

CITY OF BANKS, OREGON  
Planning Commission Meeting  
April 26, 2016  
Banks City Hall, Banks, OR

Chair Gene Stout called the meeting to order at 6:35 PM. The proceedings were recorded in digital format.

ROLL CALL

Present were: Chairperson Gene Stout, Michael Lyda, Sam Van Dyke, Rachel Nelson, and Phillip Darrah. Lisa McAllister was excused. Rodney Jacobs arrived at 6:47pm.

Attending: Jolynn Becker, City Manager; Dan Kearns, City Attorney; Stacey Goldstein, City Planner

APPROVAL OF MINUTES

1. Approval of minutes from the March 29, 2016 meeting  
Rachel Nelson moved to approve the Planning Commission minutes of March 29, 2016 as presented. Michael Lyda seconded the motion, which passed unanimously.

CITY COUNCIL REPORT

2. Verbal Report from City Manager – City Manager Becker briefly reviewed the items addressed at recent City Council work session and regular meetings with additional comments from City Planner Goldstein. She addressed questions from the Commission regarding...

PUBLIC COMMENT – There was none.

WORK SESSION (None)

PUBLIC HEARINGS

The Planning Commission addressed Agenda Item 4 Periodic Edibles at this time.

Chair Stout read the conduct of hearing format into the record for both public hearings.

3. South Banks Joint Venture (Quasi-Judicial Public Hearing)

This agenda item was addressed following Item 4 Periodic Edibles. (See Page 6)

**CPA – 16-01**

Comprehensive Plan Map Amendment to change the plan designation from Property from Industrial (I) to Single-Family Residential (R5).

**ZC 16-01**

Zoning Map Amendment to change the zoning of the property from Industrial (I) to Single-Family Residential (R5)

**CMP 16-01**

Concept Master Plan approval for 37 single-family lots and related open space.

**PSA 16-01**

Preliminary Subdivision approval for 37 single-family lots and related open space.

Chair Stout called the public hearing to order at 7:18 pm and asked if any Commissioners had any declarations of ex parte conduct, bias, or conflicts of interest.

Rodney Jacobs declared that he lived on Buckshire St in Arbor Village, two houses west of Street

A. He had no financial interest in the proposed project, other than occupying more houses. With regard to ex parte contact, he said he had visited the site several times while running his dogs and because his kids played on the property, so he knew the ground very well.

Rachel Nelson declared that she lived on Groveshire Ave in Arbor Village, noting the development would likely increase homeowner association (HOA) fees, which would only be a minor financial impact and would have no bearing on her ability to render a fair decision.

Gene Stout declared that he also lived on Yorkshire Ave and that his home backed up to the property being developed. He was also President of the HOA and has had concerns about the proposal, its impact on the HOA and its finances. He stated for the record that he personally did not oppose the development or the contractor. With regard to ex parte contact, he had talked with Rodney Jacobs about the process and procedures should he have to be recused, but nothing about the merits of the subject applications. He believed he could render a fair decision based on the criteria presented, regardless of his personal interests.

Mike Robinson, Attorney, Perkins Coie, representing West Hills, stated his client did not believe the matters concerning HOA finances, conditions, covenants and restrictions (CC&Rs) were relevant to the work of the Planning Commission, which was to determine whether the Applicant had met the burden of proof showing that all the approval criteria were satisfied. If there were any questions regarding the HOA, the Applicant was happy to talk with the HOA outside of this hearing, which was the appropriate place for that discussion since it did not have anything to do with the land use. He believed people who served on bodies like the Planning Commission had to be trusted to do the right thing and understand the importance of their function in the community, which was to review these matters impartially, listen to the testimony, and render a fair decision. In his experience, each body he has come before wanted to do the best job possible and the people had integrity about the performance of their job. With regard to the Commissioners who lived in Arbor Village, the Applicant had no objection to their participation or any reason for any of them to not participate.

Sam Van Dyke disclosed that he had testified on behalf of West Hills Development when the City was determining whether to remove Condition 9. West Hills also participated in the railroad crossing study that benefitted the Van Dyke family, as well as Quail Valley. However, his prior participation would not affect his ability to be impartial in the subject public hearing.

City Attorney Kearns noted that the Commissioners involved with the prior proceeding regarding the removal of Condition 9 received a lot of information about the proposed project that was not in the record of this proceeding, so technically, that was an ex parte contact.

Ms. Nelson confirmed she had no ex parte contacts other than being an Arbor Village resident and as a Commissioner during the process regarding Condition 9.

No members of the audience challenged the participation of any other Planning Commissioners.

City Planner Goldstein highlighted the Staff report regarding the requested applications for Arbor Village Phase 9, reviewing the land use process, key application requests, and key concerns related to each request. She corrected the first sentence of the last paragraph on Page 3 of the Staff report to state, "The Applicant states that the Property has been ~~included~~ **excluded** from the City's industrial land inventory..." Staff sought input from the Commission specifically about whether part of the trail, which was proposed to be gravel, should be continued as a solid surface entirely. She noted Clean Water Service (CWS) would have final approve of the amenity either way and briefly reviewed the pros and cons of both options as described on Page 41 of the Staff report. Staff concurred with the Applicant's findings and recommended approval of all applications as proposed subject to the recommended conditions of approval.

The Commission discussed many aspects of the proposed open space and trail, noting concerns

about having adequate access for security and for maintenance, such as dumping garbage in the tables' area. City Planner Goldstein confirmed the Sheriff did have comments about the initial proposal, but was now satisfied with the current layout being presented with provided a wide enough access for his vehicle and allowed him to access his vehicle on the east side of the open space.

The Commissioners also discussed their preferences for the gravel portion of the pathway, which included options like sand set pavers, permeable and regular concrete, as well as making the entire trail asphalt. Concerns were also expressed about the trail being able to support large vehicles so that CWS could continue to maintain the manhole in the southwest corner of the site. Staff noted the Applicant had been communicating with CWS and could respond to questions about CWS's requirements.

Staff addressed clarifying questions from the Commission about the size of the open space area in Tract C, which would be maintained by the HOA; keeping unauthorized vehicles off the pedestrian trail; the fencing and retaining walls adjacent to the trail; street naming, and concerns regarding capacity in the schools. No comments were received from the Banks School District. Ms. Nelson noted that last spring, the former superintendent had said every school had plenty of capacity to accommodate growth. Staff confirmed all the proposed streets were public and that the HOA, either the existing Arbor Village HOA or an HOA formed by the proposed 37 homes, would take control of and be responsible for the public open space area.

Questions regarding the pedestrian trail's length, its ability to support large vehicles, and whether individual lots' backyard fencing would be part of the overall development or the homeowner's responsibility were deferred to the Applicant.

Chair Stout called for the Applicant's presentation.

Mike Robison, Attorney, Perkins Coie, 1120 NW Couch St. 10<sup>th</sup> Floor, Portland, OR, 97209-4128, representing the Applicant, West Hills, addressed the questions that were deferred to the Applicant.

- The proposed trail was approximately 700 feet long. Much of the open space area was in an easement favoring CWS for maintenance of the stormwater quality facility. The existing road on the east side would likely be paved; however, anything involved with that easement required coordination with and approval by CWS. He reminded that the Applicant had to return for approval of a Detailed Development Plan, which would show what the trail would look like. That plan would involve coordination and discussions with CWS, and the Applicant's engineer, Mike Peoples with Otak, would coordinate with CWS and keep City Staff and the other agencies informed, including the Sheriff's deputy and DKS Associates, if DKS desired.
- The Applicant sought the Planning Commission direction regarding the trail's surface. If the Commission wanted the entire trail surface paved, he asked that the Commission not be too specific with regard to it being pervious or impervious to provide some flexibility when coordinating with CWS, which would make the ultimate decision since it was their easement. The trail would still have to be of sufficient quality and durability to accommodate CWS large vector trucks, as well as the deputy's vehicle. All those considerations would be taken into account when coordinating with CWS.
- With regard to safety concerns, he assured a sufficient fence would be installed between Lot 37 and the edge of the pond so nothing could fall into the stormwater detention pond. He also indicated where the sheriff's deputy would be able to view the areas where security was a concern, which would accommodate CWS's access needs as well.
- The Applicant agreed with Staff about opening this area up to allow people to walk through with a stroller, but also reduce the propensity for unwanted activities. The large grassy area would not really be a place for people to congregate; if so, it was right behind someone's house, so the homeowner(s) should call the deputy if that occurred. While a valid consideration, the proposed design did not create an inherent problem for policing or safety, but it was really not really a land use issue.

- He noted a key requirement in ORS 195, a provision for when cities and counties could deny land use applications based on school capacity, was that the school district had to object. Because the school district provided no comment upon receiving notice, the application could not be denied based on school capacity.
- With regard to fencing, he explained the retaining walls were needed to provide flat lots for useable backyards, and 6-ft high cedar, good neighbor fences would be constructed in each of the backyards. After discussion at the neighborhood meeting, the Applicant was willing to construct one new fence along lots abutting existing subdivision homes, rather than having a new fence against an old fence.
- Discussion regarding the HOA and existing CC&Rs was not a decision making criterion, but he confirmed that the open space tract would either be annexed to the existing HOA, or a new HOA would be formed. The Applicant would gladly talk with the existing HOA Board about what made sense. He explained the Applicant wanted an open space that provided both active and passive components, but with low cost amenities so residents were not burdened by it.
- He introduced members of the Applicant's team and stated the Applicant agreed with the Staff report and 28 conditions of approval. He thanked City Staff for their courtesy in working with the Applicant, adding they had helped improve the application in a couple ways.
- He confirmed that the entire Planning Department file was at the hearing and stated the Applicant had provided the findings, which were supported by real evidence, that the application met the approval criteria.

Mr. Robinson presented the Applicant's proposal, briefly reviewing the history of the proposed subdivision as it progressed through the City's land use approval process. The subdivision met all of the City's Development Standards, the Public Works and Kennedy and Jenks utility requirements, as well as all the conditions of approval in the Staff report as well as the six conditions imposed previously by City Council. ODOT had no objections either. He reviewed several components of the proposed subdivision with these key comments:

- The Applicant was requesting that the property be designated residential on the Comprehensive Plan Map and zoned R-5, the same zone as Arbor Village. The current Industrial zoning designation was probably an unlikely and improper use being behind a residential area and with no access to the State highway. If the amendment requests, along with the Master Plan and Tentative Subdivision were approved, the Applicant would return with final plat and Detailed Development Plan, which would show what the trail surface looked like.
- Of the site's approximately 8.4 acres, about 2.7 acres were wetland and the related buffer. While City Council had approved up to 42 lots, preserving the wetland, and providing the buffers, open space, and trails, resulted in only enough room for 37 lots. The Applicant generally tried to match the widths of the 37 proposed lots with the existing lots in the Arbor Village subdivision to avoid having current homeowners have two lots behind them. Lot sizes would range from 3,650 sq ft to 9,791 sq ft, which was similar to the 3,100 sq ft to 7,100 sq ft lot dimensions currently in Arbor Village. No request was made to modify the rear yard setbacks. The proposed subdivision was about 10 percent of the total lots currently in Arbor Village and it worked well in terms of the existing subdivision.
- The subdivision would have a looped water line, the cul de sac works and there was good visibility back here because of the open space and trail system.
- As suggested from Staff, and at the neighborhood meeting last October, there would be two ways in and out of the subdivision via Ashton Dr and Street A, making access easier for emergency and City maintenance vehicles. The Applicant was dedicating a lot they owned on Buckshire Ln to the City for Street A.
- Parking concerns were raised at both neighborhood meetings, but only so much on street parking could be provided because the Code only allowed parking on one side of the street. The proposal provided approximately 20 on street parking spaces and each lot had room for four parking spaces, two in each two-car garage and two in the driveway, resulting in approximately 170 parking spaces for the 37 lots proposed.
  - Adding a parking area had been suggested, but West Hills found such areas had

maintenance problems and issues because people did not use them as they should. Generally, four parking spaces worked for most people, though big pickups would not work.

- The Traffic Impact Analysis showed approximately 35 to 40 AM and PM trips going through the neighborhood and out to the State highway. DKS concurred with the Traffic Impact Analysis and concluded it met the City Code requirements and that the street system had sufficient capacity to accept the trips anticipated from the subdivision. As noted on Page 4 of Staff report, traffic from the 37 single-family lot subdivision would be less than if the site was developed for industrial use.
- The homes' designs would be comparable to or better than the existing development in a number of ways. Generally, two-story homes would be built due to the relatively small lots so square footage could be maximized. Unlike the homes built 20 years ago, the exteriors would be more interesting to reflect current home designs built today. There could be a single-story home in the subdivision.
- He circulated the City Council decision requiring six conditions of the Applicant and the development agreement with the City, which were already in the record. He noted the Applicant would meet Condition 6, improving sidewalks in front of 135 lots, replacing 6 street trees and making curb improvements in front of 6 lots, all of which was estimated to cost \$150,000 to \$200,000. He distributed a map showing where the improvements would be made. The Applicant met Condition 4, having donated \$20,000 for the railroad crossing study, which had been provided to the City and recommended the railroad crossing be farther north. He indicated the western cul de sac was located on existing public right-of-way to provide for a potential future connection to Rose Ave on the east side of the railroad right-of-way.
- He indicated the trail connections the Applicant would complete to Buckshire Ln and the trail in the cul de sac to the west. The Applicant was also providing a trail easement on this side to enable the City to extend a trail identified in the City's Bike and Pedestrian Master Plan farther south.
- The City's Industrial inventory was not affected. The subject site was not on the City's Goal 9 industrial inventory so changing the site's designation to a residential designation would not cause a problem with the State of Oregon. Page 11 of Staff report discussed how the City had a deficit in housing, so the subdivision would help make up that deficit now, and more housing was expected when the east side developed.
- He asked that the Planning Commission recommend approval of the Comprehensive Plan and Zoning Map amendments to City Council and approval the other applications as presented. He noted that members of the Applicant's team were available for questions.

Planning Commissioner Darrah suggested having a few one-story homes to accommodate elderly or retired people who want to live in Banks.

Chair Stout said he appreciated that the Applicant worked to align the proposed lots with the lots of the existing subdivision.

M. Lyda noted street trees had always been a problem that burdened sidewalks and utilities. He believed a root barrier was required, but did not see it in the conditions of approval. Additionally, the Applicant proposed maples, which were not good as street trees and not on the City's adopted planting list.

Chair Stout called for public testimony in favor of, opposed, and neutral to the application. Seeing none, he confirmed there was no rebuttal from the Applicant and called for Commission deliberation.

The Planning Commission unanimously agreed that the entire trail should be paved, noting that the surface type would be at the Applicant's discretion, but must support large vehicles and be vehicle accessible.

Chair Stout expressed concern about water, noting decisions about water to the new development were based on 2007 tests and there had been tremendous changes in the City's water system since then. He noted the water pressure water issues the City had been investigating on Buckshire St and that the City was also mapping its existing water lines. The Public Works Department's comments regarded blow off values and so forth, and he heard Mr. Robinson comment that looped water lines would be used.

City Attorney Kearns noted the fundamental subdivision question before the Commission regarded the creation of the lots, adding that all were required to be served by the full spectrum of public utilities. Public Works confirmed that public utility services were available and that capacity existed in the system to serve the lots. As the lots are constructed, the Applicant was obligated to comply with the City's Public Works Standards. The existing problems with water pressure could be on one lot or involve the existing subdivision. The Applicant demonstrated the basic feasibility of creating the lots because there was capacity in the system.

Chair Stout responded that he questioned that demonstration. Mr. Robinson noted the memorandum dated April 8, 2016 from City Engineer Rob Peacock did not identify a problem with water capacity, but provided instruction about how to do the water lines. However, the Applicant did have to return with a final subdivision plat, which was the appropriate place for further discussion about any concerns about water.

Chair Stout replied he wanted to ensure the concern was on the record.

City Planner Goldstein clarified that the Applicant submitted their application prior to the adoption of the Code amendment that changed the cul de sac lengths to 400 ft, so the proposal was held to the original Code standard of 450 ft. She noted the subdivision also had a secondary access, which was the critical issue facilitating the Code amendment. She confirmed that the Finding regarding 152.053.B.(3)(a) on Page 32 should reflect that the connection between the proposed NW Walterwood Crt and the existing pedestrian connection with the cul de sac to the west, which was on NW Broadshire Ln, not NW Buckshire St. She clarified that parking space striping was already included in the Zoning Code and noted that the City Engineer had confirmed that the root barrier requirement was already included the Street Tree and Planting Standards of the Public Works Design Standards.

City Attorney Kearns confirmed the Applicant had to comply with the Street Name List in the Design Standards for the Detailed Development Plan.

Chair Stout closed the public hearing at 8:51 pm.

**Sam Van Dyke moved to approve CPA – 16-01, ZC 16-01, CMP 16-01, and PSA 16-01 based on the Findings and subject to the conditions of approval in the Staff report, with the corrections read into the record by Staff and amending Condition A8 by adding the following sentence, “The pedestrian pathway shall be paved subject to Clean Water Services’ approval.” Rodney Jacobs seconded the motion, which passed unanimously.**

The Planning Commission proceeded to Adjournment at this time.

#### 4. Periodic Edibles (Quasi-Judicial Public Hearing)

This agenda item was addressed as the first Public Hearing.

**CU 16-02** Conditional Use Permit and Design Review for Periodic Edibles, a cannabis food manufacturing facility.

Chair Stout called the public hearing to order at 6:50 pm, He confirmed no Commissioners had any declarations of ex parte conduct, bias, or conflicts of interest. No members of the audience

challenged the participation of any Planning Commissioner. He then called for the Staff report.

City Planner Goldstein presented the Staff report, noting the Applicant stated the facility would have no retail or storefront sales and would not be open to the public. A letter was received from Mr. Walsh of Hop Cycle Brewing, who had questions about the proposed operations, which were addressed by the Applicant. Staff suggested the Applicant install an air exhaust system with filters designed to eliminate odors to insure compliance with odor regulations. Staff recommended approval with conditions. She explained that tracking parking spaces in the Banks Business Center was difficult given the changes in businesses, but to date, the City had received no complaints about parking related to the business complex.

Chair Stout called for the Applicant's presentation.

Wayne Schwind, Periodic Edibles, 1446 SW Sexton Mountain Dr. #6C, Beaverton, OR 97008, noted the Operation Plan that was submitted addressed the facility's operations and described the many regulations and restrictions involved with the operation. Growing cannabis was the strongest odor producing part of the process, so air exhaust systems were usually not seen in processing facilities. He explained that a small amount of smell is present when cannabis is infused into butter or coconut oil, which would be noticeable in the operational area located at the back of the space. A faint smell might be noticeable in the office area at the front of the space, but no smell would leak outside the building. He assured that an activated charcoal filter, the standard filter used at grow operations, would be used in the tenant space's existing air exhaust system. He believed the proposal provided an economic opportunity, adding the Applicants wanted to be 100 percent transparent. He welcomed any questions and invited the Commissioners to visit the facility during operations.

Mr. Schwind addressed several questions from the Commission as follows:

- Leaves and stems removed from the butter would be the one byproduct the operation would have and essentially all the THC content would be extracted. Only a small amount, perhaps one pound every other week, would be thrown away, but all trash would be contained within the space and removed offsite.
- Unlike other extraction companies that use solvents, butane, propane, etc. to extract THC, Periodic Edibles uses the old school method of butter in a crockpot for 24 hours, so no hazardous materials or chemicals were used for extraction.
- Hiring more people is definitely a possibility, but it would depend on the market. The limited space might allow for one or two more employees, but there was a possibility of another tenant space opening.
- No other signage than having the name on the door would be used. The goal was not to draw attention to the operation.
- He described the extensive security measures required by the OLCC, which included security cameras that recorded 24/7 and covered the entire interior space and all access points; an alarm system for any breakage; and logs to be maintained for 30 days. OLCC must be notified of any incidences and any issues regarding down time which must be corrected immediately.
- At this point, there were no plans to put bars on the windows at this point, but bars on the interior might be considered later. Exterior bars might affect neighboring businesses, like Hop Cycle Brewing, as their customers might raise questions. No cash would be kept on site and door signage like, "No Cash on Premises" was being considered. The facility would be closed to the public, and only open to the two business owners and any eventual, employees. The facility would be locked during business hours.
- The Applicant currently operated in a home kitchen in Beaverton and distributed medical edibles to 32 dispensaries in Portland, Eugene, and on the coast. A recreational business required a commercial kitchen.
- Finding a commercial kitchen location and a landlord that would work with this type of facility had been very difficult. This location was ideal because the landlord was local and onsite and a clause in lease stated that if the Applicant was not approved for any licensing,

they could walk away from the lease. Additionally, Banks was only 30 min from Beaverton.

Chair Stout called for public testimony in favor of, opposed, and neutral to the application. Seeing none, he noted there was no need for final rebuttal and confirmed Staff had no further comment. He closed the public hearing at 7:09 pm and called for Commission discussion.

Rachel Nelson stated she was pro-business and her concerns regarding the character of the cannabis business had been addressed during the discussion. However, citing the Review Criteria Item B(2) on Page 8 of the staff report, she noted the character of the proposed business was different than the surrounding businesses, which were primarily open to the public. Additionally, the vision of Main Street, especially at the north end, was to have an area that was pedestrian and shopping friendly. While Periodic Edibles was a business and economic activity, she questioned if it was the best and highest use of a space so close to the trail, adding it would be nice to have retail synergy with businesses open to the public and feeding each other business versus something closed to the public. She supported new business in Banks, but did not believe this location was ideal this type of business given the vision for economic development along Main Street.

Phillip Darrah added the business would only employ people who were not currently city residents, and he hoped they would hire locally when ready to do so. He agreed the business would pay fees, taxes, etc.

M. Lyda did not believe the proposed facility was much different than the paint or automotive shop which did not create a lot of walk-in traffic from the trail.

Chair Stout believed it was better to have the building spaces occupied with businesses than to sit vacant, and the property owner would be getting more money as well.

City Planner Goldstein clarified the Planning Commission's decision was final and not a recommendation to City Council.

**Michael Lyda moved to approve CU 16-02 subject to Staff's recommended conditions of approval. Phillip Darrah seconded the motion, which passed unanimously.**

The Commission returned to Agenda Item 3 South Banks Joint Venture at this time. (Page 1)

BUILDING PERMIT REVIEWS – INFORMATION ONLY – (None)

VERBAL STAFF REPORTS AND UPDATES

There was none.

OTHER BUSINESS– (None)

ADJOURN: The Planning Commission meeting adjourned at 8:55 pm.

Submitted by: \_\_\_\_\_  
Stacey Goldstein, City Planner