



**TUALATIN CITY COUNCIL
AND
TUALATIN DEVELOPMENT COMMISSION**
Monday, October 26, 2009

City Council Chambers
18880 SW Martinazzi Avenue, Tualatin, Oregon

WORK SESSION begins at 5:00 p.m.

REGULAR MEETING begins at 7:00 p.m.

Mayor Lou Ogden

**Council President Chris Barhyte
Councilor Monique Beikman
Councilor Joelle Davis**

**Councilor Jay Harris
Councilor Donna Maddux
Councilor Ed Truax**

WELCOME! By your presence in the City Council Chambers, you are participating in the process of representative government. To encourage that participation, the City Council has specified a time for citizen comments on its agenda – Item C, following Presentations, at which time citizens may address the Council concerning any item not on the agenda, with each speaker limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council.

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are available for review on the world wide web at www.ci.tualatin.or.us, at the Library located at 18878 SW Martinazzi Avenue, and are also on file in the Office of the City Manager for public inspection. Any person who has any question concerning any agenda item may call Administration at 503.691.3011 to make an inquiry concerning the nature of the item described on the agenda.

In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact Administration at 503.691.3011. Notification thirty-six (36) hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

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Your City government welcomes your interest and hopes you will attend the City of Tualatin City Council meetings often.

- SEE ATTACHED AGENDA -

PROCESS FOR LEGISLATIVE PUBLIC HEARINGS

A “legislative” public hearing is typically held on matters which affect the general welfare of the entire City rather than a specific piece of property.

1. The Mayor opens the public hearing and identifies the subject.
2. A staff member presents the staff report.
3. Public testimony is taken.
4. The Council then asks questions of staff, the applicant or any member of the public who testified.
5. When the Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either approve, deny, or “continue” the public hearing.

PROCESS FOR QUASI-JUDICIAL PUBLIC HEARINGS

A “quasi-judicial” public hearing is typically held for annexations, planning district changes, variances, conditional use permits, comprehensive plan changes, and appeals from subdivisions, partitions and architectural review.

1. The Mayor opens the public hearing and identifies the case to be considered.
2. A staff member presents the staff report to the Council.
3. Public testimony is taken:
 - a) In support of the application
 - b) In opposition or neutral
4. The Council then asks questions of staff, the applicant or any member of the public who testified.
5. When the Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either approve, approve with conditions or deny the application, or “continue” the public hearing.

TIME LIMITS FOR PUBLIC HEARINGS

The purpose of time limits on public hearing testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony. All persons providing testimony **shall be limited to 5 minutes**, subject to the right of the Mayor to amend or waive the time limits.

EXECUTIVE SESSION INFORMATION

Executive session is a portion of the Council meeting that is closed to the public to allow the Council to discuss certain confidential matters. No decisions are made in Executive Session. The City Council must return to the public session before taking final action.

The City Council may go into Executive Session under the following statutory provisions to consider or discuss: ORS 192.660(2)(a) the employment of personnel; ORS 192.660(2)(b) the dismissal or discipline of personnel; ORS 192.660(2)(d) labor relations; ORS 192.660(2)(e) real property transactions; ORS 192.660(2)(f) non-public information or records; ORS 192.660(2)(g) matters of commerce in which the Council is in competition with other governing bodies; ORS 192.660(2)(h) current and pending litigation issues; ORS 192.660(2)(i) employee performance; ORS 192.660(2)(j) investments; or ORS 192.660(2)(m) security issues. **All discussions within this session are confidential.** Therefore, nothing from this meeting may be disclosed by those present. News media representatives are allowed to attend this session (unless it involves labor relations), but shall not disclose any information discussed during this session.



A. CALL TO ORDER

Pledge of Allegiance

B. PRESENTATIONS, ANNOUNCEMENTS, SPECIAL REPORTS

1. Tualatin Tomorrow Presentation Key Focus Area - *Health, Safety & Social Services – not present*
2. 2009 Tualatin West Coast Giant Pumpkin Regatta Announcement

C. CITIZEN COMMENTS

This section of the agenda allows citizens to address the Council regarding any issue not on the agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

D. CONSENT AGENDA (Item Nos. 1 – 7)

Page No.

The Consent Agenda will be enacted with one vote. The Mayor will first ask the staff, the public and the Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under "Items Removed from the Consent Agenda." The entire Consent Agenda, with the exception of items removed to be discussed under "Items Removed from the Consent Agenda," is then voted upon by roll call under one motion.

1. Approval of the Work Session and Meeting Minutes of September 28, 2009 and.....
the Special Council Work Session of September 30, 2009
2. Change Order No. 2 to the Contract Documents for Construction of the Tualatin
Interstate 5/Nyberg Interchange Landscape Improvements
3. Fiscal Year 2008/2009 Parks Systems Development Charge (SDC) Annual Report
4. Fiscal Year 2008/2009 Water System Development Charge (SDC) Annual Report
5. Resolution No. 4937-09 Accepting Public Improvements for Taco Bell
6. Resolution No. 4938-09 Granting the Request for a Sign Variance for Dick's
- Sporting Goods Store in the General Commercial (CG)
Planning District at 17799 SW Lower Boones Ferry Road
(Tax Map 21E18BC, Tax Lot 1001) (SVAR-09-01)
7. Community Involvement Committee Appointments
- *Marge Congress – Library Advisory Committee, Full term ending 10/31/12*
- *Mike Riley – Planning Advisory Committee, Partial term ending 08/31/12*

E. PUBLIC HEARINGS – Legislative or Other

1. Public Hearing to Consider an Ordinance Extending the Approval Periods of
Certain Architectural Review Decisions, and Amending TDC 73.056 (PTA-09-06)

Ordinance No. 1291-09 Extending the Approval Periods of Certain Architectural Review
Decisions, and Amending TDC 73.056 (PTA-09-06)

F. PUBLIC HEARINGS – Quasi-Judicial

1. Request for Continuance – Appeal of the July 23, 2009 Interpretation Answering.....
“What is the Status of the Nonconforming Use Rights of the Land and Structure
Located at 8250 SW Tonka Street”? (Tax Map 2S124CB Tax Lot 1700) (INT-09-01)
[CONTINUED to November 9, 2009]

G. GENERAL BUSINESS

None.

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. COMMUNICATIONS FROM COUNCILORS

J. EXECUTIVE SESSION

K. ADJOURNMENT



CITY COUNCIL SIGN-UP SHEET

DATE: OCTOBER 26, 2009

PLEASE COMPLETE TO GIVE TESTIMONY

LIMIT TESTIMONY TO THREE MINUTES

	(PLEASE PRINT CLEARLY) Name	Address	E-mail	Representing	Agenda Item(s) or Citizen Comments
1.	Rob Drake	10764 SW Heron Circle Beaverton	drarej@comcast.net	People for libraries	Citizen
2.	Harry Bodine	2130 SW Burbank Portland OR 97225	bedfish@evropa.com	"	"
3.	Linda Moholt	18791 SW. Montwazi Tualatin, OR 97062	lmide@tvalatinchamber.com	Chamber	
4.					
5.					
6.					
7.					
8.					

HEALTH, SAFETY AND SOCIAL SERVICES or

HOW WE CARE FOR ONE ANOTHER

Vision Summary states that our residents are safe and healthy, and supported by strong law enforcement, comprehensive social services and accessible health care.

The Tualatin Police and the TVF&R continue to provide great services to our community. The local police continue to move forward on all the community related projects in our action plan. TVF&R is constantly upgrading their training programs and as funds become available redoing and adding services to their facilities in Tualatin.

The Senior Center has undergone a name change and is in the process of applying for grants that will allow some updating and limited expansion of the facility. The Health Fair held in April of each year continues to grow in size of participation by the public and the exhibitors. The Fit City program continues to go forward with the health fair being a great partner. Once again Providence will sponsor the health fair. Getting everyone fit goes a long way to keeping people out of the more expensive formal health care system.

The Tualatin Food Pantry has made great strides this past year. The board has been expanded and is a more formal organization. The donations of food are up over last year as are number of people needing assistance because of the past years economy. The Pantry facility was relocated due to the sale of the previously donated facility. That transition seemed to go smoothly. The pantry now is located at the Rolling Hills Church facility on Borland road. That, more out of the way location, has contributed to a number of clients not being able to get to the pantry on a regular basis. That will continue to be a concern and working point during the next year.

The Community Action organization stepped up to the plate this past year and became the lead partner in our first three strategies: Limiting Homelessness, Reducing Poverty and Accessible Emergency Family Shelters. They have a well established presence in Washington County and have many programs in place that are becoming more publicized due to their commitment to our process. We recently had a change in their liaison with our program so we are now moving forward. We aren't reinventing the wheel but as with any change in personnel we are becoming reacquainted. Their commitment remains strong to the process.

We have also made contact thru a volunteer from Rolling Hills with a homelessness task force working out of Forest Grove. They are in the process of opening a facility in Tigard and we will see how their process might apply here.

Finally, just before departing us, our Community action contact informed me that their organization had received funding for a couple of Americorp volunteers to pursue trying to establish a faith-based organization throughout Washington County. My comment was possibly they could try to do it within our community. We have 19 or so Tualatin based churches of various denominations that are each doing their own thing. Trying to bring them together with a united focus would be a great resource for Tualatin Tomorrow to draw from. That is an ongoing process, not a dead issue.



Approved By Tualatin City Council
Date 10-26-09
Recording Secretary [Signature]

STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

FROM: Sherilyn Lombos, City Manager

DATE: October 26, 2009

SUBJECT: APPROVAL OF THE MINUTES FOR THE WORK SESSION AND MEETING OF SEPTEMBER 28, 2009 AND THE SPECIAL COUNCIL MEETING OF SEPTEMBER 30, 2009

ISSUE BEFORE THE COUNCIL:

The issue before the Council is to approve the minutes for the Work Session and Meeting of September 28, 2009, and the Special Council Meeting of September 30, 2009.

RECOMMENDATION:

Staff respectfully recommends that the Council adopt the attached minutes.

FINANCIAL IMPLICATIONS:

There are no financial impacts associated with this item.

Attachments: Minutes



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

Maurice Smith



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 in 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 *Maurice Smith*



SPECIAL CITY COUNCIL WORK SESSION MINUTES OF SEPTEMBER 30, 2009

PRESENT: Mayor Lou Ogden; Councilors Chris Barhyte, Monique Beikman, Joelle Davis, Jay Harris, and Ed Truax; Councilor Donna Maddux (*participated by telephone until 6:30p*)

STAFF

PRESENT: Sherilyn Lombos, City Manager; Paul Hennon, Community Services Director; Dan Boss, Operations Director; Mike McKillip, City Engineer; Kent Barker, Police Chief; Aquilla Hurd-Ravich, Senior Planner; Doug Rux, Community Development Director; Nancy McDonald, Human Resources Director; Carina Christensen, Assistant to the City Manager; and Maureen Smith, Recording Secretary

The special work session was called to order at 5:00 p.m. at the Operations Center.

1. ANNOUNCEMENTS

Operations Director Dan Boss gave a brief update on the parking lot project and gave a brief tour of the lot and what's been happening at Operations.

Community Development Director Doug Rux gave a brief update on the Herman Road project.

2. ITEMS DISCUSSED

A. *Strategic Management Plan*

City Manager Sherilyn Lombos gave a brief update and distributed the Strategic Management Plan.

The Plan includes the proposed long-term five year goals done by the Council at their retreat. A progress report of the Plan on the performance objectives was reviewed which is broken into categories that include: *completed, underway, ongoing* and *not started*.

Councilor Harris mentioned Objective 1.8 and has spoken with officials at the recent Clackamas County Coordinating Committee (C4) C4 retreat, and that it could be a possible project that could be accomplished as there is money available and if other jurisdictions are interested. Mayor Ogden cautioned before asking for follow through, with the amount of funding that may be involved and staff time, Council should make sure what it really involves before giving an assignment to staff

On Objective 2.1, Complete the Town Center Plan, Mayor Ogden commented on his continued interest in redevelopment being located by the river, and is a big issue for him. Mr. Rux explained that buildings would not be able to be up against the river, what with setbacks, etc. It was still an interest expressed by Mayor Ogden to have the redevelopment as close to the river as possible.

Ms. Lombos continued the review of the objectives that are currently underway.

Councilor Harris mentioned the issue of "meth" use that had been brought before Council a few years back and whether it is continuing its widespread use. Councilor Maddux said meth use is down as opposed to a few years ago. It is still a problem but not to the extent it was.

Councilor Barhyte said as councilor he would like to see the Police Department's Community Response Unit (CRU), in place that was able to work on these types of issues with the community. Police Chief Barker explained the unit has not been up and running for three years due to staffing issues, and those officers were needed elsewhere. Ways to enhance recruitment efforts were mentioned and what it would take to get the CRU going again. Ms. Lombos said this is a discussion for the upcoming budget process.

Councilor Maddux left the meeting (telephonically at this point)

Ms. Lombos continued with review of the ongoing objectives, and distributed a new budget calendar. The budget process will be starting soon and the point of tonight's discussion on the work plan feeds into the budget process. Mayor Ogden asked staff what would be a workable methodology of when to revisit this work plan, a "check in" type of process. Ms. Lombos said as items are brought up there will be conversations with Council about work load, etc., and that it is really an ongoing process.

B. Metro's Strategies for a Sustainable and Prosperous Region

City Manager Lombos said Metro released their report, a 700+ page document, with comments due by October 15, 2009. Ms. Lombos distributed the report, which focuses on six attributes, in particular "suburbia". Discussion followed, and Council expressed their views of Metro, and to raise Metro's awareness of cities' real livability issues - people really do want to live in suburbia.

Councilor Harris left at this point in the meeting.

Ms. Lombos reviewed various points made in the Metro document and discussion followed. Staff will return to Council at the October 12, 2009 meeting and present a compilation of Council's comments to present to Metro by the October 15, 2009 deadline.

Senior Planner Aquilla Hurd-Ravich presented a PowerPoint on Metro's "Making the Greatest Place". Strategies for a sustainable and prosperous region were reviewed, 1) Make the most of what we have; 2) Protect our urban growth boundary; and 3) walk our talk. Population forecast was reviewed and the projections for 2050 to 2060 in the three county area. Numbers for employment for the seven county area was also reviewed. Discussion continued on employment figures.

Aspirations and investments were reviewed, and Ms. Lombos said this is part of the City's response to Metro. An "Investing in Great Places" matrix created by Metro was reviewed, which included a matrix for Town Centers, Corridors, and Employment.

The next focus was Urban and Rural Reserves. Discussion on how Metro arrived at their calculations, and the seven factors used to determine the dwelling units in the reserves areas. This is another issue that will be brought back before Council at the next meeting to forward comments on to Metro, providing a specific map, and coordination with Sherwood.

C. *Regional Transportation Plan Update*

City Engineer Mike McKillip presented a PowerPoint on the Regional Transportation Plan (RTP) and how it ties into Metro's "Making the Greatest Place" sustainable and prosperous region. Vibrant communities, economic prosperity, safe and reliable transportation, leadership on climate change, clean air and water, and equity

Strategies for a sustainable and prosperous region include: make the most of what we have; protect our urban growth boundary; walk our talk; make transportation investments that increase safe, affordable and convenient travel options for everyone and help the region's businesses and industry remain competitive

Mr. McKillip reviewed the six RTP components; 1) regional street design; 2) regional streets and throughways system; 3) regional transit system; 4) regional bicycle system; 5) regional pedestrian system; 6) regional freight system. Mobility corridors are looking at the entire regional area, not only at freeway but parallel facilities/connections.

Next steps of the plan were reviewed, with the public comment period ending on October 10, 2009, to consideration of a final adoption of the RTP by ordinance June, 2010.

Brief discussion on "connectivity" in Tualatin. The northern arterial out, and consider alternative alignments, 124th Avenue improvements, with five lanes at \$82 million also in the plan. Discussion followed and it was noted Tualatin was asked by Tigard on thoughts regarding the Hall Boulevard extension.

Discussion concluded.

3. EXECUTIVE SESSION

None.

4. ADJOURNMENT

The special work session adjourned at 8:30 p.m.

Sherilyn Lombos, City Manager

Recording Secretary 

Staff Report: CHANGE ORDER NO. 2 TO THE TUALATIN INTERSTATE 5/
NYBERG INTERCHANGE LANDSCAPE PROJECT

October 26, 2009

Page 2 of 2

The added bark mulch and silt fencing will address additional erosion control measures required by ODOT, DEQ, Clean Water Services, and the City of Tualatin.

OUTCOMES OF DECISION

The referenced changes to the scope of work are either already completed or are in the process of being completed. They were all necessary to keep the project moving and avoid delays.

FINANCIAL IMPLICATIONS:

Funds are available in the Road Operating/Utility Fund 016-0000-641-70-08.

Attachment: Change Order No. 2

CHANGE ORDER NO. 2

TO THE CONTRACT DOCUMENTS FOR CONSTRUCTION
OF TUALATIN INTERSTATE 5 / NYBERG INTERCHANGE
LANDSCAPE IMPROVEMENTS

Change Order No. 2 modifies the agreement by and between Crown Landscape, Inc., hereinafter referred to as Contractor, and the City of Tualatin, hereinafter referred to as Owner, for the construction of the Tualatin Interstate 5/Nyberg Interchange landscape improvements, to the extent described below:

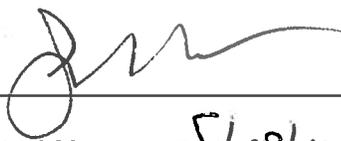
CL-002 - It is agreed that Owner will be charged \$22,725.00 by Contractor for additional erosion control measures, incorporated into the project:

ITEM NO.	ITEM DESCRIPTION	UNIT OF MEASURE	PRICE
1	Install two-inch depth of bark mulch in all shrub beds to aid in erosion control.	Lump sum for labor and materials	\$21,600.00
2	Install 500 lineal feet of additional silt fence to aid in erosion control.	Lump sum for labor and materials	1,125.00
CL-002 TOTAL			\$22,725.00

The total for unanticipated changes in the scope of work is \$22,725.00, bringing the contract amount for the project to \$341,554.56. Except as herein modified, the terms of the contract between the City of Tualatin and Crown Landscape, Inc., shall remain in full force and effect.

Dated this 26th day of October, 2009.

CROWN LANDSCAPE, INC.

By 

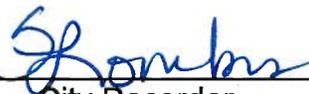
Printed Name Stephen Marcus

Title: President

CITY OF TUALATIN

By 

Mayor

ATTEST 
City Recorder



STAFF REPORT

CITY OF TUALATIN

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

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Paul Hennon, Community Services Director *Paul Hennon*
Becky Savino, Program Coordinator *Becky Savino*

DATE: October 26, 2009

SUBJECT: FISCAL YEAR 2008/2009 PARKS SYSTEM DEVELOPMENT CHARGE (SDC) ANNUAL REPORT

ISSUE BEFORE THE COUNCIL:

The Council will review the FY 2008/2009 Parks System Development Charge (Parks SDC) report and consider staff recommendations.

RECOMMENDATION:

- Staff respectfully recommends that Council accept the attached report including the recommendation that the Community Services Director continue to monitor issues that may arise and review their impact on the Parks SDC legislation or fee, and update the Parks and Recreation Master Plan as soon as is practical.
- No changes to the SDC ordinance or Park SDC methods, procedures, or fees are recommended at this time.

EXECUTIVE SUMMARY:

- Council established the current Parks SDC by adopting Ordinance 833-91 in 1991. The attached report fulfills the requirement of ORS 223.311 to provide an annual accounting of the Parks SDC and to recommend any changes to the SDC ordinance.
- In FY 2008/2009, \$4,753.66 was collected, including \$4,459.00 in Parks SDC fees and \$294.66 in interest. No credits or installment payments were authorized.
- Expenditures on qualified parks system improvements totaled \$41,077.14. The specific improvements are listed on page 2 of the attached report.

FINANCIAL IMPLICATIONS:

The Parks SDC beginning fund balance, revenues and expenditures are budgeted in the Park Development Fund (Fund 36).

Attachments: Report

PARKS SYSTEM DEVELOPMENT CHARGE (Parks SDC) ANNUAL REPORT FY 08/09

Introduction

The Parks System Development Charge (Parks SDC) consists of an “improvement fee” that covers the cost of new capacity to meet the demands of new development, based on adopted standards and a capital improvement list. The Parks SDC does not include a “reimbursement fee” since the park system does not include any excess capacity that would be used by new development. The fee is charged per new residential dwelling unit.

Council approved the original Parks SDC in 1984 by adoption of Ordinance 655-84. In 1989 the Legislature enacted House Bill 3224 requiring local governments to meet specific statutory requirements and that system development charges be based upon past and future capital improvements to the system for which it is being collected. In 1991, Council adopted Ordinance 833-91 to repeal the original ordinance and bring the City in compliance with ORS 223.297 through 223.314 (System Development Charges). The fee established in the new ordinance went into effect on July 1, 1991.

In January 2004, Council authorized two actions affecting the Parks SDC. First, by adoption of Resolution 4192-04, the 1991 fee was adjusted to present value by applying an adjustment factor consisting of indexes for both land and construction. The second action taken by Council in January 2004, by adoption of Ordinance 1154-04, was to establish an annual adjustment factor indexing both land and construction costs to enable the Parks SDC to have the purchasing power to pay for park projects it is intended to fund. These changes have been incorporated into the Tualatin Municipal Code, Chapter 2-6, System Development Charges.

Purpose

The purpose of this report is to fulfill the requirements of ORS 223.311, which requires an annual accounting of Park SDC's be performed, and to recommend any changes in the Parks SDC as adopted by the City of Tualatin.

Revenue

During the period covered by this report (July 1, 2008 to June 30, 2009), the City of Tualatin collected \$4,753.66 in Parks SDC fees and interest on the fee income (\$4,459.00 in fees and \$294.66 in interest).

Credits

No credits were authorized.

Installment Payment Agreements

No installment payment agreements were authorized.

Expenditures

Parks SDC funds were used in the following projects in FY 08/09.

<u>Project Description</u>	<u>Parks SDC Amount</u>
1. Ki-a-Kuts Bicycle and Pedestrian Bridge	5,358.00
2. Recreation Facilities Feasibility Study	11,315.36
3. Tualatin River Greenway Land Acquisition: VanRijn property	3,590.78
4. Jurgens Park Fencing	4,170.00
5. Reimbursement to General Fund	16,643.00
Total Expenditures	41,077.14

Recommendation

It is recommended the Community Services Director continue to monitor issues that may arise and review their impact on the Parks SDC legislation or fee, and update the Parks and Recreation Master Plan as soon as is practical.

No changes to the methodology, procedures, or fees for the Parks SDC are recommended at this time.



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

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Michael A. McKillip, City Engineer *MAK*

DATE: October 26, 2009

SUBJECT: FISCAL YEAR 2008/2009 WATER SYSTEM DEVELOPMENT CHARGE (SDC) REPORT

ISSUE BEFORE THE COUNCIL:

In 1991, Ordinance 833-91 established the System Development Charge (SDC) for connection to the City's water system. The attached report fulfills the requirement of ORS 223.311 to give an annual accounting of the SDC and to recommend any changes to the City's water SDC ordinance.

RECOMMENDATION:

It is recommended the Council accept the attached report. No change to methods, procedures, or fees is recommended at this time.

EXECUTIVE SUMMARY:

- In FY 08/09, the amount of water SDCs collected was \$173,674.00.
- These funds, along with prior years SDCs, were used for water system improvements and capital projects totaling \$2,509,656.29.

FINANCIAL IMPLICATIONS:

This revenue and the capital project expenses are reflected in the FY 09/10 Budget in the Water/SDC Fund #32 beginning balance.

Attachments: Report

FISCAL YEAR 2008/2009

WATER SYSTEM DEVELOPMENT CHARGE (SDC) REPORT

Introduction

In 1991, the City of Tualatin adopted Ordinance 833-91, which established a System Development Charge (SDC) for connection to the City of Tualatin water system. This SDC fee was based on projected needs of the system and the portion of the system's projected needs that were attributable to growth in the City which placed an additional demand on the water system.

Purpose

The purpose of this report is to fulfill the requirements of ORS 223.311, which requires an annual accounting of SDCs to be performed, and to recommend any changes in the water SDC as adopted by the City of Tualatin.

Revenue

During the period of this report (July 1, 2008 to June 30, 2009) the City of Tualatin collected \$173,674.00 in water SDC fees in accordance with Ordinance 833-91. Interest earned on the SDC fees was \$1,995.29. These fees were collected by meter sizes as shown:

Meter Size	No. of Meters	Total SDC Collected
3/4" x 5/8"	6	\$ 18,623.00
1"	14	\$ 108,374.00
1-1/2"	3	\$ 46,677.00
2"	0	\$ 0
3"	0	\$ 0
4"	0	\$ 0
Totals	23	\$ 173,674.00

Credits

No applications for credit were received towards the payment of water SDC in fiscal year 2008/2009.

Expenditures

The water SDC fees were determined by the ordinance methodology and retained in the Water/SDC Fund. Any unspent funds are available to be used on projects in the next fiscal year and will become part of the beginning fund balance.

Projects funded in fiscal year 2008/2009 by the water SDC revenues were as follows:

Project		SDC Amount
WD0401	ASR Production Well	\$ 1,536,197.70
WD0801	12" Crossing at Norwood Rd/I-5	\$ 511,291.93
WD0802	Norwood Pump Station	\$ 248,215.85
WD0901	C2 Reservoir (Frobase Rd)	\$ 35,130.41
WD0903	12" Line in 124th Ave	\$ 178,820.40
Total		\$ 2,509,656.29

Recommendation

It is recommended the Council accept this report and have the City Engineer continue to monitor issues that may arise and review their impact on the water SDC fees. No change to methods, procedures or fees as outlined in Ordinance 833-91 is recommended at this time.



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

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Michael A. McKillip, City Engineer *MAK*
Mike Darby, Engineering Technician II *MD*

DATE: October 26, 2009

SUBJECT: RESOLUTION ACCEPTING PUBLIC IMPROVEMENTS
FOR TACO BELL

ISSUE BEFORE THE COUNCIL:

Acceptance of public improvements constructed in association with the Taco Bell redesign project, located at 17873 SW McEwan Road.

RECOMMENDATION:

Staff recommends that the Council adopt the attached resolution approving and accepting the constructed public improvements.

EXECUTIVE SUMMARY:

All public improvements were constructed as part of the Taco Bell Redesign project. The improvements constructed were installation of sanitary sewer, storm lines, curb, and sidewalk improvements. These were done as required by AR 07-17 issued on September 17, 2007, and have been satisfactorily completed.

FINANCIAL IMPLICATIONS:

There are minor impacts on utility funds as a result of this work. Costs to be paid by ratepayers.

Attachments: A. Resolution

RESOLUTION NO. 4937-09

RESOLUTION ACCEPTING PUBLIC IMPROVEMENTS
CONSTRUCTED IN ASSOCIATION WITH TACO BELL

WHEREAS the City of Tualatin, hereinafter referred to as CITY, issued Andrew Dugas, of Taco Bell, hereinafter referred to as DEVELOPER, Public Works Construction Permit No. 08-10 to construct public improvements consisting of the installation of sanitary sewer, storm lines, curb, and sidewalk improvements association with Taco Bell, said improvements being required by the Public Facilities Decision issued on September 17, 2007; and

WHEREAS DEVELOPER has constructed said required public improvements to standards required by CITY, and now desires to have CITY accept said improvements; and

WHEREAS CITY staff has inspected and recommends approval and acceptance of all public improvements; and

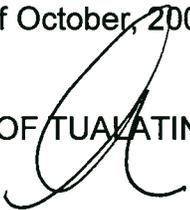
WHEREAS it is in the public interest that CITY accept said improvements.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The subject improvements are hereby approved and accepted by the CITY.

INTRODUCED AND ADOPTED this 26th day of October, 2009.

CITY OF TUALATIN, OREGON

By 

Mayor

ATTEST

By 

City Recorder



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

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Brenda Braden, City Attorney *BB*

DATE: October 26, 2009

SUBJECT: A RESOLUTION GRANTING THE REQUEST FOR A SIGN VARIANCE FOR DICK'S SPORTING GOODS STORE IN THE GENERAL COMMERCIAL (CG) PLANNING DISTRICT AT 17799 SW LOWER BOONES FERRY ROAD (TAX MAP 21E18BC, TAX LOT 1001)(SVAR-09-01)

ISSUE BEFORE THE COUNCIL:

The Council will consider a resolution that would grant a sign variance to Dick's Sporting Goods Store in the General Commercial (CG) Planning District at 17799 SW Lower Boones Ferry Road.

RECOMMENDATION:

Staff recommends that the City Council approve the resolution granting SVAR-09-01.

EXECUTIVE SUMMARY:

On October 12, 2009 the Council held a quasi-judicial public hearing on SVAR-09-01 to decide whether to grant a sign variance to the Dick's Sporting Goods. At the conclusion of the public hearing, the Council approved the request by a vote of 6-0 with Mayor Ogden absent, and directed Staff to bring back a resolution granting SVAR-09-01 with the following conditions:

The application for a sign variance submitted by Dick's shall be granted on the condition that Dick's and the property owner of Tax Lot 1001 forego placing other wall signs and any new additional monument and/or freestanding signs on Tax Lot 1001. This condition shall bind Dick's, the property owner and shall run with the land.

Attachments: A. Findings and Analysis
B. Resolution

RESOLUTION NO. 4938-09

A RESOLUTION GRANTING THE REQUEST FOR A SIGN VARIANCE FOR DICK'S SPORTING GOODS STORE IN THE GENERAL COMMERCIAL (CG) PLANNING DISTRICT AT 17799 SW LOWER BOONES FERRY ROAD (TAX MAP 21E18BC, TAX LOT1001) (SVAR-09-01)

WHEREAS upon the application by Dick's Sporting Goods (DSG), a quasi-judicial public hearing was held before the Tualatin City Council on October 12, 2009 relating to the request for a sign variance; and

WHEREAS notice of public hearing by posting a copy of the notice in two public and conspicuous places within the City on September 18, 2009, which is evidenced by the Affidavit of Posting marked "Exhibit A:" and by mailing a copy of this notice under the Tualatin Community Plan on September 18, 2009, which is evidenced by the Affidavit of Mailing marked "Exhibit B", attached and incorporated by this reference; and

WHEREAS the Committee heard and considered the testimony and evidence presented on behalf of the applicant, the City staff, and those appearing at the public hearing; and

WHEREAS after the conclusion of the quasi-judicial public hearing the Council voted the grant the request for a sign variance, [Vote 6-0, with Mayor Ogden absent]; and

WHEREAS based upon the evidence and testimony heard and considered by the Council, the Council makes, enters, and adopts its findings of fact the findings, marked "Exhibit C," attached and incorporated by reference; and

WHEREAS based upon the foregoing Findings of Fact, the Council finds that the legal requirements for a sign variance set forth in the Tualatin Development Code have been satisfied.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

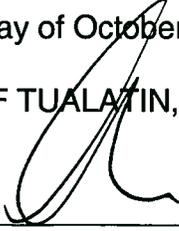
Section 1. The sign variance submitted by Dick's Sporting Goods is granted on the following conditions:

1. The maximum approved letter height for the Dick's sign is 6 feet;
2. Dick's shall not have wall signage on the other 3 sides of the building;
3. Dick's shall not have any new additional monument and/or freestanding signs on Tax Lot 1001.

4. These conditions shall bind Dick's, the property owner and shall run with the land.

INTRODUCED AND ADOPTED this 26th day of October, 2009.

CITY OF TUALATIN, Oregon

By  _____
Mayor

ATTEST:

By  _____
City Recorder

APPROVED AS TO LEGAL FORM


CITY ATTORNEY

ITEMS REFERRED TO AS EXHIBITS IN THE FOREGOING RESOLUTION ARE ATTACHED TO THE ORIGINAL. THEY HAVE BEEN OMITTED FROM THE COUNCIL PACKET AS A CONSERVATION MEASURE. IF THESE EXHIBITS NEED TO BE EXAMINED, PLEASE CONTACT THE CITY RECORDER.

AFFIDAVIT OF POSTING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

I, Stacy Crawford, being first duly sworn, depose and say:

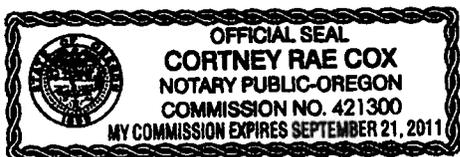
That at the request of Sherilyn Lombos, City Recorder for the City of Tualatin, Oregon; that I posted two copies of the Notice of Hearing on the 18th day of September, 2009, a copy of which Notice is attached hereto; and that I posted said copies in two public and conspicuous places within the City, to wit:

1. City of Tualatin Police Department
2. City of Tualatin City Center Building

Dated this 18th day of September 2009.

Stacy Crawford
Stacy Crawford

Subscribed and sworn to before me this 18th day of September, 2009.



Cortney Rae Cox
Notary Public for Oregon
My Commission expires: 9/21/2011

RE: SVAR-09-01—SIGN VARIANCE FOR DICK'S SPORTING GOODS IN THE GENERAL COMMERCIAL (CG) PLANNING DISTRICT AT 17799 SW LOWER BOONES FERRY ROAD (TAX MAP 21E18BC, TAX LOT 1001)

EXHIBIT A



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at **7:00 p.m., Monday, October 12, 2009**, at the Council Building, 18880 SW Martinazzi Avenue, to consider:

SVAR-09-01—SIGN VARIANCE FOR DICK'S SPORTING GOODS IN THE GENERAL COMMERCIAL (CG) PLANNING DISTRICT AT 17799 SW LOWER BOONES FERRY ROAD (TAX MAP 21E18BC, TAX LOT 1001)

In reviewing the sign variance the City Council must find that:

- (1) A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district, and the conditions are a result of lot size or shape or topography over which the applicant or owner has no control;
- (2) The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances or from the financial situation of the applicant or owner or the company, or from regional economic condition;
- (3) The variance is the minimum remedy necessary to eliminate the hardship;
- (4) The variance is necessary for the preservation of a property right of the owner substantially the same as is possessed by owners of other property in the same planning district, however, nonconforming or illegal signs on the subject property or on nearby properties shall not constitute justification to support a variance request;
- (5) The variance shall not be detrimental to the general public health, safety and welfare, and not be injurious to properties or improvements in the vicinity;
- (6) The variance shall not be detrimental to the applicable Sign Design Objectives, TDC 20.030.

All citizens are invited to attend and be heard upon the application. Failure of an issue to be raised in the hearing, in person, or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the State Land Use Board of Appeals (LUBA) based on that issue. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court.

Individuals wishing to comment may do so in writing to the Planning Division prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings are commenced with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing.

Copies of the applications, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at the City Library and Planning Division at least seven days prior to the hearing, and will be provided at reasonable cost. For information contact **William Harper, Associate Planner, at (503) 691-3027**. This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

AFFIDAVIT OF MAILING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

I, Stacy Crawford, being first duly sworn, depose and say:

That on the 18th day of September, 2009, I served upon the persons shown on Exhibit "A," attached hereto and by this reference incorporated herein, a copy of a Notice of Hearing marked Exhibit "B," attached hereto and by this reference incorporated herein, by mailing to them a true and correct copy of the original hereof. I further certify that the addresses shown on said Exhibit "A" are their regular addresses as determined from the books and records of the Washington County and/or Clackamas County Departments of Assessment and Taxation Tax Rolls, and that said envelopes were placed in the United States Mail at Tualatin, Oregon, with postage fully prepared thereon.

Stacy Crawford
Stacy Crawford

SUBSCRIBED AND SWORN to before me this 18th day of Sept., 2009.



Cortney Rae Cox
Notary Public for Oregon
My commission expires: 9/21/2008

RE: SVAR-09-01—SIGN VARIANCE FOR DICK'S SPORTING GOODS IN THE GENERAL COMMERCIAL (CG) PLANNING DISTRICT AT 17799 SW LOWER BOONES FERRY ROAD (TAX MAP 21E18BC, TAX LOT 1001)

EXHIBIT B

Exhibit "A"

2S113AD 00300
Fahey Investment LLC
17605 SW 65th
Tualatin, OR 97062

2S113AD 00400
Golden Key LLC
309 10th St
Lake Oswego, OR 97034

2S113AD 00700
6700 Bradbury LLC
6700 SW Bradbury Ct
Portland, OR 97224

2S113AD 01100
Marquardt Investments LLC
6870 NW Helvetia Rd
Hillsboro, OR 97124

2S113AD 00600
South Lake Center LLC
PO Box 529
Eugene, OR 97440

2S113DA 00100
Orwa Pioneer LLC
8320 NE Highway 99
Vancouver, WA 98665

2S113AD 00601
South Lake Center LLC
PO Box 2609
Carlsbad, CA 92018

21E18BC00400
Norman Harrison
17540 SW 63rd Ave
Lake Oswego, OR 97035

21E18BC00500 & 00800
James Berrey LLC
6305 Rosewood St Suite D
Lake Oswego, OR 97035

21E18BC00700 & 01000
Berrey Properties
6305 Rosewood St Suite D
Lake Oswego, OR 97035

21E18BC01103
Berrey Properties LLC
6305 Rosewood St Suite D
Lake Oswego, OR 97035

21E18BC01104
Safeway Inc
1371 Oakland Blvd #200
Walnut Creek, CA 94596

21E18CB00400
Fardanesh Enterprises LLC
6155 SW Seymour St
Portland, OR 97221

21E18CB00600
Hansen Trust-Lake Oswego LLC
Walgreen CO 9625
PO Box 901
Deerfield, IL 60015

21E18CB00701
Pliska Investments LLC
PO Box 607
Gresham, OR 97030

21E18CB01900
Berrey Properties LLC
6305 Rosewood St Suite D
Lake Oswego, OR 97035

21E18BC00301
Stephen Berrey Trust
6305 Rosewood St Suite D
Lake Oswego, OR 97035

21E18BC01001
Madrona Watumull LLC
210 SW Morrison St Suite 600
Portland, OR 97204



City of Tualatin

www.ci.tualatin.or.us

Exhibit "B"

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at **7:00 p.m., Monday, October 12, 2009**, at the Council Building, 18880 SW Martinazzi Avenue, to consider:

SVAR-09-01—SIGN VARIANCE FOR DICK'S SPORTING GOODS IN THE GENERAL COMMERCIAL (CG) PLANNING DISTRICT AT 17799 SW LOWER BOONES FERRY ROAD (TAX MAP 21E18BC, TAX LOT 1001)

In reviewing the sign variance the City Council must find that:

- (1) A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district, and the conditions are a result of lot size or shape or topography over which the applicant or owner has no control.;
- (2) The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances or from the financial situation of the applicant or owner or the company, or from regional economic condition;
- (3) The variance is the minimum remedy necessary to eliminate the hardship;
- (4) The variance is necessary for the preservation of a property right of the owner substantially the same as is possessed by owners of other property in the same planning district, however, nonconforming or illegal signs on the subject property or on nearby properties shall not constitute justification to support a variance request;
- (5) The variance shall not be detrimental to the general public health, safety and welfare, and not be injurious to properties or improvements in the vicinity;
- (6) The variance shall not be detrimental to the applicable Sign Design Objectives, TDC 20.030.

All citizens are invited to attend and be heard upon the application. Failure of an issue to be raised in the hearing, in person, or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the State Land Use Board of Appeals (LUBA) based on that issue. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court.

Individuals wishing to comment may do so in writing to the Planning Division prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings are commenced with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing.

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CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

COUNCIL FINDINGS GRANTING A SIGN VARIANCE FOR DICK'S SPORTING GOODS STORE IN THE GENERAL COMMERCIAL (CG) PLANNING DISTRICT AT 17799 SW LOWER BOONES FERRY ROAD (TAX MAP 21E18BC, TAX LOT1001) (SVAR-09-01)

1. Dick's Sporting Goods ("Dick's") is located at 17700 SW Lower Boones Ferry Road, Tualatin, Oregon (Tax Map 21E18BC, Tax Lot 1001.)
2. Dick's lot is an interior lot that is surrounded by dense landscaping and foliage, at the rear of the lot with two large restaurants and other buildings adjacent that block its visibility from Lower Boones Ferry Road and is lower topographically than the I-5 corridor located nearby.
3. In the CG planning district, a building of Dick's size is allowed to have a sign on the front of the building with letters 4' high and 150 square feet in area. It would also allow wall signs on three other walls and a single freestanding monument sign on the SW 65th Avenue frontage of the property. If the DSG center is designated as its own Major Commercial Center (MCC), a MCC freestanding monument or pole sign with increased sign height and sign face area is allowed.
4. Dick's believes that one sign on the front wall of its building with letters 6' high and 156 square feet in area will afford greater visibility to its site than having multiple smaller signs on the sides of its building and/or on a freestanding monument or pole sign and is willing to forego the allowed wall signs and any new freestanding monument or pole signs.
5. TDC 33.022(1) requires a showing of a hardship that is created by exceptional or extraordinary conditions that apply to the subject property that do not apply generally to other properties in the same planning district, and the conditions are a result of lot size or shape or topography over which the applicant or owner has no control.

Dick's interior location, the dense landscaping on adjacent lots, the location of the other buildings and topography of I-5 uniquely create a hardship regarding signage for this particular lot that do not apply generally to other properties in the same planning district. Therefore, Criterion (1) above is met.

6. TDC 33.022(2) requires that the hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances or from the financial situation of the applicant or owner or the company, or from regional economic conditions.

The location of the landscaping, other buildings, the topography associated with I-5, that taken as a whole, that create the hardship related to signage for Dick's are not the result of Dick's, the owner or previous owner's actions, nor do they relate to the

financial situation of the applicant, owner or company, or to regional economic conditions. Therefore Criterion (2) is met.

7. TDC 33.022(3) requires that the variance be the minimum remedy necessary to eliminate the hardship.

Dick's request is to increase the letters size from 4' to 6' and the area from 150 to 156 square feet and is agreeing to forego the three additional wall signs and monument or pole sign if the variance is granted. The Council finds that the request is the minimum remedy necessary to eliminate the hardship on this property with the condition that Dick's foregoes the three additional wall signs and the monument and/or pole sign. Therefore, Criterion 3 is met.

8. TDC 33.022(4) requires a showing that the variance is necessary for the preservation of a property right of the owner substantially the same as is possessed by owners of other property in the same planning district, however, nonconforming or illegal signs on the subject property or on nearby properties shall not constitute justification to support a variance request.

The Tualatin Development Code provides standards for signs to allow businesses to identify their properties. Because of the unique issues impacting this site, this variance is necessary to allow Dick's to have appropriate signage for its property. Therefore, Criterion 4 is met.

9. TDC 33.022(5) provides that the variance shall not be detrimental to the general public health, safety and welfare, and not be injurious to properties or improvements in the vicinity.

The variance would increase the size of the sign by a mere 6' in area, which will not affect the public or injure other properties in the area. By foregoing the additional allowed wall and monument or free-standing size and thereby minimize sign clutter in the area, the public safety and welfare will be enhanced by allowing the variance. Therefore, Criterion 5 is met.

10. TDC 33.022(6) requires that the variance not be detrimental to the applicable Sign Design Objectives, TDC 20.030.

The Sign Design Objectives provide that the City should balance visual aesthetics of signs with the need for signs that are large and visible enough to clearly and effectively identify a business or use, allow flexibility in sign design and dimension, and allow a variance to the letter height and sign area to have an appropriately scaled front façade sign. Given the large front façade on Dick's building, the slightly larger letters and area will effectively identify the business and will be appropriately scaled for the size of the façade. Therefore, Criterion 6 is met.

COUNCIL CONCLUSION:

The application for a sign variance submitted by Dick's shall be granted on the following conditions:

1. The maximum approved letter height for the Dick's sign is 6 feet;
2. Dick's shall not have wall signage on the other 3 sides of the building;
3. Dick's shall not have any new additional monument and/or freestanding signs on Tax Lot 1001.
4. These conditions shall bind Dick's, the property owner and shall run with the land.



STAFF REPORT

CITY OF TUALATIN

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

TO: Honorable Mayor and Members of the City Council
THROUGH: Sherilyn Lombos, City Manager *SL*
FROM: Maureen Smith, Executive Assistant *MS*
DATE: October 26, 2009
SUBJECT: COMMUNITY INVOLVEMENT COMMITTEE APPOINTMENTS

ISSUE BEFORE THE COUNCIL:

The City Council approve appointments to various Advisory Committees and Boards.

RECOMMENDATION:

Staff recommends the City Council approve the Community Involvement Committee recommendations and appoint the below listed individuals.

EXECUTIVE SUMMARY:

On October 5, 2009, the Community Involvement Committee met and interviewed citizens interested in participating on City Committees and Boards. The Committee recommends appointing the following individuals:

Individual	Committee/Board	Term
Marge Congress	Library Advisory Committee	Full term ending 10/31/12
Mike Riley	Planning Advisory Committee	Partial term ending 08/31/12

FINANCIAL IMPLICATIONS:

Not applicable.



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

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Doug Rux, Community Development Director *DR*
Colin Cortes, Assistant Planner *C.C.*

DATE: October 26, 2009

SUBJECT: AN ORDINANCE EXTENDING THE APPROVAL PERIODS OF CERTAIN ARCHITECTURAL REVIEW DECISIONS, AND AMENDING TDC 73.056 (PTA-09-06)

ISSUE BEFORE THE COUNCIL:

The issue before the City Council is a request for a Plan Text Amendment, PTA-09-06, to amend the Tualatin Development Code (TDC), Section 73.056 to provide for extension of all architectural reviews (ARs) that the City issued on or after January 1, 2007 through June 30, 2009 to a date certain, December 31, 2012.

RECOMMENDATION:

There is no TPAC recommendation because the committee failed to attain a quorum during its meetings on September 10 and October 8, 2009. TPAC members present on September 10 did discuss setting an earlier extension date of December 31, 2011, but reached no agreement.

Staff recommends that the Council consider the staff report and supporting attachments and provide direction.

EXECUTIVE SUMMARY:

- This matter is a land use action requiring a legislative public hearing.
- This matter is a Plan Text Amendment (PTA) to the Tualatin Development Code (TDC).
- The request is to amend the Tualatin Development Code (TDC), Section 73.056 to provide for extension of all architectural reviews (ARs) that the City issued on or after January 1, 2007 through June 30, 2009 to a date certain, December 31, 2012, when most would agree the national economic recession will have ended.

- TDC 73.056 establishes the time limit of approval for an architectural review (AR). In the normal course of events, an AR approval is good for a year with allowance for up to one extension of six months upon written request prior to expiration. The amendment would extend all ARs within the aforementioned time period regardless of whether or not staff has already granted individual extensions. An affected AR would not be eligible for a six-month extension following the date certain. Refer to Attachment E for the amending text in ordinance form.
- AR is an application process by which the City reviews site development and redevelopment in order to foster public health, safety, and welfare.
- AR includes a review of on-site improvements, primarily within the purview of the Planning Division, and of improvements that connect to and affect public facilities such as streets and sanitary and storm sewers, primarily within the purview of the Engineering Division.
- The applicant is the City.
- The Oregon State Legislature declined to legislate any extension of land use approvals during the 2009 regular session.
- The City Council held a work session on July 27, 2009 and directed staff to prepare draft language that would encompass ARs issued on or after January 1, 2007 through June 30, 2009 to a date certain, preferably December 31, 2012.
- The amendment affects 59 issued ARs. Of these, 41 are constructed or under construction, and one (1) was withdrawn by the applicant, leaving 17 that either expired or are at risk of expiration.
- The 59 ARs are AR-06-22, AR-06-24 through 27, all 2007 and 2008 ARs, and AR-09-01 through 03. Attachment C lists the full 59 ARs that the amendment extends and Attachment D lists the 17 ARs that expired or are at risk of expiration. By the time of the City Council public hearing on October 26, 2009, eight (8) of these 17 ARs will have expired.
- Of the 17 ARs that expired or are at risk of expiration, all projects but one are commercial or industrial in use. The exception is Alexan Bridgeport, which is a mixed-use project containing a residential component.
- By granting an extension, the City would allow applicants to remain subject to land use regulations in effect during the issuance date; would not require applicants to comply with present or future land use regulations or regulatory changes by the City or other agencies; and would prevent the City from mandating compliance with newly amended or enacted regulations.
- Clean Water Services (CWS), the sewer and stormwater agency for Washington County, updates its regulations every few years and last updated them in 2007. These regulations have direct effect on the review of all local land use applications. Extending land use approvals would be complicated because it would likely necessitate a case-by-case determination of what applications would require re-review by staff and CWS. CWS placed conditions of approval on many of these applications based on regulations in effect at the time.
- The primary interest of the HBA was in residential projects, of which Tualatin has had few in recent years because the majority of the City's planning area is composed of both non-residential lands and already developed residential lands.

- Of all the land use applications processed in 2007 through mid-2009 that expired or were close to expiring, only two were residential subdivision applications. SB-06-01 Amberstone and SB-06-02 Heather Ridge, which staff approved in late 2006 and that expired in late 2008, were included in the land use table presented during the July 27 Council work session. The Council expressed that because the City approved the applications well before the onset of the national economic recession, extension would not relate to the aim of helping developers.
- Because the amendment is a legislative action, the 120-day rule codified in Oregon Revised Statutes (ORS) 227.178(2) is not applicable.
- The applicable local policies and regulations that apply to PTA-09-06 are in TDC Section 1.032 Amendments "Burden of Proof."
- Before granting the proposed PTA, the City Council must find that the application meets the plan amendment criteria listed in TDC 1.032. The Analysis and Findings section of this report (Attachment B) examines the application.
- In summary, some issued land use applications dating from 2007 through mid-2009 are expired or at risk of expiring, and the majority of these are ARs. However, those ARs already granted one six-month extension each can now rely only on issued building permits to remain valid. There is no guarantee that the applicants will reach construction given current economic conditions, and their applications may increase the number of expired ARs as extended expiration dates come and go in the following months.

OUTCOMES OF DECISION:

Approval of the PTA request would result in the following:

1. The 59 architectural reviews (ARs) issued on or after January 1, 2007 through June 30, 2009 are given an extension to a date certain, December 31, 2012.
2. Clean Water Services (CWS) would likely urge applicants to comply voluntarily with newly amended or enacted CWS regulations.
3. The City allows applicants more time to weather the recession and greater chance to meet their investment-backed expectations by building approved projects.
4. The City maintains its perception of being reasonably accommodating to developers.

Denial of the PMA request would result in the following:

1. Status quo remains.
2. Several ARs remain or become expired, even with individual extensions.
3. To become approved again, expired ARs would go through re-review and would comply with newly amended or enacted City and agency regulations.
4. Some expired ARs might never be re-approved and built, and this would aggravate the local effects of the national recession.

ALTERNATIVES TO RECOMMENDATION:

The alternatives to the staff recommendation for the Council are:

- Recommend approval of the PTA with alterations.

PTA-09-06 ATTACHMENT A:

BACKGROUND

The subject land use application is City-initiated plan text amendment PTA-09-06 requesting extension of expiration dates for all architectural review (AR) approvals issued on or after January 1, 2007 through June 30, 2009 to a date certain, December 31, 2012, when most would agree the national economic recession will have ended.

The amendment would amend Tualatin Development Code (TDC) 73.056. Attachment E is the proposed amending text in draft ordinance form.

Attachment B contains the analysis and findings demonstrating how the PTA meets the approval criteria of Tualatin Development Code (TDC) Section 1.032.

Attachments C and D respectively tabulate all affected ARs and those ARs that expired or are at risk of expiration.

PTA-09-06 ATTACHMENT B:

ANALYSIS AND FINDINGS

The approval criteria of the Tualatin Development Code (TDC), Section 1.032, must be met if the proposed PTA is to be granted. The plan amendment criteria are addressed below:

1. Granting the amendment is in the public interest.

The national economic recession that officially began in December 2007 affects the regional and local real estate market. More than the number in any of the years prior to 2007, several architectural review (AR) approvals issued from 2007 through mid-2009 are expired or will expire soon. The amendment is in the public interest because it maintains economic development within the city by sustaining development and redevelopment projects. Allowing expiration of AR approvals of these projects would preclude them or, if the applicants remained motivated and financially capable, necessitate payment of fees for re-review of projects and the spending of time and third-party expenses to comply with AR. In the context of recession, greater individual occurrences of expired projects cumulatively would aggravate the local effects of the recession because of less business activity and less employment.

Granting the amendment is in the public interest. Criterion "A" is met.

2. The public interest is best protected by granting the amendment at this time.

As examined for Criterion A, in the context of recession, greater individual occurrences of expired projects cumulatively at this time would aggravate the local effects of the recession because of less business activity and less employment. It remains uncertain when the recession will end, and so the present is the best time for the amendment. Granting the amendment sends a signal to applicants that despite the recession, the City is helping applicants to meet their investment-backed expectations as much as is feasible. The timeframe of the amendment is also long enough that one could reasonably expect it extends past the end of the recession.

Granting the amendment at this time best protects the public interest.

3. The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.

There is no directly applicable objective of the Tualatin Community Plan. However, to put the amendment in context, the amendment covers a type of land use decision – architectural review (AR) – that covers site design and development review. AR

implements and comes after future land use and zoning designations and related regulations, combined as “planning districts,” defined in the in the Tualatin Development Code (TDC). The amendment does not affect or otherwise interfere with the comprehensive plan for the City or its land use planning in general. Because the TDC incorporates the Tualatin Community Plan, an amendment of TDC 73.056 – the section establishing time limits on AR approval – requires a plan amendment. However, the proposed amendment is more akin to a revision of a land development regulation than an amendment to a comprehensive plan and so is best viewed within this context.

The proposed amendment conforms with the objectives of the Tualatin Community Plan. Criterion “C” is met.

4. The following factors were consciously considered:

The various characteristics of the areas in the City.

The factor is not relevant to the proposed amendment because it does not affect any planning district designation or related regulation.

The suitability of the areas for particular land uses and improvements in the areas.

The factor is not relevant to the proposed amendment because it does not affect any planning district designation or related regulation.

Trends in land improvement and development.

Taking the national economic recession and its local effects as a trend, the amendment acknowledges and accommodates this trend by attempting to counteract the additional strain on local business activity posed by the expiration of greater than usual numbers of approved projects.

The needs of economic enterprises and the future development of the area.

The amendment directly accommodates the needs of economic enterprises by attempting to counteract the additional strain on local business activity posed by the expiration of greater than usual numbers of approved projects.

Needed right-of-way and access for and to particular sites in the area.

The proposed amendment has no relation to any particular planning district and needed rights-of-way or access.

Natural resources of the City and the protection and conservation of said resources.

The proposed amendment does not interfere with protection and conservation of natural resources at a land use level. At the site development review level, projects approved through architectural review (AR) addressed the issue.

The amendment could affect natural resources indirectly. The amendment would allow projects with extended approval periods to comply with land use regulations in effect on the date of issuance without having to comply with regulations taking effect after that date. Agencies amend land use regulations every few years, and Clean Water Services (CWS) is an agency that amends its regulations frequently, last updated them in 2007, and has land use authority in conjunction with the City over AR projects. The agency is the stormwater and sewer agency for Washington County and has authority within all of the City. Because the agency has the power to enforce regulations of the Environmental Protection Agency (EPA), environmental protection is a prime mission. If the amendment is granted, CWS would likely urge applicants to comply voluntarily with new and amended regulations. It would likely necessitate a case-by-case determination of what applications would require re-review by staff and CWS. CWS placed conditions of approval on many of these applications based on regulations in effect at the time. However, whether applications remain subject to original or newly amended or enacted regulations, CWS regulations will continue to protect and conserve natural resources.

Prospective requirements for the development of natural resources in the City.

The consideration of the previous factor applies here also.

And the public need for healthful, safe, aesthetic surroundings and conditions.

Granting the amendment would not interfere with provision of healthful, safe, aesthetic surroundings and conditions for the public. Staff approved the subject projects through AR, which addresses this factor. The amendment is limited to extension of approval periods.

Proof of change in a neighborhood or area

Neither the applicant nor staff assert proof of change in a neighborhood or area.

Mistake in the Plan Text or Plan Map.

Neither the applicant nor staff assert a mistake in the Plan Text or Plan Map.

5. The criteria in the Tigard-Tualatin School District Facility Plan for school facility capacity have been considered when evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

Because the amendment does not relate to residential use, the criterion is not applicable.

6. Granting the amendment is consistent with the applicable State of Oregon Planning Goals and applicable Oregon Administrative Rules.

Of the 19 statewide planning goals, staff determined that none of the goals are applicable.

While Goal 9 appears applicable – to provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens – the amendment is not directly related to the meaning of the goal, which is land use planning and zoning that allows for diversified economic enterprises. The amendment is limited to sustaining projects approved through AR and does not affect or interfere with local land use planning that supports economic diversification.

Additionally, the Oregon State Legislature declined to extend of land use approvals during the 2009 regular session.

7. Granting the amendment is consistent with the Metropolitan Service District' s Urban Growth Management Functional Plan.

The Urban Growth Management Functional Plan (UGMFP), codified in Metro Code 3.07, neither precludes the amendment nor regulates how a local government extends land use approvals. The criterion is met.

8. Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's planning area.

Because the amendment does not related to vehicle trip generation at a land use level, the criterion is not applicable.

PTA-09-06 ATTACHMENT C:

TABLE OF ALL ARs TO BE EXTENDED

The amendment covers all 59 ARs issued on or after January 1, 2007 through June 30, 2009, tabulated below, though 41 of the 59 are constructed or under construction and one was withdrawn by the applicant. Attachment D tabulates the remaining 17 ARs that are expired or at risk of expiration.

AR No.	Project	Expiration Date (Issuance + 1 Yr)	Extension Inquiry or Request
AR06-22	Oil Can Henry's	1/23/2008	n/a: constructed / in const
AR06-24	Providence Bridgeport Health Ctr	2/9/2008	n/a: constructed / in const
AR06-25	Famous Dave's [BBQ Restaurant]	5/7/2008	n/a: constructed / in const
AR06-26	LPFK Laser & Engineering	3/5/2008	n/a: constructed / in const
AR06-27	Tualatin Library	3/9/2008	n/a: constructed / in const
AR07-01	Albina Pipe Bending Expansion	3/15/2008	n/a: constructed / in const
AR07-02	Brockway	6/07/2008; 1/07/2009	Requested 4/28/2008; no permit issuance; expired
AR07-03	TriMet commuter rail (WES) station	9/28/2008	n/a: constructed / in const
AR07-04	Meridian Park Radiation Oncology Ctr add	3/21/2008	n/a: constructed / in const
AR07-05	Franklin Business Park Bldg E	5/1/2008	n/a: constructed / in const
AR07-06	Columbia Roofing	5/15/2008	n/a: constructed / in const
AR07-07	Cricket attached wireless antennae	5/23/2008	n/a: constructed / in const
AR07-08	Haulaway Storage	5/25/2008	n/a: constructed / in const
AR07-09	Meridian Business Ctr/Park Bldgs E&F	7/20/2008	n/a: constructed / in const
AR07-10	Tualatin Mini-Storage	6/8/2008	n/a: constructed / in const
AR07-11	Phight Campus	5/25/2008; 11/25/2008	Requested 4/16/2008; partially under construction
AR07-12	JC Ventures	7/10/2008; 1/10/2009	Requested date unk; under construction
AR07-13	Clearwire attached antennae	7/16/2008	n/a: constructed / in const
AR07-14	Shoppes at Bridgeport	8/10/2008	n/a: constructed / in const
AR07-15	Pacific Truck Colors	8/29/2008	n/a: constructed / in const
AR07-16	CEC North Shop add	8/8/2008	no; no permit issuance not constructed; expired
AR07-17	Taco Bell remodel	9/17/2008	n/a: constructed / in const
AR07-18	Arby's remodel	9/10/2008	n/a: constructed / in const
AR07-19	Kai office add	9/13/2008	n/a: constructed / in const
AR07-20	ASR production well pump	10/8/2008	n/a: constructed / in const

PTA-09-06 ATTACHMENT C: ANALYSIS AND FINDINGS

October 26, 2009

Page 2 of 3

AR No.	Project	Expiration Date (Issuance + 1 Yr)	Extension Inquiry or Request
AR07-21	Leveton Business Park Bldgs 1, 4, & 6	10/9/2008	no; not constructed; expired, though app resubmitted
AR07-22	JC Motors add	10/19/2008	n/a: constructed / in const
AR07-23	Clearwire co-location	11/2/2008	n/a: constructed / in const
AR07-24	Murphy Industrial Supply add	11/5/2008	n/a: constructed / in const
AR07-25	China Palace remodel	1/3/2009	n/a: constructed / in const
AR07-26	Ops master plan expansion	8/8/2009	n/a: constructed / in const
AR07-27	Tualatin / Allstar Storage Bldg G remodel	1/29/2009	n/a: constructed / in const
AR07-28	Martinazzi Sq Starbucks	2/8/2009	n/a: constructed / in const
AR07-29	Trammel Crow Industrial Itel Site	2/29/2009	n/a: constructed / in const
AR08-01	Miller-Zimmerly	3/14/2009; 9/14/2009	Request 2/25/2009
AR08-02	IDM - Itel Corp. Ctr	4/16/2009; 10/16/2009	Request 2/26/2009
AR08-03	PacTrust - McLane Foods	n/a	n/a: w/drawn 3/18/2008
AR08-04	CWS Community Park Pump Station	6/2/2009	n/a: constructed / in const
AR08-05	Living Savior Lutheran Church addition	5/23/2009	n/a: constructed / in const
AR08-06	Lightspeed addition	5/20/2009	n/a: constructed / in const
AR08-07	Clearwire	5/19/2009	n/a: constructed / in const
AR08-08	Pacific Coast Fruit	6/13/2009; 12/13/2009	Request 6/05/2009
AR08-09	Alexan Bridgeport	7/10/2009; 1/10/2010	Request 6/17/2009
AR08-10	Tualatin Business Park / Walgraeve	7/3/2009; 1/3/2010	Request 6/26/2009
AR08-11	Horizon C&S - Sagert St play canopy	7/1/2009	n/a: constructed / in const
AR08-12	Robinson Crossing 1 & 2	9/16/2009	n/a: constructed / in const
AR08-13	Mutual Materials	8/14/2009; 2/14/2010	Request 5/21/2009
AR08-14	MEI Bldg façade	9/24/2009	no: no bldg permit app
AR08-15	Western Wood Structures assembly and warehousing bldg (WW I)	9/17/2009	no: no bldg permit app
AR08-16	Norwood pump station	10/22/2009	no: no bldg permit app
AR08-17	T-Mobile WCF 112th/Helenius	11/17/2009	no: no bldg permit app

PTA-09-06 ATTACHMENT C: ANALYSIS AND FINDINGS

October 26, 2009

Page 3 of 3

AR No.	Project	Expiration Date (Issuance + 1 Yr)	Extension Inquiry or Request
AR08-18	Western Wood Structures shed (WW II)	11/3/2009	no: no bldg permit app
AR08-19	Meridian Business Park Bldgs G & H	1/20/2010	no: no bldg permit app
AR08-20	Panda Express	1/13/2010	n/a: constructed / in const
AR08-21	Norwood WCF	11/19/2009	n/a: constructed / in const
AR08-22	Schulz-Clearwater outdoor storage	1/13/2010	n/a: constructed / in const
AR09-01	TVF&R Station 34 expansion	3/4/2010	no: no bldg permit app
AR09-02	Koch / PacTrust mass grading, tree removal	3/4/2010	n/a: constructed / in const
AR09-03	Coho Ct Prof Bldg ext remodel	6/25/2010	n/a: in bldg permit review

PTA-09-06 ATTACHMENT D:

TABLE OF EXPIRED OR EXPIRING ARs

The amendment covers all 59 ARs issued on or after January 1, 2007 through June 30, 2009. The table below excerpts those 17 ARs from the table in Attachment C that expired or are at risk of expiring because there are not yet issued building permits that allow construction. By the time of the City Council public hearing on October 26, 2009, eight (8) of these 17 ARs will have expired.

AR No.	Project	Expiration Date	Extension Request
AR07-02	Brockway	6/07/2008; ext. 1/07/2009	Requested 4/28/2008; no permit issuance; expired
AR07-16	CEC North Shop addition	8/8/2007	No request; no permits; not constructed; expired
AR07-21	Leveton Business Park Bldgs 1, 4, & 6	10/9/2007	No; not constructed; expired, though app resubmitted
AR08-01	Miller-Zimmerly	3/14/2009; ext. 9/14/2009	Request 2/25/2009
AR08-02	IDM - Intel Corp. Ctr	4/16/2009; ext. 10/16/2009	Request 2/26/2009
AR08-08	Pacific Coast Fruit	6/13/2009; ext. 12/13/2009	Request 6/05/2009
AR08-09	Alexan Bridgeport	7/10/2009; ext. 1/10/2010	Request 6/17/2009
AR08-10	Tualatin Business Center / Park / Walgraeve Property	7/3/2009; ext. 1/3/2010	Request 6/26/2009
AR08-13	Mutual Materials	8/14/2009; ext. 2/14/2010	Request 5/21/2009
AR08-14	MEI Bldg façade	9/24/2009	no: no bldg permit app
AR08-15	Western Wood Structures assembly and warehousing bldg (WW I)	9/17/2009	no: no bldg permit app
AR08-16	Norwood pump station	10/22/2009	no: no bldg permit app
AR08-17	T-Mobile WCF 112th/Helenius	11/17/2009	no: no bldg permit app

PMA-09-02 ATTACHMENT D: TABLE OF EXPIRED OR EXPIRING ARs

October 26, 2009

Page 2 of 2

AR No.	Project	Expiration Date	Extension Request
AR08-18	Western Wood Structures shed (WW II)	11/3/2009	no: no bldg permit app
AR08-19	Meridian Business Park Bldgs G & H	1/20/2010	no: no bldg permit app
AR09-01	TVF&R Station 34 expansion	3/4/2010	no: no bldg permit app
AR09-03	Coho Ct Prof Bldg ext remodel	6/25/2010	n/a: in bldg permit review

The amendment includes these ARs and all other ARs issued on or after January 1, 2007 through June 30, 2009, that is, 65 ARs: AR-06-22, AR-06-24 through 27 (5 for 2006), all 2007 and 2008 ARs (29 for 2007 and 28 for 2008), and AR-09-01 through 03 (3 for 2009).

- Recommend denial of the PTA.
- Recommend continuance of the PTA and return to the matter at a later date.

FINANCIAL IMPLICATIONS:

The FY 2009/20 budget accounts for the cost of City-initiated land use applications.

PUBLIC INVOLVEMENT:

Staff has discussed the proposal with various applicants whose ARs are going to expire and on October 6, 2009 mailed a courtesy letter with an enclosed notice of public hearing to applicants whose ARs are expired or expiring as tabulated in Attachment D. Various applicants have expressed support.

- Attachments:**
- A. Background
 - B. Analysis and Findings
 - C. Table of All ARs to Be Extended
 - D. Table of Expired or Expiring ARs
 - E. Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE EXTENDING THE APPROVAL PERIODS OF CERTAIN ARCHITECTURAL REVIEW DECISIONS, AND AMENDING TDC 73.056 (PTA-09-06)

WHEREAS upon the application of the City of Tualatin Community Development Department, a public hearing was held before the Tualatin City Council on October 26, 2009 relating to extending the approval periods of issued architectural reviews (ARs) that the city issued on or after January 1, 2007 through June 30, 2009 to a date certain, December 31, 2012 and amending TDC 73.056 (PTA 09-06); and

WHEREAS notice of public hearing was given as required under the Tualatin Community Plan by publication in The Times, a newspaper of general circulation within the City which is evidenced by the Affidavit of Publication marked "Exhibit A," attached and incorporated by this reference; by posting a copy of the notice in two public and conspicuous places within the City, which is evidenced by the Affidavit of Posting, marked "Exhibit B," attached and incorporated by this reference; and

WHEREAS the Tualatin City Council conducted a public hearing on October 26, 2009, and heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing the Tualatin City Council vote resulted in approval of the application by a vote of _-_; and

WHEREAS based upon the evidence and testimony heard and considered by the Tualatin City Council and especially the City staff report, the Tualatin City Council makes and adopts as its Findings of Fact the findings and analysis in the staff report dated October 26, 2009, which are incorporated by this reference, and;

WHEREAS based upon the foregoing Findings of Fact, the Tualatin City Council finds that it is in the best interest of the residents and inhabitants of the City and the public; the public interest will be served by adopting the amendment at this time; and the amendment conforms with the Tualatin Community Plan; and therefore, the Tualatin Development Code should be amended.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC 73.056 is amended to read:

Architectural Review approvals shall be void after one year unless:

(1) A building, or grading permit submitted in conjunction with a building permit application, has been issued and substantial construction under the permit has

taken place and an inspection performed by a member of the Building Division;
or

(2) An extension is requested by the applicant of the Architectural Review and approved by the Community Development Director and City Engineer. Before approving an extension the Community Development Director and City Engineer shall find that there have been no significant changes in any ordinances, standards, regulations or other conditions affecting the previously approved project so as to warrant its resubmittal. The following conditions shall also apply:

(a) An extension request shall be submitted prior to the initial one year expiration, and

(b) No more than one 6-month extension shall be granted for a project receiving Architectural Review approval; or

(3) The Architectural Review approval was granted on or after January 1, 2007 through June 30, 2009. In those cases approval shall be extended to December 31, 2012. Such approval shall not be eligible for extension under TDC 73.056(2). This subsection (3) shall terminate on January 2, 2013, without further action of the City Council.

INTRODUCED AND ADOPTED THIS 26th day of October 2009.

CITY OF TUALATIN, Oregon

BY _____
Mayor

ATTEST:

BY _____
City Recorder

APPROVED AS TO LEGAL FORM

Brenda L. Braden
CITY ATTORNEY

ITEMS REFERRED TO AS EXHIBITS IN THE FOREGOING ORDINANCE ARE ATTACHED TO THE ORIGINAL. THEY HAVE BEEN OMITTED FROM THE COUNCIL PACKET AS A CONSERVATION MEASURE. IF THESE EXHIBITS NEED TO BE EXAMINED, PLEASE CONTACT THE CITY RECORDER.

ORDINANCE NO. 1291-09

AN ORDINANCE EXTENDING THE APPROVAL PERIODS OF CERTAIN ARCHITECTURAL REVIEW DECISIONS, AND AMENDING TDC 73.056 (PTA-09-06)

WHEREAS upon the application of the City of Tualatin Community Development Department, a public hearing was held before the Tualatin City Council on October 26, 2009 relating to extending the approval periods of issued architectural reviews (ARs) that the city issued on or after January 1, 2007 through June 30, 2009 to a date certain, December 31, 2012 and amending TDC 73.056 (PTA 09-06); and

WHEREAS notice of public hearing was given as required under the Tualatin Community Plan by publication in The Times, a newspaper of general circulation within the City which is evidenced by the Affidavit of Publication marked "Exhibit A," attached and incorporated by this reference; by posting a copy of the notice in two public and conspicuous places within the City, which is evidenced by the Affidavit of Posting, marked "Exhibit B," attached and incorporated by this reference; and

WHEREAS the Tualatin City Council conducted a public hearing on October 26, 2009, and heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing the Tualatin City Council vote resulted in approval of the application by a vote of 5-0 with Councilors Maddux and Davis absent; and

WHEREAS based upon the evidence and testimony heard and considered by the Tualatin City Council and especially the City staff report, the Tualatin City Council makes and adopts as its Findings of Fact the findings and analysis in the staff report dated October 26, 2009, which are incorporated by this reference, and;

WHEREAS based upon the foregoing Findings of Fact, the Tualatin City Council finds that it is in the best interest of the residents and inhabitants of the City and the public; the public interest will be served by adopting the amendment at this time; and the amendment conforms with the Tualatin Community Plan; and therefore, the Tualatin Development Code should be amended.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC 73.056 is amended to read:

Architectural Review approvals shall be void after one year unless:

(1) A building, or grading permit submitted in conjunction with a building permit application, has been issued and substantial construction under the permit has

taken place and an inspection performed by a member of the Building Division;
or

(2) An extension is requested by the applicant of the Architectural Review and approved by the Community Development Director and City Engineer. Before approving an extension the Community Development Director and City Engineer shall find that there have been no significant changes in any ordinances, standards, regulations or other conditions affecting the previously approved project so as to warrant its resubmittal. The following conditions shall also apply:

(a) An extension request shall be submitted prior to the initial one year expiration, and

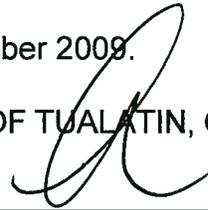
(b) No more than one 6-month extension shall be granted for a project receiving Architectural Review approval; or

(3) The Architectural Review approval was granted on or after January 1, 2007 through June 30, 2009. In those cases approval shall be extended to December 31, 2012. Such approval shall not be eligible for extension under TDC 73.056(2). This subsection (3) shall terminate on January 2, 2013, without further action of the City Council.

INTRODUCED AND ADOPTED THIS 26th day of October 2009.

CITY OF TUALATIN, Oregon

BY



Mayor

ATTEST:

BY



City Recorder

APPROVED AS TO LEGAL FORM



CITY ATTORNEY



6605 SE Lake Road, Portland, OR 97222 • PO Box 22109 Portland OR 97269-2109
 Phone: 503-684-0360 Fax: 503-820-3433
 Email: legals@commnewspapers.com

AFFIDAVIT OF PUBLICATION

State of Oregon, County of Washington, SS I, Charlotte Allsop, being the first duly sworn, depose and say that I am the Accounting Manager of *The Times* (serving Tigard, Tualatin & Sherwood), a newspaper of general circulation, published at Beaverton, in the aforesaid county and state, as defined by ORS 193.010 and 193.020, that

**City of Tualatin
 Notice of Hearing/PTA 09-06
 TT11371**

A copy of which is hereto annexed, was published in the entire issue of said newspaper for

1
 week in the following issue:
October 8, 2009

Charlotte Allsop
 Charlotte Allsop (Accounting Manager)

Subscribed and sworn to before me this
 October 8, 2009.

Rosa A. Buzman
 NOTARY PUBLIC FOR OREGON
 My commission expires

Acct #108462
 Attn: Stacy Crawford
 City of Tualatin
 18880 SW Martinazzi Ave
 Tualatin, OR 97062

Size: 2 x 8
 Amount Due \$144.80*
 *Please remit to address above.

**NOTICE OF HEARING
 CITY OF TUALATIN, OREGON**

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., Monday, October 26, 2009, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

PLAN TEXT AMENDMENT (PTA) 09-06—AN ORDINANCE EXTENDING THE APPROVAL PERIODS OF CERTAIN ARCHITECTURAL REVIEW DECISIONS, AND AMENDING TDC 73.056

Before granting the proposed amendments, the City Council must find that: (1) Granting the amendments is in the public interest; (2) The public interest is best protected by granting the amendments at this time; (3) The proposed amendments are in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan was considered; (6) The amendments are consistent with the Statewide Planning Goals; (7) The amendments are consistent with the Metro Urban Growth Management Functional Plan; and (8) The amendments are consistent with Level of Service F for the PM peak hour and E for the one-half hour before and after the PM peak hour for the Town Center 2040 Design Type and E/E for the rest of the 2040 Design Types in the City's planning area.

Individuals wishing to comment may do so in writing to the Planning Division prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings begin with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court.

Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. **For information contact Colin Cortes at (503) 691-3024.** This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON
 By: Sherilyn Lombos
 City Recorder

Publish 10/08/2009.

TT11371

EXHIBIT A

AFFIDAVIT OF POSTING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

I, Stacy Crawford, being first duly sworn, depose and say:

That at the request of Sherilyn Lombos, City Recorder for the City of Tualatin, Oregon; that I posted two copies of the Notice of Hearing on the 5th day of October, 2009, a copy of which Notice is attached hereto; and that I posted said copies in two public and conspicuous places within the City, to wit:

1. City of Tualatin Police Department
2. City of Tualatin City Center Building

Dated this 5th day of October 2009.

Stacy Crawford
Stacy Crawford

Subscribed and sworn to before me this 6th day of October, 2009.



Linda Kay Odermott
Notary Public for Oregon
My Commission expires: March 30, 2013

RE: PTA-09-06—AN ORDINANCE EXTENDING THE APPROVAL PERIODS OF CERTAIN ARCHITECTURAL REVIEW DECISIONS, AND AMENDING TDC 73.0056

EXHIBIT B



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., Monday, October 26, 2009, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

PLAN TEXT AMENDMENT (PTA) 09-06—AN ORDINANCE EXTENDING THE APPROVAL PERIODS OF CERTAIN ARCHITECTURAL REVIEW DECISIONS, AND AMENDING TDC 73.056

Before granting the proposed amendments, the City Council must find that: (1) Granting the amendments is in the public interest; (2) The public interest is best protected by granting the amendments at this time; (3) The proposed amendments are in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan was considered; (6) The amendments are consistent with the Statewide Planning Goals; (7) The amendments are consistent with the Metro Urban Growth Management Functional Plan; and (8) The amendments are consistent with Level of Service F for the PM peak hour and E for the one-half hour before and after the PM peak hour for the Town Center 2040 Design Type and E/E for the rest of the 2040 Design Types in the City's planning area.

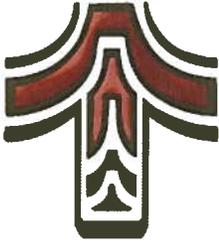
Individuals wishing to comment may do so in writing to the Planning Division prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings begin with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court.

Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. **For information contact Colin Cortes at (503) 691-3024.** This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

NOTICE TO THE TUALATIN TIMES: Please publish in the TUALATIN TIMES on
October 8, 2009



STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Doug Rux, Community Development Director *DR*
William Harper, Associate Planner *WH*

DATE: October 26, 2009

SUBJECT: REQUEST FOR CONTINUANCE—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)

ISSUE BEFORE THE CITY COUNCIL:

Whether the City Council should grant the appellant's request for a second continuance of the public hearing for the appeal of the Community Development Director's Interpretation Decision INT-09-01.

RECOMMENDATION:

Staff recommends that City Council accept the waiver of the 120-day rule for a quasi-judicial action on INT-09-01 (for 60 additional days from the June 23, 2009 Interpretation submittal) submitted by Mr. Stan Sposito (applicant/appellant) and grant Mr. Sposito's request to continue the public hearing for INT-09-01 from October 26, 2009 (1st Continuance) to the November 9, 2009 Council Meeting. Attachment A is a copy of the October 7, 2009 letter from Mr. Sposito regarding the waiver and continuance request.

EXECUTIVE SUMMARY:

- This is a quasi-judicial action that follows the Evidentiary Hearing procedures set forth in TDC 31.077.
- The subject of appeal is INT-09-01 and the Community Development Director's Interpretation dated July 23, 2009 addressing the status of non-conforming uses and auto & truck rental uses on the applicant/appellant's property at 8250 SW Tonka Street.

- The City Council opened a public hearing on INT-09-01 at the September 28, 2009 meeting. At the request of Mr. Sposito and his representatives, the Council continued the public hearing to October 26, 2009. Mr. Sposito agreed at that time to extend the 120-day period for a final decision on the INT-09-01 application.
- On October 7, 2009, Mr. Sposito submitted a letter granting a 60-day extension of the 120-day period for INT-09-01 and requesting a (2nd) continuance to the November 9, 2009 Council meeting date (Attachment A).
- TDC 31.077(7)(n) Quasi-Judicial Evidentiary Hearing Procedures provides for the City Council to "...continue the matter to a date certain." Mr. Sposito has requested a continuance to a November 9, 2009 date.
- The October 26, 2009 date is on the 125th day and the November 9, 2009 date is on the 139th day beginning at the June 23, 2009 submittal date. The 60-day extension granted by Mr. Sposito extends the time period to 180 days and the November 9, 2009 date is on day 139.

Attachments:

- A. Copy of Stan Sposito Letter regarding 120-day waiver and request for continuance; submitted on October 7, 2009

Sposito Family Trust
S. Sposito, Pres.

October 7, 2009

Doug Rux
Community Development
City of Tualatin
18880 SW MARTINAZZI AVE.
TUALATIN , OREGON
97062-7092

CITY OF TUALATIN
RECEIVED

OCT 07 2009

COMMUNITY DEVELOPMENT
PLANNING DIVISION

For The Record:

I hereby waive the 120-day land use decision process and request an extension of not more than 60 days, from June 23, 2009, the date of application. Our appeal was continued from the initial hearing to October 26, 2009 @ 7:00 PM.

We ask the Council to continue the continuation of October 26, 2009 to the November 9th Council Meeting.



Stan Sposito, Property Owner
9250 SW Tonka
Tualatin, OR