

**LEBANON CITY COUNCIL  
MINUTES  
September 23, 2020**

**Council Present** Mayor Paul Aziz, Councilors Jason Bolen, Robert Furlow, Rebecca Grizzle, Wayne Rieskamp, Karin Stauder and Michelle Steinhebel

**Staff Present** City Attorney Tré Kennedy, Interim City Manager/Engineering Director Ron Whittlatch, City Recorder Kim Scheafer, Police Chief Frank Stevenson and Community Development Director Kelly Hart

**CALL TO ORDER** Mayor Aziz called the electronic meeting to order at 6:00 p.m. using Zoom web conferencing due to the COVID-19 pandemic.

**ROLL CALL** All Councilors were present.

**CONSENT CALENDAR** Councilor Grizzle moved, Councilor Rieskamp seconded, to approve the Consent Calendar as presented. The motion passed unanimously.

**AGENDA** Lebanon City Council Agenda – September 23, 2020

**PUBLIC COMMENTS** – No public comments were received.

**PUBLIC HEARING**

**1) Appeal of Planning Commission Decision for AR-20-05**

*Mayor Aziz opened the Public Hearing at 6:04 p.m.* City Attorney Kennedy reviewed quasi-judicial appeal procedures. There were no declarations of ex parte contact, bias or prejudgment by the Councilors. Mayor Aziz stated that his ex parte contact was that he took part in an informational meeting with the applicant earlier in the year about their plans. In March, he wrote a letter in support of the project because of the critical need for low-income housing in Linn County. Regarding the first ex parte contact, he confirmed for Kennedy that the discussion would not affect his decision. Kennedy asked if the letter of support was based on a general concept of the project or if it was specifically related to issues present in the appeal. Mayor Aziz said that it was a generic letter about Lebanon's need for low-income housing for migrant farm workers and had nothing to do with the location. He confirmed for Kennedy that the general support in his letter would not impact his ability to weigh the evidence in this case. Community Development Director Hart said that she did not receive any objections to the notice sent out in this case or to the jurisdiction of this body to hear and consider the case.

Hart stated that the City received a request from the appellant group for Council to grant a two-week postponement. There is no requirement that the request be granted, but if the Council feels it is appropriate, staff recommends that the hearing be postponed to Wednesday, October 7, 2020 at 6:00 p.m. through the Zoom virtual meeting platform. Kennedy added that the requirement that a final decision be made within 120 days is somewhat difficult, but possible.

*Mayor Aziz asked for appellant testimony.*

Heather Balzomo, speaking on behalf of nearly 30 White Oaks neighborhood residents, read the submitted request for a two-week postponement (found in the Council packet). She clarified that the response from FHDC was

received on September 22, 2020 and not February 22, 2020.

*Mayor Aziz asked for the applicant's response.*

Jennifer Bragar, attorney representing the Farmworker Housing Development Corporation, 121 SW Morrison Street Suite 1850, Portland, stated her objection to the portion of the City's presentation about the 120-day deadline that expires on October 6, 2020. The request made in the Planning Commission review to extend the open record period to comply with ORS 197.763(6) was incorrectly made by the City. FHDC submitted a request to resolve the incorrect guidance by proposing that the 7-7-7 rule be applied. A two-week postponement would not work because it would violate the 120-day rule.

In FHDC's response to the postponement request, Ms. Bragar said that the notice of hearing was sent on September 2, 2020. The wildfires did not immediately affect air quality to the extent that the appellants could not meet for several days. Further, the air quality, as of September 18, 2020 had improved significantly and would have allowed the appellants to meet outside. Also, services like Zoom offer free subscriptions and could have been used by the appellants. All participants are subject to the same rules; there is no extra time just because the applicant submitted, as allowed, comments the day of the hearing. She will respond to what was submitted today at the appropriate time. The applicant requests that there be no postponement that would unnecessarily delay and add cost to this needed housing development.

Councilor Grizzle asked Ms. Balzomo why the group did not meet electronically. Ms. Balzomo said that it was not possible because many of the residents are uncomfortable using Zoom or electronic communication. Many were even uncomfortable calling and leaving a recording to be played at a Zoom meeting.

Councilor Stauder said that, with the narrow scope of information the Council can consider, she is not sure what other information can be received in two weeks. Ms. Balzomo said that since they just received FHDC's response, it would take time for her to bring the neighbors' opinion to Council. Mayor Aziz reiterated that he does not know what more the Council would gain with the postponement since he and the Council read everything submitted. Ms. Balzomo said that she cannot say what issues the neighbors would bring but she is asking for the opportunity to make sure their concerns are presented. Councilor Rieskamp asked whether Ms. Balzomo received responses from all of the neighborhood residents. Ms. Balzomo said that she did not receive a response to the applicant's most recent submittal. Responding to Councilor Stauder's question, Hart said that Ms. Balzomo was referring to the applicant's letter, received during the public comment period, further stating their position on the appeal.

Councilor Grizzle asked for more explanation on the 120-day rule. Ms. Bragar explained that a request was made to keep the record open at the initial Planning Commission hearing. That request is not subject to the automatic extension of the 120-day rule. Confusion on instructions given by City staff impacted the applicant's right to final argument. On behalf of FHDC, they submitted a letter requesting that the Planning Commission resolve the discrepancy by following the 7-7-7 rule as a continuation of instruction under ORS 197.763(6). This does not fall under an automatic extension requested by the applicant for other reasons – they were trying to resolve the procedural discrepancy that occurred – so the 120-day rule does not automatically extend for 21 additional days.

Kennedy stated that he understands Ms. Bragar's argument that it does not fall under the automatic extension, but he disagrees. Out of an abundance of caution, the applicant requested that it be continued. ORS 197.763(4)(b) specifically provides that any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations as it is related to the 120-day rule. It is the City's position that the 120 days ends on October 6, 2020. If the 21 days requested by the applicant (for open record) was applied, then the date would be October 27, 2020.

Councilor Furlow felt that the Council should move forward with the decision because there was plenty of time to address any issues during the process. Councilor Steinhebel asked how much time the appellant had to provide

comment since this first came before the Planning Commission. Hart stated that the application was first presented to the Planning Commission on June 17, 2020. Four public hearings were held before the Planning Commission, inclusive of 26 days of public comment. There were 20 additional days as part of the public notification period prior to the initial hearing. The Planning Commission made their decision on August 19, 2020. There was then a 20-day public notification period regarding the appeal itself.

***Councilor Furlow moved, Councilor Steinhebel seconded, to DENY THE REQUEST FOR POSTPONEMENT AND TO CONTINUE WITH THE PUBLIC HEARING. The motion passed unanimously by roll call vote.***

Hart summarized the general quasi-judicial hearing process and noted that the Council shall not re-examine issues of fact and shall limit the review to determining whether there is sufficient evidence in the record to support the Planning Commission findings or if there were errors committed. The review shall be limited to those issues set forth in the notice of appeal. There were no questions on the scope of review or the process.

She described the project to construct a 24-unit apartment complex. The record, as reviewed by the Planning Commission, and provided to the City Council for review, includes a detailed analysis demonstrating compliance with each of the decision criteria verifying that the proposal is consistent with the Development Code. Council is required to use these criteria to determine whether the record demonstrates compliance. She briefly went over the timeline and stated that the Planning Commission unanimously found that the project met the decision criteria and approved the application on August 19, 2020. Within the designated appeal period, the application was appealed by the resident group on September 2, 2020. She reviewed the appeal items and staff's responses, as found in the Council packet.

*Mayor Aziz asked for testimony from the appellant.*

Ms. Balzomo read the introduction of her submitted testimony dated September 23, 2020 (found in the Council packet). She said that this is not about one 24-unit building; the applicant has already spoken about their plan to develop a 110-unit complex which would have a much greater impact.

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Ronn Passmore, 865 Lebanite Drive, said that they are a neighborhood group and are not members of a vocal anti-immigrant group, as suggested by the applicant in written communication sent to garner community support. He believes that the City Planning Department erred in allowing the 9.53-acre parcel to be broken into three parcels and to proceed with a 24-unit development project on 1.39 acres since everyone involved in the review had some knowledge that when fully developed, the 9.53 acres would encompass a 110-unit three-story apartment complex housing more than 400 individuals and families. The appellant group's view is that a development plan for the entire 9.53 acres should have been required almost assuredly requiring multi-year phasing and planned development review. They request that the Council return the application to the Planning Commission with direction to require the applicant to resubmit the land use application for the entire 9.53 acres with a zoning designation of Z-RM and a project description of construction of a 110-unit housing complex with a mix of one and two-bedroom units. Appropriate traffic impact and wetlands delineation studies could address impacts of the entire project.

The six-foot chain link fence with double slats should be replaced with a minimum seven to eight-foot masonry fence as allowed for in the Development Code and which is used in numerous other places in the community. They have been hearing that the application meets minimum standards and has to be approved. He asked what type of legacy will be left for our next generation of leadership if everything in the community is built to minimum standards. He is in favor of community growth and feels that companies like FHDC should be welcomed and applauded for wanting to make an investment in Lebanon, but he asked that Council recognize the project for what it is as this is a major forever change to their neighborhood's landscape. For future applications, they recommend that applicants

be required to communicate directly with those who have standing in the community as the lack of direct communication from the applicant was very frustrating and should not be allowed to happen.

Councilor Grizzle asked Hart to address how the project was broken up and whether there are legal ramifications to requiring more than minimum standards. Hart explained the criteria for requiring a planned development application. Since the applicant is not proposing further development and since it did not meet the criteria, the City could not require them to do a planned development. She pointed out that any future proposed development would again have to demonstrate decision criteria compliance and go through the hearing process. In terms of providing different standards to different projects, the Municipal Code identifies the City's standard, not what the minimum standard is. Developers can choose to build above the standard but cannot choose to build below it. There must be clear definitive justification for any requirement above the City's standard.

*Mayor Aziz asked Hart whether she received any comments on the public hearing in favor of the appeal.* Hart stated that all comments received from the appellant group and the applicant were included in the agenda packet and posted online.

Regarding Mr. Passmore's traffic argument, Councilor Bolen asked whether the impacts of additional traffic would be reviewed if a plan for the 110-unit complex is submitted. Hart explained that it would be reviewed as part of the decision criteria if any future proposed development meets the threshold for the planning application. Separate from the Planning application, based on existing conditions, the Engineering department had already requested a traffic impact analysis be conducted for a generalized scope of consideration.

Hart confirmed for Councilor Bolen that the extension of Weldwood Drive would be built to a full City street standard. Interim City Manager/Engineering Director Whitlatch added that it would be to a residential street standard and would narrow a bit without the center turn lane. He confirmed that the street is designed to handle the additional traffic, whether from 24 or 110 apartments.

Councilor Rieskamp asked whether the Planning Commission, staff or the Council can address the issues raised by the appellants when the applicant chooses to further develop the property. Hart stated that the appeal and all actions associated with it is only related to the 24-unit application. Comments for this application do not transfer to any future development that is not planned or proposed, but it does not preclude the applicant from hearing neighborhood concerns and deciding to make changes. However, Code requirements identify what the standard is; the applicant can build to that standard or can choose to build above the standard at their discretion.

*Mayor Aziz asked for testimony from the applicant's representative.*

Jennifer Bragar addressed a letter from Ron Edwards submitted into the record that introduced new evidence in violation of hearing rules. The applicant objects to evidence included in the first paragraph that introduces new information about sheriff calls to Lebanite Drive. The applicant further objects to the introduction of new evidence about Walmart's refrigeration system in the fourth paragraph beginning with the word "noise." The applicant also objects to the fifth paragraph that states that Mr. Edwards' vehicle was vandalized and trespassed to his property. None of the specific information was included in the record before the Planning Commission and cannot be considered here.

She spoke about the appellant's comment about community organizing efforts reflected in the record. The community organizing email that went out to potential allies for the project was sent by PCUN, a separate organization not run by the applicant. This does not reflect the applicant's characterization of anyone in particular; this was PCUN's review of the record. There are many points in the record that support the contention that anti-immigrant sentiments were also raised. She wanted to make sure that there is no misunderstanding about the appellant's raising legitimate planning concerns being addressed.

Regarding the specific appeal points, she referred to the September 21, 2020 letter submitted on behalf of the applicant. This, along with the staff report that responded to grounds in the appeal and Hart's presentation, demonstrate arguments in support of affirming the Planning Commission's decision to approve the 24-unit affordable housing development proposed. This development will become background information for impacts to traffic or wetlands and will be analyzed in the future against any application that follows. This application complies with Code and has exceeded in certain areas – open space areas and setbacks are greater than required. This application has resulted in changes based on comments made by City staff and the public about where Weldwood Drive should end. The stop of the street will control some of the impacts that residents are concerned about. The applicant's submittals to the Planning Commission (particularly the applicant's open record letter submitted on July 22, 2020 and the September 21, 2020 letter) reflect their responses to all of the concerns raised by the public throughout this process. Based on the arguments, the applicant requests that the City Council affirm the Planning Commission's approval of this application.

*Mayor Aziz asked for Council questions.*

Councilor Grizzle asked whether the applicant will have more open communication with the neighborhood on future phases. Ms. Bragar said that the applicant has been in contact with the appellants and has offered to meet them after this review when they have a better idea of their subsequent plans for the property. This land use process has had a lengthy public review with many opportunities for the public to participate. Mayor Aziz agreed with Councilor Grizzle's concern and wanted to make sure that the organization actively works with the impacted neighborhood. Councilor Bolen said that property owners have the right to develop their property to Code standards. He is hesitant to handcuff or guilt someone into working with a neighborhood, which can be difficult with everyone's wants and needs. He sympathized with the neighbors because this parcel has been vacant for so many years but said that part of due diligence in buying a property is knowing the surrounding property's zones and what that could potentially bring. Councilor Stauder agreed and commented that she appreciates the applicant's offer to meet with the neighbors. She takes into consideration the community's best interest and wants the residents to understand that it is not that no one cares; the Council is limited on what they can use when making their decision. Councilor Rieskamp asked whether this decision would be subject to legal challenge if they voted against the applicant. Kennedy stated that either party has the right to appeal to the Land Use Board of Appeals.

Referring to the letter from the Woodburn's Mayor about their long-term relationship with FHDC, Councilor Furlow said that the statement that none of the fears expressed have been realized is quite significant. Hart confirmed for Kennedy that this was part of the Planning Commission record.

*Mayor Aziz asked Hart if she received comments on this public hearing against the appeal in favor of the application.* Hart stated that all public comments were submitted as written testimony and were provided to the public, appellant group, applicant and the Council ahead of time.

*Mayor Aziz asked for the appellant to provide rebuttal testimony.*

Mr. Passmore asked whether the Planner has the option to say that she would like to see a planned development review as opposed to allowing the property to be split into parcels. He also asked the date of the Planning Commission approval and the date that the land partition was approved. Hart said that she does not know the date of the land partition approval offhand, but it was approved under a separate planning application submitted during the public hearing process for this application. It went through a public notification process and a notice of decision was issued based on decision criteria for the partition. This proposal is for the development site of 1.39 acres. The rest of the property is not being considered to be developed. She added that if the partition application was not processed separately during this time period, a condition of development is that the site area be partitioned and the associated right-of-way be dedicated.

Mr. Passmore asked if there are now three parcels and whether the applicant could develop a second parcel, then

a third parcel. Hart confirmed that there are now three parcels and said that the City does not have information about how the parcels will be developed in the future.

Ms. Balzomo stated that dividing a property into small parcels is a smart way of developing it, but this addresses the impact of small buildings, rather than the overall impact of 110 units. It is questionable as to whether this is really in the best interest of the community or the developer. She has not been contacted by anyone from FHDC about communication with the neighborhood. Regarding the group's concerns about noise and foot traffic, they had stated that a masonry fence, which is not unprecedented, would alleviate a lot of their concerns. If a chain link fence is put up in this phase, it is likely that this is what would be used in any subsequent phase.

The School District has been noticed on every proposed development for 30 years and has never responded. Just because they did not respond does not mean that this building is not going to have an impact on the schools. Between 2009-2015, there were 450 apartment units and about 115 single-family units built in Lebanon but no expansion of the schools. There has also been a large growth in apartment complexes since 2015. She added that they were told over and over that the City Council has some discretion in the decision. They understand their rights to appeal to LUBA but would like to reach some compromise to avoid future litigation.

*Mayor Aziz asked for applicant rebuttal.*

Ms. Bragar reiterated that this application is for 1.39 acres and is for a 24-unit apartment. Any other project is uncertain and no multi-year phasing was proposed. To the extent that there is any question about the fact that FHDC may own other land in the area and how it is characterized, then the standard is not clear and objective in terms of what the City requires for needed housing and cannot be applied to this application. The partition was subject to its own process and was issued on August 10, 2020. The Planning Commission's decision was issued on August 20, 2020 and is conditioned on approval and recording of the partition. If in the record, they object to any references to new units coming online.

This application complies with all in the Code that applies to this development. The applicant has addressed before the Planning Commission that traffic noise from Walmart is going to be alleviated by placing the apartment building between the neighbors and Walmart. The street design will be safe for pedestrians. They believe that having a presence on this property, along with a fence that complies with the Code, will help with trespass currently occurring.

The City does not make School District decisions; complaints should be directed to the School District. The applicant has met his duty to deal with school impacts and has provided actual evidence similar to a traffic analysis. Their applicant testimony included review from a traffic engineer who corroborated City staff's analysis that the 24-unit complex does not trigger the need for an independent traffic analysis.

The applicant requests that this application be approved. If the Council does approve the application, the applicant is willing, in an abundance of caution and based on the disagreement, to formally extend the 120 days to October 15, 2020, which would allow them to come back with findings for the Council to consider at its regularly scheduled meeting on October 14, 2020.

*Mayor Aziz closed the public hearing at 7:45 p.m.*

Councilor Grizzle said that she is sympathetic to both sides but the applicant meets the decision criteria set forth by the Planning Commission. She disagreed that the Council has discretion and can move outside the parameters.

***Councilor Furlow moved, Councilor Grizzle seconded, to UPHOLD THE PLANNING COMMISSION DECISION TO APPROVE ADMINISTRATIVE REVIEW AR-20-05. The motion passed unanimously.***

**Amended Findings will be presented to the Council for approval at the October 14, 2020 meeting. The 120-day period was extended by the applicant to October 15, 2020.**

**REGULAR SESSION**

**2) Emergency Contract for Wastewater Treatment Plant Digester Repair**

Whitlatch reported that the wastewater treatment plant digester has not been maintained since the Cannibal system was installed in 2010. The digester coating needs to be repaired as soon as possible as it plays a critical role in the treatment process and can only be offline for a very limited amount of time. The repair will seal the digester and provide structure to it and is expected to last 15 to 20 years.

Staff reached out to three contractors and received one quote from Underground Tech, LLC who the City has worked with in the past. Because of the emergency nature of the project and his opinion that competition would not be impeded (due to the smaller size of the job), staff's recommendation is to award the contract to Underground Tech, LLC under ORS 279B.080.

Whitlatch explained for Councilor Stauder what concrete spalling is. Responding to Councilor Rieskamp's question, Whitlatch stated that the tank is 95'x12.' He briefly described the repair process that will take place on the lower eight feet of the tank.

**Councilor Stauder moved, Councilor Furlow seconded, to APPROVE AN EMERGENCY CONTRACT BASED ON ORS 279B.080 FOR THE DIGESTER COATING PROJECT TO UNDERGROUND TECH, LLC FROM HALSEY, OREGON. The motion passed unanimously.**

**ITEMS FROM COUNCIL** – There were none.

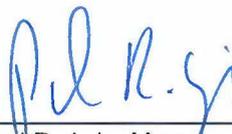
**PRESS COMMENTS** – There were none.

**NEXT SCHEDULED COUNCIL MEETING(S)** – October 14, 2020 (6:00 p.m.) Regular Meeting

**ADJOURNMENT** – Mayor Aziz adjourned the meeting at 7:57 p.m.

*[Minutes prepared by Donna Trippett]*

Minutes Approved by the Lebanon City Council on this 14<sup>th</sup> day of October 2020.

  
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Paul R. Aziz, Mayor   
Jason Bolen, Council President

ATTESTED:

  
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Kim Scheafer, MMC, City Recorder