



SCAPPOOSE *Oregon*

MONDAY, DECEMBER 5, 2022
CITY COUNCIL MEETING MINUTES
Regular meeting 7:00 pm
COUNCIL CHAMBERS
33568 EAST COLUMBIA AVENUE
SCAPPOOSE, OREGON 97056

Call to Order

Mayor Burge called the meeting to order at 7:00pm.

Pledge of Allegiance

Roll Call

Scott Burge	Mayor	Alexandra Rains	City Manager
Megan Greisen	Council President	Brian Jensen	Interim Public Safety Director
Josh Poling	Councilor	Susan M. Reeves	City Recorder
Brandon Lesowske	Councilor	Laurie Oliver Joseph	Community Development Director
Peter McHugh	Councilor	Chris Negelspach	City Engineer
Tyler Miller	Councilor	Huell Whitehaus	Assistant to Public Works Director
		NJ Johnson	Associate Planner
Peter Watts	Legal Counsel		

Remote: Councilor Jeannet Santiago; Assistant to City Manager Isaac Butman; Anna Del Savio with the Columbia County Spotlight; Beth Rajski; Bill Blank; Caitlin Cook; Monica Ahler; Fred Mueller; Matt Hoffmann; HV; Katie Mons; Bruce Howard; Chris Koback; Leonard Aplet; Duane Meissner; Mike Bradley; Chip Buxton; Mike Bradley; Ian Holzworth; Kristal Langner; Lauren; Matt Park; Patricia Post; Phil; Siddiqui; Wela Negelspach; Judy Haugen; Ivan Higgs; Joel Haugen; DM; WR; Willow Ryan; and an unknown caller.

Approval of the Agenda

Mayor Burge explained agenda item #4 Denial of Business Registration for Pure Spa Massage LLC, will be removed.

Councilor Miller moved, and Councilor Poling seconded the motion to approve the agenda as amended. Motion passed (7-0). Mayor Burge, aye; Council President Greisen, aye; Councilor

Poling, aye; Councilor Lesowske, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Santiago, aye.

Public Comment ~ Items not on the agenda

There were no public comments.

Consent Agenda ~ November 21, 2022 Council Work Session minutes and November 21, 2022 Council City Council meeting minutes

Councilor McHugh moved, and Council President Greisen seconded the motion to approve the Consent Agenda ~ November 21, 2022 Council Work Session minutes and November 21, 2022 Council City Council meeting minutes. Motion passed (7-0). Mayor Burge, aye; Council President Greisen, aye; Councilor Poling, aye; Councilor Lesowske, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Santiago, aye.

New Business

Resolution 22-21: A Resolution Adopting Public Contracting Rules and Procedures and Repealing Resolution No. 17-12

City Manager Alexandra Rains explained this is a follow-up from the work session on November 21, 2022 in which we had discussed the current contracting limits and rules.

Assistant to Public Works Director Huell Whitehaus went over the staff report. Contracting limits delegated to the City Manager pursuant to Resolution 17-12 are \$30,000 and \$50,000, for non-capital and capital expenditures, respectively. High cumulative inflation, supply chain disruptions, and labor shortages have resulted in increased public contracting costs, thus resulting in an increasing number of contracts that require Council action. City staff presented this topic at the November 21, 2022 work session for discussion. Council agreed that increasing the City Manager's signing limits for capital and noncapital expenditures would be a prudent change, considering the economic context now faced by the City. The proposed language change is shown below. Changes to the language of Resolution 17-12 are indicated below by ~~striketrough~~ or underlined text: Delegation (3): All contracts for ~~capital~~ expenditures estimated to cost more than ~~\$50,000~~ \$75,000 in a calendar year must be approved by City Council. All public contracts for ~~capital~~ expenditures estimated to cost ~~\$50,000~~ \$75,000 or less in a calendar year may be entered into by the City Manager or designee without Council approval. All public contracts for non-capital expenditures estimated to cost more than \$30,000 in a calendar year must be approved by City Council. ~~All public contracts for non-capital expenditures estimated to cost \$30,000 or less in a calendar year may be entered into by the City Manager or designee without Council approval.~~ Exhibit A – Resolution 22-21, A Resolution Adopting Public Contracting Rules and Procedures

and Repealing Resolution No. 17-12. Decreased staff time allocated to developing and presenting contracts to Council for approval; decreased opportunity costs that may be caused by a delay in purchase authorization. Staff recommends that City Council adopt Resolution No. 22-21 – A Resolution Adopting Public Contracting Rules and Procedures and Repealing Resolution No. 17-12.

Council President Greisen moved, and Councilor Poling moved to adopt Resolution 22-21: A Resolution Adopting Public Contracting Rules and Procedures and Repealing Resolution No. 17-12.

Councilor Santiago asked if we can adopt policies that support small diverse businesses.

Legal Counsel Peter Watts replied those depend on the scale of the project. He stated based on the cost of the project that's when those rules go into effect. He stated these are the States kind of safe harbor regulations or suggested public contracting. He stated if we want to deviate from that and if we want to award points based on another standard we would have to take a look at whether we can do that.

Councilor Miller stated the topic that came before us was predominantly based on raising the limits. The issue of giving preference points is another topic that he thinks we would need to address and from the last Council meeting it was basically establishing that during an RFP elevation that certain businesses could qualify for preference points. He stated to him it is a separate topic that needs to come back to Council.

Legal Counsel Peter Watts explained this is something he would need to do a little more research on.

Councilor Santiago would like to address this on a later date. She explained she would like to keep the amount at \$50,000.

Motion passed (6-1). Mayor Burge, aye; Council President Greisen, aye; Councilor Poling, aye; Councilor Lesowske, aye; Councilor McHugh, aye; and Councilor Miller, aye. Councilor Santiago, nay.

Ordinance No. 909: An Ordinance Relating to Land Use; Amending the Scappoose Zoning Map, and Approving the "Buxton Ranch" Planned Development, Subdivision, Conditional Use, and Sensitive Lands Development Permit Applications

Mayor Burge read the opening statement. He stated "I am calling this public hearing to order to consider a consolidated application for Subdivision, Planned Development Overlay Zone Change, Conditional Use, and Sensitive Lands Development Permits for Floodplain, Wetlands, Slope Hazard, and Fish & Riparian Corridor. The procedure for this hearing will follow a strict format. Testimony and evidence must address the criteria that apply to the decision as

described in the staff report or to the criteria the person testifying believes to apply to the decision. Persons may speak only after being recognized by the mayor and must come forward to the microphone (or be called on by the mayor for online participants wishing to speak) and state their name and City for the record. Only testimony that is relevant to the application will be considered. Immaterial or repetitious testimony will not be allowed, and a time limit of 5 minutes will be imposed for each person wishing to testify. The failure to raise and clarify an issue to afford all parties an opportunity to respond to the issue precludes appeal to the land use board of appeals based on the issue. The Council will conduct this hearing in a quasi-judicial capacity for the Conditional Use, Planned Development Overlay Zone Change and the Sensitive Lands Development Permits. In other words, like a court trial where the Council serves as finders of fact, based on the relevant approval criteria. Verbal testimony during the hearing is allowed for quasi-judicial decisions. This is a consolidated hearing, and the Subdivision application shall be processed as a Limited Land Use Decision – which does **not** take verbal testimony because it does not require interpretation or the exercise of policy or legal judgement; therefore, any verbal testimony shall be limited to issues related to the Conditional Use, Planned Development Overlay Zone Change and the Sensitive Lands Development Permits approval. There shall be no audience demonstration or other conduct which would disrupt the hearing. Does any Council member wish to declare any ex-parte contacts or conflict of interest regarding this matter?

Councilor Lesowske declared ex parte. He explained in August he was approached by Councilor Haugen in regards to an invite to attend a discussion in regards to the proposed development. He declined that invite. He explained also through September and November he ran an election campaign where a number of different citizens and residents approached him wanting to know his thoughts. He explained to them that ethically and morally he could not speak on the application as it was not presented to him but there was discussion in regards to the generalization of private property and also government overreach but it was not directed specifically towards this particular application and most recently he thinks it was on the 2nd of December he received an email from a citizen and he opened up that email and initially read the context or body of the email and did not open up the attachments, as he thought it would be provided in testimony today. He explained he wanted to air out those particular moments so that if the applicant feels as though his actions mean he needs to step aside, he would be more than willing to. He just wants to do what's best for this process.

Council President Greisen explained she too received the email from a resident on the 2nd and she opened it up. She did not respond or read the details that would be provided this evening.

Councilor McHugh explained he received the same email, and he did read the information and then the next day they got an email stated they weren't supposed to do that. He read it but it is pretty much all covered in this report that we received here about a week ago.

Councilor Poling explained he also received the email and read through the summary. He didn't open up any attachments but did read through the summary.

Councilor Miller explained he also received the same notice, however he got the notice that they weren't to review it before he read it, so he did not read the content of the email.

Councilor Santiago stated same thing, she did receive the email and read the content as well.

Mayor Burge explained he also received the email. He forwarded it to our City Recorder, he didn't read it because he knew it was outside of the hearing process. He explained also on November 18 received an email from former Councilor Haugen and because he is the only one who received it, he will read it for the record. "Disappointing unanimous vote at the PC last night, which is going to make it difficult for Council to deny the application. This is a helluva way to end your tenure as Mayor and unfortunately it will be the legacy, good or bad, of your good efforts for the community you love. I will be talking with our attorney soon about his rebuttal to the applicant's attorney on December 5th. Sadly, this is probably destined for LUBA! But to soften the blow, you might consider the advice offered by your contemporary John "Bill" Smith, who sent the suggestion below RE Buxton. Happy to talk, if you like, before December 5th! Joel"

"If they move forward with this project, I would make sure to require adequate performance bonds, payment bonds and warranty bonds. And they might want to require the developer to fund a HOA and reserves for a decade and include adequate insurance coverage by the HOA. HOA's nowadays sometimes cover home insurances like when attached townhomes are built to prevent the attached neighbor from not having adequate coverages. Flood insurance rates have skyrocketed in the last few years as the feds redrew flood maps, so that might be another reason for HOA to cover because unsuspecting buyers might not adequately project flood insurance costs when buying. As interest rates skyrocket, and the recession takes hold and housing prices sink, this project will make less and less sense for the developer, and they will be much less inclined to be a good partner."

Mayor Burge replied it is what it is, and it is not going to affect his impartiality on looking at the evidence.

Mayor Burge asked, "Does any party wish to challenge any Councilor's impartiality or legal capacity to participate in this matter?" Seeing none, the order of the hearing will be the staff report, then the applicant's presentation, then proponents, then opponents, then rebuttal by the applicant, then a staff response. Thereafter, the hearing will be closed for consideration of the matter by the Council."

Community Development Director Laurie Oliver Joseph thanked Council and the citizens for being here this evening. She explained she has a few housekeeping items to mention before

she starts her staff report presentation. She explained many of the issues that have been raised to date are very similar in nature. If a person who testifies before you has already covered the same concerns then we ask that you'd move on to an issue that has not been raised yet when it's your turn to provide testimony. As the Mayor mentioned testimony will be timed at five minutes for each person. This in addition to not allowing repetitious testimony is so that everyone who wishes to speak tonight can speak. Associate Planner NJ Johnson across from me will indicate when you have one minute left by raising one finger and will say when five minutes is up with a T and then she realizes those of you are online may not be able to see him doing that in which case he will let you know verbally when the one-minute mark is up and when the five minutes is up. She explained if you have the ability to kind of just time yourself to keep track of that, that is great, if not again we're here to help you. She stated again we ask that everyone online keep themselves muted and if anyone has called into the meeting and you have been muted, you'll press *6 in order to unmute yourself. She explained NJ is going to find out from the people online who wish to speak later this evening. He will be taking your information now so we that a complete list of people who want to speak on the matter. She explained it will not be right now, it will be at the appropriate time.

Associate Planner NJ Johnson asked Is there anyone online who wishes to speak on the Buxton Ranch application? If so, please raise your hand and wait until you are called to provide your name and city for the record and indicate if you are speaking as a proponent or opponent.

Joel Haugen, Scappoose, explained he is an opponent.

Chris Koback, Portland, explained he is Mr. Haugen's attorney and he will speaking in opposition.

Ivan Higgs, Scappoose explained he is an opponent.

NJ Johnson stated thank you all, and your names will be passed onto the Mayor and he will call on your name during public testimony.

Community Development Director Laurie Oliver Joseph stated tonight, she will begin by going over the Council staff report briefly, then she will cover the observations section at the beginning of the Planning Commission staff report, next she will let you know what the relevant approval criteria are, where the findings to those criteria are located within the Planning Commission staff report, and lastly, she will provide staff's recommendation and the conditions of approval. To begin, and as stated in the Council staff report, the Planning Commission held a public hearing regarding this request on October 27, 2022. Written comments on the application were due by 5 pm on October 26th, the day prior to the Planning Commission hearing. During the October 27th hearing, the Planning Commission voted to leave the record open for 10 days to allow for additional written testimony and to allow seven days after that for the applicant to provide a rebuttal statement.

All of the additional written testimony received after the date that the Planning Commission staff report was released, including the testimony received during the 10-day open period, is included at the end of the Council packet before you tonight on pages 524 – 644 (using the numbers at the bottom left of the page (where it says 12-5-2022 Council packet). After considering all of the facts in the record, the Planning Commission voted unanimously to forward a recommendation of approval to the City Council, subject to conditions of approval as outlined in the Planning Commission staff report dated October 20, 2022. Moving on to the observations section in the Planning Commission staff report beginning on page 9 of the of the 12-5-2022 Council packet, under subject site and this will provide an overview of the application.

Community Development Director Laurie Oliver Joseph went over the staff report. David Weekley Homes has requested a Planned Development Overlay zone change to change the current zoning from Low Density Residential (R-1) to Low Density Residential with Planned Development Overlay (R-1PD), a Subdivision Tentative Plan approval, Conditional Use approval, and Sensitive Lands Development Permit approval for the Floodplain, Wetland, Slope Hazard and Fish and Riparian Corridor affecting the subject site. A Planned Development Overlay is processed as a zone change on an individual parcel, for which the City Council is the approval body. While the Planning Commission would normally be the approval body for the remainder of the applications (including the Subdivision Tentative Plan approval, Conditional Use, and all Sensitive Lands Permit approvals), since the application is consolidated into one hearing process, the City Council will decide on all of the applications (taking into account Planning Commission's recommendation). David Weekley Homes has requested a Planned Development Overlay zone change (ZC1-22), Subdivision Tentative Plan Approval (SB1-22), Conditional Use approval (CI1-22) and four Sensitive Lands Development Permits (Floodplain – SLDP 1-22, Wetlands – SLDP 2-22, Slope Hazard – SLDP 3-22, and Fish and Riparian Corridor SLDP 4-22). The site is 17.3 acres and is located south of the Captain Roger Kucera Way and SW JP West Road intersection and is further described as Columbia County Assessor Map No. 3212-CB-00401. The Planned Development and Tentative Subdivision Plan proposes to create 48 single-family residential lots, with lots ranging in size 3,410 sq. ft. to 13,083 sq. ft, and 7 open space tracts. All findings related to the approval criteria for the consolidated land use applications, including the recommended conditions of approval, are contained within the Planning Commission staff report, dated October 20, 2022, which is included as Exhibit B (in the staff report) to this Council report. An ordinance to approve the consolidated applications is included as Exhibit A (in the staff report). The Planning Commission held a public hearing regarding this request on October 27, 2022. Written comments on the application were due by 5 pm on October 26th, the day prior to the Planning Commission hearing. During the October 27, 2022 hearing, the Planning Commission voted to leave the record open for 10 days to allow for additional written testimony and to allow seven days after that for the applicant to provide a rebuttal statement. All of the additional written testimony received after the date of the Planning Commission staff report (October 20, 2022) is included at the end of the Planning Commission staff report. After considering all of the facts in the record, the Planning Commission voted unanimously to forward a recommendation of approval to the City Council,

subject to conditions of approval as outlined in the Planning Commission staff report dated October 20, 2022. She explained the staff did not receive any objects from any agencies and any comments are included in Exhibits 28-37. She wanted to point out that the Scappoose Fire District did have a comment that two private lots cannot be shared to establish a hammerhead, in exhibit 32. She explained the Fire District had concerns about the turnaround being shared between two private lots. She explained staff spoke with Chief Pricher about that and the applicant. The applicant did volunteer to put that into a tract as opposed to an easement. It would be paved and curbed, which satisfied the Fire District so that it would be clearly denoted that it was a turnaround. She explained this again, alleviated the concerns for the Fire District and additionally all lots within the subdivision would be required to be sprinklered, which he is happy about.

Community Development Director Laurie Oliver Joseph stated now she will point out where the relevant approval criteria are located within the report:

Statewide Planning Goal findings pages 15 – 20 of council packet

Findings related to applicable Comprehensive Plan goals and policies, pages 20 - 26

Criteria related to..... Findings are on page....

Chapter 17.22 - Amendments to the zoning map, Findings are on pages 27 - 28

Chapter 17.44 – R-1 (Low Density Residential), pages 30 - 31

Chapter 17.81 – Planned Development Overlay, pages 32 - 45

Chapter 17.84 – Sensitive Lands Flooding, pages 45 - 51

Chapter 17.85 Sensitive Lands Wetlands, pages 51 - 55

Chapter 17.86 Sensitive Lands – Slope Hazard, 55 - 60

Chapter 17.89 Sensitive Lands Fish and Riparian Corridor, pages 61 - 64

Chapter 17.100 Landscaping, screening and fencing, pages 64 - 66

Chapter 17.104 – Street Trees, pages 66 - 67

Chapter 17.106 Off Street Parking and Loading Requirements, page 68

Chapter 17.130, Conditional Use, pages 68 - 69

Chapter 17.150 Subdivisions, pages 70 - 72

Chapter 17.154 Street and Utility Improvement Standards, pages 73 - 84

Chapter 17.162 Procedures for Decision Making – Quasi-Judicial, pages 84 – 85

Community Development Director Laurie Oliver Joseph explained please turn to page 86 of the 12-5-2022 Council packet. Based on the findings of fact contained within the record and within the October 20, 2022, PC staff report which respond to the relevant approval criteria, staff recommends that City Council adopt ordinance 909, thereby approving the application with the 52 recommended conditions of approval in place. You can see the conditions of approval on pages 86 – 93. As the Council knows, staff always includes conditions of approval to ensure that a project meets the development code. Many of the conditions included are standard to any subdivision. For reference, a recent 9 lot subdivision without any other applications consolidated with it, contained 31 conditions of approval. The 52 conditions of approval related

to this application also include specific conditions related to the Planned Development Overlay and the sensitive lands, which is why this list is longer than a standard subdivision. The Council staff report on page 2 includes staff's recommendation again and page 3 contains a suggested motion for approval. That concludes my presentation of the staff report.

Applicant Garret Stevenson explained he is here tonight on behalf of David Weekley homes. He explained who all is here with him this evening. He explained he is going to start out really briefly to hopefully provide some context about what they think this project is and what you may not understand, although he suspects some of you probably do, having been in this position for a while, but if there is any question, they have been working on this project for over three years, probably closer to four. He explained to Council what they have in front of them is a plan that has gone through the gauntlet of just about every stress test that they can throw at it. He stated he wants to tell Council, and this is no shade on staff, in fact he thinks it is a compliment, but your staff set an extraordinarily high bar for the application they came in with because they are sensitive to the concerns of the community and frankly, they knew that this one was not going to necessarily be easy. It is not necessarily an easy property and so your terrific staff, frustrating for them sometimes, actually required quite a bit that they were not used to. For example, when you talk about doing a hydraulic analysis and getting your CLOMR, for most that work throughout Oregon that's something that happens after the tentative approval with conditions of approval, not before. In this case they actually got their CLOMR before the application was deemed complete and if you look at that staff report your Planning Director went through and pretty much examined every potential issue that could come up and so he thinks through that sort of foraging process what you have is a really, really good application. He stated he wants to be clear that not everybody is going to agree with him. He stated this is not a popularity contest and they certainly understand the concerns of the neighbors but when he says good application, he means an application that meets all the approval criteria and that is a really good plan for this particular piece of property. He explained this was a discussion that came up before the Planning Commission at a great deal of length, they had a very long hearing, initially they left the record open, there was a substantial amount of additional public written testimony, there was a follow-up hearing during in which they provided their oral rebuttal and what you had there was a Planning Commission that asked some very difficult questions and some very thoughtful questions and he thinks they have answered them very well and the Planning Commission agreed with them and they voted unanimously to approve the project. He stated not because they were saying, oh we love these developers and we want to see all of Scappoose developed, the reason why they did that is because they found that the criteria were met and he thinks that City Council can find the same thing. He stated as far as the project is concerned, what you have is really a thoughtful compromise between the need to protect Scappoose Creek and preserve open space and also their desires to develop the property. He stated one of the things that they looked at is just how long this site has been in the City's residential land inventory, how long it has been zoned R1 and from what he understands, it has been zoned R1 and has been intended for single-

family residential development since the City adopted its original comprehensive plan. He stated so the City already has a long-standing policy that this property should be developed. He stated that doesn't mean it is easy though. He, like anybody else, when he sees a property that is left undeveloped for years, maybe he has walked his dog through the fields, maybe he'd been down by the creek or whatever and suddenly it looks like somebody's going to come develop that, that has a visceral emotional component to it and he might not necessarily be behind that, but in terms of what the policy is of this City, the city decided that this property should be developed, it has not decided that this should be maintained as a park. If it were, we would have a different zoning or perhaps the City would have purchased it. He stated with that being said, it is not necessarily an easy site, we all understand that and to that end, the application preserves 57% of this site. He stated 57% of the property will not be developed, it's going to be preserved as open space. It provides a public pathway that will connect up with the Veterans Park pathway across JP West Road and it also sets aside land for both a private park but also potentially a future public park if the City wants to go that way. He stated we heard some concerns during the Planning Commission hearing about, well why aren't you pushing Eggleston Lane through. He stated when you actually look at the property and understand that they are trying to develop on the upland portion and stay away from the creek, you understand why that is the case. The idea is that they can push Eggleston Lane through to the edge of the property or as close as they can get without getting into additional wetland impacts and then be able to build homes on either side of that. He stated what that allows them to do is to cluster homes away from the sensitive portions of the site. He explained you heard your Planning Director explain that in terms of wetland impacts we only have one small temporary wetland impact and he highlights that because it's an example of how reserving more than half the property for open space lets them avoid some of these natural resources that folks are concerned about and frankly they are concerned about too. He stated so that is why they are doing a planned development and when Laurie was talking she stated the purpose statement of the Planned Development Overlay and he didn't originally have that in his notes, but he thinks it is important to know why they are doing this and why you are seeing this more unique type of development application and the purpose of the overlay, he is just quoting here briefly, is to provide more flexibility and development of land and encourage variety and creativity in the development pattern of the community, conserve natural land features, create public and private open space, and a variety of other things and he thinks that that sums up what they are trying to do with their design really well. He stated there were concerns about density here, by going through the plan development process they are able to preserve that 57% of the site, avoid building homes in floodplain, avoid building homes nearer to the creek and in return for that what they get is a 4% increase in density. He explained the maximum density if they were just to develop in straight R1 zone without going through this more high level planning process would be 46 homes and they are proposing 48, but they are allowed through this process to go up to 25% in additional density, and they have not done that. He stated they think it is a good compromise between the amount of density they could potentially get out of it versus the amount of density that makes sense and also a strong effort to preserve the majority of the site

for open space. He stated the other thing he would finish on before he hands it over to Matt, is that the public's concerns are many with this, and he thinks that they all sort of stem from a general concern about flooding and also, like any other town folks don't want to see open space get developed, that they are used to having this be open space and he understands both of those concerns, but in this case they think it's obviously a good thing for David Weekley, they want to develop the property but he thinks this also gives the City some predictability about what they are going to see out there. He stated once they do the project these open spaces will be protected permanently. There is not going to be a question of another development application coming forward that might want to do something different and on and on down the line. So, they think it's time, the plan, he believes is a good one, the Planning Commission agreed with them unanimously and they think it meets all the criteria, and they hoped Council would approve it on that basis and with that he will hand it over to Matt.

Matt Sprague, Primary Lead and Planning Consultant with Pioneer Design Group, went over the project goals and benefits section of their application. He explained those included expanding the riparian vegetation areas between the creek and new development, taking advantage of and protecting sensitive environmental, visual and recreational values of South Scappoose Creek and the wetlands on the property, maintain flood storage capacity with more cut and fill, fostering the residence away from South Scappoose Creek, creating several tracks to preserve open space to ensure the home sites are safe from flooding. They want to provide a quality subdivision for single-family homes with recreational amenities for residents and the public to enjoy and to create usable recreational open space and enhance the overall visual, environmental, and recreational quality of the development and with a combination of parks and open spaces with quality landscaping, to accommodate a housing type and size that provides options for the local community, is affordable and provides opportunities for next generations of Scappoose residents. He repeated, providing opportunities for next generations of Scappoose residents. He knows that is a concern in a lot of smaller cities around the State of Oregon, is that our kids, they go to high school, they graduate, they go off to college and sometimes it is very difficult for them to return back to their hometown and find an affordable place to live, so that's one benefit of this project. He wanted to also accommodate future development via extension of the public streets and then also if you look at the design, something that wasn't mentioned is they designed this project in a way where it transitions from west to east with the largest lots being along the western property line to have minimal or no impact on adjacent neighbors to the west in the R1 zone, while putting the smaller lots very central to the site. He explained he was looking through his early emails as to when he started this project. He got involved in this project 3 years and 8 months ago. He stated at that time he got involved with David Weekley and they updated the design of the site and then they took that design to the City and have been working through all the City's code criteria to ensure that they comply with them, and the City staff has done an excellent job of helping them out with that. He stated Garrett mentioned the 57% of the site being maintained in open spaces such as natural resources areas and parks. He explained the site is 17.30 acres and what 57% means is

that 9.87 acres of the site is being preserved in open space for natural resource or parks. He stated if you wanted to add in the water quality facilities because essentially, they are open space and provide an open space benefit you would have 10.2 acres of the site that has actual open space and about 7.1 percent of the site that is actually being developed in lots and streets. So, it is a very small percentage of the site that's seeing development. He explained through the Planning Commission process there were three primary concerns that he picked up on. He explained one is flooding, one is traffic and the other is riparian areas and stream health. He stated regarding flooding he wants to point out that there's no increase in base flood elevation being proposed with this project. He stated that means that the base flood elevation today is going to be the same elevation as is when this project is completed. He stated it also means that properties across the creek, downstream, or upstream will see no change in the elevation of the base flood elevation. He explained on the site itself all the homes are more than two feet above the base flood elevation, their finished floors, the lowest is actually almost two and a half feet above the base flood elevation. He stated that puts that house more than one foot above the 500-year floodplain elevation. He stated there are only a couple of homes that are at that lower point which are still substantially higher than the base flood elevation and higher than the 500-year floodplain. He stated the majority of the homes are even higher than that. He explained, in regards to traffic, the project has complied with all of the traffic requirements as has been evidenced in the traffic study and the staff report. He stated in addition more than \$100,000 will be generated in traffic impact fees that the City will be able to use for off-site improvements in other locations. He explained this project also improves 600 linear feet along JP West Road increasing capacity and safety along that stretch of roadway. He explained, in regards to riparian areas, stormwater is being treated and detained before a measured release into the drainage system. He explained the project is actually detaining the 100-year storm event, which exceeds all City standards and requirements. There will be planting and replanting of large areas between the development and the creek itself, with plantings actually resulting in converting over 1.7 acres from pasture to planted riparian habitat. So, they are increasing the value of the habitat along South Scappoose Creek in concert with protecting those lands. He explained no wetlands are being removed, public pathways are proposed for all members of the public. That pathway essentially expands the existing system in the park and provides greater opportunity for more recreation for the public and all resource track development rights are being given to the City of Scappoose. He stated that concludes his presentation.

Councilor McHugh stated he has a question about traffic. With a lot of people living in those 46 homes, there'll be a lot of kids and with the park across the street, those kids will be running across the street to get to the park, any plan to negate that possibly being a problem?

Garret Stevenson stated before he turns it over to Matt Bell, he thinks what Council heard staff say is that when they looked at the traffic impacts here, they didn't find that there was any

probable cause that would require specific mitigation but he will let Matt explain a little bit more what that means from a traffic analysis standpoint.

Matt Bell, Transportation Engineer with Kittleson Associates, replied they did look at the crash history along the corridor, they looked at the last five to seven years of data and they are not necessarily seeing any trends and patterns in the types of crashes that might require mitigation, particularly along JP West Road and he would just reiterate what Matt said earlier about the frontage improvements along both the site frontage as well as extending further, providing those types of amenities of public sidewalks, and landscaping and whatnot.

Matt Sprague stated he would add that you know they are essentially creating a four-way intersection and we are adding two more ADA ramps at the south side so now they are creating an actual pedestrian crossing location that doesn't exist today to go along with the new sidewalk that they will put on JP West. So, it should improve safety.

Councilor Santiago stated thanked you for your presentation and thank you for putting on the record that you guys will keep 57% open and that you will not go beyond the 48-housing development, that's what she heard. She explained her question is the base flood elevation, you said it will stay the same and definitely there would be two locations for water treatment to control that but for how long do those systems last and she knows she sees that the homeowner's association will keep maintenance of those systems. She asked how long would that stay or how long would those systems work and keep that water-base elevation where it should be and who would be regulating that?

Garrett Stevenson stated it sounds like your question is about the stormwater detention and treatment facilities and how long those would be maintained by the HOA and he can tell you that the answer to that is permanently and who is responsible for maintenance and how do we assure that. One thing in your question you did ask though is about the base flood elevation and he wants to be clear that the future maintenance plans for the stormwater infrastructure is not going to control the base flood elevation. Even though we talk about that in terms of 25-year storm events and 100-year storm events and he realizes there are similar concepts but, in this case, not exactly the same. This did come up during the Planning Commission proceedings and he thinks actually your Public Works Director had a very good answer to explain how the City ensures the viability of the HOA maintenance going forward but in general terms it means covenants on the property that provide not only oversight by the City as needed but if the HOA is not doing what it needs to do the City has the ability to step in and do what it needs to do and then bill the HOA. He asked Chris if he wanted to expand on that at all.

City Engineer Chris Negelspach explained we did talk about that in the last hearing. He stated we will have a requirement in the staff report, he doesn't know what condition exactly it is, but it is a standard condition to require a stormwater maintenance access covenant and in that

agreement, we will have access to the facilities and they will be required to do maintenance and report to the City twice a year if there are any discrepancies noted in accordance with the requirements for maintenance. Once he gets that he would give them a certain amount of time to remedy those issues. The City also does have enforcement rights for maintenance where we can, in the municipal code, we can actually maintain those facilities and then charge the HOA, for those maintenance activities.

Councilor Santiago stated to clarify, the City will regulate to make sure the HOA Association is keeping up with the system.

City Engineer Chris Negelspach replied we don't have a crew that specifically goes and checks those facilities, but we do go out and monitor them. He does rely on the HOA's to do the reporting that they are required to do under the agreement. He stated when we do get those reports, we do act on them, they have in the past, as they have sought action against the Dutch Canyon HOA for lack of maintenance on their facility. He explained they took steps to mitigate those issues, we do follow those.

Legal Counsel Peter Watts stated Councilor if you look at the packet, page 90 and condition 33, that is all specified as far as the requirements of the homeowner's association. He stated after providing an HOA, he can't recall of ever having to go on site to preform the work and then bill them, but we certainly have that ability, and he can only think of one instance where we had to threaten them.

City Engineer Chris Negelspach stated we haven't ever had to do the maintenance. Councilor Santiago stated her concern is because it's already a drainage issue, an area, so she is thinking that we probably would have to be on top of that, that is her assumption and then just to follow up on a comment that was said, she just wants to clarify are you, she thinks there is a difference between single housing and affordable housing, and both were mentioned. She asked, so what type of housing would be at this location?

Matt Sprague replied, to clarify, it is all single family detached housing, it is not going through a government affordable program. But due to the size and shape of the lots and the size of the homes, they're more affordable is what he is saying in the application.

Councilor Santiago replied, even with HOA fees.

Matt Sprague replied yes.

Councilor Santiago replied thank you.

Councilor Lesowske stated just to follow up with the Councilor in regards to the stormwater facility, we are not talking about a piece of mechanical equipment we're talking about essentially a catch basin for the runoff, is that correct?

Garrett Stevenson replied yes, that is correct.

Councilor Lesowske replied thank you for clarifying.

Councilor McHugh talked about HOA's not functioning. He asked what happens when the HOA decides to vote to disband and who is going to take care of the open spaces, is that going to be up to the HOA? That is a lot of open space to deal with.

Garrett Stevenson explained he will cover the legal aspects of this. He explained he does want to correct the record that it's not the case, at least when you look at the State of Oregon that most HOA's don't function. Most HOA's do actually function especially the ones to your point, Councilor, that have been set up more recently. He explained the older HOA's were set up before the passage of what is called the Planned Community Act. The Planned Community Act, he believes was written back in 94 or maybe a little bit earlier, but not ancient history and they set into place very, very strict requirements about how you fund an HOA. So, when you look at old HOA's like for example my first house was built in 1924 and they had an HOA back at that time that of course ceased to exist as soon as they possibly could. That's not really possible under Oregon Law anymore and there are a number of reasons for that, he won't go all the way down the rabbit hole legally, but he thinks what might be important to point out based on your question is that when you set up an HOA the first and principle thing you have to do is make sure that the HOA is funded adequately to take care of the infrastructure that they're in charge of doing, that's typically done through something called a reserve study. When the reserve study is done, they basically appraise and make an educated guess about how much infrastructure they need to maintain and then that has to all be funded and go into the kitty and that's actually typically done prior to the transition of the HOA from the Developer to the neighborhood. He also wants to say that doing a project without an HOA under Oregon Stormwater Rules has become very, very difficult to do and the reason why that is is because it used to be what we were all used to really until about 20 years ago is you would build your subdivision and you would discharge all you stormwater out on the street, it would go into the cities catch basins, it would go into the cities sewer pipes and out to the river. He explained that is how it used to work which is why you didn't need HOA's to maintain detention retention facilities. In the last 20 years, because of Oregon stormwater rules requiring more aggressive treatment, a lot of communities throughout Oregon, this is not the case with Scappoose to his knowledge, but it's the case with a lot of them, a lot of communities have had issues with Oregon DEQ and the EPA on maintaining their National Pollutant Discharge Elimination System permit the NPDES program and all that has essentially resulted in is the need to do a lot more with stormwater than we used to and in 90% of cities in Oregon the way you do that is through

stormwater facilities that are maintained by the neighborhoods that are being constructed and that's simply because it's not practical, he thinks, on a large scale for local governments to take on that infrastructure in every single case. He explained that is why you see them typically placed into tracts and then you have to set up the HOA, do that reserve study, figure out how much money needs to be done to fund it and make sure that when you turn it over to the neighbors that they've got a good plan and some financial resources in place to handle things but he doesn't think in looking at this particular project the HOA piece of it is probably the least exotic part of it because he's just got used to seeing HOA's having to be part of just about anything having to do with stormwater and if you do anything up in Washington State it is even more intense in this regard.

Matt Sprague stated he would add that there are other reasons too that HOA's have become the norm in Oregon today, not just for stormwater but also for open spaces. He explained jurisdictions nowadays either can't afford to maintain these open spaces or don't want to purchase these open spaces. When he started in this business 30 years ago in their subdivisions every open space was dedicated to the local jurisdiction under their ownership and maintenance. Every stormwater facility they did was dedicated to the local or regional government for ownership and maintenance but that's not a plan that has worked in Oregon in terms of the agencies ability to pay for those maintenance costs and so HOA's are kind of the norm now. What the benefit here is there's 48 units. The more units you have in an HOA the higher success rate you are going to have, and 48 units is a very good number of units to have a successful operating HOA.

Councilor Miller stated this question is directed toward the applicant's legal counsel. He wants to unpack the HOA aspect a little bit more. He asked would it be possible for the HOA once it is turned over from the builder to the people that live there to dissolve the HOA? Because what he is hearing is that we are placing different conditions on the HOA and those conditions are obviously important. He asked so is there a mechanism in which the HOA could dissolve itself?

Garrett Stevenson replied he would say in this instance, and he is going with his gut a little bit here because he doesn't have the laws right in front of him, he explained HOA's can exist for a number of reasons, sometimes they have obligations to the public and sometimes they don't. In this case, this HOA will have obligations to the public and the covenant will be placed on every single lot and all the resulting property that requires that HOA to remain extant, that makes sense. Frankly he has not seen a whole lot of modern HOA's dissolving especially not for you know a project that is, well to be honest with you he has not seen a case of...

Councilor Miller stated can I stop you there? So, what you are saying is that when they go sign their title documents there's going to be a restriction in those documents that say that they will be perpetually in that HOA and that it will not dissolve, that they will not seek to dissolve the HOA.

Garrett Stevenson replied he doesn't know the precise answer to your question because he doesn't know what that covenant is going to look like but from speaking with Chris, the way he understands that this is going to work because of the City's requirements and the conditions of approval is that they will have an HOA that is required to remain in effect and required to maintain these public facilities. He doesn't believe that, although take it with a grain of salt, he doesn't have the material in front of him, he doesn't believe that they would just be able to just dissolve the HOA and walk away because there would be a covenant remaining on the property. The question he thinks that gets to your point is all right there is a covenant on the property, what happens then and what would happen is that the City would be able to compel the neighbors in the HOA to do what they are supposed to do. He stated there's a question of what if they do something and if you don't like it, well what's the end result, the end result is an enforcement issue.

Councilor Miller replied he is looking at it from you know we're placing all these rules, and we'll call them securities into the HOA but it would seem to him that we need to make sure that the HOA can't dissolve and the HOA is always going to be there otherwise these promises and these securities, as he calls them, are rather pointless.

Garrett Stevenson replied well they are not pointless because the covenants with the City are what maintains the existence of the HOA if folks don't like it. He can tell you in concept the obligations to the city will be covenants on the property, they can't stop maintain it and dissolve the HOA and walk away.

Councilor Miller stated what he is hearing is there is no dissolution of the HOA allowed, it is a perpetual HOA.

Garrett Stevenson replied yeah, that would be the case. The only thing he could see changing is for some reason the City came in and took over and who knows what happens years down the line but if for some reason the City came in and took over all the infrastructure and said we're going to maintain this now, at that point the HOA would no longer be obligated to maintain those facilities. They may still need to exist for a number of other reasons but right now the primary obligation that we've been talking about is the obligation to maintain the public facilities that serve the project, and those obligations are going to be insured with conditions of approval that will result in essentially covenants on title. They're very, very common. This is how every single HOA that maintains stormwater works and he doesn't think that they would be able to just summarily dissolve it and walk away.

Councilor Miller stated if there's a covenant on the title then let's hypothetically say the HOA could dissolve. So, then whose responsibly does it become to maintain things like the stormwater, if there is that covenant on the title? He is not trying to get too much in the weeds here, sorry but it's an important thing.

Garrett Stevenson replied he wants to be careful here because he doesn't want to opine on HOA documents that haven't been drafted yet.

Legal Counsel Peter Watts stated if you look at page 91 in the packet, we would be required to sign off on dissolution of their HOA so they could not do it without the City's permission and obviously he can't speak to what a future Council would do. He stated it would seem very, very unlikely. Then the other thing that we've acquired, it is kind of adjacent to this issue, is the non-remonstrance agreement for and LID, which is a Local Improvement District, which would be necessary to construct what have you. He stated one of the comments that we got in front of the Planning Commission is why aren't we taking the street to the edge of the property and there are reasons that are site specific to this site that we're not doing it but in the event that development happens on the other adjacent parcels, and we form and LID, none of the property owners will be able to object. He explained so what we'd start out is with there are 48 property owners who are not objecting to a local improvement district.

Councilor Miller replied so what he is hearing is, again he is not trying to take too much time on this, so what he is hearing is the City would be required to sign off on that and the HOA in of itself could not unilaterally dissolve itself.

Community Development Director Laurie Oliver Joseph replied correct, and she just wants to read, Councilor Miller, specifically from the condition of approval, it's in relation to the CC & R's. It requires City signature prior to recording at Columbia County, meaning we are looking it over before it gets recorded and then they have to specify that the CC & R's may not be amended without the written consent of the City for issues that impact the right-of-way stormwater or open space tracts and any other issues relevant to the City. She explained so we have thought of this, and we did include this so that we can look at that and specifically prevent some weird situation like that from happening.

Councilor Miller replied, perfect, thank you.

Garrett Stevenson stated those are really good questions to ask and frankly there are things that when you do this work they are just routine and you don't think all that much about, but he appreciates the questions because he thinks it is important every now and then to stop and look and say hey how does this actually work but he thinks in this instance it's exactly like every other subdivision that he's worked on that has an HOA obligation, just in terms of drafting, so you know, the way this works is that they will go back, they will draft a set of HOA's, bylaws and so forth, they will send submit that to the City, they will look over it to make sure the obligations they're requiring are in those documents and those documents get recorded on title for each of the lots. He stated he hopes that is an adequate explanation, but he does appreciate the questions.

Council President Greisen asked if it is accurate to say that that draft is already in our packet as listed in exhibit A Bylaws of Buxton Ranch Homeowner Association?

Community Development Director Laurie Oliver Joseph replied, yes.

Council President Greisen explained she has questions for the wetland expert. She stated there were some comments provided by the Oregon Department of Fish and Wildlife, they had the opportunity to make some comments back. She explained they are on page 472 of the staff report. She said to Jack she assumes since this is his sweet spot, he is aware of the concerns that they had, and on the record, she would like Jack to share with everyone either how he is incorporating their recommendations or how he is addressing their concerns.

Jack Dalton, Environmental Science & Assessment, out of Portland, explained the whole process dealing with ODFW was through the FEMA process and that was to meet a local requirement for the local Department of Fish and Wildlife to ask specific questions about the habitat on site. They basically walked the site with ODFW staff and they talked about where the riparian corridor was, where the limits of the project where and then the ODFW staff wrote up their recommendations and then they basically through the FEMA process worked with the design team to kind of lay out how all that feeds into the plan. He stated now some of the specific criteria about stormwater that's outside of his area, but they basically went through all of that stuff and one of the main concerns that ODFW had was the health of the creek is to be maintained by having a higher density of riparian cover and the way it was currently used, like we were talking about like an acre and three quarters was just pasture right up to the bank. The project allows them to expand that area and they went beyond the minimum 50' buffer that the City would require, they went all the way to the limits of the development so that was one of the main aspects that ODFW is concerned with water quality, water temperature in the creek, all of that and then the technical side of it about the stormwater, the engineers can answer that question for you. He stated that is how that all got implemented.

Council President Greisen asked Jack if he could just restate the amount of feet for the buffer, our requirement is 50' and you said you went up to farther. Can you say what amount that is.

Jack Dalton replied in some areas the development is right at 50' just because of the contours of the site and some of the others it's easily twice that. It kind of varies as you go, but the other piece of it that we did initially was they actually mapped where the restoration work had already been done and then they assured that that wasn't being impacted by the development as well. They were very careful step by step to measure out all of the stuff and get it mapped. He asked if there is an average width there?

Matt Sprague replied there is not really an average because the line is not straight but there are

locations where the riparian corridor has probably more than doubled the 50' width and then areas where it's just at right at 50'.

Council President Greisen explained she has a follow up question. They directly work with the local Watershed Council, and they have already done some work along the creek, so how did they know how to either continue that or not. What does that process look like or is it just they've got the experts.

City Engineer Chris Negelspach explained we do usually ask them to coordinate with Columbia Soil Water Conservation District because they know the area really well and we look for any anomalies because they will consult for no cost on projects, so we do get them involved. We did it at the Commerce Center for instance to get their opinion on those designs. He doesn't know that we have stated in the staff report that that's what we are going to do, but that's typically what we would do.

Community Development Director Laurie Oliver Joseph explained she would say too just that West Consultants who did the hydrology study, it's going to be their recommendations as far as the plantings because they did the modeling for the revised floodplain and her understanding is that they have to match the roughness of the plants that's in their model and so they are going to choose plants that are specific for that purpose. She doesn't know if the applicant has any additional comments on that.

Matt Sprague replied he would just add in there that they did have the mapping for the program that they completed south of JP West Road and there are very few areas there's any conflict at all with what their plantings are and what ours are. They're planting is more primarily right along the edge of the creek itself, where our riparian corridor is much farther west of that. So, most of the new plantings that you will see out there are brand new and won't conflict with what was already done by the Watershed Council.

Jack Dalton stated just a quick follow up on that, they actually installed that. They used GPS to establish that line and that line is on a map and so then that all gets fed into the landscape plan that was part of this.

Councilor Lesowske stated and to follow-up, those are native species plantings that would be installed so there's more drought tolerant, less maintenance associated to it, help with our pollinators, those types of things.

Matt Sprague replied, that is correct. And we also varied the landscape throughout so it's not just all forested area, it is grasslands and forested areas intermixed so there is a lot of variety there.

Councilor Lesowske asked if they would be willing to consult with the Scappoose Bay Watershed because they have done work already along South Scappoose Creek, is that something that you would entertain in the development of the riparian area of that particular portion of the property?

Matt Sprague replied to a degree they could do that. They have a very specific hydraulic study, and they have very specific plantings that they are doing in that area, and they have a very specific amount of roughness which controls the flow of stormwater, but that is something they can reach out to them and if they have a like recommendation for a similar planting material that they would prefer, then they can alternate their plans to accommodate that.

Councilor Lesowske thinks, in the spirit of community building, it's a good opportunity.

Mayor Burge asked if there are any other questions.

Council President Greisen asked who are the experts that we haven't talked to and what do they do?

Garrett Stevenson explained we have Erik McCarthy, who is our hydrologist. If you've got questions on the floodplain issues. We also have Brent Fitch who is the project civil engineer.

Council President Greisen explained she attended both of the Planning Commission meetings, so she has heard and read a lot of the information that has been received by the people behind you. She thinks that this application has definitely gained some traction since that time and so she would just appreciate if just for clarification for the record. It is without a doubt apparent that the field currently floods, and she would just like to hear from Erik how that will change based upon what you have designed here.

Erik McCarthy, Hydrologist, replied, good question. Just to back up a little bit, both FEMA and the City regulate development within a floodplain. FEMA allows development to occur within a floodplain as long as it doesn't increase the base flood elevation by more than one foot. Now the City understands that this is a very sensitive area with a lot of historic flooding is known to occur over here, so proactively, the City exceeded FEMA's requirements and basically said that there could be no increase in base flood elevation because of this project.

Council President Greisen asked Erik to say that one more time.

Erik McCarthy repeated what he said ~ there is no increase in the base flood elevation because of this project. He stated now that is based on a hydraulic analysis that they developed as licensed engineers that analyze both the existing conditions and the proposed conditions, compare the water surface elevations to ensure that there was no increase to .00 feet. So that

is known as a no rise condition and honestly that's a pretty strict requirement, you know. Often when we do a lot of these types of projects, you analyze the impact. You know different municipalities try to just match FEMA's minimum requirements of allowing up to one foot of increase in the water surface elevation. However, with this project the City you know exceeded that, had very strict requirements about there being no increase in the water surface elevation. That combined with the cut and fill balance requirement basically ensuring that any dirt, any fill, that's placed within the floodplain is offset with cuts from the 100-year floodplain, so there's no net decrease in storage in the 100-year floodplain.

Council President Greisen asked Community Development Director Laurie Oliver Joseph and City Engineer Chris Negelspach if that is unique to this application or every application since it's our requirement?

Community Development Director Laurie Oliver Joseph replied every application, it's in our Development Code and we do have higher than the NFIP minimum standards in our Floodplain Development Code.

Council President Greisen replied, thank you.

Legal Counsel Peter Watts explained our Code has been reviewed by DLCD, specifically, by the NFIP Coordinator. He explained this has been going on for 3 years and 8 months and as they said, it has not been an easy journey.

Council President Greisen stated she just wants to reiterate that we really put you through the ringer here, that is what she is trying to get at and she wants to thank our staff for trying to maintain the integrity of the City.

Erik McCarthy stated basically as hydraulic engineers it was their job just to make sure that the project was in compliance with both FEMA and the City standards. It was an iterative process of working with the project engineers where they would have a certain proposed project layout, proposed grading, we would test it out, it wouldn't quite meet it and so they would go back and suggest that they change something here or there, change the vegetation planting so that ultimately you can meet these very strict requirements.

Councilor McHugh stated phase two still hasn't been approved by FEMA, right?

Matt Sprague replied phase two has been approved via the CLOMR process and the only reason they wouldn't be platting phase two early on is because they have a follow-up mapping procedure to go through. Phase two will be 100% out of the floodplain when phase one records. He explained they have a responsibility to update the mapping through a letter of map revision process with FEMA before the City will allow the plat to record.

Councilor McHugh stated these are all properties in the floodplain, right?

Matt Sprague replied they are currently in the flood zone and will be out of the flood zone after construction.

Councilor Poling asked when that comes back from phase two for that condition of approval from FEMA, that then goes to the City and the City needs to see that approval before it would move forward?

Community Development Director Laurie Oliver Joseph replied, that's correct. She explained we have a condition of approval that states that they cannot even apply for their phase two final plat approval until the letter of map revision has been approved by FEMA and the floodplain maps have been changed.

Matt Sprague explained, essentially the City is taking an extra step. Most jurisdictions we would be able to record the plat and move forward with the project because the work was completed and follow up with their letter of map revision with FEMA. The City is taking an extra step to ensure that that letter of map revision is 100% complete before phase two.

Council President Greisen asked did she hear him correctly that no homes will be in the floodplain?

Matt Sprague replied, that is correct.

Council President Greisen asked, and so does that mean that the homeowners will not need to carry flood insurance?

Matt Sprague replied, that is correct.

Councilor Miller replied he has a question about that. So when you say that no homes will be in the floodplain, does that mean that their floor is not in the floodplain or what exactly does that mean? Does that mean that none of the parcel, none of the lot is in the floodplain?

Matt Sprague replied he might have Brent come up and talk a little bit about that, if we have any portion of any lot that contains any floodplain, but all finished floors will be more than two feet above the floodplain elevation.

Brent Fitch, Pioneer Design Group Civil Engineering on the project explained so the question that he heard was, is any portion of the lot going to be in the floodplain. He explained if you follow along the boundary of the project on the eastern edge adjacent to Scappoose Creek, you see that there's a retaining wall there, it's a rockery wall, that floodplain sits adjacent to the

bottom of that, or along the face of that was as you come up that wall you exceed the elevation of the floodplain. The lots are inside that wall, behind the wall, the lots will be outside the floodplain.

Councilor Miller asked, but with that wall there, that's not increasing the elevation of the lot, the land there.

Brent Fitch replied yes, the wall is there to increase the elevation of the property.

Council President Greisen stated to that end, no part of any of the lots will be in the floodplain?

Matt Sprague replied that is correct and if you look at sheet 2 of the preliminary plat within the application, Brent was pointing out the blue dashed line, which is the revised floodplain boundary line, and you can see that floodplain boundary line does not go onto any of the proposed lots.

Council President Greisen replied, thank you.

Mayor Burge asked if there are any other questions from Council?

Garrett Stevenson stated he thinks Council has heard from everybody, but he is happy to bring other folks back.

Mayor Burge stated if we don't have any more questions, we can go ahead and move forward.

Mayor recessed for a break at 8:49 pm and reconvened at 8:55pm.

Council President Greisen moved, and Councilor Miller seconded the motion to extend the meeting past 9:00pm. Motion passed (7-0). Mayor Burge, aye; Council President Greisen, aye; Councilor Josh Poling, aye; Councilor Brandon Lesowske, aye; Councilor Pete McHugh, aye; Councilor Tyler Miller, aye; Councilor Jeannet Santiago, aye.

Mayor Burge stated we just finished up with the applicant's presentation. He asked if there are any proponents? Seeing none he asked for opponents. He explained there is a five-minute limit to comment.

Debra Miller read her statement. Good evening, Mayor Burge and good evening, Council Members. Thank you for your time this evening, my name is Deb Miller and I'm a homeowner on Jobin Lane here in Scappoose and a concern neighbor. Thank you for the opportunity to speak tonight and I appreciate everything that the Scappoose City Staff has done. They have invested four years of time to get this application before you, from December 2018 pre-application meeting until now, four years. Consequently, they are asking you for approval. The

applicant has a deeply vested interest in you approving their application. The approval or denial of Buxton Ranch development represents an inflection point for Scappoose in terms of our collective future. The community will either applaud or condemn your vote on this application and this will be your legacy. Hence the important question you must ask yourself before voting is will Buxton Ranch be an asset or a liability to our community. My contention is that it will be a significant liability and I fear that you will be making a major blunder if you approve it. Our retained attorney Mr. Chris Kobak will provide ample legal reasoning to reject this proposal later this evening. You have zero legal obligation to approve this application and the rezoning ordinance 909. They are flawed in many respects, and I would now like to focus on five of those flaws. Number one: It will certainly flood repeatedly in coming years, even if the current expert modeling is accurate or not. Number two: The plan does not show how it meets the special approval requirements of Oregon's 2022 adopted fire code. Number three: It is clear that inadequate hydraulic modeling was performed by West Engineering. Nearly all of the 17,000 acre South Scappoose Creek Upland Watershed drains into the proposed 7 acre PD housing development area. By contract West Engineering's Scappoose Drainage District hydraulic modeling included the entire Jackson Creek Watershed for the Dike certification process. So in comparison the Drainage District totals only 9,500 acres with an upland drainage area of about 2,700 acres. If you do the math, which we have, this is only about 15% of the Buxton Ranch upland drainage basin. Number four: The Buxton Ranch proposal PD overlay is not compatible with the underlying R1 zoning which requires 6,000 square feet and 20, 000 square feet minimum lot sizes in the existing floodplain. The average lot size for the adjacent 19 properties in the underlying R1 zone is roughly 33,000 square feet with the smallest lot size being approximately 8,000 square feet. The Buxton Ranch proposes 48 lots with an average lot size of roughly 4,900 square feet and some as small as 3,400 square feet. Of the proposed lots 37 of those will be under 4,000 square feet lot size. Number 5: An approved Buxton Ranch development and ordinance 909 could unnecessarily open the City of Scappoose to future litigation and associated harms. My home sits directly above this 17-acre field that is the subject of this application. I have lived there 24 years. From my bird's eye view back deck, I have witness dozens actually countless flooding events, so much so that I stopped taking pictures or video because the flooding has become so common place. I urge you to deny this application as currently proposed or at least add conditions to protect the long-term livability of our city and its homeowners. You are free to choose but you are not free from the consequences of your choice. Just because you can do this doesn't mean you should. No reasonable person in this room can go home tonight and sleep well by believing this plan is a good idea. It doesn't matter how much money has been thrown at it. It doesn't matter how many experts have weighed in and it doesn't matter how many voices have piped in with oh yeah it looks okay to us. At the end of it all it is still a flawed plan. Thank you.

Cheryl Barker was called to speak, but she left the meeting.

Shannon Hubler, Scappoose, stated thanked Mayor and Council for this opportunity to provide public comment. He stated he has a whole lot of stuff written up here but every time he comes into these things, he learns a whole bunch of stuff. He explained he is a professional stream ecologist. He has seen firsthand the ecological consequences of what happens when we build construction projects, and we don't consider all the factors. He stated from what he can see everything that's required here, he guesses, again he is learning about this, base flood is what we are talking about, right the 100 -year flood, that's what we are talking about. All the homes on the west side in this development will be above that base flood, that's fine. He doesn't disagree with that, but what happens when they put a wall in there and they take away that floodplain storage for floods above 100. When you get a 500-year flood it would spill out to the west. Where is it going to go when you put a wall in there. He stated if you live on the east side, raise your hands. It is going into their homes; it is going down stream. He asked have they provided any information about what the flooding will be above a 100-year level? He hasn't seen any. He stated that is what it comes down to. He stated these people are going to have to leave their homes when you get a big flood. That is the least of their worries at that point. He stated before you really do this, he strongly encourages Council to read a recent story that was published in the Columbian titled "Mega storms are coming to the Pacific Northwest" and it is also carried by The Oregonian. He stated just a few things from this story; Destructive atmospheric rivers or storms are expected to be two to three and a half times more frequent in the coming years. He stated what's the 100-year flood today, is nothing compared to what it's supposed to be in the future, up to 40% or more increase in flood stage size for the 100-year flood. In other words, flood risks are going to increase dramatically without floodplain development. If we do more it is going to get worse. What it comes down to is look to Vernonia. It's in our backyard. They had three 500-year floods since 1996, only going to get worse. Put a wall in there and see what happens to the home in the floodplain already on the east side, it's not going to be good. All these new homes are going to be protected, good for them, I guess. No good for everybody else. He stated thank you.

Jennifer Hancock stated she would like to talk about the Fire Department's answer. She is concerned about people parking on both sides of the street. She stated now picture this the fire truck comes in, they always come with another one, a tanker or something to fill up, and the fire and rescue vehicle and probably an ambulance, so then you have a fire, maybe it's outside the house and it's picking up and the sprinklers inside the house don't touch it and you've got four fire vehicles trying to get in there and you've got people tearing out trying to evacuate, where id that fire going to go. Air swirls down there and it's going to go right up the hill, above Jobin Lane and hit all of those houses. It is going to take in those trees, and it will end up on Keys Road, just like that. That is one issue. She stated the other one is (she didn't have the mic close to her) Buxton said he was only going to build one and a half feet only; the floor level would be one and a half feet. Everybody says it is supposed to be two, but she heard it, so she doesn't know if he is reliable or not. At the Commissioners meeting they had four questions among them all, there were another two she thinks was questions, but mostly she just read the

ordinances and the laws and whatnot. Evidently the agencies you sent letters to, all of those answers, none of the answers were in the packet that the Commissioner had so they could not refer to them and they asked, she thinks it was you Laurie and you said oh yeah, we sent out the letters and we didn't get any response or at least we didn't get any negative response. However, she's got the letters. There were twelve letters sent out, two with no objections, eight with concerns, and one was a preliminary and it was incomplete and one opposed. So, the one in question is the letter to Oxbow which is a whole other issues, that was the one attached to the Oregon Department of Fish and Wildlife. Well, the Fish and Wildlife seemed to answer back but it was preliminary concern it was a preliminary, it's not a final answer and it was dated clear back in 2019. So, their concern, this is a preliminary jurisdictional determination and is advisory only. The Scappoose Watershed Council agreed with the Fish and Wildlife so that's just sloppy in her opinion. There is no date on the response, it might have just been a random document printed off the website, it's not an actual signed response. The one for fire is quite concerning. The Fire Marshall, there's no letter from the City attached so she doesn't know when they got it, it is dated 9-29, after the date...(hard to hear). They are concerned that it is a dead-end, concerned about flag lots, they are concerned about turnaround, and if you have to have fire sprinklers inside your house, that means to her, that the fire department does not feel comfortable putting out fires.

Mayor Burge told Jennifer Hancock her five minutes is up.

Peggy Tate, Scappoose, explained she has lived at her residence on JP West Road for 32 years. She has been a witness to the creek, property, the park, everything. She heard them say about an intersection at JP West. Her house is the house that is right next to the park and one stop sign. So, if they make an intersection there or stop of whatever you'll never be able to get out of their driveway. She explained when the park is full you can't imagine the traffic, when the baseball games, and the people from Portland and all over come, there is so much traffic and as far as with JP West there's six feet, is it six feet they are going to do concrete or whatever. JP West needs to have infrastructure but there's no place for it and that's the whole point of it and everybody seems to think that you know you people don't want us here because you want to, no you know what you can have a beautiful small town. To have to, don't take think wrong, you got to use your brain, common sense, common sense of watching that place flood 32 flipping, one time we go a rowboat, we had to use to get out of the house. This is common commonplace sometimes during the rainy season, two times, three times a month. The bathrooms in the park, whenever the water goes up, they flood. It's all just big moosh and she would also like to bring up that she would hope that they would have, she doesn't know money or bonds or whatever in place and she is saying this from experience because her house is the damaged house from the park. She has a cracked foundation from the ground, how they packed gravel, her sheetrock screws are out, she lost her gutters, she lost her flowerbeds, and she also had her concrete cracked. So, if this is going to go on this time and not to be rude but the answer to her is she got a lawyer and she went to them, she even lost a whole tree, but the

whole point is people don't want that to happen to their houses and they have to be, she thinks the builders should have to be responsible to make whole again what their project screwed up and she doesn't think it is the City's responsibility and as far as the HOA goes, if they screw up, that's not your responsibility either, you work for us, you don't work for an HOA or whatever. It really is a hard call because when they are saying 500 something trips a day, dear God, come sit at my house and have a cup of coffee, in the morning at 7 o'clock, in the afternoon at 3:30 and still going on by 7:30 at night. So. There's a whole lot, I don't know where they did their traffic study, but there's a whole lot. She thanked them for taking the time and your time and please make a good decision.

Richard Hancock stated Mayor and City Council thank you for your service to the community. Respect it and in the interest of not being redundant he totally endorses what he has heard from some of the people who have spoken before him, and he is therefore going to just limit his comments to that. Thank you for hearing us. He strongly suggests that you take patience and really consider this thing, it is huge, it's enormous. One of the things that he thinks we don't stop and think about because in American everything is big, bigger is better, no it's not. We have a beautiful little city here. The fact that it is so beautiful and so desirable is because it is small and we don't just grow in leaps and bounds, we have grown smartly, lawfully and he would encourage you to consider that as you make your decisions tonight. Thank you so much for hearing me.

Dave Powers, Warren, explained he has lived in Columbia County for almost 30 years. He moved to Creekview when he first lived here so he lived right on Scappoose Creek and saw zoning rules change that allowed houses to be developed behind neighbors who had letters saying no development behind my house, that's why he got involved in the Watershed Council. He's got 40 years of experience with water quality and fisheries and habitat and this proposal he strongly encourages you to either disapprove the tentative subdivision or at least delay the decision until you have more adequate information and the reason he says that is he has studied this watershed extensively, he's lived on the creek, he knows that the function of the creek is not just a function of cut and fill. It is a low elevation creek, and it meanders, it cuts back and forth across the floodplain and you place infrastructure or hard walls or riprap it bounces the energy of the stream over to the other bank. In addition to that this watershed feeds into Scappoose Bay which the level of that Bay is determined largely by flows from the Columbia River and the Willamette River and when spring runoff and high flows was mentioned earlier increasing level and intensity of atmospheric events happen that backs up flow, no amount of cut and fill is going to change that. In addition to that when he hears, he apologizes for not being in on the first rounds, but he has been gone for three years, but this was important enough to at least share knowledge of the watershed and the importance of having the additional analysis beyond just this much is cut and this much is filled. In addition to that, raising houses above the 100-year flood is kind of like trying to get sauce out of tabasco, you've got a little opening. He stated if you look at the floodplain in this map, we are losing floodplain.

That floodplain is critical to salmonids that utilize Scappoose Creek, it captures flows, it releases flows back into the river in a way that won't be done like the detention bases. You've had good advice from other folks here on bonding and other requirements because he encourages Council to look at some HOA horror stories and figure out whether or not that's really a good approach for the City. He also encourages Council to think about the criteria you have, criteria you have that says you have to have any adequate factual basis for the decisions and actions you make. He stated they may have met the FEMA and CORP modeling requirements, but no offense to the managers and he loves Chris, but junk in junk out, shouldn't say junk because some of that information was good information but they certainly didn't have the full information of the flows that Scappoose Creek is going into and the top of Scappoose Creek Watershed. We put well over a million dollars into watershed improvements, and it just pains him to see the City thinking about making a decision that allows this particularly the phase two development in the floodplain. He again appreciates the job you do, he knows what it is like to volunteer and take abuse, but what he would say is you do have it within your power to either delay or disapprove. In addition to that, you can't unfry an egg. When you start making decision that bind the City to problematic issues with flooding and damage from this creek, that is going to bounce back and forth across the floodplain you are going to have an angry crowd than you got here and I am not angry at you, I like you all. That's it.

Stephen Collard, Scappoose, explained he has lived here for 27 years, and this is the second go around for development in this area and he is still scratching his head as to why it was ever zoned an area that could be built on to begin with. He thinks back in the day maybe somebody had a thought that it could be safe to build there but he thinks he has seen over 27 years basically a lake out there every year and what the gentleman just commented on is absolutely true. This stream wanders, it bounces, it erodes, it finds new ways and that whole area out there is just a giant buffer and that's what it's meant to be and getting back to original zoning, maybe people weren't looking further enough into the future, but he thinks it's a good time to start looking into the future, because our world is changing, everybody could attest to that. Climate change is real, it's here. Can't predict everything and his basic knowledge from what he's learned in studying these hydrology's studies and looking at FEMA's basic requirements and looking at probably what is really coming and the size of the Scappoose Watershed, it doesn't add up to him and he is not a hydrologist, he's a retired salesman but one thing he does see is a problem with the underlying foundation for this whole idea of building in a floodplain and moving the dirt around so it's no longer a floodplain. Is that the hydrology, the basis for it all could be flawed, it could be in error and if that's true, then everything that's being built upon from that point forward is also in error. He stated it doesn't matter about the HOA is or who's going to be litigating against whom. If it shouldn't be built, it shouldn't be built. He explained his main concern is that, people are going to be literally underwater. There is going to be litigation, there's going to be housing issues, there's going to be housing pricing issues, there's going to be all kinds of chaos after this thing goes up and not only that but the first have of it can start but it can't even be approved all the way for the rest of the houses until FEMA says

okay it's fine and how does that get determined, based on what information. He asked is the underlying foundation for this sound in terms of water and the amount of water that is predicted in this area to come, not what's passed, which is bad enough, what's to come. The applicant employed hydrologist, did the City employ a hydrologist to take apart the findings? He stated he doesn't know, that's a question that he does not have the answer for, but he is asking. He would urge the Council to pass on this. He doesn't think it's a good idea, and he would urge them to make that decision tonight. He thanked Council.

Marisa Jacobs, Scappoose, stated good evening, Council, she hopes they are doing well. She explained she is speaking to Council as a Planning Commissioner tonight. For the record she did attend the first session, for the second session she was unable to attend, she was excused due to travel. She explained she did since listen to the second session, and she want to offer her thoughts to Council. First, just like Council, they received a binder that was over 500 pages with seven days to read it. She stated if you listen to the session, you had many of her Planning Commissioner's very concerned that this was a significant amount of material to get through within seven days when they had many, many questions. Unfortunately, not a lot of questions were asked but there was a lot of dialogue after the decision was made, which was concerning to her watching that session. Secondly she was very disappointed that there was a lack of discussion within the session once the hearing closed. If she was able to attend, she would have made the following arguments to my Planning Commissioner for consideration. 1) We should be challenging; we should be considering how FEMA has been already challenged. In 2020 an ecological rights foundation filed a lawsuit against FEMA in six counties in Southern California citing that FEMA causes, facilitates, influences, promotes and encourages development in floodplains that harms federally species and their habitats. We have made a commitment to protecting our riparian area ensuring that the salmon are able to do their thing. She is not into fish, so that's the summary you are going to get from her, but she would have challenged us to talk through that. FEMA is and has made mistakes. Climate change is real, things are getting worse, the climate is getting worse, the rains are getting heavier. These are things we should consider. Just because it was zoned R1 low density many, many years ago could mean that we made a mistake. That land, if you go back to 2017 Parks Master Plan, that land was earmarked as a potential place to develop a park, but it's zoned R1 low density. We have many different master plans that do not talk to each other. We do not have one comprehensive master plan for this City. That is something that has always concerned her for the last several years living here, but when you add these things up. She does think of what she would have told her Commissioners is that she doesn't know if we should be voting yes on this, she feels like there is not enough information. At a minimum we should be adding additional bonds from the developer to protect the taxpayers and homeowners here in the City because that property will flood and there will be damage done. That local street they are building we are going to be accountable for that. So, these are things she would have brought up had she not been traveling. She was very disappointed, but she wanted to point these out to Council, as a Commissioner, that these are things that she would have brought up for discussion and she

hopes that these are things that you are going to consider moving forward. She thanked Council.

Paul Fidrych, Scappoose, stated let's talk about this unremarkable development that David Weekley Homes is proposing. He says unremarkable because a carbon copy of this development with the same houses even is currently being built in Beaverton. This makes sense, its complementary to the other high-density developments that are in that area. By the way these same houses according to your website are going for \$829,000, the same exact models. So, just if you guys want to talk about affordability. So, besides the floodplain issues in this property, David Weekley Homes is asking for a high-density zoning change from R1 low density residential, to R1 PD. The plan development overlay outlines lot size changes that will deviate from standards of Scappoose, standards that we put together. The applicant put together lot sizes as small as 3,400 square feet which is a reduction of over 2,600 square feet from our existing standards, which are 6,000. It is a reduction in minimum lot width, and minimum lot area, smaller front yards, smaller backyards, smaller front of garages, smaller rear yards, smaller side yards, and a maximum building coverage increase from 35% per lot to 55% per lot. Forty of the forty-eight lots will be under the current minimum allowed size. By code the R1 PD proposal must meet many provisions, up to and including and he quotes "The creation of a land use pattern that is complementary to community and its identity and to the community design process". That's complementary with an E, not and I. What does complementary mean, by definition: combining it in such a way as to enhance or emphasize the qualities of another the opposite defined as differing strikingly. Is this high-density housing development complementary to the community, it's designed for identity process, no and this proposal be defined as differing strikingly from what we have in Scappoose, yes. There are currently no housing developments of this density and this size. This is a fact. The changes in lot sizes of David Weekley Homes is requesting is invalid. The Planning Commission overlook provision in the code and who can blame them, you guys saw the size of that packet but neither the Planning Commission nor the City staff sets policy, this falls on you guys as you know and since the developer has not proposed a complimentary design in this proposal you have no other choice than to deny this application, but what about David Weekly stating that they can't be profitable without at least forty homes on this property. When a large corporation says profitable, they are really saying making a lot of money. Well, it's neither the citizens nor the Council's responsibility to make sure that this corporation with over a billion dollars in yearly revenues make a lot of money on this development. Got to pay for your boys here. He has attended every meeting in the 50-year planning process. The City has spent many hours and dollars on consultants and hope that this will set a vision for the future of Scappoose. Consultants spent many months reaching out to citizens asking what makes Scappoose special. The number one reply was livability and that we are not Portland or Beaverton. Visioning is set at the highest level but the decisions that are made on a daily basis set the stage for our future. If this development is approved, it will create a domino effect for years to come. As other developments are designed they will also propose small lots crammed on top of each other and

as it will already exist in Scappoose such proposals will indeed be complementary to others in the future. The Beavertoncation of Scappoose starts or ends here tonight. A lot has been said about this Council regarding vision or lack of vision, real or perceived, but this Council will be remembered for this decision and you as individuals will be the ones answering questions from citizens from now on and into the future. Future generations that could be harmed by this development. Remember you serve to protect the citizens of this community, not out of town developers. Vote to deny this proposal, it is not complementary to Scappoose. Thank you.

Kaleena Ackelson, Scappoose, explained she has been at her current residence since 2016. She explained when they first purchased the home it was required for them to carry flood insurance on their house. They are across the creek from where this is going to be built. She explained within the last couple of years with the FEMA reevaluations they are no longer required to carry that. She stated her concern is if you are going to be building all of this over there, where is the water going to go. Is it going to go to her house? She stated it is kind of frustrating where that's at and since they've lived here with the major water issues that have happened, water has come up to her neighbor's garage across the street. So, what are you guys going to be doing to help protect current houses and current people that are already there? What is being done about that? She stated most everything that she wanted to touch on has already been kind of touched on. The only thing that she will also talk about is the traffic. She is on the s-curve of this little, tiny lane and a half at best road and it's true, like she is already seeing an influx of traffic with sporting events. That road connects two major roads in town, people walk dogs, there's kids walking to and from school, little kids, big kids, whatever and how many times has she had to see them jump off the road because there's a car flying by there and they are racing like it's Malibu Grand Prix. She explained there have couple of accidents this year including a hit and run. She has cameras so she sees all that. She is just nervous to think about the impact that it is going to have on the current community if you guys do decide to go through with this. It is kind of scary, so now we're you know looking at different options for flood insurance on their house. She is no longer required to carry it by her lender, which is scary. If you look at riskfactor.com she thinks her house is like a 9 out of 10 for flood and that's terrifying for her. The only reason like she said that they got this house is because the other people that were in line to get it decided to back out when they realized they did have to carry flood insurance on this place. So, definitely something to think about as you guys go forward. She strongly urges you to consider all options before voting. That's her two cents.

Michael Hickman was called to speak, but he left the meeting.

Kristine Walz, Scappoose, explained she lives on Jobin Lane in Scappoose. She explained attended the Planning Commission meeting on November 17. She was disappointed to hear Commissioner Bruce Shoemaker freely admit that he didn't read through all of the documentation. She recognizes that the Planning Commission is an unpaid position, but if the members are not committed to thoroughly reading through all of the documentation, they

should not be voting on it. Commissioner Bill Blank asked if there were any precedence for some of the exceptions that the new development was requesting. When staff replied that there was precedence, she was disappointed that the question ceased. There were no questions as to whether the precedents were good precedents and worth repeating. We as a community need to start learning from the mistakes that have been made. While the Planning Commissions has approved the development from a strictly code perspective it is up to the City Council to decide if it is right for our community. It is her understanding that you have legal zero obligation to approve the Buxton Farms application. This site consists of six different types of sensitive lands and the applicant is seeking approval of four sensitive lands developed permits. She would understand the potential to approve this application if they were seeking approval of one sensitive lands development permit but four exceptions is too many. Scappoose needs to start developing its sensitive lands and start protecting them. City of Scappoose has the opportunity to help the community grow in a meaningful way. The transformational effect that this development will have on Scappoose will change the character of the community and eliminate significant open space. Once this is gone, we will never be able to get it back. Municipalities and communities all over the Nation are purchasing floodplain lands similar to this site to help mitigate rising flood levels. These are the types of lands that Scappoose should be purchasing, in part to protect Scappoose Creek habitat, mitigate future community flooding and therefore help protect the citizens of the community. It's time for Scappoose to invest in itself. She urges the City Council to consider what the existing residents of Scappoose want out of our City. Public outcry over the proposed development should be an eye-opener for the City Council members. Loss of open space and natural beauty that will occur as a result of this development is not worth it to any of the citizens of Scappoose that she has spoken to. Thank you very much.

Winter Furrow, Scappoose, stated she is sorry, she is not a good speaker. She explained she moved here in 2009 because it was a nice distance to her work, and she loves the country it reminded her of Oregon City before it became developed. Speaking of Oregon City, she sees Scappoose going down the same path as Oregon City back in the late 1990's, early 2000's. Oregon City became very, very developed with housing which caused a huge drawback to it and that's one of the reasons why she doesn't live in Oregon City. She explained her grandfather had a bird refuge right off of Highway 213. It was a place for lots of local wildlife to come, it was considered a wetland, it still is to this day. The thing that gets her with seeing this is the habitat because she watched her grandfather's bird refuge which had osprey coming to migrate there, it had Canadian geese, it had wood ducks, it had a whole bunch of different migrating birds that would come there, lay their nests and take off. That is no longer, and the reason why that is no longer is because the stream that fed into her grandfather's pond was along Caulfield Road in Oregon City. Caulfield Road had three housing developments put up over a span of about five years. What happened was all the sudden sediment from the buildings was washed into the stream that went and fed the pond. That stopped all the birds from coming and stopped the osprey because there were no more fish in the pond because the sediment had killed them all

off. Her grandfather and her cousin had to go to City and fight the City saying it was due to the developments of these homes. It was proven through the samples from the land that it was from the development. She can see that happening over here off of JP West as well. There are lots of different habitats there. She thinks that we should go and protect that. Another thing that happened in Oregon City that she would hate to see here, is that Oregon City has about four elementary schools because it was so over developed so quickly all of the schooling went down the drain and they became horrible, horrible schoolings for schools. They could not deal with overcrowding. Her own elementary school was in such ruins that the kids were going, and they had to actually purchase trailers for these kids to go to school in. Scappoose only has two elementary schools, and they are divided between kindergarten and third grade and fourth grade and sixth grade. Where are these supposedly at least, these are family homes, correct, where are these kids going to go to school. We could have potentially up to 200 if not more children in our school. Our schools are already going down the drain as it is. When she moved here we had great school reputation of seven/eight for the elementary schools and high school. Have you looked at them now? They are five and four. We've had a huge number right behind where she lives there were a lot of housing developments put in, about that's the time when the schools started going downhill. We need to consider the schools, we need to consider the habitats, we need to consider the flooding. This is not a good plan for the future of Scappoose. Thank you.

Lauren Lafrenz stated good evening, Council. She stated she would first like to disclose that her husband is an incoming City Councilmember in January. The opinion that she is sharing tonight is her own and we have no financial interest either way in this proposed project. She stated she is speaking tonight to you as a neighbor and a citizen of Scappoose. For context her property includes a 100-year-old home on about two acres directly on the creek less than 400 meters upstream from the proposed development. She believes the City Engineer provided an estimate during the Planning Commissions meeting of how long the peak flood stages occur for. She explained the number that she heard was that he stated that the peak flood lasts only about fifteen minutes. Her experience living on the creek has been different than that and as someone who has had their property flooded on average of every two years, she has experienced the water remain high for longer than fifteen minutes. Almost their entire two acres flooded with only the house being spared due to it being elevated and above the designated FEMA 500-year flood zone. The part of her property that's in the 100- and 500-year flood zone has been under water every two years on average. She understands that the developer says they'll have houses, all the house, above the two feet base flood elevation, but their experience is that this section of creek floods above that base flood elevation, frequently. For example, they flooded three times in the last six years. From what she understands their property was also included in this recent FEMA map amendment completed by the developer. So she is referring to the very same revised base flood elevations that are included in the Buxton Development proposal. This property proposal is comprised of land in the very same FEMA flood zones that floods frequently for them. She is wondering how it would not flood

frequently downstream. They have spent hours in the middle of the night sandbagging their house as the waters rise and stay elevated for many hours not just fifteen minutes. She has concerns with the incorrect peak flood duration estimate is misleading to our decision makers involved with the proposal. She would also like to draw attention to the City's very own flooding webpage that clearly displays the exact Buxton property underwater. Another concern she has is about the addition 400 to 500 more vehicle trips along JP West Road every day that the traffic impact study estimates. She echoes Councilor McHugh's concerns with pedestrians especially our children accessing the park and walking to school. This is a stretch that only has sidewalks in very limited sections of the road and is controlled by a four way stop at SW 1st Street. The amount of increased traffic is a serious public safety concern for residents. As someone with two young children under the age of three that walks to Veterans Park three to five times a week, she has experienced close calls with vehicles due to no sidewalks or shoulder on the majority of the streets nearby to her these 500 extra trips per day are 500 opportunities for a serious or fatal accident to happen. The number one priority for the City if this development is approved should be to ensure the public safety of our residents especially in this area that is already dangerous with traffic and pedestrian conditions. The additional 600 feet of sidewalk that the developer proposes does not make up for the increased risk to pedestrians associated by these additional trips. She did not hear of the traffic impact study takes into account the cut through road that motor vehicles use to avoid the highway. She is specifically referring to 4th Street that cuts behind the middle school, yet another road with no sidewalks that has frequent child pedestrians. In closing the number of public safety issues that this development raises should be highly scrutinized by the City of Scappoose and our Council, who is representing our best interests. She absolutely welcomes growth and change when it is done safely and responsibly. She believes we need more housing that is affordable for families, but she is not convinced that this is the right path to achieve that goal. She asks that you keep the safety of our Scappoose residents and their families as the highest priority in you decision making in this process. She thanked Council for listening and advocating for their voices and the well-being of Scappoose residents. We are counting on you to make the right decision for our community. Thank you.

Joel Haugen stated Mr. Mayor I make a request that you defer to Attorney Koback before him, as good form.

Chris Koback, stated good evening, Mayor Burge and Council. He explained he represents Joel Haugen and he is a land use lawyer. He wanted to start by raising a procedural issue because they asked staff before this proceeding what our deadline was for submitting written material to respond to some of the stuff that the applicant submitted in their final argument before the Planning Commission and staff told them they did not have that right in an email that everything had to be verbal and we couldn't raise any new legal arguments and he believes that violates the code and it is a procedural error that he needs to preserve tonight so that we can raise that later at LUBA if necessary. He stated by looking at your code in section 17.162.090

and it specifically states in subparagraph D that upon an appeal or a recommendation the City Council shall conduct a public hearing in the same manner prescribed by this chapter and that's 17.162. When you go through the procedures in 17.162.130 there's no limitation on testimony being only oral in fact and there's no limitation on raising new issues. In fact, the instructions that your honor gave them said that we have to raise all issues now in order to adequately preserve them and that's a standard admonition for a proceeding in a quasi-judicial hearing but it also anticipates that parties can raise new issues and like he said there are no limitation on that and in fact in sub paragraph B of 17.162.130 G your code allows the applicant and those in favor to submit rebuttal testimony. Well, if we can't submit new testimony, new arguments what would be the point of having rebuttal and then it gets even better for them because the 17.1162.160 is part of the chapter that applies to this hearing, and it's specifically states that if they make a request you have to keep the record open for seven days for new written testimony. So, he raises this issue, he does believe they are entitled to written submissions and he thinks your staff was wrong to tell us we couldn't do that and the thinks it is really important because there was a lot of new information today that they would have responded to, and he thinks you are going to hear some more. For example, the applicant here is represented by a very good land use lawyer and suspect in rebuttal he's going to get up and talk about the fact that because you have no alternative path under the needed housing statute you can only apply clear and objective standards. That's not entirely true, it is true to a point but the law is also clear that when an applicant asks for exceptions or variants to clear and objective standards you can apply discretion to that part of the application and here if you look at it they're asking for exceptions to the lot sizes through the PUD that's not a clear and objective, that's an alternative path that you can use discretion and talk look at compatibility and you heard a lot of testimony today from neighbors. They are asking for exceptions to the block length standards they clearly can't meet those clear and objective standards so there's another element where discretion does come into play. We want to be able to develop that in writing in detail to preserve that for LUBA. You heard a lot about the stormwater and HOA. If you read their stormwater plan, this is really interesting because the default if it's not maintained this is that record 329 the default is it float the untreated water just flows into the creek. Now Fish and Wildlife told you in writing that their biggest concern is protecting the most valuable resource which is this creek and yet this plan, the default of this stormwater plan is if it's not maintained their own experts said maintenance is imperative because if it's not maintained that untreated water is going to go into the creek and talk about maintenance, the HOA well the City's trying to get this HOA to do something if they don't maintain it what happens, the default is all the untreated water goes directly into the creek. There's another really important issue and he would really, really like it if he could get a couple extra minutes here. There whole plan for phase two is they are going to do permitted development and they are going to raise the dirt up on phase two and then they are out of the floodplain but what they are proposing as development is a private stormwater pond. That is not developmental allowed in your floodplain at all, that's not a street improvement. In fact, of the 167,000 square feet of impervious surface that's going to go into those ponds 126,000 square feet is from the houses,

they \$800,000 houses. That's not a public project, it's not a street project at all, it's a private development.

Associate Planner NJ Johnson informed Mr. Koback that his time is up.

Joel Haugen stated good evening, Mayor and Council. He would like to not that the opening up for seven days for additional testimony and the evidence so that Mr. Koback can finish his arguments. He stated it seems very unfair that the applicant gets unlimited time, yet our attorney gets five minutes and so you much allow that seven-day open period. He stated next, he would like to do a quick review of some of the statements that are made by Mr. Stevenson and Mr. Sprague, just a kind of a context thing. He explained he thinks Councils challenge tonight is to distinguish between some really good slick marketing and then reality. So, he is just going to roll through a few points. So, they maintain that they hydraulic analysis was very accurate and well done and it may well be for that small segment of the creek, but they didn't look at the entire watershed nor did they look at the scour potential and they refer to FEMA which has acknowledged all their flaws which was FEMA is going through a transformation at this time to reflect the realities of climate change so that was not factored in nor were factors like risk factor which appreciably show a different formula for the flooding. So those were just given short shrift okay maintained this is a very good application based on what, they even, Mr. Stevenson maintained this is a good plan for this piece of property, based on what. Okay that this is a thoughtful compromise based on what, that the density is appropriate based on what, that they meet all the criteria. Well, he thinks that Mr. Kobach has demonstrated that is not necessarily the case, that the homes will be out safe from the flooding, based on what. That the transition properties are appropriate, that the stormwater retention basins are going to meet the 100-year events not questionable. That there's an increase of habitat, really. That the HOA's are enforceable. Well you know there's a lot of big questions here and so when you get into some of the minutia here whether or not the PUD is compatible, the block length problems, the connectivity problems, the phasing of FEMA's phase one and phase two and whether or not FEMA even gets transformed in the interim what happens then. The flood hazards are going to be incredible in the future as says as offered by other guests and then we really want to reinforce them that the seven-day period written procedures and written testimony really needs to be done. The procedural errors alone should indicate that and in closing he would like to say you do have the discretion, utmost discretion this evening to deny this application or at least condition it is severely so we can protect the community. Thank you and good evening.

Ivan Higgs, was called to speak, but was no longer online.

Pat Anderson, Scappoose, explained she has lived in Scappoose for about 27 years and prior to living where she lives now, they lived up on Keys. She explained so EM Watts and JP West were common routes home. Of the 27 years that they have live here again repeating what everybody else has testified to that they have seen the flooding occur year after year. She was also going

to bring up and also make it as point as well because she found it quite extraordinary when the City Engineer said it during the Planning Commission that that flooding event is over within 15 minutes. She stated she thinks he meant 15 hours, not 15 minutes. She thinks her mind what this does it was a perfect example of how much some of this is being minimized and how much is being misleading in order to you know go against whatever everyone is opposed to is that this property floods and when it floods it's really bad and it could have implications. She stated in her letters prior to that Planning Commission she had written to one was in October and one was for the November session there were two questions that she had posed that have never yet been answered. One had to do with a cost breakdown. They keep marketing this as being affordable housing and someone mentioned that they had seen property in like the Beaverton areas going for \$800,000. She asked for them to provide a price point so we could tell whether it would be affordable housing. You tack on to that HOA fees they still have not even in the Planning Commission meeting November they have not even provided an estimate on what the HOA fees would be in addition to flood insurance. The houses and with the rising interest rates these houses are now going to be unaffordable so let's not be swayed by this affordable housing. She also looked up David Weekley Homes, she put this in one of her letters, their Better Business Bureau rating for customer approval was like a 1.5 out of 5 stars, so they don't have a real good reputation. She also saw over on the Washington side they're building houses within the same price point \$700,000 to \$800,000. She explained she wrote the email to Council on Thursday, and she didn't do that to be underhanded. She thought this was going to a different government body, so she thought the process just started all over again. She was not going to miss an opportunity to drive home the points because these are important points to be made. She thinks a lot of, because of the time and it's getting late she won't go over everything, but she does want to make sure that she covers a couple of things. A couple of her concerns are people who are going to be buying these homes. She thinks that they don't suspect that a City would permit building homes that are part of a floodplain. So she thinks they are unsuspecting and they're going in quite naïve. The other concern she has is for people who currently live here. Right now, someone even testified there are houses all up and down a long the creek they currently are part of the flood risk rating of extreme. There's also realtor.com is making the groundbreaking practice and they say the other realtor apps are following that they are now publishing what the flood risk is for homes. There was an active listing right off of Smith Road that is now a nine point out of ten extreme. You know that goes into people being able to sell their homes and being able to leave, now they're all going to be chained and bound to their homes forever because no one wants to buy a home that is in the floodplain. HUD currently has an overwhelming amount of property that resides in floodplains because banks own that property and banks can't offload the property because again no one wants to buy a house that's in a floodplain. So again, she just wants to have you consider kind of the moral obligations that you have. She did print some signs tonight because she wants everybody to understand that this is what the property looks like when it floods and these probably aren't the most recent pictures. As Deb had testified that the most recent process, she means it floods even worse than it is, this image here is right off of the Scappoose website on flooding. She

stated this is the Buxton property right here. She stated this is JP West and that's the park and we see it flood routinely year after year. She just thinks that we're dealing with people's livelihoods, we are dealing with people who don't have disposable income, and any kind of flooding impact that they have to their house, to their vehicles. They probably don't have the finances to recover from that. So, she is just pleading from a humane standpoint, she guess consider those things.

Mayor Burge stated we will move to the next part of the hearing, rebuttal by the applicant.

Councilor Miller asked if we need to take a moment to address the alleged procedural issue, because if that is a valid thing then it could change the way we proceed here.

Legal Counsel Peter Watts replied, so what we have noticed throughout this is that this hearing would be on the record. What the chair of the Planning Commission explained was that legal arguments needed to be raised during the Planning Commission hearings. The land use lawyer term is raise it or waive it. We were asked to keep the record open for seven days with the Planning Commission. After Joel informed us that he had hired an attorney Mr. Koback, we actually kept it open for ten days to allow them to fully make their legal argument. We then gave the applicant the opportunity to rebut because that's what you do, whether you want to call it a sir reply or rebuttal. They made those points. Those were provided to the public in advance of the hearing so that if somebody wanted to do further sir reply or rebuttal to the information they could do it. He thinks that this is a lot of paperwork and it's taken a lot of time for the applicant and for us to the extent that we could give more time to the project opponents so they could fully bat and make their legal arguments. That's what we tried to, that's why we went beyond the seven days. We are on a 120-day clock, that exists for the benefit of the applicant, not for the benefit of us. He has already asked the applicant to extend that clock and they've agreed to December 30th. He thinks that Mr. Koback anticipated something that the applicant has already raised which is the needed housing argument, which is that the decision has to be made on criteria, clear and objective criteria, and that is why the application has been set up and that's why we required what we required in the way of experts.

Council President Greisen stated, to go off of Councilor Miller's request of you going into the details of how this is unfolded, there was a comment made by their attorney that they were only allowed to give written response and not She stated sorry, it's late.

Legal Counsel Peter Watts explained so there are a couple of different ways you can conduct a public hearing after the Planning Commission, and one is called on record and what that does is that it's the record that was in front of the Planning Commission. The legal arguments that were raised during the Planning Commission, a lot of people believe that is the most fair way to do it because you don't have a gotcha moment at a hearing to have an opportunity for everyone to understand the arguments that are being made. One of the other ways that it could be done is

what's called de novo, which is basically anything in the known universe and that is usually what we would see for legislative decision. So, something that impacted the City as a whole versus a quasi-judicial hearing based on one subdivision. So again, Oregon Law provides for fixed time periods for applications and for us to process them. That's another reason why usually for something like this we would do it on the record. Just to flag a couple of other things that were said, that we don't have a comprehensive plan. We do have a Comprehensive Plan. It was acknowledged by LCDC, it is our comprehensive plan until you change it. Changing it is not easy, you have to go through a tremendous process. There are other components of that such as the Transportation System Plan and a Parks Master Plan. It is not uncommon for those plans to have various options. So, there might be eleven parcels that would be the size of what allows a city park, those might all be identified in an aspirational plan as places where a park could exist if the zoning allows it. That could happen in an R1 zone if people decide to make it work there, but our R1 zone allows....

Mayor Burge stated let's move to the applicant for rebuttal, then we can have the staff response.

Councilor Miller stated if there's a procedural issue that we do need to address then we need to address that procedural issue, if there's not, then his concern is addressed.

Legal Counsel Peter Watts replied, we noticed this as on the record, so we are doing this on the record.

Councilor Miller replied okay, thank you.

Garret Stephenson stated, thank you Mayor and thank you, Councilors. He explained what this is going to be is essentially him responding to everything that he heard tonight and captured it to the best of his ability and then kind of stepping back and looking at where we are at. He stated it was actually really helpful to have Chris Koback go near to last so he could remember clearly what he was raising and he wanted to add just a couple points to what Peter mentioned on the procedural issue because when he raised that for the first time tonight, he went and looked at the code and the code clearly says that the City can decide how to scope City Council hearings of this type. It has done so and he just wants to reiterate that he understands that Mr. Haugen has been aware of this project for a long time and he did not enlist Mr. Koback until after the initial Planning Commission hearing, at which time he was presented with the question of would he allow ten days instead of the normal seven days or not allow, but he supported ten days instead of the normal seven to allow Mr. Koback to get up to speed, which he did. It is very, very clear in the code that City Council can limit the scope of a hearing to issues that were raised before the Planning Commission, and he understand that Mr. Koback doesn't like that because he was engaged frankly quite late in the process, that is not the applicants fault and he thinks they have done everything to accommodate within reason on the

opportunity for him to raise arguments which he did and you know Chris is a good lawyer and his arguments were well written and well-articulated, needless to say they didn't agree with them. The question about why they get to have final written argument is simple, they have the burden of proof, they are the applicant and the way the system is set up is honestly it may seem like the applicant holds all the cards here, but he has to tell you that is not the case. It is very, very difficult to get land use projects approved in the State of Oregon and one of the few things that we do get essentially is recognition that they have the burden of proof, is the last word. And you know, this is not the first group of people in the first city that has said we don't like that, but that's what the law is in Oregon and we think it makes sense and we're going to have our last word. But in terms of a procedural objection the other component to a procedural objection is you need to explain how you're prejudiced. In this case we took extra steps to make sure Mr. Koback had time to draft his written testimony, which he did. There's no doubt that the City can limit the testimony to issues raised before the Planning Commission. He might not like that, but he is not clear how his rights were prejudiced within the confines of the process that was clearly noticed in the public notices. So, he doesn't think there is a procedural error, certainly not one that justifies reopening the record. The other thing before he moves on from that is that the code requires an open record period only for the initial evidential hearing, in this case the initial evidential hearing was before the Planning Commission and that request was granted, as Peter mentioned. He wants to step back a little bit and talk about some of the major concerns that they heard. He thinks if he were to place the concerns into different buckets he would say that they really center on two main themes. Number one is density and growth. He actually heard more about density and growth during this hearing than he did about the flood concerns and certainly the flood concerns were top of mind during the Planning Commission proceedings, and he actually disagrees with some of the comments that the Planning Commission gave the short shift. Maybe the Planning Commission did not ask the questions they would have asked but he thought that the Planning Commission actually asked some very hard questions, and they answered those in the course of two hearings and substantial written testimony. So, he gets it, maybe if he's sitting in the pews and he doesn't like what the preacher's saying I'd you tell you guys that, but he thinks fairly, the Planning Commission did a good job with this one and you know the issues about livability and density, he'll just take density on really, really quickly. He started his presentation with a brief mention of density. In this case if they were to develop the property just under the existing zoning, no exotic land use approvals, no planned development, nothing, what you would end up with is a maximum density of 46 homes. We are proposing 48. A lot of the concerns he heard tonight had to do with lot sizes. The lot sizes are small because we want to allow for preservation of the remainder of the site for open space. So, this is not a question of where we are taking advantage of a code that allows us to do something extreme with density. The lot sizes are smaller because we need to cluster the development away from the creek, it is as simple as that. He understands that people don't like small lot sizes, he hears it all the time but in this case it has an important function, it has an ecological function, it has a floodplain management function and when you actually look at the site, if you are going to develop it all it is really what

you have to do to make it work and you know a lot of people raised concerns about oh this is not an affordable housing project. It's not an affordable housing project, we've never marketed it as such. They marketed it as a single-family project that can be affordable to more people. Affordable housing has a very specific meaning, at least in land use, and it typically means that you are limiting the purchase price artificially when you sell. That is not what we are doing here. He stated one thing that he'll observe is when you have smaller lots and especially when you have a variety of lot sizes, it allows you to build homes that are affordable to a wider variety of people. Whether that is true in the case of every single.....He stated "Sorry Mayor I am getting interrupted."

Mayor Burge stated there are no outbursts, please.

Garret Stephenson explained whether that is true of every single home is not really the issue, but he can say that on balance if you have a wider range of lot sizes you are going to have a wider range of home sizes and those are going to command a wider range of prices, but at the end of the day when it comes to the size of the homes and the price of the homes, those are not criteria that are in your code that we are responding to. There's no requirement in your code that they be limited to a certain price or be a certain style. They understand that folks that live in the neighborhood want to see houses at a certain price and a certain style, that's simply not something the City regulates. He stated as far as the concerns about flooding, he didn't really hear anything tonight that they did not address at length during the Planning Commission proceedings, but he will just kind of go through what their response is. The City has, as he mentioned at the beginning of this hearing, a very robust floodplain management program. It's not robust enough for the folks that don't like this project, he will freely state that, but in terms of the code when you compare it to other cities, it's a lot harder to meet, it was a lot harder for them to meet and they did a lot of work to make sure they could. In this instance, they obtained a conditional letter of map revision before the application was even complete and as he mentioned before normally that is a condition of approval. So here we have FEMA going on record saying if you build it like this, this is what that floodplain level is going to look like and then the final letter of map revision comes through essentially the process of an as built, where you show them what you have built, you go out and measure it and then you submit that information to FEMA and then they change the map. We heard a lot of stuff during the Planning Commission hearings and tonight about concerns about global warming, atmospheric rivers, all of this sort of stuff, those are absolutely valid concerns, and they are absolutely not embraced in your development code. FEMA standards that on which they base their maps, those are not, there's no development code that the City has that requires them to go in and second guess that or even allows it. The City development code basically says in 17.84.030 sub B is that the City recognizes the maps produced by FEMA and that leads to a broader issue here, this is not the time and it's not the process by which we change the code. When he was in planning school a long time ago he had a professor that said there's really two functions to planning, there's the comprehensive legislative function and then there is the implementation phase. What he heard

a lot of tonight was concern about what the City's code does and does not allow. This is not the venue in which to change to City's code or to decide that it allows more than you would like it to. He explained one of the things that we have in Oregon that is a quid pro quo in our land use system is the ability to use property if we own it based on the standards in place when we make an application and whether or not there needs to be regulations governing how we analyze a 500-year flood event or regulations on how we do a number of other things including looking at global warming and scoping the size of the watershed analysis we do, those are all extremely valid questions and he doesn't bemoan anybody from raising them but he just wants to be clear that those questions are not before you tonight. What is before you tonight is whether or not the application meets the criteria and the record is, he wants to be careful in how he says this but also very strong in how he says it, the record is very, very uniform in this question of whether or not the floodplain is going to change in the way the code requires it to be changed and in the way that FEMA has found that it will be. They actually had in addition to their own consultant there was another hydrologist that testified during this hearing, not during this hearing but during the Planning Commission hearing, named John Archibald and he was enlisted by the opponents to opine on their application and what he said was that and he is roughly quoting him, development in and around floodplains can be done safely. He also said that the project that they were proposing is not irresponsible and he said that it meets all local, State and Federal regulations. So, he does not envy your task, Council, this is not a popular project with the people sitting behind him, that is not how they make land use decisions in Oregon and he thinks one of the concerns that he has, and he heard it a number of times, but he will just sort of quote one person who raised this, one of the concerns was, he thinks it was Miss Waltz, Christine Waltz and he's picking on her not because of what she said specifically, but he thinks it is representative of what a lot of folks said and he thinks what she basically said is yeah this project might meet the code but you have to decide whether or not this is good for the community and he respectfully disagrees. The question before you is whether it meets your codes, this is not a legislative hearing and he doesn't pretend that that's a hard thing for you to do. You are looking at your neighbors, you are looking at voters, you are looking at people that mean something to you. He is just a lawyer working for an applicant, he means nothing, but he has to tell them that the hardest job and most important job that a City Council will do is in this instance, in a quasi-judicial capacity to put those concerns aside, put aside the political concerns and look at the application, look at what the code requires, and make a decision based on those codes. He actually has a lot of confidence in the Council that they'll be able to do that, but he just wanted to point out that this is not easy. If it were a popularity contest they'd lose every time, he would lose every time in almost every city and if he can indulge in just a really, really quick anecdote his entire family at least on his mother's side has lived in Scappoose since 1978. He has lived out here twice at two different times in his life and he worked out here every summer until he was 22 years old. If you know where Laurel Street is, just down river from here, there's a small subdivision that was build he believes in 1995 or 1996. When he was a kid, he used to spend the summers with his great-grandma who lived in a duplex right across here, her duplex is still there, and he remembers playing in that field. There

were cows in that field, and he loved it. He used to shoot at crows with bb guns, he was in hog heaven and one day somebody came in and cordoned it all off and starting laying roads in there and he was not a happy camper about it. That was his little playground and he enjoyed it but over the years what he saw in that little area and incidentally it is the same situation here. It was in a floodplain, they elevated it, it's out of the floodplain. If you look at the floodplain map it is clear as day what they did but what he saw then over years is families, kids, all community growing up in that space and he doesn't harbor any ill will against it or any frustration that he did when he was 12 years old and he thinks about the opportunities that building that project gave those folks. This is not rural land; this is City land. It was zoned for residential development and that is what ought to be going in there. If the City wants to look at different options, legislative options, it's fair game but today you have one of the most exhaustively analyzed and highly designed projects that he frankly has ever seen and so you know the volume of oral testimony tonight you don't want me to respond to everything because we would be here for another two hours, but he just wants to say that he understands where folks are coming from and he doesn't begrudge them for that opinion a bit, this is hard. Scappoose has changed a lot since he was a kid and his are older they'll take a look at it and say it's changed a lot since they were a kid but in this instance you have an application that meets all the development criteria. This applicant has gone above and beyond to reserve more of the site that it needed to for open space and he also thinks, and what he has seen is that after you build a project like this and people get used to the amenities that are in there they start to like it an awful lot, it becomes part of the community. Folks that live there in the future will become friends, he hopes, with the people that live around them, and he knows the folks that live around them, assuming that they can build this, once the five stages of grief are over be welcoming neighbors, and he anticipates they will be. So, he heard a lot about concerns about livability but he didn't hear a lot about why the applicant doesn't meet the criteria and he is asking Council to do a hard thing tonight to look your friends and neighbors in the eye and say I have a duty as City Councilor in a quasi-judicial capacity to vote on the criteria and he thinks if you do that, you can approve the project. So, he really appreciates Council hanging in with us, allowing us to present to you tonight. He is happy to answer any other questions they may have.

Matt Sprague explained there seems to be a little bit of misunderstanding because when it is mentioned that the homes in this subdivision are not going to flood, there is some backlash in the audience. He is just not sure that they're fully understanding that what they are doing here is filling in areas of the floodplain where the development is occurring. If you look at your packet you have a cut fill analysis sheet, and it indicates on that sheet where those fills are occurring and also where the cuts are occurring. Most of the areas that are being filled carry backwater which is six inches deep, fulfilling very little in terms of volume in those areas even though it looks like a large area and then they are cutting an equal or greater amount, actually by nine cubic yards west of the development or east of the development site towards the creek to balance that. It was also characterized at the study was just a cut fill study and that you shouldn't approve it based on something like that, well this was not just a cut fill study, it was a

detailed hydraulic analysis of this drainage from way down stream to way up stream with surveyed cross-sections put into a computer model that is extremely accurate, he was actually amazed. One of the signs that you see being held up tonight shows the floodplain, shows the flood event and if you had the bigger picture and you looked at that it is amazing how that looks exactly like what the flood study was showing. Originally, they did a LOMR, a letter of map revision, before they even got rolling with submittal to the City because there were so many changes to the floodplain due to other projects in the last five to ten years that they re-analyzed the floodplain to provide an accurate view of what is going on out there today. As a result, many, many properties actually were removed from the floodplain and should talk to their lenders about removing their floodplain insurance responsibilities. They pointed some of those properties out in the Planning Commission hearing, but that letter of map revision was the first study. Then they did the conditional letter of map revision for their grading, which brings all of their homes out of the floodplain and makes adjustments to the floodplain and they will follow that up in the end with a letter of map revision to finalize the work that has been completed out there. There was some concern about fire access. He worked with Mr. Pricher over a three-year period talking about different issues associated with fire access. They are sprinkling all of the units. Although it is not a requirement that you can't have a turnaround in an easement, he had a very good argument that was substantial enough for him to say yeah you are right, lets put this in a tract, so they are complying with and agreeing with everything that Mr. Pricher has stated about his needs for fire protection and safety. What is complementary, he thinks complementary is not that you have all 6,000 square foot lots throughout the entire city. He thinks different lot sizes, different house sizes, different house prices, all of those complement the City as a whole. So, he doesn't necessarily agree that this project is not complementary with the community of Scappoose and that it provides a Housing Opportunity that is actually underrepresented in the City itself. So, it is very complementary and it does provide a more affordable housing option for people within the community. He also heard that they are impacting natural resources or there was concern. They aren't impacting wetlands, they have riparian buffers out there which primarily today consist of pasture very, very poor condition riparian areas. With development of this project all of those riparian areas will be substantially improved, and the end result is an enhanced wildlife habitat and resource area within all of the Open Spaces along the creek. Mr. Haugen mentions compatibility. They have higher density zoning districts on one side, and we have lower district density zoning districts on the other side. They have purposefully, to be compatible, put larger single-family home sites on along the western boundary to be compatible with those home sites to the west and then they have moved their higher density housing to the center portion of the site, which then across the creek on the other side, is kind of a medium density and there's higher density housing farther on the other side of the creek. So, he thinks that they are very compatible with the neighborhood and the way they have designed this project. He stated that is all he has for now unless you have any questions.

Councilor McHugh just wants to clarify with Peter our attorney just what our role here is. As he understands it our role regarding this requested zone change that we're to approve or not approve what the developer has already submitted, which has already been approved by the city staff and the Planning Commission and we're just basically affirming what they've already done we're not seeing anything that they've done wrong and our job is simply to affirm what's already been provided for us by the staff and the Planning Commission.

Legal Counsel Peter Watts replied your job is to look at the record and to weigh the evidence and to look at the criteria that has been identified and to make a determination about whether they've met the criteria, the clear and objective criteria in our code, and so he thinks that one of the challenges with this is that sometimes some of the arguments we've heard aren't related to the criteria, they're related to maybe best practices somewhere else or what could happen. You know our code is our code and the way that Oregon is, you know robust land use system is set up, is that somebody that's never been to the city would look at the criteria in our code and understand what they can and can't do and submit, well they do a pre-app, and then they do an application and then if they met the criteria in our code then generally the app would be approved and if they didn't meet the criteria in our code then it wouldn't. To the extent that you have, he guesses what he terms dueling experts, you might have a traffic engineer that says one thing and the others and there might be a traffic engineer that says something else you would weigh that testimony to the extent that you found one expert more compelling than the other, you would articulate why so that we could all understand how you arrived at the decision. But if the question is, can we base the decision on something other than the criteria, then if you believe there's criteria that applies that wasn't identified by staff, which he hasn't heard so far, you would need to articulate that it would be dealt with to the extent that you believe that staff has identified all the criteria then you're simply applying facts in record and evidence to make that determination.

Councilor McHugh stated basically what he said is what we're supposed to do. He asked now what if there's something that we've heard, and they think should have been considered but he didn't hear any recent rebuttal regarding the east side of the creek if we put that wall up and what about those properties on the east side of the creek it might be flooded because of our wall. Has that ever been considered by you guys?

Garret Stephenson replied, so what you heard is testimony about what that would do the 500-year flood plain which is not regulated by the City.

Councilor McHugh replied he said 500 and 100.

Garret Stephenson replied we know the 100-year floodplain works with that wall, that's clear in FEMA's response to our request for a CLOMR. The City does not regulate and neither does FEMA by the way regulate specifically 500-year flood events or floodplains. So, he did make some notes about that and what he thinks he heard, and it was not something that was the 500-year floodplain issue was not something that was raised by any of the opponents during the Planning Commission review, he thinks appropriately so because the City doesn't regulate

that level of flood event, but he did make some notes about it and what he heard frankly was a lot of speculation. You know there was a lot of concern about the fact that we used a lot of expert testimony to establish our record in this application. You're right we did because the City's code is very complicated requires a lot of information. As Matt told you the computational tools, they used to determine how floodplains work and they don't work depending on how much you fill them or don't and how much you balance that fill are very, very complicated and if he were to sit there and say he knows how it works Garrett the lawyer guy can tell you all about the floodplain, you wouldn't believe me at all that's why we have WEST Consulting, that's why we have hydrologists to make sense out of those things and to do the analysis. What he thinks is remarkable about this case and what he doesn't typically see is the extent to which there was a lot of back and forth between the City and the applicant and FEMA and if you look at the record in that big package material, you'll see a ton of stuff that happened much earlier than this year, a lot of back and forth where Laurie raised a number of questions that were frankly good questions and sometimes bothersome to them because gosh they felt like they had done everything but Laurie kept pushing and pushing and pushing and FEMA kept pushing and pushing and pushing and he thinks what you have is the result of all that back and forth. If you want to talk you know, what he did, the concern and he's going back to concerns that were raised the Planning Commission level one of the concerns they heard was scouring and he knows that their guy from WEST, Erik, and he knows Erik did opine on that so he's happy to have Erik come up and talk a little bit about the effect of the wall because it sounds like a good question it was raised tonight and he thinks we ought to address it.

Erik McCarthy, WEST Consultants, stated in regard to the 100- year floodplain and how that wall and all that fill will impact the properties on the other side of the creek because there was a no rise requirement essentially saying that during the 100-year flood there could be no increase in the 100-Year water surface elevation. That means that there will be no increased flooding on the other side of the creek due to the wall and due to the fill placed on the opposite side during the regulatory 100-year flood. Regarding the potential for scour, he knows some people raised concerns about stream migration. Streams do migrate it's part of a healthy stream. Now when you have streams going through developed areas that's why these buffer zones are really good ideas. This 50-foot buffer reinforced with the additional vegetation that's being proposed in the area would help protect against some of the stream migration encroaching onto the proposed development and in reality, JP West Road kind of causes water to back up behind it so it's kind of a big bathtub and there's not a lot of velocity in the creek so they did look at the velocities from the hydraulic analysis.

Councilor McHugh stated the speed of the water.

Erik McCarthy replied yeah, the speed of the water, the average velocity, it's backing up behind that bridge and so the velocities are relatively low in the 100- year flood. Nothing that would trigger a significant concern with scour, or you know the erosion of the proposed development and the retaining wall.

Councilor McHugh stated you're saying the person mentioned the water going to the east side of the creek is mistaken.

Erik McCarthy replied he thinks he was about the 100-year, he can't speak about the 500 year but the 100 year, yeah it was designed so that there would be no change in the floodplain boundary for the 100 year on the other side of the creek, that's correct.

Councilor McHugh asked what are the consequences if we don't vote for it?

Garret Stephenson replied, he's sorry Councilor, just a question point of order for the mayor if and he just wants to make sure if anybody has additional questions for the applicant now would be a good time. He stated Councilor McHugh if you want to talk offline to the City staff it might be time for them to sit down but he'll leave that to the mayor's discretion.

Council President Greisen stated she doesn't have any more questions for the applicant.

Mayor Burge stated neither does he. He asked if there was staff response.

Garret Stephenson stated thank you all for your attention, thanks for sticking with us and he appreciates this hearing.

Legal Counsel Peter Watts stated so if you were to deny the application then we would need you to make findings as to what criteria have not been met. He can't speculate on exactly how likely an appeal would be, but it'd probably be pretty high, but it seems fairly high anyway. A lot of people are talking about LUBA, so ultimately what we need from you regardless of how you decide this, is just a lot of clarity in how you're arriving at that decision to the extent that a criteria has not been met, that you articulate why you believe that is, so that we have a very clear record.

Councilor Miller asked Mayor Burge if he could make a suggestion. He stated since we are focused on a task here with deciding whether or not this meets criteria and this is kind of to Council McHugh's point, is that he thinks that we, if there is a question about if something means criteria not or is criteria based then we ask, is this criteria based or not. Just so that they have clarification on that. If their scope is purely criteria based, then they need to be sure and to know that any lingering questions that they have or thoughts is criteria based or not.

Community Development Director Laurie Oliver Joseph replied agreed, thank you. She stated all right so she just wanted to take a minute to go over just some things that she heard and just to clarify some points. Let's see, we did hear some comments in relation to the capacity of schools, City infrastructure, police and others, whether or not this proposal would burden any of the agencies and then tied into that we also heard someone say that the Planning Commission did not have copies of the agency comments and such, that is that is incorrect. All of the agency comments were included in the Planning Commission staff report as exhibits 28-

37. The school district's comment was included as exhibit 31. This is the opportunity then for agencies to comment in opposition to the development or to comment on issues they see with capacity not being able to meet the need for the proposed development. The school district did not comment in opposition at all. In fact, she has heard that enrollment is actually slightly down. Next point she wanted to make, we heard Mr. Koback state that the City could not have stormwater facilities in the flood plain, this is incorrect. 17.84.040 B3 allows for installation reconstruction or improvement of underground utilities or roadway improvements in the existing floodplain. The grading plan is necessary to construct the proposed extension of Eggleston Lane and the two storm water detention ponds are necessary to treat stormwater runoff from the roads and are interrelated to the proposed roads that are permitted in the existing floodplain. The applicant's preliminary stormwater report clearly explains why the proposed catch basins are necessary to treat runoff from roadways regardless of whether they treat some stormwater from homes. Additionally, 17.84.040 B8 allows Public Works projects to be constructed in the flood plain which are defined as projects that are necessary to enhance or maintain General Public Welfare. Such projects may include but are not limited to flood control structures, public buildings, City infrastructure, utilities, parks and projects associated with resource protection. This definition does not state that Public Works projects must be completed by a public agency. The work associated with the stormwater ponds requires plans meeting the requirements of the Public Works design standards and a public works permit to demonstrate compliance with the public works design standards and Scappoose municipal code. So these facilities are considered public since they'll maintain the General Public Welfare by protecting the public from flooding conditions by capturing detaining and trading runoff from public streets. We do have examples of other projects around the city that are developed under the same conditions. Those can be found in Veterans Park, Chief Concomly Park, Meersburg plan development, Johanna subdivision and the Creekside Apartments. Additionally, the City has a condition of approval that tracks CNG. The storm water tracks are subject to a public storm drainage easement, that's condition of approval number 35 the second bullet point under that table. The City does not have a public storm system in this region of the city and so these facilities act as public infrastructure. Let see we heard from several of the neighbors that the city should utilize something other than the FEMA floodplain Maps when we're viewing the application, however that would be a violation of Scappoose development code 17.84.030 B and that requires that we base our decisions on the adopted floodplain maps for the city which are issued by FEMA. It does not say that we can evaluate the floodplain under any other criteria or mapping including a future unknown condition. To do so would be a clear violation of our development code. We also heard testimony requesting that the applicant study the entire South Scappoose Creek Watershed as part of their project similar to a study undertaken by the Scappoose Drainage Improvement District on the east side of the town and that was part of their effort to recertify the dike. This was done on the east side of town because it's evaluate evaluating flood risk associated with the levy which covers a large portion of County lands and a small portion of the City. This project seeks to revise a small portion of flood plain boundary on one distinct parcel. The applicant completed an in-depth analysis of

this revision which extended 1500 feet Downstream of JP West Road in 2200 feet Upstream of EM Watts Road. This analysis is required to ensure that the base flood elevation on not just the project site but also upstream and downstream of the project will not increase. Again, the project results in no rise to the base flood elevation which is required by our development code. Related to Traffic, so we heard from Neighbors that traffic's going to become an issue with the addition of 48 new homes and I will just say that our transportation system plan accounted for this property being developed with homes it uh those trips are accounted for in the transportation system plan, The applicant was required to complete a traffic study which they did that follows the city's traffic impact study guidelines they did that. The study was completed which determined that all study intersections are meeting their respective performance measures and mobility targets today and after site built out conditions there are specified measures that have to be met and they were met. The City then cannot ask for offside improvements related to the project as some comments have suggested since there would be, not be data to support the request and it would be considered a taking from the applicant which would be a basis for appeal Related to compatibility with surrounding neighborhoods again we heard that a few different times that this would not be compatible with surrounding neighborhoods. The Scappoose development code States in relation to compatibility the plan development shall present an organized arrangement of buildings, facilities, open spaces, and improvements such as recreation, facilities, landscaping and fencing. To ensure compatibility with the comprehensive plan in the area in which it is to be located. This application proposes all of the amenities mentioned above and this site is adjacent to three different zoning districts. The R1 low density the R4 moderate density and the A1 high-density district along its Southeastern border. The R1 zoning District then is not the sole zoning District to use as the basis for compatibility. Further the City has previously approved plan developments with lot sizes ranging from 2,660 square feet to 10,210 as recently as 2015. In that development which was South Fork the Council approved it with side setbacks of three feet. Whereas this proposal involves lot sizes from 3,410 square feet up to 13,083 square feet and side setbacks are proposed at five feet for internal lots and eight feet for street side setbacks. So again, this development is utilizing the plan development overlay because there are natural resources to protect on the site. Again, that is the main purpose of this overlay. Again, the applicant is proposing single family detached homes which are compatible with the majority of surrounding developments with the exception of the apartment complex in the Southeast corner of the site. She thinks that concludes some of the observations she saw. She doesn't know if Chris had anything else, or if we want to wait for questions.

Council President Greisen went over page 30 and 31 chapter 17.44 R1 low density residential. The subject site is zoned R1 low density residential, and the applicant proposes an average lot size of 4,917 square feet, which is an average lot size reduction of 18% below 6,000 square feet is allowed through the plan development provisions. The applicants requested dimensional requirements are summarized in the third column here. In in the first row, first column dimensional requirements minimum lot area single family detached. First row second column our requirement is 6,000 square feet outside the Scappoose Creek floodplain and 20,000 square feet when a structure is located in the Scappoose Creek floodplain. Proposed by the plan development overlay is a minimum of 3,410 square feet. No residences within the special

flood Hazard area which would require FEMA approval in phase two and then again, the minimum lot width. So now she is in the second row first column. She just wanted to look at those four boxes. She stated if you could make any sort of clarifications that would be great.

Community Development Director Laurie Oliver Joseph asked, just in the comparison between the two?

Council President Greisen stated, so our requirement is in the second column, correct?

Community Development Director Laurie Oliver Joseph replied, this is for a standard R1 zoning district. So, the planned development overlay allows for changes to the base zoning which the applicant has requested and that's to allow for the clustering of housing away from the natural resource.

Council President Greisen stated, so her feeling about that or her finding or her opinion is that then there would need to be less homes.

Community Development Director Laurie Oliver Joseph replied, in other words, you're saying you don't agree with the changes in that, it would just be the R1 standard is what you're saying.

Council President Greisen replied I'm not willing to compromise that, no.

Community Development Director Laurie Oliver Joseph replied, okay, and so what we would need then is the rationale or reasoning for not granting the reduction for the proposed PD overlay standards.

Councilor Poling stated can I ask a follow-up question if I may, in regards to that. What is the criteria, what is our standard for approving a planned development overlay?

Community Development Director Laurie Oliver Joseph replied, tonight you would be looking at this and approving the tentative plat approval. Once that was done then the final plat approval would come back to the City to her and Chris to review and what we're looking at then is to make sure that it's meeting all the conditions of approval, whatever is included and that it's also meeting FEMA's letter of map revision before we would sign off.

Councilor Poling replied he thinks his question is more about the overlay though for the planned development.

Council President Greisen asked how do we decide, what is the criteria for deciding?

Community Development Director Laurie Oliver Joseph replied, in chapter 17.81 it starts on the bottom of page 39. Approval criteria - an application may be approved, approved with conditions or denied based upon substantial conformance with the following criteria. The proposed development complies with the comprehensive land use plan and is compatible with

the surrounding area or its proposed future use. That was A that she just read. B. Is that exceptions from the standards of the underlying District are warranted by the design and amenities such as usable common open space, cluster development etc. C. Is that the proposal includes designs construction standards in compliance with city code and that all completed infrastructure be approved by the city and ownership of all infrastructure and Public Utilities deeded to the city upon completion. D. That the development can be designed so as to provide for adequate access to an efficient provision of services to adjoining parcels E. Is that streets are adequate to support anticipated traffic and the development will not overload the streets outside the planned area as supported when necessary by formal traffic impact analysis. F. that proposed utility and drainage facilities are adequate for the population densities and excuse me and type of development proposed. G. that the proposed development can be substantially completed within a reasonable period of time. So those are your criteria for the overlay.

Mayor Burge stated I have a question. If they weren't doing the overlay, they just came in an R1 zoned property, they could build 46 homes on this property, approximately, because you don't have to nothing in the code or any code says that the property line has to be squared up or anything. He thinks we saw that on County five acre lots up at Ridgeway where the houses are on five acre lots. Only a small section across the road five acres shoots all the way down. So, the 46 Lots would be on larger sites but would lose the open space, packed gravel trail.

Community Development Director Laurie Oliver Joseph stated so because though there's resources on site that have protections around them like buffers there's really not, if they're going to maintain 6,000 square feet then it just means fewer lots, right. They're still having to protect the resources, that doesn't go away.

Mayor Burge stated there's nothing that says that property when you're designing those 6,000 square feet lots because it's going to take up much more space. There's nothing in the code that says that each individual property owner can't have a slice all the way down to the edge of the creek like it's on the other side have, to make that 6,000 square feet.

Legal Counsel Peter Watts stated so he's suggesting they could do aerially shaped lots and then use the conservation easement or other function in order to protect the resources.

Mayor Burge replied and that's basically what they're saying.

Community Development Director Laurie Oliver Joseph replied, it's harder to protect the natural resource if it's not in a tract that's separate from private property.

Mayor Burge stated, that's his point.

Community Development Director Laurie Oliver Joseph replied, definitely harder to do.

Councilor McHugh stated can we go back, if we can, to the traffic study. Does the traffic study address the pedestrians crossing from the development to Veterans Park?

Community Development Director Laurie Oliver Joseph replied yeah, in fact she believes there's proposed crosswalks that the applicant would be adding to make that a safer route across.

Councilor McHugh stated so there would it be a crosswalk, what about reduction in speed or anything along there? He is on the Traffic Safety Committee and it it'd be nice if Safety Committee talked about it, but I understand we're on a time crunch too so.

City Engineer Chris Negelspach replied, so all the local roads like that are already under default speed at 25 miles per hour and so he believes there is some signage on JP West, probably not as you go up the hill, but he thinks there is some down there. He'd have to verify that. They are also proposing to meet the Public Works design standards with regard to pedestrian ADA connectivity and that's to have ADA striping on JP West at both curb returns as well as across the throat of the subdivision.

Councilor McHugh stated he knows like some places you go like West Union and other places they've got, pedestrians have to push a button and they have a sign that lights up you know. To him that could be a very dangerous intersection. They'll probably be about 60 or 70 kids in that development figuring correctly when they have 1.5 per household or something like that. So, it's probably like me if I was a kid I'd be in and out of that park all the time. He's just thinking once you get comfortable with it you just dart across, you know. He is just concerned about that. He knows it is maybe anything that hasn't been addressed but he just wonders if it's been properly addressed.

Council President Greisen stated Pete we have to go back the criteria and if we have to come up with.....

Councilor McHugh replied yeah, obviously we vote yes.

City Engineer Chris Negelspach replied he thinks, just to answer your question quickly, is that we would have recommended RFBS at that location, the flashing Beacon signs, similar to what we have on Havlik, had it been recommended by their traffic engineer based on those types of trips. It wasn't there and so it was hard to support that in our findings and our recommendations.

Councilor McHugh stated we have a similar problem on High School Way in Scappoose and we had two kids hit there years ago. What we did was put a stop sign there plus they raised the crosswalk so it's a little higher, so they slow down for that.

City Engineer Chris Negelspach replied he thinks it's a valid concern. He doesn't know if there is a specific study to show pedestrian trips related to this project and so you know he would have, you know he'd want to have the applicant respond to those concerns specifically because there's no engineering to my knowledge that supports that. Perhaps there was some analysis that I'm not aware of.

Councilor Santiago stated she knows she is tired and she's sure everyone is tired and it's really hard to make a decision when you're exhausted, you've been in a meeting for four hours. So just as Council she thinks, she feels you know that we're supposed to go by code and criteria but as Council she feels like we have the responsibility to follow the City and the mission and our vision and she knows that we need housing, but we need also quality and livable housing, right. So, with that being said you know that she knows that to her it doesn't make sense and she haven't seen that it makes total sense. She has more questions than we have time today, that there's going to be 48 units and there's not going to be a flooding issue. You know she is looking at a statistic here from Source of Governing Analysis and Standard USA Census that it says that U.S pro growth that it's calculated an estimated that shows that FEMA designated 100-Year plains are expecting slightly faster growth and it's growing each decade. So she knows what FEMA says or what FEMA doesn't say but it's flooding is obviously going to be an issue. Is flooding an issue which is going to affect our current residents and our future residents and so she is not comfortable approving that, approving what she's heard and what she's read of approving this application and that's her thoughts and she knows that you're looking for a criteria or whatever but if she can get the help of, she means of the City Planner that she really doesn't see, she knows that you guys gave information and facts and studies but she's looking at other studies too that it says that it can you know whatever studies say it's actually underrated it can actually be more than that.

Mayor Burge stated, Peter.

Legal Counsel Peter Watts stated respectfully, Councilor, you can't make your decision based on evidence if it's not in the record. So, this decision is being made based on the evidence in the record and so, you've got your folder which is 500 plus pages and so if this were a legislative proceeding then you could make your decision based on things outside of the record, but this is quasi-judicial so you're acting like a judge.

Councilor Santiago replied right and we just, she means for her that staff and the applicant have been working at it for four years but it's a lot of information to take on even for a week or two weeks and then all the testimonials that we're hearing the information it's a lot and she's not, she's talking personally here, and she knows that's probably not criteria or code but she's not comfortable of making a decision on a four-hour meeting and all the information given all at once. That's just her two cents.

Legal Counsel Peter Watts stated he knows that not everyone might agree with the rules but like the rules are when you're sitting in a quasi-judicial hearing, you're making a decision based on the evidence in the record in the criteria and to the extent that there's evidence that you're making the decision based on anything other than evidence in the record and the criteria then what's going to happen if it gets appealed is it's going to get remanded with the instruction that you need to make your decision based on the evidence in the record and the criteria and that is just how it works.

Councilor Santiago replied she understands that Peter, thank you, but it's just that we had no say, the Council had no say on the evidence of the criteria that's on record.

Mayor Burge stated that is part of code.

Councilor Santiago replied and that's what you're making us uh decide on something that we have no part in.

Community Development Director Laurie Oliver Joseph replied, Jeanette, there's a time to create the code and then there's a time to apply the code. So, every land use application has to be decided based on the criteria that's in the code when the application was submitted, so that's what we have to work with here. We're looking at the application based on the criteria in the development code and in order to then deny the application we need to hear specifically what criteria is not being met.

Legal Counsel Peter Watt stated and it's actually anticipated that some cities upon receiving an application might then decide to change their code which is why there's a rule that is referred to as the fixed goal post rule, which is that whatever the code criteria are when the application is submitted, that is the criteria that the applicant is entitled to rely upon for the purposes of their application being considered, to prevent a situation where because somebody doesn't like a code or a project they would then change their code to prevent it and that rule is a fixed goal post rule is very clear.

Council President Greisen stated, so Mr. Mayor, moving forward she would like to go back to some evidence here. How much time do we want to spend on this, or we can extend this?

Mayor Burge replied we can do one of a couple of things; if the staff response is done, we can close the hearing that's when it's time for us to go into our consideration but we can still make changes. That's when we get to make changes. Say we decide we want to turn it down, then we have to start building this record or the reason.

Legal Counsel Peter Watts replied, you can close the hearing and begin debating amongst yourselves. As far as whether the criteria has been met, some people have said that they're getting tired so we already have a second, we already have a meeting on next Monday set. We would then need to reserve the 19th as well but the good news is we're on a public hearing so into the 12th has already been noticed so and then we'd be going to a fixed date which would be the 19th. So, it's your call, I mean you can continue on this evening.

Mayor Burge replied, well there's that option where we just recognize that it's going to take two more meetings. There's nothing else on the next agenda the 12th except for this. So, the other option is to put it on first reading have the debate because that can be amended during the time of the next meeting.

Legal Counsel Peter Watts replied well you can debate; you can have the conversations regarding whether you believe that the criteria has been met or not met and make a decision this evening either approving or rejecting it. As far as doing first reading, I mean you need to make the decision in order to do the first reading.

Mayor Burge stated whether to move forward or not.

Legal Counsel Peter Watts replied, or whether you move forward or not he thinks would be....

Mayor Burge replied what he means is once the motion is on the floor, so once the motion is made, it goes on first reading. The second reading is when the vote will happen, that's either going to be in one week or in two weeks depending on whether or not the first reading is done tonight or if it's done next month.

Community Development Director Laurie Oliver Joseph replied, yeah and the other thing too is that if you're going to debate tonight and come up with findings for denial then staff might need time, you know you might need to direct staff to potentially draft findings so whether that occurs tonight or whether that occurs on the 12th.

Council President Greisen stated so on page 33 the finding is that again the applicant has requested reductions to dimensional standards as previously summarized in the section I think it was on page 30 and 31. So again we're going into them requesting a reduction in dimensional standards. This is something that she doesn't feel comfortable with, so she is needing help finding wording that somehow makes a case that we're not going to compromise on our standards in terms of lot size. She understands that setbacks and you know front yards and widths and all these other things in most cases they're being compromised on it's not necessarily just the lot size and she understands that it has to do with the preservation of the land, and so she doesn't want to compromise that.

Community Development Director Laurie Oliver Joseph replied, so there's a criteria that directly relates to that and it's on page 40 B. So, this is where it would lie as far as you know you sticking to that that thing you don't want to compromise on. That exceptions from the standards of the underlying district are warranted by the design and amenities such as usable common open space, cluster development, etc. So how she interprets that or thinks about that is that as we heard tonight 57% of the lot is left as open space to protect the natural resources. You know it also says warranted by the design, so she guesses we would need to hear from you how you feel the design um or the usable common open space or the cluster development is not enough to grant those reductions.

Council President Greisen replied she has a lot of reasons, but she doesn't know if they would withstand anything. She asked if she could just pick it away?

Community Development Director Laurie Oliver Joseph replied, yes.

Council President Greisen stated okay just bare with me, no clue what I'm doing here. She stated one thing has to do with a parking requirement there's two spots per residence, correct?

Community Development Director Laurie Oliver Joseph replied, as a requirement, that's correct and garages count.

Council President Greisen stated, and the garages count and the driveway would be the second, correct?

Community Development Director Laurie Oliver Joseph replied, she believes in their plan they have two spaces in the driveway in addition to the garage.

Council President Greisen stated, so technically, they're counting that as three.

Community Development Director Laurie Oliver Joseph replied, or four even if it's a two-car garage.

Council President Greisen replied, okay she technically has a three-car garage but one vehicle, so that doesn't stand. So then, is there parking on both sides of the street?

Community Development Director Laurie Oliver Joseph replied, yes.

Council President Greisen replied, so that still leaves room. Chris, to meet two-way traffic and the turnaround is at the cul-de-sac at the end?

City Engineer Chris Negelspach replied there's a designated turnaround. He doesn't know what the tract is but it's specific for the fire truck right so that it'll be maintained as an easement on a lot, but it'll be the HOA who will maintain that tract and enforce that it's left open and there's appropriate signage there.

Council President Greisen replied she wishes we had like an environmentalist on staff.

City Engineer Chris Negelspach replied, and just to address your on-street parking question, it's a standard local street which you would have in any subdivision in Scappoose. There's no compromise whatsoever to any of the public standards.

Council President Greisen asked is there a claim that we can make that more people clustered if you set aside that they're preserving 57% of the land which then would go ding ding, ding, okay check that box. That's what she is getting back here, that more people clustered in one location would have a higher negative environmental impact on land than if there were less people populating that space. So, her claim is let's go back to our design standards and double the lot size and have half the homes you have half the amount of people inhabiting land is the impact half negative impact to the environment in terms of just like run off, garbage pollution.

Community Development Director Laurie Oliver Joseph replied, really our codes sort of want efficiency of roads and utilities and things like, that so having them clustered, she doesn't know specifically if clustering is going to have some sort of specific measurable impact that would be different than having 46 homes spread out in a different arrangement.

Council President Greisen stated, so her take on this is she's not willing to say that by preserving 57% of the land it outweighs the livability of the lot in terms of size, but that's not going to stick.

Legal Counsel Peter Watts replied, he thinks what you're really asking is how many lots would the applicant potentially be willing to give up knowing that the answer might be zero and that's not a question that he can answer.

Council President Greisen stated that we have through the process as a council will not maybe one two three four of us probably that when we did the housing needs analysis and we redid our code we were very specific on lot sizes and that that means something to me.

Community Development Director Laurie Oliver Joseph replied, yeah and indeed absolutely but we have always had this provision in the code for a planned development overlay that would allow you to change that, and again, like we've said all night, you know it's because of the parcel itself, it's because they're protecting the natural resources on site, so regardless of what our standards are for the R1, there is this provision in the code because there are odd parcels where this applies well. Again, the City has already set precedence, past Councils have already set precedence that the City does allow planned developments. We have lot sizes smaller than these.

Council President Greisen replied, and she understands how it would all hold up in them coming back at us.

Community Development Director Laurie Oliver Joseph replied right.

Councilor President Greisen replied, thank you.

Councilor Miller stated to Laurie can you remind me all these different criteria that has to be met, did all of these things flow into the conditions.

Community Development Director Laurie Oliver Joseph replied, yes.

Councilor Miller stated so every single one of these, so the parking, all these things that we're talking about...

Council President Greisen replied, it's all covered.

Councilor Miller replied, okay, he thought he remembered that, but just wanted to clarify just to be sure.

Councilor Poling stated this is challenging because I mean, from a perspective when you look at trying to figure out you know that we have code in place that we have to follow we have rules that we have to follow and obviously you know a lot of check mark boxes have already been filled out. So for him, he needs a little more time to really kind of scrutinize the wording. He doesn't really know. He wants to make sure that we make a good decision on this process and so he is a little bit hesitant to say hey let's just go ahead and move forward with this right now when we can push out and make one more meeting and make a little more time for us to make a smart decision. That's just his personal opinion though.

Councilor McHugh asked Laurie if there's like a formula you use to reduce the size of lots, is that how that works?

Community Development Director Laurie Oliver Joseph replied no, there's a formula to reduce the size of the lots, no.

Councilor McHugh stated when we reduced them to the size that they currently are with the overlay but how do we go about determining what they're allowed say for the size of the lots.

Community Development Director Laurie Oliver Joseph replied so we don't have, there's nothing in there that says there's a formula that they use to determine the size of the lots. They propose that to us. There is a formula in so much as they have to look at their site and they have to take out the floodplain, the greenways, the wetlands, the things that can't be developed they net that stuff out, the right-of-way dedication. They come up with a certain square footage divide it by 6,000 which is the base zoning and that gave them the 46 units. So that's without any density adjustment, they requested a 4% increase to get to 48 lots, but as far as like how do they determine the size of the lots, they're proposing it, that's not captured in our code.

Councilor McHugh stated they did cite the fact that it's near Veterans Park to the more space or whatever. He kind of sees that as a little bit of a hazard for the kids living in that development.

Community Development Director Laurie Oliver Joseph replied, I mean again there's no striped crosswalk there today, so it's going to be a very visual cue. There'll be two crosswalks, one on each um corner of the new street extension, both heading parallel to the north to Veteran's Park, so that is always a major visual cue to a driver when they see that it has continental striping that it is a place to stop and that people will be crossing.

Councilor McHugh replied he understands.

Councilor Miller stated he thinks it's important to point out what's on the record because that's what's going to count here and what's on the record and what the applicant has said repeatedly

is the reason that they reduced the lot sizes to the sizes that they are is to preserve that area in between the nearest house and the creek. So, he has a really hard time finding how we can object to their criteria or that it doesn't meet criteria when we have to consider what's on the record, and they've stated that repeatedly.

Community Development Director Laurie Oliver Joseph replied right, I mean what we don't want to have happen is this get appealed and sent back to the City remanded and they say, follow your own code, because that means staff has to do this all over again and when I say we've been working on this a long time, we've been working on this a long time and it's because we needed to bring you an application that met the criteria. We couldn't have brought this to you any sooner because they weren't done with the work I asked them to do so that we could bring it to you. So, this is what it takes and this is what it looks like and it is a lot, it really is, but the evidence in my opinion is pretty clear. And it's all here, it's in the record. They have done everything we've asked them to do and they pushed back and I pushed back harder. So I mean I think it's all here, but I do understand your reservation. I do understand the public's concern. Of course anyone who's lived in the area has seen flooding on that property and like the applicant said, a lot of it is quite shallow it's like six inches to fill in certain areas of the flood plain and then they are filling beyond that as well that's all been run through their model. They're showing how that works with a no rise. Again, if the city did not have these higher standards, they could have filled more. They wouldn't have had to compensate whatsoever by cutting as long as they weren't showing an increase by more than a foot, they would have been fine, but our code doesn't allow that. Our code contains higher standards. So, again from staff's perspective, they've met the criteria, but I am sympathetic towards your decision.

Councilor Lesowske stated he thinks that we've been presented the evidence, we've heard testimony, it's on us to make our next decision.

Mayor Burge stated so ultimately the decision, he thinks the first decision for Council, is deciding either to still close the hearing but then come back to do our considerations at the next meeting, which means we would go through the first reading of the ordinance then and the second reading would be December 19. That's what most of the council requested. The other option, finish Council questions, do the first reading tonight, come back to discuss it the 12th and then make any final decisions then those are really kind of the choices given that you've got a December 30th deadline and multiple holidays between now and the 30th and, remind me again, what happens if we don't make a decision by the 30th.

Community Development Director Laurie Oliver Joseph just so that everyone is aware, if we do have the next meeting it would be Monday December 12th at 7 pm in this room, just for clarity purposes.

Mayor Burge stated if we did have another one after that it would be December 19th .

Community Development Director Laurie Oliver Joseph replied, correct.

Councilor Miller explained he will be out next week on the 12th.

Councilor Poling asked if we push this out, what's our legal obligation on information we're required to follow? I mean only the information in here, no ex parte going forward.

Legal Counsel Peter Watts replied, yes. If there is ex parte contact, and he hopes there wouldn't be any, but you would need to disclose it and it needs to be based on the evidence in the record.

Councilor Poling stated he wants to make sure that's kind of clear out there.

Council President Greisen stated she is not prepared to do a first read this evening.

Councilor Poling stated he would prefer, even though he knows it's more time and it's going to be more time from staff as well, he would prefer to at least give it a little more time so that so that we can digest it and to be honest with you he doesn't know if the decision is going to be anything different, but he would rather have a little more time to read through it.

Councilor Miller said he is good with waiting.

Councilor Santiago stated she proposes we wait for next meeting.

Mayor Burge explained the hearing's closed for consideration and the matter is now in Council's hand. He stated it is 11:30 p.m. and so Council will pick up this discussion on December 12, at 7 pm.

Community Development Director Laurie Oliver Joseph stated, staff completed our comments.

Mayor Burge wanted people to understand that it is automatically approved if we don't make a decision before December 30th.

Announcements – information only

Calendar

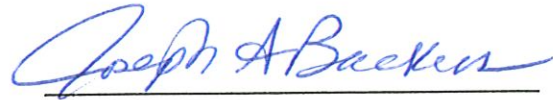
No updates due to the time.

Updates: City Manager, Police Chief, Councilors, and Mayor

No updates due to the time.

Adjournment

Mayor Burge adjourned the meeting at 11:32pm.



Mayor Joe Backus

Attest:


City Recorder Susan M. Reeves, MMC