

REGULAR MEETING

July 24, 2000

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth Council Chambers, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, July 24, 2000 at 6:34 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Evelyn Brzezinski, Dennis Doyle, Fred Ruby, Forrest Soth. Coun. Cathy Stanton was excused. Also present were Chief of Staff Linda Adlard, City Attorney Mark Pilliod, Human Resources Director Sandra Miller, Finance Director Patrick O'Claire, Engineering Director Tom Ramisch, Operations/Maintenance Director Steve Baker, Police Chief David Bishop, Library Director Shirley George, Emergency Manager Mike Mumaw, Economic Development Manager Janet Young, City Engineer Terry Waldele, City Transportation Engineer Randy Wooley, Assistant Finance Director Shirley Baron-Kelly, Budget coordinator Nancy Earp, Tualatin Valley Fire Department Battalion Chief Jim Mooney, and City Recorder Darleen Cogburn.

CITIZEN COMMUNICATION:

There was no one who wished to speak.

COUNCIL ITEMS:

Coun. Soth announced he would not be able to attend the Walking Town Meeting Walk on Thursday, July 27, 2000.

Coun. Brzezinski noted that the City had received a plaque for their support of the Beaverton Festival Parade on Broadway for the year 2000, and presented it to Mayor Drake. She said the parade was great fun and thanked all of the volunteers that contributed to it.

Mayor Drake thanked Coun. Brzezinski and noted that there was a display case in the lobby of City Hall where parade items could be viewed.

STAFF ITEMS:

Linda Adlard, Chief of Staff, told Council they had received two bids for Red Light Camera Enforcement. She reported that project was coming forward soon and the cameras should be installed sometime in early fall.

Coun. Doyle asked what the annual survey percentages were regarding Photo Red Light. He said he thought 74% of those surveyed were looking forward to it.

Adlard reported that the surveys indicated a combination of strongly agreeing and adequately agreeing that Photo Red Light was a good program. She said the number one issue in Beaverton was traffic congestion.

PROCLAMATIONS:

Car Free and Carefree Week

PRESENTATIONS:

00-256 Presentation of Shields and Swearing In of New Officers to the Beaverton Police Department

Mayor Drake noted that since he became Mayor they had been having public presentations to welcome and swear-in new officers to the City.

Police Chief David Bishop said he was proud to welcome the two new officers who were lateral transfers, one from Alaska and one from Nebraska. He said he was proud to have them as part of the force and also proud to have the support of the families, the Council, other Police officers and those from the Fire Department as well.

Bishop issued the oaths to Officer Bryan Anderson and Officer Paul Wandell.

Mayor Drake presented their shields and welcomed them.

Bishop again expressed his appreciation for the support and invited the families and friends who were present to attend a reception.

00-257 Name the Recycling Beaver Contest Winners (moved to 8/14/00)

00-258 Presentation of the Certificate of Achievement for Excellence in Financial Reporting and the Award of Financial Reporting Achievement to Shirley Baron Kelly for the City's FY 1998-99 Comprehensive Annual Financial Report

Mayor Drake said he was proud to recognize two employees for their work for the City.

Patrick O'Claire, Finance Director, explained that this represented the highest form of recognition that a government entity could achieve and he presented a plaque to Shirley Baron-Kelly for achievement for excellence in financial reporting. He noted that this was the twenty-first consecutive year to win this award. He thanked Baron-Kelly for the many hours she and her staff had put into their budget work.

00-259 Presentation of the Distinguished Budget Presentation Award and Certificate of Recognition for Budget Preparation to Nancy Earp for the City's FY 1999-00 Annual Budget Document

O'Claire said that Nancy Earp was recognized as the person who put together the City's budget document. He noted that this was the twelfth consecutive year the City had received the award. He said the award represented a significant achievement for Earp as well as the Mayor and Council for reviewing the 300-page budget document. He presented a plaque to Earp and the Council extended their appreciation.

CONSENT AGENDA:

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

Minutes of the special meeting of May 3, 2000 and the regular meetings of May 8, May 15, June 5, and June 12, 2000

00-260 A Resolution Approving the Public Information Annex as Functional Annex J of the City's Emergency Response and Recovery Plan

00-261 Boards and Commissions Appointments

00-262 Private Utility Undergrounding Text Amendment

00-263 Bid Award for Street Overlay and Traffic Calming Project Fiscal year 1999-2000

Contract Review Board:

00-264 Contract Change Order Extension of Solid Waste Rate Analysis and Services and Transfer Resolution

00-265 Contract Award for Customized Change Management Training for Library Staff

00-266 Construction Contract Award for the Lombard Gardens CDBG/LID Street and Utility Improvement – Phase 2 (Pulled for separate consideration)

- 00-267 Contract Change Order – Authorization to Increase the Contract Amount for Development Review Services Provided by Spencer & Kupper on the Haggens Development Application
- 00-271 Contract Award – Moving Services for the Relocation of the Beaverton City Library into the New Library Building
- 00-272 Waiver of Sealed Bidding – Purchase of 6 Self-service Checkout Stations for Library

Coun. Soth said he had a phone call regarding AB 00-266 and explained to the caller that he did not discuss issues (that were on the agenda) over the phone other than procedural matters.

Coun. Brzezinski said she had some changes to the minutes of May 8, page 9. She pointed out that on the minutes of June 5, the header was incorrect and on the minutes of June 12, page 6, the top paragraph should be divided into two paragraphs for clarification.

Mayor Drake noted that there was someone present who was representing the non-responsive bidder on AB 00-266. He noted the Council had received some information from the City Engineer and also a confidential memo from the City Attorney. He said with that information in mind and his previous call for public comment with no response, he asked if Council had any interest in hearing from a representative of the non-responsive bidder.

Coun. Soth said in view of the material from staff and the background, he had no interest in hearing more.

Coun. Brzezinski said it might be confusing for anyone listening to the call for public comment since that statement pertained to “something not listed on the agenda.”

Mayor Drake said his concern was that he did not know if there was anyone present from the company that was being recommended as the successful bidder. He asked if anyone representing that company was present.

No one replied.

Mark Pilliod, City Attorney, noted that J. Daniel Gragg was at the meeting that evening representing Oregon Siteworks. He noted that Gregg was unfamiliar with Council Procedures and it was up to the Council or the Chair to determine whether Gragg should be allowed to comment.

Mayor Drake said his concern was if there was no one from the firm that was recommended as the successful bidder, then only one company would be arguing without the other company being able to hear it. He said it was unusual that Council would take an open argument, after

getting quality information from the City Attorney. He pointed out that the recommendation was that Oregon Siteworks was non-responsive.

Coun. Brzezinski said she did not anticipate that hearing the representative for Oregon Siteworks would change her opinion as to who should be awarded the contract.

Coun. Doyle said regardless of what happened that evening at the meeting, he thought an appeal on the decision would be possible as part of normal procedures.

Mayor Drake said that was correct.

Coun. Ruby said if the speaker would have the usual limited time, he would appreciate hearing from him.

Mayor Drake said there was someone else that staff had recommended as the bidder and the City Attorney had recommended that Council follow and accept staff's recommendation or reject all bids. He pointed out that there appeared to be a responsible bidder.

Coun. Ruby said he was only trying to avoid the situation where a citizen would not have their opportunity to speak at the public comment time.

Mayor Drake said he understood that, and as they went through the bidding process throughout the year, people could always come in to argue a case. He commented that he thought there had been sufficient information presented and he reminded Council that he had called for public comment and he pointed out that no one completed a testimony card.

Coun. Brzezinski said she recalled a similar situation, and she wondered if they had that earlier discussion because the unsuccessful bidder appealed.

Coun. Soth noted that in this situation it was more of a question, rather than a challenge to the award of the bid. He said he understood the issue that evening was a challenge to the award of the bid.

Coun. Brzezinski stated that Mayor Drake was the Chair and if he preferred not to hear comments, then he did not have to do so.

Mayor Drake explained that in the past they had not allowed people to speak when their bid was unresponsive. He said that he did not know if they had time to evaluate the entire bid document, but it was staff's responsibility to evaluate and advise Council on these issues. He reminded Council that Tom Ramisch, the Engineering Department Director, had given them a detailed memo (dated July 18, 2000 and in record) and the City Attorney's office had followed up with sufficient information as well.

Coun. Ruby said the material that was presented persuaded him that the lack of the pre-qualification information would appear to render the bid non-responsive. He said his concern was if there had been a misunderstanding about whether the representative had been entitled to address Council previously.

Pilliod said he understood that the Council received a letter from Gragg (dated July 24, 2000 and in record) which was faxed to him and the City Engineer. He said it was to that letter that the confidential memo responded.

RECESS:

Mayor Drake called for a brief recess at 6:55 p.m., to allow staff to copy the memorandum for Council to review.

RECONVENED:

The meeting was reconvened at 7:05 p.m.

Mayor Drake said they would pull AB 00-266 from the agenda for separate consideration and they would allow someone from Oregon Siteworks and someone from Capital Construction to speak.

Coun. Soth asked if they had to have a motion to delete AB 00-266 for separate consideration.

Consensus was to pull AB 00-266 for separate consideration.

Mayor Drake said it had been moved and seconded for approval of the consent agenda excluding AB 00-266, which was pulled for separate consideration.

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

Separate Consideration:

00-266 Construction Contract Award for the Lombard Gardens CDBG/LID Street and Utility Improvement – Phase 2 (Pulled for separate consideration)

Dan Gragg, Seifer, Yeats, Mills and Swierzynski, LLP, 121 SW Morrison St., Portland, said he was an attorney and introduced Lynelle Morgan as one of the principles in Oregon Siteworks. He said they asked for consideration of their low bid, which was low by approximately \$70,000. He said they had presented their Oregon Department of Transportation (ODOT) pre-qualification statement and subsequent to bid opening had (at the request of the City) provided a listing of other successful projects Oregon Siteworks had done in the area. He said they had been told that

those materials were sufficient for the purposes of the engineer and the other individuals making the determination about the responsiveness of their bid.

Lynelle Morgan, PO Box 5162, Aloha, said Oregon Siteworks believed, with the ODOT pre-qualification they had provided, they were qualified to do the project. She stated that the pre-qualification letter was omitted on their part and it was requested three days prior to the bid opening in an addendum. She stated there was another bidder who had also omitted their pre-qualification letter as well. She noted Oregon Siteworks was more than qualified to do the work and they were doing work now and they wanted to do more work. She said they were qualified to do the work or they would not have been bidding for the job. She said she was quite compassionate about this because she was a citizen of the City of Beaverton and a fifth generation Beaverton School District attendee. She commented that she would like to do this and be able to tell her family that she was doing work in the City they had always lived in. She said they did omit the letter as well as another contractor did, and she wanted to be heard to explain that they were not trying to present themselves in an argumentative way, but were only trying to provide the best information that they were asked to provide.

Gragg said his experience with Local Improvement Districts (LID) was that they involved a small group of citizens who paid a fair amount of money to receive a certain product. He said the product in this case was the exact same thing regardless of who provided it and the only question was how much would citizens pay to get the same product. He commented that Oregon Siteworks was prepared to deliver that product for substantially less than the next bidder and they were prepared to do so in a quality fashion. He said they had never been a non-responsive bidder, had never been involved in litigation with any owner and had never come in late on a project. He pointed out those were clearly the important things in whether or not they could do the job. He asked Council to consider how their constituents would feel about paying for the identical product from two different people for a different price.

Coun. Soth pointed out that besides the ODOT letter, which he understood, in their original submission they did not fall within the time frame of the requirements of the bid specification for completion of the job. He said even on a second attempt they still did not meet the 90-day requirement as required by bid specifications.

Gragg explained that the estimator did not use calendar days, but used weekdays only, which was why the number varied so greatly. He said he believed it was 56 days over the allotted time frame and that was only because of the units that were used to compute the total amount of time to complete the project. He said he believed they submitted a schedule in response to the engineer that was in response to the request and within the time constraints of the project.

Mayor Drake asked the City Engineer to comment. He said Gragg had given the impression that this was the same product, but the Engineer's memo pointed out that it was not the same product.

Tom Ramisch, Engineering Department Director, said the question of the scheduled duration was addressed in the memo (dated July 18, 2000 and in the record) and the bidders had a faxed copy of that memo. He said the original schedule had a completion date in December, and was 149 days rather than the specified 90, and the amended schedule was 96 calendar days. He said that in either case Oregon Siteworks did not hit 90. He clarified that the City's concern was getting the street paved in the early fall in time to beat the rainy season, and noted they had to invoke some special winterizing on the last program.

Mayor Drake said he appreciated the comments.

Gus Burrell, Capital Concrete Construction, PO Box 1309, Aumsville, said he thought the engineering department had done a good job of reviewing the documents and another review would just state the facts again. He commented that he had nothing personal against Oregon Siteworks and pointed out that it was a competitive bid process and if one was in the business long enough, sometimes something was missed. He referred to a memo he had received from Terry Waldele, City Engineer, and commented that the conclusion of the memo had stated that the technical specifications laid the ground rules for successfully completing the work and delivering acceptable work projects. He said sometimes they were very detailed and complicated and the contractor must be able to read the specifications and follow the details correctly in order to do the work. He said the memo also said that correctly following the instructions to bidders, demonstrated to the City Engineer that the contractor was willing and able to follow direction. He noted that Capital Concrete Construction had demonstrated that they could read and follow the City's directions given in the bid documents and the addendum. He said that Eagle Elsner, Inc. by submitting the correct bid submittals also demonstrated that they were willing and able to read and follow the directions to the bidders. He said on the other hand Oregon Siteworks submitted a materially deficient submittal and thereby failed to demonstrate that they were willing and able to read and follow the directions to bidders. He concluded by saying the City Engineers had done a thorough job.

Mayor Drake commented that it would be nice if all contractors came from people that lived within the City of Beaverton, but that was not part of the criteria and staff made their recommendations based on the bid. He said he agreed with staff that Oregon Siteworks had not submitted a responsive bid.

Coun. Brzezinski MOVED SECONDED by Coun. Soth, approval of AB 00-266 with staff's recommendation that the Oregon Siteworks bid be identified as non-responsive and award the bid to Capital Concrete Construction, Inc.

Coun. Doyle asked if they had the right to take this to an appeal.

Mayor Drake replied they did have the right to appeal.

Coun. Doyle asked if there was anything in the contract that would assure that the project would get done on time.

Ramisch said they had the standard language, but no unique language to this project

Coun. Doyle said he was concerned that if they lost the time to get the project done in good weather then the people in the area would suffer through a longer construction session.

Mayor Drake said he thought Capital Concrete Construction did the Lombard extension to Center and they completed it on time.

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

Mayor Drake reiterated that Council had voted to award the contract to Capital Concrete Construction, Inc.

ORDINANCE:

Suspend Rules:

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that the rules be suspended, and that the ordinance embodied in AB 00-269 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. Brzezinski, Doyle, Ruby, and Soth, voting AYE, the motion CARRIED unanimously (4:0)

Pilliod read the following ordinance for the first time by title only:

First Reading:

00-269 An Ordinance Amending the Beaverton Code, the Building Code in Particular, Section 8.02.015, State Codes, to Incorporate Fire Sprinkler System Requirements

ACTION:

00-268 Approval of Economic Development Strategic Plan

Janet Young, Economic Development Program Manager, addressed Council and introduced consultant Pat Scruggs of Scruggs and Associates. She said they had given background information on the

economy of the City in February 2000, and in March of 2000, the Vision and Goals of the Strategic Plan (the Plan) were approved, with some modification, by Council. She noted that since then they had met with the Strategic Plan Committee (Committee) and had also had some opportunities for other public involvement. She noted that Councilor Doyle had been on the Committee as liaison.

Young commented that the Plan they had was looking at a 10-year vision, recognizing that the current economy in Beaverton was very good. She noted they needed to have a plan for how to keep the economic development and the Plan was designed to provide a map for the choices Council would need to make as the City went through the years, on items related to Economic Development. She reviewed the PowerPoint presentation (in record).

Young noted that all the pieces of the strategy needed to be included and were important. She noted that the link to the quality of life was very important which was clear throughout the plan. She reviewed the goals and their major points (in record). She noted that Goal 5, related to Quality of Life, was a new goal that had been added after their last meeting.

Young concluded with the main points (in record) and said they had tried to ensure that they had taken into account the Council's comments. She noted that they were keeping in close touch with the citizens of the community to make sure they were aware of the relationship between healthy businesses and a healthy community.

Coun. Soth asked, regarding Goal 4, in terms of expediting processes, was she aware of the Tri-County Building Industry Service Board on which he served. He said the Building Board had worked on this and there were changes coming. He noted that none of the folks who were aware of this were serving on her board.

Young said she did not specifically discuss that issue, and noted that Joe Grillo, Community Development Director was on the Committee and they had talked about some related issues.

Coun. Soth referred to Goal 4 and asked Young to comment on the transition time over the next five to ten years between what was currently in the downtown area and the Beaverton Regional Center Plan. He specified that they needed to provide a way for current businesses to still operate and at the same time, not penalize someone for redevelopment of property in the core area of downtown.

Young said they had dealt with that under Goal C and it was certainly an issue that needed consideration as they took closer looks at what kind of tools would be appropriate in certain areas. She noted those transition times were often difficult for certain businesses and that would need to be taken care of as the City moved forward.

Coun. Soth said the Regional Center Plan stated that the desirability was for other than automotive types of transportation and this was presupposing that there was enough of that type of traffic to make for viable businesses without the automobile. He said according to everything that he had seen the automobile would be the primary means of transportation into the future and he did not see that specifically addressed.

Young said there was a general recognition that the automobile would always be part of their lives and they needed to make the business areas work for autos and work better for pedestrians. She said it was really a function of how the ordinances were carried out and much of that had been dealt with in the way that the Downtown Plan had been adopted. She said there would not be business districts without cars and they needed to make sure those districts would be successful for cars and pedestrians.

Scruggs said there was quite a bit of discussion on the issue and that discussion had acknowledged that this was an economic development plan and not re-inventing the transportation plan. She said they had to work hand in hand with the existing transportation plan and see how they could be merged together.

Coun. Brzezinski said she was interested in learning about what they had gathered at the public input events and noted that there was no representative from the Chamber of Commerce on the Committee. She inquired as to the input from the Chamber and from the Committee for Citizen Involvement (CCI).

Young noted that three members of the Committee were or had been board members of the Chamber and spoke as Chamber members. She said they brought the Chamber message to the Committee. She said the input they got from Chamber events was primarily wordsmithing, but there had been positive comments that it was moving in the right direction. She said as far as CCI, there was a concern about how the issues would impact neighborhoods. She said they had clarified that if there was anything that changed a neighborhood, it would happen in the usual City forum.

Coun. Ruby commented that as someone coming in cold, he was impressed with the practical approach and said that the "how-to" package was very helpful. He said he had a client who said that Boise, Idaho had a similar "how to" package where they extremely helpful with everything including registering assumed business names and contractor licensing requirements.

Mayor Drake thanked Coun. Doyle for representing the elected officials on the Committee. He remarked that he thought Coun. Doyle provided good input not only as a Council member, but also as a small business

owner. He said he thought that both Young and Scruggs had done a good job of putting it all together and it was a good product that he was hoping Council would approve that evening.

Coun. Doyle thanked Young and Scruggs for what the Committee had done. He said they had kept it focused and noted that the folks who volunteered on the Committee did not all come from the City, therefore they had approached interaction with government and the business side of life differently than the elected officials did. He said they needed to move forward and it would be interesting to see it progress. He said it was a great document and a good presentation.

Coun. Soth wondered if they could expect periodic updates on how this was going along over time.

Young said they could expect updates, and noted there was a time frame in the back of the Plan.

Coun. Soth MOVED, SECONDED by Coun. Doyle approval of AB 00-268, the Economic Development Strategic Plan.

Coun. Soth said during the time he had been on the Planning Commission and the Council he had seen several of these things come about. He noted that he had seen changes as they occurred and a lot of times what seemed like a good change today, did not look so good after the legislature got through with a few things. He commented that to him this set the stage for something without being too specific. He said it set out the goals and objectives in a way that it could adapt to changing circumstances, because any plan that was too inflexible, once circumstances changed, had to be discarded and started over again. He stated that the Plan avoided that pitfall.

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

Mayor Drake noted that Mike Mumaw, Emergency Manager had given them information to be aware of about an Elected Officials Conference in Eugene on August 21, 2000.

RECESS:

Mayor Drake called for a brief recess at 7:50 p.m.

RECONVENED:

Mayor Drake reconvened the regular meeting at 7:58 p.m.

EXECUTIVE SESSION:

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that Council move into Executive session in accordance with ORS 192.660 (1) (d), to conduct deliberations with persons designated by the governing body to carry on labor negotiations. Question called on the motion. Couns. Doyle, Soth, Brzezinski, and Ruby voting AYE, the motion CARRIED unanimously (4:0).

Executive session convened at 8:00 p.m.

The executive session adjourned at 8:12 p.m.

The regular meeting reconvened at 8: 14 p.m.

ACTION:

00-270 Ratify Tentative Contract Agreement with Beaverton Police Association

Coun. Doyle, MOVED, SECONDED by Coun. Soth, to approve AB 00-270 and Ratify Tentative Contract Agreement with Beaverton Police Association.

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

ADJOURNMENT:

There being no further business before the Council, the meeting was adjourned at 8:15 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 28th day of August , 2000

Rob Drake, Mayor