

**CITY OF MILWAUKIE  
PLANNING COMMISSION  
MINUTES  
Milwaukie City Hall  
10722 SE Main Street  
TUESDAY, March 13, 2012  
6:30 PM**

**COMMISSIONERS PRESENT**

Lisa Batey, Chair  
Nick Harris, Vice Harris  
Mark Gamba  
Scott Churchill  
Russ Stoll  
Clare Fuchs

**STAFF PRESENT**

Katie Mangle, Planning Director  
Brett Kelter, Associate Planner  
Ryan Marquardt, Associate Planner  
Li Alligood, Assistant Planner  
Justin Gericke, City Attorney

**COMMISSIONERS ABSENT**

Chris Wilson

**1.0 Call to Order – Procedural Matters\***

Chair Batey called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.ci.milwaukie.or.us/meetings>.*

**2.0 Planning Commission Minutes – None**

**3.0 Information Items**

**Katie Mangle, Planning Director**, announced that Susan Shanks, Senior Planner, was resigning from the City effective April 13, 2012.

**4.0 Audience Participation** –This is an opportunity for the public to comment on any item not on the agenda. There was none.

**5.0 Public Hearings**

- 5.1 Summary: WQR Review for SFR (Furnberg St) *continued from 2/28/12*  
Applicant/Owner: Bruce Goldson  
File: WQR-11-05  
Staff: Brett Kelter

**Brett Kelter, Associate Planner**, presented new information requested at the last hearing, including topographical information, stormwater pipe location, approval criteria, possible modifications to the conditions, and a history of fill on the subject property.

**Chair Batey** requested a future worksession on problems with the wetland inventory, and questioned if there were other previously mapped wetlands that aren't shown on the Natural Resource Administrative map.

**Commissioner Gamba** asked why a variance was needed.

**Mr. Kelter** explained the definition of net acre and **Ms. Mangle** explained that the variance was needed to avoid the concern of a regulatory taking.

#### Planning Commission Deliberation

**Commissioner Fuchs** recognized that the disturbed area was already disturbed, so the owner should be able to build on it. However, she would like to see a conservation easement over the water quality resource and consolidate the lots.

**Commissioner Stoll** noted that it was a developable lot, and therefore the City should approve the application. He was in favor of lot consolidation.

**Commissioner Harris** acknowledged that there was fill, and was in favor of lot consolidation and a conservation easement.

**Commissioner Churchill** agreed that a conservation easement and lot consolidation would be good. However, it is hard to look at the history and not have questions; it brings into focus why the City needs to protect the resources.

**Commissioner Gamba** noted that approving the development would reward bad behavior and the City should at least require a smaller house. He would like to see the hardscape substantially reduced. He stated he would deny the application because it was not making the least intrusion into the WQR, and would also deny the variance request; he disagreed that it was a pointless technicality.

**Chair Batey** was not inclined to push for a smaller footprint. She agreed with most of the Commissioners as it was not unreasonable for the property owner to expect to be able to build on the property.

**Ms. Mangle** summarized that five Commissioners were voicing approval with conditions to require lot consolidation and development restriction.

**The Commission** clarified that the restriction would apply to the area at 158' elevation and lower. They discussed whether to require a fence.

**Ms. Mangle** confirmed that the intent was to permanently restrict development but the method could be flexible.

Staff presented modified findings and conditions.

**Commissioner Stoll moved to approve the land use application WQR-11-05. Vice Chair Harris seconded the motion. The application was approved with Commissioner Gamba opposing. Commissioner Wilson was absent.**

- 5.2      Summary: Residential Development Standards (RDS) *continued from 2/28/12*  
Applicant: City of Milwaukie  
File: ZA-11-03  
Staff: Li Alligood and Ryan Marquardt

**Chair Batey** opened the hearing and read the conduct of continued legislative hearing into the meeting record.

**Ryan Marquardt, Associate Planner**, presented the requested information on key issues: approach to regulating building mass, code flexibility what kind of nonconformities we would be creating, and the commercial uses proposal.

**Commissioner Gamba** added nonconforming structures to be able to have accessory dwelling units (ADUs).

Staff entered two additional comments into the record from Wade Cavin and Stephan Lashbrook.

**Chair Batey** called for public testimony.

**David Aschenbrenner** stated he was testifying on behalf of the Hector Campbell Neighborhood District Association (NDA) Land Use Committee (LUC). He stated opposition to 2-story ADUs in backyards of existing homes, and that with administrative variances there was too much staff discretion, especially for side yards. ADUs should be required to have more setbacks, and temporary PVC structures should not be allowed in front yards.

**Dion Shepard** noted she was on the RDS steering committee and supported the updates for the most part. She stated that design standards are important, and that cottage clusters and rowhouses would be a vast improvement over much of the existing apartment buildings. She was concerned that ADUs may lead to proliferating rentals and would like to require one of the two houses to be owner-occupied. She noted that conditional uses (CUs) in neighborhoods were not discussed in the steering committee meetings she attended and that CUs would impact her neighborhood and was counter to the goals of this project. She had concern about duplex landscaping requirements. She felt that ADUs and additions should require site visits, neighborhood notices, and a higher level of review.

**Steve Smelser** stated he was testifying on behalf of himself and the Home Builders Association of Metropolitan Portland. He was opposed to the single-family design requirements but supported the rest of the proposal. He suggested that for ADUs there be a window limit for sides facing adjacent properties.

**Jean Baker** noted she was on the RDS steering committee. She was in support of ADUs, although she was not in support of 2-story ADUs unless located on larger lots, and agreed with limiting windows facing existing buildings. She was not in favor of CUs for businesses in neighborhoods and felt that it was not needed. She had concerns regarding sidewalk design. She noted the proposed multi-family residential design incorporated many of her suggestions which were based on her experience with Spring Creek Apartments.

**Chair Batey** closed public testimony.

**Vice Chair Harris** moved to continue the public hearing for legislative application ZA-11-03, Residential Development Standards, to March 27, 2012. **Commissioner Stoll** seconded the motion which passed unanimously.

**6.0 Worksession Items – None**

**7.0 Planning Department Other Business/Updates**

7.1 Officer Elections – Deferred to March 27, 2012

**8.0 Planning Commission Discussion Items**

**9.0 Forecast for Future Meetings:**

March 27, 2012

1. Public Hearing: ZA-11-03 Residential Development Standards  
*tentative*


April 10, 2012

1. Worksession: CPA-10-01 North Clackamas Park North Side  
Master Plan *tentative*

Meeting adjourned at approximately 10:05 p.m.

Respectfully submitted,

Alicia Martin, Administrative Specialist II

  
Lisa Batey, Chair



## **AGENDA**

### **MILWAUKIE PLANNING COMMISSION Tuesday March 13, 2012, 6:30 PM**

**MILWAUKIE CITY HALL  
10722 SE MAIN STREET**

**1.0 Call to Order - Procedural Matters**

**2.0 Planning Commission Minutes** – Motion Needed

2.1 January 24, 2012

**3.0 Information Items**

**4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda

**5.0 Public Hearings** – Public hearings will follow the procedure listed on reverse

5.1 Summary: WQR Review for SFR (Furnberg St) *continued from 2/28/12*

Applicant/Owner: Bruce Goldson

File: WQR-11-05

Staff: Brett Kelter

5.2 Summary: Residential Development Standards *continued from 2/28/12*

Applicant: City of Milwaukie

File: ZA-11-03

Staff: Li Alligood and Ryan Marquardt

**6.0 Worksession Items**

**7.0 Planning Department Other Business/Updates**

7.1 Officer Elections

**8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.

**9.0 Forecast for Future Meetings:**

March 27, 2012 1. Public Hearing: ZA-11-03 Residential Development Standards *tentative*

April 10, 2012 1. Worksession: CPA-10-01 North Clackamas Park North Side Master Plan *tentative*

### Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

1. **PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email [planning@ci.milwaukie.or.us](mailto:planning@ci.milwaukie.or.us). Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at [www.cityofmilwaukie.org](http://www.cityofmilwaukie.org)
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at [www.cityofmilwaukie.org](http://www.cityofmilwaukie.org)
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

#### Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

*The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.*

#### Milwaukie Planning Commission:

Lisa Batey, Chair  
Nick Harris, Vice Chair  
Scott Churchill  
Chris Wilson  
Mark Gamba  
Russ Stoll  
Clare Fuchs

#### Planning Department Staff:

Katie Mangle, Planning Director  
Susan Shanks, Senior Planner  
Brett Kelter, Associate Planner  
Ryan Marquardt, Associate Planner  
Li Alligood, Assistant Planner  
Alicia Martin, Administrative Specialist II

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**COMMISSIONERS ABSENT**

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**1.0 Call to Order – Procedural Matters**

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Note: The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.ci.milwaukie.or.us/meetings>.

**2.0 Planning Commission Minutes**

2.1 November 8, 2011

**Commission [ \_\_?\_\_ ] moved to approve the minutes of November 8, 2011, as presented.**

**Commissioner [ \_\_?\_\_ ] seconded the motions, which passed unanimously.**

2.2 November 17, 2011

**Commission [ \_\_?\_\_ ] moved to approve the minutes of November 8, 2011, as presented.**

**Commissioner [ \_\_?\_\_ ] seconded the motions, which passed unanimously.**

2.3 November 22, 2011

**Commission [ \_\_?\_\_ ] moved to approve the minutes of November 8, 2011, as presented.**

**Commissioner [ \_\_?\_\_ ] seconded the motions, which passed unanimously.**

2.4 December 13, 2011

**Commission [ \_\_?\_\_ ] moved to approve the minutes of November 8, 2011, as presented.  
Commissioner [ \_\_?\_\_ ] seconded the motions, which passed unanimously.**

**3.0 Information Items**

There were no information items.

**4.0 Audience Participation** –This is an opportunity for the public to comment on any item not on the agenda. There was none.

**5.0 Public Hearings – None**

**6.0 Worksession Items**

6.1 Summary: Residential Development Standards – Accessory Dwelling Units,  
Accessory Structures  
Staff: Katie Mangle and Ryan Marquardt

This item was taken out of order and presented after item 6.2.

**Ryan Marquardt, Associate Planner**, presented the second briefing on the Residential Development Standards project and discussed single-family residential (SFR) development and design standards, and Conditional Uses. He noted that tonight's meeting was also to determine if the project was ready to go to public hearing in February or not.

6.2 Summary: Tacoma Station Area Planning project update

Staff: Susan Shanks

This item was taken out of order and presented prior to item 6.1.

**Susan Shanks, Senior Planner**, provided an overview of the TGM grant-funded Tacoma station planning project. A consultant had been selected and the contract was being negotiated with ODOT. Along with code amendments, the project would include heavy-duty transportation



analysis, and involve a team of consultants. The focus was on the North Industrial Area just south of the proposed station. This project and the City's baseball project would happen concurrently and inform each other. A key objective was to understand what changes the City could make to the City's policies to maximize the opportunities in the area, particularly with regard to light rail, the Springwater Corridor, and the proposed baseball stadium. The goal was to adopt a station-area plan, which could result in rezoning, code amendments, transportation plan, etc. She clarified that Portland was not doing their own plan, as the Milwaukie side of the station area was determined to be more developable. There may be new benefits by creating a "multimodal area," under the new policies of Metro's Title 6 and the Transportation Planning Rule and also since there have been changes to the state-wide transportation planning rule.

## **7.0 Planning Department Other Business/Updates**

**Katie Mangle, Planning Director**, noted that she was working with Grady Wheeler, Information Specialist, on a press release to explain what happened at the Council hearing for the Kellogg Bridge for light rail appeal to clarify the final decision.

### **7.1 Bowman and Brae property**

**Katie Mangle, Planning Director**, briefed the Commission regarding the recent land use history of the Bowman and Brae property, and described how the process became contentious and costly particularly with regard to the tree. The Applicant agreed to partner with the City and Neighborhood District Association to purchase the property, and Council recently approved the purchase of the property for a future City park.

### **7.2 32nd and 42nd Ave Corridors Project *added***

**Ms. Mangle** noted the upcoming Corridors project which was part of the broader Commercial Core Enhancement Program to assess what could be done to enhance downtown and central Milwaukie and the key corridors to strengthen them as viable commercial areas. The downtown area work would rely on a Metro grant to fund the studies to move forward. However, staff felt that the 32nd and 42nd corridors could be handled in-house with the help of a Portland State University Urban Studies graduate senior projects program that Milwaukie was selected for. Ryan Marquardt, Associate Planner, will manage the project. Ms. Mangle noted that the project was prompted primarily by citizen feedback in the area and would begin in the spring.

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**8.0 Planning Commission Discussion Items**

**Chair Batey** noted the question of revisiting the rules regarding the current appeal process with regard to the recent Kellogg Bridge for light rail appeal. She felt that it was not good practice to make or change code policy for one outlier application, and considered the recent appeal was perfect storm. General, applicants have the option to waive the land use clock.

**Commissioner Gamba** noted that most applicants may not understand the clock and for the protection of the applicant,

**Chair Batey** noted that staff guided the applicant and was advised to the process. 2:26+++

**9.0 Forecast for Future Meetings:**

- |                   |   |
|-------------------|---|
| January 31, 2012  | 1. Joint Session with City Council and Residential Development Standards steering committee |
| February 14, 2012 | 1. Tentatively Cancelled  |
| February 28, 2012 | 1. Public Hearing: Residential Development Standards  |
|                   | 2. Public Hearing: WQR-11-05 Furberg St Wetland   |

**Ms. Mangle** reviewed the forecast and noted the Design and Landmarks Committee meeting 2:30  
Meeting adjourned at approximately 8:33 p.m.

Respectfully submitted,

Alicia Martin, Administrative Specialist II

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Lisa Batey, Chair



# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission

**Through:** Katie Mangle, Planning Director

**From:** Brett Kever, Associate Planner  
Brad Albert, Civil Engineer

**Date:** March 6, 2012, for March 13, 2012, Public Hearing

**Subject:** Files: WQR-11-05, VR-12-01  
**Applicant:** Bruce Goldson (Theta, LLC)  
**Owner:** West Coast Home Solutions, LLC  
**Address:** No official street address (SE Furnberg Street near SE 64<sup>th</sup> Avenue)  
**Legal Description (Map & Taxlot):** 1S2E32CB, tax lots 2801 & 2802  
**NDA:** Linwood

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## ACTION REQUESTED

Continue the public hearing for application WQR-11-05 (with VR-12-01). Take additional public testimony if presented, hold deliberations, and make a decision to approve or deny the application.

## BACKGROUND INFORMATION

On February 28, 2012, the Planning Commission opened the public hearing on the application, a proposal to construct a single-family house on a SE Furnberg Street property with significant natural resources. The Commission heard presentations from staff and the applicant, took public testimony, and listened to the applicant's rebuttal. The Commission closed the public testimony portion of the hearing but agreed to hear additional testimony if more people come forward at the next meeting. The Commission deliberated enough to provide staff with some direction in preparing for the next meeting and then continued the hearing to March 13, 2012.

## KEY ISSUES

At the February 28 meeting, the Commission asked staff to provide more information related to the management of stormwater on both the subject property and adjacent properties. In particular, the Commission wants to better understand the situation with the occasional flooding that has been reported in the area, in order to better understand the potential stormwater impacts of the proposed development. Additionally, the Commission raised several questions related to determining whether the application meets the relevant approval criteria.

### A. Stormwater Management Issues

#### Apple Street Flooding

On February 28, several owners of adjacent properties on SE Apple Street (south of the subject property) testified to raise concerns about how the proposed development would impact stormwater flows. The City is aware of flooding issues on Apple Street during heavy rain events. The existing stormwater system directs runoff from the street into catch basins that connect to a 12-in pipe running east-west under the southern 10-15 ft of the subject property (see Attachment 1, Maps of Topography and Stormwater System for Apple St).

Stormwater in this pipe drains west under SE Linwood Avenue and beneath the Linwood Elementary School property, on its way to an open drainage area near/along SE Stanley Avenue. Although City crews regularly clean out this stormwater system, they have not had the equipment necessary to access a portion of the pipe underneath the elementary school. In addition, anecdotal evidence suggests that fallen leaves and other debris often clog the catch basins in Apple St. As a result, the existing stormwater system is often unable to adequately handle the runoff volume of heavy rain events.

The basic solutions to this problem are to either (1) increase the capacity of the stormwater system or (2) reduce the amount of runoff entering the system. The most practical and immediate way to potentially increase system capacity would be for the City to use newly acquired equipment to clean the pipe beneath the elementary school property and remove any debris that may be compromising stormwater flow. Such a project is actually planned for 2012. It is neither necessary nor cost-effective to replace the existing 12-in pipe with a larger one, since the 12-in pipe has been calculated to handle all of the stormwater flow.

One option for reducing the amount of runoff entering the system would be for the City to re-route the Apple St catch-basins into a portion of the stormwater system with more existing capacity. A project to do this is ranked #4 on the City's Capital Improvement Project (CIP) list as shown in the existing Stormwater Master Plan and could be implemented within the next couple of years. A second option would be for the City to build drainage swales in the public right-of-way to capture and treat runoff from the street—this kind of project would also be costly and has not been funded. Thirdly, the residents on Apple St could take steps to reduce the amount of runoff entering the system from each of their properties. This would involve disconnecting downspouts that drain into the street and treating the runoff on site, perhaps collecting it in rain barrels and/or rain gardens.

#### Stormwater on the Subject Property

Currently, stormwater from the subject property can enter the existing 12-in pipe during heavy rain events at an intake point in the southeastern corner of the property. That intake

point will remain, so excess runoff from the proposed development will still find its way into the stormwater system.

The City's requirements for stormwater management are not usually applicable to residential development. However, due to the presence of WQR and HCA on the subject property, the applicant is required to ensure that stormwater collection facilities are designed and constructed so the runoff collected from new impervious surfaces is captured and treated on-site so there is no increase in volume beyond pre-development levels. In the case of the proposed development, the planter box and driveway swale are designed to receive and treat runoff by filtering it through vegetated plantings over a base of drainage rock. During extended heavy rain events, excess runoff that cannot be processed quickly enough within these facilities will be discharged through an overflow system, with an outlet at the edge of the wetland. The proposed stormwater system has been designed to comply with current standards, and the overflow component complies with applicable requirements. The result will be no net increase in stormwater runoff beyond current, pre-development levels.

#### Fill Issues at 11910 SE Linwood Ave

The existing house on the property at 11910 SE Linwood Ave, the lot adjacent to the west of the subject property, was constructed in 1979. Northwest Housing Alternatives, a nonprofit organization that provides affordable housing for low-income seniors and families, bought the property in 1999 to establish an adult foster care facility. As a residential home, such an assisted living facility is an outright permitted use in the R-7 zone. No conditional approvals were required and the property was not subject to any other special requirements, since the larger wetland was not officially designated as a Natural Resource site on the City's zoning map at the time.

Staff found records from 1999 concerning a potentially illegal fill activity on the site (see Attachment 2, Documentation of 1999 Fill Issue at 11910 SE Linwood Ave). Within the wetland, an area approximately 11 ft wide by 110 ft long on the eastern side of the residential home site was filled, apparently to establish a berm on which to erect a fence. A representative of the Division of State Lands (DSL) responded to the concern and concluded that the amount of fill, estimated at approximately 41 cubic yards, was exempt from the standards in place at the time. Therefore, no violation was deemed to have occurred.

The berm certainly has an effect on the location of stormwater detention in the surrounding area, at least in conjunction with heavy rain events. Under the current standards of Milwaukie Municipal Code (MMC) Section 19.402 Natural Resources, a proposal for the same scale of fill activity within the wetland would require Type III review, with an impacts evaluation report and alternatives analysis. However, none of the relevant codes in place in 1999 appear to have been violated, and there were no conditions of approval to meet.

## **B. Approval Criteria**

There are two specific applications before the Commission: (1) WQR-11-05, for approval to disturb a portion of the natural resource area on the site; and (2) VR-12-01, for approval to exceed the maximum density standard for the R-7 zone.

Staff has already explained that the variance request is essentially an academic or theoretical issue, due to outdated code language that triggers a consideration of density. The subject property is a legal, developable lot and a single-family house is a use

permitted outright in the R-7 zone—density is not a real concern in this case. The variance is necessary as a work-around for a technical problem with the code.

The WQR application is the central concern, and the Commission is tasked with determining whether the proposal meets the relevant approval criteria. The components of the alternatives analysis required in MMC 19.402.9.G are essentially the core criteria of approval. The Commission can exercise a great deal of discretion in determining whether the proposal meets the approval criteria, but it should justify its decision to either approve or deny the application using these fundamental elements.

### Alternatives Analysis

The alternatives analysis requires the applicant to demonstrate that four standards are successfully addressed by the proposed development:

1. There are no practicable alternatives that will not disturb the WQR.
2. Development in the WQR has been limited to the minimum area necessary to allow the proposed use.
3. The WQR can be restored to an equal or better condition.
4. There is a rationale for choosing the preferred alternative, including an explanation of how the preferred alternative avoids and/or minimizes negative impacts to the WQR.

The City considers the property to have been legally established and therefore developable. Because the WQR designation covers most of the subject property, some disturbance of the WQR is necessary for any proposed development. Unless a defensible argument can be made that prohibiting development on the site is a practicable option, standard #1 does not appear to be a key consideration for this particular application.

Instead, the heart of the issue is how the proposal stacks up against the other three standards. Has the applicant presented the least impactful but still practicable proposal for building one house on the subject property? Can the footprint of the house and driveway be reduced any further and still allow a reasonably sized house to be built? Can the footprint be repositioned so that it disturbs less of the WQR but still meets all other applicable standards? Is the proposed mitigation adequate, given the amount of WQR disturbance? And will the mitigation plantings sufficiently improve the condition of the WQR where it will not be permanently disturbed?

Staff encourages the Commissioners to focus their questions and concerns about the proposed development on one of these four standards. However, note that none of the standards consider impacts to neighboring properties, as the WQR application focuses strictly on impacts to the WQR.

## **CONCLUSIONS**

Based on its analysis of the new information received from the applicant in advance of the February 28 hearing, staff believes the application is approvable pending the Commission's deliberation and determination of the appropriate size and location of the footprint of disturbance. Staff has revised the recommended Findings and Conditions accordingly (see Attachments 3 and 4, respectively).

## DECISION-MAKING PROCESS

The Commission has three decision-making options as follows:

- A. Approve the application with the revised, recommended Findings and Conditions of Approval.
- B. Approve the application with modified Findings and Conditions of Approval. Such modifications need to be read into the record.
- C. Deny the application upon finding that it does not meet approval criteria.

The Planning Commission must make its decision on this application on March 13, 2012. The final decision on these applications, which includes any appeals to the City Council, must be made by **May 5, 2012**, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

## ADDITIONAL COMMENTS

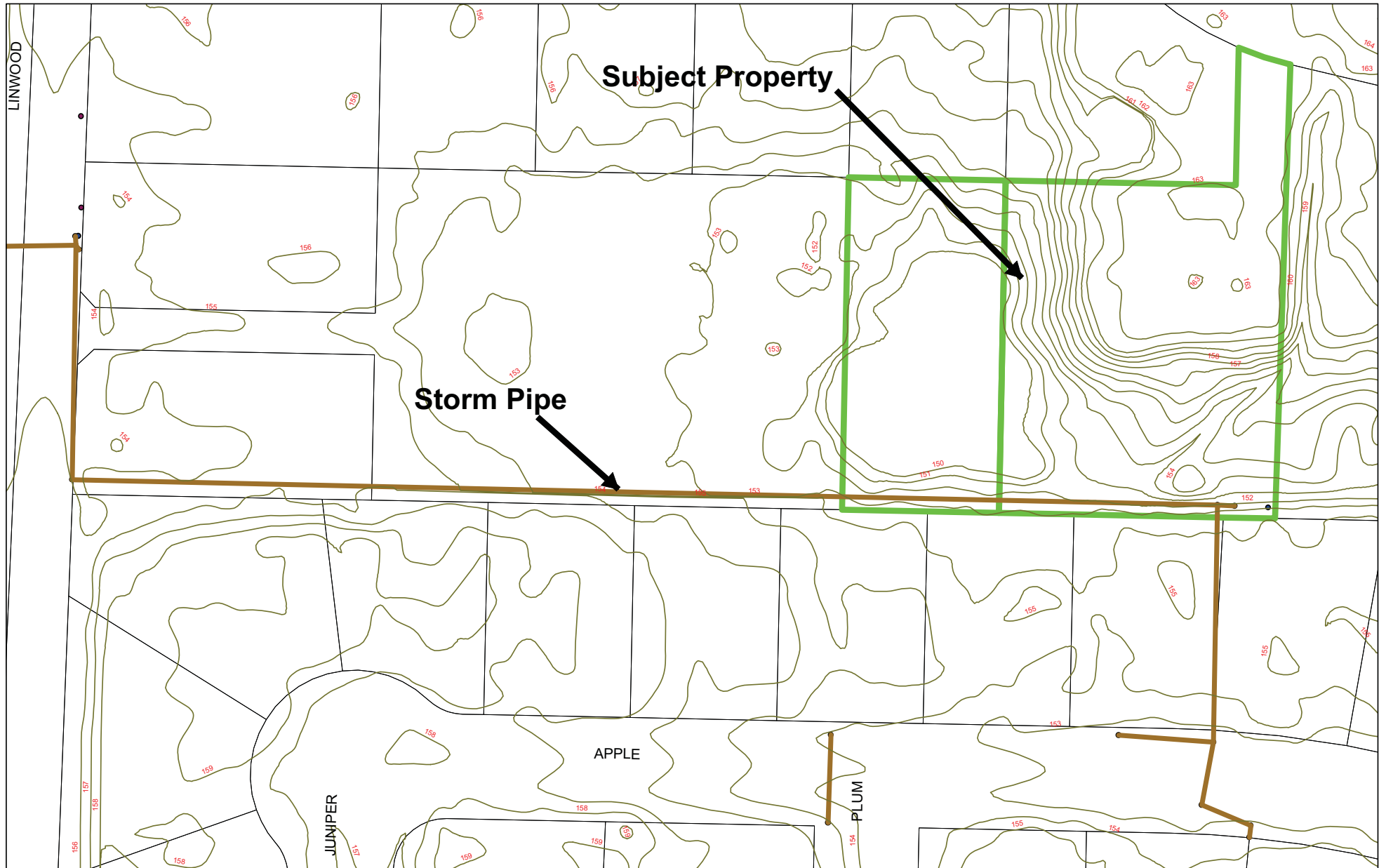
Notice of the continued hearing was not required, though staff did inform the leadership of the Linwood NDA of the continuation. Deborah Barnes (owner/resident at 6330 SE Furnberg St), contacted staff by e-mail to ask for a summary of the February 28 hearing and was informed of the continuation. Mary Kennard (owner/resident at 6404 SE Furnberg St) contacted staff by phone to ask for a summary of the February 28 hearing and was informed of the continuation.

## ATTACHMENTS

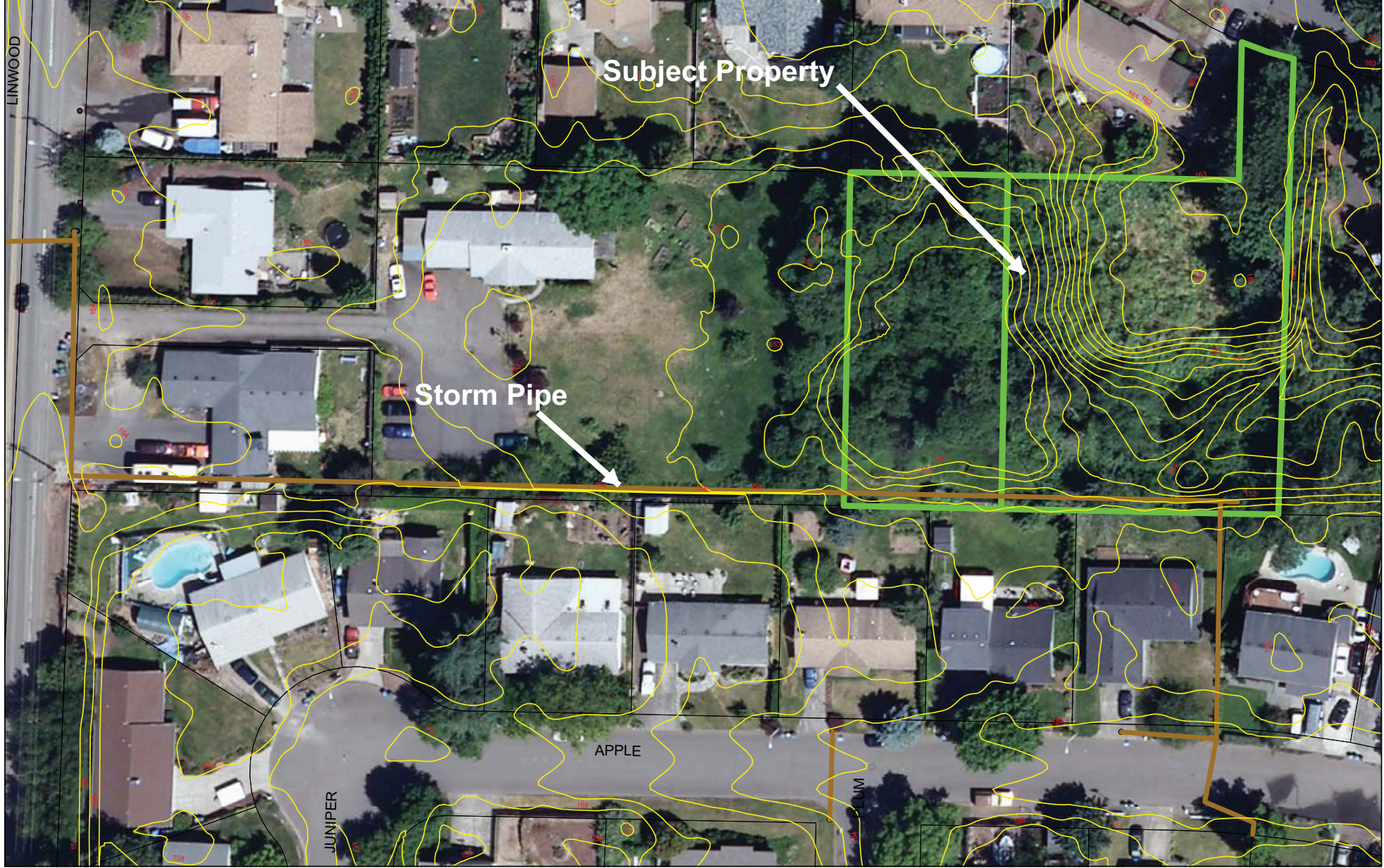
All attachments are included in the e-packet unless otherwise noted. All material is available for viewing upon request.

- 1. Maps of Topography and Stormwater System for Apple St
- 2. Documentation of 1999 Fill Issue at 11910 SE Linwood Ave
- 3. Revised Recommended Findings in Support of Approval
- 4. Revised Recommended Conditions of Approval
- 5. List of Record (updated)

# ATTACHMENT 1







**Gessner, John**

**From:** Gessner, John  
**Sent:** Friday, October 08, 1999 10:19 AM  
**To:** 'Tami.Hubert@dsl.state.or.us'  
**Cc:** Rouyer, Alice  
**Subject:** Potential wetland violation

Hello Tami, I wanted to follow-up on our concerns that a wetland violation may have occurred at 11901 SE Linwood Avenue.(map 12E32CB lots 2800 and 2801). Being unfamiliar with your permitting and enforcement process, I'll just give you as much info as I can for your assessment as to whether or not a violation has occurred. A wetland delineation was conducted on the site in 1993. Hydric soils and hydrophytic vegetation were found. Wetland boundaries were mapped. Recently, the mapped areas were disturbed by placement of fill and removal of wetland soils and vegetation. Volume of soils removed and filled have not been estimated. The site is presently subject to a stop work order prohibiting any further disturbance.

Please let me know if there is any additional information that we can provide that would help in your assessment of this case. It would be helpful if you would brief me on your enforcement process and time lines so that we can advise the property owner and neighbors and plan for resolution of the stop work order. We have advised the property owner that no further work shall be permitted until we have resolution of DSL enforcement issues. Thank you for your help.

**John Gessner, Associate Planner**  
Community Development Dept.  
6101 Johnson Creek Boulevard  
Milwaukie, OR 97206  
503-786-7652

FAX TRANSMISSION COVER SHEET  
DIVISION OF STATE LANDS775 Summer St. NE  
Salem, OR 97310  
phone: (503) 378-3805  
fax: (503) 378-4844

TO:

Name John Gessner

Agency \_\_\_\_\_

Fax # (503) 774-8236

FROM:

Name: Tamie Hubert

Title: \_\_\_\_\_

Section: Field Operations

Comments: This is The Wetland determination done by our office on The Linwood Ave. site. Less Than 50 c.y. of material was Placed so There is no Violation. They may go

Date Sent: 11-16-99 Time Sent: 12:47 Number of Pages(including cover) 3

Forward with The Fencing project.

- tamie



OREGON DIVISION OF STATE LANDS  
775 Summer Street NE, Salem OR 97310  
(503) 378-3805

Batch: Clackamas  
# 99-0481

ONSITE WETLAND DETERMINATION REPORT  
For the Purpose of Administering the State Removal-Fill Law

At the request of the landowner or his/her agent, an onsite wetland determination has been conducted on the property described below.

County: Clackamas City: Milwaukie  
Owner/Agent Name & Address: Lloyd Clemens, ODDS, c/o Fairview Training Center,  
Le Breton Cottage - Room 221/222, 2250 Strong Rd. SE, Salem, OR 97310  
Township: OIS Range: OZE Section: 32<sup>CB</sup> Tax Lot(s): 2800  
Project Name: Fairview Homesite Date of Site Visit 11 / 10 / 99  
Location: 11910 SE Linwood Ave.

☐ There are no jurisdictional wetlands or waterways on the property. Therefore, no state removal-fill permit is required. Notes: \_\_\_\_\_

☒ There are wetlands and/or waterways on the site that are subject to the state Removal-Fill Law. A permit is required for 50 cubic yards or more of fill removal, or other ground alteration.

Notes: Fill in wetland has occurred on site. Approximately 41 cu yds of fill placed in shrub/scrub wetland.

☐ A wetland delineation will be needed to locate and stake the wetland/nonwetland boundary. A consultant list is enclosed.

☐ A permit will be required for \_\_\_\_\_

☐ No permit will be required for existing 41 cu yds  
because if it is under 50 cu yd threshold. No violation has occurred on site.

☐ A permit may be required by the Army Corps of Engineers [(503) 808-4373]

Note: This report is for the state Removal-Fill Law only. City or County permits may be required for the proposed activity.

Comments: See map for extent and location of fill. Wetland boundary is marked with pink flags on site. If applicant places fence on upland side of pink flags, no removal-fill permit will be necessary.

Determination by: Lisa Jameson Date 11 / 16 / 99

Copy To:

☒ Owner/Applicant ☐ Enclosures: \_\_\_\_\_

☒ City of Milwaukie, Planning Department

☒ Bill Davis, Corps of Engineers

☒ Tami Hubert

☐ DSL file copy

- Michael Moriarty (see attached card)

FOR OFFICE USE ONLY

Wetland? ☒ Yes ☐ No ☐ Maybe Regulated? ☒ Yes ☐ No Det. # 99-0481

Wetland Notice # \_\_\_\_\_

Waterbody \_\_\_\_\_ NWI Quad: Gladstone

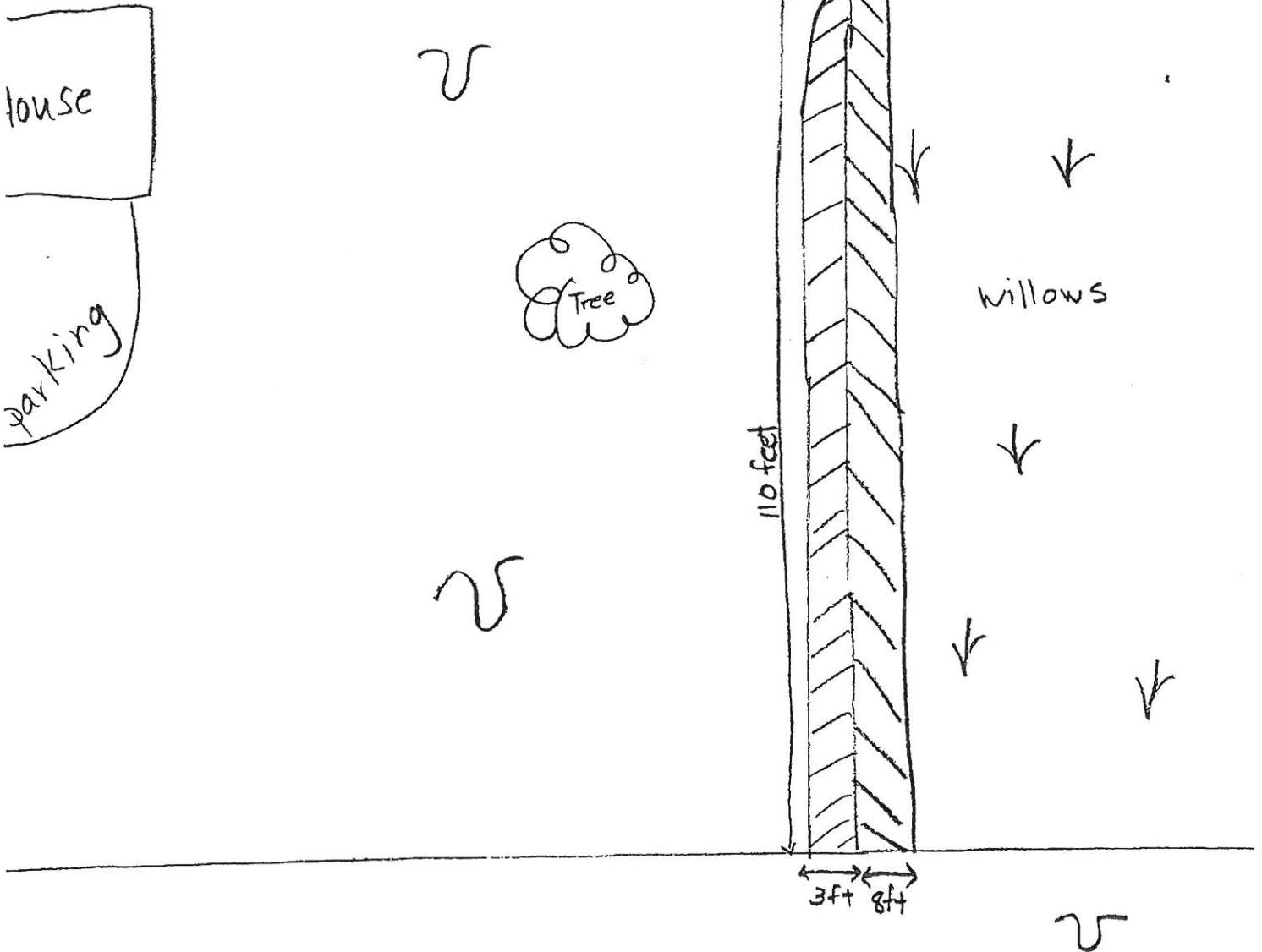
All Wetlands on NWI? ☐ Yes ☒ No LWI area: \_\_\_\_\_ On LWI? ☐ Yes ☐ No

Ag. Land? ☐ Yes ☒ No In UGB? ☒ Yes ☐ No PC ☐ FW ☐ FWP ☐ W ☐

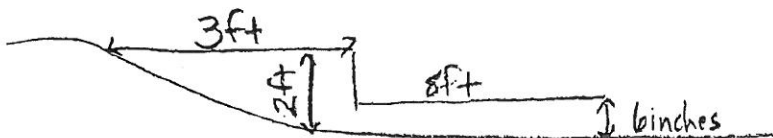
Received: 10 / 5 / 99

Clackamas Co.

Fairview Home Site  
T01S R02E 32CB  
TL 2800  
11910 SE Linwood Ave.



Cross section



Map Not  
to Scale

Max fill placed in wetland = 1100 cu ft.  
41 m. wds

Drawn by  
Lisa Hemesath  
DSL



To: Planning Commission

From: Alice Rouyer, Planning Director *ACP*

Subject: Recent correspondence with Oregon Division of State Lands; 11910 SE Linwood and 11511 SE 37<sup>th</sup> Avenue

Date: November 16, 1999

Meeting Date: November 23, 1999

**Action Requested**

Information only.

**Background**

On October 26, the Planning Commission requested that I draft a letter to the Division of State Lands (DSL) for my signature requesting investigation of wetland fill activities and possible enforcement action on properties at 11910 SE Linwood and 11511 SE 37<sup>th</sup> Avenue.

Prior to drafting this letter, DSL Resource Coordinator Tami Hubert contacted Planning staff with updates about these two properties. DSL has concluded that no violation occurred on 11910 SE Linwood. After a site visit, DSL concluded that the wetland fill on the site does not exceed the minimum 50 cubic yard threshold triggering a permit. Staff concurs with this finding, but will continue to work with the property owner to ensure that all City grading permit requirements are fulfilled prior to fence placement and building occupancy.

DSL staff will follow up on two matters relating to property at 11511 SE 37<sup>th</sup> Avenue. These are:

- a. Research past history regarding placement of fill on the site. DSL will determine if the wetland fill/mitigation permit was issued improperly or based on different facts. Based on this research, DSL will determine the next course of action.
- b. DSL staff will conduct a site inspection in early December to determine if the recent site work is compliant with the wetland fill/mitigation permit.

DSL staff will update us on the progress of these matters. Given these recent activities, I have decided not to write a letter requesting DSL attention on these two properties.

## Recommended Findings in Support of Approval

*(Revised—deleted text is ~~struck-out~~, added text is underlined)*

1. The applicant, Bruce Goldson of Theta, LLC (“the applicant”), is seeking land use approval to construct a single-family residence on the subject property. The property is vacant and has no official street address; it is comprised of tax lots 2801 and 2802 on Assessor Map 1S2E32CB. The property is zoned Residential R-7 with designated natural resource areas; including a large Water Quality Resource (WQR) area in the form of a delineated wetland, its vegetated buffer, and two stream channels, as well as Habitat Conservation Area (HCA).
2. The subject property is located between 6404 SE Furnberg Street on the west and 6460 SE Furnberg St on the east. The site has a total area of approximately 34,560 sq ft and is comprised of two tax lots created by deed from Block 2 of the Furnberg Park subdivision of 1958. The site is undeveloped, with a small pond on the western side, a mix of small trees and shrubs in the low wetland areas around the edges, and grasses in the flatter north-central portion where development is proposed. The property is shaped like a flag lot, with a narrow accessway (approximately 26 ft wide) onto Furnberg St.

Deed records from the County Assessor's office indicate that tax lot 2801 was in its current configuration as early as 1969; tax lot 2802 was created as early as 1972. Since both tax lots were established prior to October 5, 1973 (the date the City began strictly enforcing its Subdivision Ordinance as per State directive), both are considered lots of record and are recognized as legal.

3. The proposal is subject to the following provisions of Milwaukie Municipal Code (MMC) Title 19 Zoning and Title 17 Land Division:

MMC Subsection 19.1006 Type III review

MMC 19.302 Residential Zone R-7

MMC 19.402 Water Quality Resource Regulations\*\*

MMC 19.504 Site Design Standards

MMC 19.505.1 Design Standards for Single-Family Dwellings

MMC 19.600 Off-Street Parking and Loading

MMC 19.700 Public Facility Improvements

MMC 19.911 Variances

MMC 17.28 Design Standards

**\*\*Note:** The application was submitted on September 2, 2011, prior to the effective date of Ordinance 2036, which repealed MMC 19.402 Water Quality Resource Regulations and replaced it with a new MMC 19.402 Natural Resources. As per MMC 19.1001.7.B, the application is subject to the standards and criteria in place at the time of original submittal.

The application is also subject to the Metro Model Ordinance for Title 13 (Nature in Neighborhoods), as applied by the City to land use decisions as of June 1, 2009.

4. The application has been reviewed in compliance with the Type III review process described in MMC 19.1006. As required, public notice has been posted at the site and mailed to surrounding property owners and residents within 300 ft of the site. The Planning Commission held a duly advertised public hearing considering the application on February 28, 2012, which was continued to March 13, 2012.

5. The Planning Commission reviewed the application for compliance with the code sections listed in Finding 3. The Planning Commission finds that code sections not addressed in these findings are not applicable to the decision.

6. MMC 19.302 Residential R-7 zone

MMC 19.302.3 establishes standards for lots in the R-7 zone. Table 1 (below) evaluates the subject property and proposed development with respect to the applicable standards. Many of the development standards will be evaluated at the time of building permit review.

**Table 1 – Standards of the R-7 Zone**

Development Standard	R-7 Standard	Subject Property
<b>Lot Size</b>	<b>7,000 sq ft</b>	34,560 sq ft (0.79 acres)
<b>Lot Width</b>	<b>60 ft</b>	207 ft
<b>Lot Depth</b>	<b>80 ft</b>	159 ft (not including flag pole)
<b>Front Yard Setback<sup>1</sup></b>	<b>20 ft</b>	30 ft (proposed)
<b>Side Yard Setback</b>	<b>5 ft and 10ft (20 ft street-side)</b>	22 ft / 137 ft (proposed)
<b>Rear Yard Setback</b>	<b>20 ft</b>	80 ft (proposed)
<b>Off-Street Parking</b>	<b>1 space min. (no max.)</b>	4+ spaces (proposed)
<b>Height Restriction</b>	<b>35 ft or 2.5 stories</b>	n/a (to be reviewed at time of building permit)
<b>Lot Coverage</b>	<b>30% max</b>	6.5%
<b>Minimum Vegetation</b>	<b>30% min</b>	90.5%
<b>Frontage Requirements</b>	<b>35 ft</b>	26 ft (existing frontage)
<b>Density</b>	<b>5.0 to 6.2 dwelling units per net acre</b>	1.3 units per net acre <sup>2</sup>

*The Planning Commission finds that the proposed development, as conditioned and with the approval of a variance to the density standard (see Finding 13), will comply with the applicable standards of the R-7 Zone (MMC 19.302).*

7. MMC 19.402 Water Quality Resource Regulations

- A. MMC 19.402.3 establishes applicability of the Water Quality Resource (WQR) regulations, including all properties containing protected water features as shown on the City's WQR map.

*The subject property includes a delineated wetland in the western and southern portions of the site and two stream channels on the eastern side of the site. These protected water features, as well as their vegetated buffer areas as defined in Table 19.402.9.A, constitute a WQR on the site.*

<sup>1</sup> Although the subject property is shaped like a flag lot, the two tax lots comprising the property were created as early as 1969 and 1972, before the City first established special standards for flag lots in 1979. Therefore, the property is subject to the regular standards of the R-7 zone and not to the flag lot development standards of MMC 19.504.9.

<sup>2</sup> MMC 19.302.3.J provides the standard for minimum and maximum density in the R-7 zone. Proposals that require review by the Planning Commission must demonstrate compliance with the density standard. Technically, developing the subject property with only one dwelling unit does not meet the density standard and therefore requires a variance, which staff is requesting on behalf of the applicant (see Finding 13).



*The Planning Commission finds that the WQR requirements of MMC 19.402 are applicable to the subject property.*

- B. MMC 19.402.7 establishes that certain activities within a designated WQR, including development activities allowed in the base zone, are subject to Type III review and the standards of MMC 19.1006.

*The proposal includes construction of a new single-family house, with a new driveway and utility connections that will disturb the WQR.*

*The Planning Commission finds that the activities related to the proposed development are subject to the relevant standards of MMC 19.402 and Type III review.*

- C. MMC 19.402.9 establishes application requirements for projects requiring Type III review.
- i. MMC 19.402.9.A requires a topographic map of the site at contour intervals of 5 ft or less, showing a delineation of the WQR as established in Table 19.402.9.A. Similarly, MMC 19.402.9.B requires the identification of all existing natural features, including all trees with a greater than 6-in diameter at breast height.

*The applicant has provided a site plan showing 1-ft contour intervals and demarcating the WQR as provided in Table 19.402.9.A. The site plan also shows the location of existing trees with their diameter at breast height.*

*ESA, the City's on-call natural resource consultant, has reviewed the applicant's materials and visited the site to assess the existing conditions. ESA ~~has~~ concluded that the applicant's materials are generally sufficient to meet the requirements of MMC 19.402.9.A and B, with one significant exception: ESA ~~has~~ determined that the applicant's demarcation of the WQR should be adjusted by approximately 14 ft to account for the steep slope between the wetland and the south side of the proposed development. The applicant has submitted revised plans showing the corrected WQR boundary. ~~The correct WQR boundary should be shown on a revised map of existing conditions and should be incorporated into the site plan for the proposed development, the alternatives for lower-impact development, and the revised mitigation plan.~~*

*The Planning Commission finds that, with the corrected WQR boundary, the application meets the requirement to provide the information listed in MMC 19.402.9.A and 19.402.9.B.*

- ii. MMC 19.402.9.C requires identified wetlands to be delineated according to the official process outlined by the Oregon Division of State Lands (DSL).

*The applicant has submitted a wetland delineation that has been approved by DSL (WD# 2011-0331).*

*The Planning Commission finds that the application meets the requirement of MMC 19.402.9.C to provide a DSL-approved wetland delineation.*

- iii. MMC 19.402.9.D requires an inventory and location of existing debris and noxious materials. MMC 19.402.9.E requires an assessment of the existing condition of the WQR in accordance with Table 19.402.9.E. MMC 19.402.9.F requires an inventory of vegetation within the WQR, including percentage of ground and canopy coverage.

*The applicant's materials state that there is no debris or noxious material on the site. The applicant's WQR Assessment Report describes the WQR as*

*Degraded because it includes less than 25% canopy coverage and has greater than 10% coverage by non-native species, including Himalayan blackberry and English ivy. The low amount of canopy coverage (7%) is provided by approximately three dozen red alder trees on the northwestern quarter of the site.*

*ESA has confirmed that there is no debris or noxious material on the site and that the existing condition of the WQR is Degraded as defined in Table 19.402.9.E. During a site visit on February 28, 2012, staff observed a small amount of debris in the proposed mitigation planting area within the WQR in the northeast corner of the site. A condition has been established to ensure that all debris is removed from mitigation planting areas.*

*The Planning Commission finds that the applicant's presentation of existing conditions of the WQR meets the requirements of MMC Subsections 19.402.9.D-F.*

- iv. MMC 19.402.9.G requires an analysis of alternatives to the proposed disturbance, including a demonstration that the following criteria are met:
  - (a) No practicable alternatives to the requested development exist that will not disturb the WQR.

*The subject property is comprised of two lots of record in the R-7 zone, which allows development of a single-family detached dwelling as an outright permitted use. The WQR designation covers a majority of the site, except for an approximately 1,350-sq-ft rectangular area in the north-central portion of the property and a narrow portion of the accessway from Furnberg St. Some disturbance of the WQR in the accessway is necessary to provide a driveway of adequate width.*

*After subtracting the minimum required front yard setback of 20 ft, the non-WQR area in which a house could be built is reduced to approximately 350 sq ft (7 ft by 50 ft). That area is too small to accommodate the placement and construction of a conventional building. For comparison, the footprint of other houses in the surrounding area ranges from approximately 1,300 sq ft to 1,600 sq ft, and on much smaller lots.*

*Given that approximately 96% of the site is covered by WQR, any development on the site will cause at least some temporary disturbance of the WQR. However, it also appears possible to situate the proposed building footprint farther from the wetland portion of the WQR. There are practicable alternative site plans that keep more of the building footprint out of the WQR area.*

*The Planning Commission finds that there is no practicable alternative to the location of the proposed driveway but that there is a practicable alternative to the proposed footprint and location of the new house. A condition has been established to require a revised site plan showing the front of the new house located along a plane 20 ft from the front property line, which will place some of the new house footprint outside the WQR.*

- (b) Development in the WQR has been limited to the area necessary to allow for the proposed use.

*The proposed development would permanently disturb a total of approximately 2,585 sq ft within the WQR (if corrected as noted in Finding 7-C-i). The proposed driveway would disturb approximately 585 sq ft within*

~~the corrected WQR~~; it is configured to impact as little of the WQR as possible and still meet other relevant City standards. As proposed, the new house would permanently disturb approximately ~~2,000~~1,590 sq ft within the ~~corrected WQR~~. As proposed, most of the entire footprint of the new house would be within the corrected WQR.

As noted in Finding 7-C-iv-b, the Planning Commission finds that there are practicable alternatives to the proposed house configuration and location. A condition has been established to require a revised site plan showing the front of the new house located along a plane 20 ft from the front property line, which will place some of the new house footprint outside the WQR.

- (c) The WQR can be restored to an equal or better condition in accordance with Table 19.402.9.E.

*The applicant proposes to restore the WQR where temporary disturbances will result from construction. As proposed, temporarily impacted areas of existing vegetation will be revegetated as soon as practicable. A condition has been established to specify that revegetation plantings in temporary disturbance areas shall be native, non-nuisance species from the Milwaukie Native Plant List.*

*For permanent disturbances to the WQR, the applicant proposes to mitigate by planting native-species trees and shrubs in the WQR to the west of the new house. Using the ratio provided as Option 2 for mitigating HCA disturbance in proportion to the square footage of disturbance area, the applicant has proposed to plant 42 trees and 210 shrubs. Prior to planting, the applicant has proposed to remove existing nuisance-species plants within the mitigation area.*

*ESA, the City's on-call natural resource consultant, has reviewed the proposed mitigation plan and confirmed that it is generally adequate for the nature and scale of the proposed WQR disturbance. As noted in Finding 8-C-iv, the Planning Commission has requested a recalculation of the total disturbance area to account for all permanent and temporary disturbances. The recalculation will increase the number of required mitigation plantings.*

*Given that almost 50% of existing vegetation on the site has been identified as invasive or noxious species, removing invasive plants and revegetating with native species will result in a significant improvement in the condition of the WQR. In particular, as the new trees mature, the percentage of canopy will increase. As proposed, the applicant asserts that the mitigation will improve the condition of the WQR to the Good category, as defined in Table 19.402.9.E. This improvement will satisfy the requirement to restore the WQR to an equal or better condition.*

- (d) An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.

*The applicant's narrative presents two alternatives to the preferred option for the location and configuration of the new house and has explained why neither is acceptable. One alternative would push the new house farther north and further out of the WQR than the preferred option, but it would also move the garage to the southeast corner of the house. This would require the driveway and turnaround area to be realigned along the eastern boundary, almost doubling the square footage of driveway. Placing the*

*driveway and turnaround area on the east side of the new house pushes the entire development to the west and closer to the main wetland area and pond than the preferred option.*

*The second alternative would put the garage in the northeast corner of the house. This would reduce the amount of WQR disturbance caused by construction of the driveway but would move the development farther to the west and closer to the main wetland area and pond than the preferred option. The applicant asserts that this alternative would make it difficult or impossible to meet the requirement of MMC 19.505.1.A.1 to orient the main entrance of the dwelling toward the street that provides vehicle access.*

*Because the subject property is shaped like a flag lot, a vehicular turnaround area is needed. The Planning Commission is not satisfied that all possible house configurations have been explored, in the interest of minimizing the disturbance footprint of the new house and driveway. A condition has been established to require a revised site plan showing the front of the new house located along a plane 20 ft from the front property line, which will place some of the new house footprint outside the WQR.*

*As conditioned, the Planning Commission finds that the application meets the requirement of MMC 19.402.9.G to provide an analysis of alternatives.*

- v. MMC 19.402.9.I requires a mitigation plan for the WQR that includes information about adverse impacts to resource areas; how adverse impacts will be avoided, minimized, and/or mitigated; a list of all responsible parties; a map showing where specific mitigation activities will occur; and an implementation scheme.

*The applicant submitted a mitigation plan for the proposed disturbance, with information about adverse impacts and how they will be avoided, minimized, and/or mitigated. Because the infiltration capacity of the site is too low for pervious paving materials, a stormwater treatment swale will be constructed adjacent to the new driveway to accommodate runoff. The proposed location and configuration of the new house is intended to minimize additional permanent disturbance of the WQR, though a condition has been established to adjust the new house footprint and further reduce impacts.*

*The mitigation plan includes a map showing where mitigation activities will occur. The current property owner, West Coast Home Solutions, LLC, is responsible for ensuring that the mitigation plantings are installed as proposed. A condition has been established to require submittal of a more detailed mitigation plan, including timeline and clear description of responsibility for the work.*

*As conditioned, the Planning Commission finds that the mitigation plan meets the requirements of MMC 19.402.9.I.*

*As conditioned, the Planning Commission finds that the proposed development meets all of the relevant application requirements of MMC 19.402.9.*

- D. MMC 19.402.10 provides standards for development in WQRs.

*The development standards include requirements for restoring and maintaining the WQR in accordance with an approved mitigation plan, protecting existing vegetation, revegetating where vegetation is removed, performing all mitigation activities on site, and conducting all project work in accordance with the provisions of an approved construction management plan.*

*The applicant submitted a mitigation plan for the proposed disturbance, including a designated planting area and general indication of species to be planted. As proposed, the WQR will be restored and enhanced sufficient to reclassify it as being in Good condition as defined in Table 19.402.9.E. Conditions have been established to require a more detailed final mitigation plan and a construction management plan that shows the measures taken to protect the WQR.*

*As conditioned, the Planning Commission finds that the proposed development meets the applicable development standards of MMC 19.402.10.*

*The Planning Commission finds that, as conditioned, the proposed development meets all applicable standards of MMC 19.402 Water Quality Resource Regulations.*

#### 8. Metro's Title 13 Model Ordinance (Nature in Neighborhoods)

On June 1, 2009, the City began applying the Metro Model Ordinance implementing Title 13 of the Urban Growth Management Functional Plan. Title 13 regulations are intended to protect designated Habitat Conservation Areas (HCAs). On August 16, 2011, the City Council adopted an updated version of MMC 19.402 Natural Resources that incorporated much of the Metro Model Ordinance and made the City compliant with Title 13. However, the new rules did not become effective until September 15, 2011, approximately 2 weeks after the applicant submitted the application for WQR-11-05. Therefore, the application is subject to both the previous version of MMC 19.402 Water Quality Resource Regulations and the City-implemented portions of the Metro Model Ordinance.

- A. Section 2 of the Model Ordinance establishes applicability for properties containing a HCA. Proposals for development within the HCA must provide a construction management plan as per Section 5, must comply with the development standards established in either Section 6 or Section 7, and must verify the HCA boundary as per Section 9.

*The subject property includes a delineated wetland in the western and southern portions of the site and two stream channels on the eastern side of the site. These protected water features and their associated vegetated buffers constitute a WQR on much of the site. In addition, High-value HCA has been designated under most of the WQR area, as well as over the entire non-WQR buildable footprint area where development and disturbance are proposed.*

*The Planning Commission finds that the Model Ordinance is applicable to the proposed development.*

- B. Section 5 of the Model Ordinance requires a construction management plan to ensure that trees and vegetation within the HCA are not damaged during construction.

*The applicant has asserted that a construction management plan will be provided as part of the building permit process. A condition has been established to ensure that this standard will be met.*

*As conditioned, the Planning Commission finds that the proposed development meets the standards of Section 5 of the Model Ordinance.*

- C. Section 6 of the Model Ordinance establishes standards for development within HCAs.
  - i. Section 6-A provides application requirements, including a detailed site plan showing the location and value of all HCAs on the property as well as the location of all existing trees within the HCA with a greater than 6-in diameter at breast height.

*The applicant has provided site plans showing the requested information, including a demonstration that all of the HCA on the site is designated as High-value HCA. This standard is met.*

- ii. Section 6-B provides methods for avoiding HCAs, including building setback flexibility and flexible landscaping requirements.

*Given the amount and distribution of HCA on the site, these allowances are not useful or applicable to the proposed development.*

- iii. Section 6-C establishes nondiscretionary standards for development within HCAs, including limitations on disturbance area. Projects that can meet the nondiscretionary standards are not subject to the additional analysis and requirements as established in Section 7 of the Model Ordinance.

- (a) Section 6-C-1 provides a means for calculating the maximum allowed disturbance of the HCA for single-family residential projects.

*The subject property has an area of approximately 34,560 sq ft, with approximately ~~9351,530~~ sq ft designated High-value HCA outside of any WQR. For High-value HCA, the maximum disturbance area for single-family residential development is 50% of total lot area or 5,000 sq ft, whichever is less; in this case, the 5,000-sq-ft limit applies. Only approximately 415 sq ft of the subject property is not designated HCA or WQR, so the total allowable HCA disturbance is 4,585 sq ft.*

*Because only ~~9351,530~~ sq ft of HCA is outside any WQR, the limit on HCA disturbance through the nondiscretionary process established in Section 6-C is effectively ~~9351,530~~ sq ft. As proposed, the new development would permanently disturb only approximately ~~450920~~ sq ft of HCA outside any WQR, well below the maximum amount allowed through the nondiscretionary process. The nondiscretionary standard for allowed HCA disturbance on the subject property is met.*

- (b) Section 6-C-2 establishes standards for protection of the HCA during development, including a requirement to mark work areas and a prohibition on using trees in HCAs as anchors for stabilizing construction equipment.

*These standards apply to the proposed development. The applicant has proposed to provide appropriate fencing and flagging to protect the HCA, and a condition requiring a construction management plan has been established to ensure these standards will be met.*

- iv. Section 6-E establishes mitigation requirements for disturbance within HCAs, including options for determining the number of required plantings and standards for those plantings. Mitigation Option 2 bases the required mitigation upon the total area of HCA disturbance.

*Technically, the applicant's calculation of total disturbance does not need to include the square footage of disturbed WQR on the property, since the Model Ordinance applies specifically to HCA disturbance. However, the applicant has elected to utilize the HCA mitigation requirements for WQR disturbance as well, so the applicant's calculation of total disturbed area does not distinguish between HCA and WQR.*

*The proposed area of permanent disturbance is approximately 4,200 sq ft. The applicant has used Mitigation Option 2 to determine that 42 trees and 210 shrubs are required for that amount of disturbance. As proposed, the mitigation*

*plantings would be installed within the vegetated buffer abutting the delineated wetland in the northwestern corner of the site.*

*ESA has confirmed that the proposed mitigation plan is adequate for the nature and scale of the permanent disturbance to both HCA and WQR on the site. However, the Model Ordinance includes temporary disturbances in the calculation of total disturbance area. The Planning Commission finds that a recalculation of total disturbance area, including temporary disturbances, is necessary to demonstrate compliance with this standard.*

*The additional standards of Section 6-E regarding plant size, spacing, diversity, survival, etc., are applicable to the proposed development. The applicant has generally addressed these standards and indicated that a final mitigation plan will be prepared for the building permit review process. A condition has been established to ensure that a more detailed mitigation plan is provided to demonstrate that the applicable standards will be met.*

*As conditioned, the Planning Commission finds that proposed development meets the applicable development standards of Section 6 of the Model Ordinance.*

- D. Section 9 of the Model Ordinance outlines the process for verifying the HCA boundary. In particular, Section 9-F-1 establishes the basic verification approach of agreeing that the HCA map is accurate, which includes submittal of a detailed property description, copy of the HCA map, and 2005 aerial photograph of the property.

*The applicant has provided the information required to verify the HCA boundary, while asserting that the HCA map is not entirely accurate. However, the applicant has opted not to pursue the more detailed verification approach outlined in Section 9-G; for purposes of this application, the applicant has essentially agreed that the HCA map is accurate.*

*As proposed, the Planning Commission finds that the proposed development meets the applicable standards of Section 9 of the Model Ordinance.*

*The Planning Commission finds that the proposed development, as conditioned, meets the applicable standards of Metro's Title 13 Model Ordinance.*

## 9. MMC 19.504 Site Design Standards

MMC 19.504 establishes standards related to site design for items including clear vision, buildings on the same lot, minimum distances from property lines, and minimum vegetation. In particular, MMC 19.504.9 provides standards for the design and development of flag lots.

*Because the subject property was established as a legal lot of record prior to the City having standards for flag lots, it is subject to the development standards of the R-7 zone (see Finding 6) and not to the standards of MMC 19.504.9.*

*The Planning Commission finds that the site design standards provided in MMC 19.504, where applicable, will be more appropriately applied to the proposed development during the building permit review process.*

## 10. MMC 19.505 Design Standards for Single-Family Dwellings

MMC 19.505 establishes standards for the design of single-family dwellings, many of which will be evaluated as part of the building permit review process. However, MMC 19.505.1.A.1 requires that the main entrance of the dwelling be oriented to face the street which provides vehicle access.

*The subject property takes access from Furnberg St to the north. In determining how to position the proposed new house and evaluating alternative options, the applicant has considered the requirement of MMC 19.505.1.A.1 and proposed a design that will meet this standard.*

*The Planning Commission finds that the proposed development meets the applicable standards of MMC 19.505 and that other relevant standards will be addressed during the building permit review process.*

#### 11. MMC 19.600 Off-Street Parking and Loading

- A. MMC 19.605 establishes quantity requirements for off-street parking for specific uses, including residential uses. Single-family residences require a minimum of 1 parking space per dwelling unit.

*The proposed development includes a garage with 2 parking spaces in addition to at least 2 spaces in the driveway and vehicle turnaround area. This standard is met.*

- B. MMC 19.607 provides off-street parking standards for residential areas. In particular, MMC 19.607.1 requires that residential off-street parking spaces must have minimum dimensions of 9 ft by 18 ft and, along with the driveway, must have a durable and dust-free surface. The required parking space may not be located in the required front yard.

*The proposed development includes an asphalt driveway and vehicle turnaround area, as well as a 2-car garage that will meet the 20-ft front yard setback requirement of the R-7 zone. This standard is met.*

*The Planning Commission finds that the proposed development meets the applicable standards of MMC 19.600.*

#### 12. MMC 19.700 Public Facility Improvements

MMC 19.700 applies to partitions, subdivisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

*The applicant proposes to construct a single family residence on the existing parcel. The new construction of the single family residence on tax lot 2801 is projected to slightly increase vehicle trips to the site.*

*The Planning Commission finds that MMC 19.700 applies to the proposed development.*

- A. MMC 19.703 Review Process

MMC 19.703 requires for minimum safety and functionality standards to be met before a development permit will be issued.

*The proposed single family residence on tax lot 2801 does have adequate paved width along the site's frontage on Furnberg St. The existing paved width on Furnberg St is 25 ft. The minimum paved width allowed along the site's frontage is 16 ft. The applicant is not required to provide any additional paving to meet the minimum safety and functionality standard.*

*The Planning Commission finds that the proposed development meets the requirements of MMC 19.703.*

- B. MMC 19.704 Transportation Impact Evaluation



MMC 19.704 requires submission of a transportation impact study documenting the development impacts on the surrounding transportation system.

*The proposed development will not trigger a significant increase in trip generation and therefore does not require a transportation impact study.*

- i. MMC 19.704.4 requires that transportation impacts of the proposed development be mitigated.

*The proposed development does not trigger mitigation of impacts beyond the required frontage improvements. The impacts are minimal and the surrounding transportation system will continue to operate at the level of service previous to the proposed development.*

*The Planning Commission finds that the proposed development meets the requirements of MMC 19.704.4.*

*The Planning Commission finds that the proposed development meets the requirements of MMC 19.704.*

C. MMC 19.706 Fee in Lieu of Construction

MMC 19.706 establishes specific criteria for accepting a fee in lieu of construction of required transportation facility improvements.

*The applicant has requested to pay a fee in lieu of construction of the required transportation facility improvements triggered by the construction of a new single family residence on tax lot 2801. The Engineering Director accepts the fee in lieu of construction on the basis that the required improvements may present a safety hazard because tax lot 2801 is mid-block with 25 ft of frontage on a curve and the required improvements are not safe to construct. The applicant must pay the fee in lieu of construction for the required frontage improvements prior to a development permit being issued. A condition has been established to ensure that this requirement will be met.*

*The Planning Commission finds that, as conditioned, the proposed development meets the requirements of MMC 19.706.*

D. MMC 19.708 Transportation Facility Requirements

- i. MMC 19.708.1 requires all development to comply with access management, clear vision, street design, connectivity, and intersection design and spacing standards.

*Tax lot 2801 currently has no driveway access fronting Furnberg St.*

*The applicant is required to construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) on Furnberg St. The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line. A condition has been established to ensure that these standards will be met.*

*The applicant is required to remove all signs, structures, or vegetation in excess of 3 ft in height from "vision clearance areas" at intersections of streets, driveways, and alleys. A condition has been established to ensure that this standard is met.*

*The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC 19.708.1.*

- ii. MMC 19.708.2 establishes standards for street design and improvement.

*The applicant is responsible for street improvements along the tax lot 2801 frontage adjacent to Furnberg St. The street improvement includes construction of a 14-ft wide paved half street, standard curb and gutter, minimum 5-ft wide planter strip, and minimum 5-ft wide setback sidewalk to accommodate pedestrians. The applicant has proposed a fee in lieu of construction for the required street improvements. The Engineering Director accepts the fee in lieu of construction on the basis that the required improvements may present a safety hazard because tax lot 2801 is mid-block and the required improvements are not safe to construct.*

*The existing right-of-way width of Furnberg St fronting the proposed development is 50 ft. The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of Furnberg St as a neighborhood route. According to Table 19.708.2 Street Design Standards, the required right-of-way width for a neighborhood route is between 20 ft and 68 ft depending on the required street improvements. The required right-of-way width needed for the required street improvements is 52 ft. The applicant is responsible for half the required dedication. The applicant shall dedicate 1 ft of right-of-way to the public on Furnberg St fronting the proposed development. A condition has been established to ensure that this standard is met.*

*The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC 19.708.2.*

- iii. MMC 19.708.3 establishes that sidewalks shall be provided on the public street frontage of all development.

*The construction of sidewalks along the proposed development property abutting Furnberg St is included in the street frontage requirements. The applicant will pay a fee in lieu of construction for the required improvements. A condition has been established to ensure that this condition will be met.*

*The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC 19.708.3.*

- iv. MMC 19.708.4 establishes standards for bicycle facilities.

*The portion of Furnberg St fronting the proposed development is not classified as a bike route in the Milwaukie Transportation System Plan. As a result, bicycle facility improvements are not required for the proposed development.*

*The Planning Commission finds that the proposed development is consistent with MMC 19.708.4.*

- v. MMC 19.708.5 establishes standards for pedestrian and bicycle paths.

*The proposed development property is surrounded by single-family residences and a water quality resource area with no mid-block connectivity. As a result, a pedestrian/bicycle path is not required for the proposed development.*

*The Planning Commission finds that the proposed development is consistent with MMC 19.708.5.*

- vi. MMC 19.708.6 establishes standards for transit facilities.

*The portion of Furnberg St fronting the proposed development is not classified as a transit route in the Milwaukie Transportation System Plan. As a result, transit facility improvements are not required for the proposed development.*

*The Planning Commission finds that the proposed development is consistent with MMC 19.708.6.*

*As conditioned, the Planning Commission finds that the proposed development is consistent with all applicable standards of MMC 19.708.*

*The Planning Commission finds that, as conditioned, the proposed development is consistent with all applicable standards of MMC 19.700.*

### 13. MMC 19.911 Variances

MMC 19.911 establishes the process and criteria for requests for variances from specific code provisions.

*The applicant has proposed to develop a single-family detached dwelling on the subject property, at a density of approximately 1.3 units per acre. A single-family detached dwelling is an allowed use in the R-7 zone; however, MMC 19.302.3.J requires that the proposal must demonstrate compliance with the density standard of the R-7 zone because the proposed development is being reviewed by the Planning Commission.*

*The density range for the R-7 zone is 5.0 to 6.2 units per net acre. The definition of "net acre" in place at the time of application submittal excludes WQRs and HCAs, which comprise approximately 99% of the total property area and reduce the site to 0.01 net acres. As proposed, one dwelling unit on 0.01 net acres represents a density of approximately 105 units per net acre. Therefore, a variance to the maximum density standard (6.2 units per net acre) is required.*

*MMC 19.911.2.B.5 prohibits variance requests to increase, or have the same effect as increasing, the maximum permitted density. However, because the zoning code and City-implemented Metro Model Ordinance for Title 13 both provide mechanisms for allowing mitigated disturbance to WQRs and HCAs, the proposed development does not represent an actual request to exceed the maximum permitted density. This issue did not surface during the required preapplication conference, so staff has requested the variance on behalf of the applicant.*

#### A. MMC 19.911.3 establishes the review process for variances.

*MMC 19.911.3.B lists Type II variances for some limited variations to numerical standards. However, there is no Type II variance for the minimum density standard. Therefore, the Planning Commission finds that the proposed development is subject to the Type III variance procedure as per MMC 19.911.3.C.*

#### B. MMC 19.911.4 provides the approval criteria for variances.

Specifically, MMC 19.911.4.B.1 provides discretionary relief criteria for approving Type III variances.

##### i. MMC 19.911.4.B.1.a requires an alternatives analysis of the impacts and benefits of the variance proposal as compared to the baseline code.

*Most of the subject property is designated as either WQR or HCA. Most proposed development activity will trigger a land use application and review by the Planning Commission to consider potential impacts on natural resources. Planning Commission review triggers compliance with the density standard, even though the proposal does not involve dividing the subject property or establishing multiple dwelling units on it.*

*Because the subject property is comprised of two developable (though constrained) lots of record, the proposed development represents a minimal use of the site. Constructing one dwelling unit on the site presents fewer direct impacts to surrounding properties than other alternative proposals that would actually increase the density by establishing more than one dwelling unit.*

*The zoning code and City-implemented Metro Model Ordinance for Title 13 both provide mechanisms for allowing mitigated disturbance to designated natural resource areas. Granting the variance request and allowing development of a single-family house as proposed, with the accompanying requirements to remove invasive vegetation and mitigate with native plantings, would result in the enhancement of the undisturbed natural resource areas remaining on the site.*

*The Planning Commission finds that this analysis demonstrates an overall benefit from the requested variance as compared to the baseline code.*

- ii. MMC 19.911.4.B.1.b requires that the requested variance be both reasonable and appropriate and meet at least one of three criteria related to (1) minimizing impacts to surrounding properties, (2) providing desirable public benefits, and (3) responding to the existing built or natural environment in a creative and sensitive manner.

*The requested variance would allow development of a single-family detached dwelling, a use that is permitted outright in the R-7 zone. If not for the natural resource designation on the property, density would not be an issue and a new house on the site would be reviewed simply through the standard building permit process. Prohibiting development on the site due only to the density standard could be challenged as a regulatory taking, since the zoning code provides a process for mitigating impacts to designated natural resources. It is reasonable and appropriate to allow development of one single-family house on a residential property that is over 3,000 sq ft in area and has frontage on a public street, as per MMC 19.501.1.*

*The Planning Commission finds that the proposed development is reasonable and appropriate and meets the criteria of both MMC 19.911.4.B.1.b(1) and b(2).*

- iii. MMC 19.911.4.B.1.c requires mitigation of impacts from the requested variance to the extent possible.

*The Planning Commission finds that allowing development of a single-family house on the subject property does not constitute an effective increase of the maximum permitted density and results in no negative impacts that require mitigation.*

#### 14. MMC 17.28 Design Standards

MMC 17.28.030 requires that easements for sewers, water mains, electric lines, or other public utilities shall be dedicated to the City wherever necessary.

*The proposed development property has an underground stormwater mainline that runs along the south side of the property. The applicant does not show an easement for the mainline on the site plan. The applicant must grant and record a 10-ft-wide stormwater easement to the City for the stormwater mainline on tax lots 2801 and 2802. A condition has been established to ensure that this requirement will be met.*

*The Planning Commission finds that, as conditioned, the proposed development meets the specific requirements of MMC 17.28.030 and the applicable standards of MMC 17.28.*

15. The City's Public Works Standards require erosion control measures to be installed prior to earth-disturbing activities. A condition has been established to ensure that this standard is met.

*As conditioned, the Planning Commission finds that the proposed development meets the applicable requirements of the City's Public Works Standards.*

16. MMC 12.24 requires clear vision at street and driveway intersections. A condition has been established to ensure that this standard is met.

*As conditioned, the Planning Commission finds that the proposed development is consistent with the clear vision standards of MMC 12.24.*

17. The application was forwarded to the following City departments and related entities for review and comment on January 20, 2012: City of Milwaukie Building and Engineering Departments, Clackamas County Fire District #1, Linwood Neighborhood District Association, Southgate Community Planning Organization (unincorporated Clackamas County), and ESA (the City's on-call natural resource consultant). Notice of the initial public hearing was mailed to property owners and current residents at all properties within 300 ft of the subject property on February 8, 2012.

The following is a summary of the comments received by the City:

- **Tom Larsen, City of Milwaukie Building Official:** Due to the location of the proposed home near the wetlands, a soil test will need to be performed by a qualified firm or individual, verifying the adequacy of the soil to support the proposed structure. Report to be submitted with the building permit application.

*Response: A condition has been established to ensure that this requirement is met.*

- **Dolly Macken-Hambright, Beth Kelland, and Don Wiley, members of Linwood NDA Land Use Committee:** The proposed development will add hardscape on the subject property, which could affect stormwater drainage. In particular, the four abutting properties to the south may be particularly affected by any increased surface runoff or increased volume of ground water.

*Response: The City of Milwaukie Engineering Department has reviewed the proposed development for compliance with current stormwater management standards. Increased runoff from the new house and driveway will be treated on site in stormwater facilities that are designed and approved to adequately handle the new volume. Ongoing maintenance of those storm water facilities by the subject property owner is incorporated in the Stormwater Design Standards in the City of Milwaukie Public Works Standards.*

- **Brad Albert, City of Milwaukie Engineering Department:** Various comments related to MMC 19.700 Public Facility Improvements, MMC 17.28 Design Standards, and MMC 12.24 Clear Vision at Intersections.

*Response: These comments have been incorporated into the Findings.*

- **Sarah Hartung, Senior Biologist with ESA:** As the City's on-call natural resource consultant, ESA reviewed the application; assessed the existing conditions, alternatives analysis, and proposed mitigation plan; and prepared a report summarizing the analysis.

*Response: The ESA analysis has been incorporated into the Findings.*

- **Mike Boumann, Clackamas County Fire District #1:** Various comments related to the Oregon Fire Code, including standards for fire apparatus access and water supply.

*Response: These comments are advisory for the applicant and are most relevant to the building permit review process.*

- **Deborah Barnes, owner/resident at 6330 SE Furnberg St:** Concerns about impacts of the proposed development on wetland and natural resource areas as well as on privacy for neighboring properties.

*Response: The intent of the WQR review is to evaluate whether the applicant has done as much as possible to avoid or minimize impacts to natural resources and then has adequately mitigated where impacts are unavoidable. The City recognizes the subject property as being developable, though the burden of proof is on the applicant to show how the natural resources will be protected. Privacy for neighboring properties is not part of the WQR review; and the current flag lot standards are not applicable, since the subject property was established before the City had standards for flag lots.*

## Recommended Conditions of Approval

*(Revised—deleted text is ~~struck-out~~, added text is underlined)*

1. Prior to issuance of any building permits for construction on the subject property, the following shall be resolved:
  - A. Unless otherwise required by these conditions of approval, all plans submitted for building permits for the subject property shall be substantially similar to those submitted as part of the final land use application (stamped received on January 19, 2012, for most of the applicant's materials; or September 2, 2011, for the applicant's Water Quality Resource Assessment Report; or February ~~xx~~27, 2012, for the Option 1A Plan and revised Mitigation Plan~~any other materials received after preparation of the draft findings~~).
  - B. Provide a final revised site plan showing the front of the new house located along a plane 20 ft from the front property line. *(The details of this condition could change depending on the applicant's further exploration of alternative low-impact footprints.)*
  - C. Provide a construction management plan that shows the following:
    - i. Location of site access (ingress and egress) that construction equipment will use
    - ii. Equipment and material staging and stockpile areas
    - iii. Measures to protect trees and other vegetation located within the Habitat Conservation Area (HCA) but outside of the approved disturbance area
  - D. Provide a final mitigation plan that includes the following details:
    - i. Clear indication of the person responsible for the mitigation work, including primary contact, phone number, and address
    - ii. Demarcation of mitigation planting areas for permanent disturbances to the Water Quality Resource (WQR) and/or HCA
    - iii. Locations of particular plant species within the mitigation planting area—plantings shall be appropriate for particular conditions (e.g., sun/shade, wet/dry, etc.) and shall be native, non-nuisance species from the Milwaukie Native Plant List
    - iv. Demonstration that plantings to restore temporarily disturbed areas are native, non-nuisance species from the Milwaukie Native Plant List
    - v. Timeline for planting, with schedule for watering, monitoring, and replacement of plants
    - vi. Contingency plan for ensuring that work will be completed as proposed

All mitigation planting shall be done in accordance with the standards provided in Section 6-E of the Metro Model Ordinance for Title 13. This includes standards for plant size, spacing, and survival.
  - E. Submit a report documenting a soil test performed by a qualified firm or individual, verifying the adequacy of the soil to support the proposed structure.
  - F. Submit a stormwater management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2 - Stormwater Design Standards of the City of Milwaukie Public Works

- Standards. In the event the storm management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.
- G. Obtain a right-of-way permit for construction of the required driveway approach along the site's frontage on Furnberg St.
  - H. Pay the fee-in-lieu of construction costs for the required travel lane, curb, planter strip, and setback sidewalk. The fee for the required improvements will be calculated with the submission of the building permit.
  - I. Dedicate 1 ft of right-of-way on Furnberg St fronting the proposed development.
  - J. Provide an erosion control plan and obtain an erosion control permit.
2. Prior to final inspection for any building permit for the subject property, the following shall be resolved:
- A. Implement the final mitigation plan.
    - i. Restore temporarily disturbed areas according to the details provided in the final mitigation plan.
    - ii. Remove all invasive nonnative vegetation and any debris or noxious material from within designated mitigation planting areas.
    - iii. Install trees, shrubs, and ground cover according to the details provided in the final mitigation plan.
    - iv. Provide a signed statement from the responsible party identified in Condition 1-D-i above, stating that all mitigation plantings have been installed according to the final mitigation plan.
  - B. Construct a driveway approach onto Furnberg St to meet all guidelines of the Americans with Disabilities Act (ADA) prior to final inspection. The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property lines.
  - C. Remove all signs, structures, or vegetation in excess of 3 ft in height located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the proposed development.
  - D. Record a 10-ft-wide stormwater easement on the south side of tax lots 2801 and 2802 for the City stormwater mainline.
3. The land use approval shall expire and become void unless both of the following steps are completed:
- A. Obtain and pay for all necessary development permits and start construction within 2 years of land use approval.
  - B. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval.



## List of Record for WQR-11-05

The following documents are part of the official record for this application (WQR-11-05, with VR-12-01).

### A. Application Forms

*(received September 2, 2011, unless otherwise noted):*

1. Water Quality Resource Review application form
2. Variance Request application form *(received February 15, 2012)*
3. Submittal Requirements Checklist

### B. Applicant's Consolidated Narrative and Supporting Documentation

*(final materials received January 19, 2012, unless otherwise noted):*

1. Narrative
2. Location Map
3. Existing Conditions Plan
4. Lot Coverage & Vegetation Worksheet
5. Surveyor-signed Lot Coverage & Vegetation Worksheet
6. City of Milwaukie WQR & HCA maps
7. Division of State Lands Concurrence Letter with maps
8. Water Quality Resource Assessment Report *(received September 2, 2011)*
9. Wetland Delineation
10. Updated Footprint Options and Mitigation Plan *(received February 17, 2012)*
11. Option 1A Plan *(received February 27, 2012)*
12. Revised Mitigation Plan *(received February 27, 2012)*

### C. Notification Information

1. Application Referral form
2. Notice posted at the site
3. Sign Posting Affidavit
4. Notice mailed to properties within 300' radius (w/ site map)
5. Mailing list
6. Certification of Legal Notice Mailing
7. Application Materials form (to PC and City Attorney)

### D. Agency Responses

1. Tom Larsen, City of Milwaukie Building Official – Soil test needed.
2. Dolly Macken-Hambright, Beth Kelland, and Don Wiley, members of Linwood NDA Land Use Committee – Concerns about increased stormwater runoff.
3. Brad Albert, City of Milwaukie Engineering Department – Comments related to public facility improvements and stormwater easement.
4. Sarah Hartung, Senior Biologist with ESA (the City's on-call natural resource consultant) – Review and analysis of applicant's materials, including existing conditions, alternatives analysis, and mitigation plan.
5. Mike Boumann, Clackamas County Fire District #1 – Comments related to new construction meeting applicable standards for fire apparatus and water supply.

### E. Public Comments Received

1. Deborah Barnes, owner/resident at 6330 SE Furnberg St *(received February 13 and February 15, 2012)* – Concerns about impact of proposed development on

wetland and natural resource areas as well as on privacy for neighboring properties.

2. Jeff McDaniel, owner/resident at 6405 SE Apple St (*received February 28, 2012*) – Lives behind the wetland and is concerned that the proposed new development would negatively impact the natural area (wildlife and vegetation).

**F. Public Testimony Received at Public Hearing**

February 28, 2012

1. Tracy Anderson (owner/resident at 6415 SE Apple St) = in opposition
2. Jeff McDaniel (owner/resident at 6405 SE Apple St) = in opposition
3. Dennis Teske (owner/resident at 6335 SE Apple St) = in opposition

March 13, 2012

1. \_\_\_\_\_
2. \_\_\_\_\_

**G. Other**

1. Notes from Preapplication Conference (*December 2, 2010*)
2. Grading Permit # 00-312 (*pulled from archives on February 27, 2012*)
3. Documentation of 1999 Fill Issue at 11910 SE Linwood Ave (*pulled from archives on February 29, 2012*)
- 4.

**H. Materials Received at Public Hearing**

1. Staff Presentation (*February 28, 2012*)
2. Staff Presentation (*March 13, 2012*)
3. Exhibit 1: \_\_\_\_\_
4. Exhibit 2: \_\_\_\_\_

**I. Staff Report**

For February 28, 2012

1. Report
2. Recommended Findings
3. Recommended Conditions of Approval

For March 13, 2012

1. Report
2. Revised Recommended Findings
3. Revised Recommended Conditions of Approval



**To:** Planning Commission  
**Through:** Katie Mangle, Planning Director  
**From:** Li Alligood, Assistant Planner  
           Ryan Marquardt, Associate Planner  
**Date:** March 5, 2012, for March 13, 2012, Public Hearing  
**Subject:** **File:** ZA-11-03, CPA-11-04  
           **File Types:** Zoning Ordinance Amendment, Comprehensive Plan Amendment  
           **Applicant:** Katie Mangle, Planning Director, City of Milwaukie

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## **ACTION REQUESTED**

Open the public hearing on the application and hear public comment. Staff will be prepared to respond to questions and identify alternative solutions.

## **BACKGROUND INFORMATION**

The Planning Commission held the first hearing on these amendments on February 28, 2012. A description and analysis of the proposed amendments are provided in the staff report and attachments from that hearing.

At the February 28, 2012, public hearing of the Commission, several issues were raised during public testimony. Staff has provided an overview of issues raised, and divided them into two groups: those that staff will be prepared to clarify or provide additional information about at the March 13 hearing; and those that require Commission direction.

The draft code proposals are open for discussion and can be refined and revised per the Commission's direction.

### **A. Issues for Clarification/Additional Information**

Staff heard comments and questions on several aspects of the proposal, and will be prepared to offer clarification or additional information about the following issues:

- Methods for controlling the size of houses on large lots. Staff will provide an overview of the methods considered to limit the sizes of homes on very large lots (more than 2.5 times the minimum lot size), and the reason the proposed approach was chosen.

- Risk of creating nonconformities for existing homes. This is an important consideration, and staff will provide an overview of which proposed policies could create nonconformities for existing homes, and how those nonconformities could be addressed by the existing code.
- Flexibility within the code. The 2011 Land Use and Development Review Tune Up project established Type II variance criteria to allow limited relief from specific development standards, including setbacks and lot coverage. Staff will provide an overview of how the existing and proposed allowances could address the concerns expressed at the March 13 hearing.
- Allowance of personal/business service uses in medium and high density residential zones. Currently, office uses are allowed as conditional uses in the medium and higher density zones, without restriction on location or size. Staff will provide an overview of the intent behind expanding allowed conditional uses in those zones to include personal/business services.

## **B. Issues for Planning Commission Direction**

Staff is seeking Planning Commission direction on the following issues:

- 100% American Built homes. A proposal has been submitted to include “100% American” homes as one of the five required detailed design standards for new single-family homes. This proposal is not currently included in the draft code.
- Detached ADUs. Concerns have been raised regarding privacy concerns related to detached accessory dwelling units (ADUs). The draft code does not include screening or privacy requirements for detached ADUs taller than one story.
- Accessory structures. Concerns have been raised regarding the height limitations placed on accessory structures (specifically, a detached ADU above a garage) by the height and size of the primary structure. The draft ADU policies have been drafted in response to community feedback, which supported allowing detached ADUs with restrictions on their size, design, and placement.

Continued public comment and Commissioner deliberations will certainly raise additional discussion points, and staff will continue to explain the proposal and seek guidance from the Commission on how to refine it.

## **COMMENTS**

Staff has not received any formal comments since the March 13 hearing. Staff will continue to collect comments and will provide any comments received to the Planning Commission at the hearing.



**To:** Planning Commission  
**Through:** Katie Mangle, Planning Director  
**From:** Brett Kever, Associate Planner  
**Date:** March 9, 2012, for March 13, 2012, Public Hearing  
**Subject:** Supplemental Information for WQR-11-05 application  
**Files:** WQR-11-05, VR-12-01  
**Address:** No official street address (SE Furnberg Street near SE 64<sup>th</sup> Avenue)

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## **ACTION REQUESTED**

None. Staff is sharing information received after the February 28 hearing.

## **BACKGROUND AND SUPPLEMENTAL INFORMATION**

On February 28, 2012, the Planning Commission opened the public hearing on the application, a proposal to construct a single-family house on a SE Furnberg Street property with significant natural resources. The Commission heard presentations from staff and the applicant, took public testimony, and continued the hearing to March 13, 2012.

After the staff report for the March 13 meeting was finalized, staff received additional materials pertinent to the application, including correspondence between Commissioners and staff. Commissioner Stoll generated a graphic showing the location of the proposed new house in relation to other existing houses in the vicinity—he asked that this information be shared with the other Commissioners (see Attachment 1). Staff also responded to a question Commissioner Stoll raised about the lot history of the subject property—staff felt this information would be useful background for the entire Commission (see Attachment 2).

No additional public comments have been received to date.

## **ATTACHMENTS**

All attachments are included in the e-packet unless otherwise noted. All material is available for viewing upon request.

1. E-mail from Commissioner Stoll RE: Isolation of new house: *(received March 5, 2012)*
2. Staff e-mail RE: Lot history *(sent March 6, 2012)*

**Kelver, Brett**

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**From:** Mangle, Katie  
**Sent:** Monday, March 05, 2012 2:54 PM  
**To:** Kelter, Brett  
**Subject:** FW: SE Furnberg  
**Attachments:** SE Furnberg.pdf

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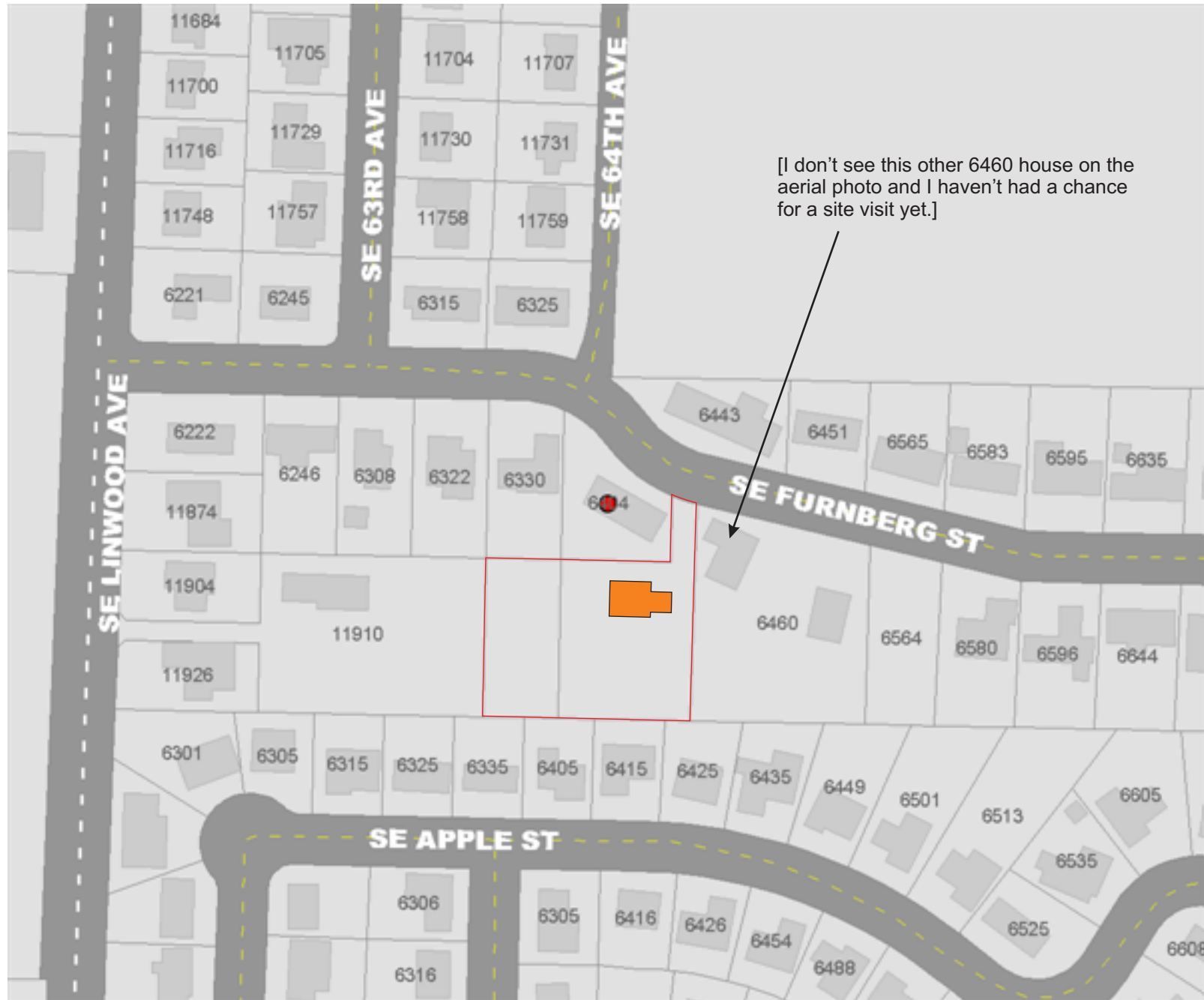
**From:** Russ E Stoll [mailto:russell@designameri.com]  
**Sent:** Monday, March 05, 2012 12:12 PM  
**To:** Mangle, Katie  
**Subject:** SE Furnberg

One thing that went unmentioned at the hearing that I was wondering about was, compared to its neighborhood, how close is the proposed house to others. I have plotted Option 1A, the one furthest to the north at Lot 2801, on an area map from Portland GIS.

With the exception of the eastern home shown at 6460, a Lot 2801 house would be one of the more isolated homes in the area.

I would like to share this with other commissioners.

Russ



**Kelver, Brett**

**From:** Kelver, Brett  
**Sent:** Tuesday, March 06, 2012 3:51 PM  
**To:** 'Russ E Stoll'  
**Cc:** Lisa Batey (lisabatey@msn.com); Mangle, Katie  
**Subject:** lot history for Furnberg WQR application

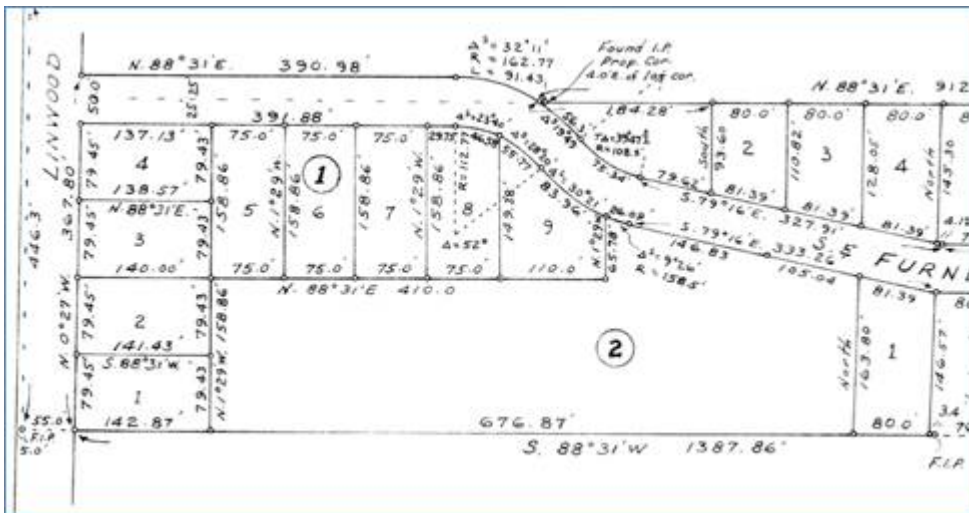
Russ,

Sorry for the delay in responding to your question about platting history for the Furnberg wetland property. I will send this info, along with your earlier note to Katie (with the plot-work you did showing the isolation of the proposed new house) and any other public comments we receive, out to the Commission this Friday in a supplemental packet. For now, this is a direct response to you.

To clarify, the subject property is a flag-lot-shaped parcel composed of 2 tax lots—tax lot 2801 is the lot with flagpole access to Furnberg St and primary site of the proposed new house; tax lot 2802 is the land-locked lot primarily covered with wetland (pond, trees, etc.).

#### History of lot creation for tax lot 2801

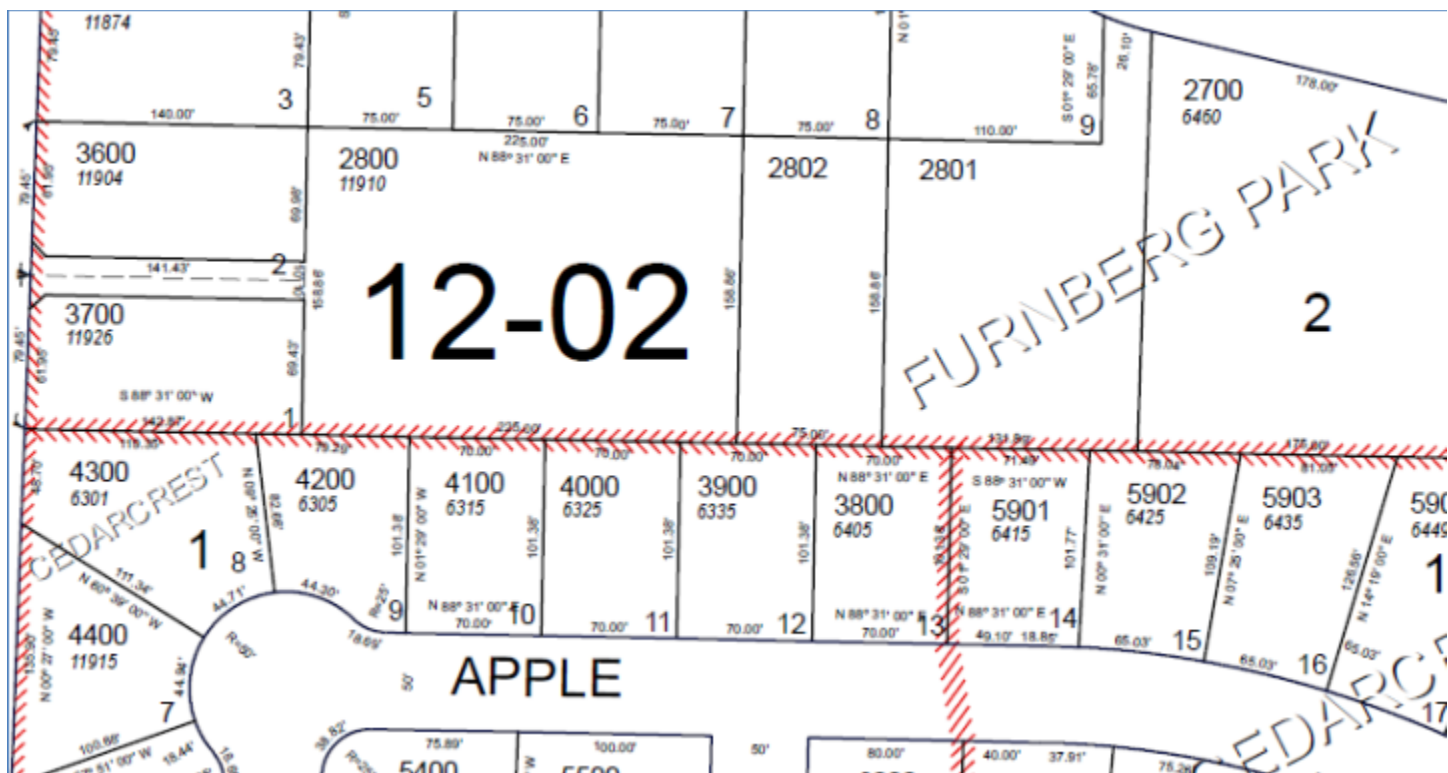
The Furnberg Park subdivision was platted in 1958. Block 1 of that subdivision includes most of the surrounding properties to the north and west of the subject property.



The subject property, including tax lot 2801, was created from Block 2 of the subdivision. It appears that all of Block 2 was originally designated as tax lot 2800. Tax lots 2600 and 2700 were carved off of 2800 by deed in 1968. Tax lot 2801 was carved off in 1968; tax lot 2802 in 1972. In 1977-78, the remainder of tax lot 2800 (the NW Housing Alternatives site) gained direct access to SE Linwood Ave through tax lots 3600 and 3700.

On Apple St to the south, Cedarcrest No. 3 created tax lots 3800-4400 (including 6405 and 6335 SE Apple St, Mr. McDaniel's and Mr. Teske's properties, respectively) in 1964. Cedarcrest No. 8 created tax lots 5901-5905 (including Ms. Anderson's property at 6415 SE Apple St) in 1973.





#### Regulations pertaining to development on tax lot 2801

Rules for the Natural Resource Overlay (NRO) zone, pre-cursor to the Water Quality Resource (WQR) regulations, were adopted in 1989. As far as I can tell, this wetland site was not identified as a natural resource and so was not covered by the overlay zone. The WQR regulations were adopted in 2002 and replaced the NRO rules. As you know, the new Natural Resource (NR) regulations were adopted in Sept 2011 and replaced the WQR regulations. So, tax lot 2801 appears to have been in existence about 20 years before any natural-resource-type rules came into effect.

The City's first rules pertaining to flag lots were first adopted in 1979 within the Subdivision Ordinance. Flag lot standards moved over into the Zoning Ordinance in 2002. During the interim, the requirements for some things like flagpole width, for example, changed repeatedly. As I noted in the presentation last Tuesday, the legal direction the Planning Department has gotten is to evaluate development proposals on flag lots according to the standards that were in place at the time they were created. For tax lot 2801, there were no specific flag lot standards in place in 1969, so it has been treated as a regular R-7 lot.

To sum up, as far as I understand it, the subject property has been available for development since it was created. Any effective natural resource rules would have been applied at the time of a development proposal, but any new flag lot rules would not. I hope this addresses your question about whether it is a "late comer." Let me know.

-Brett Kelter  
Associate Planner  
City of Milwaukee

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**From:** Russ E Stoll [mailto:russell@designameri.com]

**Sent:** Wednesday, February 29, 2012 10:40 AM

**To:** Mangle, Katie; Lisa Batey; Kelter, Brett

**Cc:** soilchem@aol.com; clareleanne@gmail.com; mark; jh6432@gmail.com; monroestreetassociates

**Subject:** Re: additional materials for WQR-11-05

Regarding privacy issues, I'd like to know if 2801 was platted at the same time as its neighbors, i.e., given flag lot and WQR regulations at the time, has 2801 been available for development all along? Or is 2801 a late comer?

Russ