

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

A special meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 2:30 p.m. on Monday, October 12, 2020. Mayor Knapp called the meeting to order at 2:36 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

- Mayor Knapp
- Council President Akervall
- Councilor Lehan
- Councilor West - Excused
- Councilor Linville

Staff present included:

- Bryan Cosgrove, City Manager
- Barbara Jacobson, City Attorney
- Kimberly Veliz, City Recorder
- Miranda Bateschell, Planning Director
- Dan Pauly, Planning Manager
- Beth Wolf, Systems Analyst
- Andy Stone, IT Director
- Cindy Luxhoj, Associate Planner

Motion to approve the order of the agenda.

Motion: Councilor Lehan moved to approve the order of the agenda. Councilor Linville seconded the motion.

Vote: Motion carried 4-0.

SUMMARY OF VOTES

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Excused
Councilor Linville	Yes

MAYOR'S BUSINESS

A. None.

COMMUNICATIONS

A. None.

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CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

Sandi Lawrence, Wilsonville resident shared she would not be providing public input at this time.

COUNCILOR COMMENTS

A. None.

CONSENT AGENDA

A. None.

NEW BUSINESS

A. Discussion On Potential Call Up Of Development Review Board Resolution No. 382

City Manager Cosgrove provided background on the item. Mr. Cosgrove reported receiving an email from Councilor Linville on Friday, October 9, 2020. In the email Ms. Linville detailed she had received concerns from citizens about the Development Review Board's recent decision on a 6-unit townhome development under consideration in Old Town. Mr. Cosgrove explained Ms. Linville asked what the procedure is for calling this item up for Council's review.

Mr. Cosgrove stated he worked with the Ms. Jacobson to contact the applicant and their attorney to make them aware that a call up is under consideration. Due to the timing today is the last day Council could decide to call up this item. Mr. Cosgrove then explained Ms. Jacobson was able to get the applicant to toll this item until November in order for the City to have time to complete any necessary tasks.

Mr. Cosgrove stated the only question in front of Council today is if they have the desire to call this item up.

Mayor Knapp declared for the record this is for Development Review Board Resolution No. 382.

Councilor Linville then explained her reason for the request for Council to discuss the potential call up. Ms. Linville shared she has had conversations with residents whom are concerned with the Development Review Board's decision. She believes the concerns are such that it would be in the best interest of the City to have Council review the record. Ms. Linville understands the Development Review Board had two public hearings providing citizens an opportunity to testify on this matter. It is her hope in response to the citizens of Wilsonville that Council would at a minimum look at the record and decides if there is any merit for further testimony. Ms. Linville feels this is a situation where the community's concerns are legitimate.

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Ms. Jacobson then provided a legal perspective on the potential call up. She explained Council has three options on the Development Review Board's decision:

1. Call it up on the record, which means Council only looks at the record that was before the Development Review Board. Council would receive a memo written by staff to assist, Council would also receive transcripts of the two Development Review Board meetings. In addition, either side could submit a short summary statement. However, the statements must be on information already included in the record, new information is not allowed.
2. The next option also includes a review the record. However, if Council sees an issue such as inadequate information the Council could request additional information and/or testimony.
3. The third option if Council felt there was a big enough issue they could hold a de novo hearing on the merits. This would start the process over and allow both sides to present directly to the Council.

Ms. Jacobson shared that option three is not typical. It is more common to begin with the record to make a determination.

Ms. Jacobson explained Council needs to allow enough time for two meetings to occur in the event Council decides more testimony is necessary. She further explained staff looked at the calendar and it is possible to hold two meetings with the extension provided by the applicant. Ms. Jacobson shared Council could have the first meeting on November 2, 2020 and the second meeting on November 16, 2020. That would leave a week to resend anything back to the Development Review Board if Council wishes to remand. Alternatively, Council could also make a decision at that time. Ms. Jacobson said she thinks Councilor Linville wants to review the record and then decide where to go from there.

Councilor Linville explained she does not want to give the impression that Council is questioning the Development Review Board's decision. However, an opportunity for additional due process is her recommendation. She recommends Council call up this decision for review of the record with an option of determining if there is merit and if needed take testimony later. Ms. Linville stated she is not recommending Council go straight to testimony nor hold a de novo hearing at this point. Ms. Linville thinks this provides for process for citizen concerns and allows the Council to determine whether there is something that merits additional testimony within the guidelines described by Ms. Jacobson.

Mr. Cosgrove reported his recommendation is in line with Councilor Linville's recommendation. He stated that Council always has the right to call up any land use decision from a lower body, as Council has final judgment. He explained that a call up is rare. Moreover, in his 10 years with the City of Wilsonville this is only the second time there has been a call up. He believes the practice of calling up should remain rare. He described the City trusts the Development Review Board is doing a good job looking at the findings and conditions of approval that they are imposing on all land use applications. Mr. Cosgrove does not recommend Council open this item up to new testimony. Mr. Cosgrove thinks everything that is going to be said on this application was said in the two hearings before the Development Review Board. Therefore, he does not think new testimony is necessary. He recommends if Council calls up the decision they review the record and then make a determination from there if additional information is needed.

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Mayor Knapp provided his perspective. He stated from his standpoint there is the question of can Council become more informed of the concerns of the citizens. Mayor Knapp thinks Council could approach that from the record. Therefore, he would try to better understand the concerns of the citizens and the process that has already occurred, in order to try to determine whether there was any reason, oversight, or something else that would cause Council to open up the record.

Councilor Lehan followed up on the comments of City Manager Cosgrove regarding the Development Review Board and this being a rare circumstance. She shared for the public that all of the City's boards and commissions are advisory to the Council when they make decisions. That is except for the Development Review Board because their decisions are quasi-judicial. Therefore, their decision stands unless the Council takes an action to call it up and review. Moreover, there are tight time constraints on a call up if Council disagrees with a Development Review Board decision.

Ms. Lehan informed that citizens with concerns over this decision approached her with questions. Moreover, she is not too familiar with the project so there have been questions that she has been unable to answer. That is why it seems reasonable to her that Council at least review the record to better understand the concerns and how DRB arrives at a decision. Ms. Lehan agreed call ups are very rare. She stated it really has nothing to do with us questioning the capacity or expertise of the Development Review Board because they certainly have that.

Councilor President Akervall shared she supports additional investigation into this matter. She stated it sounds like with two hearings with the Development Review Board there is probably considerable material that Council could look at that will be in the record. Councilor Akervall requested that staff remind Council of the procedures of a call up.

City Attorney Jacobson explained the Development Review Board members are in a quasi-judicial role, which means members judge. Those in a quasi-judicial role need to be neutral. Therefore, if Council decides to call up the decision Councilors cannot talk offline with citizens nor the applicant. While in the judicial role, the only thing Council can do is look at the staff report summary, which staff is required to prepare for the record. If Council elects to hold a hearing, the statements provided must be supported by what is already on the record. The information cannot be new. Once that happens Council deliberates as a judicial panel to come to a determination on whether to affirm the Development Review Board's decision on the record or determine there was something missed in the review of the record. It is similar to the court of appeals reviewing of a lower court decision to see if anything was missed or procedurally do improperly.

If Council does call up the decision and any member of the Council visits the site, which they are allowed to visit, it must be announced at the time of the hearing. Ms. Jacobson recalled there is also the option to hold an on-the-record appeal without any public testimony. Therefore, Council must decide whether to invite testimony. Ms. Jacobson explained that at the first meeting if item is called up all sides should be given advance notification that Council is intending to allow public testimony.

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Councilor Linville stated if she I understand Ms. Jacobson’s explanation there is an option for Council to review of the record at the November 2, 2020 meeting and make a determination whether to continue it until the next meeting to allow for additional testimony if council thought it was warranted.

Motion: Councilor Linville moved that Council call up the DRB Resolution No. 382 made by the Development Review Board for a review of the record at the November 2, 2020 meeting and should the Council decide at that time that additional testimony would be warranted based on a review of the record that decision would be made at the next meeting (November 16, 2020). Councilor Akervall seconded the motion.

Vote: Motion carried 4-0.

SUMMARY OF VOTES

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Excused
Councilor Linville	Yes

CONTINUING BUSINESS

A. None.

PUBLIC HEARING

A. None.

CITY MANAGER’S BUSINESS

No Report.

LEGAL BUSINESS

No Report.

ADJOURN

Mayor Knapp adjourned the meeting at 3:01 p.m.

Respectfully submitted,

DocuSigned by:
Kimberly Veliz
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Kimberly Veliz, City Recorder

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ATTEST:

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Tim Knapp, Mayor