

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, March 3, 2014. Council President Starr called the meeting to order at 7:00 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp - excused
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

Staff present included:

Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Mike Kohlhoff, City Attorney
Sandra King, City Recorder
Dan Pauly, Associate Planner
Chris Neamtzu, Planning Director
Jon Gail, Community Relations Coordinator
Nancy Kraushaar, Community Development Director
Blaise Edmonds, Manager of Current Planning

Motion to approve the order of the agenda.

Motion: Councilor Fitzgerald moved to approve the order of the agenda. Councilor Stevens seconded the motion.

Vote: Motion carried 4-0.

MAYOR'S BUSINESS

Mayor Knapp was in Washington D.C. meeting with Oregon Legislators and would report on the results of those meetings at the next Council meeting.

COMMUNICATIONS

A. Robotics Team "1425 Error Code Xero Robotics" Update – Kyla Minato

Representatives of Wilsonville High School's *Error Code Xero Team 1425* Robotics Team thanked Council for the donation they received for 2013. They announced the FIRST Robotics District event to be held at Wilsonville High School March 21 - 22, in which 32 robotics teams would be competing and that additional volunteers were needed. The trio spoke about the benefits of participating in the Robotics program noting that team alumni have gone on to earn engineering degrees, and the importance of earning a college degree.

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B. Mr. Cosgrove introduced Sgt. Brad O'Neal a member of Clackamas County Sheriff's Office for the past 14 years. Sgt. O'Neal works with Nero a German Shepard/Belgian Malinois cross who is trained in narcotics detection.

C. Wilsonville High School Acappella Group Soul-D Out YouTube Video
A YouTube video showing the activities of the Wilsonville High School Acappella Group Soul-D Out was shown. The CNN video described the Acappella group's success.

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.

Michelle Tonkin, announced the For the Love of Schools Fun Run, City Council Challenge event scheduled for June 1, 2014. The fun run is an annual event to raise money for schools, and 100% of the entry fees go directly to the local schools.

Lonnie Gieber, 10558 SW Sunnyside Drive, presented an average of statistics from the U.S. Census Bureau about the level of poverty in the City of Wilsonville. He spoke about the number of families using food banks, percentage of students eligible for reduced lunch in the schools, and the increases in rent at local apartments. Mr. Gieber wanted to heighten the sensitivity of the public to the needs of citizens who are in the lower economic spectrum. Mr. Gieber announced the Grace Chapel Rummage Sale whose proceeds are distributed to the schools and food pantries in the City of Wilsonville

Michael Davis 6295 SW Wilsonville Road, proposed for the city to prosper, there needed to be a positive attitude towards city employees from the public. He suggested one way for youth to have a positive attitude towards police officers is for the officers to carry a "good ticket book" to reward youth doing a positive act in the community. Staff would pass the idea on to Officer Keen at the high school.

COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

Council President Starr – (*Park & Recreation Advisory Board Liaison*) announced the next meeting dates of the Parks and Recreation Advisory Board meetings, and invited the public to attend the Volunteer Planting and Tree Care event.

Councilor Goddard – (*Library Board Liaison*) had no liaison report to make, but announced the next Library Board meeting and the opening date for registration for a community garden plot.

Councilor Fitzgerald – (*Development Review Panels A & B Liaison*) stated the next meeting date of the Tourism Strategy Task Force, and the upcoming Development Review Board meetings.

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Councilor Stevens – (*Planning Commission; CCI; Wilsonville Seniors Liaison*) noted the next Planning Commission meeting date where a discussion of Basalt Creek concept planning will take place, and that reservations for park shelters would open March 10.

PUBLIC HEARING

Mr. Kohlhoff read the title of Ordinance No. 736 into the record by title only.

A. **Ordinance No. 736** – 1st Reading

An Ordinance Of The City Of Wilsonville Declaring And Authorizing The Vacation Of Three (3) Portions Of SW 110th Avenue Public Street Right Of Way Between SW Mont Blanc Street And SW Tooze Road/SW Boeckman Road In Villebois Legally Described In Attachment C.

Council President Starr read the public hearing format for land use and opened the hearing at 7:50 p.m.

Mr. Pauly provided the staff report and used a PowerPoint presentation. Mr. Pauly displayed slides showing the changes to the alignment of 110th Avenue over the years. Vacation of portions of SW 110th Avenue in Villebois will enable the previously approved and planned street network, residential, and park development in this portion of Villebois. Both the Transportation Systems Plan and the Villebois Village Master Plan include replacing SW 110th Avenue.

SW 110th Avenue has long served as a north south connection on the west side of Wilsonville. Historically it connected SW Brown Rd./SW Camelot directly north to SW Tooze Road. The Villebois Village Master Plan, originally adopted in 2003, shows a new circulation system replacing SW 110th and the north-south connectivity it provided. During the earlier phases of Villebois development the most southerly portion of the original SW 110th Avenue was vacated and is now a pedestrian connection with plantings extending from SW Camelot Street to the SW Costa Circle/SW Barber Street round-a-bout. The portions of the original SW 110th Avenue between the pedestrian connection and the southernmost portion of proposed vacation have been converted to the SW Costa Circle/SW Barber Street round-a-bout and a segment of SW Costa Circle East.

The proposed vacation allows the conversion of much of the remainder of SW 110th Avenue into private park areas, as shown in the Villebois Village Master Plan. Some segments of the right-of-way will not be vacated, but be incorporated into planned streets including SW Villebois Drive North, SW Berlin Avenue, and SW Stockholm Avenue. The very northern portion of SW 110th Avenue will remain to provide access to a property on the west side of SW 110th just south of SW Tooze Road not yet proposed for development. The north-south connectivity of SW 110th Avenue will be replaced by a new segment of SW Villebois Drive North with bike lanes and sidewalks which will connect from a new round-a-bout at SW Costa Circle to the existing round-a-bout on SW Boeckman Rd./SW Tooze Rd. just west of the Boeckman Bridge.

It is anticipated the construction of SW Villebois Drive North and demolition of the vacated

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portions of SW 110th Avenue will take place this summer.

There are several requirements that need to be met for a street vacation petition to be approved. Staff has set those forth and how they are met in Attachment A to the Ordinance. The referenced DRB process meets city code requirements for a street vacation as well. The form of the ordinance is approved. The required public hearing notices have been sent and the required notice has been posted along the right-of-way requested to be vacated.

Upon adoption, Ordinance No. 736 will provide the following benefits to the community:

- Continued build-out of the Villebois Village Master Plan
- Support of the implementation of two high priority projects listed in the 2013 Transportation Systems Plan: RE-09 Villebois Drive Extension from Costa Circle to Coffee Lake Drive, and RE-10 Villebois Drive Extension Coffee Lake Drive to Boeckman Road.
- Improved bike and pedestrian connectivity and safety by replacing two-lane SW 110th Avenue without sidewalks or bike lanes with a complete street including bike lanes and sidewalks.
- Road closures and traffic detours during construction, which will be coordinated with the City to minimize duration.
- Development of a number of private parks.

Council may approve the vacation with the Conditions of Approval in the staff report or attach additional conditions the Council deems necessary to satisfy City code and policy.

Councilor Fitzgerald asked how the remaining right-of-way would be used. Mr. Pauly stated that was where the cross streets will go.

Councilor Stevens confirmed the south end of the new road intersecting with Boeckman Road will be a roundabout. Mr. Pauly said it would be a roundabout

Council President Starr invited public testimony; hearing nothing he moved to close the public hearing at 7:58 p.m. The motion was seconded by Councilor Goddard and carried 4-0.

Motion: Councilor Goddard moved to adopt Ordinance No. 736 on first reading. Councilor Fitzgerald seconded the motion.

Vote: Motion carried 4-0.

NEW BUSINESS

- A. Set the hearing date appeal of the denial of the Human Bean application by the Development Review Board Panel "A" for March 17, 2014. The appeal is limited to the record and additional testimony and evidence on the following issues and related development code provisions:
- On-site traffic congestion;

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- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles; and
- Section 4.154, Subsections 4.155(.03)A., 4.400(.02)A., and 4.421(.01)C.

Mr. Kohlhoff stated this matter is to set the hearing date in the appeal of the denial of the Human Bean application by the Development Review Board Panel :A”, and it is recommended that it be set for March 17, 2014, and also to establish the scope of review. There are three alternative scopes of review: one would be to hear the matter on the record only; the second would be to hear the matter on the record but have limited additional testimony and evidence on the issues related to the Development Code provisions involved in the denial: the onsite traffic congestion, the adequacy, efficiency and safety of onsite pedestrian and vehicular circulation inclusive of delivery vehicles and other larger format vehicles and involving Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C; and the third scope of review could be a full de novo hearing opening it up essentially to having a second full hearing on the matter.

The staff’s recommendation would be to hear the matter on March 17, 2014 and to adopt the scope of appeal that would be limited to the record, but having additional testimony and evidence on the issues and related Development Code provisions that were just outlined.

Mr. Kohlhoff continued, an objection to the appeal was filed by LaPoint Business Group LLC, by and through its attorney and they object basically the fact the applicant has provided no legal basis for its appeal. This objection has been made part of the record.

In addition, a response was filed by Stephen Pfeiffer, attorney for the applicant the Human Bean, Wilsonville Devco LLC, which will also be entered into the record,

Mr Kohlhoff pointed out Section 4.022(.02) addresses procedures for an appeal of the Development Review Board decision to the City Council. Such an appeal is a matter of right as long as the appeal is filed within fourteen days of the decision and indicates the decision that is being appealed. The Code does not require a statement of any specific legal grounds. In this case the applicant filed the appeal within the fourteen day period and cited the decision being appealed. The applicant further stated the DRB misapplied and misinterpreted Wilsonville Development Code Section 4.400(.02) and 4.421C; however the Wilsonville Code does not require a statement of legal grounds as a condition of filing of the appeal. It is staff’s recommendation that the Council simply denies the objection on a vote tonight and then makes a motion to set the hearing date and the scope of review. Due to the full agenda on March 17, Mr. Kohlhoff suggested Council may want to consider a motion limiting time for presentation.

Council President Starr said the Council has a recommendation from the City Attorney to vote to reject the appeal, does anybody want to make a motion on that.

Mr. Kohlhoff clarified the first vote would be to deny the objection of the appeal.

Motion: Councilor Goddard moved the Council deny the objection as outlined by the City Attorney Kohlhoff. Councilor Stevens seconded the motion.

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Vote: Motion carried 4-0

Council President Starr asked about the recommendation based on timing. Mr. Kohlhoff responded the recommendation would be as set forth in the agenda, it would be to set the appeal for a hearing date of March 17, 2014 and limit it to the record and additional testimony and evidence on the following issues and related Development Code provisions:

- On-site traffic congestion;
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles; and
- Section 4.154, Subsections 4.155(.03)A., 4.400(.02)A., and 4.421(.01)C.

Council President Starr asked for a motion.

Motion: Councilor Stevens moved the Council set the hearing date for March 17, 2014 and the Council limits additional evidence addressing only those areas already a part of the DRB record and no new evidence or testimony outside the issue already raised shall be submitted.

Mr. Kohlhoff suggested the motion be amended to add that they can add additional testimony outlined in the three bullet points on the agenda:

- On-site traffic congestion;
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles; and
- Section 4.154, Subsections 4.155(.03)A., 4.400(.02)A., and 4.421(.01)C.

Mr. Cosgrove stated Councilor Stevens can amend her motion to say what the City Attorney just said.

Amended Motion: Councilor Stevens amended her motion to say what the City Attorney just said; the motion is amended to add that they can add additional testimony outlined in the three bullet points on the agenda:

- On-site traffic congestion;
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles; and
- Section 4.154, Subsections 4.155(.03)A., 4.400(.02)A., and 4.421(.01)C.

Council President Starr asked for a second.

Councilor Goddard seconded the motion.

Vote: Motion carried 4-0

Mr. Kohlhoff stated the third item is whether or not the Council wanted to set time limits for the presentation. The appellant, in this case is the applicant, staff is recommending Council set a time limit for the presentation of additional evidence to twenty minutes and give them the right

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to reserve five of those minutes for rebuttal. And the other party who has filed the objection to the appeal be allowed twenty minutes. Both parties have twenty minutes, but the appellant could reserve up to five minutes for rebuttal.

Council President Starr asked if Council wanted to make such a motion.

Mr. Cosgrove confirmed testimony would be limited to twenty minutes for each side with five minute rebuttal for the appellant.

Councilor Fitzgerald asked if Council had further questions at that time or the desire to get more information can the timelines be extended. Mr. Kohlhoff thought if Council had questions, and it is taking them longer, then Council can grant the additional time that it is taking if they want to carry on. Councilor Fitzgerald asked if the time is always equal to each party. Mr. Kohlhoff responded that was not necessary.

Motion: Councilor Goddard moved to allow both sides in this matter twenty minutes to make their arguments with providing the appellant the right to reserve five minutes for rebuttal. Councilor Fitzgerald seconded the motion.

Vote: Motion carried 4-0.

Council President Starr thought the time allocation would allow both parties sufficient time to plan for the twenty minutes and go from there. That will happen at the next Council meeting.

Mr. Pauly's staff report is included here in its entirety to provide background on the matter.
Begin Staff Report.

Comment: Following their review at the January 13th and February 10th meetings Development Review Board Panel A rejected proposed Resolution No. 268 to approve with conditions the Human Bean Coffee Kiosk and denied the application. On January 21st, the applicant filed an appeal of the DRB's decision.

Staff Recommendation: The City Council's scope of review be limited to the issues related to the reasons DRB members stated for denial. These issues are:

- On-site traffic congestion,
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles.

Recommended Language for Motion: Having considered the factors in WC 4.022(.07) A, I move the City Council order that the appeal hearing of the denial Human Bean application by Development Review Board Panel A at its February 10, 2014 hearing, be limited to additional testimony and evidence on the following issues and related development code provisions:

- On-site traffic congestion,
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles.
- Section 4.154, Subsections 4.155 (.03) A., 4.400 (.02) A., and 4.421 (.01) C.

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PROJECT / ISSUE RELATES TO: Development Code

☐ Council Goals/Priorities

☐ Adopted Master Plan(s)

☒ Not Applicable

ISSUE BEFORE COUNCIL: At their February 10, 2014 meeting on this matter, Development Review Board Panel A voted 4-1 to deny the applications for the Human Bean Coffee Kiosk. On January 21, 2014, the applicant filed an appeal of the DRB's decision. The City's Development Code (Subsection 4.022 (.05) B.) provides the City Council as the reviewing body shall order the scope of review on appeal to be one of the following:

- Restricted to the record, meaning only evidence and testimony entered into the DRB record shall be considered, but the right of argument as to how the evidence in the record meets or does not meet the applicable standards is granted.
- Limit the scope to issues the Council determines necessary for a proper resolution of the matter. This allows any party to testify and submit new evidence related to the stated issues, but considers all other matters related to the applications on the record. For example, a new concern about architecture can't be raised on appeal if architecture wasn't an issue identified by the Council. Both parties had new evidence on the seminal issue they wanted to present to the DRB, but the record had been closed. This option takes away any claim they parties were not fully heard. This option also gives staff the ability to more thoroughly present the facts surrounding the reasons DRB denied the applications and gives the applicant and the opponent the opportunity to present further approaches to consider that might resolve the problems identified by the DRB.
- A de novo hearing, meaning new evidence and testimony on any topic related to the applications can be submitted during the City Council review. This could lengthen the hearing and not make efficient use of the Council's hearing time.

EXECUTIVE SUMMARY: On January 21, 2014 the applicant filed an appeal of the recent DRB decision to deny the applications allowing for building a coffee kiosk on the same property as the Carl's Jr. Restaurant in North Wilsonville. The appeal will first be heard during the Council's March 17, 2014 meeting. A final decision must be rendered by the City no later than the Council's April 7, 2014 meeting in order to not violate the state's 120-day rule for land use reviews. After discussion between planning and legal staff, staff recommends the council keep the record open on a limited basis to allow additional evidence, staff discussion, and analysis of the issues surrounding the reasons the DRB denied the applications. All other issues and topics will be on the record. This approach allows for more thorough discussion of the issues surrounding the denial and allows the applicant to address concerns raised by the DRB, and opponents of the application to comment on any new ideas proposed to address concerns.

EXPECTED RESULTS: Identification of the level of new evidence and testimony the Council will consider for the Human Bean coffee kiosk applications on appeal

TIMELINE: Making the decision on the type of hearing to hold will allow all parties, including staff, the applicant, and opponents of the application to understand and prepare for the anticipated City Council hearing later in the month.

CURRENT YEAR BUDGET IMPACTS: None anticipated

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FINANCIAL REVIEW / COMMENTS:

Reviewed by: JEO, Date: 2/21/14

No financial impact.

LEGAL REVIEW / COMMENT:

Reviewed by: MEK, Date: 2/14/ 2014

The Council has the discretion to set the scope of review on appeal. The factors that the Council shall consider in allowing additional evidence are set forth in WC 4.022 (.07) A. Allowing both parties to address this issue eliminates any claim of prejudice (factor 1); will allow both the parties to know they can bring available evidence as this was not the case with the DRB record being closed (factor 2); this will eliminate any claim of surprise (factor 4), albeit this was not a claim in front of the DRB; and to the extent the proposed testimony and evidence of each party was offered to the DRB (but not admitted) the proposed testimony and evidence appears to have some competency and materiality to the determining issue (factor 4). There may such other factors as the Council may determine apply (factor 5).

COMMUNITY INVOLVEMENT PROCESS: The standards public notice procedures for the DRB have been followed. The DRB has allowed interested parties to testify during their hearing process.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY Making a motion to determine the extent of new evidence and testimony that will be allowed for the Human Bean applications on appeal allows for clear expectations for all the parties involved. The recommendation of keeping the record open only on the issues identified by the DRB in the denial allows for thorough consideration of the issues in relation to the best interest of the community.

ALTERNATIVES: As alternatives to Planning and Legal staff's recommendation to allow new evidence and testimony only on those issues identified for the DRB as reasons for denial the Council could:

Not allow any new evidence or testimony and review only the DRB record

Hold a de novo hearing which will allow evidence and testimony on any topic related to the Human Bean.

End of Staff Report.

CITY MANAGER'S BUSINESS - There was no report.

LEGAL BUSINESS – There was no report.

ADJOURN

Council president Starr adjourned the meeting at 8:10 p.m.

Respectfully submitted,

Sandra C. King, MMC, City Recorder

ATTEST:

Council President Scott Starr