

BEFORE THE DEVELOPMENT REVIEW COMMISSION OF THE
CITY OF LAKE OSWEGO

DEVELOPMENT REVIEW PERMIT FOR A 5-LOT) LU 18-0018-1957
SUBDIVISION AND THE REMOVAL OF 50 TREES.) GARY NELSON
) FINDINGS, CONCLUSIONS & ORDER

NATURE OF APPLICATION

The applicant is requesting approval of a Development Review Permit for a 5-lot subdivision and the removal of 50 trees to accommodate the proposed site and public improvements.

Location of Property: 18909 SW 65th Avenue (TAX ID 21E19BB12300).

HEARINGS

The Development Review Commission (Commission) held a public hearing and considered this application at its meeting of July 2, 2018. The following information was presented to the Commission at its July 2nd hearing and added into the record:

Staff Report: Page 25 (revised to address a graphic error from earlier published version of report)

CRITERIA AND STANDARDS

A. City of Lake Oswego Community Development Code (LOC Chapter 50):

LOC 50.03.002.2	Residential Use Table
LOC 50.04.001.1	Residential Low Density Zones Dimensional Standards
LOC 50.06.002	Parking
LOC 50.06.003.1	Access/Access Lanes (Flag Lots)
LOC 50.06.003.2	On-Site Circulation – Driveways & Fire Access Roads
LOC 50.06.003.3	On-Site Circulation – Bikeways, Walkway & Accessways
LOC 50.06.003.4; 50.07.004.5	Local Street Connectivity
LOC 50.06.004.1	Landscaping, Screening & Buffering
LOC 50.06.004.3	Lighting
LOC 50.06.006.1; 50.07.004.10	Weak Foundation Soils
LOC 50.06.006.3; 50.07.004.1	Stormwater Management
LOC 57.06.007; 50.07.004.9	Solar Access
LOC 50.06.008; 50.07.004.11	Utilities
LOC 50.07.003.1	Application Procedures
LOC 50.07.003.5	Conditions on Development
LOC 50.07.003.6	Effect of Decision
LOC 50.07.003.7	Appeals
LOC 50.07.003.14	Minor Development Decisions

B. City of Lake Oswego Utility Code [LOC Chapter 38]:

LOC 38.25	Stormwater Management
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- 1 C. City of Lake Oswego Streets and Sidewalks [LOC Chapter 42]:
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- 3 LOC 42.03.130 Sight Distance at Roadway Intersections, Private
- 4 Streets & Driveways
- 5 LOC 42.08.400 – 42.08.470 Streets and Sidewalks
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- 7 D. City of Lake Oswego Tree Code [LOC Chapter 55]:
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- 9 LOC 55.02.010 – 55.02.084 Tree Removal & Mitigation Requirements

10 **FINDINGS AND REASONS**

11 The Commission incorporates the June 22, 2018, Staff Report, (with all exhibits attached thereto), as
 12 support for its decision, supplemented by the further findings and conclusions, below. If there is any
 13 inconsistency between the supplementary findings and the Staff Report, the supplementary findings
 14 control.
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16 Following are the supplementary findings and conclusions of this Commission:
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- 18 1. The Commission finds that because street trees on Lots 3, 4, and 5 will be on private property and
 19 not in the public right-of-way, the plat should include street tree easements, to the satisfaction of
 20 Planning staff. Therefore, an additional condition of approval is necessary as follows:
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22 Condition B(3)(f): Determine the number, size, and location of street tree easements for all
 23 street trees not in the public right-of-way on Lots 3, 4, and 5, to the satisfaction of Planning
 24 staff.
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26 The applicant had no objection to the condition of approval.
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28 **CONCLUSION**

29 The Commission concludes that LU 18-0018 can be made to comply with all applicable criteria by the
 30 application of certain conditions.
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32 **ORDER**

33 **IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego that:**
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- 35 1. LU 18-0018 is approved, with the exception that the request to remove Trees #1379 (Lot 2), Trees
 36 #1473, 1487, and 1488 (Lot 3), and Trees #1541-1545 and 1595-1603 (14 trees on Lot 5) is denied,
 37 subject to compliance with the conditions of approval set forth in Subsection 2 of this Order.
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- 39 2. The conditions for LU 18-0018 are as follows:
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41 **A. Prior to Submittal of the Final Subdivision Plat, the Applicant/Owner Shall:**

- 42 1. Apply for and obtain a demolition permit for the existing structures on site. The applicant
 43 shall note that this may require an asbestos report from a licensed agency to the
 44 satisfaction of the Building Official and that a 14-day notice of demolition is required to
 be posted on the site and mailed to abutting properties pursuant to LOC 45.12.100. The

demolition permit shall be accompanied by proper applications for tree protection and erosion control permits, if needed.

B. Prior to Approval of the Final Subdivision Plat, the Applicant/Owner Shall:

1. Provide proof that all structures have been removed per Condition A(1), above.
2. Submit a final plat to City staff for review and signature of approval within one year of the date of this decision. **The deadline to submit the final plat to City staff is one year from the date of final decision.** The final plat must be dimensioned as depicted in Exhibit E5 and reference this land use application – City of Lake Oswego Planning and Building Services Department, Case File LU 18-0018. 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 then current law and compatibility with surrounding development.
3. The final plat shall include the following information:
 - a. Public utility easements, to the satisfaction of the franchise utility companies.
 - b. Private storm easements for the development’s common storm facilities throughout the development.
 - c. Sufficient right-of-way dedication along the site frontage of SW 65th Avenue in order align with the existing right-of-way of the subdivision abutting the site to the south.
 - d. Dedication of the public right-of-way necessary for the design and construction of the new internal street.
 - e. Public storm easement over Tract A.
 - f. **Determine the number, size, and location of street tree easements for all street trees not in the public right-of-way on Lots 3, 4, and 5, to the satisfaction of Planning staff.**
4. Submit CC&Rs of the homeowners association for review and approval of City staff that address the following:
 - a. An operation and maintenance plan for the stormwater facilities in the open space tract, outlining the homeowners’ responsibility to control non-native vegetation and maintain the facilities. Specific maintenance schedules and methods shall be adopted and implemented subject to approval by the City Engineer.
 - b. An annual maintenance report for the stormwater facilities.

- c. Upon transfer of the homeowners' association from the developer to the homeowners within the development, the City shall be notified of the name and address of a contact person for the homeowners association.
 - d. Upon election of new officers for the homeowners' association, the City shall be notified of the new contact person.
 - e. The City's right to enforce the provisions of the CC&Rs required, above, including the right to recover all expenses of enforcement, the right to lien the lots to secure enforcement expenses, "non-waiver" of enforcement, non-amendment or rescission of the provisions of the CC&Rs required, above, and indemnification to the City for claims arising from the failure to properly design, locate, construct, or maintain the open space tracts or storm water facilities. (Suggested text for this requirement may be obtained from the City Attorney's office.)
 - f. The ownership, use and specific responsibilities for the operation and landscaping of the following features:
 - i. Stormwater facilities in the open space tract shall be maintained by the Homeowners Association, with a public easement for access.
 - ii. Street Trees – access and maintenance of the "street trees" as shown on Exhibit E9 (the new trees depicted along the street frontages).
5. Provide an updated tree inventory (Exhibit F4) that correctly identifies the species of all trees on the site.
6. Apply for and obtain a verification tree removal permit for the 32 trees approved for removal with this action. The verification tree removal application shall include an 8½ x 11-inch copy of the tree removal plan and a mitigation plan showing the size, species, and location of all required mitigation trees. The updated tree inventory required by Condition B(5), must be used to determine the correct type of mitigation trees. Trees not determined to be "significant" shall be mitigated at a 1:1 ratio. The 18 trees identified as "significant" shall be mitigated at a 2:1 ratio (36 trees required). All native trees shall be mitigated with a native species selected from LOC Appendix 50.02-1, Native Mitigation Tree List. Mitigation trees shall not be dwarf or ornamental varieties and shall be at least 1.5 inches in caliper if deciduous or at least six feet tall if evergreen. If there is insufficient space to accommodate all the required mitigation trees on the site, a fee may be paid in lieu of planting a portion of the mitigation trees as allowed per LOC 55.02.084.4.c.
7. Submit a Notice of Development Restrictions to be recorded with the final plat, per review and approval by staff. An exhibit shall be included with the Notice illustrating the Protected Solar Building Line on Lot 5. The exhibit shall be no larger than 8 ½" x 11" and shall not contain lettering smaller than 10 point font. The Notice shall include the following:
- a. Lot 5 is subject to the requirements of LOC 50.06.007.1.d.ii [Protected Solar Building Line], as depicted on Exhibit "A". The Protected Solar Building Line, if located closer to a property line than a required yard setback, shall not supersede the required yard setback.

8. Sign and record a Local Improvement District (LID) waiver of remonstrance agreement for participation in any future construction of street improvements and undergrounding of existing overhead utilities along SW 65th Avenue.
9. Submit engineered construction drawings for the public improvements for review and approval by the City Engineer. Drawings shall conform to the City's most current design standards and the drafting specifications. All final engineering design drawings and as-built plans submitted for the creation of public facilities (street, wastewater, water and surface water) shall be vertically controlled by the City Datum (NGVD'29) and horizontally controlled by the Oregon State Plane coordinate system (NAD 83/91). [Note: receiving construction plan approval is not a pre-requisite for recording the final plat.]
 - a. Provide a copy of the geotechnical report (Exhibit F3) and incorporate all applicable recommendations into the design and construction of on-site improvements.
 - b. Illustrate an 8-inch public sewer extension in the new public street from an existing City of Lake Oswego maintained sewer main in SW 65th Avenue, and terminate with a manhole near the eastern side of the proposed cul-de-sac. The most easterly lots shall be connected to the public mainline immediately downstream from the manhole and will not be allowed to connect directly into the terminating manhole.
 - c. Illustrate a new fire hydrant assembly meeting the Rivergrove Water District's standards near the entrance to the subdivision in a location approved by the District, to the satisfaction of the Fire Marshal.
 - d. Design to replace the existing AC water main within SW 65th Avenue and fronting the property with 8-inch ductile iron (DI) pipe, to the satisfaction of the Rivergrove Water District and the City Engineer. The new DI water main shall connect to the existing 8-inch DI water main at the south edge of the subject property and to the existing 6-inch AC water main at the north edge.
 - e. Illustrate an 8-inch public water mainline extension in the new public street serving the development, to the satisfaction of the Rivergrove Water District and the City Engineer.
 - f. Ensure sufficient right-of-way dedication and half-street frontage improvements along the entire site frontage similar to the half-street improvements constructed with the subdivision abutting the site to the south. The new intersection serving the development shall have ADA ramps, and the new sidewalk along SW 65th Avenue will be required to connect back the road at the north end of the site. A pavement taper will be necessary to transition the new pavement width back to the existing edge of the road.
 - g. Design to provide stormwater management for the street improvements along the site frontage of SW 65th Avenue.
 - h. Design of a public storm line extension along the entire site frontage of SW 65th Avenue to the site's north boundary line.

- i. As generally shown on the preliminary street plan, design to construct an internal public local street section that includes a 40-foot of right-of-way, 28 feet of pavement, standard concrete curb and gutter, a 5-foot planter strip, 5-foot concrete sidewalk on one side of the street, and one-half foot between the back of the sidewalk and the right-of-way line.
 - j. Design of the new public street intersection with SW 65th Avenue in compliance with AASHTO and the City's vision clearance standards.
 - k. Design of street lighting along the site's SW 65th Avenue frontage. For the proposed new public street serving the subdivision, a street light shall be installed only at its intersection with SW 65th Avenue. The final design documents shall include the manufacturer's cut sheets for the proposed luminaires and a photometric plan demonstrating that the illumination levels fall within the parameters established by LOC 50.06.004.3.
 - l. Design of the individual private water services, sanitary service laterals, and storm laterals. Sanitary sewer laterals shall have a two-way clean-out positioned at the right-of-way line. The common private storm line shown on the preliminary utility plan (Exhibit E8) across Lots 1-4 shall be clearly identified as "private" on the construction plans.
 - m. Submit a revised street tree plan (using Exhibit E9) that illustrates required street trees on the frontages of all lots, including the size, species, and locations (as appropriate for the species chosen), to the satisfaction of Planning staff.
10. Submit a final storm drainage report for all required storm improvements for the public streets and runoff from the development's impervious surface areas, prepared by a registered engineer.
 11. Complete all public improvements required by Condition B(9) and B(10), above, and provide as-built drawings conforming to the City's standards for record drawings, or provide a financial guarantee to ensure their 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.

C. Within 90 Days of the Recordation of the Final Subdivision Plat, the Applicant/Owner Shall:

1. Submit a final title report, or lot book report from a title company demonstrating that the plat was validly recorded and that the public and private easements, Notice of Development Restriction, and LID, 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.

D. Prior to the Issuance of any Grading or Building Permit on any Lot, the Applicant/Owner Shall:

1. Demonstrate compliance with Conditions A-C, above.

2. Complete all public improvements as required by Conditions B(9) and (10), above, submit certified “as-built” drawings, and receive a certificate of completion and acceptance by the City.
3. The applicant shall be responsible for maintaining the integrity of development related infrastructure for one year after the improvements have been completed and accepted by the City, and to secure that obligation with a one-year maintenance bond per LOC 50.87.020.
4. Complete construction of the private sanitary services, common private storm facilities, storm lines and laterals, private water services, and private franchise utilities serving all of the lots.
5. Submit a final drainage report, prepared by a registered engineer, in accordance with the Stormwater Management Code and LOSWMM, to the satisfaction of the City Engineer. The final drainage report calculations must demonstrate that the proposed facilities are designed to allow onsite infiltration by including drain rock and an open bottom.
6. Evaluate downstream impacts associated with the 25-year, 24-hour storm event and size any downstream improvements accordingly or provide onsite flow control. Proposed mitigation (replacement of the pipe across SW Childs Road) shall be reviewed and approved by Clackamas County on behalf of the City of Rivergrove, as acknowledged in the Preliminary Storm Drainage Report.
7. Submit final plans for all stormwater management facilities. The final design plans must include cross section details of the proposed facilities, consistent with the facility design calculations and the minimum requirements in LOSWMM, Section 4.6. Final facility placement must adhere to setback requirements from building foundations (10 feet) and property lines (5 feet) per LOSWMM Table 3.1.
8. Apply for and obtain any necessary tree removal permits on each lot prior to grading or construction of any structures. The tree removal application shall include a tree mitigation plan per LOC 55.02.084. Type II permits associated with building permits are issued simultaneously with the building permit.
9. Per LOC Chapter 52, apply for and obtain an approved erosion prevention and sediment control permit issued through the City of Lake Oswego, and install and maintain all BMPs as indicated in the permit. These measures must remain in place as indicated throughout the development period.
10. Obtain a DEQ Construction Stormwater Permit (NPDES 1200-C) prior to construction.

E. Prior to the Final Building Inspection or Occupancy of any Dwelling on any Lot, the Applicant/Owner Shall:

1. Provide certification from the engineer of record that the stormwater facilities were constructed per the design and are functioning properly.
2. Provide proof of recorded operations and maintenance plans (OMPs) for each stormwater facility. The OMP must describe how to properly maintain the facilities, the frequency of maintenance required and the party responsible for maintaining the facilities. In addition,

submit for Engineering staff review and approval (and then record) an Operations and Maintenance plan for the stormwater facility to be maintained by the Homeowner's Association (HOA).

3. Post-construction protection measures for protecting the stormwater facilities shall be left in place until after the final home construction has been completed.
4. Install all street trees and mitigation trees on each lot as required by Conditions B(6), B(9)(m), and D(8), above.
5. Submit a security in the amount of 5% of the total street tree landscaping costs for one 12-month growing season.

1 **Notes:**

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