



City of Oregon City

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Oregon City, OR 97045
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Meeting Minutes - Final

City Commission

Dan Holladay, Mayor
Carol Pauli, Commission President
Brian Shaw, Rocky Smith, Jr., Renate Mengelberg

Wednesday, November 18, 2015

7:00 PM

Commission Chambers

1. Convene Regular Meeting

Mayor Holladay called the meeting to order at 7:00 PM.

Present: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Commissioner Carol Pauli, Mayor Dan Holladay and Commissioner Renate Mengelberg

Staffers: 11 - Community Development Director Tony Konkol, City Attorney William Kabeiseman, Public Works Director John Lewis, Police Chief and Public Safety Director James Band, Community Services Director Scott Archer, City Recorder Kattie Riggs, Library Director Maureen Cole, Economic Development Manager Eric Underwood, Assistant Parks and Recreation Director Denise Kai, Human Resources Director Jim Loeffler and Parks Maint. Manager Jonathan Waverly

2. Roll Call

3. Flag Salute

4. Ceremonies, Proclamations and Presentations

4a. Recognizing Denise Kai and Jon Waverly for Life Saving Actions

An audio clip was played of Judith Miller telling the story of how Denise Kai and Jon Waverly helped save the life of her mother.

Mayor Holladay thanked Ms. Kai and Mr. Waverly and presented them with letters of commendation for exceptional professionalism in life saving actions. Ms. Miller thanked them for saving her mother's life.

4b. Planning Commission Annual Update

Charles Kidwell, Planning Commission Chair, presented the annual Planning Commission report. He thought the Commission worked well together. He discussed the applications brought to the Commission over the last year. It had been a productive and positive year.

Mayor Holladay thanked the Planning Commission for their work.

4c. Presentation by Metro Councilor Carlotta Collette

Carlotta Collette, Metro Councilor, presented a check to the City from the Community

Planning and Development Program for the Willamette Falls Legacy Project. Metro along with other partners was applying for an EPA grant to look at the brownfield potential along the McLoughlin corridor. She took a tour of the work being done at the Canemah Bluffs to create handicap access to the area. She hoped to schedule a tour for the Commission in the spring.

4d. Tourism Presentation by Jonathan Stone

Jonathan Stone, Executive Director of the Downtown Oregon City Association, introduced the topic. He asked the Commission to consider several questions. Was tourism a continued priority of the City, would the City continue the grant program funded by the tourism tax, and how soon should they act. He did not think the grant program was the most effective option and thought the Commission should take decisive steps to move the proposed plan forward as soon as possible.

Doug LaPlaca, President/CEO of Visit Bend, gave a presentation on the proposed Strategic Tourism Plan. The potential for tourism in Oregon City was enormous, but those tourism assets were not fully developed or operational. The timing was right to get the community together and align with a common vision and plan. That plan recommended involvement of City staff and the Commission in developing tourism. The three pillars of responsibility were heritage asset operations, tourism promotion, and financial strategy. The plan gave recommendations on how the City could take ownership of establishing a financial strategy for the long term. One of the first decisions would be to terminate the current grant program. He thought the various heritage groups were willing to work together toward a common goal.

Mayor Holladay wanted to see more details of the plan in a future Work Session.

Eric Underwood, Economic Development Manager, said there was a Work Session on tourism already scheduled for December. He suggested it could be a joint Work Session.

Wyatt Parno, Finance Director, suggested after the Work Session the Commission defer any final decision so that staff could further vet the finances of the plan.

The Commission agreed to discuss this issue at the Work Session in December.

5. Citizen Comments

There were no citizen comments.

6. Adoption of the Agenda

The agenda was adopted as presented.

8. General Business

8a. Resolution No. 15-29, A Resolution Interpreting the Term "Designated as a Park" as Set Forth in Chapter X, Section 43 of the City of Oregon City Charter

John Lewis, Public Works Director, said he had given the Commission a history of this issue at the last meeting. He did not think the intent of the Charter in 1970 was to make the Public Works facility a part of Water Board Park. The hearing had been

continued for staff to revise the resolution to include what had been discussed at the last meeting. He recommended approval of the resolution.

Bill Kabeiseman, City Attorney, said he helped put the resolution together. The key issue was whether or not the intent was to designate this area as a park under the City Charter with its protections. The Commission decided that it was their understanding that was not the intent.

Commissioner Shaw thought it was clear that this was not designated as a park.

Commissioner Smith did not think the Operations Center was part of the park. He was concerned at the last meeting because he did not have a chance to review all of the information before making a decision.

Mayor Holladay said the McLoughlin Neighborhood Association submitted information that was over 50 pages, some dating back from 1941 and most of it was prior to the 1970 Charter amendment. He thought it was clear in the 1970 Charter amendment that the outline of Water Board Park was accurately delineated. Given that evidence and the fact that the historic use of the site had been going on for over 80 years and they had done due diligence on this issue, this property had not been planned to be a park. There was not any ordinance, resolution, or minutes that stated otherwise.

Commissioner Mengelberg arrived at 7:47 PM.

Kattie Riggs, City Recorder, said three comments had been entered into the record, one by Jesse Buss, one by Teri Stewart, and one by Cameron McCredie.

Commissioner Pauli said it was clear and in writing in the 1970 Charter amendment.

Commissioner Shaw appreciated all of the work done by the McLoughlin Neighborhood Association.

A motion was made by Commissioner Shaw, seconded by Commissioner Pauli to approve Resolution No. 15-29, a resolution interpreting the term "designated as a park" as set forth in Chapter X, Section 43 of the City of Oregon City Charter. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Commissioner Carol Pauli, Mayor Dan Holladay and Commissioner Renate Mengelberg

8b. Urban Renewal Commission Member Appointment

Mayor Holladay said three candidates had been interviewed for the Urban Renewal Commission. The Commission each voted for one candidate on a ballot. The candidate who got the most votes was Stephen VanHaverbeke.

7. Public Hearings

7a. Appeal of Decision to Deny Public Improvement Modification Request (Planning File AP-15-0001: Appeal of PI-15-0001)

Mayor Holladay opened the public hearing.

Tony Konkol, Community Development Director, said this was an appeal of the Community Development Director's decision regarding half street improvements

associated with the construction of a home on a lot of record.

Pete Walter, Planner, presented the staff report. In 2013 the new Transportation System Plan was adopted along with Code requirements that required street improvements for new construction of single family homes. The improvements included half street improvements, sidewalks, curbs, gutters, and street trees. Any modifications to that requirement would be a Type II land use decision. After staff level review, the application was denied. This was a 5,000 square foot lot consisting of two 2,500 foot lots of record. It was in the R-8 zone and was a legal, non-conforming lot. The applicant applied for a building permit for a new single family home on this parcel. The building permit was conditioned on the provision of the public improvements. Two other lots in the area had been handled the same way. The City Engineer accepted a fee in lieu of construction for the cost of the sidewalks. The fee in lieu was 150% of the cost to account for soft costs. There was a modification request regarding the street improvements, which was denied by staff. Street improvements were required to fulfil the purpose of the Code to make street and sidewalk connections. There were stubs to the north and south of the property on Gilman Drive and Harriet Street that needed to be connected.

Mr. Lewis clarified the applicant knew about the requirements before they built the house. With this application it would be three payments from three property owners that equaled \$33,000 and the decision when to design and build the road was not being contemplated at this time. The project would have to be added to the Capital Improvement Program and there would be a need for more funding to complete the project. There were other properties in the area that would have to meet the same requirement for future street connections and the money would be used for sidewalk and half street improvements at that time all the way to Morton Road. Sewer and water utilities were in Harriet Street.

Mr. Kabeiseman explained the public hearing procedure. He asked if there were any conflicts of interest, ex part contact, or bias to declare.

Mayor Holladay said the applicant was an employee of the Willamette Falls Media Center while he was chair of the board.

Mr. Kabeiseman said since this was the first evidentiary hearing, the record was open to new evidence and issues. A final decision could be made that night.

Barbara and Tom Brady, applicants, appealed the City's denial of the application because they did not think the application was fairly, fully, and completely reviewed and thought the City's demands were unconstitutional. They discussed three Supreme Court cases that were included in the modification application regarding takings under the Fifth Amendment of the US Constitution. The 1997 Nolan case clarified that Oregon City needed to demonstrate an essential nexus between occupying their house and the need for the extensive street improvements. The 1994 Dolan case clarified that Oregon City needed to demonstrate rough proportionality between occupancy and the need for street improvements by making an individualized determination that the requirement was related in both nature and extent to the impact of occupancy. The 2013 Koontz case clarified that both essential nexus and rough proportionality must be demonstrated even when the demand was for money. There must be a reasonable relationship in both nature and extent between the City's demand and occupying the house. In this situation, essential nexus did not exist. Essential nexus meant there must be a connection between the required payment and occupancy and there was no connection. In the City's response to their modification proposal, the City attempted to quantify the impact of occupying the house would have on traffic saying they would add 12% traffic on the

street. This argument illustrated the unfairness of exacting money from them and two other property owners when the other five households were paying nothing. It was also a problematic calculation because adding 12% to very little traffic was still very little traffic. The City cited Metro's traffic demand model in the denial, but they only cited one portion of the data to make a skewed argument. The model showed that changes in traffic to and from their area would yield less than half percent overall change in traffic over the next 20 years, but the City cited changes in traffic to the area and omitted traffic changes from the area. The City entirely omitted the resulting model finding that there was a net of only .4% increase in traffic anticipated in the area over the next 20 years. The City required them to construct an additional 10 feet of pavement making their share of the responsibility for the street paving more than 81%. There was no nexus between occupying their house and requiring 26 feet of pavement, five feet of sidewalks, five feet of landscape strips, and gutters. They were at the end of a dead end street that was narrow and far from meeting the City's designation as a 54 foot wide right-of-way. The need for full half street improvements did not arise from occupying their house. In comparing Gilman Drive to Harriet, Gilman was only 39 feet wide and carried far more traffic than Harriet and did not have landscape strips. Morton and Georgia streets were much closer to Harriet, and neither had sidewalks, landscape strips, or much pavement. No City planning document cited Harriet as scheduled or contemplated for street improvements so neither they nor their neighbors were likely to benefit from any current monetary exaction. Harriet would remain a dead end street for the foreseeable future and the City admitted that the need for the full half street improvements would arise only when and if the property at the end of the street was divided. They thought the City failed to demonstrate essential nexus between occupying the home and the need for full half street improvements. The City also failed to demonstrate rough proportionality. The City had the option of not requiring any street improvements or requiring only some improvements. City staff claimed that additional traffic resulting from occupancy of the house triggered the need for street improvements, but this had no basis in fact. One additional family living at the end of a dead end street did not generate the need for sidewalks, landscape strips, and wide pavement that existed nowhere on the street or any street nearby. The City's transportation engineer found that the street could function acceptably as it was. They thought the best way to fund the improvements was creating a future Local Improvement District when the improvements became necessary. They were willing to offer an agreement of non-remonstrance to assist the City in the eventual formation of an LID or to revive the Morton Road LID. That agreement would be included with the title on any sale of their property and would apply to any new owners. The City's denial only responded to two of the Supreme Court cases the applicants cited in the application omitting a review and findings for the entirety of the modification application, especially the section pertaining to the unconstitutionality of the City's actions. The Koontz case placed the burden on the government to demonstrate the demand for an in lieu fee was roughly proportionate to the impact of occupying the house, although the burden had been placed on them to show the exaction was not roughly proportional. The City did not discuss the coordination of an LID, which the applicants supported. The transportation engineer found that Harriet could function acceptably just as it was. The agreement for non-remonstrance would perfectly align with this finding. The City Attorney said it would not be fair for them not to pay the in lieu fee when two other neighbors had paid. The neighbors had paid in protest and only because of time constraints had not appealed. There was a Morton Road LID that included Harriet and they questioned why this was not being considered as the logical tool with which to fund any eventually needed street improvements. Their modification proposal was not fairly, fully, and completely reviewed and their constitutional rights were being violated by City demands. The need for full half street improvements now was not supported by the City's transportation engineer. Only three of the eight property owners on Harriet had occupancy conditioned on paying for the unnecessary

improvements. Their agreement for non-remonstrance aligned perfectly with the current situation, guaranteeing they would support the formation of an LID if and when Harriet had a need to be improved. The money would be used specifically for Harriet improvements and would be fairly and proportionately exacted from all who would benefit.

Stephanie Head, resident of Oregon City, was in support of Ms. Brady's modification application. The City's transportation engineer stated the improvements on Harriet were not needed at this time. Georgia was also a short, dead end street with no sidewalks, landscaping, or gutters. None of the surrounding streets had what the City was demanding of Harriet. The City's comparison of Gilman Drive was much narrower than what the City was demanding of Harriet. She thought Ms. Brady's modification proposal made the most sense for the current situation.

Ms. Brady pointed out that she and her husband never questioned or fought against taxation or demand for contributions. They believed in supporting public infrastructure. They objected to the cost of the review before any improvements were done and how there was a disincentive to do anything but pay the in lieu fee.

Mayor Holladay closed the public hearing.

Mr. Lewis said most subdivision development required street extensions that weren't necessarily needed for the development but to ensure the next development could continue. That was the case in this situation. He did not think it was a question of if this area would develop, but when. The requirement was included in the Code for this specific reason. This road would be built to the current City standard and this was an attempt to secure some level of funding to build it in the future. They were keeping track of the money collected so it could be allocated to this particular project. It was more cost effective to do it when there was a large development to build the improvements. They could still form an LID in the future. It would be wider than Morton Road, and Gilman was wider with sidewalks. Extending Harriet would give another access point and connectivity. This would secure funds for future road improvements. If an LID was formed, those who had already paid would not have to pay again.

Mr. Parno explained how the funds could be tracked through a balance sheet account and could wait until Harriet was ready to be improved.

Mr. Kabeiseman addressed the legal arguments that had been made by the applicant. He explained the three cases, Nolan, Dolan, and Koontz. This application would have an impact on the transportation system and there was an essential nexus. Building roads in front of your property was generally reasonable, which meant it was roughly proportional. He thought the City was on safe ground regarding the constitutionality analysis.

Commissioner Pauli said new development paid for connectivity and filling in any gaps. It was a requirement in the Code so they could have neighborhoods with sidewalks, connectivity, and developed to standards.

Commissioner Mengelberg said this was standard practice in Oregon that as development occurred they would be required to do half street improvements. Sidewalks did add value to the property. It was problematic when development happened at different times and collecting fees in lieu made sense to save up money and do the entire street at one time. She would vote against the appeal.

Commissioner Shaw said they had to look at long range planning and would also

vote against the appeal.

Mayor Holladay did not think the Nolan and Dolan cases applied in this case. While he was sympathetic to the cost, the City had the responsibility to make sure development was paying its fair share of the infrastructure costs. He thought sidewalks were a good thing to have and the City was requiring them of everyone. While looking at it from a small view of Morton, Harriet, and Gilman it might look unreasonable, but in the grand scheme it was reasonable.

A motion was made by Commissioner Mengelberg, seconded by Commissioner Shaw to deny the appeal of the decision to deny public improvement modification request (Planning File AP-15-0001: Appeal of PI-15-0001) and adopt the Community Development Director's decision as the City's final decision. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Commissioner Carol Pauli, Mayor Dan Holladay and Commissioner Renate Mengelberg

7b. Second Reading of Ordinance No. 15-1012, Pavilion Park III Development Application for Zone Change

A motion was made by Commissioner Pauli, seconded by Commissioner Smith to approve the second reading and final adoption of Ordinance No. 15-1012, Pavilion Park III development application for zone change. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Commissioner Carol Pauli and Mayor Dan Holladay

9. Consent Agenda

A motion was made by Commissioner Pauli, seconded by Commissioner Smith to approve the consent agenda. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Commissioner Carol Pauli, Mayor Dan Holladay and Commissioner Renate Mengelberg

9a. Resolution 15-34: A Resolution adopting Revised Bylaws for the Natural Resources Committee

9b. State of Oregon Department of State Lands Lease 17480-ML

9c. OLCC: Liquor License Application- On-Premises Sales, New Location: Applying as a Corporation Company, Mebos Inc. DBA Rea's Deli 1678 Beavercreek Road Suite A, Oregon City, OR 97045

9d. Minutes of the November 13, 2015 Special Meeting

9e. Minutes of the October 21, 2015 Regular Meeting

10. Communications

a. City Manager

Mr. Konkol announced the 100 year anniversary of the Oregon City Municipal Elevator would be on December 5. The annual Christmas tree lighting would also be held on that day. The long time park hosts at the Clackamette RV Park would be moving on in the next couple of weeks. Due to the flooding that occurred in the winter and low usage, the RV park would be closed on December 7. A park host was imperative for the site.

Scott Archer, Community Services Director, stated the intent would be to re-open the RV park in the spring. There would be further discussion whether closing in the winter would be a permanent practice. Future improvements were planned to address the flooding issue.

Maureen Cole, Library Director, gave an update on the construction of the new library addition.

b. Commission

Commissioner Smith announced an Oregon City High School state quarter finals football game on November 20 against West Linn. He also announced the upcoming play at the High School, Little Women, which would run December 9-12. Christmas Parlor tours would be held on December 12.

Commissioner Shaw thanked the Clackamette RV park hosts for their work. He attended a tourism meeting, veterans assembly at the High School, and Janicki Omni Processor presentation.

Commissioner Pauli attended several Main Street meetings and Willamette Falls Locks Working Group meeting.

c. Mayor

Mayor Holladay received a message from Amber Holveck, Chamber of Commerce Director, inviting the Commission to the Bike Concierge Ribbon Cutting on November 19. He hosted some tours at the Blue Heron site, attended a Tri-Cities Advisory Committee meeting, and had been working on the Willamette Falls Legacy Project and development at the Rothman site.

11. Adjournment

Mayor Holladay adjourned the meeting at 9:12 PM.

Respectfully submitted,

Kattie Riggs, City Recorder