

**MILLERSBURG PLANNING COMMISSION  
FEBRUARY 14, 2017**

PRESENT: Planning Commission Chairman Ed Perlenfein, Vice-Chairman Dan Nixon, Members Scott Stimpson, Ryan Penning, Steve Vogler, Dennis Gunner, Connie Lepin, City Manager Steven Hasson, City Planner Don Driscoll, City Recorder Barbara Castillo

The Millersburg Planning Commission was called to order at 6 p.m. by Chairman Ed Perlenfein.

**MINUTES OF JANUARY 10, 2017**

*Dan Nixon moved, seconded by Dennis Gunner to approve the minutes of January 10, 2017.* The motion passed unanimously.

**DAYTON LAND PARTITION**

Andrew Dayton, owner of property located on Assessor Map 10S-3W-21B Tax Lot 1202 on 54<sup>th</sup> Avenue has requested to divide an existing .48 acre property into two Urban Conversion Parcels that exceed the 10,000 square foot minimum. The action requested is approval of a Partition Tentative Plan in conformance with Section 2.320 of the Millersburg Land Use Development Code.

The Oregon Revised Statutes (ORS), Chapter 92, the Millersburg Comprehensive Plan and the Millersburg Land Use Development Code provide the applicable criteria for evaluation of the requested action.

Don Driscoll gave the Staff Report. The applicant proposes to divide the existing 0.48-acre property into two parcels. Parcel 1 will contain 0.25 acres (10,957 sf) together with a 25-foot wide utility and access easement. Parcel 2 will contain 0.23 acres (10,043 sf) and will access from the easement. The parcels abut the west boundary of North Park Estates Subdivision where 54<sup>th</sup> Avenue presently terminates. Municipal water is available to the property and will be extended past the subject property upon completion of the "Sweetwater Estates 3<sup>rd</sup> Addition, Phase 2" subdivision. Sewer laterals for the parcels created by this application will connect to the existing sewer main located in 54<sup>th</sup> Avenue.

In the Conditions for approval of the request (3) it states "Code Section 5.122(5) (e) permits the Planning Commission to approve private access ways that do not meet all of the requirements of a public street. A 25-foot wide private access and utility easement shall be provided from 54<sup>th</sup> Avenue to serve both Parcels 1 and 2. Maintenance of the roadway and the water and sewer lines require a Deed Covenant specifying the applicable maintenance responsibilities.

Dennis Gunner said that his Code Section 5.122(5) (e) says something different than what Don Driscoll quoted from. It was discovered that Driscoll's version of the Land Use Development Code is slightly different in places from the rest of the Planning Commissions.

In Section 5.122 (5)(a) it states "Every property shall abut a street other than an alley, for a minimum width of 25 feet, except where the Planning Commission has approved an easement for access or where the easement existed prior to the adoption of this Code.

Dennis Gunner said this request for the access easement doesn't meet what our Code says about every property shall abut a street for a minimum width of 25 feet.

Driscoll said that is true but the Code also allows for an exception to this by allowing an access easement through Parcel 1 to get to Parcel 2. Gunner said that if you removed the area that would be used for the access easement through Parcel 1, then Parcel 1 would not meet the 10,000 sf requirement for a minimum lot size. Driscoll said you would not take the access easement area away from Parcel 1 and therefore, Parcel 1 would meet the minimum lot size. Driscoll said allowing the access easement is a discretionary decision for the Planning Commission to make and has been utilized in several cases in Millersburg before.

If you call the access easement (driveway) a right of way, it becomes City property making it a public street and it makes it the city's responsibility. It is a driveway serving both parcels.

City Manager Steven Hasson told the Planning Commission that you can't look at what is going on to the adjacent property because you cannot prejudge what land use request might come in at a later date.

Jason Cota of K&D Engineering and surveyor for the applicant said the parcels will share an access easement. His understanding is the access easement can be approved with Planning Commission approval.

Don Driscoll asked Cota if this was an unusual situation in other jurisdictions. Cota said that other jurisdictions use access easements in land partitions.

Connie Lepin said they have to look at what is best for the city and not the developer.

Ed Perlenfein said you've got to be flexible to some degree. It is what gives us the wiggle room to make something happen.

Steven Hasson said a discretionary decision is legal and advised the Planning Commission to set aside the argument and focus on what you are going to do.

Connie Lepin asked Don Driscoll about the last sentence of Number 9 in the proposed Conditions of Approval where it states, "the drainage shall be approved by the City Engineer." Lepin said she spoke with City Engineer Janelle Booth and was told she only looks at the drainage for subdivisions. Barbara Castillo agreed with this.

In Don Driscoll's Staff Report under Staff Review Item 12 Driscoll stated, "The proposed Partition is consistent with the Millersburg Comprehensive Plan and Millersburg Land Use Development Code subject to approval by the Millersburg Planning Commission." Driscoll also stated in the Staff Report that Planning Commission approval is contingent upon compliance with the Conditions of Approval, unless there is written factual data presented in opposition at the Planning Commission Review that would alter the findings for approval of the request. Although there were no written Findings for Denial of the Request in the Staff Report, there were 14 Findings for approval of the Request in the Staff Report. There were also 13 Conditions for Approval of the Request in the Staff Report.

***Steve Vogler moved, seconded by Ryan Penning to approve the Dayton Partition Tentative Plan Request contingent upon compliance with the Findings and Conditions of Approval contained in the Staff Report.*** The motion failed with the vote 3 in favor and 4 against. In favor of the motion were Ed Perlenfein, Steve Vogler and Ryan Penning. Against the motion were Scott Stimpson, Dan Nixon, Dennis Gunner and Connie Lepin.

The applicant can appeal this decision to the Millersburg City Council.

Steven Hasson made an observation and told the Planning Commission, "There is push and pull that needs to be considered. You as the Planning Commission are here to represent the citizens, but you have to take into account the rights of the property owner and the enjoyment of their property.

Connie Lepin said she voted no because what I read was different from what was there in the Findings of Approval.

Steven Hasson said a lot of things are left wide open to interpretation. Our Land Use Development Code needs more clarity and these changes in the future will be brought back as text amendments. When asked how he would have voted, Hasson said he would have voted yes. It is important to maximize the use of your property. With only one house on the .48 acre property, the back half would most likely be a mess. If two houses were built, the city would get the revenue from the tax base and sewer and water connections from two houses instead of from just one.

#### **LOVE'S TRAVEL CENTER UPDATE**

Steven Hasson said that although ODOT has appealed the Planning Commission's decision to approve the Love's Travel Center to the Millersburg City Council, he believes it is a go. Loves, ODOT and the City have been working out a development agreement that will satisfy ODOT's traffic concerns. As soon as this agreement is in place, ODOT will rescind their appeal process.

The meeting adjourned at 7:05 p.m.

Respectfully submitted,

Barbara Castillo  
City Recorder