

**Rivergrove Planning Commission Minutes
September 10, 2018**

CALL TO ORDER AND ROLL CALL The meeting was called to order at River Grove Elementary School library at 7:01 p.m.

Present: Vice Chair Jonathan Sweet and Commissioners Jacob McKay and Walt Williams. City Recorder Leanne Moll declared a quorum. Mayor Heather Kibbey and City Planner Carole Connell were also present.

CONSENT AGENDA

1. Minutes from the August 6, 2018 meeting.

Motion: Commissioner Sweet **moved** to approve the Minutes from the April 9, 2018 meeting as presented. **Seconded** by Commissioner W. Williams. The motion **passed 3-0**.

NEW BUSINESS

1. Completeness Review for an application for a dock and deck in the flood zone at 4620 Dogwood Drive, submitted by Larry Todd of Maywood Homes

Ms. Connell presented the staff report and explained that the applicant wishes to install a 10'x12' deck and 8'x16' floating dock. Ms. Connell explained that a deck requires a development permit and a dock requires a conditional use permit, which necessitates a Type III hearing. She also explained that the Commission would only be determining completeness and not evaluating the application.

Ms. Connell explained that few items were missing from the application, but staff recommends the application be approved pending the submission of these items within seven days, by September 17, 2018.

Outstanding materials:

- Elevation certificate that shows the base flood elevation
- A narrative which must explain how the proposed development meets the criteria and requirements from the Rivergrove Land Development Ordinances (RLDO).

The applicant was not in attendance.

Motion: Commissioner McKay **moved** to deem the application incomplete subject to the additional requirements suggested in the staff report and to continue the completeness review to October 1, 2018 to allow additional time for the applicant to submit the required material.

Seconded by Commissioner W. Williams.

Motion passed 2-1.

2. Completeness Review for an application for a floating dock at 5700 Childs Road, submitted by Dave Pierce.

Ms. Connell presented the staff report and explained that the applicant wishes to install a floating dock. Ms. Connell reiterated that a dock requires a conditional use permit, which necessitates a Type III hearing.

Ms. Connell explained that a document that shows the base flood elevation would help the Commissioners evaluate the application. She also suggested an alternatives analysis of the site of the dock, which the Commission has not required in the past, but is necessary according to the RLDO.

Dave Pierce, applicant, explained that the Base Flood Elevation is on the FEMA map, likely 125 ft. or 124.9 ft. He said he has that document and can provide it immediately.

Mr. Pierce explained that he chose that particular dock site to save the trees on his property. The stairs leading to the dock would be built at an angle to avoid any potential impacts on existing trees. He explained that in the building plans there are only three points at which the stairs touch the ground: the hinge-point to the ramp, and a 3x3 foundation and 3x2 foundation. Those are the only points at which there would be any ground disturbance. He explained that the dock will be built by the same contractor used by Commissioner Jeff Williams.

Ms. Connell showed the Commissioners the site plan provided by the applicant and explained that it would not be necessary to provide an alternative requirement because the applicant has already shown and explained the placing of the dock on the site plan.

Carole Connell said that she recommends the application is deemed complete pending a document that shows the base flood elevation.

Motion: Commissioner W. Williams **moved to deem the** application complete pending a submission of the Base Flood Elevation and to schedule a Type III review at the October 1, 2018 Planning Commission meeting.

Seconded by Commissioner Sweet.

Motion passed 2-1.

UNFINISHED BUSINESS

1. Type IV Hearing for Ordinance #93-2018, which regulates Trees and Tree Removal.

City Recorder Leanne Moll read the Type IV disclosures and instructions to the public. There were no reported conflicts of interest. Commissioner Jonathan Sweet disclosed that he was on the Tree Advisory Board responsible for writing the ordinance.

City Planner Carole Connell presented the staff report and explained that the city has been attempting to pass a tree ordinance for the past two years. A prior ordinance was drafted in June to September 2016, known as Ordinance 89-2016, but has been withdrawn from the Oregon Department of Land Conservation and Development (DLCD). The current ordinance, #93-2018, is a new version and considered a new ordinance. Ms. Connell noted that because the ordinance has been in process for two years, there have been several notices, work sessions, and hearings, and Rivergrove residents have had the opportunity to be involved every step of the process.

Ms. Connell explained that the Planning Commission is making a recommendation to City Council based on the criteria in the Comprehensive Plan. The City would like to preserve trees whenever possible. The elements of the Comprehensive Plan that support that preservation include the natural resources and open spaces policies, numbers 2, 3, 7, 8, 9, 10, and 12. Ms. Connell explained that the policies that consider wildlife habitat should be integrated into land use decisions, including protection of riparian and wildlife habitat, per the state's Title 13 and Metro's goal 5, which consider the **link** between trees and wildlife habitats. Since trees are

habitat for wildlife, every tree that is removed also removes wildlife habitat. Ms. Connell explained that any tree ordinance should also consider the **link** between the floodplain management and the riparian and habitat protection. Trees provide protection and stabilize the river bank. The city has a responsibility to maintain the vegetative cover of native plant species and encourage citizens to provide habitat on their own property, which affects when and how they remove trees. One of the goals in the Comprehensive Plans calls the Commissioners to revise the current tree cutting ordinance to provide stronger language to preserve native trees. The proposed ordinance is clarifying the provisions already in place in the RLDO and the current tree cutting ordinance.

The proposed ordinance is also consistent with the comprehensive plan's goal to protect air and water quality by preserving trees. Trees have the ability to clean the air by absorbing pollutants and also cooling homes, reducing energy, and preventing soil erosion by reducing pollutants that would end up in the river.

The City has received the following testimony, which needs to be evaluated:

- Tree City USA comments from Katie Lompa
- Letter from Mr. Tuttle dated 9-16-18
- Letter from Mr. Salch dated 9-9-18
- Letter from Mr. Pierce dated 9-10-18

Ms. Connell noted that she also has some formatting concerns with the enforcement section and she would like to cross-reference that section with existing code. She is also concerned about the appendices being separate from the text and would like to integrate them within the code.

Ms. Connell explained that everything is in order procedurally, and the current ordinance has been noticed appropriately. This new draft follows the Comprehensive Plan.

The Planning Commission will need to decide how to address the agency and citizen comments the City has received.

David Pierce, Chair Tree Advisory Board, 5700 Childs Road, Rivergrove, OR

Mr. Pierce explained that he revised the Tree Cutting ordinance and is neutral; he would like to incorporate everyone's ideas into the ordinance. He explained that he does not make the final decisions; those are made by the Planning Commission and the City Council. He said that the tree ordinance is being revised because citizens have requested the revision and because the changes are required by the Comprehensive Plan.

Mr. Pierce explained the differences between the two ordinances and explained how the new ordinance will impact citizens.

The purpose of the proposal is to repeal the current tree ordinance, which amended the RLDO, and replace it with a slightly more comprehensive tree cutting and preservation provision. Also, the city would like to meet the requirements of the Arbor Day Foundation and Tree City USA as well as meet FEMA requirements to protect the floodway and WQRA areas along the Tualatin River.

As noted on page 2 of the staff report, there have been a number of public meetings and notices regarding the proposed ordinance. This meeting will hear any new additional comments and the

Planning Commission will take action to move the proposal forward to the City Council with any concerns or modifications they feel are appropriate. Mr. Pierce also noted that the city received no comments from review by the state Department of Land Conservation and Development. All comments **should** be evaluated accordingly, and a revised draft of the ordinance will be prepared. Since there have been a number of misperceptions swirling around of what the new ordinance is, Mr. Pierce thought it would be valuable to go over the current Tree Ordinance, and see how it compares to the proposed new ordinance. The proposed ordinance actually varies little from the current ordinance. The current ordinance requires that a permit is required for each tree cut within the City of Rivergrove. Trees below 11.5 inches DBH, and on the Nuisance List are exempt from any permits and may be removed at will. Those above that size, and those located in the Water Quality Resource Area, require a permit and possibly approval by the Planning Commission. If a Tree Cutting permit is issued, currently the fee is \$20 per tree, plus costs incurred by the City for all administrative, legal, engineering, and planning. This is also assessed for any permit application that deals solely with dead, dangerous, or dying trees.

Mr. Pierce provided a summary of the changes in the proposed Ordinance:

1. It creates a Tree Advisory Board that provides advice and guidance to the Planning Commission and City Arborist, regarding matters covered in the Tree Ordinance. Of importance, they are *advisory* only, and hold no authority in the enforcement of the city's tree ordinance. This board is a requirement of Tree City USA and the Arbor Day Foundation.
2. It now includes trees that are in the floodway, as designated by FEMA. Trees in the WQRA are already included in the current ordinance. If the City of Rivergrove fails to protect these areas, FEMA could cause significant increases to flood insurance to the residents of Rivergrove, and possibly even deny insurance for the City. FEMA does not regulate the trees in this area, but regulates how the city enforces protection and development of these areas and obtains FEMA Insurance.
3. The new ordinance makes no significant changes in the permit process for Emergency Tree Cutting or Removals. Verification of dead, dying, or dangerous trees would now be provided by the City Arborist, or a certified arborist.
4. The new ordinance makes no significant changes for the permit process for tree removals in Non-WQRA or Non-floodway areas. In fact, the proposed Ordinance increases the cutoff size for a permit requirement from 11.5" DBH to 12" DBH.
5. The new ordinance slightly changes the permit process for those trees in environmentally sensitive areas. It includes trees in the floodway area to meet FEMA requirements. The proposed ordinance increases the cutoff size for a permit requirement from 11.5" DBH to 12" DBH. A mitigation plan is now a requirement for this permit. In the past, nearly always, the Planning Commission and City Council have required mitigation plantings for these removals. The new ordinance institutionalizes that action. It also furthers implementation of the City's Land Use Planning Goals as noted in the Staff Report. The fee for these permits increased to \$40 per tree, to reflect the increased costs of reviewing these types of permits. Both the old and new ordinance require Planning Commission approval for this level or permit. There is no change there.

The proposed ordinance and permitting process varies very little at all from the current ordinance. There are no big changes with this new ordinance. The bulk of the proposed

ordinance is additional language to clarify terms, definitions, standards, and submittal requirements. These will help the Planning Commission and the City Council more easily understand and approve permits for development and tree removals in our City. The new ordinance also furthers implementation of the City's Land Use Planning Goals.

Proponents:

None

Neutral:

None

Opponent:

Michael Salch, 5255 Childs Road, Rivergrove, OR 97035

Michael Salch noted that he is a tree lover, but he also advocates for the full citizen process in public meetings. He explained that the way to encourage citizens to participate is to give them a transparent government and to give residents feedback. As he reads the proposed changes, what he sees is that what is currently drafted cannot be supported by the Comprehensive Plan on the citizen involvement issue. He noted that the Oregon Administrative rules are not mentioned in the draft of the tree cutting code. He claimed that the City is denying citizens due process and noted that many items in the Comprehensive Plan, particularly the policies regarding wildlife habitat have not been enacted. Mr. Salch also noted that the Comprehensive Plan requires the city to revise the tree cutting ordinance. He claimed that the proposed ordinance goes beyond a tree cutting ordinance. According to Mr. Salch, the residents were led to believe that the ordinance was about cutting trees and not more. Mr. Salch noted that the City should identify historic trees, not significant trees. Mr. Salch suggests that the City take inventory of the trees that we currently have and then make an ordinance that responds to the tree population the City has. He cited LCDC's guidelines for what the City is trying to do, which stipulate that the community tree inventory comes first. The City is attempting to write the ordinance prior to taking a tree inventory. Mr. Salch continued to explain that according to LCDC's citizen involvement guidelines, a citizen's involvement group, without the involvement of Planning Commissioners or City Councilors should be in charge of revising the tree ordinance. That could be a work session, not just a citizen's involvement group. That group is supposed to be the interface between the government process and the citizens. They are supposed to represent the citizens and provide feedback to the citizens. He gave the example of neighborhood organizations in larger cities.

Commissioner W. Williams expressed concern about the qualifications and potential bias of the citizen's advisory committee. He cited the recent example of tree concerns brought up by citizens at the Planning Commission hearing of 19232 Pilkington Road, the proposed duplex at Pilkington and Childs. He said that their input was valuable in this case, but he is concerned about the qualifications of regular citizens drafting a tree ordinance. He noted that emergency downed trees are not included in the draft of the tree ordinance and that needs to be considered. He asked if the City should try to do too much, or do we keep it simple? If we narrow it too much, we tie our hands and we take the proper judgment out of it.

M. Salch noted that the City needs to respect all people in Rivergrove and get their ideas to the table. He believes the Planning Commission need to encourage people to join a citizen's advisory group and to resolve the issues in question. In Mr. Salch's opinion, as soon as a City Councilor or Planning Commissioner gets involved, any city work becomes polarized and residents feel shut down. Mr. Salch noted that it takes much skill to avoid polarizing people.

Commissioner W. Williams agreed that it does take skill. He explained that a lot of things can go wrong of the selection of the personnel and training of the personnel that would make up the tree advisory board. Commissioner W. Williams explained that he would like the tree ordinance to require education of a tree advisory board or citizen advisory board that supports the facts. He does not see that type of education required in the current draft of the ordinance, and would like to see that incorporated.

Mr. Salch noted that the process has been decided without taking the fundamental steps of figuring out what is needed by the community. The citizens have rights according to LCDC goal #1 and they have the right to make decisions without the influence of the Planning Commission or City Council.

Mayor Kibbey noted that on the current tree committee there are two Planning Commissioners, a City Councilor, but an ordinary citizen is the chair of the committee.

Mr. Salch reiterated that he believed the process did not support citizen involvement.

Mayor Kibbey said that they have reviewed the proposed ordinance twice and that citizens were involved in each step of the process.

Commissioner Sweet asked about the process to take tree inventory. Mr. Salch responded that there is a state code that defines how to take a tree inventory.

Mayor Kibbey noted that he City does need to take an inventory of trees to ensure there is a diversity of species, but the inventory does not need to come prior to approval of a tree ordinance.

Mary Mann, 5215 Childs Road, Rivergrove, Oregon

Ms. Mann provided the City Recorder with a petition signed by 28 citizens. She said she collected those signatures in two hours.

Ms. Mann stated that in her opinion the ordinance was written poorly and is over-reaching. She noted that we are a Tree City USA member, but that is not part of the city structure and that involvement was never intended to breach into our laws. Ms. Mann disputed the necessity of the "whereas" preamble to the ordinance. Ms. Mann claimed that the language is inappropriate and over-reaching.

Ms. Mann also objected to the City forming a Tree Advisory Board. She believes that the City should not be conferring authority to a contract position, like the City Arborist.

Ms. Mann asked the Planning Commission to **not** approve any significant tree or groves program. She stated that no one has the right to come on her property to assess her trees. She believes a tree inventory is counter to the nature of Rivergrove and is the type of **legislation** that drives people out of cities like Portland and Lake Oswego. She wondered if the city was going to provide the maintenance and care for the protected trees.

Ms. Mann expressed that Tree City USA should not be mentioned in the City of Rivergrove's ordinances. She explained that there should be no mandates to City law by a non-profit organization. When she was a City Councilor, Ms. Mann said she was assured by Mayor Kibbey that Tree City USA would only be about education, parks, and public land.

Ms. Mann also argued that a Tree Advisory Board should have no long-standing place in community government and would be an arbitrary and subjective interference.

Ms. Mann stated that there should be no permit required to remove a private tree. She explained that citizens do not need an arborist to remove a tree and the city does not need to micromanage this process. She believes the permitting process is busywork and none of the city's business. City staff does not need one more thing to do. She also explained that she believes the requirement of an arborist report is intrusive.

She also argued that cities should be encouraging the cutting of trees away from homes because of increased heat and fire risk. Since Oregon is dealing with historically higher temperatures, the fire risk is also increasing.

She noted that if a tree can fall down on your house, it can burn your house. The average lifespan of these trees is about 40 years in the suburbs, not 100 years in the woods.

Ms. Mann also criticized the City's public process explaining that residents did not know what would be changed in the new tree ordinance and that no one she spoke with knew there was a hearing tonight regarding the new ordinance.

Ms. Mann explained that when she was a City Councilor she went along with the mitigation rules, but she disagrees with mitigation. She believes that the city does not need to legislate that residents mitigate because an owner is already invested in their own property.

Ms. Mann explained that she believes the current fine for unpermitted tree removal is adequate, and if the money from fines is used for tree programs, that presents a conflict of interest.

Ms. Mann concluded by explaining that the changes in this ordinance are so significant, the ordinance should be on the ballot and the residents should approve or not approve by vote.

Mayor Kibbey asked Mary Mann to read the text on the petition she circulated. Ms. Mann read the text that accompanied her petition:

"The existing ordinance conditions that apply to Water Quality Resource area (WQRA and Flood Hazard areas as designated by FEMA are already regulated. The existing ability by owners to cut up to three trees with out [*sic*] a permit in any given year should stay and the rest of this ordinance which proposes to tell private homeowners how many and in what condition trees can be in to cut, arbitrary criteria such as beauty and tree canopy; designating specific trees or groves of trees which affects future use of private property on private property is not in the best interest of Rivergrove owners. Nor is appointing into law a Tree Board and giving a contract position in this case Arborist city power to regulate. The content of this proposed Ordinance is counter to not only our historical and effective volunteer committees and processes but also and the rights of private homeownership."

Doris Creedon, 5740 Childs Road, Rivergrove, OR 97035

Ms. Creedon explained that the new ordinance was very confusing and she felt that residents do not know what is going on. She wondered why the Planning Commission couldn't address more immediate problems, like homes that have abandoned cars on Pilkington Road. She explained that she lived in Alaska for fifteen years and that community never had a problem with trees. She said she regularly sees coyotes on her property and she hasn't shot one yet. She

urged the Planning Commission to consider managing the major land use issues in the city and not to add extra work. She noted that if a tree wants to die, it is obvious. She would not need an arborist or specialist to examine it.

Charlene Tuttle, 5710 Childs Road, Rivergrove, OR 97035

Ms. Tuttle said that the limit of removing three trees a year has been sufficient for her large property. She is concerned that she will need to call the city to remove a dying fruit tree. She explained that her property is very large and has 50-60 trees. She understands that if people with 10,000 sq. ft. yards remove three trees a year, they would have no trees in their yard. However, she explained that fir trees are a nuisance and unsafe to live under. She believes that people should be allowed to remove these trees and plant other ornamental trees. She cannot imagine telling people that they could not remove a tree on their property

Mayor Kibbey explained that the new ordinance does not prevent the tree being removed; the Planning Commission will simply need to provide approval.

Commissioner McKay asked David Pierce if the residents may still remove three trees without permits. Mr. Pierce replied that wasn't mentioned in the new ordinance.

Commissioner McKay **moved** to close the public hearing. Commissioner W. Williams **seconded. Passed 3-0.** Commissioner McKay **moved** to continue the Type IV hearing, but then withdrew his motion to continue the meeting and to close the public hearing.

Commissioner W. Williams **moved** to close the public record in seven days and continue the hearing to the October 1 meeting. Commissioner W. Williams withdrew his motion.

Motion: Commissioner McKay **moved** to continue the Type IV hearing to the October 1 hearing, leaving the record open. Commissioner W. Williams **seconded. Motion passed 3-0.**

PUBLIC COMMENT ON NON-AGENDA ITEMS

Mary Mann, 5215 Childs Road stated that she would have preferred that there was organic ice cream at the recent ice cream social.

CORRESPONDENCE & REPORTS

None.

COMMISSIONERS' REPORTS

None.

ADJOURNMENT

Motion: A motion to adjourn was made by Commissioner McKay.

Seconded by: Commissioner Sweet.

Motion passed 3-0.

The meeting was adjourned at 8:36 p.m.

Respectfully submitted,

Leanne Moll, City Manager/ City Recorder