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**PHILOMATH PLANNING COMMISSION
MINUTES**

October 16, 2017

1. **CALL TO ORDER.** Commissioner Caleb Nelson called the meeting to order at 7:00 PM in the City Hall Council Chambers.

2. **ROLL CALL:**

Present: Commissioners Jeannine Gay, Lori Gibbs, Mark Knutson, Caleb Nelson and David Stein.

Staff: Chris Workman, City Manager; Jim Minard, Planner, Amy Cook, Deputy City Attorney; and Ruth Post, City Recorder.

Excused: Commissioners Shon Heer and Jacque Lusk.

3. **APPROVAL OF MINUTES:**

3.1 **August 28, 2017, Minutes**

MOTION: Commissioner Gay moved, Commissioner Gibbs second, the August 28, 2017, minutes be accepted as presented. Motion APPROVED 5-0. (Yes: Gay, Gibbs, Knutson, Nelson and Stein; No: None.)

4. **PUBLIC HEARINGS:**

4.1 **Application for Type III Subdivision**

File Number PC17-06

Applicant: Muir Development

Location: 783 Fawn Lane

Benton County Assessor's Map: 12-6-11AA TL #2900

Commissioner Nelson opened the public hearing at 7:01 p.m. on PC17-06, and the rules for participation and testimony were read into the record. There were no ex-parte contacts, conflicts of interest, bias or site visits declared. There was no rebuttal of any disclosure or non-disclosure.

Staff Report:

Mr. Minard presented the staff report dated October 10, 2017. Commissioner Stein questioned why Mr. Lahey's comments dated October 9, 2017, were not acknowledged in the staff report. Ms. Post noted that the staff report was under final review at the same time that Mr. Lahey's comments were received. Mr. Minard noted the 31 proposed conditions of approval that must be adhered to and checked off prior to recording of any final plat.

Commissioner Gibbs questioned the purpose of the cross-hatched mid-block lane. Mr. Minard explained that the intent is a mid-block lane that eliminates the need for multiple flag-lots and shared driveways.

Presentation of Applicant:

Shane Ottosen, J.D. McGee Engineering, Philomath, OR – Mr. Ottosen introduced his presentation by saying this is a development by local people on a lot that has been considered for development for many years to provide Philomath families with homes. He reviewed the partition that was approved in 2016 with the mid-block lane access. He addressed the connectivity of the mid-block lane to Mr. Al Lahey's adjoining property to the west. He stated the Partition Condition of Approval #9 required them to show the connectivity could be accomplished from

1 North 9th Street to Fawn Lane and meet all of the Public Works Design
2 Standards. He described the data received from Mr. Lahey in 2009 regarding the
3 topography of his property using 10 foot contours. He stated that standard
4 engineering practice in gauging contour accuracy is plus or minus 50%, making
5 10 foot contour accuracy plus or minus 5 feet. He compared the accuracy of the
6 data provided by Mr. Lahey from an aerial topographic map compared to the
7 LIDAR data obtained from the Oregon Department of Geology and Mineral
8 Industry that uses one foot contours, plus or minus half a foot.

9
10 John McGee, J.D. McGee Engineering, Philomath, OR – Mr. McGee stated that
11 the LIDAR data-based contours were verified on-site with GPS and they matched
12 up very well and they have confidence in their data set.

13
14 Based on their data, Mr. Ottosen reviewed the 3D computer models they
15 developed showing cut and fill areas for the street connectivity of Fawn Lane from
16 North 9th Street through to the current stub out at Starlight Village.

17
18 Mr. Ottosen addressed the staff recommendations and conditions of approval,
19 specifically:

- 20 • Condition #17 regarding the three lots exceeding the maximum allowed lot
21 size could be adjusted via moving lot lines or creation of additional tracts.
- 22 • Conditions #22 and 23 regarding the use of a cul-de-sac with an
23 undeveloped tract being more desirable than a dead-end barrier. He noted
24 a subdivision in Albany with a temporary roadway easement and
25 undeveloped tract such as they have proposed. He stated that the
26 development beyond the cul-de-sac never occurred and the cul-de-sac
27 was ultimately made permanent. He stated that barricades are unsightly
28 and encourage private illegal parking which is an issue.
- 29 • Condition #31 regarding the private septic easement held by the adjoining
30 neighbor to the east. He stated they are engaged in conversations with
31 that neighbor and believe the easement concern will be resolved.

32
33 Commissioner Gay questioned if they have engaged conversations with the
34 neighboring property owners. Mr. Ottosen stated that they have had
35 conversations with some of the neighboring property owners, including Mr. Lahey.

36
37 Commissioner Nelson questioned the use of flag lots to the south instead of a
38 shared driveway like the one to the north. Mr. McGee stated he didn't recall the
39 original reasoning, but the conditions of approval require them to be a shared
40 driveway so they will make that happen.

41
42 Commissioner Stein questioned how the private septic easement effects the
43 subdivision. Mr. Minard explained that most easements preclude building on top
44 of them. He stated that the lots were evaluated for the ability to build in the
45 available area outside of the easement. He stated the two property owners have
46 an agreement, and this is a civil issue that the City wouldn't normally be involved
47 in.

48
49 Commissioner Stein questioned if the septic easement is the drainfield for the
50 neighbor. Mr. Ottosen stated that the easement is the drainfield and there are
51 talks between the two parties to extend sewer service to the Hruska house and
52 remove the easement. Mr. Minard stated that as long as there is a buildable
53 envelope on each lot, the easement doesn't affect the preliminary plat.

1
2 **Testimony of Proponents:**

3 None.

4
5 **Testimony of Opponents:**

6 Al Lahey, 565 N 7th Street, Philomath, OR – Mr. Lahey requested a continuance
7 until the engineer provides earthwork calculations that show cuts and fill as he has
8 requested from them. He stated he has a degree in civil engineering and has
9 done a lot of big projects. He stated he doesn't find the location of the proposed
10 street acceptable and he hasn't been invited to participate in any meetings to
11 design the street locations. He stated the street centerline is unacceptable to him.
12 He requested that all written testimony submitted to date from December 2016 for
13 the previous partition be included in the record. He requested that the street be
14 designed per Public Works Design Standards to and through with no cul-de-sac
15 and no Tract A. He stated it was unacceptable that he wasn't invited to participate
16 in any of the design. He stated he has estimated this design causes him \$250,000
17 in earthwork to be able to connect the two ends of Fawn Lane as proposed. He
18 requested that all previous testimony he has submitted on the partition be
19 included in the record.

20
21 Mr. Lahey stated that this is classified as a local street; but as Starlight Village is
22 built out, there will be more traffic. He described issues he has with the design as
23 shown on Sheet C2 from the approved Public Works plans. He stated that the
24 Public Works Design Standards state they are not supposed to impact other
25 properties and the design impacts his property. He stated he is substantially
26 aggrieved.

27
28 Commissioner Gay questioned if the street was relocated, would he object to the
29 development. Mr. Lahey stated he does not object to the development, just the
30 location of the street. He stated he is not opposed to annexation of his own
31 property and he has a delayed annexation agreement with the City, so the City
32 could annex it at any time.

33
34 Commissioner Stein requested a copy of the Sheet C2 that Mr. Lahey was
35 referencing. Mr. Lahey stated that the sheet is from Public Works. He stated the
36 design is not in conformance with the Public Works Design Standards because of
37 the transfer of cost onto him. He stated he is opposed to the development unless
38 the road is relocated.

39
40 **Testimony of Neutral Parties, including Governmental Bodies:**

41 Michael Gannis, 758 Marilyn Drive, Philomath, OR – Mr. Gannis stated he has
42 concerns about buildable lots and storm drains. He stated his property adjoins lots
43 10 and 11 and he has concerns about water runoff from his property that has
44 historically drained towards those proposed lots. He also stated he purchased the
45 lot 12 years ago and questioned where the exact location of the property line is.
46 He requested that the final survey clearly define the adjoining property line. Mr.
47 Gannis questioned if the new home that has already been constructed is actually
48 on Lot 9. Ms. Post stated the home is on Parcel 8 from the prior partition. Mr.
49 Workman also confirmed that the house is on Parcel 8. Mr. Minard addressed the
50 stormwater discharge requirements and the survey requirements in the conditions
51 of approval.

52
53 Commissioner Gay questioned if his concerns are addressed, did Mr. Gannis
54 have other objections to the development. Mr. Gannis stated he did not.

1
2 Jeremy Hruska, 680 N 9th Street, Philomath, OR – Mr. Hruska stated that they are
3 working with the developer to come to a resolution regarding their private utility
4 easement and they just wanted to ensure that those lots didn't impact their
5 easement as it currently stands. Mr. Workman stated Condition #31 is there to
6 ensure transparency with regard to the private easement.
7

8 **Rebuttal by the Applicant, limited to issues raised by Opponents:**

9 Shane Ottosen, McGee Engineering – Mr. Ottosen stated that Sheet C2 was
10 approved by the City's Engineer as meeting the requirements of the Public Works
11 Design Standards, including radius, grades, and curves. He stated sewer has
12 already been installed in that alignment that was approved in the partition
13 process. He stated moving the road now would create a hardship for Mr. Muir.
14

15 John McGee, McGee Engineering – Mr. McGee stated that he and Mr. Ottosen
16 are professional licensed engineers and they are serious about doing the right
17 thing. He stated their number one responsibility is to the health and welfare of the
18 public. He stated that their plans were taken to the City Engineer and Public
19 Works Director for review and nothing has been done under the table. He stated
20 they are a professional organization. He stated concerns about Mr. Lahey's
21 definition of what is fair as it seemed to be only if he gets what he wants.
22

23 Mr. McGee stated concerns about the generalized nature of Mr. Lahey's
24 assertions. He stated they have created real models based on mathematical data
25 and presented them to the Planning Commission. He stated that it appears the
26 only way to make Mr. Lahey happy is to make it his way.
27

28 Mr. McGee described the boundary survey that has been conducted and he would
29 be happy to walk Mr. Gannis around the property. He stated that Oregon statute
30 requires them to address drainage concerns like those described by Mr. Gannis.
31

32 Commissioner Stein requested an explanation for the process that goes into
33 planning a road across someone's property. Mr. Workman explained that the
34 City's requirement is to ensure that future connectivity is possible. He stated the
35 requirement is to show 250 feet of connectivity with no negative impact onto
36 adjoining property. He stated that due to topography involved in this particular
37 situation, that requirement was extended over 400 feet all the way to the other
38 property line where the existing Fawn Lane stubs out to ensure that the
39 connectivity could take place.
40

41 He stated that the language Mr. Lahey is quoting regarding causing no harm is
42 drawn from the section of Public Works Design Standards 1.1(e) addressing a
43 variance by an applicant. He stated that is not the case here. He stated the
44 applicant has shown that they can meet the requirements of connectivity. He
45 stated that Mr. Lahey is free to design the street through his property however he
46 sees fit. Commissioner Stein noted that the location the applicant chooses does
47 affect Mr. Lahey's property. Mr. Minard stated there is no subdivision plat on Mr.
48 Lahey's property that the applicant is trying to connect to. He explained that the
49 issue is whether this street configuration conforms to the applicable criteria as far
50 as the design specifications for which there is no variance requested by the
51 applicant. He stated that the City has gone above and beyond the criteria to
52 ensure the connectivity.
53

1 Mr. Lahey requested the opportunity to rebut. Ms. Cook explained that the public
2 hearing process does not allow for that. Commissioner Nelson stated it seems if
3 the goal is to ensure connectivity, there should be a mechanism that doesn't place
4 the burden of cost onto an adjacent property owner. Mr. Workman stated that
5 Public Works did look at one other option and it was more expensive with more
6 cut and more fill. He stated it was felt that this was a reasonable design.

7
8 Mr. Lahey made comments off microphone. Mr. Workman explained that the
9 applicant is not applying for any variance.

10
11 Commissioner Stein moved for a continuance until the rest of the information
12 referred to by Mr. Lahey from December or January is made available to the
13 Planning Commission for study of the results he has presented. Commissioner
14 Gay seconded the motion.

15
16 Commissioner Stein restated his motion for a continuance to a date in the future
17 so the Planning Commission can receive all of the information and be given
18 enough time to consider it.

19
20 Ms. Post requested clarification of the motion.

21
22 MOTION: Commissioner Stein moved the Planning Commission postpone
23 consideration of this development until the questions raised by OSLLC and
24 problems raised have been resolved and all the available information has been
25 provided to the Planning Commission. Commissioner Gay seconded.

26
27 Mr. Minard stated that the email submitted by Mr. Lahey on October 16, 2017,
28 references testimony submitted on December 26, 2016, for the Muir partition file
29 of P16-09. He stated these documents were not entered into the record for this
30 application and questioned if the documents from the partition application can be
31 added to this record at this point in the hearing.

32
33 There was discussion about the difference between a continuance and leaving the
34 record open. Ms. Post suggested the record could be left open for seven days
35 with the applicant allowed an additional seven days for final written response,
36 after which, the Planning Commission would reconvene for deliberation and
37 decision. She questioned if Commissioner Stein wanted to request a continuance
38 or to leave the record open.

39
40 Commissioner Gibbs questioned why Mr. Lahey didn't seek out more input
41 between December and now. Mr. Lahey made inaudible comments off
42 microphone. Ms. Post pointed out the need for a completely recorded record. Mr.
43 Workman requested that any future comments be spoken into the microphone.
44 Commissioner Nelson questioned if Mr. Lahey still has an opportunity to make
45 oral comments. Ms. Cook stated the answer was still no.

46
47 VOTE on motion: 1-4 (Yes: Stein; No: Gay, Gibbs, Knutson and Nelson).

48
49 MOTION: Commissioner Stein moved to keep the record open until 5:00 p.m. on
50 October 23, with an additional 7 days for the applicant to provide final written
51 comments, with a Planning Commission meeting on November 6 at 7:00 p.m.
52 Commissioner Gibbs second. Motion approved 5-0 (Yes: Gay, Gibbs, Knutson,
53 Nelson and Stein).

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5. ADJOURNMENT:

There being no further business Commissioner Nelson adjourned the meeting at 8:40 p.m.

SIGNED:
Mark Knutson, Planning Commission

ATTEST:
Ruth Post, MMC, City Recorder