



COUNCIL PUBLIC HEARING

Wednesday, August 17, 2022

APPROVED MINUTES

MEMBERS PRESENT

Council President Doug Morten
Councilor Patrick Birkle
Councilor Stephen R. Topaz

MEMBERS ABSENT

Mayor Rick Scholl
Councilor Jessica Chilton

STAFF PRESENT

John Walsh, City Administrator
Kathy Payne, City Recorder
Lisa Scholl, Deputy City Recorder
Jacob Graichen, City Planner
Mouhamad Zaher, Public Works Director
Sharon Darroux, Engineering Manager
Tina Curry, Event Coordinator

OTHERS

Ken Sandblast	Shannon	Steve Toschi
Jeanne Morain	Matt Snook	Rhonda Kirtland
Abigail Dawson	John Brewington	Nancy
Jacob Holder	Cyndi Furseth	Caroline Skinner
Brady Preheim	Heidi Oliver	A. Rose
Steve Osmon	Mick Harris	David Petersen
Robert Johnston	Beth Johnston	Vicky Njust
Val O'Farrell	James Shober	Howard Blumenthal
Clark Warren	Amanda Furnish	

OPEN PUBLIC HEARING – 6:01 p.m.

TOPIC

1. Appeal of Planning Commission's Denial of a 46-Lot Planned Development Subdivision Preliminary Plat located SE of the Intersection of Pittsburg Road and Meadowview Drive (Comstock)

City Planner Jacob Graichen reviewed preliminary matters. The mayor recused himself, based on the previous Planned Development Overlay. There were no other ex-parte contact, conflicts of interest, or bias in this matter. There were no objections from the audience for the Council to make a fair decision.

Graichen reviewed the staff report. A copy is included in the archive packet for this meeting. Additional written testimony was distributed to Council, which is also included in the archive packet. The applicant has amended their subdivision to 34 lots. Graichen went on to review the Planned Development Overlay

and proposed phasing. He reviewed the sanitary sewer lines that are at capacity. The applicant proposes a fair share fee in lieu to address the sewer issue.

Council President Morten asked if the developer would pay a fair share of upgrading the sewer lines marked in red that Graichen pointed out. Graichen said the system is at capacity. That creates the potential of surcharges and possible DEQ fines. In order for the sewer to not be in red, it will take millions to upgrade the system. The applicant is willing to pay their fair share, which is estimated at approximately \$6,600 per dwelling unit.

Graichen reported that the new proposal from the applicant reduces the lots by 26% and maintains a 7,000 sq. ft. minimum.

Graichen talked about moratorium law. When there is a pattern or practice of restricting or denying permits based on utility issues, there is supposed to be a moratorium or public facility plan. There is currently no pattern or practice. If this was denied based on that, that may not constitute a pattern or practice. As they review other development proposals, they may have to create a moratorium. It creates a sensitivity with the applicant.

APPLICANT TESTIMONY

◆ Ken Sandblast, Clark Warren, and Mick Harris

Ken listed the two issues that were the basis of appeal.

1. The layout did not comply with the 7,000 sq. ft. minimum. The updated plan, as reviewed by Graichen, now complies with that. This is a 26% reduction in density.
2. Sanitary sewer

Clark heard the concerns and is open to moving forward cooperatively.

Mick reviewed the letter submitted to the record, a copy of which is included in the archive packet for this meeting. The Planning Commission denied the application with respect to St. Helens Municipal Code (SHMC) Ch. 17.152.090(4), which allows developments to be restricted if there are sewer system deficiencies. They find that improper for a number of reasons. City Council adopted Ordinance No. 3281 three months prior to the denial of the applicant's proposal. When Council approved the annexation application, the Council found no concerns with sanitary sewer and any uses on the property could be accommodated by the City's sanitary sewer system, and there was substantial capacity available. Because the Planning Commission did not point to any changed circumstances between the annexation finding and then subdivision denial, they argue that there is not substantial evidence in the record to justify the statement that there is insufficient sewer capacity. If there is inadequate sewer capacity, there are considerations to encourage the Council to approve the application.

1. In denying the application, it would have imposed a de facto moratorium. For a moratorium to be established, there are certain statutes the City must follow. The imposition would be unlawful and qualify as a taking under state and constitutional law.
2. A subdivision is not a development permit. It is a plat to draw lines on the map to create new legal lots. The SHMC, which raises concerns about sewer system deficiencies, speaks specifically to development permits.
3. The standards of SHMC 17.52.090(4) are not clear and objective, as it relates to ORS 197.307(4). With respect to the needed housing law, the order to deny the application violates the housing statute by not allowing them to build needed housing in the community. Based on inconsistencies with land use regulations and the Comprehensive Plan, it would be prohibited to deny this new housing.
4. There were concerns raised about there not being a proportional calculation for the applicant to pay their fair share of a new sewer system. The applicant is willing to accept a fair share fee of \$6,600 per dwelling unit.

Ken added that one of the primary concerns was the applicant paying their fair share of the sewer system. It is a system-wide issue for the community. It is not specific to this application. He appreciates the opportunity to present tonight. They have complied with the concerns for 7,000 sq. ft. minimum lots and support the conditions of approval. They are seeking support to reverse the appeal.

- ◆ Jeanne Morain. She thanked Council for their consideration. Although there are people opposed to building on or selling the land, it was decided by the City in 1991 that this land was residential, not farmland nor a meadow. Her mother-in-law has constitutional rights to sell and develop the property. Those rights have been overlooked because the meetings have been very caustic. They have been threatened physically, their name has been publicly smudged, and people have tried to adversely possess the land. They are trying to do the right thing. They selected Noyes because they are a five-star developer who will bring quality to the area. Either way, the land will be developed.

TESTIMONY IN FAVOR

None

TESTIMONY IN NEUTRAL

- ◆ Steve Toschi. He is here as an individual and not a Planning Commission member. He commends the property owner and developer for respecting the decision of the Planning Commission and creating a plan for 7,000 sq. ft. lots. He urges the Council to prioritize the sewer issue. They need to explore revenue streams to get it done. People should be able to develop their property.
- ◆ Rhonda Kirtland. She thanked the developer and owner for the revision. She is very happy to see 7,000 sq. ft. lots will be honored. She addressed the Wastewater Master Plan. It looks like they are in basin six, which is priority three, phase four and five for the pipes. The Master Plan shows that would not be addressed until 2032-2041. Will Council prioritize this development to an earlier phase?
- ◆ Cyndi Furseth, President of Meadowbrook HOA. Initially, there were misconceptions about the Planned Development. That may be a moot point now. The family and developers are considering fire safety, maintenance of wetlands, and a trail. She is hearing a lot of positive responses from neighbors. Maintaining a wetland is almost impossible now but must be done properly. She appreciates the thought and time put into this.
- ◆ John Brewington. He is pleased to see they are 7,000 sq. ft. lots. He would like to see the sewer problem solved without it costing him anything. He suggests leaving the streets the way they are now. Connecting to Meadowview Drive is dangerous. It's steep and difficult to see turning onto Pittsburg Road.

Council President Morten asked if he is proposing access to Pittsburg Road from their property. John said no, access would be to Barr Avenue.

TESTIMONY IN OPPOSITION

- ◆ Robert Johnston. He is seeking clarification of the applicant's proposal of \$6,600 for 34 lots. That is only \$224,200 out of a \$10 million cost for the sewer. Growth should pay for growth. This will create additional traffic on Barr Avenue, which is already overloaded. He agrees with the Planning Commission's decision to deny the application unless they can come up with money to improve the sewer.

- ◆ Matt Snook. He is adamantly opposed to the proposal. Meadowview Drive is already a hazard. There would need to be a lot of improvements to make it safe. Barr Avenue is already overloaded. You must pull to the side to let cars go by. It's not their fault that the sewer is at capacity. Someone has to pay for it, but it shouldn't be the current owners. The wildlife has already been run off by the mayor. His wife bought the house to raise kids. People who live up there want a country setting. She has a right to develop, but not at the detriment of adjacent owners. The original owner wanted just a single-family residence. At the end of the day, it's the neighbors who will still be here.

Councilor Birkle reminded people not to make personal attacks. It's not appropriate and does not help the argument on either side.

- ◆ Vicky Njust. She is confused. She thought the overlay was denied. Shouldn't it be approved before they can consider the subdivision?

Graichen explained that this is a nonstandard subdivision. It creates lots that are narrower than what would normally be allowed. Vicky said she never saw the 34-lot proposal. Graichen said it was submitted on August 15. It is now part of the record and was displayed on the screens earlier in the meeting. Vicky asked if they still meet the 7,000 sq. ft. lot size. Graichen said yes.

Vicky agreed that the developer is not entirely responsible for the sewer system. If they're at critical mass, they should not be adding more. They need to consider a moratorium until it's upgraded.

- ◆ Abigail Dawson. Her property backs up against the subject property. She has concerns about adding 34 lots to the sewer. She is surprised that this hasn't been brought to the public. Traffic is a big issue. Sykes Road does not have sidewalks or bike lanes. You can't pass someone on the side without going to the other lane. This will increase the chances of someone getting hurt. It needs significant improvements to infrastructure. There are privately owned tracks with wetlands. Her lot is 15,000 sq. ft., but half is wetlands that she is unable to put a fence around. There is no way for her to delineate between the public wetlands and the private wetlands. She needs to be able to secure her property. The sewer issue is the number one priority. A moratorium is a good idea until they can sustain long-term growth.

- ◆ James Shober. Aren't there people on Firlok who are unable to connect to sewer?

Graichen said yes. James asked why that's not being brought up to the public? Graichen said that is a different problem. Engineering Manager Darroux added that there is not a public sewer available for Firlok, so would have to be all new construction. James agreed with concerns brought up about traffic.

- ◆ Amanda Furnish. Her house backs up against wetlands. They talked about having walk-throughs in the area. She is concerned about liability because it would include her property. Meadowview Drive is a very small road. It's hard to see both ways when turning onto Pittsburg Road. She can't imagine more cars on Barr Avenue and Meadowview Drive.
- ◆ Stevie Osmon. The sewer problem is a huge thing. She is not understanding the discussion about people paying the fair share. There are people along the red line who are not even on the sewer system. Meadowview Drive is not a safe place for more traffic. The development will be detrimental to the nature.
- ◆ Heidi Oliver. She is concerned about Barr Avenue. She already has to deal with Rich Bailey's subdivision. She had to get Public Works Director Zaher to install a stop sign. She is opposed due to concerns about safety and the lack of schools to accommodate the growth. They are not ready for this. If St. Helens agreed to Comstock's development in 1991, that would have been done by

Skip Baker and was messed up. She is opposed to this. They don't have an adequate grocery store to take on more, infrastructure is hurting, they can't afford to pay more taxes to support this, and the City is overstepping their bounds. They are not ready for it.

- ◆ Jacob Holder. He is mainly opposed because of the sewer infrastructure system and using Meadowview Drive. Pulling out onto Pittsburg Road is already difficult. This will also add a lot of traffic to Sykes Road and Barr Avenue.
- ◆ Robert Johnston. He requested to view the sewer map shown earlier. If someone requested to put a single-family home east of the 'X,' would they be allowed to connect to the sewer?

Graichen said they have talked about it, but he is not sure. The Council's decision tonight will help shape that for the future. Robert asked if they have a plan to cure the problem. Darroux responded that the only way is to increase the pipe size. It's more expensive to run a parallel line. Robert asked why they would want 34 lots when a single-family home could not connect.

REBUTTAL

- ◆ Ken Sandblast. Connectivity to Meadowview Drive and Barr Avenue was a concern. The Code requires it. The property has a lot of street stubs. A traffic study was done on the initial subdivision application, which was based on a higher density. It found that the infrastructure was adequate. It should be even more adequate now with a reduction in lots. The applicant is not proposing the \$6,600. They were happy to get that from the City to pay their fair share of the sewer.

Councilor Birkle clarified that the \$6,600 was only for new development. Graichen confirmed that is correct. It would be a condition of land use approval. Darroux added that the amount is for all new growth within the Urban Growth Boundary (UGB). Ken said there is already a sewer SDC fee, which this is in addition to.

- ◆ Mick Harris. He spoke to concerns about the sewer system. All three of the trunk lines affected are categorized as priority three in the Wastewater Master Plan. The Plan reported infrequent or no observations of historical overflows or surcharge in priority three.

Council President Morten pointed out that he opened the hearing as a 46-lot subdivision. Graichen confirmed that was the original application, which was appealed. The applicant submitted a revised plan reducing it down to 34 lots, by 26%. The reduction in lot size was a result of meeting the 7,000 sq. ft. minimum lot size. Council President Morten asked if the Council is liable since he opened the hearing as a 46-lot subdivision, which has changed. Graichen does not suspect there to be a liability but does not have legal counsel here to confirm.

Councilor Topaz asked if the Planning Commission has seen the new proposal. Graichen said no. They just received it on August 15.

Council President Morten asked what staff recommends for deliberations. Graichen said there are no significant changes other than the number of lots. They do have a suggested approval with conditions, including what was discussed tonight.

Council President Morten expressed concerns about voting on the 34-lot plan that he has not seen. Councilor Birkle clarified that they received it in an email from Graichen earlier today. They can deliberate but not vote tonight. Graichen pointed out the 120-day rule, which is September 17. There is some time to continue the public hearing or deliberate and continue deliberations to another meeting date. They are not compelled to make a decision tonight. Council President Morten is inclined to continue deliberations.

REBUTTAL CONTINUED...

- ◆ Jeanne Morain. She asked them to consider that they did not have time to reduce the lots sizes between the Planning Commission hearing and City Council hearing for the Planned Development Overlay. The new plan meets the conditions added. Her in-laws want something that is nice for the community. They need to consider plans in place for sewer development. This is an opportunity to address hot spots in the sewer lines. They are committed to doing what is best for St. Helens. The great grandparents were some of the town founders.

CLOSE PUBLIC HEARING – 7:32 p.m.

Respectfully submitted by Lisa Scholl, Deputy City Recorder.

ATTEST:

/s/ Kathy Payne

Kathy Payne, City Recorder

/s/ Doug Morten

Doug Morten, Council President