

# MINUTES

Creswell Planning Commission  
Public Hearing  
Creswell Community Center—99 South First Street  
Creswell, Oregon

January 20, 2011  
7:00 p.m.

PLANNING COMMISSIONERS PRESENT: Blake Oelke, Chair; David Christopher, Gary Ludeke, Alan Pointer, Lloyd Safley, members; Denise Walters, staff.

Mr. Oelke convened the Planning Commission at 7:00 p.m.

## **I. MINUTES OF AUGUST 26, November 18, and December 16, 2010**

Approval of the August 26, 2010 minutes was deferred to a future meeting.

Mr. Christopher, seconded by Mr. Pointer, moved that the minutes for November 18 and December 16, 2010, be approved as submitted. The motion passed unanimously, 5:0.

## **II. AUDIENCE**

There was no one who wished to address the Planning Commission.

## **III. COMMISSIONER COMMENTS**

There were no commissioners who wished to offer comments.

## **IV. POLL MEMBERS FOR CONFLICTS OF INTEREST**

Covered under agenda item VI.

## **V. OLD BUSINESS—LAND USE APPLICATIONS**

There was no old business to address.

## **VI. NEW BUSINESS—LAND USE APPLICATIONS**

Ms. Walters changed the order of the agenda, noting the applications would be reviewed in the following order: Application A, Application C, Application B. She added City Council retreat and email for commissioners to the agenda.

**Application A: Case No. SUB-2010-02**, a proposal from Lane County to replat Tract D in The Reserve Subdivision (SUB—2006-05). The application will be reviewed under Section 4.1.400—Type III Procedure Section 4.3.140—Approval Criteria: Preliminary Plat, Chapter 2.2—Residential Land Use District, Article 3—Community Design Standards, and other sections of Code.

Mr. Oelke explained the Planning Commission would process the three applications concurrently while it would take three separate actions. Testimony on the three applications was invited during the public hearing of the first application, Application A: Case No. SUB-2010-02, and would not have to be repeated during subsequent applications.

Mr. Oelke stated the Planning Commission would make a quasi-judicial decision on Case No. SUB-2010-02. The Lane County Waste Management Division had submitted an application for a tentative plat to replat an undeveloped portion of Tract D in The Reserve Subdivision. The site was a portion of Assessor's Map 19-03-13-13, tax lot 2000. The site was designed Residential and zoned Low Density Residential with Planned Unit Development (PUD) approval (The Reserve). The application would be reviewed under the following Sections of the Creswell Development Code: Section 4.1.400 and Type III Procedures; Sections 4.3.140 Approval Criteria Preliminary Plat 4.3.200 Replat, Section 4.1.400—Type III Procedure, Section 4.3.140—Approval Criteria' Preliminary Plat, Chapter 2.2—Residential Land Use Districts, and other applicable sections of the Code.

Mr. Oelke reviewed the public hearing procedures. He stated the failure for anyone to raise an issue accompanied by statements or evidence sufficient to afford the Planning Commission and parties opportunity to respond would preclude appeal on that issue. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the City to respond to the issue would preclude an action for damages in Circuit Court.

Mr. Oelke opened the public hearing and called for conflicts of interest, *ex parte* contacts or bias on the part of commissioners. There were no affirmative responses.

Ms. Walters offered the staff report. She said reviewed the history of the site as stated in the staff report. She said the City reviewed and approved The Reserve PUD (PUD-2006-01) and The Reserve Phase I Subdivision (SUB 2006-05) in 2006. The PUD proposal established Tract D to provide time for a property line dispute between the applicant Valley Development LLC, and Lane County Waste Management Division to be resolved. The dispute was resolved with the determination that Lane County Waste Management encroached on Valley Development LLC with the placement of fill. As part of the settlement agreement between the County and the applicant, Lane County must purchase the impacted area. For the purchase to take place and for the impacted area to be removed from the standards, conditions of approval, and covenants, codes, and restrictions of The Reserve PUD and Phase I Subdivision, the following land use actions were needed:

1. A replat of The Reserve Subdivision. The replat included changing Tract D from one lot to two lots within the subdivision and a lot to be removed from the plat.
2. A vacation of a portion of The Reserve Subdivision. The area to be purchased by Lane County was to be removed from the reserve subdivision. City Council was the decision

making authority on vacations. The Planning Commission would make a recommendation to City Council for consideration.

3. A major modification was required because the perimeter of the reserve PUD overlay zone was being changed, as was access to the vacated portion of Tract D.

Ms. Walters entered into the record the following documents:

- Letter dated June 26, 1973 from the Department of Environmental Quality Director Diarmuid F. O'Scannlain and Deputy Director E.J. Weathersbee to Lane County Solid Waste Division Director Bruce B. Bailey.
- Letter dated January 15, 1991 from Oregon Department of Environmental Quality (DEQ) Regional Consultant Donald J. Hernandez.
- Solid Waste Disposal Site Closure Permit dated May 15, 1985 from Oregon DEQ signed by Director Fred Hansen.

Ms. Walters reviewed the replat, vacation and major modification issues that were detailed in the staff report. She stated no additional public comments had been submitted.

Ms. Walters stated staff recommended approval. Based on the findings in the *Draft Findings of Fact*, staff found that the applicant could meet the requirements of the Creswell Development Code as conditioned in the findings of fact. She added that today, discussions with County staff indicated the County may have changes to the conditions of approval. She asked that County staff clarify those changes.

Mr. Oelke called for public testimony.

**Patti Hansen**, Lane County Waste Management Division Manager, 3040 North Delta Highway, Eugene, said the Creswell Transfer Station was a part of the Waste Management Division. She reviewed the history of the site, and stated the Transfer Station had been sited on the old landfill, which was a common practice in Lane County. When the property was sold, there were assumptions that the barbed wire fence was the property line, but this was not true. When Valley Development purchased the site, a survey revealed that the fence line was not on the property line. The County had been in arbitration with owner since 2006 in federal court. A settlement had been reached that required the County to purchase the property.

**Mark Rust**, Planner, Lane County, 125 East Eighth Avenue, Eugene, offered a PowerPoint presentation which contained maps of the site. He stated staff believed Creswell Development Code Chapter 5.2 related to non-conforming uses and potentially was applicable criteria. He reviewed the history of the site. In 1973, DEQ issued the first permit approving the landfill on the site. He understood but had not verified that the State Health Board issued a permit in 1969 approving the landfill. The properties in question were in Lane County's jurisdiction and unzoned until June 1976. The property was approved for use as a landfill prior to the first zoning in 1973. The zoning (GR-10) applied to the property in 1976 allowed the non-conforming use to continue as a legal, non-conforming use. The zoning was changed 18 months later, in 1977, to AGT. He averred the landfill had always been a legally established non-conforming use. The first extension of the 1973 DEQ permit in 1974 specifically identified the northwest corner of the site for containing fill. This northwest corner was the subject of the proposed vacation before the Planning Commission. The site was specifically identified for tires and no other types of waste.

Mr. Rust reviewed the DEQ closure process for the site. He reviewed the Solid Waste Disposal Site Closure Permit and process, as detailed in the document in the record. He reviewed the current use and open space use of the property. The landfill had been closed for over 20 years and had changed little during that time. It was currently, by default, an open space use, although it had never been approved for open space use. He cited other examples where former land fill sites had been converted to open space use, including Tugman Park and Alton Baker Park in Eugene. Lane County was not proposing any use for the site, and as a privately owned open space, it would never be developed as a park, and the public would not be allowed on the property. However, as an open space, it could provide space for conservation or habitat.

Mr. Rust stated Lane County was recommending that a condition enforced by covenant be placed on the site to preserve the County's right to appeal any decision. It was not clear that the City of Creswell was in a position to legally require such a covenant. However, placing a covenant was problematic because the County did not own the property nor did it have the authority under the settlement agreement to place a covenant on the property under the current ownership. The Board of County Commissioners (BCC) authorized the application in its current format. Any change, covenant or encumbrance on the resolution would have to be approved by the BCC. Staff believed there were other options. Any condition that provided for the site to be used as open space should give the City the assurance that any change in use in the future would require approval by the City. He added that a note placed on the plat stating the vacated area was approved as open space may not be legally binding.

Mr. Rust reviewed the *Creswell Planning Commission Revised Staff Report* and the *Creswell Planning Commission Revised Proposed Final Order/Findings of Fact and Decision* documents that had been distributed to commissioners. He noted land use decisions were legal, binding decisions to the property although they were not recorded against the title of property. He offered the following changes to the document:

*Creswell Planning Commission Revised Staff Report*

Page 3, paragraph 3, sentence 6 should read: ~~It is proposed to be vacated from the plat and PUD, for Lane County to purchase.~~ **The third lot is being approved with this application to be open space.**

Page 3, paragraph 5, should read: This changes the PUD boundary and ~~the use of the area being removed from PUD/residential potentially to industrial, given the applicant's statement that the area will be part of the closed landfill facility that the County owns and operated on the adjacent land to the east.~~ **The use of the area being removed from PUD is being approved with this application to be open space.**

Page 4, paragraph 1, sentence 3 reads: Prior to final plat approval, the applicant will need to either retain residential zoning and provide documentation from DEQ and other applicable regulatory authorities that feel encroachment has been mitigated and the area (portion of Tract D removed from the PUD) is suitable for development consistent with allowed uses in the LDR per Section 2.2.110; OR submit complete applications for plan amendment and zone change appropriate for waste facility usage; OR submit a complete application for withdrawal from City limits for the subject portion of Tract D.

Mr. Rust asserted that staff objected to including this sentence as a condition of approval for this application and asked that the language be removed.

Page 4, paragraph 3, sentence 3 reads: Prior to final plat approval, the applicant will need to either retain residential zoning and provide documentation from DEG and other applicable regulatory authorities that the fill encroachment has been mitigated and the area (portion of Tract D removed from the PUD) is suitable for development consistent with allowed uses in the LDR per Section 2.2.110; OR submit complete applications for plan amendment and zone change appropriate for waste facility usage; OR submit a complete application for withdrawal from City limits for the subject portion of Tract D (43,098 square feet).

Mr. Rust asserted that staff objected to including this sentence as a condition of approval for this application and asked that the language be removed.

Middle of page 5, Major Modification Findings of Fact requiring condition of approval requiring a covenant over lot 3 indicating the lot was to remain as open space. The County was open to the idea of a plat note referencing the three applications considered (MM-2010-01, SUB-2010-02, & VAC-2010-01) so any potential future buyers, developers, and plan reviewers would have a link to these reference files.

*Creswell Planning Commission Revised Proposed Final Order/Findings of Fact and Decision*

Page 8, Section F.1, Findings of Fact for SUB-2010-02 where the condition of approval requiring a covenant was listed. County proposed changing to the plat note in lieu of covenant.

Mr. Rust stated staff was recommending ordinance language changes to the City Council to preserve the public utility easement.

In response to a question from Ms. Walters, Mr. Rust said the County was amenable to putting a reference on the final plat regarding the land use approval for the three requests before the Planning Commission tonight. Mr. Rust said although the property was zoned for residential use, it could never be developed with residential uses because a good portion of the property was in the floodway of the Willamette River. Responding to a question from Mr. Oelke, Mr. Rust explained “deannexing” the site would be a process and time intensive effort and he was unsure how such a process would fit with statewide land use planning goals for urbanization and the City’s land use inventory for needed housing.

Mr. Oelke closed the public hearing and called for deliberation.

Ms. Walters asked if the commissioners felt the proposed revised condition of approval for SUB 2010-02, should be written to require that the three Creswell planning file application numbers be required on the final plat and that staff amend the staff report for the three applications to include verbatim language in the 1991 permit termination letter from DEQ that states Lane County had met all of the requirements for closure of the landfill.

Mr. Safley, seconded by Mr. Christopher, moved that the Creswell Planning Commission approve with conditions the tentative plat, Case No. SUB-2010-02, a replat of a portion of Tract D in The Reserve Subdivision, as described in the final order as amended at this meeting; and, adopt the

findings of fact presented at this meeting. The motion passed unanimously, 5:0.

**Application C: Case No. MM-2010-01**, a proposal from Lane County to modify the boundary of The Reserve Planned Unit Development (PUD-2006-05) to omit a portion of Tract D of The Reserve Subdivision from The Reserve PUD. The application shall be reviewed under the following Sections of the Creswell Development Code: Section 2;2—Residential Districts Section 2.7.600—Flood Plain Overlay; Article 3—Community Design Standards, Section 4.1.400(D), Section 4.5.180 Detailed Development Plan approval criteria; Section 4.6.300(B) Major Modifications and other applicable sections of the Code.

Ms. Walters offered the staff report. The Planning Commission would make a quasi-judicial decision on Case No. SUB-2010-01. Lane County Waste Management Division had submitted an application for a major modification to The Reserve PUD. The application would be reviewed under the following Sections of the Creswell Development Code: Section 4.1.400 Type III Procedures; Section 4.6.300 Major Modifications; and any other applicable sections of the Creswell Development Code.

Mr. Oelke opened the public hearing. He stated all testimony received during the public hearing on Case No. SUB-2010-02 was hereby incorporated into the record for MM-2010-01.

Ms. Walters staff was incorporating the staff reports that were part of SUB-2010-02 into the record for MM-2010-01. Staff was proposing to amend the condition of approval, which was the same language of the covenant to change to “requiring all three Creswell land use application file numbers to be recorded on the final plat” and to make the changes suggested by County staff in terms of everywhere that language regarding covenant in the findings was to be changed to reflect the Planning Commission’s decision to have the plat notes included in the file. She stated staff recommended approval as conditioned during this hearing.

Mr. Rust stated that from the perspective of Lane County, all previous testimony was also directed towards this application.

Mr. Oelke closed the public hearing.

Mr. Christopher, seconded by Mr. Safley, moved that the Creswell Planning Commission approve with conditions the major modification to the reserve Planned Unit Development as described in the final order, as amended at this meeting, and adopt the findings of fact presented at this meeting. The motion passed unanimously, 5:0.

**Application B: Case No. VAC-2010-01**, a proposal from Lane County to vacate a portion of Tract D in The Reserve Subdivision (SUB-2006-05). The application shall be reviewed under the following Section of the Creswell Development Code: Section 4.3.210 Vacation of Plats; Section and any other applicable sections of the Creswell Development Code; and Oregon Revised (ORS) 271.080 through 271.230.

Ms. Walters offered the staff report. She said the Planning Commission would make a recommendation to City Council on Case No. -2010-01, a proposal initiated by Lane County Waste Management Division to vacate a portion of The Reserve Subdivision plat. The site is a portion of Assessors Map 19-03-13-13, tax lot 2000. The application would be reviewed under the following

Sections of the Creswell Development Code: Section 4.1.500—Type IV Procedure; Section 4.3.210 Vacation of Plats; other applicable sections of the Code; and Oregon Revised Statutes 271.090.

Mr. Oelke opened the public hearing. He said all testimony received during the public hearing on Case No. SUB-2010-02 and MM-2010-01 was hereby incorporated into the record for VAC-2010-01.

Mr. Rust stated that from the perspective of Lane County, all previous testimony was also directed towards this application. He iterated that staff agreed with the Public Utility Easement that the easement would remain on the property.

Mr. Oelke closed the public hearing.

Mr. Oelke, seconded by Mr. Pointer, moved that the Creswell Planning Commission recommend approval to the City Council on the vacation of an undeveloped portion of Tract D in The Reserve Subdivision as described in the draft ordinance presented as amended this meeting. The motion passed unanimously, 5:0.

## **VII. LONG RANGE PLANNING**

There were no updates.

## **VIII. OTHER**

Mr. Shrives invited Planning Commissioners to the City Council retreat scheduled for January 29, 2011.

Ms. Walters reported that City email accounts had been issued to Planning Commissioners and distributed instructional packets on how to access the accounts.

## **IX. ADJOURNMENT**

Next Planning Commission meeting: February 17, 2011.

Mr. Oelke adjourned the meeting at 8:37 p.m.

*(Audio Recording by Denise Walters)*  
*(Transcribed by Linda Henry)*