

Draft Minutes

Bend Planning Commission

Monday, May 12, 2025, 5:31 P.M. Regular Meeting



The hybrid meeting started at 5:30 P.M., in-person and online.

The public was invited to watch online at: www.bendoregon.gov/planningcommission

1. ROLL CALL:

- Margo Clinton – Chair
- Scott Winters – Vice Chair
- Bob Gressens
- Suzanne Johannsen
- John LaMotte
- Erin Ludden
- Nathan Nelson

Commissioners Present: All Commissioners were present

Staff Present: Ian Leitheiser, City Attorney; Renee Brooke, Planning Manager; Aaron Henson, Senior Planner;

VISITORS:

The Vice Chair opened the floor for comments on non-agenda items. Attendees were encouraged to fill out a speaker slip and approach the podium, or raise their hand online, to provide comments.

No public comment was given.

2. QUASI-JUDICIAL PUBLIC HEARING:

4.1 [PLDR20240213](#): Proposal for a second, detached single-unit dwelling in the Waterway Overlay Zone at 659 NW Silver Buckle

Senior Planner, Aaron Henson – ahenson@bendoregon.gov

Chair Clinton convened the continued hearing at 5:32 PM.

City Attorney Ian Leitheiser prefaced that this is a quasi-judicial hearing, explained the rights of participants and that there is a defined record, so the Planning Commission decision is limited to what is in the record. He recapped the status of the project: public hearing on April 14th was continued and the record held open with limited periods for submitting information. He noted that all of the information and arguments in the record for the application will be considered by the Commission. As of May 5th, the record was closed and no

new information could be submitted. No questions can be asked by the public as the Planning Commission must make its decision based on what is in the record.

Mr. Leitheiser asked if anything had changed on pre-hearing contacts, bias, prejudice, or personal interest that was declared at the April 14th hearing. Commissioner LaMotte visited the site again. Commissioner Nelson received an unsolicited opinion on the application from a member of the public in a parking lot. Commissioner Nelson stated that this will not affect his impartiality. Chair Clinton disclosed that she did not attend the April 14th meeting, but she has listened to the entire recorded hearing, has read all of the records, and is up to date and prepared to participate.

Mr. Leitheiser asked if anyone wanted to challenge to the Commissioners' reaffirmations of impartiality. No challenges were made.

Senior Planner Aaron Henson summarized the timeline and key issues for the project leading up to this Planning Commission meeting.

Chair Clinton asked if the Commissioners can ask questions of staff. Mr. Leitheiser confirmed that clarifying questions to help with the decision are okay, but if staff is re-presenting then the hearing would need to be reopened. Mr. Henson then displayed a slide of the project approval criteria.

Commissioner Gressens asked counsel for clarification on Section 2.7.650 of the Bend Development Code and related edicts from the State that the Commission should apply the Bend Code. Mr. Leitheiser confirmed and discussed clear and objective standards.

Vice Chair Winters asked if the development site is in the Rimrock West subdivision, and Commissioner Nelson asked if the southern boundary of the Rimrock West subdivision is north of Archie Briggs Road. Mr. Henson stated that there are several maps of the development site in the record, and he displayed one of them. Mr. Henson stated that the south portion of the property is not in the Rimrock West subdivision. Planning Manager Brooke stated there are three phases of Rimrock West; this property is in Phase 1, and the southern boundary of Phase 2 is south of Archie Briggs Road. This led to a discussion of the southern boundary, WOZ setback, site access, the Rimrock West HOA, number of units in the subdivision, the Bend Development Code, and the Fire Code - which is not part of the Bend Development Code. Mr. Leitheiser stated that the Planning Commission is applying the Bend Development Code not private CC&Rs. He further explained how standards and the Development Code can change over time.

Mr. Henson displayed a map showing the portion of the property added through a property line adjustment and the shared access drive to the development site. Vice Chair Winters asked if the property is within the subdivision but not in the HOA boundary. Senior Planner Henson answered that the applicant contends

they completed the property line adjustment, but they did not go through certain additional steps needed to bring the added piece into the HOA boundary. Vice Chair Winters stated that there was a LUBA case which found that a property line adjustment brought land into a subdivision.

Vice Chair Winters stated that fire code and stormwater code and the HOA rules are not the Commission's purview.

Commissioner Johanssen asked which width of the WOZ setback applies and about homes that are closer to the river. Mr. Henson responded that the 40-foot Design Review setback applies to this property, and those homes that are closer to the river were developed before the setback was established.

Commissioner Johanssen stated that stormwater is one of the criteria and asked if staff's recommendation was that the Commission request that be addressed as a condition of approval. There was a discussion with Chair Clinton, Commissioners Ludden and Gressen and Mr. Henson on common practice, evidence provided by the applicant's engineer and design options. Senior Planner Henson offered possible condition language provided by the applicant to address stormwater. Counsel Leitheiser stated that the language is standard for this condition.

Chair Clinton started deliberation at 6:17 p.m.

Commissioner LaMotte listed issues of incomplete application, lack of specificity, concerns about the 39 existing houses with one emergency access, and stormwater management.

Chair Clinton asked the Commission if anyone had an issue with the application being complete or incomplete. Vice Chair Winters stated he had wanted the issue of whether the development site is in or out of the subdivision to be figured out clearly.

Commissioner LaMotte returned to stormwater management as a key issue and it should not wait due to the tight site, steep slope, and rock which could affect where the building can go. Commissioner Johanssen asked what is enough for the Commission. Chair Clinton stated for her, it can be addressed with a condition of approval. Commissioner Gressens stated it's a sensitive site, it's tight, the initial design did not work, and he is concerned that poor design could cause problems. Chair Clinton and Commissioner Ludden expressed this is the preliminary stage, and if the design changes, it would need to come back to the Commission. Chair Clinton suggested that this could be refined further in the conditions of approval.

Commissioner LaMotte raised the issue of lack of clarity on tree preservation with respect to construction.

Counsel Leitheiser requested that the approval criteria be displayed again to help with the discussion.

Commissioner Johannsen asked if the actual site plan and tree removal plan would be reviewed again with respect to the tree preservation code. Vice Chair Winters responded no, if they changed something that removed more trees, it comes back. Commissioner LaMotte expressed concern that they could clear the area and then find the project does not work. Chair Clinton stated that they are not allowed to clear or grade without a permit. City staff concurred.

Mr. Henson presented a slide that showed the proposed tree removal. Commissioner Johannsen indicated the only trees shown being removed are within the house footprint and some of the yard. Planning Manager Brooke stated the approval criteria that apply to tree removal for this application. Commission discussed tree damage during construction, tree protection and changes to tree removal during construction. Counsel Leitheiser mentioned that staff's recommendation says that 13 existing trees greater than 4 inches in diameter will be approved for removal if the development is approved. The trees proposed to be removed are identified, and there is not a blank check to remove more. Commissioner LaMotte and Gressens voiced concerns with construction changes that could affect other trees.

Commissioner LaMotte raised concerns with Fire access and emergency escape routes. Chair Clinton stated that this should be brought to City staff another time and does not pertain to what they are talking about tonight.

Commissioner LaMotte stated the Commission's job is to protect Tumalo Creek and the river, and this is the most natural setting in the City. The purpose of the Waterway Overlay Zone is to conserve and enhance natural resources and the looks of the bluffs and vegetation. He asked if this project is compatible with the Waterway Overlay Zone and he does not think it is. Counsel Leitheiser stated purpose statements are common in zoning and development codes but typically are not approval criteria that the decision maker can apply unless the code says that they are. These are guiding principles but not approval criteria.

Commissioner Gressens cited section 2.7.650.F. which includes the conservation of natural resources, major rock outcrops, stands of trees and other natural features as important part of the visual character and quality of the community and that the Planning Commission shall review the impacts on these resources and may limit the amount of removal. Number 2, the Planning Commission shall consider the compatibility of the proposed development with respect to the existing surroundings in terms of bulk, height, location, separation, shape and parking areas. Chair Clinton stated that the staff report states that the applicant asserts that this criterion is not clear and objective and doesn't apply. Commissioner Gressens stated that's their opinion and if the Commission denied the application based on this, the applicant could go to LUBA. Mr. Leitheiser asked Planning staff how this was addressed in the staff

recommendation. Senior Planner Henson reported that the applicant asserted it was not clear and objective, but there was enough information in the record to find if the Planning Commission agrees, that the approval standards are met. The Commissioners discussed the issues of compatibility and clear and objective criteria.

Commissioners Winters, Gressens, Johannsen and Chair Clinton stated they did not have issues to add to the discussion.

Commissioner Nelson stated that the issue of the 100-foot versus 40-foot setback was addressed and he is confident with applying the 40-foot setback. If it is impossible to retain stormwater on site, it would not make it through permitting. He supported adding the "50-foot from the river" clause to the condition that was suggested by the applicant. Mr. Henson and Ms. Brooke clarified that this idea was in the applicant's final argument and the 50-foot setback was for stormwater retention.

Commissioner Ludden stated her biggest question was which setback applies. She stated that it looks like meeting the criteria and design review is allowing a building that allows for conservation of natural features. Commissioner LaMotte raised issues on the design and location of the house with respect to the conserving the site's natural features and the scenic waterway. Mr. Henson stated that there is a separate State Scenic Waterway approval process through the Oregon Parks and Recreation Department (OPRD). He added that there is a recommended condition of approval requiring OPRD approval prior to the issuance of a building permit. Commissioner LaMotte raised issues that OPRD would be doing the review the Commission should be doing. Mr. Henson responded that some communities have no Waterway Overlay Zone rules. The Bend Planning Division has notified the State of this WOZ application, but the applicant must also apply to the State for its review. It's an overlapping review. Commissioners LaMotte and Gressens expressed the site's importance to the State and the City's Code. Chair Clinton stated she is comfortable with meeting the requirements and with additional review by the State. The Commissioners discussed the Code, conservation and compatibility and whether each criterion applies or is met. Commissioner Gressens stated he would deny the application based on the visual impact to the corridor and provided support for this.

Chair Clinton asked the Commissioners if anyone has a motion.

Commissioner Gressens stated he is open to a condition of approval to come back with a scaled down design. Counsel Leitheiser stated that this will be a tough condition to approve. If Commissioner Gressens believes there is a basis to deny, then Gressens needs to proceed and convince his colleagues that it's the thing to do.

- Commissioner LaMotte motioned to deny PLDR20240213. Seconded by Commissioner Gressens.

Vote: Failed 3 (Commissioners Johannsen, Gressens and LaMotte) – 4 (Commissioners Winters, Clinton, Nelson and Ludden)

- Commissioner Nelson moved to approve the Waterway Overlay Zone application PLDR20240213 for a second detached single unit dwelling at 659 NW Silver Buckle, based on the findings and subject to the conditions recommended by Staff. Second by Vice Chair Winters.

Commissioner Johannsen asked if Commissioner Nelson wanted to make that amendment for the 50-foot setback for stormwater retention facilities? Chair Clinton stated the process is to vote on the motion, then anyone who wants to move to amend, they could. Counsel Leitheiser stated that motions could be made to amend.

- Commissioner Ludden moved to amend the third condition of approval that the stormwater drainage system needs to meet the same 50-foot setback as the structure. Second by Commissioner Nelson.

Vote: Passed 5 (Commissioners Johannsen, Ludden, Nelson, Clinton and Winters) – 2 (Commissioners Gressens and LaMotte)

- The Commission then voted on Commissioner Nelson's motion to approve the application with the amended condition.

Vote: Passed 4 (Commissioners Ludden, Nelson, Clinton and Winters) – 3 (Commissioners Johannsen, Gressens and LaMotte)

3. APPROVAL OF MINUTES:

The Planning Commission approved the [March 24, 2025 Draft Minutes](#).

4. COMMUNICATIONS:

4.1. Reports From Planning Commissioners

Commissioner Gressens announced the Summit West Neighborhood District is having their annual meeting either June 4th or 6th and they have asked the Planning Commission to have a table. There will be other departments from the City, Summit West Neighborhood District has asked Commissioner Gressens and LaMotte to attend and they have accepted the invitation. Commissioner Gressens also asked Planning Manager Brooke, CEDD Director Stephens and Planner Pauline to attend. Planning Manager stated that City staff have a conflict with the City Council meeting.

Commissioner Winters suggested finding a better name for row houses.

Chair Clinton suggested, when time allows on an agenda, to go through the Planning Commission Bylaws and that she has a trip planned in June.

Vice Chair Winters complimented Chair Clinton on keeping the Commission clear in deliberations.

Commissioner Johannsen stated that she and Vice Chair Winters attended the “Build a Better Bend” workshop. The speaker described the old Costco site as the same footprint as downtown Bend. The speaker also discussed strip mall and landfill reclamation which Commissioner Johannsen found intriguing. Commissioner Johannsen reported that this workshop was recorded.

Commissioner Nelson stated that the Waterway Overlay Zone code could use some scrutiny, specifically section 2.7.650.F. and would like to see stronger ways to protect our waterway. Commissioners all agreed. Planning Manager Brooke stated that it is in the work program for later this calendar year.

Commissioner Ludden mentioned that fire and emergency management keeps coming up. Commissioners agreed this is a topic to address. Counsel Leitheiser stated that the City does have an intense and highly resourced Emergency Management function. The Council just adopted last week a rewritten Emergency Operations plan spearheaded by our Emergency Management team. It seems people want certainty in a hypothetical fire. It is situational. The Council is adopting wildfire planning and resiliency into their goal framework for the 2025 to 27 biennia. The Planning Commission doesn’t need to ask for anything in particular, as it is already happening. Commissioner Gressens asked if there will be new criteria to review such as for the development to the south, want to ask the broader questions. Mr. Leitheiser thinks these questions will be asked and will be interesting to see where it goes. At the May 21 Council meeting, they will be working on Council goals including emergency management. Ms. Brooke stated there is emergency preparedness with links on the City’s website. Commissioner LaMotte thinks the code should be reviewed and emergency routes. Commissioner LaMotte is unclear on what is in the code for fire hazard reduction.

Report From Planning Manager

Renee Brooke, Planning Manager stated the next meeting on May 26th is cancelled for Memorial Day. The Commission will have a meeting on June 9th with two items queued up – Waterway Overlay Zone application for Columbia Park river access and a package of amendments to the Sign code, and other code amendments for later in June and July.

4.2. Report From Community and Economic Development Director

No report.

4.3. Report From City Attorney

Ian Leitheiser, Assistant City Attorney, recognized the Commission had a good deliberation tonight.

The meeting was adjourned at 7:24 p.m.

Minutes submitted by Cathleen Carr