

**Rivergrove Planning Commission Minutes  
October 1, 2018**

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**CALL TO ORDER AND ROLL CALL** The meeting was called to order at River Grove Elementary School library at 7:03 p.m.

Present: Chair Andrew Dausman, Vice Chair Jonathan Sweet and Commissioners Jacob McKay, Jeff Williams, and Walt Williams were present. City Recorder Leanne Moll declared a quorum. Council President Arne Nyberg and City Planner Carole Connell and her associate, Matt Straite, were also present.

**CONSENT AGENDA**

**1. Minutes from the September 10, 2018 meeting.**

**Motion:** Commissioner McKay **moved** to approve the Minutes from the September 10, 2018 meeting as presented. **Seconded** by Commissioner Sweet. The motion **passed 4-0**. Chair Dausman abstained.

**NEW BUSINESS**

**1. Type III Hearing for an application for a floating dock at 5700 Childs Road, submitted by Dave Pierce.**

Planner Matt Straite explained that the dock project requires a Conditional Use permit and a development permit for a floating dock that is 8'x20' on the Tualatin River. The City received comments from Clackamas County's Water Environmental Services (WES) that are included in the conditions of approval.

In the Rivergrove Land Development Ordinances (RLDO) Section 5.07, Future Use, no building may happen within 25 feet of the high-water mark. Docks are exempted from this requirement in the flood ordinance. The project meets all the structural setbacks that are stipulated in this section.

The project must also meet the Conditional Use criteria for a floating dock on the Tualatin. The project has to be compatible with several items, including no pylons, it must be a floating dock, and it must comply with the flood ordinance as well.

The provisions in the flood ordinance include the new dock standards that were adopted in late 2017. The dock can't be more than 20' from the shore, which is a condition of approval. The applicant has affirmed that the floating dock will indeed be closer than 20' from the shore. It has to be an earth tone in color, the staircase must have minimal impact on the neighbors, and it has to be made of non-toxic materials. In this case, the applicant has verified that the dock meets these standards.

Staff recommends approval with the conditions outlined in the staff report.

City Recorder Leanne Moll read the Type III Hearing disclosures.

**Applicant: Dave Pierce, 5700 Childs Road, Rivergrove, Oregon**

Mr. Pierce explained that the dock and staircase were designed with the goal of having minimal impact on the environment at the river bank. There are three small footings that are 3'x3' or

2'x3' in size and no more than 18' in depth. Mr. Pierce feels these footings will have little, if any, impact on the riverbank. Construction will have fiber logs to prevent erosion and materials flowing into the river. WES is requesting that the Mr. Pierce complete proper sedimentation control at the construction site, as well, which will be part of the requirements of Clackamas County.

**Proponents:**

Mike Salch, 5255 Childs Road, asked if the Planning Commission has drawings that were attached to the staff report. Ms. Connell and the Commissioners affirmed that they have seen the drawings.

**Neutral:**

None.

**Opponents:**

None.

Commissioner McKay was not a commissioner when the dock standards were written and approved. He asked about the transmission of light through the docks as suggested by the Oregon Department of Fish and Wildlife, which is not a requirement in the City's dock standards. Commissioner McKay asked if this standard was discussed at the time the City adopted the new dock ordinance.

Commissioner J. Williams noted that light transmission came up in discussions and the City decided to defer to the Army Corp of Engineers building standards.

Commissioner McKay noted that Yamhill County has adopted the ODFW recommendations. It also limits the size of a dock. Sixty percent of the dock must have light transmitted through it. Commissioner McKay asked if there is anything in the RLDO that is applicable to the ODFW recommendations.

Mr. Straite noted that the RLDO is silent on fish habitat. Mr. Straite also noted that the ODFW standards are recommendations, but not requirements. He said that it would be nice to comply with the requirements. Mr. Straite also stated that the City complies with most of the recommendations, but not the light transparency.

**Motion:** Commissioner Dausman **moved** to **approve** the development permit with all the conditions required in the staff report. **Seconded** by Commissioner J. Williams. **Motion passed 5-0.**

**UNFINISHED BUSINESS**

**1. Continued 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**

Mr. Straite explained that the applicant has provided the missing items and staff recommends that the application now be deemed complete.

**Motion:** Commissioner Dausman **moved** to **deem** to application complete and to schedule a Type III review at the November 5, 2018 Planning Commission meeting. **Seconded** by Commissioner Sweet. **Motion passed 5-0.**

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

Chair Dausman noted that he listened to the recording of the hearing held on September 10, 2018. He explained that the record was kept open and the hearing was continued.

### **Proponents:**

None.

### **Opponents:**

#### **Michael Salch, 5255 Childs Road, Rivergrove, Oregon**

Mr. Salch is concerned that the Planning Commission is missing some important points that would cause the tree ordinance to be appealed to the Department of Land Conservation and Development or the state attorney general.

Mr. Salch outlined the Tree City USA requirements, which include a tree board (or department), a tree care ordinance, a community forest ordinance with an annual budget of \$2 per capita, which increases every year, and an Arbor Day celebration. Tree City USA is only concerned with public trees on public streets and parks. The Tree City USA bylaws are not applicable to private homes. Tree City USA generally works with larger cities that have a great deal of public trees. Mr. Salch is concerned that Tree City USA is named in the current draft of the tree ordinance. Normally, ordinances that regulate public land, trees, and processes should not be included in the same ordinances that regulate private property.

Mr. Salch stated that DLCD does not acknowledge Tree City USA. None of their nineteen statewide goals are included in the Tree Ordinance. DLCD is not even acknowledged in the draft of the ordinance. The goals are filtered into the comprehensive plan, which the city must uphold. DLCD has administrative rules that are tied to surveying and taking inventory of wildlife areas or significant trees and groves. DLCD requests that the significant trees be inventoried first prior to putting protections of those trees in the ordinance. Mr. Salch notes that the tree inventory should not be included in a tree cutting ordinance.

Mr. Salch noted that the Tree Advisory Board is not a citizen's board. In the current draft of the ordinance, the Tree Advisory Board would include one planning commissioner and one city councilor, in addition to City Arborist, Brian French, who is under contract with the City. He claimed that this board would not be democratic or fair. The citizens would only have three votes out of five on any given issue. Mr. Salch noted that a Citizen's Advisory committee is the interface between the residents and the governing board. Mr. Salch believes the proposed Tree Advisory Board does not comply with DLCD's definition of an Advisory Board. He explained that the planning commission is supposed to be the advisory committee for the City of Rivergrove because the City is so small.

Mr. Salch claimed that all of the input that was proposed in the first tree ordinance in 2016 was ignored in this draft. To him, it feels like the input from the citizens was not included.

Mr. Salch questioned the need for shade along to riverbank to protect fish habitat. He noted that he has spoken to Andrew Swanson of WES who has conceded that shade trees would likely not significantly reduce the water temperatures. Mr. Salch believes the city needs a thermal study to see if tree shade would actually reduce the temperature of the river.

Mr. Salch also shared his concerns about the flood management area. He cited DLCDC Goal 7 and Comprehensive Goal 7, which are not the same as the tree cutting Goal 5. Private property owned is addressed in Goal 5, but Goal 7 addressed public property in a natural disaster area. He contends that the City is confusing their goals and DLCDC policies.

Mr. Salch concluded by contending that the Comprehensive Plan states that the City may update its tree cutting ordinance, but not any other requirement such as the significant tree inventory.

**Mary Mann, 5215 Childs Road, Rivergrove, Oregon**

Ms. Mann noted that at her request, the City Recorder sent her the NOAA Fisheries “Biological Opinion for the Federal Emergency Management Agency’s National Flood Insurance Program in the State of Oregon.” Ms. Mann stated that she did not see anything in the document that made a mandate or directive that required the City to revise its tree cutting ordinance to protect fish habitats. The City must report the regulation of the floodplain to FEMA, but she does not see any documentation that the reporting is happening. There is no directive or requirements from FEMA. It’s not clear if Clackamas County or if the City of Rivergrove will be responsible for reporting the floodplain regulation.

Ms. Mann also noted that she supports Mr. Salch’s research.

**Neutral:**

**Dave Pierce, 5700 Childs Road, Rivergrove, Oregon**

Mr. Pierce explained that the Tree Advisory Board was tasked with three large jobs. They were asked to incorporate Tree City USA requirements, preserve historic trees and groves, and to institutionalize FEMA and DLCDC requirements in the floodplain and WQRA.

The Board felt they created an ordinance that was equitable to the community. Mr. Pierce noted that the ordinance took 2.5 years to draft because it took the community’s suggestions seriously. A number of public hearings were held that generated several comments. The committee made choices about which suggestions were incorporated.

Mr. Pierce hopes that the ordinance draft may be moved forward to City Council to work on and that City Council may continue the work of the Planning Commission. He asked the Planning Commission to make recommendations to Council.

**Comments by City Planner Carole Connell**

City Planner Carole Connell explained that DLCDC was notified 35 days before the first hearing. The City depends on DLCDC to reply if they have an issue with any ordinances we draft. They have acknowledged our Comprehensive Plan years ago. They had no suggestions, comments, or concerns about these amendments. If, in the future, when the Planning Commission addresses the significant tree/grove issue, the inventory may be taken at that time. The significant tree/grove requirement won’t be operable until an inventory is taken. The City will have to comply with goal 5 and provide an in-depth analysis that shows the proper steps were taken to inventory those trees/groves. The Comprehensive Plan addresses the value of trees along the river, and Ms. Connell noted those policies in the staff report.

The question about the FEMA/NOAA lawsuit is a complicated issue. The State of Washington created new standards of protection based on that lawsuit. Ms. Connell noted that Oregon does not have the laws or rules yet, but they are being considered at the state level. The state is attempting to determine how to meet the recommendations in the lawsuit. It may happen soon, and the City needs to be prepared. In the meantime, FEMA does not say that the City does not have to do anything. If the City were sued because salmon are dying because of City regulations, the City could be liable in a lawsuit.

Ms. Connell acknowledged that Tree City USA is primarily interested in public trees. The comments from Kristen Ramstad and Katie Lompa, who manage the state's Urban and Community Forestry Assistance Program, are simply recommendations for making the tree ordinance better.

Ms. Connell noted the testimony that was received since the last hearing: Jacob McKay on 9/21/18, Roger Knight on 9/30/18, and Walt Williams on 10/1/18.

**Motion:** Commissioner McKay **moved** to close the public comment portion of the hearing. Commissioner W. Williams **seconded**. **Motion passed 5-0.**

Chair Dausman acknowledged the concerns raised about public involvement, but noted that citizens have had a several opportunities to make comment and be involved. Jeff Williams was on the Tree Advisory Board before he was a Planning Commission. Citizens were instrumental in building the new ordinance. Chair Dausman noted that he is not in favor of an advisory board because the city is so small. In his time on the planning commission, it has been difficult to fill commission seats. He is also concerned about creating an additional bureaucracy that would serve only to advise the planning commission and City Council, but had no real vote or voice.

Chair Dausman also addressed the concerns about a potential significant tree program and the perception of how it may impact residents. There are people that are more active and aware of their property rights that he is. Chair Dausman feels it is important for him to acknowledge and represent that viewpoint. He does not like the way the ordinance delegates the creation of that policy to the Tree Advisory Board. The Planning Commission will be tasked with setting up the significant tree program, but will ultimately have no authority over the program.

Chair Dausman also shared his concerns that the cost of employing the City Arborist to maintain public trees would be passed on to citizens. He is also concerned about the fines increasing from \$1500 to \$5000 to address a problem that the City does not have.

Chair Dausman stated that he is in no rush to revise this law and he would rather take the time to revise the amendments than to enact a bad law. The floodplain laws and WQRA laws, while able to be improved, are serving the community appropriately right now.

He also noted that people appointed by the Mayor (like members of a Tree Advisory Board or the Planning Commission), are appointed by the citizens because the Mayor is elected to City Council by the residents of the City.

Commissioner Jeff Williams explained that he believes the amendments are ready to be advanced to City Council. He acknowledged that the fees are a big increase, but a huge fee would only be incurred if one intentionally violated the regulations. The City would not be able to trap or trick residents into non-compliance.

He noted that he found the call for more enhanced citizen involvement ironic when residents are also opposed to the tree advisory board. He also explained that someone must be in charge of making appointments and that responsibility should go to the Mayor. The intent is not that the Mayor would have total control of the citizens on the board, but that the Mayor would be available to make the decision if there are four citizen volunteers and only three available places on the board.

Commissioner J. Williams believes the ordinance is too complex and at the same time not specific enough. It does provide more citizen involvement. He does not think the proposed ordinance is impairing people's property rights because it accounts for the different needs of developers vs. private property owners. He asked that the City Attorney be consulted to weigh in on whether the ordinance needs to be broken into two ordinances, one to address public trees and the Tree City USA requirements and one to address removal of trees by private citizens on private property.

Commissioners J. Williams made the following suggestions:

- On page 4 in Section 5, 1B 8: All permit applications should be approved; the City does not need the time or method of removals.
- On page 5 in part 2B: Can we justify the cost of \$20/tree at the blue level?
- On page 5 in Section 6, letter D. The language "once a limit is reached with mitigation" is vague and needs to be revised.

Commissioner J. Williams reaffirmed that these are minor issues that Council could iron out. He believes that the ordinance is ready to be recommended to City Council.

Commissioner W. Williams agrees that there could be a separate ordinance to account for the care of public trees. The tree cutting ordinance, as it is right now with some revision, should go forward. He explained that the other parts that address the Oregon Department of Fish and Wildlife recommendations, the DLCDC significant tree/grove program, and the FEMA/NOAA fisheries requirements will come later when the state dictates it.

Commissioner Sweet noted that the Tree Advisory Board "bit off" a lot with the significant trees program. At one point the tree board had discussed regulating pruning of trees as well, which he does not believe is appropriate. Commissioner Sweet believes the biggest issue with trees is tree removal requests from developers, not from private citizens. Mr. Sweet is not in a rush to approve the ordinance, especially since the City has been working on it for two years. Commissioner Sweet asked what would happen if the Planning Commission moved the ordinance forward to City Council tonight.

Commissioner Dausman noted that after the Planning Commission proposes an ordinance and recommends it to the City Council, Council then holds a second Type IV hearing with public comment, deliberation, and either an approval or disapproval by Council.

Commissioner McKay explained that he is inclined to vote no on the currently proposed ordinance. He explained that he had a good friend who lost his mother because a tree fell on her. He is concerned that with the proposed tree advisory board, a board of untrained non-experts may require trees to be retained that could be dangerous.

Ms. Connell asked that if someone is developing land, would the advisory board need to meet to make recommendations on the tree removal permit? Would the tree board just be notified or

would the tree board need to meet? Chair Dausman noted that it would be like an agency notification. There would be no immediate delay.

Chair Dausman noted that he has had to remove old growth fir trees. He explained that his family has been replacing the trees with other trees that grow 20-30 feet with a nice canopy without a specific requirement for mitigation.

Chair Dausman recommended that the Planning Commission hold a work session via email and then make recommendations to City Council at the November 5<sup>th</sup> meeting.

Commissioner W. Williams noted that a preference to remove a tree is handled differently from the immediate need to remove a hazardous tree. He has lost six trees since he lived in Rivergrove. In addition, the public land adjoining his property lost a few trees that fell into his backyard. He explained that tree removal is common in this type of neighborhood. Two weeks after he bought his house, a tree fell in his neighbor's yard and he helped remove the tree when his neighbor was out of town.

Commissioner McKay explained that he is concerned about who is determining and defining what constitutes a hazardous tree. He is concerned that a tree advisory board, made up of regular citizens that are not tree experts, would have to approve removal of hazardous trees.

Mr. W. Williams pointed to Section 3 of the proposed ordinance, which allows for the immediate removal of hazardous trees. He also explained that with this ordinance, a resident can cut any tree on his property, as long as he applies for a permit.

Mr. McKay noted that now a resident will have to tell someone why and how he or she is removing a tree. That is a significant change from allowing three trees per year.

Chair Dausman affirmed that there is no limit of the trees that may be cut in the proposed ordinance; however, a resident must obtain an application for each tree removal. He also explained that the tree advisory board would provide public comment for tree removal applications. Each level will have a different requirement:

- At the green level, emergency tree removal is allowed with no permit and no fee.
- At the blue level, trees that are not in the Water Quality Resource Area or a flood hazard zone may be removed with a permit and a \$20 fee.
- At the black level, any tree that is larger than 12" dbh and in a flood hazard zone and/or the WQRA is subject to approval by the Planning Commission.

City Planner Carole Connell clarified that the blue level is a permit to remove any tree above 12" dbh.

Chair Dausman noted that Michael Salch and Commissioners J. Williams and W. Williams suggested to update the tree cutting ordinance, but have the other policies that govern public trees covered in a separate ordinance. Chair Dausman approved of the plan that the Planning Commission would only recommend Section V (pages 3-9) and the definitions to replace #74-2004 and not any other sections of the proposed ordinance.

Commissioner McKay explained that he is willing to forward the ordinance to City Council without any comments or recommendations because he does not believe the ordinance should be recommended in this form.

The Planning Commission discussed the following recommendations:

1. The Commissioners are concerned that there seems to be no limit to cutting blue level trees. Any ordinance should require blue level applications to have a cap at which point the application must go before the Planning Commission. They recommend this cap be three trees.
2. Tree removal in a flood hazard zone or the WQRA needs to be addressed by the ordinance to assist city management of tree permit applications.
3. Street trees are important for new developments and should be required.
4. Tree mitigation needs to be addressed and clarified in the ordinance. Developers and homeowners want to know what is expected.
5. The Tree Advisory Board should be comprised of members of the Planning Commission because the City is so small.
6. The purpose, definitions, and appendix sections should be retained.
7. Should the development section be updated to clarify drip line protections or to retain trees to maintain sufficient tree canopy?

Michael Salch asked to speak. Mr. Salch was acknowledged by Chair Dausman and noted that the ordinance requires the Tree Advisory Board to be in charge of keeping the tree ordinance up to date, but he would prefer that the Planning Commission serve in that capacity. He also reiterated his concerns about the Tree City USA requirements driving the adoption of the new ordinance.

**Motion:** Commissioner McKay **moved** to postpone the discussion until the next meeting. Commissioner Sweet **seconded**. **Motion passed 3-2.** Yeas McKay, Sweet, and Dausman; Neas J. Williams and W. Williams.

Ms. Connell asked the commissioners to read the ordinance carefully and come prepared to the next meeting with written notes that detail their recommendations.

#### **PUBLIC COMMENT ON NON-AGENDA ITEMS**

None.

#### **CORRESPONDENCE & REPORTS**

None.

#### **COMMISSIONERS' REPORTS**

Chair Dausman noted that the PC has five volunteers that values the community's input. The volunteers do a good job being casual and accommodating with rules of order, and he asked that the public respect the Planning Commission's deliberation process.

#### **ADJOURNMENT**

**Motion:** A motion to adjourn was made by Commissioner Dausman.

**Seconded by:** Commissioner J. Williams.



**Motion passed 5-0.**

The meeting was adjourned at 8:53 p.m.

Respectfully submitted,

Leanne Moll, City Manager/ City Recorder