

**CITY OF OREGON CITY
CITY COMMISSION
STUDY SESSION MINUTES**

AUGUST 30, 2004

Mayor Alice Norris called the study session of the City Commission to order at 5:48 p.m. at City Hall, 320 Warner Milne Road, Oregon City.

Roll Call: Commissioners Doug Neeley, Gary Hewitt, and Bob Bailey (arrived 6:09 p.m.) and Mayor Alice Norris.

Excused: Commissioner Tom Lemons.

Staff Present: Larry Patterson, City Manager; Dan Drentlaw Community Development Director; Scott Archer, Community Services Director; Leilani Bronson-Crelly, City Recorder; Tony Konkol, Senior Planner, and Lt. Mike Conrad, Oregon City Police Department.

Media Present: Steve Mayes, *The Oregonian*.

1.0 CALL TO ORDER

2.0 REVIEW WEDNESDAY MEETING AGENDA

2.1 Regular City Commission Meeting Agenda of September 1, 2004

3.0 Consent Agenda

Commissioner Neeley referred to page 6 of the July 12, 2004 Study Session minutes. After going through the consent agenda, Commissioner Neeley wished to return to that set of minutes and clarify definitions related to affordable housing and low income.

4.0 Commission Business

4.1 -- No changes.

4.2, 4.3 and 4.5 – The group discussed the street vacations and issues related to the Trails Master Plan. **Commissioner Neeley** understood there was an error in the Plan that impacted one of the vacations. The City Commission agreed to discuss items 4.2, 4.3, and 4.5 and set adoption to a future meeting.

4.4 – No change. **Commissioner Neeley** recommended Ms. Kraushaar address storm water improvements on 7th Street for information only.

4.6, 4.7 and 4.8 – No changes.

4.0 FUTURE AGENDA ITEMS

- **Mayor Norris** requested a report from Ms. Kraushaar and Chief Huiras on school speed zones at the upcoming regular session.
- **Mr. Patterson** suggested a joint meeting with advisory boards to discuss the Blue Ribbon Task Force recommendation, and the City Commission considered various dates and meeting duration. Mr. Patterson proposed an agenda for the session:
 - Introductions
 - Issues and process
 - Receive recommendation
 - Brief review of background information
 - Presentation of Plan
 - Questions and answers
 - Conclusions – where do we go from here?

The group agreed to hold the workshop on September 18.

- **Mr. Patterson** indicated the League of Oregon Cities had asked Oregon City to host a “City Hall Day” to open lines of communication with the legislative delegation.
- **Mayor Norris** announced that the Clackamas County Coordinating Council (C4) was holding an informational session on Measure 37.

4.0 DISCUSSION ITEMS

Mr. Patterson discussed items 4.1, 4.2, and 4.3 that related to Comprehensive Plan issues. At this time, the Planning Commission was scheduled to revisit the Plan on October 11, 2004, and the City Commission may wish to discuss the process.

Mr. Drentlaw believed there were about 18 issues related the Comprehensive Plan, some boundary changes to the zoning map, several issues related to industrial parcels, and housing policies. The topic of agricultural businesses also came up recently.

Commissioner Neeley did not recall that issue and wanted some discussion. He discussed the feasibility of using business licenses to grandfather in these types of activities.

Commissioner Bailey understood that Commissioner Neeley was making the assumption that pre-existing agricultural uses are permitted to continue with business licenses as a trigger for their being established.

Commissioner Hewitt thought the criterion was the use at the time and not a business license. He commented that the concerns with agricultural uses did not stand out when the City Commission considered the document.

Mayor Norris thought that it should be one of diverse offerings the City allows in certain areas.

Commissioner Neeley wanted to discuss the issue and for people to have the opportunity to be grandfathered in whether or not there was formal evidence they were engaged in that activity.

Commissioner Bailey agreed completely and was not aware of the extent to which the old Zoning Ordinance permitted these kinds of uses. He suggested the Planning Commission and planning department work on developing conditions to incorporate agricultural as conditional uses. There are some facets of agricultural uses such as the aerial application of pesticides and manure that would not be appropriate, while others are. He suggested looking at the old code for the specific provisions that having been repealed caused the problem. He suggested looking for a short-term arrangement to suspend and rescind that portion while the rest of the process moves forward.

Mayor Norris and Commissioner Neeley agreed.

Commissioner Bailey noted for the record that was Chapter 17.08 – R-10 Single Family Dwelling District and list of permitted uses under 17.08.020(D) – Farms, Commercial or Truck Gardening and Horticultural Nurseries on a Lot not less than 20,000 square feet in area (commercial buildings are not permitted).

Mr. Drentlaw noted that provision was also in R-10, R-8, and R-6. The reason it was removed was because there were no controls as Commissioner Bailey identified.

Commissioner Bailey did not believe this was a widespread problem and recommended rescinding that provision until it could be properly incorporated.

Commissioner Hewitt understood rather than simply being an outright use, it would be a conditional use.

Mr. Drentlaw added there was still a provision, 17.54 (C) that refers to 20,000 square feet per animal. This will also be a problem, and he will look at what other cities do.

Commissioner Neeley noted agencies like the Bureau of Land Management (BLM) and US Forest Service allocate permits for animals, and the City may need to look at square footage per animal.

Mr. Drentlaw discussed the landscaping detail required of the developer on Holcomb Ridge and ensuring that animals do not eat or destroy it.

Mr. Patterson explained this concern first came up during the discussion of leasing certain property and zoning issues. There are probably broader issues to consider.

Commissioner Hewitt agreed that the broader issues would need to be considered and controls put in place for conditional uses. He understood since the recent code amendment, that mandates for landscaping and development on properties abutting City-owned properties have resulted in concerns.

Mayor Norris understood the Planning Commission hearing was on October 11, and the City Commission would consider it after that.

Tam Seaholtz noted impacts to farming and the supporting network and expressed concern for quality of life issues. Farming is part of Oregon City's history, and the City must consider those areas within its urban growth boundary.

4.4 Timeline for Commission to Discuss the Action Items That Were Excluded from the Comprehensive Plan.

The group discussed the action items, and **Mr. Patterson** noted implications and dollar amounts. The City Commission may wish to consider these during its goal setting sessions.

Mayor Norris believed the City Commission should review the action items annually to consider the financial impacts.

Commissioner Neeley said he and Commissioner Bailey brought this up because a lot of time and effort went into developing those action items. He felt they should be documented and focus directed to potential actions whether or not it was an implementing document.

Mr. Patterson said part of the dilemma is determining today what the mission is. By adding a lot to the documents, the expectations exceed what can realistically be done. It was a policy question.

Mayor Norris recommended considering the action items in the January 2005 goal setting session.

Commissioner Hewitt suggested naming the document "Future Goal Setting Action Items." The budget will dictate what can be done, but the items will be documented.

Commissioner Neeley added some items might indicate additional goals and policies.

Commissioner Bailey understood Mr. Patterson's concern with staff's taking the time to create a document that has no enforcement effect or implementation. If, as Commissioner Hewitt suggested, it is a basis for goal setting, then he felt it could be less rigorous and re-phrased. He recalled volunteering for this process, and he was ready to spend some time on it.

Commissioner Neeley believed he had also volunteered some assistance.

4.5 Urban Renewal Program

Mr. Patterson noted there were a lot of questions surrounding urban renewal. It was an issue that the Blue Ribbon Task Force (BRTF) discussed extensively and was a topic before that. This has probably been a love-hate relationship with about as much misinformation as facts about the program floating around. It is a strong component of the City's economic development efforts, and if changes are being considered, it is important to understand the ramifications. The BRTF recommended that the program be maintained and that the Hilltop District close on schedule.

The program gives the City a chance to invest public dollars to help leverage private investment. It helps create jobs, diversify the economy, and build livability into the community. A minority has been voicing criticism about the urban renewal program saying it is nothing more than a public works program. He contended that was not a good understanding of urban renewal. A foundation of public investment in infrastructure has to be built to create the environment for investment. The community is beginning to see some of the fruits of that labor. Transportation system improvements such as Beavercreek/Hwy 213 and 7th Street are examples.

Mayor Norris asked if the City would be able to have money to retain and improve business without urban renewal. If not from urban renewal, where would the City get funding?

Mr. Patterson replied if the City did not have the urban renewal program, a number of infrastructure projects would need to be funded elsewhere. There would be no money for any kind of development system. The City is just getting to that part of the urban renewal program. One question that has come up is why we would consider providing urban renewal dollars to a business when others have come in and not asked for that? The answer is that the City does not have any policies in place. He provided some draft policies from Boise for future discussion.

Commissioner Hewitt used the Wal-Mart proposal as an example and the issue of the new road. If the City Commission did not have urban renewal money, it could not even have had a conversation. Without that money, the City could not leverage offset costs that are required.

Mr. Patterson provided written response to some questions that had been asked about urban renewal.

- How much money is budgeted to pay city salaries and other costs? Roughly in each district there is a couple of hundred thousand dollars. Mr. Patterson discussed estimated cost allocations throughout the entire budget. For example, 25% of his salary goes to urban renewal. If the program ended, salaries would have to be picked up elsewhere.
- How much money goes into the general fund if the Hilltop District were closed now? About \$56,000 would added to the general fund.
- How much money do we return to the general fund if we take Home Depot and Oregon City Shopping Center out of urban renewal and what are the impacts to the district? The loss of Home Depot and Oregon City Shopping Center would result in a net loss of about \$195,000 on the urban renewal side and the City overall. If they go on the property tax rolls, that would bring back about \$54,000 annually to the general fund. There would be \$140,000 net loss to the urban renewal district.

Commissioner Hewitt asked if the \$.51 would offset the loss.

Mayor Norris referred to the goals of improving financial health and increasing community livability. Not having the ability to leverage the quality of businesses the community wants is contrary to the City's direction.

Commissioner Neeley discussed the associated losses to the urban renewal agency and returning to the tax roll.

Mr. Patterson said there are a lot of things that sound like simple solutions on the surface but that do not address the bigger issues.

Mayor Norris understood the BRTF reached the conclusion that no change is needed.

Commissioner Hewitt noted Mr. Patterson needs to know what money he has to work with when talking to these companies.

Mayor Norris had concerns about eliminating staff's ability to negotiate.

Mr. Patterson said if the City Commission wants to change direction, the sooner he knows the better.

Mayor Norris asked if there was any interest in changing direction.

Commissioner Neeley said there were a lot of e-mails generated by a question he asked because there would be a process in March where ultimately taxpayers will be asked for some money.

Mr. Patterson said his best guess was that there would be some relief to the overall scenario. The downside would be that it elongates the time of the district, but things would slow down because less money would be available.

7.0 ADJOURNMENT

Mayor Norris adjourned the study session at 6:57 p.m.

Respectfully Submitted

Leilani Bronson-Crelly
City Recorder

**CITY OF OREGON CITY
PLANNING COMMISSION
WORK SESSION
SEPTEMBER 15, 2004**

COMMISSIONERS PRESENT:

Chairperson, Linda Carter
Commissioner Lynda Orzen
Commissioner Tim Powell
Commissioner Dan Lajoie
Commissioner Mengelberg

STAFF PRESENT:

Tony Konkol, Senior Planner

1. CALL TO ORDER

The meeting was called to order at 6:45 p.m. by Chairperson Carter.

2. WORK SESSION:

Review and discuss potential “clean up” code changes and map amendments as part of the Comprehensive Plan and Zoning Code update that was implemented on June 18, 2004 (Planning File L 03-01)

Review Single-Family Housing Design Standards

Review Farm Uses

Design Award Ceremony

Farm Uses

Mr. Konkol said staff reviewed Bend, Canby, Springfield, Tualatin, Beaverton and several other jurisdictions to determine how they dealt with agriculture and other farm uses inside their city limits. Many of them were very restrictive.

He thought the best example was Bend. As a permitted use within its urban low density, Bend allowed agriculture excluding the keeping of livestock. The keeping of livestock was a conditional use and was limited to one horse per 7,500 square feet, two horses at least 10,000 square feet, and an additional 5,000 square feet for each additional horse. Cows, goats, sheep, swine, fowl, or other livestock could not be kept on any parcel of land with an area of land less than 5 acres. No enclosure for horses, cows, goats, sheep, swine, fowl or other livestock could be kept on a parcel of land with an area less than five acres, and no enclosure for these animals could be located less than 25 feet from a dwelling. Fences had to be made from lumber. Bend allowed agriculture and horticultural uses excluding livestock in its medium density residential zone.

Tualatin’s permitted uses in low density residential allowed for agricultural uses of land such as truck gardening, horticultural but excluded commercial buildings or structures and excluded the raising of animals other than the normal household pets.

The City of Springfield permitted agricultural uses were permitted in the residential districts and some temporary sales allowed by additional standards of the conditional use process. That city broke it down to fowl and poultry. The number of animals per minimum lot size was one to four. One would need a 10,000 square foot lot for five animals. Springfield broke out rabbits and bees, and then they got into horses, llamas, goats, and sheep. One animal was allowed per 20,000 square feet, and two or more required an additional 20,000 square feet for each additional animal. Two pygmy goats were allowed on the first 20,000 square feet, and three or more required an additional 10,000 for each animal. At least 75% of the lot area had to be accessible to the animal without violating the required yard setbacks. Springfield also had a sanitation exemption, and all animals had to be properly caged. The structures designed to house farm animals had to be located in the rear portion of the yard no closer than 40 feet from the front property line or 20 feet from any interior property line. The City and animal control had the right at any time to inspect the premises where farm animals were kept. Owners of premises not in compliant with the section shall were notified in writing to correct the deficiency within one week or legal action would be taken.

At the direction of the City Commission, a conditional use process would be prepared working from the standards that allowed them, and staff would reference other jurisdictions. **Mr. Konkol** asked that the Planning Commission review the numbers and locations that staff proposed.

Commissioner Mengelberg encouraged that Mr. Konkol speak with the Soil and Water Conservation District about innovative mitigation techniques.

Mr. Konkol discussed the City of Bend's limitations that only allowed for farm uses on R-10 lots. Other jurisdictions allowed agriculture on smaller lots. One could really reference the "at the edge of the City" as it was constantly changing.

Commissioner Powell discussed the problems with farm animals in developed areas.

Chairperson Carter commented on a development that was proposed near an existing dairy farm and noted citizens won their case that development was not appropriate.

Mr. Konkol agreed that was part of the larger question. If you bought a house next to a farm, you bought into it.

Commissioner Orzen thought there might be some performance standards the City could look at – odor, potential impact on environment, noise. The City may want to consider periodic reviews that included opportunities for neighbors to voice their concerns.

Commissioner Powell thought that was a good idea, but the City did not have the staff to handle its current codes including dogs running at large. How would the City go out and count how many goats people have on a ten-acre property? He did not want to get into the situation of managing these things by code.

Commissioner Orzen suggested a complaint-driven process. Go out once a year to get comments and complaints and schedule a hearing if necessary.

Mr. Konkol noted that was two separate realms – planning and code enforcement. Giving a conditional use and letting the neighborhood take another swipe the next year did not really meet the needs.

Commissioner Orzen said on the other hand the neighbors had a right to peace and quiet and enjoyment of their property.

Commissioner Lajoie thought the conditional use process was appropriate.

Commissioner Powell thought the Planning Commission should talk more about animals because he was not comfortable.

Commissioner Orzen suggested a discussion about raising animals and sales. Would people come to the property to work? Would there be more traffic generated?

Commissioner Powell thought the traffic advisory group would have to be involved at that point. He discussed managed growth that did not take away from the rural character. He did not recommend it should not be done, but the Commission needed to plan intelligently.

Mr. Konkol understood that Canby did not allow farming in the city limits. The city had one parcel in the city limits but outside the urban growth boundary, so that section of the Canby code was written for one parcel. There was a huge dispute going on right now because they wanted that parcel in the urban growth boundary in order to build a subdivision. The neighbors did not like the farm use because of the noise and smells. They did not want a subdivision either; they wanted open space. Canby's code said agriculture including all accessory structures used for and necessary for the conduct of agricultural activity but excluding commercial processing, sales, manufacturing, or packaging plants except when used for items grown primarily on the premises.

Commissioner Powell's initially feeling was that if it was zoned residential that farm animals should not be allowed. He did not have any problems with truck gardens and things of that nature. He felt there was an inherent problem. Sometimes they live together, but most times they don't. Those were his first thoughts, but he was open to suggestions.

Mr. Konkol understood the Natural Resources Commission would provide comments and shared the Planning Commission's concerns including the use of pesticides.

Chairperson Carter said the conditional use allowed an applicant to show how he would control the situation. She suggested that perhaps the Planning Commission should develop a set of criteria.

Commissioner Orzen commented that the County had a lot of great looking farm plans on paper that never get implemented. Some people build their McMansions and then have a llama for a pet. She wanted to be assured that there was some way to enforce the conditions of approval were enforced.

Commissioner Powell agreed, but the reality was Oregon City just did not have the personnel to do that.

Chairperson Carter said conditional use permits had to come back to the Planning Commission within an identified time frame for renewal.

Commissioner Powell saw that more in the farm animal aspect.

Commissioner Orzen added there were issues with agriculture such as dust and pesticides, but those could be managed. The City would want to ensure the neighbors were not being disproportionately impacted.

Commissioner Powell would like to learn how other jurisdictions manage conditional uses. He could not envision code enforcement monitoring the uses.

Commissioner Orzen commented she would be angry if the farmer next door used an herbicide that killer her flowers.

Mr. Konkol understood that agriculture would be treated differently than farm livestock. He discussed size and commercial endeavors.

Commissioner Orzen suggested some kind of fence with a 10-foot setback that might cut down on dust and pesticides. There may be restrictions for agricultural uses.

Commissioner Powell suggested getting recommendations for animals in that kind of environment.

Commissioner Mengelberg suggested going to the extension service for information.

Commissioner Orzen discussed a house on Glen Oak Road that put out two little stations on Hwy 213 with flower bouquets. Where does something like that come in where a grower only has an acre or two? Would that be a home occupation?

Mr. Konkol explained Oregon City's home occupation regulations did not allow sales of a product, only services.

Jackie Hammond-Williams shared several points. She did not think the problem would be that grate since there were not that many large parcels in the City limits. She doubted people would consolidate parcels in order to start a farm. People may want a few goats to make goat's cheese or have a seasonal market garden. It was not farming within the

concept of a large harvest. Although she could be wrong, she did not believe there would be an interest in turning property into farm land. Impact wise, small gardens should not be a problem.

Commissioner Powell thought the Commission should plan for the worst case scenario.

Ms. Hammond-Williams discussed market gardens. She planned to grow organically and was concerned about her neighbor's spraying. She believed people would be sensible in managing their lots.

Commissioner Powell added the next owner of that property may not feel the same way, so he believed there needed to be some codes in place.

Ms. Seasholtz commented on the traffic on Holcomb Road. She did not believe a small operation would attract a lot of traffic and added that garages sales brought in a lot of traffic with no parking stipulations.

Ms. Seasholtz did not produce enough for a farmers market, so it was more convenient for her to open her doors. She indicated a willingness to live within the restrictions. The City wanted to embrace tourism, and she developing a map of farms that sold on the weekends. She discussed the number of animals per acre. As one looked at the carrying capacity of the land, one needed to consider the size of the animal. The City might think of developing a carrying capacity per breed or perhaps something based on weight. If she did have to apply for a conditional use permit, it was not her long range goal to become a large dairy. She cannot sell wholesale. Her small dairy, as defined by the state, would be nine or fewer milking animals, so her application would be self-limiting. She discussed the ability to package and sell directly. It would be nice to have a tasteful sign she could put up during the weekends letting people know that goats milk or eggs were available. She saw it as an asset to those in the community who wanted to purchase farm fresh.

Chairperson Carter said since the guest's farm was already in operation, it would be grandfathered in. The group discussed the length of time it took getting the property into shape, working with the state, and finally having a product. The water was tested regularly, and the wastewater went into the treatment facility. The group discussed requirements for treating wastewater and protecting water resources.

Mr. Konkol said the other consideration was steep slopes and calculating the required square footage for animals. The City cannot go out and enforce. He discussed the liability of dogs getting into the livestock.

Tam Seaholtz explained she had horned goats, and the neighbors might be concerned about their children's safety. She proposed she be allowed to use electric fencing setback from the property line to contain her animals.

Mr. Konkol discussed the conflict of having to have an electric fence to feel safe about keeping her animals in and other out.

Tam Seaholtz said the electric fence could be five feet inside a standard fence and asked why that would be a problem.

Mr. Konkol thought the electric fence would be a hard sell inside any city.

Chairperson Carter thought the conditional use was the way to go.

Mr. Konkol discussed conditional use language based on animal type or size and acreage, seasonal and weekend sales, and signage. This could not be tied to home occupation since those regulations do not allow commercial sales. He suggested making distinctions between market and commercial agriculture.

Single-Family Housing Design Standards

Mr. Konkol provided a copy of the e-mail from Ernie Platt of the Homebuilders Association that defined an irregular lot and a copy of the list of design standards the Planning Commission discussed. He reviewed several changes he made:

- 17-20 -- applicability. He changed that to read, “with or without a garage.” The developer only needed to meet four design criteria if there was no garage.
- Page 2, change 1 to read, “the garage was recessed two feet or more from the street-facing façade.”
- C – the garage may be up to 60% of the length of the street-facing façade and extend up to five feet in front of the street-facing facade.
- E – added that the garage may be side-oriented to the front lot line and up to 30 feet long.
- 17.20.040 regarding shakes, shingle, stone or other similar decorative materials changed to a minimum of 60 square feet.
- #12 – third garage that was recessed a minimum of two feet.
- Removed all references to shutters.

Mr. Konkol went back to the definition of an irregular lot. He had no problem with five sides or more which was typically on a cul-de-sac.

- #2 – “a slope up or down from front to back greater than 15%. Mr. Konkol did not agree with this one. He would say a natural slope up from front to back within the building setbacks greater than 15%. He would use natural so someone did not simply grade to achieve that slope.

- #3 – the dimensions such that the width measured along the street frontage was less than 35% of the depth. He would agree to that for R-6, -8, and -10. The R-3.5 however goes outside the garage standards. He did not believe the R-3.5 or R-2 zone should have that option. The group discussed skinny lots.

Mr. Konkol discussed objectivity on irregular lots that required the developer to meet seven design criteria and one of the two requirements for a porch or something over the garage. A regular lot would have to meet four design criteria. A snout house, for example, with eight feet in the front, would have to meet seven of the design criteria and one of the two options in B which was a minimum 60 square foot front porch five feet deep or the garage was two levels with a minimum 12-foot window on the second floor.

Chairperson Carter did not believe moving to the highest would be fair.

Commissioner Powell thought seven criteria might be somewhat high and could drop to six.

Mr. Konkol said a developer could simply add a dormer or hip roof. He discussed various combinations of the criteria to meet the standards.

The group discussed combinations of the various options.

Mr. Konkol said the HBA was asking for some leniency from the garage standard from the length of the garage in relation to the façade. The City was saying there would be an exemption from the garage façade standard, but the developer would have to meet seven design standards.

Chairperson Carter said if Mr. Konkol was comfortable and it read correctly to go ahead.

Commissioner Powell referred to 17.20.040 – the recessed entry at least two feet behind the front façade.

Chairperson Carter said the difference was that it had to be at least five-feet wide instead of the three-foot entryway. He thought it was like a tunnel.

The group discussed various designs. **Chairperson Carter** recalled the in the discussion with the builders that it gave enough room to have windows on each side of the door. The advantage was that there would be a porch with a little cover over the front door.

The group discussed octagonal vents as a feature.

Mr. Konkol urged giving credits for something the City wanted.

Commissioner Powell did not like the idea of the minimum of five feet without meeting the other standards and thought eight was fine. He discussed defining gables, dormers, and hip roofs standards in more detail.

Mr. Konkol will ask Ms. Robertson-Gardiner for a better definition of these features.

Chairperson Carter said these standards were 250% beyond where the City had been, and she was impressed that the HBA weighed in and was pleased with the efforts.

Mr. Konkol discussed Pan Pacific's comments and the 99E McLoughlin Boulevard Enhancement Plan. There was a client that wanted outside storage which was not allowed in mixed use downtown, so they put in a farm store. Part of the area would be a special transportation area (STA) that would allow narrower travel lanes, 10-foot sidewalks, and street trees. He felt there was a vision for a pedestrian-friendly area.

Commissioner Powell discussed the Mills Corporation that typically focused on theme developments. The group discussed the aspects of a regional center and Metro's definition.

Design Award Ceremony

Chairperson Carter discussed the award program, and the expense involved. The group discussed the beginnings of the program and how it might evolve over time.

Chairperson Carter adjourned the meeting at 8:30 p.m.

Respectfully Submitted

Tony Konkol, Senior Planner

**CITY OF OREGON CITY
JOINT CITY COMMISSION AND PLANNING COMMISSION
WORK SESSION MINUTES**

OCTOBER 18, 2004

Mayor Alice Norris called the joint work session of the City Commission and Planning Commission to order at 5:36 p.m. in City Hall, 320 Warner Milne Road, Oregon City.

Roll Call: City Commissioners Tom Lemons, Bob Bailey, Doug Neeley, and Mayor Alice Norris. Gary Hewitt excused.

Planning Commissioners Lynda Orzen, Tim Powell, Renate Mengelberg, Dan Lajoie (arrived 6:31 p.m.), and Chairperson Linda Carter.

Staff Present: Larry Patterson, City Manager; Gordon Huiras, Police Chief and Public Safety Director; Nancy Kraushaar, City Engineering and Public Works Director; Dan Drentlaw Community Development Director; Scott Archer, Community Services Director; Tony Konkol, Senior Planner; and Leilani Bronson-Crelly, City Recorder.

Work Session Topics

1. Discussion of City Commission and Planning Commission communication and membership size.

Mayor Norris stated the code identified a seven-member Planning Commission; however, it has been operating for at least four years as a five-member body. The City Commission did discuss membership, and the Planning Commission requested additional discussion. The City Commission determined it would enforce the code, and appoint additional citizens to bring the number of seated members to seven. Interviews were underway.

Chairperson Carter discussed the letter from the Planning Commission that outlined its concerns about a seven-member body. The Planning Commission wanted to understand the City Commission's reasoning since it had been working well with five members. The group was manageable without being overburdening. It was also upsetting that this decision was made without discussion. She understood from Commissioner Hewitt that the code language regarding the number of members would remain at seven, but the Planning Commission would continue to operate with five members. Now that was changed.

Commissioner Powell has watched the City Commission discussion, and he heard that there was a desire for broader representation on the Planning Commission. He believed getting through the land use issues would become

more difficult with additional members. If the Planning Commission has seven members, then there should be seven City Commissioners.

Commissioner Lemons said the intent was to follow City Code.

Commissioner Powell replied, "Sometimes we need to look at things and ask if it really made sense, not just because it says we do it that way." It needed to be logical and make sense. A lot of money goes into producing the paperwork for the Planning Commission and City Commission.

Commissioner Orzen added the Planning Commission had no budget for training and had to rely on staff. The learning curve to get a good planning background was about two years, and that takes a lot of staff time.

Commissioner Neeley said seven members would offer a broader range of experience and provide a base when Planning Commissioner's terms expire or a member decided to leave. He believed most of the advisory boards had seven members. The Planning Commission has functioned well in the past with seven members. He clarified it would be a broader representation not a better representation.

Commissioner Powell rebutted Commissioner Neeley's comment. The Planning Commission was a technical job, and he learned daily. The City Commission needed to make sure it appointed the right people who would stay with the job. He thought having a seven-member Commission to keep the process going was not a strong argument. The right five people can keep the process going and have a backlog of people interested in appointment when a vacancy came up. Additionally, there was no room on the dais for more than five people.

Commissioner Neeley said the Mayor might decide not make an appointment if she felt an applicant was not right for the job.

Commissioner Lemons believed Mayor Norris had made good appointments, and the rest of the City Commissioners was asked for their input on the applicants. He felt a broader scope was better for the community. He was a Planning Commissioner for eight years, and he understood what it took. He believed a broader representation was appropriate, and that is what the code said. He did not believe costs would be that much greater with two additional members.

Commissioner Mengelberg did not object to a seven-member Planning Commission because it brought more heads into complex discussions.

Commissioner Lemons added there were quality people in the community who could join the Planning Commission and make it better for the whole City. He believed Mayor Norris would do diligence, and there would be a benefit in the

diversity. The Planning Commission was doing a great job, and Commissioner Lemons thought two more members would benefit all parties.

Commissioner Bailey supported a five-member Planning Commission because when he was on the Planning Commission that number worked well. He thanked the Planning Commission for being on the front line and dealing with difficult issues. The code did call for a seven-member Commission. He assured the group this had nothing to do with the quality of work. He also understood the training issues, but there was also an opportunity for a broader representation. He believed the whole effort might be invigorated, and there were good people in the community who wanted to be involved.

Chairperson Carter was concerned the two new members would feel disenfranchised since the Planning Commission would be seated as 5 plus 2. Psychologically and emotionally that seemed to be an issue. Staff was already overburdened. Two more members did not sound like a lot, but that meant two more people would be calling staff. The cost of two additional packets was just that much more money out of a small budget, and the City needed to be reasonable about its spending. The Planning Commission has proven success with five members, so why reinvent the wheel and make it more expensive at a time when the City was trying to cut costs? Reinvigorating the Planning Commission was fine, but that happens naturally over time. The Planning Commission was the subject to a lot of public scrutiny, and that was part of communication issue.

Mayor Norris said the City Commission would take the topic to a study session if it changed its views.

Commissioner Neeley commented he had not heard an opinion from staff one way or another.

Mayor Norris stated that staff did comment, and they indicated things had not gone as anticipated otherwise there would have been a discussion. Her views were similar to Commissioner Bailey's, and she did have concerns about the additional staff load. She appreciated the Planning Commission's comments and thanked the group for its hard work on the big issues.

Commissioner Bailey said he had worked with a lot of Planning Commission in his professional life, and this was the best he had seen.

Mayor Norris said the City Commission would do its best to make it work.

Commissioner Neeley noted what the Planning Commission had done a wonderful job with the Comprehensive Plan.

2. Review and discuss recommended “clean up” code changes and map amendments as part of the Comprehensive Plan and Zoning Code update that was implemented on June 18, 2004 File L 03-01)

Mr. Drentlaw said there were three major efforts:

1. Additional change to the policy language in the written part of the Comprehensive Plan that dealt almost exclusively with the housing chapter;
2. Minor changes to the zoning map; and
3. Minor clean up items in the code.

The Planning Commission discussed four major issues related to code language:

1. Design standards for single-family homes;
2. Farm uses;
3. Steep slopes ordinance; and
4. Restrictions on first floors of building in the Downtown Zone.

Mr. Drentlaw believed this was on the City Commission’s November 3 agenda, so this would be a good place to discuss the big issues.

Mr. Konkol referred to page 20 regarding single-family home design standards applicable to all single-family homes, manufactured home, two-family dwellings (duplex) with or without a garage when there is an addition or alteration that added 50% to the existing floor area of an existing house or is a new house. Initially, staff developed standards that said one could put in a garage that was 50% of the façade or 60% and could not be in front of the house façade. Those were the only two options. Mr. Pratt from the Homebuilders Association raised that issue with the Planning Commission. The Planning Commission took input to develop these design standards and criteria, and this was new language. A new section was created that was referenced in the zoning designations for single-family housing. It offered options, and the most desirable was a garage that was only 50% of the façade and even with the house. That meant that only four design criteria had to be met. The length of the garage could be increased and the distance the garage could be extended out in front of the façade would require additional design criteria be met. The maximum a garage could extend in front of the façade was eight feet. The Planning Commission toured housing types and was comfortable that certain design criteria achieved a desirable look. This also applied to duplexes.

Mr. Konkol referred to the list of 14 design standards on page 21 of which 7 would have to be met.

Mr. Drentlaw added this was a menu of standards from which a developer could select the needed number.

Chairperson Carter explained the Planning Commission did this because there were developments that had no design standards and eye appeal. The purpose

was to develop friendly, walkable neighborhoods and construct housing that would be sustainable as the structures matured.

Mr. Konkol noted the exception section for lots with certain types of restrictions.

Mr. Drentlaw commented the 40% maximum lot coverage was a new feature.

Mr. Konkol added the zone previously determined the lot coverage, but that method was confusing and difficult to administer.

Commissioner Bailey referred to page 20 and the paragraph on applicability, second sentence. He did not find manufactured homes as a distinct housing type elsewhere. He understood the distinction was going to be removed. He referred to section 17.20.040 – residential design standards and the use of the design features and design options and expressed support for that approach.

Commissioner Bailey referred to page 22 section 17.20.050 – main entrances. It was not clear to him what was going on, particularly item (c). He thought it might be useful to insert, “open onto a covered porch in the front, or in the case of a corner lot, the side of the residence.” He looked at the exceptions, and an irregular lot was not really described. For example, what is a “natural upslope?”

Mr. Konkol replied that would have to do with the steepness of the slope and the garage making up the ground floor with the living area above matching the slope.

Commissioner Bailey suggested referring to natural slope. He thought the 30% width and depth needed to be explained.

Mr. Konkol replied lots on a cul-de-sac would be offered an exception, so the houses would not have to be pushed so far back.

Commissioner Neeley also referred to section (c). There were some very attractive houses that have causeways between the house and garage. He was concerned about only giving one or two alternatives when there were others that could be architecturally pleasing as well as convenient.

Commissioner Lemons has seen a lot of houses with two main entrances.

Commissioner Bailey suggested using “entry” rather than “door.” He liked this recommendation a lot.

Mr. Konkol referred to page 14 that discussed farm uses. In R-10, R-8, and R-6, it was proposed to add, “farms, commercial or truck gardening and horticultural nurseries on a lot of not less than twenty thousand square feet in area (commercial buildings are not permitted).” This was the previous language added back

pending additional work. The Planning Commission started working on this, and it will require a lot of work.

Commissioner Neeley stated if an urban farm was going to work, it would work because it can sell the produce in the community where it was located. It implied that people could not have commercial buildings from which to sell their produce. He suggested that a minimum percentage of the sales be from that farm's produce to ensure it does not become a commercial operation on the level of Spicer's. He would like to keep allow buildings but with some limitations.

Mr. Drentlaw replied that it became apparent at the Planning Commission level that this was a very complicated issue. The recommendation was to put the previous language back in and discuss in more detail this whole farm use issue. Logging in future urban growth boundary areas has also come up as a concern.

Mayor Norris suggested the City review Lake Oswego's model ordinance. It stated that property that was outside the current City boundary would not be annexed if the property was degraded (all the trees cut) without some kind of mitigation.

Mr. Drentlaw said the proposal was to approve the Comprehensive Plan as amended and to work through those two issues at the Planning Commission level.

Commissioner Lemons said just the term "commercial building are not permitted" would scare him and others to death in the community. He understood there needed to be restrictions, but various people have different ideas about what constitutes a commercial building.

Tom O'Brien discussed the large Christmas tree farm on Central Point Road near the urban growth boundary. They have commercial cutting requirements, and they also operate a store during the holidays.

Commissioner Bailey supported Commissioner Neeley's comments about commercial sales, and he was not sure what a commercial building was. He thought there were state regulations having to do with farms and retail sales. 20,000 square feet was not a great deal of space for retail sales.

Tam Seasholtz discussed 20,000 square foot lots or less that produce and grow dahlias or tomatoes that should not be restricted.

Mr. Konkol referred to page 32, steep slopes. The unstable soils and hillside constraints overlay district was renamed geologic hazards. In steep slope zones that are over 35%, the grading period was limited from May to October with the ability to add 30 days on the back end and 45 days on the front end depending on the weather and at discretion of the community development director. Limits were placed on fills and cuts that did not exist. He referred to page 34 that

indicated a maximum density of two dwelling units per acre on a lot that slopes between 25% and 35% that no more than 50% or 4,000 square feet can be stripped. No cut into such a slope may exceed a maximum height of 15 feet. As proposed, it was used in the density calculation at the beginning of the process. For example, if one had 10 acres, one could put 44 units on it if it were perfectly flat with no restrictions. Now it says that if half of that was under 25%, and the other half was over 25%, then only ten homes would be allowed on those five acres.

Dan Berge owned property with steep slopes, so he understood he would be limited in the number of houses that could be built.

Mr. Konkol said that was already in the code; this was just a clarification. He would have to look at Mr. Berge's property.

Commissioner Bailey suggested adding language about development on seismically unstable soils if the term was being changed to "geologic hazard." On the steep slopes -- he understood wanting to limit cuts and fills. Where did staff get the engineering standards?

Mr. Drentlaw replied a lot of the cut slope language was from the City of Ashland.

Commissioner Bailey asked if there were provisions for development that does not necessarily want to cut the hill or fill the hill. He was thinking of steep slopes in Portland's West Hills where people were building on steel pilings in bedrock. There may be other attractive ways to build on steep slopes that do not involve cut and fill and would apply primarily to the density.

Mr. Konkol said that was a maximum cut and fill. If someone wanted to develop without cut and fill, the City would be supportive. It would still fall under the 2-unit per acre rule. He discussed density transfers.

Ms. Kraushaar commented on accessibility problems to homes built on pilings.

Commissioner Bailey thought there might be some sites where that was an attractive alternative and was suggesting some flexibility.

Tam Seasholtz asked if there were provisions requiring re-vegetation.

Mr. Konkol said only 4,000 square feet could be disturbed. He referred to page 35 – sub (d), "all disturbed vegetation shall be replanted with suitable vegetation as soon as possible during or after completion of construction activities." One would also have to comply with Chapter 17.47 – erosion and sediment control.

Commissioner Neeley asked if the City dealt with saturation issues.

Ms. Kraushaar replied that was addressed in the erosion control ordinance, and DEQ is coming out with a new erosion control manual which the City would adopt. There would be several layers of protection.

Mr. Konkol commented that language as added about when grading could be done and suggested that during those seasons, the grading would have to be covered. The builder gets the unstable slope permit during the subdivision process, and each site has its own erosion control permit in the building phase. There may be enforcement issues to be discussed.

John Dinges said landscaping is typically done after the grading was complete and the house was built. Could there be a priority that says the slope would be re-vegetated before the builder can obtain the permits?

Mr. Drentlaw suggested tying the certificate of occupancy to re-vegetation.

Mr. Konkol was concerned that resources might be put in that have to be taken out later since the exact location of the building footprint would not be known in the early stages.

Commissioner Bailey suggested putting in a little wiggle room that would allow re-vegetation where clearly the house would not be built.

Tom O'Brien was never comfortable with the term "as soon as possible" because everyone interpreted it differently.

Commissioner Bailey referred to page 33 section C, which talked about terracing and D said terracing could not be done.

Mr. Drentlaw explained C was a cut slope and D had to do with a fill slope.

Alan Shull referred to page 35, construction standards – the City could authorize brush clearing and test pit digging prior to approval. Can the City also authorize how people access the sites?

Ms. Kraushaar thought access could be limited to the public or personal right-of-way.

Commissioner Lemons asked if the surveyor law would come into play.

Ms. Kraushaar said they would not have the same types of equipment.

Commissioner Bailey referred to page 36, new item H. What was the "building envelope?"

Mr. Konkol said that was everything inside the setback.

Commissioner Bailey understood that within that area the slope had to be 35% or less but could be greater outside.

Mr. Konkol referred to page 29 and the mixed-use downtown zone. The overlay was changed to the Downtown Design District where “retail and service uses on the ground floor and office and residential uses on the upper floors are encouraged in this district.” That was removed as a requirement. It was added as a policy in the Land Use section just as a reminder to look at it in the future.

Commissioner Bailey asked how the mixed-use downtown district worked with the downtown design district.

Mr. Drentlaw said the downtown zone was essentially the regional center. He indicated the areas on the map. The overlay has additional regulations.

Mr. Konkol stated in that area the FAR was increased, and there was an option for the number of required parking spaces under 17.52 to be reduced by half because of the infill nature. A parking lot or structure would be allowed as a conditional use.

Commissioner Bailey discussed how other communities have added structures that proved to be nice features.

Mayor Norris understood the thinking was that retail below could discourage occupancy if that was a standard right away, and that urban renewal could provide incentives at a later time.

Mr. Konkol said right now, the City does not want to discourage any type of redevelopment downtown.

Mayor Norris thought the policy sounded “squishy” – monitor the development and investigate the need. What did that really mean as a policy? (Page 4, Policy 2.2.13).

Mr. Konkol replied it meant this issue would be re-addressed if it was determined no longer appropriate to have offices on the first floor as was dominate the downtown right now.

Chairperson Carter said it could be changed if monitoring indicated the policy should be changed.

Commissioner Lemons commented this was a document that would change with the community’s needs.

Commissioner Bailey referred to page 30, W – senior housing. He saw that as more of a conditional use to ensure it fits with the downtown and urged caution.

He did not wish to detract from the retail and commercial aspects of the downtown.

Commissioner Neeley commented that people in assisted living facilities might be prime users of retail development.

Commissioner Bailey referred to V having to do with sixty thousand square foot buildings. He thought that was too big for a single store in the downtown.

Commissioner Powell said there were plenty of opportunities such as a Meier and Frank.

Tom O'Brien addressed the senior housing issue. There were three times as many employees as there are residents in those types of facilities, and they do a lot of shopping.

Commissioner Mengelberg thought active seniors might find the area very attractive.

Alan Shull asked if adult entertainment could be a prohibited use and was told it could not.

Mr. Konkol referred to page 9, 16.12.290 and houses facing collectors and arterials. The City was not allowing access to minor arterials such as Leland Road and Central Point Road, so houses facing those streets were accessed by alleyways to provide more flexibility. The purpose to avoid fences on these main streets, and if was unavoidable then landscaping would be required.

Mr. Konkol referred to page 36. The process for notifying property owners of an appeal was amended to help meet the 120-day time limitations. This proposed amendment satisfied the laws. Those with standing would receive notification.

Tom O'Brien commented that was an overflow crowd at the August 9 hearing, and not everyone had a chance to speak. How did those people get notification?

Mr. Konkol said anyone who submitted written comments or signed up to speak was notified. In that case, the hearing was also extended.

Commissioner Bailey suggested adding "or who request in writing" for notification. That would go for the neighborhood associations as well.

Mr. Konkol said the original notification went to everyone within 300 feet of the subject property. If the application goes to the Planning Commission, the meeting was advertised in the paper.

Carol (woman spoke from the gallery) said not all of her neighbors received notice of a zone change.

Commissioner Neeley said everyone in the City received notice of the Comprehensive Plan hearing, but not everyone recognized it.

Mr. Konkol explained the original notice went out to the public according to Measure 56 guidelines. Staff went through GIS to get the names of all property owners with proposed zone change and mailed postcards. There were also notices in the *Oregon City News*.

Tom O'Brien suggested keeping the website updated and making it easier to navigate. For example, he did not see that the City was recruiting for Planning Commission members.

Mr. Konkol referred to page 37 regarding parking options having to do with transit-oriented development, transportation demand management programs, and shared parking.

Commissioner Bailey liked the opportunities provided by these amendments.

Mayor Norris thought these were good incentives.

Mr. Konkol referred to page 40 and supplemental zoning regulations that dealt with accessory structures. He noted that language was added that the accessory structure shall be located behind the front building line of the primary structure.

Alan Shull had a question about the section on seasonal produce sales.

Mr. Konkol said certain retail sales might conflict with the home occupation rules having to do with sales of commodities. It became a larger issue, but he was not sure at this time if produce sales should be in this section. He thought there needed to be a larger discussion.

John Dinges referred to page 10 that said a person can sell a service, but what if you are growing organic tomatoes in the back of your yard. He urged using common sense.

Carol (gallery) discussed Internet marketing.

Commissioner Bailey referred to page 43 and the variance criteria. He thought the criteria were pretty lame and did not feel they would do the job. He used the example of item C having to do with hardship. The monetary aspect frequently does not come into play. It may be a case of word smithing to make them clearer. He was not clear how a minor variance differed from a regular variance.

Mr. Konkol referred to sub E and those seven things that fell under a minor variance and were handled at the staff level. If it was not one of those seven things, the variance request would go before the Planning Commission.

Commissioner Bailey understood a minor variance was for an individual property.

Mr. Konkol said the policy has been that a minor variance was for one property.

Commissioner Bailey read the seven grounds for a minor variance. He thought those were grounds for any variance and much clearer. He suggested discussing this again.

Mr. Drentlaw focused mainly on the sections that implemented the policies of the Comprehensive Plan. He hoped to get funding approved to re-write the entire code.

Commissioner Mengelberg commented that Commissioner Hewitt had expertise in this area.

Alan Shull referred to page 4, Comprehensive Plan Policy 2.2.11 and asked if Canemah could be included.

Mr. Konkol said it referred to mixed use in the downtown area that included the north end. He suggested Mr. Shull review the historic district section to ensure it addressed his concerns.

Commissioner Neeley referred to page regarding maintenance of an adequate affordable housing supply. He did not believe it fit in this title and was not sure where it fit. He wanted to make sure there was reference to building affordable housing near transit service. It was a critical policy.

Mayor Norris referred to page 5 regarding demographic characteristics and the percent of population being in group quarters. She felt Oregon City would have the same proportions as other county seats such as Hillsboro and requested a rationale be added. It would seem Oregon City was out of control in the area of group housing as written.

Commissioner Bailey referred to page 44, site plan and design review, 17.62.020 – when required, fourth line. He asked if manufactured housing dwelling parks was a term still used.

Mr. Konkol said it was still in the R-6 zone as a provision for manufactured housing and was under staff review. He discussed the property on Hwy 213.

Mr. Drentlaw thought it could be removed.

Mr. Konkol discussed the map changes that included the old railroad right-of-way that was one long tax lot with multiple Comprehensive Plan designations. Many of the changes cleaned up properties with split zones. For the most part the Comprehensive Plan changes addressed right-of-way changes or properties that through some type of mapping error needed to be cleaned up.

The zoning designations were primarily like the map clean ups. He pointed out the area near Clackamas Community College and the high school on Glen Oak Road. These were all zoned industrial when they were annexed, and the code did not require that they receive a City zoning designation. Under the current code, they would have been designated campus/industrial. The proposal was to take the properties in the City with a Comprehensive Plan designation of industrial and amend their zoning designations. He noted the zone changes from R-10 to R-8. A majority of these parcels were brought in under island annexations. These parcels were surrounded by R-8 parcels, so it was logical to rezone them. R-10 allowed 4.4 dwelling units per acre, and R-8 allowed for 5.5 or an increase of one dwelling unit per acre. Most of the parcels were not large enough to make a significant impact but would allow some flexibility in lot size and configuration in the application process. Many were infill situations.

There were numerous questions about Falcon Drive, which is R-8 with R-6 around it. Most of the properties are about 20,000 square feet. When people come in for a partition, the Transportation System Plan (TSP) requires a 53-foot right-of-way for a local street. After the dedication, the property fell below the 20,000 square feet. That means that people have to get a variance based on a hardship criteria or pay for a zone change. There have already been three such cases. The Planning Commission and City Commission have historically supported the zone change to allow for the additional lot on the property. Staff felt it was appropriate to make that change. He noted all of these lots were on septic, so portioning helped offset some of the infrastructure costs. All of the property owners were notified of these proposed actions in August.

Carol (gallery) said the new road requirements do not make sense, since the current road functions.

Mr. Konkol said that was the standard policy when there was a subdivision or a partition on a property. The City required that services be brought up to current standards. That included a change to a 53-foot right-of-way for local streets. Some of the development on the north side was likely even pre-TSP. He would work with her to clarify the current regulations.

Ms. Kraushaar commented the City works very hard with applicants, and sometimes there are compromises.

Carol (woman from the gallery) said there were homes on the other side of Falcon Drive with gravel driveways.

Mayor Norris understood the Planning Commission was finished with its part of the process.

Tom O'Brien referred to the two areas in purple and asked for an explanation of the difference.

Mr. Konkol responded one piece already had a City zoning designation.

Mayor Norris understood these changes would be in the version the City Commission had for its November 3, 2004 public hearing.

Commissioner Powell brought up his concerns about the Oregon City Police Department and School District and their ability to support these developments. It was difficult for him to approve these applications with that hanging over his head. He understood there were traffic issues, and although there was a long-term plan, it was the short term problems that presented the challenges. He urged a discussion of what to do about growth.

3. Discussion of the Urban Growth Boundary and "Hard Edges" concepts.

Mayor Norris agreed it was a huge issue. The Clackamas County Coordinating Council talked about lobbying the legislature to have system development charges (SDC) for schools.

Commissioner Powell agreed that of message needed to get out.

Mayor Norris said the City could grow to population of 50,000 within its urban growth boundary, growth certainly did not pay for itself.

Commissioner Lemons said there were concerns that Oregon City was growing outside its ability to provide services. He agreed it was time to discuss growth and related concerns.

Chairperson Carter commented the blame was being placed on the Planning Commission and City Commission.

Commissioner Lemons said it really had to do with the state legislature.

Commissioner Bailey stated it was a matter of private property, and the balance was difficult to achieve. He supported SDCs for schools, but it would be very difficult.

Commissioner Neeley added municipalities could not deny subdivisions based on the impact on the school system.

Mr. Patterson thought the problem was the difficulty in understanding government finance. If it were not for growth, Oregon City would have already fallen off the edge. Nobody wanted to talk about taxes. Oregon City has a population of 30,000 and a staff for a city of 10,000. Now we were talking about a City of 50,000. The City needed to start defining its levels of services.

Tam Seasholtz said the schools were full, and \$400,000 homes are being built on Holcomb Ridge. Do the buyers know about the school situation?

Mayor Norris said statistically only about 20% of the population has children.

Commissioner Mengelberg saw that Eastham School was now a community center. It was not an issue of having the buildings – it was one of operations.

Mr. Patterson added in the broader context there were many service demands that come from outside the City. There should be some kind of financial sharing.

Commissioner Neeley agreed these were all major issues but that did not in any way address where the City ought to be. How we get there was another piece. Oregon City could lose its sense of identity because each area that was annexed brought its own. There will be some areas where it would not make a lot of sense to go. He was Oregon City's representative to the Metro Policy Advisory Committee (MPAC), and there was discussion of industrial lands and agricultural impacts. One of the general boundaries discussed was the Clackamas River. It made more sense to talk about boundaries at a basin level. He thought perhaps Oregon City should not go into Clear Creek, which was the basin adjacent to Abernethy Creek. He suggested that might be one of the hard edges.

Mr. Drentlaw said because of the industrial land study, Metro Councilor Hostika was interested in the concept of crossing the Clackamas River and I-5 corridor and the feasibility of hard edges and logical boundaries. Oregon City's limit was obviously the Hwy 213/I-205 interchange. He put this item on the agenda so the City Commission would be aware of the discussions going on at Metro.

Chairperson Carter thought Oregon City had certain geographic hard edges where the City should stop.

Commissioner Neeley thought Oregon City could come up with a hard edge to the south. Beavercreek, for example, was developing its own jurisdictional capability.

Mr. Drentlaw discussed the Damascus issue.

Commissioner Mengelberg asked how this discussion interfaced with the idea of a moratorium. A municipality cannot say it will not provide services and will not grow.

Mr. Patterson suggested if the purpose of hard edges was to preserve identity, then those boundaries would not work in 50 – 60 years.

Mayor Norris said that has to be a regional discussion.

Commissioner Neeley commented the beginning was the best time to provide input to the Metro Council.

Mayor Norris believed it was important to be aware of these issues as jurisdictions look at their boundaries. The proposal to extend periodic reviews will also come before the legislature.

Commissioner Neeley added some of the thinking might have to do with future industrial expansion. Hwy 213 has a lot of potential in terms of providing transportation service although there are constraints at this time.

Tam Seasholtz asked when the farm use would be discussed again.

Mr. Drentlaw said it would be before the Planning Commission in a couple of months.

John Dinges discussed affordable housing versus the cost of houses being built in Oregon City. What was affordable housing?

Commissioner Bailey said it was the City's task to plan for those kinds of areas and identifying incentives for developers. There were agencies such as the Clackamas Land Trust and Northwest Housing Alternatives that helped home buyers.

Commissioner Neeley said affordable housing was defined as 50% of the median income. The issue was how to make sure there was affordable housing.

Mayor Norris commented that the importance of the Comprehensive Plan was to provide the opportunity for and diversity of housing to make a more vibrant community.

The City Commission expressed its appreciation to the involved citizens and to the Planning Commission for its hard work.

Mr. Drentlaw provided copies of the goal setting action items.

The work session adjourned at 8:09 p.m.
Respectfully Submitted,

Leilani Bronson-Crelly, City Recorder

**CITY OF OREGON CITY
CITY COMMISSION
MEETING MINUTES**

NOVEMBER 3, 2004

Mayor Norris called the regular session of the City Commission meeting to order at 7:01 p.m. on November 3, 2004 at City Hall, 320 Warner Milne Road, Oregon City.

Roll Call: Commissioners Tom Lemons, Bob Bailey, Doug Neeley, Gary Hewitt and Mayor Alice Norris.

Staff Present: Larry Patterson, City Manager; Bill Kabeiseman, Assistant City Attorney; Gordon Huiras, Police Chief and Public Safety Director; Nancy Kraushaar, City Engineer and Public Works Director; Dan Drentlaw, Community Development Director; Scott Archer, Community Services Director; David Wimmer, Finance Director; Leilani Bronson-Crelly, City Recorder; and Tony Konkol, Senior Planner

1.0 CALL TO ORDER

- 1.1 **Mayor Norris** asked each member to introduce himself.
- 1.2 Flag Salute

2.0 CITIZEN COMMENTS

None.

3.0 CONSENT AGENDA

Commissioners Lemons/Hewitt m/s to approve the Consent Agenda.

A roll call was taken, and the motion passed with Commissioners Neeley, Hewitt, Lemons , and Bailey and Mayor Norris voting ‘aye.’ 5:0.

- 3.1 Commission Report No. 04-212, OLCC: Liquor License Application – Limited On-Premises Sales, New Outlet Applying as a Limited Liability Company Known as KDL Trail’s End Golf Center – Located at 1107 Abernethy Road; and
- 3.2 Approval of Joint Work Session Minutes of October 18, 2004.

4.0 PUBLIC HEARINGS

LEGISLATIVE PUBLIC HEARING ITEM

- 4.1 Commission Report No. 04-211, First Reading of Proposed Ordinance No. 04-1016, the Adoption of Revisions to the Oregon City Comprehensive Plan, Comprehensive Plan Map and Zoning Map and Amendments to the Oregon City Zoning Code.

Mayor Norris stated the purpose of these amendments were to update the Comprehensive Plan adopted June 2004 based on community and Planning Commission input.

Mr. Drentlaw said this was a cleanup action and that the Planning Commission unanimously recommended approval of this package at its October 11, 2004 meeting. The City Commission and Planning Commission held a joint work session on October 18, and he briefly reviewed the changes that resulted from the joint session.

- Goal 10.2, affordable housing (page 7/53) was amended to add policy 10.2.4. "Provide incentives that encourage the location of affordable housing developments near public transportation routes. Incentives could include the reduction of development related fees and/or increases in residential density."
- He discussed Mayor Norris's concerns about Oregon City's high percentage of housing in group quarters. Staff determined the reason was because of the high number of people in correctional institutions. Other county seats such as Vancouver and Hillsboro, which had much larger populations made Oregon City's ratio seem much higher.
- 17.20.040, residential design elements, staff changed the word from "standards" to "elements" (page 22/53)
- 17.20.070, exceptions clarified irregular lots in (B) and (C) (page 23/53)
- List of permitted and prohibited uses in the mixed-use employment district (page 29/53) and added public utilities and serves including pump stations and substations.
- 17.31.050, prohibited uses, removed distribution, wholesaling and warehousing and made those permitted uses.
- Steep Slope Ordinance paragraph B (page 36/53) to clarify the ability of the city engineer to authorize site access and clearing of brush to dig test pits.
- Steep Slope Ordinance paragraph D added wording about replacement of disturbed vegetation. "All disturbed vegetation shall be replanted with suitable vegetation upon completion of the grading of the steep slope area." Suitable vegetation was at the discretion of the city engineer.
- 17.50.120 quasi-judicial hearing process paragraph C (page 37/53) was made specific as to who should receive notice in terms of an appeal. It stated that notice would be specific to the applicant, property owner, and all persons who testified either orally or in writing before the hearing body.
- This was in reference discussions regarding membrane structures (page 42/53). The code currently contained a very inclusive definition of structures and included membrane structures. Paragraph D was amended to add that if one had an accessory structure, it had to be located behind the front building line of the primary structure. This was a starting point, and the neighborhoods could continue their discussions.

The group discussed the implementation timeframe and some possible reactions. Commissioner Bailey noted other jurisdictions had dealt with this matter in a similar way. Commissioner Hewitt cautioned staff against looking for additional work.

- 17.60, variances (44/53) based on the suggestion to combine criteria for approval of variances into one section and added 17.60.30.

Mr. Konkol discussed the minor map changes. He referred to 17.08.020 (page 14/53), single-family R-10 dwelling district. The language was also added to the R-8 and R-6 single-family dwelling districts. The proposed language was identical to what was in the code two years ago. “Farms, commercial or truck gardening and horticultural nurseries on a lot not less than 20,000 square feet in area retail sales of materials grown on site was permitted.”

Commissioner Neeley understood this did not prohibit the sale of items consistent with the retail sale of the produce.

Mr. Drentlaw did not believe so as long as it was related.

Commissioner Hewitt said as written it did not address other retail sales being permitted. This was a farm stand, and state law does allow for a percentage of incidental items.

Commissioner Bailey said in this case there was a use expressly permitted. Did that in practice mean other items were excluded?

Mr. Kabeiseman replied, “Typically it did.” By identifying things that were included, the general rule was that other items were excluded. There was some interpretation ability, but not a lot. The most likely way for a court or LUBA to interpret this was that the party was limited to what was grown on site. The City Commission could permit those sales, but not the way it was written at this point.

Commissioner Bailey said the City Commission was talking about stands in residential areas. It did give the neighborhoods an out if problems did development.

Commissioner Lemons commented on the difficulty of regulating unless there was a complaint. What constituted a lot not less than 20,000 square feet?

Mr. Drentlaw said that would rule out this type of operation on lots under 20,000 square feet. There was a lot of discussion on this topic, and the Planning Commission will get into more detail to determine if this section needed further amendment.

Commissioner Hewitt commented that the state was currently reviewing farm stand regulations, and he cited an operation on Rosemont Road in Lake Oswego. People have been setting up businesses under the guise of something else. He appreciated the language because it was very precise.

Mr. Konkol read a letter into the record addressed to the Mayor and Commissioners from Ernie Platt: *“On behalf of the 12,000 plus member firms of the Homebuilders Association of metropolitan Portland, I am writing in support of the revisions of Chapter 17.20, version 5 dated October 20, 2004 the City Comprehensive Plan and Zoning Code as recommended to you by the Planning Commission. Much credit was due to staff and the Planning Commission for their willingness to discuss the proposed text of this amendment and to work with several of us in the development community. In my opinion, we now have a workable and forceful code. Thank you for the opportunity to comment.”*

At the October 18 work session, staff presented the Comprehensive Plan Map and Zoning Map and detailed the changes most of which were housekeeping amendments. Island properties were changed from R-10 to R-8. Commissioner Bailey pointed out references to manufactured homes in the code, and staff removed those. In doing that staff realized there were still three tax lots in Oregon City that had an RD-4, manufacturing dwelling park designation. Staff proposed to remove that zoning designation. Those three properties had a Comprehensive Plan designation of medium density residential that historically allowed the RD-4 manufactured dwelling park designation. The R-3.5 zone was comparable. The manufactured dwelling park code allowed lots on 3,500 square feet. The RD-4 allowed ten units per acre, and the R-3.5 allowed a little over 12 units per acre. Based on that, staff felt the change was comparable. The property would become a legal, non-conforming use. As a residential use under the non-conforming use, this was a protected use. If destroyed, the structure could be rebuilt. The non-conforming structure section of the code allowed replacement if a structure was removed. A new manufactured dwelling unit would have to meet the design criteria of Chapter 17.20 since the City did not distinguish between a manufactured home and a stick-built home. Mr. Konkol spoke with the property owners, and one was here to address the City Commission. This was a map change of three tax lots to R-3.5. The Comprehensive Plan would remain the same, but Chapter 17.66, manufactured dwelling park would be removed.

Commissioner Hewitt understood if a non-conforming use status applied and that if the structure were burned down, it could be replaced. Did it not have to be replaced within 12 months?

Mr. Konkol said that was correct. “When a structure containing a lawful non-conforming residential use was damaged by fire or other causes, the re-establishment of the non-conforming use shall be permitted.” It cannot be replaced if it was intentionally destroyed.

Commissioner Neeley discussed the length of time it might take a person to be paid off by the insurance company. How would a person get an extension?

Mr. Kabeiseman would research the statutes.

Commissioner Hewitt thought there was language about a process being lawfully commenced.

Mr. Konkol said those were the only changes made since the work session.

Commissioner Bailey believed the variance language was much clearer.

Public Testimony

John Laughlin, Operator of Cherry Lane Mobile Home Park, 20246 S. Molalla Avenue, Oregon City. He urged the City Commission allow these viable and needed properties to continue in the community. Homes were being replaced, and he wanted to ensure he could continue to improve the community. He believed the R-3.5 fit well. His concern was that he be able to vacate a lot and replace the home. He encouraged the City Commission to make the permit process workable. If the homes were continually upgraded, it will not be a trailer park but an area of updated manufactured homes.

Mr. Konkol understood that if a new home came in, it would still have to be reviewed by Chapter 17.20, design standards for all single-family homes whether it was manufactured or stick-built. This was an over-the-counter, Type I process and was reviewed prior to the building permit review and approval. Just the zoning was being changed at this time.

Commissioner Neeley thought there would be issues with the design standards.

Commissioner Hewitt explained the manufactured dwelling companies were well aware of local codes and state established setbacks for the parks. He discussed the manufacturers' recent designs, which were state of the art because they wanted to place their product. He did not know of a current manufacturer that did not meet the code.

Mr. Laughlin said he had no issues with the three lots Mr. Konkol referred to in the staff report.

Commissioner Bailey explained his intent was to make it easier to facilitate manufactured housing throughout the City without discrimination. He was sensitive to Mr. Laughlin's desire to upgrade his park.

Mr. Kabeiseman responded to the question about the length of time in which a person had to rebuild a non-conforming use. The code did not mention any

particular timeframe for a non-conforming use. If there was an expansion associated with the structure, that and related improvements would have to be done within two years. The general period for all permits under the code was one year in Chapter 17.50 with the possibility of two extensions.

Mr. Konkol stated that Mr. Laughlin showed him around the property, and there were carports but no associated garages.

There were no further comments. **Mayor Norris** closed the public hearing.

Commissioners Hewitt/Bailey m/s to approve the first reading of proposed Ordinance No. 04-1016 that was included at Attachment A to the report with revisions.

Commissioner Neeley's only concern was with retail sales on an urban farm, but he believed that could evolve. Because of the nature of urban sales, these farms might need to sell something that was naturally associated with what they were producing.

Commissioner Hewitt urged that staff made sure the Planning Commission considered very specific language about products being directly related to support the sales of the product grown on the property.

Commissioner Hewitt revised his motion to say, "...as Attachment A of this report" and strike "with revisions."

Mr. Kabeiseman read Ordinance 04-1016 for the first time.

There was no further discussion.

A roll call was taken, and the motion passed with Commissioners, Neeley, Hewitt, Lemons, and Bailey and Mayor Norris voting 'aye.' [5:0]

5.0 COMMISSION BUSINESS

- 5.1 Commission Report No. 04-208, Second Reading of Ordinance No. 04-1011, Adoption of the Oregon City Trails Master Plan as an Ancillary Document to the Parks and Recreation Master Plan.

Commissioners Lemons/Hewitt m/s for the second reading of Ordinance No. 04-1011 Adoption of the Oregon City Trails Master Plan as an Ancillary Document to the Parks and Recreation Master Plan.

Mr. Kabeiseman read the Ordinance for the second time.

There was no further discussion.

A roll call was taken, and the motion passed with Commissioners Neeley, Hewitt, Lemons and Bailey and Mayor Norris voting ‘aye.’ 5:0.

- 5.2 Commission Report No. 04-209, Second Reading of Ordinance No. 04-1014, Repealing Chapter 2.40 and Adopting a New Chapter 2.40, Public Contracting and Purchasing.

Commissioners Hewitt/Hewitt m/s for the second reading of Ordinance No. 04-1014, Repealing Chapter 2.40 and Adopting a New Chapter 2.40, Public Contracting and Purchasing.

Mr. Kabeiseman read the Ordinance for the second time.

Commissioner Bailey supported this because it was based on the Oregon Attorney General’s Public Contracting Rules and modified the process to allow staff to execute the smaller contracts while retaining the authority for larger contracts with the City Commission.

Commissioner Lemons did not support the Ordinance because he felt the City Commission was obliged to review all contracts.

A roll call was taken, and the motion passed with Commissioners Neeley, Hewitt, and Bailey and Mayor Norris voting ‘aye’ and Commissioner Lemons voting ‘no.’ 4:1.

- 5.3 Commission Report No. 04-210, Second Reading of Ordinance No. 04-1015, Second Reading of Ordinance No. 04-1013, Approval of a Zone Change from R-10 Single-Family Dwelling to R-8 Single-Family Dwelling and Approval of a 31-1 Subdivision Application within the Water Resource Overlay District (ZC04-02, TP04-13 and WR04-11).

Commissioners Hewitt/Lemons m/s for the second reading of Ordinance No. 04-1015, Second Reading of Ordinance No. 04-1013, Approval of a Zone Change from R-10 Single-Family Dwelling to R-8 Single-Family Dwelling and Approval of a 31-1 Subdivision Application within the Water Resource Overlay District (ZC04-02, TP04-13 and WR04-11).

Mr. Kabeiseman read the Ordinance for the second time.

There was no further discussion.

A roll call was taken, and the motion passed with Commissioners Neeley, Hewitt, Lemons, and Bailey and Mayor Norris voting ‘aye.’ 5:0.

5.4 Commission Report No. 04-196, Approval of Personal Services Agreement for Audio Visual Contractor.

Mr. Patterson said the City Commission awarded this contract to Spectrum Systems Design at a previous meeting. The vendor was unable to meet the errors and omissions portion of the contract, so staff recommended the contract be awarded to the second bidder in the process. This was H.K. Electrical Engineering in a not to exceed \$12,000 contract with provisions.

Commissioner Lemons appreciated staff's addressing his concerns with the earlier agreement.

Commissioner Neeley asked if errors and omissions was something that was discovered after the award.

Mr. Patterson replied that errors and omissions was part of the bid specifications.

Mr. Kabeiseman explained this was a professional liability insurance for errors in professional judgment as engineers. This requirement was part of the specifications which the vendor said he overlooked.

Commissioners Hewitt/Bailey m/s to authorize the city manager to enter into a personal services agreement as outlined in Commission Report 04-213.

There was no further discussion.

A roll call was taken, and the motion passed with Commissioners Neeley, Hewitt, Lemons, and Bailey and Mayor Norris voting 'aye.' 5:0.

Commissioner Bailey said this would be the first real step toward fixing the audio-visual system.

Commissioner Hewitt added the other portion of the money was going to Willamette Falls to help fix other problems.

Commissioner Neeley discussed previous attempts to repair the system.

5.5 Commission Report No. 04-214, Authorization for Property Acquisition, 316 17th Street, Oregon City, Oregon.

Ms. Kraushaar said this was a request for the City Commission to authorize the city manager to execute closing documents for the property on 17th Street between the Main Street extension and the rail road property. The demolition of the burned out structure was done, and the City was ready to proceed with the formal acquisition. Stormwater funds were being used because this project would

improve the riparian vegetation along Abernethy Creek and reduce damages from flooding consistent with Oregon City's hazard mitigation plan.

Commissioner Neeley understood that someone could rebuild on that site, but that was not in the City's best interest.

Commissioners Hewitt/Lemons m/s to authorize the city manager to execute closing documents for 316 17th Street property acquisition as outlined in Commission Report 04-214.

Commissioner Lemons wanted to clarify that the City did not have a pocketful of money to do this. The City used dedicated stormwater funds to buy this property. Whether or not the City purchased the property, it would have to do certain things because it was within the floodplain. This money was not coming out of the general fund. These funds were dedicated to stormwater-related projects and could not be used for police, fire, or some other service.

Ms. Kraushaar added this action would further help residents by reducing the City's flood insurance ratings.

There was no further discussion.

A roll call was taken, and the motion passed with Commissioners Neeley, Hewitt, Lemons and Bailey, and Mayor Norris voting 'aye.' 5:0.

6.0 DISCUSSION ITEMS

None.

7.0 COMMISSION/CITY MANAGER INFORMATION

7.1 City Manager's Report

7.1.a He asked the City Commission determine a date for the recently completed Clackamas Cove Trail ribbon cutting.

7.1.b Mr. Kabeiseman made several comments on Measure 37, which would be a major topic at the League of Oregon Cities Conference. The measure would become effective on December 2.

7.1.c Mr. Drentlaw announced the LUBA appeal of the Comprehensive Plan was dropped.

7.1.d Ms. Kraushaar announced there would be paving on the north end of Molalla on Friday, Saturday, and possibly Sunday.

7.2 Commissioner's Communications

7.2.a Mayoral Appointments:

- Allen Dunn to the Planning Commission with term to expire December 31, 2008.
- Lynda Orzen to the Planning Commission with term to expire December 31, 2007.
- Tam Seasholtz to the Planning Commission with term to expire December 31, 2008.

7.2.b Mayor Norris briefly discussed the failure of the library levy on Oregon City and its effect on the general fund

7.2.c Reports of Regional and Intergovernmental Committees.

- Commissioner Neeley discussed the resolution relating to Goal 5 – fish and wildlife habitat. The letter that was authorized by the City Commission was delivered to Metro Councilor Newman. The decision was made not to discuss these things but that MPAC representatives should go back to their governing bodies. It was delayed until the first MPAC meeting in December. He recommended the City Commission consider the draft resolution at its first meeting in December to provide input to the Metro Council. He thought new lands coming in could be conditioned, and he was not willing to accept that Measure 37 would kill everything Oregon City tried to do. Mr. Kabeiseman said the Rose Road decision was not yet adopted, so any appeal would be more likely be in December.

8.0 ADJOURNMENT

Mayor Norris adjourned the regular City Commission meeting at 8:19 p.m.

Respectfully submitted,

Leilani Bronson-Crelly, City Recorder

**CITY OF OREGON CITY
CITY COMMISSION
MEETING MINUTES**

NOVEMBER 17, 2004

Mayor Norris called the regular session of the City Commission meeting to order at 7:04 p.m. on November 17, 2004 at City Hall, 320 Warner Milne Road, Oregon City.

Roll Call: Commissioners Bob Bailey, Doug Neeley (arrived 7:19 p.m.), Gary Hewitt and Mayor Alice Norris. Commissioner Lemons was excused.

Staff Present: Larry Patterson, City Manager; Ed Sullivan, City Attorney; Lt. Mike Conrad, Oregon City Police Department; Nancy Kraushaar, City Engineer and Public Works Director; Dan Drentlaw, Community Development Director; Scott Archer, Community Services Director; David Wimmer, Finance Director; Leilani Bronson-Crelly, City Recorder; and Christina Robertson-Gardiner, Associate Planner.

Media: Steve Mayes, *The Oregonian*.

1.0 CALL TO ORDER

1.1 **Mayor Norris** asked each member to introduce himself.

1.2 Flag Salute

1.3 Presentations

Mayor Norris read a proclamation naming the week of November 22 – November 28, 2004 as *Emergency Responder Appreciation Week*.

2.0 CITIZEN COMMENTS

None.

3.0 CONSENT AGENDA

Item 3.1 was pulled for separate consideration.

Commissioners Hewitt/Bailey m/s to approve the Consent Agenda items 3.2 and 3.3.

A roll call was taken, and the motion passed with Commissioners Hewitt and Bailey and Mayor Norris voting ‘aye.’ 3:0.

3.2 Commission Report No. 04-218, Restrictive Covenant Non-Remonstrance Agreement for the Bailey Estates Subdivision (City Planning File No. PD 03-03); and

3.3 Commission Report No. 04-219, Restrictive Covenant Non-Remonstrance Agreement for the Carrington Place Subdivision (City Planning File No. TP 99-11).

3.1 Approval of Regular Meeting Minutes of October 20, 2004

Commissioner Bailey noted a typographical error on page 3 of 37. It was under the motion was written, “Commissioners Hewitt/Bailey m/s to enter into the grant agreement with the Oregon State Marine Board for development of the restroom at Jon State Marine Board.” It should read “Jon Storm Park” and strike “State Marine Board.”

Commissioners Bailey/Hewitt m/s to approve the Consent Agenda item 3.1 with the correction.

A roll call was taken, and the motion passed with Commissioners Hewitt and Bailey and Mayor Norris voting ‘aye.’ 3:0.

4.0 PUBLIC HEARINGS

LAND USE TYPE PUBLIC HEARING ITEM

4.1 Commission Report No. 04-215, Appeal of the Community Development Director’s Approval of a 15-unit Multifamily Building (SP 04-11) – City File #AP 04-06.

Mayor Norris made several announcements regarding the hearing. The City Commission would hear a staff report that was available seven (7) days prior to the hearing and was available at this hearing. The staff report identified the issues that applied to the appeal and analyzed those issues. Those wishing to testify were asked to fill out the appropriate form. People were asked to begin their testimony by stating the names and addresses for the record. This was an on the record hearing, which meant that no new evidence or arguments could be put forward.

Mr. Sullivan outlined the legal requirements. Oregon law required that the criteria of the approval be set out, and those were in the staff report for inspection. The testimony and direction had to be to those criteria or to any other criteria a party believed was applicable to these proceedings. Failure to raise an issue with sufficient specificity to allow other parties or the City Commission to deal with that issue would result in that issue not being considered by the Oregon Land Use Board of Appeals or the Oregon Appellant Courts if this matter were appealed. The applicant should be aware that the conditions of approval that were proposed and issues had to be raised with sufficient specificity to allow the City Commission to deal with those questions. Failure to do so by the applicant would preclude an action for damages in Circuit Court.

Mr. Sullivan asked if any member of the City Commission had ex parte contacts about the substance of the hearing. None were declared.

Mr. Sullivan asked if there were any concerns on the City Commission about bias or inability to hear this matter. There were no concerns.

Mayor Norris reviewed the procedure for the hearing that was set out by state law and Oregon City Municipal Code. Following the staff report, the City Commission would have an opportunity to ask question, and then she would open the hearing. The applicant, NW Housing Alternatives would present for 15 minutes or less. Following that, the appellant would have an opportunity to present for 15 minutes. Representatives of organizations and individual testimony would follow. After all testimony was submitted, she would close the public hearing, and the City Commission would deliberate and adopt a decision.

Staff Report

Ms. Robertson-Gardiner provided the staff report. This was an appeal of the community development director's approval of SP 04-11. The parcel was identified as Clackamas County Map 3 2E 08AB, Tax Lot 3200. It was .76-acres and was zoned general commercial. The applicant proposed a 15-unit apartment building consisting of 14 self-sufficient units and one two-bedroom manager's unit. The project was proposed to serve a targeted audience of low-income adults who lived with chronic mental illness. The site was located on the north side of Garden Meadow Drive, one tax lot away from the intersection of Garden Meadow Drive and Molalla Avenue. North of the property was a two-family residential subdivision and Molalla Avenue Commercial. To the east of the property was a vacant commercial site and Molalla Avenue Commercial. To the south was an existing senior retirement facility along with more Molalla Avenue Commercial. To the west was a two-family residential subdivision.

This property was zoned General Commercial and multifamily was a permitted uses in that district. Ms. Robertson-Gardiner provided an aerial photo of the site that indicated the two vacant lots on the north side of Garden Meadow that were zoned commercial. The subject site was to the west. She indicated other uses in the area that she discussed earlier along with a multi-space tenant commercial project under construction to the south and east.

The applicant provided a site plan and landscaping plan for the proposed project. The applicant chose to situate the building on the west side of the site near the existing two-family subdivision and placed the parking lot to the east near the vacant commercially-zoned property. The applicant proposed an 18-foot front setback, a 10-foot side setback to the west, and a 33-foot rear setback. The height of the building was 34.5 feet. These setbacks were consistent with the R-3.5 dwelling district to the west. Additionally, she pointed out the proposed 1,500 square foot deck in the rear that would be discussed in more detail during the presentation. The applicant provided four elevation drawings, and she described each. The applicant provided floor plans, which she provided for the City Commission.

The appellants raised numerous issues regarding the application. Staff believed there were four main issues:

1. Outdoor space requirement. Each multifamily development was required to provide individual, private open space for each dwelling unit. Private open space was considered a semi-enclosed area intended strictly for use by the occupants of one dwelling unit. According to the information provided by the applicant, they provided both interior common space and exterior open space that they believed met the intent of the code and the needs of the residents. The rear 1,500-square foot deck area with a community garden was much larger than the requirement for exterior common open space. Staff felt that the remaining 1,000 square feet could be used in the calculation of private open space and that the applicant provided an alternative that could meet the needs of the resident population and the intent of the code which was to provide open space options for residents.
2. Bicycle traffic and parking concerns. The appellants raised a concern over the traffic impact that this proposal would bring to the neighborhood. The City's traffic engineer reviewed the applicant's transportation analysis and agreed that no offsite impacts would be generated from this project. As part of this application, the City required half-street improvements along the applicant's Garden Meadow frontage. Garden Meadow was designated as a local street in the City's Transportation System Plan (TSP); therefore, no dedicated bike lanes were indicated for Garden Meadow development. Bike traffic in local streets was considered to be used in the normal travel lanes when no specific bike lanes were spelled out. The applicant also provided the minimum required parking spaces for a 15-unit building. As a Type II application, the applicant had the ability to choose a parameter from a minimum to a maximum number of parking spaces. In this case, the applicant chose to provide the minimum.
3. Use classification of the project. Staff did not agree with the neighbors' contention that this project should be reviewed as a conditional use. Boarding and lodging houses were generally single occupant rooms and not self-sufficient units. The conditional use chapter of the code listed public housing projects as subject to conditional uses review. Staff did not believe this project was a public housing project. It was built and run by a private developer, not the local housing agency. In this case, the Housing Authority of Clackamas County. For this reason, staff agreed with the applicant and viewed the proposal as a permitted use for a 15-unit multifamily apartment building.
4. General compatibility with the existing neighborhood. This project's dimensional standards were consistent with the R-3.5 neighborhood to the west. The applicant utilized an architectural style and volume that was compatible with the duplex subdivision. They proposed a landscape plan prepared by a registered landscape architect that provided a good mix of vertical and horizontal vegetation. Additionally, the applicant proposed

installing a perimeter fence and landscape screening. For these reasons, staff felt this application identified amiable issues and allowed the proposed development to be compatible with the existing neighborhood.

Ms. Robertson-Gardiner entered the following exhibits into the record:

1. Letter from NW Housing Alternatives dated November 11, 2004. It was a notice to the planning department that the applicant waived the 120-day time period for the application.
2. Letter from John Williams regarding the application.
3. Letter from Vicki Skryha, Housing Development Coordinator, Oregon Department of Health and Human Services, dated November 8, 2004 to the City Commission.
4. Letter from Betty and Sheridan Grippa submitted at this hearing.

Commissioner Neeley arrived, and Mayor Norris asked him if he had any conflicts of interest or bias to declare.

Commissioner Neeley received an e-mail of the exhibit just entered from John Williams. He presumed that was an appeal based on the record.

Mr. Sullivan knew the City Commission would disregard any new information in those letters and limit itself to the record that was made before the staff.

Commissioner Hewitt asked Ms. Robertson-Gardiner to elaborate on the concessions related to outdoor open space.

Ms. Robertson-Gardiner said the applicant proposed not to have individual outdoor open space because of the apartment clientele, and this was something they wanted to pursue. Site plan design review looked at multifamily housing and the required outdoor open space for use by each dwelling unit. There was also an additional requirement for common open space. One might generally see decks on the first story or enclosed courtyards with a larger common open space. For this application, staff believed the 1,500 square foot deck was nearly the aggregate of what would be required for each individual unit and met the open space requirements for the project. She noted that there was additional inside open space, which was not reviewed as part of the application.

Commissioner Hewitt said when dealing with the compatibility of the existing neighborhood there were some amiable issues. What did that mean?

Ms. Robertson-Gardiner felt that the applicant's proposal for a two-story wood composite with single-family architectural design related more to the two-family subdivision to the west rather than the Molalla Avenue General Commercial project.

Commissioner Hewitt understood the building would look more residential than commercial.

Ms. Robertson-Gardiner explained it would look like a larger residential building.

Commissioner Neeley had two questions and apologized for being late. In terms of the distinction between public housing and multiuse housing, the appellant referred to HUD funding. He asked for clarification of public housing from the municipal code perspective.

Mr. Sullivan understood the allegation was made that this was public housing and fell into a separate category that was not allowed in this zone. He understood the funding was individually made, and that this was not a public housing application. If it were, there might be some question under Oregon Law if it could be distinguished from other types of housing. He believed it did not have to do with where the funding came from, but whether or not it was public housing. He understood from the record that it was not.

Commissioner Neeley's second question was about the term "special needs" multifamily. He understood the City did not have that designation in its code.

Ms. Robertson-Gardiner said that was correct.

Mayor Norris opened the public hearing.

The appellant said there were reference documents that supported his position that had not been provided.

Mr. Sullivan said the question was if these documents had been in the record before the staff. If it was not in the record at the time the staff decided the question, then it could not be presented to the City Commission. The record was closed at the time the decision was made.

Public Testimony

Martha McLennan, Executive Director, NW Housing Alternatives. NW Housing was a non-profit organization that provided affordable housing for people in need throughout the state of Oregon. Its origins were in Clackamas County in 1986, and before that, it was formed from a merger of two Clackamas County organizations that were originally formed in 1981.

NW Housing provided 1,240 affordable housing units for people throughout the state including families, seniors, and people with special needs. Four hundred and one of these units were in Clackamas County with 143 of those units were in Oregon City. The organization has owned land in Oregon City for almost 15

years. One type of housing provided was housing for people recovering from chronic mental illness. It had both licensed group homes and independent living apartments. In Clackamas County there were a total of 53 units owned, managed, or developed by NW Housing.

Ms. McLennan submitted a plan that provided high quality design and met the needs of the community and the tenant population. The design was consistent with the City code with only the adjustment regarding the outdoor open space. The applicant proposed to provide a comparable amount of open space that was a common open space rather than the standard individual open spaces that were standard to the City code. This was proposed to provide an amenity for the targeted tenant population. Resident living in this building would be recovering from chronic mental illness. Having a common outdoor space and a single secured entry would enhance the security of the property for the residents. Staff would be able to monitor visitors rather than having the individual patios off the back of the ground floor units. She introduced other members of the project team: Attorney Peter Livingstone, Schwabe, Williamson and Wyatt, who would address the issues raised in the appeal, and Project Architect Anne Delaney, Bergsund Delaney Architects, who would address issues related to project design.

Peter Livingstone, 1211 SW 5th Avenue, Portland, Oregon, 97204. He thought staff had done an excellent job of describing the arguments he made in his letter dated November 8, which was in the City Commission packet. He emphasized several of the points. This was a multifamily housing project, and it fit neatly within the definitions of the code and was a permitted use in the zone. The fact that it served a specific population did not change its nature as multifamily housing. Second, was the public housing issue. By definition, public housing was something sponsored by a public housing agency. That was not true in this case; this was not public housing. Some of the objections made by the neighborhood were not code based but was general opposition to the project. As the City Commission did its job, he was assured the body would focus on the code requirements rather than on issues outside the code.

The open space issue also came up. Interestingly, the opponents have complained that they did not want to look at balconies and patios. This proposal accommodated that desire. It substituted common interior open space for the private spaces mentioned in the code and had an outdoor patio that was part of the open space. Essentially, the balconies and patios were intended as amenities for the residents. In the case of these residents, a more suitable amenity was furnished that was consistent with the spirit of the code and provided the needed outdoor recreation area.

There were also some other general concerns mentioned. One was parking and landscaping. As he stated in his letter, the applicant met the parking and landscaping standards. In terms of percentages, the open space standard was met as well. A transportation engineer was present who could address any questions

the City Commission might have. As discussed in his letter on page 4, the proposal included the appropriate street improvements and lighting. The final concern was with adverse effects. Although this did not seem related to a particular code standard, it should be reassuring to the City Commission that the population would be coming from the community. Properly housed, one would anticipate fewer problems than more problems. He stated the proposal was consistent with the well-being of the community and did not anticipate any kind of negative impacts beyond those which always come with development. Mr. Livingstone believed the application was consistent with the code and should be approved.

Anne Delaney, 195 E. 32nd Avenue, Eugene, Oregon, 97405. The staff did a great job of explaining the project, and she discussed several elements. She showed a perspective of the proposed building. One of the key features was a front porch as an additional outdoor space that was not talked about much in the project. She discussed the residential qualities of the neighborhood as opposed to commercial qualities on the other side of the project and Molalla Avenue. Because of the grading of the site, it did have quite a bit of slope. There were retaining walls and vegetation in the front. She hoped the front of the building would be a nice addition to the neighborhood with a front porch where residents could interact with the neighborhood. The building was trying to provide privacy for the residents in the back courtyard and also some connection to the neighborhood through the additional of the porch. There was also a great view of Mt. Hood from the porch.

Ms. Delaney reviewed the site plan with the back patio, front porch, and the middle community space interior to the building. One of the distinguishing features of the project, which had evolved over several other projects, was that it was very small for an apartment complex. The units were less than 600 square feet, so the addition of the community space enhanced and complemented the small units. Fisher Ridge was completed about 1-1/2 years ago, and NW Housing learned some things. This project enhanced the common spaces both inside and outside. The front porch was a direct result of a meeting NW Housing had with residents at Fisher Ridge. They said that they enjoyed the outdoor space but would like some of it connected to the public face of the building. They enjoyed the private outdoor space, but they wanted it larger. There was also a small raised bed flower or vegetable garden in the back for resident use.

Ms. Delaney discussed the indoor community space. There was a living room for the community where people could watch movies or have dinners, a computer room with high speed Internet access, a community laundry, and in the center a space for having coffee and hanging out with friends or playing games.

Mr. Sullivan said Ms. Robertson-Gardiner did not recall the perspective being in the record, and Ms Delaney confirmed that. Mr. Sullivan advised the City Commission to disregard that perspective.

Ms. McLennan said there were others who would testify along with Betty Dominquez from Oregon Housing and Community Services and Todd Mogeley from Lancaster Engineering to speak to traffic issues.

Commissioner Bailey asked who would actually own the site and the building.

Ms. McLennan said it would be owned by what HUD referred to as a single asset entity. Under the program, there was a requirement that a non-profit entity be created that had no purpose but to own this property. It was a non-profit entity known as Housing Options Team (HOT) of Clackamas County. NW Housing had representation on the board as did the Clackamas County Chapter for the National Alliance for Mentally Ill (NAMI) and Clackamas County staff.

Commissioner Bailey understood that HOT would actually be on the title and owned the building and that operations would be contracted out to Cascade Management, Inc.

Ms. McLennan said that was correct. Cascade would provide professional property management services.

Commissioner Bailey asked if the tenants would pay rent to Cascade.

Ms. McLennan said that was correct, and Cascade would deposit funds into the HOT account. The structure for the financing was not debt service. The loan would be forgiven after a period of 40 years of successful service. The rent the tenants paid was 1/3 of their own income. That money went for operations such as insurance, utilities, maintenance, reserve accounts, and similar things.

Commissioner Neeley asked Mr. Livingstone about the public housing issue. The appellant stated that HUD money was going into this, and some would consider HUD a public housing entity. He asked Mr. Livingstone to discuss the distinction for clarity.

Mr. Livingstone replied the distinction he made was that HUD was not the sole funding source for the project. The money came from a number of different sources.

Ms. McLennan added the project was funded under the HUD Section 811 program. Eligible applicants under the program were non-profit organizations and not public housing authorities. What was typically referred to as public housing was developed by housing authorities chartered by the state under a different HUD statute and set of funding guidelines.

Commissioner Neeley asked if public housing entities had representation on the board.

Ms. McLennan said they did not.

Commissioner Hewitt asked if these multifamily units had their own locks on their own doors as one might typically find in multifamily units.

Ms. McLennan said tenants entered into traditional landlord tenant leases and were responsible for paying their rent. The units had a kitchen, bath, and locks. The onsite manager functioned like an onsite manager in any other open-market apartment complex.

Mayor Norris asked why the applicant selected the minimum number of parking spaces.

Ms. McLennan said most often these units would be occupied by one person. They were low-income households, and while some households did have cars, that was atypical. The intent was to preserve as much open space as possible for landscaping while still accommodating needs. She did not expect there would be any parking associated with this property on the street, and that all parking could all be contained onsite.

Commissioner Neeley asked if that number of parking spaces accommodate both visitors and residents.

Ms. McLennan responded that was correct based on experience.

Appellant Presentation

Mark Brown, 13647 Garden Meadow Drive, Oregon City. When he moved into this neighborhood, there was an empty lot where this development was proposed, but it was zoned commercial. He also looked at the code and saw that it was zoned for multifamily housing – an apartment complex. In no way would a reasonable person think an apartment complex could fit on ¾-acre. This took him and others in the neighborhood by surprise. They knew what they were buying and what their land value was based on. They never imagined a low-income facility for chronically mentally ill people would be developed on that lot. One would not figure an apartment would go there. Maybe an office building because of the urban growth boundary, or it could be rezoned for townhouses.

He got the notice in the mail about the land use development. The notice said the request was for a 15-unit multifamily project. In his mind, that was an apartment complex. He knew there was no way a 15-unit apartment complex could be built on that lot. That was when the neighbors started coming to the City and found out it was actually a complex for low-income, mentally ill persons. Finding that out, the process began. He noted this was an arduous process for the people of Oregon

City and drove them away from the process. It was not that people did not oppose the project; it was that they were not capable of participating.

The first step was the application. When he came down here, he was told he could only go on the record, and that was difficult if one did not do this for a living. Mr. Brown referred to the application. The proposed use was special needs multifamily. He thought that was pertinent. It fell under the commercial code – the R-2 zone. The R-2 zone did not have a special needs multifamily designation. They said there was and that meant there had to be some interpretation on what was applied to the code. It was not multifamily. In the comments, the appellants said they did not know where it was, but they did know it was not multifamily especially in the traditional sense. They said it was somewhere between boarding and institutional. The planning department took it literally to say it was boarding or institutional. They were looking for help in trying to figure out how it fit into the code. From his perspective, it was not multifamily. In the applicant's own words, it was not. It was special needs multifamily.

Mr. Brown discussed public housing. The City code did not define public housing. If it looked like a duck, walked like a duck, and quacked like a duck, it was probably a duck. According to the application, it was funded by HUD and other government agencies including Clackamas County CDBG for a total of \$1,822,955. He noted an applicant match of \$6,000. All of the funding except for the \$6,000 was public money. The project was funded by the government. The rents were going to be subsidized by the federal government. The operating guidelines for the facility were HUD guidelines. He asked the City Commission to use its common sense. In the application to HUD, NW Housing said the project was being designed for the mental health consumer. He referred to the statements in the application. It was to also serve as dignified housing for others in the county in need of modestly-sized, low-cost housing. If the needs arose, it would be simple to convert the project with HUD's approval from special needs housing to affordable housing for different disabled or general low-income populations. At one point they could make this facility into something else. Mr. Brown thought these issues should be sufficient grounds for denial of the application. Apply a little common sense and look at how a citizen and property owner would consider the proposal. They stood by all of their objections.

Mr. Brown addressed the individual open space requirement. The code required common spaces and individual open spaces and was very specific. That was what defined a multifamily unit. Why would they not want the individual private spaces? There could be three reasons. One had to do with the cost of patios and balconies. This project was about money. They did care about the mentally ill, and there were ways to help them. This housing would provide income and cash flow for this entity. Balconies and patios would add \$3,000 to \$4,000 per unit, and that would be a large sum of money for the 15 units. It would also require a larger footprint, and the building could not be shoe-horned in. It would not meet

City code that addressed individual spaces. The code also talked about tying into the surrounding neighborhood. This project would not tie into the neighborhood if there were balconies overlooking the neighbor. He did not believe it would stand up to code and was a reason for denial. In the future, they may want to change this to something else to keep the cash flow going. He noted letters from NW Housing and Fair Housing that asked for accommodations to these code requirements. The appellant had to base all of its objections on code, while the applicant asked for accommodations. The letters were demanding and bullying to Oregon City and threatened discrimination suits. They wanted changes that had to do with single points of entry and other things to make the residents feel secure. These were features and not necessities. If the applicant did not get these features, the project would not fit into the footprint at that location. The City did not have to accommodate features. If one looked on the Internet, one would find balconies and individual open areas on buildings for people with chronic mental illnesses all over the country. He spoke with some managers of these buildings, and they considered them good things.

Mr. Brown summarized. If the City Commission did not give the applicant these accommodations, the application could be denied. He asked the City Commission to use its common sense, and put themselves in the neighbors' shoes and stand up for its constituents.

Citizens Comment in Support of the Project

Susan Johnson, 30906 S. Oswalt Road, Colton, Oregon. She represented Clackamas County Mental Health, and has worked for that entity for over 25 years. Many of those years, she was a manager of services for adults recovering from mental illness, and recently, she focused exclusively on housing development. Developing housing with supports for people in recovery was part of the long-term business plan for the County Mental Health Department because it worked. She had witnessed thousands of people in the County and Oregon City recover from mental illness and led good productive lives because they had the housing with supports when they needed it. She attested to the fundamental importance of the right kind of housing for people in recovery. For people further along in their recovery, an apartment with utilities, a lease, and communal space, a secure building with a single locked entry was a feature people were looking for because they felt vulnerable. Support from the local mental health center was coupled with independent supported housing. Independent supported housing was the balance between a private apartment and communal supports underscored by a sense of living in safe buildings. Exchanging individual outdoor space for generous indoor and outdoor communal space was a reasonable adoption for people with a psychiatric disability. In the case of Meadowlark, providing individual outdoor space would compromise the building security and put residents more at risk and undermine their sense of safety. People who were recovering from mental health problems thrived in this type of housing. At Meadowlark, they would not only thrive but also be good neighbors who would

contribute significantly to the community. She thanked the City Commission for factoring in her professional experience.

David Bachman, 8532 SW St. Helens Drive, Wilsonville, Oregon, 97070. Most of the concerns had to do in large part with the design of the building. He was the president and owner of Cascade Management, Inc. It was the agent hired by NW Housing and HOT to manage the property on a day-to-day basis and was the leasor. It was responsible for the success of the residents and their actions. Cascade had experience with other similar buildings. It managed 4,300 units in the state of which 1,500 served people with special needs including seniors and disabled tenants. Fisher Ridge, for example, housed 19 residents recovering from chronic mental illness. These were easily -managed facilities, and Cascade had input into the building design and secure housing needs. Typically, there was only one person per apartment. There were no parking and traffic issues related to common multifamily housing. There was a sense of community that the residents built with significant components such as the feeling of security. Cascade had a lot of success with resident screening including criminal background checks, previous rental history, and credit history. To that end, there was greater success in being able to monitor the building and ensuring the success of the tenants. There was not the repetitive criminal activity that was commonly found in multifamily housing, and there was significantly fewer lease termination issues. Case management, capable onsite management, and a sense of security have been tremendous in making sure the residents succeeded. It was a stable population with residents living there a long period of time and making significant contributions to the community. Cascade was responsible for the tenants' actions. Building design, a sense of community, and tenant screening were significant to how the building was used and the impact it had on the neighborhood. In summary, based on what Cascade had managed and its experience with nearly identical housing, Mr. Bachman felt these types of facilities were successful and had positive impacts on the neighborhood.

Commissioner Hewitt asked if the Cascade onsite manager had to have special skills that would not necessarily be required of a manager of an apartment complex. Were certain credential or licenses needed?

Mr. Bachman said there were not. Cascade typically hired someone that could communicate well with the resident population and carry out the administrative duties including HUD guidelines, rent collection, and lease enforcement. Experience with that type of tenant population was desirable but not a requirement. Cascade hired in that capacity less than 50% of the time and was successful.

Pegge McGuire, Executive Director Fair Housing Council of Oregon, 1020 SW Taylor, Suite 700, Portland, Oregon 97205. She read from the letter she submitted to the City Commission earlier. The Fair Housing Council of Oregon was a private, non-profit agency serving the State of Oregon and Southwest

Washington. The mission was to provide equal access to housing through education, outreach, and enforcement activities. The Council received about 3,000 calls a year from people all over the state thinking they had experienced some kind of housing discrimination. About 35% of those calls related to people with disabilities. The stories from those with disabilities were truly heart wrenching. There were situations in which a disability required that a person have access to certain types of services or certain physical modifications to the housing. It literally kept people in place in situations that would be untenable under other circumstances. There was also the issue of affordability. An opportunity like Meadowlark for these folks to get into housing that would serve their special needs as well as be affordable to them was a tremendous uplifting piece to their lives. The Council saw this as a fair housing issue. This was a group of people developing housing for a population of people with disabilities. They have asked for reasonable accommodations that were designed for the individual with the disability or their representative to identify what those special needs were. There was no real litmus test that had to be passed. It was considered to be reasonable if there was documentation. There were few circumstances under which the request should be denied. In summary, she urged the City Commission to grant the reasonable accommodation request needed by NW Housing and HOT to provide housing that was a safe harbor for people who were mentally ill by waiving the private open space and encouraged the City Commission to take action to show it would not stand for illegal discrimination in the area.

Elaine Krause, 11805 S. Partlow Road, Oregon City, Oregon 97045. She has lived there for 37 years. Before she retired she taught at Mt. Pleasant School for 25 years and was a member of the National Alliance for the Mentally Ill (NAMI) for over 20 year. She was currently serving as co-president and a member of the HOT board. She had a 52-year old son that was recovering from mental illness, and he had been ill for about 25 years. He was living independently and was doing well. Many of the people in the hearing room had family members who suffered from mental illness. This was a support group that advocated for the mentally ill and did a lot of public education and legislative work to make life better for the mentally ill. Mental illness was very common, and one in four families had a member that suffered from mental illness, a chemical imbalance in the brain. Most of these illnesses were treatable. Treatment involved three basic things: professional treatment and medication; safe, stable, affordable housing; and family and community support. With these three components in place, most of those suffering from mental illness lead meaningful lives. Without all three of these, many people, about 25%, were inappropriately housed in hospital beds. Many of them lived on the streets with an estimated 33% of the homeless being mentally ill. Many, about 50%, lived with aging parents. Twenty percent of the jail population had mental health issues. NAMI of Clackamas County advocated for appropriate, supportive housing and urged the City Commission to join them. She submitted a letter and petition.

Richard Turney, 129 Morton Road #208, Fisher Ridge Apartment complex. It was an apartment complex designed for people with various disabilities and emotional disorders. He was 40 years old and resided there. He was currently working toward two degrees in a junior college capacity. Mr. Turney testified in support of the approval of Meadowlark Apartments. He was a musician most of his life. He came from walking the streets of San Jose to living in his own apartment, which was subsidized by HUD. He was very excited about that. He felt he was a walking miracle and was grateful to be at this hearing and what he was doing with his life. He was seeking his education, doing various public speaking work, and pursuing other activities. If he and other people at Fisher Ridge could do it, the people at Meadowlark could also.

David Clarke, 2177 Marylwood Court, West Linn, Oregon. He provided a simple but reassuring message. He spent time talking to the neighborhood around Fisher Ridge. There were about 15 single-family dwellings in that part of the neighborhood, and he met with 9 of them. He asked a simple question – were the Fisher Ridge residents good neighbors? All responded positively and added that they were great neighbors. His second question was if they had any criminal or safety concerns. All said they did not. They shared that when they first heard about Fisher Ridge a couple of years ago, they were apprehensive. After being in the neighborhood for about two years, they were great neighbors. One neighbor said he was pleased with the quality of the neighborhood and landscaping of the site was far superior to what was there before. Fisher Ridge has had a positive impact on the neighborhood. It was located about three blocks from Willamette Hospital on Morton in Oregon City.

Mary Bingham, 1308 Otter Lane, Apt. B, Oregon City, Oregon. She has waited to be a tenant in the Meadowlark Apartments. She lived in Oregon City in the Otter Lane Apartments managed by NW Housing Alternatives. She graduated from Lake Oswego High School and was a member of the National Honor Society. She also graduated from Marylhurst with a BA in Interdisciplinary Studies. Her recovery has been steady and productive. She now worked 3 days a week with Willamette Falls Hospice and manned the library one-half day per week for the auxiliary volunteers. She took prerequisite courses at Clackamas Community College for a certificate in medial assisting. When she looked for a housing situation, she looked for one that was quiet and secure with a sense of community and support. She looked forward to a time when Meadowlark would be her next home.

Katherine Shabaz Arami was called, but she was not present.

Testimony in Opposition to the Project

Raul Ronces, 13645 Garden Meadow Drive, Oregon City, Oregon. He was concerned about safety. He lived behind the retirement center and across the street from the empty lot. When he heard there was one man who had no capacity

to manage 14 people with mental illness, he did not feel secure. If he knew there were only one or two, he would not care, but his was 14 people. They obviously brought the people to this meeting who were doing better. He did not feel secure, and he thought others would feel the same with that many people in the small apartments with really low incomes and mental illness.

Hal Grisham, 19346 Cokeron, Oregon City, Oregon. He and his mother just built a home two years ago that abutted this property. From the site plan, it looked as though the patio was going to adjoin his. He had an issue with security. He admitted once he looked at the building design, he felt a little better because there was only one point of egress. He was concerned the manager in the complex had no mental health experience or certificate. What assurances could he and his mother have as citizens that they would be safe?

Sara Brown, 13647 Garden Meadow Drive, Oregon City, Oregon. She expressed her concern for this building. She thought it was great that they were doing this type of project for people who were trying recover from their illnesses. The program itself was wonderful, but it needed to be put in a different area. She had young children. She did not expect any of the people living in the building to stay inside their quarters 24/7. Safety was primary. With all due respect to them, she felt the apartment should be built in a different area. She was concerned with the safety of her children.

Gene Patrick, 13662 S. Garden Meadow Drive, Oregon City, Oregon. Two issues came to his mind. First, the City was going to lose tax money by virtue of this property. Second, most of the homes were assessed at almost the top dollar of any home that was sold in that neighborhood. If the properties lost even 10% of their value because of change to the neighborhood, the City would lose more money. That was a very uncharitable way to talk about this type of building and the cause. People were living in a time of very thin dollars for municipal governments, and the City Commission should take into consideration. He was a senior security officer at a building downtown. All of his officers had worked elsewhere downtown in places such as Uthank Plaza, Grace Peck, Rosenbaum, and Hollywood East. All of those buildings were similar to this proposal, and none of his officers would ever go back and work there again. They wanted to work where it was safer and did not have to be involved with people that were difficult to handle. They were not trained as mental health officers, and it was a difficult, hands-off type of business. He did not ever think it would bother the building where he was located on SW Columbia between First and Second. There was an incident two months ago when a lady wandered into the building in the evening. She was totally out of control. She had not been taking her medicine, and his officer had to eventually call the police to take her back to where she belonged on one of those residences he listed. The neighborhood was full of senior citizens, and many of them took their exercise by walking on the street. If they were confronted by someone not in total control, that would be a tragic thing. Families have young children. If someone came to their house wanting to use the

telephone like the lady downtown, what would that young child think? Those were his considerations. The project was surrounded on two sides by single-family residences, which were townhouses. On the street behind the site, there were individual homes. For those reasons he thought this facility was not properly placed. Commercial property and zoning requirements was a myth when there was a straight line drawn on a piece of piece of paper that said this was commercial and this was residential. One could do anything he bloody well pleased on the commercial property. One had to be very careful about what was built on private residential property. It did not make a lot of sense to him.

Betty Dominquez, Regional Advisor to the Director of State Department of Housing and Community Services(HCS), 123 NE 3rd, Portland, Oregon. She lived and worked in Portland and had a daughter and son-in-law who lived in Oregon City. She was vested in the community. HCS has been a frequent partner in funding projects with NW Housing Alternatives, which she believed was one of the finest non-profit providers of affordable housing in the state. The Department partnered frequently with Clackamas County Housing Authority and HUD. HCS did not have any money in this project but did in other NW Housing projects. She was not present to debate the merits of the project or earlier comments that were inaccurate or misinformed. She was present to convey a simple message from the state. In the last legislative session, the Housing Department was mandated to set certain priority housing goals that included farm workers and sex offenders. The number one need was special needs housing. If government did not undertake the task of providing decent affordable housing and supportive services for some of the most fragile Oregonians then shamefully no one else would. No for-profit, market rate developer would come in and try to house the special needs populations. Ms. Dominquez wanted to convey the message that the state supported this project by NW Housing Alternatives in this location.

Applicant's Rebuttal

Mr. Livingstone said if one listened, one heard that mental illness was treatable, that stable housing was important, and that people living at Meadowlark would come from this community. These were the City Commission's constituents. He spoke to legal issues. One of the opponents testified that because this project was subsidized by the federal government and was managed according to federal guidelines that somehow that made it public housing. Any time a lender makes a loan, various guidelines and restrictions were imposed on how the money and property could be used.

The comments about balconies were confusing. They did not want the balconies, but they did want the balconies. The intent of the balconies was to provide outdoor recreation space for the residents. This proposal did that and met the intent of the code. It was consistent with the needs of the population that would be living in the residence.

Ms. McLennan addressed the comment that the project could not have the private balconies or outdoor spaces within the footprint that the site would allow. She did not believe that was true. It was the applicant's preference to provide for the open space in the alternative manner to better meet the needs of this particular tenant population. Another comment had to do with understanding the different stages or levels of mental illness. This project was designed for people who were capable and suited to independent living. There were people with mental illness who needed to be hospitalized and needed to be in a more structured setting with 24-hour mental health professionals supervising their activities and providing higher support levels. This project was specifically designed for people who were at a point in their and recovery where they were capable of independent living.

Other testimony had to do with a concern about property values. She pointed to the testimony from Vicki Skryha from the State Office of Mental Health and Addiction Services that cited studies that showed property values surrounding this type of facility went up and not down. That had to do with the quality of the design and management over time. She believed there was evidence that declining property values was not really a concern in this situation.

She spoke to the issue of a change of use to the property. The application under the Section 811 program to HUD asked the question, if this particular population no longer needed this housing what would be done? The applicant responded it would find another population in need that could use the same facility for that 40-year obligation period to HUD. That could be populations with other physical disabilities, seniors, or people with lower incomes.

In conclusion, she echoed the concept that his housing was to provide safe, stable homes for the people in the community. These were people suffering from a disability, an illness with which they have been struggling with in their lives to become stable and contributing members of the community. On another property NW Housing managed in Clackamas County, when the tenants moved in, none of them worked. Seven years later with little tenant turnover, almost half of them were employed to some extent in their lives. They became tax payers and contributing members to the community on an all new level as they recovered from their mental illnesses. That was a future she hoped Meadowlark residents would also be able to find.

Commissioner Hewitt understood there was only one entrance.

Ms. McLennan said there would be a secured entrance into the building. There would be additional entrances that would open from the inside and be unlocked at certain times of the day. The entrances to the patio, for example, would probably be locked at 8:00 p.m.

Commissioner Hewitt asked if the tenant could unlock the door to go to the deck or go outside and leave at 10:00 p.m.

Ms. McLennan said each tenant would probably have a key card or something of that nature, so they could come and go as they pleased 24 hours a day.

Commissioner Hewitt understood the person managing the unit would not be experienced in mental health issues. Have there ever been blow-ups where the manager had to call for help?

Ms. McLennan said there was a protocol that had to be followed. First the onsite manager would contact the case managers and bring them to the site. If it were a crisis situation as in any other apartment complex, the police would be called.

Commissioner Hewitt said the City Council heard evidence that some people did not take their medication. Was there a way the tenants were helped with medication on site, or were they in charge of their own medication?

Ms. McLennan said tenants were responsible for their own medication.

Commissioner Hewitt understood that case managers saw tenants periodically.

Ms. McLennan said Clackamas County Mental Health often assigned a single case manager to a building, so the case-load would include all of the residents of that building. They might come to the building during the week to interact with the tenants, so in that sense there would be a fair amount of coming and going. The therapeutic services would mainly be delivered off site.

Commissioner Hewitt asked if one of the individuals did not live in this type of housing but lived in a 144-unit complex and happened to have a case manager come to them, was that the same kind of case management as done in this unit?

Ms. McLennan said that was correct.

Commissioner Neeley asked if property taxes be paid on this facility?

Ms. McLennan said this property would qualify for a tax exemption.

Commissioner Neeley asked if there was a mechanism for removing an individual whose mental state had deteriorated.

Ms. McLennan replied the case manager would be able to identify any such deterioration and the need for a different situation such as a hospital or more supportive setting. Tenants were held to the same rules as were in landlord tenant law. If behavior violated the rules of the lease, they would be evicted.

Commissioner Neeley asked Ms. McLennan to describe the housing units.

Ms. McLennan replied there were 401 affordable housing units in Clackamas County with 143 of those in Oregon City. There was a range of different housing types. The two biggest properties in Clackamas County were Otter Park in Wilsonville and Newell Creek in Oregon City. There were smaller properties that were open market rentals, some mental health, and women with their children in recovery, people with HIV, and several that served people with developmental disabilities. These were individual units for which NW Housing had responsibility.

Mayor Norris declared the public hearing closed.

Mr. Sullivan asked the applicant if he wished to take advantage of the seven days in which to make a final written argument or proceed to decision.

Mr. Livingstone indicated he wished to waive the final written argument and asked to proceed.

Mr. Sullivan reminded the City Commission that it was limited in its consideration to the record before the staff. There were a lot of comments made that he strongly suspected were outside the record. There were also exhibits that the City Commission should take as argument and not as factual testimony. The issues raised primarily in the appeal came to four items:

1. Outdoor space requirements. He saw the issue as to whether or not one had to have individualized outdoor open space, or if it could be collective. The applicant said in this case it would take care of the needs of these residents. The City Commission could deal with this in three ways:
 - (1) Interpretation of the municipal code. It had to be consistent with the text and context of the code.
 - (2) Ask the applicant to pursue a variance.
 - (3) Grant a reasonable accommodation. He discussed a previous instance that dealt with a population under the Fair Housing Act and American with Disabilities Act. That was a target population for which the City Commission was required to make reasonable accommodations. It was a term of art and meant without disturbing the programs and financial abilities. If it could allow for a reasonable accommodation for major life activities to occur, then the City Commission ought to consider that. That may be done in these proceedings or it may be done as part of a variance proceeding. The City Commission could interpret the code to say one could collectivize the outdoor open space.
2. Transportation – bicycle, traffic and parking. As he reviewed it, these were technical matters that were well covered in the staff report dealing with each of the very detailed requirements of the code. He did not hear a lot tonight

about those issues except whether the parking should be at the high end or the low end. It was within the boundaries and was a decision for the City Commission to make.

3. Use classification. This was a general commercial zone that allowed as one of the permitted uses all of the uses allowed in an R-2 zoning district. That zoning district allowed multifamily housing. The issue for the City Commission was whether or not this application fell into the classification of multifamily housing. The appellant said that in the application there was a reference to special needs housing. It could be both. The issue was whether or not it was other than multifamily housing. There was a discussing of boarding or institutionalized housing. That was another interpretation for the City Commission.
4. Compatibility. Mr. Sullivan read from 17.62.050(A)(2). The size, shape, height and spatial and visual arrangement of uses, structures, fences, and walls including color and material selection shall be compatible with the existing surroundings and future allowed uses. Consideration may be given to common driveways, shared parking, increased setbacks, building heights, and the like.

Those were the four issues the City Commission had to decide. If there were findings to make, those would be dealt with at the time.

Commissioner Hewitt asked Mr. Sullivan to repeat the last compatibility items.

Mr. Sullivan said those were size, shape, height, and spatial and visual arrangement of uses, structures, fences, and walls including color and materials selection shall be compatible with the existing surroundings and future allowed uses. Consideration may be given to common driveways, shared parking, increased setbacks, building heights, and the like.

Commissioner Neeley suggested addressing each of the four issues. He missed the discussion of the outdoor space, but he has spent about 2/5 of his adult life living in multifamily housing units some of which had common open space. None had private open space. Did the code require both?

Ms. Robertson-Gardiner said that was correct.

Commissioner Neeley said that was different from the experience he had and did not have a feeling for that. He asked out of curiosity how long individual open space had been in the code.

Ms. Robertson-Gardiner believed it was an older part of the code, which staff could not trace back to a specific time. She believed it was 20 – 25 years ago.

Commissioner Neeley had not seen a lot of evidence of individual open space in existing apartment complexes unless balconies were included.

Ms. Robertson-Gardiner replied that balconies could be included as individual open space. In this application, there were no proposed private patio areas or private balconies. It was proposed to have an aggregation of the same allotted number of square feet into a common rear deck.

Commissioner Hewitt said his questions were pointed to see if it quacked, walked, and was a duck. He was satisfied that it was not what he thought it might be. Since the City Commission was going to deal with outdoor space requirements, the city attorney gave the group the opportunity to either interpret the code, do a variance, or grant a reasonable accommodation. He would say this was granting a reasonable accommodation based on the known population of this facility. There was testimony about those looking for the safety and tranquility that would necessitate a calm living situation. He thought granting the reasonable accommodation of the collective open space requirements would be prudent.

Commissioner Bailey supported that and believed there was a benefit to the common open space. It made sense in the design, and reasonable accommodation was the direction he wished to go.

Commissioner Neeley concurred.

Mayor Norris believed the City Commission could collectivize. She asked for comments on the bicycle, traffic, and parking concerns.

Commissioner Bailey was satisfied that the design met the low end of the parking requirements, and there was no mandate to go to the higher end. In his view, the traffic load would be less than if there was another commercial use with customers coming and going. The parking requirements were not an issue.

Commissioner Hewitt concurred.

Commissioner Neeley concurred given that there was only one staff person and that professional staff would be visitors. Many of the residents would not have vehicles, so the 15 spaces would probably be sufficient. Based on some of the discussion by the appellant in terms of bicycle issues, would there be any requirements beyond what might be half-street improvements?

Ms. Robertson-Gardiner responded that Garden Meadow was designated a local street and did not have a designated parking lane.

Commissioner Neeley asked if there was any requirement that an individual install a bike lane on Molalla Avenue as suggested in the appeal.

Ms. Robertson-Gardiner said the City might require a dedication.

Mr. Sullivan commented there was a Dolan issue.

Commissioner Neeley understood the traffic issue had to do with a congested residential neighborhood that had retirement housing and a major thoroughfare and that it would be better utilized as an office complex or some other passive use. He saw no evidence that a professional office complex would produce any more or less traffic than a multifamily use. He did not regard that as an issue.

Commissioner Hewitt discussed use classification. The appellant believed this application should be reviewed as a conditional use. The site was a general commercial zone and allowed R-2 multifamily. He was convinced that this application was multifamily though he was not convinced it was a typical multifamily with 600 square foot apartments. He was convinced that the way this was set up was multifamily with residents coming and going at their own will. He believed the application met the general commercial zone for multifamily.

Commissioner Bailey concurred and likened it to a college dorm room or small apartment in the Pearl District. There was a manager on site, and the tenants were free to come and go. The tenants were screened, had a lease, and were basically on their own. He felt this was like almost any other multifamily and did not regard that as an appealable issue.

Commissioner Hewitt discussed compatibility with the existing neighborhood. He did not hear evidence based on the code that there were any problems with the size, shape, height, visual appearance, color, or materials based on what was on the record. There were no common driveways, shared parking, setbacks were within reason, height, and the like. He was convinced that the section of the Ordinance for compatibility with the existing neighborhood was met.

Commissioner Bailey agreed as did **Mayor Norris**. She thought it might be more compatible without the balconies.

Commissioner Neeley thought even if there were compatibility issues, this was a residential area composed primarily of single-family and single common wall residences. If the zoning allowed for multifamily, there were going to be differences. If it met the zoning requirements on both sides of the border, it should not be an issue.

Mayor Norris noted it was a diverse neighborhood with the uses that were there.

Mr. Sullivan suggested the City Commission make a tentative decision and consider the findings on December 1. He would address the reasonable accommodation issue.

Commissioner Hewitt said as a Commissioner and a neighbor in Oregon City, he was weighing this as if he lived next door. The biggest concern was safety aspect,

and he understood. These were not people coming out of a situation in which they were marginal. They were people that had been monitored for a long period of time and were at the point their recoveries where health professionals believed they could start entering into the community on a limited, very safe basis. That bolstered the idea that they were also safe for the neighborhood because they were looking at their own wellbeing and safety. He was impressed that there were people who worked so hard to get these types of units in neighborhoods. He was impressed that in this case the mentally ill had a place to go that was affordable, and he believed in affordable housing for everyone.

Commissioners Hewitt/Bailey m/s to make tentative findings that the City Commission looking at affirming the community development director's with said findings to come and be delivered on December 1, 2004 for the final order.

Commissioner Bailey said the City Commission made its decisions in terms of the code. Behind all the discussion for him personally, were the issues that all people spoke to. Each spoke with intensity, emotion, and real feeling. In his nearly 8 years as an Oregon City resident, Commissioner Bailey has lived across the street from a group home, and he has become neighbors with those people. Occasionally there were issues, but those were resolved by talking to the manager. It was different and was not the typical neighborhood setting. He had family members who in a different time and place might live in this development, and he thought the neighborhood would be surprised at what good people these residents were. He understood the concerns and fears. The front porch was a great idea, although it was not on the record. He encouraged the neighborhood to stop and get to know the residents.

Mayor Norris appreciated all those who attended the meeting, and it was a pleasure to serve in a community where people cared and tried hard to understand the issues. She understood Mr. Brown's frustration with the difficulty of the process that was outlined in state law.

Commissioner Neeley noted one of the people testified said that there was a need for this housing, but it was in the wrong place. He did not know where the right place would be. The only alternative would be to put this housing all in the same location. That would create a ghetto that did not meet the objectives of this type of housing. This type of housing was intended to enable people who had challenges but worked through them to become a part of the larger community. Without a larger community nearby, he did not see how that would happen.

A roll call was taken, and the motion passed with Commissioners Hewitt, Bailey and Neeley and Mayor Norris voting 'aye.' 4:0

The City Commission recessed at 9:18 p.m. and reconvened at 9:25 p.m.

Commissioner Neeley made some ancillary comments. He complimented NW Housing Alternatives on the site selection and commented on the importance of locating low-income housing on public transit routes. His second point was that it was the perception that Oregon City got a disproportionate amount of low-income and group housing. He hoped there would be mechanisms identified to evenly share the responsibility throughout Clackamas County. Perhaps it was that property was less expensive in Oregon City and Milwaukie.

Ms. McLennan was encouraging Lake Oswego to consider surplus public property for affordable housing. She discussed the distribution of housing and the issue of finding affordable land that was near transit, services, and employment centers.

Commissioner Neeley said his comments had more to do with special needs housing rather than affordable housing. Later, he would make his report on MPAC and comment on the myth that Oregon City had more affordable housing in the Metro area.

5.0 COMMISSION BUSINESS

- 5.1 Commission Report No. 04-216, Findings of Fact, Conclusions of Law and Final Order for the Appeal (AP 04-05) of the Planning Commission's Conditional Approval of a 43-lot Planned Unit Development (PD 04-01) and Associated Water Resource Mitigation Plan (WR 04-09).

Mr. Sullivan said the applicant drafted the findings, and he reviewed them and found them consistent with the City Commission's decision.

Commissioner Hewitt concurred with the findings of fact, conclusions of law, and final order.

Commissioners Hewitt/Neeley m/s that the City Commission adopt the findings and deny the request for appeal and affirm the Planning Commission's decision to approve the application with conditions that each application was identified with.

There was no further discussion.

A roll call was taken, and the motion passed with Commissioners Hewitt, Bailey and Neeley and Mayor Norris voting 'aye.' 4:0.

- 5.2 Commission Report No. 04-217, Second Reading of Ordinance No. 04-1016, the Adoption of Revisions to the Oregon City Comprehensive Plan, Comprehensive Plan Map and Zoning Map and Amendments to the Oregon City Zoning Code.

Commissioners Bailey/Hewitt m/s for the second reading of Ordinance No. 04-1016, Adoption of Revisions to the Oregon City Comprehensive Plan,

Comprehensive Plan Map and Zoning Map and Amendments to the Oregon City Zoning Code.

Mr. Sullivan read the Ordinance for the second time.

Commissioner Hewitt recognized the Planning Commission, staff, and citizens for their excellent work.

Mayor Norris noted the value of the neighborhood associations' input in developing this quality product.

There was no further discussion.

A roll call was taken, and the motion passed with Commissioners Hewitt, Bailey and Neeley and Mayor Norris voting 'aye.' 4:0.

- 5.3 Commission Report No. 04-220, Emergency First and Second Reading of Proposed Ordinance No. 04-1017, Establishing a Process for Claims Made under Measure 37.

Mayor Norris suggested that the City Commission not adopt the Ordinance but have a comprehensive discussion with staff and the city attorney to make sure they understood what they were doing, find out how other jurisdictions were dealing with this matter, and adopt the Ordinance at the December 1 meeting just prior to implementation of Measure 37.

Commissioner Neeley discussed section 2.60.020.C(2) that restricted and prohibited certain activities for the protection of public health and safety such as fire and building codes. He regarded steep slopes as a public safety issues would like to know if anything could be done in terms of exemptions.

Mr. Sullivan said the City Commission would have lots of opportunity to look at exemptions as claims were filed. The wording of the measure was fairly vague that would result in claims being made and perhaps denied and be a bounty for litigators. If the litigators won, they got attorney's fees and costs. If the City won, it would collect nothing. He was going to be very cautious in advising the City and would try to stay within the words of the legislation. Mr. Sullivan thought the City would accrete a sort of case law on this as cities go through the process. He expected the state would get as many claims as Oregon City of required regulations. The Attorney General would have to determine which one he or his subordinates were going to litigate. He suggested the City act precipitously on claims as it had 180 days to deal with them.

Mayor Norris said as she looked at the Ordinance and the needs she thought the City had. The City needed to take it seriously because the voters have spoken twice on their desire to have some tweaking of land use decisions. In addition to

that, this process, because the City spent so many hours on its Comprehensive Plan, it was incumbent upon the City Commission to spend a substantial amount of time in defense of those thoughtful and well-researched zones and land use changes. She did not wish to be a Commission that rolled over when anyone made a claim because the City could not afford it. Mayor Norris wanted this to be a very public process. She believed it only affected a limited number of property owners in the community, and notices should be as broad as possible. She noted the Oregon City had selected 300 feet from the claimant's property and that Beaverton was using 500 feet.

Mr. Sullivan said there was an exponential cost.

Mayor Norris understood that. She thought the process should be as public as possible although staff may need some discretion to make simple determinations. She also saw that Measure 37 proponent Dave Honeycutt of Oregonians in Action suggested that an upfront filing fee of \$500 - \$750 might be reasonable. She understood the City of Beaverton was saying \$5,000.

Mr. Sullivan said the fee issue was not clear and urged the City Commission to spend about a half day discussing Measure 37 implications. If the City Commission was going to have this done, it would have to be filed for first reading fairly soon and posted. If the City Commission made changes, he would have to read all of them. The City Commission would have to have unanimity in order to do it in one sitting.

Commissioner Bailey understood the effective date of the Measure was December 2 and asked if there was a penalty involved.

Mr. Sullivan said there as no penalty. There was an argument going around that suggested just waiting the 180 days and be sued.

Mayor Norris read the Tigard Ordinance, which had some clear definitions of the process including how the City Commission made its decision.

Mr. Sullivan thought it would have been nice if the writers of the Measure had done that, but they did not.

Commissioner Hewitt agreed with Mayor Norris that this needed to be a very public process and understood there were costs associated with notification. There was a bigger cost when people did not realize what they voted for and what kind of ramifications there were in each neighborhood. He was willing to forego the nominal cost to educate the public in that manner. Second, he wanted a clear definition somewhere in the document about which codes applied and which did not. Third, he did not think all of the claims needed to come to the City Commission. There may only be 12, or there may be 112. He thought the City

Commission needed to rely on staff unless it did not feel comfortable about a certain issue and brought it to the Commission.

Mr. Sullivan thought staff could pay compensation claims although there was no money to do that. Waivers have to come to the City Commission because that was the way the legislation was drafted. The governing body had to waive or modify the Ordinance as written in the legislation.

Commissioner Neeley asked if that was because the City Commission adopted the Ordinance in the first place.

Mr. Sullivan said it was a hall of mirrors, but the measure did say the governing body had to waive. It did not say it had to be done by Ordinance, but there were not criteria for waiver. He did not know how anyone other than the claimant could take the issue further if they did not like the City Commission's decision.

Commissioner Bailey accepted the fact he was in an era for the rest of his personal and professional lifetime for which compensation for either real or perceived takings or diminution of properties values was a reality, and the City Commission would have to deal with that. He had a responsibility to the public who not only lived with the regulations and the uses that would be allowed, but also paid the taxes that supported the services and paid the compensations. He felt a responsibility to them as much or more as the land-owner. He appreciated that people felt their property values were diminished because of a regulation that the City enacted and would live with that. He wanted an open process and suggested posting claims on the website or putting a monthly summary in *The Oregonian*. He liked the way Mr. Sullivan drafted it with the right of action on the claim by someone who was affected by it. In the absence of criteria, the Measure was clear that it was either after compensation or a waiver of the regulation. It did allow the government to set a process. What it failed to do was to provide criteria for making a reasonable decision that a claim was valid and that the amount asked for was just compensation. He thought it was incumbent upon the City Commission to fill that void. If someone decided that the criteria were over and above what the Measure intended, he was willing to fight that in court. It was incumbent on the City Commission to set the ground rules so that its decision was defensible. He appreciated Mr. Sullivan's working to provide answers as much as he could and was willing to push the envelope a little bit. He got the message about people's feelings that the land use program and certain regulations affected them negatively, and he was willing to deal with that. The City also had a public responsibility that needed to be fulfilled, and he was ready to help define that.

Mr. Sullivan would take all of the input and make some judgments and bring it to the City Commission. If there were changes to the Ordinance, he would read it twice.

Commissioner Neeley did not have a problem meeting for half a day on Saturday with the attorney present. He would prefer a work session in early December.

Mayor Norris said the regular session was on December 1.

Mr. Sullivan did not know what the City would lose if the Ordinance was not adopted. It was written in a way that it could be submitted on the back of a napkin. Procedures could be adopted as long as they did not stand in the way of making a claim. What he found most troubling was that he would not have that level of specificity that would allow him to analyze the Measure for the City Commission. He believed it was done deliberately to add as much confusion as possible.

Commissioner Hewitt felt the City Commission had a responsibility to staff. He did not know how many calls were coming into the City, but he knew how many calls he was getting on a regular basis.

Staff indicated it was not getting many at this time.

Mayor Norris thought calls would come from people in the County in the Urban Growth Boundary (UGB).

Commissioner Hewitt said if staff was comfortable waiting until December 15, he was fine with that. He thought there was a responsibility to staff, so they could give people an intelligent answer.

Mr. Drentlaw said the other advantage was to put the burden of proof on the applicant, so the City did not have to use all of its staff time to get the information. It was hard if someone called and asked what the zoning was on their property in 1923.

Mr. Sullivan said Measure 37 was not a reasonable legislation. The burden of proof was on the City.

Mayor Norris noted the list of everything the claimant should have, but at the bottom it said even if all that was not provided, the City Commission had to review and act on it.

Commissioner Bailey said that was why he thought there needed to be some criteria. It was hard to believe that the legislation was silent on how the decisions were made and that the cities may not adopt criteria. He was willing to take his chances.

Commissioner Hewitt thought that as where the City should start. The line starts tomorrow morning and bring it in. In 179 days the City Commission would make the determination without any criteria. The reality was that one cannot make

criteria out of ambiguity. All a person had to do was make the claim. If that person owned the property prior to zoning being allowed it was pretty much a done deal. He doubted there was a Zoning Ordinance in 1923. The public has spoken. No jurisdiction he was aware of had the money. Oregon City could ill afford to pay anyone a claim. When they come in the door, they could be pretty assured that 179 days later they would get what they wanted.

Mr. Patterson suggested a course of action because there did not seem to be a lot of clarity in the direction the City Commission wished to go. The next steps would be to communicate the questions to Mr. Sullivan so he could begin to look at them. He recommended scheduling a work session on November 29 with possible action on December 1 or December 15.

Mayor Norris believed the concerns were the processing fee, the public process and the level of staff discretion.

Mr. Sullivan thought there was an issue with processing fees, and the City Commission needed to focus on that. Would the City Commission encourage or require the claimant to provide all the information albeit the Measure was written so all a claimant had to do was identify himself and his property.

Commissioner Bailey thought in a way it did not matter if the Ordinance was adopted by the end of the year. A process could be set up, but it did not really have to be followed.

Mr. Sullivan said the bite would be at the state and county levels. The Department of Administrative Services, the Governor, and the legislature may finally do something together.

Commissioner Hewitt said the reality was that there was no process, and even if there was a process, the claimant did not have to follow it. The City would need a process before the 180 days were up. He suggested because of the ambiguity that the City just hold off on the fee until it was proven based on some litigation other than Oregon City's.

Mr. Sullivan discussed fees and how they were established. He understood the Mayor was getting all sorts of input from other jurisdictions. He and half the lawyers in the state were on committees and had their own ideas. He presided at a meeting at which Mr. Honeycutt spoke, and he had views with which his own co-writers of the Measure did not agree.

Commissioner Hewitt suggested backing off from the fee issue and waiting to find out if other jurisdictions were challenged. He thought that was a prudent approach for a City that had not money. Could there be a clause that said that there may or may not be a fee. That went right along with this Measure, and we will let you know.

Mr. Sullivan said that could be put in. The point was that if the fee was challenged, he would have to collect attorney fees for the challenge to the fees. The claimant did not have to put in genealogy, applicable regulations, and even more of a property description than the address. If the fee could be done, it would be done.

Mayor Norris did not mind waiting until there was greater wisdom from the other cities. The City needed to make it work and at least inform the people at the front counter about what to do if someone came in with a claim. She wanted a process of some kind by December 3.

Mr. Sullivan would have a draft Ordinance for City Commission consideration.

Commissioner Hewitt asked Mr. Sullivan if he had an issue about adding a section that said there may or may not be a fee.

Mr. Sullivan suggested keeping track of time spent on a claim, and the City reserved the right to recover. May or may not did not give direction. The claimant would know when filing that they might be liable for the fees. The City would have to sue to collect after the fact.

Dan Berge, 20122 S. Molalla Avenue, Oregon City. He agreed with Commissioner Hewitt that the City should let the chips fall and not spend money on attorney fees. If the City collected a \$1,000 filing fee, it could spend \$10,000 to \$20,000 defending it. He would wait and see what other jurisdictions did. He preferred that claims come before the City Commission so the rest of the community could see the process.

Commissioner Neeley understood the Ordinance would come before the City Commission on December 1 and could be lived with temporarily. He would like a discussion of conditional annexations during his tenure. He appreciated Mr. Kabeiseman's work and was gratified to see the general tenor of what was written. The gist of it was if an annexation was requested that it be conditioned on any land use ordinances the City had. Those annexing would have to comply, and that the conditioning would be transferred to future property owners. He did not want to be challenged by new lands coming in.

Mr. Sullivan thought that could be done. He thought the City could say if you want to be a part of the City, you have to have a healthy city. One of the ways of getting a financially healthy City was not having the possibility of these claims for fringe areas. Oregon City succeeded to the County regulations.

Commissioner Hewitt understood Commissioner Neeley's comments. If a person wanted to annex into the City to make their development potential better, and they owned the property prior to any zoning regulations in the County or in

the City, he would be concerned about them staying outside the City and developing without City services including sewer. Or more than that, being allowed to hook up to the sewer. Or would they put septic on all those properties and creating greater problems in the future.

Mr. Sullivan commented on long-term health and safety issues.

Commissioner Hewitt said there were some near Henrici and was not aware of any long-term health effects. He was concerned that if it was limited, people would not be brought in with the right mind set.

Commissioner Bailey understood his colleague's points but had a question about issuing septic tank permits and well permits. Who issued those?

Commissioner Hewitt said the County was the only entity who used septic tanks in *unsewered* areas. Permits went through the County soils division, and there were certain mandates.

Commissioner Bailey discussed partitioning properties into one-acre parcels that did not give the right for water, sewer, or access onto a state highway. Partitioning did not equate to development, though it might.

Mayor Norris asked Mr. Sullivan if he needed further fuzzy guidance.

Mr. Sullivan knew as much as anyone. This was a cloudy issue and had a bounty to it about which he was concerned.

There were no further questions on Measure 37. The City Commission would discuss this on November 29.

6.0 DISCUSSION ITEMS

None.

7.0 COMMISSION/CITY MANAGER INFORMATION

7.1 City Manager's Report

7.1.a **Mr. Sullivan** discussed an earlier City Commission decision to authorize the entry into an agreement with a number of other cities and counties that were fighting a series of appeals on land use compatibility statements for stormwater treatment. He discussed Goal 6 – the environmental goal – and emissions including stormwater emissions that shall not violate nor threaten to violate applicable water quality requirements. It seemed to be the practice of routinely checking the land use compatibility statement (LUCS) box at the local level without looking at the regulations to determine if there were potential violations. Some would say that a number of jurisdictions were caught short on that. Since there was a general series of LUBA appeals on the LUCS an number of

jurisdictions including Clean Water Services of Washington County, Clackamas County Service District #1, City of Salem, City of Eugene, and the City of Wilsonville came together and decided to deal with this by committee and combining legal resources to deal with these permits and the appeals of those permits. The intent was to set over and resubmit in January. The group put together a Confidentiality Joint Defense and Common Interest Agreement that basically said the lawyers could talk to each other under attorney client privilege. He and Mr. Kabeiseman have participated in conference calls that were stultifying, but they do come to an approach to make findings that could accompany the issue of the LUCS. The agreement was drafted without including Oregon City, and he recommended that the City ask to join.

Mayor Norris noted the City Commission agreed to do this before.

Mr. Sullivan clarified that there was no common funding agreement, and each jurisdiction threw in its own lawyer. Ideas were shared without being a public record. Oregon City would make its own decisions.

Commissioners Bailey/Neeley m/s to seek participation in the Confidentiality Joint Defense and Common Interest Agreement.

There was no further discussion.

A roll call was taken, and the motion passed with Commissioners Hewitt, Bailey and Neeley and Mayor Norris voting ‘aye.’ 4:0.

7.1.b **Mr. Patterson** provided a tentative budget calendar. He discussed scheduling a quarterly update meeting with the Budget Committee in December.

7.1.c **Ms. Bronson-Crelly** met with the contractor designing the audio system, and the vendor indicated that the process would take from 23 to 36 weeks.

7.1.d **Mr. Patterson** discussed the budget and the defeat of the library levy. He noted a small increase to tax revenues, about \$36,000, from what was projected, and about \$26,000 was saved in the fire contract. Added together, these would improve the ending fund balance from \$431,000 to \$496,000. The City would begin feeling the brunt of the failed library levy next year. There would be a little less impact because of the cemetery decision. The negative fund balance would go up next year, and there were Measure 37 implications. That all pointed to the need for a contingency fund which the City Commission did not have at this time. The City needed to look at the community development deficit and the subsidy. The general fund was not in good shape and only continued to get worse.

Commissioner Hewitt asked Mr. Patterson to discuss when the City would reach a zero contingency.

Mr. Patterson would have to refine the numbers. Any major disruption would put the City in an interesting state.

Commissioner Hewitt reiterated that the thought this soft approach would damage the City in the long run. The tough decision should be made now instead of then. He felt the City needed to be proactive to get the word out and make things start to happen.

Mr. Drentlaw announced he had been putting together general training sessions for new Planning Commissioners and invited the City Commission to attend. It was tentatively scheduled for December 13 and Mr. Drentlaw would confirm that date via e-mail.

7.2 Commissioner's Communications

7.2.a Mayoral Appointments

- **Amy McFeeters Krone** to Historic Review Board with term to expire December 31, 2005 (completing Lans Dickinson's term).
- **Mayor Norris** discussed the Clackamas River Trail ribbon cutting on November 8, and people have given her positive feedback

7.2.b Reports of Regional and Intergovernmental Committees.

Commissioner Neeley commented on an application in the Canemah area review by the Historic Review Board. **Mr. Drentlaw** said that application had to do with sewer and waterlines and was not a subdivision.

Commissioner Neeley assumed the December 1 agenda would contain the Goal 5 issue before the Metropolitan Policy Advisory Committee (MPAC). **Mr. Patterson understood** the City Commission would discuss the issue on November 29 and take action on December 1. Commissioner Neeley said both he and Mayor Norris would meet with Metro Councilor Brian Newman to discuss his draft resolution. He extended an invitation to Commissioner Bailey as he would likely be the next alternate.

Commissioner Neeley reviewed the MPAC discussion and the issue of equal credence for all local programs. Oregon City sent a letter earlier expressing its concerns. None of the proposed resolutions indicated any level of protection to Class A upland wildlife habitat areas, and he discussed this at today's MPAC meeting. The group also discussed performance measures of 2040 implementation efforts. He discussed the perception of Oregon City's inventory of affordable housing, and he did not believe affordable housing had been growing at the same rate as market housing. Commissioner Neeley discussed the two categories of affordable housing:

1. Housing that could be afforded by people with 50% or less of the median income.
2. It was further broken down to those that have less than 30% of median and those with between 30% and 50% of median.

Affordable housing generally available in those two categories in the Metro region was 8% below 30% median income with 31% of the housing

available to those between 31% and 50%. For the City it was 10%, so it had a little more housing in the lowest category, but Oregon City only had 31% for the 31% to 50% and was comparable to the region as a whole. These were actually rentable units. Oregon City's image was probably more based on what it was than what it is. Commissioner Neeley thought it was important to realize that Oregon City needed to develop its affordable housing stock in conjunction with other development coming into Oregon City.

8.0 ADJOURNMENT

Mayor Norris adjourned the regular City Commission meeting at 10:36 p.m.

Respectfully submitted,

Leilani Bronson-Crelly, City Recorder