

Before the Tillamook County Board of Commissioners

Application for the Second Addition to Avalon Heights By Avalon Heights LLC

**County Case File Nos. 851-21-000095-PLNG & 851-21-000202-PLNG
Applicant's Appeal of the Planning Commission's Decision (mailed July 14, 2021)
(July 22, 2021)**

Introduction

Mr. Bill Hughes submitted, on behalf of Avalon Heights LLC, application for a preliminary plat for a 58-lot single-family dwelling subdivision of approximately 20 acres identified as Tax Lot 200 in Section 30DC, Township 1 South, Range 10 West, WM. Included with the preliminary plat application was a Geologic Hazard Report as required by Tillamook County Land Use Ordinance Section 4.130 Development Requirements for Geologic Hazard Areas. The subject property is zoned Residential Oceanside Zone with minimum lot sizes of 7,500 square feet and increasing that areal requirement for lots on steep slopes. A preliminary plat is a document package that demonstrates that a development project satisfies the applicable development standards and criteria of a local government, in this case Tillamook County. It is not intended to present final construction plans, but merely that a project is feasible and consistent with local standards.

The Planning Commission held its first evidentiary hearing June 10 and its second hearing July 8, 2021. At the end of the second hearing, the Planning Commission voted to deny the applications, mailing notice of that decision on July 14, 2021. This statement, along with the signed County form and fee, constitute the Applicant's appeal of this decision.

TCLUO 10.110(4) appears to govern the content of this appeal, requesting three items of information. We describe above the decision on appeal and its date. As the applicant in the captioned matter, Avalon Heights LLC possesses standing to make this appeal. The decision erred in at least the following regards:

1. It neither included nor attached findings of fact and conclusions of law for its action (contrary to mandates set forth at ORS 197.195(4), ORS 215.416(9), and TCLUO 10.080(1)(d)(ii)(1)&(4));
2. It failed to allow the Applicant to offer an amendment or to propose conditions of approval that would make the application consistent with the comprehensive plan and applicable land use regulations (contrary to the mandate set forth at 197.522(3)).
3. It appears to be based on:
 - a. criteria that are not clear and objective (contrary to the mandate set forth at 197.307(4)); and
 - b. a mandate that the Applicant provide a geotechnical analysis, which is not a required component for a preliminary plat application.

Analysis

For the initial Planning Commission hearing, staff from the Department of Community Development issued a staff report June 3rd summarizing the property, the subject property zoning and development criteria of the county zoning ordinance, the preliminary plat design and the fact that the various components of the application package met those standards and criteria. Staff also cited TCLUO 4.130, which spells out the requirements for a geologic hazard study and a finding describing the scope and breadth of submitted report. Based on these and other findings, staff also included conditions of approval, which were primarily procedural in nature, implying that the application met the county land use and subdivision ordinances standards and criteria and warranted approval. The applicant has no objections to these conditions.

On the evening of the first hearing, the Public Works Director delivered his written comments on the application focusing primarily on the proposed road layout, the conditions of the two existing off-site roads, and the proposed stormwater design. The Planning Commission continued the hearing until July 8th. Mr. Laity met with the applicant and his consulting civil engineer the following week on-site to review the existing conditions on the property and discuss revisions to the design. This resulted in agreements from the applicant to increase the corner radii on the proposed private road; improvements to the off-site Highland Drive at the sole expense of the applicant; and a proportional contribution to the improvement to the off-site Grand Avenue. There were also agreements to revise the stormwater conveyance facility to reduce the velocity of runoff and reduce the volume of stormwater upstream of a proposed detention pond which would also enable that pond to be reduced in order increase the potential setback of future dwellings from the pond's edge. Additionally, the proposed shared driveway in the southeast former of the site was also increased to comply with county access standards for the number of properties served.

Geological Hazard Study versus Geotechnical Analysis

Land Use Ordinance Section 4.130(8) spells out the six areas of focus that a geological hazard study should address. As such, it is a reconnaissance level investigation intended to analyze the feasibility of development with recommendations for more detailed investigations and analyses as necessary and appropriate to guide construction design plans and specifications. It informs the applicant, regulators, and decision-makers who work with preliminary plans that a project can move forward provided certain precautions are implemented and maintained.

Environmental Management Systems Inc. prepared just such a plan, which was submitted as a component of the subject preliminary plat application. It concluded that there was no evidence observed that there were no site stability issues with the caveat "proper design and construction" would be required to maintain stability on the steepest slopes. The report recommended that geotechnical investigations and a geotechnical report be prepared to:

provide information needed to further evaluate grading plans, lot and street layout, slope stability, storm water management and site-specific design

standards for dwelling design and construction. A future scope of work will include review of subsurface data and reports from the Capes Subdivision, nearby water tanks, as well as [a] geologic hole, monitoring well reports from the Oregon Department of Water Resources.

It is my (EMS) opinion that a 67-lot subdivision (the concept design three years ago when the study was prepared) can safely be developed. Additional recommendations and the site-specific standards will be provided in the geotechnical report that incorporates the recommendations summarized above and will further address relevant geologic hazards, storm water and vegetation.

A geotechnical report is a much more in-depth and detailed investigation and analysis intended to support and guide design and construction plans after the entitlement have been approved. In this case, it would be included with all applications for grading (both cuts and fills) and the storm water management system for the development site, and in most cases supplemental geotechnical reports would support individual building permit applications, and would be reviewed by the Building Official and Public Works Director prior to issuing building permits or approving private facilities. The geotechnical investigations would include a detailed topographic map of the site to be used to refine the grading plan. Subsurface explorations and testing should be completed characterizing soil, bedrock and groundwater conditions across the site. This information would further evaluate seismic design criteria and slope stability, among other features.

In essence, a geohazards report supports land use decisions; geotechnical reports support design and construction. The Applicant's engineer explained the difference of the focus and intent to the two reports, but it appears that the Planning Commission could not embrace the differences. Their decision, as presented above, appeared to be based on the need to evaluate the more detailed study because of fear that the county would not have additional opportunities to review the project prior to the applicant performing any grading work. Nothing could be farther from the truth. No site work can be legally performed until the county, the two utility districts, and the fire district have reviewed and approved the various engineered construction plans. Further, the Planning Commission does not have the authority to arbitrarily add items outside the land use and subdivision ordinances for their application review. Additionally, nothing in the record, either from County or interested parties, identified any deficiencies, inadequacies, or errors in the geohazard report that would invalidate its conclusions or compliance with the land use code.

State Mandates to Permit Housing

It appears that, since the County's most recent periodic review, the State augmented – in response to the housing crisis – its mandates on Oregon counties to allow production of more housing. *See, e.g.,* ORS 197.307(4) (“a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing . . .”). Reviewing the record of this matter, it appears that the Planning Commission applied many criteria that are not clear and objective, thus failing to meet this mandate.

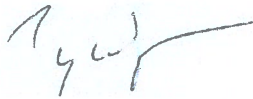
Request

For the above-stated reasons, the Applicant respectfully asks the Board of Commissioners to:

1. reverse the Planning Commission's decision to deny the preliminary plat and geohazard report for the Second Addition to Avalon Heights; and
2. based on the findings and conclusions of the June 3, 2021 Department of Community Development Staff report and the findings and conclusions of the July 1, 2021 report from Mr. Chris Laity, PE, Director of Public Works, approve the application together with the recommended conditions of approval presented in both reports.

DATED this 22nd day of July, 2021.

DUNN CARNEY, LLP



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