



# CITY OF West Linn

## PLANNING COMMISSION

Minutes of November 6, 2013

Members present: Vice Chair Christine Steel, Russell Axelrod, Lorie Griffith and Nancy King  
Members absent: Chair Michael Babbitt, Robert Martin and Holly Miller  
Staff present: Chris Kerr, Economic Development Director; Tom Soppe, Associate Planner; Khoi Le, Engineering staff; and Megan Thornton, Assistant City Attorney

### PREHEARING MEETING

Vice Chair Steel convened the prehearing meeting in the Rosemont Room of City Hall at 6:30 p.m. Staff pointed out the applicant had just submitted alternative conditions of approval to consider. Staff clarified what the applicant was proposing and what staff could agree to. The Commissioners inquired about certain features that staff identified as rain gardens. Staff clarified that applicants were not required to provide details such as building orientation in this stage of the development process. Mr. Kerr advised the City was working to arrange for other boards to receive the same training the Commissioners had just participated in. He announced there had been six responses to the Arch Bridge master planning RFP.

### CALL TO ORDER

Vice Chair Steel called the regular meeting to order in the Council Chambers of City Hall at 7:00 p.m.

### PUBLIC COMMENT

None.

### APPROVAL OF MINUTES

Commissioner King **moved** to approve the Minutes of August 19, 2013. Commissioner Griffith **seconded** the motion and it **passed** 3:0:1. Commissioner Axelrod abstained.

### PUBLIC HEARING

**SUB-13-03/VAR-13-10/VAR-13-11, Proposed 7-lot subdivision with a Class II variance for reduced lot depth on one lot and a Class I variance for reduced lot depth on another lot.**

Vice Chair Steel opened the public hearing and outlined the applicable criteria and procedure. Commissioners Axelrod and Griffith and Vice Chair Steel each reported a site visit. No one present challenged the right of the Planning Commission or any Commissioner to hear the matter.

### **Staff Report**

Mr. Soppe referred to the vicinity map and an aerial view of the site. He pointed out the locations of the existing house, which was to remain, and numerous trees. He referred to the site plan. He pointed out the existing house was on Lot 3. Two shared driveways were proposed to serve all of the lots so that none of the lots would be directly accessed from Rosemont.

Staff clarified the variance from the 90-foot average lot depth requirement was for Lots 6 and 7. The variance was needed because the three rear lots were considered flag lots. The code required the lot depth of the base zone (90' in this case) as measured perpendicular to the street from which a flag lot took access. That meant these lots had to meet the minimum lot depth requirement north/south. The lots were over 95 feet east/west, but the site was not very deep for its size, so these lots were not quite 90 feet north/south. Mr. Soppe compared the variance request with the variance criteria as follows: The exceptional/extraordinary circumstance was that the site was in an area that was mostly built out and the site had a shallow depth compared to its width. The variance was necessary to preserve the basic property right to develop as others in the zone/vicinity had been allowed to. Other subdivisions in the area had been able to fulfill R10 density and this subdivision needed the variance to have lots in back due to its shape. Staff found the variance was compatible with the Comprehensive Plan and other plans and code. The Comprehensive Plan encouraged diversity in lot configuration. The lots were still large and deep enough for houses oriented east/west, even if there was a requirement for north/south depth. Staff found the request was the minimum variance necessary for the lots in the rear. It avoided impacting the ability to develop surrounding properties.

Mr. Soppe reported that staff found the application met the approval criteria for subdivisions related to lot size; minimum density; utilities available and adequately sized to serve the development; and street improvements/dedication per code. Five of the seven lots met all of the lot dimensional requirements and the other two would if the variance was granted.

Mr. Soppe pointed out the recommended conditions required all significant trees to be preserved except for one along Rosemont Road where street grading was necessary. It was to be mitigated per code. The final plat was to show all significant trees that were to remain. They were to be protected to the dripline, plus 10 feet by a conservation easement. He observed that development on Lot 4 was most constrained by trees. He discussed an enlarged site plan of Lot 4 which showed the trees on it and a theoretical building footprint. He pointed out a tree at the northwest corner that would have to overlap the building footprint. Staff recommended a condition related to a type of foundation construction that would not hurt that tree. He noted there was a sequoia on Lot 4 close to where the sidewalk would be installed. Staff recommended conditions called for the City Arborist to do a field analysis to see if it was necessary to move the sidewalk closer to the street. He reported that TV&F had found the proposed driveway configuration was acceptable if the results of a fire flow test met TVF&R's



standards. The recommended conditions of approval required that test and result. Mr. Soppe anticipated that the applicant was going to present some proposed changes to the conditions of approval in order to have more flexibility related to trees, but that would still preserve as many trees.

### **Questions**

Commissioner Axelrod noted the applicant's plan did not show the orientation of the homes. He asked why Lots 1-4 did not each take access directly from Rosemont Road and if the homes would be turned sideways to the street. Mr. Soppe advised the code did not allow new lots to be accessed directly from an arterial street like Rosemont if there was any other alternative. He clarified that there might be quite a lot of existing driveways along that segment of Rosemont that did not conform to the current code regarding separation of driveways.

Commissioner Axelrod recalled the record showed Engineering staff had concern about the design capacity of the proposed onsite stormwater retention basins. Mr. Le clarified that he was pretty comfortable with what the applicant proposed now, which was a rain garden designed for a 100-year storm event with a rock gallery in the bottom; and, because they used a factor of three instead of two.

26:40

### **Applicant**

Kelly Pynch, 1332 Stonehaven Dr., related he planned to build a small community with friends so they could be together during their retirement years. He indicated that he had committed to sell three of the lots to buyers who were current West Linn residents. He had been working with Engineering and Planning staff and he thought they all agreed to what was proposed. He asked for approval.

Eric Saito, 2607 Hillcrest Ct., related that the applicant had worked with staff and generally concurred with the staff recommendations. However, they had some suggestions for revising two conditions and potentially adding a third condition. He discussed two sketches. Sketch A showed the footprint of the existing home and conceptual footprints on three other lots on the east side of the proposed subdivision. He explained that they had no conceptual footprints for the remaining three lots because they did not yet have prospective buyers/designs for them. He said the four homes they showed footprints for would be single level and large enough to accommodate a family. They would share a common driveway connecting with Rosemont. That helped them meet the requirements for access spacing along Rosemont, which was an arterial street. That was why they had not proposed a driveway from Rosemont for each of the homes. He noted that most of the significant trees were on Lot 4. Sketch B was the enlarged diagram of Lot 4 showing the potential footprint area and the dripline-plus-10-foot tree protection zone around the trees. He pointed out the two trees that were proposed to be removed. He pointed out the potential area for a home - outside of the tree protection zone and within the setbacks - was crosshatched. They proposed to remove a small tree in the midst of the east property line in order to accommodate this footprint shape. He pointed out the

footprint was impacted by the large tree in the northwest corner of the lot. He indicated it was a challenge to build on this particular lot. This conceptual diagram had led them to propose changed conditions for this lot and trees. They proposed changes to the conditions of approval that would indicate that they were not expecting the City Arborist to perform additional field work. They would use their project arborist. If staff wanted them to strike the first line of the new condition they proposed (2E) and start it with "The City Arborist may allow..." they could agree to that. He said they had information from their project arborist relative to the tree at the southeast corner. He had found the tree roots and then determined where they could widen the road. He indicated that they would agree to provide the tree conservation easement, but there might be a problem timing it so it was recorded on the final plat if they did not have a design for a home on Lot 4 at that time. They proposed to make that condition more flexible. If they put the conservation easement on the final plat they wanted to know if they would be able to change it later.

Ralph Henderson, Group McKenzie, 1515 SE Water Ave., Ste. 100, Portland, Oregon 97214, stated that Mr. Le had perfectly explained the storm system. Everything was designed to infiltrate up to a 100-year storm and provide the required water quality. There was a safety factor of three in all the infiltration rates. Many infiltration tests had been done on the site and one had been done adjacent to each of the proposed rain gardens.

### Questions

Commissioner Axelrod asked if the setbacks would be consistent with those of other existing buildings along Rosemont even if the buildings were turned sideways. Mr. Saito responded that each lot on Rosemont would be considered a corner lot. That meant the setback from Rosemont had to either be 20 feet or 15 feet depending on orientation. He indicated they would meet the code.

Commissioner Axelrod noted the applicant had shown a tentative design for four lots but there was not a tentative design for the remaining three lots. He asked if there should be a condition calling for a similar design for the remaining three lots. Mr. Saito indicated he thought the required code setbacks pretty well controlled the locations of the houses on those lots. He related that he did not think the property owner would require them to be single-story houses like the others were doing. That was why they had located them away from developed properties around the site so there would not be a drastic transition.

Commissioner Axelrod noted the applicant proposed to have six street trees along Rosemont and the code required trees there to be consistent with those in other developments in the area. He asked if the applicant would be willing to match the 24' and 32' tree spacing he saw along nearby developments. Mr. Saito responded that they were required to provide mitigation for a 24-inch tree they were removing in the area where the road would be widened. They would be happy to put in more street trees if they counted as mitigation trees. He added that they already planned to put in more trees, but not necessarily on the street.

Commissioner Axelrod questioned whether designing for a 100-year storm event was good enough because rating curves for storm facilities were failing and inaccurate for forecasting due to climate change. He indicated he was concerned about how close the detention facilities were to structures. Mr. Saito indicated this was an alternative way of dealing with it on the site so they did not have to go across others' properties to get to drainageways. He indicated that each property owner would know what their responsibilities were in regard to how to treat the facilities.

Commissioner Axelrod asked if the arborist had been consulted about the root zones. Mr. Saito responded that would be part of the field investigation. The results would influence how they shifted the targeted building area on Lot 4 around. That was why they were particularly interested in having new Condition 3 they proposed. If they saved the tree to the east to take out the tree in the northwest it opened up an area that would allow them to potentially have storm treatment without the interference of that tree and its removal would add sunlight to three lots. They wanted the potential to use passive solar for the homes. He said they would work with the City Arborist, who would have the final say after they did the testing. The intention was to test areas around trees and locate roots in the same manner as had been done when they preserved the 66" sequoia on the corner.

Vice Chair Steel wanted to know what the stormwater basins would look like on private property and what would prevent a future homeowner from just filling what looked like a depression on his lot. Mr. Henderson clarified that they would have an operation and maintenance agreement regarding the rain garden on each lot which would be recorded with the deed for each lot. It would inform purchasers. It would be enforceable on each individual lot. He confirmed the tree preservation easement and the stormwater facilities requirement would be on each deed. He described what a facility would look like: a shallow, 14-inch deep, depression, with a 3:1 side slope, that was 10 to 12 feet across and perhaps 20-feet cross in some places. The entire facility, with layers of rock on the bottom and top soil on top, would be about 3 feet deep. During a heavy storm, when water did not infiltrate the top soil fast enough, accumulating water would drain into a small overflow pipe that would direct it down to the rock layer faster. Water quality type plants would be planted around the sides and there would be different plants on the bottom.

Commissioner Axelrod asked if the applicant proposed this method of stormwater management because they had been denied an access easement. Mr. Henderson responded that it was proving difficult to get an access easement. This approach eliminated that issue and a lot of extra piping. Mr. Saito related there was an existing easement from this site going east to Linn Lane which he thought the City had determined was useable for this purpose. However, they would have to deal with trees and with neighbors who were not particularly in favor of the applicant using the easement.



Commissioner Griffith related she was familiar with swales/rain gardens on properties with new homes near her residence. She commented that so far they had not had a lot of rain, so she not seen them fill up or spill anything into Trillium Creek.

1:00

#### **Public Testimony**

Myron Wallace, 1515 Rosemont Road, submitted written testimony from himself and his wife. He commented that he was one of the neighbors who were not enamored with the drainage pipe proposed to be put through a sewer easement. Mr. Wallace read their written testimony aloud. In it they indicated Mr. Wallace had talked with Mr. Soppe on or about October 27, 2013. Mr. Wallace had voiced additional concerns about the proposed development and pointed out a factual omission in Staff Response 30 (see page 22 of the staff report). Portions of that staff response read:

*"The curb cuts of the access driveways comply with 48.060(D)(1) and are over 150 feet apart. Gregory Court is over 200 feet from the western driveway and Linn Lane is approximately 300 feet from the eastern driveway."*

*"Table 8-3 recommends 300 feet between private driveways on arterials. The TSP states that new developments "should meet the recommended access spacing standards" in the table. This wording indicates that this is a recommendation that applies wherever it can,..."*

The Wallace's wrote that the omission was that their driveway at 1515 Rosemont Road was located between proposed access driveways and Linn Lane. Sometime in the future another driveway might be needed to serve further development on their property. They wrote that they trusted that in the future the City's Planning Commission would be understanding of their needs and that the 1485 Rosemont development would not preclude their access to Rosemont Road or to the further development of their property. They wrote that they had been assured by Mr. Soppe that it would not preclude access to their driveway on Rosemont and it would not preclude access to the eastern portion of their property when it was further developed, either from Rosemont Road or from Linn Lane.

1:02

#### **Rebuttal**

Mr. Saito indicated the applicant understood the Wallace's concern because the applicant had originally had the same concern about their development. They had three parcels and only one of them had a drive. They had assumed there could be driveways on the other two parcels. When they found that would create problems in terms of trying to manage the access they had elected to have two common private drives to serve seven lots and to abandon the existing drive to the existing house. He anticipated that could be necessary on adjacent parcels. He commented that there were a lot of different ways to provide access to multiple lots.

#### **Staff Comments/Clarifications**

Mr. Soppe advised that code Chapter 54 called for putting in street trees to Parks and Recreation Department standards but did not specify what the spacing was to be. He reported that the City Arborist had not made any recommendation for a different spacing of the applicant's street trees after he looked at the site. Nevertheless, Parks and Recreation Department would inspect the street trees to ensure they conformed to city standards at the time the City did the final inspection of street improvements.

Staff discussed the applicant's proposed changes to conditions. He indicated that staff could agree to the applicant's version of Condition 2C because it made things clearer and more flexible, as appropriate. He said they could agree to the new condition (2E) the applicant proposed without the first line and a half about the arborist, which was not relevant. It would read: *"The applicant may remove the 36" cedar on the northwest corner of Lot 4 instead of the 16" cedar on the east area of the lot."* He advised it was not necessary to use the applicant's proposed version of 2D to address the applicant's concern that he might not know exactly where the footprint on Lot 4 would be in time to record the conservation easement on the final plat. Staff would insert the following language in their version after "using the City's standard language for conservation easements for trees": "as adjusted to allow for I-beam construction in the easement as allowed by Condition 2C." That would allow timely recording of the easement and allow the footprint overlap.

Commissioner Axelrod suggested keeping and modifying the opening language of 2E instead of removing it. His purpose was to use it to indicate that an additional evaluation was necessary. He would say, "pending field investigation by the applicant and in consultation with the project arborist." Mr. Soppe explained staff recommended removing everything from 'pending' through 'may allow' and starting the condition with, "The applicant may remove..." because the City Arborist was basically already allowing that flexibility and they did not want to commit him to having to do more investigation.

Commissioner Axelrod discussed street tree spacing. He explained he wanted to try to make infill development look consistent with existing developments along the roadway. That was important for the neighborhoods. He noted that Chapter 54 called for the street trees of a proposed subdivision to be in conformity with the street tree plan for the area. He noted the street tree plan for the adjacent property was approximately 24' spacing. He suggested the City should require street tree spacing in that area to be similar to that. He remarked that 30' was fine. He noted the City had approved six trees in the site's right-of-way, which was more like 70' to 80' spacing. He indicated he disagreed with that. The applicant asked if there was a street tree plan. Commissioner Axelrod indicated he had looked at areas in West Linn where developers had planted street trees. He reported they were all in the range of 24' to 32' spacing. He said they should make this site consistent by spacing trees that way.

Mr. Kerr assured that the City would do exactly as the code required. Staff thought they recalled the code specified spacing of 30' but they would have to research that. They did not know the circumstances related to why trees were planted closer together next door. If there



was an approved street tree plan for the area they would make sure the applicant's street trees conformed to it. He assured the Commissioners that the applicant would not get their final plat approved until the City made a final inspection of all of the street improvements including street trees. He confirmed street tree spacing was not something the Commissioners had to nail down in this part of the process. Commissioner Axelrod disagreed with that approach. He noted the applicant had submitted a tentative plan and said he was going to plant six street trees and staff had approved that. Commissioner Axelrod indicated he wanted to see a condition that required "street trees on 30-foot centers, consistent with the City plan."

Commissioner Axelrod referred to Condition 3 and asked what happened if the fire flow test failed. Mr. Le advised it was a TVF&R requirement to test the pressure in the system in order to determine if the houses needed sprinklering systems. He clarified that was normally done during the building permit stage. The Commission recessed for a few minutes and then reconvened.

1:32

Vice Chair Steel asked staff to clarify what the recommended changes to the conditions of approval were so the applicant could comment on them. Mr. Soppe related that 2C was now proposed to be the alternative language that had been handed out to the Commission that night. The following language would be added at the end of 2D: "as adjusted to allow for I-beam construction or other alternate means of construction within the easement as allowed by Condition 2C." New condition 2E would read: "The applicant may remove the 36" cedar at the northwest corner of Lot 4 instead of the 16" Japanese cedar in the east area of this lot." Ms. Thornton recalled Commissioner Axelrod's question about street trees. She recommended adding new Condition 4: "The applicant will plant street trees as required to comply with the Municipal Code, CDC Chapter 54 and Parks and Recreation Department requirements."

#### **Applicant's Response to revised conditions of approval.**

Mr. Saito confirmed that the applicant was fine with the proposed changes. However, he clarified that in regard to new Condition 4, if the required tree spacing was greater than the 30' spacing that was already on the street, they were willing to match the 30' spacing if they could get tree mitigation credit for it. He clarified those would not be the only trees they added, but they wanted that credit.

Ms. Thornton clarified that the minimum number of required street trees could not be counted against mitigation; and, the recommended condition only required the legal minimum street trees. If the applicant was saying that he wanted mitigation credit for putting in more street trees than the minimum requirement that was something he should negotiate with the Parks Department. She clarified for Vice Chair Steel that there was no need to add that caveat to the conditions of approval because the applicant was going to work out mitigation later on in the development process. Vice Chair Steel asked the applicant if that worked for him. Mr. Saito replied that he thought so.

1:37



### **Deliberations**

Vice Chair Steel closed the public hearing and opened deliberations. Commissioners King and Griffith each indicated she favored approving the application. Commissioner Axelrod indicated the variances were necessary because of the orientation of the lots. He explained he felt there should be a condition regarding street trees because he felt there were places in the City where the City and developments had short-changed the neighborhood when it came to street trees. Similar spacing would help make the look along the street more uniform. He noted this could be one of the main trail access points along Rosemont. He said he was a little uneasy about the storm system, but if the City was comfortable with the design and if it was overdesigned enough then he would let it go. Commissioner King indicated she liked the fact that the applicant was doing something unique and very good for his friends and the community.

Commissioner King **moved** to approve SUB 13-03/VAR-13-10/VAR-13-11 subject to the recommended conditions of approval as modified during deliberations. Commissioner Axelrod **seconded** the motion and it **passed** 4:0.

### **ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

Commissioner Griffith invited the Commissioners to a reenactment, which was the last event of the Centennial Celebration on the following Sunday. Commissioner Axelrod reported problems accessing digital reports and information on the City website. Vice Chair Steel reported they were also having problems using their electronic tablets and software and asked for a training class. Mr. Kerr asked them to each email him describing specific problems so he could talk with IT about them. He planned to look into having a Windows 8 class.

### **ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT**

None.

### **ITEMS OF INTEREST FROM STAFF**

None.

### **ADJOURNMENT**

There being no other business, Vice Chair Steel adjourned the meeting at approximately 8:55 p.m.

APPROVED:

Christine M. Steel  
Christine Steel, Vice Chair

2-27-14  
Date