Regular City Council Meeting
January 13, 2015
MEETING MINUTES

CALL TO ORDER Mayor Pete Edison called to order the Regular Meeting of the Banks City Council at 7:02 PM.

PLEDGE OF ALLEGIANCE
The Pledge of Allegiance was recited.

ROLL CALL
Present were: Mayor Pete Edison, Mark Gregg, Brian Biehl, Michael Nelson, Dan Keller, and Mark Walsh. Teri Branstitre was excused.

Staff present: City Manager Jolynn Becker, City Recorder Angie Lanter, City Attorney Dan Kearns, City Planner Stacey Goldstein.

Mayor Swearing-in Presentation – Peter Edison
Councilor Swearing-in Presentation – Dan Keller (Position CC1)
Councilor Swearing-in Presentation – Mark Walsh (Position CC3)
Councilor Swearing-in Presentation – Mark Gregg (Position CC5)

City Recorder Angie Lanter swore in Mayor Edison and Councilors Keller, Gregg, and Walsh.

APPEARANCE OF INTERESTED CITIZENS – None

CEREMONIAL PRESENTATIONS & PROCLAMATIONS

1. Holiday Lighting Contest Winners – Chamber of Commerce President Ray Deeth presented gift certificates from local Banks businesses to Joe Jessel, Jamie Cop, Leslie Peterson and Tim O'Connor for participating in the Holiday Lighting Contest. He announced the Lighting Contest Winners and presented them with gift certificates as follows: 3rd Place, Greg Kindel and family, $90 in gift certificates; 2nd Place: Tim Hardie, $100, 1st Place, Jean Forrest, $190. He reminded that the City and Chamber of Commerce contributed money for the awards.
   Mayor Edison expressed his appreciation to Mr. Deeth, Susie Jurgensen and the Chamber for the work they did and for the Holiday Lighting Contest.

BRIEFINGS AND PROGRAMS

2. Police Monthly Briefing – Deputy Tran stated that he was filling in for Deputy Hanlon, who was currently attending training, and would be the deputy in Banks for the week. He presented the police report for December 2014.

   Sergeant Steven Schuster updated that signage noting that the Sheriff's office served the City of Banks, similar to the Enhanced Sheriff's Patrol District signage, was being reviewed to determine whether the larger or smaller sign should be used. The signs would be made next month and then posted at all entrances to the city, either with the Tree City signs or on a separate sign thereafter. He asked if the Council had any questions or issues related to the Sheriff's office.

   Councilor Keller said he wanted to better understand how the police services the City pays for are used and how effective they were for the hours scheduled. He requested month-to-month data on the number of public demand calls that came in during scheduled hours and those response times compared to when no deputy was on duty in Banks. He assumed the response time would be faster for calls occurring during

scheduled hours. This would be especially helpful to see if additional resources are needed as the city grows, and the data would help justify the need to increase services.

Sergeant Schuster replied that in his experience working the graveyard shift, the call demand load during the evening hours was a lot less and typically when domestic calls and car break-ins occur. None of these calls are not given service because the deputies working the west end during those hours know that both Gaston and Banks are to be serviced differently than a rural area. Due to low staffing levels that have occurred since taking over the City of Cornelius, which involved a lot of personnel shuffling and training, getting enough people to work on the west end was sometimes difficult. He said he would report back to Deputy Hanlon and have his computer staff review the calls for service to report back to Council next month. He noted that the rash of evening break-ins was happening countywide, especially in Aloha and Bethany. Many people were leaving their cars unlocked. He added that he tries to drive through Banks at least once a shift, if not more. If the crime pattern continued, the Sheriff's office would consider some special missions. Deputy Tran added he was working a lot later during the week to mix up the schedule.

Councilor Gregg agreed Deputy Hanlon was doing a good job and believed there was a misnomer in the community that when Deputy Hanlon was gone, the city was on its own, which he knew was untrue. He was glad to hear randomized patrols still came through town.

Deputy Tran believed progress was being made on the criminal activity occurring especially in Arbor Village which seemed to be led by group of people. Deputy Hanlon and other deputies not assigned to the City of Banks have been making arrests/

City Manager Becker said she had asked Deputy Hanlon if Marcie Allie could include a description highlighting the details of the City's contract with the Sheriff's Office in the City's quarterly newsletter so that the community would better understand the additional policing hours and support that Banks had available.

3. Planning Commission Liaison – Planning Commission Liaison Sam Van Dyke reported on the December meeting, noting the Commission adopted the Finding of Fact for the removal of Condition 9, which was on tonight's City Council agenda.

4. City Council Goals Updates
    a. Water Resources – Councilor Gregg
    b. Downtown/Main Street Master Plan – Councilor Keller
    c. Library Phase II – Councilor Nelson
    d. Economic Development – Mayor Edison
    e. Sidewalk Maintenance/Repair Program – Councilor Branstitre
    f. At Grade Railroad Crossing – Councilor Biehl
    g. Asset Management Plan – Councilor Walsh

This agenda item was postponed to next month.

CITY REPORTS

5. City Manager Report – City Manager Becker presented the City Manager Report via PowerPoint, which was included in the meeting packet.

CONSENT CALENDAR:

6. City Council Meeting Minutes – December 9th, 2014.
7. Shall the City Council recommend approval of 2015 OLCC License Renewals to the OLCC Board? (CL 2015-01)
8. Shall the City Council approve the scriveners error changes that were discovered and corrected during the current codification process? (CL 2015-02)

Councilor Biehl moved to approve the Consent Calendar as presented. Councilor Gregg seconded the motion. MOTION CARRIED 5-0. Ayes: Gregg, Biehl, Nelson, Keller, and Walsh; Nays: None.

PUBLIC HEARING

9. MOD1-14 and MOD2-14

Modification of PUD 6-96 and PA/ZC 8-96; Request to eliminate Condition 9 from the two (2) land use approvals which requires a secondary access to the southeast corner of Arbor Village to be constructed when Phase 9 is developed.

Mayor Edison read the conduct of hearing format, noting the applicable approval criteria were included in the Staff report. He asked if any Councilor had any bias, conflict of interest, or ex parte contacts to declare. Councilor Nelson declared that his wife, Rachel Nelson, was a Planning Commissioner and that he had seen much of the information presented to him on the Council in her notes from the Planning Commission meeting. No other declarations were made. No Councilor's participation was challenged by any member of the audience. He called for the Staff report.

City Planner Goldstein presented the Staff report, noting the Planning Commission's recommendation to approve the request with conditions, which the Applicant agreed were acceptable. She and City Attorney Kearns responded to questions from the Council as follows:

- Sunset Ave was more of a collector street than Oak Way and was considered the Preferred Alternative for an east/west connection in the Transportation System Plan (TSP); however further study was needed.
- The existing railroad crossing at Sunset Ave was not a public crossing and was only for the lumber mill. The Applicant could provide further detail about that access. The location of the lumber yard and pellet mill could be an issue, but the TSP proposed an overpass type crossing, not necessarily an at-grade crossing. Any proposed at-grade crossing would consider existing conditions and potential impacts. The TSP included some preliminary cost estimates, not concrete numbers, for an overcrossing at Sunset Ave. Further study was needed to determine whether an at-grade or overcrossing was the most cost effective and legally feasible. Overcrossings are typically more expensive. The entire process of designing, planning, and building such a major piece of city infrastructure would cost millions of dollars.
- Phase 9, the last phase to be developed in Arbor Village, was indicated on the Zoning Map. Phases 1 through 8 were also developed by West Hills Development, but as written, Condition 9 was specifically tied to the development of Phase 9.
- The location where the Applicant was to stub a public right-of-way adjacent to Parcel 9, as stated in Condition 5, was indicated on the map provided to the Council at the dais. The stub would provide opportunity for an access in case the situation changed, such as the railroad going away.
- Staff deferred to the Applicant to address questions about whether a smaller easement already existed over the railroad tracks near Parcel 9 and what the average cost would be to develop the road improvements required by Condition 5 should the railroad become a positive participant in having at-grade crossing.

Mayor Edison called for the Applicant's testimony.

Seth King, Land Use Attorney, Perkins Coie, 1120 NW Couch St, 10th Floor, Portland, OR 97209, representing the Applicant, West Hills Development Co., stated multiple reports were in the record that had been prepared by Chris Brehmer and his team from Kittleson & Associates, and Mr. Brehmer was happy to answer any questions. He noted the principals from West Hills were unable to attend tonight's hearing due to a conflict and sent their regrets. The Applicant supported the Staff report and Planning Commission recommendation, including the five proposed conditions of approval.

- He discussed the boards displayed before the Council, which were entered into the record, reviewing the locations of Phase 9 and its surrounding features; the required rail crossing in Condition 9; the preferred crossing on Sunset Ave at the existing at-grade crossing as identified in the TSP; and, Phase 9 relative to the urban growth boundary (UGB) expansion area. While not pertinent to the subject request, he briefly described the future plans for the area based upon the conditions imposed by the Planning Commission, and how those conditions would impact the development of Phase 9.
- The Applicant was requesting the removal of Condition 9 for two primary reasons:
    - First, no legal basis existed for the condition. Case law, under both the Federal and State constitutions, stated that conditions of approval requiring a property owner to complete offsite improvements typically required the local government to show that the degree of the condition, or what that condition required, was proportional to the projected impact of the development. In this case, no evidence existed to support the conclusion that the condition was proportional to the

impacts of the development of Phase 9.

- The development of Phase 9 did not facilitate the need for the secondary access. In fact, Phase 9 traffic could be accommodated by Oak Way and Trellis Court, the two existing roads that connect to Highway 47, from both a safety and a capacity standpoint, which was confirmed in the memorandum from Kittleson & Associates dated June of 2014
- Additionally, no development proposal existed for Phase 9 when the PUD was approved in 1996, so nothing would have justified the crossing.
- Finally, the City's TSP showed that the need for the railroad crossing was based on the UGB expansion lands to the east. Phase 9 was not requiring a connection to the east in this particular location, but those properties to the east would require a connection to get back to the city.
    - As Staff indicated, if the connection was implemented at this location, it would effectively function as a cut through by traffic from UGB properties through Arbor Village to get back to the city. The Applicant did not believe Oak Way had been constructed to handle that kind of cut through traffic.
    - The need for the connection was a community wide need, not one based upon the impacts of Phase 9 development, so no legal authority existed for the City to impose or enforce Condition 9 on the developer of Phase 9.

- Second, Condition 9 was not practical to implement. The Applicant diligently explored three different locations for obtaining the access, none of which were feasible. In the memorandum dated July 16, 2014, Kittleson & Associates explained why these three options were not workable. He briefly summarized the findings discussed in the memorandum.

- The Applicant believed eliminating Condition 9 was appropriate from both a legal and policy standpoint. As stated in the Staff report and the Applicant's application narratives, all of the approval criteria had been met and both Staff and the Planning Commission recommended approval.
- As conditioned, if the subject application was approved the Applicant would return with a request for a zone change for Phase 9 from industrial to residential, and the application would include a traffic impact analysis, providing the opportunity for the City and the public to be certain that the streets were functioning properly in this location, and a full hearing opportunity to consider those issues at that time. Because West Hills wanted to be a good neighbor and be part of the solution, they had entered into an agreement with Quail Valley Golf Course Corporation and Van Dyke Family Land, LLC to share the cost of a study to locate a railroad crossing, which was also reflected in the conditions.

Councilor Biehl commented that the crossing was not originally intended to be tied to Phase 9, but to provide a safe access across the railroad tracks because only one access existed out of Arbor Village, which was essentially Oak Way. The condition was tied to the whole development, not just that one phase.

Mr. King responded it might have been tied to the whole development, but the language of the condition specifically limited it to this particular phase, which was how it was most appropriately analyzed. He believed the condition was imposed in 1996, when the original PUD was approved, and the UGB expansion was not even a twinkling in anyone's eye at that time.

Councilor Keller noted the vote put the crossing at a specific place and he understood a right-of-way or easement existed at that location.

Chris Brehmer, Civil Engineer, Kittleson & Associates, 610 SW Alder, Suite 700, Portland, OR 97205, understood that a partial right-of-way existed there today, and that the intent was to make use of and build upon that existing right-of-way. The crossing area shown was chosen for a reason, and the conditions were set up such that the right-of-way would essentially lead up to that crossing to allow for a future connection if desired.

Councilor Keller asked if any other rights-of-way or easements existed that the City could obtain if the railroad already expressed no interest to work with the City.

Mr. Brehmer replied his understanding from the City's TSP was that two key options were considered for potential railroad crossings, the subject location at the south end of town and at Sunset Ave. The dynamics

with the railroad had changed quite a bit since 1996, and even more recently with the new cut off. The Port of Tillamook Bay railroad was no longer running, and he understood Portland & Western (P&W) was in the process of buying the former Port of Tillamook Bay tracks, making P&W the sole railroad to work with on a crossing. P&W has a specific process for gaining a new public grade railroad crossing which would require an intergovernmental agreement (IGA) with ODOT Rail, P&W, and the City of Banks, as the road authority. Until a rail application is approved through that process, no one could guarantee that a crossing would exist. Even though a condition required the installation of a crossing, as in this case, there was no guarantee from a railroad or ODOT Rail perspective that a railroad crossing would be allowed here.
As referenced earlier, the bigger study would look at what would be feasible in terms of where a crossing could be placed and what the crossing would look like. The area identified for the crossing actually involved crossing three tracks and two or three crossing gates would be involved, so that might not be the best place from the railroad's perspective due to maintenance. The bigger study seemed to be the appropriate form to sort out where to put a railroad crossing.

Councilor Keller said it seemed difficult to work with the railroad to get anything accomplished. He asked how much more difficult a crossing would be at the subject location than at Sunset Ave.

Mr. Brehmer believed having open and early communication was the key to working with the railroads, which tend to be viewed as the evil empire that always says no. However, from a railroad perspective, adding a crossing creates a new point at which to interact with public traffic as well as a new maintenance issue that is ongoing into perpetuity. The key was to work with the railroad, understand what the railroads' needs are as well as the long term plans of Banks Lumber Mill and considering the bigger system to determine what was feasible and logical. In his experience, one could work with the railroads to get new railroad crossings. He noted that Kittleson and the City of Hillsboro had worked with the railroads on a new crossing that had been approved by both P&W and ODOT Rail.

Councilor Keller asked if the estimated cost of $20 million noted in the Applicant's packet was the most or least expensive of the three proposed options considered by the Applicant.

Mr. Brehmer replied the TSP discussed the potential for a grade-separated crossing for which he had seen cost estimates between $20 million to $40 million, but they were very conceptual; no one had actually done a detailed estimate. A typical at-grade crossing usually costs in the $1 million to $2 million range, which he estimated would cover the crossing for the subject site with three tracks. This cost only included the gate and concrete for the crossing, and was above and beyond any improvements needed for the road section.

Councilor Keller asked if the $20,000 for the transportation study and the costs for rezoning were the oly costs to be incurred by the Applicant to eliminate Condition 9.

Mr. Brehmer explained a few layer of costs were involved with the request. The $20,000 was a contribution West Hills had agreed to pay toward the larger study if that study was a greater cost. In terms of a future land use application occurring afterward, a traffic impact study would be prepared for the 34 homes proposed in Phase 9 due to neighborhood concerns about speeding, traffic volumes, on street parking, and congestion in the area. This study could result in new conditions of approval specific to development related to traffic calming, traffic control devices, changes, etc., all of which could be potential additional costs to the project.

Mr. King added that Washington County Transportation Development Tax (TDT) charges would apply when the residences were ultimately developed, so Applicant would be paying its share of that.

Councilor Nelson asked if the Applicant intended to fulfill Condition 9 when they entered into the agreement with the City in 1996.

Mr. King clarified he was not representing the Applicant at that time, but he understood the Applicant did intend to fulfill the condition. The Applicant had moved forward in good faith, exploring the alternatives to try to find a solution, but they had not been successful in doing so.

Councilor Nelson asked if the legal constraints of imposing Condition 9 were discussed and debated by the Applicant in 1996 and then they just finally just agreed to it.

Mr. King reiterated he had not represented the Applicant at that time, but the legal deficiencies of the condition were the same today as they were then. There was no evidence, then or now, to support the proportionality requirement of imposing that condition on Phase 9. He did not know why the Applicant had not pushed the issue at that point; perhaps they were interested in getting an approval and were comfortable to at least get started on the development and could, in good faith, examine the connection.

Councilor Nelson understood they were going to make a good faith effort to fulfill that condition, but did not really have a plan about how to do it. The Applicant must have ball parked what this type of condition would cost them as they proceeded with the development.

Mr. King replied he did not know what plan the Applicant had at that point, or what their studies might have shown. He did not know whether the Applicant had penciled out the cost of the condition in the 1990s.

Councilor Keller noted the City expected to have the crossing paid for by the development. How could the funds that would have been spent for the crossing be transferred into something that would pay for an additional crossing elsewhere? With the deletion of Condition 9, the Applicant was getting out of paying for 100 percent of a crossing.

Mr. Brehmer believed West Hills had responded to that question at the Planning Commission hearing, saying that the project was not feasible to build a railroad crossing at that cost, so Phase 9 would not happen if construction of the railroad crossing was a condition of approval. In removing the requirement to construct the crossing, West Hills proposed providing the right-of-way should conditions change or a future study recommended the crossing there ;contributing toward the greater railroad crossing study to figure out where to put it; and providing a traffic impact study in conjunction with the rezone, etc., to determine the infrastructure required. Kittleson & Associates was very confident that from a capacity perspective, the connection at Oak Way and Trellis Court, the railroad crossing was not needed to the east based on all the work done to date. At the end of the day, yes, the Applicant would be getting out of constructing the railroad crossing—

Councilor Biehl interjected, for $20,000.

Mr. King clarified the discussion was getting to his first point, that the Applicant was not getting out of anything that the City had the legal authority to impose.

Councilor Keller asked if SDCs or transportation charges were legal in any way. Were charges imposed for things like putting in the park legal, and was this legally done in other cities?

Mr. Brehmer replied the development would have to pay the TDT, which was essentially, a transportation SDC administered through Washington County and jointly adopted by the City of Banks and other communities. The TDT is paid for each residential home and would be charged to the project. He understood that all nine phases were all developed and proposed for development by West Hills. The TDT is assessed at the time of building permit of each home, so it would be assessed on up to 34 homes.

Mr. King noted the developer had already paid for the existing homes in Arbor Village.

Councilor Keller said it seemed like it was boxed into a corner, and now the last phase was the problem. He asked for help in better understanding the timing of the condition relative to the entire development.

Mr. Brehmer understood from reviewing the files that the project was required to provide infrastructure up through Phases 1 through 8. A network of roads was built and the big offsite improvement was the signalization of Oak Way at Highway 47. He did not know why the condition for the railroad crossing was added to the last phase, whether it was believed that having a fire access would be good at the final phase, or perhaps that with development finally reaching the railroad, it was good take a road across the tracks.

He did not know the nexus for requiring the crossing. There was no need for that capacity and the connection would result in some adverse issues with respect to new traffic coming in from the east and the connection to Highway 6 that was never addressed.

Councilor Walsh said it was obvious this whole situation was not evaluated properly. West Hills agreed to something they could not do, or perhaps, should not do in light of issues with new traffic coming into the neighborhood.

Councilor Nelson agreed the City did not have the legal authority to impose Condition 9, but it was discussed and agreed to at some point. Parties are supposed to fulfill what they have agreed to in a contract. He was looking for a way for the developer to fulfill what they had agreed to 18 years ago.

Mr. Brehmner reiterated that according to the testimony from Michael Robinson at the Planning Commission meeting on behalf of West Hills, it was not financially feasible to fulfill Condition 9. That was the reality of the Applicant and why Phase 9 had not happened.

Mayor Edison called for public testimony in favor of, opposed and neutral to the application.

Don Kilgras, 307 NE Merle Ct, Hillsboro, OR 97124, representing Quail Valley Golf Corporation, stated his client was in favor of removing Condition 9, but did not agree with the findings that only a $20 million above-grade crossing was feasible, or that the Sunset Ave crossing was the best site for the crossing. These findings were not based on sufficient data to convince Quail Valley. As the engineer stated, things have changed fairly radically with the railroad in the last several years which has changed the circumstances. Thus, Quail Valley, West Hills Development, and the Van Dykes were discussing participation in a study to provide answers to these questions. Quail Valley's position to remove Condition 9 was based on the following:

- If in fact a $20 million overpass was the only answer, then unless the City of Banks obtained a $20 million federal or state grant to build a crossing, none would ever be built, in which case, West Hills should be allowed to build homes in Phase 9.
- If a lower cost solution for a crossing was the outcome of the study, then no harm would come from West Hills building homes, as that crossing would undoubtedly be built, ultimately, by benefitting interested parties.

Sam Van Dyke, Van Dyke Family Land, LLC, 40926 NW Verboort Rd, Forest Grove, OR, noted he was not speaking on behalf of the Planning Commission. Van Dyke Family Land supported the removal of Condition 9, and agreed with comments made by Mr. Kilgrass, which reflected on them as well. He confirmed that he did not see any Van Dyke Family land on the displayed map, but noted that Sunset Ave would enter onto Van Dyke Family land. He clarified that if Sunset Ave was extended straight east, it would run into the pellet mill.

Katie Murdock testified in opposition, stating that West Hills originally agreed to build a secondary access as a condition of the entire development, not just Phase 9. West Hills could have gotten out of the condition, but they had the option of not building the crossing immediately, so they waited awhile, then returned and asked to build Phases 1 and 2, two-thirds of the development, while leaving that road for the last phase and indicating the City did not need it and that West Hills intended to do it. This was a couple years later and she was on the Planning Commission at the time. The City agreed in good faith and wanting to be good neighbors, allowed West Hills to build up to it. Then West Hills came back and started having problems. As far as she knew, West Hills had never made any formal application for a crossing, though they had thrown a lot of numbers around, told the City that they could not and that they had had conversations.

- No one had ever said it could not be done; only that it was not the ideal location. The mill was not likely to say that location was ideal either.
- The traffic numbers should impact the entire subdivision, not just Phase 9. The argument that the crossing was not legal based on Phase 9 was void because the crossing was not just for Phase 9, but the entire subdivision with more than 300 houses. The population of Banks had been doubled and that certainly impacted traffic.

- Allowing West Hills out of this obligation offered no benefit to the City. No other outlet would be an option, so the streets would certainly be tore up and damaged by the heavy machinery needed to build, resulting in costly repairs to city streets, and who would pay for that?
- She believed West Hills had the right to build, but also that the City had the right to expect businesses doing business in in Banks to keep their word. What message was the City sending to other businesses and developers coming into Banks if they did not require binding agreements to be kept?

Mayor Edison called for the Applicant's rebuttal.

Mr. King responded that the City did not condition the entire development on that condition, only Phase 9 was conditioned, which was why it was appropriate to consider it relative to only to Phase 9 and not the entire development. He clarified the Applicant had not said the crossing could not be done; however, in this case, the cost of the crossing would make it financially infeasible and greatly exceed the extent of the impact of the development. He requested that the Council approve the applications.

Mr. Brehmer added that no formal application had been made because the City had to be the applicant for the railroad crossing. Under Oregon statute, private developers were not allowed to request railroad crossings. As the larger study moved forward and the location of a crossing was defined, typically the developers and engineers would work with ODOT Rail and P&W to negotiate the application and determine the materials, but ultimately the City would be the applicant as the owner of the road and would be at the table when the railroad crossing application was submitted.

- It was fair to say that the traffic impact of the full subdivision should be considered, but if the request was adopted as proposed, West Hills would be preparing a new traffic impact study, in conjunction with the 34-unit subdivision application, that would consider all the existing trips and traffic impacts of the current subdivision, plus the 34 homes, as well as the capacity of the current road connections to Highway 6. If study determined not enough capacity was available, the City could condition that a rail crossing was needed at this location. Similarly, if the big picture study determined that this was the right location for a rail crossing, West Hills was providing the right-of-way; so, no changes were proposed this evening that would preclude a future rail crossing at the subject location. He fully expected the traffic study to show that the 34 homes would not trigger the need for the rail crossing.
    - Again, funneling traffic in from the east would create all the issues discussed regarding the potential negative repercussions to Aerts Rd and through the neighborhood.
- Construction impacts would need to be considered, but the railroad crossing would not solve that issue.

Mayor Edison confirmed there were no additional comments from Staff and closed the public record at 8:34 pm. He called for Council discussion and deliberation.

Councilor Keller believed requiring the road in the condition was probably a great idea at the time because the highly condensed community needed another exit point. However, the road would cause potential traffic problems with the UGB expansion and he agreed with Ms. Goldstein that the City did not want a bunch of traffic flowing through that part of the city. He did not know if Sunset Ave was the right option for the crossing, because the pellet mill would have to be torn down; however, it was not infeasible because the City did have some rights to build something; so, quite honestly that was the only place the City could build a crossing.

- He had to agree with the potential legal argument, but perhaps this little city made a mistake, not knowing what they were doing, and did not hold the developer to the fire, and now Phase 9 was being held to the fire for that road, but really the intent was the entire development.
- Even though they were not precluding from building it in the future, West Hills had signed up to build nine phases and to build a road there. He did not know if the road needed to be or could be there, but that location would be a great exit point for the community.
- West Hills signed up to pay for something, but if Council approved the request to eliminate Condition 9, there would be a $20,000 contribution for a transportation study versus the hundreds of thousands of dollars the City would lose for a road, which could be located somewhere else in the future. There were a lot of homes in the nine phases of Arbor Village, which was a lot of money and comparatively, the cost of the road was not that significant. Voting to eliminate would not be a good idea because the City needed to hold onto some of these funds. West Hills was a big company with a lot invested in Banks,

and the partnership should help the City with future roads that were needed.

Councilor Biehl asked if Council could impose additional conditions.

Mayor Edison noted the Council Action Status Report item # 9, the back pageof the Staff report listed the five conditions associated with the Planning Commission's recommendation and included the option of adopting other conditions, though he was not sure additional conditions could be determined tonight.

City Attorney Kearns confirmed additional conditions could be added, but no conditions could be imposed that were not directly related to the impact of the development. For example, the $20,000 contribution was something the Applicant agreed to and not something the City could legally impose over their objection. Requiring that the developer build roads within their development, as well as stormwater treatment facilities and other infrastructure was considered onsite improvements because the need for those facilities was directly caused by the impact of the development. The farther conditions were imposed off site, the more tenuous the causal connection would become. For example, shifting the obligation to Sunset Ave or contributing to its cost would be difficult to attribute to anything related to the subject development being so far off site.

- West Hills' argument from the very beginning was that causal connection did not exist. He also noticed that they did not appeal Condition 9 back then, and in reviewing the record very carefully, he believed West Hills agreed to the condition in order to get going and would look at the problems associated with the condition later. That phase was far enough into the future that they might not even own the property when it came time to develop it, so they essentially kicked the can down the road.
- Conditions could be added potentially, but legal constraints exist with regard to the exaction of property and the contribution of resources to remedy problems that were not of the developer's creation.

City Attorney Kearns described how the five conditions recommended by the Planning Commission were founded on the Banks Municipal Code, noting the developer was willing to make some guarantees so everyone would know what was going to happen and could anticipate any potential impacts.
As Mr. Brehmer stated, when applying for the rezone and development, the Applicant would have to prove adequate access, capacity, emergency access, etc. in the context of an actual development because the condition was fashioned in 1996 before the development, and that analysis could be done to a high degree of precision.

- He confirmed the developer's traffic analysis would have to consider traffic of all nine phases to determine the capacity of the existing street system, which was already handling a lot of existing traffic. He agreed a fair reading of the condition was that the secondary access was designed to serve the larger development; the trigger would be Phase 9. He believed West Hills was anticipating that there would in fact be a legally defensible trigger. In retrospect, the City's transportation engineer had determined that another access into the development was not warranted.
- Even without the UGB expansion, the access was not a practical idea. Originally, people likely believed the subject access would connect with Aerts Rd, but ODOT did not like that connection with Highway 6 and would require any access to Aerts Rd to be reconfigured.
- IF the city put access in current configuration…people would cut through the neighborhood to reach Highway 6….circulation models show would be used. ODOT would not allow that…and any one in the neighboring development would not want to see that either…
- In light of the current UGB expansion, some kind of east/west connection was needed, but it would be very expensive and difficult to plan.
- He recommended that the City determine the best location for that connection and urge those who would pay for it to throw eggs in that basket.
- The cross connection would be driven by new development and the City should not have to pay for it, but new development was not this development.

City Manager Becker added that several fees are attached to any new building in the city, including the water and parks SDCs, TDT, construction excise tax, and water connection fee. The TDT rate was now fully priced after being discounted for the recession, and would now be about $5,000 for a new home. She confirmed that the entire TDT amount was paid directly to the City due to an agreement with the County.

City Attorney Kearns explained the TDT funds were to be dedicated to pay for improving the indirect off site system impacts of development, such as infrastructure and increasing capacity, which SDCs were designed to pay for.

Councilor Keller said he was very disappointed that the principals of West Hills were not present to have the conversation in person. He wanted to partner with Arbor, adding it had been a great partnership earlier and had brought a lot of excitement and investment, but trying to get out of a few hundred thousand dollar road seemed petty. He would like West Hills to work with the City and perhaps make some kind of future donation that the City could retain, perhaps to put toward the development of the east/west connection.

Councilor Walsh said he was disappointed that the proposal did not have some kind of monetary compensation in lieu of the request to get out of the requirements of Condition 9. A $20,000 contribution to a study was peanuts compared putting in a crossing.

Councilor Keller asked if approving the request would result in the City losing leverage or its position with regard to this developer.

City Attorney Kearns noted much of the Planning Commission's discussion involved what would happen next and what regulatory hoops would be involved to do something with this land. The City had the ability to require the improvements needed to serve Phase 9 In the context of the zone change and subdivision approval. The Applicant would have to provide infrastructure needed to deal with the impacts of the development in the context of the existing traffic. However, contribution to an overpass or crossing at Sunset Ave could not be part of the zone change or development of Phase 9.

Mayor Edison understood the Council wanted to add a monetary condition to the list, but that could only occur if the Applicant agreed to do so. He asked if the Applicant could respond whether that was a reasonable way to proceed.

City Attorney Kearns advised the record could be reopened for that purpose. He provided a brief background on Condition 4, noting that Quail Valley Golf Company and Van Dyke Family Land had just received voter approval for their annexations at the time of the Planning Commission hearing and knew they would need some railroad crossing in order to serve any development on their lands. He understood that in order to mollify Quail Valley and the Van Dykes, who would oppose deleting Condition 9, West Hills agreed to contribute to the railroad crossing study and the endeavor to get a crossing to serve that potential development. It was not a concession to the City, but to those other developers. He believed those two developments had enough financial horsepower to pay for a railroad crossing and the City had the regulatory authority to prohibit development until that problem was solved.

Councilor Gregg confirmed that delaying the development of Phase 9 would also delay the tax revenue received by the City, and requiring the construction of a road before any development, which was the current situation, hurt the City as well. He asked about the amount of the TDTs.

City Manager Becker believed the fee, which was due when building permits were issued, was approximately $5,000 for each house. She would research to verify the actual amount.

City Attorney Kearns clarified that traffic SDCs obtained for improving roads to serve homes in a development would be used by the City for Banks' transportation system. The Applicant had to build the infrastructure needed to serve their development. The impact fees paid for the indirect impacts to the larger system.

Councilor Gregg agreed with others that it was not an ideal place for a secondary access and that it would draw east side traffic through the neighborhood, which was worse than not having the access and developing Phase 9. The parcel was not developable with the existing commercial/industrial zoning and he did not want commercial business back there.

- Property owners have a legal right to develop their property, and this multimillion dollar requirement to construct a railroad crossing for 34 homes was financially prohibitive. It was like charging $50,000 in

SDCs to build a covered patio.

- The City just did street improvements by chip sealing half the neighborhood, but no improvements were made to most of the streets that would supply this development. Once Phase 9 was built, the streets would need to be repaired, especially after all the construction traffic.
- He believed West Hills should be required to fix the streets after Phase 9 was built and have the City's civil engineer define what needed to be done to bring those roads serving the neighborhood into that development back up to standard. West Hills would be tearing them up to build 34 homes. They could have done it 20 years ago and chose not to, so now they needed to build them.

Councilor Biehl suggested having them post a bond because the roads would probably get destroyed.

Councilor Keller confirmed that he believed the intent was that only 34 homes would be financing the railroad crossing, not all nine phases of the subdivision because the SDCs paid during the initial development were gone. Perhaps a mistake was made with regard to the legal wording of what the Commission and Council wanted at that time, but the language in the legal documents was tied to Phase 9.

Councilor Biehl interjected that was not the original intent.

Councilor Gregg responded that the City was obligated to follow through with what was legally written. Installing a multimillion dollar crossing was cost prohibitive for 34 homes and the property owner had a legal right to develop their property. It had to be financially feasible.

Mayor Edison said that while he understood the Councilors' discussion that West Hills agreed to do this, the Council could not impose any financial condition. All the Council was left with was to ask West Hills to participate financially in helping the City with its future transportation needs, but nothing could be imposed without the Applicant's consent.

City Attorney Kearns clarified that Parks SDCs would be collected from all new development at the time of building permit to pay for the benefit of the parks. Phase 9 homes would also be part of the Arbor Home homeowners association (HOA) and would have to comply with the Covenants, Conditions, and Restrictions (CC&Rs), unless the development went through a de-annexation-type process. He had not heard that this was being considered by West Hills.

Gene Stout, Planning Commission Chair, stated that during deliberation at the Planning Commission hearing, the attorney representing West Hills at the time commented that Phase 9 would bring additional revenue to the HOA, so he assumed Phase 9 would be included in the HOA.

Mayor Edison responded that then the money paid to the HOA would go toward maintaining the park and common areas within Arbor Village. He asked how the Council could ensure Phase 9 would be in the HOA.

City Attorney Kearns noted Arbor Village was currently platted as a nine phase, single PUD subdivision, so Phase 9 was part of Arbor Village. If West Hills wanted to de-annex from the HOA, the PUD would have to be amended. He could not understand why West Hills would want to de-annex.

Councilor Keller suggested delaying the vote until next month to allow the principals the opportunity to return with a different proposal for consideration.

Councilor Walsh said he liked Councilor Gregg's comments about repairing the roads after Phase 9 was completed because it was directly related.

Mayor Edison reopened the public record at 9:03 pm and asked for a response from the Applicant's representative about Council's discussion regarding some financial contribution being made toward the City's future transportation needs.

Mr. King said he appreciated the opportunity to discuss the matter. He clarified that the $20,000 was a private contribution to work with the other private land owners, not to the City, and the Applicant considered

that a voluntary action. He also clarified that if Council denied the application, Phase 9 would not be built and the land, which was zoned industrial, would remain vacant and no fees would flow to the City. He reminded that if Condition 9 was removed, West Hills intended on moving forward with a specific development plan that would be reviewed through public process. All of the impacts would be able to be considered and, to the extent those impacts require exactions, conditions, or contributions, the City would have the authority to impose them at that time. He believed that was also the appropriate time to be considering financial obligations or contributions. At this time, there was no development, which was West Hills' argument. The City was asking the Applicant to put in a road that would not serve any development.

- He did not know whether the Applicant would be willing to voluntarily make a contribution to the City, but he had no authorization to agree to anything tonight. If the hearing were postponed, further discussion could occur, but he emphasized that any contribution would be purely voluntary. He did not believe the City had any legal right to impose such a requirement at this point.

Mayor Edison closed the public hearing at 9:07 pm and called for further deliberation by Council.

City Attorney Kearns confirmed that the potential street improvements would be captured in the future planning and rezoning proposals and reviewed by the Planning Commission, which was the final review authority. A subdivision would not come before City Council unless appealed; Councilors could testify, though he would not recommend it.

Mayor Edison said it seemed like the best point in the process for the City to lock in something to cover the damage to the streets caused by Phase 9 was when the development was actually proposed.

Councilor Biehl noted the request was only to remove Condition 9, so the Applicant could do nothing with the property for another 20 years, though he understood the Applicant wanted to do something.

Councilor Keller believed voting now and dealing with the street costs later would remove some of the City's leverage. The Applicant should have paid for something they agreed to for all nine phases and this seemed like the opportunity for the City to help and support the Applicant. He wanted to make sure West Hills could build the 34 homes as soon as possible to get the revenue coming in, but he also wanted to hold the Applicant to the fire to have a good trade-off. He wanted to delay the hearing and have the principals come next month to speak to Council in person.

City Attorney Kearns confirmed Council could do that as no time deadlines existed. If the Applicant said no, the Council was entitled to hear it directly from them.

Mr. King clarified there were three principals involved with West Hills.

Councilor Gregg also expressed his extreme disappointment that no one from West Hills was present to answer specific questions. It did appear that the matter was not as important to them, which made it harder to want to work with them from this end. He hoped West Hills would make every effort to attend next month.

Mr. King agreed to deliver the message, adding that he knew the Applicant valued their relationship with the City and were certainly not trying to communicate anything by not attending.

Mayor Edison said but they did.

Councilor Biehl agreed.

Councilor Keller requested that Staff work and have conversations with the Applicant so that something might be concluded to make the next conversation go faster.

Mayor Edison summarized that Council agreed with the five conditions recommended by the Planning Commission, in general, but the only issue was whether any additional contribution could be made, as a condition, to the City for future transportation needs.

Councilor Keller moved to continue the public hearing on MOD1-14 and MOD2-14 to February 10, 2015. Councilor Biehl seconded the motion. MOTION CARRIED 5-0. Ayes: Gregg, Biehl, Nelson, Keller, and Walsh; Nays: None.

City Manager Becker asked the Council to retain tonight's packets for next month's hearing.

Mayor Edison called for a brief recess and reconvened the meeting at 9:21 pm.

BUSINESS AGENDA

10. Shall the City Council approve the request from the applicant to remove Condition 9 from City files PUD 6-96 and PA/ZC 8-96, and substitute with 5 conditions of approval, based on the recommendation from the City of Banks Planning Commission?
11. Shall the City Council approve the lifting of the covenant on the property for Condition 9 for Arbor Village?

City Attorney Kearns noted that Items 10 and 11 would be continued to the February 10, 2015 Council agenda in accordance with the Council's prior motion.

12. Shall the City Council adopt Ordinance No. 2014-12-01 Annexing Approximately 27.5 acres to the City (Van Dyke Family Land, LLC)? (Second reading and consideration for adoption) (CL 2015-03)

Councilor Keller conduct Second Reading and adopt, by title only, Ordinance No. 2014-12-01 Annexing Approximately 27.5 acres to the City (Van Dyke Family Land, LLC). Councilor Biehl seconded the motion. MOTION CARRIED 5-0. Ayes: Gregg, Biehl, Nelson, Keller, and Walsh; Nays: None.

Mayor Edison conducted the second reading of Ordinance No. 2014-12-01.

13. Shall the City Council adopt Ordinance No. 2014-12-02 Annexing Approximately 172.93 acres to the City (Quail Valley Golf Course Corp.)? (Second reading and consideration for adoption) (CL 2015-04)

Councilor Keller moved to conduct Second Reading and adopt, by title only, Ordinance No. 2014-12-02 Annexing Approximately 172.93 acres to the City (Quail Valley Golf Course Corp). Councilor Gregg seconded the motion. MOTION CARRIED 5-0. Ayes: Gregg, Biehl, Nelson, Keller, and Walsh; Nays: None.

Mayor Edison conducted the second reading of Ordinance No. 2014-12-02.

14. Shall the City Council adopt Ordinance No. 2014-12-03 amending Certain Sections of Title V (Public Works), Chapter 50 (Water) of the Banks Code of Ordinances? (Second reading and consideration for adoption) (CL 2015-05) Staff reviewed the change made to Item 6 suggested by Council Keller at the last meeting.

Councilor Keller moved to conduct Second Reading and adopt Ordinance No. 2014-12-03 amending Certain Sections of Title V (Public Works), Chapter 50 (Water) of the Banks Code of Ordinances as amended. Councilor Gregg seconded the motion. MOTION CARRIED 5-0. Ayes: Gregg, Biehl, Nelson, Keller, and Walsh; Nays: None.

Mayor Edison conducted the second reading of Ordinance No. 2014-12-03.

15. Shall the City Council elect a new Council President?

Councilor Biehl moved to nominate Councilor Gregg as Council President. Councilor Keller seconded the motion. MOTION CARRIED 5-0. Ayes: Gregg, Biehl, Nelson, Keller, and Walsh; Nays: None.

COUNCIL ROUND TABLE DISCUSSION

Councilor Gregg appreciated the Council's vote of confidence in being elected Council President.

Councilor Biehl noted the City had submitted a CDGB proposal, noting that competition was stiff as only $600,000 total was available and only one award would likely be given.

Mayor Edison discussed the Library Capital Campaign, noting the City was trying to add the community room back to the library by raising $300,000 in donations and about $280,000 in grants. Washington County had already pledged $150,000 to the project, so now $150,000 was needed to match the County's funds. That fundraising effort would be driven by the capital campaign consultant, who said everyone involved needed to give money because it

sent a message to the community that its leaders were behind the project and that the project was viable. Information about the capital project and its related committees had been distributed to the Council. He asked the Councilors to participate on one of the committees and to donate money for the project, noting that he would also be making a contribution. Council needed to send the message that they were behind this important project for the City. He thanked Staff for the great Holiday Party.

Councilor Keller thanked Staff for repairing the coffee pot and congratulated Councilor Walsh on winning his election. He commented about the lumber mill's lack of participation in and partnership with the city. The placement of the pellet mill was interesting. The lumber mill caused lots of noise, so potentially, housing around it would be less desirable to purchase. He believed increased production at the lumber mill could potentially increase railroad traffic, while railroad traffic would decrease with decreased production at the mill. He did not know if the City had ever had a great relationship with the lumber mill. The railroad track had been upgraded, but he believed the railroad only went to the lumber mill.

- He would like to learn about that history and asked Staff to present information about past notes and conversations so Council could have a more holistic view of past deliberations as a Council, potentially related to Condition 9.

City Attorney Kearns stated the challenge was that most of the records associated with Condition 9 and the Arbor Village PUD were in plastic garbage bags in a crawl space. Staff looked high and low to find what was currently available. He agreed there should be minutes of the Planning Commission meeting to see if the condition was kicked down from phase to phase.

Councilor Keller said he just wanted the next discussion to involve a deeper level of discussion based on some historical fact regarding conversations that were held.

Councilor Biehl noted the lumber mill had 50 employees and did pay taxes.

Councilor Walsh stated he would contribute to the Library Campaign and would like to participate on the Donor Development Committee. He confirmed his assignment of overseeing the Asset Management Plan.

Councilor Nelson also discussed the Library Capital Campaign, noting he was glad the consultant was brought on board; she was very sharp and would do a great job in helping the City achieve its goal. A significant amount of enthusiasm was being generated and echoed the Mayor's call for the Councilors to actively participate on the Steering Committee and to contribute. He challenged the Council to meet or exceed his contribution of $500 minimum.

City Manager Becker said she would be giving the CDBG presentation on February 22nd. She noted that a list of all the Banks' Mayors and City Councils from 1920 to the present had been compiled, though the timeframe from 1957 through 1960 was missing, which she hoped to get from the State. She agreed to email to the list to Council.

ADJOURN The meeting adjourned at 9:40 PM

Submitted by:

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Angie Lanter – City Recorder