

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1438 BY REZONING CERTAIN PROPERTY FROM RESIDENTIAL-TEN (R-10) TO RESIDENTIAL-SEVEN (R-7) ZONE (ZC-91-02).**

**WHEREAS**, a Zoning Map Amendment was considered at public hearings before the Planning Commission on August 27, 1991, and the City Council on October 1, 1991; and

**WHEREAS**, the City Council finds the application should be approved based on the findings listed below;

**NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:**

Section 1. Findings. The following findings of fact and conclusions are adopted:

**FINDINGS:**

1. The subject property was recently annexed to the City (AN-91-02 effective August 12, 1991).
2. The current zoning for the subject property is R-10 (County).
3. The R-7 Zone is consistent with the County Comprehensive Plan designation of Low Density Residential and the City Comprehensive Plan designation of Low Density Residential.
4. The area involved is identified on Map Exhibit #1.
5. Findings for approval include Zoning Map Amendment criteria and Comprehensive Plan conformity and are addressed in Exhibit #2.

**CONCLUSION:**

1. Comprehensive Plan conformity has been shown.
2. Zoning Map Amendment criteria have been met.

Section 2. Zoning Map Amendment. The Zoning Map of Ordinance 1438 is amended by rezoning subject property, as depicted on Map Exhibit #1, from R-10 to R-7.

Read the first time on October 1, 1991, and moved to second reading by unanimous vote of the City Council.

Read the second time and adopted by the City Council on October 1, 1991.

Signed by the Mayor on October 1, 1991.

Craig J. Lomnicki  
Craig Lomnicki, Mayor

**ATTEST:**

Pat Deval  
City Recorder

Approved as to Form:

Michael C. Palmisano  
O'Donnell Ramis Crew & Corrigan, City Attorney

Exhibit B.1

BI

Milwaukie Expressway

(PD)

R-2

BI

**SUBJECT SITE**

R-10

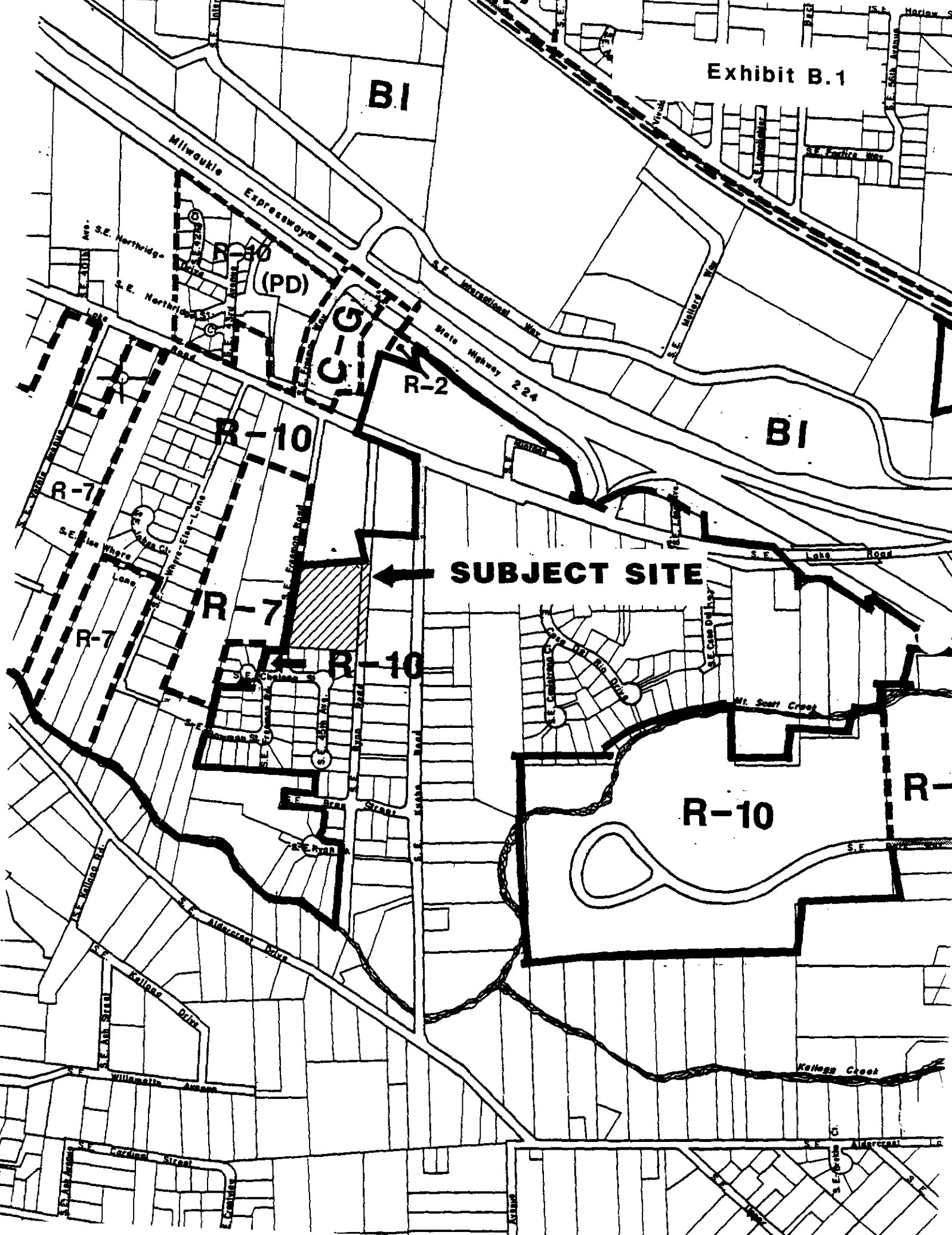
R-7

R-7

R-10

R-10

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**Findings**

1. The Applicant is proposing to rezone a 3.48 acres parcel from the R-10 (County) to R-7 (City) zone to allow the creation of a 14 lot subdivision (see Exhibit 2 for tentative lot layout).
2. The subject site has recently been annexed to the City by the Metro Boundary Commission's Final Order for proposal 2964. The property is also proposed to carry the City's Land Use Designation of Low Density Residential which is applied to the contiguous City properties to the west. The Low Density designation would allow a maximum of 6.7 dwelling units per net acre for a maximum theoretical yield of 18 dwelling units (3.48 x .25 x 6.7). The Applicant's proposal for 14 dwelling units (5.05 du/ac) is consistent with the City's Low Density designation and the County's Low Density designation (6 du/gr.ac.). A Comprehensive Plan Map Amendment will be processed along with other amendment items at a later date.
3. Requirements for Zoning Map Amendments are contained in Section 903 of the Zoning Ordinance (See Exhibit 4). They have been addressed by the Applicant in Exhibit 5 and by the Staff below.

**903.01**

**Proposals for Zoning Map amendments must provide evidence that all requirements of this Ordinance relative to the proposed use or uses are satisfied, in addition to addressing the following.**

**A. Applicable requirements of Section 10.03.**

Section 10.03 requires that the application be submitted on the forms prescribed by the City and accompanied by plans and specifications sufficient to determine conformance with the Zoning Ordinance. This requirement has been satisfied by Exhibits 2 and 5.

**B. Reasons for requesting the Zoning Map Amendment.**

As explained in Exhibit 5 the rezoning would allow the parcel to be developed to the "highest and best use consistent with the surrounding area". The increased density would further act to compensate the landowner for area lost in the preservation of the wetland located on the site.

**C. Description of existing site conditions, including but not limited to, topography, public facilities and services, natural hazards, natural areas or open space, historic sites, transportation, current uses of the subject site, and current zoning of the subject site.**

Site descriptions are found in Exhibits 5, 6, and 7.

**D. Description of the intended use or uses.**

The intended use of the site is a 14 lot subdivision for purpose of constructing single family detached homes.

**E. Identification on a detailed site plan of public facilities both existing and proposed, existing and proposed structures and site development details including display of setback and other zoning standards compliance information, and an indication of mitigation or other measures proposed for purposes of health, safety, or welfare within the community.**

See Exhibit 2. This proposal is to allow the subdivision of land at an R-7 density and does not include the construction of the individual dwellings. That information is required during the subdivision review and has been initiated by File S-91-04.

**F. The approval criteria of Section 905.**

For all proposals, the applicant shall have the burden of proof regarding the following criteria:

1. **The proposed amendment must conform to applicable Comprehensive Plan goals, policies, and objectives, and be consistent with the provision of City ordinances.**

Applicable sections of the Comprehensive Plan are addressed as follows:

a) **AIR, WATER, AND LAND RESOURCES QUALITY ELEMENT.**

Objectives 3 and 4 - The request conforms because it does not propose residential development in areas subject to high levels of noise; and development will use sanitary sewers located adjacent to the subject property.

b) **RESIDENTIAL LAND USE AND HOUSING ELEMENT.**

Objective 2, Policy 2 - The request meets the criteria for housing type, access, lack of redevelopment needs, and sensitivity to the natural environment necessary for appropriate Low Density development.

Objective 4, Policy 4 - The request meets this policy because the existing homes to be removed are beyond rehabilitation.

Objective 4, Policy 5 - The request meets the criteria of compatibility with adjacent single family building bulk, scale, and height as shown on the Applicant's Preliminary Subdivision Plat.

Objective 5, Policy 1 - The Applicant has demonstrated through a Preliminary Subdivision Plat that mixed lot sizes, consistent with the character of Pennywood Subdivision to the west and meeting a 7,000 square foot minimum lot size, are feasible.

c) **NEIGHBORHOOD ELEMENT.**

Objective 1, Policy 4 - The request complies because it proposes lot sizes and densities consistent with Pennywood Subdivision located to the west.

Guideline #1 - Single Family Character - The proposal to rezone the property to the R-7 Zone will limit the development to single family detached dwellings which will be consistent with the surrounding single family character of the area.

Guideline #8 - Walkways - The development of the R-7 Zone will require sidewalks to be constructed in conjunction with the subdivision improvements.

d) **TRANSPORTATION ELEMENT**

Goal Statement - This goal promotes safe and easy access within the City to the major transportation networks connecting with the city. This request will result in widening and improving a substantial portion of Freeman Road, thus facilitating traffic flow from the south. In addition the project will extend Pennywood Drive to serve property to the east.

Objective 3, Policy 5 - This policy requires transportation improvements to be provided as properties develop. Development of the subject site with R-7 standards will require that streets be constructed, or financially secured, prior to the construction of any homes.

e) PUBLIC FACILITIES AND SERVICES ELEMENT

Objective 3, Policy 2 - This request complies with the requirement that improvements are to be made as properties develop in that sewer, water, storm drainage, electricity, telephone, and cable TV will be installed in conjunction with public street improvements as part of a subdivision process.

Objective 6, Policy 3 - This request can meet storm drainage development requirements in that the developer will be required to connect storm drainage facilities to the existing system located in Freeman Road. The Office Engineer has indicated that the Freeman Road system has been designed to accommodate runoff from this property.

f) ENERGY CONSERVATION ELEMENT

Objective 1, Policy 1 - This request meets the objective of taking advantage of existing public facilities and transportation systems in that the subject site is adjacent to all public utilities, public facilities, and transportation systems.

Objective 4, Policies 1, 2, and 3 - The request can comply with site design practices resulting in energy efficiency. As proposed by subsection 1703.05 of the Zoning Ordinance the percentage of proposed lots that comply with subsection 1703.03 has been reduced from 80% to 71%. This lower compliance standard is because the density would have to be reduced and a natural feature (wetland) would have to be altered in order to fully conform to the design standards of the Solar Access Protection Ordinance. Other sections of the Solar Access provisions accommodate the unique situation of a wetland on-site.

2. The anticipated development must meet the intent of the proposed zone, taking into consideration the following factors: site location and character of the area, the predominant land use pattern and density of the area, the potential for mitigation measures adequately addressing development effects, and expected changes in the development pattern for the area, the need for uses allowed by the proposed zone amendment, and the lack of suitable alternatives sites already appropriately zoned for the intended use or uses. The Planning Commission and City Council shall use its discretion to weigh these factors in determining the intent of the proposed zone.

This criteria is concerned with how well a proposed development will "fit" into an existing neighborhood pattern. As previously mentioned, the neighborhood pattern is primarily established by the Pennywood subdivision located on the west side of Freeman Road. To the south is Bowman Terrace, a single family residential project located in the County and developed with lots ranging in size from 8000 to 9500 sq.ft.

Property to the north is currently being utilized as a Christmas Tree farm and is presently zoned R-10 (10,000 sq.ft. minimum), but it too could be proposed to be developed to an R-7 density in the future.

3. **The proposed amendment will meet or can be determined to reasonably meet, applicable regional, state, or federal regulations.**

The only regulations beyond those addressed specifically by the City's Codes and Ordinances would pertain to the preservation of the wetlands located on the site. It is the Applicant's intention, as demonstrated by the accompanying subdivision map (Exhibit 2), to preserve the integrity of this environmentally sensitive area. Exhibit 7 documents the wetland area size and characteristics.

Division of State Lands, Oregon Fish and Wildlife, and Corps of Engineers were contacted and expressed satisfaction that applicable regulations would be complied with as long as no proposal to fill within the wetlands was incorporated in the project (Exhibit 8).

4. **The proposed amendment demonstrates that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected area.**

Affected public agencies have responded that adequate facilities and services are available to serve the proposed increase in density from this project. (See Exhibit 9)

### **Conclusion**

The findings indicate that the requested zone change conforms to Comprehensive Plan policies concerning low density residential development, environmental quality, and other applicable topics. The request conforms with the intent of the proposed zone by following the surrounding settlement pattern of single family residential lot sizes no less than 7,000 sq. ft. in size. The request acknowledges the physical factors of a wetland on the subject site and indicates that development will not adversely affect this sensitive area. Finally, building and other City ordinances can be complied with to result in development that conforms to zone change requirements.