

**WALDPOR CITY COUNCIL
FEBRUARY 22, 2018
SPECIAL MEETING MINUTES**

1. Call to Order and Roll Call: Mayor Woodruff called the meeting to order at 2:30 p.m. Mayor Woodruff and Councilors Swan, Dunn, Dennis, Cutter and Holland answered the roll. A quorum was present.

2. Public Hearing: Appeal on Planning Commission Preliminary Approval of Case File #1-PD-PC-17, Vista View Planned Development: Mayor Woodruff opened the public hearing, stating that the evidence and testimony must be directed to the applicable criteria or criteria that the person believes to be applied, must raise issues accompanied by statements or evidence sufficient to afford the parties an opportunity to respond, and that failure to do so would preclude an appeal to the State Land Use Board of Appeals on that issue. She then called for declarations of bias, conflicts of interest, and *ex parte* contact. She noted that she is the wife of the Planning Commission Chair, was familiar with the area in question, and had spoken with Councilor Dennis in general terms regarding the appeal and the process. Councilor Dennis stated he had spoken similarly with Councilor Swan. Councilor Cutter stated that the appellant was a former workplace colleague. Mayor Woodruff added that she was familiar with the applicants for Vista View.

No objections were raised to any Council member's participation in the hearing process.

Staff Report: City Planner Larry Lewis stated that this hearing was to appeal the preliminary approval granted by the Planning Commission to the Vista View Planned Development. He reviewed the relevant criteria used in the Planning Commission decision, noting that this was a Planned Development for 34 lots located at the south end of Norwood Drive, located in an R-1 (Residential) zone. Variances to the requirements of the R-1 zone for maximum density, minimum lot widths and depths could be granted by a developer proposing a planned unit development as opposed to a standard subdivision. The intent of a planned development is provide flexibility to standard requirements in exchange for amenities such as open space, preservation of drainage ways or other natural resources, public pedestrian access, and so forth. Mr. Lewis indicated that three additional letters had been received and distributed at the meeting, in addition to the testimony in the packet materials. He also stated that if the Council determined that it had obtained all necessary information it could close the record, close public testimony, deliberate and make a decision at this meeting. Otherwise it had the option to keep the record open for additional information. The Council's decision could be to affirm, modify or reverse all or part of the Planning Commission's action, or it could choose to remand the matter to the Planning Commission for additional review or information.

Appellant's Presentation: Hollis Lundeen addressed the Council. She began by commending Public Works for the quick response to the previous day's waterline break, noting that they managed to repair the problem with no loss of service to the residences. She asked if any Council members had traveled Norwood Drive since the application for the planned development had been filed. Mayor Woodruff, and Councilors Cutter and

Swan noted that they had.

Ms. Lundeen stated that her objective in appealing this decision was that she and others did not feel that the City's existing code adequately covers this situation. She then read an additional statement into the record. The concerns were as follows:

1) Proof that the property at the end of Norwood Drive could be legally utilized by the developer to access their property. She stated that it is currently an existing steep trail, with unstable soil and a power pole which would need to be relocated. She encouraged the Council to visit the site and view the area in question. Mayor Woodruff explained that the Council had been advised by their legal counsel to not actually visit the property. City Attorney Gintner confirmed the assertion, noting that this advice had been provided in Executive Session.

2) Concern that proposed development of the property would significantly disturb an environmentally sensitive area, with potential impacts to wildlife habitat and soil stability. Ms. Lundeen suggested that the Council require an updated riparian study, and that removal of wildlife habitat could be construed as a violation of existing federal protection laws.

Mayor Woodruff noted that the argument should be addressed to the extent that the Planning Commission failed to follow what was in the existing Code, rather than perceived omissions in the Code itself.

3) Requiring a cultural resource survey prior to any exploratory excavation. Ms. Lundeen noted that if development was allowed without such a survey, and evidence uncovered, it could be too late to preserve the existing scenic and aesthetic quality of the undisturbed space.

4) Potential slope stability failure, which could directly impact Highway 101 and the Alsea Bay. Ms. Lundeen stated that removal of the existing ground cover could result in additional uncontrolled sedimentation and potential loss of neighboring trees, as had already occurred as a result of logging.

5) Concern about adequacy of existing utility infrastructure to serve the proposed development. Ms. Lundeen noted that an upgrade of the Forest Service pump station would be required of the developer, and expressed concern that the City did not have adequate capacity to serve the needs of the proposed development. Mayor Woodruff responded that her understanding was that the capacity of the current utility system was adequate to serve the additional homes, and the properties would also be paying individual systems development charges to "buy in" to the existing system.

6) Location of proposed utility infrastructure. Ms. Lundeen wondered how the developer could propose utilizing an access for utilities through property that they had no control over. Councilor Cutter noted that this was a preliminary plan, and it would be incumbent on the developer to negotiate any required easements or relocate the utilities accordingly.

7) Concerns about additional traffic. Ms. Lundeen asked that the Council consider the impact of the additional traffic on the existing street.

8) Concerns about lot sizes. Ms. Lundeen noted that although a variance could be granted, the Council needed to realize that over fifty percent of the lots did not meet the City's standard lot size requirement.

9) Necessity for a geological survey. Ms. Lundeen asked to be notified when any

of the required geological assessments are submitted to the City.

10) Lack of verification of type of surfacing to be used in the required onsite parking. Ms. Lundeen noted that the Planning Commission had discussed this, but no requirement had been included in the findings.

11) Determination of the designation and design of the proposed road within and adjacent to the proposed development. Ms. Lundeen felt that the Council and Planning Commission together should determine whether the street would be a collector street or a local street, and require that the design adhere to the street width and improvement standards contained in the City's code.

Proponents Presentation:

Paul Virtue stated that the Council should also take into consideration applicable state and federal laws.

Wayne Smith noted he was a resident in Township 13 which is an existing planned development, and had a contractor who refused to perform concrete work because of concerns about the ground stability. He also felt that access to Norwood Drive was already inadequate and further growth would exacerbate the problem, citing as an example issues with emergency vehicles and their inability to negotiate within his area.

Barbara Davis noted that Ms. Lundeen had verbalized her concerns and wondered why the City Code set standards but also allowed for variances to those standards.

Tom Cropper indicated that his concern was the stability of the hill above Highway 101, and suggested that the properties be rezoned to prevent construction altogether.

Opponents Presentation:

Phil Spulnik indicated that he had been in local real estate as well as on the Lincoln County Planning Commission for a number of years, and noted that planned developments are usually proposed when there's a large property with topographical constraints. He felt that the developers proposal was conservative, and observed that it may be appropriate for the current residents to consider working with the City to resolve the issues with Norwood Drive. He also noted that development would more than likely be gradual.

Dennis Bartoldus, Attorney for Tidewater Development, addressed the Council, noting that his understanding was that the record for the meeting included not only what was received at this meeting but all materials from the original application. He distributed copies of the applicant's materials from the November meeting, noting that the plat included the road dedication from the Norwood Heights subdivision. He stated that his clients had presented their proposal with considerable forethought and input from City staff, and that this was a preliminary plan. The Planning Commission had proposed some changes, with which his clients had agreed, including increasing the width of the proposed street and right-of-way, and the inclusion of concrete curbs, gutters and sidewalk. The lots were not substandard, but in conformance with the criteria for a planned development. They could be extended to the property line, but that would result in the loss of the proposed green space. With regard to the proposed utility access, this was a preliminary design and they would have to engineer it to see if it would work or come up with an alternative. His clients would be paying for the sewer upgrades and additional utility infrastructure, as well as the parks assessment and other applicable fees. They would be

providing turnarounds for emergency vehicles in each phase, which was an improvement on the existing condition of the street. Each step would need to be engineered, and approved by City staff. He noted that the application was submitted under the existing Code requirements, and there are also state and federal requirements that would need to be observed if cultural resources or potential environmental concerns are discovered. He noted concern regarding exactments, and indicated that when a street abuts a property there is an inherent entitlement to use it, citing several examples of Oregon case law as well as ORS 192.010. Engineering and any requisite geotechnical surveys would be done for issues such as the relocation of the power pole, the location of utilities, and the proposed access. The proposed location was not a designated natural site, and his clients had logged the property as they were entitled to. The property was not in a documented riparian zone, and drainage issues will be addressed through engineering. He stated that this was not a large development, and time extensions had been requested to allow for gradual development. The proposed development would preserve significant open space and allow for improved connectivity for future traffic flow. He asked that the Council affirm the Planning Commission decision, noting that his clients were fully aware they would have to meet all of the conditions in order to obtain final approval.

At 4:25 p.m, Mayor Woodruff proposed a recess. The meeting resumed at 4:35 p.m.

Rebuttal: Ms. Lundeen noted that, as the attorney had observed, this was only a preliminary approval. She asked that the Council consider review of components such as the geological surveys as they are completed, rather than waiting until everything is done. Mayor Woodruff inquired about the process and City Planner Lewis responded that any necessary geotechnical surveys would be submitted along with the engineering designs and reviewed by staff, including Public Works, the Fire District, and the City Engineer, before construction. Then as-builts are submitted, which become part of the final approval. He confirmed that these plans could be reviewed by the public during this process. Ms. Lundeen noted that she just wanted to ensure that if a preliminary plan is approved, it is approved according to the Code. She thanked the Council for hearing her concerns, and indicated that she felt that had not been done in the Planning Commission meeting and that the public hearing process could use some clarification. She asked the Council to consider the magnitude of the development, and the written and verbal concerns expressed by herself and others, before making their decision.

Mayor Woodruff closed the public hearing and opened deliberations.

The Council discussed the following items of appeal as submitted by the applicant:

- Signing the findings with the incorrect date. Mayor Woodruff observed that there had been changes proposed to the findings at the December 18 meeting, and the findings had been amended to incorporate those changes. Therefore, the findings could not have been signed prior to that meeting, as the appellant asserted.

- The lack of relative, current and accurate traffic data: Mayor Woodruff asked about

the 10-trip a day standard, asking if that was an accepted standard for a residential street. City Planner Lewis confirmed, noting that it was cited in numerous traffic impact reports. Councilor Cutter indicated that this had been one of his initial concerns as well, and that the Council should look at future improvements to Norwood, especially as further development of the area occurs. However, he felt that this did not rise to the level of prohibiting the developer from exploring engineering options.

- Conflict with the Yaquina John Point Transportation Master Plan: Councilor Cutter noted that this was a preliminary plan, and felt that the developers understood that it would not be in their best interest to create lots with a lack of access to adequate utilities and other inherent issues.

- Conflict with established Code requirements: It was noted that this was a planned development, which allowed for variance to lot sizes and other standards. Councilor Cutter noted that the developer could have adjusted the lot configurations to include additional non-utilizable land, but felt that would be unnecessary. Councilor Dennis added that in some developments, "patio homes" with minimal lot sizes were allowed with no apparent negative impact..

- Lack of verification of ownership of plat that borders property. Councilor Cutter noted that he felt that, before spending money to develop the road, the applicant would certainly verify the ownership and the feasibility of utilizing the property for completion of the access.

- Decision of the Planning Commission to disallow further verbal testimony. Councilor Cutter indicated it may be useful to design a one-page handout specific to the public hearing process for the public, and that the Commission could possibly have made the closure of the hearing and the segue into deliberation more clear, but felt that following the rules of a public hearing process without additional explanation did not rise to the level of an appealable error.

Councilor Swan asked about the timeline for the trail completion. Mr. Bartoldus responded that if the Council desired, it could be done in the first phase. Councilor Dennis asked whether maintenance of the trail would be included in the CC&Rs. Mr. Bartoldus indicate that it could be, but that they would certainly work with City staff to ensure that the conditions would be agreeable. It was noted that if the trail was dedicated to the City as part of the Transportation Plan, then it would most likely be maintained as other such trails in the system. Councilor Swan **moved** to add the completion of the trail in Phase One as an additional condition of approval in the findings. Councilor Dennis **seconded**, and the motion **carried** unanimously.

Councilor Cutter indicated that the Council had discussed each of the criteria cited in the appeal, and felt that none of them came to the level of requiring a reversal or modification of the Planning Commission decision. He **moved** to deny the appeal. Councilor Dunn **seconded**, and the motion **carried** unanimously.

City Planner Lewis proposed to bring the findings to the March 8th meeting for final

approval. **Consensus** of the Council was favorable.

4. GOOD OF THE ORDER: Nothing further.

5. ADJOURNMENT: At 5:30 p.m., there being no further business to come before the Council, the meeting was adjourned.

Respectfully submitted,

Reda Q Eckerman, City Recorder

APPROVED by the Waldport City Council this ___ day of _____, 2018.

SIGNED by the Mayor this ___ day of _____, 2018.

Susan Woodruff, Mayor