



PLANNING COMMISSION
Meeting Notes of December 21, 2022

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| <u>Commissioners present:</u> | Charles Mathews, Scott Erwin, John Carr, Joel Metlen, Bayley Boggess, Gary Walvatne, and Carrie Pellett |
| <u>Commissioners absent:</u> | None |
| <u>Public Present:</u> | Brandon Hoek |
| <u>Staff present:</u> | Planning Manager Darren Wyss, Associate Planner Chris Myers, City Attorney Bill Monahan, and Administrative Assistant Lynn Schroder |

The meeting video is available on the [City website](#).

1. Pre-Meeting Work Session

Associate Planner Chris Myers briefly outlined the extension request outline. He noted that it was a second extension request. The City Attorney has reviewed the Code and determined that additional extension requests are allowed. Chair Walvatne asked what would make a project a phased development according to Chapter 99.125. City Attorney Monahan replied that an applicant must submit the original application as a phased development. After the original approval, the application cannot be converted to a phased development. Myers noted that two comment letters had been received.

Commissioner Mathews asked for clarification about the Brandon Street improvements related to the new Athey Creek Middle School on Dollar Street.

2. Call To Order and Roll Call

Chair Walvatne called the meeting to order at 6:30 pm.

3. Public Comment Related to Land Use Items Not on the Agenda

None.

4. Approval of Meeting Notes: [11.16.2022](#)

Commissioner Carr moved to approve the meeting notes for 11.16.22. Commissioner Erwin seconded.

Ayes: Pellett, Boggess, Erwin, Carr, Mathews, Metlen, and Walvatne. Nays: None. Abstentions: None.

The motion passed 7-0-0.

5. Public Hearing: [MISC-22-12, a request for a two-year extension to a previously approved 34-lot subdivision and WRA permit at 18000 Upper Midhill Drive \(SUB-15-03/WAP-16-03/AP-16-02/AP-17-01/MISC-20-04/AP-20-03\)](#)

Chair Walvatne introduced application MISC-22-12, a two-year extension of a 2020 Planning Commission decision to approve a two-year extension of a 34-lot Subdivision at 18000 Upper Midhill Drive (SUB-15-03/WAP-16-03/AP-16-02/AP-17-01/MISC-20-04/AP-20-03). Walvatne explained the hearing procedures provided in CDC Chapter 99.170 and opened the public hearing.

City Attorney Monahan addressed legal standards and appeal rights. The substantive criteria that apply to the application are contained in Community Development Code (CDC) Section 99.325 (Extensions of Approval).

City Attorney Monahan addressed Planning Commission conflicts of interest, ex-parte contacts, jurisdiction, and bias challenges. There were no declarations of conflicts of interest.

Commissioner Walvatne declared a site visit on December 21, 2022. He stated that he saw a work crew member onsite but thought work was not allowed on site after November 5, 2022. Walvatne disclosed an ex-parte discussion with a neighbor while on site, but he stated that he did not learn anything that was not part of the record.

Commissioner Erwin stated that he knows Jason and Jessica Harra, who previously appealed decisions for this project. Erwin stated that he had brief discussions about the project in the past but no current discussions. Erwin stated that he would decide the matter based on the evidence provided in this hearing.

Commissioner Mathews declared that he served on the Planning Commission for an earlier decision on the project. Mathews visited the site at that time.

No other Commissioner declared any potential bias or ex-parte contacts.

Monahan asked if any audience member wished to challenge the Planning Commission's jurisdiction or the impartiality or ex-parte disclosures of any members of the Planning Commission. There were none.

Associate Planner Chris Myers presented the staff report. The applicant requested a two-year extension of a previously approved extension of a 34-lot Subdivision at 18000 Upper Midhill Drive. Myers summarized the project history and prior decisions, reviewed current conditions, and outlined applicable approval criteria.

West Linn Community Development Code (CDC) 85.090 requires that the subdivision plat is recorded with the County within three years from the date of approval. Without an extension, the applicant would not be able to record the plat.

The applicant has been working on completing the onsite infrastructure improvements but can only complete the improvements after the approval expiration. The original approval was set to expire on July 19, 2020. The applicant filed a timely application and received approval for a two-year extension, which reset the expiration date to November 5, 2022.

The grading for the water and sanitary sewer lines is complete. Stormwater lines are approximately 98% complete, power lines are 80% complete, and the pavement is approximately 65% complete. The remaining work includes the construction of a retaining wall, completing the stormwater system, the power lines, final pavement, and some on site boring.

Myers noted that two comment letters were received during the comment period. The letters expressed concern about the length of time for the project, the extended periods without work being completed, and that a retaining wall for the subdivision is blocking a pedestrian trail that is adjacent to the subdivision but in the City of Lake Oswego.

Myers concluded his staff report and recommended approval of MISC-22-12 based on the findings submitted by the applicant, supplementary staff findings, and the original conditions.

Chair Walvatne asked if a second extension is allowed under CDC 99.325. City Attorney Monahan replied that the CDC does allow additional extension requests. Walvatne asked what would make a project a phased development according to Chapter 99.125. Myers noted that an applicant must submit the original

application as a phased development. After the original approval, the application cannot be converted to a phased development. Monahan noted that a phased development is at the applicant's discretion.

Commissioner Erwin agreed that additional extensions allow the applicant to address problems with COVID and supply chain issues. He noted that the Commission could only accept extension requests if the applicant had made progress on the development.

Commissioner Carr stated that a denial of the extension request would likely be appealed to the City Council. He asked about the estimated completion of the remaining improvements.

Brandon Hoek presented on behalf of the applicant and answered follow-up questions. He discussed the project status, timeline, and setbacks related to worker availability and long lead times, Covid and supply chain issues, and site issues associated with a historic landslide and an undocumented water main.

Commissioner Boggess asked how much the project was setback because of project approval delays. Hoek could not speak to those issues. He noted that he came onto the project after the 2020 extension was granted. Commissioner Boggess noted that without the project approval delays, it was likely that the development would have already been complete, and the cost would be much less.

Chair Walvatne asked about the footpath connecting to an adjacent neighborhood. The retaining wall is blocking access to the footpath. Myers noted the footpath is entirely within the City of Lake Oswego, and access would cross private property, so it is outside the purview of this application. The City of West Linn and Lake Oswego are investigating potential solutions to provide access.

Chair Walvatne asked for public testimony. There was none.

There were no requests for continuances.

Chair Walvatne closed the public hearing and opened deliberations. Primary topics of discussion:

- What is typically expected of development at this stage after approval,
- Why was this subdivision not a phased development project, and
- The process and code requirements for an extension of approvals.

Commissioner Carr moved to approve MISC-22-12 and directed staff to prepare a Final Decision and Order based on the findings in the December 21, 2022 hearing staff report. Commissioner Mathews seconded. Ayes: Pellett, Metlen, Erwin, Carr, Boggess, Mathews, and Walvatne. **Nays: None. Abstentions: None. The motion passed 7-0-0.**

6. Planning Commission Announcements

Commissioner Pellett noted her appreciation for serving on the Planning Commission. She requested that the Commission follow through on her request for Chapter 80 training for Commissioners. She believed the Commission violated the Code when it previously approved the food cart pod in Willamette. She recommended the PC get training from Jordan Ramis on Chapter 80, hold a Chapter 80 hearing on the Willamette Garage Food Cart Pod, and modify Chapter 80. She recommended that Commissioners vote against any new food cart applications prior to this use being considered by the Chapter 80 process.

Commissioner Boggess requested a point of order. Chair Walvatne did not rule on the point of order.

Chair Walvatne noted that he was reappointed to the Planning Commission but will not run to be the Chair.

Commissioner Boggess announced that Oregon City and Clackamas County were remembering those who experienced houselessness and died during severe weather at an event in Oregon City. She submitted houselessness data that she asked the Planning Manager to pass on to the Commissioners.

7. Staff Announcements

Planning Manager Wyss thanked Commissioner Pellett for her six years of service. He announced that Tom Watton would join the PC in 2023. Watton is an architect who also serves on the HRB.

Wyss noted that the City Council confirmed that a term for a CAG Chair is one year. CAG members can serve two consecutive terms as chair (i.e., two years) before a new chair must be selected.

Wyss proposed to cancel the January 4, 2023 meeting. The January 18 meeting will be a work session on ADU and Clear and Objective code amendments.

8. Adjourn

Chair Walvatne adjourned the meeting at approximately 7:49 pm.