Agenda Item No. 3A
Meeting of 10/23/2012

City *of* Tigard
Tigard City Council Meeting Minutes
July 24, 2012

- STUDY SESSION

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

Name	Present	Absent
Mayor Dirksen	✓	
Council President Buehner	✓	
Councilor Henderson	✓	
Councilor Wilson		✓
Councilor Woodard	✓	

ADMINISTRATIVE ITEMS

- Distributed July 24, 2012, memorandum from Assistant Finance and Information Services Director Debbie Smith-Wagar, advising of an update to Resolution No. 12-23, adopting the 2013 City of Tigard Budget. The update includes the changes to the Schedule of Appropriations as a result of Technical Adjustments 1-4, which were reviewed with the council and accepted by the council during the budget hearing. Section 2 of the updated resolution notes the appropriations include the adjustments made during the hearing. The proposed update to the resolution was acceptable to council members present.

- For tonight's business meeting:
  - Consent Agenda Item No. 3.A.2. - June 12, 2012 meeting minutes. After review of the audio recording for the meeting, Councilor Wilson's motion to approve Resolution No. 18-23 included the words, "with technical adjustments as presented." Resolution No. 12-23 adopted the City of Tigard Budget for Fiscal Year 2013. City Recorder Wheatley requested the amendment to the minutes, Page 18, to add the phrase, with technical adjustments as presented," at the end of the motion adopting Resolution No. 12-23.

- Agenda Item No. 5 - Public Hearings - Urban Forestry Code Revisions - Land Use and Non Land Use Elements
  - An updated schedule for the Urban Forestry Code Revisions was distributed and reviewed with the City Council.
  - PowerPoint slides to be presented during the staff report were distributed to the City Council.
  - Written testimony received July 24, 2012, from John Frewing was distributed to the City Council.

- Council Calendar:
  - August 7 - CCDA Meeting Canceled - National Night Out
  - August 14 - Business Meeting - 6:30 p.m. Study Session/7:30 p.m. Business Meeting
  - August 21 - Workshop Meeting - 6:30 p.m.
  - August 28 - Business Meeting - 6:30 p.m. Study Session/7:30 p.m. Business Meeting

- Councilor Henderson suggested, and Mayor Dirksen agreed, that attention will be called to Consent Agenda Item C whereby the council is anticipated to approve a resolution to extend worker's compensation insurance to City of Tigard volunteers.

- EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 6:48 p.m. to discuss real estate transaction negotiations and to consult with legal counsel regarding pending litigation under ORS 192.660(2) (e) and (h).

1. BUSINESS MEETING - JULY 24, 2012

A. Mayor Dirksen called the meeting to order at 7:37 p.m.

B. Roll Call:

Name	Present	Absent
Mayor Dirksen	✓	
Council President Buehner	✓	
Councilor Henderson	✓	
Councilor Wilson		✓
Councilor Woodard	✓	

C. Pledge of Allegiance

D. Council Communications & Liaison Reports

E. Call to Council and Staff for Non-Agenda Items: None

2. CITIZEN COMMUNICATION

A. Follow-up to Previous Citizen Communication

City Manager Wine advised that Mr. John Frewing came before the City Council last week and offered testimony as it relates to the urban forestry code revisions, which is before the council later tonight. The comments from Mr. Frewing were entered into the record and are still under legal review by staff.

B. Citizen Communication – Sign Up Sheet – None.

Mayor Dirksen reviewed the Consent Agenda:

3. CONSENT AGENDA: (Tigard City Council and Local Contract Review Board)

A. Approve City Council Meeting Minutes for:

1. May 15, 2012
2. June 12, 2012

B. Reappoint Linda Monahan to a four-year term on the Tigard Library Board effective July 1, 2012 through June 30, 2016

RESOLUTION NO. 12-28 -- A RESOLUTION RE-APPOINTING LINDA MONAHAN TO THE TIGARD LIBRARY BOARD FOR A FOUR-YEAR TERM EFFECTIVE JULY 1, 2012 THROUGH JUNE 30, 2016.

C. Approve Workers' Compensation Insurance for City Volunteers

RESOLUTION NO. 12-29 -- A RESOLUTION EXTENDING CITY OF TIGARD'S WORKERS' COMPENSATION COVERAGE TO VOLUNTEERS OF THE CITY.

D. 2nd Quarter Council Goal Update

E. Local Contract Review Board:

1. Authorize the Mayor to Execute an Amendment to an Intergovernmental Agreement with the Oregon Department of Transportation

Councilor Henderson commented on Item C. He said this insurance is needed to provide coverage for volunteers.

City Recorder Wheatley requested the City Council approve an amendment to the June 12, 2012, minutes on Page 18 to add the phrase, "with technical adjustments as presented" at the end of the motion adopting Resolution No. 12-23.

Motion by Council President Buehner, seconded by Councilor Henderson, to approve the Consent Agenda with the amendment to the June 12, 2012, minutes as noted.

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

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Absent
Councilor Woodard	Yes

4. AUTHORIZE AN AGREEMENT WITH METRO AND THE PURCHASE OF THE FIELDS PROPERTY

Parks Facilities Manager Martin asked the City Council to authorize the City Manager to enter into an assignment agreement with Metro on the purchase of the Fields' property. Metro has a Purchase and Sale Agreement that is contingent upon Tigard entering into the agreement for the purchase of the property. This property was on the parks acquisition list and was rated fairly high by the Park and Recreation Advisory Board. The property consists of 25.69 acres and there is a portion at the southwest corner where Fanno Creek flows through the property. Property owned by Metro to the south of this property consists of 12 acres and it will remain a natural area.

Motion by Councilor Henderson, seconded by Councilor Woodard, to adopt Resolution No. 12-30.

Council discussion: Council President Buehner said she has no problem with the concept of buying this piece of property; however, she has concerns about process issues that she feels were left out. As a result, she advised she would abstain from voting on this resolution.

Mayor Dirksen said this property purchase has moved forward quickly. The city has looked at this property for a long time, but considered it to be unattainable. The property status suddenly changed and the city was in a position to acquire the land. He said he considers having the opportunity to bring this property into public ownership and to the city's inventory is "truly a dream come true." This piece of property will be a centerpiece for the City of Tigard's park system providing access and connections to the Fanno Creek Trail. He noted the property contains a riparian corridor, densely forested areas and open uplands.

Councilor Woodard said he thinks there is a lot of potential for this property, which offers a great deal of useable land. It will serve Tigard residents well.

Councilor Henderson referred to the piece of property to the south owned by Metro. These two properties can be utilized together. As future trails are built, this will be a great union between the city and Metro.

Mayor Dirksen advised the cost of the property is $5 million for which the city is committing $2 million -- $1 million of the city's share will come from systems development charges and $1 million will come from the parks bond measure proceeds adopted by Tigard voters a couple of years ago. The city is grateful for the partnership with Metro in the purchase of this property.

Councilor Henderson advised that PRAB rated this parcel very high on their list based on public input, but it was unattainable because funds remaining from the park bond were dwindling. He expressed gratitude to the PRAB members for their hard work in compiling a comprehensive list of potential park lands.

City Recorder Wheatley read the number and title of the resolution:

RESOLUTION NO. 12-30 -- A RESOLUTION AUTHORIZING AN ASSIGNMENT AGREEMENT WITH METRO AND THE PURCHASE OF THE FIELDS PROPERTY (TAX LOT 2S1010001200) AND AUTHORIZING THE CITY MANAGER TO TAKE ALL NECESSARY ACTION TO COMPLETE THE PROPERTY PURCHASE ON BEHALF OF THE CITY.

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

Mayor Dirksen	Yes
Council President Buehner	Abstained
Councilor Henderson	Yes
Councilor Wilson	Absent
Councilor Woodard	Yes

5. PUBLIC HEARINGS - URBAN FORESTRY CODE REVISIONS LAND USE AND NON LAND USE ELEMENTS

Mayor Dirksen read the title and description for the proposal under consideration.

- 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 - LAND USE ELEMENTS

  B. URBAN FORESTRY CODE REVISIONS - NON LAND USE ELEMENTS

  Mayor Dirksen opened the public hearing for the urban forestry code revisions for the land use and non land use elements. The revisions under consideration tonight and scheduled for several additional meetings represent a comprehensive package. The legal process for the land use and non land use elements is different, but for the purposes of council discussion and public testimony, both elements will be processed together.

  City Attorney Hall said any person may offer relevant oral and/or written testimony. Oral testimony may be offered only by a person who has been asked to speak by the mayor. Members of the City Council will be asked whether they have any potential conflicts. A council member with a potential conflict of interest may participate after fully describing the potential conflict. An actual conflict exists if the decision would result in financial benefit to the council member or a family member. In cases of actual conflict, the council member will not participate.

  After the discussion of conflicts, any person may challenge participation of a council member based on an actual conflict or failure to disclose a potential conflict. The council member in question may respond to such a challenge.

  After the discussion of conflicts and any challenges, city staff will summarize the written staff report and identify applicable standards. Then, those in favor of the proposed amendments will testify followed by those who oppose the amendments or have questions or concerns. Council members may ask the staff and witnesses questions throughout the hearing until the record closes.

  After all testimony is taken, the city staff can make a closing statement.

  After the record is closed, the City Council will deliberate. During deliberations, the council may reopen the public portion of the hearing, if necessary, to receive additional evidence before making a decision. A copy of the rules of procedure for the hearing and copies of the agendas

for today's hearing are available at the entrance. The staff report of this hearing has been available for viewing and downloading on the city's website and a paper copy of the staff report has been available at city hall.

A person must testify orally or in writing before the close of the public hearing to preserve the right to appeal the council's land use decisions to the Land Use Board of Appeals. Failure to raise an issue clearly enough so that council understands and can address the issue may preclude raising the issue on appeal.

Please do not repeat testimony offered by yourself or earlier witnesses. If you agree with a statement of an earlier witness, please just state that and add any additional points of your own. Demonstrations from the audience that prolong or interfere with the hearing are prohibited. Please refrain from them. Comments from the audience, other than from a recognized speaker, should not be offered and will not be part of the record.

When you are called to testify, please come forward to the table. Please begin your testimony by giving your name, spell your name, spell your last name, and give your full mailing address, including zip code. If you represent someone else, please say so. If you have any exhibits you want the council to consider, such as a copy of your testimony, photographs, petitions or other documents or physical evidence, at the close of your comments you must hand all new exhibits to the City Recorder. These exhibits will be marked as part of the record. The city staff will keep exhibits until appeal opportunities expire and then you can ask for the return of your exhibits.

When giving oral testimony, please feel free to address any issues that you see or would like to give comments for both the land use and non land use elements of the urban forestry code.

Mayor Dirksen asked if there were any councilors who wished to declare a real or potential conflict of interest. Councilor Henderson said he owns a business and house that has trees on the property. He holds a builder's license, but he is not a developer. Councilor Henderson said he has spoken to some people in the community about how many trees they would like to have. Councilor Henderson said he did not believe he had any conflicts of interest.

Council President Buehner advised she is a real estate and land use lawyer who represents some developers. She has had no contacts regarding this matter.

Mayor Dirksen commented that all City Council members live in the city and likely all have trees on their property and will be impacted by the decisions made on this matter. The council members would be impacted no more or less than anyone in the community; therefore, there is no conflict of interest.

Mayor Dirksen asked if there was anyone present who would like to challenge a member of the council as to having a real or potential conflict of interest regarding this issue. There were none.

Mayor Dirksen reviewed the timeline planned to proceed through this legislative process.

- The council will receive the staff report tonight on the entire package. The council will take public testimony tonight. Council will voice initial comments or ask for clarification of issues that have arisen during the council members' study of the documents or as a result of the testimony heard tonight.
- The public testimony will be closed tonight; however, the public hearing will not be closed. The hearing will be continued to August 14, 2012, at which time the City Council will hold a workshop to provide an opportunity for the council to meet with staff and with the Planning Commission members who have already heard testimony from the public. At this workshop meeting, attendees will discuss what they have heard and what changes might be needed. Public testimony will not be taken at the August 14 meeting; however, the public is welcome to attend to hear the discussion.
- Another workshop is scheduled for September 11, 2012, for the purpose of receiving a staff report on issues of interest that came up during the August 14 meeting as well as council direction to staff on potential changes.
- On October 23, 2012, the public hearing will continue and there will be another opportunity for public testimony after everyone has had a chance to digest all the discussion and information.
- A meeting is tentatively scheduled for November 27, 2012, to hold the final public hearing, close the public hearing and determine if City Council is ready to consider the package for a vote.

Mayor Dirksen announced that copies of the above timeline are available at the entrance to the Town Hall should anyone want to take one to keep track of the process.

Associate Planner/Arborist Prager presented the staff report using PowerPoint slides during his presentation. A copy of the slide presentation is on file with the meeting packet. Key points follow:

- There has been community interest in revising the city's urban forestry code. The council chose to direct a study of community values and the existing urban forest conditions to set a framework for addressing the code.
- The initial process began during the Comprehensive Plan update, which established broad, 20-year goals and policies in the new urban forest section of the Comprehensive Plan.
- The Comprehensive Plan gave direction to develop an Urban Forestry Master Plan, which expanded upon those goals and policies and studied the issues in greater detail.
- The long-term goal in the Urban Forestry Master Plan is to increase citywide tree canopy from the current 25 percent to an aspirational goal of 40 percent.

- The short-term action items include:
    - Revise the city's urban forestry codes and funding streams in support of the long-term goal.
- It is time to consider revisions to both the land use and the non land use elements of the code and create an urban forestry manual to implement the details of the code. Also, the Master Fees and Charges Schedule will need to be updated to cover costs associated with administering the code.
- Reviewed the five main categories of the project:
    - Urban Forestry Standards for Development and Tree Grove Preservation Incentives (land use elements)
    - Tree Permit Requirements
    - Hazard Trees
    - Urban Forestry Manual (non land use elements)
    - Administrative rules (Urban Forestry Manual) that will implement the code details for land use and non land use code requirements
- The Urban Forestry Standards would apply to major development projects, such as subdivisions, planned developments and site development reviews. The main issue identified with the existing code is the fact that property owners with existing trees are subject to much greater requirements (such as mitigation fees) than property owners without trees. There was much discussion about how to address this equity issue. The Development Code revisions are focused towards addressing the equity issue with more even-handed standards that apply to all development equally and result in a reasonable amount of tree canopy after development is complete.
- Reviewed the tiers of canopy requirements. An incentive was built in for preserving existing trees, since they would be granted 200 percent bonus canopy credit based on their existing canopy size.
- There is also a built-in incentive for planting native trees, by allowing 125 percent bonus canopy credit based on their mature canopy growth.
- There is an incentive for maximizing street-tree planting. Street trees are granted full canopy credit, even though half of their canopies hang over streets, which are excluded from the percentage of canopy calculations.
- Reviewed the component of refining the planting requirements for street trees and parking lot trees to assure adequate soil volumes. This is critical for these trees to achieve their full, mature canopy size.
- Reviewed the creation of a discretionary review track. An applicant could propose alternative green building or development techniques, such as installing solar panels or meeting green street standards instead of planting or preserving trees.
- When all various credits and standards for calculating the canopy requirements are taken into account, the results from planting and preservation would fall with the ranges described for the tiers reviewed. The tiers have been peer reviewed using actual site plans by outside experts. The Planning Commission found they strike the balance between trees, development and open space. Examples of the peer review were summarized and presentation slides were used to illustrate these examples.

- Tree grove preservation incentives are for major development projects; i.e., subdivisions. Seventy large groves of primarily native trees covering 527 acres of land area were identified. Of the 527 acres, there are 131 acres on what is considered buildable lands. The groves on buildable lands are the most vulnerable to development and are the focus of the preservation incentives. (One of these groves was purchased by the City Council earlier in tonight's meeting.)
- The primary preservation incentives include allowing a waiver of minimum density requirements to preserve these groves.
- There is an incentive that would allow density transfer from the tree grove to the non tree grove portion of a site to cluster development away from the tree grove. Elements were reviewed.
- For commercial and industrial development, the primary preservation incentive would be an allowed increase in building height in order to preserve tree groves.
- All preservation incentives would be contingent on permanent preservation of the grove through methods such as creating a tree preservation tract for grove placement. Examples were reviewed.
- Reviewed the non land use elements beginning with the tree permit requirements. The primary purpose of the code is not to regulate any additional tree situations or required tree permits. The purpose is to increase the clarity, consistency and scientific basis for making decisions when issuing tree permits.
- Tree permits would apply to the already regulated tree types of street median trees, native trees in sensitive lands, trees required by a prior development permit, trees planted using the urban forestry funds and heritage trees.
- Tree requirements are scattered throughout the code. The recommendation is to consolidate requirements into a new Title 8.
- Decisions regarding tree permits would fall into two major categories.
    - City Manager decisions would be implemented administratively by staff without public review and would cover simple situations such as when trees are in poor or hazardous conditions, a nuisance or "weed" type trees, causing damage to structures/infrastructures or in the way of allowed development.
    - City board or committee decisions would be implemented through a public review process for the more complex and nuanced situations where the reasons for tree removal are less clear. This board/committee would be authorized to use their discretion to weigh the benefits of the tree and reasons for removal when issuing their decision.
- Reviewed the "hazard trees" category. Issues identified in the existing code include an unclear definition of what a hazard tree is and a lack of clarity about the city's role in hazard tree situations between two private property owners.
- The definition of hazard trees has been revised to be consistent with the standardized point rating system developed by the International Society of Arboriculture.
- When there are disputes between private property owners regarding hazard trees, clear evidence must be presented that efforts were made to resolve the issues before

involving the city. If the city becomes involved, a third-party arborist would be hired to conduct an independent evaluation to lend an objective voice to the situation and limit the city's legal exposure. If the third-party arborist determines there is a hazard, abatement of the hazard would be ordered to be completed within a specific timeframe.

- Associate Planner/Arborist Prager confirmed for Mayor Dirksen that tree permits would not apply to trees in existing, established neighborhoods on private property. If you are not required to get a permit for your trees currently, then you would not be required to obtain a permit under the proposed code amendments.
- Council President Buehner asked who would make the decision whether a property owner can remove a tree on their property on a newer subdivision. She said as she reads the proposed regulations, the rule would deny property owners' requests to cut down trees on their own property without replacing them for the first two years of occupancy. Associate Planner/Arborist Prager said in this case, there is flexibility written into the proposed regulations. Currently, there is no flexibility to make those modifications formally in the code. The prior land use approval would have to be reevaluated and amended. The proposal is for the city to allow those types of changes to occur through an administrative process or a Type I permit process, which would be a staff-level decision. Council President Buehner suggested the proposed regulation would take the right of a private property owner to do what they want on their own property with regard to the number of trees on their property. Associate Planner/Arborist Prager said this would be addressed through the tree permit requirement – the current code would require that property owner to amend the land use decision for the overall subdivision, an expensive and time-consuming process. He clarified that the existing code is more onerous.

  Mayor Dirksen summarized that the first two years after the development is built, the property is considered to be development property even though the new homeowner has moved in. During that period the developer is still responsible for the survival of the trees (existing and newly planted trees).

  Associate Planner/Arborist Prager said after this two-year period, if the property owner wants to remove a tree(s), the proposal would not require an amendment to the land use approval but to go through a separate permit approval process, not part of the land use process. This permit approval would be administered either by city staff or by a designated board/committee. The proposal is less onerous than the process stipulated in current code language. Council President Buehner commented that the current code language is not being enforced.

  Assistant Community Development Director Hartnett clarified that currently, if a property owner wants to remove a tree that was included in an approved subdivision, that property owner is told he/she has two choices.

  1. Amend the subdivision (a significant land use decision).

2. Go through the "illegal tree removal process." (Property owner cuts the tree down and the city fines the property owner.)

Assistant Community Development Director Hartnett says the above two options are not good. With the proposed regulations staff has tried to:

- Place a clear time limit on how long the development aspects of a new tree exists – this is unclear at this time.
- Provide regulations so someone now has the option to remove or replace/relocate the tree through a process before a city board/committee.

Mayor Dirksen commented on the hearing procedure tonight and clarified:

Requesting clarification on the intent of the proposed code is appropriate. Discussion and proposals for adjustments to what is in the draft documents, would be more appropriate at a later meeting.

Associate Planner/Arborist Prager continued with his staff presentation:

- Reviewed the Urban Forestry Manual, which consists of the administrative rules that implement the details of the code. The council is requested to enable administrative rulemaking for the Manual through the adoption of Chapter 8.02 of the Tigard Municipal Code. Once enabled by the council, the city manager would be authorized to adopt and amend the Urban Forestry Manual according to the public process described in Chapter 2.04 of the Tigard Municipal Code.
- Summarized the draft code before the council tonight:
  - For development, the code is focused on quality rather than quantity of trees. In testing, staff found there would often be less trees but more strategic locations when compared with the existing code.
  - For the tree grove preservation incentives, the code is focused on incentives and flexible standards rather than the punitive standards (for tree removal) in the existing code.
  - For the tree permits, the code is focused on being more user friendly by consolidating and not regulating additional tree situations beyond what is currently regulated.
  - For hazard trees, the focus is to resolve these situations in an objective and efficient manner.
  - The Urban Forestry Manual is intended to implement the details of the code sections.
- On May 7, 2012, the Planning Commission made a unanimous recommendation for council approval of the land use elements of the proposal. They also advised council that the non land use elements are consistent with and supportive of the land use elements.
- During the Planning Commission process, the commissioners made several key changes to the proposal, including:

- Granting 125 percent canopy credit to encourage the planting of native trees. This credit also had the effect of lowering the canopy requirements by 20 percent for projects that use native trees.
- Reducing the canopy requirements for higher density residential development and allow canopy to be measured for the overall development site rather than individual lots for higher density residential and non-residential development. The purpose for both of those changes was to strike a balance between trees, development and open space.
- Allowing either landscape architects or arborists to develop urban forestry plans for development. The purpose of this change was to reduce development costs by eliminating the need for hiring two urban forestry professionals for one project.

- In the Planning Commission's transmittal memorandum to the council, the amount of time and effort spent to consider public testimony and improvements to the proposal were highlighted.
- The plan tonight is to receive public testimony, provide some initial feedback to staff and continue the hearing to August 14, 2012.
- On August 14, the council will have an extensive discussion with the Planning Commission about the testimony council receives tonight about the overall project.
- At the close of the August 14 meeting, the council will have an opportunity to identify issues of interest and direct staff to bring back more information or possible code changes.
- The entire project record is available electronically in the meeting room should the council need additional information from this record.

Council Questions:

- Associate Planner/Arborist Prager, in response to a question from Councilor Woodard, advised the tree fund provides the ability for the city to plant about 200-250 trees per year. The number of trees planted through efforts of volunteers in riparian corridors is about 15-16,000 trees per year. Associate Planner/Arborist Prager clarified that the amended code requirements would only apply to trees planted/funded by the urban forestry fund. Councilor Woodard noted concerns about the cost and sustainability of the tree fund. In Volume I, Page 33, Councilor Woodard read,

  "While the committee was initially split on the issue, they did reach consensus that the city should continue to restrict the use of the current tree mitigation funds to planting and three years of early establishment. The rationale was the development community paid fees with the expectation that the funds would be used for planting trees, and that using those for expanded purposes would be inconsistent with that real or perceived commitment. However, the committee did agree that the revised code should allow for future funds collected to be used for a broader range of urban forestry activities."

If the allowed use of the funds expands beyond a certain point, he is concerned about where the funding will coming from. Councilor Woodard advised he does not know the costs associated with the proposed expansion in scope into the future.

Mayor Dirksen said he recalled earlier discussions. There is no land left to do mitigation plantings. The proposal to expand represents a way to utilize this fund. Councilor Woodard said he had no problem with redefining the usage of the funds, but said his concerns relate to the increasing number of trees that would require attention. As this matter develops and information is prepared, Councilor Woodard said he would like to see some numbers associated with this part of the proposal.

City Manager Wine referred to a future opportunity to bring to the council the Capital Improvement Program profile, which includes the tree canopy replacement program and the efforts in place to aid healthy streams – these are different efforts from what is before the council this evening and are funded separately.

- Associate Planner/Arborist Prager confirmed for Councilor Henderson that testimony is available in the hearing room through computer access. These electronic files are not available online but are available through a records request. Councilor Henderson said he would like the record from tonight's hearing to be available for Councilor Wilson's review. Assistant Community Development Director Hartnett commented that the council sessions are available through TVCTV access online and she understands Councilor Wilson plans to review the proceedings accessing the TVCTV website. The key documents that make up the project record are available on the city's website. The entire record, which includes all documents on this project, has not been posted online; however, it is available should someone make a records request.

- Council President Buehner referred to the TVCTV scheduling for the City of Tigard on cable access.

- Councilor Woodard noted his concern with the proposed language in the ordinance (land use document):

  "….Statewide Planning Goal 5…limit or prohibit uses that conflict with the inventoried natural resources…"

  He said he could not see any deliberation that uses the above terminology. Mayor Dirksen suggested this could be an item for legal staff review to determine compatibility between this document and the Goal 5 record.

Public Testimony:

Proponents:

- Justin Wood, Home Builders Association of Metropolitan Portland, 15555 SW Bangy Road, Lake Oswego 97035. In addition to being a Government Affairs Director of the

Homebuilders, Mr. Wood is a builder and is currently building two houses in Tigard. Mr. Wood's remarks included:

- Thanked staff for hard work with all the stakeholders to reach a fair and equitable outcome. He had expressed concerns and several of those were addressed.
- In general he supports the Urban Forestry Code as it is a significant improvement over the current practice. The code does a good job of encouraging preservation through incentives as opposed to penalties. It also removes the responsibility of the city trying to plant trees with mitigation funds.
- The plan does add some cost to development. In many cases the costs are less than the cost of developing the treed lots with mitigation fees. However, when a lot is free of trees, there are significant costs because there are no mitigation costs to work around.
- While he supports the overall project, resolving a couple of issues would create a better, more workable plan:
    - 40 percent coverage goals – he believes this to be a little high. He worked with Portland when they revised their tree plan and the goal they settled on was 33 percent. 40 percent creates a fairly heavily treed lot when the canopy is mature. He agreed with Council President Buehner that it is difficult to plant rose bushes or do other things once you have a 40 percent (fully matured) canopy. He suggested starting at a smaller canopy percentage such as 25 percent as a test for five years to see how this works.
    - Arborist plan requirements on all lots – he referred to Associate Planner/Arborist Prager's comment that the 40 percent canopy coverage can be achieved on a small lot (5,000 sq. ft.) by planting a street tree. If that is the case, he suggested that planting a street tree be made a condition of the building permit. The tree type could be from a pre-approved list of street trees so one would not need to go to the expense of hiring an arborist.
    - Agreed with Council President Buehner that homeowners might remove trees after they take possession of the house. He referred to the proposed requirement that the developer would be held responsible if there is no tree.
    - Referred to the requirement for arborist visits during construction every two weeks. He thinks the same goal would be served if the arborist visits the construction at the beginning and the end of the project.
    - Referred to tree grove preservation requirements and whether reduction in densities were going to be allowed. This should be factored into the housing forecasts and the anticipated growth.

- Ken Gertz, 19200 SW 46th Avenue, Tualatin, OR 97062. Mr. Gertz is a homebuilder and developer. He served on the Citizen Advisory Committee that worked on the proposed tree code. He said he is a proponent of the proposal as it is a great

improvement. The new code would allow for modifications to be made to a plan without going to an appeal process.

Mr. Gertz referred to a proposal that the Forestry Manual be added as an approval criteria and he said this was a bad idea. He suggested additional documents would provide a source for people to find loopholes. Mr. Gertz participated in a recent open house where about 500 people were polled for input on what they thought was a reasonable canopy requirement. Not one person thought 40 percent was reasonable. Results of the poll were from "nothing" up to 30 percent. A tree plan for a small lot is "silly" since the trees will have to be removed and street trees planted or a landscape plan for a planned unit development.

He agreed with Council President Buehner that there is a problem that once the home is turned over to the new homeowner, the builder has no control over the health/viability of the tree. He would like to be released from the obligation of the tree's viability once the home is sold. The new code will provide more trees so even if some trees are removed after the home is sold, the net result will still be for more trees overall.

There are many things in the design manual that will cost developers a great deal of money. For example, the cost is at least $1,000 a tree for a tree vault. Nevertheless, he feels the efforts will be worthwhile.

Mr. Gertz said he likes the flexibility of the proposed code as this has been lacking for a long time. He noted his appreciation for the staff's work and while no one is totally happy with the final proposal, he thanked the staff for doing an outstanding job.

The current code, because of the mitigation factors, encourages developers to clear cut their property prior to development. He said it is horrible. The proposed code encourages people to save the trees.

Councilor Henderson asked Mr. Gertz whether he has experienced times where homeowners have added trees after they purchased the property. Mr. Gertz referred to a project where fir trees were planted on all the lots and almost all were removed and replaced with a different type of tree. One of the things that should be understood within the code, is that people will have the ability to move or change trees with approval or payment for mitigation. He disagrees with the amount of mitigation required.

Mr. Gertz described for Councilor Henderson some of the setback requirements in the proposed code and the complications for infill development. He suggested a solution would be for canopy averaging for a development, which he thinks has been added to the proposal. He questioned whether 40 percent tree canopy was a good number.

In response to a question from Council President Buehner about his concerns regarding the tree manual (containing design criteria), Mr. Gertz said there has been some support

by a member of the CAC to codify the manual. His solution is to keep the proposal as it is, with the tree manual being used as a guideline for submittal with the code specifying approval requirements. Council President Buehner asked Mr. Gertz if he could provide the City Council with written testimony on his specific concerns.

- Paul Whitney signed up to testify but was not present.

Opponents

- Robert Ruedy, 14185 SW 100th Avenue, Tigard OR 97224. Mr. Ruedy distributed written testimony and exhibits to the City Council. His remarks included:
  - During his initial review of the proposed changes, he had concerns about hazard trees and solar access.
  - First response from city staff was that there were no existing solar protection provisions, so this subject was not going to be addressed.
  - He referred to building application forms whereby solar access elements are mentioned; however, there is no way to protect the solar access should a property owner install an expensive system.
  - He referred to a State of Oregon Administrative Rules addressing solar installation and he questioned whether the city was lagging behind in protecting solar access.
  - He said he was frustrated with the response that the Planning Commission did not want to address the hazard tree issue. The current plan will place the homeowner between the insurance company and the city. The insurance company might stipulate a hazard tree should be removed while the city might deny the request to cut the tree down. There is no enforcement capability stipulated in the proposed code if there is a hazard tree on a neighbor's property.
  - Tree height restrictions – many CC&R's require tree heights to be maintained no higher than the height restrictions on the properties. The purpose is to avoid infringing on view lines. This is not taken into account in the proposed code.

Council President Buehner referred to previous solar restrictions in the City of Portland that have since "gone out of fashion." She said she thinks it is time for the city to recognize the solar issues.

Council President Buehner said she was the one who initially brought forward the hazard tree concerns noting three trees have fallen on her house. There are some fire insurance policies that will help pay for the cost to remove a tree if the city or regulatory jurisdiction declares a tree to be a hazard. She agreed that the proposed language needs to be stronger with regard to enforceability.

Mayor Dirksen said Mr. Ruedy's point about solar protection is well taken. He said he is unsure whether this has been addressed in the new code or, perhaps, it could be addressed in a different section of the code. He said solar installation is a viable

alternative to tree planting. A neighbor obstructing the solar access is a separate issue and needs to be discussed.

Mr. Ruedy referred to Councilor Woodard's earlier concerns about the Goal 5 verbiage. Mr. Ruedy maintained this is very close to "land takings" subject to legal challenges.

Councilor Woodard noted he is uncertain how the proposed language to allow solar access in lieu of tree planting would be applied for new development vs. established development. He noted a process for discretionary administrative board review, but he would like to know more about how this would work.

Mr. Ruedy said he would like to see more flexibility in reducing the number of cars allowed on properties; i.e., flex car systems, car share.

Mayor Dirksen asked if there was anyone who would like to speak who had not signed up. He reiterated there will be additional opportunities to speak.

Mayor Dirksen closed the testimony portion of the proceeding for tonight. The public hearing is not closed and is held open through the scheduled October or November meetings. By closing tonight's testimony, if a person comes back to testify, the testimony should be new – not a repetition of what has been heard tonight. Written testimony is encouraged and people do not have to wait for a meeting to submit written input.

Councilor Woodard received clarification that minor partitions consist of less than four units. Associate Planner/Arborist Prager advised that the 40 percent requirement for Tier 1 is averaged over the entire development site. For lower density residential development, the Planning Commission recommended retaining a minimum amount of canopy for each lot at 15 percent; i.e., a 15 percent minimum per lot in low-density residential development. Assistant Community Development Director Hartnett explained that a site can consist of multiple lots. She offered to bring maps to the August 14 meeting to illustrate canopy requirements.

Council President Buehner asked for information from staff for the August 14 meeting to show canopy coverage received from street trees in various lot sizes.

Assistant Community Development Director Hartnett asked a local firm, AKS, to perform a peer review of the proposal as presented to the Planning Commission. AKS did further analysis on modifications as discussed through the Planning Commission's process. The Planning Commission found it helpful for representatives to attend a meeting to work through details. Council members agreed it would be beneficial for staff to ask AKS members to come to the August 14 meeting.

Council President Buehner commented that at the future City Council meeting, she will define the issues she has with canopy cover and hazard trees. She referred to the administrative rules recently, which are up for revision. She said she needs to know what changes are being proposed.

Mayor Dirksen encouraged council members with specific questions/issues to give those to staff in advance if possible.

Council President Buehner asked for follow up to Mr. Gertz' concerns on the tree manual. She also called attention to further consideration to solar access and tree-height limits.

Councilor Henderson asked for any information in the Tigard code that deals with solar access. He would also like some information so the need for solar access can be evaluated.

Associate Planner/Arborist Prager clarified that the 40 percent canopy requirement can be confusing and the canopy can be reduced to a much lower amount.

Council President Buehner said she would be interested in information to clarify how the proposed code provisions would apply when doing infill with two or three houses in an established neighborhood.

Assistant Community Development Director Hartnett reminded council that the goal for the August 14 meeting is to discuss with the Planning Commission similar issues as raised by the council tonight. Much of the clarification-of-issues information will be prepared for and discussed at the September 11, 2012 meeting.

Mayor Dirksen continued the public hearing to August 14, 2012. The meeting format for August 14 will be a workshop with the Planning Commission; no public testimony will be received but the public is welcome to attend to listen to the discussion and feedback. More public testimony will be accepted at a future meeting.

6. COUNCIL LIAISON REPORTS

In response to a request for information from Council President Buehner, City Manager Wine reported that an employee who suffered from a heart attack is now home and resting comfortably.

7. NON AGENDA ITEMS: None

8. EXECUTIVE SESSION: Not held.

9. ADJOURNMENT: 9:33 p.m.

Motion by Councilor Woodard, seconded by Councilor Henderson, to adjourn the meeting.

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

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Absent
Councilor Woodard	Yes

Catherine Wheatley

Catherine Wheatley, City Recorder

Attest:

Mayor, City of Tigard

Date: October 23, 2012