



Home of the Tualatin River National Wildlife Refuge

**SHERWOOD CITY COUNCIL MINUTES
22560 SW Pine St., Sherwood, Or
May 1, 2012**

CITY COUNCIL WORK SESSION

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 6:08 pm.
2. **COUNCIL PRESENT:** Mayor Keith Mays, Councilors Bill Butterfield, Matt Langer, Robyn Folsom, Linda Henderson and Krisanna Clark. Council President Dave Grant arrived at 6:45 pm.
3. **STAFF PRESENT:** City Manager Pro Tem Tom Pessemier, Finance Director Craig Gibons, Public Works Director Craig Sheldon, Police Chief Jeff Groth, Planning Manager Julia Hajduk, Assistant Planner Zoe Monahan and Administrative Assistant Kirsten Allen.
4. **TOPICS DISCUSSED:**
 - A. **Metro Urban Growth Boundary (UGB):** Tom Pessemier informed Council that the Department of Land Conservation and Development (DLCD) is recommending that the Metro analysis of the UGB expansion be remanded and desired Council support for staff to testify regarding the recommendation. Discussion followed.
 - B. **Trees on Private Property:** Zoe Monahan presented a power point presentation regarding the changes made to Ordinance 2012-003 per Council request (see record, Exhibit A) and provided Council with a memorandum handout with additional tree code revisions (see record, Exhibit B). Discussion followed.
5. **ADJOURN:**

Mayor Mays adjourned the Work Session at 7:00 pm.

REGULAR CITY COUNCIL SESSION

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 7:10 pm.
2. **PLEDGE OF ALLEGIANCE:**
3. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Bill Butterfield, Matt Langer, Robyn Folsom, Linda Henderson and Krisanna Clark.
4. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Pro Tem Tom Pessemier, Finance Director Craig Gibons, Public Works Director Craig Sheldon, Police Chief Jeff Groth, Planning Manager Julia Hajduk, Assistant Planner Zoe Monahan and Administrative Assistant Kirsten Allen. City Attorney Chris Crean.

Mayor Mays addressed the Consent Agenda and asked for a motion.

5. CONSENT:

- A. Approval of April 3, 2012 City Council Meeting Minutes**
- B. Approval of April 17, 2012 City Council Meeting Minutes**
- C. Approval of April 18, 2012 City Council Meeting Minutes**
- D. Approval of April 23, 2012 City Council Meeting Minutes**
- E. Resolution 2012-020 Approving employment related decisions of the Pro Tem City Manager consistent with Section 33 of the Sherwood Charter**
- F. Resolution 2012-021 Authorizing the City Manager Pro Tem to enter into an Intergovernmental Agreement with Washington County for development of West Nile Virus Response Plan**

MOTION: FROM COUNCILOR LINDA HENDERSON TO APPROVE THE CONSENT AGENDA, SECONDED BY COUNCILOR ROBYN FOLSOM, ALL COUNCIL MEMBERS VOTED IN FAVOR.

Mayor Mays addressed the next agenda item.

6. PRESENTATIONS:

A. Eagle Scout Recognition

No scouts were present.

Mayor Mays addressed the next agenda item.

7. CITIZEN COMMENTS:

Mara Broadhurst 28440 SW Ladd Hill Rd, Sherwood came forward and stated that she owned property on the corner of Hwy 99W and Meinecke Parkway and next to the Elks Lodge on Hwy 99W. Ms. Broadhurst stated that they had been trying to find out why Mr. Doyel, dentist and developer, had been allowed to purchase and improve property without a permit or site plan. Ms. Broadhurst stated that they had asked the City when Mr. Doyel purchased the property if he would need a site plan to develop a parking lot and if highway improvements and Cedarbrook Way issues would be addressed. Ms. Broadhurst stated that the business exceeds the parking capabilities of the site and soon after purchase there were machines on site without permits, site plan, or erosion control. Ms. Broadhurst stated that the City and code enforcement were informed without a stop work order. Ms. Broadhurst stated ODOT told them that the accesses had been sold and the property was to be accessed off of Cedarbrook Way. Ms. Broadhurst stated that cars are parking there and illegally accessing the highway. Ms. Broadhurst stated that her concern was that if Mr. Doyel was allowed to use the access and not improve his section of Cedarbrook Way or Hwy 99W it would stifle nearby development. Ms. Broadhurst stated that when they did their site plan across the street they had to bond for future highway improvement and if Mr. Doyel were to do the required site plan process and bond for improvements the neighbors would be assured that development could proceed in an orderly and legal fashion.

Mayor Mays stated that Mara's husband, Joe Broadhurst had informed him of the complaint and that staff is looking into the complaint.

Robert James Claus, 22211 SW Pacific Hwy Sherwood came forward. Mr. Claus handed documents to the City Clerk for the record. Mr. Claus stated he received a call from a potential buyer who wanted to buy the lots on McFall who stated there was no use trying to buy them because the City is trying to take them and he did not want to get involved because of the terms Mr. Galati placed in order to build the lots. Mr. Claus stated that Clean Water Services told him the conditions were anti-environmental and were in order to add costs so the lots could not be developed. Mr. Claus stated the buyer directed him to go down to the open path on Metro to see a path through his lots. Mr. Claus stated that he went to Metro and spoke to Jane Hart and Governor Roberts showed up at the metro meeting and asked for an investigation. Mr. Claus stated that Dan Cooper told him it was just a squiggle with a magic marker that can be moved. Mr. Claus stated that his wife's surgery has been rescheduled because this was another attempt to kill her. Mr. Claus stated the City knew where the road was going to be put and that they were not notified regarding a City meeting hosted by Michelle Miller which was confirmed by OTAK. Mr. Claus stated the little lines on Metro's map are not squiggles with a magic marker but paths put on there with engineers.

Mr. Claus stated that his favorite theme is that the City is doing this to restrain trade, but he is not sure that is true anymore. Mr. Claus stated that he thinks the staff has taken an incredible dislike to his attitude towards the City urban renewal plan. Mr. Claus stated that what the City has done with the Refuge and other things has made it so the City has got to teach us a lesson. Mr. Claus stated this is going too far and even Cooper won't believe it. Mr. Claus stated the City is putting something in place so that he can't sell his property and questioned what was said about being careful what was done with Nathan Doyel because of Dolan v. Tigard. Mr. Claus asked what the City was trying to do besides steal nine acres and stated that it was right there in writing. Mr. Claus stated that Michelle Miller sat there while Jane Hart went after him viciously. Mr. Claus stated that they have done more gifting in this town than other family and stated he has had disagreements with Council, has been excluded from meetings, and OTAK was allowed to trespass on his property. (Mayor Mays informed Mr. Claus that his time was running out). Mr. Claus stated that he has not been able to sell that property in three years and the reason is this City Council. Mr. Claus suggested the Council take some time and clean up its act and to do good things for more than the Langers.

Mayor Mays informed Mr. Claus that his time was up at almost 5 minutes and thanked him for his testimony.

Mayor Mays addressed the next agenda item.

6. NEW BUSINESS:

A. Resolution 2012-022 Authorizing an Intergovernmental Agreement (IGA) with ODOT to receive Transportation Growth Management (TGM) Funds to develop a plan for the Sherwood Town Center

Julia Hajduk, Planning Manager came forward and explained that the City received transportation growth management funds to do the Town Center Plan and before the process can begin an IGA must be completed between the City and ODOT. Julia stated that the scope of work negotiated between the City, ODOT and the consultant was attached to the IGA.

Mayor Mays thanked Julia and staff for getting the grant and asked for discussion from Council.

With no questions or discussion from Council, the Mayor asked for a motion.

MOTION: FROM COUNCILOR LINDA HENDERSON TO APPROVE RESOLUTION 2012-022, SECONDED BY COUNCILOR ROBYN FOLSOM. ALL COUNCIL MEMBERS VOTED IN FAVOR.

Mayor Mays addressed the next agenda item and reopened the public hearing for Ordinance 2012-003. Mayor Mays confirmed with City Attorney Chris Crean that the public hearing statement did not need to be repeated.

7. PUBLIC HEARINGS:

A. Ordinance 2012-003 Amending multiple sections of the Zoning and Community Development Code relating to trees on private property, including Divisions, I, V and VIII

Assistant Planner Zoe Monahan came forward and presented a power point presentation (see record, Exhibit C) and stated that the resolution was regarding the tree code clean up which is a continuation from the Council discussion on March 20th. Zoe stated that the Planning Commission held a number of work sessions and public outreach between December 2010 and January 2012 then forwarded a recommendation to the City Council in February of 2012 and the City Council continued a public hearing in March. Zoe stated Council just held a work session regarding the proposed changes to reflect the concerns that were heard at the previous Council meeting with some additional recommended changes.

Zoe stated that the purpose of the proposed tree code is to establish a fair and flexible code for developers and for the community. Zoe stated that the proposed code promotes tree preservation and makes the trees an asset by recommending that retained trees count as double towards the canopy requirement. Zoe stated that the ordinance eliminates the mitigation standard and that the canopy requirement is a new concept, Zoe further explained that it is difficult for people to understand because we are used to that mitigation standard. Zoe added that a diagram and a table have been prepared to be inserted into the code and it is recommended that they be codified to make it more clear as to what we are looking for with the tree canopy.

Zoe stated that there was interest in understanding why we are proposing a tree canopy for the residential developments rather than just having the street tree requirement and gave an example of a 26 lot subdivision now in review which shows that the street trees would only achieve a 30% canopy out of the 40% required for residential using 30 ft and 40 ft canopy spread trees.

Zoe referred to the presentation (Exhibit C) showing the table being recommended for insertion into the code that shows how to meet the canopy requirement and stated that it shows the requirement for residential and nonresidential and what types of trees, whether they are landscape trees, street trees, or retained trees and what can be counted to achieve that canopy. Zoe stated that the equation to determine how to achieve the canopy has been

broken down mathematically and pi (π) has been updated to ensure that everyone is getting the same results.

Zoe referred to the presentation (Exhibit C) showing the diagram that is proposed for insertion into the code which shows that you don't have to have a cluster at 40% for residential but the trees can be clumped, retained, and planted. Zoe stated that there are a number of ways to achieve the required canopy and pointed out that the tree canopy is the expected mature canopy. Zoe stated that it doesn't mean that the developer is losing the area but can put a path or parking lots under the trees.

Zoe stated that there was also interest in getting more information regarding how the canopy is determined. Zoe reiterated that this applies to Type II through Type IV projects. Zoe explained that the number of trees that are needed for a one acre residential site is a 40% canopy, which can be found in the code language or on the table. Zoe explained that from there you could select the trees that you are going to retain on site, and select the street trees and any additional trees that you want to place on site to achieve your canopy. Zoe referred to the sample options in the presentation showing a number of ways that this could be achieved that provides flexibility to developers. Zoe stated that the example shows you could retain six trees using the double counting with a 40' spread or by planting four trees with a 30' spread and stated that another option would be for a site that does not have any trees where you could plant 11 trees with mature spread of 30' or plant 8 trees that have a 40' spread.

Zoe stated that in addition to the memo in the packet and the revised code in Exhibit 1A and 1B that there were additional changes added to clarify the language further in the memo dated May 1, 2012, with the revised language titled Draft Tree Code Language (see record, Exhibit B). Zoe began listing the changes with the clarification to the applicability that refers to the Type II - IV projects and stated that since we look at the highest level of review when we determine the process we wanted to ensure that any project that includes a Type III or IV be required to address the tree canopy, therefore "all applications including Type II – IV land use review" was added. Zoe stated that it is recommended that Sections D2 and D3 regarding the required canopy for residential and nonresidential be updated to add that "a variety of trees" be provided to achieve the canopy to encourage more than one type of tree be planted on site. Zoe stated that the table has been updated to identify how many decimal places need to be used when using pi (π) which is also updated in the diagram. Zoe referred to pages 12, 20 and 22 in the new code language (see record, Exhibit B) regarding the significant tree standards and the necessary buffers between sections and recommended that it read "necessary in required buffers". Zoe added that "other qualified professional" was added to all sections but was missed in tree protection during development section which was added to be consistent. Zoe stated that the trees on private property not subject to land review but nonresidential has an added exemption to tree replacement for sites such as St. Francis that in the future might need to remove trees and which won't be required to be replaced which is clarified in section 16.142.080.C.2.(3) which is also for the nonresidential pieces that do not require a land use review. Zoe stated that staff recommends that the City Council adopt the updated version dated May 1, 2012 by a motion to modify exhibit 1A to reflect the revisions and then a motion to adopt Ordinance 2012-003.

Mayor Mays asked to receive public testimony on the proposed Ordinance 2012-003.

Robert James Claus 22211 SW Pacific Hwy Sherwood came forward and stated that the form to sign up for comment is a form of prior restraint and violated time, place and matter content restrictions. He commented regarding staff resumes, a compliance agreement and the Langer tax ruling. Mr. Claus stated he wanted to appeal to LUBA and asked why it was not retroactive to every place in town and why 99W was singled out. Mr. Claus stated that there are provisions on 99W where you cannot grow the trees or they are taken out. Mr. Claus stated he told Ms. Hajduk they were going to remove trees specified in the ordinance and that she was told by PGE to mind her own business. Mr. Claus stated that legal liability for the trees being suggested for 99W are beyond belief and you cannot get policies to cover it. Mr. Claus commented regarding native species and it being confusing and mixed up and stated he has raised hybrid poplars which are meant for pulp and harvesting and not defined in the ordinance. Mr. Claus stated that native species are defined as non native species and this needs to be clarified. Mr. Claus stated that numerous sections in the ordinance are mixed up. Mr. Claus stated that poplars grow quickly, living 30-50 years then die and some of the trees he has planted grow very slowly and are nothing at fifty years old. Mr. Claus stated that under this ordinance that it would be impossible to replace a poplar when it dies a natural death and that is not taken into consideration. Mr. Claus stated that the City is requiring that we enter a federal government controlled highway and landscape it and stated the compliance agreements should be read before stating we can do that.

Mr. Claus commented regarding a Mayor Gilgan of Massachusetts stated there were two reasons why you would write an ordinance like this. Mr. Claus commented you could not read the ordinance and make anything out of it and there is too much vague language. Mr. Claus commented regarding native species listed that were not native and commented regarding statements made by Carol Connell and a subdivision being planted with native species then stated that none of the trees planted were on the tree list. Mr. Claus commented there are standards that cannot be met and he doesn't know what they mean. Mr. Claus commented there was a conspiracy in this town to restrain trade and harm 99W which comes in a myriad of ways like sign code enforcement, sign code language, and trees so that you can get money out of urban renewal. Mr. Claus recommended that each member of Council recuse himself because they are getting money to run the city by stealing money from school children.

With no other comments Mayor Mays closed the public hearing.

Zoe Monahan returned for questions from Council.

Councilor Bill Butterfield stated that he has spent quite a bit of time review this document as well and recognized the effort staff put into it. Councilor Butterfield stated it was a lot cleaner and simpler and was pleased with staff's work.

Councilor Langer referred to page 4 of the updated draft language (see record, Exhibit B) and asked if it was correct that as far as trees that are planted that meet the canopy requirements we are not defining what size caliper of tree has to be planted.

Zoe stated that for trees on private property that are subject to land use review we are looking at the expected mature canopy spread and not at how they are measured when it comes to diameter at breast height.

Mr. Langer gave an example of a residential site where a couple of street trees could be planted for credit and planting a seedling in the yard with no defined caliper for that tree or adequate protection and meeting the canopy requirement.

Zoe answered that we are trying to provide flexibility for developers that if they show that the seedling is protected and is going to grow then the tree counts.

Mr. Langer stated that some fears that were expressed by home builders and others was that they would have to plant more of the expensive 2" plus caliper trees and there is a lot of investment in that.

Zoe stated that the street trees have to be a 2" caliper and seedlings do have to be healthy and have the ability to grow and we would want them to be replaced if they die.

Mr. Langer asked regarding retained tree canopies in the case where an existing tree might exceed the canopy size you might find in literature and further inquired that if you have trees that are, stated to have a forty foot canopy but you have an existing tree that exceeds that, can the applicant get actual credit for that canopy.

Zoe confirmed and stated that a specific resource is not identified and an arborist stating that an existing tree on site has a certain canopy can be accepted.

Mr. Langer commended staff regarding the retention of existing trees because they look great in our community.

Mayor Mays stated that there is the potential that someone will come in with a project where they believed they cannot come up with the required canopy and asked if there was a process to make an argument for a variance.

Zoe answered that there is nothing specific in the tree code, but there is a variance process in place that can be used.

Mayor Mays stated that the canopy was very much achievable but it is unknown as to how development might change in one category or another so it should be said that there is a variance process that can be used.

Councilor Clark referred to page 19 of the handout (see record, Exhibit B) and asked how does the tree code effect her neighbors and residents of the City. Ms. Clark stated that under the residential single family and two family standards an existing residential property can remove up to five trees that are not street trees or up to 10% of the number of trees on the site within a twelve month period. Ms. Clark commented that notification to the City is a great way to handle your neighbors that the tree is being removed and if questions can come to the city they can field questions.

Zoe stated that there hasn't been a lot of time spent on private property not subject to land use review.

Mayor Mays commented that if you have to take out a street tree you have to replace the street tree per code. Mayor Mays stated that in general, people plant more trees in their yard and sometimes want to make changes and remove it or plant something else.

With no other discussion from Council the Mayor made the following motion.

MOTION: FROM MAYOR MAYS TO MODIFY EXHIBIT 1A TO REFLECT THE REVISIONS IDENTIFIED IN THE DRAFT TREE CODE LANGUAGE DATED MAY 1, 2012 FOR ORDINANCE 2012-003, SECONDED BY COUNCILOR BILL BUTTERFIELD, ALL COUNCIL MEMBERS VOTED IN FAVOR.

Mayor Mays asked for a debate or a motion on the amended ordinance. The following motion was received.

MOTION: FROM COUNCIL PRESIDENT GRANT TO READ CAPTION AND ADOPT ORDINANCE 2012-003, AS AMENDED, SECONDED BY COUNCILOR LINDA HENDERSON, ALL COUNCIL MEMBERS VOTED IN FAVOR.

B. Ordinance 2012-004 Amending Sherwood Municipal Code Section 15.16.100 regarding System Development Charge Credits

Mayor Mays indicated the legislative number assigned to this ordinance as 2012-004 was incorrect as it should have been assigned Ordinance 2012-007.

City Manager Pro Tem Tom Pessemier explained that in 2007 the City revised the System Development ordinance that included the section involving credits. Tom stated the ordinance in 2007 took out a section of the ordinance that required the City to notify developers if they had credits available for their property if they built qualified improvements. Tom explained upon a situation where a developer came in for land use approval and made improvements that did not qualify when the project began because it was not on the transportation systems plan or the capital improvements plan and was not included in the methodology. Tom explained that the project became eligible because of the length it took to complete the project and changes in the transportation system plan and transportation system development charge methodology changes. Tom explained that the developer ended up building a road that was SDC creditable but missed the opportunity for credits because of poor communication and not applying within 90 days of finishing the project. Tom explained that this was not fair and it was not the intent of the City. Tom stated that the ordinance allows any projects within that time frame and January 2012 to ask for system development credit if they meet the requirements. Tom stated the ordinance amends section 15.16.100 and adds some text in Item H that the City shall provide written notice to the persons making the improvement that the improvement may qualify for improvement and the credit request must be filed within 90 days of acceptance. Tom stated that it puts the burden on the City to notify the developers that we believe that their property may be eligible for credits and puts them on notice that they have 90 days to get the information back. Tom stated that we are trying to make things better and make sure there is no miscommunication and to treat developers fair.

Mayor Mays thanked Tom and confirmed with City Attorney Chris Crean that public hearing testimony was not required and up to the discretion of Council. Chris Crean confirmed. Mayor Mays asked if there was a request from Council to receive citizen comments on the proposed ordinance. With no requests from Council to receive public testimony, Mayor Mays asked for discussion from Council.

Councilor Folsom stated that this is to be more customer service oriented and to help with the System Development Charges and to be focused on helping the developer.

Tom confirmed and stated that we put requirements on the City when it is important to make sure people are treated the best they can and if the City identifies a credit they may not be aware of we want to make sure they know that and they can have their SDC reduced through credits.

Ms. Folsom stated that in a large development project this is something that could easily be overlooked as things change and stated she appreciated the efforts staff has taken.

With no further discussion the following motion was received.

MOTION: FROM COUNCILOR HENDERSON TO AMEND THE TITLE FOR ORDINANCE 2012-004 TO 2012-007, SECONDED BY MAYOR MAYS. ALL COUNCIL MEMBERS VOTED IN FAVOR.

Mayor Mays asked for a motion on Ordinance 2012-007.

MOTION: FROM COUNCIL PRESIDENT GRANT TO READ CAPTION AND ADOPT ORDINANCE 2012-007, AS AMENDED, SECONDED BY COUNCILOR LINDA HENDERSON, ALL COUNCIL MEMBERS VOTED IN FAVOR.

8. CITY MANAGER AND DEPARTMENT REPORTS

City Manager pro tem Tom Pessemier stated there had been an increase in the number of complaints from citizens, staff and City Council regarding inappropriate behavior at the Plaza specifically damaging the public facility that is a very nice public asset. Tom stated there have been large boulders smashed, panel doors beaten up, and other activities incurring damages. Tom stated that the City took a proactive action to put together an ordinance in order to protect public places and he has spoken with Chief Groth and there will be a plan put in place to start cracking down on that type of behavior especially to those causing damage and being disruptive. Tom added that the people in the park are being rude and talking back and progressive action will be taken and enforcement stepped up in the way that we deal with those issues up to and including levying fines if that is what it takes to correct the behavior. Tom stated that fines would be the last desired option as well as looking to get compensated for damage that is done. Tom stated that cameras will be active very soon so we will be able to watch that area with a more careful eye. Tom informed Council that more signs will be put in place as we want to make sure the area stays nice and lasts for a long time. Tom announced that June 1st will be a grand opening celebration which will correspond with turning on the water feature for the season and said Community Services Director Kristen Switzer is working with some partners in the community to have a celebratory event at the plaza.

Tom stated that there was a second dog bite with an officer on duty and that Chief Groth and his staff have taken a hard look at the K-9 program which has been suspended. Tom stated that the chief has concluded that Azi is not the right dog for Sherwood. Tom explained that Azi will be going back and there will be a credit for the costs that were paid to acquire Azi. Tom stated that a pause will be put on the program in order to put the proper policies and procedures in place so that when the City replaces him the K-9 program can be successful. Tom stated he supports the program and Police Chief Groth has talked to many other K-9 units in the state and said it is a great program and we need to find a way to make it work so that it is effective and people don't get hurt.

Mayor Mays commented that there has been concerns about our officers and the dog but also supportive of the program. Mayor Mays stated the Plaza celebration on June 1st is going to be exciting and a majority of the youth are excited to have the water turned on and hopefully we will be able to correct the behavior of a small minority in our community that are not appreciating that and other assets in our community.

9. COUNCIL ANNOUNCEMENTS

There were no council announcements.

10. ADJOURN TO URA BOARD OF DIRECTORS MEETING

Mayor Mays adjourned at 8:01 pm and convened to a URA Board of directors meeting.

Submitted by:


Kirsten Allen, Administrative Assistant


Keith S. Mays, Mayor
David Grant, Council Pres.