



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: July 8, 2020

Department: Public Works Agenda Planning Date: July 2, 2020 Time required: None

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature: Brian Mehl

Form with fields: TITLE, Issue, Description & Background, Financial Impacts, Impacts to Department & External Agencies, Options for Consideration, Recommendation, List of attachments, Presenter.

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Joe Fennimore gfennimore@co.marion.or.us

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

## **NOTICE OF DECISION SUBDIVISION CASE 20-001**

**APPLICATION:** Application of Progressive Design Builders Inc. for conceptual and detailed approval to subdivide a 21,700 square foot parcel into seven lots, with an adjustment to reduce the minimum lot width, in a RM (Multiple-Family Residential) zone located at 4165 and 4167 Lancaster Drive NE, Salem. (T7S; R2W; Section 7; tax lot 700).

**DECISION:** On June 16, 2020 the Marion County Planning Commission **DENIED** this subdivision/adjustment request.

**APPEAL PROCEDURE:** This decision may be appealed to the Marion County Board of Commissioners by filing an appeal with the Marion County Clerk (555 Court Street NE, Salem) by 5:00 p.m. on **July 7, 2020**. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein the Planning Commission's decision is in error. If an appeal is received it will be reviewed by the Board of Commissioners to determine if it merits further hearing and consideration by the Board. If the Board denies the appeal, \$300 of the appeal fee will be refunded. Questions regarding this decision or the appeal procedure should be directed to the Marion County Planning Division, 5155 Silverton Road NE, Salem, (503) 588-5038.

**FINDINGS AND CONCLUSIONS:** The Planning Commission decision is based on the following findings and conclusions.

1. The subject property is located in the Salem Urban Growth Boundary and is designated Multiple Family Residential in the Salem Comprehensive Plan, and zoned RM (Multiple Family Residential under the jurisdiction of Marion County).
2. The property is located on the west side of Lancaster Drive NE, directly across from its intersection with Satter Drive NE. The property is being developed with seven townhomes. All adjacent properties are zoned RM and developed with various residential uses including apartments and a mobile home park.
3. The applicant is proposing to subdivide the property into seven lots; each lot will contain one of the townhomes.

**AGENCY COMMENTS:**

4. Marion County Surveyor commented that the subdivision name must be approved per ORS 92.090. In addition, the subdivision must be surveyed and platted per ORS 92.050 and the final plat (along with appropriate fees and additional mylar fee) submitted to their office for their review and approval. Per ORS 92.065 a remaining monumentation bond may be required if some of the plat monuments have not been set and/or the installation of street and utility improvements has not been completed, or other conditions or circumstances cause the delay (or resetting) of monumentation. The final plat must be submitted to their office with a current or updated title report that is no less than 15 days old at the time of approval of the plat. The final plat must be submitted with a plant service report and/or title report to their office.

Marion County Tax Assessor noted that a potential additional tax liability may exist which may need to be paid before a subdivision would be approved. According to ORS 92.095, all delinquent taxes and interest as well as taxes which have become a lien during the tax year must be paid before the plat shall be recorded.

Public Works Land Development and Engineering Permits (LDEP) recommends the following conditions be included in any approval.

**Condition A** – *Prior to plat approval, complete all MCPW Engineering-approved infrastructure and frontage improvements that were issued for the property, as a whole, under Permits #555-19-00052-DA and #555-19-000282-PW.*

**Condition B** – *Prior to plat approval, record a stormwater Operation & Maintenance Agreement assigning joint responsibility between future lot owners for upkeep of the shared stormwater pond.*

Justification is that the stormwater pond would have been maintained by a single entity, but if approved will fall under the individual ownerships. MCPW Engineering will prepare the document; please contact John Rasmussen for details.

School District 24J commented that the property is served by Chavez Elementary School, Waldo Middle School, and McKay High School. These students are eligible for school transportation services.

Marion County Fire District No. 1 provided a list of fire code requirements the development will be required to meet.

City of Salem Public Works provided the following comments:

“The property is located in the Jan Ree Water District. The existing townhomes are served by a single public water meter. Pursuant to Salem Revised Code section 72.091, the service connection to a parcel of land shall not be used to supply an adjoining parcel of a different owner, or to supply a separate parcel of the same owner for which proper application for service has not been made.

The property is also located in the East Salem Service District. The existing townhomes are served by a common private sewer system. Subdividing the property will result in a private sewer main serving multiple parcels. City staff recommends that the Marion County Building Official review the proposal for conformance with plumbing code. If modifications are needed, the applicant is advised that new connections to the public sewer main require a permit from the City of Salem.”

Marion County Building Official commented that each building would need to have their own service line. Separate water service meters are not required per plumbing code; they are mainly for monitoring purposes. The water lines can come from a single tap to the city’s water main in the right of way. The existing water service line cannot cross multiple properties without a dedicated easement and has to be sized to supply all fixture counts for all buildings.

#### **ANALYSIS AND CONCLUSIONS:**

5. **Roads, Streets and Easement:** Standards for this section are listed in Chapter 16.33.160 through 16.33.340 of the Marion County Code (MCC) and include:

*16.33.160 ENGINEERING STANDARDS AND REQUIREMENTS. Engineering standards and requirements, including but not limited to streets, drainage, access, easements, and thoroughfare improvements, shall be those currently approved by the Marion County department of public works.*

*16.33.180 DEEDING OF RIGHT-OF-WAY ROADWAY. No person shall dedicate for public use, or deed to Marion County, a parcel of land which is used or proposed to be used as access without first obtaining the approval of the*

board or its designee and delivering the deed to the board for its endorsement. No dedication is effective unless the property is accepted by the Board or its designee and recorded with the Marion County clerk's office.

16.33.190 CONNECTIVITY. Applicants submitting preliminary development plans shall provide for local streets oriented to or connecting with existing or planned streets, existing or planned schools, parks, shopping areas, transit stops, and employment centers located within one-half mile of the development. Applicants shall also provide for extension of local streets to adjoining major undeveloped properties and eventual connection with the existing street system. Connections to existing or planned streets and undeveloped properties along the border of the parcel shall be provided at no greater than 600-foot intervals unless the planning director, or designee, determines that one or more of the following conditions exist:

- A. Physical or topographic conditions make a street or accessway connection impractical. Such conditions include, but are not limited to, freeways, railroads, steep slopes, wetlands or other bodies of water where a connection could not reasonably be provided; or
- B. Buildings or other existing development on adjacent lands physically preclude a connection now or in the future considering the potential for redevelopment.

16.33.200 DEAD-END STREETS. When it appears necessary to continue streets to an adjacent acreage, the streets shall be platted to the boundary or property line of the proposed subdivision without a turnaround. In all other cases, dead-end streets shall have a turnaround with a configuration approved by the Marion County department of public works.

16.33.220 RADIUS AT STREET INTERSECTIONS. The property line radius at street intersections shall be to Marion County department of public works' standards.

16.33.240 STREET GRADES. No street grade shall be in excess of 12 percent unless the commission or hearings officer finds that, because of topographic conditions, a steeper grade is necessary. The commission or hearings officer shall require a written statement from the director of public works indicating approval of any street grade that exceeds 12 percent.

16.33.260 DEDICATION OF RIGHT-OF-WAY. If land to be subdivided or partitioned will cause the termination of a roadway or borders a roadway right-of-way of less than standard width, the applicant shall dedicate sufficient land to provide for a cul-de-sac or to increase the half (or halves) of right-of-way bordering the subject parcel to one-half of the standard width. Unless otherwise specified for an individual street in this title, standard right-of-way widths are subject to the standards of the Marion County department of public works.

16.33.280 ADDITIONAL RIGHT-OF-WAY WIDTHS. Where topographical requirements necessitate either cuts or fills for the proper grading of the streets, additional right-of-way or slope easement may be required to accommodate the cut and fill.

16.33.290 PERFORMANCE STANDARDS. Whenever adequate assurances of performance are required as a condition of approval of any subdivision under this ordinance, the applicant shall provide one of the following:

- A. A surety bond executed by a surety company authorized to transact business in the State of Oregon, in an amount equal to 100 percent of the construction cost of the required improvements, as verified by the county.
- B. A verified deposit with a responsible escrow agent or trust company of cash or negotiable bonds in an amount equal to 100 percent of the construction costs of the required improvements, together with an agreement that the deposit may be disbursed only upon county approval. The agreement shall include a provision that the county shall allow release of the deposit in such amounts and at such times as a corresponding proportion of the

required improvements are completed to the satisfaction of the county engineer following an inspection by the county engineer or the engineer's authorized representative.

- C. An irrevocable letter of credit from one or more financial or lending institutions pledging that funds equal to 100 percent of the construction cost of all required improvements are available to the applicant and are guaranteed for payment for the improvements.

Regardless of the option chosen above, no building permits for any structures within the subdivision will be issued until all improvements have been completed by the applicant. Or, in the event the applicant fails to complete all improvements, the county may estimate the cost of completing any required improvement, call on the bond or deposit for the funds necessary to complete the improvement, and complete the improvement to the extent of the funds obtained upon call of the bond or deposit. If the amount obtained from the bond or deposit is insufficient to complete the improvement, the county may either hold the collected funds until additional funds are authorized for the improvement or expend the collected funds on a revised improvement or on a portion of the improvement as determined reasonable by the director of public works. Following final inspection, if the improvement is complete and the amount of the bond or deposit exceeds the actual cost to the county of completing the improvement, the remainder shall be released.

- D. **Maintenance Bonds.** The applicant shall provide a maintenance bond in a form approved by the office of county legal counsel equal to 40 percent of the construction cost of all required improvements. The applicant shall provide the bond within 30 days after final review of the required improvements. The bond shall remain in effect for one year after the completion of construction of all required improvements. The purpose of the bond is to guarantee applicant's obligation to maintain all required improvements for a period of one year after completion of construction of all required improvements. After the expiration of the one year period, any remaining balance on the bond shall be released. The bond shall include a provision stating that, in the event the county must take legal action to recover on this bond, and it prevails at trial or on appeal, the county shall be entitled to recover its reasonable attorney fees and its costs and disbursements. Nonpayment of the bond will not invalidate applicant's obligations under the bond.

16.33.300 **UTILITY EASEMENTS.** Utility easements meeting the approval to the standards of the affected utilities shall be provided to all newly created lots.

16.33.320 **STREET OR ROAD IMPROVEMENTS.** All street or road improvements including pavement, curbs, sidewalks, signage, and surface drainage shall be in accordance with the specifications and standards prescribed by the director of public works. Subdivision plats shall not have final approval until such time as the director of public works, or his/her designee, is satisfied that the street improvements will be completed in accordance with the specifications and standards set forth by the Marion County department of public works.

No building permits within a subdivision or partition shall be issued until the Director of public works, or his/her designee, approves that the improvements have been completed or, sufficient improvement agreements and financial guarantees have been recorded.

16.33.340 **PRIVATE STREETS.** In the event the subdivider or developer elects to provide private streets or thoroughfares, they shall be maintained by the homeowners association and a maintenance agreement shall be submitted to Marion County for review and approval prior to recording the final plat.

**In this instance, the property is under development and LDEP has not identified any needed right-of-way dedications or street frontage improvements. The proposal satisfies these standards.**

7. **Blocks and lots:** These standards are listed in MCC 16.33.360 through 16.33.440 and include:

16.33.360 **SUBDIVISION.** Block lengths and widths shall be determined after considering the following factors:

- A. *The distance and alignment of existing blocks and streets adjacent to or in the general vicinity of a proposed subdivision;*
- B. *Topography;*
- C. *Lot size; and*
- D. *Need for and direction of the flow of through and local traffic. Blocks shall not exceed 600 feet between street or road right-of-way lines unless the adjacent layout or special conditions justify greater length. Except where topographical or other physical features require otherwise, block widths shall not be less than 120 feet or greater than 400 feet.*

**16.33.380 MIDBLOCK PEDESTRIAN ACCESS.** *Where topographic or other conditions make necessary a block of unusual length, the commission may require midblock pedestrian walks with a right-of-way at least 10 feet in width which shall be hard surfaced through the block, and extending from street curb to street curb.*

**There are no blocks being created in this subdivision request.**

**16.33.400 LOT SIZE.** *All lots approved under this chapter shall have sufficient area to be consistent with the intent of the comprehensive plan and to provide adequate area for the intended structures and uses, all setbacks, access and spacing required for water supply and waste water disposal. Lots to be served by public or privately owned sewage collection and disposal system must meet the requirements and have approval of the Oregon State Department of Environmental Quality before being recorded or sold. State regulations, soil types, drainage, terrain, and location may be included as part of the criteria used by the state or county in determining appropriate lot sizes for lots using subsurface disposal of sewage. Lot size and dimensions shall be as prescribed in the corresponding zone.*

**The RM zone contains a minimum lot size of 6, 000 square feet, a minimum lot width of 40 feet, and a depth of 70 feet. In addition the maximum density is no more than one dwelling unit per 1,500 square feet of lot area. In this request the proposed lots range in size from 2,800 square feet to 3,500 square feet with lot widths ranging from 20 to 25 feet. Applicant is requesting an adjustment to the minimum lot size and width standards to accommodate the townhomes. In order to approve an adjustment the criteria in MCC 16.41.030 and include:**

- A. *The proposed development will not have a significant adverse impact upon adjacent existing or planned uses and development; and*
- B. *The adjustment will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and*
- C. *The adjustment is the minimum necessary to achieve the purpose of the adjustment and is the minimum necessary to permit development of the property for the proposed use; and*
- D. *The intent and purpose of the specific provision to be adjusted is clearly inapplicable under the circumstances; or the proposed development maintains the intent and purpose of the provision to be adjusted.*

**The City of Salem has adopted specific standards for lots to serve townhomes with a minimum lot size of 1,500 square feet and the minimum lot width of 20 feet. Applicant indicates that the lots in this proposal meet or exceed those standards. Since property is fully developed, allowing the townhomes to be placed on individual lots will have no significant adverse impact upon adjacent existing or on the health or safety of**

persons working or residing in the vicinity. The proposed adjustments are minimum needed in order for the townhomes to be placed on individual lots and still meet the standards adopted by the city.

Although the proposal exceeds or meets the minimum lot size and dimension standards required for the use the City of Salem, it was discovered the city requires a 5 foot property line setback. In addition, the Marion County code requires a ten foot separation between buildings for zero lot line dwelling. In the proposal the two buildings are only feet apart, they do not meet either the county or city standards.

Staff indicated that since an adjustment application was filed, the planning commission could consider an adjustment to reduce the required setback as part of this review. During deliberation the planning commission determined that a reduction in the setback between the buildings did not satisfy all of the criteria and denied the request.

16.33.420 CURVED FRONT LOT LINES. When front lot lines are on a curve or arc, the front line distance shall be indicated on the final plat by bearing and chord distance.

16.33.440 LOT LINE. Side lot lines shall be as close to right angles to the front street line as practicable. Unless otherwise approved, rear lot lines shall be not less than one-half the width of the front lot lines.

**The proposal meets these requirements.**

8. **Sewage, water, and utilities:** These standards are listed in MCC 16.33.460 through 16.33.560 and include:

16.33.460 SEWAGE DISPOSAL. All lots or parcels shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet the requirements of the Department of Environmental Quality (DEQ) and the Marion County building inspection division. Those subsurface sewage systems that are used by a community, sanitary district, industry, or incorporated area must be authorized by the Department of Environmental Quality (DEQ) via the Marion County building inspection division. Installation and maintenance shall be in accordance with the Department of Environmental Quality's regulations and requirements. The commission, director, or hearings officer may require connection to an existing sewage collection and treatment system regardless of lot suitability for subsurface disposal if the commission, director or hearings officer deems it necessary and provided the connection is available.

**The lots in the subdivision will be served by the City of Salem sewage disposal system.**

16.33.480 WATER SUPPLY. All lots or parcels shall be served by an authorized public or private water supply system.

A. *Public or Private Systems*. Public or private systems shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality. In addition, such systems must meet the quantity, storage, and distribution system requirements of the State Health Division and the operator of the water system.

16.33.500 SEWER AND WATER LINES AND CONNECTIONS. All proposed subdivisions within established or proposed urbanizing areas of municipalities, service districts and other incorporated communities, where, upon concurrence from the municipality, district, or incorporated community that public sewer and water services are imminent, shall be developed with water and sewer lines that meet the specifications of the director of the Marion County department of public works.

16.33.520 UNDERGROUND UTILITIES. All permanent utility service to lots in a subdivision within an established urban growth boundary shall be provided from underground facilities and no overhead utility service to a subdivision shall be permitted. The subdivider shall be responsible for complying with the requirements of this section and shall:

- A. *Obtain a permit from the director of public works for the placement of all underground utilities.*
- B. *Make all necessary arrangements with utility companies and other persons or corporations affected by the installation of such underground lines and facilities in accordance with the rules and regulations of the public utility commissioner of the State of Oregon.*

**The City of Salem provides water to the lots.**

*16.33.540 UNDERGROUND UTILITIES EASEMENTS. Underground easements for utilities and overhead utility facilities shall be provided by the subdivider and set forth on the final plat. Each easement shall be a minimum of 10 feet in width except on the perimeter of the subdivision where the minimum width shall be five feet, and when possible, such easement shall be centered on or bordering a lot line. The subdivider shall provide five-foot utility easements on both sides of all road or street rights-of-way of 60 feet or less.*

**All utilities to the property meet this standard.**

*16.33.560 STREET LIGHTING. Proposed subdivisions located within established street lighting district boundaries shall submit street lighting plans from the appropriate power company to the director of public works for approval. All provisions for wiring for underground installation shall be completed before the final street improvement is made.*

**No streets are being created, this standard does not apply.**

**9. Access standards:** These standards are listed in MCC 16.33.680 and state: *All lots must have a minimum 20 feet of frontage on a public right-of-way or, when an access easement is proposed to serve one or more lots in any partitioning, the location and improvement of the roadway access shall conform to the following standards which are necessary for adequate access for emergency vehicles. Evidence that the access has been improved to these standards and a driveway permit has been obtained shall be provided prior to the issuance of building permits on the parcels served by the access easement. The easement shall meet the following standards:*

- A. *Have a minimum easement width of 25 feet;*
- B. *Have a maximum grade of 12 percent;*
- C. *Be improved with a paved surface with a minimum width of 20 feet;*
- D. *Provide adequate sight-distance at intersections with public roadways;*
- E. *Be provided with a road name sign at the public roadway as identification for emergency vehicles in accordance with Chapter 11.55 MCC, Naming and Addressing Roads/Property.*

**All of the proposed lots have frontage on Lancaster Drive and they share a common driveway that was approved when the permits for the townhomes were obtained. This standard is met.**

10. Based upon a review of the subdivision and zoning provisions of the Marion County Zone Code and comments received from affected agencies and testimony given at the public hearing, the Planning Commission voted 5 – 2 to deny the request.

SIGNED AND FINALIZED THIS   22   day of JUNE, 2020

Joe Fennimore  
Planning Commission Secretary