



Marion County

OREGON

PLANNING COMMISSION MINUTES

PLANNING COMMISSION

George Grabenhorst – Chair
Carla Mikkelsen – Vice Chair
Scott Anderson
Stanley Birch
Mike Long
Rick Massey
Gary Monders
Dennis Person
(vacant)

DATE: September 1, 2015
TIME: 6:30 p.m.
PLACE: Senator Hearing Room
555 Court St. NE, Salem

Present: Stanley Birch, George Grabenhorst, Dennis Person, Scott Anderson, and Gary Monders

Absent: Carla Mikkelsen, Mike Long, and Rick Massey

Chair Grabenhorst called the meeting to order and reviewed the rules of the public hearing.

1. Public hearing: Subdivision 15-003. Application for conceptual and detail approval to subdivide a 4.95 acre parcel into 24 lots in an RS (Single Family Residential) zone located in the former railroad right-of-way extending from west of Elma Avenue NE to east of 44th Place NE, and from Draper Street NE to east of Kenwood Street NE, Salem.

Joe Fennimore, Principal Planner, read the staff report dated August 14, 2015. There were no questions for staff.

Keith Whisenhunt, Project Delivery Group located at 3150 22nd St. SE, Salem and the applicant's representative, testified that the applicant, Jack Yarbrough, intends on meeting all of the conditions of approval. Engineer Matt Hendricks, of the Project Delivery Group, testified with background information on himself when he worked with Marion County and as such has experience with county requirements. Mr. Hendricks talked about drainage in this area and had worked on it when employed by Marion County and knows it well. He further testified that he has worked with county staff at this sight and knew drainage would be an issue. The area is an older development and some of the existing system is undersized. He continued these issues were discussed at the site, which is 5 acres and actually a small piece of the whole area. Mr. Hendricks indicated the intent is to improve existing infrastructure in lieu of detention and wants to use the drainage ditch system and convey to this system and use some catch basins. This would be an opportunity to get this water to the conveyance system and suggested conditions of approval could direct the applicant to work with Land Development Engineering and Permits (LDEP) on this issue.

Gary Monders asked if Elma Ave. ties in with the north side and if there is access right now? Matt replied, yes and that is the only point. Gary Monders indicated he had been to the area and the roads are in poor shape, there are no sidewalks, and asked how the lots will be accessed? Mr. Whisenhunt replied the applicant proposes to distribute traffic across various streets. The proposal is not adding significant traffic so road improvements would not be the responsibility of the applicant, other than a fair share. Mr. Monders stated there are four new lots on Kenwood but no access. He is concerned as that road is in very poor shape and the area has lots of kids, the street is narrow and full of potholes. He asked if Public Works is planning any improvements? Mr. Whisenhunt replied not that he is aware of and has met with LDEP and staff has not mentioned anything. Mr. Monders continued there are other streets there and alternate ways in and out, and fire trucks would have an issue going down Kenwood. Mr. Whisenhunt replied emergency vehicles have those issues today and lots of local streets in that area that could use a facelift. Mr. Fennimore added there are no improvements planned for that area.

Chair Grabenhorst stated he has concerns with drainage as Elma will cut through and will that be a path to remove water to the north? Mr. Hendricks responded east of Elma is the East Salem Sewer District (ESSD) drainage ditch and the plan is to convey most of the water to that system and another ditch to the east that abuts a mobile home park and will convey to that drainage system. Mr. Anderson expressed concern on access and creating a connection with traffic being redirected. He asked if PW thinks this will be a detriment? Chair Grabenhorst stated without someone from PW present there are only comments to use and no discussion. Mr. Birch expressed concern on the ability for fire trucks getting into areas like the end of Kenwood with no turnaround and south of Annette Court. These areas appear to have space to back up but some equipment is too big, and this issue will be a big problem for the fire department. Mr. Whisenhunt responded that improvements on the final plan will need to be approved by the Fire Marshall and will have to meet fire code and district code for turnaround, length, etc. He added they will work with these entities. Chair Grabenhorst added the fire district was given an opportunity to give comments but didn't. Mr. Fennimore added if the proposal is approved the plan will have to show that it meets all fire district requirements. Mr. Person asked if the access road will be 25 feet wide? Mr. Whisenhunt replied it will be a 25 foot easement and will provide whatever the code requires. Mr. Person added people won't always park in driveways and will provide an additional problem. Mr. Whisenhunt stated they will work with the developer to provide off-street parking and gave examples of developments he has done before.

Lindy Schweiger, 2825 Foxhaven Dr SE, testified the area has enough width for driveways; she and her husband used to walk in that area and always thought the railroad area would be good for homes. She continued that the development will improve and provide value to the area, is an excellent infill development, provides good neighborhood connectivity, and will help get the area cleaned up at the end of the dead-ends. The PC briefly discussed Kenwood that just ends. Ms. Schweiger concluded she and her husband support the proposal and the end result will outweigh existing problems, will provide jobs for folks during the building phase, and adds stability to this undeveloped land.

Don Jensen, 6424 Hazelgreen Rd NE, testified he has lived on Elma Ave. for 10 years and had developed some lots in the area. He feels there is an issue with the area lacking affordable homes which this will provide. He suggested an LID be formed for street improvements and these homes could form a tax district to fix area issues, especially on Kenwood. He added there are only four homes going in on Kenwood and the proposal will form a better hammerhead for turnarounds for emergency vehicles, which is bigger than there is now. He concluded the biggest challenge is affordable homes and as this area can't be used for commercial or other uses, this will be a tax benefit to the county and is a great opportunity to bring change to the area.

Virgil Pruitt, 292 45th, testified he has lived there since 1969 and enjoyed the private living area and this sounds like an invasion of privacy with houses there and doesn't like it. He concluded he can't see how fire trucks can get back there.

Doug Proffit, 311 Monroe Ct NE, testified he bought the area behind his house – the railroad came and asked if anyone was interested and he was the only one. He wrote his own title and survey and then bought the area to the east and now has a big lot. He paid to level the land and took out the railroad equipment. Mr. Proffit testified he is concerned with Jack Yarbrough who sent a surveyor to his house on a Sunday night at 9:00 and wanted 30 feet behind his house. He stated he would not sign the document and ended up going to court and it was finally resolved. He continued that in 2006 Mr. Yarbrough tried to do it again and it was denied because he didn't want to make some improvements. Mr. Proffit stated he can't drive down some streets with all of the parked cars, there is flooding on Draper St. and can be a foot of water in that cul-de-sac. With no drainage, he is concerned with wording of the property description because Mr. Yarbrough doesn't own all of that property and doesn't own all of Draper St. Chair Grabenhorst responded the property does come to Draper St. and Mr. Fennimore added it is from the centerline.

John Lytle, 275 Kenwood Ave NE, testified he bought his house in 1969 and it was a dead-end street. His title says he has 20 feet in front of his house paved and no big vehicles will go down that street. Laverna Lytle, 275 Kenwood, added they own and maintain that part of the road but the rest has renters that do not maintain it and it is privately owned. Mrs. Lytle continued that they got street lights put up and have had fire trucks come down the road but couldn't go all the way. They are opposed to the proposal and own to the center of the street. Chair Grabenhorst asked if parking is allowed on the street? Mrs. Lytle responded, yes. Mr. Monders asked if Kenwood is privately owned? Mr. Lytle responded yes, each owner owns 20 feet and maintain. He tried to get the county to take it but it wouldn't. Mr. Person asked if there are any other streets in the area like that? Mrs. Lytle replied Kenwood is the only one and they don't have drainage issues but have dug and put in French drains themselves.

Jeff Livengood, 331 Monroe Ave., testified the back of his property is the railroad and he wonders if these new homes will be single family and single story? How far will the new houses go up against their fences? Chair Grabenhorst responded each house will have setbacks and staff will cover house construction at closing discussions.

John Johnstone. 299 Eldin Ave., testified he has pictures of his house and had to get flood insurance as the house flooded. He added the road can't be paved but you are responsible. He has put gravel down but no one will pave. Mr. Johnstone continued that Jack Yarbrough tried to get a dump truck down the road and couldn't so how will a fire truck? He had a run-in with him, everyone has the same issues, and he is not trustworthy. He added, again, they have pictures of flooding and where the ditch goes - water comes around and makes a 90 degree turn but the pipe can't handle it. He was going to put in a pipe but the county won't allow it. Mr. Person asked if Eldin St. is private? Mr. Johnstone responded the county paved other streets in the area but won't pave theirs and it floods about every three years.

Jenny Green, 312 Pansyway NE, testified the property is behind her and she agrees with previous testimony except the value won't go up because there are so many abandoned lots and homes in foreclosure. She added the houses are too crammed and they don't need more homes on the small streets. She is also afraid they will turn into Section 8 housing or rental homes. She is a young homeowner and doesn't want a house up against her fence, the proposal will create more traffic, and people value a cul-de-sac and she bought her house for that reason. Mrs. Green asked about buying the area behind her but was told no or she would have to buy more than just the lot behind her, and doesn't want a house behind her. She concluded that she values her privacy and the developer should ask if

people want to buy the lots.

Randy and Colleen Maxfield, 260 Kenwood NE, testified the proposal is a bad deal for this street that is in poor shape and has drainage issues. The additional traffic will create problems. He worked for the City of Salem and knows streets and that the improvements need to be made before the area is developed. He agreed with previous testimony on the issue of privacy and traffic and more people. He moved there because it is a dead-end street. Mr. Maxfield added the street has no curbs and has drainage issues and needs a major overhaul. Two cars can't get by. He tried to improve the street but the base is too poor to patch. With small front yards and no sidewalks, kids play in the street. Mr. Maxfield testified affordable housing means more people and it is a bad deal. Chair Grabenhorst asked if it is a private road? Mr. Maxfield replied yes, but the city nor county will take it. Mr. Birch asked what is water like in winter? Mr. Maxfield replied water stands there as the street is lower than the properties; there are two catch basins but he is not sure they work and when it rains hard water gets up to their front steps.

Christina Matson, 140 Kenwood, testified that in front of her house it is worse because they are responsible for 30 houses up and down the street. Pavement is bad and property owners do own to the middle of the street and responsible to pave. She added it is not a good deal, with lots of traffic and people speed down the street even with the potholes. She stated adding more houses at the end of the street is not a good idea and she is afraid for children that play on the street and afraid for property values as most of the homes in the area are rentals. She concluded that even with her fence 6 feet high, she still has problems with vandalism but is trying to improve her home.

Ty Nelson, 311 SW Hume St., Portland, testified he owns 35 units in the area (gave some addresses) and is concerned with drainage and has been out there due to water going into units if not pumping out and it was worse in 2012 with heavy rain. Mr. Nelson stated at 333 Annette Ct. he understands the turnaround for a fire truck on the west end of the development will have headlights shining into houses and no effort was ever made to line up property lines with existing property lines, which creates neighbor to two neighbors. Mr. Nelson testified Jack Yarbrough has allowed vegetation to grow in some areas and in other areas has taken fencing down. He would like to see fencing be a requisite for these backyards and it does not seem fair to require existing homeowners to build fences.

Norma Pruitt, 292 45th Ave NE, testified her property backs up to the proposed area. She has had the county come out and clear drains of roots. If not, water backs up past the mailboxes. She called the county to find out if it would do 45th when Hudson was done and was told is up to owners along the street to improve. If it is brought up to county standards, then the county would take street over. She pays taxes and is not sure what they go for and how can they get 45th taken care of? Can the county give homeowners a loan to improve the street? Signage should indicate NCR (non-county road) and none of the street signs in the area say that, so how do the owners know?

There was no further testimony. Chair Grabenhorst asked if these streets are private or county roads? John Rasmussen, Public Works, responded use of the phrase "private street" is the way residents describe it, but PW doesn't use that phrase. He continued that in this area of 8 streets, 5 are local access roads and not maintained by the county. He was asked if the streets are dedicated? Does the county own them or is it an access easement? Mr. Fennimore responded they are dedicated public right-of-way. Mr. Rasmussen added there are a few instances where the county has purchased right-of-way, but owners are still the underlying owners. Mr. Monders asked about the dedicated right-of-way width for Kenwood? Mr. Rasmussen replied it is 20 feet, while the county standard is 60 feet. Mr. Rasmussen then went through the streets in the proposed development area for right-of-way and whether county maintained or not.

Mr. Anderson stated he noticed this would create connection from State St. to Auburn Rd. and would that be the only access? Mr. Rasmussen replied Evelyn is also a connection and would create a through connection and must be widened and construct urban improvements. Mr. Anderson asked if any study was done on traffic flow being the only connection? Mr. Rasmussen replied no, it isn't required but there are other connections to Hudson. Mr. Person referred to the testimony on excess water and was that considered with the new homes? Mr. Rasmussen replied like most developments in urban areas, it must provide stormwater detention. Mr. Person asked why it was not done before? Mr. Rasmussen replied he did not have that historical knowledge. Monies are now being collected to improve the stormwater detention system and gave examples of a study done on pipe in the area which was found clear but not 100% intact. Everyone knows they must work together on this issue and they know water is coming in that direction and must somehow be designed to improve water that is collecting on the streets.

Mr. Person asked with more traffic on these privately maintained roads, what will happen and what is the responsibility of the developer? Mr. Rasmussen replied they do not require the developer to improve non-county maintained streets. The group then discussed connection of new development to non-county maintained roads. A comment was made that there is a problem with water but the developer was not specific other than directing it to the ditch, that may overload. The developer must be specific on how the area will drain before the proposal is approved. Mr. Rasmussen responded there is a problem in the area and the developer won't be permitted to increase flow to that ditch and will have to focus release to predevelopment levels. He commented that the subdivision has not yet been designed or stormwater design plans or calculations and can't say "no impact" can be achieved. Mr. Birch asked what happens if the applicant come up with a plan but it doesn't work? He gave an example of living in Polk County. Can current homeowners put up a fence in the street? Mr. Rasmussen replied roads are still public right-of-way even if owners are obligated to maintain and not allowed to do that. Mr. Birch asked if the owners have a contract to maintain? Mr. Rasmussen replied probably not, but a road maintenance agreement was done and is covered through Oregon Revised Statutes. Mr. Rasmussen continued that with regard to water – PW is concerned and will look at downstream piping, conveyance capacity, etc. and may require developer to do certain requirements but they are not to that point yet.

Mr. Monders stated railroads often don't have adequate drainage that was ever put in years ago and could be part of the issue. He continued that with this development and proper drainage under the tracks, that could solve some of the problem that has been created. Mr. Rasmussen added there is pipe under the tracks but he doesn't believe the pipe is at the correct angle and some drainage flow and efforts could be made to correct that and he has discussed it with the applicant's engineer. They are all looking at the big picture and little things, too, but more coordination is needed. Mr. Anderson noticed the area has a lot of fill. Given the lack of width, significant grading will be done on the railroad bed. Should that be done and dirt moved to get the drive in? Is there a trigger on the amount of cut or fill that would require an environmental analysis? Mr. Rasmussen disagreed that a portion of the railroad bed is higher and to get a level lot will require grading. He continued that the state requires a permit at a certain point with an erosion control plan through DEQ but putting a driveway in prior to platting is a good idea. He stated that standards exist and there will have to be some cutting and leveling, but the county no longer has a grading permit. Disturbing less than 1 acre is ok without a DEQ permit but the developer is still responsible for anti-erosion, etc. Mr. Person referred to page 3, #4 of the staff report that mentioned the city is more restrictive – and are there any triggers for the county? Mr. Fennimore replied, no.

Keith Whisenhunt testified during rebuttal, that he understands issues brought up tonight but there is a common thread here and the problems exist now. Development of the property is an opportunity to improve the area and make a change in the area. He added street conditions can be addressed to add conditions of approval for a non-remonstrance agreement for lots being created to include an LID to

improve streets and the existing properties agree to pay a portion as well. Mr. Whisenhunt continued that regard to no development at all, he understands it is nice to have vacant ground behind your property but an existing home owner can buy the lot next to them when it goes up for sale. He concluded that, all in all, if development is allowed it can be instrument in making improvements that are existing.

A motion was made to leave the record open for additional information regarding water and streets. Specifically, the increase in traffic on non-county maintained roads, what is intended to be done to relieve the water issue, and how to create a taxing district. Chair Grabenhorst asked if the PC has to leave the record open to obtain more information? Mr. Fennimore replied not if the answers are provided by staff only. Chair Grabenhorst stated the issues, as already pointed out by the applicant's engineer, are for an existing development and not really related to this request. Mr. Person replied he feels the record should be left open for anybody to provide input on maintaining these roads with new traffic and relief of the water issue. Chair Grabenhorst stated if the record remains open there will have to be a second hearing. Mr. Monders added there are questions not answered and won't be until some engineering is done. Mr. Rasmussen stated, regarding the existing stormwater issue, the county has not conducted a study for this area and that would take hiring consultants and preparing a project that could take a year or more. It is not something that could be done in time for this project. A member asked if these roads can be improved by the county or brought into the county sytem? Mr. Rasmussen replied that is an issue for the Board of Commissioners, and the decision not to was made long ago. Chair Grabenhorst stated the PC has information needed to make a decision but agreed the streets and drainage are a problem. He suggested the PC make conditions about these. Mr. Person withdrew his motion.

Mr. Birch stated the subdivision request is legal and could make things look good but will also have an effect on the non-county potholed roads and the county needs to figure out how to prevent that from happening such as forcing absent owners to fix through taxing, etc. He feels something needs to be done by the county to solve the problems. Mr. Rasmussen replied the current residents are responsible to chip in and residents of the new development will have to pay a fair share. He added the county doesn't step in and make them fix potholes but if the road was too bad the county could take action to levy a tax to the residents. Mr. Monders added construction equipment could destroy what is left of the roads. Chair Grabenhorst added the PC can make recommendations on all of those issues to the Board. Mr. Fennimore interjected the decision does not come before the Board unless appealed.

A motion was then made to close the public hearing to oral testimony. The motion passed, 5-0.

Mr. Anderson commented on the lots at 80 feet deep, but are really 55 feet after the easement. If dedicated right-of-way would be 60 feet the result is 5 feet. A house could be built on the 25 foot easement with 0 front yard. This would result in a 29 foot depth of house and it becomes questionable as to buildability. He continued that the intent seems to be that the property was never intended to be developed. He feels the proposal does not meet the intent of the Zone Code, even if it meets literal requirements. He would like to see, before voting, specific comments from the fire district based on proximity of houses, existing street parking, etc.

Chair Grabenhorst asked staff if the PC can delay a decision based on the need for more information? Mr. Fennimore replied if new evidence is introduced there needs to be another public hearing. Chair Grabenhorst suggested the PC delay for more information on drainage, street access, possible repairs to the streets, who is responsible, and how to get the streets under county control. Mr. Fennimore replied that type of discussion must be done at a public hearing. Chair Grabenhorst added he would like information on how to form a taxing district to get the roads repaired and can the county create an LID for street improvements? Mr. Rasmussen replied those have been done in the past but not for a very long time and when the subject has come up it has not progressed as it is a big burden for the department

to create the taxing district, bill, etc. The PC discussed using a non-remonstrance agreement. Mr. Rasmussen indicated only a preliminary plan was submitted and one option might be to only allow connection to county-maintained roads? Chair Grabenhorst asked if Kenwood was ever paved? Mr. Rasmussen replied, yes, but it could not be paved over anymore. He added there could be a designated construction access point, but not sure if that would work. The PC discussed the construction phase and possible damage to the roads. Mr. Fennimore explained the PC can discuss road issues in the findings portion of the decision but can't refer to the Board of Commissioners as part of the decision. The PC then discussed how the proposal might be modified including eliminating Kenwood. Chair Grabenhorst asked if part of the decision could be to exclude Draper and Kenwood? He added he is at a deadlock as to how to proceed. The subdivision, in his opinion, is ok by itself but as a whole there are problems with access and the existing streets. However, these aren't the problem of the developer or his responsibility to fix but that doesn't change the fact that some streets are in horrible condition and he questions safety and equipment in there and condition of the roads after development is done. Chair Grabenhorst indicated options for the PC include delaying a decision or reopening the public hearing and granting conceptual and detailed approval.

A motion was made to close the public hearing to oral testimony but leaving it open to written testimony to any interested parties until 4:00 p.m. on September 22, 2015; and leaving the record open for submittal of additional information by the applicant until October 5, 2015, with a public meeting to deliberate the new information on October 6, 2015. The motion passed, 5-0.

2. Adjournment.

There being no further business, the meeting was adjourned.