CITY OF OREGON CITY

PLANNING COMMISSION

320 WARNER MILNE ROAD TEL 657-0891 Oregon City, Oregon 97045 Fax 657-7892



ORIGINAL

AGENDA City Commission Chambers - City Hall

April 10, 2000 at 7:00 P.M.

PLANNING COMMISSION MEETING

- 7:00 p.m. 1. CALL TO ORDER
- 7:05 p.m. 2. PUBLIC COMMENT ON ITEMS NOT LISTED ON AGENDA
- 7:10 p.m. 3. APPROVAL OF MINUTES: March 27, 2000

PUBLIC HEARINGS

- 7:15 p.m. 4. **PD 99-01;** Larry Marple/ Triple "D" Development; 14608 Glen Oaks Rd; Clackamas County Tax Map 3S-2E-16A Tax Lot 800; Approval of Planned Unit Development (PUD) consisting of 37 single family homes, 30 multi-family dwellings
- 7:45 p.m. 5. VR 99-07; James McKnight/ 161 Barclay Avenue; Clackamas County Map 3S-2E-31DC Tax Lot 5400; Request to modify the zoning requirement of an R-10 Single-Family Dwelling District from a 100' lot depth to an 80' lot depth
- 8:15 p.m. 6. L 00-01; Proposed new Parking Lot Landscaping Standards
- 8:45 p.m. 7. OLD BUSINESS

PZ 99-05; Review and Adoption of Findings (Material to be sent separately)

- 9:15 p.m. 8. NEW BUSINESS
 - A. Staff Communications to the Commission
 - B. Comments by Commissioners

9:45 p.m. 9. ADJOURN

NOTE: HEARING TIMES AS NOTED ABOVE ARE TENTATIVE. FOR SPECIAL ASSISTANCE DUE TO DISABILITY, PLEASE CALL CITY HALL, 657-0891, 48 HOURS PRIOR TO MEETING DATE.

CITY OF OREGON CITY

Planning Commission

320 WARNER MILNE ROAD TEL 657-0891 OREGON CITY, OREGON 97045 FAX 657-7892



ORIGINAL

Staff Report

April 10, 2000

FILE NO:

FILE TYPE:

Legislative

L 00-01

HEARING DATE: April 10, 2000

LOCATION:

City Hall 320 Warner Milne Road Oregon City, OR 97045 7:00 pm

APPLICANT: City of Oregon City PO Box 351 Oregon City, OR 97045

REQUEST:

17.52 requiring new parking lots to meet minimum landscaping standards.

Add language to Oregon City Municipal Code Chapter

LOCATION: Citywide

REVIEWER: Tom Bouillion, Associate Planner

RECOMMENDATION: To Recommend Approval

APPLICABLE CRITERIA

I.	Oregon City Municipal Code
	Section 17.50.060 of the Oregon City Municipal Code (Application requirements)
	Section 17.50.170 of the Oregon City Municipal Code (Legislative
	hearing process)
II.	Oregon City Comprehensive Plan
	Citizen Involvement Goal
	Natural Resources Goal
	Natural Resources Policy No. 9
	Energy Conservation Goal
	Energy Conservation Policy No. 1
	Transportation Goal
III.	State Administrative Rules
	Transportation Planning Rule (OAR 660-012-000)

BACKGROUND

As part of the Transportation System Plan (TSP) adoption process, staff presented the Planning Commission with a proposal to implement minimum parking lot landscaping standards at its regularly scheduled meeting on January 10, 2000. Staff presented revised language for minimum parking lot parking lot standards, incorporating suggestions from the earlier meeting, back to the Planning Commission at its regularly scheduled meeting on February 14, 2000.

The most recent version of the proposed language, attached as Exhibit 1, incorporates suggestions of the Planning Commission from the February 14th meeting, as well as comments from different reviewers. This proposal is being processed as an "L" legislative amendment, which requires a recommendation from the Planning Commission and final approval by the City Commission. This item is scheduled to be heard by the City Commission at its May 3, 2000 meeting.

BASIC FACTS

- 1. The proposed parking lot landscaping standards will apply only to new development in the City. Existing parking lots will not be subject to these standards, unless the property owner proposes to further develop their property.
- 2. Transmittals on the proposed development were sent to various City Departments, affected agencies and the Community Involvement Committee Chair. Comments were received from City Engineering, Public Works, Parks and Police Departments and are incorporated into the latest version of the proposed parking lot landscaping standards, attached as Exhibit 1.

I. APPLICABLE OREGON CITY MUNICIPAL CODE (OCMC) CRITERIA

Chapter 17.50.060 Application requirements

Staff's finding: A permit application was filed on a form provided by the City, along with documentation sufficient to demonstrate compliance with all applicable criteria. Therefore, this proposed text amendment complies with OCMC Chapter 17.50.060.

17.50.170 Legislative hearing process

Staff's finding: This proposed text amendment is scheduled and has been noticed as a public hearing item before the Planning Commission on April 10, 2000. The Department of Land Conservation and Development (DLCD) was notified 45 days prior to the first evidentiary hearing, as required by ORS 197.610-197.625. The Planning Manager's report will be made available at least seven days prior to the hearing. Finally, this proposed text amendment is scheduled and has been noticed as a public hearing item before the City Commission on May 3, 2000. All remaining requirements of the legislative hearing process will be followed. Therefore, this proposed text amendment complies or can comply with OCMC Chapter 17.50.170

II. APPLICABLE COMPREHENSIVE GOALS AND POLICIES

Citizen Involvement Goal. The public hearing for the proposed text amendment was advertised and notice was provided as prescribed by law to be heard by the Planning Commission on April 10, 2000 and by the City Commission on May 3, 2000. The public hearing will provide an opportunity for comment and testimony from interested parties.

Staff's finding: The proposed text amendment does not conflict with the Citizen Involvement Goal of the Comprehensive Plan.

Natural Resources Goal. This goal, in part, encourages efforts to maintain and improve existing fisheries by controlling water pollution. In addition, this goal encourages efforts to improve air quality by reducing airborne pollutants, such as suspended particulates and carbon dioxide. The proposed parking lot landscaping standards will help to improve both water and air quality by filtering pollutants through larger shade trees than are presently required and by designing landscaping in accordance with OCMC Chapter 13.12 Stormwater Management.

Staff's finding: The proposed parking lot landscaping standards will maintain and enhance natural resources, particularly water and air quality throughout the City. Therefore, the proposed text amendment is not in conflict with the Natural Resources Goal of the Comprehensive Plan.

Natural Resources Policy No. 9 This policy seeks to preserve the environmental quality of major water resources by requiring site plan review and other appropriate procedures on new developments. The proposed parking lot landscaping standards will improve water quality by reducing the amount of pollutants entering water resources from storm water run-off through filtration, incorporating landscaping consistent with OCMC Chapter 13.12 Stormwater Management and by limiting the amount of bark dust used as ground cover. In addition, shade trees will reduce the temperature of storm water run-off in summer months and thus enhance the viability of major water resources for fish habitat.

Staff's finding: The proposed parking lot landscaping standards will preserve and improve the quality of major water resources throughout the City. Therefore, the proposed text amendment is not in conflict with the Natural Resources Policy No. 9.

Energy Conservation Policy No. 1 This policy states, in part, that new development should utilize landscaping to increase the potential for solar benefits. The proposed landscaping standards will provide shade trees that will cool parked cars, pedestrians, bicyclists and stormwater run-off in summer months.

Staff's finding: The proposed parking lot landscaping standards will increase the potential for solar benefits by providing shade trees. Therefore, the proposed text amendment is not in conflict with the Energy Conservation Policy No. 1.

Transportation Goal This goal encourages, in part, amenities for pedestrians and bicyclists. The proposed parking lot landscaping standards will encourage pedestrians and bicyclists by providing shade trees for cooling in summer months and shelter from wind and rain in winter months. Pedestrian safety is enhanced by smaller units of parking that slow internal vehicular traffic speeds.

Staff's finding: The proposed parking lot landscaping standards will provide amenities for pedestrians and bicyclists. Therefore, the proposed text amendment does not conflict with the Transportation Planning Goal.

III. APPLICABLE STATE ADMINISTRATIVE RULES

Transportation Planning Rule (LCDC, OAR 660-012-000) The State Transportation Planning Rule requires that each local government amend its land use regulations to implement a Transportation System Plan (TSP). Part of the TSP must include regulations to provide for safe and convenient pedestrian and bicycle routes, facilities and improvements. The proposed parking lot landscaping standards will provide shade trees and landscaping as an amenity for pedestrian and bicycle paths through parking lots. In addition, the TSP must require that parking lots over 3 acres in size provide street-like features along major driveways, including trees and/or planting strips. The proposed parking lot landscaping standards will comply with this requirement.

Staff's finding: The proposed parking lot landscaping standards will implement some of the regulations required for the City's TSP. Therefore, the proposed text amendment does not conflict with the State Transportation Planning Rule.

STAFF RECOMMENDATION

Staff finds that the proposed text amendments are supported by Comprehensive Plan goals and policies and that they promote the health, safety and welfare of the general public.

Staff recommends that the Planning Commission recommend approval of the proposed parking lot landscaping standards, shown as Exhibit 1, to the City Commission for their consideration on May 3, 2000.

EXHIBITS

Exhibit 1 Proposed Parking Lot Landscaping Standards

DRAFT

EXHIBIT 1 PROPOSED ADDITION TO CHAPTER 17.52 OF THE OREGON CITY MUNICIPAL CODE

FILE L 00-01 OREGON CITY PLANNING DIVISION April 10, 2000

SUMMARY OF PROPOSED LANGUAGE:

New parking lots will be required to meet minimum landscaping standards. Specifically, three-inch trees will be interspersed throughout interior and perimeter planter areas of at least five feet in width. Native plant species are encouraged. The total amount of interior landscaping is based on the number of required parking spaces.

PROPOSED TEXT:

17.52.090 Parking Lot Landscaping.

- A. Purpose. The purpose of this code section includes the following: to enhance and soften the appearance of parking lots; to limit the visual impact of parking lots from sidewalks, streets and particularly from residential areas; to shade and cool parking areas; to reduce air and water pollution; and to establish parking lots that are more inviting to pedestrians and bicyclists.
- B. Definitions.

"Interior Parking Lot Landscaping" means landscaping located inside the surfaced area used for on-site parking and maneuvering.

"Perimeter Parking Lot Landscaping" means landscaping located outside of, and adjacent to, the surfaced area used for on-site parking and maneuvering.

- C. Parking lot landscaping is required for all uses, except for single and two family residential dwellings.
 - 1. The landscaping shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area. Parking lot landscaping can be counted toward the 15% minimum total site landscaping required by OCMC 17.62.050 (1). One tree shall be planted for every eight parking spaces. These trees shall be evenly distributed throughout the parking lot as both interior and perimeter landscaping to provide shade.
 - 2. Landscaped areas both internal and perimeter shall have a minimum width of at least five feet. Landscaped areas shall contain:
 - a. Shade trees spaced as appropriate to the species, not to exceed 40 feet apart on average;

Draft

EXHIBIT 1 FILE LOO-01

- b. Shrubs, not to reach a height greater than three feet, spaced no more five feet apart on the average; and
- c. Ground cover such as grass, wild flowers, or other landscaping material covering 100 percent of the exposed ground. No bark mulch shall be allowed except under the canopy of shrubs and within two feet of the base of trees.
- 3. The amount of interior landscaped area is based upon the number of required parking spaces.
 - a. Parking lots with over 20 spaces shall have a minimum 10 percent of the interior of the gross area of the parking lot devoted to landscaping. Pedestrian walkways or any impervious surface in the landscaped areas are not to be counted in the percentage. In addition, the perimeter landscaping shall not be included in the 10 percent figure.
 - b. Parking lots with 10-20 spaces shall have a minimum 5 percent of the interior of the gross area of the parking lot devoted to landscaping. The perimeter landscaping shall not be included in the 5 percent measurement.
 - c. Parking lots with fewer than 10 spaces shall have the standard perimeter landscaping and at least two shade trees.
- 4. All areas in a parking lot not used for parking, maneuvering, or circulation shall be landscaped.
- 5. The landscaping in parking areas shall not obstruct lines of sight for safe traffic operation and shall comply with all requirements of OCMC Chapter 10.32 Traffic Sight Obstructions.
- 6. Irrigation facilities shall be located so that landscaped areas can be properly maintained and so that the facilities do not interfere with vehicular or pedestrian circulation.
- 7. Off-street loading areas and garbage receptacles shall be located so as not to hinder travel lanes, walkways, public or private streets, or adjacent properties.
- 8. Garbage receptacles and other permanent ancillary facilities shall be enclosed and screened appropriately.
- 9. All plant materials, including trees, shrubbery and ground cover, shall be selected for their appropriateness to the site, drought tolerance, year-round greenery and coverage and staggered flowering periods. Species found on the Oregon City Native Plant List are strongly encouraged and species found on the Oregon City Nuisance Plant List are prohibited.
- 10. Landscaping shall incorporate design standards in accordance with OCMC Chapter 13.12 Stormwater Management.
- 11. Required landscaping trees shall possess the following characteristics:
 - a. Three inch minimum caliper size, according to American Nurseryman Standards;
 - b. Generous spreading canopy for shade;
 - c. A canopy that spreads at least six feet up from grade in, or adjacent to, parking lots, roads, or sidewalks unless the tree is columnar in nature;

Draft Parking Lot Landscape Code April 10, 2000 Page 2

- d. Roots that do not break up the adjacent paving;
- e. No sticky leaves or sap dripping trees;
- f. No seed pods or fruit bearing trees (flowering trees are acceptable);
- g. Resistance to disease;
- h. Compatibility to planter size;
- i. Tolerance to drought unless irrigation is provided;
- j. Attractive foliage or form in all seasons; and
- k. A mix of deciduous and coniferous trees
- D. Installation
 - 1. All landscaping shall be installed according to accepted planting procedures, according to American Nurseryman Standards.
 - 2. The site, soils, and proposed irrigation systems shall be appropriate for the healthy and long-term maintenance of the proposed plant species.
 - 3. Landscaping shall be installed with the provisions of this code.
 - 4. Certificates of occupancy shall not be issued unless the landscaping requirements have been met or other arrangements have been made and approved by the City, such as the posting of a surety.
- E. Maintenance
 - 1. The owner, tenant and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping which shall be maintained in good condition so as to present a healthy, neat, and orderly appearance and shall be kept free from refuse and debris.
 - 2. All plant growth in interior landscaped areas shall be controlled by pruning, trimming, or otherwise so that:
 - a. It will not interfere with the maintenance or repair of any public utility;
 - b. It will not restrict pedestrian or vehicular access; and
 - c. It will not constitute a traffic hazard due to reduced visibility.

CITY OF OREGON CITY

COMMUNITY DEVELOPMENT DEPT. 320 WARNER MILNE ROAD TEL 657-0891 FAX 657-7892



Staff Report

April 10, 2000

120-day June 13, 2000

FILE NO:

PD 99-01 Glen Oaks Meadows Planned Unit Development

FILE TYPE: Quasi-Judicial

HEARING DATE:

Monday, April 10, 2000 7:00 p.m., City Commission Chambers 320 Warner Milne Road Oregon City, Oregon 97045

APPLICANT/ Larry Marple PROPERTY OWNER: Triple "D" Development 8115 SE 82nd Avenue Portland, OR 92226

REQUEST:Preliminary Plan for a Planned Unit Development consisting of 37
single-family lots and 1 multiple-family lot containing 30 multi-
family residential dwelling units

LOCATION: 14608 Glen Oak Road; Clackamas County Tax Map 3S-2E-16A, Tax Lot 800

REVIEWER: Barbara Shields, Senior Planner Jay Toll, Senior Engineer

RECOMMENDATION: Staff recommends approval of the requested Preliminary Plan for Glen Oaks Meadows PUD 99-01

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01

SUMMARY OF ISSUES

1. Scope of the Request

The applicant is requesting approval of a Preliminary Plan for a Planned Unit Development consisting of 67 residential dwellings on a 9.68-acre site. The development site is located south of Glen Oak Road, east of Highway 213 (Exhibit 1).

The multiple-family residential portion consists of 30 units and includes six 4-plexes and one 6-plex. The single-family portion consists of 37 lots.

Caufield Creek and its associated wetlands run along the northern portion of the site. The Caufield Creek corridor is substantially degraded and has been confined to a road-side ditch along the Glen Oak Road frontage. The property is also affected by a 125 feet wide PGE access crossing the northwesterly corner of the subject property.

The applicant proposes approximately 2.6 acres of open space as part of the requested Preliminary Plan for a PUD. The proposed open space encompasses both the Caufield Creek wetland area and the area within the PGE easement.

The proposed open space includes active recreational areas and passive recreational areas and a system of open space links connecting open space areas.

2. Review Process

Planned Unit Developments are allowed in the R-6/MH Single-Family Manufactured Home Dwelling District but they must comply with Chapter 17.64 Planned Unit Development requirements.

The Planned Unit Development review process includes two steps:

- Preliminary PUD Plan Review (Section 17.64.130)
 The Preliminary PUD Plan is reviewed by the Planning Commission as a
 Type III application. An approval is valid for a period of twelve months of
 the date of decision. The applicant may apply to the Planning Manager for up
 to two extensions of up to six months each.
- 2. Final PUD Plan (Section 17.64.150) The applicant must apply for Final PUD Plan approval within twelve months following approval of the Preliminary PUD Plan. Review of the Final PUD Plan is processed as a Type I decision by the Planning Manager. The Planning Manager may approve a Final PUD Plan as long as the Final PUD Plan does not propose any significant deviation from the approved Preliminary PUD Plan.

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01 PUDs shall also comply with the site plan and design review requirements in Chapter 17.62. Single-family detached homes are exempt from this requirement. In order to comply with the Code, the applicant is requesting Site Plan and Design Review (SP99-08) approval of a 30-unit multiple family portion of the requested Preliminary PUD Plan. The Site Plan and Design Review Application (SP99-08) is being processed as a Type II administrative decision by the Planning Divison. The Site Plan and Design Review approval for a multiple-family portion of the proposed PUD must be granted prior the Final PUD Plan approval of the Preliminary PUD Plan.

3. Summary of Analysis and Findings

Based on the analysis and findings contained in this staff report, there is sufficient evidence to prove that the proposed Glen Oaks Meadows Planned Unit Development has satisfied the Oregon City Municipal Code criteria. No limitation on capacity of public facilities has been identified that cannot be overcome through construction of improvements as required by the City.

The approval of the proposed Preliminary PUD Plan is subject to conditions related to site design features and provision of public infrastructure.

CRITERIA:

Comprehensive Plan Section "C" Housing Section "F" Natural Resources Section "I" Community Facilities Section "L" Transportation Municipal Code Chapter 17.64 Planned Development Chapter 17.13 R-6/MH Single-Family Manufactured Home Dwelling District

BASIC FACTS:

- Location and present use of the property. The subject property is approximately 9.68 acres in area. The site is located south of Glen Oak Road, east of Highway 213 (Exhibit 1). The foundation of a former single-family home remains on the parcel in the southern portion of the site.
- Zoning and the surrounding land use pattern. The subject property is zoned "R-6/MH" Single-Family Manufactured Home Dwelling District. Under Section 17.13, residential development in this district must comply with the following standards:

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01

Lot Area	6,800 square feet
Lot Width	80 feet
Lot Depth	85 feet
Front Yard	15 feet
Corner Side Yard	15 feet
Rear Yard	10 feet
Side Yard	5 feet on one side/7 feet on other side

Given the minimum lot size requirement, the 9.68-acre subject property may accommodate approximately 63 units at 6.4 units per gross acre under the current R-6/MH Single-Family Manufactured Home Dwelling District standards.

The properties to the north are under Clackamas County jurisdiction and are zoned FU-10, Future Urbanizable. The site is directly adjacent to Pioneer Place, an 81-unit subdivision zoned R-6 Single-Family Residential Dwelling District. The property to the south of the subject property is zoned RD4-MDP, Two-Family Dwelling Manufactured Dwelling District. In January 2000, the City granted a Site Plan and Design Review (SP98-37) for a 59-unit manufactured housing park on this property.

3. Site Natural Features and Constraints

The site slopes down hill form the southern boundary to the pond at the northern boundary. The vegetation on these parcels consists of scattered tress and shrubs with most of the trees located along the western, southern, and eastern property lines.

Caufield Creek and its associated wetlands run along the northern portion of the site. Caufield Creek is identified as a significant resource within Oregon City and is listed in the Inventory of Water Resources in Ordinance 93-1007. Caufield Creek is known to support populations of Cuthroat Trout and Brook Trout. The upper end of the stream, along the northern boundary of the subject property, is ditched. Lower portions of the stream do have a more natural character.

The property is also affected by a 125 feet wide PGE access crossing the northwesterly corner of the subject property.

4. Access and Circulation

Internal Circulation

Access to the site will be provided from Glen Oak via newly created street, Glen Oaks Meadows, that will extend to the southern boundary of the site and will stub into the manufactured housing park. Brittany Terrace will be extended from the eastern property line to the western property line of the subject property crossing Glen Oaks Meadows Road.

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01 4

The Preliminary PUD Plan also shows a segment of off-street pedestrian walk that is located within the proposed open space linkages. The plan shows that the proposed pedestrian walk would end at the westerly property boundary of the subject property. Given the development pattern to the west of the subject property, there is no indication whether the proposed pedestrian walk can be extended to adjacent property to the west.

Impact on City's transportation system

A Transportation Impact Analysis (TIA) was submitted by the applicant as part of the PUD application (Exhibit 3). The TIA was evaluated by a consulting Traffic Engineer (Exhibit 6b). The City Traffic Engineer indicated that the proposed improvement would negatively impact two major intersections in the vicinity of the proposed Oak Meadows PUD:

1) Intersection of Beavercreek Road and Glen Oak Road;

2) Intersection of Highway 213 and Glen Oak Road.

Both intersections are currently operating at a very poor level of service (LOS) with very long delays for traffic during both the morning and evening peak hours. Adding traffic from the proposed development will cause further degradation of traffic at the Beavercreek Road /Glen Oak Road and Highway 213/Glen Oak intersections.

The Engineering Division of the Community Development Department analyzed the street improvements to serve the requested development. A detailed description of all required street improvements is provided with this report in Exhibit 6a. Based on the analysis, the applicant would have to provide improvements at the intersection of Glen Oak and Highway 213 to mitigate traffic impacts associated with the proposed PUD development.

5. Site Design Concept

Density considerations

The applicant is proposing a 67-unit Planned Unit Development. Planned Unit Developments are permitted in the R-6/MH Single-Family Manufactured Dwelling District but they must meet comply with the requirements of Chapter 17.64. Under Section 17.64.030, a development proposal may be processed as a PUD as long as the development proposes at least eighty percent of the gross density allowed by the underlying zone. Section 17.64.050 allows the Planning Commission to grant a residential density bonus in addition to the density allowed by the underlying zone if the PUD incorporates certain design features and amenities such as housing design, historical preservation, preservation of natural resources and trees, open space, and mixed use development. The Code also states that the total amount of density bonuses shall not exceed by more that thirty percent the gross density allowed by the underlying zone.

The subject property could accommodate 63 units at 6.4 units per gross acre under the R-6/MH Single-Family Manufactured Home Dwelling District density requirements. The applicant is requesting 67 units as part of the Glen Oak Meadows PUD, which exceeds the gross density by 6%.

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01

Housing types

The Preliminary Glen Oaks Meadows Planned Unit Development Plan is proposing 37 single-family lots (Lots 1-37) and one lot (Lot 38) that would include four 4-plexes and one 6-plex (Exhibits 3 and 5).

The proposed single-family lots range in size from approximately 3,979 square feet to approximately 6,601 square feet, with an average size of about 5,000 square feet (Exhibit 4).

The submitted Preliminary PUD Plan shows that the proposed Glen Oaks Meadows development would include some of "neo-traditional" features, such as front porches on the proposed single family homes and duplex units and single-car garages setback behind the homes.

Open space

The applicant is proposing approximately 2.6 acres of open space. The proposed open space area consists of passive open space areas and active open space areas. The passive open space area includes Tracts "A" and "H" wetlands, located in the northern portion of the property (Exhibit 5).

The site plan shows that an approximately 0.8-acre portion of the PUD development area would function as a mini-park ("green circle") and would provide active recreational opportunity for the residents of the project and the surrounding neighborhood. The "green circle" area would be surrounded by multi-family units. The "green circle" area would contain a playground area and picnic tables oriented around a pond. The proposed pond would also serve as a drainage facility.

The proposed open and passive areas are contiguous and linked throughout the project (Tracts "A", "B", "C", "D", "E", "F", and "G").

6. Comments from affected agencies, the Caufield Neighborhood Association, and affected property owners

Affected Agencies

Transmittals on the proposed PUD application were sent to affect agencies. All received comments are attached to this report (Exhibits 6a-f).

Caufield Neighborhood Association

The Caufield Neighborhood Association submitted a letter, which is attached to this report as Exhibit 5g. The following major issues are raised in this letter:

• Inconsistencies between the set of submitted site plan drawings and the applicant's narrative related to the number of housing units;

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01

- Response: The Preliminary PUD Plan (Exhibit 5) shows that the applicant is proposing 67 residential dwelling units. This number is used in the staff report to analyze the density of the subject property. Based on the analysis presented in this report below, staff recommended that the Planning Commission limit the development of the subject property to 67 residential dwelling units.
- Density of the proposed development is not compatible with the character of the surrounding properties.
 - Response: The site is directly adjacent to Pioneer Place, an 81-unit subdivision zoned R-6 Single-Family Residential Dwelling District. Under the Code requirements, properties zoned R-6 may develop at 7.3 units per gross acre. The property to the south of the subject property is zoned RD4-MDP, Two-Family Dwelling Manufactured Dwelling District. Under the Code requirements, properties zoned RD4-MDP may develop at 10.9 units per gross acre. In January 2000, the City granted a Site Plan and Design Review (SP98-37) for a 59-unit manufactured housing park on this parcel.

The subject property is zoned R-6/MH and may developed at 6.4 units per gross acre, which would allow the applicant to place 63 housing units on the subject property. The applicant is requesting 67 units as part of the Glen Oak Meadows PUD, which exceeds the gross density by 6%. The requested density requirements may be approved by the Planning Commission, if the Commission finds that the proposed PUD would be compatible with the character of the surrounding properties.

- Maintenance of open space
 - Response: The Code requires that the proposed open space be maintained by the residents of the property. The applicant would be required to submit for City review and approval all proposed deed restrictions or other legal instruments used to reserve and maintenance agreements to ensure the continued maintenance facilities.
- Impact of the existing 125 feet wide PGE easement of the proposed PUD
 - Response: The submitted preliminary PUD plan does not show any residential structures within the PGE easement. However, a mini-park area within the "green circle" open space, which is located within the PGE easement, would contain playground equipment and picnic tables. The applicant did not indicate in the submitted application materials whether placement of any playground equipment would be allowed within the existing PGE easement. The applicant must obtain a PGE permit to for placement of

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01

playground equipment within the PGE easement prior to final PUD approval.

- Adjustments to multiple-family parking standards
- Response: The applicant is requesting a reduction from 2 parking spaces to 1.5 parking spaces per multiple-family dwelling unit (Exhibit 3). Given the number of proposed units, the requested adjustment would result in decreasing the total number of parking spaces from 60 parking spaces to 45 parking spaces. As part of a PUD request, the Code allows the applicant to ask for adjustments to any development standards that are not allowed with the traditional subdivision process. The Planning Commission may approve the requested adjustments, as long as the requested adjustments would enable the applicant to achieve better the objectives of the PUD ordinance, such as a mix of residential uses and types of housing structures.

Letters from Affected Property Owners

The Planning Division received five letters from the affected property owners pertaining to the proposed Glen Oaks Meadows Planned Unit Development (5h-1, 5h-2, 5h-3, 5h-4).

All submitted comments were reviewed in incorporated to the Analysis and Findings section below.

ANALYSIS AND FINDINGS:

The requested Planned Unit Development is analyzed within the context of:

- A. PUD approval criteria (Sections 17.64.010 and 17.64.120); and
- B. PUD development standards (Sections 17.64.030, 17.64.040, 17.64.050)

A. PUD Approval Criteria:

Section 17.64.120. This section identifies five preliminary PUD plan approval criteria that have to be met in order to approve an application for a Preliminary PUD Plan.

CRITERION 1: 17.64.120.A. The proposed preliminary PUD plan is consistent with the purpose of this chapter set forth in Section 17.64.010 and any applicable goals and policies of the Oregon City Comprehensive Plan.

Consistency with the Planned Unit Development purpose:

17.64.010.A. The purpose of this section is "to promote an arrangement of land uses, lot sizes, lotting patterns, housing and development types, buildings, circulation systems, open space and

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01

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utilities that facilitate the efficient and economic use of land, and in some instances, a more compact, pedestrian-oriented, mixed-use urban design. Specifically, this can be accomplished through the PUD process with cluster developments, zero lot line and townhouse type developments, and mixed use developments that integrate compatible neighborhood commercial and office uses with residential uses in a single development or within a single building".

Analysis: The submitted Preliminary PUD Plan proposes three types of buildings: 37 detached single-family homes, 6 four-plexes, and 1 six-plex. The proposed multi-family units would be sited to enclose the "green circle" open space area. The "green circle" open space area would include a playground area and picnic tables oriented around a pond. The single-family houses incorporate some of "neo-traditional" design features: front porches on single and duplex units and single-car garages setback behind the home. Eight single-family homes would have garage access from an alley (Exhibit 5).

The applicant is proposing 67 units on the subject property. The proposed gross density exceeds the maximum allowable density for this site by 6%. Under the Code provisions, the total amount of density bonuses shall not exceed by more that 30% the gross density allowed by the underlying zone. The submitted site plan shows that proposed density is a result of an efficient and economic use of the site natural features and a mix of housing types. The proposed open space is designed to be contiguous and link through the project to integrate the proposed housing types into an urban community.

Conclusion: Based on the site plan and narrative submitted by the applicant and the above analysis, the proposed preliminary PUD plan satisfies Section 17.64.010(A) of the Oregon City Municipal Code.

Section 64.010.B. The purpose of this section is "To preserve existing natural features and amenities and/or provide useful common open space available to the residents and users of the proposed PUD. Specifically, it can be accomplished through the PUD process by preserving existing natural features and amenities, creating new neighborhood amenities such as pocket or regional parks and open spaces that serve neighborhoods or on-site open spaces that meet the needs of the development's future residents. In exchange, the City will extend residential density transfers and bonuses to increase the density on developable portions of the property".

Analysis: The proposed preliminary PUD plan includes approximately 2.6 acres of open space, which constitutes approximately 26% of the total area of the subject property. The proposed open space would provide both passive and active recreational opportunities for the residents of the proposed PUD and the surrounding areas. The proposed passive and active open spaces are designed to be contiguous to connect open space areas with residential clusters.

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01

The proposed design of open space within the Glen Oak Meadows PUD consists of three major components:

- A 0.37-acre wetland area in the northern portion of the property would be enhanced through a wetland mitigation plan and would include a pedestrian path for low-impact recreational uses. The objective of the proposed wetland mitigation plan is to recreate and extend Caufiled Creek to keep with the character of the Caufield Creek corridor through the Pioneer Place subdivision adjacent to the east of the subject property. The Caufield Creek mitigation area will also include an in-stream pond. This pond is designated to provide a fish habitat area to be used for resting, feeding, and potentially spawning. The proposed mitigation plan would increase the wetland area up to approximately 0.9 acres.
- A "green circle" area would function as a mini-park for the residents of the proposed PUD and the residents from the surrounding residential areas. The "green circle" area would contain a pond that would be also utilized as a drainage basin ; and
- Open space walkways that connect passive and active open spaces with the residential portions of the site.
- Conclusion: Based on the above analysis, the proposed open space protects natural features of the property and provides useful open space for the residents and users of the subject property. Therefore, the requested PUD satisfies Section 17.64.010(B) of the Oregon City Municipal Code.

Section 64.010.C. This section requires "To protect and enhance public safety on sites with natural or other hazards and development constrains through the clustering of development on those portions that are suitable for development. This can be accomplished through the PUD process by preserving existing natural features and hazard areas and obtaining density transfers and bonuses to increase the density on developable portions of the property. The exact amount of density transfers and bonuses allowed is ultimately a discretionary decision by the City, and the applicant bears the ultimate burden of justifying the total density requested based on the mix of amenities and design features reflected in the PUD plan."

Analysis: As previously discussed in this report, the property contains approximately 0.9 acres of wetland in the northerly portion. Also, a 125-foot wide PGE easement crosses the northwesterly portion of the subject property. The applicant's design shows that both the PGE easement and the proposed wetland mitigation area would be integrated as useable open space to the site design layout. The wetland portion of the site was designed to provide for active and passive recreational activities.

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01

The submitted preliminary PUD plan does not show any residential structures within the PGE easement. However, a mini-park area within the "green circle" open space, which is located within the PGE easement, would contain playground equipment and picnic tables. The applicant did not indicate in the submitted application materials whether placement of any playground equipment would be allowed within the existing PGE easement. The applicant must obtain a PGE permit for placement of playground equipment within the PGE easement prior to final PUD approval.

The applicant is proposing 67 units on the subject property. Under the current R-6/MH Single-Family Manufactured Home Dwelling District standards, approximately 63 units may be placed on the property. The proposed gross density exceeds the maximum allowable density for this site by 6%. Under the Code provisions, the total amount of density bonuses shall not exceed by more that 30% the gross density allowed by the underlying zone. The applicant is also requesting density bonuses and adjustments to the dimensional requirements of the underlying R-6/MH District. The density bonuses requested by the applicant are discussed in this report in response to Section 17.64.050. Adjustments to dimensional requirements are discussed in response to Section 17.64.010(C).

Conclusion: In general, the Preliminary PUD Plan submitted by the applicant is a result of preserving natural features of the subject property and transferring densities to the developable portions of the site. However, in order to meet the requirements of Section 17.64.010(B), the applicant must obtain PGE approval to place playground equipment within the PGE easement area prior to final PUD plan approval.

Section 17.64.010.D. This section of the Code anticipates that certain dimensional requirements of underlying zones and general development standards, including those governing street right-of-way and pavement widths, may be adjusted to better achieve the above purposes.

Analysis: The applicant is requesting dimensional adjustments to the R-6/MH District and parking standards for multifamily residential units.

Adjustments to the R-6/MH District dimensions

The applicant is requesting the following adjustments to the R-6/MH District standards:

Type of Standard	R-6/MH Requirements	Proposed Adjustments
Min. Lot Area	6,800 square feet	3,979 square feet
Average Width	80 feet	46 feet
Average Depth	85 feet	No adjustment proposed
Max. Building Height	20 feet	35 feet
Front yard	15 feet	15 ft. for home, 18 ft for garage

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01 11

Interior yard	7/5 feet	5 feet on both sides
Corner yard	15 feet	10 feet
Rear yard	10 feet	No adjustment proposed

The applicant indicates in the narrative that the requested adjustments would allow for a more efficient use of land and transfer of densities from undevelopable areas of the property to developable areas of the property. In short, the proposed adjustments are tools the applicant may use to place 67 residential units on the subject property as long as the proposed development better achieves the purposes of the PUD development. As previously discussed in this report, the proposed preliminary PUD development would incorporate "neo-traditional" neighborhood features, efficient use of the site, preservation of natural features and mix of housing types.

Adjustments to multiple-family parking standards

As previously discussed in this report, the applicant is proposing 30 multiple-family units as part of the Glen Oaks Meadows PUD. Under the Code (17.52.010), 2 parking spaces are required for each dwelling unit. The applicant is requesting a reduction from 2 parking spaces to 1.5 parking spaces per multiple-family dwelling unit (Exhibit 3). Given the number of proposed units, the requested adjustment would result in decreasing the total number of parking spaces from 60 parking spaces to 45 parking spaces.

Section 17.62.080(C)(6b) states that "The review authority may reduce the minimum required offstreet parking up to thirty percent upon demonstration by an applicant, through a parking study prepared by a suitably qualified traffic engineer, that use of transit and/or special characteristics of the customer, client, employee, or resident population will reduce expected vehicle use and parking space demand for this development as compared to standard Institute of Transportation Engineers vehicle trip generation rates and minimum City parking requirements."

The applicant indicates (Exhibit 3) that the "Parking Generation" manual shows weekday peak occupancy of 1.11 spaces per one multiple-family unit. The Saturday peak occupancy is 0.95 spaces per unit. Also, on-street parking spaces would be available for residents of the multiple-family portion of the PUD at the same distance from the building as the parking supplied on-site.

Conclusion: The submitted Preliminary PUD Plan is designed to integrate the proposed mix of housing types and site natural features. The proposed adjustments to the R-6/MH zoning standards and multiple-family parking standards would enable the applicant to implement the design concept, and, ultimately, would satisfy one of the PUD objectives, which is to allow a mix of land uses and structure types that are not allowed with the traditional subdivision process.

Consistency of the proposed development with Comprehensive Plan:

Housing Goal: Provide for the planning development and preservation of a variety of housing types at a range of prices and rents.

The proposed PUD development would provide 67 residential units, including 37 detached single family homes, six 4-plexes, and one 6-plex, which would satisfy the Housing Goal.

Community Facilities Goal: Serve the health safety education and welfare and recreational needs of all Oregon City Residents through the planning and provision of adequate community facilities.

No limitation on capacity has been identified by the public service agencies that cannot be overcome through construction of improvements as required by the City.

Policy No. 5:	The City will encourage development on vacant buildable land
	within the City where urban facilities and services are available or
	can be provided.

The proposed PUD will utilize the vacant buildable land that can be served by the City's facilities.

Natural Resources Goal: Preserve and manage our scarce natural resources while building a livable urban development.

The proposed PUD preserves and integrates the site existing natural resources into the residential development. The proposed open space would incorporate passive recreational uses and active recreational uses while preserving the existing wetland areas.

Conclusion:	Based on the above analysis, the proposed Preliminary PUD Plan satisfies Section 17.120(A).
CRITERION 2	Section 17.64.120.B. The proposed preliminary PUD plan meets the applicable requirements of the underlying zoning district, any applicable overlay zone (e.g., Chapters 17.44 and 17.49) and applicable provisions of Title 16 of this code, unless an adjustment from any these requirements is specifically allowed pursuant to this chapter.
Analysis:	The applicant requested adjustments to the requirements of the underlying R-6 /MH Single-Family Manufactured Home Dwelling District. These adjustments were discussed in response to Section 17.64.010(4), above.
	As discussed previously in this report, the property contains an approximately 0.9-acre that includes Caufield Creek and associated drainage area.
	The applicant provided a Water Resource Report that is incorporated into the narrative. The applicant's response to the standards of the Water Resource

Overlay District in the narrative (Exhibit 3).

Caufield Creek and its associated wetlands run along the northern portion of the site. Caufield Creek is identified as a significant resource within Oregon City and is listed in the Inventory of Water Resources in Ordinance 93-1007. Caufield Creek is known to support populations of Cutthroat Trout and Brook Trout. The upper end of the stream, along the northern boundary of the subject property, is ditched. Lower portions of the stream do have a more natural character.

As previously discussed in this report, the applicant is proposing a wetland mitigation plan that would convert the existing ditch to an open stream with more natural features in keeping with the character of a stream through the Pioneer Place subdivision.

Because the property contains an important water recourse area, any development on the subject property must meet requirements of Chapter 17.49 Water Resource Overlay Area. Since the applicant filed this application before October 6, 1999, the proposed development is not subject to the recent amendments of Chapter 17. 49 adopted by the City on October 6, 1999.

Prior to City's adoption of Title 3 of the Metro Functional Plan, under Chapter 17.49 regulations, all development within the water resource/wetland area had to maintain a wetland transition area extending fifty feet from wetland boundaries. Under pre-Title 3 adoption; the Code allowed the applicant to request a reduction of the transition area from fifty feet to twenty-five feet.

As part of this application, the applicant is requesting a reduction of the Caufield Creek wetland transition area from 50 feet to 25 feet. The Planning Commission may decrease the transition area to twenty-five feet from the boundary of the creek if the project meets the following requirements:

- 1) The slope of the transition area is predominantly ten percent or less;
- 2) Soils in the transition area are not described in the U.S. Soil Conservation Service publication for Clackamas County as having high erosion potential;
- 3) the reduction in the transition area would not cause a reduction in wildlife habitat.

The applicant indicates that (1) slope of the transition area is approximately 3%; (2) soils in the transition area are not described in the U.S. Soil Conservation Service publication as having high erosion potential; and (3) the reduction in transition area would not cause a reduction in wildlife habitat. The transition area proposed by the applicant has been designated to develop into a forested riparian corridor, which would improve the wildlife habitat functions of the site even though the proposed transition area is reduced (Exhibit 4).

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01 14

In addition to the proposed 25 feet reduction of the transition area, the applicant is requesting further decrease in the transition area in three areas: (1)The first area is at the upper end of the realigned stream, at the east portion of the property and is less than 25 feet in keeping with the character of the corridor through the Pioneer Place subdivision adjacent to the east; (2)The second area that is the proposed in-stream pond. The applicant states that maintaining a 25 feet transition area would reduce the size and the function of the pond; (3)The third area with encroachments is downstream of the pond in the area

adjacent to the multi-family units. The applicant indicates that maintaining the 25 feet buffer would eliminate an opportunity to place one multi-family unit in this area.

Conclusion: The applicant is requesting modifications to the dimensional requirements of the R-6/MH Single-Family Manufactured Home Dwelling District and the reduction of the wetland transition area from 50 feet to 25 feet, with the exception of three areas, where the applicant is proposing additional reduction to below 25 feet.

As previously discussed in this report, Caufield Creek is identified as a significant resource within Oregon City and is listed in the Inventory of Water Resources in Ordinance 93-1007. Caufield Creek is known to support populations of Cutthroat Trout and Brook Trout. Current scientific literature indicates that a 200 feet wide corridor is appropriate for wildlife protection in the northwest.

The City Public Works Manager indicated (Exhibit 5c) that the Planning Commission may grant the requested reduction from 50 feet to 25 feet based on the three criteria that address slope, soil erodibility, and wildlife habitat. However, the Public Works Manager recommends that this requested reduction not be granted. Current scientific literature indicates that a 200 feet wide corridor is appropriate for wildlife protection in the northwest.

The forest riparian corridor proposed by the applicant has merit, but the habitat is unlikely to develop within the proposed 25 feet wide wetland transition area. Maintaining a 50 feet wide riparian area would ensure better conditions for the habitat.

In order to cross the northerly wetland mitigation area, the applicant must apply for and obtain an appropriate DSL/U.S. Army Corps of Engineers permit prior to Final PUD Plan approval

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01

CRITERION 3	Section 17.64.120(C). Any phasing schedule proposed by the applicant must be reasonable and not exceed five years between approval of the final PUD plan and the filing of the final plat for the last phase. Dedication or preservation of open space or natural resources, in a form approved by the city, must be recorded prior to the construction of the first phase of any multi-phase PUD.
Analysis:	No phasing is proposed as part of this application. The open space area consisting of the wetland mitigation area is part of the site design.
Conclusion:	If the Planning Commission approves the PUD request, the applicant will have to comply with this criterion prior to the PUD final plan approval.
CRITERION 4	Section 17.64.120.D. The applicant has demonstrated that all public services and facilities have adequate capacity to serve the proposed development or adequate capacity is assured to be available concurrent with development.
Analysis:	The proposal was evaluated by the Engineering Division (Exhibit 6a) and the City's Traffic Engineer (Exhibit 6b). The Engineering Division evaluated the water, sewer, and drainage facilities.
	The City's Traffic Engineer evaluated the Traffic Impact Study submitted by the applicant and assessed the impact of the proposed PUD on surrounding transportation system. The Traffic Engineer noted that the proposed PUD would have a significant impact on the existing transportation system and would that would contribute the already existing deficiencies of the system. Glen Oak is only 18 feet wide, which is inadequate for the amount of development now underway. The traffic generated by the proposed PUD will negatively affect two major intersections in the vicinity of the subject property: the intersection of Highway 213 and Glen Oak Road and the intersection of Beavercreek and Glen Oak Road.
Conclusion:	No limitation on capacity has been identified that cannot be overcome through construction of improvements as required by the City.
CRITERION 5	17.64.120.E. All adjustments from any applicable dimensional requirement requested by the applicant or recommended by the city are justified, or are necessary to advance or better achieve the policies of this chapter than would compliance with the dimensional requirements of the underlying zoning.
	The dimensional adjustment to the R-6/MH Single-Family Manufactured Home Dwelling District standards were previously analyzed and addressed in response to Section 17.64.010.

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01

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Planned Unit Development standards:

The following sections of Chapter 17.64 pertain to PUD standards:

Section 17.64.030.	This section states that "A development proposal may be processed as a PUD at the applicant's option so long as at least fifty percent of the gross area bears a residential plan designation, at least fifty percent of the net developable area is proposed for residential uses, and the development proposes at least eighty percent of the gross density allowed by the underlying zone. If the property bears a PUD designation, the property may be developed in accordance with this chapter"
Analysis:	The maximum gross density for the site is 63 residential dwelling units under R-6/MH District standards. The applicant is proposing 67 units, which includes 37 single-family homes and 30 multi-family units.
Conclusion:	The proposal satisfies Section 17.64.030.
Section 17.64.040.A.	This section allows outright detached single family dwellings and multiple- family dwelling units, private or public playgrounds, common public and private open space, and hiking trails as part of a PUD.
Analysis:	The applicant proposes a mix of single-family detached houses and multiple- family houses, and open space including a playground.
Conclusion:	The proposed PUD encompasses uses that are allowed outright in a PUD development.
Section 17.64.040.B.	This section allows neighborhood commercial uses as part of the proposed PUD.
	The applicant is not requesting commercial uses as part of the proposed PUD.
Section 17.64.040.C.	This section allows the applicant to ask for adjustments to all dimensional standards that would otherwise apply to a property in the context of a PUD without a separate variance application. However, unless an adjustment is specifically requested and explained in the PUD application or recommended by the city, the dimensional standards of the underlying zone would be assumed to apply.
	The applicant is requesting adjustments to dimensional standards of single family lots and parking standards to multiple-family development. The requested adjustments were previously analyzed in this report in response to

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01 17

Section 17.64.010.D.

Section 17.64.040.D. This section requires the applicant to endeavor to provide at least twenty-five percent of on-site open space. This section also states that the applicant must submit for City review and approval all proposed deed restriction or other legal instruments used to reserve open space and maintenance agreements to ensure the continued maintenance of open space and any related landscaping facilities.

The open space provision was discussed previously in this report in response to Section 17.64.010(B). The applicant is proposing approximately 2.6 acres of open space. The proposed open space areas are identified on the PUD preliminary plan as Tracts "A" through "K". The applicant has also provided a copy of protective covenants, conditions, and restrictions for the proposed PUD. The City will review the submitted documentation to ensure the continued maintenance of open space prior the final plan approval of the proposed PUD.

Section 17.64.040.E. This section requires the applicant demonstrate that adequate water, sewer, storm water, and traffic and transportation infrastructure capacity to serve the proposed PUD.

Analysis: The City Engineering Division provided a capacity analysis of public facilities to adequately serve the proposed development (Exhibit 6a).

As summary of this analysis is provided below.

<u>Water.</u> There is an existing 8-inch water main located in Glen Oak Road across the frontage of the property. This line connects to a new 16-inch waterline at the eastern edge of the property. The 16-inch water main was installed as part of the Pioneer Place subdivision, which is the adjacent property on eastern side of the proposed project site. There is an existing 8inch water main stubbed to the eastern end of the proposed Brittany Terrace. The City Water Master Plan calls for Glen Oak Road to have a 16-inch waterline.

The City's Engineering Division evaluated the information submitted by the applicant and indicated additional water facility improvement would be necessary to serve the proposed development (Exhibit 6a).

<u>Sanitary sewer.</u> There is an existing 8-inch sanitary sewer located in Glen Oak Road. The adjacent property to the south, TL 900, is the proposed Johnson Mobile Home Park. They have been conditioned to provide a sanitary stub-out which lines up with the applicant's street stub at the south

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01 end of the proposed Glen Oak Meadows Road. A Sanitary Advance Finance District (AFD) exists for this property.

The City's Engineering Division evaluated the information submitted by the applicant and indicated additional water facility improvement would be necessary to serve the proposed development (Exhibit 6a).

Storm water. This site is located in the Caufield Drainage Basin as designated in the City's Drainage Master Plan and the Caufield Basin Master Plan. Significant capacity upgrades and accounting for pavement widening and wetland enhancement were called for in the City's Caufield Basin Master Plan. The applicant's preliminary storm drainage system proposes discharging all of their storm drainage into an enhanced Caufield Creek drainage way. Erosion and water quality controls are critical for the development of this site.

Applicant has provided a preliminary drainage narrative summary for review. The proposal is to detain the site's runoff in a private dry-pond in the multifamily area and then discharge the detention waters into Caufield Creek. Caufield Creek will be reconstructed in the open space adjacent to the south side of the Glen Oak Road right-of-way.

The City's Engineering Division evaluated the information submitted by the applicant and indicated additional water facility improvement would be necessary to serve the proposed development (Exhibit 6a).

<u>Traffic system.</u> A Transportation Impact Analysis (TIA) was submitted by the applicant as part of the PUD application (Exhibit 3). The TIA was evaluated by a consulting Traffic Engineer (Exhibit 6b). The City Traffic Engineer indicated that the proposed improvement would negatively impact two major intersections in the vicinity of the proposed Oak Meadows PUD:

- Intersection of Beavercreek Road and Glen Oak Road;
- Intersection of Highway 213 and Glen Oak Road.

Both intersections are currently operating at a very poor level of service (LOS) with very long delays for traffic during both the morning and evening peak hours. Adding traffic from the proposed development will cause further degradation of traffic at the Beavercreek Road /Glen Oak Road and Highway 213/Glen Oak intersections.

The Engineering Division of the Community Development Department analyzed the street improvements to serve the requested development. A detailed description of all required street improvements is provided with this report in Exhibit 6a. Based on the analysis, the applicant would have to

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01 19

provide improvements at the intersection of Glen Oak and Highway 213 to mitigate traffic impacts associated with the proposed PUD development.

Section 17.64.040.H. This section allows the City to require special requirements for provision of public infrastructure necessary to meet standards in the City's master plans.

The City's Engineering Division evaluated the project with regard to provision of public infrastructure to meet standards in the City's master plans.

Section 17.64.040.G. This section requires the applicant to preserve the natural features of the property by integrating the site plan design with the constraints of the subject property.

The relationship between the site's natural features and the proposed site design layout was analyzed previously in this report in response to Sections 17.64.010(A), 17.64.010(B), 17.64.010(C) and 17.64.010(D).

- Section 17. 64. 050. This section allows the City to grant a residential density bonus in addition to the density allowed by the underlying zone if the proposed PUD incorporates some of all of the following design features and amenities:
 - A. Housing design
 - B. Historic preservation
 - C. Preservation of wetlands and other natural features
 - D. Tree preservation
 - E. Open space and community facilities.
 - F. Mixed use development.
- Analysis:The Code, the total amount of density bonuses shall not exceed by more that
thirty percent of the gross density allowed by the underlying zone. The
subject property is zoned R-6/MH. Under the R-6/MH District standards, up
to 63 residential dwelling units may be developed on the subject property.
The applicant is proposing 67 units, which exceeds the site gross density by
more than six percent.

A detailed description of requested density transfers is provided in the applicant's narrative (Exhibit 3, pages 14, 15, and 25).

The applicants indicates that the types of housing designs, the open space preservation and enhancement proposed by this development provides justification for the requested density transfer.

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01 **Conclusion:** Based on the materials presented by the applicant, the design features of the proposed PUD, including the housing types, natural conditions preservation and the provision of open space justify the density proposed by the applicant (67 residential dwelling units).

The submitted Preliminary PUD Plan shows that the proposed Glen Oaks Meadows development would include some of "neo-traditional" features, such as front porches on the proposed single family homes and duplex units and single-car garages setback behind the homes.

The proposed preliminary PUD plan includes approximately 2.6 acres of open space, which constitutes approximately 26% of the total area of the subject property. The proposed open space would provide both passive and active recreational opportunities for the residents of the proposed PUD and the surrounding areas. The proposed passive and active open spaces are designed to be contiguous to connect open space areas with residential clusters.

In summary, based on the above analysis, the proposed open space protects natural features of the property and provides useful open space for the residents and users of the subject property.

In summary, the types of housing designs, the open space preservation and enhancement proposed by this development provides justification for the requested density transfer

CONCLUSION AND RECOMMENDATON:

Based on the analysis and findings contained in this staff report, there is sufficient evidence to prove that the proposed Glen Oaks Meadows Planned Unit Development has satisfied the Oregon City Municipal Code criteria.

Therefore, staff recommends that the Planning Commission approve the requested Glen Oaks Meadows Preliminary Plan Planned Unit Development PUD 99-01, for the property located at 14608, Clackamas County Tax Map 3S-2E-16A, Tax Lot 800, subject to conditions contained in Exhibit 6.

Exhibits

- 1. Vicinity Map
- 2. Site Plan
- 3. Applicant's Narrative*
- 4. Applicant's Request for Reduction of Wetland Transition Area
- 5. Set of Site Master Plans*
 - a. General Site Design Layout
 - b. Natural Features Plan
 - c. Erosion Control, Grading and Drainage Plan

Glen Oaks Meadows Preliminary PUD Plan PUD 99-01

- d. Utility Plan
- e. Transportation Plan
- f. Landscape Master Plan
- 6. Agency and Affected Property Owner Comments
 - a. Engineering Division
 - b. Traffic Engineer
 - c. Public Works Division
 - d. Tualatin Fire & Rescue
 - e. Public Projects Manager
 - f. Parks & Recreation Division
 - g. Caufield Neighborhood Association
 - h. Affected Property Owners Letters
- 7. Conditions of Approval
- 8. Oregon City Engineering Policy 00-01**

*Available for review at City Hall, Planning Division

****** This policy outlines key requirements and helpful hints for those unfamiliar with providing public requirements as required with the Oregon City Municipal Code and Oregon City Public Works Standards

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PD 99-01 PROPOSED SITE PLAN EXHIBIT 2

1 4-#LEX -PLEX 4,257 5 THP. BLDG. **2** 4,195 SF 1946 SF 4-PLEX 4-PLEX 20 SETBACK 3 4,213 S POND GLEN ONCE NENDONE 6-PLEX **4** 4,232 SF -PLEX 5 4,262 S.F. **6** 4,536 S.F. DRIVEWAY 7 4,925 S.F. 29 27 28 26 4,768 S.F. 4,422 S.F. 4,901 5 4,802 SF 8 4,988 S.F. LILLI 2942 ST BRITANY TERRACE 田田 MCT C 32 31 4,420 S.F. 1 30 **33** 1,927 SF 25 5,168 SF 4,839 S.F. 9 5,277 SF PHNATE STREET PRIVATE ALLEY 24 4,915 S.F. **10** 4,496 S.F. GLEN ONCE NENDONE 37 4,452 ST 36 1 4,420 S.F. | 35 | 4,420 S.E. | 34 3961 SF 11 23 4,489 S.F. 4,147 S.F. 12 22 4,158 S.F. TRACT E TRACT D 920 SF PRIMATE STREET 4,333 S.F. **13** 4,165 S.F. **15** 5,087 S.F. 17 18 19 18 20 21 4,420 S.F. 14 4,420 S.F. 4,420 S.F. 4,180 57 4,447 S.F. 5,601 5 4,481 S.F. T.L. 900

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99 DEC 13 PH 2:08



environmenterlore dechnology consultants

June 28, 1999

City of Oregon City Planning Department 320 Warner Milne Road Oregon City, OR 97045

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SHIBIT 10

Dear Staff:

In conditions of approval (14) for the Glen Oaks Meadows subdivision, you have required a request for a reduction in the regulated 50' transition area. The purpose of this letter is to make that request and provide justification for doing so.

According to 17.49.70(B)-1 of the Oregon City Ordinance, the Planning Commission may decrease the size of the transition area to 25' if the following conditions apply: (1) the slope of the transition area is predominantly 10% or less; (2) soils in the transition area are not described in the US Soil Conservation Service publication as having high erosion potential; and (3) the reduction in transition area would not cause a reduction in wildlife habitat. The first condition applies to the site, as slope is much less than 10% in the transition area as can be seen in Figure 1 of 2 in the Water Resources Report. The second condition also applies as the USCS Soil Survey of Clackamas County Area, Oregon maps Jory silty clay loam (map units 45B and 45C) and Cottrell silty clay loam (map unit 24B) on the site. The publication lists water erosion potential to be "slight" for both Jory silty clay loam 2 to 8 percent unit and the Cottrell silty clay loam 2 to 8 percent unit. The third condition also applies to the site, as the area which is currently the transition zone is an open field with minimum wildlife habitat functions (this also described in the Water Resources Report). The transition area proposed has been designed to develop into a forested riparian corridor which will greatly improve the wildlife habitat functions of the site even though the proposed transition area is reduced. Therefore, we feel a reduction in the transition area to 25' is justified.

The transition area south of the proposed realigned stream varies from a minimum width of 19' to a maximum width of 78'. A straight line from the upper end of the stream to the lower end of the stream through the subject property (excluding the road crossing) encompasses a length of 404'. The transition area directly south of the stream through this 404' is 16,812 square feet, resulting in an average buffer width of 41.6'.

The proposed transition area is less than 25' in three areas. The first area is at the upper end of the realigned stream (east side of the property), and is less than 25' in keeping with the character of the corridor through the Pioneer Place subdivision adjacent to the east. The second area is the proposed in-stream pond. The majority of the perimeter of the pond has a 25' transition area, but there are a few encroachments. This pond was designed to provide a high quality fish habitat area to be used for resting, feeding, and potentially spawning. It will be an asset to the stream as a deep area where fish will be able to survive during low flows during the summer months. This pond could have been designed to maintain a 25' buffer around the entire perimeter but this would have reduced the size and functions of the pond. The benefits of the pond as designed are such that the combined benefit of the pond and proposed buffer is greater than a smaller pond with 25' buffer. The third area with encroachments in the 25' transition area is downstream of the pond in the area adjacent to the multifamily units. The reason this encroachment is necessary is that if those structures were moved to the south to allow for a 25' buffer, then one of the units would be lost due to the power easement which traverses the property. The southernmost multifamily unit on the west side of the development is already pushed to the limits of this easement.

YqUJ

(200) 000 440

Although the transition area is less than 25' in those areas described above, this is compensated for by the larger than required buffer averaged width of 41.6'. We feel the proposed transition area is adequate to protect the water resource; and our experience with similar projects is that the Oregon Division of State Lands, Oregon Department of Fish and Wildlife, and the US Army Corps of Engineers will agree. A Section 404 permit application is getting ready to be submitted by our firm which will involve the stream realignment and buffer zone. The City will be kept informed of the State and Corps of Engineer status of this permit application. If there are any questions please give me a call.

Sincerely,

DM

David Waterman Environmental Specialist



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CLACKAMAS COUNTY

THOMAS J. VANDERZANDEN DIRECTOR

June 30, 1999



City of Oregon City Planning Department 320 Warner Milne Rd Oregon City, OR 97045

SUBJ: Property Described as 14608 S Glen Oak Rd; T3S, R2E, Section 16A, Tax Lot 800

The purpose of this letter is to correct inaccuracies in my June 30, 1999 letter regarding property on Glen Oak Road. Unfortunately, the content of that letter was based upon an analysis of the wrong property. The engineering firm has corrected this problem and forwarded to me an accurate description of the site as described above.

The purpose of the analysis is to determine if a County water resources inventory identifies the presence of water resources on, or within 100 feet of, the subject property. This analysis is necessary to satisfy a condition of approval for a proposed subdivision. Please be advised County inventories of water resources do not identify such resources on, or within 100 feet of, the subject property.

I trust this satisfies the condition. Should you have any questions, please feel free to contact me at 650-3277.

Cordially.

John Borge, Principal Planner Land Use and Environmental Planning

c. Waterman; Environmental Technology Consultants

ANALYSIS AND FINDINGS

The applicant has proposed a Planned Unit Development consisting of 37 SFR and 30 Multi-family units for the above referenced property. The property is located on the south side of Glen Oak Road between Highway 213 and Pioneer Place subdivision in Oregon City.

Staff recommends approval of the proposed Planned Unit Development as long as the following recommendations and conditions of approval are followed:

PROVISION OF PUBLIC SERVICES:

WATER.

There is an existing 8-inch water main located in Glen Oak Road across the frontage of the property. This line connects to a new 16-inch waterline at the eastern edge of the property. The 16-inch water main was installed as part of the Pioneer Place subdivision, which is the adjacent property on eastern side of the proposed project site. There is an existing 8-inch water main stubbed to the eastern end of the proposed Brittany Terrace. The City Water Master Plan calls for Glen Oak Road to have a 16-inch waterline.

Applicant has proposed a water system that appears to meet City code with a few modifications.

Conditions:

1. Applicant shall install an oversized 16-inch waterline in Glen Oak Road per the City's Water Master Plan. Applicant may request Water System Development Charge credit per Title 13.20 subject to approval and funds availability.

SANITARY SEWER.

There is an existing 8-inch sanitary sewer located in Glen Oak Road. The adjacent property to the south, TL 900, is the proposed Johnson Mobile Home Park. They have been conditioned to provide a sanitary stub-out which lines up with the applicant's street stub at the south end of the proposed Glen Oak Meadows Road. A Sanitary Advance Finance District (AFD) exists for this property.

Applicant has proposed a sanitary sewer system that appears to meet City code with a few modifications.

Conditions:

2. Applicant shall provide proof of final payment of the Sanitary AFD before final plat recordation.

STORM SEWER/DETENTION AND OTHER DRAINAGE FACILITIES.

This site is located in the Caufield Drainage Basin as designated in the City's Drainage Master Plan and the Caufield Basin Master Plan. Significant capacity upgrades and accounting for pavement widening and wetland enhancement were called for in the City's Caufield Basin Master Plan. The applicant's preliminary storm drainage system proposes discharging all of their storm drainage into an enhanced Caufield Creek drainageway. Erosion and water quality controls are critical for the development of this site.

Applicant has provided a preliminary drainage narrative summary for review. The proposal is to detain the site's runoff in a private dry-pond in the multi-family area and then discharge the detention pond into Caufield Creek. Caufield Creek will be reconstructed in the open space adjacent to the south side of the Glen Oak Road right-of-way.

Applicant has proposed a storm drainage system that appears to meet City code with a few modifications

- 3. Applicant shall submit a report addressing impact of detention system, and outlet structure on Caufield Creek to City staff for approval.
- 4. Storm detention shall be required for this development and shall follow guidance in the Caufield Drainage Master Plan.
- 5. Detention pond shall be a private facility designed as a wet pond. Design, construction and landscaping of the detention pond shall be as approved by the City Engineering Manager.
- 6. Applicant must process and obtain approval for wetland and stream mitigation from the Corps of Engineers, Division of State Lands, Department of Fish and Wildlife, and any other applicable agencies. Copies of approvals shall be supplied to the City. Failure to do so shall be a justification for the City to prevent the issuance of a construction, or building permit or to revoke a permit that has been issued for this project.

DEDICATIONS AND EASEMENTS.

Glen Oak Road is classified a Collector by the City of Oregon City, which requires a minimum rightof-way width of 60-70 feet. Currently Glen Oak Road has a 40-foot right-of-way in front of this property. Applicant has proposed a 10-foot right-of-way dedication along the project's site frontages with Glen Oak Road. Applicant has proposed a 50-foot right-of way dedication for Glen Oak Meadows Road, and the continuation of Brittany Terrace. Applicant has shown several small tracts located through-out the project site.

Applicant has proposed Loop Lane, and the alley connecting Glen Oak Meadows to Loop Lane be private, and the proposed driveways and loop serving the multi-family units be private.

The City discourages the use of private streets except where construction is impracticable. This is not the case for Loop Lane and the proposed alley.

- 7. Loop Lane and the alley will be public streets.
- 8. Applicant shall dedicate 10 feet of right-of-way on the applicant's side of Glen Oak Road.
- 9. Applicant shall dedicate a minimum of 50 feet of right-of-way for all proposed interior local streets. All cul-de-sac bulbs and eyebrows shall have minimum 54-foot radii right-of-way dedications. The alley shall be a minimum of 20 feet wide right-of-way dedication.
- 10. Public utility easements shall be dedicated to the public on the final plat in the following locations: Ten feet along all street frontages, rear lot lines, and the project boundary, and five feet along all side lot lines. Easements required for the final engineering plans shall also be dedicated to the public on the final plat. The side lot line requirements can be waived once utility locations have been identified and the need for side lot line easements is determined by the City Engineer to be unnecessary except where identified by said utilities.
- 11. Tracts B, C, D, E, F, and G shall be privately owned and maintained.
- 12. Applicant shall show non-vehicular access strips along the entire site's frontage with Glen Oak Road, along the western side of Glen Oak Meadows from Glen Oak Road to the multi-family access, the entire frontages of lots 30-37 except for the alley, the frontages of all tracts, and along the street frontages of all corner lots except for the 40 feet on each street furthest from the intersection unless approved by the Engineering Manager.
- 13. Applicant shall show a reserve strip dedicated to the City at the end of all stub streets. These reserve strips shall be noted on the plat to be automatically dedicated as public right-of-way upon the approval of right-of-way dedication and/or City land use action approval of adjacent properties.

STREETS.

Glen Oak Road is classified a Collector by the City of Oregon City, which requires a minimum pavement width of 34 to 50 feet. Applicant has proposed half-street improvements for a 36-foot street along the project's site frontages with Glen Oak Road. Local interior streets require a pavement width of 32 to 34 feet. Applicant has proposed a 32-foot pavement section for interior local streets except the alley and multi-family loop and connectors. Applicant has proposed some street names at this time.

Applicant has proposed an adequate street system that appears to meet City code with a few modifications.

- 14. Half-street improvements are required for Glen Oak Road along the entire frontage with the project. A half-street improvement is defined as improvements to the centerline of the street plus an additional 10-feet of pavement. For Glen Oak Road this includes: half of a 36-foot paved section plus 10 feet for a total of 28 feet of pavement, curbs, gutters, 7 foot sidewalks with 3 foot by 3 foot tree wells adjacent to the curb, street trees, easements, centerline monumentation in monument boxes, city utilities (water, sanitary, and storm drainage facilities), traffic control devices and street lights in compliance with the City Code for Oregon City and its various Master Plans.
- 15. Full street improvements are required for public interior local streets. For local streets a full street improvement includes: 32 feet of pavement, curbs, gutters, 3 ½-foot planter strips between the curb and the sidewalk, 5-foot sidewalks, street trees, easements, centerline monumentation in monument boxes, city utilities (water, sanitary, and storm drainage facilities), traffic control devices and street lights in compliance with the City Code for Oregon City and its various Master Plans.
- 16. The alley shall be paved with a minimum pavement width of 16 feet.
- 17. The eastern access to lot 38 shall be a minimum distance of 100 feet from Brittany Terrace, and the western access to lot 38 shall be a minimum distance of 100 feet from Loop Lane measured centerline to centerline.
- 18. Applicant shall install sidewalks along the site's entire frontage with Glen Oak Road and along the frontages of lot 38 and all tracts, pedestrian walkways, and all handicap access ramps at the time of street construction.

GRADING AND EROSION CONTROL.

Preliminary grading and erosion control plans were submitted. Applicant has proposed to provide storm detention in a pond in the center of the multi-family area. Grading plan shows little disturbance of ground outside the roadways, creek drainageway, and detention pond except for the eastern side of lots 6, 7, and 8.

The back of lots 6, 7, and 8 indicate of fill of almost 3 feet.

TRAFFIC AND TRANSPORTATION.

Lancaster Engineering prepared a Traffic Impact Study for this project dated May-99. No traffic design issues, outside the normal roadway engineering requirements were identified. The Traffic Impact Study has been reviewed by the City's David Evans and Associates and it has been determined that the development will have a significant impact on the transportation system.

The combined impact of this development and other developments in the area have caused the need for some near-term improvements which include:

- 1) widening of Glen Oak Road
- 2) widening of Hwy 213
- 3) a traffic signal at the intersection of Hwy 213 and Beavercreek Road

The METRO Urban Growth Management Functional Plan, Title 6, requires intersections to maintain two-hour peak AM and two-hour peak PM levels of service (LOS) "D". The City has adopted this plan. The City's Capital Improvement Plan, Chapter 7, calls for this same LOS of "D". The applicant's traffic study indicates a background (existing plus planned development) LOS "F" for both peak AM and peak PM. The applicant's additional traffic further exasperates these conditions. Highway 213 is an ODOT facility and as such, ODOT requires approval of any improvements to their facility.

The City's CIP already recognizes the intersection of Glen Oak Road and Highway 213 as having a failing LOS of "E" or "F". The CIP contains two line items for Glen Oak Road improvements: one for designing and obtaining right-of-way for the project (1999 timeframe). Time constraints have precluded the City pursuing this effort to date. The second project is the construction for improving Glen Oak Road (2000-2002 timeframe). The Fairway Downs subdivision improved the Glen Oak Road and Beavercreek Road intersection and it does not require additional improvement at this time. Various subdivisions along Glen Oak Road provided half-street improvements across their frontage to further improve the road.

- 19. The applicant shall provide intersection improvements to obtain a level of service (LOS) of "D" for peak AM and peak PM traffic conditions at the Glen Oak Road and Highway 213 intersection.
- 20. The applicant shall coordinate with and obtain ODOT approval of their improvement plans for the Glen Oak Road and Highway 213 intersection.

ENGINEERING REQUIREMENTS.

Conditions:

21. The Applicant shall sign a Non-Remonstrance Agreement for the purpose of making sanitary sewer, storm sewer, water or street improvements in the future that benefit the Property and assessing the cost to benefited properties pursuant to the City's capital improvement regulations in effect at the time of such improvement.

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DAVID EVANS AND ASSOCIATES, INC.

March 21, 2000

2828 SW Corbett Avenue Portland, Oregon 97201 Tel: 503.223.6663 Fax: 503.223.2701

Ms. Barbara Shields City of Oregon City 320 Warner-Milne Road Oregon City, OR 97045

SUBJECT: REVIEW OF TRAFFIC IMPACT STUDY GLEN OAKS MEADOWS PLANNED UNIT DEVELOPMENT - PD 99-01

Dear Ms. Shields:

In response to your request, David Evans and Associates, Inc. has reviewed the Traffic Impact Analysis prepared by Tom R. Lancaster, PE (Lancaster Engineering) for Glen Oaks Meadows Planned Unit Development (PUD) located on Glen Oak Road between Highway 213 and Beavercreek Road. This PUD would consist of a combination of single-family homes, duplexes, and apartments totaling 71 units.

The applicant has adequately addressed traffic conditions for the proposed development. The applicant analyzed the existing conditions and accounted for in-process traffic from approved developments and the site-generated traffic. I find the report uses reasonable assumptions for distribution of traffic and for trip generation.

As identified in the report, there are several aspects of the transportation system that are in need of improvement to serve the developments in the area. The important issues are:

- Glen Oak Road is only 18 feet wide. This is inadequate for the amount of development now underway. The report indicates that widening to 24 feet and vertical alignment improvements are planned.
- The intersection of Highway 213 and Glen Oak Road is currently operating at a very poor level of service (LOS) with very long delays for traffic entering the highway during both the AM and PM peak hours. Adding traffic from other developments and site traffic from this development will cause the LOS during the AM and PM peak hours to decline to LOS F.
- The intersection of Beavercreek Road and Glen Oak Road is currently operating at LOS C. However, with the addition of traffic from other developments, delays for traffic entering from Glen Oak Road will decline to LOS D. With the addition of traffic from this development the peak hour LOS will decline to LOS E.
- According to the report, installation of a signal is planned at the intersection of Highway 213 and Glen Oak Road. If a signal is installed, the intersection will operate at an acceptable LOS with background traffic and site traffic.
- According to the report, the intersection of Beavercreek Road and Glen Oak Road will operate at LOS C during the peak hour if a center turn lane is constructed and if motorists turning left from Glen Oak Road make two-stage turns. This would require that they first turn into the center turn lane as one maneuver and merge into the northbound through lane as a second maneuver.
- Prior to 2019, both Highway 213 and Beavercreek Road will have traffic volumes that are high enough to require five-lane cross-sections.

The proposed planned unit development is one of the developments contributing to the issues identified above. As indicated above, this PUD is forecast to cause a measurable degradation in the LOS at the two key intersections.





DAVID EVANS AND ASSOCIATES, INC.

Ms. Barbara Shields March 21, 2000 Page 2 of 2

At Highway 213, the peak hour LOS for Glen Oak Road is predicted to fall to F. At Beavercreek Road, the peak hour LOS for Glen Oak Road is predicted to fall to LOS E. The mitigation for these two intersections are the installation of a traffic signal and the widening of Beavercreek Road, respectively. Note that achieving an acceptable LOS at the intersection of Glen Oak Road and Beavercreek road is dependent upon widening the road and upon motorists making a two-stage left turn. That may not be a comfortable maneuver or a safe maneuver for some motorists, especially with at 50-mph speed limit on Beavercreek Road. A traffic signal at this intersection should be viewed as a likely project in the future.

The traffic caused by the continued development along Glen Oak Road has reached the point where mitigation is now required to achieve a minimally acceptable level of service. The installation of a signal at the intersection of Highway 213 and Glen Oak Road is needed short-term.

In conclusion, I find that the applicant's traffic impact analysis meets the City's requirements. The proposed development will have a significant impact on the existing transportation system and mitigation will be needed.

I believe some near-term improvements are necessary including the widening of Glen Oak Road, the installation of a traffic signal at Highway 213 and Glen Oak Road, and the widening of Beavercreek Road. With these improvements in place, the street system has the capacity to accommodate the traffic from the PUD as well as the other developments in progress in the area. The need for short-term improvements is related to combined impact of all the developments in the area. The long-term improvements to both Highway 213 and Beavercreek Road (i.e., widening both to five lanes) will be a function of increases in background traffic rather than traffic from this PUD.

If you have any questions or need any further information concerning this review, please call me at 223-6663.

Sincerely,

DAVID EVANS AND ASSOCIATES, INC.

John Replinger, PE Senior Transportation Engineer

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DAVID EVANS AND ASSOCIATES, INC.

TELE	COPY TRANSMITTAL				.8.8	SW Corbett Avenue
TO:	Planning Permit Technician	FAX NO:	657-7892			
		PHONE NO:	657-0891		Por	tland, Oregon 97201
FIRM:	City of Oregon City	# OF PAGES:	4			T el: 503.223. 6663
FROM:	John Replinger, PE	PROJ. #:	PD 99-01			Fax: 503.223.2701
DATE:	March 21, 2000	REGARDING:	Transportatio	n Impact Analysis		
COPIES:		FAX NO:				
ORIGINA	L TO FOLLOW: 🛛 REGULAR MA		ERNIGHT MAIL			N/A

COMMENTS:

Comments on PD 99-01. The original copies will be mailed in the regular mail. If you have any questions or need additional information please call me.

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CITY OF OREGON CITY Memorandum

4

TO:	Joe McKinney, Interim Public Works Manager	
FROM:	Henry Mackenroth, Public Works Engineer	
DATE:	March 8, 2000	
SUBJECT: 1. Gener	File Number: <u>PD 99-01; ZC 99-05; PA 98-126</u> Name: <u>14608 Glen Oak Road Marple</u> ral Comments: An AFD exists on this property for construction line. No improvements shown for Glen Oak Road replaced as noted below. One half street in Additional Right of Way required as noted be	n of the Glen Oak Sewer d. Water line is to be nprovement required.
2. Water	· · · ·	_ Yes:_* Initial: e
*M]+; f	amily units may have difficulty obtaining ade	
<u></u>		Yes X Size Required <u>16</u> inch Per Fire Marshall Yes
3. Sanita	ary Sewer: San. Depart. Additional Comments No:_ \sum Exiting Lateral being reused? No X Existing Line Size = 8 inch Existing Location = Glen Oak Road Upsizing required? No_X Yes Extension required? No_X Yes Pump Station required? No XYes Industrial Pre-treatment required? No X	 Yes: Initial: MAR Yes Size Required inch Yes Contact Tri City Service District

EXHIBIT 6c

4. Stor	m Sewer:
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Storm Depart, Additional Comments

No: X Yes: ____

Initial:

Road side ditch is a recognized perennial stream. State approvals required. Title III legislation likely to apply.

South Caulfield Basin storm drainage basin plan exists for this area.

	Existing Line Size = Inch None existing X Extension required? No_X Yes Detention Required? No_ Yes X (as in Pioneer PI On site water resources: None Known Yes dite	s X (Road side
5.	Dedications & Easements: Additional right of way required? No Yes _X Existing Right of Way = approximately _40 feet Total Right of Way width required? 60 feet Recommended dedication: 10 feet Clackamas County to recommend No _X Yes	
6.	Streets: Street Depart. Additional Comments No: Yes ½ street improvement for Glen Oak Road. Classification: Major Arterial Minor Arterial	s:Initial: P.J.
	Collector XLocal Jurisdiction: City_XCountyState Existing Width = 16 feet Required Width = 36 feet Number of Traffic Lanes = 2 Center Turn Lane required? No_XYes	
	Bicycle Lanes required? No YesX_ Transit Street? No X Yes Line No =	:
7.	Traffic Problems? None KnownYes Left turns onto and Beavercreek and Hwy 2	
8.	Geotech problems? None Known Yes Potential high grou	ind water

'4.

CITY OF OREGON CITY - PLANNING DIVISION PO Box 3040 - 320 Warner Milne Road - Oregon City, OR 97045-0304 Phone: (503) 657-0891 Fax: (503) 657-7892

TRANSMITTAL

Q	BUILDING OFFICIAL	α	CICC
Q	ENGINEER MANAGER		NEIGHBORHOOD ASSOCIATION (N.A.) CHAIR
	FIRE CHIEF	۵	N.A. LAND USE CHAIR
a	PUBLIC WORKS DIRECTOR	a	CLACKAMAS COUNTY - Joe Merek
	TECHNICAL SERVICES		CLACKAMAS COUNTY – Bill Spears
	ODOT - Sonya Kazen	a	SCHOOL DIST 62
a	ODOT - Gary Hunt		TRI-MET
			GEOTECH REPORT – NANCY K.
TR	AFFIC ENGINEERS	a	DLCD/BRENDA BERNARDS @ METRO
	JOHN REPLINGER @ DEA	a	OREGON CITY POSTMASTER
	JAY TOLL	a	PARKS
RET	TURN COMMENTS TO:	СС	MMENTS DUE BY: March 21st, 2000
T T T T	NAUNC DEDAME TECHNICIAN	TIT	ADINC D ATE = 4/10/00

PLANNING PERMIT TECHNICIAN Planning Department

IN REFERENCE TO

FILE # & TYPE: APPLICANT: REOUEST:

LOCATION:

HEARING DATE: 4/10/00 HEARING BODY: Staff Review: PC: X_CC: ___

PD 99-01 Larry Marple Planned Unit Development: 37 Single-Family homes and 30 Multi-Family units 14608 Glen Oak Rd 3S-2E-16A tl 800

The enclosed material has been referred to you for your information, study and official comments. Your recommendations ar suggestions will be used to guide the Planning staff when reviewing this proposal. If you wish to have your comments considered and incorporated into the staff report, please return the attached copy of this form to facilitate the processing of the application and will insure prompt consideration of your recommendations. Please check the appropriate spaces below.

The proposal does not conflict with our interests.

The proposal would not conflict our interests if the changes noted below are included.

____ The following items are missing and are ______ needed for completeness and review:

The proposal conflicts with our interests for

EXHIBIT 6d

E Altacues CNECK Sweet.

the reasons stated below.

Signed Title

PLEASE RETURN YOUR COPY OF THE APPLICATION AND MATERIAL WITH THIS FORM.

GLEN OAK- MEADOWS

- FIRE APPARATUS ACCESS ROAD DISTANCE FROM BUILDING AND TURNAROUNDS: Access roads shall be within 150 feet of all portions of the exterior wall of the first story of the building as measured by an approved route around the exterior of the building. An approved turnaround is required if the remaining distance to an approved intersecting roadway, as measured along the fire apparatus access road, is greater than 150 feet. (UFC Sec. 902.2.1)
- 2. _____ DEAD END ROADS: Dead end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved turnaround. Diagrams of approved turnarounds are available from the fire district. (UFC Sec. 902.2.2.4)
- 3. _____ACCESS ROADS ADJACENT TO BUILDINGS: Access roadways shall not be closer than 20 feet to a structure unless topographical restrictions dictate the location. (UFC Sec. 902.2.1)
- 4. ______ FIRE APPARATUS ACCESS ROAD EXCEPTION FOR AUTOMATIC SPRINKLER PROTECTION: When buildings are completely protected with an approved automatic fire sprinkler system, the requirements for fire apparatus access may be modified as approved by the Chief. (UFC Sec. 902.2.1)
- 5. <u>ADDITIONAL ACCESS ROADS</u>: Where there are 25 or more dwellings units, vehicle congestion, adverse terrain conditions or other factors as determined by the Chief of the fire department not less than two approved means of access shall be provided to the city/county roadway or access easement. Exceptions may be allowed for approved automatic sprinkler system. (UFC Sec. 902.2.1) Ref. Hat with + Just
- 6. FIRE APPARATUS ACCESS ROAD WIDTH AND VERTICAL CLEARANCE: Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (15 feet for one or two dwelling units and out buildings), and an unobstructed vertical clearance of not less than 13 feet 6 inches. (UFC. Sec 902.2.2.1)
- 7. SURFACE AND LOAD CAPACITIES: Fire apparatus access roads shall be of an all-weather surface that is easily distinguishable from the surrounding area and is capable of supporting not less than 12,500 pounds point load (wheel load) and 50,000 pounds live load (gross vehicle weight). You may need to provide documentation from a registered engineer that the design will be capable of supporting such loading. Documentation from a registered engineer that the finished construction is in accordance with the approved plans or the requirements of the Fire Code may be requested. (UFC Sec. 902.2.2)
- 8. ______BRIDGES: Private bridges shall be designed and constructed in accordance with the state of Oregon Department of Transportation and American Association of State Highway and Transportation Officials Standards. Design load shall conform with H-S 25 or greater. The design and specifications for bridges shall be prepared by a State of Oregon registered professional engineer. A building permit shall be obtained for the construction of the bridge if required by the building official of the jurisdiction where the bridge is to be built. The design engineer shall prepare a special inspection and \ structural observation program for approval by the building official. The design engineer shall give in writing final approval of the bridge to the fire department after construction is completed. Maintenance of the bridge shall be the responsibility of the party(ies) that use(s) the bridge for access to their property(ies). The fire district may at any time, for due cause, ask that a registered engineer inspect the bridge for structural stability and soundness at the expense of the property owner(s) the bridge serves. (UFC Sec 902.2.2.5)
 - TURNING RADIUS: The inside turning radius and outside turning radius shall be not less than 25 feet and 45 feet respectively, measured from the same center point. (UFC Sec, 902.2.2.3) Apt ACCESS 'EAST ENTRANCE
- 10. X NO PARKING SIGNS: Where fire apparatus roadways are not sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "NO PARKING" signs shall be installed on one or both sides of the roadways and in turnarounds as needed. (UFC Sec. 902.2.4) Signs shall read "NO PARKING FIRE LANE TOW AWAY ZONE, ORS 98.810 98.812" and shall be installed with a clear space above ground level of 7 feet. Sign shall be 12 inches wide by 18 inches high and shall have black or red letters and border on a white background. (UFC Sec. 901.4.5.(1) (2) & (3))
- 11. _____ PAINTED CURBS: Where required, fire apparatus access roadway curbs shall be painted yellow and marked "NO PARKING FIRE LANE" at each 25 feet. Lettering shall have a stroke of not less than one inch wide by six inches high. Lettering shall be white on red or black on yellow background. (UFC SEC. 901.4.5.2) Apt. (a.mp/cx
- 12. _____ GRADE: Private fire apparatus access roadway grades shall not exceed an average grade of 10 percent with a maximum grade of 15 percent for lengths of no more than 200 feet. Intersections and turnarounds shall be level (maximum 5%) with the exception of crowning for water run-off. Public streets shall have a maximum grade of 15%. (UFC Sec. 902.2.2.6)
- 13. X COMMERCIAL BUILDINGS REQUIRED FIRE FLOW: The required fire flow for the building shall not exceed 3,000 gallons per minute (GPM) or the available GPM in the water delivery system at 20 psi, whichever is less. A worksheet for calculating the required fire flow is available from the Fire Marshal's Office. (UFC Sec. 903.3) Ap+ Complex
- 14. COMMERCIAL BUILDINGS FIRE HYDRANTS: No portion of the exterior of a commercial building shall be located more than 250 feet from a hydrant when measured in an approved manner around the outside of the building and along an approved fire apparatus access roadway. Any hydrants that are left over from the minimum number of hydrant calculations may be full filled by hydrants that are up to 500 feet from any point of the building. The Fire Prevention Ordinance has further requirements that need to be used for acceptance and placement of fire hydrants. (UFC Sec.



MEMORANDUM

To:	Barbara Shields, Senior Planner
	Bob Cullison, EIT, Engineering Manager
From:	Nancy J.T. Kraushaar, P.E., Public Projects Manager
Date:	March 30, 2000
Subject:	Comments
	SP 99-01 – Glen Oaks Meadows

GEOTECHNICAL

Additional geotechnical investigation shall be completed to comprehensively define: a) pavement section and pavement section construction technique, and b) where perimeter footing drains and specialized trench drains are needed. The August 11, 1999 WCG Geotechnical Investigation report refers to special pavement needs and drainage needs, but does not provide specificity as to where these needs shall be implemented. The additional investigation shall include test pits that penetrate a minimum of 3 feet below the deepest cuts for grading and foundation excavations to adequately define foundation soil and groundwater characteristics.

WATER RESOURCES AND STORMWATER

Stormwater detention facilities shall be designed in accordance with the Caufield Basin Master Plan (adopted November 1997) and the Oregon City Grading and Stormwater Design Standards.

The applicant has requested a reduction of the 50-foot transition area required in the January 1994 Water Resources Overlay District. The Planning Commission based on three criteria which address slope, soil erodibility, and wildlife habitat *may grant* the reduction. The applicant's request makes findings supporting the request, including the finding that the transition area would not cause a reduction in wildlife habitat. The Public Projects Division recommends that the reduction *not be granted*. Current scientific literature indicates that a 200-foot corridor is appropriate for wildlife protection in the northwest. This is based on native species tree height. The forested riparian corridor proposed in the June 28, 1999 Environmental Technology Consultants report has merit, but the habitat is unlikely to develop with a 25-foot width. The required transition area shall be 50 feet, in accordance with the 1994 City Code.

EXHIRIT 60

\\FS2\VOL2\WRDFILES\NANCY-K\Des-Revu\SP\GlenOak.doc April 30, 2000 Page 1



OREGON CITY PARKS & RECREATION PARKS & MEMORIALS

Parks Department Concerns Prepared by: Allen Toman – Operations Supervisor Richard Reed – Operations Crew Leader

Glen Oak Meadows

PD 99-01

The proposed open space area does not conform to goals expressed in adopted Parks Master Plan of 1998-Recommended Park Guidelines – concerning mini parks. In the Parks Master Plan in Section VII – Land and Facility Recommendations, Page 7, it states under:

General Land Use Guidelines:

- a. Because of their size, limited recreational value and cost of operation, public parks of this type should be discouraged.
- b. The development of this type of park should be encouraged as part of large private multifamily developments.
- c. Mini-parks may be developed within single family subdivisions as long as they are owned and maintained by <u>homeowners associations</u>.

It is the Parks Maintenance Division's recommendation to follow the guidelines of the adopted Parks Master Plan for Oregon City.

EXHIBIT 6f

CITY OF OREGON CITY - PLANNING DIVISION PO Box 3040 - 320 Warner Milne Road - Oregon City, OR 97045-0304 Phone: (503) 657-0891 Fax: (503) 657-7892

TRANSMITTAL

D CICC BUILDING OFFICIAL NEIGHBORHOOD ASSOCIATION (N.A.) CHAIR **D** ENGINEER MANAGER N.A. LAND USE CHAIR **G** FIRE CHIEF **D** PUBLIC WORKS DIRECTOR CLACKAMAS COUNTY - Joe Merek D TECHNICAL SERVICES CLACKAMAS COUNTY – Bill Spears □ SCHOOL DIST 62 □ ODOT - Sonva Kazen **D** TRI-MET DODOT - Gary Hunt □ GEOTECH REPORT – NANCY K. DLCD/BRENDA BERNARDS @ METRO TRAFFIC ENGINEERS JOHN REPLINGER @ DEA • OREGON CITY POSTMASTER **D** PARKS D JAY TOLL COMMENTS DUE BY: March 21st, 2000 **RETURN COMMENTS TO:** 4/10/00 HEARING DATE: PLANNING PERMIT TECHNICIAN HEARING BODY: Staff Review: PC: X CC: Planning Department

IN REFERENCE TO

FILE # & TYPE: APPLICANT: REQUEST:

LOCATION:

PD 99-01 Larry Marple Planned Unit Development: 37 Single-Family homes and 30 Multi-Family units 14608 Glen Oak Rd 3S-2E-16A tl 800

The enclosed material has been referred to you for your information, study and official comments. Your recommendations an suggestions will be used to guide the Planning staff when reviewing this proposal. If you wish to have your comments considered and incorporated into the staff report, please return the attached copy of this form to facilitate the processing of this application and will insure prompt consideration of your recommendations. Please check the appropriate spaces below.

The proposal does not conflict with our interests.

The proposal would not conflict our interests if the changes noted below are included.

____ The proposal conflicts with our interests for the reasons stated below.

EXHIBIT 60

The following items are missing and are needed for completeness and review:

Su

Signed Title

PLEASE RETURN YOUR COPY OF THE APPLICATION AND MATERIAL WITH THIS FOR

CITY OF OREON CITY – PLANNING DIVISION 320 WARNER MILNE ROAD OREGON CITY, OR 97045-7892

TO: OREGON CITY PLANNING DIVISION

FROM: CAUFIELD ASSOCIATION OF NEIGHBORS

In regards to the Glen Oak Meadow Development the Caufield Association of Neighbors would like to make known to the Planning Division that the purposed plans are inadequate and controversial as in numeral sections of the plans.

FAX TRANSMISSION

The purposed plans for Glen Oak Meadows is inadequate and concorvisial as in numeral sections of the plan.

Page 29 revised narrative is missing, page 29 refers to "Recommendations of Lancaster engineering.

Right-of-way identified as 1.39 acres – but page 27 states that this total street right-os-ways is 2.29 acres. Under G Water resource, impacts, and mitigation is missing: Was this intentional?

Inconsistency in the development of 69 or 71 families and the traffic study does not include about 40 more homes to be built in Pioneer Place. While the trip generation comparison for Glen Oak Meadows is 600 trips. Still to develop is 40 + or- units of single-family homes making weekday trips increase of 338 + or - giving a total of 938 + or -a few. Glen Oak Rd. is inadequate to handle the present traffic and we are looking at increases of 938 trips for weekday traffic. Counting Fairway Downs Osprey Glen, Pioneer Place and Glen Oak Meadows traffic count on Glen Oak Rd. will be at a count of 3205 on weekdays.

SEDTION H

Inconsistency in unit's numbers from 69 to 71 and lot size doesn't conform with the existing development adjacent to Glen Oak Meadows.

Question: Who maintains Playgrounds and keeps the pond clean and sanitary? Maintenance of the park area left to the Homeowners Assoc. does not necessarily form and that would leave maintaining of the playground and Pond up to the City; at City expense The "Generous amount of usable open space — 'is directly under a <u>High Power</u> <u>Line crossing over Glen Oak Meadows</u>. This is the recreation area to be used. It is environmentally unsafe.

Chapter 17 section 17.10.040 dimensional standards in R-6 MH district is Minimum lots area of 6,800 sq. ft. in Glen Oak Meadows are ranging from 3,000 to 5,000 + sq.ft. (Inadequate and lowers City standards).

Paragraph D Maximum Building Height not to exceed 20 ft. Requested Building Height 35 ft. 2-1/2 stories.

Chapter 17.64.010 Paragraph C: Response is a FALSE statement: "There are no natural or other hazards on site." A High Voltage Power Line goes all the way across Glen Oak Meadows, again I repeat this is environmentally unsafe.

City of Oregon City Code proposes development provide 2 parking space per units Glen Oak Meadow Proposes 1.5 spaces per units. This does not conform to the city code and results in the lowering the city standards.

Page 22 of Traffic Impact Study reads "The intersection of Glen Oak Rd. at Beavercreek Rd is currently operating a level of service C during peak hours." That does not take in the consideration that the intersection at Glen Oak and Beavercreek Rd. is not used. Because of the raised elevation on Beavercreek Rd. to the left and right of Glen Oak Rd. and Beavercreek Rd. intersection., this hazard causes traffic to use Glen Oak Rd. and 213 because it is safer and traffic signals <u>are</u> warranted at Glen Oak Rd and Beavercreek Rd.

INCONCULION: The Neighbor Association does not feel that Glen Oak Meadows Development is a workable plan for the area adjacent to Pioneer Place and would be a environmentally hazardous to the occupant and a liability to the City and County.

Thank you

Robert Pourieco

City of Oregon City Planning Division PO Box 3040 320 Warner Milne Road Oregon City, Or. 97045-0304

Please find attached a letter from a member of the Caufield Neighborhood Association concerning the Glen Oaks Meadows Project, File Number PD 99-01, a request for a Planned Unit Development by applicant Larry Marple.

I have also included the minutes from the June 22, 1999 Caufield Neighborhood Association meeting where the proposed development was presented to the neighborhood association.

We have invited Mr. Marple and Mr. Mike Miller to our March 23, 2000 Neighborhood Association Meeting for a discussion of the newly revised development plans. I am certain more recommendations and suggestions will be brought forward at that meeting to be shared with the Planing Division.

The Caufield Association of Neighbors would like to thank the Planning Division for keeping us up-to-date with information concerning this project.

Sincerely en Suplatary

Lynda M. Orzen- Szeplakay Acting Chairman

14943 Quinalt Court Oregon City, OR 97045 Phone: 518-3073 Email: orzep@bctonline.com



Minutes of the Caufield Neighborhood Association June 22, 1999 6:30 PM

Welcome and Introductions

Everyone in the room introduces themselves and tells where they live in the area and why they choose to attend the meeting. There were 25 neighbors, Commissioner Doug Neeley, Mary Palmer, community Involvement Coordinator, Derrick Beneville, Chair of the Gaffney Lane Association, Deb Watkins, Chair, and Julie Hollister, Secretary, of Hillendale Association and Melanie Paulo, Garry and Shirley Wilson representing the Thayer Neighborhood Association, in attendance. Larry Marple, developer and Mike Miller of Alpha Engineering were present to talk about the proposed PUD adjacent to Pioneer Place.

The meeting is opened with a discussion about the importance of neighborhood associations and the role they play in the development of the community and city government.

Mike Miller arrives and begins his presentation. He introduces himself and the company he represents, Alpha Engineering, Inc. The proposed site was recently annexed into the city from the county and is zoned an R-6MH. The development will contain 37 single-family homes and 22 multifamily units. This will be a Planned Unit Development. The designation allows the developer to cluster units within the boundaries due to certain building constraints of the site (i.e. overhead power lines and a wetland area north of the development).

A question was asked about whether the homes would be stick built or manufactured homes. The answer, it hasn't been decided yet.

Mike continues to explain that the average lot size for the homes would be about 5,000 sq. ft. There would be a single car garage in back, a front porch and extra street parking. There would also be a common green space with a playground and a water feature. A question was asked about the maintenance of the green space/play area/ water feature. The answer, a homeowners association would be created and would hire someone to maintain the area.

A question was asked if the units would be rentals or owned. The answer, they would probably be rentals. There is concerned expressed about some rental units and crime problems. Mike answers that there are some people such as newly weds or the elderly that can't afford to buy and can only rent.

A question was asked about the cost of the homes and how much they would rent for. No answer, this hasn't been decided yet. It is asked if the Caufield Neighborhood Association could be involved in the CCR process for the development. Mike answers that he sees no problem with the idea and they would welcome the input. There are concerns expressed about the increase in traffic and if there has been a traffic study conducted. There are also questions concerning Glen Oak road and improvements needed. If there will be a traffic light installed on Highway 213 and Glen Oak. Mike replies that the development is only responsible for improvements to Glen Oak adjacent to Glen Oak. Melanie Paulo offers some answers. She has been on the Transportation Committee for Oregon City and knows that there will be improvements made on Highway 213 and Beavercreek intersection in the near future. There are also future plans to improve 213 and Glen Oaks but when and how it will be financed are still in question. Glen Oaks road is currently under county jurisdiction and improvements made to the road are only those areas that are adjacent to new construction, such as Pioneer Place.

Debbie Watkins stresses the need for a land use committee to know the building and zoning codes and how the zoning process works. Once an area is zoned for a certain use, which remains constant. There is an alternative of different uses within that zone type, it doesn't have to be one way only.

There is a discussion about SDC, Service Development Charges, what they are and how they work.

There is concern about water pressure. A new pump station had to be installed to increase the water pressure in the Fairway Downs development. There is also concern about the storm drains and runoff into the wetland area. Mike explains that a retention pond will be incorporated on the site, this will also be the water feature. An 8-in. water line will be installed to provide enough pressure for the development.

After more discussion the presentation is concluded. Mike asks if we would like to be notified of any changes to the plans or any updates. We respond that we would like to be kept updated. We thank him for his presentation and sharing the information with the group.

Commissioner Doug Neeley is introduced. He begins by telling the group that if we want a response to our concerns about any development, that it needs to be read into the city commission meetings records. The commissioners can only respond to what is on the record. (Exampled, if a letter is written concerning a development issue, that letter needs to be read at the commission meeting.) He continues to discuss the interaction of the Neighborhood Associations and the city during the past several years. The associations are being recognized as the voice of the community and are beginning to be asked to participate in city activities such as the hiring of the Police Chief and City Planner. Developing an association for this area is very important, especially with all the growth.

There is further discussion about neighborhood associations and Julie H. says that it is important to do fun activities. We can get caught up in some very serious issues, so it is important to balance it out with fun social times.

National Night Out Against Crime is brought up as a way the neighborhood associations get together for different events and involve the fire and police departments. NNO is the first Tuesday in August and the event is going into its seventh year. The event is practice in all 50 states as well as military bases around the world.

Mary Palmer talks about the steps it takes to become a recognized neighborhood association in Oregon City. During the first general membership meeting a vote must be taken on whether an association should be formed. If it is a yes vote, the next steps are to form steering committees to write by-laws, set neighborhood boundaries, and a land use committee. They also need to appoint officers, beginning with a chair, co-chair and secretary. Mary and Lynda have met earlier and discussed a timeline for approval recognition by the city commission and they think that the group could gain recognition by the 3rd week in January of 2000.

Lynda Orzen asks for volunteers to assist in the organization of the next meeting and set up an agenda for the meeting. Trina Kennedy, Bev Forney, Bob Weijland, Barbara Newland, and Chris Allori offer to help.

A question is asked about the bump on Glen Oak road where the stream development has resulted in a bump in the road. Who is responsible for a fix? He is told to contact Bob Cullison at City Hall or Jay Wickman at 650-0891.

Doug Neeley tells the group that the application for the planning review shows the hearing date and we will need to make a formal response at that time. We must respond as individuals until out neighborhood association is recognized. Check city Hall for all pending issues that may be relevant to our neighborhood. There will be a land use planning workshop at City Hall on July 1, 1999 at 6:00 PM with the city commissioners and the planning commission.

City Commission Meetings are held on the 1st and 3rd Wednesday of the month and the Planning Commission Meetings are held on the 2nd and 3rd Mondays of each month.

Meeting is closed at 8:30 PM.

The next meeting will be at the Fire Station on Molalla at 6:30 on Tuesday, July 20, 1999. This will be the first general membership meeting with all residents in the area to be invited.

I. SITE PLAN DESIGN LAYOUT

A. DENSITY

- 1. No more than 67 residential dwelling units shall be developed on the subject property.
- 2. The single-family portion of the Glen Oaks Meadows Planned Unit Development shall include 30 single family lots.
- 3. The multiple-family portion of the Glen Oaks Meadows Planned Unit Development shall consists of six four-plexes and one six-plex.

B. SINGLE-FAMILY LOT STANDARDS

- 1. All single-family residential lots shall comply with the following standards:
 - a. Lot area shall be no less than 3,070 square feet;
 - b. Average width shall be no less than 46 feet;
 - c. Building height shall be no more than 35 feet;
 - d. Front yard shall be nor less than 15 feet for a home and 18 feet for a garage.
 - e. Interior yard shall be no less than 5 feet on both sides of a lot.

C. WETLAND TRANSITION AREA SETBACKS

- 1. The wetland transition area shall be no less than 25 feet from the Caufield Creek wetland boundary, with the exception of two areas:
 - a. The transition area at the upper end of the realigned stream, extending 50 feet from the east boundary line of the subject property, may be reduced to 20 feet;
 - b. The transition area at the proposed in-stream pond may be reduced to 15 feet, provided that at least fifteen shade trees, identified on the Oregon City Native Plan List, shall be placed along the southern boundary of the proposed in-stream pond.
- 2. The applicant shall obtain an appropriate DSL/U.S. Army Corps of Engineers permit prior to Final PUD Plan approval.

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City of Oregon City Planning Commission 320 Warner Milne Road Oregon City, Oregon

200 MAR 29 PH 1: 29 OITY CF DREGON CITY

RE: File PD 99-01

Dear Planning Commission

We would like to raise an issue concerning the proposed Planned Unit Development at 14608 Glen Oak Road

When we made the decision to move to the Portland area, we took into consideration, the density of housing, traffic congestion and resale value of the home we would be purchasing. We chose Oregon City because of the close proximity to the Portland area and lack of serious traffic congestion. We spent many hours driving around the Oregon City area looking for the preighborhood that had low density housing and would maintain resale value. We believed that we found those qualities when we purchased our home in the Pioneer Place sub-division off of Glen Oak Road.

We believe the proposed Planned Uni Development at 14608 Glen Oak Road would compromise those values for the following reasons:

* Multi-family Dwellings are apartments Apartments would not be compatible in this area of upscale homes. We believe that the presence of apartments would dramatically affect the resale value of our property.

*High Density Housing would create additional traffic problems on Glen Oak Road. Glen Oak Road is very narrow at the west end and traffic currently moves along Glen Oak Road at a dangerous speed (for the present conditions of the road). Making left hand turns onto Beavercreek Road and right hand turns onto Highway 213 can be very dangerous. Making left hand turns onto Highway 213 are very risky and could result in some very bad accidents. High Density housing will only make this situation worse as Glen Oak Road will not be able to handle the additional traffic

We believe the Planning Commission should adhere to the Comprehensive plan, and keep this area "LOW DENSITY HOUSING".

Loras

Dennis & Debra Smyres 14421 Cambria Terrace Oregon City, Oregon 97045



Barbara Shields Senior Planner City of Oregon City

RE: PD 99-01 Larry Marple Triple D Development Address 14608 Glen Oaks Road. Clackamas County Tax Lot 800 Map 3S 2E 16A 9.68 Acres Planned 37 Single Family Units 32 Multi Family Units

Dear Ms. Shields,

As we will not be available for the set date 4-10-2000 Planning Commission Public Hearing we will state for the record our concerns regarding the above planned High-Density project.

We are the property owners immediately next to 14608 Glen Oak Road. We own the house and property known as 14490 S Glen Oak Road. This property has been livestock acreage for over 40 years. The home and livestock rely on a well for all water use. (Problem #1) The amount of disturbance to the natural water table and current wet land on tax lot 800 will disturb our current property usage. Previous development up the entire Glen Oak Road area has contributed to standing water on the properties toward Hwy. 213 that previously had no water displacement issues. (Problem #2) As with the previous development on Glen Oak Road we have had problems with trespassing workman and equipment and then the new property owners and their children believe our property to be their recreational area. We have found children on top of equipment and buildings. This is a danger to all plus our increased liability takes from our unencumbered use of our properties. The human density element submitted with this proposal is a tremendous increase to the areas population, infrastructure and service needs and all of this on a property of less then 10 acres and a very narrow main road. (Glen Oaks).

In closing we would definitely need to have our rights of ownership protected by a permanent solid barrier fencing restraint and a guarantee of a quality safe undisturbed water source. Development needs to pay the increased cost of safe proper roadways and any water change issues, as well as provide the necessary permanent fencing barriers to protect neighboring properties. These costs should not be passed on to the long-term property owners already residing in the area.

Thank you. NUC

David & Lori Staten 15384 South Holcomb Blvd. Oregon City, Oregon 97045 503-656-9936



March 28,2000

Dear Planning Commission, -----My husband and I live in Pioneer Place off of Glenn Oak Road We are concerned about the proposed divelopment to the West of our subdivision. We usge you to keep the lot sizes to their designation or to a lot size sindar to Those in Pioneer Place. Multi-family dwellings, no matter how upscale, are still apartments and are not compatible with this area. We are concerned that these dwellings will be rentals and that they will attract people that will not have a vested interest in the property They rent or The neighborhood they live in We also worry That This dwelopment will bring too much traffic to Heider Drive and to Glenn Jak Road which can not handle the traffic it has . We would also like you to consider the passibility of Glenn Cak Meadows having its own intrance from Glinn Oak Road. All of the other new dwelogments have their own entrance of Glenn Cak Road. Why Should Glenn Oak Meadows be any different Thank you for your time and consideration, Rhitt + Amil Border EXHIBIT 6h-3

File No. PD 99-01 Larry Marple Triple "D" Development Clackamas County Tax Map 3S-2E-16A Tax Lot 800

Submitted by; Barry & Barbara McCain 14404 Talawa Dr, Oregon City, OR. 97045

Dear Sirs;

As homeowners adjacent to the above named property, we oppose the PUD as submitted by Triple "D" Dev.

I understand that this parcel of property has several unique challenges from the development perspective, I also understand that as a developer Mr. Marple wants the largest return on his investment. However, my home is my investment and the resale potential of my home will be affected by this development.

Apartments are not compatible with the existing surrounding land use and would have a negative impact on property values and the overall quality of living for the area. Apartments introduce an element of temporary housing, and are only "Upscale" (to quote Mr. Marple) until you can't rent them, then you see banners out front advertising the "move in special" as you can see at this moment on the apartments closest to this property on Hwy 213 and Myers Rd, as well as the ones behind the Albertsons store.

Apartments tend to bring increased traffic per sq ft, more so than a single family dwelling. Glen Oak Rd is dark and poorly maintained, at one particular spot there is even a telephone poll that sits into the curve of the road making it dangerous for more than one vehicle at a time, God forbid if the School bus were to be passing as well. The proposed project doesn't even have adequate parking, so the first thing we can look forward to is overflow parking on the streets.

Mr. Marple would have you believe that the "park/green space" in the center of the apartment complex is a desirable feature and would be welcomed by all. That is not the case, the combination of apartments, parking lot, and "seasonal swamp/hang out" is a recipe for trouble. I

TATTOTT 6h_A

conclude that based on 13 years in Law Enforcement. It becomes the congregating place, littered and vandalized with even more traffic coming and going at all hours. This is not desired or welcomed by our neighborhood. Mr. Marple would try to convince you that his desire is to give something to the community by way of this greenspace, when in reality, he can not build on that space.

We maintain nice yards for our children to play in, and would rather take a stroll in a safe neighborhood where we know our neighbors. Neighbors like ourselves, who have ownership in the community and a vested interest in the long term. Mr. Marple does not live here, his children are not affected by the safety issues that will arise here, nor will he have a difficult time selling his home because the adjacent neighborhood is section 8 housing or HUD homes. Really, how vested of an interest do you think he has?

I understood from the planning commission when I purchased my home, that this area was designated "Low density" in the comprehensive plan. Allowing Triple "D" to reduce lot sizes under 6000 sq ft would realize the opposite, and should not be allowed.

We respectfully suggest that prior to the scheduled hearing, you drive through our neighborhood. You will see a desirable place to live, we trust you to help keep it that way. Thank you for your time and consideration, we will look forward to your decision at the April 10th meeting.

Sincerely,

Barry a McCain Barbara & Mllain Natie a. McCain Cody a McCain

I. SITE PLAN DESIGN LAYOUT

A. DENSITY

- 1. No more than 67 residential dwelling units shall be developed on the subject property.
- 2. The single-family portion of the Glen Oaks Meadows Planned Unit Development shall include 30 single-family lots.
- 3. The multiple-family portion of the Glen Oaks Meadows Planned Unit Development shall consist of six four-plexes and one six-plex.

B. SINGLE-FAMILY LOT STANDARDS

- 1. All single-family residential lots shall comply with the following standards:
 - a. Lot area shall be no less than 3,070 square feet;
 - b. Average width shall be no less than 46 feet;
 - c. Building height shall be no more than 35 feet;
 - d. Front yard shall be nor less than 15 feet for a home and 18 feet for a garage.
 - e. Interior yard shall be no less than 5 feet on both sides of a lot.

C. WETLAND TRANSITION AREA

1. The applicant shall obtain an appropriate DSL/U.S. Army Corps of Engineers permit prior to Final PUD Plan approval.

D. PARKING

1. No less than 45 on-site parking spaces shall be provided on the subject property to serve the multiple-family portion of the Glen Oaks Meadows Planned Unit Development.

II. UTILITY AND FACILITY DESIGN

A. TRANSPORTATION SYSTEM IMPROVEMENTS

- 1. The applicant shall provide intersection improvements to obtain a level of service (LOS) of "D" for peak AM and peak PM traffic conditions at the Glen Oak Road and Highway 213 intersection.
- 2. The applicant shall coordinate with and obtain ODOT approval of their

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improvement plans for the Glen Oak Road and Highway 213 intersection.

B. STREET DESIGN REQUIREMENTS

- 1. Half-street improvements shall be required for Glen Oak Road along the entire frontage with the project. A half-street improvement is defined as improvements to the centerline of the street plus an additional 10-feet of pavement. For Glen Oak Road this includes: half of a 36-foot paved section plus 10 feet for a total of 28 feet of pavement, curbs, gutters, 7 foot sidewalks with 3 foot by 3 foot tree wells adjacent to the curb, street trees, easements, centerline monumentation in monument boxes, city utilities (water, sanitary, and storm drainage facilities), traffic control devices and street lights in compliance with the City Code for Oregon City and its various Master Plans.
- 2. Full street improvements shall be required for public interior local streets. For local streets a full street improvement includes: 32 feet of pavement, curbs, gutters, 3 ¹/₂-foot planter strips between the curb and the sidewalk, 5-foot sidewalks, street trees, easements, centerline monumentation in monument boxes, city utilities (water, sanitary, and storm drainage facilities), traffic control devices and street lights in compliance with the City Code for Oregon City and its various Master Plans.
- 3. The alley shall be paved with a minimum pavement width of 16 feet.
- 4. The eastern access to lot 38 shall be a minimum distance of 100 feet from Brittany Terrace, and the western access to lot 38 shall be a minimum distance of 100 feet from Loop Lane measured centerline to centerline.
- 5. Applicant shall install sidewalks along the site's entire frontage with Glen Oak Road and along the frontages of lot 38 and all tracts, pedestrian walkways, and all handicap access ramps at the time of street construction.

C. EMERGENCY ACCESS AND CIRCULATION

1. The revised site plan shall conform to the emergency access and circulation standards as stated in the Tualatin Fire and Rescue letter (Exhibit 6d).

D. STORM SEWER/DETENTION AND OTHER DRAINAGE FACILITIES

- 1. The applicant shall submit a report addressing impact of detention system, and outlet structure on Caufield Creek to City staff for approval prior to PUD Final Plan approval.
- 2. Storm detention shall be required for this development. Detention requirements shall be as follows:
 - a. The peak release rate for the 2-year design storm after development shall not exceed the pre-developed 2-year design peak runoff rate.
 - b. The peak release rate for the 25-year design storm after development shall not exceed the pre-developed 25-year design peak runoff rate.
- 3. Hydrology/Detention calculations shall be submitted to the City for review and approval prior to approval of construction plans. Impervious area should be calculated using 2,640 square feet per lot for the single family lots plus all impervious area in the multi-family area and the right-of-way. Documentation shall be provided to back up calculations. 100-year overflow path shall be shown and shall not cross any developed properties.
- 4. The applicant must process and obtain approval for wetland and stream mitigation from the Corps of Engineers, Division of State Lands, and any other applicable agencies as necessary. Copies of approvals shall be supplied to the City. Failure to do so shall be a justification for the City to prevent the issuance of a construction, or building permit or to revoke a permit that has been issued for this project.

E. GEOTECHNICAL

- 1. A geotechnical report shall be revised to comprehensively define:
 - a) pavement section and pavement section construction technique, and
 - b) where perimeter footing drains and specialized trench drains are needed.
- 2. A geotechnical investigation shall include test pits that penetrate a minimum of 3 feet below the deepest cuts for grading and foundation excavations to adequately define foundation soil and groundwater characteristics.
- 3. A geotechnical report shall be submitted to the City for review and approval prior to approval of any construction plans

III. SITE DEVELOPMENT

A. WATER

- 1. Any existing wells on the site shall be capped and abandoned according to state regulations. Documentation must be provided to the city prior to beginning of construction.
- 2. Applicant shall install an oversized 16-inch waterline in Glen Oak Road per the City's Water Master Plan. Applicant may request Water System Development Charge credit per Title 13.20 subject to approval and funds availability.

B. SANITARY SEWER

- 1. The applicant shall obtain sanitary sewer system design approval from DEQ prior to Glen Oaks Meadows Planned Unit Development Final Plan.
- 2. Existing septic system on site shall be abandoned and documentation provided from Clackamas County prior to beginning construction.
- 3. The applicant shall provide proof of final payment of the Sanitary AFD before final plat recordation.

C. DEDICATION AND EASEMENTS

- 1. The street Loop Lane and the alley shall be public rights-of-way.
- 2. The applicant shall dedicate 10 feet of right-of-way on the applicant's side of Glen Oak Road.
- 3. The applicant shall dedicate a minimum of 50 feet of right-of-way for all proposed interior local streets. All cul-de-sac bulbs and eyebrows shall have minimum 54-foot radii right-of-way dedications. The alley shall be a minimum of 20 feet wide right-of-way dedication.
- 4. Public utility easements shall be dedicated to the public on the final plat in the following locations: ten feet along all street frontages, rear lot lines, and the project boundary, and five feet along all side lot lines. Easements required for the final engineering plans shall also be dedicated to the public on the final plat. The side lot line requirements can be waived once utility locations have been identified and the need for side lot line easements is determined by the City Engineer to be unnecessary except where identified by said utilities.
- 5. All off-site utility easements required for this project shall be obtained and recorded by the applicant prior to approval of construction plans.

- 6. Tracts B, C, D, E, F, and G shall be privately owned and maintained.
- 7. The applicant shall show non-vehicular access strips along the entire site's frontage with Glen Oak Road, along the western side of Glen Oak Meadows from Glen Oak Road to the multi-family access, the entire frontages of lots 30-37 except for the alley, the frontages of all tracts, and along the street frontages of all corner lots except for the 40 feet on each street furthest from the intersection unless approved by the Engineering Manager.
- 8. The applicant shall show a reserve strip dedicated to the City at the end of all new stub streets. These reserve strips shall be noted on the plat to be automatically dedicated as public right-of-way upon the approval of right-of-way dedication and/or City land use action approval of adjacent properties.

D. ENGINEERING REQUIREMENTS

1. The applicant shall sign a Non-Remonstrance Agreement for the purpose of making sanitary sewer, storm sewer, water or street improvements in the future that benefit the property and assessing the cost to benefited properties pursuant to the City's capital improvement regulations in effect at the time of such improvement.

CITY OF OREGON CITY

ENGINEERING POLICY 00-01 Guidelines for Development

EFFECTIVE: March 31, 2000

PREPARED BY

COMMUNITY DEVELOPMENT DEPARTMENT

320 Warner-Milne Road

Post Office Box 3040

Oregon City, Oregon 97045-0304

Telephone: (503) 657-0891

Engineering Division



City of Oregon City Engineering Policy 00-01

The following sections outline some of the key requirements and helpful hints for those unfamiliar with providing public improvements as required by the Oregon City Municipal Code and Oregon City Public Works Standards. Copies of these Codes and Standards are available at City Hall for a nominal price. Most engineering firms in the local area already own these Codes and Standards to enable them to properly design their City projects. This is not an all inclusive list of City requirements and does not relieve the applicant from meeting all applicable City Code and Public Works Standards.

General

 All required public works improvements shall be designed and constructed to City standards. These standards include the latest version in effect at the time of application of the following list of documents: Oregon City Municipal Code, Water Master Plan, Transportation Master Plan, Sanitary Sewer Master Plan, and the Drainage Master Plan. It includes the Public Works Design Standards, which is comprised of Sanitary Sewer, Water Distribution System, Stormwater and Grading, and Erosion Control. This list also includes the Street Work Drawings, Appendix Chapter 33 of the Uniform Building Code (by reference), and the Site Traffic Impact Study Procedures. It may also include the City of Oregon City Review Checklist of Subdivision and Partition Plats when the development is a Subdivision, Partition, or Planned Unit Development.

Water (Water Distribution System Design Standards)

- The applicant shall provide water facilities for their development. This includes water mains, valves, fire hydrants, blow-offs, service laterals, and meters.
- All required public water system improvements shall be designed and constructed to City standards.
- The Fire Marshall shall determine the number of fire hydrants and their locations. Fire hydrants shall be fitted with a Storz metal face adapter style S-37MFL and cap style SC50MF to steamer port. This adapter is for a 5-inch hose. All hydrants to be completed, installed, and operational before beginning structural framing. Hydrants shall be painted with Rodda All-Purpose Equipment Enamel (1625 Safety Orange Paint) and all chains shall be removed from the fire hydrants.
- Backflow prevention assemblies are required on all domestic lines for commercial buildings, all fire service lines, and all irrigation lines. Backflow prevention assemblies are also required on residential domestic lines greater than or equal to 2-inch diameter. These assemblies are also required where internal plumbing is greater than 32 feet above the water main. The type of backflow prevention device required is dependent on the degree of hazard. City Water Department personnel, certified as cross connection inspectors, shall determine the type of device to be installed in any specific instance. All backflow prevention devices shall be located on the applicant's property and are the property owner's responsibility to test and maintain in accordance with manufacturer's recommendations and Oregon statutes.
• Any existing wells on the site shall be capped and abandoned according to state regulations. Applicant shall provide documentation to the city before beginning of construction.

Sanitary Sewer (Sanitary Sewer Design Standards)

- The applicant shall provide sanitary sewer facilities to their development. This includes gravity mains, manholes, stub outs, and service laterals.
- All required public sanitary sewer system improvements shall be designed and constructed to City standards.
- Applicant must process and obtain sanitary sewer system design approval from DEQ.
- Any existing septic system on site shall be abandoned and certification documentation provided from Clackamas County before beginning construction.

Stormwater (Stormwater and Grading Design Standards)

- The applicant shall provide stormwater and detention facilities for their development. This includes the stormwater mains, inlets, manholes, service laterals for roof and foundation drains, detention system if necessary, control structure if necessary, inflow and outflow devices if necessary, and energy dissipaters if necessary.
- All required public stormwater system improvements shall be designed and constructed to City standards. Each project is to coordinate with the City Drainage Master Plan, January 1988, and the appropriate individual Basin Master Plan (if adopted) and incorporate recommendations from them as appropriate.
- The stormwater system shall be designed to detain any increased runoff created through the development of your site, as well as convey any existing off-site surface water entering the site from other properties.
- The applicant shall submit hydrology/detention calculations to the City Engineering Division for review and approval before approval of construction plans. Documentation shall be provided to back up calculations. 100-year overflow path shall be shown and shall not cross any developed properties.

Dedications and Easements

• All off-site utility easements required for your project shall be obtained and recorded before approval of construction plans.

Streets

• The applicant shall provide street facilities to their site. This includes the pavement, curbs, gutters, planter strips, street trees, sidewalks, bicycle lanes (when required by the type of street classification), city utilities (water, sanitary and storm drainage facilities), traffic control devices, centerline monumentation in monument boxes, and street lights in compliance with the City Code for Oregon City and its various Master Plans.

- When installation of the first lift of asphalt, applicant shall provide asphalt berms or another adequate solution, as approved by the City Engineering Division, at storm catch basins or curb inlets on all streets. This ensures positive drainage until the applicant installs the second lift of asphalt.
- All street names shall be reviewed and approved by the City (GIS Division 657-0891, ext.168) prior to approval of the final plat to ensure no duplicate names are proposed in Oregon City or the 9-1-1 Service Area.
- All street improvements shall be completed and temporary street name signs shall be installed before issuance of building permits.
- The applicant is responsible for all sidewalks in their development. The applicant may transfer the responsibility for the five-foot sidewalks adjacent to the right-of-way as part of the individual building permit requirement on local streets. However, failure to do so does not waive the applicant's requirement to construct the sidewalks. Applicant shall complete all sidewalks on residential lots within one year of public improvement completion acceptance by the City unless a building permit has been issued.
- Applicant shall install sidewalks along any tracts within their development, any pedestrian walkways within their development, and all handicap access ramps required in their development at the time of street construction.
- Street lights shall typically be owned by the City of Oregon City under PGE plan "B" and installed at the expense of the applicant. The applicant shall submit a street light plan, subject to City and PGE approval, prepared by a qualified electrical contractor. Streetlights shall be placed at street intersections and along streets at property lines. The required lights shall be installed by a qualified electrical contractor. Streetlights are to be spaced and installed per recommendations of the Illuminating Engineering Society of North America as published in their current issue of IES, RP-8 to provide adequate lighting for safety of drivers, pedestrians, and other modes of transportation. Streetlights shall be 100-watt high-pressure sodium fixtures mounted on fiberglass poles with a 25-foot mounting height unless otherwise specified. The applicant shall dedicate any necessary electrical easements on the final plat. All streetlights and poles shall be constructed of material approved by PGE for maintenance by PGE.

Grading And Erosion Control

• The applicant's engineer shall submit rough grading plan with construction plans. The engineer shall certify completed rough grading elevations to +/- 0.1 feet. For single family residential developments, a final residential lot-grading plan shall be based on these certified grading elevations and approved by the City Engineer before issuance of a building permit. If significant grading is required for the residential lots due to its location or the nature of the site, rough grading shall be required of the developer before the acceptance of the public improvements. There shall not be more than a maximum grade differential of two (2) feet at all site boundaries. Final grading shall in no way create any water traps, or create other ponding situations. Submit one copy (pertinent sheet) of any residential lot grading for each lot (e.g., 37 lots equals 37 copies).

- An Erosion Prevention and Sedimentation Control Plan shall be submitted for City approval. Applicant shall obtain an Erosion Control permit before any work on site.
 - Dewatering excavations shall not be allowed unless the discharge water meets turbidity standards (see next bullet) or is adequately clarified before it enters on-site wetlands, drainage courses, and before it leaves the site. Discharge from man-made, natural, temporary, or permanent ponds shall meet the same standard.
 - Construction activities shall not result in greater than 10 percent turbidity increase between points located upstream and downstream of construction activities.
 - Effective erosion control shall be maintained after subdivision site work is complete and throughout building permit issuance.
 - Plans shall document erosion prevention and control measures that will remain effective and be maintained until all construction is complete and permanent vegetation has been established on the site.
 - Responsible party (site steward) for erosion control maintenance throughout construction process shall be shown on the Erosion Control Plan.
 - Staff encourages applicant to select high performance erosion control alternatives to minimize the potential for water quality and fish habitat degradation in receiving waters.

Engineering Requirements

- Design engineer shall schedule a pre-design meeting with the City of Oregon City Engineering Division before submitting engineering plans for review.
- Street Name/Traffic Control Signs. Approved street name signs are required at all street intersections with any traffic control signs/signals/striping.
- Applicant shall pay City invoice for the manufacture and installation of permanent signs for street names and any traffic control signs/signals/striping.
- Bench Marks. At least one benchmark based on the City's datum shall be located within the subdivision.
- Other Public Utilities. The applicant shall make necessary arrangements with utility companies for the installation of underground lines and facilities. The City Engineer may require the applicant to pay these utility companies to use trenchless methods to install their utilities in order to save designated and marked trees when the utility crosses within a dripline of a tree marked, or identified, to be saved. Applicant to bear any additional costs that this may incur.
- Technical Plan Check and Inspection Fees. The current Technical Plan Check and Inspection Fee shall be paid before approval of the final engineering plans for the required site improvements. The fee is the established percentage of a City-approved engineer's cost estimate or actual construction bids as submitted by the applicant. Half of the fee is due upon submitting plans for final approval; the other half is due upon approval of the final plans.
- It is the City's policy that the City will only provide spot check inspection for non publicfunded improvements, and the applicant's engineer shall provide inspection and surveying services necessary to stake and construct the project and prepare the record (asbuilt) drawings when the project is complete.

City of Oregon City Engineering Policy 00-01

- Applicant shall submit two (2) sets of final engineering plans for initial review by the City Engineering Division to include the drainage report (wet signed by the responsible engineer), and the cost estimate with half of the Technical Plan Check fee. The engineering plans shall be blackline copies, 24" x 36". Blueline copies are not acceptable.
- For projects such as subdivisions, partitions, and Planned Unit Developments, the applicant shall submit a completed copy of the City's latest final subdivision and partition plat checklist, and a paper copy of the preliminary plat.
- Two (2) copies of any revised documents (in response to redlined comments) will be required for subsequent reviews, if necessary.
- The applicant shall submit, for the final City approval, six (6) copies of the plans with one full set wet signed over the engineer's Professional Engineer Oregon stamp.
- Minimum Improvement Requirements. Applicant shall provide a surety on land division developments for uncompleted work before a plat is recorded as required by a Land Division Compliance Agreement (available in hard copy or electronic version from City Engineer office). This occurs if the applicant wishes to record the final plat before completion of all required improvements. Surety shall be an escrow account or in a form that is acceptable to the City Attorney.
- Upon conditional acceptance of the public improvements by the City, the applicant shall provide a two-year maintenance guarantee as described in the Land Division Compliance Agreement. This Maintenance Guarantee shall be for fifteen (15) percent of the engineer's cost estimate or actual bids for the complete public improvements.
- The applicant shall submit a paper copy of the record (as-built) drawings, of field measured facilities, to the City Engineer for review before building permits are issued beyond the legal limit. Upon approval of the paper copy by the City Engineer, applicant shall submit a bond copy set and two 4-mil mylar record drawings sets.
- The applicant shall submit one full set of the record (as-built) drawings, of field measured facilities, on AutoCAD files on CD-ROM or 3.5-inch diskette, in a format acceptable to the City Engineer, and include all field changes.
- One AutoCAD file of the preliminary plat, if applicable, shall be furnished by the applicant to the City for addressing purposes. A sample of this format may be obtained from the City Geographical Information System Division. This information, and documents, shall be prepared at the applicant's cost.
- The applicant's surveyor shall also submit, at the time of recordation, a copy of the plat on a CD-ROM or 3.5-inch diskette to the City in a format that is acceptable to the City's Geographic Information System Division.
- The City reserves the right to accept, or reject, record drawings that the City Engineer deems incomplete or unreadable that are submitted to meet this requirement. The applicant shall be responsible for all costs associated with meeting this condition. The applicant shall ensure their engineer submits the record drawings before the City will release final surety funds or residential building permits beyond the legal limit.

- Final Plat Requirements, if applicable. The final plat shall comply with ORS 92.010 through 92.190, and City Code. In addition the following requirements shall be required:
 - The applicant, and their surveyor, shall conform to the City's submittal and review procedures for the review and approval of plats, easements, agreements, and other legal documents associated with the division of this parcel.
 - Show the City Planning File Number on the final plat, preferably just below the title block.
 - A blackline copy of the final plat illustrating maximum building envelopes shall be submitted to the Planning Division concurrently with submittal of the plat to ensure setbacks and easements do not conflict.
 - > Use recorded City control surveys for street centerline control, if applicable.
 - Tie to City GPS Geodetic Control Network, County Survey reference PS 24286, and use as basis of bearings. Include ties to at least two monuments, show measured versus record, and the scale factor. Monuments may be either GPS stations or other monuments from prior City control surveys shown on PS 24286. If ties are to prior City control surveys, monument ties shall be from the same original control survey. The tie to the GPS control can be part of a reference boundary control survey filed for the land division.
 - Show state plane coordinates on the Point of Beginning.
- The civil construction drawings, once approved by the City Engineering Division, shall have an approval period of one year in which to commence with construction. Once the City Engineer holds the preconstruction conference and construction activity proceeds, plans and drawings shall be valid for as long as the construction takes. Should the approval for the construction drawings expire before construction commences, it shall be the responsibility of the applicant to bring the civil construction documents and plans into conformance with the latest Standards, Specifications, and City Codes that are in place at the time of the update, and bear the cost associated with bringing them into conformance, including additional technical plan check and review costs.
- The applicant shall include requirements for maintaining landscaping and tracts, maintaining surface runoff patterns established for each lot, maintaining any proposed private storm lines or detention, and for individual lot owner's conformance to the City's erosion control standards when establishing or renovating landscaping by including this statement in proposed Conditions, Covenants, and Restrictions (CC & R's), plat restrictions, or some other means acceptable to the City Attorney. The applicant shall submit the proposed method and statement to the Planning staff for review and approval, before final plat approval.
- Construction vehicles and other vehicles associated with the development shall only use the entrance as approved by the City Engineering Division to enter their site and these vehicles shall park or wait on the construction site. The applicant should provide a specified area of off street parking for the site's construction workers which meets the erosion/sedimentation control measures. Supplier vehicles and trailers (hauling vehicles) and actual construction vehicles shall not park, or wait, in such a manner that would block or hinder access for emergency vehicles. This includes private vehicles belonging to construction workers, supplier vehicles and trailers, and actual construction vehicles.

- Site construction activity is to only occur between 7:00 AM and 6:00 PM on Monday through Friday; between 9:00 AM and 6:00 PM on Saturday. No site improvement construction activity is allowed on Sunday. Construction activity includes all field maintenance of equipment, refueling, and pick up and delivery of equipment as well as actual construction activity.
- It is the responsibility of the applicant to ensure that all applicable outside agencies are contacted and any appropriate approvals obtained for the construction of the project. The applicant shall ensure copies of approvals are supplied to the City project files. Failure to do so shall be a justification for the City to prevent the issuance of a construction or building permit or to revoke a permit that has been issued for this project.
- The applicant shall be responsible for paying all fees associated with the recording of documents such as non-remonstrance agreements, easements, and dedications.
- Should the applicant, or any assigns or heirs, fail to comply with any of the conditions set forth here, the City may take the appropriate legal action to ensure compliance. The applicant shall be responsible for any City legal fees and staff time associated with enforcing these conditions of approval.

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CITY OF OREGON CITY

PLANNING COMMISSION

 320 WARNER MILNE ROAD OREGON CITY, OREGON 97045

 TEL 657-0891
 FAX 657-7892



STAFF REPORT Date: April 10, 2000

Complete: 2/24/2000 120 Day: 6/23/2000

FILE NO.: VR 99-07

FILE TYPE: Quasi - Judicial

HEARING DATE:

April 10, 2000 7:00 p.m., City Hall 320 Warner Milne Road Oregon City, OR 97045

APPLICANT/OWNER:

James McKnight 161 Barclay Avenue Oregon City, Oregon 97045

ORIGINAL

REQUEST: Variance to allow a reduction in the lot depth for Tax Lot 5400 from 100 feet to 80 feet (+/-) to allow a future land partition.

LOCATION: 161 Barclay Avenue, Oregon City 97045. Approximately 200 feet east of the intersection of Barclay and Brighton Street. Clackamas County Map Number 2-2E-31DC, Tax Lot 5400.

SUMMARY OF RECOMMENDATION: Deny the request.

REVIEWERS: Paul Espe, Associate Planner

VICINITY MAP: See Exhibit A

BACKGROUND:

A lot line adjustment was filed and approved by the City of Oregon City on April 1, 1991 which conveyed approximately 6,800 square feet of property from Tax Lot 5500 to 5400 owned by the applicant (See Exhibit H). The property was purchased from Mr. Al Bittner through a statutory warranty deed recorded with the County Clerk Recorder's office in April 30, 1991. A record of survey for the lot line adjustment was not recorded with the County Surveyor's office because a recording of survey documents was not required under County Ordinances until 1994.

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The property was conveyed from Mr. Bittner to Mr. McKnight so that it could be combined and subsequently partitioned under the 1994 subdivision ordinance, which allows a 60-foot depth and/or width. (See OCMC 16.20.080, 1994; Exhibit F).

A pre-application conference was held on August 5, 1998 where the applicant was informed that the City was making some changes to the Subdivision Ordinance but was told the changes being proposed would not affect the partition request. Contrary to that statement, Section 16.28.080 (1994) was removed when the new subdivision ordinance was adopted in October of 1998 which automatically required all partitions and subdivisions to follow the dimensional standards of the underlying zone.

The applicant was informed in a subsequent pre-application conference on June 24, 1999, that in order to actually partition the property, a variance to the existing lot size requirements is required and is the reason that this request is before the Planning Commission at this time.

BASIC FACTS:

- 1. The subject lot is located approximately 200 feet east of the intersection of Barclay and Brighton Street. Clackamas County Map Number 2-2E-31DC, Tax Lot 5400. The common address is 161 Barclay Avenue.
- 2. The property is approximately 23,800 square feet and proposed Lot 1 would be 13,780 square feet in size and several large fir trees are located at the rear portion. The property is zoned R-10, Single-Family Dwelling District and Designated "LR" Low Density Residential in the Comprehensive Plan. The surrounding land uses are zoned R-10 and R-6, Single Family Dwelling District and RD-4 Two Family Dwelling District.
- 3. The applicant is requesting a variance to allow a reduction in the lot depth for a proposed lot from 100 feet to 80 feet (+/-) to allow a future land partition. This is a 23,800 square foot property that would be divided into two lots of 10,020 square feet (lot 1) and 13,780 square feet (lot 2). (See proposed partition plat Exhibit B). Lot 1 would have frontage and access from Charmin Street, a lot depth of 80 feet and a width of approximately 131 feet. The subject property is located in the Rivercrest Subdivision.
- 4. Transmittals on this proposal were sent to various City departments, affected agencies and property owners. Comments were received from the Building Official and the Assistant Fire Marshall for Tualatin Valley Fire and Rescue. All agencies indicated that the proposal does not conflict with their interests. (See Exhibits C and D). A petition recommending variance approval signed by five property owners in the vicinity was received on March 20th 2000 (See Exhibit I). In addition, staff received two letters from Linda Lord, 142 Holmes Lane (Exhibits E and J) and another letter from Mark Reagan, 141 Barclay Avenue (Exhibit K). The first letter states that Ms. Lord intends to uphold the residential CC&R's limiting construction to one residential building per lot through civil action; and the second addresses the variance criteria. The letter from Mark Reagan also objects to the proposed variance (See Exhibit L).

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OREGON CITY COMPREHENSIVE PLAN CONSISTENCY:

- A. Statement in Growth and Urbanization Section: "It is the City's policy to encourage small lot single-family development in the low density residential areas..."
- B. Community Facilities Policy No. 7: "Maximum efficiency for existing urban facilities and services will be reinforced by encouraging development at maximum levels permitted in the Comprehensive Plan and through infill of vacant City land".

DECISION MAKING CRITERIA:

Municipal Code Standards and Requirements:

Chapter	17.60	Variances	
-	17.10	"R-10", Single-Family Dwelling District	

VARIANCE ANALYSIS AND FINDINGS:

The criteria for review of this variance request are found in section 17.60.020 of the City of Oregon City Municipal Code. A variance may be granted only in the event that all of the following conditions exist:

Criterion A: That the literal application of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the surrounding area under the provisions of this ordinance; <u>or</u>, extraordinary circumstances apply to the property which do not apply to other properties in the surrounding area, but are unique to the applicant's site.

To satisfy this criterion, an applicant must demonstrate that they are a right commonly enjoyed by others is being denied, or that there are unique property features that make it extremely difficult or impossible to comply with the criteria that apply to other properties in the City.

The table below contains the substandard properties listed in the applicant's response under Criterion A (See Exhibit B). These are properties that are located in the Rivercrest Subdivision and around the Rivecrest neighborhood defined in the City of Oregon City Neighborhood Associations Map.

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Tax Lot	Dimensions	Comment in R	ivercrest Neighborhoo
2-2E-31DC			
6200	100 feet deep	Triangular shape: 100 feet deep at apex of lot	Yes
8000	100 feet deep	Triangular shape: 100 feet deep at apex	Yes
3-2E-6AB			· · · · · · · · · · · · · · · · · · ·
5300	100 feet deep	Triangular shape < 100 feet	Yes
7700	80 x 83.3	Below standard	Yes
9200	125.5 x 80	Dual frontage through lot rotated orientation	Yes
9300	125 x 80	Rectangular shaped rotated orientation	Yes
3-2E-6AC			
100	80 x 110	Dual frontage rotated orientation	Yes
200	80 x 110	Dual frontage rotated orientation	Yes
1300	75 x 90.52 (Av. Depth)	Irregular shaped substandard lot	Yes
5700	66.5 x 92.05 (Av. Depth)	Irregular shaped substandard lot	Yes
3-2E-6BA	<u> </u>		
4500	90 x 85	Substandard lot	No
3-2E-6BB			
3701	97 x 85	Substandard lot	No
3903	92 x 118	Rotated orientation	No
4007	177 x 57.5 x 113.3 x 60 x 60	Polygonal shaped	Yes
4008	130 x 60	Dual frontage, rotated orientation	Yes
4009	120 x 62	Dual frontage, rotated orientation	Yes
3-1E-1DA			
600	42 x100 feet		No
700	53 x 100 feet		No
1500	97 x 74 feet	Substandard lot	No
1800	205 x 37.6 feet	Long substandard lot	No
1900	205 x 37.6 feet	Long substandard lot	No

* The Neighborhood Boundary includes more territory than the subdivision boundary

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While the majority of the properties are outside of the Rivercrest Subdivision most of them are still within the Rivercrest Neighborhood. The Planning Commission is left to decide the extent of *"surrounding area"* when considering this standard. Staff finds that the surrounding area can include the Neighborhood Boundary to illustrate the variety of lot sizes to allow for a greater sample size.

In either case, the applicant has failed to demonstrate that the any of the lots provided in the list above were approved by a legal partition or variance after any of the subdivisions in this area were created. While there may be some substandard lots in the surrounding area, the majority of these lots are existing non-conforming or previously existing remnant lots of other land divisions in the Rivercrest Neighborhood. The City has no record that any of these substandard lots were created by a partition or variance request. The applicant is the only person in the Rivercrest Subdivision, *or surrounding area*, who wishes to create a substandard lot through the variance process. The applicant would not be denied a right commonly enjoyed by others if this request was denied.

Moreover, there is nothing unique about the applicant's property that sets it apart from other properties, other than the fact that a lot line adjustment was processed to increase its area. This is not the type of unique circumstance that justifies a variance or satisfies this criterion.

All property owners in Oregon City must comply with the minimum lot depth requirements that apply within the respective zoning districts. Staff finds that the applicant has not presented evidence that demonstrates the applicant will be deprived of rights commonly enjoyed by other property owners.

The literal application of the provisions of this ordinance would not deprive the applicant of rights commonly enjoyed by other properties in the surrounding area under the provisions of this ordinance; and this issue is not unique to the applicant's site, therefore, section 17.60.020(A) cannot be met.

Criterion B: That the variance from the requirements is not likely to cause substantial damage to adjacent properties, by reducing light, air, safe access or other desirable or necessary qualities otherwise protected by this ordinance.

This property has existed in this configuration since the lot line adjustment was approved in 1991. Creation of an additional lot under the proposed dimensions would not cause significant adverse impacts to the surrounding area. The lot orientation would merely be rotated so that the lot depth and width are reversed. This would allow a house to be constructed that would meet and exceed the setback requirements of the R-10 zone (see Exhibit B).

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The requested variance to the lot depth would not directly affect or impact the abutting properties. The request does not reduce light, air, safe access or other desirable qualities as protected under the City Code. In light of the existing and proposed surrounding lots, staff concurs with the applicant's finding that approval of a reduced lot depth will not cause substantial damage to adjoining properties.

Therefore, this section 17.60.020(B) can be met.

Criterion C: The applicant's circumstances are not self-imposed or merely constitute a monetary hardship or inconvenience. A self-imposed difficulty will be found if the applicant knew or should have known of the restriction at the time that the site was purchased.

Under this criterion, if a circumstance that gives rise to the need for a variance is self-imposed the variance will not be granted. If an applicant knew or should have known that a standard applies that will preclude a proposed development, the circumstance is self-imposed.

In April 1991, the applicant was informed by City Planning Staff that new parcels created through the partitioning process would be exempt from the minimum average width and depth requirements of various districts. The applicant purchased property from the adjoining parcel to add sufficient area to create second lot at the rear of the property.

On August 5, 1998 the applicant was again informed by City Planning Staff that the new subdivision ordinance would not change previous partitioning rules described under Ch.16.28.080 (1994), (see Exhibit F). Nevertheless, this section was removed from the subdivision and partitioning ordinance when this title was adopted in October of 1998. Removal of this provision automatically required all partitions and subdivisions to follow lot dimension standards of the underlying zone.

On June 4, 1999, the applicant was informed of these changes in the subdivision ordinance and that a variance would be required prior to the processing of this partition.

The Planning Commission must decide if the city has any obligation to allow for hardship under this standard in light of previous pre-application discussions, or if the request is to be evaluated at face value under the current standards.

OCMC 17.50.050 discusses the purpose of pre-application conferences, which are to provide an opportunity for staff to inform the applicant of required approval standards that may affect the proposal. The pre-application discusses those review standards in place at the time, and may not predict future conditions. Any failure by staff to recite all relevant land use requirements shall not constitute a waiver of any standard or requirement by the City. This in turn also relieves the City from entertaining or approving any exceptions to this rule without undergoing the appropriate process.

Clearly, the creation of a lot that is substandard in size is a self-imposed difficulty. Criterion C and the variance process generally apply to previously existing lots that may have a physical constraint, which precludes someone from the full use of the property. Variances to lot size are sometimes granted if they involve a previously existing platted lot of record that is slightly undersized.

The criterion is not met in this case because the applicant failed to partition the lot when the previous partitioning standards were in place. The lack of financial resources or other monetary hardship is not sufficient reasoning for the delay in processing the land division.

Therefore Staff finds that the creation of a substandard lot is a self-imposed difficulty and since the applicant did not file the partition at the time the relevant standards were in place, the circumstances are considered self-imposed and the variance must be denied.

Staff finds that Section 17.60.020(C) is not met.

Criterion D: No practical alternatives have been identified which would accomplish the same purposes and not require a variance.

The submitted evidence fails to explore the option of conveying 20 feet of additional property from the adjacent Tax Lot (TL 5500). Each of the lots along this block are 200 feet deep and the adjacent parcel could provide the required 100 foot lot depth for proposed Parcel 1 without requesting a variance (See Exhibit B). It is for this reason that criterion D cannot be met.

Staff finds that Section 17.60.020(D) is not met.

Criterion E: That the variance requested is the minimum variance, which would alleviate the hardship.

The submitted evidence fails to explore the possibility of conveying any amount of additional property from the adjacent Tax Lot (TL 5500) to reduce the amount of lot depth being varied (see finding under criterion D). The adjacent lot could provide as much as 20 additional feet of property allowing the required 100-foot lot depth to be satisfied thus eliminating the need for a variance entirely. If the adjacent property owner does not wish to convey that quantity of property the possibility of supplying a smaller amount should be explored to minimize the amount of lot depth being varied. It is for this reason that the submitted evidence does not satisfy Criterion E.

Staff finds that section 17.60.020(E) is not met.

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Criterion F: That the variance conforms to the Comprehensive Plan and the intent of the ordinance being varied.

This proposal has been found to be consistent with Policy 1 of the Growth and Urbanization section of the Comprehensive Plan which is to provide land use opportunities within the City's Urban Growth Boundary. In addition, development and urban renewal within Oregon City boundaries will decrease the current land use burden on lands within the urban growth boundary and increase available housing within City boundaries, consequences which are found to be consistent with the Comprehensive Plan.

Section 17.60.020(F) is met.

CONCLUSION:

Staff finds that the requested variance does not meet Criterion A, because the evidence submitted to the record failed to prove that the applicant would be deprived of rights commonly enjoyed by others, since none of the substandard lots mentioned in the record were created through the variance process. Moreover, the submitted evidence did not prove that unique circumstances apply to this property.

The submitted information does not meet Criterion C because the creation of a substandard lot through the partitioning process was found to be a self-imposed hardship. Finally, In order to meet Criterion D and E the applicant needs to explore alternatives to the requested variance through the provision of additional territory from Tax Lot 5500. By adding more lot area to the subject parcel the applicant may reduce the amount of lot depth being varied or eliminate the need for a variance entirely.

RECOMMENDATION:

In light of the above listed evidence and the findings submitted to the record, Staff recommends denial of file VR 99-07 for property identified as Clackamas County Map Number 2S-2E-31DC, Tax Lot 5400, (161 Barclay Avenue to allow a lot depth reduction from 100 feet to 80 feet.

EXHIBITS

- A. Vicinity Map
- B. Applicant's written statement and site plan
- C. Oregon City Building Official
- D. Tualatin Valley Fire and Rescue
- E. Correspondence from Linda Lord Regarding CC and R's
- F. OCMC 16.28.080 (1995) previous subdivision lot width and depth standards
- G. Setback Variance Approval 147 Barclay Avenue (Al Bittner)
- H. Lot Line Adjustment approval between TL 5500 and TL5400 (4/1/91)

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- I. Petition from adjacent neighbors recommending approval for the requested variance.
- J. Letter from Linda Lord addressing criteria
- K. Letter from Mark Reagan objecting to proposal



APPLICATION FOR A VARIANCE

Applicant:	Mr. James A. McKnight 161 Barciay Avenue Oregon City, Oregon 97045 (503) 656-6435	
Location:	161 Barclay Avenue, Oregon City	
Legal Description:	Tax Lot 5400 2S 2E 31DC, Clackamas County	
Assessor's Account Number:	581828	FRE C
Zone:	R-10 (Low Density Residential)	RECEIVED
Site Size:	10,020 SF/13,780 SF	Y1
Proposal:	To modify the zoning requirement, in an R-10 Zone, from a 100' lot depth to an 80' lot depth.	

<u>EXHIBIT</u> B Applic<u>umts witten source</u> and site plan UR49-07

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2.	Project Narrative
3.	Tentative Map
4.	Map from Title Company
5.	Pre-Application Notes
6.	Mailing Labels

7. Tax Map

NARRATIVE JUSTIFICATION FOR A VARIANCE FOR PROPERTY LOCATED AT 161 BARCLAY AVENUE, OREGON CITY, OREGON.

<u>REQUEST</u>: TO MODIFY THE ZONING REQUIREMENT, IN AN R-10 ZONE, FROM A 100' LOT DEPTH TO AN 80' LOT DEPTH.

<u>CRITERION A:</u> Provide a list of properties in our area which have less than the required lot depth in an R-10 Zone.

Tax Lot 6200 and 8000 2 2E 31 DC; Tax Lots 5300, 7700, 9200, 9300, 3 2E 6AB; Tax Lots 100, 200, 1300, 5700, 3 2E 6AC; Tax Lot 4500 3 2E 6BA; Tax Lots 3701, 3903, 4007, 4008, 4009 3 2E 6BB; Tax Lots 600, 700, 1500, 1800, 1900 3 1E 1DA.

I would like approval of my request to modify the lot depth on my property.

There are many, at least 20, other lots in the area that do not meet the lot depth requirement, (see previous list). These lots do not negatively impact the livability of the area.

Money from the sale of the newly created lot would be used to upgrade and repair the home located at 161 Barclay Ave., thereby increasing the value of the home and the tax base in the area. Failure to invest in the home at 161 Barclay Ave. would lower its value, and therefore negatively impact the value of all the other residences in the area.

The new lot would provide an additional building site, increasing the tax base in the area by approximately \$2,000 per year.

<u>CRITERION B:</u> Provide detail stating why a reduced lot depth will not have an adverse impact on adjacent properties.

Any home built on the new lot would be limited to a single level, with no windows on the East side. There is also and existing 6 foot fence between the proposed building site, and the adjacent property, providing more than adequate privacy. Other landscaping could provide additional privacy if so desired by the neighbors. Until now, a 6' sight obscuring fence has been adequate to provide privacy for all the residents in the area.

Any new home built would meet, and in most cases, exceed the setbacks of adjacent properties.

<u>CRITERION C:</u> Describe in detail, how the creation of this lot, with a substandard depth dimension, is not a self imposed hardship.

When I bought the additional property, adjacent to my lot, in April 1991, from Al Bitner, a long time member of the Planning Commission, he advised me to go to City Hall and satisfy myself that it would be a legal building site...

I went to the City and talked to Kate Daschle. I showed Kate a sketch of my proposed building lot and she said it met all the parameters of a partition in the R-10 zone.

On August 5, 1998, when I received pre-application approval of my partition (file No. PA 98-78), I asked Tamara Deridder to make a note on my file the deadline for filing for a 6 month extension. Tamara noted that it would be February 1999 and at that time she told me that the Planning Department was making some changes to the City Code but it wouldn't have any effect on my partition. I figured I would need the additional time to save the money for a survey and the partition fee.

On August 4, 1999, I applied for my extension and was met with a little confusion over my request. I called weekly to check on the status and received a reply 7 weeks later that I had to re-apply and the City would waive the fee. Apparently, when the City Code was changed (October 1, 1998), no one realized it would effect the Partition Section 16.28.080, thus making Tamara's comment an honest mistake. None the less, now I had to save enough for a variance fee also.

On June 24, 1999, Pre-Application (File No. PA 99-60) was approved and I was cleared to proceed with a variance/partition request and present it to the Planning Commission.

CRITERION D: Are there any alternatives which would accomplish the same purpose?

No practical alternatives have been identified which would accomplish the same purpose and not require a variance.

<u>CRITERION E:</u> Is the variance the absolute minimum that would alleviate the hardship?

The variance requested is the minimum possible, under the circumstances.

<u>CRITERION F:</u> Does the variance requested conform to the Comprehensive Plan and the intent of the ordinance being varied?

The Plan does not specifically address the issue of a simple partition for a good reason. The City had let the need for a Plan go until the State finally advised us that it was a requirement, under the provisions of the 1973 Oregon Land Use Act, that we adopt a plan without delay! We had no time to deal with minor issues such as partitions. However, I did find material suggesting that the concept of partitioning should be encouraged. Several quotes from the Plan are:

"To maintain an Urban Growth Boundary to prevent sprawl; Plan for full public services in the urbanizing area; Housing is a primary source of income through property taxes; Housing is aimed at the development of new housing units; The City must ensure that transportation facilities and urban services are not overburdened by residential development in the Urban Growth Area; The City shall encourage the private sector in maintaining an adequate supply of single family housing units supported by the elimination of unnecessary government regulations; and it is the City's policy to encourage small lot single-family development in the low density residential areas."



REQUEST: To modify the zoning requirement, in an R-10 Zone, from a 100' lot depth to an 80' lot depth, while meeting all the setbacks.

NEW LOT SIZE: 10,020 SQ. FT.

OWNER: Jim & Diane McKnight 161 Barclay Ave 656-6435



BARCLAY AVE.



cor.



CITY OF OREGONCITY

CIMMUNTY DEVELOPMENT DEPARTMENT, SIGWARRENMLSEROAD, P.Q. BOX 351, OR BRONGTY, OR 97046-008, (503)-657-0991FAX: (503)657-7892

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LAND USE APPLICATION FORM

REQUEST: Type II A Partition Site Plan/Design Review Subdivision Extension Modification	Type III Conditional Use A Variance Planned Development Modification	Pian Amendment
STANDARD PR Please print or type the fo	Vater Resources Unstable	K EXPEDITED ze your application request:
PROPERTY OWNER (if different): PHYSICAL ADDRESS OF PROPERT DESCRIPTION: TOWNSHIP: _2.5. PRESENT USE OF PROPERTY:	ES A. MCKNIGH Y: 161 BARCLAY RANGE: <u>2E.</u> SECTION RESIDENTIAL	T AVE. N: <u>310C</u> TAXLOT(S): <u>5400</u>
PROPOSED LAND USE OR ACTIVI DISTANCE AND DIRECTION TO IN 100' WEST CLOSEST INTERSECTION: BRID PRESENT ZONING: R-10 TOTAL AREA OF PROPERTY: 2	TERSECTION:	VICINITY MAP
Land Divisions PROJECT NAME: <u>MCKANIG A</u> NUMBER OF LOTS PROPOSED: MINIMUM LOT SIZE PROPOSED: MINIMUM LOT DEPTH PROPOSE MORIGAGEE, LIENHOLDER, VENDO CHAPTER 237 REQUIRES THAT IF Y NOTICE, IT MUST BE PROMPTLY PURCHASER	OR, OR SELLER: ORS	BARCLAY BARCLAY PARK OR.

NARRATIVE JUSTIFICATION FOR A VARIANCE AND MINOR PARTITION FOR PROPERTY LOCATED AT 161 BARCLAY AVE., OREGON CITY, OR.

The owners circumstances are not self-imposed. After my pre-app was approved on August 5, 1998, the City changed the Code October 1, 1998 thereby requiring a variance to the existing 80' lot depth. The previous Code required a 60' lot depth.

A variance from the requirements will not cause substantial damage to adjacent properties. I find no practical alternatives which would accomplish the same objective without this variance, other than "Grandfathering" my rights to the previous Code.

The variance requested is the minimum that can solve the issue and still conforms to the Comprehensive Plan and the intent of the ordinance being varied.

Sincerely,

James A. m. Knight

James A. McKnight 161 Barclay Avenue 503-656-6435

City of Oregon City Pre-Application Conference Summary

Pre-application conferences are required by Section 17.50.030 of the City Code, as follows:

- (A) PURPOSE: The pre-application conference is to provide the applicant the necessary information to make an informed decision regarding their land use proposal.
- (B) A pre-application conference is required for all land use permits.
- (C) Time Limit: A pre-application conference is valid for a period of six (6) months.
- (D) An omission or failure by the Planning Division to provide an applicant with relevant information during a pre-application discussion shall not constitute a waiver of any standard, criterion, or requirement of the City of Oregon City. Information given in the conference is subject available information and may be subject to change without notice.

NOTE: The subsequent application may be submitted to any member of the Planning Staff.

DATE: June 24, 1999
APPLICANT: Vin Mc Knight
SITE ADDRESS: 22E 3DC Tan Lot 5400: 161 Bar by Ave
PROPERTY DESCRIPTION:
PROPERTY DESCRIPTION: STAFF: Ton Bouillion, Byon Cosque, Joy Toll ZONING: R-10
PROPOSED USE/ACTIVITY: 2 br printer variance to depth
INFORMATION NECESSARY TO BEGIN DEVELOPMENT: This listing of information does not preclude
t ¹ Community Development Department or hearings body from requesting additional data necessary to make a
1. Jmmendation and/or decision regarding the proposed activity.
1. PLANNING
A. Setbacks/Zoning: R-10" standards: Front 25; Rear 20; Side 8/10'
B. Design Review Standards (check list attached):
1) Parking Requirements: <u>N/A</u>
2) Landscaping: N/A
C. Signing: N/A
D. Other:
2. ENGINEERING
A. Grading: Grading point UBC and residential lot gooding criteria B. Drainage: Discharge to appoint discharge point, sharloatin of stor line in the vicinity of 147 Bandayth
B. Drainage: Discharge to appoind discharge Noint, sharloatin of ston line in the vicinity of 14) Banlayte
C. Sanitary Sewer: Sanitary concravailable in Charnen
D. Water: Water Anailable in Charman
E Right-of-Way Dedication/Easements: Encounts required for attiliting crossing proposed lots
Street Improvements (including continuation of existing streets within subdivisions):
nance requirement (Non-venous rance aqueckent)
G. Specjal Analysis (traffic study, geotechnical study, EIS): high ground hater possible on
site.
H. Development Impact Statement required with Subdivision applications.

3. BUILDING

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A	Proposed Construction Type:
E	Number of Stories:
Ċ.	Square Footage:
D.	Number of Buildings:
E.	Type of Occupancy:
F.	Fire Sprinklers:
G.	Valuation (estimate): S
H.	Fire/Life Safety Required: Yes No
	4. FIRE
A .	Fire Flow Requirements (gallons per minute):
B .	Location/Number of Hydrants:
C.	Access Requirements:
D.	Other:
	5. FEES/PERMITS
А.	Design Review:
B.	Plan Check/Building Permit/State 5% Surcharge:
Б. С.	System Development Charges (SDC):
С.	1) Sanitary Sewer:
	2) Water:
	-,
	4) Transportation:
n	5) Parks: Engineering 5% Technical Fee (based on improvements):
D	
E.	Grading Permit:
F.	Right-of-Way Pennit: Land Use Application(s): Variance \$750.
G.	Pactilles \$1,000,
	L ESTIMATED FEES:
IUIA	
OTH	CR COMMENTS:
	ariance of 20% To lot depth must go before the planing
<u></u>	mission (acmc 17.60). Variance & partition may be
	essed as one request before the Planing Commission of
Γ	services requests Variance & Partition Backers given TO
<u>as</u> _	Separate 10/00013
ae	licant at meeting
NOT	CE TO APPLICANT: A property owner may apply for any permit they wish for their property.
F 7	VER, THERE ARE NO GUARANTEES THAT ANY APPLICATION WILL BE APPROVED. No decisions are
A internal	until all reports and testimony have been submitted. This form will be kept by the Community Development

made until all reports and testimony have been submitted. This form will be kept by the Community Development Department. A copy will be given to the applicant. IF the applicant does not submit an application within six (6) months from the Pre-application Conference meeting date, a NEW Pre-Application Conference will be required.

CITY OF OREGON CITY - PLANNING DIVISION PO Box 3040 - 320 Warner Milne Road - Oregon City, OR 97045-0304 Phone: (503) 657-0891 Fax: (503) 657-7892

TRANSMITTAL

 BUILDING OFFICIAL ENGINEER MANAGER FIRE CHIEF PUBLIC WORKS DIREC TECHNICAL SERVICES ODOT - Sonya Kazen ODOT - Gary Hunt TRAFFIC ENGINEERS JOHN REPLINGER @ D JAY TOLL 	CTOR S	 CICC NEIGHBORHOOD ASSOCIATION (N.A.) CHAIR N.A. LAND USE CHAIR CLACKAMAS COUNTY - Joe Merek CLACKAMAS COUNTY - Bill Spears SCHOOL DIST 62 TRI-MET GEOTECH REPORT - NANCY K. DLCD/BRENDA BERNARDS @ METRO OREGON CITY POSTMASTER PARKS
RETURN COMMENTS TO:		COMMENTS DUE BY: March 15 st , 2000
PLANNING PERMIT TECHN Planning Department	VICIAN	HEARING DATE: 4/10/00 HEARING BODY: Staff Review: PC: _X_ CC:
P' REFERENCE TO	FILE # & TYPE: APPLICANT: REQUEST: LOCATION:	VR 99-07 James McKnight Variance to required lot depth from 100 to 80 feet 161 Barkley Avenue TL 5400 Map 2-2E-31DC

The enclosed material has been referred to you for your information, study and official comments. Your recommendations and suggestions will be used to guide the Planning staff when reviewing this proposal. If you wish to have your comments considered and incorporated into the staff report, please return the attached copy of this form to facilitate the processing of this application and will insure prompt consideration of your recommendations. Please check the appropriate spaces below.



The proposal does not conflict with our interests. _ The proposal conflicts with our interests for the reasons stated below.

The proposal would not conflict our interests if the changes noted below are included.

_ The following items are missing and are needed for completeness and review:

Signed Title EXHIBIT C PLEASE RETURN YOUR COPY OF THE APPLICATION AND MAT. 1R 99-07

CITY OF OREGON CITY - PLANNING DIVISION PO Box 3040 - 320 Warner Milne Road - Oregon City, OR 97045-0304 Phone: (503) 657-0891 Fax: (503) 657-7892

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Signed Title

PLEASE RETURN YOUR COPY OF THE APPLICATION AND MATE Tugla the Unley Fire; Resur

EXHIBIT D

VR99-07

99 OCT - 8 '4 11: 24

September 16, 1999

RECEIVED CITY OF OREGON CITY

To: Members of the RNA Steering Committee

From: Linda Lord

After the last meeting of the land use subcommittee another member of the committee asked me to let you know that the property in my subdivision (a small part of the RNA) has deed restrictions, and that I intend to compel compliance with those contractual obligations if other landowners in the subdivision attempt to use their property in ways impermissible under the restrictions. <u>I am not requesting assistance or authorization from you to proceed with enforcement if necessary or for you to be involved in related disputes in any way.</u> Since I've been requested to disclose this information to you, I want you to understand the basic legal principles so you can see the situation in context. I have enclosed a single-page explanation of the general definition of what CCRs are and how they work. Please read it before reading the rest of this memo.

This issue arose because some proposed actions by other landowners in the subdivision where I live, Rivercrest Addition, are contrary to relevant CCRs as I understand them and as the courts have interpreted similar CCRs. Specifically, I oppose the partitioning of the properties in the subdivision since I like to live in a neighborhood with large lots and open spaces. When I bought my home over a decade ago I relied on a CCR binding on the subdivision's lots which states

All lots in the tract shall be known and described as residential lots except as hereafter noted; **no structures shall be** erected, altered, placed or **permitted on any residential building plot** <u>other than one detached</u> <u>single-family</u> <u>dwelling</u> not to exceed two and one-half stories in height, and a private garage for not more than two (2) cars and other outbuildings incidental to residential use.

There are several instances where landowners have had to ask a court to issue a permanent injunction against others in their subdivisions who attempted to resubdivide property subject to the same density restrictions or to otherwise use it contrary to a CCR. My research has revealed four decisions of the Oregon appellate courts that set the precedents for interpreting this deed restriction:

a) In Ludgate v. Somerville, 256 P 1043 (Or 1927), the Oregon Supreme Court ruled that "the purchaser of residence property, relying on restrictive covenants, may enforce them against other lot owners, regardless of city zoning ordinance". They declared it is a constitutional right.

b) In Cadbury v. Bradshaw, 43 Or App 33, 602 P2d 289, review denied 288 Or 519 (1979), the Oregon Court of Appeals ruled that "where restrictive covenants in deeds required all of parcels to be used as residential parcels and prohibited building of more than one dwelling on a parcel, the restrictions prohibited resubdivision by necessary implication" and even assuming resubdivision was permissible, "construction on resubdivided parcels was

EXHIBIT LE Correspondance from Linda Lord 9/16/2000 18 44-07

ITY OF OREGON CIT

not permissible...[and] it would be inconsistent with these provisions for fractional parcels to be created where no residential use can occur.

c) In Swaggerty v. Petersen, 280 Or 739, 572 P2d 1309 (1977), the Oregon Supreme Court required a landowner to remove a house that had been built on a lot created by resubdivision contrary to a CCR which allowed only one residence per lot. Since Mr. Petersen had been told early on by Mr. Swaggerty that the project was contrary to an existing CCR which would be enforced but he proceeded anyway, he was required to remove the house at his own expense and enjoined from building another residence there when one residence was already on the lot.

d) In 1998 the Oregon Court of Appeals cited the Swaggerty decision in another ruling, *Taylor v. McCollom*, 958 P2d 207 at 213 (Or App 1998), and stated that the language of a CCR which provided "Not more than one single-family residence shall be erected or maintained on any lot" was "clear, objective, and precise".

I've attached a copy of a map of the RNA with the area included in the Rivercrest Addition highlighted in green. No other properties are restricted by my subdivision's CCRs.

I hope this memo provides you with useful information. If you want to discuss the matter I invite you to approach me directly with any concerns or any questions I can answer.



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Covenants, Conditions, and Restrictions on Use of Property

When a landowner decides to sell property, he may decide to require the purchaser to restrict the ways in which the property is used and does so by making deed restrictions, called Covenants, Conditions, and Restrictions (CCRs), part of the real estate sales contract. This part of the contract is as binding on the buyer as payment of the purchase price or any other contract term. The promise must be kept or the seller may require the buyer to abide by the agreement, i.e. enforce the CCRs, through the courts. If the seller intends that the deed restrictions apply to all future owners of the property as well, the CCRs are written to "run with the land" and are recorded with the land titles or incorporated into them by reference. They then are part of the chain of title and provide notice to all prospective purchasers of the property that they too would be subject to the restrictions on the use of the land if they decide to buy it.

If a landowner decides to subdivide a parcel and makes CCRs which run with the land applicable to all lots in a residential subdivision, then the contractual agreement is binding among all the subsequent owners of those lots. The purpose of these CCRs is to insure the benefit of the restrictions for the homeowners in the subdivision, making the neighborhood more enjoyable for all concerned. In that situation the CCRs are enforceable by any property owner if another landowner in the subdivision attempts to use his lot in ways other than allowed by the deed restrictions. The principle in law is that anyone who takes possession of land with notice of the deed restrictions cannot in equity be permitted to violate those restrictions.

Deed restrictions are contractual obligations which are not affected by zoning regulations in that a use may be allowed by a zoning ordinance but still be impermissible if contrary to a CCR applicable to the property. The rule is whichever is more restrictive, the deed restriction or the zoning regulation, controls. For instance if an owner wants to paint his house neon orange the municipal officials would not object even if all the neighbors clamored for action, unless there was a relevant city ordinance. However if there was a CCR which regulated the appearance of houses to the extent that a neon orange painted house was not permissible, any of the property owners who were also subject to that CCR could enforce the deed restriction and the landowner would be required by the courts to use a color which was allowable under the contractual obligation.

A property owner who is interested in maintaining a neighborhood characteristic which is guaranteed by a CCR must enforce that CCR <u>promptly and</u> <u>every time</u> he learns it is violated or that another landowner in the subdivision intends to violate it. If he does not, he may be considered to have waived his right to benefit from the CCR when he asks a court to issue an injunction against an impermissible action. In other words, a person may not pick and choose which neighbors he will allow to violate the CCR and which he will oppose.

More information on CCRs is available in an Oregon State Bar publication called *Principles of Oregon Real Estate Law*, Chapter 4: "Covenants, Conditions, and Restrictions". The book can be found at the Clackamas County Law Library which is open to the public and is located in the courthouse on Main Street.

LUDGATE v. SOMERVILLE

AWSON v. HUGHES at al.

Supre. Court of Oregon. June 21, 1927.

ppeal and error s=425-Deposit of appeal notice in post office less than 60 days after jecree, followed by similar service of undertaking, held sufficient (Or. L. § 541).

Service of notice on appeal, by deposit of py in post office within less than 60 days on time of entry of decree, and similar servof undertaking 6 days later, held sufficient, view of Or. L. § 541, providing service by il is deemed complete on first day after date deposit of copy in post office that mail leaves the post office for place to which it is sent.

in Banc.

z.) '

Appeal from Circuit Court, Douglas Coun-: J. W. Hamilton, Judge.

Action by Gordon Lawson against Thomas Hughes and Mary C. De Mund. From the cree, plaintiff and defendant last named heal. On motion to dismiss appeal. Moa denied.

'homas A. Hughes, of Los Angeles, Colo., the motion.

lbert Abraham, of Roseburg, opposed.

AND, J. This is a motion by the respond-, Hughes, to dismiss the appeal. The apd is from a decree which the record shows s entered on September 15, 1926. Hughes seared as his own attorney in the suit i was not represented by any other at-He was a resident of Los Angeles, nev. he proof of service shows that a L. a e notice of appeal and of the unv7 01 taking on appeal were each deposited in post office at Roseburg, Or., addressed him at his proper place of residence in Angeles, Cal., with postage prepaid; the ce having been mailed on November 13, the undertaking on November 19, 1926. y section 541, Or. L., service by mail is ned complete on the first day after the : of deposit of a copy in the post office the mail leaves such post office for the e to which the same is sent. The servof the notice was therefore completed on ember 14th, and this was within 60 days n the time of the entry of the decree. Hutchison v. Crandall, 82 Or. 27, 160 24, and McCargar v. Moore, 88 Or. 682, P. 1107, 171 P. 587, 173 P. 258. A copy te undertaking having been mailed on Noper 19th, service thereof was completed lovember 20th, and, there being no exon to the sufficiency of the sureties, the al was perfected 5 days thereafter. The script, consisting of copies of the decree. e, and undertaking, with proof of service of and of the original testimony, depns, and other papers containing the nce, all properly certified to, was filed is court on February 18, 1927, together

with two orders made and entered by the trial judge extending the time for filing the transcript, both of which orders were made within the time in which a transcript could be filed. On the same day that the transcript was filed, the appellant made an application to this court for an extension of time to April 1, 1927, for filing the printed abstracts, and on March 22, 1927, an order was made extending the time to and including April 1, 1927, on which last-named date the abstracts were filed in strict compliance with the order thus made.

Respondent has wholly failed to point out any legal grounds upon which this appeal can be dismissed, and, finding none in the record, the motion to dismiss must be denied.

LUDGATE V. SOMERVILLE.

Supreme Court of Oregon. May 31, 1927.

 Municipal corporations @=601-Zoning ordinance must have some rational relation to public health, morals, safety, or general welfare.

Only justification for city zoning ordinance is that it have some rational relation to public health, morals, safety, or general welfare, and general scheme of maintaining and perpetuating high class, exclusively residential district promotes general welfare.

2. Covenants emi-Restrictive covenants imposed by former owner on all subsequent owners held not contrary to public policy.

Restrictive covenants imposed by original owner of land on all subsequent owners of loss platted held not contrary to public policy.

Purchaser of residence property in reliance on covenants in deed sgainst use of land for business purposes acquires property right of which he cannot be divested by city zoning ordinance.

 Injunction (=>62(1)—Public Inconvenience Inrequiring consumers of gasoline to go 1,900 feat further held not to prevent enforcement of restrictions on property.

Public inconvenience in having to go 1,900 feet further to unrestricted property is nosufficient to prevent property owner enforcing restrictions against erecting filling station, regardless of profit owner of such filling station might make therefrom.

 Constitutional law d=81—Police power should not be exercised to thwart lawful agreements not operating against public welfare.

Police power is not to be exercised to thwart ir nullify lawful agreements not operating to letriment of public welfare.

dem For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes

of such business? Does it supersede or nuillfy the restrictions previously put upon the property by those who platted it? This interesting and important question is res integ-

n this state. After diligent search we s been able to find only one jurisdiction wherein the point has been squarely passed upon. Gordon v. Caldwell, 235 III. App. 170. The zoning ordinance of Portland divides the city into four districts. It undertakes to place no restriction upon single detached dwelling houses. As stated in section 2 of the ordinance, it was "for the purpose of regulating the location of trades and industries. * * *" The primary object of the law, without doubt, was to prevent the invasion of residential districts by commercial The original owner of Laurelinterests. hurst undertook to do by covenant and agreement that which is in keeping with the general legislative policy of the city. The only justification for such exercise of the police power is that it has some rational relation to the public health, morals, safety, or general welfare. The general scheme of maintaining and perpetuating Laurelhurst as a high class, exclusively residential district certainly promotes the general welfare. The contractual obligations imposed upon all lot owners is not contrary to public policy. An act which so deprives a citizen of his property rights cannot be sustained under the police power unless the public health, comfort, or welfare demands such enactment. It cannot well be argued that the purpose to enjoy that which we are pleased to call home and to protect it against the encroachment of commercial interests is i1 al to public welfare. The precise ...on was considered in Gordon v. Caldցլ well, supra, and the court said:

"Notwithstanding said [zoning] ordinance the owners of said lots have the constitutional right to make use of them in accordance with such restrictions so long as they do not endanger or threaten the safety, health, and comfort or general welfare of the public, * * * and the fact that said subdivision has been so classified does not require the owners of said lots to yield the rights secured by such covenants. We fail to see that their enforcement in any wise contravenes public policy."

[3] Plaintiff purchased her lot in reliance upon the covenants in her deed and had the right to expect that every other lot owner in Laurelhurst would comply therewith. Grus-Si v. Eighth Church of Christ, Scientist, 116 Or. 336, 241 P. 66. Such is a property right of which she cannot be divested by legislation of the character in question.

[4, 5] Who is clamoring for this gasoline service station? Surely not the public. No great public inconvenience will result if consumers of gas are obliged to go 1,900 feet to that part of Sandy boulevard to which the restrictions do not apply. True this triangu- be ineffectual of any meritorious result, it will

[6] Besides Sandy boulevard, there are other main arteries traversing Leurelhurst. If the restriction is to be removed as to one, it may be as to others. If the city can authorize the operation of business within the 100-foot strip, it could extend back for 1.000 feet, or it could throw the entire district open to commercial activity. We conclude that the zoning ordinance has no validity so far as it contravenes the restrictions in question.

[7, 8] Has the residential character of Laurelhurst adjacent to Sandy boulevard so changed by reason of surrounding business activity that equity will not intervene to prevent the violation of these building restrictions? Has there been such a radical change that the restrictions can no longer serve the nurpose for which they were intended? Ordinarily, equity may be invoked to enforce negative agreements and clauses in deeds restricting the use of real property. Intester v. Alvin, 74 Or. 544, 145 P. 660. However, it does not follow that equitable jurisdiction will be exercised in all cases where there has been a violation of a legal right. Under some circumstances the party injured may be relegated to his remedy at law. Whether injunctive relief is to be granted is a matter within the sound legal discretion of the chancellor, to be determined in the light of all the facts and circumstances. Many authorities could be cited wherein equity has refused to intervene, and, perhaps, even more where it has assumed jurisdiction. Each case must be considered in the light of its own particular facts. For this reason it would be a useless and endless task to review and distinguish the large number of cases cited. We prefer to discuss the facts in the instant case as applicable to well-recognized equitable principles.

Many courts have undertaken to state the rule for the interposition of equity in proceedings of this character. We quote with approval the following clear and concise statement found in Robinson v. Edgel. 57 W. Va. 157, 49 S. E. 1027:

"The right to invoke relief by injunction in such cases is not absolute, however. To a certain extent, the jurisdiction is discretionary. It is governed by the same general principles which control the jurisdiction to compel specific performance of contracts. Where a proper case for its exercise is shown, relief is granted as a matter of course, but if, under the conditions and circumstances obtaining, the granting of the relief sought would work injustice or

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"he facts in that case are far removed from -ose before us for consideration. The same 31 N. E. 691, 32 Am. St. Rep. 476, 355. pon :h defendant also relies. Pierce v. Louis Union Trust Co., 311 Mo. 262, 278 W. 398, is an instructive case in which the thorities are reviewed and one which is in eeping with the conclusions here reached.

The trial court exercised its discretion in suming equitable jurisdiction of this cause, ad we see no reason to interfere therewith. The decree of the lower court is affirmed.

CREDIT SERVICE CO. v. KORN.

Supreme Court of Oregon. June 21, 1927.

Pleading 年106(1)—Plea in abatement may be joined with one in bar, but must allege facts with particularity, and conclude with prayer asking abatement (Or. L. § 74).

Under Or. L. § 74, plea in abatement may e joined with one in bar, but pleader must alege facts with high degree of certainty and articularity, and must conclude with prayer sking for abatement of action.

Pleading s=106(1)—One entering plea in abatement must conform strictly to applicable rules of pleading.

Plea in abatement being dilatory, plea is not favored in law, and pleader must conform strictly to applicable rules of pleading.

. Ple ing 🖙 434 - Plea in abatement, not ng with prayer for abatement, though COT dei. dict_

Plea in abatement, not concluding with prayer asking for abatement of action, though efective, held not fatally defective after verdict, in absence of demurrer.

4. Pleading 34(1)-In determining whether pleadings are fatally defective, courts should be more concerned with substance than form.

In determining whether defects in pleadings are fatal, courts in administration of jusice should be more concerned with substance han form, since object of pleadings is to aprise adverse party of what is to be relied on Juring trial

In Bane.

Appeal from Circuit Court, Multnomah County; J. W. Knowles, Judge.

Action by the Credit Service Company gainst Israel Korn, doing business as the Torn Furniture Company. From judgment thating the action, plaintiff appeals. Af-Grmed.

On June 11, 1924, the plaintiff commenced an action to recover the amount alleged to be

gregating \$463.73, sold to the defendant at his express instance and request. To the complaint, defendant filed an answer in bar, and, as a further and separate defense, by plea in abatement alleged:

"(1) That the goods, wares, and merchandise mentioned in the complaint were sold to defendant upon a credit of sixty days from June 1, 1924.

"(2) That such period had not elapsed before the commencement of this action."

The answer thus concluded:

KORN

"Wherefore defendant demands judgment against plaintiff for his costs and disbursements.

After reply both to the plea in bar and in abatement, the trial court, upon hearing, rendered judgment abating the action. Plaintiff appenls.

W. B. Layton and Edward A. Boyrie, both of Portland, for appellant.

BELT, J. (after stating the facts as above). [1, 2] It is contended that the alleged men in abatement is insufficient, and that therefore such defense has been waived. Under section 74, Or. L., it is permissible to join a plea in abatement with one in bar, but there has been no change in the requisites of such pleas at common law. Since the above defense is a dilatory plea, it is not favored in law (Walker v. Hewitt, 109 Or. 366, 220 P. 147, 35 A. L. R. 100), and he who would avail himself of it must conform strictly to the rules of pleading applicable to such defenses. The pleader is required to allege facts with a high degree of certainty and particularity, and must conclude with the prayer asking for the abatement of the action.

Our attention is directed to Sutherlin τ . Bloomer, 50 Or. 398, 93 P. 135, wherein it is said :

"Where matter in abatement concludes in bar, it must be so treated * * * and its character must be determined, not from the subject matter of the plea, but from its conclusion or prayer."

[3, 4] It will be observed that the defendant did not ask for the abatement of the action, and his plea is therefore defective in this respect. Is it fatally so in the absence of demurrer and after verdict? In Sutherlin v. Bloomer, supra, a demurrer was interposed to such plea, and what was said there must be read in the light of the record before the court. In the instant case the trial court, in keeping with well-established practice in this jurisdiction, proceeded, without objection on the part of appellant, to determine the issues under the plea in abatement, and judgment was rendered to the effect that plaintiff's ac-

tion was prematurely commenced. We think, "we for goods, wares, and merchandise, ag- after verdict, the defense pleaded is sufficient.

E=For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes

'г.)

43 Or.App. 33

William E. CADBURY, III, Maxine D. Scates, Peter C. Lorenz and Helen G. Lorenz, Appellants,

Dorothy R. BRADSHAW and Dennis Clark, Respondents, v.

v.

Don HAASE, Douglas Bates, Gloria J. Bates, Lloyd Lovell, Robert H. Painter, Alice Barckley, James H. Freuen, Claire E. Freuen, Richard T. Marrocco, Mary E. Marrocco, Barry W. Dumnich, M. A. Dumnich, James W. Waning, Margaret A. Waning, Gary V. Koyen, Harold R. Primrose, Emma Dell Primrose, John H. Doyle, Betty B. Doyle, Wayne E. Vanderhoff, Duane W. Mogsted, Joanell Mogsted, Lonnie E. Williams, Mary E. Williams, George Wickes, Louise Westling, Rickie H. Howell, Gladys M. Scott, Edward H. Meyers, Dereatha A. Meyers, Duane Marshall, Marie L. Marshall, Carl D. Richart, Francis J. Richart, Gene Mross, Melinda Mross, Villian Giliman. Gene Moyer, Darlene Moyer, Lloyd D. Brown, Monica Brown, Theo B. Allen, Andrew G. Iskra, Personal Representative of the Estate of John R. Seely, Deceased, Evelyn Seely, Larry L. Parker, Harold B. Evans, Beverly M. Evans, Scott Ferguson, Marlene Dehn, Marshall A. Dix, Hillary Dix, Edwain Foster, Michael S. White, Michael D. Copely, Marilyn Papich, John R. Dubin, Timothy L. Blood, Robert M. Langford, Michael T. Grant, Janna K. Grant, Holoway R. Jones, Frances D. Jones, Robert J. Guthrie, Judy F. Guthrie, Martin H. Acker, Julia A. Acker, William J. Larson, Jane S. Larson, Leeann Robertson, Dorothy Haberly, Blaine R. Newnham, Bob L. Wynia, Marjorie L. Wynia, Helen D. Racely, Jack Racely, Greg Buller, Jeanne Buller, Fred Deffenbacker, Ester L. Deffenbacker, Russell Peterson, Ariene H. Peterson, Georgis K. Haynes, Eugene P. Flores, George M. Currin, Gail C. Currin, Courtney L. Healy, V. J. Healy, Joanna Newnham, Ruth A. Copeby, Kathleen Lovell, Jean Seely, John 002 P.24-7

Does and Jane Does, Third Party Defendants.

John Kovtynovich, Elva Kovtynovich, Douglas A. Warner, Edith R. Warner, Dan Kovtynovich, and Richard A. Brown, Third Party Defendants-Appellants,

William G. Ross, Melba D. Ross, and Gertrude M. Andrews, Trustee, Third Party Defendants-Respondents.

No. 77-5866; CA 13708.

Court of Appeals of Oregon.

Argued and Submitted Sept. 10, 1979. Decided Nov. 5, 1979.

Landowners in an area brought an action against seller of a parcel in the same area and her buyer to prohibit further subdivision and construction on resubdivided parcels. The Circuit Court, Lane County, Helen J. Frye, J., granted summary judgment for the seller and for her buyer and the landowners appealed. The Court of Appeals, Richardson, J., held that: (1) where restrictive covenant contained in grantor's deed to first purchaser and incorporated by reference in subsequent instruments of conveyance permitted only one dwelling to be built or maintained on any parcel and the term "parcel" was not ambiguous and referred to units of property which were originally conveyed by common grantor, construction on resubdivided parcels was not permissible, and (2) where deeds contained restrictive covenants, requiring all parcels to be used as residential parcels and prohibiting the building of more than one dwelling on a parcel, the restrictions prohibited resubdivision by necessary implication.

Reversed and remanded.

1. Covenants = 51(2)

Where restrictive covenant, contained in grantor's deed to first purchaser and incorporated by reference in subsequent in-

GODDARD v. AVEMCO INS. CO. Cite as, Or.App., 662 P.2d 291

map. For example, paragraph 3 of the restrictions deals with setback lines and other distance requirements, and creates various exceptions for Parcels 41, 69, and 10, as shown on the map. Paragraph 5 relates to building sizes and specifications, but creates exceptions for nine specified parcels. Paragraph 10 limits animals in the area to household pets and certain others, but permits horses to be kept on ten particularized parcels.

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It is clear from the foregoing that the word "parcel," as used in the restrictions, refers to the units of property which are shown on the map and which were originally conveyed by the common grantor. In addition, the surveyor's affidavit, which appears on the face of the map, confirms that meaning of "parcel." The affidavit, after referring to a galvanized iron pipe which was used as the initial point of the survey, states:

"* * said galvanized iron pipe being the Southeast corner of parcel # 71 as indicated on said map." (Emphasis added.)

The meaning of the word "parcel" being clear, the meaning of paragraph 2 of the restrictions is also clear. The paragraph permits only one dwelling unit to be built or maintained on any "parcel," i. e., on any of the original units of land shown on the map. -We therefore reject defendants' contention that construction is permissible on resubdivided parcels, even assuming that resubdivihsion would in itself be permissible.

[2] Defendants are also mistaken in contending that resubdivision is permissible. Paragraph 1 requires all of the parcels to be "used * * as residential parcels," and paragraph 2 prohibits the building of more than one dwelling on a parcel. It would be inconsistent with these provisions for fractional parcels to be created where no residential use can occur. We conclude that the restrictions prohibit resubdivision by accessary implication. See Friedberg v. Building Committee, 218 Va. 659, 239 E.2d 106 (1977).

Defendants argue that Schmitt et ux v. Sulbane et al., 223 Or. 130, 354 P.2d 75 (1960), is analogous to the present case. In Culhane, the Supreme Court rejected the contention that a restriction against " 'more than one dwelling * * * on a single tract of land conveyed'" (Emphasis added.) prohibited construction of dwellings on parts of lots. However, the word "tract" was ambiguous in context, and nothing in Culhane affirmatively suggested that the word "tract" as used in the restrictions was intended to be synonymous with the original lots shown on the subdivision plat. Here, conversely, both the restrictions and the map clearly show that the word "parcel," used in the relevant covenants, refers to the units of land originally mapped and conveyed.

Defendants also argue that certain language is used in the restrictions which manifests the grantor's intention or expectation that resubdivision would occur. The language defendants cite is itself ambiguous in context, and consists of peripheral phrases which play no role in the substantive definition of any of the restrictions. The meaning of the specific covenants before us for interpretation is clear, and the language to which defendants refer from other parts of the restrictions is not inconsistent with that meaning.

Reversed and remanded.



43 Or.App. 39

E. Laverne GODDARD, Personal Representative for the Estate of Forrest I. Goddard, Deceased, Appellant,

v. AVEMCO INSURANCE COMPANY, Respondent.

No. 106,739; CA 13389.

Court of Appeals of Oregon.

Argued and Submitted Aug. 22, 1979. Decided Nov. 5, 1979.

Suit was brought on an aviation policy for property damage to insured aircraft and

SWAGGERTY v. PETERSEN Cite 25, 07., 572 P.2d 1309

Penal Code § 221.1, pp. 59-60 (Tent Draft intent No. 11 1950): faces

"To specify 'any crime' comports better with the realities of law enforcement. The burglar is often apprehended, if at all, in the process of entering, when it may be difficult to know more than that he is up to some mischief. Recognition of this is reflected in the rule that the specific criminal purpose need not be pleaded or proved with the same particularity in prosecuting burglary as in prosecuting the crime which the burglar had in mind.

After reading the cases cited in the footnote to support that statement, we are of the opinion that the Institute meant that the indictment for burglary need not allege all the elements of the crime intended, not that it did not have to allege the specific crime intended.

[1] The state argues and the Court of Appeals reasoned that the omission of an allegation of the particular crime intended did not work a hardship on the defendant because of his pretrial discovery rights. In some instances the availability of discovery can remedy a deficiency in the specificity of the indictment; for example, State v. Shadley/Spencer/Rowe, 16 Or.App. 113, 517 P.2d 324 (1973) (failure to name the person to whom drugs furnished). However, the pretrial discovery available to the defendant in this case would not enable him to know what criminal intent the state was going to attempt to prove. ORS 135.805 and following. Statements of witnesses, which are discoverable, might or might not give the defendant a clue, but one charged with a felony is entitled to more than a clue to what the state contends are the elements of the crime charged.

[2] The intent the state charges the defendant had when he entered is important to the defendant. If the state can prove the defendant entered illegally with the

committed an assault after entry and testified he entered with the intent to commit assault, not theft. Commonwealth v. Ronchetti, 333 Mass. 78, 81-82, 128 N.E.2d 334 (1955). Likewise, if the defendant was charged with an intent to commit a crime, the defendant faces a maximum of five years in the penitentiary for burglary. If the state only is able to prove an illegal entry but not an intent to commit a crime, the defendant only faces a maximum of 30 days in jail for criminal trespass in the second degree.

In light of the long practice in Oregon of specifying the intent which the defendant is charged with having at the time of the breaking and entering, the unanimous view of other jurisdictions with comparable statutes that it is necessary to specify the intent and the lack of any showing of prejudice against the state by continuing such practice, other than imposing upon the state the usual burden of alleging and proving each element of the crime charged, we hold that an indictment failing to specify such intent is subject to demurrer upon the ground that it is not definite and certain.

Reversed.



280 Or. 739

David A. SWAGGERTY and Carol Swaggerty, husband and wife, Kenneth A. Springate and Kathleen M. Springate, husband and wife, Svent Toftemark and Lois Toftemark, husband and wife, Paul S. Holbo and Kay A. Holbo, husband and wife, James W. Kays and Marilyn Kays, husband and wife, Respondents,

٧.

Carl PETERSEN, Appellant.

Supreme Court of Oregon, Department 1.

Argued and Submitted Nov. 7, 1977.

Decided Dec. 28, 1977.

Property owners brought action to enjoin construction by builder of houses al-

illegal entry with intent to commit theft, and there was evidence to support this charge, but he committed no crime after entry and he testified he intended to commit no crime, the jury can convict for burglary. in nature of subdivision justifying finding that general plan embodied in restrictions had been abandoned.

7. Covenants \$\$\$ 103(3)

Other violations of density restrictions applying to lots in subdivision, which were relatively few, and of which property owners were unaware until shortly before they brought action against builder to enjoin construction of houses in violation of density restrictions, were not so obvious as to require finding that property owners had acquiesced in relaxation of density restrictions and thus had waived or abandoned restrictions or were estopped from enforcing them.

8. Injunction 🖙 23

Because policy and practical considerations may differ depending upon source of right which suit is brought to vindicate, proper circumstances for application of doctrine of relative hardship may also differ.

9. Injunction = 128(6)

Where builder of houses violating density restrictions applying to lots in subdivision testified that he knew nothing about moving houses and that he had not attempted to find out whether houses could be moved and if they could what cost would be, and thus failed to show what harm injunction requiring removal of houses would cause him, and permitted must construction on houses to be completed while suit was pending, and thus himself was responsible for most of hardship which moving or dismantling houses would entail, action to enjoin construction of houses was not proper one in which to apply "balance of hardship" doctrine.

10. Injunction 🖛 23

Defendant cannot, after suit has been filed and he is thus clearly informed of both nature of plaintiffs' claim and their intention to insist upon it, deprive plaintiffs of their right to complete relief by increasing his investment, and thus his potential hardship, before final decision, and thus warrant application to case of "balance of hardship" doctrine.

11. Injunction 🗢 108

Preliminary injunction is not prerequisite to final decree enjoining a defendant. ORS 32.010.

12. Injunction \Leftrightarrow 23

Neither statutes nor traditional equity practice place on plaintiffs the burden of deciding whether defendant shall carry on disputed activities pending final decision in case, so that failure of plaintiffs to request preliminary injunction might be found to be cause of increased investment by defendants in activity to be enjoined which, if attributable to defendants, would preclude application of "balance of hardship" doctrine; plaintiffs may, if they wish, apply for temporary injunction, but there is no penalty attached to their failure to do so. ORS 32.010.

H. Thomas Evans, Eugene, argued the cause for appellant. With him on the briefs were Dave Phillips and Evans & Armstrong, Eugene.

Joe B. Richards, of Luvaas, Cobb, Richards & Fraser, Eugene, argued the cause and filed a brief for respondents.

Before DENECKE, C. J., HOWELL and BRYSON, JJ., and GILLETTE, J. Pro Tem.

HOWELL, Justice.

This suit arises out of a dispute over the meaning of the density provisions of certain subdivision building restrictions. All of the parties own property within the subdivision. The plaintiffs contend that two houses built by defendant are in violation of the applicable building restrictions. The trial court agreed, and ordered the houses removed. Defendant appeals, contending that the restrictions have not been violated; that if they have been violated, the plaintiffs have

SWAGGERTY v. PETERSEN Cite as, Or., 572 P.2d 1309

also intended to permit the original lots to be redivided, but only if each new lot contains parts of two adjacent original lots.

This is, to be sure, a somewhat indirect way of expressing a density limitation. Our interpretation of the restrictions does, however, give direct effect to the language of both of the relevant paragraphs of the restrictions. Construed in this way, those two paragraphs, together with the provisions for minimum house size and minimum setbacks,¹ effectively limit the overall density of the subdivision.

When defendant constructed residences on lots 1, 3, and 5 of the new subdivision, he had built a residence on each of the three original lots. He was not entitled, under the restrictions, to treat a fraction of each of those lots as a permissible building site and thus create two additional lots which, considered in isolation, are in literal compliance with Paragraph 11.

i

In support of his position, defendant relies on the rule that:

"* * because of the public policy favoring untrammeled land use, such restrictions are construed most strongly against the covenant and will not be enlarged by construction." Aldridge v. Saxey, 242 Or. 238, 242, 409 P.2d 184, 186 (1965).

We have recognized and applied that rule many times. See, e. g., Johnson v. Campbell, 259 Or. 444, 447, 487 P.2d 69 (1971); Smoke v. Palumbo, 234 Or. 50, 52, 379 P.2d 1007 (1963); Rodgers et ux. v. Reimann et ux., 227 Or. 62, 65, 361 P.2d 101 (1961); Schmitt et ux. v. Culhane et al., 223 Or. 130, 354 P.2d 75 (1960); Hall v. Risley and Heikkila, 188 Or. 69, 87-88, 213 P.2d 818 (1950); Crawford et al. v. Senosky et al., 128 Or. 229, 232, 274 P. 306 (1929); Grussi v. Eighth Ch. of Christ, Scientist, 116 Or. 336, 342, 241 P. 66 (1925).

1. Paragraph 2 provides:

"No residential structure shall be erected or maintained on any lot which has a ground floor area of less than twelve hundred square feet on the main floor, exclusive of open porches and garages." [2] We are doubtful, however, whether we should continue to do so. Public policy, as expressed in recent legislation, no longer favors "untrammeled land use," but requires the careful public regulation of the use of all of the land within the state. See especially, ORS chapter 197.

[3] In this case we need not inquire whether this legislative expression of public land use policy requires a new approach to the construction of private restrictions on the use of land. Even under the traditional rule, upon which defendant relies, a "construction in favor of the unrestricted use of property must be reasonable." Hall v. Risley and Heikkila, supra 188 Or. at 87, 213 P.2d at 826. As we have pointed out, defendant's proposed construction of Paragraph 11 is not reasonable because it would result in building sites composed of a fraction of a single lot, contrary to the express provisions of Paragraph 11.

We hold, then, that the trial court was correct in its conclusion that defendant violated the restrictions applicable to the Amended Plat of Hawkins Heights.

[4] We further hold that the trial court correctly concluded that defendant had not established his affirmative defenses of waiver and estoppel.

Defendant contends that plaintiffs waived any right to complain by failing to act promptly to enforce their rights, and by failing to bring suit before he had made substantial expenditures. He points out that the suit was not filed until approximately a year and a half after he first applied for approval of his eight-lot subdivision, and slightly more than a year after final approval was received.

There was no evidence that any of the plaintiffs had notice of the application for

Paragraph 4 provides:

"No building erected on any lot shall be less than twenty five feet from the front street line or fifteen feet from the side street line, or less than ten feet from the side lot line except on the rear quarter of the lot."

SWAGGERTY v. PETERSEN Cite as, Or., 572 P.2d 1389

Cite as, Or., 572 P.2d 1389 [7] There is also evidence that the relements,⁴ of ant provisions of Paragraphs 1 and 11 trust ag ave been violated in other instances with- other's la

vant provisions of Paragraphs 1 and 11 have been violated in other instances without objection by these plaintiffs. The evidence convinces us that these violations are relatively few, that plaintiffs were unaware of them until shortly before this suit was filed, and that they were not so obvious that plaintiffs must be held to have acquiesced in a relaxation of the density restrictions. We agree with the trial court that these violations do not establish a defense to the present suit.

[8, 9] Finally, defendant urges that if plaintiffs are entitled to any relief, that relief should be limited to money damages. He contends that if the houses must be removed, the harm he would suffer would be greatly disproportionate to the benefit the plaintiffs would enjoy. He asks that we apply the so-called "balance of hardship" doctrine, to which we referred in *Tauscher v. Andruss*, 240 Or. 304, 308-9, 401 P.2d 40, 42 (1965):

"There being an encroachment, plaintiffs are entitled to a mandatory injunction ordering the removal unless it would be inequitable to require such removal. Under the proper circumstances the court will consider the relative hardship of the parties and if the removal of the encroaching structure would cause damage to the defendant disproportionate to the injury which the encroachment causes plaintiff, an injunction will not issue." (Emphasis added.)

We have recognized, and sometimes applied, that doctrine in other cases as well. We have treated the defendant's hardship as relevant to the allowance of a mandatory injunction of this kind in suits based on a violation of a zoning ordinance,³ encroach-

- Frankland v. City of Oswego, 267 Or. 452, 478-79, 517 P.2d 1042 (1974).
- 4. Tauscher v. Andruss, 240 Or. 304, 308-09, 401 P.2d 40 (1965).
- Andrews v. North Coast Development, 270 Or. 24, 526 P.2d 1009 (1974).

ments,⁴ obstruction of easements,⁵ breach of trust agreement,⁶ and improvement of another's land under mistaken claim of ownership.⁷ Because policy and practical considerations may differ depending upon the source of the right which the suit is brought to vindicate, the "proper circumstances" for application of the doctrine of relative hardship may also differ.

However, we need not employ such distinctions in the present case. We hold, for two reasons which are applicable regardless of the source of plaintiffs' right, that this is not a proper case in which to weigh the parties' relative hardships.

In the first place, defendant has not shown what harm the injunction would cause him. He testified that he would lose \$60,000 or more if the houses had to be destroyed. He further testified that because these houses had concrete slab floors and were built on a hill, it would be very difficult to move them. He admitted, however, that he knew nothing about moving houses and that he had not attempted to find out whether these houses could be moved and, if they could, what the cost would be. On this evidence we cannot hold that defendant has shown that it would be inequitable to grant the injunction.

In the second place, we find that defendant himself is responsible for most, if not all, of the hardship which moving or dismantling the houses would entail. There was only cement work in place when plaintiff Swaggerty's attorney wrote to defendant, notifying him of a claim that the construction would violate the restrictions. At the time suit was filed, a short time later, the foundation work had been completed on both houses and, according to the defendant, one of them had been framed and

 Heitkemper v. Schmeer et al., 130 Or. 644, 668, 275 P. 55, 281 P. 169 (1929).

7. Jensen v. Probert, 174 Or. 143, 160, 148 P.2d 248 (1944).

153 Or.App. 670

i.

ai.

Brice F. TAYLOR and Susan Taylor, husband and wife, Respondents-Cross-Appellants.

art McCOLLOM and Ann McCollom, nusband and wife, Appellants-Cross-

Respondents,

v

and

Virginia W. Cotton and Peter Cotton, Defendants.

2²⁰90–2095–E–2; CA A91609.

Court of Appeals of Oregon.

rgued and Submitted Nov. 19, 1997.

18⁽¹⁾ Decided April 29, 1998.

Homeowners brought suit against adnr owners for breach of covenants, coninstand restrictions (CC & Rs) arising out instruction of home that impaired home-The Circuit Court, Jackson ty, Donald A.W. Piper, Senior Judge, g judgment on jury verdict awarding owners damages, denied injunctive reequiring adjoining owners to modify - home to lower their roof line, and deward of attorney fees. Adjoining ownopealed, and homeowners cross-appealthe Court of Appeals, Haselton, J., held issue of whether architectural con-inmittee's action regarding roof line dint precluded jury award of damages each of covenant was not preserved; (2) owners did not knowingly violate sive covenant so as to permit injuncselef regardless of balance of hardships; rance of hardships did not support inrelief; and (4) homeowners were enreformation of attorney fees proviovenants and to award of reasonable revailing parties.

med on appeal; affirmed in part,

App. 1998)

COLLOM

Under "relative hardship" or "balance of hardships" test injunctive relief, damage caused by view impairment in violation of restrictive covenant is weighed against costs of mitigation, and if damages associated with removal of encroaching structure are disproportionate to injury which the encroachment causes, injunctive relief is inappropriate.

See pg 213 Or. 207

2. Injunction 🗢 50

Where homeowner has continued to build notwithstanding notification of clear violation of restrictive covenant that precludes view impairment, court may order injunctive relief, even if balance of hardship cuts against injured party.

3. Injunction ∞50

"Knowing violation" exception to general rule that injunctive relief is not appropriate for violation of view impairment covenant if costs of mitigation outweigh damage caused by violation would not be applied where restriction was not clear, objective and precise but provided only that views "shall be preserved to the greatest extent reasonably possible."

4. Covenants @=103(2)

Homeowners did not willfully violate restrictive covenant precluding view impairment where they submitted their plans to subdivision's architect one year before commencing construction, architect did not express major reservations about home's height, and architectural control committee informed homeowners during construction that it had rejected neighbors' height complaint.

5. Injunction \$50

Injunctive relief requiring owners to make structural modifications to their home costing between \$50,000 and \$70,000 would not issue under balance of hardships test to remedy impairment caused neighboring home in violation of restrictive covenant where roof and clerestory of home substantially impinged on view of mountains only at one end of panoramic range and "best" parts of view were unimpaired.

June 1989, roughly six months after refendants submitted their preliminary plans Peter, but before defendants started building, plaintiffs began looking into buying property at Quailhaven. On two occasions. Peter met plaintiffs and showed them Lot 2. which was uphill from defendants' lot; on a hird occasion, he showed them the adjacent bot 3, which was also uphill and directly tehind defendants' lot. On each occasion. maintiffs emphasized that view preservation as critical to their decision to buy and build: that was especially so for Susan Taylor, for whom the views to the north toward Mt. Grizzly were reminiscent of the landscape round Yreka where she grew up. On each occasion, Peter represented that under the Giailhaven CC & Rs, plaintiffs' view would preserved. On one visit, Peter had plaintis climb a step ladder to a height approximitting the projected level of their first floor dif told them that their view would be unimarired at that level. On the same visit, Peter deferred to a downslope power pole, and told antiffs that the roofline of defendants' as--unbuilt home on Lot 4 would be no highhan the pole. Peter also represented defendants' home would be a low-built "fm" house. Ultimately, plaintiffs bought

th Lots 2 and 3. Plaintiffs began building their home in member 1989. Construction on defenits home started several months later, in ity 1990. In March 1990, shortly before intiffs moved into their home, they first inte aware of a possible view impairment is header on defendants' home was put place. Plaintiffs' concerns heightened a

days later, when the trusses for defen-

"a' cathedral-style roof were put in place. "It the meeting, Stewart McCollom told plainthat, if he were in their position, he would be y upset" by the house blocking their view, be also advised plaintiffs to consider hiring a ter. The context of those remarks is unclear. "Using plaintiffs cast those comments as adons of liability, it is at least equally plausible hey were expressions of sympathy and an the invitation to seek redress against the part of Peter's misrepresentations.

tion 3.3 of the Design Review Manual, enti-Committee Discretion," reads as follows: is recognized that this manual does not main specific requirements for every situathat may require Committee approval; Plaintiffs met with defendants $|_{674}$ and asserted that defendants' construction and design violated various provisions of the CC & Rs. including, particularly, Section 8.1. That provision reads:

"It is important that Quailhaven owners restrict the height of improvements on their lots and the height of trees and vegetation growing thereon in order that the view of other Quailhaven residents shall be preserved to the greatest extent reasonably possible[.]" (Emphasis added.)

Plaintiffs suggested. as a possible compromise, that defendants eliminate the clerestory.³ Defendants met with their architect, Zaik, and ultimately refused to delete the clerestory—a modification that would have cost approximately \$10,000.

Plaintiffs then initiated a complaint to the Quailhaven Architectural Committee, asserting that defendants' home violated several provisions of the CC & Rs, including the "view preservation" covenant, Section 8.1. Under Section 7.1 of the CC & Rs, the Architectural Committee was authorized "to regulate the external design, appearance, location and maintenance of any and all improvements on the Property and any and all landscaping thereon in accordance with provisions of this Declaration and the [Design Review] Manual." 4 On April 26, 1990, Virginia Cotton wrote to plaintiffs, stating, "The full Architectural Committee has met. We regret that you feel so strongly about the matter, but we do not believe that a violation Covenants. Conditions of the and 1575 Restrictions exists." 5 Defendants completed their house, and this litigation ensued.

therefore, the Committee will necessarily exercise discretion in many instances in approving or disapproving of a specific proposal. It is further recognized that a proposal may deserve consideration on its own merit even though it does not meet a specific standard set forth in this manual; therefore, the Committee is authorized, in its sole discretion, to approve a proposal notwithstanding that it may conflict with a standard set forth in this manual."

5. The parties dispute whether that letter or another exhibit, which purports to memorialize minutes of the Architectural Committee meeting on April 15, 1990, evinces a valid decision by the Committee, entitled to deference under Valenti v.

TAYLOR v. McCOLLOM Cite as 958 P.2d 207 (Or.App. 1998)

that, under Valenti v. Hopkins, 324 Or. 1926 P.2d 813 (1996), the trial court erred aling to give the Architectural Commitbipurported approval preclusive effect. Fire addressing the substance of that artent; it is essential to briefly review Vatiand, then to put defendants' present and then to put defendants' present anents, based on Valenti, into the procelicontext of what occurred at trial.

Valenti, the plaintiffs purchased a me, with an unobstructed mountain view, ubdivision. The subdivision's CC & Rs fied that new construction be approved the Architectural Control Committee , The defendants subsequently pured a nearby lot and submitted their plans to the ACC. The plaintiffs obed to the defendants' proposed design as firing the view from the second floor of house, but the ACC ultimately apwived the defendants' plans, concluding munder the operative view protection defon of the CC & Rs, the plaintiffs' lot not "adjacent" to the defendants' lot. plaintiffs filed an action in circuit court ing; alternatively, injunctive relief or ages. The trial court dismissed the itiffs' complaint, concluding that, because ACC had not acted "arbitrarily or unreably, its decision was binding.

tplaintiffs appealed, and we reversed. th, v. Hopkins, 131 Or.App. 100, 883 882 (1994). We concluded that, under On v. Salishan Properties, Inc., 267 Or. 15 P.2d 1325 (1973), the ACC's conon of "adjacent lot" in the view protecevenant was not entitled to preclusive See Valenti, 131 Or App. at 107, 883 interpretation of covenants, that bility is assigned exclusively to the miess the agreement expressly proherwise."). We further concluded win'the broadly protective purpose of apreservation covenant, the plaintiffs' "adjacent" to the defendants' lot, manded to the trial court to deterproper remedy. Id. at 108-09, 883

> its counsel characterized our holding in the court can sit *de novo* and deter-

On review, the Supreme Court reversed. The essence of the court's analysis is that, where restrictive covenants clearly express that a designated third party (in Valenti, the ACC) "is to make final decisions respecting the relevant issues," those decisions are preclusive unless the |678decision maker's determination was tainted by "fraud, bad faith, or failure to exercise honest judgment." Valenti, 324 Or. at 335, 926 P.2d 813, (citing Lincoin Const. v. Thomas J. Parker & Assoc., 289 Or. 687, 692-93, 617 P.2d 606 (1980), and Friberg v. Elrod et al., 136 Or. 186, 194-95, 296 P. 1061 (1931)). Because the plaintiffs had not pleaded or proved that the ACC's decision was so tainted, that decision was binding. Valenti, 324 Or. at 335, 926 P.2d 813.

So much for Valenti. At the time this case was tried, the Supreme Court had accepted review of our decision in Valenti but had not yet issued its reversal. The parties' arguments to the trial court were framed and phrased accordingly. Defendants contended that our decision was "bad law" and that the Architectural Committee's decision was absolutely preclusive. Conversely, plaintiffs asserted that the Architectural Committee had not rendered any decision approving defendants' home and, even if it had, the trial judge was free, under our decision in Valenti, to construe and apply the CC & Rs, and especially Section 8.1, "de novo." 6 In urging their respective absolutist positions, neither party anticipated the "fraud, bad faith, or failure to exercise honest judgment" exception that the Supreme Court ultimately endorsed in Valenti-and, thus, neither party attempted to relate the evidence to that principle.

However skewed the parties' arguments may have been at trial, defendants' Valentibased assignment of error fails for an even more fundamental reason: Defendants' arguments at trial were not directed against the source of the judgment they now attack. As described above, the judgment here was based on the jury's award of damages for defendants' breach of the CC & Rs—and not on the claim for equitable/injunctive relief,

mine whether what the architectural review committee did was reasonable."

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214 Or.

the injury [that] the encroachment causes." *Tauscher*, 240 Or. at 309, 401 P.2d 40. Accordingly, we affirm the denial of injunctive relief.

Plaintiffs' second assignment of error on cross-appeal challenges the trial court's denial of their petition for attorney fees, which was based on Section 14.3 of the CC & Rs. That section. entitled "Enforcement," reads:

"Declarant, the Association, the owners of Lots or Dwellings within the Property, the holder of any recorded mortgage on any Lot or Dwelling shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or herein/after imposed by any of the provisions of this Declaration as may appertain specifically to said bodies or owner by any proceeding at law or in equity. Failure by any of them to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration, the prevailing party shall be issentitled to its attorney's fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney's fees incurred in any enforcement activity taken on delinquent assessments, whether or not suit or action is filed." (Emphasis added.)

The trial court concluded that, because it was not an "appellate court," it could not award fees. In so holding, the court observed that the emphasized language, "though somewhat illogical, says what it says."

Plaintiffs argue to us, as they did to the trial court, that, because literal application of Section 14.3 as written would produce incongruous results, the term "appellate court" must be disregarded as a "scrivener's error": ¹⁴

14. Plaintiffs do not contend that the trial court can somehow be an "appellate court" within the meaning of Section 14.3.

15. Plaintiffs also assert that, based on the last sentence of Section 14.3, they have a reciprocal entitlement to attorney fees under ORS 20.096(1). However, as the trial court noted. "A reasonable construction of this part graph is that the prevailing party is entitled to attorney's fees incurred both trial and on appeal. It simply does no make sense to have the right to attorney fees contingent upon an appeal to be set by an appellate court.

"*****

"In the instant case, it is clear from viewing the matter as a whole that Section 14.3 contained a scrivener's error." ¹⁵

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Conversely, defendants assert that the language is unambiguous and that "it may well have been included as an attempt to induce litigants to consider carefully the monetary risk of appealing a trial court decision."

[6] We agree with plaintiffs that the term "to be set by the appellate court" is susceptible to reformation. In Sea Fare v. Astoria, 6 Or.App. 605, 610–11, 488 P.2d 840 (1971), we described the controlling analysis:

"Every presumption should be invoked in favor of the instrument in question as written on the theory that the <u>less</u>sanctify of written agreements should be preserved. *Teachers' Fund Ass'n. v. Pirie*, 147 Or. 629, 34 P.2d 660 (1934).

"In addition to overcoming the presump; tion in favor of the instrument, a party seeking reformation of the same on the basis of a 'scrivener's' error has the further burden of proof to show that the reformation is necessary. He must support that burden with 'clear and convincing evidence.' Weatherford v. Weatherford, 199 Or 290, 257 P.2d 263, 260 P.2d 1097 (1953). * *

"The recognized grounds for reformation are: (1) A mutual mistake of fact. See, e.g., Ray v. Ricketts, 235 Or. 243, 383 P.2d 52 (1963). (2) Mistake of law where both parties misapprehend the legal import of the words used or use words through mutual mistake or inadvertence. See, e.g., Harris Pine Mills v. Davidson, 248 Or.

that sentence refers only to enforcement actions by the Quailhaven Homeowners Association to collect delinquent assessments, and this action is not one by the Association to collect assessments. Accordingly, reciprocity under ORS 20.096(1) does not apply. Client Identifier: LINDA LORD Date of Request: 10/05/99 he Current Database is OR-CS /our Natural Language Description:

COVENANT RESTRICTION ON DENSITY IN RESIDENTIAL SUBDIVISIONS

Citations List Database: OR-CS

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20. 1000 Friends of Oregon v. Board of County Com'rs, Benton County, 32 Or.App. 413, 575 P.2d 651 (Or.App., Feb 07, 1978)

Copr. C West 1999 No Claim to Orig. U.S. Govt. Works



width requirement for the parcel. The number of units to be served shall not exceed six.

C. A minimum twelve-foot wide fire access corridor shall be provided to all parcels created through the partitioning process. No vehicular obstruction, including trees, fences, landscaping, and structures shall be located within the fire access corridor.

D. The area of any accessway shall be excluded from calculations of a minimum lot area for any new parcels or lots. (Ord. 94-1003 §8(part), 1994)

16.28.070 Pavement requirements. A minimum of ten feet of paved driveway shall be provided for single-family units on parcels created through the partitioning process. If more than one unit will use the drive, a minimum of eight feet of pavement width shall be provided for each unit. No paved drive shall be required to exceed twentyeight feet in width. If the proposed accessway exceeds one hundred fifty feet in length, it shall be paved to a minimum width of twenty feet and, if more than two residences are served, a turnaround for emergency vehicles shall be provided. The turnaround shall be approved by the city engineer and fire chief. (Ord. 94-1003 §8(part), 1994)

16.28.080 Width/depth requirements. New parcels created through the partitioning process shall be exempt from the minimum average width and depth requirements of the zoning code. The minimum width and/or depth of any new parcel created through the partitioning process shall not be less than sixty feet. (Ord. 94-1003 §8(part), 1994)

16.28.090 Conformance. All parcels created shall conform to the requirements of this title, ORS 92.010 to 92.160, the city comprehensive plan and zoning ordinance, and any other applicable city ordinances and regulations. The applicant shall submit a written statement addressing conformity with these standards. (Ord. 94-1003 §8(part), 1994)

16.28.100 Sale of a parcel prohibited. A person may negotiate to sell any parcel in a partition with respect to which approval under this title is required prior to the approval of the tentative plan for the partition. However, no person may sell any parcel in a partition for which approval is required prior to the granting of such approval and the recording of the partition by the county clerk. The sale of any parcel shall conform to the requirements of state law. (Ord. 94-1003 §8(part), 1994)

EXHIBIT /-OCML 16.28.080 (1995)

(Oregon City 3/95)

2

CITY OF OREGONICITY Incomposates 2000 7th & JOHN ADAMS STREETS OREGON CITY, OREGON 97045 February, 1980 Appeal No. 345

REPORT FOR THE OREGON CITY

ZONING BOARD OF ADJUSTMENT

REQUEST: Reduce required side yard from 12% of lot width (or 10.3 feet) to 5 feet, to construct a carport.

BY: Albert E. Bittner

LOCATION: 147 Barclay Avenue

- ANALYSIS: The applicant requests a 5.3 foot reduction in the required side yard (12% of lot width or 10.3 feet in an R-1 zone) for the purpose of constructing a carport. The property fronts on Barclay Avenue, in an area of oversized lots and large houses. This lot has 17,000 square feet, 7,000 square feet in excess of the R-1 requirement. The variance would allow the construction of a carport, maintaining the side yard of the existing residence and driveway.
- RECOMMENDATION: Approval. The proposed variance will have no detrimental effect on the adjacent property owners. The proposed side yard will maintain the existing separation between this and the adjoining property.

EXHIBIT 6-Sethick Variance 2/2

CITY OF OREGON CITY	
APPLICATION FOR LOT LINE ADJUSTMENT	
APPLICANT: Jim MCKNIGHT	PHONE: 656 - 0435
SITE ADDRESS: 161 BARCLAY AVE., PRECON CITY	
CITY: OREGON CITY	
PROPERTY OWNER: <u>SAME</u> (if different)	PHONE: 54018
	ZIP CODE: SAMS
PROPERTY DESCRIPTION: T25. R 22. S 3/20	TAX LOT: 5400
ADJOINING PROPERTY INVOLVED IN THE LOT LINE ADJUSTMENT	
PROPERTY OWNER: Albert Bitther	PHONE :
SITE ADDRESS: 147 BARCLAY AVE, ORBION C.14	ZIP CODE: 970:15
PROPERTY DESCRIPTION: TZS. RZE. S 3/DC	TAX LOT: _5500
GENERAL LOCATION: <u>River CREST PARK</u>	······································
LEASUN FOR ADJUSTMENT: PURCHASE EXISTING CARDEN \$	ORCHARD SPACE;
THAT IS SURAUS TO NEWHBOR, FOR EVEN	TUBL BUILDING SETSI
PRESENT ZONE OF APPLICANT'S PROPERTY: R-10	
PRESENT ZONE OF ADJOINING PROPERTY: R-10	
PRESENT AREA OF APPLICANT'S PROPERTY: 85'×200' = 17,000	D SQ.FF.
AREA OF APPLICANT'S PROPERTY AFTER ADJUSTMENT:	10,200 \$
PRESENT AREA OF ADJOINING PROPERTY: 85' x 200' = 17,000 8	<u>9. Ar. 0</u> 8
AREA OF ADJOINING PROPERTY AFTER ADJUSTMENT: 85' × 120' =	
PLEASE ATTACH A MAP DRAWN TO SCAL	<u> </u>
* * * * * * * * * * * * * * * * * * *	
All taxes for parcels are paid in full (attach a receipt The deeds are in the same name for all parcels to be ad	trom Lounty Asses or state (Ce)
	EXHIBIT H
INCOMPLETE APPLICATIONS WILL NOT BE	between The 5500 and
* * * * * * * * * * * * * * * * * * * *	VR46-07
Appligant's Signature Da	<u>4////1/</u> te
Cally TE Bittmen	4/1191
Property Owner's Signature Da	

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ROPERT DESCRIPTION: 14. A A C. 3 21-	
DJOINING PROPERTY INVOLVED INE LOT LINE A	DJUSTMENT
PROPERTY OWNER: Albert Bither	PHONE :
SITE ADDRESS: 147 BARCLAY AVE , C	ZIP CODE: 97045
PROPERTY DESCRIPTION: T25. R 28. S 3/	DC TAX LOT: 5500
GENERAL LOCATION: <u>RIVER CREST PARK</u>	
REASON FOR ADJUSTMENT: PURCHASE EXIST.	N- GARDEN & ORCHARD SPACE,
THAT IS SURAUS TO NORTHBOR	FOR EVENTURE BUILDING SETT.
PRESENT ZONE OF APPLICANT'S PROPERTY:	۶
PRESENT ZONE OF ADJOINING PROPERTY:	
PRESENT AREA OF APPLICANT'S PROPERTY: 85'	× 200' = 17,000 50, Fr.
AREA OF APPLICANT'S PROPERTY AFTER ADJUSTMENT	: 85 × 1201 = 10,200 50,00. 23,800 50 FT.
PRESENT AREA OF ADJOINING PROPERTY: 851 x	200' = 17,000 \$9. Fr.
AREA OF ADJOINING PROPERTY AFTER ADJUSTMENT:	85' × 120' = 10,200 59.Fr
PLEASE ATTACH A M	AP DRAWN TO SCALE
* * * * * * * * * * * * * * * * * * * *	TE» * * * * * * * * * * * * * * * * * * *
$\mathcal{H}_{\mathcal{A}}$ All taxes for parcels are paid in full (a	attach a receipt from County Assessor's Office)
AT The deeds are in the same name for all pa	
Accurate legal descriptions have been pre	pared for all adjustments.
	NS WILL NOT BE ACCEPTED * * * * * * * * * * * * * * * * * * *
· Or Small Rh	41, lai
Applicant's Signature	Date
allert & Bittin	4/1/91
Property Owner's Signature	Date
THIS APPLICATION MUST BE PROCESSED WIT	
	USE ONLY
FILE NUMBER: LL9 - CK	DATE SUBMITTED: $4/2/91$
APPROVED DENHER	RECEIVED BY: KF FEE PAID: 100.00 RECEIPT NO. 644983
Planner	FEE FAID: _100.5 RECEIFT NO.01110
#19791	
Date	
* * * * * * * * * * * * * * * * * * * *	* * * * * * * * * * * * * * * * * * * *
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LEGAL DESCRIPTION TO BE RECORDED BY TICOR TITLE INSURANCE COMPANY FOLLOWING APPROVAL OF LOT LINE ADJUSTMENT APPLICATION:

1. APPLICANTS PROPERTY AFTER ADJUSTMENT:

LOT 2 AND THE NORTHERLY 80 FEET OF LOT 3, BLOCK 8, RIVER CREST ADDITION.

2. ADJOINING PROPERTY AFTER ADJUSTMENT:

SOUTHERLY 120 FEET OF LOT 3, BLOCK 8, RIVER CREST ADDITION.

<u>____</u>

Lot 3, Block 8, RC Addn, except the northerly 80 Feet thereof





PETITION

TO: OREGON CITY PLANNING COMMISSION

SUBJECT: VARIANCE TO THE LOT DEPTH RE: FILE VR 99-07

WE, THE UNDERSIGNED, RECOMMEND YOU PERMIT THE APPLICANT, JIM MCKNIGHT, TO MODIFY THE ZONING REQUIREMENT, IN AN R-10 ZONE, FROM A 100' LOT DEPTH TO AN 80' LOT DEPTH.

NAME **ADDRESS** LESIN INCLAY , NOE Orepor lety 17. maus

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	CEIVED	MAR 20
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<u>EXHIBIT</u> *I* From 6015 VR99-07

142 Holmes Lane Oregon City, OR 97045 March 27, 2000

City of Oregon City, Planning Commission 320 Warner-Milne Road Oregon City, Oregon 97045-0304

00 MAR 27 PM 413

RE: Variance 99-07

RECEIVED CITY OF OREGON CITY

From: Linda Lord

I oppose the applicant's petition for a variance and partition to create a substandard lot in the Rivercrest neighborhood, an area zoned R-10. The applicant has not presented facts to show the request meets the grounds for an acceptable variance. I will address each criterion in sequence.

The grounds for considering a variance are given in Code §17.60.020:

1. The literal interpretation of the provisions of the City's zoning requirements must deprive the applicant of rights commonly enjoyed by other properties in the surrounding area.

Mr. McKnight misstated the first criterion listed in the Code, which requires him to show that not granting the variance would deprive him of rights commonly enjoyed by other properties in the surrounding areas. No other property owners in the City have the right to create building lots with a depth of less than 100' in an R-6, 8 or 10 residential zone, and none of the lots he cited was created by means of a variance to a zoning requirement in force at the time the lots were platted. The lots met the lot depth requirement which existed at the time they were created, and over half of the lots applicant cited in his application currently have a lot depth exceeding 100 feet, according to the information in the Assessor's packets for each tax lot. (Exhibit 1). Applicant presents no evidence that any of the cited lots was created by means of a variance to the lot depth then required by the Code.

Applicant evidently expects to make three lots from two by creating a substandard lot. He appears to argue that because the law changed, and some properties exist with less than the lot depth presently required for new lots, he should be allowed to ignore the current law which took effect before he filed his application. Code § 17.50.070 states clearly that the approval standards which were in effect on the date the application was first submitted will control the city's decision on the application. Mr. McKnight was a planning commission member and knows the variance decision making process. Expecting him to conform to the law does not deprive him of any rights enjoyed by other Oregon City property owners. Granting the variance, without solid evidence to support the petition, would be inequitable.

Testimony of Linda Lord March 27, 2000

VR 99-07

EXHIBIT J Letter from Linda Lad Octed 3/27/00 UR96-07

2. The proposal must not be likely to damage adjacent properties by reducingdesirable or necessary qualities.

Applicant listed the steps he expects to take to prevent the proposed building from reducing desirable qualities of neighboring properties. He has promised that the proposed residence will have no more than one story and no windows on the east side. There are no zoning requirements to prevent such building features. The owner of the existing residence on Tax Lot 5500 added a second story to that house shortly after moving into it in 1992. The only way applicant's suggested building restrictions could be enforced would be through CCRs. Existing deed restrictions already forbid the building of a second residence on either lot. (Exhibit 2).

By proposing the protections he listed, the applicant acknowledges that adjacent properties are at risk of having desirable qualities of their properties substantially damaged. He proposes to prevent the deterioration of his neighbors' enjoyment of their properties by remedies which he cannot ensure if he sells the proposed substandard lot to another owner.

Another particularly desirable quality of adjacent properties threatened by the proposal is that the lots are large and the neighborhood is well-established. At the time the Plan was written, Oregon City was under a sewer moratorium which "restricted residential development". (C-7). However, in the recent spurt of residential developments, the direction established in the Plan has been followed and smaller lots have been encouraged by zoning requirements with reduced lot sizes. Lot depths in residential zones R-6, 8 and 10 <u>all require a minimum 100' lot depth.</u> Applicant is asking for a major variance, twice as much as a minor variance. He has not justified such a drastic deviation from the requirements.

An article in the Oregonian two weeks ago explained the growing reluctance of homeowners to sell properties with large lots because newer subdivisions usually have much smaller lots and higher population densities. (Exhibit 3) The smaller lots are not as marketable as larger lots in established neighborhoods. The article discussed the phenomenon:

"Builders and government officials think that the undesirable aspects of new houses, often built on small lots in isolated corners of the metropolitan area, increase the appeal of homes in older neighborhoods....Jim Feild of Progressive Builders Northwest said prospective buyers 'look at new houses on small lots and say they are happier where they are.' ... The region's close-in neighborhoods have advantages usually associated with the most distant suburbs: larger lots with more room to grow" (March 11, 2000, p. B1).

If the existing lot sizes are reduced for this R-10 property, the neighboring properties will be less desirable and property values WILL DECREASE. Low population density was so important to the subdivision's

Testimony of Linda Lord March 27, 2000 VR 99-07

Page 2

developers that they made it part of the <u>FIRST</u> covenant they created when the subdivision was platted and the CCRs were recorded. They also provided that the restrictions would run with the land and be automatically renewing. Subsequent homeowners, such as Mr. McKnight and I, have benefited from that density restriction for over 50 years. Maintaining large lots with only one residence per lot is a very important desirable quality for most of the applicant's neighbors in Rivercrest. The applicant's petition is not in the best interests of neighboring properties and should be denied.

3. The applicant's circumstances must not be self-imposed or merely constitute a monetary hardship or inconvenience.

There could be no clearer instance of a self-imposed hardship than the situation facing the applicant. He purchased his home in 1970 and has lived there for nearly <u>thirty years</u> with <u>NO HARDSHIPS</u> requiring any variances to allow him to enjoy his home. Then, in 1991, he decided to buy part of the neighbor's backyard before the property next door was sold. Applicant does not have a depth of 100' for his proposed lot because he only bought 80 feet of Tax Lot 5500 in 1991, although the lot was 200' deep at the time. If applicant's neighbor had sold the full 100' necessary for a buildable lot, however, Tax Lot 5500 would have become substandard.

The only hardship the applicant mentions is that he needs money to maintain his house. According to the Code, merely a monetary hardship or inconvenience is not sufficient to meet the requirements for a variance.

Applicant purchased his home in 1970 for \$23,500, and the Assessor estimated the 1999 real market value (RMV) at \$226,600. The mortgage was retired in 1995. (Exhibits 4, 5 & 6) In April 1991, applicant purchased the rear 80' of Tax Lot 5500 for \$5000, although the first deed reported the consideration was \$80000. (Exhibits 7 & 8). In June 1991, applicant purchased residential property at 105 Randall Court for \$90,000, and sold it for \$125,500 in April 1994. (Exhibits 9 & 10). Applicant appears to have more than sufficient resources to raise funds needed to keep his house from deteriorating and reducing the neighbors' property values.

In December 1997, a field inspection of the applicant's property, conducted at applicant's request, found that it is "located in one of the premier areas of Oregon City overlooking the park". The appraiser noted that there was "some deterioration holding down the percent good at reappraisal to <u>10% OVER</u> the base. (Exhibit 11). There is no imminent danger of declining values for homes surrounding Rivercrest Park.

Applicant has not given evidence of any hardship other than financial inconvenience. The proposal does not meet this criterion.

4. No practical alternatives can have been identified which would accomplish the same purposes and not require a variance.

There are many practical alternatives. If applicant needs to finance home maintenance, it appears he has access to other avenues for funding the repairs. There is no hardship evidenced sufficient to meet this criterion.

5. The variance must be the minimum variance which could alleviate a legitimate hardship.

Applicant has defined no legitimate hardship to be alleviated through the planning process. Enforcing the existing zoning requirement for lots in the R-10 residential districts in Oregon City is appropriate, and the application should be rejected.

6. The variance must conform to the Comprehensive Plan and the intent of the ordinance being varied.

The applicant's suggested partition and variance are in direct conflict with specific provisions of the city's Comprehensive Plan regarding housing.

The Plan recognizes that "housing supplies a personal identity to the neighborhood" (C-1), and it defines buildable lots as "sites...<u>not substandard in size</u>." (C-12). (Emphasis added). Rivercrest is "one of the newer areas of the city which tends to emphasize larger concentrations of one housing type", e.g. R-10. (C-2). Oregon City's Housing Goal #2 is to "encourage the maintenance of the existing residential housing stock through <u>appropriate zoning designations</u>. considering existing patterns of development in established older neighborhoods." (C-16) (Emphasis added.) Goals 10 and 14 of the LCDC include "preservation of older housing and residential neighborhoods." (E-3-4). The Comprehensive Plan map displaying development potential in Oregon City (C-14) shows <u>NO BUILDABLE PROPERTY IN RIVERCREST.</u>

<u>To create a substandard lot in Rivercrest would violate these elements of the</u> <u>Comprehensive Plan as well as city ordinances.</u>

ADDITIONAL COMMENTS:

I also object to the proposed partition because the resubdivision would violate restrictive covenants which apply to <u>all properties</u> in the Rivercrest Addition, including the applicant's and mine. I understand that the City does not enforce private contractual obligations, and I am not requesting your assistance. However, I do want you to fully understand my interests in your decision.

Applicant informed me he was aware of our land's deed restrictions when he purchased the Barclay property about thirty years ago, that he understood then as now that the restrictions run with the land, and that he knows the restrictions are binding on him as well as all other current property owners in Rivercrest Addition. I wrote him about my objections to the proposed variance and partition,

Testimony of Linda Lord March 27, 2000 VR 99-07

Page 4

and gave him a copy of the restrictions on file at the Clackamas County Records Office. The restrictions are more fully discussed in that correspondence. (Exhibit 12).

I sent the applicant a formal notification of my objection to his proposed partition and requested that he abandon his intention to re-subdivide the two Rivercrest properties. I have given him express notice that, if necessary, I intend to ask the Circuit Court to enforce the CCRs and to enjoin the proposed resubdivision as a violation of a binding restrictive covenant. I received my copy of the deed restrictions when the title search revealed them at the time I purchased my property in 1988, and I have relied on them as contractual guarantees that the basic character of the neighborhood will remain as it was when I acquired my home. I object to any actions in violation of the covenants, especially partition of any of the lots in the subdivision. I believe the proposed partition violates several obligations mandated in Rivercrest Addition's CCRs, as well as violating the City's zoning ordinances.

The Oregon Supreme Court has already ruled on density restrictions by restrictive covenants. In a very similar situation, *Cadbury v. Bradshaw*, 43 Or App 33, 602 P2d 289, 291, *review denied*, 288 Or 519 (1979), the court ruled that:

where restrictive covenants in deeds required all of the parcels to be used as residential parcels and prohibited building of more than one dwelling on a parcel, the restrictions prohibited resubdivision by necessary implication.., [C] onstruction on resubdivided parcels was not permissible...[and] it would be inconsistent with these provisions for fractional parcels to be created where <u>no residential use can occur</u>. (Emphasis added.)

SUMMARY:

The applicant's proposal does not meet <u>any</u> of the requirements established in the Oregon City Zoning Ordinance for an acceptable variance petition, and it is required to meet <u>all</u> the requirements to be approved. Additionally, the petition directly conflicts with applicable elements of the Comprehensive Plan. I ask that you reject it.

Sincerely,

Lenla Lord

Linda Lord

Encl.

CC: James McKnight

Testimony of Linda Lord March 27, 2000 VR 99-07

LIST OF EXHIBITS

- 1. Dimensions of Lots Cited in Narrative of VR 99-07, March 2000
- 2. Restrictive Covenants of Rivercrest Addition, July 1940
- 3. "Changing the View from Within", Oliver Gordon, Oregonian, March 11, 2000. Page B1
- 4. Deed to 161 Barclay, July 1970
- 5. Cover of Assessment Packet for 161 Barclay, March 2000
- 6. Satisfaction of Mortgage for 161 Barclay, October 1995
- 7. Deed for Part of Tax Lot 5500, April 1991
- 8. Deed for Part of Tax Lot 5500, May 1991
- 9. Deed for 105 Randall, June 1991
- 9. Deed for 105 Randall, April 1994
- 11. Appraisal Report for 161 Barclay, December 1997
- 12. Letter to James McKnight from Linda Lord, September 1999

VR 99-07

	Мар	Tax Lot	Dimensions	Acreage	Var?	99 RMV Land	Total RMV	Address	Owner
	2 2E 31 DC	5400	85 x 200	0.55		691 90	226600	161 Barclay	James McKnight
1	2 2E 31 DC	6200	135 x 73 (C)*	0.23	N	52810	170480	810 Charman	Jeffrey Miller
2	2 2E 31 DC	8000	119 x 110 (C)*	0.3	N	57660	198690	112 Harding	Charles Hudson
3	3 2E 6AB	5300	68 x 131 (C)*	0.2	N	50020	125770	152 Valley View	Steven Phillipson
4	3 2E 6AB	7700	85 x 83	0.16	N	4518 0	118290	114 McCarver	Paul Wickstrom
5	3 2E 6AB	9200	125 x 80	0.23	N	5392 0	127700	333 Holmes	Clarence Richardson
6	3 2E 6AB	9300	80 x 125 (C)*	0.23	N	53920	176470	886 Linn	William Johnson
7	3 2E 6 AC	100	80 x 110	0.2	Ν	50020	101960	344 Holmes	Howard Lafave
8	3 2E 6 AC	200	80 x 110	0.2	N	5095 0	120610	334 Holmes	Violet Carnes
9	3 2E 6 AC	1300	75 x 103	0.18	N	46860	117030	110 Holmes	Melvin Weseman
10	3 2E 6 AC	5700	60 x 92	0.13	Ν	39230	111090	192 AV Davis	Geraldine Robinson
11	3 2E 6BA	4500	85 x 97(C)*	0.18	Ν	48540	167620	105 Randall Ct.	Richard Ferguson
12	3 2E 6BB	3701	85 x 97	0.19	N	48540	106240	305A Barker Ave	Forest Jones
13	3 2E 6BB	3903	115 x 97	0.24	N	53860	306560	379 Barker	Kevin Dale Dier
14	3 2E 6BB	4007	68 x 179	0.28	Ν	75300	206200	439 Ridgecrest	Alfred Simonson
15	3 2E 6BB	4008	130 x 75	0.2	Ν	52810	152670	441 Ridgecrest	Leslie Kegg
16	3 2E 6BB	4009	82 x 155	0.29	Ν	56540	184190	430 Ridgecrest	Kurt Bevers
17	3 1E 1DA	600	42 x 100	0.09	Ν	35330	87730	119 Warner-Parrot	Bobby Pierce
18	3 1E 1DA	700	53 x 100	0.12	N	38290	99390	125 Warner-Parrot	Steven Winchester
19	3 1E 1DA	1500	97 x 74	0.16	Ν	45180	126920	1018 King Road	Gary Todd
20	3 1E 1DA	1800	37 x 200	0.17	N	35180	81810	147 Warner-Parrot	Rosa Şargent
21	3 1E 1DA	1900	42 x 230 (C)*	0.22	N	48540	105890	151 Warner-Parrot	Melvin Bayless

Dimensions of Lots Cited in Narrative of VR 99-07

Sook 270 Page 312

Recorded July 2, 194

RESERVATIONS AND RESTRICTIONS UPON USE AND

OCCUPANCY OF PROPERTY IN RIVER CREST

ADDITION TO OREGON CITY, OREGON AND CORRECTION OF NAME OF PLAT AND DEDICATION

KNOW ALL MEN BY THESERPRESENTS, That River-Crest Development Co., as corporation created and existing under the laws of the State of Oregon, does hereby certify and declare that the following reservations, conditions, covenants and agreements shall become and are hereby made a part of all conveyances of property within the plat of River Crest Addition to Oregon City Oregon, as the same appear on the map and plat recorded in Book 23, at page 2] Record of Town Plats of Clackamas County, Oregon, of which conveyances the following reservations, conditions, covenants and agreements shall become a part by reference and to which they shall thereupon apply as fully and with the same effect as if set forth at large therein during the period of twentyfive years from and after the 28th day of June, 1940.

1. All lots in the tract shall be known and described as residential lots except as hereinafter noted; no structures shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single-family dwelling not to exceed two and one-half stories in height, and a private garage for not more than two (2) cars and other outbuildings incidental to residentail use.

2. No building shall be located on any residential building plot nearer than twenty (20) feet to the front lot line, nor nearer than twenty (20) feet to any side street line, and no building, except a garage or other outbuilding located sixty (60) feet or more from any front lot line, shall be located nearer than five (5) feet to any side lot line. No residence or attached appurtenance shall be erected on any lot farther than thirty (30) feet from the front lot line. No residential structure shall be erected or placed on any building plot, which plot has an area of less than 7500 square feet not a width of less than 60 feet at the front building setback line.

3. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals other than domestic pets shall be kept on any part of Blocks One (1), TWo (2), Three (3), Four (4) and Eight (8). Blocks Five (5), Six (6) and Seven (7) shall be under the same general limitations and restrictions as Block Four (4), except the owners in Blocks (5), Six (6) and Seven (7) who own lots containing One (1) Acre of ground or more have the privilege of keeping poultry sufficient for family use, and any out buildings in which poultry is kept must be built on rear 1/2 halfhooftthettract; not nearer than twenty (20) feet to side lines of lot or tract.

4. No persons of any race other than the Caucasian race shall use or occupy any building or any lot, except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant.

5. No trailer, basement, tent, shack, garage, barn or other out building erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

Exhibit 2 - 1

Book 270 Page 312

6. No dwelling costing less than \$3,500.00 shat be permitted on any of the following described lots in said subdivision: All lots in Blocks One (1), Two (2) and Eight (8), and Lots One (1) and Twenty (20) in Block Three '3). No dwelling costing less than \$2,000.00 sahll be permitted on any other t in the tract. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall be not less than 700 square feet in the case of a one -story structure nor less than 600 square feet in the case of a one-half, two or two and one-half story structure.

7. It is understood and agreed by and between the parties hereto that Lot Ten (10) in Block Three (3), and Lots One (1) and Five (5) in Block Four (4) of said subdivision are hereby reserved to be used for commercial or other purposes, and none of the restrictions, covenants or conditions contained in paragraphs two, three, six or eight hereof shall apply thereto, and said lots may be sold with or without such restrictions and for such purposes as the grantor may elect.

8. No advertising signs shall be erected on any of the lots herein or on any improvements thereon, save and excepting plates of professional men and "for sale" and "for rent" signs, all of which are to relate only and bes restricted to the lots to which the same apply, and further excepting such general advertising signs as may relate to all unsold property in River Crest Addition to Oregon City, Oregon.

9. An easement is reserved over the rear five (5) feet of each lot for utility installation and maintenance.

10. Until such time as the city sewer is available, all sewage disposal shall be by means of septic tanks of type and construction and outlets in accordance with recommendations of the Oregon State Board of Health and the ty of Oregon City.

11. These covenants are to run with the land and shall be binding on all the parties and all persons claiming under them until June 28, 1965, at which time said covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then owners of the lots it is agreed to change the said covenants in whole or in part.

12. It is further agreed and covenanted that no breach of the restrictions contained herein shall of itself work a forfeiture of the land conveyed in fee simple, but any such breach shall give the grantor, its officers and agents, or any owner of land in River Crest Addition to Oregon City, Oregon, the right to compel performance of these agreements, and to abate and remove any structures or erections in violation of them through the court or courts having jurisdiction in such cases, and

It is further agreed that the grantor, its officers and agents, shall have the right summarily to ender upon the granted premises, and to abate and remove at the expense of the owner therof any erection, nuisance, thing or condition that may be thereon contrary to the true intent and meaning of such restrictions or any of them, and that the grantor, its officers or agents, shall not thereby be deemed guilty in any manner of trespass.

13. Invalidation of any one of these covenants by judgment or court order shall in no sise affect any of the other provisions which shall remain 'n full force and effect.

A REAL TO A REAL PROPERTY OF A R

14. That whereas the ledication as shown on the plat recorded in Book 23 at Page 21 of Record of Town Plats of Clackamas County, Oregon, describes the same as River Crest and the caption of the plat describes iteaseRiver Crest Addition to Oregon City, Oregon. Now therefore, the true and correct r e of the plat and dedication as recorded in Book 23 at Page 21 of Record c Town Plats, as recorded in the office of the County Clerk, Clackamas County, Oregon, is hereby declared to be River Crest Addition to Oregon City, Oregon.

IN WITNESS WHEREOF, River-Crest Development Co., pursuant to a resolution of its Board of Directors, duly and legally adopted, has caused these presents to be signed by its President and Secretary and its corporate seal to be hereunto affixed this 1st day of July 1940.

River Crest Development Co.

s/s Geo. F. Vick

President River-Crest Development Co.

sss Maree Odom

Secretary

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BOOK 272 655355

AMENDED AND SUPPLEMENTAL RESERVATIONS AND RESTRICTIONS UPON USE AND OCCU-PANCY OF PROPERTY IN RIVER CREST ADDITION TO OREGON CITY, OREGON

KNOW ALL MEN BY THESE PRESENTS, That River-Crest Development Co., a corporation created and existing under the laws of the State of Oregon, does hereby certify and declare that the following reservations, conditions, covenants and agreements shall hereafter become and are hereby made a part of all conveyances of property within River Crest Addition to Oregon City, Oregon, as the same appears on the map and plat recorded in Book 23, page 21, Record of Town Plats of Clackamas County, Oregon, of which conveyances the following reservations, conditions, covenants and agreements shall become a part by reference and to which they shall thereupon apply as fully and with the same effect as if set forth at large therein during the period of twenty-five years from the date hereof. It being the intention to supplement and amend the reservations and restrictions heretofore filed upon River Crest Addition to Oregon City, Oregon, on July 2, 1940, in Book 270, page 312, Deed Records of Clackamas County, Oregon, and except as so supplemented and amended herein the prior reservations and restrictions are to remain and be in full force and effect.

1. Lots 6, 7, 8, 9 and 10, Block 5; Lots 1 and 2, Block 6; and all of Block 7, all in River Crest Addition to Dregon City, Oregon, are hereby divided into northeasterly and southwesterly halves by a line through said lots and blocks parallel to Max Telford Road.

2. Poultry sufficient for family use in Blocks 5 and 6 and the buildings in which they are housed, must be kept on the rear 100 feet, by rear half of such lots and in Block 7, poulury and the buildings in which they are housed, must be kept on the " 15

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BOOK 272 PAGE 356

rear 79 feet of each lot.

hereafter be erected, placed, or 3. No building shall altered on any building plot in this subdivision until the building plans, specifications, and plot plan showing the location of such building have been approved in writing by a majority of a committee composed of F. L. Udom, and Geo. F. Vick, and N. H. Cherry, or their authorized representative, for conformity and harmony of external design with existing structures in the subdivision; and as to location of the building with respect to property and building setback lines. In the case of the death of any member or members of said committee, the surviving member or members shall have authority to approve or disapprove such design or location. If the aforesaid committe or their authorized representative fails to approve or disapprove such design and location within 30 days after plans have been submitted to it, or lf no suit to enjoin the eraction of such building, or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required. Said committee or their anthorized representative shall act without compensation. Said committee shall act and serve until 5 years at which time the then record owners of a majority of the lots which are subject to the covenants herein set forth may designate in writing duly recorded among the land records their authorized representative who thereefter shall have all the powers, subject to the same limitations, as ware previously delegated herein to the aforesaid conmulttee.

IN WITKESS WHEREOF, River-Crest Development Co., pursuant to's resolution of its Board of Directors, duly and legally edopted, has caused these presents to be signed by its President and Secretary and its corporate seel to be hereunto affixed this

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/9th day of September, 1940.

BOOK 272 ME 357



River-Crest Development Co.

Ro Filik President

River-Crest Development Co.

By Marce Oa

STATE OF OREGON SS County of Clackamas

On this/Oth day of September, 1940, before me appeared Geo. F. Vick and Maree Odom, both to me personally known, who being duly sworn, did say that he, the said Geo. F. Vick is the president, and she, the said Maree Odom is the Secretary of River-Crest Development Co., the within named corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Geo. F. Vick and Maree Odom acknowledged said instrument to be the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and seal, the day and year last above written.



- Milles

Notary Public for Oregon My comm. expires: Nov. 13, 1942

BEALD DOCUMENT 651/PRECORDED SEP 10 1940 53 PM. EVIL PAL WHITY LERK



Brian Stitzel of Tri-County Painting moves stained boards to another room for drying in a large remodeling job. Unprecedented prosperity, declining city crime rates and the growing appeal of urban neighborhoods are contributing to an increase in remodeling.

Changing the view from within

Homeowners hooked on large lots remodel aging houses instead of buying new

By GORDON OLIVER THE OREGONIAN

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Market of the second subcause many of those once green pastures are being transformed into crowded subdivisions.

Growth patterns in the Portland re-

gion have added a new twist to the timeless homeowner quandary of whether to remodel an older house or move to something bigger, newer and better.

Builders and government officials think that the undesirable aspects of new houses, often built on small lots in isolated corners of the metropolitan area, increase the appeal of older homes on larger lots in established neighborhood. "Moving is becoming less of an option for most people," said Jim Feild of Progressive Builders Northwest, one of hundreds of small-sized residential remodeling contractors in the Portland area. "They look at new houses on small lots and say they are happy where they are."

The region's unprecedented prosperity, declining city crime rates and the anoming angest of mbody set 13 to middle-class Americans contribute to the growing strength of the remodeling industry. But the unusual turn of history is that the region's close-in neighborhoods have advantages usually associated with the most distant suburbs: larger lots with more room to grow. And they have the added advantages of being closer to jobs in an increasingly con-

Remodel: Home tour starts Saturday

Continued from Page B1

gested region.

A dozen of the region's remodeling contractors will show the latest in remodeling techniques in the Portland area's first Tour of Remodeled Homes, sponsored by the Remodelers Council, a 2-year-old committee of the Home Builders Association of Metropolitan Portland. The tour is a showcase for the new organization and some of its 150 members, in homes scattered throughout the region. It is from 10 a.m. to 5 p.m. today and Sunday. Tickets, to the show's maximum of 2,500 attendees, are available at all Parr Lumber outlets. The cost is \$15.

Feild's addition to the Lake Oswego home of Tom and Sue Marks is among the most modest of the display homes, with a two-floor bedroom, bathroom and loft that takes advantage of west-facing views of the Willamette River and the Cascades.

The Markses chose their small home because of its prime location 1 Lake Oswego. They couldn't aford a new house in Lake Oswego and weren't interested in new houses elsewhere on small lots, Susan Marks said. "We bought the house for the lot and the view," said Sue Marks, a 46-year-old substitute teacher. "We knew it wasn't a fabulous house."

That was three years ago, and their decision to remodel the 1951 ranch-style home came when they needed a new roof. The work cost them about \$80,000, and they already are looking forward to saving enough for the next remodeling job.

"We have a vision of doing the kitchen next," Sue Marks said.

The definition of remodeling is vast enough to include everything from installing a new countertop to a whole house remodel. Nationally, the almost \$150 billion spent every year on residential remodeling rivals spending on new construction, according to a report released a year ago by Harvard University's Joint Center for Housing Studies.

Few people spend large amounts of money on remodeling. A 1994-95 American Housing Survey found that 17 percent of homeowners spent less than \$500 during a two-year period on home projects, and just 9 percent of homeowners put more than \$10,000 into improvements and repairs. Those 9 percent were responsible for more than half of all home improvement spending.

But few homeowners escape the remodeling impulse. A majority of homeowners who stay in a home 10 years make at least one remodeling improvement during those years, according to the Harvard study. One-quarter of those owners had undertaken a major addition, kitchen or bathroom project.

Big-ticket projects fuel the industry and make for the kind of showcase projects that dominate the Tour of Remodeled Homes. The remodelers are not disclosing costs, although some say their projects are in the half-million dollar range or above. They include full house remodels that are a huge logistical challenge to builders and homeowners.

"The remodeling itself is stressful, and it's almost like you are living in another house," said Scott Gregor of Master Plan Remodeling, who completed a three-phase whole house remodel of a 1950s ranch home while owners were living in the home. The home is on the tour of remodeled homes.

"Remodeling is not something done for profit," said Sam Hagerman of Hammer and Hand, a fastgrowing remodeling firm whose customers spend an average of \$180,000 for remodeling work. "You are spending real dollars you won't get back. If you want to make money, you should buy a mutual fund."

Demographic trends tend to favor a rise in demand for remodeling. The average age of homes is rising, and home demolitions have fallen by three-quarters since the 1960s, the Harvard study reported. There are more homeowners in the high-spending 45-to-65 age

group, and they are increasingly inclined to hire contractors rather than doing the work themselves.

Locally, the huge run-up in housing prices during the '90s has given longtime owners plenty of equity to pay for remodeling. Adding fuel to the national trends are the strength of close-in city and suburban neighborhoods, traffic congestion that discourages long commutes, and the region's antisprawl growth restrictions.

"Basically the trend in Portland is going to high-density housing," Gregor said. "That's what I'm counting on."

You can reach Gordon Oliver at 503-221-8171 or by e-mail at gordonoliver@news. oregonian.com.


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OF OREGO YTNU ed in the public CLACKAMAS Received and plrecords of Clackamas County \$15.00 DATE AND TIME: 10/24/95 12 JOHN KAUFFMAN, COUNTY 12:28 RECEIPT# AND FEE: CLERK

OREGON DEPARTMENT OF VETERANS' AFFAIRS

(Reserved for Reconding Purposes)

SATISFACTION OF MORTGAGE

Account No. M29173

The STATE OF OREGON, acting by the Director of Veterans' Affairs, certifies that the mortgage executed by James A. McKnight and Diane L. McKnight, husband and wife, recorded on the 30th day of July 1970, in the Clackamas County, Oregon, Mortgage Records, #70-14950, a Mortgage recorded July 28, 1975, #75-20555, and a Mortgage recorded November 6, 1979, #79-49578, together with the debt is paid, satisfied, and discharged.

WITNESS the STATE OF OREGON has caused these presents to be executed this 20th day of October 1995, at Salem, Oregon.

Director of Oregon Department of Veterans' Affairs

By

Curt R. Schnepp Manager, Accounts Services

STATE OF OREGON

County of Marion

this instrument was acknowledged before me by the above-named Curt R. Schnepp, who personally appeared, and, being first duly sworn, did say that he is duly authorized to sign the foregoing document on behalf of the Oregon Department of Veterans' Affairs by authority of its Director.

) ss.

Before me: Notary Public Ror Oregon

OFFICIAL SEAL JUDY WILLEMS NOTARY PUBLIC-OREGON MMISSION NO. 023057 MISSION EXPIRES MAY 22, 1907

95-

-06582

COMMISSION NO.

On October 20, 1995

AFTER RECORDING RETURN TO:

JAMES A. MCKNIGHT 161 BARCLAY AVE. OREGON CITY, OR 97045

453-W (10-95)

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The true cons	ideration for this conveyance is \$ 80	,000.00	Here comply with the requirem	ents of ORS 93.03
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The second se	A CONTRACTOR		

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TICOR TITLE INSURANCE STATUTORY WARRANTY DEED VIOLET J. ELLISON Granter. conveys and warrants to JAMES A. MCKNIGHT • Grantee, the following described real property free of encumbrances except as specifically set forth herein situated in <u>Secondar</u> CLACKAMAS County, Oregon, to wit: LOT 13, BLOCK 1, HAZELWOOD PARK. THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLI-CABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTINO THIS INSTRUMENT, THE PERSON ACQUIA ING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT D VERIFY APPROVED USES The said property is free from encumbrances except CONDITIONS, RESTRICTIONS, EASEMENTS AND POWERS OF SPECIAL DISTRICTS, IP ANY. TO 1. 90,000.00 (Here comply with the requirements of ORS 93.030) The true consideration for this conveyance is \$ 19 91 Dated this 26 day of June VIOLET. J. ELVISO المربع المرب المربع Clackamas _ State of Oregon, County of . State of Oceanificonnty of -The foregoing instrument was acknowledged before me this ______ The foregoing instrument was acknowledged before me this _______ the ______ the _____ the _____t the ____t the _____t the ____t the _____t the ____t the _____t the ____t the _ Secretary of 12:53 UBL corporation, on behalf of the corporation. A CARLENE AND A CARLENE Notary Public for Oregon My commissio ÷... WARRANTY DEED VIOLET J. ELLISON JAMES A. MOKNIGHT Until a change is requested, all tax statements shall be --- 3 sent to the following address: JAMES A. MoKNIGHT 161: BARCLAY AVENUE OREGON CITY, OR 97045 Escrow No. 197-379E Title No. 197-379 After recording feturn lot JAMES A MOKNIGHT .161 BARCLAY AVENUE OREGON CITY, OR. 97045 A Ticor Form No. 137 Statutory Warranty Deed \$/85 20355 ESTANA MARCA 5.7

• • • • • • 20.00 TICOR TITLE INSURANCE 610372 STATUTORY WARRANTY DEED JAMES A. ACCOUCHT Recor SHARE AND D. PERCHARD D. PERCHEDIN AND JOAR N. PERCHEDIN, HUSBAND AND WEPE ribes regenerate ben al encanterman Canese as specifically an farth bervin an County Origina to siz ġ Groom, the following des CLACKNESS g LOT 13. BLOCK 1. HAZELMOOD PARK. DI THE CITY OF ORDEON CITY, COUNTY OF CLACKOMAS AND TICOR STATE OF CARCON. 04500 2E 06BA 3 THIS DISTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCARED IN THIS INSTRUMENT IN VIOLATION OF APPLI-CABLE LAND USE LAWS AND REGILATIONS REFORE SIGNED SHACEPTING THIS INSTRUMENT. THE PERSON ACQUTE ING FEE THLE TO THE PROPERTY SHOLD CHECK WITH THE APPLOPMATE (ITY PLANNED GEPARTMENT TO VERFY APPROVED USES TREMPROCENSIL STRUCTURE AND TO DETURING ANY LIMITS CH TITLE LAMSUITS AGAINST FAMILIES OF PAREST PRACTICES AS DEFINED IN ORS 30,930. The said property is tree from anometrances except - MULTIONS, RESTRICTIONS, EASIMPHITS AND FUMERS OF SPECIAL DISTRICTS, IT NAY. ND The true consideration for this maveyance = \$ 125,500.02 (Herr consult with the resumments of ORS 1) 030; James A. The Knight Denset share will be any of 19.... Apr11 State of Oregon Courty of _____CLACETER____ - Sain of Oregon, County of . G Secretary of - • . Corporation CAPTICAL BEAL TO MEAL Of the corporation TOTAL PLACE DEC COMP SECOND COMP EN COMPSESS - COLARS NOV & WIT - Unbit for Oregon EN COMPSESS - COLARS NOV & WIT - Unbit for Oregon αt WARRANT'S DEED JAMES A. HEIGHLEHT GRAN GEN ះ RECHARD D. FEDGLEON JOAN N. FEDGLECH 111 Used a change is requested, all tan statement that be are to the following address. ć, ŧ. RECHARD D. EERISION & JOAN R. 757.00203 54.41.1.20 105 KANDALL COUNT .) ARCON CITY. OR 97045 THE No 6103725 C610372DT 5 11 8 RICHARD D. FERGISION & JOAN H. FERDUSCH Į 105 RANDALL COUNT UNDERNI CITY, OR 9/045 Teast Furn No. 137 Sustainty Wateries Deal 8 85 91 35952 -----Flat Hall here had a factor of a

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142 Holmes Lane Oregon City, OR 97045 September 12, 1999

James McKnight 161 Barclay Avenue Oregon City, Oregon 97045

RE: Proposed resubdivision of lots in Rivercrest Addition

Dear Jim,

Thank you for providing me with a copy of the information regarding your proposed lot partition and zoning variance. As I told you yesterday when you delivered the documents, I object to the proposed partition which is contrary to the CCRs which apply to all properties in the Rivercrest Addition. You informed me you were aware of the deed restrictions when you purchased your property about thirty years ago and understood then as now that the deed restrictions ran with the land and are binding on you as well as the other property owners in Rivercrest Addition. I have previously provided Diane and you with a copy of the restrictions as recorded in the Deed Records of Clackamas County. This letter is formal notification of my objection to your proposed partition and my request that you abandon your intention to resubdivide your lot and the adjacent lot which is also subject to the CCRs.

You'll note in Clause 11 on page 2 of the document from Book 270, the covenants run with the land and are automatically extended. Clause 12 gives any landowner in Rivercrest Addition the authority to compel compliance with the obligations in the CCRs. If there is no other option, I will file the required legal action to enforce them. If you submit a petition with the City I will file an objection, hoping to avoid any further proceedings. Of course I'll provide you with a copy of anything I file. You told me you understand that I must object to any violations of the CCRs in order to retain my standing with the courts to object to future proposed or actual violations. Obviously I would prefer to resolve this issue without involving the courts, before any of us incur damaged feelings or further stress and expense.

I received my copy of these deed restrictions when the title search revealed them at the time I purchased my property in 1988, and have relied on them as contractual guarantees that the basic character of the neighborhood will remain as it was when I acquired my home. I object to any actions in violation of these CCRs, especially partition of any of the lots in the subdivision. The proposed partition violates several of the provisions in these contractual obligations which apply to all owners of property in the Rivercrest Addition.

a) Clause 1 of the Restrictions recorded in Book 270 allows <u>only one detached</u> <u>single-family dwelling per lot</u> as those lots are described at the time of original conveyance. Adding a third residence where only two can now exist **is not permissible.**

Page 1

Exhibit 12-1

b) The proposed lot depth is not in conformity and harmony with the <u>existing structures in Rivercrest</u>, as required by Clause 3 on page 2 of the Restrictions from Book 272.

I mentioned that I have researched the case law on this issue and that I would provide you with copies of the most relevant court decisions that are binding on all Oregon circuit courts, including Clackamas County's. There are two:

a) In Ludgate v. Somerville, 256 P 1043 (Or 1927), the Oregon Supreme Court ruled that "the purchaser of residence property, relying on restrictive covenants, may enforce them against other lot owners, regardless of city zoning ordinance". My understanding is that this means that even if you are successful in gaining permission to proceed from the municipal planning authorities, you are still legally required to comply with the contractual deed restrictions which run with the land. Even if the zoning regulations permit an action, it is not legal if prohibited by binding CCRs.

b) In *Cadbury v. Bradshaw*, 43 Or App 33, 602 P2d 289 (1979), the Oregon Court of Appeals ruled that "where restrictive covenants in deeds required all of parcels to be used as residential parcels and prohibited building of more than one dwelling on a parcel, the restrictions prohibited resubdivision by necessary implication". Please note that the court also ruled on page 291 that even assuming resubdivision was permissible, "construction on resubdivided parcels was not permissible...[and] it would be inconsistent with these provisions for fractional parcels to be created where no residential use can occur". Even if you were to resubdivide the lots, the new owner of the property would be subject to the CCRs. My interpretation of this decision is that, under this binding Oregon appellate court precedent, any property owner in Rivercrest Addition could block construction of a residence on the new lot by compelling compliance with the CCRs. I'm pretty sure that possibility would have to be disclosed to any potential purchaser under current real estate sales regulations.

I could cite additional case law supporting my position but I hope this brief review of Oregon legal precedents is sufficient to cause you to reconsider your proposed lot partitions. I hope you are able to find other ways to fund your projects, and we can maintain cordial neighborly relations enjoying our homes as we do now.

If you have any questions or wish to discuss the matter further, please feel free to contact me.

Sincerely, Linda Lord 657-3293

Encl. CC: Charles Leeson

Page 2

- To: Oregon City Planning Commission 320 Warner Milne Road Oregon City, OR 97045
- From: Mark Reagan 141 Barclay Ave. Oregon City, OR 97045



Regarding Land Use Application Form File # VR 99-07

Dear Planning Commissioners.

This variance that you are considering is adjacent to my property on the south side. I <u>strongly object</u> to you granting this variance for several reasons.

1. If a house were to be built on this small lot it would look directly into my backyard and into the back of my house, and into that of the next 2 houses down the street. The limited depth of the lot would cause the house to be a very imposing structure in a well established neighborhood. The reason I and most of the neighbors bought in this neighborhood was due to the lot size and the privacy that it provided.

2. The lot sizes for this neighborhood were established over 50 years ago and changing that lot size to wedge a house in will be completely against the character and original intention of this neighborhood.

As the housing boom continues in the Oregon City area, please protect the established neighborhoods from becoming just another housing tract.

Thank you for your consideration of this matter.

Mark Reagan

EXHIBIT R Letter From Mark Reagon R99-07

