

Brier City Council Minutes

August 8, 2000

Mayor Kaske called the regular meeting of the Brier City Council to order at 7:32 PM and the flag salute was given.

Roll Call:

Present:

Councilmembers Colinas, Jordan, Moller, Starks, and Warner. Councilmember Magnuson arrived at 7:35 PM.

Reports of Committees and City Officials:

Councilmember Jordan stated that he had spoken with Office Art Audette regarding the Block Watch Program and the funding that would be available in the future. Mayor Kaske stated he would discuss this in the next few weeks.

Councilmember Warner reported that the Planning Commission discussed changes to zoning regarding mother-in-law units.

Mayor Kaske reported that he received an MDNS for an area outside the City limits that affects Scriber Creek, the filtration system that is being proposed and possible potential wetlands and stated that he will be responding to the MDNS.

Councilmember Starks reported that he is pursuing another provider for the City's Web page and Internet Service and that it will be at a lower cost.

Public Requests and Oral Communications:

Ursula Vecchi, 3003 216th Street SW, Brier, WA, reported that Councilmember Colinas had visited them and they were surprised as they were under the impression that Mr. Russell was to be the one to oversee it. Mrs. Vecchi reported the contents of their conversation regarding pipes and fences. Mrs. Vecchi stated that they were confused regarding this and the fence issue should not be brought up again as that had been previously handled. Mrs. Vecchi stated that the City should enforce the contract that was in place and asked where they should go from here. Mayor Kaske stated that there is no double standard regarding bio-filtration and, to date, they have not received any tight-line proposal. Councilmember Colinas stated that they had stopped by to see how things were going and was concerned to see if the problem was solved.

Consent Agenda:

Mayor Kaske opened for consideration of the Consent Agenda. Councilmember Moller moved and Councilmember Colinas seconded to approve the Consent Agenda, which included approval of the Brier City Council Minutes of July 25, 2000 and approval of the Findings of Fact and Conclusions of Law for the Administrative Appeal of Paul Trombley for 24204 23rd Avenue W. Motion Carried.

Unfinished Business:

None

Hearings:

Mayor Kaske opened the discussion on Telecommunications Ordinance No. 293 and reported that Mr. William Covington was the attorney representing the City from 3-H Communication Consultants regarding the proposed ordinance. Mr. Covington informed the Council of his previous background and distributed information in a briefing book to Council. This information included, in part, an Industry Overview (Wireless, Cable); a glossary of terms; a copy of one of most important federal laws (47 USC 253) that grants cities the right to manage telecommunications; a copy of legislation regarding utility tax, information on competitive telephone service, a copy of the new state legislation (RCW 35. 21. 860, 865, 870 and RCW 82. 04. 065 and 297) which has lots of information of managing right-of-ways, information that shows the rapid increase of

subscribers coming to the industry that shows a need for the infrastructure to support these companies, industry goals of reaching profitability, leasing City facilities, permitting requirements, and mandatory undergrounding. Mr. Covington gave a quick overview of his opinion regarding the permit requests that could be granted or denied by the City and of the information contained in his briefing book. Mayor Kaske opened the Public Hearing on Telecommunications Ordinance No. 293. Judy Endejan of Williams, Kastner & Gibbs of Seattle, representing Verizon, formerly GTE, explained the background of incumbent telephone providers who are allowed to occupy public right-of-way without getting a franchise. Ms. Endejan requested that the City refrain from taking action tonight and allow industry to meet with City representatives to go through some of their concerns and work things out. Ms. Endejan stated that some of her concerns with the present proposed ordinance are the provisions, and worker's compensation. There was Council discussion with Ms. Endejan. Ms. Endejan requested three weeks to a month delay. Mr. Covington suggested delaying eight weeks. Mr. mark Simonson, Verizon, discussed the vertical location of placing their facility within the right-of-way. There was Council discussion that they reduce their concerns to writing to be able to respond to them.

Julia Plucker, Omaha, Nebraska, representing Level-3 Communications, stated that they have seen the agreement, reviewed it, submitted the application, and they are ready to go as there is a sense of urgency for new companies to pull their fiber through as it affects their competitive edge.

Tom Stames, Metromedia, Bothell, Washington, stated that they support the ordinance being approved tonight for those who are just passing through the City with their fiber. There was Council discussion with Dick Russell regarding locating utilities in the right-of-way. Councilmember Colinas asked the City Attorney, Tom Evans, if the City could allow the new companies to pull the fiber through the City. Tom Evans responded he did not know if that creates a vested right to have a franchise. There was continued Council discussion.

Karen Kirkpatrick, Metricom, Redmond, Washington, stated that they would like to request additional time to review the proposed ordinance to see how it affects their current franchise as they have operational concerns.

Tim Ellis, Project Manager, of 360 Networks, Inc. , stated that they provide a condominium duct-bank for utilities so that the City will know who is in their right-of-way and they have no problem with the franchise.

Councilmember Colinas moved and Councilmember Magnuson seconded to hold a fifteen-minute Executive Session after an eight-minute break. Motion Carried at 9:22 PM. The meeting adjourned to an eight-minute break prior to Executive Session at 9:22 PM. The meeting resumed at 9:55 PM. Councilmember Colinas asked legal counsel to state the legislative intent behind 4. 02. 100 of the proposed ordinance. Tom Evans paraphrased 4. 02. 100 stating that this provision states that there will be no effect on any existing franchise ordinance franchise agreement, lease, permit, or other authorization to use or occupy the public right-of-way unless it expires. Therefore, any preexisting rights would not be affected. Mr. Evans requested a clear statement from those attending who feel that they are at risk because of this new legislation. Councilmember Colinas moved and Councilmember Moller seconded to close the Public Hearing on the proposed Telecommunications Ordinance. Motion Carried. Councilmember Colinas moved and Councilmember Moller seconded to approve Ordinance No. 293 establishing a new Title, Title 4. 0, of the Brier Municipal Code, "Telecommunications"; establishing requirements for telecommunications carriers and providers; use of the public right-of-way and public property; for telecommunications right-of-way use authorizations; franchises and facilities, leases; describing violations and establishing penalties; providing for payment for reasonable use, expense and penalties and forfeitures; repealing all ordinances or parts of ordinances in conflict herewith; providing for emergency action and immediate adoption upon five affirmative votes or effective date of five days after passage, posting and publication as required by law in the event of four affirmative votes; making other provisions. Motion Carried.

Councilmember Moller stated he had some reservations regarding the ordinance but was voting in the affirmative. Mayor Kaske stated that he would still like Verizon's input to work with our consultant to clear up their concerns. Mayor Kaske thanked Mr. Covington for being at the meeting and for his input.

Councilmember Magnuson left the meeting at 10:05 PM.

New Business, Petitions, Communications, Application Appeals, etc.:

Councilmember Colinas reported that Katrina Anders would give Council further information regarding the claims on Brier Road. Katrina Anders stated that, from the beginning of the project, the concern was the cost for the planter strips. Ms. Anders explained all the work was done on City right-of-way. There was Council discussion with Katrina Anders and with Ms. Bates, Ms. Brooks, and Ms. Bouffion. There was Council consensus to have the Mayor mitigate the claims with tree permits where he felt it was justified.

Mayor Kaske opened for consideration of Proposal "A" from Lynnwood to amend Medic-7 Interlocal Agreement to establish a multi-year commitment to the Medic-7 Program. There was Council discussion. Councilmember Starks moved and Councilmember Moller seconded to deny the amendment of Proposal "A" of the Medic-7 Interlocal Agreement which would have established a multi-year commitment to the Medic-7 Program. Motion Carried.

Consideration of Bids, LID's, and Related Matters:

Mayor Kaske opened for consideration of the Brier Road Sidewalk Replacement Bids. Councilmember Colinas moved and Councilmember Moller seconded to award the Brier Road Sidewalk Replacement Bid to Ortiz Concrete Finishing of Tacoma, Washington in the amount of \$235,530 and authorize Mayor's signature. Motion Carried.

Ordinances, Resolutions, and Orders:

Councilmember Colinas moved and Councilmember Moller seconded to approve Resolution No. 456 to terminate the PageNet Conditional Use Application No. 99-004. Motion Carried.

Miscellaneous Business by Call of Councilmember and City Officials:

Councilmember Colinas complimented Nicole Magnuson, Lisa Graham, and Leona Starks for their help with Brierfest.

Mayor Kaske reported that Karen Giesen has been in the hospital for the last few days but they still have not diagnosed her problem.

Councilmember Warner asked Tom Evans, City Attorney, about the enforceability regarding the Vecchi property, the drainage swale, and their fence. Tom Evans, City Attorney, stated he would need to take a look at the file. Councilmember Starks asked who is responsible for maintaining the swale. Councilmember Warner asked the City Attorney to review to see if the City can maintain the swale even though it was not City property. Councilmember Starks asked the City Attorney to review the easement to see if the contractor may be allowed to correct the problem with the manhole.

Auditing of Accounts:

Councilmember Moller moved and Councilmember Jordan seconded to approve July 2000 Payroll Warrants No. 9564 through 9614 in the amount of \$68,445. 56 with Warrant No. 9563 and No. 9579 Void. Motion Carried.

Councilmember Moller moved and Councilmember Jordan seconded to approve July 2000 Claim Warrants No. 13562 through 13618 in the amount of \$209,918. 83. Motion Carried.

Adjournment:

Councilmember Moller moved and Councilmember Jordan seconded to adjourn. Motion Carried and the meeting adjourned at 11:16 PM.

Date Approved:
August 22, 2000

Mayor Wayne E. Kaske

Norma Wilds