

1 NORTH OGDEN CITY COUNCIL MINUTES

2
3 August 20, 2013

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5 The North Ogden City Council convened in an open meeting on August 11, 2013 at 6:30 p.m. in the
6 North Ogden City Council Chambers at 505 East 2600 North. Notice of time, place and agenda of the
7 meeting was delivered to each member of the City Council, posted on the bulletin board at the municipal
8 office and posted to the Utah State Website on August 16, 2013. Notice of the annual meeting schedule
9 was published in the Standard-Examiner on January 30, 2013.

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12 PRESENT: Richard G. Harris Mayor
13 Kent Bailey Council Member
14 Wade Bigler Council Member
15 Justin Fawson Council Member
16 Cheryl Stoker Council Member
17 Brent Taylor Council Member
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20 STAFF PRESENT: Ronald F. Chandler City Manager
21 S. Annette Spendlove City Recorder/H.R. Director
22 Jon Call City Attorney
23

24 VISITORS: Brian Russell Blake Welling
25 L. Steve Davies Elwood Powell
26 Bret Wahlen Rachel Trotter
27 Phillip Swanson
28

29 Mayor Harris welcomed those in attendance.

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31 Council Member Taylor offered the invocation and led the audience in the Pledge of Allegiance.
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34 **AGENDA**

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36 **1. CONSIDERATION AND/OR APPROVAL OF AN AGREEMENT FOR THE CITY'S**
37 **PARTICIPATION IN THE SMITH'S MARKETPLACE DEVELOPMENT**
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39 Matthew Godfrey, President of Better City, the City's Economic Development Consultant, stated
40 there have been a few last minute changes to the agreement and it was necessary for him and City
41 Manager Chandler to review those changes so they could be accurately represented to the City
42 Council. He stated that is the reason for the late start of tonight's meeting. He stated the changes are
43 included in his presentation at the very end. He stated he would use the aid of a PowerPoint
44 presentation to review the evolution of the projected over the last year as well as the complications of
45 the project. He stated he will also present a concept agreement for the Council to consider. He then
46 began reviewing his presentation and stated the existing Smith's store performs well, but it is old and
47 tired and does not meet the current model and the owner has been trying to decide if it would be best
48 to abandon the store and go somewhere else to build a new one or to build a new store adjacent to the
49 existing store. He stated the good news is that the owner has decided to build a Smith's Marketplace
50 in the land adjacent to the existing store. He stated the concerns with the existing area is that there

51 has been a lack of investment in the retail space around the current store and there have been
52 discussions about building a new Smith's Marketplace without the availability of new retail space; it
53 will be necessary to have some redevelopment in the existing infrastructure surrounding the property.
54 He stated there is an opportunity to expand the market share with the new Smith's Marketplace
55 because the store offers more than just food items. He reviewed the characteristics of the site; it is 11
56 acres that will need to be rezoned and that rezone has already been approved by the Planning
57 Commission and will be forwarded to the Council for consideration. He stated there are soils issues
58 in the area that the owner wants to develop: one issue is liquefaction, which is very rare in this area;
59 and there is a band of silt and sandy soil that has a lot of moisture in it and in the event of earth
60 movement the land has the potential to gel and any building built on top of it would have the
61 tendency of coming down. He stated Geo-piers is the solution to liquefaction, which is very
62 expensive, but it the least expensive of the mitigation options. He then stated another issue with the
63 property is a canal that dissects the property at the point they would like to build the new store. He
64 stated the cost of relocating the canal is significant, but by relocating the canal it would be possible to
65 open up more commercial property for the City and allow the land to be developed in a pretty high
66 commercial intense use. He stated all costs associated with correcting the problems with the
67 properties total approximately \$750,000. He then reviewed an aerial photograph of the map
68 highlighting the boundaries of the property and the areas where geotechnical drilling occurred, which
69 found the liquefaction. He also reviewed the portion of the property that is currently zoned for
70 residential use that needs to be rezoned for commercial use. He then reviewed a slide highlighting
71 the benefits of the project to the City. He stated one benefit is that it creates a fairly significant
72 amount of new jobs that pay fairly well. He added this is a \$20 million investment into the City and
73 all indications are that if the City is not willing to participate in mitigating the issues with the site, the
74 development will not be possible. He stated both sides have pushed pretty hard and the first request
75 that came from Smith's was for the City to provide \$1.5 million to the project and he has pushed to
76 find other ways to make the project work for both sides and one that would be responsible from the
77 City's standpoint. He stated there will be a significant amount of new sales tax revenue generated by
78 the project; the size of the store will increase by more than 50 percent and there will be more
79 property tax generated by the property as well. He stated the project provides productivity to land
80 that would otherwise be sitting vacant in the heart of the commercial area of the City. He stated it
81 would even be difficult to develop the land for residential use. He added the development will create
82 a regional retail draw different than the current Smith's store that is strictly a grocery store; this store
83 will compete with other retailers outside of the City and this will be the only Smith's Marketplace in
84 the City. He added this is a collaborative solution with the property and business owners and it will
85 provide opportunities for the City to recruit additional businesses to the town, which will also create
86 additional jobs and sales tax revenues. He then reviewed what has been proposed in terms of the
87 City's participation. He stated there are some infrastructure needs and the first is relative to water;
88 the water flows to the site were not sufficient to meet the fire requirements. He stated looping two
89 water lines at the project will provide additional flows to the project as well as redundancy to the
90 area. He noted there is also a main sewer line that will need to be connected to the project. He stated
91 the main infrastructure project is relative to storm sewer; there is a need for a small regional
92 detention basin that can handle detention for this project as well as a five acre parcel of property
93 directly to the south of the property; there is an intent to develop that land in the near future and
94 developing a detention basin to serve both properties will do several things for the City and the
95 property owners. He added the other thing that the City has been asked to facilitate is a reduction in
96 fees; Mayor Harris and Mr. Chandler have worked with the sewer district to ensure that all fees were
97 calculated correctly, which helped to lower the fees charged to Smith's. He then reviewed a slide
98 highlighting the reasons the City should participate in the project. He stated the project did not
99 initially meet the required rate of return necessary for Smith's to move forward. He stated that as a

100 result Smith's, three other property owners selling property to Smith's, and the City will share in the
101 shortfall in order to make the project happen. He stated the City's role is to help with infrastructure
102 needs and he feels that is an appropriate role for the City to assume. He stated it is up to the policy
103 makers (City Council) to assess the risks in moving forward with the project. He stated the project
104 would help to keep sales tax dollars in the City, capture increased property tax revenues, provide
105 convenience and quality of life for the citizens, and increase private sector investment to lower taxes
106 on homeowners. He then stated he would update the Council regarding the latest changes to the
107 contract, which Smith's has already agreed to. Mr. Chandler stated he has provided the Council with
108 a copy of the contract highlighting some items that have been added in 'pink' font. Mr. Godfrey
109 stated most of the changes are stylistic in nature and he briefly reviewed those, noting that the project
110 is scheduled to be completed by September 2014. He stated the most substantive change is relative
111 to the cost of providing retention pond and the reason behind the change is that \$346,000 included
112 the engineer's estimate for the work. He stated the City Engineer estimated it would be \$70,000 to
113 build the retention basin that he referenced earlier and that was added to the \$276,000 of other fee
114 reductions or infrastructure projects that the City would undertake. He stated Smith's wanted to
115 break those costs apart to make sure it is clear that the retention basin is a City project and not a
116 Smith's project. He stated that Smith's wanted to ensure that if the City Engineer's estimate was not
117 high enough the City could not go back to Smith's and ask them to pay the difference for that
118 miscalculation. He stated he originally thought it was clear enough, but Smith's wanted further
119 clarity by splitting the costs apart. He stated the last sentence in section four has been changed to
120 read "nothing in this agreement shall be construed to expose the City to more than the amount that is
121 set forth in section four". He stated that concludes the changes that were made to the draft agreement
122 and he reiterated that all numbers and costs are the same.

123
124 Council Member Taylor asked if the detention basin will serve other properties in the future and if
125 the City will be able to sell any rights to developers, similar to the recent sale of rights to Wadman
126 Park, in order to recoup any of the costs associated with building the basin. Mr. Chandler stated the
127 party that the City has been working with is Intermountain Health Care (IHC) and the detention basin
128 would actually be located on their property to expand their current detention basin. He stated that in
129 discussions that Mr. Godfrey has had with their representatives, they are agreeable to the project and
130 the basin will service Smith's, the current IHC, as well as IHC's potential future expansion to the
131 east. Council Member Taylor asked if the City will enter into an agreement with IHC regarding the
132 use of their property prior to executing the agreement with Smith's. He asked what will happen to
133 the Smith's agreement if IHC chose to revoke their consent to build the basin on their property or if
134 they decided to increase the price of their property. Mr. Godfrey stated that IHC has been very
135 cooperative regarding that aspect of the project and there is no reason to suspect that they will revoke
136 their support and mutual interest, however, there are two other alternatives for dealing with the water
137 detention on the property if something were to happen: one option is to convey the water to two other
138 nearby existing basins and the cost to do that is not significantly different than the cost of
139 constructing the new basin.

140
141 Council Member Bigler asked if the canal is included in the infrastructure. Mr. Godfrey answered
142 yes and stated he should have mentioned that as a benefit because the canal will be piped and a trail
143 will be constructed upon it.

144
145 Council Member Bailey stated Mr. Godfrey mentioned one of the concerns with the existing facility
146 is the lack of redevelopment at the site and he asked if the fact that Smith's Marketplace is locating
147 on the adjacent property will make other retailers desire to reinvest in their properties. He asked why
148 redevelopment has not happened to date and if that will change as a result of the new store. Mr.

149 Godfrey stated that is a very good question and he stated the new Marketplace will help with the
150 redevelopment of the current Smith's store, which is currently the largest building on the site. He
151 stated Smith's will become the landlord over their old store and having the property look good in
152 order to attract good tenants is of paramount interest to them. He stated there are problems around
153 the community in areas where big box stores have been abandoned and they sit vacant for years; an
154 example is the old Fred Meyer store on 12th Street and Wall Avenue. He stated this project is
155 different because Smith's is moving right next door and they cannot afford for the property to
156 flounder; it is in their best interest to work to make the property successful. He stated this is an
157 anomaly in terms of big box abandonment and the property owner will need to price the building
158 appropriately in order to get redevelopment. He added there is additional property next to the
159 existing Smith's store and he has had several discussions with that property owner about the
160 condition of his property and the need to upgrade it and they have been cooperative to this point. He
161 stated there will be an opportunity to continue to work with that property owner to look at specific
162 plans for redevelopment and he will assist in recruiting potential tenants for that area.

163
164 Council Member Bigler stated the Council was told a representative of Smith's would be present this
165 evening. Mr. Godfrey stated their engineer is present. Council Member Bigler inquired as to how
166 serious Smith's about moving forward with construction; the contract includes a date of completion,
167 but it also says they are under no obligation to build a store in the City. Bret Wahlen, Great Basin
168 Engineering, stated he does all consulting work for Smith's and Council Member Bigler's question is
169 an appropriate question. He stated Smith's will build in North Ogden and the only challenge is
170 meeting requirements to build that are included in contracts because Kroger is building so many of
171 these stores throughout the country. He stated those clauses are typically cut from the contract for
172 that reason, but all intentions are to move forward and plans have already been submitted to the City.
173 He stated Smith's simply wanted to strike the legal obligation to build from the contract. Council
174 Member Bigler asked if construction will commence soon if the agreement is executed. Mr. Wahlen
175 stated they will begin as soon as possible once permits are issued by the City; he anticipates the canal
176 piping portion of the project being completed this fall and Smith's is anxious to get the project under
177 way. Mr. Godfrey added that the City incentives are post-performance incentives; the City will not
178 build the infrastructure and hope that the store is built. He stated after Smith's begins construction
179 and has given the City \$522,000 as outlined in the agreement the City will engage in its portion of
180 the project.

181
182 Council Member Taylor stated that he has two quick follow up questions; he inquired as to the
183 estimated sales tax increase associated with the project. He stated Mr. Godfrey communicated that
184 the amount of sales is estimated at \$18 million and he asked if the City's share of that would be
185 approximately \$90,000 per year in additional sales tax revenue. Mr. Godfrey stated the City will get
186 one half of one percent of the sales at the store. Council Member Taylor then asked the estimated
187 property tax revenue will be for the project. Mr. Godfrey stated he can provide that estimate fairly
188 quickly, but he believes the City's portion is just under \$100,000. Council Member Taylor stated he
189 wants that data to be part of the record to justify the City's participation in this project.

190
191 **Following the meeting, Mr. Godfrey submitted an email to City staff explaining the first
192 year incremental sales tax income for North Ogden City is estimated to be \$93,080 and the
193 property tax is \$29,748.**

194
195 Council Member Fawson stated that Mr. Godfrey referenced the leakage report identifying how
196 much business is going to other cities because there are certain facilities or services not offered in the
197 City and he asked Mr. Godfrey if he has an idea how the expanded produce offering at the Smith's

198 Marketplace will impact that leakage report. Mr. Godfrey stated that Smith's will have a few
199 expanded offerings in the grocery side of the store, but most of the expanded sales revenue will come
200 from non-food items and that is a fairly good indicator of the leakage that will be stopped. He stated
201 an estimate of \$18 million per year is not a bad number to see return to the community.
202

203 Council Member Bigler inquired as to the status of the RDA project area. Mr. Godfrey stated the
204 property is currently split between two different zones: commercial and residential. He stated the
205 RDA boundary went around the commercial area and followed that boundary. He stated property
206 must be all in or all out of an RDA so it will be necessary to go to the taxing entity committee (TEC),
207 which consists of representatives of the various taxing entities in the County, to adjust the RDA
208 boundary to make sure it matches the boundary of the commercial land upon the rezone being
209 approved. He stated it is something of a technicality, but it is an important technicality. Mr. Chandler
210 stated he and Mr. Godfrey have talked with the TEC via phone and they are set to meet with them in
211 person later this week. Mr. Godfrey stated that he wanted to make sure this vote took place tonight
212 before proceeding with that meeting.
213

214 **Council Member Fawson moved to approve the Smith's/North Ogden City Agreement A2013-**
215 **9. Council Member Bigler seconded the motion.**
216

217 Council Member Taylor thanked Mr. Godfrey, Mayor Harris, and Mr. Chandler for all their work on
218 the project to this point; it is a very exciting project that he is happy to see coming to the City. He
219 stated he does support the City being involved in the project in this way and he thinks the way it has
220 been structured with the City contributing towards infrastructure that will become publicly owned is
221 the appropriate way for the City to be involved. He stated the only thing he has a concern with is
222 approving the agreement tonight when there has not really been opportunity for public discussion of
223 it. He stated this is a special meeting. He stated he understands there is no mal-intent and these
224 types of issues tend to move forward without a lot of publicity until a vote is taken, but giving
225 economic incentives to a business is something that a lot of residents feel strongly about and he feels
226 that if the Council proceeds forward without giving the residents the opportunity to weigh in on the
227 project that will be concerning. He stated he feels the project will be supported in the end because it
228 is the right project for the City, but he would prefer to wait until one of the next few meetings to
229 allow for the item to be publicized and to give people in the City a chance to weigh in if they have
230 strong feelings on it. He stated that because of the sensitive nature of the project, it has not been
231 publicized at all and his feeling is that he would like to put it on hold until the next meeting. He
232 stated he is sure there will be a newspaper article about the project before the next meeting and
233 citizens can come and share their feelings about it before a final vote is taken.
234

235 Council Member Fawson asked what impact public input would have on the project. Mr. Godfrey
236 stated that he appreciates the concern about the timeline of the project, but he understands Council
237 Member Taylor's concern. He stated the issues with timing include that the property owners are
238 scheduled to close on the purchase of the subject property by the end of the month and the City's
239 participation in infrastructure is critical to that closing taking place. He stated waiting could
240 potentially impact the closing. He stated that he understands the next meeting will be held August
241 27, but he does not know what date Smith's has scheduled for closing. He reiterated the TEC
242 meeting relative to the RDA boundaries will be held later this week.
243

244 Mayor Harris noted another consideration is that people know about the project even though it was
245 supposed to be a 'secret'. He stated it is fairly well known throughout the City that the project is
246 being discussed and all he has heard is support for it.

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Voting on the motion:

Council Member Bailey aye
Council Member Bigler aye
Council Member Fawson aye
Council Member Stoker aye
Council Member Taylor no

The motion passed on a four to one vote.

2. ADJOURNMENT

Council Member Bailey moved to adjourn the meeting. Council Member Stoker seconded the motion.

Voting on the motion:

Council Member Bailey aye
Council Member Bigler aye
Council Member Fawson aye
Council Member Stoker aye
Council Member Taylor aye

The motion passed unanimously.

The meeting adjourned at 7:13 p.m.

Richard G. Harris, Mayor

S. Annette Spendlove, MMC
City Recorder

Date Approved