City *of* Tigard
Tigard City Council Meeting Minutes
October 8, 2013

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

Name	Present	Absent
Mayor Cook	✓	
Council President Henderson	✓	
Councilor Buehner	✓	
Councilor Snider	✓	
Councilor Woodard	✓ (speaker phone)	

Staff present: City Manager Wine, Community Development Director Asher, Economic Development Manager Purdy, Redevelopment Project Manager Farrelly, City Attorney Guerra, and City Recorder Wheatley.

STUDY SESSION:

A. REVIEW COUNCIL ROLES AND HEARING PROCEDURES FOR QUASI-JUDICIAL MATTERS

Attorney Guerra reviewed quasi-judicial roles and hearing procedures as outlined in a September 18, 2013, memorandum from City Attorney Ramis. A copy of this memorandum is on file with the packet materials for this council meeting.

B. REVIEW ECONOMIC DEVELOPMENT WORK PLAN 2013 - 2014

Economic Development Manager Purdy reviewed the 2013-2014 Work Plan for the newly defined economic development program. Key elements of the work plan are outlined in the staff report prepared for this agenda item.

Future reporting on progress made in implementing the work plan was discussed. Councilor Snider said he would like to hear comments from business owners. Regular reporting will be provided to the council on the work plan.

On occasion, the mayor and one other City Council member might choose to accompany Mr. Purdy when he visits representatives of businesses located in Tigard.

C. REVIEW INTERGOVERNMENTAL AGREEMENT WITH METRO FOR DOWNTOWN TIGARD MIXED USE DEVELOPMENT PROJECTS CONSTRUCTION EXCISE TAX (CET) GRANT

Redevelopment Project Manager Farrelly presented the staff report. In September, 2013, Tigard was awarded a $100,000 CET grant from Metro for Downtown Tigard Mixed Use Development Projects. Staff will return at a future date for Council's consideration of adopting the Intergovernmental Agreement (IGA) with Metro required for the grant. Council consensus was that this item could be presented on the Consent Agenda for council approval.

D. ADMINISTRATIVE ITEMS:

The following administrative items were noted:

- Council received two pieces of public testimony for Agenda Item No. 4 – LID No. 1:
  - Jack Kearney
  - Greg Specht

- Council Calendar:

October		
15*	Tuesday	Council Workshop Meeting – 6:30 p.m., Town Hall
22*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall
29	Tuesday	Town Hall Meeting – 6:30-8:30 p.m., American Legion, 8635 SW Scoffins Street

- EXECUTIVE SESSION: Not held.

Study Session concluded at 7:25 p.m.

1. BUSINESS MEETING - OCTOBER 8, 2013

A. Mayor Cook called the meeting to order at: 7:30 p.m.

B. Roll Call

Name	Present	Absent
Mayor Cook	✓	
Council President Henderson	✓	
Councilor Buehner	✓	
Councilor Snider	✓	
Councilor Woodard	✓ (by speaker phone)	

C. Mayor Cook asked everyone to join him in the Pledge of Allegiance.

D. Council Communications & Liaison Reports Reports were given later in the meeting; see Agenda Item No. 8.

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

2. CITIZEN COMMUNICATION

A. Follow-up to Previous Citizen Communication: None

B. Tigard High School Student Envoy - EJ Albaugh presented an update of activities at Tigard High School. A copy of his report is on file in the record copy of tonight's meeting packet.

C. Tigard Area Chamber of Commerce – Chamber CEO Debi Mollahan presented an update of activities. A copy of her report is on file in the record copy of tonight's meeting packet.

D. Citizen Communication – Sign Up Sheet:

Michael Denton, 12604 SW 60th Court, Portland OR 97219 advised the City Council that he owns a piece of property on Pacific Highway. It is a small, vacant lot – approximately 11,000 square feet. He said he put the property up for sale and received an offer to purchase. The purchaser wanted to put a medical office on the lot. The sale was pending the outcome of the city's pre-application process. They met with Associate Planner Caines and one of the first items discussed was the traffic impact fee, which was quoted as $76,000.

Mr. Denton explained the price of the lot was $250,000. In addition to the traffic impact fee was $25,000 for utility fees, which meant that even before the project could be started the fees added up to more than $100,000. Costs for building permits were yet to be determined.

During the pre-application meeting, items such as building placement and parking requirements were discussed. The staff explained the requirement for the 33 percent canopy for this lot. In the end, it was deemed virtually impossible to build the building with the required parking and the tree canopy (almost 4,000 square feet). The requirements coupled with the fees made this property purchase "impossible."

Mr. Denton said he was before the City Council tonight to help the council members understand the harmful impact on small businesses imposed by the fees and the existing policies (i.e., tree canopy requirements). The medical building (immediate care facility) would have been a good thing to have on Pacific Highway, creating jobs and revenue.

In response to a question from Councilor Snider, Mr. Denton said the proposed building would have been two stories. The bottom level was 2,500 square feet and the second level was 2,300 square feet. The proposed building met the requirements for this particular lot; however, it was impossible to include the parking and the required tree canopy of 33 percent.

In response to a question from Councilor Buehner, Mr. Denton acknowledged that the staff explained the canopy requirement was for fully grown tree canopy estimates. However, the space for the trees is needed at the time of development. He reiterated that on this small lot, it was impossible to meet the parking and tree canopy requirements. Mr. Denton explored the idea of sharing parking with his adjacent property, but that proved to be inadequate as well. He referred again to the $100,000+ fees to get the project started and said it was "ridiculous."

Councilor Snider said he was surprised to hear the impact described by Mr. Denton and said he had no response other than he would like to have staff look into this situation to give the council insight about "what's driving this" given that this is a 4,800 square foot building on an 11,000 square foot lot.

In response to a question from Council President Henderson, Mr. Denton advised the property does not front Pacific Highway and would not require another driveway.

City Manager Wine said staff will look into the details on this matter and respond to the City Council and Mr. Denton.

3. CONSENT AGENDA:
   A. Receive and File:
      1. Council Calendar
      2. Council Tentative Agenda for Future Meeting Topics

Motion by Councilor Buehner, seconded by Councilor Snider, to approve the Consent Agenda.

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

Mayor Cook	Yes
Council President Henderson	Yes
Councilor Buehner	Yes
Councilor Snider	Yes
Councilor Woodard	Yes

4. QUASI-JUDICIAL PUBLIC HEARING ON THE CONSTRUCTION, MODIFICATION, CONTINUATION OR ABANDONMENT OF TIGARD TRIANGLE LOCAL IMPROVEMENT DISTRICT (LID) NO. 1

a. Mayor Cook opened the public hearing.

b. Mayor Cook called for the following declarations or challenges:

- Do any members of council wish to declare any:
  - Ex parte contacts or information gathered outside the hearing, and
  - Bias or conflicts of interest.
    - Councilor Buehner advised she was on the City Council when this LID was originally created.
    - Councilor Snider reminded council that this LID was discussed at a recent City Council workshop meeting. Council President Henderson, Councilor Buehner and Councilor Woodard advised they were present for this workshop meeting. Mayor Cook said he did not attend; however, he did watch the video replay of the meeting. Mayor Cook said he also spoke with Mr. Specht about this matter at a Tigard Triangle Citizen Advisory Committee meeting. Mr. Specht spoke to the mayor about this matter, basically stating the facts that will likely be reviewed at this hearing. Mr. Specht said he hoped the council would discuss this matter during the hearing. The mayor said his discussion with Mr. Specht did not create a bias for him nor does he have a conflict of interest as a result of the exchange.

- Does a member of the audience wish to challenge a councilor's qualifications to hear and decide this matter, or the jurisdiction of the council as a whole to hear and decide this case? There were no challenges.

o Staff Report

City Engineer Stone presented the staff report. His comments included the following:

- This hearing relates to a request for a boundary adjustment for LID No. 1, which is located in the Tigard Triangle.
- The LID was formed in 2008.
- The improvements that were scheduled to be constructed as part of the LID have not been completed. The design is done; however, no substantial work on the LID has occurred.
- In 2012, City Engineer Stone was contacted by one of the property owners to determine if the LID could be abandoned or if the boundaries could be modified. At the August 20, 2013, workshop meeting, property owners talked to the City Council about this LID.
- The hearing tonight was scheduled to take testimony on the status of the LID to determine whether the boundaries should be modified, the LID built or abandoned.

d. Public Testimony on the construction, modification, continuation or abandonment of Tigard Triangle Local Improvement District No. 1.

Steve Pfeiffer, Perkins-Coie, 1120 NW Couch Street, Portland, Oregon 97204, advised he was appearing tonight on behalf of Specht Development that was one of the initial sponsors of the LID. His testimony included the following:

- Mr. Specht was unable to attend tonight's meeting. Mr. Pfeiffer asked that before the hearing is closed, the City Council consider leaving the record open for one of the next three City Council meetings so Mr. Specht could attend and speak on this matter.
- Mr. Pfeiffer said, in his experience, it is unusual to see an abandonment of an LID. The recession brought about a lot changes for real estate development. Despite these circumstances, he urged the City Council to remember that the purpose of an LID is to provide an unusual, unique and effective financing tool whereby the benefited properties can pick up the cost of improvements representing a disproportionate greater benefit to those properties by providing infrastructure for sewer, water and other improvements. LIDs offer an effective way to provide infrastructure to areas for small, discreet projects where the benefit is disproportionately high to the participating properties.
- This LID went through the process: It met the remonstrance requirements, which means the City Council received the support of enough people to be able to go forward with the formation of the LID. The assumptions and the findings made at the time of formation are still in effect:
    - The improvements are still needed as a precondition to development in this area.
- Another assumption made by the City Council at the time the LID's preliminary report was adopted, was that these property owners within the current boundary are directly benefited. There is a formula applied to the benefited properties and,

depending on the infrastructure improvement, Specht Development bears between 50 and 55 percent of the cost of the LID representing their percentage of ownership of the lots within the LID area. The finding at the time of LID formation is equally valid today.

- The potential for seeing development occur has not changed because it is highly unlikely that the city will be able to extend the service development infrastructure to facilitate and bring about the development as part of a city project due to the fact that this is a small, discreet area. If the city were to abandon or modify the LID, Specht representatives would argue that this effective financing tool would be lost; that is, there would be no means to stimulate development in that area unless the city sees the largesse and decides to fund the public infrastructure.
- Mr. Pfeiffer said that formation of an LID represents a good financing tool that has worked well. He referred to the staff report that states that if the LID is abandoned this would represent adverse impact on development. If the LID goes away, there is virtually no potential for development. If it remains in place, the ability to attract development increases. When and if someone comes forward with a development proposal, the mechanism would be in place to stimulate the spreading of the assessments and the completion of the LID.
- Mr. Pfeiffer said there is no down side to retaining the LID. He offered that the individuals who are proposing to terminate the LID or remove themselves from the LID, have been challenged with purchasers who fear the prospect of a future assessment or are asking for a discount in the sales price. While this may be the case, the finding that the City Council made at the time of LID formation, was that the LID would bring two things to those properties:
    - A direct benefit.
    - An increased likelihood of development and the corresponding benefits to the city in terms of fees, charges, revenues and an increased tax base.
- Mr. Pfeiffer said that in his experience developers welcome the presence of an LID when they purchase property that would otherwise be lacking infrastructure. With an LID in place there is some certainty that the infrastructure will become available and what the fixed cost will be.
- If property owners are concerned that an assessment represents a reduction or negative effect on the value, he would conclude that the purchasers who purport this argument are not looking to develop but are looking to buy property at a cheaper price to wait until the day until someone, including the city, builds infrastructure for their benefit but at no cost to them. A developer will gladly accept the assessment because it represents a clear component of their pro forma that they can factor as they decide whether or not to go forward.
- Mr. Pfeiffer urged the City Council to leave the LID in place. There is no downside that he can identify as this tool remains viable. If, as suggested in the Strategic Plan, the City Council could choose to come forward with a larger LID for the whole district and this could be done as part of the larger strategic planning exercise. He

asked that the council wait to make this decision until they have the "picture clearly before you."

- If the decision is to modify the LID boundary to delete two property owners who were benefited as concluded by the City Council at the time this LID was formed, the council will have to come up with a contrary finding that says they are no longer benefited by those improvements at the relatively proportional rate that they would be charged when the assessments are spread. The finding will have to be reversed and replaced with the finding that for some reason, without any change in geography or facilities, the properties are no longer benefited as identified in 2008.
- Mr. Pfeiffer said he believes the City Council has been advised by its legal counsel that it is not required to make a decision. This is an unusual type of quasi-judicial/legislative situation since there is no application requiring the City Council to decide yes or no. He said the City Council does not have to make a decision tonight or, perhaps, never make a decision on the request. If the City Council decides to move forward with its consideration of this matter, he urged them to continue the hearing so Mr. Specht could attend. Mayor Cook corrected the statements made by Mr. Pfeiffer, advising it is his understanding that the council can continue the hearing; however, the City Council is required to make a decision on the matter. Mr. Specht agreed with Mayor Cook that the City Council would rely on its legal counsel's advice to make a decision based upon the four options presented in the staff report.

Councilor Buehner advised she, as a real estate attorney, has worked with other LIDs and she has never seen one sit and not be built for this many years. She said this is major concern to her. She acknowledged that the economy has been down. Mr. Pfeiffer agreed that he has never seen an abandonment of an LID nor has he seen an LID remain inactive for as long as this LID. However, he said a lot of things have happened in the real estate market solely because of the economic conditions. The economy is coming back. He said it is unclear to him regarding what the downside would be to leave the LID in Stage 1, without completing Stage 2 (spreading the assessments). Leaving the LID in place would mean the tool would still be available the city. The city is always free to terminate the LID if and when the circumstances warrant. The city can decide to create a larger LID as the Strategic Plan moves forward. He reiterated that he did not find a downside to leaving the LID in place. The mere specter of a future assessment to a developer purchaser is not that fearful because the number is clear to identify in the preliminary assessments. While there could be a reassessment later, one could factor in the costs of construction as it has gone up or down. He agreed that this situation is unusual; however, the LID is simply a tool that is available, productive and helpful in the right situation.

Councilor Snider noted that the properties Mr. Pfeiffer's clients own are significantly larger than the other lots and inquired if Mr. Pfeiffer thought the same benefits would be realized by lots of all sizes. Mr. Pfeiffer explained that with the LID process each property owner would be responsible for a pro rata share. Once a determination is made that a

property is benefited, then there is a pro rata distribution of the cost based on a formula. For road improvements, sidewalks and pipes, Mr. Pfeiffer guessed that the formula was a linear frontage foot calculation. There was discretion available to the City Council in 2008 but there is a formula that is numerical, objective and based on quantified direct benefit.

Councilor Snider acknowledged he understood the pro rata application for an LID, but said that his question was more to understand the authoritative statement Mr. Pfeiffer made about the fact that if a property owner was talking to buyer about a development, that they were talking to the wrong people if they were not excited about the prospect of an LID. Mr. Pfeiffer said he thought his statement was true for every lot size because whether it is a 10,000 or 50,000 square foot parcel, a permit will not be issued until the infrastructure is in place. The options are development – or not. For a person who has a 10,000 square foot lot, there is no way he/she could afford the magnitude of the improvements absent an LID or the city stepping forward and constructing the infrastructure. In his opinion, Mr. Pfeiffer said the formula would not change with the size of the lot; in fact, he would argue the smaller lot benefits more because in this case another property owner (Specht) will bear 50-55 percent of the cost. Despite the size of the lot, a property owner in the LID area would receive a benefit proportionate to the value of their property unless it could be proven the benefit is not there. If there is no benefit, Mr. Pfeiffer said he thought modifications could be warranted.

City Manager Wine advised that if this hearing were to be continued, upcoming City Council business meeting dates are October 22, November 12, November 26 and December 10 remaining for 2013. Mr. Pfeiffer advised the City Council that if it was willing to continue the public hearing, Mr. Specht would adjust his schedule to attend.

Kazem Ken Nadri, 1510 6th Street, West Linn, Oregon 97068 testified and his comments included the following:

- They purchased the property before the LID became an issue. When the LID was formed in 2008, they were unaware of what was occurring. He said they were not asked if they were in agreement with the LID. They learned their share of the costs, based on the size of the lot, was significant when compared to the amount for which they purchased the property. He and his wife purchased the property to provide them income should they become disabled or to assist with their retirement. The amount of the LID they would have to pay over the course of ten years would mean this property would not be an income property for them.
- He reflected that the council would be making the decision for not just those who are wealthy, but for the majority who are of moderate income for this and other issues.
- If they became a part of the LID, it would take a long time to pay back the money. In his research and based on the city's requirements, there is no direct benefit or even a long-term benefit to them because of the total high costs that would become a burden on this property.

- He supported development in the area. However, he requested that only those property owners that want the LID be required to participate. He asked that the boundary be modified.

Mayor Cook took a moment to clarify the purpose of this hearing. He said that this is a quasi-judicial hearing. The role of the City Council in this type of hearing is to hear the facts and to make its decision based upon the facts and whether or not the proposal follows the law. This is a different role from those instances where the City Council members can base their decisions on personal preferences. City Attorney Guerra noted agreement with Mayor Cook's summarization of the City Council's role for this type of hearing.

Councilor Buehner summarized her understanding of Mr. Nadri's testimony. She heard that he and his wife have one parcel in the LID and they are not ready to develop. Mr. Nadri said they would like to develop if they could do it themselves and be excluded from the LID. The costs, based on the 2008 cost estimates, are too high. In his research he found that if they did the sidewalk themselves, it would not cost as much as the LID would cost. Councilor Buehner noted the 2008 figures were estimates before the economy downturn. It has been the experience of the city that bids are now coming in lower. Were the LID were to move forward now, the construction could probably be done more cheaply than in 2008. Mr. Nadri disagreed with Councilor Buehner's expectation that the work would cost less now and gave an anecdotal account of his experience with estimates versus the actual amount that is eventually charged. In response to a question from Councilor Snider, Mr. Nadri said the estimated cost for his lot's share of the LID was more than $70,000 – their lot has 75 feet of frontage. In addition, they would be required to change from a septic tank and hook up to the sewer.

Ms. Marzie Salarie also residing at 1510 6th Street, West Linn, Oregon 97068 referred to and asked about the LID costs now and the statement that the estimates in 2008 would be higher than what the LID would cost today:

- She asked how much lower the costs would be. Councilor Buehner said she could not give Ms. Salarie an exact figure only that it has been the experience of the city in recent times that contractors are submitting bids lower than they were several years ago. Mayor Cook said there is no guarantee the bids would be lower. Ms. Salarie said the costs for them are much higher on a percentage basis than for the other properties. She said if they could do the work themselves, it would be faster and less expensive. Councilor Snider asked how she figures the cost is disproportionate for their lot. Ms. Salarie said she was comparing the costs for them and the cost for the Specht property. Overall the entire LID was estimated to cost more than $2 million.
- Ms. Salarie said they want that area to be developed and they want to fix the home on the property as they bought it for an investment. They are ready now for their son to

move in; however, they are waiting for the city to make a decision to determine whether they can afford it.

Mr. Nadri commented on the estimate for the LID. About four to five years ago, one of the items on the list for property improvement was a tree at $800 for each tree. In response to a question from Council President Henderson, it was determined that the Lot number for the Mr. Nadri's and Ms. Salarie's property is 7601.

Tim Roth, 22583 SW 104th Avenue, Tualatin, Oregon testified:

- He owns two parcels within LID No. 1, Lot Nos. 7001 and 6900.
- He advised he is a builder/land developer. He bought this property and several others within the Triangle as investments. His intention was to eventually develop these properties into some type of commercial use.
- He advised he was at the hearing tonight primarily to fact find. He said he has called the city a couple of times over the years asking about the status of the LID and whether the city was going to move forward with performing the improvements. In his experience, all land use decisions have an expiration date. The exceptions he has seen over the last several years that, with the crash of the economy, most jurisdictions have granted extensions to land use approvals. However, it has also been his experience that almost all jurisdictions have placed a limitation on the extensions. He added that he is unfamiliar with LIDs and whether they time out. He said he tried to investigate the matter on the website and found no information about LIDs with regard to expirations nor was he able to find any information about this particular LID.
- He received a letter dated September 26, 2012, from Tigard City Engineer Michael Stone. The letter stated that ... "the council formed an LID district for the design and construction of a certain roadway improvement in and around the area bounded by Dartmouth Street, 68th Parkway and 70th Avenue within the City of Tigard. Since the LIDs formation little, if any, work associated with the anticipated roadway work has been conducted. Recently, city staff has received a request to recommend to the City Council that the LID be formally abandoned." Since then, Mr. Roth said he received no follow up correspondence and he is unsure what the staff has recommended. He assumes the staff presented something to the City Council in the form of a recommendation, which was why this was "on the City Council's radar." He said he is curious about the procedures followed to date. He said he has a vested interest and would like to know the direction the city is going to take on this LID; i.e., abandonment, going forward or allowing certain property owners to opt out.
- Mr. Roth said that when the LID was formed, the boundary lines extended to Baylor Street. During the course of a lot of argument and testimony, the city elected to allow a couple of the property owners to opt out of the LID.

- He said he is neutral on the LID other than being curious and wanting to be kept informed about the direction the city is going to take.
- In response to a question from Councilor Snider, Mr. Roth said if he was to place his property on the market with the disclosure that there is a $200,000 assessment on the property, this would likely mean he would have to reduce the price of his property by the amount of the assessment. The existing LID assessment is not viewed by him as being an advantage to the property. The only advantage would be that it might create more interest in the market. He has found there are still a large amount of vacancies in the current market condition. Rents have not recovered to the pre-economy downturn. He has no immediate interest to sell or develop the property in Triangle since there is no interest. He said the property is a long-term investment for him and, eventually, he believes there will be value to realize as the Triangle continues to develop and grow. He said if the west side rail route goes through the Triangle, then this might enhance the value of the real estate and spark a lot more interest.

John Kearney, 2508 NE 24th Avenue, Portland, Oregon thanked the City Council for hearing this item and advised he initiated the proceedings on this matter. His remarks included the following:

- He is one of the owners of Dartmouth Townhome LLC, which owns Tax Lots 7500 and 7600. They purchased the property in 2005 as part of a development. The people they purchased the property from transferred the development rights to a nearby property about two blocks away. They were left with a property that had residential rights only – the entire commercial FAR had been transferred.
- They applied for permits for a seven-unit condominium. In 2007, they received their site development review, which gave them conditional approval requiring some improvements. Item No. 25 in the SDR said they were to participate in any future LIDs that involved the future expansion or improvement of Dartmouth Street.
- During their approximately three-week long appeal period, they contacted Greg Berry with the City of Tigard. They asked if there were any existing or pending LIDs affecting the area. He was told "no." So, "we wiped that one off the boards for things to consider." Two weeks later, when their appeal period ended, they were locked in and about six days later they received a letter stating they were part of a proposed LID, which is this LID. Mr. Kearney said they were "hoodwinked" into giving up their appeal rights. He said he feels this was a gross misrepresentation – an intentional misrepresentation, or "fraud." He said he is before the city to find a way to "get us out of what has become a complete loss and continues to be a loss to us of $3,000 a month for bare land that is just sitting there rotting away."
- When they purchased the property, it was finished on three sides with all of the curbs, streets, gutters, storm system and street trees. They paid $500,000 for the property and spent $100-125,000 on getting through the permit process, which included the

engineer, architect and planning fees. At this time, they are into the property for more than $800,000. The property has been marketed since October 9, 2008 with an asking price of $490,000. It is now listed at $125,000 to accommodate the $135,000 "ask" for the LID.

- During the SDR process, Condition No. 25 only addressed their future participation in and non-remonstrance on the LID. When they received their report, the LID was already in a proposed form. He said City of Tigard staff member Gary Pagenstecher wrote and signed the SDR for Specht Properties (processed about 35 days earlier than Mr. Kearney's SDR). The LID is referenced a number of times within the Specht properties SDR, citing conditions that would have to be met if the LID was not approved. The only mention in Mr. Kearney's SDR was that they would have to participate in any LIDs.
- When they received notification about the formation of the LID, they attended the meeting expecting they would have to pay a few fees. The amount they were asked to pay was $130,000. They were shown a Group Mackenzie report that listed how all the benefits, costs and assessments were analyzed including the benefit that the LID would have to the neighborhood. The report said that the ideal benefits in the neighborhood would be a 3:1 land value to assessment ratio. Based on the 250,000 (approx.) feet, costing $2.5 million, there would be $10.39 per square foot of improvement added. This means the value should be $31 per foot. The conclusion was that the properties were not at that level, nor would they be at that level in the future even with the improvements. They reported that the ratio would be 2.5 to 2.8 after all of the work was done. The requirement was not close to being met, yet the LID was pushed forward.
- In the Group Mackenzie report there was another map that included the first rendition. This map (dated January 26, 2006) included all properties between Dartmouth Street/Baylor Street and between 68th and 70th Avenue, with the exception of their two lots and one "on the bottom right corner." This LID "was in the works for two years, so Greg Berry should have known and should have told us about it." In 2006, the map was changed, which is the map that is now before the City Council. The original map included the entirety of three Specht properties on SW 70th Avenue and also included the properties on Baylor Street. He said, "after this was gerrymandered, we were put in, two and one-half Specht properties were removed as were other properties."
- He said he did not want Mr. Specht to do this again in the future to unsuspecting landowners. This process has been "very costly, hurtful, damaging, and I don't want other people to have to go through this."
- He said he would like the city to look into the benefit that their property would receive from this. He said they bought the property fully finished on the perimeter and then they lost part of the property due to eminent domain (an 11-foot strip along Dartmouth Avenue), which was part of the SDR. Then they were asked for $130,000 to re-improve this property when they only had 12-14 cars that would be in their

establishment. During the previous proceedings on LID No. 1, he said Councilor Buehner mentioned that because they were going to have to redevelop their property, that there should be some accommodation or consideration for this. He noted former Mayor Dirksen, who was in the audience tonight, commented at this meeting that because Mr. Kearney's property was for residential use only, this property should also have some form of accommodation or adjustment.

- They are asking for the council to review this matter to determine what the benefit to them is. They do not believe there is a benefit to them – only a cost. They had agreed to buy the property improved and were asked to re-improve it. The only thing that will benefit them is a total removal from this LID and for removal from future ones. SDR Condition 25 stated that their property was going to be subject to any future LIDs and this could happen again – e.g., when the west side train comes through. It could be never-ending and he said this needs to be adjusted.
- He referred to Mr. Pfeiffer's statement that the developers are solely looking for quality and will pay more for these LIDs. Mr. Kearney said buyers of residential lots do not want to pay fees. They want to buy things as cheaply as possible. Therefore, if there is a $130,000 assessment, they will ask for it from the seller – "so I will have paid it either way. And, that's the reason why I am asking you to remove this and to remove us from the LID."
- Mr. Kearney advised he had formal paperwork for the remonstrance and some back-up information. He submitted this paperwork to the city recorder.

Councilor Snider noted Mr. Kearney raised a number of procedural questions. He asked Mr. Kearney whether Mr. Kearney took any action when he perceived he was deceived during his SDR process. Mr. Kearney said he has been writing to the city for years on this matter. He said, "Mike Stone is one of the first people that even responded in a decent way. Gus Duenas, the former engineer, rammed this down our throats and took pride in doing it." Councilor Snider clarified that he was asking Mr. Kearney when was the first time he contracted the city after he had knowledge of the LID. Mr. Kearney said probably early 2008 and they were stuck with the non-remonstrance, so they could not "go after this." Councilor Snider asked if Mr. Kearney discussed this with anyone in the city and, if so, approximately when was that. Mr. Kearney said he probably initially discussed this with Gary Pagenstecher and/or Greg Berry. Mr. Kearney said he called Greg Berry, but did not recall the date. He said Mr. Berry refused to talk about this matter. When Mr. Kearney asked Mr. Berry why he did not tell them about this LID, Mr. Kearney said Mr. Berry said, "We're not even going to go there."

e. Staff Recommendation

Responding to Mayor Cook's request for a staff recommendation, City Manager Wine said staff recognizes that rather than offering the council a staff recommendation the staff

would like to know what information would be helpful to the City Council to consider the facts on this matter. Staff provided several potential options the council might want to consider:

- Leave the LID in place.
- Determine whether to move forward and construct the LID improvements.
- Modify the LID boundary.
- Dissolve the LID.

City Manager Wine said there are implications for each of the options. Staff wanted the City Council to be able to have a full discussion and, if needed, consider the full record including the historical documents.

Council President Henderson addressed the city manager and said he would like to have a recording of tonight's proceedings for review. In addition, he would like more time to read the information presented. He also wants to reserve the ability to ask questions in the future.

City Manager Wine noted council received additional testimony by email today from Mr. Kearney and Mr. Specht's representative. These shall be entered into the record so the council has this additional information. The 2012 Correspondence from City Engineer Stone to the property owners will also be forwarded to the City Council. City Manager Wine said the entire record will be provided to the council.

Mayor Cook said it would be helpful to have information showing how the benefit calculations were derived at the time the LID was formed.

Councilor Woodard said the staff report now before the council is brief; however, he suspects there are volumes of information. He would like to know why the LID was declared an emergency in 2008; that is, he would like to see documentation regarding the emergency declaration.

Councilor Snider said he would like a report from staff whether the methodology used five years ago to determine the relative benefits and assessments is still appropriate given the dramatic changes in market conditions and situations. Councilor Snider would like to know everything about the contact with affected property owners concerning the land use decisions that went along with this matter. He would like to know what, if any, liability the city might have for the situation. He agreed with Councilor Woodard's request to have information onwhy this LID came about and why was it declared an emergency when it has not moved forward in five years.

Council President Henderson asked for legal counsel to review this issue to respond to whether there is some kind of time limit for this type of procedure.

Councilor Buehner said she would like to have access to the audio recordings – all the documentation from the original hearing. City Manager Wine noted there is a record of the council proceedings that will either be in the form of minutes or the recordings.

In response to a question from Councilor Snider, City Manager Wine said that given the requests received during tonight's testimony, questions asked by council and the request to provide the whole record, the staff recommendation would be for the hearing to be continued to a future date. This would give staff time to assemble the record and give the council time to review the information.

Councilor Buehner requested that the record be left open to give an opportunity for additional testimony.

Mayor Cook requested council acknowledgement to continue this hearing and to name a specific date (aka, "date certain"). After discussion, council consensus was to continue this hearing to November 12, 2013. Councilor Buehner will be absent on November 12 and said she might try to participate in the hearing via telephone.

Motion by Council President Henderson, seconded Councilor Buehner, to continue the hearing to November 12, 2013.

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

Mayor Cook	Yes
Council President Henderson	Yes
Councilor Buehner	Yes
Councilor Snider	Yes
Councilor Woodard	Yes (speaker phone)

Mayor Cook advised the record will be kept open.

Motion by Councilor Snider, seconded by Council President Henderson, to accept the written testimony into the record.

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

Mayor Cook	Yes
Council President Henderson	Yes
Councilor Buehner	Yes
Councilor Snider	Yes
Councilor Woodard	Yes (speaker phone)

In response to a question from Mayor Cook, City Attorney Guerra said the City Council can impose a deadline for receipt of additional written testimony; however, at this point the attorney said he would not recommend setting a deadline. This would allow additional information to be submitted that might be triggered by events that occur at the continued hearing date. The determination whether to close the record can be made at the hearing on November 12, 2013.

5. UPDATE DISCUSSION WITH METRO COUNCILOR CRAIG DIRKSEN

Metro Councilor Dirksen updated the City Council on current Metro activities. An outline and key points of his presentation are contained in slides on file in the record copy of the packet materials for this meeting.

6. CONSIDER A RESOLUTION ENDORSING THE SOUTHWEST CORRIDOR PLAN AND SHARED INVESTMENT STRATEGY

Senior Transportation Planner Gray presented the staff report on this agenda item. The purpose of the resolution before the City Council tonight is to endorse the Southwest Corridor Plan and the shared investment strategy. It directs staff to continue working on the regional project and pertains to work being done for planning in the Tigard Triangle. The proposed resolution does not change any city policies, Comprehensive Plan, commit any funds or identify any specific transit projects.

Mayor Cook said he received a telephone call earlier today where the person was wondering about the high capacity transit initiative petition and the pending March ballot measure. He said he advised the caller that the proposed resolution would approve a plan that has already been vetted through a process. He re-stated Ms. Gray's earlier comment that this resolution does not commit any funds.

Ms. Gray said that most of the cities (Sherwood, King City, Beaverton, and Durham) and both of the counties (Washington County and Multnomah County) involved in the Plan have already adopted similar resolutions. The City of Portland, Tualatin, Lake Oswego, the Oregon Department of Transportation and TriMet will all be considering endorsement of the Plan and strategy. The Plan is on track to go before JPACT and MPAC.

Councilor Snider pointed out the initiative is on the March ballot regarding future decisions and does not bind what the city is doing now.

Ms. Gray reviewed the elements of the Plan, which are to continue evaluation of high capacity transit options and to begin identifying near-term bus service enhancements. There is a list of roadway and active transportation projects and most of these projects have already been adopted in local or regional Transportation System Plans. A large list of about 400 projects have been narrowed to approximately 81 projects that would be most supportive of the objective of the Southwest Corridor Plan.

Ms. Gray advised there is an inventory of natural resources, parks and trails. The plan is to have the inventory ready so opportunities are utilized when making other investments in projects that would tie in to those listed in the inventory.

Ms. Gray said the Plan is an information resource for planning and will be helpful as the city moves forward with the Tigard Triangle Planning.

Motion by Councilor Buehner seconded by Councilor Snider to adopt Resolution No. 13-43.

RESOLUTION NO. 13-43 – A RESOLUTION ENDORSING THE SOUTHWEST CORRIDOR PLAN AND SHARED INVESTMENT STRATEGY AND PROVIDING DIRECTION FOR FUTURE PARTICIPATION IN THE SOUTHWEST CORRIDOR PLAN

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

Mayor Cook	Yes
Council President Henderson	Yes
Councilor Buehner	Yes
Councilor Snider	Yes
Councilor Woodard	Yes (speaker phone)

7. LEGISLATIVE PUBLIC HEARING ON THE PROPOSED FIRST QUARTER SUPPLEMENTAL AMENDMENT TO THE FY 2014 ADOPTED BUDGET

   This agenda item was set over to the October 22, 2013, council meeting.

8. COUNCIL LIAISON REPORTS: None.

9. NON AGENDA ITEMS

10. EXECUTIVE SESSION: Not held.

11. ADJOURNMENT 9:40 p.m.

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

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

Mayor Cook	Yes
Council President Henderson	Yes
Councilor Buehner	Yes
Councilor Snider	Yes
Councilor Woodard	Yes (speaker phone)

Catherine Wheatley

Catherine Wheatley, City Recorder

Attest:

Mayor, City of Tigard

Date: January 14, 2014

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