

MEMORANDUM

To: Planning Commission
From: Christina Robertson-Gardiner, Senior Planner
Laura Terway, Community Development Director
Carrie Richter, Assistant City Attorney
Re: Subdivision: TP 17-03
Zone Change: ZC 17-02
Date: October 1m 2017

Background

On September 25, 2017 the Planning Commission opened the hearing, heard staff presentation and public comment from the applicant and neighbors on a subdivision and zone change known as Wheeler Farm. The Planning Commission kept the record open and continued the hearing to October 9, 2017 for additional public comment, deliberations and a decision. This memo is intended to generally respond to public comments and provide additional background.

Comprehensive Plan

The Oregon City Comprehensive Plan and Plan Map were adopted on 2004 to provide long-range community goals and aspirations for community development. Comprehensive plans typically encompass large geographical areas, a broad range of topics, and cover a long-term time horizon. The Comprehensive Plan dictates public policy in terms of transportation, utilities, land use, recreation, and housing.

Along with the text, the Comprehensive Plan map creates plan use categories such as Low Density Residential, Mixed-use and Industrial. The subject site is carries with it a Comprehensive Plan designation of "LDR" Low Density Residential. Three zoning districts identified in the code implement the LDR plan designation include: R10, R-8 and R-6. Therefore, all three of these zoning designations have been deemed to be consistent with the LDR plan designation.

The Oregon City Comprehensive Plan is implemented through Oregon City Municipal Code (OCMC). The OCMC sets forth enforceable, detailed regulations regarding land use, land development, protection of natural resources, building design, traffic management, etc. For land use, OCMC Title 16 provides standards and regulations for new subdivisions and other land development; OCMC Title 17 lists specific development standards for uses of land in the city and related regulations for issues such as steep slopes, tree cover, historic review, and site design or architectural design standards. The City Commission is responsible for adopting all code through a public review process where the community agrees on the applicable standards. The community has agreed by adopting the standards that development in accordance with the applicable standards is acceptable.

Quasi-Judicial Land Use Process.

The Planning Commission role in this application is quasi-judicial, meaning that its charge is to apply the facts to the existing regulations. Unlike a legislative process, where the applicable policy can be changed, all discussion and deliberation in a quasi-judicial process should be focused on applicable standards and criteria. The applicant shall demonstrate how the criteria are met by the application. An application may be denied only for failure to meet an applicable standard or criteria.

Planning Commissioners, as decision makers, are required to report any exporting ex parte contact when receiving information, discussing the land use application or visiting the site in question outside the formal public hearing. Failure to disclose such contact may result in reversal or remand of the decision. If ex parte contact does occur, the decision-maker must disclose it on the record at the hearing, describe the circumstances under which it occurred and present any new evidence introduced through that contact.

Planning staff are not decision makers and are not subject to ex parte restrictions. Communication between staff and a member of the governing body is not an ex parte communication. ORS 227.180(4). Further, communications between staff and parties to a land use proceeding are also not ex parte communications. *McKenzie v. Multnomah County*, 27 Or LUBA 523, 532 (1994). In other words, Planning Staff's role is to meet with all people such as the applicant, their consultants, neighbors, city staff who may have questions or information that can help provide the Planning Commission information for their deliberation and decision. Planning staff typically meet with interested parties throughout the land use process, including those who seek information about the application, process, or how the criteria are applied.

Lot Averaging

16.12.050 - Calculations of lot area.

A subdivision in the R-10, R-8, R-6, R-5, or R-3.5 dwelling district may include lots that are up to twenty percent less than the required minimum lot area of the applicable zoning designation provided the entire subdivision on average meets the minimum site area requirement of the underlying zone. The average lot area is determined by calculating the total site area devoted to dwelling units and dividing that figure by the proposed number of dwelling lots.

The project includes 77 lots for the future construction of single-family detached homes in the R-8 zoning district. As permitted above, a number of the planned lots are less than 8,000 square feet. The smallest of the future lots is approximately ±6,406 square feet, which is within the maximum 20% reduction allowed by this standard. A number of the planned lots are also larger than 8,000 square feet with the largest lot being ±26,814 square feet. The average lot area is ±8,279 square feet, which exceeds the minimum square footage requirement of the R-8 zone. Although some expressed concern about the standard or modifications such as the imposition of maximum lot size requirements to equalize lot sizes, the standard is unambiguous and non-discretionary.

Retaining Large Lots near Neighboring Properties

Ensuring that comparable or cohesive lot sizes about neighboring built subdivisions is not a criteria for Subdivision or Zone Change approval. There is no known criteria which would authorize the City to require the applicant to retain larger lots near neighboring properties.

Traffic

A Transportation Planning Rule (TPR) analysis has been included in the Transportation Impact Study (TIS), prepared by Lancaster Engineering. The TIS includes trip generation estimates for the existing R-10 zone and the planned R-8 zone, traffic count data, trip distribution and assignments, operational analysis, crash data analysis, and capacity analysis for the 20-year planning horizon consistent with the requirements of the State Transportation Planning Rule (OAR 660-012-060). Written findings are contained within the TPR analysis that

demonstrate that the TPR is satisfied by the application and that the development does results in a level of congestion which is allowed in the Oregon City Municipal Code. Therefore, the application is consistent with this Goal. John Replinger, the City's transportation consultant with Replinger and Associates concurs with the applicant's assertion that the requested zone change is consistent with the TPR.

Schools

B. That public facilities and services (water, sewer, storm drainage, transportation, schools, police and fire protection) are presently capable of supporting the uses allowed by the zone, or can be made available prior to issuing a certificate of occupancy. Service shall be sufficient to support the range of uses and development allowed by the zone.

The criteria relevant to schools is provided above. The City worked with the School District in implementing the Comprehensive Plan to ensure adequate capacity for the three implementing zoning designations. Further, the City provides notice to the School District of all applications for their review. In addition, the School District utilizes statistics on the number of homes being built and the number of lots created for forecasting purposes. The School District staff did not identify concerns with this zone change application and did not submit formal public comment. The requested zone change would allow up to an 11 additional lots onsite more than the maximum development requirement of the R-10 Zone.

Housing Options

Goal 10: Housing

Goal 10.1: Provide for the planning, development and preservation of a variety of housing types and lot sizes.

Policy 10.1.1

Maintain the existing residential housing stock in established older neighborhoods by maintaining existing Comprehensive Plan and zoning designations where appropriate.

Policy 10.1.3

Designate residential land for a balanced variety of densities and types of housing, such as single-family attached and detached, and a range of multi-family densities and types, including mixed-use development.

Policy 10.1.4

Aim to reduce the isolation of income groups within communities by encouraging diversity in housing types within neighborhoods consistent with the Clackamas County Consolidated Plan, while ensuring that needed affordable housing is provided.

The above are goals and policies from the Comprehensive Plan to guide policies on housing. Since 2002, the City has implemented these policies by making land use decisions to increase density and encouraging additional housing development by increasing the size, type and location of housing options. For example, units have been created through approval of zone changes that allowed greater density as well as through the creation of a variety of housing types ranging from single-family to multi-family and care facilities.

In 2004, the City implemented new mixed use zones, including the MUC-1, MUC-2, MUD, HC, NC and C that allows for the development of housing which is limited by building height, parking standards, lot coverage, etc (though there are some restrictions in NC). While not counted as contributing to needed housing goals in the City's Housing Technical Report (2002), the capacity from the new mixed use zones, is estimated at a potential 8,000 dwelling units within the City limits. Approximately 24.57% of the City is currently within the R-10 district while only 16.95% of the City is zoned R-8 and 13.82% is zoned R-6. Therefore, the approval of this zone change will expand the housing types and options available within the City.

Zoning in City Limits – Number of Acres:

Residential Plan Classification	City Zone
Low-Density Residential	R10 = 1589.11 (24.57%) R8 = 1095.97 (16.95%) R6 = 893.99 (13.82%)
Medium Density Residential	R3.5 = 424.15 (6.56%) R5 0%
High-Density Residential	R2 = 262.22 (4.05%)
General Commercial	C = 160.86 (2.49%) MUD = 510.19 (7.89%) WFDD = 30.44 (0.47%)
Mixed-Use Corridor	MUC1 = 168.46 (2.6%) MUC2 = 44.66 (0.69%) I = 475.31 (7.35%) HC = 8.82 (0.14%)
Mixed-Use Employment	MUE = 156.88 (2.43%)
Industrial	GI = 220.32 (3.4%) CI = 164.66 (2.55%)
County	245.38 (3.79%)

R10 currently comprises the largest minimum lot sizes in the city and consists of the largest percentage of zoned land within the City limits. As it is a default zoning designation for the Low Density Residential Comprehensive Plan designation, it is generally applied to most properties annexed into the City.

Established Older Neighborhoods

Public comments referred to the comprehensive plan policy that supported protecting older established neighborhoods in reference to this zone change request. The comprehensive plan refers to existing housing stock in established older neighborhoods as of the 2004 adoption. This was written to protect established neighborhoods with houses more than 50 years old such as Rivercrest, Mcloughlin and Canemah. The subject site was annexed into the city in 2006. Hazel Creek Farms, a neighboring R-10 subdivision was developed in 2002/2003.

Livability/Community/Existing Neighborhoods

A concern was raised about a reduction in livability and community if the proposed subdivision is approved with an R-8 zone. No evidence has been submitted that smaller lot sizes reduce the quality or compromise the character of the neighborhood. Moreover, these are not a criteria that may be considered when evaluating a Subdivision or Zone Change approval.

Property Value

A concern was raised that the smaller lots associated with the Subdivision or Zone Change would diminish the value of neighboring properties. Again, there is no evidence to support this conclusion. Rather, if this is highly desirable location, as the evidence suggests, the new homes will be similarly priced and will help the

existing housing stock retain their value. Further, there is no evidence to suggest that greater density compromises housing value. Further, this is not a criteria for Subdivision or Zone Change approval.

Conclusion

Although it is understandable that the Planning Commission has heard testimony from neighbors who are concerned about changes resulting from the proposed development, staff has not identified any applicable land use regulations or plan policies that would prohibit the proposed zone change or subdivision.