

REGULAR MEETING
December 4, 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, December 04, 2000, at 6:31 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Evelyn Brzezinski, Dennis Doyle, Fred Ruby, Forrest Soth, and Cathy Stanton. Also present were City Attorney Mark Pilliod, Community Development Director Joe Grillo, and City Recorder Darleen Cogburn

CITIZEN COMMUNICATION:

Barbara Wilson said she just wanted to convey that she was concerned about Measure 7. She asked that the Mayor and Council not back away from their land use and zoning efforts. She said she believed that this was a ballot measure of unintended consequences. She noted that her precinct did not support the Measure, and the City did not either. She asked them to "hang tough" until this was sorted out.

Mayor Drake said he had talked to Wilson earlier and had told her that the League of Oregon Cities (LOC) was planing a lawsuit to stop Measure 7 from taking effect and that he was going to ask if the Council would support joining the lawsuit.

Wilson asked if she had heard Coun. Stanton say that 1000 Friends of Oregon was going to join the lawsuit.

Coun. Stanton responded that Wilson had misunderstood, but they had received a letter from Bob Liberty of 1000 Friends that they would sue the City if they enacted Measure 7.

Mayor Drake explained to Wilson that the City was required by the new law that would go into effect by December 8, 2000, to have something in place to allow Council to address those claims that might come in.

Coun. Soth noted that they had no idea of the ramifications of this measure and there were many folks up in the air and wondering how to address this. He said some of the legal issues needed to be solved in order for more decisions to be made.

Coun. Stanton noted that Metro would have a panel discussion on the effect of Ballot Measure 7.

Wilson noted there was an ad in the paper about that.

COUNCIL ITEMS:

Coun. Soth said he attended a meeting of the LOC Energy Committee the past week and one of the issues discussed was the proposed electricity deregulation. He said it would be discussed at length at the Legislature. He said one of the issues was whether or not the LOC would be a potential coordinator for cities on this issue.

Coun. Stanton reminded everyone that at 5:30 on Thursday, December 7, Metro would hold a discussion on Measure 7. She announced there was also a community meeting about Mr. Peeps (adult video store) at Century High School, as well as the City Open House the next week on December 12 at 5 p.m.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

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

00-398 A Resolution Establishing Fees For Evaluating Claims For Compensation Filed Pursuant To Chapter 2.07 of the Beaverton Municipal Code

Coun. Soth said he had a particular concern with exhibit A, where they require a deposit of \$3000 for the appraisal, when an appraisal for a single-family residence usually runs about \$350. He noted that the resolution indicated it might be an option, but the ordinance said that it was required. He said he could see a potential for problems, and wondered where the \$3,000 came from.

Mark Pilliod, City Attorney, reported that \$3,000 was the amount the City incurred in the process of acquiring property in a condemnation process. He said this was not from a real estate agent or broker. He noted that in the ordinance they were looking at standards and noted the ordinance was clear that the City would not require it in all cases, and it was a deposit.

Coun. Brzezinski asked if that was the amount for the houses across from the library.

There was discussion of this issue.

Mayor Drake clarified that it allowed for "up to" that amount, and if it was a single family home, they would get an estimate and not require that much.

Coun. Brzezinski said she did not think the double asterisk said that; it said an appraisal might be required but it did not say "up to \$3,000." She suggested it should say an appraisal fee not to exceed \$3,000. She said she agreed with Coun. Soth that an appraisal did not cost that much on a single-family house.

Joe Grillo, Community Development Director, said an issue was the difficulty the staff had with bringing this forward to Council was that they did not know if they would be bringing in claims for single family residences or if it will tend towards non-residential claims that might be much larger. He said another issue was that to the extent they had someone who was willing to perform one of those appraisals, they needed to be reminded that these would not be typical appraisals. He explained that they would be asking for an evaluation of another appraisal, or to appraise something different than they typically did. He said the staff did not think it would be a typical appraisal, even if it was a single-family household.

Coun. Soth referred to page 5 of the ordinance, (beginning on page 4) Section C, item 7 on page 5, and read from it (in record), and said what it said to him was that essentially that the appraiser would have to first of all make an appraisal based upon current conditions and then somehow come to an appraisal showing a reduced value, whether or not the regulation was in effect. He asked if this could be two appraisals by the same party.

Grillo said it could be, and reiterated that they would be asking appraisers to go into uncharted territory, and they would have to become very knowledgeable with aspects of the Development Code and decide what that regulation did or did not do, on that particular property. He explained that over time, they might be able to get a price break after the appraisers understood the Development Code.

Coun. Soth pointed out that the wording did give Grillo the authority to waive the fee. He said he would like there to be more discretion, such as "up to..."

Mayor Drake said he did not disagree, but as for one of the staff concerns, this was based on an average, and on a very large piece of property downtown an appraisal would be well beyond this. He pointed out how hard it was to process a development application in 120 days

and this has only 90 days. He said they had no idea what kind of burden this would have on existing staff. He reiterated that this was an average and perhaps there could be some kind of verbiage, but it already stated that there was some discretion of the Director.

Coun. Stanton noted that under exhibit A, with the double asterisk, the second sentence says that any unused money from the deposit for the appraisal would be returned. She said if someone wanted to challenge the City's Code, an appraisal deposit of \$3,000 did not seem unreasonable.

Coun. Soth said he personally did not have \$5,977 to file a claim for reduced property value and he did not want it to discourage those who might have valid claims.

Mayor Drake said he would respectfully disagree because they required fees for processing other land use applications and services of the City, and it took staff time. He said he understood there was a condition that if someone prevailed the City would pay it, but if someone was on a "fishing expedition" the City was fronting a lot of staff time and expertise by doing this. He said he had counted and there were over the 31 entities over the Metro area that could be seeing multiple claims and rather than fees going down, he could see with competition the appraisers would say they could only work so many hours in a day and there were only 90 days to process these claims. He said the appraisers could say that if the City of Beaverton wanted to be at the front of the line, they had to pay his fee or else. He expressed his concern that with the complexity of the claims he thought they would find it difficult and even if they got 10 claims each that would be an additional 300 appraisals that would have to be done in the first 90 days. He stated that he thought it was a reasonable fee since unused funds would be returned.

Coun. Soth said he thought there was language that could be used that said up to \$3,000.

Mayor Drake asked if that was something they could do.

Pilliod noted that he was sure the Council wanted to avoid the dilemma that staff would be in if they had to decide on a case-by-case basis, what would the deposit be for each person. He said it would be better if they developed a standard for less than a \$3,000 deposit would be required. He stated that he did not have any basis except for what the Council had discussed that evening. He noted they had said on average an appraisal for a single-family piece of property, was less than \$1,000, but he had not personal knowledge of that. He reiterated that the Council should avoid having the staff have to decide on a case-by-case basis how much of a deposit it should be, which was the reason for the amount being part of the resolution. He said he heard them say an "up-to" a particular amount, but he did not know what that should be because they did not know on a particular basis what that should be. He said over time the appraisers

might get familiar with these claims the City might be the beneficiary of some economies of scale. He said he was trying to avoid a situation where the \$3,000 was not firm, because that would not help staff know what fee to collect.

Coun. Doyle asked if the \$3,000 was what they expected the full appraisal to cost.

Grillo said their hope was that the \$3,000 would be an average price taking into consideration previous experience. He pointed out that whether they would have to pay a premium for expediency or the complexity, that was a total unknown at that point. He said if they believed that another appraisal needed to be done, they might be back in front of the Council.

Coun. Doyle noted that Pilliod had argued they wanted to relieve staff of the responsibility and the problems that could follow that, but staff would have the dilemma of whether or not to require an independent appraisal. He said he now understood that \$3,000 was an average of what they expected it to cost.

Mayor Drake noted that when the City has bought some single-family homes it was less, but larger pieces could be more.

Coun. Doyle said he understood that they were thinking it could go well beyond \$3,000, and they were just estimating at this time. He asked if it would be better to say something like "a deposit of up to 50% of the expected costs was required." He suggested they would not have to adjust it so often. .

Grillo agreed with the City Attorney, and would rather have the Council be explicit in their resolution, and if that evening, they desired a lower amount for an individual residence, such as \$1,500, for a single-family residence, then they could start at \$3,000 for anything commercial. He commented that there was no one who would more like the Council to remove the Director from the decisions that him.

Coun. Doyle said that sounded like a good solution. He asked when they would require the full payment of the appraisal, and what if the person did not pay all of the amount, he wondered if the claim would just go away.

Pilliod said they could go into executive session and discuss this.

Mayor Drake asked if they wanted to do that.

Coun. Stanton stated that she was willing to go forward with the ordinance, as it was that evening. She said she had no problem telling people that, if they chose to pursue their rights under Measure 7, there was a cost involved. She stated that she did not believe there was an appraiser out there who would give an estimate on what an appraisal of

this type would cost, up front, if called by a City Planner. She reiterated that she was comfortable with the \$3,000 because she knew they would get back any unused funds.

Mayor Drake noted that he thought Coun. Soth was thinking of just a single lot, and most of the newer lots were less than 5,000 sq. feet, but there were many lots in town that several houses could be put on, and the appraisal could be much more. He said he could imagine the arguing at the front counter and people thinking it was not fair, so they would go see the Mayor or call Coun. Soth. He said he did not know how they would make an adjustment depending on who was at the counter.

Coun. Soth said the appraiser would appraise it according to what was on the property, and once the property was divided, that would bring up an different issue of what the value was of the different pieces of property. He reported that when he sold a single-family place in SE Portland the appraisal cost \$350. He said his concern was were they shutting out claimants because of the fee structure.

Coun. Doyle asked, regarding the fee for filing the claim, he wondered where they came up with that in relation to the cost of a BDR appeal.

Grillo distributed a handout regarding the fees (in record).

Coun. Brzezinski asked what the fees were for BDR or PC appeals.

Grillo said he did not know for sure but they were less than \$1,000, and they actually cover less than 20% of the costs. He said he did not know if they would want to use the current development fee schedule.

Mayor Drake noted that with the failure of the ballot measure on fees, they were going to come to Council to discuss the fees. He noted that the General Fund had been supplementing those fees. He said he had asked Grillo to evaluate the fee schedules that were current and this was consistent to that process.

Coun. Ruby commented that one reason the cost of the appraisal might not be proportionate to whether property was single family or multi-family or commercial, was that these would not be the typical type of appraisal, where they look at the property and say it was worth "x." He explained that it would be an evaluation of the impact on the property of a particular regulation under Measure 7, had. He said the differential between the size of the property might not be as much as it would be in the conventional sense. He clarified that any Measure 7 appraisal would have to evaluate the impact of the regulation on the property.

Pilliod clarified that the appraisal that was required to be submitted as part of the application was described in the ordinance at 2.07.015, sub 7, it contained a number of elements, and it was a lot more than the usual, highest and best market value. He noted that he would suspect that an

appraisal the City would obtain would likewise focus on the same factors that were part of the claim, but they did not have to be. He clarified that they could focus on one or more facets of the claim itself. He explained that he did not believe that all of the appraisals that were obtained on a particular claim be focused on the same key elements. He said the City would ask the appraiser to focus on a part of the claim that was weak. He gave the example that an appraiser should be able to take comparables and say that they might be acceptable, but they could also focus on what effect the regulation had and in that analysis they could devote more attention to another part. He said it was difficult to give a clearly defined instruction at this early stage, but in general he would expect an appraisal that would be conducted by the City would focus on the elements of the claimants appraisal that were weak to help the Council decide if it was a valid claim and in what amount. He reiterated that this was not a typical "highest and best use value of a property at a particular date" type of appraisal.

Coun. Doyle thanked Grillo for the summary since he had wondered how much of a bath they were taking in regard to the other appeal fees.

Mayor Drake said with the ballot measure on fees had kept them from addressing this earlier, but they would be back after the first of the year.

Coun. Doyle said he thought that \$3,000 would make some sense and if it did not, they could make the change. He noted it might be hard to find appraisers to do this.

Coun. Stanton noted that Council had waived fees in the past, or part of the fees.

Coun. Ruby said he thought Coun. Soth's sensitivity to single family issue was very well placed, but he was convinced that the types of appraisals were going to be different and he would defer to the city staff for their recommendations.

Coun. Soth said he was prepared to support this, with the red flags he had raised. He said he realized this was directed at the fees the City had incurred with purchases of right-of-ways and commercial, rather than single family residences. He stated that upon that basis, he was prepared to support it, with the provision that after some experience, they could look at it again.

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

ORDINANCE:
Second Reading and Passage:

Pilliod said he would take questions first.

Coun. Stanton inquired regarding process times, if the developer went through the pre-application process and got to Facilities Review, and at that point something came up that triggered Measure 7, she did not see anything that would stop the 120-day clock.

Pilliod said they had not proposed any amendment to the Development Code, so if a person had a Measure 7 concern in the process, they would be directed to this ordinance, apart from the development context.

Coun. Stanton clarified that she was looking at someone who had a completed application and were through Facilities Review, she did not see anything in this ordinance that that would stop the 120 days time line.

Pilliod said it would not stop, and they would have to make the Measure 7-claim decision in the 90 days and the 120 days would still run.

Grillo said while staff might agree with the Council individually, the statute precluded this.

Pilliod noted they would ask the applicant to sign the waiver.

Coun. Soth referred to page 3 of 14, where it said, "restricts the use," the word should be "affect."

Pilliod clarified that they wanted it to be effect.

Coun. Soth said that point was not clear to him.

Pilliod explained that the idea was that the regulation would have a result, so it was the effect.

Coun. Soth referred to page 7, B3 and said he thought there should be a colon after Washington County.

Others noted that the colon was on their copy,

Coun. Soth said on page 8, B, at top of page on second line, should that be "City" rather than "local government. "

Pilliod said that was correct.

Coun. Soth asked for clarification on the last line, and asked if it was saying that the appraisal submitted by the applicant should be in hand ahead of time, but the City's own appraisal could be required, that could be submitted at the hearing. He wondered if that was correct.

Others agreed that was correct.

Coun. Soth asked, regarding 2.07025, he was not sure of the intent of the paragraph. He pointed out a sentence regarding a consideration of any appraisal that was contracted for by the City. He asked if that was in conjunction with an appraisal submitted with an application or a claim and the City did not waive that and decided that the appraisal needed to be clarified and sent out the City's own appraiser.

Pilliod said that was correct.

Coun. Soth said on page 11, in the middle of page, paragraph six, to do with contributions from others, he said he did not understand that paragraph at all.

Pilliod explained that the purpose of that was to respond to a situation in which persons owning property or residing in the neighborhood, come to the City and offer to help the City satisfy the claim by a contribution to what the City otherwise might pay, itself. He clarified that this would allow the City to cobble together those contributions as a way of satisfying a claim when the City might otherwise decide to waive a regulation rather than pay a claim. He noted this would allow some flexibility.

Coun. Soth said he did not think he had heard of anyone helping the City to pay a claim.

Pilliod noted that Harvey Rogers, a bond counsel downtown, suggested that there were a number of funding mechanisms that a local government might use to satisfy a claim and one of them was a Local Improvement District (LID). He said he found that hard to imagine because of a lack of a capital improvement or public benefit, but if people agreed to not remonstrate against the formation of such a district. He noted that they had to think creativity.

Coun. Stanton said the Greenway Bridge, in the first knockout the staff suggested an LID for just the neighbors on both ends of the bridge but there were 600 other families who would have helped if the City had not done it all.

Coun. Brzezinski noted that on pages 4 and 5 of the final version, it was talking about the application. She said on page 5, #7, where it talked about the applicant being required to say how much the subject property had its value reduced, but on page 4, in C 2 c, for any property that was contiguous to the subject property, they had to say how much the regulation had enhanced the value. She wondered if that was correct. She explained that she was asking if they had to say how the subject property had been devalued and the contiguous property had increased.

Pilliod said he believed that the requirements of 2 a-d were intended to apply to all properties owned by the claimant, not just those directly or indirectly contiguous.

Coun. Brzezinski said she did not hear which paragraphs.

It was clarified that it was 2 a-d.

Pilliod explained that while he could understand why she could conclude that it would only apply to contiguous property, and not to the main property, it was intended that the information in a-d would apply to the main property as well as the contiguous property.

Coun. Brzezinski said it was confusing, and did not think an English teacher would say it applied to anything other than paragraph 2. She explained that it was talking about two or more pieces of property that abut each other. She noted that if Pilliod thought small a-d, were supposed to also apply to the subject property, then it needed to say that under C 1, also. She agreed it would be confusing because it had to say how it had enhanced the property and how it had decreased the market value. She wondered how this would enter into a decision.

Mayor Drake said they had some discussion on this, and an example would be that of property next to a waterway where the City said they could not develop it, the owners might be due some compensation. He continued that if their property was close to it, but not contiguous, the regulation might increase the value of that piece.

Coun. Brzezinski asked if they would have to get an appraisal for that also.

Pilliod clarified that the appraisal would have to account for the conditions on the contiguous parcels because they were limited, they had somehow been impacted by a regulation. He continued that the main parcel would thereby be enhanced by the regulation. He gave the example of a parcel that had an obligation to provide storm water detention or other types of reserved space, that had been isolated on that site, they could say that the value had been reduced as a developable parcel. He noted that if all of the contiguous and non-contiguous properties of the same owner were thereby relieved of their own obligation to provide some facility or protected space that was burdened by the one piece, that would need to be factored into the appraisal.

Coun. Brzezinski explained that she thought the only time they were talking about an appraisal was on the main parcel, so if you did not have an appraisal on the other parcels how would you answer "c."

Pilliod said the parameters of the appraisal could be defined during pre-app, or through the application that had been submitted. He explained that the City would determine to what extent there were contiguous parcels that had overall benefited the main parcel because of their function. He said in the process, they would define what they would expect the appraisal to furnish.

Coun. Brzezinski asked if he felt there was enough flexibility in the ordinance to allow them to expand the scope of the appraisal to go beyond the one parcel on which the regulation was being applied.

Pilliod said he did, and explained that if the applicant felt they had satisfied the burden of submitting an application, they could tell the City that, and carry on, proceed. He said the ball would then be in the City's court to respond given the time frame that was set out in 015 a.

Coun. Brzezinski said in his comment on small a-d, the wording was clear that it was on the contiguous property.

Mayor Drake asked if there was anything that needed an executive session discussion before they did the second reading.

Coun. Doyle commented that he had gained a greater understanding of what had been going on, and thanked all of the staff who had worked on this in the short time.

Mayor Drake agreed that Pilliod and Grillo had done an excellent job and together had written a very responsible ordinance. He said in his opinion those who pieced this Measure together did not care about good government or they would have allowed more than only give 30 days to put this together. He noted that 60 or 120 days would have allowed more thought and whatever flaws there might be in the regulations, he did not understand how they (the Measure writers) were so aggrieved. He said he did not understand why they did not give a little longer to give more certainty to the product. He said those folks had done a disservice to package this as they did.

Coun. Soth added his comments of appreciation to Pilliod and Grillo for their work to put this together, and he was surprised they were able to do this much work in the short time they had.

Pilliod thanked them for their comments, and reiterated what Mayor Drake said about this being an effort from folks outside the City as well as those inside, and they had tried to utilize the most appropriate pieces for the City. He said partially in response to 1000 Friends, and in response to a concern staff had about government literally waiving regulations. He explained that they would be making a land use decision if they waived a regulation in response to a claim. He pointed out that in the amended ordinance they had replaced the term "waiver" in the original ordinance, with "waiver of enforcement of the regulation." He agreed that it might make a big difference in from the practical standpoint of how they were responding, in his opinion it took the decision outside the land use arena. He said it would not make it any more justifiable, but it would take it out of the Land Use Board of Appeal's (LUBA) jurisdiction. He said that focused a little on the letter from 1000 Friends which focused on what they viewed as an out-out waiver or variance of a regulation. He noted

that he drew a distinction there based on the fine print, it was what he was suggesting.

Mayor Drake asked Pilliod to proceed with the Second Reading of the Ordinance.

Pilliod noted that according to the Charter, he would have to read the sections that had been amended (in record), and did so.

Coun. Soth MOVED, SECONDED BY Coun. Doyle, approval of the amendments to the main ordinance as presented by the City Attorney.

Coun. Stanton referred to 2.07.025, Review of Application, where it read "is/or may be," and wondered if that was being left in or would be removed.

Pilliod said on page 9 of 15, red line/strike out, it said "is or may be," which he said was not consistent with the verbiage they used later, about 10 lines down, where he currently read, "is or may be." He said he was willing to leave the "is or may be," included.

Coun. Stanton said that was fine with her, she just wanted clarification.

Pilliod pointed out that he did not repeat the typographical errors or forms.

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

Coun. Stanton noted that the next time they did something like this she thought they should say, "all those in favor of the ordinance as written, not necessarily in favor of what it said," so she would not be saying, "yes I like this, and I agree to this."

Pilliod then read the following ordinance by title only:

00-397

An Ordinance Establishing a Process for Evaluating Claims for Compensation Under the Amendments to Article 1 Section 18 of the Oregon Constitution Approved in the 2000 General Election and Declaring an Emergency

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that the ordinance embodied in AB 00-397 as amended now pass. Roll call vote. Couns. Soth, Brzezinski, Ruby, Stanton, and Doyle, AYE, the motion CARRIED unanimously. (5:0) Mayor Drake noted that he was in agreement with the passage.

EXECUTIVE SESSION:

Coun. Soth MOVED, SECONDED by Coun. Brzezinski that the 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, Ruby, Soth, Stanton, and Doyle voting AYE, the motion CARRIED unanimously. (5:0)

The executive session convened at 8:23 p.m.

The executive session adjourned at 9:08 p.m.

OTHER BUSINESS:

Coun. Soth MOVED, SECONDED by Coun. Doyle, to join with the LOC in their challenge to Measure 7.

The vote was taken. Couns. Soth, Doyle, Brzezinski and Ruby voting AYE, the motion CARRIED unanimous. (4:0) (Coun. Stanton was out of the room and did not vote.)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 9:10 p.m.

Darleen Cogburn, City Recorder

APPROVAL:

Approved this 8th day of Janaury, 2001

Rob Drake, Mayor

**MINUTES
DECEMBER 4, 2000**

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