

**CITY OF OREGON CITY
CITY COMMISSION
MEETING MINUTES**

January 18, 2012

1. [Convene Regular Meeting of January 18, 2012, and Roll Call](#)

Mayor Neeley called the meeting to order at 7:22 p.m.

Roll Call: Mayor Doug Neeley; Commissioner Betty Mumm; Commissioner Kathy Roth; and Commissioner Rocky Smith, Jr.

Staff Present: David Frasher, City Manager; Ed Sullivan, City Attorney; Nancy Kraushaar, City Engineer & Public Works Director; Scott Archer, Community Services Director; Tony Konkol, Community Development Director; David Wimmer, Finance Director; Jim Loeffler, Human Resources Director; Maureen Cole, Library Director; Nancy Ide, City Recorder; Kelly Burgoyne, Asst. City Recorder; and Eric Underwood, Economic Development Manager.

2. [Flag Salute](#)

3. [Ceremonies, Proclamations, Presentations](#)

a. [Main Street Oregon City Annual Report - Lloyd Purdy, Downtown Manager](#)

Lloyd Purdy, Downtown Manager, introduced Terri Powers, Main Street Board President. He gave the Main Street annual report including downtown partnerships, downtown's impact on the community, dollars for downtown, and 2012 goals.

4. [Citizen Comments](#)

Joyce Gifford, resident of Oregon City, discussed Oregon City's train depot and compared it to the train station in Olympia which was run by volunteers. She suggested putting together a volunteer organization for Oregon City to meet and greet visitors coming on Amtrak.

Kevin Hunt, resident of Oregon City, discussed appointing citizens to a committee to review the City Charter rather than having the City Commission and City staff review it.

5. [Adoption of the Agenda](#)

The agenda was adopted as presented.

6. [Public Hearings](#)

a. [AP 11-01: Appeal of Nonconforming Determination LN 11-05. Located within a residential zoning designation at Clackamas County Map 2-2E-21CC, tax lot 201, 1300 & 1400 is currently utilized for outdoor storage and material processing. A](#)

Nonconforming Use application was submitted to the Oregon City Planning Division to confirm if the property near the intersection of Front Avenue and Forsythe Road is legally nonconforming. Planning file LN 11-05 was conditionally approved by the Community Development Director. This appeal of Planning file LN 11-05 was submitted within the appropriate appeal period.

Ed Sullivan, City Attorney, read the hearing statement describing the hearing format and correct process for participation. He asked if the Commission had any ex parte contact, conflict of interest, bias, or statements to declare.

Commissioner Smith had a phone call a week ago from a citizen who asked what was going on with this agenda item. Commissioner Smith stated it was a Planning Commission decision and he would look into it.

Commissioner Roth also received a phone call from a citizen asking about the issue.

Mayor Neeley opened the public hearing.

Laura Terway, Planner, presented the staff report. This file was submitted in order to confirm the legality of the use for properties located on the corner of Front and Forsythe. The property was currently in the R-10 zoning designation which allowed single family homes as the primary use. The site was currently utilized by Bill Erickson Heavy Construction for outdoor storage of equipment, rock, and fill dirt and material processing. She explained the previous approval with conditions and City Commission options. She went over the criteria for approval and evidence within the record. The applicant submitted this appeal because they did not agree with staff findings relating to outdoor storage. She explained how staff had concluded the applicant did not bear the burden of proof to demonstrate the outdoor storage was legally established on all three lots or that it had continued for the past 20 years. Thus the expansion outside the original area was determined to be an expansion which was not allowed. Regarding the material processing, staff concluded the applicant did not bear the burden of proof that the processing of materials on site was legally established and had continued for the past 20 years. Thus by adding processing, it was an intensification of the use which was not allowed.

Seth King, Land Use Attorney with Perkins Coie LLP, Portland, was there on behalf of the appellant. He requested the Commission modify staff's determination and find that it was a lawful non-conforming use to continue the outdoor storage and processing occurring on all three tax lots. A letter had been submitted requesting to hold the record open to allow the appellant time to answer questions of staff.

Bruce Goldson, Project Engineer with Theta LLC, Lake Oswego, gave a background on the property. There were many sworn affidavits in the file which had a higher believability and should be used as criteria to judge whether the business had operated continuously and had processed material over time. This was a seasonal operation, there were no daily employees, and the equipment and materials were moved on and off the site at various times. He showed some photos of the materials and those that were processed on the site. He thought the appellant had met the burden of proof and there had been grading permits issued that showed operations had been going on for some time.

Bill Erickson, resident of Oregon City and owner of the property, had been in the Park Place neighborhood since 1945 and started the excavation business in 1957. He discussed what his

business did and how he used the site.

William Grant Erickson, resident of Oregon City and president of Bill Erickson Heavy Construction, said the property had been used for this purpose for a long time. They recycled material and resold it. He was surprised this issue came up because they had been there so long. They just wanted to keep working.

There was discussion regarding the area that was paved on the property, when the paving took place, and the grading permits that had been issued for the property.

TJ Erickson, resident of Molalla, was in favor of the appellant. He had worked with his father for years and it was important that they got to work together. He was willing to help anyone in the neighborhood.

Dennis Snyder, resident of Canby, was in support of the appellant. In the early 1970s he had known the place as a sandpit and material and equipment were hauled to and from the location at that time.

Billy Toman, resident of Oregon City, said his property adjoined the property in question. The area was flat and used as a sandpit. Bill Erickson had excavated the property for his house and Mr. Erickson helped others in the neighborhood as well. He said the materials on the property moved pretty fast as contractors needed it. He and his wife had never been bothered by any of the equipment or trucks. If the street got dirty, Mr. Erickson would have a sweeper clean it. Mr. Toman had been there since 1961 and he did not remember any zoning restrictions and a change to residential. The area had always been a business area rather than residential. They wanted Mr. Erickson to stay in the location. He had never seen dust come off of the property and never had a problem with the house getting dirty. He thought Mr. Erickson was a good neighbor.

Rocky Younger, resident of Oregon City, said Mr. Erickson used to do business with his father. In the 1970s, Mr. Younger worked for Chuck Hagler Concrete and got dirt from Mr. Erickson's property. It had been a rock and dirt place ever since he was a kid and he had been doing business for 65 years in the community.

Brian King, resident of Oregon City and manager of Hal's construction, had known Mr. Erickson for 38 years. Mr. Erickson was an asset to the community and provided jobs. He thought the Commission needed to help small businesses stay in business.

Walt Smith, resident of Oregon City, lived in the Park Place area and owned property within three blocks of Mr. Erickson's property. He was not affected by any noise; it was a quiet and smooth operation. Mr. Erickson had helped several times in the neighborhood plowing snow. He did not know why it was non-conforming because there was another construction company a few blocks away that had not been there when the Park Place area was annexed. He thought as long as it stayed with the original ownership, the existing use was allowed. It was a good business to have in the neighborhood.

Brian Johnson, resident of Gladstone, stated his family had worked with Bill Erickson all his life. He explained the organic material that was on the property and why grass grew on the top of the piles. Mr. Erickson had been doing this business since Mr. Johnson was a kid. Mr. Erickson put people to work, had done many projects in the community, and had helped his

neighbors for years.

Bronson Blather, resident of Oregon City, went by the property as a teenager and there was different materials and equipment on the property at different times. He later worked in construction and there were always different materials there. Ten years ago he became an employee of Mr. Erickson and he still was. A person could not tell by the photos what was on the property all the time as things came and went. There had always been material and equipment there. If the piles got dusty, they were watered down or if the road was muddy it was cleaned.

Dan Serres, resident of Oregon City, owned Serres Greenhouse and Farm and had lived and worked in the area for 60 years. He had gone by the site every day from the 1970s up until now. That site had been used for excavation and storage of materials and equipment including tax lot 201. This use went back about 100 years in that area.

Fray Repp, resident of Portland, owned properties adjacent to Erickson Construction and had been in business for 28 years. The City needed to work with small business owners and if Mr. Erickson's business was shut down, there would be many people out of work. Mr. Erickson had done nothing but make the property better and safer. Mr. Erickson always parked his equipment in the same place every time. Without the Commission's help small businesses could not stay in business.

George Milliken, resident of West Linn, had worked with Mr. Erickson for many years, and Mr. Erickson did everything right and took pride in his work. He did not think a house in the neighborhood could see the place from their homes and he did not know what the complaints were about.

Paul Hauck, resident of Oregon City, moved to the area in 1996. He had made several trips past this location and he was concerned about the expansion of the area. He thought the photographs presented by staff showed substantial changes between 2000 and 2010. He did not want the area expanded to allow greater use.

Blaine Rowland, resident of Oregon City, lived 100 yards south of the site and had done business with Mr. Erickson over the years. Mr. Erickson did good business. He was in a location where he heard the noise of the vehicles. He thought use of the site had ramped up significantly in the last five years. The paving happened in 2005 or 2006 and after the blacktop went down there had been a significant change of activity. The activity was cyclical and seasonal. It was a grandfathered in use, but it wasn't the 1960s anymore and the neighborhood had grown. It was an odd use in the middle of a residential neighborhood. He hoped there was a similar site where the zoning wasn't residential and more appropriate for this activity. He thought Mr. Erickson's business was good, but the dirt storage yard in the middle of a residential neighborhood was not appropriate.

Jeanine Seger, resident of Oregon City, thought very highly of Mr. Erickson and his family and had a house that abutted Mr. Erickson's house. Her concern regarding commercial construction in a residential zone was the safety of the children due to the large trucks in the neighborhood.

Darrel Teel, resident of Oregon City, said his property abutted Mr. Erickson's lot 201. He had lived there since 1974 and there had been huge changes. He complained about being able to see the materials, hear the noise, dirt on his windows, smell of the diesel, and the work started

early even on weekends.

Mr. King gave the rebuttal. He said some of the comments regarding site operations was new information. He requested time for investigation and to have conditions of approval to address the issues and allow the site to continue. Whether or not the site was generating those impacts was not directed at the approval criteria. Regarding changes to tax lot 201, this had been continuously used as a pit site that predated zoning in the area. Testimony had been presented that the use had been continuous and there had not been an expansion or intensification of the use. The Code did not define those terms, and he provided legal argument on how to interpret the terms. There was comment regarding early hours on Saturdays, and it was rare that they operated on Saturdays. He proposed extending the record for a decision by March 22, 2012.

Mr. Konkol clarified anyone could submit written comments into the record for 14 days, the next seven days was for anyone to rebut the written comments, and the last seven days was for the applicant to submit their final written comment.

Mayor Neeley closed the public hearing.

Motion by Commissioner Rocky Smith, Jr., second by Commissioner Betty Mumm to leave the record for AP 11-01 open for 14 days followed by 7 days for rebuttal followed by 7 days for written argument and a final decision by March 22, 2012.

A roll call was taken and the motion passed with Mayor Doug Neeley, Commissioner Betty Mumm, Commissioner Kathy Roth, and Commissioner Rocky Smith, Jr. voting aye. [4:0:0]

b. [**LE 10-02: Water Master Plan Update. Ordinance for Introduction, No. 12-1001: An Ordinance Adopting an Update to the Oregon City Water Distribution System Master Plan, an Ancillary Document to the Oregon City Comprehensive Plan**](#)

Pete Walter, Planner, said staff recommended approval of the first reading for Ordinance 12-1001. He explained the purpose of the Water Master Plan, what was included in the record and public involvement process that had taken place. The Planning Commission recommended approval of the Water Master Plan through a vote of 5-0 and agreed that the funding scenarios required a larger policy discussion to be addressed by the City Commission. They did not make a recommendation for which funding scenario should be chosen, but were comfortable that the draft Water Master Plan was consistent with the City's Comprehensive Plan and statewide land use goals. The Planning Commission also recommended the City explore alternative water sources including well water at the time of annexation of properties into the City.

West Yost, Consulting Engineer representing the applicant, gave a presentation on the water service area, water demand, existing system, storage, water distribution system pipes, pipe replacement, revenue and expenses, water rate rollback, and funding scenarios. He recommended the City begin a dialogue with the citizens to help them understand the funding issues, that the goal should be towards Financial Plan Scenario 3 to be self sustaining, and to bill separately for what was controlled by the City and what was controlled by the South Fork Water Board.

Paul Edgar, Canemah Neighborhood Association Land Use Chair, had reviewed the Water Master Plan and asked for adjustments that had not been changed. He was concerned about pipes being extended into areas like the Metro natural area in Canemah and was also

concerned about the financing. He did not agree with diverting revenue to a building fund as it might create a rate increase. The building fund should be on its own and not taken out of the operating revenue but funded through a bond.

Nancy Kraushaar, City Engineer and Public Works Director, said there were extra costs to bonding as well because of interest. Regarding pipes in the Canemah vacant areas, it did not mean the pipes had to go there, but if it was determined to be a need for a water system in that area at some point, this was what size pipe needed to go in.

Motion by Commissioner Betty Mumm, second by Commissioner Kathy Roth to approve the first reading of Ordinance No. 12-1001, an Ordinance adopting an update to the Oregon City Water Distribution System Master Plan, an ancillary document to the Oregon City Comprehensive Plan.

A roll call was taken and the motion passed with Mayor Doug Neeley, Commissioner Betty Mumm, Commissioner Kathy Roth, and Commissioner Rocky Smith, Jr. voting aye. [4:0:0]

Mayor Neeley said regarding exploring alternate water sources such as wells, the Commission had testimony previously from someone outside incorporated Oregon City who stated the well water level had dropped due to development. The placement of the wells would need to be considered as well as the option of recharging the water table itself during the winter months. To tap well water itself concerned him because other people used the water and the well water level may be dropping.

Ms. Kraushaar explained other cities used an aquifer to store water and that was the kind of system the Planning Commission was suggesting.

7. General Business

a. [Second Reading, Ordinance No. 11-1013, Amending Chapter 5.04 of the Oregon City Municipal Code \(OCMC\) Related to the Process for Issuing Business Licenses](#)

David Frasher, City Manager, had discussed this issue with the Chamber of Commerce Director. He recommended postponing a decision to allow the City Attorney to meet with business leaders and Chamber representatives of the Government Affairs Committee to be comfortable with what was being proposed and to make possible language changes.

Mr. Sullivan reviewed his memo that responded to the questions that had been received regarding this ordinance. There were two things the ordinance did regardless of the Blue Sky issue. One major change was the City would not have to wait until there was a violation and then revoke the license, but could declare some things unlawful or a nuisance beforehand and deny the license. The second change was the appeals process. Right now it was both the hearings officer and City Commission and it was changed to the hearings officer with the City Commission able to review a decision. He thought the ordinance passed constitutional muster and would be valid if adopted.

Commissioner Mumm said she had asked the Chamber to look into this issue since it had to do with the business license fund.

Kevin Hunt, resident of Oregon City, said the issue was not whether or not to have a marijuana dispensary in Oregon City. He thought this was an overbroad ordinance that affected the rights of every single business in the City. He thought the issue could be solved simply by adding a provision to the business license code that said no business license shall be issued to any facility that dispensed any controlled substance contrary to federal criminal law. They did not have to pass an ordinance that amended the current business law ordinance. He said the Chamber of Commerce's Government Affairs Committee voted unanimously to oppose the ordinance. He discussed his response to the City Attorney's memo. Regarding the idea that the search and seizure provisions did not apply because it was administrative, the amendment did not require a warrant, probable cause, or reasonable grounds and allowed a search on the basis that in the future it might violate a law.

Michael Berman, resident of Oregon City, confirmed that the Chamber unanimously opposed the ordinance. He wondered what the purpose of the ordinance was. He thought the current ordinance was functioning well and he did not think they should decide what businesses should come to the City. Other business owners also viewed this as over reaching, ill-conceived, and paranoid and questioned the purpose.

Mr. Sullivan responded the purpose was a request from the Chief of Police which was triggered by the Blue Sky application to look at the ordinance and make two changes, one to address the question of whether the City had to wait until there was a nuisance or violation or could they anticipate that as part of the decision making process and the second was updating an ambiguous appeals process.

Mr. Hunt asked Mr. Frasher if it was true that the business license for the Oregon Sky Foundation's business expired on December 31, that they had not requested renewal, and they had indicated they had no intention of opening up in Oregon City.

Mr. Frasher stated on December 7 the City issued Oregon Sky a license for which they could seek renewal in 2012. To his knowledge they had not applied for renewal.

Amber Holveck, Executive Director for the Chamber of Commerce, said it was the policy of the Chamber that they did not give a final decision on any given matter until it was passed through the Board of Directors. Other people from the public were speaking for the Chamber and that was not appropriate and not the way they did business. She appreciated the effort to talk with the business community about this issue. It was premature to utter a decision on how the Chamber and the business community viewed this particular matter.

Motion by Commissioner Betty Mumm, second by Commissioner Rocky Smith, Jr. to postpone a decision on the second reading of Ordinance No. 11-1013, amending Chapter 5.04 of the Oregon City Municipal Code (OCMC) related to the process for issuing business licenses to March 21, 2012.

A roll call was taken and the motion passed with Mayor Doug Neeley, Commissioner Betty Mumm, Commissioner Kathy Roth, and Commissioner Rocky Smith, Jr. voting aye. [4:0:0]

b. [Urban Renewal Commission Discussion and Appointment](#)

Mayor Neeley gave a background on this agenda item.

Dave Prideaux, resident of Oregon City, spoke on behalf of Tom Geil and thought Mr. Geil would be a good addition to the Urban Renewal Commission. Mr. Geil put in an appeal that since he was not able to attend the meeting that if comments were made from the public he would like to be able to respond. Mr. Prideaux gave the Commission a brief summary of Robert's Rules of Order and he asked about the procedure for motions made by the Commission.

Michael Berman, resident of Oregon City, endorsed Mr. Geil for the Urban Renewal Commission.

Nick Dierckman, resident of Oregon City, thought it would be good for the City Commission to have multiple candidates to consider and would like to see the other candidates submitted by the general membership interviewed. He did not intend the update to the bylaws to take away the rights of the general membership. There were new people who were participating in Park Place. He thought it was important to recognize and respect the desires of the general membership that participated in the October meeting and consider those candidates.

Commissioner Smith said the Commission had to base their decision on the current bylaws and the three applicants were qualified. However there was only one candidate and the process did not work when there was only one. He did not feel comfortable changing his vote to allow the other two candidates. He thought this appointment should be postponed for further discussion.

Commissioner Mumm thought Tom Geil was a good choice, but thought one candidate was not a selection. She thought the Commission should open it up and have candidates from the Park Place neighborhood apply through the City Recorder's office like every other City committee did.

Mayor Neeley did not want to leave the position vacant for any length of time. He suggested making a temporary appointment of Tom Geil for one year.

Commissioner Roth thought the Commission had to respect the bylaws. She suggested a cooling off period and to send it back to Park Place.

Mr. Sullivan said if the position was not filled, the incumbent remained on the Commission. He had trouble making the appointment one year when it was a three year term to be appointed.

Nancy Walters, resident of Oregon City, supported Tom Geil for the position. The reason she dropped out of the interview process was because it was a hostile process and she was intimidated. No one was responsible for the process and it was the third different process she had been through as an appointee.

William Gifford, resident of Oregon City, stated how the McLoughlin Neighborhood Association Steering Committee worked, the steering committee made a recommendation to the general membership and the general membership voted on the recommendation. He thought the general membership of the Park Place Neighborhood Association was not aware of the implications of making the steering committee the only source of making recommendations for the Urban Renewal Commission. The Commission did not have to accept what the neighborhood offered and could direct the neighborhood association to correct the situation.

Karin Morey, resident outside of Oregon City, thought there was nothing different about the interview process that was going to occur for Urban Renewal from any other board and commission. She asked about the bylaws for Urban Renewal Commission terms.

Mr. Sullivan said hold over's were allowed on the Urban Renewal Commission.

Motion by Commissioner Rocky Smith, Jr., second by Commissioner Kathy Roth to postpone the Urban Renewal Commission appointment until further discussion at the Commission Retreat.

A roll call was taken and the motion failed with Commissioner Kathy Roth and Commissioner Rocky Smith, Jr. voting aye, Commissioner Betty Mumm voting no, and Mayor Doug Neeley abstained. [2:1:1]

Motion by Mayor Doug Neeley, second by Commissioner Betty Mumm to declare the Urban Renewal Commission position vacant and postpone the election until further discussion on alterations to the nature of the Urban Renewal Commission and if it was not changed to ask the Park Place Neighborhood Association to forward a new set of names for consideration.

A roll call was taken and the motion failed with Mayor Doug Neeley and Commissioner Betty Mumm voting aye, Commissioner Kathy Roth abstaining, and Commissioner Rocky Smith, Jr. no [2:1:1].

Motion by Commissioner Kathy Roth, second by Mayor Doug Neeley to declare the Urban Renewal Commission position vacant and to postpone the matter for further discussion at the Commission Retreat or a Commission Work Session, whichever was first.

A roll call was taken and the motion passed with Mayor Doug Neeley, Commissioner Betty Mumm, Commissioner Kathy Roth, and Commissioner Rocky Smith, Jr. voting aye. [4:0:0]

c. **[2012 Potential Topics List Survey for Metro Policy Advisory Committee \(MPAC\)](#)**

Mayor Neeley discussed the items to be brought forward to MPAC and their ranking. He asked the Commission to look at the topics and provide input.

8. **[Consent Agenda](#)**

a. **Resolution No. 12-01, Oregon City Garbage, B&B Leasing, Proposed Solid Waste Rate Adjustment**

b. **Minutes of the December 13, 2011 Joint Work Session Meeting**

c. **Minutes of the January 4, 2012 Regular Meeting**

Motion by Commissioner Rocky Smith, Jr., second by Commissioner Betty Mumm to approve the consent agenda.

A roll call was taken and the motion passed with Mayor Doug Neeley, Commissioner Betty Mumm, Commissioner Kathy Roth, and Commissioner Rocky Smith, Jr. voting aye. [4:0:0]

9. **Communications**

a. **City Manager**

Mr. Frasher said the Commission Retreat would be held on January 21. He discussed staff's communication to the Commission called Friday Highlights.

The Commission thought it was a good way to keep informed.

Mr. Frasher stated regarding the change to the business license ordinance, this was a values decision and he did not care what the Commission's decision was.

Ms. Kraushaar said staff was continuing discussion regarding the Willamette Valley Resilience Compact. She suggested bringing it to a Commission Work Session in February.

b. **Mayor**

a. **Mayoral Reappointment of Chris Geiger and William Gifford to the Budget Committee for the term January 1, 2012 to December 31, 2014.**

b. **Mayoral Appointment of Robert Siewert to the Urban Renewal Budget Committee for the term January 18, 2012 to December 31, 2014.**

Mayor Neeley reappointed Chris Geiger and William Gifford to the Budget Committee for the term January 1, 2012 to December 31, 2014. He appointed Robert Siewert to the Urban Renewal Budget Committee for the term January 18, 2012 to December 31, 2014. He announced the vacancies on other City committees.

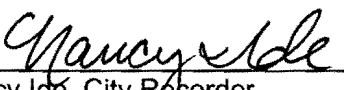
c. **Commissioners**

Commissioner Mumm said the Mayor was appointed as the Chair of South Fork Water Board.

10. **Adjournment**

Mayor Neeley adjourned the meeting at 11:22 p.m.

Respectfully submitted,



Nancy Ide, City Recorder