

The emphasis of this zoning question will always come back ultimately to a park for Shady Cove, but this is really an issue of law, ethics, morality and public resources, as we will describe below, and which have been ignored to date. The time has now come for you to decide whether or not you want to participate in the perpetuation of unlawful and unethical decisions made in the past regarding this property, or do you want, instead, to represent a new direction for the City.

Since December of 2008, I have provided the State of Oregon, Jackson County, and the City of Shady Cove with evidence that the sale of this property to Flywater by the City in 2008 was done illegally, according to ORS 221.725 (attached). In June of 2009, after finally receiving copies of executive sessions recordings from 2007 in connection with this sale (attached), I provided notice to the City (attached), under ORS 30.275, that a claim was being made for damages and/or protective remedy, as a result of this illegal action. That set in motion a statute of limitations period during which a civil lawsuit could be filed. No lawsuit has been filed to date, as I continue to wait patiently for the City to rescind the sale and in turn, follow Oregon statutes and return to the people of Oregon the monies due for the actual value of the land, as confirmed by the Jackson County Assessor in 2008.

The above-referenced executive sessions were held to negotiate real property transactions under ORS 192.660(2)(e). For this reason the recordings should be an integral part of this hearing, since conceptual understandings were agreed upon that directly impact this zoning application, including agreement by the City, "memorialized" in the modification letter dated 9/5/07 (attached), which states in part, "Upon completion by Buyer and approval by the City Planning Commission and City Council of all entitlements for the ultimate development of the property and creation of a separate legal parcel, the Park Parcel will be gifted to the City by Buyer." Reference is made on Pg 2 of the zoning application in the Current Zoning section to the implicit negotiations and agreements made during these executive session meetings and should thus be a part of this application. Further, the agreement entered into by the City to receive this parcel of land in exchange for R2 and potentially R3 zoning opens an additional area of concern regarding both the legality and ethics of this land-use action.

On another subject, the serious issues in Shady Cove's floodplain have not been directly addressed in this application. Public Works Management (PWM) is currently helping the City figure out what to do about the existing mobile home parks that are located in the floodplain at the south end of town and not currently in compliance with the City's floodplain ordinance. PWM is also a consultant currently under contract to Flywater. The City's floodplain manager is an employee of PWM. In addition, a family member of Flywater, a professional engineer, is also an employee of PWM and has worked extensively on this project. Does this not create a conflict of interest?

Furthermore, I think this application should contain a letter from the City regarding any floodplain restrictions that should be placed on the mobile home park contemplated in this application. Flywater has already disregarded the City's floodplain regulations when it plowed up the floodway over a year ago. This is your opportunity for the City to get ahead of the Flywater curve and prevent anything further from happening in that regard.

And finally, Ladies and Gentlemen of the Commission, having been given a package of this magnitude, and given the fact that several of you have jobs outside of your responsibilities here, to have only 7 days to do all of the research required to fully understand the implications of this land-use action, including whatever rebuttal the applicant is prepared to make to all testimony submitted during this hearing, it is hard to imagine that you can absorb all of that, deliberate, and render a thoroughly thought through, comprehensive decision on this application in one evening session. Over this year, our Interim City Administrator and City Council have made steps forward to rid this city of its favoritism and good ol' boy mentality. The Council has encouraged the planning commission to exercise its powers granted by the Charter, and function as an informed, cohesive, and inclusive body for governance here. The applicant's offer to exchange land for his zoning preference is just that, an offer. You don't have to grant this zoning that he has requested in order to get a park. You as a planning commission have the power to include a fully developed common area such as a park as part of any development plan. The City Council has made it clear in the joint Council/Planning Commission study sessions that you have the power to negotiate on behalf of the people of Shady Cove with any applicant on any land-use request.

If you feel the exchange of zoning for a minimally developed park is a lawful and ethical decision, perhaps Flywater and the City would be willing to void the exclusive negotiation agreement and in exchange for the zoning requested by Flywater, the city would appoint a park commission to design a park, which Flywater will build prior to any residential development. As Mr. Malepsy has stated in the executive sessions referenced above, it will be easier to sell his lots with a completed park already in place. These negotiations could include an agreed upon figure that the cost of the completed park should not exceed, but which would still provide for a fully developed park with boat ramps, soccer fields, playground equipment, nature trails, etc. The cost of this park would represent a substantial tax write-off to the entire Flywater project, and in that way everyone wins.

Please leave no stone unturned. Our city is in transition, the ultimate goal of which is to make the best decision for all our citizens, not just to favor a few. In the past, the City has allowed favored individuals to run roughshod over land use issues here. This is your opportunity to establish a new direction for our community. Take your time, do your due diligence and render a decision that will benefit our town now and in the future.

Bud Rees
22348 Hwy 62

Have you looked at a zoning map of Shady Cove (attached)? It's a patchwork quilt of illogical preferential zoning created by the City over the years. As the Interim City Administrator stated in his budget message delivered earlier today, this needs to stop. Haphazardly rezoning properties to higher densities will have many deleterious consequences for our City as you can read in his remarks (attached).

As for this application specifically, on Pg. 2 the statement is made that the applicant was approved for a land division with Jackson County to separate a portion of the parent parcel outside City Limits, which is complete and finalized. This is not entirely true. You can see on the attached case document that numerous conditions for this partition have not been met and parcel hold tags have been applied. These hold tags are typically used to interrupt the permitting process. In fact, one of the conditions on the case, that the private road is to be complete prior to July 30, 2009, appears from the status notes not to be done. Who is it that Shady Cove will have to enforce any conditions that may be placed on this amendment?

In the staff report, the City has recommended that traffic studies be done prior to development proposals. Currently Brophy carries 377 ADT's. Pg 2 of the application states the Flywater development, as conceived at R2, adds 257 more ADT's, not including any data on ADT's for the proposed city park, should it ever be built. This will create traffic problems on both Brophy and #62, which would be greatly mitigated with lower density zoning. I believe the Commission needs to have that information before making this zoning decision.

In addition, when I contacted ODOT about this application, they had not received any notice from the City, required by law, regarding this amendment. In the staff report it is noted that ODOT had not commented, but of course, it was hard for them to comment when they had never received the notice. The City should not be assuming if they don't receive comments from an affected agency, that the agency has nothing to say.

Pg 3 of the application states the applicant is not proposing the use of wells. When the rezoning was done for the applicant's property on Bond Road in 2006, the water was to come from the Shady Cove Waterworks (see attached staff report from 2006); however, when that source dried up, the applicant re-drilled an existing well in 2006 to serve two lots on Bond, and then drilled a new well in 2009 when he partitioned off two more lots to sell. (See attached well logs.) There is nothing to keep him from doing the same thing here if his plans to get a water right from the Rogue fall through.

On Pg 7 the statement is made that the applicant intends to preserve the floodway in its most natural state. If that is true, why then was the riparian area plowed to remove berry bushes well over a year ago? I was advised of this fact last year by the RiverKeeper at a public meeting in White City. A site visit by all of you should demonstrate that this has indeed been done.

In this same vein, attached is a wetlands report cover form and map, submitted to Oregon State Lands by Flywater over a year ago, stating that the proposed use of the property would be single family residential development. Both before the wetlands submission (in the contract modification letter of 9/5/07 between Flywater and the City in your packet) as well as after the submittal (as stipulated in this application), medium density zoning was always a part of the applicant's plans but never disclosed to the State agency doing the wetland delineation study for the project. Simply sloppy work; perhaps. Not that we haven't seen that before by agents for applicants; however, this form was signed by the owner of Flywater, whose integrity and attention to detail you are counting on.

The extremely important floodplain issues in this case are barely touched upon by the applicant or staff. Since Bud Rees has commented on them, I would only say that it's one thing to have a stately mansion up on cement blocks off the highway near this property. It is something else entirely to have 29 dwellings squeezed together up on blocks on tiny mobile home lots. Or perhaps, with the entire parcel zoned R-2, it will be filled with block-mounted trailers. According to the staff report, Shady Cove is second only to White City in percentage of mobile home parks in the County. Do we really need another one? I believe, based on Goals 5, 11, 13 & 14, single family zoning of no more than R1-10 density is the proper designation for land on the edges of town, whomever it may ultimately belong to.

And finally, Bud Rees' comments pretty much sum up the legal and ethical issues of this application. However, there is one comment I want to make regarding all that. I anticipate that the City Attorney will

be looked to for input regarding at least the legal issues of this application. In my opinion, his track record on this land is at best dubious. In the recordings attached to Bud's comments, you can hear Councilor Hughes asking if the process of selling the land to Flywater needs to be opened for bidding to other interested parties. Attorney Rich's answer is, "The short answer is no." He never does get around to the long answer, so we have no idea what that would be. The reality is that ORS 221.725 (in your packets) makes it crystal clear that the sale is to be an open process. In addition, last year the City Attorney as much as admitted that the sale was illegal. In an article in the URI (attached) he is quoted as saying if the proper process was not followed, it was not intentional. As a so-called expert in the law, he should know that ignorance of the law is no excuse; and now all who participated in the sale of this land are at risk for at minimum, ethics questions, and even worse, civil and/or criminal penalties for the imposed secrecy that contributed to the personal gain for Flywater from the sale. When a governing body votes, it doesn't get to hide behind its counsel, liability insurance or ignorance.

This matter before you is your opportunity to take the first step in bringing a semblance of sanity to the zoning mess in Shady Cove, get higher density building into the center of town where it belongs, and start moving the lower densities toward the outskirts, ultimately putting less pressure on the water, sewer and transportation services available here.

Jane Hagan
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Shady Cove