



City of Tigard

Tigard Business Meeting – Agenda

TIGARD CITY COUNCIL LOCAL CONTRACT REVIEW BOARD (LCRB)

MEETING DATE/TIME: May 12, 2009 – 6:30 pm Study Session; 7:30 p.m. Business Meeting
MEETING LOCATION: City of Tigard – Town Hall, 13125 SW Hall Blvd., Tigard, OR 97223

Mayor Dirksen called the meeting to order at 6:30 p.m.

Roll Call:

<u>Name</u>	<u>Present</u>	<u>Absent</u>
Mayor Dirksen	✓	
Council President Wilson	✓	
Councilor Buehner	✓	
Councilor Henderson	✓	
Councilor Webb		✓

Staff Present: City Manager Prosser, Assistant City Manager Newton, Community Development Director Bunch Engineering Manager McMillan, Public Works Director Koellermeier, City Engineer Duenas, and City Recorder Wheatley.

- **EXECUTIVE SESSION:** The Tigard City Council went into Executive Session at 6:30 p.m. under ORS 192.660(2) (e) to discuss real property transaction negotiations.

Executive Session concluded at 6:54 p.m.

- **STUDY SESSION**

Track 2

- Discuss Naming the City-Owned Residence and Property at 13335 SW Hall Boulevard

Public Works Director Koellermeier introduced this agenda item. Council President Wilson said he had a concern that naming the property the Fanno Creek House might cause confusion because of another property similarly named in the area. After discussion by the City Council, the majority of the members present indicated their preference for naming this property the Fanno Creek House.

Track 3

- Status of Street Maintenance Fee Public Outreach

City Engineer Duenas reviewed the public involvement plan and the schedule of information and communication events planned. He plans to return with a final report on the Street Maintenance Fee Public Outreach results on July 21, 2009. Council discussion followed with comments on the estimates contained in the booklet prepared explaining the street maintenance fee. There were statements about the good quality of the booklet.

TIGARD CITY COUNCIL/LCRB MINUTES– MAY 12, 2009

Track 4

➤ Administrative Items

- National League of Cities Prescription Program – Assistant City Manager Newton reviewed a memorandum distributed to the City Council noting it looks as if this program is something that could be made available to residents of the City of Tigard. Upon suggestion by Councilor Henderson, Mayor Dirksen said he will visit with the League of Oregon Cities to determine what they know about this program. After discussion, Assistant City Manager Newton advised she would gather more in-depth information about this program and follow up with the City Council.

Track 5

- City Council members agreed to schedule a Team Building/City Council groundrules facilitated session.

Track 6

- City Council members agreed to setting up a dinner meeting with Senator Burdick and Representative Galizio after this Legislative Session adjourns.
- City Council members talked about scheduling a future agenda item to consider continuation of the Fifth Tuesday meetings. The City Council agreed to hold a Fifth Tuesday meeting on June 30, 2009.
- Logistics of the upcoming joint meeting with the Lake Oswego City Council was discussed. The meeting will be preceded with a tour of selected Tigard-area sites followed by a dinner at 6:30 p.m. The meeting will begin at 7:15 p.m.
- Councilor Henderson advised of his desire to explore a Department of Sustainability. After brief discussion it was determined that Councilor Henderson and Public Works Director Koellermeier would meet to discuss some ideas. A report to the City Council will be scheduled.
- Councilor Buehner noted the need for regular updates and discussion with the City Council regarding the Urban and Rural Reserves activity. Regular briefings will be scheduled on the City Council agendas.

1. BUSINESS MEETING

- 1.1 Mayor Dirksen called the City Council & Local Contract Review Board meeting to order at 7:36 p.m.
- 1.2 City Council present: Mayor Dirksen, Councilors Buehner, Henderson and Wilson
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports: None
- 1.5 Call to Council and Staff for Non-Agenda Items:

Note of Postponement – A study session was scheduled after the business meeting on *Proposed Park Bond Voter Attitude Survey* (Item No. 12 below) – this item will be rescheduled.

Public Hearings tonight: After brief discussion, City Council members decided to conduct the public hearing listed as Agenda Item No. 8 before the hearing listed as Agenda Item No. 7.

TIGARD CITY COUNCIL/LCRB MINUTES– MAY 12, 2009

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2. PROCLAMATIONS

- A. Mayor Dirksen proclaimed May 17-23, 2009, as Emergency Medical Services Week.

Representatives from Metro West Ambulance spoke a few words of appreciation for the opportunity to serve the community. Mayor Dirksen was presented with a plaque.

- B. Mayor Dirksen issued a proclamation to Adopt the Headquarters and the Headquarters Company 41st Brigade Combat

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3. CITIZEN COMMUNICATION

Tigard High School Student Envoy Alexa Kanbergs gave her final report for the school year regarding activities at Tigard High School. A copy of the report is on file in the City Recorder's office. She introduced next year's Associated Student Body President and Student Envoy, Taylor Friesen

City Council considered a resolution to Acknowledge and Commend Alexa Kanbergs for Her Efforts as the Tigard High School Student Envoy to the City of Tigard – Resolution No. 09-27

A RESOLUTION ACKNOWLEDGING AND COMMENDING ALEXA KANBERGS FOR HER SERVICE AS THE TIGARD HIGH SCHOOL STUDENT ENVOY TO THE CITY OF TIGARD

Motion by Council President Wilson, seconded by Councilor Buehner, to adopt Resolution No. 09-27.

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Wilson	Yes
Councilor Buehner	Yes
Councilor Henderson	Yes
Councilor Webb	Absent

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Mayor Dirksen reviewed the following Consent Agenda:

4. CONSENT AGENDA:

- 4.1 Approve City Council Minutes for March 24, April 14, and April 25, 2009
- 4.2 Receive and File:
 - a. Council Calendar
 - b. Tentative Agenda
- 4.3 Withdraw the City's Participation in the Tualatin Basin Water Supply Project (TBWSP) and Terminate the City's Membership in the Joint Water Commission (JWC)
- 4.4 Approve Intergovernmental Agreement between the Cities of Beaverton, Tigard, and Washington County Regarding Barrows Road and Barrows Road Bridge
- 4.5 Reappoint Tony Tycker to the Tree Board – Resolution No. 09-28

A RESOLUTION RE-APPOINTING TONY TYCER TO THE TREE BOARD

TIGARD CITY COUNCIL/LCRB MINUTES– MAY 12, 2009

- 4.6 Approve Intergovernmental Agreement with Washington County for Right-of-Way Services on the Greenburg Road/Highway 99W Main Street Intersection Project – Resolution No. 09-29

A RESOLUTION OF THE CITY COUNCIL APPROVING AN AGREEMENT WITH WASHINGTON COUNTY FOR RIGHT-OF-WAY SERVICES ON THE GREENBURG ROAD/HIGHWAY 99W/MAIN STREET INTERSECTION PROJECT

Motion by Councilor Buehner, seconded by Council President Wilson, to approve the Consent Agenda.

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Wilson	Yes
Councilor Buehner	Yes
Councilor Henderson	Yes
Councilor Webb	Absent

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5. DISCUSSION WITH REPRESENTATIVE LARRY GALIZIO -- LEGISLATIVE BRIEFING

Representative Galizio advised that from his perspective the Mayor's new role with a more visible presence at the state capitol has been a useful and wise investment. Things happen quickly during the legislative session and there is a need for people "to make their case." The Mayor's representation for the City has provided an important perspective, which has been good for the citizens of Tigard.

Briefing highlights included:

- Budget – On Friday, May 15, the May revenue forecast will be published. This will provide an update on current status and indicate projections. From this information, the legislators will attempt to construct the budget for the 09/11 biennium. The March forecast indicated a \$3.1 billion decrease. Projections now are that there will be a \$4.4 billion shortfall. Every state agency has been charged to make a 30 percent reduction (listed by priorities) in the event it is needed. Representative Galizio said he did not believe 30 percent reductions will be made; however, there will be severe cuts. Difficult decisions will become necessary.

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- Public education, human services, and public safety utilize 94 percent of the state's General Fund. The State Economist advised that to maintain services at the current level, \$17.1 billion is required, and it appears there is a shortage of about \$4-plus billion. This translates to severe cuts to all those areas funded by the General Fund.

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- New ways of doing things along with attempts to raise revenue will be forthcoming.

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- Transportation – The Mayor has been a visible presence in discussions on transportation. The Oregon Transportation Commission will adopt, by rule, to establish greater flexibility in the use of the federal funding (\$20-24 million). There will be monies available for planning. Representative Galizio said his and Senator Burdick's offices will work aggressively to secure some of this funding.

TIGARD CITY COUNCIL/LCRB MINUTES– MAY 12, 2009

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Mayor Dirksen said this was good news and if there is any way that City of Tigard officials can be of assistance, to let us know.

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Councilor Buehner noted that the federal stimulus money is being released through the Oregon Department of Transportation (ODOT). One of the concerns has been that ODOT will be inundated with all of the proposals and projects creating an administrative bottleneck. Representative Galizio responded that the stimulus money is held in about one hundred different areas. The Governor's office is working aggressively attempting to procure funding and determine how to make the most effective proposals. There is no simple answer other than "to stay on top of it and work together."

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Council President Wilson acknowledged receipt of a survey from Representative Galizio's office. The City of Tigard has several things we would like to start working on at the state level. Some do not require money. Council President Wilson referred to the Transportation Planning Rule and the intent to make transportation system planning work with land use planning, so the transportation systems are not overwhelmed by new development. ODOT has been routinely using the Rule as a way to prevent us from achieving many of our objectives regarding the Downtown and the Tigard Triangle. These same objectives are supported by Metro as a general land use scheme. ODOT has been reluctant to spend any money around the Tigard area and they have not been investing in facilities. A number of jurisdictions in the region are banding together to talk to Metro about this situation.

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Council President Wilson said the City of Tigard is concerned about the difficulty of getting new railroad crossings. A new crossing would help us quite a bit on Highway 99W. He said he did not know if there are federal regulations that would prevent ODOT from granting new crossings; however, this is a conversation that the City would like to start with ODOT.

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Council President Wilson said the City of Tigard supports the gas tax increase. We do have concerns about how the gas tax monies will be allocated.

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Representative Galizio advised that he, Mayor Dirksen and City Manager Prosser have been discussing the gas tax increase and allocation.

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Councilor Buehner said she brought up the issue at the Legislature that ODOT has not updated its allocation formula for various districts for quite a number of years. In the intervening period, District 1 has grown significantly with no formula adjustment to reflect this growth. She reported the Majority Leader was surprised. Councilor Buehner also mentioned this to Senator Burdick. She asked if Representative Galizio could follow up on this to see if it could be added to the transportation package so it is updated when other areas of the budgeting allocations are updated. This impacts our ability to do what is needed. It also negatively impacts developers in the community.

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Mayor Dirksen noted that the League of Oregon Cities has started a dialogue with stakeholders across the state. An event for this purpose will be held in the Portland area in July. The question is: How is the

TIGARD CITY COUNCIL/LCRB MINUTES– MAY 12, 2009

relationship between cities and the state? Wherever you go in the state, ODOT is the first thing everyone wants to talk about. One of our major connections with the state is when we need money for transportation projects. The process that is used does not function well. The legislature, in the next year or two, might be asked to look at this.

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Representative Galizo said he has heard similar reports about the ODOT process. Mayor Dirksen said more than just a second look at the formula might be needed. The processes probably worked a long time ago when the state was largely rural, but as it has become more urbanized, the processes no longer work as well. Oregon is likely not the first state to have gone through this and there are probably examples of how funding decisions can be changed.

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6. INFORMATION PUBLIC HEARING – CITY COUNCIL TO CONSIDER ADOPTING THE CITY OF TIGARD’S 20-YEAR FACILITIES PLAN

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- a. Mayor Dirksen opened the public hearing.
- b. Public Works Director Koellermeier presented the staff report. A copy of the staff report and the PowerPoint presentation reviewed by Consultant Paul Boundy are on file in the City Recorder’s office.

Mayor Dirksen verified that the figures presented in the presentation have not changed since the previous briefing.

- c. Public Testimony: None
- d. Staff Recommendation: Adopt the proposed resolution.
- e. Council Questions

Discussion on adoption and implementation was held. The plan should be reviewed every five years to determine if changes should be made.

Council President Wilson said we need to start planning for financing the proposed facilities to provide services needed in the future.

Councilor Henderson asked whether sustainability was incorporated into the plans for future facilities. He said he understands it is well worth the cost and effort to provide for sustainable buildings. Mr. Boundy said the master plan report does not specifically address sustainability; although, it probably should have a statement to that effect. The state has a requirement for sustainability and it would do the City well to instigate a minimum level of sustainability for its facilities.

Mayor Dirksen asked if the City Council would want to consider a policy to meet a LEEDs (Leadership in Energy and Environmental Design) standard; i.e., the “Gold” level. Council President Wilson commented that we have language to that effect in our Comprehensive Plan. Councilor Buehner referred to the new fire station as an example of the Gold Standard for LEEDS.

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- f. Close Public Hearing

TIGARD CITY COUNCIL/LCRB MINUTES– MAY 12, 2009

g. Council Consideration: Resolution No. 09-30

Motion by Councilor Buehner, seconded by Council President Wilson, to adopt Resolution No. 09-30.

RESOLUTION NO. 09-30– A RESOLUTION APPROVING TIGARD’S 20-YEAR CITY FACILITY PLAN

Councilor Buehner asked City Attorney Ramis if there was a need to amend the motion to address the issues of sustainability as contained in the Comprehensive Plan. City Attorney Ramis said the City Council needs to make a determination whether it wants language in this plan or whether it is relying on the language in the Comprehensive Plan. Mayor Dirksen said that Council President Wilson noted this language was already in the Comprehensive Plan, so it is not needed to be addressed in this document.

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Wilson	Yes
Councilor Buehner	Yes
Councilor Henderson	Yes
Councilor Webb	Absent

(City Recorder’s Note: The City Council conducted the public hearing listed as Agenda Item No. 8 at this point in the Agenda.)

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7. LEGISLATIVE PUBLIC HEARING – PROPOSED DEVELOPMENT CODE AMENDMENT REGARDING TREE REMOVAL (DCA2009-00001) – COUNCIL GOAL #1B – UPDATE THE TREE CODE TO MEET COMPREHENSIVE PLAN

REQUEST: To amend the current Tigard Development Code to clarify how an applicant for development is to demonstrate compliance with the City’s stated preference for tree protection over removal wherever possible. The complete text of the proposed Code Amendment can be viewed on the City’s website at http://www.tigard-or.gov/code_amendments. **LOCATION:** Citywide **ZONE:** All City Zoning Districts **APPLICABLE REVIEW CRITERIA:** Community Development Code Chapters 18.380, 18.390, and 18.790; Comprehensive Plan Policies 1.1.2, 1.1.3, 1.2.1, 1.2.6, 2.1.2, 2.1.14, 2.1.24, 2.2.1, 2.2.6, 2.3.1, 2.3.6, 6.1.6, 6.2.3, 6.2.4, and 6.2.5; Metro Functional Plan Titles 1, 2, and 3; and Statewide Planning Goals 1, 2, and 6.

Mayor Dirksen opened the public hearing.

Motion by Mayor Dirksen, seconded by Councilor Buehner, to continue the public hearing to a date certain of July 14, 2009, to give the City Council an opportunity to review new information received.

Council President Wilson referred to two maps the City Council members received tonight and asked for clarification. Attorney for the applicant, Mr. Phil Grillo, said he was anticipating he would have an opportunity to explain these when he testified. The maps go with the letter he submitted tonight; however, they are not directly referenced in the letter. What these maps mean to show is that much of the vacant and buildable land inventory is also sensitive lands.

TIGARD CITY COUNCIL/LCRB MINUTES– MAY 12, 2009

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Wilson	Yes
Councilor Buehner	Yes
Councilor Henderson	Yes
Councilor Webb	Absent

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8. LEGISLATIVE PUBLIC HEARING – PROPOSED DEVELOPMENT CODE AMENDMENT REGARDING SENSITIVE LANDS PERMIT REQUIREMENTS (DCA2008-00005) TO REMOVE CRITERION THAT PROHIBITS PATHWAYS LOCATED WITHIN OR ADJACENT TO THE FLOODPLAIN TO BE BELOW THE ELEVATION OF THE ANNUAL AVERAGE FLOOD (18.775.070.B.5)

REQUEST: To remove Section 18.775.070.B.5 of the Sensitive Lands Permit requirements which reads:

"5. The plans for the pedestrian/bicycle pathway indicate that no pathway will be below the elevation of an average annual flood;". Removal of this section would allow pathways to be installed in areas which would benefit the public's access to and educational appreciation of ecological areas. On April 6, 2009, the Planning Commission recommended the City Council replace the subject section with "Pedestrian/bicycle pathways within the floodplain shall include a wildlife assessment to ensure that the proposed alignment minimizes impacts to significant wildlife habitat." **LOCATION:** Citywide. **COMPREHENSIVE PLAN DESIGNATION:** All City Comprehensive Plan Designations. **ZONE:** All City Zoning Districts. **APPLICABLE REVIEW CRITERIA:** The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197; [Goal 1, Public Involvement; Goal 2, Land Use Planning; Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces; Goal 7, Areas Subject to Natural Hazards; and Goal 8 Recreational Needs]; any federal [FEMA] or state statutes or regulations found applicable; any applicable METRO regulations; [Metro Code Sections 3.07.300, Urban Growth Management Functional Plan; and Title 3, Water Quality and Flood Management]; any applicable Comprehensive Plan Policies; [Goal 1, Public Involvement; Goal 2, Land Use Planning; Goal 7, Hazards; Goal 8, Parks, Recreation, Trails, and Open Space]; and any applicable provisions of the City's implementing ordinances [TDC 18.130, 18.380, 18.390 and 18.775].

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- a. City Attorney Ramis reviewed the hearing procedures. City Attorney Ramis added there might be many issues for the City Council to resolve this evening, he asked the City Council that when it directs the staff to prepare the final ordinance that they give staff some additional time to prepare the final version of the ordinance with accompanying findings for the Council's consideration. This might require a continuance of the hearing.
- b. Declarations or Challenges: None

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- c. Mayor Dirksen opened the public hearing.
- d. Associate Planner Pagenstecher presented the staff report.
- This application was brought forward by the Community Development Department.
 - The standard in question prohibits trails to be below the average annual flood. It was perceived that this might prohibit trail alignments for the Fanno Creek Park plans.

TIGARD CITY COUNCIL/LCRB MINUTES– MAY 12, 2009

- The proposal was brought to the Planning Commission. Substantial public comment was received with the primary issues being wildlife protection and water quality protection.
- There were a number of comment letters from agencies and interested parties.
- The Planning Commission decided this should be aired more broadly to address the issues raised.
 - Staff developed an options paper (included in the City Council meeting packet) to provide for wildlife protections in lieu of the elevation standard.
- The option (3.c) recommended by the Planning Commission removes, as originally proposed, average annual flood elevation and replaces it with a wildlife assessment requirement. This pertains to floodplains throughout the whole City.

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Councilor Buehner referred to the communication received today from the Oregon Department of Fish and Wildlife. She said she understands their concern, but it does not appear that they were aware we were going to include a wildlife assessment. Associate Planner Pagenstecher said he had a conversation with Fish and Wildlife Habitat Biologist Mischa Connine and he noted that she referenced the wildlife assessment in her letter. The letter does not comment on the efficacy of the standard that currently exists and does not give any credit to a wildlife assessment requirement. Associate Planner Pagenstecher said he believes the Department has a general stance against incursions into sensitive areas.

Councilor Buehner recalled a hearing a number of years ago regarding the Maplecrest subdivision. One of the proposals was to build a path to a bridge that the developer would build over a creek and have it continue to an existing path on the other side. Concerns were raised regarding ADA issues. Associate Planner Pagenstecher said ADA issues were not raised for this application. The trail for Maplecrest was a small neighborhood trail in a riparian area, but not in a floodplain. The trails to be accommodated in the floodplain are regional trails (in this case, the Fanno Creek trail), which has a standard design of 12-foot widths rather than a three-foot wide soft path. The main question is can you balance access to nature and recreation with resource (wildlife) protection?

Councilor Buehner referred to an area of the trail in Beaverton that floods regularly. Has this issue come up in the context of their portion of the Fanno Creek trail? Associate Planner Pagenstecher said he has not consulted with Beaverton but added that Tigard Public Works staff members say that inundation occurs on average six times a year for one to several days. This represents an inconvenience, but people generally stay away when the areas are flooded. The maintenance associated with those inundations has not been a significant issue.

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Councilor Henderson asked about barring access during times of flooding and if there was any special construction needed for the sensitive areas? Associate Planner Pagenstecher said this proposal does not address the questions. Usually people use common sense and stay away from flooded areas.

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Council President Wilson said the intent of the wildlife analysis, as he understands it, is to try to minimize negative impacts to wildlife. He said he assumed an analysis would not be done until there was a project proposal. The intent is not to stop the project, but to determine whether impacts could be minimized. He cited a potential example of a typical conflict along Fanno Creek with beavers and their tendency to raise the water level. There is an inherent conflict between human use and the use of by animals. At some point, the space will need to be shared. Council President Wilson said he is not sure what the intent of the wildlife assessment is. The stated intent is to minimize; at some point someone has to make a value judgment -- who makes this decision and on what basis?

TIGARD CITY COUNCIL/LCRB MINUTES– MAY 12, 2009

[8:55:42 PM](#)

Associate Planner Pagenstecher agreed with Council President Wilson in that this is a balancing act. You can design around the wildlife habitat; the important thing is to know what wildlife resources exist in the subject area. Currently we do not have any regulatory tools to ensure wildlife protection. Council President Wilson responded to Associate Planner Pagenstecher's explanation observing that, apparently, this is a resource for the decision makers but it does not necessarily impose any particular approval criteria; it is simply information that the decision makers can use. Associate Planner Pagenstecher affirmed that the designer could use the information to change alignment accordingly or use certain construction techniques; i.e., permeability or an elevated boardwalk to address wildlife habitats.

d. Public Testimony

- Eric Lindstrom, 6801 SW Canyon Crest Drive, Portland OR 97225 testified. Mayor Dirksen advised Mr. Lindstrom the City Council received his comments given to the Planning Commission. Mr. Lindstrom acknowledged his comments are on record and said he needs to address what has been "put on record." He has exception to make to one of the major points regarding tonight's proposal.

He said, "It states categorically that this change in the code will not impact negatively...the wildlife protection in that region...and that's categorically not true." This will affect sensitive areas because it brings pathways into areas that are not currently allowed. He asked the City Council to recognize that while this is being brought to the City Council as a problem related to a plan that the City is advancing, there are other properties coming online over the next several years this proposal will affect. Mr. Lindstrom said it was interesting there is a proposal that cannot be implemented because "it runs into its own code." He said the proposal to change the code does not make sense to him and does not sound like a good process.

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Mr. Lindstrom commented that this ordinance would apply to the property from Bonita Road to Durham Road. He said the City Council would be opening a "Pandora's box" in that area even if a recreational problem is solved "here." A serious watershed problem might be created downstream in Tigard. He said he is hoping the City Council will send this back to the Planning Commission and planners and ask them to come up with a more creative process to allow the City to implement as much of its plan as needed while at the same time preserve the standard that is "serving you so well in the stewardship of your watershed resources."

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- John Frewing, 7110 SW Lola Lane, Tigard, OR advised he sent in written comments to the City Council this afternoon that he will summarize and make additional comments. He said Council President Wilson raised a good point: How do you balance the desire to have people interact with natural areas of the City and at the same time protect the wildlife? The City has not done a general citywide plan determining what areas should be dedicated to fish/wildlife and areas dedicated to people/recreation. He said he is critical of the Forest Service because they try to do all activities in every acre and he is concerned that the City is using that same approach. There needs to be plan to zone for areas of wildlife and areas of recreation and segregate these areas. Previous comments noting concern for wildlife stemmed from the fact there would be additional trails. We are carving up the wildlife areas into small pieces. National and regional studies have found that the size of the

piece of natural area is key to making it successful for wildlife. For that reason, Mr. Frewing says he thinks there needs to be a different approach to trail location in the City of Tigard.

Mr. Frewing clarified comments he sent in earlier. He said this change in regulation has not been coordinated with Metro. Coordination is called for in Tigard's Comprehensive Plan and coordination is defined in state law and state rules requiring affected agencies be given an opportunity to review and to incorporate their comments. Metro has regulations dealing with this type of application. Metro's Title 13, Nature in Neighborhoods, calls for protection of sensitive lands including those in the 100-year floodplain. In Tigard and Washington County, Title 13 says that the Tualatin Basin Partners developed an alternative scheme for Nature in Neighborhoods. There are additional requirements in Title 13 for every jurisdiction in the Metro area. One of these additional requirements states that the cities shall have clear and objective standards for protection of these sensitive lands including significant habitat areas. Mr. Frewing said he did not think a wildlife assessment was a clear and objective standard and needs more study and clarification.

Mr. Frewing referred to 18.775.050 M regarding non-residential construction in 100-year floodplains, there is a requirement that the base elevation/floor of any structure shall be above the 100-year floodplain. Any structure below that level shall be water proofed and made flood resistant. He said he thinks this section calls for trails to be above the 100-year floodplain and this is the reasonable standard rather than the annual average flood or the more general call for a wildlife assessment.

- Sue Beilke, 11755 SW 114th Place, Tigard, OR advised she is a Board member of Fans of Fanno Creek. The Fans have many members who work hard to protect and restore natural resources. She said they believe that removal of this part of the Code should not occur for a number of reasons. One section of the Code addresses annual average flood and they have not received a good definition of average annual flood. The answer from staff was that it is about the same as a second year flood. She advised that she and Mr. Frewing have done quite a bit of investigation into what they thought would be the average annual flood. She said this information is contained in the material distributed to the City Council. They got this data from the Durham Road gauge, which is actual hard data.

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Ms. Beilke referred to the CFS of Fanno Creek. They have information that the annual average flood is increasing, which makes sense due to what has happened with urban development. This will affect where trails are placed. If this section of the Code is removed, there is the potential to put trails in areas where we would not necessarily want them. She referred to the problem of annual flooding and bank erosion. She cited Attachment C of her material, which is a picture of Fanno Creek Trail that has to be removed at a great cost to the City. She believes this piece of the trail is currently in the average annual flood and referred to photographs supporting her position. Councilor Buehner said this is one of the reasons that Clean Water Services is going to re-meander the creek and significantly reduce the odds of flooding in this area. The City is cognizant of this situation. This project will significantly change the dynamics of what will happen in the park.

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Ms. Bielke referred to comments in the packet from Facilities/Parks Manager Martin that there are no costs to trail maintenance. She contended there are many costs and her photos represent an example of a huge cost to the City. The trail is not going to be replaced there.

There are other costs to trails. For example, asphalt erodes resulting in stream bank. Many times, in average annual floods, people go around the trail, step on the adjacent ground, trample plants and compact the soils. This type of situation results in costs that we have to pay for as part of maintenance of trails and this has not been addressed.

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Ms. Bielke referred to the staff's statements regarding why this part of the Code was put into place (Page 3 of her comments).

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Ms. Bielke disagrees with staff when they refer to some new policies in the Comprehensive Plan that removal of this section of the Code would meet. You cannot pick and choose your policies. There are new policies in the Code that removal of this section of Sensitive Lands Code would not meet. For example, Policy 6 states that the City shall acquire and manage some open spaces to solely provide protection of natural resources. Policy 17 (another new policy) is that the City shall maintain and manage its parks and open space resources in ways that will preserve, protect, and restore natural resources including rare or state and federally listed species. She said she does not think we have done an adequate analysis of how removal of this section of the Code would address those policies and how it would affect our natural resources. We need to make sure we are meeting all of our policies in our Comprehensive Plan.

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Ms. Bielke commented on the wildlife assessment. She agreed with Mr. Frewing's comment that a wildlife assessment needs to be defined. There are questions that need to be addressed. Her recommendation is that do a biological assessment as many other agencies do. This would include a review of the habitat and the species that might be in the area and perform a qualitative and quantitative analysis regarding how a project might impact the habitat and the species. Another policy is needed in the Comprehensive Plan to increase our baseline information on habitat in Tigard.

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Ms. Bielke asked the Mayor and Council to have staff do further analysis before this section of the Sensitive Lands code.

e. Staff Recommendation

Associate Planner Pagenstecher responded to Mr. Lindstrom's comments that the staff report said that no impacts would result from removal of the standard. Staff listened carefully to public comment and included the wildlife assessment criteria in lieu of that standard of elevation. Staff agrees that impacts will occur and should be minimized. One could argue that it is not clear and objective, but it is also a performance standard in that staff wants to minimize impacts to the wildlife resource.

Mr. Pagenstecher said the City is not alone in protecting the resource. We rely on other agencies permitting processes; i.e. DSL and CWS. The City also has direction from the Comprehensive Plan and the Transportation System Plan to provide for a regional trail. The Development Code ensures that development provides for a pedestrian/bicycle pathway in accordance with adopted plans. There is a lot of support for including pathways in floodplains. As both Mr. Frewing and Ms. Bielke mentioned, we do not want to adversely impact natural resources anymore than we have to, so the issue is one of balancing these two things as our Comprehensive Plan seeks to accomplish.

Staff thinks the Code amendment is more effective in protecting the resource than the previous Code criteria. We do not suffer any loss by taking out the elevation standard.

Community Development Director Bunch noted Mr. Frewing's reference to 18.775 about habitable structures and the way they are to be sited to avoid flood damage. A pathway is not necessarily a habitable structure. Community Development Director Bunch concurred with Associate Planner Pagenstecher's statement that Tigard is not alone in the pathway siting "business" or the management of these resources. Clean Water Services is involved. We complied with Title 13, Nature in the Neighborhood, with our Sensitive Lands ordinance. The City undertook efforts to coordinate this post-acknowledgement plan amendment with the Oregon Department Land Conservation and Development, which provides a clearinghouse for comment.

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Community Development Director Bunch referred to the issue raised regarding Comprehensive Plan policies. This is the opportunity for the City Council, as the legislative body, to weigh the policies that it decides are applicable. The City Council can choose a policy to emphasize over others and decide which ones are more important to the community. In this instance, we have pathways, recreation, and wildlife habitat. Council will go through the process, make its decisions, and the staff will develop appropriate findings.

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City Attorney Ramis pointed out that at least one of the witnesses indicated that a portion of the testimony offered was new. This is material that staff had not seen before and not discussed previously in public hearings. If this is the case, the City Council might want to consider continuing the proceeding after giving some direction to staff. Then, those arguments and issues can be considered and adequate findings prepared in response. Staff also needs to determine whether it needs to add the additional evidence.

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Councilor Henderson concurred on the continuation.

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Council President Wilson referred to the Willamette Greenway as a statewide goal that requires a greenway trail. This has been in existence since 1973. He asked if staff knew the approximate date the City of Tigard's Sensitive Lands code was adopted. Associate Planner Pagenstecher advised the code was adopted in 2006 and was updated in 2007 for the Nature in Neighborhoods. Assistant City Manager Newton advised she was a City Planner when the first Comprehensive Plan was written. It was around 1983 that the first Development Code written and this included a Sensitive Land section. Council President Wilson said 18.775.080 B 5 implies that a pedestrian/bicycle pathway was previously going to be required and this only speaks to where it would be required.

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Community Development Director Bunch said staff members have reviewed the Development Code and numerous statements in the Code will be cleaned up.

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Council President Wilson said that it appears that we have had the intent to put a trail on Fanno Creek for a long time. At some point 18.775.070 B.5 was probably inserted along with a number of other code provisions dealing with the floodplain. He said he thinks the argument could be made that this language is a mistake because it obviously prevents completing the plan. Mayor Dirksen

said “This isn’t even a rule. It is a statement with regard to an existing plan. I think it’s ironic that No. 4 above it actually requires that any landform alteration within the 100-year floodplain have a pedestrian/bicycle pathway.” Council President Wilson agreed that the wording is contradictory. He said, “We want to build another piece of it now, and we’re recognizing...there’s a problem.” He’s not seeing that this language, as has been suggested from testimony received, was put in the Code to protect wildlife. He said wildlife is an important concern. At some point, we need to have a conversation about wildlife inside the City and what degrees of protection are appropriate.

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Mayor Dirksen asked about coordination with other planning partners and whether there was a need or a requirement for this Code language to be considered by Metro or anyone else before the City of Tigard could consider this change. Associate Planner Pagenstecher advised the staff provided notice to DLCD, Metro and others of the original intent to remove this section of Code. No comment was received. He added that when the options analysis was done, staff contacted Metro to discuss the issue of trail design. Metro provided a useful trail handbook for this kind of situation, to design trails, alignments, and indicate techniques for minimum impact. It is implicitly acknowledged there will be conflicts and that trails will be in sensitive areas. Metro did not say to Tigard that we should not put trails in floodplains or there was an elevation that was relevant. Instead, they provided the City with information about design.

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Council President Wilson asked if there was any precise way to determine the elevation of average annual flood? Associate Planner Pagenstecher said that there is and that Ms. Beilke alluded to a calculation based on observed data in the field. Every reach of stream has variable data. Not all stream sections are measured at the same frequency. For this particular reach of Fanno Creek within the City, he said he did not know if specific measurements were taken. Associate Planner Pagenstecher said he thought there was about a dozen times they could average; however, that was not significant enough to make a determination. The consultants for us were tending to use the two-year flood as a proxy; DSL used this data as well.

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Mayor Dirksen said he recommended that the City Council follow the City Attorney’s suggestion to close the public hearing, continue the matter, and direct staff to produce findings based on what was heard tonight. Council would then consider an ordinance at a later date.

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City Manager Prosser advised the first opportunity to bring this matter back to the City Council would be July 14, 2009.

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City Attorney Ramis suggested that the proceeding be continued. It might be that that the staff will have additional information they might want to present. Therefore, he recommended against closing the hearing. This would not preclude the City Council from giving comments and direction.

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Councilor Buehner requested if the hearing was continued that it be limited to the issues brought forward this evening.

TIGARD CITY COUNCIL/LCRB MINUTES– MAY 12, 2009

[9:32:03 PM](#)

After some discussion, City Attorney Ramis suggested the hearing be continued with the understanding that if the staff introduces new facts or language, there will be an opportunity for the public to address only the new material.

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Councilor Buehner said “we have a long-range plan to provide for access for the public along Fanno Creek.” This is supported by Metro and by all the cities in the region. She said she thinks this is a very important concept. She acknowledged there are people who are concerned about protecting the natural habitat and want to keep people out of areas such as floodplains. Councilor Buehner is very concerned that we maintain an opportunity for the public to use the public parks provided for them and that they have paid for with their tax dollars. They should have an opportunity to see this “wonderful creek that we have that comes through this community...and I want to make sure that our citizens are aware that we are trying to protect their rights to have the opportunity to use the park, while at the same time being sensitive to protecting the park. We are spending very large sums of money to restore the park and the creek the way it was before it was fouled up many, many years ago. There is a middle place. We don’t have to keep the public totally out of its own public park.”

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Mayor Dirksen, with the City Council’s permission, announced he would continue the hearing to the date certain of July 14, 2009, for the purpose of reviewing staff findings and potential comment on any new information.

[9:34:48 PM](#) (break)

[9:48:22 PM](#)

Meeting reconvened.

Mayor Dirksen noted the late hour. New information, both oral and written, have been received by the City Council tonight regarding the public hearing cited in Agenda Item No. 7. He said he thought it best for the City Council to have review and consider this new information before the public hearing is held.

See Agenda Item No. above for the procedures the City Council followed to continue this hearing to July 14, 2009.

9. COUNCIL LIAISON REPORTS: None
10. NON AGENDA ITEMS: None
11. EXECUTIVE SESSION: Not held.

TIGARD CITY COUNCIL/LCRB MINUTES– MAY 12, 2009

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13. ADJOURNMENT

Motion by Council President Wilson, seconded by Councilor Buehner, to adjourn the meeting.

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Wilson	Yes
Councilor Buehner	Yes
Councilor Henderson	Yes
Councilor Webb	Absent

_____/s/ Catherine Wheatley_____
Catherine Wheatley, City Recorder

Attest:

_____/s/ Craig Dirksen_____
Mayor, City of Tigard

Date: July 14, 2009

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