



CITY OF  
**West Linn**

PLANNING COMMISSION

Minutes of October 7, 2009

Members present: Chair Michael Babbitt, Vice Chair Robert Martin and Commissioners Laura Horsey, Michael Jones, Charles Lytle, Christine Steel and Dean Wood

Staff present: John Sonnen, Planning Director; Peter Spir, Associate Planner; Tom Soppe, Associate Planner; Khoi Le, Civil Engineer; and William Monahan, City Attorney

Members absent: None

CALL TO ORDER

Chair Babbitt called the Planning Commission meeting to order at 7:05 p.m. in the Council Chambers of City Hall

APPROVAL OF MINUTES

Jones **moved** to approve the Minutes of August 5, 2009 as amended. Martin **seconded** the motion and it **passed** 5:0. Horsey and Wood abstained

Martin **moved** to approve the Minutes of August 19, 2009. Jones **seconded** the motion and it **passed** 5:0.

PUBLIC COMMENTS

Roberta Schwarz, 2206 Tannler Drive, said the public should be allowed to comment on proposed legislation whenever changes were made to it. The extension of approvals proposal had been changed, but the City was proceeding as if it were a "done deal."

Karie Oakes, 1125 Marylhurst Drive, questioned whether the Planning Commission was following correct process by not opening the two-year approvals extension hearing to public testimony. She held that if the language of the proposed legislation had been changed the public should be allowed to comment on it. Babbitt explained that the Commissioners had agreed the staff should make the language more consistent with the code.

Alice Richmond, 3939 Parker Road, wanted the City to improve the configuration of City Hall parking spaces. Babbitt asked the staff to find out what the appropriate body and process would be for considering a change.

Lynn Fox, PO Box 236, Marylhurst, Oregon, 97036, encouraged people to attend the City Council meeting the following Monday when the Council was to consider an intergovernmental agreement that would result in increased sewer bills.

#### WORK SESSION

**CDC-09-04 Review and finalize CDC amendments that provide for extension of original land use approvals in Chapters 24, 55, 60, 75, 85 and 89**

#### *Staff Report*

**Peter Spir, Associate Planner**, presented the staff report. (See Planning & Building Department Staff Report dated September 21, 2009. The Planning Commission had decided at a prior hearing to recommend that the City Council adopt the amendments, but later the Commissioners agreed that the staff should make non-substantive changes that would clarify their intent and make the document flow better. They decided it was best to discuss those changes at a public meeting. Most of the changes were to clarify the language, but one of them clarified that the start date of the extension period was the date the three-year original approval lapsed. Spir explained the proposal would mean that if the approved development could accommodate the change in code the approval could be extended. If not, the decision making body could deny an extension request. Babbitt explained that all the Commissioners were going to do that evening was to re-recommend the clarified proposal to the City Council. Horsey said the Commissioners had the best of intentions, but in the interest of keeping the process open and clear to the public she thought the Planning Commission should follow the direction of Chair Babbitt to place the item on the public agenda.

Horsey **moved** to reopen the public hearing. Lytle **seconded** the motion and discussion followed. Jones explained that the changes were minor and the Commissioners had decided to vote on the recommendation again at a public meeting to ensure the public was aware of everything the Planning Commission did. They were forwarding a recommendation that would be considered in a City Council hearing that the public could participate in. To reopen the Planning Commission hearing would be starting the entire public process over again and would be a waste of current and past Commissioners' time and staff time. The vote was conducted and **the motion failed** 5:2. Lytle and Horsey voted yes.

Jones **moved** to recommend CDC-09-04 to the City Council with the minor language changes the staff recommended. Wood **seconded** the motion and it **passed** 5:0. Lytle and Horsey abstained. Babbitt announced the City Council would hear the proposal on October 26, 2009.

#### PUBLIC HEARING

(Note: The staff reports and all related documents for the hearings are available through the Planning Department.)

**PUD-09-01/SUB-09-01/WAP-09-02 6-Lot PUD, Subdivision and Water Resources Area Permit at 19650 Suncrest Drive.** Continued from June 17 to July 29, 2009 (July meeting cancelled). Re-

advertised for September 2, 2009 (September meeting cancelled). Re-advertised for October 7, 2009.

Chair Babbitt opened the public hearing and explained the applicable criteria and procedure. He asked the Commissioners to declare any potential or actual conflict of interest or bias, site visits and ex parte contacts. Lytle recused himself because he had participated in neighborhood discussions and votes related to the site. Horsey declared she had made two site visits.

Lynn Fox, PO Box 236, Marylhurst, Oregon, 97036, challenged Babbitt's ability to hear the application. She contended that a comment he had made on a blog a few years ago showed he was prejudiced against the Hidden Springs Neighborhood Association. Babbitt responded that he could not recall making such a comment and it did not sound like a comment he would make.

Jones **moved** to affirm Babbitt's ability to participate in the hearing. Martin **seconded** the motion and it **passed** 5:0. Babbitt did not vote.

### *Staff Report*

**Tom Soppe, Associate Planner**, presented the staff report. He said the applicant chose to propose a 6-lot subdivision when the zoning would have allowed as many as 12 lots. The eastern two-thirds of the site were to be protected in open space and the western one-third of the site would be developed. The site was in the R-10 zone, but the lots were smaller than 10,000 sq. ft. because a Planned Unit Development (PUD) could be allowed to have smaller than minimum sized lots if development density had been transferred to protect natural resources. The two open space tracts were separated by the creek. The conditions of approval put a conservation easement over them. The only development that would be allowed there would be a trail. Soppe reported that the staff had watched videos submitted in by Karie Oaks and it was clear the applicant had offered that land to the City and the City had a legal right to accept it. But the Parks and Recreation Department director had made the case that it was in the public interest not to, because the area was not very accessible and the staff was spread thin maintaining the many other City-owned tracts. So the staff was recommending new conditions of approval 14 and 15 that would allow the homeowners association to retain ownership of the two tracts with a conservation easement on them that would ensure they would be protected from development, neglect, and dumping of materials. The City was to maintain Tract B and the trail easement on the east side of the creek. The homeowners association was to fence, sign, and maintain Tract C, which was on the west side of the creek and closest to the development. If the homeowners association did not take appropriate care of it, the City could take action to ensure the protected area was maintained. He said the stormwater facility drained into the open space, which was large enough to protect the entire Water Resource Area (WRA) and the transition area. Soppe showed a slide that listed how the City benefited from a PUD. He said the staff found the application with the recommended conditions of approval met the criteria for a PUD and WRA permit, so they recommended

approval. He showed slides that listed the staff-recommended conditions of approval (See the September 23, 2009 Staff Memorandum).

During the questioning period the staff clarified the map that showed the open space divided into Tracts B and C was to be submitted by the applicant during their testimony. Jones asked the staff to explain their rationale for recommending a conservation easement instead of City ownership of the open space tract. The staff recalled that the Parks Director had advised that the City was spread thin maintaining all the open space tracts they had inherited in many different parcels. He had pointed out the subject space was landlocked by other parcels. Putting a conservation easement on it and requiring a fence, signage, trail easement, and homeowners association maintenance would be the most cost-effective solution for the City. That would be in the public interest and would protect the creek while the City decided the route of a future trail system (See Attachment 2 to the September 23, 2009 Staff Memorandum). The only activity that would be allowed there was removal of hazard trees. Steel observed it was a heavy burden on six property owners to have to maintain an open space that bordered on many other properties. When asked, Monahan clarified that it would be up to the homeowners association to sell or give it to the City if the City decided they wanted to own the open space. The developer would initially control the homeowners association, but a developer typically relinquished control to the homeowners after 50% of a development was sold. Meanwhile the conservation easement would prohibit development in the open space.

### *Applicant*

Kirsten Van Loo, Emerio Design LLC, 6107 SW Murray Blvd., Ste 147, Beaverton, Oregon 97008, submitted a revised site plan that she said was identical to the April 27, 2009 site plan in the staff report, except that she had drawn a line that divided the open space tract into two tracts on either side of the creek in order to make the map conform to proposed new conditions 14 and 15. She asked the staff to highlight the dividing line with a marker on the larger map on display and Soppe did that. She clarified that the homeowners association would maintain Track C on the east side of the creek and closest to the development. It was just over 40,000 square feet. The City would maintain Tract B on the west side of the creek. It was about 60,000 square feet. She explained the location of the creek would change over time, so she had drawn a north/south line that would be easier to monitor and delineate. She said she had also corrected the locations of trees. She said the applicant was comfortable with the 21 conditions of approval the staff recommended

During the questioning period, Martin suggested the conditions specify that the trail in Tract B was to be at least 50 feet from the stream. That was what Metro recommended and the local code had been based on Metro research. Van Loo recalled that the staff had indicated they wanted the trail easement to be fairly close to the stream. Soppe advised that Chapter 32 allowed trails to be in a Water Resource Area and the Parks Department wanted flexibility because the City did not yet know where the best pathway location would be. Sonnen agreed that care had to be taken to keep the trail as far back as possible from the stream. But specifying a distance might make it challenging to align a trail if the City decided a trail should

come through there. He suggested not specifying a distance, but saying the trail was to be as far from the stream as practical or possible. Martin said the path the application described was not practical because of the steep bank. He agreed it should be intelligently positioned. He wanted to specify a minimum distance so the trail was not closer to the stream than it should be and because another part of the code required a path that was farther than 20 feet back to be paved. Jones observed that specifying a distance for the trail easement would not affect the applicant, because a conservation easement would be there in any case.

Horsey asked how the development would transition to the neighborhood to the north. Van Loo referred to the tree plan. She said the existing trees would be removed because they were not the kind of quality trees people wanted in their side yards. The northern boundary was along the backyards of adjacent houses. Those yards featured existing trees and fences. She said she could not commit to what the owners of the PUD houses there would plant in their yards. She clarified that the application stated the perimeter setbacks would be what the base zone required and the applicant had asked for interior side yard setbacks of 5 feet. She clarified that the applicant planned to plant the majority of mitigation trees on site. Some would be planted throughout Tracts B and C. Some would be planted along the south property line. The applicant would work with the City Arborist in choosing street trees. Native plants would increase the biodiversity of the open space. Chair Babbitt announced a 10-minute recess.

#### *Proponents*

Alice Richmond, 3030 Parker Road, observed that as soon as the development was built there would be greater protection of the natural area than it had now. She suggested leaving the location of the trail to a trail design process. She said a trail there would help in fighting fire.

Lynn Pettitt, 2085 Ridgebrook Drive, wanted to know if the developer would retain ownership of Tracts B and C after the six lots were sold. Monahan said typically a developer priced homes to recoup the cost of the open space and gave controlling interest to the homeowners association after at least 50% of the homes were sold. Typically an agreement between the developer and the homeowners association would be reflected in the association's Covenants, Conditions and Restrictions (CC&Rs). The City did not see them at this stage of the development process. Pettit said the applicant's drawing showed a few trees on a north corner that were actually on her lot and she wanted the trees to remain there.

Lynn Fox, PO Box 236, Marylhurst, Oregon, 97036, said developers sometimes sold land that had been part of a PUD approval process. One example was that the developer of Hidden Springs 1-4 had offered buyers a parking area for their RVs and boats and then sold that parcel to someone else who allowed non-residents to store RVs and boats there. She said people had expressed concern that a trail would have to be farther away from the stream and too close to homes and yards. That affected privacy. The location of the trail was a very important aspect for the Commissioners to consider. She said the Hidden Springs Neighborhood Association had found that people stored things in trail areas, changed them into garden spaces; used them as dump sites; and drove vehicles over them. She asked how the City would control the

applicant's site if they could not control what happened on existing trail sites? She suggested that when the applicant removed noxious weeds and nonnative species it would be nice if they also removed debris that posed a hazard and polluted the water. She indicated that the neighborhood felt the applicant had betrayed and defrauded them to influence them to support the application. She asked why the City had not made it known during the preapplication conference that they did not have the money or the staff to take care of dedicated open space. When she asked if the approval was for 3 or 5 years, the staff clarified it was for three years.

Brandy Sarget, 19667 Sun Circle, opined that the City's argument for not requiring the applicant to dedicate the open space was very thin (see the September 18, 2009 Memorandum from the Parks and Recreation Department Director). She noted the recommended conditions of approval required a conservation easement on Tract C for the benefit of the homeowners association. If it was for their benefit, could they decide to remove the easement and deed the land back to the homeowners? Although the conditions of approval required a conservation easement on Tract B for the benefit of the City, Sarget reasoned that was not a benefit at all because the applicant had already offered to dedicate the open space to the City, so the City could accept it. Martin asked if the homeowners association had the option to decline the burden of maintaining the open space.

Monahan advised that the conditions of approval would require the conservation easement to be recorded on the plat and run with the land. The burden of maintaining the conservation easement was on current and future home purchasers. People who bought a home there also bought the responsibilities that came with it. The CC&R arrangement between the six property owners would be in place and would clearly state it was the owners' responsibility to maintain the conservation easement. The homeowners association could not transfer ownership of the open space. Sarget asked that the conditions be modified to specify that the party that the conservation easement benefited was the City.

Karie Oakes, 1125 Marylhurst Dr., also questioned the City's rationale for allowing the open space to be privately owned and for putting the burden of maintaining the large open space area on just six homeowners. She said public ownership was what the code preferred and what the public was expecting when they voted to annex the parcel. The drainageway was part of a larger watershed that benefited the public, so it was best for it to be in public ownership. She saw no need for a condition of approval related to how far the trail had to be from the creek because that was not required to make the application comply with the code. She held the map the applicant offered that evening was new evidence that had not been available to the public before. It created a new tract and specified new square footage. Oakes requested that the hearing be continued because that new evidence had been submitted. She also wanted to be assured that the map showed that the stormwater facility had been moved outside the WRA. She suggested the Commissioners look at a trails map the staff had given her at another meeting. It showed how the trail would connect City-owned tracts. She said the site's tracts should be publicly owned so the trail would follow contiguous publicly owned tracts. That would make them more cost effective to maintain.

The request for a continuance had been based on new evidence. Babbitt asked the applicant to state what they had changed. Van Loo explained that she had offered a graphic illustration of how former Tract B could be bisected into two parcels so the Commissioners could clearly see the amount of land that was going to be in Tract B and the amount of land that was going to be in Tract C if Conditions 14 and 15 were applied. She held the line that had been drawn through the original tract was not new information. If the Commissioners were uncomfortable with it she would withdraw it.

Babbitt polled the Commissioners. Steel said it was not new information but reorganization of existing information. Tract B had simply been divided. Jones concurred. Martin said it was new information because there was now Tract B and Tract C and the new conditions of approval specified who had the burden and the benefit of the conservation easements on them. The public should have the opportunity to comment on that. Wood thought it was more a clarification than new information but he would agree with Martin and treat it as new information. Horsey said it was new information.

Jones **moved** to continue PUD-09-01/SUB-09-01/WAP-09-02 to October 21, 2009 and keep the record open for seven days to receive written testimony related to the new information the applicant had submitted that evening that delineated Tracts B and C. The applicant was to be allowed to rebut at the October 21st hearing. Horsey **seconded** the motion but wanted assurance the new map would be available to the Commissioners and the public. Horsey **amended the motion** to keep the record open for seven days after the map was available to the public on the City website. Van Loo said she would provide a high quality map, to scale, with the correct square footage, by the end of the next business day. The **amendment failed** for lack of a second. **The vote on the motion was conducted and it passed 6:0.**

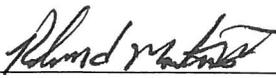
ITEMS OF INTEREST FROM STAFF (None)

ITEMS OF INTEREST FROM THE PLANNING COMMISSION (None)

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 9:50 p.m.

**APPROVED:**

  
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Michael Babbitt, Chair

Bob Martin vice chair

1/6/2010  
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Date