



Home of the Tualatin River National Wildlife Refuge

**SHERWOOD CITY COUNCIL MINUTES**  
**22560 SW Pine St., Sherwood, Or**  
**June 18, 2013**

**CITY COUNCIL EXECUTIVE SESSION**

1. **CALL TO ORDER:** Mayor Middleton called the meeting to order at 6:00 pm.
2. **COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Robyn Folsom, Dave Grant, Matt Langer, and Krisanna Clark. Councilor Bill Butterfield was absent.
3. **STAFF AND LEGAL COUNSEL PRESENT:** Tom Pessemier Assistant City Manager, Craig Sheldon Public Works Director, Police Chief Jeff Groth, and Sylvia Murphy City Recorder. City Attorney Chris Crean.
4. **TOPICS DISCUSSED:**
  - A. Labor Agreements, pursuant to ORS 192.660(2)(d). SPOA and AFSCME agreements.
5. **ADJOURN:** Mayor Middleton adjourned to a Council work session at 6:10 pm.

**CITY COUNCIL WORK SESSION**

1. **CALL TO ORDER:** Mayor Middleton called the meeting to order at 6:15 pm.
2. **COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Robyn Folsom, Dave Grant, Matt Langer, and Krisanna Clark. Councilor Bill Butterfield was absent.
3. **STAFF PRESENT:** Tom Pessemier Assistant City Manager, Julia Hajduk Community Development Director, Craig Sheldon Public Works Director, Julie Blums Accounting Supervisor, Police Chief Jeff Groth, Ashley Graff Intern, Colleen Resch Administrative Assistant, and Sylvia Murphy City Recorder.
4. **TOPICS DISCUSSED:**
  - A. **Memorials on City Property:**

Council deferred this topic to a future date as staff presenting the information was not present.

**B. Tourism Update:**

Tom Pessemier explained that the City Council and SURPAC in 2006 put together the “Economic Development Strategy” and explained the overall strategy included information on jobs, retail and development. He informed the Council that SURPAC has discussed tourism and is seeking feedback from the Council. He spoke of a strategy to promote in four areas: The Wildlife Refuge, Hotel-Motel Initiative, Gateway to Wine Country and a Sports Initiative. Discussion followed regarding cost and benefits of the initiatives.

Tom explained the focus on the Refuge and opportunities to partner with the City. Discussion followed.

Tom recapped Sports Initiative and the need to invest if this was a Council priority. He stated SURPAC showed some interest due to the return on investment. Discussion followed regarding maintaining assets, and cost and opportunities of providing information to the sports leagues to help promote the city.

Tom recapped Gateway to Wine Country and discussion followed regarding what this could look like, with tasting rooms, opportunities to promote, zoning changes and signage. Council discussed as a long-term project and what can be done now.

Tom recapped Hotel-Motel Initiative and discussion followed with Council support of the need, and services provided by neighboring cities. Council discussed SDC's and eliminating room tax/fee and Tom reminded the Council that staff would be working on SDC's this fall.

## **5. ADJOURN:**

Mayor Middleton adjourned the work session at 7:00 pm and convened to a regular meeting.

## **REGULAR CITY COUNCIL MEETING**

- 1. CALL TO ORDER:** Mayor Middleton called the meeting to order at 7:08 pm.
- 2. PLEDGE OF ALLEGIANCE:**
- 3. ROLL CALL:**
- 4. COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Robyn Folsom, Dave Grant, Matt Langer and Krisanna Clark. Councilor Bill Butterfield was absent.
- 5. STAFF AND LEGAL COUNSEL PRESENT:** Tom Pessemier Assistant City Manager, Julia Hajduk Community Development Director, Craig Sheldon Public Works Director, Bob Galati City Engineer, Jeff Groth Police Chief, Accounting Supervisor Julie Blums, Captain Ty Hanlon, Administrative Assistant Colleen Resch and City Recorder Sylvia Murphy. City Attorney Chris Crean.

Mayor Middleton indicated an amendment to the agenda and stated an item C would be added and the Council would address Council Announcements before Citizen Comments. No Council objections were received.

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

**6. CONSENT AGENDA:**

- A. Resolution 2013-030 Reappointing Lisa Walker to the Sherwood Planning Commission**
- B. Resolution 2013-031 Extending the Portland General Electric Franchise Agreement through December 31, 2013**

**MOTION: FROM COUNCILOR ROBYN FOLSOM TO ADOPT THE CONSENT AGENDA, SECONDED BY COUNCIL PRESIDENT LINDA HENDERSON, MOTION PASSED 6:0, ALL PRESENT COUNCIL MEMBERS VOTED IN FAVOR (COUNCILOR BUTTERFIELD WAS ABSENT).**

Mayor Middleton addressed the next agenda item.

**7. PRESENTATIONS:**

- A. Proclamation Proclaiming July as National Parks & Recreation Month**

Mayor Middleton read a portion of the proclamation and stated parks and recreation programs are an integral part of communities throughout this country and are vitally important to establishing and maintaining the quality of life in our communities, ensuring the health of all citizens, and contributing to the economic and environmental well-being of a community and region.

Mayor Middleton addressed the next agenda item.

**8. NEW BUSINESS:**

- A. Resolution 2013-032 Adopting an Evaluation Document Containing Criteria for the Review and Evaluation of the City Manager's Job Performance**

Assistant City Manager Tom Pessemier reported that the City Manager has an upcoming evaluation and the Council is responsible for determining the process and criteria used. He stated there are criteria in place but we have a City Manager that has not been evaluated before and there have been conversations about creating more information for his benefit and for Councils benefit to understand how he is performing. He said the resolution has the criteria for the review and evaluation of the City Manager's performance for Council consideration. He said there have been some discussion today about potentially including staff in that evaluation process and that was not contemplated in what was put together, and if the Council is interested he has the amended language (see record, Exhibit A). He mentioned that City Manager Gall has looked through all of the documents and put some of it together so this could be done in a well thought out manner. He stated Mr. Gall has not had a chance to comment on potential changes in the Exhibit.

Mayor Middleton asked for Council comments.

Council President Henderson asked if the Council saw the updated language. She clarified that the resolution in the meeting packet did not include an avenue for staff to submit the same evaluation form directly to the City Attorney's office and said this will provide additional information to help Council complete the City Manager's review. She stated the amendment to the resolution doesn't

change the content form or the categories, but simply includes how the staff gets the information to the city attorney's office.

Councilor Folsom asked which staff this includes. Councilor Henderson responded the Senior Management Team. Mayor Middleton asked Mr. Pessemier to list the senior staff with titles. Mr. Pessemier responded: Community Development Director, Public Works Director, Police Chief, Assistant City Manager, Community Services Director, and the City Recorder. He said that is the Senior Management Team at this time but there have been conversations about adding to this team.

Mayor Middleton commented that it is important that the staff doing the evaluating remain confidential and asked the city attorney if their names are required. Mr. Crean said no and anything that is submitted will be protected under the attorney client privilege. Mayor Middleton stated that staff should know that the comments made will only be read by the city attorney's office and summarized to Council.

Tom Pessemier said what Council has before them are both of the resolutions and potential language changes that could be made. He suggested reading the changes out loud and referred to the timing and said if this is too rushed for the Council it can wait until the July 16, 2013 meeting, but this would delay the rest of the process.

Mayor Middleton asked if the resolution could be amended tonight with simple language.

Tom stated the Council could amend the resolution that was proposed and read how it would be amended, if the amendment is approved, then the Council would adopt the amended resolution.

Mayor Middleton asked the City Attorney what the wording would be. Mr. Crean said Paul Elsner was working on this and provided the language, currently before the Council (see Exhibit A). Mayor Middleton asked if that is all the language that is needed. Mr. Crean responded yes.

Councilor Clark asked if the resolution number would remain that same, Resolution 2013-032.

Councilor Folsom said it will be the same number as amended. The following motion was received and the amendment was read in its entirety, (see record, Exhibit A).

**MOTION TO AMEND: FROM COUNCILOR CLARK TO AMEND RESOLUTION 2013-032,**

*RESOLUTION 2013-032 AS AMENDED*

*A RESOLUTION ADOPTING PROTOCOL AND AN EVALUATION DOCUMENT CONTAINING CRITERIA FOR THE REVIEW AND EVALUATION OF THE CITY MANAGER'S JOB PERFORMANCE AND DESCRIBING PROCESS FOR OBTAINING STAFF ASSESSMENT OF MANAGER'S PERFORMANCE*

*WHEREAS, the Sherwood City Council wishes to adopt a set of criteria to assist it and the City Manager in evaluating the City Manager's job performance;*

*WHEREAS, Exhibit "A" attached to this Resolution is a document which contains the criteria the Council wishes to use in performing its evaluation; and*

*WHEREAS, Council believes it necessary and appropriate for review and evaluation of the City Manager to obtain input from senior staff concerning their perceptions of the City Manager's performance.*

*NOW THEREFORE BASED ON THE FOREGOING, the City of Sherwood hereby resolves as follows:*

*Section 1. Exhibit "A" is hereby established as the City's Evaluative device for assessing the City Manager's job performance. The Mayor and Council President may, if they choose, delegate their duties described in Exhibit "A" to the City Attorney's Office.*

*Section 2. Senior Staff will be offered the chance, utilizing criteria described in Exhibit "A", to provide Council with their collective and individualized observations/perceptions on the City Manager's performance.*

*Section 3. The observations described in Section 2 will be treated as confidential and provided to the City Attorney's Office for that Office's compilation, summarization and transmittal to Council.*

*Section 4. The terms of this resolution shall be and are effective as of the date of the adoption of this resolution by City Council.*

**MOTION SECONDED BY COUNCILOR FOLSOM, MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BUTTERFIELD WAS ABSENT).**

The following motion was received on the proposed amendment.

**MOTION: FROM MAYOR MIDDLETON TO ADOPT AMENDED RESOLUTION 2013-032, SECONDED BY COUNCIL PRESIDENT HENDERSON, MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BUTTERFIELD WAS ABSENT).**

Mayor Middleton responded to questions from the audience and said the criteria is in the Council packet. He addressed the next agenda item.

**B. Resolution 2013-033 Authorizing the City Manager to Execute a Construction Contract for the 2013 City Paving Projects**

City Engineer Bob Galati came forward and introduced the resolution which authorizes the City Manager to enter into a construction contract with the lowest bidder for the paving projects. He said these are the yearly maintenance road construction projects that public works puts together, which include three separate segments; SW 12<sup>th</sup> Street between Hwy. 99 and SW Sherwood Blvd, SW Murdock Road between SW Upper Roy and SW Sunset Drive, and SW Wildrose Place basically the whole road from Tualatin Sherwood Road through the cul-de-sac. He referred to a bid document he submitted to the Council which includes the bids that were received after the Council packet was produced, and said 4 bids were received with the apparent low bid being \$434,622.50 from Kodiak Pacific. He referred to the estimated cost of the project and the range of bids associated with that. He said the resolution itself discusses how we are going to issue this as a not to exceed amount and will issue the contract under the bid amount and the contingency amount of 10%, which is standard.

He stated the valuation will be much less than what is shown in the resolution, but the resolution does cover the construction and the design costs. He said in the financing of this it comes out of the street maintenance fund. He referred to difficulties transferring the funds and said parts of the funds were transferred and the other part of it, actually from the construction costs, will have to be dealt with in a budget amendment. He asked Julie Blums to provide specifics.

Accounting Supervisor Julie Blums stated that Public Works Director Craig Sheldon discovered that the contract services portion of the pavement management projects for next year was inadvertently left out of the expenditure line item when we adopted the budget, so the funds are sitting in fund balance. She said she will bring a supplemental budget on July 16, 2013, to appropriate those funds.

Council President Henderson clarified that a portion of the \$554,000 is in a fund that needs to be transferred in July. Julie said we had a total of \$700,000 in pavement projects, slurry seal for infrastructure projects and part of it was included because it was for personal services but about \$540,000 were not and that is what she will be bringing forward for contract services. She said it's also for slurry seals and other things, not just for this project.

With no further Council questions, Mayor Middleton asked for a motion.

**MOTION: FROM COUNCILOR GRANT TO ADOPT RESOLUTION 2013-033, SECONDED BY COUNCIL PRESIDENT HENDERSON, MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BUTTERFIELD WAS ABSENT).**

Mayor Middleton addressed the next agenda item.

**C. Resolution 2013-034 Creating a Special Committee to advise the City Council on possible referral to voters of ordinances establishing new business regulations**

Mayor Middleton confirmed Mr. Crean also had information regarding conflict of interest. Mr. Crean stated he would provide the staff report for this resolution and then address the conflict of interest issue.

City Attorney Chris Crean provided the staff report and stated that over the last few weeks the Council has heard substantial public testimony about a number of ordinance ideas the city may want to pursue in response to Walmart coming. He stated it was suggested that the Council create an advisory committee to identify the ordinances that need to be drafted, draft the ordinances and present the recommendations to the Council for consideration. He said recommendations in the same way the Planning Commission or the Parks Board periodically recommends legislation. He said the notion is those ideas the Council felt they wanted to refer to the people, they would refer to the ballot in November, 2013. He stated this resolution sets up an advisory committee and specifies the number of members, including how you identify and select the members, it is an official public body governed by public meeting laws, and the committee will have to finish their work and bring recommendations, a written and verbal report, to the Council prior to the first meeting in August due to the election time frame. He stated the ordinances will have to be adopted in August and referred to the ballot and this needs to be submitted to the County Elections officials by the first week in September, September 5, 2013. He said this will be a quick committee that the city will staff, and provide staff resources, and they will recommend ordinances that the Council could act on or not, and refer to the ballot as the Council wishes.

Mr. Crean addressed the conflict of interest issue and said based on comments he has heard he looked these up. He said these ordinance, the notion is, they would apply, the notion is these are big box regulations ordinances, but that is not anywhere specified and this advisory committee may come back with ordinances affecting the hours of operations for all retail operations in the City of Sherwood or maybe those just larger than 100,000 square feet, we don't know. He said hours of operations and overnight parking, employment regulations, he has heard while Councilor Langer because he sold the property to Walmart has a conflict of interest, but the fact is the regulations would apply to all similarity situated businesses within the City of Sherwood, and frankly Councilor Langer doesn't own the property anymore he sold it, so he has no financial interest in whatever is going in the 145,000 square foot building, assuming it gets built. He referred to ORS 244.020 subsection 1 and said an actual conflict of interest is "any act or decision the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or business". He stated a potential conflict of interest is very similar with one significant change "any action or any decision the effect of which *could* be to the private pecuniary benefit or detriment of the person or the person's family". He said that is actual, if you are going to get a private benefit or avoid detriment from your decisions then that's an actual conflict of interest. And if you *might* suffer a detriment of a joy benefit, that would be a potential. He referred to ORS 244.040 and stated a "public official may not use official position to obtain a financial gain or avoid a financial detriment and when there is an actual or potential conflict of interest with the potential conflict of interest the public official has to announce potential conflict prior to taking action but can still participate if it a potential. He stated if it is actual conflict of interest the official has to refrain from participation in discussion and from taking any official actions unless your vote is required for a quorum.

He stated under the facts here, there is no actual or potential conflict of interest because as he understands, Matt Langer or his family no longer have any interest in the property that Walmart purchased. Walmart owns the property and the effect of any regulation on that property would be suffered or enjoyed by Walmart, the property owner, and any other large store, such as Target, Home Depot. He suggested if an ordinance is drafted in a way that affects all of those businesses they would have an actual or potential conflict of interest and if they served on the Council and would probably have to announce a conflict and refrain, but at this point nobody on the Council has any financial interest in those properties that he is aware of. He said conceivably those are anchor stores, Target, Walmart and Home Depot and there are other stores around them, the satellite stores arguably are there because they live off the traffic that comes to the Target but that is a large class of businesses in the city and would qualify for class exemption under the conflict of interest laws.

He said given his understanding and he has been working with these laws for a long time, there is no actual or potential conflict of interest that prohibits Councilor Langer or any other Councilor or the Mayor from participating. He informed the Council there have been two complaints filed with the Government Ethics Commission, one this same question, one on May 22, 2013, by Kathy Hollaman and one in June by Debbie Price, and in both cases the Government Ethics Commission agreed that there is nothing stated in either complaint that indicates there has been any violation of the public ethics laws. He said it's not just him, the Government Ethics Commission also agrees there is no actual or potential conflict of interest under the facts as we understand them today. Mr. Crean offered to answer questions.

Mayor Middleton asked for Council questions or comments on the resolution.

Council President Henderson asked if Tom Pessemier was going to address the staff report.

Tom Pessemier referred to the June 12 meeting and the attendance of city attorney Pam Beery and listen to the conversation and the direction the Council gave her to put together a resolution. He said they collectively reviewed it to make sure they drafted what they heard, but said when you're trying to create a resolution on the fly, certain things can be either not clear or could be better clarified. He referred to the staff report where staff identified the areas that the Council might want to think about or have discussion and trying to anticipate where the Council might be going, as we don't want to be making policy decisions for the Council without their input.

He said the Council may want to identify a name for the proposed committee, its called "Special Committee" now. To determine whether the proposed composition of the committee is sufficiently defined to assure representative membership of residents and businesses. He said this was the conversation that Pam Beery heard on a few things that the Council talked about, how they want this committee formed and who's representing on it.

To determine whether to provide additional guidance in the resolution as to the desired outcomes of the potential legislation. He noted there was not any conversation what the scope of the committee was and you may want to consider specifying whether the committee are just talking about overnight parking, 24 hours of operation and employee regulations, as Council could potentially get a variety of recommendations that were not anticipated. He discussed the timing related to the committee and making a recommendation for a November election and said he penciled out some dates to think about. He said today is June 18<sup>th</sup> and the earliest we can be taking applications is June 19<sup>th</sup> and because we want to get the committee set up as soon as possible, we tentatively targeted the July 2<sup>nd</sup> Council meeting as a date to adopt and set the members on the committee. He said in order to do this, there needs to be a process to select the members and we would probably have to make the applications due June 27<sup>th</sup> in order for the Council to make a July 2<sup>nd</sup> meeting and selection.

Council President Henderson clarified staff was proposing the deadline for applications would be 5pm on June 27, 2013.

Tom Pessemier said yes, in order to have time to screen the applications and make sure to get the right composition for the committee. He said the committee would have from July 2 to the first Council meeting in August to do their work. He stated that it would be some quick work because if you work backwards from the election the County has to have the information by September 5, if you're looking at a November 2013 election and the Council has to have time to consider what is proposed and adopt the appropriate legislation on August 6, so there is a tight timeframe for the committee to do their work and trying to create ordinances in a month will be a challenge to get on the ballot by November 5, 2013, where the other option is the May 2014 election. He said it probably won't be part of the resolution but it would be wise to discuss what process Council wants to use to select committee members.

Council President Henderson clarified with Mr. Crean that if the committee submits recommendations to Council by August 6, then the city attorney would draft a ballot title and an explanatory statement that Council would then adopt on August 20, and that would give the City Recorder enough time to get that information to Washington County by September 5, 2013.



The City Recorder stated she would have to look at the calendar and said we also have to do the noticing of the ballot title and explanatory statement and will need to check with the Oregonian to make sure we meet the noticing requirement. She said there are a few more steps other than getting it to the County, we have to do the public noticing. Mr. Crean clarified with the City recorder that the public noticing requirement after Council adoption is a 7 day appeal period. She said yes. Mr. Crean stated he thinks that can be accommodated within August. Sylvia said all these functions can occur the day after adoption. Mr. Crean clarified that if you adopt on August 20, public notices can go out on August 21, and that will give the 7 days for appeal period is someone doesn't like the ballot title.

Mayor Middleton asked for Council comments, with none heard he asked for a motion.

Council President Henderson asked if the Council felt strongly about giving the committee a special title? No comments were received.

Councilor Folsom said she heard Tom's message about scope and said she thinks we need to make sure our direction clear and that this is not a targeted ordinance, but a direction of defining the community to make sure we don't target any ordinances at any specific situation. She asked the Council if they all felt that way, the Mayor responded "correct" and no objections were heard. She said she thinks we have to have the discussion of what is the process of selecting the members. She referred to the process of selection for the Cultural Arts Commission and Parks Board, with having multiple applicants, conducting interviews and not everyone gets selected and asked how do we define a process that is fair and impartial for the public.

Mayor Middleton said the applications will be compiled the people that apply and made reference to the process of the Council having liaisons on other boards & commissions and due to the fact that this committee doesn't have a liaison, he and Council President Henderson spoke of having himself, the Council President and a staff member will review the candidates on present them back very quickly to the Council. He said they would come in on Friday, June 28 after the deadline closed. He stated we would then allow Council comments on that. He commented regarding the business members and residents filling out the applications and noting their interest and business and stated it has to be focus and said he thought we were focusing on 3 or 4 ordinances.

Councilor Folsom asked if there will be a staff liaison assigned to present them with information so we don't replicate ordinances that already exist in the state. Mayor Middleton replied yes.

Mr. Crean referred to Section 4 of the resolution that states that the City Manager will provide or designate staff support for the committee and the city attorney's office will provide legal advice to the committee.

Mayor Middleton stated it would probably be Tom Pessemier.

Councilor Henderson stated they will probably meet biweekly.

Tom Pessemier said that he spoke with City Manager Gall and said every board and committee needs organizational structure and needs to keep minutes and make sure that the meetings follow the meeting laws and the Council may want to consider who will be best in that position and suggested the City Recorder. He said staff will be there to answer questions and assist in any way

possible. He said he thinks the committee will need to be fairly autonomous in what they are able to do to get this done.

Mayor Middleton suggested if there are certain groups, that citizen groups send one person forward to apply for the committee, so we get a fair representation.

Council President Henderson clarified that the application process will be just like the other boards and commissions application process and the application will be available on the city website and paper copies will be available at City Hall.

Tom Pessemier said the city has a standard application but there could be different criteria that may be added to the form, such as a supplemental page so that we get the correct information for this particular committee. He said it will essentially follow the same process.

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

**MOTION: FROM COUNCIL PRESIDENT HENDERSON TO ADOPT RESOLUTION 2013-034, SECONDED BY COUNCILOR CLARK, MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BUTTERFIELD WAS ABSENT).**

Mayor Middleton addressed the next agenda item

## **9. COUNCIL ANNOUNCEMENTS**

Councilor Clark stated she wanted to talk about something that was brought to the Council a few weeks ago and said we got a lot of letters from citizens on concerns of maintenance at the YMCA. She said in the former leadership, she requested to see the contract as we have a very unique relationship with the YMCA that was started in 1996. She said the city built this recreational facility and contracted with the YMCA to run the facility. She said it was a wonderful idea, outside of the box, that had not been done before. She said the city had a contract that she had not seen and wanted to know what were the parameters as it had been a long time. She said a copy of the contract had been provided to everyone on the Council and she reviewed it and said lots of things have happened since 1996, and we have had some wonderful economic years and some rough ones. She said she wanted to see since there has been maintenance issues, and they currently have a proposal to work on those issues, what we were financially looking at and said this has always been her question, what are we financially looking at and what do the citizens want for our recreational facility. She said she believes all of the Council has looked and indicated this is a public document and anyone can look at it. She referenced Section 3-Financial which references financial obligations of the YMCA to the city and the city's response to that. Under Section 3(e) it talks about the operator, the YMCA, shall provide the city quarterly financial reports covering the facility operations and attendance. She stated she wanted to see the financial reports and said there were other stipulations indicating a certain amount would go to the Columbia Willamette Valley and if operating expenses are exceeded, then 20% should go the city. She asked if the financial reports have been received since 1996 as per the contract.

Tom Pessemier said he would have to check about past reports but said we have been receiving the most recent quarterly reports. He stated that we have always had city representation on their board and the YMCA provides the financial information at the meetings to the Board but he doesn't know if

that information has been transmitted directly to the city. He said he does not believe we have a record of those documents. He said he met with Bob Hall, and he is currently working on the documents back to 1996.

Councilor Clark said as a Council, in terms of transparency, we need to hold our vendors responsible and we need to be responsible and need to tell them what we want. She referred to having two pages, the financials and what is coming in and what is it the citizens of Sherwood want from this facility and if these pages are not matching up then it is both parties responsibility to align these pages. She stated it is our responsibility under the contract to determine if something is needed that hasn't been provided, to give a 30 day written notice that we need that documentation. She stated she thinks that if we haven't received it in a formal manner as outlined by the contract that needs to happen. She said she would like to direct staff, if the Council is ok with that, to send them under the terms of the contract, a 30 day notice for those quarterly reports, so they can be audited and looked at so we can see what the financial status is.

Councilor Grant stated that he will be joining the YMCA Board on Thursday night and said he will discuss this at that time. He said he has looked into this and believes the way that term has been executed was by delivering the financials to the Council Liaison and we as the city have accepted that to this point. He said he thinks it would only require us to ask them to transmit them in a different way or to a different person. He said he does not believe we will have any resistance. He said he did not think they are in violation as they transmitted to the Council Liaison, this is why we have a liaison. He said he thinks we are all happy to see it on a power point, or whatever, the information is there and has been given to us. He said he doesn't think we asked for it to go any further than the liaison.

Councilor Clark replied that's not what the contract said.

Councilor Grant replied a 30 day notice is a little harsh and said if they came back to us and said no we aren't going to do that, then Council could send a 30 day notice. He said he doesn't see any resistance to that, he thinks we just need to work with our partner and look for it in a different form. He said he sees a group that is very willing to work with us and said he thinks a 30 day notice is a bit harsh.

Councilor Langer confirmed with Tom Pessemier that Tom said they already agreed to provide that information. Tom Pessemier said they indicated they would and said he believes what Councilor Clark is asking is to look at the actual provisions of the contract, not this section, but the section that talks about remedying contractual issues and making a formal request under that section which is different from them just voluntarily providing the information and us asking for it. He said it's up to the Council if they want it to go to that level or would it be better, as Councilor Grant has suggested, to ask for that and see what their response is.

Councilor Langer asked according to the contract who is supposed to administer it, is that a city staff function or the city council, are we supposed to be monitoring that and administering it. Tom said he asked City Manager Gall that question and said it's not clear in the contract who is responsible and this is definitely something we need to add to indicate responsibility to avoid these issues in the future.

Councilor Folsom said she agreed and we need to take some time and make sure that we follow up and that is something that tends to get lost when new administrations come in and new councils and

we need to put a process in place, this was a very unique arrangement and vibrant for our community and it is a good time to say we could do better. She said the YMCA has been a tremendous asset for all these years and she appreciates the YMCA Board and stated that Councilor Clark had been on the Board for many years. She said that we will make our partnerships better and stronger by continuing to look through the contract and see how we can do better.

Council President Henderson stated and confirmed with city attorney Crean that we have had a contract with a YMCA since 1996 and it has been amended a couple times, and asked Mr. Crean if the amendments ever amended the financial arrangements.

Mr. Crean responded that he is not aware and he read the most recent contract a few weeks ago. Mr. Crean stated that he agrees with Tom Pessemier that like most contracts there is a cure provision that when one party notices the other party that they are in default of something they are given notice and have an opportunity to cure it. He stated the question is if they are in default of the contract, because the contract does not specify the manner for providing the information. He said what he is hearing is the YMCA saying we did provide the information to the Council Liaison at every Board meeting. He said with respect to the contract administration question and said typically when a contract assigns obligation to two or more parties, each party is responsibility for administering the contract in its own interest. He said we monitor our own obligations and in their own performance, they do the same.

Council President Henderson asked Julie Blums if we receive an annual payment from the YMCA. Julie said yes and that is their portion of the debt service. Councilor Henderson asked if that payment has ever been in default. Julie responded no.

Councilor Henderson asked if Council could direct staff to determine whether or not we had an obligation on our end which may not have been followed through with. Councilor Henderson said she did not know who the liaison is and Councilor Folsom indicated it was Councilor Langer. Councilor Langer replied he was the liaison.

Councilor Folsom stated when she started on the Council, it was Councilor Luman who was the liaison and said she believes there was a gap in the liaisons. She commented it is difficult as a liaison to determine what the Council wants the liaison to share with the Council and could consciously say we would like to receive them.

Councilor Langer replied, yes, we get them every month.

Council President Henderson asked Councilor Langer and stated the Board meetings are not open to the public, correct? Councilor Langer replied correct. Councilor Henderson asked why. Councilor Langer said he is not sure as they have not talked about it.

Councilor Henderson asked when the financial data is provided at meetings are they asked to keep it confidential. Councilor Langer said we don't discuss this either, and said he doesn't believe there's anything that is top secret there. He said the Board is big, 20 members or so and everybody gets a copy of it and they don't collect them back like we collect confidential documents here.

Councilor Henderson asked if the information is a snap shot of the Y's financial status. Councilor Langer stated that it shows cash flow to date, expenditures, revenue and they discuss every

maintenance capital expenditure and projects as they come up. He referred to information at a meeting a few months ago where they looked at a long list of capital and maintenance projects that will be going on this summer with shut downs and said he provided that information during Council Announcements, he said this is content that is frequent at the meetings.

Mayor Middleton said he feels different about this and this is a huge chunk of the City and he wants to know where the money is and where it comes from and said he doesn't care who is in charge of the operating agreement and believes it would be on the back of the City Manager, not the current one, however long this has gone on.

He referred to the meetings being closed to the public and stated there is no reason to have closed meetings on anything in this city. He was corrected by an audience member that the YMCA Board meetings were not closed to the public.

Councilor Langer said he stands corrected and stated that he has never seen any interest from the public so assumed the meetings were closed.

Mayor Middleton commented about the makeup of the Board members in the contract being 8 or 9, and Councilor Henderson said 4 members are appointed by the Columbia Willamette and 4 members are residents of Sherwood. Mayor Middleton replied this is the way it should be and that is what we will do.

He stated that the Board will have to readjust and get in organization with, there will be 4 from us and 4 from the Willamette, we will not have unlimited memberships. He said we will be presenting our 4 in a future meeting and you can present your 4. He said he believes it has to be mutually acceptable. He stated we have to look in the long term what's best for the City of Sherwood and said he is not so sure we couldn't run that organization ourselves, take the money and keep it in Sherwood. He stated these are his feelings and at the time it was great for a long period of time but doesn't agree in not letting us know what is financially going on. He said we did not get any reports from the Council until four months ago and we are starting to get those now. He commented regarding getting an update from the liaisons for all committees. He said this is a huge part of Sherwood and we don't really know what's going on there. He stated having the Council discuss and look at taking over the facility. He said he understands the YMCA has trimmed down. He noted that it wouldn't have to be major change of leadership, just run by the city and we could get reports from the city and he stated that Julie Blums does a well-organized report and we would know every month where the money is going and said it may be time to look at the organization.

Councilor Langer commented regarding the liaison responsibility and said if there's a big issue or topic or happening it's important to update the Council in regards to the financials and said there is no "smoking gun" here and there hasn't been any problems that's why it hasn't been a big part of the updates. He said the other happenings like the capital improvement projects, those are pretty significant shutdowns.

Mayor Middleton said he agreed with that and that times have changed and money is important and we need to know monthly how much went to us and how much to the Y and how much went to pay off debt, just so we know and are fully involved. He said the money is there and maybe we can utilize it in house, rather than sending it to a second party. He said this is his view and maybe it can provide

us with money that we can use for our rec programs. He said we talk about our parks and our turf and it can be a big part of our park organization.

Councilor Langer stated he thinks if it comes down to financials, if the city was running the YMCA and we were paying PERS and public wages, you're assuming what would be extra fluff that would be consumed by public employee wages, he said he doesn't think there is extra money there that can come back into the city from his observation.

Councilor Clark said she thinks this is a discussion for another time and the thing she wanted to talk about was that we've seen the contract with the vendor, there are things that are missing that she thinks the citizens are entitled to know about, and doesn't necessarily think there is a smoking gun, or think that it's being mean or rude or overbearing to ask for something that is outlined very specifically, within the contract. She said this is what the contract is for, to protect both parties, to make sure both parties are fulfilling their obligations and both parties understand what their obligations are. She said it's simply that the financial documents were not provided to the city and the contract states the city, not the council liaison, and this is what I'd like to see. She said she doesn't think that it is asking too much to give them the 30 day notice because that's what the contract tells us as our obligation, under our section, that if we want something we ask for a 30 day notice, if they can't provide it in 30 days then they can counter that and say, it's a big onus, we are going to need extra time, and we can follow the contract. She said she doesn't see this as being mean or rude, it's simply being transparent to the public about finances and fair to all parties.

Mayor Middleton said he agrees with Councilor Langer, we would have to look and see if it is to our advantage, as I think most workers are part time and paying PERS on some of them if it's limited hours. He said he thinks we could look at it both ways, if we look at this and we suddenly have an extra \$200,000 we can put in our programs that are currently being sent to other programs such as Tigard, why not look at it that way. The citizens are paying on their property taxes to pay those bonds back, people in Tigard and out in the County are not, it's the citizens of Sherwood and it's their money and their building. He said we have to take a hard look to see if we are doing it right.

Mayor Middleton referenced the contract #7 which states, such board must consist of 8 members, 4 appointed by Westside Family Y Board and 4 appointed by the City of Sherwood.

He asked Tom Pessemier if he had any comments on that.

Tom Pessemier asked for clarity and stated that Council wants the City Manager to send a letter to the YMCA requesting the quarterly financial reports as far back as they can produce.

Councilor Clark said that she would like them from the inception of the contract because those were the fat years economically.

Tom Pessemier said we could make that request. He asked the Council, with weigh-in from the city attorney, if they wanted to enforce that provision or just send a letter requesting that and if they don't respond to that, then we could look at the contract moving forward.

Councilor Clark said she doesn't want this to fall through the cracks and getting to it when we get to it.

Tom Pessemier said we will send the letter out tomorrow with a request for the information but was still unclear if it should contain a 30 days' notice and a statement regarding the YMCA not meeting this condition of the contract. He said he doesn't have the contract in front of him and is not sure what constitutes a default of the agreement. He said he is trying to get guidance from the Council on how to proceed, do we want to make the letter voluntary for now.

Mr. Crean said the letter could ask to please provide the reports by date certain and then if they do not comply, follow up with a letter alleging they are now in breach. He referred to comments made by Councilor Grant of not wanting to accuse of being in breach. He said let's ask them for the information and then take the next steps.

Councilor Clark responded with "yeah" agreeing with Mr. Crean's suggestion.

Councilor Folsom referred to comments from Councilors Grant and Langer that the YMCA has the information so it should not be difficult for them to provide the reports.

Tom Pessemier agreed to get the letter out tomorrow.

Council President Henderson requested to see a listing of the composition of the Board members.

Tom Pessemier said that would also be included in the letter and noted that this is an issue that needs to be discussed with the YMCA, and clarified Councilor Henderson wanted a list of names of who is currently on the Board.

Mayor Middleton asked if the financial reports will show what leaves Sherwood and goes to the YMCA Willamette. Councilor Clark said yes. Tom indicated he would include that in the request.

Councilor Folsom reminded Council and city administration that this was a discussion at Council Goal Setting, not necessarily targeted, but that we wanted to take a look at how to better leverage our assets, and how they serve the City. She referred to other Parks and Recreation districts and how they work and said Sherwood has amazing community volunteers that have done incredible things with our sports. She stated that Mr. Gall said there are groups that look at your community resources and population to see how to best leverage every dollar and said that is what the Mayor and Councilor Langer are getting to the heart of, a discussion of where are we now after 14 years and how can we best serve the citizens.

Councilor Langer referred to the conversation at Council Goal Setting and said the conversation went well until we talked about how we could get one and that was with a new tax levy on Sherwood residents, and said that was the end of the conversation.

Councilor Folsom recognized that Councilor Butterfield had strong objections about this issue but suggested we see what it looks like. She said these districts can be done in a lot of creative ways and they don't all have to be that kind of tax structure. She referred to different mechanisms of sales tax and lower property taxes and said it wouldn't hurt to look. She said she thought this was the discussion we had, to look into it. She agreed that nobody wants to impose another tax but we have to ask if there's a way to leverage what we have, such as resident exemptions, and referred to organizations that can help us look at this. She referred to Parc Resources and their guidance with Cultural Arts. She said City Manager Gall said we may come up with nothing as we don't want to tax

our citizens, but she would like more information and she referred to the maintenance issues that are concerning and the great support for our assets.

Tom Pessemier said we are in a contract with the YMCA until 2018 and it will be part of the conversation regardless of anything in the future, he said he's heard of starting that conversation sooner rather than later. He said he doesn't see, and the city attorney's would have to get involved, but changing the contract or breaking the contract could be problematic.

Councilor Folsom said she does not want to break the contract and referenced a conversation she had with City Manager Gall on looking at options, but said now is a good time to look into the future and the contract negotiation process and ask is this what the citizen's want and how can we serve them best. She suggested the Parks Board can be part of the conversation.

Tom Pessemier agreed that it is not too early to have these discussions as this will be a large project and we should start these conversations sooner rather than later.

Councilor Clark said that is one of the reasons, besides the people that came to us in our emails regarding maintenance issues that brought this to the forefront, to work within the contract and look at things that we are seeing in the contract that we are not following. She said this is what she is saying, these are the things in the contract and are we doing them.

Tom Pessemier said the message has been heard and staff will go through the contract and if we see anything else we will bring it to the Y and the Council.

Councilor Clark said she did see something else in the contract and that was on the maintenance issue and would like feedback on this as well. She stated the facility is to be used and operated as a full branch of the operator, continuous under the terms of the agreement. She said she understands there are maintenance issues that they are proposing a two week shutdown of the Y, at the end of August early September, and according to the contract that is not provided for. She quoted from the contract, "except for city maintenance repair obligations, the operator shall at its expense shall keep the facility in good order and repair". She said she does not feel it's the Sherwood citizens obligation to financially bear the burden of a failure to mitigate their damages. She said we are completely remodeling the Senior Center and asked if we are shutting it down.

Tom replied, we talked about it and choose not to.

Councilor Clark replied we choose not to, and chose to work around it. She said she would like to propose that we say to our vendor that they need to work around their maintenance issues, take care of the issues and keep the facility open for our residents to enjoy. She asked, how do people feel about that? Mayor Middleton replied, he agreed with that.

Mayor Middleton said now that we are taking a hard look at the contract we will, we will keep our end of it and it is their responsibility to keep their end of it. We are not going to remind them, they better read it and understand it and go by it, and we will too.

Councilor Clark said she thinks in all fairness, as that's a close date, to give them time, she thinks a letter needs to be sent on that as well, they need to either alter their schedule, work around it or do something, the facility is not to be closed for a two week period, in its entirety.



Tom Pessemier said we will certainly have that conversation, and said we also can't put them in a position that is physically impossible for them to, not be able to do their work. He said there are some things that they might be doing, work that puts the public in harm, it might be a chemical unit or a heating unit, but let's have that conversation with them as far as what can be done in regards to that. He said we are being reasonable. Councilor Clark responded that would be fair.

Mayor Middleton reminded staff that the Senior Center is managing to stay open during a remodel.

Councilor Grant asked Tom to send the Council an email on the results of the conversation. Tom confirmed.

Councilor Folsom stated she is the Senior Center liaison and said the remodel is not the entire center, it's the front entry and the bathrooms, and said the volunteers are there daily and doing a great job serving lunch and graciously allowing 64 children to rehearse every afternoon, she thanked the Senior Center.

Mayor Middleton asked Tom Pessemier if he had enough direction from Council regarding the YMCA. Tom said yes.

Mayor Middleton asked for other Council comments.

Mayor Middleton announced that he recently attended a meeting and said he sent the information out on a proposal from the County to do a registration fee increase on vehicle registration and asked the Council for feedback. He said his conversations with other mayor's is they want to put it to a vote, since it does benefit us to a certain extent, we already have a maintenance fee as does Tualatin and other cities. He said you need to read it and see how much they want to increase it.

Councilor Folsom clarified that the other Mayor's he's spoken with feel like we should not double tax our citizens as we already have a fee and accommodating in other ways and this would be a second collection of the same money.

Mayor Middleton said to an extent but the bottom line is that the Commissioners did not even want to put it to a vote, while the majority of the mayors want a vote. He stated the increase would add up to \$43 dollars a year on every vehicle. He said he wanted to make the Council and the public aware of what the County is looking at.

Councilor Folsom asked where the citizens can find this information.

Mayor Middleton asked staff if they could provide this information on the website and said that Julia Hajduk could answer questions.

Julia said the Washington County Coordinating Committee got a presentation from the County that could be posted on the city website as well as links to the County.

The City Recorder informed the Mayor of an email that was received earlier this evening with an amendment to that presentation and said she will forward the information in the morning.

Julia responded that she saw the email and will make sure that the public has the amended version. She stated that they were proposing to increase the fee slowly over a ten year period and DMV said that was not feasible, so they changed the chart about how the revenues would come in and be allocated.

Tom Pessemier said that if that is the case the city will look at their fees and consider reducing some of the fees to offset. He said it probably wouldn't have a major impact on the city but would change who would be paying what.

Mayor Middleton agreed that it is small and based on population.

Tom Pessemier said with the 10 year plan it was very small, perhaps \$140,000 in 10 years, and said they tried to adjust it based on population.

Mayor Middleton said if there are questions, people can contact Commissioner Roy Rogers.

Mayor Middleton addressed the next agenda item.

## 10. CITIZEN COMMENTS:

**Jeanette Hatcher**, 16780 SW 12<sup>th</sup> Avenue, came forward and asked for an update on the signage on 12<sup>th</sup> and Glen Eagle. She stated that she would like to go to the YMCA but there is not bus service. She discussed an issue she had with the fence code in Sherwood and referred to a situation with a neighbor's dog coming after her, she said the neighbors were cited, and said their fencing consists of baby gates and netting maybe about a foot high across our front yard. She said now they just have to pay the fine and nothing is solved with the fencing issue and she predicts the dog will get out again. She said she is concerned about her safety. She referred to the accessibility issues in Sherwood and discussed the problems she encountered trying to get to Albertson's with the lack of crossings and sidewalks. She spoke of trying to get to Langer Blvd to get to Albertson's and vehicles neglecting to stop for her and said she would like to be part of a sting operation. She asked people to please stop for pedestrians.

Mayor Middleton said staff would get back to her regarding these issues.

Tom Pessemier said that City Engineer Bob Galati has made a recommendation to the City Manager regarding the actions and signage.

**Nancy Bruton**, 22566 SW Washington Street #101, approached the Council and stated she was the Executive Director of the Sherwood Area Chamber of Commerce and was representing the Board of Directors of the Chamber. She read the following statement: The mission of the Sherwood Chamber of Commerce is to give value to our members and the community through innovation, bold leadership, and programs that develop the business climate. We represent the interests of 250 total businesses, with one of the highest regional representations of over 50% of Sherwood organizations with business licenses in the body of our membership. We believe in a free enterprise system, economic opportunity, investing in our community, and consumer choice. We support all businesses and seek innovative ways to support those businesses of varying sizes as they operate differently and on unique scales. As City Council discusses creating an advisory committee on possible referral to voters of ordinances establishing new business regulations, many of Sherwood's business leaders

are not raising their concerns about the potential impact of some of these proposals for fear of retaliation. There is a social, political, and monetary, risk to their business and investments for speaking out, and they are choosing not to. As the City's business organization, to nurture economic development, we want to make sure that these concerns are brought forth to City Council. Businesses are a valuable asset to the City and the citizens of our community. We need to expand ways to entice future investors in Sherwood and model ourselves after communities that recognize that quality of life is linked to a healthy and vibrant business community. One way that we seek to do this is by soliciting feedback. Our Annual Survey is available for business leaders to share the challenges and opportunities that they face so that we can support positive and cohesive commerce in Sherwood. We also are currently taking community-wide nominations for the Sherwood Chamber Annual Awards recognizing the categories of Small and Large Businesses, Citizen, Outstanding Youth, Commitment to Youth, Community Service, and Educator of the Year. Both the survey and nomination sheet can be found at [sherwoodchamber.org](http://sherwoodchamber.org). We encourage Sherwood City Council and Citizens to consider economic impacts of business regulations such as Local Ordinances on businesses today and in the future. Due to the volume of businesses that we represent in Sherwood, it is our intent to provide feedback to decision making bodies regarding new business regulations that could impact our stakeholders. We ask that a realistic time frame for a collaborative process be identified, noting who is at risk, and encouraging all stakeholders to create a fair, impartial, and balanced committee. As business advocates we urge the Council and any other official forums that may be established to carefully consider the impact on business --now and in the future-- that any constrictive ordinances may impose. Thank you to Sherwood City Council and staff for being active listeners. We appreciate your time and encourage our Community to support our volunteers as we get back to timely city business.

**Jim Claus**, 22211 SW Pacific Hwy., approached the Council and said we are supposed to have a city attorney, but you have a contract attorney that represents the City Manager, the City Council and the Mayor. He referred to the contract attorney being in an adverse position and drafting evaluation criteria for the City Manager and the City Manager sending out an RFP for a new contracted city attorney and suggested a conflict of interest. He commented on the contract with the YMCA, which is one of our major assets and spoke of the contracted city attorney not reading the contract because he wasn't paid to do so. He stated that the contract attorney worked with Mr. Gall in Fairview and with him at the League of Oregon Cities. He stated that lawyers advocates for you if he represents you and we need an attorney that represents the citizens. He said the Council needs to read the Charter and play by the rules. He made reference to the power the City Manager has and without checks. He commented on the possibility of being sued for civil rights violation. He commented on the YMCA and the need for a city attorney that represents the citizens, not the City Manager, not the City Council and not the Mayor and to makes sure that they comply with the law.

**Nancy Taylor**, 17036 SW Lynnly Way, came forward and discussed the City Managers evaluation criteria and said she took some time and looked at the resolution to hire the City Manager in 2012. She stated that she hopes the Council lets the taxpayers have some say in the evaluation. She commented on writing a number of checks for various taxes and fees that come back the city to disperse the money again, she made reference to the budget passing without the additional audit the citizens requested. She commented on the City Manger's employment package, and said which is a nice package with a standard termination clause. She said she has experience with contract negotiations and evaluations, and spoke about the professional liability clause which says the city agrees to hold harmless and indemnify from any and all demands, claims, etc. She said if she does something wrong at work, or says the wrong thing even in non-working hours she could be fired. She

stated the citizens need to look at these contracts and she told the Council they are watching this closely and they are the watchdogs.

**Susan Claus**, 22211 SW Pacific Hwy., approached the Council and referred to the comments from the contracted city attorney that the Langer's don't have an interest in the property and asked if he knows that for a fact. She said that she has not been able to find the public record and the only record she has found is from May 3, when Langer LLC did an accommodation deed to Langer Gramor, LLC. She said if this is correct Councilor Langer should correct it for the record so the contract city attorney is not making assumptions that are incorrect. She said in the past, citizens had some input in the criteria for evaluating the City Manager and this did not happen and asked who or what is controlling that and said that is another step away from the citizens. She said the only discussion has been how the staff is going to give input and referred to the suggestions that they do it confidentially to the contract city attorney. She commented on this being a problem due to the prior relationship in Fairview and said part of this contract says Mr. Gall has the right to a private review. She said there is nothing that show the citizens how to interact with this process and asked how is the interaction meaningful and again referred to Mr. Crean and the firm' long history with the City Manager and said if you are considered unworthy they ignore or try to prosecute. She stated that citizens have a right in this process and asked Council to provide a path that is meaningful and provide a process for confidentiality and if there is something that needs to be communicated. She referred to a communication she sent and has not received a response and asked what they did with the RFP and said he sent it to only 4 places and put it on the city website and as a result we didn't have any applicants or a very narrow band. She stated that is not a meaningful RFP and said that needs to be communicated so we can select from a wide assortment. She asked for some criteria to work with the City Council directly.

**Meerta Meyer**, 24002 SW Middleton, approached the Council and requested that code enforcement issue and complaints be placed in on online format and is hoping it might be a better use of review time. She asked about the process for appointing people on boards and commissions and asked for an outline of the process.

**Naomi Belov**, 22741 SW Lincoln Street, came forward and read the following: This is a draft of the Langer PUD chronology June 17, 2013. This is a chronology of process. We are asking questions for potential conflicts and actual conflicts of interest. Some of this is opinion and belief and we welcome comments. This is being prepared for what has occurred around Walmart application. In 1995 the Langer PUD was initiated, hence the quote in 2013, "Matt Langer, a spokesman for the Langer family, said he's pleased that Walmart will anchor the shopping complex. "This is a project we've been working on for almost 15 years," said Langer, who is also a member of the Sherwood City Council. "So we're pretty excited to bring this project to town." Ray Pitz, the Sherwood Gazette (May 6, 2013). May 31, 1995 Clarence & Pam Langer buy 10,000+ acre ranch in Mitchell, Oregon. The proceeds from Sherwood Village residential subdivision transactions, from the Wheeler County deeds records. 1995 Langer Development agreement has 8 phases. Included in the PUD was the 55-acre vacant parcel, (the proposed Walmart site), which was zoned light industrial, but in farm deferral. August 1, 1995, the Planning Commission said "Condition Number 8 at each phase of development and with each site plan submitted to the city the applicant shall provide a traffic impact analysis for city, county, and ODOT approval. Recommended traffic safety and road improvements shall be considered by the city and may be required by each phase." May 9, 1998 The Langer Family LLC formed bringing together the family members' respective farm holdings under a single manager's control. February 2, 2000, F. Wallace Langer passed away. Clarence D. Langer Jr. (Matt Langer's

father) was appointed executor of the estate. On advice of counsel, the estate selected Steven Kam to prepare the valuation report of the decedent's non-managing, minority Interest (29.19%)...a concerted team effort by Kam and the estate's attorney successfully resolved most of the pretrial issues in the estate's favor...the parties also reached stipulations on the values of five of the PUD parcels. The 55 acre light industrial parcel (phases 6, 7, 8 of the Langer PUD) was also stipulated as to value and not part of the tax proceedings to settle value. It was not valued at commercial prices because it is still zoned light industrial for those phases. The estate and the tax court disagreed on the commercial value for phase 2 and 5 both phases were zoned retail commercial. Phase 2 includes Avamere (vacant at the time) and a still vacant parcel behind Polar Bear yogurt. Phase 5 is the Target Shopping center. See Sherwood Village PUD Final Land Use and Phasing Plan. In August of 2000 the Home Depot parcel sold. This lot sale was used as a comparable property sale to arrive at value for phases 2 and 5 of the Langer PUD in the tax court. Home Depot was split zoned 50% light industrial and approximately 50% zoned exclusive farm use. The tax court's reconciliation of the appraisers' two differences for the sale included the following language, "Comparable 2-11 was zoned light industrial instead of retail-commercial. However, given the fact that comparable 2-11 was sold to Home Depot for the construction of a Home Depot store we find that its zoning did not have a significant impact on the ability to develop the property." Even the tax court recognized that if you can have commercial uses, the property should be valued commercially.

**Lori Stevens**, 15630 Farmer Way, came forward and continued reading: The estate argued to the tax court that the Langer Family LLC, "had particular difficulty in getting city approval because of the strained personal relationships between Clarence Langer and members of Sherwood's government. Because we are determining the fair market on a hypothetical sale by a hypothetical seller we do not necessarily take into consideration the personal characteristics of the actual seller. Therefore, we do not factor in any difficulty arising from Clarence Langer's relationship with members of the city government." (Pg. 15 T.C. Memo. 2006-232 United States Tax Court.) Essentially the Langer estate was asking for a further tax break based on the city punishing certain personalities and the Federal Tax Court said no. The estate's appraiser also made an implicit assumption that people living outside a 1.5 mile radius of the property would not shop there. The court found, that the appraiser "...did not offer a reasonable explanation for why he so limited his analysis. The businesses within the area included a Home Depot, grocery stores, banks, restaurants, a movie theater and an ice skating arena. We find that it is unreasonable that only those people living within 1.5 miles will frequent such businesses." (Pg. 16 T.C. Memo. 2006-232 United States Tax Court) August 29, 2000 "The Sherwood Urban Renewal Plan was adopted and approved by ordinance. The initial URA 'maximum indebtedness', as defined by statute, was \$35,347,600. However, on February 27, 2012, the Sherwood City Council [the Sherwood Urban Renewal Agency coincidentally is the same as the city council] approved a substantial amendment to increase the maximum indebtedness to \$45,133,469." ([www.sherwoodoregon.gov/urban-renewal-agency](http://www.sherwoodoregon.gov/urban-renewal-agency)). This is a 20-year plan that since its inception has added an additional year for the agency. The fund takes all the tax money to do capital projects' which are supposed to bring in capital through overrides. The question with the Walmart development is: what are the overrides on the project and system development funds and how much of this feeds into the general fund? Is this being used for fixing the budget in times of financial trouble such as we are experiencing now? December 5, 2000 Sherwood passes its own traffic mitigation ordinance called the Capacity Allocation Program (the CAP ordinance). (Pg. 4 T.C. Memo. 2006-232 United States Tax Court) March 1, 2005, The City Charter was changed to Home Rule with the Berry Elsner & Hammond drafted Home Rule charter. This gave the city manager increased authority versus the City Council, Resolution 2005-008. October 30, 2006 T.C. Memo finalized and filed in the United States Tax Court that settled the estate of F. Wallace Langer and required payment of

additional estate taxes. March 23, 2007, Clarence Dean Langer, Jr., Pamela A. Langer, Steven D. Langer, Gary W. Langer and Barbara Langer convey their interest to their SIX CORNERS, LLC for the land located at the Sherwood Plaza on Langer Drive. (Washington County Records, 2007-043813, Oregon Secretary of State Business Registry #419537-95 March 9, 2007.) December 4, 2007, the city council held 'Minor Modification' on the 2nd phase of development agreement. If they had determined that the PUD had Major Modification the Langer PUD and would have had to submit a new application for a new PUD that would not have same grandfathered commercial uses in industrial zoning.

**Lori Randel**, 22710 SW Orcutt Place, approached the Council and thanked Councilor Clark for taking a look and the contract with the YMCA and said in the interest of transparency she wants the Council to go through everything that Patterson and Nelson and previous Council's touched to take a look at it and make sure that we are getting the deal that we should get. She said it gets to her that she pays for the YMCA but cannot afford to use the YMCA and it is of no use to her. She said she used it when her kids were little and they have gotten pricing and she could no longer afford to use it. She said she continues to pay for it with her tax dollars but gets no use from it. She urged the Council to continue looking at everything and being transparent and in the interest of transparency, urged the Council to hire a CPA and let them find whatever they are going to find, as she believes they will find stuff that will not make people happy, let them find it, get it over with and move on.

**Amanda Stanaway**, 16103 SW 2<sup>nd</sup> Street, came forward to discuss the safety and traffic at the intersection of Washington and 2<sup>nd</sup>, and stated that 15 cars a day run the stop sign. She is concerned about the safety of her daughter who crosses the street. She commented on the Cruis'in and said a friend wanted to paint at the event but was charged \$100 so she let her paint on her porch. She said residents have to move their cars at 4am and she moved hers at 7pm the night before and between that time and sometime after that they changed the spot to ADA parking and she received a ticket. She said communication is bad in our culture and said everyone is upset with the Walmart and are trying to make our community better. She said they raised \$2800 in 2 days' to fight the Walmart cause and that is the kind of community involvement that is happening.

**Patti Spreen**, 20488 Lavender Place, approached the Council and commented regarding thoughts she had about the Special Committee. She commented the city staff and the City Council will all have a vote on who is selected to the committee and is concerned that there could be influence all the way around depending where the friendships lie and it seems like an ideal situation for the staff and Council to cherry pick members that adequately fit their agenda. She read from an article that was in the Sherwood Gazette on December 17, 2007, recalling the announcement that a road would be built extending Adams Road and Tualatin Sherwood Road, which resulted in the construction of Langer Parkway. She continued reading: December 4, 2007 After the Minor Modification hearings the Langer family and Gramor Development hired "exclusive leasing agents" as opposed to sales agents, for a 55-acre master development. The estimated completion date was the spring of 2009 per their 'Sherwood Town Center' leasing. This was phases 6, 7 and 8 of the Langer PUD light industrial zoned land. At the time they called it Langer Crossings at Sherwood. "Langer Crossing will be a new 22-acre power center in addition to new office and flex space on the remaining 27 acres...Langer Crossing preliminary design will include approximately 225,000 SQ FT of retail plus 295,000 of office and flex development." (See Attached 5 pages: Real Estate Investment Group Site Plan and Descriptive information provided by George Diamond, Principal Broker). From their leasing information site plan the largest building was going to be 90,000 SQ FT and this is what was

specified at the time during the hearings for Minor Modifications. It was going to be a retail/flex space split 50/50.

Mayor Middleton addressed the next agenda item.

#### 11. CITY MANAGER REPORT:

Assistant City Manager Tom Pessemier addressed the question regarding the selection process for the boards and commissions. He stated the Council Liaison, the Committee Chair and the staff member view the applications and make recommendations to the Mayor and the Council to place the appointment on the agenda. The Planning Commission has 1 opening which closes the end of June, the Cultural Arts has a position open, SURPAC has two open positions, and the Parks Board has an open position. He responded to the comments regarding code enforcement response and the possibility of putting the information online and said he would look into this matter. He informed the Council that City Manager Gall has appointed Julie Blums as the Interim Finance Director while the search for a Finance Director continues.

Mayor Middleton asked if appointments for the YMCA Board use the same process as Tom mentioned. Tom responded that there is not a staff member for the YMCA, so he will give it some thought and mentioned how they just modified the process for the Special Committee.

Mayor Middleton thanked the departments for responding to his questions in a timely manner.

#### 12. ADJOURN:

Meeting adjourned at 9:10 pm.

Submitted by:

  
Sylvia Murphy, CMC, City Recorder

  
Bill Middleton, Mayor