



MEMORANDUM

TO: Planning Commission

FROM: Elena Sasin, Associate Planner

DATE: May 28, 2019

SUBJECT: Cedar Grove Multifamily (ADJ2019-0009 / ADJ2019-0010 / DR2019-0057 / LD2019-0057) Supplemental Memo

Staff provides this supplemental memo to incorporate additional testimony received from the Beaverton School District on May 22, 2019 and provide staff's response.

The City of Beaverton (City) understands the importance of establishing and maintaining healthy relationships with all of the various agencies that provide essential services to the City. The Beaverton School District (District) is one such agency. To better understand and respond to the District's short-term and long-term needs, the City and District both actively engage in ongoing coordination efforts.

There are several ways in which the City strives to maintain its State-mandated commitment to the District. In addition to regular meetings with the District's Administration Staff and the City's management staff, the City notifies the district of development applications in the following ways:

- A Facilities Review agenda is provided to the District that tracks every Type 2, 3 and 4 application from Pre-Application through the Facilities Review meeting.
- As part of City staff's development review process, applicants are required to submit a Service Provider Letter (SPL) (identified by the District as a "Service Provider Statement"), in which the District states whether or not sufficient capacity is available for the proposed development. Without this SPL, the submittal is considered "incomplete" and cannot move forward in the review process.

Once an application is deemed complete and progresses, the Facilities Review Committee evaluates the proposal's compliance with technical criteria addressing the availability of applicable critical and essential facilities. The Beaverton Development Code defines "essential facilities" as facilities and services that "include schools, transit improvements, police protection, and on-site pedestrian and bicycle facilities in the public right-of-way." Through this process, the City considers a proposal's impacts on school capacities and relies on the SPL provided by the District to determine whether or not a proposal is in compliance with the applicable technical criteria. Any proposal that addresses density or floor area ratio would include a land use application that is subject to the Facilities Review criteria.

In a letter dated May 22, 2019, the District maintained that the Cedar Grove application (ADJ2019-0009, ADJ2019-0010, DR2019-0057 and LD2019-0010) for a Major Adjustment – Affordable Housing should be considered a land use amendment due to the addition of 14 additional units, representing a 47% density increase to the standard base density maximum. The Major Adjustment – Affordable Housing application differs from a legislative land use amendment in that it is a Type 3 application that is subject to discretionary review on a case-by-case basis. A legislative land use amendment, in contrast, would establish a new, nondiscretionary base maximum density and would eliminate individual discretionary review.

There are no numerical density requirements or maximums stated in the Comprehensive Plan, just supportive goals and policies. If the proposal *had* included an application for a legislative land use amendment that was required to demonstrate compliance with applicable Comprehensive Plan Goals and Policies, it is highly likely the proposal would have been successful.

The application for Major Adjustment – Affordable Housing was made possible by a recently adopted text amendment (TA2018-0005) to the Beaverton Development Code. The City-initiated text amendment resulted in two new land use applications; Minor Adjustment – Affordable Housing and Major Adjustment – Affordable Housing, as well as the option to exceed the density maximum in select areas of the Regional Center – Old Town zoning district. The Staff Report for the text amendment, dated January 9, 2019, evaluated the proposed changes against applicable Comprehensive Plan Goals and Policies. Staff’s findings were reviewed by the Beaverton Planning Commission on January 16, 2019 and by the Beaverton City Council on February 12, 2019 and February 19, 2019. Both the Planning Commission and City Council approved the text amendment. The two newly adopted land use applications are similar to the Minor Adjustment and Major Adjustment applications that have been part of the Beaverton Development Code since June 2004, which include the following thresholds allowing adjustments to numerical Site Development Requirements specified in Chapter 20, including density and floor area ratio:

1. *Involves up to and including a 10% adjustment from the numerical Site Development Requirements specified in Chapter 20 (Land Uses). This threshold does not apply where credits have been earned for height increase through Habitat Friendly Development Practices, as described Section 60.12.40.4., .5., .6., and .7. [ORD 4531; April 2010] (Section 40.10.15.1.A.1, Beaverton Development Code)*

and

1. *Involves an adjustment of more than 10% and up to and including 50% adjustment from the numerical Site Development Requirement specified in Chapter 20 (Land Uses). This threshold does not apply where credits have been earned for height increase through Habitat Friendly Development Practices, as described Section 60.12.40.4., .5., .6., and .7. [ORD 4531; April 2010] (Section 40.10.15.2.A.1, Beaverton Development Code)*

The District also states, “By proposing to exceed residential density through a quasi-judicial land use process, the City is not consistent with ORS 195.110 wherein changes in density is a residential land use amendment.” The District does not reference a specific subsection of ORS 195.110 that it believes the City is violating. Staff finds that the only subsections of ORS 195.110 applicable to the City, and not solely directions for the District, are outlined below. Furthermore, staff have provided responses to these subsections that explain how the City is in compliance with all applicable subsections of ORS 195.110:

(2) *A city or county containing a large school district shall:*

(a) Include as an element of its comprehensive plan a school facility plan prepared by the district in consultation with the affected city or county.

City Staff: The School Facility Plan is a supporting document to the City's Comprehensive Plan. The District adopted the "Beaverton School District Facility Plan 2010" on June 16, 2010. This is incorporated into the Public Facilities and Services Element of the Comprehensive Plan by reference. The District is responsible for planning its own facilities and the City may only cooperate and advise them in this process. (Ord. 4289, Ord 4567)

(4) The large school district shall select a representative to meet and confer with a representative of the city or county, as described in subsection (2)(b) of this section, to accomplish the planning required by ORS 195.020 (Special district planning responsibilities) and shall notify the city or county of the selected representative. The city or county shall provide the facilities and set the time for the planning activities. The representatives shall meet at least twice each year, unless all representatives agree in writing to another schedule, and make a written summary of issues discussed and proposed actions.

City Staff: The City and District meet approximately two times a month at City Hall.

(9)(a) In the school facility plan, the district school board of a large school district may adopt objective criteria to be used by an affected city or county to determine whether adequate capacity exists to accommodate projected development. Before the adoption of the criteria, the large school district shall confer with the affected cities and counties and agree, to the extent possible, on the appropriate criteria. After a large school district formally adopts criteria for the capacity of school facilities, an affected city or county shall accept those criteria as its own for purposes of evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

(b) A city or county shall provide notice to an affected large school district when considering a plan or land use regulation amendment that significantly impacts school capacity. If the large school district requests, the city or county shall implement a coordinated process with the district to identify potential school sites and facilities to address the projected impacts.

City Staff: The School Facility Plan is a supporting document to this Comprehensive Plan and is adopted by reference. The District has adopted the "Beaverton School District Facility Plan 2010," including its objective criteria for determining capacity, on June 16, 2010, which is incorporated into the Public Facilities and Services Element of the Comprehensive Plan by reference. The subject proposal does not include a (residential) land use amendment; however, the City provided notice to the District of the proposal..

(13) A city or county may deny an application for residential development based on a lack of school capacity if:

(a) The issue is raised by the school district;

(b) The lack of school capacity is based on a school facility plan formally adopted under this section; and

(c) The city or county has considered options to address school capacity. [1993 c.550 §2; 1995 c.508 §1; 2001 c.876 §1; 2007 c.579 §1]

City Staff: In its December 20, 2018 Service Provider Statement, the District did not raise a lack of school capacity as an issue. The District Service Provider Statement states, “With new school capacity scheduled to come on line in the years ahead, the District believes there will be sufficient capacity to accommodate new students from the project.”

Therefore, staff find that school capacity was considered in review of the subject proposal and that the process under which it is reviewed is consistent with all applicable sections of ORS 195.110.

The City will continue to coordinate with the District and look for ways that the District’s needs can be captured more accurately moving forward.

Exhibits:

Exhibit 3.4 – Letter dated May 22, 2019 from the Beaverton School District



May 22, 2019

Elena Sasin
City of Beaverton
PO Box 4755
Beaverton, OR 97076

RE: Cedar Grove Multi-Family Project

Dear Ms. Sasin:

The purpose of this letter is to respond to your email dated May 13, 2019 responding to my email dated April 29, 2019 concerning the above referenced project. In your May 13th email, you state that the land use applications for the Cedar Grove project do not include approval criteria requiring conformance with the Beaverton Comprehensive Plan. You further state the Development Code implements the Comprehensive Plan and quote two Comprehensive Plan policies. I agree that the Development Code implements the Comprehensive Plan. The Beaverton Development Code states that the maximum density for the site is 40 units per acre. Within that maximum density, the quoted Comprehensive Plan policies could probably be met. Yet, the City is considering a proposal that is a land use amendment in all but name.

Any development proposing to exceed residential density in the City's Code must consider the impact on school capacities as was contemplated under the ORS 195.110 joint planning process. By proposing to exceed residential density through a quasi-judicial land use process, the City is not consistent with ORS 195.110 wherein changes in density is a residential land use amendment. This type of land use process would create an unsustainable precedent for both the City and the District in considering similar proposals by subverting the legislative planning process both agencies completed.

Sincerely,



Steven A. Sparks, AICP
Executive Administrator for Long Range Planning

District Goal: WE Empower all students to achieve post-high school success.

"The District prohibits discrimination and harassment based on any basis protected by law, including but not limited to, an individual's actual or perceived race, color, religion, sex, sexual orientation, gender identity, gender expression, national or ethnic origin, marital status, age, mental or physical disability, pregnancy, familial status, economic status, veteran status, or because of a perceived or actual association with any other persons within these protected classes."