

THE CIRCUIT COURT IN THE STATE OF OREGON
IN THE COUNTY OF CLACKAMAS

STATE ex rel NEW LOOK)
DEVELOPMENT LLC, an Oregon limited) Case No. 24CV03746
liability company,)
)
Plaintiff-Realtor) OPINION and ORDER
v.)
CITY OF LAKE OSWEGO, a municipal)
Corporation,)
)
Defendant,)
and)
MICHAEL E. KOHLHOFF,)
)
Intervenor.)
_____)

This matter came before the court for trial on May 28, 29, and 30, 2024. The court received evidence and heard testimony, considered the arguments of counsel and received post trial briefings.

NOW, THEREFORE, the court finds and rules as follows:

I. Constitutionality of Chapter X

Plaintiff first raised this issue in a footnote to its joinder to the City of Lake Oswego’s motion to reopen and reconsider this court’s ruling that Chapter X is a land use regulation. The issue was further argued during trial and in post trial briefings.

Article IV, section 1(2)(d), Oregon Constitution provides in part: “An initiative petition shall include the full text of the proposed law or amendment to the Constitution.”

examine it by virtue of public records laws. ORS 192.311, ORS 192.314, and ORS 250.027.

Accordingly, the initiative petition for Chapter X complied with Article IV, section 22.

II. Compliance with Chapter X

Intervenor submits that the proposed project (an underground sewer line through the west portion of Waluga Park - West, which would connect with an existing sewer line that runs through the eastern portion of the park) violates various provisions of Chapter X. Intervenor makes a number of arguments in this regard.

The first main argument surrounds the building of a temporary gravel construction route over which plaintiff's construction vehicles will travel to place the underground sewer line. Paragraph 3, section 43, Chapter X explicitly prohibits the construction or development of "roads. . .for motorized vehicles" within designated parks, and also prohibits the removal of trees for the construction of roads. In a vacuum, the temporary gravel construction route may fall within the dictionary definition of a road, though the temporary nature of the route and the plan to fully restore and mitigate the effects of the route create a serious question. However, once read in context of Chapter X, the drafters must have contemplated temporary access routes as a permitted use. Paragraph 2, section 43 expressly allows trails, benches, picnic and sanitary facilities to be constructed. All those activities would require temporary access for construction equipment and vehicles. Accordingly, the proposed development does not consist of a road that would violate paragraph 3, section 43, Chapter X.

The second main argument is that the five or six permanent above ground manholes that will be installed with the sewer line violate paragraph 4, section 43, Chapter X. That paragraph prohibits construction or development of any above ground structure "that would impair or be inconsistent with the natural conditions" of the nature parks. Again, context is important. The

evidence showed that park currently has eight existing manholes for the existing sewer lines that run through the park. Exhibit 4. The proposed manholes will be approximately 25 inches in diameter and sit above the surface approximately 10 inches. Exhibit 106. The manhole footprint for each manhole is approximately 48 inches. Exhibit 106. Even if the manholes would constitute an above ground structure, they would not impair or be inconsistent with the natural conditions of the park, given that the park already has a significant number of existing manholes. For this reason, the proposed project does not violate paragraph 4, section 43, Chapter X.

Intervenors final main argument is that the proposed project runs contrary to the general purposes or spirit of Chapter X. Section 41, the purpose section, states that the purpose of the chapter is to preserve the designated parks as natural areas for the enjoyment of all. The first paragraph of section 43 essentially echoes this language. Intervenor presented substantial evidence and argument about the effect the proposed development would have on the wetlands of the western portion of Waluga Park - West. Had Chapter X directed preservation of wetlands in all circumstances or prohibited development of any sort, this argument would be compelling. However, as noted above, Chapter X allows certain development and allows structures that are not inconsistent with the existing natural conditions of the parks. Accordingly, because the proposed project is consistent with contemplated improvements and current conditions of the park, I do not find that the current development violates the purpose provisions of Chapter X.

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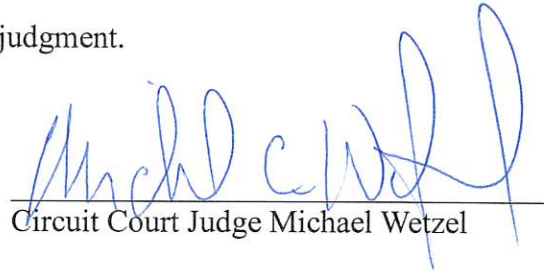
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III. Conclusion

For the reasons discussed above, I find that the proposed project does not violate a substantive provision of land use regulations under ORS 227.179(5). Accordingly, the relief sought by intervenors is denied, and the writ of mandamus sought by plaintiff is approved. Counsel for plaintiff should submit the appropriate judgment.

Dated: October 16, 2024.



Circuit Court Judge Michael Wetzel