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191215

Ordinance

Deny Blain A. West and Teresa West's application for Special Assessment of Open Space Land at 10615 SW 42nd Avenue

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. Under Oregon Revised Statute (ORS) 308A.300 through ORS 308A.330, a property owner may apply for a current open space use assessment on forms prepared by the Department of Revenue and supplied by the county assessor.
2. On December 30, 2022, Multnomah County received Blain A. West and Teresa West's application for Special Assessment of Open Space Land for the property located at 10615 SW 42nd Avenue, Portland OR 97219, attached as Exhibit A.
3. 10615 SW 42nd Avenue ("the Property") is 2.44 acres and contains a single-dwelling residential structure and one detached accessory dwelling unit. The primary use of the Property is residential Household Living.
4. The Property is not zoned Open Space and is not designated as Open Space on the Comprehensive Plan Map. The Property is designated for residential use on the Comprehensive Plan Map (Single-Dwelling 7,000) and is zoned residential 7,000 (R7), which is the corresponding base zone for the Single-Dwelling 7,000 Comprehensive Plan designation. The Property also has environmental conservation (c) and constrained sites (z) overlay zoning.
5. Approximately .9 acres of the Property is currently within the environmental conservation overlay. In 2022 the Environmental Overlay Zone Map Correction project reduced the extent of the environmental conservation overlay area on the Property to the present size from approximately 1.8 acres. The change reflects the current location of inventoried natural resources on the Property.
6. The Property's present use is residential. Additionally, the Property is large enough to be further divided into additional lots for residential development. In fact, in 2007 a 12-lot land division was proposed for the Property and was recommended for approval by the Bureau of

Introduced by

[Commissioner Carmen Rubio](#)

Bureau

[Planning and Sustainability \(BPS\)](#)

Contact

Sandra Wood

Principal Planner

✉ sandra.wood@portlandoregon.gov

Requested Agenda Type

Regular

Date and Time Information

Requested Council Date

March 22, 2023

Development Services (LUR 07-120870 LDS ENM, attached as Exhibit B). The land division was withdrawn by the applicant (a former owner of the Property) prior to final decision by the Hearings Officer.

7. The Property is within a quarter- to a half-mile of three publicly owned, and publicly accessible, open spaces:

- Holly Farm Park (City of Portland);
- Jackson Middle School (Portland Public Schools);
- Loll Wildwood Natural Area (Metro/City of Portland).

8. ORS 308A.303, describes the legislative intent of the Special Assessment for Open Space Lands as being to "...maintain, preserve, conserve and otherwise continue in existence adequate open space lands..." and "...to prevent the forced conversion of open space lands to more intensive uses..." City Council finds that the intent of the statute is to preserve existing open space lands. Granting this assessment will not preserve existing open space land. On the contrary, for the duration that the Property is classified as open space, the result will be conversion from residential land to open space.

9. ORS 308A.309 requires that determination of approval or disapproval of an application made for classification under ORS 308A.300 (1)(b) must weigh the factors identified in ORS 308A.309 (1)(a) through (d).

10. Regarding ORS 308A.309 criteria (1)(a), there are no projected costs or other consequences of extending urban services to the Property. The Property is within the City's Urban Growth Boundary and Urban Services Boundary. It is surrounded by residentially zoned and residentially developed land. The Property has access to urban services including streets, sanitary sewer, water, police and fire protection, parks, public schools and mass transit. The availability of sewer and water services are shown in Exhibits C and D. Therefore, there are no projected costs or other consequences of extending urban services to the Property. In addition, as shown in Exhibit B, urban services can be extended onto the site to serve additional lots should the Property be further divided in the future.

Furthermore, the retention of residential uses on this site supports a focused and efficient land use pattern, supporting efficient use of a limited urban land supply and preserves non-urban land uses beyond the Urban Growth Boundary.

11. Regarding ORS 308A.309 criteria (1)(b), there is no value in preserving the Property as open space. The Portland 2035 Comprehensive Plan was adopted in 2016 (Ordinance No. 187832). The Comprehensive Plan guides how and where land is developed and is required for all cities and counties in Oregon. Development of the 2035 Comprehensive Plan considered the appropriate distribution and location of land uses citywide to accommodate the need for housing and jobs. The Plan also considered the need for open space land and natural resource protection to support community members and the environment. According to the Comprehensive Plan, Portland is expected to add about 123,000 new households between 2010 and 2035. Oregon's Statewide Planning Goal 10 — Housing and the

Metropolitan Housing Rule require that cities provide adequate land and plan for a range of housing types that can meet the diverse housing needs of various types of households. Comprehensive Plan policy 5.1 requires the City to “Maintain sufficient residential development capacity to accommodate Portland’s projected share of regional household growth.” Based on these policy considerations, the 2035 Comprehensive Plan Map assigned a residential land use designation to the Property.

The Property was also designated as residential land in the previous Comprehensive Plan (adopted in 1981). The Property is zoned residential and is in a residential Household Living use. The current use is not open space, and the Comprehensive Plan does not intend for this Property to be preserved as open space. As previously noted, there are three open space zoned properties within one quarter to one half mile of the Property, each providing public access. Therefore, there is no value in preserving the Property as open space.

Furthermore, converting the Property from residential land to open space for the duration of the classification would have a negative effect on the supply of residential land within the City of Portland at a time when the City Council has declared a housing emergency (Ordinance No. 190756).

On balance, City Council finds that the greater value lies in the preservation of this Property for residential use, with no value in preserving it for open space.

12. Regarding ORS 308A.309 criteria (1)(c), there are no projected costs or other consequences of extending urban services beyond the affected Property. As shown in Exhibits C and D, urban services exist and serve the lots and parcels in the vicinity of, and beyond, the Property.
13. Regarding ORS 308A.309 criteria (1)(d), approval of the requested open space special assessment would reduce the supply of buildable land for residential uses. While it is unknown whether the reduction would directly trigger an expansion of the Urban Growth Boundary, the reduction in buildable land opportunities further constrains housing options in the city at a time when the need for housing has significantly surpassed the supply of housing and a housing emergency has been declared (Ordinance No. 190756).
14. The City Council’s denial is not based on the potential loss in revenue that could result from granting the application but rather based on the determination that preserving the land as open space would convert the Property from residential to open space. The legislative intent of the Open Space Land Special Assessment states that “it is in the best interest of the state to maintain, preserve, conserve and other wise continue in existence adequate open space lands...to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of this state and its people.” The Property is not currently in an open space use and the public does not have access to the Property.
15. The environmental conservation overlay zoning applied to a portion of the Property is intended to allow development while conserving, to the

extent practicable, the identified natural resources. Maximum lot density is not affected by the environmental conservation overlay zone. The zoning contains additional requirements to assure development is carried out in an environmentally sensitive manner. Review of development with the environmental conservation overlay zone must consider the most practicable ways to protect resources within the overlay area, including the preservation of trees, and other important natural values or features. City Council determines that the environmental conservation overlay zone on a portion of the Property adequately “conserves or enhances natural resources” consistent with ORS 308A.309 (2)(b) and Oregon Land Use Planning Goal 5. There are no scenic resources on the Property. City Council further determines that granting the open space assessment will not better conserve the identified natural resources on the site.

16. Regarding the additional consequences listed in ORS 308A.309 (2), City Council finds that there are no water supply or stream resources on the Property; there are no known wetlands, beaches or tidal marshes on the Property; soils are adequately conserved based on the environmental conservation zone regulations and other land division and base zone regulations including building coverage and floor area ratio limits; the Property is not a landscaped area such as a public or private golf course; the Property is within a residential neighborhood and is not directly adjacent to open space; the Property is not in an Open Space use, contains a privately owned home, and does not provide publicly accessible recreational opportunities; the Property does not contain a historic site; and converting the Property from residential to open space will undermine the orderly urban development anticipated by the adopted Comprehensive Plan.
17. City Council weighed the costs and benefits of removing all, or a portion of, the Property from the residential use designation, as required under ORS 308A.309. Council considered the criteria that evaluates the cost and consequences of extending urban services and preserving open space. Additionally, Council considered the present housing shortage and crisis and the 2035 Comprehensive Plan policies. Due to the current and longstanding housing crisis, City Council cannot support elimination of this site from residential use category in favor of open space use.
18. The City Council adopts its denial by ordinance, the same manner in which an amendment to the Comprehensive Plan occurs.

NOW, THEREFORE, the Council directs:

- A. That Blain A. West and Teresa West's application for Special Assessment of Open Space Land at 10615 SW 42nd Avenue be denied.

Documents and Exhibits

 [Exhibit A - Open Space Application](#) 216.58 KB

 [Exhibit B - Staff Report](#) 1.5 MB

 [Exhibit C - Water Report](#) 676.22 KB

 [Exhibit D - Sewer Report](#) 658.5 KB

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed by Council
March 22, 2023

Auditor of the City of Portland
Simone Rede

Impact Statement

Purpose of Proposed Legislation and Background Information

Under Oregon Revised Statute (ORS) 308A.300 through ORS 308A.330, a property owner may apply for a current open space use assessment on forms prepared by the Department of Revenue and supplied by the county assessor. On December 30, 2022, Multnomah County received an application for Special Assessment of Open Space Land for the property located at 10615 SW 42nd Avenue, Portland OR 97219. ORS 308A.309 requires that "An application shall be acted upon in a city or county with a comprehensive plan in the same manner in which an amendment to the comprehensive plan is processed." An amendment to a comprehensive plan requires a hearing before the City Council.

Consistent with ORS 308A.309(1), Council will weigh the projected costs and other consequences of extending urban services to the lot, extending urban services beyond the lot, and expanding the urban growth boundary to compensate for reduction in buildable lands; and the value of preserving the lot as open space.

Financial and Budgetary Impacts

If the application is denied, no long-term financial impacts or budget impacts for the City are anticipated.

If the application is approved, and taxes on the property are deferred it could have impacts for the City on future revenues. While this may be minor for an individual application, should other property owners make similar requests, it could result in a large impact on future revenues.

Community Impacts and Community Involvement

- The surrounding neighborhood may be interested in seeing this application approved as they have testified in opposition to prior land use applications for a subdivision at the site.
- Groups supporting additional housing production in the city may be interested in seeing this application denied, as a tax deferral would incentivize maintaining the current development at the site, rather than adding more housing units.
- A notice with a summary of the action proposed, the date and time of the City Council hearing was sent to 312 contacts on the City's legislative list, including the property owner and the area neighborhood association, on March 1, 2023. The notice included information on how to watch the hearing and how to provide testimony in-person, virtually or via correspondence.

100% Renewable Goal

N/A. This action does not increase or decrease the City's total energy use and does not increase or decrease the City's renewable energy use.

Agenda Items

224 Time Certain in [March 15, 2023 Council Agenda](#)

Passed to second reading

Oral and written record closed.

Passed to second reading March 22, 2023 at 9:30 a.m.

242 Regular Agenda in [March 22, 2023 Council Agenda](#)

Passed

Motion to pass the Ordinance and deny the request: Moved by Mapps and seconded by Ryan.

Commissioner Carmen Rubio Absent

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Absent

Commissioner Mingus Mapps Yea

Mayor Ted Wheeler Yea