

**Wilsonville City Hall
29799 SW Town Center Loop East
Wilsonville, Oregon**

Approved
June 24, 2019

**Development Review Board – Panel B
Minutes–May 30, 2019 6:30 PM**

I. Call to Order

Chair Richard Martens called the meeting to order at 6:31 p.m.

II. Chair's Remarks

The Conduct of Hearing and Statement of Public Notice were read into the record.

III. Roll Call

Present for roll call were: Richard Martens, Shawn O'Neil, Tracy Meyer, and Ellie Schroeder.
Samy Nada was absent.

Staff present: Daniel Pauly and Charles Tso

IV. Citizens' Input This is an opportunity for visitors to address the Development Review Board on items not on the agenda. There were no comments.

V. Consent Agenda:

A. Approval of minutes of February 25, 2019 DRB Panel B meeting

Shawn O'Neil moved to approve the February 25, 2019 DRB Panel B meeting minutes as presented. Ellie Schroeder seconded the motion, which passed 3 to 0 to 1 with Richard Martens abstaining.

VI. Public Hearing:

A. Resolution No. 365. Boeckman Creek Primary Temporary Use Permit: Keith Liden, Bainbridge – Representative for West Linn-Wilsonville School District – Owner/Applicant. The applicant is requesting approval of a Five-Year Temporary Use Permit for temporary placement of a modular classroom building at Boeckman Creek Primary School. The site is located at 6700 SW Wilsonville Road on Tax Lot 100 of Section 13, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon. Staff: Charles Tso

Case Files: DB19-0018 Five-Year Temporary Use Permit

Chair Martens called the public hearing to order at 6:35 p.m. and read the conduct of hearing format into the record. Chair Martens and Ellie Schroeder declared for the record that they had visited the site. Chair Martens responded no.

Did you form any conclusions about the application, either pro or con, from your site visit?
Chair Martens responded no.

Ellie Schroeder declared that she had formed conclusions about the application from her site visit and confirmed she was able to make an objective decision.

No Board member participation was challenged by any member of the audience.

The Board discussed the question in the Chair's script about forming conclusions about an application from a site visit, and how the phrasing seemed to have changed from prior scripts, which resulted in some confusion regarding how Board members would respond to the question.

Dan Pauly, Planning Manager, noted the language asked if any conclusions had been formed from a site visit, not a final decision. Historically, Board member responses had always been "yes" to the visit, but "no" to drawing any conclusions as that demonstrated the Board member had no bias. He agreed to talk with City Attorney Barbara Jacobson about the script language.

Charles Tso, Associate Planner, announced that the criteria applicable to the application were stated on Pages 1 and 2 of the Staff report, which was entered into the record. Copies of the report were made available to the side of the room.

Mr. Tso presented the Staff report via PowerPoint, noting the location of the proposed modular classroom building on the site and highlighting previous temporary use approvals with these additional comments:

- The modular building was unlikely to be seen from any public street due to the large trees on site, and its location near the main classroom building would help integrate the new building with the existing campus.
- Two previous temporary use permits had been approved for the school district, and now the district was requesting a five-year temporary use permit for one temporary modular building that would contain four classrooms and three restrooms.
 - The building had a fairly well-designed exterior, as illustrated on the elevations provided by the Applicant. Unlike a typical temporary classroom building, the architecture had the appearance of a more permanent building. He believed the school district intended to keep and use the building at other school locations in the future, once this location had a permanent building with more capacity.
- Because the building site was the same as the previous temporary use buildings, there were already paved sidewalks that provided direct access to the parking lot and main building, which the proposed temporary classroom building would also utilize ~~the same~~.
 - Boeckman Creek Primary School and Wilsonville High School currently shared 201 parking spaces, which were deemed to be sufficient when the school was originally approved with a total enrollment of up to 574 students. Last year, the school district conducted an analysis and concluded that the optimal enrollment level was 550, which

was the current enrollment. The temporary classroom building would not increase demand for additional parking spaces.

- An increase in student enrollment would come with additional residential developments, which would put more demand on school capacity, so with or without the temporary building, the school would have more students.
- Staff recommended approval of the request.

Daniel Pauly, Planning Manager, noted that no school district representative was present. He understood that previously, the Board believed the applicant's presence was necessary to make a decision and had requested continuances when an applicant had failed to appear. He was open to that if the Board felt it was necessary.

Tracy Meyer asked if there was lighting along the 5-ft paved sidewalk.

Mr. Tso replied that the proposed building would have exterior lighting; however, the Applicant's proposal did not contain any information as to whether any additional lighting would be installed for the sidewalk.

Mr. Pauly added he was not sure what lighting would be required by the Building Code. Typically, for certain ingress and egress paths, there were fire and life safety Building Code lighting requirements that would apply as well. Because the sidewalk and pad were used for a previous modular building, it was an existing condition

Chair Martens reiterated that no Applicant's representative was present and asked if the Board was comfortable proceeding without the Applicant's presentation or the Applicant present to answer questions.

Mr. O'Neil stated that he did not believe the Board could go forward without the Applicant present. The first time the Board had a public hearing that the Applicant did not attend, the Board decided that going forward, it would not proceed with an application if the applicant did not show up to present testimony or answer questions because it was the Applicant's responsibility to offer an explanation regarding their needs.

- He meant no disrespect to the City, but the City should not be explaining the needs of the school district as that was the school district's responsibility. The City should only advocate to ensure the school district went through the processes correctly and provide Staff's recommendations, but any questions regarding the reasons for the application were the responsibility of the Applicant to address. Noting a similar situation on a prior application and the City Council's decision, he believed Council agreed that the applicant needed to be present.
- Precedent was important, and if the Board allowed this Applicant not to appear, other applicants would do the same. If an applicant was going to present an application to the Board, they needed to attend the meeting. The Board was an adjudicated body that was required to listen to the City's recommendation, the Applicant's presentation, visit the site,

and make a final decision. He did not know why the Board would exist if the Applicant was not present.

Mr. Pauly added that since the prior meeting when the applicant did not show up, Staff had been diligent in confirming with applicant that they would attend the meeting, including the Applicant for this evening, who had confirmed with Staff that a representative would be present.

Mr. O'Neil stated that mistakes happened, especially since tonight's meeting was not being held on its normal night, but if the Applicant could not attend, the Board should continue the matter to the subsequent meeting.

Ms. Schroeder stated that she was not positive, but she believed that during her site visit earlier in the day, she overheard that the subject modules were being delivered next week.

Chair Martens stated it would still take some time before they were put in place.

Mr. Pauly added if that was the case, it was unknown if they were intended for the Boeckman Creek Primary site, and the Applicant was not present to answer questions.

Mr. O'Neil suggested the Board adjourn for ten minutes and call the Applicant to see if a representative was coming or would attend via teleconference.

Mr. Pauly believed that was an option, and asked for feedback from the rest of the Board.

Ms. Meyer said she wanted to know more about the lighting, not just for the children, but also the teachers.

Ms. Schroeder stated she was ambivalent, and as a new member would prefer not to take a position on the matter as she was unsure of the standard procedure.

Chair Martens replied that he too felt some ambivalence. The request was very routine and when reading through it, he wondered why it did not meet the criteria for a Staff approval; however, he believed that if there was a public hearing, it was very important that the Applicant attend.

Mr. O'Neil stated the application made sense to him, and he had no questions; however, he believed the Board had to be consistent and not treat applicants differently or there would be a due process problem. In this particular instance, he agreed with Chair Martens and did not understand why the matter was before the Board as it was not complicated, but because the matter warranted a public hearing, the Applicant needed to be present, as they had been notified of the hearing.

Mr. Pauly advised on next steps, noting the Board could move to continue the hearing or take a brief recess, and have Staff attempt to get a representative to appear in person or via phone tonight. The Board could also take action, by making a motion and voting on the application.

Mr. O'Neil replied that he had a problem with the City saying that. He asked if Staff was attempting to change a policy where applicants did not have to attend meetings. Given what happened previously, he would have thought Staff would have confirmed with the Applicant that they would be present. He asked if the City received an email or phone message stating the Applicant's intention to attend.

Mr. Pauly replied Staff did receive confirmation that the Applicant would attend tonight.

Mr. O'Neil stated if Mr. Pauly was attempting to advocate that the Board change the policy stating an Applicant must be present, as he had stated that was an option, he did not believe Mr. Pauly had a basis for that and he had a problem with it. He had watched what happened at City Council and everyone, including the City Attorney, agreed the applicant should have been present.

Mr. Pauly replied that beyond the introduction of a routine in which Staff confirmed with an applicant that they would be present at the public hearing, the City had not adopted any clarifying policy per se.

Ms. Schroeder stated that per the Staff report, the school district's primary justification for using temporary buildings was that enrollment had exceeded the capacity of the current building, and that the school board was going to put forth a bond for a Frog Pond school.

Mr. Pauly confirmed that was reflected in the school district's long-range plan, which the Applicant could have explained if they were present.

Ms. Schroeder added she would have liked to have heard more about that as five years could easily turn into more; although she understood the building itself was not a typical modular building, like a trailer.

Mr. Pauly clarified that conceptually, the Applicant could apply for extension over and over, indefinitely; however, the Applicant would need to meet certain criteria and present some certainty or justification for those extensions. The criteria was subjective, and the reason the process was conducted before the Board, rather than Staff making a decision, was to weigh whether or not the Applicant met the threshold of having a reasonable purpose for a temporary use permit for that long, as well as explanation as to why it would no longer be needed in five years.

Ms. Schroeder stated that during her site visit, she had informed the person who escorted her that the Board meeting was tonight. She confirmed her on-site escort was a member of the school staff and not from the school district

Chair Martens suggested it might be embarrassing to get an Applicant representative on the phone if the Board only had one question about lighting.

Ms. Schroeder asked if she was permitted to ask another Board member a question.

Mr. Pauly replied that even though they were still having an open discussion, technically, the Board should put forth a motion and then commence a discussion.

Shawn O'Neil moved to recess the meeting to allow time for Staff to attempt to contact the Applicant. Tracy Meyer seconded the motion, which passed unanimously.

Chair Martens recessed the meeting at 7:06 pm, and reconvened the meeting at 7:15 pm.

Mr. Pauly stated Staff was unable to get a mobile phone number for Operation Manager Tim Woodley or a school district number that anyone would answer. Staff also tried to reach the consultant who had assisted with the application, but could not reach him either.

Shawn O'Neil moved to continue Resolution No. 365 to the next DRB-Panel B meeting on June 24, 2019 date certain. Tracy Meyer seconded the motion.

Ms. Meyer explained that she would like answers about the lighting because based upon pictures, it appeared that all of the lighting was within trees and away from the school. The permit was for a five-year commitment and school was in session during winter.

Ms. Schroeder stated that out of respect for her fellow Board member, she had no objection to a continuance.

Mr. O'Neil stated the problem was when an applicant attended a meeting, answered the hard questions, and then the Board declined their application, it was fundamentally unfair because that Applicant could point out that the Board had approved a prior application when the Applicant did not show up. That was a problem, and he did not believe the Board could function that way. As a public body, they would run into problems. It was unacceptable that they did not try harder getting Applicants to attend. Applicants should be told they must attend or else. They had to be a part of the hearing otherwise there was no purpose to the Board.

- It sounded like Mr. Tso was almost advocating for the Applicant. Mr. Tso needed to make his recommendation with City matters, but the Applicant had to speak for the Applicant. He respected what Staff did every day, but he believed there was a due process problem if Applicants did not show and then the Board turned down an Applicant that did. That had happened in the past, and he worried about that one person who showed up but was told no who might then turn around and point out the Board had approved another application in which the Applicant did not show. He believed that was a problem and that it should be a problem for every member of the Board.

Mr. Tso agreed it was important for an applicant to attend the public hearing, but he wanted to clarify that he was not advocating for the Applicant, but simply attempting to explain why Staff recommended approval. He apologized if his stance had come across as more than neutral and technical.

Mr. O'Neil apologized and explained he did not intend to attack Mr. Tso personally, but he believed Mr. Tso was stuck doing it that way because the Applicant was not present. He believed that process could be avoided when an applicant was actually present. In fairness to the Applicant, he noted the packet incorrectly stated the meeting was on Monday, May 30th instead of Thursday, May 30th, so he believed the Applicant probably got the day wrong.

Mr. Pauly stated Mr. Tso had received an email from the Applicant confirming their attendance for tonight.

The motion passed unanimously.

VII. Board Member Communications:

A. Results of the May 13, 2016 DRB Panel A meeting

Daniel Pauly, Planning Manager, stated Industrial Focus along I-5 was a major project being worked on. Panel A approved the zone change and the Stage 1 of Master Plan. The application would most likely return before Panel A in July to review the Stage II Final Plan and Site Design Review. He clarified the site was located on the vacant land between Boeckman Rd and the Walnut Mobile Home Park. A portion of the site fronted both Boberg and Boones Ferry Roads, while the upper portion fronted Boones Ferry Rd only. He clarified the site was open except for one small tree in the middle. It had not been zoned residential. The Applicant was proposing a substantial building.

Chair Martens added the site had good I-5 visibility and was flat.

VIII. Staff Communications

Daniel Pauly, Planning Manager, anticipated that the next Panel B meeting would be the last phase of the Clermont application, the Villebois subdivision Panel B had worked on last year. The street vacation request had been withdrawn for now, and until the Applicant solidified the real estate deal, no accompanying applications would be submitted.

- He confirmed the Clermont subdivision was the last single-family application in Villebois. The last area that did not have land use approval at this point was the mixed-use buildings around the Piazza.
- He noted a number of upcoming small projects were expected to come in soon.
- The Willamette River Treatment Plant was a major project that had been recently submitted. The plant would undergo seismic upgrades and add an electrical building. The project would affect the treatment plant park quite a bit as a 66-in pipe would be installed through the park. There would be a lot of impacts on natural resources and along the river.

IX. Adjournment

The meeting adjourned at 7:26 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for
Shelley White, Planning Administrative Assistant