



City of Oregon City

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

Meeting Minutes - Final

Planning Commission

Monday, June 11, 2018

7:00 PM

Commission Chambers

1. Call to Order

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

Present: 6 - Zachary Henkin, Paul Espe, Denyse McGriff, Damon Mabee, Robert Mahoney and Vern Johnson

Absent: 1 - Tom Geil

Staffers: 4 - Laura Terway, Carrie Richter, Pete Walter and Josh Wheeler

2. Public Comments

There were no public comments on non-agenda items.

3. Public Hearing

3a. Remand of Land Use Board of Appeals Court Decision for Planning Files PZ 15-01: Comprehensive Plan Amendment and ZC 15-03: Zone Change Located near Beaver Creek Road and Highway 213 (Tentative Decision)

Chair McGriff opened the public hearing and read the hearing statement. She asked if any Commissioner had ex parte contacts, conflicts of interest, bias, or statements to declare including a visit to the site.

Commissioner Mabee drove by the site every day. No other Commissioner had anything to declare.

Carrie Richter, City Attorney, explained the procedure for the remand. The Land Use Board of Appeals found the City had erred with respect to Goal 5, Resources. The City reviewed its Goal 5 inventories and determined the only Goal 5 resource on this property was Newell Creek. The Planning Commission had been charged with deciding whether or not the existing regulations to protect Newell Creek were adequate given the new mixed use zone.

There was clarification about what was meant by protecting Newell Creek and the Commission's responsibility.

Laura Terway, Community Development Director, presented the staff report. She gave a background on the property located near the intersection of Beaver Creek and Hwy 213 that was rezoned from residential to mixed use. She then discussed the scope of

review and documentation in the record. She entered into the record the 1999 wetland inventory which designated Newell Creek on the property. No other designations were on this site. The question was could stormwater generated from the new uses increase the levels of contaminants in Newell Creek. Staff thought the City's existing regulatory programs were adequate to ensure that the new, more intensive uses could not conflict with protected resources and no further analysis was needed.

Josh Wheeler, Development Services Manager, explained the City's stormwater design standards and what the developer of this property would be required to do.

The Commission asked questions about the impact of erosion and pollutants on the creek.

Dan Fowler, applicant, stated this development would not affect Newell Creek.

Tom Sisul, Sisul Engineering, said they were talking about the difference between the existing residential zone and the new mixed zone, however the drainage requirements and standards were the same for both zones.

Michael Robinson, representing the applicant, agreed with the staff report and recommendation for approval. He explained the issue that was raised in the appeal and gave evidence to show that the City's existing program was sufficient to protect Newell Creek with the new zoning. He discussed Mr. Nicita's email dated today and how some of the points were not in the scope of the remand and the other issues raised were addressed by the evidence in the record.

Ms. Richter went over Mr. Nicita's submittal and asked Mr. Nicita which documents were germane to the remand.

Jim Nicita, resident of Oregon City, explained that the first thing the Commission had to do was to identify whether the new use could impact the Goal 5 resource, and if they found that it could, then further analysis would have to be done. He was arguing that there were impacts, and there were other policy issues in the ESEE analysis. He had added items to the extent that they were relevant to the ESEE analysis.

Ms. Richter clarified the first document, ESA and Goal 5 analysis, was submitted to show a legal argument for what an ESEE required and she thought that was acceptable to submit. The second document was the Oregon City MS4 permit which was already in the record. The third document was the Oregon City NPDES 2016-17 Annual Report, which would be allowed as it explained monitoring and the pollutants that were discharged into the creeks of Oregon City. She recommended not accepting the fourth document, Oregon DEQ State Agency Coordination Program from 1991, as it was not pertinent to the remand. Regarding the fifth document, Cascade Environmental Group Clackamette Cove Water Quality Habitat Improvement Feasibility Study, she recommended a paragraph of the document be added to the record. For the sixth document, Oregon City TMDL Implementation Plan, she suggested not including in the record because it had nothing to do with Goal 5. She recommended adding the seventh and eighth documents, Metro Newell Creek Canyon Master Plan and Conservation Plan, into the record as they discussed the quality of Newell Creek.

Mr. Nicita thought Oregon City's regulations that were based on the MS4 permit were not satisfactory for Goal 5 and an ESEE analysis should be done.

Commissioner Mabee thought the sixth document, TMDL Implementation Plan, should be included because it had to do with water quality. There was consensus to allow the document to be included in the record.

Mr. Robinson did not object to allowing the documents into the record, but cautioned the Commission to limit the issue to what was included in the remand, not new issues that could have been raised when the application was first approved.

Mr. Nicita provided testimony, raising issues regarding downstream impacts off site, increased risk of landslides due to infiltration, and higher water temperatures that were not addressed in the City's stormwater management plan.

William Spady was speaking for his sister, Sha Spady, who was a resident of Oregon City and owned property on Newell Creek Canyon. She recommended the Commission visit the site that Clackamas Community College had worked on to remediate stormwater damage at the headwaters of Newell Creek, visiting the stormwater detention facility on the north side of Beavercreek Road, visiting Metro's Newell Creek enhancement area, Newell Ridge, and Forest Edge apartments, and to fully engage the City's Natural Resources Committee in assisting them to make this decision.

Ms. Richter stated this testimony went beyond the scope of the remand and the City's past practices were not germane to whether or not the current program would be adequate to preserve the water quality.

Mr. Robinson gave rebuttal. He placed a letter into the record addressing Ms. Spady's testimony.

Mr. Sisul discussed the testimony regarding the impacts of increased traffic causing more pollutants and reminded the Commission there was a trip cap on this application. Regarding the concern about the geotechnical hazard due to infiltration, when this property was to be developed, a geotechnical report would need to be provided. The City's Stormwater Manual took into account whether they could infiltrate or not. There was discretion allowed for conditions of approval regarding trees and shading.

Mr. Robinson explained the direction from LUBA for the remand. He discussed how there was substantial evidence that the City's program was more than satisfactory to protect Newell Creek. Everything Mr. Nicita had alleged could occur with the residential uses as well as the proposed zone. LUBA had asked the Commission to compare the two zones and conclude whether or not there would be an impact on the Goal 5 resource. He did not think there would be an impact. He asked that the record be closed and that the Planning Commission recommend approval to the City Commission.

Chair McGriff closed the public hearing.

The Commission deliberated on whether or not the City's program was adequate to protect Newell Creek with the zone change.

Commissioner Mabee did not think further analysis was needed.

Ms. Richter said she just received notice at 7:18 PM that Mr. Nicita entered into the record the Oregon City Stormwater Management Plan from 2012. The record had been closed, and she recommended not including this plan into the record.

A motion was made by Commissioner Espe, seconded by Commissioner

Henkin, to accept the items submitted by Mr. Nicita into the record as suggested by staff including documents 1, 3, one paragraph of 5, 6, 7, and 8 and to recommend to the City Commission approval of Planning Files PZ 15-01: Comprehensive Plan Amendment and ZC 15-03: Zone Change located near Beaver Creek Road and Highway 213 with the conditions of approval in the staff report. The Planning Commission believed the application met the requirements described in the code and the City had adequate tools to protect the Goal 5 resource. The motion carried by the following vote:

Aye: 6 - Zachary Henkin, Paul Espe, Denyse McGriff, Damon Mabee, Robert Mahoney and Vern Johnson

4. General Business

4a. AN 17-0004 / ZC 17-0005: Park Place Annexation and Rezoning of 92 acres (Findings of Fact and Conclusions of Law Approving the Application)

Ms. Richter asked if any Commissioner had ex parte contacts, conflicts of interest, bias, or statements to declare on this matter since the last meeting. There was none.

Mr. Walter reviewed the final findings and updated conditions of approval for this application that had been tentatively approved on May 14, 2018.

Chair McGriff suggested corrections to Conditions of Approval #5 and #6 by changing the "may" to "shall" and "must" to "shall".

Ms. Richter explained the conditions had been worded in this way because they did not know what the transportation study would require.

There was consensus to make the suggested correction to Condition #6, but not to Condition #5.

Commissioner Mabee suggested corrections to Conditions of Approval #3 and #4 by changing "91" acres to "92" acres.

There was consensus to make the corrections.

Commissioner Mabee suggested corrections to the findings regarding his concerns about Holly Lane. He clarified his concern was prioritizing the portion of Holly Lane between Livesay and Holcomb.

Chair McGriff suggested adding the language, "Consideration of the construction of Holly Lane shall be a part of the master plan and Phase 1 of the detailed development plan process."

There was consensus to add that language.

A motion was made by Commissioner Mabee, seconded by Commissioner Johnson, to approve the findings of fact and conclusions of law as amended approving AN 17-0004 / ZC 17-0005: Park Place Annexation and Rezoning of 92 acres. The motion passed by the following vote:

Aye: 5 - Zachary Henkin, Denyse McGriff, Damon Mabee, Robert Mahoney and Vern Johnson

Nay: 1 - Paul Espe

5. Approval of the Minutes

5a. Approval of Planning Commission Minutes for 9/25, 10/9, 10/23, 11/13, and 11/27, 2017.

A motion was made by Commissioner Mabee, seconded by Commissioner Espe, to approve the Planning Commission minutes for September 25, October 9 and 23, and November 13 and 27, 2017. The motion carried by the following vote:

Aye: 6 - Zachary Henkin, Paul Espe, Denyse McGriff, Damon Mabee, Robert Mahoney and Vern Johnson

6. Communications

Ms. Terway gave an update on upcoming agenda items.

7. Adjournment

Chair McGriff adjourned the meeting at 10:00 PM.