



MINUTES
Planning Commission Meeting
Monday, February 25, 2019 City Hall- Council
Chambers, 39250 Pioneer Blvd., Sandy,
Oregon 97055 7:00 PM

PLANNING COMMISSIONERS Don Carlton, Commissioner, Hollis MacLean-Wenzel, Commissioner, John Logan,
PRESENT: Commissioner, Todd Mobley, Commissioner, and Jerry Crosby, Commissioner

PLANNING COMMISSIONERS
ABSENT: Ron Lesowski, Commissioner

STAFF PRESENT: Kelly O'Neill, Development Services Director, Emily Meharg, Associate Planner, and
Rebecca Casey, Planning Director

ATTORNEY PRESENT: David Doughman (via phone)

1. Roll Call

2. Requests From the Floor - Citizen Communication on Non- Agenda Items
None.

3. NEW BUSINESS

3.1. Public Hearing

3.2. Jacoby Heights Subdivision

Staff Report - 0109

Chairman Crosby opened the public hearing on File No. 18-025 SUB/VAR/TREE/FSH/INT (Jacoby Heights Subdivision) at 7:01 p.m. Crosby noted that this is a quasi-judicial public hearing. He called for any abstentions, conflicts of interest, ex-parte contact, challenges to the jurisdiction of the Planning Commission, or any challenges to any individual member of the Planning Commission.

Commissioner Mobley recused himself as he is the owner of Lancaster Engineering who conducted the traffic impact study for the applicant.

Commissioner MacLean-Wenzel stated she came close to having ex-parte contact when she attended the tree committee meeting last week. She explained that

“luckily” she was stopped before the conversation went further. Chairman Crosby asked the remaining Commissioners if they had any issues over MacLean-Wenzel’s explanation and none did.

With declarations noted, Crosby went over the public hearing procedures for a quasi-judicial public hearing and called for the staff report.

Staff Report:

Associate Planner Emily Meharg summarized the staff report and addressed the background, factual information, public comments staff received, applicable criteria, and went over a brief slide show. Meharg finished her report with the summary and conclusion and staff’s recommendation.

City Attorney David Doughman explained to the Commission the Code Interpretation is part of the application.

Commissioner Carlton asked Doughman if the definition of “all zones” includes zones such as R1, R2, SFR, etc. Doughman said yes, the definition of “all zones” references every City zone.

Applicant Presentation:

Tracy Brown, 17075 Fir Dr., Sandy, OR 97055

Mr. Brown gave his presentation on behalf of the applicant by starting with background information and their response to the Code Interpretation regarding Chapter 17.92.10 (c) (Landscaping & Screening). Brown requested and was approved to discuss the Code Interpretation first as its outcome will have implications on staff’s other recommended conditions in the staff report.

Brown handed out a document to both staff and the Commission that included the applicant’s response to staff’s recommended conditions.

Brown said his main contention is that Chapter 17.92.10 (c) is intended for landscaping which is also the title of the chapter. He said that staff is using this chapter to try to increase the number of trees to retain and that staff is not applying this chapter correctly. Brown said that the Urban Forestry Ordinance (Chapter 17.102) was the intended Ordinance to regulate tree harvesting in the City. Brown continued to dissect Chapter 17.92. and Chapter 17.102 and what he believed the intent of these chapters are.

Brown said that staff will “run-a-muck” if allowed in preserving trees by trying to “switch” the language of “should be preserved” to “shall be preserved”.

Brown also stated, "I would wager that there's nobody in the City that's planted more trees than I have or instituted more tree planting programs in this City". He then finished by stating that in regard to City staff "the left hand doesn't know what the right is doing".

Ray Moore, All County Surveyors and Planners, PO Box 955, Sandy, OR 97055

Mr. Moore also mentioned Brad Picking's letter that was given to staff just prior to the meeting and was handed out to the Commission. Mr. Moore said that Mr. Picking was part of the committee that assisted in writing Chapter 17.102 (Urban Forestry) and said from what Mr. Picking understood Chapter 17.92 was not applicable to residential subdivisions.

Mr. Moore requested that the Committee not "muddy" the waters at this time and wait until the process of reviewing the codes is complete.

Chairman Crosby asked City Attorney David Doughman if the Commission could have a discussion and make a decision based only on the Code Interpretation. Doughman said that would be fine and encouraged the public to make comments during this time regarding just the Code Interpretation.

Chairman Crosby followed up and clarified that at this time the Commission will move forward with the Code Interpretation issue first which will allow for Proponent and Opponent Testimony. The rest of the application will be discussed after a motion is made on the Code Interpretation.

Proponent Testimony: (In favor of staff's recommendation)

None

Opponent Testimony:

Mac Even, 5360 SE Chase Rd, Sandy, OR 97055

Mr. Even said he wanted to be on the record and is currently working with the applicant on the Jacoby Heights Subdivision. Mr. Even explained that the decision will also affect other property he is considering developing that is an overgrown Christmas tree farm. He said if this code is applied to subdivisions then he will be stumped as to what he will be able to do with the property.

Mr. Even said he's on the City's Tree Code Committee to find a solution and because he sees the two different sides (staff and applicant). Until there are code changes, he would like to see staff stay with what was established in the past.

Buzz Ortiz, 41525 SE Vista Loop, Sandy, OR 97055

Mr. Ortiz said he would like code clarification as he will be looking at possible development in the near future.

Bonnie Drake, 19270 SE Jacoby Rd, Sandy, OR 97055

Mrs. Drake said she would like code clarification as her property was recently annexed. She also stated that she is against the use of Chapter 17.92 for subdivisions.

Testimony:

Ryan Newman, Portland Tree Company, 4933 SE Henry St., Portland, OR 97206

Mr. Newman said he is the project Arborist hired by the applicant, but he does not want to be for or against this application. In his opinion it should be a “hard rule” that states the limit of what size trees need to be inventoried.

Tim Anders, 19098 SE Jacoby, Sandy, OR 97055

Mr. Anders said his property borders the applicant’s property on the north side. He said that over 10 years ago he had to inventory over 600 trees and removed 35 trees to build his house.

Planning & Building Director Kelly O’Neill Jr. said it sounds like the interpretation back then required Mr. Anders to inventory a lot more trees than just 11-inch trees. Mr. Anders agreed and said he did have to inventory hundreds of trees, but he didn’t know what interpretation was used during that time.

Staff Recap:

Associate Planner Emily Meharg said that not all of the 60 + trees the applicant has proposed to retain are in good condition and said the applicant is already going to remove over 450 trees.

Meharg explained that good standard practice is to have more than the absolute minimum of three trees per acre as there are many times the retention trees get damaged or knocked down by the wind. Meharg said that staff is not being unpractical or unrealistic by how they are interpreting the code. She explained that staff is working with what was written in the code under Chapter 17.92 and it never mentions “not applying to subdivisions” just as chapter 17.102 doesn’t specifically say it does apply to subdivisions.

Planning and Building Director Kelly O’Neill Jr. followed up and said the bottom line is that the tree standards in Chapter 17.102 do not work at all for subdivisions and that is why Council created the Tree Code Committee. He explained that applying Chapter 17.102 as the only guiding code chapter would be a bad thing and said by also applying Chapter 17.92 it gives the applicant more flexibility with trees that are smaller than 11 inches in diameter.

O’Neill also said that typically when you adopt code regulations and want to exempt a certain chapter then somewhere in the Ordinance would state the exemption. There was nothing in the adopted ordinance stating that Chapter 17.92 is not applicable to subdivisions.

O'Neill stated that after forming the new Tree Code Committee he hopes to make these chapters much clearer.

Discussion:

Commissioner MacLean-Wenzel asked staff if they added the 8-inch trees in diameter to allow for diversity if there are not enough 11-inch trees in diameter to choose from. Meharg said the Code does not state that specifically, but it's how staff is applying the code to provide flexibility. Meharg talked about the Marshall Ridge subdivision as an example. She said they had to apply for a tree variance, but they also had many 8-inch trees in good condition that staff allowed the applicant to count to meet the retention requirement.

Applicant Recap:

Tracy Brown, 17075 Fir Dr., Sandy, OR 97055

Mr. Brown said that he did a very exhaustive look at Chapter 17.92 and did not find any language that would be applicable to subdivisions since Chapter 17.100 addresses street trees. Brown stated that since subdivisions don't have landscape plans, Chapter 17.92 should not be applicable.

Staff Response:

O'Neill responded to Brown and said that almost all subdivisions have landscape plans as they have detention ponds, pedestrian tracts, and/or parking courts all within the subdivision. He explained that there are several cases such as Pioneer Meadows who prior to final plat had to have a landscape plan for their parking court and this was based on Chapter 17.92.

Doughman said it's good to recognize that Chapter 17.92 and Chapter 17.102 are not clear regarding tree preservation.

O'Neill told the Commission that if they agree with the applicant's Code Interpretation request then it should be very clear. He explained that if the Commission takes away Chapter 17.92 for staff to use in Subdivisions, then staff would have no way of enforcing or monitoring landscape plans in tracts.

Discussion:

Commissioner Carlton said he is frustrated and would like to see these conflicts addressed in the upcoming code changes and in a timely manner. He would like to see the code changes complete and in front of Council within three months.

Commissioner Logan said Mr. Brown makes a compelling argument.

Commissioner MacLean-Wenzel stated that over the last 17 years the knowledge base has changed as well as what people know about trees and tree retention.

Chairman Crosby said it would be difficult for him to say Chapter 17.92 does not apply to all zones when it states "All Zones" in the Chapter title. Although, he said there is enough testimony and evidence to show there is some confusion. While throwing out ideas, Crosby said in the Motion they could state that Chapter 17.92.10 (c) does not apply to subdivisions but retain everything else in the Chapter. Crosby said staff could then reference Chapter 17.102 for subdivisions realizing that it wouldn't solve the problem forever.

Motion: Code Interpretation - Although Chapter 17.92 clearly states in its title, "All Zones," the chart in the chapter does not list all zones. Chapter 17.102 is to be applied to subdivisions, in place of 17.92.10 (C), in regard to tree retention." This is due to the confusion and a need to provide a "stop gap" or a temporary solution until the Tree Committee can complete working on these Chapters.

Moved by: Commissioner Carlton

Seconded by: Commissioner Logan

Yes votes: Commissioner Carlton, Maclean-Wenzel, Logan and Chairman Crosby

No votes: None

Abstentions: Commissioner Mobley

The motion Passed.

After a short break Chairman Crosby asked the applicant to continue with their presentation.

Mr. Brown stated that the applicant agrees with staff's recommendations on the variances, but has concerns with some of the conditions. Before continuing his presentation, Mr. Brown handed out their response to the list of staff's recommended conditions.

Mr. Brown addressed the Flood Slope Hazard (FSH) overlay along with the trail conditions and tree conditions. He then introduced Arborist Ryan Newman to again address the tree protection fencing in the FSH overlay.

Mr. Newman explained how they will protect and preserve the trees in the FSH. He agreed with staff's request to have protection on these trees 5 feet beyond the drip line and said in some municipalities they require one foot per inch of trunk diameter. Mr. Newman said the trees should be preserved in groups instead of individually as they would be more viable. Mr. Newman believes that even though there is some decay in the trees in the FSH, saving these trees preserves the characteristics of the site in the FSH Overlay.

Commissioner Maclean-Wenzel asked Mr. Newman about the type of tree protection fencing and he explained to the Commission they will be using a 6-foot-high metal fence.

Mr. Brown addressed staff's recommendation to have the applicant dedicate all the

FSH overlay to the City. He considers that recommendation “a taking of the applicant’s property”. Alternatively, he said the applicant would consider a conservation easement, or tree protection easement.

Mr. Brown moved on to Lot 19 and again explained to the Commission that staff is requesting that Lot 19 be saved for tree preservation. He believes that Lot 19 is worth roughly \$130,000 and would like to know if the applicant will be compensated for the taking of that lot. After stating this to the Commission he asked to have this condition removed and said, “It constitutes a taking of the applicant’s property without any compensation”.

Ray Moore, All County Surveyors and Planners, PO BOX 955, Sandy, OR 97055

Mr. Moore discussed future street plans, access to the FSH on the applicant’s property as well as a possible future trail.

Mr. Brown continued his presentation and started addressing the 79 conditions in the staff report. At condition #13, Commissioner Carlton suggested the applicant identify and address just the “main issues” that are a “big deal” and work with staff on the remaining concerns. Staff and the Commission both agreed that reading every staff condition along with the applicant’s response will take at least another 2-3 hours. Mr. Brown said, “I don’t know how else to do it unless you send staff back to the drawing board”. Following this statement Mr. Brown continued and jumped to staff’s condition #27 in the staff report addressing sidewalks and then said he was almost done with his presentation. Mr. Brown then covered condition #32 regarding the right-of-way, condition #35 and condition #78 regarding the fee-in-lieu.

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Mr. Moore covered condition #28 (shifting the street), #30 and #31 (extending the street to the property line), #34 (cul-de-sac radius), #38 (ADA ramp), #40 (vehicle non-access reserve VNAR), #48, #52 and #59 (Moore said its redundant as it’s the same condition as #45 regarding sanitary sewer lines and should be removed), #49 (sewer laterals), and finished with condition #67 (cut and fill evaluation).

Planning and Building Director Kelly O’Neill Jr told the Commission that some of the conditions addressed by the applicant will need to be discussed in further detail with the City Engineer and City Attorney. O’Neill explained that staff just received the applicant’s response to the staff report during the meeting when it was handed out, which allowed no time to review.

Commissioner Carlton suggested a continuance to the application and Chairman Crosby agreed. O’Neill asked City Attorney David Doughman if staff could request the continuance as they were just presented with multiple documents from the applicant. Doughman explained that staff could request the continuance, but the 120-day clock will continue to run where as if the applicant asks for a continuance the clock will stop.

The Commission, the applicant and staff decided on a date certain of April 8, 2019 to continue the hearing. The Applicant officially asked the Commission for a continuance in order to "toll the clock" to the April 8, 2019 meeting date. The Commission asked the applicant to please provide their presentation handouts before the meeting, as they have no time to review it at the meeting.

O'Neill asked the Commission how they would like to proceed in the next meeting for this application if Commissioner Lesowski is present along with potentially a new planning commissioner. Should or could they participate since they were not currently present. Doughman explained that if the other commissioners review the material and this current meeting, they could legally participate but asked if the applicant had any concerns over this. Mr. Brown said they are fine with this, but would like to reserve the right to contest those individual members at the meeting.

Motion: Move to continue the Public Hearing to Monday April 8, 2019 by request of the applicant.

Moved By: Commissioner Carlton

Yes votes: All Ayes

No votes: None

Abstentions: None

The motion passed

Moved by Don Carlton, seconded by John Logan

Staff Report - 0109

Although Chapter 17.92 clearly states in its title, "All Zones," the chart in the chapter does not list all zones. Chapter 17.102 is to be applied to subdivisions, in place of 17.92.10 (C), in regard to tree retention." This is due to the confusion and a need to provide a "stop gap" or a temporary solution until the Tree Committee can complete working on these Chapters.

CARRIED.

Moved by Don Carlton

Although Chapter 17.92 clearly states in its title, "All Zones," the chart in the chapter does not list all zones. Chapter 17.102 is to be applied to subdivisions, in place of 17.92.10 (C), in regard to tree retention." This is due to the confusion and a need to provide a "stop gap" or a temporary solution until the Tree Committee can complete working on these Chapters.

CARRIED.

4. Items from Commission and Staff

None.

5. Adjourn

5.1.

Moved by John Logan, seconded by Todd Mobley

To adjourn

CARRIED.



Chair, Jerry Crosby



Planning Director, Kelly O'Neill Jr