City of Tualatin

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Approved By Tualatin City Council
Date 10-26-09
Recording Secretary M Smith

TUALATIN CITY COUNCIL WORK SESSION MINUTES OF SEPTEMBER 28, 2009

PRESENT: Mayor Lou Ogden, Councilors Chris Barhyte, Monique Beikman, Joelle Davis, Jay Harris, Donna Maddux *[by telephone]*, and Ed Truax; Sherilyn Lombos, City Manager; Brenda Braden, City Attorney; Doug Rux, Community Development Director; Don Hudson, Finance Director; Dan Boss, Operations Director; Kent Barker, Police Chief; Paul Hennon, Community Services Director; Carina Christensen, Assistant to the City Manager; Eric Underwood, Development Coordinator; Will Harper, Associate Planner; Maureen Smith, Recording Secretary

ABSENT: None.

[Unless otherwise noted, MOTION CARRIED indicates all in favor.]

A. CALL TO ORDER

Mayor Ogden called the work session to order at 5:00 p.m.

B. PRESENTATIONS, ANNOUNCEMENTS, SPECIAL REPORTS

1. *Sign Design Standards in Central and General Commercial Planning Districts*
Associate Planner Will Harper gave a PowerPoint on the proposed Plan Text Amendment (PTA-08-06) amending the Tualatin Development Code (TDC) regarding the sign design review standards and process. The Council has previously discussed creating design standards for freestanding signs and a process for reviewing design, looking at restrictions on freestanding pole signs, and creating a process for transitioning existing nonconforming freestanding signs to new standards. The intent is to improve the appearance of new and existing signs in the City. He explained how monument signs guidelines are met and that there is some current signage that meets the guidelines.

Policy considerations for Council is whether to adopt design and material standards for freestanding monument and pole/pylon signs in the Central Commercial (CC) and General Commercial (CG) Planning Districts, restrict freestanding pole signs from arterial streets and have sign code and nonconforming sign provisions encouraging or requiring both new and existing signs to meet standards.

The amendment requires nonconforming signs in the CC and CG planning district to be removed or replaced within five years of adoption of the proposed ordinance or up to ten years from when a sign permit to construct is issued, exempting freestanding signs located within a certain distance along the I-5 freeway. The Tualatin Planning Advisory Committee (TPAC) reviewed PTA-08-06 in August, and will review again in October, and it is scheduled for a public hearing at the October 26, 2009 Council meeting. Staff has also met with the business community on the proposed sign design and transition program. While there was general acceptance of new standards and process there were concerns about the additional expenses for businesses in replacing their existing signs to meet the new standards.

Discussion followed. It was asked about being able to regulate sign colors, and staff replied that would be difficult, what with branded logos, etc. Requiring a uniform color for other parts of the sign, such as the pole, was also mentioned. It was asked and answered that this process is not as rigorous and would not be part of the architectural review (AR) process.

The existing pole sign inventory and pole sign examples were reviewed and discussed, and it was asked how many existing signs are nonconforming. Mr. Harper said there are 53. Also mentioned is having existing signs be able to be brought into conformance by just doing a face change, basic maintenance, with no dimension or structural changes.

The process of how a sign could be brought into compliance over a period of time and the impact to businesses was discussed. What type of amortization schedule that would make sense was also discussed, and it was suggested there could be a tie-in to when a business does maintenance and/or upgrades to their sign, or when a change of ownership happens that could trigger the replacement of a sign. Staff said it raises some issues with multi-tenant buildings.

After discussion, Council suggested looking at an eight year amortization plan for existing businesses to change their nonconforming sign, some type of trigger event that would then require replacement of the sign, and cost considerations. Staff will come back with the direction given by Council for further review.

2. *Historic Preservation Ordinance Revisions*
Community Development Director Doug Rux and Assistant Planner Colin Cortes presented information on the review of and revisions to the historic preservation ordinance. Included in the staff memorandum to Council are policy considerations.

Staff has met with the Tualatin Historical Society for comments on historic preservation and a map is provided showing the locations of structures suggested by the THS. Staff also researched possible options, as outlined in the memorandum provided, such as drafting more definitions, allowing for reconstruction, rely primarily on economic incentives and less on regulatory mandates, designate a limited number of structures for highest priority, and a secondary tier of structures with lesser preservation priority, subject to less stringent preservation, and cease owner negligence of historic structures.

Mr. Rux said there is not a huge dynamic of historical structures in Tualatin. By doing this program, it would require an Historic Preservation Committee, which the City did have at one time, but was disbanded. Preserving a structure with economic incentives was discussed and what approaches could be taken. Other cities in the U.S. allow for reconstruction. Most states do not mandate preservation as does Oregon, and many cities have historic guidelines rather than regulations. Staff looked at four cities that could be models for Tualatin, as outlined in the memorandum.

Discussion followed on the approach in addressing historic structures. Mr. Rux mentioned the Tualatin Historical Society and what they may be willing to do as the City is not in a position to do. Discussion came around again to what is Council trying to accomplish with the discussion. It was asked and answered how structures are placed on the City's historic listing, and anything that is 50 years or older was determined to be historic.

Allowing for reconstruction and reuse of materials was suggested and the possibility of incorporating the façade into the new structure. Requiring off-site mitigation was also suggested, and to talk with the THS about the concept. Be clear on what would be included - whole "site" or the "structure" and maintenance provisions that could be done. Also coming up with a ranking list was suggested.

Ms. Lombos said staff will be back before Council at a future work session with more information from what was discussed at this work session.

3. *City Financing of Private Projects Discussion*
Finance Director Don Hudson presented information on recent approval of Bancroft Bond applications. and the process in which the City finances these charges.

Mr. Hudson explained the Bancroft Bonding Act came about and how the process works. The Council adopted an ordinance where residential owners subject to a development charge may apply for installment payments to include interest on the unpaid balance. Owners of commercial, industrial and multi-family residential property may also apply for installment payments upon Council resolution adoption providing for one or more of such classes, and in consideration of the fiscal impact to the City. In 1979 an ordinance was passed establishing general and administrative costs be included if a property owner wishing to pay their development or connections by installment under the Bancroft Bond shall pay for all associated fees, as well as a 15% administrative and overhead charge. The 15% fee was set up to cover the costs of processing the application, etc. and was also put in place to discourage developers from choosing to use the City as their lender.

Recently through one of these approved contracts, the owner felt that 15% was too high. Mr. Hudson said he has contacted other cities and found that their programs were mostly for residential, and not commercial. Staff is looking from direction from Council whether to amend the Tualatin Municipal Code (TMC) related to additional charges for Bancroft Bonding. It was asked and answered that the fee has been in place since 1979.

Discussion followed and it was mentioned that the 15% fee does not cover actual costs. The ordinance would need to be changed if the fee is discontinued. It was suggested removing the commercial aspect from the ordinance. Discussion followed on the approach that could be taken, and administrative costs over the next five years. Council was also concerned about addressing the risk factor to the City. Some sort of underwriting process and having a different program in place for urban renewal than for the rest of the city was mentioned.

After discussion Ms. Lombos said staff will come back to Council at a future work session, but will not make any changes to ordinance as yet.

C. CITIZEN COMMENTS – N/A

D. CONSENT AGENDA

Council reviewed the Consent Agenda with no changes except as noted *(items that will be moved to presentations, and others to consent agenda).*

E. PUBLIC HEARINGS – *Legislative or Other*

N/A

F. PUBLIC HEARINGS – *Quasi-Judicial*
N/A

G. GENERAL BUSINESS – N/A

3. Ordinance No. 1289-09 Relating to Core Area Parking Time Limits; and Amending TMC 8-1-220

MOTION by Councilor Davis, SECONDED by Councilor Beikman for a first reading by title only. MOTION by Councilor Harris, SECONDED by Councilor Davis for a second reading by title only. MOTION CARRIED. The poll was unanimous. MOTION by Councilor Harris, SECONDED by Councilor Beikman to place adoption of the ordinance on the Consent Agenda. MOTION CARRIED.

H. ITEMS REMOVED FROM CONSENT AGENDA – N/A

I. COMMUNICATIONS FROM COUNCILORS
None.

J. EXECUTIVE SESSION
None.

K. ADJOURNMENT
The work session adjourned at 7:06 p.m.

Sherilyn Lombos, City Manager

Recording Secretary Maureen Smith

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TUALATIN CITY COUNCIL MEETING MINUTES OF SEPTEMBER 28, 2009

PRESENT: Mayor Lou Ogden, Councilors Chris Barhyte, Monique Beikman, Joelle Davis, Jay Harris, and Ed Truax; Sherilyn Lombos, City Manager; Brenda Braden, City Attorney; Mike McKillip, City Engineer; Doug Rux, Community Development Director; Paul Hennon, Community Services Director; Kent Barker, Police Chief; Carina Christensen, Assistant to the City Manager, Maureen Smith, Recording Secretary

ABSENT: Councilor Maddux * *[* denotes excused]*

[Unless otherwise noted, MOTION CARRIED indicates all in favor.]

A. CALL TO ORDER

Mayor Ogden called the meeting to order at 7:11 p.m.

The Pledge of Allegiance was led by Councilor Barhyte.

B. PRESENTATIONS, ANNOUNCEMENTS, SPECIAL REPORTS

1. *Proclamation Declaring the City of Tualatin Recognize October 7, 2009 as International "Walk and Bike to School Day"*

   Councilor Beikman read the proclamation declaring the City of Tualatin recognize October 7, 2009 as International Walk and Bike to School Day.

   Teen Program Coordinator Julie Ludemann gave a short PowerPoint presentation on the program. Ms. Ludemann invited Council to participate in the "Walk and Bike to School Day" activities on October 7, 2009.

   Councilor Beikman mentioned her involvement in the program, having recently attended a conference, and she has personally made an effort to walk her child to school every day.

2. *Proclamation Proclaiming the month of October 2009 as "National Arts & Humanities Month" in the City of Tualatin*

   Cynthia Kirk, manager of the Oregon Cultural Trust was introduced by Mayor Ogden. Ms. Kirk gave a brief background on the cultural projects and funding credits. She mentioned the funding and grant-making program in Oregon as forward-thinking, and the idea of a day of culture to raise awareness. She suggested visiting the website at www.oregondayofculture.org and take part in cultural events across the state.

   Councilor Truax read the proclamation proclaiming the month of October 2009 as National Arts and Humanities month in the City of Tualatin.

3. *Tualatin Valley Fire & Rescue Presentation*
Fire Captain Case Brown, Tualatin Fire Station 34, Tualatin Valley Fire & Rescue (TVF&R), was present to give an update, and introduced new Battalion Chief Dan Griffin to the Tualatin fire station.

Captain Brown gave a brief PowerPoint presentation on TVF&R's capital construction and reviewed various projects. The plans to remodel the Tualatin fire station have been pushed back logistically, but should start construction sometime this spring.

They are looking at alternative deployment plans to put in place for calls that are of a non-emergency nature, as current policy is to respond full engine. Station 34 is a hazmat response station, and they are engaged in a study to look at fireground air for products of combustion and toxins released from fire. TVF&R displayed a prototype of only one in nation on being able to monitor air toxins.

Captain Brown also mentioned the recent fire in the Fox Hills neighborhood. It gave them an opportunity to go back and canvas the neighbors on response and issues they may have had. Mention was also made of the increase in use of portable defibrillators that can increase a person's survivability. Asked about the location of the portable defibrillators and were told where they are located. Captain Brown noted the second time in the past month that the Police Department has been first on-site with defibrillators.

Council thanked Captain Brown and said Tualatin is fortunate to have TVF&R and their nationally recognized program as the City's fire protection.

4. *National League of Cities Prescription Discount Card Program*
Human Resources Program Coordinator Debra Bullard gave a brief PowerPoint presentation on the program. The National League of Cities (NLC), which Tualatin is a member, is offering a prescription discount card program for use by member cities. It allows Tualatin residents without health insurance or limited prescription drug coverage a discount card at no cost for an average savings of 20% off retail price. Press releases have been issued and staff has received the cards, display stands and advertising materials. The program will launch on October 1, 2009.

C. CITIZEN COMMENTS

Stephen Ricker and Del Judy, representatives from the Juanita Pohl Center, were present and distributed the August, 2009 monthly report. Mr. Ricker reported on the activities, particularly during the Crawfish Festival. Other highlights were reviewed, and also on view is a quilt the center will be auctioning off in November. Mayor Ogden suggested contacting the "Fit City" challenge group to coordinate with the Pohl Center on areas of mutual interest.

D. CONSENT CALENDAR

Item G-5 was placed on the Consent Agenda at Work Session. MOTION by Councilor Barhyte, SECONDED by Councilor Beikman to adopt the Consent Agenda as amended and read:

1. Community Involvement Committee Appointments

2. Resolution No. 4930-09 Authorizing Execution of an Updated Urban Planning Area Agreement with Washington County

3. Resolution No. 4931-09 Approving an Intergovernmental Agreement with Metro for the 2006 Natural Areas Bond Measure Local Share Component Land Acquisition Services

4. Resolution No. 4932-09 Authorizing an Application by the City of Tualatin for a Community Development Block Grant Public Facilities Project Proposal to Expand and Renovate the Juanita Pohl Center

5. Acceptance of the Tualatin Tomorrow Community Vision and Strategic Action Plan; Updated July 2009

6. Resolution No. 4933-09 To Adopt an Intergovernmental Agreement Between the Tri-County Metropolitan Transportation District of Oregon, and the City of Portland for Transit Police Services

G-4 Consideration of a Request to Change Parking Space Time Allocations in the White Lot

G-5 Ordinance No. 1289-09 Relating to Core Area Parking Time Limits; and Amending TMC 8-1-220

MOTION CARRIED.

E. PUBLIC HEARINGS – *Legislative or Other*
None.

F. PUBLIC HEARINGS – *Quasi-Judicial*

1. Public Hearing to Consider an Ordinance Relating to Plan Map Amendment PMA-09-02; Applying Office Commercial (CO) Planning District Designation to 6480 SW Nyberg Lane; and Amending the Community Plan Map 9-1

Mayor Ogden read language required by legislation before a comprehensive plan or land-use regulation [ORS 197.763(5) and (6)] and opened the public hearing. No bias or ex parte contact noted.

Assistant Planner Colin Cortes presented the staff report and entered the entire staff report into the record. The property is .93 acres of land located at 6480 SW Nyberg Lane. This is a request to change the planning district designation from Low Density Residential (RL) to Office Commercial (CO). This would allow for a child daycare provider to occupy the vacant property as a permitted, rather than conditional use. It has functioned as a day care operation since 1990, and prior to that it was undeveloped. The Tualatin Planning Advisory Committee met and recommended the City Council approve PMA-09-02.

PROPONENTS
Theresa Paulson, Group Mackenzie, 1515 SE Water Avenue, Portland, 97214, was present representing the applicant, and said they support the staff report in its entirety. Ms. Paulson said they would be happy to answer any questions Council may have.

Chris Tiesler, Kittleson & Associates, 610 SW Alder Street, Portland, 97205, traffic engineer, was present and said they performed an analysis, concluding there is not a significant increased effect to traffic in the area. Mr. Tiesler said he was also available to answer any questions.

OPPONENTS – None.

COUNCIL DISCUSSION
Councilor Barhyte asked if there is another zone for medical complexes, and Community Development Director Doug Rux said there can be medical operations in various districts, and the Medical Center (MC) Planning District would not fit this application.

Councilor Harris asked about the existing facility and parking, and whether it will be adequate for what is built there. Assistant Planner Cortes said that would be examined during site development review if the site was redeveloped, and also noted there is no practical change to the activities on the site, it is merely changing from a conditional use in the Low Density Residential (RL) Planning District to a permitted use in the Office Commercial (CO) Planning District. Councilor Harris also mentioned the reduced capacity of the use that has been on site, and the traffic associated with that. Mr. Tiesler said when the traffic report was done they took the reasonable worst case scenario, and the worst case in the CO Planning District actually reduces traffic. It was asked and answered that the Stafford Hills Racquet Club traffic counts were also included in the report.

Councilor Barhyte asked if the building would be able to increase in size and Mr. Rux said theoretically, but any increase would likely have to be in the form of going up, such as a second floor. Ms. Paulson said the current parking ratio is tight and if increased the space it would cut into the play area, etc.

It was asked and Ms. Paulson replied the applicant is looking to keep the current use on the site. The CO designation allows the use that has been on the property for 20 years outright. If the existing use left, and an applicant was unable to provide another daycare, the only other use on the property would be another daycare as it currently stands. Rezoning to CO would allow daycare, or another type of medical or office use.

Mayor Ogden asked about possible redevelopment in the area along Nyberg in the long term. Mr. Rux said they have not had a full discussion with Council on the redevelopment possibilities of that particular section of Nyberg. Mayor Ogden asked if it may be better served not to change the district designation and look at the broader picture. Mr. Rux explained this is a quasi-judicial hearing to address this particular piece of property.

It was asked and answered that this request is on day 77 of the 120 day period. It was also asked about findings that could address this issue and Mr. Rux explained the process and a potential denial would have to be able to articulate findings that explain how this request does not meet applicable criteria.

Ms. Paulson commented that the existing daycare is on a day to day lease and could end, leaving the site vacant unless another daycare use comes along. Also, there is only one year left on the existing conditional use permit.

Mayor Ogden asked the purpose of having daycare centers as conditional uses in the RL planning district. Mr. Rux said it is actually a holdover from the early creation of the Tualatin Development Code. The conditional use does allow Council to look at that specific application to see if there are any conditions that need to be proposed in the particular area.

Councilor Harris asked if retail be allowed as a certain percentage in a CO district. Assistant Planner Cortes said retail is not allowed in that particular district. Councilor Barhyte asked and Mr. Rux read from Tualatin Development Code (TDC) Chapter 50 what some of the conditional uses are allowed in the CO planning district.

Mayor Ogden closed the public hearing.

COUNCIL DELIBERATIONS

Councilor Barhyte said he has had issues with conditional uses, but believes this is the best way to have an outright permitted use versus a conditional use permit for this property. It is a small site and would be difficult to do anything, and he will be voting in the affirmative for that reason.

Mayor Ogden said he is disappointed haven't taken the time to look at the entire area, and making permanent land use changes because of conditions, and don't think this is a well thought out strategy. Should be motivation to doing something different instead of taking one piece at a time, and will reluctantly vote yes, but not sure right strategy.

MOTION by Councilor Barhyte, SECONDED by Councilor Truax to approve the staff report adopting an ordinance relating to PMA-09-02; applying Office Commercial (CO) planning district designation to 6480 SW Nyberg Lane, and amending the Community Plan Map 9-1.

Ordinance No. 1288-09 Relating to Plan Map Amendment PMA-09-02; Applying Office Commercial (CO) Planning District Designation to 6480 SW Nyberg Lane; and Amending the Community Plan Map 9-1

MOTION by Councilor Davis, SECONDED by Councilor Barhyte for a second reading by title only. MOTION CARRIED. The poll was unanimous. *[Maddux absent.]* MOTION by Councilor Barhyte, SECONDED by Councilor Harris to adopt the ordinance. MOTION CARRIED.

2. Public Hearing Regarding an Appeal of the July 23, 2009 Interpretation Answering "What is the Status of the Non-Conforming Use Rights of the Land and Structure Located at 8250 SW Tonka Street"? (Tax Map 2S124CB Tax Lot 1700) (INT-09-01)

Mayor Ogden read language required by legislation before a comprehensive plan or land-use regulation [ORS 197.763(5) and (6)] and opened the public hearing, and asked of any bias or ex parte contact.

Mayor Ogden noted in spring of 2008 he was invited by Enterprise Rental to meet the new manager and this issue was brought to his attention, and that it was not an allowed use and suggested they meet with staff. He has also spoken on the telephone with Mr. Sposito a few times and has had no further conversation about this, noted no bias or predisposition.

Councilor Truax noted a conversation he had approximately six months ago about the property, noted no bias or predisposition. There were no objections to either Mayor Ogden or Councilor Truax' participation in the hearing.

Associate Planner Will Harper presented the staff report and entered the entire staff report into the record. The property is located at 8250 SW Tonka Street, in the General Commercial (CG) Planning District, Block 11 of the Central Urban Renewal District. It is an appeal of the interpretation decision of the Community Development Director dated July 23, 2009, determining that a small equipment rental nonconforming use on the 8250 SW Tonka Street property that was subject to definitions and conclusions in Interpretation INT-88-01 was not retained after December 31, 2008. Also determining that a light truck leasing and rental use or an auto leasing and rental use with greater than five vehicles on site are not permitted uses nor previously established legal nonconforming uses and are not

allowed uses on the property as permitted nor nonconforming uses.

Mr. Harper said a request for interpretation was submitted by Stan Sposito and the Sposito Family Trust to identify the legal nonconforming uses on the 8250 SW Tonka Street property and to address Mr. Sposito's belief that a proposed light truck or auto rental/leasing use is allowed on the property as a nonconforming use. He is seeking to obtain an interpretation of nonconforming uses on the property and in the CG Planning District that would allow a prospective light truck/auto leasing and rental business on the property.

APPELLANT

Bill Campbell, Bill Campbell and Associates, 9370 Sandpiper Lane, Manzanita, OR, representing Stan Sposito, was present and began by noting there is an interesting history on the property going back some 80 years. The barn is still located there and was constructed in 1923 and there was also a dairy farm. The property has existed as multiple uses as it went through time. In 1973 it was acquired by Mr. Stan Sposito and has since been managed by his family, which allows for businesses to be on the property by lease. Mr. Campbell reviewed various photos he had of the property through the years that indicate there has been car uses on the site. Anderson Oregon Rental assumed the property in 1988, as provided by photo evidence by Mr. Campbell.

Mr. Campbell continued that in 1999 United Rentals went through negotiations of substantial improvements to the property, that included an urban renewal district overlay, and a letter from the City setting the terms of United Rental's use and improvements to the property. Mr. Campbell said the use by United Rentals is trucks, and they have been told by staff that the current lease does not matter in this particular issue. Mr. Campbell said there is a history of over 20 years of adherence and conformance, and they are faced with a lease that is intact and in full force and effect until February 2010. Mr. Campbell said staff contends the use was terminated on December 2007, which is not true as the property is under control by United Rentals. Mr. Campbell contends that the uses were not terminated and are in full force and effect.

Greg Jenks, G.J. Solutions, 11243 SW Vista Lane, Milwaukie, OR, also representing Mr. Sposito, presented exhibits for the record not available in the staff report, along with a series of photographs which they believe document the continuous use of trucks on the site. From January 2008, United Rentals has had trucks on site, and the information they submitted gives a history and timeline of the property. Mr. Jenks also submitted for the record a United Rentals catalog indicating the type of equipment that is used by United Rentals.

Mr. Jenks also requested a portion of the staff report, specifically page 2 of 5 (p.207), second bullet, last sentence, ...*"United Rentals does not identify the property as a business location on its website showing locations in the Tualatin area, but the applicant indicated United Rentals continues to hold a lease on the property."* Mr. Jenks said staff has apparently visited the website and their objection is the information put in the staff report is not reliable for the interpretation. Mr. Jenks pointed out omissions to be a series of conclusions or statements with little or no evidence supporting staff conclusions. There is no mention of a meeting, no meeting notes, nor testimonial evidence of staff's rendition of said meeting, and no mention of the historic reference of the site. Also no mention made of staff and the mayor on meetings held with Enterprise.

Mr. Campbell said there is a 1999 letter memorializing the terms of the use of United Rentals, and the mention of big dump trucks, large excavators, etc. In the Architectural Review decision (AR-99-20) that was done, it was stated by staff that United Rentals replaces Oregon Rental, and that the company will keep the equipment as previously offered at the facility.

At a meeting in February 2008 there was mention of a grandfather clause, and the interpretation that was done by staff in 1988 was also discussed, excluding certain types of trucks. Also discussed were improvements to the site, and also spoke to specific materials in the United Rental catalog that were on the property, 15 to 20 ton crane trucks, etc. Also noted information that was provided by staff, from their request for public records. Mr. Campbell said their belief is the property owner is not being allowed to manage his property, and asked that the property rights of the owner coexist with the current lease.

IN SUPPORT OF THE APPEAL
Yvonne Addington, Tualatin Historical Society President, was present, and read a letter that was submitted for the record in support the *continued preservation* of the barn located at 8250 SW Tonka Street, known by Tualatin historians as the "Ed Blank Barn." While the issue at hand is not about preservation of the barn, the Tualatin Historical Society feels the owner as done all the right things to support keeping one of only two remaining 1900-era barns.

OPPOSITION TO APPEAL – None.

COUNCIL DISCUSSION
Councilor Barhyte asked staff about having a conditional use is in place and the underlying use is altered, continuing to allow the altered use to go on for a period of time. Associate Planner Harper said this is a nonconforming use, not a conditional use, characterized by the appellant's argument that they believe the uses were allowed when United Rental and Anderson Rental were located there, it then should be allowed. The appellant contends the underlying use was allowed and staff did not stop it from happening. Staff believes the use was never allowed and is not a legal use and does not create a precedent.

City Attorney Braden added if the use was not allowed and was not legal, whether the City interfered or not, does not change the use into being legal.

Mr. Campbell reiterated that the rental, lease, repair and maintenance of all sizes trucks and equipment has continued without any breaks in operation. Mayor Ogden asked and Mr. Harper explained what makes a use a nonconforming use,

Mayor Ogden said those activities are not allowed outright in the CG planning district in the City of Tualatin, which Mr. Harper said what is allowed is auto leasing ***up*** to five vehicles, repair of cars, and rent and repair of small equipment. If the use occurred prior to the CG planning district designation, and if those uses are occurring, they could be grandfathered as a nonconforming use.

In response to Mayor Ogden, Mr. Harper explained that staff's statement is truck rental leasing was never established when the CG planning district was established in 1979. Staff's contention is the rental of light trucks was never agreed upon as occurring prior to the district being designated. Also the City of Tualatin never recognized the leasing of light trucks on this site. Mr. Campbell said he has photo evidence that truck leasing was taking

place, and referenced a 1979 ordinance, and also referred to the architect review, AR-99-20, that speaks of the previous land use actions.

A break was taken from 9:45 p.m. to 10:01 p.m.

Mayor Ogden continued the discussion about the nonconforming use of light trucks, and the correlating question that because an activity takes place on the site, does that make it a legitimate use.

Gary Bisaccio, 19784 Bennington Court, West Linn, OR, legal counsel for Stan Sposito since 1979, said from his own knowledge of the property it has been a mixture of cars, jeeps, trucks, buses, ambulances, all the items photographed. Mr. Bisaccio said he knows that the former Rabbit Hutch rented vehicles when it was located on the property. In negotiating with United Rentals to locate on the property, and meeting with then Planning Director Jacks, the basic interpretation of the Tualatin Development Code in 1988 was they would be permitted to rent small equipment on the property. After determining that small equipment rental did not mean hand-held equipment, they negotiated with the City and Anderson Oregon Rental.

Mr. Bisaccio said grandfathered rights were also discussed, and then former Planning Director Jacks readily acknowledged for a long period of time there had been the kinds of vehicles described on the property. Those rights are important because it explained the reason that from 1988 until the present time, why the City never took any action against Anderson Rental with greater than 20 horsepower equipment. Mr. Bisaccio said he has also advised Mr. Sposito to protect his grandfathered rights, and when a contract was entered into with Anderson Oregon Rental, included in the lease rental was implied use, because it is a rental business.

Also in a letter dated August 31, 1988 (p. 254-255), Item 6 refers to the Lessee taking reasonable steps to protect the grandfathered rights of lessor by maintaining trucks and equipment on the property. On the second page, Item 5, of the letter to United Rentals district manager, dated April 8, 1999 (p. 273) former Planning Director referred to what large equipment would not be available at the site, but what would be allowed, and they took that to mean it included light trucks.

Councilor Davis said in reference to the April 1999 letter, appears to her to indicate there would be no big dump trucks, etc, but that former Planning Director Jacks is allowing that use. Councilor Beikman said in the October 28, 1988 letter (p. 258) of then Planning Director Jacks, on his interpretation of what small means, and then look at the April 1999 letter, would not make the summation that anything could be rented from a "D6" on down. Mr. Bisaccio said he believes this was staff's first communication stating the City's position. He also said that from the beginning, Mr. Sposito has maintained he has grandfathered rights.

Mr. Bisaccio continued by noting that after his review of documents, the City has rented equipment from Andersen Oregon Rental and United Rentals and finds it interesting that City staff can say or suggest not knowing what kinds of vehicles were being rented, stored, and used on that property. In 1999 improvement were done to the building in partial reliance on the letter from the city. All this is consistent with old photographs that were taken in the 1970s and 1980s, and he believes more is going on here, with the City having taken this position, indicating to him the desire that the building be torn down and redeveloped.

Councilor Truax said his question goes back to the bottom paragraph of the October 28, 1988 letter (p. 258), that rental of cars and light trucks is permitted din the Light Manufacturing (ML) planning district, and the property was once in the ML district, was it in the ML district in October of 1988. Mr. Rux said his recollection of the property is in the 1970s and early 1980s there was property that was designated ML.

Mr. Stan Sposito, present at the hearing, said the property was purchased as an ML planning district.

Councilor Truax said the October 28, 1988 letter (p. 251), references small to medium service and delivery trucks, as clearly not permitted in the General Commercial (CG) planning district. Mayor Ogden said the letter has some discrepancy of what is determined to be small. Ogden asked where does it say where does Jacks say trucks were allowed. Campbell said looking for the continuity.

Mayor Ogden said in looking for the rental of trucks as an acknowledged use on the property, and having documentation that the property was once Light Manufacturing (ML) planning district, and then General Commercial (CG), asked the appellant for some type of documentation that would substantiate that use was being conducted as a permitted use under one planning district designation.

Councilor Truax said the October 28, 1988 letter (p. 258) specifically allows trucks in the ML district and assumes the ML district was in place at that time.

Councilor Beikman asked the difference between lease and use, and Mr. Harper said the use is the physical activity, whereas a lease can discuss the type of equipment but the use is a nonconforming activity. Councilor Beikman asked and Mr. Harper said the nonconforming activity can continue for one year. Staff's position is there was not a use of small equipment occurring from February 2008 to February 2009. It was asked of the appellant's representatives if there are any receipts that can document the rental of equipment during that time.

Mr. Rux said there were conversations in April 2008 about the nonconforming use and if nothing happened in the last year, the nonconforming use would cease. Mr. Sposito said he understands that if there is equipment on the property that keeps the grandfathered clause intact, and currently there is a vehicle located on the property.

Mr. Bisaccio contends it is not staff's determination to figure the level of activity on the property. Mr. Sposito said it is about ownership of property. Mayor Ogden said if owning property and part of the business interest is leasing trucks, even if not leasing, then you are perfecting the use. Mr. Bisaccio said he believes Mr. Sposito means "right to use". Mr. Campbell said they contend that the position is the right to use an actual use, and is not staff's position. Mayor Ogden asked and Mr. Bisaccio said the truck stored on the site if far larger than a light truck.

Mr. Rux said staff's opinion is that the use of United Rentals left the site at the end of 2007. At the end of 2008, the use had passed and is not been conducted on the property any longer. In April, 2009 a trailer was placed on the site with a large banner, and staff's opinion is the piece of equipment placed on the site occurred well after one year. Mr. Rux said in referencing the TDC, if the use stops in a year, a owner can come back and request the use again.

Councilor Barhyte asked if there has been a nonconforming use that has happened in recent years. City Attorney Braden said since 1994 there has not been a nonconforming but there have been conditional uses that have been rescinded.

Mr. Bisaccio said he does not practice land use law but does remember some State Land Use Board of Appeals (LUBA) cases, and his recollection of a quarry that was not doing business but that it was enough that they were storing equipment on the property.

Mr. Bisaccio asked for a continuance of this hearing.
Staff said the next Council meeting is October 12, 2009, and coming up on the 120-day rule. Mr. Rux said a limited continuance of an additional 60 day period could be done, and the appellant's representative agreed to a waiver of an additional 60 days. The public hearing will be continued to the October 26, 2009 agenda.

MOTION by Councilor Barhyte, SECONDED by Councilor Harris to continue the hearing to October 26, 2009. MOTION CARRIED.

Resolution No. ____---____ Affirming the Appeal of the July 23, 2009 Interpretation Answering "What is the Status of the Non-Conforming Use Rights of the Land and Structure Located at 8250 SW Tonka Street?" (Tax Map 2S124CB Tax Lot 1700) (INT-09-01)

G. GENERAL BUSINESS

3. Consideration of a Request to Change Parking Space Time Allocations in the Blue Lot

Development Coordinator Eric Underwood gave a brief explanation of the request by the Oregon Nurses Association (ONA) to change the timed spaces to better accommodate their business needs in the Blue Lot. Upon receiving notice of the request, neighboring businesses to the west, asked that those spaces be left to better accommodate their needs. After taking the issue to the Core Area Parking District Board (CAPDB), they recommended not to approve a change of the short term spaces to long term. All Council present were in agreement with the board that no change be made to short term parking spaces in the Blue Lot.

H. ITEMS REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

I. EXECUTIVE SESSION

None.

J. COMMUNICATIONS FROM COUNCILORS

None.

K. ADJOURNMENT

MOTION by Councilor Beikman, SECONDED by Councilor Harris to adjourn the meeting at 11:11 p.m. MOTION CARRIED.

Sherilyn Lombos, City Manager

Recording Secretary Maureen Smith