



City of Tigard

Tigard City Council Meeting Minutes

August 14, 2012

- STUDY SESSION

Mayor Dirksen called the meeting to order at 6:30 p.m.:

| <u>Name</u> | <u>Present</u> | <u>Absent</u> |
|---------------------------|----------------|---------------|
| Mayor Dirksen | ✓ | |
| Council President Buehner | ✓ | |
| Councilor Henderson | ✓ | |
| Councilor Wilson | ✓ | |
| Councilor Woodard | ✓ | |

Staff present: City Manager Wine, Assistant City Manager Newton, Public Works Director Koellermeier, Utility Division Manager Goodrich, City Engineer Stone, Senior Transportation Planner Gray, City Attorney Hall, City Recorder Wheatley

A. Discuss Council Groundrules

Assistant City Manager Newton presented the information on this agenda item. Current groundrules require the council to review the rules in July or August each year. Last summer when Assistant City Manager Newton was serving as City Manager the decision was made to include the groundrules discussion as part of the goal-setting meeting once the new city manager was appointed.

A list of proposed amendments to the groundrules was submitted to the council in February 2012. No action was taken on the list.

Assistant City Manager Newton noted the upcoming election for mayor/council candidates. She proposed a couple of options:

- Time has been set aside on the August 28 meeting for the council to discuss groundrules, or
- Council could discuss groundrules during its goal-setting discussion after the November election.

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Assistant City Manager Newton suggested that if the council would like maximum flexibility regarding the timing of groundrules discussion, the council could revise the groundrules resolution to remove the July/August dates and indicate there would be an annual groundrules review.

Councilor Wilson said he would like to hold a groundrules discussion when new councilors begin their term. An every-other year review is enough. Council President Buehner agreed with Councilor Wilson and Mayor Dirksen noted an every-other year review would coincide with council elections.

Mayor Dirksen advocated that it would be best to have a specific date mentioned in the groundrules regarding the timing of the review. Council President Buehner suggested the date be for every-other year in conjunction with goal setting.

Mayor Dirksen noted that the groundrules could be reviewed at any time, but a specified review date would be important.

Councilor Henderson said he is not in favor of an every-other year review. He would prefer the rules be reviewed on an annual basis as a refresher for council members to reflect on the rules guiding how they should treat one another. He said he currently has seven issues with the groundrules. He said he would favor holding a short session to review the rules. He agrees with others that the current timing for groundrule review is not good and would like to have the review occur when new council members join. He referred to a specific section now in the groundrules that provides that the council will host an event for potential mayor or council candidates regarding what is involved in serving on the council.

Councilor Henderson also referred to problems he perceives with regard to the city charter and a need for further council discussion. There are questions with regard to interpretation and voters' intent.

City Manager Wine said if there are specific issues/sections of the groundrules identified by the council tonight, staff could take that list to set time aside at a future meeting for a more in-depth council discussion.

Councilor Henderson said he would like to have a review of provisions with regard to not only how council members treat each other, but also how the council treats members of the community. He reiterated a desire for an annual groundrules' review and said that a January review would be acceptable. Council President Buehner and Mayor Dirksen suggested the review occur in December when the council reviews its goals and incoming councilors can attend and exiting councilors can assist with the discussions. Councilor Henderson said this was a great idea.

Mayor Dirksen requested that council members give staff a list of issues they would like to discuss with regard to groundrules.

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Councilor Woodard brought an issue forward that needs to be discussed now. He contacted legal counsel on the following statement in the rules:

- Council members, as private citizens, may support political candidates or issues but such activities must be done separate from their role as a council member.

City Attorney Hall noted the above provision is on Page 11 of the current groundrules and there is a similar statement on Page 8:

- Council members may support a person running for office but they must declare this is an individual endorsement and not in their official capacity as council member.

All City Council members indicated they had endorsed candidates. Mayor Dirksen noted this is done around the region with individuals identifying themselves by the positions they hold. Mayor Dirksen suggested the council consider an amendment to the groundrules to allow council members to use their position titles for purposes of identification when endorsing a political position or candidate.

City Attorney Hall acknowledged updated language could be written for council's consideration to indicate endorsements could be made by the mayor and council members (including their title) with it noted that such endorsements were from the individual.

Additional groundrules discussion, with a proposed amendment as noted above, will be before the City Council on August 28, 2012.

Councilor Woodard said he would agree to a once-a-year groundrules review. Mayor Dirksen suggested that each year as the groundrules are brought forward for review, if there are no outstanding issues, the council could agree to simply receive a copy of the groundrules and not necessarily hold a formal discussion.

Track 3:

- B. Briefing on a Draft Cooperative Improvement Agreement (CIA) with Oregon Department of Transportation and Wal-Mart

Engineering Manager McMillan presented the staff report on this item. She referred to the CIA and a map showing the proposed improvements. She said conditions of approval are under review for the project. She reviewed the proposed improvements, which are outlined in the agreement. Wal-Mart representatives are working on obtaining permits; however no permits will be issued until all three parties, Tigard, ODOT, and Wal-Mart have entered into the agreement.

One provision of the agreement is for Wal-Mart to provide medians with landscaping on Highway 99. The City of Tigard will maintain the landscaping.

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Signalization responsibilities are outlined in the agreement.

Engineering Manager McMillan advised the Building Department has completed most of its review required through the permitting process. ODOT will need to issue permits they require before the city will issue any permits. She estimated the earliest date for issuance of permits will be mid-September at the earliest. Council President Buehner requested updates and Engineering Manager McMillan agreed she could provide these when appropriate in the council's weekly mail packet.

Council President Buehner commented that the planned improvements are significant and care must be taken to work with businesses in the area so they can continue to operate during construction. Engineering Manager McMillan said an informal staff task force was assembled by the City Manager and one component of the task force's responsibility is to manage public involvement with Wal-Mart and their consultant(s).

City Manager Wine pointed out the City of Tigard is not the lead agency for this project, but to the extent we can coordinate with the parties during the improvement, we will do that. Wal-Mart will take the lead on public involvement.

In response to a question from Councilor Wilson, Engineering Manager McMillan advised she is fairly certain all right of way needed has already been acquired by Wal-Mart. Council members agreed that staff needs to be accessible and prepared to coordinate issues the public might have regardless of whether or not the city is the lead agency on the project.

In response to a comment by Councilor Henderson, Engineering Manager McMillan explained that as a result of this project, Highway 217 will be widened with one additional lane to Beveland. There will be a bottleneck from Beveland to Dartmouth Avenue on Highway 217 – this project is listed on the Capital Improvement Program (CIP) five-year list. The widening of 217 from Dartmouth to 99W is on the CIP list, but is further out; that is, this segment is not on the five-year list.

Additional transportation improvements underway in this area were discussed briefly.

The CIA is scheduled on Council's Consent Agenda next week; however, it is under review at the Department of Justice and might not be ready by then. Staff will likely move this forward to the next business meeting.

- C. DISCUSS POTENTIAL LIGHT RAIL REFERENDUM (This item removed from Study Session to the Executive Session.)

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D. Administrative Items: City Council and the City Manager reviewed the administrative items.

- City Council members received a transcription of a telephone message from John Schmidt, 10960 SW Fairhaven Street, Tigard, OR regarding his objections to the rehabilitation center for drug and alcohol at 10975 SW Park Street.
- City Council members received a revised resolution for Agenda Item No. 5, Initiate the Transfer of Jurisdiction of Certain County Roads to the City of Tigard. Changes include formatting changes as well as revised wording to describe this segment of road to be transferred:
 - SW 113th Avenue, from Durham Road south to the Tigard city limits...

Original wording was: SW 113th Avenue, south of Durham Road...

- Council Calendar
 - August 21, Tuesday Council and CCDA meeting, 6:30 p.m. Town Hall
 - August 28, Tuesday Council Business Meeting, 6:30 p.m., Town Hall
 - September 3, Monday Labor Day Holiday, City Offices Closed
 - September 4, Tuesday City Center Development Agency, 6:30 p.m. Red Rock Creek Conference Room
 - September 11, Tuesday Council Business Meeting, 6:30 p.m. Town Hall

Mayor Dirksen read the purpose of the Executive Session:

- EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 7:04 p.m. to discuss real property transaction negotiations, exempt public records and consultation with legal counsel regarding potential litigation, under ORS 192.660(2) (e) (f) and (h).

Executive Session concluded at 7:34 p.m. Council met again in Executive Session after the business meeting from 9:37 p.m. to 10:51 p.m.

1. BUSINESS MEETING

A. Mayor Dirksen called the meeting to order at 7:40 p.m.

B. Roll Call

| <u>Name</u> | <u>Present</u> | <u>Absent</u> |
|---------------------------|----------------|---------------|
| Mayor Dirksen | ✓ | |
| Council President Buehner | ✓ | |
| Councilor Henderson | ✓ | |
| Councilor Wilson | ✓ | |
| Councilor Woodard | ✓ | |

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- C. Pledge of Allegiance
- D. Council Communications & Liaison Reports: None.
- E. Call to Council and Staff for Non-Agenda Items: None.

2. CITIZEN COMMUNICATION

- A. Follow-up to Previous Citizen Communication City Manager Wine referred to recent citizen communication received from Myron Robinson, Executive Director of the Portland Poker Players Association. There is interest in reviewing the likelihood of the City of Tigard allowing or regulating social gaming in the city. City Manager Wine reported that she and Mayor Dirksen met with Mr. Robinson and a community restaurant owner. This topic is scheduled for City Council discussion at its September 18, 2012 workshop meeting.
- B. Tigard Area Chamber of Commerce – Chamber CEO Debi Mollahan presented an update on recent and future activities. A copy of her report is on file in the meeting packet.
- C. Citizen Communication

Mayor Dirksen acknowledged persons who signed up to speak on the sign-in sheet for this portion of the agenda. Upon request by the mayor, those who signed in agreed to have one person speak and then if there are additional comments to make, others could address the City Council.

Maria Copelan, 10885 SW Derry Dell Court, Tigard OR 97223 – She reported there is a home adjacent to the backyard of her property that was recently purchased by a couple who have rented the home to a person who runs a “501c3” (non-profit business) called Fairhaven. This is a “clean and sober home.” She said it is a group home for men who have had former addictions.

There are currently three men living in the house. She understands there might be up to five men living there; no permits or notice requirements apply.

She reported these men are in the backyard much of the time and her teenage daughters are very uncomfortable and avoid spending time in their backyard.

The home is within a thousand feet of a preschool, elementary school and a private school. In addition the bus stop for the middle school and high school is adjacent to this property. Ms. Copelan said she has contacted Tigard-Tualatin School District and asked that the bus stop be moved.

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In the month since this home opened, there has been an incredible amount of mischief in her neighborhood. Mail has been stolen (with debris of the mail scattered along Park Street and in Woodard Park). The neighbors have filed police reports. Also, there have been incidents of entries into people's garages – tools were stolen. An RV was trespassed with evidence that someone was smoking in the RV. Ms. Copelan clarified she could not say these activities were done by the residents in this home.

Ms. Copelan presented three questions to the City Council:

1. She understands no application is needed for this facility because it is a group home of five people or less. Is it possible that the zoning laws could be amended so that children foster care or elderly care facilities would not be required to file an application, but homes for men and women who have had addictions should at least be required to inform the neighborhood. Could the zoning be reviewed since the home is so close to school properties and a bus stop?
2. Now that the city knows this facility is at this location, is there any way for the city to monitor? She said she does not know if there is a counselor or a general manager to make sure these men are working on recovery and whether there are outside visitors (former “drug pals”) coming to the site. She said the person sponsoring the facility, John Liebertz, has seven such homes and she said there might be additional homes in the community that no one is aware of.
3. She asked that the city mediate a meeting between the neighbors and Mr. Liebertz. She and the neighbors would like to ask him questions about the operations of the home.

Mayor Dirksen commented that he was impressed that Ms. Copelan has done research into this situation. He advised the City Council has only just become aware of the situation. He acknowledged there are certain types of group homes that do not require any kind of permit or regulation. At present, the council has no way of knowing whether this home meets these requirements or not. The city staff will investigate to determine the circumstances and if there are any legal issues. The mayor advised there are certain types of group homes that cities are not allowed to regulate or limit (Fair Housing).

Mayor Dirksen said in response to Ms. Copelan's first question, if the home does come under the cover of the state law that does not allow cities to regulate, then “no, we cannot change the zoning.”

Mayor Dirksen addressed Ms. Copelan's second question regarding who is monitoring the residents and what are the requirements for such monitoring. He said the city would find out.

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Mayor Dirksen addressed Ms. Copelan’s question about mediation. Typically when these types of group homes are put into place, the city talks with the person who is supervising the facility and work towards establishing a relationship between them and the city (specifically, the Police Department) to make sure everyone is being held to the right standard as a preventative measure.

Mayor Dirksen said the city will look into this matter in greater detail to make sure all the codes and requirements are being followed. When the city learns more, he said he thought Ms. Copelan’s idea of mediation meeting between this home and the neighborhood was an excellent idea. The city will work towards setting this or something like this up.

Mayor Dirksen asked if there were people present who have additional issues to bring up on this matter. In response to a question from a person in the audience, City Manager Wine said staff would immediately look to find out the owner’s name, the operator’s name and the nature of the facility’s use. Ms. Copelan agreed to be the contact person for the neighbors for the city staff to relay information as it is revealed, including whether a mediation or facilitated discussion session could be scheduled. In the past, City Manager Wine said a “Good Neighbor Agreement” was drawn up. Mayor Dirksen commented that this process has been used successfully with similar facilities in neighborhoods in the past. Ms. Copelan noted her appreciation for the proposed follow up.

Mayor Dirksen reviewed the Consent Agenda:

3. CONSENT AGENDA: (Tigard City Council)

A. RECEIVE AND FILE:

1. Council Calendar
2. Tentative Agenda

Motion by Councilor Wilson, seconded by Council President Buehner, to approve the Consent Agenda.

The motion was approved by a unanimous vote of City Council present.

| | |
|---------------------------|-----|
| Mayor Dirksen | Yes |
| Council President Buehner | Yes |
| Councilor Henderson | Yes |
| Councilor Wilson | Yes |
| Councilor Woodard | Yes |

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4. PUBLIC HEARINGS CONTINUED - URBAN FORESTRY CODE REVISIONS LAND USE AND NON LAND USE ELEMENTS - WORKSHOP FORMAT WITH PLANNING COMMISSION AND STAFF (NO PUBLIC TESTIMONY ACCEPTED AT THIS HEARING OR A CONTINUATION HEARING DATE TENTATIVELY SCHEDULED FOR SEPTEMBER 11, 2012. ADDITIONAL PUBLIC TESTIMONY WILL BE ACCEPTED AT ANOTHER CONTINUATION HEARING DATE TENTATIVELY SCHEDULED FOR OCTOBER 23, 2012)

**- URBAN FORESTRY CODE REVISION PROJECT -
COMPREHENSIVE PLAN AMENDMENT (CPA) 2011-00004
DEVELOPMENT CODE AMENDMENT (DCA) 2011-00002**

REQUEST: To implement the city's Comprehensive Plan as recommended by the Urban Forestry Master Plan, the City of Tigard is proposing a Comprehensive Plan Amendment adopting the "Significant Tree Groves" Map and Tigard Development Code (Title 18) Amendments to Chapters 18.115, 18.120, 18.310, 18.330, 18.350, 18.360, 18.370 18.390, 18.530, 18.610, 18.620, 18.630 18.640, 18.715, 18.745, 18.775, 18.790, and 18.798.

(Non Land Use Elements) In addition, in support of the Title 18 amendments, amendments are proposed to the Tigard Municipal Code (TMC) Chapters 1.16, 6.01, 6.02, 7.40, 8.02 through 8.16, 9.06, and 9.08.

LOCATION: Citywide. ZONE: Citywide. APPLICABLE REVIEW CRITERIA: City of Tigard Community Development Code Chapters 18.380 and 18.390; Comprehensive Plan Goals 1, Citizen Involvement; 2, Land Use Planning; 5, Natural Resources; 6, Environmental Quality; 7, Hazards; 8, Parks Recreation, Trails and Open Space; 9, Economic Development; 10, Housing; 11, Public Facilities and Services; 12, Transportation; 13, Energy Conservation; and 14, Urbanization; METRO's Urban Growth Management Functional Plan Titles 1, 3, 12 and 13. Statewide Planning Goals 1, 2, and 5 through 14.

- A. URBAN FORESTRY CODE REVISIONS - DISCUSSION OF LAND USE ELEMENTS
- B. URBAN FORESTRY CODE REVISIONS - DISCUSSION OF NON LAND USE ELEMENTS

Planning Commissioners present: Tom Anderson, Calista Fitzgerald, Jason Rogers, Don Schmidt

- Continuation of public hearing from July 24, 2012. Mayor Dirksen advised that while this is a public hearing and the city encourages the community to be present, no public testimony will be accepted at this hearing or the continuation hearing date tentatively scheduled for September 11. Additional public testimony, based on the council's discussion over the next couple of meetings will be accepted at another continuation hearing date tentatively scheduled for October 23, 2012.

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- *Tentative Schedule for Urban Forestry Code Revisions (copies of following schedule were available at the entrance to Town Hall for public):*

| Meeting Date | Meeting Type | Meeting Purpose |
|---------------------|--|---|
| Aug 14, 2012 | Council Public Hearing (workshop format) (no public testimony) | <ul style="list-style-type: none"> • Staff report summarizing public testimony from July 24th public hearing. • Recommendation from and discussion with Planning Commission; and • Council direction to staff on issues of interest for further study or possible code changes. |
| Sep 11, 2012 | Council Public Hearing (workshop format) (no public testimony) | <ul style="list-style-type: none"> • Interactive staff report on issues of interest; and • Council direction to staff on possible changes. |
| Oct 23, 2012 | Council Public Hearing (public testimony) | <ul style="list-style-type: none"> • Staff report based on council direction from prior meeting; • Public testimony on any changes under consideration; and • Potential council decision on adoption of any changes and entire package. |
| Nov 27, 2012 | Council Public Hearing (public testimony) | <ul style="list-style-type: none"> • Additional meeting in similar format as previous meeting if needed. |

- Associate Planner/Arborist Prager presented the staff report.
 - At the July 24 City Council hearing, a range of testimony was received on both the land use and non land use elements of the proposal. The council provided preliminary feedback to staff. All of this information has been captured and summarized in the meeting materials contained in the council packet.
 - The hearing was continued from July 24 to tonight so the council could have a discussion with the Planning Commission and to direct staff regarding additional issues of interest.
 - Later in the meeting, there will be an opportunity to provide feedback to staff on the issues of interest for further study or possible code changes. These will be discussed in more detail at the September 11 meeting.
 - The preliminary issues of interest, stated at the July 24 meeting, have been compiled into a chart. Those issues were labeled as:

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- (I) Informational – Issues the council asked for more information.
 - (C) Possible code changes.
 - (P) Big picture policy issues – those major policy changes.
 - During the first part of the meeting tonight, there will be an opportunity for discussion with the Planning Commissioners on their recommendation to council regarding the urban forestry code revisions.
 - Mr. Prager suggested the council might want to have a discussion with the commissioners on their perspective relating to issues that came up on July 24, since the Planning Commission wrestled with many of these issues during their hearing process.
 - Mr. Prager commented on the time allowed for tonight’s discussion and City Manager Wine clarified that 60 minutes has been allotted for this discussion. On September 11, there will be an opportunity to have a more detailed discussion on all issues.
 - Mr. Prager said proposed code changes will be brought to the council for its consideration on October 23 and public testimony will be accepted. The September 11 meeting will be a workshop-style discussion.
- Planning Commissioner Schmidt addressed the City Council. He referred to the Planning Commission hearing process on this matter. He said the commission’s goals were to create a recommendation to the council on a balanced plan for consideration. The commission process was lengthy.
 - Mayor Dirksen said he was expecting to hear an overview of what the commission heard during public testimony and whether issues were responded to and addressed satisfactorily in the proposed code.
- Planning Commissioner Schmidt said one of the biggest issues articulated by the development community related to the 40 percent canopy requirement. This requirement was controversial throughout the Citizens Advisory Committee process and Planning Commission discussions. Changes were made to the canopy requirements including alternatives such as preservation and making other options available through a tier system to allow a reduction to the 40 percent requirement.
 - Mayor Dirksen said his understanding of the now-proposed canopy cover requirements include different basic cover requirements depending on housing density. There are other ways to adjust the required canopy cover; i.e., existing trees, street trees, etc.
 - Mayor Dirksen said there was some misunderstanding from people who testified with regard to their belief that the city wanted a 40 percent canopy, on average, for every kind of zoning. The goal is to achieve a 40 percent canopy for the entire city, including park areas that might have 80-90 percent coverage.
- Commissioner Fitzgerald said when the canopy issue came up at the Planning Commission, there was a misunderstanding that was clarified when staff demonstrated how this might be applied to individual properties. She shared how her property would be affected as an example. When street trees were included, it appeared to be quite easy to meet

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the canopy requirement. The 40 percent number is an “overall” number; there is no such percentage requirement for every property.

- Council President Buehner said that street trees are fine, but said you could not grow roses and plants that need a lot of sunlight.
- Council President Buehner said when this issue came up at the City Council two-three years ago, the council was concerned about canopy in parking lots and commercial facilities. The council was not talking about private residential property. Somehow the canopy coverage morphed from parking lot canopy to canopy over the entire city. This was not the intent when the council sent it forward for review. The proposed canopy is at least ten percent above the canopy rules for the City of Portland. Trees cannot be removed on newer properties if there are limitations on the property without going through a permit process and said this was a “taking.”
- Commissioner Fitzgerald commented that the current code stipulates a penalty to be paid if a tree is removed on property. Council President Buehner explained that this issue came up several years ago when a committee she was serving on was discussing landscaping in the context of planned unit developments and the Goal 5 discussion.
- Councilor Wilson said he shared Council President Buehner’s concerns. More discussion is needed but suggested discussion move forward onto other items. Mayor Dirksen agreed that an issue has been identified by at least one councilor regarding a concern of a misunderstanding about the goal for achieving a 40 percent canopy cover – whether on public property or for the city as a whole. This issue needs background information collected for a future discussion.
- Councilor Wilson advised he submitted a list of comments to the city manager. He said it appears there was a disconnection between the goals the council started with and what we ended up with. He said the council inserted a sentence into the Comprehensive Plan stating that nothing in the plan should mean the city is regulating people’s private landscapes. He referred to a survey that indicated that people are generally satisfied with the amount and quality of trees in their neighborhood and citywide.
- Commissioner Rogers said since the issue was initially sent to the commission from the council, there was a public process through the Citizen Advisory Committee and the Planning Commission. The matter is now before the council, which is the third part of the process. The council has the power, if it does not agree with the 40 percent canopy or other things, to change them during its proceedings.
- Council President Buehner said her problem was with the disconnection between what was asked for and what was worked on by the Planning Commission.
- Commissioner Rogers acknowledged Council President Buehner’s concern; however, he thought tonight’s discussion was to be focused on the process followed by the Planning Commission. He reiterated that if the council does not agree with the 40 percent number to “fix it.” There are other topics that have come up.
- Council President Buehner referred to a list of issues she prepared. Mayor Dirksen asked Council President Buehner to present a synopsis of her issues. She reviewed:
 - Canopy – original intent by the council.

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- Taking – when Goal 5 was adopted, this was a major issue in the context of the PUD committee she was serving on.
 - Panel for tree removal – who will be on the panel.
 - Manual – should it be codified.
 - Solar access issues – not provided to the Planning Commission.
 - Street trees – what kinds are appropriate; should they be deciduous or evergreen.
 - Hazard trees – problems she has raised previously that are inconsistent with the new code just adopted a few months ago.
 - Tree planting standards – thinning – types of trees that grow into pipes – how to deal with that.
 - Balanced representation of interests.
 - What kind of soil amendment standards will be forced on new property owners to maintain trees – a significant cost.
 - Trees on northern slopes where light needs to be maximized.
 - Tree height – what is appropriate.
 - Views – do people have a right to a view.
 - City Attorney Hall responded to the use of the word “taking” within the context of this project. This is a “loaded term” that can mean a lot of different things. In the constitutional sense, he does not believe this is what is before the council insofar as it is presented in the provisions proposed for tree canopy percentages or defining a process for tree removal. A taking from a regulatory perspective would require the city to deprive someone of all economic use of their property. There are valid policy discussions to be had about how many trees are required and what the process is for allowing people to remove trees. If the property remains developable, we are not at risk of committing a regulatory taking for which the city would have to compensate a property owner.
 - Mayor Dirksen acknowledged the depth of concern expressed by Council President Buehner, but for the sake of clarity with regard to the “disconnect” between what council directed and what she feels staff has returned with – he said, and Council President Buehner agreed, she was not saying there was an intentional effort to circumvent the direction of the council.
- City Manager Wine noted the intent was to bring forward council issues. She referred to Commissioner Rogers’ point about the Planning Commission presentation regarding what they had heard beyond the tree canopy issues and the process the commission followed.
 - Councilor Woodard advised he attended some of the meetings where the Planning Commission was reviewing this matter. He would like to hear more about the process and agreed the council might have concerns that they will need to address. Overall, he said he thought the Planning Commission public process went well. At the request of Mayor Dirksen, Councilor Woodard summarized his concerns:
 - Councilor Woodard referred to costs associated with the proposed urban forestry program. By using information contained in Volume V, he

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was concerned about the costs of implementing this program and the costs to sustain it. He suggested an exercise to look at the proposal that has come to the City Council from the Planning Commission along with what the City Council would like to see in the program – he said he believes this will show that this program is too expensive.

- Councilor Woodard also commented on funds coming into the urban forestry fund and the expansion of what the funds will be used for; i.e., care and maintenance for trees planted by the city for three years after the planting. He spoke of defining how the fund will be replenished and whether the program was sustainable – how to tie these two mechanisms together. In response to a comment by Mayor Dirksen, Councilor Woodard said he would like to go through the exercise because it appears to him that the program would cost \$1.2 – 1.5 million. He said he likes some of the land use provisions of the proposed code changes, but the changes are too far-reaching into business and private ownership.
- Councilor Woodard referred to the administrative rules proposed for private property – he said he has a huge problem with this.
- Councilor Henderson said he concurred with much that has been expressed by the councilors. He was concerned about new development proposals insofar as the choices preferred by future homeowners were not considered. He thinks the canopy requirement should be cut in half. A person buying a home should be able to landscape as they want. He said he did not think the city was deficient in tree canopy.
- Planning Commissioner Anderson said their biggest concern was to address mitigation, which has been an issue for years. The proposed code revisions would work well for mitigation because if there is a grove or cluster of trees on a large development, that cluster can remain, which would mean several property sites might not need to have any trees. This was good because it would reward developers who keep clusters of mature trees. The commission reviewed several developments in recent years and compared them to the new canopy approach and it turned out to be less onerous on developers. The Homebuilders were “on board” with these revisions – Ken Gertz of the Homebuilders Association (HBA) participated in the process and gave some good input. The HBA was not totally on board with the 40 percent canopy requirement, but this can be reviewed. All the developments reviewed met the requirements provided for canopy in the proposal. One of the commissioners does not like a lot of canopy creating a “dark town.” Allowing the street trees to be taken into account was helpful.
- Planning Commissioner Rogers said the commission spent a lot of time talking about mitigation and the canopy cover. Costs were not addressed as the commissioners felt this would be a council decision. The questions about administrative rules versus the code were not addressed by the Planning Commission and suggested this could be explored more when

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the City Council and staff have a discussion on September 11. He indicated that the commissioners had many of the same concerns that have been expressed by the council tonight but became comfortable with the end results (i.e., staff showing them drawings of what the canopy cover would look like on their own properties, current and new developments). He said the proposed revisions are not perfect; however, these were vetted through the public process.

- Council President Buehner said that three of the council members attended all of the Planning Commission hearings on this subject. She acknowledged the hard work of the Planning Commission in its review of this matter. Her underlying concern was that the commission was dealing with an issue that was not what the council intended to have reviewed.
- Councilor Wilson said he agreed with the provisions in the Master Plan. He recently reviewed the Volumes II – V and concurred with most of the land use elements with the proposal. Councilor Wilson said he started to get “bogged down” when he reviewed the Forestry Manual. He said the manual addresses non-existent issues and said we should not try to create a fix for non-existent problems.

Councilor Wilson commented on his perspective as a landscape architect with 25 years of experience in many jurisdictions, including those in other states. When reviewing the requirements in the proposed revisions, he wondered how he could comply. The proposal is very complicated. If he were to work in Tigard, his fees would more than double. The proposals need to be substantially simplified. If adopted, the proposed code would be the most complicated of any city, with the possible exception of San Diego.

Currently, a consultant/landscape architect would be required to do a landscape plan and a tree protection plan. The proposal adds a canopy plan, a soil plan and a special report. This work will raise costs for owners. The impact to small projects will be huge.

The Forestry Manual lists a number of restrictions regarding where trees cannot be placed. As a landscape architect, it is difficult at times to find places to put them. With further constraints, it becomes unworkable. The most extreme restriction was the 30-foot distance of a large tree away from a building, but this is done all the time. He questioned how the public would be served with the proposed code.

Councilor Wilson said he does not know why trees should be limited to a handful listed by the city.

Councilor Wilson referred to the distinction between stand-grown trees and isolated trees. He understands this when discussing native groves of trees, but there is no distinction from a landscape designer’s view in that there might be a reason to plant a small grove of trees. He said he does not know why it would be in the public’s interest to limit creativity.

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Planning Commissioner Fitzgerald and Councilor Wilson discussed their differences in opinion on whether the new provisions allow more or less creativity than the current code.

Councilor Wilson said he is in favor of the city getting involved with hazard tree abatement; however, he is not in favor of saying all hazard trees within the City of Tigard shall not be allowed to stand. The city is the largest property owner within the city and we are not going to go through all of our lands and identify every hazard tree and remove it. In reality, except in a storm, any individual's chance of being harmed by a falling limb or tree is small. He said he researched this for statistics and found that tree cutting is one of the more hazardous professions. The irony is that requiring property owners to remove trees can present more safety risks. However, he said it is important that if someone cannot sleep at night because they are worried about a neighbor's tree falling on their house, that they ought to have some recourse. He referred to an experience where some beautiful trees were cut down because they were identified as hazardous trees but, in his opinion, they were viable trees. With this proposal, a lot more good trees will be cut down than are necessary.

Councilor Wilson said there is no practical reason to specify sheet sizes and scales with regard to written submittals. We are in the "pdf world" and such requirements will add cost.

Councilor Wilson said he strongly supports ensuring adequate soil volumes. He said this is where the council discussion on this matter started – our parking lot tree requirements are not working. We have thirty years' experience and the trees planted are not growing. The code should address this problem but he recognizes this will be expensive.

Councilor Wilson said he would like more discussion about the concept of nuisance species. As an example, he said Norway maples are an important landscape tree; however they are starting to appear on nuisance lists. From his research he said it appears these trees are a problem in New England where they are out-competing the sugar maples; however, we do not have native sugar maples. He said he has not heard of any evidence where these trees have been a problem. He pointed out there is no authority on nuisance trees. There are lists of so-called experts who place trees on lists – there's no adjudication process, no data or agreement on what a nuisance species is. There is a federal definition that he would like to adopt – or something similar. Councilor Wilson said he would like to see a process whereby things are nominated, where the data is provided and it is clear. There are cases where plants have altered ecosystems, but there is also common naturalization, which he does not think is a problem.

Councilor Wilson said the proposed code requires a landscape architect or arborist visit a site every two weeks. He noted how expensive this would be for a project that would take a year or longer to build. He would favor that the arborist/landscape architect inspect before grading takes place. Councilor Wilson said he has never seen a case where an

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architect or a consultant is held civilly responsible for not showing up on a visit; however, this requirement is in the proposed code revisions.

In response to a question from Mayor Dirksen, Councilor Wilson said he has shared this list with staff, noting the last two points he raised are new.

Council President Buehner advised she does not disagree with Councilor Wilson comments on hazard trees. Her goal is to create a situation to incentivize removal of trees in the case where a few trees are left in a subdivision where there used to be a number of trees. She said she has had three trees fall on her house. There is no provision in the current code to allow people get hazard trees removed who might have insurance coverage that would assist with the cost.

Mayor Dirksen said it was his desire to achieve a 40 percent canopy for the entire city. He said he thinks it is achievable without placing an onerous burden on developers or private property owners. He agrees with the rest of the council that they need to craft the code so it does not restrict private property owners from being able to use the property as they wish. He shares Councilor Woodard's concerns about financing program. To achieve the 40 percent goal, the city will have to take the lead in finding ways to re-canopy areas of the city; e.g., parking lots. It will be difficult for private owners or commercial interests to retrofit to achieve the canopy goal; therefore, the city will need to have a program to help make this happen. The city needs to look for ways to finance this effort. One issue with the sustainability of the program is that is open ended – the goal would be to strive to achieve the canopy coverage over a period of time.

Councilor Woodard agreed with the mayor regarding goal achievement over a period of time. He suggested looking at a smaller scope. Mayor Dirksen said the canopy approach is a good one because it addresses what is desired rather than defining steps that might lead to what is desired.

Mayor Dirksen said he did not think the code revisions are as burdensome as some of the councilors have shared. He said he will need to review the proposals again. Canopy requirements for different levels of development are valuable tools. He referred to the ways to mitigate the 40 percent coverage requirement and he thinks this would work.

Mayor Dirksen asked some questions for staff to research with regard to what he has heard from people who testified at the last meeting. One person expressed concern whether or not the approach of separating the administrative rules from the development code meets state requirements. He called for submitting the proposed code to state officials for review and then advise whether it meets state requirements.

Mayor Dirksen said he heard a concern with regard to the Tree Manual (administrative rules) and whether there are statements within the manual that would open the door to

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increased appeals based on interpretation. He asked for the city attorney's office to review this. He suggested a scenario approach might shed some insight on whether this would become an issue.

Councilor Wilson commented on the canopy approach. He said he liked the idea of using the canopy approach to set goals, but was less fond of this approach as a regulatory tool because no one really knows how big a canopy will become in practice. He would rather see the city use the canopy goal as a tool. He prefers the focus to be on healthy trees.

Mayor Dirksen said he understands what Councilor Wilson is saying, but he is not sure how to achieve this. He likes where the existing groves have been identified along with finding ways to incentivize/reward developers and property owners for preserving while at the same time allowing for full development rights. This should be the city's main goal.

Commissioner Rogers commented on the process and agreed with Mayor Dirksen that the larger "chunks" have been dealt with and now it is up to the council to fine tune. Again, he said it will not be a perfect tool when the code revisions are in place and there will be refinements needed over the years.

Councilor Wilson acknowledged Commissioner Fitzgerald's question about why council concerns were not expressed earlier. He agreed the process has been lengthy. It would have been good to see the proposed language revisions earlier in the process.

Council President Buehner said she has long felt it important for the City Council and Planning Commission to hold joint workshops so the two bodies have opportunity to communicate directly.

Councilor Henderson thanked the commission for speaking with the greater public and listening to the people including the representatives from the Homebuilders Association.

Council President Buehner thanked the Planning Commission for its hard work.

5. INITIATE THE TRANSFER OF JURISDICTION OF CERTAIN COUNTY ROADS TO THE CITY OF TIGARD - RESOLUTION

Assistant Public Works Director Rager presented the staff report.

The city and Washington County worked together on the River Terrace annexation. As part of this work, some details need to be addressed in an Intergovernmental Agreement. Part of the agreement was that both Washington County and city staff identified several roadway segments that are presently under county jurisdiction, but are under existing Tigard city limits. Staff felt it would be

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appropriate to initiate the transfer of jurisdiction of those segments. Assistant Public Works Director Rager reviewed the list as also shown in the agenda item summary. Staff is recommending the council adopt the proposed resolution to initiate the transfer of jurisdiction of the listed roads.

Mayor Dirksen noted that some of the roads are unimproved or in poor condition. One of the conditions of the agreement is continued coordination with the county to bring those roads up to the basic city standards. Assistant Public Works Director Rager noted the county recently overlaid 113th Avenue in a section the city will be taking over – this was promised by the county and it is now done.

Councilor Woodard said his only concern was whether the county would help with the cost to bring the roads up to standard. Council President Buehner said last summer the county did an overlay of Bull Mountain Road on and beyond where the city will be taking over jurisdiction.

Councilor Wilson noted he is opposed to this type of IGA; however, he will be voting yes. Mayor Dirksen stated he understands that Councilor Wilson is concerned about the city accepting responsibility for these roads, but recognizes this is a prior commitment. Councilor Wilson agreed the mayor stated his concerns correctly. He said the city has been taking responsibility for county roads for a long time. This means that the gas taxes collected from Tigard citizens are spent in other places. The county does not maintain anything but county roads; however, we are all county citizens and paying into the gas tax fund. Later in the discussion, Councilor Wilson reviewed his understanding of how the gas tax monies are paid to counties and very little is spent on urban roads, resulting in an equity issue.

Council President Buehner said that one of the issues is that Tigard has, by far, the highest percentage of roads transferred from the county, whereas, cities such as Hillsboro have taken almost none of the county roads. This means Tigard citizens pay for these roads in the urban road maintenance program and this is a problem.

Councilor Henderson said there is more than just a money issue. There are agreements that need to be maintained and it is important for us to work with Washington County for our community.

Mayor Dirksen said in the future, as we work with our city partners and the county, this issue needs to be addressed. Other cities should be held to the same level of financial responsibility as has been asked of the City of Tigard.

City Recorder's Note: the proposed resolution was replaced by a new version distributed to the City Council during the study session held earlier this evening.

Motion by Council President Buehner, seconded by Councilor Woodard, to adopt Resolution No. 12-31.

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RESOLUTION NO. 12-31 - A RESOLUTION INITIATING ACTION TO TRANSFER JURISDICTION OF CERTAIN COUNTY ROADS (SEGMENTS OF SW BARROWS ROAD, SW FRIENDLY LANE, SW ROSHAK ROAD, SW BULL MOUNTAIN ROAD AND SW 113TH AVENUE) WITHIN THE CITY OF TIGARD TO THE CITY OF TIGARD

The motion passed by a unanimous vote of City Council present:

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|---------------------------|-----|
| Mayor Dirksen | Yes |
| Council President Buehner | Yes |
| Councilor Henderson | Yes |
| Councilor Wilson | Yes |
| Councilor Woodard | Yes |

6. ACCEPT THE FINAL REPORT OF THE TIGARD HIGH CAPACITY TRANSIT LAND USE PLAN - RESOLUTION

Senior Transportation Planner Gray presented the staff report, which included PowerPoint slides. She said she has been before the council several times on this topic. She said she does not have new information but asked if the council had any comments or questions. She gave a brief overview of the plan highlighted on the slide presentation and outlined in the agenda item summary.

Council members expressed appreciation for Senior Transportation Planner Gray's work on this project and for the outcome, which is now being utilized by a number of neighboring jurisdictions.

Motion by Councilor Wilson, seconded by Council President Buehner, to adopt Resolution No. 12-32.

RESOLUTION NO. 12-32 - A RESOLUTION ACCEPTING THE FINAL REPORT OF THE TIGARD HIGH CAPACITY TRANSIT LAND USE PLAN FOR THE PURPOSE OF INFORMING FUTURE TIGARD PLANNING ACTIVITIES

The motion passed by a unanimous vote of City Council present:

| | |
|---------------------------|-----|
| Mayor Dirksen | Yes |
| Council President Buehner | Yes |
| Councilor Henderson | Yes |
| Councilor Wilson | Yes |
| Councilor Woodard | Yes |

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