

APPENDIX A

LEGAL BRIEF



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Via Hand Delivery

Seaside Planning Commission
c/o Kevin Cupples
Seaside Planning Director
989 Broadway
Seaside, OR 97138

RE: Vista Ridge II Planned Development/06-10-22AB-08100
City File No. 21-061PDSUB
Our Clients: Lief and Sani Morin
Our File No. 14129

Dear Planning Commissioners and Director Cupples:

On behalf of our clients, Lief and Sani Morin, we hereby provide the following comments in opposition to the proposed Vista Ridge II Planned Development at Map 06-10-22AB Lot 8100. Please include these comments in the record of these proceedings and provide our firm with all future notices associated with this application.

As is set forth in detail below, we respectfully request that the Planning Commission deny the proposed Planned Development application for failure to conform with applicable minimum standards in the Seaside Zoning Ordinance (SZO) and Seaside Comprehensive Plan. For ease of reference these minimum standards are set forth below in bold italics followed by a brief statement setting forth the inconsistency of the proposed development with those standards.

A. The applicant has failed to provide information in its application required by SZO 3.112(4) and does not demonstrate compliance with all relevant standards.

The applicant is proposing to make use of the City's Planned Development (PD) process for its proposed 17-lot subdivision, but has not provided basic information required by the zoning ordinance.

The City's PD review process is intended to provide "appropriate and orderly development" of large tracts of land that provides for a greater degree of flexibility than "traditional lot-by-lot subdivisions." SZO 3.110. To this end the PD standards require the submission of additional information including, amongst other requirements:

"C. Existing and proposed finish grades of the property with all drainage features.

D. Location of all proposed structures and associated uses with the height, gross floor area and approximate location of all entrances of each structure.

E. Vehicular and pedestrian circulation features within the site and on adjacent streets and alleys.

F. The extent, location, arrangement and proposed improvements of all off-street parking and loading facilities.

G. The type, extent, location, arrangement and proposed improvements of all open space, landscaping, fences and walls.

H. Architectural drawings and sketches demonstrating the planning and character of the proposed development.

* * * *

J. Contour lines at two-foot intervals”

This information is largely absent from the information provided by the applicant.

1. Lack of development information.

Vital information concerning structures (height, gross floor area, entrances) as well as the architectural drawings and sketches for the proposed development are wholly absent from the applicant's materials. In fact, the “New 17 Lot Layout and Proposed Development of Tract ‘G’ Vista Ridge, Sunset Ridge LLC” appears to be little more than a traditional lot-by-lot subdivision, albeit one that does not conform to the underlying R-1 provisions for minimum lot size.

It is the applicant's burden to provide evidence sufficient to demonstrate compliance with all relevant approval criteria. In this case, the applicant's failure to provide minimum information concerning the height, gross floor area of structures on the lots, the architectural drawings and sketches of the planning and character of the proposed development, or the landscaping, fences and walls of the property, mean that the applicant has not carried its burden. The failure to conform to the minimum information requirements in 3.112(4)(D), (G) and (H) with regard to the development is itself a failure to conform to 3.115, which requires development to conform to “the Planned Unit development Regulations Sections 3.110 through 3.114.”

In addition, the applicant precludes the Planning Commission from finding in its favor with regard to issues where this structural information is necessary to assess the criteria. The Commission cannot find that the design and size of the development can be well integrated within its surroundings where the applicant provides no information concerning the “design and size” of the development which would permit a comparison. SZO 3.115(1). Nor can it determine that the “size and uses will result in an attractive, healthful, efficient and stable environment for living” where the applicant has not demonstrated that it will be.

As the applicant has failed to meet the minimum standards in sections 3.112(4)(D), (G) and (H) and 3.115(1), we respectfully request that the Commission deny the application.

2. Lack of Transportation Information.

Likewise, the applicant has failed to provide minimum information concerning transportation issues. Section 3.112(4) requires the applicant provide minimum information

regarding the Planned Development including the location of entrances on the lots (D), vehicular and pedestrian circulation both on and off-site (E), and the location and arrangement of all off-street parking facilities under (F). Again, the applicant has largely failed to provide this minimum information, and its proposal is subject to denial for failure to conform to these general regulations in section 3.112(4) under section 3.115.

And, since the applicant has failed to locate entrances or off-street parking, and failed to address on and off-site vehicular and pedestrian circulation, it has failed to provide the Commission with a factual basis to believe that "the location, design, size and uses are such that traffic generated by the development can be accommodated safely and without congestion on existing or planned arterial, collector or local streets." Likewise, since the applicant has not addressed off-street parking requirements or demonstrated that the required spaces can be accommodated on its small lots given its increased lot coverage and the topography of the property, it has failed to demonstrate compliance with the offstreet parking requirements in sections 3.025(8) and 4.100.

As the applicant has failed to meet the minimum requirement in sections 3.112(4)(D), (E) and (F), 3.115(2), 3.025(8), and 4.100, we respectfully request that the application be denied on this basis as well.

3. Lack of Grading and Fill Information.

In addition to failing to provide adequate information concerning the development and transportation impacts, the applicant has also failed to address basic minimum requirements concerning public health and safety issues. Subsection (C) of 3.112(4) requires "existing and proposed finish grades of the property with all drainage features." While the applicant makes some effort to identify the creeks on the property, it does not provide a grading plan or stormwater plan, or identify the limits of cuts and fills on the property. Indeed, despite the express code requirement, the applicant does not provide the two-foot contours of the slopes on the property under section (J). The applicant has failed to meet minimum standards in section 3.112(4)(D) and (J) and its PD application is subject to denial under section 3.115.

Moreover, as the applicant has failed to properly consider the "location, design, size and use" of the necessary cuts, fills and drainage features, its application materials do not demonstrate the existence of a stable environment for living as required by section 3.115(4). Accordingly, we respectfully request that the application be denied on this basis as well.

B. The applicant has not provided an adequate basis to reduce the minimum parcel sizes, lot dimensions, or lot coverage required by the R-1 zone.

The applicant appears to have proposed planned development of the property primarily avoiding the minimum lot size, lot coverage and area requirements in the R-1 zone. These standards require a minimum lot size of 10,000 square feet and an average lot width of 70 feet, and impose a maximum lot coverage of 35% of the total lot area, to wit:

"Section 3.025 Standards. In the R-1 Zone the following standards shall apply:

1. Lot Size: Lot area shall be a minimum of 10,000 square feet. Average lot width shall be at least 70 feet at the building line.

**** * * ****

7. Lot coverage: Maximum area that may be covered by a permitted structure and accessory buildings shall not exceed 35 percent of the total area of the lot."

The applicant has sought exceptions to these minimum requirements in order to decrease lot size to "6,943 sqft with a minimum lot width of 50'" and to increase lot coverage to from "35% to 40% as allowed in the R-2 zoning."

However, the subject property is zoned R-1, and while certain development standards may be modified via section 3.113, the applicant has not demonstrated that its proposed modifications to the lot size, dimensions, and lot coverage are consistent with these development standards.

In particular, while the code allows reductions in lot width and minimum lot area in some cases, it only allows such reductions where the applicant demonstrates compliance with the standards for such reduction including fire and life safety standards and that structures comply with applicable standards, to wit:

"6. Waiver of Reduction of Yard and Other Dimensional Requirements. Except as otherwise provided in Section 3.113, the minimum lot area, width and frontage, height and yard requirements otherwise applying in the district shall not dictate the strict guidelines for the planned unit development but shall serve to inform the designers of the importance of development a project that will be in harmony with the character of the surrounding neighborhood. Reduction of the yard and other dimensional requirements are allowed with the following standards are met:

A. Structures comply with applicable building and fire, life, safety requirements.

B. The structure(s) comply with the standards listed in 3.113 (4)(A)(1-8)."

In this case, the applicant has provided no information concerning its proposed structures in its application materials, and has entirely failed to provide any basis for its proposed reduction in minimum lot size and width. As such, its proposed reduction in lot size and width, and its subdivision plat based thereon is inconsistent with the applicable zoning and is subject to denial on that basis.

Moreover, while the applicant has sought an increase in lot coverage on each of these substandard lots from 35% to 40%, it points to no basis in the PD code or elsewhere that would support the proposed increase in coverage. Section 3.113(6) allows modifications to "lot area, width and frontage, height and yard requirements," but does not allow for alteration of the minimum lot coverage standards, nor do other lot development standard in section 3.113 authorize this alteration. As the proposed PD includes lot coverage that is consistent with the R-2 zone, but not with the R-1 zoning on the subject property, it is also subject to denial on this basis.

As the applicant's proposed subdivision fails to meet the minimum standards of the underlying R-1 zone in section 3.025, and fails to demonstrate compliance with applicable

standards for the reduction of lot size or width under 3.113(6), we respectfully request that the proposed planned development and subdivision be denied on this basis as well.

C. The applicant has failed to provide a geological hazard report as required by SZO 3.113(9), 4.140, and applicable geological hazard policies in the comprehensive plan.

The applicant's proposed planned development also fails to conform to the City's minimum protections for geological hazard areas. Section 3.113(9) requires that development be consistent with the geological hazard standards at 4.140, to wit:

"9. Natural Hazard Areas: Development shall be consistent with Section 3.147 and 4.140 of the Seaside Zoning Ordinance."

These requirements include the preparation of a Hazard Mitigation Plan that describes the extent and severity of Geologic and Erosion hazard(s) and the site capability, as well as a Grading and Erosion Control Plan (GECP), to wit:

"1. The applicant shall submit a Hazard Mitigation Plan (HMP) which describes the extent and severity of the Geological and Erosion hazard(s), the capability of the site and adjacent affected areas to support the proposed development, and the recommended techniques/safeguards that could be used to adequately protect life, property and environment on and adjacent to the site. The HMP shall be prepared and certified by a Certified Engineering Geologist registered in the State of Oregon, or a Civil Engineer registered in the State of Oregon specializing in the area of Geotechnical Engineering, and submitted by the applicant."

2. The applicant shall submit a Grading and Erosion Control Plan for the proposed development. The GECP shall comply with the requirements of Section 4.200 of the Zoning Ordinance. The GECP shall be submitted in conjunction with a HMP."

3. The HMP shall, at a minimum, consider the following:

- A. Cut and fill methods of leveling lots shall be discouraged. Structures should be planned to preserve natural slopes as much as possible.***
- B. Access roads and driveways shall follow the slope contour whenever possible to reduce the need for grading and fillings.***
- C. Removal of vegetation shall occur only for those areas to be improved by the proposed development.***
- D. No development shall be allowed to block stream drainage-ways in any area or to increase the water level on adjacent property."***

These requirements are largely derived from the Geological Hazards Policies of the Seaside Comprehensive Plan, which require an HMP for any sites with slopes greater than 15% or situated

adjacent to slopes that are 15% or greater,¹ and which provide identical development limitations.²

The site of the proposed PD contains slopes that are in excess of 15%, which subjects it to these requirements. However, the applicant has failed to conform to these minimum standards as well.

The applicant has failed to provide the "Grading and Erosion Control Plan" required by 4.143(2). The applicant refers to erosion control on sheet 8 of its materials, but does not include the minimum information required for a grading and erosion control on this map. In fact, the map does not clearly identify grading or cut-and-fill areas, and omits the majority of the required features for such a plan including "streams, wetlands, channels, ditches, or other water courses on and immediately adjacent to the development site," "areas where existing vegetative cover will be retained and measures to protect vegetation from damage," "accurate location, size and shape of proposed and existing structures," "direction of surface water flows," "indication of slope steepness of existing and proposed contours at intervals of two (2) feet," "location of construction access driveway(s) and designated vehicle parking area(s)," "location of soil stockpiles," and the "schedule and construction operations and phasing." SZO 4.202(3)(C) –(I) and (K). As this erosion control and grading plan is required to be submitted in conjunction with the HMP, and the applicant has not provided a conforming grading and erosion control plan, denial of the application is warranted pursuant to 3.113(9) and 3.115 for failure to conform to these minimum requirements.

Likewise, the applicant's purported HMP does not address the extent or severity of geological hazards on the site or consider the minimum requirements specified in 4.143(3) and Geological Hazards Policy 2. In particular, the applicant's proposal does not identify or properly evaluate the risks of common geological hazards on the site or in the surrounding areas, including risks for compressible soils, plastic or expansive soils, soil creep, soil liquefaction, slope instability, landslide impact, seismic shaking, tsunami inundation, settlement and differential settlement on

¹ ***11.1 GEOLOGIC HAZARDS POLICIES 1. An HMP performed by a Certified Engineering Geologist registered in the State of Oregon or a registered Civil Engineer, registered in the State of Oregon, specializing in the area of Geotechnical Engineering, shall be prerequisite for development in the following areas:***

a. Sites that are composed of areas with slopes of 15% or greater, sites that are situated adjacent to slopes of 15% or greater, or other sites as determined by the City Council, Planning Commission or Planning Director

² ***2. Development requirements for the areas listed above specifically, and the city generally, are: a. Cut and fill methods of leveling lots shall be discouraged. Structures should be planned to preserve natural slopes as much as possible.***

b. Access roads and driveways shall follow the slope contour whenever possible to reduce the need for grading and filling.

c. Removal of vegetation shall occur only for those areas to be improved by the proposed development.

d. No development shall be allowed to block stream drainage ways in any area or to increase the water level on adjacent property.

fill, erosion due to wind deflation, rain impact, overland flow, misdirected water, soil piping and fault rupture. Nor does the HMP incorporate recommended safeguards or techniques to protect life, property and the environment on and adjacent to the site taking into account these hazards.

Moreover, the HMP does not incorporate provisions to ensure compliance with 4.143(3) and Policy 2. The HMP does not discourage cut-and-fill nor does it plan the residential structures so as to preserve the natural slopes on the property as much as possible as required by 4.143(3)(A). The HMP also does not plan the driveways on the property. Its proposed access roads (Hemlock Court and Fern Court) do not follow the natural contours of the property as far as possible and both cut across slopes on the property contrary to 4.143(3)(B). Vegetation removal is not addressed in the report and there is no requirement that it be confined to areas used for development despite the requirement of 4.143(3)(C). In addition, the proposed Fern Court is identified as crossing a creek on the property but no provision is identified to prevent the blockage of that drainage-way contrary to 4.143(3)(D). Denial is also warranted by the applicant's failure to conform to these provisions.

As the applicant has violated the Geological Hazard policies of the City's comprehensive plan, failed to provide the Grading and Erosion Control Plan as required by 3.113(9), 4.143(2) and 4.202, and failed to provide the Hazard Mitigation Plan required by 3.113(9), and 4.143(1) and (3), we respectfully request that the Commission deny the planned development on this basis as well.

D. The applicant has failed to demonstrate consistency with the criteria at SZO 3.115(1)-(4).

The applicant's proposed planned development also fails to demonstrate compliance with each of the relevant approval criteria at 3.115(1) through (4).

Section 1 requires:

"That the location, design and size are such that the development can be well integrated with its surroundings. In the case of a departure in character from surrounding uses, the location and design will adequately reduce the impact of the development."

The applicant does not address this criterion in its application materials, and does not demonstrate that its proposed development will be well integrated with its surroundings or that its location and design will adequately reduce the impacts of its development. As noted, the applicant has not provided evidence, in the form of the required figures, drawings and sketches, that relate to the design and size of the residential development proposed, nor has it conducted the required evaluation of the impacts of its proposed development on geological hazards, vegetation removal, or onsite wetlands and waterways. Accordingly, the applicant has provided the Planning Commission with no basis to believe that it would be well integrated with its surroundings or that the applicant can or would reduce the impacts of its proposed development via the location or design of the development.

What is evident from the submitted plans is that the applicant is proposing to develop a residential subdivision that does not conform to the minimum requirements of the R-1 zone, and without conforming to the minimum protections required by the HMP for slopes, vegetation

removal or waterways. Accordingly, denial of the planned development is also warranted on this basis.

Section 2 requires:

“That the location, design, size and uses are such that traffic generated by the development can be accommodated safely and without congestion on existing or planned arterial, collector or local streets. Commercial developments will not be served solely by local streets.”

Again, the applicant does not address this criterion in its application materials, or demonstrate in its materials that the proposal will conform to this standard. Neither off-street parking nor vehicular or pedestrian circulation are addressed in the application materials, nor does the applicant address the location of driveways on the subject property. The applicant also does not provide information from a traffic engineer addressing safety or traffic congestion on the proposed streets or in the area adjacent to the proposed development. Accordingly, the applicant has not provided the Planning Commission a basis to believe that traffic generated on the site can be accommodated safely and without congestion on existing or planned streets.

Moreover, the planned development relies on an extension of Hemlock Street and the development of a new dead-end road (Fern Court) that are not planned improvements in the Transportation System Plan and which do not conform to the cross sectional requirements for local streets as Hemlock Street would not have the required sidewalks and Fern Court (with a 25 foot right-of-way and 20-foot wide paved surface) would not have adequate right-of-way paved width or sidewalks to conform to the City’s standards,³ and would rely on a hammerhead turn-around design for fire access rather than a cul-de-sac. As the submitted information demonstrates that the proposed development is inconsistent with the adopted standards, denial of the application is also warranted on this basis.

Section 3 requires:

“That the location, design, size and uses are such that the residents or establishments to be accommodated will be adequately served by existing or planned facilities and services.”

The application does not address this requirement in its application, and has not provided evidence demonstrating the existing public facilities and services have adequate capacity to serve the proposed planned development. As the applicant has failed to consider or carry its burden of proof with regard to this criterion, denial of the application is also warranted on this basis.

Section 4 requires:

“That the location, design, size and uses will result in an attractive, healthful, efficient and stable environment for living, shopping or working.”

³ The applicant does not propose an adjustment to these standards under 3.113(4), and, in any case, has failed to demonstrate or provide evidence that demonstrates that the criteria for reduction are met under this standard.

The applicant does not address this requirement in its application, and has not provided evidence demonstrating that the location, design, size and uses will result in an attractive, healthful, efficient and stable environment for living. The applicant's failure to conform to the minimum submission requirements means that the Planning Commission has no basis to conclude that the proposed residential development would be attractive or would incorporate attractive landscaping or buffering. The applicant does not incorporate any of the vegetation preservation measures required in the HMP to ensure the attractive wetlands, stream corridors and forested hills on-site would remain, or that structure, driveways and accesses would be integrated into the natural environment. In addition the lack of the requisite Grading and Erosion Control Plan and the substantial defects in the HMP do not permit a determination that the applicant's proposal would result in a healthful or stable environment for living. What's more, the applicant's failure to address transportation issues such as off-street parking, driveways, and pedestrian and vehicular circulation on-site, as well as its proposed substandard streets similarly rule out an efficient environment for living. As the applicant has failed to consider or carry its burden of proof with regard to this criterion, denial of the application is also warranted on this basis.


As the applicant has not demonstrated compliance with any of these PD criteria in section 3.115, we respectfully request that the application be denied.

Conclusion

As the applicant is seeking approval of the planned development but without the requisite planning and conformance with minimum standards as set forth herein, we respectfully request that the Commission deny the planned development application and pendent subdivision.

Very truly yours,

HUTCHINSON COX



Zack P. Mittge

ZPM/gcc
c: Clients

