



**MINUTES**  
**Planning Commission Meeting**  
**Monday, November 8, 2021 Zoom 6:30 PM**

**COMMISSIONERS PRESENT:** Donald Carlton, Commissioner, Ron Lesowski, Commissioner, Hollis MacLean-Wenzel, Commissioner, Jerry Crosby, Commissioner, and Chris Mayton, Commissioner

**COMMISSIONERS EXCUSED:** Jan Lee, Commissioner, and Steven Hook, Commissioner

**STAFF PRESENT:** Kelly O'Neill Jr., Development Services Director, Emily Meharg, Senior Planner, and David Doughman, City Attorney

**COUNCIL LIAISON EXCUSED:** Rich Sheldon, Councilor

**1. MEETING FORMAT NOTICE**

Instructions for electronic meetings.

**2. ROLL CALL**

Chairman Crosby called the meeting to order at 6:31 p.m.

**3. APPROVAL OF MINUTES**

3.1. Minutes for October 25, 2021

**Motion:** Approve the Planning Commission minutes for October 25, 2021.

Moved By: Commissioner Lesowski

Seconded By: Commissioner Mayton

Yes votes: All Ayes

No votes: None

Abstentions: Maclean-Wenzel

The motion passed.

**4. REQUESTS FROM THE FLOOR – CITIZEN COMMUNICATION ON NON-AGENDA ITEMS:**

None

**5. OLD BUSINESS**

5.1. **Deer Meadows Subdivision (21-014 SUB/TREE):**

Chairman Crosby opened the deliberation for File No. 21-014 SUB/TREE at 6:36 p.m. City Attorney Doughman called for any ex-parte contacts since the September 27, 2021 meeting. No ex-parte declarations were made. City Attorney Doughman asked if anyone from the public had any challenges or concerns. No declarations were made. Doughman explained that the applicant may possibly provide additional evidence per statute 197.522, which provides the applicant an opportunity to provide a condition of approval or an amendment to the application if the Commission is going to deny the application. Doughman recommended taking a straw poll if the Commission is heading towards a denial so that the applicant can propose an amendment or condition of approval, if so desired. If the applicant does propose an amendment or condition of approval, the City can extend the 120-day clock to review the proposal.

**Staff Summary:**

Development Services Director O'Neill reminded everyone there was a public hearing on September 27, 2021 followed by an open record period. O'Neill stated there were 10 items received during the open records period, all of which are on the website. The staff recommendation is the same as on September 27 and the staff report was not modified to address any of the new materials.

**Deliberation:**

Chairman Crosby asked for initial comments. Commissioner Carlton asked City Attorney Doughman about Section 17.100.100(G.2) regarding highways with access control. Commissioner Carlton stated that he interprets 'standards' to be different from the requirement for a connection. City Attorney Doughman agreed with Commissioner Carlton. Commissioner Carlton also brought up plans being incorporated into the code. Commissioner Carlton appreciated Exhibit X, which was a letter the applicant's attorney submitted that highlights all the sections of the code they don't think are clear and objective. Commissioner Lesowski recommended that the Commission review the application based on the spirit of the code, rather than deliberate on legal technicalities, which the Commission is not qualified to do. Commissioner Lesowski does not believe the application is in the spirit of the code.

Director O'Neill stated either approach would be fine. Director O'Neill stated getting more parkland has been a goal for decades and the Parks Board has requested it. The previous proposals on the subject site all included dedicated parkland. The City Attorney letter (Exhibit RR) stated the City can require parkland dedication and that the Commission could deny the application

based solely on that. O'Neill stated that the Commission could deny the application based on one item or criteria, or a few different criteria without needing to go through every single reason for denial.

Commissioner Carlton suggested they discuss the Dubarko Road connection. Commissioner Carlton stated that he is leaning towards denial. Commissioner Carlton asked City Attorney Doughman if the prior development was appealed to LUBA. City Attorney Doughman stated it was appealed but the appeal was stayed, meaning no action has been taken on it yet. City Attorney Doughman clarified that the other application is not before the Commission tonight and encouraged the Commissioners to not spend too much time comparing this application to the previous one since the discussion tonight is for the current proposal. City Attorney Doughman addressed the code criteria that requires proposals to follow the City's official street plan and whether that sufficiently incorporates the TSP. The issue of proportionality is a separate issue. If the Commission determines the requirement to connect to Highway 26 is in the code and can be applied, the next step is to determine what we can compel the applicant to build in terms of proportionality. City Attorney Doughman stated it would be difficult to determine where to find the City's official street plan if it's not the TSP. City Attorney Doughman stated it's reasonable to determine that the TSP is incorporated, though it's less clear than the parks issue.

Commissioner MacLean-Wenzel stated that applications don't come before the Planning Commission unless they're asking for exceptions, but in this case the applicant is stating that nothing applies to them so they don't need exceptions. Commissioner MacLean-Wenzel stated it feels like the applicant is not operating under an air of cooperation and that some of the standards they're arguing against were in place when their project planner was the Director of Planning at the City, which seems unethical.

Commissioner Carlton clarified that clear and objective is separate from incorporation of master plans. Carlton asked if the zone is SFR. O'Neill clarified what the zones are for this property (R-1, R-2, and C-3).

Commissioner Carlton agrees with Commissioner MacLean-Wenzel and thinks the Commission should focus on the park and Dubarko Road. Commissioner Mayton asked City Attorney Doughman about Section 17.100.60(E), the criteria for approval, and asked if they have to not meet all six criteria to be denied or if they just need to not meet one of the criteria as a basis for denial. City Attorney Doughman stated if the applicant doesn't meet any one of the criteria then that can be a basis for denial. Commissioner Mayton stated that

he finds the application doesn't meet the Section 17.100.60(E) criteria based on the intent of the code. Commissioner Carlton brought up criteria 3 and stated the applicant will argue it's not clear and objective. City Attorney Doughman brought up that the 17.100.60(E) criteria are for the subdivision, and that there are other criteria and other code requirements found in other chapters, such as Chapter 17.86.

Chairman Crosby feels the parkland issue is the Achilles heel since the parkland requirement is clear and objective. Chairman Crosby stated that by not connecting Dubarko Road to Highway 26 the proposal is not consistent with the City's official street plan. Director O'Neill clarified that the Dubarko Road extension is in the TSP as a project and is in the Capital Improvements Project (CIP) list and is eligible for reimbursement for upsizing from a local road to an arterial so there shouldn't be a proportionality issue. City Attorney Doughman stated if it's on the CIP, then it would be eligible for reimbursement. Director O'Neill stated it is in the CIP.

Commissioner Lesowski requested the Commission craft a motion for denial around the lack of parkland dedication and the lack of a Dubarko Road connection. City Attorney Doughman stated that if a commissioner feels another standard is not met, they should discuss it to get it on the record. Commissioner Carlton stated that Lot 3 and Lots 9-13 are proposed as larger lots to destroy the Dubarko Road connection. Commissioner Carlton stated there's plenty of land for them to dedicate parkland. Chairman Crosby asked the Commissioners if there are any other issues with the application aside from the parkland and Dubarko Road connection. Commissioner Mayton believes the applicant is not meeting the criteria for subdivision approval so that should be added to the list. Chairman Crosby stated the Dubarko Road connection would be part of that, under criteria 3. Commissioner Carlton asked if Doughman feels comfortable defending criteria 3 as a reason for denying the application. City Attorney Doughman stated yes, it's defensible. Commissioner Carlton asked about criteria 1 and if the setback issue is sufficient for recommending denial as well even if density and dimensional standards are met. City Attorney Doughman stated there's no reason not to include a basis under criteria 1 as an additional reason.

Commissioner Carlton asked if he could make a motion or if they should do a straw poll first. City Attorney Doughman recommended completing a straw poll first and then allow the applicant's representative to respond. Commissioner Carlton stated that he wants to make a draft motion that the commission deny the application based on specific code sections including Chapter 17.86 and Section 17.100.60(E.1 and 3) so that the applicant knows what they're responding to. The Commission did a straw poll to see who

would vote in favor of that motion. All 5 commissioners said yes, they would vote in favor of that motion.

City Attorney Doughman asked if the applicant wants to propose any modifications or conditions of approval. The applicant's Attorney, Garrett Stephenson, stated his client is not willing to offer the parkland or Dubarko Road connection at this time but asked if there are any other issues the Commission believes the applicant hasn't met. Commissioner Carlton asked about the 18-inch water line and if they should state all of the issues the staff report brought up. City Attorney Doughman stated that the staff report recommendation would stand unless the Commission disagreed with something. City Attorney Doughman asked if Attorney Garrett Stephenson had any other comments. Attorney Stephenson thanked the Commission.

**Motion:** Motion that File No. 21-014 SUB/TREE be denied based on lack of compliance with Chapter 17.86 and Section 17.100.60(E.1 and 3).

Moved By: Commissioner Carlton

Seconded By: Commissioner MacLean-Wenzel

Yes votes: Carlton, Lesowski, MacLean-Wenzel, Mayton, and Crosby

No votes: None

Abstentions: None

The motion passed at 7:58 p.m.

## 6. PLANNING COMMISSION DISCUSSION

### 6.1. Planning Commission Bylaws Discussion

Chairman Crosby stated that Commissioner Carlton worked on the bylaws. Commissioner Carlton summarized his research on Commissioner rules and explained his reasons for the proposed bylaws.

Chairman Crosby reiterated that the Commission is mandated to have bylaws, which could be a separate document or could be incorporated into Section 2.16. Chairman Crosby recommended 3 or 4 cohorts. Director O'Neill asked the Commission to keep in mind staff time and stated 3 cohorts would save time compared to 4 cohorts. Commissioner MacLean-Wenzel stated continuity and succession planning is important so she would prefer the cohorts are divided up into more years rather than less and believes the 3, 2, 2 cohort option would be a good compromise in terms of staff time and continuity on the Commission. Commissioner Lesowski brought up attendance and suggests the Commission just refer a commissioner to Council if they miss four meetings, rather than refer them for dismissal specifically. Commissioner Lesowski also brought up the issue of having a commissioner who is legally

unable to participate. Commissioner Lesowski suggested that some rotation of the chair and vice chair positions might be a good thing and asked whether there should be a term limit to allow new blood on the Commission.

Commissioner Carlton stated that he is leery of term limits because there are often not many applicants and Council can always choose to not reappoint a commissioner if they want new blood. Chairman Crosby stated the board where he works can serve two consecutive terms and then you must be off for one term before you can reapply.

Commissioner MacLean-Wenzel stated that she would like to see more diversity on the Commission and wondered what can be done to bring in more perspectives. Commissioner Carlton thinks it should be up to the Council so if the Council wants diversity, they can choose who to appoint. Commissioner Carlton stated there's not much perspective since the commission's role is to implement the code.

Director O'Neill stated the process for existing commissioners to reapply has changed in the last 3 or 4 years in that they need to reapply. Director O'Neill stated that if the economy has a downturn, there might be less interest in being on the Commission and it could be tough to fill positions. Chairman Crosby asked how many applicants there are for the four positions that are up for renewal in January. Director O'Neill stated there are 7 applicants for the 4 seats. Senior Planner Meharg asked whether the advisor position could serve on the Commission if any of the 7 commissioners are absent. City Attorney Doughman stated the advisor can already participate if there's not a quorum and that it would be possible to allow them to participate even if there is a quorum but that there could be an issue with consistency if a meeting is continued and the regular commissioner is in attendance at one meeting but not the other. Commissioner Carlton suggested keeping it at only allowing the advisor to vote if there's not a quorum. Director O'Neill stated there could be an issue with the advisor being fully up to speed on the proposal and prepared to participate as a voting member due to the large amount of information that needs to be reviewed for a typical hearing.

Commissioner Mayton stated that he would vote for term limits and is open to a 2 term limit, and then making it a requirement to be off the commission for one term before reapplying. Commissioner Mayton stated that if all 4 commissioners' terms were expiring right now, there would only be 3 applicants, which wouldn't fill all 4 seats. Commissioner Mayton also thinks that new lenses are beneficial to everyone and would like to see change, including term limits and chair/vice chair rotations. Commissioner Mayton recommended four cohorts (2, 2, 2, 1). Commissioner Lesowski stated if a commissioner has reached their term limit but there aren't enough applicants,

then maybe they could still stay on. Commissioner MacLean-Wenzel agrees with Commissioner Lesowski in that new people should be brought in that reflect the changing community. Chairman Crosby stated that term limits of commissioners and term limits of officers are things the Council may want to consider as well as the 3 or 4 cohort proposal.

Chairman Crosby summarized the suggested edits to the bylaws. Commissioner MacLean-Wenzel stated it's too late to change the process for the upcoming commissioner appointments that will start January 1, 2022 but that the interview panel could review the commission's recommendations and provide their input. Commissioner Mayton asked if there's a way to change the timeframe on the current 4 positions that are up for renewal so 2 positions could be for 2 years, and 2 other positions could be for 3 years, so that staggering can begin. Director O'Neill stated that the November 22 meeting will be too busy to vote on the bylaws and that it would make more sense to review them in January in case there are new commissioners. Chairman Crosby does not believe the staggering can start with this cycle and stated that when he brought it before Council, they were not anxious to change anything. The commission will review edited bylaws at the January meeting.

**7. ADJOURNMENT**

**Motion:** To adjourn at 9:22 p.m.

Moved By: Commissioner MacLean-Wenzel

Seconded By: Commissioner Mayton

Yes votes: All Ayes

No votes: None

Abstentions: None

The motion passed.

Chairman Crosby adjourned the meeting at 9:22 p.m.



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Chair, Jerry Crosby

A handwritten signature in blue ink, appearing to read "Kelly O'Neill Jr", is centered on the page.

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Planning Director, Kelly O'Neill Jr