

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

**Development Review Board – Panel B
Minutes August 26, 2019 6:30 PM**

Approved as Amended

October 28, 2019

*(Note: additional language in bold,
italic text; deleted language struck
through)*

I. Call to Order

Chair **Richard Martens** called the meeting to order at 6:30 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, Samy Nada, Shawn O'Neil, and Elizabeth Schroeder. Tracy Meyer was absent.

Staff present: Daniel Pauly, Barbara Jacobson, and Patty Nelson.

IV. Citizens' Input This is an opportunity for visitors to address the Development Review Board on items not on the agenda.

Karl Kahlan stated that he and his wife had put a deposit down in April on a home on Stockholm in Villebois across from Polygon's anticipated Phase 5, which he had understood would include building out the street in front of his future home. He asked if Phase 5 had been stopped.

Daniel Pauly, Planning Manager, responded that the Phase 5 approval was still valid, and by law Polygon had up to two years to develop the property, but the matter actually regarded a real estate transaction. Polygon had requested an additional option to continue their due diligence period as they looked over the costs of constructing the subdivision. At that time, the property owners did not accept that so the contract between the owners and Polygon expired, and the property returned to the open market. Since then, the City had received inquiries from other developers, but the property was not yet sold nor were any offers to purchase it under contract. He did not know if it would be sold in the future to another developer or Polygon. If the property was purchased by another developer who wanted to do something substantially different than what was already approved for Phase 5, they would have to go through the full public process, so they would likely just follow the approval already in place. He confirmed that if the property was purchased by another developer who had to go through the full public process, he would be added to the interested parties list and notified.

Mr. Kahlan stated that the certificate of occupancy for the home he had put a deposit on was completed but he could not get the certificate because neither the retaining wall nor the street

had been built. The home had no curb appeal because the curb stopped short 40-ft before their home.

Mr. Pauly explained much of that was controlled by the State Building Code and Building Official. The DRB was responsible for approving the layout of the subdivision. Structural elements, such as the granting of a certificate of occupancy were under the purview of the building official. He advised Mr. Kahlan to contact ~~Mr.~~ Dan Carlson, the building official, to discuss his concerns.

Mr. Kahlan asked when the opportunity to purchase had expired.

Mr. Pauly replied he did not know the exact date, but it was a few months ago.

Mr. Kahlan noted it was interesting that Polygon had not bothered to communicate with them whatsoever that something had happened to what they had anticipated would be in front of their home and that would affect the perceived value of the property.

Mr. Pauly stated he was fairly certain Polygon still hoped to pursue the property.

Mr. Kahlan asked if anything he had discussed would be a part of tonight's agenda.

Mr. Pauly responded that tonight's agenda item was connected to Phase 5 in that a little stub of a street off of Berlin was no longer needed and would therefore be turned back over to the private entities.

V. Consent Agenda:

A. Approval of minutes of June 24, 2019 DRB Panel B meeting

Shawn O'Neil moved to approve the June 24, 2019 DRB Panel B meeting minutes as presented. Samy Nada seconded the motion, which passed unanimously.

VI. Public Hearing:

A. Resolution No. 363. Cherbourg Lane Street Vacation: Polygon at Villebois III LLC and Allen and Victor Chang – Petitioners. The City is vacating SW Cherbourg Lane right-of-way north of SW Berlin Avenue, Section 15AB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.
Staff: Daniel Pauly

Case Files: DB19-0006 Street Vacation

The DRB action on the Street Vacation is a recommendation to the City Council.

Chair Martens called the public hearing to order at 6:41 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site.

No Board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No Board member participation was challenged by any member of the audience.

Daniel Pauly, Planning Manager, announced that the criteria applicable to the application were stated on page 1 or 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. Pauly explained that Polygon had requested delaying the hearing back in May or June due to the option expiring on the property. Subsequently, the City had received a petition to vacate the right-of-way, which was a specific type of request governed primarily by State statute. He had discussed the issue with Barbara Jacobson, and the City was also interested in Phase 5 going forward, so although Polygon might not ultimately be the developer, it was in the City's best interest to vacate that portion of land for eventual use as private property. Vacation was the return of public property to the adjacent private property owners. In this instance, half of the property would return to Polygon for a future development tract they currently own, and half would return to the Chang family. He presented the Staff report via PowerPoint with these comments:

- The property in question, as was typically required, was a street stub that had been built per the Villebois Village Master Plan as part of a previous phase of Tonquin Woods with the expectation that a street would continue north at this location into Phase 5 North. A lot of topography was involved at Phase 5 North, and as it was considered in more detail, it became apparent that it was not feasible or desirable to do a street connection at that point. A pedestrian connection would work better with the topography and did not require a right-of-way.
- While the preliminary plat of Phase 5 North (Slide 3) did not reflect the subsequent administrative approval per City Council direction of moving a couple of additional lots to save additional trees, it was accurate with regard to the subject area. The area to be vacated was shown in pink. Under the currently approved plans, that area would be a tract for a pedestrian path, a tract for an alley, and small portions of two small lots. As the City no longer had a purpose for the subject property, it was reasonable to vacate it. All of the State statutes and City codes related to street vacations had been met. City Engineer Patty Nelson was the City authority that controlled right-of-way and was present as the applicant for purposes of tonight's hearing.
- Initially, tonight's Staff report was pretty simple. He had updated it by changing a few dates and removing Steve Adams as City Engineer, as he had left to pursue other opportunities, and listing Dominique Huffman as the Engineer who reviewed the application.
- He noted Condition of Approval PFC2 on Page 3 of 7 of the Staff report stated, "The applicant shall provide public or private utility easements on City approved forms." However, for this item, there was no applicant per se that such language made sense for, so he recommended amending Condition PFC2 as follows: "~~...Applicant shall provide public or private utility easements on City approved forms.~~ **Public or private utility easements shall be provided concurrent with the transfer of the property.** For public easements..."

Shawn O'Neil asked if the Applicant was actually the City because he noticed there were petitioners with different names, and the Staff report did not specifically name the City as applicant. He asked if Mr. Pauly was trying to fancy a maneuver because he was aware that some Board members might have a problem if no applicant present.

Mr. Pauly explained this was a unique type of application in that it was not a development permit application per se, which was what the Board typically saw. It was a specific action of a street vacation, which under City Code could be petitioned for by a private property owner or instigated by the City. He confirmed there was no actual applicant.

Mr. O'Neil suggested it would be helpful for future reference to show somewhere in the report that the City was the entity seeking the land vacation.

Mr. Pauly replied someone else had petitioned the vacation, Staff had to do something with the request in front of them, and the requirements were not the same as if someone had petitioned to build something.

Mr. O'Neil understood Polygon had simply changed their minds, so the land was reverting back.

Mr. Pauly clarified Polygon had not necessarily changed their minds; they had become neutral on the matter, but did not want to withdraw the application. Therefore, the City had to take action, which was unique.

Mr. O'Neil stated it was odd that the exhibits showed the petitioner as the applicant representative, but did not reference to the City. It would have been a simple matter to add that, and it looked better for the record if there was ever an issue before City Council.

Barbara Jacobson, City Attorney, explained that in this particular case, there was not an issue of the Applicant not being present as the Applicant did not care; it was the City that wanted to move forward. However, she agreed with Mr. O'Neil, adding she had also been confused when she read the report. She advised that to make the record clear, language could be added to the motion to clarify that the City was requesting the vacation move forward.

Mr. O'Neil stated he had a difficult time with all of the changes and edits that seemed to take place at hearings because due to expediency, Staff had to revise a pre-existing form and missed something. As a result, the Board members had to take time to figure out how to make the amendments, which he believed did a disservice to both the Board and the citizens who had to watch the Board try to figure things out.

Chair Martens understood the City's position was that under no circumstances would the City want a street there.

Mr. Pauly believed it would be too steep adding the City did not see a scenario that included a street in that area.

Patty Nelson, City Engineer, confirmed the topography was too steep to build a road.

Ms. Jacobson added that vacation would return the land to the original property owners, which relieved the City of maintenance responsibilities.

Ms. Nelson confirmed the angle from Berlin St downward was too steep.

Ellie Schroeder stated she had visited the location and noted it had a beautiful view, but would be a terrible build.

Chair Martens called for public testimony in favor of, opposed, and neutral to the application. Seeing none, he closed the public hearing at 6:56 pm.

Mr. Pauly apologized for the last minute changes to the Staff report and noted that Engineering was short staffed. The report had been written by one engineer and then passed onto another who had to pick it up. He reread his proposed change into the record and confirmed references to Steve Adams would be removed as well.

Mr. O'Neil asked if the City would be noted as the Applicant. Since the City was making the request, they were therefore, for the purposes of tonight's hearing, technically the applicant. Staff was making the presentation and the City was requesting action.

Mr. Pauly explained that the City had not petitioned for the vacation under State law. Another way to look at it was that an applicant was not necessary for the City to take the proposed action.

Ms. Jacobson stated she believed they could say the City was requesting that the property be vacated.

Mr. O'Neil reiterated it would be nice to have the record referencing the City was making the request.

Ellie Schroeder understood the petitioner and applicant names would not change.

Mr. Pauly explained the original petitioners who paid the fee and signed the documents requesting it were still the same two as they never withdrew the application or petition, so the City was still acting on that.

Ellie Schroeder moved to adopt Resolution No. 363 and accept the Staff report with the following changes:

- Remove all references to Steve Adams, former City Development Engineering Manager.

- Amend Condition PFC2 as follows: “...~~Applicant shall provide public or private utility easements on City approved forms.~~ *Public or private utility easements shall be provided concurrent with the transfer of the property.* For public easements...”

Samy Nada seconded the motion, which passed 3 to 0 to 1 with Shawn O’Neil abstaining.

Chair Martens read the rules of appeal into the record.

VII. Board Member Communications:

- A. Results of the July 8, 2019 DRB Panel A meeting
- B. Results of the August 12, 2019 DRB Panel A meeting
- C. Recent City Council Action Minutes

Daniel Pauly, Planning Manager, confirmed the Board had no questions regarding the recent Panel A actions and noted the applicant was likely to withdraw the application.

Barbara Jacobson, City Attorney, stated at the last Council meeting, five finalists were interviewed by the City Council for the position left vacant by Susie Stevens. The Council would deliberate and vote at the next Council meeting, and the new Councilor would start at the September 16th Council meeting if all went according to plan. She confirmed the deliberation would be an open session.

Chair Martens asked if the Council was permitted, under statute, to have any discussions in an executive session.

Ms. Jacobson clarified the Council could discuss in an executive session, but the decision and reasons for the decision needed to be discussed in the public session. The current plan was to do everything in an open session.

Shawn O’Neil stated he had heard feedback that appointees were picked based on friendships and bias. He had also heard discussions about term limits and that term limits should apply to appointees like Board members. He had been appointed by the Mayor, whom he did not know and with whom he disagreed with on many occasions, and yet had agreed to let him volunteer and serve. He knew there were a lot of other people who volunteered and served who may or may not agree to whoever was on City Council, and he believed it was a disservice when he heard in the press or in comments that somehow the volunteers were picked similar to a presidential cabinet. There were some very good volunteers from all sides of the aisle that served. He noted that there were term limits on volunteers, as he was on his last term. He found it difficult to criticize volunteers, as they were not politicians, and the comments regarding bias and term limits had been driving him up a wall. He encouraged those who volunteered to speak up and state that their choice to serve had nothing to do with where they stood on issues with City Council.

Ellie Schroeder confirmed she had heard the same rumor. Long before she had volunteered for her current position on the Board, she had disagreed with the Mayor at a public meeting and *she believed she had* made him mad. When she later went in for her interview, she asked him why he was the only one to decide on Board members, and he stated because that was the way the Council wanted it as the Council did not have time to interview all of the applicants. She believed the Mayor appointed volunteers for various reasons, such as experience and balance on a committee. She did not see any prejudice, as she believed if he ~~would~~ *could* have had prejudice, it would have been against her.

Mr. O'Neil stated he fully agreed with Ms. Schroeder.

VIII. Staff Communications

IX. Adjournment

The meeting adjourned at 7:07 p.m.

Respectfully submitted,

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