

MINUTES
KEIZER CITY COUNCIL
SPECIAL SESSION
Monday, July 10, 1995
Robert L. Simon Council Chambers
Keizer City Hall
Keizer, Oregon

CALL TO ORDER

Mayor Koho called the special session to order at 7:02 p.m. Roll call was taken as follows:

Present:

Dennis Koho, Mayor
Carl Beach, Councilor
Jim Keller, Councilor
Al Miller, Councilor
Jerry Watson, Councilor

Absent

Jerry McGee, Councilor
Chet Patterson, Councilor

Staff:

Dotty Tryk, City Manager
John Morgan, Community Development Director
Kim Krause, Finance Director
Wally Mull, Public Works Director
John Lien, City Attorney
Dianne Suek, Administrative Assistant

**PUBLIC
TESTIMONY**

Presenting testimony to the Council was:

Robert Ray, 581 Cummings Lane, Keizer voiced his concern regarding a 911 call he made on July 6, 1995 in respect to a robbery which had occurred at a residence on Delight Street. Mr. Ray noted he was troubled by the lack of communication with the 911 operator in having a Keizer Police Officer respond immediately to the residence. Mr. Ray stated the lack of having the 911 center located within the City will continue to be a detriment to the Keizer Police Department and the citizens of Keizer.

Mayor Koho asked the City Manager to investigate the incident and report back to the Council on the findings. Councilor Watson requested Mr. Ray be notified of the findings of the report

There was no other public testimony to come before the Council.

PUBLIC HEARING

SUBDIVISION 95-1 APPEAL (SHADY LANE SUBDIVISION)

Mayor Koho opened the Public Hearing.

John Lien, City Attorney announced the applicable criteria for the hearing was listed in section 3, subsection 1 of the Keizer Zoning Ordinance. Mr. Lien reviewed these guidelines.

In response to a request from Mr. Lien there were no objections or conflicts of interest raised at the opening of the hearing.

John Morgan, Community Development Director reported this is a complex land-use case involving a parcel of land presently zoned Residential Multi-Family (RM). The applicants, Dennis Sullenger and Dr. Everett Mozell have applied to develop a ten-lot subdivision in which six of the proposed lots have had houses moved upon them. The present condition of the houses has caused great concern, however, according to the state law the houses do not have to meet the current building code requirements if they are moved from another location. Nevertheless, Mr. Morgan has informed the applicants the City will apply the Keizer Housing Code against these houses.

Mr. Morgan stated during the subdivision process it allows the City to provide the needed "consumer protection" to make sure the buyer of one of these parcels is assured all standards have been met. Mr. Morgan summarized these issues that focus on the environmental issues surrounding the property. The appellant has raised the issue of the location of wetlands on the subject property. A request was made to the Division of State Lands to analyze the property for wetland issues. Mr. Morgan submitted a copy of the response from the Division of State Lands noting a analysis will be performed to determine if a additional state permits are required.

An additional concern that was raised is the removal of trees and the noise impacts on the subject property. Mr. Morgan stated the trees have already been removed from this area. He noted the Council could include a condition addressing the requirement to plant trees within the subdivision.

Another concern raised was the issue of surface water on the property. Mr. Morgan displayed a map showing the Claggett Creek flood plain at this location. The applicant applied for a flood plain permit, met the criteria and therefore the permit was given.

Mr. Morgan presented a short video tape showing the subject property.

Mr. Morgan recommended the Council receive the testimony and recess the hearing to August 7, 1995 for staff to return with an Order upholding the hearings officers decision and include the following two conditions:

- A wetlands analysis will be prepared by a qualified wetlands expert and accepted by the Community Development Department determining if there are wetlands impacts and including a plan for mitigation of any impacts. The Plan must be implemented prior to the platting of the subdivision.
- The storm drainage plan required by the Hearings Officer shall include a plan to convey a storm waters through the subject property so that there is no additional flooding of adjacent properties beyond levels occurring prior to the development of the property. Plus the drainage plan will be approved by the Public Works Department and implemented prior to platting of the subdivision.

In response to a question from Councilor Watson, Mr. Morgan noted the advantage to placing these conditions of approval on the subdivision will make the developer responsible for the surface water issue rather than the home owner.

Councilor Miller noted lending institutions financing these homes may require the houses to be brought up to curing code conditions.

Presenting testimony to the Council was:

Jerry L. Groff, 5478 River Road S, Salem, civil engineer, spoke on behalf of the applicants of this project. Mr. Groff stated the owners do intend to improve the condition of the houses. However, this approval process has caused the developer increased financial burdens and construction delays which therefore could result in the selling of the houses and parcels as they are presently.

Mr. Groff reviewed the history of the purchase of the homes and the developers intentions to provide additional affordable housing in Keizer. He noted the original intent was to start with only the six houses and lots in the subdivision, however they decided to go with the full plan of ten at this time. This caused additional improvements to be required by the City to complete the subdivision. Mr. Groff showed an aerial photo showing the small cluster of trees which were removed from the parcel. At no time was there an intent to remove the trees to increase the noise levels. In fact, Mr. Groff believed the houses will provide a greater noise barrier than the trees.

In regards to the wetland issue, Mr. Groff reported approval was granted for a flood plain development permit. He added the developer does not have any intention to affect Claggett Creek, in fact this plan will leave approximately 8000 square feet of native and natural land on the parcel.

Pertaining to the drainage situation, Mr. Groff noted the primary source of drainage is the runoff from the state highway. The lowland which originally carried the water to Claggett Creek have been filled and may have created additional drainage problems to surrounding parcels. In conclusion, Mr. Groff does not feel the developer of this parcel should be responsible for fixing the entire system. Mr. Groff noted the developer has complied with all storm drainage standards as set forth by the City.

Dennis Sullenger, 1710 Dearborn Avenue NE, Keizer indicated when he originally began planning this development there was a natural flow of drainage, however due to adjoining properties being filled, it has created the standing water problem. Mr. Sullenger noted the problem lies with the surrounding parcels of land and their actions changed the flow of the water.

In response to a question from Councilor Watson, Mr. Sullenger stated he concurs with his engineers analysis of the ponding on the property.

Councilor Keller confirmed Mr. Sullenger was agreeable to the extra conditions of approval as recommended by staff.

Dr. Everett Mozell, 2020 Capitol Street NE, Salem stated he is a partner in this project with Mr. Sullenger. He explained the initial philosophy of this project was to preserve the houses targeted for destruction by the expansion of the Salem Clinic and to provide additional affordable housing in the area. Upon his initial visit to the property, Dr. Mozell indicated he was concerned this development may be a detriment to the wetlands and obtained all the necessary approvals and permits needed to assure it was environmentally safe.

In response to a question from Councilor Watson, Dr. Mozell indicated the only access to Claggett Creek will be from the two undevelopable lots.

Mayor Koho expressed his appreciation for Dr. Mozell's concern of the environmental issues for this important gateway to Keizer.

Councilor Miller suggested the undevelopable portions could be deeded to the City in order for the area to remain in its natural state.

Dean Rudishauser, 3764 Pleasant View Drive, Keizer informed the Council he is a property owner near this proposed subdivision. Mr. Rudishauser noted he is not opposed to the subdivision only the way it is being constructed. In the eight years of living in this area, he is concerned the removal of the trees will create a greater noise impact on the area. Mr. Rudishauser presented an aerial map showing the area and the number of the trees which were removed. (Note: this 1981 aerial map is the same as those on file in the Planning Department).

Mr. Rudishauser acknowledged fill was placed along the banks of Claggett Creek near his property. He noted there is

approximately a four-foot difference in the elevation of the land on the other side of the creek. Mr. Rudishauser displayed photographs of the area and explained the flow of the drainage.

Mr. Rudishauser quoted the Oregon Drainage Law taken from the Hydraulics Manual ODOT which reads as follows:

For a land owner to drain water onto lands of another in the State of Oregon two conditions must be satisfied initially; the land must contain a natural drainage course and the landowner must have acquired the right of drainage supported by consideration. In addition because Oregon has adopted the civil law doctrine of drainage three basic elements must be followed; a land owner may not divert water onto adjoining land which would not otherwise had flowed there. Diverted water includes but is not necessarily limited to water diverted from one drainage area to another, from water collected and discharged which normally would infiltrate into the ground, pond and/or evaporate. The upper land owner may not change the place where the water flows onto the lower owners land.

In response to a question from Councilor Keller, Mr. Rudishauser stated he agrees the additional conditions as recommended by staff should be made part of the order of approval.

In summary, Mr. Rudishauser noted his main concern is the flooding of the property in the back of his house. He believes the diversion of the water from one piece of property to another is in violation of the law. He questioned how the increased drainage from the improved street will affect the overall drainage in the area. Mr. Rudishauser noted he would be willing to allow the applicant to continue the culvert along the back of his property line to flow through to Claggett Creek.

Chuck DeLong, 3770 Pleasant View Drive, Keizer addressed the Council as a property owner in the area of the proposed subdivision. He concurred with the previous testimony of Mr. Rudishauser. In addition, Mr. DeLong stated during his ten years of living at this location, he has never been faced with the amount of standing water on his property as he did during this last year. He attributed this problem to the work at the proposed development.

Mr. DeLong thanked the staff for the recommended conditions of approval for this subdivision. He hoped these conditions will be monitored for completion.

In closing, Mr. DeLong also voiced his concern for the Oregon law which allows homes to be moved to another location without bringing these homes up to code.

Bill Wolf, 4055 Gary Street, Keizer - President of the South East Keizer Neighborhood Association addressed the Council to relay the concerns of the members of the Association. Mr. Wolf expressed his support of the additional recommendations of approval as stated by staff earlier in the meeting. In addition, Mr. Wolf maintained the applicants should follow through with the drainage master plan to assure each of the neighbors concerns are met. Mr. Wolf noted a major concern of the Association has always been the preservation of Claggett Creek and the surrounding wetlands. Mr. Wolf also voiced his concern with the number of lots proposed for this subdivision and the possible effects upon the wetlands.

Jerry Groff, 5478 River Road S, Salem stated the number of lots cannot be reduced in order to comply with the zoning regulations. Mr. Groff added once the approval process is complete, the developer will be able to move forward with the improvements to the subdivision and homes. However, he disagrees the improvements to the property as being the reason the adjacent properties have seen increased flooding.

Mr. Groff expressed his concern the City may require the developer to be responsible for the costs of the construction of a culvert along adjacent properties.

In response to a question from Councilor Miller, Mr. Groff stated Mr. Sullenger did work with an adjacent property owner to remove trees from another adjacent parcel of land.

There was no further testimony to come before the Council.

Councilor Miller moved to direct staff to prepare an Order upholding the hearings officer's decision including the additional conditions as recommended by staff. (i.e.... A wetlands analysis will be prepared by a qualified wetlands expert and accepted by

the Community Development Department determining if there are wetlands impacts and including a plan for mitigation of any impacts. The Plan must be implemented prior to the platting of the subdivision. The storm drainage plan required by the Hearings Officer shall include a plan to convey a storm waters through the subject property so that there is no additional flooding of adjacent properties beyond levels occurring prior to the development of the property. Plus the drainage plan will be approved by the Public Works Department. Councilor Keller seconded the Motion.

Mayor Koho noted he will be supporting the motion, however it is difficult to make a decision on increasing the supply of affordable housing possibilities and to also provide the needed protection for the natural areas of Claggett Creek.

Councilor Watson requested staff investigate placing a condition on each of the deeds of the property adjacent to the wetland area advising the owner they are wetlands and to provide the necessary protection for these properties. In addition, he asked staff explore the possibility of acquiring an easement on the property.

Mr. Morgan noted a wetland easement is commonly used in these type of cases to protect the area.

The Council agreed by consensus to include the direction as set forth by Councilor Watson.

Councilor Beach stated the testimony provided showed the developer followed the requirements of the law and hoped the developer would provide additional relief for the drainage issues to the adjoining property owners.

Mayor Koho recessed the public hearing until August 7, 1995 at 7:00 p.m.

The Motion passed as follows:

AYES: Beach, Keller, Koho, Miller, and Watson (5)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: McGee and Patterson (2)

ADMINISTRATIVE ACTION

RESOLUTION - AUTHORIZE THE CITY MANAGER TO SIGN PROPERTY PURCHASE AGREEMENT (SE KEIZER NEIGHBORHOOD PARK)

Wally Mull, Public Works Director reported staff has completed the negotiations to purchase a parcel of property located on Alder Drive for a park in the south east portion of Keizer. Mr. Mull recommended the Council authorize the City Manager to sign the agreement to purchase the property.

Councilor Miller moved a Resolution Authorizing the Purchase of Real Property Located at 1595 Alder Drive NE, Keizer, Oregon for Park Purposes and Authorize the City Manager execute the Sale Agreement. Councilor Watson seconded the Motion.

The Motion passed as follows:

AYES: Beach, Keller, Koho, Miller, and Watson (5)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: McGee and Patterson (2)

OTHER BUSINESS

There was no other business to come before the Council.

WRITTEN COMMUNICATION

There was no written communication to come before the Council.

EXECUTIVE SESSION

The Council adjourned to executive session at 8:56 p.m. pursuant to ORS 192.660(1)(I) - City Manager Evaluation.

The executive session was adjourned at 9:40 p.m.

The Council reconvened the regular session at 9:40 p.m.

Mayor Koho moved that the City Manager be awarded a 3% cost of living increase effective July 1, 1995. Councilor Miller seconded the Motion.

The Motion passed as follows:

AYES: Beach, Keller, Koho, Miller and Watson (5)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: McGee and Patterson (2)

Mayor Koho moved that the City Manager be given a 2% performance increase effective July 1, 1995. Councilor Miller seconded the Motion.

The Motion passed as follows:

AYES: Beach, Keller, Koho, Miller and Watson (5)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: McGee and Patterson (2)

Mayor Koho moved that the City Manager be given a minimum 3% performance increase effective January 1, 1996 contingent on continued satisfactory performance. Councilor Miller seconded the Motion.

The Motion passed as follows:

AYES: Beach, Keller, Koho, Miller and Watson (5)

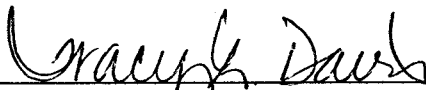
NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: McGee and Patterson (2)

ADJOURNMENT

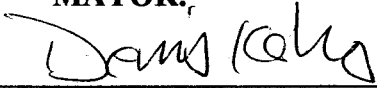
The meeting was adjourned at 9:52 p.m.



Tracy L. Davis
City Recorder

APPROVED:

MAYOR:



Dennis Koho

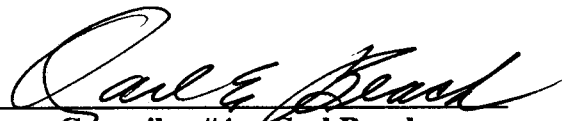
COUNCIL MEMBERS:

Councilor #1 - Jerry Watson

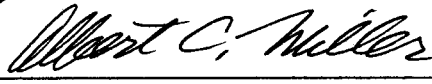
(absent)

Councilor #2 - Chet Patterson

Councilor #3 - Jim Keller



Councilor #4 - Carl Beach



Councilor #5 - Al Miller

(absent)

Councilor #6 - Jerry McGee

approved
O.T.A.S.