

REGULAR MEETING MINUTES  
SISTERS CITY COUNCIL  
520 E. CASCADE AVENUE  
JULY 23, 2015

**MEMBERS PRESENT:**

Chris Frye Mayor  
Nancy Connolly Council President Pro-tem  
David Asson Councilor  
Wendy Holzman Councilor  
Amy Burgstahler Councilor

**STAFF PRESENT:**

Andrew Gorayeb City Manager  
Steve Bryant City Attorney  
Patrick Davenport CDD Director  
Lynne Fujita-Conrads Finance Officer  
Kathy Nelson City Recorder

**ABSENT:**

Paul Bertagna PW Director

**I. CALL TO ORDER/PLEDGE OF ALLEGIANCE**

The meeting was called to order by Mayor Frye at 7: p.m.

**II. COUNCILOR APPOINTMENT**

*Councilor Holzman moved to appoint Amy Burgstahler to serve on the City Council for a term that expires on December 31 2016. Councilor Asson seconded the motion. The motion carried unanimously.*

**III. OATH OF OFFICE FOR APPOINTED COUNCILOR**

City Attorney Bryant administered the oath of office to Amy Burgstahler.

**IV. ELECTION OF COUNCIL PRESIDENT**

Mayor Frye asked for nominations for Council President.

*Council nominated Councilor Connolly to serve as Council President Pro-tem. Councilor Holzman seconded the motion. The motion carried unanimously.*

**V. VISITOR COMMUNICATION - None**

**VI. CONSENT AGENDA**

A. Minutes

1. June 25, 2015 –Regular Meeting
2. July 09, 2015 – Regular Meeting

B. Bills to Approve

1. July Accounts Payable

C. Liquor License Change of Ownership – The Gallery Restaurant & Bar

*Councilor Holzman moved to approve the consent agenda. Councilor Asson seconded the motion. The motion carried unanimously.*

**VII. STAFF REPORTS**

A. Deschutes County Sheriff's Office – no questions

**VIII. COUNCIL BUSINESS**

**A. Public Hearing and Consideration of a Resolution No. 2015-16: A RESOLUTION OF THE CITY OF SISTERS ADOPTING A SUPPLEMENTAL BUDGET AND ESTABLISHING APPROPRIATIONS WITHIN THE 2015/16 BUDGET**

**Finance Officer Fujita-Conrads** stated the supplemental budget was to permit funds held by the City from the defunct Community Assets Team of Sisters (CATS) to be used for additional review and analysis of community asset projects identified by the Community Assets Committee (CAC) and to increase capital outlay for the Barclay Drive Waterline Project that was not completed prior to the beginning of the new budget year as originally expected.

**Mayor Frye** opened the public hearing for anyone that wished to speak. As there was no one that wished to speak on the matter, **Mayor Frye** closed the public hearing.

**Councilor Connolly** stated she had received a message from a citizen alleging the CATS funds could not be used for the purpose proposed and questioned whether it was appropriate to use the funds. **Finance Officer Fujita-Conrads** replied the CATS funds were given to the City with the stipulation they be used in supporting community visioning efforts for Sisters Country and it was an appropriate use of the funds.

**Councilor Asson** stated he was concerned with appropriating the CATS funds as he was uncertain if it was worthwhile to move forward with reviewing the projects. **City Recorder Nelson** reminded the Council they could appropriate the funds but it did not mean they would necessarily be spent. **Councilor Holzman** stated she had been a member of the CAC and supported moving forward with fleshing out the projects identified by the committee.

***Councilor Holzman** moved to approve Resolution No. 2015-16 adopting a supplemental budget and establishing appropriations within the 2015/16 budget. **Councilor Connolly** seconded the motion. The motion carried unanimously.*

**B. Discussion and Consideration of Resolution No. 2015-17: A RESOLUTION SUPPORTING THE CREATION OF A COMMITTEE TO FURTHER RESEARCH THE TOP TWO COMMUNITY ASSET PROJECTS IDENTIFIED BY THE COMMUNITY ASSETS COMMITTEE AND AUTHORIZE THE USE OF COMMUNITY ACTION TEAM OF SISTERS FUNDS HELD BY THE CITY OF SISTERS**

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**City Recorder Nelson** explained the resolution was in support of the June 18<sup>th</sup> presentation by the CAC and its recommendation to further review the two top ideas identified during the process the CAC undertook. She stated the CAC felt a committee with specific knowledge in business development, design, architecture and financing was necessary to continue researching the feasibility of either project. She reported there would still be \$3,442 of CATS left if the Council approved soliciting members for the specialized committee which would be allotted \$10,000 to create architectural designs, elevations, interior color renditions, budget and financing options for the two projects.

**Councilor Asson** stated he was not comfortable with moving forward and felt it was a backwards way of doing things. He stated he was unsure if this was something the City should be undertaking. **Councilor Connolly** stated she was somewhat torn in her feelings toward the matter. She stated she liked the work the CAC had performed and that the cost to further review the project was not a huge amount. She stated to walk away at this point would not be appropriate after all the work the committee had performed. **Councilor Holzman** stated on behalf of the committee she felt creating a committee with a specific skillset was the next logical step in determining if the projects were right for the city. As part of the research, the committee would look into what group or non-profit could be in charge of day to day operations of a project.

**Mayor Frye** stated he also felt it was not appropriate to pull the plug at this time. He stated a lot of people had provided input since the first town hall meeting in February 2014 when the community asset projects were first identified. **Councilor Burgstahler** stated she also felt it was a logical step forward from what had transpired and would allow ideas to be fleshed out.

***Councilor Holzman** moved to approve Resolution No. 2015-17 supporting the creation of a committee to further research the top two community asset projects identified by the Community Assets Committee and authorize the use of Community Action Team of Sisters (CATS) funds held by the City of Sisters. **Councilor Connolly** seconded the motion. The motion carried with a vote of four to one. **Councilor Holzman, Councilor Connolly, Councilor Burgstahler** and **Mayor Frye** voted in support of the resolution. **Councilor Asson** voted against the resolution.*

**C. Public Hearing** for an Appeal of a City of Sisters Planning Commission Decision Relating to Planning Commission Resolution No. 2015-13 regarding MOD 15-

**Mayor Frye** read from the script for the Appeal (Appeal #15-02) of Planning Commission Resolution No. Planning Commission 2015-13 affecting File No. MOD 15-05 and SP 15-01, McKenzie Meadows Village (MMV) Assisted Living Facility, Phase 1. He stated MOD-05 was an application for a modification to the approved master plan and SP 15-01 was a site plan for an assisted living facility. He explained it was a 'de-novo' hearing that allowed all

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aspects of the application to be re-evaluated as if it were newly submitted. He called the hearing to order.

**Mayor Frye** explained how the hearing would be conducted and how to testify. He stated he would limit testimony to 5 minutes per person with the exception of the applicant's attorney and the developer's attorney, who would have 15 minutes to testify. He stated the applicable criteria was listed in the staff report and would be used by the Council in making its decision. He noted that failure to raise an issue with sufficient specificity to afford the Council and all parties an opportunity to respond to the issue could preclude an appeal to the Land Use board of Appeals (LUBA) based on that issue and could preclude an action in Circuit Court.

**Mayor Frye** asked if any member of the Council had any disclosures. **Councilor Connolly** reported she had met with both Mike Reed and Mark Adolf on separate occasions relating to different topics but the MMV project came up in both conversations. She stated she did not feel she had any conflict in participating. **Mayor Frye** asked if any member of the audience wished to challenge the ability of any Councilor to hear the matter and there were no audience members that voiced any challenge. **Mayor Frye** requested Director Davenport present his staff report.

**Director Davenport** announced there were three additional emails to add to the record.

**Director Davenport** provided a brief summary of the matter. He reported Pinnacle Alliance Group LLC appealed the Planning Commission decision of approval on June 18<sup>th</sup> for MMV modification MOD15-05 and site Plan SP 15-01. He explained MOD15-05 was a modification to the MMV Master Plan development , MP10-01, Sub10-02 to accommodate a specific site plan , SP15-01, supporting the construction of an assisted living facility (ALF). The modification request was to accommodate shifting a portion of the proposed building by more than 25 feet, which could constitute a major modification requiring review by the Planning Commission. The site plan, SP15-01 was for a 46,750 square foot building ALF with associated parking, landscaping and other required features. He stated staff was requesting the Council perform a de novo review, consider the appeal and issue a decision to either remand, affirm, reverse or modify the decision by the Planning Commission. He noted the staff report included attachments A through P.

**Director Davenport** gave a Power Point presentation. He showed a zoning map, pointing out the subject site and then showed a tighter shot illustrating the site map, noting the property was located west of Sisters High School and east of Village at Cold Springs subdivision. He provided an overview of the prior approvals on the subject property ranging from the annexation and annexation agreement in December 2009, master plan and subdivision approved in September 2010, revised annexation agreement, site plan approval under a previous applicant that expired in September 2011, modification to a master plan and

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subdivision in December 2012, approval of a modification and site plan on June 18<sup>th</sup> by the Planning Commission to this evening's appeal. He presented a slide of the current master plan with the proposed modification to the master plan super-imposed on it to illustrate the proposed new footprint. He noted it increased the footprint on one portion of the building over 25 feet and shrunk another portion of the building footprint by more than 25 feet. He stated the modification changed the building to one entrance and shifted parking closer to the building. He also pointed out the area for a future phase.

**Director Davenport** provided some Development Code definition for assisted living facility, residential facility and residential care facility. He provided an overview of Development Code references relating to special provision for residential care homes and facilities, specifically licensing and site design review, and modifications to master plans.

**Director Davenport** provided a summary of responses staff had drafted to address the concerns raised in the appeal.

- Is the City Council required to perform a “de novo” evidentiary review of the application under appeal? **Yes**
- Does the MMV project comply with associated annexation agreements, MP 10-01 as amended by MOD 12-01 and MOD 12-02, Comprehensive Plan Amendment CP 10-02, Zone Change ZC 10-01, SUB 10-02 and SP 11-05 approvals?

**Yes. The proposal is in compliance with previous land use approvals except the expired SP 11-05 and its associated MOD 12-02.**

- Are the applications MOD 15-05 and SP 15-01 a Type II or Type III applications? **MOD 15-05 is a Type III and SP 15-01 is a Type II application. Both applications were heard at the June 18, 2015 PC meeting.**

- Did staff correctly process the consolidated application as a Type III application? **Staff correctly processed the applications. The proposed shift of the building, parking lot and entrance does not require new land use applications.**

- Are the studies referenced in SDC 4.1.77.A.7 required to be performed by the applicant?

**No. The shift of the building toward the center of the property and shift in the parking lots and entrances did not necessitate the requirements for new land use applications.**

- Does the proposed use of “Housing with Services” and “Memory Care” necessitate a Major Modification which would require amendments to the annexation agreement and subsequent land use decisions?

**No. The proposed uses are consistent with SDC definitions of Assisted Living Facility and Residential Care Facility, and the annexation agreements which reference “Senior Living Center and Senior Assisted Living Center”.**

- Does the proposed use of “Housing with Services” and “Memory Care” create a “substantial adverse impact on prior approvals? **No.**
- Are Residential Care Facilities required to be licensed by the State of Oregon?

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See SDC definition; RCFs are required to be licensed by the State. Staff from the State DHS reviewed the proposal for Housing with Services and determine that no license was required for that client care model.

- Does the proposed use of “Housing with Services and “Memory Care” require amendments to the Annexation Agreements, and subsequent land use decisions? **No.**
- Is the applicant required to construct and operate a facility that is wholly licensed by the State of Oregon?

**No.** Any licensing requirements for the proposed uses by the State will be co-enforced by the City. Prior to occupancy of the facility, licensing requirements are required to be satisfied.

- Did staff ignore the appellant’s request for evidence of a request for information from the appellant that relates to proof that various dates and deadlines by previous and is the applicant’s previous land use applications still valid/unexpired.

Staff does not have a specific record of this request by the appellant. The project’s entitlements are not expired.

- Did the Planning Commission act according to procedures set forth in the SDC pertaining to requesting that the hearing be continued?

The Planning Commission did not continue the hearing as requested by the appellant. SDC reference 4.1.500.C.1.d: *Before the conclusion of the initial evidentiary hearing, any participant may ask the Planning Commission for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a “continuance”) per paragraph 2 of this subsection, or by leaving the record open for additional written evidence or testimony per paragraph 3 of this subsection.*

- **Appellant’s Footnote 1:** Was the application included in the staff report to the Planning Commission unsigned, deficient and should it never have been accepted.

Staff inadvertently placed the unsigned version of the application in the staff report. Staff received a properly signed application which is identical to the unsigned application (**Attachment N**).

- **Appellant’s footnote 2:** “The applicant’s Burden of Proof did not use SP 11-05. The filing of a Type II application instead of a Type III application amount to a de facto City of Sister sanctioned subsidy of the applicant’s project to the disadvantage of other similarly situated thus violating the appellant’s constitutional rights under the 5<sup>th</sup> and 14<sup>th</sup> amendments.”

SP 11-05 is a now expired application and the current applicant is under no obligation to modify said expired plan. A new site plan was filed (SP 15-01) which in essence supersedes the now expired SP 11-05. Even if the SP 11-05 was not expired, as previously mentioned, it is entirely unreasonable to require an applicant to modify an application with whom the applicant is no longer associated with and with whom the former associate is now an opponent of the application.

The application MOD 15-05 was processed as a Type III application with the exception of requiring needless studies for a minor adjustment in building location and parking and consolidation of entrances.

- Does the previously approved master plan (MP 10-01, and SUB 10-02) clearly state that that “a shift greater than 25-feet in the location of buildings, proposed streets, parking lot configurations and landscaping or other site improvements” constitute “substantial adverse impact” requiring a new Master Plan for the entire subject property?

The language being cited by PAG references the SDC requirements for Section 4.5.800, adopted on May 13, 2010, not a specific condition of approval for the application.

The SDC Section 4.5.800.D, adopted on May 13, 2010 states:

D. Amendments to Master Plan. Once adopted, amendments that create substantial adverse impacts to an approved Master Plan shall be processed as a new Master Plan for the entire subject property, except as provided for in the original Master Plan approval.

1. Examples of substantial adverse impacts **may include**;

An increase to lot coverage by buildings or residential densities by more than 10 percent;

A reduction greater than permissible to the dimensional standards identified in Section 4.5.130.B;

A reduction to open space;

A significant change to circulation;

Any change that commits land to development which is environmentally sensitive or subject to a potential hazard; and

A shift greater than 25-feet in the location of buildings, proposed streets, parking lot configuration and landscaping or other site improvements.

- Do the Conditions of Approval fail to include the below listed requirements? (examples 1-5)

(1) “The applicant complete a final subdivision plat of the portion of MMV’s property upon which the Senior Assisted Living Facility is to be constructed before issuance of a building permit

This condition references MP 10-01 and SUB 10-02 as amended by MOD 12-01, affecting files no. MP10-01, SUB 10-02 Hearing Date: October 18, 2012 Page 13 of 17.

*Phase I. The final plat for Phase I of this development shall be recorded within two (2) years of the date of this approval. The Phase I area was amended administratively to include the lot containing the ‘Grange Hall’, and shall be considered as the approved preliminary plat for phase I. The Central Electric Cooperative (CEC) utility easement shall be vacated, and proof of vacation shall occur prior to recording the final plat for Phase I. Public improvements and dedications within Phase I shall include the following and shall be completed or bonded where permitted, inspected and accepted prior to the final plat being recorded for phase I.*

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*No other building permits shall be issued for Phase I (exceptions are the Medical Clinic and the Assisted Living Facility) until the plat for Phase I is recorded, and all necessary public improvements are completed, inspected and accepted by the City of Sisters.*

This condition excepts the Medical Clinic and Assisted Living Facility from being issued a building permit **prior** to recordation of a final plat. One parcel has been subdivided to enable development of the Medical Clinic site.

(2) "Negotiate and execute a Memorandum of Understanding with the City of Sisters concerning a whole variety of land use matters prior to recording the final subdivision plat of the portion of MMV's property upon which the Senior Assisted Living Facility is to be constructed before issuance of a building permit".

This condition references MP 10-01 and SUB 10-02 as amended by MOD 12-01, affecting files no. MP10-01, SUB 10-02 Hearing Date: October 18, 2012. The text in the Conditions of Approval referred to in the appellant's example are provided below. Three instances of references to a Memorandum of Understanding are in the staff report:

(3) ;"prepare, obtain necessary City of Sisters approvals, and record a Declaration of Covenants, Conditions and restrictions for the entirety of applicant's property";

This condition references MP 10-01 and SUB 10-02 Condition #14. **Revised CC&R's.**

(4) "complete final subdivision platting of the remainder of the applicant's property following approval of the master plan as modified".

The applicant is required to complete the final subdivision platting. References to final platting exist in the decision for MP 10-01 and SUB 10-02. Some of these terms were modified in MOD 12-01. The conditions associated with final platting can be found in the attachments. The conditions of approval for MOD 15-05 and SP 15-01 specify that all previous conditions in MP 10-01, SUB 10-02, and MOD 12-01 not modified by the approval remain in effect.

(5) "prepare and submit for the City of Sister's approval a revised detailed site plan showing multiple detailed components of the project plan prior to the issuance of any building permits".

The applicant has submitted an application for City review (SP 15-01) which is under appeal by this appellant.

Should the Planning Commission's decision be rejected, MOD 15-05 and SP 15-01 be denied and MMV be directed to file for a revised annexation agreement, comprehensive plan amendment, zone change, master plan, subdivision and site plan?

Staff recommends that the City Council not reject the Planning Commission's decision, and not require the applicant to file for new land use applications as requested by the appellant.

- The applicant's proposal as illustrated in MOD 15-05 and SP 15-01 is in compliance with the Sisters Development Code and prior land use decisions.
- This appeal application is a "de novo review" and a continuance at the Planning Commission may not be necessary.
- City Council has the authority to remand the application to the Planning Commission
  - If the City Council remands the decision the Planning Commission or affirms, reverses or modifies the decision, SDC 4.1.800.H states that:

*H. Appeal Authority Decision*

1. *Upon review, the appeal authority may by Resolution remand, affirm, reverse, or modify a determination or requirement of the decision that is under review. When the appeal authority renders a decision that reverses or modifies a decision of the hearing body, the appeal authority, in its Resolution, shall set forth its findings and state its reasons for taking the action encompassed in the Resolution. When the appeal authority elects to remand the matter to the hearing body for further consideration, it shall include a statement explaining the errors or omissions found to have materially affected the outcome of the original decision and the action necessary to rectify such.*

Mayor Frye asked for questions from the Council.

**Councilor Connolly** asked if the matter was remanded back to the Planning Commission, would the City be able to meet the 120 day state mandate. **Director Davenport** stated Oregon Revised Statutes require the City to make a decision within 120 days after an application has been deemed complete. He stated since the application was deemed complete on June 3<sup>rd</sup>, the City had until the end of September to issue the final decision.

**Councilor Connolly** noted Director Davenport had stated the project had shifted more than 25 feet. She asked if the list of examples for when a new master plan was required was a comprehensive list or just a list of examples. **Director Davenport** replied it was a list of examples that might create a substantial adverse impact and thus require a new master plan, but it was by no means comprehensive. **Mayor Frye** questioned if this was to allow staff the ability to determine what might substantiate an adverse impact. **City Attorney Bryant** replied it was, since a shift of 25 feet that shrunk a buildings footprint would obviously not be considered a substantial adverse impact. **Director Davenport** noted this was the Development Code that was in effect in May of 2010, but the Development Code had been revised since that time. **Councilor Connolly** asked if it was staff's and the Planning Commission's opinion that the new design shifts that were greater 25 feet did not impact the overall design adversely and **Director Davenport** replied that was an accurate assessment. **Councilor Connolly** asked if the proposed future phase was part of the current application and **Director Davenport** replied was not and it would require a new building permit.

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**Councilor Connolly** asked for clarification on the various terms regarding the types of senior facilities he had discussed in his presentation. **Director Davenport** replied the original annexation agreement referred to a senior living facility while the amended annexation agreement referred to a senior assisted living center. He noted the terms were not defined in the agreements. He stated the definitions for an ‘assisted living facility’ and ‘residential care facility’ in his presentation came from the Development Code and provided a general definition staff felt met the intention of the annexation agreement. **Councilor Connolly** asked if a memory care facility would be covered by the same definition as a subset of the facilities and require licensing and **Director Davenport** replied it would.

**Councilor Connolly** asked when the application was signed. **Associate Planner Reed** confirmed the application was originally received via email in May and the applicant came in and signed sometime within the next five days or so. She confirmed it was definitely before the application was deemed complete on June 2<sup>nd</sup>, not June 3<sup>rd</sup> as Director Davenport had mentioned previously. She stated the unsigned version had mistakenly been placed in the packet for the Planning Commission as opposed to the signed application.

**Mayor Frye** asked for the appellant to testify.

**Peter Hoover, 31402 Lovegren Lane, Sisters, OR 97759**

**Mr. Hoover** stated for the sake of disclosure, he was one of about a dozen area residents seeking to build an assisted living facility via a project lead by Pinnacle Alliance Group. He reported since he had been unable to attend the June 18<sup>th</sup> Planning Commission hearing, he had listened to the meeting recording posted on the City’s website. He reported there were currently two projects hoping to provide different types of senior living options and related services to the community. He affirmed those services were sorely needed and welcomed both projects, and hopefully more facilities, to meet the need of seniors. He noted the City would be better served if it did. He stated one Commissioner stated in the recording that the Planning Commission had a Code and framework by which it made its decisions. He stated he concurred with the statement and assumed the rules and procedures were chosen with deliberate words and thoughts. He stated he came away from listening to the recording that that framework and platform used for making decisions was not given its due and full consideration. He stated there was clear awareness by the Planning Commission that the project was subject to an annexation agreement with detailed conditions and requirements for utilization of the land.

**Mr. Hoover** remarked that during presentation of the neutral testimony of the Planning Commission hearing former City Councilor Sharlene Weed came forward and stated she had been on the City Council when the annexation agreement for McKenzie Meadow Village (MMV) had been approved. She indicated she had been very involved in helping draft the agreement and stated that although the proposed project might be a very good projects, it was significantly different than what was envisioned at the time of the annexation agreement.

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She had stated the Planning Commission did not have the authority to change the annexation agreement and that only the City Council had that authority. He stated from his perspective this input should have been considered by the Planning Commission. If the conditions of the annexation agreement requirements were not met then some finding, such as rejection of the application, requiring modification of the agreement or a statement affirming Ms. Weed's comments were baseless would have been appropriate. He added numerous concerns were raised by Michael Repucci, an attorney assisting Pinnacle Alliance Group and he was disappointed by the disparagement of Mr. Repucci because he was from Colorado and not the local area. He stated it was his hope that Mr. Repucci comments and not his home base was what was considered. He stated through written and oral testimony Mr. Repucci raised concerns about non-compliance of the Code with regard to a major modification that created a significant adverse impact which the Development Code indicated would require a new Master Plan. He questioned whether certain approvals requirements had been obtained, extensions had been appropriately granted and if Type III application conditions had been met. He stated Mr. Repucci even sited the applicable Code sections to facilitate the discussion if the Planning Commission chose to. He stated he agreed it was a lot of information to comprehend but questioned whether the Planning Commission gave due consideration to Mr. Repucci's comments. He cited the comments of one Commission during the hearing that he really appreciated what Mr. Repucci had presented and he had put a lot of work into it. The Commissioner stated he had understood about three minutes of it and his point was, without spending at least two days checking on Mr. Repucci's comments, could the Planning Commission prove his allegations were true or whether he was just making it up. He stated he probably wasn't but how could it be documented. He stated he just didn't see it, he wasn't there and he was ready to approve it. **Mr. Hoover** stated he was not disparaging the Commissioner but rather pointing out that perhaps not enough consideration was given to the points raised. **Mr. Hoover** asserted in essence, another comment stated that if the Planning Commission were to not approve the application the same paper work would be in front of them in five months. He stated he would hope the process to comply with the Development Code would not take that long.

**Mr. Hoover** stated the Council needed to decide if the framework of the Development Code was followed and if so, did the conditions allow for this type of development, were the codes, procedures and required applications all received and documented and whether the Development Code required new documents and was it appropriate for the Planning Commission to ignore Mr. Repucci request to keep the application open as allowed per the Sisters Development Code which states such requests must be granted. He stated he understood the Council had a difficult task before them and thanked them for their time in listening to him this evening.

**Michael Repucci, 2521 Broadway, Boulder CO**

**Mr. Repucci** stated his firm had representing Pinnacle Alliance during the Planning Commission hearing. He stated this was all about getting senior housing to Sisters, doing it

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the right way and following Sisters Development Code. He stated he would be happy if both facilities could be successful. He announced this evenings hearing should never have been scheduled and had been invalidly noticed. He stated at the Planning Commission hearing he had asked to have the hearing continued in order to respond to some statements. He stated the Code was clear he had the right to do so but his request was ignored. He stated the meeting should never have been closed and so any decision made by the Planning Commission was a non-decision. He contended the Planning Commission did not have the jurisdiction to close the hearing. He stated Pinnacle Alliance also objected to the notice of the public hearing by the Community Development Director for this hearing. He stated there were two notices, one postmarked July 6<sup>th</sup> and one July 7<sup>th</sup> that were facially different in that they included different language and one had a site plan attached. He stated Sisters Development Code Chapter 4.1.800.F clearly stated the entire record must be transmitted with the notice. The Development Code stated *when* an appeal was scheduled for hearing by the Council, the Community Development Director should prepare and transmit the record which included a long list of items. He stated the meaning of the word “when”, meant at about the same time. He stated the record was 248 pages and was not received until three days prior to the appeal hearing. He stated he didn’t know which notice was correct, he didn’t receive the record and he received an email from Director Davenport stating he would provide the staff report by the 17<sup>th</sup>. He reported his client had to send a public records request in order to get the staff report and it was finally received on Monday. He asked where the due process was in that. **Mr. Repucci** stated Sisters Development Code Chapter 4.1.800 G stated the notices of an appeal hearing should be provided in the same manner as the original notice. He stated Chapter 4.1.500B 2(h) stated the record must be made available seven days prior to the hearing. He stated apparently City staff didn’t believe it needed to comply with the Code or that it wasn’t important or a priority. He stated there had been a host of procedural errors to the point that the entire matter was tainted and the civil rights of Pinnacle Alliance had been systematically and completely disregarded by staff. He stated the hearing was invalid because no legal decision had ever been made or entered and the hearing was invalid because it was not properly noticed and because the record was provided long after the requirement to do so had expired.

**Mr. Repucci** stated that subject to those objections he was designating as part of the record his July 2<sup>nd</sup> notice of appeal and accompanying statement of reasons for the appeal, including all referenced sections of the Sisters Development Code , all MMV underlying approval and agreements, his June 18<sup>th</sup> statement of objection letter to the Planning Commission and all matters submitted to the Planning Commission and Council including all material made available to the Planning Commission and Council, all material received by the Planning Commission and Council and all material considered by the Planning Commission and Council in connection with making their decisions. He stated he was also designating the entire recording of the June 18<sup>th</sup> Planning Commission hearing, all *ex parte* communication which may have occurred that had disclosed as part of the open records request by Pinnacle

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Alliance and that which had not been disclosed as part of the open records request. He stated it appeared there were several things missing from the record.

Mr. Repucci stated at the center of the appeal were the actions of a core group of friends of Bill Willitts that would do anything to help him build something at the MMV property. He stated Kevin Cox of Ageia Health Services had previously contracted to manage an assisted living facility for his client, Pinnacle Alliance. He stated unfortunately the recession hit and his client had been unable to obtain financing and so the purchase contract lapsed. He stated at about the same time, Kevin Cox approached Bill Willitts and Mr. Willitts enlisted Mr. Cox to build the exact same facility Pinnacle Alliance had planned. He noted Mr. Cox had previously had access to all of Pinnacle Alliance's plans, architectural drawings, master planning documents and market studies. He stated armed with all of this proprietary information, Mr. Cox discovered a way to make a healthy profit for himself by stealing this information and working with City staff to extend the previous land use approval that would not require Mr. Cox or Mr. Willitts to spend any additional money to build the facility. He stated by not requiring the master plan to be renewed, the City of Sisters was providing a substantial financial subsidy to Mr. Cox and Mr. Willitts because they didn't need to go through the process. He stated that was pretty dirt but good for them if they could get it. He stated that was not the way the Code was written and that's not what the Council would want to be known for. He stated these were tough words but his client had brought suit against Mr. Cox and his architects in the Oregon Federal District Court for copyright infringement and an injunctive release in case CV#6:15-451-AA which he designated as part of the record.

**Mr. Repucci** asked who Mr. Willitts' friends were. He stated based by the comments by several Planning Commission members it seemed several had discussed the entire matter in great detail. He stated in listening to the recording there was discussion about approving modifications for MMV because the commissioners 'just didn't get it' or 'approval just felt right' regardless of the what the Code or underlying agreements stated. He stated City Attorney Bryant was mixed up in this also. He stated in a March 26, 2015 email he wrote and sent to the Council, he outlined all of the conflict of interest Mr. Bryant had in that his firm represented Mr. Cox in several personal and business dealings which financially benefitted his firm. **Mr. Repucci** designated his email as part of the record. He stated while Mr. Bryant had begrudgingly admitted his dual representation might be a conflict of interest he had stated it was a waiveable conflict of interest. He stated he disagreed citing Rule 1.11D (1), (2), and (3) of Oregon Rules on Professional Conduct that specifically prohibit this dual representation. He stated regardless of whatever written waiver Mr. Bryant had asked the Council to sign, Mr. Bryant's conflict made it legally impossible for him to provide impartial advice relating to this appeal; yet he was still doing so. He stated the Council had a legal duty to perform with competence, fairness, impartiality and integrity and relying on Mr. Bryant for advice did not discharge that duty.

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**Mr. Repucci** stated during the course of the hearing several derogatory and slanderous comments were made about his client. He stated his client was not against competition as long as it was fair competition. He stated his client worked tirelessly to comply with the Code and granting Mr. Cox and Mr. Willitts a de facto subsidy by not requiring them to comply with the Code was not fair competition. He stated staff went to great length to point out that Pinnacle Alliance's previous site plan had expired but when the application was submitted that plan was still in effect. He stated the Code required the City to process an application with the Code that was in place at the time of a submittal. He stated staff also went to great lengths to substantiate the argument that prior amendments to the annexation agreement took away the concept of the senior living center. He stated Director Davenport improperly pasted two sections of the annexation agreement together and left off a section of the agreement that stated it was a senior assisted living center.

**Mr. Repucci** closed by stating the matter must go back to the Planning Commission, a proper application must be submitted for a Type III procedure where impacts reports were completed that would tell the Council this was a housing with services facility, it was an independent senior facility with residents that would drive and need parking spaces.

**Mayor Frye** asked if the developer's attorney would like to testify.

**Bill Willitts, 251 S. Elm, Sisters, OR 97759**

**Mr. Willitts** stated he wanted to put the record straight with regard to the Pinnacle Alliance Group sales agreement history with MMV and submitted a document for the record. He stated the original agreement between MMV and Pinnacle Alliance Group was dated October 1, 2010. He stated there had been four subsequent extensions dated October 30, 2011 to January 31, 2012, January 31, 2012 to March 31, 2012, June 29, 2012 to March 31, 2013 and a final extension from April 4, 2013 to August 15, 2013. He stated on August 15<sup>th</sup> all extensions terminated and Mr. Adolf had signed a letter confirming that understanding. He stated for an attorney from 1,000 miles away and a developer from 200 miles away to bring forth the appeal in order to "protect us" from Code violations was frivolous. He asserted he was one of the surrounding property owners. He stated MMV had a letter from Hayden Homes acknowledging support for the project as well as Sisters School District supporting the school based health clinic built on the property.

**Damien Hall, 101 SW Main Street, Portland, OR**

**Mr. Hall** stated the Council had heard attacks and confusing statements from the appellant's attorney and he wanted to clarify that the past business dealing of the appellant and applicant carried no weight in the decision before the Council this evening and were beyond the scope of the project. He stated the Council was only being asked to apply the facts of the application to the Development Code. He explained that prior approvals for the property weren't owned by Pinnacle Alliance and instead ran with the property as they do in all land

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use matters. He stated all documents and issue referenced by the appellant's attorney as not contained in the record had no bearing on the decision either.

**Mr. Hall** stated the higher level discussion was on the Development Code and dealing with a master plan. He explained a master plan allowed an owner of a large property to have some certainty in what they could build knowing they may want to develop the property in phases. He explained the master plan for the MMV property was approved in 2010 and what was before the Council this evening was a request to modify that master plan in a simple way. He stated the extent of the modification was to reconfigure the building within the same footprint. He stated it was not going to create additional demands for water, sewer, police or fire protection and in fact the building was being reduced from the original proposal of 72,000 square feet down to 46,000 square feet, which would actually reduce the demand for those services. He stated with regard to the use there was a lot of terminology being used. He stated the applicant was proposing a senior living center that would include memory care and assisted living units, or housing with services. He stated he agreed with staff's interpretation that not all facilities needed to be licensed and that requiring a facility to be 'duly licensed' meant a facility must be licensed if the State required it to be licensed. He stated the applicant would be amenable to adding a condition of approval stating the facility would be 'duly licensed' by the State of Oregon. He stated the client had already received approval from the State to license that part of the facility that was not memory care units as an assisted living facility. He stated he realized there were a lot of terms and he felt the appellant's attorney was trying to make it more confusing.

**Mr. Hall** stated with regard as to whether the proposed change was a major or minor modification by virtue of the 25 foot footprint change, it didn't really matter as the applicant had demonstrated it had met the criteria applicable to either type of modification. He pointed out the substantial negative impacts that were discussed from the 2010 version of the Development Code no longer existed. He explained that every time the appellant's attorney stated the master plan stated something it was related to the 2010 staff report, not the findings or conditions of approval. He stated it was merely a discussion at the beginning of the staff report about what criteria from 2010 would be applicable to a modification of a master plan. He stated the Council was charged with applying the current Development Code and not the 2010 Development Code. He stated Chapter 4.1.800D was no longer part of the Development Code and therefore not an applicable criteria this evening. He explained a substantive negative impact was defined as any measurable traffic, noise, vibration, massing, dust, air pollution, density, lighting or odor. He stated with a smaller building proposed, none of those would be an issue.

**Mr. Hall** reported Mr. Repucci and Mr. Hoover both spoke about the annexation agreement but it was unclear what section they felt did not comply. He stated the section staff was accused of purposely omitting only referred to the fact that the applicant had received its permit for a senior living center and was only brought up to further confuse the matter. He

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stated the written appeal noted the owner was to designate 6.3 acres for a senior living center and this application was only for five acres. He explained the master plan had broken out Phase I as five acres but once the subsequent phases were developed, the total acreage would total more than the required 6.3 acres. He stated there was nothing in the annexation agreement that required all 6.3 acres to be developed all at one time.

**Mr. Hall** stated Mr. Repucci's stated there was no jurisdiction for the Planning Commission to make a decision but that was not accurate. He stated it was in fact a valid decision and the Planning Commission had been authorized to make it and noted he had cited in his memo the Oregon law that addressed that. He stated it boiled down to the appellant had taken advantage of the City's process to have an additional 30 days to submit whatever they wanted to into the record. He stated that cured any defective process claimed by the appellant to the Council. He summarized the application had gone through extensive review by staff and the Planning Commission, and all necessary standards had been met.

**Mayor Frye** asked if anyone would like to testify in support of the appeal.

**Mike Morgan, 15925 Pilot Dr., Sisters, OR 97759**

**Mr. Morgan** stated he wanted to discuss the difference between housing with services versus assisted living. He explained he'd had extensive experience with all forms of retirement care for a family member and the two were totally different. He provided the example that if he broke his leg and had someone with nursing services come into his home to help him, that would be housing with services. He stated assisted living facilities had architectural requirements, the means to get people safely in and out of showers, grab bars and trained staff. He reiterated there was a huge difference between the services provided by each. He stated people in assisted living don't drive while people living in housing with services did. He stated housing with services was merely an apartment. He stated assisted living residents used walkers and wheelchairs. **Mr. Morgan** remarked he was in attendance when MMV was original annexed and what was on the table now was assisted living. He stated he had argued against the model as he had felt it was not financially feasible since it would not be near the types of specialist needed by the residents of an assisted living facility. He stated an assisted living facility needed a nurse on staff and trained, licensed people to disperse drugs.

**Lynn Hemphill, 1613 W. Allingham Avenue, Sisters, OR, 97759**

**Ms. Hemphill** stated the reason she was in attendance was because a sign had been posted on the cluster mailbox cluster the development would include punching through Williamson Avenue and Hill Avenue. She stated the streets in the development were narrow and maintained by a homeowners association (HOA). She stated she didn't want cars whipping through the streets. She stated she was also concerned with the other types of development planned such as cottages and apartments and questioned where those units would be built. She summarized she hated to see people be allowed to come through their community to get to the facility.

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**Jonathan Kelly, 1630 W. Williamson Avenue, Sisters, OR 97759**

**Mr. Kelly** stated he lived in the neighborhood and would be a neighbor to this project. He stated his main concern was if W. Williamson was connected to the MMV development. He noted the streets were maintained by the homeowner association and it paid for the upkeep. He stated he did not want his children to be dodging cars and have drivers cutting through the neighborhood. He reported the street were less than 30 feet wide and the base was not meant for a lot of traffic. He stated the driveways were short and when cars park on either side of the street, there would not be enough room for other vehicles to pass through. He stated he had lived in areas that posted "Private Road" signs and they were not effective in keeping cars out.

**Berke Kriehn, 1603 W. Allingham Avenue, Sisters, OR 97759**

**Mr. Kriehn** stated he was a part time resident at the Hayden Homes subdivision. He noted he was not against the project but he was against how the project would impact the roads in his neighborhood if they were cut through. He stated the roads were owned and maintained by the HOA and for any HOA, roads were a major cost. He stated in 10 years their roads would need extensive maintenance and the HOA would require reserves to pay for that work, which in turn would affect their HOA fees. He stated even with crack sealing and seal coating, eventually the roads would need to be taken back to the base and repaved. He questioned how the City could have the authority to open a road it didn't own and stated he felt it was a violation. He stated there would be numerous emergency vehicles coming through the area day and night.

**Mike Rankin, 1602 W. Hill Avenue, Sisters, OR 97759**

**Mr. Rankin** stated what was being discussed was the warehousing of seniors. He stated that would include disoriented people walking away from the facility where search and rescue personnel would need to become involved and a lot of emergency vehicles coming in and out of the facility. He stated the homeowners owned the roads and they could shut them down unless the City wanted to declare imminent domain and start paying for them.

**Doug Wills, 1655 W. Williamson Avenue, Sisters, OR 97759**

**Mr. Wills** stated his comments were not related to the project but rather with Williams and Hill being cut through to the facility. He stated he had concerns with safety and the roads. He reported there were at least 15 children on his street and he has seen them run out between parked cars when they were playing. He noted residents knew to look out for the children, but others traveling through on the street would not. He stated people bought their homes to have a nice quiet neighborhood and cutting the streets all the way through would impact their neighborhood. He stated the street were owned and paid for by the homeowners and do not have marked lanes or lines. He noted that if two cars parked opposite one another on the street it was too narrow for emergency vehicles to even get through. He asked if the

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City planned on taking over the street along with assuming the liability and costs to maintain them. He stated everything needed to be developed with the safety of citizens in mind.

**Mr. Wills** asked what would happen to the gravel road that ran behind the Village at Cold Springs development that provided access to a house. He stated he did not see anything on the illustrations to show if it might be paved which could open the neighborhood to even more traffic from the Tollgate subdivision.

**Gary Radma, 1647 W. Williamson Avenue, Sisters, OR 97759**

**Mr. Radma** stated he was not going to repeat what others had said, noting pictures spoke louder than words. He presented two photos of Williamson Avenue, one looking east and one looking west that had been taken earlier in the day. Both photos showed narrow crowded streets with numerous cars, trucks and an RV parked on the street. He stated the street would become a thoroughfare and it wouldn't work.

**Harry Ohe, 1623 W. Williamson Avenue, Sisters, OR 97759**

**Mr. Ohe** stated the issue was feeding traffic through a crowded residential neighborhood as it created major safety flaws and economic impact to the HOA and habitat in the area. He stated he understood the model for the development and determined it would have a minimum of 200 residents. He stated that would impact our medical community and availability to get an appointment with a doctor. He reported the roadways were private and estimated it would cost approximately \$130,000 to repave Williamson and Hill, and the cost would only continue to rise. He provided photos showing the roads were only 26 feet wide and vehicles already had to park on the curb and sidewalks in order to allow traffic to get through. He noted there were 15 children that lived on Williamson alone and asked where they would play. He stated the only possible solution would be to require single side parking which would be onerous for residents and their visitors alike. He asked who would be responsible for the traffic and safety as there was no enforcement in the area. He posted a photo of Highway 242 and pointed out the last remaining fiberglass lane marker. He reported that 50 of the markers had been chopped down in one year's time. He stated if that was happening on a state highway, what would happen to their private roads. He stated he saw one possible solution that would instead use Aitken and Allington to reach the development as they were two lane streets and one did not have any homes on it. He stated he was certain the residents on those streets would not welcome the change either. He summarized that he saw no benefit to the neighborhood on any level. He stated the residents at the facility would have falls, heart issues and asthma and there would be a lot of emergency vehicles using the road.

**Mayor Frye** asked if anyone would like to testify in opposition to the appeal.

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**Pat Thompson, 18290 Plainview Road, Bend, OR**

**Mr. Thompson** stated he had served on the City Council from 2008 through 2012 and had been involved in the annexation process, which took several months. He reported the developer had to meet many conditions to accommodate the City. He added that in every instance the developer always went above and beyond what was asked. He stated he didn't see anything that was different than what was originally proposed. **Mr. Thompson** stated he agreed with the streets being an issue of concern, but for fire, life and safety 'to and through' streets were a necessity, as well as for utility infrastructure. He stated the developer of the neighborhood proposed narrow roads as a means of cutting costs and it was unfortunate, but he felt those issue could be addressed.

**Mr. Thompson** asserted the development community in Sisters was unhealthy and everything was a controversy and a fight. He stated the city had a Planning Commission for that reason and the community should let them do their job. He stated he hoped the Council would support the Planning Commission decision. He noted the community needed to find a way to grow, develop, move on and get along. He closed by stating the city was in real need of affordable and retirement housing.

**Curt Kallberg, PO Box 3500, Sisters, OR 97759**

**Mr. Kallberg** stated he wanted to provide some history on the project. He reported the project was master planned six years ago, long before the homes in the neighborhood were built. He stated the roads were required to go through as a condition from the City. He noted he owned the house on the gravel road mentioned by a previous speaker and stated the driveway would be paved. He stated the development was owned by three families and they had been working on the project for 15 years. He stated tonight was the first time he had heard anyone from Mr. Adolf's group say they would welcome a second facility, as they had stated at the Planning Commission hearing they did not want two facilities in Sisters. He remarked that names for these types of facilities had changed over the years but what remained was the need for a place for our seniors. He hoped Mr. Adolf was successful in his project and he welcomed the competition, stating the city could use two facilities. He noted Mr. Adolf and his group had done everything in their power to block the project. He stated they had gone through the same process for their project and neither he nor his partners had done anything to stop them. He agreed there were problems with the streets and stated he felt something could be worked out. He asked the Council to not jeopardize the chance for our seniors over roads and to give them a chance to build the building. He requested the Council not let the citizens and families down.

**Mac Hay, 70919 Armorant, Black Butte Ranch, 97759**

**Mr. Hay** stated he was standing before the Council as the former volunteer Chair of the Sisters Business and Retention Team (SBART) and contractor to the City as the Economic Development Manager. He reported in both positions he had worked closely with the development team of MMV, including Mr. Adolf., to annex the property and interface with

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City appointed and elected official and staff alike. He reported there was great support from the community and City government and eventually the developers were successful in completing the annexation and project application. He stated all these years later, there was still great community need for the project and with the financing in place he could not imagine why the Council could not unanimously approve the project, affirming the Planning Commission's decision.

**Doug Roberts, 16052 Foothill Lane, Sisters, OR 97759**

**Mr. Roberts** stated he had been a real estate broker in the area for 20 years and the need for an assisting living facility was constant and continual. He reported he worked every day with people considering a move here that are concerned with this issue, especially for their parents. He stated the project had been a very long time in the making. He stated he was hopeful the Council would remember that the people behind this project have given back to this community on many levels for a long time and had integrity. He stated that as a former Planning Commissioner of four years he could attest the Planning Commission works very hard and does not take issues lightly. He asked that the Council not allow someone to come in and dictate how things should be. He asked why the Pinnacle Alliance Group was fighting the project and stated if they were ready to build their project, they should go ahead and do so. He stated the community would welcome two facilities and it was sour grapes on the part of Pinnacle Alliance Group to be fighting the decision.

**Susan Trask, 15685 Trapper point Road, Sisters, OR 97759**

**Ms. Trask** stated she was a realtor and had moved to Sisters in 2006. She reported shortly after arriving she'd heard about the MMV project and was warmed to know her community would soon have such a facility. She stated she too has been discouraged by the fact someone had brought in their "big guns" to thwart a project for which there was so much need. She asked the Council to approve the decision and get the project done for the seniors in the community.

**Seth Anderson, 920 NW Bond Street, Suite 204, Bend, OR**

**Mr. Anderson** stated he was the architect for Keven Cox. He stated there were some outrageous allegations levied by the appellant's attorney earlier that he wanted to clarify. He stated he had never seen nor copied Mr. Adolf's plan. He informed the Council his team had developed their own site plan that had been reviewed and fully approved by the state as an assisted living facility. He stated the allegations were patently false.

**Mayor Frye** asked if there was anyone that wished to provide neutral testimony.

**Cort Horner, 14861 Crupper, Sisters, OR 97759**

**Mr. Horner** stated there were some great points made by residents of the Cold Springs neighborhood this evening. He reported when he was on the Planning Commission, they had also focused at the ingress and egress for the other assisted living development proposed on

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Larch Street by Pinnacle Alliance Group. He pointed out there were other roads that could be used to access the MMV facility and so it appeared Williamson and Hill could be closed off to through traffic. He stated there was a lot of call for cottages and affordable housing and this project appeared to include these in many of the later phases. He suggested the City Council and Planning Commission take this into consideration when making its decision.

**Jack Gallic, 1623 W. Allingham, Sisters, OR 97759**

**Mr. Gallic** stated he had moved to Sisters 15 years ago and noticed right away there was a lack of senior housing. He stated one thing everyone could agree on with was the need for senior housing, but not memory care units or assisted living facilities. He commented that Sisters does not have the medical support structure necessary to deal with those types of facilities. He stated he thought the project was great but it would require its residents to rely on others to get them to their various medical appointments with the specialists that deals with the diseases of the elderly. He summarized he felt it was a mistake to build the facility without the medical community it needs to support it. He stated ambulances would be going back and forth to Bend on a regular basis.

**Mark Maboll, 1690 W. Williamson Avenue, Sisters, OR 97759**

**Mr. Maboll** stated he was in favor of the project but there needed to be a way to control or stop the traffic on Hill and Williamson. He reported he had measured the roads and they were five and one half feet narrower than Cascade Avenue. He stated he had worked in these types of facilities and residents did get out and wander sometimes. He stated he didn't move here to listen to sirens 24 hours a day, seven days a week. He stated the facility would need to have designated medical staff that could care for the residents.

**Mayor Frye** asked if anyone would like to provide rebuttal testimony on either side of the argument.

**Michael Repucci, 2521 Broadway, Boulder CO**

**Mr. Repucci** stated the drawing being shown, the figure eight building, which was the site plan that was being compared was another site plan that was in effect earlier. He stated it wasn't even the right site plan and he did not know why the developer was using it.

**Damien Hall, 101 SW Main Street, Portland, OR**

**Mr. Hall** stated he wanted to address the issue of the roads brought up by the neighbors. He stated he wanted to make clear the site plan there were looking at does not include extending the roads at this time. He stated that was slated for a later phase and could be an ongoing conversation in the community and be addressed with the later application.

**Mr. Hall** stated the project was for an assisted living facility and the developer would be willing to accept an additional condition of approval to be duly licensed by the state as such. He stated the reference to Site Plan 11-15 made by Mr. Repucci had expired and what was

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before the Council this evening was a modification to the master plan, which was what was being shown. He stated he would appreciate the Council finding in favor of the developer and making a decision this evening as opposed to sending it back to the Planning Commission. He stated the appellant would likely file a Land Use Board of Appeal (LUBA) regardless. He stated the record and extensive findings from staff supported approval of the decision.

**Mayor Frye** asked if the appellant would like to provide a final statement.

**Michael Repucci, 2521 Broadway, Boulder CO**

**Mr. Repucci** stated the grounds for appeal of this project, the burden of proof of housing with services model that doesn't require any licensing, implies a greater level of independence than what was originally approved by the annexation agreement. He stated he didn't know how the developers could now state they would agree to a condition of approval to be a licensed assisted living facility after two rounds of hearings. With regard to impacts, that argument was off the table but that was not the way the application had been written. He stated MMV needed to go back and do impact studies so people could determine whether the roads should be made wider and how they could be made safer.

**Mr. Repucci** stated this was supposed to be processed as a Type III application with impact studies. He noted the impact studies were not done and the staff report indicated they were not necessary. He stated, given the evidence presented this evening, he didn't see how it was possible to come to that conclusion. He cited *Gould v. Deschutes County* 216 Or. App 150.171 P. 3d 1017 holding that a cursory reference by staff to satisfy a specific condition of approval does not constitute sufficient evidence in the public record to support a decision approving a land use application. He stated the absence of impact studies does not give the Council authority to make a decision today just because a staff member decided to waive it. He stated that was required for a Type III decision and listed in the Sisters Development Code. He stated due to procedural defects, there was no legal decision made by the Planning Commission. He stated that hearing was not continued as requested, the meeting was not properly noticed and neither the staff report nor record of appeal were provided until well after the required deadline.

**Mayor Frye** asked if the developer's attorney like to provide a final statement.

**Damien Hall, 101 SW Main Street, Portland, OR**

**Mr. Hall** stated with regard to the impact statements, there was a difference between the concerns of the neighbors versus what was being proposed, which was not proposing extension of the streets and not dealing with the proposal of the facility but the modification of the already approved facility. He stated the implication the project would bring increased traffic was not accurate as the building was actually going to be smaller; going from the original plan for a 72,000 square foot facility and to a 46,000 square foot facility. He stated

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he also wanted to clarify an inaccurate statement there would be 200 residents. He stated the facility would only have 45 assisted living units and 12 memory care units. He respectfully requested the Council approve the application this evening.

**Mayor Frye** closed the public testimony and asked if staff had anything to add in response to the testimony.

**Director Davenport** stated he wanted to address the phasing plan for the property. He pointed out that the two street connections were part of the approved master plan and subdivision approved in 2010 and were scheduled for Phase III and Phase VIII of the development. He stated the appellant's attorney had incorrectly stated the procedure for transmitting the record was past the seven days prior to the hearing deadline. He referred to the Sisters Development Code Chapter 4.1.800 and read:

*(G) Notice of Appeal Hearing*

*Notice of the hearing held by an appeal authority shall be of the same type as that required for the original hearing. Notice shall be mailed to the appellant, to all persons originally notified, and to parties to the hearing who may not have been on the original notification list.*

**Director Davenport** noted there was no mention of a seven day review requirement prior to the hearing deadline. He stated he thought the appellant's attorney might have been referring to the process for a Type III application under Chapter 4.1.500B (2) (h) which reads:

*h. A statement that a copy of the City's staff report and recommendation to the hearings body shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost;*

**Director Davenport** confirmed this was not a Type III application but rather an appeal. He added this was the first time he had heard from the appellant's attorney about being improperly noticed. He noted since there had been some past history of incorrect noticing, staff was quite sensitive to that issue and worked very hard to follow noticing requirements. He stated he had not been received any evidence of incorrect noticing by the appellant's attorney.

**Mayor Frye** asked if the Council had further questions of staff.

**Councilor Connolly** asked about the assertion there was a conflict of interest by City Attorney Bryant. **City Attorney Bryant** replied that issue had already been dealt with and it was not relevant to the hearing this evening. **Councilor Connolly** asked City Attorney Bryant what would be the best course of action for the Council to take. **City Attorney Bryant** replied it was the Council's decision to make since this was a de-novo hearing. He

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commented the Council could make their decision this evening or at a future date if they wanted additional time to deliberate prior to making a decision.

**Councilor Connolly** stated Mr. Hoover had stated the annexation agreement had been modified and asked if that was an issue for the Council. **Director Davenport** placed a copy of the agreement that referenced a senior living center on the overhead projector and read:

*4. Senior Living Center: Owner shall designate no less than 6.3 acres of the Owner Property for the purpose of construction and operation of a Senior Living Center. The Center will provide senior (55 years old and older) assisted and independent living, and non-senior assisted living options.*

**Director Davenport** stated that portion of the agreement was what staff worked with. **Councilor Connolly** stated someone had mentioned cottages earlier and wanted to know if that would take the plan up to 6.3 acres. **Director Davenport** explained that was a different phase of the plan and not at issue this evening.

**Councilor Connolly** asked for clarification on the allegation the attorney was not noticed properly. **Director Davenport** brought up the section of the Development Code related to appeals, pointing out there was no mention of a noticing requirement. He then brought up the section of the Development Code related to Type III where making the staff report and findings were required to be available seven days prior to the hearing. He reiterated this was an appeal and not a Type III hearing and therefore the seven day noticing requirement did not apply. **Councilor Connolly** asked if the seven day deadline had been met for the Planning Commission hearing and **Director Davenport** confirmed it had been. **Councilor Connolly** asked if Chapter 4.1.800 section F. Review of the Record and section G. Notice of Appeal requirements had also been met and **Director Davenport** replied they had.

**Councilor Connolly** asked about the contention that the Code had expired but the project should still have been held to that 2010 Code. **Director Davenport** explained the Code had not expired but rather it had been modified. He stated the Code at that time did have include that language but had not been tied to any specific condition of approval for that decision. **City Attorney Bryant** asked if the decision was based on the old Code or the current Code and **Director Davenport** replied it was held to the terms and development standards of the former code except when there were changes and then those changes were held to the current Code. **Councilor Connolly** asked Director Davenport what his interpretation of “may” versus “shall” meant. **Director Davenport** replied “may” was suggestive and “shall” was mandatory.

**Councilor Connolly** asked how the decision, had changed from a major modification to a minor modification. **Director Davenport** replied it had never been changed to a minor

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modification since in the strict definition of the Code, with the 25 foot change in the footprint, it a major modification. Substantially and logically it was minor and therefore not adverse in staff's determination.

**Councilor Burgstahler** asked for clarification on punching through W. Williamson and W. Hill and when that would occur. **Director Davenport** explained the expansions were scheduled for Phase III and Phase VIII of the development and at present there were no dates assigned to those phases.

**Mayor Frye** asked if any transportation studies had been done on the roads and if so, what were the findings. **Director Davenport** replied a transportation study was performed and that where the recommendation and conditions to punch the street through came from. **Mayor Frye** agreed it would create an extra burden on the streets and asked what the City does in those cases. **Manager Gorayeb** replied any decision of that nature would need to be discussed with the Sisters-Camp Sherman Fire District and Public Works to look at life and safety issues. He commented that perhaps life/safety gates could be installed. He noted the City would also be collecting \$223 per bed, in system development charges from the facility.

**Mayor Frye** stated the envisionment of the facility had been brought up by two former Councilors. He stated it was his understanding a project would be held to what the City's Code stated, as opposed to the envisionment of the project, and **Director Davenport** replied that was correct.

**Mayor Frye** stated that for the Council information, staff had indicated the 120 day review time-frame requiring the City to make a final decision on the application (MOD 15-05 and SP 15-01) was September 30, 2015. As there were no further questions, he closed the public hearing.

**Mayor Frye** asked if there was further discussion by the Council.

**Councilor Asson** stated after discussing this with the Planning Commission and staff he was convinced the Code was properly followed, the Master Plan was properly prepared and there was certainly a need for this type of project. He stated the opposing claims were nebulous and presented to confuse and delay a qualified project. He summarized the appellant could do what they wished with their property and they were not harmed or denied any rights. He stated he supported furthering the project and making a decision this evening.

**Councilor Holzman** stated as always she liked to wait to weigh in until she had heard what other Council members were thinking but she felt the Council had their questions answered this evening. She stated there were concerns with the road issue but felt that could be dealt

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with in the future and was not the issue before the Council this evening. She stated she tended to agree with Councilor Asson and that she could move forward with a decision this evening.

**Councilor Connolly** stated coming into the meeting she was leaning towards remanding the matter back to the Planning Commission but after listening to all the information presented tonight, she was ready to move forward with a decision.

**Councilor Burgstahler** stated she was ready to move forward as well. She stated the Council had heard some “red herring” things this evening and she found that frustrating at a meeting like this and was thankful to receive clarity on a lot of issues this evening.

**Mayor Frye** stated that he feels there is a need for this type of facility and he had received many emails supporting this need. He stated there is also a need for the type of housing units included with later phases. He stated after listening to the Planning Commission minutes and talking with City Attorney Bryant he did feel the use did meet the definition. He agreed the major changes were not adverse since it shrank the overall footprint of the project. He stated while he respects the work of the Planning Commission and feels they have a more difficult job than the Council at times, but a mistake was made with not allowing the continuance. He stated he was very concerned by a comment from the Chair stating “the commission goes by what they want to go by and do what they want to do”. He stated that was very concerning in the current climate where there was a lack of trust in City officials. He stated it was the City job to follow the Code. He stated he understood this was a de novo hearing and as such the Council could ignore the mistake and make a decision this evening but he was concerned if they did ignore this mistake. He stated he was sorry that had occurred and the Council did have the authority to send it back to the Planning Commission. He asked what other Council members felt about the matter.

**Councilor Asson** stated he felt this was not a mistake that jeopardizes this project. Some of the comments were less than clearly stated, were someone’s opinion and he felt they were caused by frustration. He stated the vote was strongly in support of the project and didn’t change the basis facts of the project.

**Councilor Holzman** asked City Attorney Bryant to confirm that since this was a ne novo hearing, that the Council had the authority to make the decision and not sent it back to the Planning Commission. **City Attorney Bryant** confirmed it was a brand new hearing, with records and findings and the Council did have the authority to make the decision.

**Councilor Holzman** stated she was also concerned about the comment but did not feel it was appropriate to send it back.

**Councilor Connolly** stated she would like to move forward. She asked staff to offer training to the Planning Commission or an explanation of the rules governing the

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commission. She stated the Planning Commission had seen a lot of turn over and it was unfortunate it was a learning experience for them. **Councilor Burgstahler** stated she was uncertain if the comment was off the cuff, heartfelt or made out of frustration, but she also found it concerning. She agreed it was worth noting and bringing up with the Planning Commission but she did not feel it was a hindrance in making a decision tonight.

**Councilor Holzman** added she know the Planning Commission worked hard and put a lot of effort into positions and did know they need to follow the Code.

**Mayor Frye** asked City Attorney Bryant that since this was a de novo hearing, could Council assume the appellant had had the opportunity to present everything they might have presented if the Planning Commission hearing had been continued. **City Attorney Bryant** replied the Council could.

The **Council** discussed whether the motion should include the offer from the applicant to be duly licensed. **City Attorney Bryant** advised that would mirror what the City's Code required and since there had been some disagreement on whether licensing was required or not, it would be a good idea to add the language. In discussing how to phrase the motion **Mr. Hall** clarified it would be licensed as a 'housing with services' facility and it would include both assisted living and memory care. **Mr. Repucci** stated the appeal was for both assisted living and memory care and **Attorney Hall** confirmed the applicant was stating it was amenable to both which would be covered by the term of housing with services.

***Councilor Asson** moved for the City Council to approve the application, adopt the findings and conditions of approval of PC 2014-28, MOD 15-05 and SP 15-01 with the additional condition the facility will be duly licensed as required by the State of Oregon prior to occupancy. **Councilor Holzman** seconded the motion. The motion carried unanimously.*

**D. Discussion and Consideration of a Motion to Award Community Grant Funds for Fiscal Year 2015/16**

***Councilor Holzman** moved to award FY 2015-16 Community Grants to the following organizations:*

*Circle of Friends - \$1,500*

*Deschutes Public Library Foundation - \$2,000*

*Family Access Network (FAN) - \$2,500*

*Habitat for Humanity - \$1,000*

*Seed to Table Program - \$1,000*

*Sisters Community Garden - \$1,500*

*Sisters Folk Festival - \$1,000*

*Sisters School Foundation - \$3,000*

*Start Making a Rader Today (SMART) - \$500*

*Sisters Park and Recreation District (SPRD) - \$3,000*

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*VFW Post 8138 - \$500*

*Councilor Connolly seconded the motion. The motion carried unanimously.*

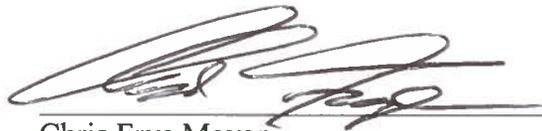
**IX. OTHER BUSINESS - none**

**X. MAYOR/COUNCILOR BUSINESS - none**

**XI. ADJOURN -10:18 p.m.**

Respectfully submitted,

  
Kathy Nelson, City Recorder

  
Chris Frye Mayor