

## NORTH OGDEN CITY COUNCIL MINUTES

August 20, 2013

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

PRESENT:                Richard G. Harris        Mayor  
                              Kent Bailey                Council Member  
                              Wade Bigler            Council Member  
                              Justin Fawson            Council Member  
                              Cheryl Stoker            Council Member  
                              Brent Taylor              Council Member

STAFF PRESENT:      Ronald F. Chandler        City Manager  
                              S. Annette Spendlove    City Recorder/H.R. Director  
                              Jon Call                    City Attorney

VISITORS:             Brian Russell              Blake Welling  
                              L. Steve Davies            Elwood Powell  
                              Bret Wahlen                Rachel Trotter  
                              Phillip Swanson

Mayor Harris welcomed those in attendance.

Council Member Taylor offered the invocation and led the audience in the Pledge of Allegiance.

### AGENDA

#### **1. CONSIDERATION AND/OR APPROVAL OF AN AGREEMENT FOR THE CITY'S PARTICIPATION IN THE SMITH'S MARKETPLACE DEVELOPMENT**

Matthew Godfrey, President of Better City, the City's Economic Development Consultant, stated there have been a few last minute changes to the agreement and it was necessary for him and City Manager Chandler to review those changes so they could be accurately represented to the City Council. He stated that is the reason for the late start of tonight's meeting. He stated the changes are included in his presentation at the very end. He stated he would use the aid of a PowerPoint presentation to review the evolution of the projected over the last year as well as the complications of the project. He stated he will also present a concept agreement for the Council to consider. He then began reviewing his presentation and stated the existing Smith's store performs well, but it is old and tired and does not meet the current model and the owner has been trying to decide if it would be best to abandon the store and go somewhere else to build a new one or to build a new store adjacent to the existing store. He stated the good news is that the owner has decided to build a Smith's Marketplace in the land adjacent to the existing store. He stated the concerns with the existing area is that there

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Voting on the motion:**

<b>Council Member Bailey</b>	<b>aye</b>
<b>Council Member Bigler</b>	<b>aye</b>
<b>Council Member Fawson</b>	<b>aye</b>
<b>Council Member Stoker</b>	<b>aye</b>
<b>Council Member Taylor</b>	<b>no</b>

**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:**

<b>Council Member Bailey</b>	<b>aye</b>
<b>Council Member Bigler</b>	<b>aye</b>
<b>Council Member Fawson</b>	<b>aye</b>
<b>Council Member Stoker</b>	<b>aye</b>
<b>Council Member Taylor</b>	<b>aye</b>

**The motion passed unanimously.**

**The meeting adjourned at 7:13 p.m.**

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Richard G. Harris, Mayor

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S. Annette Spendlove, MMC  
City Recorder

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Date Approved