



Planning Commission Minutes

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note the public testimony may be limited by the Chair.

August 8, 2023
REGULAR MEETING
Minutes

I. CALL TO ORDER:

Chair Verner called the meeting to order at 7:00 p.m. at the Civic Center Council Chambers, 1175 E. Main Street.

Commissioners Present:

Lisa Verner
Doug Knauer
Eric Herron
Russell Phillips
Susan MacCracken Jain

Staff Present:

Brandon Goldman, Community Development Director
Derek Severson, Planning Manager
Michael Sullivan, Executive Assistant

Absent Members:

Kerry KenCairn
Gregory Perkinson

Council Liaison:

Paula Hyatt

II. ANNOUNCEMENTS

Community Development Director Brandon Goldman made the following announcement:

- The annual Planning Commission annual retreat will be held on August 29, 2023, and the August 22, 2023 Study Session will be cancelled.

III. CONSENT AGENDA

1. Approval of Minutes

- a. June 27, 2023, Study Session
- b. July 11, 2023, Regular Meeting

Commissioners Knauer/MacCracken Jain m/s to approve the consent agenda as presented.
Voice Vote: All AYES. Motion passed 5-0.

IV. PUBLIC FORUM

Chair Verner noted that the Commission had received a letter from Brent Thompson prior to the meeting (see attachment #1).





Planning Commission Minutes

Echo Fields/Ms. Fields introduced herself as the Housing and Human Services Advisory Committee (HHSAC). She stated that there is significant overlap between items reviewed by the HHSAC and those reviewed by the Commission, and that she looks forward to working with them in the future.

Brent Thompson/Mr. Thompson implored the Commission to consider new projects and the rezoning of existing districts before approving annexations, and that the Croman Mill Site could be rezoned as a trailer park. Mr. Thompson stated that the periphery doesn't sustain the City as much as the core. He cautioned that large annexation projects are likely to get appealed to the Land Use Board of Appeals (LUBA), but that smaller projects and rezonings might not be appealed.

V. **TYPE III PUBLIC HEARING**

A. **PLANNING ACTION:** PA-T3-2022-00004

SUBJECT PROPERTY: 1511 Highway 99 North

OWNER: Casita Developments, LLC for owner Linda Zare

DESCRIPTION: The City Council previously approved the Annexation of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation state highway right-of-way and 7.68 acres of California Oregon & Pacific railroad property. These properties are located in Jackson County and zoned Rural Residential (RR-5); with Annexation they are to be brought into the City as Low Density, Multi-Family Residential (R-2). In addition to Annexation, the approved application included Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including 37 affordable units; an Exception to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six-inches in diameter at breast height. *This approval was appealed to the Land Use Board of Appeals (LUBA) and has been remanded to the city to consider two issues: 1) That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and 2) That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet. This Planning Commission hearing will be strictly limited in scope to the consideration of these two issues on remand.* **COMPREHENSIVE PLAN DESIGNATION:** Multi-Family Residential; **ZONING:** Existing – County RR-5 Rural Residential, Proposed – City R-2 Low Density Multi-Family Residential; **ASSESSOR'S MAP:** 38 1E 32; **TAX LOT #'s:** 1700 & 1702.

Chair Verner related how this project was approved by the City Council on December 6, 2022, but was subsequently appealed to LUBA by Rogue Advocates. LUBA remanded it to the City on the two counts noted above, which will be the only items considered by the Commission at this limited Public



Planning Commission Minutes

Hearing. Chair Verner noted that public testimony was submitted by Rogue Advocates prior to the meeting (see attachment #2).

Chair Verner stated that a letter was received from lawyers on behalf of the owners of Knox Storage, LLC, the property adjacent to 1511 Highway 99 North. She noted that the issue raised in the letter is a civil matter and will not be considered by the Commission (see attachment #3).

Chair Verner stated that Commissioners Phillips and MacCracken Jain were not present when this item was reviewed by the Commission on September 13 and October 11, 2022 meetings. She stated that they could both participate in the discussions and deliberations if they could attest to having reviewed the minutes from the aforementioned meetings, and read the Findings, Conclusions and Orders adopted at the November 8, 2022 meeting. Both Commissioners Phillips and MacCracken Jain attested that they had.

Ex Parte Contact

No ex parte contact was reported, and no site visits were conducted since this item was remanded back to the City.

Staff Presentation

Mr. Goldman reiterated that this item was remanded back to the City on two main issues; that the City erred in approving and Exception to the on-street parking requirements in Ashland Municipal Code (AMC) 18.3.9.060; and that the affordable unit sizes as approved did not comply with AMC 18.5.8.050.G.3. Mr. Goldman noted that these unit sizes do not apply to market-rate housing units but are applied to affordable-housing units. The Commission's comments and recommendations will be incorporated into written findings which would be recommended by this body to the Council. He stated that the annexation portion of the application was adopted by ordinance by the Council, and any changes to the findings that reference the annexation would result in changes to the ordinance.

Planning Manager Derek Severson provided a brief background on the project, showing the proposed site layout, parking lot ingress/egress points, and the easement to the north of the property (see attachment #4). He restated that the affordable unit sizes, as approved, don't apply to the table laid out in AMC 18.5.8.050.G.3, which requires studios be at least 350sqft if affordable, and that one-bedroom affordable units be no less than 500sqft.

Mr. Severson noted that no Exception or Variance was requested to the on-street parking standards in the application, but that the Commission determined that these standards did apply based on the street improvements proposed, therefore an Exception to the street standards would be appropriate. Subsequently, the Climate Friendly and Equitable Communities (CFEC) rules were approved in July 2022 by the Land Conservation and Development Commission (LCDC) and went into effect on January 1, 2023. Part of these new CFEC rules prevent cities from enforcing existing off-street parking





Planning Commission Minutes

mandates within ½-mile of frequent transit, and that cities may not require parking for units less than 750sqft or affordable units. Staff recommended that the Commission evaluate the application based on the new CFEC rules. Mr. Severson noted that the City had dealt with similar situations where ordinances that have been adopted but not taken effect have been applied to planning actions being reviewed at the time. He cited Ordinance 3015 and its application to the Grand Terrace decision in 2019.

Mr. Severson stated that, in consultation with City Attorney Doug McGeary, Rogue Advocates' application of ORS 227.178(3)(a) to the project is erroneous, and that the rule is meant to protect applicants from being held to more stringent guidelines that were not in effect when the application was submitted. Mr. McGeary asserted that it is not used to prevent the City from applying a rule that is less strict, where the applicant accepts that rule, and doesn't require resubmitting the same request to get a different result under the new rule.

Mr. Severson related how the original application designated each of the ten identical proposed buildings as containing 20 one-bedroom units at 499.5sqft each, and three studio-units at 250 sqft each. Two of those buildings would be relied on to meet affordability requirements, which called for 38 deed-restricted units, assuming the applicant was building the units themselves or partnering with an affordable housing provider. Mr. Severson noted that AMC 18.5.8.050.G.3 requires the affordable one-bedroom units be a minimum of 500sqft, and that the affordable studios be a minimum of 350sqft. Mr. Severson pointed out that the original application was approved with the following added conditions relating to affordability:

Condition #7e. [That prior to final approval and annexation of the property, the applicant shall provide:] A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.

Condition #10g. If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.

Mr. Severson stated that LUBA remanded the City's approval on the basis that the affordable unit seizes did not comply with AMC 18.5.8.050.G.3. The applicants had subsequently submitted a revised floor plan increasing the size of the one-bedroom units to meet the 500sqft minimum standard. Additionally, the applicant noted that affordable basement level studios would be modified to 499.5



Planning Commission Minutes

square feet to significantly exceed the required 350 square feet per affordable studio unit requirement. As such, staff recommended modifying Condition #7e to the following:

Condition #7e. [That prior to final approval and annexation of the property, the applicant shall provide:] A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2) and** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and affordable studio units being a minimum of 350 square feet.**

If approved by the Commission, Mr. Severson stated that staff will draft findings that address both remand issues and bring them back to the Commission at the September 12, 2023, Regular Meeting.

Mr. Severson noted that the letter from Rogue Advocates raised concerns over unit density with density bonuses, particularly after adjusting the unit sizes to meet the standards found in AMC 18.5.8.050.G.3. Mr. Severson stated that no density bonuses were included in the original application. He added that the increase of 38 affordable to 500sqft would increase the density of the property to 182 units, where the minimum density is 167.0625 units.

Questions of Staff

Commissioner Knauer asked if there would not be any 250sqft units in the revised proposal. Mr. Goldman responded that there would not be. He added that the increase of the 250sqft units to 499.5sqft resulted in a 182-unit density for the whole project.

Commissioner Knauer remarked that the remand issue over parking was seemingly due to the approval timeline of the application in relation to the recent implementation of CFEC rules. Mr. Goldman responded that neither the applicant nor the appellant addressed the CFEC rules during LUBA's deliberations, and so it was not considered. He indicated that LUBA did not feel that the City made an adequate argument for why the CFEC rules should be applied to this project, but that this would not be the case if the project is appealed again.

Commissioner MacCracken Jain requested clarification regarding the number of affordable housing units the applicant is required to provide. Mr. Goldman responded that the applicant is required to provide 38 affordable units, rented at 80% Area Median Income (AMI), if they partner with an affordable housing provider. However, if the applicant dedicates the land, then they are required to



Planning Commission Minutes

provide an additional 25% of the base density as affordable housing, which would result in 47 affordable units. He added that LUBA ruled in favor of the City on this issue.

Applicant Presentation

Applicants Robert Kendrick and Amy Gunter stated that staff had adequately presented their submitted materials and that they would reserve the remainder of their time for rebuttal.

Public Comments

Craig Anderson/Mr. Anderson began by noting an error he made on page three, paragraph two of the letter he submitted to the Commission. He stated that he erred in referring to a Type I planning action as a non-discretionary approval.

Mr. Anderson lamented that there had been no attempts by the applicants to meet with Rogue Advocates and expressed the opinion that there had been multiple breaches of conduct throughout the application process. Mr. Anderson stated that LUBA acts as a judiciary body, and can only rule on the evidence that is provided to them. He remarked that this project was finalized on December 20, 2022, and that it was incorrect to refer to it as “in-process” or to apply CFEC rules that went into effect on January 1, 2023. Mr. Anderson stated that Rogue Advocates would appeal any approval of this project by the Council to LUBA.

Chair Verner closed the Public Hearing and Public Record at 7:41.

Deliberation and Decision

Commissioner Knauer inquired if it is standard practice to have a preliminary outline plan that is approved before the final plan is reviewed. Mr. Goldman responded that it is, and that the final plan is an opportunity for the applicant to revise their plans, provided these changes do not deviate more than 10% from the outline plan. Commissioner Knauer asked how a 10% deviation would be measured. Mr. Goldman responded that it is relative to the plan itself but could involve items such as parking spaces and unit sizes, to be determined by the Commission. Mr. Severson added that any deviation of more than 10% would require the application to go back through the approval process.

Commissioner Knauer asked if staff was confident that the application did not need to restart the review process. Mr. Goldman assured him that staff was confident, and that the Commission can amend the findings on remand to clarify those issues that were previously approved, particularly regarding the affordable unit sizes and the parking requirements. Mr. Goldman pointed out that the discretionary review process of the final plan would be taking place after the CFEC rules went into effect. Therefore, the applicant would no longer be held to the City’s parking requirements. In consultation with the City’s legal department, it was determined that the application could move forward without going through the outline plan process.





Planning Commission Minutes

Commissioner Knauer remarked that the Commission made its recommendation for approval in December 2022, before the CFEC guidelines went into effect. He noted that Rogue Advocates cited an Oregon code where it is dictated that a project be subject to laws in effect at the time of approval, not those made after. Mr. Goldman stated that there is precedent for the City to apply less-stringent standards after an application has been approved, and that staff will clarify this in its findings. Commissioner Knauer emphasized the importance of basing any decision the Commission makes in established case law, to which Mr. Goldman agreed.

Chair Verner pointed out that the City approved the outline plan, and that the applicants would still be required to submit a final plan for approval. Mr. Goldman stated that the aspects of the application that were approved were the site review, annexation, and the outline plan. The site review and annexation will not be reviewed during the final plan process, but the outline plan that encompasses parking requirements will be subject to further review.

Commissioner MacCracken Jain requested clarification regarding the City Attorney's assessment of the CFEC rules overriding the City's current parking requirements. Mr. Goldman responded that the City Attorney considered the CFEC rules as superseding the City's parking requirements. Commissioner MacCracken Jain asked how many parking spaces would be included in the project. Staff responded that there will be 212 parking spaces for the 230 units, but that public transit facilities will also be provided.

Commissioners MacCracken Jain/Herron m/s to approve the application with the following amendments:

1. To insert a paragraph in the Planning Commission's findings as follows:
The Planning Commission recommends that the City Council find that the Climate Friendly & Equitable Communities parking rules are appropriate for this planning action, that neither on- or off-site street parking are required in this case, and that the findings for the original approval should be amended accordingly.
2. To amend Condition #7e of the original approval as follows:
Condition 7e. A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: 1) where the required number of affordable units is fractional it shall be rounded up, 2) that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, and 3) that each of the required affordable units comply with the minimum affordable unit size requirements of





Planning Commission Minutes

AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet and affordable studio units being a minimum of 350 square feet.

Roll Call Vote: All AYES. Motion passed 5-0.

VI. **OTHER BUSINESS**

A. Croman Mill Site Sampling Results & Next Steps

Staff Presentation

Mr. Goldman informed the Commission that the owners of the Croman Mill Site have engaged in a voluntary cleanup effort in consultation with SCS Engineering and under the regulatory authority of the Department of Environmental Quality (DEQ). Mr. Goldman stated that the DEQ is committed to engaging the community throughout this process, and that representatives already spoke before the Council on July 31, 2023. Mr. Goldman noted that several contaminants have been identified on the site, and the DEQ has already received an interim removal plan from SCS Engineering.

Townmakers, LLC is requiring that the owners clean the site to residential standards as a pre-condition for this project. SCS Engineering's report noted different levels of safety for environmental cleanup for the intended use, with residential being the highest level of environmental quality. Some areas could be considered for non-residential uses if they could not be cleaned to residential levels. Mr. Goldman concluded that Townmakers, LLC is committed to and eager to proceed with the development.

Questions of Staff

Chair Verner asked how long the cleanup effort could take. Mr. Goldman responded that the most optimistic estimate is a matter of months but will likely be years. Some removal of contaminated materials is set to begin in sometime between September and November of 2023.

Commissioner Phillips asked if the cleanup will be done in phases. Mr. Goldman answered that the southern portion of the property, outside the City limits, has no contaminants, so development could begin there if applicant wished. However, Townmakers, LLC has indicated that it would like to receive a "no further action required" notice from the DEQ for the entire site before beginning any development.

B. Discussion of August 29, 2023 Planning Commission Retreat Details

The Commission discussed which items they would like to review as part of their annual retreat. Commissioner Knauer suggested discussing opportunities for regional cooperation, such as the sharing of general services.





Planning Commission Minutes

Mr. Goldman informed the Commission that staff had arranged for site visits to the Water Treatment Plant, as well as the Reeder Reservoir dam. Mr. Severson stated that the remaining site visits will include the West Village subdivision and cottages, the Railroad property, the Beach Creek subdivision, the former Croman Mill Site, Kingston Cannabis at 2366 Ashland Street, and the new Tesla charging station at 580 Clover Lane.

The Commission deliberated and decided to move the date of the retreat from August 29 to August 30, 2023.

VII. ADJOURNMENT

Meeting adjourned at 8:20 p.m.

*Submitted by,
Michael Sullivan, Executive Assistant*