

COUNCIL MEETING MINUTES

March 7, 2011

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

Members of staff present were Henry Lawrence, Tori Barnett, Chuck Mickelson, Mark Alexander, and Larry Sullivan. Due to construction at City Hall, the meeting was unable to be video taped or televised.

David Sullivan led everyone in the Pledge of Allegiance.

AGENDA

David Sullivan moved, seconded by Norm Crume, to adopt the Agenda as amended. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 4/0/3.

CONSENT AGENDA

David Sullivan moved, seconded by Charlotte Fugate, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 02/22/2011; Item B: Appointment to Airport Board-Kevin Thompson; Item C: Resolution #2011-106: Accept/Expend ODOT Grant Funds for Speed Enforcement; and Item D: Approval of the Bills. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 4/0/3.

NEW BUSINESS

Resolution #2011-105: Exercising the Power of Eminent Domain for ROW Services

Chuck Mickelson, Public Works Director stated the proposed resolution would authorize the City to proceed with eminent domain in the event that ODOT was unsuccessful in negotiating right of way on the NW Washington project. The resolution had to be passed in order for ODOT to proceed with the appraisal and negotiation process. Before proceeding with any eminent domain action, the City Council would be apprised of the particular situation.

In 2001, ODOT and Ontario entered into Agreement #697 where Ontario accepted maintenance responsibility for West Idaho, including the underpass, SW 2nd Street, SW 4th Avenue and North Oregon Street. ODOT agreed to pay the City \$490,000 for future maintenance of those facilities, and the Agreement superseded prior Agreements made in 1975 and 1979. All right, title and interest in the above mentioned streets would be transferred to Ontario upon completion of the Yturri Beltline. In 2006-07, the City Council approved a project to realign NW Washington to North Oregon. Also in 2007, the City hired the firm of CH2M Hill to prepare plans and specifications for this project. Funding for the acquisition of right of way and construction of the realignment was not clearly identified at that time. In October 2009, the County approved Resolution 2009-126 Amendment #1 with ODOT to Miscellaneous Agreement #23255 also known as Cooperative Agreement OR 201 North Ontario Interchange Bridge #08635, an Agreement transferring NW Washington to the City. In return, ODOT paid the City \$375,200 for the realignment of the intersection of NW Washington and North Oregon and the construction of curb, gutter and sidewalks along NW Washington. In July, 2010, the Council approved Resolution #2010-136 approving a local agency agreement for fund distribution for the NW Washington Avenue realignment between the City of Ontario and the State of Oregon, acting by and through its Department of Transportation, and as authorized by the Oregon Jobs and Transportation Act of 2009 (HB 2001). In November, 2010, the Council approved Amendment #1 to Miscellaneous Contracts and Agreements (#26720) between ODOT and City for fund distribution for NW

Washington Avenue realignment (funds from HB 2001). Finally, in February, 2011, the Council approved Intergovernmental Agreement for right-of-way services #27027 for ODOT to acquire right of way for the NW Washington project.

Since the early 1990's ODOT and Ontario have been discussing various transportation related issues within and adjacent to the City. During this period of time, ODOT reconstructed East Idaho, rebuilt the overpass over I-84, reconstructed the freeway ramps leading to East Idaho, constructed the Yturri Beltline bypass around the City, reconstructed the North Oregon overpass and ramps, constructed an overpass over the railroad on SW 18th Avenue, as well as other miscellaneous projects.

Funding for this project included the \$4.5 million authorized by HB 2001 and \$375,200 cash paid to the City for the project.

Mayor Dominick verified that ODOT could not move forward with eminent domain without going before Council.

Larry Sullivan, City Attorney, stated that any litigation or any condemnation settlement with a landowner that involved the payment of money by the City would require Council approval. However, if a landowner agreed to give property to the City without asking for compensation, it might not be necessary for that to be brought back to the Council for its approval.

Charlotte Fugate moved, seconded by Norm Crume, to approve Resolution #2011-105, A RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN FOR RIGHT-OF-WAY SERVICES FOR THE NW WASHINGTON PROJECT. Roll call vote: Crume-yes; Fox- out; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 4/0/3.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

Mayor Dominick reminded the citizens of the Sister City Visit coming up, and invited everyone to participate.

Mark Alexander stated there would be an officer coming from Hillsboro here to present information on gangs, Thursday, April 7th in English, and Friday, April 8th, in Spanish. The Commission on Children and Families would be providing food. They were also working with the Boys and Girls Club to provide daycare for those parents wishing to attend. They continued to work on ways to get the information and flyers out to the public.

Chuck Mickelson stated they were working diligently on the budget. Also, chip sealing would begin after July 1st and the primary street would be a SW 4th.

Duke Clinton, Ontario School District 8C, gave an update on the improvements going on with the school district. The basis for the request for the upcoming vacation request for 2nd was for safety reasons.

Casey Huse presented maps on the proposed change to the Ontario Middle School. There would be a new two-story structure with 22 classrooms. It would fully house the 7th and 8th grade programs, as well as administration. The current Enterprise building would house the 6th grade class. The ground floor would have public parking and a drop off and pick up area off the public streets. The lobby space would give direct access to reception area, but would keep it separate from the students. They anticipated having Health, English, Computer Labs, tech, ESL, Social Studies on first floor, and the second floor would house additional restrooms, the Science labs, a staff area, computer labs, math, reading, and language arts, plus some storage. Also, 1.5% had to be spent on renewable power, making it healthier, less costly, and more efficient. They would also allow for natural sunlight deeper into the classrooms, and would have high four values on insulation. Daylight harvesting with lift shelves meant the lights automatically turned off when enough sunlight came through. There would also be an elevator, located centrally in the building.

Councilor Fugate asked what type of control would there be on the entrances and exits of the building.

Mr. Huse stated there would be exit stairs only. Everyone would have to enter through the front on the first floor. The reception area would be fully glassed so there would be continual monitoring of the halls.

PUBLIC HEARING

Ordinance #2654-2011: Request for Street Vacation; Portion of SW 2nd Avenue between SW 4th Street and SW 6th Street as Proposed by Ontario 8C School District (1st Reading)

It being the date advertised for public hearing on the matter of Ordinance #2654-2011, the Mayor declared the hearing open. There were no objections to the city's jurisdiction to hear the action, no abstentions, ex-parte contact, and no declarations of conflict of interest.

Larry Sullivan, City Attorney, stated the Ontario School District 8C ("Ontario 8C") filed a petition to formally vacate the portion of SW 2nd Avenue that the Council previously closed. A public hearing is legally required as part of the vacation process.

On August 18, 2008, the Council passed Resolution 2008-142 for the indefinite closure of SW 2nd Avenue between SW 6th Street and SW 4th Street.

ORS 271.080 set out the procedure for a property owner to petition a city to vacate a right of way. The landowner was required to file a petition along with consents signed by the following: 1) all abutting property owners; and 2) two-thirds (2/3) of the property owners within a statutorily defined rectangle of land surrounding the road proposed to be vacated. The boundaries of the rectangle were a distance of four hundred (400) feet from the ends of the road and a distance of two hundred (200) feet from the road along its length. Ontario 8C did not file any property owner consents with its petition, but it was not legally required to do so, because Ontario 8C owned all the land abutting the portion of SW 2nd Avenue to be vacated, as well as more than two-thirds of the area within the statutorily defined rectangle surrounding the road.

Once a petition was filed with the necessary consents, ORS 271.090 and 271.100 provided that the City Recorder was required to review it for completeness, then give it to the Council to review at a public meeting of which the petitioner has been given notice. The purpose of the meeting was to allow the Council to determine whether to schedule a public hearing on the petition or to reject it without a hearing. That step was not followed in this case. The City Recorder was not given the opportunity review the petition, nor was the Council. In this case, staff scheduled the public hearing without having the Council review the petition. However, prior to filing the petition, at the December 30, 2010, work session, Ontario 8C's architects made a presentation to the Council showing their architectural plans and describing the reasons for wanting to vacate the road. The Council consensus in that work session appeared to favor the vacation. Arguably this presentation served the same informational purpose as a meeting allowing the Council to review the petition. This presentation was held prior to the time two of the current Council members were sworn in, but they were present as observers.

If the Council had concerns about the failure to comply with ORS 271.090 and 271.100, the Council did retain the option of cancelling or postponing the public hearing in order to give the Council the opportunity to review the petition first. The City attorney determined that Ontario 8C's petition was legally sufficient and complied with ORS 271.080, and that the Council could legally proceed with the public hearing if do desired.

School District 8C was proposing that the City vacate SW 2nd Avenue between SW 4th Street and SW 6th Street for the purpose of locating a new middle school building across that right-of-way. This section of SW 2nd Avenue had been closed for more than two years pursuant to the indefinite closure resolution 2008-142 passed by the Council in 2008.

The central question before the Council was whether making the road closure permanent would prejudice the public interest. The effect of a road vacation was is to convey the land underlying the road to Ontario 8C. This

would deprive the City of any further control of the real property except for a utility easement for City utilities that Ontario 8C would relocate at its expense. The utility reservation was included in the proposed ordinance.

The City's permanent loss of control of the right of way could have long term ramifications for traffic flow in this area of the City. This area was located in the City core next to the library, and within two blocks of commercial buildings on SW 4th Avenue as well as City Hall and the fire station.

In the core area of the City, the east-west traffic pattern was restricted. There were only three streets that would permit a vehicle to cross from the business core to the hospital and beyond, namely SW 4th Avenue, SW 2nd Avenue and West Idaho Avenue. SW 5th Avenue might be a fourth route but did not go further west than the hospital except in segments that were not aligned with one another. NW 4th Avenue traveled all the way west to Highway 201 parallel to SW 4th Avenue, but did not directly connect to the downtown core.

In order to give the Council the widest range of viewpoints about the proposed road vacation, staff sent out 187 notices of the public hearing to property owners. In addition to providing the legally required published notice of the public hearing, staff mailed out individual notices of the public hearing not only to those property owners in the statutorily defined rectangle described above, but all property owners of land fronting within 200 feet of SW 2nd Avenue, from the alley east of South Oregon Street to the west side of SW 13th Street.

After the public hearing, ORS 271.120 required the Council to determine whether "*... the public interest will be prejudiced by the vacation of such plat or street or parts thereof.*" The Council had the option of approving the road vacation petition in full by enacting Ordinance #2654-2011; denying the petition; granting a portion of the vacation request; imposing additional conditions or reservations on the vacation; or tabling the matter for further review.

Staff was recommending approval of Ontario 8C's vacation petition and the enactment of Ordinance #2654-2011. After this portion of SW 2nd Avenue was closed by the Council in 2008, staff has received very few complaints from residents about the closure. Balancing Ontario 8C's immediate need for the road vacation against a theoretical long term impact on traffic, it appeared that the public interest would not be prejudiced by the proposed vacation.

Councilor Fugate asked about the gas utilities.

Mr. Clinton stated the gas line ran on 2nd Avenue, between the two buildings.

Mr. Sullivan stated if the proposed ordinance passed, the school district would have to cooperate with utility companies to make sure they were protected.

Mayor Dominick stated the issue raised by Idaho Power needed to be addressed between the school district and power company, not the City.

Mr. Clinton agreed.

Mayor Dominick stated the sewer and water connections would be rerouted for easier access. That was the main concern of the city for this property.

The Mayor opened the hearing for public testimony.

Opponents: None.

Proponents: Proponents: Letter received from Ann Easley-DeBisschop, dated March 1, 2011; Letter from Ken Hart, 8C Facilities Task Force Co-Chair, Ralph Poole, 8C Facilities Task Force Co-Chair, David Cox, 8C Facilities Task Force Co-Chair, Ben Peterson, Bond Chair, Construction Owner's Team, and Adele Schaffeld-Griffim, School Bond Community Oversight Committee Chair, dated February 28, 2011.

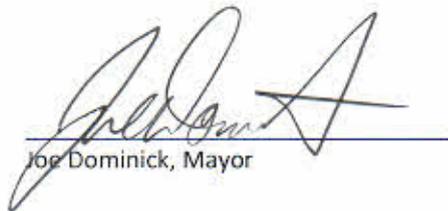
Also submitted: Letter from Idaho Power Company, signed by Tracy Ragan, dated March 3, 2011, requesting a copy of the recorded resolution of the Board of Commissioner's determination on this matter, and any other instrument that would pertain to a conveyance of the subject property if Ontario approved the vacation request.

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

Norm Crume moved, seconded by Charlotte Fugate, to enact Ordinance #2654-2011, AN ORDINANCE VACATING THAT PORTION OF SW 2ND AVENUE BEWTEEN THE WEST EDGE OF SW 4TH STREET AND THE EAST EDGE OF SW 6TH STREET, AND RESERVING A UTILITY EASEMENT FOR THE CITY, on First Reading by Title Only. Roll call vote: Crume-yes; Fox- out; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 4/0/3.

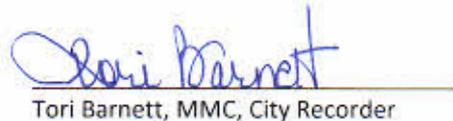
ADJOURN

David Sullivan moved, seconded by Norm Crume, that the meeting be adjourned. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 4/0/3.



Joe Dominick, Mayor

ATTEST:



Tori Barnett, MMC, City Recorder