



# CITY OF MILWAUKIE

## PLANNING COMMISSION MINUTES

City Hall Council Chambers  
10722 SE Main Street  
[www.milwaukieoregon.gov](http://www.milwaukieoregon.gov)

March 12, 2019

**Present:** John Henry Burns, Vice Chair  
Joseph Edge  
Sherry Grau  
Robert Massey

**Staff:** Denny Egner, Planning Director  
Brett Kelper Associate Planner  
Alex Roller, Engineering Technician II  
Justin Gericke, City Attorney

**Absent:** Kim Travis, Chair  
Greg Hemer  
Adam Argo

### 1.0 Call to Order – Procedural Matters\*

**Vice Chair Burns** called the meeting to order at 6:30 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 June 26, 2018
- 2.2 August 14, 2018

**Commissioner Edge moved and Commissioner Grau seconded to approve the June 26, 2018 and August 14, 2018 Planning Commission minutes as presented. The motion passed unanimously.**

### 3.0 Information Items

**Denny Egner, Planning Director**, noted the upcoming housing meeting on April 16<sup>th</sup> would be held jointly between the Planning Commission and City Council. Cottage cluster information would be presented.

**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 Public Hearings

- 5.1 Summary: Appeal of MLP-2018-001 (continued from 2/12/2019)  
Applicant/Owner: Daniel Barela  
Address: 10244 SE 43<sup>rd</sup> Ave  
File: AP-2019-001  
Staff: Brett Kelper, Associate Planner

**Brett Kelper, Associate Planner**, clarified that the hearing was for an appeal of a Type II application and that the decision tonight would be the final local decision and could not be

appealed to City Council. He presented the staff report and provided additional information as requested on the analysis of rough proportionality for the requirement of the right-of-way (ROW) dedication. He also outlined options in the event of a finding that the ROW dedication was not required, including if the applicant was interested in moving forward with a revised partition. Staff addressed clarifying questions from the Commission as follows:

- The fee-in-lieu-of construction could be applied anywhere within the neighborhood district and would expire and be refunded if not used after 10 years.
- No direct money was associated with the number staff provided for the ROW dedication, as no money would change hands in the process. The number was calculated based on the assessed value of the land and was only a rough value.
- Calculations 1 and 2 included the right-of-way dedication but did not include the value of the property. The calculations also did not include the 5-ft dedication in front of Lot 1, but only the 20-ft dedication on the north side of both lots. Inclusion of the land value would likely not allow the calculation to remain within the roughly proportional range.
- Though it was not addressed specifically in the code, staff considered the impacts of creating a new lot by splitting the existing lot in determining rough proportionality. Making Lot 1 smaller, and the fact that it already had a house, did not create additional impacts.

**Vice Chair Burns** called for the applicant's testimony.

**Michele DaRosa, Applicant, 10244 SE 43<sup>rd</sup> Ave**, stated believed staff had a thorough understanding of the Code which they tried to apply fairly. She requested that the Commission to approve the partition but did not agree with dedication of 20% of her land and believed it would be an unlawful taking.

- The rough proportionality calculation should not be based on the valuation of the land alone.
- She was concerned that should she decide to sell the property, she would have to disclose that the City could at any time build a thoroughfare to replace the park-like character of the land.
- She believed the impact in taking the property from her ownership before the land was developed into a thoroughfare was greater than the impact that her development would have on the City's infrastructure, especially considering the system development charges (SDCs), dedication of the right-of-way, and the cost of various improvements she hoped to make.
- She had worked with staff to determine a preferred configuration; however, no option was available to develop her property without a significant dedication of land or without multiple Type III variances.
- She confirmed her understanding was that with either plan, the trees and the gazebo would remain. The ultimate goal was to obtain the partition in order to build another house and an accessory dwelling unit (ADU), as well as a second ADU on the original lot to provide a total of four units. She would "condominium-ize" the parcel, remove the partition line, and the condominium plat would remain.

**Vice Chair Burns** called for public testimony.

**Dan Barela, Appellant, 10194 SE 43<sup>rd</sup> Ave**, stated that his main concern was about the impacts of a potential road built next to his home with regard to resale value, security, and privacy. He opposed the application.

**Vice Chair Burns** noted that City staff could answer Mr. Barela's questions about future homes on the neighboring property.

**Chris Leoni, 4471 SE White Lake Rd**, stated that he was against the extension of White Lake Rd.

- **Frank Fossold, 4446 SE White Lake Rd**, stated that he was in favor of the proposed development but against any future extension of White Lake Rd. Allowing for the development of the subject property without the road extension would maintain the peace, quiet, and safety within the neighborhood. Extending the road had no benefit to the people who lived there. It would cost the City money to maintain and the loss of privacy and safety could not be compensated. **Mr. Kelper** clarified that the fee-in-lieu of construction was for a half-street improvement and he did not know if it would be accurate to double it for a full street improvement. He confirmed that the cost would include sidewalks and storm drains.

**Commissioner Edge** expressed his concern regarding the barrier that the closed neighborhood may present to someone who was mobility impaired.

**Dana Stearns, 4459 SE White Lake Rd**, stated that she had lived in her house for 23 years and had enjoyed the safety of the dead-end street, especially for kids playing. She believed connecting White Lake Rd to 43<sup>rd</sup> Ave would change that, would take part of the front of her property, and would also reduce privacy and safety.

**Vice Chair Burns** called for staff's response.

**Mr. Kelper** disputed the applicant's suggestion that the City had any development plans for the subject property, noting that staff had simply considered it and the surrounding area in the context of the applicant's proposed development. The site offered the opportunity for connectivity to a dead-end street, though variances would be needed. Internal discussions were continuing, but staff believed it was possible that some of the variances for street spacing would not apply.

- Staff believed that using the assessed value from the county for the land was fair. Dedication of ROW along the edges of the property for potential connections would not significantly reduce the overall value of the property because it would not make the rest of the property undevelopable.
- Although there were options for a partition without variances if a ROW dedication occurred, it was important not to lose a possible street connection for the future. Staff had expressed that the City did not have an active plan to physically construct the street.
- Since White Lake Rd terminated so close to 43<sup>rd</sup> Ave, even without the partition the City could use eminent domain to create the street connection. He understood the concerns of residents and acknowledged that opening the street up to through traffic in the future would represent a change.
- Any new impervious areas would require stormwater management.
- There was no requirement to develop the subject property, but if development occurred, requirements such as improving the driveway for shared access might be necessary.
- Staff confirmed that even with a ROW dedication there would still be enough square footage on the property to construct three units. The maximum density would not be reduced by the required ROW dedication.

**Vice Chair Burns** called for the applicant's rebuttal or final remarks.

**Ms. DaRosa** noted that there were also safety concerns with a bike or pedestrian path.

- The lot partition would trigger public improvements but she asked that Chapter 19.700 be reviewed for applicability to her application.
- She confirmed that she was amenable to the configuration of a flag lot with a duplex, but noted that a new flagpole would create more nonconforming accessways onto 43<sup>rd</sup> Ave; the existing driveway was already nonconforming because it accessed a collector road. She noted that the existing driveway could be used as an easement area to access a possible duplex.
- There was little difference between the calculations for minimum and maximum density on the lot because of its configuration and size. With the ROW dedication, the property barely allowed for the 7,000-sq-ft requirement per home; without it, the property was at the maximum density of 3.8 homes.

**Vice Chair Burns** closed the public hearing.

**Justin Gericke, City Attorney**, stated that the critical decision for the Commission would be whether or not the findings offered by staff adequately supported the proposed dedication. References had been made to case law, but the Commissioners were not attorneys and were not responsible for determining the constitutionality of the issues.

### **Planning Commission Deliberation**

**Commissioner Edge** believed that staff had provided findings sufficient to support the original decision through the analysis of rough proportionality in the most recent staff report.

**Commissioner Grau** believed that staff had responded sufficiently to the Commission's direction from the last hearing and said she agreed with Commissioner Edge.

**Commissioner Massey** expressed reservations about the decision-making options presented to the Commission. He asked for clarification from staff regarding the preliminary denial of the appeal.

**Mr. Egner and Mr. Kelper** clarified that Option C would suspend a decision by the Commission on the appeal and that the applicant could make revisions to the partition but without the ROW dedication. It was assumed that the appellant would then withdraw their appeal. The revised partition would come before the Commission with variances and new findings. Option C was also an attempt to minimize the impact on the applicant of having to start over if the appeal was denied. Staff might not recommend approval of the variances, though the Commission had the discretion to approve them. The Commission was not required to guarantee an outcome right now, but if the majority were inclined to not approve the variances, then the applicant might reconsider their preferences. It was noted that the Commission did not have a full body in attendance tonight.

**Vice Chair Burns** stated that he appreciated the burden of proof being shifted from the applicant to the City when considering the ROW dedication. He also believed the rough proportionality calculations could have been laid out more clearly. He believed that the proportionality standard was met because the no-access issue was remedied, although access was required either through a ROW, an easement, or some creative solution with a variance that the Commission might approve. He did not find an error in the findings and was inclined to deny the appeal and let the process move forward.

**Commissioner Edge** noted that a lot of issues needed consideration, but the decision needed to be supported by findings of fact, and staff had produced those findings. The question was whether or not an error existed in the findings, and he did not think one had been seen.

**Vice Chair Burns** stated that the Commission could provide a courtesy preliminary denial of the original partition proposal if it was wanted to give the applicant the opportunity to gamble with whether the Commission would approve any variance(s) needed for a revised proposal.

**Commissioner Grau** concurred and she viewed Option C as providing that opportunity.

After a brief recess, **Mr. Egner** stated that an agreement had been reached for extending the hearing by 120 days to a date certain. A revised application for the partition and a variance(s) would be presented at a hearing where the Commission could finalize the denial of the appeal. Another option discussed was for the appellant to withdraw the appeal at that time, if it appeared the revised partition would be approved. If the appeal were withdrawn, no findings of an error would need to be made. However, it would be unwise for the appellant to withdraw the appeal without having the substitute partition in place.

**Commissioner Edge moved and Commissioner Massey seconded to pursue Option C, to include a preliminary denial of the appeal and the applicant's waiving of the 120-day clock, and to extend the hearing to a date certain of July 9, 2019. Motion passed unanimously.**

- 5.2 Summary: Harlene St Driveway Width  
Applicant/Owner: Steve Vukovich  
Address: 5485 SE Harlene St  
File: VR-2019-002  
Staff: Brett Kelter, Associate Planner

**Mr. Kelter** presented the staff report and described the request for a variance to have a wider driveway approach than allowed. The applicant had widened and reinforced his existing driveway to accommodate drivers' turnaround movements, to limit property damage from those movements, to deal with stormwater issues, and to create more parking on his property.

- The maximum width for a driveway from the public right-of-way (ROW) onto a property was 20 ft, and the applicant's driveway approach was 32 ft wide. The key issue was whether a variance to allow the 32-ft-wide driveway would create any issues in the future if Harlene St was extended to Wood St and formal curbs and sidewalks were installed.
- Staff proposed a condition requiring an agreement from the applicant to not oppose or object to the City constructing curbs and/or sidewalks in the future and to not object to the City then returning the driveway approach to a 20-ft width. The applicant would also meet whatever code standards were applicable to driveways at that time.

**Vice Chair Burns** called for the applicant's testimony.

**Steve Vukovich, Applicant, 5485 SE Harlene St**, noted that the area in front of his house was difficult for drivers to turn around in. In the past, he had removed a fence and bushes in the front yard because they had been damaged by drivers, as had his yard, which turned into mud and filled with water every year. When he replaced the driveway, he graded and expanded it to allow runoff to go to the street and prevent turnaround drivers from damaging his yard. He also used the additional width for access to his backyard. He would not object to improvements should Harlene St be extended in the future.

**Mr. Egner** clarified that there were no current plans for an extension of Harlene St.

**Vice Chair Burns** closed the public hearing.

### **Planning Commission Deliberation**

**The Commissioner** agreed with the condition and findings and appreciated the applicant improving his driveway for use by others.

**Commissioner Grau moved and Commissioner Edge seconded to approve VR-2019-002 with the recommended findings and conditions in Attachment 2. Motion passed unanimously.**

**6.0 Worksession Items** – None

**7.0 Planning Department Other Business/Updates**

7.1 PC Notebook Interim Update Pages

**Mr. Egner** stated the Comprehensive Plan Advisory Committee (CPAC) would meet Monday to discuss housing again and the other Block 3 topic areas would be addressed at the beginning of the month. He noted that the 20-year Metro growth forecasts may be low and that constraint from growth would be on the wastewater treatment facility; the water treatment facility for drinking water had the capacity to double. Also, concern existed about natural resource conflicts with solar access. Staff would return to the Commission with updates.

**Commissioner Massey** noted the cottage cluster tour, which he found very instructive, and a reasonable approach to a cottage cluster.

**Mr. Egner** believed the shallow setbacks were an issue. One 2,800-sq ft unit was for sale at almost \$800,000, but a variety of housing types were presented. He would provide a listing of the units as well as photographs to the Commissioners.

**8.0 Planning Commission Committee Updates and Discussion Items**

**Commissioner Edge** said volunteers were being sought for a 28-person Community Advisory Committee (CAC) to advise the feasibility study for the Oak Grove-Lake Oswego Pedestrian/Bridge. Milwaukie had been requested to find four volunteers.

**Mr. Egner** noted he was having some difficulty with the request to recruit a member from an underrepresented group within the city's boundary. He was trying to get recommendations to the Council by Tuesday.

**Commissioner Edge** noted that on April 9<sup>th</sup>, a public meeting would be held at the Oak Grove Elks Lodge for the Park Avenue Neighborhood and Station Area Development and Design project. There was interest in engaging with residents of Island Station who were not within the neighborhood, but who were on the side of the boundary where Clackamas County did not have land use authority. People in that community would either benefit or be impacted in some way by changes to the area.

**9.0 Forecast for Future Meetings**

- March 26, 2019
1. Public Hearing: AP-2019-002 11380 SE 21stAve
  2. Worksession: Comprehensive Plan Update – Housing
- April 9, 2019
1. Public Hearing: WG-2019-001 Riverway Ln Single-Family Residence Replacement
  2. Public Hearing: NR-2018-005 Elk Rock Estates Development

Meeting adjourned at approximately 9:29 pm.

Respectfully submitted,

Alicia Martin, Administrative Specialist II



Kim Travis, Chair