

MEMORANDUM

TO: Honorable Mayor and City Commissioners
FROM: Carrie A. Richter, Deputy City Attorney
DATE: September 5, 2017
RE: Request for Interpretation of the Oregon City Charter Chapter X to Accommodate the Parker Knoll Subdivision within Wesley Lynn Park

Introduction

The City has received an application from Icon Construction and Development LLC (“Icon”) to subdivide property adjacent to Wesley Lynn Park into an 11-lots residential subdivision. The proposal includes constructing a roadway to access to the subdivision on a portion of land within Wesley Lynn Park. Ex A. In order to align the roadway with an existing intersection of Reddaway Avenue and Leland Road, the road extension must be located within a pre-existing 50-foot roadway easement area.¹ The land within the easement is currently unimproved, although it does contain a well-worn foot path that connects to a hard-surfaced pedestrian trail within the park. Ex B. The improvements proposed within the easement area include a portion of a local roadway, 12 feet of pavement area, a drainage swale necessary to collect runoff from the roadway only, plus a 10 foot concrete path for use by residents as well as park attendees.

The question for the City Commission to decide is whether construction and/or use of these improvements requires prior approval by the voters, under Chapter X of the Oregon City Charter.

It is important to note at the outset that it is the City Commission who is charged with interpreting its own City Charter. Chapter II, Section 5 of the charter provides that “[t]he charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs.” Where there is more than possible interpretation of a charter provision, the choice of which interpretation is the proper one is for the City Commission to make not the courts. *Fifth Avenue Corp. v. Washington Co.*, 282 Or 591, 581 P2d 50 (1978) (cited approvingly in *Gage v. City of Portland*, 319 Or 308, 315, 877 P2d 1187 (1994)). As discussed in greater detail below, whether the proposed activities trigger the voter approval threshold is subject to more than one interpretation and for that reason, the City Commission’s interpretive guidance is essential.

¹ The City’s road standards encourage the alignment of road extensions with existing streets. OCMC 12.04.190 provides:

The centerline of streets shall be:

- A. Aligned with existing streets by continuation of the centerlines; or
- B. Offset from the centerline by no more than five (5) feet, provided appropriate mitigation, in the judgment of the city engineer, is provided to ensure that the offset intersection will not pose a safety hazard.

Given that this express authority for interpretation rests with the City Commission and that the courts should affirm a Commission interpretation that is consistent with the text of the Charter, this memorandum does not conclude with any recommendation. Staff is standing by to respond to questions and to assist the Commission with its analysis, as requested.

Background Facts

The subject easement was created in 1962 and allows the owner of the adjacent property, currently Icon, and its invitees, to use a 50 foot strip of land within the Park for “roadway purposes.” Ex C. At the time that the easement was created, the Icon property, as well as the three tax lots that currently comprise Wesley Lynn Park, were located outside of the city limits. Ex D. In 1998, the City purchased 13.71 acres of land, abutting the Icon property to the southeast, known as Tax Lot 501, for use as a park. This property was annexed to the City in 2001. The City acquired the subject property, already encumbered by the easement in 2002. In 2003, the land was annexed to the City, becoming part of the recently renamed Wesley Lynn Park.² The City has not completed any formal master planning for this park and does not expect to have funds available for further development of this park for some time.

Development of a subdivision requiring use of this easement area has been subject to two previous voter approval efforts on this property that have failed. Ex. E. In both of those cases, the activities proposed were different in the following respects:

- The 2015 /2016 development proposed roadway improvements to occupy the full width of the easement area and included water and sewer lines. An additional easement to accommodate an underground stormwater drainage facility was also necessary. The improvements currently proposed are limited solely to a portion of a street, 12 feet, with a storm drainage swale necessary to move runoff from the roadway only, plus a multi-use concrete trail for access by park users. All of the sewer, water, additional storm sewer and other private utilities necessary to support the subdivision will be constructed within the Icon-owned property.
- In order for the underground utilities to be maintained by the City within the roadway, as proposed with the 2015 / 2016 development, Icon and the City would have been required to dedicate the parkland subject to the easement to the public for use as a public street.³ This would have the effect of extinguishing the easement and, in turn, changing the legal status from public park property subject to an easement to a dedicated public street. The current proposal does not include the creation of a dedicated public street on park property. Rather, the underlying fee ownership will remain in City ownership, for use as a park, subject to the road access obligations guaranteed to Icon pursuant to the existing easement.

In April 2017, Icon filed the subject subdivision application. Subdivision applications are processed by providing a period for the submittal of written comments, rather than a public hearing. During the comment period, the city received a significant number of concerns related to the Oregon City Charter and the previous election determinations made by Oregon City voters. Rather review the subdivision for

² When the City acquired this land, it consisted of a single tax lot, Tax Lot 400 that was subsequently partitioned.

³ Another solution would be the conveyance of a private or public utility easement but such actions would similarly change the “legal status” of this area within the park.

compliance with the Oregon City Municipal Code separately from reviewing the proposal for compliance with the Oregon City Charter, the City Commission decided to review the application as a whole in a process that resulted in increased opportunities for public participation. The application was noticed a second time to the public identifying an additional opportunity to submit written comment as well as testify at a City Commission hearing to be held on October 18.

The Applicable Standards

The standards applicable to the City Commission's consideration of these issues set forth in Chapter X, Section 41 of the City Charter provide, in relevant part:

The commission may not do any of the following listed acts with regard to any designated city park or part thereof without first obtaining approval of the legal voters of the city. Said acts are as follows:

(b) Vacate or otherwise change the legal status of any park.⁴

(c) Construct permanent buildings or structures thereon other than for recreational purposes and park maintenance. In any case where at the date of adoption of this section there are existing structures which do not comply with this provision, such structures and any additions and alterations thereto are excepted from the provisions of this section.

The Charter does not absolutely prohibit the activities such as a change in legal status or the construction of permanent non-recreation structures. Instead, the Charter provision requires that the City Commission receive voter approval for taking such actions. Further, although the City is not the party constructing the road, the applicant has requested an interpretation of these Charter provisions as part of its subdivision request to determine if these construction activities may proceed without voter approval.

Chapter X, Section 40 of the City Charter contains a purpose statement that might provide some helpful context to the City Commission in considering these matters as well:

The purpose of this Chapter X of the Charter is to prevent the transfer, sale, vacation or major change in use of city parks without first obtaining an approving vote of the legal voters of this city; to designate certain park areas and their use; to preserve the natural beauty of public parks and to protect the rights of citizens in the preservation of their heritage of nature. Its purpose also is to establish authority and procedures for abatement of nuisances and fire hazards for the protection of the public, as well as protection of the rights of individual citizens.

⁴ Section 41 also limits the ability of the City to transfer any aspect of ownership of park property, including creating an additional easement, but that limitation is not implicated by Icon's current proposal.

Analysis

Construction of a Roadway and Its Use as “Changing the Legal Status” of a Park

Voter approval is required whenever an action by the City Commission will “change the legal status” of a park. The Commission must decide what the term “change the legal status” means and then decide if this threshold is triggered given the facts. “Legal status” generally means the circumstances describing a condition as defined in the law. In this case, the legal status of this 50 foot strip of Wesley Lynn Park is that it is owned by the City for park purposes and is subject to a roadway easement in favor of Icon. There are a number of considerations that may affect whether this proposal alters the “legal status” of the park.

First, the City acquired this property, designating it a Charter park, after the easement was already in place. Installation of the roadway improvements will not change the existing easement encumbering this property. In other words, the extent to which the public could use the easement area for park purposes has always been limited by the easement rights held by Icon and its predecessors-in-interest, even though the road has not yet been installed. Although constructing the roadway in this area will change the look of the land, that right to make improvements, constructing a roadway, pre-existed the land becoming a park. No further change in that status is proposed.

Second, as the City Commission is likely aware, where a subdivision requires the extension of utilities and roadways, these utility extensions are typically located within the road area that is dedicated for public use. A public road dedication, as noted on a subdivision plat, in effect, creates a public easement. This is the permission that allows the City to freely install and maintain utilities within public roads and keeps them open for unrestricted public use. In 2015 / 2016, when previously proposed, this easement area was to be used to accommodate utilities, which would have the effect of expanding the easement to include all utilities, and not just a roadway. Locating utilities in the easement area would have expanded the existing private easement for roadway purposes to include utility purposes as well. The current proposal does not include utilities within the easement area.

Lastly, allowing the City and the public unfettered access to this easement area to maintain the utilities, would have the effect of converting the existing private easement into a public one – changing its “legal status.” This was one of the reasons that the City Commission cited for its conclusion that voter approval was required in 2015 and 2016.

Icon has altered its proposal so that no public dedication of the roadway within the easement is proposed. Icon finds support for its position in the fact that nothing in the OCMC or public works standards prohibit private streets. For example, all of the roadways within the County’s Red Soils campus are private roads subject to maintenance and access easement authorizations running to the City. Since the portion of the road will not be subject to a public dedication, the City, as the underlying owner of the property may still exercise all of the existing ownership rights, subject to the easement limitation. In other words, the City could lease the park for a private event and, as part of that lease, could limit those who access the park via the easement solely to event guests as well as the Icon authorized users, as required by the easement. The general public could be prohibited from entry. This ability to exclude others is a right that the City currently enjoys as the owner of park property that would not exist if the property is dedicated to public use. This ability to exclude others is confusing because as a practical matter the City leaves this park land open for use by the public and is likely to continue to do so in the

future. In other words, the City has no desire to restrict access so long as this area remains a park, open to the public and thus this proposal should have no impact on the public ability to access or use this easement area.

With that background, Icon has asked for a finding that the proposal does not change the legal status of the park. Icon's argument is that the City took title to the property subject to the easement and, therefore, the easement has been part of the legal status of the park since the inception of the City's ownership. The stated purpose is that voter approval is required when there is a "major change in use." Icon argues that construction of this roadway represents nothing more than the realization of a right that was already guaranteed to Icon at the time that the City acquired the land.

An alternative interpretation would be to conclude that, from a public policy and sound planning perspectives, land divisions that require the extension of utilities or roadways to be maintained by the City, must be accomplished by extinguishing the private easement in favor of public dedication. The justification for this is two-fold. The result of such a public dedication would be unrestricted public access within the park which, as pointed out above, is likely the result in any event because this area is a fully accessible to the public by virtue of being a Charter park.

Secondly, providing for public dedication through voter approval would result in a more traditional road cross-section, with utilities running through the street. Under Icon's proposal, the road ownership will be split – one half owned by Icon subject to a dedication for public use and the other half owned by the City subject to a private easement in favor of Icon. Rather than the utilities running down the middle of the road, as is typically the case, the utilities are constrained, pushed to one side and located on the Icon owned property. However, it is also likely the case that proposing a less complex road / utility proposal that would require a vote, would also result in a redesign of the roadway locating it within the entire 50 foot easement area leaving less room available for greenspace and traditional park uses.

Roadway and Sidewalk as Permanent Structures for Purposes other than Recreation

In addition to the "change in legal status," the Charter limits the construction of "structures" or "buildings" in parks under certain circumstances. This standard requires consideration of whether the roadway paving, stormwater swale and multi-use trail that Icon plans to provide in the easement area qualify as "structures," and if these improvements are structures, whether they could be excluded from consideration by the voters because they are for "recreation purposes."

The term "structure" is not defined, nor does this term appear anywhere else within the body of the City Charter. As a result, the Commission could conclude that this term was intended to carry its plain and ordinary dictionary meaning: "something (such as a building) that is constructed" or, alternatively, as "something arranged in a definite pattern of organization." *Merriam-Webster Dictionary*. Another alternative would be to look to the definition of "structure" as it is defined in the City's land use and zoning regulations. OCMC 17.04.1215 defines "structure" as "anything constructed or erected that requires location on the ground or attached to something having location on the ground."

Icon argues that both the dictionary and zone regulations definition of "structure" suggests a "vertically organized construction" that would not include a roadway or a swale. Icon places significance on the term "erect" as indicating some vertical construction is necessary to create a "structure." Icon distinguishes the term "structure" from the term "street or road," which is defined in the zoning regulations as "a public or private way that is created to provide the principal means of ingress or egress

for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress and egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.” Icon argues that as a specifically defined term that is not similarly referenced within the definition of “structure,” a “street” cannot also be a “structure.”

On the other hand, a roadway, although it is of limited verticality, is something that is built. Just like a vertical building, a roadway has a complex, logical and definite organization, like a bridge, a dam or a runway, that must be attached or located upon the ground in order to serve its purpose. In that way, a road could be a “structure.” It is true that, with regard to zoning and land use, the OCMC Chapter 17 generally regulates “structures” differently from “streets,” however, there is also a general definition of “streets” in the code that controls the definitions appearing in all ordinances unless the context dictates otherwise. OCMC 1.04.010. “Streets” are defined under this section to include “all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this city which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.” This definition does not include private streets. Therefore, if the term “structure” as used in the Charter excludes “streets,” the City Commission needs to clarify whether this exception applies to all streets or just public streets.⁵

The Commission may place some significance on the introductory language of Section 41, which opens with the stipulation that “the commission may not do any of the following listed acts with regard to any designated city park...” In this case, neither the City, nor the City Commission will be constructing any improvements within the park. Rather, it will be Icon or its representatives that will be doing all of the work. This limitation is directed at situations where the City is the actor – giving up some right of ownership or making some physical change for non-recreation purposes. Certainly, the conveyance of a roadway easement in the first instance would be an action by the City that would trigger the Charter but in this case, the easement was in place at the time that the City acquired the property. No City action is needed and construction of the roadway is already allowed.

The City Commission’s analysis may also include some consideration of the “recreation purposes” qualification. Should the term “structure” be considered in isolation? Or is it possible that what qualifies as “structure” could vary depending on the recreational benefit realized? The provision of a multi-use trail will further a recreational purpose. It may also be that reducing the road width to leave a majority of the easement area vacant and available for recreational use, and providing vehicular access to the center of the park could serve a recreational purpose. However, the City has no adopted parks plan for Wesley Lynn Park and has no plans to provide further vehicular or pedestrian access at this time. As a result, it may be premature to determine whether the road extension, when viewed in isolation or considered in tandem with the other benefits, would serve a recreational purpose.

Precedent for Interpreting Chapter X, Section 41

The City has some precedent for requiring voter approval where the activity proposed within park land included a roadway. In 2010, the City Commission required voter approval to allow for the extension of Josephine Street and a storm detention facility to be located within Oak Tree Park. A memorandum summarizing the legal issues in the Oak Tree Park proposal is attached as Ex. F. The Oak Tree Park proposal presented a clearer case for requiring voter approval because the land to be occupied by the

⁵ This distinction was not relevant to the City’s previous considerations of this request because it included utility lines, both within and beyond the easement boundaries that were not “streets.”

roadway was not subject to a pre-existing roadway easement, restricting the public right to use this area at the time that the park was acquired. There was no indication that the road or storm detention proposal would further any recreational purpose.

As pointed out above, in 2015 / 2016, the City interpreted Chapter X, Section 41 to require voter approval with regard to the subject property on two prior occasions. The explanatory statement for the 2016 measure stated that the “improvement require voter approval because Chapter X of the Oregon City Charter prohibits improvements on park property, other than for recreational purposes, without a vote of the people,” Ex E. The Commission could distinguish this proposal from its previous decisions because the previous requests required reforming the existing private easement into a public easement, increasing the number of uses within the easement area to include water and sewer utilities and expanded the overall area encumbered by easement to include a stormwater detention area. The 2015 / 2016 physical improvements occupied the full width of the easement area and did not include any non-vehicular amenities.

Conclusion and Next Steps

The City Commission will need to interpret the City Charter to determine if voter approval is required for Icon’s current proposal. Given the deferential standard of review to the City’s interpretive authority, it is likely that a court would defer to any interpretation that is plausible. Any of the interpretations set forth above would be consistent with the text of the Charter, if challenged. Therefore, staff has not provided any recommendation about the most appropriate outcome.

At the work session on September 12, staff will present a report summarizing the issues presented in this memorandum. Although the Commission is encouraged to ask questions, and staff will make every effort to respond to these questions, the City Commission will also be holding a public hearing where it will take testimony from the public, including the applicant at its hearing on October 18th. It is at that point, after hearing public testimony, that the Commission will be given an opportunity to deliberate and make a decision.

We look forward to discussing these issues further with you on September 12.

Exhibits:

Exhibit A: Proposed subdivision site plan

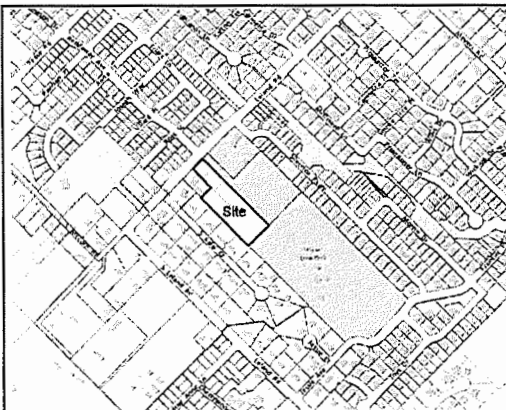
Exhibit B: Aerial photo of existing conditions

Exhibit C: Deed creating easement

Exhibit D: Existing tax lots

Exhibit E: Resolution No 16-03 and ballot measure

Exhibit F: 2010 Memorandum considering Oak Tree Park and Josephine Street Extension



Owner/Applicant:
Icon Construction & Development, LLC
1980 Willamette Falls Drive, Suite 200
West Linn, OR 97068
PH: (503) 657-0406

Legal: 3-2E-7D TL 600, 601 & 701

Water: City of Oregon City

Sewer: City of Oregon City

Contours: Field Survey by Centerline Concepts, Inc.

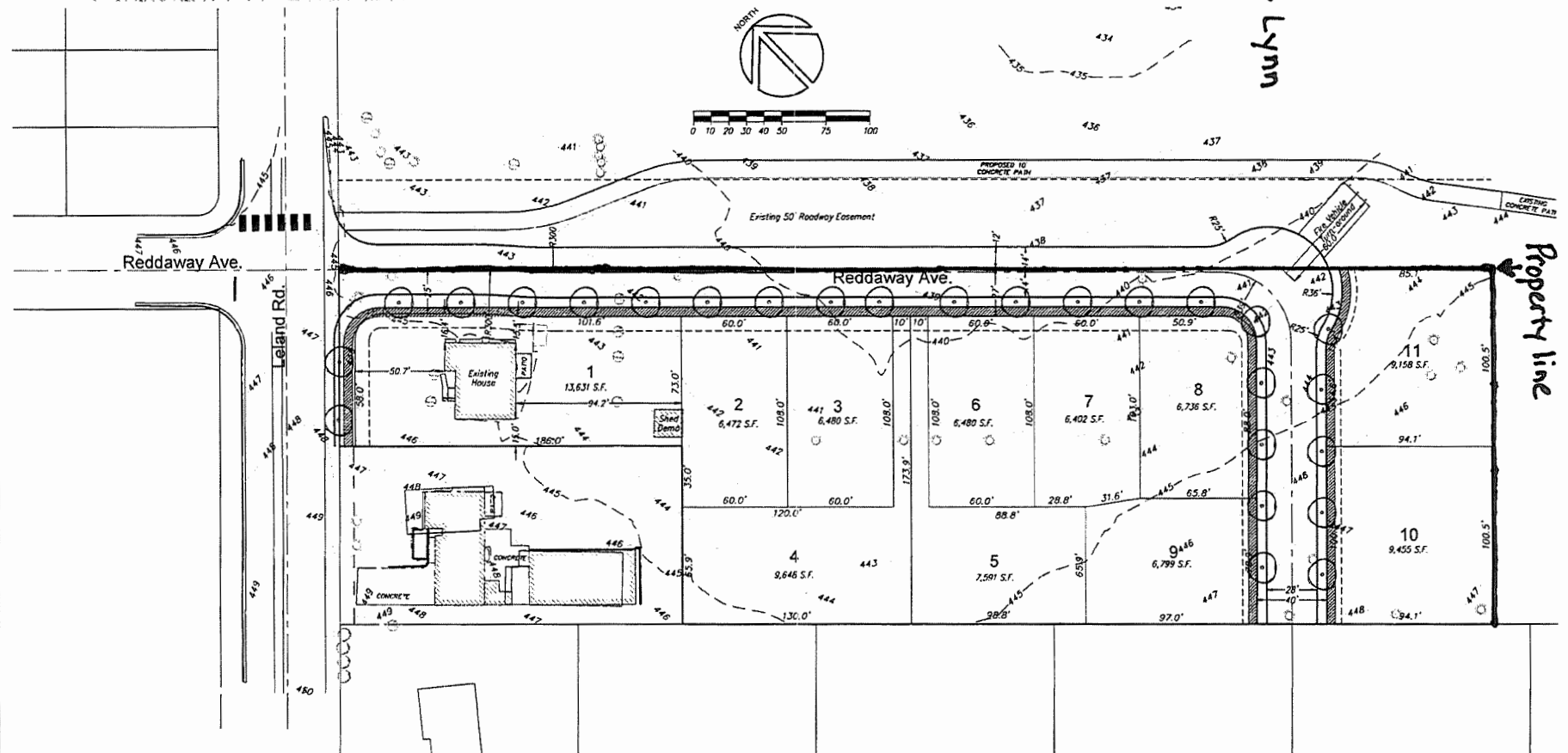
Site Area: 2.57 Acres

Engineer:
Theta Engineering, Inc.
4260 Country Woods Ct.
Lake Oswego, OR 97035
PH: (503) 481-8822

Zoning: R-8

Impervious Areas: Street - 22,209 sq. ft.

Wesley Lynn
Park



DESIGNED	REG		
DRAWN	REC		
SCALE	1" = 40'		
DATE	April 2017		
FILE	144061551	DATE	NO

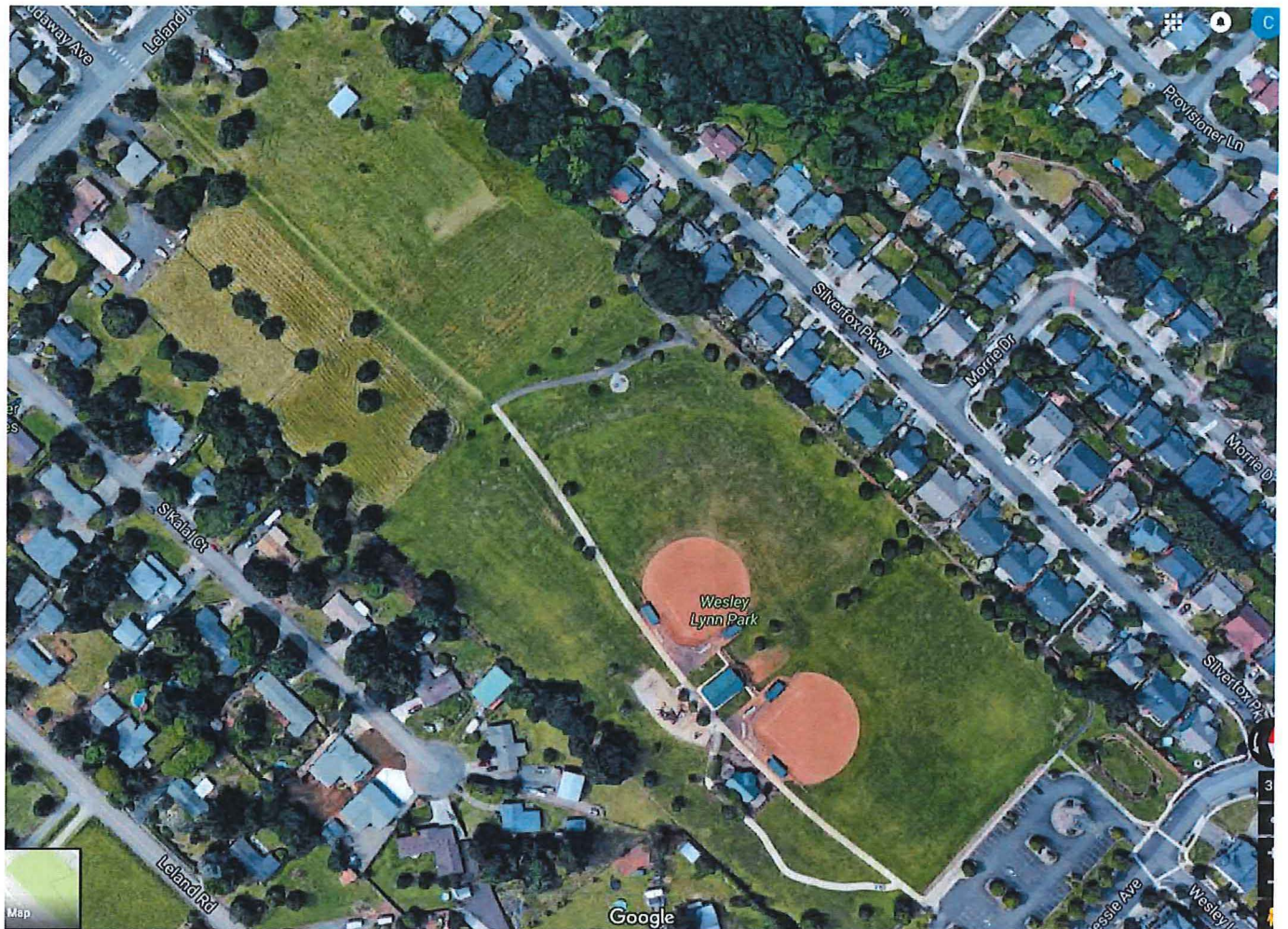
Richard E. Givens, Planning Consultant
18680 Sunblaze Dr.
Oregon City, OR 97045
PH: (503) 479-0097

APPLICANT: Icon Construction & Development, LLC
1980 Willamette Falls Drive, Suite 200
West Linn, OR 97068
PH: (503) 657-0406

Parker Knoll
Preliminary Plan

SHEET:
1/3

EX. A



KNOW ALL MEN BY THESE PRESENTS, That
TUALATIN VENTURES, INC.

a corporation duly organized and existing under the laws of the State of OREGON
in consideration of Ten and no/100-- Dollars,
to it paid by DONALD L. FOWLER AND VERN FOWLER

does hereby grant, bargain, sell and convey to said DONALD L. FOWLER AND VERN FOWLER

heirs and assigns forever, the following real property, with the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining; and also all its estate, right, title and interest, at law and equity, therein and thereto, situated in the County of CLACKAMAS and State of Oregon, bounded and described as follows, to-wit:

Part of the John S. Howland D.L.C. No. 45 in T.3.S.R.2.E, of the W.M., in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at a stake at the most westerly corner of that tract conveyed to Tualatin Ventures, Inc., by deed recorded in Book 599 page 352, records of Clackamas County, Oregon, which said point is South 43 deg. West 31.72 chains from the most northerly corner of said Howland D.L.C.; thence running South 45 deg. 45' East 684 feet; thence North 43 deg. East 200 feet; thence North 45 deg. 45' West 684 feet to the northerly line of said Howland D. L.C.; thence South 43 deg. West 200 feet to the place of beginning.

ALSO an easement 50 feet in width adjoining the above tract along the northeasterly line thereof, for road purposes.



TO HAVE AND TO HOLD the same to the said DONALD L. FOWLER and VERN FOWLER heirs and assigns forever. And the said TUALATIN VENTURES, INC. does covenant with the said DONALD L. FOWLER and VERN FOWLER and their legal representatives forever, that it is lawfully seized in fee simple of the above described and granted premises, and has a valid right to convey same; that the said real property is free from all encumbrances, except rights of the public in and to the County Road along the northwesterly line.

and that it will, and its successors shall WARRANT AND DEFEND the same to the said Grantee, their heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, TUALATIN VENTURES, INC.

pursuant to a resolution of its Board of Directors, duly and legally adopted, has caused these presents to be signed by its President and Secretary and its corporate seal to be affixed this 29th day of November, 1962.



Executed in the presence of

TUALATIN VENTURES, INC.

By *[Signature]* President

By *[Signature]* Secretary

BOOK 615 PAGE 119



Owner/Applicant:
Icon Construction & Development, LLC
1980 Willamette Falls Drive, Suite 200
West Linn, OR 97068
PH: (503) 657-0406

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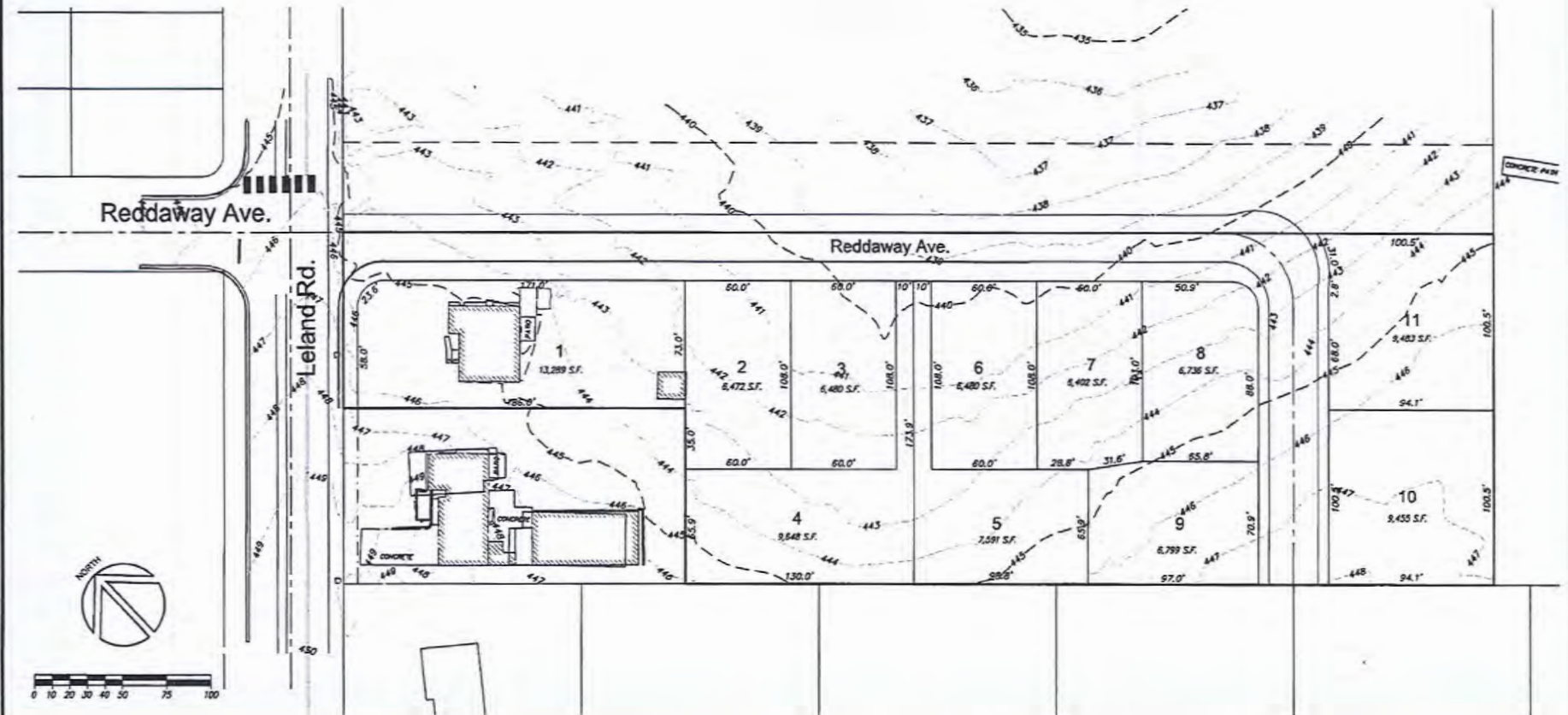
Contours: Field Survey by Centerline Concepts, Inc.

Site Area: 2.57 Acres

Engineer:
Theta Engineering, Inc.
4260 Country Woods Ct.
Lake Oswego, OR 97035
PH: (503) 481-8822

Zoning: R-8

Impervious Areas: Street -



DESIGNED: REG			
DRAWN: REG			
SCALE: 1" = 40'			
DATE: November 2016			
FILE: 161026-100	DATE: 10/1/16	NO.:	25/10/16

Richard E. Givens, Planning Consultant
18680 Sunblaze Dr.
Oregon City, OR 97045
PH: (503) 479-0097

APPLICANT: Icon Construction & Development, LLC
1980 Willamette Falls Drive, Suite 200
West Linn, OR 97068
PH: (503) 657-0406

Parker Knoll
Concept Plan

SHEET:
1/1

Pre-App Date: Jannam 10, 2017 10am

Diliana Vassileva

221 Moralla Avenue Ste. 200 OC, OR

From: Mark Handris via City of Oregon City <noreply@orcity.org>
Sent: Friday, December 16, 2016 3:31 PM
To: Diliana Vassileva
Subject: Form submission from: Pre-Application Conference Request Form

2016 DEC 19
RECEIVED

97045

Submitted on Friday, December 16, 2016 - 3:30pm Submitted by anonymous user: 71.193.224.131 Submitted values are:

Applicant Name(s): Mark Handris

Applicant's Representative: Rick Givens

Company: Icon Construction & Development, LLC Mailing Address: 18680 Sunblaze Dr., Oregon City, OR 97045 Phone Number: (503) 479-0097 Email Address: Rickgivens@gmail.com Project Description: Eleven lot subdivision with half-street on subject site and half of street improvement on 50' easement on Wesley Lynn Park property. All utilities are proposed to be located on the subject property.

Project Address: 19510 Leland Road, Oregon City Map and Taxlot Number: 3-2E-7D 600, 601 & 701 Site Size: 111,800 square feet Existing or Previous Use (within last 10 years): One single-family home.

Existing Zoning: R-8 Single Family

Overlay Districts: None

Check if "yes":

- Public Water Available?
- Public Sewer Available?
- Public Stormwater Available?

If any boxes above are checked, please explain: Public sewer, water & storm sewer are located in Leland Road. The road is proposed to be filled at the low point so that storm sewer will drain to the existing line in Leland Rd.

Past land use actions on this property: Previously approved as Parker Knoll subdivision.

Anticipated New Impervious Surface: 14,183 sq. ft.

Proposed Stormwater Disposal Methods: LID storm improvements in street, storm sewer to be graded to drain to existing line in Leland Road so as to avoid crossing park property.

Transportation System Plan (TSP) Projects on or near the site: None

Subdivisions: Show density calculations: 111,800 sq. ft. - 22,718 sq. ft. right-of-way = 89,082 sq. ft. net site area. Divided by 8,000 sq. ft. per lot = 11 units maximum density. Proposed density = 11 units.

Block lengths: The proposed block length measures 570 feet centerline of Leland Rd. to centerline of new street. A modification to the block length 530 foot standard is proposed.

Additional information: None.

Questions: None.

Meeting Date: 01/10/2017

Alternate Date: 01/11/2017

Vicinity Map: http://www.orcity.org/sites/default/files/webform/pre-applications/vicinity_map.pdf

Site Plan/ Layout: http://www.orcity.org/sites/default/files/webform/pre-applications/parker_knoll_half_street_design.pdf

Building Elevation Drawings:

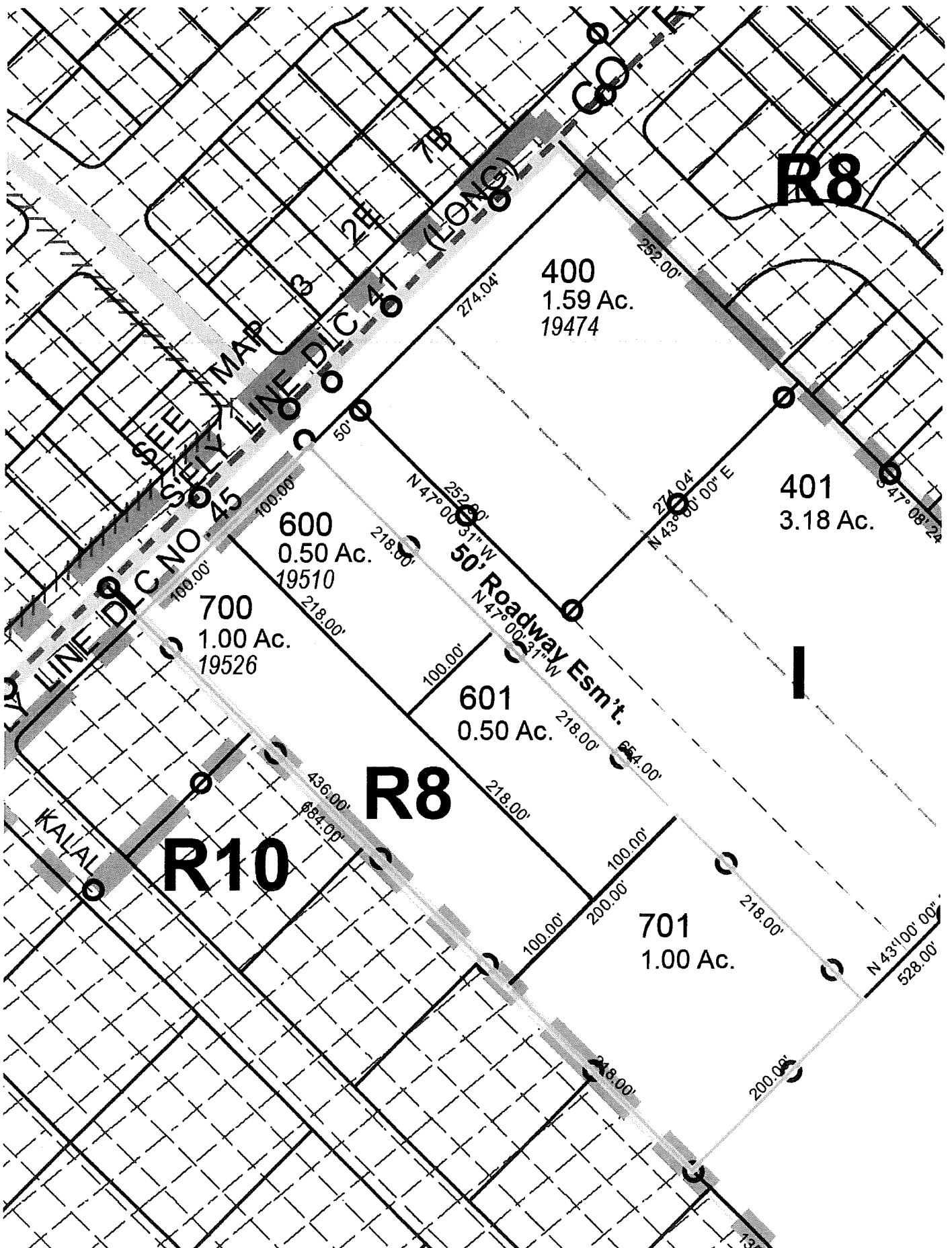
Shadow Plat (for subdivisions only):

Disclaimer: Select to acknowledge you read and understand the paragraph below.

Other Attachments: http://www.orcity.org/sites/default/files/webform/pre-applications/parker_knoll_prelim_utilities.pdf

The results of this submission may be viewed at:

<http://www.orcity.org/node/331/submission/3651>









Ex D - Tax lots

RESOLUTION NO. 16-03

**A RESOLUTION CALLING FOR AN ELECTION TO APPROVE THE CHANGE IN STATUS
AND CONSTRUCTION OF IMPROVEMENTS FOR A PORTION OF THE WESLEY LYNN
PARK UNDER SECTION 41 OF THE OREGON CITY CHARTER, AND ADOPTING A
BALLOT TITLE**

WHEREAS, Wesley Lynn Park is a City park located on the south side of the City that was created through the purchase of property for use as a park; and

WHEREAS, Wesley Lynn Park is subject to the protection of Chapter X of the Oregon City Charter, including a prohibition on the change in status of a park or the construction of improvements on park land without a vote of the people; and

WHEREAS, the owner of property adjacent to undeveloped northwestern portion of Wesley Lynn Park, who also has an easement for the use of a portion of Wesley Lynn Park for road purposes; and

WHEREAS, the owner of the property adjacent to the undeveloped northwestern portion of Wesley Lynn Park would like to develop a nine lot subdivision and use the easement area to construct a public road to serve the development and install an underground stormwater drain across a portion of Wesley Lynn Park at no cost to the City; and

WHEREAS, the public road would likely provide future access to Wesley Lynn Park and the stormwater facility may also be used by the Park in the future, but the City is not currently in a position to construct that access or otherwise improve the Park; and

WHEREAS, the City Commission has determined that it would be in the public interest to change the status of a portion of Wesley Lynn Park to allow a portion of Wesley Lynn Park to be used for road and utility purposes; and

WHEREAS, the City Commission considered this matter on January 12, 2016, and, after reviewing the information presented, reached consensus to continue with further City process and subject to this referral; and

WHEREAS, Section 41 of the City Charter of Oregon City requires voter approval of the sale, lease, transfer, or change in status of park land.

NOW, THEREFORE, OREGON CITY RESOLVES AS FOLLOWS:

Section 1. A regular City election is called in and for the City of Oregon City, to be held Tuesday, May 17, 2016. The Clackamas County Clerk shall conduct the election.

Section 2. At that election a measure shall be submitted to the voters of Oregon City to allow the change in status of a portion of Wesley Lynn Park to allow for the construction of a public road and to allow the granting of an easement for stormwater facilities to serve a subdivision on adjacent property and for potential future use by the Park.

Section 3. The City Commission adopts the following ballot title to describe the measure to be placed before the voters at the May 17, 2016 regular City election. The City Manager is directed to file the following ballot title with the City Recorder:


Measure No. _____:

CAPTION: Changes status of Wesley Lynn Park; allows easement, public road.

QUESTION: Shall the status of a portion of Wesley Lynn Park change to allow construction of a public road and utilities?

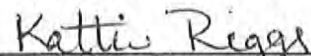
SUMMARY: The City Charter requires voter approval for the change in status of a city park and to allow improvements (other than for recreation) in a park. A property owner who owns the property adjacent to the northwest of an undeveloped portion of Wesley Lynn Park wishes to develop a nine lot subdivision and would like to use a portion of the park to build a public road and install utilities at no cost to the City. The road would be located largely in an existing easement and would likely also serve the park in the future, but the City is not in a position to develop the park at this time. In addition, the developer would be granted a fifteen foot wide easement to allow the installation of an underground stormwater drainage facility. Approval of this measure would allow the construction of a public road and utilities in the park, but would not foreclose the use of those roads and utilities by the park in the future or impact the current use of the park.

Approved and adopted at a regular meeting of the City Commission held on the 3rd day of February 2016.



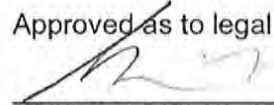
DAN HOLLADAY, Mayor

Attested to this 3rd day of February 2016:

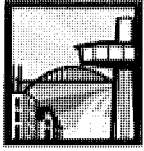


Kattie Riggs, City Recorder

Approved as to legal sufficiency:



City Attorney



**OREGON
CITY**

Office of the City Recorder

625 Center Street | Oregon City OR 97045
Ph (503) 657-0891 | Fax (503) 657-7026

March 11, 2016

Hand-delivered and e-mailed on 03/11/2016

Steve Kindred
Clackamas County Elections
1710 Red Soils Court, Ste. 100
Oregon City, OR 97045

Re: Submittal of Ballot Documents from City of Oregon City for May 17, 2016 Election

Dear Steve:

In accordance with State Statute requirements for submittal of election materials, enclosed are the following documents certifying one measure for the May 17, 2016 Election.

1. Measure authorizing the change in status of a city park and allowing improvements
 - SEL 802 – Notice of Measure Election
 - Explanatory Statement

If you have any questions on these matters, please do not hesitate to contact me at 503-496-1505.

Sincerely,

Kattie Riggs
City Recorder – City of Oregon City
Election Official

Notice of Measure Election

City

SEL 802

rev 01/16 ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465

Notice

Date of Notice

March 11, 2016

Name of City or Cities

City of Oregon City

Date of Election

May 17, 2016

Final Ballot Title The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

Caption 10 words which reasonably identifies the subject of the measure.

Changes status of Wesley Lynn Park; allows easement, public road.

Question 20 words which plainly phrases the chief purpose of the measure.

Shall the status of a portion of Wesley Lynn Park change to allow construction of a public road and utilities?

Summary 175 words which concisely and impartially summarizes the measure and its major effect.

The City Charter requires voter approval for the change in status of a city park and to allow improvements (other than for recreation) in a park. A property owner who owns the property adjacent to the northwest of an undeveloped portion of Wesley Lynn Park wishes to develop a nine lot subdivision and would like to use a portion of the park to build a public road and install utilities at no cost to the City. The road would be located largely in an existing easement and would likely also serve the park in the future, but the City is not in a position to develop the park at this time. In addition, the developer would be granted a fifteen foot wide easement to allow the installation of an underground stormwater drainage facility. Approval of this measure would allow the construction of a public road and utilities in the park, but would not foreclose the use of those roads and utilities by the park in the future or impact the current use of the park.

Explanatory Statement 500 words that impartially explains the measure and its effect.

If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:

→ any measure referred by the city governing body; or

→ any initiative or referendum, if required by local ordinance.

Explanatory Statement Attached?

☒ Yes

☐ No

Authorized City Official Not required to be notarized.

Name

Kattie Riggs

Title

City Recorder / Elections Officer

Mailing Address

P.O. Box 3040, Oregon City, OR 97045

Contact Phone

503-496-1505

By signing this document:

→ I hereby state that I am authorized by the city to submit this Notice of Measure Election; and

→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.

Signature

Date Signed

EX. E

Measure Explanatory Statement for County Voters' Pamphlet

Important! Please read all instructions before completing this form. This form is to be used when filing a 'Measure Explanatory Statement for County Voters' Pamphlet' with your County Elections office. If a local government is located in more than one county, the county clerk of the county in which the city hall of the city or the administrative office of the local government is located shall be the filing officer for the 'Measure Explanatory Statement for County Voters' Pamphlet'.

Filing Information

Election: ☐ Primary 20____ ☐ General 20____ ☐ Special____ Measure #____ - ____

Ballot Title Caption

Changes status of Wesley Lynn Park; allows easement, public road.

Name of Person responsible for content of 'Explanatory Statement' (as it should appear in the Voters' Pamphlet):

Kattie Riggs, City Recorder

Name of Jurisdiction/Organization Person is authorized to represent (as it should appear in the Voters' Pamphlet):

City of Oregon City

CONTACT INFORMATION

Phone: Cell: _____ Work: (503) 496-1505 Home: _____

E-Mail: kriggs@orc.org

SIGNATURE

Kattie Riggs
Signature of person responsible for content of 'Explanatory Statement'

3-11-2016
Date

MEASURE EXPLANATORY STATEMENT

See attached for 'Measure Explanatory Statement' (500 word/number MAX).

For Office Use only:

☐ County: _____

Word Count (500 max):

Signed? ☐ Yes ☐ No

Digital copy? ☐ Yes ☐ No

'Measure Explanatory Statement' attached?

Review Staff Initials:

☐ Yes ☐ No

Intake Staff Initials:

EX. E

MEASURE EXPLANATORY STATEMENT FOR COUNTY VOTERS' PAMPHLET

This measure would allow a property owner adjacent to the northwest end of Wesley Lynn Park to build a new public road on park property and to use a portion of the park to drain stormwater via an underground pipe. These improvements require voter approval because Chapter X of the Oregon City Charter prohibits improvements on park property, other than for recreational purposes, without a vote of the people. It is likely that these improvements would also serve park purposes in the future, but because no improvements are currently planned, the improvements require a vote.

Wesley Lynn Park was created through two purchases of property, the first in 1998 and the second in 2010. The city used funds from park system development charges and other park specific funds. Since the park was purchased, the southeast side of the park was improved with ball fields, but no improvements have taken place on the northwest end of the park. When the City acquired the property, it was subject to an access easement for the property to the west and that property owner now wants to subdivide its property.

At the request of the adjacent property owner, the Oregon City Commission approved sending this measure to the voters and the City's Park and Recreation Advisory Committee has reviewed the proposed road improvements and stormwater improvements and has no objections. The City is likely to improve the northwest side of the park in the future and the improvements authorized by this measure could be used to serve the park uses at that time, but any improvements related to this measure would be made at the sole cost of the neighboring property owner.



G A R V E Y S C H U B E R T B A R E R

MEMORANDUM

TO: Honorable Mayor and Oregon City Commission
CC: City Manager
Community Services Director
Bill Kabeiseman, Assistant City Attorney
FROM: Carrie Richter, Assistant City Attorney
DATE: June 29, 2010
RE: Oak Tree Park and Josephine Street Extension

The Oregon City United Methodist Church has proposed realigning the future extension of Josephine Street, as well as locating a storm detention facility, so that they occupy a portion of land dedicated as park land on the plat of the Oak Tree Park subdivision. Although extending a road through park land may be possible, given the restrictions on the use of dedicated property as well as the City Charter restrictions on park lands, some additional legal hurdles may be required in order to realize this solution.

Background

In 2008, the City approved a partition sought by the Church in order to allow residential development of a portion of the Church's property (Exhibit C). The approved application also included a zone change from R-10 to R-8, a modification of the conditional use to reduce the parcel size for the existing church, and a variance to the maximum lot size requirements permitted for a partition. A condition of approval of the partition was the extension of Josephine Street through the Church parcel to provide for additional connectivity for the neighborhood north of the Church. As originally approved, the new road was to connect to South End Road by running between the existing Fire Station No. 14 and the Church. A copy of the original proposal is attached to this Memorandum as Exhibit B. In 2008, the City transferred ownership of Fire Station No. 14 to Clackamas County Fire District # 1.

The Fire District is opposed to the road extension as proposed in the Church's original partition application. Therefore, the Church is proposing an alternative alignment that places the future Josephine extension behind the fire station and connecting it to Lafayette Avenue As shown on Exhibit D to this memorandum. This alignment requires crossing Oak Tree Park, a small park dedicated to the City pursuant to a subdivision plat recorded in 1973. A copy of portions of the recorded plat is attached to this memorandum as Exhibit E. (Oak Tree Park is highlighted in yellow on both maps.) In addition to locating a road on park land, the parties are also proposing to relocate the storm water detention facility that would serve the future Church property development from behind the Fire Station onto the park land creating a single park / storm water maintenance obligation for the City. According to the engineer hired by the Church, such combination park / stormwater facilities work well as the low flow channel is placed along the edge of the park so that, during dry weather, a majority of the park is usable.

"A strip of land in the Southeast 1/4 of Section 1, Township 3 South, Range 1 East, of the Willamette Meridian, within the City of Oregon City, Clackamas County, Oregon and further described as follows:

The northwesterly 53 feet of "Tract A" as platted in the duly recorded subdivision plat "Oaktree."

Section 3. The City Commission adopts the following ballot title to describe the measure to be placed before the voters at the November 2, 2010 regular city election. The City Manager is directed to file the following ballot title with the City Recorder:

Measure No. _____:

CAPTION: Conversion of a Portion of Public Park Within Oaktree Subdivision

QUESTION: May City convert portion of public park within the Oaktree Subdivision to allow construction of a public road and utilities?

SUMMARY: The Oregon City Charter requires voter approval to change the status of land designated for parkland. The Oaktree Subdivision includes a 21,780 square foot area, located at 18980 Lafayette Avenue that was dedicated to the City for park purposes. If approved, a portion of that area, approximately 4,558 square feet, will be used as a public road. The legal description for this right-of-way tract is:

A strip of land in the Southeast 1/4 of Section 1, Township 3 South, Range 1 East, of the Willamette Meridian, within the City of Oregon City, Clackamas County, Oregon and further described as follows:

The northwesterly 53 feet of "Tract A" as platted in the duly recorded subdivision plat "Oaktree."

The reasons identified by the City Commission for supporting this request include: allowing access to an adjacent undeveloped parcel of land, increasing road connectivity and increasing tax revenues to the City. The effect of this Measure would reduce the size of the public park within the Oaktree Subdivision and provide a road connecting Lafayette Avenue with Josephine Street.

Approved and adopted at a regular meeting of the City Commission held on the 4th day of August 2010.

ALICE NORRIS, Mayor

Attested to this 4th day of August 2010

Approved as to legal sufficiency:

Nancy Ide, City Recorder

City Attorney

Nature of the Dedication Language

The Oak Tree Park plat contains dedication language that provides as follows:

“David E. Farr and Virginia M. Farr do hereby dedicate to the use of the public as public ways forever all street, avenues, park areas and easements shown on said map.” See attached plat details.

The first question is whether that area has been dedicated as a park such that a road can not be built on the site. Typically, dedication as a “park” would limit the use of the area to park uses. Parks may include roadways, but usually such roads are internal or access roads, not roads that take up a significant portion of the park, such as the one proposed here and a roadway across a park would typically not be consistent with dedication for use as a park. In any event, the language of the dedication (as shown in Exhibit E) does not distinguish between park uses and road uses and “dedicates to the use of the public as public ways forever all streets, avenues, park areas and easements shown on said map.” It is likely that, if this issue were brought to a court that the court would find the specific notation of the tract as a “park area” would limit uses to park uses.

To the extent Tract A is dedicated solely for park uses, and the city can not use the dedication for a road, the City could not simply convert the use. As the Commission is aware, dedications are not outright grants of property to the City, but are the equivalent of easements to the public for a particular use with the City managing the property for the benefit of the public. *Siegenthaler v. North Tillamook County Sanitary Authority*, 26 Or App 611, 553 P2d 1067 (1976). If property dedicated for a particular purpose ceases to be used for that purpose, the dedicated area reverts to the owner of the underlying property. *Portland Baseball Club v. Portland*, 142 Or 13, 18 P2d 811 (1933). Generally, the holders of that interest are the immediately adjacent neighbors. *Id.* Thus, if a court were to determine that the construction of the proposed road was inconsistent with the area’s use as a park,¹ the construction of the road could be enjoined and the land could revert to the neighboring property owners.

Given that uncertainty, in order to ensure that the dedication issue does not cause problems at some point in the future, the prudent course would be to acquire whatever property interest the neighboring property owners hold in the dedicated park area on the Oak Tree Park plat. The acquisition of those interests would eliminate any risk that limiting park uses in that area would allow the area to revert back to the neighboring property owners. The easiest way to accomplish this would be to require the applicant to obtain quit claim deeds from the neighboring property owners foregoing any interest they may still have in the property dedicated as park areas. Our office could work with staff to provide such forms for use by the applicant.

Charter Park Limitations

¹ There is at least an argument that the dedication language in this subdivision could be read to contemplate that the dedicated areas could be used for either roadways or parks. However, such a conclusion is, at best, unclear.

A more significant issue may be the limitations set forth in the City Charter governing parks. A copy of the entire Charter Chapter governing parks and natural beauty is attached to this memorandum as Exhibit F. Section 42 of the City's Charter identifies 12 specific areas as parks (and some of those parks are also designated "natural" parks). In addition to those 12 named parks, Section 43 of the City Charter provides that "additional parks may be created and land established as parks upon . . . dedication of land as a park." Section 43 goes on to say: "Whenever any real property is designated as a park as provided herein, it is subject to all of the provisions of this Chapter X."²

Section 41, which is a provision of Chapter X, provides:

"The commission may not do any of the following listed acts with regard to any *designated city park* or part thereof without first obtaining approval of the legal voters of the city. Said acts are as follows:

"(a) Sell, lease or otherwise transfer park property.

"(b) Vacate or otherwise change the legal status of any park.

"(c) Construct permanent buildings or structures thereon other than for recreational purposes and park maintenance. In any case where at the date of adoption of this section there are existing structures which do not comply with this provision, such structures and any additions and alterations thereto are excepted from the provisions of this section."

The first question is whether the creation of a new park through the dedication of land as a park (such as occurred with the recordation of the Oak Tree Park plat) results in a "designated" city park. Section 41 only applies to "designated" city parks, while Section 43 discusses creation of additional parks through dedication, but allows the City to "designate" by ordinance real property acquired through other means as parks. One potential view of the Charter would be that only parks that have been "designated" as a park by specific ordinance of the Commission are subject to the limitations in Section 41. An alternative view could be that property dedicated as park land is subject to the limitations of Section 41, because the language discussing "designation" of parks applies only to parks acquired by means other than dedication or gift.

Two factors may influence how the Commission decides to interpret this provision. First, although it does not specifically deal with city parks, section 5 in Chapter II specifies how the charter should be interpreted. It provides that "[t]he charter shall be liberally construed to the end that the city may have

² Section 43 of the City Charter provides as follows:

"Section 43 - Additional Parks.

"Additional parks may be created and land established as parks upon the acceptance by the commission of a gift to the city for park purposes or a dedication of land as a park. Real property owned or acquired by the city in other manners may be designated as a park by ordinance. Park areas may be specifically designated as natural parks and when so designated shall be maintained as provided in Section 41. Whenever any real property is designated as a park as provided herein, it is subject to all of the provisions of this Chapter X."

all powers necessary or convenient for the conduct of its municipal affairs.” Second, the Oregon Supreme Court has held that a local body is entitled to deference when it is interpreting its own charter. *Fifth Avenue Corp. v. Washington Co.*, 282 Or. 591, 581 P.2d 50 (1978) (cited approvingly in *Gage v. City of Portland*, 319 Or 308, 315, 877 P2d 1187 (1994)). Thus, if there are two possible interpretations of a charter provision, the choice of which interpretation is the proper one is for the city to make, not the courts. Ultimately, it is for the Commission to determine whether the limitations in Section 41 apply to all parks within the City, or only to those parks listed in the Charter and those other parks that have been specifically designated as subject to the limitations in Section 41 of the Charter.

To the extent the Commission determines that dedicated parks, such as the one dedicated in the plat of Oak Tree Park are subject to the limitations in Section 41, that section limits the City’s ability to (1) vacate or change the legal status of a park, and (2) construct buildings or structures on the park.³

The limitation on vacating a designated park is relatively straightforward – Oregon law allows cities to vacate property dedicated to a city. This is seen most typically for undeveloped streets, but also applies to dedicated city parks. When dedicated property is vacated, the property reverts to private ownership. Under this provision of the Charter, the City cannot vacate such a park without a vote of the citizens of Oregon City. Here, rather than vacating the park, the City would be converting the land from one type of public use to another.

As far as changing the “legal status” of a park, the Charter does not provide much information about the term “legal status.” One likely interpretation would mirror what occurred in a recent case in the city of West Linn, *Dodds v. City of West Linn*, 222 Or App 129, 193 P3d 24 (2008). In that case, West Linn acquired a .4 acre parcel through foreclosure. The city initially classified the property as “city-owned,” but later, by resolution, designated the property as “open space natural area.” Two months later, after a new mayor and city council had taken office, the city council removed the “open space natural area” designation and the former mayor challenged that action. The Court of Appeals ultimately dismissed the case for unrelated reasons, but this type of “re-designation” from city park to some other status, with the concomitant avoidance of the limitation in Section 41, may be the purpose of the limitation on the change of legal status. With that in mind, depending on how the Commission interprets the change in legal status provision of Section 41, the use of park land as a street could be considered a “change in legal status,” because that area of the park is no longer available for park purposes.

The final limitation prohibits the construction of certain permanent buildings or structures at Charter Parks for purposes other than recreation or park maintenance. A “structure” is defined by OCMC 17.04.1215 to mean “anything constructed or erected that requires location on the ground or attached to something having location on the ground.” Although roads are typically separately described and distinguished from structures, it appears that a road for non-recreational purposes could be viewed as a structure, requiring a vote of the citizens.

It is important to note that, with all of these limitations, the Charter does not absolutely prohibit the activities such as change in status or the construction of permanent non-recreation structures. Instead, the Charter provision requires the City Commission to receive voter approval for such an action. Although this process makes these activities subject to voter review, the history of this provision

³ Section 41 also limits the ability of the City to transfer any aspect of ownership of park property, including leasing of park property, but that limitation is not implicated by the Church’s proposal.

indicates that the voters are willing to consider such situations. For example, in 1999, the voters approved the construction of the regional visitors' center in Kelly Field Park. Similarly, in 2003, the voters approved the grant of an easement to a few property owners adjacent to Singer Creek Park. It does not appear that the voters of Oregon City have categorically rejected a proposed use of a Charter Park, although the number of issues presented has been relatively few.

CONCLUSION

The use of the park tract in the Oak Tree Park plat presents two issues.

The first issue involves the use of dedicated land that may be inconsistent with the purpose of its dedication. There are methods to resolve this issue, assuming neighboring property owners are cooperative. If neighboring property owners are not cooperative, this may place a significant hurdle in the way of the Church's proposed transportation solution.

The second issue involves the limitation on the use of parks contained in the City's Charter. To the extent it applies to this area, Section 41 of the City Charter limits the ability of the Commission to take certain actions in the park. If Oak Tree Park is subject to section 41, it would limit the ability of the City to change the legal status of Oak Tree Park, and that may affect the ability of the applicant to build the road. In addition, Section 41 limits the ability to build structures such as roads for non-recreational purposes. Therefore, if the City wished to proceed with converting a portion of Oak Tree Park to a road or a storm water detention use, voter approval may be required, depending on the Commission's interpretation of these provisions.

EXHIBITS

- A. Vicinity Map / Aerial Photo
- B. Approved Minor Partition MP 07-11 showing South End Road connection (plat not recorded).
- C. Notice of Decision & Conditions of Approval for planning files ZC 07-05, CU 07-07, MP 07-11 & VR 07-05.
- D. Proposed new subdivision showing alternate road crossing Oak Tree Park to Lafayette Street.
- E. Recorded plat of Oaktree subdivision with park dedication language (1973).
- F. Oregon City Charter Chapter X - Parks and Natural Beauty

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