



MEMORANDUM

TO: City Council

FROM: Lauren Russell, AICP, Associate Planner

DATE: April 20, 2020

SUBJECT: APP2020-0003 Appeal of West Sylvan Middle School Field Improvements (CU2019-0011)

At the May 5, 2020, meeting, the City Council will hear an appeal of the Planning Commission's decision to approve West Sylvan Middle School Field Improvements (CU2019-0011). The entire land use record must be provided to the Council for consideration, which is provided with this Memorandum and Agenda Bill.

Background Information:

The applicant, Portland Public Schools, represented by Angelo Planning Group, applied for a New Conditional Use (CU2019-0011) application and a Design Review Three (DR2019-0182) application on December 16, 2019. On March 11, 2020, the Planning Commission held a public hearing to consider the West Sylvan Middle School Field Improvements (CU2019-0011 / DR2019-0182) proposal and took public testimony. After reviewing all materials entered into the record and conducting deliberations, the Commission voted to approve the West Sylvan Middle School Field Improvements (CU2019-0011 / DR2019-0182) proposal.

The Land Use Orders were prepared and mailed on March 27, 2020, with the appeal period ending at 4:30 PM on April 6, 2020. One timely appeal (Exhibit APP 1.1) was filed by the West Slope Neighborhood Association Committee (NAC) on April 6, 2020, prior to the 4:30 PM deadline. Staff notes that the City received only one appeal form and fee, though the appellant's materials reference both case file numbers. In an email (Exhibit APP 1.2), Carl Tebbe, Chair of the West Slope NAC, clarified that the appellant has chosen to appeal the New Conditional Use (CU2019-0011) decision. The appellant did not file an additional appeal; therefore, the Council may only consider the New Conditional Use application. Because the Design Review Three (DR2019-0182) application was not appealed, that decision is final.

Staff anticipates that additional materials will be filed by the appellant, the applicant, or members of the public. Staff will provide additional memoranda to the Council as necessary to respond to additional materials.

Section 50.70.2 Appeal of a Type 3 Decision:

Within seven (7) calendar days after an appeal has been filed, the Director shall determine whether an appeal contains at least the following information:

A. The case file number designated by the City.

FINDING:

The appellant identified both the New Conditional Use (CU2019-0011) and Design Review Three (DR2019-0182) applications on the appeal form received by the City on April 6, 2020. Because the City received only one appeal form and fee, the appellant can only appeal one application. On April 6, 2020, City staff received a subsequent email (Exhibit APP 1.2) from Carle Tebbe, Chair of the West Slope NAC, stating that the appellant has chosen to appeal the New Conditional Use (CU2019-0011) decision.

Therefore, staff finds that appeal contains the required information.

B. The name and signature of each appellant.

FINDING:

Carl Tebbe, Chair of the West Slope NAC, signed the appeal form on behalf of the NAC.

Therefore, staff finds that appeal contains the required information.

C. Reference to the oral or written evidence provided to the decision making authority by the appellant that is contrary to the decision.

FINDING:

The appellant referenced the NAC's email (Exhibit 2.38 of the March 4, 2020, Staff Report), which the City received on February 29, 2020, as well as the NAC's oral testimony at the March 11, 2020, Planning Commission hearing as evidence that the appellant provided to the decision making authority that is contrary to the Planning Commission's decision

Therefore, staff finds that appeal contains the required information.

D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.

FINDING:

Only one party, the West Slope NAC, filed the appeal.

Therefore, staff finds that this criterion is not applicable.

E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law, or both, and the

evidence relied on to allege the error.

FINDING:

The appellant outlined the alleged errors in their appeal letter (Exhibit APP 1.1) received by the City on April 6, 2020. Responses to these allegations of error are provided below. Staff finds that the appellant provided specific approval criteria being appealed, the reasons why they assert that the findings are in error, and the evidence they relied on to allege the errors.

Therefore, staff finds that appeal contains the required information.

F. The appeal fee, as established by resolution of the City Council.

FINDING:

The appellant submitted the required fee of \$2,134 for one appeal. The appeal fee was set by the City Council as part of the Planning Division fee schedule.

Therefore, staff finds that appeal contains the required information.

Summary of Appellant's Assertions:

The appellant made three assertions in their appeal submittal (Exhibit APP 1.1). The applicant's representative, Angelo Planning Group, provided written responses to the appellant's assertions, which are identified in the record as Exhibit APP 2.1 to this memorandum and incorporated in the findings below.

In the findings below, staff only responds to the appellant's assertions of errors and does not provide a full re-analysis of the original New Conditional Use decision (CU2019-0011). Staff incorporates the findings of CU2019-0011 in their entirety and provides references to where analysis of these topics is found within the Staff Report and Land Use Order No. 2750.

Assertion 1: The Planning Commission erred in concluding that the West Sylvan Middle School Field Improvements proposal will comply with the applicable policies of the Comprehensive Plan. (BDC Section 40.15.15.3.C.3)

Assertion 2: The Planning Commission erred in concluding that the location, size, and functional characteristics of the West Sylvan Middle School Field Improvements proposal are such that it can be made reasonably compatible with and have a minimal impact on livability and appropriate use and development of properties in the surrounding area of the subject site. (BDC Section 40.15.15.3.C.5)

The appellant asserts that the proposal does not comply with Comprehensive Plan Goal 8.4.1, Noise: create and protect a healthy acoustical environment within the City. Policy 8.4.1.a states that noise impacts shall be considered during development review processes. The appellant claims that the applicant did not provide facts or evidence to the Planning Commission regarding the types or intensity of cumulative nighttime noise generated by crowds and athletic teams during games and practices occurring until 10:00 PM or later and the impacts of the noise levels on the acoustical health and livability of the surrounding properties.

The appellant asserts that the applicant's acoustical analysis is inadequate because its noise model only addresses one sound source, the new portable public announcement (PA) system. The appellant states that a realistic noise model must account for all possible noise sources occurring simultaneously, which includes a game being played on each field, crowd noise from the bleachers filled to capacity, both portable PA systems in use, and noise from the players. The model should account for sudden, disturbing noise peaks and the northerly and easterly winds that carry sounds from the field down through the neighborhood. The appellant contends that the cumulative nighttime noise after 8:00 PM will prevent healthy sleep, which constitutes a significant impact on health and livability that the applicant should have to mitigate. Additionally, the appellant questions whether nighttime use of the fields will meet Beaverton's Noise Ordinance (City Code Section 5.15).

In response, the applicant states that the field use will meet the City's Noise Ordinance. Section 5.15.030, Specific Noises Prohibited, declares certain acts to be violations of the Noise Ordinance, including unreasonable noises, sound amplification devices, and yelling, shouting, and similar activities. Section 5.15.035.F, however, exempts from the provisions of Section 5.15.030 reasonable activities conducted on school playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to school athletic and school entertainment events.

The applicant states that their acoustical analysis specifically analyzed the portable PA systems under conditions where both systems are used at the same time. The noise model used in the acoustical analysis included a moderate downwind condition. The applicant states that due to the uncertainty of weather conditions, the noise model assumes a moderate downwind condition in all directions away from the noise sources. The acoustical analysis found that with both portable PAs operating at the same time, the sound levels from the amplified devices will not exceed 50 dBA at the neighboring residential lot lines if the systems do not operate above 80 dBA sound output. While the acoustical analysis did not include noise from spectators, the applicant did provide information on the expected number of spectators per Lincoln High School baseball or softball game. The applicant states in their written statement that based on historical trends, there would likely be up to 40 spectators per game. If two games occur simultaneously, there could be a total of 80 spectators, which is well under the proposed bleacher capacity of 75 seats per field, for a total of 150 seats.

In Section 5.15.025.B.7, the City's Noise Ordinance states that sounds that exceed 50 dBA at residential property lines between 10:00 PM and 7:00 AM are considered to be loud or raucous noises. Therefore, staff infers that sounds under 50 dBA at such property lines are not unreasonable. Staff reviewed the findings of the applicant's acoustical analysis and determined that if the portable PA systems are used in accordance with the recommendations of the applicant's acoustical analysis, including not operating at a sound level greater than 80 dBA at five feet in front of the system, the sound levels from the PA systems will not exceed 50 dBA at the neighboring residential lot lines, which complies with the Comprehensive Plan by protecting a healthy acoustical environment within the City (Staff Report pages CU-3 and CU-4). Staff also found that by using the portable PA systems in accordance with the recommendations of the applicant's acoustical analysis, the functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability of properties in the surrounding area (Staff Report pages CU-5 and CU-6). The Planning Commission adopted the

recommendations as a condition of approval in Land Use Order No. 2750, as well as two other conditions of approval further limiting amplified noise (Order page 4, conditions 3 – 5).

Therefore, staff finds that the Planning Commission did not err in fact or law in concluding that the proposal will comply with the applicable policies of the Comprehensive Plan and that the proposal can be made reasonably compatible with and have a minimal impact on livability and appropriate use and development of properties in the surrounding area of the subject site.

Assertion 3: The Planning Commission erred in concluding that the West Sylvan Middle School Field Improvements proposal meets the B-3 high screen landscape buffer Design Standard. (BDC Section 60.05.25.13.D)

The appellant asserts that the proposal does not meet the B3 landscape screening buffer standard because the proposed landscape buffer does not include the six-foot high fully sight obscuring fence required by the Design Standard. Meeting the Design Standards is one of the applicable approval criteria for a Design Review application; it is not applicable to the appeal of the New Conditional Use application.

While not applicable to this appeal, staff would like to clarify that because the proposal was subject to a Design Review Three application, the applicant may choose to address a combination of Design Standards and Design Guidelines. Instead of demonstrating that the proposal meets the B-3 high screen landscape buffer Design Standard in BDC Section 60.05.25.13.D, the applicant chose to demonstrate that proposal meets the corresponding landscape buffer Design Guidelines in BDC Section 60.05.45.11.A – D (Staff Report pages DR-17 and DR-19 through DR-21). The Planning Commission found that the proposal met the Design Guidelines in BDC Section 60.05.45.11.A-D.

Therefore, staff finds that the assertion is related to the Design Review Three approval, which has not been appealed and therefore is not applicable to this appeal of the New Conditional Use application.

RECOMMENDATION:

Staff recommends that the City Council **affirm the Planning Commission’s decision to approve the New Conditional Use application for West Sylvan Middle School Field Improvements (CU2019-0011)**, with the conditions of approval stated in Land Use Order No. 2750, dated March 27, 2020, **thereby denying the appeal (APP2020-0003).**

EXHIBITS:

Exhibit APP 1 – Appellant Materials:

APP 1.1 Appeal Submittal from Carl Tebbe, Chair of the West Slope Neighborhood Association Committee (NAC), on behalf of the West Slope NAC, received April 6, 2020

APP 1.2 Email from Carl Tebbe, Chair of the West Slope NAC, received April 6, 2020

Exhibit APP 2 – Applicant Materials:

APP 2.1 Appeal Response from Frank Angelo of Angelo Planning Group on behalf of Portland Public Schools, received April 10, 2020

Exhibit APP 3 – Public Comment:

APP 3.1 Email from Rene Ferran, received April 13, 2020

APP 3.2 Email from Sue and Norman Denton, received April 13, 2020

Exhibit APP 4 – Agency Comment:

No additional agency comment received to date.

Land Use Record (Exhibit 2 to the Agenda Bill)