

CITY OF OGDEN

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Council Meeting

November 17, 2010

The Regular Meeting of the Governing Body for the City of Ogden was scheduled on Wednesday, November 17, 2010 at 7:00 p.m. in City Hall.

The meeting was called to order at 7:02 p.m.

The following members were present; Kenneth Carroll, David Ward, Ward Nations, Rae Harris and Mayor Pence. Attorney Irvine was present. Brian Still was not present.

Mayor Pence invited the public to present comments to the Governing Body.

Attorney Irvine requested that discussions he has had with regard to the Lexington Hotel project and action by the Governing Body on the Community Development Block Grant – Economic Development application be added as an Agenda topic.

Nations moved to amend the Agenda to include Attorney Irvine's discussions regarding the Lexington Hotel project and action by the Governing Body on the Community Development Block Grant – Economic Development application and approve the amended Agenda. Seconded by Harris. Motion carried.

Ward moved to approve the minutes of the November 3, 2010 Council Meeting. Seconded by Nations. Motion carried.

Terry Morrand, Jr.-Foreman, present, commented that he contacted a U.P.R.R. representative who stated that they would raise the tracks at the three crossings in the City but the approaches would be the responsibility of the City. Morrand commented that raising the tracks should result in a smoother crossing. Morrand commented that the U.P.R.R. would not be doing anything with the South Walnut Street bridge.

Morrand commented that he has contacted three asphalt contractors who will examine the streets in advance of submitting bids for asphalt overlays.

Morrand commented that during the last flooding event, infiltration through the sanitary sewer manholes located along South Elm Street from 10th Street to 6th Street resulted in surcharging the sewer mains and backing up into a basement. Morrand commented that the cost of six locking manhole lids would cost \$1,950. Morrand commented that construction of the Dry Branch Creek Overflow Diversion structure and modifications to Seven Mile Creek are designed to alleviate the flooding in the area. The structure and modifications will be completed by December 2012 as a result of the K-18 Limited Access Highway improvements. Morrand inquired whether the Council wanted to replace the existing manholes with the locking manhole lids. Morrand commented that he would inquire of FEMA whether replacing the manhole lids would qualify as a mitigation project.

Patrick Cox-BG Consultants, Inc., present, commented that there are additional KDHE Revolving Loan funds available to the City as a result of the savings realized in the

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South Walnut Street Lift Station project and Wastewater Lagoon Improvement project that could be utilized. Council directed Morrand to investigate the feasibility of the FEMA Mitigation option first.

Harris inquired, upon review of the October bills, whether there were two air compressors that Maranatha Welding and Truck Repair recently repaired. Morrand replied that the City has only one air compressor and it is a portable air compressor that was repaired. Morrand commented that the cost of repair is justified because of the cost of replacement of the compressor. Morrand commented that the repairs would add considerable more serviceable years to the compressor.

Ward commented that the expenses paid to Maranatha Welding seem to be excessive and the Council is unaware of the reasoning behind the repairs. Nations commented that equipment should be periodically evaluated to determine whether the repairs can be justified in comparison to replacement.

Harris commented that Maranatha Welding billed the City for 40 hours of labor during four days of repairing the floodgate hinges and inquired of Morrand whether in his opinion that was reasonable and whether that was monitored for verification.

Morrand commented that he has approximately 50 tons of salt and 50 tons of salt/sand for the winter.

Morrand commented that asphalt repair is done for the season and he will begin with concrete repairs.

Morrand stated that 45 fire hydrants have been flushed and one hydrant was discovered to require repair.

Morrand commented that work on storm drainage ditches has begun and he will progress to sanitary sewer jetting and videoing.

Patrick Cox-BG Consultants, Inc., present, commented that some of the water distribution system is old and does not meet the present day standard of minimum 6" diameter water mains. To comply with the minimum regulatory standards for water storage, the general rule is 100 gallons per population equivalent. The City has a 200,000 gallon water tower and the population is approximately 1,800. Cox stated that there is a formula used that assesses many variables in determining the sizing of a water tower to meet the needs of a community.

Cox commented that the distribution mains within the Still's Ranch Addition are in compliance with the 6" minimum standard requirement. Cox commented that initially there would be very little impact on future development north of the City. Cox commented that as the City expands, both residentially and commercially, there are three areas that must be considered: the volume of water, pressure of water, and adequate and available water rights.

Cox commented that most of the deficiencies within the distribution system lie between Riley Avenue and 6th Street. Cox commented that it appears that in the area there are 4" water mains and possibly one 6" water main.

Cox commented that Firm Capacity from well water supply is determined by adding the yield of all the wells and subtracting the highest yielding well.

Cox commented that to accurately determine the effect of development to the north of the City would require a detailed evaluation and modeling of the water distribution system.

Cox commented that it is difficult to plan for needs of commercial development because the potential for the types of businesses is unknown. With expansion of the City follows the need for additional storage, wells and distribution improvements.

Cox commented that it makes sense to look at an area of potential development, not the total area available for development, that has the most viability to be developed in the

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quickest fashion, i.e. the area around the proposed Ogden/K-18 interchange, and making engineering decisions or recommendations that are not counterproductive.

Cox stated that daily peak demand within a year is used to design and account for pumping and storage capacity.

Cox stated that the 200,000 gallon water tower may not be a deficiency with a City of a population of 2,000 because of an analysis of the pumping capacity of the wells and the peak day demands. Nations inquired at what population would the City's existing water tower be deficient. Nations commented that the increase in population could be used to determine how much residential development the present system can absorb before other steps must be taken to remain compliant with the minimum regulatory standard. Cox commented that a planning process should be undertaken in order to avoid the consequences of poor planning. Ward commented that the cost of growth is going to be placed upon the utility customer and taxpayer and he inquired where is the resulting benefit to the citizens.

Ward commented that he would like information regarding the impact on the water distribution system on finishing what has been presented for development at the River Trail Development, potential development north of the City and the Springer Addition.

Cox commented that a professional and complete analysis of the water distribution system would cost approximately \$25,000. Cox stated that he could provide a basic study of the distribution system for \$5,000. Cox stated that ultimately the City would need a complete analysis to obtain a KDHE Revolving Loan. Cox commented that to provide the Council with information to make decisions regarding the entire City would require modeling.

Nations moved to authorize an expenditure not to exceed \$5,000 for Patrick Cox-BG Consultants, Inc. to provide a basic study of the water distribution system. Seconded by Ward. Motion carried.

Patrick Cox-BG Consultants, Inc., present, commented that the original contract price for the Wastewater Lagoon Improvement project was \$1,167,915.44. Cox submitted Change Order #1 reducing the original contract price by \$19,708.78. Cox commented that the savings originated in the overestimation of the gravel surfacing quantities around the lagoon cells and lagoon liner material in an amount of \$24,713.31. Cox commented that additional project costs originated from additional riprap rock, removal of pipe in Cell 2 and a repair to a hole discovered in Cell 2 (concrete added to seal the hole) in the amount of \$5,004.53.

Cox commented that the original KDHE Revolving Loan authorization has a surplus available to the City should the Council desire to use the funds for additional projects. Cox commented that KDHE will allow the Revolving Loan to remain open for a short period of time should the City decide to utilize the surplus funds for an additional project.

Ward expressed his concern regarding the sole sanitary sewer main crossing Riley Avenue at North Park Street. Cox replied that the sanitary sewer main was videoed and he reviewed the tape and concluded that it appeared to be fine. Cox commented that previous planning by the City resulted in extending a sanitary sewer main from the east end of 15th Street south along the original east City Limits to 6th Street and then to the South Walnut Street Lift Station. This interceptor sewer would carry the wastewater generated from Stills Ranch Addition Unit 1-4, Unit 10, a future Unit 11, Springer Addition and a future North Woods Addition. Cox commented that during emergency situations, the KDHE has emergency funds available to cities.

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Nations moved to approve Change Order #1 in the amount of a deduct of \$19,708.78 in the original contract price for the Wastewater Lagoon Improvement project. Seconded by Carroll. Motion carried.

Clerk commented that the following have submitted 2011 Cereal Malt Beverage License Applications: Casey's Retail Company-Casey's General Store at 329 Riley Avenue, Patricia Junghans-Ogden Total #22 at 400 Riley Avenue and RMB Enterprises-Ogden Grocery Market at 301 Riley Avenue to sell CMB in original and unopened containers not for consumption on the premises; Ed's Dog House at 523 Riley Avenue to sell CMB for consumption on the premises. Clerk stated that the Riley County Police Department has reviewed the applications and reported no discrepancies.

Ward moved to approve the 2011 Cereal Malt Beverage License applications of Casey's Retail Company-Casey's General Store at 329 Riley Avenue, Patricia Junghans-Ogden Total #22 at 400 Riley Avenue and RMB Enterprises-Ogden Grocery Store at 301 Riley Avenue to sell CMB in original and unopened containers not for consumption on the premises; Ed's Dog House at 523 Riley Avenue to sell CMB for consumption on the premises. Seconded by Nations. Motion carried.

Clerk presented three Resolutions reflecting a change in the signatories on three of the City's Certificates of Deposit with Kansas State Bank.

Ward moved to adopt Resolution 11-17-10-A - Government/ Municipal/Public Funds Banking Establishing an Account for Certificate of Deposit No.25426, Resolution 11-17-10-B - Government/Municipal/Public Funds Banking Establishing an Account for Certificate of Deposit No. 25427, Resolution 11-17-10-C - Government/ Municipal/Public Funds Banking Establishing an Account for Certificate of Deposit No. 25428. Seconded by Nations. Motion carried.

Attorney Irvine commented that he was understanding that the concern of the Council was the potential of a stalemate between the Mayor and Council regarding the appointment of officers. Attorney Irvine commented that officers are appointed on an annual basis and the Mayor could make appointments that were unacceptable to the Council.

Attorney Irvine stated that the Council discussed the possibility of adopting a Charter Ordinance that would change the requirement of annually appointing officers to more closely align with how regular employees are subject to the rules of employment.

Attorney Irvine commented that the Council was concerned whether the appointed officer had some protection against the non-retention by the Mayor.

Attorney Irvine stated that the more he examined the issue, the more he would recommend that the Council do not make any changes to the present ordinance. Attorney Irvine commented that the existing ordinance does strike some balance between the authority of the Mayor and the Council whereby advice and consent to the appointment is delegated as final approval to the Council.

Attorney Irvine commented that some would argue that there is some expectation of employment in that someone should not be terminated unless there is cause or a basis for termination.

Attorney Irvine stated that the Council can reject a nomination for appointment by adopting a resolution finding the nomination unfit for office. Nations inquired how the Council could determine whether a candidate was unfit if there wasn't an application to review to make that determination. Mayor Pence stated that the Council does not have to

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elaborate on the reasoning behind finding the candidate unfit, rather only the statement that the candidate is unfit would be sufficient. Ward commented that even with the advice and consent of the Council, a stalemate could still be possible if the Mayor chooses not to nominate a candidate that the Council would prefer.

Mayor Pence commented that without advice and consent of the Council being presented before a nomination is submitted by the Mayor, the Mayor ultimately makes the decision on the candidate that the Council must approve or reject. No other candidate can be considered unless nominated by the Mayor. Attorney Irvine commented that there was no firm direction whether advice and consent by the Council would be given before or after a nomination by the Mayor. Attorney Irvine commented that the better practice would be to consider the advice of the Council prior to the nomination but he doesn't necessarily agree that it has to be done in advance.

Attorney Irvine commented that the idea of doing away with the annual appointment of officers would in itself avoid the stalemate possibility, but eventually the position would have to be filled because of retirement, resignation, etc. and then the nomination process would arise with the possibility of a stalemate. Ward stated that the Council should have a say in who fills the vacancy to assure their competency, rather than the Mayor just nominating someone for the Council to approve.

Attorney Irvine commented that the City has some potential exposure in terms of wrongful discharge if the Council fails to reappoint an officer without cause.

Attorney Irvine stated that the Mayor offers a nomination and only through ratification by the Council that the nomination is actually made an appointment.

Ward stated in the past, where there was a vacancy in an officer position, applications were solicited, were reviewed and candidates were interviewed by the Council. Ward commented that is what the Council wishes to continue to be implemented versus allowing only the Mayor to submit a nomination for the Council to approve or reject.

Attorney Irvine commented that reference of the Council denotes the five Councilmembers whereby Governing Body denotes Councilmembers and Mayor.

Attorney Irvine commented that the issue is more than eliminating the annual appointment process, it also encompasses shifting some of the power of the Mayor to the Council. Council agreed. Ward commented that should a vacancy exist for an officer position, the Council and Mayor should both be involved in the decision making process to fill the position. Attorney Irvine inquired whether Ward was suggesting that the replacement process should require the majority of the Governing Body, meaning that four of six members, would be needed to hire an officer. Ward stated that he didn't want to exclude the Mayor in the hiring process. Attorney Irvine commented in that scenario, there could be the possibility of a tie vote. Attorney Irvine commented that employees are selected by the Mayor with the consent of the Council and the same potential exists for a stalemate. Nations inquired why can't the practice of soliciting applications, reviewing the applications interviewing candidates and agreeing on a qualified candidate be the official process for filling all employment positions.

Attorney Irvine commented that he would prepare a Charter Ordinance for presentation at the next Council Meeting, but recommended not acting on it immediately.

Nations commented that the Planning Commission has approved their final draft of the Comprehensive Plan and forwarded it to the Council, who upon review returned the document back to the Planning Commission for further consideration along with specific

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recommendations. The Planning Commission has reviewed the recommendations and did not agree with all of those recommendations.

Attorney Irvine suggested that a joint session of the Council and Planning Commission in a Work Session would be advisable in order to discuss the differences.

Carroll moved to schedule a Work Session on November 29, 2010 at 7:00 p.m. for discussion of the Comprehensive Plan and as an alternate a Work Session on December 6, 2010 at 7:00 p.m. for the same purpose. Seconded by Nations. Motion carried.

Harris commented that she has reviewed the bills of the month and found them acceptable.

Attorney Irvine commented that he had a meeting with Kim Bell-Gilmore & Bell, Michael Noble-Aventura, and two financiers. Attorney Irvine commented that Edward Jones, underwriter, has declined to market the Recovery Zone Bonds. Attorney Irvine commented that Bell explained to the prospective financiers the conditions regarding the issuance of Recovery Zone Bonds and the prospective financiers stated that where the bonds were not backed by the City it would be very difficult, if not impossible, to find investors. Attorney Irvine commented that the Lexington Hotel project will not be realized under the conditions that have been currently discussed.

Attorney Irvine commented that his and Bell's opinion is to recommend that the Council terminate the application for CDBG – Economic Development funding.

Ward moved to contact Rose Mary Saunders-Ranson Financial Consultants and terminate the application for CDBG – Economic Development funding. Seconded by Nations. Motion carried.

Attorney Irvine commented that Noble is probably continuing to pursue other avenues of financing for the Lexington Hotel project. Ward stated that should Noble, or another developer, wish to present a project for consideration by the Council, they will be required to submit detailed information prior to addressing the Council.

Attorney Irvine commented that there was a hearing in the Bankruptcy Court to hear the arguments of a summary judgment regarding whether BG Consultants, Inc. has a lien on the River Trail Development property. The Judge took the information under advisement. Attorney Irvine stated if the Judge grants the summary judgment, that will allow the foreclosure by Testron of the 72 units to proceed in a timely manner. Attorney Irvine commented that a Sheriff's Sale could be conducted in January 2011 and at that time any outstanding taxes and special assessments would have to be paid. Attorney Irvine stated that if summary judgment is not granted, then the issue will have to be litigated in the Bankruptcy Court and will delay resolution to the situation.

Attorney Irvine commented that at the previous Council Meeting he informed the Council that he submitted a draw request to Core First Bank on the Letters of Credit (River Trail Development). Attorney Irvine stated that Core First Bank responded by refusing to honor the draw request because it is their continued contention that those LOC have been released by meeting the development qualifications. Attorney Irvine commented that remains an issue and could potentially result in litigation. Attorney Irvine stated that the biggest risk is the undeveloped lots within the River Trail Development where Core First Bank potentially perceives those lots as valueless because of the special assessments. Attorney Irvine commented if Core First Bank abandons the lots, the risk is that the City would not be recovering the special assessments for years into the future.

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Attorney Irvine commented that there was the possibility of KDOT paying for the taxes and special assessments from the condemnation proceeds, but Core First Bank is not allowing that to happen because of the LOC issue. Attorney Irvine stated that he has asked for a meeting with the Core First Bank attorney for the possibility to negotiate the issues.

Attorney Irvine commented that the LOC actually show as mortgages against the property and any attempt to sell the lots are going to be encumbered by those mortgages and therefore have to be paid in their entirety, which is inhibiting their sale. Attorney Irvine commented that another factor is the development of the K-18 Limited Access Highway. Attorney Irvine commented that when the Highway is completed, those lots may become more marketable. Attorney Irvine stated that the lots that have been developed are not marketable as single-family residential units, rather they are rental units.

Attorney Irvine commented that in his discussions with Core First Bank, he suggested that because the City cannot keep paying the Principal and Interest on the outstanding bonds indefinitely. Ward stated that the City cannot increase the mill levy to cover the outstanding liability due to unpaid special assessments because the effect would be no new development, no sale of existing homes and an increase in property owners not being able to pay the high taxes.

Attorney Irvine stated that there are three LOC that are in dispute with Core First Bank amounting to almost \$600,000. Attorney Irvine stated that there are other LOC's amounting to about \$525,000 that are not in dispute at this time. The disputed LOC's correspond to River Trail Unit 1, 5, 6 & 7 which comprise about 290 lots of which about 90 lots have been developed. Attorney Irvine stated that the 90 developed lots triggered what the City contends to be a 50% release of the LOC and Core First Bank contends to be a 100% release of the LOC. Attorney Irvine commented that there is risk in not releasing the LOC that should be released, and the risk is that it will have to be litigated and the City would have to pay for counsel and the Court could order the City to pay Core First Bank's attorney fees should the City lose. Should the City win, the City would recover potentially \$180,000 in unpaid special assessments, which is the sum of the draw requests to-date. Attorney Irvine commented that, if the City should win, each time a future draw request is made it would probably not have to be litigated. Attorney Irvine commented that it could be conceivable that there might be some middle ground that could be acceptable to both parties. That is the reasoning behind the meeting with Core First Bank.

Attorney Irvine commented that in order for the KDOT condemnation proceeds to be used to pay taxes, it will take unanimous consent from anyone that may have a stake in the money. Should there be litigation regarding the distribution of the approximately \$2,000,000 of condemnation proceeds, Core First Bank is going to take the position that the condemnation proceeds only applies to the property taken by KDOT for construction of the interchange which has nothing to do with development that have special assessments attached.

Attorney Irvine stated that Core First Bank wants the condemnation proceeds and released from the LOC, and are in the best position to accomplish both.

Attorney Irvine stated that if the meeting with Core First Bank is not productive, he inquired of the Council for a consensus to proceed with trying to collect on the LOC by getting a resolution to the issue in Court. Attorney Irvine estimated the cost of litigation to be approximately \$10,000. Attorney Irvine stated that the LOC by their terms are automatically renewable annually, but the LOC contains language that allows Core First Bank to choose not to renew the LOC. If the LOC is not renewed, then the City can draw upon the LOC to the extent of the special assessments owed at the time. Attorney Irvine

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stated that he has been hesitant to confront Core First Bank for fear that they will respond by not renewing all of the LOC.

Carroll suggested contacting Fort Riley and inquire whether they would be amenable to leasing the small area along the west City Limits at the end of 13th Street and 14th Street. Carroll suggested that the road could be extended from 13th Street along the west City Limits to connect into Riley Avenue. Carroll commented that the issue of using city resources maintaining the connecting loops would be settled.

Ward inquired what if the City would do nothing about the issue. Carroll stated that he has a complaint regarding an individual parking a semi-trailer in the area, makes ruts and the City fills the ruts and the other citizens are not afforded the same treatment.

Ward inquired why must a Type III Barricade be installed versus the types in various locations within the City. Attorney Irvine recommended that the current approved barricades be installed because otherwise an exposure to liability is created. Ward commented that installation of barricades at 14th Street may actually have to be installed on the pavement since adjacent structures have been identified as being located on Fort Riley property.

Nations stated that the loops have always been there without complaint. Nations commented that if ruts are created, the City should not fill them in.

Ward stated that at the October 20, 2010 Council Meeting he commented that a honest mistake was made and that is how it should be left.

Carroll inquired of the deadline regarding the debris from the fire at 336 13th Street which was deposited on private property adjacent to the east end of 14th Street. Clerk replied that an e-mail sent by Shane Schartau was dated October 19, 2010 and referenced removal within 30 days. Mayor Pence commented that he had spoken with Schartau who said that he would begin removal last weekend.

Ward inquired what would be the procedure if the debris were not removed. Clerk replied that a notice would be sent to the property owner, RIM Development, and if not removed within 45 days the City would abate the nuisance and place the cost against the property as a special assessment. Ward suggested that Schartau be sent a notice requiring removal of the debris or enforce an illegal dumping violation.

Mayor Pence agreed to contact Schartau and convey the urgency to remove the debris.

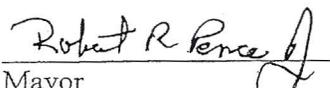
Ward commented that there is a semi-trailer parked on 4th Street inside the barricades. Mayor Pence commented that the City Foreman said a contractor working on the K-18 Highway project asked if it could be parked there. Mayor Pence commented that he would confirm the information from the City Foreman.

Nations stated that the sidewalk along South Walnut Street is in need of repair. Nations stated that the sidewalk is the responsibility of the adjacent property owners. Nations stated that the property owners should be notified that they are responsible for the repairs and the City is requiring that they make the necessary repairs to the sidewalk. Nations commented that some areas of sidewalk are nearly overgrown with grass which needs to be removed. Nations commented that there are sidewalks along Riley Avenue that are also in need of repair. Council consensus was to send notices of sidewalk repair to property owners along Riley Avenue and South Walnut Street.

Ward moved to adjourn the meeting. Seconded by Nations. Motion carried.

Time: 10:19 p.m.

Vincent L. Kramer II


Mayor