

REGULAR MEETING
May 3, 1999

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 May 3, 1999, at 5:31 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Evelyn Brzezinski, Dennis Doyle, Forrest Soth, Wes Yuen and Cathy Stanton. Also present were City Attorney Mark Pilliod, Chief of Staff Linda Adlard, and City Recorder Darleen Cogburn.

EXECUTIVE SESSION:

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that Council move into executive session in accordance with ORS 192.660 (1)(h), to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed and in accordance with ORS 192.660 (1) (d), to conduct deliberations with persons designated by the governing body to carry on labor negotiations.

The executive session recessed at 5:40 p.m.

The executive session reconvened at 5:55 p.m.

The executive session recessed at 7:03 p.m.

The regular meeting reconvened at 7:10 p.m.

Also present at the regular meeting were Finance Director Patrick O'Claire, Human Resources Director Sandra Miller, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Steve Baker, Library Director Shirley George, Police Chief David Bishop, City Utilities Engineer David Winship, Development Services Manager Irish Bunnell, Redevelopment Project Manager John Engel.

CITIZEN COMMUNICATION:

John Biggi, 19765 SW Bellavista, said he had read in the *Oregonian* that his property was in the slum area. He commented that he was very upset about the situation at *The Round* and felt they needed to have an outside investigation, even if it came from the Governor. He remarked that the taxpayers had not been told the truth about *The Round*. He noted that another million dollars had been asked for and he felt something was wrong with that. He said no one in private enterprise could get away with what was going on and the only way they could do it was by robbing the taxpayers. He asked how the project developer Selwyn Bingham, got a building permit within four months of the contract being signed when it took everyone else at least a year to get a permit for anything. He mentioned the contractor was having problems with the soil and the City had given him an additional three million dollars. He said one could not put up a building without a soil test before starting construction and everyone knew what kind of soil was at the site. He added that he thought the citizens of Beaverton were entitled to correct, honest answers and he was upset that his taxpayer money was going for something that might never work. He said he attended meetings about *The Round* before construction and at that time had said it would not work. He noted the same people who had said *The Round* would work, said that buildings had to be up to the sidewalk, and parking had to be behind the building or there would be no parking. He noted that it was not practical to walk to *The Round* from other businesses in Beaverton and parking would be a necessity.

Biggi referred to the article in the *Oregonian* about the area near *The Round* being a slum and asked what businesses had made the City of Beaverton for the last 50 years. He said he knew the City had been trying to get rid of the car dealers within the City for the last 30 years and maybe they wanted to get rid of his business (Beaverton Foods) as well. He commented that there were too many people working in city hall, and they should get rid of 75% of the people sitting around city hall who were thinking up this stuff to put the business people out of work. He reiterated that business people were there to make money and keep people working. He said they wanted to improve their business and make a living for themselves and other people and they did not need to fight city hall. He commented that in the old days the City employees worked for the taxpayers, and now the taxpayers worked for city hall. He concluded by saying an investigation needed to be done because they could not get the truth out of City Hall. He specified that the paper reported \$3 million dollars plus the land was given to the developer.

Mayor Drake asked if Biggi was referring to the 'soap box' article that was in the *Oregonian* two weeks earlier.

Biggi said the article had been reported several months before that and it had said the developer came to the City twice for \$3 million dollars.

Mayor Drake responded that that was not the case. He explained they asked for help and what the City agreed to was to return up to \$300,000 a year in taxes once they (the developer) had paid it. He stated that until the project generated tax the developer would not get that money.

Biggi replied that Mayor Drake owed the people of Beaverton an open letter that told them what was going on at *The Round*. He commented again that the *Oregonian* had said the area looked like a slum and he was upset about that comment.

Mayor Drake reiterated that was only one man's opinion.

Biggi stated the City should not be in the construction business and now they were in a mess with *The Round* and the taxpayers had to pay for it. He said the City should have sold the land for \$2 million dollars when they had the chance instead of losing money now on interest and taxes.

Mayor Drake said he respected Biggi's opinion, but thought he was drawing a conclusion too early. He commented that the City always told the truth to the public and never had lied and never would under his administration. He went on to say that Biggi had misinformation and the City had not infused \$2-3 million in the project, nor had the developer asked for that amount of money. He said the money had come from several sources (not just taxpayers) and he thought that was a smart way to handle dollars, and what the City had tried to do was get a jump-start to downtown. He noted that Biggi might disagree and that was an honest disagreement.

Biggi said that if he got misinformation it was from the *Valley Times* publication and they (the *Times*) thought the Council should give the \$1 million. He stated that the *Valley Times* should give the million dollars and if *The Round* were successful they would make a profit and if it wasn't successful they would take the loss, not the taxpayers.

Walter Lemon, 13710 SW Otter Lane, addressed Council on the issue of *The Round* and said he got his information from the media. He reviewed financial figures and concluded that the project had cost the City over \$10 million dollars so far on a \$100 million dollar project. He said that 10% was high for not having any real dollars coming back from rent and if it were based on money coming back from property taxes it would take a long time to pay off \$10 million. He commented that he presumed there was collateral that was being put up for the \$1 million, and he wondered if there was an appraisal on the collateral. He questioned if the collateral was totally owned by Bingham or by BCB, and wondered if the suppliers would hold onto their liens until the end of the year, when BCB would supposedly come up with the extra money to pay the City back the \$1 million plus the additional money on the liens. He asked what kind of legitimate lending institution would lend money where there was \$3 million in liens sitting on the property and the lending institution would not have first lien rights. He asked if the suppliers would go back to work

immediately or wait until they got the rest of their money. He noted there was weather damage to the building and materials would have to be replaced and that would require additional dollars. He commented that the media said BCB took the gamble to not get financing prior to building, and they were 'big boys' and if they couldn't come up with the money, then that was tough. He declared that the City should not have gone into an agreement if the City knew the money wasn't there to begin with. He said there should have been a soil test taken and someone knew that up front, and \$2.8 million should have been built into the cost of the project. He reported Bingham was now working on another project and looking for financing in Washington. He said he would sleep better at night knowing Bingham was more concerned about this project in the City of Beaverton, making sure the City was getting their money back, before he started spending another \$100 million out of state.

Mayor Drake thanked him for his comments and noted that Lemon was an estimator in the construction industry and was deep into what was going on. He clarified that the funds to prepare the soil were from Bingham, not the City, and the City and Bingham were both aware of the soil conditions. He explained that Bingham did more testing and found more problems the further they got into it. He noted that area was wetlands and a beaver marsh, and when it was drained the Biggi's grew horseradish on it. He noted that Lemon did not comment about the fact that the Council had seen this as a vision and an opportunity for a new downtown in Beaverton. He reminded Lemon that he saw what Lemon saw, but anything worth having was worth working hard for. He emphasized President Roosevelt's quote: 'The only thing we have to fear is fear itself.' He said he would hate to see strong negative talk continue until it was known if the project was doomed or not.

Lemon said he was getting his facts from the media and wondered if there were more underlying facts that the City had to backup what was being done to guarantee the City's investment.

Mayor Drake said that was what he and Council were working on. He thanked Lemon for his comments.

Barbara Wilson, 12820 SW 20th Ct, addressed Council on the subject of the Westside Bypass (Bypass). She noted the *Oregonian* had some articles on the Bypass and asked if Council had read them.

The Councilors indicated they had read the articles.

Wilson noted that she was not in favor of the Bypass, and had actively worked against it. She said it was with disappointment that Marilyn Shannon's committee was rolling out the proposal. She expressed her disappointment that the Mayor was quoted in support and asked if she was wrong in remembering that Metro came out against it.

Mayor Drake said he and the Council (at that earlier time) had supported the Bypass, but he was not supporting Marilyn Shannon's bill. He explained that he had supported the Bypass but did not support it in its current configuration, the reason being it circumvented the regional process and secondly he did not think a statewide vote should be taken on a roadway in Washington County. He commented the Region had identified needs in the next twenty years of approximately \$3 billion for the road projects and had identified only \$1 billion in funds, so obviously there was a shortfall. He suggested if the Bypass were to be built, the Oregon Department of Transportation (ODOT) said it was up to \$1 billion dollars which would take everything out of the region in the next 20 years, and that could not happen. He said he did not support Shannon's bill, with all due respect to Senator Charles Starr and Senator Tom Hartung (who supported it), and his position was no different than it had been.

Coun. Stanton said she was on the original citizens committee for the Bypass and was part of the 40% of the committee that voted to pursue building the Bypass. She said Metro incorporated the committee's recommendation and subsequent ODOT recommendations to scrub the concept of a bypass and had updated the Regional Plan to include collector street improvements to take the pressure off the road systems in Washington County. She noted that she completely agreed with Mayor Drake, and thought the rest of the committee members did not want to see a state vote for the Bypass. She commented the question would be to build the Bypass or the I-5/217 improvements. She explained that she had not polled the members of the committee from six years ago, but she did not think the committee members who had agreed with her at that time, would go along with what was currently being considered.

Wilson said it was only a guess what would happen with the bill and wondered if the Governor could veto it.

Mayor Drake explained if the bill was referred, the Governor could not veto it.

Wilson said she was disappointed and was not sure how to read what the Council's feelings were about it. She noted there were many people with hesitations and she did not know how many would talk to Council or Marilyn Shannon, but there were a lot of people that still needed to be heard before anyone took a favorable position on it.

COUNCIL ITEMS:

Coun. Stanton reminded the audience that the Mayor's Prayer Breakfast was scheduled at 7:00 a.m. on May 6. She noted that on Friday, May 7, the Neighborhood Association Awards would be presented at City Hall and invited everyone to attend.

STAFF ITEMS:

There were none.

PROCLAMATION:

May 15 as Peace Officers' Memorial Day and The Week of May 10-16 as Police Week

CONSENT AGENDA:

Coun. Soth announced AB 99-134 was pulled from the consent agenda pending resumption of executive session later that evening.

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

Minutes of the joint meeting of November 10, 1998 and the regular meetings of December 7, December 14, 1998 and January 4, 1999

- 99-120 Liquor License Renewal: Annual Renewal – Wen's Inc.
- 99-121 Liquor License: New Outlet – Fuji Teriyaki
- 99-122 Resolution Initiating Amendment to the Open Spaces Bond Measure Intergovernmental Agreement with Metro
- 99-123 Intergovernmental Agreement with Unified Sewerage Agency for Cost Share of Tektronix Wastewater Pump Station and Force Main
- 99-124 VAR 99001 Bernardini Street Access Variance
- 99-125 APP 99006 Stampin' Buddies
- 99-126 Rescind City Council Consent to Carlyle Group CPA/RZ (CPA98027/RZ980026)
- 99-127 Bid Award – Maintenance Painting and Repair of the Sexton Mountain 1.75 Million-Gallon Standpipe
- 99-128 Bid Award – Street Surface Slurry Seal Project
- 99-129 Bid Award – Alger Avenue Roadway Reconstruction
- 99-130 Approval of the FY 1999 CDBG Action Plan
- 99-131 Bid Award – Pedestrian Path Lighting Improvement Project
- 99-134 Authorize Forbearance and Reconveyance Agreement with Developer of the Round; Approve Transfer Resolution (Pulled for separate consideration.)

Contract Review Board:

99-107 Contract Award – Selection of New Library Construction Project Manager

99-132 Contract Change Order – Additional Architectural Services for the Beaverton Community Center Expansion Project

Coun. Stanton asked regarding AB 99-131 if all streetlight poles within City boundaries were owned by the City or by the Portland General Electric Co. (PGE). She asked if PGE owned any of the pedestrian path poles.

Steve Baker, Operations and Maintenance Director, said PGE did own a portion of the streetlight poles, but none of the pedestrian path poles.

Coun. Soth asked David Winship, City Utilities Engineer, regarding AB 99-123, if the pump station would alleviate the surcharge on the Beaverton Mall sewer situation.

Winship said it would.

Coun. Yuen pointed out a spelling error in the minutes of December 7, 1998.

Coun. Brzezinski referred to AB 99-129, and noted that people had asked when it would be completed and she wondered when they thought it really would be done.

Tom Ramisch, Engineering Director said the contract they would award would have a 30-day performance agreement and it would be finished in June.

Question called on the motion. Couns. Brzezinski, Doyle, Yuen, Stanton and Soth voting AYE, motion CARRIED unanimously with AB 122 as amended and 99-134 pulled for separate consideration later in the meeting. (5:0)

Public Hearing:

99-76 Regional Center Text Amendment and Rezoning (Continued from 3/29/99)

Mayor Drake requested a continuance of AB 99-76 to May 24, 1999.

Coun. Soth MOVED, SECONDED by Coun. Yuen to continue The Regional Center Text Amendment and Rezoning to May 24, 1999.

Coun. Doyle questioned if Council would vote on a final action that evening.

Mayor Drake said he believed it would be a final action.

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

Ordinances:

Suspend Rules:

Coun. Soth MOVED, SECONDED by Coun. Stanton that the rules be suspended, and that the ordinance embodied in AB 99-133 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Yuen, Brzezinski, Doyle, Soth, and Stanton voting AYE, the motion CARRIED unanimously (5:0)

First Reading:

99-133 An Ordinance Amending Ordinance No. 2050, the Development Code, By Adding A New Residential Zoning District – Single Family District – Urban Medium Density R-4 Zone, In Addition to Other Related Amendments

Second Reading and Passage:

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

99-118 An Ordinance Amending Ordinance No. 2050, The Zoning Map, From (CS) to (GC), For the Property Located at 8555 SW Canyon Road, Beaverton, (Tanner Rezone); RZ 980024

99-119 An Ordinance Amending Ordinance No. 2050, the Development Code to Add Minimum Density Zoning Regulations; In Addition to Other Related Amendments; TA 980012 (Minimum Density Zoning)

Coun. Soth MOVED, SECONDED by Coun. Doyle that the ordinances embodied in AB 99-118 and AB 99-119 now pass. Roll call vote. Couns. Brzezinski, Doyle, Soth and Yuen voting AYE, motion CARRIED. (4:0)
Coun. Stanton was out of the room during the vote.

RECESS: Mayor Drake called for a brief recess at 7:45 p.m., so Council could go back into the executive session they had recessed earlier.

RECONVENE EXECUTIVE SESSION:

The executive session reconvened at 7:58 p.m.

ADJOURNMENT OF EXECUTIVE SESSION:

The executive session adjourned at 9:09 p.m.

RECONVENED REGULAR MEETING:

The regular meeting was reconvened at 9:09 p.m.

99-134 Authorize Forbearance and Reconveyance Agreement with Developer of the Round; Approve Transfer Resolution (Pulled for separate consideration.)

Coun. Soth MOVED, SECONDED by Coun. Doyle approval of AB 99-134 authorizing forbearance and Reconveyance Agreement with Developer of The Round, including a transfer resolution and to notify Council as soon as the exhibits were completed.

Coun. Doyle expressed his appreciation to staff who had worked so long and hard on *The Round* issue. He said what was going on was not unusual, and would minimize future problems and expenses. He commented that it was an honorable way to deal with the contractors involved, they needed to move quickly and this was a vehicle to do that. He said he was comfortable with the obligations, in a few years they would see a new and different downtown area and it would still happen the way the business community wanted it to happen. He said the City's investment was minimal in terms of this type of project and the comments he had received were that the citizens did not want this project to die. He suggested that this time they had to do it right and find the developer who could make it work.

Coun. Stanton said she could trust staff and would support the motion.

Coun. Yuen said he would vote against the motion, for the two reasons they had discussed earlier in executive session. He explained that as much as Council knew and trusted each other, he felt they had a fiduciary obligation to review contracts rather than provide a blank contract based on the trustworthiness of each Council member. He noted that as much as he wanted to be optimistic (and there were four of them on the Council who had worked for many years on the project and wanted it to happen), he had to take on his responsibility for the City. He said what he had seen did not give him reason to be optimistic about what could happen by Dec. 1. He noted he was very concerned about the liabilities to the City in the Forbearance Agreement. He commented he thought Mark Pilliod, City Attorney and Linda Adlard Chief of Staff, had done a superior job in crafting the document and getting it to this point, but he was concerned about the negative liability that could come into effect. He said he was concerned that if they City acquired this property they would acquire the liens also, and he was concerned about having to pay them. He said he was not optimistic that it could be brought forward.

Coun. Soth said as far as he was concerned the interest of the City were protected by what was in the Forbearance Agreement, and having been through one conservatorship and five property disposals from wills and so forth, he felt he was familiar with those types of documents. He stated that his biggest concern was the protection of the City, unlike Biggi's

concern about the area becoming characterized as a slum. He explained that he felt this gave the City a controlling interest, and with the schedule Council had received, the project would proceed in a timely fashion. He stated the City owed the citizens of Beaverton and the people of the region to see that it did happen.

Coun. Brzezinski said she would support the motion, even though she did not know if they would succeed. She noted that in the worse case scenario, if Coun. Yuen was right, she felt the City would be better off with the agreement than without it.

Question called on the motion. Couns. Brzezinski, Doyle, Soth and Stanton voting AYE, and Coun. Yuen voting NAY, motion CARRIED. (4:1)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 9:20 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 27th day of September, 1999

Rob Drake, Mayor