

Legislation Details (With Text)

File #:	22-134	Version:	1
Type:	SOB - Unfinished business from prev. mtg.	Status:	Passed
		In control:	City Council
On agenda:	3/28/2022	Final action:	3/28/2022
Title:	Deliberations for City Council review of a modified application following Council's vote to deny Phased Subdivision Tentative Plan Case No. SUB21-09.		
	Ward(s): 3		
	Councilor(s): Phillips		
	Neighborhood(s): Morningside Neighborhood Association		
	Result Area(s): Welcoming and Livable Community		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. Vicinity Map, 2. SUB21-09 Decision, 3. Applicant's Revised Plans and Written Statement dated March 9, 2022, 4. Public Comment - Combined Testimony 3-13-2022 thru 3-21-2022.pdf, 5. 3.28.2022 Applicant's Final Written Argument to Salem City Council with Exhibit 1.PDF		

Date	Ver.	Action By	Action	Result
3/28/2022	1	City Council	approved	Pass

TO: Mayor and City Council

THROUGH: Kristin Retherford, Interim City Manager

FROM: Norman Wright, Community Development Director

SUBJECT:

Deliberations for City Council review of a modified application following Council's vote to deny Phased Subdivision Tentative Plan Case No. SUB21-09.

Ward(s): 3
Councilor(s): Phillips
Neighborhood(s): Morningside Neighborhood Association
Result Area(s): Welcoming and Livable Community

SUMMARY:

On February 28, 2022, the City Council conducted deliberations and voted to deny the application for a phased subdivision tentative plan to divide approximately 29.68 acres into 139 single family lots ranging in size from 4,000 square feet to 3.64 acres in two phases of development for property located at 4540 Pringle Road SE (Attachment 1) (Phased Subdivision Tentative Plan Case No. SUB21-09).

The applicant has modified the proposal in light of City Council's vote and City Council is required by ORS 197.522 to consider the modified application.

ISSUE:

Shall the City Council affirm, modify, or reverse the Planning Administrator's decision approving phased subdivision tentative plan case no. SUB21-09 with the applicant's proposed modifications dated March 9, 2022.

RECOMMENDATION:

Affirm the Planning Administrator's decision approving phased subdivision tentative plan case no. SUB21-09 with the applicant's proposed modifications dated March 9, 2022 and the additional conditions of approval in this report.

FACTS AND FINDINGS:

1. On February 28, 2022, the City Council conducted deliberations and voted to approve a motion denying the Planning Administrator's decision approving Case No. SUB21-09.
2. ORS 197.522(2) provides that a local government shall approve an application for a permit, authorization or other approval necessary for the subdivision or partitioning of, or construction on, any land for needed housing that is consistent with the comprehensive plan and applicable land use regulations.
3. ORS 197.307(4) requires local governments to only apply clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The proposed subdivision is an application for needed housing consistent with the definition in ORS 197.303.
4. ORS 197.522(3) provides that if an application is inconsistent with the comprehensive plan and applicable land use regulations, the local government, prior to making a final decision on the application, shall allow the applicant to offer an amendment or to propose conditions of approval that would make the application consistent with the plan and applicable regulations.
5. Following the February 28, 2022 meeting the applicant, citing ORS 197.522, requested an opportunity to offer an amendment or propose conditions of approval that would make the application consistent with all applicable requirements of the Salem Revised Code.
6. The applicant's amended plan and written statement for reconsideration is included as Attachment 3.

7. On March 14, 2022 the City Council voted to reopen the record for this case until 5:00 p.m. on March 21, 2022 for the public to submit new evidence and arguments that address the applicant's amended plan and written statement. Comments received during this period are included as Attachment 4.
8. The record shall be open until March 28, 2022 at 5:00 PM for the applicant to provide final written argument. The applicant's final argument will be provided once it is received.
9. On March 28, 2022 the City Council will deliberate and vote on the applicant's amended proposal. Staff will be available to discuss the amended application and public testimony with City Council. However, there will not be any opportunity for any party, including the applicant, to provide oral testimony, nor may staff introduce any new facts outside those already in the record.
10. Per ORS 197.522(4), a local government shall deny an application that is inconsistent with the comprehensive plan and applicable land use regulations and that cannot be made consistent through amendments to the application or the imposition of reasonable conditions of approval.
11. The applicant agreed to extend the state-mandated local decision deadline from March 15, 2022 to April 12, 2022.

BACKGROUND:

The applicant has provided the following modifications to the tentative plan.

1. **Significant trees.** There are a total of 64 significant trees located on the subject property and within abutting sections of right-of-way for 12th Street SE. The applicant's development plan previously deliberated by City Council on February 28, 2022 proposed the removal of 17 of the 64 significant trees. The applicant states they heard the concerns of the neighborhood and the City Council regarding the number of significant trees proposed for removal and have revised the tentative plan to reduce the number of significant trees proposed for removal from 17 to six.

The applicant's March 9, 2022 revised tentative plan no longer proposes removal of a significant tree solely for the purpose of creating a buildable lot. Thirteen of the previously proposed lots that conflicted with the location of significant trees have been removed from the revised plan. These lots have been incorporated into the Meyer Farm farmhouse lot, and results in the preservation of 11 more significant trees than the previous plan.

Six significant trees are still proposed for removal due to the required street improvements and grading and trenching for a required public utility easement. The table below identifies the significant trees proposed for removal, the diameter at breast height (DBH), and the reason for removal.

Tree Number	DBH	Reason for Removal
2578	25	12 th Street widening
2579	38	12 th Street widening
3143	26	In path of required public utility easement (PUE).
3146	24+	Construction of Hilfiker Lane
3194	27	Construction of Hilfiker Lane
5546	24	12 th Street widening

Trees 2578, 2579, and 5546 are located within the right-of-way for 12th Street SE. 12th Street SE is an underimproved street that does not comply with City standards for overall right-of-way width, width of the paved improvement, and does not contain sidewalks. As a condition of development, the applicant is required to improve boundary streets that do not comply with City standards. The location of these trees conflict with required improvements on 12th Street and must be removed.

Similarly, removal of Trees 3146 and 3196 is necessary for development of the Hilfiker Lane SE extension through the subject property. The extension of Hilfiker Lane is identified as a high priority connection in the Salem Transportation System Plan that is needed to connect between Commercial Street SE and Pringle Road SE. Due to design requirements for this collector street, and physical and topographic constraints on the subject property, it is not possible to relocate or realign this street. The location of these trees conflict with required improvements related to Hilfiker Lane and must be removed.

Finally, the revised tentative plan includes the removal of Tree 3143 located on proposed Lot 57, which is proposed to remain as a developable lot. Removal of this tree is necessary due to the location of a required 10' wide public utility easement (PUE) and the trenching and grading required to take place in this area for placement of utilities. Removal of Lot 57 would not result in preservation of Tree 3143, as the PUE along Hilfiker Lane cannot be relocated and must be provided along the frontage whether or not Lot 57 is developed.

2. **Number of lots reduced.** The March 9, 2022 revised tentative plan proposes to reduce the total number of lots for the subdivision from 139 to 126 in order to avoid removal of significant trees. The revised plan shows removal of lots 58-65 and 40-44; these lots are adjacent to the Meyer Farm farmhouse lot and will be incorporated into this lot increasing its size from 3.64 acres to 4.87 acres. The applicant requests that the City Council impose the following condition of approval:

Condition: Final subdivision plats for the phased subdivision shall be in substantial conformance with the applicant's revised tentative plan dated March 9, 2022, and shall not include proposed lots 58-65 and 40-44 as development lots.

3. **Walking path adjusted.** The walking path between Hilfiker Lane SE and Ramsay Road SE had been adjusted on the March 9, 2022 revised tentative plan in order to reduce the impact

on nearby trees.

4. **Off-site transportation improvements.** The applicant is requesting that the City Council impose the following off-site transportation improvements as conditions of approval.

Condition: As proposed by the applicant, as a condition of Phase 1, the applicant shall construct speed humps on Albert Street SE to City standards in locations approved by the Public Works Department.

Condition: As a condition of Phase 2, the applicant shall install an all way stop at the intersection of 12th Street SE and Lansford Drive SE.

ALTERNATIVES:

On February 28, 2022 the City Council voted to reverse the Planning Administrator's decision and deny the subdivision. The City Council is required by ORS 197.522 to consider the applicant's proposed modifications.

The City Council may affirm, modify, or reverse the decision of the Planning Administrator for Phased Subdivision Tentative Plan Case No. SUB21-09 with the applicant's proposed modifications dated March 9, 2022 and additional conditions of approval contained in this staff report.

- I. AFFIRM the Planning Administrator's decision with the applicant's proposed modifications and additional conditions of approval;
- II. MODIFY the Planning Administrator's decision with the applicant's proposed modifications and additional conditions of approval; or
- III. REVERSE the decision and deny the subdivision application.

Aaron Panko
Planner III

Attachments:

1. Vicinity Map
2. SUB21-09 Decision
3. Applicant's Revised Plans and Written Statement dated March 9, 2022
4. Additional Public Comments