

**PHILOMATH PLANNING COMMISSION
MINUTES**

February 29, 2016

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5 **1. CALL TO ORDER.** Chair Shon Heern called the meeting to order at 7:00 PM in the City Hall
6 Council Chambers.

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8 **2. ROLL CALL/INTRODUCTIONS:**

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10 **Present:** Commissioners Shon Heern, Leroy Fenn, Jacque Lusk, Gabe Callaway and Mark
11 Knutson (Arrived 7:03 p.m.).

12
13 **Staff:** Chris Workman, City Manager; Dan Miller, Deputy City Attorney; Jim Minard,
14 Planner; and Ruth Post, City Recorder.

15
16 **Excused:** Commissioner Patrick McDonald

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18 **3. APPROVAL OF MINUTES:**

19 **3.1 January 18, 2016, Minutes**

20 **MOTION:** Commissioner Lusk moved, Commissioner Fenn second, the January 18,
21 2016, minutes be accepted as presented. Motion APPROVED 4-0.

22
23 **4. PUBLIC HEARING:**

24 **4.1 P15-09; Applicant: Oregon Sequoia LLC, Allen Lahey; Application Type: Appeal of**
25 **Planning Official Decision; Location: 12-6-11A #3500, terminus of North 7th Street –**
26 Chair Heern opened the public hearing at 7:02 p.m. Chair Heern read the statement
27 describing the presentation of testimony and evidence related to the approval criteria.

28
29 *(Mark Knutson arrived at 7:03 p.m.)*

30
31 He requested any ex parte contacts, conflicts of interest, bias or site visits. No members of
32 the Planning Commission declared any ex parte contacts, conflicts of interest, bias or site
33 visits. Chair Heern announced the order of testimony. He noted that testifiers would be
34 given 20 minutes to speak.

35
36 **Staff Report:**

37 Mr. Minard reviewed the staff report associated with the original partition application. He
38 stated that most partitions are a simple matter but this one is a bit more complicated as
39 Mr. Lahey's property is not within the city limits.

40
41 Dan Miller, Deputy City Attorney, reviewed the City Attorney's memorandum dated
42 February 22, 2016. In response to Mr. Lahey's appeal dated January 26, 2016, Mr. Miller
43 stated that the City's Charter amendment 11.2 is valid. He stated that the City is in
44 compliance with statewide land use planning goals and the time to contest the 2003
45 Comprehensive Plan has long since passed.

46
47 Commissioner Lusk questioned if the Planning Commission is the correct body to make
48 the determinations requested in Mr. Lahey's appeal. Mr. Miller stated the Commission is
49 the correct body to decide if Condition of Approval #8 is appropriate but not the questions
50 of the validity of either the Charter or the Comprehensive Plan.

51
52 **Appellant:**

53 **Al Lahey, Oregon Sequoia LLC, Monmouth, OR** – Mr. Lahey reviewed the delayed
54 annexation agreement that the subject property has. He stated that he had submitted
55 additional testimony tonight and would be requesting a continuance. His point is that the
56 entire parcel described in the original legal description for the delayed annexation
57 agreement should be afforded the right to City utilities. He stated he would like to get the
58 Planning Commission to grant him the rights he believes he should receive.

1 Mr. Lahey questioned if the Commission had had an opportunity to review all of the
2 documents he has submitted. Chair Heern stated that the Commission received the
3 additional information Mr. Lahey submitted tonight and suggested that, if he wants that
4 information to be considered, he should not waive the right to keep the record open for an
5 additional seven days. Mr. Lahey stated he would request the continuance.
6

7 Mr. Lahey described options on the property related to well water. He referred to historical
8 documents that should support his rights to urban services. He re-stated his contention
9 that Charter Amendment 11.2 is unconstitutional. He stated there does not appear to be a
10 method for goal exceptions.
11

12 Chair Heern stated that he didn't entirely understand what Mr. Lahey is requesting. Mr.
13 Lahey stated that he is trying to flesh out what legal rights he has and his belief is different
14 from what the City Attorney's office states. He is requesting that he does not have to go
15 through voter approval to have the right to water and sewer because his delayed
16 annexation agreement predates the Charter amendment.
17

18 **Proponents:** None.

19 **Opponents:** None.
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21 **Neutral Parties including Governmental Bodies:** None.
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23 **Rebuttal by Applicant – Limited to issues raised by Opponents:** None.
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25
26 Mr. Minard pointed out the size of the file for this partition. He stated that the conditions of
27 approval were crafted to refer to what is legally available, and it is up to Mr. Lahey to
28 secure those services. He stated that Mr. Lahey hasn't been denied any services. He
29 stated that issues raised by Mr. Lahey regarding land use goals are not applicable to this
30 application.
31

32 Mr. Lahey requested that the record be kept open to allow the Commission to review the
33 entirety of the file. Chair Heern stated the record would be kept until 12:00 Noon on March
34 8, 2016.
35

36 Chair Heern stated the Planning Commission would take the appeal up on March 21 at
37 7:00 p.m. Mr. Minard questioned if Mr. Lahey would waive the 120-day decision rule. Mr.
38 Lahey waived the 120-day decision rule.
39

40 The public hearing closed at 7:51 p.m.
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42 **5. NEW BUSINESS:**
43 **5.1 PC16-01, Applicant – City of Philomath, Application type – Zoning Code Amendment for**
44 **Urban Forest** – Mr. Workman summarized the desire to address the care, up-keep, planting
45 and removal of the urban canopy by amending Municipal Code Chapter 18.70. He explained
46 there are sections of PMC 2.40, Tree Advisory Board that would be more applicable in PMC
47 18.70; and upon approval of amendments in PMC 18.70, PMC 2.40 will be amended to
48 remove those sections. He described the processes outlined for tree removal and
49 replacement. He stated that a public hearing will be held on March 21 before the Planning
50 Commission to consider this language.
51

52 Commissioner Lusk questioned the criteria that a fruit tree wouldn't count as a qualifying
53 replacement tree. Mr. Workman confirmed that was correct. Mr. Workman stated that this
54 language was a simplified version of code from the City of Veneta. He stated that the fruit tree
55 may be an example of a revision to consider. Mr. Minard suggested that it might be possible to
56 replace like trees for like trees. Commissioner Knutson described the list of acceptable trees
57 that Corvallis has. Commissioner Lusk had concerns about this being too restrictive and taking
58 away homeowner rights to decide what type of tree to plant.
59

1 Commissioner Heern described the 20 years it has taken for trees to become established in
2 the Canberra neighborhood. Mr. Workman suggested there could be more provisions for fruit
3 trees and more significant trees. It was suggested to increase the minimum tree size subject to
4 mitigation to 12 inches. Commissioner Heern stated that smaller trees have a stronger chance
5 of survival.

6
7 Commissioner Lusk had concerns that citizens would be responsible for ensuring the survival
8 of trees purchased by the City in lieu of replacing the tree on their own property. Mr. Workman
9 clarified that the City would purchase, plant and maintain those trees. There was agreement
10 that the minimum replacement tree size should be 1.5 inches. Commissioner Lusk had
11 concerns under mitigation about timing of tree planting for new developments to ensure there
12 are sufficient services for them to survive. Mr. Workman stated it was important to require
13 trees to be planted before granting final occupancy.

14
15 There was discussion about replacement on site or requiring the opinion of a landscape
16 architect or certified arborist to justify on site non-replacement. Commissioner Callaway
17 questioned how big of an issue this is and how common it is for people to cut down trees. Mr.
18 Workman stated that the City gets several calls per year questioning if there is a process for
19 cutting down trees. Commissioner Lusk stated there can be problems with trying to plant
20 another tree where one has been removed. Mr. Workman stated there are ways to get around
21 it if you remove a tree but still have other significant trees on your property.

22
23 Commissioner Heern encouraged making it less restrictive to use the payment in lieu of
24 replanting option. Commissioner Callaway suggested giving the option of paying a higher in
25 lieu of fee if they really desire not to mitigate on site. Commissioner Lusk questioned if, in the
26 event of an emergency action, any of the mitigation requirements apply. Mr. Workman stated
27 that an emergency only waives the need for the permit but replacement or mitigation is still
28 required. Commissioner Lusk had concerns about creating a burden on elderly citizens. Mr.
29 Workman stated the intent is not to create a burdensome process but is meant to prevent
30 abuse and disregard for the laws of the City. He stated this is meant to be an educational
31 piece and a feel-good piece to protect trees.

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33 **6. ADJOURNMENT:**

34 There being no further business Chair Heern adjourned the regular meeting at 8:57 p.m.

35
36 SIGNED:
37 Shon Heern, Chair

ATTEST:
Ruth Post, MMC, City Recorder