

DALLAS CITY COUNCIL
Monday, April 16, 2012
Civic Center

The Dallas City Council met in regular session on Monday, April 16, 2012, at 7:00 p.m. in the Civic Center with Mayor Brian Dalton presiding.

ROLL CALL AND PLEDGE OF ALLEGIANCE

Council members present: Council President Wes Scroggin, Councilor Jim Brown, Councilor Jim Fairchild, Councilor Beth Jones, Councilor Murray Stewart, Councilor LaVonne Wilson, and Councilor Ken Woods, Jr. Absent: Councilor Jackie Lawson and Councilor Kevin Marshall.

Also present were: City Manager Jerry Wyatt, City Attorney Lane Shetterly, Community Development/Operations Jason Locke, Chief of Police John Teague, Fire Chief Bill Hahn, Finance Director Cecilia Ward, Administrative Services Director Robert Spivey, Engineering/Environmental Services Director Fred Braun, and Recording Secretary Emily Gagner.

Mayor Brian Dalton led the Pledge of Allegiance.

COMMENTS FROM THE AUDIENCE

Chelsea Pope, Executive Director of the Dallas Area Chamber of Commerce and Visitor Center, thanked the Council and staff for their recent Arbor Day celebration at Kingsborough Park, noting it was fun to celebrate that the past four years and see all the trees that had been planted. On behalf of the Chamber Board, she invited the Council to attend the monthly brown bag leadership luncheons, which provided an opportunity for Chamber members to communicate with the Board members.

PUBLIC HEARING

APPEAL OF PLANNING COMMISSION DECISION PTN 11-04

Mayor Dalton opened the public hearing open at 7:04 p.m. He asked the Councilors if they had any ex parte contacts or conflicts of interest to declare. There were none.

Mr. Locke reviewed the staff report for the appeal of the Planning Commission approval of a two-lot partition at 1463 SE Miller Ave. He reviewed the background of the application and issues involved on appeal. Mr. Locke recommended the Council uphold the Planning Commission appeal.

Eric Yandell stated he represented the applicants, Anthony and Anne Nunes. He reviewed a brief summary of points, a copy of which he provided to each Councilor and for the record. He explained the properties in question were originally one parcel but in 1997, the owners at the time decided they needed two separate taxlots and went to the Polk County Assessor to divide them. He indicated the Nunes' bought both of those parcels in 2006 as two parcels, and in 2008 sold the larger parcel to Prism Manor. He noted the fact that the Nunes' purchased the property as two parcels in 2006 showed the division happened prior to 2006. He reported that in approximately June 2011, when the Nunes' got ready to sell the smaller parcel, they had that parcel surveyed to find the corners, at which time the surveyor discovered the properties had not been properly partitioned. Mr. Yandell indicated his clients made an effort to negotiate with Prism to correct the issue, but commented that Prism saw that as an opportunity to reverse everything. He indicated Prism threatened to sue to rescind, which meant to cancel everything, require the Nunes' to buy back the parcel at the original purchase price plus 9% interest from the date they purchased the property in 2008, some other damages, and court costs and attorney fees. Mr. Yandell reported that at that time, August 8, 2011, the Nunes' applied to properly partition the property as they ought to have. He indicated by August 24, 2011, the staff had approved it because the criteria were very easily met. Mr. Yandell stated Prism appealed to the Planning Commission, which was put on hold while the Nunes' tried without success to negotiate. At that time Prism sued to rescind contract. He said the argument on appeal is that the Nunes can validate their lot, but the Nunes couldn't apply to validate the big lot, which he felt was an absurd way to look at the statute. He asked why one would validate the small lot and leave the other lot in limbo, noting it couldn't be sold that way.

Mayor Dalton asked if the Council had any questions for the applicant. There were none. Michelle Morrow stated she was the attorney representing the appellant, Prism Manor, LLC. She

indicated the applicant sought to legalize both the property they owned and the property they didn't own. She advised that Oregon law didn't allow the applicant to legalize both parcels. She said there was quite a record in the case and incorporated that, but wanted to summarize the main points. Ms. Morrow indicated the first point was that the applicant was relying on ORS 92.177, which only authorized a party to plat a parcel it purchased that was not legally divided even though all the owners of the larger legal parcel did not participate in the application. She advised nothing in that statute authorized a party to plat land that they didn't own, which was what the applicant was attempting to do. She declared the very language of the statute supported that; it talked about "a" parcel, not parcels, and not property that the applicant did not own. Ms. Morrow stated that to suggest the applicants could legalize Prism Manor, LLC's parcel was contrary to the specific language of the statute. She indicated that ORS 92.075 required the signatures on all fee owners for a resulting plat, so the language of that statute would prohibit the recording of a plat when less than all of the fee owners involved, meaning both the applicant and Prism Manor, LLC, had signed it. She argued that the statute the applicants relied on in the application only allowed an owner who was sold an illegal lot to legalize his or her parcel. Ms. Morrow advised that the applicant conceded that they couldn't make use of the partition application approval without filing another lawsuit to get a court order requiring Prism Manor, LLC to sign the actual plat. She said the fact that the applicant would need to file a lawsuit to compel a partition approval demonstrated that the decision to partition it and to partition property that the applicant didn't own didn't correctly follow Oregon law.

Councilor Jones asked what Prism thought they were buying. Ms. Morrow replied they believed they were buying the larger 1.63 acres, but believed when they bought it that it was a legal lot. Councilor Jones asked if that was the same way the Nunes' were trying to parcel it out, the same way they believed they were buying it. Ms. Morrow replied it was. Councilor Jones asked why that would change why they wanted the lot, since this partition would give them the same thing they thought they were getting. Ms. Morrow stated that it was the same thing they thought they were getting, but the fact was that they were sold an illegal lot and there were other Oregon laws and rules that prohibited the selling of an illegal lot, and therefore entitled the purchaser of an illegal lot to rescission. Councilor Jones clarified that Prism believed they were required to rescind the transaction. Ms. Morrow stated they would argue that they were required to rescind the transaction and in the event they agreed to rescind the transaction, they would own both parcels and could partition it as they saw fit. Mr. Shetterly clarified they believe the Nunes' were required to rescind, not that Prism was required to seek the rescission. Councilor Jones stated it could be made legal to where they were still getting what they thought they were getting. Mr. Shetterly indicated that was the point of the application.

Mr. Yandell stated the applicant did fix it. He indicated Prism didn't know there wasn't a partition and his clients didn't know there wasn't a partition. It was one of those things that come out of the mists of time and his clients tried to fix it. He indicated now Prism had what it thought it was buying, adding the only reason it didn't was because they were appealing. He stated the appeal was holding up the finality of the process of the partitioning. He reported there were four conditions placed by the staff and his clients had completed the first two, noting the last two required finality, such as a plat. Mr. Yandell advised his clients were willing and able to do that at no expense to Prism, adding the only reason they were present before the Council was so Prism could get a perceived advantage in their civil case. Mr. Yandell stated in terms of the signature on the plat, that was a step that was required by statute but it wasn't something the Council needed to decide because the Council's approval of the partition wasn't contingent on Prism's signature on a plat. He acknowledged a plat would eventually need to be signed and that may mean asking a judge to order Prism to sign. Mr. Yandell stated it was his contention that a rescission wasn't a matter of right just because someone purchased an unpartitioned piece of property, noting that was something the court could look at. He indicated here the defect was corrected in 16 days at no expense to Prism.

Mayor Dalton closed the public hearing at 7:30 p.m.

It was moved by Councilor Wilson and seconded by Councilor Jones to deny the appeal and direct staff to draft an order upholding the Planning Commission final order in the matter with the conditions listed in the staff report. The motion carried unanimously.

Mayor Dalton indicated the Final Written Order would be issued and a notice mailed to all participants within ten business days.

SELECTION PROCESS TO FILL COUNCIL VACANCY

Councilor Marshall joined the meeting via telephone at 7:30 p.m. Councilor Lawson joined the meeting via telephone at 7:33 p.m.

Mayor Dalton reviewed the selection process that was adopted at the previous Council meeting. Councilor Fairchild stated all nine candidates were great and it made his decision difficult.

Councilor Woods asked what would happen if someone did not receive five votes on the first ballot. Mayor Dalton explained anyone who did not receive any votes would be removed from further selection.

In response to a question, Mr. Shetterly explained the Council did not need to formally accept another Councilor's resignation for it to be valid.

The Councilors turned in their ballots, then Councilor Lawson and Councilor Marshall announced their vote. The result of the first round of voting was four votes for Jim Brown (Council President Scroggin, Councilor Marshall, Councilor Stewart, and Councilor Woods), one vote for Darand Davies (Councilor Wilson), one vote for Wanda Davis (Councilor Fairchild), one vote for Kelly Gabliks (Councilor Lawson), and one vote for Dirk Levy (Councilor Jones).

Mayor Dalton advised the Council that there would be a second round of voting, noting only Mr. Brown, Mr. Davies, Ms. Davis, Ms. Gabliks, and Mr. Levy were eligible candidates. The Councilors turned in their second ballots, then Councilor Marshall and Councilor Lawson announced their vote. The result of the second round of voting was six votes for Jim Brown (Council President Scroggin, Councilor Fairchild, Councilor Marshall, Councilor Stewart, Councilor Wilson, and Councilor Woods), one vote for Kelly Gabliks (Councilor Lawson), and one vote for Dirk Levy (Councilor Jones). Mayor Dalton announced Jim Brown was selected to fill the vacant Council seat. Mr. Brown was given the oath of office and seated.

Councilor Lawson and Councilor Marshall left the meeting at 7:46 p.m.

CONSENT AGENDA

It was moved by Councilor Woods and seconded by Councilor Fairchild to approve the Consent Agenda as presented. The motion CARRIED UNANIMOUSLY.

Item approved by the Consent Agenda: a) the March 19, 2012, City Council minutes.

ITEMS REMOVED FROM CONSENT AGENDA

There were no items removed from the Consent Agenda.

REPORTS OR COMMENTS FROM COUNCIL

Councilor Jones reported a new business, Trash to Treasure, had recently opened downtown and she was excited to see it open. Councilor Wilson stated she had also visited it and it was very nice.

NATIONAL VOLUNTEER WEEK PROCLAMATION

Mayor Dalton reviewed the proclamation for National Volunteer Week, April 15-21, 2012. He expressed his appreciation of the work performed by volunteers in Dallas.

REPORTS FROM CITY MANAGER AND STAFF

SPR-11-01 WALMART DECISION APPEAL

Mr. Wyatt reviewed the staff report. Council President Scroggin clarified the City Attorney would be defending the City and not working for Walmart. Mr. Shetterly explained the City's and Wal-Mart's interests were aligned since the Council interpreted their Code to allow the application. He advised if the Nunes case was appealed, he and staff would not recommend the City participate. Mr. Shetterly indicated it was the sense of the staff that it was worth the City speaking up to represent the Council on its own code.

It was moved by Councilor Scroggin and seconded by Councilor Wilson to authorize the City Attorney to participate in the Land Use Board of Appeals (LUBA) proceeding to defend the City's decision on SPR11-01, the approval of the Walmart expansion. The motion CARRIED UNANIMOUSLY.

OLCC SPECIAL EVENT APPLICATION FOR BOUNTY MARKET

Mr. Wyatt reviewed the proposal, explaining it would be for wine tasting and sales of unopened bottles only. He advised staff and the Agent of Record would work closely to ensure each vineyard provided proof of insurance naming the City as additional insured. He explained the Visitor Center and staff were asking for Council to approve all 7 wineries' applications at once so each winery didn't have to come before the Council at a later date.

Councilor Wilson declared an actual conflict of interest due to the fact she was on the Visitor Center Board.

Council President Scroggin asked where the tasting and sales of unopened bottles would take place. Bonnie Drier of the Visitor Center explained there would be a booth next to the manager's booth each week.

It was moved by Councilor Fairchild and seconded by Councilor Brown to recommend the OLCC approve all seven applications for Special Event OLCC Licenses. The motion CARRIED UNANIMOUSLY.

ODOT/CITY PARTNERSHIP

Mr. Wyatt reviewed the staff report. He explained this project would be done the same way Jefferson Street was. Council President Scroggin directed the City Manager to ensure the work was coordinated so it didn't interfere with summer events in Dallas.

OTHER

Mr. Wyatt advised the Council that the Park and Rec Board would meet on April 24 at 7:00 p.m.

RESOLUTIONS

Resolution No. 3244: A resolution authorizing a grant application under the Oregon Parks and Recreation Department Local Government Grant Program for park improvements on the Rickreall Creek Trail System.

A roll call vote was taken and Mayor Dalton declared Resolution No. 3244 to have PASSED BY A UNANIMOUS VOTE with Council President Wes Scroggin, Councilor Jim Brown, Councilor Jim Fairchild, Councilor Beth Jones, Councilor Murray Stewart, Councilor LaVonne Wilson, and Councilor Ken Woods, Jr. voting YES.

FIRST READING OF ORDINANCE

SECOND READING OF ORDINANCE

OTHER BUSINESS

There being no further business, the meeting adjourned at 8:03 p.m.

Read and approved this _____ day of _____ 2012.

Mayor

ATTEST:

City Manager