

CITY OF McMinnville
MINUTES OF WORK SESSION
of the McMinnville City Council
Held at the Kent L. Taylor Civic Hall on Gormley Plaza
McMinnville, Oregon

Tuesday, July 23, 2019 at 6:00 p.m.

Presiding: Scott Hill, Mayor

Recording Secretary: Melissa Bisset

Councilors:	<u>Present</u>	<u>Excused Absence</u>
	Kellie Menke	None
	Remy Drabkin	
	Wendy Stassens	
	Sal Peralta	
	Zack Geary	
	Adam Garvin	

Also present were City Manager Jeff Towery, City Attorney David Koch, Parks and Recreation Director Susan Muir, Steve Ganzer, Anne Lane, Katie Noyd, Matt Scales, Planning Director Heather Richards, Kylie Bayer-Fertterrer, Intern Megan B, and members of the News Media – Dave Adams, KLYC Radio, and Tom Henderson, *News Register*.

Other Attendees:

1. CALL TO ORDER: Mayor Hill called the meeting to order at 6:09 p.m.

2. DISCUSSION ON PARKS AND RECREATION FEE STUDY

Parks and Recreation Director Susan Muir presented. When she came to the City two years ago, she found that each manager within their program area was doing a great job of balancing their budget and meeting their cost recovery goals of 50% and making good decisions about issuing scholarships or fee waivers. Now they wanted to look at consistency across the program areas and through an equity lens in how they offered programs to customers. The Council policy in the past had been 50% cost recovery. What they had found, though, was keeping fees artificially low was not a long term sustainable way to fund programming. The equity lens they thought they were applying only reached those who knew how to access the programs and they were leaving people behind. This process was an opportunity to look at where they increased and decreased fees based on community values and the Strategic Plan.

This was a multi-step process:

1. Review the data and methodology (7/23/2019)
2. Policy discussion framework/direction
3. City staff sets up scholarship program mirroring the KOB scholarship program (in development)
4. City staff conduct a public open house on policy framework & scholarship program (announce in winter guide*)
5. City staff report back to City Council with results of public input, and provide draft decision making tool for Council approval. (date TBD)
6. City staff will apply the filter to programs and fees and bring forward fee setting structure (date TBD)
7. Future & ongoing: Long term funding sustainability and facility assessment work incorporating a look at capital costs as well as operating costs (Ballard King study)

Dan Edds, Capital Accounting Partners, acknowledged how staff was sensitive to community values and he greatly appreciated that. He reviewed the scope of the project which included calculating the full cost of recreation services based on fiscal year 2018-2019 budget, determine the full cost with revenues for each major recreation program and/ or facility, and work with staff to develop cost recovery objectives, policies, and strategies. He noted that the project aligned with the Strategic Plan in the following ways: provide a framework for cost recovery opportunities, look for accuracy and total cost recovery, account for direct cost and indirect cost, facilitate a policy discussion relating to equity and access, look at consistency in setting fees and targets for cost recovery, and make sure there was transparency within the cost recovery strategies for both the public and users.

He stated that they conducted an indirect cost allocation plan. They conducted it using the federal government methodology which was the highest and most robust methodology of allocating overhead costs. He provided a sample of the double step down cost method. In the City's budget, \$245,000 of City wide overhead was assigned to Parks and Recreation. In the modeling he did for this project, he took that \$245,000 and allocated it out to each of the departments. It was the full cost of recreation services.

He then discussed what drove cost recovery:

- Targeted cost recovery rate

- Frequency of updating fees
- City overhead rates were frequently not assigned to recreation fees or programs
- Challenges of allocating program development and administration costs to specific program fees
- Scholarships, discounts, and memberships

The various components of costs included direct program expenses, division administrative costs, and department and city-wide overhead. He then provided an example of the allocation of administrative costs. In summary, they were at 48% of cost recovery and the goal was 50%. That was about average in his opinion. The total cost recovery for youth programs was 51%, for adult programs was 63%, and for senior programs was 29%. This could be a discussion on where they wanted pricing for the various programs to land.

Discussion ensued regarding how fee reductions had not been administered consistently across the department.

They conducted a comparison of fees. He provided the challenges with comparisons: comparing current cost with a price, city overhead may or may not be included, fee/service descriptions seldom match perfectly, many communities did not routinely update fees with a robust cost analysis, service levels could vary dramatically, and recreation services had multiple objectives. The comparators included Newberg, Woodburn, Hillsboro, Wilsonville, Newport, and Redmond Area Park and Recreation. He compared the cost of the aquatic six month membership pass and summer day camps rate per program hour. McMinnville was on the lower end of the average.

Discussion ensued regarding competition with other facilities.

Parks and Recreation Director Muir stated that they had heard that people were choosing to go to Newberg with their new pool.

The recommendations included:

- Set policies or targets for fee generating revenues consistent with community values but also that would maximize cost recovery.
 - o Focus on high quality services to support quality of life.
 - o Provide robust scholarship opportunities.
- Adjust fees annually and perform an update review every 3 – 5 years.

- Long-term facility maintenance program.
 - o Stewardship
 - o Deliver services with discipline and focus.
 - o Prioritize service and maintenance needs.

Councilor Stassens stated that the prices compared to the comparable communities were not significantly different. What was the recommendation for increasing fees and staying competitive?

Parks and Recreation Director Muir stated that they did not have any policy direction to increase the cost recovery percentage. She thought they wanted to keep their General Fund footprint the same while making sure that they were subsidizing the right people and programs in the community. Instead of the dollars driving all of the program decisions, they wanted to look at it from an equity perspective.

Mr. Edds stated that they should be aggressive as possible and at the same time have a well thought out scholarship program and design programs with specific population targets in mind. He had seen cities that were very integrated with the local job placement programs.

Councilor Garvin was open to recommendations regarding cost recovery. They needed to pair the cost recovery with the value people were getting.

Councilor Drabkin stated there needed to be better access to scholarships. She would like to see the KOB program set apart and not treated in the same way as other programs for cost recovery. They needed to make sure that the students that needed the program that were the most challenged or had parents that could not apply for the scholarships were not limited from doing so.

Parks and Recreation Director Muir said there would be a KOB Technical Advisory Committee meeting tomorrow. Staff was working with the School District as well. The program was being set aside for special consideration. She explained the way fees were set and the subsidy percentage. There were also a lot of free programs.

The policy discussion that needed to take place was:

- Should all fee programs include a resident and non-resident fee?
- Equitable scholarship program?
- Did a tiered fee system make sense for McMinnville?

Councilor Geary wanted to make sure that they were setting the City up for success when they needed to go out for a large ask in the future.

Mr. Edds stated this project looked at cost recovery as a moment of time, not in the future. Any kind of a master plan or facility remodel needed to be factored into how fees were structured and set and long term cost recovery strategies.

Mayor Hill was excited that KOB was being looked at through a different lens and bringing the partners together. He was also excited about looking into fee recovery. He thought they were going down the right road and trying to understand and make more informed policy decisions.

3. ADJOURN: Mayor Hill adjourned the meeting at 6:45 p.m.

CITY OF McMINNVILLE
MINUTES OF REGULAR MEETING
of the McMinnville City Council
Held at the Kent L. Taylor Civic Hall on Gormley Plaza
McMinnville, Oregon

Tuesday, July 23, 2019 at 7:00 p.m.

Presiding: Scott Hill, Mayor

Recording Secretary: Melissa Bisset

Councilors:	<u>Present</u>	<u>Excused Absence</u>
	Kellie Menke	None
	Remy Drabkin	
	Wendy Stassens	
	Sal Peralta	
	Zack Geary	
	Adam Garvin	

Also present were City Manager Jeff Towery, City Attorney David Koch, Parks and Recreation Director Susan Muir, Steve Ganzer, Anne Lane, Katie Noyd, Matt Scales, Planning Director Heather Richards, Kylie Bayer-Fertterrer, Intern Megan B, Jamie Fleckenstein, and Mike Bisset and members of the News Media – Dave Adams, KLYC Radio, and Tom Henderson, *News Register*.

Other Attendees:

1. CALL TO ORDER: Mayor Hill called the meeting to order at 7:02 p.m.

2. PLEDGE OF ALLEGIANCE

Council President Menke led the pledge of allegiance.

3. PUBLIC HEARINGS

Mayor Hill stated that there would be one quasi-judicial public hearing to consider three land-use applications for the Oak Ridge Meadows project. These land-use decisions were represented by Ordinances 5065, 5069, and 5070. At the meeting on June 25, 2019, the City Council conducted the first reading of each ordinance and directed staff to schedule a public hearing. He read the following statement:

I want to thank everyone who has come to the public hearing for their participation. Oregon Land Use Goal #1 is citizen participation. The intent of that goal is to provide an opportunity for citizens to participate in the land-use decision making process. However, land-use decisions are a legal decision impacting real property and the City of McMinnville and McMinnville City Council are held to rigorous statutory and local regulations about how to make land-use decisions so that the decision and process are transparent and fair for all.

The City Council must make their decision based upon the federal, state and local regulations governing the project at the time that it was submitted. All decisions must have legal findings based on whether or not the land-use application meets the criteria of the Oregon State Laws and the McMinnville City Code. If the application does not meet the provisions of the Comprehensive Plan or the McMinnville City Code as presented but could meet it with a condition of approval than the City Council must provide that condition of approval as an opportunity to meet the requirements of the code.

1. All testimony in the hearings must be directed toward the criteria listed in the staff report or other criteria in the Comprehensive Plan or other land use regulations that the person testifying believes apply to the decision.

2. The failure to raise an issue accompanied by statements or evidence sufficient to afford the City Council and the parties an opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals based on that issue.

3. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the City Council to respond to the issue precludes an action for damages in circuit court.

4. The order of procedure for tonight's hearings are set out in detail on the board. In brief, we will start with a staff report. Next, the applicant will be asked to present his or her case. Everyone who supports the applications will be given an opportunity to speak after the applicant is finished. Then questions from the Councilors may be posed to the Mayor to be addressed by the applicant and the supporters. Next, the opponents may speak. Then questions from the Councilors may be posed to the Mayor to be addressed by the opponents. The applicant is then given time to respond to and/or rebut any evidence presented.

5. The applicant is allowed at least seven more days to submit written arguments. The applicant may waive this right if he or she wants to.

6. Once the City Council has allowed all the procedural rights to the parties and once the City Council is satisfied it has all the evidence it needs, it will then close the public hearing, deliberate amongst themselves, and announce the decision.

7. A final decision of the City Council can be appealed to the Land Use Board of Appeals.

8. We wish to hear from everyone who is interested in the proposals. However, we request that you refrain from repeating testimony already given by someone else. If you agree with what someone before you has said but you want to ensure you have legal standing in the public record, please come to the testimony table, sign the sign-in sheet, state your name and address for the record and say that you support the application or that you concur with what the opposition has said. Outside of staff and the applicant, public testimony will be limited to three minutes. We will time the testimony and provide you with a visual warning when there is one minute remaining. Please be sure to keep your testimony relevant to the Comprehensive Plan and McMinnville City Code criteria.

Mayor Hill noted that this was a passionate topic and Council had received all public testimony and had studied it. They had diligently worked very hard to read the testimony. He thanked staff for the efforts they had taken in this matter and breaking it down for the Council. He also thanked the Planning Commission for their efforts and in wanting to be transparent, listening to testimony, and supporting the Municipal Code and the Comprehensive Plan.

He then stated tonight's public hearing was for docket numbers PDA 3-18, PDA 4-18, and S 3-18, applications requesting approval of two separate Planned Development amendments and a tentative subdivision plan. The City Council was considering the recommendation of the Planning Commission and decisions on the three applications would be made

independently against the review criteria that applied to each individual request, but all three applications would be reviewed concurrently in one public hearing because they related to the same property.

Application PDA 3-18 was requesting approval to amend Planned Development Ordinance 4722 (Oak Ridge Planned Development) to remove the unplatted fourth phase of the Oak Ridge phased subdivision from the boundary of the Oak Ridge Planned Development Overlay District.

Application PDA 4-18 was requesting approval to amend Planned Development Ordinance 4822 (Oak Ridge Meadows Planned Development) to add the unplatted fourth phase of the Oak Ridge phased subdivision to the boundary of the Oak Ridge Meadows Planned Development; allow for lot size averaging; allow for modified setbacks; allow for some lots with side lot lines oriented other than at right angles to the street upon which the lots face; allow for some lots to exceed the recommended lot depth to width ratio; allow some block lengths to exceed the recommended maximum block length standard; allow for the designation of an approximately 0.85-acre active private neighborhood park; and allow for dedication of an approximately 5.6-acre public open-space greenway dedication along Baker Creek.

Application S 3-18 was requesting approval of a 108 lot tentative two-phased single-family residential subdivision plan on approximately 35.47 acres of land with lots ranging from 4,950 to 14,315 square feet in size and averaging 7,771 square feet in size, referred to as Oak Ridge Meadows. In addition, an approximately 0.85-acre active private neighborhood park and an approximately 5.6-acre public open-space greenway dedication along Baker Creek are proposed.

The subject site was located generally north of Baker Creek Road and the multi-phased Oak Ridge residential development and south of Baker Creek. It was more specifically described as Tax Lot 602, Section 07 and Tax Lot 1300, Section 17, T.4 S., R. 4 W., W.M.”

Mayor Hill opened the public hearing at 7:16 p.m. He asked the following questions.

Did anyone wish to object to the jurisdiction of the City Council to hear this matter? None.

Did any Councilor wish to make any disclosure or abstain from participating or voting on this application? No Councilor made any disclosures or abstained from participating or voting on the application.

Did any Councilor need to declare any contact prior to this hearing with the applicant, any other party involved in this hearing, or any other source of information (outside of staff) regarding the subject of this hearing?

Councilor Drabkin made the same declarations as other Councilors on June 25th regarding emails she had received. All of the emails were forwarded along to Planning Director Richards.

Councilor Menke declared that any email she received was forwarded to Planning Director Richards.

Mayor Hill clarified all emails received by the Council had been forwarded to staff and made part of the public record.

Councilor Peralta stated that he did not send any additional emails that Council was cc'd on.

Had any Councilors visited the site? All Councilors declared that they had visited the site.

Did any Councilor wish to discuss their visit to the subject site?

Mayor Hill stated that he traveled the full perimeter of the site.

Mayor Hill then asked staff to give a brief description of the application.

Planning Director Richards presented the staff report. She stated Section 2.36.040(D) of the MMC governed the public hearings process at the City of McMinnville. A staff report was part of the process. However, staff gave an extensive presentation on the three land-use decisions on June 25, 2019. In order to ensure time for the applicant report and public testimony, the June 25, 2019, staff report and presentation were being submitted as part of the public record. Those Councilors who were not present on June 25, 2019 had watched a recording of the presentation. She stated that they would summarize the new material entered into the record between the June 25, 2019 City Council meeting and the July 23, 2019 public hearing.

Per ORS 227.178, the City of McMinnville needed to render a decision on these three land-use decisions within 120 days unless the applicant requested an extension. This was done to ensure timeliness in terms of decision-making. The applicant requested an extension to August 13, 2019 extending the processing time to 201 days. The public hearing was on July 23, 2019 and a second reading of the ordinance could take place as late as August 13, 2019.

Associate Planner Fleckenstein reviewed the applications. Ordinance 5065 related to PDA 3-18, which would remove 11.47 acres of undeveloped, unplatted property from the Oak Ridge Planned Development. Ordinance

5069 related to PDA 4-18, which would add 11.47 acres to the Oak Ridge Meadows Planned Development, zoning departures, and required amenities. Ordinance 5070 related to Subdivision 3-18, a 108 lot single family residential subdivision with public and private open space amenities. The Planning Commission had recommended approval of all three applications. He then reviewed the 10 new written testimonies submitted to the Planning Department. These included:

- PBS, letter re: Baker Creek Hydrologic Analysis rebuttal
- Mike Colvin, letter in opposition re: flooding
- Mike Colvin, letter in opposition re: Shadden Drive
- Rick & Linda Thomas, email in opposition
- Carmen Mendenhall, email in opposition
- Sandi Colvin, letter in opposition
- Friends of Baker Creek, testimony binder in opposition
- Randy & Jan Hartzell, email in opposition
- Mark & Sandy Hyder, email in opposition
- Sandi Colvin, email in opposition
- Sandi Colvin, correction to testimony

The oppositional testimony expressed concern related to three primary issues:

1. Impact of development on surrounding street network and transportation system
 - Local street standards were too congested for a neighborhood.
2. Impact of development on the wetlands
 - Any impact was too much impact
3. Impact of development on downstream flooding
 - Development would increase flooding

Associate Planner Fleckenstein discussed the current street standards that were adopted by the 2010 Transportation System Plan. The local residential street standard was 1,200 maximum average daily trips.

Councilor Drabkin asked about other local streets that currently had a traffic flow comparable to this location.

Community Development Director Bisset stated that most neighborhoods were developed to local street standards and they conveyed areas of this

size or larger. This was not an uncommon occurrence in the residential areas.

Associate Planner Fleckenstein said the existing traffic on Pinot Noir was approximately 200 average daily trips. The assumption was 1 household generated approximately 9.5 average daily trips. The traffic impact of the proposed 108 households would create just over 1,000 average daily trips. This would reach the threshold of 1,200 average daily trips at the intersection of Oak Ridge Drive and Pinot Noir Drive.

Councilor Peralta asked about the difference between local residential and neighborhood connector streets.

Community Development Director Bisset explained they both had 50 foot right-of-way with 28 foot wide paved section. As traffic increased and started passing the 1,200 daily trips, they had to begin to look at traffic calming measures. There was no physical change to the width of the street or right-of-way going from a local street standard to a neighborhood connector street. They would begin to look at restricting parking at intersections and other ways to increase visibility. The 1,200 trips was the upper limit of a neighborhood street and lower limit for a neighborhood connector in the adopted plan.

Councilor Garvin asked if NW Oak Ridge Drive was considered a connector. Community Development Director Bisset clarified that if it was carrying 1,200 vehicles per day or less, it was classified as a local street. If the traffic flow were to surpass that over time, they would look at other measures in the neighborhood connector standards.

Councilor Garvin asked what the additional traffic flow would be on NW Oak Ridge Drive. Associate Planner Fleckenstein noted that the number was included in the traffic study that the applicant provided.

Associate Planner Fleckenstein said the addition of 108 lots would push Pinot Noir Drive to the threshold of the local street. There had been a lot of testimony about the extension of Shadden Drive to relieve some of the traffic stress from Pinot Noir Drive. Shadden Drive was scheduled to be an emergency access to the neighborhood until it was built by Stafford Land Company in their development of Baker Creek North.

Planning Director Richards stated that there had been some confusion with Shadden Drive as a secondary emergency access versus being a public road. She stated that for public safety there was a need for two accesses and the second access was usually not built to a street standard, but was gravel to support fire vehicles and there was a locked gate that the Fire Department had access to. The secondary access was a requirement in the

Code. The way that the applicant was responding to that was providing the secondary access on Shadden.

Councilor Drabkin appreciated that the street was built to withstand that amount of traffic in the long term. She noted the City could not require the applicant to build the road on property that did not belong to them. Citizens had raised the concern about livability especially during construction. Opponents had stated that there was a working relationship that would allow the street to be built out at this time. She asked if that conversation had gone any further.

Planning Director Richards stated that there had been discussion about the applicant voluntarily working with the adjacent property owner to build out Shadden Drive as a public street. She confirmed the City could not require it because the property was not owned by the applicant. She explained the Nollan and Dolan case laws. The City could not go above and beyond the test of what was required for a development. Evidence in the record showed that the proposed street network met the standards in the TSP. With regard to Shadden Drive, staff received the application for the Baker Creek North development and the first portion of Shadden Drive would be built in the first phase. The last portion of Shadden Drive would be built in the last phase. They were estimating it would be anywhere from 5-10 years for Phase 3B. The City did not know if those conversations took place; it would be a good question to ask the applicant.

Councilor Stassens asked what the secondary access was intended to be in 2005. Planning Director Richards said there was a plan to do a secondary emergency access onto Pinehurst Drive but as the neighborhood developed and the public street network was created, those lots were built out and the second public street would serve as the secondary access.

Associate Planner Fleckenstein then displayed a map of the intersections that were included in the Oak Ridge Meadows supplemental traffic analysis dated July 2019. The analysis showed that all of the intersections met the standards for level of service and volume to capacity ratios. The second issue that came up in public testimony was the impact of the development on the wetlands. He displayed a map of the development and the wetlands. There are 3.09 acres of delineated wetlands, 2.03 would be preserved and 1.06 would be impacted. The impacted wetland was on the periphery and primarily for the road. Any impact that was proposed and approved by the Department of State Lands would have a required compensatory mitigation required. He provided a map of other mitigated wetlands in McMinnville for development to show the precedent. There was not a City policy that did not allow wetland impact/mitigation. There were several examples similar to the proposal with peripheral impact and

mitigation for road development and preservation of primary wetland. Development should minimize impact. The examples included Bixler and Gerhart subdivisions, NE Grandhaven Dr., Horizon Heights subdivision, NW Horizon Drive, Oak Ridge subdivision, and Crestbrook 1st addition.

Planning Director Richards stated that the traffic on Pinot Noir Drive was where there would be the most trips because then it started to disperse through the transportation network. None of the roads met or exceeded 1,200 average daily trips based on the analysis. She then discussed the concerns about the floodplain and downstream flooding. The Friends of Baker Creek commissioned a hydrological report which showed that there were valid concerns about the floodplain itself. It also showed that the development did not have significant impact on the neighborhoods downstream in terms of flooding. They had been speaking with officials from FEMA and the Department of Land Conservation and Development. A new discussion since the June 25 meeting was a concern about stormwater runoff contributing to flooding in this area. Most of the new development did not drain into this basin but was draining south of the basin toward Baker Creek East and West and Hill Road. The last development that drained into this basin was built in 2010.

Mayor Hill asked about the areas where there was constraint, was that where there could be overflows or lack of capacity in the pipes. Community Development Director Bisset stated that the Stormwater Master Plan did a capacity analysis for the full build out of the City and considered a design for rainfall events. It was likely a future capacity issue. There were a few pipes in the Master Plan that were current challenges, but none of those were in this basin. Most of the constraints were identified as future constraints when the City was fully built out.

Planning Director Richards stated that one of the concerns in the hydrological report was that the floodplain could be larger than what was identified in the FEMA maps adopted in 2010. They worked with staff from DLCDC and FEMA to evaluate the validity of the report and conclusions, the safety of the built environment in the floodplain, and what McMinnville could require of the applicant. In terms of the validity of the report and conclusions, they had a third party review by FEMA consultants and further review by the applicant. Those consultants did not dispute the validity of the opponent's PBS report's conclusions including: data for the FEMA FIRM panels was outdated and should be updated, the floodplain shown in 2010 FIRM panel may not be representative of the floodplain's extent today, and the proposed development would not increase downstream flooding. They were working with FEMA on being

more competitive in the grant process for a floodplain analysis and landslide susceptibility analysis.

Councilor Drabkin asked about the timeframe for new the FEMA FIRM panels for this project, which would take 6-8 months. Planning Director Richards said it would take 6-8 months for a review process for a map revision of this site. She explained the analysis that was needed for the map revision. The timeframe for new FEMA FIRM panels was a 5-10 year review. All of the land in the FEMA FIRM panels was rezoned into the floodplain zone. The City did not allow development in the floodplain zone. However, just because the report stated the floodplain might have expanded, the property had not been rezoned into the floodplain and there was no definitive analysis to rezone it. They wanted to ensure safety for structures that were built, but they could not apply the floodplain zone management practices to the property that was not in the floodplain because that was not how the City's ordinance was designed. The land that was in the designated floodplain was being dedicated to the City to maintain as a greenway.

Councilor Drabkin said in thinking about the long term build out, if the analysis of the floodplain was to begin now, would they be aware of any other properties that were in the floodplain before development occurred. Planning Director Richards explained that no developer wanted to put themselves at risk to do that analysis first and the developer for this property had done an analysis of the floodplain as well.

Planning Director Richards said in regard to the safety of the built environment in the floodplain, McMinnville did not allow residential development in the Floodplain Zone. She noted that other jurisdictions allowed development in floodplains that conformed to State and Federal regulations. The impacted lots could be developed to State/Federal standards to prevent flood damage. For what McMinnville could require of the applicant, she stated that DLCD and FEMA expressed concern that additional conditions would not be supported by their current adopted ordinances and would not be legally tenable. The applicant could be asked to agree to a condition relative to determining current base flood elevation and employing Oregon Model Flood Damage Prevention Ordinance standards on impacted lots. The applicant contacted the City and they had concerns about building in the floodplain. The applicant had revised the subdivision plan to remove the five lots that were in the expanded floodplain and place them somewhere else in the subdivision. They also agreed upon conditions of approval to mitigate the risk of flooding the lots in the proposed subdivision and conditions of approval to mitigate development increasing downstream flooding. She then reviewed these

new additional conditions. The new Exhibit 6ALT site plan would achieve:

- Removal of 5 lots likely in the expanded floodplain eliminating the risk of developing in a potential floodplain
- Adding 5 smaller lots to the subdivision which would increase the variety of housing types offered
- Reduce wetland impact from 1.06 acres to approximately 0.9 acres
- Provide “no-rise certification” to verify that development had zero downstream impact on the floodplain

Councilor Drabkin asked about the wetland that appeared in lots 3, 4, 5, 6, 8, and 9. Planning Director Richards said that was the planned mitigated wetland to support the development. It was the same wetland that was approved for mitigation in the original planned development.

Councilor Drabkin gave an example lot 6 where the wetland was in the center of the lot. Was it a situation where it would be filled in to be built upon? Planning Director Richards responded that it was.

Planning Director Richards reviewed the next steps which were: hold the public hearing, close the public hearing, elect to conduct or not conduct a second reading of the ordinance(s), and vote to adopt or not adopt the ordinance(s). The land use decision timeline expired August 13, 2019.

Councilor Stassens asked if there was ever a time that the State Department would decline development altogether. A significant concern was that the wetlands were not being protected. Planning Director Richards stated the City deferred to the Division of State Lands to administer, manage, and enforce the wetland program. They had to balance development and preservation of wetland. They would look at the type of wetland and had priority structures in terms of preservation. Associate Planner Fleckenstein said they also reviewed multiple options to see if they could avoid wetlands altogether and what was the least impactful.

Councilor Stassens stated that at one point mitigation failed. What happened when the mitigation failed? It was noted that this would be a good question for the applicant.

Planning Director Richards stated in terms of process, staff declared the application incomplete until the wetland delineation was provided. The wetland mitigation and DSL process was a typical process that occurred after the land use decision.

Councilor Drabkin asked if either or both parties indicated to Planning staff if the outcome wasn't to their liking that they would appeal the decision. Planning Director Richards stated that staff had not had that conversation, but both sides had engaged lawyers.

Councilor Stassens stated that there was testimony concerned that Pinehurst Drive would not be able to go across the property because of the wetlands. Community Development Director Bisset stated that there were provisions in the zoning ordinance that required adjacent properties be served by the road and utility networks. That property was within the UGB and it would need to be served for residential development in the future. He was not aware of another example of a time when the conditions changed and a floodplain was where a street was planned to go and it had to be reconfigured.

The Mayor asked if the applicant would provide any testimony.

Lori Zumwalt, Premier Development, said she and her husband had been born and raised in McMinnville. They cared deeply about the community and had built many homes in the City. They had listened to the opponents and made alterations to their plan to make the best subdivision that they could. In regards to Shadden Drive, she had many conversations with the owner of Stafford Lands and the owner was adamantly opposed to creating the ongoing access and was only agreeable to the easement for emergency access. The owner also did not want their construction trucks to be using the access as his contention was that he would be doing his own construction and did not want others driving through it.

Wendy Kellington, attorney with Kellington Law Group, stated that the applicant had demonstrated that all three proposals satisfied all approval standards. The ultimate issue was if the development met the adopted and acknowledged approval criteria. If the answer was yes, then the City must approve the applications. The applicants had conducted extensive studies related to the project including transportation, hydrology, wetlands, and stormwater management to ensure the proposal satisfied all the applicable Comprehensive Plan policies and zoning ordinance standards. The staff report concluded the standards had been met and the findings demonstrated the standards had been met by reference to evidence in the record. She reminded Council of the goalpost rule and that they must apply the standards in affect at the time of the application. There was no dispute that no development was proposed within the City's adopted FEMA 100 year floodplain. The current adopted FEMA maps were carefully prepared. The staff report correctly stated that the FIRM panels in Yamhill County were updated in 2010 as part of a state-wide effort to modernize and update the FIRM maps. The proposal not only did not

develop in the floodplain, but also dedicated the entire floodplain to the City of McMinnville as a natural greenway park. The proposal simply did not cause flooding. The Westech Engineering, Inc. stormwater technical response showed that the storm water detention pond and excess to Baker Creek as required by City Plan had no down-stream impacts which was confirmed by the opponents' hydrologist. Even if the City ignored the adopted standard, the opponents' evidence in the PBS report showed worst case, approval of the development as originally proposed had no perceptible downstream impact. The proposal either reduced downstream impacts or added 1/100th of a foot (1/8") to the flood elevation. The applicant agreed with staff that a voluntary condition resolved the matter. The applicant was willing to accept and asked the City to impose revised and additional conditions to address the issue. The benefits of City approval imposing the requested conditions were: it completely resolved the concerns which had been a central issue for opponents about the residential development of the residentially zone land, with the proposed conditions, there was no possibility of a 100 year flood issue, it reduced the wetland impact from 1.06 acres of filled wetland to .9 acres, and it still maintained the density expectations of 108 lots which was 16 fewer lots than the 206 lots currently approved for the subject property. The opponents primarily lived adjacent to the proposed development. They objected to view shed impacts, which was not a relevant standard under City Code. Regardless, the features the opponents said they wanted to preserve were largely left intact.

Councilor Drabkin asked if there was any testimony received about views. It was noted that no testimony was received about views.

Ms. Kellington said no development was proposed where the water was and upland was proposed park area and she provided a map showing the area to be developed in the 11.4 acre portion. The wetlands in the cul de sac were not wet all year long. Lots 34, 35, 41, 42, and 43 would be removed. She displayed a map of where the edge of the wetland was in relation to the road. She then showed a map of the saved wetlands. The proposed development should not be a surprise. The property was zoned residential and was currently covered by a Planned Development approval since before 2005. That approved development was nearly identical to the proposal here. She displayed an image of the 2005 plat and the proposed alternate plat which showed the difference was almost indistinguishable. She stated that all traffic standards were met. There were three traffic studies done by DKS in an effort to look into the concerns that had been raised. All streets and intersections would perform at a level C or better which was a standard required by the TSP. Table 4 showed under a "worst case scenario" condition that peak hour turn delays would be a delay of

less than one second; the worst intersections increased to 4.4 seconds. The conclusion was that there was no evidence that the additional traffic generated by the Oak Ridge Meadows development would degrade traffic operations, and the estimated increase in delay for accessing NW Baker Creek Road were negligible. The Planning Commission and staff report both recommended approval based on the standards and the findings demonstrated that all City standards were met in regard to traffic volumes, capacity, and safety. There was no reason for Shadden Drive to be used for any other use than emergency access. The Fire Department's concerns which lead to a previous lot limitation had been resolved. There was no reason to demand Shadden Drive be used for construction access. Pinot Noir and Pinehurst were public streets available to everyone. Opponents had argued that the width of Pinot Noir was too narrow. One of the conditions of approval was to widen Pinot Noir from Blake Street north to the terminus from 21 feet to 28 feet, the current City standard for local residential streets. The right-of-way for Pinot Noir was 50 feet and there was plenty of room to widen it. The wetlands, DSL, and Corps requirement issues would be addressed through the conditions as well. The wetlands to be filled were isolated and poor quality and the majority of the wetlands would be preserved. The City should not deviate from the established City practices for this proposal. She urged caution with anecdotal statements that were not based on the approval standards. Many opposing statements showed a lack of understanding and appreciation of the requirements and limitations of the land use planning process and the quasi-judicial land use application, review, and approval process. They requested that the City Council approve all three applications with the additional conditions the applicant proposed.

Steve Warren, engineer with Westech Engineering, said staff and the Planning Commission correctly determined that the original proposal met all City standards. The lots were not in the floodplain and there were no downstream impacts. When questions arose about the accuracy of the floodplain, the opponents hired a consultant to prepare a report which showed an increase of 1/100 of a foot. DLCD staff confirmed this report did not use the FEMA methodology. Since then the applicant had determined that the five lots would be in a new mapped floodplain and revised the site plan. When the surveying work was done, it would be given to the City as part of the process. No developer or engineer wanted to put someone in a floodplain and all of the lots had been moved out of the floodplain. The proposal protected wetlands and met all City standards. They would certify that there were no downstream impacts.

Lacy Brown, Transportation Engineer with DKS and Associates, pointed out the City did not require any traffic analysis as part of this application.

Regarding the delay of drivers accessing Baker Creek Road after Oak Ridge Meadows was developed, it was an increase of less than 5 seconds based on observations and standard practices of traffic engineering. She had used trip generation estimates that were developed by the Institute of Transportation Engineers. The existing developments were generating less traffic per household than what was estimated and she thought that at full build out they would not reach the 1,200 daily trips threshold.

Caroline Rim, Pacific Habitat Services, had conducted the wetland delineation for the entire site. Several trips were made to the site to do the analysis and all of the information would be given to the City.

Councilor Garvin asked about the trip count of the traffic coming off of Pinot Noir onto Oak Ridge and Merlot in a 70/30 split. Was that standard practice? Ms. Brown said it was based on typical driver behavior for people turning onto the earliest street that they could. People typically would take the shortest route and this was a typically observed split for drivers accessing the same development via two different access points. It was not a City requirement.

Councilor Drabkin asked for clarification on the PBS engineering rebuttal regarding the conclusion that the current FEMA study did not accurately depict the floodplain and how the conditions of approval addressed the issue. Mr. Warren said it came to their attention that the floodplain maps might not be accurate and a study was done. They still believed that with the original plan there would be no rise and no impacts downstream. However because it was such an issue, they decided to remove the five lots out of a potential floodplain so there would not be a problem. They planned to give the City a study that showed the 100 year floodplain and the impacts and that there would be no impacts at the property, in the vicinity of the property, and downstream based upon FEMA standards. It was part of the conditions of approval. They were not filling the floodplain as moving the five lots would mean there was no need for fill there. There would be a little bit of fill where the streets were located, but it was minimal. The floodplain did not extend to the area where the five lots were going to be moved.

Councilor Geary stated that the applicant would provide a report that said the development would be out of the floodplain. He asked if the study would be commissioned for that intent and what would happen if they got different results. Planning Director Richards said the report would be sent to DLCD for review and to affirm the report.

Mr. Warren said the study was nearly done and it was far enough along that they were confident that there would be no impact to the floodplain.

Planning Director Richards explained it was a condition of approval that the applicant must provide a professionally engineered and certified report to FEMA standards that showed there was no rise and identify where the potential new floodplain could be.

Ms. Kellington stated these lots were the ones in the PBS study that showed would be impacted. Because of its methodology the PBS study was far more conservative. Those lots were being removed from that area. They were confident in the certification and that the study would provide the City and developer with the assurance that the development would not cause problems.

Planning Director Richards read the language in the condition, which stated: the applicant shall provide a professionally engineered and certified hydrologic and hydraulic evaluation of Baker Creek in the immediate vicinity of the Subject Property that complies with FEMA standards for a detailed flood study to ensure that the proposed lots as depicted in the application site plan (Exhibit 6ALT) will be not be subject to flooding during the 1-percent annual chance (100-year) flood. The Applicant shall also provide a professionally engineered and certified report that the proposed development will not increase the flood risk of adjacent and downstream properties.

Councilor Drabkin said that the opposition had stated there was an already existing island of unpermitted fill from 2005.

Mr. Warren clarified that the fill that was required was no longer needed because they were moving the five lots. He was not aware of any past fills.

Ms. Kellington explained the 2005 development occurred under Corps and DSL permits. She did not see how that related to the standards of approval for this application.

Mayor Hill asked about the timeframe for the proposed development.

Ms. Zumwalt answered there was a condition of approval that Phase 1 would be recorded at a two year mark once everything was approved. The next phase would be recorded prior to the three year mark. The building of the land would be done by five years from the approval.

Councilor Stassens asked about the type of wetlands the .9 acres was and how the wetlands were mitigated. Ms. Rim said the .9 acres were relatively low quality as they consisted of a monoculture of invasive species. It was not a forested wetland or a scrub shrub wetland. As far as mitigation, there was no room to mitigate onsite and the only option was to do offsite mitigation through a mitigation bank. The mitigation bank serviced different areas and developers bought credits to create the type of

wetland that was removed to compensate for what had been impacted. It must stay within the same service area. This particular site was within the Mudslough mitigation bank and that was where they would be going to purchase credits. Since the mitigation failed on this site before, there was no point in trying to mitigate again because it was likely that it would fail again. That was why they were going to a mitigation bank.

Mayor Hill asked if any person in the audience wished to speak in support of this proposal. There was none.

Mayor Hill asked if any person in the audience wished to speak in opposition of this proposal. Testimony was limited to three minutes. Comments should provide the land-use application that you are testifying about, and the Comprehensive Plan Criteria or McMinnville City Code criteria that you feel that the project does not meet, why it does not meet that criteria and why you feel that a condition of approval will not help it meet that criteria. If you have a proposed condition of approval to help the project meet the criteria please provide that as well.

Andy Soltani, McMinnville resident, was neither in support or in opposition of the project, but had comments on the process. There were still some technical arguments on the floodplain and wetlands. If the Council was going to reconcile the technical merits of the arguments, he proposed the studies be reported to the Council and the Council could have periodic updates for all parties. He thought this would be to the benefit of all parties and would avoid controversy when the final product was delivered.

Planning Director Richards said typically these types of studies were reviewed under the development process, not a public process because they were not discretionary. They had the report from the opponent and the report from the applicant would also be public record, but there was not a public process of review of those reports. If the City wanted to move forward with updating the FEMA maps, that would be a direction from Council and would be conducted in a public process.

Steve Fox, McMinnville resident, lived at the corner of Pinot Noir and Oak Ridge. He brought up Comprehensive Plan Policy 78 as a potential way to mitigate some of the traffic issues. The current plan had one access to the development that would be right by his house. Shadden Road was already planned and he thought it could be developed to handle the construction traffic and the people who would eventually live there or who came to visit the neighborhood park. Policy 78 said traffic systems in Planned Developments were to be designed to be compatible with the circulation patterns of adjoining properties. He did not think the increase

of traffic with this development would be compatible. He gave the example of trying to get to work in the morning and backing out of his driveway onto a road that now had 250-500 more cars going by. He thought it was changing the circulation pattern and texture of the neighborhood. He asked what had been the historical increase in traffic and if any other neighborhood had a one way in and one way out for new development. He asked the Council to consider what threshold was acceptable for increase of traffic within the limits of Policy 78.

Councilor Drabkin asked for other examples of subdivisions with one access and the timing of development. Associate Planner Fleckenstein discussed another similar development that had only one access point in and out of that subdivision. He was not sure of the timing or phasing of that development.

Councilor Garvin asked how many lots were in that subdivision and the average daily trips. Community Development Director Bisset stated that it would take some time to do an analysis. They developed incrementally and as things were developed, the construction vehicles went through other developed areas. Over time they built out and there had been a number of occasions where there was one road out and one road in until neighboring properties were built to connect it. The evidence in the record showed that the street network would handle the proposed traffic from the proposed development.

Mike Colvin, McMinnville resident, knew that the City was under pressure to increase density and affordable housing. The Council was also responsible for keeping the City safe. He requested that the Council require the applicant to get all of the DEQ, DSL, and Corps of Engineer permits. He thought the Comprehensive Plan demanded two access roads for every new development. They should not leave this area with only one access point for up to 10 years. Approval of this development with only one access would penalize the other residents in the area. Stafford Development was willing to make Shadden Drive available in phase 1 of Oak Ridge Meadows. It was not right for the City to allow the developer to not provide the second access street. He thought both Pinot Noir and Shadden Drive should be required as access streets in phase 1. They realized that there had been a lawsuit where the City could not force a developer to build on someone else's property. He thought they should still require two access streets in phase 1.

Councilor Drabkin heard conflicting reports related to permits by DEQ and the Corps. She asked for clarification from staff. Planning Director Richards stated that in the condition of approval the permits must be acquired before development occurred.

Councilor Drabkin asked about the access on Shadden Drive and who offered permission to develop it. Mr. Colvin was unsure of the gentleman's name. He thought someone from the City should talk to Stafford.

Councilor Drabkin noted that they were not planning on fully building out the road for 5-10 years but they were allowing the gravel access road at this time. She asked if Stafford had indicated to the City whether they would allow any additional length of gravel road if they did not have to pay for it. Planning Director Richards stated that there was an access easement agreement to allow for the secondary emergency access. The developer must provide that as part of the condition of approval. The discussion of the full build out of the public street was a different discussion. In order for it to be used by the public it would have to be a full build out of the public street. Staff had a meeting with Stafford and asked if they would consider a full build out if Premier was willing to build it and at that time Stafford had said no. The reason was that there was a lot of infrastructure built in the ground underneath the street that served the different lots and they did not have it preplanned until they got into that phase of residential development. The last phase of the residential development was by Shadden Drive.

Councilor Drabkin asked if construction vehicles could use the secondary access.

Community Development Director Bisset stated that he was not aware of any City standard that required construction vehicles to go on someone else's property. The property owners could enter into such an agreement.

Councilor Drabkin asked if there was any reason that the road would be limited to only emergency vehicles. Community Development Director Bisset stated if the easement was for emergency access, it would require a modification to the agreement between the two property owners to allow any other type of access.

Councilor Stassens stated that they had heard there was a requirement for two access points, but earlier they had been told that was not the case. Planning Director Richards said she was not familiar with the Comprehensive Plan policy Mr. Colvin mentioned.

Cathy Goelker, McMinnville resident, said in a City memorandum dated December 8, 2003, Premier Development had been advised to obtain concurrence from DSL given the possibility that DSL might not approve subsequent actions necessary to permit the area's use for residential housing. If it had been a requirement that the developer went to DSL first, this whole process would not have gotten as far along. The neighbors from

three adjoining HOAs agreed that there was a problem with this development. The Friends of Baker Creek had concerns as well as the Yamhill Soil and Water Conservation District. She asked the Council to vote no on these applications. The one street would have to handle the increase in cars for at least five years if it built out according to the plans. She thought the City policy should be changed so that before applications were deemed complete, appropriate DSL, Corps, and DEQ permits were in place. She also thought the FEMA maps should be updated.

Councilor Drabkin clarified the DSL permits did not have to come first.

Planning Director Richards confirmed the practice in McMinnville was the DSL permits came after the land use decision. There were different milestones in every step of the process. They had been in conversations with the Friends of Baker Creek for many months to help them understand the process currently. It was policy discussion if they wanted to change how they conducted the process and the permits they needed to receive before they made decisions.

Scott Wellman, McMinnville resident, said the 1996 flood totally inundated the Tice Woods which became the Rotary Nature Preserve and obliterated all of the infrastructure that had been there. The 1996 flood also flooded the entire Willamette Valley and the South Yamhill River crested at 59.33 feet, 10 feet above flood stage. The flood predated much of the subdivisions north of Baker Creek. Global warming and the increasing loss of vital habitat were accelerating these events in regions across the US and especially in California. It was only a matter of time before it came again. They needed all of the wetlands to absorb what would be coming again.

James Ticer, McMinnville resident lived on Reisling Way. He was not opposed to progress or a subdivision, but did think that there should be an additional road put in. He agreed with Mr. Fox's and Mr. Colvin's testimonies. At the Planning Commission hearing, Mr. Fox had commented on truckloads of dirt being hauled in about a year ago into the area where the 108 homes were going in. The applicant had said they were filling holes for the farmer that was using the property. He knew that farmer, and the farmer said that was not true. He thought the dirt was quietly being hauled out now. If something like that was being said to the Planning Commission that was disingenuous, what else was being said to the Council that was disingenuous?

Barbara Boyer, Chair of the Soil and Water Conversation District, appreciated the applicant's willingness to modify the application, but she did not think it went far enough. There was a rare habitat type on this land

and it should be preserved. Loss of wetlands contributed to decreased flood storage and increased local drought, lower water quality, and loss of unique wildlife habitat. She thought the Council could request of the applicant more time, especially for the FEMA map revision.

Councilor Drabkin thought they could not ask for additional time and if there was not a decision rendered then it reverted back to the previous approval.

City Attorney Koch stated that there was a 120 day time period to make a decision on a land use application. There had been times during this process where the applicant had requested more time to address concerns, and had granted an extension of the 120 days. It was at the applicant's discretion to grant the extension, and if the City failed to meet the deadline, the applicant could go to Circuit Court and compel the City to issue the permit and approval so long as they met the requirements.

Planning Director Richards stated if the City did not render a decision in the legal timeframe, the applicant had the right to request the City to issue the decision for the application as submitted originally.

City Attorney Koch said the extension had to be something the applicant was in favor of. If the application was denied, the prior approved planned development would remain in effect.

Planning Director Richards stated that it was currently day 201 and in order to meet statutory guidelines Council would need to make a decision by August 13, 2019.

Councilor Stassens clarified they could not require changing the FEMA maps for this application based on the goalpost rule. Planning Director Richards explained if the intention was to change the floodplain zone to represent an extended floodplain that put more property into that zone that would be changing the goalpost. One of the conditions of approval was to identify the floodplain and ensure that nothing was developed in the floodplain.

Councilor Drabkin asked about the conflicting testimony about the quality of the wetland. What was the City's source for the quality of the wetland? Planning Director Richards said it was DSL.

Lon Skene, McMinnville resident, had many concerns similar to Mr. Fox about getting out of his driveway with an increase of 200 cars. It was currently difficult to get around landscaping trucks that parked in the neighborhood, as they left a single lane to get up and down Pinot and Merlot. At the Planning Commission hearing, he stated concerns about the economic feasibility of the development as there were indicators that there

would be a downturn in the economy or possibly a recession. He asked what feasibility studies had been done and if the applicant had the feasibility to get this done in 5-10 years especially if there was a downturn. He hoped to maintain the livability of the community. He also had concerns about general safety with the increased traffic and children in the neighborhood.

Mark Byerly, McMinnville resident, lived on Reisling Way which was a street that intersected with Pinot Noir. He thought there was a defect in the traffic study. The average daily trips were based on 9.5 trips per household, but this development had public greenway, parks, and open spaces. There was no consideration for use of those areas by people who did not live in the subdivision. If they added in any other usage, they would be over the 1,200 limit. There was going to be a second access someday, and he thought it was strange that the Fire Department was able to require the second access but not the City. He was asking that the initial access road be open to the construction vehicles and when the lots were being sold in about five years to develop Shadden Drive for public use. He thought the issue was cost and the developer wanted a free ride to push it onto Stafford.

The meeting was recessed for a short break at 10:10 pm. and reconvened at 10:18 p.m.

Mayor Hill asked if the applicant wished to respond to any of the opposing testimony. Rebuttal would be 15 minutes.

Ms. Zumwalt said regarding Shadden Drive, Gordon Root from Stafford Development was not going to allow construction access onto his property. It could not be a condition of the subdivision either. She would have to pay for the gravel road. Regarding the development being economically feasible, they were developing the last lot in West Valley Estates and McMinnville needed more lots. She thought they could get it done within the five year period that was a condition of approval.

Ms. Brown addressed the comments that there would be 200-500 vehicles in the morning peak hour when people were trying to get out. That was simply not accurate. The peak hour traffic was between 8-12% of the daily traffic which would be 80-120 vehicles. Regarding the park, this was not a typical City park and would not have dedicated parking. If they did try to account for the park, it would actually lower the trip generation of the development. Regarding Shadden Drive, the existing street system could handle the trips that would be generated by this development. The street system had always been planned and intended to serve this traffic.

Ms. Rim reiterated that it was not rare wetland habitat and was relatively low quality. The dominant vegetation was invasive species. Any impacts would be mitigated as previously discussed. Permits would have to be obtained before any work could be done.

Councilor Drabkin asked about the quality of the wetlands. There was conflicting testimony from the Yamhill County Soil and Water Conservation District. She asked what standards the applicant was using to identify what was important in an area. Ms. Rim stated she did not know the District's criteria for rare habitat. Wetlands were not typically described as being rare, but were described by the functional value which included the diversity and native species around the wetlands. She had been doing this for 23 years in Oregon. She had been through the permitting process with the Corps and DSL and had seen a variety of wetlands throughout the State. She was a Professional Wetlands Scientist.

Ms. Kellington thanked Council for their consideration and the comments of the opponents that made the application better. All of the concerns had been addressed. The project met all relevant approval standards. The conditions eliminated any concerns about flooding. A study would be provided that assured there would be no rise or downstream impacts. There were no traffic concerns and it met all approval standards for the City street system which was designed to handle this development. DSL approval must be obtained by the applicant. Policy 78 was met if the City's traffic standards were met, and they were. The applicant had worked really hard and the City and neighbors could be proud of the project.

Mayor Hill closed the public hearing at 10:32 p.m.

Mayor Hill asked if the applicant wished to waive the seven day written argument period. The applicant did.

Councilor Garvin liked the layout of the subdivision and concessions the applicant had made. He was having a hard time getting over the traffic flow and only one access point for 5-10 years to mitigate the daily trip increase on Oak Ridge and Merlot.

Councilor Peralta appreciated the time, energy, and money of the applicant. He shared the concerns about the impact on the neighboring streets. He did not think the application met Policy 78. When he looked at the traffic patterns, there were 1,200 average daily trips which moved it from a residential street to a neighborhood connector. It changed the character of the transportation through the neighborhood. He thought the applicant had mitigated the other concerns, but he was struggling with Policy 78.

Councilor Geary stated that at first glance he was excited about the project because of the dedicated greenway and park space. There was a lot in the development that was good. He shared the same concerns about traffic and movement and that it compromised the safety of the neighborhood.

Councilor Drabkin stated that there was a lot in the application that she liked. She appreciated the wetland preservation and applicant's relocation of the five lots as well as the decreased size of the lots on the other side of Pinehurst. She hoped that it would be reflected in the price. She was interested and intrigued with regards to the lot sizes, setbacks, and working on a unique approach to the development. She understood that the City could not require as a condition the use of Shadden Drive. She was troubled by the recent knowledge that had come to light about the City's policies and the FEMA FIRM maps and how that would need to be addressed.

Councilor Stassens appreciated the thoughtful testimony that had been given on all sides. The application was thorough, staff reports were excellent, and opposing testimony brought up good things for them to think about and valid concerns. She liked a lot of the proposed development with the greenspace and neighborhood park, preserving the wetlands, and changes made in response to the testimony. A lot of the concerns that had been raised were legislative issues, not quasi-judicial. They could not make a decision based on a feeling but whether or not the applicant met the criteria. She asked Community Development Director Bisset to clarify if the applicant met the criteria regarding the traffic.

Community Development Director Bisset stated that there was testimony from the applicant and from a registered traffic engineer that demonstrated the local street network met the City standards for local street traffic. The traffic studies had looked at intersection capacity and demonstrated that the traffic generated by this development and adjacent developments would result in intersections that operated safely within the City standards. Those were the thresholds staff evaluated when reviewing applications. They did not find anything unreasonable in the analysis. The standards that were in the adopted Transportation System Plan were thresholds and 1,200 average daily trips was the threshold for local street standards, and the next level was a neighborhood connector street which could carry up to 3,000 average daily trips but was the same dimensions. Connectors required more attention to intersection and pedestrian safety. As development occurred, they could make adjustments to parking, sight distance, traffic control, traffic signals, center turn lanes, and bike lanes.

Councilor Stassens asked for an example of a traffic report not meeting the standards. Community Development Director Bisset gave an example of

the west hills. There were significant portions of the west hills that was master planned for phases of development and a traffic study was done as part of the proposal which was several hundred lots. That study found that at a certain number of building permits there would need a left turn lane on Hill Road south of Second Street. The traffic study showed a future improvement needed at a certain threshold and it was a condition of approval. That routinely happened with development applications.

Councilor Stassens thought the applicant had done an excellent job and met all of the conditions. She thought they should look at the policy questions and updating the FEMA maps that had been raised, but they did not apply to this application.

Council President Menke thanked staff for keeping them continuously updated and noted that they had done a fabulous job. The applicant was anything but cheap and they had mitigated most of the concerns. She thought strongly that all the criteria had been met and the applications should be approved.

Mayor Hill thanked the applicant and those opposed for sharing their concerns with the Council. He understood the impact of traffic. His greatest concern was the construction traffic and if there was any way to get around that especially with children playing in the streets. He thought the roads could handle the increase in traffic. This was a difficult piece of land and McMinnville could be proud of this development. He noted that the Housing Needs Analysis was recently done and it showed that homes were needed in McMinnville. He thanked staff noting that it had been a large and tedious process.

4.

ORDINANCES

Mayor Hill stated that there were three separate ordinances for the proposed applications. Ordinance No. 5065 addressed the first proposed Planned Development Amendment (PDA 3-18). Ordinance No. 5069 was for the second proposed Planned Development Amendment (PDA 4-18). Ordinance No. 5070 was for the proposed subdivision (S 3-18) which was contingent upon the approval of PDA 3-18 and PDA 4-18. They already had the first reading of each Ordinance. He asked if they were ready for a second reading of Ordinance No. 5065, for the first proposed Planned Development Amendment (PDA 3-18).

Council President Menke MOVED to approve Ordinance No. 5065 amending Planned Development Ordinance No. 4722 to remove approximately 11.47 acres from the boundary of the Oak Ridge Planned Development Overlay District with amended conditions as proposed by staff; SECONDED by Councilor Stassens.

City Attorney Koch read by title only for a second time Ordinance No. 5065.

Councilor Garvin asked if both amendments to the Planned Development were approved but not the subdivision, what would happen?

Planning Director Richards said the Council would have to provide a reason for the denial. The applicant would be able to come back with another subdivision plan that fit the framework of the Planned Development.

City Attorney Koch stated that if there was a condition of approval that would meet the concern or criteria, they had to consider imposing that condition prior to an outright denial.

Planning Director Richards explained in the Planned Development the tentative subdivision plan was embedded and zoned to the property. It was classic practice for the City of McMinnville. If the concern was the layout of the subdivision, adopting and approving PDA 4-18 would approve that layout. If it was the phasing of the construction, that was in the conditions of the subdivision approval.

Councilor Garvin asked if there was another example of a single access subdivision.

Community Development Director Bisset stated the Cozine Woods development off of Old Sheridan Road had well over 100 houses with a single access on Old Sheridan Road. There was a plan for future extension and connections.

Councilor Peralta thought the biggest impact was the impact on the surrounding areas. There was a big difference between a residential street versus a connector street. People bought their houses in this area with a certain type of neighborhood in mind and this development would significantly change the character of the neighborhood. He thought there should be two points of access.

Mayor Hill stated that in 2005 there had been discussion regarding limiting the number of units on this property. It had been known that if it were to be developed the traffic would go on Pinot Noir.

Council President Menke stated that at the most it was a five year issue.

Councilor Drabkin thought that the applicant deserved a timely decision. She did not like making late night decisions and a lot of information came in yesterday. She asked if they had until August 13, 2019 to make the decision. Planning Director Richards stated yes, that was the deadline. The

issue was if the conditions and findings needed to be amended, staff would need some time to do that as it would set a precedent for the future.

Councilor Stassens said every big planning decision changed the nature of neighborhoods. She was concerned about setting that as a precedent and criterion for the future.

Councilor Peralta thought the 1,200 trips put it right at the boarder to become a connector and it hugely increased the traffic to the neighborhood.

Planning Director Richards clarified the 1,200 trips was the threshold for Pinot Noir. If 1,200 was too much congestion on a local residential street for neighborhood compatibility, what should the number be? That would change the average daily trips threshold.

Councilor Garvin was in support of setting precedent to lower the number.

Councilor Peralta thought that a rational basis had been given to lower the number. He asked about cut through traffic and how that was defined.

Community Development Director Bisset stated in the context of the larger transportation network there was a hierarchy or street systems which were meant to carry different levels of traffic. Cut through traffic that was being discouraged was taking traffic off of the higher classification streets and running them through the neighborhoods. It was a different distinction than this residential area that was being developed with a system of local residential streets that was intended to carry residential traffic. It was meant to implement traffic calming techniques to keep local neighborhood traffic at a neighborhood level as the City grew.

Councilor Stassens asked about the threshold of when the subdivision was all built out. Was there anything that could be done to establish a certain percentage of the lots that could be developed before a second access was required. The development would be done over five years.

Planning Director Richards said it was currently structured under the threshold established under the TSP. One of the conditions was only 108 dwelling units could be built before another access point was provided. If they wanted to reduce the threshold, staff would change the condition to reduce it to that number. Staff would need a basis for changing the number as well because the TSP was an adopted policy for the City and went through a public process for adoption. The applicant had not been required to do a traffic impact analysis, but did so due to the concerns of the neighbors in the area. The 108 lots was established before the analysis was conducted. They looked at what was in the Planned Development and it was 129 units, but that number was reduced because of the concerns.

Councilor Drabkin asked what happened if SB 2001 passed and quad plexes could go in the development. Planning Director Richards answered that was why they put in the number of dwelling units instead of number of lots. This meant that all of the lots may not be developed before a secondary road was put in.

Community Development Director Bisset explained that the Transportation System Plan was adopted in 2010. The community at that time decided that they could not build their way out of congestion and would tolerate more delay at intersections as they grew. This property was zoned residential and was intended for development and per current standards it met the traffic thresholds.

Councilor Drabkin asked what the difference was between vehicles per day and average daily traffic and why in the development of the City's standards was it different than the common practice. Community Development Director Bisset did not know about other community's transportation plans had. When they went through the Transportation System Plan update, they had a very engaged citizens committee that walked through the discussion points. There was also a robust public outreach process. They brought forward the best practices for complete streets and residential street standards that were in place at that time. They landed on 1,200 based on the complete street standards.

Councilor Garvin suggested adding a condition that they would not allow full build out until the secondary access was built.

Councilor Drabkin expressed concern with making an arbitrary decision about moving the needle in order to satisfy the concerns. It did not allow time for thoughtful dialogue about the decision.

Councilor Stassens would not be willing to go against the thoughtful process that had happened previously to establish that number.

Councilor Peralta was really uncomfortable with not having a secondary access but felt that he could get to yes because it was a good project.

Council Garvin liked the subdivision plan, but also could not get past the need for the secondary access.

Ordinance No. 5065 PASSED by a unanimous roll-call vote.

Council President Menke MOVED to approve Ordinance No. 5069 amending the Oak Ridge Meadows Planned Development adopted by Ordinance 4822 to add property to the boundary of the existing Oak Ridge Meadows Planned Development Overlay District; allow for lot size averaging; allow for modified setbacks; allow for some lots with side lot

lines oriented other than at right angles to the street upon which the lots face; allow for some lots to exceed the recommended lot depth to width ratio; allow some block lengths to exceed the recommended maximum block length standard; allow for the designation of an approximately 0.85-acre active private neighborhood park; and, allow for dedication with amended conditions as proposed by staff; SECONDED by Councilor Stassens.

City Attorney Koch read by title only for a second time Ordinance No. 5069.

Ordinance No. 5069 PASSED 4-3 by a roll-call vote with Councilors Garvin, Geary, and Peralta opposed and Mayor Hill breaking the tie.

Council President Menke MOVED to approve Ordinance No. 5070 approving a tentative subdivision for a 108 Lot, Phased Single-Family detached residential development at R441701300/R440700602 with amended conditions as proposed by staff; SECONDED by Councilor Stassens.

City Attorney Koch read by title only for a second time Ordinance No. 5070.

Ordinance No. 5070 PASSED 4-3 by a roll-call vote with Councilors Garvin, Geary, and Peralta opposed and Mayor Hill breaking the tie.

5. INVITATION TO CITIZENS FOR PUBLIC COMMENT: Mayor Hill invited the public to comment.

Chris Bean, McMinnville resident, discussed the lack of homes and need for something different. He noticed that in the process tonight there had been issues with people's plans imposing on someone else's rights. He was not a person who had any real power or would be affected by any decisions in this specific matter, but he was a person who was affected by actions of the City Council and the Police Department. He wanted to make sure that everyone involved regardless of the fiscal advantage thought about the impact of these decisions.

6. CONSENT AGENDA

- a. Consider Minutes of the May 28th, 2019 and June 11th, 2019 Work Session and Regular City Council Meetings.
- b. Consider request from 7-Eleven Inc. located at 840 NE 3rd Street for an OLCC Off-Premises Liquor License.
- c. Consider request from Splash Partnership, LLP located at 405 NE 3rd Street Suites 8 & 9 for an OLCC Limited On-Premises Liquor License.

- d. Consider request from Zen Asian Bistro LLC DBA: Pho 3 located at 913 N Hwy 99 W Suite C for a Limited On-Premises Liquor License.
- e. Consider request from For Good Enterprises, LLC DBA: Insiders Wine Club located at 1250 NW Meadows Drive for an OLCC Off-Premises Liquor License.

Councilor Peralta MOVED to adopt the consent agenda; SECONDED by Councilor Garvin. Motion PASSED unanimously.

7.

RESOLUTIONS

Resolution No. 2019-50: A Resolution submitting a proposed initiative Charter Amendment to the City voters of McMinnville.

City Recorder Bisset said the City received a prospective petition from Art Bradley in December for a Charter amendment restricting regulations and fees on care facilities. State law required the number of signatures on a petition to be 15% of registered voters. The City Attorney filed a ballot title and the chief petitioner filed a petition for review of the ballot title in March. The Circuit Court issued an opinion on the ballot title. In May the chief petitioner began to circulate the petition and in July turned in the signatures. The Elections Office verified that there were enough valid signatures for the petition to move forward. As City Recorder she would be submitting the measure for the November 5 ballot. The Charter could not be amended without approval of a majority of votes. Council did not have the authority to adopt the measure without submitting it to McMinnville voters. If the Council rejected the resolution, it would still be placed on the ballot. They could refer a competing measure or approve the resolution, but it would still go on the ballot.

Gwen Dayton was the general counsel for the Oregon Health Care Association. She had been a health care lawyer for many years and had spent a lot of time developing health policies and drafting health care laws for the state legislature. They had heard reasons that the City adopted Ordinance 5059 which included revenue raising for the Fire Department and to support the imposition of care standards on senior care facilities in the community. Senior care facilities were heavily regulated already by the state and federal government. She thought it was untenable for the City to put another layer of regulation on top of what was already in place. New regulations imposed in one city would inevitably conflict with the current regulations or duplicate or confuse them. It would create chaos on

the provider level and be of no benefit to the seniors. They were also surprised at the process used to develop the ordinance. It should have involved conversations with providers, residents, families, and advocates. The ordinance would cause the cost of care to go up. She wished they would have been able to work with the City earlier on.

Councilor Peralta stated one of the reasons why the ordinance was adopted was because there was a significant shortfall in the amount of money received for providing emergency care to these facilities. When there was that shortfall, the City taxpayers were paying for that out of their property taxes. It seemed that the City was subsidizing the business model for these facilities. He asked what kind of models should be considered for cost recovery.

Ms. Dayton stated that Portland recently adopted an ordinance that imposed a fine on senior care facilities for using emergency services solely for lift assists. She was not opposed to appropriate cost sharing if a facility used emergency services inappropriately. There was a rational policy that could be developed and they would be happy to engage in the policy development process in McMinnville.

Linda Kirshbaum, OHCA, said the 400 rule violations or abuse in the 10 year period was about 2.6 per building per year. No abuse was acceptable; however, over the last five years that was a 1.2 percent number of violations. The numbers had come down over time as the regulations had been increased. The oversight was there to protect seniors and provide quality care. They were also required by law to self-report any falls or injuries. She was here to ask for support of the resolution. She had worked on many legislative efforts and they had always been collaborative and problem solving and that was not what happened when this ordinance passed. She discussed what other jurisdictions were doing and the different models of care facilities. They had looked at McMinnville's usage and call statistics and they were in line with the national average. McMinnville was an outlier in assigning fees and taxes that hadn't been experienced anywhere else. Redmond put a utilization fee on all citizens that misused the system and did not single out seniors. Senior residents did pay taxes and EMS services were something all citizens should expect the City would provide.

Councilor Peralta asked about the issue of Medicaid reimbursement not being adequate to cover the expense of emergency services. Ms. Kirshbaum agreed that was an issue that they would be willing to talk about and make amendments to the current ordinance.

Mayor Hill stated they had 500 incidents last year of non-emergency use of the system and that took the paramedics and emergency services out of use for citizens. The ordinance had allowed them to make sure the EMS and fire protection were available for emergencies.

Councilor Peralta said the challenge was this was a high turn-over industry and they had complaints from the Fire Department that they had provided training to a facility and a few months later there was new staff that needed training again.

Ms. Kirshbaum would like to work with the City to come up with solutions to these issues. She explained the current regulations and fees for these facilities and how the City's fee needed to be fair and equitable.

Councilor Peralta MOVED to adopt Resolution No. 2019-50; submitting a proposed initiative Charter Amendment to the City voters of McMinnville; SECONDED by Council President Menke. Motion FAILED 1-5 with Council President Menke the only vote in favor.

Resolution No. 2019-51: A Resolution authorizing the City Manager to execute Intergovernmental Agreement No. 33705 with the Oregon Department of Aviation

Community Development Director Bisset said this agreement would provide \$83,000 to do crack sealing and pavement repair at the airport. There would be no cost to the City.

Councilor Geary MOVED to adopt Resolution No. 2019-51; authorizing the City Manager to execute Intergovernmental Agreement No. 33705 with the Oregon Department of Aviation; SECONDED by Councilor Peralta. Motion PASSED unanimously.

8. ADJOURNMENT: Mayor Hill adjourned the Regular City Council Meeting at 12:31 a.m.

