

# CITY OF OGDEN

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## Council Meeting

October 20, 2010

The Regular Meeting of the Governing Body for the City of Ogden was scheduled on Wednesday, October 22, 2010 at 7:00 p.m. in City Hall.

The meeting was called to order at 7:05 p.m.

The following members were present; Kenneth Carroll, David Ward, Ward Nations, Rae Harris, Brian Still and Mayor Pence. Attorney Irvine was present.

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

Terry Morrand, Jr.-Foreman, present, stated that the U.P.R.R. has looked at the South Walnut Street railroad bridge crossing and they have commented that the bridge is structurally sound. Carroll commented that the U.P.R.R. must do repairs, the City cannot because the bridge is their property and responsibility.

Carroll requested that the illegal dumping of debris from a fire at 336 13<sup>th</sup> Street be addressed and placed on the Agenda.

Nations moved to amend the Agenda by replacing the Agenda item regarding John Gieber III with addressing the illegal dumping of debris of a fire at 336 13<sup>th</sup> Street, and approve the amended Agenda. Seconded by Carroll. Motion carried.

Nations moved to approve the minutes of the October 6, 2010 Council Meeting. Seconded by Still. Motion carried. Ward abstained.

Mayor Pence opened the Public Hearing for evaluation of the performance of CDBG 08-PF-829 South Walnut Street Lift Station Improvements.

Dax Mayes-Governmental Assistance Services, present, submitted the Estimated Cash Disbursement Report reflecting disbursements to-date of CDBG funds and Local funds. Mayes presented a Request for Payment of CDBG Funds in the amount of \$3,150, which is the final payment request for the project. Mayes submitted the Grant Close-out packet requiring signatures of the Mayor.

Mayes stated that if the City spends more than \$500,000 of federal funds in a single year, a single audit in accordance with OMB Circular A-133 is required and which would be conducted by Sink, Gillmore & Gordon. Patrick Cox-BG Consultants, Inc, present, commented that Leanne Thurman-Kansas Department of Commerce conducted an audit of the project and found no discrepancies. Cox commented that the City matching funds for the project was from a KDHE Revolving Loan.

Cox stated that the Lift Station has a one-year warranty.

Carroll moved to close the Public Hearing. Seconded by Nations. Motion carried.

Nations moved to authorize the Mayor to execute the documents within the CDBG 08-PF-829 Close-out packet. Seconded by Carroll. Motion carried.

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Jody Reid, present, requested permission for the Girl Scouts to sell cookies in the City Park.

Ward moved to authorize the Girl Scouts to sell cookies in the City Park. Seconded by Still. Motion carried.

Jim Wood-Wood Enterprises, present, requested an adjustment to the sewer charge for Account 3860-01 at 102 10<sup>th</sup> Street due to a water leak.

Ward moved to refund Jim Wood-Wood Enterprises \$241.91 as an adjustment to the sewer charge for Account 3860-01 at 102 10<sup>th</sup> Street as a result of a water leak. Seconded by Nations. Motion carried.

Paul Werle, present, commented that City labor, equipment and material was used on Fort Riley property to apply used chip rock along the west City Limits at 14<sup>th</sup> Street. Werle stated that he contacted Fort Riley officials and they stated that no permission was granted for what was done by the City. Werle inquired why were City resources used on Fort Riley property. Ward stated that when the issue of maintenance of the area was brought up under the public comment section of the August 4, 2010 Council Meeting, he did not realize that the area was on Fort Riley. Ward commented that Shelly Payne commented on potholes at the end of 14<sup>th</sup> Street.

Werle commented that a misrepresentation of the issue occurred, and he inquired who the City was going to send an invoice to in order to be reimbursed for the expense incurred by the City. Ward stated that he did not believe Payne misrepresented the issue because she told the Council the location, rather an honest mistake might have been made.

John Gieber, Jr., present, commented that when he was Foreman he occasionally bladed the ruts or added useless material in the same area because vehicles drove there and the potholes held stagnant water. Werle commented that Payne drove her truck and semi-trailer thru the area and parked it adjacent to her property. Gieber suggested barricading the west City Limits at the end of 13<sup>th</sup> Street, 14<sup>th</sup> Street and the alley between.

Terry Morrand, Jr.-Foreman, present, commented that the material used was chip rock that was removed from the street after a chip seal application and the material cannot be reused. The used chip rock becomes a waste byproduct of the chip seal process.

Patrick Cox-BG Consultants, Inc, present, commented that he would provide the Foreman with the specifications of a Type III barricade installation. Council requested the Foreman to provide a cost estimate to install barricades for review at the next meeting.

Ward suggested contacting Fort Riley officials with regard to their preference for the location of the barricades.

John Ramsey, present, inquired of the status of Prairie View Estates repairing their storm water detention embankment.

Attorney Irvine commented that Tim Miller-MACO Management has a Topeka contractor that has agreed to complete the repairs and a contract is expected to be consummated within the next few days. The contractor is to start the project in about two weeks and expected to take three weeks to complete the detention embankment component of the project. In addition, other erosion aspects on the property are expected to be done in the near future.

Ramsey inquired whether the City would appoint someone to periodically check the detention embankment to verify that is being maintained.

Patrick Cox-BG Consultants, Inc., present, stated that the Council authorized him to oversee the repairs to the embankment and he would periodically check on the contractor's



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progress and advise the Council. Ward inquired whether it was appropriate for the City to get involved in the activity on private property and how is the City's liability affected. Attorney Irvine commented that from the City's perspective, probably doing nothing is worse than doing something, in that the experience of Cox is being utilized and Cox would advise the City that the repairs were being done appropriately.

Ward inquired why the gates across the Dry Branch Bridges at 13<sup>th</sup> Street and 14<sup>th</sup> Street have not been locked and kept locked on a regular basis. Terry Morrand, Jr.-Foreman, present, replied that the gates have been locked but when the property owner wants access he cannot deny them access to their property. Ward commented that access can be gained by the property owner through 12<sup>th</sup> Street.

Mayor Pence commented that the Riley County Transfer Station will not accept debris from a fire until a minimum of 10 days following the fire. The fire occurred at 336 13<sup>th</sup> Street on October 14, 2010. The debris was removed from the fire site and placed on property at the east end of 14<sup>th</sup> Street, which is owned by RIM Development. The owners of 336 13<sup>th</sup> Street contacted Eric Callahan-RIM Development Maintenance for permission to deposit the debris on the property. Mayor Pence commented that he received an e-mail from Shane Schartau stating that the debris would be removed no later than 30 days from October 19, 2010. Mayor Pence stated that the City did not give permission for the act. Mayor Pence commented that the debris site is not on City property but is within the City Limits. Mayor Pence commented that the owners did what they thought was right and for the good of the City by removing the debris from a populated area of town and away from the City Park.

Patrick Cox-BG Consultants, Inc., present, commented that his mission was to find funding that created no financial obligation to the City to assist in installing the infrastructure for the Lexington Hotel project. Cox stated that the Community Development Block Grant – Economic Development program is the funding source that is available. Cox commented that he had conversations with Attorney Irvine, Attorney Kim Bell-Gilmore & Bell and John Haas-Ranson Financial Consultants verifying the issues brought up at the October 6, 2010 Council Meeting.

Cox commented that the CDBG-Economic Development program requires a grant writer to prepare the application and Rose Mary Saunders-Ranson Financial Consultants has offered to prepare the application for \$2,000. Cox commented that should the application be accepted, a grant administrator will have to be selected to administer the Grant at a cost of approximately \$15,000-\$18,000.

Ward commented that Michael Noble-Aventura stated at the September 1, 2010 Council Meeting that the Hotel would provide 12-16 permanent jobs. Michael Noble-Aventura, present, commented that the hotel management company analyzed the part-time and full-time positions required for the size of the hotel and arrived at 24 full-time equivalent employees.

Noble stated that he talked to the RIM Development owners regarding assuming the responsibility of financing the infrastructure improvements and they agreed to adjust the price of the land to offset the cost of the infrastructure improvements.

Cox commented that the concern of the Council was the consequences associated with not being awarded the CDBG-Economic Development grant. Cox commented that the discussion was directed at creating and consummating a Developer's Agreement whereby if the grant was not awarded, the developer would be responsible for installing the necessary infrastructure. Cox stated that, should there be no CDBG funding, Noble has agreed to



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provide the funds necessary based on the appropriate design and the options approved by the Council to meet fire demand and water pressure within the Code to safely operate a three-story hotel.

Attorney Irvine stated that RIM Development can sell property that is part of the bankruptcy proceeding but there is some uncertainty whether the sale would be routed through the Bankruptcy Court or Riley County District Court where the foreclosure is being processed.

Attorney Irvine commented that the Kansas Department of Commerce was requesting the City to execute the Notice of Intent to Authorize Recovery Zone Facility Bonds before October 31, 2010. Attorney Irvine commented that Ed Serrano-KDOC had stated that the NOI was not a prerequisite for the project to proceed forward. Serrano commented that the KDOC was requesting the NOI for two purposes; to gauge the relationship between the City and the developer, and to preserve cap space within the allocation of the program. Serrano commented that he was satisfied with the recent conversations that both the City and developer are informed participants, and the demand for the bonds is far from exhausting the available supply.

Attorney Irvine commented that Kim Bell-Gilmore & Bell stated the next step was for Noble to secure commitments from investors that will ultimately be responsible for purchasing the bonds and providing other collateral financing for the project. Attorney Irvine stated that collateral financing means components of the project that will not be covered by the Industrial Revenue Bonds. Attorney Irvine stated that once the commitments are in place the Council could adopt a Resolution of Intent to Issue Bonds. The Bonds must be issued/sold prior to December 31, 2010. Attorney Irvine commented that Attorney Bell stated that it was possible to accomplish the tasks but it is a very tight time frame in which to do so. Attorney Irvine understood that Noble has secured another attorney that apparently has a relationship with an underwriting firm that might be in a position to find the sophisticated investors or investment bank to purchase the bonds.

Attorney Irvine stated that he has refrained from preparing a Developer's Agreement because, depending upon the circumstances, the City may require the commitments from lenders that may have an interest in the project as well, depending on the financing structure that is advanced by Noble.

Noble commented that he felt that the underwriters would need some form of document of the City's commitment and he surmised that the Notice of Intent would be the document.

Noble stated that he would be purchasing the land versus subordinating as referenced at the September 1, 2010 Council Meeting.

Cox commented that Rose Mary Saunders-Ranson Financial Consultants has indicated that she must start the application preparation by November 1, 2010 in order to complete the application by the January 5, 2011 deadline.

Nations commented that in the application, submission of plans are probably required and he inquired as to who provides them. Cox stated that much of the project detail is already available because of his knowledge of the City and that he may have to be paid for a little of the work but it would not be much.

Cox commented that there may be the need for a temporary standpipe water tower in the River Trail Development as an option of providing adequate water service. Cox commented that continued development and specific commercial/industrial development would require a permanent 1,000,000-1,500,000 gallon water tower to satisfy the entire development area.

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Noble commented that in the initial development stages of River Trail Development there was a restaurant, convenience store and medical arts facility interested in the area.

Harris commented that she has suggested that a check thru Dunn and Bradstreet be conducted on Noble and Ventura. Harris commented that there were other hotels being built in Manhattan and Junction City and she feared that the area was overbuilding the need for lodging.

Noble stated that the Lexington Hotel brand is about 5 years old which started as selling franchises to build hotels and at the same time they were converting Sheratons and Ramada Inns. Lexington Hotels were selected because of their fees and the method of their marketing. Noble commented that Lexington Hotel members vote on changes regarding their hotel versus being dictated by the corporate owners what changes would be required. Noble commented that Americas Best Value owns about 15-20 Lexington Hotels nationwide.

Noble commented that he believed that it would be very helpful in assisting the underwriter to have the Notice of Intent executed or a draft of a letter stating the contingencies in order to further the process of marketing the bonds.

Attorney Irvine stated that there were two options available for the City; to do nothing and allow Nobel to secure the investors without the document, or consult with Bond Counsel to prepare and execute a document that would contain contingencies that protect the City.

Ward stated that the Council has been advised by Bond Counsel that the City does not need to do anything, and Noble can proceed without any action by the Council and suggested that the Council take the advise of counsel.

Attorney Irvine commented that the concern of the Council was being boxed into a position with too many unknowns.

Attorney Irvine stated that Attorney Bell assembled a list of questions and documents that were submitted to Noble and Noble presented the answers to the Council. Attorney Irvine commented that he would forward the information to Attorney Bell for review.

Noble commented that the IRB's do not have to be sold by December 31, 2010 to be awarded the CDBG, rather the IRB's must be sold before December 31, 2010 to be eligible for the federal tax advantages of the program.

Attorney Irvine suggested, if the Council is contemplating moving forward, to withhold permission to apply for the CDBG but authorize the undertaking of the grant application process.

Carroll moved to recess the meeting until 9:46 p.m. in order to contact Attorney Bell. Seconded by Harris. Motion carried.

Carroll moved to return to the Regular Session. Seconded by Still. Motion carried.

Attorney Irvine commented that Attorney Bell stated that there did not appear to be a downside to authorizing the CDBG application process to proceed, but actually preserve any type of commitment of submitting the application pending the progress from the financing standpoint undertaken by Noble. Attorney Bell commented that if Noble wanted to pay the cost of grant writing, it could be part of the process also. Noble commented that he has expended a considerable amount of personal funds already in the process.

Ward inquired confirmation from Noble that he negotiated a lesser price to the hotel site with RIM Development in order to use the difference to offset the cost of installing the necessary infrastructure in the amount of approximately \$750,000. Noble replied that he negotiated a lower price for the land recognizing that the infrastructure was to satisfy not only the hotel site but also 5-6 other surrounding lots.

Cox suggested to Noble to forgo the CDBG application and proceed with financing the infrastructure costs with the savings received from the land purchase which would result



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in not having to deal with the constraints imposed by the Kansas Department of Commerce. Noble replied that he would rather reserve that option as the last option available.

Cox commented that in his experience, the majority of the work involved in the writing of the grant application occurs in the final week prior to submitting the application. Carroll commented that should Noble fail to obtain the investors prior to finalizing the grant application process, the City could stop the application process and only be liable for the cost incurred to-date. Carroll stated that should Noble obtain the necessary investors, the application can be submitted and the City would pay \$2,000 for the grant writing service.

Nations commented that the hotel is a worthwhile project and to get a business started in River Trail Development is worth the investment of \$2,000.

Nations moved to authorize Rose Mary Saunders-Ranson Financial Consultants to prepare the CDBG – Economic Development application, not to exceed \$2,000, for infrastructure improvements associated with the Lexington Hotel development. Ward stated that he would be voting against because he has not seen any plans or designs of the proposed hotel and he doesn't like the time constraints being imposed upon the Council to make hasty and uninformed decisions. Seconded by Carroll. Motion carried. Ward and Still voted against.

Attorney Irvine commented that in regard to a Developer's Agreement and the Notice of Intent to Issue Recovery Zone Facility Bonds, no further action is necessary at this time. Attorney Irvine commented that it would be premature to draft a Developer's Agreement when much of the information is dictated by what Noble has arranged by means of investor financing.

Noble stated that by early December 2010 he should know whether the underwriter has been successful in securing investors. Attorney Irvine replied that securing investors would have to happen sooner than December because between now and December the City will have to pass a Resolution of Intent to Issue Bonds and a Bond Ordinance in order for the process to be complete by the deadline of December 31, 2010. Attorney Irvine commented that Noble's attorney and Attorney Bell must be in contact with each other to facilitate the process moving forward on schedule.

Attorney Irvine stated that he had made revisions to the Ordinance Amending Various Sections of the Code of the City of Ogden, Kansas, Relating to Selling and Serving Alcoholic Liquor and Cereal Malt Beverages Within the City as discussed at the October 6, 2010 Council Meeting.

Attorney Irvine commented that the Ordinance applies only to public functions and that it doesn't nor was it intended to apply to private functions.

Nations moved to adopt Ordinance #661 - Amending Various Sections of the Code of the City of Ogden, Kansas, Relating to Selling and Serving Alcoholic Liquor and Cereal Malt Beverages Within the City. Seconded by Carroll. Motion carried.

Mayor Pence recused himself from presiding at the meeting regarding the consideration of the Agenda item of additional compensation for Sharon Pence for City Treasurer responsibilities.

Kenneth Carroll-President of the Council presided at the meeting.

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Ward commented that Sharon Pence has the additional responsibilities of the City Treasurer and is presently earning \$11.70 per hour.

Nations moved to increase the wage of Sharon Pence to \$13.25 per hour as compensation for the additional responsibilities of City Treasurer. Seconded by Ward. Motion carried.

Mayor Pence returned to preside during the remainder of the meeting.

Council decided to schedule a Work Session on Thursday, October 28, 2010 at 7:00 p.m. for continued review of the Comprehensive Plan.

Ward inquired whether the agreement with USD 383 to repair an asphalt excavation included up to the Elementary School building. Nations commented he thought that the repair was the Kansas Gas Service excavation.

Nations commented that the security light for the City Park Shelter, located next to Well #8, was not operating and needed repair.

Nations commented that the light on the scoreboard at Puett Field is flashing at night and needs to be turned off.

Nations commented that the lights inside the Puett Field concession building have been on for months and need to be turned off.

Ward inquired why the Foreman had been removed from being a regular agenda item.

Council agreed to place the Foreman near the top of every Agenda in order for the Council to directly communicate inquiries and issues to him.

Still inquired of the status of the demolition of the four mobile homes in Maplewind Court. Clerk replied that the demolition was completed without incident and in compliance with the ordinance.

Still inquired whether the City was paying BG Consultants, Inc. for Aventura's engineering fees because of a comment made by Patrick Cox-BG Consultants, Inc. regarding sending an invoice for engineering services to the City. Clerk replied that the invoice could be for attending Council Meetings and services providing information to the Council regarding the hotel project.

Still commented that he would be interested in knowing whether Cox was providing engineering services to Aventura because Cox seemed to have answers for both the City and Aventura. Still inquired whether there was a conflict of interest present. Still commented that with regard to engineering services provided to development within the City, BG Consultants, Inc should be providing services exclusive to the City.

Attorney Irvine commented that the issue has arisen before. Attorney Irvine suggested that the Mayor and himself could meet with Cox and address the issue. Attorney Irvine commented that at one time there were drafts of an agreement that were being considered by both parties. Attorney Irvine suggested that the Mayor and himself review the documents in closer detail and determine a direction in which to proceed.

Ward moved to adjourn the meeting. Seconded by Still. Motion carried.  
Time: 10:38 p.m.

Vincent L. Kramer II  
City Clerk

  
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Mayor