

MINUTES

Creswell Planning Commission
Creswell Community Center – Creswell, Oregon

September 29, 2005
7:30 p.m.

PRESENT: Keith Morgan, Chair, David Christopher, Blake Oelke, Wes Olson, Dennis Grice, Lloyd Safley, members.

ABSENT: Jeri-anne Cohen; member.

STAFF/GUESTS: Gary Darnielle, Megan Banks, Lane Council of Governments; Mark Shrives, City Administrator; Carrie Connelly, City Attorney; Ron Petitti, Mayor; Carl Sorenson, Pat Sorenson, Gunnar Schlieder, Ron Stirtz, Gordon Malcomb, Paul Wilkins, Wayne Bowers, Marge Bowers, Sharon Stirtz, Jim Denker, Larry Arnold, Sharon Arnold, Jim Mercer, Joni Bezates, Liam Sherlock, Todd O'Neil, Dennis Cuddeback, Jim Pliska, Larry Gildea, Shane Hughes, Brent Erickson, Phil Velie, David Dougherty, S.E. Reittman, Pat Reittman, guests.

Mr. Morgan called the meeting of the Creswell Planning Commission to order.

Minutes of August 4, 2005

Mr. Christopher, seconded by Mr. Safley, moved to approve the minutes of the August 4, 2005, meeting as submitted. The motion passed unanimously, 6:0.

Poll Members for Conflicts of Interest

Mr. Grice recused himself because he and his wife were considering building a home in the planned unit development (PUD) under consideration by the commission.

There were no challenges from the audience to the impartiality of any member of the commission.

I. OLD BUSINESS

There was no old business.

II. NEW BUSINESS

Case Nos. PUD-2005-01 and SUB 2005-01 (concurrent submittal and review), a request by EGR Engineering, on behalf of Phil Velie, for a planned unit development and preliminary plat subdivision for

a 19-lot residential subdivision on 4.6 acres (assessor's map 19-04-13-21, tax lot 4600). The site is located approximately ½ mile east of Dale Kuni Road and will extend Emerald Valley Road (a private road) to the east. The site is zoned General Commercial with Resort Commercial subzone and Flood Hazard subzone overlays.

Mr. Morgan stated for those wishing to testify that failure to raise an issue during the public hearing accompanied by sufficient statements or evidence to enable the commission and other parties to respond could preclude appeal of that issue to the Land Use Board of Appeals (LUBA).

Mr. Darnielle stated that a request could be made to either hold the record open for an additional seven days or for a continuance of the public hearing. He noted that only the request for a continuance was discretionary with the commission. He said that leaving the record open would allow seven days for additional testimony and seven more days for the applicant to review the testimony and provide written testimony. He said that the applicant would be given 30 minutes to make a presentation, followed by an opportunity for the opponents to provide rebuttal; those offering testimony either in support or opposition to the application would be limited to three minutes. He said the opponents had a right to appeal the Planning Commission's decision to the City Council and appeals must be filed within ten days from the date of the decision.

Mr. Darnielle summarized the staff report. He said that there were two applications for the same development: a subdivision application and a PUD application. He said there were four areas in the Creswell Development Code that had applicable approval standards. He said that Section 13 of the code concerned Resort Commercial Subzone, which was a zoning district that overlaid the property and required that a PUD process be used; it also addressed permitted uses. He said that residential development standards would apply to the proposed development and addressed streets, lot size, easements, sidewalks, and other issues. He indicated that the applicant had requested a modification to the standard for curb radius that was approved by the Fire Marshal. He said that questions about the road width and accommodation of emergency vehicles were addressed by the applicant's offer to eliminate curb barriers and signs to provide a wider travel surface. He said that the applicant had proposed a private stormwater system and the privately owned sanitary sewer system met both City and Department of Environmental Quality (DEQ) standards. He noted that the application had to satisfy PUD criteria related to permitted uses, minimum acreage, perimeter standards, open space, traffic generation and consistency and conformity with surrounding uses. The proposed findings of fact included a number of conditions of approval pursuant to standards in the codes. He pointed out that energy efficient homes would be allowed in lieu of solar orientation standards.

Mr. Morgan opened the public hearing and reviewed the order of presentations and testimony.

Presentation by Applicant

Larry Gildea, 324 E. 12th Avenue, Eugene, attorney for the applicant, stated that the PUD design was based on efforts to conform to standards in the Creswell Development Code (CDC) and asked the commission to concentrate on whether opponents of the application were speaking to the criteria. He cited CDC 10.1.0: *"A Planned Unit Development, for purposes of this Ordinance, is described as an approach to community development that allows modification of the more or less rigid setbacks, lot size specifications and land use provisions of the City of Creswell Development Ordinance and Building Code and instead establishes broad standards and goals to be followed, thus enabling and encouraging*

flexibility of design and development.” He said that although there were instances in which the application did not completely comply with the code standards staff had recommended approval because it had satisfied the intent of the code.

- Mr. Gildea directed the commission’s attention to the finding of fact under CDC 14.12.0 related to sanitary sewers and noted that the privately owned sanitary sewer system met both DEQ and City standards. He stated that the development was begun in the early 1980s and the development concept had been evolving since that time. He said the proposed development was not a new development; it was simply a continuation of the development that had been approved conceptually in 1983. He said the City had accepted the sewer system within the Emerald Valley PUD and it was available to all development within the PUD.

Shane Hughes, EGR Associates, 2535B Prairie Road, Eugene, stated that he had worked with the owners of the sewer system for the past 15 years and it had always been intended to service development east of Interstate 5. He used maps to illustrate the floodway and floodplain and explained that the floodplain was defined as the area inundated by a base flood, which was a 100-year flood. He drew the commission’s attention to a drawing of the floodplain cross section that was contained in Creswell’s Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) report. He pointed out that development was anticipated in the floodway fringe but the intent was to preserve the main channel of the river by allowing very little development and what was allowed had to mitigate for the effects and show no rise. He explained how modeling was used to define the floodway and the ordinance requirements for floodway development and used a series of maps to demonstrate how the proposed development would mitigate the potential for obstruction of water flow with fill to the south. He also illustrated the pathways that would be left for water flow.

Mr. Hughes submitted the following documents for the record:

- 11x17 floodplain maps (4 sheets)

David Dougherty, Dougherty Landscape Architects, Inc., 474 Willamette Street, Eugene, said that landscaping had been designed to fit into the environment. He used drawings to illustrate how the landscape blended into the site, including the golf course and the golf course community surrounding the site. He said particular emphasis was placed on how the development would look from the outside, with a softened view that preserved existing conifer trees to the greatest extent. He said that shade and ornamental trees compatible with golf course plantings would be added and the upscale fencing design used ornamental ironwork. He acknowledged concern about street trees along Emerald Valley Loop and said the applicant was open to modifying the plan so it was in agreement with residents’ wishes.

In response to a question from Mr. Olson, Mr. Dougherty pointed out the location of the gateway into the development and stone paving that would be used as a threshold.

Mr. Gildea submitted the following documents for the record:

- March 18, 2005 letter from Julie Berndt, DEQ, to Phil Velie (DEQ inspection report)
- Findings of Fact for File Nos. 83-001 and 83-002 dated 3/17/83
- Findings of Fact for File No. 89-001 dated 5/4/89

- Reciprocal Easement for Sewage Pipeline, etc. (LC Doc. #9362594)
- Letter regarding wetland Determination for The Fairways, dated 8/29/05

Parties in Support of the Application

Dennis Cuddeback, P.O. 536, Creswell, related that he had been on the county Planning Commission in the 1970s and 1980s and was familiar with the development and floodplain issues. He said it appeared the applicant understood the requirements and had addressed them well. As a Creswell resident and local businessman, he said the community needed a mix of housing and an upscale development would help support schools and shopping. He was in favor of approving the application.

Jim Pliska, 7300 S.E. 190th, Gresham, stated that he was the owner of the Emerald Valley Golf Course. He felt the opponents were primarily angry about the view. He said the golf course had worked to improve the view and in the past had used the area of the proposed development for debris storage; the homes would be a significant improvement. He said the houses that would be built would be higher in value than the current houses and there should be no concerns about the impact of the development on property values. He supported the application.

Phil Velie, 345 Magnolia, Creswell, indicated he lived in the first home built in the project. His intent was to build a fine project, with lots selling for between \$200,000 and \$300,000 and homes in the \$700,000 to \$800,000 price range.

Todd O'Neil, 88 Honer Loop, Creswell, said he had been employed by the Pliska family for three and a half years and as a representative of the golf course he said the facility and surrounding community had increased in value as the Pliskas worked to create a very upscale golf course. He disagreed with those who felt the value of their property would decrease. He noted that the fees for using the course had doubled in the past three years because of the investment of time and money to make improvements and the proposed development would only increase property values.

Presentation by Opponents

Liam Sherlock, 777 High Street, Eugene, attorney for neighbors on Magnolia Drive who opposed the application, said that a consultant engineer would challenge some of the assumptions in the EGR Associates floodplain analysis. He said there was a serious flaw in the application as submitted with respect to the floodplain as the data relied upon was outdated and speculative at best. He said that a U.S. Army Corps of Engineers map generated in 2004 would be used to illustrate the opponents' concerns.

Gunnar Schlieder, GeoScience, Inc., P.O. Box 2238, Eugene, reminded the commission that the floodplain in the FIS report was a model and questioned what the Coast Fork did before there was flood control. He used a 1936 aerial photograph to illustrate the clear line dividing the area that was used for agriculture and the area to the east that was not in agriculture use because it probably had been under water yearly and the soil was likely not good. He said that so far the Emerald Valley development had occurred in an area that was upland and might have gone under water in a 100-year flood but not annually. He said the proposed development was in the area that likely had flooded annually, regardless of what the FEMA study showed. He used newer topographic maps to demonstrate elevations and support the contention that the river would seek to come through its historic channel. He said the

boundary that was the basis for allowing fill was a problem as grading had occurred since FEMA's original modeling. He used models to show what would happen during the 100-year flood without any development or filling of the floodway fringe, with the floodway fringe filled and with underlying topography that was higher than FEMA thought. He asserted that the FEMA contours could be wrong by as much as two feet and the actual impact during a 100-year flood should be reexamined.

Mr. Sherlock submitted written opposition testimony from Joni Bezates and Carl Sorenson and asked for the record to be held open for a minimum of seven days. He disagreed that compliance with the intent of the approval criteria was acceptable. He said there was no dispute that the development was in a general commercial zone with floodplain and resort commercial zone overlays, but the overlays did not modify or eliminate any of the standards in the underlying zone. He cited the purpose of the general commercial zone to accommodate a wide range of commercial uses, including those that attract shoppers from the community or larger market area and acknowledged that some types of residential uses were permitted, but they were limited to residences on the second story above a commercial and pre-existing residential uses on ground floors that were necessary or accessory to the permitted commercial use. He emphasized that all residential uses were related to commercial use and the proposed single-family lots did not fall into those categories. He said the purpose of the resort commercial subzone was to accommodate large-scale concentrations of recreational oriented uses and "...traditional residential and commercial uses shall not be permitted within this subzone except when shown as necessary to support the primary recreational oriented uses." He said the applicant contended that the proposed development of large expensive houses supported the recreational use by putting more people on the golf course but it was evident that the development did not support the recreational use but rather took advantage of it. He thought it was more likely that a residential subdivision would detract from the recreational use by placing an island of homes in the middle of what used to be fairways and creating potential hazards for course users.

Mr. Sherlock cited the natural disaster and hazards policy provisions of the code as another major factor. He pointed out that the proposed causeway was the only access point to the homes for emergency vehicles and evacuation route for residents. He said the proposed levee that would allow water to flow between the residential developments would be subject to erosion or failure, which could prevent access by emergency vehicles. He gave an example of how the internal circular traffic pattern could also prevent evacuation and access, as could the proposed landscaping that would constrict the travel width of the road. He also doubted that preservation of existing trees would be possible given the amount of fill material that was being proposed.

Parties in Opposition to the Application

Carl Sorenson, 170 Magnolia Drive, Creswell, submitted written testimony. He stated he lived across from the proposed development and had concerns about flooding. He illustrated the location of his home and a slough. He said that he had not seen the berm described by the applicant and was concerned that instead of water flowing to the east it would be redirected and undermine fill beneath the existing homes. He said the proposed development would place adjacent properties at higher risk of flooding. He also questioned the compatibility of the proposed homes with the design of existing homes, which did not take into consideration development directly across from them.

Ron Stirtz, 90 Magnolia Drive, Creswell, thanked the Pliska family for improvements to the golf course. He cited code provisions that required uses to be necessary to support the primary recreational oriented use. He did not feel that the addition of 19 homes was necessary to the golf course and had spoken to

golfers who did not intend to continue playing the course of the homes were built. He said the location of the new homes to the right of the fairway assured they would be constantly hit with golf balls. He questioned how raising the level of the land would protect homes from the risk of flooding.

Paul Wilkins, 220 Magnolia Drive, Creswell, also commended the golf course improvements but said the applicant was proposing a development that was opposed by course users. He was not concerned about the view shed but did not want to see the golf course make a mistake that could not be reversed.

Marge Bowers, 83244 North Bradford Road, Creswell, said she lived within 100 feet of the proposed development and had seen three floods at her door since 1951. She was concerned that the development would direct more floodwater toward her property as well as other property that she owned on Cloverdale Road. She said that in previous floods fences had been destroyed and it was expensive to replace them and to relocate livestock. She opposed the application.

Sharon Stirtz, 90 Magnolia Drive, Creswell, noted that the code related to solar requirements was ignored by the applicant and homes would be energy efficient because all 19 houses would not fit on the property if they were oriented properly for solar energy. She felt it was likely that the existing trees and vegetation would be killed by fill. She said the adjacent properties would be impacted by loss of open space view to the east. She said even though the applicant had stated the proposed development was part of the original development concept, not one of the property owners on south Magnolia Drive were told of the proposed development. She said that most homes were oriented to the east to take advantage of the view, which they were assured would exist forever.

Jim Denker, 130 Magnolia Drive, Creswell, said that residents were in agreement that the Pliskas had done an outstanding job of golf course improvements and that was not a concern. He did not understand why the proposed housing development was infringing on the golf course itself with fencing onto both the 4th and 5th fairway areas. He was concerned that homes on the 5th fairway would be hit more often if a second fairway on was developed on fairway 4 as had been suggested. He stated he was the last to purchase a home on the golf course and was told no more homes would be built on the course.

Jim Mercer, 150 Magnolia Drive, Creswell, said he was speaking on behalf of Ralph and LaVern Barnhard, who were unable to attend but had submitted written testimony. He noted he had also submitted written testimony. He remarked that a qualifying round for a nationwide tournament had been recently held at Emerald Valley Golf Course and he could not visualize how a major tournament could be conducted if the proposed development and related traffic occurred. He said the golf course was a community asset and the Planning Commission should assure that any development was done properly.

Joni Bezates, 80 Magnolia Drive, Creswell, submitted written testimony. She said her initial concern was for the view and property value. She said another concern was the effluent used to water the golf course, which was currently a level 2 but according to DEQ would have to be a level 4 in order to be safely used in proximity to the proposed development. She said her biggest fear was flooding and according to the Corps of Engineers the 1964 flood was a 50-year flood and the 1995 flood was a 25-year flood. She said it was not a matter of if but when a flood would occur. She said she did not currently have flood insurance but would need it if the development was allowed. She said the applicant stated no permits were required for the development but the Department of State Lands indicated that permits were required for anything over 50 cubic yards of fill or excavation required an application and permit. She was also concerned about wetlands and questioned some of the data that was used. She asked the

Planning Commission and City to protect residents and deny the development application.

Ms. Banks noted that as of 5 p.m. on September 29, 2005, written testimony had been submitted from the following individuals and copies provided to the commission:

Ralph and LaVern Barnhard
James Mercer
Ronald Stirtz
Sharon Stirtz
Marlys Becker
Larry and Sharon Arnold

Rebuttal from Applicant

Mr. Hughes said that the applicant would submit detailed written materials in rebuttal. He highlighted the flood issue and referred to the standards the applicant was required to adhere to. He said that while there might be additional topographic data to the FEMA studies updated in 1979 there was no credible evidence that the FIS report was flawed. He pointed out that the 25-year event in 1995 was very consistent with predicted floodplain issues. Referring to comments from Mr. Schlieder, he said the golf course soils were high quality and the golf course and developments were specifically designed to allow water to flow through. He said that a wetlands determination of the site had been submitted to DEQ and none were identified nor were permits required.

Mr. Gildea entered into the record a letter from the Department of State Lands dated August 29, 2005, regarding the wetlands issue. He referred the commission back to the criteria and standards contained in the ordinance and which the commission and applicants were required to follow. He said that the applicant would address in a written response Mr. Sherlock's contention that standards were ignored. He said the opponents appeared to base arguments on conclusions and not facts and the erroneous assumption that the opposition was presumed to be right. He commented that a 1936 photograph was used to establish flooding problems and inaccurately defined floodways and floodplains. He declared that the applicant was in compliance with the standards and criteria but for the few exceptions noted in the staff report that came within the approval criteria in the code under the sections relating to PUDs. Mr. Gildea asked for additional time to respond to other written testimony from the opponents.

Following a discussion of process and response periods it was determined that the record would remain open for written testimony until 5 p.m. on October 13, 2005, and the applicant would have until 5 p.m. on October 20, 2005, for rebuttal. All materials should be submitted to the Creswell City Hall. A special meeting of the commission would be scheduled for deliberations and decision.

Mr. Sherlock requested an opportunity to respond to any new argument submitted by the applicant.

Mr. Gildea agreed that cross-rebuttal arguments could be made if new arguments were submitted.

Mr. Morgan closed the public hearing.

IV. NEXT MEETING/ADJOURNMENT

Ms. Banks reminded the commission that its next regular meeting would be on October 20, 2005, at 7:30 p.m. and a special meeting would be on October 27, 2005, at 7:30 p.m.

The meeting adjourned at 9:45 p.m.

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