

**CANBY CITY COUNCIL  
SPECIAL CALLED MEETING  
July 28, 2021**

**PRESIDING:** Mayor Brian Hodson

**COUNCIL PRESENT:** Traci Hensley, Jordan Tibbals, Sarah Spoon, Greg Parker, and Shawn Varwig.

**COUNCIL ABSENT:** Christopher Bangs

**STAFF PRESENT:** Scott Archer, City Administrator; Joseph Lindsay, City Attorney/ Assistant City Administrator; Melissa Bisset, City Recorder/ HR Manager; Brianna Addotta, Associate Planner; and Don Hardy, Planning Director

**CALL TO ORDER:** Mayor Hodson called the Special Called Meeting to order at 7:30 pm.

**PUBLIC HEARINGS:** Comprehensive Plan Map Amendment and Concurrent Zone Change for 102 NE Territorial Road –

Mayor Hodson read the public hearing statement.

STAFF REPORT: Brianna Addotta, Associate Planner, explained the process for the Hemmerling project. This project contained multiple land use applications that formed a single development proposal. The applicant would need to follow the steps outlined in the conditions of approval for both CPA/ZC 21-01 and SUB 21-02 to move forward with a final plat of the subdivision as proposed. This was a Comprehensive Plan Amendment to change the designation from low density residential (LDR) to medium density residential (MDR) and a concurrent zone change from low density residential (R-1) to medium density residential (R-1.5). She explained the Statewide Planning Goals were the framework for all Oregon municipal governments' comprehensive plans and all comprehensive plans had to be consistent with the goals, Oregon Administrative Rules, and Oregon Revised Statutes. The Development Code was the implementing tool of the Comprehensive Plan and was intended to guide development and be consistent with the Comprehensive Plan, and therefore consistent with the Statewide Planning Goals. Staff found that the proposed Comprehensive Plan Map amendment was consistent with the Statewide Planning Goals and Comprehensive Plan. There were no goal exceptions requested as part of this proposal. She reviewed the approval criteria to be used in evaluating this application. The subject property was about 3.17 acres on NE Territorial Road. The property was relatively flat with existing structures that would be removed. It had frontage along N Locust Street and NE Territorial Road. She then described the surrounding uses, survey conducted by the applicant, and comments received. There were agency comments from the City Engineer and Public Works as well as five public comments related to traffic congestion, speed, pedestrian safety, water quality, and power availability. There were concerns about the rezone, support for the amendment and zone change, and concern about the potential for multifamily housing. The traffic analysis letter recommended reducing foliage for sight distances on the N Locust approach onto Territorial. It also found that the project did not degrade performance for any existing or planned transportation facility beyond what was allowed in the current or proposed

zone. The Planning Commission voted 4/1 to forward a recommendation of denial to the City Council. The reasons for the recommendation of denial were: the proposed medium density residential designation was not compatible with the surrounding area and was not consistent with the original depiction of R-1 in the N Holly Development Concept Plan. Staff found that a change from R-1 to R-1.5 netted a maximum possible of 5 additional single family dwellings. The surrounding area had property with similar zoning designations. R-1.5 was directly across the street from the subject property and was on the corner of an intersection. There were no regulations in the Code strictly limiting rezoning to only the designations expressly included in a Development Concept Plan. The Comprehensive Plan was the guiding document on rezoning and the applicant's proposal to rezone from R-1 to R-1.5 was consistent with the Comprehensive Plan. Staff thought the Planning Commission incorrectly interpreted and applied the Development Code in this instance and did not provide justification related to the approval criteria. Staff recommended approval of the application subject to the identified conditions of approval.

Don Hardy, Planning Director, said the end result of this application would be single family residential lots. This was not a multifamily project. The Comprehensive Plan was the driver for the policy direction. The surrounding character of this site fit with the request. The change in designation would result in 4 to 5 more lots, although the lots would be smaller.

Councilor Spoon asked about the zoning of the surrounding properties. Ms. Addotta said three sides of the property were R-1 or EFU and one side was zoned R-1.5.

Councilor Spoon asked if there were approval criteria for the zone change or if it was entirely discretionary. Joe Lindsay, City Attorney, said it was discretionary, but there needed to be a valid reason for the decision.

Councilor Parker asked why the Planning Commission thought it was not compatible with the surrounding area. Was R-1.5 incompatible with R-1 and EFU? Mr. Hardy said the standards for a rezone were consistency with the Comprehensive Plan and public facilities were available to serve the development. Staff thought it was compatible because it was single family residential and that was consistent with the Comprehensive Plan. The Comprehensive Plan trumped the Development Concept Plan.

Councilor Tibbals asked if the parking requirements were different between R-1 and R-1.5. Ms. Addotta said the parking requirements were the same. R-1 had 60% impervious surface, R-1.5 had 70%. Setbacks were largely the same. It was the lot size that was the biggest difference.

Councilor Hensley asked about traffic counts for the smaller lot sizes. Ms. Addotta said the total increase for the proposed R-1.5 homes was four additional trips in the morning peak hour and five additional trips in the afternoon peak hour. This included the Dodds addition numbers.

There was discussion regarding the Comprehensive Plan amendment, distinguishing between R-1 and R-1.5, assumption that the single family homes fit the Comprehensive Plan designation, and examples of R-1.5 next to EFU zoning in the City.

Ms. Addotta clarified to change any zone in the City, they also had to change the Comprehensive Plan. She said the intent of the N Holly Development Concept Plan was to put in single family homes in this area.

Councilor Varwig questioned the traffic count numbers. Mr. Hardy explained how the traffic analysis used the Institute of Transportation Engineers assessment tool. It was an industry standard across the nation. The applicant provided the traffic study and the City's consultant reviewed it. Ms. Addotta said as part of the subdivision application, they would be installing pedestrian facilities on both streets.

Councilor Varwig did not think an algorithm could be trustworthy to determine how much traffic was going to come from a development. He thought it would be more than what the traffic study said.

Ms. Addotta said that was the projected traffic during peak hours, not total trips. For weekdays there would be 188 more trips throughout the 24 hours.

Mr. Lindsay said if it was left at R-1, it would generate 142 trips per day. Mr. Hardy said that followed the average for single family homes, which was 10 trips per day.

Councilor Tibbals asked about the differences between R-1 and R-1.5. Ms. Addotta described the differences in the setbacks and size of the lots. The height and design standards would be the same.

Councilor Tibbals was concerned about setting a precedent with this application.

Mayor Hodson opened the public hearing.

Hal Keever, representing the applicant, said they concurred with the staff report and conditions of approval. The N Holly Development Concept Plan cited a significant shortage of single family lots. Territorial Road was a collector street and was meant to handle higher density. He thought there was only a very subtle difference between R-1 and R-1.5. His client did not build multifamily. The Planning Commission had concerns about 20 lots. They were proposing 19 lots which took away the need to adjust the setbacks.

Councilor Spoon asked why they were requesting R-1.5. Mr. Keever said generally residential development had become denser due to the housing shortage. They were trying to be compatible with the neighborhood with single family detached homes, but also increase the density.

There was no other public testimony.

Mayor Hodson closed the public hearing.

Councilor Spoon was concerned about the infrastructure to support the rezoning and setting a precedent for the future. She was not in support of rezoning after the Comprehensive Plan designation was established. The Comprehensive Plan took into account the needs and desires of the neighborhood and changing the designation felt underhanded to the neighbors who were expecting a certain density. She did not take the market into a factor as to what should or should

not exist there and did not think the EFU property would come in at a higher density in the future. She did not want to create an island of higher density surrounded by R-1. The City had annexed in more land and she questioned whether there was a shortage. She was not in favor of the rezone.

Ms. Addotta confirmed the infrastructure would be able to handle the rezone to R-1.5. Public Works had no concerns with the capacity of the infrastructure.

Councilor Varwig was also concerned about setting a precedent. He did not think it should matter whether this was single family or multi-family. Adding more traffic was concerning as well.

Council President Hensley agreed they should not change the zone after the fact. They made a promise to the community that it would look like R-1. She was also concerned about the traffic.

Councilor Tibbals agreed about setting a precedent. The zoning should not be changed after the fact.

Mayor Hodson did not see the issue about precedence. The Comprehensive Plan allowed them to be flexible when these types of requests occurred to look at a single piece of property and evaluate its merits.

**\*\*Councilor Spoon moved to deny CPA/ZC 21-01 and affirm the Planning Commission's final written findings. Motion seconded by Council President Hensley and passed 5-0.**

Mr. Lindsay clarified the reason for denial was inconsistency with the Development Concept Plan and Comprehensive Plan. The Council concurred.

Appeal (APP 21-02) of the Planning Commission's denial of a 20-unit subdivision at 102 NE Territorial Road (SUB 21-02) –

Mayor Hodson read the public hearing statement.

#### CONFLICT OF INTEREST:

Council President Hensley – No conflict, plan to participate.

Councilor Varwig – No conflict, plan to participate.

Councilor Tibbals – No conflict, plan to participate.

Councilor Parker – No conflict, plan to participate.

Councilor Spoon – No conflict, plan to participate.

Mayor Hodson – No conflict, plan to participate.

#### EX PARTE CONTACT:

Council President Hensley – No contact.

Councilor Varwig – No contact.

Councilor Tibbals – No contact.

Councilor Parker – No contact.

Councilor Spoon – Driven by the site.  
Mayor Hodson – No contact.

STAFF REPORT: Mr. Hardy said since the Comprehensive Plan and zone change applications were denied and the subdivision approval was based on those applications being approved, staff could not support the subdivision application since it was no longer consistent with the zoning and could not meet the current code.

Mayor Hodson opened the public hearing.

Mr. Keever said the applicant would like the Council to consider leaving the record open to amend the application to the R-1 zoning.

Mr. Lindsay asked if the applicant was willing to extend the 120 day deadline to remand it back to the Planning Commission. The applicant was willing.

**\*\*Councilor Varwig moved to remand SUB 21-02 back to the August 23, 2021 Planning Commission meeting for a subdivision plan consistent with an R-1 zone and sending notice to the neighbors. Motion seconded by Council President Hensley and passed 5-0.**

**ORDINANCE:** Ordinance No. 1551 – This ordinance was unnecessary due to the remand.

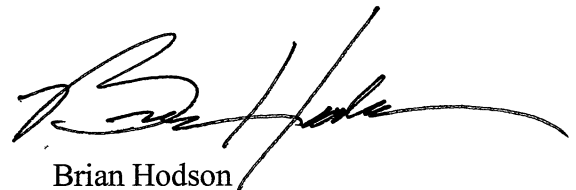
**ACTION REVIEW:**

1. Denied CPA/ZC 21-01.
2. Remanded SUB 21-02 to the Planning Commission for their August 23, 2021 meeting.

Mayor Hodson adjourned the meeting at 9:11 p.m.



Melissa Bisset  
City Recorder



Brian Hodson  
Mayor

Assisted with Preparation of Minutes - Susan Wood