

**CITY OF FIRCREST**  
**REGULAR CITY COUNCIL MEETING MINUTES**

**TUESDAY, SEPTEMBER 22, 2009** **COUNCIL CHAMBERS**  
**7:00 P.M.** **FIRCREST CITY HALL, 115 RAMSDALL STREET**

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**CALL TO ORDER, PLEDGE OF ALLEGIANCE AND ROLL CALL**

Mayor Pro Tempore Robert Thaden called the regular meeting to order at 7:00 P.M. and led the Pledge of Allegiance. Councilmembers Matthew Jolibois, Chris Gruver, Mike Weinman, Hans Hechtman and David M. Viafore were present. Mayor Kathy L. McVay was excused.

**MOTION**

**Moved by Thaden, Seconded by Hechtman, to excuse Mayor Kathy L. McVay from the meeting. Ayes: Jolibois, Gruver, Thaden, Weinman, Hechtman and Viafore. Noes: None. Excused: McVay. Motion Carried.**

**PRESIDING OFFICER'S REPORT**

Viafore stated the Agenda should have included an Executive Session for Council's quarterly oral review of the City Manager's performance. Viafore requested the evaluation be scheduled for the October 13, 2009 regular meeting. No objections were noted.

**CITIZEN COMMENTS**

**Curtis Naef, 144 Regents Boulevard**, voiced concern that two City employees were laid off. He stated if the City could spend 1.2 million dollars on a sewer project there should be enough money to pay those two employees salaries.

**COMMITTEE, COMMISSION & LIAISON REPORTS**

**Streets, Facilities and Equipment**

Hechtman reported work continues on the Contra Costa lift station with completion anticipated in early November. Issues include additional work on the pumps and possible additional costs for the use of temporary pumps. The generator has been delivered, a new electrical control panel and new lid are on order and some valve replacement work has been done.

**Public Safety and Court**

Gruver reported a \$3,000 donation was received for the 2010 National Night Out event.

**CONSENT CALENDAR**

Thaden requested City Clerk Rosenblatt read the consent calendar as follows: approval of Voucher No. 40091 in the amount of 91,419.63, approval of Voucher No. 40092 through Voucher No. 40168 in the amount of \$194,057.44, approval of Payroll Warrant No. 31268 through Payroll Warrant No. 31340 in the amount of \$103,071.26 and approval of Minutes of the September 8, 2009 regular meeting.

**MOTION**

**Moved by Viafore, Seconded by Weinman, to approve the Consent Calendar as read. Ayes: Jolibois, Gruver, Thaden, Weinman, Hechtman and Viafore. Noes: None. Excused: McVay. Motion Carried.**

**NEW BUSINESS**

**Amending FMC Section 22.34.005 to increase the maximum impervious coverage for the R4C zoning district**

City Attorney Smith stated this was a follow up to the September 8, 2009 public hearing. Three Councilmembers were not in attendance at the public hearing and would have to be excused from participating this evening unless they have reviewed the record. Affidavits were prepared but have not been signed which means Councilmembers Weinman, Hechtman and Viafore cannot participate in this item.

Viafore stated he reviewed the record but that record raised questions for him and he would disqualify himself from voting on this issue. Viafore left the Council Chambers for this item. Hechtman stated he was informed signing an affidavit was not mandatory and that he had reviewed the record and was prepared to participate this evening. Smith confirmed signing an affidavit was not mandatory. Weinman stated he had read the transcript and the minutes of the public hearing.

Planning/Building Director Gilmore stated the proposal before Council was to amend Fircrest Municipal Code (FMC) 22.34.005 to increase the allowable impervious coverage from 30% to 50% for all structure and impervious surfaces combined within the development site within the R4C zoning district. At the public hearing on September 8, 2009 staff provided information on this issue and additional testimony was given by City Engineer Loughheed. Testimony was given by several citizens who voiced concerns about stormwater runoff from potential development of the R4C properties. Written testimony (Exhibit 7, Dressler and Exhibit 8, Kolouskava) was admitted at the public hearing. Also submitted was an index of materials from the City's prior proceedings that lead to the adoption of Ordinances 1460 and 1461 which previously amended the impervious coverage from 15% to 30%. Kolouskova had requested that the materials identified in the index be incorporated into the record for the September 8, 2009 public hearing, which they were. A letter from Greg Vigoren, dated September 7, 2009 was also admitted.

Weinman stated that R4C property owners were seeking to change the zoning conditions of their property to increase the impervious surface of the area if it were to be developed. Neighboring property owners were concerned that allowing more impervious surface will increase and worsen future flooding of their properties from Leach Creek. The State's Stormwater Manual identifies that water on developed properties must be captured at 100% or nearly 100% and slowly released so there is not an impact to the surrounding area regardless of the impervious surface levels. Weinman explained that where discussion was once unclear a recent court decision was clearer. The court decision indicates that if City does not change the zoning it will lose on this issue in court and have to pay damages. The City's legal advisors and insurance carrier have warned that the City will liable if Council does not take proper measures on this issue. Weinman felt it would be unwise and reckless not to vote for the change.

Weinman inquired about the chances of winning a legal dispute if the allowable impervious coverage was not changed to 50%, which was the same level as the surrounding areas. Land Use Attorney Carol Morris stated because this discussion was not taking place in executive session she did not feel comfortable responding to that question. She did clarify that the recommendation of the attorney for the City in this case and the attorney hired by the City's insurance pool was to pass this ordinance.

Weinman inquired if the recent court decision might change any time soon. Morris explained that the court decision that is the basis of the recommendation was decided by the Court of Appeals. King County did attempt to appeal it to the Supreme Court but the Supreme Court decided not to accept the appeal. This case was final and would not be changed unless the Court decides to reverse itself.

Weinman inquired what the response was from the insurance attorney. Attorney Michael Tierney explained he was hired by the insurance risk management pool but the City of Fircrest was his client. He agreed with Attorney Morris on this matter. The decision in King County was going to stand until a new case comes along and changes that decision but until then that was the law and had to control the City's actions.

Weinman inquired about the impervious surface levels for the surrounding properties. Gilmore explained those levels were 40% for structures and 50% for all structures and impervious surfaces combined. Weinman stated the R4C property was held to a higher standard than the surrounding properties. Gilmore stated the previous regulations would impose a higher standard.

Weinman inquired if the standard was changed to the same standard as the surrounding area would the property owners be able to build immediately. Gilmore stated there would be an extensive process to go through first. Weinman inquired about the Stormwater Management Manual standards. City Engineer Lougheed explained current Department of Ecology's (DOE) regulations under the Western Washington Stormwater Management Manual were the most stringent in the State. Fircrest Greens, The Commons and Emerson Courtyard were developed using those regulations. Previous development was prior to the City adopting any Stormwater Manual. Weinman inquired how the State's Stormwater Manual would be implemented on this property if it was developed. Lougheed stated the Western Washington hydraulic model would be used. That model takes years of rain data, goes through a modeling system and comes up with three orifice sizes at certain levels depending on the volume and depth of the tank or pond. Water would be released at an old growth forest rate equivalent of three different storms; the 2-year, 10-year and 100-year storms. Weinman inquired if that was the condition that existed now. Lougheed responded the existing condition was not old growth forest but was 2<sup>nd</sup> growth timber. The proposed standard was higher.

Hechtman clarified that if this property was developed in the future using the Stormwater Manual the runoff would be no more at any one time than it was today and may be less because of the stringent standards. Lougheed agreed. Hechtman inquired if this property would now be similar to surrounding properties in terms of what it will be zoned for. Gilmore stated the zoning would be essentially the same for density. The flexibility of an R4C was that there was no minimum lot size and houses can be placed closer together to preserve more open space. That was an option to the applicant and a decision the Planning Commission would make in a recommendation to Council. Gilmore emphasized that although the focus this evening was on impervious coverage, this is a Critical Area under the City's Critical Areas Ordinance.

Hechtman stated this issue has been considered and discussed for several years and now there was definitive law on it. This was private property and there were stringent private property rights. He assured residents that if and when an application was submitted all their questions and considerations would be taken into account. The City would make sure the Stormwater Manual standards were applied.

Jolibois questioned the Determination of Environmental Non-significance passed on May 29, 2009 and wanted to review the Environmental Checklist. He explained the State Environmental Policy Act (SEPA) requires all governmental agencies to consider the environmental impact of a proposal and an Environmental Impact Statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. Jolibois stated the Environmental Checklist was completed to help an agency decide whether a EIS was required. In this case that Checklist was filled out by the City of Fircrest and contains 52 "not applicable" responses under the non-project proposal. Gilmore confirmed that was correct.

Jolibois referred to two environmental elements on the Checklist. The first, Earth, relating to types of soils found on the site and the second, Water/Surface, relating to estimating "the amount of fill and dredge material that would be placed in or removed from surface water or wetlands" and "the source of the fill material." The City's response on these two Checklist items was "Not applicable under this non-project proposal." Jolibois inquired what the proposal was.

Gilmore stated this is a non-project proposal and a non-project does not have a specific environmental impact. Any project application would be required to disclose site specific information and would have to go through the SEPA process specifically for a proposed project.

Jolibois suggested the Checklist might need to be delegated to somebody so the determination of Non-Significance was not passed and signed by the same person supplying the information. Jolibois reviewed a Stormwater Detention Recommendations letter (Exhibit 4a) from Dr. McCarthy dated July 15, 2008. McCarthy stated in his letter, "The development scenario having 45% impervious surface would result in more annual runoff unless mitigated by incorporating low impact development concepts into the site plan as discussed below." and "The character of flooding that occurs downstream from the site should be further evaluated to identify the potential impacts of development." Jolibois pointed out McCarthy was referring to 45% impervious surface, less than the 50% being proposed. Jolibois suggested further evaluation of information based on a 1974 agricultural survey, a 1984 manual and the 1988 Pierce County Comprehensive Drainage Program Maps. Jolibois inquired if current studies incorporated information identified in a letter from Civil Engineer Vigoren, (Exhibit 3) who works in development and identified, "There are springs that emanate from the hillside of the proposed development area that flow year-round." Gilmore stated the Critical Areas Ordinance was updated in 2005. That update, required by Department of Ecology, was based on best available science. There was no Critical Areas Ordinance in 1974 or 1988. The agricultural survey was from the U.S. Department of Agriculture (USDA), Soil Conservation Service, but was not the in-depth guide that was utilized now. The USDA manual says that soils types and conditions change over time and Gilmore noted they probably have since 1974. He stated site specific analysis was far more important.

Jolibois referred to information on streams emanating from the hillside and inquired if McCarthy incorporated that underground flow into his duration and runoff flow rates. Gilmore stated that has to be addressed in any studies done as a development application because it was a critical component of geologically hazardous areas and has to be addressed.

Jolibois inquired how the Critical Areas Ordinance relating to wetlands, unstable soils, year round emanating streams and the relationship to slope was going to impact the allowable density of development. Council was being told the Critical Areas Ordinance supersedes the Conservation Overlay and that under the threat of a law suit would have to pass this. Jolibois inquired about a project coming forward and folding mid-stream due to lack of financing or the determination profits would not be adequate. He voiced concern about the property being stripped of vegetation before a stormwater retention system was built and about who would be responsible for a bond to mitigate future problems. Gilmore stated the applicant would have to address those issues when they submit a development application. They would have to comply with all elements of the Critical Areas Ordinance and there would have to be a site specific analysis for the type of development proposed. Gilmore stated bonds would have to be posted for any aspect of the development where bonds are required, particularly when it comes to civil engineering portions.

Jolibois inquired about an Environmental Checklist when a project does come forward for actual development. Gilmore stated when an application comes forward an Environmental Checklist would be submitted to the City for evaluation. Jolibois inquired if referenced studies were available to read. Gilmore explained the Critical Areas Ordinance was based on the DOE model ordinance that was based on hundreds of studies. Those studies were developed by state agencies, private companies and integrated together to form the model ordinance. Jolibois referred to a grant that was awarded in the past to study and update the critical areas inside Fircrest. He thought the City hired a civil engineer to do the studies and felt that information should be available.

Thaden invited additional comments. None were noted.

#### **ORDINANCE NO. 1481**

**Moved by Jolibois, Seconded by Weinman, to adopt Ordinance No. 1481, an ordinance amending Fircrest Municipal Code (FMC) 22.34.005 to increase impervious coverage from 30% to 50% for all structure and impervious surfaces combined within the development site within the R4C zoning district. Ayes: Gruver, Thaden, McVay, Weinman, Hechtman and Viafore. Noes: Jolibois. Recused: Viafore. Excused: McVay. Motion Carried.**

#### **Presentation of the 2010 Preliminary Budget**

City Manager Brandon presented the 2010 Preliminary Budget to Council and reviewed the City Manager letter including what the City of Fircrest does and potential development in 2010. He stated the Preliminary Budget was balanced and cost containment had been implemented throughout. Budget study sessions were scheduled on Mondays in October and public hearings were scheduled in November.

Thaden explained that by law the City Manager is required to present a Preliminary Budget to Council. Council would review the document and discuss it in October at study sessions that are open to the public. There would be public hearings in November when public comments are taken and then Council would adopt a 2010 Budget in December.

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Hechtman thanked residents in attendance. He explained that at the study session last night Council discussed recent actions that occurred in the City. Council was aware of where he stood on those issues. It was identified last night that those actions would be brought up again tonight and questioned. Hechtman felt that questioning would illicit answers that would be specific to individuals affected. He was not comfortable with having discussion about individuals in a public setting. Hechtman stated he looked forward to working with the Council on a balanced budget for 2010 and excused himself from the meeting.

Weinman and Gruver concurred with Hechtman's comments and excused themselves from the meeting as well.

Viafore recognized there was no longer a quorum of Council and inquired about continuing the meeting.

Smith clarified without a quorum the meeting was over. At 7:53 P.M. Smith stated the meeting was over.