



**SHERWOOD CITY COUNCIL MINUTES**  
**22560 SW Pine St., Sherwood, Or**  
**February 21, 2012**

**CITY COUNCIL WORK SESSION**

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 5:05 pm.
2. **COUNCIL PRESENT:** Mayor Keith Mays, Councilors Bill Butterfield, Matt Langer, Krisanna Clark and Linda Henderson. Councilor Robyn Folsom arrived at 5:10 pm and Council President Dave Grant was absent.
3. **STAFF PRESENT:** City Manager Pro Tem Tom Pessemier, Economic Development Manager Tom Nelson, Finance Director Craig Gibons, Human Resource Manager Anna Lee, Accounting Supervisor Julie Blums, IT Director Brad Crawford, City Engineer Bob Galati, Public Works Director Craig Sheldon, Planning Manager Julia Hajduk, Police Chief Jeff Groth and City Recorder Sylvia Murphy.
4. **OTHERS PRESENT:** Sally Ho with the Oregonian, Murray Jenkins and Jason Fifield with Ankrom Moisan Architects, Dan Cook and Mark Simpson with R&H Construction, Chris Nelson with Capstone Partners LLC.
5. **TOPICS DISCUSSED:**
  - A. **Community Center:** Murray Jenkins presented information on the Community Center and reviewed drawings. Murray informed the Council that information would be coming before the Planning Commission in March. Murray briefed the Council on Community Center amenities including; Theatrical features, telescoping seating, sprung floors, concrete floors, electrical, lighting and lighting controls, lighting preset features, universal control panel with 521 data points. Discussion followed.

Discussion occurred regarding the RFP process and cost estimates.

Murray briefed the Council on the Center's acoustics, curtain track system, scenery tracks, winged walls, no fly space, storage space, back stage access with rollup doors and no dock.

Dan Cook with R&H Construction briefed the Council on cost estimates and the RFP process and how the estimates were in line with the design documents. Dan stated the current facility estimate is \$3 million in comparison to the original \$2.3 million. Discussion followed and Council asked for an explanation of where and how the estimate changed.

Dan Cook explained some of the areas of increases in cost were electrical, lighting and consultants. Dan explained options to reduce cost, including; scope, value engineering options, scope reductions regarding brick, amount of brick and design, scope elimination such as lighting, future infrastructure and future add-ons. Dan informed the Council the electrical was costly and they were doing above the minimum code requirements and said cost saving opportunities existed in this area. Dan explained HVAC was also an area that was costly and this could also be looked at. Discussion followed.

Dan Cook explained cost savings in the bid process and briefed the Council on other areas of cost increases such as: the roof core and discovery of asbestos, foundation and rock and structural. Discussion followed.

Discussion occurred regarding scheduling a meeting to further discuss reductions in cost.

**B. Metro Presentation:** Metro Councilor Carl Hosticka and Kim Ellis Principle Transportation Planner distributed a packet of documents (See record, Exhibit A) and briefed the Council on the information provided, specifically page 15 and 16 of the materials provided. Discussion followed.

Mayor Mays expressed concern regarding transportation and reductions of public transportation in the Sherwood area. Discussion followed.

**6. ADJOURN:** Mayor Mays adjourned the work session at 6:50 pm and convened to a City Council Executive Session.

### **EXECUTIVE SESSION**

- 1. CALL TO ORDER:** Mayor Mays called the meeting to order at 6:52 pm.
- 2. COUNCIL PRESENT:** Mayor Keith Mays, Councilors Bill Butterfield, Matt Langer, Krisanna Clark, Linda Henderson and Robyn Folsom. Council President Dave Grant was absent.
- 3. STAFF AND LEGAL COUNSEL PRESENT:** City Manager Pro Tem Tom Pessemier, City Recorder Sylvia Murphy and City Attorney Paul Elsner.
- 4. OTHERS PRESENT:** Sally Ho with the Oregonian.
- 5. TOPICS DISCUSSED:**
  - A. Pursuant to ORS 192.660(2)(f) Litigation and 192.660(2)(h) Exempt Public Records, City v. Blakeslee case.**
- 6. ADJOURN:** Mayor Mays adjourned the Executive Session at 7:07 pm and convened to the regular Council Session.

### **REGULAR CITY COUNCIL MEETING**

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 7:15 pm.
2. **PLEDGE OF ALLEGIANCE:**
3. **ROLL CALL:**
4. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant (via conference call), Councilors Bill Butterfield, Matt Langer, Krisanna Clark, Linda Henderson and Robyn Folsom.
5. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Pro Tem Tom Pessemier, Police Chief Jeff Groth, Finance Director Craig Gibons, Economic Development Manager Tom Nelson, IT Director Brad Crawford, Planning Manager Julia Hajduk, Associate Planner Michelle Miller, Assistant Planner Zoe Monahan, Senior Planner Brad Kilby, Human Resource Manager Anna Lee, Administrative Assistant Kirsten Allen and City Recorder Sylvia Murphy. City Attorney Paul Elsner.

Prior to addressing the Consent Agenda, Mayor Mays proposed an amendment to the Agenda under Public Hearings to alternate Item A. Ordinance 2012-003 and Item C. Ordinance 2012-005 as there were several attendees in the audience wanting to present testimony for Item C. Mayor Mays also changed the testimony time from four minutes to two minutes to allow everyone an opportunity to speak. No objections from Council were received to amend the agenda.

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

## 6. **CONSENT AGENDA**

- A. **Approval of February 7, 2012 City Council Minutes**
- B. **Resolution 2012-006 Appointing the Budget Officer for Fiscal Year 2012-13**
- C. **Resolution 2012-007 Reappointing Kim Rocha-Pearson to the Budget Committee**
- D. **Resolution 2012-008 Reappointing Lynette Waller to the Budget Committee**
- E. **Resolution 2012-009 Reappointing Steve Munsterman to the Budget Committee**
- F. **Resolution 2012-010 Appointing Neil Shannon to the Budget Committee**
- G. **Resolution 2012-011 Appointing Brian Stecher to the Budget Committee**
- H. **Resolution 2012-012 a Resolution Approving Settlement in City of Sherwood v. Blakeslee Properties, LLC.**

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

## 7. **PRESENTATION**

- A. **Eagle Scout Recognition**, no Scouts were present.

## 8. **CITIZEN COMMENTS**

Robert James Claus, 22211 SW Pacific Hwy, Sherwood came forward and informed Council that he has been gathering evidence and has spoken with the FBI and wanted to enter information into the record, regarding Langer Property viewed values in tax court, commented regarding this

property within an urban renewal area, commented regarding issuing gag orders, commented regarding name calling in public meetings and suppressing first and fourteenth amendment rights concerning the City Attorney. Mr. Claus provided documents to the City Recorder and requested they be entered into the record (See record, Exhibit B).

Eugene Stewart, 22595 SW Pine Street, Sherwood came forward and commented regarding a fundraiser held at the Sherwood Senior Center the previous Saturday evening. Mr. Stewart informed the Council that roughly \$6800 was raised to be shared by the Senior Center and Faith in Action. Mr. Stewart stated that he believes there is a lot of support in the community for the Senior Center and thanked everyone who supported the event.

With no other citizen comments received, Mayor Mays addressed the next agenda item, Public Hearings, Item C. Ordinance 2012-005 and the City Recorder read the public hearing statement.

## **9. PUBLIC HEARINGS**

### **C. Ordinance 2012-005 Making certain determinations and findings relating to and approving the Fifteenth Amendment (Substantial) to the Sherwood Urban Renewal Plan**

Economic Development Manager Tom Nelson and Elaine Howard with Elaine Howard Consulting came forward. Tom stated that the Urban Renewal Plan and report was adopted in August of 2000 and presented a power point presentation regarding the URA activity (See record, Exhibit C).

Tom reminded Council that the implementation of the plan was to remove blight in Sherwood and provide opportunity for investment in the community. Tom commented that the anchor investment of City Hall and the Library has perpetuated interest and investment in Old Town. Tom commented on the new streetscapes stating that residents, former residents and visitors have complemented the improvements and the investments have added value to Old Town.

Tom stated the City purchased the Old Cannery site in mid-2000 and a feasibility study was conducted, and said the City has partnered with Capstone Partners LLC on the project and the Urban Renewal Agency to develop the Cannery project. Tom referenced the presentation and a photo of the old machine shop and said the machine shop wasn't part of the cannery plan at the time. Tom stated that Capstone inquired about the machine shop and if it would detract from the project if left as is. Tom stated the Urban Renewal Agency was able to purchase the property and do some visioning on the property and partner with Capstone to convert the old machine shop into retail space and a Community Center. Tom stated the hope is to have the project completed by October 2012.

Tom referenced the presentation and explained a comprehensive map showing the proposed private development that has resulted from the public improvements made.

Tom explained other improvements made by the URA including transportation improvements, such as the railroad intersection at the corner of SW Langer Farms Parkway and SW Oregon Street, investments in school turf fields, and a contribution to the new Sherwood High School Stadium, and assisted in funding the Sherwood Field House. Tom stated the URA purchased blighted property adjacent to the Senior Center to be developed in partnership with Washington County Non-Profit Accessible Living Inc. that will also provide right-of-way property for the extension of the Cedar Creek Trail. Tom recounted other blighted property purchased by the URA

such as the Old School House property, the Robin Hood Theater property, and properties on SW 1<sup>st</sup> Street, Main Street and Sherwood Blvd. Tom explained that most of the acquired property will be able to be redeveloped and sold with additional revenues of up to \$4 million that can be used for future designated projects or to pay down the URA debt. Tom explained that another URA project was Façade Grants that allowed up to \$15,000 in a matching grant per façade improvements with over \$200,000 worth of grants paid out to assist in the Old Town area.

Tom referenced the presentation and a list of “proposed projects in the amendment” and said the last time this information was presented, he discovered a mistake he made and said the figure for “Complete Community Center Construction” was not included in the table of information and this was his miscalculation of the maximum indebtedness based on an earlier figure we had from a report we received and informed the Council we had just made two large payments for the plaza that were not included in that figure. The difference in the figure was \$1.9 million due to these two large payments.

Tom referenced the presentation showing a list of proposed projects in the amendment and stated at any time the Urban Renewal Agency can readjust, add or remove projects and said the list shows a list of projects you have indicated were important to you, the Council as well as the Urban Renewal Board and SURPAC.

Tom turned the time over to the urban renewal consultant Elaine Howard.

Ms. Howard said for the benefit of the audience she wanted to explain what Urban Renewal is and how it works. Ms. Howard explained Urban Renewal is a process for financing projects and programs within a specified area as designated by the City and it is through an Urban Renewal Agency that urban renewal boundaries are established. Ms. Howard stated the assessor does something called “freeze the base” in that area. Ms. Howard said all the taxes that are coming from the assessed value at the time the property is frozen, this was done in 2000 with the Plan, and continued to go to all the different taxing jurisdictions in the area. Ms. Howard said any increase in value in the area, the taxes off of that increase in value goes to the urban renewal agency for programs and projects within an urban renewal area. Ms. Howard said the constraining factor of urban renewal by statute is maximum indebtedness and this is what was set when the Urban Renewal Plan was adopted and what you (the Council) are proposing to increase. Ms. Howard stated that most urban renewal plans do not have a time limit other than when maximum indebtedness is reached. Ms. Howard stated maximum indebtedness means the amount of money spent from tax increment revenues on projects and programs within an urban renewal area and does not increase property taxes for properties within an urban renewal, but instead divides those taxes differently than if there wasn’t an urban renewal area. Ms. Howard stated this is one of the things that people get confused about, thinking that property taxes go up and they do not, it just means that the amount on the frozen base goes to the taxing jurisdictions and the amount above that goes to the urban renewal agency.

Ms. Howard explained that a substantial amendment is one of two different types of amendments that have to be approved by the same process as an Urban Renewal Plan. Ms. Howard reviewed the process and what has been done to date:

- The Urban Renewal Agency has to review and approve the amendment to begin that process of approval, as was done on January 3<sup>rd</sup>
- The taxing jurisdictions have to be notified, as done on January 6<sup>th</sup>

- The Planning Commission reviewed the proposed amendment and made a recommendation on January 24<sup>th</sup>
- The Washington County Board of Commissioners were presented to on January 24<sup>th</sup>, they did not need to take any action, but gave comment
- Notices to all citizens was provided in the Sherwood Archer
- Notice of the public hearing was provided in the Sherwood Archer and on the City website
- Open Public Hearing by City Council
- Ordinance has to be a non-emergency ordinance and is effect 30 days after adoption

Ms. Howard stated since this is an amendment to increase maximum indebtedness and to add or refine your projects, the main analysis that is done is a “financial analysis” to determine how much maximum indebtedness you can increase. Ms. Howard said in 2009 there was a change to urban renewal statutes that spoke of what happens with changes in maximum indebtedness and it required two things; revenue sharing at certain key indicators in time when you reach target amounts in receiving tax revenue and said revenue sharing isn’t something that the taxing jurisdictions get, other than through a maximum indebtedness change on an existing urban renewal plan. Ms. Howard said it also spoke of setting limits for increasing the maximum indebtedness and one of those limits is that you may increase your maximum indebtedness by 20% indexed over an inflation factor, over each year for the time period from when your first plan was adopted. Ms. Howard said that 20% is the amount being proposed for the amendment. Ms. Howard said if the Council wanted to increase above the 20%, they would have to get concurrent, an actual written approval from the taxing jurisdictions and as long as you stay at 20% or below you may do that without written concurrence.

Ms. Howard commented that the revenue sharing is actually a positive thing for taxing jurisdictions because at this point, (Ms. Howard referenced a chart in the presentation), and said if it weren’t for the proposed amendment all the listed funds would be going to the urban renewal agency and with the proposed amendment the funds that are shown in the red go to the taxing jurisdictions.

Ms. Howard stated there’s a chart in the report that speaks of what the impacts on the taxing jurisdictions are. Ms. Howard stated in 2014-2018 there’s the positive impact on taxing jurisdictions and the amendment that you’re considering goes into effect between the years 2019-2021, that is when the increased amount of maximum indebtedness will actually be taken from the tax receipts, so there is a negative impact on those taxing jurisdictions during that time frame and they still will receive their share of revenue sharing but they also will be impacted by the total tax receipts being divided to the agency. Ms. Howard said the other impact they were asked to look at, because you are a standard rate urban renewal plan, and there are only a few of these in the state of Oregon, you not only get tax receipts from real property but you gain the tax receipts in urban renewal from local option levies and from bond levies. Ms. Howard explained on the bond levies, because they’re outstanding bonds and the debt service on the bond has to be paid, that impact is not on the issuers of bonds, ie Washington County or TVFR, that impact is on the actual property owner through their property taxes. Ms. Howard stated that analysis of impact on the individual tax payer is in your packet and for the time period of 2014-2018 there is a reduction in their property tax bill and because of the revenue sharing between 2019-2021 it would be an increase of net \$85.34 for a \$200,000 house over the life of the plan.

Ms. Howard explained that the substantial amendment will lengthen the time period of the Urban Renewal Plan by an estimated three years and reminded Council that the financial projections are all best estimates based upon tax assessor’s information. Ms. Howard stated that most urban

renewal areas are a minimum of twenty years and your plan was adopted in 2000 and said many plans go 20-30 years or sometimes longer and pointed out that even with the amendment, Sherwood's Urban Renewal Plan would only be in effect for twenty one years which is conservative and well within what might be expected by taxing jurisdictions for urban renewal.

Mayor Mays thanked Tom Nelson and Ms. Howard and said when the error was communicated three weeks ago, he was disappointed that the two payments were not in the figures and was not clearly reviewed by the Finance Director. Mayor Mays asked City Manager Pro Tem Tom Pessemier going forward what would be done to ensure the reports are provided to both SURPAC and the Urban Renewal Board.

Tom Pessemier, City Manager Pro Tem, answered that the Finance Department will take over the maximum indebtedness calculations from here forward and will be working with the project team and proposed that three reports be created. One report will do a cumulative tally of all of the expenditures to maximum indebtedness, including everything done in the previous month; the second report will take all the maximum indebtedness that we've spent on any projects and once a project is closed out we'll insert the exact figure of what we've spent on that project and it will also put the projected maximum allocations for any current project. Tom explained when we start a project we do an analysis to see what it's going to cost to design the project, cost to construct the project, cost for construction administration, contingency, legal and any fees, this allows us to have a very good estimate for the project and once the project kicks-off we will put that total amount into that report so we can see at the end of the project where we expect to be or how much money we actually allocated on the indebtedness, we will use this report to calculate how much maximum indebtedness is left. The third report would show how much maximum indebtedness is left, based on previous reports, to show a list of possible projects to be reviewed by SURPAC and the Urban Renewal Board.

Mayor Mays opened the public hearing to receive testimony.

Robert James Claus, 22211 SW Pacific Hwy, Sherwood came forward and stated you've violated your own notice provisions and said he would be placing these on file. Mr. Claus stated he did not know what the Council was doing in borrowing \$10 million and giving away \$20 million and at a minimum if this IRS document is accurate and in addition to that you are going to extensive states to restrain trade. Mr. Claus commented regarding Councilor Langer and zoning, Opus and their property. Mr. Claus said this is a matter of record as it's filed with the Clerk. Mr. Claus commented regarding suing for restraint of trade and having to make a number of administrative steps and gave examples of Councilor Langer being on the Urban Renewal Committee and sending this to Standards and Practice as he should not be there. Mr. Claus said there is nothing Mr. Langer can do without having a conflict of interest as everywhere he turns he's reaching a relative or himself. Mr. Claus stated the real issue is not with you and what you are doing with Urban Renewal if you weren't restraining trade, you've ruined the ridge, you've ruined the people that bought that property, you've shut down every single person. Mr. Claus stated Mayor Mays and Patrick Allen were directly involved with filing about Opus and closing him down. Mr. Claus stated staff cannot operate without urban renewal money and they also have a conflict of interest. Mr. Claus provided the City Recorder with documents and requested they be entered into the record (See record, Exhibit D).

Neil Shannon, 23997 SW Redfern Drive, Sherwood stated that he believes the major amendment does not need to pass, stating that a more honest form of funding should be found. Mr. Shannon

stated that twelve years ago a \$10 million dream is now \$35 million reality now adding another \$12 million on top of that. Mr. Shannon commented that the Urban Renewal area has been renewed and it was time to proceed honestly.

Eugene Stewart, 22595 SW Pine Street, Sherwood came forward and referenced the audit reports for Urban Renewal that are created by staff and approved by Council and stated that the Urban Renewal District started with \$0 and to June 30, 2012 is expected to have collected \$38,307,108 and to have spent \$40,494,508. Mr. Stewart stated that part of the Urban Renewal funding, in the amount of \$17,110,708, was paid for through the general fund and never recorded on the Urban Renewal accounts and cited other amounts spent for urban renewal including \$3 million for the water pipeline. Mr. Stewart stated that he was on the original committee which had more citizen input and requested the Council reject the ordinance. Mr. Stewart provided the City Recorder with a document (see record, Exhibit E).

Lee Weislogel, 22566 SW Washington Street, Sherwood stated that he was part of the Sherwood Main Street program which is involved in implementing the National and Statewide Main Street Program that Council is familiar with and has supported by resolution. Mr. Weislogel stated that the challenge is to rejuvenate Old Town and build on its history. Mr. Weislogel commented that the completion of Railroad Street, Washington Street, and alleyways, that are on deck for Urban Renewal work, are important to complete the upgrade of Old Town. Mr. Weislogel requested Council approval on behalf of the Sherwood Main Street Program.

Kevin Bates, 22461 SW Pine Street, Sherwood stated that he is owner of Symposium Coffee, a business with eight new employees because of Urban Renewal. Mr. Bates stated he supported the extension of the Urban Renewal fund because of the economic development that will be created and commented that putting an end to urban renewal funding would be devastating to the current plan in regards to Main Street and other projects like the Cannery Project. Mr. Bates asked Council to approve the amendment to the Plan.

Mark Christie, 23395 SW Starlight Drive, Sherwood commented that as a member of the Sherwood School Board he wanted to thank Council on an Urban Renewal standpoint for the \$380,000 that was invested in the High School Football Field, stating it was an unbelievable partnership and that as a team, the City and the School District have looked for ways to maximize taxpayer dollars that are unique and a model for other cities and school districts to follow. Mr. Christie stated that there may be more partnering with the City in regards to streets and that transportation and safety between schools is extremely important to the School District.

Nancy Bruton, 22566 SW Washington Street, #101, Sherwood stated that she was the Executive Director to the Sherwood Chamber of Commerce and that the Chamber believes that investment in strong business communities supports the community as a whole. Ms. Bruton stated that the Chamber testifies in favor of the expanded Urban Renewal funding to finish the proposed and ongoing infrastructure improvements including fixing the historical Old Town streets, completing the Community Center, and fixing Oregon Street. Ms. Bruton noted that the URA is an economic engine that can lay the foundation for building a strong tax base and create jobs. Ms. Bruton stated that Urban Renewal is a public investment that leverages private investment which creates a positive quantifiable return for the community as a whole. Ms. Bruton asked Council to consider the perspective of the business community when making their decision and thanked the community for their input.

Jim Haynes, 22300 SW Schmeltzer Road, Sherwood and current member of the Chamber Board stated that he has served on several of Sherwood's committees for decades, but comes before Council as an average citizen. Mr. Haynes stated that the urban renewal efforts have been very positive and Sherwood is on the right track and Council should not derail the great things that the Urban Renewal authority has done. Mr. Haynes suggested that Council not look at funding as an expense but an investment in Sherwood's future. Mr. Haynes stated that he would like to have a great place to visit, great people to do business with, and great businesses to enjoy and Sherwood is giving that to its residents and visitors more and more. Mr. Haynes encouraged Council to support the extension.

Allen Bower, 16066 SW 1<sup>st</sup> Street, Sherwood from Clancy's Restaurant and Pub stated that as a business owner of twenty four years he supports the extension of the URA and stated that the improvements to Old Town are a positive step, more unified and directed in comparison to the prior 20 years and believes this is a move in the right direction, stating that to pull the plug on it would be a shame at this point and time. Mr. Bower commented that he is also involved with the Sherwood Main Street Program and sits on their Board he feels that as a citizen or business owner in Sherwood it is important for all to be involved and was happy to see everybody here this evening.

With no other testimony received, Mayor Mays closed the public hearing and asked for questions from Council.

Councilor Robyn Folsom thanked the citizens for their comments, stating that their input is really important for her to hear and she appreciated them taking the time to come.

Ms. Folsom asked Tom Nelson regarding a previous Council resolution to move forward with the Community Center project. Ms. Folsom stated that Council was informed that there was enough money to complete the Community Center in the existing maximum indebtedness and inquired if that was accurate and asked for an explanation.

Tom Nelson stated it was accurate at that time and a report from Tashman Consulting on maximum indebtedness indicated where we were, but there were expenses that had not been accounted for from the Plaza construction and these figures were not included in the numbers provided. Ms. Folsom stated that it was really important for citizens to realize that decisions were made based on the numbers presented to Council, including buying additional property in November, when Council again asked if there was enough money in Urban Renewal and staff confirmed yes there was enough money.

Tom answered that we do have the money to do those projects but not enough money to complete the Community Center to the level in maximum indebtedness. Tom stated that we have plenty of revenue and plenty of budget authority, but we don't have the room in the maximum indebtedness calculation and the parallel track that is not contained in the financial report but must be calculated by hand every time.

Ms. Folsom inquired about the reports suggested by Tom Pessemier. Mr. Pessemier confirmed that the reports would track funds to prevent this from happening again. Ms. Folsom asked what figure was given to the URA Board a month ago and what was the actual number. Tom Nelson answered that the Board was given \$3.4 million a month ago and the actual amount is \$2.1 million. Ms. Folsom stated that numbers need to be trustworthy and expressed her disappointment that the numbers were incorrect.

Ms. Folsom stated that she believes that the Urban Renewal investments have helped our citizens. Ms. Folsom explained that the Urban Renewal District will not be dissolved if the ordinance does not pass and asked for clarification that the proposed increase is not the \$12 million listed in the projects so all of those projects will not be done.

Tom Nelson verified that the increase is \$9.7 million and that all of the projects could be done if property was sold in order to do the projects.

Ms. Folsom stated that she believes that the increase in maximum indebtedness should only include those things that we have promised to our citizens which included the streets and said we have to finish the streets and not leave the patch work we have as this was a promise that was made when we spent \$8.2 million. Ms. Folsom stated she believes we have to finish the Community Center to make it a viable product for the community and not just a shell. Ms. Folsom said testimony was received that mentioned alley improvements and some other things and she came up with a figure of about \$6.3 million and she would be willing to put out there what she thinks was promised. Ms. Folsom stated she is not supportive of passing the ordinance without specific projects tied to them and is not comfortable having a blank check out there. Ms. Folsom commented regarding being responsible to the citizen and having a specific list that doesn't change with political winds or political will.

Councilor Linda Henderson expressed her frustration with the incorrect figures and asked regarding the property on Railroad as she doesn't see it on the list. Tom Nelson replied it's in the Community Center figure, the remaining \$2.1 million.

Councilor Henderson asked to have the project list placed on the screen (see Ordinance 2012-005, Exhibit C, Pg 17). Ms. Henderson stated that currently as it stands, we could not complete the Community Center without passage of the maximum indebtedness because of our other obligations and without selling property. Tom Nelson confirmed this was correct. Ms. Henderson stated the Council held a work session this evening prior to this meeting and the Council received an update from the construction manager and staff that there were cost over-runs in the Community Center that they were working on to bring down but we are already behind schedule on the project. Ms. Henderson stated she believes the project is crucial to the Cannery development and getting it completed as soon as possible and at a level we feel is meaningful. Ms. Henderson stated she feels like she is backed into a corner where she has to make a decision to incur, to extend the length of the District for a longer period of time because we can't finish a project we've been working on for three years. Ms. Henderson referred to the project list and said she understands it's just an estimate and expressed frustration that the list can be changed and projects can change and stated she has great distress over this as there's no accountability.

Ms. Henderson expressed concerns that the list of projects generated by SURPAC, can be changed and items not on the list can rise to the top and a future Council can spend millions of dollars on a project that is currently not on the list. Ms. Henderson stated that, even with the increase, after the community center is completed only \$7.8 million will remain and something on the list will have to go or not get done without selling property. Ms. Henderson stated that no property has been sold since she has been on Council.

Tom Nelson stated we have a contract with Capstone Partners to purchase property by 2017.

Mayor Mays commented that the City could sell additional property, but that in this economy it was best to hold onto it.

Ms. Henderson stated that we have generated a list and have not prioritized it and her concern with approving this is if she doesn't approve it we don't finish the Community Center and if I do approve it, there's no accountability, no Council member is tied to spending funds on any of these projects. Ms. Henderson stated she would like to see in the legislation, if we were to dramatically change the project list, there would be some accountability, with either having to come back to SURPAC and regenerate a list to come back to the Council and have a public hearing to receive public comment on whether or not citizens agree with the direction of the Agency. Ms. Henderson commented regarding the current project list and not having a public hearing to vet the listed projects and have the opportunity to understand the projects and why they are important.

Tom Nelson commented that the ordinance just gives the URA the authority to spend an additional \$9.7 million in the future and would not have to be for any of these projects, but a future Urban Renewal Agency Board would prioritize the projects and said the list can change at the Council's direction based on input from SURPAC.

Mayor Mays stated like any law, and an ordinance is a law, the City Council has the authority, as long as it's not violating a state or federal law, they have the authority to change the law.

Ms. Henderson stated that none of the items on the current list were on the original list when the District was enacted on and that most of the projects have come from Council changes, in her opinion. Ms. Henderson stated that her concern is for accountability to stay with a plan that is being voted on.

Tom stated that the original plan that was enacted in 2000 changed because of direction from Council because opportunities arose and priorities changed. Tom stated that the cannery development project was originally allocated only \$2.5 million but the opportunity to do more was taken and the accountability is the decision to make those changes.

Tom replied that the improvements on the top of the list are important and mentioned that the alley improvements, the downtown streetscape, and the community center are important. Tom stated that some of the other items on the list could be argued, commenting that the parking study has been wanted for a long time, and the façade grants may have been maxed out and maybe we don't do those. Tom reminded Council that project costs are all estimates and said if Council doesn't give themselves the authority to spend the money in the future and these projects come in costing more, then you've put yourself in a box. Tom reminded the Council if they don't take the entire maximum indebtedness now there is only a one time opportunity.

Councilor Henderson thanked the citizens for their comments and made reference to the momentum to get projects completed.

Mayor Mays thanked everyone who gave testimony on the proposed ordinance and stated that Sherwood has a very successful, thriving Urban Renewal District that is the envy of many cities in Oregon. Mayor Mays commented regarding shutting down the Urban Renewal District in only 18-21 years not being seen in Oregon and is a very quick return and payback. Mayor Mays stated he disagreed with Councilor Henderson in that a Community Center theater was on the original list as well as downtown streets and streets in general, such as Washington Hill, stating that those projects are important and we haven't addressed them and believes we need to. Mayor Mays stated that the vast majority of what we've done with urban renewal has been in Old Town, which was at the heart of the plan, and our Old Town is getting more and more active and successful. Mayor Mays stated that it is a fairly large district and there is value in making improvements

beyond Old Town such as the hill on Washington Street, which is an atrocious road that has been ignored for a long time. Mayor Mays stated that it would be difficult to find funds any time soon for such a project but with the increase this could be done in the next 24-36 months.

Mayor Mays stated that the prospect of improving Oregon has a big price tag that the City is unable to get County money for and if development occurred, there would not be enough requirements on those developers to fix it to an appropriate standard. Mayor Mays stated that he believes there is a lot of value in that project as it not only improves the road for the community it improves the road for public safety. Mayor Mays stated that safe pedestrian and bike paths for that part of our community to get to school and Old Town does not exist and that the pedestrian and bike path element of the Oregon Street project also would count toward the local matching required for the \$5.2 million Cedar Creek Tonquin Trail Grant received through Metro from the federal government. Mayor Mays commented that Oregon Street is the last gateway into our community that is blighted and believes it is a significant project for consideration.

Mayor Mays stated from his perspective regardless of what's passed this evening, the list needs to go back to SURPAC to be prioritized and vetted, such as the Cedar Creek Trail line item on the list he believes it folds into the Oregon Street dollars but not adding to those dollars. Mayor Mays stated the opportunity for Sherwood is tremendous with this change and he was fully supportive.

Councilor Bill Butterfield stated that he too felt pushed into a corner with a couple of ways out and neither one of them a good choice. Councilor Butterfield stated that he agreed with the community that we need to continue on this path and take advantage of the dollars we have especially in these economic time and get the most out of the funds. Councilor Butterfield stated that he is in support of the amendment and agrees with the Mayor that the list needs to go back to SURPAC to reorganize.

Councilor Krisanna Clark stated that she was very conflicted with the vote for a lot of the reasons that have already been addressed. Ms. Clark stated that she does not like that she received bad numbers and made decisions on numbers that were inaccurate. Ms. Clark disclosed that she had ex parte discussions with Eugene Stewart regarding the auditing and the increase indebtedness and therefore has concerns. Ms. Clark stated that she feels that our community has been made promises in regards to the Community Center and the street improvements that would in turn support the business community and be instrumental in continuing the momentum and would not want to see this momentum stopped because of the accounting process. Ms. Clark stated she liked the ideas from Mr. Pessemier about receiving more reliable numbers and a better accounting process that the community and Council can rely on to make good decisions. Ms. Clark stated that she agreed that before we make any final decisions, if this is passed, on how projects rise to the top or fall to the bottom of the list that we hear public input so we can hear from our citizens about what they feel will be the best use of the money because it is their money. Ms. Clark expressed that she wanted to see Sherwood move forward in the right direction.

Councilor Matt Langer asked staff regarding URA owned property if it mattered when the property was sold, whether it was before or after the 2021 or 2018 deadline.

Tom Nelson answered that if the district folds the property would be deeded to the City and it could be sold at that time.

Ms. Howard added that the City can still have an Urban Renewal Agency after it stops taking tax increment revenue and could continue to do work off of program income or close down the agency. Program income comes from property sales.

Councilor Langer asked regarding being able to increase the maximum indebtedness only once and asked if Council extended tonight would there be another opportunity to extend or increase in 2021.

Ms. Howard answered that as she understood the statute there is one opportunity to increase maximum indebtedness by 20% without taxing jurisdiction approval and if Council decided at some point in the future to increase maximum indebtedness again two things happen; Council wouldn't be able to index that original \$35 million, and the 20% couldn't be exceeded without taxing jurisdictions approval. Ms. Howard stated that Council could not raise the maximum indebtedness again unless there is a change in the statute on how urban renewal works. Ms. Howard informed the Council that the statute is new and has not been tested on the "what if's" and that the intent was to allow for a one time opportunity to index a plan at 20% from the original plan.

Councilor Langer asked for further clarification that if the ordinance did not pass tonight if the increase in maximum indebtedness could be reconsidered before the district is extinguished in 2018.

Ms. Howard answered yes because Council will not have used its one time opportunity and further explained that the indexing could keep going and could actually increase next year from the \$9.7 million because it would index the \$35 million plus an additional year.

Councilor Langer asked why the timing was critical that the substantial amendment was done now.

Tom Nelson answered the City has used up its capacity to continue doing projects.

Councilor Langer repeated that the City has committed the funds it has accumulated in the past and if more projects are to be done, now is the time to make the increase, otherwise only the projects in process will be done. Tom confirmed. Mr. Langer asked regarding the original amount of \$35 million when the URA was formed and \$10 million attached to an original list of projects and asked Tom to clarify for the public what the original amount was as we have been criticized for \$10 million and wants the public to know the original amount of the district.

Tom answered the original plan has a maximum indebtedness of approximately \$35.7 million and that there was a list of projects with a lot of the projects done or are being worked on right now.

Councilor Langer stated he hears criticism over the fact that we had a list of commitments that we were going to build and should have built and then we deviated from that and changed and said often times government and legislation is too ridged and sets a course for doing something that isn't flexible enough to change with weather and climate and current economic picture. Mr. Langer stated he sees the ability to be flexible with any of our URA as a benefit. Mr. Langer stated he finds it interesting that he has been seated on Council for one year and a lot of the changes and deviations have been made by currently seated Councilors and said we need to keep in mind who's making the decisions.

Councilor Langer stated as a whole he believes it's clear that the URA has benefited our City based on the pictures shown in Mr. Nelson's presentation and said there are several other pictures and examples and there were several business owners present who are direct beneficiaries of the program who have generated jobs in a poor economy and this is a direct result of the dollars spent on this program. Mr. Langer stated that he believes the community needs to take a step back and realize how blessed of a community we are and a lot of this is attributed to the system in the URA program. Mr. Langer stated he is in support of extending the maximum indebtedness and understands the concerns for a commitment to a certain list and whether we complete the projects or not. Mr. Langer stated if we don't do it and keep Sherwood property taxes in Sherwood to build projects the money goes to other agencies, ie Metro, PCC and Washington County. Mr. Langer stated this is a very short timeframe in the history of Sherwood, 18 to 21 years, where we get to take a fraction of our property tax dollars and spend them on projects that are important to our community. Mr. Langer stated after this passes, unless there's a large act by Salem to do something else of this nature, it's over. Mr. Langer stated he is in support of spending his property tax bill in town as long as we can, reasonably and feasibly until it ends.

Council President Grant stated that he wanted to point out that the URA was a good idea at the start when it was adopted and believes everyone has been in favor all along up to this time and it has been incredibly successful. Mr. Grant commented that the discussion is about incrementing inflation for all the years gone by and he thinks it is a good idea now just as he did then. Mr. Grant stated that the URA has proved itself to be great for Old Town and jobs, has been positive for schools, and good for everyone and for the community. Mr. Grant stated that the projects are our responsibility that we are going to pay for some day and this mechanism for funding will complete the projects with the least impact on the City budget and no direct impact on property taxes. Mr. Grant stated that he believed this is what Council is expected to be doing by the citizens and he supports the amendment.

With no other Council comments received, the following motion was made.

**MOTION: FROM MAYOR MAYS TO READ CAPTION AND ADOPT ORDINANCE 2012-005, SECONDED BY COUNCILOR MATT LANGER, ALL COUNCIL MEMBERS VOTED IN FAVOR.**

Mayor Mays recessed the meeting at 8:40pm.

City Recorder's note: Council President Grant discontinued the conference call and exited the meeting at 8:40pm.

City Recorder's Note: Copies of Exhibit D to Ordinance 2012-005, Planning Commission record, Commission Draft minutes from January 24, 2012 meeting, were provided to Council members via email and copies were made available at the meeting.

Mayor Mays reconvened the meeting at 8:47 pm. and addressed the next item on the agenda.

**B. Ordinance 2012-004 approving a Planned Unit Development (PUD) to be known as Denali Planned Unit Development including application of a Planned Unit Development Overlay on the Comprehensive Plan and Zone Map, and approving the seven-lot subdivision**

The City Recorder read the public hearing statement which asked for disclosure of ex parte contact, bias or conflict of interest from the Council.

Mayor Mays disclosed that he had spoken with staff and watched part of the Planning Commission meeting on cable access and he intends to fully participate and has no bias.

Councilor Langer stated that he had attended a Planning Commission meeting for a different purpose and this happened to be one of the topics discussed and he did not speak with anybody and just listened to the meeting.

Councilor Henderson stated that she had attended the same Planning Commission meeting and briefly spoke with Commissioner Walker who recused herself because she lives adjacent to the property, but only spoke about the testimony she submitted.

Councilor Clark stated that she is the Planning Commission liaison and she also had an ex parte discussion with Ms. Walker about the PUD itself, but she feels no bias towards the discussion.

With no other Council declarations received, Mayor Mays addressed the Ordinance and asked staff for the staff report.

Michelle Miller, Associate Planner, presented a power point presentation regarding the PUD application (see record, Exhibit F) and pronounced that the City had received an application for an eight lot planned unit development residential subdivision called the Denali PUD located in southeast Sherwood, east of SW Murdock Road, and north of Sherwood View Estates. Ms. Miller stated that the lot is irregularly shaped and approximately 3  $\frac{3}{4}$  acres with areas of steep slopes and a vegetative corridor buffer to the east. Ms. Miller stated that the PUD will connect with the existing Sherwood View Estates with an extension of SW Denali Court and SW Ironwood Lane on the northeast corner. Ms. Miller explained that the site is part of the SE Sherwood Area which is a special area zoned Very Low Density Residential which allows for limited development due to the topography and sensitive natural resources in the area.

Ms. Miller explained that the applicant held several neighborhood meetings prior to submitting their application to get input on the proposal and staff reviewed the application and prepared a staff report for the Planning Commission recommending approval with conditions for the Planned Unit Development. Ms. Miller stated the Planning Commission held a hearing on December 13, 2011 took testimony, reconvened on January 11, 2012 to deliberate with their final recommendation of approval with conditions on January 24, 2012.

Ms. Miller explained the Council has before them Exhibit 1, which is the final Planning Commission recommendation, all the applicant materials, agency comments, and citizen comments attached as Exhibits 1-A thru 1-P. Michelle stated since the Planning Commission hearing last month Council has received additional citizen comments in the form of emails, which are included in the materials this evening. Michelle stated today staff received additional comments from Mike Pugh with the Department of Environmental Quality (see record, Exhibit G).

City Recorder's Note: Copies of this document were distributed to the Council members and made available at the meeting.

Ms. Miller stated that in the Very Low Density Residential zone the minimum lot size is at least 40,000 square feet with a density of one unit per acre. Michelle explained that in this zone only there is a special density allowance that provides for 2 units per acre if the applicant applies for a Planned Unit Development and a minimum lot size of 10,000 square feet is then granted. Michelle explained this proposal is designed with eight lots ranging in size from 10,000 square feet to

12,616 square feet and there are five tracts totaling a little over an acre that serve as open space, vegetated corridor buffer, and storm and sanitary sewer connections leaving approx. 2.38 acres of buildable area. Michelle stated the applicant proposes to extend SW Denali through the center of the site to SW Ironwood Lane a partially completed local street. Michelle stated the applicant will dedicate one foot of right-of-way on their portion of the street, install sidewalks, curbs and planter strips with street trees the length of SW Ironwood Lane, approximately 700 feet and make full street improvements to SW Denali Court. Michelle explained Tract D will serve as usable open space with a pathway circling nearly 16,000 square feet area and connecting to the sidewalk on SW Denali.

Michelle stated the Planning Commission found the proposal would meet the code requirements with the general conditions of approval and said three issues were reviewed and discussed in more detail at the hearing based on citizen comments and the applicant's proposal. Michelle stated these include evaluating the planned unit development in relation to the SE Sherwood Master Plan, the soil contamination on the site and the method of calculating density for the site.

Michelle stated the City received a grant in 2005 to help to facilitate future development of the 55 acre area known as the SE Sherwood Area. Development had been limited and piecemealed due to the topography and environmental constraints in the area. Michelle said because of these constraints it was difficult to get the necessary infrastructure in place in order to get the area to develop. Michelle stated the grant funding provided an opportunity for collaboration between the City, developers, neighbors and property owners in the SE Sherwood area to develop the Master Plan. Neighborhood meetings and workshops were held and the area was studied by transportation consultants, planning consultants and other urban service providers in order to develop a plan that would meet the needs of the existing community, preservation of natural resources and provide an opportunity for developing this constraint area. The result of which was a master planning effort adopted via resolution by the Planning Commission in 2006. Michelle explained the Planning Commission resolved that they would evaluate land use application in keeping with the principles adopted in the Master Plan concerning the layout, density and roadway connections.

Michelle showed the design of the SE Sherwood Master Plan with the Denali site highlighted in the map. Michelle explained the Denali PUD is similar in number of lots, gross density and roadway connections and general configuration as the Master Plan layout.

Michelle stated the contaminated soil on the site was another issue raised in the process, it came to light shortly after the Master Plan developed in early 2006, that this area and part of the Ken Foster Farm site, a place for discarding tannery waste from Frontier Leather Facility. Michelle explained hides were buried over the entire area during the 1960's and 1970's and later revealed to contain hexavalent chromium. DEQ entered the area into the environmental clean-up database in 2006 and began monitoring and cleanup of the site. Michelle stated the applicant was aware of the contaminated soils at the beginning of the process and has met with DEQ and has done some limited soil samples, also finding contaminants. The applicant is prepared to undertake significant expense to cleanup in order to develop the property with the community receiving the benefit of the cleaned up site and developed lots.

Michelle stated staff received this afternoon additional information from Mark Pugh with DEQ (see record, Exhibit G) on the new standards that will be in place when the applicant begins cleanup efforts. Michelle stated regardless of these standards the same conditions will apply that the

applicant will be required to comply with the DEQ requirements before construction on the site begins.

Michelle informed the Council Bruce Giles with DEQ was in the audience and was available to answer questions.

Michelle explained that staff evaluated the site in a manner that is generally followed for subdivisions using net buildable density definitions found in the code. Michelle stated unique to this zone is a special density allowance providing for up to 2 units per acre planned unit development. Using this formula it would allow for 4.6 or rounding up to 5 units. Additionally the site is considered environmentally constrained. An additional 20% special density transfer is available to bring 6 units to the site overall.

Michelle stated that the applicant proposed an eight lot PUD and staff recommended six lots based on a standard density calculation for PUDs with a special density transfer. Michelle stated that the Planning Commission weighed multiple factors in determining their recommendation and found that they would recommend 7 lots to best achieve the objective described for under the planned unit development section allowing for flexibility following standards in the development code.

Michelle stated the Commission felt strongly that they should follow the direction of the SE Sherwood Master Plan. By allowing additional lots for this development that meets the minimum lot size required and meets the gross density for the site, the site will be cleaned up and be a better use of the land. Michelle stated it can best encourage efficient use of the land and resources under these particular circumstances that will result in savings to the community, consumers and developers.

Michelle explained that the Planning Commission made specific findings for meeting the objectives and criteria for a Planned Unit Development as outlined in the Planning Commission recommendation to the City Council marked as Exhibit 1. The Planning Commission recommended that the Council approve the 7 lot residential subdivision with the conditions of approval as described in their recommendation.

Michelle stated the next steps in the process would be to hold a public hearing to consider the Planning Commission recommendation of approval with conditions, adopt, or specify any changes to the Ordinance and approve the PUD overlay to the site. Michelle stated if approved the applicant will prepare final development plan that will require further planning commission review and approval.

Michelle asked for questions from the Council.

Mayor Mays asked if staff suggested routes for development to the applicant other than a PUD.

Michelle answered that in this circumstance if they were not requesting a PUD the site is 3.71 acres so that would generally be a minimum lot size of 40,000 square feet, meaning roughly 2-3 lots maximum and stated that this is an alternative foreseeable with the specific zoning for very low density which allows for the special density of up to two units and then also with the special density transfer to allow for even more dense development in the area.

Mayor Mays stated that there were other tools or mechanisms that the applicant could have taken to get a higher density on the property like a zone change request or a plan text amendment.

Michelle answered that there could have been a zone change, but other zones have some very specific requirements that are really difficult to achieve as all the surrounding property is all zoned Very Low Density Residential (VLDR).

Councilor Folsom asked for further explanation on how seven lots was allowed explaining that she understood how six was allowed, based on the code, but not seven.

Michelle responded that the objectives within a Planned Unit Development allow for some flexibility of the development standards which the Planning Commission utilized along with allowing for an evaluation of some other components that would look at all community standards combined. Michelle stated that staff looks at objective standards and what would be traditionally used and that one of the reasons for using a Planned Unit Development is the flexibility it offers developers and the Planning Commission to achieve a product that is weighed and balanced with the community benefits that can be done on the site.

Ms. Folsom stated that in order to make the site economically feasible for the developer they need to have that many lots to sell. Michelle replied that it was a better question for the applicant, but the question did arise and it was getting quite tenuous with the expense of the contaminated soil, the steep slopes and the different environmental constraints on the site.

With no other Council questions of staff, Mayor Mays asked to hear from the applicant.

The applicant's representative, Kirsten Van Loo, a land use planner with Emerio Design, 6900 SW 105<sup>th</sup> Beaverton, came forward and stated in answering Councilor's Folsom' question, the reason the Planning Commission determined that seven lots were feasible was because of a Planning Commission resolution adopted in 2006 which specifically states that the gross density, which is the number of lots divided by the number of acres, is equal to 2.2 units per acre. Ms. Van Loo stated that the density on this site calculated at 2.2 units per acre would allow 8.2 units, however through the review of the design and the public hearing process the consensus was that seven lots was the appropriate size based on the amount of open space and based on dedication of right-of-way and the best design for the project.

Ms. Van Loo commented that staff has done a fabulous job for the last year and a half working on this project and stated that this piece of property is incredibly complex and challenging. Ms. Van Loo described the site as having Sherwood View Estates to the south, which was developed by JC Reeves as a PUD, and Ironwood Acres to the north, which was developed under VLDR standards where the hearings officer allowed a substandard street. Ms. Van Loo stated this is when the citizens of the SE Sherwood Master Plan area realized that they needed to take a harder look at these constraints and also when Pat Huske discovered the contamination. Ms. Van Loo stated there were environmental concerns on the site and the land is very hard Tonquin scab lands with only 8-12 inches of topsoil over basalt rock. Ms. Van Loo explained that it will be very difficult to install urban services because blasting will be necessary, in addition the land has slopes and some incredible views.

Ms. Van Loo commented on the rise and fall of development in Sherwood and stated that she thought that the Planning Commission adopted their resolution and until just recently there was no development. Ms. Van Loo stated that the property was owned by a financial institution and she

first met with staff eighteen months ago. Ms. Van Loo commented on working with Clean Water services because of the wetland to the east, to do soils analysis, and geotechnical analysis to determine the wetland buffer. Ms. Van Loo has worked with geotech engineers, environmental engineers and with DEQ to address the issues of contamination and how to mitigate and ameliorate the impacts of hexavalent chromium. Ms. Van Loo stated she has worked with City Engineer Bob Galati at length in order to connect Denali to Ironwood and he has preliminarily granted horizontal and vertical curve adjustment to the standards so the road can go in. Ms. Van Loo commented that all this work costs a lot of money it is very challenging and that a lot of land will be set aside for infrastructure and for the mitigation and amelioration. Ms. Van Loo stated that she believes the applicant has met the intent and purpose of the SE Sherwood Master Plan which was very extensive in its evaluation of the site and stated if you look at all of the concept plans for this particular piece of property there were eight lots considered in roughly the same area, but on evaluation and public testimony seven lots is the right number of lots. Ms. Van Loo stated they have worked with the neighbor to the west, who is a planning commission member who has some very strong concerns, and they will be working with the property owner to the north for improvements on Ironwood Lane.

Ms. Van Loo offered to answer Council's questions and stated she would reserve any further testimony about specific questions for after the public testimony.

Mayor Mays opened the public hearing to hear testimony.

Kurt Kristensen, 22520 SW Fair Oaks Court, Sherwood stated that he was involved in the conceptual development of the SE Sherwood Master Plan for the past six years and said he is glad to hear we are making a positive step in the right direction with the adoption of the PUD. Mr. Kristensen commented that the developer is willing and able to work with the neighbors and the SE Sherwood Master Plan to accomplish what were the original neighborhood concerns. Mr. Kristensen stated that there was very strong testimony from the residents of SE Sherwood View that Denali remain a cul-de-sac and not made a thru street and encouraged the Council to adhere to that testimony. Mr. Kristensen stated that the street could be a plaza with a gate for fire department access. Mr. Kristensen commented in regards to the new revisions of contamination data and stated he is very concerned because the testimony was incredibly passionate that the contaminates not be allowed to stay on the site, subsequent research and calculations has proven that it is impossible without the City creating a financial tax area to remove it. Mr. Kristensen encourage the Council to stipulate the contaminates, if they stay on the site it has to be encapsulated. Mr. Kristensen stated he believes the Council can make this work if they instruct staff to collaborate in the spirit they have done to date and said this will be a good start to the SE Sherwood Master Plan.

Gary DeBoer, 14166 SW Whitney Lane, Sherwood stated he agreed with Mr. Kristensen's recommendation on keeping Denali a cul-de-sac and commented on the steep slope of the lot and asked if anyone could relay the percentage of grade that the new road would incur. Mr. DeBoer stated his reasons were that in an emergency during heavy snows in the winter of 2008 the emergency responders could not get up to his street using McKinley due to snow and ice. Mr. DeBoer commented that if the emergency had been life threatening or a fire the results would have been worse. Mr. DeBoer clarified that he would like to know if the adjusted standards for the new street were more or less than McKinley and that if they were more the new residents might not have emergency services due to our inclement weather from time to time.

Jack Hoffbuhr, 14280 SW Whitney Lane, Sherwood stated he is a recent resident and thanked the Council for the Urban Renewal. Mr. Hoffbuhr said he was a professional engineer and a board certified environmental engineer and when he saw that the site was being considered for development he became interested. Mr. Hoffbuhr stated that he has also submitted written comments and that he opposes it from the standpoint that it is not a suitable site for a subdivision because the slope will make it difficult to prevent water quality contamination from entering the wetlands. (Note: Written comments are included in the Council meeting packet). Mr. Hoffbuhr commented that the reports showed lead on the site and that there is no safe level of lead established for children and that lead mobilizes easily in soil particularly during the construction process. Mr. Hoffbuhr concluded by stating that air and water quality would be difficult to maintain due to the steep slopes and stated that if Council does approve he feels the soil should be removed, that a cap system is not effective and sometimes fails.

Susan Hart, 14300 SW Whitney Lane, Sherwood stated that she agrees with Mr. Kristensen's comments and asked if the contaminated soil were to remain on the site what would it look like as she would like to make sure the site that has been designated can fit it all.

Patrick Huske, 23352 SW Murdock Rd, Sherwood informed Council that DEQ has been engaged for a very long time, and he has done extensive work on the contamination. Mr. Huske stated that he lives in the neighborhood and wanted to make sure decisions were based on the facts. Mr. Huske commented that he totally supported the PUD for a number of reasons; to get rid of the contamination, it adheres to the transportation plan, and in 2005 the neighborhood went through a yearlong rezoning process with the Planning Commission that approved eight lots for that neighborhood. Mr. Huske stated that the applicant came here tonight after a year and a half worth of work and is only asking for seven lots. Mr. Huske suggested that Council look at the City as a whole on how to get rid of properties with issues, that this property is just the first of forty acres that may have similar situations.

Mayor Mays asked to receive other public testimony, with none received he asked Bruce Giles from the Department of Environmental Quality to come forward.

Mr. Giles stated he was a manager for DEQs NW Region where he manages cleanup programs, emergency response and tank cleanups and has a lot of experience dealing with cleanups on residential property. Mr. Giles stated he has been working in Sherwood on the tannery site since 2002 and on the Ken Foster property since about 2004. Mr. Giles stated that DEQ and the EPA studied the site and in 2008 and DEQ concluded that there were not any substantial human health risks remaining at the site. Mr. Giles stated that DEQ primarily wanted to deal with the wetland which was heavily impacted from the run off from these properties and that as the gateway to the wildlife refuge it was the one viable ecological habitat that they wanted restored. Mr. Giles stated that there are similar wetland problems at the tannery that remain to be repaired and DEQ has been working on a settlement with the former owner of the Frontier Leather facility which closed down in 1988 and transferred to another company. Mr. Giles stated that the settlement will bring some funds to the site to clean up the wetlands and will also commit resources in that settlement to assist property owners to safely manage the conditions of their properties for development into a more productive use.

Mayor Mays asked Mr. Giles regarding contaminated sites and what roll does DEQ take and what is the City's roll in dealing with the contamination when it approves a site for development.

Mr. Giles answered that the City sets the blueprint as far as the code as to what can be built on that property, within that, DEQ can work with the City to design and make sure that those soils are managed in a manner that prevents exposure, because risk occurs through exposure. Mr. Giles stated often site would be capped with soil as a usual solution and other solutions have been brought forth, full removal of all the contaminated soil is cost prohibited and DEQ estimates this cost being close to \$10 million. Mr. Giles stated the soil will have to be managed on site for the most part and believes they have the tools to work with the City to make sure the site is developed properly and controls are put in place so that residents can live there safely.

Mayor Mays asked if the DEQ offers solutions on how to fix the problem and if the City or the property owner makes that determination on which method to use.

Mr. Giles answered that in the case of Ironwood Homes, Patrick Huske entered into an agreement with the DEQ and DEQ provided the oversight of the cleanup of four lots, clarifying that Mr. Huske was largely in charge and DEQ provided the framework for Mr. Huske's decisions. Mr. Giles stated that the DEQ tries to lay out options for the party and facilitate their decision making by explaining the limitations with each decision.

Mayor Mays stated that while a City may give a land use approval it is between the property owner and DEQ to decide the method of management. Mr. Giles confirmed. Mayor Mays stated he wanted confirmation from DEQ that the City could not set the constraints.

Mr. Giles stated that this matter came up at the Planning Commission meeting and he had indicated that the City has the options of writing the code and DEQ is obligated to comply with that code. Mr. Giles stated that if the City adopted code that prohibited development on contaminated land then that would be a constraint the DEQ would have to follow, but he was unaware of such a code anywhere in Oregon.

Mayor Mays asked to receive other public testimony before closing the public hearing, with none received he invited the applicant to provide rebuttal.

Kirsten Van Loo, the applicant's representative came forward and stated she would like to answer some of the questions that were asked. Ms. Van Loo indicated that she thought staff would also address some of the questions asked.

Ms. Van Loo answered that the vertical slope of the proposed new road, the extension of Denali, the maximum allowed by City code and County code is 12%. Ms. Van Loo stated that Tualatin Valley Fire and Rescue has a different code that stated if the road is over a 10% slope it requires homes to have residential sprinkler systems.

Ms. Van Loo addressed questions about site contamination by stating that the site has a grading plan showing how the applicant proposes to re-contour the site and stated that the plan has a worst case scenario that up to 1 foot of soil from the entire property has to be removed from the entire property being developed and redistributed and capped. Ms. Van Loo stated that staff has been very clear that no contaminated soil can be stored or maintained under the public right-of-way because of the possibility of having to excavate the road for utility repairs.

Ms. Van Loo referred to the map attached to the DEQ letter received by Council from Michelle Miller and stated that there are four red dots indicating where they have detected any chromium and three of the four dots are in vegetative corridor required by Clean Water Services that we can't touch, so the majority of the chromium on the site is on area that the developer can't alter. Ms. Van Loo stated that the hope is that very little of the site contains contamination at a level where they have to do very nominal mitigation.

Ms. Van Loo stated that she understands the concerns about the street connection but there is no latitude given by staff, the Planning Commission or Council to ask or mandate non-through connections. Ms. Van Loo stated that the City transportation plan clearly identifies the connection of Sherwood View Estates with Ironwood Lane as does the state Transportation Planning Rule.

Ms. Van Loo stated that the rest of the testimony was about contamination and stated that Mr. Giles and Mr. Pugh from DEQ know the site far better than anyone and read a portion of the letter submitted as Exhibit G; "The risk-based concentration for residential exposure is calculated under the assumption that exposure through incidental ingestion and direct contact with soil would occur daily, 350 days a year, for 30 years".

Ms. Van Loo stated that the soil will be graded and tested for Chromium, the contaminated soil will be removed, the streets and sidewalks will be paved, and the yards will be landscaped with turf so all of DEQ standards will be met and all of the underlying soil will be covered with something else so there is no contact with the soil and little to no concern of exposure.

Ms. Van Loo stated that the owner of the property, a financial institution, has stayed with the process as this applicant has and indicated that the Planning Commission asked some tough questions and she believes that their recommendation was honest and straight forward and takes into consideration all of the work done with the SE Sherwood Master Plan. Ms. Van Loo stated she hopes Council agrees with the Planning Commission and adopts the ordinance for seven lots so that within a year there is a subdivision with lots available.

Mayor Mays asked for questions from Council.

Councilor Butterfield asked if this was a JC Reeves development. Ms. Van Loo answered no, that JC Reeves was no longer involved in this property nor has financial interest in the property.

Councilor Langer asked what explanation the City had given as to why the 2006 PUD density calculation was no longer any good. Ms. Van Loo asked for clarification. Mr. Langer clarified and said that Ms. Van Loo previously stated that in 2006 there was a density calculation that would yield 8.2 lots.

Ms. Van Loo stated that the resolution adopted by the Planning Commission very clearly delineated that the gross density should be 2.2 units per acre of gross density which would yield on this particular site a maximum of 8.4 lots. Ms. Van Loo asked Mr. Langer if he was asking why the applicant backed down from 8 lots to 7. Mr. Langer stated this is what he meant in his original question and asked Ms. Van Loo what explanation the City gave as to why that calculation was no longer useful, even though it was in the resolution.

Ms. Van Loo stated she did not believe that it was no longer useful, she believes that through the Planning Commission and public hearing process the seven lots seemed to be the best compromise to reach consensus.

Councilor Folsom asked for an explanation on how contaminated soil is capped.

Ms. Van Loo answered that they anticipate testing the soil very well within financial reason, determining the levels and meeting DEQ requirements, removing as much as a foot, re-contouring that dirt and clean dirt is then placed on top. Ms. Van Loo stated that it is very similar, but opposite, to digging a pond where the hole is lined with an impervious surface like clay or a rubber surface, in this case instead of digging a hole a lump on the ground is formed, capped with clean dirt and with plants and turf over it so there is no possibility for the average person to ever come in contact with the contaminated soil.

Ms. Folsom asked what happens to the water when it runs down through the plants and soil into the wetlands.

Ms. Van Loo stated that for the last forty years the rain has washed the contaminants into the wetland and by capping it the water doesn't run through the deep soil and travel horizontally to the wetlands. Ms. Van Loo added that between this project and the wetland there is a sewer line that was blasted into solid rock and that acts like a French drain that catches all the water before it gets to the wetlands and carries it to the water quality facility at Sherwood View Estates.

Mayor Mays closed the public hearing.

Mayor Mays commented that it was great to hear from the community and to have a development application, but from his prospective the challenge and a learning moment for the Planning Commission is when you get an application and you have the code, you need to follow the code. Mayor Mays stated in the record and a reference made by the applicant, there's a resolution regarding a SE Master Plan Study which was never adopted by the City, therefore it needs to be set aside and ignored, it's not code or law or what guides projects at this point. Mayor Mays stated the reason it did not advance, for a variety of reasons, doesn't matter at this point, when you apply you have to follow the rules that are in place, if there's flexibility in the rules when you apply then you get to use that flexibility.

Mayor Mays commented regarding concerns raised of contamination and said hopefully there's not much to be dealt with and said there are ways to address this. He commented regarding connectivity and said this is state law and City law and commented regarding the testimony regarding the slope and with the amount of slope, and said if approved, people will not be taking this route. Mayor Mays commented regarding the TVFR residential sprinkler requirements due to the slope.

Mayor Mays stated from his perspective, it comes down to the density calculation and what the code says. Mayor Mays asked for comments from City Attorney Paul Elsner regarding the Planning Commissions findings on the calculation.

Mr. Elsner stated that the calculation is not supported by City code and doesn't know how they reached that decision or were trying to and said the Planning Commission could not get to seven

lots using the criteria they were supposed to use. Mr. Elsner stated that the City Attorney who worked with staff, Chris Crean, took a look at this and tried to provide some ambiguity in the code requirements that could be interpreted to grant a level of deference. Mr. Elsner stated that it would be difficult to get that deference granted and upheld if this decision were ever challenged at the Land Use Board of Appeals (LUBA).

Mayor Mays stated with the code, it states six lots, not seven and not eight.

Michelle Miller answered that based on the definition section and from a strict construction perspective for the development code the area comes to six lots. Michelle stated the Planning Commission wanted to follow the intention of the SE Sherwood Master Plan and used the objectives of the Planned Unit Development which allows flexibility, but from a strict construction perspective for the actual development code, it's not there. Michelle stated, whether you find it in the interpretation in the PUD, that's the flexibility that's granted through the PUD process and this is the manner in which the recommendation moved forward to the Council.

Mayor Mays stated that with land use you have rules that provide certainty that you apply and move in that direction. Mayor Mays commented regarding having an unusual interpretation and said he appreciates the work done by the Planning Commission and said they have been spending much of the past few years making our code better for the community from a public process standpoint, which means they can be creative and think about scenarios and options, but when you get an application, you're no longer creating code, you're enforcing the code.

Mayor Mays asked staff, from staff perspective and legal counsel perspective, are the other conditions of the recommended approval sound, if we were to change the condition of the number of lots from seven to six.

Michelle responded yes, she believes it addresses the other conditions of approval and will address the issues and recommends approval based on the six lots, which was the initial recommendation from staff.

Mayor Mays asked for any addition questions from Council.

Ms. Folsom asked for clarification on how we got from six lots to seven lots and staff said it can be done in a PUD and said now she has heard it can't be done because of our code.

Michelle answered that the Planning Commission through the PUD process, they made a finding that through a planned unit development, they had flexibility to recommend to Council a seven lot subdivision.

Mr. Elsner stated that the Commission tried to elevate one criteria, which is the first criteria to "encourage efficient use of land and resources that can result in savings to community and consumers and developers", which is 16.4.400.10, it's the purpose of the PUD portion of the development code. What they did is they said, what we will do is, that has some primacy, or it should have, they have accorded it some primacy, and it should play over the net language on the net developable land language and elevate that above other standards so you are therefore going to a gross development standard as opposed to a net development standard. Mr. Elsner said based on that, he assumes there thought, that the Master Plan had some weight and should carry

some weight even though it had not been adopted by the Council, they felt that they could bring this forward to the Council. Mr. Elsner stated he believes what the Council is hearing from staff and from legal counsel is, if you rely on, in terms of the gross versus net issue, there is no way to avoid that conflict, that you have historically applied net standards as opposed to a gross standard. Mr. Elsner stated if the Council wanted to try and do that you would then have to find some leeway in one of the other criteria's that you would apply when you're looking at a PUD. Mr. Elsner said his office looked at the criteria, and the only one they felt offered some flexibility was the first one. Mr. Elsner said, however what Council heard from him earlier was it's a tough road to hoe if this decision to move ahead with seven was advanced by Council and someone would thereafter challenge it, we believe it might be difficult to sustain that decision and not have it ultimately get reversed or remanded from LUBA. Mr. Elsner stated it wasn't as if the Planning Commission had a valiant effort and goal, the fact is regardless of the effort or the goal, the standards drive the direction away from the decision they made.

Councilor Langer said he understands six lots and seven lots sounds like a compromise between six and eight and asked why the resolution that states 2.2 lots per acre was no good.

Mr. Elsner answered that the resolution was not passed by Council, but it was a recommendation from the Planning Commission that for some reason never made it to Council and was never acted upon by the Council.

Ms. Miller stated that the Planning Commission acknowledged that through the master planning process that it would require some zoning changes in order to achieve that level of density.

Mayor Mays stated that he has had conversations in the past year about the SE Sherwood Master Plan and with Mr. Kristensen and its potential value of revisiting it, but the reality is that the law is the law when you apply.

Councilor Henderson referenced page 103 of the Council packet and the original land use application which came in on 2-9-11, where they clearly asked for an 8 lot subdivision and asked why have 12 months gone by where we have pursued, trying to apply that rule that Mr. Elsner explained. Ms. Henderson commented that a great deal of time has been spent by staff, legal, consultant and it has come down to one issue and she would feel very frustrated if it were her in those positions. Ms. Henderson commented regarding understanding the planning commission, understanding the need to have more development, pursuing a subdivision for months that was not applicable under our code and our code hasn't changed in the last 12 months with respect to density calculations.

Michelle Miller explained that the application came in February 2011 after a pre-application conference where staff reviewed a preliminary plan showing 7 lots and it was said at that time that they might be able and looking at the layout it would be difficult to show you could achieve that density. Michelle stated we don't have those numbers at hand in the review process to know what is going to be done for a buildable lot, how much area will be right of way, those numbers are not part of the calculations until you conduct a thorough review. Michelle explained during the course between February and the summer the applicant was required to get a service provider letter from Clean Water Services and this took time and evaluation. Michelle explained that the applicant had to go onto adjacent property and do an evaluation and find out where the vegetation corridor

buffer was going to be and this took time and took away from the density calculation that we had in the preliminary evaluation of the site during the pre-application process.

Michelle commented that often time developers will look to stretch what can be achieved on a site and once Planning had all of the information available staff recommended six lots to the Planning Commission. Michelle noted that she had evaluated the SE Sherwood Master Plan, but knew it was more of an intention of the Planning Commission to follow those guidelines. Michelle stated that she did not know how strongly the Planning Commission would feel about the higher density and the work they did with the SE Sherwood Master Plan.

Councilor Butterfield asked if staff was recommending approval of the development.

Michelle answered that she was recommending approval, and said it's the Planning Commission's recommendation that she is presenting, she provided a staff report recommending that the Planning Commission would recommend approval to the Council.

Mayor Mays asked staff and legal counsel if we need to remove the additional findings language that was added by the Planning Commission, the interpretation to get from seven to six lots, and asked for a suggestion on a motion he can make to modify the recommendation to make it an enforceable PUD. Mayor Mays asked staff if this was the only section amended by the Planning Commission.

Michelle explained that there were several areas where she added a discussion of where they were making the findings and that could continue to be in the document with a change to the introduction along with the condition of approval.

Tom Pessemier, City Manager Pro Tem added that the language in blue was added after the Planning Commission's recommendation after consultation with legal counsel to approve the findings.

Planning Manager Julia Hajduk came forward and said she did not know exactly where we were at on the 120 day.

Mayor Mays stated that Council has three choices; approval, denial, or modification, stating that if we can't change it tonight we can ask for an extension to get it changed and or come back.

Discussion occurred regarding an extension and it being extended twice already and the deadline being March 9, 2012. City Attorney Elsner said it wasn't doable to extend.

Julia Hajduk said that staff could look at the materials and see what could be modified tonight and said her recommendation, if the 120 day wasn't an issue, would be for Council to give staff a general direction and come back with revisions to the ordinance and findings based on where the Council wants to go. Julia stated the Council doesn't have the time to extend and needs to make a decision this evening and said she doesn't feel Council wants to approve the Planning Commission recommendation.

Mayor Mays stated he would prefer to approve it rather than deny it and asked staff to ask the applicant if they would be willing to extend the 120 day rule.

Planning Director Julia Hajduk stated the next Council meeting is March 6, 2012 and we would need an appropriate appeal period after that. It was asked if re-noticing was needed and Julia responded it was not needed if continuing to a date certain.

Julia spoke with the applicant, Kirsten Van Loo who was in the audience and the applicant agreed to extend.

Julia stated the 120 day would be extended to March 20 and the hearing would be continued to March 6, 2012.

Mayor Mays asked City Attorney Elsner if the City had an adequate authorization for the 120 day rule extension.

City Attorney Elsner stated he would like to have the approval to extend in writing and requested it be provided to staff by tomorrow.

Ms. Van Loo asked why the 2 week extension. Mr. Elsner said so staff can come back as the Council is in a difficult position, they would like to be able and give this consideration but in light of the fact that, the Council doesn't believe based on our advice, that there is a legitimate basis to alter the density calculation from net to gross and we will have to make changes in the findings. Mr. Elsner said the Council will need to do this unless.... rather than deny and they would rather not deny.

Mr. Elsner confirmed with Ms. Van Loo that the written approval would be provided to staff in writing on February 22 and informed the Council he was satisfied with this decision.

With no other discussion, the following motion was received.

**MOTION: FROM MAYOR MAYS TO CONTINUE ORDINANCE 2012-004 UNTIL THE MARCH 6, 2012 CITY COUNCIL MEETING, THE APPLICANT HAS AGREED TO EXTEND THE 120 DAY DEADLINE BY 14 DAYS AND COUNCIL WILL DIRECT STAFF TO BRING BACK AN UPDATED ORDINANCE AND SET OF FINDINGS TO SUPPORT SIX LOTS FOR THIS PROJECT, SECONDED BY COUNCILOR LINDA HENDERSON. ALL PRESENT COUNCIL MEMBERS VOTED IN FAVOR. (COUNCIL PRESIDENT GRANT WAS ABSENT).**

Prior to Mayor Mays addressing the next agenda item, he stated per Council Rules, Council would consider the current time as it was getting late. Mayor Mays asked City Manager Pro Tem Tom Pessemier if Ordinance 2012-003 can be continued to March 6<sup>th</sup>. Tom replied it can be continued and staff preferred to continue to March 20<sup>th</sup>.

**A. Ordinance 2012-003 amending multiple sections of the Zoning and Community Development Code including Divisions I, V and VIII**

Due to the duration of the meeting and the Urban Renewal meeting still to follow, Council concluded to continue this business item to the March 20, 2012 meeting.

**MOTION: FROM MAYOR MAYS TO CONTINUE ORDINANCE 2012-003 TO THE MARCH 20, 2012 CITY COUNCIL MEETING, SECONDED BY COUNCILOR KRISANNA CLARK. ALL PRESENT COUNCIL MEMBERS VOTED IN FAVOR. (COUNCIL PRESIDENT GRANT WAS ABSENT).**

Mayor Mays addressed the next agenda item.

**10. CITY MANAGER REPORT**

City Manager Pro Tem Tom Pessemier had no report.

**11. COUNCIL ANNOUNCEMENTS**

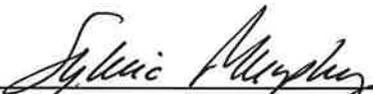
No announcements were received.

**12. ADJOURN**

Councilor Folsom suggested to staff that in the future we not schedule 3 public hearings in one night.

Mayor Mays adjourned the Council meeting at 10:10 pm and convened to a URA Board of Directors meeting.

Submitted by:

  
Sylvia Murphy, CMC, City Recorder

  
~~Keith S. Mays, Mayor~~  
Dave Grant, Council President