

**COUNCIL MEETING MINUTES**

**January 18, 2011**

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Tuesday, January 18, 2011, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Charlotte Fugate, Dan Jones, David Sullivan and Ronald Verini. Jack Fox was excused.

Members of staff present were Tori Barnett, Mark Alexander, Chuck Mickelson, Larry Sullivan, and camera operator Delaney Kee.

David Sullivan led everyone in the Pledge of Allegiance.

**AGENDA**

Consensus to add Item B under New Business: Amended CDH Purchase Agreement.

David Sullivan moved, seconded by Norm Crume, to adopt the Agenda as amended. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

**CONSENT AGENDA**

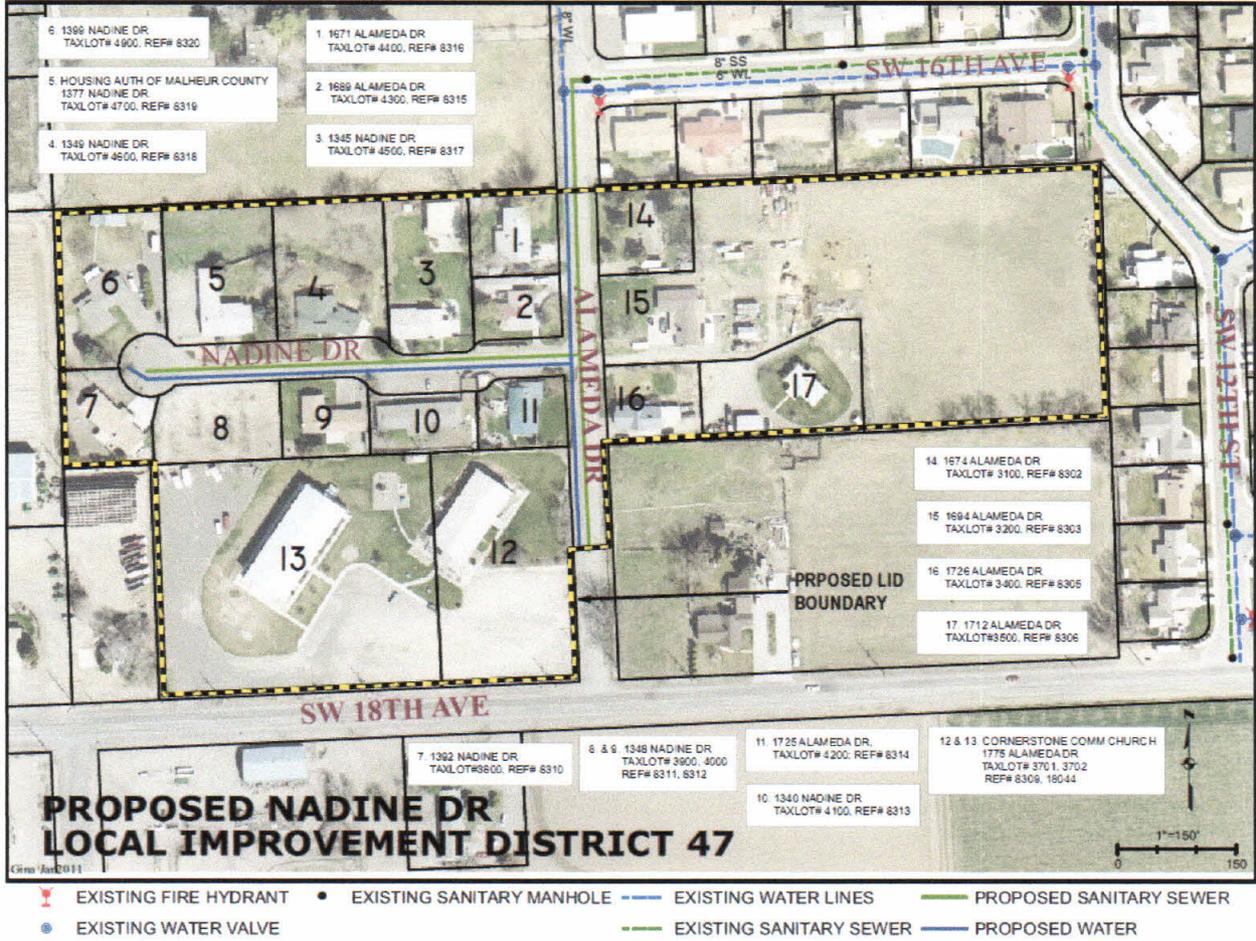
Ron Verini moved, seconded by Charlotte Fugate, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 01/03/2011; Item B: Liquor License Application: New Outlet – Brewery Public House/Winery; and Item C: Approval of the Bills. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

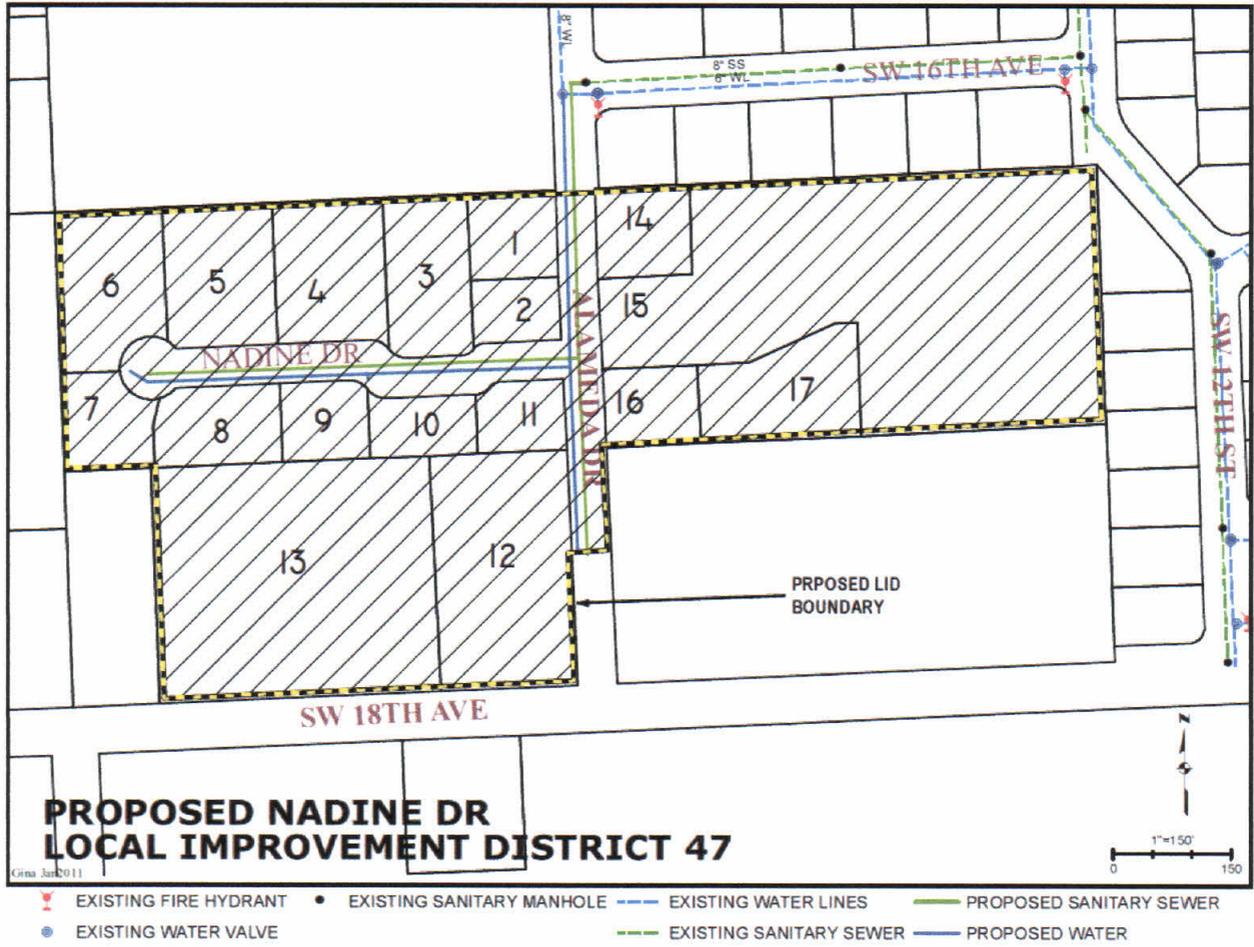
**NEW BUSINESS**

**Resolution #2011-101: Adopt Public Works Director's Report - LID #47 (Nadine Drive); Set a Public Hearing Date**

Chuck Mickelson, Public Works Director, stated this was the next step in the creation of LID 47. The Director's Report identified the location, estimated costs of construction, estimated costs of individual assessments, preliminary construction drawings and various other items required to create a local improvement district.

On August 12, 2010, during a Work Session, staff recommended that the City Council adopted Resolution 2010-138 with the intent to create a local improvement district and extend sewers into the area. The Council remanded the action to hold an additional meeting with the property owners. On September 9, 2010, at a Neighborhood Meeting, the Council directed staff to do an additional survey to determine the interest in forming an LID for sewer only, for sewer and water and those opposed to any LID. On October 28, 2010, during the Council work session, staff was directed to prepare a resolution declaring the intent to create a LID and to leave the Calvary Chapel Church property and the Michael Derrick property out of the proposed LID. On November 22, 2010, the Council adopted Resolution 2010-152; a resolution of intent to create LID 47 to construct water and sewer for the construction of sanitary sewer mains and water mains on Alameda Drive from SW 16<sup>th</sup> Avenue 615 feet south, and on Nadine Drive from Alameda Drive to the west terminus of Nadine Drive, and also directed the Public Works Director to prepare a Director's Report in accordance with the Ontario City Code.





**LID 47 - NADINE / ALAMEDA DRIVE  
SIGNATURES & PERCENTAGES  
FOR ANNEXATION**

Tax Lot	Address	Total Square Foot Per Lot	Property Owners Signed	Signed	Total Property Owners	Signed	Total Possible Electors	Electors Renting or Not Property Owner	PROPERTY OWNERS
1	4400	1671 Alameda Dr	12,632.40	12,632.40	2	2	2	2	Larry & Leanna Hoffman
2	4300	1689 Alameda Dr	9,147.60	9,147.60	2	2	2	2	George & June Krasznavolgyi
3	4500	1345 Nadine Dr	20,473.20	20,473.20	2	2	1	1	Hoffman Loving Trust, Larry & Lois Hoffman
4	4600	1349 Nadine Dr	25,700.40			1	-----	-----	Coffelt, Elise Trust c/o Duane R. Coffelt Trustee, Po Box 1324, Eagle Point, OR 97524
5	4700	1377 Nadine Dr	25,264.80	25,264.80	2	2	-----	-----	Housing Authority of Malheur Co 959 Fortner Street, Ontario, OR 97914
6	4900	1399 Nadine Dr	26,571.60			2		3	Seen Robert E. & Regina K. Ormsby (3) Ellen B. King, 120 Emma St., Payette, ID 83661
7	3800	1392 Nadine Dr	13,503.60			1		1	Rebecca Getes Marlene M. Reel, Dean D. Dahnke, Larry L. Dahnke, Michael Dahnke
8	3900	Vacant Lot	15,246.00	15,246.00	4	4	-----	-----	Marlene M. Reel, Dean D. Dahnke, Larry L. Dahnke, Michael Dahnke
9	4000	1348 Nadine Dr	10,980.00	10,980.00	4	4	1	1	Marlene M. Reel, Dean D. Dahnke, Larry L. Dahnke, Michael Dahnke
10	4100	1340 Nadine Dr	10,018.80	10,018.80	1	1	1	1	Georgia Hasler Betsy L. Moore Trustee Moore's Real Estate Investment, LLC 840 3rd Ave N., Payette, ID 83661
11	4200	1725 Alameda Dr	10,018.80	10,018.80	2	2	2	2	Bobby & Paula Puckett (2)
12	3702	1775 Alameda Dr	105,415.20	105,415.20	1	1	-----	-----	Calvary Chapel
13	3701	"	52,272.00	52,272.00	1	1	-----	-----	"
14	3100	1674 Alameda Dr	13,503.60	13,503.60	2	2	2	2	Francis & Janet Kittelman
15	3200	1694 Alameda Dr	160,300.80	160,300.80	2	2	-----	-----	Clyde & Glenna Underwood
16	3400	1726 Alameda Dr	11,761.20			2		6	Sandra, Vance, Weston, Dustin Wayland & Dana Duncan (6) Herbert & Beulah Derrick c/o Diane Nielej 113 SW 4th Ave, Milton Freewater, OR 97862
17	3500	1712 Alameda Dr	23,598.00			2	-----	-----	
18	3600	1275 SW 18th Ave					-----	-----	
<b>TOTAL....</b>			<b>546,408.00</b>	<b>445,273.20</b>	<b>25</b>	<b>33</b>	<b>11</b>	<b>21</b>	<b>81.49%</b> <b>75.76%</b> <b>52.38%</b>

Also, the Rural Road District #3 had agreed to contribute up to 2,000 yards of road base material for the project.

The annexation piece of this issue was scheduled to go before the Planning Commission in February, and would come back before Council in March.

Dan Jones moved, seconded by David Sullivan, that the Council adopt Resolution 2011-101, A RESOLUTION ADOPTING THE PUBLIC WORKS DIRECTOR'S REPORT FOR LOCAL IMPROVEMENT DISTRICT #47 AND SETTING A PUBLIC HEARING, February 7, 2011. Roll call vote: Crume=yes; Fox=out; Fugate=yes; Jones=yes; Sullivan=yes; Verini=yes; Dominick=yes. Motion carried 6/0/1.

**Amended CDH Purchase Agreement**

Larry Sullivan, City Attorney, stated this matter arose because the original contract between the city and Chris Harden, dba DCH Consulting, signed December 10, 2009, and modified September 21, 2010, established a due diligence period ending January 17, 2011, during which the purchaser would have the option to withdraw from the purchase of the property that was owned by the city. That property was 74.72 acres. The due diligence period had expired, meaning that under the original contract, there was a 15-day waiting period for sale of the property. Mr. Harden has asked the city for an extension of the closing period. He initially asked for a 1-year extension, but following discussions with Mr. Harden, an agreement had been reached for a 9-month extension. Before the Council was the amended purchase and sale agreement. The new closing would be November 5, 2011. There were a few changes in the new Agreement, as follows:

The original contract had no survey done on the property; the new contract did. Also, the original purchase price of the property was \$1,494,400, as set forth in the letter of intent.

Section 4 – The original escrow agent was First American Title Company, who was now Malheur County Title Company.

Section 5 – Change in escrow. Was \$133,300, deposited in escrow. Both parties agreed that of the \$133,300, \$50K would go immediately to the City, leaving a balance of \$83,300. Under the proposed amendment, the \$83,300 would also go immediately to the City, and an additional \$50K in escrow to the City. Total amount of deposit of \$183,300 shall be credited to the purchase price at closing.

Section 6 – Purchase will be made in cash.

Section 7 – Purchaser acknowledged that the purchaser's due diligence period in the original agreement has expired, and the inspection contingency has been deleted in the amended contract.

Section 8 – Purchaser acknowledges that on or about July 19, 2010, the city provided a third-supplemental preliminary title report from the escrow agent regarding the property. Purchaser accepts the title to the property subject to the exceptions set forth in the report.

Section 9 – A number of the representations made were deleted. There haven't been any significant changes to property since initial transaction on property. City has authority to execute agreement. The last warranty was that the City was not a foreign person. All the warranties would survive the closing. Purchaser was also making some representations. CDH had authority to purchase the property, there was no litigation that would affect the proceedings, CDH had not filed bankruptcy, and there was no breach of any agreements.

Section 11 – Only real condition was that the remaining money be received.

Section 12 – The new agreement extended the closing date to November 5, 2011; however, the purchaser could close sooner, with a 10-day notice.

12.3 – Adjustments could be made to the purchase price, but there were none in this case.

12.5 - Title insurance had already procured a preliminary title report, and would have a final at the final sale.

Section 13 – Defaults were the same as in the original agreement. Because this was the equivalent of an earnest money agreement, the City's main protection was the \$183,300 already received. If purchaser dropped out of the deal, and didn't close on November 5, 2011, the City could not compel CDH to complete the process, but the City would keep the money. If CDH had the money, it could force the City to complete the purchase, meaning the City could not sell to a third-party without breaching the contract. That was a pretty standard section of an earnest money agreement.

Mr. Sullivan stated he had sent the contract to Mr. Lawrence on Friday, but it had not been circulated to the Council, so he was provided a summary. The contract had been sent to CDH and the bank. If Council was satisfied with the contract, they could move forward.

Councilor Sullivan confirmed the City had earned the \$183,300.

Mr. Sullivan stated that was correct.

Councilor Sullivan asked what circumstances, if any, would the money have to be returned to the purchaser.

Mr. Sullivan stated if the City refused to go forward with sale, the purchaser could insist on being paid back the earnest money.

Councilor Sullivan encouraged the closing date be kept at November 5, 2011, with no further extensions.

Joe Dominick moved, seconded by Charlotte Fugate, that the Council authorize the City Manager to sign the amended agreement with CDH Consulting. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

**PUBLIC HEARING**

**Sale of Parking Easement for Oregon Real Estate Co., LLC**

It being the date advertised for public hearing on the matter of the Sale of Parking Easement for Oregon Real Estate Co., LLC, the Mayor declared the hearing open. There were no objections to the city's jurisdiction to hear the action, no abstentions, and no declarations of conflict of interest. The Mayor declared ex-parte contact.

Joe Dominick declared ex-parte as he had been in direct discussions with Larry Tuttle, a participant in this issue.

Larry Sullivan, City Attorney, stated the purpose of the public hearing was to discuss the City's sale of a public parking easement to Ontario Real Estate Co., LLC, and the execution of a Memorandum Agreement with the LLC and with the Maeda-Tuttle Construction Partnership.

On February 7, 1977, the City entered into an agreement with a partnership known as PFC Company in which the City acquired vacant lots on the corner of South Oregon Street and East Idaho Avenue. On April 13, 1999, the City entered into another agreement, a "Property Interest Exchange Agreement", concerning the same lots, in which the City traded those lots to Maeda-Tuttle Construction, a partnership consisting of Larry Tuttle and Richard Maeda, to allow the construction of ICB Bank. Under the 1999 Agreement, the partnership agreed to build a 9,000 square foot parking lot on the East ½ of Block 3, which is the eastern half of the same block on which ICB Bank is now located. As part of the 1999 Agreement, the partnership also agreed that it would give the City a public parking easement to the portion of Block 3 on which the parking lot was to be constructed, and would perpetually maintain the parking lot and its landscaping.

The partnership constructed the parking lot, which was located immediately north and east of the Brewsky's Broiler restaurant building located at 23 SE 1<sup>st</sup> Avenue. It has also maintained the parking lot since its construction.

The Maeda-Tuttle Construction partnership no longer wanted to incur the expense of maintaining the parking lot that it constructed. It was the understanding of staff that the partnership contacted Arthur and Cynthia Lynch, the owners of Brewsky's Broiler restaurant, to take over the maintenance of the lot, but was not able to work out an arrangement with those owners.

For several months Maeda-Tuttle Construction and Ontario Real Estate Co., LLC, had been in negotiations with the City to terminate the 1999 Agreement. Staff met with the City Council in executive session several times to discuss the negotiations.

The LLC and the partnership have offered to pay the City \$10,000 to release the partnership from the 1999 Agreement. As part of the proposal, the City would deed the public parking easement to the LLC, which owned the underlying land. This would do away the easement, and the parking lot would no longer be available for public parking.

The City was not receiving any substantial benefits from having a public parking easement at that location. Brewsky's Broiler appeared to be the only business benefitting from the parking lot.

The terms of the proposal are set forth in the Memorandum Agreement. Under the Memorandum Agreement, the City would also be granted a five year temporary construction easement to the portion of Block 3 adjoining the underpass on East Idaho Avenue to make future repairs to the underpass. The City would also be able to negotiate for additional construction easements after that five year period, so long as the easements did not interfere with the LLC's development of Block 3.

Because the Memorandum Agreement proposed a transfer of the City's interest in real property, namely, the City's public parking easement, ORS 221.725 required that the City hold a public hearing to provide information to the public about the proposed transaction. The notice of the public hearing was published in the Argus Observer on January 12, 2011, as required by statute.

In addition to receiving \$10,000 from the transaction, the City would also receive the benefit of having the full value of the parking lot returned to the County tax rolls. The County assessor discounted the value of the real property on which the parking lot was located because of the nontaxable parking easement held by the City.

Based upon the information available to staff prior to the public hearing, staff recommends that the City Council approve the Memorandum Agreement; however, the Council should consider any information presented at the public hearing before deciding whether to approve the Memorandum Agreement.

Ontario Real Estate Company would own the ground. Essentially, the owner of the property could do what they wanted with the parking lot, no one would have a legal obligation to do anything, other than following the City's P&Z regulations.

Councilor Sullivan asked if the receipt of the \$10K encumber the City in any way?

Mr. Sullivan stated there would be none whatsoever.

The Mayor opened the hearing for public testimony.

Opponents: None.

Proponents: None.

There being no Proponent and no Opponent testimony, the Mayor declared the hearing closed.

Charlotte Fugate moved, seconded by Ron Verini, that the Mayor and City Council approve the Memorandum Agreement with Ontario Real Estate Co., LLC, and the Maeda-Tuttle Construction partnership, and authorize the City Manager and Mayor to execute all necessary documents on the City's behalf. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

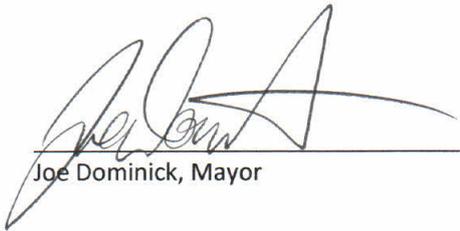
#### **CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS**

- Chuck Mickelson stated the flooding was not affecting the treatment plant, but there was standing water on the farmer's fields, which might affect the crop harvest.
- Mark Alexander asked if there were any questions on the stats he provided last week. He would be doing those monthly. Also, OPD had joined the social network by becoming active on Twitter.
- John Breidenbach stated the Jan 31 the Mayor would be doing the State of the City Address at Chamber. Several ribbon cuttings coming up.
- Councilor Verini stated the 116<sup>th</sup> experienced bad contact in Iraq. No injuries, but shaken up.

- Councilor Fugate stated they had applied for a grant for revitalization of the downtown area. There was an opportunity for the public to go on a website to participate in the survey, which would increase the chances of the city receiving the grant. Would like it placed on the website. The grant was for \$1.5M, and that would go a long way for improvements downtown. The deadline was coming up fast – January 28<sup>th</sup> - so please vote. It only took a few minutes to complete.
- Mayor Dominick reminded everyone of the Council Orientation on Friday, February 4, beginning at 8:00 a.m.

**ADJOURN**

David Sullivan moved, seconded by Ron Verini, that the meeting be adjourned. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.



Joe Dominick, Mayor

ATTEST:



Tori Barnett, MMC, City Recorder