



CITY COUNCIL MINUTES

April 15, 2024 at 7:00 PM

Wilsonville City Hall & Remote Video Conferencing

CALL TO ORDER

1. Roll Call
2. Pledge of Allegiance

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, April 15, 2024. The Mayor called the meeting to order at 7:01 p.m., followed by roll call and the Pledge of Allegiance.

PRESENT

Mayor Fitzgerald
Council President Akervall
Councilor Linville - Excused
Councilor Berry
Councilor Dunwell

STAFF PRESENT

Amanda Guile-Hinman, City Attorney
Bryan Cosgrove, City Manager
Cindy Luxhoj, Associate Planner
Dan Pauly, Planning Manager
Delora Kerber, Public Works Director
Jeanna Troha, Assistant City Manager
Kimberly Rybold, Senior Planner
Kimberly Veliz, City Recorder
Kerry Rappold, Natural Resources Manager
Mark Ottenad, Public/Government Affairs Director
Miranda Bateschell, Planning Director
Robert Wurpes, Chief of Police
Stephanie Davidson, Assistant City Attorney
Zoe Mombert, Assistant to the City Manager

3. Motion to approve the following order of the agenda.

Motion: Moved to approve the order of the agenda.

Motion made by Councilor Akervall, Seconded by Councilor Dunwell.

Voting Yea:

Mayor Fitzgerald, Councilor Akervall, Councilor Berry, Councilor Dunwell

Vote: Motion carried 4-0.

MAYOR'S BUSINESS

4. Upcoming Meetings

The Mayor provided details on the following:

Food Carts

- The Mayor recalled there were recent conversations about food carts and the distinction between a truck that may pull up to a curb and those located in a food pod garage.
- The City Manager shared that food carts were allowed for and contemplated in the Town Center Master Plan.
- The City Manager noted there were some code items that would require review which would be added to the work plan.
- In addition, Councilors were encouraged to let staff know if there were other items they would like to explore in that area.

Kroger's Fred Meyers Stores and Albertsons' Safeway Stores

- Members of the City Council were contacted by residents expressing concern about potential negative impacts to the community if Wilsonville's two largest grocery stores were to merge.
- Concerns included a potential decrease in grocery selections and competition that could lead to higher prices.
- Another concern was the potential loss specifically of pharmacy services.
- The Oregon Attorney General's Office had joined with other states in a lawsuit brought by the Federal Trade Commission seeking to block the merger on anti-trust grounds.
- The City shared a number of these concerns.
- The Mayor recalled when Albertson's acquired Safeway in 2015, the Albertson's store in Wilsonville was subsequently shut down and remains vacant to this day.
- Albertsons acted as the anchor tenant for Lowrie's Marketplace shopping center, which reduced the vibrancy in that area.
- It was reminded that the owner of the store had discretion to do what they desired. However, the Mayor added it would not be good for the community if the Fred Meyer or Safeway were to close and remain vacant for an extended period, as had happened with Albertson's former location.

- Related to pharmacy services, it was recalled that Rite Aid had filed for bankruptcy and Walgreens was closing some stores.
- While there was no information indicating that either of the Wilsonville Rite Aid or Walgreens stores may close, it still posed a concern to the community.
- The Oregon Health Authority (OHA) was taking public comments on the potential impact of the proposed merger on access to pharmacy services, especially in rural areas.
- An online public hearing by OHA was set for April 24, 2024.

Housing Our Future Taskforce

- Recently Planning Division staff reported to Council on Wilsonville's on-going efforts to develop residential living opportunities in accordance with state law under the banner of "Housing Our Future."
- As part of Wilsonville's efforts to plan for new, quality, and affordable housing, the City Manager would be appointing a volunteer task force to help advise the Council in developing policies and actions to support Wilsonville's housing needs.
- The City Council had been asked if they would like to appoint members to this task force, and indeed, Council was honored to participate.
- The Mayor shared she would appoint Councilor Dunwell as the Council Representative and Councilor Berry as the Alternate to the Housing Our Future Task Force.

Charbonneau Country Club Event

- April 4, 2024, the Mayor presented at the Charbonneau Country Club homeowners association, with about 178 people in attendance.
- Topics included the proposed Town Center redevelopment plan, the Charbonneau walking paths, and the Governor's recent decision letter regarding suspending tolling.

Rotary Club

- The Mayor attended the Rotary Club of Wilsonville 2024 Heart of Gold Dinner and Auction.
- The Mayor shared the event was remarkable with incredible volunteer work and participation by so many members of the Rotary Club, and businesses who contributed to the auction.
- At the annual Heart of Gold event, the First Citizens award was given to Brad Hanson.
- The First Citizen award honors local community members for their exceptional volunteer service to the community.
- The Mayor recalled that she read about \$50,000 was raised at the event for youth programs supported by Rotary.
- The audience was encouraged to attend next year's Heart of Gold Dinner and Auction.

Representative Neron Town Hall

- April 13, 2024, the Mayor attended Wilsonville State Representative Courtney Neron's Town Hall at the Wilsonville Public Library.
- Representative Neron provided a review of the 'short' 2024 legislative session that wrapped up in March and responded to a number of questions from constituents.

Spring Hygiene Drive

- The City collaborated with the Wilsonville Muslim Community Center to collect hygiene products for Wilsonville Community Sharing.
- During April 2024, community members could drop-off new hygiene items such as toothbrushes, shampoo, and diapers to City Hall and the Library.

Volunteer Appreciation Event

- The City's Volunteer Appreciation event was scheduled for April 25, 2024, at the Wilsonville High School Performing Arts Center.
- The event was an opportunity for the City to thank all the many volunteers who serve on boards and commissions, as well as those who help at the Community Center, Library, and other roles.

City Council Meeting and State of the City Address

- The next City Council meeting was scheduled for Monday, May 6, 2024.
- At the start of the May 6, meeting, the Mayor would present the Annual State of the City Address, which was an opportunity to review key accomplishments of the City over the past year, as well as to preview upcoming programs and events.
- In addition, at the May 6, meeting Tualatin Valley Fire & Rescue would present on the State of the Fire District.

COMMUNICATIONS

5. Child Abuse Prevention Month Proclamation

Amanda McVay and Karen Rush of the Children's Center shared details of the center's work. In addition, the audience was informed of the center's upcoming community events and activities.

The Mayor then read into the record a proclamation declaring April as Child Abuse Prevention Month in Wilsonville.

The speakers were then given a signed proclamation. This was followed by photos with the speakers, City Council, representatives for the Police Department and West-Linn Wilsonville School District.

CITIZEN INPUT AND COMMUNITY ANNOUNCEMENTS

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

Public comments were given by the following:

Bill Bagnall	Christine Weber	Cole Wieland	Cornelia Gibson	Dick Spence
Doris Wehler	Dwight Sims	Elizabeth Peters	Joel Hockensmith	John Budio
John Ludlow	Klaus Gibson	Kristin Roche	Paul Fruin	Shawn O'Neil
Stephen Hunter	Steve Schoop	Steven Brooks		

Following the public comments the Mayor shared a summary of the history of Council appointments.

The Mayor acknowledged that individuals are requested to participate in many surveys. However, she invited the audience to participate in order to gather the community's input.

COUNCILOR COMMENTS, LIAISON REPORTS AND MEETING ANNOUNCEMENTS

6. Council President Akervall

Councilor Akervall provided details on the following meetings and events:

- Diversity, Equity and Inclusion Lecture Series held on April 4, 2024
- Human Trafficking Awareness Event hosted by Wilsonville and Lake Oswego Chamber of Commerce on April 16, 2024
- West Linn - Wilsonville School District Equity Summit on April 20, 2024

7. Councilor Linville - Excused

8. Councilor Berry

Councilor Berry provided details on the following meetings and events:

- Clackamas County Coordinating Committee (C4) Metro meeting on April 4, 2024
- Clackamas County Coordinating Committee (C4) Subcommittee meeting on April 17, 2024
- Murase Park Arboretum Celebration on April 20, 2024
- Volunteer Appreciation event on April 25, 2024
- Tourism Promotion Committee meeting on May 1, 2024

9. Councilor Dunwell

Councilor Dunwell provided details on the following meetings and events:

- French Prairie Forum meeting on April 17, 2024
- Earth Day Celebration on April 20, 2024

CONSENT AGENDA

The City Attorney read the titles of the Consent Agenda items into the record.

10. **Resolution No. 3122**

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Enter Into And Execute A Cooperative Maintenance Agreement And Accept The Relinquishment Of A Portion Of SW Elligsen Road With The State Of Oregon Department Of Transportation.

11. **Resolution No. 3138**

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Construction Contract With Flow Line Construction, LLC., Inc. To Construct The Park At Merryfield And Boones Ferry Park Trails Project.

12. Minutes of the April 1, 2024, City Council Meeting.

13. Minutes of the April 3, 2024, Special City Council Meeting.

Motion: Moved to approve the Consent Agenda as read.

Motion made by Councilor Dunwell, Seconded by Councilor Akervall.

Voting Yea:

Mayor Fitzgerald, Councilor Akervall, Councilor Berry, Councilor Dunwell

Vote: Motion carried 4-0.

NEW BUSINESS

There was none.

CONTINUING BUSINESS

14. **Ordinance No. 890** - *2nd Reading (Legislative Land Use)*

An Ordinance Of The City Of Wilsonville To Adopt The 2024 Stormwater Master Plan As A Sub-Element To The City Of Wilsonville Comprehensive Plan And The Stormwater Capital Improvement Project List.

The City Attorney read the title of Ordinance No. 890 into the record on second reading.

The Mayor read the second reading script.

The Council had no further questions of staff. Therefore, the Mayor called for a motion on Ordinance No. 890.

Motion: Moved to adopt Ordinance No. 890 on second reading.

Motion made by Councilor Berry, Seconded by Councilor Dunwell.

The Mayor recalled Council had several meetings and discussions on the Stormwater Master Plan.

The Natural Resources Manager shared the survey on Let's Talk Wilsonville only received one response which was favorable.

Voting Yea:

Mayor Fitzgerald, Councilor Akervall, Councilor Berry, Councilor Dunwell

Vote: Motion carried 4-0.

15. Appeal of DRB Resolution No. 429, A Resolution Affirming the Planning Director's Determination of Non-Conformance in Case File ADMN23-0029 and Denying the Applicant's Appeal DB24-0002.

The City Attorney read the title of the appeal into the record.

At 8:35 p.m. the Mayor called to order the Wilsonville City Council meeting on the appeal by Lars Andersen & Associates, Inc. concerning the Development Review Board Resolution No. 429, case file DB24-0002.

The Mayor read the quasi-judicial appeal procedure script.

No Councilor declared a conflict of interest, bias, or conclusion from information gained outside the hearing. No member of the audience challenged any of the Councilor's participation.

The Mayor shared that she had been approached by a couple of residents speaking about Home Depot. However, she noted the comments did not influence her opinion. Furthermore, her response to residents was to read the meeting packet.

All Councilors familiarized them self with the record.

It was noted that no new evidence was to be taken or considered.

Prior to moving forward with hearing arguments on the appeal, the Council addressed a preliminary matter. It was announced that the Appellants requested a 14-day continuance of this issue.

Continuance Motion: Moved to deny the appellant request for continuance, which was submitted by Keenan Ordon-Bakalian by email to City staff on April 11, 2024.

Motion made by Councilor Dunwell, Seconded by Councilor Berry.

The Council was in agreeance they were prepared to hear the matter. Furthermore, delaying consideration of the matter to another date would negatively impact on the Council's ability to timely consider the many other matters on their calendar.

It was noted that the Council's decision in this matter may impact the applicants Class II application which was being heard by the Development Review Board. The Council desired to conclude this appeal proceeding as soon as possible to ensure that the Development Review Board decision in the Class II proceeding was informed by City Council's decision in the Class I appeal.

Voting Yea:

Mayor Fitzgerald, Councilor Akervall, Councilor Berry, Councilor Dunwell

Vote: Motion carried 4-0.

Cindy Luxhoj, Associate Planner presented a factual report related to the Appeal of Development Review Board Resolution No. 429, Case File No. DB24-0002, as required under Wilsonville Code 4.022 (.06) A. 1.

Stephanie Davidson, Assistant City Attorney next presented about the Legal Standard Applicable to Appeal of DB24-0002.

The PowerPoint displayed by staff was added to the Council record.

The Council asked clarifying questions of staff.

Recess Motion: Moved for a five-minute recess for the City Council.

Motion made by Councilor Dunwell, Seconded by Councilor Akervall.

Voting Yea:

Mayor Fitzgerald, Councilor Akervall, Councilor Berry, Councilor Dunwell

Vote: Motion carried 4-0.

The City Attorney reminded Council there was to be no discussion of the item during the recess.

The Mayor recessed the meeting at 9:16 p.m.

The Mayor reconvened the meeting at 9:21 p.m.

The appellants were then invited to present to the Council.

The following individuals presented on behalf of the applicant/appellant Home Depot:

- Attorney Keenan Ordon-Bakalian of Schwabe, Williamson & Wyatt
- Daniel J. Zoldak of Lars Andersen & Associates, Inc.
- Barry L. Simons of The Home Depot, Inc.

Attorney Ordon-Bakalian addressed the request for a continuance with the understanding that the Council denied it. The Attorney provided procedural history and background information.

During the presentation appellants addressed challenges to the decision. In addition, the appellants addressed differences of opinions regarding statements made by staff.

The PowerPoint that was presented for Development Review Board was Home Depot was displayed.

At 9:56 p.m. Council was reminded that a motion was necessary to extend the meeting past 10:00 p.m.

First Motion to Extend Meeting: Moved to extend this meeting to 11:00 p.m.

Motion made by Councilor Berry, Seconded by Councilor Akervall.

Voting Yea:

Mayor Fitzgerald, Councilor Akervall, Councilor Berry, Councilor Dunwell

Vote: Motion carried 4-0.

The Council asked clarifying questions of appellants.

Next, the following City staff members provide arguments in response to appellants' presentation:

- Miranda Bateschell, Planning Director
- Kimberly Rybold, Senior Planner
- Stephanie Davidson, Assistant City Attorney

In addition, City staff answered further questions from the Council.

The Appellant then presented their rebuttal and answered additional questions for Councilors.

The City Attorney explained the appellants were willing to extend the 120 days if Council were to leave the record open for an additional 7 days. It was the staff's understanding that the appellant team wanted to submit additional written argument or written document testimony within the next seven days. Furthermore, staff would have the same opportunity. Then Council would come back at a later meeting with that additional information and render a decision at that time. However, that could not be done without an extension of the 120 days.

Further discussion ensued between the Council, staff, and appellants. Following the commencement of discussion the Mayor requested a motion and a second to adopt an order to either affirm, reverse, or modify, the Development Review Board decision.

Prior to making that motion Council President Akervall made a motion to extend the meeting.

Second Motion to Extend Meeting: Moved to extend the meeting to 11:15 p.m.

Motion made by Councilor Akervall, Seconded by Councilor Berry.

Voting Yea:

Mayor Fitzgerald, Councilor Akervall, Councilor Berry, Councilor Dunwell

Vote: Motion carried 4-0.

Next Council made a motion on the Appeal of DRB Resolution No. 429, A Resolution Affirming the Planning Director's Determination of Non-Conformance in Case File ADMN23-0029 and Denying the Applicant's Appeal DB24-0002.

Motion: WHEREAS, on October 30, 2023, the City received an application for Class 1 Review to confirm the status of the existing use and the structure at 29400 SW Town Center Loop West (the "Location") from applicant/appellant Dan Zoldak, of Lars Andersen & Associates, Inc. ("Appellant"), requesting a Class I Review to confirm the status of the existing non-conforming use at the Location (this application is referred to as docket no. ADMN23-0029 in City records and hereinafter referred to as the "Application"); and

WHEREAS, on December 28, 2023, the Planning Director issued a Notice of Planning Director Determination (the "Planning Director's Decision"); and

WHEREAS, Appellant submitted a notice of appeal of the Planning Director's Decision to the Development Review Board (the "DRB") on January 10, 2024 (this appeal is referred to as docket no. DB24-0002 in City records and hereinafter referred to as the "DRB Appeal"); and

WHEREAS, the DRB held a public hearing for the DRB Appeal proceeding on February 26, 2024 (the "DRB Hearing"); and

WHEREAS, the DRB closed the public hearing on February 26, 2024, but kept the written record open to allow the submission of evidence and legal arguments, and reconvened to address the appeal on March 14, 2024; and

WHEREAS, on March 14, 2024 the DRB unanimously adopted Resolution No. 429, which was a written decision regarding all issues reviewed during the DRB Hearing; and

WHEREAS, on March 27, 2024, the Appellant submitted the document titled "Appellant's Notice of Appeal" to the City (the "Notice of Appeal") within the prescribed appeal period; and

WHEREAS, pursuant to the Notice of Appeal (see Notice of Appeal, p. 2), Appellant challenges the following DRB actions:

1. Rejection of certain materials and information from the record on March 14, 2024;
2. Adoption of the staff report presented to it in preparation for the February 26, 2024 meeting; and,
3. Finding that the legally established non-conforming use at the Location is "a 159,400 square-foot electronics-related retail store" (together, the "Challenged Actions"); and,

WHEREAS, on April 1, 2024, City Council adopted an order establishing the scope of this appeal proceeding and the procedure that City Council would follow during this appeal proceeding on April 1, 2024 (the “Procedural Order”); and,

WHEREAS, City Council held an appeal proceeding to address this matter on April 15, 2024 in accordance with the Procedural Order.

FINDINGS:

1. June 5, 2019 is the date of restrictive zoning (i.e., the point in time when the use of the Location must be evaluated to determine what uses are protectable as non-conforming uses).
2. Appellant asked City Council to recognize a non-conforming use for either a “commercial retail center” or “retail, office, warehouse, manufacturing, and service store” use (the “Proposed Scope of Non-Conforming Use”). Appellant has the burden of proof in this appeal to establish the nature and extent of the actual use of the Location as of June 5, 2019: Appellant must prove that the actual use of the Location as of June 5, 2019 supports the recognition of the Proposed Scope of Non-Conforming Use. City Council finds that Appellant has not satisfied its burden of proof.
 - a. Appellant has not provided any evidence that City Council deems relevant to the determination of the Proposed Scope of Non-Conforming Use. Furthermore, Appellant requested recognition of different types of uses throughout this Class I review process – initially from “retail, office, warehouse, manufacturing, and service store” in its Application to “commercial retail center” in its DRB Appeal.
 - b. City Council deems the 1991 Decision irrelevant to this decision. Appellant’s position that the 1991 Decision is the controlling authority is not supported by any legal authority, and it is contrary to extensive legal authority presented by City staff.
 - c. City Council deems the zoning regulations in place in 1991 irrelevant to this decision. This includes, but is not limited to, what uses were allowable in the Planned Development Commercial zone.
 - d. City Council deems evidence, information, and testimony regarding Home Depot, or any proposed or future occupant, of the Location, irrelevant to this decision. This includes, but is not limited to, the letter dated March 4, 2024 from Lars Andersen & Associates, Inc. regarding “Home Depot, Wilsonville, OR . . .” and the Memorandum dated March 4, 2024 from Amy Wasserman and Chis Forster, P.E. of Transportation Engineering Northwest.
 - e. City Council deems any argument regarding an alleged taking irrelevant to this decision.
3. DRB followed correct procedures, and the DRB did not err when it adopted the staff report dated February 15, 2024, and rejected certain materials and evidence from the record. But for clarity, the record for any appeal of this order to the Land Use Board of Appeals shall be the unredacted record reviewed by City Council.

4. The City Council finds relevant Appellant’s admission that a “Fry’s Electronics” operated at the Location from 1991 to 2021. *See* Attachment 3 (in the City Council Record), p. 84. The City Council further finds relevant certain descriptions of electronics retail uses occurring at the Location, as consistent with an electronics-related retail store. Also found on page 84.
5. Assuming, for the sake of argument only, that consideration of the 1991 Decision is determined to be relevant by future reviewing body or bodies, the City Council finds that the facts described in point 4 above are consistent with the 1991 Decision’s adopted staff report, which describes, on the first page, that the approved development is “a 159,400 square foot electronics-related retail store.” Attachment 3 (the City Council Records), p. 98.

IT IS THEREFORE ORDERED, by the City of Wilsonville City Council, at its regular meeting on this 15th day of April 2024, that the Development Review Board decision in Resolution No. 429, determining the scope of the legally established non-conforming use at the Location is “a 159,400 square-foot electronics-related retail store,” is affirmed, and further, that this was correct and appropriate decision made based on applicable laws, policies, and standards. The Appeal is therefore respectfully denied.

Motion made by Councilor Akervall, Seconded by Councilor Dunwell.

Council discussion ensued.

The Council appreciated all involved in the process. In addition, the input from the many participants involved in the Town Center Plan and Zoning Code was acknowledged.

It was also acknowledged that the job of the Council was not to talk about brands but to evaluate on clear subjective laws for all businesses. The Council’s job was to evaluate applications based on clear objective standards, on laws, not someone’s subjective opinion. Moreover, it was about being fair, equitable and following the process expected for all the businesses in Wilsonville.

The Council unanimously shared their support for the motion set forth.

Voting Yea:

Mayor Fitzgerald, Councilor Akervall, Councilor Berry, Councilor Dunwell

Vote: Motion carried 4-0.

The Mayor then provided the appeal script and announced those that desired to appeal the decision to the Oregon Land Use Board of Appeals (LUBA), must make application, stating the grounds of the appeal, in the form and within the time prescribed by State law.

PUBLIC HEARING

There was none.

CITY MANAGER’S BUSINESS

There was none.

LEGAL BUSINESS

There was none.

ADJOURN

The Mayor adjourned the meeting at 11:13 p.m.

Respectfully submitted,

Kimberly Veliz, City Recorder

ATTEST:

Julie Fitzgerald, Mayor

DRAFT