

1 C. City of Lake Oswego Tree Chapter [LOC Chapter 55]:

2
3 LOC 55.02.010 - 55.02.080 Tree Removal
4 LOC 55.02.084 Mitigation Requirements
5 LOC 55.08.020 Tree Protection Plan Required
6 LOC 55.08.030 Tree Protection Measures Required
7

8 D. City Charter

9
10 Section 40 Major Road Expenditures.
11

12 **CONCLUSION**

13
14 The Commission concludes that LU 13-0044 can be made to comply with all applicable criteria by the
15 application of certain conditions.
16

17 **FINDINGS AND REASONS**

18
19 The Commission incorporates the findings in the September 27, 2013, Staff Report (with all exhibits
20 attached thereto) and the findings in the October 17, 2013 Staff Memo (with all exhibits attached
21 thereto), as support for its decision, and supplements with further findings and conclusion set forth
22 herein. In the event of any inconsistency between the supplementary matter herein and the staff
23 reports, the matter herein controls. To the extent they are consistent with the approval granted herein,
24 the Commission adopts by reference its oral deliberations on this matter.
25

26 Following are the supplementary findings and conclusions of this Commission:
27

- 28 1. The Commission heard testimony from the Forest Highlands Neighborhood Association (FHNA) and
29 others that (a) approval of LU 13-0044 would imply approval of future partitions on the site as well
30 as the concept plan for complete parcelization of the subject property that was submitted with the
31 application; and (b) the Commission's review, and any conditions, should be based upon the number
32 of parcels as shown in the parcelization plan, and the impacts from the parcels as shown in the
33 parcelization plan. The Commission also heard that approval of this partition should be contingent
34 on the City's approval of a Development Agreement for future land divisions on the site. Finally, the
35 Commission heard testimony that the 17 lots shown in the parcelization plan would cause density
36 that was too high for the neighborhood.
37

38 The Commission finds that the request is for a 3-parcel partition only; and that the application, with
39 staff recommended conditions, meets all of the approval criteria for a 3-parcel partition. The
40 Commission notes that approval of this partition does not alleviate the requirement for future
41 partitions to meet the applicable criteria in effect at the time of application. As stated by the
42 applicant, the Commission finds that no future partition is approved with the approval of LU 13-
43 0044.
44

45 The Commission also finds that the requirement in LOC 50.07.007.2.a.iv for submission of a
46 conceptual plan of complete parcelization of the subject property does not imply approval of that
47 plan; it only ensures that conditions can be imposed that will not preclude the opportunity for
48 future parcelization.
49

1 The Commission finds that a Development Agreement is not required by the Community
2 Development Code nor state law when submitting an application for a 3-parcel partition, along with
3 a parcelization plan. Finally, the Commission finds that there is no Code authority for it to prohibit
4 future “serial” partitions on the site, and therefore the Commission can not consider at this juncture
5 whether a *future* partition would result in a level of density that did not comply with the minimum
6 Code requirements.

- 7
8 2. The Commission heard testimony from nearby residents and from the FHNA that questioned
9 whether the 3-parcel partition as proposed would comply with the drainage standard.

10
11 Barry Waterfield (resident owner across the street from the site on Knaus Road) testified that storm
12 runoff currently sheet flows across the road and enters his property, and he wondered how one
13 would determine, after partition approval, whether there were *additional* waters that would enter
14 his property due to the partition. He also stated that there is a ditch along Knaus Road that will be
15 used for drainage conveyance from the partition; he was concerned that additional water in the
16 ditch would saturate the hillside.

17
18 The FHNA was concerned whether the drainage plan was feasible and whether it would be effective.
19 They noted that on Leslie Lane some trees had to be removed because of ground saturation.

20
21 Gary WillihnganZ (resident also located across the street from the site) stated that the drainage
22 report was inadequate, assumed site conditions that were not in existence, and lacked information.
23 He was concerned about ground absorption rates for each of the future lots created by subsequent
24 partitions.

25
26 The Commission finds that per LOC 50.07.004.1.c and d, the City Engineer is the reviewing authority
27 to determine if the partition’s drainage plan complies with the Drainage standard. The City Engineer
28 has determined that the proposal, with conditions, would be in compliance with the Drainage
29 Standard for this 3-parcel partition, and the staff-recommended conditions include the City
30 Engineer’s recommended conditions. The Commission notes that any future division of the property
31 would be reviewed on its own for compliance with the Drainage standard.

- 32
33 3. The Commission heard testimony from the FHNA regarding traffic, specifically traffic generated from
34 the future partitions of the site, although the FHNA noted that there would be an additional 20
35 vehicle trips per day due to this 3-parcel partition. The Commission finds, as stated above, that the
36 application before them was for a 3-parcel partition. Under LOC 50.07.003.14.d, 50.07.003.5, and
37 ORS 227.173, the partition must be approved if it meets the standards and criteria for a 3-parcel
38 partition. The Commission finds that the additional 20 trips per day are mitigated by street
39 improvements recommended by the City Engineer as a condition of approval of this application.

- 40
41 4. The FHNA testified that it was concerned about the aesthetics of the neighborhood, such that any
42 dwellings built on the lots should be of high quality, in order to preserve and enhance the value of
43 the neighborhood. The Commission finds that this is a 3-parcel partition only; the development
44 plans for the residences are not before it. Further the Commission finds that under the Building
45 Design standards in LOC 50.06.001, all residential structures are subject to certain design
46 requirements, but that “high quality” is not a requirement for single-family dwellings (LOC
47 50.06.001.5.a regarding applicability; compare with LOC 50.06.001.5.b.i: non-residential and multi-
48 family residential dwellings must be “complementary in appearance to adjacent structures of good
49 design.”) The Commission therefore finds that it does not have any authority under LOC

1 50.07.003.5 (Conditions of Approval) to impose a condition regarding the quality of future
2 residences on the lots.

3
4 **ORDER**

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6 **IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego that:**

- 7
8 1. LU 13-0044 is approved, subject to compliance with the conditions of approval set forth in Subsection
9 2 of this Order.
10
11 2. The conditions for LU 13-0044 are as follows:

12
13 **A. Prior to Approval of the Final Partition Plat, the Applicant/Owner Shall:**

- 14
15 1. Submit a final plat to City staff for review and signature of approval within one year of the
16 date of this decision. **The deadline to submit the final plat to City staff is October 28, 2014.**
17 The final plat must be dimensioned as depicted in Exhibit E-6, and reference this land use
18 application – City of Lake Oswego Planning and Building Services, Case File LU 13-0044.
19 Upon written application, prior to expiration of the one-year period, the City Manager shall,
20 in writing, grant a one-year extension. Additional extensions may be requested in writing
21 and must be submitted to the City Manager for review of the project for conformance with
22 current law, development standards and compatibility with development that may have
23 occurred in the surrounding area. The extension may be granted or denied and, if granted,
24 may be conditioned to require modification to bring the project into compliance with
25 current law and compatibility with surrounding development.
26
27 2. All plats and public easements submitted to the City of Lake Oswego shall have
28 accompanying vector based electronic drawings or maps consistent with the prevailing
29 technologies in the Civil Engineering and/or Surveying fields (e.g., current or near current
30 versions of AutoCAD). The electronic drawings shall conform to the mapping requirements
31 for plats adopted in ORS Chapter 92.
32
33 3. The final plat shall include the following information to the satisfaction of staff:
34
35 a. Dedicate sufficient public right-of-way to accommodate the required street
36 improvements along Goodall and Knaus Roads to the satisfaction of the City Engineer.
37 The final construction plans shall be submitted that are advanced enough to determine
38 the right-of-way dedication width required for providing future half street
39 improvements along the entire site frontage of Goodall and Knaus Roads. The right-of-
40 way dedication shall be wide enough to account for the design of the following street
41 improvements:
42
43 i. Widen the pavement along the east side of Goodall Road and north side of Knaus Road
44 along the entire site frontage to achieve a 14-foot wide shared travel lane (measured
45 from the existing painted yellow centerline) and a minimum 3-foot wide, compacted
46 crushed rock shoulder.
47
48 ii. An 8-foot wide drainage swale along the entire site frontage on Goodall and Knaus
49 Roads.

- 1 iii. A 6-foot wide asphalt pedestrian pathway behind the drainage swale along the site
2 frontage on Goodall and Knaus Roads. A culvert shall be provided at the pedestrian
3 crossings where the pathway will connect back to the edge of road.
4
5 iv. Undergrounding the existing overhead utilities along the entire site frontage along
6 Goodall Road.
7
8 b. Grant a public utility easement (according to the minimum width standards for the
9 franchise utility companies) along the site frontage of Goodall Road for undergrounding
10 the existing overhead utilities or franchise utilities.
11
12 4. Submit a landscape plan to show plant species, size and spacing for the following, to the
13 satisfaction of staff:
14
15 a. A future vegetated drainage swale along Goodall and Knaus Roads.
16
17 b. Provide a note on the final landscape plan requiring all burlap or wire cages to be
18 completely removed from root balls of all trees and shrubs before they are planted.
19
20 5. Record a "Notice of Development Restriction" with the final plat. The Notice shall be
21 submitted for staff review and approval prior to recording and shall contain the restrictions
22 listed below. A site plan showing the Protected Solar Building line shall be included and
23 labeled as Exhibit A.
24
25 a. Parcels 1-3 are solar lots and Parcel 3 is subject to the requirements of LOC
26 50.06.007.1.d.ii [Protected Solar Building Line] as indicated in Exhibit A.
27
28 b. Any future parcelization of Parcels 1-3 shall conform to the Parcelization and
29 Connectivity Plan attached as Exhibit B (Exhibit E-13 of LU 13-0044).
30
31 6. Submit engineered construction drawings for the public and site improvements for review
32 and approval by the City Engineer. Drawings shall conform to the City's designs standards
33 and the drafting specifications found in the City's booklet "CAD Standards and Design
34 Requirements," May 2006 edition. [Note: receiving construction plan approval is not a pre-
35 requisite for recording the final plat.] The plans shall include the following:
36
37 a. Compiles with one of the following:
38 (1) Design that brings the public sanitary sewer up Goodall Road to the north property
39 line of Parcel 2, approximately 420 feet north of Knaus Road and that the public
40 sanitary sewer shall be located within the public right-of-way, and service laterals
41 shall be provided directly to a parcel, without crossing other parcels within a private
42 sewer easement; or
43 (2) The public sewer easement is shown to be located in a driveway; or
44 (3) A subsequent partition or subdivision approval shows that the public sewer line will
45 not cross any lots.
46
47 b. Design of an 8-inch public water main extension along Goodall Road up to the north
48 property line of Parcel 2, approximately 420 feet north of Knaus Road.

- c. Design showing the location of the private water services.
 - d. Design showing any new fire hydrants, if required by the Fire Marshal. Fire hydrants shall be installed per City standards.
 - e. At the applicant's option, either submit a design for hanging a light on the existing utility pole or submit a design showing a new street light at the intersection of Goodall and Knaus Roads, to the satisfaction of the City Engineer.
7. Construct the public improvements required by Condition A(6), above, *or* submit a financial guarantee to ensure construction of the public improvements per LOC 50.07.003.9. The financial guarantee shall be based on 120% of an itemized engineer's estimate of the cost of construction of the public improvements, that is in turn based on final construction plans that are far enough advanced to support the estimates, to the satisfaction of the City Engineer.
 8. Submit a preliminary title report or lot book report showing the status of title and any liens and encumbrances.
 9. Execute and, following City approval, record an LID Waiver to underground utilities on the utility poles. Note: the LID Waiver may be terminated by the City if the area is partitioned or subdivided in the future and the additional lot creation, along with this 3-lot partition, is adequate to meet the required rough proportionality to require the construction of undergrounding the overhead utilities.

B. Within 90 Days of the Recordation of the Final Partition Plat, the Applicant/Owner Shall:

1. Submit a final title report, or lot book report from a title company demonstrating that the plat was recorded and that the private and public easements and Notice of Development Restrictions are valid and subsisting, and that the parcels are either free and clear of liens or encumbrances, or that the holders of the liens and encumbrances consent to the creation and recordation of the easements, maintenance agreement and Notice of Development Restriction.

C. Prior to the Issuance of any Grading or Building Permits to Construct Any Structures on Parcels 1-3, the Applicant/Owner Shall:

1. Complete all public and site improvements as required by Condition A(6), above, submit certified "as-built" drawings, and receive a certificate of completion and acceptance by the City.
 - a. Parcels 1 and 2: Submit a storm water disposal plan for each parcel. Installation of a subsurface infiltration facility or rain garden on the individual parcels is an acceptable method for storm water disposal. The plan must include design calculations to ensure they are adequately sized. Stormwater disposal facilities shall meet minimum setbacks of five feet from property lines and 10 feet from building foundations. Subsurface disposal systems (i.e., drywells or storm chamber systems) shall be engineered. Driveway runoff shall not be directed to a subsurface infiltration disposal system without Department of Environmental Quality (DEQ) approval. Any emergency overflow

1 shall be conveyed to an approved point of disposal.

- 2
- 3 b. Parcel 3: Demonstrate to the City Engineer’s satisfaction that the existing drainage from
- 4 Parcel 3 either:
- 5 i. Does not cross Parcels 1 and 2 and is contained on Parcel 3 or is discharged into
- 6 an approved storm drainage facility as approved by the City Engineer, or
- 7 ii. There is a drainage easement across Parcels 1 and 2 for the current drainage
- 8 pattern.
- 9

10 2. Apply for an erosion control permit and install the erosion control fencing as required

11 by LOC 45. These measures shall remain in place throughout construction period.

12

13 3. Demonstrate that driveway approaches comply with the “vision clearance triangle”

14 standards. No vegetation, fence, or signage higher than 30 inches will be allowed

15 within the area formed by ten-foot legs extending from the intersection of the

16 driveway and the street travel lanes.

17

18 i. Driveway approaches shall be asphalt and limited to 16 feet wide, irrespective of

19 the number of garage doors facing the street. Culverts meeting City standards shall

20 be located across the driveway approaches. The size of the culvert shall be

21 engineered, but shall not be less than 10 inches in diameter.

22

23 ii. Provide evidence from a traffic engineer that the driveway approaches are located and

24 designed so that the driver entering or exiting the driveway can see approaching traffic

25 for a sufficient distance to make a safe entrance and exit. American Association of State

26 Highway and Transportation Officials (AASHTO) standards shall be used in determining

27 compliance with this standard. Any sight-obstructing vegetation along the Goodall Road

28 or Knaus Road site frontage as one exits the driveway approach shall be permanently

29 removed.

30

31 4. If dead-end driveways on Parcels 1 and 2 exceed 150 feet in length, or additional square

32 footage is added to the structure on Parcel 3, the applicant must provide either an approved

33 fire department turnaround or an alternative method of fire suppression, such as residential

34 sprinklers.

35

36 5. Apply for and obtain a verification tree removal permit for two trees, including a

37 mitigation plan that shows a total of two mitigation trees.

38

39 6. For each parcel, apply for and obtain the appropriate tree removal permit, if necessary,

40 and submit mitigation plans.

41

42 7. Install all tree protection fencing as required by the Tree Code (LOC 55), below. All

43 protection fencing shall be inspected and approved by staff prior to the issuance of any

44 grading or building permits.

45

46 **D. Prior to the Final Building Inspection or Occupancy of any Dwelling on any Parcel, the**

47 **Applicant/Owner Shall:**

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49 1. Provide certification from the engineer of record that the stormwater facility for each

50 parcel was constructed according to the design and is functioning properly.

1 **Code Requirements:**
2

- 3 1. Tree Protection: Submit a tree protection permit application as required by LOC 55.08.020
4 and 55.08.030 for review and approval of staff, including off-site trees that are within the
5 construction zone. This plan shall be attached to the construction documents or printed on
6 the construction site plans, and shall include:
7
8 a. The location of temporary tree protection fencing, consisting of a minimum 6-foot high
9 cyclone fence secured by steel posts, around the tree protection zone, or as
10 recommended by the project arborist and approved by the City.
11
12 b. A note stating that no fill or compaction shall occur within the critical root zones of any
13 of the trees, or that if fill or compaction is unavoidable, measures will be taken as
14 recommended by a certified arborist to reduce or mitigate the impact of the fill or
15 compaction. Such measures shall be clearly outlined in the tree protection plan. The
16 note shall also inform contractors that the project arborist shall be on site and oversee
17 all construction activities within the tree protection zone.
18
19 c. A note that clearly informs all site contractors about the necessity of preventing
20 damage to the trees, including bark and root zone. The applicant and contractor(s)
21 shall be subject to fines, penalties and mitigation for trees that are damaged or
22 destroyed during construction.
23
24 d. A sign shall be attached to the tree protection fencing, which states that inside the
25 fencing is a tree protection zone, not to be disturbed unless prior approval has been
26 obtained from the City Manager and project arborist.
27

28 **Notes:**
29

- 30 1. The applicant is advised to take part in a post-Land Use Approval meeting. City staff would like
31 to offer you an opportunity to meet and discuss this decision and the conditions of approval
32 necessary to finalize the project. The purpose of the meeting is to ensure you understand all
33 the conditions and to identify other permits necessary to complete the project. If you like to
34 take advantage of this meeting, please contact the staff coordinator at (503) 635-0290.
35
36 2. The land use approval for this project does not imply approval of a particular design, product,
37 material, size, method of work, or layout of public infrastructure except where a condition of
38 approval has been devised to control a particular design element or material.
39
40 3. Development plans review, permit approval, and inspections by the City of Lake Oswego
41 Planning and Building Services Department are limited to compliance with the Lake Oswego
42 Community Development Code, and related code provisions. The applicants are advised to
43 review plans for compliance with applicable state and federal laws and regulations that could
44 relate to the development, i.e., Americans with Disabilities Act, Endangered Species Act. Staff
45 may advise the applicants of issues regarding state and federal laws that staff member believes
46 would be helpful to the applicants, but any such advice or comment is not a determination or
47 interpretation of federal or state law or regulation.
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1 DATED this 28th day of OCTOBER, 2013

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_____/s/ Don Richards_____
Don Richards, Chair
Development Review Commission

_____/s/ Janice Reynolds_____
Janice Reynolds
Administrative Support III

ATTEST:

PRELIMINARY ORAL DECISION– October 21, 2013

AYES: Creighton, Needham, Richards, Johnson and Poulson
NOES: None
ABSTAIN: None
ABSENT: Rossi and Ahrend

WRITTEN FINDINGS – October 28, 2013

AYES: Richards, Johnson, Rossi and Poulson
NOES: None
ABSTAIN: Ahrend
ABSENT: Creighton and Needham