

**Rivergrove Planning Commission Minutes
June 4, 2018**

CALL TO ORDER AND ROLL CALL The meeting was called to order at River Grove Elementary School library at 7:00 p.m.

Present: Chair Andrew Dausman, Commissioners Jonathan Sweet (vice chair), and Walt Williams. City Recorder Leanne Moll declared a quorum. City Planner Carole Connell and Planner Matt Straite were also present.

CONSENT AGENDA

1. Minutes from the April 11, 2018 and May 7, 2018 Meetings

Motion: Commissioner Dausman **moved** to approve the Minutes from the April 9, 2018 meeting as presented. **Seconded** by Commissioner Sweet. The motion **passed 2-0**. Commissioner W. Williams abstained.

Motion: Commissioner Dausman **moved** to approve the Minutes from the May 7, 2018 meeting as presented. **Seconded** by Commissioner Sweet. The motion **passed 3-0**.

OLD BUSINESS

1. Continuation of Type III Hearing for an amended development permit application for a duplex at 19232 and 19262 Pilkington Road, submitted by Renaissance Homes.

Planner Carole Connell explained that the applicant, Renaissance Homes, requested a continuation of their Type III hearing to the July 2, 2018 Planning Commission meeting in order to give them more time to address the questions and issues brought forth in the May 7, 2018 hearing. The applicant also waived the right to a decision in 120 days, adding an additional 30 days to the decision deadline.

Motion: Commissioner Dausman **moved** to continue the hearing to the July 2, 2018 Planning Commission meeting.

Seconded by Commissioner Sweet.

Motion passed 3-0.

2. Type III Hearing for a 3-lot partition in the floodplain at 5450 Childs Road, submitted by Hayward, Uskoski & Associates for Lance Coffel.

City Recorder Leanne Moll read the hearing disclosures and instructions for the Type III hearing and Chair Dausman opened the public hearing.

Planner Matt Straite presented the staff report. Mr. Staite summarized that the application was a Type III Development Permit to create three parcels out of four tracts of land and an Area Accessory Development Permit for grading and related improvements on the land. The project meets the definition for a minor partition. The City has received letters from five agencies: Clackamas County Water Environmental Services (WES), Tualatin Valley Fire & Rescue (TVF&R), City of Lake Oswego Engineering (sanitary sewer), Rivergrove Water District, and City of Rivergrove engineer, Kelli Grover.

Mr. Straite explained the criteria from the Rivergrove Land Development Ordinances (RLDO) that the application must satisfy.

The project is located within a flood zone, so the minimum lot size is a half-acre. All the parcels proposed meet that requirement.

There shall be not development within 25 feet of the Ordinary High Water Mark of the Tualatin River or within 25 feet of a wetland. The applicant has submitted a wetland delineation, which indicates that there are wetlands on the property. They intend to fill those wetlands, and they will seek the appropriate permits from the state. Staff has added conditions of approval to ensure they obtain the appropriate permits and those grading permit must be presented to the City prior to the approval of any building permits.

The applicant must also ensure that there are adequate services for the site: water, sewer, etc. With the conditions of approval stated in the staff report, those services are available for the site.

The applicant is not just seeking approval for a plat, they are also proposing some development, which necessitates an Area Accessory Development Permit.

The scale and bulk of the lots are in harmony with the area and consistent with the other development and lot sizes of the surrounding properties. The traffic that would be generated by the three lots will not create any significant impacts.

Criteria require that there is no remaining property on the land, or if there is remaining property, it can comply with the RLDO in the future. The property is made up of four tracts from a previous subdivision and at that time, it did meet those requirements. Staff finds that the applicant is proposing to subdivide the entirety of their property. Therefore, the criteria do not pertain.

The project must also assure that it isn't limiting access to any of the surrounding properties. At this time, it is not limiting access to other properties, and it meets that criteria.

Lastly, the project must comply with the City's Comprehensive Plan and all the policies herein. One of these requirements is a combination of a trail from Dogwood Drive. The applicant has shown an eight-foot wide easement on the project and City staff have added conditions of approval to ensure that that trail is shown on the final plat as well.

Overall, staff recommends approval of the application, pending the conditions of approval included in the staff report.

Mr. Straite also noted that at the beginning of the meeting, the applicant submitted a new layout for the project in order to comply with some previously-shared concerns. Staff has reviewed the new layout and finds that it still complies with all the requirements in the RLDO and no changes are required to the conditions of approval presented in the staff report.

City engineer Kelli Grover did request that one area of the parcel be converted into a tract. Mr. Straite stated that the application should be changed from a partition (3 lots) to a subdivision (4 lots) at the hearing because that extra tract could be considered an additional lot.

The City received three letters from the public, all citing concerns about construction traffic, the impact to the street, and neighborhood safety. Ms. Joyce's letter also shared a concern about protecting trees and wildlife.

- Joan Joyce, 5510 Dogwood Drive, Rivergrove, OR (letter received on May 22, 2018)
- Steve and Denise Novosel, 19342 Lorna Lane, Rivergrove, OR (letter received on June 4, 2018)
- Dyan and Todd Klein, 19331 Lorna Lane, Rivergrove, OR (letter received on June 4, 2018)

Commissioner Dausman asked if the change from a partition to a subdivision called for an action by the Planning Commission. Mr. Straite and Ms. Connell affirmed that the change does not impact the application because the approval criteria are the same.

Applicant:

Valerie Uskoski, Hayward, Uskoski & Associates, 400 East Evergreen Blvd, Ste. 112
Vancouver, WA 98660

Ms. Uskoski noted that on page 9 and page 10 of the staff report, the text referred to the tentative trail along the "western edge" of lots one and two. This should actually read the "northern edge."

She explained that the applicant is proposing to dedicate the pedestrian trail but requested to have a note on the plat that states that the pathway shall be closed to the public until such time that the connection is made between the parks. This will ensure there is a right-of-way all the way through, so there is not a dead-end. The Ms. Uskoski shared that she was concerned about public safety and long-term maintenance. This was not clearly stated in the conditions, but the applicant wanted to make sure that proposal was included in the conditions.

Ms. Connell questioned how and when the pathway would be improved. Will there be a note on the plat that would require the purchaser of the property to improve it? If the City does not know when the path will connect, how will the City ensure it happens?

Ms. Uskoski stated that since she does not know when the City will require the right-of-way to ensure the path will connect, she cannot be sure when it will be constructed. If the path is constructed now and the applicant dedicates the easement, it could become a dangerous place typical of trails that dead-end. She noted that some of the lots in between 5450 Childs Road and park are fairly large, built, and have residents on them. These properties are valuable, so the likelihood that the adjoining neighbors will allow the connection across their properties is not likely soon. Ultimately, the applicant wants to make sure the connection is there, but not if it creates a public safety and maintenance concern. If it was a short-term process where the applicant was sure that the path would connect very soon after the development of 5450 Childs Road, then the applicant would approve of constructing the path right away. Ms. Uskoski claimed that it could be 15-20 years for the path develop, which is a long time for the path to remain dormant, unmaintained, and assimilated into the landscape.

Ms. Connell replied that it is the City's project to build the pathway, so she is not sure about the timeframe.

Ms. Connell reminded the Planning Commission that City staff needs to include the construction hours in the conditions of approval.

Ms. Uskoski responded to the written public comments regarding the suggestion that Lorna Lane be repaved at the end of construction. She explained that the conditions and CC&Rs of the Chapman Estates Phase 1 plat do allow legal access for construction vehicles and there is language in the plat that states that if anyone damages the pavement, they are required to repave the road. She also pointed out that Lorna Lane, a private road, was constructed to a higher standard to mitigate the impact of the construction vehicles. She explained the CC&Rs from Phase 1 automatically apply to the CC&Rs in Phase 2 of Chapman Estates.

Ms. Uskoski also replied to the concerns regarding tree removal. The applicant is proposing to remove two trees. There is a leaning tree that is dropping debris on a neighboring home. The second tree is in the area of the fill composition that they have proposed. They are not proposing to cut trees on or near the riverbank, which was a stated concern of a resident who submitted testimony.

Commissioner Sweet asked if they are removing a tree about 25-feet south of the current SE corner of Lorna Lane. He asked if they are paving at this point. Ms. Uskoski noted that they are extending the driveway to lot three. For tree removal, the first one is on lot two, adjacent to the Morton home, and in the path easement. In addition to preventing the tree from falling on the Morton home, it would also allow the future pedestrian walkway to be constructed. The second tree would be damaged by the development and needs to be removed.

Commissioner Dausman read the construction hour conditions: "Construction activities creating noise audible off the project shall be limited to the hours of 7:00 a.m. to 7:00 p.m., Mon.-Fri.; 8:00 a.m. to 5:00 p.m. on Sat. and Sun.; and not be allowed on Federal holidays."

In favor:

None.

Neutral:

Peggy Morton, 19484 Lorna Lane, Rivergrove, OR

Ms. Morton asked if the homes would be included in the Chapman Estates Homeowner Association. Ms. Connell and Mr. Strate noted that that is not one of the City's requirements.

Ms. Uskoski pointed City staff to the Phase 1 plat note CC&Rs for Chapman Estates that states that if the Phase 2 lots are subdivided and developed, the new homes are automatically enrolled into the HOA and would need to contribute as equal members to the HOA.

Darren Murray, 19320 Lorna Lane, Rivergrove, OR

Mr. Murray pointed out several concerns of the HOA and raised questions to the Planning Commission and City staff.

He noted that adding three buildable lots at the end of Lorna Lane creates a financial obligation on the HOA in terms of the operating budget and long-term replacement costs of the improvements. Mr. Murray questioned why the City would not require the applicant to meet with the HOA and get their approval prior to resubmitting plans to the City.

Mr. Murray also cited the proposed storm water improvements that rely on the existing tract which is the responsibility of the HOA to maintain. He pointed out that this again creates an additional financial obligation on the HOA and therefore the HOA should have a say in what is proposed and how the new lots will share in those costs.

Mr. Murray stated that the HOA should consider when the new lots, as potentially new members, would be financially liable to participate in the reserves and operating capital. Is the HOA willing to defer those? He also noted that as the applicant intends to modify the existing common infrastructure, a new reserve study may be indicated. Who pays for this?

Mr. Murray explained that the current lot owners each own a respective portion of Lorna Lane and sidewalks. If the new lots are allowed to develop without a street -- only a shared driveway -- but impact the existing street, sidewalks, etc., how will this be shared and compensated?

Finally, Mr. Murray noted that developing in flood plains and floodways has a lot of complex issues and multiple involved agencies, so he is concerned that the applicant may not be able to mirror what was previously developed in Chapman Estates Phase 1. Mr. Murray requested that the HOA be consulted in the design and layout of the future lots so that the values of the existing homes are supported.

Dan Brown, 19317 Lorna Lane, Rivergrove, OR

Mr. Brown noted that his family moved to Lorna Lane eleven years ago and purchased the model home. At that time, the street was not finished, and there were open lots for years. He would like the developers to keep the same high standard of homes that have been built up and down the street. Mr. Brown noted he was the HOA president for two years. He stated that he is not critical of the development or the construction traffic and is neutral, although he noted that in eleven years he has had three different builders constructing and driving up and down 200 yards of Lorna Lane. He wants the developer to be sensitive to the residents and would like an open dialogue with the HOA before the application is approved.

Ed Wolak, 5320 Childs Road, Rivergrove, OR

Mr. Wolak noted he is one of the large properties that lies between Chapman Estates and Heritage Park.

He asked the Planning Commission to clarify whether the application is a partition or a subdivision and how many tracts will be built. Ms. Uskoski replied that only three lots will ever be built.

Ms. Connell noted that the City engineer suggested that a fourth tract be created to hold the Water Quality Resource Area (WQRA) and the 50-foot vegetated corridor, which is a tract that is not intended to be developed ever. This tract designation would preserve the area on the river. It could cause confusion with the County surveyors because it will be a subdivision with only three lots. Normally, a subdivision has four or more lots. In this case there will be three buildable lots approved for homes and one tract that protects the 50-foot vegetated corridor along the river. The designation as a subdivision is a formality.

Mr. Straite showed on the site plan which area the City engineer suggested become a tract. He noted that the condition is on the staff report, page 11, condition 8. Oregon Land Use law calls areas that are important to a resource a tract instead of a lot or a parcel. By becoming a tract, this area will be protected. No building can take place on it, even development proposed by the future homeowner of lot 3.

Chair Dausman stated that that is a favorable feature to the homeowners and to the City because it gives the City clear protection of the WQRA because we are federally mandated to do so.

Mr. Wolak questioned why the lots in the FEMA floodway were not required to be a full acre. He believed that properties in the floodway were required to be a full acre, citing a prior Planning Commission decision.

Mr. Wolak asked where the houses would be placed on lot 2 or lot 3.

Mr. Wolak introduced into evidence there is a de facto wildlife corridor that connects the non-urbanized portion of the area surrounded by the Tualatin River, the Willamette River, and the area that connects to I-5. He noted that this is the only way for larger animals like coyote and deer to connect with other populations at Cook's Park in Tualatin and other nature preserves. Mr. Wolak presented a map of animal corridor into the record.

Mr. Wolak asked if the City should have a pedestrian walkway at all when we have Childs Road 150 yards away in parallel? He requested that when the three parcels are developed, the City make sure the animals can roam freely. He asked that fences not be allowed. He also noted that no one wants the pedestrian walkway through their yards.

Finally, Mr. Wolak noted that there is a fence on the boundary of his property that has been there for more than ten years. The fence deviates from the boundary near his dining room. He wanted to note this in the meeting on the record and will speak to the applicant about adverse possession because it will affect the eastern boundary of the proposed subdivision.

In opposition:

David Shafer, 19475 Dogwood Ct., Rivergrove, OR

Mr. Shafer noted that on Dogwood Ct., residents view the backs of the fences of the homes on Lorna Lane. He stated that his family would prefer to not have more fences to look at. Would like to keep some of the few remaining parcels open and to not fill in the wetlands. He urged the Planning Commission to maintain the quality of life and water quality in their decision.

Ms. Connell asked the applicant to explain the flood line and the building envelope for parcel 3. Is it adequate for the home to stay out of the floodway line? Ms. Connell also explained, responding to Mr. Wolak, that a half acre is the minimum size of a buildable lot in the floodway and the floodplain.

Ms. Uskoski responded to Ms. Connell that the inclusion of the floodplain was the reason they reconfigured their drawings. She noted that the RLDO is silent on the distinction between development in the floodway and the floodplain, so the applicant cross-referenced into Clackamas County for building code requirements. Development in the floodplain is prohibited unless a no net-rise analysis is provided. The no net-rise analysis is expensive and will be analyzed carefully by FEMA and Clackamas County engineers. With the reconfiguration of the lots, the driveway has been shortened, and the primary building envelope for lot 3 is directly east of that storm-water tract. Building envelopes for lots 1 and 2 are still in the same area, mirroring each other, but the envelope for lot 3 is centered at the end of Lorna Lane.

Commissioner Sweet asked the applicant what infrastructure is being constructed with the subdivision?

Ms. Uskoski explained that they would be extending the lateral services for both water and sewer and build the driveway. They want to avoid three different builders installing patchwork facilities. The applicant will need to realign the stormwater that travels across lot one, bringing it down into a manhole and transporting it back into the stormwater tract. They would also grade

the driveway and create the volume cut/fill capacity at the rear of lot three. Ms. Connell explained that the cut and fill has to be proven by an engineer and that is clearly stated in the conditions for approval.

Commissioner Sweet noted his concerns about collaborating with the HOA, when HOAs are not mentioned in the RLDO. Mr. Straite noted that in 99% of cases, the HOA is considered a civil matter between the applicant and the property owner. Commissioner Dausman noted that HOAs are legally enforceable, but are a different venue.

Mr. Sweet requested that the Commissioners remove the eight-foot pathway easement from the conditions because it's already on the applicant's preliminary plat, so it seems redundant. Mr. Straite explained that the condition to include the pathway was inserted to the staff report before the preliminary plat was presented showing the pathway. Mr. Straite said the condition could be removed.

Commissioner Dausman asked for clarification of the plat and asked if the plat records the subdivision as a shared driveway situation. Ms. Uskoski and Mr. Straite confirmed Mr. Dausman was correct. Mr. Dausman explained that the developer should attempt to fit the feel of the neighborhood by extending the sidewalks and maintaining a cohesive look and feel to the neighborhood.

Ms. Morton asked about the agency letter from TVF&R. She wondered if there was going to be a fire hydrant and will there be enough room for a turn-around. Ms. Connell explained that these issues are addressed during the home development process. Most of the TVF&R conditions are standard state requirements, and not all apply in this case. These conditions will apply in the next step when homes are approved.

Commissioner Sweet brought up the trail and asked about the applicant's request to close the easement of the trail to the public until a connection is made. Mr. Sweet said he believed it would serve the City to have it closed until a connection is made. Mr. W. Williams stated that he was concerned that the applicant would then have no obligation to open the trail. If the City plans to build the trail 10-15 years from now, the trail easement needs to be available for the City to implement its plan.

Commissioner Dausman noted he could put a condition on the notice to have some money in trust for the path to be constructed. Ms. Connell noted that the City does not have Systems Development Charges built into the ordinances or fees in lieu. Mr. Straite explained that lot one should be able to build the trail right away. The trail would connect Lorna Lane through to Dogwood Ct. The Commission could include a condition of approval that requires the applicant or the future homeowner to build that trail right away. Mr. Straite noted that he understands the applicant's point on the west side of the lot where the path would seemingly dead-end. Mr. Straite noted that requiring the east side trail to be built would fulfill part of the Comprehensive Plan.

Ms. Connell noted that requiring a path is a fairly recent policy change in the City's Comprehensive Plan.

Chair Dausman noted that he is reluctant to put just that one path in right now because it adversely affects the homeowners right at the end of Lorna Lane. Since it's not providing a thoroughfare, Mr. Dausman said he was concerned that it would just become a cut-through for pedestrians. Mr. Dausman explained that he feels like there is a pathway already there, and the

goal of that path is to provide parallel connectivity to the river and getting just that extra half block over does not serve the public enough to inconvenience those two home owners.

Ms. Connell noted that ideally the walkway would be on the river, but there is no precedent for that. Commissioner Dausman responded that a river-front path would not be ideal to the property owners on the river. He does not think that constructing the pathway will positively impact the City's Comprehensive Plan goals by mandating that the path be built immediately. Commissioner Dausman noted that he likes the concept but does not feel it needs to be implemented at this time.

Ms. Connell noted that the easement being included on the plat is the most important aspect of the Planning Commission's decision. She is not clear how the City will pay for the path's construction.

Ms. Connell clarified that right now, the pathway does not have any condition requiring it be improved. Chair Dausman said this was correct. Mr. Dausman said that the Planning Commission does not need a condition stating the path is closed because they are de facto closing it by not requiring improvements. The concerns of the applicant are that they build a pathway that does not connect, and then it becomes a pathway just between these three lots. Commissioner Dausman explained that in his mind, the path should fulfill the connectivity goal and right now building it would not connect the parks. Chair Dausman stated that he does not feel that the Planning Commission needs to "strong-arm" the construction of the path.

The Planning Commissioners reviewed the conditions of approval and decided the following:

- Remove condition 5: "The extension of the private road SW Lorna Lane, into the proposed partition shall be constructed according to Clackamas County Standards."
- Amend condition 6 to read: "The applicant shall provide the City a fully executed joint access easement and maintenance agreement between the three property owners to assure legal access and shared maintenance of the driveway."
- Remove condition 8: "The 8- foot wide trail easement along the western edge of lots 1 and 2 shall be recorded with the final plat and shown on the final plat."
- Add construction hours: "Construction activities creating noise audible off the project shall be limited to the hours of 7:00 a.m. to 7:00 p.m., Mon.-Fri.; 8:00 a.m. to 5:00 p.m. on Sat. and Sun.; and not be allowed on Federal holidays."

Ms. Uskoski asked for the Planning Commission to clarify the conflicting conditions for TVF&R and the Rivergrove Water District. She requested that the Commissioners include a condition that the applicant will have approval from TVF&R, Rivergrove Water District, and the other agencies.

Ms. Connell explained that she thinks it's informative to include the exact communication from the agencies. Mr. Straite said that the City could include both the general condition to receive approval from agencies as well as the specific requirements listed in the staff report.

Applicant

Ms. Uskoski explained that they agree with all the City's conditions and they want to be good neighbors. She again asked the Planning Commission to simplify the conditions provided by the agencies to make the conditions cleaner.

Commissioner Dausman asked if there should be a condition to help facilitate communication with the HOA. Ms. Uskoski explained that she will be initiating contact with the HOA herself.

Motion: Chair Dausman closed the public hearing. Seconded by Commissioner W. Williams
Motion passed 3-0.

Mr. Straite wondered if the City should shorten the agency condition requirements. Some of the conditions that the fire and water districts required will not apply, which can make it difficult to require.

The Planning Commission agreed to amending the conditions of approval by adding an additional section indicating that the applicant is required to get TVF&R and River Grove Water District approval prior to construction. The conditions will then list all of the agency recommendations.

Motion: Commissioner Dausman **moved** to approve the application based on the amendments to the conditions previously discussed. **Seconded** by Commissioner Sweet. **Motion passed 3-0.**

NEW BUSINESS

1. Completeness review for a single-family home at Canal Park subdivision, built on lot 2 (19680 Canal Road) submitted by Sean Foushee of Elite Homes.

Mr. Straite presented the completeness report, noting that the proposed home is a 5 bedroom, 3 ½ bath single-family home on a lot that is 10,364 square feet. Mr. Straite explained that City staff believe that the Planning Commission has all of the information needed to review the application. He noted that an arborist report was submitted the night before and the City arborist is reviewing that report. The applicant will also need to provide information about the sanitary sewer service. The application can be deemed complete and be processed as a Type II review subject to the determination of the sewer service.

Commissioner W. Williams will recuse himself because he lives in the notice area.

Motion: Commissioner Dausman **moved** to **deem** to application complete and schedule a Type II review at the July 2, 2018 Planning Commission meeting.

Seconded by Commissioner Sweet.

Motion passed 2-0. Commissioner W. Williams abstained.

2. Completeness review for a single-family home at Canal Park subdivision, built on lot 3 (4485 West Road) submitted by Sean Foushee of Elite Homes.

Mr. Straite explained that the second proposed single-family home is 4 bedrooms, 3 ½ baths on a 10,004 sq. foot lot. City staff recommends the second Canal Park application be deemed complete pending the sanitary sewer determination.

Motion: Commissioner Dausman **moved** to **deem** the application complete and schedule a Type II review on July 2.

Seconded by Commissioner Sweet.

Motion passed 2-0. Commissioner W. Williams abstained.

PUBLIC COMMENT ON NON-AGENDA ITEMS

None.

CORRESPONDENCE & REPORTS

None.

COMMISSIONERS' REPORTS

None.

ADJOURNMENT

Motion: A motion to adjourn was made by Commissioner Dausman.

Seconded by: Commissioner Sweet.

Motion passed 3-0.

The meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Leanne Moll, City Manager/ City Recorder