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M Vaughn, Deputy Clerk

2017-114631



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CITY OF PORTLAND
Office of the City Auditor
1221 SW Fourth Avenue, Room 130
Portland, OR 97204-1900

I hereby certify this Land Use Document No. LU 16-159330 LDS EN – Order of Council to be a complete and exact copy of the original as the same appears on file and of record in my office and in my care and custody on September 22, 2017.

MARY HULL CABALLERO
Auditor of the City Of Portland
By Meghan Davis
Deputy

RETURN TO CITY AUDITOR
131/130/Auditor's Office

9

**APPEAL OF THE HAYHURST NEIGHBORHOOD ASSOCIATION AGAINST THE
HEARINGS OFFICER'S DECISION TO APPROVE THE APPLICATION OF VIC
REMMERS, EVERETT CUSTOM HOMES FOR AN 11-LOT SUBDIVISION AT 5920 SW
48TH AVENUE
(LAND USE CASE NO.: 16-159330 LDS EN)**

Appellant: Hayhurst Neighborhood Association
C/O SWNI
7688 SW Capitol Highway
Portland, OR 97219
503-823-4592; janetchawkins@msn.com

Applicant: Vic Remmers
Everett Custom Homes Inc
735 SW 158th Ave Ste. 180
Beaverton, OR 97006

Representative: Li Alligood
Otak, Inc.
808 SW 3rd Ave., Suite 300
Portland, OR 97204
503-415-2384; li.alligood@otak.com

Owners: Thomas E Rollman and Corrie H Jackson
5920 SW 48th Ave
Portland, OR 97221-2832

Site Address: 5920 SW 48TH AVE

Legal Description: TL 7300 2.31 ACRES, SECTION 18 1S 1E

Zoning: R7c – Single Dwelling Residential 7,000 base zone, with Environmental Conservation
'c' overlay zoning

Case Type: LDS EN – Land Division (Subdivision) and Environmental Review

Procedure: Type III, with a public hearing before the Hearings Officer. The decision of the
Hearings Officer can be appealed to City Council.

Proposal:

The applicant proposes to divide the approximately 2.3-acre site to create 11 lots for single dwelling development, an environmental resource tract, and a public street extension. The proposed lots range in size from 4,200 to 6,402 square feet. The environmental resource tract (Tract A) is proposed to be 25,430 square feet in area and will contain the entire area within the Environmental overlay zone on the site (after street dedication). The proposed public street extension will connect the two segments of SW Pendleton Street that abut the site on its north and east boundaries. Public street dedication is also shown on SW 48th (7 feet) and SW Pendleton (17 feet). Public street improvements are proposed, consisting of street paving and sidewalk corridors, within the site and along the existing street frontages on SW Pendleton and SW 48th Avenue.

Public sanitary sewer and water lines are also proposed in the new public street to serve the site and will connect with existing lines in SW Pendleton.

Stormwater from the public street improvements is proposed to be managed by flow through planters between the curb and sidewalk. A new storm sewer connecting to the existing storm sewer in SW Pendleton (to the north) is proposed to convey water from the new street extension. Stormwater from SW Pendleton is proposed to be directed to the existing storm sewer in SW Pendleton and stormwater from SW 48th Avenue is proposed to be directed to an improved culvert at the stream crossing in SW 48th. Stormwater from the individual lots is proposed to be managed by flow through planters on each lot that is discharged to new/existing storm sewers, with the exception of Lots 4 and 5 that are proposed to have individual outfalls within Tract A (outside of the Environmental overlay zone).

Significant grading is proposed on the site and a retaining wall up to 6 feet high is proposed at the rear of Lots 6-8 and within Tract A. Tree preservation is proposed primarily within the southwestern corner of the site within the Environmental Conservation overlay zone. Three additional non-nuisance species trees are proposed for preservation outside of the Environmental zone (two within Tract A and one on Lot 8). A number of trees are proposed to be retained along the southern and eastern boundary of the site, however these trees are identified as nuisance species by the applicant's arborist and are therefore exempt from tree preservation regulations.

Because a portion of the site is within the Environmental Conservation overlay zones, the proposal must meet the development standards of Section 33.430.160, Standards for Land Divisions and Planned Developments, or be approved through Environmental Review. The proposed street improvements on SW 48th Avenue include right-of-way dedication with associated LIDA stormwater facility, and sidewalk improvements (including a portion of the planter strip along SW 48th Avenue) within wetland areas, and in the resource area of the Environmental overlay zone; as well as new culvert construction beyond the SW 48th Avenue right-of-way, and in the resource area. Therefore, the standards of Section 33.430.160 are not met and an Environmental Review is required. The Environmental Review application originally included modifications to development standards on the proposed lots, but was revised to eliminate those requests.

This subdivision proposal is reviewed through a Type III procedure because: (1) the site is in a residential zone; (2) four or more dwelling units are proposed, not including accessory dwelling units; (3) the site is located within a Potential Landslide Hazard or Flood Hazard Area; and (4) a concurrent Environmental Review is required (see 33.660.110).

For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year, according to ORS 92.010. ORS 92.010 defines "lot" as a single unit of land created by a subdivision of land. The applicant's proposal is to create 12 units of land (11 lots and 1 tract). Therefore, this land division is considered a subdivision.

The City Council appeal hearing was opened in the Council Chambers, 1221 SW 4th Avenue on June 22, 2017 at approximately 2:00 p.m. After hearing public testimony and considering the evidence in the record, Council closed the public hearing. The City Council left the record open for submittals from any interested party until July 6, 2017, rebuttals of these submissions by any party until July 13, 2017 and the Applicant's final written argument until July 20, 2017, and continued the hearing to August 9, 2017 at 3:30 p.m. for deliberation. On August 9, 2017, at approximately 3:30 p.m. Council voted 4-1 to tentatively deny the appeal and uphold the Hearings Officer's decision to approve the application of Vic Remmers, Everett Custom

Homes, for an 11-lot subdivision at 5920 SW 48th Avenue with conditions and ordered findings be prepared for September 6, 2017 at 11:00 a.m. On September 6, 2017 at approximately 11:00 a.m., Council voted 4-0 to deny the appeal and uphold the Hearings Officer's decision and adopt findings.

DECISION

Based on evidence in the record and adoption of the Council's Findings and Decision in **Case File LU 16-159330 LDS EN** and by this reference made a part of this Order, **it is the decision of Council** to deny the Appeal and approve the Application with all of the Conditions of Approval adopted by the Hearings Officer.

Therefore, the City Council approves:

- 1) A Preliminary Plan for an 11-lot subdivision, that will result in 11 standard lots, an environmental resource tract, and a new public street; and**
- 2) An Environmental review for proposed right-of-way dedication and construction of street improvements on SW 48th Avenue, associated LIDA stormwater facility, sidewalk improvements, and new culvert construction in the Environmental Conservation overlay zone;**

The Approval shall be subject to the following Conditions:

A. The final plat must show the following:

1. The Applicant shall meet the street dedication requirements of the City Engineer for SW 48th Avenue, SW Pendleton Street, and the new public street connection. The required right-of-way dedication must be shown on the final plat.
2. The environmental resource tract shall be noted on the plat as "Tract A: Open Space (Environmental Resource and Drainage Reserve)." A note must also be provided on the plat indicating that the tract will be commonly owned and maintained by the owners of Lots 1 through 11, or be consistent with the ownership requirements of PCC 33.430.160.E.
3. A private sanitary sewer easement, for the benefit of Lots 4 and 5, shall be shown and labeled over the relevant portions of Tract A.
4. A private storm sewer easement, for the benefit of Lots 4 and 5, shall be shown and labeled over the relevant portions of Tract A.
5. A private access easement for maintenance of the proposed retaining wall shall be shown and labeled over the relevant portions of Lots 6, 7, and 8 and Tract A. The dimensions of the easement must be established from the retaining wall design as shown on the approved permit drawings.
6. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&R's) as required by Conditions B.9- B.12 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A (name of document) has been recorded as document no. _____ Multnomah County Deed Records."

B. The following must occur prior to Final Plat approval:

Streets and Site Preparation

1. The Applicant shall meet the requirements of the City Engineer for right-of-way improvements along the site's street frontages and the new public street connection. The Applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation and the Bureau of Environmental Services for required street frontage improvements. In addition, the Applicant shall work with Urban Forestry staff and Public Works Project Managers to determine if it is possible to retain the existing 42-inch diameter Western Red cedar (Tree #20201) located in the SW Pendleton Street right-of-way and revise the plans accordingly.

2. The Applicant shall submit a Site Development Permit for mass grading of the site and construction of the retaining wall that crosses Lots 6, 7, and 8 and Tract A. The permit plans must substantially conform to the preliminary grading plan (Exhibit C.8), tree preservation plan (Exhibit C.11), and construction management plan (Exhibit C.16), with the following additions:

- It must show root protection zones of the trees to be preserved on the Tree Plan (Exhibit C.1 1);
- The Applicant shall provide a Supplemental Tree Plan demonstrating how Trees #20005, 20068, and 20069 will specifically be protected according to the requirements of Title 11 during construction of road, planter, and sidewalk improvements in SW 48th Avenue;
- It must include mitigation plantings indicated on Exhibit C.12 and as required in Condition D.2.

3. A supplemental plan using the final plat survey as a base map shall be provided for review and approval by the Bureau of Development Services Land Use Services and Site Development review and approval showing the location of the retaining wall spanning Tract A and Lots 6, 7, and 8 and the maintenance access easement. The location of the retaining wall on this supplemental plan shall match that shown on plans for the Site Development Permit required in Condition B.2.

Utilities

4. The Applicant shall meet the requirements of the Bureau of Environmental Services for extending public sanitary and storm sewer mains in the new public road. The public sewer extensions require a Public Works Permit, which must be at a stage acceptable to the Bureau of Environmental Services prior to final plat approval. As part of the Public Works Permit, the Applicant must provide engineered designs and performance guarantees for the sewer extensions to the Bureau of Environmental Services prior to final plat approval.

5. The Applicant must submit a revised site utility plan for review and approval by the Bureau of Environmental Services that shows feasible locations of storm and sanitary connections for each lot that do not conflict with proposed public stormwater facilities, street trees, and/or other utilities.

6. The Applicant shall meet the requirements of the Water Bureau for providing plans and financial assurances for water system improvements to serve the proposed development. These plans must include fire hydrants to meet Fire Bureau requirements as indicated in Condition B.7.

7. The Applicant shall meet the requirements of the Fire Bureau for installing new fire hydrants as part of the water system improvements and documenting that new and existing hydrants serving the development meet fire flow requirements. Documentation must be provided to the Fire Bureau prior to final plat approval.

Existing Development

8. Finalized permits must be obtained for demolition of the existing residence and all accessory structures on the site, capping the existing sanitary sewer connection, and decommissioning the old septic system. Note that Title 24 requires a 35-day demolition delay period for most residential structures. All demolition work must be in conformance with the Tree Preservation Plan (Exhibit C.11) and the applicant's arborist report (Exhibit A.5.b).

Required Legal Documents

9. A Maintenance Agreement shall be executed for Tract A, the Environmental Resource tract described in Condition A.2 above. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval. The agreement must also include:

- a. assign common, undivided ownership of the tract to the owners of all lots, a homeowner's association, or meet the requirements of PCC 33.430.160.E;
- b. include provisions for assigning maintenance responsibilities for the tract;
- c. provisions assigning maintenance responsibilities for mitigation plantings located within the tract;
- d. Include a description of allowed/prohibited activities consistent with Chapter 33.430;
- e. acknowledge easements within the tract and related facilities; and
- f. include conditions of this land use approval that apply to the tract.

10. A Maintenance Agreement shall be executed for the Private Sanitary and Storm Sewer Easements described in Conditions A.3 and A.4 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and the proposed facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

11. A Maintenance Agreement shall be executed for the shared retaining wall on Tract A, Lot 6, Lot 7, and Lot 8 to be located within a Private Access Easement, as described in Condition A.5. The agreement shall include provisions assigning maintenance responsibilities for the easement area, the retaining wall, and any other facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

12. The Applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Lot 8 and Tract A. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on, and recorded with, the final plat.

Other requirements

13. The Applicant must pay into the City Tree Preservation and Planting Fund the amount equivalent to 55.5 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

14. The Applicant must meet the Urban Forestry requirement to pay a fee in lieu of planting one street tree (1.5 inch equivalent) for the permanent loss of planting space on the site's SW 48th Avenue frontage.

C. The following is required as part of the Site Development permit for grading:

1. Tree protection fencing shall be provided according to Title 11 Tree Code, Chapter 11.60, Tree Protection Measures, except as otherwise specified below. Title 11 tree protection fencing shall be placed as shown on Exhibit C.11 Preliminary Tree Plan, as recommended in the Applicant's Supplemental Tree Plan required in Condition B.2 above, or as required by inspection staff during the plan review and/or inspection stages.

- a. All construction plans, grading plans, and any other plans depicting construction fencing and/or tree protection fencing shall be updated to match Exhibit C.11. Plans shall include erosion control

fencing between the tree protection fence and construction areas. Erosion control fencing shall be located one foot from the tree protection fencing. All such plans shall also depict erosion control fencing and tree protection fencing around the SW 48th Avenue culvert replacement in conformance with that area shown on Exhibit C.16.

b. Nuisance species trees shown as being retained on the site outside of the Environmental Overlay zone are optional and may be removed.

c. No mechanized construction vehicles are permitted beyond the approved "Limits of Construction Disturbance" delineated by the construction fence. All planting work, invasive vegetation removal, and other work to be done beyond the Limits of Construction Disturbance shall be conducted using hand held equipment.

2. Mitigation Plantings shall be planted in Tract A, in substantial conformance (location and species) with Exhibit C.12, Preliminary Planting Plan, as follows:

a. At the time of permit review for grading at the site, the approved Planting Plan shall be submitted to the Bureau of Development Services, in substantial conformance with Exhibit C.12.

b. A total of 24 trees, 456 shrubs, 1,682 ground covers, and native seed mix are required to be planted in Tract A in the environmental zone.

c. A total of 31 trees are required to be planted in Tract A outside of the environmental zone (for mitigation required under PCC 33.630).

d. Any disturbance areas in the environmental zones not planted as required above must be seeded with a native seed mix with species contained in the Portland Plant List.

e. All portions of trees to be removed, that are 12 inches or greater in diameter, shall be placed within the environmental zone in Tract A.

f. All mitigation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector/Landscape Professional. All tape shall be a contrasting color that is easily seen and identified.

g. Plantings shall be installed between October 1 and March 31 (the planting season). Any changes or substitutions to approved planting plans shall first receive written approval from Bureau of Development Services Land Use Review staff.

h. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.

3. An inspection of Permanent Erosion Control Measures shall be required to document installation of the required mitigation plantings.

a. The Permanent Erosion Control Measures inspection (IVR 210) shall not be approved until the required mitigation plantings have been installed (as described in Condition C.2 above);

b. If the Permanent Erosion Control Measures inspection (IVR 210) occurs outside the planting season (as described in Condition E.2 above), then the Permanent Erosion Control Measures inspection may be approved prior to installation of the required mitigation plantings - if the Applicant obtains a separate Zoning Permit for the purpose of ensuring an inspection of the required mitigation plantings by March 31 of the following year.

D. The following conditions are applicable to site preparation and the development of individual lots:

1. Development on Lot 8 and within Tract A shall be in conformance with the Tree Preservation Plan (Exhibit C.11) and the applicant's arborist report (Exhibit A.5.b) for preservation of trees outside of the environmental zone. Specifically, trees numbered, #20078 (11-inch Oregon ash), #20165 (17-inch Leyland cypress), and #20174 (16-inch cottonwood) are required to be preserved, with the root protection zones indicated on Exhibit C.11. Nuisance species trees shown as being retained on the site outside of the Environmental overlay zone are optional and may be removed.

Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zones may only occur if it meets the Prescriptive Path allowances of 11.60.030 or is under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones beyond the allowances of 11.60.030 is subject to receipt of a report from an arborist explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his/her supervision.

2. The Applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.

3. Prior to issuance of building permits for the site, the Applicant must meet the Portland Bureau of Transportation requirements for street frontage improvements to the satisfaction of the City Engineer, including the existing frontages of SW Pendleton Street and SW 48th Avenue and the new public street extension through the site.

4. Development on lots shall be in conformance with the following:

- a. Prior to starting home construction on Lots 1, 2, 4, 5, and 6, the Applicant shall install 4-foot high temporary construction fencing along any lot line that abuts an open space tract. The fence must be shown on building permit plans. The fence shall remain in place until the final erosion control inspection is completed.
- b. Fences are allowed only within lots (not within any of the tracts).
- c. Exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas. This condition applies to lots that abut any environmental zoning on the site.

5. The following apply to environmental zones:

- a. All vegetation planted in a resource area of environmental zones is native and listed on the Portland Plant List. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited.
- b. Fences are not allowed within a resource area of environmental zones.

E. The landowner shall maintain the required plantings for two years to ensure survival and replacement. The landowner is responsible for ongoing survival of required plantings during and beyond the designated two-year monitoring period. The landowner shall:

1. Obtain a Zoning Permit for a final inspection at the end of the 2-year maintenance and monitoring period. The permit must be finalized no later than two years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.

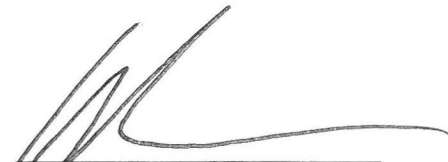
F. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33. 700.040 and/or enforcement of these conditions in any manner authorized by law.

Conditions of Approval. This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such. These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the Applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

IT IS SO ORDERED:

SEP 12 2017

Date



Mayor Ted Wheeler
Presiding Officer at Hearing of
September 6, 2017
9:30 a.m. Session