

**CITY OF TIGARD  
PLANNING COMMISSION  
Meeting Minutes  
October 19, 2009**

**1. CALL TO ORDER**

President Inman called the meeting to order at 7:00 pm. The meeting was held in the Tigard Civic Center, Town Hall, at 13125 SW Hall Blvd.

**2. ROLL CALL**

**Present:** Commissioners Anderson, Caffall, Doherty, Fishel, Hasman, Inman, Muldoon, and Vermilyea

**Absent:** Commissioner Walsh, Alternate Commissioner Gaschke

**Staff Present:** Community Development Director Ron Bunch  
Assistant CD Director Susan Hartnett  
Planning Manager Dick Bewersdorff  
Downtown Redevelopment Manager Sean Farrelly  
Associate Planner Gary Pagenstecher  
Senior Administrative Specialist Doreen Laughlin

**3. COMMUNICATIONS - none**

**4. CONSIDER MEETING MINUTES**

**10-05-09 Meeting Minutes:** President Inman asked if there were any corrections, deletions, or additions to the minutes; there was one correction (Commissioner Doherty's name had inadvertently been misspelled), President Inman declared the minutes approved with the noted correction.

**5 PUBLIC HEARINGS**

**5.1 DOWNTOWN TIGARD CODE AMENDMENTS COMPREHENSIVE PLAN AMENDMENT (CPA) 2009-00003, DEVELOPMENT CODE AMENDMENT (DCA) 2009-00005, ZONING MAP AMENDMENT (ZON) 2009-00001**

## **STAFF REPORT**

Senior Planner Sean Farrelly gave the staff report. (Staff reports are available to the public one week before the scheduled meeting.) Farrelly went over a PowerPoint presentation (**Exhibit A**).

## **QUESTIONS OF STAFF & COMMENTS FROM COMMISSIONERS**

**What if the City of Tigard and ODOT can't come to an agreement? Are we mandated by law to comply with whatever ODOT decides to throw down – how does that work?** There's a risk they could appeal this to LUBA but I don't see that happening. We're working with them on multiple projects including a couple hundred thousand dollar grant that's going to be looking at the lanes on the 99W corridor. We want to keep them happy but we have our own aspirations as well. I think we'll be able to meet their concerns and prove to them that the zoning that's there now is not being utilized to its full use.

**Specifically, what were some of the concerns ODOT had?** It's the concern that they have two facilities Hwy 99W and Hall Blvd - if there's maximum build-out under this proposed code, there could conceivably be a lot more people driving cars on their facility, making traffic worse. We argue that this is a town center and it will be pedestrian oriented. We feel a big percentage of the people who choose to live in the Downtown area in the future will use the transit; will use the WES commuter service; and will potentially use any future light rail that might come down the 99W corridor. ODOT expresses these concerns to pretty much every community that tries to increase density.

## **TESTIMONY IN FAVOR**

Alexander Craghead, 12205 SW Hall Blvd., Tigard who is also the Vice-Chair of the City Center Advisory Commission (CCAC), and a member of the body that helped draft the code, read a statement (**Exhibit B**) acknowledging and thanking the people and the process that brought the draft downtown land use code to this point.

## **TESTIMONY AGAINST**

**Gary Haagen**, 2514 SE 112 Ave., Vancouver, WA 98664 (owner, since 1989, of lot 5 - Payless Shopping Center at the corner of Pacific Hwy and Main Street). He's had the property for sale for more than a year. He said obviously the economic conditions up to this point have been challenging for commercial properties. He said two things are happening simultaneously. He noted he's not really "against" this, but had to choose – "for, or against" to sign in. He really just wanted to state a problem he has and was hoping there's a solution.

Haagen testified as follows: The road is being expanded from Pacific Hwy towards my property and they're also moving in from Main Street as well. Up until just the same time I

got the notice of this hearing, I got them practically the same day, I'd never actually received a detailed map showing me exactly what they're doing but they're taking more of my land than I would have anticipated based upon the markings that I'd seen out in the street and that sort of thing. I called the City to find out what the set-back requirements are under this new zoning – and it expands the set-back requirements. If I understand it correctly, my current zoning allows me a 5' set-back – the new zoning would be a 10' set-back. My property is a little less than 15,000 sq ft and the goal of me selling this building, and with the land value and the appraisals I've had, is that my building could actually be doubled, based upon my understanding of what I owned previously. The building there now is 1,290 sq ft, my CC&R's say the building could be up to 2,800 sq ft. Based upon my appraisals and my realtor – the idea was to try to find a buyer that would want one of two things – either destroy the current building and build a new building that would meet those requirements, or add on to the existing building and up until, maybe now, there's been sufficient ability to expand towards Pacific Hwy. I guess what I'm wondering is – is there any way I can be considered for a "grandfather" so that my set-back is maintained at the 5' and then I'd realize I'd have to deal with the state about expanding the road as a separate issue. Both of these two things happening simultaneously are resulting in an adverse economic effect on my property. Could I answer any questions?

#### **QUESTIONS OF HAAGEN TESTIMONY BY COMMISSIONERS & STAFF**

Sean Farrelly, Downtown Redevelopment Manager, explained what could be built under the proposed code. He said it may not be a feasible scenario now but in the not too distant future, especially if high capacity transit goes into the corridor, could make Haagen's property much more valuable. He said, as with any code, there may be some negative effects, but the positive impacts would outweigh that.

Haagen: It's hard for me to assess that other than... you know I only own a small piece of property and to destroy the building and then build again – at most it could be 2,800 sq ft – at most. So it'd be hard to build very high. The way I look at it, I can only see economic disadvantage – no economic advantage.

Commissioner Vermilyea to staff: Is there a way a property owner can have issues addressed individually... is there a variance process? A Grandfather process? Some kind of process where we can deal with individualized issues?

Farrelly: Couple things, there is a variance process that would be identical to the rest of what is permitted in our code. There's also an adjustment process in the new code. In addition, there are exceptions identified in 18.610.045 "Exceptions to Standards" [page 33 of "Proposed Downtown Tigard Code Amendments"].

Haagen questioned the right-of-way appraisal process. He wondered how to get a true value.

Ron Bunch, Community Development Director, spoke to the right-of-way appraisal process explaining that is a state and county process. He said the City is working with ODOT and the county. He said the 10 foot set-back is a standard with a 20% possible exception, so that could be reduced to 8 feet. That's as much dimensional "give" that we have in the standards right now. The right-of-way appraisal process is entirely separate from the planning process. Farrelly pointed out that the proposed code allows a 90% maximum site coverage; the current code allows 85% so you're able to cover 5% more of your lot.

At this point Haagen asked what the "process" is regarding this. President Inman explained that they would take more public testimony, deliberate, have questions of staff, and then make a recommendation to City Council. She said he could also testify to City Council at the public hearing on December 8<sup>th</sup>. In the meantime, he could consult with staff to get a little better idea of what the effective usefulness of his property might be within the code.

Haagen asked if the City Council would be aware of his testimony tonight. Inman said it would be in the minutes and in the record – so long as they read it.

Inman asked if there was anyone in the audience who wished to speak either for or against.

**Jim Andrews, Nicoli Engineering, 9025 SW Center Street, spoke [but had not signed in]. He said his was more of a question focused towards Farrelly. He said "Center Street has been put in a sub-area with Main Street. I understand it needed to go somewhere and I guess that makes sense. My only question is – the standards on Main Street aren't always applicable to what I can see the character of Center Street being (or is). So I want to verify that the variances are still applicable to some of the zoning guidelines and the development standards that you've made and is the 20% reduction applicable to those design standards – not so much set-back but as façade issues and those kind of guidelines?"**

Farrelly answered: There is a discretionary design due process which would allow an applicant to propose something different from the standards. That's one of the tracks we have. The 20% reduction is not applicable to the design standards – just the set-backs.

**"What is the criterion of acceptance of modification?"** Farrelly: It's very discretionary. There will be a design review board. In the interim there may be a sub-committee of the Planning Commission. There will be a designated design review body. They will judge against the design objectives towards the end of the code amendments [page 34]. They're just statements of intent of what we're looking for and the applicant would have to show how their proposal meets that. There will be multiple ways of showing that.

## **QUESTIONS OF STAFF BY COMMISSIONERS**

**With regard to the design review board – how are we going to make that known to the public who may wish to follow track 3 and have a discretionary design review?**

By the time Council (hopefully) adopts these code amendments, we'll explicitly talk about that as well as our ideas on how a design review board would work, and the long term transition to an independent board.

Ron Bunch added that Council has the authority under Municipal Code essentially to appoint a body that has land-use regulatory authority. Our proposal essentially, when we complete this, is to draw a series of proposals for Council, and the Planning Commission both, to consider. It would happen through a Council deliberation and appointment process.

## **PUBLIC HEARING CLOSED**

## **DELIBERATION**

President Inman noted the Downtown Code Errata that Farrelly had distributed earlier (**Exhibit C**) is basically updates to the code that was sent out in the earlier packet to the Commissioners. She also noted the fact that it would need to also be included in any recommendation. She said it would also be good to include in the amendment some instruction for staff to continue to develop ways to address ODOT's concern for greater density.

There were no further deliberations.

## **MOTION**

The following motion was made by Commissioner Muldoon, seconded by Commissioner Vermilyea, as follows:

**"I move for a recommendation to City Council, based on the findings that are in the staff report, to approve CPA2009-00003, DCA2009-00005, and ZON2009-00001; cognizant of the errata for the Downtown Code; and with a stipulation asking staff to work with ODOT to maximize towards target density as requested.**

The motion CARRIED on a recorded vote, the Commission voted as follows:

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

## 5.2 DEVELOPMENT CODE AMENDMENT (DCA) 2009-00004. SEASONAL OUTDOOR SALES CODE AMENDMENT

### STAFF REPORT

Associate Planner Gary Pagenstecher went over the staff report on behalf of the City. (Staff reports are available to the public one week before the scheduled meeting.)

### QUESTIONS OF STAFF & COMMENTS FROM COMMISSIONERS

**Is there a City goal of having a single “Tigard Farmer’s Market?”** Pagenstecher: The Comp Plan calls for Farmer’s Markets Downtown. That’s a goal expressed in the Comp Plan. I think in the staff report we find this language allowing for a Farmer’s Market consistent with that goal. Do we have a specific plan to provide a certain area in City owned property? No.

Bunch interjected that a city can provide a place/opportunity for a Farmer’s Market. He said it’s very rare for a city to be the actual sponsor of a Farmer’s Market kind of activity. Cities throughout the state in our research and experience worked with the organizations that establish a charter (inaudible) Farmer’s Market. It is a City goal to provide opportunities for Farmer’s Markets who operate in a community.

**So what I’m hearing is it’s possible for several Farmer’s Markets could be operating in the City at the same time? This has me concerned - so on any Saturday and Sunday – are we talking about a Farmer’s Market at the Grange, a Farmer’s Market Downtown, and maybe a Farmer’s Market someplace else within the confines of the City all at the same time?**

Bunch: This provides the opportunity for that to happen if the market will allow it to occur according to the specific criteria, yes.

Commissioner Vermilyea said he had a technical question – [Re: Page 6 of 10 – 18.785.020]. **What do you mean by the word “charter”? Is that meant to be a licensed, registered, non-profit with the state corporation division – is that what the intent is there? Or is there some other charter that I’m not aware of? Is the City intending to issue a charter?** No. So my suggestion then would be to put in language something along the lines of a public service or non-profit organization duly and properly licensed by the State of Oregon – or something along those lines because in order for a non-profit to operate legally in Oregon you have to register and file annual reports with the state corporations division. So something along those lines to me seems to be a more specific set of language than “charter”.

Commissioner Doherty – **So, in other words, when you talk about charter your intent was an organization that has a charter, a by-laws, a constitution, that kind of thing?**

**Or was your intent that they had some recognition from the state? I really think that needs to be defined – I agree with Commissioner Vermilyea.**

Pagenstecher - We ran this by the City Attorneys and they had no problem with this language. Neither did they didn't suggest another language. They can be chartered public service – in other words by-laws and documents that they have this organization and operate under these rules, or they can be a non-profit organization.

## **QUESTIONS OF APPLICANT**

**TESTIMONY IN FAVOR:** Phil Yount, 11222 Cottonwood Lane, Tigard – introduced himself as the “treasurer/janitor/rental manager” of the Tigard Grange. He’s also a 17 year resident of the City of Tigard. He wanted to publically thank Ron Bunch and Gary Pagenstecher for their recognition of the problem confronting the Tigard Grange last spring and summer when they wanted to implement a Farmer’s Market activity on the Tigard Grange property and were not allowed to do so for longer than 30 days. When asked how the Tigard Farmer’s Market could operate for longer than 30 days, he said they didn’t really have an answer to that question – and thus, this meeting tonight. He said the Grange needs to have a way to earn funds to support the activities at the Grange. He hopes that the Planning Commission will see fit to recommend this to the City Council and they will end up passing it so that a year from now they can implement their Farmer’s Market. He said he was concerned about one thing in the staff report. The one that says they will need to enumerate how they are satisfying all these different things, like visual access, parking, so on and so on. He said he’s relatively confident they can do it but whether they can write it – they don’t have writers and if they have to hire an attorney to write that application for them, that might be somewhat of a disadvantage... but they might just have to overcome it. He ended saying he encourages them to recommend this to the City Council.

## **QUESTIONS OF YOUNT:**

**What’s your take on actually calling out specific months (such as May to October) as opposed to just giving a specific duration of time?** We would probably be happier if it said “April to October” but I’m satisfied with May to October. That would fulfill all the requirements that we currently have. We have a strawberry vendor that works within the 30 day requirement. We also have a Christmas tree vendor that works within the 30 day requirement. If we could have the six months – seven would be better – but I don’t think that’s a critical need.

**Do you have concerns with dealing with traffic that might be coming in and out of the grange during the market on Hwy 99?** No – because we have entrance and egress as it stands and we have to deal with that during the Christmas tree season and the strawberry vending season as it is and haven’t had any particular complaints about that.

## TESTIMONY AGAINST

Mr. Stan Baumhofer, PO Box 230421, Tigard 97281, President of the Tigard Area Farmers Market at 12950 SW Pacific Hwy, said he signed up as “against” the proposals, not so much that he’s against anything that is proposed in the current code, but more the concept is that the more regulations you provide, the less chance a new business has of starting. His testimony is as follows: We have no objection to the grange having a market or any other body – so far as we’re concerned – the more the better. Like a gas station on 4 corners. Some of the things being considered should include a definition of what a Farmer’s Market is. To make it easier on staff so that if someone comes to the counter, there should probably be a definition of what’s a “bazaar,” and what’s a “food cart”, what’s a “Farmer’s Market,” what’s a “garage sale” – so there’s a definition as to where this potential applicant falls into your codes here. Also – considering whether it’s a business for profit or a business not for profit. We started ours as a civic event and a venue for other non-profits to come at no charge by the market to display whatever they had – the Boy Scouts, the Chamber, the Red Cross Blood Drive, or the City itself, when it’s promoting an issue, we’re glad to have you there at no charge – cause that’s what we’re all about. We’re run by volunteers – we do hire a manager for the actual market – I’d like to introduce Pat Benson here. She is our Market Manager.

Whether the organization is a profit or non-profit should be of some concern. If Landmark Ford came in and said they wanted to have a market in their parking lot on Saturdays - that might be a separate concern or issue as to whether in comparison to a non-profit such as ourselves who are here for a civic purpose. We are registered with the Oregon Corporation Commission as a tax-paying corporation and we file a tax return every year. If we were to get to specific issues here I have a couple points. Specifically: the code exempts markets and yet you’re trying to put allowances for temporary uses. If you want to talk about a timeframe in the context of running a market, I think it should say something like “less than a year.” That way you don’t have to worry about it being May 10<sup>th</sup> or May 12<sup>th</sup> or May 20<sup>th</sup> or something that specific. So you say less than a year – are you expecting us to come in every year and pay a new fee each time we renew our license? Is this code intended just to generate some more revenue for the City and therefore run up the expense of the Market itself? Limiting the type of products to be sold is another can of worms because – where do you stop – or where do you start on the different types of items to be sold. And if we do need approval every year, would you expect a fee from us? As to a new market starting and having to do a lot of studies... a “traffic study” – obviously we want to be concerned about the traffic but if you require so many studies – they’re spending 4, 5, 7, 8, \$10,000 just to go into business – they’re never going to go into business. That is contrary to what I think the City should be doing.

We’ve had over 75,000 people at our markets this summer – we compete with the Balloon Festival. Signage is an important thing for a market to succeed. What we would like to have is a permanent sign that says “This is the Home of the Tigard Area Farmer’s Market” so

people could contemplate 12 months of the year where we are and where we're going to appear when the market products come into vogue.

## **QUESTIONS OF MR. BAUMHOFER**

**With respect to the timeframe - is May to October as enumerated in the statute sufficient? Is it better to make it April to October as Mr. Haagen suggested, or is it best to make it a range of 6 months, or 7 months, in terms of how you're going to operate and when you're going to operate?** That pretty much hinges on what your product is going to be. If you're going to sell something that's winter month oriented, you require during that time of year and that's why I say you can't guess correctly and fit all... one size doesn't fit all. We found that those six months from the middle of May to the end of October fits the kind of product that we are focusing on. That might not always be true for us or some other market.

**So are you suggesting that we change it to be a range of a number of months to give that kind of flexibility?** With any 12 month period I think would be the flexibility that would work best.

At this point, President Inman asked if anyone else was in the audience who wished to testify. There were none.

## **QUESTIONS OF STAFF**

**Regarding the criteria – they could tend to lean toward being onerous... such as letter “C,” the traffic study. It could be a very expensive endeavor. That and “D,” documentation that there is no adverse off-site impacts etc. How do you achieve that without paying consultants, and experts, and studies? I do see that, depending on how this is interpreted, you could end up spending thousands of dollars documenting something. Is there a way to soften the language so an applicant can address their plan and these concerns and then the planning director or somebody can require further documentation if they deem it necessary - to sort of allow somebody to “get in the door”?** Pagenstecher: Not every site will have the same set of problems. It's entirely appropriate to attempt to make these standards achievable by non-profits who are doing something maybe once a week.

**I'd like a common sense approach – a less onerous approach. We need to take another look at these 5 criteria of 18.785.040 No. 6. And come up with a way to get to what you're talking about because I don't think the language that's in there now, gets there. Can you wordsmith this so that the goal is workable – allowing permitted uses for both of these entities? Yes – we can certainly do that. We have a few months until May to work this out.**

President Inman asked for a general consensus from the Planning Commission. If I'm hearing this correctly, we'd like to go back and address these approval criteria, see if we can soften them up, get more of a sliding scale – something in there that's a little more potentially "user friendly." Is that correct? The Commission concurred. Commissioner Vermilyea added one thing that he wanted to be specific criteria – and that would be a call out for hours of operation.

**So the way it's written right now the modification is good for one year? So would they come in every year for a modification?** Yes – they would renew it each year. **What are the fees associated with that?** Currently non-profits have no fees for renewal.

## **PUBLIC HEARING CLOSED**

## **DELIBERATION**

The commission decided to continue this meeting and deliberations to November 2<sup>nd</sup>.

## **6. OTHER BUSINESS – None.**

## **7. ADJOURNMENT**

President Inman adjourned the meeting at 8:50 pm.

  
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Doreen Laughlin, Planning Commission Secretary

  
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ATTEST: President Jodie Inman