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**Planning Commission Minutes
EXCERPT OF LU 17-0078
January 8, 2018**

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, and Commissioners Randy Arthur, Skip Baker, Ed Brockman, Vickie Hansen, Nicholas Sweers, and Bill Ward. Jackie Manz, City Councilor was also present.

Staff present were Scot Siegel, Planning and Building Services Director; Evan Boone, Deputy City Attorney; Leslie Hamilton, Senior Planner; Bill Youngblood, Code Enforcement Specialist; and Iris McCaleb, Administrative Support.

Comprehensive Plan Map and Zoning Map Amendments for Forest Highlands (LU 17-0078).

A request from the City of Lake Oswego and the Forest Highlands Neighborhood Association for amendments to the Comprehensive Plan Map and Zoning Map. The amended Plan and Zoning Maps are intended to match the development pattern of the neighborhood, allow a wider range of housing types, with increased densities along major transportation corridors, reconcile conflicts between the Plan and Zoning Maps and rectify situations where properties have split designation. Staff coordinator was Scot Siegel, Director of Planning and Building Services.

Chair Heape opened the hearing. Mr. Boone outlined the applicable criteria and procedures. At time of declarations no conflicts of interest were reported, except for Commissioner Brockman who declared a financial interest and recused himself. No one challenged any Commissioner’s right to consider the application.

Staff Report

Mr. Siegel explained that zoning had been a long-standing issue and Forest Highlands had desired changes to the maps dating back to the 1980s and acknowledgement of the Comprehensive Plan. He noted that the neighborhood planning effort had been in the works over the past two years. He advised that on the technical side, if there was a proposed change in zoning or density, there were specific criteria in the Comprehensive Plan that must be met, including land use, housing, citizen engagement, and transportation polices. There were also Metro and Statewide planning requirements and policies. He opined the neighborhood had done an excellent job looking at the housing needs and the rebalancing of density in the neighborhood. He advised the proposal met the policies of the Comprehensive Plan, and complied with Metro’s planning requirements that there be no net loss in housing and State housing rules under Goal 10 related to needed housing and the Metropolitan Housing Rule.

Phil Zald, 13430 Atwater Lane, and Gary Willihnganz, 13068 Knaus Road, from Forest Highlands Neighborhood Association thanked the Commission for their input and guidance over the past 18 months. They shared Forest Highlands characteristics, zoning, and development history including examples of developments requiring neighborhood involvement.

They reviewed the purpose and process of the neighborhood survey. They advised that the results of the survey showed that:

- 30 years later, the 1987 zoning designations needed to be addressed.
- About 25 years of development had preserved the neighborhood's spatial look and feel.
- Recent development had increased density issues, resolution was inefficient for volunteer leaders/developers/city, and tensions were high.
- Resident voter feedback overwhelmingly supported the proposal to preserve neighborhood character with lower density.
- The proposed plan strategically preserved character, absorbed density, improved efficiency and created a win-win for development.
- FHNA supported development that respected and maintained the character of the neighborhood.

Mr. Zald noted the proposal actually increased development potential in certain areas along two of the corridors and there was a no net loss.

Questions of Staff

Commissioner Arthur asked about the northwest quadrant of FHNA and the thought process behind changing the designation to R-15 when the properties to the east were R-10 and R-3 to the west. Mr. Zald responded that it was basically suggested to change everything that was R-7.5 to R-15 as most of that area was already developed. He opined there likely wouldn't be any objection to R-10 in that area as most of that area was more densely built out. Mr. Siegel noted there was a property that was incorrectly proposed to change from R7.5 to R-3 rather than to the lower density of R-10 or R-15 in the Alto Park area. Chair Heape asked how there was no net loss with so many lots re-designated to R-15, even with the areas proposed for higher density. Mr. Zald responded that staff could better answer that in detail. Generally, some of the lots re-designated were not likely to redevelop even at a lower density, based on when they were developed or some being estate-like development; there were also slopes and other barriers. He concluded that the density loss was not as big as it may appear. He added that they went into this analysis with no preconceptions, rather they put density where it made sense from an efficiency standpoint, along arterials. Mr. Siegel added that the methodology used to determine buildable lands paralleled the methodology required by Metro. He pointed out that Exhibits E-2 and E-3 were maps that really got at the granular level for individual lots; they were buildable lands assumptions based on the Metro methodology. Staff worked very closely with the neighborhood to gather on the ground data as well. Vice Chair Ward asked for clarification as to what mistakes were made 30 years ago that they were trying to correct. Mr. Willihnganz responded that the rezoning 30 years ago was to R-7.5 and they had been told over the years by neighborhood leaders and City staff that the intent at that time was to revisit the zoning designation to make it something less dense. When asked, the FHNA representatives noted that they were not sure how many homeowner associations (HOAs) were in FHNA, but there were several such as Country Commons and Red Fox Hills; they clarified that while the President of the Country Commons HOA was present at the meeting, no other HOAs had specifically weighed in. Mr. Siegel confirmed that the methodology used to determine the effect on density was satisfactory and accurate.

Public Testimony

Proponent

Larry Brown, 884 Country Commons, Lake Oswego, 97034, President of Country Commons Property Owners Association, stated he had lived in Country Commons for 27 years and his wife had lived in the neighborhood her whole life. He noted that they enjoyed the neighborhood because of the open space and safety. He supported the proposal to have less density in the interior and that it provided a safer environment.

In response to a question from the Commission, Mr. Brown stated he had not done a separate survey but he had had many conversations and many of my neighbors shared the same belief.

Marty Gardner, 13238 Thoma Road, Lake Oswego, 97034, stated he and his wife had lived on Thoma Road for over 15 years. He shared that currently a developer had applied to cut down five of the trees at the north end of a grove. He noted it was currently under appeal but there seemed to be little in the City Code to keep the trees from being cut down; he indicated that several of the trees in the grove were on their lot and under current R-7.5 zoning they could partition and build up to four homes. He described similar situations on his neighbors' lots in relation to the tree grove. He held that in order to take advantage of this density a significant majority of these trees would need to be taken down to allow for the footprints of these homes. He referred to an unsatisfactory experience trying to negotiate with a developer recently. He opined going forward development would be under developer's control if changes to the zoning were not made at this point.

Sam Taylor, 13170 Thoma Road, Lake Oswego, 97034, stated he had lived in Lake Oswego since the 1960s and one of his concerns was that developers had met with them but did not take any of their concerns into consideration. He opined that more homes resulted in more traffic and danger for pedestrians. He added that Thoma was the thoroughfare for the high school kids and there was no way to get off of the street, as there was no pedestrian walkway. He advised that FHNA had done its diligence and everyone seemed to be on board with it. He opined the changes would not impact the City financially.

David Spurr, 13286 Goodall Road, Lake Oswego, 97034, stated he had lived in the area for only three years and was drawn to the area for similar reasons as others had stated. He opined that higher density would mean more traffic. He expressed concern for the safety of his kids when they walked to school because there was no sidewalk. He was not opposed to density in the right places. He commented that more development would lead to more traffic and would destroy the character of the area.

Tom Archer, 801 Atwater Road, Lake Oswego, 97034, noted that Atwater Road had portions in the City and County that would be affected by the possible change. He indicated that the FHNA had asked him what people on his street thought so he went door-to-door and asked them if they supported, opposed or were impartial to the zoning change from R-7.5 to R-15. He submitted the results to the City (Exhibit G-7). He summarized the results: 100% of the Atwater neighbors were represented in the survey and the tally was 18 in support, one impartial, none opposed, and four undeclared.

William Kenneth Gisch, 851 Atwater Road, Lake Oswego, 97034, stated he was the historian of the neighborhood and had lived there his entire life. He shared observations of the development pattern in the neighborhood. Starting in 2012 a total of six homes had been completed, plus one under construction; they were running from 4,100 to 6,500 sq. ft., with lot

sizes ranging from .5 acres to just under 1.5 acres, with the new construction in the County at 3 acres. In response to a question from the Commission regarding the methodology, he described that 2 acres of his 2.99-acre parcel were in resource lands.

Bill Jaursch, 1485 Timberline Drive, Lake Oswego, 97034, stated he had lived there since 1994. He expressed concern with the impact on pedestrian and cycling safety and transportation with the current and proposed zoning changes. He reported that Forest Hills residents had expressed concerns about pedestrian and bicycle safety in past surveys and it was not uncommon to see cyclists and pedestrians on Knaus Road have to step aside for cars to pass, as there were no shoulders. He noted that while some interior roads had had sporadic improvements related to development there was still no contiguous walk or cyclist route. He indicated that there were two Transportation System Plan (TSP) projects, including the Knaus Road path currently on the Capital Improvement Plan (CIP) however, it was only funded to complete 18% of the total distance of the pathway. He opined that this was an indication to him that the pathway would not be completed in the foreseeable future. He noted that the density in this amendment would generally move toward the peripheral roads on the borders of the neighborhood, moving the density toward areas with major vehicular, pedestrian, and cyclist access, as shown on the TSP. He acknowledged that the proposal moved density into proximity with existing pedestrian and cyclist access. He observed that in this proposal there had been a lot of agreement and he urged the Commission to approve the proposal.

Chris Robinson, 1400 Goodall Road, Lake Oswego, 97034, stated he was the former Chair of the FHNA. He observed that the designation of R-7.5 for the FHNA area had come at the cost of hours on the part of the City, neighborhood, developers, and other stakeholders. He indicated that the zoning designation was supposed to be somewhat consistent with what the County had, however, as a result of Comprehensive Plan amendments, when properties were annexed into the city with a County zoning of R-20 they were brought in at R-7.5. He advised that in those particular situations where people felt it would be a hardship, the neighborhood was willing to work with them to try and accommodate them without sacrificing neighborhood character.

Mr. Willihnganz responded to a question and clarified that the area to the north was in the County and was zoned R-20. Mr. Robinson opined that at the time the R-7.5 zoning was changed the neighborhood association was not well organized and the developer community had sway, there was concern about the amount of land that could be developed and Forest Highlands was not yet built out.

Scott Bullard, 14130 Taylors Crest Lane, Lake Oswego, 97035, stated he agreed that R-7.5 was a mistake in the interior and the proposal fixed the density problem by moving the density to the perimeter where there was access to the major collectors of Boones Ferry and Country Club. He noted there were five lots on Atwater developed with septic and wells in the County because the neighborhood had not had a strategy to accommodate this type of development; he added that they did not contribute system development charges.

Kent Myers, 13580 Goodall Road, Lake Oswego, 97034, moved to Lake Oswego in 1953. He stated he felt very fortunate to live in an older house with seven acres. He indicated that the staff report was well done, however changing the zone from R-7.5 to R-15 would impact some people, such as someone who had been planning to sell a lot for development in retirement that would no longer be developable. He questioned how many people were being deprived of living in Forest Highlands. He was looking for equity for people, even if he was not impacted

by the outcome. In response to a question from the Commission he indicated that he would have liked slightly smaller lot sizes though he was generally supportive of the proposed amendments.

Mark Rockwell, 13455 Knaus Road, Lake Oswego, 97034, stated he had lived in the neighborhood for 22 years. He indicated that he had a two-acre lot and supported the concept of 15,000 sq. ft. lots and completely agreed that the character of the neighborhood needed to be protected. He thanked City staff and the neighborhood for their hard work and the open and thorough process. He opined the proposed plan did provide diversity of housing, which Lake Oswego needed and it provided the opportunity for lower density in the interior and higher density near major arteries, where it belonged. He indicated that it also provided different types of housing at different price points, which was a good for the community.

Karen Ingels, 12831 Alto Park Road, Lake Oswego, 97034, referenced her written submittal (Exhibit G-6), stated she had lived there for 29 years and had been involved in a lot of work in front of the Development Review Commission. She acknowledged the hard and complicated work that went into developing the proposal. She noted that the short street touched the City of Lake Oswego, Clackamas County, City of Portland, and Multnomah County. She focused her remarks on 19 homes on the Lake Oswego portion of Alto Park Road and recommended a fine-tuning of the zoning by rezoning this particular area to R-10. She indicated that it had been hit very hard by so much redevelopment with larger lots being split with 15 new homes being built since 2008. She noted there were quite a few examples around the outer perimeter of the neighborhood where the R-10 zone was already in place; the properties on the west side of Alto Park Road backed up to the R-3 zone where the 22-unit Jamison Ridge townhomes were built. She indicated that the R-10 would be a nice transition zone. She stated they purchased their 0.9-acre (39,575 sq. ft.) property in 1989 and would lose value with the rezoning, but would lose less value with the R-10 zone. She noted that with the R-10 zoning they would have the potential for three lots, which was compatible with the surrounding properties and reasonable. She shared that she had talked with her neighbors on Alto Park Road and many were supportive of the R-10 zoning, as the changes would not affect them since their property had already been fully redeveloped. She noted one parcel that was just under 19,000 sq. ft. that would not be able to redevelop under the R-10 zoning so those neighbors were opposed to the change and had submitted written testimony (Exhibit G-4).

Ms. Ingels confirmed for the Commission that she was in favor of the overall proposal except the proposed zoning for Alto Park Road, which should be R-10. In response to the Commission's question, staff responded that development applications were subject to the code standards in effect at the time of application.

Dave Shotwell, 13636 Goodall Road, Lake Oswego, 97034, stated they bought their home four years ago and lived on a 15,000 sq. ft. lot in an area platted with five lots ranging from 15,000 to 30,000 sq. ft. lots that had all been built out with homes. He noted that the property immediately to the north of them (13900 Goodall) was initially marketed by the homeowner as up to nine 7,500 sq. ft. "affordable" lots; after the neighborhood meeting the homeowner was now going the serial partition route. He added that three lots had been approved and they would be coming back to the City for five lots. He noted he was sharing this as an example of what was currently happening on the ground under the current zoning.

He confirmed for the Commission he was in favor of the proposal and that his home was one of five homes in a flag lot situation.

Opponent

Ralph Tahran, 13741 Knaus Road, Lake Oswego, 97034, stated that he was opposed to the proposal as it was recommended. He opined it was not appropriate planning to apply a rural zoning classification to any property within the Urban Growth Boundary (UGB). He indicated that he had owned his property for 30 years and never heard there was a mistake made with the zoning and the possibility of going back to redo it, though he had heard objections. He stated that he had never been in favor of the R-7.5 zone as it was inappropriate for their area; however, he stated that R-10 would be a more appropriate zone because it was still taking advantage of urban services, which was what the area was designated for in the long term. He held that affordable housing was not going to happen because currently any new house on a 12,000 sq. ft. lot was running a minimum of \$2 million. He held that R-15 zoning would guarantee larger and more expensive homes and he opined it would eliminate a lot of diversity in housing. He did not believe shoving smaller housing out to the arterials was a fair way to do housing. He stated that he had talked with several long-time neighbors who wanted to remain in the area but did not want to maintain a large house on a large lot and were looking forward to being able to split their lot into smaller ones in order to be able to stay in the neighborhood. With the proposed zoning one would not be able to split a lot without a minimum of 35,000 sq. ft. due to frontage and other dedications. Mr. Tahran advised that an R-15 zone was a drastic change and eliminated a lot of property rights. He opined that potential development rights were being taken from many properties and property values were being minimized for a lot of area. He suggested looking at a larger portion of area being zoned R-10, as most lots would be a minimum of that anyway; it would retain a good portion of property rights for people and would result in some reasonable sized houses rather than 5,000 to 6,000 sq. ft. homes. He noted that several neighbors asked him to look at their property and he found inaccuracies on at least three properties. In closing, he was not totally opposed to the proposal but was opposed to the R-15 zoning.

In response to a question from the Commission regarding there being so few opponents, Mr. Tahran stated that with only 28% of the people responding to the survey, a lot of people just didn't want to get involved or didn't really understand the consequences of what the change in zoning would do to them. He felt there was not adequate notice giving the pros and cons of the decisions. He indicated that he had lived in the neighborhood a long time and had received a few flyers in the mail, but a change this drastic usually went through several public hearings where people could be heard; this was the first public hearing.

Neither for Nor Against

None.

Rebuttal

None.

Questions of Applicant

None.

Deliberations

Chair Heape opened deliberations.

Commissioner Baker observed that no one was completely opposed to the proposal, though some did suggest modifications. He noted he was in favor of the proposal and felt the Commission was not in a position to make small changes as staff and the neighborhood had done a lot of study and highly competent work.

Commissioner Arthur noted the Alto Park Road area and Ms. Ingels testimony requesting R-10 zoning; he pointed out two large lots on Goodall Road immediately across from the Street of Dreams and asked Mr. Siegel if the Commission were to entertain a modification to the proposal for R-10 for Alto Park Road would there be factors to indicate also including these lots in the R-10 modification if one were recommended. Mr. Siegel responded that if he understood Ms. Ingels' recommendation, she was looking at the actual lot sizes and development pattern along Alto Park Road and observed that nearly all of those lots were 10,000 to 11,000 sq. ft., though some were larger and her lot was dividable. If the Commission were looking at R-10 it would be to conform to what was already developed and committed to that density; they would then need to ask what the rationale would be to discontinue that or extend it to the east all the way through to Forest Meadows, which was currently R-10. It was a policy issue. The desire and direction from the neighborhood association was to transition density upward going out to the periphery. There was precedent for R-10 around the periphery and the Commission could go either direction on that. He added that if they were looking at higher density in the interior the neighborhood association should be asked for input.

Chair Heape noted he was looking at the same thing, maybe accommodating some of those requests. He added that he heard the neighborhood association's concerns about safety and traffic, which seemed to be better handled at the edges. He added he would like to try to accommodate some of the input they had heard, but in order to address some of the concerns of neighborhood associations he would suggest keeping it consistent with the plan as currently proposed.

Commissioner Sweers commented on the neighborhood association presentation and opined that 28% of the neighborhood association responding to the survey was an impressive and high figure. Chair Heape commented that he did some research on civic engagement and survey response rates and that the norm was around 30%, so he wouldn't say this survey had an outstanding rate, rather it was more typical.

Vice Chair Ward noted he was looking at maps, Exhibits E-2 and E-3, and he opined the change to development potential was not huge and would not be diminishing the ability to develop some of these vacant and/or larger parcels by a large number of lots. He added that he didn't think the Commission wanted to create a hardship for property owners; the neighborhood had done a good job with the number of meetings and preparation in conjunction with City Planning staff.

Vice Chair Ward referred to a letter received from Robert Fiordalice (Exhibit G-3) which stated he was formally opposed to the proposal that Forest Highlands Neighborhood Association had put forth regarding the adjustment of zoning in the Forest Highlands neighborhood, citing "Oregon Revised Statutes 195.310 (Claim for Compensation) to 195.314 (Notice of Claim)."

Vice Chair Ward asked Mr. Boone if the City might expect litigation from some property owners. Mr. Boone responded that under Measure 49, ORS 195.305, if a claim was brought within the applicable period of time, five years from the date the regulation was enacted, the property owner could seek just compensation. The City could avoid just compensation by waiving the restrictions in that ordinance. The property owner, to be entitled to just compensation, would have to show there was some diminishment of fair market value. There was an evidentiary issue to the property owner as to whether or not they had lost value.

DRAFT: 01/26/18

Commissioner Baker **moved** to recommend approval to the City Council for Comprehensive Plan Map and Zoning Map Amendments for Forest Highlands as proposed (Ordinance 2771: LU 17-0078), returning with Findings, Conclusion, and Order on January 22, 2018. Commissioner Sweers **seconded** the motion. The motion **passed 6:0**.

Commissioner Arthur expressed how impressed he was with the FHNA. He suggested entertaining a future proposal to zone the Alto Park area R-10.

Mr. Siegel brought forth a clarification noted in the FHNA presentation that highlighted a property at the southwest corner of Thoma Road and Knaus Road that had been identified as going from R-7.5 to R-3, but was supposed to be designated R-15, similar to the properties adjacent to it; it was shown on the map mistakenly as R-3. Mr. Siegel added that with this change there would not be a net zero change to development capacity; that change would diminish the development capacity by three dwelling units, which would be a negligible reduction.

Mr. Siegel noted the January 22 meeting would be held at the City Operations Center on Pilkington Road in conjunction with the Commission's retreat, which would be a public meeting that would be noticed and the agenda posted.