

Wednesday, July 18, 2001

The regular meeting of the Bend City Council was called to order at 5:30 pm on Wednesday, July 18, 2001. Present were City Councilors Bruce Abernethy, Kathie Eckman, John Hummel, and Mayor Bill Friedman

Council recessed to Executive Session at 5:30 pm pursuant to ORS 192.660 (1)(h) to discuss threatened and/or pending litigation, and to conduct a work session.

Council reconvened at 7:00 pm.

1. Roll Call:

Present upon Roll Call by City Recorder Patricia Stell were City Councilors John Schubert, Kyla Merwin, John Hummel, Bruce Abernethy, Oran Teater, Kathie Eckman, and Mayor Bill Friedman.

2. Consider approval of the minutes:

- a. **Bend City Council Work Session, June 20, 2001**
- b. **Bend City Council Regular Session, June 20, 2001**

Councilor Eckman moved approval of the minutes. Councilor Teater seconded the motion, which passed unanimously.

3. Receive Petitions

- a. **Consider acceptance of petition for the formation of a Local Improvement District (L.I.D.) to provide street and water improvements to Ogden from 12th to Juniper.**

Management Intern Andy Lindsey advised that 15 properties are effected; 9 of these have signed the petition, representing 66 percent of the effected properties. Staff recommends acceptance and requests authorization to conduct cost estimates through a consultant.

Councilor Teater moved acceptance of the petition and authorization to proceed. Councilor Schubert seconded the motion, which passed unanimously.

- b. **Consider acceptance of petition for the formation of a Local Improvement District (L.I.D.) to provide sewer improvements to the Romaine Village area.**

Mr. Lindsey explained this is a joint project between the City and residents of Romaine Village. The area has been divided into 9 drainage basins, six of them have the required support of the petition (55 to 65 percent of effected properties). Property owners will pay \$5,000 each. Staff asks for authorization to proceed to bid.

Councilor Abernethy moved acceptance of the petition and authorization to proceed. Councilor Teater seconded the motion, which passed unanimously.

c. Consider acceptance of petition for the formation of a Local Improvement District (L.I.D.) to provide sewer improvements to the Woodriver Village area.

Mr. Lindsey explained this is a joint project between homeowners and the City. A State grant and low interest loans are available on this project. Sixty percent of homeowners in the area have supported the project. Staff asks for authorization to proceed with the bid process.

Councilor Schubert asked why the grant is applied evenly to all lots and not just to those with a need for assistance. Mr. Lindsey explained that half of the grant funds are divided equally among the property owners, not among lots. The other half is used by the City to offset the City's cost. COCAAN is also applying for another grant for low interest loans.

Councilor Merwin asked about the percent of citizens supporting the project. Mr. Lindsey explained there are always some property owners who don't want it to go forward. The State requires more than 50 percent support for the project to proceed. Mr. Garzini explained when the sewer extension began, the City started with the two most needed areas based on health and public safety concerns. It is also a priority because there are citizens in this area who are at low to middle income levels. The existing systems are failing at this time. Property owners in this area approached the City to request this.

Councilor Teater moved acceptance of the petition and authorization to proceed. Councilor Abernethy seconded the motion, which passed unanimously.

d. Accept petition for vacation of a portion of 2nd Street and Thurston Avenue.

Development Services Engineer Tony Tirico advised the petition has met requirements of State law. After acceptance by Council, it will go to the Planning Commission for review. They will make recommendation to Council.

Councilor Abernethy moved acceptance of the petition. Councilor Eckman seconded the motion, which passed unanimously.

Mayor Bill Friedman and the Council recognized Darcy Justice and Patty Stell for 5 and 20 years of

service respectively to the City of Bend.

4. Consent Agenda:

a. Minutes from the Bend Urban Area Planning Commission:

o June 4, June 11 and June 25, 2001

- a. Minutes from the June 14, 2001 City / County Meeting
- b. Receive a report on Communications Plan for the City of Bend.
- c. Receive a report on Water Quality Planning Requirements.
- d. Accept Request for Proposal submitted by CH2M for \$333,810.00 to provide engineering services for the Wastewater Treatment Plant.
- e. Accept low bid submitted by Long Painting for \$22,400.00 for the Reservoir Exterior Painting Project FY 2001/2001 (WA0201) and authorize Interim City Manager to proceed with a contract.
- f. Accept low bid submitted by Ackley Tool Company for \$16,395.00 for the purchase of a Utility Trav-L-Vac for the Water Division and authorize Interim City Manager to proceed with a contract.
- g. Accept low bid submitted by Norstar Industries, Inc. for \$41,743.00 for the purchase of a Unibelt Patcher Patch Box for the Street Division and authorize Interim City Manager to proceed with a contract.
- h. Accept low bid submitted by Cantel of Medford for \$16,495.00 for the purchase of a portable message board for the Street Division and authorize Interim City Manager to proceed with a contract.
- i. Authorize acquisition of an upgrade to the City's network phone system to provide universal voice mail in the amount of \$20,688.
- j. Authorize funding to COIC to assist with implementation of the Broadband Access Feasibility Study in the amount of \$3,000.00.
- k. Approval of Public Works Water Meter Implementation Plan that sets forth the Water Meter Conversion Program for the next three years.
 - l. Adoption of the Bend Municipal Airport Layout Plan.
- m. Authorize renewal of employee group medical insurance with PacificSource and dental insurance with Oregon Dental Service.
- n. Approve Liquor Licenses:
 - DiLusso Baking, 1135 NW Galveston, Limited On-Premises license
 - Black Horse Saloon, Inc., 20565 Brinson Blvd., Full On-Premises license
 - Change of location for Chelsea Lane

Councilor Eckman moved approval of the Consent Agenda. Councilor Hummel seconded the motion.
Councilor Abernethy declared a potential conflict of interest for item k. Councilor Schubert removed

items b and m from the Consent Agenda. The motion passed unanimously.

Councilor Schubert discussed item b, the minutes of the joint City/County meeting. On page two EDCO was miss typed.

Councilor Schubert discussed item m, the Bend Municipal Airport Layout Plan. Council previously held a public hearing on the document and a great deal of work has been done since then. He was surprised to see it on the Consent Agenda and hasn't receive a copy of the plan. Mr. Lindsey explained this issue was discussed at the last meeting. FAA work has to be completed before the final version of the Plan is available. Councilor Teater advised a workshop was held with neighbors and pilots and there were no problems or issues. Counsel Jim Forbes advised it is appropriate to adopt the plan by motion. The City is the landowner, but it is a County land use process. Mr. Garzini noted the City will take the Plan to the County.

Councilor Schubert moved approval of item b on the Consent Agenda. Councilor Merwin seconded the motion, which passed unanimously.

Councilor Teater moved approval of the Bend Municipal Airport Layout Plan. Councilor Eckman seconded the motion, which passed unanimously.

The record shows item f was removed from the consent agenda.

5. Visitors

Mayor Friedman removed item 8 from the agenda. The tax issue is still under review by the Economic Development Subcommittee.

David Sheldon addressed the Council to advise that a Political Action Committee was formed to present alternatives to the Southern River Crossing, Taxpayers Against the Bridge. He feels that the segment of City Edition on the Southern River Crossing is biased in favor of the bridge. The program is produced using City staff and funds. Mr. Emerson and Ms. Lewis have expressed professional and personal views about the project. There were no alternatives aired in the same program. He asks Council to consider providing for equal broadcast time to opposing viewpoints.

Counsel Jim Forbes introduced his associate Mr. Pete Shanauer. He will be reviewing this issue. Mr. Forbes explained it came to his attention yesterday that there was a legal question about the *City Edition*. He called the State agency responsible for election laws, (Secretary of State, Elections Division) and asked, if there is a biased communication, how it can be cured. He asked if offering equal time to alternatives would remedy the situation. He was told that equal time is not a viable option because it could also violate election laws. There are other alternatives such as providing an open forum that would permit all points of view.

Mayor Friedman noted there is clearly a division of opinion among the Council. He suggested referring the issue to the Communications Subcommittee to hear their recommendations. Councilor Teater suggested dropping the issue from the City Edition and immediately canceling the program. Councilor Merwin explained it has already aired for a month, and it ended it today. Councilor Eckman supports a public forum of some type though she doesn't believe it was intended to show bias. There will be ample opportunity through many mediums to provide all points of view. Mr. Shanauer will be available to meet with the Communications Subcommittee. Mr. Garzini advised that staff will do its best not to show bias; to present just the facts in a neutral fashion. Citizens will ask for information; he suggested the Communications Subcommittee think about how to address this. All information about the Southern River Crossing on the City's web page has been removed.

Councilor Hummel noted that no one on the committee thought that staff was trying to influence the election.

This felt the issue should not be addressed in the City newsletter. The explanation materials for the ballot were reviewed by three individuals. Every attempt was made to be neutral.

Councilor Merwin cautioned about the importance of keeping opinions quiet as the election draws closer. The Communications Subcommittee has some recommendations and they will review the video of *City Edition* with Mr. Shanauer. Councilor Merwin suggested a bridge and alignment fact sheet to be prepared by Ellie Waterston and reviewed by two Councilors. Mr. Shanauer explained it can be reviewed by the City Attorney's office and the election officials, but it would take 30 days.

Councilor Abernethy would much rather have opposing views presented side-by-side than not give any information. He wondered if the City should encourage each of the PACs to get their information out. Councilor Teater is not sure the City should be doing anything. Councilor Eckman feels the facts are definite and solid and the City can prepare a fact sheet that is concrete.

Councilor Schubert reminded that the City has historically provided fact sheets. He agrees with Councilor Eckman, though it would be very difficult. He feels it is unfortunate it has come to the point where a violation may have occurred.

Mr. Garzini referred to a handout that was used during the charette process. The Communications Subcommittee may wish to review this. He is concerned that citizens will ask questions and he would like to be able to present some facts to answer them.

6. Hold a public hearing on findings in response to Oregon Land Use Board of Appeals remanded items from appeal of General Plan.

Mr. Schanuer explained the public hearing is to take evidence and consider findings regarding the remand from the appeal of the General Plan to LUBA. LUBA affirmed some items and remanded back to the City certain items in the General Plan. There are two sets of findings. The first was

prepared some time ago by City staff, and the second was a collaborative effort with the City and the Volneys.

Retired Principal Planner Mike Byers commented that the second set of findings are, for the most part, the same as the findings in the first packet. The findings were prepared to support and explain four items that were remanded back to the City. At some time they must be adopted by ordinance before they are sent to LUBA.

The changes include removing a section referring to the widening of 27th Street to five lanes. The additional findings present the perspective that discussions will occur before design on 27th Street begins. There is nothing in the findings that will change the General Plan.

Mayor Friedman opened the public hearing.

Corrine Sherton addressed the Council representing the Volneys, petitioners in the original appeal. Mr. Sherton added briefs to the record. She commented on the revised findings. The Volney's main interest was to assure they and others would have input in the widening of 27th Street. During the appeal to LUBA the City took the position that the 1998 decision did not declare that 27th would become 5 lanes. The first set of findings went beyond supporting the designation of 27th as a major arterial. The Volneys agreed with staff that the two issues could be separated. The designation of 27th as a major arterial does not dictate it shall become a 5-lane street. The findings also indicate that a public process will occur prior to design.

Norbert Volney addressed the Council. Ms. Sherton voiced his views and he looks forward to working with the City.

Mayor Friedman will hold the record open for a period up to a week from Tuesday.

Mayor Friedman closed the public hearing.

7. Hold a public hearing on a proposed ordinance providing for a zone change for Brookwood Meadows.

Two public hearings were held before the hearings officer and the hearings officer recommends approval. Staff concurs.

Mayor Friedman opened the public hearing.

Jim Clinton addressed the Council not to speak against the commercial zone, but to test the assertion that it internalizes traffic. He hopes this will not adversely impact the nearby elementary school.

Mr. Clinton also spoke on the Brookswood mandamus case and the attorney fee section. He is unhappy about the process. He was unhappy with how it was handled in the Development Department, but thanked Mr. Forbes and two Councilors for their work.

Mike Lovely addressed the Council to oppose the commercial development. He feels it is too close to the school and will add to traffic problems. A store that close to the school will cause additional problems.

Mayor Friedman closed the public hearing.

14. **Neighborhood Association.**

This issue was discussed out of order.

Diane Crampton encouraged Council to vote for the program. There was a question about the size of the neighborhoods. They were grouped in divisions of 3,000 and the question was raised, can smaller groups organize and ask to be recognized. Ms. Crampton explained the reason for the size structure is based on input from other communities, but it can be flexible. There will be circumstances where a proven exception would be warranted. Councilor Hummel asked if the downtown group would be appropriate for a smaller group. Ms. Crampton would welcome a proposal. Neighborhood Associations should have a good mixture of business and residential. Councilor Teater noted that a particular issue may be represented by only a subsection of a neighborhood association. Councilor Merwin would like to see some of the existing neighborhood groups recognized as neighborhood associations. Councilor Schubert is concerned about the suggested size of 3,000 and would like to see the location outline. Issues may not be the same for a group of this size. Ms. Crampton feels this is a good starting point. If associations are too small, there might be too many. A neighborhood association should not be a special interest group.

Councilor Hummel is not opposed to a goal of 3,000 citizens for each group, but doesn't like the mandatory language. He would like to see the Old Town Neighborhood group recognized. He feels it should be reworded to make 3,000 a guideline, rather than a requirement.

Ann Wheeler addressed the Council representing Friends of Bend. She commended the City for their work in empowering neighborhoods. She hopes for a successful program and a balance. She doesn't feel the program should portray a sense of imposing limits on the group, but should be flexible and allow for exceptions.

Councilor Hummel proposed revised language in page 3, exhibit B, third sentence, "*Neighborhood Associations should incorporate a minimum of 3,000 residents and shall not exceed \$6,000. However Neighborhood Associations with less than 3,000 residents will be considered for approval on a case-by-case basis.*" Councilor Merwin seconded the proposal. Councilor Abernethy proposed to change the recommended language by changing both *shalls* to *should*, and stating, "*Neighborhood Associations with less than 3,000 or greater than 6,000 residents...*"

Councilor Hummel moved to adopt the resolution and approve the supporting documentation. Councilor Teater seconded the motion, which passed upon unanimous roll call vote.

Councilor Hummel thanked Ms. Crampton and recognized the early participants.

6. Consider the first reading of a proposed ordinance increasing the transient room tax from 7% to 10% in the City of Bend.

This item was removed from the agenda.

7. Consider the first reading on a proposed ordinance regulating Derelict Structures.

Police Chief Andy Jordan advised that one change was made to the Derelict Structures Ordinance that was presented at the last meeting. The fee was removed. The purpose of the ordinance is to clean up unsafe structures in the City that have been abandoned by property owners.

The first reading was held.

8. Consider the first reading of a proposed amendment to the Abatement Procedures Ordinance.

Chief Jordan explained this ordinance cleans up language and takes the workload off Council; due process would go through Municipal Court.

The first reading was held.

9. Consider the first reading of a proposed ordinance providing for a zone change for Brookwood Meadows.

Councilor Schubert asked for an explanation of the clause in the settlement agreement that states if the City doesn't approve the rezone, it could be liable for attorney fees. Mr. Forbes explained this was a negotiated provision that the developer was insistent on. The cities ability to win the case in court was not good. The developer wanted Council to look favorably on the convenience commercial zone request. A lot of discussion was held about this and the developer was told it would not sound good to Council. The developer stated the alternative was not to give up their claim to attorney fees. They stated if commercial convenience is approved, the claim for attorney fees would be abandoned. The City would not have done this without the concurrent understanding that in-fill commercial is smart planning and without the knowledge that convenience commercial was already shown on the General Plan.

Mayor Friedman reminded that Mr. Forbes described this during settlement discussions and that Council approved it as part of the agreement. Copies of the settlement agreement were given to all

parties.

Councilor Schubert is concerned about how the convenience commercial is developed. Associate Planner Wendy Robinson explained it will be subject to site plan approval and commercial design review provisions.

Councilor Merwin supports infill development, but doesn't like being backed into a corner.

The first reading was held with Councilor Merwin opposed.

10. Consider the second reading of an Ordinance changing the zone of a parcel of land from RL to RS (Brookswood).

Counsel Forbes explained this is the main body of the settlement agreement, which was the rezone. It is a formality because Council already approved the settlement agreement. Councilor Schubert confirmed there will be no further site plan review in this issue.

Upon unanimous roll call vote the second reading was held.

11. Consider a resolution accepting the loan from Oregon Economic and Community Development Department in the amount of \$300,000.00 for Woodriver Sewer Project.

Director of Public Works Mike Elmore explained this Resolution authorizes the City Manager to sign a contract with OECD for the Woodriver Village sewer project. The Resolution is a requirement from OEDD and has been reviewed by legal counsel and the Finance Department.

Keith Scott, President of Woodriver Village Homeowners Association, addressed the Council. 54 percent of effected citizens signed the petition. Several more are willing to sign if necessary. Additional grants may be available for those who need additional assistance.

Upon unanimous roll call vote the Resolution was approved.

12. Ratify the City of Bend Office of Neighborhood Associations (ONA) through adoption of the resolution and approval of the supporting documentation.

This was addressed earlier in the meeting.

13. Consider approval of Letter of Intent for The Tower Theater Foundation.

Mr. Garzini advised that current Council meeting facilities are inadequate and other alternatives have been explored. One of the suggestions was to use the Tower Theatre. Much dialogue has

occurred and the parties have attempted to structure a fair business deal. Meeting space could be found for a cheaper price, but it would not support the goals of helping the Tower, supporting the arts, keeping the facility downtown, etc.

Mr. Forbes noted that a purchase option agreement was adopted in 1997. The proposed Letter of Intent is a statement committing the city to enter into negotiations to update the agreement.

Mayor Friedman supports the Letter of Intent. Councilor Schubert noted that the current draft would allow the Tower Theatre to cancel the agreement to allow Council to use the facility with minimal notice. Mr. Garzini clarified it requires three years notice, and they would have to pay the balance of what they owe on the note.

Councilor Merwin received a letter from a citizen opposing the issue. The citizen felt public comments were not considered. Councilor Merwin assured that all comments were very much considered and that negotiations have not been completed yet.

Councilor Hummel is not in favor of this. He feels a City of this size deserves a meeting space of its own. The City needs to have meeting space for the Council to use whenever they need it, not just twice a month. Interest rates are low now and the City should look at other alternatives.

Councilor Teater moved to approve the Letter of Intent. Councilor Merwin seconded the motion.

Councilor Eckman will support the motion, but agrees with Councilor Hummel that Council needs its own facility. Councilor Abernethy feels it is a great partnership and a more effective use of tax dollars. It would cost \$900,000 to build a new facility and for \$300,000 the City is getting the same thing. Councilor Schubert supports sharing use of facilities. He feels Council should give it a try. The City is not ready to begin building its own facility. He doesn't however, feel the deal is quite right. Councilor Teater pointed out that originally the proposal was to forgive the whole loan. This new proposal will ensure the City receives repayment of one-third of the loan. The City has a history of providing this type of assistance. Councilor Eckman commented on the articles Mr. Bruckner submitted. She supports the issue as she did four years ago.

The motion passed with Councilor Hummel opposed.

- 14. Consider the second reading and roll call vote on a proposed ordinance vacating a portion of Penn Avenue and Deschutes Place (removing the City's claim to right-of-way and returning property to prior owner.)**

Upon unanimous roll call vote the second reading was held.

15. **Consider the second reading and roll call vote on a proposed ordinance amending Bend Zoning Ordinance NS-1178 providing for a change of zoning for property located at the southeast corner of the intersection of NE 3rd Street and Empire Avenue from IL to CH. (Applicant: Wells and Wells)**

Upon unanimous roll call vote the second reading was held

16. **Discussion of a proposed zone change from IG to RS for RiverBend Partners, File #01-148.**

Associate Planner Dayle VanValkenberg explained this zone change is for property above the Lifewise building. It is in compliance with the General Plan and no opposing comments were received.

17. **Discussion of an ordinance repealing sections 7.584 through 7.590 of the Bend Code pertaining to drug paraphernalia.**

This item was discussed at the last meeting and no additional comments were made.

18. **Discussion of Colorado/Arizona Couplet Build Alternative.**

Councilor Schubert moved to encouraged staff go to forward as described in the earlier Work Session. Councilor Hummel seconded the motion, which passed unanimously.

19. **Council Action and Reports.**

- **Economic Development 6/19/2001**
- **Transportation Subcommittee, 6/18/2001**

Councilor Eckman discussed the Local Public Safety Coordination meeting she attended and encouraged others to attend. She obtained and had copies of the Adult Parole and Probation budget. Council should be aware of their concerns. She encouraged communication with mental health professionals.

Councilor Eckman met with Jackie French of the Visitors and Conventions Bureau and Gary Peters of the Chamber of Commerce regarding the Bend Centennial, 2005. It will be important for the City to participate in the project. The Chamber will provide leadership and coordination of the project.

Councilor Teater commended staff on their resolution of the Colorado/Arizona issue.

Councilor Teater commended Cameron Clark for the successful Summer Festival. The Bend community hosted three major events in one weekend and pulled it off.

Councilor Abernethy gave an update on the City Manager search. The committee has been working with the Parr Group. They are gathering applications at this point and expect to receive the first cut of 8 to 12 candidates. The committee will look through the applications and choose about 5 candidates. The process will be beyond reproach. All segments of the community have been involved in selecting a City Manager.

Councilor Abernethy gave an update on the Historic District. As of July 1st Old Town is officially a Historic District. The Ordinance Subcommittee met this morning and will ask the Communications Subcommittee to select a Citizens Task Force to draft this Ordinance. It will be 5 to 7 months before the ordinance is ready.

Councilor Abernethy gave a brief update on other ordinances under review. The Areas of Special Interest Ordinance is at the Planning Commission level as is the Grading Ordinance. Upon further review of the tree ordinance, there is a sense that it is written too complicated and should be rewritten.

Councilor Hummel had no comments.

Councilor Merwin commended the 27th Street and Arizona/Colorado compromises.

Councilor Merwin and several Councilors attended a Natural Step presentation on conservation measures. The City of Bend is a member of the Natural Step Network. Cost savings are enormous. Mayor Friedman and the Council encouraged staff to continue investigation of this.

Councilor Merwin is thrilled that the Shevlin Development agreements went through and feels this type of development is exemplary.

Councilor Schubert thanked staff for their efforts to resolve the Arizona/Colorado and 27th Street issues. He commended their work with citizens.

6. City Manager's Report.

Mr. Garzini discussed the explanatory statement for the ballot measure that was disbursed to Council. Councilor Schubert asked if the Ordinance that provided the language for the ballot question could be revised. Counsel Forbes explained it would not be possible within the time frame. Mr. Garzini noted that a lot of time was spent trying to be as non-controversial as possible. Council authorized staff to proceed.

7. Adjourn.

Councilor Teater moved adjournment. Councilor Merwin seconded the motion, which passed unanimously.

The meeting adjourned at 9:25 pm.

Respectfully submitted,

Patricia Stell

City Recorder

/kp