

**MINUTES
FAIRVIEW CITY COUNCIL REGULAR MEETING
FAIRVIEW CITY HALL
1300 NE VILLAGE STREET
FAIRVIEW, OREGON 97024**

September 15, 2004 -- 7:00pm

- I. CALL TO ORDER/
ROLL CALL** Mayor Weatherby called the meeting to order at 7:00pm.
- PRESENT: Mayor Mike Weatherby
Councilor Darrell Cornelius
Councilor Sherry Lillard
Councilor Steve Owen
Councilor James Raze
Councilor Larry Cooper
Councilor Jim Trees
- STAFF PRESENT: Bob Cochran, Interim City Administrator
Ken Johnson, Chief of Police
John Andersen, Community Development
Director
Caren Huson, City Recorder
- II. CITIZEN
COMMUNICATIONS** Mayor Weatherby called for persons wishing to speak on non-agenda items. As there was no response, the session continued.
- III. CONSENT AGENDA** Councilor Owen moved and Councilor Lillard seconded the motion to approve the Consent Agenda, consisting of the Minutes of September 1, 2004.
- AYES: 7
NOES: 0
ABSTAINED: 0
- IV. COUNCIL BUSINESS**
- A. INTERGOVERNMENT
AGREEMENT
Multnomah County
Sheriff** Ken Johnson, Chief of Police, reported that the Intergovernmental Agreement with the Multnomah County Sheriff's Office was a continuation of an existing contract. The Sheriff's Office responds to calls for service when Fairview Police Officers assigned to patrol are not available. Chief Johnson added that the City is billed on an hourly basis, from the beginning to the end of a call; they are not obligated to patrol Fairview.

Councilor Raze questioned if the Agreement could be cancelled at any time. Chief Johnson responded that it would require 90-days notice, adding that it was his hope that Fairview could wean itself as much as possible on relying on the Sheriff's Office for coverage. Within the Police overtime budget, they would like to cover as many shifts as possible, but that is a little more expensive. Councilor Owen moved and Councilor Raze seconded the motion to approve the Extension of the Intergovernmental Agreement.

AYES: 7
NOES: 0
ABSTAINED: 0

B. INTERGOVERNMENT AGREEMENT
Metro

Chief Johnson reported that the Fairview Police Department currently has a contract with Metro to patrol Blue Lake Park and Chinook Landing. In exchange for patrolling both locations a minimum of 12 hours per week, the City of Fairview receives \$25,155. The proposed amendment before the Council would extend that contract through December 31, 2004.

Councilor Raze questioned if that was a flat fee. Chief Johnson responded yes, but that it really comes out close to the actual cost throughout the year.

Councilor Lillard moved and Councilor Cornelius seconded the motion to approve the contract extension with Metro.

AYES: 7
NOES: 0
ABSTAINED: 0

C. ORDINANCE 11-2004
- Building Appeals Program

John Andersen, Community Development Director, reported that staff has been researching the creation of a Building Board of Appeals, as other cities use this process. To provide a means by which property owners may appeal the determination of the Building Official to a local appeals body, the City must adopt an ordinance creating an Appeals Board and approve a list of members. Once created, that Board is then empowered to consider appeals of the Building Code for those property owners who disagree with the determination of the Building Official regarding applicability of particular standards within the Building Code to their property. The Building Official has recommended that Fairview establish such an appeals body to deal with issues that may arise with his review of the occupancy determinations for the properties along Village Street. There is a need to adopt the ordinance quickly to meet deadlines established by the new International Building Code adopted by the Legislature, as well as deadlines from the Fire Marshal.

Councilor Owen commented that it appears as though one individual recommended for the Board has some ties and contractual relations with Troutdale. Director Andersen responded that that was correct, but the individual has never used that contract. Councilor Owen asked if the individual was willing to remove himself from that position with Troutdale. Director Andersen responded that he would tell him that that would be a condition of appointment to the Board.

Councilor Trees stated that the Building Official will be an ex-officio member and act as secretary to the Appeals Board, but has no vote on any matter before the Board, yet it sounds as if he must approve any decision. Director Andersen responded that the Board has no authority in administering the process; they have the ability to determine and supplant the Building Official's specific decision. Councilor Trees asked if the person appealing a decision would have to present their side and hire contractors to testify if necessary. Director Andersen responded that there would be an original application for a building permit; the Building Official would rule on the application and identify things he felt were not in compliance with Code; the person applying for the permit would then appeal that decision to the Board. Councilor Trees stated that the merchants on Village Street do not really know what their violations are and would not know what items to specifically appeal. Director Andersen stated that the Board would allow a person to bring any alternatives they might have to them for a decision. Councilor Trees questioned how a person would know that they have covered all the issues in an appeal. Director Andersen responded that all information would come from the comments on the original building permit application. Councilor Trees asked who had contacted the individuals listed as proposed members of the Board. Director Andersen responded that he had and that several were recommended by the fact-finding architect. Councilor Trees stated that Allan Clair has been under contract with Fairview and Steve Winsted had been under contract with Troutdale, and he feels that it would be a conflict of interest if they served on the Board.

Councilor Raze commented that the Appeals Board was not being created just for the merchants on Village Street; anyone who applies for a building permit in Fairview would have the opportunity to appeal any Building Official decisions to the Board. Councilor Raze added that this Board has not existed before and will be very helpful to all who apply for building permits in Fairview.

Councilor Cornelius asked if the proposed ordinance must be adopted tonight and be in effect by October 1, 2004. Director Andersen responded yes. Councilor Cornelius stated that one of his concerns is the Building Official being on the Board and showing no impartiality whatever. He understood that the Building Official could

not vote, but it appears he could at least participate in discussions with other Board members and may attempt to persuade them in their decision. Councilor Cornelius added that he realizes that the current Building Code does have a provision that the Building Official be an ex-officio member of the Board, but is it possible that he be mandated to not be present during deliberations of the Board? Director Andersen responded that the challenge would be that the that the Building Official is the secretary to the Board and must take the minutes of the meeting; we could direct him not to participate in deliberations, but it would be difficult for him not to be in attendance at a meeting of the Board. Councilor Cornelius asked if a City staff member could be present at the Board meetings to take minutes. Director Andersen responded that that might be an option. Councilor Cornelius stated that he just wanted the Board to be a fair and impartial body and he did not see how that could occur when the Building Official who made the original decision participates in the appeals hearing with the Board. Councilor Cornelius mentioned that he would like to see the Building Official restricted and not participate during deliberations; any minutes could be recorded and then transcribed at a later date.

Councilor Cornelius stated that the ordinance provides that the Board will adopt rules and procedures, and he did not think they should adopt them, but prepare them only and then have the Council adopt them. It is the Council's ordinance and should be done the way we feel it should be done. Director Andersen responded that he had no problem with that suggestion; the Board functions more informally than a court proceeding and information is provided to them and they discuss and arrive at a consensus on how to proceed.

Councilor Cornelius commented that Fairview has a standing procedure in that any of the positions on any Fairview Board or Committee would be publicly announced with applications requested, but that has not been done for this Appeals Board. None of the people on the Board are Fairview citizens. Councilor Cornelius stated that he would like to see the Appeals Board be an Interim Board and actually solicit for applications; individuals would not necessarily have to be Fairview residents. Councilor Cornelius added that he knows the Board requires some expertise, but he was sure Fairview had some people who would be highly qualified to sit on this Appeals Board.

Councilor Raze stated that he had no problem with Council reviewing the rules the Board creates, but the Council should not micro-manage the Board. In terms of having Fairview citizens sit on the Board, he personally would feel uncomfortable if he had an appeal and his neighbor was making the decision. Membership of the Board could be reviewed in the future, as any Board is interim that is not elected

by the citizens.

Councilor Cooper commented that he agreed with Council Cornelius that the Building Official should excuse himself from deliberations. Councilor Trees mentioned that he was concerned about issues that will require professional review, e.g, from a structural engineer, and the possibility that they would not be present at the Appeals hearing. The ordinance indicates that a decision could possibly be made by a vote of two if the entire Board was not present. Councilor Trees questioned if there was a fee to appeal. Director Andersen responded that no fee has been established at this time, although it may occur in the future.

Councilor Cooper moved and Councilor Raze seconded the motion to adopt Ordinance 11-2004.

Councilor Cornelius moved and Councilor Raze seconded the motion to read Ordinance 11-2004 by title only.

Councilor Cornelius moved and Councilor Raze seconded the motion to amend Section 2.18.030 of Ordinance 11-2004 by adding the following language: "The Building Official shall not be present when the Appeals Board discusses and decides the matter before it. The Appeals Board discussion, deliberation and decision shall be recorded by audio tape recording."

AYES: 7
NOES: 0
ABSTAINED: 0

Councilor Cornelius moved and Councilor Owen seconded the motion to amend Section 2.18.110 of Ordinance 11-2004 by adding the following language after FMC: "subject to approval by the City Council."

AYES: 6
NOES: 1 (Lillard)
ABSTAINED: 0

Councilor Trees moved to remove the word "not" in the last sentence of Section 2.18.100. Receiving no second, the motion failed.

Mayor Weatherby called for the vote to read Ordinance 11-2004 by title only.

AYES: 7
NOES: 0

ABSTAINED: 0

Recorder Huson read Ordinance 11-2004 by title only.

Mayor Weatherby called for the vote to adopt Ordinance 11-2004, AN ORDINANCE CREATING THE BUILDING APPEALS BOARD, AMENDING THE FAIRVIEW MUNICIPAL CODE, AND DECLARING AN EMERGENCY as amended.

AYES: 6
NOES: 1 (Trees)
ABSTAINED: 0

Councilor Owen moved and Councilor Raze seconded the motion to appoint the Building Appeals Board members as stated in the Council's packet, leaving Steve Winsted's participation on the Appeals Board contingent upon him withdrawing from any contractual obligations with the City of Troutdale. Councilor Cornelius stated that he would vote in favor of the Board members at this time, but when the time comes to re-appoint, that the City solicit applications from Fairview residents. Mayor Weatherby and Councilor Raze commented that the Board is comprised of people knowledgeable in the Building Code field and not lay people. Councilor Cornelius stated that he thought Fairview might have citizens who would be capable of serving on the Board.

AYES: 7
NOES: 0
ABSTAINED: 0

**D. RESOLUTION 25-2004
Award of Contract for
Construction of
Woodland Elementary
Soccer Field**

Melissa Slotemaker, Associate Planner, reported that City staff has been working diligently to design, bid and construct the Woodland Soccer Field project. In order for the schools and soccer clubs to use this field next fall (2005) it is imperative that the field be constructed this fall (2004). With that scheduling timeframe, City staff hurriedly found a designer, developed a contract and bid the project. Bids were opened on Thursday, September 9th, hoping to award the contract on the last meeting of September. Typically, the City allows 7 days to review the bids, review references, and note any discrepancies. But, because staff wanted to deliver packets to Council on September 10th, staff selected Custom Sprinkling Specialist at a price of \$169,500. This was not the low bid but considered the most responsive bid based on the fact that the low bidder (Grant's Landscape) had not received addendum No. 1 and was not included in their bid and it was staff's understanding that the contractor had not visited the site. On September 13th, a letter was received from Grant's Landscape Services stating that the addendum they did not receive would not change their bid of \$147,641 and that

the Commercial Division Manager had visited the site prior to the bid. A review of our contract, and discussion with the City Attorney, allows staff to “waive minor irregularities and informalities”. With that, Planner Slotemaker believed it was in the best interest of the City to award the bid to Grant’s Landscape for a bid of \$147,641. A new staff report and resolution was before the Council to reflect the change. Custom Sprinkling has submitted a letter protesting the award to Grant’s Landscape Services (attached hereto to these minutes).

Councilor Cornelius asked if the City Attorney has affirmed that all issues are minor discrepancies. Planner Slotemaker responded yes, adding that the City has the authority to disqualify and also reserves the right to accept all bids. Councilor Cornelius questioned if the City would receive a performance bond from whoever is awarded the bid. Planner Slotemaker responded yes.

Councilor Lillard questioned if Custom Sprinkling was informed that their bid had been accepted. Planner Slotemaker responded that there was a verbal intention to award the bid to them, but after receiving additional information, it is staff’s recommendation to now award the bid to Grant’s Landscape.

Don Del la Plain, Grant’s Landscape, stated that their specialty is sports fields all over Oregon and Washington. They had bid on the Woodland Soccer Field project without receiving Addendum No. 1, but after reviewing the Addendum, nothing in it affected their original bid. Mr. Del la Plain commented that he had personally visited the site; the person who submitted the bid was simply being honest when he indicated he had not visited the site.

Councilor Raze questioned if Grant’s Landscape was aware of the timeframe for the project. Mr. Del La Plain responded yes.

Paul Frymark, Custom Sprinkling, stated that he was protesting the award of the bid to Grant’s Landscape as they did not receive Addendum No. 1 and did not attend the preliminary meeting on the project. Mr. Frymark indicated that the City’s documents state that bids would be rejected if the application was not complete, and Grant’s bid was not complete as they did not acknowledge the Addendum by dating and signing it so their bid must be rejected. Mr. Frymark reported that Planner Slotemaker had phoned him the day after the bid opening and told him that he was the low bidder; he was told yesterday that the City had changed its mind and was recommending Grant’s. Mr. Frymark added that he also has a lot of experience in constructing sports fields.

Councilor Raze mentioned that it was unfortunate how things

happened, but it all came down to dollars and attorney opinions. Councilor Raze indicated that Mr. Frymark did everything right, but he personally felt that Council should go with the low bidder if they are capable of doing the work. Councilor Raze added that the City has tried to move the project along quickly and it was not deliberate to put Mr. Frymark through any hoops; there is a substantial difference between the two amounts. Mr. Frymark stated that money should have nothing to do with the specifications as written. If the specifications say "must", then that is how it should be. Councilor Raze thanked Mr. Frymark for what he has done and his efforts.

Councilor Owen commented that he knew staff was busy and that this project was moving quickly, but in the future he hopes staff is a little more tight in what they are doing. It was unfortunate that Mr. Frymark received a phone call in which he was declared the low bidder, but at the end of the day, the contract needs to go to Council for formal action and \$20,000 was quite a difference. Councilor Owen asked if Grant's will be able to do the work needed in the amount quoted. Bob Cochran, Interim City Administrator, responded that staff has performed reference checks and has the bond for the bid amount.

Councilor Owen moved and Councilor Cooper seconded the motion to approve Resolution 25-2004, authorizing the City Administrator to enter into a contract with Grant's Landscape for the Woodland Elementary Playfield Development.

Councilor Lillard commented that it was terrible to think you were getting a job and then you don't, but it really is Council's decision in the end as to who to award a contract to.

AYES: 7
NOES: 0
ABSTAINED: 0

Mr. Frymark stated that he believed he had seven days to formally protest the award of the contract. Administrator Cochran indicated that he would look into that.

V. STAFF REPORTS

A. Police

Chief Johnson reported that two suspects were in custody within 30 hours of the homicide that took place in Fairview. The Fairview Police Department would have had a difficult time working the homicide on their own and extended gratitude to the Major Crimes Team for their work on the case. Chief Johnson reminded the Council of the Police Department Community Forum to be held on September 30th, 7:00pm, at the Community Center.

B. Community Development

Director Andersen reported that code enforcement activity was up, that staff was learning to use new software for building permits, and that staff was working on finding options for Village Street issues. The Community Center has been a great source of activity. Director Andersen distributed copies of the new Fairview Comprehensive Plan and commended Planner Slotemaker for her work on the project.

Administrator Cochran reported that the new reservoir now has a top on it, and mentioned that the three cities meeting scheduled for tomorrow night had been rescheduled for October 5th.

VI. MAYOR/COMMITTEE REPORTS AND COUNCIL CONCERNS

Councilor Cornelius stated that the Fairview Candidate's Forum would be held on October 6th, 7:00pm, and that the public was invited to attend and submit questions to the candidates running for Fairview Council. Councilor Cornelius reported that last week he and Administrator Cochran had attended a tour of the Forest Grove Fire Department which has a combination of paid and volunteer staff. Representatives of all three East County cities had participated in the tour and it convinced him all the more that the three cities need to work together on the fire service issue.

Councilor Trees suggested that a banner be placed on top of the "Welcome to Fairview" wooden signs to promote the Thursday night Farmers Market. Administrator Cochran stated that they were just waiting for the banner to be printed and that it would be placed on the 223rd and Glisan sign.

Councilors Lillard, Owen, Raze and Cooper, along with Mayor Weatherby, had no reports or concerns.

VII. ADJOURNMENT

Councilor Owen moved and Councilor Trees seconded the motion to adjourn. Mayor Weatherby adjourned the meeting at 8:37pm.

AYES: 7
NOES: 0

ABSTAINED: 0

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Council President Steve Owen

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Dated:

Caren C. Huson Quiniones
City Recorder