

REGULAR MEETING
December 14, 1998

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, December 14, 1998, at 6:38 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Dennis Doyle, Forrest Soth, Wes Yuen, Cathy Stanton and Evelyn Brzezinski. Also present were Chief of Staff Linda Adlard, Human Resources Director Sandra Miller, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Steve Baker, Police Chief David Bishop, Library Director Shirley George, City Engineer Terry Waldele, Utilities Engineer David Winship, Redevelopment Project Manager John Engel, and City Recorder Darleen Cogburn.

CITIZEN COMMUNICATION:

There was no one present who wished to speak.

COUNCIL ITEMS:

Coun. Yuen noted letters Mayor Drake had sent to the Committee for Citizen Involvement (CCI), and said in reading them it occurred to him that there were times that either the Mayor or staff had to make presentations or defend actions that the Council had taken. He clarified that these letters did not happen to be regarding one of those issues, but noted that some of those times, the staff and/or Mayor may not be of the same opinion as the Council. He expressed his appreciation for the difficult position they may put others in at times, when they have to defend on behalf of the Council.

Mayor Drake thanked Coun. Yuen for recognizing the support he and the staff give Council in such situations.

Coun. Stanton reported that she was getting calls regarding the Greenway Bridge, with people claiming there had been no activity and wondering how and when it would be done.

Mayor Drake asked Steve Baker, Operations and Maintenance Director, if he could give a response at that time or would do so in writing.

Baker said he would respond by mail the following day, and reported that they would not make it by the target of nine weeks. He reported that it should be in place by late January or early February.

Mayor Drake explained that even though they were having the bridge replaced with the same design, local and state standards for engineering had changed since it was last built, so they were having it analyzed to make sure it met current codes.

STAFF ITEMS:

There were none.

PRESENTATION:

98-324 Presentation of Shields and Swearing in of New Officers to the Beaverton Police Department; Presentation of Shield to Newly Appointed Sergeant

Police Chief David Bishop said he was proud of the opportunity to promote an officer to Sergeant and swear in new officers. He thanked the family members and friends who had come that night, for their support, noting that this was an occupation where support was needed as they pursue their careers.

Bishop noted that it was a favorite part of his job to issue oaths to new recruits and to promote officers. He swore in Tim Roberts, promoting him to the rank of Sergeant. He also swore in new recruits: Danial Park, Matthew Barker, Shawn Kramer, and Richard Sowers as Police Officers. He noted this might be the most important night in their careers.

Mayor Drake presented the shields to the officers.

98-325 Beaverton Visual Chronicles

Jim McCreight, President of the Beaverton Arts Commission (BAC), said it was his pleasure to officially present to the City, the first collection of the Beaverton Visual Chronicles. He noted it was unveiled at the City's Open House the past week and had received much interest. He pointed out that this would assist the City in meeting its first Goal To Enhance and Preserve the Sense of Community.

McCreight noted that one purpose of the project was to use the talents of local artists to document community life in Beaverton today so their shared memories would be preserved for future generations. He said the other purpose was to use the visual arts as a vehicle to create a sense of community that can be shared equally by everyone. He noted that the arts were a universal language that had an ability to bring people together. He

acknowledged those who had worked on the project, first the Selection Committee: Chair Manetta Andrew, Marcy Speer, Eileen Miller and Bryan Grimes. He introduced three of the artists Wendy Dunder, John Waddingham, and Raymond Howerton. He acknowledged the valuable sponsors of the project: The Regional Arts Cultural Council, the City of Beaverton, and Frame of Mind.

McCreight reported that BAC was very enthusiastic and wanted to continue the next fiscal year into 2000 with the same goals, and expressed his hope for continued support. He announced that the emphasis would be on capturing the City's neighborhoods and ethnic communities. He thanked the Mayor and Council for their support during the past year. He introduced the BAC board members for 1999 who were present: President Sue Wendel and Secretary Susan Toler.

Mayor Drake thanked them for the presentation, and the Chronicles.

Coun. Doyle asked how and where citizens could see the art works.

McCreight said they were currently on display in the Council Chambers, and they were available for viewing during regular business hours. He noted that the current issue of *The Valley Times* had a great article about the art work.

Coun. Doyle thanked McCreight for his work as President of BAC the past year.

Coun. Soth said he was especially pleased to see Mr. Waddingham's work because he had seen numerous of his works reproduced in the paper in years past.

Mayor Drake remarked that it had been easy for him and the Council to support the work the BAC had done. He noted that the BAC Board was very active and in terms of matching funds, they had worked hard to match Jayne Scott's salary, and to raise money for the events they sponsor. He pointed out that the benefits can be seen in the community, and said he would be remiss if he did not mention the good work that Jayne Scott did as the Executive Director. He presented a gift to McCreight from the BAC Board, in recognition of his efforts as Board President the past year.

TCI Franchise Renewal & TCI/AT&T Change of Control

Bruce Crest and Sarah Hackett from MACC (Metropolitan Area Communications Commission), were present to answer questions.

Coun. Brzezinski noted that she had told Crest and Hackett that Council did not need an extensive explanation, so they would be brief.

Crest thanked them for the opportunity to be there and noted that Brad Hostler, TCI Cable, was also present. He noted they had come to give Council three recommendations from the Commission, as outlined in the report Council had received. He said another issue was the change of control with TCI and AT & T, and the third issue would be the ordinances in January. He reported that the City of Sherwood might decide to not remain in the franchise.

Crest reported that MACC started the process over three years ago and began with community and technical needs surveys and assessments. He said the priorities were strong, enforceable customer service, upgraded fiber-based cable TV network serving the residential areas, upgraded fiber based communications network which served schools, governments and institutions in the area, and full support for public education and government access (such as the TVCA service that evening). He said he was happy to report that the franchise was an excellent document, which was a product of three years and seven months of negotiations with TCI. He reported that the negotiations were sometimes difficult and extensive, and they agreed to disagree on some issues, but MACC members and TCI were happy with the end result. He noted that he understood the Council would take action in January, and offered to answer any questions they might have.

Coun. Doyle said the documents were well done and noted that it was hard not to notice another group negotiating with TCI over the change of control issue and asked for more information on that issue, in terms of what their group had done.

Crest explained that what Coun. Doyle was referring to was an action probably going on with Mt. Hood Cable Regulatory Commission (MACC's counterpart in east Multnomah County), that evening. He said they all started this change of control process with TCI/AT&T in September, and MACC had an extension to the end of January to complete it. He explained that in the Mt. Hood situation, they had taken the position that they wanted some protection for the Internet Service Providers (ISP) in the Portland metropolitan area in their change of control document. He noted that this just came to MACC's attention a few days before MACC considered the issue on November 17, 1998. He reported that Hackett attended the Mt. Hood Commission's meeting on November 16, and heard of it then, and learned that the ISP providers and US West would show up at MACC's meeting on November 17 and make a presentation. He said no representatives showed up at MACC's meeting, so they did not have that point of view to discuss. He explained that the position at MACC had been quite conservative in terms of change of control, and was primarily governed by Federal law. He said regulations were quite restricted and only financial, technical and legal qualifications could be considered regarding AT&T's ability to own and operate the system. He noted that MACC did not see where they could fit in the kind of review that Mt. Hood was dealing with. He said since the ISP providers and US West did not make a presentation to MACC, they did not have much to go on. He

explained that MACC thought this was primarily a federal issue since the Federal Communications Commission (FCC) held hearings a few months earlier. He commented that the impression he had was that AOL and some of the other major companies felt like they were not getting anywhere with the FCC, and in September when the AT&T change came about, they saw this as an avenue. He noted that if he was in their position, he probably would do the same thing and Mt. Hood had been listening. He pointed out that in the newspaper there was information that the resolution being considered had been under negotiations. He explained that he thought they would pass a resolution that said if the FCC made a determination, then Mt. Hood and TCI would abide by it, and stated that MACC would also abide by it. He commended his colleague in Portland for what he was doing, but MACC did not feel they could do the same.

Coun. Doyle thanked Crest for the explanation.

Coun. Stanton asked, regarding the Public Education and Government (PEG) access, (the special fund to be managed by MACC), how that would be identified on the cable bill.

Crest said their fund would be set up to support PEG access and the public communications network grant.

Brad Hostler, Regional Director of Marketing for TCI, noted that in other places where the access fee was part of the franchise renewal, it was identified as a line item, as a PEG access fee, just like the franchise fee was identified.

Coun. Soth noted, concerning the FCC and the Mt. Hood situation, that cities all across the country were concerned about the preemption issue. He wondered if they were being more narrowly allowed in their negotiations or the kinds of things they could require or negotiate with TCI or AT&T. He noted that AT&T had more power with the affiliates, and he wondered how Crest saw it affecting the City in the future and over the life of the franchise.

Crest pointed out that Coun. Soth was right that the controls had diminished significantly from previous years. He said he thought it would be interesting to see AT&T coming into the area and operating the cable system as well as probably wanting to give enhanced services. He reported that MACC was very concerned with that and maintained contact with the current Congress. He pointed out that as local governments knew, they did not have the kind of clout that they had on many issues with those groups. He reported that they were working hard to stay ahead of the curve, and noted that Hackett had been distributing a draft of a model ordinance that she had helped put together. He explained they thought that would help with the various people coming into the area. He remarked that a potential good that could come out of AT&T buying TCI

was they would have a platform to provide competitive services, which might open up a few choices in the telephone market.

Coun. Stanton pointed out that if the new agreement passed it would be for 15 years and the previous one was for 17 years.

Coun. Brzezinski suggested that Crest might want to explain about the nine year review.

Crest explained that there was an annual review to look backwards in a public process to assess the past 12 months, and in the ninth year there would be two reviews. He noted that one review would be a technology review to see what AT&T was offering and what types of services were being offered in adjacent communities. He said the second review was related to performance and there was a potential there to ratchet their franchise down from 15 to 12 years if there were problems.

Coun. Stanton asked if the fees had to go through a MACC process before rates were increased again.

Crest explained that there were two types of review, first the review of the expanded basic service rate, and that tier of service was regulated at the FCC level but would sunset in March of 1999. He said they would only have basic rate regulation review.

Mayor Drake reported that he had a very good experience with TCI the past week when he modified his service. He said the response was quick and the person he talked with was very helpful.

Crest reported that TCI had come a long ways and had invested a lot of money in equipment, staff and improved service.

Coun. Brzezinski reported that they had definitely got their money's worth out of MACC over the past couple of years she had been the Beaverton representative, between keeping track of the phone answering problems and the subdivision installation problems. She said for her the franchise renewal had been going on for about one year, but actually it had been three years. She noted that Federal regulations limited their efforts, but was pleased that MACC got the best for them they could. She commented that she wished they had more control over rates.

Coun. Stanton asked what the differences were between the old and new franchise and said she wished they had a comparison to look at.

Crest said they could do a comparison and get it back to the Council. He commented that the state of the art technology had changed so much during those 15 years, and now they were looking at fiber optic systems. He noted that it was amazing how different the two documents were, but they found that the customer service standards worked when they used them and MACC got a \$75,000 penalty out of TCI. He said much had

changed in the world over the years and they could see that in the franchise.

Coun. Brzezinski pointed out the example that in the original MACC franchise, the standard for telephone answering service was that 90% of the calls had to be answered within three (3) minutes and TCI was not meeting that a couple of years ago. She reported that there was now an FCC standard that required that 90% must be answered in 30 seconds. She said that was difficult for TCI to meet, but in the last few weeks they had. She said MACC was optimistic but they could still use the fines. She agreed that it would be useful to have a comparison of the old and new franchises, especially regarding consumer issues such as the number of channels.

Coun. Stanton expressed her interest in clarifying what had been pre-empted by higher levels of government.

Crest said they would look at that.

Hostler replied that they had some things happening both short and long-term, as far as channels. He noted that they had the opportunity to add some things as a result of a reduction of PEG channels. He reported that as they rebuilt the cable system they would do a \$30 million upgrade over the next 24 months, which would increase capacity.

Crest commented that they had a 36 month build-time, and understood that TCI would light some of the fibers as early as April of 1999. He said within 18-24 months, they would be pretty well upgraded.

Coun. Soth thanked Coun. Brzezinski for the time and work she put into this issue.

Mayor Drake agreed and also thanked Crest and Hackett for the presentation.

Photo Radar Update

Mayor Drake said they would postpone the Photo Radar Update to January 4, 1999.

CONSENT AGENDA:

Mayor Drake noted that AB 98-329 had been pulled from the consent agenda for separate consideration.

Coun. Yuen MOVED, SECONDED by Coun. Doyle that the consent agenda be approved as follows:

98-326 Liquor License - Prego Pizzeria & Espresso Bar: New Outlet

Liquor License - Elmer's Pancake & Steak House: New Outlet

98-327 A Resolution Stating the Official Results of the November 3, 1998, General Election to Elect Three Candidates for City Council Positions, and to Authorize Bond Measure 34-78, to Design, Build, and Furnish a New Library

98-328 Modification to Sick Leave Policy

98-329 The Round at Beaverton Central – Additional Consideration for Land Transfer; Waiver of Fees (Pulled for separate consideration.)

Contract Review Board:

98-330 Contract Change Orders – Consultant Work to Assist With The Round At Beaverton Central

98-331 Waiver of Sealed Bid – Purchase, Reconfiguration and Installation of Herman Miller Furniture from an Existing Award through the State of Oregon, and Transfer Resolution

Coun. Stanton said, regarding AB 98-331, she appreciated the response to Coun. Brzezinski's question, and would like the reconfiguration on the budget information.

Question called on the motion. Couns. Yuen, Doyle, Soth, Stanton and Brzezinski voting AYE, motion CARRIED unanimously. (5:0)

ORDINANCE:

Second Reading and Passage:

Mark Pilliod, City Attorney, read the following ordinance for the second time by title only:

98-323 An Ordinance Amending BC 2.03.034 Decreasing the Maximum Number of Board Members on the Beaverton Arts Commission

Coun. Soth MOVED, SECONDED by Coun. Doyle that the ordinance embodied in AB 98-323 now pass. Roll call vote. Couns. Soth, Doyle, Yuen, Brzezinski, and Stanton voting AYE, motion CARRIED unanimously. (5:0)

RECESS: Mayor Drake called for a recess at 7:25 p.m.

RECONVENED:

The regular meeting reconvened at 7:43 p.m.

The Round at Beaverton Central – Additional Consideration for Land Transfer; Waiver of Fees

Coun. Soth asked for the City Attorney's comments.

Pilliod said the agenda bill spoke for itself; the terms had been discussed with the developer sometime ago, and staff understood that Council approval was essential for the developer to gain financing for the project. He noted that Linda Adlard, Chief of Staff, was the primary author of the agenda bill and he worked with her on it late that afternoon. He clarified that in the second sentence of the Historical Perspective, he would say it was more accurate to say "private and public elements" rather than "a private-public partnership." He reported that he had talked with Ollie Norville about the details of the agenda bill, and Norville had helpful comments to clarify the approach. He stated that Norville said it was an appropriate action for the City to take if they choose. He stated that he had incorporated Norville's comments with his own.

Coun. Doyle said it was well written and he appreciated the paragraph on the last page explaining the intent of the bill, which was important. He stated that he would support the agenda bill and appreciated the documentation and the time they had to review it.

Coun. Stanton noted that in the second paragraph under Recommended Action, the third sentence referred to what would happen if the City did not collect 100% of the tax revenues, and asked why the City would collect less than 100%.

Adlard explained that was included as a safeguard because if some of the taxes were not paid and were delinquent, then the City might pay less than the total property tax. She noted there were consequences to that, and penalties put in place. She clarified that if the taxpayer owed \$100,000 in property taxes and they paid \$90,000, then the City would not pay the extra \$10,000. She said this was to match the revenue stream; there would be no moneys taken out of the General Fund in addition to the property tax.

Coun. Stanton said there was nothing there that said any more than if they pay the City less, we are not going to give them more.

Adlard said she would be very surprised if that was the scenario, and did not want to imply the City believed that.

Coun. Stanton asked if there was anything in the agenda bill that would allow the developers not to pay.

Adlard said there was not.

Coun. Stanton said she agreed with Pilliod that it was not a partnership because the City was not giving any of the benefits up front.

Mayor Drake clarified that it was not a per se financial partnership, but he thought the City was getting a defined downtown and a new cornerstone for their downtown community; an intangible benefit.

Coun. Doyle MOVED, SECONDED Coun. Soth, of the Council approve AB 98-329 as modified in the first paragraph as discussed. (Modification as printed in final revision of agenda bill in record.)

Coun. Stanton said she would support the motion because she believed it was the right thing to do, (but was not sure "right" was the right thing to say," and felt it needed to go through. She noted that she was not comfortable with how it came forward.

Coun. Soth explained that it appeared to him that with all of the issues that had developed within the project, and with the integrity that Mr. Bingham had presented throughout it, he believed this would be "the" project for the City of Beaverton. He expressed his belief that the Council needed to bring it forward in a timely manner, and he was in full support.

Coun. Yuen recalled that there was an old adage that meant that if someone owed you money you were a creditor, and if they owed you a larger amount of money, you were a partner. He stated that if they looked at it in that manner, the City was a partner, and certainly if they had a financial interest or a civic interest, both of which they had, then they were partners. He clarified that it seemed perfectly reasonable to him that the City would be willing to provide support to make it happen. He pointed out that not everything always worked out as they hoped, and the City needed to be flexible and be good partners to make something happen that was good for the community. He said they all wished they did not have to spend the large amount of money to make it happen but the long-term benefits were there.

Question called on the motion. Couns. Doyle, Soth, Yuen, Brzezinski and Stanton voting AYE, motion CARRIED. (5:0)

OTHER BUSINESS:

Mayor Drake said there was a memo (in record) with a request for building and development fee waivers for Satterberg Heights No. 3 (Venture Properties).

Coun. Doyle MOVED, SECONDED by Coun. Soth, to approve the request for a waiver of a total of \$153.00 in fees.

Coun. Yuen asked Joe Grillo, Community Development Director, to explain why the issue was before the Council.

Grillo noted that he did not bring the previous annexation agreement to the meeting, but within that agreement it implied the City would not require more of the developer than the County would have required if it had

remained in the County. He explained that normally in the County, when the developer submitted their application, they submitted for models early, but for some reason they did not do that. He clarified that the City needed to be consistent and the County would have folded the applicant's sales office review into a straight model review and not have charged for the temporary permit for a sales office, or for the permit to convert a garage into a sales office. He said this would keep the City on par with the County.

Coun. Yuen thanked Grillo for the explanation, and agreed that the City was obligated to honor the agreement. He continued that on the other hand, the City did incur a cost to review or process the permits for these two items, or were the fees simply revenue-generating.

Grillo responded that whenever they accept a fee, there would be a service rendered, and both of those permits would require minor work, such as processing a temporary use permit for the sales office, or reviewing the revisions to the garage for the sales office. He noted the fees were an approximation on average of the amount of time it would take to complete the process. He noted the house had already been reviewed as a house, so it would take minor time to do this .

Coun. Yuen asked for clarification that if the developer was not paying for the staff's time, how was the person paid. He asked what fund it would come from.

Mayor Drake said Coun. Yuen's question was a good line of reasoning. He noted that Venture agreed to annex to the City early as opposed to later which was a good business decision on the City's' part. He explained that since Venture came into the City earlier than planned, it netted the City between \$600,000 and \$700,000 in SDC funds. He noted that money would have gone to the County and not to the City. He agreed that there would be some time allotted for staff to do this.

Grillo noted that the \$80 amount would come from the Building Fund, which was in good shape, and the \$73 would be a fee that would go into the General Fund.

Coun. Yuen explained that he was asking because he wanted to better understand how the process worked when those things came forward. He said it was part of the annexation agreement that said the City would follow a process according to comparable County codes, and part of it was trying to understand the impacts.

Coun. Stanton asked at what point in the County code did a building fee become required for a remodel.

Grillo said he was not sure he understood her question. He explained that normally the County would take a model house application, and within that model home the garage was already proposed for a sales office, which

was typical. He said normally within the fee for the house review was the fee for the sales office and for whatever reason that did not happen this time.

Coun. Stanton asked if this was still in the County, and after the fact they wanted to do this remodel, would the County collect the fee.

Grillo said he did not know because in the past the developer would have included it in the original plans, and he could not think of an instance where this had happened.

Coun. Stanton said this was a process thing for her, but she would not quibble over this amount of money.

Question called on the motion. Couns. Doyle, Soth, Brzezinski, Yuen and Stanton voting AYE, motion CARRIED unanimous. (5:0)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 8:02 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 3rd day of May, 1999

Rob Drake, Mayor