

MINUTES OF THE PROCEEDING OF THE CITY COUNCIL

September 6, 1994

The minutes of the proceedings of a regular meeting of the City Council of the City of Coos Bay, Coos County, Oregon, beginning with a work session at 7:00 P.M. in the Council Chambers of City Hall and proceeding to regular session in the Council Chambers at 7:30 P.M.

Those Present

Those present were Mayor Joanne Verger, Councilors Joe Benetti, Gary Combs, Cindi Miller and David Williams. City staff present included City Manager Jim Watson, City Recorder Gail George, City Attorney Paula Bechtold, Police Chief Marc Adams, Public Works Director Ralph Dunham, Fire Chief Cliff Vaniman, and Planning Coordinator Kevin Cupples. Members of the media were also present.

Work Session

Mayor Verger reviewed the agenda for the meeting. Councilor Combs asked if there was anything more the City could do that they have not done to help get a Coast Guard vessel to replace the Citrus. Jim Watson stated he felt it was more of an economic issue and the City needs to talk to the Coast Guard about the economic angle. Verger agreed but was also concerned about the safety issue with the loss of the Citrus. Combs felt there was a safety issue here also. He then asked the City Attorney if he had a conflict of interest on the subdivision since he lived in the neighborhood. Paula Bechtold replied that he only had a conflict if he felt he could not render an impartial decision. Verger removed item five from the agenda regarding amending the sewer use fees. She complimented staff on how they handled the meeting on this issue and is removing it because there is yet no agreement by those who want a change in the new sewer rates. When asked, Ralph Dunham explained the request for different trees is due to unavailability of the size of trees originally required. Verger stated her opinion that she hoped the Council could not only make a decision about having an assessment center, but select a firm tonight. She said she favored the proposal by Gibson citing his residence on the Oregon coast and his references. She also was swayed by his fee.

Mayor Verger explained that she had been looking at reference material about the history of the area and asked if Council had any feeling for giving the blocks on Central Avenue, that used to be a mall area, a name of one of the families connected with the history of the area. She also reported that she had received an enthusiastic response when she mentioned the idea of naming the former mall blocks to the Chamber of Commerce.

COUNCIL MEETING

Flag Salute

Mayor Verger called the meeting to order and led the assembly in the salute to the flag.

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Presentation of Public Service Awards

Police Chief Marc Adams presented Public Service Awards to James Schade and Gordon Lentz for aiding law enforcement. The two recipients came to the aid of Officer Schweitz while he was attempting to arrest a disorderly subject. Adams, on behalf of the entire Police Department, expressed appreciation for their willingness to become involved and come to the aid of the officer.

Consent Calendar

Mayor Verger read the consent calendar which included the following items:

- a) Approval of the minutes of the regular meeting of August 16, 1994.
- b) Approval of the minutes of special meetings of August 15 and 29, 1994.
- c) Approval warrants for June and July, 1994.
- d) Adoption of Resolution 94-13 - accepting and appropriating a Federal Criminal Justice Services grant.
- e) Adoption of Resolution 94-14 - supporting efforts to replace US Coast Guard vessel.
- f) Adoption of Resolution 94-15 - adopting disability access grievance procedures.

Councilor Miller moved for approval of the consent calendar. The motion was seconded by Councilor Combs and carried with the Mayor and all Councilors present voting aye.

Public Comments

No one appeared under Public Comments.

Public Hearing - Approval of Water's Edge Subdivision

Mayor Verger opened the public hearing and asked if anyone objected to the Council holding the hearing on jurisdictional grounds or if any Councilor had a conflict of interest or needed to declare an ex-parte contact. Councilor Combs said he lived in the neighborhood and his wife worked for the attorney representing the applicant, but he has had no ex-parte contact and feels he can render an objective decision.

Kevin Cupples, Planning Coordinator, summarized application No. 94-27 for Water's Edge Subdivision and the review criteria which was included in their agenda. He said that staff recommendation was for the council to adopt the Planning Commission recommendation which includes findings and conditions. He pointed out that the attorney for the applicant requested this hearing to afford his client a chance to comment on the decision of the Planning Commission. Combs asked the width of the current pavement on Lakeshore Drive. Cupples replied that the existing right of way is 50-60 feet, but that the actual pavement width varies. Combs also asked if there was a bike path on the south side of the roadway as proposed, to which Cupples replied there was. Mayor Verger asked if the Council needed clarification on bringing up the east and west ends of the road to collector standard. Cupples said the main change needed would be to widen the radius of the curve to make smoother corners.

Roger Gould, Attorney, appeared on behalf of the applicant, Evergreen Development, and asked the Council to approve the application as submitted by the Planning Commission with all the requirements except condition 3d. Condition 3d requires the applicant to get a variance to the ordinance on collector standards or make improvements to the curves. It is his opinion that the condition is not a valid condition for a number of reasons and cannot be included as a condition for approval of the subdivision. One reason he raised was that it is illegal for a subdivider to be required to improve streets which are outside the subdivision as a matter of having the plat approved. The curves the Planning Commission is requiring the developer to address are on an existing street, located outside the subdivision, one being in Coos Bay, while the other is in North Bend. He relayed staff's position that the entire roadway is being used as part of the subdivision because you can't get to the subdivision without using Lakeshore Drive, and therefore the Planning Commission and Council can impose conditions regarding the part of the roadway which is outside the plat. Gould quoted some subdivision law contained in The American Law of Zoning, which says "A subdivider may not be required to approve streets outside the subdivision as a condition of plat approval". He felt it was clear and cited several cases which upheld this law, but noted that the issue had never been brought before the Oregon Appellate Court to decide.

Gould stated other reasons he felt this condition should be removed from the plat, asking the Council to consider the logic of staff's reasoning that the City has jurisdiction because it is the only way to get to the subdivision and therefore they can require the corners past the east end and west end to be improved. Based on this reasoning, Gould asked if they could then ask for the improvement of the curve at Seagate, four blocks away, or other improvements to the road three blocks away on the other side. Gould then cited the recent case of Dolan vs. City of Tigard which went to the U.S. Supreme Court and said the City could not impose a condition upon a developer of land that does not have an essential nexus to the development, and there has to be a rational relationship between the condition and the impact that the development is having. He questioned whether there was this essential nexus between this development and improving the road citing that the road was already a designated arterial road and was not being made an arterial road by this subdivision. He vocalized that the increased traffic on this road created by the subdivision will not change the status to an arterial road since it already has that designation. Mayor Verger asked if the developer is in agreement with improving the part of Lakeshore Drive which is adjacent to the subdivision. Gould replied that the developer will smooth out the curve in the portion abutting the development and improve the road to a standard width.

Another reason Gould felt the condition should not be imposed was because it was an impossible condition. He conveyed that it was impossible because it required acquiring property from two property owners who had no desire to sell and Evergreen Development does not have condemnation powers. Gould summarized that the developer was complying with the law, putting in a very fine subdivision, and was being asked to do something that the law does not allow the City to make him do and he again asked for approval of the subdivision as approved by the Planning Commission with the deletion of condition 3d.

Gould then expressed his opinion that yet another reason for removing the condition in dispute was that State law says that a City may adopt certain standards for the approval of subdivisions and there are no such adopted standards in the City of Coos Bay in regards to arterial roads. He said that since it is a matter of discretion by the staff as to what will be imposed it is not valid because there must be specific guidelines, standards and criteria that any developer can look

at and see what he has to do. Gould stated that it is not valid under Oregon land use law to determine what the developer must do after the fact, that is after the application has been submitted. He also noted that there was no criteria for major arterials in the City's Zoning Ordinance and arterial standards, according to staff, were left up to the Public Works Department. Mayor Verger said she felt the Council must take any changes in the Planning Commission recommendations very seriously as they have spent many hours reviewing the application and coming up with their recommendations. Councilor Williams asked about the relevance of the Supreme Court case mentioned earlier as he understood this was a case about uncompensated taking. Gould agreed that the case was about uncompensated taking, but said the Court also talked about relationships imposed in exchange for the grant of a permit. Gould then cited another case involving this same issue. Councilor Combs wanted clarification that his understanding was correct in that the request of the applicant was for the Council to approve the Planning Commission recommendation with the exception of item 3d. Gould replied that his understanding was correct and mentioned that at the Planning Commission's request, there will be no driveways coming out on to Lakeshore Drive.

Councilor Miller asked if the Planning Commission had heard this same argument about the legality of the condition. Gould replied that the issue was raised, but more research on this issue had been done since the Planning Commission decision. Verger felt the Planning Commission had given the applicant an out in letting them satisfy the condition by getting a variance to the collector standards. Gould replied that there was nothing to get a variance to since the part of the road in question is outside the subdivision. Verger remarked that although you need to be reasonable and encourage development to occur, this entry from the subdivision will have an impact and has a safety factor to consider. She also mentioned the poor lighting in the area which increases the unsafe condition. She noted that the developer has agreed to provide additional lighting. Gould opined that the City cannot require the applicant to correct the entire problem that already exists. Verger said she was of the opinion that the road could be brought up to collector standards without acquiring any property. Gould replied that he was not aware that the required improvements could be made without taking property, and the developer was already willing to do all he could to smooth out the curve without taking any property and believed that to bring the curve up the standards required by the Planning Commission, private property would have to be taken including removing the existing house at the west end. Gould agreed that the Planning Commission has spent many hours dealing with this application and it was a very complicated issue. He then reiterated his argument that you cannot impose street improvements outside of the subdivision as a condition of approval of the plat.

John Nikirk, North Bend, said the safety problem on Lakeshore Drive is the speed of the traffic. He suggested that posting signs for 25 mph speed limit and increased patrol would help solve the problem.

Mayor Verger asked Cupples if this road could be brought up to collector standards without infringing on other property owners. Cupples replied that the required condition which specifies a 300 foot radius could not be met without acquiring the neighboring property. He also said he had discussed this with the Community Development Director and they both believed that a variance would be required to meet the standards in the ordinance if the curve were not straightened as set forth in the condition. Verger then asked if the Planning Commission agreed that this was the responsibility of the developer and Cupples replied that they did. He said he was not aware of the case cited by Gould which talks about not being able to require improvements outside the

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subdivision. He feels the Council has three options, adopt the Planning Commission recommendations without any changes, amend the Planning Commission recommendation, or if in fact there is some reason the City cannot require the improvement, then it may be that the access is not adequate to the property and perhaps the subdivision should not be approved. He advised the Council that if they were to deny the subdivision or cut down on the conditions required, they would need to adopt findings to support their decision.

Verger asked the City Attorney's opinion and Paula Bechtold suggested that Council give staff a chance to research the legal issues raised because if what they are requiring is in fact unlawful, the Council should not adopt the findings of the Planning Commission. Cupples stated that the ordinance allows imposing conditions similar to those imposed by conditional use permits and one of the items in the ordinance listed under potential conditions, is basically just that, bringing up to the ordinance standards anything else in addition to that property that the Planning Commission or Council believes is necessary. Gould asked Cupples if the subdivision development ordinance for the City of Coos Bay allows the City to impose conditions on improving the standard of a street located off grounds and is it right in the ordinance? Cupples replied that he believed the ordinance had wording which allowed imposing conditions which are similar to the ones listed under the conditional use section of the ordinance under which a number of potential conditions could be imposed, such as improving facilities necessary to mitigate whatever problem there might be. He feels the ordinance empowers them to do what they have done, the question now is whether or not the City is rightfully empowered to impose this type of condition. Councilor Miller moved and Councilor Combs seconded a motion to continue the hearing to the next Council meeting, September 20, 1994. The question was called and the motion carried with the Mayor and all Councilors present voting aye.

Resolution 94-17 - Amending Sewer Rates

Mayor Verger removed this item from the agenda pending reaching a consensus on what changes should be made. She noted that the staff recommendation would be published in the World newspaper so that those concerned would be aware of what recommendation the Council would be considering.

Request For Approval to Use Alternate Size Trees re Tree Board Decision and Appeal

Ralph Dunham explained the reason for the request by Mike Vaughn to use smaller trees was due to the unavailability of the size of tree required in the previous Tree Board and Council decision. Mayor Verger asked if the party appealing the earlier Tree Board decision was in agreement with this requested change. Dunham said she had not been notified. He further stated that since the trees required were not available, the two alternatives were to not allow any of the existing trees to be cut, or to work out a plan that will provide adequate screening with smaller trees. Dunham feels the screening can be accomplished with the recommended changes in type of tree and tree size. Councilor Combs moved to accept staff recommendation, direct staff to get agreement of both parties involved and that if agreement is not reached, bring the issue back to the Council. The motion was seconded by Councilor Miller and carried with the Mayor and all Councilors present voting aye.

Award of Bid - Koosbay Boulevard/Dakota Street Storm Sewer Repair

Ralph Dunham explained the necessity for the storm sewer repairs on Dakota and on Koosbay Boulevard. He said they bid the projects together to try to get a better price. He noted that although both bids came in over staff estimates, they feel the low bid is a fair bid. Councilor Miller moved to award the bid to JBS Construction for \$36,909. Councilor Combs seconded the motion, but was concerned with the 90 days allowed for completion of the project allowed in the bid. Dunham explained the reason for allowing 90 days was because of the concerns with tides and the equipment needed to make the pipe. Combs asked staff to request the contractor to expedite the project as much as possible. Williams asked why there was such a large discrepancy between the two bids received. Dunham said it may be because of the short time allowed for bidding and how busy the contractors are at this time. Verger asked if the City had an overall plan for repair and replacement of sewer pipes and was this just reacting when things are breaking. She felt the City needed to start repairing things before they broke. Dunham replied that the City has a plan for replacement of sanitary sewers, but these are storm sewers. He agreed that it would be a good idea to have a plan for replacing deteriorating storm sewers also. The question was called and the motion carried with the Mayor and all Councilors present voting aye

Award of Bid - City Hall Carpet

Ralph Dunham explained that this project was in the budget, came in within the budgeted amount, and was the second half of a project replacing the carpet in City Hall, noting the Police Department was done last year. Councilor Benetti moved to award the bid to Modern Floors for \$13,368. The motion was seconded by Councilor Miller and carried with the Mayor and all Councilors present voting aye

Authorization to Hire Facilitator for City Manager Assessment Center

Cliff Vaniman advised the Council that the proposals they have in their agenda material from the three consultants are just estimates, not formal bids. He noted that he had worked with two of the facilitators, the third had been recommended to him and he felt all three are very able and competent. Mayor Verger commented that she is leaning toward Mr. Gibson because of price and proximity. The Council discussed the prices quoted by the facilitators and what would be required. The Mayor felt the Council and staff could do much of the preliminary work and let the facilitator know what they are looking for as well as send them the profile already developed in conjunction with the League of Oregon Cities. Vaniman explained the purpose of the assessment center is to determine whether or not the applicant can do the job, and the oral interview with the Council will determine whether the person is right for the City and the community. Councilor Combs asked if delaying this decision one more meeting will hurt the process and was informed that it would, due to time constraints. Councilor Benetti moved that Vaniman negotiate with Gibson, obtain a final bid, check on his references and if there is any problem, come back to the Council. Councilor Miller seconded the motion. Mayor Verger stated she would vote against the consultant from Washington. The question was called and the motion carried with the Mayor and all Councilors present except Combs voting aye. Councilor Combs voted no stating he was not convinced that the City needed

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to have an assessment center as part of this process.

Resolution 94-16 - Change of Name for Neighborhood Facility Building

Mayor Verger asked Councilor Combs if this name change had been approved by the Parks Commission and Combs replied that it had. Councilor Benetti made a motion which was seconded by Councilor Williams to change the name of the Neighborhood Facility Building to Empire Lakes Community Building. The question was called and the motion carried with the Mayor and all Councilors present voting aye.

Discussion - Renaming Renovated Portion of Mall/Central Avenue

Mayor Verger felt that since the mall was no longer going to be a mall, it would be appropriate to give the area a new name that reflects the character of the area. She wanted those travelling through on Highway 101 to have some idea of what is downtown. Verger asked if and how the Council wanted to proceed. Councilor Miller asked if it wouldn't be a good idea to get some public opinion. Verger related her experience in Stockton when they had a public contest to name an area such as this and after choosing one name, most of those whose names were not chosen were upset. She said she certainly was not opposed to public input, but she would not recommend having a formal contest. She suggested maybe a nautical theme or something else that would identify the area and said the name needs to remove the title of "The Mall". It was suggested that the name could have historical significance. Verger noted that in talking to some of those who have lived here a long time they indicated they would prefer to keep the name Central as part of the identification. Councilor Williams had no suggestions but was in agreement with a change. Councilor Combs suggested Marshfield or Ocean View. Miller asked if signs would be put up so people would know what is down there. Jim Watson mentioned that the area has an Indian heritage, a timber heritage, a shipping heritage, all of which hinged on the bay and he feels that the name should tie the area to the bay. Consensus was to bring names back to the council for discussion at a later date.

City Attorney Report

Paula Bechtold reported that next Tuesday is the scheduled arbitration for the police department grievance and she may have some news on that at the next meeting.

City Manager Report

Jim Watson reported that 160 resumes have been submitted for the City Manager position and the top ten will be reviewed on September 20th.

Council Comments

Councilor Combs said he had been contacted by people in the Libby area that would like street lighting on Southwest Boulevard near Michigan and would like staff to look into this. He

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reported that his son had been in an accident on Sanford Street and would like staff to look into a stop sign as there is a long stretch without a stop sign that is being used more since Virginia Avenue has been put through. He noted that the Parks Commission will be meeting September 12 to do a hands on review of the parks in Eastside.

Councilor Miller asked for an update on the glass for the pavilions on the boardwalk. Dunham related that he had been informed that the contractor has found a supplier on the east coast which will provide the glass, but at a \$30,000 higher cost than the \$85,000 budgeted. He explained that the two companies originally contacted about providing the glass were no longer willing to do so. He reported on his conversations with the architect and had suggested that a portion of the glass be put in right away. Miller requested that this be followed up on as soon as possible.

Councilor Benetti said he has been impressed by the process the Council is using to hire a new City Manager.

Mayor Verger mentioned that the Governor was coming on September 19th and that she would be disappointed if some of the landscaping was not in by that time. Dunham said the electrical was holding everything up but that he expects work to begin soon. The Mayor invited all the Councilors to be on hand to meet the Governor. Combs requested that Joyce let the Councilors know exactly when the Governor would be there.

Adjournment

There being no further business to come before the Council, Mayor Verger adjourned the meeting to 7:00 o'clock P.M. in the Council Chambers of City Hall on September 20, 1994.

Joanne Verger
Mayor of the City of Coos Bay
Coos County, Oregon

ATTEST:

Gail George
Recorder of the City of Coos Bay
Coos County, Oregon