

**Rivergrove Planning Commission Minutes  
November 5, 2018**

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**CALL TO ORDER AND ROLL CALL** The meeting was called to order at River Grove Elementary School library at 7:07 p.m.

The Planning Commission recognized retiring City Planner Carole Connell.

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

**CONSENT AGENDA**

**1. Minutes from the October 1, 2018 meeting.**

**Motion:** Commissioner Sweet **moved** to approve the Minutes from the October 1, 2018 meeting as presented. **Seconded** by Commissioner J. Williams. The motion **passed 4-0**.

**NEW BUSINESS**

**1. Type III Hearing for an application for a floating dock at 4620 Childs Road, submitted by Maywood Homes, owner Larry Todd.**

City Recorder Leanne Moll read the Type III Hearing disclosures.

City Planner Carole Connell explained that this dock project requires a Conditional Use Permit and a development permit for a 128 square foot floating dock on the Tualatin River. Planner Matt Straite worked with the applicant to remove the proposed deck from the application. 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 a neutral color, the staircase must have minimal impact on the Water Quality Resource Area, and it has to be made of non-toxic materials. The dock is made of aluminum and meets that standard.

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

**Proponents:**

None.

**Neutral:**

None.

**Opponents:**

None.

**Motion:** Commissioner Jeff Williams **moved to approve** the development permit with all the conditions required in the staff report. **Seconded** by Commissioner W. Williams. **Motion passed 4-0.**

**UNFINISHED BUSINESS**

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

City Planner Carole Connell suggested the Commissioners deliberate without any additional comments from her. Commissioner McKay asked about the process and why the City Council has scheduled their hearing for November 14, 2018. Ms. Connell explained that legislative matters are not as formal as quasi-judicial hearings and City Council may proceed with or without the Planning Commission's input. The Planning Commission's job is to make their recommendations and send them to City Council, not to approve or disapprove of the ordinance.

Commissioner J. Williams explained that he has served on the tree board for the last year. He urged Council to adopt provisions that capture the spirit and intent of the ideas, but not what is exactly in the document. The intent of the tree board was to create a process that will preserve freedom of choice for homeowners while dealing with questionable tree removal activities and addressing developers' needs. Commissioner J. Williams's only concern is the blue-level approval criteria for homeowners, which is effectively an automatic rubber stamp approval, without the limit of three trees per year. He is concerned about homeowners with dividable lots who would work with developers. He would like the three-tree limit for trees not in the WQRA reinstated.

City Recorder Leanne Moll read a relevant email message from incoming City Planner Matt Straite:

"The new ordinance has specific application costs listed for different levels. However, anything that needs to go to PC will need a contractor to draft a staff report. The applicant will have to pay for staff time to draft and present the project. That's far more than the small amounts listed in the Ordinance. I am not sure that was clear at the hearing.

Also, we could be opening a real can of worms if Blue Permits are issued over the Counter, because there will be no paper trail on how the criteria was satisfied. Yes, the intent may have been to make them over the counter. But we should not lose sight of the fact that they are still subject to appeals and LUBA. Anything approved by staff needs to have findings, even if they are pre-printed findings that Leanne simply checks (literally) the boxes to indicate they have been satisfied. Perhaps the application should have those check boxes."

Commissioner McKay asked about the tree advisory boards role in tree removals and if any tree that is not an emergency tree permit (green) need to have a recommendation from the tree

advisory board. Commissioner McKay explained that with the proposed ordinance, trees that are not in the WQRA or floodplain now need the recommendation from the tree advisory board, which is not an automatic approval. He also shared concerns that the new tree ordinance requires a review by a certified arborist, but the specifics of the arborist involvement or report are not defined.

Commissioner Sweet explained that the definition of a jurisdictional tree will increase in size from 11.5" to 12" dbh. If a resident need to remove a larger tree that fits that qualification, the permit process, including comments from the tree board and an arborist report is required.

Commissioner McKay explained that he thinks the ordinance is too hard to understand for a typical resident. He is opposed to the tree ordinance because in a City of 400 residents, the people do not need another layer of government. He is also very concerned that a tree advisory board comprised of residents who are not arborists should not be making recommendations about tree retention. If the tree board or the planning commission requires retention of a tree that is ultimately dangerous or falls on a home, that could be a significant liability for the City. Commissioner McKay expressed that it was not the full truth for Mr. David Pierce to testify at the last hearing that the ordinance was basically the same. It is changed significantly and strips the property rights of the citizens of the City. Commissioner McKay further expressed that he does not like an ordinance that not a single citizen testified in favor of. He listed the issues he sees with the proposed ordinance: the process of identifying significant trees or groves was questioned; the tree protection and mitigation required by the FEMA lawsuit has not been understood; the ordinance incorporates TCUSA requirements that are irrelevant. Commissioner McKay proposed that the Commissioners should not recommend the proposed ordinance #93-2018, but should recommend a small change to modify the existing ordinance: that trees in the flood hazard area should be reviewed by the Planning Commission and mitigation required for those trees when they are removed.

Commissioner W. Williams stated that he has reviewed the ordinance and he agrees that it is confusing because there are several layers, including the residential tree cutting and the state and Tree City USA requirements. He believes these should be separate ordinances and he acknowledged resident Michael Salch for helping him see the ordinance this way. Commissioner W. Williams agrees with Commissioner McKay that the current ordinance could use some additional revisions. He also has concerns about the lack of limits for residential tree removal. He explained that he is not attempting to limit property owner's rights, but he is trying to maintain the current canopy and make sure the community maintains its beauty and attractiveness. He proposed that only one tree a year should be allowed without the permitting process. After that, two more trees could be evaluated by the Planning Commission. Those would still be at no cost, but would need a more formal evaluation. Residents could remove three trees from their property a year, but not more without a review by the Planning Commission. He also expressed concerns that the City has not defined significant or historical trees.

Commissioner W. Williams continued that he shares Commissioner McKay's concerns about the proposed tree advisory board because the ordinance has not defined any education level or qualifications. He believes the Planning Commission should be the tree advisory board with help from the City Arborist. The Planning Commission is a representation of the community and can listen to the community's concerns, make the effort to understand the risks by consulting the City Arborist, and ultimately make an informed decision. Commissioner W. Williams explained that the allure of Rivergrove is that residents have larger lot with trees and privacy and that makes it attractive and quaint. Rivergrove is a special City. Commissioner W. Williams

explained that the current ordinance is overcomplicated and he called for the Tree City USA and state requirements to be proposed in a separate ordinance.

Commissioner J. Williams agreed with Commissioner W. Williams that the ordinances could be separate and there should be a limit on blue-level permit tree removal.

Commissioner W. Williams expressed that he hopes the Planning Commission move those stipulations forward. Without those recommendations, Commissioner W. Williams agreed with Commissioner McKay that the Commissioner should not recommend the ordinance in any form to City Council.

Vice Chair Sweet noted that he hopes Council asks first what, if any, problems there are with the existing ordinance. He believes Council should set aside the proposed tree advisory board because of all the issues it raises. The requirements for public trees have the same issues. He agrees that Council should look at the current ordinance and apply a simple, direct fix. He urged Council to consider whether or not the proposed ordinance solves our problems or creates more issues or problems. Commissioner Sweet believes that the proposed ordinance has “bitten off more than it can chew.” The City didn’t look at the current ordinance to make amendments, and that would have been a good place to start. Vice Chair Sweet is in favor of thoughtfully modifying the existing tree cutting ordinance.

Commissioner W. Williams explained that he believed the ordinance process lacked scope, which cost the City a lot of additional time and money.

Commissioner McKay shared that he would like to move forward and proposed that Council modify the existing tree ordinance with the following items:

- Include a mitigation plan for any tree removed from the flood hazard zone.
- The Planning Commission will serve as the tree board.
- Council should review the quantity of trees allowed to be removed without any oversight and consider that as a problem.

Commissioners W. Williams suggested that violations should be stiffer and the violations should be applied per tree removed, so people don’t just remove trees and pay the fines.

Commissioner J. Williams agreed that the fines should be higher.

Commissioner Sweet explained that the Planning Commission does not recommend adopting the proposed tree ordinance, but does recommend amending the current tree cutting ordinance. Commissioner Sweet believes Council should revise the existing tree cutting ordinance instead of the proposed ordinance 93-2018 and that Council should only address these issues:

**Motion:** Commissioner McKay **moved** to recommend that City Council not adopt proposed ordinance 93-2018, but to modify ordinance #70-2004 to include mitigation in the WQRA and review and mitigation in the flood hazard district. Council should also review ordinance #70-2004 to reconsider the three-tree limit if it makes sense to make it more restrictive. If it is deemed necessary, Council should propose a new ordinance that addresses public trees, Tree City USA requirements, and state requirements for Heritage and Significant Trees. **Seconded by J. Williams. Passed 4-0.**

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

Mr. Salch noted that two years ago Mr. Salch volunteered to write a new ordinance, but he was not invited. He explained that this task should not be so difficult. He believes it is only difficult because the scope, direction, and focus were lost.

Commissioner J. Williams noted that the focus of the tree board was clear, but the last failed proposal was the starting point.

#### **CORRESPONDENCE & REPORTS**

None.

#### **COMMISSIONERS' REPORTS**

#### **ADJOURNMENT**

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

**Seconded by:** Commissioner Sweet.

**Motion passed 4-0.**

The meeting was adjourned at 8:20 p.m.

Respectfully submitted,

Leanne Moll, City Manager/ City Recorder