

**CITY OF TIGARD
PLANNING COMMISSION
Meeting Minutes**

January 5, 2009

1. CALL TO ORDER

President Inman called the meeting to order at 7:06 p.m. The meeting was held in the Tigard Civic Center, Town Hall, at 13125 SW Hall Blvd.

2. ROLL CALL

Commissioners Present: President Inman; Commissioners Anderson, Caffall, Doherty, Fishel, Hasman, Muldoon, Vermilyea, and Walsh

Commissioners Absent: Commissioner Fishel

Staff Present: Craig Dirksen, Mayor of Tigard; Dick Bewersdorff, Planning Manager; Gary Pagenstecher, Associate Planner; Ron Bunch, Assistant Community Development Director; Darren Wyss, Senior Planner; Doreen Laughlin, Senior Administrative Specialist

3. COMMUNICATIONS

Mayor Dirksen was introduced by President Inman. The Mayor took some time to thank the Commissioners on behalf of the City Council and himself for their hard work on the Comprehensive Plan. He complimented them on the work that was done and the quality of the document - which he said was a direct result of all the hard work the citizens, policy interest teams, City staff, and especially the Planning Commission did. He thanked them and gave them each a token of remembrance and appreciation. He presented each commissioner with a personalized pen and a candy filled City of Tigard mug.

4. APPROVE MEETING MINUTES

There was a motion by Commissioner Caffall, seconded by Commissioner Vermilyea, to approve the December 1, 2008 meeting minutes as submitted. The motion was approved as follows:

AYES: Caffall, Doherty, Hasman, Inman, Muldoon, Vermilyea, Walsh
NAYS: None
ABSTENTIONS: Anderson
EXCUSED: Fishel

5. PUBLIC COMMENTS

PERIODIC REVIEW PUBLIC COMMENT OPPORTUNITY

The City of Tigard has been notified that the Oregon Department of Land Conservation and Development (DLCD) has initiated periodic review for the community. DLCD is tasked with overseeing the process and focuses periodic review on economic development, needed housing, transportation, public facilities and services, and urbanization. The first step of periodic review is to perform an evaluation of the City's comprehensive plan and land use regulations. An important component of the evaluation is to provide the opportunity for citizen review and comment. This is an opportunity for citizen comment in the presence of the Planning Commission, before the final evaluation is made by the City Council on January 27, 2009.

STAFF COMMENTS

Senior Planner, Darren Wyss, introduced periodic review and gave a rundown of what it is. He noted that the City of Tigard had been notified of the commencement of Periodic Review by the Department of Land Conservation and Development (DLCD) last May. Periodic Review is a process required by state statute and Tigard must review its comp plan and land use regulations to ensure they continue to provide for the growth management and development needs of the community. The first step to Periodic Review is to evaluate the City's comprehensive plan and land use regulations. DLCD focuses Periodic Review evaluation on economic development, needed housing, transportation, public facilities and services, and urbanization. The City completed the evaluation using the DLCD checklist, and staff is here tonight to accept public comment before the Planning Commission. Staff received written comment from two individuals. These will be incorporated into the evaluation, as will any comments submitted tonight. Staff will prepare a response to all submissions and will send the response to the person who submitted the comments. Based on the evaluation, the City will then create a draft work program to address any needed deficiencies in the comp plan or land use regulations. Council has scheduled Jan 27th to review the evaluation and draft work program. With Council's direction, both will then be submitted to DLCD for review.

PUBLIC COMMENTS

At this point President Inman opened up the meeting for public comment. She noted that no one had signed up to speak and asked if anyone present would like to make a comment. No one from the public had questions.

PUBLIC COMMENT CLOSED

6. PUBLIC HEARING

DEVELOPMENT CODE AMENDMENT (DCA) 2008-00004

MOTOR VEHICLE SALES IN THE I-P ZONE CODE AMENDMENT

REQUEST: A Development Code Amendment to amend the text of Table 18.530.1 of the City of Tigard Community Development Code to allow “motor vehicle sales/rental” in the I-P zone as a Restricted (R) use, currently Not Permitted (N), provided (a) such operation takes place wholly within an enclosed building and (b) does not exceed 20% of the floor area of the given development complex. **LOCATION:** Land zoned Industrial Park (I-P).

COMPREHENSIVE PLAN DESIGNATION: Industrial Park. **ZONE:** I-P:

Industrial Park District. The I-P zoning district provides appropriate locations for combining light manufacturing, office and small-scale commercial uses, e.g., restaurants, personal services and fitness centers, in a campus-like setting. Only those light industrial uses with no off-site impacts, e.g., noise, glare, odors, vibration, are permitted in the I-P zone. In addition to mandatory site development review, design and development standards in the I-P zone have been adopted to insure that developments will be well-integrated, attractively landscaped, and pedestrian-friendly. **APPLICABLE REVIEW CRITERIA:** Community Development Code Chapters 18.130, 18.380, 18.390 and 18.530; Comprehensive Plan Goals 1.1 and 9.1; Metro Urban Growth Management Functional Plan Sections 3.07.110 and 3.07.410; and Statewide Planning Goals 1, 2 and 9.

STAFF REPORT

Gary Pagenstecher, Associate Planner, presented the staff report on behalf of the City. He noted the applicant owns and operates Northwest Ski & Wake Sports, LLC which specializes in high-end watercraft. The applicant intends to move their business to Tigard and entered a lease agreement for a building in the Industrial Park (I-P) zone that met the space and functional needs of their business. On learning the proposed use was not allowed in the I-P zone, the applicant applied for a text amendment to permit the use. Pagenstecher went over the background information, applicable criteria, findings, and conclusions as on the staff

report. He noted the staff recommendation: “Staff recommends that the Planning Commission find in favor of the proposed text amendment allowing motor vehicle sales/rental in the Industrial Park zone with a restriction that limits the permitted use to boats and with any alterations as determined through the public hearing process, and make a final recommendation to the Tigard City Council.” Pagenstecher went over the five listed factors (in the staff report) on which the recommendation by the Commission and the decision by the Council shall be based: 1) Statewide Planning Goals and Guidelines; 2) Federal or State Statutes and Regulations; 3) Metro; 4) Tigard Comprehensive Plan; and 5) Applicable Provisions of the Tigard Development Code.

Pagenstecher noted that a comment letter from the Department of Land Conservation and Development (**Attachment 1**) which was distributed to the commissioners. He said DLCD does not support the code amendment – they want to preserve the IP zone for industrial uses and they cite the inconsistency with the Metro code.

QUESTIONS & COMMENTS BY COMMISSIONERS (Replies in italics)

- One of the commissioners referred to the traffic impact issue. He said that on page 3 of 8 on the staff report, the State Transportation Planning Rule (TPR) requires evidence that the proposed plan amendment will not significantly affect a transportation facility. As he understands the description, there’s been no evidence provided, but there’s been an analysis, based on some assumptions, and then a conclusion. It seems that a potential problem, if approved, is the fact that there is no “evidence” supplied to address the TPR rule. He wondered how that would be dealt with. *That is a legitimate concern.*
- Does this set a precedent? The letter from DLCD seemed to imply that this sets a precedent for all of that type of land, one that is broad in scope – is that correct? *Yes – this is a legislative action that would apply to all IP zoned lands. Not just the subject property.*
- What is our history, in Tigard, of changing zoning for a single business? *That’s not something usually done.*
- Where are the IP zoned areas? *There are two maps attached. You can see the areas on there.*
- If the code is changed – is the concern that car lots could come in? *It’s possible – motor vehicle sales, and rentals, would include all vehicles.*
- What is the downside of that? *From a standpoint of protection from Metro, DLCD, and our regulation previously, we want to preserve industrial land for industrial uses – primarily. But, there are other services in the IP zone that are allowed.*
- What business was in that building before? *Industrial use.*
- Are there other industrial sites where this facility could be located and meet code? *Yes, there are zones that can accommodate that use; however, the applicant had difficulty finding the*

building that would accommodate that use in those zones so they found this building type attractive – it just happened to be located in the IP zone.

- If they do this amendment, my thought is that we open the floodgate to any and all operations.
- With respect to the finding that this may be inconsistent with Metro’s code, what is the potential consequence of allowing a change like this? What’s the downside? *If they felt it was important, they could appeal it to LUBA and then we’d have to deal with that.*
- Development complex – is it defined? *Complex could be one building, one property, one use.*
- Development complex is not defined. It’s not clear. *Should we consider narrowing that down to be specific to make sure we’re getting the scale of what we might permit appropriate?*
- Is part of the problem the fact that the definition has the boat fall within “motor vehicle sales”? Is there any way we can we move the boat out separately? *That is a potential recommendation. You could add a note saying “This use is limited to boat sales and rentals.”*
- Can we pull out “boats” versus “motorized vehicles”? Most people don’t think of boats as motorized vehicles – those are cars, motor homes, etc. Is one of our alternatives to make an exception saying it only deals with boats? *Yes – you could do that.*

APPLICANT’S PRESENTATION

April Berg of 13531 SW Aerie Dr., Tigard, OR 97223 introduced herself as one of the owners of Northwest Ski and Wake Sports.

Jack Hoffman also introduced himself as an Attorney for Dunn Carney Allen Higgins & Tongue LLP located at 851 SW 6th Ave., Portland, OR 97204

Ms. Berg began by saying they’d gone through most all of what the commissioners concerns are during the pre-apps with the City of Tigard. She said they started the process in July and, unbeknownst to them, they and their brokers had information that the property was zoned IL. They said they’ve been in other IP and IL zones in other cities in the Metro area. She said this particular location was chosen for various reasons. They did a market study. Their business is to sell very high end boats - they could be likened to Lamborghini’s. They don’t have customers every day. It’s a very high end single niche. They sell anywhere from 30 to 65 boats a year. So a buyer is coming in once every 5 days or once every 12 days. In the winter there will be times when people will drop off their boat to have it serviced on Monday and come pick it up on a Saturday. She said we may have 3 or 4 days where there’s, frankly, no deposits - and that’s not to make my current landlord sitting back there worried, but it’s just one of those difficult sales. The reason we chose this location is 3 fold. One - It’s close to the center where the market study was done. Two - Based on our buyer profile,

those people that we would be selling to are already traveling on that road. It's not a new trip for them. They're already going to the high school. The typical buyer is a family buyer -- their income range is \$150,000 - \$350,000. So they are coming and going to Bridgeport or to the high school for games and activities. The third, and probably the most important reason, is the Duncan's building -- the site itself. We have to have our boats inside. They're high end and we don't want them exposed to the weather. We have to move the boats easily in and out. This building meets those needs. There are freight doors that work in that capacity. Lastly, industrial zones have become unfriendly to retail environment. This location is clearly very "light" industrial -- which is what makes it so attractive. This business will not be an eyesore, but an asset to that area. We've worked with the City on this since July. We want to provide a good product for Tigard.

At this point, the attorney spoke to the Commissioners regarding their stated concerns. He said that in terms of the traffic impact and the DLCD analysis, there's no evidence to address the TPR -- Traffic Planning Rule. The difficulty with what DLCD said is that there's nothing in the Institute for Transportation Engineer Manual (the ITE manual), that fits with boat sales. If you go through the manual, there's nothing that talks about it. The closest would be furniture sales, which is a large item. We're really talking about form over function. As staff has pointed out, industrial uses are changing and blurring. We're proposing that you look at the effect on the industrial park area -- what does this look like? If you minimize it to 20% and the development complex is very small in this situation -- less than 60,000 sq ft. and that they're indoor boat sales -- then you have a handle on it and you don't open the flood gates. The comment about car lots - well, car lots will not come in if you limit the boat sales. As to whether this does or does not comply with Metro's code -- I'm confident that this does not violate Metro Code and we didn't get a letter from Metro to that effect because the employment area restriction from Metro restricts new buildings. The industrial area restriction really talks about big box retail. They don't intend to regulate this kind of small commercial activity. I'm comfortable that that isn't an issue with this Planning Commission. This does not violate Metro Code Title Four. We would support the staff's recommendation in terms of the conditions of limited to boats with the other restrictions as per your instructions.

At this point there were a few questions & comments. One of the commissioners noted that he thought this business would be an asset to the area. His biggest concern remains the traffic issue. He said the Planning Commission has an obligation to make a decision based on evidence so he wanted to ask some questions:

- What is the business that used this property previously? At this point, the landlord, John Duncan, of 9929 NW Upton Ct., Portland, 97229, spoke to the question. He introduced himself as the owner of the property. He said *the previous tenants in the*

building were basically involved in selling cultured stone to builders, etc. and there was a lot more traffic coming into the place than these people will have.

- How many visits do you anticipate you're going to get from "lookie loo" types or prospective buyers? *On an average - two visits. We have an Internet site and a lot of the negotiating and information disseminating is done over the Internet.*
- What you're essentially saying is that you're averaging on a daily basis roughly one visit to your store per day. Is that correct? *I would say that's true. In the winter we can go days without a visit – we'll deal on the internet and the phone – but no visit.*
- Would you say that the prior user's trips were significantly greater than that? *Yes – semi's would come in unloading stone.*
- How long was that tenant in there? *That tenant was in there for two years.*

PUBLIC TESTIMONY – IN FAVOR

None

PUBLIC TESTIMONY – IN OPPOSITION

None

APPLICANT'S REBUTTAL

None

PUBLIC HEARING CLOSED

DELIBERATIONS

The commissioners deliberated at length. Some of the deliberations follow:

One of the commissioners said the intent of Metro was to keep out used car lots and sprawl. He said he likes the project. It will attract people from out of town. Another commissioner noted upscale selling would be a good tenant and citizen for the City. One noted the fact that they're indoors, and that this business might actually reduce traffic from the previous business.

Commissioner Doherty wanted to go on record as encouraging light industrial growth in the City of Tigard. She said that looking at where this property is, and looking at the kind of business that's coming in, she's not that concerned about the traffic. She thinks there should be some sort of requirement for a traffic study but this is not a business that will bring in a lot of traffic. It's a very exclusive clientele. So she likes to encourage business coming in to

Tigard, but again, with the idea that a goal out there that – we also encourage light industrial that will bring in more jobs into the City of Tigard.

One of the commissioners said she was personally conflicted because she thinks that it's a nice business but, thru her tenure, she's seen a chipping away at all of our industrial – it seems it's all going commercial office. She's concerned about the pattern that seems to be being established - about individualizing zoning. She doesn't like the path it's headed down. She's also concerned about the Industrial Zone as an employment base – she's not sure it can be considered to be good for employment. She'd like to see it work but is concerned about the trend. She suggests addressing development complex.

There were more deliberations and then a motion was made.

MOTION

The motion was by Commissioner Vermilyea, seconded by Commissioner Caffall as follows:

I move that the Planning Commission forward a recommendation of approval to the City Council of application DCA2008-00004 and adoption of the findings and conditions of approval contained in the staff report, as well as the amendments that we've made here tonight. Specifically, restricting changing the motor vehicle related sales from a non-prohibited use to a restricted use with the restrictions that were set forth today including limiting it solely to boat sales, such that those limited uses separately, or in combination, may not exceed 10,000 sq ft per lot, and such that all activities, except employee and customer parking, are wholly contained within the building. And also a condition on receipt of a letter from Metro Council to the effect that this use, as set forth in the application, will not violate Metro Code Title Four. (Not in the language of the restriction - it is just a condition of approval.)

The motion passed unanimously on a recorded vote; the Commissioners voted as follows:

AYES:	Commissioner Anderson, Commissioner Caffall, Commissioner Doherty, Commissioner Hasman, Commissioner Inman, Commissioner Muldoon, Commissioner Vermilyea and Commissioner Walsh (8)
NAYS:	None (0)
ABSTAINERS:	None (0)
ABSENT:	Commissioner Fishel (1)

President Inman noted that this application will be going to City Council on February 10th pending the letter [from Metro].

7. OTHER BUSINESS


There was a request that the Planning Commission Secretary check on whether there is a need to vote on officers this year. She will check the bylaws and see if this needs to be done on an odd or even year and report back to the commission.

8. ADJOURNMENT

President Inman adjourned the meeting at 8:49 p.m.



Doreen Laughlin, Planning Commission Secretary



ATTEST: President Jodie Inman



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

Meg Fernekees, Portland Area (West) Regional Representative

Portland Regional Office

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Portland, OR 97232

(971) 673-0965

January 2, 2009

Gary Pagenstecher, AICP
Associate Planner
City of Tigard
Community Development
13125 SW Hall Blvd.
Tigard OR 97223

SENT VIA EMAIL

Subject: Local File No. **DCA2008-00004**
DLCD File No. Tigard 010-08
Development Code Change

Dear Mr. Pagenstecher:

The Department of Land Conservation and Development received a notice of proposed amendment for the file referenced above. The proposal is to allow "motor vehicle sales/rental" in the I-P zone as a restricted (R) use, currently Not Permitted (N), with some limitations.

The Oregon Department of Land Conservation and Development (DLCD) appreciates the opportunity to comment on the above proposal. We respectfully request that this letter become part of the official record for the above proceedings. We hope you will find the following comments helpful in the city's deliberations on this matter.

Goal 12 – Transportation Planning Rule (TPR)

As we understand the applicant's case, the applicant claims that the requirement to be indoors placed on the motor vehicle sales use in this zone would make most "walk-in" motor vehicle sales unfeasible. While one could argue that the history of large indoor showrooms along the I-5 corridor proves the opposite, the text amendment in

any case is overly broad and likely may have unforeseen consequences, both in terms of the growth of large product merchandizing and in traffic congestion. In this regard, the Transportation Planning Rule mandates that all possible “motor vehicle sales/rental” uses in the IP zones city-wide be addressed, not just the applicant's specific proposed use.

Goal 9 and Preventing conversion of industrial land

The applicant erroneously concludes that Statewide Planning Goal 9 is not applicable to the proposal. Commercial sales of any large merchandise can erode the future viability of industrial uses in the vicinity. The department agrees with this advisory conclusion in the staff report: “The Planning Commission should consider whether the proposed use would otherwise compromise the intended use of industrial-zoned lands for industrial purposes.” Similarly, we would urge the Commission such serious consideration as well, particularly in light of the apparent inconsistency with Metro’s Title 4 requirements.

We appreciate the opportunity to comment and ask for your kind consideration of these comments. To continue the trend of conversion of industrial land is not in the State’s or the City’s best interest.

If you or other city officials have any questions on the above comments, please contact me at 971-673-0965 or meg.fernekees@state.or.us.

Thank you.

Sincerely,

Meg Fernekees
DLCD Metro Area (West) Regional Representative

cc: Tom Hogue, Economic Development Planning Analyst
Angela Lazarean, Urban Planner
Darren Nichols, Community Services Manager
Gloria Gardiner, Urban Planning Specialist
Bill Holmstrom, Transportation & Land Use Planner
Tim O’Brien, Principal Planner, Metro