

Rivergrove Planning Commission Minutes July 2, 2018

CALL TO ORDER AND ROLL CALL The meeting was called to order at Lloyd Minor Park at 7:00 p.m.

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

CONSENT AGENDA

1. Minutes from the June 4, 2018 Meeting

Commissioner Jacob McKay joined the table.

Motion: Commissioner Dausman **moved** to approve the Minutes from the June 4, 2018 meeting as amended. **Seconded** by Commissioner W. Williams. The motion **passed 3-0**. Commissioners McKay and J. Williams abstained.

- In Old Business, section 2. Type III Hearing for a 3-lot partition in the floodplain at 5450 Childs Road, submitted, page 7, paragraph 3 to read: "...it's already on the applicant's preliminary plat...."
- In New Business, section 2. 2. Completeness review for a single-family home at Canal Park subdivision, built on lot 3 (4485 West Road), page 9, to read: "Seconded by Commissioner Sweet."

OLD BUSINESS

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

City Planner Carole Connell briefly summarized the supplemental staff report. She highlighted that it had been 60 days since the hearing and the supplemental staff report focused on the hardship relief for the setback orientation and the tree cutting permit. The Area Accessory Development permit and the site design review aspect of the original report and review have since been deemed not applicable.

Numerous documents have been received, including letters of testimony from Jeri Parrish (June 28), Anne Redman (June 30), and Jennifer and Michael Crock (July 1).

The original duplex was 5,500 square feet and was approved in 2007. The current duplex is 3,800 square feet. Ms. Connell also clarified that the height of the proposed duplex is 26 feet 10 inches high. The impervious surface area is approximately 3,400 square feet.

Ms. Connell highlighted the second letter from Clackamas County dated May 10, 2018 that highlights important conditions regarding street improvements, storm drainage, and other conditions of approval.

Ms. Connell explained that according to Rivergrove Land Development Ordinances (RLDO) Section 5.055, duplexes cannot have ADUs or secondary dwelling units now or in the future.

The setback required in the RLDO are as follows:

- Front yard 25 feet from Pilkington Road
- Rear yard 25 feet from the opposite property line

The proposed hardship setbacks for the duplex are as follows:

- Front yard 15 feet from Pilkington Road
- Rear yard 10 feet from Pilkington Road

These are the same setbacks approved in 2004 and 2007. Since the lot is only 50 feet wide, Ms. Connell explained that hardship relief is necessary to build on the lot.

There are four parking places per unit and only two are required in the RLDO.

Ms. Connell explained that the City Arborist, Brian French, visited the lot and gave the following comments:

- Tree #503 has severe lean and needs to be removed. A neighbor and the applicant's arborist agree.
- Trees #501 and #502 need permission from the neighbor according to state law. Permission has not been provided for those trees to be removed.
- The English Hawthorne is invasive.

Ms. Connell reiterated that hardship relief is the pertinent issue, not site design criteria or accessory development permit criteria, just hardship criteria is the basis for the Planning Commission's decision.

Ms. Connell explained that the driveway was 19 feet deep, and the applicant has provided a six-foot wooden sight-obscuring fence on the north and east property lines and has agreed to save trees #501 and #502 if permission to remove is not granted by the neighboring property owner.

Ms. Connell concluded by stating that the hardship criteria narrative provided by the applicant was considered sufficient by staff and that staff recommend approval of the application with the conditions listed in the staff report:

Ms. Connell explained that Condition #3, which addresses Pilkington Road improvements is vague because Pilkington Road is not wide enough for the applicant to meet Clackamas County's standards for bicycle and pedestrian improvements. The applicant has accepted a fee in lieu, but the City would prefer a condition that requires the applicant to help with traffic calming and bike and pedestrian safety. Ms. Connell noted that the applicant will likely address this issue during the continued hearing.

Secondly, the city requests a clear delineation between the driveway (private space) and the street (public space) by adding a 12"x12" masonry wall on the west property line of Pilkington, as suggested by resident Michael Salch.

Ms. Connell noted that the Clackamas County requirements are important and should be included in any decision.

Ms. Connell explained that the City will be adopting explicit tree protection and fencing requirements from a horticulturist that worked for another applicant. These tree protection standards are not in the current Tree Removal Ordinance and are written into Condition #5.

Commissioner McKay asked Ms. Connell about the home orientation. What decides the front and the back as opposed to side to side? Ms. Connell explained that the home orientation is written into the RLDO and was interpreted by the Planning Commission in 1998. "All setbacks referred to in these sections shall be determined based upon the orientation of the residential structure unless the setback would be more restrictive, that is greater, if determined based on the orientation of the lot." Therefore, the front of the structure and the front setback is facing Pilkington Road. Commissioner McKay asked if the orientation of the home was the applicant's decision. Ms. Connell responded affirmative.

At attorney Michael Robinson's request, City Recorder Leanne Moll re-read the public disclosures and instructions to the public. There were no *ex parte* contacts reported by the Planning Commissioners.

Applicant:

Jeff Shrope, Applicant, Renaissance Homes, 16771 Boones Ferry Rd, Lake Oswego, OR 97035.

Mr. Shrope began by explaining that the lot is 10,240 square foot lot and Renaissance has proposed to build a 3,800 square foot home covering approximately 28% of the lot. The impervious surface area is approximately 3,400 square feet. One proposed unit is 1,735 square feet. The other proposed unit is 2,194 square feet. They are all 3 bedroom, 2.5 bath, and 2 car garage dwellings. The tallest unit is 26 feet, 10 inches.

Mr. Shrope explained that they are now only requesting to remove three trees including #503, which has a lean. The two trees that are on the east property line will not be removed and Renaissance Home's arborist will manage those trees on site as building proceeds.

The applicant will be following all of Clackamas County's requirements for storm water drainage and working with PGE on undergrounding power from the pole to the duplex.

Applicant's Attorney:

Michael Robinson, Land Use Attorney, 1211 SW 5th Ave #1900, Portland, OR 97204.

Attorney Michael Robinson submitted a survey of existing conditions on the lot to be included in the record. He addressed three issues regarding the duplex, including use, the prior decisions, and the criteria for the hardship relief.

Mr. Robinson began by stating that a duplex is a permitted use in the RLDO. The issue is not whether the use is allowed, but whether or not the applicant satisfies the approval criteria for hardship relief. Mr. Robinson acknowledged that residents are concerned that a duplex is proposed but explained that duplexes are allowed in the residential zone according to the RLDO. According to Mr. Robinson, the setbacks would need to be the same for a single-family home or for a duplex. He cited Ms. Connell's staff report which explained that due to the narrowness of the lot, hardship relief is required to build.

Mr. Robinson continued by stating that he agreed with the April 30, 2018 staff report that the 2007 approval has not expired. The same hardship relief was approved by the Planning

Commission in 2004 and 2007. The duplex that was approved in 2007 was substantially larger than the currently proposed duplex. There is nothing in the RLDO that stipulates the expiration of the prior approvals. Mr. Robinson argued that since the approvals are still valid, the Planning Commission may grant the hardship based on those prior approvals.

Mr. Robinson continued by explaining that the alternative to approval based on the prior decisions would be to review the new hardship relief application the applicant submitted, which addresses all eight criteria set forth in the RLDO:

Mr. Robinson claimed that hardship criteria #1 and #8 are satisfied because those require that the hardship not be the result of the applicant's act. He explained that the unique circumstance was the narrow width of the lot. The applicant did not create the lot; the lot has existed in that way for some time. Mr. Robinson also cited aerial maps of the City that show that there is no other similarly-situated lot that is vacant in the vicinity. Mr. Robinson continued by explaining that the hardship is also the result of Clackamas County, which controls access to the two abutting roads, requires the driveway to be on Pilkington. The driveway cannot be on Childs Road because the driveway would be too close to the intersection and the neighbor's driveway. The driveway has to be 150 feet from the centerline of Childs. Both of those factors constitute the hardship.

Subsections #2 and #7 require the applicant to explain that the duplex is a permitted use. Mr. Robinson previously explained that a duplex is a permitted use in the RLDO.

Subsections #4 and #6 required proof that the hardship not be injurious to residents. Mr. Robinson stated that he appreciated the testimony from the neighbors but explained that the analysis of the hardship criteria #4 and #6 require one to analyze not the impact of the duplex, but the impact of the reduced setback. He again stated that the setback reduction would be required if the proposed home were a duplex or a single-family dwelling. The narrow lot and the orientation of the structure on the lot require a hardship relief to make the lot buildable. Mr. Robinson explained that the newly submitted survey shows how far away the dwelling is from the north and east sides. The home to the east is 27 feet away from the east lot property line, so the dwelling will be 37 feet away from the neighboring home to the east. The dwelling in the lot to the north is fairly far of in the northeast corner. The closest structures are actually garages, not dwellings.

Mr. Robinson stated that subsection #5 does not apply in this case because no other adjacent land is in the same ownership. Subsection #5 requires adjacent ownership to be relevant.

Mr. Robinson said that this is the same hardship relief that has been approved twice, and he believed that the applicant has provided substantial evidence to justify the hardship relief criteria.

Mr. Robinson said that the applicant agrees with all of the conditions set forth in the staff report but did suggest changes to the wording of condition #3. Mr. Robinson suggested a change to condition #3, requesting a curb to delineate the private vs. public area on the road, instead of a 12"x12" masonry wall. The applicant will be installing a curb there regardless.

Proponents:

None.

Neutral:

None.

Opponents:

Michael Salch, 5255 Childs Road, Rivergrove, OR 97035

Michael Salch referenced his written testimony regarding traffic concerns. He was concerned about the vision of drivers in the turn-around driveway. Mr. Salch claimed that a driver could not see a bicyclist or car on north Pilkington between the two driveways, and that this blind spot was not accounted for in the vision condition test. The turn-around driveway is not safe for cyclists. Beyond the lot, Mr. Salch explained that if there is a 6-foot-wide pathway installed, there will be a pinch-point where the path ends that is not safe for pedestrians or cyclists. The driveway is 19 feet long. A Prius is 17 feet long. The end of a parked car will be up against the east property line and Right-of-Way. A truck or longer car will be in the ROW. If there is a bike lane, the vehicle will encroach on the roadway. Mr. Salch explained that the turn-arounds are so tight to the house, that there is no room for a passenger or driver to open the door without encroaching in the street. He is also concerned about a car from the north turnaround turning northbound on Pilkington and pulling out into the pedestrian pathway. He would like the Planning Commission to “be sensitive to the vehicle facility” and warned that the driveway turnarounds could be a public nuisance and could create unsafe conditions.

Jennifer Crock, 19235 Pilkington, Lake Oswego, OR 97035

Jennifer Crock asked the applicant to again clarify the height of the duplex, citing documents that listed the height at 32 feet and at 27 feet. She requested the applicant consider shifting the duplex to the south of the lot to help save trees on the north end of the property and give neighboring residents more privacy.

Anne Redman, 5475 Childs Road, Lake Oswego, OR 97035

Anne Redman, the neighbor directly to the east, asked if a retention pond is going to be built on the lot. She recommended strongly that the setback not be reduced to 5 feet. She added that she is concerned about the sunlight that she will lose as a gardener due to the height of the building.

City Planner Carole Connell addressed the questions that arose from the residents who testified. The height will be 26 feet 10 inches. The height will be verified by Clackamas County, which is in charge of the building permit.

Ms. Connell also added that Clackamas County’s Water Environmental Services (WES) is the storm water authority in this jurisdiction. Their letter and conditions have been unchanged from the 2004 and 2007 approvals. When they apply for their building permit, they must obtain a storm water approval from WES. If the impervious surface of the duplex is more than 5,000 square feet or more, then they will have to work with WES on a storm water plan with a possible detention pond on site. The applicant estimates that the impervious surface is around 3,400 square feet, well under the 5,000 square feet. It is up to the engineering that goes along with the building permit request. Clackamas County will require the residence to have adequate storm drainage.

Applicant Rebuttal:

Mr. Robinson replied to the residents who testified on behalf of the applicant. Mr. Robinson replied to Ms. Redman by stating that the storm water plan will likely be infiltration. This is entirely up to the WES and Clackamas County’s Building Permit department. If they do not meet the standards, they cannot build the duplex. He also clarified that he is requesting a 10-foot setback not a 5-foot setback.

Mr. Robinson suggested that Jeff Shrope and Renaissance homes would keep the neighbors informed about the building process once the permit is granted.

Responding to Ms. Crock, Mr. Robinson reiterated that the building height is 26 feet, 10 inches, well under the maximum height of 35 feet. He also explained that the duplex can't be shifted to the south because of the driveway requirements of Clackamas County. The driveway has to be 150 feet from the centerline of the driveway to the centerline of Childs Road. If the residence is moved south, the applicant cannot meet Clackamas County's driveway requirements.

Mr. Robinson responded to Mr. Salch by explaining that Clackamas County regulates access to the roads because the City does not have jurisdiction over Pilkington Road and the RLDO does not address road standards. He did think Mr. Salch's idea to demarcate the property and the road clearly was a good idea.

Mr. Robinson stated that his applicant is happy to construct a pedestrian path on their property, but it is really up to the county because it is their ROW. If it is allowed by the County and safe, the applicant will construct an asphalt path. If it is not allowed by the county, the applicant will pay the fee in lieu. Again, it's up to the County whether or not a path can be installed.

Mr. Robinson stated that the City's Comprehensive Plan verifies that the streets have adequate capacity. Cited the City of Rivergrove's Comprehensive Plan Goal #12 Transportation (revised 2014): "The City streets are adequate for present traffic volumes and should have adequate capacity through the planning period."

He added that the two dwellings will generate two or three additional trips during the peak hours of traffic and will not add significantly to the traffic. The applicant will work with the County to make the safest driveway and street possible.

Mr. Robinson stated that the applicant is asking for a permitted use outright, a height that is well within the maximum height set forth by the RLDO, and because the lot is narrow, relief must be given to make the lot buildable. The Planning Commission has granted relief twice in the past and Mr. Robinson stated he believed that the evidence is in the record to support the Planning Commission making that decision again.

Planning Commission deliberation:

Commissioner Sweet asked about the two trees located on the east property line. Mr. W. Williams explained that the property owner to the east did not give permission to remove those trees and therefore they will not be cut.

Commissioner McKay asked the applicant how many trees total they are applying to remove. Mr. Shrope clarified that they are requesting to remove three trees: #508, the English Hawthorne, a nuisance tree; #504, the Douglas Fir with a significant lean, and #500, a Douglas Fir. All of the trees are in the middle of the property.

The trees that will remain are #503, #502, and #501, all Norway Spruce that are on the east property line. #503 also has a lean, but will be retained.

Commissioner Dausman noted that in the current Tree Cutting Ordinance, a permit is not required for the removal of three trees.

Commissioner McKay asked the applicant if Clackamas County requires the driveway to be 125 feet or 150 feet from the centerline of the road. Ms. Connell clarified that it is 150 feet, as stipulated in the letter from Clackamas County and in Condition of Approval #2 in the supplemental staff report.

Commissioner McKay asked the applicant if they have officially requested a hardship relief to for the 150 feet requirement for the driveway. The applicant responded that since it is not governed by the City ordinances they have not requested hardship relief. Mr. McKay asked if the applicant has requested a hardship relief for the driveway from Clackamas County. The applicant's attorney responded, "no."

Commissioner W. Williams asked about the impact of the shortened rear setback on the garage of the neighboring east property.

Mr. Robinson responded that the garage is not currently habitable.

Mr. W. Williams stated that the resident has a right to convert the garage into habitable space if she chooses.

Mr. Robinson stated that the garage is either conforming or non-conforming in regards to today's setback standards. A garage is an accessory structure and those setbacks are different in the RLDO. Ms. Connell explained that accessory structure side setbacks are 3 feet and the reduced setback shouldn't have an impact on the use of the garage.

Commissioner Sweet asked about the tree cutting application again. Ms. Connell replied that in the Notice of Decision, a condition will stipulate that only three trees, #500, #504, and #508 are permitted to be removed.

Mr. Sweet asked about the third condition and if the Planning Commission could provide a more specific condition. Ms. Connell replied that there are two options: to install a pedestrian path just on the corner to help a pedestrian trying to get over to Pilkington from Childs Road; or to install a pathway all along the frontage of the east-side of Pilkington Road. Mr. Salch shared concerns that the longer pathway may be dangerous.

Ms. Connell explained that the applicant has provided this alternative wording: "Prior to occupancy the applicant shall install a 6' wide asphalt path in the Pilkington ROW subject to Clackamas County approval." The County will have to approve the path because it's in the ROW. The applicant also requests a curb, rather than a masonry wall, at property line.

Chair Dausman asked if the Planning Commission can put a sunset clause in their decision.

Commissioner J. Williams stated that the original approval goes back more than a decade. The current application is the third iteration of the project by the third different owner, but the original decision and hardship relief still stands.

City Attorney Bill Kabeiseman noted that prior decisions can guide the Planning Commission. Unless there were changes to the facts or changes to the law, the Planning Commission can be guided by prior approvals. Since the RLDO does not have a sunset clause, the Planning Commission would need to amend the RLDO rather than add a condition to a decision tonight.

Commissioner McKay asked that if the applicant can already build on the lot with a prior approval of hardship relief, why is it necessary to reapply for hardships? McKay explained that he does not understand how it is a hardship if the applicant can already build on the lot with a prior approval.

Chair Dausman responded that he believed that based on community feedback, there is a preference to build a new structure that is smaller and fits better with the neighborhood and adjoining properties. Chair Dausman noted that the Commission approved the current application to be complete understanding that the previous development permit was still valid and that any day the applicant could choose to build the previously-approved duplex.

Ms. Connell cited RLDO 6.340 that states that a Conditional Use permit expires in 2 years but has a potential 1-year extension. There is no known expiration for hardship relief or site design review.

Commissioner McKay asked if there is an existing approved development application, is the current application null?

Mr. J. Williams stated that if they are “shovel-ready,” they can just go to the County, obtain a building permit, and build the duplex.

Mr. Robinson asked if the Planning Commission had closed the public hearing or not. Chair Dausman said that the public hearing was still open. Mr. Robinson made a procedural objection, asking for the Planning Commission to focus on the facts and ask the applicant if they have a question. He noted that whether or not the applicant was “shovel-ready” was not a part of the public record.

Chair Dausman explained the Commissioner McKay was speaking in hypothetical terms when he said the applicant was “shovel-ready.” Mr. McKay explained that he did hear the applicant state on the record that he is prepared to build the prior approval at the May 7, 2018 hearing.

Mr. Shrope commented that Renaissance homes would potentially build the 2007 approval because it is still valid.

Commissioner J. Williams asked if hardship relief was tied to the applicant or to the property. Mr. Kabeiseman explained that land use decisions typically go with the land, not with the owner.

Chair Dausman stated that he is not making a motion, but he will be voting to approve the development permit application as presented. He explained that he wishes to follow the precedent made by previous Planning Commission. He considers the current duplex a better use of the lot and more in the spirit of the community’s wishes. The duplex preserves more trees, makes a smaller footprint on the lot, and will make some safety improvements to an intersection.

Commissioner J. Williams noted that he will be voting against approval of the duplex. He questioned whether or not a single-family home would actually have same setbacks or traffic impacts and noted that the claim from the applicant’s attorney was not analyzed. He believed that in regards to hardship relief criteria #1, the applicant is acting to build a duplex, not a smaller single-family home. He disagrees that the applicant has met criteria #1 for hardship relief.

Commissioner J. Williams noted that in regards to criteria #4, he disputes that the 37-foot rear space between the duplex and the habitable dwelling to the east is adequate for privacy and enjoyment of property for the existing homeowner. Mr. J. Williams noted that he is currently living next to new construction with a reduced setback and he does not agree that the reduced setback between the duplex and the east and north properties will not impact the privacy and the enjoyment of those property owners. He noted that he is happy to see fewer trees removed.

Mr. W. Williams noted that he agreed with Commissioner Williams regarding hardship relief criteria #1 and stated that he believed the applicant could build something else without hardship. He noted that the Planning Commission hasn't reviewed all of the options and the impact of those options.

Commissioner McKay reminded the Commissioners of the 2004 and 2007 hardship approvals. He stated that based on the prior approvals, there is no need for a new application for hardship relief. If the Planning Commission continues to allow applicants to claim "hardship over hardship," it gives the applicant preference, and it is not hardship relief. Commissioner McKay explained that he thinks the current application should not be approved.

Commissioner Sweet noted that he is in favor of approving the application but would like to resolve the ambiguity with Condition #3. He likes the idea of a curb or wall but does not think the City has the authority to require condition #3. He would like to drop the condition and make it a recommendation.

In regards to Condition #5, Commissioner Sweet recommends that the City not grant a tree removal permit until other conditions were met. Chair Dausman commented that the application does not require a tree removal permit anymore because the applicant is only requesting to remove three trees.

Motion: Commissioner Dausman **moved** to close the public record. **Seconded** by W. Williams. **Motion passed 5-0.**

Motion: Commissioner McKay **moved** to deny the development permit request for the new duplex because the previously approved duplex plan is still valid and there is no hardship; furthermore, hardship relief for a new or amended duplex plan cannot be justified.

Seconded by Commissioner J. Williams.

Motion passed 3-2. J. Williams, W. Williams, J. McKay voted yea. Chair Dausman and Vice Chair Sweet voted nay.

2. Maximum size of non-habitable accessory structures.

City Recorder Leanne Moll explained that resident Michael Salch had requested that the Planning Commission interpret and resolve the issue of the maximum allowed size of a non-habitable accessory structure. The RLDO lists the maximum size of an accessory structure that does not need a building permit at 108 square feet. A 1997 interpretation does not list a particular size, and the City has adopted the state specialty building code size of 200 square feet. Mr. Salch questioned why the City of Rivergrove is conforming to county and state standards and not setting its own size. Ms. Moll noted that she had an email communication with Cheryl Bell, Deputy Building Codes Administrator at Clackamas County, where Ms. Bell confirmed that Clackamas County is not allowed to exceed the building code requirements, even by using the land use decisions of local governments. Therefore, Clackamas County will

not issue a building permit for an uninhabitable structure smaller than 200 square feet, even if the City of Rivergrove's ordinances require a permit.

City Attorney Bill Kabeiseman explained the difference between a development permit and a building permit. The City of Rivergrove regulates what goes on the property and where it goes on the property. The County's Building Code department regulates how a structure is built. The City regulates where and what, and the counties regulate how. When the RLDO was adopted, it provided an exemption from a development permit for "insulation or construction of accessory structure that does not require a building permit (i.e., 108 square feet in size)." At that time, the state had a different minimum size for an accessory structure that required a building permit. The building code has since changed and the minimum size is no longer 108 square feet, but 200 square feet in size. Therefore, there is an internal inconsistency within the provision that says if the structure does not require a building permit, the City will not require a development permit. However, there is also the mention of 108 square feet. Back in 1997, this issue first came to the Planning Commission and they reiterated the main text and ignored the parenthetical. Therefore, if an applicant does not have to obtain a building permit, they also do not have to get a development permit. This has been the standing interpretation for the past 20 years.

If the Planning Commission believes the City should regulate buildings that are less than 200 square feet, the Planning Commission needs to propose an amendment to the RLDO and City Council would need to approve.

Currently, accessory structures smaller than 200 square feet are exempt from a building permit and a development permit. The Department of Consumer and Business Services at the state level, not local governments, determines that number, and the minimum size could change again. Even if Rivergrove issued its own building permits, we could not change the minimum standard for a building permit.

3. Type II review for a single-family home at 19680 Canal Road, submitted by Sean Foushee of Elite Homes.

Matt Straite presented the staff report for a Type II development permit and tree removal permit to construct a 3,900 square foot, 4-bedroom single-family home with a two-car attached garage. The project is located on lot 2 in Canal Acres, 19680 Canal Road.

The findings for the criteria include that the single-family home is allowed in the residential zone, adequate utility services exist at the site, the project meets all the setback requirements and the height requirement. The lot is not in the floodplain, so those section of the RLDO do not apply. The parking requirements are also met.

The applicant is proposing to remove ten trees from the site and offering ten trees for mitigation to offset the cut trees. The RLDO permits this type of tree removal for reasonable use. With the mitigation and tree protection standards listed in the conditions of approval, City staff feel that all conditions of approval have been met for the tree removal.

Staff recommends approval of the development permit, with the conditions listed in the staff report, including compliance with the agency comments and tree report.

Applicant Sean Foushee was present but declined to comment on the application.

City Recorder Leanne Moll explained that the City received no written testimony prior to the meeting.

Chair Dausman asked if any members of the public would like to speak regarding the application.

Commissioner Walt Williams left the Commissioner's table because he is in the notice area; he requested to speak about the application.

Walt Williams, 17900 Canal Road, Lake Oswego, OR

Mr. Williams explained that he lives across the street from the development and made similar comments during the approval process of the subdivision. Mr. Williams explained that his garage has suffered water damage due to the new asphalt on West Road. In heavy rain, the water runs down his gravel driveway and floods his garage, despite a drain present on his property. After confronting the prior developer, the developer installed a second drain and a ditch on Mr. Williams' property. Mr. Williams explained that the ditch is not sustainable and a second heavy rain caused further damage. He explained that he experienced damage to his property but is not seeking compensation. Because the flooding is a result of the construction of the asphalt road, he would like to work with the current developer to find a remedy for the flooding.

Mr. Williams also requested that the Planning Commission include conditions that detail an orderly and clean construction site. Currently, the grass is over five feet tall with many rodents, snakes, and other animal traffic.

Karen Betz, 4515 West Road, Lake Oswego, OR

Karen Betz explained that she is pro-development but added that she and other neighbors have concerns about the current state of the lot. She explained that the property is not being maintained, nor is the road. She is concerned about the safety of walkers and joggers who frequent the gravel road and the trails behind the property. She requested that the current developer maintain or improve the lot and the road.

Sean Foushee, applicant, 15540 Boones Ferry Road, Lake Oswego, OR

Mr. Foushee, the applicant, responded to the comments from neighbors. He explained that he was not involved in the development of the subdivision and has not visited the lot recently. He will clean up and mow the yard. He explained that he will need to look at the road and the drainage issue and will address it and find a way to remedy it.

Commissioner McKay asked if Mr. Foushee was the developer, builder, or contractor. Mr. Foushee responded that he is a developer and builder and will be building the three new homes on the lot.

Commissioner J. Williams asked if the builder will build the three homes and remodel the existing home. Mr. Foushee explained that he is only seeking the development permit for two of the homes and will reapply for the third home later. He will maintain the remaining lot during construction.

Shannon Lofton, 4500 West Road, Lake Oswego, OR

Shannon Lofton asked which lots are being developed.

Mr. Foushee responded that he is building on lots 2 and lots 3, which are the lots on the west side of the property. The lot on the corner of West Rd. and Canal Rd. will be built at a later time.

J. Williams asked if the Planning Commission can ask or require a greater amount of tree mitigation. He is concerned about the impact of privacy to the Lofton home, directly west of lot #3. Mr. Foushee explained that he wants the same privacy between the homes. However, he is worried about light on the property because it is already a wooded area.

Mr. Straite explained that staff felt a 1-1 mitigation ratio was appropriate, but the Planning Commission can require more mitigation if they think it is necessary. Chair Dausman noted that the Planning Commission has required more mitigation in the past, especially in sensitive zones like the Water Quality Resource Area.

Motion: Commissioner Dausman **moved** to **approve** the permit as submitted.

J. Williams amended the motion to add a condition that requires an acceptable landscaping and screening plan for the City's review. Commissioner McKay noted that privacy screening between properties is not tied to the criteria for development permit. Mr. Straite reiterated that the screening plan would have to be tied to a particular criterion in the RLDO. Chair Dausman explained that the Planning Commission can require specific things be provided prior to the meeting, like a landscaping plan, but the Commission cannot require such plans *ex post-facto*. Ms. Connell explained that the Commissioner could change the mitigation ratio but cannot require the applicant to provide another plan. Chair Dausman stated that he is comfortable with the 1-1 tree mitigation ratio as permitted.

Seconded by Commissioner McKay.

Motion passed 4-0.

Commissioner W. Williams abstained.

4. Type II review for a single-family home at 4485 West Road, submitted by Sean Foushee of Elite Homes.

Matt Straite presented the staff report for the Type II permit for a four-bedroom, three-bath single-family home at 4485 West Road, directly adjacent to the previously approved home at 19680 Canal Road. Mr. Straite explained that the findings, criteria, and conditions of approval are the same as the proposed home at 19680 Canal Road. Staff recommends approval based on the conditions set forth in the staff report.

Again, the City received no letters of testimony regarding the application.

Shannon Lofton, 4500 West Road, Lake Oswego, OR

Ms. Lofton asked about the next steps after the approval of the development permits for the homes. Mr. Foushee explained that he will apply for a county building permit, which takes six to seven weeks. After the building permit is issued, he will begin building the homes. Chair Dausman explained that the City signs the notice of decision, which the applicant presents to the county in order to obtain a building permit. Mr. Foushee explained that it will take him about six months to build the home. Planner Matt Straite explained that there is a 10-day appeal period prior to the finalization of the Planning Commission's decision, but the county will begin the building permit process during that appeal period.

Ms. Lofton asked to be updated about the builder's progress. City Recorder Leanne Moll will share the neighbors contact information with Mr. Foushee.

Motion: Commissioner Dausman **moved** to **approve** the permit application as submitted.
Seconded by Commissioner J. Williams.
Motion passed 4-0.
Commissioner W. Williams abstained.

Commissioner W. Williams returned to the Commissioners' table

NEW BUSINESS

Emergency Tree Removal permit for a fallen deciduous tree in the floodplain, submitted by Bill Tuttle.

City Recorder Leanne Moll shared photographs and a site plan of a fallen ash tree in the flood zone at the Tuttle property. The applicant was seeking approval of an emergency tree removal permit. The commissioners briefly discussed the precedent of requiring mitigation for trees fallen or removed in the floodplain.

Motion: Commissioner Dausman **moved** to **approve** the permit and require a 1-1 mitigation with native species in the same flood zone.
Seconded by Commissioner McKay.
Motion passed 5-0.

2. Presentation of Revised Tree Ordinance

The revised tree ordinance will be presented electronically to the Commissioners, sent to DLCD for state review, and noticed for a mid-September 2018 hearing.

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 5-0.

The meeting was adjourned at 8:52 p.m.

Respectfully submitted,

Leanne Moll, City Manager/ City Recorder