

Minutes of the Veneta Planning Commission

July 1, 2014

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

Others: Kay Bork, Community Development Director; Lisa Garbett, Associate Planner; Ric Ingham, City Administrator; and Darci Henneman, Assistant City Recorder, Lane Branch, City Engineer; Matt Lewis, Thatch Moyle, and Jesse Lovrien, Hayden Homes

I. Review Agenda

Chair James Eagle Eye opened the Veneta Planning Commission meeting at 7:06 and reviewed the agenda.

II. Public Comment

None

III. Approval of Minutes

MOTION: Len Goodwin made a motion to approve the May 5, 2014 Planning Commission minutes. Kevin Conlin seconded the motion which passed with a vote of 5-0.

IV. Review Proposed Amendments, A-2-14, Medical Marijuana Dispensaries

a. Amend the Veneta Land Development Ordinance No. 493, with additional provisions for locating a Medical Marijuana Facility. Amendments to Sections: 4.05(2) (b), 4.06(2), 4.07(2), 4.08(2), 4.09(2), and 13.02

1. Chair James Eagle Eye Opened the Public Hearing at 7:07 p.m.

2. Declaration of Conflict of Interest or Ex-Parte Contacts
None

3. Staff Report

Bork reviewed the proposed amendments to Veneta Land Development Ordinance No. 493 to allow Medical Marijuana Facilities (MMF) in Highway Commercial, Community Commercial, Broadway Commercial, Residential-Commercial, Industrial-Commercial, and Light-Industrial Zones and restrict MMFs from locating within 1,000 feet of a public park. She said the amendments also include an additional definition of a Medical Marijuana Facility consistent with the Oregon Health Authority (OHA) definition.

These code amendments were initiated by the City Council in response to House Bill 3460 which directed the OHA to regulate MMF. Senate Bill 1531 passed allowing cities to adopt additional regulations. With direction, cities could place reasonable limitations on hours of operation and the manner in which the facilities were operated. The City Council met with staff, and legal counsel reviewed several options for code amendments and in the end the Council proposed amendments included in the final order for the Planning Commission's consideration. Staff sent public notice to Oregon Department of Land Conservation and Development (DLCD) and a Measure 56 notice as a precaution. The amendments allow the use but at the same time they restrict the use because MMFs can operate as a pharmacy or other type of retail establishment in commercial zones. Just to be safe staff sent the notice to all property owners in those zones and published a legal notice in the Fern Ridge Review, which received no comments.

In response to a question from Calvin Kenney, Bork said the provisions would exclude MMF's from locating within 1000 ft. of any park land whether it's developed or not. She said the park land needs to be dedicated but once it is, a buffer would be established around that area.

4. Public Testimony

None

5. Questions from the Planning Commission

In response to a question from Len Goodwin, Bork said the park exclusion includes all City parks; Territorial Skate Park, Territorial Sports Ball Fields, all the parks west of Territorial, and the City Park on Broadway.

6. Chair James Eagle Eye closed the Public Hearing at 7:13 p.m.

MOTION: Len Goodwin made a motion that the Veneta Planning Commission recommend approval of the amendments to Lane Development Ordinance No. 493, as presented in Exhibit A of the proposed Final Order. Lily Rees seconded the motion which passed with a vote of 4-1.

Vote: Kevin Conlin voted no.

7. Deliberation and Decision

None

V. Request for Tentative Subdivision & Type C Tree Removal Approval, S-1-14 Applegate Landing Phase 3

- a. Request approval of a tentative plan to divide 14.77 acres (two parcels) into 39 lots and associated Type C Tree Removal

Chair Eagle Eye staff made some changes due to new information which has been provided tonight and is slightly different from the materials provided in the packet mailed out last week. He said staff will review the staff report, the applicant will provide a 15 minute presentation, and then the Planning Commission will have a discussion.

Garbett said changes were made last Friday which have since been emailed to everyone. She said those changes were in response to public improvement plans received that showed a larger wetland impact that encompassed the stormwater facility and two lots in the proposed subdivision. She would like to review the issues and tie it back to the revisions staff made and then each topic can be individually reviewed. Staff also made an additional amendment labeled "final draft" that incorporates all the changes that staff is proposing.

Natural Resource

In response to a question from James Eagle Eye, Bork said regarding lots with wetlands, once the wetlands are delineated, a greenway buffer is put in place which may or may not extend onto a lot. If a building footprint meets all setbacks but is not in the greenway or wetland, then the applicant would not have to file for a variance. She said the issue of the stormwater being in the wetland is per code and indicates that any drainage or stormwater facilities in the wetlands triggers a site plan review. Bork said the greenway overlay allows for the stormwater facility as long as the wetland standards are met.

Garbett said a few other changes include removing the condition of heavy machinery in the greenway. The variance allowed for permitted path development which will take some equipment to construct. In addition, staff added a sentence addressing park land dedication to allow the applicant to enter into a development agreement (to be recorded against the property) that will include the seven acre parkland, and the third would allow a reduced travel lane at local streets to accommodate stormwater facilities within the right of way on all local streets. She said this was approved as part of the SWAP standards.

Transportation

Garbett said the reduced lanes are allowed in the adopted SWAP. She said Lane Fire Authority would like the curbs painted and clearly marked as a fire lane. She said the City Public Works Director has agreed to paint the curbing and she said she felt he would work on the signage.

In response to a question from Lily Rees, Garbett said the tentative site plan received on June 10th shows five areas where off street parking would be reduced along the local streets. She said there's potential with the public improvement plans for the City Engineer and the Public Works Director to potentially recommend staggering the bio-swales so they're not all in one place which may alleviate the problem.

Lily Rees said regardless of posting no parking signs, people will park where they want to if there's no place to park other than driveways.

James Eagle Eye said the SWAP approved an 18 ft. paved travel width for streets but that surprised him because he didn't recall it being that narrow. He said Phase I has some problems that came about when the stormwater facility/wetland was a discussion. He said one good thing is the lots are bigger in Phase III but we don't know how much of an issue this will be in Phase III.

Calvin Kenney said in theory if street parking is allowed, there's always that one person that parks 24 in. from the curb. He said like the bio-swales and suggested the parking bulb outs should be painted, staggered, and have adequate signage. He asked who will maintain the bio-swales. He said there's only one bio-swale that's maintained. He said he maintains the one in Phase I.

Bork said it's up to the homeowners association to maintain the bio-swales.

James Eagle Eye said the Public Works Director can look into that.

Garbett said a Traffic Impact Analysis (TIA) was submitted by the applicant and ODOT expressed concerns to the City Engineer; one of which was that the traffic counts were done at a non-peak travel time. She said the City's Engineer recommended approval of the TIA. A proportionate share agreement was recorded as part of the SWAP that helped pay for offsite transportation impacts per lot which is done at the time of building permit review. She said there were no findings indicating those offsite transportation costs would not increase. She said Lane Fire Authority would like to see vegetation cleared along the emergency access gravel road extending west of Perkins.

Geo-Technical Report

Garbett said the City Engineer indicated that the applicant is proposing quite a bit of fill on many lots. Subsequently, he is requiring a condition of approval that includes a Geo-Technical Report just for Phase III or the applicant can submit a concurrence letter indicating the design is consistent with the recommendations found in the original SWAP Geo-Technical Report.

Stormwater

There is additional information the City Engineer needs that was not provided so a condition was included to require a final drainage report.

Wastewater

Garbett said the Public Works Director indicated the applicant is proposing to gravity flow the entire subdivision to an existing 8 in. sewer manhole constructed in Phase III. She said capacity isn't an issue but extensive grading will be required. She said a lot of work is needed in the public improvement plans in order to meet City requirements. Lighting along the proposed pathway will also be required.

Trees

Garbett said the applicant has submitted a tree permit to remove 293 significant trees and 18 heritage trees. She said City code defines trees based on their species and diameter at breast height. She said in order to remove the significant and heritage trees the applicant will be required to plant 364 replacement trees or make a payment to the City's Tree Fund in lieu of planting those trees. Garbett said both options are allowed in the tree code.

In response to a question from Lily Rees, Lane Branch, City Engineer said a detailed thermal Geo-Technical Report was prepared for the original SWAP and his concern is that when the report was prepared, the details weren't available as they are now; as far as the amount of fill and location of the wetlands. He said his main concern would be to confirm that the original Geo-Technical Report and Plan are being followed. He said the intent of the concurrence letter would be to confirm that the original Plan is being followed.

James Eagle Eye said he noted that the Public Works Director had concerns about elevation of fill on neighboring property lines. He said he believed we've had that issue before and we've tried to rectify that in the past.

Mr. Branch said the majority of the fill is due to stormwater drainage facilities that pull the water away from the lots and to the detention ponds. He suggested the City and the applicant review the options to lessen the fill.

In response to a question from James Eagle Eye, Mr. Branch said road grades were based on stormwater facilities, and all the lots are graded to be at least as high as the road grade.

In response to a question from James Eagle Eye, Bork said Schauer wants to work with the applicant to look at ways to reduce that huge change in grade.

In response to a question from Lily Rees, James Eagle Eye said the grading standards didn't make it into the SWAP.

Bork said it didn't make it in the SWAP specifically but Schauer is working on the code that states all lots have to drain into the street and neighboring properties cannot be impacted by drainage. She said he doesn't have anything that specifically prohibits it but he is concerned about it.

Garbett said all public notice requirements were fulfilled. She said we received one public comment concerned about street connectivity and potential increased construction traffic associated with Phase III.

In response to a question from Len Goodwin, Garbett said on Friday, after the packets were mailed to the Commissioners, staff met with legal counsel who recommended a condition highlighted on page three of the final order, (proposed addendum). She said staff reviewed it over the weekend, and felt that condition relates to the public improvement plans showing the wetland delineation was potentially impacting the stormwater facility. But that was not a concurred upon wetland delineation but was an assumption. She said the delineation and concurrence comes first and then a separate site plan application will be required if it's found, after the wetlands are concurred upon, that the stormwater facility is in fact impacting delineated wetlands.

In response to a question from Len Goodwin, Bork said it's not a condition of subdivision approval but would be information for the applicant. She said the subdivision can be approved except that if Department of State Lands (DSL) does concur the stormwater facility is in the wetland, then our code requires a separate site plan process. She said staff got a little ahead of ourselves thinking that we could address both issues in one meeting.

Len Goodwin said the language on page five is the same sort of thing.

Lily Rees said she is concerned about heavy equipment in the greenway in order to construct the pedestrian pathway. She suggested adding restoration language as a condition of approval for any possible damage caused by the construction of the pathway.

In response to a question from James Eagle Eye, Garbett said equipment is allowed for the construction of the pathway and roadways.

Bork said the applicant would still be required to comply with the greenway subzone. She said the greenway overlay does apply.

James Eagle Eye said that's not really clarified in the final order.

Garbett said staff wanted clarity on how to apply the greenway subzone. She said years ago the greenway subzone was being amended at the same time Phase I and II were being approved, so it wasn't clear to staff how the greenway subzone would apply to Phase III. She suggested leaving condition two and propose an additional condition allowing limited approved activity in the greenway.

In response to a question from Len, Goodwin, Bork said the site plan would be specifically for the stormwater facility. She said the greenway provisions would apply to the path construction and potentially to the stormwater facility. She said we can require that anything removed or destroyed in the greenway and any work extending beyond the pathway, be replanted.

Lily Rees felt some level of protection should be included.

Bork said it could be added to page three, condition 6.vi, "that all construction in the greenway shall comply with the greenway overlay" and "construction of the pathway and machinery is permitted to construct the pathway per variance approval" and cite the variance. She said this section also references applying the greenway boundary. She said this would be a good section to include that clarification.

Calvin Kenney said construction of the pathway should be accessed from the lot side so the greenway shouldn't be entered into.

Bork said it may depend on where the greenway is.

In response to a question from Len Goodwin, Bork said the staff response to the citizen comment was not included in the final order. She said for the record, we could say the TIA didn't show any required mitigation.

Len Goodwin suggested staff's response to that public comment should be included in the record.

Calvin Kenney said he is not prepared to move forward. He said he has too many unanswered questions; offsetting the bio-swales, too many variances, etc. and he would like to see it come to the Commission one more time.

James Eagle Eye said Commissioners can express their concerns to staff and determine what can be addressed at this point and what is required to be addressed.

Bork said the main outstanding issue is concurrence from DSL for wetlands. She said in Phase I and II the applicant was able to submit the tentative subdivision and get approval with delineation only. She said planning staff is following the same process for Phase III that was required for Phases I and II. She said the other outstanding issue is to address stormwater, but that's in the site plan review process not the subdivision process. She said ideally it would be nice to have them altogether but the applicant is not required to do that.

James Eagle Eye said some things can't be addressed at this stage. He said part of it is to get the Planning Commission's concerns in the record.

Lily Rees said the delineation of the wetlands and the Geo-Technical Report or a concurrence letter are two large pieces of information that we currently don't have now.

Lane Branch, the City Engineer said the Geo-Technical Report was submitted in the original SWAP and indicated this area is acceptable for a subdivision. He said he doesn't have a lot of concerns that the applicant can't build this appropriately based on the Geo-Technical recommendations but as far as final build out of streets and houses, he wants to ensure that the plans are in accordance with the original Geo-Technical Report. He's not concerned about unstable soils or other major issues.

In response to a question from Lily Rees, Len Goodwin said it's impossible to get it through delineation by September.

Garbett said in Phase I and II the SWAP conditions of approval allowed for delineation to occur prior to construction.

In response to a question from Ingham, Bork said it's not likely there will be time for the Planning Commission to provide feedback on the fill issues or staggering the bio-swales. She said she's not sure when that would normally happen because the street standards are included in the original SWAP. She suggested the Planning Commission direct the public works department to work with the applicant to stagger the bio-swales and include that they be staggered as a condition of approval.

In response to a question from Lily Rees, Bork said it wouldn't be necessary to have that reviewed by legal counsel.

Len Goodwin said the Planning Commission has given clear direction to staff and he is confident the City Engineer and staff will implement exactly what it wants.

Terry Nye, Chief, Lane Fire Authority, said he appreciates the involvement the planning staff has requested for this process and he wanted to express as a fire officer, that all roundabouts, traffic islands, one way streets, and dead-end streets are not a good idea. He said he is concerned about the narrow sections of roadway and asked if there's any way to alleviate that problem by staggering the bio-swales. He said only one parked car can keep an ambulance from getting through. He suggested rounded curbing rather than the square curbing. He also requested yellow paint be maintained and said the fire lane will be aggressively enforced.

Matt Lewis, Civil Engineer, Cardno, 5415 SW Westgate Dr., Suite 100, Portland, OR

Mr. Lewis reviewed his power point presentation and proposed changes to the conditions of approval.

Jesse Lovrien, Hayden Homes, 2424 S. W. Glacier Place, Ste. 110, Redmond, OR

He said he knew the delineation would be a concern and that process is underway. He said under staff's proposed conditions, they would not be able to build the subdivision because of the 50 ft. buffer. He felt the SWAP overrides current code. He said the idea of the SWAP is to allow for streamlining and efficient development. He said wetlands change and if that buffer is applied, they will lose lots. He said the City will get a larger park based on the SWAP. He said there's a lot of questions about the bio-swales and he would be more than happy to see those go away but they are required to provide a vegetative filtration system. He said bio-swales are very challenging to maintain and the Phase I homeowner's association is unable to maintain those bio-swales with the budget they currently have so Hayden Homes is funding a portion of the maintenance. He said by creating more lots they are hopeful to dilute the maintenance costs with more homeowners association fees coming in. He said Hayden Homes doesn't want to bring in a lot

of fill to the site because it's expensive but the site is limited by the stormwater issues. He said they are willing to work with staff to come up with some solutions addressing these issues.

Bork thanked the applicant for the presentation. She said staff looked to the SWAP, in particular, the issue relating to the greenway overlay - how do we apply the greenway overlay knowing that the wetlands are different from when the SWAP was approved. It was legal counsel's recommendation that the City apply the greenway code as it was adopted. That includes pushing that buffer out and putting the overlay on those impacted lots. She said the open space isn't changing just the application of the greenway. She said staff understands that conceptually there is an option to do a variance and it would most likely be approved because it meets the criteria. She said this is a procedural planning land use requirement and we cannot ignore the code to address those two issues. She said it would be nice if we can adopt it as shown. Staff thought there was some language in the original variance approval that may have addressed some of those issues but the variance was very specific on road crossings, utilities and it specifically called out water and sewer so staff wasn't able to use that as a way to address specific issues. She said we couldn't get there with the current code so that's why staff is recommending those conditions. They are not conditions of approval of the subdivision they are separate land use processes.

Len Goodwin said he agreed when the SWAP was done, there was an effort made by the Planning Commission so that they tried to recognize that by allowing for smaller buffers in some areas and larger in others which would achieve the same effect. He said the challenge he has is if we were to attempt that with Phase III, to replicate that approach and allow for slightly different buffers, we would need to redo the entire Plan because we would have to take into account the change of the buffer in relation to the rest of the Plan. He said the only way to achieve that is a modification of the Master Plan, which not likely going to happen. He said we can't really tweak buffering in Phase III. He agrees with staff we don't have a lot of flexibility any more. He said when the original Master Plan was created, we exercised that flexibility in creating the SWAP.

Bork said she felt that was the intent when the SWAP was created. She said in looking at old staff report exhibits, the SWAP was created at the same time the Planning Commission and Council were adopting the greenway language and the 50 ft. buffer along the wetland. She said they did try to accommodate that 50 ft. buffer as best they could throughout most of the site knowing in anticipation the code would apply. She said without having the original staff to talk with, that is our best interpretation in applying the greenway code as it's written.

James Eagle Eye agreed with Len Goodwin and said when the SWAP was created, they worked with the information they had at the time. He said we knew there would be some changes and give and take but the code at the time would be the decision maker.

Bork said the SWAP under the "implementation" section indicates we will apply subsequent codes after the adoption of the SWAP. She said it's leading us that way but it's probably not what we anticipated; given the length of time between phases. She said we didn't anticipate the wetland growing but that's what we have to work with.

James Eagle Eye agreed with staff and legal that it seems logical that we would apply the same buffer to any delineated wetlands within the City of Veneta.

Len Goodwin said he appreciates the suggestion of an additional traffic conditions but he too doesn't support a new Traffic Impact Analysis (TIA) being done and said the existing TIA adequately establishes the project. He said he read the comments from ODOT and he doesn't credit their objections highly. He said if ODOT chooses to appeal, they certainly have the right but he doesn't see anything in the TIA that would require additional conditions.

Lane Branch agreed but we like to be concurrent with ODOT.

In response to a question from James Eagle Eye, Garbett said the memo from OTAK summarized the

application for the variance but just shows a street crossing.

Len Goodwin asked staff at what level of flexibility do we have to work with the applicant to craft a solution that is workable. He said he understands legal counsel's position but he also understands that the reasonable expectations of the developer is that they be able to develop their project.

Bork said the most flexibility we can offer is in the site plan and variance process.

James Eagle Eye said we're getting a little ahead of ourselves. He said we don't have the delineated wetlands. He said there is an option to come in for a variance for the greenway if it is an issue. He said we have opportunities to work as we have in the past but we're not there yet.

Bork said for the subsequent phases, we could potentially amend the greenway to address the SWAP area and discuss in more detail whether or not to apply the buffer.

James Eagle Eye said we have the option of a variance if the greenway falls on a lot that prohibits a building footprint. He said we have a way of moving forward and an option.

Len Goodwin said even if we grant the variance at some future time, we'll have the opportunity to take another look at the wetlands and greenway. He said he's hopeful we don't have to do too many more delineations before the project is completed, but one more is likely, which may offer us additional opportunities to make adjustments at that time.

Bork said if it's done early enough we can probably meet the time lines.

Len Goodwin suggested we don't do another delineation before the Planning Commission moves on this.

Ingham said staff received new information last Friday, after the packets went out. He said staff can work through the new information and bring back final orders at a future Planning Commission meeting. We have through September 9th to respond to this but it's a lot of information to absorb tonight.

Kevin Conlin agreed.

James Eagle Eye said he agreed but he believes whatever the delineation comes back we apply the 50 ft. buffer and work through variance to approve that. He said we have the opportunity to do that as the project moves on. He said it doesn't need to be done tonight.

Bork said the variance would be a separate process.

Len Goodwin suggested if staff works on it over the next few weeks and brings it back to the Planning Commission at the August 5th meeting. He said it's the preference of the Planning Commission to find a way to make this work.

In response to a question from Matt Lewis, James Eagle Eye said he felt a recess is not necessary because the Planning Commission is not voting on the application tonight. He said he felt staff has a clear view of what the Commission's intentions are.

In response to a question from the applicant, Jesse Lovrien said he has challenges with the time frames associated with building the site.

James Eagle Eye said the City and the Planning Commission put a lot of time and put their best effort into the SWAP. He said we are committed to continue to see it move forward and make sure it's best for the developer and the City. He said this application can be held over to the August meeting. He said the applicant will have time to discuss that with staff before the August meeting.

Mr. Lovrien said he is concerned he wouldn't be able to start construction this year if the application is pushed out another month.

James Eagle Eye said the Commission wants more information and more work done before it makes a decision.

James Eagle Eye said the Planning Commission and the City need to treat this application with the same timeline of 120 days as any other application.

In response to a question from Len Goodwin, Bork said it's possible to hold a special Planning Commission meeting.

Ingham said staff can provide a new package of information at the August meeting and said the Planning Commission could endorse it quickly.

James Eagle Eye said he wants staff to feel comfortable being able to work through a new packet of information.

Mr. Lovrien said he would be happy to provide any additional information.

Bork asked the Planning Commissioners what additional information they would like to see that would assist them in making a decision. She said she's not sure she can add additional subdivision conditions of approval but more like additional information on how to address future wetlands.

Len Goodwin said the Planning Commission needs to be comfortable that the issue of wetlands can be addressed at the site plan level or through a variance. He said the challenge is that the applicant is asking that several conditions of approval be removed and he's not comfortable approving anything without staff's approval.

James Eagle Eye said the variance process provides for changes to be made.

Ingham said even if the Planning Commission made a decision, the applicant can appeal that.

Bork said yes, but staff would not recommend approval of the changes the applicant proposed but would recommend the Planning Commission approve the final order presented by Garbett with the condition of the variance and the site plan.

Mr. Lovrien is concerned about specific lots that would be impacted if the 50 ft. buffer was required. He said if that buffer were applied he would lose three lots.

Bork said it's possible that with a variance, that could be approved based on all other requirements being met.

Kevin Conlin suggested that rather than having a special meeting, the Planning Commission could vote with that understanding.

Mr. Lovrien said he would be willing to accept staff's recommendations and he understands the meeting doesn't provide for any approval.

In response to a question from James Eagle Eye, Mr. Lovrien said it's possible the greenway wetland may have pushed into those lots.

MOTION: Len Goodwin made a motion to approve staff's recommendations of conditional approval of the Tentative Subdivision and Type C Tree Permit. Kevin Conlin seconded the motion which passed with a vote of 3-2.

In response to a question from Lily Rees, Bork said she could add the condition that the construction of the pathway must comply with the greenway zone standards and recognize the variance for the construction of the pathway.

Calvin Kenney said he is not comfortable approving the application at this time.

VOTE: 3-2. Calvin Kenney and Lily Rees voted no.

VI. Other

Bork said a code amendment addressing irrevocable petitions for infill lots will come before the City Council at the July 14th meeting. She said an update will be provided at the August Planning Commission meeting which she will not be attending.

Kevin Conlin said he also will not be attending the August meeting.

VII. Adjourn

Chair James Eagle Eye adjourned the Veneta Planning Commission at 8:57 p.m


James Eagle Eye, Chairman

ATTEST:


Darci Henneman, Assistant City Recorder