



City of Oregon City

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Meeting Minutes - Final Planning Commission

Monday, August 25, 2014

7:00 PM

Commission Chambers

1. Call to Order

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

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

Staffers: 3 - Pete Walter, John Lewis and Kelly Moosbrugger

2. Public Comment on Non-Agenda Items

There were no public comments on non-agenda items.

3. Public Hearings

3a. [14-528](#)

Ordinance for Introduction, No. 14-1013: Adopting the Linn Avenue / Leland Road / Meyers Road Corridor Plan (Planning File LE 14-04)

Chair Kidwell opened the public hearing.

Pete Walter, Planner, presented the staff report. He said this corridor plan was being developed to address deficiencies in pedestrian and bicycle facilities along the corridor. He explained the area and purpose of the plan including a round about. This would be an amendment to the Transportation System Plan. He reviewed the decision making criteria, plan implementation process, adequacy of the plan to to guide land use actions including trends, community needs, desires, attitudes, and conditions, addition of updated factual information, Comp Plan goals and policies, consistency with statewide planning rules, and consistency with other transportation plans. Staff recommended that the Planning Commission recommend approval of the plan to the City Commission for their consideration on September 17, 2014. He entered his PowerPoint presentation, public comment in support by Don Bredelhoeft, and Wallace Engineering presentation into the record.

David Brokaw, Wallace Engineering, presented an analysis of the corridor plan. He gave an overview of the plan, existing connectivity and access, major concerns, corridor planning priorities, proposed improvements for Segments 1, 2, 3, 4, and 5, and preferred round about option. He then discussed the implementation plan and next steps.

Commissioner Espe suggested using biofiltration swales as part of the landscaping. He thought Segment 3 should be a priority for pedestrian access and bike lanes.

Commissioner Mahoney suggested adding lighting to the corridors.

Commissioner Mabee thought the round about needed to be centered more to the northwest towards the Mt. Pleasant School property.

Commissioner McGriff thought there should be raised markers on the round about so people knew when they were getting out of their lane. She also thought it needed to be greener with more landscaping.

Fred Juris was representing Betty Savage who was not able to come that night. The biggest concern was access for delivery trucks into the parking lot of Plaid Pantry. The preference was for a four way round about instead of a five way round about. He asked that there be openings in the medians for access.

John Lewis, Public Works Director, intended to work with Plaid Pantry to find the best access for the trucks and customers.

Kathy Hogan, resident of Oregon City, thought there should be a one way in, one way out for the Plaid Pantry to avoid stacking and congestion. She wanted to make sure it was planned right and would be safe.

William Gifford, resident of Oregon City, thought the core concept should be safety for traffic and pedestrians more than the convenience of getting in and out of driveways.

Chair Kidwell closed the public hearing.

Mr. Walter would include a memorandum to the City Commission summarizing the recommendations made by the Planning Commission that evening. The recommendations were: to look into rumble strips to separate the bike lanes from the travel lanes particularly on the inside curves, try to minimize impact to the Plaid Pantry, maximize use of green techniques for landscaping and make the intersection and round about area as visually attractive as possible, shift the center of the round about northwest in order to minimize the impacts to the Plaid Pantry and other properties, look at options for Electric Avenue with respect to stormwater improvements, and to maximize safety along the right-of-way by street lighting.

A motion was made by Commissioner Mabee, seconded by Commissioner Geil, to recommend approval of the Linn Avenue / Leland Road / Meyers Road Corridor Plan (Planning File LE 14-04) to the City Commission with the added recommendations. The motion carried by the following vote:

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

3b. [PC 14-095](#)

CU 13-03: Conditional Use and SP 13-22 Site Plan and Design Review for a wireless communication pole on the McLoughlin Elementary School property, located at 19230 South End Road.

Chair Kidwell opened the public hearing. He read the quasi-judicial hearing script and asked if any Commissioner had an ex parte contact, conflict of interest, bias, or any other statement to declare including a visit to the site since the last hearing.

Commissioner McGriff visited the site and was an AT&T customer.

Commissioner Henkin had not visited the site recently and was also an AT&T customer.

Kelly Moosbrugger, Planner, presented the staff report. This hearing was continued from the last Planning Commission meeting as requested by the applicant. Some minor revisions to the application had been made. The name of the applicant had

changed to New Cingular Wireless. The narrative also had some minor changes and a few public comments had been submitted including a petition against the project. The neighborhood association submitted comments objecting to the proposal and there was a comment regarding tree removal in easement locations. Condition 5 had been modified to account for comments made about the tree removal. The applicant had proposed a 75 foot tall wireless communications pole designed to look like a fir tree on the McLoughlin Elementary School site. The pole location would be near the southwestern portion of the property close to the parking lot turn around and softball fields. She explained the site plan, elevation drawings, and renderings. She then reviewed the Conditional Use criteria and other review criteria. Staff recommended approval with conditions. She entered her presentation into the record.

Commissioner McGriff wanted a tree mitigation plan submitted with these types of applications in the future. She preferred native trees to be used rather than arborvitae.

Chair Kidwell agreed about not using arborvitae.

Commissioner Espe wanted to know what the camouflage would actually look like as opposed to drawings as it always ended up looking larger than what was represented on the plans. He also wondered if they used native trees if they would cause interference with the transmission.

Kimberly Allen, Busch Law Firm, was representing the applicant. New Singular Wireless was licensed in Oregon and Washington to do business on behalf of AT&T. It was an omission in the original application and was fixed when a revised application was submitted. There was also a different company representing AT&T for the acquisition. She did not attend the School Board meeting, but received a report that stated eight people spoke at the meeting and the issues were the same that had been raised at the last Planning Commission hearing. AT&T was willing to raise the fence height to eight feet as opposed to six feet. They also agreed to remove the bottom pegs from the pole to keep kids from climbing up and the roof of the enclosure would be slanted and would hang over the edges of the enclosure. Inside the enclosure would be locked cabinets. The School Board voted 3-3 to terminate the lease agreement and the Board did not intend to vote on it again. The lease was in place and was moving forward. This location was the least intrusive means to fill the gap in coverage. Regarding health effects, Congress had acted on that and removed discretion from local jurisdictions if the applicant complied with FCC standards.

Tom McAuliffe, Velocitel, representing the new site acquisition consultant, discussed the trees. One oak tree was proposed to be removed and three replacement trees would have to be planted on site. Regarding the trees on the west side of the property line, there was a concern raised about the utility easement disturbing the trees. It would be a five foot easement and there would be no damage to the trees. If there was damage, they would be required to correct it.

Ms. Allen said they did not need to plant arborvitae and were open to whatever the Commission suggested. Regarding loss of places for parents to watch softball games, AT&T was willing to put bleachers in an alternate location to compensate for the loss. They could provide actual pictures of the camouflage. Regarding Life Flight access, the FAA gave them the determination that the tower would be fine, no additional lighting was required, and it would be treated like any other 75 foot tall tree.

Mr. Alfaq Motiloala, the applicant's radio frequency engineer, discussed the seven alternative sites proposed by the public, which were found to be too far outside of the

service range gap and not feasible. This was the only site where they could provide the needed coverage.

Commissioner McGriff clarified there was cell phone coverage in this area, just not through AT&T. Alfaq Motiloala said the AT&T customers in this vicinity needed better service and had complained about needing better coverage. Ms. Allen said a gap in coverage meant a gap in this carrier's coverage, not a complete lack of coverage. Mr. Motiloala confirmed the coverage issues were persistent and they received complaints every day. This would also increase capacity for the future and there would be co-location capability.

There was further discussion regarding the location and maintenance of the tower.

Paul Edgar, resident of Oregon City, said students in the Canemah area went to this school and there was a universal lack of acceptance by residents in Canemah of this cell phone tower at the school. As long as there was a chance for one child to get hurt, it was not acceptable. He testified at the School Board meeting. He thought the tied decision was really a decision against it not for it. This would also affect real market value as the tower would be unsightly and would detract from the neighborhood. He thought there was a more appropriate location as the neighborhood was against it.

John Falkenstein, resident of Oregon City, discussed points in the staff report that he thought the application did not comply with. He thought the cell tower would alter the character of the surrounding neighborhood and would eliminate the access to the community facility. These towers were encouraged to be in non-residential areas, but this was a request to construct a new wireless pole in a residential zone. He did not think there was a State of Oregon verification that there was no other co-location possibilities. He requested the Planning Commission deny the application or continue it to give AT&T time to meet the conditions of approval and address the issues that had been raised by the community. He also did not think they followed the tree mitigation for the utility easement. The set backs were to the perimeter fence, not to the tower. The Code numbers he objected to were 17.56.010 part 4, 17.80.010 part 4, 17.80.100, 17.80.110 part d regarding setbacks and part g regarding noise reduction, 17.41.50, 17.41.070, and 17.41.130.

Sarah Herbert, resident of Oregon City, lived in the neighborhood and attended the School Board meeting. She had children who would be going to that school. She was concerned about the safety and lack of transparency to the children who would be impacted. The school did not send notices to the parents, and the City did not send notices either. She thought the voices of the people who wanted better service were given priority over the voices of the parents and children who were being impacted by the decision. They were changing the functionality of the space and she did not think this was the right location for the tower. The School Board did not have enough information or time to work through all of the concerns that were raised to them. They were concerned about the safety of the children. She was also concerned as technology changed, would the use of the tower change and would there be public input at that time.

Tom O'Brien, resident of Oregon City, was representing the Hazel Grove/Westling Farms Neighborhood Association. He gave a summary of what took place at the School Board meeting. The School Board asked what would happen if they withdrew from the contract with AT&T, and the AT&T representatives said they would most likely require to be compensated for the money that had already been spent on the effort. A motion was made to withdraw the contract, and since it was a 3-3 vote the motion did not pass. The neighborhood was glad that at least half the Board

recognized the safety concerns. A six foot fence would only present an opportunity for some adventurous children. The neighborhood cared a great deal about the safety of the children. The school had a flyer saying safety was their number one priority, but he did not think the focus was on child safety. He discussed three hazards within 10 feet of the walking path of the school. The school was not taking responsibility for their number one priority. The material the branches were made of was fiberglass which did not have a long life expectancy unless it was well maintained. This agreement was for 25 years.

Kathy Hogan, resident of Oregon City, discussed maps of current AT&T service coverage, the area that would receive better service if the tower was installed, and possible alternative locations that had not yet been considered and would provide better coverage for a greater number of customers. She was concerned about the safety of the children.

Jim Peitz, resident of Oregon City, lived behind the school and was an AT&T customer. He had terrible service at his home and would like to have better coverage. However, he did not want the tower at the school. If there was any possibility that one kid could get hurt, it was not worth it. He would give up the better service to save the kids. A lot of people did not have AT&T in the area, and had good coverage. He requested that the application be denied.

Peggy Falkenstein, resident of Oregon City, said they needed to make the South End Concept Plan a reality and to follow the values in the plan as a guide post especially in regard to livability and community use. She showed photos of caution signs that were on another cell tower. She asked that the Commission show the community that the South End Concept Plan was a working document. She questioned the accuracy of the information that had been given as there was a discrepancy between the application to the City and the contract with the School Board as to the easement width. The tower would reach up into the boughs of a 400 year old oak tree and what would that do to reception and would the tree have to be removed. There needed to be an accurate and clear application, and she requested the application be denied or continue the hearing to make sure there was accuracy in the application.

Ms. Allen gave a rebuttal. The tower would be designed to mitigate the visual impacts. There was no evidence that there would be a loss in property value. Regarding the safety of the children, there was also no evidence that the tower would be a danger. Planning staff reviewed the application and materials and found that they met the criteria to build the cell tower. The fence height would be increased to eight feet, the bleachers would be moved, and she offered to move the large tree that had been designated to be cut down.

Mr. Motiloala addressed the alternative sites. The other locations did not cover the service area needed.

Ms. Allen said AT&T could submit a maintenance plan prior to construction to cover the 25 year lease. Staff was comfortable dealing with any easement reconciliation at the time of construction plan. The application met all of the criteria and they had done everything possible to mitigate for it and be a good neighbor and provide service to their customers.

Chair Kidwell closed the public hearing.

Commissioner Mabee said this was a business arrangement, and the only thing the Planning Commission could use to deny the application was public safety. He thought reasonable engineering safeguards were being proposed. Removing the

tree and planting new ones was better than trying to move the large tree. Also additional bleachers, a maintenance plan, and higher fence were being proposed. He did not see enough evidence to object to the application.

Commissioner Mahoney said the South End Concept Plan and Comprehensive Plan were contracts the City had with the public. He did not think this application met all of the criteria as they had not garnered the support of the public and the 3-3 vote from the School Board did not show strong support either. The construction of a cell tower was not compatible with the neighborhood in terms of livability. He did not support the application.

Commissioner Espe did not think there was enough evidence in regard to the size and shape of the proposed use was suitable for the site and failed to meet Criteria 2. There was not enough evidence that the cell tower would not alter the character of the area and failed to meet Criteria 3. It also was not consistent with the intent of the South End Concept Plan because it affected livability and failed to meet Criteria 5.

Ms. Moosbrugger explained this application was submitted before the South End Concept Plan was approved.

Commissioner Espe retracted the last statement and cited livability as stated in the Comprehensive Plan as his basis for failure to meet Criteria 5.

Commissioner Mahoney retracted his statement about the South End Concept Plan and applied his comments to the Comprehensive Plan.

Commissioner Henkin agreed with Commissioner Espe about failure to meet Criteria 3 as it would impair the school site. He was not convinced that co-location was not an option for AT&T. He thought they could do better.

Commissioner Geil said for all the reasons that had already been given he was not in support of the application.

Commissioner McGriff was sympathetic about the need for better service. She preferred the first location on the school site that AT&T suggested and the School District rejected. She did not think the current proposed location was the right place for the tower. She also questioned if a large oak tree could be moved.

Commissioner Mabee stated there were many trees taller than this tower would be and more climbable than the tower would be. The attractive nuisance argument did not hold water based on the environment it was in.

Chair Kidwell did not have a problem with the cell tower on the school site if it was in a location that did not interfere with the use of the space and did not require removal of the trees. The other location on the school site seemed more appropriate. If the tower was relocated he would be willing to support it, but was not in support of the current location. He did not think the tree would survive being transplanted. He appreciated the gesture and thought relocating the tower would be a better alternative.

Ms. Allen requested to speak to the Planning Commission.

A motion was made by Commissioner McGriff, seconded by Commissioner Espe, to re-open the public hearing for CU 13-03. The motion carried by the following vote:

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

Chair Kidwell re-opened the public hearing.

Ms. Allen requested a continuance for AT&T to talk to the School District about moving the location to the alternative site and leaving the record open to October 13. They would also extend the 120 day decision deadline.

Mr. O'Brien said AT&T had proposed an alternative site that would satisfy their needs, although not quite as well as the school site, but it would have a lesser impact to the neighborhood. He thought the dates for the second application should be reviewed in light of when the South End Concept Plan had been approved. The initial location on the school grounds had been rejected due to its proximity to a playground. It should not be on school property.

Ms. Hogan said it was also rejected because the children had to pass it to get to the school grounds and it was close to the back of the school.

A motion was made by Commissioner Mabee, seconded by Commissioner McGriff, to continue the public hearing for CU 13-03 to October 13, 2014. The motion carried by the following vote:

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

4. Communications

Ms. Moosbrugger announced the first public hearing for the Willamette Falls Legacy project would be held on September 8. There would be three public hearings for the project in September.

5. Future Agenda Items

No future agenda items were suggested.

6. Adjournment

Chair Kidwell adjourned the meeting at 10:26 PM.