

REGULAR MEETING

Oregon City, Oregon, December 21, 1994

A regular meeting of the City Commission was held in the Commission Chambers of City Hall on the above date at 8:00 p.m.

Roll call showed the following present:

Mayor Daniel W. Fowler
Commissioner Suzanne VanOrman
Commissioner Robert M. Light
Commissioner James R. Ebert
Commissioner Ronald H. Bespflug

Charles Leeson, City Manager
Jean K. Elliott, City Recorder
Edward J. Sullivan, City Attorney

The flag salute was led by Mayor Fowler, after which he called for approval of the minutes. It was moved by Light, second by Ebert, to approve the Executive Session minutes of November 16 and December 3, 1994 and regular meeting minutes of November 16 and December 7, 1994.

Roll call: Light, Aye; Bespflug, Aye; Ebert, Aye; VanOrman, Aye; Fowler, Aye.

Mayor Fowler noted that this was the last full meeting for Commissioners Light and Bespflug and thanked them for their service. Bespflug expressed his appreciation for the experience and pleasure of serving as Commissioner of Oregon City.

At this point, Commissioner Bespflug exited the meeting to recuperate from recent surgery.

At this time, Mayor Fowler presented Certificates to Fire Department employees which expressed appreciation for their life-saving efforts in a recent apartment fire in which an 11-year old boy was burned.

Roger McClurg, Library Director, was called upon for an update on the new Library facility. Using a display model, he outlined to the audience and viewing public the design of the new facility to be located within the Danielson Shopping complex.

On the call for other presentations and future agenda items, James Dalton, PO Box 3, asked why Agenda Item No. 9, Commission Report No. 94-224, was not a public hearing. The City Attorney responded that the hearing has been held with findings issued. Those findings are back on remand from LUBA with no requirement for any further public hearing.

Keith Griffin, Vice-President of Cash Flow Investors, Inc., 501 Pleasant Avenue, Ste 5, Oregon City, spoke regarding water damage and drainage problem at 501 Pleasant Avenue. This was referred to the City Manager for resolution.

Mayor Fowler announced the Sesquicentennial Proclamation Event on December 24, 1994 at the End of the Trail Interpretive Center from 10:00 Am to 11:30 AM.

Commission Report No. 94-225, Zone Change for Annexed Properties - South of S. Caufield Road, North of Conway Drive, West Side of Molalla Avenue - Public Hearing; If approved, proposed Ordinance No. 94-1035, An Ordinance Amending Chapter 17.06.030, Official Zoning Map of Oregon

City Municipal Code, 1991, by Changing Certain Districts, was presented. The report noted that on September 15, 1994, the Boundary Commission approved the annexation of 2.36 acres on the west side of Molalla Avenue, north of Conway Drive and south of S. Caufield Road; addressed as 20071 and 20085 S. Molalla Avenue. The annexation was initiated at the request of the property owners to obtain sanitary sewer service.

On November 22, 1994, the Planning Commission held a public hearing on File No. ZC94-10 to change the zoning from "FU-10" Future Urban 10-Acre Minimum, to City zoning. No testimony was received regarding this request.

The proposed designations for the property were based on the Comprehensive Plan classification of Low Density Residential. The three City single-family residential zones are R-10, R-8 and R-6 Single-Family Dwelling District. The Planning Commission recommendation was R-10 Single-Family Dwelling District. In addition, any future development which would require additional access to High 213/Molalla Avenue will need to be resolved, addressed and coordinated with ODOT, Clackamas County and Oregon City prior to development.

Attached for Commission review were the following: 1) Planning Commission minutes from the November 22, 1994 meeting; 2) staff report; 3) Public notice and Map of the properties; and, 4) proposed Ordinance No. 94-1035.

Notice of proposed Ordinance No. 94-1035 was posted at City Hall, Pioneer Community Center and Municipal Elevator, by direction of the City Recorder. It was recommended that first and second readings be approved for final enactment to become effective January 20, 1995.

The City Attorney advised that this was a public hearing in which there was testimony in evidence and facts. He cautioned the participants that the criteria that was set forth in the staff report were the criteria that the City believed to be applicable. If anyone believes that different criteria are applicable, they need to set forth those criteria with sufficient specificity to permit other parties and the City Commission to respond to those criteria. Failure to raise an issue with sufficient specificity can preclude appeal to the Land Use Board of Appeals on that issue.

Mayor Fowler declared the public hearing open and called for testimony. With no conflicts declared and no testimony offered, the hearing was closed.

Fowler asked if R-10 along Molalla Avenue was inconsistent with population density per the 2040 plan. McGriff responded that direction from ODOT over the years that their concern was additional access points onto Highway 213.

It was moved by Light, second by VanOrman, to approved first reading of proposed Ordinance No. 94-1035.

Roll call: Ebert, Aye; VanOrman, Aye; Light, Aye; Fowler, Aye.

Second reading was called after which it was moved by VanOrman, second by Light, to approve second reading for final enactment to become effective January 20, 1995.

Roll call: VanOrman, Aye; Light, Aye; Ebert, Aye; Fowler, Aye.

ORDINANCE NO. 94-1035

AN ORDINANCE AMENDING CHAPTER 17.06.030, OFFICIAL ZONING MAP OF THE OREGON CITY MUNICIPAL CODE, 1991, BY CHANGING CERTAIN DISTRICTS

OREGON CITY ORDAINS AS FOLLOWS:

WHEREAS, public necessity and general welfare of Oregon City require changes to certain districts, which changes have been heard by the Oregon City Planning Commission and approved by it after public notice and hearing as required by Chapter 17.50 of the City Code, and the City Commission after public hearing finding that the following described properties can reasonably be utilized for uses incident to the R-10 Single-Family Dwelling District, for which there is a need in this area, and that such zoning is compatible with the neighborhood development and consistent with the Comprehensive Plan of Oregon City, the findings and conclusions attached as Exhibit "A" and depicted in Exhibit "B" adopted as the findings of this Commission and the following described property to wit:

Tax Lots 2200 and 2300, Map 3-2E-16B, zoning designation is changed from FU-10, Future Urban 10-Acre minimum, to R-10 Single-Family Dwelling District, with the following condition:

Any future development which would require additional access to Highway 213/Molalla Avenue will need to be resolved, addressed and coordinated with Oregon Department of Transportation, Clackamas County and Oregon City prior to development.

Read first time at a regular meeting of the City Commission held on the 21st day of December, 1994, and the foregoing ordinance was finally enacted by the City Commission this 21st day of December 1994.

/s/JEAN K. ELLIOTT, City Recorder

ATTESTED this 21st day of December, 1994.

/s/Daniel W. Fowler

DANIEL W. FOWLER, Mayor

The City Manager suggested considering Commission Reports 94-228 and 94-229 at the same time. The Commission approved.

Roger McClurg, Library Director, presented both reports and the recommended action.

It was moved by Ebert, second by VanOrman, to approve Commission Report No. 94-228 to Columbia Cascade Construction, Inc. for \$199,700 and 94-229 to reject the bid of Northwest School Equipment, Inc. in favor of the bid of Saxton, Bradley, Inc. for \$39,783.90, as recommended by staff.

Roll call: Light, Aye; Ebert, Aye; VanOrman, Aye; Fowler, Aye.

Commission Report No. 94-228, Library Facility Contractor - Bid Award, was presented by the Manager. The report noted that on March 9, 1994, the City Commission in work session approved a staff recommendation to relocate the City library into leased space in the Danielson Hilltop Mall. Funding for this project was subsequently placed in the Library Department operating budget for

fiscal year 1994-95. At its July 6, 1994 meeting, the City Commission entered into a five-year lease agreement with Danielson for the 13,000 square feet to be used for the City Library.

Since July, planning for the new Library facility has proceeded and the architectural and design work is now complete. On November 17, 1994, the City issued a Call for Bids for a contractor to perform the required renovation to the facility; eight contractors responded. Attached is the Tabulation of Bids received.

On the December 21, 1994 agenda was the Bid Award of the Library Facility Contractor Service. It was recommended that the bid submitted by the firm of Columbia-Cascade Construction, Inc. in the amount of \$199,700 be accepted and the City Manager directed to execute the contract document.

Should the contractor decline to enter into the contract, it was then recommended that the second low bid by the firm of Glen/Mar Construction, Inc. in the amount of \$207,031 be accepted and the Manager directed to execute the contract document.

* * * * *

Commission Report No. 94-229, Steel Shelving for Library Facility - Bid Award, was presented by the Manager. The report noted that on the December 21, 1994 agenda was the bid award for steel shelving for the new Library facility.

An essential component of the plan to move the City Library to the new Hilltop facility is the acquisition of steel shelving to replace old wood shelving and provide capacity for the expansion of the Library's collection. Funds for this purpose are included in the overall project budget.

On November 17, 1994, the City published a Call for Bids for the provision of shelving and related components. Three bids were received with the following results:

Northwest School Equipment, Inc.	\$35,345.00
Saxton, Bradley, Inc.	39,783.90
Spacesaver Specialists, Inc.	48,189.00

Upon review of the bids, it was discovered that the apparent low bid was based on changes to the bid specifications. This is in contradiction to the City's bid document which, in the Instruction to Bidders section was very specific in requiring that all bids must meet or exceed the specifications or they will not be considered and that conditional bids will not be accepted.

The most notable problem with the low bid was that it was based upon a significant reduction in the amount of oak edge banding for the shelving canopy tops; e.g. the City specified that all edges would be externally banded with 5/8" oak. The low bidder based their proposal on providing edge banding only on the "...front edge and exposed end of shelving run only..." and excluded the back edges and ends between panels.

In addition, the bid was conditioned upon a delivery lead time well in excess of that specified in the bid documents. The City specified that all work was to be fully completed within sixty days after receiving the Notice to Proceed. The low bidder conditioned acceptance of liquidated damages on an eighty-four day lead time prior to the anticipated completion date in the bid form.

Also of concern was a letter submitted to the City by the low bidder after the bid opening. In this letter, the bidder explains and justifies the lower bid and states that the competitor's higher cost is "difficult to understand". The City's bid document clearly states that only the advantages and capabilities contained in the vendor's written proposal will be considered.

In contrast, the other two bidders accepted all terms and specifications listed in the bid documents.

Based on the information provided, it was recommended that the bid submitted by Northwest School Equipment, Inc. be rejected on the basis of not meeting or exceeding specifications.

It was further recommended that the bid submitted by Saxton, Bradley, Inc. in the amount of \$39,783.90 be accepted and the City Manager directed to execute the contract documents.

* * * * *

Commission Report No. 94-224, Revised Findings of Facts - TP92-02, and Final Order - Approval of a Preliminary Plat for a 55-Lot Single Family Subdivision, was presented by the Manager. The report noted that on the December 21, 1994 agenda was the revised findings of fact for File No. TP92-02 which was an application for a preliminary plat for a 55-lot single-family residential subdivision.

The application was reviewed by the Planning Commission. The decision was appealed to the City Commission. The final decision was appealed to the Land Use Board of Appeals (LUBA) which remanded the decision for further proceedings.

Attached for Commission review were the revised findings. It was recommended that the City Commission review all the facts of the findings and if the findings are approved, the Mayor should be authorized to sign the Final Order.

The City Attorney advised that the Commission had before them for the second time, a 55-lot single family subdivision which was heard earlier this year. It was taken to LUBA with them sending it back only on the grounds that the City Commission did not address some of the issues that were brought out at the hearing. LUBA intimated that had the City done that, the City's interpretation which was certain in the briefs but not adopted by the Commission may have been upheld. Staff returned and looked at the alleged deficiencies and re-wrote the findings with the findings now before the Commission for final determination. This is not a public hearing; if the Commission hears new facts, they will be asked to disregard them. This is simply the adoption of a final order which was adopted once before.

The Mayor announced he would accept public input regarding comment on the findings.

Dan Holliday, 1223 Monroe, spoke opposed to the Commission voting to accept the report as it stands. He felt some interpretations were weak at best. He referred to 16.12 and the development impact statement and the requirement for a development impact statement to be found, he noted that the City finds that it is not required for the City to have that development impact statement before the preliminary approval. In the Code it specifically calls for a development impact statement and will contain certain items with two copies presented to the Planning Commission. He felt to find that it is not required is a direct contravention of the Code as it reads now. He then noted that a lot of City money has been spent at LUBA defending this particular development. He advised that if the Commission chooses to approve the report tonight, the City will spend thousands more dollars defending this again and in all likelihood it will be returned to the City Commission again from

LUBA. He urged the Commission to think about how that money is being spent and maybe there are better ways to spend that money other than paying attorneys.

James Dalton, PO Box 3, spoke noting he found areas in the findings questionable. On Page 6, the distance of the development from Newell Creek he felt was never established. He felt there was no support for the conclusion that the long distance makes it highly unlikely that the development will have no adverse effects. He referenced Page 13s reference to City Code 16.12.080, wherein he felt the DIS for vegetation and animal life was necessary for this development. Middle of first paragraph on Page 14, "three distinct areas on the site are to be dedicated as open space. These areas include corridors for wildlife to pass through and to the site", he has not seen any credible evidence to support that statement. He wondered if the open space was adequate with no evidence to suggest that.

Dan Holliday spoke again noting that in several places in the report, special conditions were mentioned regarding stormwater run off and impacts to Newell Creek and tributaries. He has seen a lack of enforcement of those issues in developments under construction at this time. He questioned whether the City has the will or the capability to enforce those conditions. He wanted this matter to be put off until it is seen whether the City has the ability to enforce the conditions that are placed.

Fowler referred to Page 13, Code 16.12.080 and asked for an explanation. The City Attorney responded that the Goal 5 process requires inventorying a number of resources. Once its placed in the inventory the City has to determine what must be done with the sites to preserve them to allow alternative uses that might have the effect of destroying or nullifying those resources or trying to have the two co-exist under conditions imposed on each one. The point of the finding is that in the City's plan, none of those inventoried sites are found on this property. That is not to say that there are not animal habitats present; but, the City is required to inventory the significant animal habitats and parklands and open space alike. It has done so, but has not determined that there any significant resources on that site. There is still the ability to protect whatever resources are there through the imposition of conditions. That is what that section does.

Fowler asked if the City can impose at the point of a development application, further conditions. The City Attorney responded that the City can impose further conditions at the actual design review or development stage. He mentioned this issue was appealed on a set of fairly narrow grounds to LUBA with the chief ground being - was a development impact statement a criterion for approval. The City when it entered its findings did not address that issue. The developer argued that this was not one of the criteria because the criteria were listed with DIS statement not among that criteria. LUBA advised that this was not stated in the findings.

It was moved by VanOrman, second by Ebert, to adopt the revised findings.

Roll call: Ebert, Aye; VanOrman, Aye; Light, Aye; Fowler, Aye.

CONSENT AGENDA

The following were considered routine matters and could be approved in one motion. On the call for discussion of a particular item, Fowler requested pulling Agenda Item 12, Commission Report 94-230 for discussion in Executive Session.

It was moved by Ebert, second by Light, to approve the items in the Consent Agenda Items 10 and 11 as recommended by staff.

Roll call: VanOrman, Aye; Light, Aye; Ebert, Aye; Fowler, Aye.

Commission Report No. 94-226, Liquor License Application - McMenamins, 102 9th Street (former Chamber Building) - New Outlet, was presented. The report noted that at a Special meeting of the City Commission held March 28, 1983, Commission Policy 1-7 entitled, "Approval of Liquor License Renewals" was adopted. Commission Policy 1-7 states as follows: "The Mayor is authorized to approve all liquor license renewals if these renewals are approved and recommended by the Fire and Police Departments. The approval by the Mayor can be made without City Commission authorization. However, all new liquor licenses shall be submitted to the City Commission for consideration."

On October 31, 1994, the City received a Liquor License Application for McMenamins (former Chamber of Commerce Building) 102 9th Street for Michael R. McMenam, 3722 SW Greenleaf Drive, Portland and Brian C. McMenam, 9122 NW Wood Rose Loop, Portland for a new outlet. The application was reviewed by Police and Fire Departments and revealed no adverse information that would warrant denial of the application.

On the December 21, 1994 agenda was the application for an OLCC liquor license for a New Outlet for McMenamins. Based upon the information provided, it was recommended that the application be approved.

* * * * *

Commission Report No. 94-227, Subdivision Compliance Agreement - TP94-01, Hazel Grove, Phase II (formerly "Orchards"), was presented. The report noted that on the December 21, 1994 agenda was a Construction Compliance Agreement for the Hazel Grove, Phase II subdivision. The agreement provides for surety to complete public improvements and was attached for review. It was recommended that the Commission authorize the Mayor and City Recorder to execute.

* * * * *

At 9:02 PM, it was moved by Ebert, second by VanOrman to recess to convene an Executive Session pursuant to ORS 192.660 (1)(h) Legal Counsel and (1)(e) Real Property Transactions. MOTION CARRIED UNANIMOUSLY.

9:55 PM - reconvening of regular Commission meeting

Commission Report No. 94-230, Deed of Sale to Transfer Parcel 2 of City Minor Partition No. 92-16 to Oregon City Leasing, was presented. The report noted that at the November 16, 1994 Executive Session, the City Commission received information regarding a request to execute a deed of sale to transfer Parcel 2 of Minor Partition No. 92-16.

Therefore, on the December 21, 1994 agenda was the matter of City Commission authorization for execution of the Deed of Sale to Oregon City Leasing. Based upon the information discussed on November 16, 1994, it was recommended that the City Commission authorize the Mayor and City Recorder to execute a Deed of Sale transferring Parcel 2 of Oregon City Minor Partition No. 92-16 (County Partition No. 1994-139) from the City of Oregon City to Oregon City Leasing.

The City Attorney noted that this item had just been discussed in Executive Session and understood the remarks of the Commission to be that he request a copy of the lease and ask if there is interest in disposal of the parcel to the City and under what terms.

It was moved by Light, second by Ebert, to table and direct staff to so inquire.

Roll call: Light, Aye; Ebert, Aye; VanOrman, Aye; Fowler, Aye.

The Manager advised of an offer by Patel to purchase the Riverfront Parcel 2. The offer is inconsistent for the development needs of the property.

It was moved by VanOrman, second by Light, to direct staff to reject the offer.

Roll call: Ebert, Aye; VanOrman, Aye; Light, Aye; Fowler, Aye.

Commission Ebert asked about the suggestions that Bessflug submitted regarding the requirement of easements. The City Attorney noted that he prepared a memorandum that said if a change was wanted, it should be referred to the Planning Commission for hearing. The second item regarding the Planning Commission Chair signing findings. He knew that on recommendations staff has been formulating findings. He felt it might be better to have the Planning Commission adopt its own rationale rather than staff. Of concern was the 120 day rule. Rich expressed concern over the extra time that would be needed with direction he received being to speed things up.

Ebert reminded of a work session regarding Leland Road improvements and wanted it scheduled relatively soon.

With no further business, the meeting adjourned at 10:05 PM.


JEAN K. ELLIOTT, City Recorder

jke