

OLYMPIA CITY COUNCIL MINUTES

June 5, 2007, 7:00 p.m.

PRESENT: Mayor Mark Foutch, Mayor Pro Tem Laura Ware, Councilmembers TJ Johnson, Karen Messmer, Jeff Kingsbury, Doug Mah, and Joe Hyer

Telling Our Story - Health & Wellness

City Manager Steve Hall noted one of the Council goals is improving the effectiveness of government. He provided background on the City's health and wellness program, outlined steps the City's taken since 2000 to promote a healthy employee work force, and highlighted benefits to the City, such as a reduction in the number and cost of claims, increased employee health and morale, and reduced health insurance premiums.

PUBLIC COMMUNICATIONS

Mr. Dave Prutzman, 9531 Samish Island Rd, Bow, asked the Council to consider a public/private partnership on the Boulevard sewer project in the near future. He also discussed local elections and said he's noticed Councilmembers often recuse themselves from decisions on issues involving people who've made financial contributions to their election campaign. He asked the Council to find a way for Councilmembers not to have to recuse themselves when a situation doesn't warrant it.

Mr. John Harvey, 1503 5th Ave SW, Olympia, spoke against the Israeli occupation of Palestine and announced upcoming activities to mark the 40th anniversary and support efforts for ending the occupation.

The following people spoke in support of a resolution to build an inclusive community within Olympia schools and for Council assistance in placing City of Olympia entrance signs that say "Welcome to Olympia. We're building an inclusive community.":

- Mr. Anthony Brock, 721 Wilson St NE, Olympia
- Ms. Kayla Williams, 3149 Horse Haven St SE, Olympia
- Ms. Rosa Colma, 812 Decatur St SE, Olympia
- Ms. Jeorgia Whittaker, 1049 Cardigan Lp NW, Olympia
- Ms. Nikkia Avenger, 3606 Lorne St SE, Olympia
- Ms. Rahellyn Serlans, 2217 Cooper Crest Pl, Olympia
- Ms. Julia Cox, 1815 Madison Ave NW, Olympia
- Ms. Kiara Jenkins, 1315 B North St SE, Olympia
- Mr. Matt Clark, 2325 Jackson Ave NE, Olympia
- Ms. Linda Malanchuk-Finnan, 3122 28th Ave SE, Olympia

The following people discussed the proposed Festival Event ordinance and its impact to Lakefair. Concerns included Section 12.72.070 of the ordinance (sets a rate of \$50 per lineal street block for use of City streets) and a request that Council exclude it.

- Ms. Teri Chmielewski, 3039 Langridge Lp, Olympia
- Mr. Larry Watkinson, 1405 9th Ave SE, Olympia

The following people presented a petition signed by 82 people in the Cooper Crest neighborhood and spoke in support of the City taking action to address concerns related to stormwater

management, landscaping requirements, construction debris, and signage related to speed limits and 'no parking':

- Ms. Karen Veldheer, 2315 Cooper Crest Pl NW, Olympia
- Mr. Sal Munoz, 3722 Cooper Crest, Olympia

Mr. Toren Valimir, 2008 Evergreen Pl Dr SW #101, Olympia, spoke against any development on the Budd Bay inlet.

Hands On Children's Museum Exhibits and Facilities Manager Kathy Irwin gave a brief overview of the architecture firms considered for the new Hands On Children's Museum project. She asked the Council to accept the recommendation of Miller/Hull Partnership as the firm of choice for the project.

Mr. Jim Reeves, 119 7th Ave SE, Olympia, discussed security threats and overconfidence in America's future.

Mr. Chris Stearns, 4045 36th Ave NW, Olympia, spoke about concerns with annexations on the periphery of the City without impact fees having been collected.

COUNCIL RESPONSE TO PUBLIC COMMUNICATIONS

Jim Reeves - Councilmember Kingsbury assured the community he in no way subscribes to any of Mr. Reeves' comments and said the Council shouldn't have to tolerate them. Mayor Pro Tem Ware indicated the Council expects people who address them to conduct themselves appropriate to a business setting, and citizens should be held accountable to that standard.

Inclusive Community Resolution - Mayor Foutch provided a brief history on *All America City* signs. Mayor Pro Tem Ware requested a referral to the General Government Committee for further consideration of the resolution. Councilmember Mah added a request to include discussion about City entrance signs and partnering with the School District. Communications Manager Cathie Butler recalled the Council budgeted \$3,500 in 2007, staff time permitting, to look at new welcome signs in Olympia. ***The Council agreed to the referral.***

Cooper Crest - Community Planning & Development Director Keith Stahley provided an update on staff progress related to Cooper Crest issues. Councilmember Johnson asked for the upcoming written report to Council to address all the issues raised in the petition.

SPECIAL RECOGNITION

Utility Advisory Committee Staff Recognition

Public Works Assistant Director Jay Burney introduced Utility Advisory Committee (UAC) Chair Jim Rogers and Vice Chair Mary Groeber to recognize staff for efforts and work with the Committee in 2007. Mr. Rogers presented an award to Utility Operations and Maintenance staff who responded to the windstorm in December, 2006. Ms. Groeber presented an award to Program Assistant Linda Ayala for staff support to the Committee.

Proclamation for Capital City Pride Day

Mayor Foutch read a proclamation to proclaim June 16, 2007 as Capital City Pride Day. Mr. Anthony Sermonte accepted the proclamation and thanked the Council for its continued support.

CONSENT CALENDAR

- A. Minutes of May 17, 2007 Meeting with Olympia Downtown Association
- B. Minutes of May 22, 2007 Council Meeting, **Passed with Noted Correction**
- C. Bill and Payroll Certification
Payroll check numbers 79703 through 79796 and Direct Deposit transmissions: Total: \$1,941,571.15; Claim check numbers 249294 to 250254: Total: \$7,470,059.18.
- D. Utility Franchise Renewal with the Wash. State Dept of Transportation (Fran Eide, Public Works)
- E. Interlocal Memorandum of Agreement on the Family Investment Initiative (Steve Hall, Exec.)
- F. Boulevard Road Sewer Agreement and Bid Award (Andy Haub, Public Works), **Pulled and Passed**
- G. Hands On Children's Museum Project - Selection of Design Consultant (Rick Dougherty, Public Works; Subir Mukerjee, Exec.)
- H. Appropriations Ordinance in the Amount of \$215,000 for Stormwater Mitigation Funds to Projects (Andy Haub, Public Works)
- I. Budget Resolution in the Amount of \$72,600 for the 18th Avenue Project - Boulevard Road to Hoffman Road Improvements (Randy Wesselman, Public Works)
- J. Appropriation Ordinance in the Amount of \$462,000 for Washington State Department of Ecology Grant for Decatur Street Low Impact Street Demonstration (Craig Tosomeen, Public Works)
- K. An Ordinance Amending Ordinance No. 6464, which Vacated a Portion of the Alley Way Located Between Central and Henry Streets. (Tom Hill, CP&D)
- L. Ordinance Annexing Area Near Highway 101 (Westside) (Todd Stamm, CP&D), **Pulled and Passed**

Mayor Pro Tem Ware moved, seconded by Councilmember Mah, to adopt the Consent Calendar. Mayor Pro Tem Ware pulled Item 4F, *Boulevard Road Sewer Agreement and Bid Award*, and asked staff to explain the recommendation for the public's benefit. Councilmember Messmer made the following correction to Item 4B, *Minutes of May 22, 2007 Council Meeting*: (page 3, second bullet under Council and Staff Discussion) ~~Properties south of Highway 101 should be annexed (staff recommendation).~~ There was discussion about whether or not to annex the properties south of Highway 101. Councilmember Johnson voiced concern on Item 4E, *Interlocal Memorandum of Agreement on the Family Investment Initiative*, regarding the prevention money and each of the jurisdictions having an equal vote regardless of financial contribution levels. He suggested that the idea of equal votes should be revisited. Mayor Foutch noted a weighted vote according to population might be considered. **Motion passed unanimously, except Items 4F and 4L, and with the correction to Item 4B.**

Item 4F - Boulevard Road Sewer Agreement and Bid Award

Public Works Planning and Engineering Manager Andy Haub briefly provided background about past discussions related to the Boulevard Road sewer project. He discussed bids, increased project costs, and the offer from a group of developers to donate \$1 million to project construction through the creation of a Local Improvement District (LID).

Mayor Foutch commented on the cost of establishing an LID. Councilmember Hyer discussed concern with the change in direction from discussion two weeks ago and the recommendation in the staff report tonight. Interim City Attorney Tom Morrill noted the LID funding concept was the only option currently on the table from the developers.

Councilmember Hyer moved, seconded by Mayor Pro Tem Ware, to decline Boulevard Road sewer construction bids but consider a proposal to financially participate in project construction with private developers. *Motion passed unanimously.*

Item 4L - Ordinance Annexing Area Near Highway 101 (Westside)

Councilmember Johnson indicated the City already can't financially keep pace with demands, and taking on a large area of land with inadequate infrastructure will only add to the problem. He said he can't support any additional annexations into the City until the financial problems are resolved.

Councilmember Hyer moved, seconded by Councilmember Kingsbury, to approve first reading of the ordinance annexing that contiguous portion of urban growth area north of and including Highway 101, but not including those properties accessed from Overhulse Road. Councilmembers Hyer and Kingsbury spoke to the motion. Councilmember Messmer spoke in support of the motion, voiced concerns, and said impact fees need to be looked at very soon. *Motion passed 5-2, with Councilmember Johnson and Mayor Pro Tem Ware voting against.*

Mayor Pro Tem Ware requested a referral to the Finance Committee to look at construction cost inflation and impact fees. ***The Council agreed to the referral.***

OTHER BUSINESS/LAND USE APPEALS

Festival Event Ordinance

Communications Manager Cathie Butler provided an overview of two years worth of work by the General Government Committee on festival events and outlined challenges associated with supporting community events. She said the Committee recommends a festival event ordinance that focuses on multi-day festivals and highlighted certain portions, such as permit administration, an appeal process to the General Government Committee, and event sponsor and City responsibilities. She noted the Committee isn't recommending changes to existing ordinances that waive certain City fees and taxes or require special permission for street closures or park usage. In closing, she reviewed next steps if the Council passes the ordinance and highlighted clarifying language related to the definition of a festival event.

Councilmember Hyer moved, seconded by Councilmember Johnson, to approve (as recommended by the General Government Committee) the guiding principles for festival events in Olympia and add Chapter 12.72, including the amended "Festival Event" definition, to the Olympia Municipal Code to regulate festival events on City-owned property, with an ordinance effective date of January 1, 2008.

Council Discussion

- The \$50 street usage fee was determined by looking at other City ordinances and discussing what would be an appropriate use fee.
- Most cities already have something in place to manage events; this ordinance will benefit the City's interest and set clear expectations for event organizers.

- The appeal process for festival event permits is 14 days and the idea for the General Government Committee as the appeal body is that it may be able to convene and act more quickly than the full Council can.
- The City embraces and encourages events; permitting them will ensure communication between event organizers and the City and will encourage sustainability practices toward zero waste.

Motion passed unanimously.

Fern Street Multifamily Appeal of Hearings Examiner Decision

Mayor Foutch explained the Council's role in a quasi-judicial proceeding, and Councilmembers confirmed no ex-parte communications have been received. Interim City Attorney Tom Morrill outlined the process for appeal participants, noted the appearance of fairness doctrine applies, and advised the Council on decision options.

Community Planning & Development Associate Planner Brett Bures summarized the chronology of City actions and decisions from May, 2006 when the land use application was submitted through February, 2007 when the Hearings Examiner upheld the City's requirement for a street to be constructed from Fern Street to 11th Avenue.

Appellant Attorney Aaron Laing stated the appeal stems from the City's decision to require Capezio Homes (the applicant) to dedicate and construct a connecting street through the center of the proposed development. He also made the following points as part of his presentation and in answers to questions from the City Council:

- The street dedication was never planned by the City, but was an afterthought after the applicant purchased the property.
- The applicant's transportation impact study showed there wouldn't be a material benefit to traffic by connecting the street to 11th Avenue and it wouldn't improve emergency access or response times.
- The City is unable to present a problem that the proposed street would address, so the requirement is based on speculative benefits. However, the law doesn't allow the City to provide benefits to the public at the applicant's expense absent a problem.
- A second access point would be a better solution than a through street.
- There is no actual abutting right-of-way to the property, but even if there was, no impacts have been demonstrated to justify the proposed street.
- There is an exemption in the Comprehensive Plan and design standards regarding large blocks that include schools or parks.

Community Planning & Development Assistant City Attorney Darren Nienaber made the following points as part of his presentation and in answers to question from the City Council:

- In the appeal submitted to the Hearings Examiner, the appellant made no reference to RCW 82.02.020 as a legal issue on appeal.
- In their brief, the appellant indicated SEPA (State Environmental Policy Act) and the secondary connection requirement weren't issues; however in oral argument tonight, legal problems associated with both topics have been raised.
- The Engineering Design and Development Standards require that developments connect to abutting public rights-of-way. The Kansas Supreme Court said about means 'to touch' and

thus, even if a person's property touches a public road at only one point, he or she is an abutting land owner.

- When raw land is developed, the development impacts public infrastructure.
- The applicant hasn't exhausted all administrative options prior to appeal because engineering standard 2.040.12 outlines a process for creating private streets.
- The record is clear that a public benefit results when a public problem is solved. The term 'benefit' isn't superfluous.
- The Comprehensive Plan and Council vision for Olympia places a high priority on connectivity.
- The failure on the Department's part to act is not an appealable decision for the Hearings Examiner.
- There's nothing in the Comprehensive Plan to suggest that if no sign is placed at the end of a stub road, the City is prevented from enforcing connectivity standards.

Mr. Laing's rebuttal offered the following points:

- The appeal form lays out what may constitute grounds for an appeal but doesn't require specific law to be referenced.
- While RCW 82.02.020 wasn't specifically noted, the cases cited in the brief are all discussing it.
- The impact fee ordinance deals with traffic impacts and qualitative issues caused by development, and the applicant will have to pay impact fees as a condition of site plan approval.
- The appeal before Council is not about a private street, so the argument that the administrative process hasn't been exhausted doesn't apply.
- The Comprehensive Plan requires a sign to be placed at the end of a stub road. Had this been done, the applicant would have known prior to purchasing the property that a through street would be required.
- There is no room for the development if a street is required through it.

The Council recessed to Executive Session at 10:45 p.m.

Upon returning from Executive Session at 11:20 p.m., **Councilmember Hyer moved, seconded by Councilmember Kingsbury, that the Council uphold the Hearings Examiner's decision to the extent that it requires everything but the internal public street connection. There are definite impacts from this development that must be mitigated, as evidenced in the record, but in rough proportionality, the internal public street goes beyond what is required. Therefore, the applicant shall improve 11th Avenue to the point of the development, put in a second access to 11th Avenue so that residents can go to Decatur or Fern, build to City standards a bike/pedestrian connection along the southern boundary to then be dedicated to the City as right-of-way so that eternal public access is provided in lieu of a public street. Motion passed unanimously.**

REPORTS

Mayor Foutch announced he will be at the Association of Washington Cities meeting in Tacoma next week so will not be at the Council meeting June 12.

City Manager's Report

Mr. Hall requested a referral to the Land Use and Environment Committee to discuss at its June 18 meeting what criteria to use for reasonable use exceptions to the Septic System policy. Councilmember Johnson added that this issue should be in line behind development of the financing plan for the conversion of septic systems already in the City limits. Mr. Hall clarified that the Land Use Committee will work with staff on criteria, but the issue won't come back before the Council until after the septic conversion financing plan has been completed. ***The Council agreed to the referral.***

Mr. Hall reported that staff generally comes to the Council prior to applying for a grant; however, he just learned of a grant opportunity from the Thurston County STEPS Program with an application deadline of June 12. He explained the grant provides \$10,000 for the City's health & wellness programs. He said the City will have to commit 8 hours annually of Brad Payne's time to work with other cities to develop wellness programs throughout Thurston County. ***The Council gave consensus for the City to apply for the grant.***


Committee Referrals

Mayor Pro Tem Ware requested a referral to the General Government Committee for further consideration of the Inclusive Community resolution. Councilmember Mah added a request to include discussion about City entrance signs and partner with the School District. Communications Manager Cathie Butler recalled the Council budgeted \$3,500 in 2007, staff time permitting, to look at new welcome signs in Olympia. ***The Council agreed to the referral.***

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The meeting adjourned at 11:25 p.m.



Debbie Krumpols, City Clerk

