

MINUTES

I. CALL TO ORDER: Chair Arthur Babitz called the meeting to order at 5:31 p.m.

PRESENT: Commissioners Arthur Babitz (Chair), Mark Frost, Bill Irving, Sue Powers, Tina Lassen, and Erika Price

ABSENT: Commissioner Megan Ramey

STAFF: Planning Director Dustin Nilsen, Senior Planner Kevin Liburdy and Planner Jennifer Kaden

II. PLANNING DIRECTOR'S UPDATE:

Planning Director Dustin Nilsen reminded the Commissioners of the adhoc Committee Meeting on Parking tomorrow and the Parking Study Open House on Wednesday, December 4th at the Hood River Hotel from 6 p.m. to 8 p.m.

III. PUBLIC HEARING:

FILE NO. 2019-16 – "The Creek" Planned Unit Development

PROPOSAL: A Conditional Use Permit for a Planned Unit Development including a 39-lot subdivision for 30 townhouses and nine single-family dwellings. The proposal includes designation of approximately 40% of the site as common open space, impacts to wetlands, construction of private streets, public and private utilities, and associated site improvements including retaining walls. The subdivision is proposed to be constructed in two phases.

APPLICANT: Mark VanderZanden

Chair Arthur Babitz opened the hearing, read the procedural script and asked the Commissioners to disclose any ex-parte, bias or conflict of interest. Commissioner Sue Powers disclosed she visited the site yesterday and learned that it has a challenging terrain. Commissioner Bill Irving disclosed he has looked at the site multiple times over the last five years with clients. However, he is not representing anyone at this hearing. He has learned the zoning, the density, seen someone else's development plan and is aware that there is topography that must be dealt with. Commissioners Tina Lassen, Erika Price and Mark Frost had none. Babitz said he walks his dog in Indian Creek Trail twice a day and is familiar with the property's topography difficulties. He also walked the site when the Indian Creek Trail was being planned. Babitz's asked if anyone in the audience had any concerns. There were none. He asked if any of the Commissioners would like to make a motion to disqualify any other Commissioner. There were none.

STAFF REPORT: Senior Planner Kevin Liburdy reiterated that this is a Conditional Use Permit for a Planned Unit Development including a 39-lot subdivision (30 townhomes and nine single-family homes). The proposal includes designation of approximately 40% common open space, impacts wetlands, construction of private streets, public and private utilities, and associated site improvements including

three retaining walls. The subdivision is to be constructed in two phases. The property is located at the North end of a cul de sac on the South side of Indian Creek. The legal description for the property is 3N10E36AB 3300/3400. Tax Lot 3300 is approximately 3.16 acres and it is zoned general commercial. Tax lot 3400 is approximately 1.31 acres and is in the urban high-density zone. The applicable criteria include chapters 17.03.030 urban high-density residential zone, 17.03.050 general commercial zone, 17.04 supplementary provisions, 17.06 conditional use, 17.07 planned development, 17.09.040 quasi-judicial actions, 17.16.040 site plan review criteria, 17.17 landscaping and development standards, 17.22 natural resource overlay, 16.08 procedural requirements for land division and 16.12 general design and improvement standards.

The role of the Planning Commission is to take testimony and determine whether the criteria meets or does not meet applicable approval criteria. The Staff Report presents findings explaining how the Applicant complies with applicable criteria and where standards have not been met and conditions of approval have been recommended.

Liburdy said he would like to focus on three significant areas: environmental constraints, phasing of the development, and application of zoning after the lots have been platted. Environmental constraints include wetlands which are subject to City and State Department of Lands regulations. The Applicant has submitted a delineation concurrence letter from the Department of State Land (Attachment A4). Most of the wetlands are not expected to be impacted. However, wetlands will be impacted North of proposed lots 11, 12, 16, 17, 37 and 36. Section 17.22.010 restricts most development activities in locally significant wetlands unless a variance is obtained. Most variances are subject to city ordinance 17.18.

Liburdy said Staff recommends the approval of a variance provided the conditions of approval outlined in the Staff Report are fulfilled. Recommended conditions of approval include deed restrictions to be recorded on any lot where a wetland has been delineated and notification to residents that delineated wetlands shall not be altered unless first reviewed by the City Planning Director and the Department of State Lands.

Liburdy said the proposed site is adjacent to Indian Creek and there is a 50-foot buffer which is measured from the top of the bank along the creek. Development activity is restricted in the buffer area pursuant to section 17.22.020 of the municipal code. Portions of lots 32-38 are in the buffer and are proposed to be counted towards planned development open space requirements. There is also a stormwater line to be constructed through that buffer on lots 34 and 33 so stormwater can be discharged into Indian Creek.

Staff recommends conditions of approval to have the developer construct a pedestrian path over the stormwater line and allow people to walk between the private street and Indian Creek Trail. Staff also recommends the developer constructs a split-rail fence along the 50-foot buffer on lots 32 to 38 to distinguish private space from common open space.

Proposed tree removal is depicted on Sheet A118 of the preliminary plan. The Applicant is proposing all trees be removed where the homes, streets and utilities are to be constructed. Approximately 42% of the site is proposed as common open space to be maintained by a Homeowners Association. Tree retention in the buffer is especially important to shade the creek and minimize temperatures which are regulated by Environment Quality Regulations. Liburdy said it is important to be aware of the potential for wildfires in a forested corridor. The City's Fire Chief is recommending ignition resistant construction

materials and spaces around homes consistent the Urban Wildlife Interface code as well as installation of fire sprinklers in each home.

There are cuts, fills and retaining walls up to 10-feet tall proposed in areas with steep slopes and there are existing apartments uphill. Current zoning standards do not preclude development on steep slopes. A geotechnical review the tested findings and provided recommendations for the development of the site was conducted. The geotechnical analysis (A5 Appendix B) did not anticipate development where lot 39 is proposed and where there is an existing drainage way. A condition of approval is that lot 39 be removed from the final development plan, no grading and vegetation removal should be permitted in that area or other areas where the geotechnical analysis did not anticipate development. In addition, an easement shall be provided through the remainder of site for a drainage way.

Liburdy said, the second area Staff wanted to touch on the phasing of development. A two-phase subdivision is proposed. Phase one would include the West half and phase two the East. All roads, utilities and common open area are proposed for phase one. The details of phase two are not clear, so Staff is recommending a phase line be provided on the final development plan and plat.

The timing of the retaining wall construction is very important and is something that should be done by the developer vs. individual homebuilders as it needs to be done as the cuts and fills are made across the site and utilities are installed. Recommended conditions of approval for the phase lines shall be depicted on the final development plan and plat. All public and private utilities, private streets improvements shall be installed by the developer in phase one and all proposed retaining walls shall be constructed by developer prior to the recording of platting for that phase. Finally, construction shall be completed no later than five years from approval of the final development plan.

The application of zoning narrative in A2 of the packet explains proposed lots for residential use including 30 single-family, attached homes and 9 single-family, detached homes. As depicted on the preliminary plat (A1) lots 23-30 and 38 are split-zoned R-3 and C-2. Provisions for uses and the development standards in these zones are not identical. Neighbors provided some comments on how split zoning will affect development including applications of the City's short-term rental (STR) regulations and other development standards. In order to improve consistency of uses in the development Staff drafted conditions requiring any applications for uses be consistent with the provisions specified in the R-3 zone. Staff also recommended the application of development standards including setbacks and building heights be based on the R-3 zone. However, the Applicant did speak with the Planning Director regarding this application and Staff understands that he has some concerns regarding this recommendation, so Staff looks forward to hearing more on this from the Applicant.

Staff is recommending approval subject to the findings and conditions that have been drafted in the Staff Report dated November 25, 2019. If the Applicant would like to request a continuance Staff is happy to work on issues that could be clarified further.

Commissioner Mark Frost had a question regarding design standards and visual interest. Looking at plat, he thinks all the buildings look similar and was wondering if there are any visual differences. Liburdy said it up to the Planning Commission to approve the design. Babitz said he views this as the site review process and does not see the design elements presented as binding. Liburdy said the designs are more conceptual at this stage and will be refined in the final development plan. He recommended the Commission hear directly from the Applicant on design then if they deem changes are necessary, they

could add a condition of approval (COA). Commissioner Bill Irving said the Commission has seen PUD designs amended. Babitz asked Staff nail the process down for the Commission.

Commissioner Tina Lassen pointed out that the trail easement cuts through some of the single-family detached lots and asked if governance of the trail will change. Liburdy said the Parks and Recreation Department holds and will retain that easement. Public access will continue to the trail. As a COA, Staff is requesting that a split-rail fence be constructed to distinguish the private part of those lots and the common open space.

Lassen asked under what circumstances can the easement be removed. Nilsen replied that it depends on the how the easement is written, whether it is revocable or non-revocable. In this case, it is non-revocable in perpetuity, so the Parks and Recreation Department will continue to maintain the easement.

Commission Sue Powers said she thought the Homeowners' Association (HOA) was responsible for maintaining the open space which includes the trail. Liburdy said Mr. Ryan owns the property over which there is an easement which is the trail. The only presumably change is the HOA would become the owner.

Irving said the plat shows lots within the common open space. The ownership of the land on plat is the property owners. Liburdy said that is correct. Lots 32 to 38 include a common open space easement.

Babitz said in the single-family, detached residential homes the common open space by easement belongs to the homeowner. In the townhomes the common open space is owned by the HOA. Liburdy said the preliminary plans does depict common open space on lots 32 through 38.

Lassen asked where the easement for public access to Indian Creek Trail is going to be. Liburdy replied between lots 33 and 34.

Babitz asked about the requirement Staff put in place for the riparian corridor. Liburdy said the zoning ordinance requires a 50-foot setback from the top of the bank buffer. Little has been proposed except for the stormwater outfall, pedestrian access, and the trail connection. Other than that, the plan is to retain the natural environment.

Irving said the proposed streets are private and the plan is to put a public access easement over that area. Liburdy said that is correct. Easements are typically put in place for public access and utilities.

Developer, Mark VanderZanden and property owner, David Ryan introduced themselves and Ryan provided background information on the project. Babitz said five to six years ago there was a transaction between Charlotte Wertjen and the City whereby a piece of property including Indian Creek was given to the City in exchange for making this site more developable, is that correct? Ryan said that is correct. He said he did not own the property at that time, but he was trying to help Wertjen with the property.

VanderZanden provided an overview of the site and proposed development. He said previously proposed single-family homes were going to be very difficult to build. He is proposing that townhomes barrack the site and act as retaining walls which is more efficient than having six individual homes as originally proposed. He said the single-family homes were intended to provide more house, but he did

not want to block Indian Creek Trail. The pedestrian connection is a modest downhill grade. The townhomes would be 2 and 3 bedrooms and built towards the lower end of the market. He said the economic advantages of property are great if ownership is held for 10 years and the homes starts off as rentals.

VanderZanden directed the Commission to A117 which shows open space areas. He said lots 32 to 38 have a section of open space that falls on the parcels which make the lots appear larger and more attractive to buyers. Irving asked if there is any lot coverage benefit. Liburdy said lots 32 to 37 and a portion of 38 are in the C-2 zone where the lot coverage standards are not applicable. In PUDs, residential lot coverage standards are not applicable.

VanderZanden said they do not need the lot space in the common open areas as the land is not buildable because it is either a public easement, a stormwater easement or wetland. Referencing Sheet 115, Irving asked for clarification on the boxes on lots 38 and 39. VanderZanden replied lots 39 and 33 are set aside for stormwater and lot 38 is a delineated wetland.

VanderZanden also referred a green line on Sheet 115 that indicates where they plan to put retaining walls. VanderZanden said there would be two types of walls, a shoring style to protect any uphill owners and a wall under four feet. He added that both are essential for providing yard space for the townhomes.

Powers asked if the homeowners or the HOA will own the open space on lots 32-38. VanderZanden said the open space on those lots would be part of the owners' lots but there is an easement that precludes them from developing on this portion of the land.

Commissioner Erika Price asked why there is not an easement on the common open space to the east and west ends of lots 32-39 along the trail. VanderZanden said the trail already has an easement, it is not on a parcel and the common open space would be deeded to the HOA.

Babitz asked what makes up the 42% of common open space. VanderZanden referenced the pale green area on Sheet A116.

Commissioner Erika Price asked if there is a setback from the trail easement. VanderZanden said there was not but he could certainly add one. Price asked if a rear setback could be applied. Babitz suggested the Commission one as a condition of approval.

Irving asked if the dark green area is included in what makes up the 42% of common open space. VanderZanden said it is not.

VanderZanden said it has always been their intent that homes in the C-2 zone would have the opportunity to be vacation rentals. He said it is very difficult to pay for construction with current monthly rental rates, and believes it is reasonable to be flexible in this area.

Babitz directed the Commission to A117 and asked Staff to explain the regulations behind each of the zones. Liburdy said the vertical lines on A117 distinguishes the C-2 zone from the R-3 zone which runs between lots 23-30 and 38, resulting in split-zoning. He said when he suggested the application of R-3 in split-zone area he was not aware of the developer's need for flexibility with respect to rentals. R-3 zoning requires that owner use the home as their primary residence. When they do that, they can rent

their home up to 90 days per year. In the commercial zone, the property owner does not have to reside in the home and there is no limitation on the number of nights it can be rented.

VanderZanden said he is okay applying the R-3 zoning to the split-zone lots while retaining the rental use for the lots that are clearly in the C-2 zone. Babitz added that the C-2 zone requires a minimum density and asked if the development meets this requirement. Liburdy confirmed that it does. Babitz asked if that was a condition of approval. Liburdy agreed that it makes sense to include a condition of approval stating the developer must maintain a minimum of 11 homes per acre.

Babitz asked the Applicant about phasing which could have an impact on the development if everything does not get developed as planned. VanderZanden said their intent is to build the infrastructures such as the streets, utilities, stormwater, landscaping and approximately half of the townhomes in phase one. Phase two would include the remaining townhomes, and the single-family homes would be developed throughout both phases.

Lassen asked VanderZanden if his intent is for the homes to be held by one owner or multiple owners? VanderZanden said there are two options: the mostly likely option is the one with the tax benefit which requires that all homes be for 10 years as rentals. Option two provides for the sales of a portion of townhomes to individual owners and remaining homes be held by one owner for tax advantages.

Irving asked VanderZanden for clarification on Lot 39. VanderZanden said he would like a Geotech report conducted to address Lot 39. He thinks the lot is valuable and would like to see it developed. However, he agrees that there should be a stormwater easement and is okay with a condition of approval to that affect if the report determines the land can be developed.

Powers asked about the tree renderings on Sheet A118. VanderZanden said their intent is to have street trees. Liburdy said there is a condition of approval for a landscaping plan to be submitted. Street trees are typically not required on private streets. In the PUD the conditional use requirement is that a minimum of 20% of the site to be landscaped. The Applicant said he would no objection to this condition.

PUBLIC TESTIMONY:

Brian Robb of 922 Union St. in Hood River testified that he is not opposed to the development but has several questions:

- He agrees with the application of R-3 zone regulations in split-zones but expressed concerns about what might happen to the homes in the C-2 zone if the market changes. Is it possible those home could become offices?
- Who is going to control the Indian Creek Trail setback?
- Where is the 50-foot Indian Creek Trail buffer?
- What are the conditions for the Indian Creek Trail easement?
- How will the common open space on the individual lots be maintained?
- Is the development to be gated?
- What will the home prices and HOA fees be?
- What is allow in common open space (i.e. lawn, playground, natural, etc.)?

Liburdy said the 50-foot buffer is to remain in its natural state. Currently, there is no condition of approval. He referenced HRMC 17.22.020.D.1 which addresses permissible activities and said the HOA will be responsible for common open space. In addition, he thinks there should be a condition of

approval around fencing and the corridor. Babitz asked how the split-rail fence will be maintained. Liburdy said that has yet to be determined.

Irving asked about land use requirements and the riparian corridor. Liburdy said the plan is to maintain the natural vegetation and added that this could be made a condition of approval. Liburdy referred to HRMC 17.07.090.A.3 which addresses uses in common open space outside the riparian.

Liburdy said there are no findings regarding the gating of the community. Irving thinks there should be a condition of approval that ensures public access to the trail.

Liburdy said he has no information regarding prices and HOA fees.

Linda Maddox of 3018 Dana Lane in Hood River testified that her biggest concern is that more than 2/3 of the property is zoned C-2. Like Robb she has concern about how the homes may morph into offices among other things. Staff said a PUD is a conditional use. Therefore, the PUD defines the conditions. If there are changes, there would have to be an amendment to the PUD.

VanderZanden said the condition for approval for the application of R-3 uses in split-zones make perfect sense to him and they would agree to limit C-2 use to residential use.

Robb had a question regarding building height. Liburdy said R-3 zoning allows building height of 28 to 35 feet. VanderZanden said his plan is not to exceed 28 feet high to protect home views.

Babitz called for a recess at 7:38 p.m. Session resumed at 7:44 p.m.

REBUTTAL: None.

STAFF RECAP:

After discussion with the Applicant during recess, Nilsen suggested the Commission postponed deliberations this sand move for a continuance, so the Applicant has times to address the question and propose solutions with Staff's input.

Babitz asked Staff to read through the list of items to be addressed for all. The list included the following:

- The design of the homes should be explicit and binding, not discretionary
- The easement along Indian Creek Trail and the maintenance and governance of common open space shall be explicit
- Lot size vs. easement in common open space
- The stormwater between lots 33 and 34 shall have an explicit access easement
- There shall be a public easement across the private streets
- Clarity on the design of single-family detached homes
- The inclusion of a rear set back from the trail easement
- Phase lines, milestones and how the fulfillment of density requirements can ensured
- Lot and unit mix
- Split-rail fence design and maintenance
- Other proposed fencing and restrictions
- Clarification on landscaping on private streets and open space

- Public access to Indian Creek Trail
- Confirmation on activities that will be allowed on the riparian buffer and common open space
- Confirmation on whether the development will be gated vs. not gated
- Confirmation on height of homes (C-2/R-3).
- Accessory uses on C-2/R-3/Split-zone.
- Development of lot 39 subject to Geotech analysis

Babitz asked if there were any objections to the list. There were none.

Irving asked about deliberations on short-term rentals. Babitz said the Commission is going to allow Staff to provide options. Nilsen said Staff will look to the Applicant for clarification on their intent.

Staff also agree to provide examples of fencing that has been down well or poorly with respect to the proposed split-rail fencing.

Ryan requested to continue the hearing on Monday, December 16, 2019. There were no objections.

DELIBERATIONS: None

MOTION:

Irving motioned for the continuance of File 2019-16 until Monday, December 16, 2019 not earlier than 5:30 p.m. and that any new materials be submitted by the Applicant are done by December 10, 2019 no later than 5 p.m. Motioned seconded by Price. There was a brief discussion. Motion passed unanimously (6 Yays/0 Nays).

IV. APPROVAL OF MINUTES

None.

V. ADJOURN

Babitz adjourned the hearing at: 8:10 p.m.



10/28/2021

Arthur Babitz, Chair (acting Chair Mark Frost)

Date



11/22/2021

Dustin Nilsen, Planning Director

Date (Approved)