



SHERWOOD CITY COUNCIL MEETING MINUTES
22560 SW Pine St., Sherwood, Or
July 19, 2022

WORK SESSION

- 1. CALL TO ORDER:** Council President Rosener called the work session to order at 6:30 pm.
- 2. COUNCIL PRESENT:** Council President Tim Rosener, Councilors Kim Young, Doug Scott, and Taylor Giles. Mayor Keith Mays and Councilor Sean Garland participated remotely. Councilor Renee Brouse was absent.
- 3. STAFF PRESENT:** IT Director Brad Crawford, City Attorney Josh Soper, Economic Development Manager Bruce Coleman, Police Chief Ty Hanlon, Records Technician Katie Corgan, and City Recorder Sylvia Murphy. City Manager Keith D. Campbell participated remotely.
- 4. TOPICS:**

A. League of Oregon Cities (LOC) Legislative Priorities

Council President Rosener explained that every two years the LOC's Policy Committee comes up with initiatives. He commented that it was likely that some of the more popular topics such as home rule and right-of-way protections would already be LOC legislative priorities, so cities should not necessarily use their vote on those types of topics. City Manager Keith Campbell presented the "2023 League of Oregon Cities Legislative Priorities" PowerPoint presentation (see record, Exhibit A) and provided background. He explained that in even-numbered years, the LOC appointed members to serve on seven policy committees and were the foundation of the LOC's policy development process. He explained that the committees were tasked with analyzing policy and technical issues and recommending positions and strategies for the LOC. He outlined that each committee provided a list of recommended policy positions and actions for the LOC to take on in the upcoming two-year legislative cycle. He explained that Sherwood could review the proposals and vote for five topics the city wanted the LOC to focus on during the 2023 legislative session and that Sherwood was permitted one vote. He stated that the seven committees were: Community Development; General Government; Energy and Environment; Finance and Taxation; Telecommunications, Broadband; Transportation; and Waste and Wastewater. Mr. Campbell reported that there were 29 policy proposals for Council to review. He referred to the "LOC 2023 Legislative Priorities Ballot" handout (see record, Exhibit B) and commented more detailed information on the policies could be found there. He provided a brief overview of the proposed committee priorities on pages 4-10 of Exhibit A. He explained that out of the 29 policy proposals, Council needed to decide on five items that they wanted to vote on to encourage the LOC to prioritize. City Manager Campbell addressed the Community Development and Policy priorities and Council discussed and agreed to support the "Full Funding and Alignment for State Land Use Initiatives" policy. City Manager Campbell addressed the General Government Policy Committee priorities, Council discussed and concluded to not select any policies from the General Government Policy Committee. City Manager Campbell

addressed the Energy and Environment Policy Committee priorities, Council discussed and concluded to not select any policies from the Energy and Environment Policy Committee. City Manager Campbell addressed the Finance and Taxation Policy Committee priorities and Council discussed and agreed to support the "Lodging Tax Flexibility" policy. City Manager Campbell addressed the Telecommunications, Broadband Policy Committee priorities and Council discussed and agreed to support the "Digital Equity and Inclusion" and "Incentives for Broadband Affordability, Adoption and Consumer Protections" policies. City Manager Campbell addressed the Transportation Policy Committee priorities and Council discussed and agreed to support the "Transportation Safety Enhancement" policy. City Manager Campbell addressed the Waste and Wastewater Policy Committee priorities, Council discussed and concluded to not select any policies from the Waste and Wastewater Policy Committee. Mr. Campbell recapped next steps and stated that a resolution would be drafted for the August 2, 2022 City Council meeting authorizing the City Manager to cast a vote on behalf of the city. After the passage of the resolution, Mr. Campbell would submit the city's vote.

5. ADJOURNED:

Mayor Mays adjourned the work session at 7:00 pm.

REGULAR SESSION

1. **CALL TO ORDER:** Council President Rosener called the meeting to order at 7:05 pm.
2. **COUNCIL PRESENT:** Council President Tim Rosener, Councilors Kim Young, Doug Scott, and Taylor Giles. Mayor Keith Mays and Councilor Sean Garland participated remotely. Councilor Renee Brouse was absent.
3. **STAFF PRESENT:** City Attorney Josh Soper, IT Director Brad Crawford, Public Works Director Craig Sheldon, Community Services Director Kristen Switzer, City Engineer Bob Galati, and City Recorder Sylvia Murphy. City Manager Keith D. Campbell participated remotely.
4. **APPROVAL OF AGENDA:**

MOTION: FROM COUNCILOR YOUNG TO APPROVE THE AGENDA. SECONDED BY COUNCILOR GILES. MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BROUSE WAS ABSENT).

Council President Rosener addressed the next agenda item and noted that Item C under Consent had been updated to include Daniel Bantz's name in place of "TBD" and Item H under Consent had been added just prior to this meeting. He stated updated agendas and meeting packets had been uploaded to the city website.

5. CONSENT AGENDA:

- A. **Approval of June 29, 2022 City Council Meeting Minutes**
- B. **Resolution 2022-054, Appointing Alan Rappleyea as Interim City Attorney**
- C. **Resolution 2022-055, Forming and Appointing the Members of a Technical Advisory Committee to Update the 2021 Economic Opportunities Analysis**
- D. **Resolution 2022-056, Authorizing the City Manager to Sign a Service Order with 1547 CSR – Pittock Block LLC for Data Center Space and Connectivity**
- E. **Resolution 2022-057, Authorizing City Manager to enter into the Washington County Emergency Management Cooperative Intergovernmental Agreement**

- F. Resolution 2022-058, Authorizing City Manager to sign a Professional Services Contract with KPFF Consulting Engineers for 100% Design Level of the Hwy99W Pedestrian Overcrossing (Bob**
- G. Resolution 2022-059, Reappointing Casey Chen to the Cultural Arts Commission**
- H. Resolution 2022-060, Authorizing the City Manager to Acquire Real Property**

MOTION: FROM COUNCILOR YOUNG TO APPROVE THE CONSENT AGENDA. SECONDED BY MAYOR MAYS. MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BROUSE WAS ABSENT).

Council President Rosener addressed the next agenda item.

6. CITIZEN COMMENTS:

Sherwood resident Jim Claus came forward to address Council and stated that this was in part an effort to exhaust administrative rights because it appeared to him that there was little to no chance to avoid litigation with the city. He stated that a city planner had said that fees to appeal were to cover their costs and Mr. Claus stated that that was not true. He stated that when Walt Hitchcock was mayor, Mayor Hitchcock had introduced that policy specifically to discourage appeals and had said as much. He stated that previously, people could speak as long as they wanted as long as they did not repeat themselves. Mr. Claus stated that the city's planners were not lawyers, but continually acted like lawyers. He reported that only one state had managed to require that American Planning Association members be registered and certified to work in their state and commented that that requirement had not lasted long. Mr. Claus stated that "these people are not professionals, they're not lawyers and they should not be practicing the law" and that was what was happening. He stated that every time you did not look at a code, the city planners started to interpret it. He stated that City Attorney Josh Soper was unable to do anything about that because he really worked for the City Council, and would soon leave for a job at Beery, Elsner & Hammond. He continued that it was "turning into a zoo" because there was no attorney to talk things through with which was forcing litigation to occur. Mr. Claus stated that that was a "bad road to go down" with him because he would not litigate over money, but he would litigate over principle. He stated that Mayor Mays was taking zoning away from the Clauses, and despite what the City Charter said, Mayor Mays was passing zoning on to his contributors. Mr. Claus stated that when he taught planning at the university level, he always advised that if someone could not determine what a word meant as a planner, they needed to seek a legal opinion. He stated that the city's planners interpreted, and the documents stated otherwise. He urged Council to rethink this because Sherwood was a small town and there was "no reason you should provoke a citizen into filing a lawsuit particularly when they're elderly, ill, and were going to ask for triple damages and attorney's fees."

Council President Rosener addressed the next agenda item and City Attorney Josh Soper read aloud the public hearings statement. The statement asked Council members to declare any ex parte contacts, bias or conflict of interest.

7. PUBLIC HEARINGS:

A. Appeal Hearing for LU 2022-004 MM Sentinel Storage Major Modification

Councilor Giles stated that he served as the City Council liaison to the Planning Commission when the initial hearings were happening. He stated he did not participate in any of the deliberation and that he planned on participating at this meeting. Council President Rosener stated he rented a storage unit at Sentinel Storage,

but he did not believe that that would have any impact on his decision. Mayor Mays stated that he rented two storage units at Sentinel Storage, but not at the location of this project. He stated that he had not spoken with the applicant or the property management company regarding the proposal. He stated he had met an attorney that worked for the applicant, but they had not discussed the proposal. Mayor Mays asked City Attorney Josh Soper if his status as a customer of Sentinel Storage was an actual or potential conflict of interest and should he participate? Mr. Soper replied that his opinion was that it was at most a potential conflict of interest, but he did not see how Mayor Mays would economically be benefitted or harmed by the result of this decision and that it did not seem necessary for Mayor Mays to recuse himself. Councilor Young stated that she rented a storage unit at Sentinel Storage, but not at the location of this project. City Attorney Soper asked if anyone in attendance wished to challenge or question any of the Councilor's disclosures? Sherwood resident Jim Claus challenged Mayor Mays's disclosures and stated that Mayor Mays was biased against him and Mayor Mays had a direct conflict of interest. Mr. Claus stated that Mayor Mays had "continually taken things like the Urban Renewal project and misdirected the money...to Langer's on Langer Farms Parkway" and spoke on Home Depot's zoning. He stated that Mayor Mays had done nothing but benefitted that group and he was prejudiced against anything Mr. Claus said and Mayor Mays should recuse himself. He stated Mayor Mays had financial interest and he would pursue ethics if Mayor Mays did not recuse himself. Mr. Claus stated he would pursue Mayor Mays's constant badgering of him via city staff and that Mayor Mays was willing to break both constitutional law in the state of Oregon and case law and had proceeded to tell potential buyers not to look at the Claus's property because they did not like them. Mayor Mays replied that the city had challenged the Home Depot issue and the county had given the city the money to build most of Langer Farms Parkway. He stated he had no issue recusing himself if Council wanted him to do so. City Attorney Soper stated that the operative question was whether or not Mayor Mays had any bias that would render him incapable of rendering a decision. Council President Rosener stated that he did not believe Mayor Mays had any bias and was fine with him participating. Councilor Giles stated that he also did not believe Mayor Mays had any bias and asked if the meeting procedures would go better if Mayor Mays recused himself? Mayor Mays stated he would recuse himself from the hearing.

Associate Planner Eric Rutledge presented the "LU 2022-004 MM Sentinel Storage II Major Modification Land Use Appeal Hearing" PowerPoint presentation (see record, Exhibit C) and provided an overview of the application and appeal summary. He reported that Langer Storage 2, LLC was the applicant and Jim and Susan Claus were the appellants. He explained that the proposal was for the removal of an existing RV canopy and replacement with a 3-story self-storage building containing approximately 575 storage units and the zoning on the site was Light Industrial PUD. He stated this was a Type IV land use action. Mr. Rutledge reported that staff had received additional testimony on July 19, 2022 from attorney Jeffery Kleinman (see record, Exhibit D) who represented the Appellant. He provided an overview of the applicable criteria of the Sherwood Zoning and Community Development Code (SZCDC) on page 4 of the presentation and explained that this was what the Planning Commission had based their discussion on. He provided an overview of the site and existing conditions and explained that the site was located at 21900 SW Langer Farms Parkway and was approximately 6.14 acres. He stated that the site was fully developed as an RV and self-storage facility that included buildings, drive aisles, utilities, and landscaping and the adjacent roadway (SW Langer Farms Parkway) was fully developed to city standards for a 3-lane collector. He reported that the site was approved in 2016 under a site plan approval and the Applicant was now proposing a major modification to that site plan. Mr. Rutledge reported that the site was zoned as Light Industrial PUD and stated that Langer's Entertainment Center was to the north, additional storage to the east, a multi-tenant industrial building to the south, and the St. Francis Church and school and some residential properties were located to the west of the property. He explained that the property was in the Sherwood Village PUD that was approved by the City Council in 1995 and the site was in phase 8. He reported that there had been various modifications to the

PUD over the years and most of the area had been built-out and included Walmart, Target, and some residential townhomes. Mr. Rutledge explained that in Sherwood, the applicant gets the initial PUD approval and states the phases that would occur and the uses in the zoning for each phase, and this application was in phase 8 with Light Industrial zoning. He explained that the proposal was not a modification to the PUD but was a modification to the site plan approval for this specific site, which was approved in 2016. He provided an overview of the site plan and access on page 8 of the presentation. Associate Planner Rutledge explained that because the building was located on a collector road, it was subject to the city's Industrial Design Standards and the Applicant was required to use two different building materials; have a maximum 35-foot setback; and parking, loading, and mechanical equipment could not be visible from the street. He reported that the application had complied with those standards. He addressed "Appeal Issue #1 – Use Determination Under ORS 92.040" and explained that the Appellant argued that the Planning Commission misinterpreted ORS 92.040 as it applied to the application and the factual history of the subject property, and that ORS 92.040 did not permit the applicant to ignore the provisions of the SZCDC to site a use that was expressly prohibited by the code on the subject property. Mr. Rutledge summarized that the Planning Commission had determined that self-storage was not a permitted use under the current Light Industrial zone, but the use was permitted on the property until August 28, 2022 pursuant to ORS 92.040 and the previous land use approvals issued on the property. He read Subsections 2 and 3 of ORS 92.040 aloud and explained how they related to the application and the use determination by the Planning Commission. He explained that in 2012, there was a subdivision that included this property as well as other properties on the east side of Langer Farms Parkway and the subdivision was approved on August 28, 2012. He explained that when the subdivision was approved, the zoning on the property was Light Industrial and at the time the Light Industrial Code said that approved PUDs may elect to establish uses which were permitted or conditionally permitted under the base zone text applicable at the time of final approval of the PUD, and the PUD was originally approved in 1995. He continued that the 1995 code said that if the zoning was Light Industrial, the permitted uses in the Light Industrial zone included uses permitted outright in the General Commercial zone which included mini-warehousing. Associate Planner Rutledge outlined that it was staff's opinion that the city had not established a different time period other than the 10-year time period cited in Subsection 3 of ORS 92.040 and the Planning Commission had found that the self-storage use was permitted on the property until August 28, 2022. He addressed "Appeal Issue #2 – Open Record Period Under ORS 197.797 (6)(b) and explained that the Appellant argued that the Planning Commission erred by refusing to keep the record open at the continuance hearing, as demanded by the Appellants pursuant to ORS 197.797(6)(b) and the Applicant and staff had offered new evidence which the Appellant was not given the opportunity to rebut. Mr. Rutledge provided background and explained that the Planning Commission held the initial evidentiary hearing and the Appellant had provided testimony at that hearing and requested that the record be left open, and their request was accepted. At the continuance hearing two weeks later, the Appellant again requested that the record be left open because new evidence had been submitted at that meeting. The Planning Commission said that what was submitted was not new evidence and therefore the record was not required to be left open for additional time. He read aloud from ORS 197.797(6)(b) and cited the ORS definitions for the words "argument" and "evidence" and outlined that the Planning Commission would only have been required to leave the record open if new written evidence was submitted at the continued hearing. He explained that the Planning Commission had based their decision on the fact that at the continued hearing, staff had given a presentation and no new evidence was provided in the staff presentation. He continued that he believed the new evidence the Appellant was referring to was a letter from the Applicant's attorney regarding the testimony received at the initial hearing and was submitted to the city on the day of the continued hearing. Associate Planner Rutledge stated that per ORS definition of "evidence," no new evidence was submitted through staff or through the referenced letter. He added that state law required that new written evidence must be submitted at the continued hearing and the letter was submitted by the Applicant's attorney via email to staff

and uploaded to the city's website prior to the continued hearing meeting and was strictly a response to what was already in the record. He outlined that for those reasons, the Planning Commission had determined that the record did not need to be left open for additional time and they closed the record and issued a decision. Mr. Rutledge explained that it was staff's recommendation for City Council to review the applicable approval criteria, the appeal petition, and Planning Commission decision and affirm the Planning Commission's decision in approving the application. He provided an overview of the alternatives as: tentatively affirm the Planning Commission's decision and approve the application based on the Planning Commission Findings Report dated May 11, 2022, tentatively amend the Planning Commission's decision and approve the application with additional or amended findings of compliance, or tentatively reverse the Planning Commission's decision and deny the application with amended findings of non-compliance. He added that under all alternatives, Council should also authorize the mayor to sign a Notice of Decision including written findings consistent with Council's tentative decision on or before August 4, 2022. Council President Rosener asked City Attorney Soper if Mayor Mays was still the appropriate person to sign the Notice of Decision since he had recused himself? Mr. Soper replied that Council President Rosener should sign the Notice of Decision instead. Councilor Giles asked when in the timeline between the two meetings was the rebuttal letter submitted? Associate Planner Rutledge replied that the letter was submitted several hours before the continued hearing and added that it was the Planning Commission's opinion that the content of the letter was not considered new evidence. Councilor Scott referred to the 10-year time period cited in the ORS and asked if the August 28, 2022 expiration date was because the city did not have an alternative established time period, which made the ORS 10-year timeframe be applied by default? Mr. Rutledge replied that the way the Planning Commission applied the ORS was that when the 2012 subdivision occurred, the Applicant had not elected a different time period other than the 10 years. He continued that the Appellant had argued that development agreements that the Applicant had entered into with the city had established a different time period, which would have expired in 2015 and 2017. He reported that the Planning Commission had found that those development agreements were signed and executed before the 2012 subdivision and there was nothing within the agreements that spoke on ORS, subdivisions, etc. Councilor Scott clarified that he wanted clarification on if the 10-year time frame was the default or if it should be interpreted as "not to exceed 10 years" instead. City Attorney Soper explained that Subsection 3 of ORS 92.040 stated that the local government had the option of establishing a time period, but regardless of what the local government had established, the period shall not exceed 10 years. Discussion occurred regarding the ORS rule needing better clarity. Council President Rosener asked if City Attorney Soper had provided legal interpretations for staff throughout the process? Mr. Soper replied that was correct. Councilor Giles asked City Attorney Soper if he had also assisted the Planning Commission during their process? Mr. Soper replied that was correct. Discussion regarding instances where letters and replies to letters impacted the hearings process occurred and Councilor Scott commented that the issue seemed to be deciding where the line was when it came to addressing points that were previously raised versus introducing new evidence. Mr. Soper replied that Councilor Scott was correct and that was when the definitions of "argument" versus "evidence" came into play and explained that at a certain point, the record was left open for written responses and there was a finite number of days that the process happened. Council read Exhibit D.

Council President Rosener opened the public hearing and asked for public comment.

Attorney for the Appellant Jeff Kleinman, 1207 SW 6th Avenue Portland, Oregon 97204, stated that their argument under the first of the two appeal issues was that "time's up and time's been up for a long time" on the Applicant's ability to get the city to approve the requested modification. He stated that the Sherwood Village PUD was approved in 1995 and that was the last time that the zoning would have allowed the mini-warehouse proposal. He stated that in the initial subdivision approval in 2012, they were allowed to proceed

with mini-warehousing not because the code allowed it, but because there was a provision that stated that when a PUD went forward to be subdivided, the original provisions previously in effect when the PUD was approved could be used. He continued that in 2016, the site plan was approved for the mini-warehouse development on the lot and the mini-warehouse was completed and there was nothing to modify. He argued that the Applicant should apply for their changes under the current code. Mr. Kleinman stated that in the original city orders approving them, both the subdivision and the site plan cited two-year time limits unless the city extended them and commented that the record did not show that there was any request for an extension. He continued that because of that and because there was nothing left to modify, the current code applied. He referred to the 10-year time period cited in the ORS and stated that the timeframe would only apply if the city had not set a different time limit, but the city had determined a two-year timeframe from the subdivision and site plan. Mr. Kleinman argued that the Planning Commission had misconstrued the statute when it relied on ORS 92.040 to approve the application and that those regulations were in effect 27 years ago, not 10 years ago. He referred to Exhibit D and stated that when the subdivision was applied for in 2012, the existing regulations and Comprehensive Plan would not have allowed mini-warehousing. He stated that the Applicant and Planning Commission had "bootstrapped" 1995 regulations and that was not permitted in Subsection 2 of ORS 92.040. He continued that Subsection 2 was confined to plan provisions and regulations that were in effect at the time of the application in 2012, not at the time of PUD approval in 1995, regardless of the city's code provision. Mr. Kleinman stated that he felt that there had been a dramatic misreading of the legislative intent and the language of Subsection 3 of ORS 92.040 and argued that the statute established an outside time limit of 10 years regardless of local regulations that provided a longer time limit. He argued that the time had long since passed for the Applicant to apply for their modification. He referred to the future impacts from the number of storage units compared to the RV storage canopy and asked Council to give serious thought as to what was proposed and what Council would allow by approving a modification to which it was not entitled. He stated that his letter cited the language from the subdivision and site plan approval establishing a two-year time limit and there was nothing in the record that showed that those two years were extended. He argued that the case was clear-cut to the extent that there was no ambiguity in the statute and the statute favored the reading that he was giving to it as it was the most plain and clear reading. He continued that if the legislature had intended more or had intended a "free ride or a golden ticket" it would have said so. He referred to his letter and explained that he was able to find one case that addressed the statute and the case favored his reading of the statute. He stated that had there been a specific development or proposal that was approved in the subdivision approval, then there would be the right to rely on the statute's 10-year period, but that was not the case in this instance. He stated that the application must be denied, and the appeal must be sustained. He referred to the rebuttal letter cited in Appeal Issue #2 and stated that he was happy to rely on what was already stated in the appeal and in the record.

Record note: Appellant attorney Jeffery Kleinman provided Council with copies of his letter to Council dated July 19, 2022 (see record, Exhibit E).

Susan Claus referred to the rebuttal letter cited in Appeal Issue #2 and stated the letter was only uploaded to the website several hours prior to the hearing, which staff had stated served as entering the letter into the record. She continued that staff had not alerted the Clauses about receiving the rebuttal letter and the Clauses had wanted to respond but did not have enough time to do so. She stated that the ORS 197.797(6)(b) said "new evidence, arguments or testimony" and stated that staff and the Planning Commission were saying that only new written evidence applied. She continued that there was also new arguments and testimony during the hearing that they had wanted to reply to as well, which was why they had requested that the record remain open for seven days. She stated that they believed that they were incorrectly denied.

Jim Claus came forward and stated, “most of you haven’t been in the city long enough to know what some of us are complaining about, and that this was at the heart of it.” He stated he had taught urban planning and he had a PhD in Urban Planning and Regional Development from Berkeley and he had written a thesis that was accepted by the Economist at both Berkeley and Stanford. He continued that he had also attended one year of law school. He stated that lawyers provided technical matters in the law, and Council had heard a very good technical argument that the agreement was breached. He argued that the permits were two-year agreements and that that time frame had passed. He stated that it was his understanding that they had paid for Langer Farms Parkway and that was why the Sherwood Center for the Arts was what it was and why the Cannery Square pollution was not cleaned up. He stated, “we made a decision to take Light Industrial ground worth \$5 a foot, put in the streets, put in the infrastructure—and Walmart, who was brought here by Joe Broadhurst, and we’re looking at his and the Elks property and a small piece of ours—and my only condition was they had to come to a public hearing... I don’t like Walmart they’re a category killer and they destroy your small business. Look at the downtown—they ruined it.” He continued that, “we rebuilt that hotel, we rebuilt most of the downtown and gave it back at cost because there was a central business district... and that’s what the urban renewal money was supposed to go to... Then... Joe Broadhurst brought in Walmart and Walmart went over to Langer’s by Keith Mays... and more than that, we developed a large area with Opus and Opus was told go to Langer’s or no place.” He stated that Sherwood was an upper income community and had the only national wildlife refuge in the US that was started inside an urban area that did not allow hunting. He stated that the wildlife refuge was started because of a lawsuit he and his wife had fought for eight and a half years. Mr. Claus stated that the city planners did not analyze the benefit-cost of what the city was getting by approving the application, they analyzed whether the Langers could force it through or not. He continued that the Langers would not be able to force the application through without Mayor Mays. He argued that the right questions were not being asked and what should be asked was what “are we doing building this kind of thing and overbuilding the density when we paid for the streets, we paid for the dirt, and the schoolchildren in Oregon gave up money?” He continued that that was what Council and city planners were here for and commented that city planners were not lawyers. He stated that he had not seen a benefit-cost analysis or a traffic study which may require more police staffing to offset the increase in traffic. He stated that the land Walmart and Home Depot were built on was worth \$5 a foot and “they got \$15 cash—that’s \$1 million an acre and that was when the town started coming apart.” He stated that people wanted to live in Sherwood and Council was supposed to protect that lifestyle and no one was saying “enough’s enough.” Mr. Claus referred to the land that the QT Pub had been located on and stated that it was valuable land and “you guys forced R-1 housing back-to-back to an interstate.” He stated that this was happening because certain people were demanding \$15-25 a square foot rent and Mayor Mays allowed it to happen. He stated that Council needed to look at the benefit-cost analysis to the city and stated that the application would bring more traffic to the area which would put more pedestrians at risk. He commented that because of Council’s feelings towards the Langers, he knew Council would approve the application.

Attorney for the Applicant Seth King, 1120 NW Couch Street 10th Floor Portland, Oregon 97209 came forward and stated that the Applicant agreed with the staff recommendation and believed that the Appellant had not demonstrated that the city had made any errors along the way. He asked that Council deny the appeal and affirm the Planning Commission’s decision. He stated that Council should be confident in both the processes the Planning Commission followed and the decision they came to. He stated that the Planning Commission took a 20 minute recess to review the written testimony that had been submitted prior to the meeting and after reconvening they asked staff and the City Attorney a number of questions that showed that they had a good grasp on the issues and arguments from both sides and had come to a well-reasoned decision. He stated that the Planning Commission’s decision was consistent with past city practices and cited information from the staff report that stated that in 2016, the city had relied upon the 10-year vesting provided by the

2012 subdivision and utilized that to approve development on the Langer's property. Mr. King addressed Appeal Issue #1 and stated that their response was that they believed that the Planning Commission had correctly interpreted and applied ORS 92.040 in the present case. He read Subsection 2 of ORS 92.040 aloud and reported that in 2012, the city had approved a subdivision for the Langer's property. He outlined that it was a city decision for a subdivision inside an urban growth boundary and as a result, all of the local government laws that were in effect at the time of the 2012 decision would apply unless the Applicant elected otherwise. He stated he believed that the 10-year time period applied. He addressed the Appellant's argument that the development agreement had undermined the vesting and that the development agreement between the Langers and the city had set out a shorter period of time. He stated that there was nothing in the development agreement that appeared to contemplate any sort of future subdivision or that if there was a future subdivision that the Applicant would waive the vesting that would otherwise have been available to them. He stated that there was no rule that stated that if you had vesting under one provision of law that you could not also vest separately under a separate provision of law and commented that that was what was occurring here. He addressed Mr. Kleinman's testimony in which he stated that the 1995 uses were not allowed in 2012 so that even if the 2012 subdivision vested the standards in effect at that time, that would not include the 1995 uses and stated that he believed Mr. Kleinman had misconstrued the law. Mr. King stated that the regulations at the time said that approved PUDs may elect to establish uses which were permitted or conditionally permitted under the base zone text at the time of final approval of the PUD. He explained that that provision would have been in effect and thus would have been vested at that same time and would have allowed the Applicant to use the 1995 standards in 2012. He addressed the time period for the vesting and stated that he agreed with Mr. Kleinman's assertion that if the city had not stipulated any other time period, then the 10-year time period would apply and commented that the city had not stated any other time period. He addressed Mr. Kleinman's argument that the 2012 tentative subdivision approval had a two-year time frame which would establish a two-year time period that the standards would be in effect and stated that he did not believe that that was a persuasive position because that would not be consistent with the intent of the statute. He stated that the statute said that once the final subdivision was in place and recorded, there was a particular period of time in which you could rely upon the standards that were in effect when you first applied, but that time period had to include a time when the final subdivision was in place. He stated that Mr. Kleinman was referring to a tentative subdivision decision, not a final subdivision decision. He addressed Mr. Kleinman's argument that the site plan also had a two-year time period and stated he believed this to be irrelevant as ORS 92.040 only concerned subdivision approvals, not site plan approvals. Mr. King addressed Appeal Issue #2 and stated that the Planning Commission was correct in not re-opening the record to allow response to the rebuttal letter dated May 10th because the letter did not include any new evidence as he was only responding directly to the commentary made by the Appellants. He continued that all of the statements were legal arguments and reference to facts that were already in the record and referred to ORS 197.797(6)(b) and stated that "evidence" was considered to be facts and information, not legal argument. He stated that the definition of "evidence" also referred to documents and commented that that did not turn a written letter that was otherwise argument into evidence. He stated that the "point is not the form that it takes, the point is the substance of it." He referred to the 2016 LUBA case Talbot v. City of Happy Valley that found that statements that were in a letter that said that state law limited the applicability of certain local standards did not constitute new evidence that required the city to provide a rebuttal opportunity and stated that the city was not required to reopen the record. Mr. King referred to the testimony Mr. Claus had provided at this hearing and stated that Mr. Claus's comments regarding Langer Farms Parkway, Walmart, Mayor Mays, and the wildlife refuge were not within the scope of the appeal and should not be taken into consideration when Council made their decision.

Mr. Kleinman argued that past city practices or past interpretations of a statute were not relevant and were not controlling when a legal issue was raised under a state statute in a current case. He stated that Mr. King was incorrect in stating that he and Mr. King agreed that in the absence of a specified timeframe in the city regulations or in a prior city order, that the statute provided a "gift" of 10 years and stated that the statute did not say that. He continued that someone did not get 10 years just because the city was silent on the issue at a particular point in time. He spoke on the effect of the 2016 site plan and the passage of two years since it had been approved and stated that this was an application to modify the site plan, and that approval had expired two years ago. He continued that the Applicant now wanted to do something else on the site that was much more intense and much more traffic intensive and was asking to modify the 2016 site plan to do so. Mr. Kleinman stated that the Applicant now wanted to do something different from what they had applied for, built, and benefitted from in 2016 and argued that a new application was necessary under the current regulations as there was nothing left to modify. He stated that by applying for a modification, he felt that the Applicant was trying to "slip one by" the city and they were not entitled to do so. He stated that the appeal was well grounded, and the application should be denied.

Mr. Claus came forward and stated that he had read both of the legal analyses and stated that there was no question that this was "marginal on every corner." He continued that when it was marginal on every corner, you had to determine if you were going to allow for an exception. He stated that there was a decision to make, and asked what the community would get out of this and was there any reason to give this kind of benefit to non-residents that had "already picked up off of urban renewal between \$30-50 million?" He asked why Council would allow someone to go back and "redo a piece" when it had already been completed and ask themselves "why would I give them a use that they went in and asked to be made illegal?" Mr. Claus argued that Mr. Kleinman had shown that there were flaws in their arguments and had provided LUBA citations. He stated that it was Council's job to protect Sherwood residents in a "benefit-cost sense" even from its own planners and that it was their job to protect their citizens as they would want to be protected. He stated that he did not see what need there was for this project and commented that "we gave in the flats to the Fish and Wildlife larger land than the Langers own and that was one of many pieces we gave away and I'm very happy we did...you have to look at how you can protect this community because your police do, everybody else does."

Mr. King came forward and apologized for his misunderstanding of Mr. Kleinman's argument regarding the time period and replied that he did not understand how any other conclusion could be reached under the statute. He read the statute aloud and stated that the city had not taken any action to establish a time period that was less than that either by ordinance or something specific to this case and that the 10-year time period cited in the statute applied. He referred to Mr. Kleinman's site plan argument and stated that Mr. Kleinman misunderstood. He explained that the Applicant was not modifying the application, they were submitting a new application which was called a modification and was a specific type of application that the city had which allowed an applicant with an existing approval to come back and seek a modification. He continued that it was not relevant that the two-year implementing period for the site plan had passed, it was now that there was a brand new application that they were seeking to modify. He referred to Mr. Kleinman's argument regarding the LUBA decision related to ORS 92.040 and stated that he read that decision differently than the Appellant. He continued that he believed that LUBA said that even if a local government was not approving specific development at the time that the subdivision was approved, if the local government was still approving lot size and configuration that was premised upon a particular type or location of future development, then the local government is precluded under ORS 92.040(2) from applying different or conflicting standards to that development during the vesting period. He provided details on the LUBA case. He stated that he believed that the Appellants had not demonstrated that the Planning Commission had

committed any error and the appropriate outcome was for City Council to affirm the Planning Commission's decision.

Associate Planner Eric Rutledge came forward to provide his final comments. He reminded Council that they were not permitted to take any new evidence from this hearing into consideration when making their decision. He stated that the major modification process was the correct process and explained that there was a clear process in the code to modify a previously approved site plan, which was what the Applicant had done. He stated that the big question was whether the state statute automatically allowed for a 10-year period or not and asked City Attorney Soper for his opinion on the matter. Mr. Soper stated he agreed that the key issue was whether that default was a 10-year period. He commented that section was not as clear as it should be but that he did not think that there was any other way to read the statute without defeating the purpose of the statute. He explained that there had to be some sort of time period and the statute clearly said it was a maximum of 10 years. He asked that if it was not an automatic 10 years, what time period is it? He continued that the rest of the statute would be rendered meaningless if the 10-year period did not apply. Councilor Scott asked Associate Planner Rutledge for clarification on if this was not a modification to the original site plan but was a modification to the site itself. Mr. Rutledge replied that there was a 2016 site plan approval after which everything that was on the site now was constructed, and now there was a new application. He explained that the code had a clear process for an applicant or property owner to modify a previously approved site plan and included the stipulation that anything the applicant was touching on the site had to come into compliance with the current code. He explained that this modification included a trip generation report that indicated how many trips would result from this specific modification. Councilor Scott asked why some new standards were applicable in a modification but not others? Mr. Rutledge replied that it came down to the language of "unless the applicant elects otherwise" and asked City Attorney Soper for his input. Mr. Soper explained that the new standards that were applied were only more burdensome on the Applicant than they would have been otherwise, so the Applicant went through "additional hoops" as a result of the new standards that they would not have had to under the old code. He explained that the Applicant could have objected to doing so, but they did not. Councilor Scott asked how long could someone modify a site plan? Mr. Soper replied that it was a nomenclature issue and explained that once you had an approved site plan and you wanted to do something different, it was called a site plan modification. Mr. Rutledge added that whatever the city decided to call it, the requested modifications were reviewed and brought up to the current standards. City Attorney Soper remarked that the question of site plan modification and whether the site plan had expired was not raised at the Planning Commission and was not one of the issues on the appeal, so it was not relevant to this discussion. Councilor Young referred to Ms. Claus's comments on ORS 197.797(6)(b) and commented that the statute referenced arguments and asked for clarification from City Attorney Soper. Mr. Soper replied that the section that was relevant for this hearing was when the record needed to remain open for rebuttal. Associate Planner Rutledge read the statute aloud and explained that at the Planning Commission hearing, they had provided the opportunity for the Appellant to provide oral testimony which satisfied the requirements within the statute. He continued that the reference in the statute to requesting a record be left open for at least seven days was a separate sentence than the sentence that referred to additional arguments. He explained that people were provided the opportunity to provide testimony at the continued hearing and if someone then showed up and provided new written evidence at the continued hearing and someone then requested to respond to that, then the Commission should leave the record open. Councilor Young asked that someone could have presented new evidence, but nobody did? Mr. Rutledge replied that that was what the Planning Commission had found. Councilor Giles confirmed that it was the city's legal counsels' opinion that what was submitted at the hearing was argument, not evidence? Mr. Soper replied that was correct. Councilors Young, Scott, and Giles commented that they had read the

comments and had viewed them as argument not evidence. Hearing no other discussion or questions, Council President Rosener closed the public hearing and asked for comments and deliberation from Council.

Councilor Giles commented that he had lived in Sherwood for 18 years and he did not believe he had ever met the Langers and stated that reviewing the criteria of the application was what Council should be basing their answers on. Council President Rosener stated he agreed, and that Council's role was to evaluate the application based on the evidence presented by the Planning Commission and the applicable ORS and Sherwood code. Councilor Scott commented that this was an interesting hearing for him and stated that he felt that he had been very open minded. He continued that all of his questions had been answered very clearly and he felt that the Planning Commission had done their job appropriately and suggested that Council affirm the Planning Commission's decision based on the evidence presented at this meeting. Councilor Garland stated he agreed and commented he also agreed with the comments regarding the lack of clarity in the code but that was a task for another day. He continued that Council had to decide based on the way the code was currently written as decided on by the Planning Commission and decide based on that. He stated that based on this hearing he was willing to let the Planning Commission's decision stand. Councilor Young stated she agreed and that she had listened to all of the evidence and the testimony and said that the city had planners and attorneys that had reviewed the materials and she was ready to make a motion. Councilor Giles stated that he felt that the Planning Commission had been extremely deliberate in their decision making in trying to be as careful as possible and had come to a decision that was defensible and stated he was in favor of confirming the Planning Commission's decision. He continued that based on tonight's appeal, he had not heard anything that had showed him that a mistake was made, or something was done inappropriately or because of bias. Council President Rosener stated that the city had an amazing Planning Commission and were backed up by staff and the City Attorney to review these types of issues. He continued that he agreed with Councilor Scott and had concluded that Council should affirm the Planning Commission's decision because he did not see anything that would warrant Council to override their decision. With no other Council comments, the following motion was stated:

MOTION: FROM COUNCILOR SCOTT THAT THE CITY COUNCIL TENTATIVELY AFFIRM THE PLANNING COMMISSION DECISION AND APPROVE THE APPLICATION BASED ON THE PLANNING COMMISSION FINDINGS REPORT DATED MAY 11, 2022. ADDITIONALLY, MOVE THAT THE CITY COUNCIL SHOULD AUTHORIZE THE COUNCIL PRESIDENT TO SIGN A NOTICE OF DECISION INCLUDING WRITTEN FINDINGS CONSISTENT WITH THE COUNCIL'S TENTATIVE DECISION ON OR BEFORE AUGUST 4, 2022. SECONDED BY COUNCILOR YOUNG. MOTION PASSED 5:0, ALL PRESENT MEMBERS VOTED IN FAVOR (MAYOR MAYS RECUSED AND COUNCILOR BROUSE WAS ABSENT).

Council President Rosener addressed the next agenda item.

8. CITY MANAGER REPORT:

City Manager Keith Campbell reported that he and his family attended the Robin Hood Festival and thanked Public Works staff for their work during the Festival. He announced that today was City Attorney Josh Soper's last day working with Council and he wished Mr. Soper well and thanked him for his service to the Sherwood community.

Council President Rosener addressed the next agenda item.

9. COUNCIL ANNOUNCEMENTS:

Councilor Scott reported that there was no Parks and Recreation Advisory Board meeting in July and they would meet in August. He stated that he was grateful to have the Robin Hood Festival back after its hiatus due to the pandemic.

Councilor Young stated that she was grateful to have the Robin Hood Festival back. She thanked Mr. Soper for his years of service to the city and wished him well.

Councilor Giles thanked City Attorney Soper for his service to the city. He reported on a recent Planning Commission meeting and commented on ongoing construction on Oregon Street. He thanked the members of the Planning Commission and all city boards for their service.

Councilor Garland thanked City Attorney Soper for his work and commented he had enjoyed working with him. He reported that the Sherwood Foundation for the Arts' production "Cinderella" would open the following weekend. He referred to Casey Chen's reappointment as a Cultural Arts Commission member and he thanked her for her work serving on the Cultural Arts Commission. He thanked the volunteers of all city boards and commission for their work.

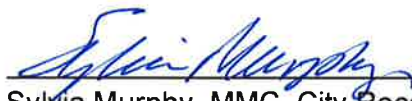
Mayor Mays thanked the Robin Hood Festival Association and city staff for their work over the weekend. He thanked City Attorney Soper for his work for the city over the years.

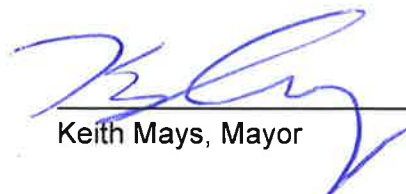
Council President Rosener thanked City Attorney Soper for his years of service to the city. He reported that he would attend the National League of Cities meeting in Atlanta.

10. ADJOURN:

Council President Rosener adjourned the regular session at 9:32 pm.

Attest:


Sylvia Murphy, MMC, City Recorder


Keith Mays, Mayor