

## SCAPPOOSE PLANNING COMMISSION

Council Chambers at City Hall  
33568 East Columbia Avenue

### PLANNING COMMISSION MEETING; Thursday November 9<sup>th</sup>, 2017

#### 1.0 CALL TO ORDER

#### 2.0 ROLL CALL

Carmen Kulp	Chair	Laurie Oliver	City Planner
Scott Jensen	Vice Chair	Chris Negelspach	City Engineer
Jim Dahla	Commissioner	Elizabeth Happala	Office Administrator III
Rita Bernhard	Commissioner		
Tim Connell	Commissioner		

#### 3.0 APPROVAL OF MINUTES

##### 3.1 October 12<sup>th</sup>, 2017 meeting minutes

Chair Kulp asked if anyone had any corrections; as there were not she asked for a motion to approve;

Commissioner Bernhard moved and Commissioner Connell seconded the motion to approve the October 12<sup>th</sup>, 2017 Planning Commission meeting minutes conditions. Motion passed 5-0.

**AYES: Chair Kulp, Vice Chair Jensen, Commissioner Dahla, Commissioner Bernhard and Commissioner Connell.**

**NAYS: None.**

#### 4.0 CITIZEN INPUT

#### 5.0 NEW BUSINESS

##### 5.1 Docket # CU1-17

Chris Iverson has requested approval of an application for a Conditional Use Permit (CU 1-17) to allow for the reconstruction of a non-conforming duplex in the R-4 zoning district after discontinuance of more than one year. The site is located at 52714 NE 2<sup>nd</sup> Street, southeast of the NE 2<sup>nd</sup> Street and NE Williams Street intersection, on property described as Columbia County Assessor Map # 3212-AC-01900.

**Format:** Quasi-Judicial Public Hearing, both verbal and written testimony may be provided during the hearing.

Chair Kulp read the format of the hearing to the commissioners and asked for any ex parte conflicts then if any party wanted to challenge any ex parte conflict.

Vice Chair Jensen stated that the applicant, Chris Iverson, is a Commissioner for the Port of St. Helens where he works but there is no direct connection between them.

City Planner Oliver went over the staff report and conditions of approval. Adding that staff's recommendation is approval with the conditions of approval discussed.

Chair Kulp asked the Commissioners if any commissioners had questions for staff. As there were none, she asked the applicant to come forward.

Applicant's representative, Al Peterson with AKAAN Architect & Design, came forward; he began by commending the staff for a very thorough and well written staff report. Adding that he has discussed the conditions of approval with his client and his client does not have an issue with items 2 & 3. Starting on page 21 of the packet, his client is okay with condition #3 obtaining all required building permits, item #2 he wanted to commend staff on; stating that

he is on the Planning Commission for the City of St. Helens, and this is the first time he has seen existing sidewalks being addressed during an approval process and wants to commend staff for addressing it in the staff report as it is a perfect time to address it and he will be bringing this staff report to the City of St. Helens Planner, Public Works and Planning Commission to show them how the City of Scappoose addresses sidewalks in their development staff report. Also stated that his client does not have any issues with this condition #2. But then stated that his client does have an issue with the required street trees in item 1.B.; as he feels the trees would be hit by a car. He thought there were was a curb there but there is not so his client thinks cars will drive into them. Then stated for item 1.A. related to the existing carport recommendation to either tear it down or move it; he has a philosophical opinion as an architect as our architecture portrays our society as it portrays our history and how it has developed overtime. This property was originally developed standard to many cities around the county as 50' x 100' lots, the building was built in the 1930's then the carport was built later. At some point, his interpretation, is that the city then determined they wanted 6,000 sq. ft. lots instead of 5,000 sq. ft. lots with additional setbacks so the carport no longer conforms. Explaining that on one hand they could say that it doesn't conform so tear it down or move it but on the other hand his standpoint is that it is a reflection of our society which constantly changes. And it's simply a physical representation of our society so why should we spend our time & money to destroy what is already there; adding the fact that the laws have changed which are also a reflection of our society but from an architects standpoint, the physical manifestation of our society simply because the laws have changed it should not simply be torn down for them. Stating from the philosophical stand point it shouldn't necessarily be required even though that is what our codes say. Adding that the client has not expressed any strong reservations against it so he is on the 'fence' about it but just wanted to express his thoughts about it for consideration. Then stated the other item was item #1, no A., was that they needed to get all the approvals and permits which they are not opposed to that and his client is ready to do that. Then thanked the commissioners for listing to his philosophical take on how society develops and laws change over time.

Commissioner Bernhard asked Representative Al Peterson if his client was okay with removing the carport.

Applicant's representative, Al Peterson with AKAAN Architect & Design, replied that his client is okay with the staff report related to the carport then asked if there were any further questions.

Vice Chair Jensen asked the applicant's representative Al Peterson/AKAAN Architect & Design, if he could still meet the parking requirement if the carport stayed?

Applicant's representative, Al Peterson/AKAAN Architect & Design, replied no, then directed their attention to packet page 38 of 164 which shows a couple cars on the street. Adding that on-street parking is not valid per the development code. Then referred to page 40 of 164; the public works dept. 'x' out a couple cars for vision clearance; but in any case look at page 32 of 164 photo from 2007, at some point in time clearly there were 3 cars parked on the property with the 4<sup>th</sup> probably on the street.

Commissioner Dahla stated that the photo from 2007 appears to show a vehicle just parking in the grass, not really a designated parking area.

Applicant's representative, Al Peterson/AKAAN Architect & Design replied that he doesn't dispute that. Then stated that the photos on page 32, were acquired from the Columbia County Assessor which he included as he was curious when the building was constructed and they had these photos.

Chair Kulp asked if there was room to have one car parked behind another.

Applicant's representative, Al Peterson/AKAAN Architect & Design replied that technically if one car parked behind another then it would stick out over the existing sidewalk.

Vice Chair Jensen asked if it was just a dirt parking spot where the 3<sup>rd</sup> car is parked in the photo.

Applicant's representative, Al Peterson/AKAAN Architect & Design, replied that it is grass or dirt, he isn't quite sure on its current condition.

Chair Kulp asked if his intent would be to change the exterior of the building.

Applicant's representative, Al Peterson/AKAAN Architect & Design replied essentially no depending on how detailed you want to be; adding that the only thing on the exterior that is being changed is the roof due to the new trusses and for the back yard, pointing to page 38 of 164, which is not noticeable from the street. They will be removing an existing 1<sup>st</sup> floor bay window. Stating that the building is getting smaller by 16 square feet or something like that. Then asked if there were any more questions. As there were none he left the speakers desk.

Chair Kulp asked the commissioners if they had any questions for staff or if staff had any response to the trees.

City Planner Oliver stated that the trees should be visible and shouldn't cause a problem to have them planted there. Adding that there is not a curb in that area but it is the obligation of the applicant to maintain the curb & sidewalk, so if the applicant was concerned about the trees then they could propose to put in curbs if they wanted to. Then addressing the on-site parking spaces, she felt that since it is an ongoing issue and concern of the Planning Commission she added that recommended condition of approval, and since the applicant isn't opposed to it she still recommends it. Stating that there was not a Variance application submitted with this Conditional Use application requesting to allow the 14' setback as opposed to the 20' required for carports, so she still recommends keeping that condition.

City Engineer stated that the street trees are consistent with another similar multi-family project we have where there are no curbs and it seems to be working just fine. Adding that although it is not outlined in the land use approval; there are some modifications required to the carport to meet the building code related to the separation between the two structures, so if it stayed there would need to be modifications made to it.

Chair Kulp asked if there were any proponents that would like to speak on this matter. As there were none, she asked for any opponents. There were none, so she closed the hearing for deliberations.

Commissioner Dahla stated that they can meet all the conditions.

Vice Chair Jensen stated that if they could meet the parking requirement and keep the carport then he would entertain the idea but if they can't meet the parking requirement then they would have to rebuild it anyways.

Chair Kulp stated that either way they would have to modify it so unfortunately it can't stay. And thanked Applicant's representative, Al Peterson/AKAAN Architect & Design for his philosophy on it.

*(An audience member stated that they could hear everyone else but could not hear the chair)*

Chair Kulp apologized and moved the mic closer. Then asked for a motion.

Vice Chair moved and Commissioner Bernhard seconded the motion to approve the new findings and conditions of approval to approve CU 1-17 with recommended conditions. Motion passed 5-0.

**AYES: Chair Kulp, Vice Chair Jensen, Commissioner Dahla, Commissioner Bernhard and Commissioner Connell.**

**NAYS: None.**

*(audience member stated his hearing aids are turned up all the way but still can't hear well and asked the commissioners to speak louder as there are many other older people in the audience besides him that can't hear the commissioners)*

## **5.2 Docket # SB1-16, SLDP2-16, MaV1-16**

BMP Design LLC is requesting approval of an application to subdivide Columbia County Assessor Map No. 3211-DA-00300 to create 8 residential lots (SB1-16) in the Low Density Residential (R-1) zoning district. The site is located east of Meacham Lane, between SW JP West Road and SW Keys Crest Drive. The applicant is also requesting approval of a Sensitive Lands Development Permit (SLDP2-16) due to slopes exceeding 20% within the subject property, and a Major Variance (MaV1-16) to allow for reduced

setbacks to an existing house on proposed Lot 1. **Format:** Quasi-Judicial Public Hearing, both verbal and written testimony may be provided during the hearing.

Chair Kulp stated since she has received several speaker request forms, she requested they limit their repetitive comments as they would like to give everyone a chance to speak but if there are too many people then they will need to put a time limit on everyone speaking adding that they have a number of letters as well. Then read the details of the docket (above) and the format of the hearing. And asked for any ex parte conflicts from the commissioners.

Commissioner Bernhard stated that she knows a number of people that have submitted comments as she has lived in this community for 40 years but it shouldn't make a difference to her decision which will be based on the code.

Chair Kulp asked if any party wanted to challenge any ex parte conflict. As there were none, she went over the order of the hearing, then turned it over to City Planner Oliver to begin.

City Planner Oliver stated that she would briefly go over the highlights of the staff report knowing that they would be revisiting each one in depth later on as there are many people here tonight so many of the items will be further discussed. Stating that the staff recommends approval of the application with the 44 conditions of approvals that begin on page 62. Then she went over the exhibit packet of all comments received and staff's response to all the written comments, inserted below on the next full page;

**Staff response to written comments received for SB1-16, SLDP2-16, MaV1-16:**

Stormwater concerns: Please see City Engineer Chris Negelspach's memo, attached to this exhibit.

Noticing comments: Several letters mentioned the lack of notice of the application, and one letter from Taylor Murray was returned to the Planning Department. Quasi-Judicial Decisions require noticing to all property owners of record within 300' of the subject site compiled from the most recent Columbia County tax assessment roll. Property owners who mention they were not noticed were not within 300' of the subject site. In the case of Taylor Murray, the Columbia County tax assessment roll lists the mailing address as the physical address, however, Taylor Murray receives mail at a P.O. Box and the notice was returned to the Planning Department as undeliverable. Taylor Murray sent an email requesting that the notice be emailed since Taylor Murray was out of town at the time the notice was sent and staff emailed the notice and plan sheets as requested.

Sidewalk on JP West comments: When the city requires a developer to build infrastructure, as part of a development, it is called an exaction. Exactions are not per se illegal, but the U.S. Supreme Court has ruled that there must be a "nexus" between the development and the exaction, and the exactions must be "roughly proportionate" to the benefit received. If the exactions do not meet the "nexus" and "rough proportionality" tests they are considered a "taking" and subject the City to potential liability. In this case, given that there are only seven lots, and there are substantial onsite improvements that the City is requiring, we do not believe that the City can require the offsite sidewalk improvements requested, without substantial legal risk that that condition would be determined to be a taking.

Narrow lots: One comment submitted mentioned that the proposed lots were narrow, however, all of the proposed lots exceed the minimum lot width of 50'.

Mention of variance as it relates to the Sensitive Lands Development Permit (SLDP2-16): The Taylor Murray comment makes reference to the variance permit being related to the Sensitive Lands Development Permit in the last paragraph of the written comment. The variance is a request to allow for reduced setbacks to the existing house on proposed Lot 1, and has nothing to do with the Sensitive Lands Development Permit.

Trtek's comments: Robert Schmit submitted a response to address some of the Trtek's concerns (Exhibit 19). As the Trtek's mention, some of the concerns they raise in the letter are not related to the approval of the application tonight. Those items will need to be dealt with privately between the Trtek's and the developer, or the Trtek's and the family trust.

- The Fire Department governs addressing within the City. The Fire Marshall has stated that the Trtek's will need to readdress their home since the new driveway will be accessed from Keys Crest Drive. Staff inquired if there was any flexibility in this and were told that it is for safety reasons that they MUST change their address so that emergency vehicles can easily determine where to go in the event of a medical or fire emergency.
- The existing 50' width at the north end of the subject site defines the location and width of the roadway where it connects with JP West Road. The Trtek's can request a lateral to their property from the water mainline within Keys Crest Drive in case any issue is detected with the well on their property in the future.



- The street lights used in the development will be LED and the Trtek's can request to have the lights shielded by contacting the Columbia River PUD in the event that the light shines on areas other than the street itself.
- Height restriction of homes in the new development are governed by Chapter 17.44, R-1 (Low Density Residential). The maximum height for a single family home in this zoning district is 35' (this is the same for all residential zoning districts). Any new home proposed on these lots would be required to stay below the maximum height.
- Only one driveway curb is permitted by the development code and the Trtek's can use Meacham Lane to drive their lawnmower and trailer into their backyard.

Kleinman comment (representing the Specht's):

- As mentioned in the applicant's response to the Kleinman letter (Exhibit 27), what is referred to as a "barrier wall" is actually a retaining wall necessary for grading purposes, to compensate for the difference in elevations between two points or two alignments. Final engineering will determine the necessary height. If the Specht's wish to have a decorative pattern on the front of the wall, they can work with the developer to cover the additional costs to do so. This also applies to the request for a decorative wrought iron fence.
- All utilities are required to be placed underground, a condition specifying this is not needed, since the applicant is required to meet the City of Scappoose Development code standards and Public Works Design Standards.
- As noted in the applicant's response to the Kleinman letter (Exhibit 27), the applicant could not find the well registration in the Oregon database and did not know of its existence. The existing 50' width at the north end of the subject site defines the location and width of the roadway where it connects with JP West Road. The Specht's can request a lateral to their property from the water mainline within Keys Crest Drive in case any issue is detected with the well on their property in the future. Per the City Attorney, the City does not have a method for requiring the applicant, through the conditions of approval, to provide for the relocation of the well on the Specht's property. The developer is responsible for drafting the CC&R's, if they choose to do so, and the City cannot condition the developer to add the cost of a new well to the CC&R's.

Fencing at the perimeter of the development: One of the letters asks about fencing at the perimeter of the development. Since the subject site abuts the same zoning district and the same use (residential) as the properties it is adjacent to, there is no requirement for fencing or buffering. Each individual future development will determine if they want to construct a fence on their lot.

Concern regarding home construction on steep slopes: Several of the letters mention the concern about allowing construction on steep slopes, particularly lot 4. The applicant was required to apply for a Sensitive Lands Development Permit – Steep Slope for this reason, and conditions of approval 20 – 26 relate directly to this concern. Specifically, condition of approval # 21 states that *prior to development of Lots 4 - 8, a Sensitive Lands Development Permit shall be required. The applicant shall submit all required illustrations and plans prior to the issuance of building permits for the individual lots. The building permit application shall include a foundation plan designed or reviewed by a registered professional engineer that conforms to the recommendations and guidelines listed in the geotechnical report and supporting site-specific recommendations.* This means that an additional permit must be issued for each home proposed for construction and that foundations must be designed based on the specific lot characteristics.

City Planner Oliver then turned it over to the City Engineer Negelspace to discuss his memo related to the storm system by BMP Design LLC plan, inserted below;



## Memorandum

November 9, 2017

To: Laurie Oliver, City Planner  
From: Chris Negelspace, P.E., City Engineer  
Subject: SB1-16 Victoria Estates – Response to public comments

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I have reviewed the comments received as of November 8, 2017 regarding the public improvements and response by the applicant BMP Design LLC. The following remarks are in response to both the public comments as well as the applicants.

Starting in the winter of 2017, we worked with BMP Design to review the proposed storm system and their preliminary analysis. To understand the drainage characteristics of the basin, I conducted a site visit with the previous building official, Don Saltee and the owner of the property with the existing drainage, Mike Juda. I made another site visit with Bogden of BMP Design and the Public Works Director, Dave Sukau in the late spring. During the second visit we met with both of the neighbors immediately downstream of the culvert on Jobin Lane to discuss their concerns and observe the drainage system. Since the system is entirely located on private property we were granted permission to walk the site and allow the surveyor to take measurements of the existing piping and open channel cross sections. During the site visits we notice partially plugged culverts or intake structures, and outfall onto the Buxton property with no riprap protection. Subsequent comments received concur with these observations in addition to the mention of several small springs along the eastern property line.

The PWDS requires a number of performance standards and specific design requirements to ensure compliance with Oregon Drainage Law. In compliance with the City and State law the applicant is demonstrating compliance or exceeding requirements as follows;

- Stormwater runoff is not being conveyed from one basin to another and is being collected and discharging in the same manner it is today since little to no infiltration happens once the top organic layer of soil becomes saturated (see geotech report regarding infiltration).
- The applicant is proposing to discharge the proposed development where the existing water flows onto the lower owner's land, see Storm Drainage Report basin area map for reference.
- The upper land owner is not accumulating stormwater and accelerating the flow onto the lower owner's land. The applicant is aware of the downstream concerns and to minimize impacts to the downstream systems per section 2.0043 of the PWDS, has proposed to exceed the 25-yr requirement and detain all design flows up to the 100-yr storm and limit



post developed release to ½ the undeveloped rate for the existing 2 yr storm (~90% of all storm events).

The result of this design is that the downstream system will see storm system releases occur over a 24-yr timeframe for the design storm verses the runoff experienced today which might occur in minutes or hours, limiting the peak discharge rate currently being experienced.

Given the survey data from the site visit, BMP Design provided additional analysis to show that the downstream series of open channel, piped systems and culverts can manage the 25-yr event. However, since we have not received final design for the project, I have recommended Conditions of Approval 6.c to include additional investigation and improvements, as warranted, in accordance with section 2.0027 of the PWDS. This information will be reviewed during final design approval of Construction Documents regarding erodibility of the open channel and determine if inlet configuration of the culverts need improvements to prevent blockage. The camera inspection will also help determine if the downstream pipes are damaged or blocked with debris.

Based on the information provided, I find that the applicant's proposed design meets or exceeds the requirements of the Public Works Design Standards and Oregon Drainage Law and is consistent with other projects City wide regarding the stormwater conveyance and discharge.

City Engineer Negelspach asked the commissioners for any questions.

Vice Chair Jensen asked what a normal infiltration rate would be.

City Engineer Negelspach replied that it varies site to site as it really depends on the over burden of the soil; but anywhere from 4-6" per hour to 100-200" if there is clean gravel adding that .2 is not usable for infiltration.

Chair Kulp thanked the City Engineer and stated that was a lot to absorb, then asked if any commissioners had questions for staff, as there were none she asked the applicant to come forward.

Applicant Bogdan Popescu with BMP Design came forward and explained they are the civil engineering company working on this project. He began by thanking staff for all their time and thanked all the members of the audience for coming tonight. He stated that when he sat down with the owner of the project to discuss it they wanted to make sure that through their design process they took care of the the technical issues related to storm water, as they detected an issue with it from the beginning. Then re-stated what the City Engineer stated, that their storm water design meets and exceeds the standard. Asking that if anyone came to look at the system they could see that there is a ditch that picks up storm water then drops it into a 12" pipe, then into another ditch and into a 10" culvert and another ditch under Jobin Lane then to the Buxton Property to the east. Adding that it is on private property so whoever installed that system tried to do a good job. Stating that there are 2 elements to this system; first, it would be a good idea that the system is under the city's jurisdiction to ensure it functions properly since it doesn't now, and second, it requires maintenance as it is a heavily treed area. He imagines that every fall that storm system probably gets plugged so if you have a plugged system then the rains come, you will now have a sheet of rain flowing over Jobin Lane. Adding that the system can carry the water but in his opinion the way it was built, it is missing a couple manholes but that goes back to the fact that it should be under the city's jurisdiction and maintained to ensure it works properly which involves some legal aspects. Stating that if the developer had the money and wanted to fix the system, they couldn't since it's all under private ownership. He suggests that the 6-7 houses that are directly affected by it should associate somehow and look into it. He also stated that they agree with everything that the city staff has suggested except for the part that they should look at the system and fix it. He strongly encouraged everybody to realize that this is a problem that has been there for over 20 years. And they have waited until now, when the property owner wants to develop 7-8 houses to have him pay to fix everything; he doesn't think that is correct and it should be more of a neighborhood action or association that comes together to fix it. Adding that from a technical standpoint; they made sure that the storm water that comes from the 4 acres to the west does not exceed what is currently flowing into the ditch on the SE corner of the property. He then asked the commissioners if they had any questions.



Commissioner Dahla stated even if his design exceeds the Design Standard but there is a problem downstream, then their design won't change the problems downstream so it will continue to be a problem.

Applicant Bogdan Popescu with BMP Design replied that is what he read in the neighbor's letters, that over the years they experienced flooding and they said there is a sheet-flow phenomenon that happens; so that could only happen if the pipes are plugged since they calculated the pipes and they can handle the water.

Commissioner Dahla asked City Engineer Negelspace if that is something the city could address.

City Engineer Negelspace replied that it is all private so they are at an impasse essentially since there has to be cooperation by the downstream neighbors/property owners otherwise the applicant would have difficulty resolving the drainage issues.

Chair Kulp asked if the houses on Jobin Lane were built as part of a subdivision or individually.

City Engineer Negelspace stated he does not have any history on that.

City Planner Oliver stated it was more than likely developed in the County, adding that Jobin Lane is a private road in a private tract.

City Engineer Negelspace stated there are no easements for the current system there.

Chair Kulp stated that as they move forward, the applicant is going to be building a system that will work and will somehow also need to be maintained; if she is understanding that correctly, this seems to be the problem now as we have an existing system that has not been maintained properly and is clogged.

City Engineer Negelspace added that it could also be that it was not designed properly either as he has no evidence or records of how it was designed. Adding that the inlet condition of the culverts is an obvious issue.

Chair Kulp stated to ensure this doesn't happen with this new development, we need to make sure it is a part of the association of the subdivision.

City Planner Oliver stated that there would be no home owners association since there is not a private tract to maintain which is typically why they would include a requirement for an HOA. Adding that Condition of Approval 6.C. puts the burden on the applicant to ensure that the downstream system is actually functioning as it should.

City Engineer Negelspace stated the essence of this discussion is that there is a mutual interest with the applicant and the downstream property owners to work together to resolve these legacy problems and to participate in some of the improvements. Stating that obviously the developer didn't create those issues as they exist today without the development, as evident by all the comments they received. Adding that there is an opportunity with this project to resolve those issues. We do not know what it will cost but if the project moves forward then we will have a better understanding of that and the developer can work with the neighbors to participate and help take care of some of these issues as there is a mutual benefit to be gained.

Property Owner Robert Schmit came forward and joined his consultant Bogdan Popescu with BMP Design to discuss their proposed development; stating that his father purchased the property in 1958 and it was his dream that each one of his children would have a lot to live on but now that they are in their 50's it is no longer feasible. He and his siblings came up with the idea of having it done anyways and having it done correctly. Adding that he used to trick or treat down Jobin Lane and they realized that there were issues on Jobin Lane with the storm water so that is why they found the best consultant who had the best engineers so they could take the situation that Jobin Lane had before and try to make it better by the way it is designed, not make it worse. Stating he still has family and friends that live in Scappoose and they want to be good neighbors to make sure it's done correctly. And they have come to the point where the 7 lots with all the improvements is quite expensive and they have not held anything back and have done things that people don't see to ensure it works. He is concerned about the requirements section that states they would have to scope the system and according to the city they would require upgrades with channels,

culverts, and pipes; in a 7 lot subdivision it isn't feasible without a budget or tangible budget, it's impossible for them to do that financially. Adding that they put all their money into making sure that the water that currently goes down there is made better with the proposed system. Stating that he knows they have had problems down there for decades but we didn't start this project thinking we would be responsible for fixing their problem but instead they wanted to ensure that their project wouldn't make it worse. And as good faith and as good neighbors they are willing to help with some of that but if they start looking into it and find a lot of issues or things that need to be replaced and to put that burden onto them makes the entire project not doable. Adding that they started the project with 11 lots but their dad wanted 6 lots so they compromised with 7 lots as they wanted them to be nice lots and they want to use a local builder. He doesn't want to say they spent all their money in the beginning to make it right, but they wanted to do the important things right like the neighborhood and the water drainage issues. Stating that the city's requirement is an open-ended budget item that he does not feel they can bare.

Commissioner Bernhard asked Property Owner Robert Schmit which condition he is referring to.

Property Owner Robert Schmit replied it is on page 63, last part of Condition 6.c.;

*The applicant shall verify the condition of the system by camera inspection and the City Engineer shall require upgrades to the channel, culverts, pipes and outfall as needed to meet the PWDS.*

He continued by stating they want to use a local builder but if this is approved then this condition seems open ended, and the builder would have no idea what he is getting into, then the price we might get wouldn't even be close to the amount they've already spent on the work that was already done. Or the builder might not even want it since it is an unknown entity without any budget which isn't even on their property. Adding that they thought they took every precaution to ensure that the water runoff was improved; but in no way would it fix their problems and it wasn't cheap.

Chair Kulp thanked them then asked for any proponents that would like to come forward.

Attorney Jeffrey Kleinman approached the speaker desk with his client, property owner Mary Ann Specht, (submitted exhibit 17) who lives at the corner of JP West Rd. and the proposed extension of Keys Crest. He explained that they have lived there for some time. He wanted to sign up as neither in favor or opposed but was informed that there was no such category. So they are in favor to testify with restrictions or conditions; he had submitted a letter suggesting certain conditions of approval which was addressed in the staff report and also addressed by the applicant in exhibit #27. Adding that he is not casting dispersions upon the folks who own other properties that will be affected with very serious concerns but in terms of his clients they have limited concerns that are fairly easily addressed and would expect that a normal land use applicant would be grateful for not taking, what would normally be called a nimby (not in my back yard) position, but working with the applicant and proposing reasonable conditions. His clients live down slope from the proposed extension of Keys Crest, which with its barrier wall or retaining wall would loom over their property with fencing on top of the wall, which would give some sense of imprisonment for his clients. They understand that the applicant has a right to subdivide his property but there needs to be some respect for the property rights of others. And with respect to his clients existing well, the city's attorney has implied that there was nothing they could do about it. But the condition he will talk about will avoid future city liability if the required improvements of the street and storm drainage system cause their well to fail which is only 5' from the new streets. Adding that it is not his client's fault that the applicant could not find a record of that well, but it is there and it is their sole source of domestic water for household use and irrigation. And without reading through the conditions of his memorandum; first they proposed that the wall be limited to 2'.

Chair Kulp stopped the attorney and stated that the items he is requesting are not anything the Planning Commission has control over and as our City Planner pointed out, these are things you need to discuss with the owner of the property. All they can deal with is the development code which doesn't pertain to a wall that he wants, but a wall that is necessary.

Attorney Jeffrey Kleinman said with all due respect he pointed out the City's development code 17.150.060; the commission has discretion to include conditions of approval of this nature; and the applicant's response is that they would follow the city's guidance on doing that. So he doesn't think that is something that should be turned away since the applicant is agreeing to do it if the city suggests it.

Chair Kulp added that they are not turning it away but right now this planning commission is not set to even have that conversation.

Attorney Jeffrey Kleinman stated that he disagrees with all due respect as he is representing his client and will be very quick so others may be heard; continuing that if there is any damage to his clients well that it would subject the city to liability by approving the proposed improvements and extension of Keys Crest so there should be a condition added that if there is such impact then the applicant or successors will pay for re-siting his client's well. Then began discussing the misunderstanding of a buried telephone line; the house that exists on lot 1 is served by a buried line that is on his clients property. Adding that he understands what the applicant and staff are saying about the new houses, they would be served by a new line but he questions how the existing house on lot 1 will be served which is basically a trespass on his client's property. So that line should be disconnected and decommissioned which is consistent with the application but there is confusion on how the existing house on lot 1 will be served. Then he stated finally on condition number 32; there is some conflict between what the applicant says and the actual condition which calls for the applicant to provide some access on Keys Crest as it would be a very difficult access, if it can be sited, as there are severe drainage and slope issues. Adding that as the applicant suggested, they too suggest that it be modified to state; pursuant to the agreement of the applicant and Specht's for the siting of that driveway. Then stated that concludes his testimony and asked if anyone had any questions; as there were none they left the speaker desk.

Chair Kulp then called up opponent Jennifer Hancock.

Jennifer Hancock/Jobin Lane property owner (submitted exhibit 14) stated that her concerns will probably will be repeated which have to do with the amount of water tributaries and springs that come out of that hillside. Adding that she lives on the west side of Jobin Lane and has installed terraces, 2-french drains, & retraining walls to help with the drainage, she found several springs or tributaries that find their way down the hillside. Stating that some of the water flows towards JP West Rd. even though the report shows it flowing towards Murray Creek. She stated that when she moved there in 2002, she was at 20% grade with all the clay. She has talked to half of the neighbors who have installed auxiliary french drains to deal with all the water coming off the hillside and she isn't even talking about the culvert. Adding that there are 4 of them towards JP West Rd., that get a lot of water and out of 8 houses she has talked to, they have put in a total of 16 new drains to deal with the water coming off the hill, not the culvert. Adding that there are 9 more houses she has not had a chance to speak to yet. And wondered if the geotechnical report the applicant submitted is considering the springs or tributaries in that hillside.

Chair Kulp asked if she would consider or is asking to sit with the applicant and the city engineer to try to figure out a solution.

Jennifer Hancock/Jobin Lane property owner stated that she is just asking if a thorough report was done with a more current climate report about water, heavy rains and climate changes. Adding that the hillside is unstable, it has a lot of water coming out and the weather is changing so she is unsure what the report includes; did he include a survey of the springs and underground water or is it just a water run off report.

City Engineer Negelspach replied that he doesn't believe they looked at subsurface water as that report would require an extensive investigation.

Jennifer Hancock/Jobin Lane property owner added that the setback would be an issue for the lot behind her and she would like to see a better survey done on the subsurface water and a landslide report would also be helpful due to all the water that comes off the hillside. And of course she has an issue with the culvert which they all maintain plus she is sure they are going to build a good system but is unsure how much water the new swale will hold or if it will be enough. Stating there there a lot of concerns and doesn't think they should vote on this tonight.

Chair Kulp called Darla Knytych.

Darla Knytych/Jobin Lane property owner (submitted exhibit 18); stated she moved to Scappoose in 1976 and has lived on Jobin Lane since 1987 and has a lot of history of that area. She stated that she and her neighbor are at the



lowest point on the east side of Jobin Lane. She was told it was built by Don Kalbera & Don Jimmerson and they built the Don's Apartments plus several other homes in Scappoose including his house at the end of Jobin Lane and two other houses on Jobin. When they moved there they were told no one would build below them as it was within the 100 year flood plain and no one would build above them as there was a study that the hillside is unstable because it was clay and when saturated it literally slips. Adding that when they built their house, they installed a 4" drain at the top of her driveway and a 4" drain at the bottom of their driveway that has 20% slope at least. Stating that Jobin Lane is not maintained by the City so it is just hard packed gravel and there are no ditches to help drain it. Since they have lived there Keys Crest was developed and they noticed a significant change in the amount of water that comes down the hillside and into the pipe and the pipe goes across at a slight angle across Jobin Lane and under the corner of her property and under the corner of her neighbor Lindsay's property. Adding that the open channel would run slightly wet all day long but when they put in the Keys development it stopped running all year long but then when it does run it runs like a gusher and she has seen a raging torrent run down her driveway when it gets blocked. Adding that it goes from a 12" pipe, which doesn't collect much since above that pipe where it comes off the back of the Keys property is a big slope forming a "Y" behind Keys and behind where this new development is going. Adding that the water comes in at the joint of the "Y" and goes straight down where Mr. Judah put in a pipe. Adding that the previous owner Mr. Cupples installed a water wheel feature that would run year round since there was enough water from a creek and spring drainage that would keep it running year round. Adding that the clay soil in the area is not very permeable and if anyone takes out a tree, which can collect & retain hundreds of gallons of water, then now they have additional water. Over the past couple years the area has lost about 12 trees, now every night her and her husband have to set an alarm clock to go out to check the drain with a hoe to rake it across the driveway; she is 71 years old with fibromyalgia out in the rain & the cold with a hoe digging a trench to ensure the water diverts to the culvert since the roadway is slanted towards her driveway. Stating Jobin Lane is not maintained by the city. From the hillside, the water comes out of the 12" pipe from the west side, which the report says is supposed to be able to drain all the water, then it goes into an open culvert which is always full of leaves this time of year and she is always digging it out, then it goes into a 10" pipe which goes under Jobin Lane across her property but after that she doesn't know where it goes as they have never been able to find it. A few years ago she asked Don Kalbera where it went and he said it might be a permeable pipe. So from her gutters and downspout and the 5 drains on her property and the 4" pipes, it all goes into a plastic drain that she knows about. Adding that before her neighbors, Devon & Lindsay moved in, the previous owners were planting an arborvitae and they hit something hard that they thought was broken up; so between the two properties all the water goes into the Buxton Property via a 10" pipe that stays wet most of the year. Stating that when she goes home tonight she has to get out her hoe to trench a couple areas to drain the water off Jobin Lane so it doesn't go down her driveway and she needs to clear the grates to the 4" pipes to make sure her basement doesn't flood like it has in the past with 2" of water and that was when the pipes & drains were clear. She has seen the water shoot out of the pipe with such force it misses the connecting 10" drain and comes right down her driveway. She would like to know, when she bought the house, whose responsibility is it to build a better system and maintain it; is it a homeowners association or the City of Scappoose and who's responsible for the damage to her property when it fails. If you allow this development to happen, then someone will make a profit but someone will be burdened which will be the people of Jobin Lane. Adding that yes something does need to be improved, but this project should not go forward unless someone takes on the prospect of making that drainage system better at taking on that much flow. Stating that their 24 hour calculations of what can move through that pipe is way off from what really goes through that pipe. She said when they came out to check the drainage in the area, they did not come to her property or talk to her and feels that is an oversight on their part as the drainage comes out on her property. Stating that when they purchased property here in Scappoose they trusted the city and that they had due diligence that the drain system would work; and maybe it did in the beginning before all the development occurred on the hillside above them. She said that just like water that runs downhill, there is other stuff that runs downhill too that stinks and if they allow this new development then it will be pretty stinky if they allow it, and thanked them before leaving the speaker desk.

*(applause from the audience)*

Chair Kulp called up Lindsay Goodwick.

Lindsay Goodwick/Jobin Lane property owner (submitted exhibit 13 comment); stated she lives right next door the previous speaker, Darla. She purchased the property December 2015 and is coming up on her 2 year anniversary of living in Scappoose and loves living here in our small community and being able to talk about these issues with the commissioners tonight. She stated she was the one that wrote about the flooding basement and had no idea about

the flooding in the area as there was no disclosure from the people she purchased it from and actually lied by stating there were no water issues. As stated in her letter she has dealt with the water issues ever since she purchased her home. Her letter regarding the big flooding issue she experienced over Thanksgiving stated she took out 100 gallons of water but it was actually more like 300 gallons; and when she put in her french drain recently water was cascading down her driveway. The consultants state that they have been doing statistics and analysis on this but every time it rains she now experiences high anxiety since her Thanksgiving flooding. She is now a single mother and will have to deal with the flooding issues on her own. She appreciates that the land owner is following through with his father's dreams, but his development will severely impact all the people on Jobin Lane. She is actually surprised that they did all the research, analysis on the water but never came to look at where the pipe goes since it runs right underneath her yard and her neighbor Darla's, but no one ever talked to them about it. Her babysitter had told her that one day someone was there looking around but never came to talk to her or her babysitter. Adding that in May she called and talked to the City Planner, Laurie, who connected her to Chris, the City Engineer and was told there was nothing that could be done but she could come to the Planning Commission when they have the hearing on Victoria Estates Subdivision, which was the first time she learned about it since she lives outside of the noticing area. Plus she was told that there wasn't anything the city could do since they live on a private road, which she feels is quite bad. Sounds like no one knows what is under the ground there but they did all the research to allow buildings on the hillside. She feels more needs to be done as there is no history or permits on the system, so it would be totally irresponsible to move ahead with the development without more information. She also sees it as an opportunity as she would like to not live in fear every time it rains; and that a bigger conversation needs to happen about whose responsibility it is to fix the issues and maintain it, as it would take a lot of money, but whose money? Adding that they do live on a private road but they all pay the same property taxes as everyone else, then thanked the commissioners for listening to her.

Chair Kulp asked her if she called anyone at the city when the flooding occurred over Thanksgiving.

Lindsay Goodwick/Jobin Lane property owner stated that she did start calling people in the city and everyone was really nice; in fact one person she talked to said someone was standing right next to her that could come up and look at it right now which is what she loves about this small town. When someone came from the Public Works department to look at it, they stated that they didn't know anything about it. Since she knew something needed to be done, they began working on the french-drain in March but she is unsure if that will work, adding that her basement has since flooded again which is ruined and doesn't want to spend the money to fix her basement until it is figured out. She stated that the letter she submitted also includes all the bids from contractors to fix her basement which is thousands of dollars.

Commissioner Bernhard asked if the flooding occurred after she had lived there for a while after the last subdivision was built.

Lindsay Goodwick/Jobin Lane property owner replied that she has only lived there for 2 years; but the people that lived there before her had basement issues which they lied about on their disclosure.

Commissioner Dahla asked the City Engineer if the flooding we all experienced last Thanksgiving was determined to be a 100 or 500 year storm event.

City Engineer Negelspach stated that the closest event we had was a 2 year event which was in December.

Commissioner Dahla stated he knows what she is referencing since he also lives on the hillside off Smith Rd., and saw the destructive path of water when the torrential rains came down on Thanksgiving and relates with her feelings.

Chair Kulp called up Taylor Murray.

Taylor Murray/Jobin Lane property owner (exhibit 23); stated that topographically speaking he is the unlucky one as his property is at the lowest point of the proposed development and he has only lived there since May. In his written response, he referenced Oregon water law. During the latest rain he hiked to the top of the hillside towards Keys Crest then down his property line and turned around and did it again. As it has been referenced, the creek actually

forks on his property. According to the diagrams, the water would flow straight down his property line per the schematics. Adding that there is no established creek bed on his property line as it's a spring or seep; it's about 20' from where the water enters the channel and the property line above. His question is how would you connect or improve this seep, adding that in reality it is a fork between him and the neighbors that live directly above him, they have in excess of a 30% slope on the backside of them off the back side of the Key's development which makes a channel then it takes a 90 degree turn down his property line where it runs about 60' then plunges into the culvert that everyone keeps talking about that clogs up, before it goes under Jobin Lane. Stating that since they were philosophical earlier; he asks, "What is a creek"? Is it a small wash that doesn't have a source up the hill and doesn't follow a course down to the river below? Stating that he was looking at the Scappoose Municipal Code; the utilities statutes states that there should be adequate channel for the water to flow out and if that doesn't occur down below then how can this development be approved if it's only adequate up on top of the hill. Adding that it will be a bottle neck of water that will hit that area. He went on to talk about the erosion; and mis-spoke in his letter when he called the Sensitive Lands Application a Variance as he stated in his mind, anytime you go against the established code it is a deviance. Stating at the lowest point where they come out of the woods it's about a 20% grade but as you get closer to Keys Crest it goes to about 30-35% slope, it's a large slope there. The Oregon Drainage Law states that a landowner may not divert water onto adjoining land that would not otherwise have flowed there; and doesn't understand how you can take all the water from that entire field to one point as that is a diversion of water. He added that sewage isn't coming down his hill, which he is thankful for, but wonders why the water can't go where the sewer is going off towards JP West Rd. Stating that he also mis-wrote in his comment about the water going to Jobin Lane, he meant JP West Road where there is established infrastructure. Adding that we had a huge snow event last year and the weather is changing, it was a major event for them. He is a divorced father of three kids and just bought this dream home; now he is hearing that he might have to partner with a developer to repair the bottom portion of his creek for the benefit of the development above him which he can't afford to do that. It seems like the developer should work with them to figure out those costs; fortunately he does work in riparian restoration for the Department of Agriculture and there are some things he can do with his neighbors for the existing conditions to mitigate some of the problems but shouldn't have to take on all the extra runoff water. Unfortunately when you take away the houses and trees, it makes a lot of sense since he looks at topographical maps every day at work but when you really look at the drainage and existing conditions, then it doesn't make any sense as it is not designed to accept that flow. He would also argue that the right fork of the creek behind his neighbor's house, doesn't even reach the top of the hill as there is not a creek running across and it's probably just catching springs; which is actually a 1' x 1' not 1'x1'x1' that he wrote in his comments. It's a foot wide by a foot deep; and as a person who owns a bulk of that drainage area what is he going to have to do or change about that property. Will he have to remove his fully grown fir & cedar trees to install an above ground pipe? Adding that none of the water issues were disclosed to him either when he purchased the property in May but he loves the neighborhood and has learned a lot about his neighbors. Stating the fact that they have maintained the road for years all on their own and dig out ditches to divert water and re-grading the roadway; and they continue to do it but now are being asked to take on more water. Requesting that the storm water be re-routed to an area that can handle it better than Jobin Lane.

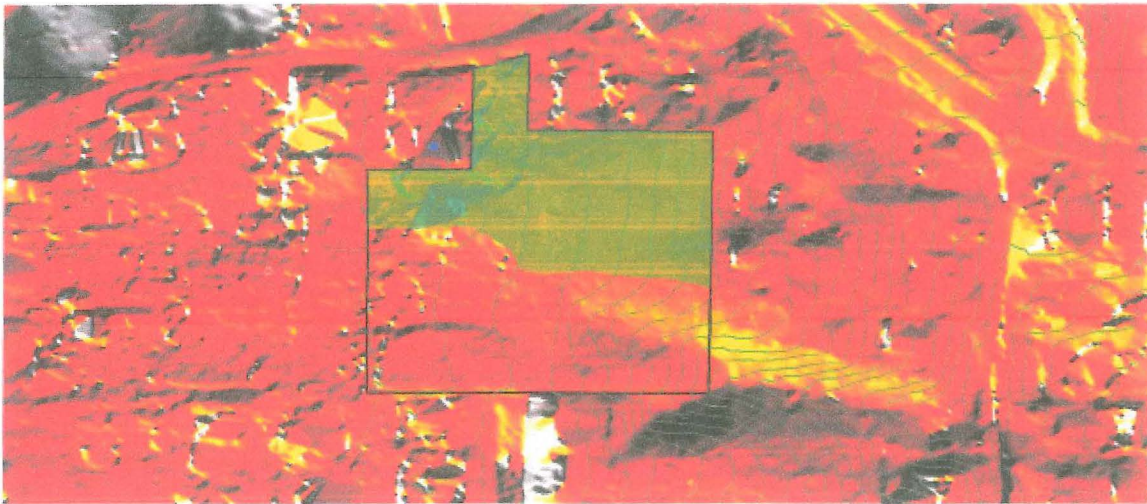
Chair Kulp thanked him for his time, then called up Judy Haugen/Jobin Lane property owner. She handed out and read the statement, inserted below;



Dear Commissioners,

My name is Judy Haugen, a resident of Scappoose on SW Jobin Lane. My husband and I have several concerns regarding the proposed "Victoria Estates" development. First, we are not opposed to this development, per se. Our primary concern is with the proposed storm drainage plan. Obviously, when you grade and prepare a property for development you necessarily change the surface flow and the water retention capacity that trees, shrubs, and grasses provide.

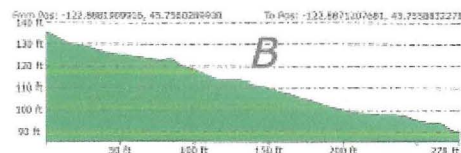
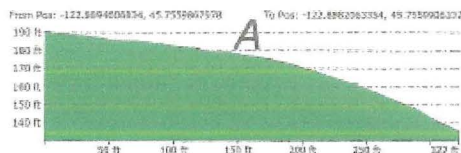
The question then becomes how to mitigate these changes without harming downstream neighbors. **Oregon Drainage Law** states that a landowner may not divert water onto adjoining land that would not otherwise have flowed there and goes on to stipulate what constitutes "Divert water." We can all agree that flowing water obeys the laws of gravity and naturally flows down slope. Please note that in the figure below (based on USDA LIDAR data) depicting the proposed development area, roughly half (green shade) of this area currently flows eastward (red areas show eastward slopes and yellow southward slopes),



but does not flow into the seasonal creek area where this development plans to convey the water from the new impervious areas southward via a 48-inch conveyance and then eastward via a 12-inch 17 degree pitch conveyance to a "rip rap" outflow into the current creek area that flows through the Taylor Murray property and then under Jobin Lane and between the Knytich and Goodwick properties before spilling out onto the Buxton property via a 12-inch pipe with grate. Given the steep slope of the Murray property, the concentrated flow from the current plan will almost certainly do harm to affected properties and likely lead to legal remedies.

**Oregon Drainage Law** also stipulates that the upper landowner may not accumulate large quantities of water, then release it, greatly accelerating the flow onto the lower land owner's land. The proposed 400 FT x 48 inch pipe feeding a 12-inch pipe positioned at a downward angle of 17 degrees that then dumps onto the Murray property appears to be in conflict with these additional details of Oregon Drainage Law. To quantify this, the 400FT pipe has a volume of about 37,601 gallons and the 17 degree inclined 12-inch 158 FT pipe has a volume of 928 gallons. It is useful to consider that just 1-inch of rain falling on the new roadway will alone produce approximately 13,739 gallons of runoff to the 12-inch pipe; add to that the drainage from roofs, driveways, walks, etc., will greatly increase this volume.

Please note the profile west to east across the proposed development (A) and (B) the profile west to east down the seasonal creek across the Taylor Murray property to Jobin Lane, are depicted below.



The proven changes to the physics of our atmosphere all but guarantee increasing record rainfalls, making 100-year events commonplace. At a minimum, a condition for approval of this application should include mitigation to downstream properties such that the developer works with



affected property owners to convey the drainage via a 12-inch pipe all the way to South Scappoose Creek drainage; perhaps ending with a bioswale for that portion in the existing floodplain.

Other requirements for this development should be a greater concern for slope stability, to include deeper bore holes placed in the proximity of excavations for each lot and infiltration tests at multiple locations north to south to better assess impacts to the drainage; mindful that this development is on a steep slope with less than desirable substrata as witnessed by the well log of the adjoining Trtek property below. Thank you!

32958 JP WEST RD <b>Trtek Well</b>					
<b>(10) STATIC WATER LEVEL</b>					
		Date	SWL(psi)	+	SWL(ft)
Existing Well / Predeepening					
Completed Well		09-22-2011			93
Flowing Artesian?		<input type="checkbox"/>	Dry Hole?	<input type="checkbox"/>	
WATER BEARING ZONES		Depth water was first found 105			
SWL Date	From	To	Est Flow	SWL(psi)	+ SWL(ft)
09-22-2011	105	126	24		93
<b>(11) WELL LOG</b>					
		Ground Elevation			
Material	From	To			
BROWN CLAY SILTY	0	11			
SOFT GRAY SILTS	11	18			
GRAY SANDY CLAY	18	34			
BROWN CLAY	34	46			
SOFT BROWN SILTS	46	61			
STICKY BROWN CLAY	61	69			
SOFT BROWN SILTS WITH CLAY	69	84			
COARSE GRAVEL W/ FINE SAND	84	130			
GRAY CLAY	130	135			
WELL WAS COMPLETED TO 126'			<b>RECEIVED</b>		
HOLE CAVED 126-135'					
			SEP 29 2011		
			WATER RESOURCES DEPT		
			SALEM, OREGON		

Chair Kulp thanked her for her time and asked if anyone else wanted to speak who didn't fill out a speaker request form.

Jennifer Hancock/Jobin Lane property owner asked, from the audience, if future developments up the hill would also divert their storm-water onto Jobin Lane as the city grows.



Applicant Bogdan Popescu of BMP Design came forward and stated that it appears that the meeting tonight is not about the approval of the project but more about the problems that exist currently. Adding that it is a great opportunity for all the neighbors to gather and maybe at the end of the meeting they can decide to do something. Stating that when someone purchases land that is adjacent to a private road, then the general knowledge is that you share maintenance of that road so he finds it curious that many of the owners on Jobin are stating they didn't know they have ownership of that private road, but correct him if he's wrong. He believes everything that they are saying is true, he shares this with the property owners and they definitely do not want to impact the property owners that live below them. Repeating that they have done everything possible to make sure that they are not increasing the water that comes off their development. Then responding to Taylor Murray; it is against the law to divert storm water into the sanitary sewers and it's against the law to divert it to JP West because it would be taking the water to a different basin which is also against the law.

James Clark, landscape architect on the project, joined Mr. Popescu at the speaker desk; his scope of the project is the street trees but he has worked for a civil engineer firm for 11 years prior. Adding that one thing that might be misunderstood is that there is a 48" pipe going into a 12" pipe, and they are thinking that all the water is going into one big pipe then into a smaller pipe but they are designing a detention system. So imagine if he filled up a 5 gallon bucket, then drilled a tiny hole in the bottom of it, then it takes 24 hours to drain out, so it's a tiny orifice that the water exits from and it takes 24 hours for it to drain. Adding that during the peak flow; the detention system will hold that water to drain slowly at 2" per hour. When the development is built; the water running into the 48" pipe will take away some of the infiltration that is charging the springs and the seeps. Also the law states you cannot increase flow to the downstream properties but you can release it at the low point of the property what was previously flowing there before, but you cannot increase that flow. So the detention system would meter it out at a slower rate over a 24 hour period. By what he is hearing from the City Engineer and Mr. Popescu, that during a 2 year storm event it was coming out 1 foot per second then it would be coming out ½' per second after the development goes in. Then during a 100 year event it would be coming out at the same rate. So Bob, the property owner, is actually improving it and cutting the flow in half. But if Bob gives up and can't afford to do it, then the problem that is there will continue but if they allow the project to move forward then it will cut the flow in half during a 2 year event; so it is not a downstream problem. But it sounds like the neighbors all believe that this development will exacerbate the problem when in actuality it will alleviate it if the calculations are correct. Then asked the commissioners if they had any questions.

City Planner Oliver stated that there definitely an inference that the city was somehow responsible for potentially maintaining this road, providing permits, and why wasn't it designed in a particular manner; but it was not under the city's jurisdiction at that time and most of houses there were built when this was still in the county, under county regulations. Adding the the county standards are not as high as the city's so it wasn't anything that the city had any control over.

City Engineer Negelspace added that it probably met the county standards at the time and a lot of times the owners will take on drainage repairs within their property or with a neighbor. Adding that with a private road, there is no requirement to contact the city to do work in the right of way. Typically we would get a right of way permit for anyone working in the publicly owned streets which would be reviewed, vetted & engineered to ensure they meet all the code requirements but on a private street essentially they could do whatever they want so it would be hard to say how that system came about.

Commissioner Bernhard asked City Engineer Negelspace if he looked at the county records to gain any information.

City Engineer Negelspace replied that he did, but he did not do a title search for each property, they looked at the county records in regards to easements.

Commissioner Bernhard asked if he checked with the county planning department to see if they had any records that would be helpful.

City Engineer Negelspace replied that he did not go to the county, he just looked at the records they have on-line.

City Planner Oliver added that much of the work that was done was done by property owners who may or may not

recall what they did, so there might not be any records or any permits.

City Engineer Negelspach added that it is kind of pointless to go back to find a permit that says they put in a pipe in 1950 since it is evident that what is there now is inadequate to handle the existing run off from an open field.

City Planner Oliver added that hearing everyone tonight, obviously there are a lot of issues and there needs to be a solution but she doesn't know if it is proportional for the applicant to fix existing problems from 20, 40 or 50 years ago but clearly something needs to be done regardless of if the development happens or not. Adding that the city does not accept roads that do not meet the current standard as it would be too hard for the city to maintain as well, but the homeowners could petition the council to form an LID (local improvement district), and if they approved that then the city would do the work and the homeowners would be assessed a fee on their taxes over the years to pay that off. Adding that she is not saying that council would be on board or if the city has the money in the budget but it could be a viable option to be considered. Then once it was brought up to city standards then it could be accepted as public right of way, but it would have to meet the right of way width.

Darla Knytych/Jobin Lane property owner, came back up to the speaker desk; she stated that currently the road is quite narrow and she was told that the width from the center would have to go out 20' each way; which would interfere with driveways and current drains. She sees the consultants have done a lot of speculating and planning of how to handle the run off and it sounds really good on paper but it is currently maxed out for what the pipes can handle. Adding that it sounds like the consultants are telling them that they are missing out on a really good opportunity here to alleviate the problem, and maybe that is true if 100% of the runoff could be handled by their new drainage system but she does not see how that could be possible with all the hard surfaces to be developed. Instead it will be collecting more water that would be diverted in a different direction than it is going now; down the creek and then her driveway. She invited everyone to come to her house the next time it rains to have coffee & donuts so they can see the water that runs down her driveway. Adding that the water will not go the way they have planned but the new development will be sitting up high and dry while they get out their oars.

Commissioner Dahla asked for clarification on condition of approval 6.c.; on how they would meet the storm water master plan and the process of doing the camera inspection.

City Engineer Negelspach replied that whenever there is a project, no matter where it is, you have to evaluate both the upstream basin that comes to the property and the downstream basin. Most of the time the development is connecting to a public system so the downstream basin isn't an issue. In this case they have undeveloped property above them and they have a system that is not developed below them. So the Public Works Design Standard is set up to handle this by asking for downstream analysis to make sure whatever is being proposed is not going to be an issue. This condition of approval simply speaks to that requirement by asking for additional site investigation to make a determination as to the condition of some of the elements; as they have already looked at the open channel, the piping, the slope and the sizes, so when they plug it into a model it works. Adding that there are some inlet issues with plugging but from a purely hydraulic perspective, it works and has adequate capacity if all the pipes were connected and there were no limbs or leaves falling into the culvert openings, then all the water would funnel through that system just fine. But the nature of storms doesn't exactly match what engineer's model, as a model storm event; as there are different types of storms. Adding that Bogdan Popescu could speak more about the technical aspects of the type of distribution. He thinks it might be a Type 1-A distribution that they would use; that the run off rate in that storm doesn't always match what happens in reality so culverts can be inundated during a unique storm event.

Commissioner Dahla added that he sees this often when driving up Smith Road with the water running across the street and bubbling up in the asphalt.

City Engineer Negelspach added that you might get a 2 year event that occurs over the course of 2 or 4 hours but with the modeling they use, the distribution is different as it's over a 24 hour period. Adding that engineers don't design roads for a flash flood occurrence otherwise they would have ditches that were 10'-20' wide which would require huge road right of ways. So that is the methodology they are following.

Commissioner Dahla asked how they would inspect the system by camera.

City Engineer Negelspach stated that it is a standard requirement for all new projects.

Commissioner Dahla asked if they would have to schedule that with the individual property owners.

City Engineer Negelspach stated that this presumes that there would be some sort of cooperation on behalf of the neighbors.

Vice Chair Jensen asked if City Engineer Negelspach could speak more about the Oregon Drainage law.

City Engineer Negelspach replied that a lot of the comments tonight referenced it, then read the law as written;

1. *A landowner may not divert water onto adjoining land that would not otherwise have flowed there. Divert water includes but is not necessarily limited to:*
  - a. *Water diverted from one drainage area to another, and,*
  - b. *Water collected and discharged with normally would infiltrate into the ground, pond, and/or evaporate.*

Then added that one of the comments asked why they couldn't take the water to a different system like Keys Crest since they have a system and it outfalls to a different drainage basin; but their system was designed to pick up their basin and their uphill basin plus the pipes are sized that way and they actually have a detention system which releases all storm events and they match pre-existing flow rates and an orifice system that releases it slowly and the outfall system is designed for a certain outfall and velocity so if you start to take water into another engineered system that is not designed to handle it then you will cause a problem with that system. Which is what 1.a. is saying. The other point is 1.b.; you don't want to change how the water is collected and distributed. So if the water would normally hit the land and infiltrate fully so that the downstream property owners didn't see any run off and all of a sudden you collected it on concrete and piped it to flow under all the houses then that is an example of changing the way the water normally behaves. According to the geo-technical report, this property has poor drainage characteristics. They did 6 test pits and did not get any ground water in those test pits that were down 5-6' deep but water flows in layers so it could be below that. There obviously is some surface water occurring but it is hard to tell exactly where, but he would presume that the geotech considered the depths of the foundations in his investigations and since it is a sensitive lands application it will require additional geotechnical reports for each of the lots so they will need to consider additional foundation drains or ways that they might have to build their foundations according to the slope stability issues they might encounter. Adding that there is a section in the geo-tech report that refers to slope stability and they don't note any ancient slide history and they don't expect landslides on that hillside; and there is a Basalt layer below the organic layer (exhibit 4). So the applicant is not proposing a change in the way the water is collected or routed.

Then continued with the Oregon Drainage Law;

*The upper landowner may not change the place where the water flows onto the lower owner's land, most of the diversions not in compliance with this element result from grading and paving work and/or improvements to water collection systems.*

Adding that essentially there could be some overlaying flows or it's infiltrating into the organic layers, but he does not know. But there is evidence that there is obviously a channel there that is collecting water which the contours indicate that; it's not sheeting across the east property line but it is flowing into a channel in the SE corner of the property to some extent and the applicant is proposing to keep it in the same basin, which he agrees with. It is a very reasonable approach.

Then read;

*The upper landowner may not accumulate large quantities of water, then release it, greatly accelerate the flow onto the lower owner's land. This does not mean that the upper landowner cannot accelerate the flow of water at all; experience has found drainage to be improper only when acceleration and concentration of the water were substantially increased.*

Adding that this is based on case law, and he is assuming that it is related to if it were to cause damage to a downstream system. Stating that our code does not allow development to increase runoff rates, they always have to match existing. And in the case of steep slopes; it is recommended that they release it at half of the 2 year event. Further, they are detaining up to the 100 year event which is more than what the standard requires. So the net effect is that the conveyance system that they will put in for the storm will essentially act as a cut off for subsurface drainage. It will be collected in a storm system which will release it at a much slower rate compared to what it does today. Adding that he has seen a lot of projects that have these same types of concerns and what they find is that

these projects do cause a lot of the ground water issues to be resolved and the overall drainage is improved because they are actually detaining it and releasing it at a controlled rate versus how they normally see it in a naturally occurring rainfall event, which could be really intense. Then he asked Vice Chair Jensen if that answered his question.

Chair Kulp asked if anyone had any further questions, as there were not she thanked everyone for coming tonight and appreciated it as they gave them some good information that they were not aware of and there needs to be a solution made but doesn't know if that should be placed upon the person who wants to develop his property but it definitely is something that they need to come together on, like the suggestion made by City Planner Oliver to approach the city to see if there is something they can do to help; but at this point we will close the hearing so the commissioners can discuss it.

*(as the audience members began to get up to leave, Chair Kulp announced that they did not have to leave but many of them still began to leave and chat loudly, she then had to state to them that the meeting is not over and they are welcome to stay)*

Commissioner Bernhard stated there are a lot of unanswered questions and they took in a lot of information tonight plus we don't have a couple of our regular members here tonight so she would like more time to go over it.

Commissioner Dahla asked if this goes to council.

City Planner Oliver replied that it does not.

Commissioner Dahla stated that one of the hardest parts of being on the Planning Commission is situations like this where the applicant has met all the criteria. Their hands are tied if they are willing to abide by all the conditions of approval. Otherwise it goes to the Oregon Land Use Board of Appeals.

Chair Kulp stated there are 44 conditions of approval on this, and wanted to say thanks to the City Engineer for educating her on storm drainage and water flow. Adding that they have conditions 5-12 which address public utilities and infrastructure and 7 conditions (20-26) for steep slope issues and she thinks what the public and the commission needs to realize is that staff does a fantastic job of monitoring things as they move forward and the conditions have been met; the applicant can't move forward without meeting all the Conditions of Approval. So when they are talking about water drainage, part of what was mentioned tonight, is actually something that this development can't take care of, as it has become very clear to her as she listened to all the speakers tonight that it is something that has been going on for years without that land being developed yet. If you have an issue that is there, then she does not know if the developer can actually help mitigate it, but she believes it is something that he is willing to help find a solution to. And knowing the city, they might be willing to work with you as well and feels that they should move forward with their decision tonight.

Vice Chair Jensen stated that for Condition of Approval 6.c.; if the last sentence would be subject to the proportional cost.

City Planner Oliver stated that she did discuss this with the City Attorney, he said it is an extremely difficult thing to ascertain. He recommended that if the applicant could come up with an amount certain that he would be willing to contribute, that would at least help them to move forward in finding a developer to take the project on; as it would be easier to know what the known cost was that they would agree to. She does understand that the way it is written is vague but not knowing what is required, since they met the criteria as far as the preliminary drainage report, the preliminary geo-tech report, they checked all the boxes and met all the criteria. Then read section 2.0027

Downstream Analysis Report from the City's Public Works Design Standard: *There are however some situations that, although minimum requirement have been met, will still have negative impacts. Whenever a situation is encountered where it has been determined that there will be negative impact resulting from the project, mitigation measures must be included in the project to correct for the impacts.*

Adding that 6.c. was written to meet this standard. The applicant hasn't provided a number as they are only talking about 7 buildable lots.



Vice Chair would like to suggest we add condition # 45, to ask for electronic files as well as paper files; since # 44 was asking for a paper copy of the full sized plat.

Chair Kulp asked if it could just be added to condition # 44, which City Planner Oliver agreed.

Commissioner Bernhard asked if there was a way to monitor or to make sure that some of these concerns could be addressed, even if it isn't the Planning Commission role, but it seems to her that there needs to be a way for them to work with these folks to mitigate some of their problems.

Commissioner Dahla asked if there was a way to monitor the actual flow coming down the hillside.

City Engineer Negelspach replied that is what the applicant did in the storm report, adding that it is hard to decide when there will be a 2 year event or a 5 year event or a 10 year event so it would have to be monitored all the time then match the event with your analysis so it is a hard thing to do. When they do their Storm Water Master Plan update they'll have stream gauges in for 6 months. The hillside does not necessarily have a stream that is consolidated into one area to gauge.

Chair Kulp replied to Commissioner Bernhard's question, that it is more the city that should be working with them not the Planning Commission.

Commissioner Bernhard asked if maybe they could make a recommendation some way that it happens, since clearly there are some concerns and she understands that the applicant would like to move forward.

City Planner Oliver stated that it's private property.

Chair Kulp stated they could recommend that the property owners approach the city and maybe the city can find a way to assist them.

Commissioner Bernhard stated that it makes it more difficult that it's a private road and is just looking for some ways to help them mitigate some of their concerns.

City Engineer Negelspach stated we receive storm water complaints on a weekly basis on new and old subdivisions; so it's easy for them to contact us to let us know.

Developer Robert Schmit came to the speaker desk; stating in good faith, it is private property but they want to do something even though everything they talked about tonight in regards to installing a better system than what they have, although it won't alleviate decades of problems, but they would be willing to come up with a dollar amount to get things rolling and it would be enough to get the pipes looked at and scoped to see what the problems are; and maybe enough left over to fix most of it; but they could put \$10,000 towards that. Adding that this amount is a lot for them but they are from Scappoose; the infrastructure they have to put in there for 7 lots is a lot of money going out and they are not making a killing. They hope they can find a local builder for their development and they want this development to go through, but they want it to go through correctly. Their \$10,000 could start the scoping and start actually fixing something, or part of it, and maybe the rest of the neighborhood could donate up to that or find out what they need to do to fix the rest of it. That is a lot of money.

Chair Kulp suggested that they all get together to meet and hash it out as it is not something the Planning Commission can help you work out, but you are on the right path to open the door to help mitigate and maybe the city can join in also. Adding that money comes from a lot of different places but you have to have a plan together first as that is the key; and maybe you can find funding to help you do it.

Shane Walz/Jobin Lane property owner (comment 24); stated that maybe there is a little miscommunication between the Planning Commission and the Jobin Lane neighbors; we are not looking to have the problems fixed we are more scared of it getting worst. And with all of the unknowns with where the water is and knowing that it is not in one specific location; and that the geo-tech was done in mid-summer;

City Planner Oliver stated that the test pits were dug in January.

Chair Kulp then added that they understand, but if they don't move forward with the testing, then they are not going to know if they can move forward as it is all preliminary right now; they may even find out that they aren't going to develop the land; they are only at the start of research.

Shane Wales/Jobin Lane property owner continued that the real concern with him and his neighbors is if it will make it worse.

Chair Kulp replied that is why our staff put together all the Conditions of Approval that they did, to make sure that everything will come together the right way, but we can't guarantee it as nothing in life is guaranteed.

Shane Wales/Jobin Lane property owner replied that would leave them with the short end of the stick.

Chair Kulp replied not really, because he just opened the door to work with the community, and with you and so has the city; so you still have a voice.

Shane Wales/Jobin Lane property owner replied that it's their damaged homes he is concerned about and \$10k does nothing for a damaged home.

Commissioner Connell stated that there are a lot of professional engineers that are working on this and they deal with this stuff day in and day out; and he trusts what they are saying, that they are going to make it better.

Darla Knytych/Jobin Lane property owner, stated that is exactly what they told them when Keys Crest was built and they all saw it get worse.

Commissioner Bernhard stated there have been situations in the city where further development did fix other issues nearby so it is something that could happen but there are no guarantees and that you have to look at all the possibilities.

Vice Chair Jensen asked about the Sensitive Lands process.

City Planner Oliver stated that it would be similar to this application, which will approve the underground utilities and the road work, but not the house construction, as they have to submit a geo-tech report to ascertain initially what the subsurface conditions are and make design recommendations. This application is not proposing any house development that is why we added the condition for site specific geo technical reports for each lot 4-8. So it is a specific look at the lot and it makes recommendations for the type of foundation required for that lot.

Vice Chair Jensen asked if it was administrative or if it comes to Planning Commission.

City Planner Oliver stated that the individual house permits and sensitive lands permits is administrative but there is a notice of decision, which could be appealed.

Commissioner Jensen stated that even after this, each house would have an individual geo-tech report which the neighbors could request to be noticed when the decision is made. Adding that there will be other opportunities to check in.

Commissioner Bernhard stated that is exactly what she was looking for.

Chair Kulp stated that they are going to get back to deliberating since the hearing was closed and we should not be having these conversations; then asked for any other questions.

Vice Chair Jensen stated that he is not insensitive to this as he has the same issues on his street with a failing culvert that the county owns on a private street so he understands the problems and wishes he had the same opportunities, but feels that the conditions do give some awareness and protection, adding that staff does a great job reviewing all

of this and he is comfortable with the conditions as they are.

Commissioner Bernhard added that she too is comfortable with the conditions but just wants to encourage these folks to get together and try to continue to mitigate their issues.

Chair Kulp agrees with Commissioner Bernhard.

City Planner Oliver stated that if there is a motion to include up to 10,000 dollars on 6.C.

Chair Kulp asked if any commissioners had any more comments and asked if they were all comfortable with the 44 conditions including the \$10,000 in 6.c. plus adding electronic copies to item 44.

Vice Chair moved and Commissioner Dahla seconded the motion to approve the new findings and conditions of approval to approve SB1-16, SLDP2-16, MaV1-16 with recommended conditions. Motion passed 5-0.

AYES: Chair Kulp, Vice Chair Jensen, Commissioner Dahla, Commissioner Bernhard and Commissioner Connell.

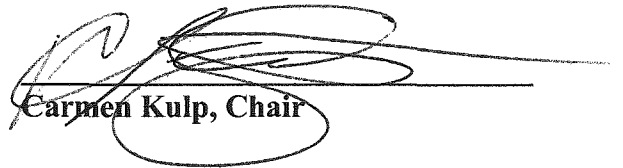
NAYS: None.

## **6.0 COMMUNICATIONS**

- 6.1 Calendar Check
- 6.2 Commissioner Comments
- 6.3 Staff Comments

## **7.0 ADJOURNMENT**

Chair Kulp closed the meeting at 10:20pm.



Carmen Kulp, Chair

Attest:



Elizabeth Happala, Office Administrator III