MINUTES
KEIZER CITY COUNCIL
Tuesday, September 7, 1999
Keizer City Hall
Robert L. Simon Council Chambers
Keizer, Oregon

CALL TO ORDER

In Mayor Newton's absence, Council President Whalen called the regular meeting to order at 7:02 p.m. Roll Call was taken as follows:

Present:
Garry Whalen, Council President
Craig Campbell, Councilor
Jim Keller, Councilor
Jerry McGee, Councilor
Jacque Moir, Councilor

Absent:
Bob Newton, Mayor
Lore Christopher, Councilor

Staff:
Wally Mull, City Manager
Amy Drought, Senior Planner
Dianne Hunt, Human Resources Officer
Susan Gahlsdorf, Finance Officer
Rob Kissler, Public Works Director
Marc Adams, Chief of Police
Shannon Johnson, City Attorney
Tracy Davis, City Recorder

PUBLIC TESTIMONY

Kristen White, 4999 13th Avenue North, Keizer expressed her interest in the proposed library district for Keizer. She shared how she and her family use Salem's library and how important she felt a library in Keizer would be to the public. She requested that the Council do everything possible to bring a library to Keizer.

Marcia Bednarczyk, 77758 O'Neil Road, Keizer- Distributed copies of a letter requesting that the Council direct staff to respond to their letter dated July 30, 1999. She indicated that the Highland Lots adjacent to their property still do not meet the grading and drainage plan and there are areas with fill up to three feet high. Ms. Bednarczyk read through the remainder of her letter and again requested a response to their letter.

FMAGIC

Responding to questions City Manager Mull indicated he did not recall Ms. Bednarczyk's letter but would research it and would respond.

Ms. Bednarczyk announced the Clearlake Neighborhood Association would be holding their second annual barbecue at the Marion County Fire District One on September 11, 1999 from 4:30 –7:00 p.m. All proceeds would go for park benches and possibly a picnic table for Bair Park. She invited everyone to attend.

COMMITTEE REPORTS

Jim Hupy, President Keizer Heritage Foundation, 631 Chemawa Rd, Keizer reported the renovations of the old school are on time and within budget. A grand opening date has not been set but they are anticipating mid-October to December.

Council President Whalen expressed his appreciation of what had been completed so far.

Mr. Hupy noted he would be happy to give a tour to anyone wishing to come by.

OTHER BUSINESS

a. New Business

Ms. Hunt reported that three new employees had joined Keizer's work force. They included: Dina Brown working as a Permit Specialist, Michael Griffin as a Municipal Utility Worker I and Michael Alexander as a Community Services Officer. She welcomed them to the City of Keizer.

Chief Adams shared that he and City Manager Mull participated in "Operation Boss Lift" sponsored by Employee Support of National Guard and Reserve in Colorado. They were able to see what employees with the National Guard participate in and shared some of his employee's participation in the various guard programs.

Ms. Hunt noted she participated in a discussion panel at Borders Bookstore pertaining to Y2K that was very successful.

Mr. Kissler announced the improvements to Cummings Lane are almost complete. Responding to questions, Mr. Kissler noted the pavers would be completing Cummings Lane and would move to Chemawa Road at it's completion.

City Manager Mull announced Amy Drought, Senior Planner had accepted a position with the City of Vancouver and would be leaving around the 20th of this month. He expressed his appreciation for the great job she had done for the City of Keizer and wished her luck in the future.

b. Old Business

City Manager Mull reported on September 3, 1999, he and Chief Adams would be at Roth's between 5:00-6:00 bagging groceries. Roth's will match the money spent during that time and donate to the United Way.

Councilor Keller initiated discussion on the recently formed task force for the Chemawa Activity Center.

Councilor Keller moved to direct the City Manager to work with the Chairman of the Chemawa Activity Center Task Force to propose a letter which states the purpose of the Task Force, a possible agenda and a caveat at the first meeting that 80% of the property owners in area "A", or their representatives, be in attendance. Also, if there is not 80% in attendance the Task Force be disbanded. Councilor Campbell seconded the motion.

Responding to questions, Councilor Keller indicated the Council had formed the Committee and felt the assistance of the Task Force in this manner would be appropriate.

Councilor Moir expressed her concern with the desires of the task force in regards to this motion. She also indicated the participation of the property owners in this process is crucial.

Councilor McGee expressed his concern with the idea of 80% property owner attendance and the Council's involvement in dictating the process. He noted the task force was formed in order to distance the Council in the process but still offering assistance if requested.

In response to questions, Councilor Keller indicated that the Chairman of the Task Force was in favor of the 80% attendance. He also felt it was time for the Council to step forward.

Council President Whalen shared his support of Councilor Keller's motion, noting he had discussed this matter with the Task Force chair, Rick Roemer.

Mr. Johnson requested clarification of the motion noting 80% of the number of property owners or 80% of the land area.

Councilor Keller indicated 80% of the property owners in area "A".

Responding to questions, Mr. Johnson referred to the Council Procedures Review and explained there was no specific provision in the procedures to suspend the rules and noted Council would need to determine if the item was urgent or wait until the next meeting.

Councilor Keller suggested that this should be reviewed as an urgent issue for the Task Force and the property owners of area "A". He referred to a letter received from Bob Herberger which was submitted to the newspaper indicating they were anxious for the Task Force to move forward.

It was consensus of the Council to consider the request urgent.

The motion passed as follows:

AYES: Campbell, Keller, Moir and Whalen (4)
NAYS: McGee (1)
ABSTENTIONS: None (0)
ABSENT: Christopher and Newton (2)

Responding to a concern in regards to the conditions of the roads from Council President Whalen, Mr. Kissler noted he was unsure when an overlay of the roads within Berkshire Estates would take place, as it was not a public road. He offered to contact Mr. Brown for a timeline.

In regards to the completion time for this development, Ms. Drought noted she would review the prior land use approvals for conditions and would offer a report at the manager's meeting.

PUBLIC HEARINGS

a. Appeal of Hearings Officer Decision-Partition/Variance Case No. 99-23(1295 Harmony Drive)

Councilor President Whalen opened the public hearing.

Shannon Johnson, City Attorney requested reviewed the applicable criteria and procedures for this hearing.

Mr. Johnson requested that all testimony be directed toward these criteria and requested the Council declare any bias of interest, or any parties to declare any notice of defect to do so at this time.

There were no response to Mr. Johnson's inquiries.

Amy Drought, Senior Planner reported the City was appealing the Hearing's Officer's final order for Partition/Variance Case No 99-23. James Toney is the applicant and the subject property is located at 1295 Harmony Drive and contains approximately 3.11 acres.

Ms. Drought noted that the applicant had requested to divide the lot into three separate parcels and a variance to allow an accessory structure to be placed within the front yard of proposed parcel one.

Ms. Drought shared that the City approved both the Partition and Variance requests. As a condition of approval, the City required that the street frontage along the subject property be improved to City Standards for ¾ width public street, including sidewalks. Ms. Drought cited 2.310.05 of the Development Code noting since the subject property has approximately 292 feet of frontage, staff placed this standard as a condition of approval. The applicant objected to the condition and appealed the staff decision to the Hearings Officer. The Hearings Officer upheld the appeal by interpreting the Development Code to exclude the subject property from having to make the street improvements. Ms. Drought noted that the staff disagreed with the Hearings Officer's decision.

Ms. Drought noted that section 2.302 of the Development Code contains specific standards for street improvements. She noted that this section also contained an "exception" stating "*Provisions of the Section do not apply in existing developed areas of the City. Improvements in these areas shall be based on standards adopted by the Department of Public Works.*" Ms. Drought went on to explain that the Hearings Officer concluded that the subject property lies within an "existing developed" area and concluded that the street standards had no bearing to the subject property.

Ms. Drought indicated that staff disagreed with the interpretation and felt that an "Existing Developed Area" implied an area that is completely built out and could not be further divided. In this situation, the applicant sought to

divide an existing parcel that is 3.11 acres into three parcels. Each of the proposed parcels could be further divided in the future. Due to the development potential of the property staff felt that it does not fall under the category of existing developed area as cited by the Hearings Officer.

Ms. Drought went on to state that since it did not fall under this category, staff felt that the Applicant was compelled to complete the street improvements pursuant to Section 2.310.05 in the Development Code.

In conclusion, Ms. Drought recommended that Council open, conduct and close the public hearing. Staff recommended that the City Council reverse the Hearings Officer decision and approve the Partition/Variance with the conditions as outlined in the original Notice of Decision.

Ms. Drought noted that the application had gone 30-days beyond the required 120 day rule that is state law which compels the City to make a final decision on all land-use applications.

Mr. Johnson reiterated what Ms. Drought stated regarding the 120-day land use law and explained if a decision is not made within 120 days, the applicant has the right to go to court and obtain a writ of mandamus. Mr. Johnson went into an explanation of this term and how it is used. He noted that if the Council made a decision within the 120- day period and the applicant was not happy with the decision they might appeal to LUBA. At this point, based on statute and case law deference is given to the City Council's interpretation of their own ordinance.
Mr. Johnson also, noted if a writ of mandamus is filed and the issue is heard in circuit court, the circuit court judge would not be bound by that deference rule. He indicated that the statue says that the City has the burden of proof to show why the application should not be approved.

Mr. Johnson shared that the applicant and his attorney agreed not to file a writ of mandamus before the hearing as long as the City did not obtain a written order. He stressed that this was not a final agreement and the final decision was in the hands of the Council.

Before going into an explanation of the settlement proposal, Mr. Johnson stated if the Council wished to obtain more detail, the Council meeting may be recessed

and moved into Executive Session. Mr. Johnson referred to the plat map marked Exhibit "A" and shared after discussions with the applicant's attorney, the City Manager and the Senior Planner. Staff felt it was inappropriate for three new homes to be built on these parcels and indicated they settled with the applicant on the building of two new homes.

Mr. Johnson shared that the current proposal to solve the matter included all conditions as indicated on the staff report would apply with the addition of: 1. New homes could be built on parcel one and parcel three. 2. No other building permit, other than a replacement of the barn and the shed (out building), would be allowed. 3. No other land-use application or partitioning or sub-dividing would be allowed without the frontage improvements. 4. A recorded improvement agreement would be recorded against the entirety of the property, in order for any future owners to understand the restrictions that applied. He felt these conditions were a good solution and noted again that this was not a binding agreement.

Responding to questions, Mr. Johnson clarified that two new houses may be built on parcels one and three and that staff did not wish to see the home on parcel two torn down and a new house built in it's place. Mr. Johnson further noted that this case does not set a precedent and the only compromise would be the timing in which frontage improvements would be required.

Presenting testimony was:

Norm Hill, 1114 12th Street SE, Salem- Attorney for the applicant. Mr. Hill shared that Mr. Johnson's recitation of the agreement was accurate but wished to highlight a few things that he felt were different than the staff report that the Council had received. Mr. Hill shared that they felt there was a hole in the code and that the City may have intended to place a clear definition that did not come across in the code.

Mr. Hill noted as applicant's they had two choices, to go to LUBA or work with the City. He went on to explain that the code was not clear on this issue and urged the Council to seek a clarification in the code. Mr. Hill shared if this agreement was not met they would proceed to file the writ of mandamus and go through the circuit court. Mr. Hill explained that his client did not wish to build any

improvements, but the agreement was something that they could work with.

Rick Weddle- Signed up but did not speak before the Council.

Mr. Hill noted that an exception to the agreement was in the event that Council adopts the final order the agreement on the applicant's part was as long as it met what was spelled out earlier they would not seek writ of mandamus. He also wished to clarify that the Council's action was not a final action to preclude the applicant from seeking a writ of mandamus and requested that this be placed on the record.

Mr. Johnson agreed with Mr. Hill's explanation.

Responding to questions, Mr. Johnson noted that the motion would be to direct staff to draft an order consistent with the recommendation, with the exception of the frontage improvements if this was what the Council wished to endorse.

Council President Whalen closed the public hearing.

Council members reiterated some of the highlights that the City and the applicant's attorney stated regarding the agreement.

Councilor Campbell shared his support of the agreement but hoped there would be some narrowing of the term "existing developed areas of the city" in the City's code.

Councilor Moir noted that neighbors in the area were also in support of the agreement.

Councilor Keller moved a motion to direct staff to prepare and order reversing the Hearings Officer's decision, pursuant to the staff's recommendation with the exception of the issue of street frontage which would be dealt with per the tentative agreement between the Council. Councilor Campbell seconded the motion.

The motion passed unanimously as follows:

AYES: Campbell, Keller, McGee, Moir and Whalen (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Christopher and Newton (2)

ADMINISTRATIVE ACTION

a. RESOLUTION- Fund Exchange Agreement- Cherry Avenue

City Manager Mull reported the State of Oregon has previously assisted the City with the funding on the Cherry Avenue projects and requested that the City enter into a fund exchange agreement.

Mr. Mull noted that the City had requested the State to exchange 1999 Federal Funds that had been allocated to the City for State funds based on the ratio listed in the staff report. He also noted that this would be in the City's best interest because the estimated paperwork and procedural steps necessary to acquire the federal funds would reduce the allocation 12 to 15 percent.

Mr. Mull stated that staff recommended that the Council adopt the resolution authorizing the City Manager and the City Recorder to enter into the 1999 Fund Exchange Agreement with the State of Oregon.

Responding to questions, Mr. Mull noted that Federal Funds are as reliable as State Funds pertaining to the allocation process, and the City would continue to do Fund Exchanges, but would also review any State Funding if it became available.

Councilor Keller moved a motion Authorizing the City Manager and City Recorder to Enter into the 1999 Fund Exchange Agreement with the State of Oregon. Council Moir seconded the motion.

The motion passed unanimously as follows:

AYES: Campbell, Keller, McGee, Moir and Whalen (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Christopher and Newton (2)

CONSENT CALENDAR

The consent calendar consisted of the following items:

a. RESOLUTION- Approving Engineer Report for Jordan Run Street Lighting District

b. RESOLUTION- Approving Engineer Report for Prairie Clover Street Lighting District

c. Approval of August 16, 1999 Regular Session Minutes

Councilor Keller moved for approval of the Consent Calendar. Councilor Campbell seconded the motion.

The motion passed unanimously as follows:

AYES: Campbell, Keller, McGee, Moir and Whalen (5)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Christopher and Newton (2)

WRITTEN COMMUNICATIONS

Council President Whalen indicated a letter was received from Ken Sherman, Jr. regarding the library district. There are no firm details at this point, however a report should be made in the near future.

AGENDA INPUT

September 20, 1999
7:00 p.m. City Council Meeting
- Y2K Report
- Burglary Alarm Ordinance

October 4, 1999
7:00 p.m. City Council Meeting

RECESS TO URBAN RENEWAL AGENCY MEETING

The City Council meeting recessed at 8:10 p.m.

EXECUTIVE SESSION

Pursuant to ORS 192.660 (1)(d)- Labor Negotiations

ADJOURNMENT

Council President Whalen reconvened the City Council Meeting at 8:55 p.m. and announced that no formal action was necessary from the Executive Session.

The meeting was adjourned at 8:57 p.m.

Tracy L. Davis, CMC
City Recorder

APPROVED:

MAYOR:

(absent)
Mayor Bob Newton

COUNCIL MEMBERS:

Council President - Garry Whalen

Councilor #4 - Jacque Moir

(absent)
Councilor #2 - Lore Christopher

Councilor #5 - Craig Campbell

Councilor #3 - Jim Keller

Councilor #6 - Jerry McGee

Minutes approved:

September 20, 1999