



# 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.

**May 9, 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. She called for moment of silence for Commissioner Michael Dawkins, who passed away on May 2, 2023.

**Commissioners Present:**

Lisa Verner  
Kerry KenCairn  
Doug Knauer  
Eric Herron

**Staff Present:**

Brandon Goldman, Community Development Director  
Derek Severson, Planning Manager  
Aaron Anderson, Senior Planner  
Michael Sullivan, Executive Assistant

**Absent Members:**

**Council Liaison:**

Paula Hyatt

**II. ANNOUNCEMENTS**

Community Development Director Brandon Goldman made the following announcements:

- There is currently no plan to hold the May 23, 2023 Planning Commission Study Session.
- Staff has been in contact with Sandra Slattery, Executive Director of the Chamber of Commerce, about providing a presentation to the Commission at the June 27, 2023 Study Session regarding the economic diversification study that the Chamber recently completed. Staff felt the study's findings would be relevant to the Commission's work.
- The City is currently reviewing applications to fill the three vacant Commission positions. An Election of Officers will be conducted at the June 13, 2023 Commission meeting to formally select a Chair and Vice Chair.

**III. CONSENT AGENDA**

**A. Approval of Minutes**

1. April 11, 2023, Regular Meeting
2. April 25, 2023 Special Meeting

**Commissioners KenCairn/Knauer m/s to approve the consent agenda as presented. Voice Vote: all AYES. Motion passed 4-0.**





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## IV. **PUBLIC FORUM** – None

## V. **TYPE II PUBLIC HEARING**

- A. PLANNING ACTION:** PA-T2-2023-00042  
**SUBJECT PROPERTY:** Clear Creek Dr. Parcel 7 – 391E09AB TL 6700 & 391E09AA TL 6200  
**OWNER:** Jacobs on behalf of Union Pacific Railroad  
**APPLICANT:** City of Ashland  
**DESCRIPTION:** A request to modify a condition of approval and change a deed restriction that was required in a 1999 planning approval (PA 99-048), amended in 2016 (PA-2016-00684), and recorded on the vacant 20-acre site owned by Union Pacific Railroad (UPRR). The deed restriction required that the 20-acre site meets Oregon Department of Environmental Quality’s (DEQ) cleanup standards applicable to a “single residential property” before further land divisions or development occurs. The proposed revision to the deed restriction clarifies the site be cleaned to an “urban residential standard” to enable future development consistent with the E-1 zoning of the property including commercial, employment, and ground floor residential within mixed-use and apartment buildings. The modified condition would stipulate the deed restriction would be removed from the property upon the City receiving written documentation from the Department of Environmental Quality demonstrating compliance with these standards.  
**COMPREHENSIVE PLAN DESIGNATION:** Employment; **ZONING:** E-1; **ASSESSOR’S MAP #:** 391E09AB & 391E09AA; **TAX LOT:** 6700 & 6200

Chair Verner read the procedure for a Type II Public Hearing.

### **Ex Parte Contact**

Commissioner Knauer informed the Commission that he had inadvertently discussed this item with Mr. Goldman within earshot of a representative of the Union Pacific Railroad before the start of the meeting. No other ex parte contact was reported.

### **Applicant Presentation**

Mr. Goldman began by informing the Commission that this is an application from the City. The reason is because the City Council had heard a request from the Union Pacific Railroad (UPRR) on March 21, 2023, and subsequently directed staff to bring an application before the Commission to consider modifying the 2016 condition of approval.

Mr. Goldman introduced both Greg Aitken, a member of staff who has experience in environmental cleanup, and Michael Niemet, who was representing UPRR. Don Hanson and Margaret Oscilia were





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also in attendance via Zoom, and are consulting on behalf of the Department of Environmental Quality (DEQ).

Mr. Goldman provided historical background on the site, and detailed how a 1999 application to partition the property resulted in a condition of approval that established a deed restriction on the UPRR which would require the site to be cleaned to Residential standards before further land divisions or development could occur. This condition was amended in 2016 when the UPRR requested a modification in order to allow the entirety of the property to be cleaned to a single-residential property. There were subsequent changes to the DEQ's cleanup standards in 2017, which redesignated properties that could accommodate ground-floor residential units. The applicant is requesting a modification to the condition of approval and the corresponding deed restriction to stipulate that the property be cleaned to urban-residential standards, which is the type of development that could occur on the property with E-1 zoning. Mr. Goldman stated that UPRR has indicated that it will proceed with cleanup of the site after receiving approval of a modification to the deed restriction.

Mr. Niemet provided a brief presentation where he outlined the scope of the project and the proposed covenant modification. He pointed out that residential standards have changed since the condition of approval was imposed, and requested that the Commission adopt the changes (see attachment #1). Mr. Niemet stated that the applicants are merely requesting a change to make it consistent with current land use.

Mr. Goldman added that the cleanup plan and Record of Decision is part of a public process to keep City residents informed and allow them to provide feedback. The DEQ will be the jurisdictional authority over the cleanup, but the process will invite public comments.

### **Questions of the Applicant**

Commissioner Knauer inquired if the DEQ would set the targeted cleanup level of the property, or if the City would set the goal. Mr. Niemet responded that DEQ cleanup standards have recently changed, so this modification would create consistency between their standards and those of the City. Commissioner Knauer requested clarification over the applicant's expectation of this application, and expressed concern that there could be confusion over the amount of contamination that they wish to remove from the site. Mr. Niemet responded that the main contaminant on the site is lead, and the same level of lead removal is present in both DEQ and City cleanup standards.

The Commission discussed the appropriateness of including language in the condition to allow clean-up to an "urban residential **and/or** occupational standard", and whether allowing clean-up to the occupational standard would preclude future residential development.





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**Commissioners Knauer/Herron m/s to approve a modification to the deed restriction with the following conditions:**

1. All conditions of Planning Action 99-048 shall remain conditions of approval unless otherwise specifically modified herein.
2. That the deed restriction required in condition 9 of PA 99-048, and amended per PA-2016-00684, shall be revised to read as follows:  
*Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards for current and likely future land use zoning for the property consistent with the ODEQ designation of Urban Residential for the identified contaminants on the parcel. Thereafter, development of or any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. This covenant will be removed from the property, and/or any subdivided parcel(s), upon the grantor providing the City written documentation from the Department of Environmental Quality demonstrating compliance with these standards to the City.*
3. That evidence shall be submitted demonstrating that the deed restriction has been revised in accordance with Condition 2 above and recorded prior to issuance of City excavation permit or any site work.

**Roll Call Vote: all AYES. Motion passed 4-0.**

- B. PLANNING ACTION:** PA-T2-2023-00041  
**SUBJECT PROPERTY:** Tax Lot 404 Clinton St.  
**OWNER:** Magnolia Heights LLC  
**DESCRIPTION:** A request Performance Subdivision Outline Plan approval for a 12-lot, 11-unit residential subdivision. The application also includes requests for an Exception to Street Standards, and a Tree Removal Permit for four significant trees. Additionally, the applicant has applied for a minor amendment to the adopted Physical and Environmental Constraints map to effectively remove a drainage way from the map that is not extant on the property. And finally, the applicant has addressed the applicability standards of the Water Resource Protection Zone WRPZ by providing a wetland determination demonstrating that there are no regulated wetland resources on the subject property. **COMPREHENSIVE PLAN DESIGNATION:** Single Family Residential;  
**ZONING:** R-1-5; **MAP:** 39 1E 04 DB; **TAX LOT:** 404

Chair Verner stated the Commission and applicants had received public testimony concerning this item prior to the meeting. (see attachment #2).





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## **Ex parte Contact**

No ex parte contact was reported. Chair Verner conducted a site visit.

## **Staff Presentation**

Senior Planner Aaron Anderson began by informing the Commission that a continuance of the meeting had been requested by a noticed resident, Eric Elerath. He provided a brief presentation where he outlined the subject property, and identified the site as an ephemeral stream in the floodzone. He stated that the application included requests for a Water Resource Protection Zone (WRPZ) delineation, an exception to Street Standards, and the removal of 4 significant trees. Mr. Anderson concluded that staff recommended approval of the application with the conditions included in the staff report (see attachment #3).

## **Applicant's Presentation**

Applicant Amy Gunter detailed the site and described the surrounding neighborhood, City parklands and restricted wetland areas, and stated that the property is within a R-1-5 zone. She noted that the application proposes dividing the property into twelve-lot residential subdivisions with a common area parcel, and that the requested exception to Street Standards is for a portion of the sidewalk to be curbside. She added that the layout of the subdivision was naturally derived from the adjoining streets, and that the homes shown in the proposal do not necessarily depict the final product. The streets will also be extended to existing City street standards, except where the curbside sidewalk is proposed. Ms. Gunter identified an access easement north of the property which will be improved as a multi-use pathway for pedestrian access. Ms. Gunter concluded that the application complies with existing standards, excluding the requested exception to Street Standards, and that this project would help alleviate the City's need for additional housing (see attachment #4).

## **Questions of the Applicant**

Commissioner Knauer inquired about the placement of the open space designated in the application. Ms. Gunter responded that this is due to it being located at the lowest point of the property, and will include a required consolidated storm drain.

Chair Verner noted that the application showed potential duplexes on the lot, which would result in twenty-two dwelling units on the eleven lots. Ms. Gunter responded that two residential units are now permitted on a lot provided they show adequate accessibility and development standards, and that the property will likely include duplexes. Chair Verner asked if all twenty-two dwelling units would be accessed from the alley. Ms. Gunter responded that they would, and that applicants are no longer required to include parking, but that adequate parking would be provided.

## **Public Comments**

**Eric Elerath**/Mr. Elerath requested a continuance of the meeting to allow for additional research to





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be submitted into the record. He stated that the conditions of approval of PA-T1-2019-00109, which allowed the subdivision, did not appear to have been carried over to this project. He said that he objected to the proposal, stating that the review of the project conducted by the Community Development Department appeared to violate article 6, paragraph 2 of the U.S. Constitution, as well as the balance of powers doctrine. Mr. Elerath stated that the application also appeared to violate Oregon State laws that regulate the licensing of land use professionals.

Mr. Elerath noted apparent inconsistencies between a 2020 review of the site that located a “slight slope” on the property, which is shown as a “steep slope” in the current proposal. He lamented that the Ashland Municipal Code (AMC) does not require applicants to abide by prior approval conditions, and that the prior planning action referred to the development of Single-Family Residences (SFRs), not duplexes. He concluded that these changes are not consistent with the prior approval conditions.

**Bob Weibel**/Mr. Weibel read from a memorandum provided his wife and himself (see attachment #5).

**Gordan Longhurst**/Mr. Longhurst stated that he did not receive a notice of the application, despite living three houses away from the subject property. Mr. Longhurst commented that this development would increase neighborhood traffic, and that additional traffic signs would need to be installed. He stated that his understanding of R-1-5 zones is that a minimum of 5,000sqft is required for each dwelling on a lot, and that none of the proposed lots would have the space to accommodate two dwellings. He requested clarification regarding this discrepancy. Mr. Longhurst suggested that a further review of the wetlands be conducted, as the initial review was done during a drought period and therefore not indicative of its natural state.

**Linda Hilligoss**/Ms. Hilligoss echoed Mr. Longhurst’s concerns regarding the environmental impact of the development, stating that there are inconsistencies between a past wetland review and one done more recently. She expressed concern that the wetland area is not listed as a WRPZ. Ms. Hilligoss suggested that the applicant reduce the number of lots from eleven to ten to provide a open space in lot one that could provide additional water protection. Ms. Hilligoss expressed concern that a traffic report was not included in the application, and requested that more traffic signs be installed around the neighborhood.

Mr. Goldman pointed out that any property that can accommodate one dwelling unit can now contain two, per House Bill 2001. He mentioned that the City has long allowed this, and that it cannot prohibit two units where one would be allowed.

### **Applicant’s Rebuttal**

Ms. Gunter stated that there are no required licenses for land use developers. She stated that her





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licensed team proposed this development plan, and that they would be stamped in accordance with licensing laws. Ms. Gunter suggested that any concerns regarding signage around the neighborhood should be directed to the Transportation Advisory Committee. She stated that her team's licensed professional, Jodi Forgione, can speak more to the wetlands, but that no previous wetland studies had been conducted on this property. She explained that the determination of a wetland is based on the combined presence of specific plants, soil, and water types, and that the wetland delineation has not yet been completed at the state level. Ms. Gunter stated that her client, Gil Livni, received a copy of the memo read by Mr. Weibel.

Chair Verner reminded the Commission that a continuance request had been submitted by Mr. Elerath. Commissioner KenCairn remarked that keeping the record open for only seven days would not provide sufficient time for additional research to be done or for comments to be submitted. The Commission discussed an appropriate timeframe for the record to remain open. Commissioner Herron suggested that the record be kept open for an additional seven days to allow for further comments to be received, and then a further seven days be provided for any participant of the meeting to respond to comments received during the extension period. The Commission agreed, with Chair Verner recommending a two-week period for additional comments.

**Commissioners Herron/Knauer m/s to close the Public Hearing and keep the Public Record open for fourteen additional days, followed by seven days for participating parties to respond, followed by seven days for a final argument from the applicant. DISCUSSION:** Commissioner Herron expressed appreciation for the opinions shared during the meeting, and requested that all further comments be limited to the criteria over which the Commission has purview. Commissioner KenCairn concurred, stating that the Commission will not have purview over the issues raised regarding lights and street signs. **Voice Vote: All AYES. Motion passed 4-0.**

Mr. Goldman stated that this item would be returning the Commission at the June 13, 2023 Regular Meeting, and reminded the Commission that any ex parte contact should be avoided since the record has been left open. Mr. Goldman explained that the City's process for noticing neighbors about planning actions includes mailing notices to all addresses within 200ft of the subject property, as well as placing signs around the property. He commented that state guidelines for notices only require those within 100ft to be noticed. Mr. Goldman requested that any evidence of noticing procedures not being met should be submitted and entered into the record.

### VI. **OPEN DISCUSSION** – None

### VII. **ADJOURNMENT**

Meeting adjourned at 9:06 p.m.  
*Submitted by,*  
*Michael Sullivan, Executive Assistant*

