



# PLANNING COMMISSION

## WEDNESDAY, JUNE 12, 2024

### INFORMATIONAL

4. City Council Action Minutes (May 6, 17 & 20, 2024) *(No staff presentation)*

City Council Meeting Action Minutes  
May 6, 2024

**COUNCILORS PRESENT**

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

Kimberly Veliz, City Recorder  
Jeanna Troha, Assistant City Manager  
Zoe Mombert, Assistant to the City Manager  
Dan Pauly, Planning Manager  
Kimberly Rybold, Senior Planner  
Miranda Bateschell, Planning Director  
Stephanie Davidson, Assistant City Attorney  
Bill Evans, Communications & Marketing Manager  
Chris Neamtzu, Community Development Director  
Zach Weigel, City Engineer

**STAFF PRESENT**

Bryan Cosgrove, City Manager  
Amanda Guile-Hinman, City Attorney

AGENDA ITEM	ACTIONS
<b>WORK SESSION</b>	<b>START: 5:03 p.m.</b>
<p>A. Frog Pond East and South Development Code</p> <p>B. IGA with Metro for Wilsonville Industrial Land Readiness Project</p>	<p>Staff sought additional input from Council to inform development code amendments consistent with the Frog Pond East and South Master Plan.</p> <p>Council was informed of Resolution No. 3139, which authorizes the City Manager to execute an intergovernmental agreement (IGA) with Metro for the Wilsonville Industrial Land Readiness Project.</p>
<b>REGULAR MEETING</b>	
<u>Mayor’s Business</u>	
<p>A. State of the City Address</p>	<p>The Mayor presented the 2024 State of the City Adress.</p>
<u>Communications</u>	
<p>A. Senator Aaron Woods B. Representative Courtney Neron</p> <p>C. Tualatin Valley Fire &amp; Rescue State of the District</p>	<p>Both Senator Woods and Representative Neron spoke about several legislative issues in which they collaborated with the City</p> <p>The Tualatin Valley Fire and Rescue Government Affairs Division Chief provided the agencies 2024 State of the District Address.</p>

Consent Agenda

The Consent Agenda was approved 4-0.

- A. **Resolution No. 3132**  
A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Construction Contract With Aaken Corporation To Construct Street Lighting LED Conversion – Phase 3 Project (CIP #4722)
  
- B. **Resolution No. 3134**  
A Resolution To Allocate Community Enhancement Funds For Fiscal Year 2024/2025.
  
- C. **Resolution No. 3135**  
A Resolution Of The City Of Wilsonville Acting In Its Capacity As The Local Contract Review Board Authorizing The City Manager To Execute A Contract With Absco Solutions For Updating Card Access And Security Cameras At The SMART Administration Facility.
  
- D. **Resolution No. 3136**  
A Resolution Of The City Of Wilsonville Acting In Its Capacity As The Local Contract Review Board Authorizing The City Manager To Execute An Intergovernmental Agreement With Clackamas County To Build Fiber Infrastructure To The Elligsen And C Level Reservoirs.
  
- E. **Resolution No. 3137**  
A Resolution Of The City Of Wilsonville Authorizing Acquisition Of Property And Property Interests Related To Construction Of The I-5 Pedestrian Bridge Project.
  
- F. **Resolution No. 3139**  
A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute An Intergovernmental Agreement With Metro For The Wilsonville Industrial Land Readiness Project.
  
- G. **Resolution No. 3140**  
A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute An Intergovernmental Agreement With The City Of Portland For Local Improvement District Services.

New Business

- A. None.

<p><u>Continuing Business</u></p> <p>A. None.</p>	
<p><u>Public Hearing</u></p> <p>A. <b><u>Ordinance No. 891</u></b>  An Ordinance Of The City Of Wilsonville Repealing  And Replacing Wilsonville Code Sections 2.310-2.319  Regarding Public Contracts.</p>	<p>After a public hearing was conducted, Ordinance No. 891 was approved on first reading by a vote of 4-0.</p>
<p><u>City Manager's Business</u></p>	<p>The City Manager shared news of a pending \$550,000 grant from the Land and Water Conservation Fund, procured by the City's Parks and Recreation staff, which is to be used for the purchase and installation of new play equipment at lower Memorial Park.</p>
<p><u>Legal Business</u></p>	<p>The City Attorney updated the Council on a collaboration with non-profits Wilsonville Community Sharing and Heart of the City to successfully procure more than \$500,000 over two years from Clackamas County Health, Housing and Human Services to fund programs that provide hotel vouchers and other supportive services to aid people experiencing homelessness.</p> <p>Council moved to adopt an order establishing the procedure that City Council would follow of appeal proceeding for anticipated appeal of Development Review Board Resolution No. 432 to City Council as distributed. Passed 4-0.</p>
<p><b>ADJOURN</b></p>	<p>10:00 p.m.</p>

Special City Council Meeting Action Minutes  
May 17, 2024

**COUNCILORS PRESENT**

Mayor Fitzgerald  
Council President Akervall  
Councilor Linville  
Councilor Berry  
Councilor Dunwell

Amanda Guile-Hinman, City Attorney  
Cindy Luxhoj, Associate Planner Kimberly Rybold,  
Senior Planner  
Kimberly Veliz, City Recorder  
Jeanna Troha, Assistant City Manager  
Miranda Bateschell, Planning Director  
Dan Pauly, Planning Manager  
Stephanie Davidson, Assistant City Attorney  
Zoe Mombert, Assistant to the City Manager

**STAFF PRESENT**

Bryan Cosgrove, City Manager

AGENDA ITEM	ACTIONS
<b>SPECIAL MEETING</b>	<b>START: 12:00 p.m.</b>
A. Appeal of DRB Resolution No. 432, A Resolution Denying the Proposed Occupant's (The Home Depot) Proposed Use at 29400 SW Town Center Loop West is a Continuation of the Existing Non-Conforming Use in Case File No. DB24-0003 (Planning Director Referral of AR23-0031).	Council moved and passed 5-0, the attached Order on Appeal for Development Review Board Resolution No. 432.
<b>ADJOURN</b>	3:56 p.m.

## ORDER ON APPEAL: DEVELOPMENT REVIEW BOARD RESOLUTION NO. 432

WHEREAS, on December 15, 2023, the City received an application for Class II Review with respect to the real property located at 29400 SW Town Center Loop West (respectively, the “Location”) from applicant/appellant Dan Zoldak, of Lars Andersen & Associates, Inc. (“Appellant”) (this application is referred to as “AR23-0031” in City records); and

WHEREAS, in its application, Appellant requested a “Class II Staff Interpretation to confirm that The Home Depot and Fry’s Electronics are both warehouse retail uses” at the Location, and alternatively, a “staff interpretation of the Wilsonville Development Code to confirm that The Home Depot store proposed for [the Location] constitutes a warehouse retail use and may operate in the existing structure”; and

WHEREAS, the City processed the Appellant’s application as a request to confirm that the Home Depot’s (the “Proposed Occupant”) proposed use of the Location will constitute a continuation of the non-conforming use, as provided in Wilsonville Code (WC) Section 4.189(.01), which existing nonconforming use was confirmed in the related but separate Class I decision relating to the Location (which was established by the Development Review Board (“DRB”) in Resolution No. 429, and later confirmed by Order on Appeal by City Council dated April 15, 2024); and

WHEREAS, the Planning Director referred the application to the DRB for a public hearing per WC 4.030(.01)B., and did not issue a Planning Director’s decision; and

WHEREAS, the DRB held a public hearing on April 8, 2024 (this proceeding is referred to as “DB24-0003” in City records); and

WHEREAS, the DRB closed the public hearing on April 8, 2024, but kept the written record open to allow the submission of evidence and legal argument, and reconvened to consider the application and issued a decision on April 24, 2024; and

WHEREAS, on April 24, 2024 the DRB unanimously adopted Resolution No. 432; and

WHEREAS, during its regularly scheduled meeting on May 6, 2024, anticipating that Appellant would appeal Resolution No. 432, City Council adopted an order establishing the scope of this appeal proceeding and the procedure that City Council would follow during the appeal proceeding, and set May 17, 2024 at 12:00 p.m. as the date and time of the appeal proceeding (the “Procedural Order”); and,

WHEREAS, on May 7, 2024, Appellant submitted the document titled “Appellant’s Notice of Appeal” to the City (the “Notice of Appeal”) within the prescribed appeal period; and

WHEREAS, City Council held an appeal proceeding to address this matter on May 17, 2024 in accordance with the Procedural Order; and,

WHEREAS, all references to the “staff report” in this order are to the staff report prepared

by staff for the May 17, 2024 titled “Order on Appeal: DRB Resolution No. 432” (the “Staff Report”) and all citations in the following findings are to the attachments to this Staff Report.

FINDINGS:

1. The foregoing recitals are hereby incorporated as findings of the Council, as if fully set forth herein.
2. As of the date of this order, the recognized non-conforming use at the Location is “a 159,400 square-foot electronics-related retail store,” which was determined by the DRB Decision in Case File DB24-0002 (Resolution No. 429), and affirmed by Council in its Order on Appeal dated April 15, 2024 (the “Recognized Non-Conforming Use”). Council finds re-argument of the settled issue of the Recognized Non-Conforming Use in the Class I land use proceedings irrelevant to this decision.
3. Appellant describes itself as a “home improvement warehouse store” (Attachment 3b, page 89), which is not the same as an “electronics-related retail store.”
4. Appellant has the burden of proof in this appeal to establish that the Proposed Occupant’s proposed use of the Location would be a continuation of the Recognized Non-Conforming Use at the Location. Council finds that Appellant has not satisfied its burden of proof for the following reasons:
  - a. Council finds that Appellant relies on evidence irrelevant to this Class II Review, including: (1) the exhibits attached to Appellant’s April 15, 2024 “Open Record Submittal” to the DRB, (2) discussion of the Town Center Plan and related zoning, and (3) the document referred to as the “1991 Decision” throughout these proceedings (Attachment 3b, pages 94-254). Council finds the reasoning on pages 14-17 of the Staff Report persuasive.
  - b. Proposed Occupant proposes to engage in the following activities at the Location, and there is no evidence in the record that establishes that the Current Occupant engaged in these activities at the Location as of June 5, 2019. Regardless of any ancillary commonalities that may be shared by Proposed Occupant and Current Occupant, these activities amount to a “fundamental change in the nature of the use” and go beyond the scope of the Recognized Non-Conforming Use. *See Hendgen v. Clackamas Cnty.*, 115 Or App 117, 121 (1992). The ancillary commonalities are insufficient to compel the Council to grant the relief that has been requested by Appellant.
    - i. Based on the document titled “Applicant’s Narrative and Exhibits Demonstrating Compliance with the Relevant Approval Criteria,” which was submitted by Appellant to the DRB, Proposed Occupant plans to sell tools and construction products (Attachment 3b, page 89). This description is supported by photos showed during Appellant’s presentation at the DRB public hearing on April 8, 2024 (Attachment

3b, pages 468-484), which showed images of merchandise, often stocked floor-to-ceiling, that included large electric power tools, floor polishers, tools, hardware, chainsaws, flooring, paint, cleaning products, windows and doors, large household appliances (e.g. washing and drying machines, refrigerators), light fixtures and lighting systems, saw blades, and patio furniture. There is no evidence in the record of Current Occupant selling these products, or even these types of products. Further, the as-built floor plan submitted by the Current Occupant to the City's Building Division in 2014 (Attachment 3b, page 15) supports this assessment; the only similar type of product shown on this floor plan is small appliances, which are not the same as large household appliances such as washing and drying machines. The as-built floor plan predates the date of non-conformance by five years, which lessens the weight Council assigns to this evidence. However, Council finds it more credible than other evidence submitted by Appellant that is: (1) not from the Location (i.e., other Fry's Electronics stores), (2) earlier in time, and/or (3) fails to demonstrate that the Current Occupant and the Proposed Occupant engaged in the same retail sales.

- ii. Proposed Occupant plans to have a garden center (i.e., a nursery that sells live plants). The site plan included in Appellant's application materials shows a garden center at the front of the building (Attachment 3b, page 256). During the DRB public hearing on April 8, 2024, Barry Simmons, a real estate manager for the Proposed Occupant, acknowledged that there would be a garden center with "live goods" inside the existing building (Attachment 5, page 10). A garden center that contains live plants would require some kind of irrigation or watering. There is no evidence in the record of Current Occupant selling these types of products, or anything live that required irrigation or watering.
- iii. Proposed Occupant would have at least some operations outside of the existing building at the Location. The site plan included in Appellant's application materials shows a "lumber pad" at the back of the building (Attachment 3b, page 256). The extent of the activities that would occur in this area is not clear. During the DRB public hearing on April 8, 2024, Barry Simmons stated that the lumber pad area would be used to unload heavier products off of a flatbed truck, and that it would not be used for exterior storage (Attachment 5, page 10). There is no evidence in the record of Current Occupant having any operations outside of the building that currently exists at the Location, whether for receiving, unloading, temporary storage, or for some other purpose. Although the extent of these activities is unclear, Council must rely to some extent on what has been represented in Appellant's initial application materials.
- iv. Contractors and other home improvement professionals would account



for close to half of the Proposed Occupant's annual sales (Attachment 3b, page 90). There is no evidence in the record of Current Occupant selling to contractors or other home improvement professionals.


- c. During the DRB public hearing on April 8, 2024, Barry Simmons suggested that Proposed Occupant would probably invest about \$20 million into redeveloping the Location, including upgrading roads, the water system, sewer system, and called the project a "redevelopment" (Attachment 5, page 14). This statement strongly suggests that Proposed Occupant's plans involve significant changes to the Location, which go far beyond a mere continuation of non-conforming use.
5. Appellant failed to preserve any argument regarding the utilization of both Class I and Class II review processes in this matter. Assuming, without acknowledging, that the argument was preserved, WC 4.030(.01)A.7. states that confirmation of an existing non-conforming use is subject to a Class I Review, not the determination whether a proposed use is a continuation of an existing non-conforming use. A Class II Review is required for determining continuation of existing non-conforming use, as explained in the Staff Report. Further, Council finds that City staff proposed that Appellant withdraw its Class I application, while preserving its arguments concerning existing non-conforming use, in order for the Class I and Class II applications to be processed together, and Appellant refused (Attachment 3b, pages 63-65).
6. DRB followed correct procedures, and in particular, the DRB did not err when it adopted the staff report dated April 1, 2024 for the reasons stated on pages 2-3 of the Staff Report. DRB properly applied the relevant Wilsonville Code provisions, including, but not limited to, WC 4.030 and 4.189, as evidenced by findings A5 through A11 of DRB Resolution No. 432.
7. For the reasons provided in the Staff Report, Council finds Appellant's arguments unpersuasive regarding: (a) parking spaces and traffic impacts, (b) certificates of occupancy, (c) the 1991 Decision, (d) the 1992 CCRs, (e) current Town Center zoning regulations; (f) the "codification" rule and, relatedly, Ordinance No. 55; and (g) the "common nucleus" test.

IT IS THEREFORE ORDERED, by the City of Wilsonville City Council, at its special meeting on this 17th day of May 2024, that the Development Review Board decision in Resolution No. 432 is affirmed, and further, that this was the correct and appropriate decision made based on applicable laws, policies, and standards. The Appeal is therefore respectfully denied.

DATED this 17th day of May 2024.

  
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JULIE FITZGERALD MAYOR

ATTEST:

  
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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

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

# City Council Meeting Action Minutes

## May 20, 2024

**COUNCILORS PRESENT**

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

Kimberly Rybold, Senior Planner  
 Kimberly Veliz, City Recorder  
 Jeanna Troha, Assistant City Manager  
 Dan Pauly, Planning Manager  
 Miranda Bateschell, Planning Director  
 Zoe Mombert, Assistant to the City Manager  
 Bill Evans, Communications & Marketing Manager

**STAFF PRESENT**

Amanda Guile-Hinman, City Attorney

AGENDA ITEM	ACTIONS
<b>WORK SESSION</b>	
<b>START: 5:04 p.m.</b>	
<ul style="list-style-type: none"> <li>A. Housing Our Future</li>   <li>B. Frog Pond East and South Implementation Development Code</li> </ul>	<p>Staff sought direction from the Council as to what additional public outreach might be valuable to further inform the Housing Our Future project.</p> <p>Council and staff continued ongoing dialogue to identify development code amendments to support planned residential growth in alignment with the Frog Pond East and South Master Plan and the Equitable Housing Strategic Plan.</p>
<b>REGULAR MEETING</b>	
<u>Mayor’s Business</u>	
<ul style="list-style-type: none"> <li>A. Upcoming Meetings</li> </ul>	<p>Upcoming meetings were announced by the Mayor as well as the regional meetings she attended on behalf of the City.</p>
<u>Communications</u>	
<ul style="list-style-type: none"> <li>A. Recognition of Sean Sype</li> </ul>	<p>Sean Sype was recognized for successfully pursuing legislation that allows Oregon jurisdictions to install cameras on school bus stop sign arms as a deterrent to drivers who don’t stop for school buses as required by law. Measure 4147, co-sponsored by Representative Courtney Neron (House District 26), was adopted by the State legislature in March, and becomes effective in 2025.</p>

<p>B. <b>Wilsonville High School Student Achievements</b></p>	<p>Student body co-president Venecia Gonzales shared with the Council a summary of student accolades and achievements. In addition the Wilsonville High Girls' Golf Team was recognized on the occasion of winning the 5A State Championship.</p>
<p><u>Consent Agenda</u></p> <p>A. <b><u>Resolution No. 3113</u></b>  A Resolution Of The City Of Wilsonville Authorizing The City Manager To Amend A Goods And Services Contract With Absco Alarms, Incorporated For The Security And Access Controls For The Public Works Complex (CIP # 8113).</p> <p>B. <b><u>Resolution No. 3141</u></b>  A Resolution Of The City Of Wilsonville Adopting The FY 2024/25 Five-Year Action Plan And Annual One-Year Implementation Plan For The Wilsonville Tourism Development Strategy.</p> <p>C. Minutes of the April 15, 2024 City Council Meeting.</p>	<p>The Consent Agenda was approved 4-0.</p>
<p><u>New Business</u></p> <p>A. <b><u>Resolution No. 3146</u></b>  A Resolution Of The City Of Wilsonville Authorizing The City Manager To Enter Into A Disposition And Development Agreement With Palindrome Wilsonville Limited Partnership</p> <p>B. <b><u>Resolution No. 3147</u></b>  A Resolution Of The City of Wilsonville Establishing A Systems Development Charges Deferral Program For Affordable Housing Projects On City-Owned Property.</p>	<p>Resolution No. 3146 was adopted 4-0.</p> <p>Resolution No. 3147 was adopted 3-1.</p>
<p><u>Continuing Business</u></p> <p>A. <b><u>Ordinance No. 891</u></b>  An Ordinance Of The City Of Wilsonville Repealing And Replacing Wilsonville Code Sections 2.310-2.319 Regarding Public Contracts</p>	<p>Ordinance No. 891 was adopted on second reading by a vote of 4-0.</p>
<p><u>Public Hearing</u></p> <p>A. None.</p>	
<p><u>City Manager's Business</u></p>	<p>Council was invited to the Grand Opening of the Korean War Memorial Interpretive Center on June 29, 2024.</p>

	The Assistant City Manager reminded all about the upcoming election and shared there was an election drop box in the City Hall parking lot.
<u>Legal Business</u>	No report.
<b>ADJOURN</b>	8:55 p.m.