



City of Oregon City

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Oregon City, OR 97045
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Meeting Minutes

City Commission

Dan Holladay, Mayor
Brian Shaw, Commission President
Nancy Ide, Frank O'Donnell, Renate Mengelberg

Wednesday, October 18, 2017

7:00 PM

Commission Chambers

REVISED

1. Convene Regular Meeting and Roll Call

Mayor Holladay called the meeting to order at 7:15 PM.

Present: 5 - Commissioner Brian Shaw, Mayor Dan Holladay, Commissioner Nancy Ide, Commissioner Renate Mengelberg and Commissioner Frank O'Donnell

Staffers: 10 - City Manager Tony Konkol, Assistant City Attorney Carrie Richter, City Recorder Kattie Riggs, James Band, Community Services Director Phil Lewis, Community Development Director Laura Terway, Christina Robertson-Gardiner, Library Director Maureen Cole, Finance Director Wyatt Parno and Human Resources Director Jim Loeffler

2. Flag Salute

3. Ceremonies, Proclamations

3a. Willamette Falls Media Center Presentation

Melody Ashford, Willamette Falls Media Center (WFMC) Executive Director, and Sherry Morisch, Friends of WFMC Board Member, gave a presentation on the WFMC. They managed the community Public, Education, and Government (PEG) Access channels, provided media education, on-site mobile production, professional videography equipment and studio spaces, and LIVE podcast and streaming. They worked with non-profits on media training and workshops and with schools on internships and vocational training. They described what the WFMC had done this year in the community and the focus for the coming year. They would continue to work with non-profits and would do some facility improvements.

Commissioner Ide asked how they advertised the services they offered to the community. Ms. Ashford said Ms. Marsh was handling the social media, explained where else they advertised, and they were developing a monthly newsletter.

Commissioner Ide asked what their greatest need was. Ms. Ashford answered they needed to improve their marketing.

4. Citizen Comments

William Gifford, resident of Oregon City, said WFMC also videotaped the meetings of the Oregon City Business Alliance. Next Tuesday the Alliance would be meeting and

the guest speaker would be from Willamette Falls Hospital to discuss the hospital expansion.

5. Adoption of the Agenda

The agenda was adopted as presented.

6. Public Hearings

6a. Request for Continuance: AP 17-04: Appeal of the Historic Review Board's August 22, 2017 Approval with Conditions of MD 17-01, MD 17-02, MD 17-03, MD 17-04, MD 17-05, and MD 17-06: Historic Review for the Designs of Six (6) Cottage Style Homes in the Canemah Historic District

Laura Terway, Community Development Director, said the City received a request from the applicant to continue the hearing to November 15, 2017. The 120-day rule was extended.

Mayor Holladay opened the public hearing.

There was no public testimony.

A motion was made by Commissioner Shaw, seconded by Commissioner Mengelberg, to continue the hearing for AP 17-04 to November 15, 2017. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Mayor Dan Holladay, Commissioner Nancy Ide, Commissioner Renate Mengelberg and Commissioner Frank O'Donnell

6b. Parker Knoll Subdivision: TP 17-02. Eleven Lot Subdivision at Leland Road and Reddaway Avenue Including Utilization of an Existing Easement in Wesley Lynn Park

Mayor Holladay opened the public hearing.

Carrie Richter, City Attorney, read the hearing statement. She asked if any Commissioner had any ex parte contacts, conflicts of interest, bias, or any other statements to declare including a visit to the site.

All members of the Commission had visited the site.

Ms. Terway presented the staff report. This was a request for a subdivision adjacent to and including portions of Wesley Lynn Park. There were concerns related to the Charter and the Commission gave direction to hold a public hearing on the matter. Part of the application included use of the park, which was City owned property. The applicant had an easement on the property and planned to utilize it for a 12-foot road, stormwater facility, pathway, and turn around. Staff had recommended revised conditions of approval for the subdivision application. Staff did not provide a recommendation on the Charter issue.

Ms. Richter said the Charter set some limitations on activities that may occur in Charter parks, including Wesley Lynn Park. The applicant proposed to create a 12-foot portion of the access road along with a bump out area with a knuckle that would turn

the road to the south, a swale that would remove water from the roadway, and a pedestrian pathway in the easement area. When the City acquired this property in 2002, it was subject to a 50-foot easement that was created in 1962 allowing the applicant's property to use this area for roadway purposes. This was the third time the City's residents had the opportunity to weigh in on this proposal. It had been voted down twice. She explained the differences between the previous requests and the current proposal. She then explained Chapter X, Section 41 of the Charter that stated the Commission shall not vacate or otherwise change the legal status of any park or construct permanent buildings or structures on any park other than for recreational purposes and park maintenance without obtaining approval by the voters of the City.

Mayor Holladay wanted to know when this chapter of the Charter was adopted. Kattie Riggs, City Recorder, would find out.

Ms. Richter said regarding the legal status of this area of the park, it was owned by the City and was subject to a roadway easement allowing for use by the neighboring property owner and its invitees. When the City acquired the property it was subject to the roadway easement. She did not think the proposal changed the legal status. The easement predated the park and the public's use of this area had always been limited. The proposed easement area would remain entirely within City ownership for park purposes subject to the applicant's use. The City would maintain the road. Regarding constructing permanent structures, the question to think about was did this limitation apply in cases where all construction was completed by a private property owner rather than the City. She discussed the definition of structures and that the applicant did not think the definition included a roadway or swale because they were not vertically organized construction or were erected. It was up to the Commission to determine the most appropriate definition of structures that should guide the interpretation of the Charter. Regarding recreation purpose, there would be a pedestrian pathway that would serve a recreational purpose. The question for the Commission was if each structure had to serve a recreational purpose independently or could there be an overall recreational benefit from the project. She reviewed the next steps and decision options.

Mike Robinson, representing the applicant, passed out a letter to be entered into the record. They had reviewed the revised conditions of approval and agreed with them. They thought they met the approval criteria. They were not subdividing the park. The property proposed to be subdivided was owned by the applicant. The easement was on City property and the only thing planned was to construct a road, swale, and sidewalk. They were not proposing to dedicate the street to the public. They planned to build a private road in the 50-foot wide easement. There might be some question whether this easement was correctly shown on the City map, and they had asked a survey company to compare the legal descriptions to the maps in the record. The letter he passed out dated October 18, 2017, was from the survey company who concluded the easement description was accurate based on the legal description of the recorded document in the County records. The easement was recorded in 1962 and gave the applicant the right to use the 50-foot width for roadway purposes. It was a non-exclusive easement and even though it was a private roadway, it was open to public use. When the City purchased the property in 2002, the title was subject to the easement. The Commission needed to find two things in order to determine a vote was not required. The first was the application proposed did not change the legal status and the second was the applicant was not constructing permanent buildings or structures. The legal status of the property was it had a 50-foot easement for roadway purposes. The road, swale, and sidewalk were not structures. The City's Title 17 defined structures and roadways separately which showed the City treated streets and structures differently.

There was a general definition in the Code that included public streets, but it did not exclude what was being proposed because the street would be open to the public. There was some testimony that suggested a road was a structure. The testimony cited a definition from a Measure 5 statute that did not have anything to do with the definition of structure or road, but had to do with tax assessment. There were also definitions from the Oregon Residential Specialty Code and Oregon Structural Specialty Code which was about governing buildings, not about roads. The testimony also referred to an International Zoning Code which he did not think was relevant. The Commission decided how the term was defined and the applicant was asking that it be applied reasonably. A road subject to an easement was not a structure and it did not change the legal status of the park. This application did not require a vote of the people. The two proposals that went to the voters were very different from what was being proposed tonight. He requested approval of the subdivision application and find that a vote was not required under the Charter.

Mark Handris, resident of West Linn and owner of Icon Construction, was the applicant. He said half of the street was being built on his property including a sidewalk, planter strip, and curb. He would only be using 12-feet of the 50-foot easement. All of the utilities would be put in on his property. The swale proposed only served the 12-foot section.

Commissioner O'Donnell asked why this could not be built entirely on the applicant's property. Mr. Handris said his half street lined up directly with the opposing intersection and it was where the road must go. The intersection could not be off-set.

Ms. Terway said intersections were only allowed to be off-set a little bit, but not too much because it became a hazard.

Mr. Robinson said there was an existing house and the only way to off-set the road would be to bring it south and butt up against the existing house. They had to line it up with the other road or it was very difficult to run a road to the property.

William Gifford and Roy Harris, representing the Hillendale Neighborhood Association, said the Neighborhood Association had several discussions regarding this application. Mr. Gifford said the Association found there was a significant difference between this proposal and the two previous proposals on the ballot and this proposal should not be considered as an avoidance of the vote. This was not park land that was being developed. It was private property and would not take away any park land. They also were not destroying the park. The Association did not discuss whether the road was a structure or not. He thought the point was moot because the applicant owned the property and easement. Maybe the City should not have allowed the easement to remain when they purchased the property, but that was in the past. There was an argument that they did not need more houses in Oregon City, but there was a housing shortage problem in the City. This would be an improvement to the neighborhood with access to the park, lighting, and curbs. Mr. Harris said all of the input the Association received had been positive. The development was on private property and the easement was in place when the City purchased the property. They saw no reason to oppose it. About a dozen people were at the last meeting where this was discussed and this project was inside the Association boundaries.

David Abraham, resident of Oak Grove, had raised the issue of easement rights and whether the applicant had easement rights. The City was the owner of the land that contained the easement area. The question was whether the applicant had rights to use the area for a road. The applicant referred to a document from 1962. In that

document there was one line in the subsection that dedicated this easement. There was no clear definition and he questioned whether it applied today. The Commission had multiple mechanisms to erase the easement completely. The City had owned the land for 15 years. The State statutes stated if the City owned the land for 10 years and had been maintaining it as park land, the easement could disappear. The City could also use eminent domain. He had asked the City Attorney if she had the original deed documents and had reviewed them and she said she did not know. When he asked her if she or her firm had ever been retained by Icon, she refused to answer. He questioned if there was a conflict in determining who had easement rights. The deed documents in the packet were an unclear photocopy and where it said for road purposes, it was in a different font and darker color ink with initials by it that showed it had been added later and that easement rights changed through time.

Philip Abraham, resident of Oregon City, read from the State statute regarding when land uses changed, easement rights could also change. David Abraham said there was one document that had verbiage about easement rights when the City purchased the property which said nothing about roadway purposes, but about ingress and egress.

David Abraham said the people had voted this down twice because they did not want a road on park land. He thought a roadway was a very complex structure that required several engineers to design and approve.

Jesse Buss, resident of Oregon City, recognized this was a different proposal than what was on the ballot. The common factor that remained was creating a street on park land. He thought the intent of the voters who enacted this Charter provision was to prevent major changes in the use of the parks and to prevent the erection of buildings and structures in parks. While this proposal might seem relatively minor, the interpretation on structures might have far-reaching implications for other parks. It could allow a road to go right through the middle of another park without the going to a vote of the people. That was not consistent with the intent of the voters.

Mr. Robinson provided rebuttal. He thought this issue was straightforward. It was a recorded deed and he did not see a difference in the font. It was part of the typed statement. It was a recorded document that was passed through title and was not invalid. He did not think there was a basis to try to discard the value of a recorded document in the public record. When the City bought the land, they bought it with the easement. They could have potentially asked to remove the easement, but that was not done. Maintaining the property did not create a basis for adverse possession. To assert adverse possession, a quiet title action had to be filed in Circuit Court and won. This was a minor proposal and would improve the park. They were not constructing a road to exclusively serve the subdivision. It could be used by park users and park maintenance employees. He did not think it would set a precedent. The decision could be based on the facts of this case, that there was a 1962 document that ran with the title that gave the applicant the right to use the property for roadway purposes. He requested approval of the subdivision and that a vote was not required for the easement property.

Mayor Holladay closed the public hearing.

Commissioner Shaw was on the Parks and Recreation Advisory Committee when the City purchased this property and it was always the intention to have access on the north side of the park. It would allow access to the park on the north which was valuable. The Commission had to define structure, and he thought the legal status had

been addressed.

Commissioner Ide clarified there was no evidence that the City looked into removing the easement before they purchased the property. Ms. Richter said everything staff found was in the record.

Commissioner Ide did not see how 12 feet of road negatively impacted the Charter's purpose. She thought it would be a benefit as it gave better access to the park.

Commissioner Mengelberg did not think this would change the legal status of the park. The easement was in place long before the City acquired the park. This access was a benefit to the park. She was not convinced that a road was a structure. The Charter requirement for a vote did not apply because the vast majority of the development was on private property and the development on the easement was what had been intended.

Commissioner O'Donnell said speaking as a private citizen, this would benefit the park and would improve its usability. Speaking as an elected official, they were being asked to determine that the development met all of the criteria. He objected to the road being 28-feet wide instead of 32-feet. Its primary purpose was to access the subdivision, not the park. He thought this was a structure and was concerned about setting a precedent. He questioned whether there was a conflict of interest with the City Attorney and previous dealings with the applicant.

Ms. Richter said her firm had no connection with Icon Construction or any Icon entities or the Handris family either now or in the past.

Mayor Holladay said staff found that this section of the Charter was adopted in 1970. He thought the easement was exempted from the Charter because the easement was recorded eight years before the Charter change. He thought a precedent had already been set when the Oregon City Interpretive Center was established on Kelly Field without a vote of the people. He thought this was minor in comparison to what happened to Kelly Field. It came down to fairness and basic property rights. This easement had been on the title since 1962 and the City bought it knowing it was there. A road had always been expected to go there. The applicant owned the property to be developed and he did not think they should take away their basic rights on a technicality. He did not think a vote should be required.

A motion was made by Commissioner Ide, seconded by Commissioner Shaw, to tentatively approve the Parker Knoll Subdivision, TP 17-02, finding that the subdivision criteria were met subject to the staff amendments and that the City Charter did not require voter approval. The motion passed by the following vote:

Aye: 4 - Commissioner Brian Shaw, Mayor Dan Holladay, Commissioner Nancy Ide and Commissioner Renate Mengelberg

Nay: 1 - Commissioner Frank O'Donnell

6c.

First Reading of Ordinance No. 17-1012, Amending the Comprehensive Plan (Planning files PZ 17-01), Zone Change (ZC-17-04), Minor Site Plan and Design Review (SP 17-114) Allowing the Relocation of the Oregon City Community Development Offices

Ms. Richter said the Planning Commission held two hearings on this application and no public testimony was received. The Planning Commission recommended approval of

the application. Only those who testified during the Planning Commission hearing were allowed to participate, and since there was no one, there was no participation at this point. She asked if any Commissioner had ex parte contacts, conflicts of interest, bias, or any other statements to declare.

Mayor Holladay had several discussions with City staff regarding this item and had visited the site. He thought he could review the criteria and make a decision based on the application before the Commission rather than the discussions that he had.

Commissioners Shaw, Ide, and Mengelberg had visited the site.

Christina Robertson-Gardiner, Planner, presented the staff report. This was a proposal for the Community Development Department to move to the Mt. Pleasant Annex on Warner Parrott Road. Staff was requesting three approvals, a Comprehensive Plan amendment, zone change, and minor site plan and design review. The Comprehensive Plan amendment was to change the designation of the property from MR to Public/Quasi-Public and the zone change was to go from R-10/R-3.5 to Institutional. There was a trip cap proposed as part of this application that would be explained by Mr. Replinger.

John Replinger, City's Traffic Engineer, said for a rezoning proposal, the applicant was required to compare the traffic impacts from the current use to the worst-case scenario of the proposed use. Changing to the proposed zoning could allow a wide variety of uses and to get around that, they would be using a trip cap. The trip cap would be based on the prior use, Mt. Pleasant Elementary School with 400 students. It was a condition of approval that the traffic would not exceed the trip cap. As long as the development stayed underneath the trip cap, no further analysis was necessary. If in the future a proposal came before them that would increase the traffic to exceed the trip cap, a more detailed analysis would be required. The trip cap was 238 a.m. and 143 p.m. peak hour trips.

There was discussion regarding how the trip cap was determined. Mr. Replinger clarified each time any development occurred on the site an analysis would be done to make sure the traffic stayed under the trip cap limits.

Ms. Robertson-Gardiner said a minor site plan and design review was being proposed as well. This included improvements to the roof, siding, windows/doors, landscaping, and parking lot. Some parking spots would be removed and added. There would be a picnic bench, flagpole, and additional landscaping. She showed pictures of the proposed elevations and interior layout and internal photos for context. Staff thought the proposal met the criteria for a zone change.

Commissioner Shaw asked that the entry on the roundabout side mimic the side where the public was coming in.

Ms. Terway, applicant, said the lease was up in April for the current Community Development office. She was excited about this location where they would not need to pay rent. The location was also more centrally located for customers. When they calculated the transportation impact, they calculated it for government office in the square footage of the complete Annex. This accounted for the gym area as government offices, though it was not being used for that at this time. There was flexibility to grow within the existing numbers.

Matthew Crawford, Structural Engineer with ZCS Engineering, said both entries were

treated the same. He agreed the awning was more predominate on the street side. He thought it would be about \$30,000 to do the same on the other side, but they were already at the maximum for the budget.

Mayor Holladay did not think any extra money should be spent.

Commissioner O'Donnell was concerned about the structure of the building. Mr. Crawford said an analysis was done of the structural system and it was in fair condition. It was lacking seismic requirements and as part of the project there would be a seismic retrofit to bring the building up to code.

Commissioner Ide thought if there were ways to cut some costs, it would be good to have an attractive entrance on the other side. She asked about the timeframe for the project.

Ms. Terway said it would be a three to four month project. They would be using the same furniture and were trying to be as cost effective as possible. They were emphasizing the intersection facing side due to a code requirement.

A motion was made by Commissioner Ide, seconded by Commissioner Mengelberg, to approve the first reading of Ordinance No. 17-1012, amending the Comprehensive Plan (Planning files PZ 17-01), Zone Change (ZC-17-04), Minor Site Plan and Design Review (SP 17-114) allowing the relocation of the Oregon City Community Development offices. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Mayor Dan Holladay, Commissioner Nancy Ide, Commissioner Renate Mengelberg and Commissioner Frank O'Donnell

7. General Business

8. Consent Agenda

A motion was made by Commissioner Shaw, seconded by Commissioner Mengelberg, to approve the consent agenda. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Mayor Dan Holladay, Commissioner Nancy Ide, Commissioner Renate Mengelberg and Commissioner Frank O'Donnell

8a. Election Results for the September 19, 2017 Special Election as Certified by Clackamas County Clerk for Ballot Measure 3-517

8b. OLCC: Liquor License Application- On-Premises Sales, New Outlet, Applying as a Limited Liability Company, The Hive Taphouse, 13851 SE Beaver Creek Rd - C104

8c. Minutes of the August 16, 2017 Regular Meeting

8d. Consider the Settlement Agreement with David Frasher

9. Communications

a. City Manager

Jim Band, Police Chief, said on October 31, 2017 they would be honoring fallen Officer Rob Libke downtown by helping with the Halloween event.

Maureen Cole, Library Director, said tomorrow evening there would be a Library Foundation Donor thank you party and celebrating the one year anniversary at the Library.

Tony Konkol, City Manager, announced the Open House Meet and Greet for the top three candidates for the Community Coordinator position on October 20, 2017. He went to the Northwest Pavement Management Association meeting where Matt Powlison, Street Operations Supervisor, was named Pavement Manager of the Year. The City's Pavement Condition Index had been improved from 60 in 2011 to 76 today. They were in the top five for cities of the same size. Mr. Powlison also coordinated winter weather responses and events.

b. Commission

There were no Commission communications.

c. Mayor

There were no Mayor communications.

10. Adjournment

Mayor Holladay adjourned the meeting at 9:28 PM.

Respectfully submitted.



Kattie Riggs, City Recorder