

MINUTES

Members Present: Chair Butler; Commissioners Chroust-Masin, Drabkin, Hall, Hillestad, Koch, Stassens, Tiedge

Members Absent: Commissioner Morgan

Staff Present: Mr. Pomeroy, Ms. Lynagh, Ms. Kindel

1. Approval of Minutes – January 17, 2013

Chair Butler called the meeting to order at 6:32 p.m. He listed the names of the Commissioners who had been present at the January 17, 2013, Planning Commission meeting, and called for action on the minutes. Commissioner Drabkin said that she wanted to make a correction to the minutes, and stated that she had made a disclosure at the meeting that she knew Stacy Martin, but knowing her would not affect her decision on the application (CU 11-12).¹ Chair Butler indicated that the correction would be made to the minutes, and Commissioner Chroust-Masin MOVED to approve the minutes as amended; SECONDED by Commissioner Koch. Motion PASSED unanimously.

2. Public Hearing (Quasi Judicial)

◆ Docket CU 1-13

Request: Approval of a conditional use permit to allow for the operation of a daycare for more than 12 children within an existing residence. The use of the residence will be specifically for a daycare and will not be owner-occupied.

Location: 1700 SW Alexandria Street, and more specifically described as Tax Lot 2700, Section 30AA, T. 4 S., R. 4 W., W.M.

Applicant: Socorro Shaw

Chair Butler opened the public hearing at 6:37 p.m., and requested disclosures, abstentions, or objections to jurisdiction. There were none from the Planning Commissioners that were present, and Chair Butler called for the staff report.

Ms. Lynagh explained that the application was for a day care for more than 12 children in a residential zone. She stated that the applicant would not reside at the subject site, a fact which, together with the number of children, triggered the need for a conditional use permit. She said that the applicant had extensive experience as a day care provider, and staff recommended approval of the request. Ms. Lynagh noted that the Planning Commission members had been provided a copy of a letter of opposition from the property owners of 1701 SW Alexandria, and she entered it into the record. She clarified that, although the applicant intended to provide day care services for children, such a use could be for care of children or adults.

¹ Subsequent review of the audio record does not indicate such a disclosure.

Chair Butler called for the applicant's testimony.

James Shaw said he and his wife were the owners of the subject site, which had previously been used by them as a rental property. He explained that his wife had been a day care provider in their home since 1998, and they had recently decided to move it to its own location. He responded to concerns about traffic on Alexandria Street, and said that traffic congestion on that street would be considerably less than what they experienced on Fellows Street, the current location of their day care. He pointed out that they would not need a conditional use permit if they were going to reside at the location of the day care facility, and said they currently cared for seven children, four of which were full time. He explained further about traffic related to the day care business, and said the children would be dropped off at their Fellows Street home and transported to the Alexandria Street location, where their van would be parked in the garage. Additional parking options, he said, included the driveway, which could accommodate one vehicle, and there were at least two on-street parking spaces available. Mr. Shaw said that the day care was subject to six annual inspections, four of which were unannounced; a residence re-approval every three years; and an annual background check for any staff member over 18 years of age. In addition, he stated that they had never had a single violation or noise complaint. He asked the Commissioners to approve their application.

Commissioner Stassens asked how many vehicles were dropping off children at the most congested time, and what the total number of children was that they anticipated would be in their care.

Mrs. Shaw said there might be two cars at any one time, and Mr. Shaw said they had never exceeded 12 children. He further explained that it would not benefit them financially to have more than 12 children, but would receive a larger state stipend if they were certified for up to 16.

Commissioner Koch expressed concern that the yard at the subject site was not large enough for the children to play in.

Mr. Shaw said that there had previously been a child care facility at the subject site, and that the back yard was adequate for 12 children. He also noted there was a park only one block away where the children would be taken on occasion to play.

In response to questions from members of the audience, Mr. Shaw reiterated that the children would be dropped off elsewhere and then transported to the Alexandria Street location at around 9:00 a.m. With regard to pick up of the children, he said pick-up times would vary, and might amount to two or three vehicles at any one time.

Chair Butler called for opponents' testimony.

Alexandria Clifton, 1704 SW Alexandria Street, said she owned the other half of the applicants' townhome. She read a statement into the record in which she said she was opposed to the application. In her statement, she said she thought there should be mitigation measures submitted by the applicant for her review and approval, as well as steps taken to soundproof windows and the adjoining wall of the subject site in order to address noise associated with the proposed use. She said that the noise was a big concern for her current tenants and any future tenants. Ms. Clifton said the yard was very small, and there was a limited amount of available parking, which had her concerned about vehicles quickly parking and blocking her tenants'

parking spot. She also said that the day care should post hours of operation, staff should be required to undergo background checks, and she noted her concerns about their property value decreasing because of the proximity of the business operation.

Kris Zirkel, 1704 SW Alexandria Street, said he was the tenant in the adjacent property. He also expressed concern about noise from the day care facility, and said his son's bedroom was connected to the common wall. He said his son had complained on many occasions about being able to hear children next door while he was in his room. He also discussed safety issues due to traffic on Alexandria and Emily Streets, and stated he had witnessed numerous vehicle accidents at the intersection of the two streets. Further, he said his wife's vehicle had been totaled when parked on Alexandria Street. Mr. Zirkel said that friends of the tenants at the subject site had, on occasion, parked such that it forced them to go around the vehicle and over the curb in order to exit their driveway.

Commissioner Chroust-Masin asked whether Ms. Clifton had been aware of the existence of the previous day care, whether there had been any problems associated with it, and, if so, whether she had complained about it.

Ms. Clifton said when they lived there, they had been aware the neighbor cared for children, and that it was noisy. She admitted that it had been a long time ago, and she never made a formal complaint about noise.

Discussion ensued with regard to possible traffic issues, parking issues, and litter from cars belonging to individuals visiting the neighboring property.

Cynthia Laeger said she and her husband, Karl, owned the property at 1707 SW Alexandria, located at a right angle across the street from the subject site. She also discussed potential parking issues, traffic, safety, and whether the subject home and yard were large enough for the proposed use.

Karl Laeger concurred with his wife, and discussed some of the accidents that had occurred in the area.

There was no further testimony, and Chair Butler called for the public agency report.

Ms. Lynagh said that all comments from public agencies had been included in the staff report.

Chair Butler asked the applicant to address some of the concerns raised by opponents.

Mr. Shaw said that they had never had a single complaint about the day care, either in person, or from law enforcement officials. He noted that the common wall already had a sound barrier, which was a requirement for townhomes, and clarified that both the garage and one bedroom shared the common wall. He pointed out that moving to the 1108-square-foot Alexandria Street location would provide considerably more room for the day care than their current facility which was in a 24x24 foot converted garage. Mr. Shaw listed some of the state requirements for safety including child to supervisor ratio, which required them to have an employee because they currently had seven children in their care.

Mr. Shaw explained that they would only have one vehicle at the day care, because their employee did not own a car. Parents typically picked up their children between 4:30 p.m. and 5:00 p.m., he said, and there was room to park one vehicle in the driveway and two directly in front of the facility. He emphasized that there would be no encroachment into the neighbor's parking area by any of the cars associated with the day care.

Ms. Lynagh said that the subject site had available the required two off-street parking spaces that were a condition of approval.

Commissioner Drabkin asked whether parents were advised as to where they should park when they picked up their children.

Mr. Shaw affirmed that they were not only told where they could park, they were also advised where they could not park.

Chair Butler asked whether the fence at the facility would be kept locked.

Mr. Shaw said that the gate would be kept locked when the children were at the day care.

The applicants waived the seven-day period, and Chair Butler closed the public hearing at 7:42 p.m.

Commissioner Tiedge said that some of the objections to the application had more to do with the day care use than being an unoccupied day care facility. He pointed out that a day care for up to 12 children was a permitted use; so the application did not appear to stretch the permitted use much. He said that all the issues about whether the day care was safe or large enough were subject exclusively to state regulation and not to the conditional use application. Commissioner Tiedge said that it was not up to the Planning Commissioners to decide whether it was a good idea to have a day care in the proposed location, or whether the property or neighborhood was suitable, because it was already zoned for such a use. He said there was no compelling testimony about why it would make a difference if the property was occupied, and he had not heard anything to suggest that the lack of being a residence would create problems that would be solved if someone lived there full time. Therefore, he said he could find no reason to oppose the application.

Commissioner Stassens agreed with Commissioner Tiedge, and stated that if there were complaints in the future, the conditional use permit could be reviewed.

Commissioner Stassens MOVED based on the findings of fact, the conclusionary findings for approval, and the material submitted by the applicant, to APPROVE CU 1-13, subject to the three conditions of approval; SECONDED by Commissioner Drabkin. Motion PASSED unanimously.

Chair Butler called for a recess at 7:47 p.m., and reconvened the meeting at 7:55 p.m. Commissioner Tiedge excused himself and left the meeting at 7:55 p.m.

3. Public Hearing (Quasi Judicial)

◆ Docket CPA 1-13 / ZC 1-13

Request: Approval of a Comprehensive Plan map amendment from Residential to Commercial, and a zone change from an R-4 (Multi-Family Residential) zone to a C-3 PD (General Commercial, Planned Development) zone to allow development of an automobile showroom and sales lot on two parcels of land totaling some 0.44 acres in size (approximately 18,960 square feet).

Location: 304 NE Logan Street and 337 NE Macy Street, and more specifically described as Tax Lots 3100 and 3200, Section 21AC, T. 4 S., R. 4 W., W.M., respectively.

Applicant: Jim Doran

Chair Butler opened the public hearing at 7:56 p.m., and requested disclosures, abstentions, or objections to jurisdiction. There were none from the Planning Commissioners that were present, and Chair Butler called for the staff report.

Mr. Pomeroy said that the applicant was seeking a comprehensive plan map amendment and a zone change in order to develop an automobile showroom and sales lot on two parcels of land. He said the application was straightforward, and staff recommended the Planning Commission recommend approval of the applications to the City Council, subject to 13 conditions. He noted that one of the conditions of approval required retention of the largest tree on the site as part of the landscaping.

Chair Butler called for the applicant's testimony.

Jim Doran said that Subaru wanted them to do a new facility, which was something they also wanted to do. He said they were in agreement with the 13 conditions of approval.

Commissioner Chroust-Masin asked whether the service department would also be located in the new facility.

Mr. Doran said that the service department would remain in the building across the street.

Commissioner Hillestad thanked the applicant for preserving the trees.

There was no proponent or opponent testimony, and Chair Butler called for the public agency report.

Mr. Pomeroy said that all relevant public agencies and departments had been contacted, and any comments had been included in the staff report. He said there were no comments in opposition to the application.

The applicant waived the seven-day period, and Chair Butler closed the public hearing at 8:03 p.m.

Commissioner Koch MOVED, based on the application materials, the testimony received, the findings of fact, and the staff report and recommendations, to recommend APPROVAL to the City Council of CPA 1-13 and ZC 1-13, subject to the conditions of approval as noted in the staff report; SECONDED by Commissioner Hall. Motion PASSED unanimously.

4. Public Hearing (Quasi Judicial)

◆ Docket ZC 2-13

Request: Approval to amend Section 2 (3) of Planned Development Ordinance No. 4696 by removing the current restriction on the removal of trees greater than nine inches in diameter from private properties within the Grandhaven Heights subdivision.

Location: Generally north of Grandhaven Street, east of Newby Street, and west of Grandhaven Drive.

Applicant: Vernon and Sheila McCluskey, Kelly Couch, and Mark Goodman

Chair Butler opened the public hearing at 8:06 p.m., and requested disclosures, abstentions, or objections to jurisdiction. Commissioner Chroust-Masin disclosed that he was friends with the McCluskeys, but stated that it would not influence his decision on the application. There were no disclosures from any of the other Planning Commissioners that were present, and Chair Butler called for the staff report.

Mr. Pomeroy said that the Planning Director had provided a fairly detailed memorandum, dated April 18, 2013, which contained a history of the events that had transpired regarding trees in the subject subdivision, and in particular on the applicant's property. He noted that the Commissioners could choose to modify the planned development by removing the condition to preserve the trees, or leave the condition in place and require retention of the trees.

Chair Butler called for the applicants' testimony.

The three applicants individually introduced themselves as Kelly Couch, 3305 NE Lucas Drive, which was next door to the McCluskeys; Sheila McCluskey, 3347 NE Lucas Drive; and Mark Goodman, 1491 NE Carly Court, which was directly southwest of the McCluskeys.

Mr. Couch said he had lived in his current home since December 2012, and although he was aware the trees at the rear of his property would cause some maintenance issues, he had no current plans to remove them. He explained that the six mature trees were neglected when they moved in so he recently had them serviced. He said that, although he liked the trees, he understood the concerns of the McCluskeys, and if his trees became an issue in the future, he would like to have the option to remove them. Mr. Couch said he did not believe the trees had any kind of public benefit to anyone beyond them as property owners and some of the surrounding neighbors. He said he understood the issues Mrs. McCluskey had with her trees, and if they were ever in a similar position in the future, where the trees were causing damage to their property or if the maintenance became overwhelming or costly, he would like the ability to take them out.

Mrs. McCluskey said that when they bought the property they planned to cut the trees down if they became a problem, since they were on their property, but had now become aware of the ordinance prohibiting that. She said they used to spend winters in Arizona, but no longer do that, so now they experience the wind storms while in their home, and they are very frightening. Further, she said they may not be able to use their pump house in the future, because the trees are right up to it, and they had been told by an arborist that eventually the root system would raise up the concrete floor. She said the trees were also restricting their ability to maintain or replace their fence, because they were right up to it and the fence was eventually going to fall down. Mrs. McCluskey said the trees were not particularly beautiful, were really a nuisance, and during one wind storm, they had large branches across the front of their house. She said that they owned their home, and it didn't seem right that they were scared to stay in it at times because of the wind.

Mr. Goodman said he did not have any immediate plans to remove the trees either, but also noted they had maintenance issues. He said they had lived there since last June, and on a regular basis since then, they were removing very large limbs from their yard. He said they had their own children as well as day care children, and his biggest concern was safety. Mr. Goodman stated that they were fast growing trees, and he would like the ability to remove them, at his discretion, if necessary.

Mrs. McCluskey added that they intended to have a very nice, landscaped yard with smaller trees, if allowed to remove the existing ones. She said that it was not possible to landscape their yard with the trees there.

Mr. Couch said they had been in their home about a week when there was a big wind storm with 50 mph winds. He said that this occurred before they had the trees maintained, and had good-sized branches and pine cones hitting their roof all night.

Commissioner Hillestad asked whether there was any history of anyone being killed by trees in McMinnville.

Mr. Pomeroy said he thought there had been such an incident about 15 years ago where a tree had fallen on an apartment building and killed a resident. Chair Butler confirmed that.

Commissioner Stassens asked Mrs. McCluskey whether she was aware of the ordinance that restricted cutting the trees when she purchased her property.

Mrs. McCluskey said she was unaware of it, and did not think anyone else was either.

Commissioner Stassens asked whether Mrs. McCluskey had an arborist evaluate the trees.

Mrs. McCluskey said they had the trees trimmed up, and that a couple of arborists had commented about the eventuality of the roots uplifting the cement slab beneath their pump house. However, she said that, although the trees appeared to be healthy, she did not want them there and felt as a property owner and taxpayer, they should be allowed to do with their property as they saw fit. She expressed her opinion that it would be prettier to have the trees gone, and have a nice, landscaped yard instead; something she believed was her right.

Commissioner Hillestad asked whether the applicants had received a title insurance report on their properties when they purchased them.

Mrs. McCluskey said she “probably” had received one; Mr. Goodman said he did not recall; and Mr. Couch said he did not recall anything in the title report about the ordinance.

Commissioner Hall asked whether Mrs. McCluskey had ever noticed the ground around the trees “lifting” during a wind episode.

Mrs. McCluskey said that the ground would lift “slightly,” and repeated that it was a “very scary situation” that could make them consider moving.

Chair Butler called for proponent testimony.

Ashley Spaun, 3271 NE Lucas Drive, said she lived right next door to Mr. Couch, and they also had trees in their yard. She agreed that during storms a person would not want to be in the back yard, because pine cones and limbs would come down. However, she said they liked the trees and did not have any plans to take any out; but they did pose a danger during windstorms.

Chair Butler called for opponents’ testimony.

Gary Lucas, 3125 NE Lucas Drive, said he designed the subdivision, built it, and put all the utilities in. He said the property had belonged to his family, and one of the conditions of approval for the subdivision had been that the trees be retained, and for that reason, the subdivision had to be designed around the trees. Mr. Lucas gave a history of the Douglas fir trees in the subdivision, which were planted as seedlings over the time period from 1954 until 1972, and now had attained an approximate height of 60 feet. He said he wanted to maintain the subdivision the way it was designed, and pointed out that any of the trees could be removed if an arborist’s report confirmed it was diseased. He said that the McCluskeys had purchased their property through a local real estate agent, and he had no idea whether they were informed of the tree cutting restriction at the time; however, before they built their home, they attempted to remove the trees, and were informed at that time they could not. Mr. Lucas said that the trees were there when the McCluskeys purchased the property, and neither he nor the Planning Commission should be responsible for them failing to read a title report or realizing that a fir tree would grow. He asked the Planning Commissioners to enforce the condition of approval in the planned development ordinance, and deny the applicants’ request.

In response to a series of questions, Mr. Lucas said that some of the trees were about 40 feet tall when the Columbus Day storm occurred, which had 120 mph winds, and all of the trees had survived. He explained that the root system of a Douglas fir tree spreads at least two feet from the foliage with a tap root at least 25 percent of the height of the tree, so they are well anchored. In addition, he said the trees in the subdivision had up to two additional feet of topsoil put on and around them during construction, so the trees were very stable and healthy. He stated that Douglas fir trees were dependent upon the root system from others to anchor them and also to feed nutrients, which made them susceptible to root problems if any tree within 20 feet was removed. Mr. Lucas pointed out that the trees would serve as an anchor to one another, and to remove some of them would actually increase the danger of nearby trees falling. He suggested that the trees at the McCluskey’s could be limbed up to alleviate issues associated with their proximity to the pump house.

Commissioner Chroust-Masin asked why the condition requiring retention of the trees was placed on the subdivision in the first place.

Mr. Lucas said that he believed the condition was added in response to his failure to give timely notice to the City Engineering Department about a visit by state agencies regarding development of the subdivision. Regardless, he said his father, who passed away during the construction phase, had wanted the trees retained.

Commissioner Hall asked for clarification of the rationale for retention of the trees. He said that Mr. Lucas had indicated there was "a game" involved, but the Commissioners just wanted to do what was best.

Mr. Lucas said that there "was game playing going on between Engineering and myself," but the rationale for keeping the trees was that they were there and they were healthy. He said that, in his opinion, "you don't cut a tree down unless you absolutely have to."

Commissioner Hall said that trees were not sacred in and of themselves, unless they had some particular historical significance. Further, he said if a tree was cut down, another one could be planted in its place.

Commissioner Stassens asked why the trees were planted in the first place.

Mr. Lucas said that the trees had been planted for erosion control, and most were spaced about 20-25 feet apart.

Commissioner Hillestad stated that mature trees usually add value to a property, and asked Mr. Lucas what his experience as a developer was in that regard, and also whether the property was marketed with the trees listed as an amenity.

Mr. Lucas said he did not know whether trees influenced property value in today's market, but previously a home would appraise for more if there were trees on the property. He added that he designed his home specifically for the location, taking the trees into account and positioning it 10 feet further away from the trees than the location the McCluskeys had situated their home. He noted that there were measures that could be taken to address some of the nuisance issues associated with the trees, including gutter guards to prevent needles from plugging the gutters.

Chair Butler called for the public agency report.

Mr. Pomeroy said that all comments from public agencies had been included in the staff report.

Angie Redford, 3196 NE Lucas Drive, took issue with Mr. Lucas' opinion that Douglas fir trees did not fall easily in wind storms. She said there were two fir trees that had fallen in a wind storm at an office she had, which was located at 2046 NE Highway 99W.

Mr. Goodman said he did not see any purpose in retaining the trees. He said it sounded as if "someone got ticked off and said 'okay, you have to keep the trees'." He stated that was not a legitimate reason to force a person to have trees.

Mr. Couch said it sounded as if Mr. Lucas had a sentimental attachment to the trees. He stated that the trees did not have a lot of aesthetic value, and did not provide any privacy. He pointed out that the ordinance mandated the trees be protected "during all phases of development," and pointed out that development ended 10 or 12 years ago.

The applicants waived the seven-day period, and Chair Butler closed the public hearing at 9:00 p.m.

Commissioner Chroust-Masin said that he saw downed trees every year on his way to the coast. He said the property was no longer Mr. Lucas' and the current property owners were responsible for the trees. Therefore, he said he was in favor of taking the trees down if the applicants wished to.

Commissioner Drabkin said that, while she was sympathetic with the McCluskey's situation, the request was to change the planned development ordinance. She said they did not know why the city wanted to preserve the trees, and noted the ordinance included provisions to allow for removal of the trees. Further, she said that the ordinance pertained to a much larger property, yet the majority of the homeowners in the subdivision were not present to express their support for the change. Therefore, she said she did not feel as if there was compelling testimony that would support a change to the ordinance.

Commissioner Koch said he had huge fir and pine trees at his home, and had previously experienced fallen trees at a home they owned in the mountains. He said that he personally would prefer to have control of his own destiny, so was inclined to approve the request.

Commissioner Hall said he was still unclear about the rationale to keep the trees in the first place, and even if a rationale existed at the time the ordinance was written, he was not convinced that would still exist today. He stated that the subdivision was no longer farm property, no longer orchards, and these particular trees were out of character with the entire rest of the development. He pointed out that there were no other similar stands of Douglas fir in the neighborhood, so they constituted a unique potential problem that did not exist in the rest of the neighborhood. Commissioner Hall said that, in his viewpoint, there was no clear rationale for the condition in the first place; therefore, he was in favor of changing the ordinance.

Chair Butler said that since they did not know what the rationale for the requirement was, it could not be considered. He stated that they needed to determine whether the ordinance was just and valid as it was submitted, or whether there was a clear and compelling reason to change it. He recalled that there had been previous occasions in which the Planning Commission evaluated tree removal requests from individuals who argued that the trees were their personal property, so they should be allowed to remove them. He noted that the request was not whether to retain or remove the trees, it was to change the ordinance, which did allow removal of a diseased tree, if necessary. However, he said that they had heard testimony that the trees were healthy. Therefore, he said he was in favor of keeping the ordinance as written.

Commissioner Stassens said that, while she sympathized with the applicants' tree-maintenance issues, she was aware that a real estate contract listed any restrictions placed on the property and therefore, she did not understand why the applicants had been unaware of the condition. She said she believed it was the buyer's responsibility to know what they were buying, and they clearly had purchased the property with the ordinance and the trees on it. Commissioner Stassens said that all testimony was that the trees were healthy, and she was in favor of upholding the ordinance.

Commissioner Hillestad said he was personally strongly opposed to granting the request, and noted that one of the things that attracted him to McMinnville was the trees and an ethic to preserve and increase them. He also noted that the trees in question were healthy now, but could be taken down if that changed. He said that the applicants agreed to the conditions of the ordinance when they bought into the subdivision, but now had decided the trees were not aesthetic for them. He expressed concern that approval of the request would set a precedent, so he was opposed to it.

Commissioner Drabkin MOVED, based upon the application materials, the testimony received, and the staff report and recommendation, to DENY the applicants' request to amend planned development ordinance No. 4696; SECONDED by Commissioner Hillestad. Motion PASSED by a vote of four in favor and three in opposition (Chroust-Masin, Hall, Koch).

5. Old/New Business

- Mr. Pomeroy reminded the Planning Commission members that the next meeting would be held on Wednesday, May 15.
- Ms. Lynagh said that there were two items slated for the May 15 Planning Commission meeting; the first draft of the Northeast Gateway planned development ordinance, and an application from Church on the Hill to add two new buildings to the site.
- Chair Butler reminded the Commissioners to file their SEI forms (Statement of Economic Interest).
- The Planning Commissioners discussed the possible creation of a city tree ordinance, and decided they would like the City Council to consider that possibility at a future goal setting session.

6. Adjournment

Commissioner Chroust-Masin MOVED to adjourn the meeting; SECONDED by Commissioner Drabkin. Motion PASSED unanimously, and Chair Butler adjourned the meeting at 9:28 p.m.

Doug Montgomery
Secretary