



City of Tigard

Tigard City Council/CCDA Meeting Minutes

January 13, 2015



1. STUDY SESSION – January 13, 2015

- Mayor Cook announced an Executive Session at 6:30 p.m. The City Center Development Agency entered into Executive Session to discuss real property negotiations under ORS 192.660(2) (e). The Executive session ended at 7:44 p.m.

COUNCIL LIAISON REPORTS

- Due to the lack of time Councilor Snider will report on his meeting with Ingebrand Heights neighbors at a future meeting.

ADMINISTRATIVE ITEMS

- Mayor Cook informed council of new seating arrangements at the dais in Town Hall.



2. BUSINESS MEETING

A. At 7:47 p.m. Mayor Cook called the City Council and Local Contract Review Board meeting to order.

B. City Recorder Krager called the roll.

	Present	Absent
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard	x	
Mayor Cook	x	

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

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D. Call to Council and Staff for Non-Agenda Items – None

3. CITIZEN COMMUNICATION

A. Follow-up to Previous Citizen Communication – None

B. Tigard High School Envoy – ASB President Carter Kruse gave an update on Tigard High activities. A coin drive benefitting the Tigard/Tualatin School Foundation raised \$1,000. Boys and girls basketball is going well. The Powerhouse Coffee Shop opens at Tigard High next week. A Badminton Tournament between high school clubs is scheduled with the goal of raising clothing to donate. Teams will play for prizes and club funding. Human Rights Week activities are scheduled. The Senior Citizen prom will be held on February 15 and is a fun event with live jazz music and leadership class members available to dance with the senior citizens.

C. Tigard Area Chamber of Commerce – Chamber CEO Mollahan said they are accepting applications for three \$1,000 scholarships. To be eligible, applicants must be high school seniors either living or attending school within the 97223 and 97224 zip codes. The application deadline is March 6. “Cheers” is the newly revised networking event and is an after-work social group for business professionals. Tigard and Lake Oswego young professionals have partnered to produce a series of education breakfast events this year. The Tigard Chamber of Commerce Bowlarama will be held February 28 and she urged the council to form a team. The Shining Stars awards event is on April 24. The Farmers Market received a grant from the USDA for a tool called, “Manage my Market,” which enables vendors to sign up online, list their products and receive more visibility. Opening day for the Farmers Market is May 10. The Third Friday is on January 16 and several downtown businesses will feature special promotions. Future dates: The Art Walk on May 1-15 and the Street Fair on September 12.

D. Citizen Communication – Sign-up Sheet.

Steve Bintliff, 13520 SW 122nd Avenue, Tigard, OR 97223, co-founder of citizen group Tigard First spoke. He said a little over a year ago many people got involved in what was the most expensive election in Tigard history. Measure 34-210 passed by just over 200 votes in last March’s special election. As a result, council has to publically state that it is the policy of the city to be opposed to light rail. Since then, the chief petitioner (Tim Esau) for that initiative participated on the city’s Budget Committee and last month was appointed to the Tigard Transportation Advisory committee (TTAC). Mr. Esau did not stop there. He turned in an initiative petition to Washington County to put the same restrictions on the county government. He stated in the initiative petition paperwork (which will be made available on the Tigard First website) that he intends to use paid petition gatherers. ORESTAR, Oregon’s campaign finance database shows that his PAC has already received over \$2,000 from Andrew Miller of Stimson Lumber and the Oregon Transformation Project. Mr.

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Bintliff said, “So here we are, a member of the committee that advises you on transportation matters, is actively lobbying against some of the same transportation solutions that could make a difference for this county and for this city.” He said he wanted council and citizens to be aware of this. Tigard First will be watching closely for any conflicts of interest and he hoped council will do the same.

Jim Long, 10730 SW 72nd. Tigard, OR 97223, said he is Chairman of CPO4M which represents East Tigard, Durham and Metzger. He spoke about street safety issues in Metzger. The stop signs on 72nd and Spruce Street are not effective and have not been in years. The city responded to his earlier complaints by putting in a pedestrian walkway with a series of eight posts so drivers had to slow down. In July 2014, Spruce Street was repaved and the posts were removed. Now drivers go faster through the stop sign than they did before, cutting the corner into the pedestrian parkway. He requested that the posts be reinstalled as this is a safety issue. Mayor Cook said staff would look into this. Streets and Transportation Engineer McCarthy commented that the posts are on order and will be installed soon.

4. CONSENT AGENDA

A. RECEIVE AND FILE:

1. Council Calendar
2. Council Tentative Agenda for Future Meeting Topics

B. CONSIDER RESOLUTION TO AMEND THE CITY COUNCIL GROUNDRULES SUPERSEDING RESOLUTION NO. 13-04

RESOLUTION NO. 15-02 – A RESOLUTION AMENDING THE COUNCIL GROUNDRULES AND SUPERSEDING RESOLUTION NO. 13-04

C. REVIEW AND CONFIRM UPDATES TO THE COUNCIL LIAISON APPOINTMENT INDEX

Councilor Woodard moved for approval of the Consent Agenda. Councilor Henderson seconded the motion. Mayor Cook conducted a vote and the motion passed unanimously.

	Yes	No
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard	x	
Mayor Cook	x	

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5. APPROVE CITY CENTER ADVISORY COMMISSION APPOINTMENTS

 Redevelopment Project Manager Farrelly gave the staff report with background on three candidates for voting positions on the City Center Advisory Commission, the citizen urban renewal advisory body. Deanie Bush and Sherrie Devaney have served on the CCAC for the past three years. A new voting member is Joyce Casey and Raviprakash Nagaraj will be appointed as a non-voting alternate.

Councilor Henderson moved for approval of Resolution No. 15-01 and the motion was seconded by Council President Snider. Councilor Henderson noted that there is a CCAC business meeting at 5:30 p.m. tomorrow night followed by a goal setting session. He asked if the meeting was open to the public and Mr. Farrelly confirmed that it was.

City Recorder Krager read the number and title of the resolution.

RESOLUTION NO. 15-01 – A RESOLUTION APPOINTING DEANIE BUSH, SHERRIE DEVANEY, AND JOYCE CASEY AS VOTING MEMBERS OF THE CITY CENTER ADVISORY COMMISSION, AND RAVIPRAKASH NAGARAJ AS A NON-VOTING ALTERNATE MEMBER

Mayor Cook conducted a vote and announced that Resolution No. 15-01 passed unanimously.

	Yes	No
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard	x	
Mayor Cook	x	

6. QUASI-JUDICIAL PUBLIC HEARING – CONSIDERATION OF A+ O APARTMENTS COMPREHENSIVE PLAN AMENDMENT (CPA2014-00002) PLANNED DEVELOPMENT REVIEW (PDR2014-00003), SITE DEVELOPMENT REVIEW (SDR2014-00004), AND SENSITIVE LANDS REVIEW (SLR2014-00002)



- a. Mayor Cook opened the public hearing and asked City Attorney Ramis to read the rules.
- b. Basic rules for the quasi-judicial public hearing were reviewed by City Attorney Ramis so participants would know the procedure. A copy of the rules was available at the front of Town Hall. He reminded everyone that they must testify orally or in writing before the close of the public record to preserve the right to appeal the council's decision to the Land Use Board of Appeals. Failure to raise an issue clearly enough so the council understands and can address the

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issue precludes an appeal on that issue. Failure to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow a response precludes an action for damages in circuit court. He requested that people not repeat testimony already given and if they agree with an earlier witness, just state that fact and add any additional points of your own. As provided by State law this is a consolidated procedure addressing several applications together. Persons may speak on all or any of the applications when they testify.

- c. Mayor Cook called for any ex parte contacts or information gathered outside the hearing, or any bias or conflicts of interest from council.

Councilor Goodhouse said he was a non-voting alternate member of the Planning Commission when this came before them and he did hear this before but did not think it would affect anything. City Attorney Ramis said the critical thing is whether he can hear the case tonight and consider it without prejudgment.

Councilor Woodard said he walked the site.

Councilor Henderson stated he could not access the site itself but did travel on the street from Hall Boulevard to Greenburg.

Mayor Cook said he has driven by the site for years and viewed it on Google Earth.

Council President Snider said he drove to and from Washington Square on the street.

Mayor Cook asked, "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.

- d.  Staff Report – Associate Planner Pagenstecher gave the staff report. The agenda item summary included a list of documents that are part of the record including public comments, staff report, the ESEE Analysis and the applicant materials. He said further testimony was received this week and council was given copies: a letter from the applicant, correspondence from Ms. Cofield, Trudy Knowles and Elise Shearer. Planning Commissioner John Smith submitted testimony as a citizen.

Associate Planner Pagenstecher displayed three exhibits that show what the site is today, the Washington Square Regional Center Standards and Regional Plan, and the proposed development. He said the site is around 11 ½ acres, wetland, bordered by Ash Creek on the bottom and a non-named tributary on the west. The site slopes gently from Oak Street to Ash Creek and has been used for agricultural purposes. Several houses exist along Oak Street. This is part of the Ash Creek drainage which passes through the site and continues to a confluence with Fanno Creek. The Washington Square Regional Plan (WSRP) shows this site as split zoning of MUE1 and MUR2. He showed the locations of Highway 217, Hall Boulevard and Greenburg Road. He said this is a high-density plan with 50 units per acre on the project site. It represents a more intense development to the north that steps down as it nears Ash Creek. The minimum is 50 units per acre and greater densities are envisioned proceeding north in the WSRP district.

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Associate Planner Pagenstecher showed a drawing indicating the massing of buildings and elevations as they appear from the street. The project meets the density standards of the WSRP and also attempts to balance natural resource impacts by locating the development close to Oak Street. He showed the wetlands and stream corridors map which is a part of the city's Comprehensive Plan Inventory. He indicated the subject site, wetlands buffer and preserved wetland. He said there is an attempt to preserve most of the wetlands and it impacts just 4.2 acres with one acre as the buffer. If approved, the Comprehensive Plan Amendment would amend the map by reducing the inventory by the amount shown.

Associate Planner Pagenstecher said the second decision, after the Comprehensive Plan Amendment is approved, deals with other agencies such as Clean Water Services and the Army Corps of Engineers and the Division of State Lands. Expertise from these agencies comes in to play to make sure that Sensitive Lands review impacts are adequately mitigated. The mitigation for the wetlands is proposed off-site and mitigation for the buffer is proposed on the site, on about 3.2 acres of wetlands.

Associate Planner Pagenstecher said after these applications have been considered and approved, consideration of the concept plan for the Planned Development and the detailed plan would follow. If the applications are amended or not approved for the first two decisions, that changes the buildable area. The Planned Development Review is considered a two-step process. The concept plan first offers the decision making body an opportunity to give direction to the applicant so they are not invested in something that would not be acceptable. In this case the applicant has requested a concurrent review. Council will consider them in the same hearing but separate decisions are required. The concept plan shows that the general distribution of the buildings on Oak Street, is consistent with Washington Square standards and protection of most of the wetlands. The detailed plan shows more specific arrangements of open space and how it is articulated, the interface between the public space and buildings, and access through the site. In this case, the detailed plan is accompanied by a request under the Planned Development Review Criteria for a parking exception. The 215 units require 302 parking spaces. 278 are proposed. The parking exception is requested in part because the applicant wanted to minimize the footprint of the site for natural resource reasons, but also because the use itself, primarily studios, one-bedroom and two-bedroom units would require fewer cars. That exception can be underwritten by pedestrian improvements on and off the site. The conditions of approval attached to the staff report address the pedestrian/bike access issue.

Associate Planner Pagenstecher said the public comment has been arranged by proponents and opponents in terms of underlying planning documents in effect today, flooding, affects to the wetlands and floodplain and traffic congestion. The Planning Commission had a split vote: four in favor, three against. The three against were design professionals and felt there could have been a design that had less impact on the wetlands.

 Mayor Cook briefly explained to the audience how a quasi-judicial hearing is different from a legislative hearing. Council is only allowed to consider evidence that is part of the record.

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e. Public Testimony

Applicant – Don Hansen, OTAK, said he was present at the request of the applicant and owner. He said he appreciated the explanation of the process. He said he will give a general overview and Joe Tucker will talk about the buildings. John VanStavern will discuss the natural resources and environmental aspects of the project. OTAK Engineer Mike Peebles will address the floodplain and Kelly Lassen will talk about traffic impacts.

Mr. Hansen said the WSRP is the foundation for what is proposed. He said the applicant was involved in the planning for this area as a community volunteer and is interested in seeing that plan implemented. This is one of the first housing projects to come along that meets the kind of density anticipated for the town center. The vision is for a cohesive, mixed-use district with ever-improving transit facilities. It is denser in some locations with transitional areas in others and this project is one of the latter. Mixed-use zones are considered on a district basis, not a site by site basis. He said they combined their review processes to get the whole picture and to give an accurate description of the project and its impacts for discussion purposes. The site is 10.85 acres including right of way to be dedicated for Oak Street improvements.

Four acres are proposed for development. Six-plus acres are open space. Of the four acres being developed, 25 percent is landscape, or soft space. They propose 215 units, 52 per acre, which is just over the 50 unit per acre zone minimum. This is a step-down zone to the open spaces staff described. They propose three access points to Oak Street which form a connective loop, and are putting the parking behind the project. The buildings are being pushed forward so they address the street, the public realm, and future improvements on the other side of Oak Street. On the frontage they are improving the two lane road, with parallel parking and a wide, 12-foot sidewalk. Four buildings are proposed, all four-story, and one has tuck-under parking.

Joe Tucker of Ankrom Moison Architects, showed a concept imagery slide of how the buildings will address Oak Street. The buildings are placed closer to Oak Street as required by the Washington Square Regional Center Plan and this creates a smaller impact to residents. Building heights are lower to be more consistent with the existing neighborhoods. They tried to maintain as much open space as possible and two of the buildings have tuck-in parking to help minimize impact. The pedestrian access has an overview of the wetlands and they are setting up a future access point for a trail along Ash Creek. Building C is the primary leasing area and includes more active space and a pool and picnic space. The L-shaped building to the west has more passive green space as well as a bike pavilion. Each building has bicycle parking. He showed a slide of the development massing showing the step-down of buildings that will allow more natural light to reach the pool area.

Pacific Habitat Services Wetlands Scientist John VanStavern said his first task was to delineate the wetlands. There are 6.62 acres of lower-quality wetlands on the property. The wetlands have been impacted by agricultural use so the trees have been removed and the riparian area on Ash Creek is almost gone. The wetland area has increased in size from when it was delineated previously because water is coming onto the site from stormwater outfall. The expansion area accounts for a lot of the area that is proposed for impacts. Once the 6.62 acres of wetland were identified they

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worked with the development team to avoid and then minimize wetland impacts. Avoidance was not possible to achieve the goals of the Washington Square Regional Plan. They looked at ways to minimize and the proposed plan impacts .42 acres of wetland. They spoke to the Army Corps of Engineers, the Department of State Lands and the Department of Fish and Wildlife on site. Applications were filed to impact the .42 acres of wetland and the applicant is very close to getting those permits.

Mr. VanStavern said they have already received approvals from the National Marine Fisheries Service based on the plan itself and the stormwater impacts. They felt it followed the criteria and will not degrade salmon and steelhead habitat downstream. Mitigation was discussed with the agencies because if a wetland is impacted there must be mitigation. They looked in the local area and reached out to the city and Tualatin Hills Park and Recreation District but found no opportunities for mitigation within the vicinity. They looked at onsite mitigation but did not feel that would satisfy the Corps of Engineers. They are going to a mitigation bank and buying credits. The developer is enhancing the remaining on-site resources. The 6.4 wetland acres remaining will be trees – about 3.4 acres, with 16,000 native plants going in (8,000 sedges and rushes within the center and then 8,000 native trees and shrubs surrounding). Once they came up with that plan it was decided to use this as the buffer mitigation for Clean Water Services. They went through the Oregon Freshwater Wetland Assessment methodology and the wetland still came out to be “significant” even though it has been impacted. As such, they needed to go through an ESEE analysis and look at prohibiting, limiting or balancing. As a result they considered limiting conflicting uses and balancing. They achieved this by enhancing the wetland area and achieving 215 units which complies with the WSRP. The wetland area in its enhanced state will provide the habitat that it did historically for fish and wildlife, with improved water quality and flood flow.

OTAK Engineer Peebles discussed the Sensitive Land Review and impacts to the floodplain. In their preliminary storm drain analysis prepared as part of the application they provided a zero-rise analysis. It showed no increase in the flood level during the base flood discharge based on our encroachments. He showed a slide of the flood map with white indicating floodway and the blue-stippled area indicating the floodplain. The building is shown in the yellow area that is off to the edge of the floodplain, the fringe of the floodplain. The impacts are to the north area of the floodplain. Models were done showing floodway and floodplain before and after the encroachment. Two scaled cross-sections indicate small slivers of area with impacts to the floodplain and that is where there is a retaining wall planned for the south side of the project. Running it through a model shows that there is no difference in floodplain elevation pre- and post- development during base flood discharge. This meets the criteria in the code regarding floodplain impacts.

OTAK Engineer Peebles summarized the parking design. It was an integrated design that balanced impacts to the floodplain, the required site density, the city’s parking requirements, landscaping and the building footprint. Much iteration was explored. The requirement is 306 parking spaces on the site which includes 15 percent for visitors. They proposed 278 on-site parking spaces and this exception request is less than 10 percent. They also put parking under two of the buildings to limit the encroachment into the wetland area. He said they looked at

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distribution to make sure the parking was distributed evenly around the building entrances. They provided to the Planning Commission as part of the record a brief comparison of other local jurisdictions. The City of Tigard's parking requirements were met but they also wanted to show that the parking standards of Washington County, Beaverton, Lake Oswego and Tualatin were exceeded, so the applicant is not out of range with local requirements. They also have an experienced multi-family developer who is confident that the parking will be adequate.

Mr. Hansen added that the parking adjustment is a minimal request and from his experience he is confident that it will be successful. He said a lot of it is how the parking is managed and there is an experienced developer involved. It is the right level of parking now and looking ahead as the district is developed it is the right amount too. There are also 16 parallel parking spaces on Oak Street and these are not included in the count. The 40 visitor parking spaces are very generous based on other jurisdictions.

Kelly Laustsen, Kittelson & Associates, discussed a few aspects of the traffic study. It was a collaborative study between the city, ODOT and Washington County to develop the study scope. They worked closely with Streets and Transportation Project Engineer McCarthy about trip distribution and generation. Their analysis was conservative. They used the rates and the IT Trip Generation Manual, which relies on studies largely from suburban areas with high load splits related to vehicles. Allowances were not made for other modes of travel that will likely be used by residents such as walking, bicycling or transit. The study was comprehensive. They looked at a large study area and added Highway 217 ramp intersections based on comments from ODOT. They looked at future build-out in the area as well as for their site.

Mr. Hansen summarized by saying, "We think the plan we put together on balance meets a lot of current objectives." He said it is a seed for the WSRP and is a good first step. It complies with the underlying zoning. The zoning needs to be considered on a district basis, not on a site by site basis. He commented that if it was considered on a site by site basis, nothing would ever happen. We are residential, next to a lot of office space and a lot of retail, which is really the essence of a balanced mixed-use area approach. We feel we have responded appropriately to the limited site conditions. It is a good solution to the neighborhood in terms of impact.

Mr. Hansen said some public comment letters mentioned a possible continuance. He would like to discuss logistics for that during the rebuttal period at the end of the public testimony.

Proponents –

Ryan O'Brien, 1862 NE Estate Drive, Hillsboro, OR 97123. He said he is a Planning Consultant representing Gene Davis and other property owners in the area. He said they would like Lincoln Street to be dedicated to the city. It is important to the apartment complex residents and businesses at the Lincoln Center and the city. The city has recommended Condition No. 8 which relates to proportionality and this is an important step but they feel the condition is very nebulous and it is hard to interpret. The City Code Section 18.630.10.C states that "All new developments will be required to dedicate improved public streets and participate in funding future transportation projects within the Washington Square Regional Center." He said we do not

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know what that is. Anywhere from 300-600 more apartments and possibly hotels or more commercial in the area is proposed and there is no way to get that road improved. The right of way is needed.

Mr. O'Brien said there is a letter allowing a pedestrian access easement but that does not really help us as that easement should be dedicated public right of way. He said, "They should do that just to be good neighbors." The city attorneys can determine whether or not a condition like that can be placed but we feel that if there is going to be a condition, it should require a deed restriction that they will provide the city with the right of way when needed. If this gets approved without this condition we will recommend that the city condemn it. The property owners paid for it but if they developed anything on the site they would have to dedicate the right of way and make improvements anyway. It is better for it to be dedicated so that other developers can improve the road if necessary; otherwise it will stop development in the area. We feel with the amount of development coming up and to help relieve traffic on 90th Street the city needs Lincoln Street to go forward. I think you need an interpretation of Development Code Section 18.630.10.C from the city's counsel or planning director. It is in the code but no one knows how to interpret or utilize it.

Opponents –

Tamara Alva, 9360 SW 80th, Tigard, OR 97223, said she lives in a nearby apartment building and there is a saturation problem with water in their neighborhood. Ditches were deepened but there is still a water problem during heavy rains. Her concern is that this is the only runoff area between the top of Taylor's Ferry Road and the bottom of the hill. She said she has family further up on Oak Street and their basement floods; they all need sump pumps to drain the water. She spoke with neighbors about this development and only two people had any inkling about it. People she spoke with in lower lying areas already have problems and FEMA not give them insurance should there be a flood like the one in 1996. Ms. Alva saw a red-tailed hawk in the area and she asked what will happen when 215 units are added. She said nature will be affected.

Ms. Alva said another culvert was blocked recently and a neighbor was panicking trying to unblock it herself because if she did not, water would enter her basement. Ms. Alva mentioned another neighbor was present tonight and had the same problems. They cannot get flood insurance from FEMA. She spoke with a gentleman across Highway 217 that said they are digging ditches to handle water problems there and she did not see how this development would help much.

Steve Bintliff, 13520 SW 122nd Avenue, Tigard, OR 97223, said council is being asked to do three things: approve a Comprehensive Plan Amendment, modify the 100-year floodplain and grant a parking exception. By their own admission the developer has determined that without council granting these exceptions the development does not pencil out. As explained in the Planning Commission meeting you do not have an obligation to help him with his return on investment on the development. You do have a responsibility to the taxpayers and to protect the interests of the city's residents. One thing that was not adequately discussed in the Planning Commission hearing

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was the implications to the city and its taxpayers in allowing development inside a floodplain. He requested to hear discussion on this central issue.

Mr. Bintliff said the development has inadequate parking. He noted that most councilors have visited the site so they know that Oak Street is not fully developed and has no curb on one side. 90th Street also has no curb on one side. The cars are going to park on the street and this will be a problem. The development would destroy some wetlands but as someone testified at the Planning Commission hearing, it is not for us to decide the quality of the wetland. The wetland is for the wildlife and for maintaining the water quality. The area has insufficient infrastructure to support this development. Ash Creek is the collection point for all the runoff and since 90th Avenue is not a fully developed street with adequate drainage all the water comes into this development during a heavy storm. As required by city code there will be another sidewalk that goes to nowhere, and there are plenty of them around town. There is no other sidewalk from where this development will be, all the way to Hall Boulevard on that side of the road. Furthermore, children walking to Metzger Elementary will have to walk along 90th Avenue on one side. There is no continuous sidewalk to any bus stop. If the city is going to get serious about walkability, it needs to get serious about how to deal with sidewalks and mobility issues.

Although they recommended approval to the Planning Commission and Council, he does not feel that the applicant or city staff made a compelling case that the city benefits in any significant way from allowing these waivers. The risks to the city and its residents far exceed any benefit that the community would realize. He urged the council to protect the taxpayers from financial liability, uphold the city's parking and zoning requirements and reject this application.

Trudy Knowles, 10430 SW 82nd, Tigard, OR 97223, has lived in the neighborhood for 40 years, and said her one and only comment was that the developer does not live in the neighborhood nor does he plan on living in the neighborhood. The development will have a great detrimental effect on the neighborhood.

Jill Warren, 9280 SW 80th Avenue, Portland, OR 97223, said one thing that confuses her about the plan is that Planner Pagenstecher stated this area is zoned MUE1 and MUR1, which is mixed use, but this plan is residential. It does not match the zone. She asked how that worked because zones are not optional. She said the FEMA map shown earlier indicated a zone AE, which according to FEMA, means that it must not have any encumbrances because it will severely impact flood levels upstream. The developer's mitigation as far as putting in a retaining wall and grading the land is not adequate because it is a natural floodplain. As expressed earlier, all the water comes down from the west hills and with all the new development the flooding will be exacerbated. FEMA says it is not buildable land and there is also the issue of flood insurance. It is prohibitively expensive and the State Floodplain Manager said the city may not qualify to participate in the National Flood Insurance Program. The city should check into this to see if there is flood insurance available and if the city would even qualify.

Ms. Warren noted that this development is a private, for-profit apartment complex. Because it is not zoned mixed-use it is not the regional center. She asked why taxpayers should be committed to a \$1.5 million investment to support a regional center when this is a for-profit apartment

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building. She said she saw a big disconnect. She added that this puts the taxpayers at liability for lawsuits in the future when it floods, especially when there may be no flood insurance, and will be a real disaster. She asked council to reconsider the site. Development is a good thing but this is not the right site and is hazardous. She submitted a petition to the city recorder.

Penny Nash, 10231 SW Jefferson Avenue, Tigard, OR, 97223, said she lives between Locust and Oak Streets. She said her property drains into a tributary that drains into Ash Creek. She said her house is always flooded and over the 28 years she has resided there has seen floodwaters rise over the bridge at Oak Street and Hall Boulevard three times. We need these wetlands not just for our habitat but for our drainage. These apartments change the entire flavor of the neighborhood and have nothing to do with the experience of Metzger.

Margaret Linn, 10455 SW 87th Avenue, Tigard, OR, 97223, lives where Hall Boulevard meets Oak Street and 87th Avenue. She said residents have been talking since the beginning of the Regional Center Plan what to do with the water and the traffic. The Regional Center was supposed to be a holistic plan, not a piecemeal plan. She said it was not supposed to be put together in an exploitive fashion. She said she can see from her door how the culvert at Oak Street fills and the berm the Army Corps of Engineers built in 2003 fills with water on Hall Boulevard and 87th Avenue. There is no access to Highway 217 so drivers go through 87th through the mixed-residential skinny street, through Locust Street and Metzger School and then to Highway 217. This will happen unless the taxpayers come up with a lot of money to accommodate this scenario.

Ms. Linn said as a birdwatcher, she will watch the wetland get gutted. As the site is built up it is harder for bald eagle and larger birds' migratory patterns. She said we cannot put up a sign that tells birds to, "go to another site in Hillsboro because this area is taken." The Tualatin Riverkeepers did not give their blessing and were not happy about developers going into the wetland area. The Riverkeepers were working on their mitigation but were not able to come up with local sites along Ash or Fanno Creeks so a site in Hillsboro was selected to accommodate that mitigation.

Ms. Linn said we have been talking about this for a long time. The timing is not right; it is not good planning and is not going to be profitable in terms of the community at large. She said citizens do not feel they are being heard, are frustrated and fear very much for their properties. She said water goes over the berm the Army Corps of Engineers built and residents have been putting on their wading boots and solving the problem on Oak Street and 87th Avenue. This is the little byway where the city wants to put 100 or more cars. She encouraged council to reject the plan or force a reduction in units to make it more appropriate for the area at this time. She asked that all the idealistic TriMet and Metro walking, biking and transit aspects be put into place before allowing development of this kind in their neighborhood.

 Ben Rubin, 7640 SW Cedarcrest Street, Tigard, OR 97223, said what drew him to Tigard was the open spaces. Streams and creeks were all protected and there was this wonderful array of mini-parks in the neighborhoods. He said he loves this about Tigard and hopes it can be maintained. He said he was at a loss to understand why a concept is even on the board that talks

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about development encroaching onto wetlands that play an essential role. Across America there are, in every town and city, restrictions about building in wetlands. We are talking about a floodplain here. To turn our backs on this concept of that importance is as perverse to him as it is to say global warming does not exist. He said it is proven that water levels everywhere are rising and that the weather is changing. He asked, "Do we somehow think that mysteriously this floodplain is going to shrink with time and global warming?" He said the proposal from the developers dances up to the micron of the edge of what is buildable and allowable and they are still pushing the envelope. He said if there was ever a need to preserve floodplains in this day and age of global warming, now is the time.

Mr. Rubin said he was a realtor in Florida and saw many proposals, ten times the scale of this, come before city councils. He understands it is tempting to see proposals for growth and additional tax revenue. But this is the wrong location and it raises another question of whose fiduciary interest this council has in mind. If the goal is truly to raise revenue and stimulate growth, he suggested council take a good hard look at the zoning along the mass transit corridor, like the railroad track in downtown.

Jason White signed in to speak but did not come forward when called.

Dorothy Cofield, 8705 SW Nimbus, Suite 380, Beaverton, OR 97008, said she represents Jill Warren and Trudy Knowles, who live in this neighborhood. She said the staff report has much information on how this development does not meet the code. She noted that she sent two letters to council and hoped they had read them. Her testimony would highlight what she had in her letters.

Ms. Cofield said the city adopted an inventory under the Statewide Goal 5, which is different than the Division of State Lands Wetland Protection Program, and it deemed this wetland as significant. That is no small thing. At the time you deemed it significant you had to do an ESEE, which is a balancing scheme that weighs the environment, social impacts and public and private economics, to see how to balance protection and allowing conflicting uses. According to the applicant's wetlands scientist it is still significant. That has not changed even though there was talk about it being degraded or increased by storm water runoff. Council needs to look at the applicant's ESEE (Appendix C) and will see that it is very weighted towards the developer's economic interest. Council needs to ask if it is worth it to take a half-acre significant wetland out of the inventory so this project will pencil out. In order to get this Comprehensive Plan Amendment, the developer had to show that there are no other sites in the Tigard planning area that would accommodate these 250 apartments. On page 13 of the staff report it states that only two sites were considered, the Davis property, which is not available for purchase, and a site off of Hunziker Street. She said that is not substantial evidence under land use law and the inventory does not show that there are no other sites. She said based on that alone, council will have to deny the four applications.

Ms. Cofield discussed the floodplain. She said Tigard's code says, under 18.775.070, that you cannot allow a floodplain alteration for residential development. The developer and his attorney and consultants will say, "This is zoned commercial. It is zoned MUE and MUR." She said the

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fact remains that it is residential. She has not had the time to research this and if there is a continuance, she will, but suggested council look very closely to see if the city's floodplain insurance will still be in effect if council approves floodplain residential development, which is against its code.

Ms. Cofield talked about the mixed use zoning. She said the developer's consultants said the mixed-use zoning can be for the entire Washington Square Regional Center. She asked why the property was not zoned high-density residential. She read the project notice MUE1 description saying that residential is accessory to the retail, commercial use; it is not the entire use of the site. She suggested that the interpretation could not be made to let the retail and commercial go someplace else in the WSRP. She did not think that would be plausible and survive at the Land Use Board of Appeals.

She spoke about the parking exception. The code says an exception can only be obtained when it is low-demand use and the example given is a nursing home. She said this is 1,430 trips, high-density apartments and is not a low demand use. She said she did not think the council could approve the exception. She mentioned mitigation to the traffic and said there is a rough proportionality Dolan analysis on page 28 of the staff report. It says this project is creating \$3.5 million in impacts and the developer is being asked to mitigate \$1.5 million (\$775,000 via TIF and the rest by a half-street improvement that does not even meet collector street standards. She said with the \$1.5 million that is left there, council can find that this developer has to do more improvements to the street and this would pass muster "under Dolan." She encouraged council to read the staff report in detail; everything she said is already in the staff report.

Nancy Tracy, 7310 SW Pine Street, Tigard, OR 97223. She said she would turn in written testimony but through listening to other people speak tonight she wanted to add some information. Even with no development on Oak Street this floodplain is going to have to be a workhorse to handle the stormwater already destined for it. By proceeding on a piecemeal basis (this apartment the first piece) there is risk of losing the inventory of storm water that exists now. Meanwhile, this area is going to become a warzone of redevelopment. Metzger School, a century in its location on SW 90th, will be its first victim. An eighth of a mile from heavy construction is no place for children.

In the 1990s promotion of the Presidents Parkway called for relocation of Metzger School, its green acres deemed then and now, land wasted on kids. No alternative site was found. The Presidents Parkway's glorified plan to put a 12-acre lake surrounded by retail shops and restaurants on the floodplain exemplifies the dichotomy that exists between those who see value in open space and those who see open space as wasted value. Metzger School provides quality education for 650 students. It is a social center and information resource for the whole community. Metzger has always been a desirable place to live. No busy arterials bisect the neighborhoods. Walkers, joggers and bicyclists enjoy a peace and quiet virtually unchanged in the past 50 years of infilling.

Ms. Tracy said property values are going to go down. They will fall because a community without a viable school district is not going to make it. Conditions already exist to limit

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Washington Square's plan to redevelop the land west of Hall Boulevard. On the floodplain, 20,000 cubic yards of heavy construction for a hotel on Greenburg have reduced wetland capacity by four million gallons. Stormwater flows from the Fred Meyer store into the wetlands via Ash Brook and some 40 single-family homes are slated for construction in a half-mile radius of the shopping center. Added to this is the climate forecast for heavier rainfall in the Pacific Northwest. She said, "No straitjacket binds us to a zone made in another decade, especially one certain to do such harm to this community. A comprehensive, professional survey of the floodplain and corridors of Ash and Fanno Creeks could guide planning and prevent costly property loss and higher insurance rates and save our school and community."

Dr. Gene Davis, 10875 SW 89th Avenue, Tigard, OR 97223, said he was surprised to hear just now that his property was one being evaluated. He asked council to delay or sack the proposal until there is a street design that will facilitate or accommodate the traffic flow for the development west of Oak Street and around Lincoln Center. In 1994 when the land now being developed was purchased, the buyers were told that Lincoln Street had to become a through street as a requirement of development. They purchased two extra lots at the end of the Lincoln Street extension. He said the Lincoln Street extension is 62 feet wide but he heard tonight that there is a desire to close that down to 50 feet and add a bicycle path of 12 feet. He said twenty years ago, 62 feet was the proposed width and there is much more traffic now. In order for Oak Street and these properties to be developed it should have to be a regular 62-foot street. It has not been developable because it is on a 40-foot right of way. When anyone develops they have had to give ten feet on either side. He commented that the city is building walkways that go nowhere. He said the council should delay this and do an LID (Local Improvement District) or a PD (Planned Development). He said he has at least 700 feet on the west side and would be delighted to give it and pay his share now.

This development is blocking future development that would produce top-notch city streets. If the street will not take care of walking, cars and parking, we will have a second-rate city and nobody wants a second-rate city. He reiterated his desire for a 60-foot street and the extension of Lincoln to Oak Street so the area can be developed and residents do not have to be inundated with cars. He said Lincoln Street is labelled a minor collector street but 90th Avenue is not.

Jim Long, 10730 SW 72nd Avenue, Tigard, OR 97223 spoke as CPO4M Chair, and said 50-60 residents attended a neighborhood meeting last February and the September CPO meeting drew 39 people who were very concerned about this project. On December 10, 2014, CPO4M voted unanimously to oppose portions of these applications. He said he hopes this is not a done deal and council's minds are not made up and will not be until they have heard all the testimony and a possible continuance. He noted that the county commissioners allow five minutes for CPOs to testify and two minutes for individuals and suggested the city should move to this format.

He asked why the four applications in the case are not considered separately. If they were, a hearings officer would be an impartial, trained judge of the issues. He asked that the issues not be streamlined and that they be considered separately. He requested a continuance and that the record remain open. He said CPO4M disagrees with the staff recommendations in a number of ways. There is confusion in the staff report that went to the Planning Commission in that the

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name of the applicant was misspelled. He asked if the words used in the application were Oland or Orland and said this creates difficulty for people trying to do research and get more information about the applicant. He said Tigard already has a traffic problem and was unsure if an objective traffic study was done. He did one on his own for parking and traffic last month before the Planning Commission meeting and found that the off-street parking was completely full along SW Oak Street and SW 90th Avenue was also completely full. There were cars on both sides of SW Oak Street. The developer is asking for a 51-space variance so there are 51 more cars than they will have parking for; this is unbelievable.

Mr. Long referred to the rebuttal period at the Planning Commission hearing and said he was not sure he heard correctly so he submitted a records request but has not received a response. He thought he heard that the impact would be just 100 new cars. He said that is unbelievable. He said the applicant's claims about TriMet are not accurate either. He measured the space from the north part of the proposed development to the south part to Bus 78, 76 and 43. They are over one-quarter mile.

CPO4M opposes the requested amendment to remove or decrease any acreage or partial acreage of existing, significant wetlands south of the corridor. He said he agrees with Steve Bintliff, Jill Warren, Ben Rubin, Dorothy Cofield and Nancy Tracy on many of their points. He said he is trying not to repeat what they testified. He said it appears that the combination of the proposed decrease in wetlands acreage and the proposed retaining wall would actually increase the elevation of surface water of the 100-year floodplain. He said over the years the city has approved many codes to protect the public. Development uses conflicting with city code should be prohibited, period. Recent climate change has brought about extreme conditions that do not suggest any modification of the floodplain is warranted at this time.

Mr. Long talked about Goal 7 – Other Hazards. There are major economic liabilities for building in a floodplain. The City of Tigard and its citizens have already experienced negative, costly economic issues due to the overbuilding on Bull Mountain. At the neighborhood meeting it was asked if there was any affordable housing and the answer was no, it will not be affordable. He noted that their meeting minutes differ from his.

Mr. Long said CPO4M opposes the request for variance of city codes for parking, wetlands and asks for a continuance to allow for full deliberation of this issue.

A letter, submitted earlier by Lynn Tax Paye of SW 87th Avenue, Tigard, and addressed to Ash Creek Coalition was read. She said she attended a meeting at Metzger School months ago and was unable to attend the public hearing tonight but wanted her comments given to the council. She does not want her way of life ruined by hundreds more people leaving cigarette butts, broken glass, etc. all over sidewalks in front of her townhouse on 87th Avenue and Locust Street. She does not wish to put bars on windows like her grandmother was forced to do because of burglary at her home years ago in southeast Portland.

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Applicant Rebuttal – Mr. Hansen said Jim Long from the CPO4M requested a continuance and they agree with that. He said they want to hear council concerns, questions and observations based on testimony this evening.

Steve Pfeiffer, 1120 SW Couch Street, Portland, OR 97204 said he was land use counsel for the applicant. He said there has been information added tonight and they agree with the neighbors who testified that the review would benefit from a continuance. He said he would not suggest a continuance of the hearing but that is up to council. He asked that the record be left open for a period of two weeks to allow any information to be added followed by a 7-10 day period to allow rebuttal or response to the information added during the first two-week period. And then finally, under the statutory requirement, the applicant would have the opportunity for written argument, closing only, and no new evidence. He said they could do this in three to five, rather than seven, days to keep the city on schedule.

Council President Snider proposed that council list their questions tonight but said there is not enough time to get answers. Councilor Woodard agreed that continuance was a good idea. Mayor Cook agreed with leaving the record open.

City Attorney Ramis said the responses must be given in a public hearing setting. Council had a choice between continuing to come back later and ask questions or raising the questions tonight and hearing the responses at the continued hearing.

Councilor Henderson and Mayor Cook discussed the upcoming council meeting schedule and available dates for a continued hearing. Councilor Henderson commented that if there is a continuance, all people present tonight may not be able to come back and some continuity may be lost, but that may just be unavoidable.

Attorney Pfeiffer suggested assembling the questions and providing them to staff and the applicant and also making them available to everyone on the website during the two-week period.

In response to a question from Councilor Goodhouse, City Attorney Ramis said anything that is relevant to the criteria can be asked.

Council questions:

Councilor Woodard: Question for staff. Need more information on how building this development affects National Flood Insurance. Is the city responsible and liable in the case of a 100-year flood.

Councilor Woodard: Is there a way to do a downstream modification of the water holding area to help with the bottleneck where water flows down Hall and Oak Streets near the bridge structure.

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Council President Snider: Wants to understand from staff why their recommendation on wetlands modification is acceptable. Why not require taller buildings?

Council President Snider: (Question for City Attorney) Is council obligated to make these comprehensive plan amendments? Have standards been met that compel the city council to make such a decision?

Councilor Henderson: When was the Washington Square Regional Center Plan adopted and is it the only applicable plan? Does it go through periodic review?

Councilor Goodhouse: Where did the parking numbers come from?

Mayor Cook: Is concerned that every other apartment complex he sees, whether it is on Hall Boulevard or North Dakota, has many cars parked on the street because there is not enough at the complex. Clarify what is meant by development onsite planning for parking and enforcement. He needs to see a paved sidewalk or walking trail for transit access for him to allow the downward parking requirement.

Councilor Woodard: There would be an impact on 90th Avenue and development needs to pay for that. There is no certainty about Lincoln going through. How would this traffic impact the school area?

Council President Snider: I've heard many numbers tonight regarding parking. The math doesn't work out and we need to understand what exception is really being made. Shared similar concerns about right of way for bus shelters and walking.

Councilor Henderson: Did we review siting of the large apartment building already across the street to guide us with this development?

Councilor Goodhouse: Did you talk with TVF&R about No Parking signs?

Mayor Cook: The environmental mitigation would occur in Hillsboro. Why can't we find a local mitigation area? Could Tualatin Riverkeepers help us find a Tigard area needing mitigation, along the Tualatin in Cook Park, for example?

Mayor Cook: Has seen flooding in that area over the years. How did you arrive at a zero-rise analysis if the area already floods now? It has to rise somewhere.

Councilor Woodard: Concerned about what is being developed upstream and downstream from this project. Requests assistance with understanding the 1989 DLCD letter about floodplain management. Is DLCD still connected with FEMA for flood management aspects?

Councilor Woodard: How will you prevent car lights exiting the development from shining directly into the living rooms of the homes across the street?

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Council President Snider: Statements were made during testimony that the city would not be able to purchase flood insurance if this is built. Does the city even buy flood insurance? Is there such an implication for the city or its residents?

Council President Snider: Every model has to have some level of certainty. How certain are we that this flood model is right? What is the level of precision - 95 percent? 90 percent? And if the model is wrong, what will happen?

Councilor Henderson: Can the creek drainage retention be part of the floodplain?

Councilor Woodard: Walkability is a huge deal. Need at least one natural area to walk and a continuous path without gaps. Is there a Dolan analysis required for the impact area if the street is extended?

Council President Snider: Relating to the alternative site analysis, what is the requirement and do the areas have to be within a certain distance from a proposed development? Was such an analysis done in a thorough and reasonable manner? Should Lincoln Street right of way dedication be a condition of approval?

Councilor Henderson: Are there water quality problems (sewage) in this high water area? Is storm water from hard surfaces being treated?

Councilor Woodard: What does the MUE designation mean? The public needs a clear understanding of how a residential development fits in this zoning.

Council President Snider: Are we obligated to accept this from a zoning perspective? Given community concerns have we imposed enough conditions of approval on the developer in the interests of the public?

Councilor Henderson: Are we still waiting for a report to come from TriMet or others and can these be pulled together before we meet again?

Councilor Woodard: Ms. Cofield comments in a January 12, 2015, letter that the applicant is proposing a 26-foot width street yet TVF&R requires roads under a certain width to have No Parking signs posted on both sides of the fire lane. She says the applicant's proposed exception to the street standard is not permissible. He needs help understanding what is going on with this.

Council President Snider: An attorney testified and questioned our legal ability to do some things with the zoning. This is concerning. Could city attorney and staff address this?

In response to a question from Councilor Woodard on the order of approvals, City Attorney Ramis said it was the suggestion of staff to begin with the Comprehensive Plan Amendment change. He said it makes sense to do that first.

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Mayor Cook continued the public hearing to February 3, 2015. Mr. Hansen clarified that the applicant will return on that night to orally respond. Council President Snider commented that there will be questions also for staff and the city attorney.

City Attorney Ramis said there was a request for a continuance from people that testified who will not be part of the question and answer process. He suggested that at the end of the February 3, 2015, meeting a timeline be established to allow written submissions. After that time period ends, council could make their decision. He said there may be people who learn things during the question and answer period and want to respond after that. Mr. Hansen said that was a fair approach.

Mayor Cook continued the public hearing to February 3, 2015. The comment period is open for two weeks and there will be another response period before a council vote on the matter.

7. NON AGENDA ITEMS None.

8. EXECUTIVE SESSION: Mayor Cook announced that the executive session called to discuss the performance evaluation of a public officer under ORS 192.660 (2) (i), has been postponed until the council meeting of January 27, 2015.

9. ADJOURNMENT

Motion to adjourn by: Councilor Goodhouse moved to adjourn the meeting at 10:20 p.m. Councilor Henderson seconded the motion and all voted in favor.

	Yes	No
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard	x	
Mayor Cook	x	



Carol A. Krager, City Recorder

Attest:


John L. Cook, Mayor

Feb. 24, 2015
Date

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