



CITY OF OREGON CITY

CITY COMMISSION SPECIAL MEETING - REVISED AGENDA

Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City
Friday, October 21, 2022 at 9:00 AM

SPECIAL MEETING OF THE CITY COMMISSION

Ways to participate in this public meeting:

- *Attend in person, location listed above*
- *Email recorderteam@orcity.org (deadline to submit written testimony via email is 3:00 PM on the day of the meeting)*
- *Mail to City of Oregon City, Attn: City Recorder, P.O. Box 3040, Oregon City, OR 97045*

1. CONVENE MEETING AND ROLL CALL

2. PUBLIC HEARINGS

2a. Adoption of Findings of Fact Upholding the Appeals and Denying the Park Place Crossing General Development Plan (AP-22-00003; GLUA-21-00045; MAS-21-00006; VAR-22-00001)

3. ADJOURNMENT

PUBLIC COMMENT GUIDELINES

Complete a Comment Card prior to the meeting and submit it to the City Recorder. When the Mayor/Chair calls your name, proceed to the speaker table, and state your name and city of residence into the microphone. Each speaker is given three (3) minutes to speak. To assist in tracking your speaking time, refer to the timer on the table.

As a general practice, the City Commission does not engage in discussion with those making comments.

Electronic presentations are permitted but shall be delivered to the City Recorder 48 hours in advance of the meeting.

ADA NOTICE

The location is ADA accessible. Hearing devices may be requested from the City Recorder prior to the meeting. Individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.

Agenda Posted at City Hall, Pioneer Community Center, Library, City Website.

Video Streaming & Broadcasts: The meeting is streamed live on the Oregon City's website at www.orcity.org and available on demand following the meeting. The meeting can be viewed on Willamette Falls Television channel 28 for Oregon City area residents as a rebroadcast. Please contact WFMC at 503-650-0275 for a programming schedule.



CITY OF OREGON CITY

Staff Report

625 Center Street
Oregon City, OR 97045
503-657-0891

To: City Commission
From: Tony Konkol, City manager

Agenda Date: 10/21/2022

SUBJECT:

Adoption of Findings of Fact Upholding the Appeals and Denying the Park Place Crossing General Development Plan (AP-22-00003; GLUA-21-00045; MAS-21-00006; VAR-22-00001)

STAFF RECOMMENDATION:

Staff recommends that the City Commission adopt the Findings of Fact, denying the Park Place Crossing General Development Plan and associated files.

EXECUTIVE SUMMARY:

On October 17, 2022, after holding a public hearing and reviewing all of the testimony in the record, the City Commission, by a vote of 3-1, made a tentative decision to uphold the appeals and deny the Park Place Crossing Master Plan General Development Plan and associated approvals. The attached Findings of Fact reflect the Commission's decision and findings for denial of the General Development Plan. At the request of Mayor McGriff and Commissioner O'Donnell, the staff redlines to the attorney's Findings of Fact have been included as reference.

BACKGROUND:

At the appeal hearing on Tuesday 10/11/2022 the City Commission heard testimony from the appellants, applicant, staff and the City Attorneys on procedural matters. The Commission closed the Public Hearing and continued the decision to 10/17/2022 for deliberation.

The City received nine (9) appeals of the Planning Commission's Type III decision approving the Park Place Crossing Master Plan General Development Plan and associated approval.

A tenth appeal filed by Richard Guerrero was evaluated to determine whether the appellant has legal standing. Staff cannot find prior testimony before the Planning Commission for Richard Guerrero and recommends that their appeal be rejected.

As amended during the Planning Commission proceedings, the Applicant, Icon Development, requested approval for 426 residential units to be provided in six residential phases on 91.7 acres of land. The project also includes a community park, open space, on-site stormwater management facility, an area to accommodate retail/civic uses, and trails components.

On September 12, 2022 the Planning Commission voted 4-3 to approve GLUA-21-00045 / MAS-21-00006 / VAR-22-00001 with revised findings and conditions of approval. The appellants are:

- Park Place Neighborhood Association – Tom Geil
- Linda Smith
- Jackie Hammond-Williams
- Roya Mansouri
- Jackie Dalseme
- Elizabeth and Jed Peterson
- Enoch Huang
- Christine Kosinski
- James Nicita

This appeal is governed by the procedures set out in OCMC 17.50.190, including the following limitations:

- The appeal is "on the record," meaning no new evidence may be introduced on appeal – only the evidence placed before the Planning Commission may be considered by the appellants, applicant, and City Commission. 17.50.190(F).
- The issues on appeal are limited to those listed in the notice of appeal. The appellant may not raise any new issues as part of this appeal. 17.50.190(F).
- Only those persons who submitted comments during the notice and opportunity to comment will be allowed to participate in the appeal hearing. OCMC 17.50.120(E)(6).

OPTIONS:

The options before the City Commission include:

1. Adopt the Findings of Fact.
2. Adopt the Findings of Fact with amendments.
3. Reject the Findings of Fact and provide direction to staff.

**In the Matter of: Park Place Crossing General
Development Plan Appeal # AP-22-00003; File
#s: GLUA-21-00045 / MAS-21-00006 / VAR-22-
00001**

NOTICE OF DECISION

On October 17, 2022, after holding a public hearing and reviewing all of the testimony in the record, the City Commission, by a vote of 3-1, made a tentative decision to uphold the appeals and deny the Park Place Crossing Master Plan General Development Plan and associated approvals. On October 21, the City Commission took final action to deny this application, relying for support on the following findings of fact and conclusions of law:

Background Facts

The Proposed Development

The subject 92 acres proposed for development is within the northernmost portion of the Park Place Concept Plan (PPCP) area, also known as the “North Village.” In 2018, through an applicant-initiated process, the City Commission approved the annexation and zoning for the property by adopting Ordinance 18-1007. One of the conditions of approval imposed on the annexation request was that the applicant obtain General Development Plan (GDP) approval for the 92-acre area prior to any urban development on the site. This application for a GDP is thus necessary to comply with this condition and is the next step in the development of this site. Once approved, the GDP would guide future development within the master plan area to assure long-term regulatory certainty and a high level of predictability for existing homeowners and developers within the master plan area as well as the rest of the Oregon City community. The GDP provides a framework for development within the master plan area to be accomplished over a 20 year period.

Although it was modified a number of times during the proceedings before the Planning Commission, the development proposal before the City Commission for consideration includes the following components:

- 426 residential units to be developed over 6 phases including 342 detached single family residential units and 121 attached or paired townhomes with an overall net density of 9.2 units per acre.
- A master plan adjustment to accommodate changes in the lot dimensions and lot area up to 20% and a variance to reduce the minimum lot size for the attached single family lots to 1800 square feet.
- The primary transportation access point for the first two phases of development or 209 homes would be through a single new road connection to Holcomb Blvd. The 59 additional units proposed for Phase 3 would be directed through the existing Trailview neighborhood to Winston Drive. When the vehicle trips moving through Trailview neighborhood exceed 2000, anticipated during Phases 4-6, Holly Lane would be extended to the south to connect with Redland Road.

- A 4.3 acre community park and 14.6 acres of open space including trails.
- 2.43 acres of land available in separate tracts to provide a continuous corridor for the Livesay Main Street Area that might include neighborhood commercial, retail or mixed-use development and civic space.
- Stormwater is to be treated by a series of street drains and a regional stormwater pond.

The Regulatory Framework

The subject property includes about 56 acres that were included as part of the original 1979 urban growth boundary and about 35 acres were added to the boundary in 2002. At that point, these areas were anticipated for urbanization within the 30-year planning horizon. To acknowledge prospective urbanization, these lands were zoned Future Urban – FU-10 by Clackamas County and designated as Future Urban on the Oregon City Comprehensive Plan Map.

In order to ensure an orderly transition from rural to urban uses, Metro has adopted rules requiring the adoption of a concept plan for the area prior to its development. Title 11 of the Metro Urban Growth Functional Management Plan (Sections 3.07.1105 – 3.07.1140) – Planning for New Urban Areas. After an extensive and interactive public process, guided by a Project Advisory Committee comprised of neighbors, stakeholders, business owners, and City residents, as well as hearings before the Planning Commission and City Commission, in 2008, the City Council adopted the Park Place Concept Plan (PPCP or Concept Plan) by the adoption of Ordinance 07-1007.

Quoting the relevant parts from the Plan introduction:

“Concept plans describe how an area is expected to develop over time. In general, they identify the general location and intensity of land uses, including a variety of housing types (affordable and market-rate), commercial and industrial land uses, parks, open spaces, and schools.” p 7.

And elsewhere:

“2. Concept Plan

The vision for the Park Place Concept Plan is to provide a framework for growth that respects and augments the area’s context, history, and natural systems. The Park Place Concept Plan emphasizes *good urban design, connectivity, opportunities for place-making and cultivating community, diversity, and, above all, a way to provide for future growth in a sustainable manner.*” (Emphasis added) p 21.

These core values are implemented through the identification of certain planning and design principles that, when applied to the existing conditions and taking into account the utility and facility constraints and natural resource limitations, formed the basis for “key components” that the PPCP identifies as essential for achieving the Plan objectives. The particular “key components” within the PPCP that the Commission finds serve as approval criteria for determining compliance with the PPCP include:

- “Two primary north-south connections between Holcomb Boulevard and Redland Road (Swan Avenue and Holly Lane)
- Neighborhood-oriented commercial nodes that integrate commercial land uses, residential land uses, and public open space

- Innovative, green on-site stormwater treatment methods
- Protected sensitive areas, including drainages and steep slopes
- The use of green edges to define neighborhoods and buffer developments” p 1, 21.

The PPCP consists of a variety of materials that guided plan drafting, the plan, and chapters dealing with implementation and possible financing. The PPCP also includes a Technical Appendix “which provides comprehensive descriptions and details of the Plan elements” and, as such, provides relevant context for interpreting the PPCP. p 7. The Plan itself consists of an area site plan or map followed by a narrative series of chapters. The Plan map - “North Village Neighborhood”, Figure 3-2, bears a note stating:

“This map is for concept planning purposes only. The specific locations of natural resource boundaries, open space, parks, land uses, roads, trail, infrastructure and related improvements may change and is subject to on-site verification and design at the time of development.” p 24.

The map disclaimer suggests that the Concept Plan was designed at a high-level without any site-specific assessment of topography or other natural resource or health and safety overlay obligations. The term “framework” is defined by *Merriam Webster’s 3rd International Dictionary* as “a basic conceptional structure (as of ideas).” The Commission finds that it provides an idea of how a community might be designed so as to achieve all of the “key components.” However, this is not the only way. The PPCP acknowledges that on-site conditions may require some variation with respect to uses, their density, location, and design. However, any proposal must further the Concept Plan “key components” in order to be deemed compliant with the Concept Plan.

Concurrent with the adoption of the PPCP, the City designated the subject property on the comprehensive plan map for low density residential (LR), medium density residential (MR), and mixed use corridor (MUC). In 2008 and 2010, the City adopted zoning amendments to implement the PPCP addressing allowed land uses, residential, commercial and mixed use design standards, provisions for protection of natural resources and geologic hazards, public improvements, tree removal and replacement, and other standards.

The owners of 14 tax lots initiated an application for annexation and concurrent rezoning the subject 92 acres of property in 2017. A small portion of the property was rezoned to R-10, Low Density Residential, a majority of the site was rezoned R-5, Medium Density Residential, and the southern portion was rezoned Neighborhood Commercial. The annexation and rezoning of the property in 2018 was conditioned upon submittal of a Type III master plan including, as the first step, the subject GDP proposal.

Summary of the City’s Review

The initial public hearing on this application was held on April 25, 2022, with continuances to May 9, 2022, May 23, 2022, July 11, 2022, July 25, 2022 and August 22, 2022. Taken together, the Planning Commission heard 10 hours of public testimony, not including presentations from city staff or the applicant, including from representatives of the Park Place Neighborhood Association and 72 individuals, many testifying at multiple hearings.

On August 22, 2022, after closing the public record to all new testimony and a lengthy deliberation where all Planning Commissioners were heard, the Planning Commission voted 5-2 to tentatively approve the application with modified findings and conditions. The matter was then continued to September 12 where the Planning Commission would adopt the final written decision confirming that it was consistent with its previous decision.

At the continued hearing on September 12, the meeting began with only six members of the Planning Commission present. The Chair called for any ex parte contacts and commenced deliberations on the final written decision. The Planning Commission initially split evenly on whether to approve the application; however, after the initial vote was taken, the seventh commissioner joined the meeting and the application was approved 4-3.

In response to concerns raised over the Planning Commission's final vote, at its regular meeting on Sept 21, the City Commission decided to waive the otherwise applicable appeal fee for anyone seeking further review. OCMC 17.50.290(C). In response, the City received a total of ten notices of appeal from project opponents, including one from the Park Place Neighborhood Association and the others from individual neighboring residents or concerned citizens. All entities / individuals, except for Richard Guerrero, participated during the proceedings before the Planning Commission and have standing to participate. Mr. Guerrero did not participate before the Planning Commission and his notice of appeal as well as oral testimony was not considered by the City Commission as part of this decision.

The City Commission held a public hearing to consider this appeal on October 11, 2022. Under OCMC 17.50.290(C), the City Commission's review was on the record and the issues for consideration were limited to those listed in the notices of appeal. All parties with standing, those who participated in the Planning Commission proceedings, were allowed to be heard. On October 17, 2022, after considering all of the evidence in the record, the City Commission voted 3-1 to tentatively uphold the appeals and deny the applications. On October 21, 2022, the City voted _____ to adopt this Decision including written findings. This Notice of Decision shall serve as the City's final decision on this matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before turning to the merits of the appeals, the Commission must first deal with several procedural issues, including those raised both by the Applicant and the Appellants.

Procedural Issues Raised by Applicant

The Applicant moved to dismiss the various appeals because of the fee waiver adopted by the Commission and one of the Appellants.

Regarding the appeal filed by the Park Place Neighborhood Association ("PPNA"), OCMC 17.50.290(C) specifically states that no appeal fee will be charged for a city recognized neighborhood association "so long as the appeal has been officially approved by the general membership or board of the neighborhood association at a duly announced meeting." The Applicant argues that, in this case, PPNA's meeting was not "duly announced," because notice of the meeting was sent 5 days prior to the meeting, rather than the 7 days required by the bylaws, and attaches a copy of the bylaws to their letter to the Commission. However, as also evidenced by the PPNA's bylaws, the PPNA holds a regular monthly meeting every third Monday of the month and, because those dates are announced far in

advance, the meeting was, in fact, duly announced and the neighborhood association's appeal was valid. The Applicant goes on to argue that the Commission failed to or improperly considered the "fairness to the applicant." However, that consideration only applies to discretionary fee waiver requests, not the automatic fee waiver given to neighborhood associations. Because the Commission finds that the PPNA's appeal was approved by the neighborhood association's general membership or board at a duly announced meeting, the Applicant's motion to dismiss the PPNA's decision is denied.

Regarding the other appeals, OCMC 17.50.290(C) provides that the Commission may waive appeal fees if the Commission finds that "considering fairness to the applicant and to opposing parties, a full or partial waiver of the appeal fee is warranted." The Applicant argues that the Commission failed to or improperly weighed the fairness to the parties and, moreover, that this requirement is not "clear and objective," and so cannot be applied to this application for housing. There are several reasons to conclude that the fee waiver was fair to the applicant and opposing parties, perhaps most prominently because the neighborhood association did not have to pay a fee and, therefore, the Applicant would be involved in the appeal regardless of whether the fee waiver was granted or not. Moreover, as discussed further below, the controversy surrounding the Planning Commission's final decision prompted the Commission to waive the fee to ensure all parties believed that they were fairly heard. As LUBA has held in other circumstances, due process and fairness relates to the ability to have a full and fair opportunity to present its case, not to avoid issues.

Procedural Issues Raised by Appellants

Planning Commission Decision

A number of Appellants raised concerns over the way in the which the final vote occurred before the Planning Commission on September 12. The September 12 meeting began with only six of the seven members of the Planning Commission present – five in the Council chambers, and one present electronically. Before beginning their consideration of the proposed findings, the Planning Commission disclosed any ex parte contacts and then began discussing an issue that had not been discussed previously, namely, whether a particular clause in the prefatory portion of Ordinance No. 07-1007 required some further action before action could be taken. After a short discussion, one member of the Planning Commission present in the chamber moved to approve the findings, and that motion was seconded. A vote was held and the result was a tie vote at 3-3. The Planning Commission Chair turned to the City Attorney to ask what should occur with a tie vote. The City Attorney provided several options, including the possibility of locating the seventh member and having that member participate in the vote. Subsequently, a member of the audience who was not participating in this matter called the missing Planning Commission member and provided his phone to the Community Development Director. The motion to approve was made again and it was approved 4-3.

Several Appellants have raised various issues related to the Planning Commission's meeting and how the vote occurred, including that the Planning Commission was not presented all available options, that the seventh commissioner was called by someone who had a bias, that the seventh commissioner was not informed regarding the issues before the Commission, that the seventh commissioner did not disclose any ex parte contacts, that the vote was a "nullity" because no one on the prevailing side of the previous vote moved to reconsider, and various other procedural concerns.

As an initial matter, it is important to note that, while several of the appeal issues raise the specter of improper actions by the seventh commissioner, there is no allegation of actual improper conduct. In other words, there is no allegation that the person on the phone was not the actual seventh

commissioner, only that the Commission could not be certain. Similarly, there is no allegation that there were ex parte contacts, only that there could have been, nor do any of the appeals explain how it was improper for the commissioner to use one particular phone instead of a different phone.

For whatever reason, the seventh commissioner was not present when the Planning Commission meeting began, but joined the meeting later. There is nothing improper about the late arrival at the meeting and there was no reason for either planning staff or the planning commission to prevent his participation in the meeting. The City acts through its elected and appointed representatives on various boards and commissions; to the extent a member of one of those commissions is present, they are entitled to participate in the decisions of those boards (barring other disqualifying attributes).

Turning to the procedure used by the Planning Commission, the appeal filed by Mr. Nicita correctly points that under the Commission's rules of procedure and Robert's Rules, only a member of the Commission who voted with the prevailing side on a motion can seek reconsideration of the motion. However, the fact that the motion was made by someone who was not on the prevailing side did not make the vote "illegal" or otherwise render it a nullity. As noted in section 23 of Robert's Rules, if a breach of the rules occurs, a member may raise a point of order, but the point of order must be raised in a timely fashion. Because no member raised a point of order, the vote was taken and the result announced, making it a final decision. In short, while the Planning Commission's decision was procedurally flawed, it was not a nullity, nor was it illegal.

Moving beyond the merits of those challenges for a moment, review of this matter on appeal by the City Commission offers a *de novo* (or new) opportunity to interpret the applicable approval criteria and make a decision based solely on the issues in the notices of appeal and the City Commission's evaluation of volumes of evidence collected over a 4-month period. The Commission owes no deference to any of the Planning Commission's interpretations or weight given to any of the evidence. As a result, allowing all parties with standing an opportunity to appeal raising their concerns, coupled with unrestricted review of the record by the City Commissioners will cure any prejudice due to a planning commissioner's allegedly improper participation in or vote taken during the planning commission proceedings. *See Murphy v. City of Ashland*, 19 Or LUBA 182, 189 n 7 (1990). Accordingly, whatever occurred at the Planning Commission does not affect the City Commission's review of the decision.

Other Procedural Issues

As required by OCMC 17.50.190(F), review of appeals by the City Commission is limited by two factors. First, all issues for City Commission consideration must have been raised in a notice of appeal. Second, the City Commission cannot consider new evidence. The City Commission received testimony, both written and oral, that exceeded these limitations and for that reason, it was not considered. The list of issues not considered includes:

- Various master plan criteria are not "clear and objective" and therefore, do not apply to this application for "needed housing" under ORS 197.303(4).
- Bias challenge against Planning Commissioners Daphne Wuest and Mike Mitchell
- Impropriety of conversations between the applicant and staff relating to changes to the Geologic Hazards Code
- Lack of transit-focused roadway design
- Adverse impacts caused by the Serres development or its inclusion as a Street of Dreams

- Including open space as required parkland
- Failure to address Statewide Goal 13 or ORS 105.465 as it relates to steep slope hazards
- Traffic congestion at Anchor Way and bottlenecks at I-205 / 213
- Concern that the Holcomb Market will run out of food

Since these issues were neither raised in either a notice of appeal, nor raised in the record created by the Planning Commission, the City Commission finds that they cannot be considered on appeal.

Appellant Nicita raised another procedural objection relating to the City Commission's consideration of an issue matrix that was provided by the City Commission after the public hearing record had closed. Mr. Nicita argued that considering these materials prejudiced his rights to present and rebut evidence, for an impartial tribunal and to a full and fair hearing. The City Commission finds that the matrix is nothing more than a reference document that organizes evidence already in the record. It does not include any new evidence. The City Commissioners indicated that they reviewed the record materials and would exercise their own independent judgment to evaluate this case.

Response to the Substance of the Appeals

Master plan approval in Oregon City is a two-step process. First, an applicant must secure a General Development Plan (GDP) approval identifying "the long-term buildout" proposal for the site including proposed land uses, densities and infrastructure necessary to serve those uses. Oregon City Municipal Code (OCMC) 17.65.040.B. Once a GDP is in place, an applicant must obtain a Detailed Development Plan (DDP) approval to ensure that development complies with the approved GDP. OCMC 17.65.040.C. There are nine applicable approval criteria for granting a GDP but this denial focuses primarily on two of them. OCMC 17.65.050(C)(6) and (7) provide:

"The proposed general development plan is consistent with the Oregon City Comprehensive Plan.

The proposed general development plan is consistent with the underlying zoning district(s) and any applicable overlay zone or concept plans."

The PPCP has been adopted as an ancillary document to the City's Comprehensive Plan. Therefore, approval of the GDP required finding consistency with the PPCP which, in turn, serves to achieve compliance with the Comprehensive Plan. As noted above, finding "consistency" does not mean "identical." It does not require that all development follow the PPCP map exactly with respect to uses, densities or road locations. However, it does require that all development respond to and further the "key priorities" and design principles either as prescribed or in some other way that indicates that it will achieve the overall PPCP objectives. For the reasons discussed in greater detail below, the proposal fails to present a development proposal that will achieve PPCP consistency.

Need for a North -South Transportation Connection

The PPCP sets forth a number of transportation-related design objectives including, in relevant part:

- "Streets sized to handle future growth
- Provide safe environment for all modes of travel
- Connectivity within and outside study area
- Minimize increases in impervious surfaces

- Minimize adverse impacts on existing properties” p 5-6.

Within each of these headings, the City Commission identified a number of elements that were critical to its finding that the proposed GDP was inadequate with respect to traffic. Without quoting the explanation that follows each of these objectives in full, the Commission highlighted the following as offering critical support for the analysis that follows:

“A network of local, collector, and arterial street provide the area with *sufficient capacity and connectivity to meet anticipate travel demands, well into the future. ...* Holly Lane and Swan Avenue, designed as Collectors, will both be extended and improved to provide pedestrian, bicycle, and auto/transit facilities from Holcomb Boulevard to south of Donovan Road.”

“*Safe travel by each mode of travel is inherent in the design and layout of the Plan’s* transportation system.”

“*The network of streets is designed to easily disperse vehicular traffic,* readily accommodate transit, and fully integrate pedestrian and bicycle travel.”

“The Park Place Concept Plan incorporates *a well-connected transportation system with two primary north/south travel routes (‘Holly and Swan corridors’ providing connectivity both within and outside of the planning area.*”

“*Transportation network redundancy, interconnected streets,* and an emphasis on pedestrian, bicycle, and transit amenities work together to manage the need for impervious surfaces.”

“Minimize adverse impacts on existing properties: *To the greatest extent possible, the Park Place Concept Plan minimizes impacts to existing properties.* Strategies to do so include:

- *Providing a parallel collector route to Holly* to reduce impacts on properties along that street.
- Designing streets and intersections in the context of the land uses they serve.
- *Considering development parameters, such as parcel size and access locations,* while laying out the transportation network.
- Providing design flexibility in roadway alignments, while *diligently preserving safety and capacity for all travel modes.*” (Emphasis added) pp 5-6.

Taken together, these objectives require that all development within the area subject to the Park Place Concept Plan be supported by a transportation network that is connected, redundant, safe, and minimizes impacts to existing properties to the “greatest degree possible.”

Based on the foregoing, the City Commission finds that one of the most fundamental design requirements to achieving a connected, redundant, safe and impact minimizing transportation scheme is through north-south connectivity. This concept is reinforced multiple times throughout the Plan but stated most clearly and directly in the following “key component”:

- “Two primary north-south connections between Holcomb Boulevard and Redland Road (Swan Avenue and Holly Lane)” p 1, 21.

Elsewhere, the PPCP provides additional rationale for requiring both north and south connections for development within this area, where it states:

“The Swan Avenue extension will include bridges across the Livesay Creek canyon and Abernethy Creek, creating much needed connections between adjacent neighborhoods and providing adequate capacity and system redundancy critically needed during times of emergency. In addition, Holly Lane would be extended north from Redland Road to connect with Holcomb Boulevard, *providing good access, connectivity and system redundancy to the area.*” (emphasis added). p 33.

The Commission finds that the Holly Lane extension clearly and unambiguously requires a connection to the north through Holcomb Blvd as well as to the south via Redland Road concurrent with development, where the traffic generated from a proposed development gives rise to safety concerns and adverse livability impacts. The Commission finds that the Appellants provided clear and convincing evidence that the resulting traffic generation would give rise to safety concerns, particularly in the case of an emergency, such as wildfire evacuation, and compromise overall livability.

The GDP proposes to direct cars from the first three phases of new development through discrete singular points of access. The first two phases of development or 209 homes will have a singular road access along Street A to Holcomb Blvd.¹ The 59 additional units proposed for Phase 3 will be directed through the existing Trailview neighborhood to a singular point, Winston Drive, and again, onto Holcomb Blvd. The City Commission notes that there are approximately 80 Trailview neighborhood homes that front on a local street that will be affected by the traffic generated by 59 homes within Phase 3, very nearly doubling the amount of traffic directed through three local streets before joining with Winston Drive. Providing 209 Phase 1 and 2 homes plus 59 Phase 3 homes with only a single point of access to a collector / arterial access point, particularly when nothing connects Phases 1 and 2 with Phase 3, does not provide a “network” of streets that are connected, redundant or safe. The City Commission was moved by the testimony that identified safety concerns created by a single point of access including wildfire or other emergency to endangering children playing within the Trailview neighborhood or will likely reside in the proposed development along Street A.

Rather than provide some assurance that a connection to Holcomb Blvd as well as a connection to Redland Road, to be provided by either the Applicant or the City, would be available to serve this development immediately, the Planning Commission found that such a connection need not be provided until the number of trips passing through Trailview neighborhood exceeded 2,000 average daily traffic (ADT). The Applicant projected that this threshold would be exceeded during the development of Phases 4-6. More specifically, the Planning Commission’s findings explain:

“For comparison purposes, Average Daily traffic (ADT) on other local city streets based on 2021 volume studies are as follows:

- 16th St – West of Division ADT: 517 trips
- Front Street (in Park Place) near Forsyth ADT: 449 trips
- Apperson north of Holcomb ADT: 692 trips

¹ The City Commission acknowledges that this limited access condition would change with the provision of the Holly-to-Redland connection proposed at some time during Phases 4 through 6 but there is no guarantee that these subsequent phases will occur, meaning that this constrained access condition may be permanent.

According to Metro's 2018 Regional Transportation Plan, 'local streets primarily provide direct access to adjacent land uses, and usually between 200-2,000 vehicles per day, with volumes varying by jurisdiction.' The City does not have an adopted standard for traffic volume on local streets. However, a street with 2,000 or more trips per day will feel, to the adjacent resident, more like a collector street. The level of traffic would have noise impacts as well as effects on the ability of children to play in or near the street. Local streets in Park Place are generally quiet and conducive to activities like walking, bicycle, sports, and other non-automotive uses. With the traffic levels at 2,000 trips per day or more, the livability of the neighborhood and enjoyment of these activities, as well as overall safety would be significantly affected." Planning Commission decision pp 71-72.

Based on the evidence relating to comparative street volumes, the City Commission finds that the 2,000 ADT threshold is at the extreme end of the spectrum of what is desirable for a local street. It agrees with the Planning Commission that traffic levels at 2,000 trips per day would adversely affect the livability of neighborhood and would adversely affect the overall safety of the area. As the Appellant Linda Smith pointed out, allowing this condition would allow the transportation system to exceed capacity or to be "broken," before requiring any fix.

During the course of the Planning Commission proceedings, the Applicant revised its proposal reducing the number of dwelling units and identifying a plan to prevent the number of pass-thru trips into the Trailview neighborhood. Under this plan, Phases 1 and 2 of the development would take access solely through Street A onto Holcomb Blvd. Although this proposal would reduce the number of trips passing through the existing neighborhood, it exacerbates the Commission's concern that these Phase 1 and 2 lots would have a singular access through Street A to Holcomb Blvd, eliminating any redundancy that the Commission finds is necessary to satisfy PPCP requirements. The City Commission finds the testimony from Appellant Hammond-Williams persuasive where she notes that confining entry and exit into the development solely to Holcomb Blvd does not result in a "well-connected transportation system" but rather creates a singular point of evacuation that "could prove catastrophic for residents."

With the addition of Phase 3, future residents would have access to Holcomb Blvd via Trailview subdivision and would use Winston Drive. The Applicant calculated that the addition of 59 additional dwelling units in Phase 3 would add 620 ADT plus the existing 878 from Trails End for a total of 1498 ADT. Although this total is less than the 2,000 trip threshold triggering the need for the additional north / south connection as specified in the condition, the City Commission finds that 1498 ADT for Phase 3 alone still far exceeds, by twice or three times, the ADT on other comparable local streets throughout the City.

In response to claims that the Holly Lane extension should occur immediately, the Applicant argued that such an extension was not possible as it did not own or control all of the lands extending from Livesay Road to Redland Road and therefore, could not be required to make the connection. This approach fails to acknowledge what Appellant Nicita pointed out - the City has the power to condemn and construct roads outside of the city boundaries under ORS 223.930. Further, this improvement is identified within the City's Transportation System Plan for funding. As a result, methods that might allow a property owner, including the Applicant here, the opportunity to provide necessary connections even without owning the necessary property might include negotiating a development agreement, local improvement district, or some other shared cost arrangement. Before any development occurs in the future, the City Commission urges applicants, including this one, to work with the City, to ensure that a

north-south connection, either the Holly Lane or Swan Lane extension, exist to provide connectivity and redundancy at the level identified in the PPCP.

Finally, the City Commission finds that a condition of approval requiring the extension of Holly Lane earlier in the development process is not appropriate due to the scale of the overall proposal, coupled with the lack of information about how such a change would impact the remaining project components, and to what degree such a revision would lessen the impacts on the surrounding neighborhood. As such, without the benefit of seeing a revised plan achieving compliance, imposing conditions of approval would be ill-advised.

In summary, the PPCP provides clear instruction that a north-south connection is essential to achieving the requisite connectivity, redundancy and livability protection for future development required by the PPCP. As such, the City Commission concludes that the applicant's failure to provide such connections early enough in the development process to respond to the compelling safety and livability concerns identified by the Appellants requires a finding that this PPCP is not satisfied.

The Need for Neighborhood Commercial

Another of the primary objectives identified within the PPCP relates to the importance of commercial, retail and civic space. More specifically:

“We value having the civic and retail services that provide for the community's basic day-to-day needs located within the community.” p 8

The “key policy” implementing this vision provides:

“Neighborhood-oriented commercial nodes that integrate commercial land uses, residential land uses, and public open spaces.” p 1, 21.

To implement this vision, the PPCP organizes land uses within a “village” concept:

“The Park Place Concept Plan proposes a mix of residential, commercial, park and open space, and civic land uses. Redland Road serves as the logical division between two neighborhoods: North Village and South Village. *Neighborhood-oriented nodes serve as the heart of these new neighborhoods and provide a variety of civic and commercial spaces.* These nodes are centrally located in the neighborhoods along existing and future roadways and are surrounded by medium density residential land uses that transition to lower-density residential land uses.” p 24.

Taken together, these provisions call for the provision of a vibrant retail / civic core that is essential to support the surrounding residential neighborhood. These areas are to be “integrated” and serve as the “heart of the community”. p 23. Yet, the City Commission finds that this GDP does not include the provision of commercial uses in any one of its proposed development phases. Developing 426 new residential units will create a demand for commercial and civic uses that could go unmet, demanding that future residents incur additional vehicle trips to get day-to-day supplies. This, in turn, places pressure on these single vehicle access points discussed above and that was not envisioned in this type of complete community. Further, the City Commission interprets the obligation for “integration” of uses to refer not just the location of various use types but also with respect to the timing for commercial

development as necessary to result in a complete community. What the Applicant has proposed is a large-scale residential subdivision and not a complete community.

Further, the Applicant failed to propose any restrictions on development in this area that would require the development of commercial / retail or civic uses. Permitted uses in the Neighborhood Commercial Zone include parks as well as public utilities and as such, it is possible that these areas could be developed for uses that are not contemplated within the PPCP. Appellant Nicita points out that some of the PPCP identified retail area is encumbered by the neighborhood park and townhome residences, making the loss of mixed-use retail space a reality. Such a result would be inconsistent with the PPCP policies.

Moving beyond the timing for the provision of resident-supportive commercial, there was another issue raised by Appellant Nicita relating to the overall commercial design. Again, the PPCP is fairly specific about what kind of development it envisions within the retail / commercial core. It states:

“The land uses along Livesay Main Street are envisioned to be a *mix of residential and commercial uses (e.g., ground-floor, neighborhood-oriented commercial with housing or offices above)*. The buildings should convey a rich palette of architectural elements that distinguish the Village from the existing auto-oriented commercial uses and a proposed regional shopping center in the area bounded by Washington Street, Abernethy, and Highway 213. The types of elements incorporated into the design of the street facing façade should include large storefront windows, recessed entry ways, awnings and canopies, building lighting, and a rhythm of columns and/or pilasters that break the façade into smaller, more intimate modules.” p 25

Acknowledging that the City does have design guidelines in place that would require that all new commercial development be oriented to and within 5 feet of the street, include 60% transparency, canopies or awnings and lighting, what they do not require is two-story structures with commercial ground floors and residential or office above. The failure to include these elements would again, result in a development that is not consistent with the PPCP.

Although staff did identify a condition of approval requiring two-story development and that condition could have been amended to require mixed use development, the City Commission rejected the invitation to do so lacking any reasonable basis upon which to conclude it was feasible and likely to occur. Requiring the development of some level of commercial property concurrent with the development of the residential property, given the order of the proposed residential development phases, would be too speculative. For these reasons, the City Commission concludes the proposed GDP must be denied.

Lack of Green Buffers

The PPCP calls for: “The use of green edges to define neighborhoods and buffer developments.” p 1, 21. One of the “design principles” that is to “shape the various elements of the Final Concept Plan,” and, the Commission finds is necessary for new development to be consistent with it, is to:

“Utilize existing green edges to define neighborhoods. Providing” green edges” or buffers between development provides opportunities for better neighborhood connectivity, wildlife habitat preservation, a more rural, park-like environment, and greater privacy.” p 23.

The City Commission interprets this provision to require more than the preservation of otherwise regulated natural resource area tracts, as this GDP proposal provides. An adequate “green buffer” is not simply a row of street trees separating new lots from existing development. Rather, the PPCP contemplates the incorporation of green buffers as a discrete and intentionally designed element that provides definition to neighborhoods, creating a “rural, park-like environment” and that enhances “privacy.” The GDP does not include adequate “green buffers” particularly with respect to the east and south sides of the proposed Phase 1 development.

Lack of Innovative, Tiered Approach to Stormwater Treatment

Another critical objective for development within Park Place is that it must be “sustainable” and, as such, requires the implementation of “innovative, green on-site stormwater treatment methods.” p 1 and 21. “By treating or detaining stormwater on site, there is less need for costly infrastructure,” p 23. On pp 51-54, the PPCP goes to some lengths describing the required stormwater approach attempting to capture “the natural hydrology of the site to the extent practicable.” To accomplish this, the Plan calls for a three-tiered approach focusing on the site, the street and the neighborhood, as summarized in relevant part:

Tier 1 – Site Specific Stormwater Management Facilities (Site) requires the development of “site specific (or on-site) low-impact stormwater facilities to manage stormwater on-site to the extent practicable,” and offers examples of impervious area reduction as well as innovative management or infiltration options.

Tier 2 – Green Streets Stormwater Management Facilities (Street) addresses water degradation resulting from streets through the use of Green Streets. “Green Streets are streets that integrate the management of stormwater into the street design itself to provide a stormwater management benefit as well as an urban design element....”

Tier 3 – Regional Stormwater Management Facilities (Neighborhood) includes regional stormwater management facilities designed to accommodate flows that “that may be passed through Tier 1 and Tier 2 facilities.” These facilities “should take on a more naturalistic form such as a wetland pond.” Pp 51-54.

Achieving consistency with the PPCP with respect to stormwater requires evidence that the proposal will include all of the elements identified in this tiered hierarchy of treatment. There is no indication of how this proposal would address the Tier 1 infiltration obligations with respect to on-site stormwater treatment, as Appellant Nicita pointed out. The Applicant’s response was that site topography required regional treatment. In other words, it appears that the Applicant’s position is that on-site treatment was not “practicable.” The City Commission does not understand this response when the Tier 1 identified options include “porous pavement and ecoroofs,” which could be included as part of the development and would likely reduce the amount of runoff. Identifying on-site treatment approaches that would serve this development was required in order to find that this GDP was consistent with the PPCP sustainability and innovative obligations and could not be deferred until DDP approval, particularly given that the Applicant steadfastly argued that these approaches could not be done.

With respect to streets or Tier 2, the Applicant proposes the use of roadside planters for stormwater management. Although all stormwater facilities will be designed for management, detention, and treatment of stormwater to remove sediment and other pollutants in compliance with the stormwater

standards, there was no indication of how these drains would be integrated into the street design so as to create green streets.

With Tier 3, the PPCP does authorize the use of regional drainage, but only to the degree that all flows cannot be accommodated under Tiers 1 and 2 and in a naturalistic form. On p 55, a Concept Plan illustration shows the use of multiple regional detention facilities which, if they had been proposed, may well have led to a reduction in the size of the proposed facility. Condition 59 to the Planning Commission's decision identified a wetland-style detention facility as an option to mitigate for the density variances / adjustments. Although this is the right idea for achieving a natural-looking amenities, such a design is a mandatory component of the Tier 3 treatment obligations under the PPCP. The Applicant failed to provide a regional stormwater facility that was sized and designed to comply with these requirements.

In conclusion, the City Commission finds that this GDP proposal failed to incorporate "innovative, green on-site stormwater treatment methods" and for this reason, does not comply with the PPCP.

Avoidance of Steep Slopes

Another "key component" for development within PPCP requires "protected sensitive areas, including drainages and steep slopes." p 1, 21. This protection is achieved by, among other things, the requirement that "areas with slopes of 25% or more ... will remain undeveloped." p 56. Further, the Geologic Hazard Overlay obligations set forth in OCMC 17.44.060(A) provides: "All developments shall be designed to avoid unnecessary disturbance of natural topography, vegetation and soils."

The City's mapping identify a number of slopes over 25% dotting through the middle of the GDP plan area. Yet, these sloped areas are entirely removed on the plan showing the development (before revision) with the steep slopes. Before the Planning Commission, the Applicant presented a geologic report indicating that these slopes were isolated and could be graded and safely developed. The City Commission finds that this is not responsive to the obligation to not develop on slopes over 25%. For this reason, the Commission cannot find that this GDP is consistent with the PPCP requirements.

Variation in Lot Dimension and Density Required a PPCP Amendment

Of the 92 acres proposed for development, 1.5 acres of this area are zoned R-10, with a maximum density of 4.4 units per acre and a minimum density of 3.5 units per acre. Approximately 44 acres is zoned R-5 with a maximum and minimum density for this area that varies depending on whether the proposal is for attached or detached residential but it is between 7 and 12 units per acre. The overall development density proposed would be 9.2 units per acre, but including the Natural Resource Overlay District density transfer authorized in OCMC 17.44, the proposed density is 10.1 units per acre. This is within the maximum and minimum density thresholds authorized by the underlying zone but this does not tell the whole story.

In addition to overall unit density, residential lots must be sized to meet minimum lot dimension standards. In the R-10 zone, that minimum lot size is 10,000 square feet. In the R-5 zone, that minimum is 5,000 square feet for detached structures and 3,500 for attached structures. Rather than relying on lot averaging as would apply to a subdivision request, the master plan review allows for adjustment of the minimum lot size for lots not abutting other development by up to 20% upon satisfying the lot adjustment criteria set forth in OCMC 17.65.070(E). OCMC 17.65.070(C)(1). The Applicant sought to adjust the size of all of the qualifying lots, in addition to taking advantage of the NROD density transfer

authorizations. In addition to these adjustments, the Applicant sought to further reduce the minimum lot size for about ¼ of the lots (139 lots) to 1,800 square feet, or about one-half the otherwise required lot size. In order to accomplish this, the Applicant sought a variance as allowed under OCMC 17.60. The Applicant responded to the applicable variance criteria by explaining that compliance with the minimum lot dimension requirements with attached structures would result in excessively long lots. The Planning Commission supported this approach out of concern that not granting the adjustment / variance requests would result in this development not meeting its share of the units needed to satisfy the Concept Plan.

The City Commission rejects the notion that development with such significant adjustment / variance requests was necessary to achieve the overall PPCP density goals. There are a wide variety of options that could have made up for the shortfall. Some of those options include: (1) a zone change, as contemplated in Ord 07-1010 with notice to all affected owners, (2) middle housing; (3) the inclusion of mixed use or multifamily development within the NC area, within the subject GDP area, or with the MUC zoned areas further to the east.

One of the criteria relevant for granting an adjustment OCMC 17.65.070(E)(2) provides:

“(2) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zone;”

The purpose of the PPCP, as described throughout these findings, is to achieve a certain quality and character of development. These objectives are undermined by lot sizes that depart so significantly from what the zoning code requires. The Commission estimates that about half of the R-5 zoned lots where single-family residences are proposed are below the minimum lot size.

Further, one of the PPCP design principles requires that development:

“Create a mix of housing types that include ranges of affordability. One way to provide neighborhood diversity is to enable the development of a variety of housing types and sizes. This also allows people to stay in the neighborhood for long period of time as they transition through the various stages of life.” p 23.

The City Commission finds that the proposed lot size reductions are clumped together such that most of the townhomes – 121 of them – are bunched together in the center of this development and all of the larger lot single family residential is located on the edges. Although this approach with respect to the larger single family lots might make sense in order to offset impacts to the surrounding developments, the fairly uniform lot sizes all grouped together reads as a cookie-cutter design and does not provide the requisite degree of “mix” in housing types, sizes and their arrangement that the Concept Plan requires.

CONCLUSION

For these reasons, the City Commission concludes that this GDP proposal fails to show that it is consistent with the Park Place Concept Plan as required by OCMC 17.65.050(C)(6) and (7) and therefore, these applications are denied.

**In the Matter of: Park Place Crossing General
Development Plan ~~Appeals~~ Appeal# AP-22-00003
~~of s~~; File #s: GLUA-21-00045 / MAS-21-00006 /
VAR-22-00001**

NOTICE OF DECISION

On October 17, 2022, after holding a public hearing and reviewing all of the testimony in the record, the City Commission, by a vote of 3-1, made a tentative decision to uphold the appeals and deny the Park Place Crossing Master Plan General Development Plan and associated approvals. On October 21, the City Commission took final action to deny this application, relying for support on the following findings of fact and conclusions of law:

Background Facts

The Proposed Development

The subject 92 acres proposed for development is within the northernmost portion of the Park Place Concept Plan (PPCP) area, also known as the “North Village.” Through an applicant-initiated process, ~~the property City Commission property approved the~~ was annexed ~~annexation ed~~ and ~~assigned~~ zoning for the property in 2018 through file #s AN-17-04 and ZC 17-05 ~~by Ordinance No. 18-1007~~. One of the conditions of approval imposed on the annexation request was that the applicant obtain General Development Plan (GDP) approval for the 92-acre area prior to any urban development on the site. This application for a GDP is thus necessary to comply with this condition and is the next step in the development of this site. Once approved, the GDP would guide future development within the master plan area to assure long-term regulatory certainty and a high level of predictability for existing homeowners and developers within the master plan area as well as the rest of the Oregon City community. The approved GDP provides a framework for development within the master plan area over the next 20-12 years.

Although it was modified a number of times during the proceedings before the Planning Commission, the approved development proposal includes the following components:

- 426 residential units to be developed over 6 phases including 342 detached single family residential units and 121 attached or paired townhomes with an overall net density of 9.2 units per acre.
- ~~AA master plan adjustment modification~~ to accommodate changes in the lot dimensions and lot area up to 20% and a variance to reduce the minimum lot size for the attached single family lots to 1800 square feet.
- The primary transportation access point for the first two phases of development or 209 homes would be through a single new road connection to Holcomb Blvd. The 59 additional units

proposed for Phase 3 would be directed through the existing Trailview neighborhood to Winston Drive. When the vehicle trips moving through Trailview neighborhood exceed 2000, anticipated during Phases 4-6, Holly Lane would be extended to the south to connect with Redland Road.

- A 4.3 acre community park and 14.6 acres of open space including trails.
- 2.43 acres of land available in separate tracts to provide a continuous corridor for the Livesay Main Street Area that might include neighborhood commercial, retail or mixed-use development and civic space.
- Stormwater is to be treated by a series of street drains and a regional stormwater pond.

The Regulatory Framework

The subject property includes about ~~60-56~~ acres that were included as part of the original 1979 urban growth boundary, and about ~~40-35~~ acres were added to the boundary in 2002. At that point, these areas were anticipated for urbanization within the 30-year planning horizon. To acknowledge prospective urbanization, these lands were zoned Future Urban – FU-10 by Clackamas County and designated as Future Urban on the Oregon City Comprehensive Plan Map.

In order to ensure an orderly transition from rural to urban uses, Metro has adopted rules requiring the adoption of a concept plan for the area prior to its development. Title 11 of the Metro Urban Growth Functional Management Plan (Sections 3.07.1105 – 3.07.1140) – Planning for New Urban Areas. After an extensive and interactive public process, guided by a Project Advisory Committee comprised of neighbors, stakeholders, business owners, and City residents, as well as hearings before the Planning Commission and City Commission, in 2008, the City Council adopted the Park Place Concept Plan (PPCP) with passage of Ordinance # 07-1007 (Planning File # L 07-01).

Quoting the relevant parts from the Plan introduction:

“Concept plans describe how an area is expected to develop over time. In general, they identify the general location and intensity of land uses, including a variety of housing types (affordable and market-rate), commercial and industrial land uses, parks, open spaces, and schools.” p 7.

And elsewhere:

“2. Concept Plan

The vision for the Park Place Concept Plan is to provide a framework for growth that respects and augments the area’s context, history, and natural systems. The Park Place Concept Plan emphasizes *good urban design, connectivity, opportunities for place-making and cultivating community, diversity, and, above all, a way to provide for future growth in a sustainable manner.*” (Emphasis ~~added~~–~~padded~~) p 21.

These core values are implemented through the identification of certain planning and design principles that, when applied to the existing conditions and taking into account the utility and facility constraints and natural resource limitations, formed the basis for “key components” that PPCP identifies as essential for achieving the Plan objectives. The particular “key components” with the PPCP that the Commission finds serve as approval criteria for determining compliance with the PPCP include:

- “Two primary north-south connections between Holcomb Boulevard and Redland Road (Swan Avenue and Holly Lane)
- Neighborhood-oriented commercial nodes that integrate commercial land uses, residential land uses, and public open space
- Innovative, green on-site stormwater treatment methods
- Protected sensitive areas, including drainages and steep slopes
- The use of green edges to define neighborhoods and buffer developments” p 1, 21.

The PPCP consists of a variety of materials that guided plan drafting, the plan, and chapters dealing with implementation and possible financing. The PPCP also includes a Technical Appendix “which provides comprehensive descriptions and details of the Plan elements” and, as such, provides relevant context for interpreting the PPCP ~~plan~~. p 7. The Plan itself consists of an area site plan or map followed by a narrative series of chapters. The Plan map - “North Village Neighborhood”, Figure 3-2, bears a note stating:

“This map is for concept planning purposes only. The specific locations of natural resource boundaries, open space, parks, land uses, roads, trail, infrastructure and related improvements may change and is subject to on-site verification and design at the time of development.” p 24.

The map disclaimer suggests that the Concept Plan was designed at a high-level without any site-specific assessment of topography or other natural resource or health and safety overlay obligations. The term “framework” is defined by *Merriam Webster’s 3rd International Dictionary* as ~~the~~ “a basic conceptional structure (as of ideas).” The Commission finds that it provides an idea of how a community might be designed so as to achieve all of the “key components.” However, this is not the only way. The PPCP acknowledges that on-site conditions may require some variation with respect to the various uses, their density, location, and design. However, any proposal must further the Concept Plan “key components” in order to be deemed ~~compliant~~ ~~complaint~~ with the Concept Plan.

Concurrent with the adoption of the PPCP, the City designated the subject property on the comprehensive plan map for low density residential (LR), medium density residential (MR), and mixed use corridor (MUC). In 2008 and 2010, the City adopted zoning amendments to implement the PPCP addressing allowed land uses, residential, commercial and mixed use design standards, provisions for protection of natural resources and geologic hazards, public improvements, tree removal and replacement, and other standards.

The owner initiated an application for annexation and concurrent rezoning in 2017, comprising fourteen tax lots totaling approximately 92 acres. A small portion of the property was rezoned to R-10 Low Density Residential, a majority of the site was rezoned R-5 Medium Density Residential and the southern portion was rezoned Neighborhood Commercial. The annexation and rezoning of the property in 2017 was conditioned upon submittal of a Type III master plan including, as the first step, the subject GDP proposal.

Summary of the City’s Review

The initial public hearing on this application was held on April 25, 2022, with continuances to May 9, 2022, May 23, 2022, July 11, 2022, July 25, 2022 and August 22, 2022. Taken together the Planning Commission heard 10 hours of public testimony, not including presentations from city staff or the

applicant, including from representatives of the Park Place Neighborhood Association and 72 individuals, many testifying at multiple hearings.

On August 22, 2022, after closing the public record to all new testimony and a lengthy deliberation where all Planning Commissioners were heard, the Planning Commission voted 5-2 to tentatively approve the application with modified findings and conditions. The matter was then continued to September 12 where the Planning Commission would adopt the final written decision confirming that it was consistent with its previous decision.

At the continued hearing on September 12, the meeting began with only six members of the Planning Commission present. The Chair called for any ex parte contacts and commenced deliberations on the final written decision. The Planning Commission initially split evenly on whether to approve the application; however, after the initial vote was taken, the seventh commissioner joined the meeting and the application was approved 4-3.

In response to concerns raised over the Planning Commission's final vote, at its regular meeting on Sept 21, the City Commission decided to waive the otherwise applicable appeal fee for anyone seeking further review. OCMC 17.50.290(C). In response, the City received a total of ten notices of appeal from project opponents, including one from the Park Place Neighborhood Association and the others from individual neighboring residents or concerned citizens. All entities / individuals, except for Richard Guerrero, participated during the proceedings before the Planning Commission and have standing to participate. Mr. Guerrero did not participate before the Planning Commission and his notice of appeal as well as oral testimony was not considered by the City Commission as part of this decision.

At a public hearing held on October 11, 2022, the City Commission took additional testimony from all parties with standing. Under OCMC 17.50.290(C), the City Commission's review was on the record and the issues for consideration were limited to those listed in the notices of appeal. All parties with standing, those who participated in the Planning Commission proceedings, were allowed to be heard. On October 17, 2022, after considering all of the evidence in the record, the City Commission voted 4-1 to tentatively uphold the appeals and deny the applications. On October 21, 2022, the City voted _____ to adopt this Decision including written findings. This Notice of Decision shall serve as the City's final decision on this matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before turning to the merits of the appeals, the Commission must first deal with several procedural issues, including those raised both by the Appellants and the Applicant.

Procedural Issues Raised by Applicant

The Applicant moved to dismiss the various appeals because of the fee waiver adopted by the Commission and one of the Appellants.

Regarding the appeal filed by the Park Place Neighborhood Association ("PPNA"), OCMC 17.50.290(C) specifically states that no appeal fee will be charged for a city recognized neighborhood association "so long as the appeal has been officially approved by the general membership or board of the neighborhood association at a duly announced meeting." The Applicant argues that, in this case, PPNA's meeting was not "duly announced," because notice of the meeting was sent 5 days prior to the

meeting, rather than the 7 days required by the bylaws, and attaches a copy of the bylaws to their letter to the Commission. However, as also evidenced by the PPNA's bylaws, the PPNA holds a regular monthly meeting every third Monday of the month and, because those dates are announced far in advance, the meeting was, in fact, duly announced and the neighborhood association's appeal was valid. The Applicant goes on to argue that the Commission failed to or improperly considered the "fairness to the applicant." However, that consideration only applies to discretionary fee waiver requests, not the automatic fee waiver given to neighborhood associations. Because the Commission finds that the PPNA's appeal was approved by the neighborhood association's general membership or board at a duly announced meeting, the Applicant's motion to dismiss the PPNA's decision is denied.

Regarding the other appeals, OCMC 17.50.290(C) provides that the Commission may waive appeal fees if the Commission finds that "considering fairness to the applicant and to opposing parties, a full or partial waiver of the appeal fee is warranted." The Applicant argues that the Commission failed to or improperly weighed the fairness to the parties and, moreover, that this requirement is not "clear and objective," and so cannot be applied to this application for housing. There are several reasons to conclude that the fee waiver was fair to the applicant and opposing parties, perhaps most prominently because the neighborhood association did not have to pay a fee and, therefore, the Applicant would be involved in the appeal regardless of whether the fee waiver was granted or not. Moreover, as discussed further below, the controversy surrounding the Planning Commission's final decision prompted the Commission to waive the fee to ensure all parties believed that they were fairly heard. As LUBA has held in other circumstances, due process and fairness relates to the ability to have a full and fair opportunity to present its case, not to avoid issues.

Procedural Issues Raised by Appellants

Planning Commission Decision

A number of appellants raised concerns over the way in the which the final vote occurred before the Planning Commission on September 12. The September 12 meeting began with only six of the seven members of the Planning Commission present – ~~four~~ five in the Council chambers, and ~~two~~ one present electronically. Before beginning their consideration of the proposed findings, the Planning Commission disclosed any ex parte contacts and then began discussing an issue that had not been discussed previously, namely, whether a particular clause in the prefatory portion of Ordinance No. 07-1007 required some further action before action could be taken. After a short discussion, one member of the Planning Commission present in the chamber moved to approve the findings, and that motion was seconded. A vote was held and the result was a tie vote at 3-3. The Planning Commission turned to the City Attorney to ask what should occur with a tie vote. The City Attorney provided several options, including the possibility of locating the seventh member and having that member participate in the vote. Subsequently, a member of the audience who was not participating in this matter called the missing Planning Commission member and provided his phone to the Community Development Director. The motion to approve was made again and it was approved 4-3.

Several appellants have raised various issues related to the Planning Commission's meeting and how the vote occurred, including that the Planning Commission was not presented all available options, that the seventh commissioner was called by someone who had a bias, that the seventh commissioner was not informed regarding the issues before the Commission, that the seventh commissioner did not disclose any ex parte contacts, that the vote was a "nullity" because no one on the prevailing side of the previous vote moved to reconsider, and various other procedural concerns.

As an initial matter, it is important to note that, while several of the appeal issues raise the specter of improper actions by the seventh commissioner, there is no allegation of actual improper conduct. In other words, there is no allegation that the person on the phone was not the actual seventh commissioner, only that the Commission could not be certain. Similarly, there is no allegation that there were ex parte contacts, only that there could have been, nor do any of the appeals explain how it was improper for the commissioner to use one particular phone instead of a different phone.

For whatever reason, the seventh commissioner was not present when the Planning Commission meeting began, but joined the meeting later. There is nothing improper about the late arrival at the meeting and there was no reason for either planning staff or the planning commission to prevent his participation in the meeting. The City acts through its elected and appointed representatives on various boards and commissions; to the extent a member of one of those commissions is present, they are entitled to participate in the decisions of those boards (barring other disqualifying attributes).

Turning to the procedure used by the Planning Commission, the appeal filed by Mr. Nicita correctly points that under the Commission's rules of procedure and Robert's Rules, only a member of the Commission who voted with the prevailing side on a motion can seek reconsideration of the motion. However, the fact that the motion was made by someone who was not on the prevailing side did not make the vote "illegal" or otherwise render it a nullity. As noted in section 23 of Robert's Rules, if a breach of the rules occurs, a member may raise a point of order, but the point of order must be raised in a timely fashion. Because no member raised a point of order, the vote was taken and the result announced, making it a final decision. In short, while the Planning Commission's decision was procedurally flawed, it was not a nullity, nor was it illegal.

Moving beyond the merits of those challenges for a moment, review of this matter on appeal by the City Commission offers a *de novo* (or new) opportunity to interpret the applicable approval criteria and make a decision based ~~on~~ solely on the issues in the notices of appeal and the City Commission's evaluation of volumes of evidence collected over a 4-month period. The Commission owes no deference to any of the Planning Commission's interpretations or weight given to any of the evidence. As a result, allowing all parties with standing an opportunity to appeal raising their concerns, coupled with unrestricted review of the record by the City Commissioners will cure any prejudice due to a planning commissioner's allegedly improper participation in or vote taken during the planning commission proceedings. *See Murphy v. City of Ashland*, 19 Or LUBA 182, 189 n 7 (1990). Accordingly, whatever occurred at the Planning Commission does not affect the City Commission's review of the decision.

Procedural Issues that are Not Party-Specific

As required by OCMC 17.50.190(F), review of appeals by the City Commission is limited by two factors. First, all issues for City Commission consideration must have been raised in a notice of appeal. Second, the City Commission cannot consider new evidence. The City Commission received testimony, both written and oral, that exceeded these limitations and for that reason, it was not considered. The list of issues not considered includes:

- Various master plan criteria are not "clear and objective" and therefore, do not apply to this application for "needed housing" under ORS 197.303(4).
- Bias challenge against Planning Commissioners ~~Daphne~~ Daphne Wuest and Mike Mitchell

- Impropriety of conversations between the applicant and staff relating to changes to the Geologic Hazards Code
- Lack of transit-focused roadway design
- Adverse impacts caused by the Serres development or its inclusion as a Street of Dreams
- Including open space as required parkland
- Failure to address Statewide Goal 13 or ORS 105.465 as it relates to steep slope hazards
- Traffic congestion at Anchor Way and bottlenecks at I-205 / 213
- Concern that the Holcomb Market will run out of food

Since these issues were neither raised in either a notice of appeal nor raised in the record created by the Planning Commission, the City Commission finds that they cannot be considered on appeal.

Appellant Nicita raised another procedural objection relating to the City Commission's consideration of an issue matrix that was provided by the City Commission after the public hearing record had closed. Mr. Nicita argued that considering these materials prejudiced his rights to present and rebut evidence, for an impartial tribunal and to a full and fair hearing. The City Commission finds that the matrix is nothing more than a reference document that organizes evidence already in the record. It does not include any new evidence. The City Commissioners indicated that they reviewed the record materials and would exercise their own independent judgment to evaluate this case.

Response to the Substance of the Appeals

Master plan approval in Oregon City is a two-step process. First, an applicant must secure a General Development Plan (GDP) approval identifying "the long-term buildout" proposal for the site including proposed land uses, densities and infrastructure necessary to serve those uses. Oregon City Municipal Code (OCMC) 17.65464.040.B. Once a GDP is in place, an applicant must obtain a Detailed Development Plan (DDP) approval to ensure that development complies with the approved GDP. OCMC 17.65464.040.C. There are nine applicable approval criteria for granting a GDP but this denial focuses primarily on two of them. OCMC 17.65.050(C)(6) and (7) provide:

"The proposed general development plan is consistent with the Oregon City Comprehensive Plan.

The proposed general development plan is consistent with the underlying zoning district(s) and any applicable overlay zone or concept plans."

The PPCP has been adopted as an ancillary document to the City's Comprehensive Plan. Therefore, approval of the GDP required finding consistency with the PPCP which, in turn, serves to achieve compliance with the Comprehensive Plan. As noted above, finding "consistency" does not mean "identical." It does not require that all development follow the PPCP map exactly with respect to uses, densities or road locations. However, it does require that all development respond to and further the "key priorities" and design principles either as prescribed or in some other way that indicates that it will achieve the overall PPCP objectives. For the reasons discussed in greater detail below, the proposal fails to present a development proposal that will achieve PPCP consistency.

Need for a North -South Transportation Connection

The PPCP sets forth a number of transportation-related design objectives including, in relevant part:

- “Streets sized to handle future growth
- Provide safe environment for all modes of travel
- Connectivity within and outside study area
- Minimize increases in impervious surfaces
- Minimize adverse impacts on existing properties” p 5-6.

Within each of these headings, the City Commission identified a number of elements that were critical to its finding that the proposed GDP was inadequate with respect to traffic. Without quoting the explanation that follows each of these objectives in full, the Commission highlighted the following critical support for the analysis that follows:

“A network of local, collector, and arterial street provide the area with *sufficient capacity and connectivity to meet anticipate travel demands, well into the future*. ... Holly Lane and Swan Avenue, designed as Collectors, will both be extended and improved to provide pedestrian, bicycle, and auto/transit facilities from Holcomb Boulevard to south of Donovan Road.”

“*Safe travel by each mode of travel is inherent in the design and layout of the Plan’s transportation system.*”

“*The network of streets is designed to easily disperse vehicular traffic, readily accommodate transit, and fully integrate pedestrian and bicycle travel.*”

“The Park Place Concept Plan incorporates *a well-connected transportation system with two primary north/south travel routes (‘Holly and Swan corridors’ providing connectivity both within and outside of the planning area.*”

“*Transportation network redundancy, interconnected streets, and an emphasis on pedestrian, bicycle, and transit amenities work together to manage the need for impervious surfaces.*”

“Minimize adverse impacts on existing properties: *To the greatest extent possible, the Park Place Concept Plan minimizes impacts to existing properties.* Strategies to do so include:

- *Providing a parallel collector route to Holly to reduce impacts on properties along that street.*
- *Designing streets and intersections in the context of the land uses they serve.*
- *Considering development parameters, such as parcel size and access locations, while laying out the transportation network.*
- *Providing design flexibility in roadway alignments, while diligently preserving safety and capacity for all travel modes.*” (Emphasis added) pp 5-6.

Taken together, all of these objectives require that all development within the area subject to the Park Place Concept Plan be supported by a transportation network that is connected, redundant, safe, and minimizes impacts to existing properties to the “greatest degree possible.”

Based on the foregoing, the City Commission finds that one of the most fundamental design requirements to achieving a connected, redundant, safe and impact minimizing transportation scheme is

through north-south connectivity. ~~€This~~^{this} concept is reinforced multiple times throughout the Plan but stated most clearly and directly in the following “key component”:

- “Two primary north-south connections between Holcomb Boulevard and Redland Road (Swan Avenue and Holly Lane)” p 1, 21.

Elsewhere, the PPCP provides additional rationale for requiring both north and south connections where it states:

“The Swan Avenue extension will include bridges across the Livesay Creek canyon and Abernethy Creek, creating much needed connections between adjacent neighborhoods and providing adequate capacity and system redundancy critically needed during times of emergency. In addition, Holly Lane would be extended north from Redland Road to connect with Holcomb Boulevard, *providing good access, connectivity and system redundancy to the area.*” (emphasis added). P 33

The Commission finds that the Holly Lane extension clearly and unambiguously requires a connection to the north through Holcomb Blvd as well as to the south via Redland Road concurrent with development, where the traffic generated from a proposed development gives rise to safety concerns and adverse livability impacts. The Commission finds that the Appellants provided clear and convincing evidence that the resulting traffic generation would give rise to safety concerns, particularly in the case of an emergency, such as wildfire ~~evaaculation~~^{evacuation}, and compromise overall livability. Further, this clear expression of intent to require a north-south connection sets the baseline for how the Commission interprets the connectivity and redundancy obligations, in general, in cases where constitutional limitations may preclude imposing such an obligation onto a smaller scale development.

The proposed GDP proposes to direct cars from the first three phases of new development through discrete singular points of access. The first two phases of development or 209 homes will have a singular road access along Street A to Holcomb Blvd.¹ The 59 additional units proposed for Phase 3 will be directed through the existing Trailview neighborhood to a singular point, Winston Drive, and again, onto Holcomb Blvd. The City Commission notes that there are approximately 80 Trailview neighborhood homes that front on a local street that will be affected by the traffic generated by 59 homes within Phase 3, very nearly doubling the amount of traffic directed through three local streets before joining with Winston Drive. Providing 268 units with only a single point of access to a collector / arterial access point does not provide a “network” of streets that are connected, redundant or safe. The City Commission was moved by the testimony that identified safety concerns created by a single point of access including wildfire or other emergency to endangering children playing within the Trailview neighborhood or will likely reside in the proposed development along Street A.

Rather than provide some assurance that a connection to Holcomb Blvd as well as a connection to Redland Road, to be provided by either the Applicant or the City, would be available to serve this development immediately, the Planning Commission found that such a connection need not be provided until the number of trips passing through Trailview neighborhood exceeded 2,000 average daily traffic (ADT). The Applicant projected that this threshold would be exceeded during the development of Phases 4-6. More specifically, the Planning Commission’s findings explain:

¹ The City Commission acknowledges that this limited access condition would change with the provision of the Holly-to-Redland connection proposed at some time during Phases 4 through 6 but there is no guarantee that these subsequent phases will occur, meaning that this constrained access condition may be permanent.

“For comparison purposes, Average Daily traffic (ADT) on other local city streets based on 2021 volume studies are as follows:

- 16th St – West of Division ADT: 517 trips
- Front Street (in Park Place) near Forsyth ADT: 449 trips
- Apperson north of Holcomb ADT: 692 trips

According to Metro’s 2018 ~~Regional~~~~Reginal~~ Transportation Plan, ‘local streets primarily provide direct access to adjacent land uses, and usually between 200-2,000 vehicles per day, with volumes varying by jurisdiction.’ The City does not have an adopted standard for traffic volume on local streets. However, a street with 2,000 or more trips per day will feel, to the adjacent resident, more like a collector street. The level of traffic would have noise impacts as well as effects on the ability of children to play in or near the street. Local streets in Park Place are generally quiet and conducive to activities like ~~walking~~~~waking~~, bicycle, sports, and other non-automotive uses. With the traffic levels at 2,000 trips per day or more, the livability of the neighborhood and enjoyment of these activities, as well as overall safety would be significantly affected.” Planning Commission decision pp 71-72.

Based on the evidence relating to comparative street volumes, the City Commission finds that the 2,000 ADT threshold is at the extreme end of the spectrum of what is desirable for a local street ~~can accommodate~~. It agrees with the Planning Commission that traffic levels at 2,000 trips per day would adversely affect the livability of neighborhood and would adversely affect the overall safety of the area. As the Appellant Linda Smith pointed out, allowing this condition would allow the transportation system to exceed capacity or to be “broken,” before requiring any fix.

During the course of the Planning Commission proceedings, the Applicant revised its proposal reducing the number of dwelling units and identifying a plan to prevent the number of pass-thru trips into the ~~Trailview~~~~Trails End~~ neighborhood. Under this plan, Phases 1 and 2 of the development would take access solely through Street A onto Holcomb Blvd. Although this proposal would reduce the number of trips passing through the existing neighborhood, it exacerbates the Commission’s concern that these Phase 1 and 2 lots would have a singular access through Street A to Holcomb Blvd, eliminating any redundancy that the Commission finds is necessary to satisfy PPCP requirements. The City Commission finds the testimony from Appellant Hammond-Williams persuasive where she notes that confining entry and exit into the development solely to Holcomb Blvd does not result in a “well-connected transportation system” but rather creates a singular point of evacuation that “could prove catastrophic for residents.”

With the addition of Phase 3, future residents would have access to Holcomb Blvd via Trailview subdivision and would use Winston Drive. The Applicant calculated that the addition of 59 additional dwelling units in Phase 3 would add 620 ADT plus the existing 878 from Trails End for a total of 1498 ADT. Although this total is less than the 2,000 trip threshold triggering the need for the additional north / south connection, the City Commission finds that 1498 ADT for Phase 3 alone still far exceeds the ADT on other comparable local streets throughout the City. 1498 ADT is twice or three times the number of cars that one would find on these other comparable local city streets. In fact, using the other streets as comparisons, the ADT on Winston Drive already is at the high end of the ADT spectrum at 878 trips for existing Trailview users. The Commission finds that ~~This suggests that Winston Drive has very little, if any, additional capacity, to accommodate additional traffic and finds that doing so will without creating safety concerns and impacts to the livability to the neighborhood.~~

In response to claims that the Holly Lane extension should occur immediately, the Applicant argued that such an extension was not possible as it did not own or control all of the lands extending from Livesay Road to Redland Road and therefore, could not be required to make the connection. This approach fails to acknowledge what Appellant Nicita pointed out - the City has the power to condemn and construct roads outside of the city boundaries under ORS 223.930. Further, this improvement is identified within the City's Transportation System Plan for funding. As a result, methods that might allow a property owner, including the Applicant here, the opportunity to provide necessary connections even without owning the necessary property might include negotiating a development agreement, local improvement district, or some other shared cost arrangement. Before any development occurs in the future, the City Commission urges applicants, including this one, to work with the City, to ensure that a north-south connection, either the Holly Lane or Swan Lane extension, exist to provide connectivity and redundancy at the level identified in the PPCP.

Finally, the City Commission finds that a condition of approval requiring the extension of Holly Lane earlier in the development process is not appropriate due to the scale of the overall proposal coupled with the lack of information about how such a change would impact the remaining project components and to what degree such a revision would lessen the impacts on the surrounding neighborhood. As such, without the benefit of seeing a revised plan achieving compliance, imposing conditions of approval would be ill-advised.

In summary, the PPCP provides clear instruction that a north-south connection is essential to achieving the requisite connectivity, redundancy and livability protection for future development required by the PPCP. As such, the City Commission concludes that the applicant's failure to provide such connections early enough in the development process to respond to the compelling safety and livability concerns identified by the Appellants requires a finding that this PPCP is not satisfied.

The Need for Neighborhood Commercial

Another of the primary objectives identified within the PPCP relates to the importance of commercial, retail and civic space. More specifically:

“We value having the civic and retail services that provide for the community's basic day-to-day needs located within the community.” P 8

The “key policy” implementing this vision provides:

“Neighborhood-oriented commercial nodes that integrate commercial land uses, residential land uses, and public open spaces.” P 1, 21.

To implement this vision, the PPCP organizes land uses within a “village” concept:

The Park Place Concept Plan proposes a mix of residential, commercial, park and open space, and civic land uses. Redland Road serves as the logical division between two neighborhoods: North Village and South Village. *Neighborhood-oriented nodes serve as the heart of these new neighborhoods and provide a variety of civic and commercial spaces.* These nodes are centrally located in the neighborhoods along existing and future roadways and are surrounded by medium density residential land uses that transition to lower-density residential land uses. P 24.

Taken together, these provisions call for the provision of a vibrant, retail / civic core that is essential to support the surrounding residential neighborhood. These areas are to be “integrated” and serve as the “heart of the community”. P 23. Yet, the City Commission finds that this GDP does not include the provision of commercial uses in any one of its proposed development phases. Developing 426 new residential units will create a demand for commercial and civic uses that could go unmet, demanding that future residents incur additional vehicle trips to get day-to-day supplies. This, in turn, places pressure on these single vehicle access points that was not envisioned in this type of complete community. Further, the City Commission interprets the obligation for “integration” of uses to refer not just the location of various use types but also with respect to the timing for commercial development as necessary to result in a complete community. What the Applicant has proposed is a large-scale residential subdivision and not a complete community.

Further, the Applicant failed to propose any restrictions on development in this area that would require the development of commercial / retail or civic uses. Permitted uses in the Neighborhood Commercial Zone include parks as well as public utilities and as such, it is possible that these areas could be developed for uses that are not contemplated within the PPCP. Appellant Nicita points out that some of the PPCP identified retail area is encumbered by the neighborhood park and townhome residences, making the loss of mixed-use retail space a reality. Such a result would be inconsistent with the PPCP policies.

Moving beyond the timing for the provision of resident-supportive commercial, there was another issue raised by Appellant Nicita relating to the overall commercial design. Again, the PPCP is fairly specific about what kind of development it envisions within the retail / commercial core. It states:

The land uses along Livesay Main Street are envisioned to be a *mix of residential and commercial uses (e.g., ground-floor, neighborhood-oriented commercial with housing or offices above)*. The buildings should convey a rich palette of architectural elements that distinguish the Village from the existing auto-oriented commercial uses and a proposed regional shopping center in the area bounded by Washington Street, Abernethy, and Highway 213. The types of elements incorporated into the design of the street facing façade should include large storefront windows, recessed entry ways, awnings and canopies, building lighting, and a rhythm of columns and/or pilasters that break the façade into smaller, more intimate modules. P 25

Acknowledging that the City does have design guidelines in place that would require that all new commercial development be oriented to and within 5 feet of the street, include 60% transparency, canopies or awnings and lighting, what they do not require is two-story structures with commercial ground floors and residential or office above. The failure to include these elements would again, result in a development that is not consistent with the PPCP.

Although staff did identify a condition of approval requiring two-story development and that condition could have been amended to require mixed use development, the City Commission rejected the invitation to do so lacking any reasonable basis upon which to conclude it was feasible and likely to occur. Requiring the development of some level of commercial property concurrent with the development of the residential property, given the order of the proposed residential development phases, would be too speculative. For these reasons, the City Commission concludes the proposed GDP must be denied.

Lack of Green Buffers

The PPCP calls for: “The use of green edges to define neighborhoods and buffer developments.” P 1, 21. One of the “design principles” that is to “shape the various elements of the Final Concept Plan,” and, the Commission finds is necessary for new development to be consistent with it, is to:

Utilize existing green edges to define neighborhoods. Providing “green edges” or buffers between development provides opportunities for better neighborhood connectivity, wildlife habitat preservation, a more rural, park-like environment, and greater privacy.” P 23.

The City Commission interprets this provision to require more than the preservation of otherwise regulated natural resource area tracts, as this GDP proposal provides. An adequate “green buffer” is not simply a row of street trees separating new lots from existing development. Rather, the PPCP contemplates the incorporation of green buffers as a discrete and intentionally designed element that provides definition to neighborhoods, creating a “rural, park-like environment” and that enhances “privacy.” The GDP does not include adequate “green buffers” particularly with respect to the east and south sides of the proposed Phase 1 development.

Lack of Innovative, Tiered Approach to Stormwater Treatment

Another critical objective for development within Park Place is that it must be “sustainable” and, as such, requires the implementation of “innovative, green on-site stormwater treatment methods.” P 1 and 21. “By treating or detaining stormwater on site, there is less need for costly infrastructure,” p 23. On pp 51-54, the PPCP goes to some lengths describing the required stormwater approach attempting to capture “the natural hydrology of the site to the extent practicable.” To accomplish this, the Plan calls for a three-tiered approach focusing on the site, the street and the neighborhood, as summarized in relevant part:

Tier 1 – Site Specific Stormwater Management Facilities (Site) requires the development of “site specific (or on-site) low-impact stormwater facilities to manage stormwater on-site to the extent practicable,” and offers examples of impervious area reduction as well as innovative management or infiltration options.

Tier 2 – Green Streets Stormwater Management Facilities (Street) addresses water degradation resulting from streets through the use of Green Streets. “Green Streets are streets that integrate the management of stormwater into the street design itself to provide a stormwater management benefit as well as an urban design element...”

Tier 3 – Regional Stormwater Management Facilities (Neighborhood) includes regional stormwater management facilities designed to accommodate flows that “that may be passed through Tier 1 and Tier 2 facilities.” These facilities “should take on a more naturalistic form such as a wetland pond.” Pp 51-54.

Achieving consistency with the PPCP with respect to stormwater requires evidence that the proposal will include all of the elements identified in this tiered hierarchy of treatment. There is no indication of how this proposal would address the Tier 1 infiltration obligations with respect to on-site stormwater treatment, as Appellant Nicita pointed out. The Applicant’s response was that site topography required regional treatment. In other words, it appears that the Applicant’s position is that on-site treatment was not “practicable.” The City Commission does not understand this response when the Tier 1 identified options include “porous pavement and ecoroofs,” which could be included as part of the development

and would likely reduce the amount of runoff. Identifying on-site treatment approaches that would serve this development was required in order to find that this GDP was consistent with the PPCP sustainability and innovative obligations and could not be deferred until DDP approval, particularly given that the Applicant steadfastly argued that these approaches could not be done.

With respect to streets or Tier 2, the Applicant proposes the use of roadside planters ~~are proposed~~ for stormwater management. Although all stormwater facilities will be designed for management, detention, and treatment of stormwater to remove sediment and other pollutants in compliance with the stormwater standards, there was no indication of how these drains would be integrated into the street design so as to create green streets.

With Tier 3, the PPCP does authorize the use of regional drainage, but only to the degree that all flows cannot be accommodated under Tiers 1 and 2 and in a naturalistic form. Condition 59 to the Planning Commission's decision identified a wetland-style detention facility as an option to mitigate for the density variances / adjustments. Although this is the right idea for achieving a natural-looking amenities, such a design is a mandatory component of the Tier 3 treatment obligations under the PPCP. The Applicant failed to provide a regional stormwater facility that was sized and designed to comply with these requirements.

In conclusion, the City Commission finds that this GDP proposal failed to incorporate "innovative, green on-site stormwater treatment methods" and for this reason, does not comply with the PPCP.

Avoidance of Steep Slopes

Another "key component" for development within PPCP requires "protected sensitive areas, including drainages and steep slopes." This protection is achieved by, among other things, ~~the requirement required~~ that "areas with slopes of 25% or more as open space... will remain undeveloped." [CITE?] Further, the Geologic Hazard Overlay obligations set forth in OCMC 17.44.060(A) provides: "All developments shall be designed to avoid unnecessary disturbance of natural topography, vegetation and soils.""

The City's mapping identify a number of slopes over 25% dotting through the middle of the GDP plan area. Yet, these sloped areas are entirely removed on the plan showing the development (before revision) with the steep slopes. Before the Planning Commission, the Applicant presented a geologic report indicating that these slopes were isolated and could be graded and safely developed. The City Commission finds that this is not responsive to the obligation to not develop on slopes over 25%. For this reason, the Commission cannot find that this GDP is consistent with the PPCP requirements.

Variation in Lot Dimension and Density Required a PPCP Amendment

Of the 92 acres proposed for development, 1.5 acres of this area ~~are is~~ zoned R-10, with a maximum density of 4.4 units per acre and a minimum density of 3.5 units per acre. Approximately 44 acres is ~~available to accommodate homes and is~~ zoned R-5 ~~with a~~. The maximum and minimum density for this area that varies depending on whether the proposal is for attached or detached residential but it is between 7 and 12 units per acre. The overall development density proposed would be 9.2 units per acre, but including the Natural Resource Overlay District density transfer authorized in OCMC 17.44, the proposed density is 10.1 units per acre. This is within the maximum and minimum density thresholds authorized by the underlying zone but it does not tell the whole story.

In addition to overall unit density, residential lots must be sized to meet minimum lot dimension standards. In the R-10 zone, that minimum lot size is 10,000 square feet. In the R-5 zone, that minimum is 5,000 square feet for detached structures and 3,500 for attached structures. Rather than relying on lot averaging as would apply to a subdivision request, the master plan review allows for adjustment of the minimum lot size for lots not abutting other development by up to 20% upon satisfying the lot adjustment criteria set forth in OCMC 17.65.070(E). OCMC 17.65.070(C)(1). The Applicant sought to adjust the size of all of the qualifying lots, in addition to taking advantage of the NROD density transfer authorizations. In addition to these adjustments, the Applicant sought to further reduce the minimum lot size for about ¼ of the lots (139 lots) to 1,800 square feet, or about one-half the otherwise required lot size. In order to accomplish this, the Applicant sought a variance as allowed under OCMC 17.60. The Applicant responded to the applicable variance criteria by explaining that compliance with the minimum lot dimension requirements with attached structures would result in excessively long lots. The Planning Commission supported this approach out of concern that not granting the adjustment / variance requests would result in this development not meeting its share of the units needed to satisfy the Concept Plan.

The City Commission rejects the notion that development with such significant adjustment / variance requests was necessary to achieve the PPCP density goals. ~~There are a wide variety of~~Other options that could have made up for the shortfall. ~~Some of those options~~ include: (1) a zone change, as contemplated in Ord 07-1010 with notice to all affected owners, (2) middle housing; (3) the inclusion of mixed use or multifamily development within the NC area, within the subject GDP area, or with the MUC zoned areas further to the east.

One of the criteria relevant for granting an adjustment OCMC 17.65.070(E)(2) provides:

“(2) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zone;”

The purpose of the PPCP, as described throughout these findings, is to achieve a certain quality and character of development. These objectives are ~~further~~ undermined by lot sizes that depart so significantly from what the zoning code requires. ~~This GDP proposal includes no lots that are R-10 in size and although it is difficult to tell exactly, the~~The Commission estimates that about half of the R-5 zoned lots where single family residences are proposed are ~~undersized~~below the minimum lot size.

Further, one of the PPCP design principles requires that development:

“Create a mix of housing types that include ranges of affordability. One way to provide neighborhood diversity is to enable the development of a variety of housing types and sizes. This also allows people to stay in the neighborhood for long period of time as they transition through the various stages of life.” P 23.

The City Commission finds that the proposed lot size reductions are clumped together such that ~~most~~all of the townhomes ~~— all~~ 121 of them – are bunched together in the center of this development and all of the larger lot single family residential is located on the edges. Although this approach with respect to the larger single family lots might make sense in order to offset impacts to the surrounding developments, the fairly uniform lot sizes all grouped together reads as a cookie-cutter design and does not provide the requisite degree of “mix” in housing types, sizes and their arrangement as called out in the PPCP.

CONCLUSION

For these reasons, the City Commission concludes that this GDP proposal fails to show that it is consistent with the Park Place Concept Plan as required by OCMC 17.65.050(C)(6) and (7) and therefore, these applications are denied.