

**PLANNING COMMISSION MINUTES**

**May 12, 2011**

**7 p.m. Regular Meeting**

**Newberg Public Safety Building**

**401 E. Third Street**

TO BE APPROVED AT THE JUNE 9, 2011 PLANNING COMMISSION MEETING

**I. ROLL CALL:**

Present:	Philip Smith, Chair	Thomas Barnes, Vice Chair
	Lon Wall	Cathy Stuhr
	Art Smith	Allyn Edwards
	Gary Bliss	Kale Rogers, Student PC

Staff Present: Barton Brierley, Building & Planning Director  
Luke Pelz, Assistant Planner  
Annette DePaz, City Surveyor

**II. OPEN MEETING:**

Chair Smith opened the meeting at 7:00 p.m. and asked for roll call.

**III. CONSENT CALENDAR:**

Chair Smith entertained a motion to accept the minutes of the April 14, 2011 meeting.

<b>MOTION #1: Lon Wall/Art Smith</b> approve the minutes from the Planning Commission Meeting of April 14, 2011. (7 Yes/ 0 No/ 0 Absent) Motion carried.
--

**IV. COMMUNICATIONS FROM THE FLOOR:**

Chair Smith offered an opportunity for non-agenda items.

Doug Lanz, Managing Partner for the Terrace Heights Subdivision and Northwest Classic Custom Homes, asked the Planning Commission to look at the lot requirements in Newberg. Due to the 30% lot coverage regulations, it limits the size of a ranch home to 1800 square feet. The biggest complaint he is receiving from potential buyers who are mostly at retirement age, is the inability to build a big enough home. They want a home in the 2200 -2400 square foot range. Mr. Lanz is asking for 35% coverage instead. They could build a home within the 2400 foot range at that percentage. It would help the local community with the purchase of 27 more lots.

Chair Smith said these changes normally come from City Council or staff but he believes in the opportunity for the public to drive code changes. He suggested Mr. Lanz speak with staff in developing the code language and encouraged Mr. Lanz to testify at the time such a code is brought before the Planning Commission. Commissioner Stuhr suggested staff research what other cities are doing in regard to this.

**V. QUASI-JUDICIAL PUBLIC HEARINGS:**

**APPELLANT:** Shawn Irwin  
**APPLICANT:** Habitat for Humanity  
**REQUEST:** Appeal of the decision to approve a two-lot partition and a variance to allow one of the lots to take primary access from an existing alley.  
**LOCATION:** 803 E. 9<sup>th</sup> Street                      **TAX LOT:** 3219DA-2700  
**FILE NO. PAR-11-001 & VAR-11-001/APLG**      **RESOLUTION NO.:** 2011-290  
**CRITERIA:** 15.235.040, 15.215.040

**Opening of the Hearing:**

Chair Smith opened the hearing and asked the Commissioners for any abstentions, conflicts of interest, and objections to jurisdiction. Chair Smith stated he has a potential conflict due to the fact he contributes money to Habitat for Humanity on a regular basis but believes he can judge this appeal fairly. Commissioner Bliss also contributes to Habitat for Humanity in Washington County and works for Willamette West in developing lots. He has volunteered on a fundraiser at the local Habitat for Humanity. He will have a potential conflict but will be unbiased in his decision making on this hearing. Kale Rogers is the son of Rick Rogers, of Habitat for Humanity, thus will not be able to ask questions during this hearing. Chair Smith read ORS §197.763.

Luke Pelz, Assistant Planner, presented the staff report and reviewed the decision criteria (see official meeting packet for details).

**Staff Recommendation:**

Staff recommends approval of Resolution 2011-290 with the findings and conditions of approval as shown in Exhibits “A” and “B”, affirming the Planning Director’s decision to approve the decision and deny the appeal.

**Public Testimony:**

Chair Smith opened the public testimony and stated due to this being an appeal, the opponents will testify first.

**Opponents:**

Shawn Irwin stated he is not against Habitat for Humanity, affordable housing or change. His appeal is about an accumulation of problems. His understanding is the code assumes the alley is 20 feet wide, but at the east end it is only 12 feet and gravel; half of the alleyway is not up to standard. On a personal note, his bedroom has a setback of 5 feet off the gravel alleyway. The affordable housing plan does not deal with community or livability, which is what he is afraid the neighborhood will lose. There are currently no fences, which shows a sense of community, but he is afraid that will change, as well. Safety is broader than reaching a location with a fire truck. The alleyway is a semi-private space. People are very aware of what goes on in the alleyway. The principal review criteria and quality of design will be affected. Developments should respect existing mature trees and at least 4 have been lost. In the broad spectrum, putting together many compromises affects community, safety, interaction, and does not offset greater density. If the

project is to be done, then it is important to do it right and create a home and not just another house. Mr. Irwin asked for denial of the appeal.

Gerald Stock has lived on 9<sup>th</sup> Street for 13 years and has experienced traffic problems and vehicles blocking his back yard. It is already a very populated area without adding another home or traffic. Mr. Stock stated he has had a high water table in his back yard and flooding and if the alley is paved, drainage will be more of a problem. He does agree with affordable housing but there are some houses available now that could be purchased instead.

**Proponents:**

Rick Rogers, Habitat for Humanity, stated that this was a foreclosure property purchased through a grant from the Neighborhood Stabilization Program. They are hoping to build a 2-bedroom, 1 bath, 900 square feet home on one level to house a single mother and her 12 year old son. The change in the design from a 2-story to 1-story came after speaking to the neighbors. Habitat for Humanity does not want to cause problems for neighbors since they rely on the community to provide for those that are in need, but there is an obligation to the donors and when faced with an opportunity to stretch their resources, Habitat needs to take those opportunities whenever possible. They pride themselves on the design of the homes they have built, which have been an asset in many locations. An existing structure was demolished due to an unsafe electrical hazard, which improved the neighborhood. He disagrees that an R-2 community built to R-2 standards cannot have community due to higher density. It was a painful decision to cut down the trees but the one large tree was threatening the building in the front and the back; others were pulling up the pavement. Livability is very important to Habitat for the neighborhood. Mr. Rogers is aware of the drainage problems and their Civil Engineer says it can be improved. Also, "No Parking" signs will be placed and enforced; the house will have head-in parking instead of parallel parking. Right now there is access to the back of the lots for all the homeowners. Habitat is asking for this home to be approved, which will help meet the density requirements that are needed.

Jared E. Jones is the President of the Board of Directors and volunteer for Habitat for Humanity. This is a great project and opportunity funded by two grants from the Neighborhood Stabilization Program and from the Lutheran Financial Organization. He urged denial of the appeal.

**Rebuttal:**

Shawn Irwin stated this is an infill project and special considerations need to apply. Placing fences at the back of all the houses along the alleyway is not considered community. The alley width will be continually problematic. Chair Smith stated the project does not mandate putting up fences.

Chair Smith closed the public hearing at 8:50 p.m. and asked staff if any late correspondence had been received.

**Final Comments from Staff:**

Luke Pelz stated one letter was received from Charlie Harris, Community and Shelter Assistance Corporation (CASA), dated May 10, 2011. Copies of the letter were handed out to the Planning Commission and Mr. Pelz read the letter aloud to the Commission and audience members.

Chair Smith recessed for a five-minute break at 8:52 p.m.

**MOTION #2: Wall/Art Smith** moved to approve Planning Commission Resolution No. 2011-290.

**Deliberation:**

Commissioner Bliss understands the concerns of the neighbors, but the City of Newberg has found it necessary to meet the goals of affordable housing and in doing so finding areas in which the lots are in essence under developed in R-2. The applicant meets those criteria. As for access to public ways, the Fire Marshall has reviewed it and found that an all weather surface in a 20 foot area meets the need. Staff has provided conditions of approval. The one area of concern is in drainage and he suggested amending to a more specific language addressing the drainage; making sure it is away from abutting properties and directed toward a public right-away or public system.

Commissioner Wall stated his criteria for supporting this original staff decision is because they were not approving unreasonable conditions but rules have now changed substantially. He does not want to punish Habitat for Humanity by costing them more money to re-file under the new rules.

Commissioner Barnes stated as he reads the conditions of approval regarding drainage, moving the water away from abutting houses is a good thing. He questions where the fire hydrants will be located and where will the water be drawn from.

Commissioner Edwards agrees with the Mission Statement of the City to improve and make things better. After listening to the arguments, Habitat for Humanity is willing to pave the entire alleyway which is an improvement and provides greater access for neighbors. Some may subdivide in the future with the new code, but this application is an improvement to the neighborhood as well as the elimination of the standing water problems.

Commissioner Stuhr volunteered on the Affordable Housing Committee which is very important to her. It is clear these lots are zoned R-2 and essentially under developed, but she is torn. She is not convinced if this application came back it would pass. This does not qualify as an alley right now; does not meet the definition of an alley. Parking on the alleyway would be an issue for everyone as would parking on 9<sup>th</sup> Street. She supports infill and affordable housing, but this may be a situation where it does not work. Commissioner Stuhr drove down this alleyway this afternoon and stated this is everyone's backyard. The house on the east side where the alley is 12 feet wide is very narrow and concerns her. She is afraid this will do more harm than good to the neighbors for the benefit of infill.

Commissioner Art Smith appreciates the representation from the neighborhood. His experience with Habitat for Humanity is that they have always helped in each area where they have built. One area of concern was drainage but if it makes it better, he supports it. Regarding the fences, he likes open neighborhoods, but the assumption that fences will be put up is not a reason to vote against this proposal.

Chair Smith stated this is a policy matter. Stormwater can be resolved and improved; the house is small and will not impact the neighborhood much. He supports infill properties as well as



- Tentative plan requirements reflect some final plat requirements
- Tentative plan requirements are more extensive in content than final plat requirements

**Final Plat Review:**

- Planning verifies conditions of approval have been met and refers verification to collaborating agencies and city departments
- Public Works Department verifies completion of public improvement related conditions
- City Surveyor coordinates Public Works Department verification
  - Substantial completion of public improvements
  - Payment of financial obligations relating to public works
  - Performance/Maintenance agreements
  - Performance/Maintenance bonds
  - As-builts
  - City plat requirements

**City Final Plat Requirements:**

- City Surveyor Verifies
  - Information required by city code shown on plat
    - Area in square feet
    - Watercourses shown
    - Tie to “city” coordinate system
    - Some city requirements are also required by state and/or county
- Information required by conditions of approval shown on plat
  - Easements
  - Maintenance agreements
  - ROW Dedications
  - Provides a “face of plat” preliminary review of standard plat requirements

**Additional Plat Review:**

- County Surveyor Verifies
  - Plat complies with state survey statutes
    - Mathematical analysis (closure)
    - Field monument placement
    - City signatures on plat
    - Drafting material, sheet size, ink complies with County archiving requirements
- City Recorder Does NOT Verify
  - All liens on the property have been paid
    - Conditions of approval have been met
    - Plat complies with city, county, or state plat requirements
  - \*\*City Recorder does not archive city copy of final plat.

**Proposed Changes Don't:**

- Change development requirements or restrictions for land divisions

- Eliminate or add city requirements for information shown on plan or plat
- Increase or decrease the number of signatures required on the final plat
- Change actual role of the City Surveyor, the County Surveyor, the Planning Director, or the City Recorder in the plat review process.
- Change city application requirements, application fees, or administrative procedures currently in practice

**Proposed Changes Do:**

1. Adjust city requirements for information shown on the plat to reflect current industry standards for survey practices
2. Modify final plat signature requirements to reflect actual roles in the review process
3. Clarify or adjust submittal requirements to reflect administrative procedures currently in practice
4. Correct misused terminology, minor grammar problems, and unclear provisions
5. Eliminate or reduce unnecessary requirements which are not enforced in current practice or which pertain to County Surveyor role
6. Update existing requirements to conform with state statutes

**1. Current Survey Practices:**

- a) Vertical Datum
- b) Coordinate System ties
- c) Water course measurement and mapping
- d) Label easement beneficiary
- e) Note agreements to be recorded in conjunction with the plat

**2. Signature Requirements:**

- a) Remove City Recorder lien certification
- b) Remove City Surveyor survey law compliance certification
- c) Add City Surveyor public improvement and dedication acceptance
- d) Accommodate County signature requirements

• **City Signature – Dedications:**

ORS 92.014 Approval of city or county required for specified divisions of land.

- (2) Notwithstanding ORS 92.175, an instrument dedicating land to public use may not be accepted for recording in this state unless the instrument bears the approval of the city or county authorized by law to accept the dedication.

ORS 92.175 Methods by which certain land may be provided for public purposes.

(1) Land for property dedicated for public purposes may be provided to the city or county having jurisdiction over the land by any of the following methods:

- (a) By dedication on the land subdivision plat;
- (b) By dedication on the partition plat, provided that the city or county indicates acceptance of the dedication on the face of the plat; or

- (c) By a separate dedication or donation document on the form provided by the city or county having jurisdiction over the area of land to be dedicated.
- (2) Notwithstanding subsection (1) of this section, utility easements in partition and condominium plats may be granted for public, private and other regulated utility purposes without an acceptance from the governing body having jurisdiction.

### 3. Submittals and Processing:

- a) Clarify number of “exact” copies to be submitted
- b) Partition and Subdivision signatures and drafting requirements the same
- c) Age and content of title reports

### 4. Terminology and Clarification:

- a) “Blocks” normally not used

#### **Blocks:**

ORS 92.090 Approval of subdivision plat names; requisites for approval of tentative subdivision or partition plan or plat.

(1) Subdivision plat names shall be subject to the approval of the county surveyor or, in the case where there is no county surveyor, the county assessor. No tentative subdivision plan or subdivision plat of a subdivision shall be approved which bears a name similar to or pronounced the same as the name of any other subdivision in the same county, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and, if used, the block numbers of the subdivision plat of the same name last filed. On or after January 1, 1992, any subdivision submitted for final approval shall not use block numbers or letters unless such subdivision is a continued phase of a previously recorded subdivision, bearing the same name that has previously used block numbers or letters.

- b) “Parcels”, “Lots”, “Tracts”, Partition Plats (not maps)

#### **Definitions:**

ORS 92.010 **Definitions for ORS 92.010 to 92.192.**

- (4) “Lot” means a single unit of land that is created by a subdivision of land.
- (6) “Parcel” means a single unit of land that is created by a partition of land.
- (8) “Partition plat” includes a final map and other writing containing all the descriptions, locations, specifications, provisions and information concerning a partition.
- (10) “Plat” includes a final subdivision plat, replat or partition plat.

- c) “Common” improvements – Public vs. Private: donation, explanation, maintenance agreements
- d) “Stormwater systems” added to public improvements references
- e) Minor grammar corrections

### 5. Unnecessary Requirements:

- a) Drafting material/ink/size for tentative plans omitted

- b) Drafting material/ink/size for final plats deferred to County Surveyor
- c) Scale specification reduced to multiples of 10
- d) Individual tract or parcel legal descriptions

**6. State Statute Compliance:**

- ORS 92.050 Requirements of survey and plat of subdivision and partition.  
 (3) The survey and plat of the subdivision or partition shall be made by a registered professional land surveyor.
- ORS 672.025 Practice of land surveying without registration prohibited; seal required.  
 (1) No person shall practice land surveying in this state unless the person is registered and has a valid certificate to practice land surveying issued under ORS 672.002 to 672.325.  
 (3) Notwithstanding the provisions of ORS 672.005 (1), a registered professional engineer not also registered as a professional land surveyor shall not establish, reestablish or restore land boundaries, corners or monuments between lands not held in common ownership or intended for conveyance.

**State Statute Compliance (Land Surveying):**

- ORS 672.005
- (2) "Practice of land surveying" means doing any of the following:
- (a) Providing or offering to provide professional services that apply mathematics, geodesy and other sciences and involve:
    - (A) The making of geometric measurements and gathering of related information pertaining to:
      - (i) The physical or legal features of the earth;
      - (ii) Improvements on the earth; or
      - (iii) The space above or below the earth; or
    - (B) The development of measurements and information described in subparagraph (A) of this paragraph into graphics, data, maps, plans, reports, descriptions, projects or other survey products.
      - (b) Performing geodetic surveys.
      - (c) Establishing, reestablishing or replacing boundaries or geodetic control monuments or reference points.
      - (d) Locating, relocating, establishing, reestablishing or retracing any property lines or boundaries for any tract of land, road right-of-way or easement.
      - (e) Making any survey for the division or subdivision of a tract of land or for the consolidation of tracts of land.
      - (f) Locating and laying out alignments, positions or elevations for the construction of fixed works.
      - (g) Performing or offering to perform any investigation, interpretation or evaluation of, or any consultation or testimony about, any of the services described in paragraphs (a) to (f) of this subsection.
      - (h) Collecting, preparing, manipulating or modifying data related to activities described in paragraphs (a) to (f) of this subsection, other than acting as a scrivener.
      - (i) Performing photogrammetric mapping.
      - (j) Making surveys that involve horizontal or vertical mapping control or geodetic control.

**State Statute Compliance (Engineering):**

ORS 672.005

(1) "Practice of engineering" or "practice of professional engineering" means doing any of the following:

- (a) Performing any professional service or creative work requiring engineering education, training and experience.
- (b) Applying special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, investigation, testimony, evaluation, planning, design and services during construction, manufacture or fabrication for the purpose of ensuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects.
- (c) Surveying to determine area or topography.
- (d) Surveying to establish lines, grades or elevations, or to determine or estimate quantities of materials required, removed or in place.
- (e) Surveying required for design and construction layout of engineering and architectural infrastructure.
- (f) Performing photogrammetric mapping.

Chair Smith opened the public testimony at 10:03 p.m.

**Opponent:**

Larry Anderson is concerned about over regulating and the length of time it takes to move anything through the City due to unnecessary obstacles and steps in the process which he sees as a waste of time. The actual text should have clear and simple clarifications. Fees are already too high and the time to get things moved through the City of Newberg is longer, so if time can be saved that would be an advantage.

**MOTION #6: Wall/Barnes** moved to approve Planning Commission Resolution No. 2011-288.

**MOTION #7: Bliss/Stuhr** moved to amend the resolution to have Civil Engineers not be stricken from the text relating to Tentative Plats. (7 Yes/ 0 No/ 0 Absent) Motion carried.

**VOTE ON MOTION #6 AS AMENDED:** (7Yes/ 0 No/ 0 Absent) Motion carried.

**VII. ITEMS FROM STAFF:**

Update on Council items: Barton Brierley stated each Planning Commissioner has received a copy of a new development code which was adopted by the City Council. The main difference in the code is the numbering system has changed from the old code. Mr. Brierley reported on the Meridian zone change; the Planning Commission and City Council both approved it and then it was appealed to LUBA. The deadline for filing the petition for review came and passed this week and the appellants chose not to file the petition for review. Therefore, the appeal will be dismissed. The next City Council Hearing is scheduled on June 6, 2011 and they will consider the South Industrial UGB Amendments and updates to the Economic Opportunities Analysis.

The next Planning Commission Meeting is scheduled on Thursday, June 9, 2011.

***Resolution 2011-289 will be moved to the June 9, 2011 Planning Commission Meeting.***

**VIII. ITEMS FROM COMMISSIONERS:**

Commissioner Stuhr will be unable to attend the June 9, 2011 Planning Commission Meeting due to her Nephew's graduation.

**IX. ADJOURN:**

Chair Smith adjourned the meeting at 11:05 p.m.

**Approved by the Planning Commission on this 9<sup>th</sup> day of June, 2011.**

AYES: 6      NO: 0      ABSENT: 1 (Stuhr)      ABSTAIN: 0

  
\_\_\_\_\_  
Planning Recording Secretary

  
\_\_\_\_\_  
Planning Commission Chair