



**Special City Council Meeting  
April 6, 2015  
MEETING MINUTES**

**CALL TO ORDER** Mayor Pete Edison called to order the Regular Meeting of the Banks City Council at 6:00 PM.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

**ROLL CALL**

Present were: Mayor Pete Edison, Mark Gregg, Brian Biehl, Michael Nelson, Dan Keller, Mark Walsh, and Teri Branstitre.

Staff present: City Manager Jolynn Becker, City Recorder Angie Lanter, City Attorney Dan Kearns, City Planner Stacey Goldstein.

**APPEARANCE OF INTERESTED CITIZENS – None**

**PUBLIC HEARING (CONTINUANCE FROM JANUARY 13, 2015, FEBRUARY 10, 2015, and MARCH 10, 2015) MOD1-14 and MOD2-14**

1. Modification of PUD 9-96 and PA/ZC 8-96; Request to eliminate Condition 9 from the two (2) land use approvals which requires a secondary access to the southeast corner of Arbor Village to be constructed when Phase 9 is developed.

Mayor Edison read the conduct of hearing format and asked if any Councilor had any bias, conflicts of interest, or ex parte contacts to declare.

Mayor Edison declared that since the last hearing, he was involved in three meetings with representatives from West Hills Development that were held on February 2, March 2, and March 16, 2015. Present at all three meetings were Dan Grimberg and Mike Robinson, representing West Hills Development, City Manager Becker, City Attorney Kearns, and himself. Wally Remmers from West Hills was also present at the two meetings in March. Discussions centered on what West Hills could do for the City in lieu of a rail crossing.

No other declarations were made. No Councilor's participation was challenged by any member of the audience. Mayor Edison called for the Staff report.

City Planner Stacey Goldstein noted that a copy of the Staff report and the recommended approval from the Planning Commission were included in the meeting packet. She acknowledged several meetings had occurred to consider possible transportation and public improvements in Arbor Village to offset Condition 9, if Council decided to remove it. She recommended moving on to the Applicant's presentation, noting that she and the city attorney were available for any planning or legal questions.

Mayor Edison confirmed there were questions of Staff and called for the Applicant's testimony.

Mike Robinson, Land Use Attorney, representing West Hills Development and South Banks Joint Venture, introduced himself and the members of the Applicant's team. He noted Wally Remmers, one of the owners of West Hills Development and a member of the Joint Venture, wanted to personally talk to Council about how the Applicant could work with the City to come up with something the City Council might view as beneficial to the city. He added that Dan Grimberg, who handled all the project development for West Hills, had attended all the meetings, including the November Planning Commission meeting.

- He confirmed the Applicant was requesting approval of both modification applications to remove Condition of Approval 9, to which the Planning Commission agreed. The Applicant had asked Kittleston & Associates to examine various ways to achieve it, but it was not within the scope of possibility for one company, no matter how many lots were being developed. That evidence was included in the record.
- He apologized that neither he nor Mr. Remmers were able to be present for the January City Council meeting; however, as mentioned, they had met with City Staff and the Mayor to determine what West Hills could do in lieu of the crossings. During the three meetings referenced by Mayor Edison, a development agreement, which was provided to the Council, was developed in which West Hills volunteered to make a number of improvements in Arbor Village. A map was also included in the packet. He added that City Manager Becker and Mr. Grimberg had also driven through Arbor Village agreed on the needed improvements. He described the improvements, which he hoped the Council would consider appropriate in lieu of the railroad improvements, as follows:
  - Repair the sidewalks that had sustained damage due to street tree root growth and install barriers to keep that from reoccurring.
  - Removal certain trees as necessary, retaining as many trees as possible.
  - Replace certain curb sections.
  - Replace the section of street also damaged by tree root growth.
  - Repair any damage sustained by the residential streets as a result of Phase 9 construction. Road conditions would be documented before construction to compare with the post construction conditions. West Hills would work with the Public Works Department to repair the road and require a bond, as typically done in all West Hills' subdivisions.
- He reminded that West Hills wanted to build additional lots in Phase 9 that would add value and beauty of Arbor Village, noting the Applicant would still leave the ability to make a connection across the railroad track.
  - He noted the City's Transportation System Plan (TSP) actually recommended that the rail crossing be at a different location. West Hills had entered into an agreement with the Van Dyke Family and the golf course to fund a study of where the east-west rail crossing should be located. However, West Hills would not impair the ability of the railroad crossing to connect Arbor Village if that was what the City ultimately provided for and if an ODOT Rail permit was granted. He assured the subdivision design would allow for a public street connection abutting the railroad if that was determined to be the best location.
- If City Council chose to approve the modifications, he requested that a sixth condition be added to the Planning Commission's recommendations requiring that the City, West Hills Development, and South Banks Joint Venture enter into this agreement within 30 days.
- He also asked to change the Planning Commission's Condition 3, stated in Section 2A on page 5 of the agreement, to allow for up to 42 lots, all consistent with the current R5 zoning and subdivision ordinances, rather than the current 34 lots as a means of allowing for compensation for the extra costs of the improvements. The Applicant understood if the Council was not comfortable with this change, but did not want to make the same mistake made in 1996 by not having a discussion about the condition.
- As stated at the Planning Commission, the Applicant work with the neighbors to ensure they knew what was happening. The Applicant would do another traffic study and a neighborhood

meeting would be held to inform citizens about when construction would begin and to reassure that they would not be left with damaged streets. He assured Banks' citizens would be a part of the process and not shut out.

- He concluded by requesting approval of the application and that the City enter into the agreement with West Hills and South Banks Joint Venture.

Wally Remmers, Co-Owner, West Hills and South Banks Joint Venture, expressed his appreciation for Mayor Edison, City Manager Becker, and City Attorney Kearns, who were very professional, friendly, and really good to work with. He noted that West Hills had taken over from the previous developer after a lawsuit between him and the City. He gave a history of the Arbor Village project, referencing the large community involvement at the start of the project nearly 20 years ago and his pleasure with how the development turned out, particularly with regard to the large central park area.

- He noted that when conditioned, West Hills had no idea what the railroad crossing would entail. West Hills was able to put in a crossing at the Oregon Rose's land on TV Highway for the Arbor Roses development, but railroads were not very easy to work with, and West Hills could never get this crossing approved, though they certainly made an effort. Two different railways were involved and neither railroad company wanted the crossing there.
  - West Hills tried to locate the crossing to the east, underneath the viaduct and loop it around, but ODOT would not approve it; and there really was not enough room there anyway. West Hills looked at excavating, rebuilding the bridge, etc. to meet the condition but it proved impossible. He did not think installing the crossing did not have anything to do with money, ODOT just did not want it, so there was nothing West Hills could do, and now, 19 years later, the property was still just sitting there. He appreciated that everybody was talking about it again.
- He believed the current proposal was a win-win for everybody. West Hills was happy to clean up the issues in the neighborhood, which would cost about \$200,000, in exchange for getting the subdivision approved.

City Attorney Kearns clarified that now was the best time to ask the Applicant questions, adding they had presented a draft development agreement and that a new version was provided today with a minor changes.

Mr. Robinson acknowledged that references to Highway 43 were his error and should state Highway 47.

Councilor Keller asked how pre- and post-inspections were done for road damage, particularly with regard to subsurface problems.

Mr. Robinson explained two baseline sets of photographs would be taken as visual evidence of what the road looked like and to document the location of cracks, etc. These would be taken after the agreement was signed and before public improvements began. West Hills could also work with the City to take core samples to see what the sub base was like and determine before and after subsurface conditions.

Mr. Remmers added it was standard to repair any negative impact to roads caused through construction. He was not sure how that impact was measured.

Dan Grimberg, West Hills, explained photos and/or video could be used to look for settlement or cracking. West Hills also anticipated using a single route into the site to limit access, as well as standard sized dump trucks and equipment that the roads were designed to handle.

Mr. Remmers said he could not recall West Hills ever having to repair a road following construction, but assured West Hills would certainly repair any problems that they did cause. He explained a huge amount of grading would not necessary to the site, so no giant scrapers would be needed. There would be some impact initially with the equipment coming in, but the construction traffic would primarily consist of pickup trucks.

- He confirmed none of the lots would have basements. Cement trucks would be through to pour foundations, and then pavers would come in for the new roads, but there would not be any excessively heavy equipment, no more than the logging trucks that currently use the public roads.
- He was not certain how to measure the impacts, but taking pictures and walking down the street as done with the trees was probably as good as anything. West Hills was happy to work with whatever language the City Council developed about how to measure the impacts.

Councilor Keller asked whether the street tree replacements would be similarly sized trees, he noted the language was not written that way.

Mr. Robertson explained West Hills was required to retain the services of an arborist agreed to by West Hills and the City, and that arborist would instruct them as to what kind of trees to install and how to ensure that they survived.

Mr. Remmers clarified the replacement trees would not be the same size as the existing trees, which have been growing for 20 years. West Hills would have to plant smaller caliper trees initially, but they would grow. Trees of the same size would not survive after planting. There was an optimum tree size to plant that would have the best chances of survival and certain types of trees were specified in the Tree Ordinance, but the trees would not be 6- or 8-inch caliper trees like the existing trees.

Mr. Grimberg confirmed that the City's Tree Ordinance controlled the placement of trees. It could be a fairly elaborate process unless the city manager determined that a tree was damaging City infrastructure, which was the only reason the trees would be removed. Replacing the sidewalk would also damage the trees, and some could not be replanted because the planter strips were so narrow. Those trees would be replanted in the park.

Councilor Keller asked what the average square footage would be of the lots if the maximum was increased from 34 to 42 lots.

Mr. Robertson replied the maximum square footage for lots in the R-5 Zone was 5,000 sq ft. Smaller lots were allowed if the subdivision was done as a planned unit development.

Mr. Remmers added several designs had been reviewed because the original design was 20 years old and not very efficient. Some redesign and running the street differently would result in the same size of lots West Hills currently in Banks. The lots against the railroad track were a little smaller. Using the same or similar product type currently in Arbor Village, there would be about 38 to 42 lots. At this time, 34 lots had been approved and West Hills was asking if there was flexibility to return with something different at the preliminary plat stage.

Mr. Robertson noted the Applicant was not asking the Council or Planning Commission to commit to an approval of 42 lots at this time, but was asking for the ability to submit up to 42 lots, knowing West Hills must go through the City's regular process at the Planning Commission level to receive that approval.

Councilor Keller asked when the process for the street and sidewalk repairs and tree replacement

would begin and how long would it take.

Mr. Robertson replied the development agreement called for submittal of the next applications within 60 days of the effective date of the agreement. West Hills wanted to have the applications reviewed by the Planning Commission this summer and hoped to get the work done this fall. If not, it would have to wait until next spring. West Hills also need to build the neighborhood meeting into the schedule.

Mr. Remmers added West Hills would need to get engineering permits from Washington County, which might push it too late into the season given all the private developers' projects going on now that the market had come back. Ideally, they would like to do the repairs and street tree replacement work this fall at the same time as the development and so all the street trees could be done at the same time. If the development was constructed first, the agreement stated West Hills had one year to plant the trees.

Mr. Robertson confirmed the agreement called for the Applicant to match the existing sidewalk type and width. As with any public permit, West Hills would work closely with City Staff to ensure that the City's requirements were met.

Mayor Edison called for public testimony in favor of the application.

Don Kilgrass, President, Quail Valley Golf Corporation, 307 NE Merle Court, Hillsboro, OR, stated Quail Valley supported removing Condition 9 and asked that City Council approve the request. They did not agree with findings that only a \$20 million above-grade crossing was feasible or that the mill was the best site for the crossing. While those findings could, in fact, be true, they were not based on sufficient data to convince Quail Valley. Thus, Quail Valley, Arbor Village [West Hills] and the Van Dykes were presently funding a study to give data based answers to those questions. Quail Valley's position to remove Condition 9 was based on the following:

- If, in fact, a \$20 million overpass was the only answer, then unless the City of Banks received a \$20 million federal or State grant to build the crossing, none would be built, in which case Arbor [West Hills] should be allowed to build homes in Phase 9.
- If a lower cost solution for a crossing was the outcome of the study, then no harm would come from Arbor [West Hills] starting to build homes, as a crossing would be built by benefitting, interested parties, ultimately.

Sam Van Dyke, 40926 NW Verboort Rd, Forest Grove, OR, stated he was not representing the Planning Commission in any way in his testimony. He represented the Van Dyke Family Land, LLC, and they supported removal of Condition 9. He agreed with all the comments made by Mr. Kilgrass.

Mayor Edison called for public testimony neutral and opposed to the application. Seeing none, he called for the Applicant's final rebuttal.

Mr. Robertson said the Applicant had no rebuttal, but asked that the Council approve the application with the addition of Condition 6 as discussed and modifying Condition 3 to change 34 lots to 42 lots.

Councilor Keller asked what would be the ball park cost of an at-grade crossing if it was easy and the railroad wanted to help.

Mr. Remmers estimated about \$500,000, but that figure depended on a number of details. The crossing on TV Highway was more complicated as a lot of grades were involved, so this crossing

might be less.

Chris Bremer, Kittleson & Associates, 610 SW Alder, Suite 700, Portland, OR, 97275, stated that a typical at-grade railroad crossing cost in the range of about \$500,000 including the track equipment and gates. In this case, there would be two crossings of two different railroad tracks, so he estimated the cost would be \$500,000 to \$1 million.

Mayor Edison called for any final comments from Staff.

City Attorney Kearns clarified that draft development agreement was designed to essentially outline the terms that West Hills had agreed to, but it was not final the language. For example, language still needed to be developed about how to quantify the street repairs, though essentially, conditions before and after construction should be at least as good as before work began. Oak Way would be the main access to the development site and was slurry sealed last summer. Ashton Dr would be the connector to Phase 9 and would be slurry sealed this summer. Photographs would likely be used to document the conditions, so the language would be tweaked to clarify how that was going to work.

- He confirmed the City would be responsible for taking the before pictures to know whether West Hills had met the standards. City Manager Becker and City Recorder Lanter, along with the city engineer would likely be documenting the conditions.

Mayor Edison added that similar to the process used to identify what sidewalks to repair, representatives from both the City and West Hills would likely go out together to document the conditions.

City Attorney Kearns confirmed a few details of the agreement would be fleshed out later. The draft articulated the deal points in a way to be recommended to City Council. A few changes needed to be made for clarification purposes, for example, Section 9 on Page 6 was deleted because the City could not indemnify West Hills and South Banks Joint Venture for the work.

- While West Hills agreed to repair any damage they caused, they objected to doing new slurry seal if it was not required as part of the repair, which seemed fair and resulted in the change at the top of Page 6.
- The Applicant was no longer requesting a change to Condition 5 as discussed in Mr. Robertson's cover letter from April 3<sup>rd</sup>, 2015. Condition 5 regarded stubbing public right-of-way in case it was determined that the best location for the railroad crossing was at Phase 9. No matter how the Applicant designed the Phase 9 subdivision, a public right-of-way would abut the railroad right-of-way there.
- The only changes from the Planning Commission recommendation being requested were the changing the maximum number of units possible from 34 lots up to 42 lots, and adding new Condition 6 requiring West Hills to enter into the development agreement with the City and execute within 30 days.
- He clarified a yes or no voice vote was anticipated by City Council on Business Agenda Item 2, and if yes, what conditions would be applied.
  - Item 3 addressed the fact that Condition 9 was also embodied in a bond and the developer had approached the City about eliminating the bond if a deed and restriction covenant were put on the property title to do the crossing, so in eliminating Condition 9, the City would have to release the deed restriction.
  - Under Oregon law, land use decisions must be reduced to writing, at which point they become appealable. Normally, the developer, as the prevailing party, writes the findings, which Mr. Robinson had agreed to do. The land use findings would support Council's decision and the order would return for adoption at a subsequent meeting.

Mayor Edison closed the record for the public hearing and called for the Council's deliberation.

Councilor Keller understood the potential expense for the railroad crossing was \$500,000, based on the agreement, the improvements would be around \$200,000, which seemed like a pretty good deal for Arbor Homes. [West Hills] He did appreciate the hard work that had gone into the agreement. He also heard in the testimony, that changing the development to potentially more lots would help pay for the improvements, which did not sound right. He understood the other phases were part of the original condition for the at-grade crossing. Increasing the allowable maximum of lots just seemed to sweeten the deal for Arbor [West Hills].

City Attorney Kearns clarified the number of lots was set by the Planning Commission. He was not sure how many lots were possible under the City's R-5 zoning, but the Commission had limited the number to 34 lots; that number did not come from the original 1996 approval.

- Council could still set it at 34 lots. Looking at the plat, the dimensional requirements of the underlying zoning had been shifted to increase density in one area, establish the park, etc. PUDs involved give and take, so the Applicant was making the request.
  - He did not know what changes would be required to the underlying lot sizes to get 42 lots; that detail would come out in the preliminary plat for the subdivision.
- He explained the Planning Commission had arrived at the 34-lot limit during discussion, but he could not recall why.

Mayor Edison reopened the public hearing.

Mr. Robertson clarified West Hills had suggested 34 lots due to the subdivision plan at that time. Since the Planning Commission hearing, West Hills had looked at the wetlands and designed a street that abutted the railroad to provide for the connection, so the Applicant believed there could be up to 42 lots, and would like that opportunity. However, removing the condition was more important, so if Council was concerned, Condition 3 with 34 lots could remain.

Councilor Keller asked if West Hills thought this was a good deal, not having to do an at-grade crossing at \$500,000 to \$1 million.

Mr. Robertson clarified it was not a matter of liking it; the Applicant just could not perform the condition. Thinking back to how good the housing market had been, if West Hills had been able to perform Condition 9, they would built houses and been done with this. Having this vacant lot on the Applicant's inventory for 19 years was not a good deal. He believed the questions were legitimate, but West Hills could not perform the condition. If they had, they would have, which was why the record included a study by Kittleson & Associates.

- He reviewed the various access options the Applicant had studied, noting that about the only time a new railroad crossing was constructed was when it was proposed by the railroad. He recalled that with the railroad crossing done for Arbor Roses West Hills had to pay about \$100,000 to even get the city to apply for it. That process and money from West Hills resulted in the rail improvements in Banks done by the railroad.
- West Hills wanted this deal to be done so the property could be developed for single family homes. The Applicant was not crazy about having to hire Kittleson & Associates, or himself, to work with the City to help get this done. He assured the Applicant was comfortable with doing the improvements, which was something West Hills could do. They could not do the railroad crossing.

Councilor Keller clarified he did not want his comments taken negatively in any way, he simply wanted to formulate what was being voted on to ensure he was making the right decisions for the

citizens of Banks. He questioned the ability to accurately measure the impacts on the roads, and therefore, the need for the condition as it did the City no good.

Mr. Robertson explained City Staff had asked for the condition and West Hills was comfortable doing it. With any final plat in the State of Oregon, public improvement agreements were required. He had yet to see one where the applicant did not have an obligation to restore public rights-of-way for damage caused by the developer. West Hills had told the citizens at the neighborhood meeting in August and the Planning Commission that they needed to do the improvements to be a good neighbor.

Councilor Biehl believed the City was better off having more lots than less because it provided a better tax base, long term.

Councilor Keller asked if Arbor [West Hills] would agree to an additional condition to donate to the current Library Campaign.

Mr. Robertson replied as a lawyer, he was comfortable with the agreement which seemed to exchange one transportation related condition for another. With regard to unrelated items, he suggested inviting West Hills to discuss how they might benefit the city and be a real partner after this matter was finalized. As a lawyer, he would be uncomfortable suggesting that the library was related to the condition requested for removal.

Mayor Edison closed the public record and called for further deliberation.

Mayor Edison commented that in his dealings with West Hills and the entire project as presented, he believed it was a good project, and that the City and the residents would get some nice improvements. He was not sure West Hills would ever be able to develop if Condition 9 remained; they could have vacant land there 20 years from now. Everyone's perspective was to consider what could be done that was consistent with Condition 9 that would benefit Banks' citizens and this seemed like a pretty good deal for everybody. He believed Staff did a great job laying it out, adding he appreciated City Attorney Kearns comments.

City Attorney Kearns clarified the Applicant was asking to modify the prior land use approval by eliminating Condition 9. The Planning Commission recommended approving the request with the addition of five additional conditions to make up for that. A sixth condition was proposed requiring the execution of a development agreement that included the additional deal points, which could have been identified as conditions, but the development agreement was a binding contract that would run with the title to the land. Such an agreement was a better form than simply conditioning the Applicant to execute the agreement.

- He confirmed City Council would be asked to authorize the mayor to execute the agreement on behalf of the City.

## **BUSINESS AGENDA**

1. Shall the City Council approve the request from the applicant to remove Condition 9 from City files PUD 9-96 and PA/ZC 8-96, and substitute with the conditions of approval, based on the recommendation from the City of Banks Planning Commission?

Councilor Keller moved to approve MOD1-14 and MOD2-14 to remove Condition 9 from City files PUD 9-96 and PA/ZC 8-96, and substitute with the conditions of approval, based on the recommendations from the Banks Planning Commission, amending Condition 3 to state, "shall be limited to a maximum ~~34~~ **lots up to 42 single family lots**", and adding Condition 6 authorizing execution of the development agreement as outlined, correcting Highway 43 to 47 and including small

changes to be made between the parties within 30 days. Councilor Nelson seconded the motion. MOTION CARRIED 6-0. Ayes: Gregg, Biehl, Nelson, Branstitre, Walsh, and Keller; Nays: None.

2. Shall the City Council approve the lifting of the covenant on the property for Condition 9 for Arbor Village?

Councilor Keller moved to approve the lifting of the covenant on the property for Condition 9 for Arbor Village and authorize the mayor to execute on any related documents. Councilor Biehl seconded the motion. MOTION CARRIED 6-0. Ayes: Gregg, Biehl, Nelson, Branstitre, Walsh, and Keller; Nays: None.

City Attorney Kearns explained that the voice vote on the land use decision was tentative pending adoption of a final written order.

Following discussion, Mr. Robertson agreed to provide City Attorney Kearns the draft findings on April 8th, and he would forward his comments to Mr. Robertson, Mr. Remmers, and City Manager Becker. Council would then be able to consider and possibly adopt the findings at the April 14, 2015 City Council meeting when City Attorney Kearns would be out of town.

Mayor Edison announced that Item 3 would be continued to the April 14, 2015 City Council meeting no sooner than 7 pm for consideration and adoption of written findings only.

### **Adjourn**

The meeting adjourned at 7:08 pm.

Submitted by:

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Angie Lanter, City Recorder