

Parsons, Susan

From: Rapp, Reagan S. (Perkins Coie) <RRapp@perkinscoie.com> on behalf of Robinson, Michael C. (Perkins Coie) <MRobinson@perkinscoie.com>
Sent: Thursday, July 20, 2017 4:56 PM
To: Council Clerk – Testimony
Cc: Reynolds, Allison J. (Perkins Coie); Robinson, Michael C. (Perkins Coie)
Subject: City of Portland Case # LU 16-159330 LDS EN
Attachments: 2017.07.20 Lt Mayor Wheeler.pdf

Attached please find a letter on behalf of Everett Custom Homes. This is the applicant's final written argument on July 20, 2017 by 5:00 pm. Please place a copy of this submittal into the official record for this matter.

Thank you.

Michael C. Robinson | Perkins Coie LLP

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July 20, 2017

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VIA EMAIL ONLY TO: CCTESTIMONY@PORTLANDOREGON.GOV

Mayor Ted Wheeler
Portland City Council
Portland City Hall
1221 SW Fourth Avenue
Portland, OR 97204

Re: City of Portland Case # LU 16-159330 LDS;

Dear Mayor Wheeler and Members of the Portland City Council:

This office represents the Applicant, Everett Homes. This letter is the Applicant's final written argument and does not contain new written evidence. This submittal closes the open record period. The City Council is scheduled to deliberate to a tentative (oral) decision on this application at its public meeting on August 9, 2017. The City Council will not accept new argument and evidence at that meeting.

I. Summary of Argument.

The Applicant is bound to demonstrate by substantial evidence that it has satisfied the approval criteria for its subdivision application. The record that has been made before the City Council demonstrates by substantial evidence that the Applicant has done so. Not only have professional planning, engineering and transportation staff supported the application and recommended its approval to both the Hearings Officer and the City Council, the Hearings Officer approved the application with conditions of approval acceptable to the Applicant. Further, and not diminishing participation by project neighbors, the decision is not made based on how many people approve or disapprove of the application, or on what the neighborhood desires at a particular time. The decision is based on ordinances adopted by the City Council applied to every similarly situated application. To make a decision based on other considerations would not only be unfair to the Applicant and other persons who depend on the City Council's enforcement of its land use regulations, but would make such enforcement of such regulations in the future extremely difficult for the City Council.

For the reasons explained in the Applicant's prior written and oral testimony, the staff report, and the Hearings Officer's decision, the City Council can approve this application with the recommended conditions of approval. The remainder of this letter summarizes argument and evidence regarding the main issues raised to the City Council in this appeal.

Finally, we ask that the Council pay special attention to the additional condition of approval proposed in Section 3 of this letter, which evidences the agreement reached between the Applicant and the Appellant.

II. The Issues.

A. Traffic and Safe Routes to Schools for Hayhurst Elementary.

Nothing in the PCC or other City plan or ordinance makes the Safe Routes to School (“SR2S”) map or program an approval criterion for land divisions such as the application. To the extent SR2S does apply to the City’s consideration of the application, the application is consistent with this program for the reasons explained by PBOT staff in the record. The subdivision will enhance pedestrian and bicyclist safety and increase, not decrease, the number of safe bicycling and pedestrian routes to and from Hayhurst Elementary School by providing improved public streets and sidewalks.

The only comprehensive and complete traffic study in the record for this matter was provided by the Applicant’s consultant Kittelson & Associates, Inc. (“KAI”). The Portland Bureau of Transportation (“PBOT”) reviewed this study and determined that it demonstrates that all street intersections will operate at acceptable levels after project construction, that pedestrian travel will not be impaired and that very little additional traffic will be generated (just over 100 additional trips over 24 hours) by the proposal. More importantly, only about 10 trips in the morning peak hour and about 10 trips in the evening peak hour will be generated.

When children are walking to school, there will be very little additional traffic from this subdivision. The traffic study notes that the additional traffic caused by the connection of SW Pendleton Street will not amount to very many additional trips, either.

B. Seep and Spring-Like Features Outside of the Environmental Zone.

Appellant has argued that the seep and spring-like water features outside of the environmental tract must be preserved pursuant to PCC Chapter 33.640. However, both the Portland Bureau of Development Services (“BDS”) and the Applicant’s substantial evidence demonstrate that features in question do not meet the definition of seeps and springs found in PCC Chapter 33.910 in effect on the date this application was submitted. BDS submitted a memorandum on July 13, 2017 addressing issues raised by the Appellant during the open record period. BDS concluded, based on the substantial evidence in the record that the features outside of the environmental tract do not qualify as seeps or springs under the Code definition. BDS further notes that even if questions remain with regard to presence of an aquifer in this location, the water features cannot be classified as seeps or springs because they do not flow into defined stream channel.

The City Council must therefore reject the Appellant's request that these features be regulated under PCC Chapter 33.640.

C. Street Connectivity.

As explained at length by substantial evidence in the record from both the Applicant and PBOT, the Applicant is required to provide street connectivity. This is a requirement of the Code, and consistent with the City's Comprehensive Plan, Goal 11B, Policy 11.11, Objective K for the Southwest District. The City requires street and pedestrian connections in residential zoning districts, taking into account existing street patterns and master street plans for the area. PCC 33.654.110.A.1. In this case, both existing street patterns and the applicable master street plan call for the street connection. The subject site is an infill site with existing street stubs on either side, including on the south side, where SW Pendleton Street dead-ends at the eastern boundary of the subject site. Thus, the subject site must provide a connection that fits into this existing street pattern by connecting the two (2) dead-end sections of SW Pendleton Street.

Although there is an exception to the connectivity requirement if a street connection is not "appropriate or practicable," the Applicant has not proposed an exception and the City Council should find that the exception is not met in this case. "Practicable" is defined as "[c]apable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." PCC 33.910. The Applicant has analyzed site conditions and determined that it is "practicable" to provide the street connection. Further, KAI has opined that the Street connection is "appropriate" in light of the location and spacing of existing roadways. PBOT has concurred with the need for the Street connection and has noted the many benefits of providing this connection, including dispersing traffic, providing alternate routes, and facilitating emergency response.

The City Council should find that the Street connection is required and should be approved.

D. Storm Culverts.

The Bureau of Environmental Services ("BES") submitted a memorandum to this Council on July 13, 2017 regarding the storm culvert that the Applicant is required to upgrade. BES reiterated in this letter, as it has previously stated during these proceedings, that the Applicant is required to upgrade the culvert under 48th Avenue to withstand a 25-year storm event. BES also clarified, as shown in the record, that the Applicant's required upgrade will not increase the flow through the culvert, and is likely to *decrease* flows due to the stormwater improvements the Applicant will make. The Applicant has no legal ability or obligation to install a 36-inch culvert on the Fosters' private property.

BES also addressed the other arguments made by Mr. Alvin Iverson regarding use of the existing wetland area on the Applicant's property as a stormwater treatment facility. The Applicant acknowledges that City could exercise its power of eminent domain to acquire the property for a public purpose such as stormwater treatment. However, sale of the wetland area to the City and any associated stormwater treatment functions are not proposed by the Applicant. We urge the City Council to address the appeal before it and explore any ancillary proposals at another time.

III. Condition of Approval Proposed by the Applicant and the Appellant.

The Applicant proposes the following condition of approval to satisfy concerns raised by Appellant regarding traffic, pedestrian safety, and safe routes to school, among others. As stated in the attached letter from the Appellant (**Exhibit 1**), the Appellant has agreed to waive all further appeal rights in this matter if this condition is adopted. The Applicant therefore requests that the City Council modify the Hearings Officer's approval by imposing the following additional condition of approval:

The Applicant and the Hayhurst Neighborhood Association shall agree upon a plan for barricading the extension of SW Pendleton Street, and such agreement shall not be unreasonably withheld, so that the extension may be used only by pedestrians, bicyclists and emergency vehicles and such plan shall be approved by the Portland Bureau of Transportation prior to the approval of final plans for the subdivision's construction and any ground-disturbing activities, except for site testing.

IV. Conclusion.

The Applicant appreciates the time that people have taken to testify on this application. The City Council can approve this application. The Applicant commits to being a good neighbor as this property is developed for its intended use, a single-family residential subdivision consistent with the area around it, and will be happy to meet periodically with neighbors and the neighborhood association to engage in an ongoing conversation about how to assure that the neighborhood is not disadvantaged by construction traffic or construction impacts.

The Applicant has offered three (3) new voluntary conditions of approval during the open record period before Council as follows (condition language in bold), in addition to the condition proposed above in Section 3. We repeat these earlier-offered conditions here:

A. Neighbors raised concerns regarding increased traffic of greater speed and volume along the required street extensions. PBOT has opined that traffic calming measures do not

appear warranted along this street segment, but the Applicant understands that the neighborhood is concerned about the potential for these conditions to occur. Applicant voluntarily proposes the following condition of approval to facilitate the City's further analysis and installation of traffic calming in the future:

The Applicant shall deposit into an escrow fund in favor of the City of Portland an amount up to \$10,000, which amount is to be jointly determined by PBOT and the Applicant. These funds may be used at any time by the City of Portland after the Applicant's final plat is recorded to analyze traffic impacts resulting from the connection of SW Pendleton Street, and if necessary, to install traffic calming devices including but not limited to stop signs, other signage, and speed bumps in Pendleton Street or other streets.

B. The cedar tree located in the right-of-way may be required to be removed in order to allow the street extension to be constructed. However, the Applicant understands that Leslie Hammond, a neighboring property owner, is concerned that removal of this tree may impact the stability of slopes on her property. Therefore, the Applicant would agree to accept a condition that requires it to mitigate any impacts of removal of the cedar tree to the stability of the slopes on Ms. Hammond's property, as follows:

If removal of the cedar tree in the right-of-way is required by the Portland Bureau of Transportation and Urban Forestry, the Applicant shall mitigate any impact of removal of the tree to the stability of slopes on the adjacent private property owned by Leslie Hammond. This mitigation obligation shall be contingent upon Ms. Hammond providing baseline slope stability data for the property from a reputable geotechnical professional approved by the Applicant prior to tree removal.

C. Appellants raised significant concerns regarding the health of the wetland and impacts to the environmental conservation zone from the proposed development. The wetland currently has several non-native species including Himalayan blackberry (*Rubus armeniacus*) and little diversity in the tree layer. Removal of the blackberry and addition of native trees and shrubs will increase the diversity and overall habitat value of the wetland.

To further enhance the health of the wetland, the Applicant shall remove blackberry and English ivy from the wetland and replace this removed vegetation with native trees and shrubs.

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The Applicant has also agreed that it would accept conditions proposed by the Appellant, as detailed in our July 13, 2017 letter, should City Council find that these conditions are necessary and appropriate to approve the project.

The Applicant respectfully requests that the City Council approve this application with the conditions of approval imposed by the Hearings Officer and with the four above additional conditions of approval recommended by the Applicant.

Very truly yours,



Michael C. Robinson

MCR:rsr

cc: Mr. Vic Remmers (via email) (w/ encls.)
Mr. Mike Peebles (via email) (w/ encls.)
Ms. Li Alligood (via email) (w/ encls.)
Mr. Keith Busiman (via email) (w/ encls.)
Mr. Greg Summers (via email) (w/ encls.)
Ms. Stephanie Beckman (via email) (w/ encls.)
Mr. Fabio De Freitas (via email) (w/ encls.)
Ms. Stacey Castleberry (via email) (w/ encls.)
Ms. Peggy Hennessey (via email) (w/ encls.)

July 20, 2017



To All Interested Parties

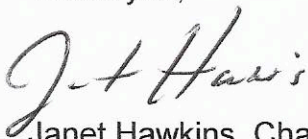
RE: LU 16-159330 LDS EN

If the following condition is imposed as a condition of approval by the Portland City Council, the Hayhurst Neighborhood Association hereby waives all further appeal rights to LU 16-159330.

"The Applicant and the Hayhurst Neighborhood Association shall agree upon a plan for barricading the extension of SW Pendleton Street, and such agreement shall not be unreasonably withheld, so that the extension may be used only by pedestrians, bicyclists and emergency vehicles and such plan shall be approved by the Portland Bureau of Transportation prior to the approval of final plans for the subdivision's construction and any ground-disturbing activities, except for site testing."

This decision was based the on recommendation of the Hayhurst NA Land Use Committee and approved by the Hayhurst NA Executive Committee members on July 19, 2017.

Thank you,



Janet Hawkins, Chair
Hayhurst NA
4675 SW Cullen Blvd.
Portland OR 97221
503-453-2903

c. Hayhurst NA Executive Committee
Hayhurst NA Land Use Committee