



City of Tigard

Tigard City Council/CCDA Meeting Minutes

February 2, 2016



1. EXECUTIVE SESSION

At 6:32 p.m. the Tigard City Council entered into an Executive Session called under ORS 192.660(2) (f). The Executive Session ended at 7:09 p.m.

2. BUSINESS MEETING

A. At 7:10 p.m. Mayor Cook called to order the City Council and City Center Development Agency meeting.

B. City Recorder Krager called the roll:

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

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

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

CITY CENTER DEVELOPMENT AGENCY

3. JOINT MEETING WITH THE CITY CENTER ADVISORY COMMISSION

The City Center Advisory Commission (CCAC) members present were: Chair Carine Arendes, Gina Schlatter, Vice-Chair Linli Pao, Richard Shavey, and David Walsh. They presented a PowerPoint on the vision for downtown Tigard. The vision was developed through a public process related to the Downtown Tigard Improvement Plan (DTIP). The vision was that downtown “*is a vibrant and active urban village at the heart of our community. Pedestrian oriented, accessible by many modes of transportation and it recognizes and uses natural resources as an asset and features a combination of uses that enable people to live, play, work and shop in an environment that is uniquely Tigard.*”

The TDIP identified some potentially unifying themes: community, nature and art. There was not a lot of graphic representation of what this might look like so in addition to adopting code changes the city has also engaged in a number of projects that help paint a picture of what the written vision might look like. These include the Streetscape Design Plan, the Fanno Creek Park Plan, and the Tigard Future Vision and there is a plan to update the original urban renewal plan to contain more visual elements. The Tigard Downtown Future Vision was a further refinement of the TDIP and included renderings of what it might look like with development on Highway 99 and Hall, housing at the redeveloped public works yard, transit oriented development located near high capacity transit in the urban core, as well as arts involved community center. The city has adopted a Strategic Plan which is a vision for the entire city. The CCAC asked the CCDA to consider how compatible these two visions are. Chair Arendes said she felt the TDIP vision fits very well under the umbrella of the citywide walkability vision. She said the vision of a thriving, active, vibrant urban core is the one that the CCAC considers when coming to the CCDA with project recommendations. This vision is what they keep in mind when setting their annual goals.

Vice-Chair Pao discussed their goal setting process this year which was a little different than usual since they had several new members. They compiled a document with all the goals and implementations since the CCAC began setting them in 2009. They held a session for 2016 goals and came up with four main categories:

- Support urban renewal area project infrastructure and development; provide input
- Identify and discuss long-term impacts of future development in the downtown area
- Communications and engagement
- Self-education on topics of interest to the downtown such as marketing opportunities to developers and affordable housing

Vice-Chair Pao said if the CCDA Directors and Chair have input they would like to hear it so they can incorporate it into their goals.

Commissioner Shavey spoke about marketing and branding and the CCAC's goal to advocate for potential funding options to keep the Tigard Downtown Alliance (TDA) momentum going. Consultant Michelle Reeves and the Leland Company recommended supporting a downtown association for coordinated marketing and promotion. The CCAC supports the land and business owners doing this task and they confirmed the importance of getting involved in the marketing and branding effort. However, they acknowledge that TDA's organizational capacity would need to be increased prior to them taking on this task. The TDA is maxed out with volunteer activities now.

Chair Arendes said the CCAC recommend the following urban renewal plan identified projects as priorities as the CCDA works on their budget: filling in the gaps on Hall Boulevard sidewalks, plaza development, the Tigard Street Trail, and public restrooms in the downtown area. She noted that the city is going to do a public facilities plan and hoped that public restrooms, a public market and an arts-oriented community center, all facilities identified in the urban renewal plan, will be considered in this study.

Director Woodard said the CCDA takes the CCAC's recommendations seriously. He reflected on many community planners and experts who gave the city ideas and concepts that should be reflected in the goals. He asked them to keep in mind the puzzle pieces: connectivity, walkability, activation of

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the downtown, business opportunities, infrastructure, circulation and recreation. He said he was pleased to hear Commissioner Shavey speak about branding. He quoted Director Henderson, “without identity we have no community.” He said a lot of good work has been done but there is a lot to do. He recommended adding developing a brand as a goal. He said hiring a marketing manager is important. He suggested picking two businesses along Main Street and talking to the owners to get their ideas on what they need to succeed. He added that circulation is very important and advised that the Ash Creek crossing be kept in mind. He clarified that he meant the railroad crossing.

Director Snider said the CCAC has done a great job and he will keep their recommendations in mind while working on the budget. Chair Cook agreed that their goals are great and he agrees with Director Snider; it is a different CCDA than it was in 2011 and the CCAC can expect a little different outcome.

Circulation was discussed and Redevelopment Project Manager Farrelly reminded everyone that the Ash Creek rail crossing is still in the mix with the SW Corridor. He noted that the city is getting the first leg of a transportation system improvement completed due to the Ash and Burnham development.

Chair Arendes invited further comment and said the CCDA is welcome to come to their meetings or send ideas to their email.

4. UPDATE ON THE MAIN STREET/FANNO CREEK SITE (SAXONY) REDEVELOPMENT STUDY

Redevelopment Manager Farrelly gave the staff report for this meeting which included a PowerPoint. He introduced John Flynn and Suenn Ho of Resolve Architecture.

Architect Flynn described the property and progress made in the concept design. He said they would like to hear feedback on the design. Slides were shown of possible uses of the building including public space. The first floor could be small restaurant and retail with creative office tenant space on the second and third floors. The sixth floor is only at the back of the building, fronting 99W. He said the pro forma studies indicate that it has to be really small or really big. Resolve Architecture’s charge is to create a design that appeals to the city and the developer. This floor space works either way. If they were divided there could be eight 1,000 square foot living areas.

Suenn Ho said this is a challenging site. There is a bridge with fast paced cars going by. Within the south side there is a pedestrian-friendly street. On the west is a creek. On the east side there is a sewer easement.

A southern elevation shows steps going down to the creek. On the highway side there is verticality. Main Street will be a great opportunity to give the development presence with tall buildings along the highway. There is a vegetative strip owned by ODOT behind it. Slides showed opportunities for materiality such as green ways, glazing balconies and store fronts. Ms. Ho showed a sketch of the painted building. Green roofs celebrate nature.

Mayor Cook commented that the design has come a long way. He agreed that it is a challenging site but appreciated what they have developed so far. He said triple-glazed windows will keep the sound down on the north side. He said the taller buildings will have great views. Mayor Cook said he likes the mixture that goes right onto a festival street.

Councilor Goodhouse said he likes the green roofs and the stair steps make it resemble an art piece.

Councilor Woodard had some design questions regarding guest parking. There can be issues if tenant and guest vehicles take up all the parking spots so customers cannot find places to park. Another concern he has is the occasional high Fanno Creek water levels. Mr. Flynn said a movement joint could be created for the deck. Clean Water Services redundancy is good to have for high water situations.

Mayor Cook commented that the concept design process was good and he looked forward to the next update.

CITY COUNCIL

5. CONTINUATION OF PUBLIC HEARING: CONSIDER COMPREHENSIVE PLAN AMENDMENTS AND ZONING CHANGES TO PRESERVE MEDIUM DENSITY (R-12) RESIDENTIAL LAND

- a. Mayor Cook reopened the public hearing. He said at the initial hearing before council there was testimony suggesting that this matter should be heard using the quasi-judicial procedures and standards rather than legislative. The city attorney was asked to review those concerns and he recommended that council do that as a precaution. He asked the council if there was any objection to that process. There was none. He asked the city attorney to explain the process for the hearing.
- b. City Attorney Olsen said the city is the applicant in this proceeding and accordingly the process for the hearing shall be as follows:

City staff will state the applicable criteria and summarize the application, staff report and the staff's recommendation. Council will then take public testimony and staff will have an opportunity for rebuttal or other comment. Council may ask the staff and witnesses questions throughout the hearing until the record closes. After the record is closed the city council will deliberate about how to proceed. During deliberations the city council may reopen the public portion of the hearing, if necessary, to receive additional evidence before making a decision. Testimony, argument and evidence must be directed toward the applicable criteria including any additional criteria that a participant in the hearing thinks might apply. Failure to raise an issue clearly enough so that the city council understands and can address the issue precludes an appeal on that issue. He covered testimony guidelines.

City Attorney Olsen said that prior to the end of the hearing he would explain how any participant may request a continuance or that the record be kept open for more time. Council

may approve all of the requested Comprehensive Plan amendments and zone changes, some but not others or may deny the applicant in its entirety. He said since this started out as a legislative matter, quasi-judicial notice (Type III) was provided prior to the hearing. At the end of the hearing council will vote to approve or reject the ordinance.

- c. Council Questions: Mayor Cook asked for clarification that any prior written or oral testimony on this matter is included in this hearing and that it is part of the record. City Attorney Olsen said that any testimony provided to the Planning Commission, written submittals and the staff report, etc. are all available and included in the record. He said however, that the hearing is being conducted as a de novo hearing which means that people are not limited to issues raised at the prior Planning Commission and City Council hearings.

Council President Snider explained to the audience that council made a decision tonight to hear this as a quasi-judicial matter which is a different forum than the previous hearing. Staff prepared some material that council needs to take time now to read. City Attorney Olsen added that the material included proposed findings from staff should council decided to approve the application. Extra copies were available so anyone in the audience can review the same material. Council read the material from 8:22 p.m. to 8:38 p.m.

- d. Challenges and Declarations: City Attorney Olsen asked council if they had any ex parte contact, site visits or related prior information to disclose. None.

City Attorney Olsen asked if any council members had any potential or actual conflicts of interest to declare. There were none.

Mayor Cook asked if there were any challenges from the audience on any councilor's ability to participate in this hearing. There were none.

- e. Staff Report

Assistant Community Development Director McGuire gave the staff report. He read the approval criteria applying to the proposal. He said per 12.380.030.b standards for making quasi-judicial decisions, recommendations or decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following standards:

1. Demonstration of compliance with all applicable Comprehensive Plan policies and map designations
2. Demonstration of compliance with all applicable standards of any provision of this code or other applicable implementing ordinance
3. Evidence of change in the neighborhood or community or a mistake or inconsistency in the Comprehensive Plan or zoning map as it relates to the property which is the subject of the development application

Mr. McGuire referred to two memos provided by staff. The February 2, 2016, memo provides findings in favor of the proposal. A January 26, 2016, memo from Associate Planner

Pagenstecher provided responses to council's specific questions and issues raised after the first public hearing. He said there were a few errors in some of the notices such as listing the year as 2015 instead of 2016. There was also a typo in the staff contact phone numbers. The department has safeguards in place. The planner prepares the notices and an administrative staff person prints the notices and helps with processing and distribution, yet the two typos made it through those screens. He noted that the public notice sign was damaged and it is assumed it blew down in the storm in early December. Since that time staff has changed to using plastic coated paper with double sticks to hold the sign in place. In the future staff will monitor the signs and check on them after a bad storm.

Mr. McGuire noted that Council President Snider asked about process issues related to public testimony and responded that any appeals would go directly to the Land Use Board of Appeals (LUBA), whether legislative or quasi-judicial. He said the city's parks staff was asked about Property A ever being considered for purchase as a parks property and it was not.

A question from Councilor Henderson at the last hearing related to the real estate sign advertising Property B as commercial property when it is zoned residential. Mr. McGuire said commercial real estate signs are not addressed in the code and as council is aware, per federal and state Supreme Court cases, staff cannot regulate the content of signs.

Assistant Community Development Director McGuire gave the background on this issue. When he first learned of this potential zone change application on Site B from R-12 to Commercial the city was in the middle of the Heritage Crossing hearings. Specifically, staff was addressing one of the Comprehensive Plan policies on housing. He read some of Goal 10, Policy 10.1, "to provide opportunities for a variety of housing types at a range of price levels to meet the housing needs of current and future city residents." In the Heritage case staff held multiple Planning Commission hearings and council hearings and staff had been stressing the point of that policy and the diversity and variety of housing that is available in R-12 zoning. He said it is not just a numbers issue. We need to meet Metro requirements but that is not the focus of that policy. The issue is the variety that is available in that zone which creates a diversity of price ranges important for young, first-time home buyers and also those that are downsizing. This makes more housing available for people to purchase at varying price ranges. He said Community Development Department staff need to be consistent in interpreting the city's code and policies.

Assistant Community Development Director McGuire said the market is sending a signal through the pre-application conferences that Site A is a good location for R-12. There are other R-12 sites zoned right in that neighborhood and it is between high-intensity commercial use Fred Meyer and lower density residential. He noted that Site A and Site B are very similar in size. Because of this, staff initially chose a legislative process because council would have the ability to examine the Comprehensive Plan policies and have a little more leeway than in a quasi-judicial process.

Mayor Cook asked council if they received answers to all their questions. Council President Snider said he appreciated that the answers were very thorough and specific and he would like this to be the model for future staff reports.

f. Public Testimony

Mayor Cook said due to the time each person may talk for two minutes. Council President Snider reminded the public that this is a quasi-judicial hearing, and council is acting as judges, not legislators. He said their testimony is most effective if it relates to the criteria that is what council must consider in their decision.

Richard Topping, 19765 Derby Street, West Linn, OR said he and his wife own Site A. He said it has been on the market for eight years. They have gone through five commercial real estate agents who have done a lot of aggressive marketing and all came to the conclusion that it is not a viable commercial property. He addressed the testimony neighbors gave at the last hearing noting their great sense of ownership and how they felt the property was part of their community. But they are not paying the upkeep or property taxes. The existing houses cannot be replaced and the city is in need of more R-12 housing. They strongly feel that this would be a good thing for them and for the city.

Levi Levasa, Stafford Land Company, 485 S. State Street, Lake Oswego, OR, 97034, is the potential developer for Site A. He asked that council echo the recommendations of the Planning Commission and adopt the findings of the staff report. He said staff did a great job on the findings and agreed with the quasi-judicial approach. He said the property looks like R-12 property, not R-4.5. The entire frontage needs to be improved and splitting that up between four to six lots does not make much sense. R-12 zoning allows a variety of housing types.

Kelli Hossaini, Miller Nash, 111 SW Fifth Avenue, Portland 97204 represents Tigard-Tualatin School District, the owner of Site B. She said the R-12 zoning is a holdover from the 1940s and the district's use of the site as an administrative center. This property has been on the market for ten years. The market views this property as commercial. She said Leadership Circle wants to develop the property into a natural grocer which would be a great use near the elementary school and for people in the neighborhood. She said she could understand opposition to a zone change on Site A but encouraged council to adopt the Site B zone change.

Read Stapleton, DOWL Engineers and Planners, 720 SW Washington Street, Suite 750, Portland, OR, 97205, said he agreed with Ms. Hossaini and believes Site B is optimal for commercial development. Historically residential zoning may have made sense but the most recent Economic Opportunities Analysis recognized there is a dearth of commercial land. This request will improve that lack of capacity. He said Leadership Circle has been meeting with city staff since last year. He asked for council's approval on the zone change for Site B regardless of whether it is considered with the other site.

Debbie Bowman and Penny Stewart signed up to speak but said they would give their time to Dorothy Cofield.

Jim Long, 10730 SW 72nd Avenue, Tigard, OR 97223, gave some written testimony which has been added to the record. He said he would speak first as Chair of CPO4-M and then as a private citizen. On Monday, December 4, 2015, CPO4-M discussed the planning department's request and voted unanimously to endorse retaining the commercial/professional district

zoning for Site A. Speaking personally, he said if the city moves forward and approves this application with staff's first recommendation the decision will be vulnerable to appeal and the city will lose. He said last month that the city should start over. He noted that the process has been changed to quasi-judicial but the notices are still in error. There are landowners who did not receive notice. New signs were put out on two posts but did not last. The notices did not have the right time, place or phone number. The website did not list this public hearing for four days in December. The title is misleading and the word "preservation" does not explain the nature of the application. He had pictures in the testimony that are still relevant. Mayor Cook asked if the new postings are correct. Mr. Long said he heard staff say they were going to monitor the signs but they are gone so the city did not provide the information required by the code. Council President Snider said staff was asked by council to start completely over with their noticing. He asked if Mr. Long was testifying that after the lecture from council, staff did not in fact redo the sign posting. He said the sign on 72nd Avenue is blank. Mr. Long said Councilor Henderson asked for the commercial sign to be removed but it is still in place.

Dorothy Cofield, 8705 SW Nimbus, Suite 380. Beaverton, OR 97008, said she represents Jim Long and Nancy Tracy as individuals. She said she submitted a memorandum to council along with seven exhibits. She noted that Mayor Cook gave the differences between legislative and quasi-judicial public hearings. She said this was done at the eleventh hour after there may have been discussion and talking. She said the city needs to start over to do this process right. The notice lists preservation of R-12 zoning but does not have the quasi-judicial criteria. Without that being in the notice LUBA says anyone can raise anything because the notice did not list the criteria.

Ms. Cofield said staff and the Planning Commission were hanging their hat on the Angelo Study which said that Tigard is deficient in R-12 land. She said the executive summary does not say this at all. It says 6,000 units (53 percent are projected to be detached single-family home). The idea that Tigard needs attached homes is not supported by the record. Regarding changing the zoning, the Cogan Economic Analysis Report says there is a deficiency in commercial land. Taking the Topping site and removing the commercial zoning is inconsistent with evidence in the record. She asked council to consider this rather than the planner's desire for more attached housing. She asked to keep the record open because they just received the findings and want to review whether or not the neighborhood has changed. They want to put evidence in the record. Regarding the sign on Site B, she felt the city can regulate it if it says it is zoned for commercial and this has not yet been done. The city should tell the developers that this has not gone through a zoning change yet. She ended by saying that although they believe that the process is flawed, her clients would be in favor of changing the zoning for the school district site. She asked that council adopt the alternative to change the zone for Site B but they object to any zone change on Site A.

Ann Murdock, 7415 SW Spruce Street, Tigard, OR 97223, handed in some written testimony. She highlighted that if this land is zoned R-12 it allows the owners to put in 12-18 units. With each there could be two cars, pets, and two children. She doesn't see how the parking will work. She said there is a new development on 74th Avenue and the people living there are already parking in front of her house because they do not have enough parking. People from Tigard Woods park in front of her neighbors' mailboxes. She mentioned that there is a spring

on the west end of the property. She asked who will be responsible for fixing it if the spring is paved over and the water runs onto her property.

Richard Garber, 10680 SW 71st Avenue, Tigard, OR 97223, lives two blocks from the subject property. He walks his dog on the property and reiterated what the previous speaker said; it is a swamp. He has seen the tractor mower sink down and then avoid large areas of the property. He noticed in the handout a lot of concern for the property owners but it would be better if the city was concerned about the residents. He has made bad investments before and it is not the city's fault. He said R 3.4 zoning might be a possibility.

Chris Glawe, 9830 SW Pine Street, Tigard, OR 97223, said he was here in support of Jim Long and the neighbors. He said neighbors look out for each other by placing flyers and he did not know about this until a neighbor placed a flyer out for this meeting. He did not receive the official statement that was mailed last fall.

Nancy Tracy, 7310 SW Pine Street, Portland, OR 97223, brought a handout for council. She said she was here on behalf of the children. The children are our city's future and they have a tough road ahead of them. Cities, communities, parents and schools are all responsible for children. She said she hoped that council will read her pamphlet.

Richard Allegretto signed up to speak but gave his time to Jim Long.

Jim Long said the most important thing is that Site B was left out of the city's inventory of residential land so there is no need to balance out the residential because there was no loss of residential. The city can go ahead and change it to commercial. The city does have a deficit of commercial land. He said the equality swap "does not wash." He objected to the commercial sign. He commented that the city is rezoning some property in another area and if R-7 there can change to R-12, it does not need to happen here. The citizens do not support three-story buildings on Site A.

Nathan Murdock 7415 SW Spruce Street, Tigard, OR 97223, noticed that during the last month a big problem in getting a vehicle from Hall Boulevard and 69th Avenue onto Highway 99W. ODOT says it should not be a problem but it is now, without having another 30 cars from people that are not in the neighborhood.

Read Stapleton asked to rebut Mr. Murdock's testimony but Mayor Cook said the city is the applicant and he could not testify. He has already spoken tonight.

Charlie Hanson 10670 SW 75th Avenue, Tigard, OR 97223, lives on a flag lot with 50 feet of his side yard along Site A. He said the land is swamp-like and test pits done for the preschool verified drainage issues. He said he experiences drainage problems onto his property from the subject property. He showed a picture of a notice and said there was no notice of a continuation until Nancy Tracy came to his door one day ago. He said the property is more of a wetland than a viable property and that may be why commercial builders have not shown interest either.

Julie Garvin, 7025 SW Mapleleaf Street, Tigard, OR said she just received a flyer at her door and from what she is hearing regarding the procedural information it is clear to her that council should evaluate Site A and Site B independently and they both must meet the criteria. They cannot be evaluated conjoined and there is evidence that Site B meets all the criteria. She does not think Site A meets the criteria in terms of there being a change in the neighborhood or an error or mistake in the zoning.

- g. Staff response to testimony: Assistant Community Development Director McGuire said he would respond to specific council questions.
- h. Council questions: Council President Snider asked about Ms. Cofield's testimony that the city should restart the process to have it follow the full quasi-judicial process and if the city has done what was necessary to meet those requirements.

City Attorney Olsen replied that in terms of procedural error LUBA and the courts have held that a person alleging a procedural error has to demonstrate substantial prejudice and the courts generally have held that if there was a procedural error in the process, as long as at the final hearing before the final decision maker, those alleged irregularities are addressed and the full quasi-judicial rights are substantially afforded, then it is very difficult to make a finding of substantial prejudice. He said in this case notice went out as if it was a quasi-judicial hearing despite the fact that it had been legislative so notice was provided in accordance with the code. The city council made the determination in the response to citizen concerns that it would afford those full quasi-judicial processes and protections, including the substantive criteria, rather than go forward with the legislative hearing which the council could have done. Council President Snider commented that the public indicated that they would have immediately appealed. City Attorney Olsen said in effect the council has responded to the concerns raised. He said Ms. Cofield is correct that the notice sent out did not list all of the applicable criteria, and that may provide more of an opportunity for an appeal on a substantive ground with LUBA but it is not really a procedural error. In this case, there have been no other criteria identified other than ones staff have addressed. And that is a Type III quasi-judicial process. He said there might be a standard that the notice did not indicate and that no one else has raised. But it is not one that staff or the citizens are aware of. He said council made it clear that they are addressing the applicable standards.

Council President Snider referred to a comment made about two properties being considered under the same quasi-judicial public hearing. City Attorney Olsen said council needs to apply the criteria to each property and needs to make a decision on each property to approve both, approve one and deny the other or deny both. He said it is appropriate for staff to inform council and for the council to consider the context in which the Comprehensive Plan policies and housing policies apply. City Attorney Olsen said Ms. Cofield and others requested additional time and many potential problems are cured during the process if the record is kept open for additional testimony during a continuance.

Council President Snider asked if the city has an excess inventory of R-12 land as heard in some of the testimony, and Assistant Community Development Director McGuire said it did not. He said the housing study addresses that and is part of the record and in the staff report.

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Council President Snider noted that at least some people clearly living within 500 feet of Site A did not receive a notice. He asked how confident staff is that proper notice was made. Mr. Pagenstecher said the notice went out for the first hearing. Council President Snider said council direction was to notify everyone of the continued hearing. Assistant Community Development Director McGuire said staff prepared a second notice and posted the property. Council President Snider said he did not think that was what council asked staff to do.

Councilor Snider asked about the parking standard for R-12 zoning. Assistant Community Development Director McGuire said each unit is required to have its own on-site parking but it is hard to estimate how many cars because there is such variety in R-12 housing. The R-12 developments are attached or narrow units and some off street parking is lost to the number of curb cuts for driveways. It has been an issue. In River Terrace the city required extra parking per tracts.

Council President Snider expressed many concerns about the process. Councilor Woodard said he thought the two separate properties should have their own consideration but did not think council had to start all over. He said by design, development can take care of wetland and parking issues. Mayor Cook advised that this is not a development review; it is a zone change.

Councilor Goodhouse asked if the properties can be separated in a decision tonight. City Attorney Olsen said they can be considered separately and in fact, when looking at options staff drafted an ordinance approving only the zone change for Site B. Council could adopt it and remand Site A back to the Planning Commission.

Councilor Woodard commented that no one said they did not receive a notice about Site B. He said staff did the best they could to rectify the notice issue. He said staff put up signs and he did not know if someone was pulling out the signs. He gave staff credibility. He asked Assistant Community Development Director McGuire if notice was provided. Mr. McGuire responded that staff used the quasi-judicial noticing requirement prior to the Planning Commission hearing. Every property owner within 500 feet received a notice; it was advertised in the newspaper and on the website and the property was posted prior to the Planning Commission hearing. Staff did the same procedure prior to the last council hearing (mailed notices, site posting, website and newspaper). He said he did not hear at the last hearing that council was instructing staff to resend the notice. However, the notice was revised and the site re-posted.

Council President Snider asked for confirmation that staff used a quasi-judicial notice process for a legislative hearing held months ago. Assistant Community Development Director McGuire said staff “over-notified” the meeting as it is standard to err on the side of more public participation. Council President Snider asked City Attorney Olsen if the notice requirement was not an issue. City Attorney Olsen expressed confidence that in terms of Site B there was not a notice issue. He said in terms of Site A, generally the case law is that a minor defect in the noticing is not a fatal flaw. He said while the notice is not perfect, the city has taken appropriate steps to address the issue from a legal standpoint.

Councilor Goodhouse moved to approve Ordinance No. 16-05, approving Site B and remand Site A to the Planning Commission as quasi-judicial matter. There was no second and City Attorney Olsen said he needed to read a statement first.

City Attorney Olsen read a statement saying any participant may request an opportunity for more time to present additional evidence, arguments or testimony regarding the application for either of the properties. If such a request is received the city council has a choice. Council may continue the public hearing for at least seven days and at the continued public hearing if new evidence is submitted, any person may then request that the record be left open for at least seven additional days to submit written evidence, arguments or testimony for purposes of responding to the evidence at the continued hearing. Or council could leave the written record open for seven days rather than continue the public hearing. During the seven days, any person may submit new evidence or argument. The record is then kept open for an additional seven days for anyone to respond to written materials submitted during the first seven days. Then the applicant has the discretion of requesting a continuance. After the written record is received then council would conduct its final deliberation and make a decision.

City Attorney Olsen said the attorney for some of the neighbors asked for a continuance. He said he has heard that there may be some councilors considering denial of one of the applications and that may mean the counsel withdraws her request for additional time. He asked if anyone else in the audience wished to keep the record open. Ms. Cofield said if Site A will be denied and Site B recommended for approval she was in favor of that and would not need a continuance but of course, she would not know that until deliberation. She asked if she could make her request contingent. City Attorney Olsen said that was appropriate. Mr. Levasa asked if he could ask for a contingent continuance as well. If Site A is remanded he would not need it but if it is denied he does want a continuance. Mayor Cook accepted his request for a contingent continuance

Councilor Goodhouse moved to approve Ordinance No. 16-05, approving Site B and remanding Site A to the Planning Commission. Councilor Woodard seconded the motion.

Council President Snider asked if the remand required a full quasi-judicial noticing process. City Attorney Olsen said it did; it was like starting over. Mayor Cook said he would like staff to demonstrate with date-stamped photos that signage is intact and notification was complete. Councilor Woodard suggested using a simple checklist and dating it.

Council President Snider said the residents near Site A need to recognize that the property is two blocks off of Highway 99W and behind a huge commercial center. It is probably not going to be developed as a commercial property. He suggested that they as a neighborhood figure out how they can live with whatever will be done residentially on that property at some point. He said he thought it would be hard for the neighborhood to prevent things from happening on the property because of Oregon land use law and Tigard's Community Development Code.

Councilor Woodard addressed Jim Long and suggested there is time to talk to the Parks and Recreation Advisory Board (PRAB) about using it for a park. Mayor Cook added that anyone could buy the property and donate it to the city.

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- i. Mayor Cook closed the public hearing.
- j. Council Deliberation

Mayor Cook asked City Recorder Krager to read the number and title of the ordinance.

Ordinance No. 16-05 – AN ORDINANCE ADOPTING COMPREHENSIVE PLAN AMENDMENT CPA 2015-00005 AND ZONE CHANGE ZON 2015-00007 TO AMEND THE TIGARD COMPREHENSIVE PLAN DESIGNATIONS AND ZONING DISTRICTS MAP

City Attorney Olsen said while the title is the same, the body of this ordinance only relates to Site B. Council President Snider asked if the ordinance needs to mention the remand and City Attorney Olsen said the remand for Site A would not be part of the ordinance for Site B and staff was directed to remand the other matter back to the Planning Commission. Councilor Woodard asked if the property owners near Site A will be notified when the Planning Commission meets and City Attorney Olsen said they would; the applicant is basically starting over.

City Recorder Krager conducted a roll call vote.

	Yes	No
Council President Snider	✓	
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	
Councilor Henderson	(absent)	

Mayor Cook announced that Ordinance No. 16-05 passed unanimously by a vote of those present.

- 6. CONTINUED DELIBERATION: APPROVING AN ORDINANCE ESTABLISHING TIGARD MUNICIPAL CODE 3.75 PARKS MAINTENANCE FEE AND APPROVING A RESOLUTION AMENDING THE MASTER FEES AND CHARGES SCHEDULE

Due to the late hour council elected to carry this item over to the next council business meeting on February 9, 2016.

- 7. DISCUSSION ON THE PROPOSED FY 2017 CITY COUNCIL BUDGET

Assistant City Manager Newton gave the staff report for this item. She asked that council look at the highlighted items. An inauguration photographer, a slight increase in Tigard Downtown Alliance dues, and a reception were added. She noted that the Tigard Youth Advisory Commission Washington DC trip has been added to council’s budget. She said these are the only changes to the original version council received earlier.

Assistant City Manager Newton confirmed there are only enough funds to send two youths to Washington DC. Council President Snider said council should budget for five kids to go next year. Mayor Cook said he did not think the cities always pay. Some cities have their youth fundraise for the trip. Council President Snider mentioned being on the school board as a youth and felt he was more effective at the California legislature than some adults. Councilor Goodhouse recommended four. Council President Snider suggested partial payment and encouraging the youths to raise some of the funds themselves.

8. NON-AGENDA ITEMS None.

9. ADJOURNMENT

At 10:20 p.m. Council President Snider moved for adjournment. Councilor Woodard seconded the motion. Mayor Cook conducted a vote and the motion passed unanimously.

	Yes	No
Council President Snider	✓	
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	
Councilor Henderson	(absent)	

Carol A. Krager, City Recorder

Attest:

John L. Cook, Mayor

Date