



## CITY OF LAKE OSWEGO

### Development Review Commission Minutes

#### Monday, February 4, 2019

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The Commissioners convened at 7:04 p.m. in the Council Chamber of City Hall, 380 A Avenue.

Members present: Vice Chair Brent Ahrend, Paden Prichard, Kirk Smith, and Jason Frankel

Members absent: Chair Poulson, Jeff Shearer

Staff present: Jessica Numanoglu, Planning Manager; Mike Ward, Traffic Engineer; Evan Boone, Deputy City Attorney; and Kat Kluge Administrative Support

#### **COUNCIL UPDATE**

Councilor John LaMotte listed the topics that will have the focus of City Council in the coming weeks, including: recruitment process to replace retiring City Manager Scott Lazenby; West Lake Grove tree code amendments; goals and policies arising from a retreat; park bond renewal; and potentially allowing for accessory dwelling units in the downtown district.

#### **FINDINGS**

LU 18-0039, a request for approval of the following:

- A Development Review Permit to construct a restroom in Woodmont Park; and
- A Major Variance to the on-site Parking requirement (to remedy non-compliance).

This site is located at 13600 and 13701 Atwater Lane Tax IDs: 21E04AC01900 and 21E04AC02200. The staff coordinator is Debra Andreades, Senior Planner.

Commissioner Frankel **moved to adopt the findings for LU 18-0039**. Commissioner Smith **seconded** the motion and it **passed 2:1** with Mr. Ahrend abstaining.

#### **MINUTES**

Vice Chair Ahrend **moved to approve the December 17, 2018 minutes with amendments provided earlier to staff**. Commissioner Frankel **seconded** the motion and it **passed 3:0** with one abstention.

#### **PUBLIC HEARING**

**LU 18-0024**, a request for approval of a 25-lot subdivision with a private street for future townhome development in the West Lake Grove Design (WLG) District. The proposal also includes the removal of 39 trees to accommodate the project. (Additional trees will be removed under a separate Invasive tree removal permit).

This site is located at 16858 Boones Ferry Rd (21E 18AA00100, 21E18AB00400, 21E18AB00300, 21E18AB00200, 21E18AB00100). The staff coordinator is Debra Andreades, Senior Planner.

This hearing was continued from January 7, 2019. Any person may testify at the hearing or submit written testimony before the hearing.

Evan Boone, Deputy Attorney gave an overview of the public hearing process.

Mr. Boone then outlined the applicable criteria and procedure, asking DRC members to declare contacts, biases, or other conflicts relating to applicants or the proposed project. All DRC members present declared that they have no conflict of interests, no ex parte contact, and no bias. Mr. Frankel and Mr. Prichard indicated that they have visited the site, while Mr. Smith did not. Mr. Ahrend did not indicate whether or not he visited the site.

Mr. Boone asked if anyone attending wished to challenge any of the commissioners regarding the application. Mike Robinson, representing the applicant, inquired if Mr. Frankel or Mr. Prichard had any observations as a result of having visited the site. Both commissioners noticed that the trees targeted for removal were not flagged. Nonetheless, it was clear which ones were going to be removed.

### **Staff Report**

Jessica Numanoglu, Planning Manager summarized the four exhibits that staff received since the January 7<sup>th</sup> hearing relating to the application. Exhibit F-010 from the applicant addresses questions and issues raised during the last hearing. Exhibit F-011 is a memo from the Deputy City Attorney written in response to Exhibit F-010. The remaining two exhibits are letters – one written expressing support for the application and one in opposition. Ms. Numanoglu concluded by stating that the staff recommendation remains unchanged from the January hearing. No additional recommendations were forwarded.

### **Questions of Staff**

Commissioner Smith inquired if the city arborist reviewed the applicant's arborist report. Ms. Numanoglu replied that there is no evidence to suggest that a review occurred.

Citing Item 2.1 of the Exhibit F-011 memo, Commissioner Prichard sought clarification from Mr. Boone on procedures for assessing significance of trees targeted for removal in the absence of neighborhood testimony in support of preserving targeted trees. Mr. Boone responded that neighborhood testimony is a factor but not the conclusive factor.

Commissioner Smith questioned the interplay between the purposes of the West Lake Grove design review policies versus tree code policies applicable throughout the city. Mr. Boone explained that Mr. Smith was citing the purpose section, which provides guidance, not criteria. He elaborated further that the West Lake Grove District provides standards that address preservation of mature Douglas fir trees in addition to the citywide tree code. The section states that the applicant must preserve trees to the greatest degree practicable (i.e. balancing several interests or priorities). Hence, the code acknowledges that mature trees cannot necessarily be preserved under all scenarios.

Vice Chair Ahrend asked if staff had comments on Exhibit G-200 (letter expressing opposition to the application). Ms. Numanoglu replied that staff had no comments.

Mr. Ahrend inquired if staff is pursuing a pedestrian walkway as part of the project. Mike Ward, Traffic Engineer, replied that the City has a request for pedestrian access along Upper Drive.

Citing the signalized approach from Washington Court, Mr. Ahrend expressed concerns that it may be offset in such a way that left turns could conflict. He asked a procedure question that, if during final design, it is determined that the approach would need to shift further up the hill, would that change need to come back to DRC for review. Mr. Ward replied that city engineers could work through a solution without taking it back to DRC.

Mr. Prichard engaged in a discussion of whether he had ex parte contact due to his attempts to interpret boundaries and develop overlays at his home in preparation for the hearing. He had overlaid the tree removal plan over the subdivision plan to better understand the impacts to trees.

### **Applicant**

Mike Robinson, Schwabe, Williamson & Wyatt, 1211 SW Fifth Avenue Suite 1900, Portland, OR 97204, requested clarification regarding ex parte contact discussed. Mr. Prichard acknowledged that he created a new document (the overlay) which potentially caused him to draw his own conclusions before his information was shared with the rest of the commissioners. He then asked Mr. Smith to specifically cite the code sections that he reviewed.

Mr. Robinson introduced Ken Sandblast, Westlake Consultants, 15115 SW Sequoia Parkway, Suite 150, Tigard, OR 97224.

Mr. Robinson expressed agreement with the staff report recommendations and conditions for approval, acknowledged the City Attorney memo, and requested the opportunity to respond to any questions before closing the record for the hearing.

Mr. Sandblast provided a PowerPoint presentation explaining the proposal, including plan history, zoning code, property characteristics, plat design (how proposal adheres to zoning/subdivision requirements), and site plan. He also presented alternatives that were considered.

Mr. Robinson addressed some of the questions raised by Commissioners during the staff presentation. He expressed agreement with the staff response to Mr. Smith's inquiry of how the purpose statement is related to some of the approval standards. Referring to the staff report, Mr. Robinson noted that most of the more mature trees located on the perimeter of the site will be preserved. It would not be practicable to preserve some of the trees located in the center of the site where development would occur.

### **Questions of Applicant**

Commissioner Prichard asked for clarification of whether the decision to remove trees on the site is based on dollars saved or feasibility of project implementation. Mr. Robinson responded that decisions on which trees to preserve versus which to remove are based on the interpretation of what is "practicable." Ms. Numanoglu read the definition of "practicable" in the City Code. In response to Mr. Prichard's inquiry, Ms. Numanoglu expressed staff opinion that losing the ability to have additional lots permitted by the zone would be considered a cost, which is a consideration as to whether it is "practicable."

Mr. Sandblast indicated that the arborist for both the City and applicant did indeed meet and discuss the project site.

### **Public Testimony**

#### *In Support*

None

#### *In Opposition*

Ed Gehrig, 4850 Upper Drive, Lake Oswego, said he did not get all the notices he would have liked on this hearing. He summarized his concerns, including traffic impacts to the intersection at Upper Drive and Washington Court; how the 25 townhomes will convert a natural forest habitat into a densely populated "human island" surrounded by a highway and a railroad; air quality; where kids will play; and land slippage at the narrow finger of raised land rising from the railroad.

*Neither for Nor Against*

Dan Anderson, 4900 Upper Drive, Lake Oswego, OR 97035, expressed support for the development and his desire to see more affordable housing in Lake Oswego. He would like to close off Upper Drive to through traffic.

Karen Ingles, 12831 Alto Park Road, Lake Oswego, OR 97035, asked the applicant to consider reducing the density to make room for other amenities that would enhance livability, such as dedicated open space.

**Rebuttal**

Mr. Robinson discussed the removal of trees, opining that the Commissioners must base their decision on the substantial available evidence and the Code that the City has adopted, noting the final decision must be made based on what is “practicable.” He concluded that it is not practicable for the applicant to develop the site based on the Code and remove fewer trees. Regarding comments of added traffic on Upper Drive, Mr. Robinson stressed that few trips will occur on that roadway. Finally, he stated that the applicant meets, and exceeds, open space standards.

Mr. Sandblast followed, expressing support of the staff preference to put a pathway along the existing paved area of Upper Drive.

**Deliberations**

Commissioner Prichard opined that it is poor building practice to build retaining walls with backfill behind to create a level platform as the applicant proposes. Perhaps some trees could be saved with a little less grading.

Commissioner Ahrend questioned if Mr. Prichard’s concerns are based on personal experience or on what the Code states. He suggested that Mr. Prichard is presenting additional information (retaining wall) that should have been discussed before deliberations began. Mr. Robinson stated that since concerns expressed by Mr. Prichard during deliberations are not in the record, the DRC cannot make a decision based on his statements.

Commissioner Prichard did not agree with staff and applicant statements that the trees that they are saving are significant because they are screening the site, while trees further down the site are not significant because they are not seen.

Commissioner Prichard questioned whether the Code requires 25 lots on the site. Ms. Numanoglu informed that the site is located within two zones, which together set the minimum density at 15 lots.

Commissioner Prichard asked staff why the individual trees targeted for removal were not flagged.

Mr. Boone announced that the applicant would like to request a continuance in order to address the tree and density issues.

Mr. Robinson stated the only way to accommodate the issues raised during deliberation is to request a continuance.

Mr. Smith theorized one reason why the City has not received comments to date regarding proposed tree removal on the site is because the targeted trees were not flagged. Mr. Boone suggested this may be addressed if the hearing is continued. Ms. Numanoglu explained that a notice was mailed and a sign was posted on site indicating that 39 trees are proposed for removal.

Mr. Smith and Mr. Frankel expressed reservations about making a decision based on uncertainties over density and whether the public has had adequate notice of proposed tree removal.

Mr. Smith **moved** for continuance of an open hearing to March 18, 2019 as requested by the applicant. Mr. Prichard **seconded** the motion and it **passed 3:1**.

**ADJOURNMENT**

Vice Chair Ahrend adjourned the meeting at 9:48 pm.

Respectfully submitted,

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Kat Kluge  
Administrative Support