



July 1, 2019 City Council Land Use Appeal

4222 NE Old Salem Road

Albany, OR 97321

6:00 p.m.

A. CALL TO ORDER: Called to order by Mayor Lepin at 6:00 p.m.

B. ROLL CALL

Councilors Present: Mayor Jim Lepin, Councilors Scott Cowan, Dave Harms, Scott McPhee, Don Miller

Councilors Absent: None

Staff Present: Kevin Kreitman, City Manager; Janelle Booth, Assistant City Manager/City Engineer; Forrest Reid, City Attorney; Kimberly Wollenburg, City Recorder; Matt Straite, City Planner, Wallace Lien, Attorney

C. PLEDGE OF ALLEGIANCE

Mayor Lepin gave a brief introduction to the process for the evening and the schedule of the upcoming hearing.

D. NEW BUSINESS / PUBLIC HEARING

1) Public hearing on appeal of Planning Commission approval of the Evening Star Manufactured Home Park, Land Use Files CUP 19-01 and SP 19-01 opened by Mayor Lepin at 6:04 p.m. City Recorder, Kimberly Wollenburg, read disclosures. Mayor Lepin finished opening the hearing.

a. Mayor Lepin noted two ex parte contacts with his wife as a Planning Commission member and that he had contact with Mr. Eddings 20 years ago on an unrelated project in another part of the state.

2) Staff report was presented by Matt Straite, City Planner, who went over the structure of the staff report then focused on specifics. He noted that when considering the case, the City Council could not consider the fact the manufactured home park (MHP) is identified as being age restricted. This information has no bearing as the City cannot enforce the restriction. Next, Mr. Straite briefly discussed the Oregon Manufactured Dwelling Standards (OMDS) and the Needed Housing Act (NHA), both used to determine if the MHP should be approved or denied. Before he went over the appeals and concerns of each, he discussed the case process up to and including an appeal to the Land Use Board of Appeals (LUBA).

He spent some time going through both appeals and the concerns in each. Following that, he reviewed the applicable criteria connecting them to the NHA, OMDS and the City of Millersburg standards.



Finally, he went over Exhibit C which was passed out before the meeting and finished with a recommendation to the City Council to uphold the Planning Commission's decision. He asked City Manager Kreitman to go over some images of a recent example of parking on 22' wide street with posted no parking.

- 3) Mike Reeder, 375 W. 4th Avenue, Ste 205, Albany, the applicant appellant's attorney and William Eddings, Evening Star LLC, 1979 Clover Ridge Albany, applicant, presented their objections. Mr. Eddings began by expressing his concerns with the City requiring him to add 10 feet to the street width noting that he would be bearing an extensive cost burden to comply. He reviewed the rest of his presentation.

Next, Mr. Reeder focused on the legal issues around clear and objective standards as noted in the NHA. He specifically noted the objections to the condition of the City to add extra 10 feet of street width for parking on one side and sidewalks stating there is no justification and asking the Council to remove the criteria. He then brought up Exhibit C regarding vermin breeding ground criteria for a study saying there is no clear and objective standard to prove when this is addressed.

Councilor Scott Cowan asked about the width of the road and costs. Mr. Reeder responded that in Albany, the 20-foot street widths are okay; however, Councilor Cowan said that posted no parking can be enforced in Albany because those are city streets whereas the MHP is a private street, and Millersburg cannot enforce.

Mayor Lepin followed up by asking how are they going to ensure no parking is enforced. Mr. Reeder said through the CC&Rs (Covenants, Conditions & Restrictions) in place.

Councilor Cowan further noted that the average is 2 people/2 parking spots and expressed his concern that there won't be adequate parking space which will lead to violations of the no parking requirement, which can't be enforced. Mr. Eddings said there will be signs and painted red curbs. In addition, he said he can add up to four additional guest parking spots.

Councilor Dave Harms said that CC&Rs are self-regulated and asked who will handle enforcement. Mr. Eddings noted that he would. Then Councilor Harms asked about who is liable if something happens in the MHP and emergency services can't access.

Councilor McPhee asked about the 50% lot coverage. Assistant City Manager/City Engineer Booth said that 50% lot coverage maximum in any zone did not end up in the conditions of approval as it was determined this requirement was not applicable to the MHP. Next, Councilor McPhee asked about the vermin breeding ground requirement to which Mr. Reeder said clear and objective standards don't exist as to the parameters of such a study and how suitability is determined.

Councilor Don Miller mentioned drainage and storm water and said he has some real concerns about how the applicant appellant proposes to handle. Following that comment, there was lots of discussion regarding storm water and vermin in the

area based on his experience, including the time line of when in the approval process the drainage is addressed.

Finally, Councilor McPhee went back to width of the street and access by the fire department. He read from Chapter 10. Mr. Reeder said the code has already determined that a 20-foot width is not injurious to fire, health, and safety. In addition, he noted that a Deputy Fire Marshal in Albany said that with the appellant applicant agreeing to three conditions, 20-foot is okay. City Manager Kevin Kreitman said he does not believe the Deputy Fire Marshall is aware that Millersburg does not allow 20 feet street widths, although Albany does. He said that Millersburg does not allow less than 32' street widths.

- 4) Corbett Richards, 6218 NE Mesa Court, Millersburg and Nathan Van Nicholson, 6347 NE Sedona Road, Millersburg spoke for the citizen appellants. Mr. Richards began by addressing various objections:
- Floodplain – mentioned base flood elevation point and how MHPs have to be built above that. He feels the staff report didn't address the flooding enough, that more conditions of approval were needed to address the issues now and not wait to point in project when mitigation is addressed given the severity of the issues and the site environment.
 - Oak trees – contends that Mr. Eddings violated the Oregon fill removal act by the work he's done on the land but then he further violated when he cut down the great white oak on June 17, 2019. He believes that might even be illegal since the tree is in the wetlands.
 - Vermin – believes that NHA and LUBA won't want to trump safety issue concerns related to vermin.
 - Lighting – reviewed language from staff report on shielding. He takes care of folks with migraines, on antibiotics and so on that light sensitivity is a big part of his concern so having unshielded lights is a safety issue.

Mr. Van Nicholson finished noting that that Mr. Eddings is building in a floodplain and requests that all the conditions listed in the citizen appeal be added.

Mr. Richards spoke next, starting off with asking how health and safety are not clear and objective. Next, he gave his presentation and concluded asking that Mr. Eddings be fined \$1,000 since the citizen appellants made the oak trees a part of their appeal process and by taking it down, he took away their chance to have resolved.

Councilor Miller thanked them for taking the pictures showing the water as it matches what he's seen. Councilor Cowan noted Mr. Richards made an interesting point on health and safety.

Finally, the Mr. Richards finished with comments on Mr. Eddings early mention of additional costs being accrued to meet the conditions of approval. Mr. Richards noted a recent fire on Woods and Alexander had no less than 20 emergency vehicles and that if an ambulance couldn't get past that on a narrow street, how can they get to someone to save their life? Mr. Richards further asked for a condition of approval that no other white oak trees be removed.

5) Rebuttal by applicant appellant.

Mr. Reeder introduced a copy of Mr. Eddings' presentation to the record. Next Mr. Reeder read the Deputy Fire Marshall's email so that it was in the record. Mr. Eddings mentioned the lighting and said he was agreeable to reduced height on the poles so light stays within the MHP.

Councilor Cowan asked about the idea of cutting down the white oak and why he did when it was part of the appeal. Mr. Eddings said the tree came up during the Planning Commission hearing and there was no restriction to cutting down the tree. City Planner Straite said the Code doesn't address trees so it was okay for him to cut down the tree as it is his property. Councilor Cowan agreed that Mr. Eddings had every right but wondered if that was the right thing to do.

Councilor McPhee said he thought Chapter 10 was more restrictive. Planner Straite said yes, our Code says that natural landscape features should be kept as much a part of the construction as possible.

Mayor Lepin closed public hearing at 8:20 p.m. and opened for Council deliberations.

- 1) Councilor Cowan believes a vermin study needs to be done to make sure what's really going on versus opinions.
- 2) Mayor Lepin asked about the review process and will flooding and wetland issues be resolved. Assistant City Manager/City Engineer Booth said that the Department of State Lands (DSL) regulates wetlands and the standard process is for an applicant to do a delineation and submit to DSL. The applicant may decide to work around wetlands or mitigate them. Mr. Eddings is ahead of where other applicants typically are at this stage in a project. She further noted that as is appropriate at this stage, the drainage concept is identified but it's typical not to see calculations at this time. She said that as the City is the agency that has to approve floodplain development, conditions were added to address the floodplain on site and she read the condition of approval.
- 3) Councilor Harms said the Council is steadfast on safety and water then he spoke about whether it is reasonable to allow a big engine to go down a skinny street to save someone. He also said water is a big deal in the City and that needs to be answered on the front end, not the back end.
- 4) Councilor Cowan said there are a lot of studies that need to be done and that things are really unclear. He believes everything has to be in place for this project to be able to move forward. Assistant City Manager/City Engineer Booth and attorney Lien explained what happens after this stage and the things that have to happen before permit is issued.
- 5) Councilor McPhee noted the potential width of fire trucks and what happens when an ambulance also needs to access the street and this is a concern even if no one

is parked on 20-foot street. He also spoke about impact of water and rights of jurisdiction to make requirements then asked about a soil test.

- 6) Mayor Lepin also noted the road width and given the fact the City is responsible for emergency services and we have no enforcement on parking on the private road, we have to have a 30-foot road.

Action: **Motion to Deny CUP 19-01 & SP 19-01 made by Councilor Don Miller** citing that he believes approval would set a precedent for developers to cross private property with drainage that will be a problem for Millersburg in the future.

Mayor Lepin asked attorney Wallace Lien if the City will be able to sustain that decision to which Mr. Lien said the chances were slim to none and that based on case law, that decision would be reversed and remanded to the City Council.

Motion failed due to lack of a second.

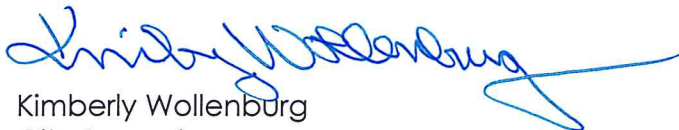
Action: **Motion to Approve CUP 19-01 & SP 19-01 Based on the Findings of Fact with the Conditions of Approval made by Councilor Scott McPhee; seconded by Councilor Scott Cowan.**

Mayor Jim Lepin:	Aye
Councilor Scott Cowan:	Aye
Councilor Dave Harms:	Aye
Councilor Scott McPhee:	Aye
Councilor Don Miller:	No

Motion PASSED: 4/1

- 6) ADJOURNMENT
Meeting adjourned at 8:20 p.m.

Respectfully submitted:



Kimberly Wollenburg
City Recorder



Reviewed by:

Kevin Kreitman
City Manager

Upcoming Meetings & Events:

July 2, 2019 @ 6 p.m. – Events Planning Committee
July 9, 2019 @ 6:30 p.m. – City Council Meeting
July 11, 2019 @ 6 p.m. – Parks Committee Meeting

