

REGULAR MEETING

May 17, 1999

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Council President Forrest Soth in the Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, May 17, 1999, at 5:43 p.m.

ROLL CALL:

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

EXECUTIVE SESSION:

Coun. Brzezinski MOVED, SECONDED by Coun. Yuen 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. Couns. Brzezinski, Doyle, Soth, and Yuen voting AYE, the motion CARRIED unanimously (4:0)

The executive session convened at 5:44 p.m.

The executive session adjourned and a recess was called at 6:10 p.m.

The regular meeting reconvened at 6:31 p.m.

Also present at the regular meeting were Assistant Finance Director Shirley Baron-Kelly, Engineering Director Tom Ramisch, Human Resources Director Sandra Miller, Operations/Maintenance Director Steve Baker, Police Chief David Bishop, Director of Engineering Tom Ramisch, and Development Services Manager Irish Bunnell.

CITIZEN COMMUNICATION:

There was no one present who wanted to speak.

COUNCIL ITEMS:

Coun. Doyle reminded everyone that the Beaverton Arts Commission (BAC) would be at the Borders Book Store on Cedar Hills Blvd. on May 18, in the evening, and 15% of all purchases will be donated to BAC. He noted that local artist would be performing at Borders from 6 to 8 p.m.

Coun. Soth reminded them that on Wednesday, May 19, the Mayor's Walk in Vose Neighborhood would begin at the Community Center at 6:00 p.m. He said this was an opportunity for citizens to meet with the Mayor and Councilors as they walked through the neighborhood.

Coun. Soth announced the Citizens' Advisory Committee on the Urban Services Boundary, would be meeting at Aloha High School, on Thursday, May 20, from 5-8 p.m. He said those interested should attend.

Coun. Doyle noted that the Arts Commission ran their first student video contest and the winner of both the first and second prizes was a young man named Perry Freize, of Wilsonville High School, and third place went to Chris Hanes from Beaverton Arts and Communications High School. He said there would be a celebration of this on Friday, May 21, from 5:30 to 7:30 p.m., at the Arts and Communications High School, and noted that it sounded like the videos would be very entertaining.

STAFF ITEMS:

Linda Adlard, Chief of Staff, reported that the Red Light Photo Radar bill was scheduled for a public hearing at the Senate Transportation Committee. She reported that she understood there were amendments drafted which would put the bill back to just including Beaverton and Portland. She noted they would receive a copy of the citizen survey on this issue later that week. She reported that 73% of the residents favored Photo Red Light Radar in Beaverton; 80% said it could be used effectively in other Oregon cities; and 74% believed using a camera was the most efficient way to enforce red light laws. She said they would have representatives at the committee hearing that Friday, May 21, and if the bill got out of committee as they expected it to, it would then go to the House for concurrence.

PROCLAMATIONS:

National Public Works Week

Council President Soth remarked that these are the folks who play an important part in the work that occurs throughout the City on the streets, and the water and sewers, that makes Beaverton such a livable place.

Emergency Medical Services Week

Council President Soth noted there were two people in the audience from those services and thanked them for their work. He asked them to pass their thanks on to all those folks involved in Emergency Medical Services. He pointed out that they played a critical part in saving lives and helping those people who need help and call 9-1-1.

Jason Rogers, paramedic with Metro West Ambulance, said the proclamation was very important to the EMS teams in Beaverton. He said they were part of a team of professionals who gave emergency care to the citizens and visitors of Washington County. He reminded everyone that their partners were fire personnel, police and emergency room staff, and noted that Washington County had one of the finest emergency health care systems in Oregon. He said it was their goal to meet the emergency medical needs of the community in a timely, compassionate and professional manner. He thanked them for providing a safe and healthy community for the residents. He presented a plaque to the City for their support.

Physical Fitness and Sports Month, and May 19, 1999 as Fitness Day

CONSENT AGENDA:

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

Minutes of the regular meeting of February 22, 1999.

- 99-138 Liquor Licenses - Additional Privilege: McMenamins, New Outlets: Soya Japanese Cuisine, Hilton Garden Inn
- 99-139 A Resolution Certifying that the City of Beaverton Provides Certain Services Necessary to be Eligible to Receive State-Shared Revenues Under ORS 221.760
- 99-140 Resolution Supporting the Portland-Cannon Beach Junction (US 26) Corridor Plan
- 99-141 Resolution Adopting the New Emergency Response and Recovery Plan (ERRP) to Supersede the Current Emergency Operations Plan (EOP)
- 99-142 Boards and Commissions Appointments
- 99-143 Traffic Control Board Issue 405
- 99-144 Authorize the Mayor to Enter into an Intergovernmental Agreement with ODOT to Construct Sidewalks and Bike Lanes on 113th Avenue, Cabot Street, and 110th Avenue
- 99-145 Insurance for Domestic Partners

99-146 Bid Award – Street Striping Project

99-147 Bid Award – Design Joint Crack Sealing Project

99-152 Boards and Commissions Appointments

Contract Review Board:

99-148 Waiver of Sealed Bid – Repair of 1991 Tymco Street Sweeper

99-149 Consultant Contract Award – Engineering Services for Lombard Avenue Storm Drain Repair and Asphalt Overlay

99-150 Exemption from Competitive Bidding – Contract for Traffic Signal Preventive Maintenance

Coun. Yuen gave his corrections to the minutes to City Recorder Darleen Cogburn.

Coun. Brzezinski said she would abstain from voting on the minutes because she was absent from that meeting.

Question called on the motion. Couns. Brzezinski, Doyle, Yuen and Soth voting AYE, motion CARRIED unanimously. (4:0) (Coun. Brzezinski abstained on the minutes.)

ACTION:

99-153 Appeal of Disqualification from Library Construction Contract Qualified Bidder List

Coun. Pres. Soth asked City Attorney Mark Pilliod for a brief explanation and asked what statute was applicable to this issue.

Pilliod noted that the appropriate statute, ORS 279.037, was referred to in the agenda bill, and explained it allowed the City to disqualify any prospective contractor on a public project. He reported that the statute listed the various reasons that could be used to disqualify contractors. He explained that Adlard was more involved than he was with the investigation of various potential contractors and could elaborate. He stated that if the staff recommended to disqualify, then the party who had been proposed to be disqualified had a right to be heard by the Council, acting as the Contract Review Board. He explained that the purpose of the current hearing was to enable the applicant to make a presentation to the Council, and the Council would then have to determine whether to sustain the recommendation, or overrule it and enable the potential contractor to submit a bid.

Adlard said they would discuss the appeal request from OC America Construction Inc. She reported that this firm was one of the construction

firms who submitted a proposal to be pre-qualified for bidding on the new library. She said the City had an extensive request list and there were many elements a contractor had to meet in order to be qualified. She reported that there was a panel made up of City staff, consultants, and outside contractors to evaluate each proposal and rank them in a weighted system to ensure a fair and equitable procedure. She said they took a great deal of time discussing this and it was always unfortunate when a contractor did not meet the needs and requirements of the City.

Adlard clarified that OC America, Inc., was a very good company, in the business for many years and with a high-ranking in the US. She explained that one of the City's issues was, that given the short time frame of the library project (14 – 15 months), they needed to be assured they had consistent staff committed to the project, throughout the tight timelines. She stated that as they reviewed OC America's proposal among the others, unfortunately, the committee was unable to determine if they would have the same staff committed to the project for the duration. She pointed out that the committee also could not find that the request for identification of backup staff, in case of an illness or some emergency, was evident. She said based on that information, they took OC America, Inc., out of the pool along with some others. She said Hal Bales, the contract project manager from Heery International, was present and could answer questions.

Hal Bales, Vice President of Heery International, and manager of their local office, noted they were the construction project managers for the new library. He clarified that he had not been a voting member of the committee but was the facilitator. He reported that they had 13 submissions that were copied for those on the committee for their review. He said they came to the meeting prepared to discuss, rank and eliminate if necessary, contractors, and noted that eliminating anyone had not been a goal.

Bales pointed out that one of the major submission elements was a list of references, and those references were called prior to the meeting of the group. He reported that was the basic source of the information used for the disqualification. He said one of the key references cited a large turnover of staff at OC America, Inc. He said other comments were related to not being very good communicators during the process, and an example was during the value engineering process, where they look for ways to cut costs, not all members of OC America's team participated in that process. He reported that there were comments about a lack of good control of their subcontractors, not getting the kind of performance out of them, with the example that they did not get the punch list completed. He stated that all of that information combined, led the committee to raise the issue of capability and experience of personnel, and then disqualify them.

Coun. Brzezinski asked Bales if the project the reference told him about, where there was a fair amount of turnover, was of a similar duration.

Bales said he was not sure but it was a similarly complex project.

Coun. Brzezinski asked if the importance of a stable staff had been stressed in the request for qualifications (RFQ).

Bales said they did and they asked for the names of the people who would be the project managers, superintendents, etc., and the names of those who would be back-ups.

Coun. Brzezinski asked if he knew if the other reference also wanted long-term staff.

Bales said he did not know.

Coun. Brzezinski asked how the other bidders showed them that they would not have a high turnover.

Bales said they gave the names of the people who would be there and the backups. He noted that he did not think anyone attempted to prove they would have people there for the whole time, and noted this information from the reference was voluntary, not in response to a direct question.

Coun. Brzezinski asked if when he said "volunteer" did he mean it was not a specific question asked of the references.

Bales said that was correct; they asked about issues of communication, issues of cooperation of other members of the team, so they were leading questions, as opposed to "did they have a high turnover rate."

Coun. Yuen noted the two issues of the large turnover and the communication situation, and asked what the references' overall opinion was of the work of that company. He wondered if they were satisfied, and if they would hire them again.

Bales reported that one reference said he would give them a "D" and would not hire them again, and he could not recall the other responses.

Coun. Yuen noted that in the letter from OC America in response to the City's letter (both in record), they responded that they were fully committed and said they gave the resumes of their three key personnel, and yet the City was still choosing to disqualify them for that same reason. He explained that he did not understand why the City would not then take their word for it.

Adlard explained that an unfortunate part of the bidding process was that the bidder had to be judged on the bid, not one that was "fixed," but complete when submitted. She reported that they had disqualified one firm because a form was missing, one that they likely did on a daily basis and a clerical staff probably left it out. She stated that even though this felt pretty bad, the City had a bidding procedure that they required and

everyone had to abide by it. She noted that it was the law, and the legal process. She explained that although they had no doubt that someone could cure something that was not represented in the bidding process, they had to be careful, because then others who did not have certain pieces in their documents which were required, would also be able to cure their applications. She said any company that was in business, could cure their problem by writing a letter or doing whatever was required, after the bids had closed.

Adlard stated that the fact was the documents from OC America did not adequately prove to staff what they asked for. She clarified that the bid asked for staffing, plus backup staffing, plus references. She said it was always unfortunate to disqualify someone, but it was important to have a process that was followed for everyone, so they had qualified contractors and would not have problems during the process of building, which could be devastating. She stated that staff continued to recommend the appeal be denied, based on the fact that OC America did not have an adequate response within the process.

Applicant Statement:

Stephen Clouten, Senior Project Manager, OC America Construction, Inc. thanked them for the opportunity to clarify some issues within their RFQ. He noted that considering the background of their company he had been perplexed by the disqualification. He stated they had been in the Portland area for about four years, and a local customer was Komatsu in Hillsboro. He reported they had built a \$270 million, high-tech wafer manufacturing facility and office building.

Clouten said he would clarify some of the issues in the reference process. He stated that as far as high turnover in personnel, when they were building the Komatsu project the high-tech market was at tremendous growth in this area and it was built in three phases. He reported that all three phases required different expertise, which was why there was not in some cases, the same individual from start to finish. He said they lost a good five or six key people to a project up the street from them. He stated that they tried desperately to keep those people, but were unsuccessful. He noted that as far as the communication issue was, it was a Japanese project; it was driven by the Japanese staff and the engineers from Japan. He reported that they had both a Japanese and American staff, and agreed that there were communication problems between those two groups, but over time, they were able to bridge the gap. He stated that he could speak of it with pride because the Komatsu project had been successful. He noted that it had not been easy, all projects had their problems, challenges and personnel issues that must be dealt with.

Clouten stated that he could commit to the City of Beaverton that the staff which was committed in the proposal, would be there from start to finish, and as far as backup personnel, they had an assistant superintendent on the organizational chart. He explained that he did not submit the resume

for that person, but thought identifying the individual on the organizational chart would be sufficient. He stated that individual would step into the role of project superintendent in case of illness. He reviewed the positions that would also be there and committed to the project, and noted they were local staff. He agreed that they did not have a 20-year track record as did some of the local companies, but they would get a top-notch project from his team. He stated that he could only speak for their one local project, and reported that he had dinner with that client the past week and they were very satisfied clients.

Coun. Doyle noted they had heard the staff report that omissions did occur in the bid, and stated that he had done this kind of work with another organization. He said if this was the case, it was not a reflection on the company, it was just that a mistake was made in the bid. He asked Clouten if he was trying to say that he did submit everything that was requested.

Clouten explained that if the issue was the backup staff, and they looked on the organizational chart, it identified – they added in the organization, because they believed this project was very detailed architecturally, with very fine finish work, and exposed material, and they figured they needed specialized staff in those areas. He said, therefore, in their organizational chart they identified an assistant superintendent who would not only be assigned to the project but would provide backup for the project superintendent in case of illness. He noted there were two engineers on the project, so not only did they address the technical requirements and the schedule requirements through staffing, but he thought they could see in the organizational chart that they had adequate backup. He stated that if some was ill or gone for a period of time, they would be covered.

Coun. Doyle asked if they had to respond to RFQs on a frequent basis; was this a usual process for them.

Clouten said they were experienced and had a team that understood what the client's requirements were. He noted that every project had specific requirements and they were a professional company. He stated that the City had 110% commitment from OC America; they would stand behind their integrity and reputation. He declared that as he had stated in his letter, they would not do a "bait and switch;" what they saw in the proposal was the team they would get.

Coun. Doyle asked how often a punch/check list was not completed on such a project.

Clouten said there had been zeros missed due to the pressures of a project and noted that everyone was under pressure on large projects. He stated they were all human and mistakes happen.

Coun. Soth asked if the backup personnel had been identified by name with a biography/resume, or did they just refer to the organizational chart.

Clouten stated that they did not provide a name and resume, but showed the positions on the organization chart. He noted that within the text, they did not refer to the chart, and felt the organization chart clearly exhibited the project team managers as well as the backups.

Adlard reviewed the process to evaluate the bids. She said the bids were evaluated on whether or not each piece was within the bid. She reported that when they determined that within the organizational chart there were simply positions and not individuals as asked, they went on to check other things. She said they went through the checking process the same for everyone, and when they came to the issue of "do we know who this was on the project and are we confident that person would have the skill level we need as a backup staff for this project," that could not be determined. She continued that they had references that said there were multiple individuals whom their organization could not control in the sense of choice or qualification. She noted that made staff very uncomfortable because of the expertise that is needed in the City project. She pointed out that they had some specialized kinds of things in cement and laminated wood, and architectural design, which were different than in an industrial plant. She said the third piece was the communication factor, and when they took all of those together, staff did not feel comfortable that the bid met their needs. She explained that not only did they not meet the request, but the references were giving the City a 'heads up' on their experience.

Adlard stated that based on those things they had rejected the bid, and continued to believe that should those three elements happen in the City's project, it would be devastating.

Coun. Brzezinski MOVED, SECONDED by Coun. Yuen that the Council uphold the committee's action and deny the appeal.

Coun. Brzezinski explained that she would take the recommendation of staff because they had all the information. She stated, however, that she was not comfortable with one thing, and she hoped it would not be repeated. She explained that from Adlard's discussion she understood there was more than just the reference check about key personnel changing during a period of a prior assignment, but that was the only thing that was mentioned in the letter. She stated that if that was something that knocked one company out of competition, then that should be a question that was asked of all bidders. She said if that had been the only thing that had been said as the reason to disqualify OC America, she probably would not have supported the recommendation of the staff.

Coun. Yuen stated that he concurred with Coun. Brzezinski's comments. He pointed out that he worked for a small company whose work went from firm to firm and project to project, and he was sensitive to the notion of a bid being thrown out over a technicality. He said he was very concerned about that. He explained that he seconded the motion because he heard

enough to make him believe the committee's recommendation was the right one. He noted there were some things that were explained by the response of the applicant. He said as one who did identify with the plight of the contractor, since that often was his job when it went out, he was very concerned about simply throwing out a proposal because of a technicality. He explained that he felt they should give people the fair opportunity to respond to issues. He said he did not think bureaucracy would collapse if that was done, and if they did not adequately respond to the issues that was fine, but he was concerned about the people and particularly peoples' jobs, when they forgot to file a piece of paper or the City had an additional question they chose to not pursue. He reiterated that in this case he believed the committee made the right decision.

Mark Pilliod, City Attorney, said in response to Coun. Brzezinski's comment, that it was important to the decision-makers that the reasons should be focused on what was written in the letter of May 13, from Sharon Woodhouse to the applicant. He explained that committee staff were conducting the interviews as indicated, and as indicated, contacted references given by the applicants and asked open-ended questions. He reported that they explained, as part of the process it was their intention to seek some level of assurance that key personnel would remain consistent throughout the project because of concern that it would not meet the tight timeline. He noted that any other basis would not be the staffs' reason for recommending a rejection. He stated that it only had to do with that particular issue, it did not necessarily have to do with asking every person/reference the same question, but the emphasis had been on maintaining the key personnel. He said he did not think the City was trying to pull a "gotcha" because someone did not 'dot an i or cross a t,' however it would have been an indicator to staff that without naming the 'sub-tier' personnel, it could have raised a red flag. He stated that other things did not apply, for instance they did not know if there had been any disputes with other projects, but that was not relevant; for all staff knew the contract was successfully completed. He reiterated that they were talking about one element in the contractual relationship, which in the City staffs' view was very important in this case.

Coun. Brzezinski said that weakened her resolve to support the motion. She noted that the syntax of the sentence (in the letter to OC America) was a little confusing but it did not say, "You failed to demonstrate sufficient staffing of key personnel for this project in that you did not name the individual who would be the assistant superintendent. In addition reference checks...." She pointed out that it tied the failure to demonstrate sufficient staffing to the reference check; it implied that the only reason the company was being disqualified was the reference check. She said that staff said there were open-ended questions about such things as communication, which was a legitimate thing since it was one of the criteria for selecting. She noted that it also seemed like another criteria was lack of turnover in staff. She pointed out that if that question was not asked of every company's references, then it did not seem fair to disqualify someone because this reference apparently mentioned it

without having been probed with an open-ended question that would have led to it.

Coun. Yuen stated that having heard Pilliod's comments regarding the need to make the basis of the decision the letter from Purchasing Agent Woodhouse, and the reasons therein, he felt the applicant's comments that evening and in the letter actually satisfied the concerns presented in the letter. He said because of that he would withdraw his second to the motion.

Coun. Pres. Soth asked if there was another second.

Coun. Doyle said he would SECOND the motion.

Coun. Doyle read from the letter to OC America and said the portion that said the reference checks showed that key personnel were not available for the full duration of the work, clarified that was what staff felt was not adequately demonstrated in the written documentation supporting the request for qualifications. He stated that was quite straight forward to him.

Coun. Brzezinski pointed out that someone needed to work on the sentence before they used it again. She explained that what it said to her was that the reference check said that key personnel were not available for the full duration of *their* job, and the City used that as the basis for saying that was a concern because it was important for the City to have the same staff throughout the project. She said to make a statement like that without knowing the other project required them to have the same staff all the way through, seemed unfair.

Coun. Doyle said he thought he heard that the documentation submitted by OC America for the RFQ did not indicate who the key staff were, which was a concern, and other applicants who had passed the first hurdle, satisfied the committee with their written documentation of who the staff were and that they would be there for the duration.

Adlard said the committee's process was to evaluate whether or not the contractor met the requirement of the bid. She explained it did not ask for duration of staffing, but who the people were that would be assigned to the project, and unless they left the job, they would continue on the project. She noted that it also asked that they identify the backup staffing, because they wanted to evaluate the quality of the backup staffing, to assure that if something happened to the primary staff, they had quality staff ready to step in. She said because they did not do that, the next step was the reference checks, and the references were not asked if they had any staffing issues; the comments were spontaneous. She said the person who did the reference checks reported that they had learned that this company had five project managers on one project, and noted that they did not know the duration of the project. She explained that this made them uncomfortable enough that they decided it did not meet the parameters for the qualifications. She stated that because OC America

could not assure them that they would have staff consistently on the project and if that staffer was not there, they had quality staff for backup, they rejected the bid.

Coun. Doyle asked again if the request and expectation that went with the RFQ was unusual in that it wanted to know the qualifications of the backup personnel. He explained that if all the other firms did it, he wondered if this was an industry standard way to indicate that they had understood the request; was this an unusual thing to request in a bid.

Adlard said it was not her impression that it was unusual at all.

Coun. Brzezinski stated that she understood the point Adlard had made, which was why she was willing to put the motion forward to support the staff recommendation. She explained that it was not until the City Attorney said they should be making their decision based on what was in the letter, not what she heard, and to her that was not in the letter. She said that perhaps she misunderstood the Attorney.

Adlard said Ms. Woodhouse was an employee who would not be hired because of her writing skills; she did a very technical job of putting pieces out that were legally correct, and had the elements which attorneys write. She explained that Woodhouse then checked to make sure the elements had been complied with, and made a judgment whether they were or not on simple bids. She clarified that on more complex bids such as this, where a professional committee was formed, the committee took over that responsibility. She reported that they then asked Ms. Woodhouse to send a letter back to the contractor, expressing, and being as explicit as possible, about why they believed they did not meet the contractual obligation they asked for. She said perhaps it would be better, but when it was a lay person, and not an attorney, to quote the ORS that said "the person did not have key personnel available of sufficient experience to perform the contract," which was one of the disqualification of bidder parameters. She explained that she thought Ms. Woodhouse tried to broaden it so they would understand more clearly that it was not just that their key personnel were not qualified, (because that was not what the committee thought), it was that they did not meet the parameters by providing all the qualifications of other employees they might have. She read from the letter (in record), and said it appeared that Ms. Woodhouse had put two sentences together. She pointed out that given the parameters of this project, (noting that this was one of the largest public projects they would have in the City), they needed to ensure they had backup staff that was adequate and could perform in order to go forward with the qualifications. She stated that it was up to the Council to make the choice. She said every group that bid on this was good and she did not want to say they were not, it was that they did not meet the parameters.

Coun. Yuen said this was quite difficult, because they did not have the RFQ to look at, so they don't know what was being asked, and they also

did not have what was submitted, so they could review it and see what was asked and what was delivered. He noted that as they went along it seemed like there had been more asked and more responded to. He asked if in the RFQ the City specifically asked for the names and resume for the backup staff.

Adlard said she did not have it in front of her, but she could tell them that 10 out of 13 contractors did provide the names and resumes of the backup staff. She stated that led her to believe there was a sentence in the RFQ that asked for that, and the majority complied. She noted that three were disqualified for various reasons. She reported that one was disqualified for forgetting a piece of paper that identified certain kinds of informational materials about the contractor, one was for staffing, and she could not recall the reason for the third one.

Coun. Yuen stated that he was beginning to not support the denial, principally because he thought what was good for one, was good for all. He explained that if the City was going to narrowly interpret qualification standards that say they were going to disqualify people for a missing piece of paper, a clerical error with a missing zero, then it seemed to him they should also, in hearing the appeal, say that if staff could not conclusively prove they demanded of the contractor a specific piece of qualifying material, then he could not disqualify them. He continued that he could not use rationale other than what was in the letter of denial, to deny the appeal. He stated that if they were going to play the fine tight line with the applications, then they should play the same fine tight line when it came to hearing the appeal. He said he did not think the City had made its case.

Coun. Soth said he would support the motion because he had been involved in a number of bids with these types of projects, and one of the strictest rules was that you respond exactly to the bid; no "ifs, ands or buts, or I forgot that," and no room in that kind of process to come back during an interview and say, "Here is the explanation." He explained that the explanation might be perfectly reasonable, but at the time they were evaluated, it did not meet the parameters of the bid - when they submitted their response. He stated that it was common that the prime staff and the backups all had the name and a bio listed. He explained that in the event a person was unable to perform then there was another person who was qualified to take over and complete the project. He said that was the way he read all of it. He stated that it was not the Council's prerogative to judge whether or not any firm met all of the conditions of the RFQ, because that was the work of the review committee. He noted that in that particular case, since the contractor did not provide the names and qualifications of all those backup staff, as the others did, and was common throughout the contracting industry, they should be denied.

Coun. Yuen said he agreed with everything Coun. Soth said, but one small caveat. He explained that was that no one had stated conclusively that the City had specifically requested the names or resumes of the backups. He recalled that staff could not say that evening that it was requested

specifically. He stated that it was one thing to say that it might be standard practice, it might be one thing to say that in your experience you have seen this, but it did not say that this happened in this case. He explained that if he had it in front of him, he would not have a problem, and they did not get conclusive statements from anyone saying that was what happened; it could have been, but in the absence of the contract itself, he did not know that it did. He clarified that it was one thing to say it was an industry standard, but if the City forgot to ask it and then disqualified them for it, then it was disingenuous. He stated that further they had a letter from the City saying they were disqualified, and a letter from the applicant saying they provided the information. He pointed out that without the contract in hand, they had to decide it, one way or the other. He noted that they had to determine whom they believed, and Coun. Soth wished to believe staff and he tended to believe the applicant when they said they provided it.

RECESS: Coun. Pres. Soth called for a brief recess at 7:40 p.m. to allow Council to review the RFQ.

RECONVENED:

The regular meeting reconvened at 7:50 p.m.

Adlard asked them to review the pages of the qualification submittal requirements they had been supplied during the break and note item four (4), which stated the proposed staffing for the project. She noted at the end of the paragraph, it stated, "also include resumes for personnel to replace these positions if primary positions are not available." She then asked them to note OC America's organizational chart where they would see the key personnel, and then listed an assistant superintendent, field engineer, project assistant, simply by position titles without names or resumes. She pointed out that attached to that were the resumes for the key individuals OC America had identified as the senior project manager, the superintendent and the senior project engineer, the first string that would come in. She noted that what they had asked for in number four, also included a request for the resumes of the second string, in order to judge whether or not they were qualified. She stated that it appeared to her that the committees' determination about not having the resumes available for the second group of staffing was correct.

Coun. Yuen asked for a minute to review the material.

Coun. Pres. Soth agreed to a brief break.

Coun. Yuen referred to the naming of the staff positions and the statistic that 10 of the 13 provided the backup staffing information. He stated that in reading through it, the wording said "also include resumes for personnel to replace these positions, if primary positions are not available." He noted that he did not have any familiarity with this type of project and would ask

open-ended questions. He asked if it was typical that backup staff be named for these types of projects.

Adlard said that was typical

Coun. Yuen referred to number four and said it did not say it was required that they have all of those backup positions, but it did say that resumes for backup personnel should be included. He explained that he guessed the contractor could argue that they did not intend to replace those positions, so they did not bother to include the backup. He said he realized they could go on and on with this, and if it was standard industry practice to do that, then he thought he could accept it. He said it was a case of semantics where someone might want to argue it with City, in which case you had a legitimate difference of opinion. He stated that if it was an industry standard and the contractor should have known it, he would not be so hard on it.

Adlard said she could not agree with that easily; it was not how the majority of the contractors responded to the proposal, so they apparently believed, (as the City thought they were asking for) that if primary positions were not available, the City would be aware of who was backing it up. She stated that she believed that this was the only contractor who did not provide any information on backup personnel.

Clouten stated that it was common in the industry to propose personnel that would get your firm selected and then you switch them out, and that was what he was referring to as the "bait and switch." He said he had been involved in many projects and this was the only one that supposedly specifically asked for the resumes of backup personnel that would replace people in the event of illness. He stated that he proposed personnel who would start the job in July and stay with it unless they went to another company. He declared that the team they proposed that would start was the team that would finish. He pointed out that the organizational chart clearly showed there was sufficient staff who would back up someone who was sick for a few days. He noted that to have someone pick up for a one to two day absence was unproductive.

Coun. Soth asked how he interpreted the statement, which in his view specifically directed them to include resumes of personnel to replace those positions if primary personnel were not available.

Clouten explained that it was interpreted that, at the time of proposal the people who were proposed on May 14, if they were not available for some reason, the contractor would provide the backup resume for the person to staff the project.

Coun. Soth clarified that OC America interpreted that to allow a resume to be submitted after the project had begun, in the event of a principal not being able to perform their work, for some reason. He pointed out that in that case, prior to the start of the project, the City would have no way to

look over that resume and determine whether or not that individual was as qualified as the primary.

Clouten said that was not correct, and explained that the team that had been proposed had been with the company since they began in Portland, and were committed to OC America, and to this project; they would not be reassigned to another project. He explained that in the event they would leave it would be extraordinary circumstances.

Adlard said she had just been handed the entire RFQ document and read from it where it was noted that the evaluation of contractors qualifications would be based upon the qualification selection criteria, as found in the qualification forms. She continued that review of the forms would be conducted by an evaluation committee consisting of: staff and officials of the City of Beaverton, citizens, the architect and the project manager. She said that criteria for qualification included but was not limited to a list of bulleted points, including experience that demonstrates capabilities for this project; appropriateness of the organization and personnel proposed and replacement of support personnel.

Coun. Yuen thanked Adlard for providing that and said he thought he could support the motion. He said he thought a prudent person, if they saw it twice in a document, would have called and asked for information. He stated that with all the information that had now been presented, he was convinced it was fair case for disqualification.

Question called on the motion to uphold the committee recommendation to deny the appeal. Couns. Brzezinski, Doyle, Soth and Yuen voting AYE, motion CARRIED unanimous. (4:0)

PUBLIC HEARING:

99-151 Open the Public Hearing on Applicant's Request to Remand the Appeal of the Parking Variance for the New Beaverton Library. File: APP 96019 and VAR 96015

Adlard explained that they were asking the Council to remand this appeal back to the Planning Commission, to review the plan for parking, make their case and get final approval for the library plans. She noted they would then get the site development permit and begin the process.

Coun. Soth clarified that the circumstances for the request were changed from the original denial by the Board of Design Review.

Adlard explained that staff had reviewed the square footage and the requirements that were needed for parking. She noted that it was now their belief that staff were very close to only needing a small variance, if

any. She stated that they were prepared, given that analysis and a further traffic study, that they could make their case and be approved this time.

Coun. Pres. Soth opened the public hearing.

There was no one present who wished to testify.

The public hearing was closed.

Coun. Yuen MOVED, SECONDED by Coun. Doyle to approve AB 99-151 and remand APP 96019 and VAR 96015 to the Planning Commission for a hearing on June 23, 1999.

Question called on the motion. Couns. Yuen, Doyle, Brzezinski and Soth voting AYE, motion CARRIED unanimously. (4:0)

Ordinance:

Mark Pilliod, City attorney, read the following ordinance for the second time by title only.

Second Reading and Passage:

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

Coun. Yuen MOVED, SECONDED by Coun. Doyle, that the ordinance in AB 99-133 now pass. Roll call vote. Couns. Yuen, Doyle, Soth and Brzezinski voting AYE, motion CARRIED unanimously. (4:0)

OTHER BUSINESS:

Coun. Doyle MOVED, SECONDED by Coun. Brzezinski, that Council approve the request for fee waiver for the Beaverton Veterans Memorial.

Question called on the motion. Couns. Doyle, Brzezinski, Soth and Yuen voting AYE, motion CARRIED unanimously. (4:0)

Adlard called their attention to the cards they had been given to promote the Red Light Running Program, which was an intensive campaign on stopping red light running. She said they would see selected enforcement by police officers, and reminded everyone that those who disobeyed the law by running red lights would face about \$170 for each citation. She pointed out that this campaign would be making Beaverton one of the safest cities in which to drive.

Coun. Doyle asked if this was paid for with part of the grant.

Adlard said it was from part of the grant from ODOT.

ADJOURNMENT:

There being no further business to come before the Council at this time,
the meeting was adjourned at 8:14 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 30th day of August, 1999

Rob Drake, Mayor