



-APPROVED-

**CITY OF LAKE OSWEGO
Development Review Commission Minutes
Monday, April 21, 2014**

CALL TO ORDER / ROLL CALL

Vice-Chair Gregg Creighton called the meeting to order at 7:00 p.m. in the Council Chambers of City Hall, 380 A Avenue.

Members present: Vice-Chair Gregg Creighton, Brent Ahrend, Ann Johnson, Bob Needham, David Poulson and Kelly Melendez. Frank Rossi was not present.

Staff present: Hamid Pishvaie, Assistant Planning Director; Debra Andreades, Senior Planner; Evan Boone, Deputy City Attorney; and Janice Reynolds, Administrative Support

ELECTION

See under 'General Planning and Other Business' below.

MINUTES

Mr. Needham **moved** to approve the Minutes of January 29, 2014. Ms. Johnson **seconded** the motion and it **passed** 5:0:1. Ms. Menendez abstained.

FINDINGS

LU 14-0001/SV 14-0001: The applicant (Lake Oswego School District) requested approval of the following:

- A Conditional Use Permit modification [LU 99-0028, LU 08-0007] to increase the number of fixed stadium seating on the site
- A Development Review Permit to construct additional fixed seating, stadium cover, press box, and a team/concessions building
- A hardship variance to the Building Orientation Standard to locate the team/concession building more than 30 feet from a public street [LOC 50.06.001.5.g.ii]
- Multiple sign variances to the number, size, height and type of allowed signage

The applicant also requested approval to remove 15 trees to accommodate the development.

The site is located at: 1235 Overlook Drive, (Tax Lot 100 of Tax Map 21E 16).

Mr. Ahrend **moved** to approve LU 14-0001-1840 Findings, Conclusions and Order. Ms. Menendez **seconded** the motion and it **passed** 6:0.

Ms. Menendez **moved** to accept SV 14-0001-1841 Findings, Conclusions and Order. Mr. Needham **seconded** the motion and it **passed** 4:0:2. Mr. Ahrend and Mr. Poulson voted no.

AP 14-04 [TR 499-14-00235]: a request for a hearing on a Type II tree removal application to remove 40 trees in order to construct a new single-family dwelling on the site. The site is located at 17918 Kelok Road (Tax Lot 00205 of Tax Map 21# 17CA).

Vice-Chair Creighton **moved** to approve AP 14-04 [TR 499-14-00235]-1839 Findings, Conclusions and Order with one correction by Mr. Needham. Mr. Ahrend **seconded** the motion and it **passed** 5:0:1. Mr. Needham abstained.

PUBLIC HEARING

LU 14-0005: The Sisters of the Holy Names of Jesus and Mary is requesting approval of a Development Review Permit to construct 17 villas in Phase 1-B of Mary's Woods ODPS. The applicant is also requesting the removal of 187 trees to accommodate the project. The site is located at: 17400 Holy Names Drive, (Tax Lot 300 of Tax Map 21E14).

Vice-Chair Creighton opened the public hearing. Each Commissioner declared her/his business/employment. Vice-Chair Creighton, Ms. Menendez and Mr. Poulson each reported a site visit. No one challenged any Commissioner's right to hear the application.

Staff Report

Ms. Andreades pointed out the site was located in the R-10 section of Mary's Woods. The 17 new villas were to be constructed in conformance with the approved Mary's Woods ODPS phased development. The other villas in that ODPS had already been constructed. The ODPS had already determined the location of these villas. The building design was governed by the architectural design guidelines of the Mary's Woods ODPS. The design had to preserve the aesthetic created by the Convent and be complementary to the specific location of the project. This same project had been approved in 2008 but the permit had expired. Rosecliff Drive and Martin Way as well as the existing pathway from Highway 43 were to be extended through the site. The proposed design, materials and landscaping theme reflected those of the existing villas. The applicant had highlighted all of the Type II trees to be removed in yellow. The other trees were all considered invasive and would be removed per a separate invasive tree removal application. Staff recommended approval subject to the conditions listed in the staff report.

Applicant

Steve Poland, Ankrom Moisan Architects, 6720 SW Macadam, Portland, Oregon, noted this project was part of the 1996 Overall Development Plan and Schedule (ODPS). It emulated the existing villas' density, materials, roof slopes and landscape design. The majority of trees to be removed were invasive species. Most of the Type II removal trees were Douglas firs that were very close together because they had been planted as part of a Christmas tree operation years ago. The slope down to Old River Road was heavily wooded with Douglas firs and deciduous trees so it would be difficult to see that anything had changed from that road. This project would finish the public access pathway from Highway 43.

Questions of Applicant

Mr. Poulson referred to the geotechnical report and the test pit map. He expressed his concern that no site-specific work had been done to look at the possibility of liquefaction in an earthquake. He wanted to know if they would anchor foundations in the basalt under the sand layer. Mr. Poland indicated that a large sediment pond in the middle of the site and was a kind of major test pit. The experts and those who had experience building the other buildings there wanted to avoid digging into lenses of higher water flow and they wanted to avoid blasting. They would set the buildings on shallow, spread-out, footings on the existing grade, which was a uniform, fairly-gentle, 5% grade across the site. They were not disturbing the toe of the slope where it got steeper down toward River Road. The single-story, wood-frame buildings were most resilient in case of an earthquake. They would look at anchoring the foundations in the basalt when they started earth work. At this time there was no indication they needed to do that. Mr. Poulson noted the Fire Marshal had indicated the general grade out there was about 10%.

Mr. Poland and Mr. Poulson discussed how runoff and water would be piped and the tight configuration of the street and house #16 driveway. The applicant's representative explained the

roadway was minimum Fire Code width to preserve open space, and the convoluted road configuration served as a traffic calming scheme. Mr. Poulson had concern about having an adequate buffer between Mary's Woods and the Christie School for security of the residences. Mr. Poland related there was a landscaped chain link fence between Mary's Woods and the school, but the school campus was not entirely fenced. The landscaped, public access pathway would also serve as a buffer. Mr. Needham recalled there were fences around each residential structure and its yard.

Ms. Menendez and Mr. Poland talked about the overhangs, garage door openings and porch columns. He clarified that the basic form and the scale of garage openings was meant to be similar between buildings. She observed the porch columns did not seem to have the same heft as those on the existing villas and the corner design did not offer a sense of return. He clarified that the low walls were shortened to focus on the landscaping. He clarified that while some of the older drawings showed ledger stone the new villas would actually have stacked boulders just as the existing villas did.

Mr. Poland clarified that a building on the Christie School campus had a barbed wire fence around it because it was for a psychological treatment program. He clarified that a large sediment pond Vice-Chair Creighton had observed would be removed because stormwater quality treatment for this project and for the entire Mary's Wood campus would be down on Old River Road. He clarified all the villas had single car garages.

Public Testimony

Carolyn Jones, 2818 S. Poplar Way, spoke for the Glenmorrie Neighborhood Association. Overall they thought the Mary's Woods development had been very tastefully done. The board had some questions about stormwater drainage that Ms. Jones said she thought had been adequately addressed. They were also concerned about the traffic impact on Highway 43. She noted the report stated that the original ODPS had been approved in 1996 and that page 3, paragraph 3 said: 'All traffic, land use, density, and streets and intersection capacity issues were addressed and conditioned as part of the ODPS approval.' They wanted to know how the fact that the traffic study had been done 18 years ago was addressed.

Rebuttal

Mr. Poland recalled that the four lanes and the signal at the Highway 43/Holy Names Drive intersection had been installed in anticipation of the total load of a fully-developed campus at the completion of the ODPS. The west campus had not been developed yet. The fact was that without this [Mary's Woods] development there would be no traffic light at the intersection on Hwy 43 that benefitted the folks in the residential development on the west side of the highway as well. That development's load would not have justified a requirement for a signal.

Deliberations

No one requested that the record be held open for additional testimony. The applicant waived their right to additional time to submit a final written argument. Vice-Chair Creighton opened deliberations.

Mr. Ahrend asked what year the 2008 traffic report projected out to and if there was any expiration of trip vesting. Mr. Pishvaie advised the ODPS had a 2015 deadline because it had two or three extensions. As long as the development happened within the maximum density and intensity approved in the Master Plan by 2015 they were vested. The City had not required a new report at the time of the extensions. Staff related that the applicant had not optimized their allowed commercial intensity to the full 120,000 s.f. of commercial, office and retail during the last development review. That development was only for 60,000 s.f. In 2008 they had received approval for a special use building as well as the villas but they had never constructed it. Mr. Boone advised that the exactions had been determined when the ODPS Master Plan was

approved and they were based on the maximum density. The question of the impact of the currently proposed development and what should it be obligated to do to address it had been addressed then. If there had been an increase in background traffic since then it was not the applicant's obligation to address that. Mr. Ahrend observed this 17-unit application had a very small traffic impact compared to the entire development and the 2008 update showed a lot more trips were approved and vested than they had used to this date.

Ms. Menendez pointed out the entry porch design in Exhibit E-15, Plates 4 and 5, showed the proposed design was not good design in general and it did not meet the design of adjacent structures in that aesthetically the corner design of two columns in a row did not seem to adequately support the roof; it lacked appropriate mass; and it needed something such as a third column to help it turn the corner. She pointed out the existing villas had a large stucco column (Exhibit E-16, Plate 2), but she clarified the applicant did not have to go that far with the new ones. She suggested adding a related condition of approval. The Commissioners looked at the floor plans in Exhibit E-11 to see if it would make the sidewalk entrance into the porch from the driveway too narrow. She and Vice-Chair Creighton noted it would be an issue for Units 8, 9, 10 and 11 depending on how the sidewalk met the porch. She suggested the applicant could bring the roof forward another eight inches on all of the porches.

Mr. Poulson noted the drainage report just stated they were close to the Willamette River so they did not need detention. He asked if the Code allowed that. Mr. Pishvaie advised that the City Engineer had determined that detention was not necessary for this project. The standard in LOC 50.07.004.1.c - Stormwater Detention Facility, was that if onsite detention was not feasible, practical, or required by the City, the applicant was to submit a plan to mitigate any adverse effects such as erosion and flooding of culverts resulting from increased runoff and construct those mitigation measures. A bioswale would be enlarged to provide water quality functions.

Mr. Poulson indicated he was concerned about the possibility of liquefaction of soils in the event of an earthquake. He read aloud parts of the geotechnical report. He noted it talked about the potential risk. He was concerned they did not have any information about the site itself because the map showing borings and test pits did not show any on site. Others showed there was a fairly thick layer of sand and opportunities for accumulated ground water. He noted there was no information that supported the proposed foundation design. The area was on a fault line. Vice-Chair Creighton indicated he did not think they were going to get down to rock with spread footings because the borings across the street showed the sand layer was very thick.

Mr. Boone advised the related standard for the Commission approval indicated that the presence of weak foundation soils was not a cause for denying the development, but it might be a cause for relocating or modifying structures. It was not a design issue. The Building Official would review the geotechnical report during the building permitting process. When asked if they could have the City Engineer review the final design based on soils, Mr. Boone advised the City Engineer did not certify any buildings. The applicant's geotechnical engineer could certify that the development could be built here under the building standards.

Mr. Ahrend pointed out the staff report said that the site was identified as having weak foundation soils on the City's soil inventory map and that the applicant had submitted a geotechnical report in Exhibit F-2 which stated that the native soil could support conventional spread footings in the villas area. He asked if the Commissioners believed that was an error or correct. Mr. Poulson acknowledged the expert's report did say it could support spread footings with a certain type of concrete, etc., but he was concerned because it went on to talk about pile-driven supports and anchoring the foundation to the basalt. He suggested adding a condition that called for site-specific geotechnical investigations to be performed and to be followed up with staff to assure there was not a dangerous condition in terms of liquefaction. Mr. Boone advised that the City would not make a determination based on the results of that analysis. If the condition required the applicant's expert to do that and it was done and submitted to the Building Department they would have to

sign off on it. Mr. Needham suggested that a property owner would have an interest in knowing that whether or not it was a condition of approval because buildings collapsed during an earthquake it would be the applicant's responsibility. The City was not in the business of ensuring things like that. Mr. Poulson anticipated the applicant could find such a study was warranted if they encountered wet sands when digging trenches during or after construction. He clarified that he suggested the new condition because he just wanted them to have site-specific information.

Mr. Needham observed the code requirement seemed to be that if there were weak foundation soils they had to have it analyzed by a geotechnical engineer; the geotechnical engineer had to render an opinion; and the opinion had to support spread footings. If it said that the Code was met. He asked if Mr. Poulson was asking for generation of new evidence despite the fact the geotechnical report conclusion seemed to be supported by the existing facts. Mr. Poulson indicated he would approve this because he thought it was a good project, but he wanted them to condition approval on an investigation. If the extra information revealed things of concern there would be things the applicant could do about it. Mr. Needham asked what was to be done if the applicant decided to just take the risk because otherwise it would not pencil out. Mr. Boone advised if the applicant's geotechnical expert signed off on it that was their risk. The Building Department had a check list. If there were weak soils they looked to see if a geotechnical expert had looked at it; what the expert recommended; and if the plans conformed to the recommendation. It all came back to the geotechnical engineer. Mr. Poulson noted their expert had not really rendered an opinion on the site, but relied on a report done for an adjacent area.

Mr. Poulson **moved** to approve LU 14-0005 with the added condition that the applicant's geotechnical engineer perform a site-specific investigation regarding the potential for high ground water and the potential for seismically-induced liquefaction. He agreed to include another condition that Ms. Menendez and Vice-Chair Creighton suggested calling for the front porch columns to be adjusted with staff assistance to become an 'L'-shaped base with a triple column that matched the scale and proportions of what they were seeing from the front. Ms. Menendez **seconded** the motion and discussion followed.

Mr. Needham indicated he supported the architectural changes, but he was uncomfortable with the breadth and detail being required under the geotechnical condition. Only the applicant's geotechnical expert would be able to determine whether or not anything needed to be changed. He noted it was usually sufficient to just offer hints to the applicant that they should have their expert take another look because of some general concerns of Commissioners. Mr. Ahrend indicated it was a good idea because the analysis had been done so long ago and the test pits were 200 to 300 feet away; however, he was not sure it should be made a condition of approval.

Mr. Boone advised the City Engineer could have required the extra study. Mr. Pishvaie advised that in practice the fact that the soils map showed a potential problem could lead the Building Official to require some sort of investigation; and, sometimes the soils report was not that specific and if a problem was encountered during the construction phase it had to be addressed then.

Mr. Needham asked if the Commission could find the geotechnical report was insufficient because it should be site specific. Mr. Boone advised it was the applicant's expert who determined what was relevant. LOC 50.07.004 - Week Foundation Soils Procedures, called for the applicant to provide a report to the City Manager prepared by a professional soils engineer or engineering geologist that described the nature, distribution, strength of the soils, and included findings regarding adequacy of the soils to support the proposed use and structures. If it was determined not to be adequate, the report was to include recommendations and conclusions. If the expert found the soils were adequate for the proposed use no further considerations of a compensating design were necessary. Otherwise the Building Official might require modification to the proposed design to ensure adequate structural support.

Applicant's comments on potential changes to the conditions of approval

Mr. Poland related he had asked their engineer the same questions Mr. Poulson had asked. He recalled the response was that the test pits in the existing villa area were representative enough to draw conclusions. Additionally, during construction of the original project the sanitary and storm sewers had been installed through the site, which was monitored by the same expert (GRI). They had also dug some additional, shallower, test pits in connection with determining the quality of the soil for landscaping purposes. However, Mr. Poland said he would go back to GRI to discuss the same concerns the Commissioners raised. If GRI agreed it would add a degree of certainty to do some additional test pits on the site they were prepared to do it. Essentially their conclusion had been that the buildings were very light buildings and the soils should support them. He indicated he thought the discussion about methods such as pilings had been about larger buildings on campus but he would ask about that as well. They would share the information with the City. They would not contest the condition for porch posts. They would have to extend the porch roof in order to have room for that return and allow adequate passage onto the porch.

Vice-Chair Creighton **moved** to sever the two conditions from the main motion. Ms. Menendez **seconded** the motion and it **passed** 6:0. Mr. Poulson **moved** to add the condition calling for a site specific geotechnical investigation. Vice-Chair Creighton **seconded** the motion and it **failed** 2:4, with Mr. Poulson and Vice-Chair Creighton voting yes. Mr. Needham **moved** to add the condition regarding front porch design. Vice-Chair Creighton **seconded** the motion and it **passed** 5:1. Mr. Ahrend voted no.

Mr. Needham **moved** to approve LU 14-0005 with the additional condition regarding the front porch design. Vice-Chair Creighton **seconded** the motion and it **passed** 6:0. The vote on the findings was scheduled on May 5, 2014, at 6:00 p.m.

GENERAL PLANNING AND OTHER BUSINESS

Election

Vice-Chair Creighton announced he was stepping down from the position of Vice-Chair as of July 1, 2014. Ms. Menendez **nominated** Mr. Needham to serve as chair. Mr. Ahrend **seconded** the nomination. Chair Needham was elected in a 5:0:1 vote with Mr. Needham voting abstained.

Terms used during deliberations

Mr. Boone explained that sometimes the words the Commissioners used during deliberations had moved the discussions away from the applicable standards and criteria. He urged them not to use words such as 'a good compromise,' 'common sense', and 'market forces' because they suggested a bias toward using different factors for decision-making than Code standards and criteria. He advised that an application either met or did not meet the Code. If it met the Code it had to be approved. He noted the City Council made the legislative policy decisions. It was not the role of the Commission to say they did not agree with the criteria, so they were going to do 'x'. Staff captured the Commission's deliberations and reasons for decisions in the findings. What they said affected LUBA appeals. The reasons should be relevant to the standards and criteria. He clarified that a variance was not an opportunity to 'go rogue.' The applicant had to have applied for it; the neighborhood had to have been notified of it; and the request had to be reviewed against the criteria for a variance.

ADJOURNMENT

There being no other business Vice-Chair Creighton adjourned the meeting at approximately 9:25 p.m.

Respectfully submitted,

Janice Reynolds /s/

Janice Reynolds
Administrative Support