



City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Minutes - Final

City Commission

Dan Holladay, Mayor
Brian Shaw, Commission President
Nancy Ide, Frank O'Donnell, Renate Mengelberg

Wednesday, February 1, 2017

7:00 PM

Commission Chambers

1. Convene Regular Meeting and Roll Call

Mayor Holladay called the meeting to order at 7:03 PM.

Present: 5 - Commissioner Brian Shaw, Mayor Dan Holladay, Commissioner Nancy Ide, Commissioner Renate Mengelberg and Commissioner Frank O'Donnell

Staffers: 10 - City Manager Tony Konkol, Assistant City Attorney Carrie Richter, City Recorder Kattie Riggs, Police Chief and Public Safety Director James Band, Public Works Director John Lewis, Human Resources Director Jim Loeffler, Community Development Director Laura Terway, Finance Director Wyatt Parno, Economic Development Manager Eric Underwood and Community Services Director Phil Lewis

2. Flag Salute

3. Ceremonies, Proclamations

3a. Oath of Office for Oregon City Police Officer Christopher Koehnke

Jim Band, Police Chief, introduced Police Officer Christopher Koehnke.

Mayor Holladay administered the Oath of Office to Officer Koehnke.

4. Citizen Comments

Dakota Hufford, resident of Oregon City, was part of a group called Oregon City Naturalists whose role was to promote environmental awareness. They were holding their first volunteer debris cleaning event on February 4, 2017 at Mt. View Cemetery.

5. Adoption of the Agenda

The agenda was adopted as presented.

6. Public Hearings

6a. Request for Continuance of AN-16-0004 / ZC-16-0001: Annexation and Re-zoning of 35.65 Acres North of Holcomb Boulevard and West of Winston Drive

Laura Terway, Community Development Director, said the City received an annexation request for 35 acres north of Holcomb Boulevard. The applicant was requesting more time as he had amended his application. This would go before the Planning Commission on February 13, 2017.

Mayor Holladay thought the testimony should start at the Planning Commission before allowing testimony to the City Commission.

There was consensus to not take public testimony on this agenda item that night.

A motion was made by Commissioner Shaw, seconded by Commissioner Ide, to continue AN-16-0004 / ZC-16-0001: Annexation and Re-zoning of 35.65 Acres North of Holcomb Boulevard and West of Winston Drive to March 1, 2017. The motion passed by the following vote:

Aye: 3 - Commissioner Brian Shaw, Mayor Dan Holladay and Commissioner Nancy Ide

Nay: 1 - Commissioner Frank O'Donnell

6b.

**Tentative Decision and Request for Continuation to March 1, 2017:
AN-16-0003: Annexation of Oregon City Golf Course**

Carrie Richter, City Attorney, explained the quasi-judicial hearing process. She asked if any Commissioner had ex parte contacts, conflicts of interest, bias, or any other statements to declare.

Commissioner Ide said at the Commission Retreat, she was asked by Rose Holden what she thought about recent Senate Bill 1573 and Commissioner Ide replied she thought that the bill took away the City's home rule authority.

Mayor Holladay said he had talked about these kinds of issues with Rose Holden for many years. The most recent had been about trying to get the Beavercreek Road Concept Plan to work. He had not discussed this particular application since the last time it had gone to a vote in 2008/2009. He had visited the site for an OCBA Retreat.

Commissioner Shaw said the Oregon City Business Alliance had declined discussing this project at one of their meetings.

Ms. Richter asked if the Commission wanted to open the public record and accept new evidence. She thought it was appropriate to do so.

There was consensus to open the record and accept new evidence.

Mayor Holladay opened the public hearing.

Ms. Terway presented the staff report. This was a request to annex 117 acres located east of Beavercreek Road also known as the Oregon City Golf Club. This was only a request for annexation, not a zone change or proposed development. The land was in the Urban Growth Boundary and in the Beavercreek Road Concept Plan. The Concept Plan was currently before the Land Use Board of Appeals, although it had been approved by the City. She explained the typical development process within the Concept Plan. A lot of work still needed to be done before development could occur on this property. She then reviewed the approval criteria. There was a question at the Planning Commission hearing regarding SB 1573 that was recently passed and the Oregon City Charter.

Ms. Richter explained SB 1573 preempted city charters that provided for voter

approved annexations. This was the second application the City Commission had considered after SB 1573 had been adopted. SB 1573 had been challenged in circuit court over whether or not a city's charter would prevail over the senate bill. That question was raised by the Planning Commission. The argument was the City's home-rule authority provided for voter approved annexation and the City should follow the Charter rather than SB 1573. The City Commission could reject the application for land use reasons. If the Commission thought the land use criteria were met, the application could be approved following SB 1573 and the annexation would be effective or the application could be approved following the Charter and there would be a condition that it would go to a vote and staff would seek court direction along the lines of what Corvallis did to resolve the conflict. The Commission could also wait until there was resolution of the court decision, ask a Clackamas County court to resolve the question, or instruct staff to place the matter on the ballot. Once a tentative decision had been made, staff would come back with findings in support of the decision and an ordinance. Both ways had risks and could be challenged in court.

Ms. Terway said there items that were handed out that night related to 6a which were entered into the record. A series of emails had been sent to the Commission that provided information on City documents. Staff recommended taking public testimony, then the Commission provide tentative direction and continue the hearing to March 1 for staff to bring back findings.

Tim Ramis, attorney representing the applicant, said the application itself did not produce a change in the use of land or impact to the transportation system. The property was poised to become part of the future of the City. At least ten years of planning had been done for the property and LUBA upheld the technical policies and policy decisions of the Commission. The developer was on board, the infrastructure challenges were known, and the developer was already planning for how the infrastructure improvements could be financed. The market was strong, the community had development needs, and housing was badly needed. One of the questions of the opposition was if annexing would give away the ability to make development pay its own way. He thought the answer was no, annexation put in the City's hands the power to decide when land would be developed and how it was developed. The City could condition the project and land to provide the kind of infrastructure that was necessary. Annexation was the first step, and there were many more steps that had to happen before development. Another issue frequently raised by the opposition was they did not have perfect information yet about every aspect of the development. Since they did not know exactly what would be built, how could they anticipate the impact.

Commissioner Mengelberg arrived at 7:38 PM. She had no ex parte contacts, conflicts of interest, bias, or statements to declare.

Mr. Ramis stated in 2008 the Commission interpreted the Code to establish the standard for how much evidence had to be in the record for annexation applications and that decision was upheld by the Land Use Board of Appeals. The Code did not require that public facilities existed or that plans were in place. The City only had to consider the availability of services as one factor among many. The infrastructure studies had been completed for the project and there was a lot of data in the record. The applicant was requesting annexation now and all of the outstanding items would have to be done before development.

Doug Neeley, resident of Oregon City, said since one application had already passed using SB 1573, did that set a precedent?

Mayor Holladay thought it did set a precedent. If they changed procedures, they

would leave themselves open to a law suit. He thought they should follow state and federal law.

Bill Holden, resident of Oregon City, referred to a newspaper article from January 25, 2017 stating how some developers in the past did not take into account transportation, education, utilities, habitat, or other effects in the rural areas. The applicants for this application had put in a lot of effort and money to deal with all of these issues. The applicants wanted to do it right and make this a sustainable community that linked residential and commercial use. He testified in 2003 when this was originally intended to be industrial land and how he thought there was a better opportunity for this property. What was being proposed was better. SB 1573 was meant for this type of property.

William Gifford, resident of Oregon City, said this annexation included four properties, not just the golf course. He thought they could approve the annexation now and if SB 1573 was overturned in the future, that was a separate issue. If SB 1573 prevailed, then they would be ready to move on the annexation. If they waited until there was a determination on SB 1573, the process would have to start over. If no property could be annexed, then Metro should not consider the land as developable within the UGB and the housing and job shortages would continue to be exacerbated. He encouraged the Commission to get the annexation going and see what the next step in the process would be.

Barbara Renken, resident of Oregon City, was concerned about the law suits against SB 1573. She thought they should follow the Code. People wanted to know what would be developed on this site and there seemed to be a lot of annexations occurring lately.

Gerald Dietz, resident of Oregon City, said citizens had voted on this property before and it was defeated by a large majority. The Commission was supposed to represent the people and the people said no. The senate bill was taking away people's right to vote. The people had already voted on this, and their vote should be respected.

Dan Fowler, resident of Oregon City, believed if they were going to have proper land use, they needed proper annexations. When the UGB was set in place, it was done to save the farm and forest land and so development would occur within the UGB. He thought the legislature looked at the voter annexation approval issue and made a tough decision for proper land use planning and agreed it was not necessary to go to a vote. He thought the proper process was setting the UGB and annexing the land that was in the UGB. He recommended approving the annexation following SB 1573.

Mr. Ramis gave rebuttal. The City Commission did make a decision earlier to annex property consistent with SB 1573. He thought that decision set a precedent and it would not be fair to do something different for this property. He asked that the Commission approve the application and direct staff to return with findings following SB 1573.

Mayor Holladay closed the public hearing.

Mayor Holladay said many years ago he had started the process for voter approved annexations in Oregon City. Now he thought that was a mistake because it made developable land unavailable. He had been trying to get it fixed through the legislature. One of the comments Planning Commissioner Mabee stated was that the property taxes were going to the County right now and annexing the property would bring the property taxes to the City. The City would still have a say on how the property would be developed. He did not think it was disrespecting voters and was in

favor of following SB 1573.

Commissioner Ide said every step of the future development of the property would be thoroughly analyzed by staff, Planning Commission, and City Commission, and all with citizen input. SB 1573 was currently law and until it was overturned or revised, the City Commission should follow its process. This was the first step for this property. The Commission already approved an annexation using SB 1573, and there was no opposition for using it at that time.

Commissioner O'Donnell said one of the requirements that the application did not fulfill was the transportation report especially in regard to the Highway 213 and Beavercreek intersection. He had not had a chance to review everything that was received today. He discussed the conflict regarding SB 1573 and the City Charter and the right of home rule. The Commission recognized this conflict and he thought there should be further discussion on the issue.

Commissioner Shaw thought a precedent had been set. He valued the right to vote, but there were times that the Commission had to make the big decisions. Things changed, and this was for annexation only. The transportation would be dealt with when development occurred. The Commission was looking at the big picture for this annexation.

Commissioner Mengelberg wanted more time to review the information as well. The senate bill was a law, but she wanted to make sure the application met all of the criteria. She had not had a chance to evaluate everything thoroughly. The Beavercreek Road Concept Plan went through a lot of public hearings and was a good blueprint for how the area would develop. When there were larger parcels available, they could be more thoughtful and well coordinated and provide infrastructure better. She did not feel comfortable voting tonight.

Mayor Holladay thought a tentative decision did not mean they could not deny the application at a later date. It gave staff direction to bring it back for the Commission to vote on it.

A motion was made by Commissioner Shaw, seconded by Commissioner Ide, to continue the hearing for AN-16-0003: annexation of the Oregon City Golf Course to March 15, 2017, and to direct staff to bring back findings and an ordinance for tentative approval. The record would be reopened until February 8 at 3:30 PM to allow additional written testimony, the applicant could submit a response to the new testimony until February 15 at 3:30 PM, and the record would be closed on February 15. The applicant could submit final written arguments until February 22 at 3:30 PM. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Mayor Dan Holladay, Commissioner Nancy Ide, Commissioner Renate Mengelberg and Commissioner Frank O'Donnell

7. General Business

7a. First Reading of Ordinance No. 17-1002, Amending Oregon City Municipal Code Chapter 3.06 - Tax on Recreational Marijuana Sales

Wyatt Parno, Finance Director, stated this ordinance would amend the City's Code regarding collection of taxes on marijuana sales. In November, voters approved the tax and authorized entering into an agreement with the State's Department of Revenue to collect the tax on behalf of the City. There was a 4% reduction of the fee

that would go to the State to provide these services.

A motion was made by Commissioner Mengelberg, seconded by Commissioner O'Donnell, to approve the first reading of Ordinance No. 17-1002, amending Oregon City Municipal Code Chapter 3.06 - Tax on Recreational Marijuana Sales. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Mayor Dan Holladay, Commissioner Nancy Ide, Commissioner Renate Mengelberg and Commissioner Frank O'Donnell

7b. Second Reading of Ordinance No. 17-1001, Removing Linn Avenue from the 2016 Sewer Public Facilities Strategy

John Lewis, Public Works Director, said this ordinance would lift the sewer moratorium on Linn Avenue. All the moratorium areas except the Hazelwood area had been removed from the list.

A motion was made by Commissioner Shaw, seconded by Commissioner Mengelberg, to approve the second reading and final adoption of Ordinance No. 17-1001, removing Linn Avenue from the 2016 Sewer Public Facilities Strategy. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Mayor Dan Holladay, Commissioner Nancy Ide, Commissioner Renate Mengelberg and Commissioner Frank O'Donnell

8. Consent Agenda

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

Aye: 5 - Commissioner Brian Shaw, Mayor Dan Holladay, Commissioner Nancy Ide, Commissioner Renate Mengelberg and Commissioner Frank O'Donnell

8a. Public Improvement Contract with T Bailey, Inc. for the Construction of Boynton Reservoir Fall Protection Project

8b. Restrictive Covenant Non-Remonstrance Agreement for the Pavilion Park No. 3 Subdivision Project - Planning File No. TP15-03

8c. OLCC: Liquor License Application- On-Premises Sales, New Outlet, Applying as a Limited Liability Company, Ingrid's Scandinavian Food LLC, 209 7th Street Oregon City, OR 97045

8d. Minutes of the January 4, 2017 Regular Meeting

8e. Minutes of the January 6, 2017 Emergency Special Meeting

8f. Minutes of the January 10, 2017 Special Meeting

8g. Minutes of the January 10, 2017 Work Session

9. Communications**a. City Manager**

Mr. Lewis said the Mayor had raised a question regarding water borne illness in Oregon City. Since the South Fork Water Board had been in place in 1915, there had not been a water borne illness. There was a typhoid outbreak in 1912 and at that time the water was being taken from the Willamette. The water plant currently took water from the Clackamas River.

Ms. Terway said the Commission's approval of the Beavercreek Road Concept Plan went to the Land Use Board of Appeals. It then went to the Court of Appeals and the City was waiting for a decision. Regarding the zone change for Beavercreek and Highway 213, the City received a remand from LUBA to clarify that the City's environmental protections applied equally. LUBA's opinion affirmed the City's larger concerns about the scope. It would go back before the Planning Commission, and then back in front of the City Commission.

Ms. Richter clarified the decision could be appealed to the Oregon Court of Appeals and the deadline for appealing was February 15. After that date, staff would work with the applicant to move forward on the remand.

Mr. Konkol said Clackamas County Disaster Management and the City of West Linn were putting on an emergency management training for elected and appointed officials on February 27. Representative Schrader's Town Hall meeting would be held on February 10. Senator Wyden's Town Hall meeting would be held on February 3. He presented the Comprehensive Annual Financial Report for the fiscal year ending June 30, 2016. The auditors issued an unmodified opinion, which was a clean opinion, of the City's financial statements.

b. Commission

Commissioner Shaw attended Teri Gan'ts memorial service, the Commission Retreat, OCBA luncheon, South Fork Water Board meeting, Clackamas County Dinner, and Chamber meeting.

Commissioner Mengelberg went to the Clackamas County Dinner, Commission Retreat, OCBA luncheon, and Brownfields Task Force meeting.

Commissioner Ide attended the OCBA luncheon, County Commission interviews, and participated in the Clackamas County Homeless Count. She gave a shout out to Rae Gordon and her band, the Back-seat Drivers, who would be competing in the International Blues Challenge.

Commissioner O'Donnell walked Water Board Park from the armory to Promontory Point and walked around the Buena Vista House and Atkinson Park. These were treasures in the City.

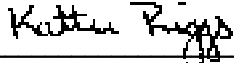
c. Mayor

Mayor Holladay attended the Commission Retreat and ten year anniversary of the Lewis and Clark Bank. He would be attending C4 tomorrow night. He listed the Commission liaison appointments for 2017. He also appointed Ken Hall to the Library Board for a term to expire on December 31, 2020.

10. Adjournment

Mayor Holladay adjourned the meeting at 9:03 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Katie Riggs", is written over a horizontal line.

Katie Riggs, City Recorder