



TO: Development Review Commission

FROM: Leslie Hamilton, Senior Planner
Planning and Building Services

SUBJECT: LU 12-0059, Appeal of Staff Decision on a Minor Partition application
5570 Neff Park Lane

DATE: May 9, 2014

ACTION

Hold a public hearing and issue a tentative decision on LU 12-0059.

APPLICANTS' REQUEST

The applicants, Teri Caprio and Monica Thomas, are requesting approval of a 3-parcel minor land partition creating one flag lot, and the removal of nine trees for the construction of the shared access lane and roadway improvements.

STAFF DECISION / REQUEST FOR HEARING AND APPEAL

On April 3, 2014, staff approved the applicants' request for the minor partition and tree removal as described above. On April 17, 2014, Russ Littlefield and Dana Lundell, the owners of the property at 16825 Inverurie Road, filed a request for public hearing in opposition to the staff decision (Exhibit A1).

FINDINGS

The written request for a hearing filed by the appellants does not specify the reasons for the appeal (Exhibit A1); however, the appellants submitted written comments in opposition to the application during the preliminary decision on the application (Exhibit G200). The issues raised in that letter along with all the applicable approval criteria are discussed in the April 3, 2014 Staff Report (Exhibit D1); the appellants' specific concerns are addressed on pages 16-18.

CONCLUSION

Based upon the materials submitted by the applicants and the findings presented in this report, staff concludes that LU 12-0059 complies with all applicable criteria and standards or can be made to comply through the imposition of conditions.

RECOMMENDATION

Staff recommends **approval** of LU 13-0063, subject to the following conditions:

A. Prior to Approval of the Final Partition Plat, the Applicants/Owners Shall:

1. Submit a final plat to City staff for review and signature of approval within one year of the dated of this decision. The final plat must be dimensioned as depicted in Exhibit E4, and reference this land use application – City of Lake Oswego Planning and Building Services, Case File LU 12-0059. Upon written application, prior to expiration of the one-year period, the City Manager shall, in writing, grant a one-year extension. Additional extensions may be requested in writing and must be submitted to the City Manager for review of the project for conformance with current law, development standards and compatibility with development that may have occurred in the surrounding area. The extension may be granted or denied and, if granted, may be conditioned to require modification to bring the project into compliance with current law and compatibility with surrounding development.
2. The final plat shall include the following information:
 - a. Label the access lane as a private reciprocal access easement benefitting Parcels 1, 2 and 3. The access easement shall be wide enough to accommodate a 16' wide paved driveway with two feet gravel shoulders on each side.
 - b. Show a franchise utility easement for the benefit of Parcels 1, 2 and 3.
 - c. Include a plat note referring to a separately recorded maintenance agreement for the shared access lane as required by Condition A(7), below.
 - d. Show a minimum 15' wide public sewer easement over the access lane.
 - e. Show a public water line easement over the access lane to the satisfaction of the Lake Grove Water District.
 - f. Sufficient right-of-way dedication, to the satisfaction of the City Engineer, along Inverurie Road so that the required frontage improvements and turnaround will be located entirely within the public right-of-way. The turnaround minimum radius shall be according to the preliminary site drawings shown in Exhibit E8.

3. All plats and public easements submitted to the City of Lake Oswego shall have accompanying vector based electronic drawings or maps consistent with the prevailing technologies in the Civil Engineering and/or Surveying fields (e.g., current or near current versions of AutoCAD). The electronic drawings shall conform to the mapping requirements for plats adopted in ORS Chapter 92.
4. Submit photographic evidence, to the satisfaction of staff, that the accessory structures along the southern lot line abutting the railroad right-of-way have been removed, or submit a revised site plan showing that the accessory structures are located either on Parcel 1 or Parcel 2.
5. Submit revised site plans, to the satisfaction of staff, showing the number and location of all existing parking spaces on the site, and the location of new parking spaces on Parcel 1 to mitigate for the loss of parking spaces due to the construction of the access lane; these parking spaces shall not be located within a required setback.
6. Submit revised site plans, to the satisfaction of staff, that illustrate the retaining walls along the parking spaces are set back a sufficient distance to allow efficient vehicle access to these spaces.
7. Submit a maintenance agreement for the access lane and utility easement(s) to be recorded with the final plat, for review and approval of staff.
8. Submit a final landscape plan to show the following, to the satisfaction of staff:
 - a. Illustrate planting materials, including size, species and location, for the access lane screening. Plant materials shall be of the size to provide an effective screen within two years of planting; shrubs shall be a minimum of five gallon and trees shall be a minimum of 2-inch caliper.
 - b. Provide a note on the final landscape plan requiring all burlap or wire cages to be completely removed from root balls of all trees and shrubs before they are planted.
9. Record a "Notice of Development Restriction" with the final plat. The development restriction shall be submitted for staff review and approval prior to recording and shall contain the following restriction listed below. A reduced copy of the site plan showing the shared access and utility easements shall be included with the Notice and labeled as "Exhibit A" to be recorded in the County Recorder's Office. The site plans shall be no larger than 8 ½" x 11" in size and cannot contain any lettering smaller than 10 point font. A copy of the maintenance agreement for the access lane and utility easement, as required by Condition A(7) shall be included with the Notice and labeled as "Exhibit B."
 - a. Parcels 1, 2 and 3 are solar lots and are subject to the requirements of LOC 50.06.007.1.d.ii [Protected Solar Building Line] and LOC 50.06.007.1.e [Protection from Future Shade].

- b. A minimum 5-foot landscape buffer is required on both sides of the access lane, except where the vehicular and pedestrian access is taken. Maintenance of the landscape buffer is the ongoing obligation of the property owners(s) of Parcels 1, 2 and 3.
- c. Parcel 2 is a flag lot. Development of structures on this parcel shall comply with the provisions of LOC 50.07.007.2.e regarding building and site design standards, including height limitations, garage placement, and landscape buffer requirements. The following site development restrictions apply:
 - i. The maximum height of all structures on Parcel 2 shall be 22 feet measured from the ground to the ridgeline of the roof as defined by LOC 50.10.003, "Height of Building."
 - ii. The front lot line of Parcel 2 shall be the eastern property line.
 - iii. The front, side and rear yard setbacks for primary structures on Parcel 2 shall be as follows:

	Parcel 2	Add'l Requirements
Front Structure	10 feet	As measured from the access lane or access lane extension
Garage, Carport	20 feet	
Side	10 feet	
Rear	25 feet	

- iv. There shall be a 6-foot fence along the southern property line of Parcel 2, unless the abutting property owner(s) waive this requirement in writing.
 - v. If the existing fence along the west (rear) property line of Parcel 2 is removed by the owner of Parcel 2 or the abutting neighbor, the owner of Parcel 2 shall replace it with a 6-foot fence, unless the fence requirement is waived by the neighbor.
 - vi. If the existing trees along the west (rear) property line of Parcel 2 are removed, they must be replaced with trees providing similar screening abilities within three years, unless waived by the neighbor.
10. Submit engineered construction drawings for the public and site improvements for review and approval by the City Engineer. Drawings shall conform to the City's current design standards and drafting specifications. [Note: receiving construction plan approval is not a pre-requisite for recording the final plat.] The plans shall include the following:
- a. Design to widen the existing pavement along Inverurie Road from the intersection of Washington Court and Inverurie Road to the site in order to achieve a 20-foot pavement width. The pavement shall be located entirely within the existing right-of-way and a gravel shoulder shall be located along the edge of the new pavement.

- b. Design of the driveway approach to City standards for the common access lane serving the development. The driveway approach shall comply with AASHTO and City vision clearance standards.
 - c. Design of a public street turnaround at the end of Inverurie Road, located at the site entrance. A vegetated filter strip shall be constructed immediately south of the turnaround to manage storm water runoff from Inverurie Road and prevent erosion. The turnaround shall be signed “no parking.”
 - d. Design of an 8-inch public sewer extension from the existing public sewer located in Inverurie Road, and terminating with a manhole at the end of the shared access lane. The public sewer main shall be located under the shared access lane within a minimum 15-foot wide public sewer easement.
 - e. Design of the public water system and private water services in conformance with the Lake Grove Water District standards.
 - f. Design of the individual private sanitary services.
 - g. Design of the shared access lane and on-site turnaround to the satisfaction of the Fire Marshal.
 - h. Design of the storm water management for the shared access lane.
 - i. Design of a street light at the intersection of Inverurie Road and Washington Court.
 - j. Adequate sight distance at the intersection of common access lane and Inverurie Road, in accordance with the requirements of LOC 42.03.190.
11. Construct the improvements required by Condition A(10), above, *or* submit a financial guarantee to ensure its construction per LOC 50.07.003.9. The financial guarantee shall be based on 120% of an itemized engineer’s estimate that is in turn based on final construction plans that are far enough advanced to support the estimates, to the satisfaction of the City Engineer.
 12. Pay the final plat review fee of \$378.
 13. Submit a preliminary title report or lot book report showing the status of title and any liens and encumbrances.

B. Within 90 Days of the Recordation of the Final Partition Plat, the Applicants/Owners Shall:

1. Demonstrate compliance with Conditions A(1) – A(13), above.
2. Submit a final title report, or lot book report from a title company demonstrating that the plat was validly recorded and that the private and public easements, Notice of Development Restrictions, and the maintenance agreement as required by conditions,

above, are valid and subsisting, and that the parcels are either free and clear of liens or encumbrances, or that the holders of the liens and encumbrances consent to the creation and recordation of the easements and Notice of Development Restriction.

C. Prior to Constructing the Public Improvements and/or Site Improvements, the Applicants/Owners Shall:

1. Apply for and obtain a verification tree removal permit for the following trees approved for removal to construct the access lane and roadway improvements: Trees #338, 348, 349, 354-358 and 561. The verification tree removal permit submittal shall include an 8½" x 11" copy of the tree removal plan and a mitigation plan showing replacement trees on a 1:1 basis. Replacement trees shall not be dwarf or ornamental varieties and shall be at least two inches in caliper if deciduous or at least eight feet tall (excluding the leader) if evergreen. The removal and mitigation plan shall include:
2. The retention of the stump of Tree 561 to limit below-ground impacts to the interconnected root system of Trees 594 and 595.

D. Prior to the Issuance of any Grading or Building Permits to Construct Any Structures on Parcels 1- 3, the Applicants/Owners Shall:

1. Complete all public and site improvements as required by Conditions A(5) and A(10), above, submit certified "as-built" drawings, and receive a certificate of completion and acceptance by the City.
2. Complete the construction of the private sanitary services, private water services, private franchise utilities and access improvements serving all three parcels.
3. Obtain required plumbing permits and connect the existing structures on site to the new public sanitary sewer main, and decommission any existing active septic tanks (removal, or fill with sand and gravel), if applicable. If the existing structure(s) are not currently connected to the public sewer, pay the appropriate system development charges prior to obtaining the required plumbing permit for connecting to the public sewer.
4. Provide certification from a registered engineer that the common access lane improvements, including a turn-around at the terminus were constructed according to Fire Marshal specifications. Post-construction stormwater management and erosion protection for the access lane shall be in place in order to protect the access lane during home construction.
5. Submit a storm water disposal plan for each parcel. Subsurface disposal systems shall be engineered and constructed to City standards, and shall incorporate any design recommendations from the geotechnical engineer. All infiltration systems shall meet minimum setbacks of five feet from property lines and 10 feet from building foundations. Driveway runoff cannot be directed to a subsurface disposal system without DEQ approval. Pervious pavers may be installed to manage runoff from driveway surface areas. Emergency overflow pipes shall be directed to an approved point of disposal. Installation of a rain garden on the individual lots is an acceptable alternative method for

storm water disposal. Rain gardens shall meet the minimum setbacks if five feet from property lines and 10 feet from building foundations. Rain gardens shall have a positively graded overflow or emergency overflow pipe leading to an approved point of disposal.

6. Submit a driveway approach design for each parcel, showing the vision clearance triangles.
7. Apply for an erosion control permit and install the erosion control fencing as required by LOC 52. These measures shall remain in place throughout the construction period.
8. For each parcel, apply for and obtain the appropriate tree removal permit, if necessary, and submit mitigation plans. Note: Mitigation trees on flag lots are subject to additional requirements in LOC 50.07.007.2.f.iv.
9. For each parcel, submit documentation showing compliance with the Hillside Protection standards of LOC 50.06.002, to the satisfaction of staff.
10. For building permits on Parcels 2 and 3, the recommendations from the geotechnical report (Exhibit F4) regarding construction near the southern lot lines shall be incorporated into the final designs of the site and building, to the satisfaction of the Building Official.

E. Prior to the Final Building Inspection or Occupancy of any Dwelling on any Parcel, the Applicants/Owners Shall:

1. Install all mitigation trees as required by Condition D(8), above.
2. Install all flag lot fencing on Parcel 2 as required by Condition A(9), above, unless written waivers from abutting property owners are received.
3. Submit a height survey that illustrates compliance with the maximum building height of structures on Parcel 2 as identified in Condition A(9), above.
4. Provide certification from the engineer of record that the stormwater facility for each parcel was constructed according to the approved design and is functioning properly.
5. Provide post-construction protection measures for the access lane until after the final home construction has been completed.

Code Requirements:

1. **Tree Protection:** Submit a tree protection plan and application as required by LOC 55.08.020 and 55.08.030 for review and approval by staff, including off-site trees that are within the construction zone. The plan shall include:
 - i. The location of temporary tree protection fencing, consisting of a minimum 6-foot high cyclone fence secured by steel posts around the tree protection zone, or as recommended by the project arborist and approved by the City.

- ii. A note stating that no fill or compaction shall occur within the critical root zones of any of the trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a certified arborist to reduce or mitigate the impact of the fill or compaction. The note shall also inform contractors that the project arborist shall be on site and oversee all construction activities within the tree protection zone.
- iii. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicants and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.
- iv. A sign shall be attached to the tree protection fencing which states that inside the fencing is a tree protection zone, not to be disturbed unless prior written approval has been obtained from the City Manager and project arborist.

Note:

- 1. The applicants are advised to take part in a post-Land Use Approval meeting. City staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting, please contact the staff coordinator at (503) 635-0290.
- 2. The land use approval for this project does not imply approval of a particular design, product, material, size, method of work, or layout of public infrastructure except where a condition of approval has been devised to control a particular design element or material.
- 3. Development plans review, permit approval, and inspections by the City of Lake Oswego Planning and Building Services Department are limited to compliance with the Lake Oswego Community Development Code, and related code provisions. The applicants are advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, i.e., Americans with Disabilities Act, Endangered Species Act. Staff may advise the applicants of issues regarding state and federal laws that staff member believes would be helpful to the applicants, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

EXHIBITS

A NOTICE OF INTENT TO APPEAL

- A1. Letter of intent to appeal the staff decision submitted by E. Michael Connors on behalf of Russ Littlefield and Dana Lundell, dated April 17, 2014

B-C. [No current exhibits; reserved for hearing use]

D. STAFF REPORTS

D1. Staff Report (staff decision), dated April 3, 2014

E. GRAPHICS/PLANS

E1 Tax Map
E2 Vicinity Map
E3 Existing Conditions
E4 Preliminary Plat
E5 Shadow Plat
E6 Grading and Erosion Control
E7 Landscape Plan
E8 Street Profiles
E9 Slope Analysis
E10 Utility Plan
E11 Tree Preservation, Removal and Mitigation Plan

F. WRITTEN MATERIALS

F1 Applicants' Narrative, dated January 14, 2014
F2 Clackamas County Documentation
F3 Hydrology Report from WB Wells, dated November 1, 2013
F4 Geotechnical Report from Redmond Geotechnical Services, dated January 14, 2014
F5 Fire Marshal Comments
F6 Water services letter from Theta, LLC, dated January 28, 2014
F7 Neighborhood Meeting Documentation
F8 Email conversation between Applicants, Mr. Conners, and staff

G. LETTERS

Neither for nor Against (G1 – G99)

G1 Letter from Ruth Risch, dated March 4, 2014

Support (G100-G199):

None

Opposition (G200 – G299):

G200 Letter from E. Michael Conners, representing Russ Littlefield and Dana Lundell, dated March 4, 2014

Date of Application Submittal: December 21, 2012

Date Application Determined to be Complete: February 18, 2018

State Mandated 120-Day Rule: June 18, 2014

