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**CITY OF LAKE OSWEGO  
Planning Commission Minutes  
EXCERPT OF LU 17-0052**

**November 27, 2017**

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**CALL TO ORDER**

Chair Heape called the meeting to order at 6:30 p.m. in the Council Chamber of City Hall, 380 A Avenue, Lake Oswego, Oregon.

**ROLL CALL**

Members present were Chair Robert Heape, Vice Chair Bill Ward, and Commissioners Randy Arthur, Skip Baker, Ed Brockman, Nicholas Sweers, and Bill Ward. Jeff Gudman, City Councilor was also present.

Staff present were Scot Siegel, Planning and Building Services Director; Paul Espe, Associate Planner; Leslie Hamilton Senior Planner; Evan Boone, Deputy City Attorney; and Iris McCaleb, Administrative Assistant.

**PUBLIC HEARINGS**

Community Development Code Amendments – Flag Lots and Private Access Lanes (LU 17-0052). This hearing was continued from November 13, 2017. Discussion, testimony and deliberations were limited to the subject of private streets.

A request from the City of Lake Oswego for text amendments to the Community Development Code amending the standards for development of flag lots and private access lanes. The proposed text amendments are to the following sections: Circulation and Connectivity [LOC 50.06.003], Land Divisions, Flag Lots [LOC 50.07.007.2], and Definition of Terms [LOC 50.10.003]. *Staff coordinator was Leslie Hamilton, Senior Planner.*

Chair Heape opened the hearing. Mr. Boone outlined the applicable criteria and procedures. At time of declarations no conflicts of interest were reported. No one challenged any Commissioner’s right to consider the application.

***Staff Report***

Ms. Hamilton provided the staff report and reviewed the Commission’s direction from October 9, which was to reopen the hearing for testimony on a proposed private street standard. The Commission had requested alternatives to a standard 50-foot wide street with adequate parking, drainage, and circulation. The intent was to mitigate the impact on the City’s housing capacity resulting from the Commission’s recommended limit on the number of flag lots. Ms. Hamilton noted she had met with Engineering and they were not interested in narrower public streets for a variety of reasons, including maintenance with existing equipment; hence, the proposed private street standard.

Ms. Hamilton reviewed the schedule going forward if the Commission were to approve: Findings on December 11, Council study session on December 19, followed by public hearing on January 2, 2018.

### ***Questions of Staff***

Chair Heape asked for an explanation of how the widths and dimensions were set and Ms. Hamilton confirmed it was in consultation with the City Engineer. Mr. Siegel added they were comparable with a narrow public street. In response to Chair Heape, Mr. Siegel clarified the width of a local street in Lake Oswego varied, with the standard right-of-way (ROW) of 50 feet for a local street, with discretion about paved width, curb, swale, sidewalk, street trees, etc. Chair Heape opined the street width proposed would satisfy past concerns raised about narrow streets and safety. Commissioner Brockman opined that for a local neighborhood street standard there should be differentiation between a dead end street and a through street.

In response to Commissioner Brockman's question of how variance standards would apply to street width, Ms. Hamilton noted it might be limited to a Hardship Variance, though there was a Minor Variance available to the driveway and access lane width, which was typically related to safety in terms of fire access.

Ms. Hamilton referred to the analysis regarding the number of flag lots that could be developed under the different standards at the October 9 hearing and at the prior work session. In response to a request for a summary of why the Commission was looking at the private street proposal at this time, Mr. Siegel reminded that they had tentatively recommended approval of limiting flag lots to two. He added, to address concerns related to ramifications on property owners, the Commission had directed staff to explore opportunities to provide more flexibility and relief from the required 50-foot street section. The City Engineer was not willing to provide a narrow public street so the private street option was being proposed. Mr. Siegel further explained potential ramifications of limiting the number of lots in situations where there was not enough land to dedicate ROW for a public street.

Chair Heape recalled that some public testimony was related to limiting public access via a private street, such as the locked gate at a pathway leading to Freepons Park; otherwise some of the concerns expressed about streets that were too narrow were being addressed by the proposed street widths. He asked if there was a way to address lack of public access. Mr. Siegel responded that public access would be required where standards related to providing future street connectivity, including pathways, were met. He added that ultimately the City Council could decide what would be accepted as a public street.

### ***Public Testimony***

#### ***Proponents***

James Adkins, Home Builders Association of Metropolitan Portland (HBA), 15555 Bangy Road, Lake Oswego, 97035, read aloud a letter submitted for the record, Exhibit G-19. They were requesting flexibility and an added level of discretion to the Code with regard to sidewalks and parking space provisions.

In response to a question from Chair Heape, he noted the HBA would like to see a more comprehensive suite of street options, as each lot had its own different requirements, such as slope. He commented that what was being proposed felt overly prescriptive. He stated that the HBA would be happy to help convene a group of homebuilders to explore further.

Jim Standring, 12670 SW 68<sup>th</sup>, Tigard, 97223, opined that a public street could be created with a narrow ROW. He pointed out that many streets in Mt. Park did not have sidewalks and were narrow public streets. He shared that he was the developer of the Reserve at Westlake and opined there were many ways to accommodate the problems being addressed tonight without a 50-foot or 38-foot wide street ROW. He agreed all streets should have public access of some sort; as a developer he did not like private streets, they were not cheap. He added that the potential for lost lots meant fewer options for people to buy in the community.

### ***Opponents***

Donald Mattersdorff, 930 Bullock St., Lake Oswego, 97034, stated that there were two issues: 1) how wide the street should be; and 2) whether they should be public or private. He advised that narrow streets should be allowed to be public streets, accessible by all; he strongly opposed the idea of private streets.

Mr. Siegel explained the City Engineer's concern with accepting narrow streets that serve a small number of properties, particularly as it related to policy direction around pavement management and deferred maintenance.

Mr. Mattersdorff stated the main concerns were connectivity and access to parks and parking on the private street.

Liz Martin, 1017 Cedar Street, Lake Oswego, 97034, stated she was from the Hallinan Heights Neighborhood Association and shared the same concerns as Mr. Mattersdorff. She added that private drives created a separateness. She agreed that many people did not know they lived on a private street or understand their responsibilities for maintenance.

In response to a clarifying question from Chair Heape regarding private streets, owner obligation, and non-remonstrance agreements, Mr. Boone addressed the required maintenance agreements for private access lanes. Regarding a waiver of non-remonstrance, it had a very limited effect on whether or not there was a Local Improvement District (LID).

Jim Bolland, 804 5<sup>th</sup> Street, Lake Oswego, 97034, stated he did not understand how the City Engineer was able to drive a policy decision. He advised that the Commission should move forward with the solution they had previously reached – a parent lot with two flag lots, a small access lane and no need for a wide private lane. He commented that no one was telling Lake Oswego to increase its density.

Saul Caprio, 5570 Neff Park Lane, Lake Oswego, 97035, stated he and his wife have owned their property for 20 years, have been working with the City to divide it into 10 parcels and have spent years to reach this point. He indicated that they ran an adult assisted living facility on the property as well as eight low cost rentals, for a total of nine dwelling units served by one access lane. He held that the ordinance change would cost them \$100,000 and the proposed private street standards would require even more, such as a sidewalk that would connect to nowhere. He urged the Commission to consider the material impact of the proposed code changes on property owners. He further outlined their concerns and requests as detailed in written testimony, including an exemption process for certain types of land divisions.

Chris Haettemeyer, 1044 O'Brien Street, Lake Oswego, 97034, stated he was representing the Hallinan Heights Neighborhood Association (NA) as a Board member, followed by testimony as an individual. The Hallinan Heights NA unanimously adopted Exhibit G-18, which he read aloud into the record. In summary, Hallinan Heights NA did not support the

addition of any reference to private streets to the Code and supported limiting flag lots to one parent lot and two flag lots. Mr. Haettemeyer then testified as a private citizen. He expressed puzzlement that the private road option was brought forth based on the testimony he heard at the prior public hearing and work session. Private streets were exclusive and divisive; that was not the direction they wanted to go. He opined this process felt rushed; it needed more study and analysis. He was not opposed to development but the community connection that could be lost should not be forgotten.

Jim Fisher, 1023 O'Brien Street, Lake Oswego, 97034, shared that he would be opposed to a-la-cart development options. He opined that the Code was very obtuse and needed to be simplified. He supported comments from the Hallinan Heights Neighborhood Association and pointed out that six other neighborhood associations supported Hallinan Heights' position – one flag lot per existing dwelling; and no accessory dwelling units should be the standard. He appreciated the Commission's recommendation for two flag lots. He stated that the Code should require that streets be built to public standards which would also address one of the main livability concerns, parking. He expressed concern that private streets would reduce connectivity.

Carol Ockert, 910 Cumberland Rd., Lake Oswego, 97034, Chair of FAN-FH Neighborhood Association (NA) stated that this hearing was not adequately noticed to the public with regard to private streets, a matter that she thought had been resolved. There was insufficient time for neighborhood associations to communicate with members to meet and discuss this topic prior to the public hearing.

Diane Cassidy, 3601 Wren Street, Lake Oswego, 97034, stated that she had heard everyone's testimony tonight reflect that the needs of citizens should be given priority over the needs of developers.

Kate Myers, 5750 Carman Drive, Lake Oswego, 97035, Chair of Lake Forest Neighborhood Association, reiterated the Board's position of one parent with one flag lot, as the Board did not have adequate time to convene a meeting. Speaking for herself, she stated her opposition to privatized roads. She observed that there were many cul-de-sacs in the city that had four to six houses that were served by public streets and she questioned why there was a need for a separate tier. She pointed out that in addition to on-street parking, garbage pick-up as well as work and delivery trucks created safety issues. She added that there should not be gated streets in Lake Oswego. She opined that the Code and process needed to be clearer and equally applied.

### ***Neither for Nor Against***

Ralph Tahrán, 13741 Knaus Road, Lake Oswego, 97034, stated he was a local architect and had worked on a lot of private and public developments in Lake Oswego. He was asked by the HBA and some other developers to take a look at the proposal. He stated that it was a good clean up and had a lot of clarifications, however his main concern was the new street cross-section and the impact it would have on future partitions, the requirements seemed excessive. He had heard the main concern was parking and opined that a 38-foot street improvement with two side parallel parking spaces would negatively impact the character of Lake Oswego. He shared sketches with the Commission related to parking while reducing the taking of property. He noted the parking requirement in Lake Oswego did not count the driveway as required parking for single-family development and only required one parking spot, which was less than was required for multi-family development.

Lisa Volpel, 5655 Kenny Street, Lake Oswego, 97035, shared that she had a piece of property that could potentially be partitioned. She explained that when they built a replacement house they sited it at least 30 feet away from all of the property lines in order to provide flexibility for future development so the house would not be torn down. She opined that the proposed street widths were horrendous. Her property at its narrowest part was 123 feet by 475 feet deep; that would be a big piece of pavement on a lot that was only 123 feet wide. She pointed out that under current Code eight houses could be built, but with the proposed street widths it might not even be able to accommodate four houses.

***Rebuttal***

None.

***Questions of Applicant***

None.

***Deliberations***

Chair Ward opened deliberations.

Commissioner Brockman brought up private property rights, noting that landowners may have held property planning to develop in retirement, that the proposed 50-foot ROW would reduce the number of developable lots, which meant less revenue.

Ms. Hamilton clarified that the existing Code allowed an access lane to serve up to eight flag lots, anything above that needed to be served by a public street.

Chair Heape opined that they had not yet reached a good solution and asked if any Commissioners wanted to entertain a motion as to what direction should be taken. He shared some options: 1) motion to table; or 2) deny the aspects of private streets and pick that up in 2018 as part of the Commission's goals, and move ahead tonight with the original Findings that do not mention private streets.

Commissioner Brockman **moved** table the decision until the access issue had been vetted more thoroughly. The motion **failed** due to lack of a second.

Commissioner Baker **moved** to approve the proposed Community Development Code Amendments – Flag Lots and Private Access Lanes (LU 17-0052), excluding the proposed private street standard, returning with Findings, Conclusion and Order on December 11, 2017. Commissioner Sweers **seconded** the motion. The Commission discussed the motion.

Commissioner Brockman noted he would vote no as the topic needed more vetting, echoed by public testimony tonight. Commissioner Arthur commented that he did not recall hearing strong support for any form of private streets and that he would be supporting the motion.

The motion **passed 5:1**. Commissioner Brockman voted no.

