Eugene Hearings Official

AGENDA

Phone: 541-682-5377
www.eugene-or.gov/hearingsofficial

Meeting Location:
Lane County Public Service Building – Harris Hall
125 East 8th Avenue

The Eugene Hearings Official welcomes your interest in these agenda items. Feel free to come and go as you please at any of the meetings. This meeting location is wheelchair-accessible. For the hearing impaired, FM assistive-listening devices are available or an interpreter can be provided with 48 hours notice. To arrange for these services, contact the Planning Division at (541)682-5481.

WEDNESDAY, JUNE 1, 2016
(5:30 p.m.)

I. PUBLIC HEARING ON APPEAL OF PLANNING DIRECTOR'S DECISION

Oakleigh Cohousing (PDF 15-2)

Assessors Map: 17-04-24-13 **Tax Lot:** 400
Assessors Map: 17-04-24-24 **Tax Lot:** 5500

Decision: Final Planned Unit Development approval for cohousing development. The project includes 28 multi-family dwelling units within seven buildings, and a central community building with bedrooms and a kitchen.

Appellant: Bryn Thoms, on behalf of the River Road Community Organization

Lead City Staff: Erik Berg-Johansen
Telephone: (541) 682-5437
E-mail: erik.berg@ci.eugene.or.us

Public Hearing Format:

1. Staff introduction/presentation
2. Public testimony from applicant and others in support of application.
3. Comments or questions from interested persons who neither are proponents nor opponents of the proposal.
4. Public testimony from those in opposition to application.
5. Staff response to testimony.
6. Questions from Hearings Official.
7. Rebuttal testimony from applicant.
8. Closing of public hearing.

The Hearings Official will not make a decision at this hearing. The Eugene Code requires that a written decision must be made within 15 days of close of the public comment period. To be notified of the Hearings Official's decision, fill out a request form at the public hearing or contact the lead City staff as noted above. The decision will also be posted at www.eugene-or.us/hearingsofficial.

99 west 10th Avenue
Eugene, Oregon 97401
Phone: 541-682-5377
Fax: 541-682-5572
www.eugene-or.gov/planning

Memorandum

Date: May 25, 2016

To: Ken Helm, Eugene Hearings Official

From: Erik Berg-Johansen, Assistant Planner, City of Eugene Planning Division

Subject: Appeal of Oakleigh Meadow Cohousing Final PUD (City File PDF 15-2)

ACTION REQUESTED:
To hold a public hearing and take action on an appeal of the Eugene Planning Director's approval for Oakleigh Meadow Cohousing Final Planned Unit Development (PDF 15-2).

BACKGROUND:
On April 15, 2016, the Planning Director approved the Oakleigh Meadow Cohousing Final PUD application (PDF 15-2). On April 27, 2016, Bryn Thoms filed an appeal on behalf of the River Road Community Organization. Public notice of the June 1, 2016 appeal hearing was mailed on May 6, 2016. Since the notice was sent three individuals submitted written public testimony; this testimony is included as Attachment D. If additional testimony is received after the publishing of this memo it will be added to record and made available to the Hearings Official.

Extensive background information on this appeal is included in the full record of materials provided separately. The Final PUD application is based on the Oakleigh Meadow Cohousing Tentative PUD (PDT 13-1). The tentative PUD approval was for the development of 28 multi-family dwelling units within seven buildings.

The Planning Director approved the subject application based on the approval criteria at EC 9.8365 Final Planned Unit Development Approval Criteria:

> **EC 9.8365 Final Planned Unit Development Approval Criteria. The planning director shall approve, approve with conditions, or deny a final PUD application. Approval shall include a finding that the final PUD plan conforms with the approved tentative PUD plan and all conditions attached thereto.**

APPEAL ISSUES AND STAFF RESPONSE:
To assist the Hearings Official in determining whether to affirm, reverse, or modify the Planning Director's decision (see Attachment A), staff has identified pertinent record information and considerations below. Excerpts from the appeal statement are stated below, followed by staff

comments. The full text of each assignment of error is included in the appeal statement (see Attachment B).

1. ***<u>First Assignment of Error</u>: It is fundamental that a decision approving a final PUD application state unambiguously which documents represent the previously approved, tentative PUD, as well as the final PUD being approved. The Decision does not identify the specific tentative PUD application, including the site plans and all relevant documents, that was approved under PDT 13-1 by the City in its Revised Final Decision on October 5, 2015.*** (See appeal statement for full text of this appeal issue).

The Final PUD decision states the file number for the subject tentative PUD application (PDT 13-1). The record for the tentative PUD includes the site plans and all relevant documents. All relevant versions of the site plans included in the tentative PUD record, including the initial tentative PUD site plan, were reviewed as part of the final PUD decision. However, the "Site Plan with Recommended Conditions" dated October 2, 2013 is the most recent version of the site plan and is therefore the most pertinent. This version of the site plan was submitted into the record on October 9, 2013 during the Hearings Official's open record period (Post-Hearing Exhibit PT-18). A reduced version of this site plan is included in the memo as Attachment C. Staff will also provide full-size color copies of the following documents to the Hearings Official at the public hearing:

- Hearing Official Record Index for Oakleigh Cohousing (PDT 13-1 & WG 13-1)
- Site Plan with Recommended Conditions dated October 2, 2013 (Post-Hearing Exhibit PT-18)
- Attachment D-2 Site Plan dated March 12, 2013 (Pre-Hearing Exhibit PH-1.D-2)
- Attachment D-4 Tree Preservation and Removal Plan dated June 12, 2013 (Pre-hearing Exhibit PH-1.D-4)
- Initial plan set including Site Plan and Landscape Plans, submitted August 12, 2013 (Pre-Hearing Exhibits PH-68 and PH-69).

In any event, the full record of materials for the relevant tentative PUD has been available to interested parties and other members of the public since well before the public comment period on the final PUD application.

2. ***<u>Second Assignment of Error</u>: The Decision does not identify which specific PUD application, including site plans and all relevant documents, was approved under this Application (PDF 15-2). This makes it impossible to determine whether the Final PUD application is consistent with the Original Application.*** (See appeal statement for full text of this appeal issue).

This assignment of error presents essentially the same argument under Assignment of Error #1. Therefore, staff's response under Assignment of Error #1 applies to this second Assignment of Error, and is herein incorporated by reference.

3. ***<u>Third Assignment of Error</u>: The Willamette Greenway (WG 13-1) has expired, and the PUD approval requires a valid Willamette Greenway approval.*** (See appeal statement for full text of this appeal issue).

Staff finds that the subject Willamette Greenway Permit (WG 13-1) has not expired. This determination is based on a previous Hearings Official decision for the OBO Enterprises project (MDA 13-7), where it was determined that the expiration clock for a secondary application does not start until all appeals related to accompanying applications are fully resolved and the approval is "effective" or "final". In the case of Oakleigh Meadow Cohousing, the tentative PUD appeal is not yet resolved; in effect, the Willamette Greenway expiration clock has not been initiated. Regardless, this issue has no relevance under the approval criteria for the final PUD application which is the subject of the current appeal.

4. ***<u>Fourth Assignment of Error</u>: The Application does not provide for safe access by fire trucks to conform with the PDT 13-1 approval findings under EC 9.8320(5)(a) and EC 9.8320(6). Specifically, the Application has not provided any means for a fire truck to reach the site under a condition where a "pumper" fire truck is in the normal position next to the fire hydrant that's located in the right-of-way.*** (See appeal statement for full text of this appeal issue).

This assignment of error appears to raise a substantive issue that was previously addressed as part of the tentative PUD process, and the tentative PUD has been affirmed by LUBA. As such, the issue is outside the scope of the approval criteria for the final PUD.

5. ***<u>Fifth Assignment of Error</u>: The decision completely ignored the fact that the western 2/3rds of Oakleigh Lane is within Lane County jurisdiction*** (See appeal statement for full text of this appeal issue).

While not entirely clear, this assignment of error appears to be related to vehicle access which was thoroughly analyzed through the tentative PUD process (and the tentative PUD has been affirmed by LUBA). Further, there is no tentative PUD condition of approval directly related to this jurisdictional question. As such, the issue is outside the scope of the approval criteria for the final PUD.

6. ***<u>Sixth Assignment of Error</u>: The decision erroneously found that the "final PUD plan conforms with the approved tentative PUD plan and all conditions attached thereto," specifically with respect to the turning radius where the driveway meets Oakleigh Land and condition #5…The question of whether the Fire Code is or will be met is not the point. The fact is that the turning radius is a substantial factor in whether or not the application meets the criteria in EC 9.8320(6), which requires: "The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response."*** (See appeal statement for full text of this appeal issue).

Staff disagrees with the assertion that the criteria in EC 9.8320(6) will not be met. The tentative

PUD was found to meet the approval criteria at EC 9.8320(6) without conditions, and this was affirmed on appeal by LUBA. The Fire Department will review the site development permits and determine compliance with the Fire Code.

7. ***<u>Seventh Assignment of Error</u>: The Decision erred by relying on the erroneous assertion, unsupported by substantial evidence, that the final plan provides acceptable water facilities…There is no documentation that the letter from EWEB, dated 3/25/16 was actually received by the City prior to 5:00 p.m., as required by the notice...There is no evidence in the record to support the Planning Director's claim that EWEB actually reviewed the "correct set of plans," as the Planning Director claims.*** (See appeal statement for full text of this appeal issue).

The following excerpt from the Final PUD Planning Director's Decision (PDF 15-2) addresses the above assignment of error, and no additional staff response regarding water availability is necessary:

> *EWEB issued an "Availability of Water Service" letter (dated February 11, 2016) that confirms water facilities are available for the proposed development* (Planning Director Decision, PDF 15-2, page 5).

The EWEB letter dated 3/25/2016 regarding utility easements is not relevant to the tentative PUD conditions of approval. The proposed utility easements will be evaluated through a building permit, and EWEB will require sufficient easements to be shown on plans before a building permit is issued.

8. ***<u>Eighth Assignment of Error</u>: The Decision erred by relying on an inadequate and unreliable analysis that the trees proximal to the site would not be at risk was not properly done. The report submitted did not address the potential impacts on utility trenching and other factors*** (See appeal statement for full text of this appeal issue).

As outlined in the Planning Director's decision, staff finds that the arborist report dated January 14, 2016 satisfies the Planning Commission Condition "b" regarding tree impacts. The condition states the following: "As part of the final PUD application, the applicant's arborist shall assess whether this **landscaping** would jeopardize the health of the cedar trees to the north. If so, no landscaping shall be required."

The appellant asserts that "…subsurface utilities are proposed within the protected CRZ, yet there is no discussion of protection measures in the application materials," and that "…there is no consideration of future bike path improvements, utilities, or general construction activities that may take place in the protected CRZ (newly acquired right of way immediately south of TL 200)."

Condition of approval "b" does not address impacts related to *subsurface utilities*; the condition only addresses impacts related to the required *landscaping*.

9. ***<u>Ninth Assignment of Error</u>: The Decision erred because it did not ensure the PUD would comply with the requirement to ensure a minimum of 14 feet of paving width, in any areas where the paving width is currently less than 14 feet within the existing right-of-way*** (See appeal statement for full text of this appeal issue).

The relevant condition of approval states: "Prior to occupancy of any dwellings in the PUD, the application shall improve Oakleigh Lane to ensure a minimum of 14 feet of paving width, in any areas where paving width is currently less than 14 feet within the existing right-of-way…"

The following excerpt from the Final PUD Planning Director's Decision (PDF 15-2) addresses the above assignment of error:

> *Through the building permit process the City will require compliance with this condition (final occupancy will not be granted until it is met). In their application narrative, the applicant also acknowledges the condition and confirms it will be met* (Planning Director Decision, PDF 15-2, page 7).

As stated in the Planning Director's Decision, a future building permit will require the applicant to "…improve Oakleigh Lane to ensure a minimum of 14 feet of paving width, in any areas where the paving width is currently less than 14 feet within the existing right-of-way." This condition does not need to be met prior to approval of the final PUD application.

ATTACHMENTS

A. Planning Director's Decision – Final PUD (PDF 15-2)
B. Written Appeal Statement
C. Oakleigh Meadow Cohousing Site Plan with Recommended Conditions, dated October 2, 2013 and received October 9, 2013 (reduced version)
D. Written Public Testimony

The full record has already been provided to the Hearings Official separately, and is also available on the City's website at:
http://pdd.eugene-or.gov/LandUse/SearchApplicationDocuments?file=PDF-15-0002

A hardcopy of the complete record can also be made available for free inspection at the Atrium Building, 99 West 10th Avenue, between 9:00 a.m. and 5:00 p.m. Monday through Friday. Copies may also be obtained at a reasonable cost.

FOR MORE INFORMATION:

Please contact Erik Berg-Johansen, Assistant Planner, City of Eugene Planning Division, at 541-682-5437 or via email at erik.berg@ci.eugene.or.us

Eugene Planning

Atrium Building
99 West 10th Avenue
Eugene, Oregon 97401
Phone: 541-682-5377
Fax: 541-682-5572
www.eugene-or.gov/planning

FINDINGS AND DECISION OF THE PLANNING DIRECTOR:

FINAL PUD APPROVAL FOR OAKLEIGH MEADOWS COHOUSING (PDF 15-2)

Application Summary:
Final Planned Unit Development approval for a 29-unit cohousing development.

Applicant:
Oakleigh Meadow, LLC

Lead City Staff:
Erik Berg-Johansen, Assistant Planner; (541) 682-5437

Subject Property/Zoning/Location:
Tax Lot 5500 of Assessor's Map 17-04-24-24 and Tax Lot 400 of Assessor's Map 17-04-24-13; Located at the east terminus of Oakleigh Lane.

Relevant Dates:
Final PUD application received on November 12, 2015; application deemed complete on March 3, 2016; decision granting approval issued on April 15, 2016.

Background/Present Request

The applicant's Tentative Planned Unit Development (PUD) (PDT 13-1) approval was for the development of 28 multi-family dwelling units within seven buildings. The residential buildings will be arranged around a central community building which also includes bedrooms and a kitchen, and therefore is considered a dwelling unit in the calculation of residential density for the subject property. The subject property consists of 2.3 acres in two tax lots that are considered one development site under common ownership. The subject properties are zoned R-1 Low-Density Residential. The east boundary of the subject property abuts undeveloped City parkland that contains Goal 5 Water Resources associated with the Willamette River, which borders the City property farther to the east. Otherwise, the surrounding properties primarily consist of single-family dwellings on individual lots and undeveloped lots. For more information about the details of the project and site characteristics, please refer to the application file and related record for the tentative PUD approval.

The tentative PUD approval was most recently appealed to the Land Use Board of Appeals (LUBA) on October 23, 2015 following the City's final local decision in which the Planning Commission re-affirmed tentative PUD approval on remand from LUBA. As of the date of this

decision, LUBA has not made a decision on the most recent tentative PUD appeal. It should also be noted that a previous final PUD application was submitted in April of 2014, but was ultimately withdrawn.

The present request is final PUD approval for the Oakleigh Meadows Cohousing project. In response to the tentative PUD conditions of approval, the applicant made changes to the tentative PUD plans and submitted additional supplementary information. Compliance with each tentative PUD condition of approval is further evaluated below.

Public Notice/Referrals

Public notice of the final PUD application was mailed and posted on March 11, 2016. All noticing was conducted consistent with the requirements of EC 9.7315 Public Hearing Notice.

The Planning Division provided information concerning the application to other appropriate City and County departments, public agencies, service providers, and the affected neighborhood group. All referral comments received by the Planning Division on this application are included in the application file for reference, and addressed in the context of applicable tentative PUD approval criteria and standards in the following evaluation.

Public testimony was received from both opponents and proponents. A number of opponents, including Ms. Love and Mr. Thoms, infer that the arborist reports[1] are inadequate. However, staff finds that Mr. Sperry's updated report (dated January 14th, 2016) fulfills Condition of Approval #2, and opponents did not provide expert testimony (i.e. a third party arborist report) to challenge Sperry's findings. This issue is further detailed below under the evaluation of Condition of Approval #2.

Various opponents also address the EWEB letter dated March 16, 2016. The letter states that a 14-foot wide public utility easement is required for the construction of water lines across the subject property. To correct this generalized statement present in the March 16th letter, EWEB revisited their review of the proposal and sent a clarification letter on March 25th, 2016. The most recent letter states the following: "EWEB water has reviewed the site plans for the Oakleigh Meadows project and find the easements acceptable as shown on the site plan dated 3/25/16." EWEB stated an incorrect date (3/25/16) as the site plans under review were received by the City on February 11, 2016; however, staff confirms that the correct plan set was routed to EWEB for review, and therefore it can be assumed that EWEB made their comments based on the plans currently under review. Staff also concurs with EWEB that the proposed easements are acceptable.

Mr. Conte and Mr. Thoms, both project opponents, state that the turning radius at the property's western access point as shown on the final PUD plans is not consistent with the radius shown on tentative PUD plans. Ultimately, the applicant will need to show compliance with the Fire Code before a site development permit can be issued. If the turning radius needs to be slightly adjusted in order to comply, this change can be made during the building permit

[1] The applicant provided two arborist reports, both generated by Sperry Tree Care. During completeness review, staff found that the first report (dated July 24, 2014) did not adequately address tentative PUD Condition of Approval #2. An updated report (dated January 14, 2016) was submitted to address staff's comments.

review process. It must also be noted no condition of approval from the tentative PUD approval addresses the turning radius issue; staff acknowledges this minor discrepancy but notes that a variety of Fire Code requirements remain to be met or otherwise resolved through the normal sequence of future site development and building permits necessary to construct the project.

A number of project opponents express various other concerns with the project, and ultimately state the City should not approve the final PUD application. For example, neighbors express that the project is too large in scale, that the natural setting will be negatively impacted, and that increased traffic could make Oakleigh Lane unsafe. Staff has reviewed all the comments, and while some of this testimony addresses important issues that were considered during the tentative PUD process, ultimately none of the testimony provides a valid basis for denial of the final PUD.

Final PUD Evaluation

The final PUD application for the subject site has been reviewed by the Planning Division as well as other City divisions and public service agencies to ensure conformance with the approved tentative plan, and related conditions of approval, in accordance with approval criteria at EC 9.8365 Final Planned Unit Development Approval Criteria.

> **EC 9.8365 Final Planned Unit Development Approval Criteria. The planning director shall approve, approve with conditions, or deny a final PUD application. Approval shall include a finding that the final PUD plan conforms with the approved tentative PUD plan and all conditions attached thereto.**

The applicable conditions of approval are listed below (in **bold**), followed by findings of how the final PUD application complies.

Conditions of Tentative PUD Approval:

1. **The final PUD plans shall show Building 2 located outside (moved south) of the required right-of-way dedication along the north property line.**

The final site plans have been modified to show Building 2 located outside the required right-of-way dedication along the north property line. This condition is met.

2. **Prior to final PUD approval, the applicant shall submit a report from a certified arborist confirming that the row of cedars on adjacent lands to the north can survive the construction impacts of the proposed development (and include any necessary protection measures to ensure survival). The final PUD plans shall show the location of Building 2 and any related protection measures (e.g. construction fencing for protected CRZ areas) consistent with the arborist's recommendations.**

The applicant submitted a report from a certified arborist confirming that the row of cedars on adjacent lands to the north can survive construction impacts of the proposed development. Nathaniel Sperry's report states the following: "No arborist can guarantee tree health, safety or

survival. Given the preceding disclaimer however, it is my professional opinion that the existing line of cedars north of Building #2 will be able to survive the impacts of the proposed construction and landscaping." Based on Mr. Sperry's statement, the first part of the condition is met.

The second part of the condition requires that final PUD plans show the location of Building 2 and any related protection measures consistent with the arborist's recommendations. Consistent with this requirement, Sheet L3 of the final PUD plans shows tree protection fencing that is designed to protect against construction activities past a certain point. Sheet A1.1 of the final PUD plans also includes the following statement: "Development will comply with all measures described in arborist report to protect existing large cedar trees."

Based on the findings above, this condition is met.

3. **Prior to final PUD approval, the applicant shall revise the final site plan to show the dedication of 22.5 feet of right-of-way along the northerly boundary of the development, between the westerly boundary of the proposed development and a line that is 50 feet east of the westerly boundary, and also to show the dedication of 13 feet of right-of-way extending from the aforementioned line (the east end of the required 22.5 feet of right-of-way dedication) to a line that is 117 feet beyond (east of) the existing the existing right-of-way (for a total length of 199 feet). Additionally, the revised site plan shall show the dedication of a 13-foot wide Public Accessway along the northerly boundary, which extends from the east end of the aforementioned right-of-way to the easterly property boundary (for a total distance of 24 lineal feet).**

Staff confirms that the requirement to revise the site plan to show 50' x 22.5' and a 13' x 199' segments of proposed right-of-way as well as a 13' x 24' public accessway are satisfactorily shown on Sheet A1.1. This condition is met.

4. **Prior to final PUD approval, the applicant shall submit for review and approval by City staff and recording at Lane County Deeds and Records, a street deed which reflects the right-of-way as shown on the final site plan.**

The applicant submitted a street deed to the City for review and approval. The deed was reviewed by City of Eugene Public Works staff and subsequently recorded at Lane County Deeds and Records. This condition is met.

5. **Prior to final PUD approval, the applicant shall dedicate a temporary emergency vehicle access easement over the on-site hammerhead and the access drive from Oakleigh Lane, and show this easement on the final PUD plans.**

Staff confirms the applicant has dedicated a temporary emergency vehicle access easement consistent with the above condition. The easement was reviewed by City of Eugene Public Works staff and subsequently recorded at Lane County Deeds and Records. This condition is met.

6. **Prior to final PUD approval, the applicant shall provide documentation from EWEB, confirming that water facilities are available for the proposed development.**

EWEB issued an "Availability of Water Service" letter (dated February 11, 2016) that confirms water facilities are available for the proposed development. This condition is met.

7. **The applicant shall submit an Irrevocable Petition for public improvements in Oakleigh Lane to include paving, curbs and gutters, storm drainage, sidewalks, and street trees.**

Staff confirms that the applicant submitted an Irrevocable Petition for public improvements consistent with the condition above. The Irrevocable Petition was reviewed by City of Eugene Public Works staff and subsequently recorded at Lane County Deeds and Records. This condition is met.

8. **The final site plan shall delineate the Special Flood Hazard Area, identify Base Flood Elevation (for the entire site or for each building), and note that development of the site will be required to comply with the standards at EC 9.6707 through EC 9.6709.**

The Special Flood Hazard Area (SFHA) is delineated on the final site plans. A Base Flood Elevation (BFE) for each building is noted on Sheet 1 – Site Grading Plans and Sheet 3 – Site Stormwater Plan (plan set submitted November 12, 2015). Note C.O.A. 8 on Sheet A1.1 indicates that "Development will comply with EC 9.6707 through EC 9.6709." Additional detail related to the methodology used to determine the BFE and the relationship of BFEs to the Finished Floor Elevation (FFE) are included in Notes 1 & 3 on Sheets 1 & 3. In summary, the floodplain notes on Sheets 1, 3 and A1.1 demonstrate compliance and this condition is met.

9. **The final PUD site plans shall note that construction permits shall conform to the applicant's geotechnical analysis.**

Sheet A1.1 of the final PUD plans note: "Construction permits shall conform to the applicant's geotechnical analysis." This condition is met.

10. **The final PUD plans shall note that all on-site utilities will be placed underground consistent with EC 9.6775.**

Sheet A1.1 of the final PUD plans note that all on-site utilities will be placed underground. This condition is met.

11. **The final PUD plans shall note the requirement that, at the time of development, all stormwater discharge points directed toward the City's property shall be designed as level spreaders, consistent with the City's 2008 Stormwater Management Manual. All stormwater facilities shall be located outside the public wastewater easement along the east property line.**

Sheet A1.1 of the final PUD plans note that "stormwater discharge points directed toward city property shall be level spreaders" and that "all stormwater facilities shall be located outside the

public wastewater easement along the eastern property line." Note 1 on Sheet 3 – Site Stormwater Plan indicates that "Stormwater plans conform to the Eugene City Code Section 9.6790 – 9.6796 and the 2008 Eugene Stormwater Manual." This condition is met.

12. The final site plan shall note: "On-site stormwater management facilities will be privately owned and operated. An operation and maintenance plan will be developed consistent with the City's Stormwater Management Manual, and notice of this plan will be recorded, during the building permit process."

Sheet A1.1 of the final PUD plans notes the statement above. This condition is met.

13. The final PUD plans shall show the applicant's proposal for "espaliered" trees along the outside face of the proposed concrete wall as a requirement. The required landscaping shall be the responsibility of the owner(s) and maintained as a requirement of the PUD approval. Those portions of the wall adjacent to unenclosed parking areas shall also be limited to 6 feet in height. Plans shall also be revised to show a minimum 5-foot setback for the wall along the west and south boundaries of the site. A reduced setback may be allowed for Building 6, so long as the applicant obtains the necessary maintenance access easement from the adjoining owner, in compliance with EC 9.2751(7), and all other conditions of approval are met.

In accordance with this condition, the final PUD plans show espaliered trees along the outside face of the proposed concrete wall. Sheet L1 of the final PUD plans also include a note that required landscaping shall be the responsibility of the owners and maintained as a requirement of the PUD approval. Sheet L2 also includes notes indicating that all walls adjacent to unenclosed parking areas shall be limited to 6 feet in height, and that a 5-foot setback will be maintained between the wall and the west/south property boundaries (no reduced setback is requested). This condition is met.

14. The final site plans shall note that compliance with the following development standards will be determined more precisely at the time of building permit review:

- **a. Landscape Standards beginning in EC 9.6200**
- **b. Garbage Screening contained in EC 9.6740**
- **c. Bicycle Parking Standards contained in EC 9.6105**
- **d. Outdoor Lighting Standards contained in EC 9.6725**

Sheet A1.1 of the final PUD plans note that compliance with the development standards listed above will be determined more precisely at the time of building permit review. This condition is met.

15. The final PUD plans shall show landscaping along the southern property boundary except along the length of the proposed wall (see related Condition #13) and the easternmost property line segment (123.48 feet) where existing trees are shown on the applicant's plans. The required landscaping shall meet the High Screen Landscape Standard (L-3) at EC 9.6210(3).

Sheet L2 of the Final PUD plans show L-3 landscaping consistent with the condition above. This condition is met.

<u>Planning Commission Conditions (added during remand process)</u>:

a) **The final PUD plans shall show a building setback of 5 feet from the front property line along the newly dedicated right-of-way boundary for Oakleigh Lane. A 10 foot setback shall be shown along the remainder of the north property line, along the newly dedicated right-of-way for a bike/pedestrian path. (See related Condition #3.)**

Sheet A1.1 of the Final PUD plans show 5' and 10' setbacks consistent with the condition of approval. This condition is met.

b) **The final PUD plans shall show landscaping along the north property line consistent with the applicant's proposed landscape plan (Sheet L2 of Exhibit PH-69), but moved south within the required 5-foot setback outside of the newly dedicated right-of-way for Oakleigh Lane. The applicant shall also revise the site plans to show landscaping that meets the City's L-2 standard at EC 9.6210, within the required 10-foot setback along the remainder of the north property line, but without the requirement for additional canopy trees. As part of the final PUD application, the applicant's arborist shall assess whether this landscaping would jeopardize the health of the cedar trees to the north. If so, no landscaping shall be required.**

The applicant has revised the landscaping plans to be consistent with the specifications outlined in the above condition of approval. More specifically, the landscaping along the north property line has been moved within the 5-foot setback (outside the dedicated right-of-way), and a note has been added to Sheet L2 confirming that landscaping within the 10-foot setback along the north property line will be to the L-2 standard (but without canopy trees). In regards to the last part of the condition, Sperry's arborist report states that future landscaping is not expected to jeopardize the subject cedar trees. This condition is met.

c) **Prior to occupancy of any dwellings in the PUD, the applicant shall improve Oakleigh Lane to ensure a minimum of 14 feet of paving width, in any areas where the paving width is currently less than 14 feet within the existing right-of-way. The applicant shall obtain any necessary permits for the required street improvements, and shall provide documentation of compliance upon completion.**

Through the building permit process the City will require compliance with this condition (final occupancy will not be granted until it is met). In their application narrative, the applicant also acknowledges the condition and confirms it will be met.

d) **The final PUD plans shall show landscape screening along the eastern property boundary, compliant with the landscape standards at EC 9.6200. More specifically, the landscaping shall:**

- **Be located on the subject property outside (along the west boundary of) of the**

existing public utility easement.

- **Be a minimum of 7 feet in width and comply with the Low-Screen Landscape Standard (L-2) at EC 9.6210(2), for the portion to the south of Building 4 (beginning at its southeast corner).**
- **Comply with either the High-Screen Landscape Standard (L-3) at EC 9.6210(3), or the Partial Screen Fence Landscape Standard (L-5) at EC 9.6210(5), for the portion directly adjacent to and north of Building 4 (beginning at its southeast corner).**

A 10-foot wide opening is allowed (but not required) for a pathway connection to the east as shown on the applicant's tentative plans near the southeast corner of the subject property. At the northeast corner of the subject property, the landscape screening shall terminate at the edge of the required right-of-way dedication for Oakleigh Lane.

The final PUD plans show landscape screening along the eastern property boundary consistent with the condition above. The condition also gives the applicant the option to implement either L-3 or L-5 landscaping for the area directly adjacent to and north of Building 4; in this area the applicant elected to utilize L-3 landscaping. The applicant has also elected to provide a 10-foot wide opening for a pathway connection near the southeast corner of the property. This condition is met.

Decision

Based upon the available information and findings set forth in the preceding evaluation, the proposed Final Planned Unit Development will conform to the applicable standards and criteria addressed in EC 9.8365. Final PUD approval is therefore granted.

Post Approval

Pursuant to EC 9.7220(4), the decision of the Planning Director is effective on the 13th day after notice of the decision is mailed, unless appealed according to the procedures in EC 9.7605. The final PUD approval shall remain effective for 36 months following the effective date of approval, in accordance with EC 9.7230.

This approval does not relieve the applicant from complying with other applicable provisions of the Eugene Code, Oregon Revised Statutes, or any other laws which may govern the development of the subject property.

Approval Granted By:

4/15/16

Gabe Flock, Senior Planner (date)
for the Eugene Planning Director

RECEIVED
APR 27 2016

April 27, 2016

Eugene Planning Director
c/o Erik Berg-Johansen, Associate Planner
City of Eugene
99 West 10th Avenue,
Eugene, OR 97401

Re: City File No. PDF 15-2; Oakleigh Meadows PUD

Appeal of Planning Director Decision

Dear Planning Director:

Enclosed is documentation appealing the Planning Director's approval of the final PUD (PDF 15-2). The following items are attached:

- City of Eugene Appeal form with appropriate signatures from the appellants
- Appeal notice
- Appeal Statement
- ~~Check for $250 only to be cashed if the RRCO co-chair signature is argued to be invalid~~ BET
- Email documentation between the co-chair of the neighborhood association (RRCO), the City of Eugene Planning Department, and the primary appellant regarding a reduction in the appeal fee with RRCO co-chair signature

The appeal form has the appropriate co-chair signature from the RRCO board member (Clare Strawn) according to the email exchanges (attached). If for some reason the signature is invalid or the Planning Department argues that the form was not completed correctly, the enclosed check of $250 is available to pay for the appeal. Otherwise, please confirm that the check is un-needed and I will void it.

disregard BET

Please let me know if you have any questions. You can reach me at brynthoms@msn.com or at 541-543-1204.

Sincerely,

Bryn Thoms, representing Oakleigh McClure Neighbors

135 Oakleigh Lane

Attachment B

RECEIVED
APR 27 2016

Eugene Planning

APPEAL OF PLANNING DIRECTOR DECISION

This appeal form applies to appeals of interpretation of this Land Use Code made according to EC 9.0040(1) and to appeals to all Type II land use applications. The appeal of the Planning Director's decision provides for a review of an administrative decision by a higher review authority specified in this Land Use Code. The Planning Director's decision may be affirmed, reversed, or modified.

Please check one of the following:

- ☐ Adjustment Review, Minor
- ☐ Adjustment Review, Major
- ☐ Code Interpretation
- ☐ Hazardous Materials Review
- ☐ Historic Property Alteration
- ☐ Historic Property Demolition
- ☐ Historic Property Move
- ☐ Modification of a Conditional Use Permit
- ☐ Modification of a PUD Tentative
- ☐ Modification of a PUD Final
- ☐ Modification of a Site Review
- ☐ Modification of a Standards Review
- ☐ Modification of a Subdivision Plan
- ☐ Modification of a Willamette Greenway
- ☐ Partition Tentative
- ☐ Partition Final
- ☒ PUD Final
- ☐ Site Review
- ☐ Standards Review
- ☐ Subdivision Tentative
- ☐ Subdivision Final
- ☐ Traffic Impact Analysis
- ☐ Vacation Improved Public R-O-W
- ☐ Vacation Improved Public Easement
- ☐ Unimproved Public R-O-W with Re-dedication
- ☐ Variance

City File Name: Oakleigh Cohousing

City File Number: PDF 15-2

Date of Planning Director Decision: April 15, 2016

Date Appeal Filed: April 27, 2016

(This date must be within 12 days of the date of the mailing of the Planning Director's decision.)

☒ Attach a written appeal statement. The appeal statement shall include a written statement of issues on appeal and be limited to the issues raised in the appeal. The appeal statement shall explain specifically how the Planning Director's decision is inconsistent with applicable criteria. Please contact Planning staff at the Permit and Information center, 99 West 10th avenue, 541-682-5377, for further information on the appeal process.

☐ A filing fee must accompany an appeal of a Planning Director decision, with some exceptions for neighborhood groups. The fee varies depending upon the type of application and is adjusted periodically by the City Manager. Check with Planning staff at the Permit and Information Center to determine the required fee or check on the web at: www.eugeneplanning.org

Acknowledgment
I (we), the undersigned, hereby acknowledge that I (we) have read the above appeal form, understand the requirements for filing an appeal of a planning director decision, and state that the information supplied is as complete and detailed as is currently possible, to the best of my (our) knowledge.

APPELLANT:

Name (print): Bryn Thoms Phone: 541-461-6343

Company/Organization: Oakleigh McClure Neighbors

Address: 135 Oakleigh Lane

City/State/Zip: Eugene, OR 97404

Signature:

APPELLANT'S REPRESENTATIVE:

Name (print):

Company/Organization:

Address:

City/State/Zip: E-mail (if applicable):

Phone: Fax:

Signature:

IF this appeal is being filed by the affected recognized neighborhood association, complete the following:

Name of Association: River Road Community Organization, RRCO

Clare Strawn, co-chair RRCO
Clare Strawn

APPEAL STATEMENT

RE DECISION APPROVING PLANNED UNIT DEVELOPMENT (FINAL)

OAKLEIGH MEADOWS CO-HOUSING – FILE PDF 15-2

The following statement by appellant, who is a member of the **River Road Community Organization**, a City-chartered neighborhood association, lists the specific issues on appeal and identifies where the Planning Director's Decision is inconsistent with the criteria applicable to the above captioned application for approval of a planned unit development (final).

The River Road Community Organization neighborhood association encompasses the subject property, and the River Road Community Organization filed this appeal.

THE PLANNING DIRECTOR DECISION

On March 11, 2016, the City mailed a Notice of Land Use Action. This notice stated that public comments must be received by March 25, 2016.

April 15, 2016, the Planning Director approved a planned unit development (final) for the subject property. The Decision was mailed on April 15, 2016.

REFERENCED DOCUMENTS[1]

"Application" – Application for Final PUD approval

"Original Application" – Application approved under PDT 13-1

"Decision" – Planning Director Decision (PDF 15-2), dated April 15, 2016, 2016.

"Conte 3/25" – Comments by Paul Conte, dated March 25, 2016

PRELIMINARY PROCEDURAL ISSUE

Appellant reserves the right under ORS 197.763 and other applicable statutes to raise new issues and submit new evidence at the first evidentiary hearing, which is to be held by the Hearings Official.

---

[1] Note that references to exhibits in the following sections are intended to assist the Hearings Official in understanding the assignments of error and are not intended as exhaustive references to all relevant evidence in the record.

See Conte 3/25, Preliminary Procedural Issues #1.

PROCEDURAL ERRORS

FIRST ASSIGNMENT OF ERROR

Eugene Code (EC) requires that a Planning Director decision "state the facts relied upon in rendering the decision."

> **EC 9.7215 Decision.** Within 45 days of the city's determination that an application is complete, unless the applicant agrees to a longer time period, the planning director shall approve, conditionally approve, or deny a Type II application. The decision shall include a brief statement that explains the criteria and standards considered relevant to the decision, state the facts relied upon in rendering the decision and explain the justification for the decision based upon the criteria, standards and facts set forth.

It is fundamental, of course, that a decision approving a final PUD application state unambiguously which documents represent the previously approved, tentative PUD, as well as the final PUD being approved.

The Decision does not identify the specific tentative PUD application, including the site plans and all relevant documents, that was approved under PDT 13-1 by the City in its Revised Final Decision on October 5, 2015.

This omission violates EC 9.7215 and makes it impossible to determine whether the Final PUD application is consistent with the Original Application. That failure constitutes a procedural error that provides a basis for reversing a Planning Director decision because it prejudiced the substantial rights of appellant and other opponents of the PUD. ORS 197.835(9)(a)(B). A party's substantial rights under ORS 197.835(9)(a)(B) include an adequate opportunity to prepare and submit a case and a full and fair hearing. *Muller v. Polk County*, 16 Or LUBA 771, 775 (1988).

This error cannot be remedied simply by the City correcting the omission and submitting testimony to the Hearings Official because that would not provide opponents their right under EC 9.7210(3) to have 14 days to submit comments *prior to the Planning Director's decision*; and if the Planning Director approves the final PUD based on the specifically identified applications, to file a local appeal, *based on the specific tentative and final PUD documents* relied upon in the decision.

> **EC 9.7210 Notice of Application.**
> * * *

(3) The notice shall allow a 14-day period for the submission of written comments, starting from the date of mailing. All comments must be received by the city within that 14-day period.

Therefore, the decision must be reversed.[2]

See Conte 3/25, Preliminary Procedural Issues #4.

SECOND ASSIGNMENT OF ERROR

The Decision does not identify which specific PUD application, including site plans and all relevant documents, was approved under this Application (PDF 15-2).

This makes it impossible to determine whether the Final PUD application is consistent with the Original Application.

The arguments under the First Assignment of Error are incorporated herein by reference.

For the reasons explained under First Assignment of Error, the decision must be reversed

See Conte 3/25, Preliminary Procedural Issues #5.

SUBSTANTIAL EVIDENCE ERRORS

THIRD ASSIGNMENT OF ERROR

The Willamette Greenway (WG 13-1) has expired, and the PUD approval requires a valid Willamette Greenway approval.

Obviously, if the Willamette Greenway permit has expired, the final PUD application cannot be approved because the proposed PUD lies within the Willamette Greenway. The Planning Director did not address this objection to approval of the final PUD application at all[3], as required.

---

[2] EC 9.7600, which addresses an appeal of a Planning Director's decision states: "The planning director's decision may be affirmed, reversed, or modified." The decision cannot be remanded.

[3] The entirety of the Planning Director's decision other than under the specific conditions of approval is excerpted here. There is no mention of the Willamette Greenway.

"Public testimony was received from both opponents and proponents. A number of opponents, including Ms. Love and Mr. Thoms, infer that the arborist reports are inadequate[1]. However, staff finds that Mr. Sperry's updated report (dated January 14th, 2016) fulfills Condition of Approval #2, and opponents did not provide expert testimony (i.e. a third party arborist report) to challenge Sperry's findings. This issue is further detailed below under the evaluation of Condition of Approval #2.

"Various opponents also address the EWEB letter dated March 16, 2016. The letter states that a 14-foot wide public utility easement is required for the construction of water lines across the subject property. To correct this generalized statement present in the March 16th letter,

As explained under the First Assignment of Error (which is incorporated herein by reference), the City cannot simply "redo" the Planning Director's decision during the appeal hearing because that would prevent opponents their rightful "adequate opportunity to prepare and submit a case."

Accordingly, the decision must be reversed.

See Conte 3/25, Comments #1.

FOURTH ASSIGNMENT OF ERROR

The Application does not provide for safe access by fire trucks to conform with the PDT 13-1 approval findings under EC 9.8320(5)(a) and EC 9.8320(6). Specifically, the Application has not provided any means for a fire truck to reach the site under a condition where a "pumper" fire truck is in the normal position next to the fire hydrant that's located in the right-of-way.

EC 9.8365 Final Planned Unit Development Approval Criteria. The planning director shall approve, approve with conditions, or deny a final

---

EWEB revisited their review of the proposal and sent a clarification letter on March 25th, 2016. The most recent letter states the following: 'EWEB water has reviewed the site plans for the Oakleigh Meadows project and find the easements acceptable as shown on the site plan dated 3/25/16.' EWEB stated an incorrect date (3/25/16) as the site plans under review were received by the City on February 11, 2016; however, staff confirms that the correct plan set was routed to EWEB for review, and therefore it can be assumed that EWEB made their comments based on the plans currently under review. Staff also concurs with EWEB that the proposed easements are acceptable.

"Mr. Conte and Mr. Thoms, both project opponents, state that the turning radius at the property's western access point as shown on the final PUD plans is not consistent with the radius shown on tentative PUD plans. Ultimately, the applicant will need to show compliance with the Fire Code before a site development permit can be issued. If the turning radius needs to be slightly adjusted in order to comply, this change can be made during the building permit review process. It must also be noted no condition of approval from the tentative PUD approval addresses the turning radius issue; staff acknowledges this minor discrepancy but notes that a variety of Fire Code requirements remain to be met or otherwise resolved through the normal sequence of future site development and building permits necessary to construct the project.

"A number of project opponents express various other concerns with the project, and ultimately state the City should not approve the final PUD application. For example, neighbors express that the project is too large in scale, that the natural setting will be negatively impacted, and that increased traffic could make Oakleigh Lane unsafe. Staff has reviewed all the comments, and while some of this testimony addresses important issues that were considered during the tentative PUD process, ultimately none of the testimony provides a valid basis for denial of the final PUD."

"[1] The applicant provided two arborist reports, both generated by Sperry Tree Care. During completeness review, staff found that the first report (dated July 24, 2014) did not adequately address tentative PUD Condition of Approval #2. An updated report (dated January 14, 2016) was submitted to address staffs comments." Decision 2-3.

PUD application. Approval shall include a finding that the final PUD plan conforms with the approved tentative PUD plan and all conditions attached thereto.

The Eugene Planning Commission's Final Order included the following findings:

Under the findings related to EC 9.8320(5):

> "EC 9.8320(5) The PUD provides safe and adequate transportation systems * * * EC 9.8320(6)) does provide a means of addressing the safety of Oakleigh Lane for purposes of emergency response vehicles" EPC Final Order 4.

Under the findings related to EC 9.8320(6):

> "The PC concludes that emergency response vehicles can access the proposed PUD solely via Oakleigh Lane and that the ability of Oakleigh Lane to safely accommodate emergency response vehicles is an issue that can be addressed in determining compliance with EC 9.8320(6).
>
> * * *
>
> In order to ensure unimpeded emergency response pursuant to EC 9.8320(6), * * *, consistent with Oakleigh Lane's function as a 'queuing street' * * *." *Ibid* at 6.

The City must adopt findings based on substantial evidence that "final PUD plan conforms with the approved tentative PUD plan." This requires that the final PUD *not conflict* with the findings upon which the tentative plan was approved. EC 9.8365 is *not* limited only to demonstrating that conditions of approval are met.

As will be documented during the appeal process. The final PUD will conflict with the findings above because of physical impediments that render Oakleigh Lane unable to safely accommodate emergency vehicles.

The City did not evaluate this issue at all. As explained under the First Assignment of Error (which is incorporated herein by reference), the City cannot simply "redo" the Planning Director's decision during the appeal hearing because that would prevent opponents their rightful "adequate opportunity to prepare and submit a case."

Accordingly, the decision must be reversed.

See Conte 3/25, Comments #2d.

FIFTH ASSIGNMENT OF ERROR

The decision completely ignored the fact that the western 2/3rds of Oakleigh Lane is within Lane County jurisdiction. There were several documents presented in the testimony for the final PUD that clearly demonstrates that that portion of the road is not under City of Eugene jurisdiction. That portion of Oakleigh Lane is not wide enough to meet the minimum standards for Local Access Roads within Lane County jurisdiction. This assignment of error is similar to the fourth assignment in that EC 9.8320(5)(a) "safe and adequate transportation systems" and EC 9.8320(6) "unimpeded emergency response" have not been met.

As explained under the First Assignment of Error (which is incorporated herein by reference), the City cannot simply "redo" the Planning Director's decision during the appeal hearing because that would prevent opponents their rightful "adequate opportunity to prepare and submit a case."

Accordingly, the decision must be reversed.

See Conte 3/25, Comments #2c.

SIXTH ASSIGNMENT OF ERROR

The decision erroneously found that the "final PUD plan conforms with the approved tentative PUD plan and all conditions attached thereto," specifically with respect to the turning radius where the driveway meets Oakleigh Lane and condition #5.

> **"5. Prior to final PUD approval, the applicant shall dedicate a temporary emergency vehicle access easement over the on-site hammerhead and the access drive from Oakleigh Lane, and show this easement on the final PUD plans.**
>
> "Staff confirms the applicant has dedicated a temporary emergency vehicle access easement consistent with the above condition. The easement was reviewed by City of Eugene Public Works staff and subsequently recorded at Lane County Deeds and Records. This condition is met." Decision 4.

The Decision ignores and attempts to evade the requirement that the final Application be consistent with the Original Application. The Decision does not dispute that the final Application has a substantially tighter turning radius where the driveway meets Oakleigh Lane than was approved for the Original Application.

Instead, the Decision attempts to sidestep the law by claiming:

> "Ultimately, the applicant will need to show compliance with the Fire Code before a site development permit can be issued. If the turning radius needs to be slightly adjusted in order to comply, this change can be made

during the building permit review process. It must also be noted no condition of approval from the tentative PUD approval addresses the turning radius issue; staff acknowledges this minor discrepancy but notes that a variety of Fire Code requirements remain to be met or otherwise resolved through the normal sequence of future site development and building permits necessary to construct the project." Decision 2-3.

None of these dodges are relevant:

It is entirely incorrect that there was no related condition of approval. Condition #5 *explicitly* encompasses "the access drive from Oakleigh Lane."

The question of whether the Fire Code is or will be met is not the point. The fact is that the turning radius is a substantial factor in whether or not the application meets the criteria in EC 9.8320(6), which requires:

> "The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response."

An inadequate turning radius is a potential impediment to emergency response. The Original Application was approved, based on a significantly greater turning radius than the current application. The City cannot dismiss opponents objection with a waive of the hand and "don't worry, we'll take care of it later during the building permit process" – when there's no public hearing process during building permit review and approval.

If the City would like to approve the application with a substantial change to an element that impacts the PUD tentative approval criteria and condition of approval, then it must provide the public with the same hearing rights as the process for approving a tentative PUD.

As explained under the First Assignment of Error (which is incorporated herein by reference), the City cannot simply "redo" the Planning Director's decision during the appeal hearing because that would prevent opponents their rightful "adequate opportunity to prepare and submit a case."

Accordingly, the decision must be reversed.

See Conte 3/25, Comments #2c.

SEVENTH ASSIGNMENT OF ERROR

The Decision erred by relying on the erroneous assertion, unsupported by substantial evidence, that the final plan provides acceptable water facilities.

> **"6. Prior to final PUD approval, the applicant shall provide documentation from EWEB, confirming that water facilities are available for the proposed development.**

> "EWEB issued an 'Availability of Water Service' letter (dated February 11, 2016) that confirms water facilities are available for the proposed development. This condition is met." Decision 5.

There is no documentation that the letter from EWEB, dated 3/25/165 was actually received by the City prior to 5:00 p.m., as required by the notice. Therefore, this letter should not be considered by the Hearings Official.

In any case, this letter is essentially a "referral response" that is an integral document associated with the application, and which must have been made available to the public so the public had reasonable time to respond during the comment period.

There is no evidence in the record to support the Planning Director's claim that EWEB actually reviewed the "correct set of plans," as the Planning Director claims. No plans at all were attached to either of EWEB's letters, so it is impossible to know which (if any) plans EWEB reviewed between EWEB's letter dated 3/16/16 and the letter dated 3/25/16.

It should be noted that the original referral letter from EWEB (dated August 20, 2013) required a 14 ft easement for water line looping to connect the Oakleigh main to the McClure main. The second EWEB letter (3/16/16) again stated that a minimum 14 feet easement would be required for the water line connection across the site. The Site plans in the application materials dated November 12, 2015 show a 10 ft EWEB easement. Simply based on this, this condition is not met.

Further, a Letter of Water Availability is required to have a financial guarantee document from the developer that shows they can pay for upgrades.

Further, the letter provides no evidence, and there is none in the record, to explain why EWEB changed its position from prior technical reviews.

> "EWEB water has reviewed the site plans for the Oakleigh Meadows project and find the easements acceptable as shown on the site plan dated 3/25/16."

Despite the fact that EWEB is a public agency, nevertheless, the City cannot rely on a single sentence that provides a conflicting, purely conclusory statement, at the last minute, and that provides no explanation or substantial evidence to support such a conflicting conclusion. A reasonable person would not rely on this sentence to make a decision as critical as final approval of such an impactful PUD.

The Planning Director must base findings only on substantial evidence in the record as of 5:00 p.m. March 25, 2016 when the record was closed for

comments. To do otherwise would prejudice my substantial rights under due process, ORS and Eugene Code.

> **EC 9.7085 Quasi-Judicial Hearings - Burden of Proof.** The burden of proof is upon the applicant. A decision to resolve the issues presented shall be based upon reliable, probative and substantial evidence in the record. (Emphasis added.)

The Decision does nothing more than provide unsupported conclusions made by a planner (who signed the decision) in order to sidestep the legal requirements of EC 9.7085:

> "... therefore it can be assumed that EWEB made their comments based on the plans currently under review. Staff also concurs with EWEB that the proposed easements are acceptable." Decision at page 2.

This *assumption* is not sufficient under the law; a decision by the Planning Director needs to abide by the law's requirement for reliable evidence, not an unqualified planner's assumptions. There is nothing in the record to show that any planning staff evaluated EWEB's conclusory statement or even has the competency to make such an analysis.

As explained under the First Assignment of Error (which is incorporated herein by reference), the City cannot simply "redo" the Planning Director's decision during the appeal hearing because that would prevent opponents their rightful "adequate opportunity to prepare and submit a case."

Accordingly, the decision must be reversed.

See Conte 3/25, Comments #2a.

EIGHTH ASSIGNMENT OF ERROR

The Decision erred by relying on an inadequate and unreliable analysis that the trees proximal to the site would not be at risk was not properly done. The report submitted did not address the potential impacts on utility trenching and other factors.

Therefore, the Decision failed to demonstrate that the final PUD conforms with the following condition of approval.

"b) The final PUD plans shall show landscaping along the north property line consistent with the applicant's proposed landscape plan (Sheet L2 of Exhibit PH-69), but moved south within the required 5-foot setback outside of the newly dedicated right-of-way for Oakleigh Lane. The applicant shall also revise the site plans to show landscaping that meets the City's L-2 standard at EC9.6210, within the required 10-foot setback along the remainder of the north property line, but without the requirement for additional canopy trees. As part of the final PUD

application, the applicant's arborist shall assess whether this landscaping would jeopardize the health of the cedar trees to the north. If so, no landscaping shall be required.

"The applicant has revised the landscaping plans to be consistent with the specifications outlined in the above condition of approval. More specifically, the landscaping along the north property line has been moved within the 5-foot setback (outside the dedicated right-of-way), and a note has been added to Sheet L2 confirming that landscaping within the 10-foot setback along the north property line will be to the L-2 standard (but without canopy trees). In regards to the last part of the condition, Sperry's arborist report states that future landscaping is not expected to jeopardize the subject cedar trees. This condition is met." Decision 7.

Supplemental Site plans provided to the City by the applicant in March 2016 presents the critical root zone (CRZ) and the protected CRZ for the cedar trees north of the north property boundary. A utility figure is presented in the Site Plans provided in the application materials submitted to the City on November 12, 2015. There is no correlation of the location of the subsurface utilities north of the Building 1 and Building 2 and the protected CRZ. It appears that subsurface utilities are proposed within the protected CRZ, yet there is no discussion of protection measures in the application materials. Sperry's three letters do not identify protection measures for utility trenching, which is included in "all construction impacts", thus the condition has not been met.

To add, there is no consideration of future bike path improvements, utilities, or general construction activities that may take place in the protected CRZ (newly acquired right of way immediately south of TL 200). The City has an obligation to make all bike/pedestrian paths safe by placing concrete or making the surface smooth and consistent. This is the same obligation the City has to repairs sidewalks that are a hazard. Presumably the City will plan to improve the bike path connector in the future to make it safe to serve public access. These improvements are part of the PUD and are relied upon as part of the public benefit in the land use change, thus they are part of "all construction impacts." These improvements may very likely include construction of a 12 ft wide concrete path, which would cover a significant area of the protected CRZ. This was not addressed by Sperry. The condition has not been met.

As explained under the First Assignment of Error (which is incorporated herein by reference), the City cannot simply "redo" the Planning Director's

decision during the appeal hearing because that would prevent opponents their rightful "adequate opportunity to prepare and submit a case."

Accordingly, the decision must be reversed.

See Conte 3/25, Comments #2b.

NINTH ASSIGNMENT OF ERROR

The Decision erred because it did not ensure the PUD would comply with the requirement for to ensure a minimum of 14 feet of paving width, in any areas where the paving width is currently less than 14 feet within the existing right-of-way.

> "c) **Prior to occupancy of any dwellings in the PUD, the applicant shall improve Oakleigh Lane to ensure a minimum of 14 feet of paving width, in any areas where the paving width is currently less than 14 feet within the existing right-of-way. The applicant shall obtain any necessary permits for the required street improvements, and shall provide documentation of compliance upon completion.**
>
> "Through the building permit process the City will require compliance with this condition (final occupancy will not be granted until it is met). In their application narrative, the applicant also acknowledges the condition and confirms it will be met." Decision 7.

The final PUD plan must either include evidence that it is feasible to widen Oakleigh Lane as required, and the approval of the final PUD must also include the same condition of approval as in the EPC Final Order.

Accordingly, the Planning Director's decision must be reversed or modified.

CONCLUSION

The multiple errors and misinterpretations made by the Planning Director require the Hearings Official to reverse this decision and deny this planned unit development (final) application.

Respectfully submitted this 27th day of April, 2016.

FOR APPELLANTS

Bryn Thoms
River Road Community Organization

Bryn Thoms

From: Sandy Thoms <sandythoms@msn.com>
Sent: Monday, April 25, 2016 10:14 AM
To: Bryn Thoms
Subject: Erik Confirmation email

Also, confirmation from Erik regarding where to sign the form.

Sandy Thoms

-------- Original message --------
From: Jon Belcher <Jbelcher@efn.org>
Date: 4/21/16 4:05 PM (GMT-08:00)
To: Anne and Terry Love <molly2003@msn.com>, Cameron Ewing <cameronewing5@gmail.com>, Clare Strawn <clarestrawn@gmail.com>, "Dixon, Lynn" <ld61069@gmail.com>, Jolene Siemsen <jolenesiemsen@gmail.com>, Jon Belcher <jbelcher@efn.org>, Mary Walston <lotsoscots@mac.com>, Michael Lambros <michael@dreamteammedia.com>, Steve Norris <steve_norris@hotmail.com>
Subject: FW: Confirmation email

Confirmation.

Jon Belcher (jbelcher@efn.org)

From: BERG-JOHANSEN Erik [mailto:Erik.Berg@ci.eugene.or.us]
Sent: Thursday, April 21, 2016 4:00 PM
To: BELCHER Jon (SMTP)
Subject: RE: Confirmation email

Hi Jon,

Your statements below are correct, and please get in touch if you have any other questions. Thanks,

Erik Berg-Johansen | Assistant Planner
Planning Division | City of Eugene
99 West 10th Avenue | Eugene, OR 97401
541.682.5437 | erik.berg@ci.eugene.or.us

From: Jon Belcher [mailto:Jbelcher@efn.org]
Sent: Thursday, April 21, 2016 2:19 PM

Attachment B

To: BERG-JOHANSEN Erik
Subject: Confirmation email

Please confirm that to reduce the fee for appeal of the Planning Director's decision on the Oakleigh Meadow Co-Housing Final PUD plan to the Eugene Hearings Official, the Type II Appeal Form needs to show the name of the River Road Community Organization on the last line of the form and below that the printed name of either or both Neighborhood Association Co-Chair(s) with the appropriate signature(s)..

I also understand that the form needs to be submitted by 5 PM on Wednesday April 27th.

Thank you.

/s/
Jon Belcher (jbelcher@efn.org)

Bryn Thoms

From: Sandy Thoms <sandythoms@msn.com>
Sent: Monday, April 25, 2016 10:12 AM
To: Bryn Thoms
Subject: RRCO appeal approval vote

Here is this, for the record.

Sandy Thoms

From: Jbelcher@efn.org
To: sandythoms@msn.com
Subject: RE: OMC
Date: Wed, 20 Apr 2016 15:29:31 -0700

This is the motion passed by the board on Monday night:

The River Road community organization board based upon a motion approved by the general meeting on November 11, 2013 reaffirms the RRCo decision to support either parties appeal of the hearings official approval of the final PUD to the planning commission (if we are unable to bring it before the general meeting of the RRCO).

Is there going to be a neighbor appeal to the Hearings Official? (to the hearings official - my error on the process).

Jon Belcher (jbelcher@efn.org)

EUGENE OR 974

Attachment B

Planning & Development
Planning Division
City of Eugene
99 West 10th Avenue
Eugene, Oregon 97401

APR 2016 PM 2 T

neopost
04/15/2016
US POSTAGE $00.34°

FIRST-CLASS MAIL

ZIP 97401
041L11244993

PDF 15-2
IP
THOMS, BRYN & SANDY
135 OAKLEIGH LANE
EUGENE OR 97404

Attachment B

Notice of Land Use Decision

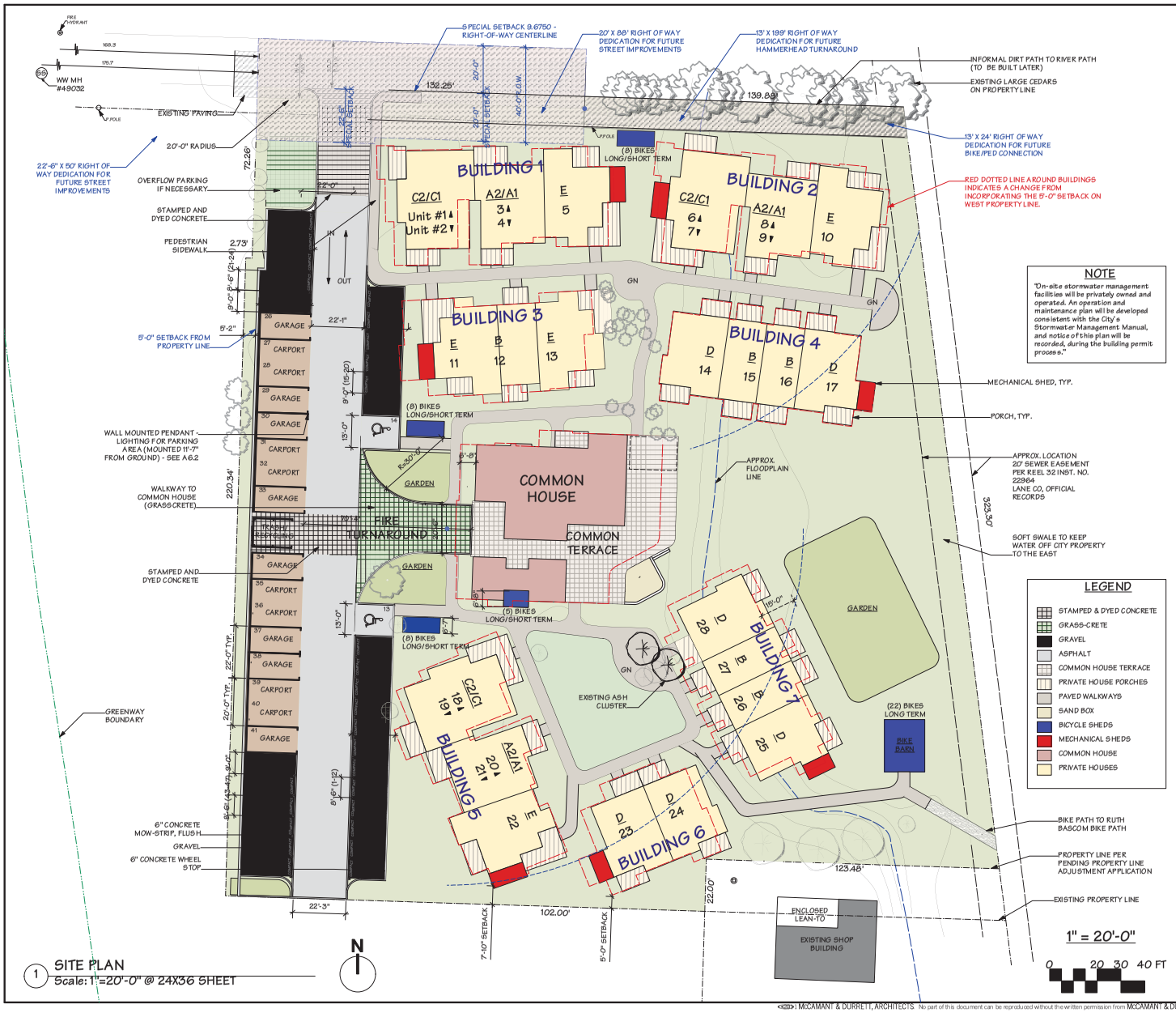
File Name: Oakleigh Cohousing (PDF 15-2)
Date of Notice: April 15, 2016
Location: End of Oakleigh Lane

On April 15, 2016, the Eugene Planning Director approved a final planned unit development for a co-housing development.

A copy of the application, decision, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for review at the Planning Division and may be obtained at a reasonable cost. This notice, the Planning Director's decision, application materials, and general information about the land use application process and criteria may be accessed by visiting http://www.eugene-or.gov/3208/Land-Use-Application-Information.

Any person who is adversely affected or aggrieved by this decision, or who is mailed this written notice, may appeal the decision and pay an appeal fee in accordance with procedures listed in Section 9.7600 of the Eugene Code. The Planning Director's decision will not become final until the 12 day period for filing a local appeal has expired. In this case, any appeal must be received by 5 p.m. on April 27, 2016. Appeal procedures, forms, and fee information are available at the City's Permit and Information Center or on our web site. In accordance with Section 9.7055 of the Eugene Code, the Eugene Hearings Official will consider any appeals of this land use application.

For questions, contact: Erik Berg-Johansen, Assistant Planner
Phone: 541-682-5437, E-mail: erik.berg@ci.eugene.or.us



1 SITE PLAN
Scale: 1"=20'-0" @ 24X36 SHEET

NOTE

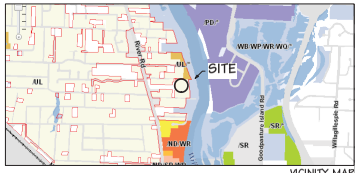
"On-site stormwater management facilities will be privately owned and operated. An operation and maintenance plan will be developed consistent with the City's Stormwater Management Manual, and notice of this plan will be recorded, during the building permit process."

LEGEND

- STAMPED & DYED CONCRETE
- GRASS-CRETE
- GRAVEL
- ASPHALT
- COMMON HOUSE TERRACE
- PRIVATE HOUSE PORCHES
- PAVED WALKWAYS
- SAND BOX
- BICYCLE SHEDS
- MECHANICAL SHEDS
- COMMON HOUSE
- PRIVATE HOUSES

GENERAL NOTES

TAX LOT MAP W/ GREENWAY BOUNDARY



VICINITY MAP

SITE COVERAGE

SITE COVERAGE	102,808.89 SF
BUILDINGS (includes carports & garages)	33,879.52 SF (33%)
PARKING	14,202.31 SF (14%)
OPEN SPACE (includes pathways)	54,727.06 SF (53%)

BUILDING TYPE MATRIX

BUILDING #	BUILDING TYPES	QUANTITY
6	D-D	1
3	E-B-E	1
4, 7	D-B-B-D	2
1, 2, 5	C-A-E	3
	TOTAL	7

UNIT TYPE MATRIX

UNIT	BED	BATH	TYPE	QTY.	UNIT SF	UNIT TYPE SF
A1	2	1	FLAT	3	955	2865
A2	2	1	FLAT	3	955	2865
B	2	1.5	TOWNHOUSE	5	1088	5440
C1	3	2	FLAT	3	1218	3654
C2	3	2	FLAT	3	1218	3654
D	3	2	TOWNHOUSE	6	1305	7830
E	4	3	TOWNHOUSE	5	1632	8160
			TOTALS	28		34,468

PARKING SUMMARY

TYPE	QUANTITY
GARAGES	8
CARPORTS	8
OPEN PARKING	31
TOTAL CAR PARKING	47
BIKE SHED PARKING	51 (788 SF)

PRELIMINARY DRAWINGS

McCamant & Durrett Architects
241 B Commercial Street, Nevada City CA 95959
Tel 530.265.9980 Fax 530.265.4398
E-mail cdr@mccamantdurrett.com
www.cohousingco.com

OAKLEIGH MEADOW COHOUSING
EUGENE, OREGON 97404

SITE PLAN WITH RECOMMENDED CONDITIONS

IF SHEET SIZE IS 24X36 DRAWING IS SHOWN AT 100%, IF SHEET SIZE IS 11X17, DRAWING IS SHOWN REDUCED TO 50%

PLANNED UNIT DEVELOPMENT APPLICATION

Date	2 OCT 2013
Scale	AS NOTED
Drawn	M&D
Job	EUG
Sheet	A1.1
of	0 sheets

© 2013 McCAMANT & DURRETT, ARCHITECTS. No part of this document can be reproduced without the written permission from McCAMANT & DURRETT, ARCHITECTS (241B Commercial Street, Nevada City, CA 95959. (530)265-9980 or fax (530)265-4398)

BERG-JOHANSEN Erik

From: Katherine Bravo <bravo.aguayo@gmail.com>
Sent: Monday, May 16, 2016 8:02 AM
To: BERG-JOHANSEN Erik
Subject: Oakleigh Lane

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Berg-Johansen,

I am resident of the River Road area of Eugene (118 Alberta Ln.) and a daily commuter along the Ruth Bascomb bike path. I was extremely upset to recently hear about the potential elimination of the greenway along our beloved path to make room for a multi-unit housing structure off Oakleigh Lane.

The bike path is a community treasure that allows Eugene residents to experience nature close to our homes. The infringement of beautiful pastures that form the character of the path to make room for a large, unsightly housing unit is unacceptable.

I hope city officials will consider negotiating with the property developers to create smaller structure that will not destroy the unique beauty of what many residents consider Eugene's best feature.

Sincerely,

Katherine Bravo Aguayo

BERG-JOHANSEN Erik

From: sage@cruzio.com
Sent: Monday, May 23, 2016 10:42 AM
To: BERG-JOHANSEN Erik
Subject: save Oakleigh Lane

Dear Sir,

About ten years ago I helped my daughter search for a house to buy in Eugene. We found the perfect place near the end of Oakleigh Lane. Noting the empty space across the street, I went to the county building in downtown Eugene and asked about the Zoning. I was shown on the map that the land between Oakleigh and McClure Ln was zoned for low density housing. This sold the deal for me as we did not want to see a big development being built with lots of traffic created.

Guess what? This is exactly what the city of Eugene and Lane County are trying to approve. Oakleigh Lane is much too narrow of a street to used as access for the Oakleigh Meadows co-housing. This whole development is a bad idea and I believe that the property should be used for some nice low density single family homes.

Thank you for your consideration.

Bill Heinze
590 Risso Ct.
Santa Cruz, CA 95062

BERG-JOHANSEN Erik

From: Phyllis Temple <phyllistemple@gmail.com>
Sent: Wednesday, May 11, 2016 12:21 PM
To: BERG-JOHANSEN Erik
Subject: Oakleigh Cohousing (PDF 15-2)

Follow Up Flag: Follow up
Flag Status: Flagged

I have communicated with appropriate City of Eugene staff regarding my concerns about the location of Oakleigh Cohousing in the past, and thank you for another opportunity to communicate opposition to the location for this project.
The narrow road without sidewalks that leads to the proposed development will be unduly stressed, first with the infrastructure and construction needs, and then with the daily traffic of 28 families. The project is out of scale to its neighborhood. The Eugene Planning Director should have taken a walk down this block, then asked how s/he would view this project were s/he a street resident.

Perhaps a working compromise might be to limit the project to seven multi-family dwelling units -- a footprint the block might accommodate.

Thank you,
Phyllis Temple
244 Loretta Way
Eugene, Or 97404

--
phyllis

"No one can possibly know what is about to happen. It is happening each time, for the first time, for the only time."
James Baldwin (1924-1987)