

Minutes of the Veneta Planning Commission

June 2, 2015

Present: James Eagle Eye, Len Goodwin, Kevin Conlin, Calvin Kenney, Lily Rees

Others: Ric Ingham, City Administrator; Kay Bork, Community Development Director; Lisa Garbett, Associate Planner; Darci Henneman, City Recorder, Eric Bolken, DLR Group, and Andrea Larson, Chairperson, Fern Ridge School District

I. Review Agenda

James Eagle Eye opened the Veneta Planning Commission meeting at 7:01 p.m. and reviewed the agenda.

II. Public Comment

None

III. Approve Minutes

MOTION: Len Goodwin made a motion to approve the March 9, 2015 minutes of the Joint Meeting of the City Council and Planning Commission (Economic Strategic Plan, the April 6, 2015 minutes, and the May 5, 2015 minutes. Kevin Conlin seconded the motion which passed with a vote of 5-0.

IV. Veneta Elementary School – Site Plan Review SR-2-15

Garbett reviewed her staff report with the Planning Commission. She said public comments were received from Ryan Frome, DVD, of Veneta Veterinary (veterinary clinic) and Mr. Marvin Margolis, who owns the property to the north of the School District's (Applicant) property line. She said they are concerned about continuing with their current access to their property from the Applicant's property. She said originally, ODOT recommended an easement access between the Applicant and veterinary clinic. But final comments from ODOT do not require an easement and legal counsel agrees that an easement is not required. However, if the Applicant wishes to do so, they can, but they are not required to. Nor is the City required to make the Applicant offer the property owners an easement.

Access

The veterinary clinic is located on tax lot 1000, immediately north of the Applicant's property and abuts Territorial Hwy. They currently use the Applicant's property to access their parking spaces. She said ODOT manages maintenance and access permits off of Territorial Hwy within City limits. She said the two existing residents on tax lot 1008 (owned by Mr. Margolis) adjacent to Applicant's southern property line also access their property from the Applicant's property. She said those residents also have legal access from E. Broadway Ave.

Garbett said the Applicant indicated they would notify the residents that they will no longer have access via school district property and will need to access their residences from Broadway Ave. The Final Order includes a condition for the Applicant to submit and receive a state highway approach permit. ODOT felt it was necessary in order to widen the existing approach to allow for side by side buses to travel through the area.

Garbett said there is a limited buffer between the residential properties and the Applicant's property, however, the existing chain link fence does not extend the entire length of the residential properties. Garbett said there is a provision in the Land Development ordinance that allows the Planning Commission to require the Applicant to provide a site obscuring fence as a buffer or screening between the residential properties and the Applicant's property. She said the Final Order includes a condition requiring sight obscuring fencing but it can be omitted if the Planning Commission approves.

Garbett said the Applicant approached the City this morning indicating they wanted to modify or split condition 10, prior to issuance of building permit, for the required state highway approach. She said staff confirmed with ODOT and they didn't find issue with splitting that condition. Staff is recommending approval.

In response to questions from Lily Rees, James Eagle Eye said splitting the submittal means that the Applicant wants to be able to start construction of the building before the parking lot approach is completed because the approach will be the last step. He said they need to have the approach approved before they build the parking lot. If it's not approved, the Applicant would need to make any required modifications and they can't take occupancy. He said working through the ODOT process without a building permit, the Applicant would lose a lot of building time if they had to wait for the building permit before they started working.

In response to a question from Lily Rees, Garbett said ODOT makes recommendations to staff which are not necessarily requirements but she did check with ODOT to make sure the intent of their recommendation was met. She said the Applicant isn't proposing construction phases but they do plan to stage equipment and building supplies in the proposed bus loop.

In response to a question from Calvin Kenney, Len Goodwin said this could be several because it's demolition as well as construction.

Garbett said ODOT did mention that the Applicant may wish to construct the new road approach in two phases; leaving one open to let the concrete set and then do the other half.

James Eagle Eye said they do have access for the demolition and construction from the existing parking lot.

In response to a question from Len Goodwin, Garbett said the City Engineer did not make a comment on Condition 2.

Len Goodwin said he is concerned that the thickness of the concrete is adequate for fully loaded school buses because sounds more like automobile loads and not bus loads.

Garbett said staff can check with the City Engineer.

James Eagle Eye said we may want to modify that before it's approved.

In response to a question from Len Goodwin, Garbett said she doesn't believe there's any change in use to the area adjacent to site obscuring fence.

In response to a question from James Eagle Eye, Garbett said students will be escorted out to the bus area to wait for the buses in the afternoon.

Len Goodwin said he is wondering what legal counsel's view is to the economic impact on the adjacent property owners if there were no access granted. He said there is clearly adverse economic impact if the property is restricted to straight in access which would eliminate all parking.

Garbett said there is no access easement in existence on file and legal counsel for the City indicated that an access easement was not a requirement by the City but if the two property owners were provided access by the Applicant, it would be between the Applicant and the property owners.

Len Goodwin said he's concerned we are walking into potential litigation by taking that attitude.

Bork said that's why we asked legal counsel to weigh in on us granting approval and if the City is in

anyway liable for that. She said it appears the Applicant will offer the veterinary clinic an access easement.

Kevin Conlin said there is a fine line between what is required and what is prudent given the possibilities before the Commission. Even with the advice we've been given by legal, he would be more comfortable if we had some kind of guaranty that the interests would be respected.

Lily Rees said she noticed in Exhibit F there was a request to Lane Fire Authority for a site plan review but she didn't see a response. She said she doesn't see a fire truck being able to access the residences from the north or access the construction side to the northeast.

James Eagle Eye said there's not an easement nor has there ever been. He said those are divided legal lots with access from East Broadway. He said the two homes are on one parcel and the owner chose to access the homes from the south.

In response to a question from Lily Rees, James Eagle Eye said the fenced area could have an emergency gate put in so they have access to the east.

James Eagle Eye suggested including a condition that a gate be installed and be accessible. He said he understands the Applicant has offered an easement but he felt it's up to the Applicant and the property owners and it's not a City issue. He said it's an ODOT approach with an ODOT approval and he asked if the City has the authority to make a requirement?"

Len Goodwin said tax lot 1000 (veterinary clinic) does not have access to Broadway, its only access is through the existing point. In a sense, absence the use of the area on the Applicant's property, it has no access to Territorial which means the veterinary clinic needs an access easement or an approach permit from ODOT. He said he is concerned about legal counsel's opinion, in the absence of an easement, it has no legitimate access to the road. He said he wonders if we haven't had a take which leads him to more questions about the parking area. What is the 10 ft. circulation lane and what does it serve? He wonders why it wouldn't be possible to relocate the island and the bus stalls south 10 ft. to get an additional amount of land for the joint access agreement so at least the veterinary clinic can get its customers through there even when buses are moving. He said he assumed the buses won't be staging on the north side so is it possible the entire bus turn around could be shifted 10 ft. to the south to provide additional access for the veterinary clinic.

James Eagle Eye said as he understands it, the Applicant planned for the buses to parallel park along the curb for student drop off and pick up and the City's stacking and queuing requirement is one space per 20 students, and that's where the parking lanes came in to meet that requirement.

Len Goodwin said so the buses would be circulating in the south lane, stopping to discharge students and returning to the north side of Territorial Rd.

In response to a question from James Eagle Eye, Garbett said there is no bus parking requirement in our code but that was proposed by the Applicant. She said we have required parking requirements which the existing parking lot meets.

In response to a question from Len Goodwin, Eric Bolken, the Applicant's's engineer, said the diagonal parking spaces are for buses and the buffer is for a turning radius to pull forward and out. He said buses are not allowed to go in reverse on the property so the 10 ft. of additional paving in front of the diagonal stalls is required for the buses to turn around.

In response to a question from Len Goodwin, Bork said the way the code is written, SDC credits remain with the property so the next property owner gets the benefit of those credits. She doesn't recall if SDC credits expire or have a time limit but she will check on that.

James Eagle Eye said he agreed with Len Goodwin, that it's not in the City's best interest to have a land locked parcel but in his opinion, and based on advice from legal counsel, it's a matter between the two properties and we've been told the Applicant offered an access easement to the property owners.

Len Goodwin disagreed with legal counsel's opinion with respect to the value of the property and he's concerned this will render lot 1000 unsuitable for its purpose and he doesn't think he can support approving the site plan as it is. He said he understands the value of improving the school and it is a worthy objective but not at the expense of depriving the City of a valuable business. He said he's not convinced that all the right conditions have been established to approve the application.

Kevin Conlin said he agrees somewhat with Len Goodwin. He said, if in fact, there was some previous agreement that an easement would be granted then it does them no injury for the City to insist upon as a condition. He finds himself unable to support this proposal moving forward without seeing an access agreement in place.

Len Goodwin said he remained concerned about the other two parcels. He doesn't know what sort of access issue there may be but Lily Rees' comments caused him some concern about those two properties. He said he would like to hear more from staff as to how comfortable we are that the access from Broadway is in fact reasonable and appropriate. He said regarding the site obscuring fence, what is the purpose of the area to the east of the buses? He said if students will be present, he will be firm in asking for a site obscuring fence to separate the residential and educational uses. He would like to see alternatives to the bus area or tweak it to make it easier for the adjoining property owners to take advantage of their property. He will not assume they have acquired an easement by prescription but he would like some advice from legal counsel about the circumstances that an easement might be obtained. He's not sure they can't obtain an easement by prescription.

In response to a question from Lily Rees, Garbett said Lane Fire Authority's only recommendation was that the alarm system needed to be upgraded.

Lily Rees said she is concerned about the Broadway access for the two residential properties, liability of the veterinary clinic, and if there was an easement agreement between the Applicant and the veterinary clinic. She asked if the clinic decided to sell the property, would the easement agreement transfer with the property. Because if it didn't you can't put a driveway or a parking spot on the sidewalk or on Territorial, it would basically render that property worthless.

Calvin Kenney said he has some of the same concerns other Commissioners have expressed. He said he also checked out the gravel road easement from Broadway and an agreement made 40 years ago could easily have been based on a hand shake and without the easement and the way the site plan is written, he's not comfortable moving forward with this.

Bork said we can check with legal counsel whether or not the City can require the Applicant to even offer an easement as part of this land use decision. She said we're conditioning the Applicant on circumstances that are not necessarily things the City can require. That's why staff checked with legal counsel; if the City could even require it because it's private property. She said she understands the dilemma because those people have used the Applicant's access without proper agreements in place but whose responsibility is it and she's not sure its necessarily a land use decision.

Kevin Conlin said since the Applicant claims they've already promised the property owners access, the Applicant cannot claim injury in that requirement. If they're going to claim that somehow requiring the access would cause injury, then he would ask under which condition would the Applicant not grant the access easement and if so, what is the harm and why has the Applicant not done it before now. Why wasn't an easement properly in place before it came before the Commission?

James Eagle Eye said looking at the site plan, the Planning Commission cannot require the Applicant to provide an easement to the properties because it's an issue between the Applicant and the property owners. He said he's also concerned about delaying the project.

Ingham said the Applicant is in the midst of a 26 million dollar bond process and they're dealing with four different sites. He said he's not sure the City can require that easement is in place prior to approval of the site plan.

Kevin Conlin said the Applicant has already indicated they intended to offer an easement agreement, which in his opinion, should be completed before the site plan is approved. He said he understands the pressure the Applicant is facing and he is sympathetic but this is an example of something that really should not be happening. He said some of the responsibility for it taking on the aspect that its taking on now is because the easement agreement was not in place earlier. He understands the City cannot require the Applicant to offer an easement to the property owners but had it been place prior to the site plan review, the Commission would not be having this discussion. He said many of the Commissioners' concerns are because the agreement was not in place and that's what he is questioning. He said intent is speculative.

Ingham said legal counsel provided a very thorough brief and he suggested Commissioners take a brief recess, so staff could make copies of the brief for Commissioners to review.

It was the consensus of the Commission to take a brief recess at 7:50 p.m. and reconvened at 7:55 p.m.

Bork said the Planning Commission is being asked to decide if a site obscuring fence, wall or landscaping should be required along the south side of the residential properties. She said requiring a buffer is consistent with the Applicant's intent to notify residents to begin using their Broadway Ave. access.

In response to a question from James Eagle Eye, Eric Bolken said the area at the end of the road and beyond the small parking area is currently a field. He said the road and parking lot currently goes passed or is in line with the last eastern residence. He said the field may be developed to provide for future school activities but for now it's intended to remain a field.

Len Goodwin said if it's not used for education functions, he sees no reason to require site obscuring fencing.

Bork said the way the condition is written in the code, it allows the Planning Commission to condition it with appropriate buffering so if Commissioners don't see the need for site obscuring fencing, then that condition can be omitted.

Len Goodwin said it should be fenced to provide security.

Bork said the Applicant is proposing to fence the northern boundary. She said the other issue is the alternative bus parking so the easement could be utilized safely. She said that is probably something the Applicant would need to agree to because she doesn't know how we could condition it.

Len Goodwin said we can't condition it. He said if the Applicant can come up with an alternative proposal, fine, but the Planning Commission will not provide a proposal. He said with respect to the depth of the lifts, we'll approve whatever the City Engineer recommends.

Bork suggested including that as a condition to be approved by City Engineer.

Garbett provided Commissioners with legal counsel's opinion which they took a few minutes to read.

Len Goodwin said Mr. Juster from ODOT recommended the following language . . . “Specifically, the Applicant shall provide evidence of an existing access easement, or record of an access easement for the joint shared driveway access off of the Territorial Hwy. The easement should apply to the School, the Veneta Veterinary Hospital and the two residences on Tax Lot 1008 . . . “. He said yet in legal counsel’s comment “especially since ODOT isn’t questioning the condition of approval, it seems, in fact, Mr. Juster was requesting that condition of approval.”

Garbett said Mr. Juster made the first comment during the completeness review period, but his final comments, attached to the staff report as Exhibit G did not include any mention of a shared access easement requirement.

James Eagle Eye said when staff followed up with ODOT, they verified ODOT would not require an access easement agreement.

Len Goodwin said he wonders if the veterinary clinic, at least, might not have an inverse condemnation against the Applicant.

Bork said as a condition, the Applicant could agree to provide a copy of the access easement agreement for the veterinary clinic. She said the City can’t require it so it would have to be proposed by the Applicant.

James Eagle Eye said the Staff Report includes a draft copy of access easement agreement, which the Applicant provided to the veterinary clinic, which clearly indicates the Applicant offered access and is trying to move the situation forward.

In response to a question from Lily Rees, Garbett said when she corresponded back with ODOT to make sure that that requirement wasn’t omitted mistakenly in their final comments, they said “if the intent of the Applicant is to continue to provide the veterinary client access, then yes, an easement should be in place”. She said it’s recommended but not required.

Lily Rees said it mentions all the properties and not just veterinary clinic.

Bork said ODOT is not requiring the access easement. She said they recommended the easement if the Applicant wants to allow access, it’s probably a good idea to have it in place.

Kevin Conlin said his interpretation is that it should be in place.

Len Goodwin said ODOT’s final comments of April 24th make no reference to a requirement of an easement or of access.

James Eagle Eye said that was followed up by staff to make sure it wasn’t in error.

In response to a question from Kevin Conlin, Garbett said ODOT said if it was the intent of the Applicant to provide access then an easement is recommended but not required.

In response to a question from Calvin Kenney, Garbett said during the completeness review she received the first email from ODOT and she interpreted their final comments would require a shared access agreement but when she corresponded with the Applicant during the completeness review period, a number of things needed addressing, the biggest issue was stormwater, and she included a note that a shared access agreement should be provided. At that point, the Applicant provided the shared access agreement with the intent to follow through with the document. She said its her understanding it was presented to the veterinary clinic. She said but it turned out that ODOT’s final comments did not include the requirement but just a recommendation.

In response to a question from Kevin Conlin, Bork said there’s two different distinctions. It’s not

required by the land use decision and it's a separate issue if the Applicant allows access. She said its staff's understanding that the Applicant would like to offer the easement to the veterinary clinic but the City is staying out of it because it wasn't a condition, we are leaving the burden to the two property owners.

James Eagle Eye said as per a recommendation from legal counsel, and we have an Applicant that has attempted to provide the agreement and access to the veterinary clinic. He doesn't feel that we should hold up the Applicant's project. He said the Applicant has tried to be the good neighbor and give an access to the veterinary clinic when they're not required to do so.

Len Goodwin said the Applicant offered the draft agreement by letter on April 1st and they were aware of ODOT's comments dated March 20th, that the easement would be required. Then on April 24th ODOT issued its comments, which do not comment upon a shared access agreement or easement. He is concerned whether or not the Applicant has changed its position after April 24th, given the knowledge at that time that ODOT would require an access agreement.

James Eagle Eye said his interpretation was that the Applicant intended to give the easement regardless of whether or not it was required by ODOT.

Andrea Larson, Fern Ridge School Board Chairperson, said the veterinary clinic and the two property owners have all received a letter of intent offering a 20 by 80 ft. easement. She said the Applicant fully intends to give an easement access to all three property owners but she's not sure why the property owners are dragging their feet.

James Eagle Eye said for clarification, yes, what the Applicant intends is feasible.

Len Goodwin said the Applicant intends to do it, whether it's feasible or not remains a question.

Andrea Larson said it is feasible, it's been explored and the Applicant has gone above and beyond.

James Eagle Eye said he's concerned about holding up a project while two parties, outside of the City, work out an agreement.

Kevin Conlin said he can vote against something that he's not sure what he's voting on even if he can't go forward with the requirement. He said that's why this discussion was helpful and that he's grateful the Commission was provided with legal counsel's recommendation and also to hear Ms. Larson's comments tonight. He said it's a situation that without some clarification as to present intent, we have a problem. He said he felt the entire discussion, however frustrating for some, was very worthwhile.

James Eagle Eye said everyone agrees that it's in the best interest of the City to have an access easement agreement in place so the business can continue and to allow the Applicant to move forward with their project. He said we can't require that and we've heard the intent of the Applicant. He said he doesn't know how else we could put a condition in that would make the Commission feel more comfortable.

Len Goodwin suggested as a condition, include the following language on page 5, Item 2. Site Plan Amendment . . . of the Proposed Final Order "the Commission notes that the Applicant has offered a shared ingress and egress easement to the property owner of tax lot 1000, which is not a requirement or a condition of approval but a finding." He said if it goes to LUBA it will be in the record.

Kevin Conlin suggested the following language be included "in reaching this conclusion, the Commission . . .".

Len Goodwin said it should read as follows "In making this finding, the Commission notes that the

Applicant has offered an ingress and egress easement to the owner of tax lot 1000". He said that doesn't address tax lot 1008 and 1009 because they have legitimate access from E. Broadway and whether or not they are damaged is for them to determine on their own.

MOTION: Len Goodwin made a motion to approve as conditioned with the exception of modifying condition 8 "the Applicant shall install a fence" leaving out the words "sight obscuring" and deleting the related "at least 75% opaque . . ." and as conditioned and modified. Kevin Conlin seconded the motion.

Garbett asked for clarification, when you say "modify, does that include the recommendation to modify condition 10, the Applicant had wanted the state highway approach permit.

MOTION: Len Goodwin withdrew the motion.

MOTION: Len Goodwin made a motion to approve modifying conditions 1, 2, 8, and 10 of the Proposed Final Order and include the addition of the finding on page 5, no. 2. Kevin Conlin seconded the motion which passed with a vote of 5-0.

V. Other

Bork asked the Planning Commissioners if they were interested in changing the meeting start time to 6:30 p.m. She said the Council chose to move their meeting start time to 6:30 p.m. beginning July 1, 2015.

Commissioners agreed they would give it some thought and have a brief discussion at the July 7th meeting.

In response to a question from Len Goodwin, Bork said with regard to Ms. Boothe's comment about changing the zoning where her business is located on Jeans Rd., she said she compiled code amendments, included information on the residential piece, and incorporated Ms. Boothe's comments on the retail aspect in the Light Industrial zone. She said she mentioned there was a possibility of extracting all reference to the urban service boundary out of the comp plan to make sure the plan is up to date because we no longer use that terminology. She said it's taking longer than she thought but she should have it on next month's agenda.

After a brief discussion, it was the consensus of the Planning Commission to have the July 7th meeting.

VI. Adjourn

Chair James Eagle Eye adjourned the Veneta Planning Commission at 8:19 p.m


James Eagle Eye, Chairman

ATTEST:


Darci Henneman, City Recorder