

Council Questions Excerpted From Tigard City Council Minutes of January 13, 2015

Agenda Item No. 6 - Quasi-Judicial Public Hearing – Consideration of A + O Apartments Comprehensive Plan Amendment (CPA2014-00002), Planned Development Review (PDR2014-00003), Site Development Review (SDR2014-00004), and Sensitive Lands Review (SLR2014-00002)

Staff Response To Council Questions

With References to Applicant's Response (January 22, 2015 Memo to Council)

- 1. Woodard: Need more information on how building this development affects National Flood Insurance. Is the city responsible and liable in the case of a 100-year flood?**

City Attorney response: The City is not responsible for property damage to private properties caused by large scale flooding. For owners who choose to obtain insurance, protection is offered through the National Flood Insurance Program of the federal government.

For a community to qualify for the program the local government must have in place a flood plain protection ordinance, as the City of Tigard does. Approving a project which conforms to the ordinance does not place the availability of flood insurance in jeopardy. A community which engaged in a regular pattern of ignoring its ordinance would put the availability of the program at risk, but that is not the case in Tigard and that allegation has not been made in this case.

- 2. Is there a way to do a downstream modification of the water holding area to help with the bottleneck where water flows down Hall and Oak Streets near the bridge structure?**

See Applicant Memo dated January 22, 2015, #1

- 3. Snider: Wants to understand from staff why their recommendation on wetlands modification is acceptable. Why not require taller buildings?**

Staff's recommendation is based on the applicant nominally addressing the five approval criteria within their ESEE analysis and the applicant's argument to marginally impact the resource to create a coherent building site. However, it is incumbent on the Council in criterion #2 to make the balancing decision: *that the adverse economic consequences of not allowing the conflicting use are sufficient to justify the loss, or partial loss, of the resource.* As a comprehensive plan amendment, the task is to balance two goods, the aggregate economic gains to the community of the proposed development with the natural resource functions and values of the impacted wetlands.

Background on the reason that a Comprehensive Plan Amendment is necessary in order to impact Significant Wetlands in Tigard. When cities in Oregon conduct an Inventory of Significant Wetlands under State Planning Goal 5, there is a very specific set of administrative rules and procedures that must be followed. The state provides only two options for protecting significant wetlands. One, the jurisdiction may choose the states' "safe harbor" option that fully protects all of the significant wetlands and essentially acts as a "least effort" option for the jurisdiction. The state also provides a model implementing ordinance that a local jurisdiction can adopt.

The second option requires the jurisdiction to conduct an ESEE analysis on all of the significant wetlands. This can be a very expensive and time consuming effort for local jurisdictions to take on. The ESEE is used to inform decisions by the local jurisdiction on how to treat each individual significant wetland. In other words, the local jurisdiction has to determine what level of protection to apply to each wetland and then create regulations to implement that level of regulation. Cities that use this option can create development code that allows for an environmental review of any development proposal that impacts wetlands. These types of regulations commonly include allowances for mitigation of wetland impacts. These reviews are done at the staff level.

When the City of Tigard adopted the Significant Wetlands Inventory they chose the “safe harbor” option to protect significant wetlands. This option requires that all significant wetlands be fully protected. Once adopted through “safe harbor”, the wetland protection can’t be changed and so must be removed through a Comprehensive Plan Review. Because Tigard chose not to conduct a citywide ESEE they could not develop wetland regulations that allowed for individual wetland review and consideration of mitigation options through a staff level review.

Also, see Applicant Memo dated January 22, 2015, #2

4. Snider: Question for City Attorney – Is council obligated to make these comprehensive plan amendments? Have standards been met that compel the city council to make such a decision?

No. Council is not obligated to approve the proposed comprehensive plan amendment. The Council has the responsibility to approve, approve with modifications, approve with conditions, deny or adopt an alternative to an application for the legislative change or to remand to the commission for rehearing and reconsideration on all or part of an application transmitted to it under this title.

In addition, as a type IV procedure amending the comprehensive plan, the Council has broad discretion based on consideration of the following factors:

1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;
2. Any federal or state statutes or regulations found applicable;
3. Any applicable METRO regulations;
4. Any applicable comprehensive plan policies; and
5. Any applicable provisions of the city’s implementing ordinances.

5. Henderson: When was the Washington Square Regional Center Plan adopted? Is it the only applicable plan? Does it go through periodic review?

The WSRCP was adopted by Council on July 25, 2001. The plan is a district plan that is not subject to periodic review. In addition, the City's Park System and Trail System Master Plans apply to the proposal.

6. Goodhouse: Where did the parking numbers come from?

See Applicant Memo dated January 22, 2015, #3

7. Cook: Is concerned that every other apartment complex he sees, whether it is on Hall Blvd. or on North Dakota, has lots of cars parked on the street because there isn’t enough at the complex. Clarify what is meant by development onsite planning for parking and enforcement. He needs to see a paved sidewalk or walking trail for transit access for him to allow the downward parking requirement.

The applicant has withdrawn the parking exception request and has addressed paved public access to the west, to the Greenburg transit site. However, the applicant has not addressed paved access to the east to Hall Blvd or the Hall and Locust transit site.

See Applicant Memo dated January 22, 2015, #4

8. Woodard: There would be an impact on 90th and development needs to pay for that. There is no certainty about Lincoln going through. How would this traffic impact the school area?

See Applicant Memo dated January 22, 2015, #5

9. **Snider: I've heard many numbers tonight regarding parking. The math doesn't work out and we need to understand what exception is really being made. Shared similar concerns about right of way for bus shelters and walking.**

See Applicant Memo dated January 22, 2015, #3 regarding parking. The applicant proposes using existing right of way to fill paved walkway gaps to the west on the north side of SW Oak Street. The applicant has coordinated with the property owner to obtain right of way for the transit shelter, and awaits a response from corporate headquarters.

10. **Henderson: Did we review siting of the large apartment building already across the street to guide us with this development?**

Staff was aware of the Ashbrook Condominiums on SW 90th and the Touchstone Townhomes on SW Oak, but did not review the decisions.

See Applicant Memo dated January 22, 2015, #6

11. **Goodhouse: Did you talk with TVF&R about No Parking signs?**

See answer to Question #26, below.

12. **Cook: The environmental mitigation would occur in Hillsboro. Why can't we find a local mitigation area? Could Tualatin Riverkeepers help us find a Tigard area needing mitigation, along the Tualatin in Cook Park, for example?**

City policy allows, but does not require developers to provide local wetlands mitigation. The applicant has proposed off-site mitigation with this project as well as on-site wetland enhancement. The on-site enhancement is fairly substantial and will result in significant improvement in the quality of the wetland.

The City Parks Director has commented that private wetland mitigation on city-owned property has proved difficult administratively in the past and that city property will need to be used in the future for city projects that require mitigation. In this case, city owned property has not been made available for private wetland mitigation.

See Applicant Memo dated January 22, 2015, #7

13. **Cook: Has seen flooding in that area over the years. How did you arrive at a zero-rise analysis if the area already floods now? It has to rise somewhere.**

See Applicant Memo dated January 22, 2015, #8

14. **Woodard: Concerned about what is being developed upstream and downstream from this project. Requests assistance with understanding the 1989 DLCD letter about floodplain management. Is DLCD still connected with FEMA for flood management aspects?**

See Applicant Memo dated January 22, 2015, #9

15. **Woodard: How will you prevent car lights exiting the development from shining directly into the living rooms of the homes across the street?**

See Applicant Memo dated January 22, 2015, #10

- 16. Snider: Statements were made during testimony that the city would not be able to purchase flood insurance if this is built. Does the city even buy flood insurance? Is there such an implication for the city or its residents?**

See answer for Question #1 above.

- 17. Snider: Every model has to have some level of certainty. How certain are we that this flood model is right? What is the level of precision - 95 percent? 90 percent? And if the model is wrong, what will happen?**

See Applicant Memo dated January 22, 2015, #11

- 18. Henderson: Can the creek drainage retention be part of the floodplain?**

See Applicant Memo dated January 22, 2015, #12

- 19. Woodard: Walkability is a huge deal. Need at least one natural area to walk and a continuous path without gaps. Is there a Dolan analysis required for the impact area if the street is extended?**

The applicant proposed easements across the property to accommodate a future improvement of the Washington Square Loop trail along Ash Creek. The applicant has been conditioned to improve the Oak Street frontage to include a 12-foot wide multi modal path, which is the alternate location for the Loop Trail (Tigard Greenways Trail System Master Plan, page 44). Extension of SW Lincoln Street, an off-site transportation improvement, would be subject to rough proportionality (Dolan).

Also, see Applicant Memo dated January 22, 2015, #13

- 20. Snider: Relating to the alternative site analysis, what is the requirement and do the areas have to be within a certain distance from a proposed development? Was such an analysis done in a thorough and reasonable manner?**

See Applicant Memo dated January 22, 2015, #14

- 21. Should Lincoln Street right of way dedication be a condition of approval?**

Staff has not required dedication of SW Lincoln Street right of way because the traffic impact study undertaken by the applicant and concurred on by city staff does not indicate the street improvement is warranted.

- 22. Henderson: Are there water quality problems (sewage) in this high water area? Is storm water from hard surfaces being treated?**

See Applicant Memo dated January 22, 2015, #15

- 23. Woodard: What does the MUE designation mean? The public needs a clear understanding of how a residential development fits in this zoning.**

The MUE-1 zone, or high density mixed use employment district, permits residential uses which are compatible with the employment character of the area. A project that is wholly residential is allowed outright in the zone. The Tigard development code does not stipulate how the mixing of uses must occur, whether vertically or horizontally. Lincoln Center is an example of a commercial office area

designated MUE-1. In the case of the proposed apartments, there are no other uses included in the proposed development. So, the district retains a mixed-use character because it is horizontally mixed with Lincoln Center commercial uses to the north and residential toward Ash Creek.

- 24. Snider: Are we obligated to accept this from a zoning perspective? Given community concerns have we imposed enough conditions of approval on the developer in the interests of the public.**

The Council is not obligated to accept the proposed development where it does not meet the standards or where there is discretion the Council can exercise.

- 25. Henderson: Are we still waiting for a report to come from TriMet or others?**

TriMet's comment letter is all we would expect from them for the purposes of these land use decisions. No other reports are expected.

- 26. Woodard: Ms. Cofield comments in a January 12, 2015 letter that the applicant is proposing a 26-foot width street yet TVF&R requires roads under a certain width to have No Parking signs posted on both sides of the fire lane. She says the applicant's proposed exception to the street standard is not permissible. Needs help understanding what is going on with this.**

Staff consulted with TVF&R about the proposed plan. "No parking" signs on SW Oak Street were not an issue because the WSRCP cross section for SW Oak specifically includes parking on both sides of the street. Staff believes Ms. Cofield may have misinterpreted the reference to the half-street improvement (26 feet) for the whole street width. The Engineering Division agrees with the applicant's assertion that the center turn lane is not warranted but has determined an alternative design that will better serve multimodal transportation options: the SW Oak Street half section will be 40 feet from center line and include a 20-foot paved width with a 12-foot travel lane and 8 feet of on-street parking, an 8 foot LIDA planter and a 12-foot wide separated bike/ped path.

In addition, staff asserts that when standards conflict, as in this case where the Oak Street Collector standard did not anticipate a multi-modal path but a subsequent plan shows a multi-modal path along Oak Street, staff may modify the street design to reconcile the conflict.

Also, see Applicant Memo dated January 22, 2015, #16

- 27. Snider: An attorney testified and questioned our legal ability to do some things with the zoning. This is concerning. Could city attorney and staff address this?**

Staff addressed the mixed use question in #23 above.