



## Staff Report

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**File #:** 19-420

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**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Norman Wright, Community Development Director

### **SUBJECT:**

Appeal of the Planning Commission's decision approving Fairview Refinement Plan / Class 2 Adjustment / Tentative Subdivision Plan Case No. FRP-ADJ-SUB19-01 for property located in the 4100 to 4200 blocks of Pringle Road SE and the 4200 Block of Battle Creek Road SE.

Ward(s): Ward 3

Councilor(s): Nanke

Neighborhood(s): Morningside

Result Area(s): Welcoming and Livable Community

### **ISSUE:**

Shall the City Council affirm, modify, or reverse the July 26, 2019, decision of the Planning Commission for Fairview Refinement Plan / Class 2 Adjustment / Tentative Subdivision Plan Case No. FRP-ADJ-SUB19-01 approving a new refinement plan for approximately 14.07 acres of the former Fairview Training Center site together with an adjustment to reduce the minimum required size of the refinement plan from 40 acres to approximately 14.07 acres and a tentative subdivision plan to divide the approximate 14.07 acre property within the refinement plan into 16 lots with open space?

### **RECOMMENDATION:**

Affirm the July 26, 2019, Planning Commission's decision approving the Fairview Refinement Plan, Class 2 Adjustment, and Tentative Subdivision Plan.

### **SUMMARY:**

On July 26, 2019, the Planning Commission approved a consolidated application submitted by Olsen Design and Development, Inc. seeking approval of:

- A new Refinement Plan (Fairview Woods) for approximately 14.07 acres of the former Fairview Training Center site;

- A Class 2 Adjustment to reduce the minimum required size of the refinement plan from 40 acres to approximately 14.07 acres; and
- A tentative subdivision plan to divide the approximate 14.07 acre property into 16 lots, ranging in size from approximately 13,499 square feet to approximately 47,096 square feet, together with common open space.

The property subject to the proposed request totals approximately 14.07 acres in size, is zoned FMU (Fairview Mixed-Use), and is located in the 4100 to 4200 blocks of Pringle Road SE and the 4200 Block of Battle Creek Road SE (**Attachment 1**).

Under the requirements of the FMU zone, pursuant to SRC 530.015 and SRC 530.030, the proposed refinement plan is required for development of the 14.07 acre property. Pursuant to SRC 530.030, refinement plans are detailed regulatory plans that implement the *Fairview Plan*, the overall master plan for the former Fairview site. The standards and processes included within a refinement plan supersede the standards and processes of the UDC and regulate development within that specific refinement plan area. The applicant's proposed Fairview Woods refinement plan is included as **Attachment 2**.

Because the area of land identified to be included within the proposed refinement plan is less than the minimum 40 acres required under SRC 530.030(b), the applicant has requested a Class 2 Adjustment in conjunction with the refinement plan to reduce the minimum required refinement plan area to approximately 14.07 acres in size.

In addition to the refinement plan and Class 2 Adjustment, the applicant has also requested to subdivide the property into 16 residential lots together with common open space.

The tentative subdivision plan submitted by the applicant showing the layout of the proposed 16-lot subdivision is included as **Attachment 3**. As shown on the tentative subdivision plan the 16 proposed lots range in size from approximately 13,499 square feet to approximately 47,096 square feet. The large size of the lots, together with their use which will generally be limited to single family dwellings and single family dwellings with accessory dwelling units, is intended to facilitate increased preservation of trees, wildlife habitat, and open space while allowing development of the property in a manner to complement and support the surrounding Fairview Addition West refinement plan.

Vehicular access is proposed to be provided by two private streets, Braden Woods Lane and Long Loop. Upon the initial development of the subdivision, these streets will connect to the existing streets within the constructed phases of the Fairview Addition West subdivision to the north. As the remaining phases of the Fairview Addition West subdivision are completed to the east and south of the subject property, additional street and alley connections will be provided between the proposed subdivision and the Fairview Addition West subdivision; thereby providing for an interconnected system of streets.

In addition to providing vehicular access, the proposal also provides for pedestrian connectivity throughout the site and to the abutting Fairview Addition West subdivision in the form of dedicated

paved pedestrian paths, a natural surface path, and shared vehicle/pedestrian areas.

The Planning Commission's July 26, 2019, decision (**Attachment 4**) approved the proposal subject to the following conditions of approval:

**Refinement Plan Conditions:**

- Condition 1:** Figure 5 (Archeological Inventory/Tree Conservation Plan) of the refinement plan shall be revised to indicate a 90 percent preservation requirement within the identified tree protection zones.
- Condition 2:** The "Transit Close at Hand" section of the refinement plan on page 10 shall be revised to eliminate the language referring to transit service being provided to the development via Salem-Keizer Transit Route 6 on Pringle Road SE and Battle Creek Road SE.
- Condition 3:** The language concerning water service to the proposed refinement plan included under Sections 12 and 22 of the refinement plan shall be revised to be consistent with the water service requirements identified by the Public Works Department.
- Condition 4:** The existing glacial erratic boulder identified in the 2004 Archaeological Cultural Resources Inventory and Assessment for the Fairview Plan shall be moved to a different location within 200 feet of its current location in order to facilitate development of the property. When the boulder is moved, an archaeologist shall be present to examine the procedures and re-examine it to determine if any cultural petroglyphs are present.
- Condition 5:** An archeological resource inadvertent discovery plan shall be required for development within the refinement plan area.

**Subdivision Conditions:**

- Condition 1:** For all lots proposed with dwellings constructed at a finished floor elevation greater than 358 feet, extend water main(s) pursuant to PWDS from the terminus of the existing S-2 water main at the intersection of Battle Creek Road SE and Sunland Street SE to serve those lots.
- Condition 2:** Construct water and sewer systems to serve each lot.
- Condition 3:** Design and construct stormwater facilities pursuant to SRC Chapter 71 and PWDS.
- Condition 4:** Provide easements for public utilities located within private streets pursuant to PWDS 1.8(f).
- Condition 5:** Show all necessary access and utility easements on the plat and provide appropriate documentation of infrastructure maintenance agreements pursuant to SRC 802.040.
- Condition 6:** Dedicate a 10-foot public utility easement along the street frontage of all internal

streets.

- Condition 7:** Fire hydrants shall be provided and located within 600 feet of all portions of the dwelling units.
- Condition 8:** Prior to final subdivision plat approval, the applicant shall submit a Homeowners Association Agreement and Covenants, Conditions, and Restrictions (CC&R) document for review and approval by the City Attorney for the perpetual maintenance and operation of all common properties and facilities within the development including, but not limited to: private streets, private utilities, open spaces, common facilities, and community areas.
- Condition 9:** The portion of 2<sup>nd</sup> Street within the Fairview Addition West Subdivision located west of Z Street and connecting to Long Loop within the Fairview Woods refinement plan shall be designed to provide a transition from the private street design approved in the Fairview Addition West refinement plan to the private street design for Long Loop approved in the Fairview Woods refinement plan.
- Condition 10:** The portion of Braden Lane within the Fairview Addition West subdivision located between the south end of Braden Woods Lane and the modified cul-de-sac transition shown on the tentative subdivision plan shall be designed as a private street extension of Braden Woods Lane.
- Condition 11:** Construct a minimum 46-foot-wide improvement along the entire frontage of parcels 2 and 3 of Partition Plat 2015-29 to Minor Arterial standards, including tapers pursuant to PWDS. The sidewalk may meander and be located within an easement east of the property line in order to preserve existing trees along the property frontage. The boundary street improvements for the parcel 3 frontage may be deferred through an amendment to the existing Construction Deferral Agreement for the Fairview Addition West Subdivision (Reel 3690, Page 288, Marion County Records).
- Condition 12:** Construct internal streets to Local street standards pursuant to PWDS, except as otherwise provided in the alternate cross-sections pursuant to the refinement plan.
- Condition 13:** The emergency access to Pringle Road SE will be allowed only as required by the Fire Marshal.
- Condition 14:** Braden Woods Lane and Long Loop shall have appropriate no parking signage reviewed and approved as a condition of public construction plan approval.
- Condition 15:** No parking shall be permitted in the cul-de-sac bulbs at the northern and southern ends of Braden Woods Lane.

Prior to the expiration of the appeal deadline, an appeal of the Planning Commission decision was filed by Jerry Mumper. The appeal letter filed by the appellant is included as **Attachment 5**.

## FACTS AND FINDINGS:

### *Procedural Findings*

1. Eric Olsen, of Olsen Design & Development, filed a consolidated application for a new Fairview Refinement Plan, and corresponding adjustment and subdivision, to develop a 14.07 acre portion of the former Fairview Training Center site generally located in the 4100 to 4200 blocks of Pringle Road SE and the 4200 block of Battle Creek Road SE.
2. After additional requested information was provided by the applicant, the application was deemed complete for processing on May 30, 2019. Notice of the public hearing on the proposal was subsequently provided pursuant to SRC requirements on June 19, 2019. Notice of the public hearing was also posted on the subject property pursuant to SRC requirements by the applicant.
3. On July 9, 2019, the public hearing for the proposed development was opened and, based on requests received from the public and the applicant, continued until July 23, 2019.
4. On July 23, 2019, the continued public hearing was held before the Planning Commission to receive evidence and testimony on the proposal. Included in the testimony provided to the Planning Commission was a request to leave the record of the public hearing open for seven days to address additional testimony and evidence submitted at the hearing. The Planning Commission considered this request and, based on the hearing already having been previously continued to allow for the submittal of additional evidence and testimony, proceeded to deliberate and vote on the proposal.
5. On July 26, 2019, the Planning Commission's decision was issued approving the proposed refinement plan, Class 2 Adjustment, and tentative subdivision plan (**Attachment 4**).
6. On August 9, 2019, an appeal of the Planning Commission's decision was filed by Jerry Mumper (**Attachment 5**).
7. On August 20, 2019, public notice of the appeal hearing was provided pursuant to SRC requirements. Notice was also subsequently posted on the property pursuant to SRC requirements by staff.
8. The appeal hearing before the City Council is scheduled for September 9, 2019.
9. The state-mandated 120-day final decision deadline for the application is September 27, 2019.

### *Substantive Findings*

#### **1. Neighborhood Association Comments.**

The subject property is located within the Morningside Neighborhood Association. Comments were received from the neighborhood association (**Attachment 6**) during the initial review of

the application prior to the July 23, 2019, continued public hearing before the Planning Commission. The comments submitted indicated support for the proposal with the following additional caveats concerning:

- Pedestrian access;
- Inclusion of provisions for maintenance of and access to open space within the HOA covenants;
- Preservation and protection of as many trees as possible with home design and construction; and
- Provision of an opportunity for the neighborhood association to review final development plans before submittal to City.

No additional comments from the neighborhood association have been received as of the date of completion this staff report for the appeal.

## **2. Public Comments.**

During the review of the application by the Planning Commission comments were received from individuals expressing both support and opposition to the proposal. Comments received are included as **Attachment 7**.

Comments provided in favor, in summary, expressed support for the proposal due to:

- The refinement plan maintaining the spirit of the original vision for Sustainable Fairview and utilizing many of the sustainable principles included in the refinement plan for Fairview Addition West.
- The refinement plan offering an excellent option for the use of the land with the property being developed into 16 home sites while preserving open space, a majority of the current trees, and allowing for pedestrian and bike paths.
- The refinement plan representing a wise use of the woods adjacent to the Fairview Addition West subdivision because the proposed large lots and narrow private streets will allow for preservation of as many trees as possible and the porous pavement, bioswales, and green spaces are in keeping with the spirit and intent of Sustainable Fairview.

Comments provided in opposition, in summary, expressed concerns regarding:

- The proposal not being in keeping with the Fairview Plan.
- Loss of trees within the proposed refinement plan area.
- Loss of community natural open space.
- The proposed reduction to minimum required refinement plan size.
- Lack of conformance with the requirement to provide a minimum of 20 acres of natural

open space within the FMU zone.

- Grading and tree removal within the adjacent Fairview Addition West subdivision.

As of the date of completion of this staff report for the appeal, no additional public comments have been received.

### 3. Approval Criteria.

The approval criteria which must be satisfied in connection with the proposal are included in the following sections of the SRC:

- Fairview Refinement Plan: SRC 530.030(e);
- Class 2 Adjustment: SRC 250.005(d)(2); and
- Tentative Subdivision: SRC 205.010(d).

Facts and findings demonstrating the proposal's conformance with the applicable approval criteria are included in the Planning Commission's July 26, 2019, decision, which is included as **Attachment 4**.

### 4. Appeal.

Prior to the expiration of the August 12, 2019, appeal deadline, an appeal of the Planning Commission's decision was filed by Jerry Mumper. The appeal letter from Mr. Mumper's attorney, Sean Malone, is included as **Attachment 5**.

A summary and response to the issues raised in the appellant's appeal letter are provided below.

#### A. **Community Open Space, Neighborhood Park, and/or Wildlife Habitat/Ecological Buffer.**

The appellant's appeal indicates that the decision is inconsistent with the Fairview Plan because the provisions of the Fairview master plan expressly contemplate the subject property as being retained as community open space, neighborhood park, and/or wildlife habitat/ecological buffer.

**Staff Response:** SRC 530.030(e)(1) requires that for a refinement plan to be approved it must be consistent with the Fairview Plan. The Fairview Plan is the general master plan for the entire former Fairview Training Center site that establishes the overall goals and policies to guide future development of the property. Refinement plans, on the other hand, are specific more detailed regulatory plans that implement the Fairview Plan through establishment of specific requirements and development standards to regulate use and development of land within an identified specific refinement plan area.

As identified in the Planning Commission decision and further provided herein, the proposed

Fairview Woods refinement plan is consistent with the Fairview Plan and therefore satisfies SRC 530.030(e)(1).

The Fairview Plan is comprised of the main Fairview Training Center Redevelopment Master Plan (**Attachment 8**), which identifies the overall vision, goals, and policies for development of the Fairview Training Center site, and several other exhibits and attachments that inventory existing on-site resources and illustrate the conceptual redevelopment of the site.

In addition to goals and policies identified in the Fairview Training Center Redevelopment Master Plan, the natural resources inventory of the Fairview Plan identifies the subject property as being comprised of two mature groves of trees. One of the groves occupies the western portion of the subject property and is described as an area characterized by scrub oak and native species that will be protected for its ability to serve as wildlife habitat and provide an ecological buffer. The other grove is located on the eastern portion of the subject property and is described as an area consisting of mature firs to be protected and enhanced as a neighborhood park or community protected open space.

As identified in the July 26, 2019, Planning Commission decision, the proposed refinement plan respects the landscape consistent with Goal 6 of the Fairview Training Center Redevelopment Master Plan and will protect the natural, ecological, habitat, and recreational benefits and opportunities afforded by the two existing identified tree groves located on the subject property.

The refinement plan achieves this by allowing reasonable economic use of the property while at the same time preserving it's natural character, habitat, and trees by providing large lots served by sensitively sited narrow private streets, trails, and open space areas that provide benefit to not only the residents within the proposed refinement plan but the Fairview Training Center site as a whole.

The refinement plan includes open areas and trails that will connect to the surrounding Fairview Addition West refinement plan; and the narrow private streets proposed within the development will help to minimize impacts to site topography due to grading and allow for more trees to be preserved.

The proposed refinement plan includes standards for tree preservation that exceed the requirements of the City's tree preservation ordinance (SRC Chapter 808) and standards for habitat preservation and wildlife passage that go beyond any standard included in the SRC.

Proposed increased standards for tree preservation include the establishment of identified tree protection zones where 90 percent of the trees located within the zones after the subdivision is complete must be preserved. In addition, a prescribed minimum tree preservation requirement is also established for each lot after the subdivision is completed. Under this proposed standard, lots with more than 16 trees must preserve 75 percent of all existing trees on the lot and lots with 16 or fewer trees must preserve 50 percent of the existing trees on the lot. This standard allows for homes and other improvements to be reasonably constructed



on the lots while maintaining increased minimum preservation requirements.

Proposed standards for habitat preservation and wildlife passage include a maximum 4,000 square-foot size limit on the amount of enclosed yard space allowed on a lot and requirements to provide openings in fences and walls to allow wildlife passage.

The proposed development strategies embodied in the refinement plan will help to ensure that the development will work with and respect the landscape as required under the Fairview Plan and help to integrate it into the surrounding area.

The proposed refinement plan is also consistent with the various other exhibits and attachments included in the Fairview Plan. The "Illustrative Plan" shown on page 6 of the Fairview Training Center Redevelopment Master Plan, and the corresponding off-street pathway and open space plan, mobility plan, and street network plan are all conceptual in nature and not intended to prescribe exactly how property within the Fairview site would be developed because at the time the Fairview Plan was created site specific detailed engineering and other necessary studies and analysis to determine the feasibility of the conceptual illustrative layouts had not been conducted. Instead, that level of detailed planning and analysis is deferred to the refinement plan level where specific proposed land uses, street layouts, and other details concern the specific layout of proposed developments are required.

As comments provided indicate, the Pringle Creek Community refinement plan bears the closest resemblance, with some differences, to the development pattern shown on the Illustrative Plan of the Fairview Plan. Subsequent other refinement plans, however, have deviated to varying degrees from the Illustrative Plan based on the applicant's envisioned use and more detailed engineering and site analysis performed for those specific refinement plan areas. Regardless of how much a refinement plan deviates from the conceptual layout shown on the Illustrative Plan, all refinement plans, however, must still be consistent with the goals and policies of the Fairview Plan.

In comparison of the Illustrative Plan included in the Fairview Plan with the layout of the proposed refinement plan, the Illustrative Plan identifies approximately 25 structures which are assumed to be single family dwellings, or potentially single-family dwellings with accessory dwelling units (ADUs), that would be located on the eastern third of the subject property. Instead of concentrating this development on the eastern portion of the property, the proposed refinement plan distributes it throughout the site on larger lots together with identified areas of open space. Because of the larger proposed lot sizes, trees and existing site features can be preserved consistent with the goals and policies of the Fairview Plan.

## **B. Street Network Plan.**

The appellant's appeal indicates that the decision is inconsistent Fairview Plan as it relates to the street network plan because the street network plan does not contemplate any streets in the area proposed for the development. The appellant explains that the lack of transportation facilities in this area is consistent with the overall guidance in the master plan that the area be

protected for park uses, community open space, and wildlife habitat/ecological buffer.

**Staff Response:** As with the proposed refinement plan's consistency with the Fairview Plan in terms of provision of open space, recreational opportunities, and preservation of trees and wildlife habitat/ecological buffer, the proposal is also consistent with the Fairview Plan in terms of the provision of streets and therefore conforms to SRC 530.030(e)(1).

As identified in the Planning Commission's July 26, 2019, decision, the proposed refinement plan provides an interconnected system of streets, as called for under the Fairview Plan, to serve the development. There are two internal private streets included within the refinement plan, Braden Woods Lane and Long Loop. As shown in Section 3 (*Name, Location, and Extent of Existing or Proposed Major Streets*) of the proposed refinement plan, both Braden Woods Lane and Long Loop are designed to connect to existing and proposed streets and alleys within the surrounding Fairview Addition West Refinement Plan and subdivision; thereby ensuring the provision of an interconnected web of streets as envisioned by the Fairview Plan.

The street network plan included with the Fairview Plan (**Attachment 9**) referred to by the appellant, like the other attachments of the plan depicting the layout of development within the FMU zone, provides an illustrative example of how the goals, policies, and development concepts embodied in the Fairview Plan can be achieved. However, because these layouts were done without specific detailed engineering studies and analysis to determine their feasibility, they are conceptual in nature and do not identify exactly where streets within the site will be provided. Detailed layouts and locations of streets are instead established during the review and approval of refinement plans where the applicant is required, pursuant to SRC 530.030(d)(5), to identify the location and width of proposed streets within the refinement plan area.

In the appellant's appeal it is indicated that the proposal is inconsistent with the Fairview Plan as it relates to the street network plan because the street network plan does not contemplate any streets within the area proposed for development. This, however, is incorrect because when the boundaries of the subject property are overlaid on the street network plan (**Attachment 10**), two local streets and an alley serving approximately 35 structures clustered on the eastern portion of the site can be identified on the subject property.

The proposed refinement plan includes two internal streets to serve the proposed 16 residential lots and although the proposed street network doesn't exactly match the locations and alignments shown on the street network plan, the street layout proposed with the refinement plan provides an interconnected system of streets as called for under the Fairview Plan to connect to the streets and alleys of the surrounding Fairview Addition West subdivision.

#### C. **Minimum 20 Acres of Natural Open Space.**

The appellant's appeal indicates that the proposed development does not conform to the requirements of SRC 530.045(b) which requires a minimum of 20 acres of land within the FMU

zone be reserved as natural open space. It is explained that the area proposed for development is the area proposed as natural open space, consistent with the master plan. The appellant indicates that the applicant has not demonstrated that 20-acres of open space will be available absent a significant amendment to the master plan.

**Staff Response:** As identified in the Planning Commission decision, SRC 530.045(b) requires a minimum of 20 acres of land within the FMU zone to be reserved as natural open space. This standard applies to the entire FMU zoned area and does not specifically identify where the natural open space must be located. As staff presented at the July 23, 2019, continued hearing, the amount of natural open space areas currently identified in existing approved refinement plans, together with those natural areas that will be required in conjunction with refinement plans for the remaining areas of the Fairview site, will ensure that a minimum of 20 acres of natural open space area is provided within the FMU zone as required by this standard.

**D. Proposed Development Requires Amendment to Fairview Plan.**

The appellant's appeal indicates that the applicant must first amend the Fairview Plan, pursuant to SRC 530.025, due to the significant changes to the plan included in the proposed development. It is explained that because of the significant changes proposed with the development which are inconsistent with the basic objectives of the master plan, the applicant cannot implement the proposed development until the master plan has been amended. The appellant indicates that amendments are necessary in many instances, including under SRC 530.025(b)(2), SRC 530.025(c), SRC 530.025(b)(2)(B), and SRC 530.025(b)(2)(F).

**Staff Response:** As identified in the Planning Commission's July 26, 2019 decision, the proposed refinement plan satisfies the applicable refinement plan approval criteria under SRC 530.030(e) and therefore an amendment to the Fairview Plan is not required prior to the approval of the proposed refinement plan.

In terms of residential density, the Fairview Plan does not identify specific residential density requirements. The plan instead includes general language explaining, in summary, that the site contains enough land to accommodate 2,000 residential units. The FMU zone establishes a general development standard under SRC 530.045(c) to implement this provision of the plan by limiting the number of dwelling units within the FMU zone to maximum of 2,000.

Rather than density requirements being established in the Fairview Plan, it is refinement plans that are expected to set proposed density standards and other requirements governing development of land within refinement plans. This is evidenced from the submittal requirements for refinement plans under SRC 530.030(d) which include, but are not limited to, "Detailed standards governing development within the refinement plan area, such as performance standards and **standards for development densities**, building and accessory structure height, floor area and FAR, open space, lot area and lot coverage, parking, landscaping, and other site improvements."

The 16 proposed residential lots, and the single-family dwellings and potential accessory dwelling units allowed on them under the refinement plan, will not result in the maximum 2,000 dwelling unit limit established under the FMU zone being exceeded and are therefore in conformance with the Fairview Plan.

The residential densities proposed within the refinement plan are, however, as identified in the comparison table below, lower than the residential densities identified in the FMU zone under SRC 530.050(b).

Overlay Area	FMU Zone Densities	Fairview Woods Densities
Low Intensity (LI)	5 to 8 du/acre	0.5 to 2 du/acre
Mixed Intensity (MI)	7 to 35 du/acre	1 to 3 du/acre

The residential densities included under SRC 530.050(b) were established, along with other standards for minimum lot area and dimensions, setbacks, lot coverage, height, etc., in order to provide clear and objective standards for residential development within the FMU zone. It is not the intent of the FMU zone, however, that the standards of SRC 530.050 apply to all refinement plans that include residential uses. Pursuant to SRC 530.050:

*"When uses and activities falling under Household living are proposed within a Refinement Plan, such uses and activities shall be subject to either the development standards set forth in this section or the development standards established in the Refinement Plan. If development standards for uses and activities falling under Household Living are established in a Refinement Plan, approval of such standards shall be reviewed and approved as "alternative approval criteria" under ORS 197.307. Such standards shall apply in lieu of the standards set forth in this section and shall govern all development of uses and activities falling under Household Living within the Refinement Plan area."*

Because the proposed refinement plan establishes its own standards for residential development, including residential density, those standards apply in-lieu of the standards established in 530.050.

Though the residential densities within the refinement plan are lower than those identified in the FMU zone, the lower proposed densities are a result of the need to preserve natural features and characteristics of the site while at the same time allowing for some reasonable economic use of the property. Despite the larger lot sizes, the plan still promotes the efficient use of land by allowing single family dwellings along with accessory dwelling units on the proposed lots.

As identified in the Planning Commission's decision, and further provided herein, the proposed refinement plan is consistent with, and therefore does not result in a significant change to, the Fairview Plan. The proposed refinement plan therefore does not require an amendment to

the Fairview Plan.

**E. Proposed Refinement Plan Not Compatible with Adjoining Land Uses.**

The appellant's appeal indicates that the proposed refinement plan is not compatible with adjoining land uses because the community open space, park, wildlife habitat, and ecological buffer contemplated in the master plan to provide for these uses to offset more dense development elsewhere is not provided. It is explained that the contemplated uses of the subject property contained within the master plan create the compatibility necessary to support areas of greater density.

**Staff Response:** SRC 530.030(e)(3) requires refinement plans to be compatible with adjoining land uses. Existing and proposed future land uses adjoining the subject property located within the FMU zone include single family dwellings and the potential for higher density residential housing types. Adjoining land uses located to the west of the subject property outside the FMU zone include single family dwellings.

As identified in the Planning Commission's July 26, 2019, decision and explained previously in this report, though the property is proposed to be developed rather than left as open space, the proposed development provides for a low-intensity residential development consisting of larger lots in order to allow for the reasonable economic development of the property while also preserving trees, habitat, and open space as called for under the Fairview Plan.

The proposed development of 16 larger lots with a residential density less than that of the surrounding Fairview Addition West subdivision and residential property located outside the FMU zone to the west, together with a prohibition on further division of the lots, increased tree preservation, and provision of common open space and trails, ensures a development pattern that is less intense than that of the surrounding area and therefore compatible with adjoining lands. The proposed refinement plan satisfies SRC 530.030(e)(3).

**F. Requested Class 2 Adjustment Cannot be Approved.**

The appellant's appeal indicates that the requested Class 2 Adjustment to reduce the minimum required size of the refinement plan cannot be approved because the underlying purpose of this standard to discourage a piecemeal approach to the development of the Fairview site is not met; and an adjustment to this standard is prohibited under SRC 250.005 (2) because the proposed adjustment modifies the applicability of a requirement under the UDC, modifies the definition of a refinement plan, and changes the status of an activity under the UDC.

**Staff Response:** As identified in the July 26, 2019, Planning Commission decision and further provided herein, the requested Class 2 Adjustment to reduce the minimum required size of the refinement plan from 40 acres, as required under SRC 530.030(b), to approximately 14.07 acres is not prohibited under the SRC and satisfies the applicable Class 2 Adjustment approval criteria under SRC 250.005(d)(2).

SRC 250.005(d)(2)(A)(ii) provides that in order for a Class 2 Adjustment to be approved the proposal must equally or better meet the purpose of the underlying development standard proposed for adjustment.

In the case of the proposed development, the standard which is sought to be adjusted is the minimum 40-acre size requirement for refinement plans included under SRC 530.030(b). As identified in the Planning Commission decision, the purpose of this requirement is to ensure that future detailed planning for development of the Fairview site occurs in a coordinated fashion involving land areas large enough to discourage a piecemeal approach.

The 14.07 acre property subject to the proposed refinement plan and the requested adjustment is completely surrounded by the previously approved Fairview Addition West refinement plan. Within the Fairview Mixed-Use (FMU) zone all property included as part of the former Fairview Training Center site is intended to be included within a refinement plan. Because the subject property is entirely surrounded by land which is already included in a refinement plan, the only way for it to be included within a refinement plan, as envisioned and intended under the FMU zone, is for an adjustment to minimum required refinement plan size to be approved or for the Fairview Addition West refinement plan to be amended to include the subject property.

The applicant for the proposed Fairview Woods refinement plan is the same as the Fairview Addition West refinement plan so it would have been possible for the Fairview Addition West refinement plan to be amended to include the subject property but the applicant instead chose proceed with a separate refinement plan for the subject property along with an adjustment request to reduce the required minimum refinement plan size.

As indicated in the general introduction to the proposed refinement plan on pages 5 and 6 it is explained that the proposed Fairview Woods refinement plan, while standing alone, is considered in many ways as being integrated into the Fairview Addition West refinement plan and the larger community. As such, many of the principles overlap and Fairview Woods and Fairview Addition West ultimately complement each other. For these reasons the applicant indicates that both Fairview Woods and Fairview Addition West are collectively referred to as the Greater Woods neighborhood which honors the spirit of the FMU zone to design a cohesive development of at least 40 acres.

Because the proposed Fairview Woods refinement plan is completely surrounded by the Fairview Addition West refinement plan and because both refinement plans are being developed by the same applicant, share the same underlying development principles and concepts, and are physically integrated in term of access and open space, the smaller 14.07 acre refinement plan size requested with this adjustment equally meets the underlying purpose of the minimum refinement plan size standard by ensuring that the planning and development of the Fairview site is done in a coordinated, rather than piecemeal, approach. The Class 2 Adjustment approval criteria are therefor met.

The appellant's appeal also indicates that the proposed adjustment is otherwise prohibited under SRC 250.005(a)(2) because the adjustment modifies the applicability of a requirement under the UDC, modifies the definition of a refinement plan, and changes the status of an activity under the UDC.

As provided in the Planning Commission's decision and explained herein, the requested Class 2 Adjustment meets the applicable approval criteria of SRC Chapter 250 and is not prohibited under SRC 250.005(a)(2).

The applicability section for Class 2 Adjustments under SRC 250.005(a)(1)(B) provides that a Class 2 Adjustment is an adjustment to any development standard in the UDC other than a Class 1 Adjustment, including an adjustment to any numerical development standard in the UDC that increases or decreases the standard by more than 20 percent.

In the case of the proposed development, the applicant has requested an adjustment to the minimum required area for refinement plans included under SRC 530.030(b), which establishes a minimum numerical size standard for refinements plans of 40 acres. Because this standard is a numerical standard, it is eligible for adjustment under SRC 250.005(a)(1)(B).

Contrary to the issues raised in the appellant's appeal, the proposed adjustment to the minimum required size of a refinement plan does not modify the applicability of a requirement of the UDC, it does not modify the definition of a refinement plan, and it does not change the status of an activity under the UDC.

The proposed adjustment does not modify the applicability of a requirement under the UDC because the adjustment does not seek to eliminate the requirement to have a refinement plan approved for the subject property. Instead, the proposal seeks only to reduce the minimum required size of the refinement plan in order to allow a refinement plan to be approved for the 14.07 acre property, which is currently surrounded by land included within a separate refinement plan, the Fairview Addition West refinement plan.

The proposed adjustment similarly does not modify the definition of a refinement plan. The term "refinement plan" is not specifically defined under SRC Chapter 111 (Definitions), but the FMU zone does provide an explanation of what a refinement plan is. SRC 530.030 provides that refinement plans are:

*"detailed regulatory plans that implement the Fairview Plan. Standards and processes stipulated in an approved refinement plan supersede the standards and processes of the UDC and shall be used as review criteria for any specific development proposal within the area covered by the refinement plan."*

The requested adjustment to the minimum required size of the refinement plan does not make the it any less of a detailed regulatory plan implementing the Fairview Plan and establishing specific standards for future development of the subject property. The proposed refinement plan includes all the elements that a refinement plan of 40 acres or larger would

be required to include; the standards of the refinement plan, however, just apply to a smaller area of land. Because the requested adjustment only reduces the minimum required size of the refinement plan, and not the definition of a refinement plan or what constitutes a refinement plan, it is not prohibited under SRC 250.005(a)(2).

The proposed adjustment also does not change the status of an activity under the UDC. SRC 250.005(a)(2)(B) specifically provides that an adjustment shall not be granted to change the status of a use or activity under the UDC. In order to correctly interpret this standard, one must first understand what is meant by the terms "status," "use," and "activity."

Under SRC Chapter 400 (Use Classifications), specifically SRC 400.015(a), the principal activity, or principal activities, that occur on a property establish the use. A principal activity falls within a specific use when the principal activity possesses the characteristics of the use, and the broader use category the use falls within.

Based on the provisions of SRC 400.015, specific activities occurring, or which are proposed to be conducted, on land are classified under specific "uses" identified under the UDC. The "use" a specific activity is classified under and the "status" of that use in a particular zone (e.g. whether the use is allowed as a permitted use, conditional use, special use, or it's a prohibited use) ultimately establish whether or not a particular activity is allowed in a specific zone.

A refinement plan, however, is not a land use or activity allowed in the FMU zone, but is instead a detailed regulatory plan implementing the Fairview Plan that in itself sets forth the allowed uses and development standards regulating future development of land within the refinement plan. Because a refinement plan is not an "activity" under the meaning of SRC 250.005(a)(2)(B), the requested adjustment does not change the status of an activity under the UDC and is therefore not prohibited under SRC 250.05(a)(2).

## **5. Conclusion.**

Based on the facts and findings included within this staff report and the Planning Commission's July 26, 2019, decision, the proposed Fairview Refinement Plan, Class 2 Adjustment, and Subdivision satisfy the applicable approval criteria of SRC 530.030(e), SRC 250.005(d)(2), and SRC 205.010(d).

## **BACKGROUND:**

On September 24, 2003, the City Council adopted amendments to the Salem Area Comprehensive Plan (SACP) and Salem Revised Code (SRC) establishing a "Mixed Use" comprehensive plan designation and a "Fairview Mixed Use" (FMU) zone district. The adopted amendments were applied to the former Fairview Training Center site to promote the sustainable and mixed-use development of the 275-acre property.

Development within the Fairview Mixed-Use zone requires a master planning process, the first step



of which began with the adoption of the Fairview Plan in 2005. The Fairview Plan is the master plan for the entire Fairview site that establishes the overall goals and policies to guide future development of the property.

The second step in the master planning process is the adoption of more detailed refinement plans. Refinement plans are generally intended to apply to areas of the site not less than 40 acres in size. Refinement plans serve as detailed regulatory plans that implement the overall goals, policies, and development objectives of the Fairview Plan and establish the specific standards for development within the Refinement Plan area.

Since the approval of the Fairview Plan in 2005 the following four refinement plans have been approved for the Fairview site:

- Pringle Creek Community (2005)
- Lindburg Green/Fairview Refinement Plan II (2009; Amended 2016)
- Simpson Hills (2012)
- Fairview Addition West (2014)

The application under review includes a new refinement plan for a 14.07 acre portion of the Fairview Training Center site. The standards included in the proposed refinement will, pursuant to SRC Chapter 530.030, govern the future development of the 14.07 acre property.

## **ALTERNATIVES:**

The City Council may take one of the following actions on the appeal of the decision of the Planning Commission on Fairview Refinement Plan, Class 2 Adjustment, and Subdivision Case No. FRP-ADJ-SUB19-01:

- I. **AFFIRM** the July 26, 2019, Planning Commission decision;
- II. **MODIFY** the July 26, 2019, Planning Commission decision; or
- III. **REVERSE** the July 26, 2019, Planning Commission decision.

Bryce Bishop  
Planner II

## **Attachments:**

1. Vicinity Map
2. Fairview Woods Refinement Plan
3. Tentative Subdivision Plan
4. Planning Commission Decision (July 26, 2019)
5. Notice of Appeal submitted by Jerry Mumper
6. Morningside Neighborhood Association Comments
7. Public Comments
8. Fairview Training Center Redevelopment Master Plan

- 9. Fairview Plan - Street Network Plan
- 10. Street Network Plan Compared with Subject Property