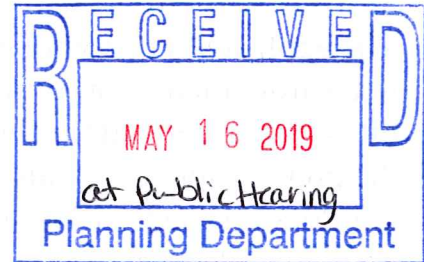


May 16, 2019

McMinnville Planning Commission
c/o Jamie Fleckenstein
City of McMinnville Planning Department
231 NE 5th Street
McMinnville, OR 97128



Re: PDA 3-18/PDA 4-18/S 3-18 (Planned Development
Amendments and Subdivision)
Applicant – Premier Development

Dear Chair Hall and Members of the Planning Commission:

This firm represents the Friends of Baker Creek (“FBC”), a group of local neighbors concerned about the development contemplated in the above applications and its impact on the Baker Creek wetlands and access in this neighborhood.

The FBC urge you to protect Baker Creek and its neighbors by:

- (1) approving PDA 3-18 (removing 11.47 acres from the Oak Ridge Planned Development); and
- (2) Denying PDA 4-18 and S 3-18, proposing development in the newly created, larger Oak Ridge Meadows Planned Development.

I. INTRODUCTION

The applicant would have you believe that you have no choice on the application before you – that it must be approved. This is incorrect – this is a discretionary decision and, as discussed below, the application must be consistent with

McMinnville's Comprehensive Plan. As detailed below, this proposal is inconsistent with the Comprehensive Plan and must be rejected.

The applicant's overwrought pleas to the contrary appearing in the May 15, 2019, letter from their attorney and memorandum from their planner are simply a last ditch effort to avoid the inevitable. Contrary to the planner's memorandum, using the policies found in your Comprehensive Plan does not violate the goal post rule, nor does it somehow constitute a "moratorium." The planner's memorandum adds nothing to the Planning Commission's review of this application.

The letter from the attorney is of even less use; the bulk of her letter attacks the hydrology report prepared by PBS Engineering. Her letter might be worthwhile if she were an engineer, but there's no indication she has any engineering training or expertise in analyzing hydrologic flows. Although she may be an experienced land use attorney, she is not an engineer and LUBA has previously held that a letter from an attorney opining on matters that require expertise is not substantial evidence to support a decision. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015); *see also Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

Simply put, the Planning Commission cannot rely on that new material and, as discussed below, these applications must be denied. Development is appropriate on this property, but only development that is consistent with the City's Comprehensive Plan and protects Baker Creek, as well as the residents of McMinnville.

II. ISSUES

A. Transportation

Turning first to traffic impacts, the Planning Commission has heard and seen testimony from a large number of concerned residents about the traffic that would result from the proposed development. Those concerns are valid; the transportation system designed by the applicant violates several Comprehensive Plan policies. In particular, it is not consistent with the following policies:

1. Policy 118.00.1. This policy requires new roads in the city to include the following design factor:

“The City of McMinnville shall encourage development of roads that include the following design factors:

1. Minimal adverse effects on, and advantageous utilization of, natural features of the land.”

The isolated portion of roadway labelled as Pinehurst is not consistent with this policy; in particular, that roadway section will have significant adverse effects on the most prominent natural feature of the site – the isolated road section will destroy over one-third of the wetlands on the property.

The proposed road through the wetland is not necessary and serves only to destroy a large portion of a functioning wetland. The applicant has noted that the wetland impacts will be mitigated through a mitigation bank elsewhere in the valley. Although that may be acceptable under state and federal regulations, that mitigation does not address this City policy. The policy does not say that new roads can have significant effects on natural features, so long as they are mitigated. Instead, Policy 118.00.1 requires that roadway design must have “minimal” adverse effects on natural features. The destruction of a third of the wetlands on the property is not “minimal.”

The better course would be to avoid these impacts on the wetland and not build a road through this portion of the site. This is especially important because the road will not connect through to anything. The neighboring property is outside of the city limits and the owner has made clear that he will not be developing his property. Accordingly, the proposed development is not consistent with Policy 118.00.1 and, therefore, those portions of the proposal that rely on the roadway should be denied.

2. Policy 132.29.00. This policy requires new roads in the city to be timed to coincide with development:

“The construction of transportation facilities in the McMinnville planning area shall be timed to coincide with community needs, and shall be implemented so as to minimize impacts on existing development.”

In this case, the development of this property is not timed to coincide with the necessary transportation facilities to serve it. As explained in many comments, the development contemplated by this application should be served by the construction of NW Shadden Drive as a full street – not just as an emergency access. The development of this property without an alternative outlet will not “minimize” impacts on the existing development, but maximize those impacts. The developer attempts to avoid this obligation by noting that the adjacent property should develop shortly, so the impacts on existing development is only a short term issue.¹ However, the applicant has it backwards; the development of this property should be delayed until there are adequate facilities to serve it and placing the burden of the new traffic on existing development is not consistent with this policy.

Moreover, the development of the isolated roadway section on the east side of the property is not appropriate either; the owner of the adjoining parcel, located outside of the City, has made clear that he has no intention of developing his property and there is no “community need” to construct this road to nowhere. Accordingly, the proposed development is not consistent with Policy 132.29.00 and those portions of the proposal that rely on the roadway should be denied.

3. Policy 132.35.00. This policy requires new roads to avoid disrupting neighborhoods:

“Transportation facilities in the McMinnville planning area shall be, to the degree possible, designed and constructed to mitigate noise, energy consumption, and neighborhood disruption, and to encourage the use of public transit, bikeways, sidewalks, and walkways.”

¹ Although the applicant relies on the development of the neighboring property, no application for that development has been filed and it may never occur. The applicant, and the City, cannot rely on unproposed development that may never occur.

The proposed development does not meet this policy because the new transportation facilities, i.e., roads, do not mitigate the noise and neighborhood disruption caused by this application. There are two specific issues with the proposed development. First, as discussed above, the development of this property without the construction of the NW Shadden Drive connection will lead to significant neighborhood disruption, as 1,000 new trips will pass through the sole entry point for this development. It is hard to imagine a more effective way to disrupt a neighborhood. In addition, the isolated roadway section on the east side of this property will also disrupt the neighborhood by creating an unused road section that will not be used and, instead, simply become a road to nowhere (but which would require the destruction of a significant portion of a functioning wetland). Accordingly, the proposed development is not consistent with Policy 118.00.1 and those portions of the proposal that rely on the roadway should be denied.

B. Flooding

The applicant's attorney and planner are correct that the city is subject to the goal post rule – the application is subject to the standards and criteria that are in place when that application was submitted. FBC are not asking the Planning Commission to do anything other than apply the standards that have been in place since well before this application was submitted.

MZO 17.74.070(B), which was adopted well before this application was submitted, explicitly requires amendments to existing Planned Developments, such as proposed in these applications, to be consistent with the Comprehensive Plan. A significant part of the Staff Report, the proposed findings, and the application attempted to address a variety of Comprehensive Plan policies, but they miss several important plan policies that address flooding, including the following policies:

1. Policy 2.00 This policy requires the city to enforce development controls on lands with building constraints, including natural hazards:

“The City of McMinnville shall continue to enforce appropriate development controls on lands with identified building constraints,

including, but not limited to, excessive slope, limiting soil characteristics, and natural hazards.”

As detailed in the Baker Creek Hydrologic Analysis submitted to the Planning Commission, this property is subject to a significant natural hazard – it is located in an area subject to significant flooding. Such development presents a danger to many people – future residents of this development, as well as the current neighbors and the city itself, which may face significant liability for approving development in an area subject to flooding. Policy 2.00 requires the city to control such development and the portions of this application that attempt to develop in the floodplain are inconsistent with such controls and should be denied.

2. Policy 143.00 This policy requires the city to retain natural drainage ways:

“The City of McMinnville shall encourage the retention of natural drainage ways for storm water drainage.”

The applicant’s proposal does not retain natural drainage ways; instead, it proposes to destroy over one-third of the wetlands on the property and reroute the current drainage through the site. The portions of the application that propose development in the floodplain are inconsistent with Policy 143.00 and therefore, should be denied.

C. Wetlands Preservation

Much of the applicant’s response to any concern regarding the destruction of the wetlands is to suggest that the city should simply throw up its hands and say McMinnville has abdicated all responsibility for wetlands and takes no position on whether an applicant can destroy wetlands in the City. Such an approach is inconsistent with the values of McMinnville and, more importantly, contrary to the following policies from the City’s Comprehensive Plan:

1. Policy 74.00 This policy requires planned developments to retain distinctive natural features:

“Distinctive natural, topographic, and aesthetic features within planned developments shall be retained in all development designs.”

The wetlands on the property are a distinctive natural feature and the application does not “retain” those wetlands; to the contrary, the application proposes to destroy over one-third of the wetlands. Although the applicant has proposed to mitigate the destruction of these wetlands, that mitigation will occur elsewhere and, while that mitigation may be acceptable for state and federal purposes, this, and the following policies, do not allow for mitigation. Instead, these policies explicitly require retention of the natural features on the site. Accordingly, those portions of the proposal that do not retain the wetlands should be denied.

2. Policy 80.00 This policy also requires planned developments to preserve of distinctive or unique natural features:

“In proposed residential developments, distinctive or unique natural features such as wooded areas, isolated preservable trees, and drainage swales shall be preserved wherever feasible.”

As with Policy 74.00, the wetlands on the site are a distinctive and unique natural feature and this policy requires those wetlands to be retained, when feasible. It is feasible to re-design this planned development and subdivision to preserve the wetlands by eliminating the isolated roadway section on the east side of the property. Accordingly, those portions of the proposal that do not retain the wetlands should be denied.

3. Policy 118.00(1) This policy requires roads to be designed to have minimal effects on natural features:

“The City of McMinnville shall encourage development of roads that include the following design factors:

“1. Minimal adverse effects on, and advantageous utilization of, natural features of the land.

This policy is similar to the above two policies, except it is specifically directed at road design; it asks that roads be designed to minimize adverse effects on natural features, such as the wetlands. As described above, the design of this road does not “minimize” impacts on the wetlands, but maximizes those impacts. The road

could be eliminated or rerouted to avoid any impacts to the wetlands. Accordingly, those portions of the proposal that propose a road through the wetlands should be denied.

4. Policy 187.50(1)(a) This policy requires all neighborhoods, including the one proposed by the applicant to preserve natural features, specifically including wetlands:

“Neighborhoods shall be designed to preserve significant natural features including, but not limited to, watercourses, sensitive lands, steep slopes, wetlands, wooded areas, and landmark trees.”

Once again, the application before the Planning Commission does not “preserve” the significant natural feature of the property – the wetland – instead, the application proposes to destroy one-third of the wetland. Such a course is not consistent with this policy and those applications that propose destruction of the wetlands should be denied.

IV. CONCLUSION

The Comprehensive Plan policies identified above are not just words on a page; they are mandatory policies that must be followed. As the City’s Comprehensive Plan itself says, there policies

“[C]arry the full force of the authority of the City of McMinnville and are therefore mandated.”

MZO 17.74.070(B) specifically requires any application to amend a planned development to be consistent with these policies. As discussed above, the portions of the proposal that contemplate further development are not consistent with those policies and must be rejected.

Accordingly, the Friends of Baker Creek respectfully ask this Planning Commission to deny PDA 4-18 and the subdivision on which it depends, S 3-18. Those proposals do not adequately accommodate or address the City’s policies as

McMinnville Planning Commission

May 16, 2019

Page 9

detailed above. Given these shortcomings, the Planning Commission has no choice but to reject this application.

Very truly yours,



Bill Kabeiseman

BK:kma
Enclosure
cc: Clients