

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, July 25, 2017
6:30 PM**

COMMISSIONERS PRESENT

Greg Hemer, Chair
Adam Argo, Vice Chair
John Burns
Kim Travis

STAFF PRESENT

Denny Egner, Planning Director
David Levitan, Senior Planner
Brett Kelder, Associate Planner
Mary Heberling, Assistant Planner
Alex Roller, Engineering Technician II

COMMISSIONERS ABSENT

Sherry Grau
Scott Jones
Shannah Anderson

1.0 Call to Order – Procedural Matters*

Chair Hemer called the meeting to order at approximately 6:40 pm and read the conduct of meeting format into the record.

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.*

2.0 Planning Commission Minutes

2.1 May 23, 2017

It was moved by Commissioner Travis and seconded by Vice Chair Argo to approve the May 23, 2017 Planning Commission minutes as presented. The motion passed unanimously.

3.0 Information Items

Denny Egner, Planning Director, noted the City's meetings would be on YouTube. Also, on July 18th, Council adopted a resolution directing staff to move forward on the North Milwaukie Industrial Area (NMIA) Plan. Comprehensive Plan and code amendments would be presented to the Commission this fall. Council included the FAR and height bonuses as ecodistrict incentives. The Council action did not include the Commission's recommendation that the Mill Ends site be designated MTSA.

4.0 Audience Participation – This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Worksession Items

5.1 Summary: Vision and Comprehensive Plan Update
Staff: David Levitan

David Levitan, Senior Planner, presented the staff report and updated the Commission on the Community Vision project and the early work being done on the Comprehensive Plan Update.

Mr. Levitan responded to questions from the Commission as follows:

- A 1995 vision document was used as a foundation for work on the current Vision. Direction from Council was for a robust visioning process to either move in a new direction or affirm the existing vision. No actual action plan accompanied the older vision, and this broader new vision included climate change, equality, and other issues that were not issues addressed 25 years ago. The new Vision was intended to support Council goal-setting over time.
- Increasing access, translation services, and engaging children, were included in the action plan to improve inclusivity and get input from a diverse group of stakeholders.
- With regard to Attachment 3 of the packet, the Goal Actions in bold were elevated by Council and the Vision Advisory Committee and were either related to Council goals or were underway.
- Biennial updates to the Action Plan would occur, but an annual progress reporting process would also be developed.
- **Mr. Egner** reviewed the expectations of Comprehensive Plan Review Committee members, and agreed to email the Commission about all the committees on which the City would request participation by a Commissioner over the next two years.

The Commission consented to appoint a Comprehensive Plan Review Committee liaison at its August 22nd meeting.

6.0 Public Hearings

- 6.1 Summary: Logus Road Subdivision
Applicant/Owner: Julian Illingworth
Address: 4543 SE Logus Rd
File: S-2016-002, VR-2016-010, PLA-2016-002
Staff: Mary Heberling/Brett Kelter

Chair Hemer called the public hearing to order and read the conduct of quasi-judicial hearing format into the record.

Mary Heberling, Assistant Planner, presented the staff report via PowerPoint and reviewed the key elements of the project, which included a proposed property line adjustment and three variances. She noted key issues related to street connectivity requirements. She reviewed and summarized concerns expressed from two property owners east of the site as well as staff's responses, and distributed additional comments received before the meeting. Staff recommended approval with the attached findings and approval criteria

Ms. Heberling addressed clarifying questions from the Commission as follows:

- The 15-ft right-of-way (ROW) would be open to pedestrians even if not improved for motor vehicles.
- Based on proportionality tests, staff did not believe improvements to the pedestrian access could be requested, considering the applicant's required improvements to Melody Ln and other dedications with only three new dwelling units. Justification for additional improvements could be explored further. If the hearing was continued, other approaches could be explored, including clearly restricting or encouraging access to the unimproved pedestrian path.

- The setback issue for Lot 2, which had an accessory structure, was a temporary issue that would resolve itself once the structure was demolished, or Lot 2 was sold.
- While the City had the authority to require a 20-ft ROW to ensure an appropriate setback if the parcel ever redeveloped, a 15-ft ROW was being proposed to match the narrower frontage on Logus Rd.
- The connector street between Melody Ln and Logus Rd was required because Melody Ln was at its maximum 400 ft for a dead-end road. Without the ROW for the connector street, any property to the east that developed would require an access variance.
- Ms. Heberling confirmed Lots 2, 3, & 4 would have Melody Ln addresses. There would be no flag lots, which the City tried to avoid.

Chair Hemer called for the applicant's presentation.

Julian Illingworth, 6334 N Curtis Ave, Portland, OR, stated the variances were required for the density requirements due to constraints from the property dimensions, the Melody Ln improvements, and the 15-ft ROW. Options had been considered and this was the most reasonable design. He added that he would not support creating a barrier in order to allow or encourage pedestrian access, preferring instead to prohibit pedestrian access in recognition of the neighbors' wishes and the preferences of future residents.

Chair Hemer confirmed there was no public comment and closed the public hearing.

Planning Commission Deliberation

Commissioners Travis, Argo, and Burns believed the requested variances were reasonable and appropriate for the site's needs.

Commissioner Burns noted the City's Vision Action Plan included building connectivity for pedestrians and suggested adding a condition of approval requiring the dedicated ROW to be improved to ADA accessibility for pedestrians and that a reasonable screen be installed to protect the privacy of the adjacent property owner at 4591 SE Melody Ln.

The Commission discussed the necessity of requiring ADA compliance, since any future development of the 4591 Melody Ln property would require road improvements, and the importance of being consistent with the City's guiding documents. Screening both sides of the pedestrian access was also requested.

Mr. Egner suggested a continuance to allow staff to explore issues related to the proportionality analysis and the City's ability to require additional improvements, including screening the property. The continued hearing would only be opened to address the pedestrian access issue.

- He clarified ADA compliance would be necessary if the ROW was designated as a pedestrian access, which was different from making it available for pedestrian use without improvements.
- The issue was further complicated because the southern portion that approached Logus Rd was the driveway for the house; the driveway was in the ROW.

Commissioner Burns described how the subject site and pedestrian access would be similar to the area in the Ardenwald Neighborhood with the walkway to Ardenwald Elementary, so the suggestion was not without precedent. He strongly supported designating the access as an ADA pedestrian access.

Chair Hemer suggested installing a vehicle barrier and a manmade or natural barrier on both sides of the property or install a no walking sign. Creating a pathway that was not in the City's Transportation Systems Plan (TSP) was a waste of energy and resources.

Vice Chair Argo noted the upcoming Comprehensive Plan process might involve formulating strategic approaches to designating priorities for connections that would be done appropriately to ADA and City Standards. Building a path in the ROW was not an interim solution and could create liability issues for the City. He did not believe it was appropriate to condition this application with the path. A pedestrian connection would be provided when the appropriate cross section was built.

Commissioner Travis noted a connectivity analysis was needed if designating a pedestrian access and that was not readily available. Her involvement with Safe Routes to School and the Public Safety Advisory Committee had shown the need for pedestrians to safely get around the city and she did not want to miss an opportunity to push for connectivity.

It was moved by Commissioner Burns and seconded by Commissioner Travis to continue the hearing to August 22, 2017, leaving the record open for public testimony with regard to pedestrian access from the end of Melody Ln down the 15 ft right-of-way to Logus Rd. The motion passed unanimously.

Chair Hemer called for a brief recess and reconvened the meeting at approximately 8:40 pm.

- 6.2 Summary: Rusk Rd Planned Development
Applicant/Owner: Brownstone Development, Inc. / Turning Point Church
Address: 13333 SE Rusk Rd
File: PD-2017-001 (master file)
Staff: Brett Kelter *continued from 5/25/17*

Chair Hemer called the hearing to order and read the conduct of continued quasi-judicial hearing format into the record.

Chair Hemer declared that while employed with Milwaukie Lumber five years ago, he used to sell material to Brownstone Development, Inc.; however, that would not influence him either way on this decision. He also declared that during his site visit, a Clackamas County Water Environment Services representative asked him about the site and whether it was developable for business. No other conflicts of interest or ex parte contacts were declared.

Brett Kelter, Associate Planner, presented the staff report and highlighted the key issues discussed at the May 25, 2017 hearing. He noted that staff and the applicant had worked to address key issues related to the proposed site plan that included the management and ownership of the open space tract, preservation of the white oak trees, floodplain impacts, and traffic issues. The traffic counts had been updated as requested. Key questions for the Commission regarded the closed-loop street system, whether components of the proposal warranted the density bonus, and if the project did enough to avoid and/or minimize impacts to the Water Quality Resource (WQR) and Habitat Conservation Area (HCA).

Mr. Kelter addressed clarifying questions:

- To meet the City's minimum street-spacing standards, staff had suggested widening the second 22-ft access into a 42-ft ROW where the City would require a sidewalk with two 11-ft

travel lanes, planters, and no parking. As proposed, the 22-ft-wide access would not look like a street for regular vehicle traffic and would be accessible only for pedestrians and emergency service vehicles. If widened, the second access would include a crosswalk similar to the primary access.

- The City Manager confirmed the City would be willing to accept the open space area if donated by the applicant. If the Commission found that the applicant's donation of the land would provide a public benefit worthy of the request for a density bonus, the Commission could make that recommendation to the City Council but could not guarantee the tract would be donated since City Council was the final decision maker.
- The North Clackamas Park property was composed of different tax lots, some of which were owned by the North Clackamas Parks and Recreation District (NCPRD). However, the majority of the property was owned by the City, making it consistent for the City to accept the open space tract if donated.
- The Commission could write a finding that if Council chose not to take ownership of the open space tract, a second option could be that it would be offered to NCPRD to ensure public ownership.
- The open space tract was part of the proposal, so the applicant would still meet the requirement for 1/3 of the net acreage being dedicated to open space even if final ownership of that tract was transferred to the City.

Chair Hemer called for the applicant's testimony.

Serah Breakstone, DOWL, 720 SW Washington St, Portland, OR 97205, noted that a new revised site plan had been submitted. She and Scott Emmens, also from DOWL, described the revisions made to the proposal in response to concerns expressed at the last hearing, including a revised traffic analysis that reflected the new counts done on June 1st and new floodplain calculations. Additional key comments and responses to questions from the Commission were as follows:

- Oregon Department of Transportation (ODOT) responded that the proposed northbound right-turn lane at Rusk Rd/Hwy 224 intersection would meet ODOT standards and would help to mitigate traffic impacts.
- The City's engineering staff did not oppose the one access point and one emergency access point, given the number of units in the revised site plan. The variance was requested because the proposal exceeded the number of units allowed for one access; however, an emergency access was also being provided. The applicant was brainstorming other ideas and the team would like to know about any related concerns.
- Egress would no longer be allowed at the church's southeast driveway, which would limit cut-through traffic. The applicant was willing to donate Tract E (the open space tract), a seven-acre area of land, to the City.

Mr. Kelper reviewed additional correspondence received from ODOT, Oregon Department of Fish & Wildlife (ODF&W), and DKS (the City's traffic consultant).

Chair Hemer called for public testimony.

In Opposition

Kirby Broderick, 6109 SE Eric St, Milwaukie, was not opposed to development of the site but believed the City and community could do something better with a smaller footprint on the site. He noted that part of the site had been zoned R-3 for senior living. He was concerned about the

care of the sensitive area and if donating land to the City and NCPRD relieved the applicant of liability. He questioned maximizing the density when the majority of the site was located within the 500-year floodplain. He encouraged the Commission to make the best decision for the community.

Wallace Brown, 5824 SE Kellogg Creek Dr, Milwaukie, questioned whether the outstanding design requirements for the density bonus applied to the surrounding unincorporated areas. He would like to see the neighborhood grow and develop but was concerned about flooding and traffic impacts.

- **Commissioner Burns** asked what Mr. Brown would consider outstanding for the site.
- **Mr. Brown** believed the additional right turn lane at the Rusk Rd/Hwy 224 intersection would help alleviate what was already a bad traffic situation. Anything the developer could do to go above and beyond would minimize impacts and risk. He also supported the idea of a walking path.

Vince Alvarez, Chairman/Treasurer, Lake Road Neighborhood District Association (NDA), 12671 Where Else Ln, Milwaukie, stated that concerns had been raised at NDA meetings about the development, but he liked some of the changes that have been made with the revised site plan. Although the land donation would benefit the developer, it would also attract potential buyers. Continued and worsening flooding was a concern with regard to development upstream and climate change, and he would prefer that the units to the west be removed. He added that the traffic congestion was bad already.

Chris Runyard, Portland, OR, said flooding along Mt. Scott and Kellogg Creeks was getting worse, in part due to development upstream. The City and County needed code changes and a better strategy for development along the creeks to provide some relief for residents downstream. The proposed mitigation for this development did not do enough for the watershed. He supported the ODF&W comments to not encroach on sensitive areas but felt they were being dismissed. He said the approach should be to first consider the areas to conserve and the wetlands to improve, and then look at the area to be developed and the number of units that could fit.

Dick Shook, 4815 SE Casa Del Ray Dr, Clackamas County, 97222, expressed concern about additional people impacting the park and the wildlife. He regretted the loss of open space at a pace more rapid than the city could afford. He would like to see developments be more practical and not consume all of the ground area.

Greg Bartz-Bowman, 10677 SE 28th Ave, Milwaukie, said he had filmed the work Mr. Runyard had done along the Kellogg-Mt Scott watershed and about the importance of protecting the watershed and white oaks for livability. He said the Commission should plan for the future and protect those areas.

Mr. Kelper responded to the testimony as follows:

- Staff was not certain that the original zone change to R-3 for the senior housing development had been contingent upon a conditional use for senior living. It was unusual and not good practice to condition a zone change on approval of a particular use and more common for use to be approved contingent upon a zone change. The land use narrative indicated there were 9.6 acres of R-3 and 4.4 acres of R-10.
- If the City had an intergovernmental agreement (IGA) for NCPRD to manage the donated land, NCPRD would ensure it was incorporated into the Park Master Plan. NCPRD seemed

open and eager to incorporate the management of the open space into what it was already working to achieve in their district, which mitigated some of the liability.

- The City would control access points and how parts of the open space were used through NCPRD, and the City would provide code enforcement for any issues on a complaint issues.

Chair Hemer called for applicant's rebuttal.

Ms. Breakstone clarified that a community garden and play structure were proposed on the site in the open space west of the cul-de-sac.

Chair Hemer closed the public hearing.

Planning Commission Deliberation

The Commission deliberated whether the proposed development provided enough benefits to warrant the additional 12 lots and staff's proposed condition regarding a second access. Key comments included the following:

- While WQAs and HCAs should be off limits to development, that was not the way the rules read. People should be able to do things on their private property.
- The site should not be zoned R-3. During the Comprehensive Plan update, the zoning of this site and all the City's natural resource areas should be reconsidered.
- The City obtaining and being able to preserve 7 acres of WQR, the white oaks, and habitat was a huge benefit, especially since no the trees were not currently protected.
- The development met the criteria for providing different housing types that the Vision Area Plan and the new Comprehensive Plan would require.
- As private land owners, nothing would require the homeowners' association (HOA) to be good stewards of the land. The density bonus was the only way for the City to negotiate public ownership and protect the open space tract.
- **Tim Ramis, City Attorney**, explained that, to force a dedication outside of the density bonus scenario, a proportionality analysis would be needed to show that the subdivision's impact created enough recreational demand to warrant it, which could be a difficult burden. A voluntary dedication by the applicant to receive a density bonus was an entirely different scenario.
- **Mr. Egner** noted a proposed condition required that the tract either be dedicated or a long-term maintenance program would need to be approved.
 - The Natural Resource designation provided some degree of protection over the area. A long-term maintenance program would likely require maintenance of the white oaks to prevent the HOA from cutting them down.
- The outstanding features included the community garden with the play structure, the ability to negotiate for public access to and ownership of the open space tract, and the sight lines available for the community to see into the natural area. However, were these outstanding enough to justify the 12 additional units and risk impacts to the natural resources?
- Without any outstanding feature, the developer's rights to develop would have many of the same impacts, but in a slightly different configuration. Approving 92 units and obtaining public ownership of the tract met the public benefit criterion.
- The difference between the impact of 80 and 92 units on the traffic study and trip generation was unclear. The proposal lacked other outstanding benefits such as better water quality and flood control features, pervious pavement for the ROW and sidewalks, and correct sizing of the stormwater facilities.

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- The prospect of losing the natural area as well as the impacts of the development were concerning; outstanding features should add value in protecting the resource and include treatments and practices that would address concerns about encroachment and water quality.
- If the bonus units were not allowed, the outcome would be a non-outstanding development that was still within the 100-ft buffer that ODF&W noted in its concerns about the impact on the creek.
- The applicant had applied design solutions to try to address the existing lack of safe pedestrian access, particularly for those accessing the schools and parks.
- Denser communities are considered more sustainable. Outstanding features needed to be considered in the context of what was reasonable in the near future, as there were likely to be more developments like this.
- Protection of the natural resources and the creation of affordable housing units, a goal put forth by Council, were considered outstanding features of the development.
- Access was not much of an issue during discussion at the last hearing and the Commission consented to not include staff's proposed condition for a second street access.

It was moved by Vice Chair Argo and seconded by Commissioner Burns to recommend approval of PD-2017-001 to City Council with the recommended findings of approval and conditions in the staff report as amended. The motion passed 3 to 1 with Commissioner Travis opposed.

7.0 Planning Department Other Business/Updates There were none.

8.0 Planning Commission Committee Updates and Discussion Items

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| August 8, 2017 | 1. TBD |
| August 22, 2017 | 1. Public Hearing: DR-2017-001 2036 SE Washington St <i>tentative</i> |
| | 2. Public Hearing: CSU-2017-004 10670 SE 52 nd Ave <i>tentative</i> |
| | 3. Public Hearing: WG-2017-002 Kellogg Creek Bridge Replacement |

Chair Hemer announced the details for several upcoming events including the Gone but Not Forgotten event at the Milwaukie Pioneer Cemetery, the Trolley Trail Experience, Linwood Community Day at Wichita Park, and Movies in the Park. He reminded the Farmer's Market was held every Sunday.

Meeting adjourned at approximately 10:40 pm.

Respectfully submitted,

Alicia Martin, Administrative Specialist II



Greg Hemer, Chair