



APPROVED: November 6, 2006

**CITY OF ALBANY
PLANNING COMMISSION
City Hall Council Chambers, 333 Broadalbin Street
Tuesday, October 17, 2006
5:15 p.m.**

MINUTES

Planning Commissioners present: Dan Bedore, Paul Davis, David Faller, Tim McCarley, Cordell Post, and Dala Rouse

Planning Commissioners absent: Anne Peltier and Wayne Rackham

Staff present: Planning Manager Don Donovan, Transportation System Analyst Ron Irish, Community Development Director Helen Burns Sharp, Civil Engineer III Gordon Steffensmeier, Administrative Assistant I Tracy Swett, and Chief of Police Ed Boyd

Others present: Approximately 30 others in the audience, including the applicant and his representatives.

CALL TO ORDER

Chair Paul Davis called the meeting to order at 5:16 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL

CONTINUED CONSOLIDATED QUASI-JUDICIAL PUBLIC HEARING, Case File Numbers SD-09-06 and SP-15-06 (13th Avenue Subdivision)

Davis called to order the continuation of a consolidated public hearing on Planning files SD-09-06 and SP-15-06, Subdivision Tentative Plat that would divide 15.26 acres into 46 residential lots and open space areas using cluster development standards and Site Plan Review to remove 23 trees from the property to build the subdivision. The applicant is 1901 13th Avenue LLC. The subject property is generally located west of Hop and Gale Streets, and north of 15th Avenue SW.

Declarations:

None.

Staff Report:

Planning Manager Don Donovan said the applicant provided additional information to address the public testimony heard the preceding week (Exhibits A through C, in agenda file).

He said a few other documents have been or will be submitted into the record since the last public hearing. These include a letter from Jason Desler, dated October 10, 2006 (Exhibit D, in agenda file);

several documents and copies of photographs entered into the record by Michael L. Wilson (Exhibits E through N, in agenda file); and a memo from Donovan to the Planning Commission, dated October 17, 2006 (Exhibit O, in agenda file). Desler's letter addressed concerns regarding foot/traffic patterns during construction of the proposed subdivision, street conditions, and possible traffic calming methods. Donovan said Transportation System Analyst Ron Irish could answer any questions on these if the Commission wished to do so.

Michael Wilson's record submissions included a letter to the City of Albany Planning Department, dated October 16, 2006 (Exhibit E, in agenda file) which addresses an annexation in 1978 which involved the same property involved in this development, more or less. The Council annexed the property in 1978 and approved a development called "Old Mill Village." The project was never built. Donovan said following the annexation, the neighbors were successful in placing a referendum on the ballot, and the voters repealed the annexation by general election. Wilson's letter requested the City review all information related to this project and a case the developer David Hayes brought against the City in 1979.

Donovan said following the 1978 repeal of the annexation, a portion of the property was again annexed in 1992, and the remainder of the property was annexed in 2002.

Wilson's second letter, dated October 16, 2006 (Exhibit F, in agenda file), restates his opinion that trees have been cut on the property without a permit. Donovan said calls were received by City staff and an investigation is ongoing as to whether there was a violation of the tree cutting ordinance. Code enforcement is a separate process from the land use process and one does not affect the other. Donovan said Wilson also submitted copies of photographs to document the tree cutting on the property (Exhibit N, in agenda file).

Based on the testimony received at the public hearing on Tuesday, November 10, staff has provided some modified conditions of approval for the Planning Commission's consideration. They are attached to Donovan's memo dated October 17, 2006 (Exhibit O, in agenda file).

Donovan said the developer agreed to preserve the 36-inch Oregon White Oak prior to the last hearing. The original condition contained in staff report said the developer should try to save it. The modified condition now reads the tree must be preserved.

Regarding testimony about possible archaeological sites, the applicant testified that experts had been contacted to determine if there was any significance to the site. While there are legal processes that must be followed if evidence is uncovered during construction that a site does exist, staff has drafted a condition to remind the applicant of the legalities involved.

Donovan said conditions were added in response to Mr. Hackett's concern about the sidewalk placement on 12th Avenue and Mr. Desler's letter. They include a requirement to videotape the street before construction begins to document the pre-construction condition of 13th Avenue. After construction, the application will be required to repave the road with two inches of asphalt to correct any damage and to stripe a pedestrian walkway on 13th Avenue. Under the modified conditions, no sidewalk will be constructed on 12th Avenue.

Applicant Testimony:

Brian Moore, 250 Church Street SE (Salem), said he represents the applicant and the applicant agrees with staff's recommendations and the modified conditions. The applicant's only request is an assurance that if any of the new conditions slightly conflict with the original conditions contained in the staff report, the new conditions would supersede.

Moore said the applicant obtained a recording of the October 10, 2006 hearing and the letter dated October 13, 2006 (Exhibit A, in agenda file) addresses any concerns or questions heard during the October 10 hearing.

If there are any further questions regarding floodplain and flooding issues, Roger Sutherland is in the audience. Moore said Sutherland has previously stated this development will not negatively impact the surrounding homes, nor will it improve the current flooding situation. Staff has concurred with his findings. Moore cited finding 4.28 drafted by City Engineer Mark Shepard contained in the staff report.

Public Testimony:

Mary Zelinka, 1020 SW Gale Street, brought another letter from the Calapooia Watershed Council (Exhibit P, in agenda file). She is still concerned with the property immediately behind her property. The floodplain runs through her dining room. By placing fill, she feels a “trough effect” will occur from the north onto her property, resulting in increased flooding. She requested hydraulic modeling and cross-sectional field survey be done on the property to know for sure what will happen within that property. She said she understood that building within the 100-year floodplain was not allowed. She said by approving this development, it would set a precedent for future development.

She questioned the impact this development would have on the wetlands. She asked who would hold the developer accountable, if homeowners adjacent to the wetland would be responsible for maintaining the wetland, but who will hold the developer accountable. She asked how the developer would mitigate the impact of additional flooding on the wetland. She requested an assessment be completed on the site’s wetlands.

Rouse asked where the 100-year floodplain was in relation to her property. Zelinka said it runs through her dining room. She added the property already slopes down toward the subject property. Rouse asked where the floodwaters were in 1996. Zelinka said the water was three feet from her back door. Rouse said she understood from testimony on October 10 that the 1996 flood was not a 100-year flood event.

Rouse asked if Zelinka’s house was the lowest on Gale Street. Zelinka said she thought so.

Jay Gardner, 1510 SW Broadway, asked Donovan to put the tentative plat on the overhead. Gardner said he is now in favor of the development. He believes there is a natural right-of-way from the bulb that continues through two blocks beyond the power plant, to Hazelwood Park, and then connects to Queen. He said that would be the best access for this subdivision. Donovan showed an aerial on the overhead. He said the right-of-way that Gardner was referring to is the Fisher Street right-of-way that was referenced at last week’s meeting.

Davis said the Planning Commission could not mandate applicant to complete those street improvements as part of this application.

Robert Kentta, PO Box 549 (Siletz), said the idea that an executive session could be held to discuss issues of a sensitive nature was brought up after the last hearing. He would like to request that an executive session be called.

Community Development Director Helen Burns Sharp said she had tried to discuss the possibility with the City Attorney and the City Manager and was advised that the City could legally enter into an executive (closed) session only on a very narrow set of circumstances. She said that the topic Kentta raised did not directly relate to one of these exemptions.

Kentta said the same issue has been brought before the Jackson County Planning Commission and he was granted an executive session. Rouse said if Kentta threatened litigation it would allow for an executive session.

Sharp deferred to the Planning Commission to determine whether the members wanted to adjourn then convene an executive session. Rouse said she thought the matter was important to hear before making a decision on the application. Commissioner Cordell Post said if an executive session could not be held legally, he would not participate. The Commission decided to deny Kentta's request to convene an executive session.

Applicant Rebuttal:

Moore provided the applicant's rebuttal testimony. He restated Roger Sutherlin is available for any questions.

He said the neighboring properties' risk of flooding would not be increased or decreased by this development. He asked Donovan to put the drainage plan on the overhead (Exhibit F, in October 10, 2006, agenda file) He said the drainage swale along the three back lots will actually take the water from the property that Zelinka referenced and put it into the public drainage system. Any water currently draining onto the property would continue to do so, but would then be discharged into the public system by the applicant's drainage plan. Moore said the City has reviewed the plan and approved it.

Moore said Zelinka's claim that the City does not allow building houses in the floodplain may be true, however this development would be filled so the houses would be at least one foot above the floodplain.

He said Kentta's concern about possible archaeological sites on the property would be taken care of as dictated by law should any sites be discovered. In addition, the applicant is willing to meet privately with Kentta to discuss his concerns.

Bedore asked about the scope of the retaining wall and the projected impact on the protected area given the Calapooia Watershed Council's letter presented by Zelinka. Moore said the applicant would not impact the protected area at all. There would be erosion control fencing and no equipment would be allowed within the protected area. All work would be conducted within the approved area.

Rouse said she had some questions for Sutherland.

Roger Sutherland, 1405 SW Griffith, Suite 200 (Beaverton), came to the podium. Rouse asked Sutherland how long he had been retained by the applicant. Sutherland he was initially contacted in July 2006 to review the property and began working in August. Rouse said he had worked on the project a month, month and one-half, since his report was dated 2006. Sutherland said yes.

Rouse said the applicant provided a transcript of Sutherland's testimony from October 10. She referenced page 15 where he said the Calapooia's flooding is influenced by the Willamette, but he was unaware of the drainage area of the Willamette is locally. Sutherland said that was correct, he did not know at the time. He researched it and it is 4,840 square miles and regulated by several dams. In the transcript of his testimony (pg 15) said 4840 square miles (Willamette River), regulated by four or five dams. Rouse said no dams have been built since the 1964 flood. Sutherland said the Blue River Dam came online during the flood. The estimated 100-year discharge on the Willamette in Albany is 200,000 CFS.

Rouse said he referenced a field study in his letter (Exhibit J, in October 10, 2006, agenda file) and he looked at different data that he did not reference. Sutherland said he wanted to look at the property and look in terms of how the floodwaters were likely to enter the site. The property is in the floodplain. The City's criteria allows fill within the floodplain, outside of the floodway. His concern was the railroad bridge as a logical dam creating a scenario where the water might flow down along the railroad tracks and enter the subdivision from the south which would mean the water would be conveyed at a higher velocity when the Calapooia River goes into flood stage. What he found during his site visit was that there is a major roadway that accesses the substation that can be seen off of Riverside Drive which cuts off any opportunity for floodwaters to jump out of the Calapooia, flow along the railroad track, and enter from the south. This led to his conclusion that the flooding experienced in the subject area is backwater, also known as slackwater. He said the floodwater that is affecting Zelinka's property is from the Willamette, not the Calapooia. Rouse disagreed, given what she saw in 1996.

Rouse referenced page 61 with a map representing a gauging station, the railroad tracks, and floodwaters on both sides of the tracks coming from the south. Sutherland said yes, but because of the fill there is no velocity to the floodwaters. The concern is conveyance. Most of the damage that is done during a flood is how floodwaters enter an area. Rouse asked how much difference it would make if the floodwaters entered the site from the south over water seeping from under the railroad tracks. Sutherland said if there was enough room in the open space along the railroad to allow conveyance, but none is necessary. Rouse asked how much difference it would make to the subdivision. Sutherland said the subdivision would be elevated so it will not affect the subdivision.

Staff response:

None.

Davis closed the public hearing at 6:05 p.m.

Commission Discussion:

Bedore said this application is not unlike many of the subdivision applications since it meets the review criteria and cluster development standards. He acknowledged the objections from the neighbors due to their perceptions of increased traffic and changes within the established neighborhood. He said the reason for the establishment of the city limits and urban growth boundary was to avoid urban sprawl. It is important to use available open spaces to prevent urban sprawl. He was convinced that there will be no negative impacts, was hopeful for right-of-way improvements to Fisher Street in the future, and a possibility of increased property values for the adjacent properties.

Rouse said Takena Elementary School may only be a half mile from the proposed subdivision, but children also walk from this area to West Albany High School and Calapooia Middle School. Since one of the review criteria addresses pedestrian safety, she is concerned if the proposal meets this review criterion because there is no other way to get out of this subdivision without improved streets and sidewalks.

In addition, Rouse asked staff about running storm drainage onto the open space property. She asked if the City has an easement to do so and an easement for the ditches. Donovan said there was not a condition requesting an easement, but deferred the question to Civil Engineer III Gordon Steffensmeier. Steffensmeier said an easement would normally be requested. Rouse said an easement is not in the conditions for approval. Steffensmeier said that was an oversight. Donovan added that part of the water already goes to that area and the City may not have jurisdiction to request an easement, however he would defer to Steffensmeier's recommendation to add the easement as a condition of approval.

Rouse said the plan calls for each individual property owner to own a portion of the retaining wall rather than establishing a homeowners' association to ensure any necessary repairs are made. She asked what mechanism would be used to guarantee they would maintain it over time. She said the wetlands are a similar situation. She said there was another development off of Columbus Street where a fence was required to protect the wetlands. She asked why that was not being done in this development. Donovan said staff did not require the applicant to fence or preclude use of the property. The applicant made that statement in response to a concern raised during Hackett's testimony on October 10, 2006. Rouse said a similar requirement was conditioned as part of another development. Donovan said the Columbus Street development was a manufactured home park that was converted to a planned development. The fencing was proposed by the applicant of that development to meet a requirement of the planned development. The City accepted the proposal as meeting the requirement. This development is a subdivision using cluster development standards and is not subject to the same requirement.

Rouse said the wetlands would be owned individually by adjacent property owners. Donovan said the wetlands would be owned in common. Rouse said property owners along Swan Lake own property that goes into the middle of the lake. Donovan said those property owners lot lines may continue to the middle of the lake. That is not the case in this proposal.

Rouse asked about the retaining wall. Donovan said Rouse's questions were bordering on legal questions and he was not an expert in that area.

Davis asked if the retaining wall was to protect one tree. Donovan said no, it continues along several of the lots. Davis asked Donovan to put a map up depicting the area of the retaining wall on the overhead. Donovan put the grading plan on the overhead (Exhibit G, in October 10, 2006, agenda file). Donovan said the retaining wall is the dark line along Lots 1 through 17, adjacent to 13th Avenue. Bedore said the wall continues along "Tract B."

Davis said the individual property owners would have incentive to maintain the retaining wall to ensure their property did not erode. Donovan agreed. Rouse said it there may be financial considerations that would prevent a property owner from maintaining a portion of the wall.

McCarley asked if Rouse was concerned that only the property owners with property abutting the retaining wall have ownership. Rouse said yes. She also asked if the one section by the road would be deeded to the City. Bedore said the plan shows a break in the wall at that location.

Donovan said there was some discussion about the swale along Lots 1 through 4. Staff did not want the drainage to be public. He believes Rouse is referring to something within the storm drainage portion of the staff report. Condition 4.3 states the outcome of that discussion.

Rouse said she is concerned that if the wall was damaged by 100-year flood the wall would not be repaired. Donovan referenced Sutherland's testimony that there would be no water velocity to damage the wall.

Steffensmeier said a similar wall exists in the Hickory Hills subdivision in North Albany where a part of the retaining wall is owned by individual property owners.

Davis asked Rouse about her concerns that the streets coming into the subdivision were inadequate. Rouse paraphrased from the staff report transportation plan findings regarding 12th, 13, 14th, and 15th Avenues. Davis requested Irish approach to address Rouse's concerns.

Irish said the Development Code allows off-site conditions for new development when a neighborhood activity center is within one-half mile from the subject site. Tadena Elementary is about a quarter mile away. There are no sidewalks in this area to this school. West High School is about 175 feet further than the one-half mile boundary of this development. There is sidewalk up and down Broadway. When he first looked at the subdivision, he looked at the elementary school and originally drafted the condition regarding the sidewalk on 12th Avenue because he thought 12th would be preferred given the existing curb and sidewalk, to result in a permanent improvement.

Testimony at the October 10 public hearing demonstrated that most of the pedestrian access took place on 13th Avenue. In order to provide a pedestrian amenity on 13th, it would serve as a connection for the elementary, middle and high schools. To complicate the discussion, the construction route had to be taken into consideration. Staff was concerned regarding impacts to the street and the neighborhood during construction. The neighborhood has very low traffic volumes so safety was a staff concern. The applicant agreed to put in temporary speed humps on 13th Avenue during construction to keep vehicle speeds down. The applicant also agreed to video pre-construction conditions and repair damage as a result of the construction traffic. Irish said since the applicant is likely to have to do an overlay on 13th, add shoulders, and speed humps, and designate 13th as the pedestrian route for all three schools. This approach resulted in the new proposed condition presented to the Planning Commission tonight.

Faller asked Donovan what the materials the retaining wall would be built out of. Donovan said the applicant submitted a vendor schematic, which he put on the overhead (Exhibit Q, in agenda file). Donovan said engineering of walls are not reviewed at this stage of the development. The Engineering Department will review and approve construction of the wall during the site improvement phase.

Bedore asked if the Planning Commission could require curbs, gutters and sidewalks from the eastern boundary of the subdivision. Irish said curb and gutter improvements would not extend within the east boundary of the development. Sharp said it is possible to require some off-site improvements given the neighborhood activity center. In this case, staff initially requested the sidewalk be constructed on 12th Avenue, then decided not to require the sidewalk given testimony from the neighbors. She said while the Planning Commission possibly could require the applicant to require curbs, gutters and sidewalks on additional streets, it would like create larger impacts to neighbors given how neighbors tend to “expand” into what might actually be right-of-way. Irish added that the off-site improvements must be reasonable in relationship to the development. Rouse said it also has to meet the review criteria. Irish agreed.

Bedore asked if Rouse would recommend a condition. Rouse asked the other Commissioners if they were concerned with safety traffic. Bedore said the people in the existing subdivision have children as well. Rouse agreed, but said the traffic would be increased by this development and there is a review criteria relating to safety that must be met.

Rouse did not think one improved street was enough to meet the criterion. Davis said children will go in a direction that is safe and convenient and it is the Planning Commission’s responsibility to ensure there is a safe route. Rouse agreed. Davis said this looks like a good compromise. Post agreed.

Commission Action:

Bedore moved that the Planning Commission approve with conditions as modified to include the modified conditions presented on October 17, 2006, and the addition of a required easement, the Subdivision Tentative Plat application that will divide 15.26 acres into 46 residential lots and open space areas using cluster development standards; and the Site Plan Review application to remove 23 trees from the property to build the subdivision (Files SD-09-06 and SP-15-06). The motion was based on the

findings and conclusions of the staff report and verbal and written testimony presented at the October 10, 2006, public hearing and the October, 17, 2006, continued public hearing. Post seconded the motion.

Post asked if Bedore intended the motion to include the applicant's request that any conditions in the original staff report that might conflict with the new conditions proposed October 17, 2006, be superseded by the most recent conditions. Bedore said yes, and the motion was amended.

A vote was taken and the motion passed unanimously.

OTHER BUSINESS:

Sharp reminded the Planning Commission of the Oak Creek Refinement Plan Open House would be held on Thursday, October 19 at 7:00 p.m. in Council Chambers.

NEXT MEETING DATE:

The next meeting of the Planning Commission is tentatively scheduled for Monday, November 6, 2006.

ADJOURNMENT

Hearing no further business, Chair Davis adjourned the meeting at 6:45 p.m.

Submitted by

Reviewed by

Signature on file

Signature on file

Tracy Swett
Administrative Assistant I

Helen Burns Sharp
Community Development Director