



# City of Oregon City

625 Center Street  
Oregon City, OR 97045  
503-657-0891

## Meeting Minutes - Draft

### Planning Commission

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Monday, September 14, 2015

7:00 PM

Commission Chambers

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#### 1. Call to Order

*Chair Kidwell called the meeting to order at 7:00 PM.*

**Present:** 7 - Charles Kidwell, Tom Geil, Robert Mahoney, Zachary Henkin, Paul Espe, Denyse McGriff and Damon Mabee

**Staffers:** 4 - Tony Konkol, Carrie Richter, John Lewis and Laura Terway

#### 2. Public Hearing

##### 2a. Pavilion Park III Development Application: Zone Change file ZC 15-02 & Subdivision file TP 15-03

*Chair Kidwell opened the public hearing. He asked if the Commission had any ex-parte contact or a visit to the site since the last meeting. There was none.*

*Laura Terway, Planner, presented an updated staff report. She gave an overview of the application on McCord Road. The applicant proposed to change the zoning from R-10 to R-6. The property abutted R-6 and R-3.5 zoning. The zone change would provide the City with a variety of densities and housing types and a greater efficiency in public facilities. The applicant also proposed a 25 lot subdivision and she explained the lot layout, street tree plan, tree removal plan, and utility plan. The applicant brought up four issues at the last Planning Commission meeting regarding utility concerns. In response, Condition #9 was removed and Conditions #10, #11 and #21 were amended. Staff thought all of the concerns had been addressed for #9, #11, and #21. A letter from Carrie Richter, City Attorney, was added to the record regarding a proportionality analysis and nexus analysis for the water line in Leland Road. The City also received an email from the applicant that was put in the Planning Commission packet last week addressing the concerns.*

*Ms. Richter said her letter was in response to the email and testimony received relating to the requirement to extend the water line from Kalal Court to the southwest corner of the property on Leland Road. The concerns the applicant raised had to do with the obligation to extend the water line the additional 182 feet was not roughly proportional to the impacts of the development of Lot 16. She analyzed the issue with Public Works. The existing CRW water mains were in poor condition and were scheduled to be abandoned in the near future. Portions of the water distribution system design standards required that all lots created by a subdivision included permanent distribution facilities in the frontage. Because the water lines had to connect, they had to require the extension. The City's 2012 Water Distribution Master Plan showed a future system pipeline extending along Leland Road. By extending the water line down to where McCord turned a corner and coming back up on McCord where the applicant was already extending the line, the applicant would see a benefit of increased connectivity resulting from the connection. The benefits identified by Public Works were increased water pressure for the entire property, increased public*

safety through enhanced fire flows, increased water quality enjoyed by the entire property because water would not be sitting in a dead end line, and looping provided redundancy in the event of an outage. It was staff's position that the whole property benefited from the 182 foot extension. This information established the essential nexus component of the takings analysis that the City had to complete in order to bear the burden of requiring the improvement. The second step was to determine whether or not the obligation for the extra 182 feet of pipe was roughly proportional to the impacts of development. Staff looked at the number of lots that would be created that would benefit. The total length of pipe necessary to provide the enhanced connectivity benefitting all the proposed development from the existing water line terminus at Leland Road to the McCord Road terminus was 1,625 feet. Conditions of approval as they were currently proposed required the applicant to construct 800 feet. Staff determined that by dividing the necessary 800 feet by 25 lots resulted in an allocation of 32 linear feet of pipe per lot. Staff compared that to how many lots could be developed in the green area, which was ten lots and required construction of 82 linear feet more than what the applicant was being asked to construct, and how many could be developed in the red area, which was 3 lots resulting in 61 feet per lot. This suggested that the obligation to construct only 32 linear feet per lot was less and was proportional to what would be required for other lots in the area to realize the same benefits. Another way to look at it was land area instead of lots. The applicant was being asked to construct 37% of a linear pipe system. The applicant was rezoning 224,198 square feet and the total land area that would benefit by the fully connected water line was 390,204 square feet. They were developing 57% of the land and being asked to improve 37% of the pipe. In the Dolan case, no precise mathematical calculations were required, only rough proportionality and it appeared to be roughly proportional. It was consistent with the City's regulations to require an extension in order to connect Lot 16 and it was roughly proportional.

Commissioner Espe asked about the possibility of a reimbursement district. John Lewis, Public Works Director, said there was a reimbursement district option in the Code that a developer could apply for.

Wendy Marshall, Development Projects Manager, explained they could apply for a reimbursement district for any infrastructure above and beyond the standard. It could be done for the water line they needed to build.

There was discussion regarding how the reimbursement district worked.

Ms. Terway said staff recommended approval with the revised conditions.

Ms. Marshall explained the amended conditions.

Rick Givens, representing the applicant, said at the pre-application meeting, staff's position was that there was no need to extend the water main to Leland Road. They were told they could either use temporary access to Clackamas River Water or extend it as the applicant proposed. At some point the City's position changed and it was a \$40,000 hit for the water line. It was a significant cost and potential reimbursement when the surrounding properties redeveloped was not likely in the near future. He explained how they proposed to provide water service to Lot 16. The argument for nexus had a few flaws. The purpose of the extension was for fire protection, but there were existing fire hydrants and fire protection already on Leland. The reason given in the design standards for the extension was not met in his opinion. Usually when the line was at the border, it was extended across the frontage, not extending it some unknown distance from a water line off site that they did not need.

Bruce Goldson discussed the rough proportionality. In the staff report it said one of the benefits of the extension was water pressure, but that would not happen with an extension of the line. Looping it together would not change the water pressure. The current pressure on the site was 70 psi which was what was expected throughout this subdivision. It was well above the fire protection requirements and City's design standards. He spoke with Clackamas River Water who said they were not opposed to providing service to the lot. It would not work very well for them to abandon the line in small segments. The new subdivision provided four connections that were dead-ended at this point. They would increase the water flow and redundancy of the system significantly with this subdivision. It would be hard to improve the water quality as there would be dead end lines with any development like this until it was totally built out. Looping was a benefit and would occur at some point when and if the line was built around McCord and Leland. The reimbursement option had to be approved by the City and there was no guarantee that the money would be recouped.

Mr. Givens was concerned about Condition #10 and asked that it be stricken entirely and allow the applicant to service Lot 16 as originally proposed from the rear and allow the applicant to do a fee in lieu of for the frontage improvements across the subject property. He also requested Condition #27 be changed to allow the option of providing a fee in lieu of the frontage improvements.

Mike Robinson discussed Condition #10. The applicant could provide a water line and sewer extension to Lot 16 by private easement. The staff report said Oregon Administrative Rules did not allow water and sewer lines in the same easement. The testimony from Mr. Goldson was that it was acceptable. Clackamas River Water did not object to serving Lot 16. There was no need for the 12 inch line to serve the single lot as it could be served by other means. The purpose of Condition #10 was to serve other areas, but there was no requirement for that in the Water System Master Plan. There was no evidence that there would be a subdivision impact that would justify the condition. Looping, fire protection, water quality, and water pressure were not supported by substantial evidence. There were contrary findings in the staff report on Goal 11 stating the public facilities and services could be provided and the findings that said the Fire Department did not have any concerns. He read an email from Mike Bowman, Deputy Fire Marshall with Clackamas Fire District, who was not aware of any water pressure or water quality issues in this area. The City had the burden of proof to show a nexus between the impacts of the subdivision and the condition. There was no evidence to support the justification in regard to fire protection, water quality, and water pressure by looping. There would always be dead ends in these situations. The water system had to be extended to allow for future connections of neighboring undeveloped properties, but the neighboring properties were developed. The cost for the extension was only for Lot 16, not the entire subdivision as the subdivision did not need the extension. He thought that was the proper proportional analysis. This was a City requirement, not an applicant requirement. Regarding the reimbursement district, he was unsure who would reimburse them as people would have to redevelop their property which required a zoning change. He did not think there would be an opportunity to recoup the money. He requested seven days to submit final written arguments and the Commission to come back and deliberate on September 28.

Commissioner Mabee asked if it was the potential for growth or the growth that happened that made this applicable. Mr. Robinson read a portion of the Code in the staff report regarding the water system, which stated applicants were responsible for extending the City's water system to the development site and through the applicant's property to allow for future connection of neighboring undeveloped properties. He thought it was a fair conclusion that this language did not take into account underdeveloped properties. He did not think this application fit with this Code

requirement.

Councilor Espe asked about the definition of undeveloped. Mr. Robinson said if he could find the definition, he would add it to the written comments he would be submitting.

Commissioner Espe was concerned about when the City might be able to provide additional water lines in this area that would be needed in the future. Mr. Robinson pointed out how he thought the applicant was paying his way for this development by extensions and connecting four dead end streets. He thought the extension should be a government financed project. He was willing to work with staff to come up with a modified condition.

There was no public testimony.

Ms. Marshall explained how the static pressure would not change, but the residual pressure would be increased with looping. Drinking water would not change, but the fire hydrant flow would be increased. Clackamas River Water had indicated that if the City did not require the main extension down Leland, they would serve Lot 16. It was not the preferred option, but they would if they had to. She explained which areas were considered developable and likely to develop. She did not think it was unfeasible to think parts would be developed soon and she thought Oregon City was amenable to higher density. A reimbursement district would be used in a 10 to 20 year timeframe.

Mr. Lewis said reimbursement districts were set up based on the number of properties that were in the district and if a majority of those property owners opposed the district, then it would become a problem with the formation of the district. It added more risk to the developer. There were credits the developer could request for SDCs for larger facilities.

Commissioner Espe said instead of fee in lieu, he thought they should give more SDC credits for the upsized system.

Mr. Goldson said when a fire hydrant was turned on there would be a residual drop in the pressure even if it was looped because the water was coming from several different directions. There might be better flow if it was looped, but there was still fire flow if it was not looped.

Chair Kidwell closed the public hearing.

**A motion was made by Commissioner McGriff, seconded by Commissioner Geil, to continue deliberations to September 28, 2015, and authorize the applicant to submit final written arguments no later than noon on September 21, 2015. The motion carried by the following vote:**

**Aye:** 7 - Charles Kidwell, Tom Geil, Robert Mahoney, Zachary Henkin, Paul Espe, Denyse McGriff and Damon Mabee

### **3. Consent Agenda**

**3a.** Approval of Planning Commission Minutes for 12/08/14, 01/12/15, 01/26/15, and 04/13/15.

**A motion was made by Commissioner McGriff, seconded by Commissioner Espe, to approve the December 8, 2014, Planning Commission minutes. The motion carried by the following vote:**

**Aye:** 7 - Charles Kidwell, Tom Geil, Robert Mahoney, Zachary Henkin, Paul Espe, Denyse McGriff and Damon Mabee

**A motion was made by Commissioner McGriff, seconded by Commissioner Espe, to approve the January 12, 2015, Planning Commission minutes. The motion carried by the following vote:**

**Aye:** 7 - Charles Kidwell, Tom Geil, Robert Mahoney, Zachary Henkin, Paul Espe, Denyse McGriff and Damon Mabee

**A motion was made by Commissioner Mabee, seconded by Commissioner McGriff, to approve the January 26, 2015, Planning Commission minutes. The motion carried by the following vote:**

**Aye:** 7 - Charles Kidwell, Tom Geil, Robert Mahoney, Zachary Henkin, Paul Espe, Denyse McGriff and Damon Mabee

**A motion was made by Commissioner Henkin, seconded by Commissioner Mabee, to approve the April 13, 2015, Planning Commission minutes. The motion carried by the following vote:**

**Aye:** 6 - Charles Kidwell, Tom Geil, Robert Mahoney, Zachary Henkin, Paul Espe and Denyse McGriff

**Abstain:** 1 - Damon Mabee

#### **4. Community Development Director Update**

*Tony Konkol, Community Development Director, said the Commission would have an upcoming Work Session on the Beavercreek Road Concept Plan and another Work Session on the Cove application. He explained the other applications coming up on the calendar. Additional funding was received from the State for the Riverwalk project. A Community Planning and Development Grant was applied for to do a development opportunity study on the private property. A Kick Off event for the Riverwalk was held last week and was well attended. A 501c3 was created called Rediscover the Falls to help with fundraising. He discussed the recent visit with Senator Wyden and the work with the railroad in creating a quiet zone downtown.*

#### **5. Adjournment**

*Chair Kidwell adjourned the meeting at 8:37 PM.*