

BEFORE THE DEVELOPMENT REVIEW COMMISSION OF THE
CITY OF LAKE OSWEGO

4-LOT SUBDIVISION AND THE REMOVAL) LU 15-0070-1890
OF 19 TREES) CITY OF LAKE OSWEGO
) FINDINGS, CONCLUSIONS & ORDER

NATURE OF APPLICATION

The applicant is requesting approval of a 4-lot subdivision and the removal of 19 trees to accommodate the site improvements.

The site is located at 13211 Knaus Road (Tax Lots 1300 and 2700 of Tax Map 2 1E 04BA).

HEARINGS

The Development Review Commission (Commission) held a public hearing and considered this application at its meeting of March 7, 2016.

CRITERIA AND STANDARDS

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

LOC 50.04.001.1	Residential Low Density Dimensional Table
LOC 50.06.002	Parking
LOC 50.06.003.1	Access
LOC 50.06.003.2	On-Site Circulation - Driveways and Fire Access Roads
LOC 50.06.003.3	On-site Circulation – Bikeways, Walkway and Accessways
LOC 50.06.003.4	Local Street Connectivity
LOC 50.06.004.1	Landscaping, Screening, and Buffering
LOC 50.06.004.3	Lighting
LOC 50.06.005	Park and Open Space
LOC 50.06.006.3.b; 50.07.004.1	Drainage Standard for Major Development, Partitions, Subdivisions, and Certain Structures
LOC 50.06.007	Solar Access
LOC 50.06.008	Utilities
LOC 50.07.003.1	Application Procedures
LOC 50.07.003.3	Public Notice/Opportunity for Public Comment
LOC 50.07.003.4	Hearings
LOC 50.07.003.5	Conditions on Development
LOC 50.07.003.7	Appeals
LOC 50.07.003.14	Minor Development Decision
LOC 50.07.007.3	Platting
LOC 50.09.002.5	Compliance with Approved Permit

B. City of Lake Oswego Streets and Sidewalks Ordinance [LOC Chapter 42]:

LOC 42.03.130	Vision Clearance
LOC 42.03.135	Method of Establishing Special Street Setback Reference Line

1 LOC 42.08.400 - 42.08.470 Streets and Sidewalks

2
3 C. City of Lake Oswego Tree Code [LOC Chapter 55]:

4
5 LOC 55.02.010 - 55.02.080 Tree Removal
6 LOC 55.02.084 Mitigation Requirements

7
8 **CONCLUSION**

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10 The Commission concludes that LU 15-0070 can be made to comply with all applicable criteria
11 by the application of certain conditions.

12
13 **FINDINGS AND REASONS**

14
15 The Commission incorporates the February 26, 2016, Staff Report (with all exhibits attached
16 thereto) as support for its decision supplemented by the further findings and conclusion, below.
17 In the event of any inconsistency between the following supplementary matter and the staff
18 report, the supplementary matter controls. To the extent they are consistent with the approval
19 granted herein, the Commission adopts by reference its oral deliberations on this matter.

20
21 Following are the supplementary findings and conclusions of this Commission:

- 22
23 1. The Commission received testimony from a neighbor that the proposed subdivision will
24 negatively impact traffic safety on Knaus Road, particularly at the 90-degree bend of
25 Knaus Road to the north of the site, by adding more trips.

26
27 The Commission finds that no evidence was presented to demonstrate that the proposed
28 subdivision's incremental traffic increase would itself negatively impact traffic safety on
29 Knaus Road. In fact, the Commission notes that the eventual connection of Amber Place
30 from Country Commons to Knaus Road will provide a more direct route for lots on Country
31 Commons and Amber Place that will allow traffic within the subdivision and the surrounding
32 area to avoid the 90-degree bend on Knaus Road.

- 33
34 2. The Commission received testimony from the Forest Highlands Neighborhood Association
35 that:
- 36 • The extension of Amber Place has no functional advantage and that the Association
37 does not want to see the road connected through; they suggested that the applicant
38 propose a flag lot configuration for the lots that does not include an extension of Amber
39 Place.
 - 40 • The size of the three 10,000 square-foot lots proposed in the subdivision is out of
41 character with the larger lots in the surrounding neighborhood.

42
43 The Commission finds that:

- 44
45 • The Association did not identify any standard that conflicted with the extension of
46 Amber Place. Rather, the proposed extension of Amber Place complies with the
47 Connectivity Standard [LOC 50.06.003.4] as discussed on pages 7-8 of the Staff
48 Report. The Commission has no authority to require an applicant to redesign a
49 subdivision that is in compliance with all applicable standards. If there is an objection to
50 the requirements of the Connectivity Standard, the process to amend the standard is
51 outside the authority of the Commission.

- The minimum lot size of the R-10 zone is 10,000 square feet and all of the proposed lots comply with the minimum lot size. The Association did not identify any standard that requires the proposed lots to be larger in size if the surrounding lots exceed the minimum lot size of the zone, and the Commission finds none exists.

3. The Commission received testimony from a neighbor that:

- Until the extension of Amber Place is connected through it will create confusion for emergency vehicles and travelers unfamiliar to the area if both sections are named Amber Place. He suggested that the new extension be named Country Commons Court or another similar name until Amber Place is connected all the way through.
- Vehicles traveling south on the north section of Amber Place could drive through the new pedestrian path, creating a safety hazard.

The Commission finds that:

- No standard was identified that requires unconnected portions of streets to bear different names. The authority to name streets lies with the City Engineer, not the Commission. See LOC 42.03.090 Street Names (“The City Engineer shall have the authority to approve new street names and to approve changes of existing street names.”) The Commission notes there are many examples of other roads in the City that do not connect all the way through and that emergency vehicles have state-of-the-art navigation systems that assist them in reaching their destination in the shortest trip possible.
- Conditions of approval may be imposed by the Commission that are necessary to eliminate or mitigate a negative impact on the built environment of the neighborhood which is created or contributed to by the proposed development. LOC 50.07.003.5.a.iv. It may be possible for a vehicle to drive through the proposed pedestrian pathway connecting the existing and new sections of Amber Place and that bollards or means of other vehicle obstruction to the satisfaction of the City Engineer should be required at the north end of the pathway to alleviate this safety concern. Condition A(6)(d) has been added to address this concern.

ORDER

IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego that:

1. LU 15-0070 is approved, subject to compliance with the conditions of approval set forth in Subsection 2 of this Order.
2. The conditions for LU 15-0070 are as follows:

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

1. Submit a final plat to staff for review and signature of approval within one year of the date of this decision. **The deadline for submitting the final plat to City staff is March 7, 2017.** 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 Department Case File LU 15-0070. 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

1 writing and must be submitted to the City Manager for review of the project for
2 conformance with current law, development standards and compatibility with
3 development that may have occurred in the surrounding area. The extension
4 may be granted or denied and, if granted, may be conditioned to require
5 modification to bring the project into compliance with then current law and
6 compatibility with surrounding development.
7

- 8 2. All plats and public easements submitted to the City of Lake Oswego shall have
9 accompanying vector based electronic drawings or maps consistent with the
10 prevailing technologies in the Civil Engineering and/or Surveying fields (e.g.
11 current or near current versions of AutoCAD). The electronic drawings shall
12 conform to the mapping requirements for plats adopted in O.R.S. Chapter 92.
13
- 14 3. The final plat shall illustrate the following to the satisfaction of staff:
15
- 16 a. A minimum of 40 feet of right-of-way dedication along the entire west
17 side of the site. The east right-of-way line at the north end of the site
18 shall transition over in order to match into the existing right-of-way line
19 abutting the site as illustrated on Exhibit E4.
 - 20 b. Private storm drainage easement along the back of Lots 1 through 3 for the
21 benefit of Lots 1 through 4. (Note: if it is determined the storm laterals for Lots
22 1-3 can be routed to the new storm main in Amber Place, this easement and
23 common private storm line will not be needed.)
24
 - 25 c. Public utility easements along the site frontages to the satisfaction of the
26 franchise utility companies.
27
 - 28 d. Public storm drainage easements to the satisfaction of the City Engineer to
29 provide City access to maintain the public storm conveyance line that leads to
30 the detention access manhole and the line that exits the detention control
31 manhole conveying drainage to the storm main in Country Commons.
32
 - 33 e. Verify the location of the existing public waterline in Amber Place and provide
34 a public waterline easement on the plat across the northwest corner of the site
35 if necessary.
36
- 37 4. Submit a "Notice of Development Restrictions" to be recorded with the final plat
38 after review and approval by staff. If the Protected Solar Building Line Option
39 will be utilized on Lot 3 in lieu of the Performance Option, an exhibit shall be
40 included with the Notice illustrating the Protected Solar Building Line. The
41 exhibit shall be no larger than 8 ½" x 11" and shall not contain lettering smaller
42 than 10 point font. The "Notice of Development Restrictions" shall include the
43 following:
44
- 45 a. Lots 1-4 are subject to the requirements of LOC 50.06.007.1.d.iii,
46 Performance Option, which requires habitable structures on Lots 1-4 to be
47 built according one of the following requirements:
48
 - 49 i. Orient the long axis of habitable structures within 30° of a true east-west
50 axis and at least 80% of their ground floor south wall protected from shade
51 by structures and non-exempt trees; or

- ii. Habitable structures will have at least 32% of their glazing and 500 sq. ft. of their roof area facing within 30° of south and protected from shade by structures and non-exempt trees.

[Alternatively, if the applicant chooses to apply the Protected Solar Building Line Option on Lot 3, the following text shall be included in the Notice and Lot 3 can be removed from the Performance Option text, above:

Lot 3 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.]

- b. The City of Lake Oswego has determined the fire apparatus means of approach to Lot 1 may not meet the local City standards adopted in accordance with the applicable Fire Code and state building code requirements. The Building Official may allow an alternative to the minimum requirements of the One-and Two-Family Dwelling Specialty Code as authorized by ORS 455.610, which may include, but is not limited to, installation of an automatic fire sprinkler system. The owners or owners' representative shall offer an approved alternate method for fire suppression on Lot 1, such as an NFPA 13-D residential fire sprinkler system, to the satisfaction of the Fire Marshal and Building Official.

- 5. Submit CC&Rs of the homeowners association for review and approval of staff that includes or addresses the following:
 - a. The ownership and specific maintenance responsibilities for the following features:
 - i. Common stormwater facilities to be maintained by the HOA including the tree well catch basins along Amber Place and any common detention facility. [Note: The individual planter boxes on each lot shall be maintained by the owner of each lot.]
 - b. 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.
 - c. Upon election of new officers for the homeowners association, the City shall be notified of the new contact person.
 - d. 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 stormwater facilities. (Suggested text for this requirement may be obtained from the City Attorney's office.)
- 6. 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

1 engineering design drawings and as-built plans submitted for the creation of
2 public facilities (street, wastewater, water and surface water) shall be vertically
3 controlled by the City Datum (NGVD'29) and horizontally controlled by the
4 Oregon State Plane coordinate system (NAD 83/91). [Note: receiving
5 construction plan approval is not a pre-requisite for recording the final plat.]
6

7 The plans shall include the following:
8

- 9 a. A minimum of 40 feet of right-of-way dedication along the entire west
10 side of the site. The east right-of-way line at the north end of the site
11 shall transition over in order to match into the existing right-of-way line
12 abutting the site as illustrated on Exhibit E4.
13
- 14 b. Design to construct full street improvements from Country Commons to a
15 point approximately 45 feet south of the site's north boundary line as shown
16 on Exhibits E6 and E10. Curb returns and sight distance according to
17 AASHTO standards will be required at the connection to Country Commons.
18 In addition, as shown on the preliminary plans, a retaining wall will be needed
19 along the west side of the street in order to construct the street improvements.
20 An ADA ramp shall be constructed at the new intersection of Amber
21 Place/Country Commons and also across the street along the south side of
22 Country Commons.
23
- 24 c. Increase the width of the pathway connecting the new extension of Amber
25 Place and the existing right-of-way of Amber Place to the north to six feet as
26 required by LOC 50.06.003.3.c.vii.
27
- 28 **d. Design for bollards or other means of vehicle obstruction, to the**
29 **satisfaction of the City Engineer, at the north end of the pathway**
30 **connecting the new extension of Amber Place and the existing right-of-**
31 **way of Amber Place.**
32
- 33 e. Design of the public sanitary main extension according to either Option 1 or
34 Option 2, as generally shown on the preliminary utility plans (Exhibits E8 and
35 E9). Pavement repair along Country Commons due to the installation of public
36 utility mains shall be to the satisfaction of the City Engineer.
37
- 38 f. Design of the public water main extension along the entire Amber Place street
39 extension.
40
- 41 g. Design of public storm conveyance line along Country Commons and the
42 entire Amber Place street extension, and design of the detention facility for
43 the development.
44
- 45 h. Design for the individual sanitary, storm and water services.
46
- 47 i. Design to relocate the existing street light near the proposed Amber
48 Place/Country Commons intersection.
49
- 50 7. Submit a final storm drainage report for review at the time of plan review for the
51 public street and storm drainage improvements, to the satisfaction of the City
52 Engineer.
53

- 1 8. Submit for the City Engineer’s review and approval a Declaration of Covenant for
- 2 Operation and Maintenance of Surface Water Management Facilities for the
- 3 common stormwater facilities to be maintained by the homeowners association
- 4 (HOA) and record with the final plat. The drainage facilities to be maintained by
- 5 the HOA include the tree well catch basins along Amber Place and any common
- 6 detention facility. The individual planter boxes on each lot shall be maintained by
- 7 the owner of each lot.
- 8
- 9 9. Sign and record a Local Improvement District (LID) waiver of remonstrance
- 10 agreement for participation in any future construction of street frontage
- 11 improvements for the 45-foot section of unimproved right-of-way remaining at the
- 12 north end of Amber Place.
- 13
- 14 10. Construct the improvements required by Condition A(6), above, or submit a
- 15 financial guarantee to ensure its construction per LOC 50.07.003.9. The financial
- 16 guarantee shall be based on 120% of an itemized engineer’s estimate that is in
- 17 turn based on final construction plans that are far enough advanced to support
- 18 the estimates, to the satisfaction of the City Engineer.
- 19

20 **B. Within 30 Days of the Recordation of the Final Plat, the Applicant/Owner Shall:**

- 21
- 22 1. Submit a title report, or lot book report from a title company showing that all public
- 23 and private easements as required in Condition A(3), the “Notice of Development
- 24 Restrictions” as required in Condition A(4), the CC&R’s as required in Condition
- 25 A(5), and the Declaration of Covenant for Operation and Maintenance of Surface
- 26 Water Management Facilities required in Condition A(8), above, are valid and
- 27 subsisting, and either free of any prior liens or encumbrances, or holder of prior
- 28 liens and encumbrances shall submit a Consent Affidavit.
- 29

30 **C. Prior to Constructing the Public Improvements or Issuance of a Site Grading**

31 **Permit, the Applicant/Owner Shall:**

- 32
- 33 1. Apply for and obtain a verification tree removal permit for the 19 trees approved
- 34 for removal by this action. The Verification application shall include an 8½” x 11”
- 35 copy of the tree removal plan (Exhibit E6) and a mitigation plan that shows a
- 36 minimum of 19 replacement trees. Replacement trees shall not be dwarf or
- 37 ornamental varieties and shall be at least two inches in caliper if deciduous or at
- 38 least six to eight feet tall, excluding the leader, if evergreens.
- 39
- 40 2. Install the tree protection fencing as required by Code Requirement No. 1, below.
- 41

42 **D. Prior to the Issuance of a Building Permit on any of the Lots, the**

43 **Applicant/Owner Shall:**

- 44
- 45 1. Demonstrate compliance with Conditions A-C, above.
- 46
- 47 2. Complete all public and site improvements as required by Condition A(6), above,
- 48 submit certified “as-built” drawings, and receive a certificate of completion and
- 49 acceptance by the City.
- 50
- 51 3. Record the final plat.
- 52

- 1 4. Provide certification from the engineer of record demonstrating the minimum sight
2 distance according to AASHTO standards has been achieved for the new
3 intersection of Amber Place/Country Commons.
4
- 5 5. Submit a stormwater disposal plan for each Lot, prepared by a registered
6 engineer, to the satisfaction of the City Engineer.
7
- 8 6. Design for the new driveway approaches on each lot in compliance with both the
9 AASHTO and the City's vision clearance standards. No vegetation, fence, or
10 signage higher than 30 inches shall be located within the vision clearance
11 triangles.
12
- 13 7. Provide post-construction stormwater management facility protection for the new
14 tree well catch basins and catch basins along Country Commons in order to
15 protect the facilities during home construction.
16
- 17 8. Show the vision clearance triangles on the site plans for building permit
18 applications on each lot.
19
- 20 9. Apply for the appropriate tree removal permits on each lot and include a
21 mitigation plan. For mitigation, deciduous trees shall have a minimum caliper of
22 two inches and conifer trees shall be a minimum of six to eight feet high
23 (excluding the leader).
24
- 25 10. Install permanent "No Parking – Fire Lane" signs on both sides of the new
26 extension of Amber Place to the satisfaction of the Fire Marshal. The signs shall
27 have a minimum dimension of 12 inches wide by 18 inches high and have red
28 letters on a white reflective background.
29
- 30 11. The building plans on Lots 1-3 shall comply with the R-10 zone standards in effect
31 at the time of building permit application. [A small portion of the west sides of Lots
32 1-3 are in the R-7.5 zone; however, the R-10 zone standards shall be applied to
33 all development on Lots 1-3.]
34

35 **E. Prior to any Final Building Inspection or Occupancy of any Dwelling on any Lot,**
36 **the Applicant/Owner Shall:**
37

- 38 1. Provide certification from the engineer of record that the stormwater facility for
39 each lot was constructed according to the design and is functioning properly.
40
- 41 2. Install required mitigation trees on each lot as required by Conditions C(1) and
42 D(7), above.
43
- 44 3. Install the street trees along the site frontage(s) on each lot in accordance with
45 Exhibit E5 and provide a one-year guarantee (one 12-month growing season from
46 the date of installation) for the street trees pursuant to LOC 50.06.010.2. The
47 guarantee shall consist of a security in the amount of five percent of the total cost.
48

49 **Code Requirements:**
50

- 51 1. **Tree Protection:** Submit a tree protection plan and application as required by LOC
52 55.08.020 and 55.08.030 for review and approval by staff, including off-site trees that are
53 within the construction zone. The plan shall include:

- 1 a. The location of temporary tree protection fencing, consisting of a minimum 6-foot
2 high cyclone fence secured by steel posts around the tree protection zone, or as
3 recommended by the project arborist and approved by the City.
4
- 5 b. A note stating that no fill or compaction shall occur within the critical root zones of any
6 of the trees, or that if fill or compaction is unavoidable, measures will be taken as
7 recommended by a certified arborist to reduce or mitigate the impact of the fill or
8 compaction. The note shall also inform contractors that the project arborist shall be
9 on site and oversee all construction activities within the tree protection zone.
10
- 11 c. A note that clearly informs all site contractors about the necessity of preventing
12 damage to the trees, including bark and root zone. The applicant and contractor(s)
13 shall be subject to fines, penalties and mitigation for trees that are damaged or
14 destroyed during construction.
15
- 16 d. A sign shall be attached to the tree protection fencing which states that inside the
17 fencing is a tree protection zone, not to be disturbed unless prior written approval has
18 been obtained from the City Manager and project arborist.
19

20 **Note:**

- 21
- 22 1. The applicant is advised to take part in a Post Land Use Approval meeting. City staff
23 would like to offer you an opportunity to meet and discuss this decision and the conditions
24 of approval necessary to finalize the project. The purpose of the meeting is to ensure you
25 understand all the conditions and to identify other permits necessary to complete the
26 project. If you like to take advantage of this meeting, please contact the staff coordinator
27 at (503) 635-0290.
28
- 29 2. Development plans review, permit approval, and inspections by the City of Lake Oswego
30 Development Review Section are limited to compliance with the Lake Oswego
31 Community Development Code, and other applicable codes and regulations. The
32 applicant is advised to review plans for compliance with applicable state and federal laws
33 and regulations that could relate to the development, e.g., Americans with Disabilities
34 Act, Endangered Species Act. City staff may advise the applicant of issues regarding
35 state and federal laws that the City staff member believes would be helpful to the
36 applicant, but any such advice or comment is not a determination or interpretation of
37 federal or state law or regulation.
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1 DATED this 21st day of March, 2016.
2

3 Brent Ahrend /s/
4

5 _____
6 Brent Ahrend, Chair
7 Development Review Commission

8 Janice Reynolds /s/
9

10 _____
11 Janice Reynolds
12 Administrative Support III

13 **ATTEST:**

14
15 **TENTATIVE DECISION – March 7, 2016**

16 AYES: Ahrend, Melendez, Poulson, Shearer, Smith and Rabbino
17 NOES: Prichard
18 ABSTAIN: None
19 ABSENT: None
20

21 **WRITTEN FINDINGS – March 21, 2016**

22 AYES: Ahrend, Poulson, Shearer
23 NOES: Prichard
24 ABSTAIN: None
25 ABSENT: Melendez, Smith, Rabbino