Benton County
COMMUNITY DEVELOPMENT DEPARTMENT

Planning Division

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Memo to the PLANNING COMMISSION

Date:	July 27, 2021
Application:	Preliminary plat approval of a 9-lot subdivision on a 21 acre property in the RR-2 zone, with the proposed name of "South Anderson Blues Subdivision"
File #:	LU-21-025
Applicant:	Scott Taylor
Owner:	Sandra Villwock
Subject:	Answers to Planning Commission questions and some draft Conditions of Approval for Planning Commission consideration and editing
Staff:	Kristin Anderson

Background:

The Tuesday, July 20, 2021 public hearing was continued to Tuesday, August 3. The Planning Commission left the record open for additional comments, which were due by 5 p.m. on Tuesday, July 27. The Planning Commissioners stated they would send their questions to staff by 5 p.m. on Thursday, July 22, to allow Staff to obtain answers from Environmental Health, Public Works, the Building Official, and the Oregon District 22 Watermaster. The applicant can present written testimony until 5 p.m. on Tuesday, August 3. Staff has posted the newest testimony from the public on the County website and will post the applicant's testimony there after it is received. The address is www.co.benton.or.us/pc/page/planning-commission-meeting-public-hearing-1.

Questions from the Planning Commission:

1. There was some testimony on deer and cougar migrations because of the public land through the forest at Peavy Arboretum and nearby agricultural areas to the north and east. Was Oregon Department of Fish and Wildlife (ODFW) consulted regarding wildlife migration corridors in this area?

Answer: Staff did not consult ODFW, however email records show that four ODFW staff were emailed the Notice of Public Hearing, and therefore had the opportunity to comment. None of

them replied.

2. Do the resource land buffers apply to lands zoned Rural Residential (RR) if current uses are agriculture (such as with the land to north)?

Answer: To reduce conflicts, Benton County Code (BCC) requires that dwellings in the RR zone be located 300 feet or more from land zoned for resource use, such as Exclusive Farm Use (EFU) and Forest Conservation (FC). However, BCC has no dwelling setback from agricultural uses on nearby RR land, despite "Farm or forest use" being outright permitted in the RR zone.

3. Does the 300 foot resource buffer apply to land zoned Public?

Answer: No. Although the Peavy Arboretum land is being actively managed for timber, the land is zoned Public and thus does not have the protections offered by the FC zone. Also, the 300 foot buffer from resource lands, such as Exclusive Farm Use (EFU) and Forest Conservation (FC), does not apply when the RR land is on the other side of a public road.

4. Can you confirm the distance of the proposed lots to Public zoned land across the road?

Answer: The Public zone is approximately 80 feet from the RR zone on the other side of the road. With the required side setback of 8 feet for a dwelling in the RR zone, the closest a dwelling could be to the Public zone would be approximately 330 feet

5. Does the proposed development have to craft CCRs to guide home and development operations? For example, downcast lighting, detention pond maintenance agreement, and well use restrictions?

Answer: No CCRs are required for subdivisions. Important items that Benton County Code or the Planning Commission intends to be binding should be legally created via covenants, easements, maintenance agreements, and similar vehicles. The long-term detention pond maintenance liability is already a Condition of Approval, as required by Chapter 99. Well use restrictions have been added in the CCRs by developers, but those can be removed at a later date. The Planning Commission can put concerns as "Advisories" at the end of the Notice of Planning Commission Decision, or, when appropriate, require binding legal documents.

6. Does the request for an additional Condition of Approval by OSU Forest Research regarding a signed declaratory statement prohibiting trail construction as well as requiring spark arresting chimneys, fire retardant roofs, and fire breaks have merit? Would they be allowable?

Answer: Preventing forest fires has merit. It is within the Planning Commission's authority to require spark arrestors, fire retardant roofs, and fire breaks. However, the Benton County Building Official stated he's seen only a few chimneys in the past 20 years, because people are installing gas fireplaces instead. On the chimneys he has seen, spark arrestors are automatically included. The Building Official stated that he hasn't seen a shake roof installed in more than 20 years, and he believes all the other options (such as the typical asphalt roof) would be considered "fire retardant." However, he believes it does not hurt to include these two ideas.

For fire breaks, Chapter 51 of Benton County Code has this definition: "Fire break" means a minimum area of thirty (30) feet around a dwelling cleared of vegetation except for ornamental

shrubbery, sod, single trees or similar plants used for ground cover. Trees and large ground cover shall be placed to prevent rapid movement of a fire. If slopes are greater than thirty percent (30%), "fire break" means a minimum of fifty (50) feet."

The Rural Residential and Urban Residential zones require a 30 foot fire break around structures located on land adjacent to the Forest Conservation Zone. The EFU zone requires a 30 foot fire break around all structures. The Forest Conservation zone requires a primary *and* secondary fuel-free fire break around structures.

Fire breaks can be useful in preventing fire spread from surrounding areas to the dwelling in the middle of a fire break. However, inspection and enforcement of fire breaks is challenging. The Planning Commission could require the property owner to sign a covenant, alerting future property owners to the proximity of forested land and that a fire break could protect their dwelling from wildfire.

The same covenant could remind property owners to obey the law regarding OSU's property rights, the requirement of remaining on official trails, and the prohibition against starting new trails. The covenant should not imply in any way that Benton County Community Development Department will enforce against trail building or unauthorized access to OSU forestland.

7. How would the issues brought up in this subdivision hearing be viewed through the lens of the Thriving Communities Initiative? The priority values include supporting local agriculture (conflict with Anderson Blues over organic certification, nearby pesticides, and invasive species) and valuing the environment (conflict with Peavy Arboretum and OSU research forest management over unauthorized trail creation and wildfire protection).

Answer: Those are important community considerations and priorities, however there is nothing in our code that enables us to apply them as review criteria.

8. Were the two wells in the subdivision lawfully drilled?

Answer: Staff does not know, and this is not relevant to the subdivision approval. The dwelling water supply requirement has been met by City of Adair Village.

9. Are the water rights on the land legally transferable to the subdivision for residential use? If there are no limitation on using water for lawns, then can the Planning Commission put limitations on the extent of domestic irrigation?

Answer: Joel Plahn, District 22 Watermaster, provided an image showing that the water rights are only on the northern 7 +/- acres of the parent parcel (Tax Lot 2800). The well that is authorized to use the water right is on the Anderson Blues farm, approximately 700 feet to the north of Tax Lot 2800. (See image.) Although the land within the northern part of the subdivision has the right to apply water on this 7 acre area, there is no legal access to use the well. Therefore, if the land on the northern 7 acres of subdivision is to be irrigated, a new well must be drilled.[1]

[1] The two existing wells on the parent property are not within the 7 acre area, but are instead on the southern half of the property, near Lot 9's northern property line (just south of the NW Earlyblue Drive right of way) and on the property line between Lot 6 and Lot 7. (See the preliminary plat map received July 6.)

If the current or future property owners choose to drill wells to take advantage of the water right for irrigation, then they may legally apply 2 ½ acre feet per acre on this land every year. The Watermaster stated this is the equivalent of pumping 11 gallons per minute, 24 hours a day, for 101 days in a row. This irrigation water can legally be applied to commercial agriculture or residential lawns and gardens, or any other plant.

The exempt wells on the southern half of the parent property are prohibited from irrigating more than a <u>total</u> of ½ acre (21,780 square feet) of lawn, non-commercial garden/crops[2], or other vegetation. If the usage is divided evenly between two lots, then each lot can irrigate only ¼ acre.

Yes, the Planning Commission can put limits on the extent of domestic irrigation, but it is potentially problematic. The irrigation of lawns is related to dwelling use, and the subdivision is creating nine new dwelling rights, and nearby property owners have stated their concerns regarding the limited water supply, and lawns are expected to use more water than the blueberries, which Pamela Toman stated were irrigated via waterwise drip irrigation.

10. The applicant makes a compelling argument that the development immediately to the south would be only 4 lots, and Arbor Creek would separate these 4 lots from the adjacent 13 lots on the other side of Arbor Creek, and therefore the road easement is not necessary. Does Staff concur? Should Condition of Approval # 8 requiring enhanced connectivity to the south be kept?

Answer: From one perspective, a developer would likely try to avoid crossing Arbor Creek. Access to a development would be obtained via Arboretum Road, and the developer likely has no reason to avoid creating dead-ends and no reason to want to build a road over Arbor Creek. Although enhanced connectivity is required by BCC 99.515(1)(g): "Dead-end streets shall be designed to connect with future streets on adjacent property," one could say that reserving this future right of way makes it more likely the stream will be crossed, which is beneficial for transportation connectivity but might be detrimental to the stream (although streams are frequently crossed by roads).

From another perspective, although it is often cheaper and involves less permits to avoid building roads over streams, it does happen. Within the past few weeks Staff has been working on a different housing development in which the developer chose to have a road cross the same stream twice, and that stream is even in the regulated floodplain, requiring even more permits. If the developer's motivation is high enough, streams may be crossed. Connection of dead-end streets between properties is required by BCC 99.515(1)(g). Dedicating the land for a road at a later date when the connectivity need is imminent would be costly, time consuming, difficult, and most importantly, avoidable if appropriate measures had been taken when the

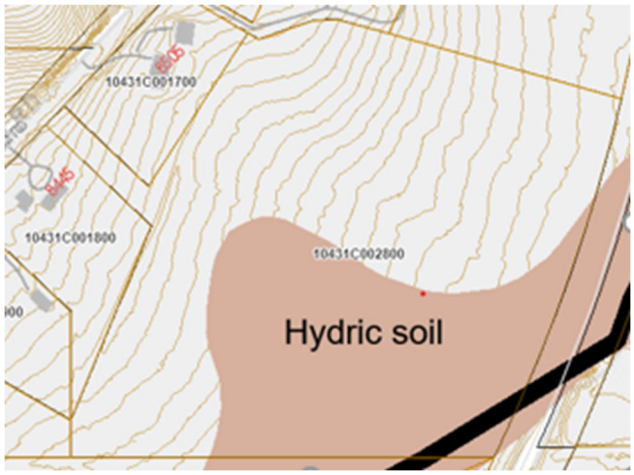
[2] Exempt well water can not be used for any amount of *commercial* agriculture without first obtaining a water right from the State.

property was under one ownership with no structures built on the land yet. Pre-planning roads and infrastructure is an important aspect of efficient land use planning. No construction is required at this point, only the reservation for future right of way, which preserves options for the future.

11. Even though you report that the developer has already received Environmental Health approval for septic feasibility, don't you want the condition of approval in the record that "all lots need to have an approved initial sewage disposal system and repair area"?

Answer: The Conditions of Approval are a checklist of what needs to be done prior to the County approving the division of land. Septic feasibilities are good essentially forever, unless the conditions in or near the ground have changed, such as a landslide or a well being drilled, or the presence of agricultural tiles being discovered. In the past, if offspring parcels already obtained septic feasibility approval there was no reason to list them in the Conditions of Approval. However, in this case, with the new information of agricultural drain tiles in the area, which Environmental Health was not informed of, it does seem a good idea to include the approval of feasibilities for all lots.

12. Can you confirm the land generally slopes from west to east? Can you explain the testimony regarding standing water in the area of proposed Lot 1?



Answer: The land slopes from the northwest to the southeast, towards Arbor Creek. Page 11 of the packet states the slopes were measured at approximately 2 to 5 percent. This image shows the mapped location of hydric soil. Although hydric soil is not mapped in the location of Lot 1, ponding might still occur due to soil permeability. Planning Staff does not have on the ground observations of this area. The septic drainfield area that was approved on Lot 1 measures approximately 250 feet by 150 feet and is in the northern half of Lot 1. Rob Turkisher, Environmental Health Specialist, stated, "I find it hard to believe there is standing water on the upper portion of Lot 1 in the winter where the soil evaluation was done. There is no evidence of a shallow water table or restrictive layer in that area. It is possible that there is standing water on the lower portion of lot 1 in the winter near the proposed road."

Please see the next question for an additional answer.

13. A neighbor adjacent to the subdivision shared his observation that the proposed subdivision property regularly floods in the fall and winter. I have driven along Hwy 99W in fall and winter many, many times since the mid 1960's, and I have also seen that area flood whenever there is any significant rain. The engineering reports and septic approval processes are telling a different story. Is it necessary to use only the engineering reports for our decision or can these observations be used? If our observations cannot be used, is there any other action that can help assure the stormwater detention pond is adequate, the treatment

facility is safe from regular overloading, and that Arbor Creek is not adversely impacted by the additional impervious surfaces?

Answer: For a Planning Commissioner's observations of the site to be a factor in a decision, that information needs to be brought up prior to the closing of the record (i.e., prior to deliberations). One way to do that is through a question like this one. Observations can be considered compared to a soils analysis or engineering study, but it would be crucial to explain why you think the observations should carry more weight than the professional analysis. There is a presumption that a professional analysis is a detailed look at the situation, but if for example the analysis assumes a high soil permeability based on soils mapping (as opposed to on-site soils testing) and you have direct observation of ponding, that could be grounds to question the analysis.

In this instance, the septic system feasibility studies are based on on-site examination of the soils, and so actual permeability characteristics of the soil were considered. Rob Turkisher, Environmental Health, stated, "The septic approval areas are located on higher ground. I suspect most of the flooding would occur down near the highway where the soils did not meet DEQ requirements for septic drainfields."

As for the stormwater analysis, the Planning Commission could potentially add language to Condition of Approval #29 (packet page 29) to the effect that if stormwater detention and treatment prove inadequate, the Stormwater Maintenance District shall fund alterations to the system as directed and approved by the County Engineer or Oregon Department of Environmental Quality.

14. Pamela Toman's written statement raised concerns about drain tiles installed by the Anderson Blues prior owner on the proposed subdivision property. Does the tiled landscape from previous agricultural operations change the function of septic drainfield systems and should it be considered in the approval of drainfield areas? Does the tile drainage plan show the termination of the tile network to the north as presented in testimony?

Answer: Rob Turkisher, Environmental Health Specialist, stated that approval areas will avoid these areas or he will require the removal of any tile drains that encroach on the septic approval areas. He stated that this presence of tile drains was not shared with him at the time of septic application, and that he will request the applicant to provide him with a map showing the specific locations of tile drains. "If an old tile drain is encountered during installation of a septic drainfield, we typically have the installer cut the tile drain back away from the drainfield and backfill with native soil." He stated that DEQ septic rules require a 50 foot minimum setback from the initial and repair drainfields to any downslope drains (including tile drains) under *OAR 340-71-220(1)(j): Table 1: Minimum Separation Distances,* and that one solution would be to completely remove any downslope tile drains within 50 feet of the initial and repair drainfields.

Gordon Kurtz, Public Works Engineer Associate, stated he is concerned about the effect possible connection of the drain fields with the existing tile system could have on Arbor Creek. The Environmental Health policy is to cut the tile away from the septic drainfield area and plug

the ends of the tile, which could be viewed as an effective, safe solution in a single instance in an area further removed from fish bearing streams, wetlands, and/or sensitive habitat. If properly plugged it seems likely the drainfield areas and the existing tile system could be effectively isolated from one another. This proposed subdivision circumstance, however, is a network of drainfield areas. He wonders if the common solution is actually reliable 50 years in the future, and what if septic drainfield contamination *does* migrate to Arbor Creek or into the Toman/Smith farming operation? What would be involved in addressing that scenario? After the contamination is already evident and there are multiple owners on this land and multiple structures already built, the retrofit, removal, or additional underground mitigation measures would be costly, time consuming, difficult, and most importantly, avoidable if appropriate measures had been taken when the property was under one ownership with no structures built on the land yet.

Additionally, the Corvallis Fault Line is mapped as running through the center of this property. Mass land movements change drainage patterns, sometimes drastically, and create problems with piped systems. The drain tile on the property could exacerbate discharge of septic effluent to waters of the state in a seismic event.

The existing tile system drains roughly from west to east and southeast, following the general slope of the property, and has outfalls in either the ODOT ditch line or the southeast corner of the property at Arbor Creek. According to written testimony, the tile system was installed in 2002. This indicates that the tile system is not an older, less functional system that might typically be encountered in normal rural re-development. It is safe to assume that this system functions efficiently, as designed. The tiles were installed because blueberries require a fair amount of water but don't grow/produce well in wet soils. It might be of some benefit to communicate directly with the tile installer, if possible, and it would also be of some benefit to see the original drawings as we are currently viewing copies of copies. If additional design information is available (specifications, receipts, work orders, schematics) it would be beneficial to review those documents as well. A majority of the installed pipe is of standard 6-inch diameter, but there are substantial lengths of both 8-inch and 10-inch pipe capable of carrying high flows. It is unclear what the pipe material is and/or if it varies from diameter to diameter.

It is reasonable to question whether all or part of the off-site drain tile (under ownership of Toman/Smith) may drain through the tile on the subject property. Additional detail is required to determine if this issue needs to be addressed. If Toman/Smith's tile system fails, and their farming income is affected as a result of the development we might be asked why we did not address it at this stage of review. This is a potential liability and we have to address it.

Finally, subdivisions change the existing grading of sites significantly. Lots are graded to drain to existing or constructed drainage ways or facilities and homes are usually placed at a high-point on a lot to make drainage flow away from the structure and its foundations. Even if standing water were present on or around Lot 1 it is unlikely that it would be present after the lot was prepared for building construction. My assessment is that most or all of the lots will be designed so they drain to the ditch lines on either side of the proposed road. The construction of NW Earlyblue Drive, driveways, dwellings, and associated hardscape will increase the sudden flush of water in the area, and potentially exacerbate any contamination issues. Therefore,

Staff recommends a Condition of Approval to address these concerns.

15. On page 14 of the packet, Staff states that NW Earlyblue Drive would be under Benton County's jurisdiction. However, on page 31 of the packet, Staff states that NW Earlyblue Drive "might become the County's responsibility." How can both of these statements be true?

Answer: The owner will dedicate right of way to the County on the plat. The road will fall under the County's jurisdiction, and thus under County permitting authority, but it will remain a local access (Public) facility until the road's 3-year warranty period is completed. Until the end of the 3-year warranty period, maintenance and repair of the road is the responsibility of the developer and/or the adjacent property owners. Once the warranty is released, the developer and/or the property owners may petition the Board of Commissioners for acceptance of the road into the County system. If the Board accepts the road it will become a County road.

16. The Benton County Transportation System Plan (TSP) includes project AT-236, which is a multi-use path along Hwy 99W. Are there any additional factors the planning commission should consider when deciding whether to include Condition of Approval # 9 (packet page 26)?

Answer: The Planning Commission should consider the testimony from the public supporting the Condition and the testimony from the applicant opposing the Condition. At this point it is unknown if this project (AT-236) within the TSP would be on the west or east side of Hwy 99W. However, the TSP and Benton County Code support connectivity. The Condition of Approval does not require the construction of any infrastructure, only that a 15 foot reservation for future right of way dedication be required on top of an already existing 10 foot wide gravel road to the stormwater detention pond, and then extend past that to Hwy 99W. As can be seen with the County's recent challenging efforts to obtain right of way for the multi-use path connecting Corvallis with Albany, requiring a future dedication now is less costly, less time consuming, and less difficult because the property is under one ownership with no structures built on the land yet.

17. Are there any street light requirements for NW Earlyblue Drive?

Answer: There are no lighting requirements for the Rural Residential zone.[3] Any street lights that exist on County roads are installed and maintained by adjacent municipalities.

18. Is there County authority to re-name the "South Anderson Blues" subdivision to eliminate the association with the current "Anderson Blues" business adjacent to the subdivision?

Answer: With the close similarity in names and the dispute over the name, County Counsel has advised the County Surveyor to tell the applicant to select another name. Therefore, the County Surveyor has stated he will not accept "South Anderson Blues" and will work with the applicant on a new name.

[3] The lighting requirements in the Industrial and Commercial zones require that if lights are installed for parking areas that they avoid direct glare and unreasonable interference with adjacent properties. The requirements for the Airport Industrial Park are more detailed.

Conditions of Approval for Planning Commission Consideration and Editing

A. The owner shall sign a declaratory statement, to be recorded with Benton County Deed Records, that shall include this wording:

> Be it known to all that the undersigned, being the legal owners of the real property described below; hereby consent and covenant as follows:
>
> The land herein described is situated adjacent to the Peavy Arboretum, owned by Oregon State University and actively managed to provide sustainable timber harvests. When residential development occurs next to actively managed Forests, it introduces and amplifies risks and conflicts with the Forest use. Specifically, residents may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws, which ordinarily and necessarily produce noise, dust, smoke and other impacts. The resource nature of nearby land can result in herbicide and pesticide spraying, slash burning, timber cutting, farm operations, crown fires, hunting, use by big-game, bears, and cougar, and other accepted resource management practices. Conflicts to residents can include noise and dust from timber harvesting and the increased risk of forest fire, trespassing, and illegal dumping on Forest land.
>
> Activities by residents can create management difficulties or increased costs for nearby farm or forest operations. Grantee acknowledges the need to avoid activities that negatively impact nearby farm or forest uses. Grantee also acknowledges and agrees to not create or construct any type of pedestrian, bicycle, or motor vehicle access through the forest; that all dwellings with chimneys shall have spark arrestors; that all dwellings shall have fire-retardant roofs; and that a 30 foot fire break meeting the standards of the Oregon Department of Forestry shall be maintained at all times around dwellings.
>
> The grantees, including their heirs, assigns and lessees, by the recording of this declaratory statement, and in return for allowing a subdivision on this property, hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby farm or forest uses. Furthermore, grantee and all successors in interest hereby agree not to pursue a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.
>
> This covenant shall be binding upon the undersigned and their heirs, successors, and assigns as a covenant running with the land until such time as released by Benton County and/or as otherwise noted above.

B. The subdivision name shall not be “South Anderson Blues.” The new name shall receive the approval of the County Surveyor.

C. The applicant shall improve 100 feet of NW Arboretum Road in the vicinity of the property’s frontage on Arboretum Road. The road shall be widened and built to current

standards on both sides of the road and taper to the existing road.

D. The applicant shall locate and remove all of the existing drain tile from the property and plug/isolate any connection to the Toman/Smith tile system to the north. The applicant shall provide documentation confirming this was completed that meets the approval of the County Engineer.

E. Approvals for on-site sewage disposal feasibility permit for an initial and replacement system shall be obtained for all nine lots. Also, the Environmental Health Specialist shall review the impact of drainage tiles and their subsequent removal on the previous approval that was granted for Lots 1, 2, 3, and 4. The Environmental Health Specialist shall confirm in writing that the drainage tile concerns expressed in the Planning Commission memo dated July 27 have been adequately addressed. If additional action is required by the applicant, then the application shall take the action to properly ameliorate or mitigate the situation, as determined appropriate by the County Engineer and Environmental Health Specialist. (Applications were already initiated with Benton County Environmental Health, and the Feasibility permit numbers are 138-21-000013-EVAL, 138-21-000026-EVAL, 138-21-000027-EVAL, 138-21-000028-EVAL, 138-21-000032-EVAL, 138-21-000033-EVAL, 138-21-000034-EVAL, 138-21-000035-EVAL, and 138-21-000036-EVAL.) [BCC 99.710 & 99.715]

F. The applicant shall form a Stormwater Maintenance District which is designed to provide for the long-term maintenance, repair, and/or renovation of the stormwater detention pond and its appurtenances, including the drainageway from the detention pond to Arbor Creek. The district shall be established so as to maintain, repair, and/or renovate the facility in perpetuity. *If stormwater detention and treatment prove inadequate, as determined by the County Engineer, the Stormwater Maintenance District shall fund alterations to the system as directed and approved by the County Engineer or Oregon Department of Environmental Quality.* [BCC 99.670(7)]

G. [Other conditions the Planning Commission deems appropriate.]