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92-2024

Report

Consider appeal by the West Portland Park Neighborhood Association against the Hearings Officer's decision to approve with conditions a Conditional Use Master Plan and Adjustment Review for improvements to athletic facilities at Jackson Middle School (LU 22-185273 CU MS AD)

Findings Adopted

DATE: January 11, 2024

TO: Mayor Ted Wheeler
Commissioner Mingus Mapps
Commissioner Rene Gonzalez
Commissioner Carmen Rubio
Commissioner Dan Ryan

FROM: David Kuhnhausen, Interim Director
Bureau of Development Services

RE: City Council hearing on an appeal of the Hearings Officer's approval of LU 22-185273 CU MS AD, a land use review proposal for improvements to athletic facilities at Jackson Middle School

The purpose of this memorandum is to provide a brief description of the land use review decision that was appealed and which will be presented to you in a public hearing on January 11, 2024 at 2:00 pm.

Site Address: 10625 SW 35th Ave.

BDS Representative: Andy Gulizia, City Planner

- 1. Land Use Review Requested:** Type III Conditional Use Master Plan Review and Adjustment Review for improvements to athletic facilities at Jackson Middle School.
- 2. Proposal:** The proposed Conditional Use Master Plan would allow the following athletic facility improvements at Jackson Middle School to be phased over a maximum 10-year period:

Phase 1: Install synthetic turf on the existing baseball/softball/soccer field in the northwest part of the site. Two existing youth soccer fields to

Introduced by

[Commissioner Carmen Rubio](#)

Bureau

[Development Services](#)

Contact

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Requested Agenda Type

Time Certain

Date and Time Information

Requested Council Date

January 31, 2024

Requested Start Time

10:10 am

Time Requested

10 minutes

the west of this field will remain grass. New field lighting is proposed for the baseball/softball/soccer field, and the applicant proposes evening use of this field until as late as 10pm (with scheduled events ending at 9:30pm). Existing spectator seating around this field would remain, but no new spectator seating is proposed, and no voice amplification system is proposed. Phase 1 also includes a new 6-space parking lot and a new 9,825-square-foot building for storage and batting cages to the south of the improved sports field.

Phase 2: Regrade two existing soccer fields in the southwest part of the site with natural turf or synthetic turf to accommodate overlapping softball and soccer fields. No field lights, spectator seating, or voice amplification equipment are proposed for this area. Phase 2 also includes two new tennis courts to the west of the new parking area and building from Phase 1.

The following Adjustments to Zoning Code requirements were also requested:

To waive the requirement for L3 (high screen) landscaping buffers in the following locations:

within 25 feet of the southern edge of the existing driveway and parking lot in the south part of the site; and

within 25 feet of the north side of the existing driveway to the north of the existing school building.

(Without these Adjustments, the nonconforming upgrades standard would require permits for the Conditional Use Master Plan projects to include this landscaping adjacent to existing vehicle areas.)

To increase the maximum structure height for 10 new field light poles proposed for the Phase 1 field in the northwest part of the site from 50 feet to between 60 feet and 90 feet.

3. **Hearings Officer Decision:** The Hearings Officer found that with the conditions of approval listed in the decision, the applicable approval criteria for the Conditional Use Master Plan Review and Adjustment Review were met.
4. **Appeal:** The West Portland Park Neighborhood Association appealed the Hearings Officer's decision and raised the following issues on the appeal form:

The appellant states the Hearings Officer's decision relied too heavily on the Stormwater Management Manual (SWMM) for environmentally related approval criteria, and that the SWMM will not adequately protect the watershed.

The appellant states the purposes of the Open Space (OS) zone are not adequately met, including the requirement to protect sensitive or fragile environmental areas. The appellant states the decision incorrectly limited

the analysis for this aspect of the OS zone purpose statement to environmental overlay zones.

The appellant states the Hearings Officer's approval of the proposal is inconsistent with policies from the Southwest Community Plan.

5. Alternatives Facing Council:

- Deny the appeal and uphold the Hearings Officer's findings and conditions of approval.
- Deny the appeal and uphold the Hearings Officer's decision, but with modified findings or conditions.
- Grant the appeal and overturn the Hearings Officer's approval of the Conditional Use Master Plan Review and Adjustment Review.

Documents and Exhibits

 Council Findings and Conclusions - LU 22-185273 CU MS AD	618.91 KB
(https://www.portland.gov/sites/default/files/council-documents/2024/findings-and-conclusions-of-the-city-council-01414324xc624a.pdf)	
 Hearing Notice - LU 22-185273 CU MS AD	11.34 MB
(https://www.portland.gov/sites/default/files/council-documents/2023/lu-22-185273-cu-ms-ad-public-notice-mailed-12.6.23_0.pdf)	
 120 Day Extension Request Form 12-1-23	99.67 KB
(https://www.portland.gov/sites/default/files/council-documents/2023/120-day-extension-request-form-12-1-23.pdf)	
 120 Day Extension Request Form 1-16-24	251.95 KB
(https://www.portland.gov/sites/default/files/council-documents/2024/120-day-extension-01413142xc624a-1.pdf)	

Impact Statement

Purpose of Proposed Legislation and Background Information

This is an appeal of a Type III land use review decision (a quasi-judicial action). Zoning Code Section 33.730.030.G provides that Type III land use review decisions may be appealed to City Council. The Hearings Officer decision for the proposed development (improvements to athletic facilities at Jackson Middle School) was appealed by the West Portland Park Neighborhood Association.

Financial and Budgetary Impacts

This is an appeal of a Type III quasi-judicial land use review (not legislation). The City Council decision on this matter will not have financial or budgetary impacts on the City.

Generally, land use reviews are fee supported. In this case, the appeal fee was waived because the appellant is a recognized organization as defined by 33.910. City costs associated with this appeal are for staff time to process the appeal.

Community Impacts and Community Involvement

The notification procedures for this Type III land use review followed the public notice requirements contained within the Portland Zoning Code, as adopted by the City Council.

For Type III land use reviews, the Zoning Code requires public notice of the initial public hearing to be mailed to recognized neighborhood and business associations that are within 1,000 feet of the subject site and to neighbors within 400 feet of the site. In addition, several signs notifying the public of the initial hearing were posted at the subject site. City Bureaus were also sent notice. Interested persons were encouraged to write and/or testify at the public hearing conducted before the Hearings Officer.

Numerous public comments, including from the appellant (the West Portland Park Neighborhood Association), were submitted to the Hearings Officer as both oral and written testimony. The public hearing before the Hearings Officer took place on October 4, 2023. On November 16, 2023, the Hearings Officer issued a written decision on the proposal (approval with conditions).

The City Council decision on this appeal will be the final decision of the City, per Zoning Code Section 33.730.030.I.9. However, the City Council's decision may be appealed to the Oregon Land Use Board of Appeals (LUBA).

100% Renewable Goal

N/A

Budget Office Financial Impact Analysis

There is no significant financial impact for the City, as costs are limited to routine staff time for processing the appeal.

Agenda Items

35 Time Certain in [January 10-11, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/1/10)
(<https://www.portland.gov/council/agenda/2024/1/10>)

Tentatively deny appeal and uphold decision of Hearings Officer

Motion to the extent that there are new facts or other new evidence in the oral statements today or submitted in written testimony, the Council intends to reject and will not consider that evidence as part of their final decision, and that will be reflected in the findings: Moved by Mapps and seconded by Ryan. (Y-5)

Motion to tentatively deny appeal and uphold the decision of the Hearings Officer, ask the applicant to add the condition proposed on October 20, 2023, prepare revised findings, and work with staff to return to Council with revised findings: Moved by Wheeler and seconded by Mapps.

Prepare Findings for January 31, 2024 at 10:10 a.m. Time Certain

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Yea

Mayor Ted Wheeler Yea

92 Time Certain in [January 31, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/1/31)
(<https://www.portland.gov/council/agenda/2024/1/31>)

Findings Adopted

Motion to deny appeal and uphold the decision of the Hearings Officer with one additional condition and adopt findings: Moved by Ryan and seconded by Rubio.

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Yea

Mayor Ted Wheeler Yea