

CITY OF OREGON CITY

Community Development Department, 320 Warner Milne Road,
P.O. Box 3040, Oregon City, OR 97045, (503) 657-0891
www.ci.oregon-city.or.us

APPEAL OF A LAND USE DECISION

FILE # AP 26-0001 (of File #) GLUA 19-0030 DATE: 3/4/2020 ⁰⁴⁵

NAME: MARK DANE PLANNING TELEPHONE #: 503-332-7167

ADDRESS: 12725 SW GLENHAVEN ST, PORTLAND OR 97225

ADDRESS OR PROPERTY DESCRIPTION (T/R/S) OF SUBJECT PROPERTY:
13735 LAZY CREEK LANE

SUBJECT OF APPEAL: NOTICE OF DECISION DATE: 2/20/20 For File #:
GLUA-19-00030, SUB-19-00003

The undersigned hereby appeal(s) the decision of the COMMUNITY DEVELOPMENT DIRECTOR

concerning the subject case. The decision to approve deny N/A the application was made at the meeting held on STAFF APPROVAL 2/20/20.

REASONS FOR APPEAL: Please include a statement identifying which approval criteria are violated by the decision and an explanation of how those criteria are violated, or stating how the decision is otherwise in violation of applicable law. Please see Chapter 17.50 of Oregon City Municipal Code for Administration & Procedures concerning Appeals.

PLEASE SEE ATTACHED WORD DOCUMENT.

- EMAIL: markdaneplanning@gmail.com.

FILING FEE PAID: \$250.00 DATE PAID: 3/4/2020 RECEIPT NO.: INV 00007820

Property Owner Signature
PROPOSITION TWO LLC

Address
11515 SE WESTGATE WAY
HAPPY VALLEY, OR 97086
Address

Property Owner Signature

****SIGNATURES REQUIRED IF APPLICABLE****

3-4-2020
[Signature] OWNER REPRESENTATIVE
Signature Address

Contract Purchaser Lessee Prospective Purchaser

[Signature] 3/4/20
APPLICANT - PROJECT PLANNER.

The Staff Report and Notice of decision with Conditions of approval for GLUA-19-000300 were mailed out February 20th. The deadline for any appeal is March 4th. The applicant is filing an appeal notice with intent to appeal the decision., However It is hoped that the outstanding issue can be resolved to allow the applicant to withdraw the appeal before the hearing.

The decision includes the following conditions:

24. *For the necessary offsite improvements of Lazy Creek Lane to the east of the proposed development, the applicant may construct a stormwater swale or pay a fee-in-lieu to meet stormwater treatment and detention standards, in accordance with the current Public Works Stormwater and Grading Design Standards. The fee shall be based on the applicant's engineering cost estimate for the City to construct an equivalent stormwater management facility or facilities. Final approval for the fee-in-lieu amount shall be approved by the City Engineer. (DS)*
25. *The applicant shall design a conveyance system to safely convey stormwater within the Lazy Creek Lane right-of-way from the proposed development to the existing stream corridor located just east of the residence at 13835 Lazy Creek Lane. The applicant has the option to design a piped system or a ditch system to safely convey stormwater to the stream corridor. (DS)*
26. *The developer shall provide updated engineered drainage plan(s), drainage report(s), and design flow calculation report(s) stamped and signed by a licensed engineer addressing all items from the Section 9 of the Public Works Stormwater and Grading Design Standards. (DS)*
27. *The engineered drainage plans and drainage report shall comply with the current version of the Public Works Stormwater and Grading Design Standards. (DS)*

It also includes the following findings:

13.12.080 - Submittal requirements.

- A. *Applications subject to stormwater conveyance, water quality, and/or flow control requirements of this chapter shall prepare engineered drainage plans, drainage reports, and design flow calculation reports in compliance with the submittal requirements of the Public Works Stormwater and Grading Design Standards.*
- B. *Each project site, which may be composed of one or more contiguous parcels of land, shall have a separate valid city approved plan and report before proceeding with construction.*

Finding: Complies as Conditioned. *The developer shall provide updated engineered drainage plan(s), drainage report(s), and design flow calculation report(s) stamped and signed by a licensed engineer addressing all items from the Section 9 of the Public Works Stormwater and Grading Design Standards. The engineered drainage plans and drainage report shall comply with the current version of the Public Works Stormwater and Grading Design Standards. Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.*

13.12.090 - Approval criteria for engineered drainage plans and drainage report.

An engineered drainage plan and/or drainage report shall be approved only upon making the following findings:

- A. *The plan and report demonstrate how the proposed development and stormwater facilities will accomplish the purpose statements of this chapter.*
- B. *The plan and report meet the requirements of the Public Works Stormwater and Grading Design Standards adopted by resolution under OCMC 13.12.020.*

- C. *The storm drainage design within the proposed development includes provisions to adequately control runoff from all public and private streets and roof, footing, and area drains and ensures future extension of the current drainage system.*
- D. *Streambank erosion protection is provided where stormwater, directly or indirectly, discharges to open channels or streams.*
- E. *Specific operation and maintenance measures are proposed that ensure that the proposed stormwater quantity control facilities will be properly operated and maintained.*

Finding: Complies as Conditioned. For the proposed onsite improvements, the applicant has proposed to meet water quality and detention standards through a combination of private onsite stormwater planters and/or rain gardens, and a vegetated swale located within the right-of-way on the south side of Lazy Creek Lane. The applicant has provided a conceptual design in general accordance with the Public Works Stormwater and Grading Design Standards. The storm drainage design within the proposed development shall include provisions to adequately control runoff from all public and private streets and roof, footing, and area drains and ensures future extension of the current drainage system. For the necessary offsite improvements, the applicant has proposed a stormwater swale along the north side of Lazy Creek Lane to meet stormwater treatment and detention standards. The applicant shall provide stormwater treatment and detention for all proposed onsite and offsite improvements, in accordance with the current Public Works Stormwater and Grading Design Standards.

For the necessary offsite improvements of Lazy Creek Lane to the east of the proposed development, the applicant may construct a stormwater swale or pay a fee-in-lieu to meet stormwater treatment and detention standards, in accordance with the current Public Works Stormwater and Grading Design Standards. It is possible that installation of the swale could impact adjacent property redevelopment. OCMC 16.12.010 urges the City Engineer to take the remaining development potential of adjacent properties when reviewing utility plans. As a result, the City would prefer payment of a fee-in-lieu in this case. The fee shall be based on the applicant's engineering cost estimate for the City to construct an equivalent stormwater management facility or facilities. Final approval for the fee-in-lieu amount shall be approved by the City Engineer. The applicant's development proposal triggers the General Thresholds (1.2.1) of the current Public Works Stormwater and Grading Design Standards, as it results in greater than 5,000 square feet of new or replaced impervious surface. The Stormwater and Grading Design Standards are applicable to the entire development, including the necessary offsite improvements. The provision of stormwater treatment along this widened and resurfaced area east is required to due to stormwater degradation that may result from a significant increase in traffic levels that is directly attributable to this development.

The applicant shall design a conveyance system to safely convey stormwater within the Lazy Creek Lane right-of-way from the proposed development to the existing stream corridor located just east of the residence at 13835 Lazy Creek Lane. The applicant has the option to design a piped system or a ditch system to safely convey stormwater to the stream corridor. Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.

At a meeting several weeks earlier the applicant met with the project engineer, and the head of engineering to discuss the issue of SDCs reimbursement for the offsite water, and offsite street. Other issue discussed included the possibility of reducing the 10-ft PUE along the lot frontage, as well as the storm drainage options available to treat the onsite and offsite improvements. Staff stated that the PUE could not be reduced. This had a significant impact the applicant's intent to design individual facilities for each lot prior to it entering the public

RECORDING REQUESTED BY:
Fidelity National Title
Company of Oregon

12809 SE 93rd Avenue
Clackamas, OR 97015

GRANTOR'S NAME:
Rita C. Wisher

GRANTEE'S NAME:
Proposition Two, LLC, an Oregon limited liability company

AFTER RECORDING RETURN TO:
Order No.: 45141911414-MH
Proposition Two, LLC, an Oregon limited liability company
11515 SE Westgate Way
Happy Valley, OR 97086

SEND TAX STATEMENTS TO:
Proposition Two, LLC, an Oregon limited liability company
11515 SE Westgate Way
Happy Valley, OR 97086

Clackamas County Official Records **2020-006840**
Sherry Hall, County Clerk
01/29/2020 02:56:02 PM
D-D Cnt=1 Stn=76 CONNIE
\$10.00 \$16.00 \$10.00 \$62.00 **\$98.00**

45141911414-07
Fidelity National Title of Oregon

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STATUTORY WARRANTY DEED

Rita C. Wisher, Grantor, conveys and warrants to **Proposition Two, LLC, an Oregon limited liability company**, Grantee,

the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Clackamas, State of Oregon:

A tract of land in Samuel N. Vance and wife Donation Land Claim No. 51 in Section 8, Township 3 South, Range 2 East of the Willamette Meridian, Clackamas County, Oregon, being more particularly described as follows:

BEGINNING at the most Southerly corner of that tract conveyed to Frank C. Brown and Elsie D. Brown by deed recorded August 25, 1948 in Book 410, Page 547, Deed Records, said point being on the East line of the Samuel N. Vance Donation Land Claim, a distance of 33.27 chains from the most Southerly corner thereof; thence North 46° 49' 15" West along the Southwesterly line of said Brown tract, 370.18 feet to a point in the Northeasterly line of Lot A, in the plat of GAFFNEY LANE ACRES NO. 1491; thence North 40° 38' 45" East parallel with the centerline of County Road No. 526, a distance of 396.52 feet to a point in the Northeasterly line of said Brown tract; thence South 46° 13' 30" East along said Northeasterly line 194.94 feet to a stone called in Book 410, Page 547, Deed Records; thence continuing South 46° 13' 30" East, 0.78 feet to a point in the East line of the Samuel N. Vance Claim, being the most Easterly corner of said Brown tract; thence South 17° 12' 00" West along the Samuel N. Vance Claim line, 438.40 feet to the point of beginning.

EXCEPTING the Northeasterly 100 feet of the Southwesterly 125 feet of the Northwesterly 160 feet thereof.

TOGETHER WITH a non-exclusive easement for roadway purposes described as follows:

BEGINNING at a 5/8-inch iron rod set in the northerly line of Lot A in the plat of GAFFNEY LANE ACRES NO. 1491 which bears North 46° 49' 15" West 370.18 feet from a 5/8-inch iron rod at the intersection of the Northeasterly line of Lot A in the plat of GAFFNEY LANE ACRES NO. 1491 with the East line of Samuel N. Vance Donation Land Claim No. 51; thence North 46° 49' 15" West, 799.06 feet to a 5/8-inch iron rod which is in the Northeast corner of the above mentioned Lot A; thence North 40° 38' 45" East along the Southerly right-of-way of County Road No. 52, 25.02 feet to a point; thence South 46° 49' 15" East parallel with the Northeast line of Lot A, 799.05 feet to a point in the Northerly line of the tract conveyed to Roger Nichols and wife by Elsie D. Brown; thence South 40° 38' 45" West 25.02 feet to the point of beginning.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS SIX HUNDRED NINETY-FIVE THOUSAND AND NO/100 DOLLARS (**\$695,000.00**). (See ORS 93.030).

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING

STATUTORY WARRANTY DEED

(continued)

THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: January 28, 2020

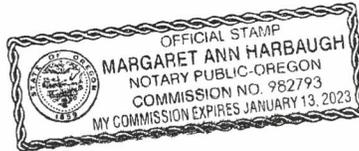
Rita C. Wisler
Rita C. Wisler

State of Oregon
County of Clackamas

This instrument was acknowledged before me on 1/28/2020 by Rita C. Wisler.

M. Harbaugh
Notary Public - State of Oregon

My Commission Expires: 1/13/23



system. Secondly there was a discussion about the facility in Lazy Creek Lane to handle the treatment, detention, and conveyance of storm water for both the site, and the offsite storm drainage.

In their findings engineering staff state that:

*The engineered drainage plans and drainage report shall comply with the current version of the Public Works Stormwater and Grading Design Standards. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.***

In their findings they state that:

private onsite stormwater planters and/or rain gardens, and a vegetated swale located within the right-of-way on the south side of Lazy Creek Lane.

Also that:

For the necessary offsite improvements, the applicant has proposed a stormwater swale along the north side of Lazy Creek Lane to meet stormwater treatment and detention standards.

This is not correct. In the plans submitted by the civil engineer the swale on the south side of Lazy Creek was intended to handle ½ of that portion of Lazy Creek fronting the property through a simple surface treatment. All water on the north side of Lazy Creek, the internal public street, and storm water from the lots is to be treated and detained on the system to be built on the north side of Lazy Creek Lane. The intent being to build a single large system to handle all storm water treatment / detention from the site in a single facility. This was shown on the preliminary plans submitted by the Project Engineer, and in the ensuing conversations.

Given that staff is requiring that the offsite street be treated why would the applicant build two storm drainage facilities given their cost, and area when one location could accommodate both. The applicant agreed to build the offsite street and treat same said street on the basis it could use the same facility for treatment, detention, and conveyance.

This design is not reflected in any of the conditions or the findings provided by staff. Engineering staff had stated in an earlier meeting that the storm design would be discussed and conditioned in the decision. While that is true of the offsite storm system, staff seem to have misplaced the discussion and conditions regarding the onsite storm drainage system.

The applicant had stated that he was deferring the finish of the design to his civil engineer, and staff. However, it appears that staff have set up a meeting to discuss the storm system one day after the appeal period closes. While I am sure this is simply a coincidence it is certainly unusual given the significant importance of the issue. It is for these reasons that the applicant is submitting an appeal.

Sincerely



Mark Dane

Cc: Tom Sisul , Bryant Booth

INVOICE (INV-00007820) FOR CITY OF OREGON CITY

BILLING CONTACT
Rita Wisner

Mark Dane
Mark Dane Planning
12725 SW Glenhaven ST
Portland , OR 97225



INVOICE NUMBER	INVOICE DATE	INVOICE DUE DATE	INVOICE STATUS	INVOICE DESCRIPTION
INV-00007820	03/04/2020	03/14/2020	Paid In Full	NONE

REFERENCE NUMBER	FEE NAME	TOTAL
AP-20-00001	Appeal - Administrative	\$250.00
13735 Lazy Creek Ln Oregon City, OR 97045		SUB TOTAL \$250.00

REMITTANCE INFORMATION
City of Oregon City 625 Center Street Oregon City, Oregon 97045-0304 503-657-0891 City phone 503-657-3339 Fax

TOTAL **\$250.00**