

**Rivergrove City Council Meeting Minutes
November 14, 2018**

CALL TO ORDER AND ROLL CALL

The meeting was called to order at River Grove Elementary School at 6:01 p.m.

Present: Mayor Heather Kibbey, Council President Arne Nyberg, and Councilors Carolyn Bahrman, Brenda Ruble, and Bill Tuttle. City Attorney Bill Kabeiseman was also present. A quorum was declared.

Motion: Councilor Nyberg moved to postpone the Consent Agenda and Public Comment on Non-Agenda Items until the end of the meeting. Councilor Tuttle **seconded** the motion. **It passed 5-0.**

UNFINISHED BUSINESS

1. Continuation of Hearing on Appeal of denial of a development permit application for a duplex at 19232 Pilkington Road.

Prior to detailing the staff report, City Attorney Bill Kabeiseman explained that Council must first discuss whether or not to hold an “on the record” hearing or a *de novo* hearing under the Rivergrove Land Development Ordinances (RLDO) 8.180. The applicant requested that the hearing be “on the record.” Mr. Kabeiseman explained that notice went out for an “on the record” hearing, the RLDO allows for a *de novo* hearing, and one of the residents who has testified has asked for a *de novo* hearing. After discussing the options, City Council decided to hear from the appellant and others about the choice.

Michael C. Robinson, attorney for the appellant, 1211 SW 5th Avenue, Ste. 1900, Portland, Oregon 97204, explained that the appellant asked for an “on the record” hearing because the application has been before the Planning Commission for two hearings. All parties had an opportunity at the initial evidentiary hearing to ask the Planning Commission to keep the record open or continue the hearing. No one did that. There was more than ample opportunity to make a record. The appellant has stated its case in the record and the appellant feels that the opposing parties presented their arguments in evidence during the Planning Commission hearings. Secondly, Mr. Robinson noted that the notices of hearing issued by the city said that it would be “on the record.”

Michael Salch, 5255 Childs Road, Rivergrove, Oregon, was asked by Council why he provided evidence after the deadline. Mr. Salch said that he made a one-word error on page three and change the date on page one. He offered to go back to the original argument with a verbal presentation. Mr. Salch and Mr. Kabeiseman discussed the definition of “evidence” and both agreed that there was no new evidence to present.

City council debated “on the record” and *de novo* and Councilor Ruble pointed out that the notice was “on the record.”

Motion: Councilor Bahrman **moved** that the hearing continue “on the record.” Councilor Ruble **seconded**. The **motion passed 5-0.**

Mr. Kabeiseman read the disclosures for the hearing. There were no *ex-parte* contacts made by the Councilors.

Mr. Kabeiseman then outlined the staff report. Hardship relief for the setbacks of the duplex was granted in 2004 and then again in 2007. Both Mayor Kibbey and Councilor Tuttle served on the Planning Commission in these two years when the original application was presented. This was deemed not a

problem in considering the present application. The hardship relief was granted because of the odd shape of the property, which has 200' frontage on Pilkington Road and 50' frontage on Childs Road. Pilkington Road is considered the front of the property, and with required front and rear yard setbacks of 25' each, any buildable area is eliminated. The Planning Commission denied the new application because the previous approval for hardship relief was still valid, and there is no new hardship. However, according to Mr. Kabeiseman, a new hardship relief is necessary to develop the property. The Planning Commission did not consider the issue of tree removal, as well as the northern neighbor's request that the duplex be moved 8' to the south.

Mayor Kibbey opened the hearing to comments, first from the applicant and then from the public.

Michael C. Robinson, attorney for the appellant, 1211 SW 5th Avenue, Ste. 1900, Portland, Oregon 97204:

Mr. Robinson stated that the 2007 approval was for a 5,330 square foot structure and the current application is for a 3,940 square foot duplex. The hardship relief is the same and the appellant needs a new hardship relief approval with the new plan approval for a smaller structure. Approval criteria is found in RLDO 6.060(b). The RLDO does not prevent a third application for a third hardship relief. The applicant approves of the previous staff report's recommended conditions. Mr. Robinson also explained that moving the structure to the south is contingent upon Clackamas County Department of Transportation's approval for driveway access.

Councilor Ruble asked for confirmation about the number of garage parking spaces and the building height. The new application and site plan show two 2-car garages and a building height of 26'-10'. Mr. Robinson also confirmed a backup space adjacent to the driveways.

Commenting on tree removal, Mr. Robinson explained that the 14" Douglas Fir will be saved and Renaissance Homes will coordinate with the City arborist.

Michael Salch, 5255 Childs Road, Rivergrove, Oregon:

Mr. Salch expressed his concerns about the vehicles parked in the driveway and whether or not the residents will have access to their trunk without stepping out in the Right-of-Way of Pilkington Road. He also communicated the danger of backing into Pilkington Road if visibility is blocked by adjacent parked cars.

Walt Williams, 17900 Canal Road, Rivergrove, Oregon:

Mr. Williams, a planning commissioner, discussed the reasons that the Planning Commission denied the new hardship relief request in July 2018.

Michael C. Robinson, attorney for the appellant:

Mr. Robinson requested a rebuttal. He first explained that Mr. Salch's concerns about the driveways are not germane to the hardship relief request. The county transportation department is addressing the driveway locations. He then addressed Mr. Williams' discussion of the Planning Commission's denial of the duplex. He explained that the applicant has addressed the neighbors' concerns and the RLDO does not preclude a new application for a new hardship relief. Mr. Robinson also explained that the RLDO interpretation Sec. 5.080 dated July 6, 1998 specifies that the "required setback should be based upon the more restrictive interpretation (the one requiring the greater setback)." The more restrictive front-rear orientation would be front and rear being west and east, and the setbacks would equal the entire width of the property.

Mayor Kibbey closed the public record portion of the hearing and the Councilors proceeded to deliberate. Council decided that the applicant would work closely with the north and east neighbors to satisfy landscaping and fencing concerns. Council also decided the sidewalks and curbing would be required on both frontages.

Motion: Councilor Tuttle **moved** to overturn the Planning Commission’s decision and approve the hardship relief based on the conditions discussed that evening. Councilor Bahrman **seconded**. The **motion passed 5-0**.

City Council took a recess for 15 minutes

NEW BUSINESS

1. Type IV Hearing for proposed ordinance 93-2018 regulating tree cutting (City File 2018-01)

City Attorney Bill Kabeiseman explained that the approval of the tree ordinance was a legislative decision. The City Council is acting in making policy, not making a decision on specific criterion. Therefore, the rules for the Type IV hearing are significantly different and there is no concern of bias or *ex-parte* contact. There were no challenges to any member of the council based on conflict of interest and no challenge to the jurisdiction of Council to hear this matter.

Mayor Kibbey commended former and current members of the Tree Ordinance Committee, Jonathan Sweet, Arne Nyberg and Dave Pierce, who have been working on the draft of the ordinance.

Mayor Kibbey opened the hearing for public comment.

Jonathan Sweet, 19416 Tualamere Avenue, Rivergrove, Oregon.

Mr. Sweet noted that he found that the scope of the ordinance was too broad and the record shows that the draft he worked on with the Tree Ordinance Committee was met with a lot of public resistance. Mr. Sweet recommended Council prioritize the issues at hand and focus on the immediate needs of the community. Mr. Sweet noted that he left the Tree Committee because he needed a break and he was frustrated that the Committee spent two years drafting the ordinance with very little progress.

Mary Mann, 5215 Childs Road, Rivergrove, Oregon.

Ms. Mann reminded Council that she is opposed to the ordinance and organized a petition that was signed by twenty residents who were also opposed to the original draft. She noted that the Planning Commission decided to address the concerns of residents who live along the river and the impacts of tree removal in the Water Quality Resource Area and flood hazard zone. She explained that homeowners in the flood hazard zone are affected by tree removal on the river bank and tree cutting in these areas should be regulated for protection of the community. However, Ms. Mann is not in favor of regulating private home owners who live outside of the WQRA and flood zones, who wish to remove trees on their properties. She urged Council to wait until the State of Oregon addresses the regulations outlined in the NOAA Fisheries “Biological Opinion for the Federal Emergency Management Agency’s National Flood Insurance Program in the State of Oregon” before enacting legislation that may need to be overturned. Ms. Mann reiterated that tree removal on city-owned property or tree removal for the development of private land along the Water Quality Resource Area or in the Flood Hazard Zone are the only issues that need to be addressed in the ordinance. Ms. Mann believes that, as a property owner, no one should dictate to her which trees she retains or removes from her property. She is concerned that the Tree Ordinance is too large and too comprehensive and that it overreaches and is not fair to the community. She reiterated that she believes the City should not be regulating privately-owned property.

Mayor Kibbey asked Ms. Mann about the Planning Commission’s proposed tree removal limit of two trees.

Ms. Mann responded that she was not actually satisfied with that choice and she believes that the number of trees the City approves should be zero. She explained that residents should be allowed to cut any or all of the trees on their property with absolutely no input or regulation from the City.

Mayor Kibbey asked Ms. Mann if she was willing to go to the Planning Commission to get permission to remove trees on her property. Ms. Mann stated that she was not willing to seek approval from the Planning Commission.

Councilor Tuttle commented that he saw an issue with Blue-level trees: the ordinance does not clearly state how many blue-level trees may be removed. It just requires the resident to apply for a permit. There is no basis or criterion for approval or disapproval of a blue-level permit. The current ordinance does not stipulate how many trees may be removed each year. That amount would be arbitrary depending on who is doing the approving. In addition, the staff or group that approves the permits is not specified. Mr. Tuttle shared his concern that the three-tree limit is gone and any number of trees may be approved according to this draft.

Mayor Kibbey agreed and stated that it would not be fair to the Planning Commission to not give them guidelines about how to approve or deny a tree removal permit or how many tree removal permits to approve.

Ms. Mann agreed that the draft ordinance is missing specific criteria and is unclear. She cited the example of a tree grove and asked for proof that the removal of a tree in a grove impacts the health of the other trees in the same grove. Councilor Nyberg and Mayor Kibbey explained that it has been proven that removal of one tree in a grove impacts the health and safety of the other trees in the grove. Councilor Tuttle read aloud the definition of “grove” from the ordinance and explained that it needed to be better defined and removed from a reference of the city’s non-existent “Significant Trees and Groves” policies.

Ms. Mann commended the Planning Commission on their decision and their ability to put aside their own personal beliefs to come to an agreement.

Michael Salch, 5255 Childs Road, Rivergrove, OR.

Mr. Salch summarized his written testimony and made six recommendations:

1. He expects the land use decisions that the City makes comply with the City’s Comprehensive Plan. He referenced ORS 197.175 2(d): “If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations.”
2. Mr. Salch pointed out that the Comprehensive Plan requires the City to update a “Tree Cutting” ordinance per Policy 12, Goal 5. The Comprehensive Plan does not make mention of signification trees or groves or the Tree City USA program. Mr. Salch believes any elements not relating to tree cutting do not belong in the ordinance update.
3. Mr. Salch requested that the draft ordinance clearly state that it replaces and repeals the current tree cutting ordinance.
4. Mr. Salch explained that identifying significant trees can be supported by the Compehensive Plan’s Goal 5, Policies 7 and 13. However, Mr. Salch pointed out that the trees may not be “codified,” only identified. The goal should be to identify the significant resources in the City. That process, according to the Oregon Administrative Rule 660-023 should come first and then be incorporated into the Comprehensive Plan, a regulation, or an ordinance. That process may take a long time. It does not need to be a part of an ordinance.
5. Mr. Salch recommended that the City comply with Oregon State Goal 5 and take the inventory of significant trees first before drafting an ordinance.

6. Mr. Salch believes that Tree City USA requirements concerning public trees should not be in the same ordinance that regulates private tree ownership. He is concerned that the draft ordinance does not mention DLCD once, but frequently references Tree City USA.

Mayor Kibbey noted that she hoped the prospective ordinance would not just be a tree cutting ordinance, but would consider tree preservation and mitigation. Mr. Salch reiterated that the Comprehensive Plan states that the ordinance to be updated should be a “tree cutting” ordinance.

Dave Pierce, 5700 Childs Road, Rivergrove, OR.

Mr. Pierce stated that the Tree Ordinance Committee believes each of the items in the Purpose Statement are true, fact-based statements, are consistent with the City's goals, and are desired by the community.

Mr. Pierce alluded to the concerns expressed about the Tree Advisory Board (TAB) and the members adding an additional layer of government in a small city. He noted that the Board is an advisory group only and has no authority to make decisions regarding tree removals in the city. The draft ordinance recommends that the Mayor appoint members of this advisory board with the approval of City Council. One member is from City Council, one from the Planning Commission, and three are residents of the City. Therefore, citizens are represented on the TAB through elected officials or citizen appointees.

Mr. Pierce then addressed the concerns about either the citizens and/or other members of the TAB not being knowledgeable about trees or arboriculture. For that reason, the draft ordinance recommends that TAB seek guidance from the City Arborist, and that appointees have some background or interest in the city's trees. This is similar to City appointments to the Planning Commission or elected offices. A certain level of expertise or experience is sought after. It has been suggested that the Planning Commission be the “Tree Advisory Board” for the ordinance. However, one could pose a similar question about their knowledge of trees or arboriculture. How many Planning Commission members have a background in city forestry, horticulture, city planning or allied professions? Would they rely on the City Arborist?

Mr. Pierce noted that the “Applicability” sections of the Draft Ordinance are included to ensure that the City is in compliance with all state and federal regulations. That is a section that is not included in the existing ordinance, but something the Tree Ordinance Committee felt was desirable and should be included in a new ordinance.

Mr. Pierce then addressed the concerns that the draft ordinance is a significant change in regulations. He explained that most of the existing and draft ordinance have the same requirements in them for tree removals. He then outlined two notable exceptions. One is the exception including trees in the WQRA and Flood Hazard area which require Planning Commission review and mitigations. The other is the omission of the “three free” tree removals each year in the existing ordinance. The Tree Ordinance Committee felt that this removal would further support the community's desired goals for preserving tree canopy. It would also prevent a property from being systematically “clear cut” of trees, particularly over the years prior to possible development or subdivision. The trade-offs are that the minimum DBH for tree cutting approval was raised from 11” to 12” (common in most ordinances). And, a homeowner could apply to cut as many trees as they like at one time (“Blue Level permit”), but they would need review and approval by the Planning Commission for each instance.

Mr. Pierce encouraged Council to compare side-by-side the two documents to adequately determine if there are any other significant changes that would impact property owners. The Tree Ordinance Committee felt there were minimal changes from the existing ordinance. Also, after the comments from the first public workshop, where the Draft Ordinance was requiring approvals for most any tree work in the city, the Committee scaled back the draft to be more in line with the existing ordinance requirements.

Mr. Pierce then addressed concerns about city liability for making decisions on tree removals and determinations of tree health and ordinance enforcement in general. There has been concern that citizen groups or officials, (possibly the TAB or the Planning Commission, or even City Council) lack the knowledge to make such decisions. It is for that reason that the Tree Ordinance Committee recommended that the City Arborist be a part of approval process. It makes sense to have the knowledge and guidance of a professional when making decisions of public matters. This is the same reason the City employs a City Planner, City Engineer, and City Attorney—to guide them in making evidence and fact-based decisions when approving plans presented to the City.

Mr. Pierce then explained that the Tree Ordinance Committee felt that membership in Tree City USA does not significantly impact any city finances and it enhances the City's and community's desire for valuing and preserving trees and the tree canopy that attracts homeowners and residents to our community.

Mr. Pierce stated that any ordinance proposed should respect property rights. The committee made a strong effort to do that in the draft ordinance as mentioned in several comments above. A comment was made that people chose to buy homes in Rivergrove because of the existing tree ordinance. He doubts that few, if any, prospective home buyers in Rivergrove have taken the time to read our ordinances, particularly the tree ordinance, and said, "Oh, yes, I'm going to buy this home because I can cut down trees in my yard." What does attract new residents is the tree canopy and significant number of mature trees in the community. The draft ordinance's intent it to protect that feature.

Mr. Pierce concluded that he viewed regulating tree cutting as somewhat similar to traffic laws. Some of us would like to drive as fast as we like, stop only when we want to at intersections, pass wherever we like, park wherever we like, etc. However, for the safety and appearance of our community, we have all decided some types of regulations are necessary. The good of the many outweigh the supposed needs of the few.

The Draft Ordinance is a work in progress. Simply because there have been a number of comments on it does not make it a bad document, one that should be discarded, or mean that Council should only slightly modify the existing ordinance. The Tree Ordinance Committee will make additional revisions to the draft from the comments received so that a final draft can be prepared for the Council's review and approval.

Ms. Mann spoke again asking why the ordinance was in draft form at this point. She requested that the public record be open and the hearing continued because of the interest in the ordinance.

Mayor Kibbey and Council agreed to continue the hearing to the next meeting, leaving the record open. She requested that the Tree Board work with her and Mr. Kabeiseman to make necessary revisions.

Mr. Salch noted that the Citizen's Advisory Committee was the Planning Commission and asked Mr. Kabeiseman if the ordinance draft should then go back to the Planning Commission. Mr. Kabeiseman explained that each time an ordinance comes to hearing, there is an expectation that changes will be made and not every change warrants the restarting of the whole process. The Planning Commission has held its hearing as required by the Comprehensive Plan. Council could send the ordinance back to the Planning Commission, but there is no obligation for the Council to do so. The final version is also sent to DLCDC who can still make comments to the City.

Motion: Councilor Nyberg **moved** to continue the Type IV hearing to December 10, 2018 at 7:00 PM, leaving the public record open with the understanding that the Tree Ordinance Committee would continue to revise the draft. Seconded by Councilor Bahrman. The **motion passed 5-0**.

CONSENT AGENDA

1. Minutes from the October 8, 2018 City Council Meeting

Motion: Councilor Nyberg moved to accept the October 8, 2018 minutes with no amendments. Councilor Bahrman **seconded** the motion. **It passed 5-0.**

2. Financials – October 2018 (Carolyn Bahrman)

Motion: Councilor Nyberg moved to accept the October 2018 financials as presented. Councilor Tuttle **seconded** the motion. **It passed 5-0.**

PUBLIC COMMENT ON NON-AGENDA ITEMS

None.

PLANNING COMMISSION REPORT

Commissioner Walt Williams noted that at the November 5, 2018 Planning Commission meeting, the commissioners continued to hear testimony regarding the Tree Ordinance draft and made recommendations to Council regarding the separation of public tree concerns from private tree cutting regulations. Mr. Williams explained that he believed the public and some commissioners were concerned because the ordinance was twenty pages long. Mr. Williams thinks the ordinance can be simplified and shortened and still effective. Also at the November meeting, the Commissioners approved for new construction a dock at 4620 Dogwood Drive. The applicant had wanted to build a wooden deck in the WQRA, but City Planner Matt Straite had him withdraw that proposal from the application.

COMMITTEE REPORTS

1. Parks

Councilor Nyberg found a large Willow Oak from a member of the State Heritage Tree Board to plant in honor of Coco, his new granddaughter

2. Transportation

Councilor Bahrman distributed the latest report from the engineering company DKS, who will be working on the radar speed signs along Childs Road. The estimate of \$17,000 is Clackamas County's responsibility. Councilor Bahrman explained that she has attempted to contact County Engineer Christian Snuffin to verify the total costs to the City, which are now estimated to be at \$68,150 up from an estimate of \$50,000.

Councilor Bahrman read an email from Mr. Snuffin: "We have provided review comments for the final plans, specifications, and estimates from the consultant. Once this happens, the project will be transitioned to the City and you can then advertise and get the signs built. I will need to set a meeting with the County, the City, and our consultant [DKS]. Work scope includes a contingency task five-bid and construction support which would be paid by the City."

The work is supposed to be completely finished by June 2019. Originally, the County told Rivergrove the signs would be completed by December 2018.

Councilor Bahrman also announced that Mike Bezner, the Assistant Director of Transportation at Clackamas County, will hold a meeting in January and it will be important for the Councilor who takes over the Transportation Committee to attend.

3. Giving

Councilor Ruble is not suggesting a giving campaign this December.

COUNCILORS' REPORTS

Mayor Kibbey announced that a new Planning Commissioner, Kellen Russell, will be sworn in at the December 3, 2018 Planning Commission meeting.

ADJOURNMENT

Motion: Councilor Tuttle moved to adjourn the meeting. **Seconded** by Councilor Nyberg.
The **motion passed 5-0.**

The meeting was adjourned at 9:01 p.m.

Respectfully submitted,

Leanne Moll
City Manager/City Recorder