

AGENDA
City of Brookings
Special City Council Meeting
Brookings City Hall Council Chambers
898 Elk Drive, Brookings, Oregon 97415
Tuesday January 30, 2007 7:00 p.m.

VAULT COPY

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Public Hearing

A. Continuation from Public Hearing dated, December 19, 2006, in the matter of the following two appeals:

1. An appeal, File No. APP-5-06, of the Planning Commission's approval (File No. PUD-1-04/MC-2-06), a request for a minor change to PUD-1-04, *Pacific Terrace*, to change the emergency exit from Izaiha Drive to Pacific Terrace Drive, to remove the existing water tank, or to obtain approval of the water tank as presently located by authorization for a variation from height and setback requirements; and plat a 175 foot spur road, named Sage Lane, for access to Tax Lots 1527 and 1528; located at Old County Road and Marina Heights; Assessor's Map 40-13-32CC, Tax Lots 1501, 1527, 1528 and 1535; Gary & Meta Kent, Eric & Mollie Eastaff, Harry & Sherry Gallaty, Michael & Ellen Winger, appellants. Criteria used to decide this case can be found in Chapters 17.116, 17.24.060, 17.24.070, and 17.152, of the Land Development Code.
2. An appeal, File No. APP-6-06, of the Planning Commission's approval (File No. PUD-1-04/MC-2-06), a request for a minor change to PUD-1-04, *Pacific Terrace*, to change the emergency exit from Izaiha Drive to Pacific Terrace Drive, to remove the existing water tank, or to obtain approval of the water tank as presently located by authorization for a variation from height and setback requirements; and plat a 175 foot spur road, named Sage Lane, for access to Tax Lots 1527 and 1528; located at Old County Road and Marina Heights; Assessor's Map 40-13-32CC, Tax Lots 1501, 1527, 1528 and 1535; John Babin, representative for Bruce Brothers-LLC, appellants. Criteria used to decide this case can be found in Chapters 17.116, 17.24.060, 17.24.070, and 17.152, of the Land Development Code.

V. Remarks from Mayor and Councilors

- A. Mayor
- B. Councilors

VI. Adjournment



COUNCIL AGENDA REPORT

To: Mayor and City Council

From: Dianne L. Morris, Planning Director

Date: January 18, 2007

Re: Continued hearing of the Appeal of Planning Commission decision on PUD-1-04/MC-2-06, Pacific Terrace PUD; Appeal File # APP-5-06, Appellants Kents, Wingers, Gallatys, and Eastaffs; also Appeal File # APP-6-06, Appellants, Bruce Brothers, LLC.

Subject: Two appeals have been filed for the above referenced application, PUD-1-04/MC-2-06, which requested approval of a Minor Change and replat to the approved Planned Unit Development/Subdivision (Pacific Terrace) to plat Sage Lane, a 175 foot private road serving lots 6 and 15, plat a cul-de-sac at the end of Izaiha Drive on lot 26, and eliminate the access easement from Izaiha Dr. to Marina Heights Loop. The Minor Change application also requested authorization to eliminate the water tank on "Tract A" or approve a variation to setbacks and height standards for the tank. Pacific Terrace PUD is located on the east side of Old County Rd. and Marina Heights Rd. with the northerly boundary adjacent to the city limits line. The subject property is identified as Tax Lots 1501 through 1530 on Map 40-13-32CC and is zoned Suburban Residential (SR-20).

Background /Discussion: The City Council conducted a hearing on Dec. 19, 2006 on this matter. The public hearing was closed and the record left open for additional written submittals and rebuttals. The submitted materials have been sent to you in "Supplemental Packets" numbered 1 through 4. This packet contains City Attorney Jim Spickerman's responses to the submitted materials. The Council will deliberate on this matter on January 30, 2007 at 7PM in Council Chambers.

Recommendation: Attorney Spickerman details several options the Council must consider in reaching their decision. As he details in his memo, if the Council reaches a decision, the meeting should be continued for at least a week to allow Staff time to prepare the Final Order.


Financial Impact(s): None.

City Manager Review and Approval for placement on Council Agenda:


Ken Hobson, Interim City Manager

MEMORANDUM

DATE: January 17, 2007
TO: City of Brookings Mayor and City Council
FROM: James W. Spickerman, Acting City Attorney
RE: Appeal of PUD-1-04-MC-2-06
File No. APP-5-06 & APP-6-06
Pacific Terrace PUD



This memorandum will supplement previous comments submitted by Dianne Snow, Planning Director, addressing this appeal and written materials submitted subsequent to the Public Hearing of December 19, 2006.

A. Brookings Planning Commission Action of July 6, 2004.

The original approval of the planned unit development contained the following conditions:

"41. A water tank shall be constructed in the location on the preliminary plat map and connected to the City's water system. If the engineers determine that a different site is more appropriate, then a tank shall be constructed in that location.

46. All water systems plans shall be approved by the City Engineer prior to construction and all construction shall be carried out by the City Engineer."

Some of the contentions raised by the appellants (herein "Neighbors") are really related to that 2004 action by the Planning Commission, which was not appealed.

1. Limitation on the Size of the Water Tank

The application for planned unit development approval did not specify the size of the tank. A representative of the applicant, during applicant's rebuttal at the Planning Commission hearing, estimated the tank would be 35 feet wide and 13 feet high. This was additionally characterized by applicant's

representative as an "initial estimate" and it was indicated that the gallonage for the tank was unknown.

The Neighbors have cited several Oregon Land Use Board of Appeals and Oregon Court of Appeals cases for the proposition that this estimate of tank size had the same effect as if the application was for a tank 13 feet in height and that the applicant was bound to that limitation. The cases simply do not support this assertion. The cases do establish that, even when a specific condition is not imposed limiting a use to the specifications proposed in the application, the applicant is, nonetheless, bound by the limitations contained in the application. That is not the case here. A specific tank size was not part of the proposal.

2. Unlawful Delegation of Authority

It is contended that the original Planning Commission approval unlawfully delegated authority to the engineers and Brookings Public Works to determine the precise location of the water tank. It is the case that such a delegation of authority, particularly in light of no specification of tank size, was a delegation to staff of a "land use decision" and subject to challenge. The record is clear, however, that no one challenged this delegation of authority by appealing the Planning Commission decision approving the planned unit development. The decision is not subject to attack in the present context, nor is the issue relevant to the issue before the City Council.

B. Applicability of the R-2 Setback to the "Tank Tract."

The Planning Director has pointed out that the lots that were subject to the SR-20 setbacks, rather than the R-2 setbacks, were clearly enumerated in the Planning Commission's Conditions of Approval and listed on the plan. The Planning Commission action made all other lots subject to the R-2 setback.

It is argued that the direction that "all other lots are subject to the R-2 setbacks" does not establish that the "tank tract," Tract A, is subject to R-2 setback, as it is a "tract" and not a "lot."

The Brookings Development Code contains no definition for the term "tract." BDC 17.08.120 contains the following definition:

"A 'Lot' means a parcel of land used or capable of being used under the regulations of this code, lawfully created as such in accordance with the land division laws or ordinances in effect at the time of its creation."

At 17.08.120 "Land Divisions" are defined to include:

"2. 'Subdivision' means a division of land creating four or more lots from (a parcel)."

"Tract A" is a lot, being a parcel of land lawfully created by the subdivision process. The setbacks of the R-2 district were applicable to "Tract A."

C. Proposed Minor Change to Plat.

Dianne Snow has addressed the Neighbors' contention that the City Council has no authority to grant a minor change to the PUD that means a change to a recorded plat. As indicated, the plat submitted with the application before the Council is a new preliminary plat and both the Final Order and Conditions of Approval adopted by the Planning Commission will require final plat approval prior to recording this preliminary plat.

The process is consistent with BDC 17.116.110, which plainly contemplates that minor changes may involve a change in the subdivision map. BDC 17.116.110(B) includes, as one of the submissions to accompany the application for a minor change, a "site plan or revised subdivision map showing the proposed changes...."

D. Tract A as Substandard or Not Buildable.

It is contended that Tract A is not a "lot" at all. That issue is addressed above. As pointed out by the Planning Director, lots in PUDs do not have to comply with standard minimum lot size. Finally, this lot is replatted as part of the Pacific Terrace Subdivision, even though it was formerly part of Marina Heights Subdivision.

E. Applicable Criteria.

A great deal of argument has been submitted discussing the criteria for planned unit development approval. Of course, the planned unit development was approved and the previous modification approved without challenge. At issue presently is:

1. A minor change to PUD-1-04-Pacific Terrace, moving the emergency exit from Izaiha Drive to Pacific Terrace Drive, platted 175 foot spur road named Sage Lane for access to tax lots 1527 and 1528; and
2. For a variation from height and setback requirements to allow approval of the water tank as presently located.

Attached, as Exhibit A, is a copy of BDC 17.116.110 (minor change) and BDC 17.116.080 (variations to be authorized). These are the applicable ordinances containing the criteria for the decisions before the City Council:

1. Minor Change The portion of BDC 17.116.110 setting the standards for approval of a minor change is as follows:

"... The planning commission will hold a public hearing to consider the nature of the requested change, impacts the change may have on the surrounding properties and/or on the remaining portion of the project and the impact in city's services and facilities...."

As is apparent, the Council must determine the impacts the changes have on the surrounding properties, the remaining portion of the project, and the City's services and facilities. If the proposed changes will change the level of impact of the development, those impacts should be considered to determine if they are consistent with the original PUD approval.

2. Variations Proposed BDC 17.116.080 provides that the Planning Commission (City Council on appeal):

"... may authorize standards ... not equivalent to the standards prescribed within the regulations for the district within which the planned unit development is located, if the applicant has demonstrated, by its design proposal, that the objectives of the land development regulation and of the section will be achieved."

In this instance, the district at issue is the Suburban Residential (SR) district.

BDC 17.16.010 Purpose states:

"The Purpose of the SR district is to stabilize and protect the suburban residential qualities of areas which, because of topography, level of service or other natural or developmental factors are best suited to large lot sizes."

The Council should consider the suburban residential qualities of this area and the effect of topography and other developmental factors.

Another development regulation that is relevant to the criteria for granting a variation is the Planned Unit Development Ordinance. BDC 17.116.010 Purpose states, in part:

"The purpose of planned unit development approval is to allow and to make possible greater variety and diversification in the

relationships between buildings and open spaces in planned building groups, while ensuring compliance with the purposes and objectives of the various zoning district regulations and the intent and purpose of these land development sections. These provisions are intended to allow developers the freedom to design and construct projects whose objectives could be inhibited by strictly applying the provisions of this code, thereby providing more harmony with site conditions, aesthetics, economy and similar considerations that might otherwise be possible...."

The purpose or objective of the planned unit development ordinance must be considered, as well, in determining whether variations, setbacks and height for the water tank should be allowed. It is apparent that among the considerations are site conditions, aesthetics and similar considerations. This may be determined to be an area that, in order to be developed, must accommodate storage of water, including quantities such that fire protection needs may be addressed.

A consideration of topography may apply. On behalf of Bruce Brothers, Mr. Wise has raised the issue as to whether the height of the water tank has been properly computed by utilizing the height of the tank structure without regard to the portion of the structure that is below grade.

The definition of "height of building" at BDC 17.08.020 specifies that the term means the vertical distance from the highest point on the structure to the "finished grade" at the center of all four sides of the building. The now finished grade is the level area with footings surrounding the tank, resulting in a height, under the definition, of the full 34 feet. The facts of this particular case, including the particular topography in the area of the tank, can be considered by the City Council when determining whether the objectives of the land use regulations will be achieved if the variations to the setbacks are allowed.

Setbacks are deemed desirable to increase fire safety, privacy, and, perhaps, aesthetic considerations. These all must be weighed by the Council to determine whether setbacks can be reduced and still be deemed consistent with the objectives of the SR zone and the Planned Unit Development Regulations.

F. Council Options.

Among the Council options are:

1. Approval of either the modifications or the variations or both without further conditions.
2. Denial of either the modifications or the variations, or both.

3. Approval of either of the applications with modification to the conditions imposed by the Planning Commission.

There is a broad range of conditions the Council could impose if it deemed it necessary to assure compliance with the applicable criteria for approval. An example is that the Council could determine that it is appropriate that Bruce Brothers only be required to provide sufficient water to serve the needs and fire safety of the planned unit development itself. This may be determined to allow reduction of the height of the tank. If the water tank is required to serve properties in addition to the planned unit development itself, there should be a specification, a provision, such as the "buy-back" provision suggested in the December 11, 2006, Council Agenda Report, so that Bruce Brothers would be reimbursed for expense beyond that caused by the impact of the planned unit development itself.

4. If approval is granted on the condition that screening for the water tank be improved, unless the Council specifies a particular screening plan, the applicant should be required to submit an application to the Site Plan Review Committee and be subject to site review procedures set forth in Chapter 80 of the Brookings Development Code.

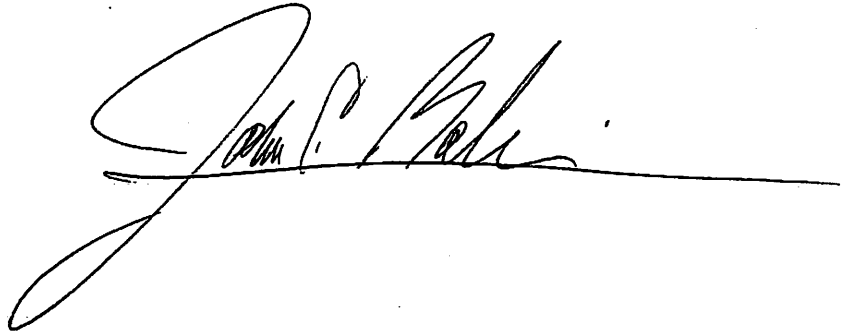
G. January 16, 2007 Submittal by Applicants.

There has not been the opportunity to review these documents in detail but they appear to include new evidence pertaining to the need for a water tank. If that evidence is to be considered, any party has the right, pursuant to ORS 197.763(6)(c), to submit rebuttal evidence.

Once the Council has deliberated and reached a tentative decision, staff recommends that the matter be continued for a minimum of one week so that staff can prepare findings and an order for the Council's formal action.

On behalf of Bruce Bros.,
the applicant hereby waives the 120 day
period for decision on application for
minor change to Pacific Terrace PUD,

Dec. 19, 2006

A large, stylized handwritten signature, likely "John C. Pelt", written in black ink. The signature is fluid and cursive, with a long horizontal line extending from the end.

\$100.