

with common open space for property located in the 700 to 800 Blocks of Creekside Drive SE (**Attachment 1**). On September 11, 2024, an appeal was subsequently filed by the applicant contesting one of the conditions of approval placed on the decision, Condition No. 14, requiring construction of a sidewalk along the frontage of the property on the north side of Creekside Drive SE.

ISSUE:

Shall City Council affirm, modify, or reverse the Planning Commission’s decision approving Planned Unit Development-Subdivision Tentative Plan, Partition Tentative Plan, Urban Growth Preliminary Declaration, and Class 2 Adjustment Case No. PUD-SUB-PAR-UGA-ADJ24-01?

RECOMMENDATION:

Affirm the Planning Commission’s decision approving Planned Unit Development-Subdivision Tentative Plan, Partition Tentative Plan, Urban Growth Preliminary Declaration, and Class 2 Adjustment Case No. PUD-SUB-PAR-UGA-ADJ24-01.

FACTS AND FINDINGS:

Procedural Findings:

1. Summary of Record:

The following items are submitted to the record and are available: 1) All materials and testimony submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, and stormwater reports; 2) Any materials, testimony, and comments from public agencies, City Departments, neighborhood associations, and the public; and 3) All documents referenced in this report.

All application materials are available on the City’s Permit Application Center website at <https://permits.cityofsalem.net>. You can use the search function without registering and enter the permit number listed here: 24 109994.

- 2. On May 6, 2024, an application for a Partition Tentative Plan, Class 2 Adjustment, Planned Unit Development-Subdivision Tentative Plan, and Urban Growth Preliminary Declaration was submitted by Brandie Dalton, of Multi/Tech Engineering, on behalf of the applicant and property owner, Creekside Golf Course, LLC.
- 3. After additional requested information was provided by the applicant, the application was deemed complete for processing on July 8, 2024; and notice of the public hearing was subsequently sent, pursuant to SRC requirements, on July 16, 2024, and posted on the property by the applicant’s representative on July 26, 2024.

4. On August 6, 2024, a public hearing was held before the Planning Commission. Subsequent to receiving public testimony and asking questions of the applicant and staff, the hearing was closed, and the record subsequently left open until August 13, 2024, for any party to submit additional written evidence and testimony on the proposal; August 20, 2024, for rebuttal; and August 27, 2024, for final written argument from the applicant unless subsequently waived.
5. On August 20, 2024, a written request was received from the applicant's representative waiving the final seven-day period for final written argument. Having received the applicant's request to waive the seven-day period for final written argument, the Planning Commission proceeded with deliberations on the proposal at their August 20, 2024, meeting and voted to approve the Planned Unit Development-Subdivision, Partition, Urban Growth Preliminary Declaration, and Class 2 Adjustment (**Attachment 2**) subject to the conditions of approval recommended in the August 6, 2024, staff report and accompanying August 6, 2024, supplemental staff report; but as further recommended to be modified in staff's August 13, 2024, open record period memo and further revised by the Planning Commission during deliberations.
6. On September 11, 2024, a timely appeal of the Planning Commission's decision, meeting the requirements of SRC 300.1010 and SRC 300.1020, was filed by the applicant's representative (**Attachment 3**).
7. The 120-day state mandated local decision deadline for the application is November 5, 2024.

Substantive Findings:

1. Neighborhood Association Comments

The subject property is located within the boundaries of the South Gateway Neighborhood Association. No comments were received from the neighborhood association during the initial review of the application and no comments have been submitted as of the date of completion of this staff report on the appeal.

2. Homeowners' Association Comments

Portions of the subject property are within Creekside Homeowners Association (HOA) and the proposed lots within the planned unit development-subdivision will be served by the private streets within the Golf Club Estates at Creekside PUD. The HOA provided comments during the initial review of the application with the Planning Commission and subsequently provided additional comments relating the appeal that are included as **Attachment 4**. In summary, the HOA board indicates that they have been working with the applicant and are in support of what has been proposed. They indicate that while the HOA is concerned with sidewalk connectivity and making sure that there are safe and accessible sidewalks throughout

Creekside, they don't believe that the addition of sidewalks between the access points along the north side of Creekside Drive will provide a benefit to the HOA but will instead add costs as the HOA will be the party responsible for the long-term maintenance of these sidewalks. They explain that they believe the applicant's proposed improvements will provide the community with pedestrian connections that will both improve pedestrian safety and provide a better pedestrian experience while avoiding the addition of sidewalks that will add cost for both the applicant and the HOA.

3. Appeal

At issue in the applicant's appeal is condition of approval No. 14. This condition specifically requires the following:

Condition 14: Prior to final plat or delayed pursuant to improvement agreement per SRC 205.035(c)(7)(B), construct a 5-foot curblin sidewalk along the frontage of the subject property abutting Creekside Drive SE.

This condition was added during the Planning Commission's August 20, 2024, deliberations after the record had been closed and focused on pedestrian connectivity along Creekside Drive. The notice of appeal filed by the applicant explains the condition of approval is being appealed because:

- A. The cumulative impact of the conditions of approval, with the addition of Condition 14, violates ORS 197.758, by adding unreasonable cost to the middle housing development proposed in the application; and violates the Fifth Amendment of the US Constitution and Article I, Section 18, of the Oregon Constitution by requiring public improvements that are disproportionate to the impact of the proposed development;
- B. The addition of Condition 14 is inconsistent with the City's Climate Action Plan by requiring the applicant to construction additional, unnecessary, sidewalks along Creekside Drive while creating additional climate impacts associated with the proposed development; and
- C. There is sufficient evidence in the record to support the application of alternative street standards within the Planned Unit Development, consistent with the previous approvals for the area.

Staff Response: As shown on the planned unit development-subdivision tentative plan submitted by the applicant, the proposal includes the creation of 11 residential lots on the north side of Creekside Drive SE that, as indicated in the application materials submitted by the applicant, will have the potential to be developed with up to two dwelling units on each lot for a total of 22 units.

Creekside Drive SE is a private local street that was constructed as part of the Golf Club

Estates at Creekside Planned Unit Development. Because Creekside Drive is a private street it is under the ownership of the Creekside Estates Homeowners Association, which also bears responsibility for maintenance of the street and all of the other private streets and common private facilities included within the development.

Under the City's Transportation System Plan (TSP) and SRC 803.025 (Tables 803-1 and 803-2), local streets are required to be improved to width of 30 feet within a 60-foot-wide right-of-way. The section of Creekside Drive that abuts the property was originally approved in 1993 as part of the second phase of the Golf Course Estates at Creekside PUD (*Case No. PUD93-1*) and is currently improved to a paved width of 30 feet within a private street right-of-way which varies in width from 50 feet to 60 feet. For the majority of the length of Creekside Drive, from Sunnyside Road SE on the east to Lone Oak Road SE on the west, there are curblin sidewalks on the south side of the street. There are also curblin sidewalks on the north side of the street; however, they're only present along relatively shorter section of the street between Sunnyside Road and the eastern boundary of the subject property where site topography is less steep and there are lots with homes facing the street on both sides of the street.

For those sections along Creekside Drive where the site topography is steeper adjacent to the street, including along the frontage of the subject property and continuing west to its intersection with Lone Oak Road, and where there are double frontage lots with street frontage not only abutting Creekside Drive on the south but also Inverness Drive SE and Inverness Court SE to the north, there are no sidewalks on the north side of the street. For the double frontage lots located between Creekside Drive and Inverness Drive/Inverness Court, the homes on these lots are generally located up and away from Creekside Drive at the top of the adjacent hillside; and because of the elevation change adjacent to Creekside Drive, the homes are oriented to face the north with driveway access from Inverness Drive and Inverness Court rather than Creekside Drive.

Due to the topography of the site which increases as you go north from Creekside Drive, the proposed lots and the homes that will be constructed on them are proposed to be configured as double frontage lots in a similar fashion as the lots to the west between Creekside Drive and Inverness Drive/Inverness Court. As shown on the tentative planned unit development-subdivision plan, a reduced-width private street (Villa Loop) is proposed that loops to the north off Creekside Drive to provide vehicle access to Lots 3 through 11. The homes on these lots will face Villa Loop. Due to the configuration and dimensions of the property, there is not sufficient space, however, to extend Villa Loop further to the west to provide access to Lots 1 and 2. As such, the homes on these lots will face, and take access from, Creekside Drive.

Villa Loop is proposed to be improved to a width of 22 feet to 28 feet and will include on-street parking and a landscape strip with street trees on the north side of the street, and a curb-line sidewalk providing for pedestrian access and connectivity on the south side of the street.

In the August 6, 2024 staff report to the Planning Commission, the Planning Administrator did not recommend a condition of approval requiring construction of a sidewalk on the north side

of Creekside Drive. SRC 803.020(b)(2) requires private streets to conform to the same development standards as public streets. However, an Alternative Street standard can be authorized pursuant to SRC 803.065 if one of the following applies: existing development or physical constraints make compliance with the standards set forth in this chapter impracticable; the development site is served by fully developed streets that met the standards in effect at the time the streets were originally constructed; or topography or other conditions make the construction that conforms to the standards impossible or undesirable. Staff's analysis of the Alternative Street standard request is as follows:

- The original planned unit development approval for the property in 1993 (*Case No. PUD93-1*) included a variance that was approved to allow the portion of Creekside Drive that abuts the subject property to be developed without a sidewalk on the north side of the street;
- The sidewalk proposed along the new internal private street (Villa Loop), together with the recommended additional pedestrian connectivity improvements established in Condition No. 15 to link the existing sidewalks on the north and south sides of Creekside Drive to the new sidewalk along Villa Loop, otherwise provide for safe and convenient pedestrian access;
- The resulting development pattern without sidewalks on the north side of Creekside Drive is consistent with the development pattern of the existing double frontage lots to the west of the site abutting Inverness Drive and Inverness Court, which was approved in subsequent phases of the PUD, where these lots also abut Creekside Drive, are characterized by steep topography, and have homes that face, and take driveway access from, the abutting street to the north rather than from Creekside Drive; and
- The potential impacts requiring a sidewalk on the north side of the street could have on the development of the site due the additional grading that would be required to cut into the adjacent sloped hill area to accommodate the sidewalk.

During deliberations on the proposal, the Planning Commission considered staff's recommendation and the testimony provided from the applicant and the public and voted to require construction of a curblined sidewalk on the north side of Creekside Drive. The Commission found that pursuant to SRC 803.035(I) sidewalks are required along both sides of streets and the alternative street configuration recommended by staff should not be approved. Testimony was received that people enjoy walking in this neighborhood and therefore, a safe place to walk should be provided. Sidewalks along local streets provide a safe place for residents of all ages and abilities to walk safely throughout the neighborhood. The Commission determined that it was necessary to fill in the missing section of sidewalk along the frontage of the property, satisfying the street improvement standards of SRC 803.035(I), and providing safe and convenient pedestrian access along Creekside Drive.

The requirement to construct the sidewalk along the property's frontage of Creekside Drive does not violate ORS 197.758, the Fifth Amendment of the US Constitution, or Article I,

Section 18, of the Oregon Constitution. The requirement is also not inconsistent with the City's Climate Action Plan.

Condition of approval No. 14 is consistent with ORS 197.758 (*now codified under ORS 197A.420*) because the requirement to construct a sidewalk adjacent to a street is a normal element of a boundary street improvement requirement provided under SRC 803.040(a)(1)&(2), which applies to subdivisions, partitions, planned unit developments, and manufactured dwelling parks equally whether the proposed lots will be developed with single family dwellings or, in the case of the proposed development, duplexes. Because sidewalks are a normal and expected part of a street and because the requirement to construct a sidewalk on the Creekside frontage of the property is based on the requirements of SRC 803.040(a) and dependent on the type of application proposed (*in this case a planned unit development-subdivision*) and not the specific type of housing that will be constructed on the lots, the condition does not have the effect of discouraging needed housing and does not result in unreasonable cost to the middle housing development because this same cost would otherwise still equally apply if the lots were instead being developed with single family detached dwellings.

The requirement to construct a sidewalk along the property's Creekside Drive frontage similarly does not violate the Fifth Amendment of the US Constitution or Article I, Section 18, of the Oregon Constitution. This is because the required 5-foot-wide sidewalk improvement is not disproportionate to the impact of the proposed development. The proposed PUD-subdivision includes the creation of a total of 11 lots accommodating up to a total of 22 dwelling units. The City's Development Services Division indicates that based on the total 22 dwelling units proposed an estimated 158 average daily vehicle trips (*7.20 trips/unit*) will be generated by the proposed development. This increase in vehicle trips will result in increased vehicle traffic on adjacent streets; thereby supporting an additional sidewalk improvement along the frontage of the property to provide pedestrian access where none is currently provided. In addition, the conditions of approval applicable to the proposal require construction of a sidewalk on the north side of Creekside Drive and a sidewalk on the proposed new internal street, Villa Loop, but only on one side of that street. As such, the cumulative impact of the conditions of approval applicable to the development ultimately requires only the construction of two sidewalks, a number that is equal to the number of sidewalks that would otherwise be required to be constructed for Villa Loop itself had the private street not been approved for a reduced-width alternative street standard. Because the proposed development is subject to the boundary street improvement requirements of SRC 803.040 and because the required sidewalk improvement along the north side of Creekside Drive is proportional to the resulting impact of the proposed development, it is not a taking and does not violate the Fifth Amendment of the US Constitution nor Article I, Section 18, of the Oregon Constitution.

The requirement to construct a sidewalk along the property's Creekside Drive frontage is also not inconsistent with the City's Climate Action Plan. The City's adopted Climate Action Plan establishes strategies and actions intended to reduce Greenhouse Gas emissions and increase climate resiliency in the community. One way to reduce greenhouse gas emissions is to encourage more walking and the utilization of alternative modes of transportation. Providing

sidewalks on streets makes walking safer and in-turn can help to reduce the need to drive to destinations within a vehicle; thereby helping to fulfill the goals of the Climate Action Plan.

Based upon the above findings, Condition No. 14 complies with the applicable requirements of the Salem Revised Code and is in compliance with State and Federal Law. The proposed development will conform to the applicable requirements of the SRC either with the requirement to construct the sidewalk along the Creekside Drive frontage of the property or without the requirement to construct the sidewalk, as originally recommended in the August 6, 2024, staff report.

ALTERNATIVES:

The City Council may affirm, modify, or reverse the decision of the Planning Commission approving Planned Unit Development-Subdivision Tentative Plan, Partition Tentative Plan, Urban Growth Preliminary Declaration, and Class 2 Adjustment Case No. PUD-SUB-PAR-UGA-ADJ24-01.

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Planner III

Attachments:

1. Vicinity Map
2. Planning Commission Decision Dated August 27, 2024
3. Notice of Appeal Dated September 11, 2024
4. Creekside Homeowners Association Comments