



## PLANNING COMMISSION

Minutes of Wednesday, February 19, 2014

Members present: Chair Christine Steel, Vice Chair Russell Axelrod, Lorie Griffith, Nancy King, Jesse Knight, Robert Martin and Ryerson Schwark

Members absent: None

Staff present: Chris Kerr, Community Development Director; Tom Soppe, Associate Planner; Khoi Le, Engineering Department; and Megan Thornton, Assistant City Attorney

### PREHEARING MEETING

Chair Steel convened the meeting at 6:30 p.m. in the Rosemont Room of City Hall. Staff reported that they had not received any public comments. Commissioners indicated they were going to ask questions related to sidewalks and the arborist's and stormwater reports. Mr. Soppe confirmed that if this subdivision application had been for three parcels or less it would have been a planning director decision.

Chair Steel thanked Ms. Thornton for reworking the script. She noted it did not indicate polling. Mr. Kerr related that he was going to ask them to pull Planning Commission rules from this agenda and discuss it at the March 5 work session. They could talk about the script then as well. Ms. Thornton noted the script question was, 'Prior to making a motion, does anyone have something to discuss?' was different than polling only in that polling would call on every single Commissioner to speak.

The Commissioners discussed polling. Comments included that the Commission had once discussed it and decided to have polling time; when everyone voiced their concerns or related they were on the fence about it that let the whole Commission know what they needed to work on; it avoided having a series of amended motions; it might be a good idea in some cases, but not in straightforward cases like the one that night; there did not seem to be a huge difference between 'polling' and discussion or comment; they did not feel a need to be polled every time; they did not need to be polled every time as long as they could discuss motions after they were made; there had been a few times when it would have been nice to express an opinion but the motion had already gone the other direction; the motion could be withdrawn instead of being serially amended and a new motion could be made that incorporated everyone's feedback; there was no problem with just having a check-in to get a sense of where everyone was; without a polling time a Commissioner might not feel compelled to say anything; the scripted question would encourage them to put everything on the table before a motion was made; and that in the water treatment plant case polling showed it could not be fixed and there was no point in discussing conditions of approval. Chair Steel suggested they not officially poll at this hearing. She would ask the scripted question regarding if anyone wished to comment. They could discuss polling at length at the next meeting.

Ms. Thornton distributed copies of the short form outline of hearing steps. Mr. Kerr advised this hearing would be a test of the short staff report format that staff was introducing. Commissioner Martin said he had been disappointed to hear the City Council asking for a kill switch for someone testifying.

29:10

### **REGULAR MEETING - CALL TO ORDER**

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

### **PUBLIC COMMENT**

None.

### **APPROVAL OF MINUTES**

Vice Chair Axelrod **moved** to approve the Minutes of November 6, 2014 as corrected by Chair Steel. Commissioner King **seconded** the motion and it passed 4:0:3. Commissioners Schwark, Knight and Martin abstained.

### **PUBLIC HEARING**

#### **SUB-13-05, Proposed 4-lot subdivision**

The staff report and written testimony is available online at: <http://westlinnoregon.gov/planning/4997-summit-street-4-lot-subdivision>

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

### **Staff Report**

Mr. Soppe discussed an aerial view of the site at the intersection of Summit Street and Gloria Drive. He explained there was a default site plan and an alternate site plan because the exact site plan used would depend on whether there was relinquishment to the applicant of a four-foot unclaimed area. Either way, the lot sizes and dimensions met the code. Staff-recommended conditions of approval were listed in the staff report.

### **Questions of Staff**

Mr. Soppe was asked to explain the street vacation. He reported that the applicant had asked for and been granted a street vacation of a 15-foot wide strip of right-of-way along the site's portion of Gloria Drive. Without that strip the right-of-way at the site was consistent with the width of the rest of Gloria Drive. The vacated strip had been added to the site and made it larger. The strip was still a public utility easement. Staff was asked where the sidewalks were

to be located. He said there would be a curb-tight sidewalk along the site's Gloria Drive frontage that would match existing curb-tight sidewalks along Gloria Drive. On Summit Street, which did not have any existing sidewalks, the new sidewalk would be a regular configuration of sidewalk and planter strip. He clarified that the 4-foot unclaimed area he had talked about in his presentation was along the east edge of the site - not the 15-foot vacated street area along Gloria.

17:17

#### **Applicant**

Andrew Tull, 3J Consulting, 10445 SW Canyon, Beaverton, Oregon 97007, represented the applicant. He stated that they proposed a small, four-lot, subdivision. They had worked with staff on the street vacation and the subdivision. They had no objection to any of the proposed conditions of approval.

#### **Questions of Applicant**

Commissioner Martin asked if they could think of any way to save significant Tree 3053. For example, the code might allow a 4' wide sidewalk instead of the proposed 6' wide sidewalk. Mr. Tull related the applicant had given that a lot of consideration. There were only three significant trees on site and they proposed to retain two of them. The tree in question was right in the center of where the driveway access would be. There were several issues they had to contend with when they were making the decision whether or not they could retain that tree. The first was that when they constructed the sidewalk along Gloria Drive they would have to push a lot of dirt around that area and it would impact the tree. He said that a 4' wide sidewalk would still require some grade changes that would impact the root zone. He said they had looked at having a horseshoe-shaped driveway approach. Their arborist said it would not be safe way to leave that tree with the entire root zone on all sides of the tree impacted by the road. He said a third issue was that even if they managed to heroically retain the tree the franchised utilities would be coming through there. To avoid impacts they would have to hand dig and further impact the roots for the gas lines, cable and telephone. He said at the end of the day, with the sum of the impacts to the tree, it was decided that retention was not the best option for it.

Commissioner Martin suggested another possibility might be that the driveway could just serve the two inner lots if the lot on the corner and the one on Summit could have driveways directly accessing the street. Then they could make that driveway half as wide. The flag lot driveway could then miss the tree. He asked if they had looked at that. Mr. Tull said they had looked at a couple of different access configurations. They could not take access off of Rosemont. With the current flag configuration that tree was almost dead center. It would suffer tremendous impact whether the driveway was 12' or 20' wide. He said they had provided an easement for the trees being retained and tried to retain this one, but unfortunately this one was just in the wrong place. Commissioner Martin said it was especially significant to him because the applicant was only leaving two trees on the site. He hoped there was some way to save it. Mr.

Tull said the applicant would be planting mitigation trees at a one to one caliper inch ratio and they would also have street trees.

24:17

### **Public Testimony**

Alice Richmond, 3939 Parker Rd., said she drove around that corner just about every day. She said the City needed more lots to have more tax income. The subdivision would improve the corner. She recalled a time when she rode horses in the area. That tree was not that tall or impressive. She said she would rather see something that was solidly constructed rather than have that tree on top of the house [referring to the storms they had had lately]. She said it was a simple subdivision with four, square, R-10, lots. It would be very complementary to the neighborhood. There was nothing not to like about it. She recalled they had seen other lots that looked like they had funnel-tunnel driveways. This one was simple. She suggested if it was approved, next year they could collect more taxes because of it.

Janet Dalgaard, 2629 Gloria Dr., noted that the arborist's report said all of the trees had to be removed because they were topped. Ms. Dalgaard testified they were not topped because she had looked and could not see where they had ever been topped. She noted that out of 40 trees there was one significant tree, possibly two, and maybe a third. She commented that was an awful lot of trees to be gone, especially when West Linn was supposed to be a Tree City. She asked why the Commissioners were not flagging that. She said parking was an issue. It was a very tiny street. She observed that there were usually four cars per every house in West Linn for the man, woman, kid/nanny and a guest. That was 16 cars coming in on the little cul-de-sac. She said they did not have room for them on that street, which was not even finished all the way down on the south side of the street. It was just a raw shoulder. When there was a party on their street it was really tough. She questioned why the applicant had to put the driveway on Gloria Drive and over the tree. She asked why they could not put the utilities through on Summit, or on a neighboring street where other utility work was being done. She asked, "Why kill the one tree?" She asked if parking had even been addressed. She asked the Commission to please help them.

32:23

### **Rebuttal**

Mr. Tull said those were valid points to raise on a street that had not had a lot of development. It was true that street did have development potential as there were a lot of additional lots down the road which could develop in the future. Additional homes and roadways could be built. Regarding the trees, the City had a process. The arborist visited the site to determine which trees were potentially significant in accordance with the City's definition of a significant tree. That report was submitted to the City. Then the City Arborist visited the site with the report and often with the applicant's arborist. They deliberated and decided which trees the City would determine to be significant. The report that was in the record had been agreed to by Mike Perkins, the City Arborist. In regard to the trees that were mentioned in the arborist's report as 'topped,' they were a series of Douglas firs that were planted 10' on center about in the center of Lot 3, which was the northeastern-most lot. There used to be a house there. His

guess was those trees had probably been topped to retain their view at some point in time. That had caused the trees' health to decline. In regard to parking, he said the applicant met the City's off-street parking requirement, which was parking for two cars. The lots would likely be able to park four cars per lot: two in the driveway and two in the garage.

### **Questions**

Chair Steel asked if the franchise utilities that were mentioned were to service the subdivision houses directly. Mr. Tull said they would serve the houses directly but also provide continuing utilities for any future development down the road and extend the existing utilities around the corner. Chair Steel asked if that was different from the utility work going on the neighboring street. Mr. Tull confirmed they were separate. He said generally sewer, water and stormwater facilities all went in the public street and the franchise utilities went within the public utility easement over each one of the lots. Vice Chair Axelrod asked if they could save Tree 3064, a large maple tree on the southwest corner that was leaning a bit and somewhat questionable and if it was safe. Could it be retained if it was trimmed a little bit? Mr. Tull noted the plan indicated they were going to try to retain that tree. He said they would do their best to work around it.

36:25

### **Staff Comments / Questions of Staff**

Mr. Soppe clarified that the City Arborist had agreed with the applicant's arborist's report about which trees were significant. He and the City Arborist had considered what could be done differently to save the tree. He reported that the applicant would only be able to move the driveway so much and there was no guarantee because it was so close to the tree and there would also be the utility work and street improvements on the other side of it. If the tree was taken out as proposed one to one mitigation was required for each tree taken out for a private roadway. He advised that whether or not the driveway served two or four houses it was required to be 14' minimum width. He advised that reconfiguring to have more driveways would not change the situation in that part of the site. He advised that the code also required that when a site bordered two streets the driveway was supposed to come out at the lowest classification street. That was Gloria, which was a local street, and not Summit, which was a major street. He confirmed they had looked into alternative configurations to save the tree and for other reasons. This was the configuration that met the code.

Commissioner Martin pointed out potential alternatives for driveway accesses in order to avoid the tree. Mr. Soppe explained that Summit was an arterial street. The code indicated they were not supposed to access from an arterial street. There was also a problem of bisecting a lot. Commissioner Martin asked if the code forbade them from having a driveway accessing an arterial. Mr. Soppe researched that question and answered later (see below). Mr. Le confirmed for Vice Chair Axelrod that there were dimensional requirements. A driveway had to be a certain distance from an intersection. In this particular case there was a very steep slope and there was another driveway on an adjacent property to the north, so having a driveway from Lot 2 onto Summit would not meet code or provide the safest situation for people using

the driveway or the intersection. Commissioner Martin related that he was looking for the grading plan to see if there was a possibility for a driveway there after grading.

Mr. Kerr clarified the Commission's parameters of review. If an application met the code requirements they had to approve it. If there were conditions of approval that needed to be applied they could do that as well. He advised the Commissioners to review the application that was in front of them and ask whether or not it met the code requirements. While they had thoughts about redesign that might go in a different direction and thoughts about whether or not a driveway could work off the road or did not meet spacing requirements, the application before them met the CDC requirements. He said he wanted to be clear about that for the benefit of everyone, including the applicant. Commissioner Martin indicated how significant trees were protected and the staff's judgment in regard to the tradeoff between which trees to protect and where the driveway was placed was something the Commission could review and consider conditions of approval for that might modify the design. Mr. Kerr advised them to review the application that had been presented to them first. The question to be answered was did the plan in front of them meet the code criteria. He clarified for Commissioner Martin that he was not hearing any basis to deny the application in front of them.

Mr. Soppe advised that CDC 48.025.B.4 regarding new residential land divisions fronting onto an arterial street indicated that access was not to be from an arterial street if there was any other alternative to access from a non-arterial street. He noted the non-arterial street was Gloria Drive. He advised the significant tree code was flexible in the sense that if a street or driveway had to go through and there was no other alternative to taking out a significant tree that could happen. One to one mitigation was required. He said that was why staff found the code supported the proposed configuration instead of moving that driveway onto Summit, even to save the tree.

Vice Chair Axelrod recalled testimony regarding further development down Gloria Drive. He asked staff to confirm that Gloria Drive was a local street and clarify how the City defined 'drive'. He asked them to discuss whether they were creating a future problem dimensionally in that area if the street was extended in the future, and if it might become a collector street when property developed down the road. He noted a local street was pretty narrow and when cars were parked on both sides it might be difficult to get an emergency vehicle down the middle. Mr. Le advised the City's TSP did not indicate any further extension of Gloria. It was currently a dead end and he did not see it being extended any further out in the future. Mr. Soppe advised there were no big subdivision sites on Gloria. There were dividable properties where the subdivisions would be smaller than the one the applicant proposed. The dead end was a cul-de-sac and beyond it was Wilderness Park, so it would never become a through street. The existing code required 'drive' to be a through street; however, Gloria Drive was at least 30 years old and had likely been built under a different code.

Vice Chair Axelrod asked the Commission to invite Ms. Dalgaard to speak about that street's development. Ms. Dalgaard related the City owned the parcel of land at the turnaround which could be used to connect their street to Prospect. If the City ever wanted to build it it would become a through street. She said the sidewalks on their street varied in width for no rhyme or reason. In places they were three or four feet wide and they went around trees and parking. Chair Steel asked her if the parking problem could be alleviated if they marked the unfinished side of the street "No Parking." Ms. Dalgaard indicated the residents of Gloria Drive had thought about it and it might be good because if someone was on the unfinished shoulder and someone was by the sidewalk you could not drive through. If they had a party it became an issue. The fire truck had been stuck there when it came to look at the fire hydrants. She concluded that a no parking restriction was a good suggestion.

Vice Chair Axelrod asked if the City would want the plan to be different dimensionally and if they would want Gloria Drive to be a collector street instead of a very narrow local street if it would eventually connect to Prospect. Mr. Soppe said the TSP did not anticipate Gloria would be connected to Prospect and the topography might not allow it. Mr. Le advised the classification of a roadway was based on the amount of traffic and a collector or arterial had to have a lot of traffic. He said he did not foresee this street having more traffic than a local street.

Vice Chair Axelrod had questions about the recommended conditions of approval in regard to street lighting and in regard to street trees. Mr. Kerr clarified that Condition 5 stated that 'Street lighting shall be directed downward' so it was directly tied to a specific code criteria that said 'Street lighting shall be directed downward.'

In regard to street trees Vice Chair Axelrod indicated the conditions of approval should address specifically where they were to be because the applicant's plan did not show all of the street trees. He asked if that meant the applicant was not going to actually put in street trees.

Mr. Soppe advised that applicants paid for the City to plant street trees. The city planted them later, when each lot was developed, rather than beforehand, so machinery did not drive over the new trees. The applicant was to pay the appropriate amount and the funds would go to the City to plant the trees per city standards and on both streets.

Vice Chair Axelrod indicated the condition of approval should specifically require the trees to be shown on the plan on both Summit and Gloria in accordance with the code. After that it could go on to talk about the applicant compensating the City. He related that he had looked and observed that some of the more recent developments in that area had street trees spaced at 25' to 30'. He referred to the plan and noted there seemed to be two trees missing on Summit and there were no trees on Gloria. Commissioner Griffith asked if there was a reason for the inconsistency.

Mr. Soppe confirmed that there was a street tree requirement along Gloria. The typical row of street trees was not shown along Gloria because there was no planter strip between the sidewalk and the street. The trees would be planted north of the sidewalk. There were street trees shown in the planter strip along Summit. Vice Chair Axelrod noted that two street trees were missing from the plan showing street trees along Summit. Ms. Thornton advised that the Parks Department chose the type of street trees and where they were to be planted. All the developer was required to do was compensate the City and leave space for the trees to be planted. Vice Chair Axelrod responded that they might not be going to drop them on the drawing and that was fine, but they needed a condition explaining that street trees were going to be put on both Gloria and Summit for everyone's comfort, including the neighborhood's comfort.

When asked if it was within the Commission's purview to ask for "No parking" signs, Mr. Le advised that the TSP indicated there should be no parking at all along that particular configuration of a local street, so the City did not allow parking at all on Gloria Drive. He said the City could post "No parking" signs or do other things, such as paint the curb yellow.

When asked if it would be appropriate for the Commission to ask what the applicant was planning or budgeting in regard to street trees, Mr. Le advised that the Parks Department would give the developer the choice of either planting the trees or paying a certain amount for each tree and Parks would plant it at the appropriate time. Mr. Soppe confirmed they were supposed to have street trees along Gloria, but because the sidewalk was tight to the curb the trees would have to be planted on the other side of the sidewalk. Mr. Kerr advised that during the final inspection the City would look for them because they were required improvements. The city would not sign off on it until it happened. Vice Chair Axelrod confirmed he wanted that documented in the conditions of approval because they were not on the plans. Chair Steel invited the applicant to comment on the potential change of conditions.

Michael Robinson, 1120 NW Couch St., Tenth Floor, Portland, Oregon 97209-4128, said the applicant suggested if that was what the Commission wanted to do they could include it in their motion approving the subdivision application and the applicant would accept it.

Vice Chair Axelrod inquired about a change in spacing of Summit street trees on the plan. Mr. Le explained the two areas where it did not show them were reserved for a rain garden. Vice Chair Axelrod suggested they could have a tree there as well. Mr. Lee said if they had enough space they would put a tree there. It would be a different type of tree than the other trees along the street because it was in the area of a rain garden. Vice Chair Axelrod explained that he suggested that because if those houses were not oriented to the street it would be nice to have a buffer.

1:10

**Deliberations**

Chair Steel closed the public hearing and opened deliberations. She asked if any of the Commissioners wished to comment or if there were any issues they would like to discuss.

Vice Chair Axelrod indicated he was concerned that in the future the street could become more of a collector than a local street and that had not been fully thought through. If they could not have parking on the street did they need to have "No Parking" signs now as a result of this development. He said he did not want to change so much the practice of the neighborhood if they needed some place to park. Chair Steel said her feeling was not to pursue that because they did not want to inflict no parking on the street at all. She indicated she did not think that was really part of what they were looking at that night anyway.

In regard to the driveway changes that Commissioner Martin was concerned about Commissioner Schwark said he heard Commissioner Martin's concerns, but he was concerned about the idea of trying to put a driveway out to Summit. It struck him as dangerous. He loved trees and would like to save them but he did not want to have someone come out of the driveway and get killed in a car crash on that steep hill to save a tree. Chair Steel talked about preserving trees. They were beautiful, and she agreed with saving trees, especially significant trees, but they were also a liability. After ten or fifteen years they could grow to monstrous size, affecting a house. They took away a future homeowner's options for gardens, for solar, and for trees that they might enjoy more. So there were two sides to it.

Vice Chair Axelrod **moved** to add the following language to staff recommended Condition 4 regarding street trees: 'The site plan shall incorporate street trees on both Summit and Gloria.'

Commissioner Schwark questioned why they should ask the applicant to amend something that they could not control. The city determined where the trees went, not the applicant.

Vice Chair Axelrod then agreed to **restate the motion** to so the motion was to add the following sentence to Condition 4: 'Street trees shall be provided on both Summit and Gloria.'

Commissioner Schwark **seconded** the motion. Discussion followed.

Commissioner Martin noted the street trees along Gloria Drive would be planted on the interior side of the sidewalk in what would normally be someone's yard. Mr. Soppe clarified they would actually be planted in the public utility easement. Chair Steel anticipated that over the years the residents would come to feel those were their own trees. The vote was conducted and **the motion passed 7:0.**

Mr. Kerr pointed out that recommended Condition 5 regarding street lights was redundant because Condition 9 addressed that.

Vice Chair Axelrod **moved** to strike recommended Condition 5. Commissioner King **seconded** the motion and it **passed 7:0.**

Commissioner Schwark **moved to approve SUB-13-05 as amended during deliberations.** Commissioner Griffith **seconded** the motion and it **passed 6:0:1.** Commissioner Martin abstained, explaining that there was no reason to not approve it but he hated the fact they could not save the tree.

1:27

#### **REVIEW PLANNING COMMISSION RULES**

Chair Steel noted this item was on the agenda by mistake because the Commission had agreed at their last meeting to defer it to the March 5 work session. She called for a voice vote and observed the consensus was to do that.

1:28

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

Commissioners Martin and King offered their feedback on the new script related to confusion about having to fill out the testimony form and inquiring whether someone there was new and had never testified before. Chair Steel made a note to hold up a copy of the form as she talked about it.

Vice Chair Axelrod had missed the hearing when the Commission considered WRA amendments. He had not been there to support his recommendations when the Commissioners discussed them. He talked about his concerns that the dimensional requirements were misrepresented in the graphics and that the City was not accurately measuring them. He apprised the Commission that he was going to provide his comments and recommendations in regard to those issues at the City Council hearing. In regard to accurate measuring he advised they should be exact, accurate, dimensions and staff did have the ability to measure accurately. It was easy to learn and do and did not require expensive instruments. Not measuring accurately could mean the measurement would be way off and the City would risk liability. The graphic illustration should be true for the benefit of the public. He discussed his recommendation to cap the amount of resource that could be disturbed on large properties. Although he had not specified a process he had said the cap should be determined on a site-specific basis. They could put a maximum of 15,000 s.f. on it. His concern was that if they developed the Stafford basin as part of West Linn in the future the proposed code would allow destruction of up to 30% of the resource for all development. They had already made a similar mistake that had resulted in thoughtless development in the Tanner Basin. He planned to carry his comments forward to the City Council.

Commissioner Schwark indicated he would like to discuss how they handled small subdivision applications. If the Commission held a quasi-judicial public hearing in order to allow people who were affected by the application to come in and testify, he wanted to ask staff if there were other jurisdictions that provided notice and then only held a public hearing if there were people who wanted to testify at a hearing. Then he would like the Commission to explore doing something like that so they could facilitate getting some of the applications through that nobody objected to. He confirmed that he understood the Commission had discussed it in the

past, but he was talking about a variation of it because if there were no objections to an application he was not sure this was the best use of the Commissioners time.

Chair Steel asked Mr. Kerr to clarify what had happened to a similar proposal in the Cut the Red Tape amendment package. He said they had discussed the concept of allowing the Planning Director to hear applications for subdivisions rather than the Planning Commission. Staff had then dropped it from the package that moved forward because of the kind of feedback they got. He noted the City Council had not yet held the hearing on the amendments. He suggested if they wanted the variation that Commissioner Schwark was talking about to go forward they could talk about it at their upcoming joint work session with the City Council. Chair Steel recalled the proposed threshold was a 25-lot subdivision. Commissioner Schwark anticipated that a subdivision that large would cause someone to want to say something about it. He said he just wanted to have a discussion. Perhaps they should set a different threshold. Staff could look at whether other jurisdictions did something like that. Mr. Kerr said he thought there were. He noted making this type of change would take more discussion and vetting.

**ITEMS OF INTEREST FROM STAFF**

None.

1:44

**ADJOURNMENT**

There being no other business, Chair Steel adjourned the meeting at approximately 8:45 p.m.

APPROVED:

Christine M Steel  
Christine Steel, Chair

4-30-14  
Date