



CITY OF LAKE OSWEGO

Development Review Commission Minutes

Monday, March 18, 2019

The Commissioners convened at 7:07 p.m. in the Council Chamber of City Hall, 380 A Avenue.

Members present: Chair David Poulson, Vice Chair Brent Ahrend, Kirk Smith, Jeff Shearer, Randy Arthur and Jason Frankel

Members absent: Paden Prichard; Jeff Shearer left the meeting at 8:20 pm

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

COUNCIL UPDATE

Councilor John LaMotte gave a report on the activities of City Council.

MINUTES

Commissioner Frankel made a **motion to approve the minutes of January 23, 2019 with corrections as noted by Commissioner Ahrend** (correct attendance to reflect that Commissioner Ahrend was not present at this meeting and did not make a motion and there were no minutes at that meeting; and findings for LU 18-0057 need correction to reflect the motion is by Commissioner Prichard and seconded by Commissioner Smith); **second** by Commissioner Shearer and **passed 4:0 with 2 abstentions**.

Commissioner Ahrend made a **motion to approve the minutes of February 4, 2019**, **second** by Commissioner Smith and **passed 3:0 with 3 abstentions**.

PUBLIC HEARING

LU 18-0063, a request for a Conditional Use Permit for a Transportation Depot (School District bus barn/maintenance facility), Development Permit for exterior building alterations and a parking lot expansion, and a minor variance to wall height. Removal of one tree is also requested to accommodate site improvements.

This site is located at 6333 Lakeview Blvd. (21E18CC03200). The staff coordinator is Evan Fransted, Associate Planner.

This hearing was continued from March 4, 2019 upon the request of persons to leave the record open as required under city code and state statute. Any person was able to submit written testimony or written rebuttal to testimony received, which was due by the following dates: new written testimony was due by 5 pm on March 11, 2019, and written rebuttal to the testimony received by March 11 was due by 5 pm on March 13, 2019.

Staff identified a noticing error after the March 4th hearing (public notice of the hearing was not sent to all City, County or State jurisdictions with ½ mile of the development site), and staff has since

mailed notice to the affected jurisdictions and is recommending that this procedural error be corrected by continuing the public hearing for a limited purpose to April 1, 2019. The continued public hearing on April 1 would be limited to:

- Receipt of testimony from the jurisdictions,
- Rebuttal testimony by any interested party limited to the scope of the jurisdictions' testimony, and
- Rebuttal evidence/argument by the applicant limited to the jurisdictions' testimony.

The Commission will then proceed with deliberations.

Evan Boone, Deputy Attorney raised a procedural item; staff has provided a memo summarizing the written testimony and rebuttal received by the above deadline. One item was received that is not rebuttal evidence received during the rebuttal period. The DRC has the option to strike that information as not relevant and can review that information tonight or at the April 1 hearing. The Commission indicated they would review it at the next hearing.

Chair Poulson **moved** that the limited public hearing for LU 18-0063 be continued to **April 1, 2019**; **seconded** by Commissioner Frankel and **passed 4:0** with 2 abstentions.

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 February 4, 2019. Any person may testify at the hearing or submit written testimony before the hearing.

Evan Boone, Deputy City Attorney gave an overview of the public hearing process. He then asked for the Commissioners to disclose any bias, conflicts of interest or ex-parte contact related to this case. Commissioner Arthur did make a site visit and stated he viewed the tapes of the previous hearing on this matter. He also stated that he served on the Planning Commission and Commission for Citizen Involvement; having worked with Todd Prager, arborist and Ed Brockman who testified as a proponent of the project. As a Planning Commissioner he was also involved with stormwater management and flag lot code amendments. Commissioners Ahrend and Shearer stated they did make a site visit. Chair Poulson said he conducted a site visit and viewed the prior tapes of the public hearing on this matter. There were no objections to the Commissioners' right to hearing the land use application.

Staff Report

Ms. Numanoglu gave the staff report in Ms. Andreades' absence. Exhibits F-012 through F-014 and G-201 through G-213 addressing tree removal were received by staff. Two other exhibits were also received at the hearing and will be addressed by attendee testimony.

Ms. Numanoglu summarized the information submitted by the applicant in response to the public testimony on tree removal flagging and removal criteria. Changes in the site plan include the reduction in the number of lots from 25 to 23. Tract "C" was an addition to the site plan, which allowed saving 6 additional trees, resulting in a reduction of the tree removal request from 39 trees to 33 trees. Staff had forwarded a memo to the DRC regarding density of the site, which is a split zone. With 23 lots, the proposal meets the all density requirements of the applicable zones. Ms. Numanoglu noted the odd shape of the lot and that the permitted number of lots could be 29. Staff

concurs with the applicant's findings that they are saving the maximum number of trees practicable given the constraints of the site.

Ms. Numanoglu read modifications to proposed conditions of approval:

- Condition A3: should refer to Exhibit F-014 for reduced number of lots;
- Condition A5(vi): should refer to a final landscaping plan showing buffering (tree planting plan) in Exhibit F-014;
- Condition B3: require application for removal of 33 instead of 39 trees. Mitigation would be revised to show there will be 988 caliper inches lost;
- Condition C1: strike reference to Lots 9 and 10 and replace with Lots 23 and 24 for design review.

Questions of Staff

Chair Poulson asked for clarification of the changes in the land use application and how they related to the original conditions of approval. Ms. Numanoglu clarified which conditions were affected by the change in the site plan, stating that the staff did an audit of the conditions of approval.

Vice Chair Ahrend asked about changes in lot dimensions and tree mitigation. He asked if road dimensions were still consistent. Ms. Numanoglu clarified the applicable code language and that dimensions were still consistent.

Commissioner Arthur asked about parking requirements, specifically on-lane parking. Ms. Numanoglu stated that no on-lane parking was required for this development. One off-street parking space per unit would be required and reviewed at the time of building permit on each lot. Mr. Arthur asked about the undeveloped portion of Upper Drive and why it wasn't being vacated. He asked if a condition of approval could be imposed to require vacation. Mr. Boone said the DRC could require it if it was related to applicable criteria. He stated there was no requirement for on-lane parking and the City declined to vacate that portion of Upper Drive as they are unsure at this time of any future plans for that unimproved right-of-way.

Chair Poulson stated that the proposed access is a 20-foot road and asked if the Fire Marshal addressed parking on the 20-foot wide access road. Mr. Boone said that the lane could be posted for no parking and that there is no requirement for on-lane parking. Exhibit F-007, Fire Marshal's comments, explained the requirements of the posting and allowance of parking on one side of the road under certain conditions.

Commissioner Smith pointed out sections of the West Lake Grove plan and lack of qualifiers for retention of trees. He said there is emphasis by staff and the applicant on "to the extent practicable", but could be argued differently. Ms. Numanoglu opined that the code sections quoted by Mr. Smith are aspirational and broad purpose statements, and not actual code criteria. There are specific criteria later in those code sections that do address tree removal and retention. Since the subdivision is the only application at hand, Ms. Numanoglu said that Section 9 is not applicable at this time, but will be when the town homes are reviewed for design review. Mr. Boone stated that Sections 1-8 of the WLG standards do apply at this time. Ms. Numanoglu spoke to the intent of the WLG standards. Mr. Smith gave his opinion on the WLG criteria and whether they are aspirational or code criteria. Discussion ensued about the interpretation of the language cited in the discussion. The conclusion of legal staff is that a purpose statement is not criteria but guidance when there is a conflict between criteria. Chair Poulson sought clarification between the tree removal criteria for a subdivision and for future building permits. Staff again cited the term "to the maximum extent practicable" and how it is applied in the code. Mr. Poulson proposed that conditions could be

applied to the grading plans. Mr. Boone again clarified that evidence would have to show that the condition is necessary.

Applicant

Response to Questions from DRC

Michael Robinson, applicant's attorney, introduced members of the developer's team. He addressed some of the questions posed by the DRC during the staff presentation. With regard to street vacation of Upper Drive, he stated that it was not pursued during the initial pre-application phase as the applicant was not encouraged to do so by City staff. He then clarified the finding by staff on page 14 of the staff report, that the housing can be built on the proposed subdivision and meet all the applicable criteria. On-street parking would be used for additional parking, but each lot can accommodate the required parking space for each townhome.

Mr. Robinson read the applicable fire code section regarding on street parking limitations and road width and fire apparatus access.

Ken Sandblast, applicant's planner, addressed questions by Chair Poulson about 5 parking spots on the 28-foot width portion of the internal road. Mr. Sandblast said the parking would be south, behind Lots 3 and 8.

Mr. Robinson gave a response to Mr. Smith regarding the purpose statements in the WLG, opining that they are not code criteria. He brought forth the question of the use of the words "preservation" and "conservation" and how they may be interpreted. He suggested clarification of the code might be undertaken at a later date. He also addressed inapplicability of some of the WLG plan language mentioned by Mr. Smith.

Mr. Robinson addressed the question by Chair Poulson on the tree removal permit at the time of subdivision. He said tree removal permit review is required by code at the time of major land development permit per LOC 55.02.035. At design review, additional tree permits may be required if additional trees are removed for building. He reviewed the landscaping plan and addressed tree replacement, which will exceed the number of trees removed. He noted that 67 trees will be planted and some larger trees, 5-inches DBH, will be used for replacement of some.

Questions of Applicant

Commissioner Smith asked who Mr. McConnell is and his relationship to the project. Mr. Robinson replied and said that Mr. McConnell is the property owner. Mr. Smith read from the McConnell letter which referenced a retaining wall and said he could not make the link between the retaining wall and the tree preservation.

Ken Sandblast, Planner, presented the changes to the site plan and also added to Mr. Robinson's answer to the question about Mr. McConnell's letter (above).

Chair Poulson asked about stormwater management. Mr. Sandblast explained the relocation of stormwater facilities due to retention of the additional trees. He noted the extra requirements needed for development in the West Lake Grove area. Mr. Poulson asked if the applicant looked at sanitary sewer alternatives. Mr. Sandblast explained that pumping is discouraged so grading of the site is important to address a number of utility issues on the south side of the site.

Ms. Numanoglu asked the applicant about the need for a public sewer easement through the open space tract. Mr. Sandblast said that there would be a need for a public easement and would meet City requirements. She suggested a change in conditions of approval to require revisions to the proposed landscape/tree mitigation plan to avoid conflicts with the sewer easement.

Mr. Sandblast said that the additional Tract "C" will result in 29 percent open space, meeting and exceeding the 20 percent open space requirement.

Chair Poulson asked about the public sewer at the dead end and if it would be too flat for adequate flow. Mr. Sandblast said that it has been analyzed and shown as able to work. He said final engineering and details will be done at the time of final plat and building permit to meet code.

Commissioner Arthur asked about parking and if additional parking could be provided on the lane. Mr. Sandblast said that it was considered but not feasible if the vacation of Upper Drive was not going to take place.

Public Testimony

In Support

None

In Opposition

Nancy Osborne, 1217 Laurel Street, Lake Oswego, testified on why she moved to the area. She stated she walked the site. She stated she did research on townhouse design and said she liked the idea of a central green area. She said there were no numbers on the marked trees so she couldn't tell which ones were to be removed. She wanted to assure that additional trees proposed to be preserved in Tract "C" are not dead.

Ms. Osborne said there was no park play area for future residents. She supports the conservation of trees on the site and within the neighborhood. She suggested the site be acquired for a park.

Ed Gehrig, 4850 Upper Drive, Lake Oswego, testified about living in the neighborhood for over 70 years and his appreciation for the trees. He talked about the importance of the trees and their benefit for the community and his family. He is concerned about air pollution and left information with planning staff. He suggested air quality testing before tree removal and after development for a comparison. He noted that there is a layer of clay in the site vicinity with soil slippage.

Neither for nor Against

Chuck Fisher, 15780 Boones Way, Lake Oswego, Chair, Lake Grove Neighborhood Association testified on behalf of the organization. He expressed concerns about the proposed tree removal and mitigation may not be adequate. He proposed that tree mitigation be done on the site where the trees are removed instead of allowing payment into the Tree Fund. He addressed realignment of Upper Drive. He asked that the City allow tree mitigation on city-owned land on Upper Drive. The neighborhood association asked that a tree inventory be conducted in the neighborhood to identify suitable mitigation sites. He submitted his written testimony to staff.

Ms. Numanoglu said that tree mitigation funds are put into a general fund and are not targeted to specific neighborhoods. Mr. Arthur suggested the neighborhood association make their recommendation to City Council.

Stacey Tandberg, 3575 Upper Drive, Lake Oswego testified about her concern for the trees and environment for current and future residents.

Rebuttal

Mr. Robinson gave a brief rebuttal. With regard to Ms. Osborne's testimony, the current application is not for townhomes, it is for the subdivision only. He spoke to the arborist's report and preservation of trees in "good" condition. The applicant agrees with the staff report and recommendations and believes that the applicable approval criteria are met.

Mr. Sandblast thanked those who testified. He pointed out the planting of larger trees as part of the mitigation and that the applicant is going above and beyond code requirements.

Mr. Robinson waived further written argument.

Deliberations

Commissioner Ahrend stated that he likes the new plan better than the original one. He appreciates the mitigation plan. He pointed out that other issues will be dealt with in final design. He supports the proposal and conditions of approval as proposed and revised by staff.

Commissioner Arthur said he was concerned about parking being inadequate, though he recognizes that the code requirements for parking are met. Townhomes will be the only housing type allowed to be built on the site, per Ms. Numanoglu. Mr. Arthur supports the proposal as shown.

Commissioner Smith spoke to the WLG plan reference to the landmark status of the tree resources. He questioned the retention of the landmark status of the resources.

Chair Poulson spoke to the audience about the need to listen to the community concerns, but also apply the codes. He would like to see a better job to save the trees, but doesn't see how to better save the trees. He believes the code has been met.

Vice Chair Ahrend said he understood that the applicant is proposing planting larger mitigation trees than required to meet the WLG plan.

Decision

Commissioner Ahrend **moved** to approve **LU 18-0024** with conditions as modified by staff; including A3, A6 (but with provisions for a public easement), B1 and C1; **second** by Commissioner Frankel and **passed 4:1**. Note that Mr. Shearer left the meeting at 8:20 PM.

ADJOURNMENT

Chair Poulson adjourned the meeting at 9:36 pm.

Respectfully submitted,

/s/

Kat Kluge
Administrative Support