



TUALATIN CITY COUNCIL WORK SESSION MINUTES OF NOVEMBER 9, 2009

PRESENT: Mayor Pro tem Chris Barhyte, Councilors Monique Beikman, Joelle Davis, Jay Harris, Donna Maddux, and Ed Truax; Sherilyn Lombos, City Manager; Brenda Braden, City Attorney; Doug Rux, Community Development Director; Don Hudson, Finance Director; Dan Boss, Operations Director; Paul Hennon, Community Services Director; Carina Christensen, Assistant to the City Manager; Eric Underwood, Development Coordinator; Maureen Smith, Recording Secretary

ABSENT: Mayor Lou Ogden* [**denotes excused*]

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

A. CALL TO ORDER

Mayor Pro tem Barhyte called the work session to order at 5:09 p.m. and recessed the work session at 5:09 p.m. Mayor Pro tem Barhyte reopened the work session at 5:10 p.m.

Council reviewed the "Consent Agenda" with no questions or changes.

B. PRESENTATIONS, ANNOUNCEMENTS, SPECIAL REPORTS

1 PGE Franchise Discussion

City Manager Sherilyn Lombos said the City's current franchise with Portland General Electric (PGE) expires soon and staff has been meeting with PGE representatives to renegotiate the franchise agreement.

Mark Fryberg, PGE Government Affairs representative was present and gave a brief background on the negotiations that have taken place. It is proposed to be a ten year agreement, with a ten year extension. A draft of the agreement was arrived at and presented to Council at this meeting. The franchise fee will remain at 3.5% gross revenues. Mr. Fryberg noted besides the City Manager, City Engineer Mike McKillip, City Attorney Brenda Braden, Operations Director Dan Boss, and Finance Director Don Hudson were involved in the negotiations and he believes it is a good agreement. Mr. Fryberg said their committee has endorsed this draft and added City staff was professional, knowledgeable, and easy to work with.

Council said the agreement reads well, and staff did a great job negotiating it. Councilor Harris noted on Page 2 of the agreement, rights granted do not include the right to build, etc. in the rights-of-way. He also asked what about substation or switches, and Mr. Fryberg said if referring to poles, wires, and conduit, it can be addressed. Also mentioned in Section B is whether it should address getting an easement in the City's parks. Operations Director Dan Boss said it had been included previously, and if one is needed it could be done, but is not guaranteed by this franchise agreement. Councilor Harris asked and Mr. Fryberg said he will provide clarification.

Mayor Pro tem Barhyte asked about at what point is the City able to tell other utilities to remove their equipment and Mr. Fryberg said he did not know and is not sure how it works. Mayor Pro tem Barhyte asked staff to check into.

City Manager Lombos said staff will bring a final ordinance for adoption at the November 23, 2009 Council meeting, and thanked Mr. Fryberg for attending the work session.

2. *Municipal Court Update / Peer Court Discussion*

Finance Director Don Hudson and Court Administrator Cortney Cox presented an update on municipal court. Mr. Hudson said the first court session was held in January 2009, and they are here tonight to update Council on how municipal court program is working to date.

Court Administrator Cortney Cox presented information on the court process. Court is held twice a month, with approximately 100 cases on each court docket, with 70-80 appearing. Recently there have been more "not guilty" pleas that before, which may be due to the economic times.. It was asked and answered how the process works when a person pleads "guilty". Court revenues were also explained by Finance Director Hudson, in response to a question from Council.

Court Administrator Cox presented information she has gathered from other jurisdictions that have a peer court. She explained how a first time offender could be referred to "Peer Court", with sanctions ranging from up to 40 hours community service, a written essay, and a written apology to the victim. After the offender completes court required service, they would serve as a "juror" at least one time. Staff time for administration of a peer court typically runs from 20-30 hours per week.

Council President Barhyte said Council had looked into having a peer court approximately six years ago, and what it would take to start a program. Discussion followed and it was explained by Court Administrator Cox how various cities administer their peer courts.

Discussion continued with Council discussing the viability of continuing to pursue a peer court program.

Mayor Pro tem Barhyte summarized the discussion noting that while Council is interested in the peer court program, it is not economically feasible at this time. City Manager Lombos said this can be brought up during budget discussions and will keep it in the loop.

3. *Stafford Basin Urbanization Discussion*

Community Development Director Rux introduced consultant Tom Coffee, who has been working with West Linn on the Stafford area position statement. After reading through the position statement four questions were raised by staff. Mr. Coffee has prepared amendments to help clarify and respond to the comments. Mr. Rux said an Intergovernmental Agreement (IGA) will need to be in place by the middle of December, to have it ready by January 2010.

Council reviewed the four specific comments and proposed amendments and had no changes with expanding the language in 1 and 2. Mr. Coffee reviewed the third comment and there was no issue by Council with 3. On comment #4, Mr. Coffee said he didn't have any amendments for this. Council briefly discussed and made no changes to staff's comments.

Discussion followed and it was mentioned that while opposing the urbanization of the Stafford triangle area, it seems odd to enter into discussions about which jurisdictions will take control of which areas. Mr. Coffee said that even though urbanization is opposed, if it ends up happening we should be ready.

Brief discussion followed. Mr. Coffee said he will make the changes and put in the format as presented and will get the latest version back to Tualatin. He will move on to Lake Oswego and hopes to have something by the November 23, 2009 Council meeting.

4. *Council Communications & Roundtable*

City Manager Lombos began with a discussion on Metro's "Making the Greatest Place." A matrix was presented on the various committees and timelines for the next few months, and Community Development Director Doug Rux said there are key dates in December, and Metro will be adopting by resolution the urban growth report that sets the stage for the issues at hand. Mr. Rux continued review of the timelines over the next few weeks. Brief discussion followed, and Mr. Rux concluded by noting staff will bring an updated version of the matrix to Council periodically for review.

City Manager Lombos said the next issue is a question regarding park rules, and Council's recent concern regarding smoking at a Commons "event." It was noted that Hillsboro has recently banned smoking in their parks, and is one of a growing list of cities to ban smoking in their parks. Discussion followed on how a smoking ban would work in some parks and not in others in Tualatin, and it was suggested it could be during public-sponsored events. City Manager Lombos said the appropriate venue would be to send this issue to the Parks Advisory Committee (TPARK). Council agreed and will wait for comments and review by TPARK on this issue.

City Manager Lombos gave an update on the proposed Aquatics District. Washington County has approved to move forward with the district, and the way is cleared to have a May election. Brief discussion followed on what might happen if the district doesn't pass and whether the Tigard-Tualatin School District has a backup plan to closure of the pools. The issue of a utility fee implementation was again discussed and how it could be accomplished.

Councilor Maddux asked if the funding to outside agencies has been sent and City Manager Lombos said it has been disbursed to the list of agencies. Councilor Maddux also mentioned a meeting she attended regarding "high speed rail."

C. CITIZEN COMMENTS – N/A

D. CONSENT AGENDA

Council reviewed the Consent Agenda at the beginning of the work session with no changes.

E. PUBLIC HEARINGS – *Legislative or Other*
N/A

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

G. GENERAL BUSINESS

None.

H. ITEMS REMOVED FROM CONSENT AGENDA – N/A

I. COMMUNICATIONS FROM COUNCILORS

None.

J. EXECUTIVE SESSION

None.

K. ADJOURNMENT

The work session adjourned at 6:53 p.m.

Sherilyn Lombos, City Manager

Recording Secretary





TUALATIN CITY COUNCIL MEETING MINUTES OF NOVEMBER 9, 2009

PRESENT: Mayor Pro tem Chris Barhyte, Councilors Monique Beikman, Joelle Davis, Jay Harris, Donna Maddux, 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; Eric Underwood, Development Coordinator; Carina Christensen, Assistant to the City Manager, Maureen Smith, Recording Secretary

ABSENT: Mayor Lou Ogden* [** denotes excused*]

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

A. CALL TO ORDER

Mayor Pro tem Barhyte called the meeting to order at 7:01 p.m.

The Pledge of Allegiance was led by Scott Bushnell, brother of Brian Bushnell, Vietnam Veteran during the war .

B. PRESENTATIONS, ANNOUNCEMENTS, SPECIAL REPORTS

1. *VFW Presentation – Proclamation*

Councilor Davis read the proclamation proclaiming “Veterans’ Day November 11, 2009 as “Navy Airman Brian Bushnell in the City of Tualatin.”

Brian Bushnell was declared “Missing in Action” in 1970 during the Vietnam War. His last known address was Tualatin. The National League of POW/MIA families contacted the City of Tualatin to obtain information on Brian, and to complete their compilation of 1,777 missing in action/prisoners of war from the Vietnam War era.

Yvonne Addington, president of the Tualatin Historical Society, found that Brian was raised in Tualatin, and gave a brief background on her research and was able to find information on Brian. In doing so, she located the only remaining family member, brother Scott Bushnell who lives in Washington.

Scott Bushnell was present to accept a plaque honoring his brother Brian, and VFW representative Dale Potts, said it will proudly be displayed in perpetuity at the Tualatin VFW.

2. *Tualatin Youth Advisory Council Update*

Members of the Youth Advisory Council (YAC) were present and gave an update on recent activities and participation, such as their annual Haunted House, and the West Coast Giant Pumpkin Regatta. Four members will also be attending the NLC conference in San Antonio, and thanked Mayor Ogden for his efforts on raising funds for members to be able to attend.

3. *Presentation of Government Finance Officers Association (GFOA) Award*
Finance Director Don Hudson introduced Bernice Bagnall, president of the Oregon Government Finance Officers Association chapter. Ms. Bagnall gave a brief presentation and background on how the award is given. Fewer than 20% are awarded, and of those only 30% are cities. Ms. Bagnall also wanted to thank Council and Finance Director Don Hudson and his staff. Finance Director Hudson said it is the dedication of his whole department and being good stewards of public money.

4. *Commuter Rail Update*
City Manager Lombos gave a brief update on commuter rail issues. The Intergovernmental Agreement (IGA) has finished, and TriMet submitted a request to the Federal Railway Administration (FRA) and are close to making a decision on the waiver. Ms. Lombos noted the article in The Oregonian of Portland & Western opposing the waiver due to safety issues, but Tualatin does not believe it will affect our quiet zone. Currently out with a Request for Proposals (RFP) for safety measures along the rail, and hope to have someone onboard by the end of the year. Construction on safety measures should begin late spring or early summer, with quiet zone in place by December 2010.

5. *Presentation on "Flash Alert News"*
Assistant to the City Manager Carina Christensen gave a brief presentation on "Flash Alert News" and what types of information can be given. Anyone can sign up for the service and can go to www.flashalert.net for more information

C. CITIZEN COMMENTS

Linda Moholt, Tualatin Chamber of Commerce, gave a brief overview and update on what's happening in the community. She noted the 1st annual Regatta Run had 183 participants and are excited to establish a scholarship fund in memory of Tualatin resident Cpl. Matthew Lembke. The annual Chamber Luncheon and Auction is December 3, and all are invited. Also noted the Chamber's "Economic Development Task Force" has been meeting every few weeks as to what the Chamber's role could be when the recession is over.

D. CONSENT CALENDAR

MOTION by Councilor Harris, SECONDED by Councilor Maddux to adopt the Consent Agenda as read:

1. Approval of the Work Session and Meeting Minutes of October 12, 2009 and October 26, 2009

2. Approval of a New Liquor License Application for Blakeslee Vineyards Estate

MOTION CARRIED.

E. PUBLIC HEARINGS – *Legislative or Other*

None.

F. PUBLIC HEARINGS – *Quasi-Judicial*

1. Continued Hearing – 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 from October 26, 2009]

Mayor Pro tem Barhyte reopened the public hearing and noted it was continued from October 26, 2009 (*a public hearing was first held on September 28, 2009 and continued to October 26, 2009*).

Councilor Maddux noted she was not present at the public hearing held on September 28, 2009, however she did view the video of the September 28, 2009 hearing in its entirety.

Associate Planner Will Harper presented the staff report and entered the entire staff report into the record, and noted what was done previously. The appellants agreed to bring additional evidence, particularly truck and auto leasing, found in the A-2 section of staff report and packet materials. Mr. Harper reviewed areas in the staff report and attachments explaining additional information, and referred to the Resolution No. 491-79, passed on October 22, 1979 (*page 236*). Also at the October 26, 2009 meeting the City Attorney offered to review case law (*page 231*), as it relates to nonconforming use and activity.

Staff summarized responses to material in the packet. Staff found that truck and auto rentals were no longer an allowed use prior to 1979 and since 1979. Also after January 10, 2008, United Oregon Rental no longer conducted business on site. Staff finds that there is no continuance of the nonconforming use. Staff presented information at the September 28, 2009 hearing, and asked Council to consider various attachments and provide direction to staff.

Bill Campbell, PO Box 843, Manzanita, OR, representing the appellant, was present and said at the last public hearing there were two questions asked, on providing documentation of the use, and any legal uses.

Greg Jenks, GJ Solutions LLC, Milwaukie, Oregon, representing the appellant, was present and gave an explanation of use, quoting from the Tualatin Development Code (TDC), Chapter 31.060 and said there is no dispute of fact, United Rental has maintained the site.

Mr. Campbell reviewed uses in Chapter 31.060, “business occupant”, and said there were two business activities on the property, one is United Rentals, and the other is the owner, Mr. Sposito, and the Sposito Family Trust. Mr. Sposito acquired the property in 1973, and has been managing the property since then, and will find since 1973, it has had activity on the site.

Mr. Jenks distributed an updated timeline matrix of activity on the site and said there is substantial evidence provided and he believes the property owner has provided a 30-year history of the site. He also read an affidavit signed by Stan Sposito and attorney Gary Bisaccio with their affirmation that the timeline/matrix submitted for the record is true and correct regarding the property.

Mr. Campbell said Exhibits 4 and 5 of the staff report are photo displays of the "Blank Barn", that indicate there was equipment and materials on site. Mr. Campbell gave a rundown of the occupants on the property over the years showing continuity on the site. He also referred to letters from former Planning Director Jim Jacks reviewing what would be allowed on the site and activities. Mr. Campbell also referred to the United Rental catalog on the exclusion of the large equipment. Mr. Campbell then quoted and reviewed some land use case law on nonconforming uses and said he would give the quoted case law to the City Attorney for review.

CONTINUANCE OF COUNCIL QUESTIONS

It was asked and staff affirmed they had an opportunity to review the matrix presented. He also questioned the differing conclusions from the appellant and staff, and Mr. Harper explained how staff arrived at their conclusions.

Councilor Maddux said there has been a lot of previous testimony and reviewed how we arrived to this point. Councilor Harris mentioned the one-year non activity on the site and the quote from the appellant about activity still happening on the site.

Mayor Pro tem Barhyte closed the public hearing.

COUNCIL DELIBERATIONS

Discussion on the appellant having met that activity has taken place prior to October 1979. Discussion followed. Councilor Maddux said Council is only dealing with the Interpretation at this hearing, and said it has been over a year, and even though they had the use before the use would have lapsed. Councilor Davis said one argument that appellant put forward is maintenance provides for use. It was asked if the Development Code read in the same fashion and City Attorney Braden said yes, but noted case law overrules what is in the Development Code. Councilor Truax noted on page 85 of 243 shows receipts, and Councilor Maddux said the last one is from January 2008.

Councilor Barhyte said there is a mechanism for the property owner to come back and request a continuance of the nonconforming use, and that #2 does not appear to be an activity on the site, and with case law.

MOTION by Councilor Maddux, SECONDED by Councilor Beikman to adopt the staff report and attachments and affirm the Community Development Director's July 23, 2009 Interpretation INT-09-01.

Discussion on Motion

Councilor Maddux said she hoped the appellant would come back to apply to reestablish the use.

City Attorney Braden said because of additional findings, asked to bring the resolution back at the next meeting.

Councilor Truax said he is not in support of this and the City ought to look at the bigger picture. Councilor Barhyte said there is a mechanism in place to come back before Council and he doesn't want to set a precedence.

MOTION CARRIED. [Vote: 4-2-1; YES – Barhyte, Beikman, Harris, Maddux; NO – Davis, Truax; Ogden absent]

A break was taken from 8:50 p.m. to 9:00 p.m.

2. Public Hearing to Consider an Ordinance Changing the Planning District Designation from Low-Density Residential (RL) to Medical Center (MC) of Parcels of Land Located on SW Borland Road (21E 19C 1700 & 2000) and Amending the Community Plan Map 9-1 (PMA-09-03)
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Mayor Pro tem Barhyte read language required by legislation before a comprehensive plan or land-use regulation [ORS 197.763(5) and (6)] and opened the public hearing.

Councilor Harris noted he is a neighboring property owner to this application but does not believe it will affect his decision. No bias or ex parte contact noted.

Associate Planner Will Harper presented the staff report and entered the entire staff report into the record. This is for Plan Map Amendment 09-03, and the property is depicted on Attachment A. The proposal initiated by Legacy Health Systems is to follow through on plans the hospital has had to follow through on an expansion. This proposal would match all of the other Meridian Park Hospital land. The Medical Center (MC) Planning District has specific standards. Mr. Harper listed some of the allowed uses inside the MC designation. The staff report reviews the criteria information, traffic impact, impact on Tualatin's housing obligations, trends and developments, and reasons why Legacy is proposing this.

Staff is recommending Council consider the staff report as well as testimony and provide direction.

PROPONENTS

Alyson Anderson, 19300 SW 65th Avenue, Tualatin, chief administrative officer of Legacy Meridian Park Hospital and vice president of Legacy Health Systems, was present and said Meridian Park Medical Center has been proud to serve the community for the last 36 years and they are a not-for-profit health center. The hospital bought the acreage east in 2003, and are asking for the plan text amendment (PMA) in order to be able to expand in the future. A public meeting was held in 2003, and Ms. Anderson has copies of letters sent yearly to the immediate surrounding property owners, exceeding the property notification requirements. There is no requirement to do so, but it has always been their intent to continue to be a good neighbor. The hospital has also made many improvements to the property and have been a good neighbor to the property owners along the site.

Thomasina Gabriele, Gabriele Services, 2424 NW Northup Street, Portland, OR 97210, and Mark Vandehey of Kittleson & Associates, consultants representing the applicant were present. Ms. Gabriele said this is the best piece of property for the campus because it is adjacent to the main facility. It benefits the hospital and the patients that receive care from the hospital. Also, by receiving the services in one place it keeps people from driving to other areas for additional services. She has heard that it would be easier if it was known what the expansion is going to be, but Legacy is not at a point to determine that at this time or when. Ms. Gabriele believes the plan map amendment is in the public interest now as it will provide Legacy Meridian Park Hospital to know they have the land to do an expansion. The City will have certainty as this will be the place where your hospital services will be served, and it would be supporting the largest employer in the city, as well as one of the uses in identified in the Economic Development Plan for economic growth.

Ms. Gabriele said there is an opportunity to be able to have a conditional use for the property, but by proceeding with the plan text amendment the building height will be less in the Medical Center (MC) Planning District than a conditional use permit (CUP).

Linda Moholt, Tualatin Chamber of Commerce CEO, also a neighboring Fox Hills resident, said Legacy Meridian Park Hospital has been such a good neighbor and how much they have meant to the community. Tualatin is a great place to live and work, and Legacy is part of that equation.

OPPONENTS

Mark Majors, 5756 SW Joshua Street, Tualatin, OR, said his property abuts the 20 acres, and he would like Council do whatever it can to keep their property in good order.

Steve Day, 5712 SW Calusa Loop, Tualatin, OR, lives approximately 200 feet from the boundary of the property and said in reviewing the application, Legacy should discuss different aspects of the impact to natural resources. He was looking for sufficiency of statement that there are no natural resources impacted, particularly wetlands. Mr. Day said he attended a meeting a few years back where a consultant spoke that there is no wetlands on the south portion of the property, which he does not believe is an accurate statement. Mr. Day also said another concern is proof of a change to the neighborhood characteristic, Legacy only speaks to changes to the hospital.

Marylee Tolley, 5725 SW Calusa Loop, Tualatin, OR, was present and noted she also sent an e-mail. She understands the hospital has property, and hopes there will be conditions, including buffer, setback, lighting, and saving and maintaining as many trees as possible. She also did not want the three streets adjacent not become through streets, and to cap the maximum building height.

Renee Gunwater (sp?), 5755 SW Natchez, Tualatin, OR, reiterated what has been said, that the access to hospital remain on 65th and the three streets not become through streets.

Todd Allison, 5753 SW Joshua, Tualatin, OR, said it is vital to keep the hospital and not slow progress, and it is the largest employer of the city. He does not however, understand how this has come about with no notion of what will be built and encouraged Council to take their time with this proposal.

A break was taken from 9:39 p.m. to 9:44 p.m.

REBUTTAL

Ms. Gabriele said natural resources information is addressed in the materials submitted. One off-site wetland was identified as indicated on the map. Ms. Gabriele noted the required buffer area and will take that into consideration. The other issue of initial presentation is the hospital is not interested in making any connections to the subdivision local streets, other than a fire safety devices, and not in the hospital's interest to use those local streets being connected in any way. Other issues that were raised could be part of the architectural review (AR) process.

COUNCIL DISCUSSION

Mayor Pro tem Barhyte asked about the change of planning designation and if there is an opportunity to apply conditions and Community Development Director said no. He also asked about the conditional use process (CUP) which puts stringent uses on the applicant, and conditions that can be placed by the Council. The MC district setbacks are ten feet. Community Development Director Rux said a Development Agreement (DA) is another tool that could be done and explained the process. An agreement between the City and Legacy

would address certain parameters and issues would be brought up, details worked out and whatever Council would like to be considered in the agreement.

Community Development Director Rux said staff could work with the applicant on a DA and continue this hearing to sometime in January to allow time to have discussions, if the applicant is willing.

Councilor Harris asked about traffic issues, and assuming the zone change is granted, there would likely be a significant increase in traffic and level of service at the intersection. City Engineer Mike McKillip said staff will be doing a Public Facilities Report that looks at impacts of the development and conditions required, such as where does the traffic go, what directions, and what are the impacts on that, and decide what are the appropriate requirements to mitigate those impacts.

Mark Vandehey, Kittleson & Associates, said a traffic signal would go a long way to solve traffic issues at that particular intersection, and could work out a number of ways to address the transportation issue.

Ms. Gabriele clarified that 250,000 square feet is unlikely to be developed all at one time on the site, and with an already failing intersection. Beginning with the first building there would likely be funding to fix the intersection and the hospital is fine with that particular intersection.

Community Development Director Rux said it could be possible to continue this hearing to January 25, 2010, and if the applicant is willing to extend the 120-day requirement. Ms. Anderson said she would like to work on a DA, etc. instead of requesting an extension, but could continue the hearing to January 25, 2010.

MOTION by Councilor Maddux, SECONDED by Councilor Davis to continue the hearing to January 25, 2010. MOTION CARRIED. [7-0]

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. EXECUTIVE SESSION

Mayor Ogden noted an executive session pursuant to ORS 192.660(2)(h) to discuss current and pending litigation will be held after the regular meeting.

J. COMMUNICATIONS FROM COUNCILORS

None.

K. ADJOURNMENT

MOTION by Councilor Beikman SECONDED by Councilor Davis to adjourn the meeting at 10:14 p.m. MOTION CARRIED.

Sherilyn Lombos, City Manager

Recording Secretary *Maureen Smith*