

ORDINANCE NO. 17-1011

AN ORDINANCE OF THE CITY OF OREGON CITY AMENDING TITLE 17: ZONING, CHAPTER 17.06.020 AND THE OFFICIAL ZONING MAP OF THE OREGON CITY MUNICIPAL CODE FROM R-10 SINGLE FAMILY DWELLING DISTRICT TO R-8 SINGLE FAMILY DWELLING DISTRICT AND A 77-LOT SUBDIVISION FOR CLACKAMAS COUNTY MAP 32E07C, TAX LOTS 1001, 1100, 1180, AND 1291 AND MAP 31E12D TAX LOTS 1700 AND 1790

WHEREAS, the City of Oregon City has adopted a Zoning Map to implement the Comprehensive Plan in conformance with statutory requirements and the requirements of the Statewide Land Use Goals; and

WHEREAS, the City of Oregon City Zoning Map implements the Comprehensive Plan Map by illustrating the location best suited for specific development; and

WHEREAS, the City of Oregon City Zoning Map and Comprehensive Plan Map may be amended and updated as necessary upon findings of fact that satisfy approval criteria in the City of Oregon City Municipal Code Section 17.68.020; and

WHEREAS, the owners of the subject site: 32E07C Tax Lot 1001 (Wheeler Family Enterprises, LLC), Map 32E07C Tax Lots 1100 (19566 Central Point Rd), and 1180 (David H. Wheeler Sr. Trust), Map 32E07C Tax Lot 1291 (Donald W. & Roxanne O. Wheeler), Map 31E12D Tax Lots 1700, 1790 have requested the approval of a Zone Change from "R-10" Dwelling District, to "R-8" Dwelling District known as file numbers AP 17-05, TP 17-03, ZC 17-03; and

WHEREAS, notice of the hearings was timely mailed to property owners within 300 feet of the subject site, signs advertising the hearing were posted on the property, notice of the hearings was published in a local newspaper and the City held public hearings where the zone change and subdivision applications were presented and discussed; and

WHEREAS, on October 9, 2017 after considering all the public testimony and reviewing all the evidence in the record, the Planning Commission voted 3-2 to deny the requested Zone Change and Subdivision; and

WHEREAS, the applicant appealed the Planning Commission decision, known as file number AP 17-05, which was heard at the November 1, 2017 City Commission meeting; and

WHEREAS, The City Commission voted to approve the appeal and reverse the Planning Commission's denial of TP 17-03 and ZC 17-02 and found that zone changes within the same comprehensive plan designation should be generally allowed upon a finding that the facilities and services are adequate as regulated in the OCMC standards and the Comprehensive Plan should be viewed and implemented as a complete package that balances the need for neighborhood compatibility and the need to encourage a variety of housing opportunities as well as increased density to support a more efficient system of infrastructure; and

WHEREAS, the proposal with conditions, will result in the timely provision of public services and facilities and, with the imposition of conditions, will have no significant unmitigated impact on the water, sewer, storm drainage, or transportation; and

WHEREAS, the proposed subdivision and Zone Change with conditions of approval complies with the requirements of the Oregon City Municipal Code; and

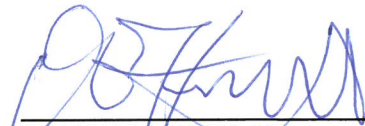
WHEREAS, approving the Subdivision and Zone Change with conditions of approval is in compliance with the applicable Goal and Policies of the Oregon City Comprehensive Plan, the Statewide Land Use Goals and the Metro Urban Growth Management Functional Plan and is in compliance with all applicable city requirements.

NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:

Section 1. The Zoning Map Amendment request is hereby approved as proposed by the applicant with the conditions of approval for the properties located at 32E07C Tax Lot 1001 (Wheeler Family Enterprises, LLC), Map 32E07C Tax Lots 1100 (19566 Central Point Rd), and 1180 (David H. Wheeler Sr. Trust), Map 32E07C Tax Lot 1291 (Donald W. & Roxanne O. Wheeler), Map 31E12D Tax Lots 1700, 1790.

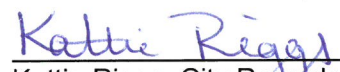
Section 2. The Commission considers and adopts as its own the findings and conclusions that are attached to the Ordinance as Attachment A, based on the record of the Planning Commission hearings, and are incorporated herein to support the City's approval to amend the zoning map and approve the subdivision application.

Read for the first time at a regular meeting of the City Commission held on the 6th day of December 2017, and the City Commission finally enacted the foregoing Ordinance this 20th day of December 2017.



DAN HOLLADAY, Mayor

Attested to this 20th day of December 2017:



Katie Riggs, City Recorder

Approved as to legal sufficiency:



City Attorney

Attachments:

- A. Findings of Fact and Final Order with Conditions of Approval

**BEFORE THE CITY COMMISSION
FOR THE CITY OF OREGON CITY, OREGON**

In the matter of an Appeal by Property	)	FINDINGS OF FACT AND
Owners Wheeler Family Enterprises, LLC,	)	CONCLUSIONS OF LAW
David H. Wheeler, Senior Trust, Donald W.	)	SUPPORTING THE GRANTING
and Roxanne O. Wheeler and Applicant	)	OF THE APPEAL AND
Rian Park Development, Inc. of the Denial	)	APPROVAL OF THE
by the Oregon City Planning Commission of	)	APPLICATIONS
a Zoning Map Amendment from R-10 to	)	
R-8 in Conformance with the Oregon City	)	City of Oregon City File Nos.
Comprehensive Plan and a 77 Lot	)	ZC 17-02 and TP 17-03
Subdivision, on Property Located	)	
Generally South of Orchard Road Drive	)	
and Containing Approximately 22.56 Acres.	)	

I. PROCEDURAL STATUS.

The Applicant seeks approval of a zone change from R-10 to R-8 in conformance with the Oregon City Comprehensive Plan Map designation of “Low Density Residential” and a 77 lot subdivision. The property is inside the Portland Metropolitan Urban Growth Boundary (the “UGB”).

After proper public hearing notice, the Oregon City Planning Commission held two public hearings on the Applications on September 25, 2017 and October 9, 2017. No person asked that the October 9, 2017 public hearing be continued. The Planning Commission thereafter closed the public hearing and the record and tentatively voted 4-2 (Commissioner Henkin absent; Commissioners Mahoney and Johnson opposed) to deny the Applications. The City mailed notice of the final Planning Commission decision on October 12, 2017. The Applicant filed a timely appeal pursuant to Oregon City Municipal Code (“OCMC”) 17.50.190, “Appeals,” on October 18, 2017.

The City Commission opened the public hearing on the appeal on November 1, 2017. The City Commission’s appeal hearing was an “on the record” appeal hearing limited to the record made before the Planning Commission. All five City Commissioners were present and constituted a quorum.

The City Commission provided for the announcements required by ORS 197.763(5) and 197.796. The City Commission asked for disclosures of *ex parte* contacts, bias, actual and potential conflict of interest and site visits. None of the City Commissioners disclosed an *ex parte* contact, bias, or actual or potential conflict of interest. All four City Commissioners and the Mayor disclosed a site visit. The City Commission provided an opportunity for persons to rebut disclosure of the site visits but no person did so.

Planner Christina Robertson-Gardner provided the staff report. The City Commission thereafter heard the Appellant, supporters of the appeal, opponents to the appeal and the Appellant’s

rebuttal. No person raised a procedural objection to the City Commission proceeding. The Applicant waived final written argument.

The City Commission thereafter closed the record and public hearing and voted 4-1 (Commissioner O'Donnell opposed) to tentatively grant the appeal, reverse the Planning Commission's decision and approve the Applications with the conditions of approval recommended by staff and including one new condition of approval. The City Commission determined to adopt the final decision at its public meeting on December 6, 2017.

II. SUMMARY OF THE CITY COMMISSION DECISION.

The City Commission's decision is to reverse the Planning Commission, grant the appeal and approve the Applications. In general, the City Commission finds that the Planning Commission denied the Applications without a proper evidentiary basis and misinterpreted the applicable approval criteria.

III. FACTS.

The appeal challenges the Planning Commission's denial of an application for a zoning map amendment from R-10, "Single-Family Dwelling District" to R-8, "Single-Family Dwelling District" and for a 77-lot single family subdivision on 22.56 acres (the "Applications"). Both zoning districts implement the Oregon City Comprehensive Plan (the "Plan") map designation of "Low Density Residential". The 77-lot subdivision is only four more lots than a subdivision in the R-10 zone would allow and seven lots fewer than the maximum density allowed in the R-8 zoning district. The subdivision application includes a 1.35 acre open space tract. This subdivision will be developed for single family lots, just as the five surrounding subdivisions (the "Area," or the "Area Subdivisions") have been.

The proposed subdivision application was submitted pursuant to Oregon City Municipal Code ("OCMC") 16.12.050, "Calculations of Lot Area," which allows lot size averaging, because it proposes 64 lots that are up to twenty percent less in size (1,600 square feet) than the 8,000 square feet minimum lot size of the R-8 zone and the 77-lots' average 8,000 square feet in size. OCMC 16.12.050 applies to the R-3.5, R-5, R-6, R-8 and R-10 zoning districts and may be used by a subdivision applicant. This standard is not a relevant approval criterion for the zoning map amendment, however it is relevant to the extent that lot averaging allows lots smaller than the minimum lot size for both the R-10 and R-8 Districts. The City Commission notes that almost all of the opponents addressed this standard, but the concern was not compliance with the standard, but the impact of the smaller lots on other matters such as compatibility and cohesion, as discussed further below.

The proposed subdivision's lots meet the R-8 zone's dimensional standards and dwellings on those lots can meet the R-8 zone's setback requirements. The R-8 zone's lot width and depth standards are only five feet less than the R-10 zone's requirements: 60 feet versus 65 feet and 75 feet versus 80 feet and the two zone's front yard and rear yard setbacks are also virtually the same.

The proposed subdivision is near five other Area Subdivisions: Payson Farms, Central Point Crossing, Ed's Orchard, Highland Park and Hazel Creek Farms. Hazel Creek Farms is the oldest

subdivision of the five, having been platted in 2001. OCMC 16.12.050 was not in effect when the Hazel Creek Farms Subdivision was platted and that is why it is the only existing subdivision without minimum lot sizes less than that allowed by the zone.

The proposed subdivision abuts three of the five Area Subdivisions. Of these three subdivisions, one is exclusively zoned R-8 (Highland Park), one is zoned both R-8 and R-10 (Ed's Orchard) and one is exclusively zoned R-10 (Hazel Creek Farms). The other two Area Subdivisions are zoned R-8. Including the proposed subdivision, the six subdivisions contain 310 lots, of which 99 are in the R-10 zone and 211 are in the R-8 zone.

The four existing Area Subdivisions in the R-8 zone have minimum lot sizes ranging from 6,401 square feet to 7,022 square feet and average lot sizes ranging from 7,071 square feet to 8,580 square feet. The proposed subdivision's smallest lot is 6,407 square feet and its average lot size is 8,279 square feet.

The two existing R-10 subdivisions have minimum lot sizes of 9,114 and 10,000 and average lot sizes of 10,166 and 10,233.

The gross density of the proposed subdivision is 3.41 dwelling unit per acre ("DU/AC"), compared to a range of 3.06 DU/AC to 3.91 DU/AC for the other five Area Subdivisions.

The proposed subdivision abuts four of the Area Subdivisions in seven areas. Only in one of the seven areas does the proposed subdivision abut Hazel Creek Farms. In that location, six Hazel Creek Farms' lots abut six proposed subdivision lots. The ratio of existing to proposed abutting lots is:

- Area 1 (separated by Orchard Grove Drive): 9 lots to 9 lots (Lots 54-57 and 72-76)
- Area 2: 2 lots to 2 lots (Lots 11 and 12)
- Area 3: 3 lots to 3 lots (Lots 6-8)
- Area 4: 4 lots to 5 lots (Lots 1 and 3-5)
- Area 5: 2 lots to 2 lots (Lots 22 and 33)
- Area 6: 2 lots to 1 lot (Lot 34)
- Area 7: 6 lots to 6 lots (Lots 34-37 and 39-40)

Even though the proposed subdivision's lots are as small as 6,407 square feet, most proposed lots abut just one existing lot, which means that the lot dimensions are a good match to one another. Even in the one area where the large Hazel Creek lots abut the proposed subdivision, only two of the six Hazel Creek Farms Subdivision lots abut more than two proposed lots. The proposed subdivision's perimeter inside the City abuts Hazel Creek Farms for only 690 linear feet out of 4,120 linear feet.

Most of the surrounding area is zoned R-8. Of the 23 lots abutting this proposed subdivision, 17 are zoned R-8. Four of the five Area Subdivisions utilize lot size averaging allowed by OCMC 16.12.150 and contain lot sizes less than the minimum zone lot size in their zone. Only the Hazel Creek Farms Subdivision, which is just one of the three subdivisions abutting the proposed subdivision, one of the five Area Subdivisions, and the oldest subdivision, does not contain smaller lot sizes than the minimum lot size and it has the highest average lot size. In other words, the Hazel Creek Farms Subdivision is the least typical subdivision in the area, does not

represent the planning trend of using reduced lot sizes and was not developed under current lot average provisions allowed by OCMC 16.12.150, yet the Planning Commission based its decision largely on how the proposed subdivision affects Hazel Creek Farms even though the boundary between the two subdivisions is very small.

IV. FINDINGS IN SUPPORT OF THE CITY COMMISSION'S DECISION.

The City Commission finds that the Appellant fully complied with the requirements of OCMC 17.50.190, "Appeals," by filing the required appeal fee, filing a timely appeal and including in the appeal all of the information required by OCMC 17.50.190.

The City Commission's findings include incorporation of the two-page staff report to the City Commission for agenda date November 1, 2017, including the October 20, 2017 memorandum from Wendy Marshall and the October 20, 2017 memorandum from John Replinger. The City Commission decision also incorporates by reference the entire staff report, including exhibits, to the Oregon City Planning Commission dated September 18, 2017 and entitled "Type IV Zone Change And Subdivision Application Staff Report And Recommendation". Where there is a conflict between the incorporated documents and these findings, these findings shall control.

1. Why the Planning Commission Erred in Denying the Applications.

a. The Facts in the Planning Commission Notice of Decision Section 5, "Notice and Public Comment", Are Inaccurate and Not Supported by Substantial Evidence.

The Planning Commission found that the smaller subdivision lot sizes allowed by lot size averaging would be "incompatible" and "lack cohesion" with the surrounding larger lots. The City Commission understands the Planning Commission's concerns, but finds that the lot sizes are compatible and cohesive with the surrounding lots. In particular, the Commission notes that only a few of the lots abutting the proposed subdivision are larger than those in the proposed subdivision; the majority of abutting lots are about the same size as the proposed lots and the required minimum dimensions of lots in the two zoning districts are similar.

The Planning Commission's decision also asserts that the roads in the area lack capacity to accommodate additional traffic. However, the Applications additional 4 lots over the R-10 zone and the City's traffic engineer, as well as the Applicant's traffic engineer, concluded that there is adequate intersection capacity. No substantial evidence was submitted to the contrary.

The Planning Commission's decision also asserts that schools are overcrowded. The substantial evidence in the record shows that the school district is not concerned about the impact on capacity from the Applications. Further, ORS 195.110(13)(a)-(c) prohibits the City from denying the Applications based on school capacity because the school district did not raise the issue.

Finally, the Planning Commission's decision also asserts problems with conflicts with traffic, and no need for the open space tract. These concerns are unrelated to relevant approval criteria.

2. The Planning Commission Findings are Inadequate, not Based on Substantial Evidence and Misapply Applicable Law.

a. Introduction.

The Planning Commission denied both Applications but made findings for denial only on the zoning map amendment. Therefore, the City Commission finds that, because it reversed the Planning Commission on the zoning map amendment decision, the subdivision Application may be approved, with conditions, without further consideration.

b. The City Commission finds that OCMC 17.68.020.A is satisfied.

This section addresses the reasons that the Planning Commission denied the zoning map amendment from R-10 to R-8 in compliance with the Oregon City Comprehensive Plan.

The denial of the zoning map amendment on the basis that the Applications failed to comply with relevant goals and policies of the Oregon City Comprehensive Plan is based largely on the idea that lot averaging in conjunction with the zone change results in smaller lots that are "incompatible" with abutting larger lots. For the reasons already explained, most of the abutting lots to the proposed subdivision are a similar size as those proposed in the Applications; only six lots of the Hazel Creek Farms Subdivision abut the proposed subdivision. Moreover, two-thirds of the lots in the area around the proposed subdivision are in the R-8 zone rather than in the R-10 zone. Finally, the majority of lots in the proposed subdivision use the lot averaging provision in OCMC 16.12.150 to create lots less than the minimum lot size required in the R-8 zoning district, just as four of the five existing Area Subdivisions did; only the Hazel Creek Farms Subdivision did not use the lot averaging method. Therefore, the City Commission finds that the basis for the Planning Commission decision is unsupported by substantial evidence.

The Planning Commission's decision presents an undesirable policy direction. By affirming the Planning Commission, the City Commission would determine that existing lot sizes must be matched by proposed lot sizes. This is inconsistent with the Oregon City Comprehensive Plan as explained below, and inconsistent policy because there are a variety of lot sizes that have been approved by the City. Moreover, the Planning Commission's reasoning does not provide a "bright line" of when lots are "too" small. The result of affirming the Planning Commission's decision would be that existing property owners would have an expectation that their lot sizes would be matched by future lot sizes on adjacent properties; however, that would be contrary to the current provisions of the OCMC and policies in the Oregon City Comprehensive Plan, regarding the goal of providing variety of lot sizes in the future. Finally, the Planning Commission's decision does not explain why the proposed subdivision is inconsistent with the Area Subdivisions, aside from parking, and what constitutes incompatibility.

Further, the Plan is implemented by the land use regulations in OCMC Titles 16 and 17. Plan at page 4 ("The Oregon City Comprehensive Plan is implemented through City Codes ancillary plans, concept plans and master plans"). The Planning Commission made a decision not supported by substantial evidence relating to Plan Goal 2.4 that approving the proposed subdivision would not protect and maintain existing neighborhoods in the area.

c. **The Planning Commission’s finding that the Applications did not satisfy Plan Goal 2.4, “Neighborhood Livability”, is erroneous.**

Plan Goal 2.4, “Neighborhood Livability”, provides as follows”:

“Provide a sense of place and identity for residents and visitors by protecting and maintaining neighborhoods as the basic unit of community life in Oregon City, while implementing the goals and policies of the other sections of the Comprehensive Plan.”
(Emphasis added)

The Planning Commission legally erred in finding that the Applications did not satisfy Plan Goal 2.4 for two reasons. First, Plan Goal 2.4 consists of two parts, the second part of which is to implement other Plan Goals and Policies. The Planning Commission’s decision does not to give effect to this Plan Policy and is inconsistent with other goals and policies of the Plan.

- Plan Policy 2.4.2: **“Strive to establish facilities and land uses in every neighborhood that help give vibrancy, a sense of place, and a feeling of uniqueness; such as activity centers and points of interest.”** The proposed subdivision voluntarily provides a 1.35 acre open space tract which provides a sense of place, a feeling of uniqueness, an activity center and a point of interest for the proposed subdivision.
- Plan Policy 2.4.3: **“Promote connectivity between neighborhoods and neighborhood commercial centers through a variety of transportation modes.”** The proposed subdivision provides connectivity between neighborhoods by providing a number of connection points to other neighborhoods.
- Plan Policy 2.4.5: **“Ensure processes developed to prevent barriers in the development of neighborhood schools, senior and child care facilities, parks, and other uses that serve the needs of the immediate area and the residents of Oregon City.”** The Planning Commission’s decision fails to approve the subdivision with a voluntary 1.35 acre of open space tract that may be used as a park by residents of the proposed subdivision at no cost to the City.
- Plan Goal 10.1, “Diverse Housing Opportunities”. Goal 10.1 provides: **“Provide for the planning, development and preservation of a variety of housing types and lot sizes.”** The Planning Commission’s decision effectively requires future subdivisions to match past subdivisions notwithstanding the Applications of new land use regulations, such as OCMC 16.12.150, which permits lot size averaging. The decision effectively prohibits a variety of lot sizes and consequently housing types by requiring new subdivisions to match old subdivision lot sizes.
- Plan Policy 10.1.3: **“Designate residential land for a balanced variety of densities and types of housing, such as single-family attached and detached, and a range of multi-family densities and types, including mixed-use development.”** Plan Policy 10.1.3 is not implemented by the Planning Commission’s decision because the decision fails to provide a balanced variety of density and types of housing. Denying the proposed

subdivision thwarts the Plan Policy's intention to provide a variety of housing types which necessarily provides for a variety of lot sizes consistent with Plan Goal 10.1.

- **Plan Policy 10.4: “Aim to reduce isolation of income groups within communities by encouraging diversity in housing types within neighborhoods consistent with the Clackamas County Consolidated Plan, while ensuring that needed affordable housing is provided.”** The Planning Commission's decision, by requiring unnecessarily large lots inconsistent with the Plan, reduces the opportunity for affordability of housing and isolates income groups to other areas of the community, all in contrast to the plans, goals, variety of lot sizes, housing types and housing prices.

The Planning Commission's decision is inconsistent with and fails to give full effect to relevant Plan Goals and Policies.

d. The Planning Commission erred by misconstruing the OCMC and the City's Comprehensive Plan, as well as making a decision not based on substantial evidence.

The Planning Commission's decision found that Plan Goal 2.4 requires “compatibility and cohesion” between neighborhoods in order to “protect existing neighborhoods “livability”. The Planning Commission's did not explain why a variety of lot sizes would not protect existing neighborhood's “livability,” with the exception of a finding that the smaller lot sizes would result in additional on street parking. The decision does not explain how marginally smaller lots would be contrary to existing neighborhood's livability, nor does it explain what “cohesion”, “protect,” and “livability” mean. The Planning Commission's decision on this point is not supported by substantial evidence because the evidence is to the contrary.

Additionally, the Planning Commission's decision finds that the R-8 zoning district is not compatible with the adjacent area Subdivisions which are within the R-10 zoning district. The Planning Commission's decision is not supported by substantial evidence because it does not explain why R-8 zoning districts adjacent to R-10 zoning districts are “incompatible” and what zoning designation would be compatible. Moreover, the existing subdivision pattern in the area already establishes R-8 zoning districts adjacent to R-10 zoning districts. The fact that an adjacent development contains lots which are a minimum of 10,000 square feet and often larger is a factual statement without legal or substantial evidentiary basis to deny the proposed zoning map amendment.

e. The Planning Commission erred by concluding that “density matters not just in terms of overall lot totals, but also on how varied lot sizes relate to each other along shared property lines.”

The Planning Commission was concerned that the proposal allowed for additional lots and those additional lots had impacts. However, the R-8 zoning is consistent the Comprehensive Plan designation of the property. In addition, the Planning Commission's assertion that “density matters” in terms of how lot sizes relate to each other is inconsistent with the Plan. The Plan defines “density” at page 136 as: “The number of families, individuals, dwelling units, households, or housing structures per unit of land.” The Plan definition of density does not

provide any basis for reviewing density based on how lot sizes relate to each other; it is simply a mathematical computation.

Further, only a few of the lots in the proposed subdivision abut larger lots in the R-10 zoning district. The facts in Section 1 of this Appeal demonstrate that the majority of lots in the proposed subdivision abut lots that are about the same size. However, even if this were not the case, the Planning Commission decision fails to explain why smaller lots abutting larger lots results in Applications that can be denied under the applicable approval criteria.

Finally, any new R-10 zoning district, even one developed on this property, may use OCMC 16.12.050 to proposed lots twenty percent smaller than the 10,000 square foot minimum lot size, or lots 8,000 square feet in size. In addition, there is no maximum lot size and thus the lot sizes may be varied.

f. The City Commission finds that Plan Goal 11.1 is satisfied.

The Planning Commission found that the Applicant failed to satisfy Plan Goal 11.1, which provides:

“Serve the health, safety, education, welfare and recreational needs of all Oregon City residents through the planning and provision of adequate public facilities.”

First, the Planning Commission finds that this Plan Goal does not apply to a development Applications. Instead, it is a more general goal for the City to follow in adoption of implementing regulations. ORS 197.175(2)(b) provides that cities with acknowledged comprehensive plans apply those plans to land use decisions. Nevertheless, not every Plan Goal and policy is an approval criterion for a land use decision.

The Planning Commission’s decision notes that the zoning map amendment and proposed subdivision result in four more lots than if the property were developed in the existing R-10 zoning district. Further, the R-8 zoning district implements the Plan’s “Low Density Residential” map designation as does the R-10 zone. The metric for evaluation of this part of the Planning Commission’s decision is how four additional lots affect public facilities.

The City Commission reverses the Planning Commission’s finding on Plan Goal 11.1 for the following reasons.

A. The Planning Commission’s decision acknowledges that the City’s existing transportation system “could accommodate the proposed traffic” and “that the congestion of the proposed land division would comply with the acceptable levels in the Oregon City Municipal Code”.

Because the Planning Commission’s decision acknowledges that applicable standards regarding transportation are satisfied, the City Commission reverses the Planning Commission. However, the Planning Commission denied the Applications because it found “additional trips resulting from the additional dwelling units on the additional lots would increase traffic congestion.” The Planning Commission’s decision is not a valid basis for denial for several reasons.

The Planning Commission's decision acknowledges that the Applications meets the approval standards; therefore, a generalized finding that the additional single family lots would "increase traffic congestion" is not a basis for denial because the decision fails to demonstrate that the Applications did not meet applicable approval criteria.

Both the Applicant's traffic engineer (June 15, 2017 traffic study at page 21) and the City's traffic engineer (September 5, 2017 letter at page 4) conclude that the zoning map amendment, which adds only four lots over the R-10 zone, will not cause any intersection to fail. Finally, the proposed subdivision contains nine road connections, providing excellent connectivity to disperse vehicle trips.

The Planning Commission's finding that "the roadways are already more congested than the Planning Commission would like and the Commission does not support any additional burden to the traffic system or other public facilities allowed under the R-8 single-family dwelling district" is not a basis for denial of the Applications. The only standard that matters is whether the Applications meets the applicable approval criteria in OCMC 17.68.020.A-.D.

The City Commission finds that the Planning Commission failed to find that the more specific criteria regarding transportation impacts found in OCMC 17.68.020.C ("The land uses authorized by the proposal are consistent with the existing or planned function, capacity and level of service of the transportation system serving the proposed zoning districts.") are not met.

This Planning Commission finding is not supported by substantial evidence in the record because both the City's traffic engineer and the Applicant's traffic engineer found that the with the additional four single-family dwelling units, the affected intersections would be within required performance standards. The single intersection that would fail would do so regardless of whether this zoning map amendment were approved or not and has an identified remedy in the Transportation System Plan.

Finally, the Planning Commission found with respect to transportation that "Given the existing levels of congestion, the transportation system is not adequate to justify the zone change." The City Commission reverses the Planning Commission because this finding fails to relate to applicable approval criteria, is not based on substantial evidence and is contrary to substantial evidence and is contrary to substantial evidence.

B. The Planning Commission's findings on school capacity are not supported by substantial evidence and are contrary to applicable law.

The Planning Commission found that the schools "Lack of capacity, as evidenced by their intent to seek a bond to fund school improvements in the future." The City Commission reverses this Planning Commission finding for the following reasons.

First, the City may not use lack of school capacity as a basis for denial of a residential development application such as this because ORS 195.110(13)(a)-(c) prohibits school capacity as a basis for denial of a residential development application unless the issue is raised by the school district. There is no dispute that the school district did not raise the issue.

Second, the only substantial evidence in the record regarding school capacity is from the Applicant because the school district did not comment on the Applications. The City Commission finds that had the school district been concerned about school capacity, it could have commented but its failure to do so indicates that, as the Applicant states, school capacity is not a concern for the school district. Staff testified that the application and the pre-application conference requests were transmitted to the school district.

The only substantial evidence on school capacity is from the Applicant. The Application at page 6 states that the “school district staff did not identify concerns with the zone change application due to [its small size]”. The Applicant testified to the same facts at the October 9, 2017 Planning Commission hearing.

Finally, the Planning Commission’s finding that requesting a bond approval by the voters is indication of lack of capacity is not based on substantial evidence. Bonds serve a number of purposes and it may be that the school bond may improve existing facilities without regard to capacity. However, there is no way to know. The City Commission notes that several persons asked about participation by the Oregon City School District. Substantial evidence in the whole record demonstrates that the school district participated in the pre-application meeting for the Application but did not submit any written comments regarding the Application nor did the school district state that school capacity was insufficient. Further, the City Commission finds that ORS 195.110(13)(a)-(c) prohibits consideration of school capacity as a basis for the decision unless the issue was raised by the school district. Because the school district did not raise the issue, the City Commission may not consider it.

For these reasons, the Planning Commission’s decision on school capacity is reversed.

C. The Planning Commission erred by finding that the applicant failed to provide insufficient details about how a sewer pump station would function as necessary to ensure adequate capacity..

The Planning Commission’s sole reason for finding that the Applications did not demonstrate adequate sanitary sewer capacity was “insufficient details” about a sanitary sewer pump station that would be necessary to provide adequate capacity. The only substantial evidence in the record is the Application’s Exhibit F from an Oregon registered professional engineer which states that the subdivision will be served by adequate facilities that are available, or can be made available. There is no evidence demonstrating that a pump station must be used. Nevertheless, even if this were the case, the details regarding the pump station are ministerial details that can be addressed at the final plat and public improvement construction stage. Lastly, a pump station is a means of conveyance and does not represent a lack of ability for the system to serve the site.

3. Response to testimony at appeal hearing.

The City Commission makes the following findings with regard to oral testimony at the City Commission appeal hearing.

a. Insufficient parking.

The City Commission finds that the assertion that the Applications will provide for insufficient parking is without basis. Substantial evidence in the whole record demonstrates that it is feasible to provide the required amount of off and/or on-street parking for each of the proposed 77 lots.

b. Lots 51-53 are unbuildable.

Opponents argued that these three lots are unbuildable. The City Commission finds that substantial evidence in the whole record demonstrates that all of the proposed 77 lots are feasible to accommodate a single-family dwelling meeting the requirements of the R-8 zoning district.

c. Issues related to value of single-family dwelling, transit availability, nearby shopping and difficult topography.

An opponent raised these issues regarding the Applications. The City Commission finds that these issues are not relevant to the approval criteria nor did the testimony relate them to approval criteria.

4. Conclusion.

The Planning Commission's decision that the Applications fail to satisfy OCMC 17.68.020.A is reversed because it fails to give effect to Plan Goals 2.4 and 10.1 by ignoring other Plan Goals and Policies, does not rely on substantial evidence and is contrary to substantial evidence in the whole record. For these reasons, the City Commission reverses the Planning Commission and find that the Applications satisfies OCMC 17.68.020.A because it satisfies Plan Goals.

V. DECISION.

For all of the reasons contained in Parts III and IV of this decision, the City Commission hereby adopts these findings grating the appeal, reversing the Planning Commission and approving the Applications with the conditions of approval contained in Exhibit A, including with the following new condition of approval: "The 1.35 open space tract ("Tract A") shall be open space in perpetuity and open to the public and shall be maintained by the subdivision homeowners association."

EXHIBIT A

CONDITIONS OF APPROVAL

1. Timing of construction of public improvements and provision of guarantees shall comply with section 16.12.105 and 16.12.110 of the Municipal Code. (DS)
2. Temporary water looping is required along White Lane Right-of-Way until an 8-inch water main is extended when White Lane Right-of-Way is fully developed. Water system improvements shall include an 8-inch waterline extension to the southeast in the proposed intersection improvements of White Lane and Orchard Grove Drive with reduction to a temporary 4-inch waterline extension in an easement along proposed White Lane Right-of-Way and looped to the proposed water main at the street intersection of the southeasterly subdivision street (proposed Wheeler Farm Road). (DS)
3. The Applicant must demonstrate all properties can be served with a gravity sewer system meeting the City's sanitary sewer design standards, and all other applicable standards. Otherwise, sanitary sewer pump station or other approved method shall be provided. (DS)
4. A final stormwater report shall be submitted with the public facilities construction plans to fully address all applicable Stormwater and Grading Standards, including downstream analysis. (DS)
5. The final stormwater design shall incorporate maintenance access to the Tract B stormwater facility relocated to a more direct route, such as from Wheeler Farm Road cul-de-sac, and stormwater piping traversing Tract A relocated to a more direct route, such as the border of Lots 54 and 55, unless shown that the proposed configuration is the only feasible option. (DS)
6. The stormwater management facility will be publicly-owned and maintained and will be transferred to public ownership following the 2-year warranty period. During the 2-year warranty period, the applicant is responsible for all maintenance of landscaping and shall provide cash surety of 110% of landscaping costs. Alternatively, the applicant may execute an agreement with the City to provide maintenance services during the 2-year period, to be paid at actual landscape contract rates. (DS)
7. Ten-foot public utility easements along all street frontages and all easements required for the final engineering plans shall be dedicated on the final plat. (DS)
8. The applicant shall provide written approval from PGE allowing the public stormwater facility proposed in Tract B to be placed within the 125-foot transmission easement.
9. The applicant shall comply with all applicable sections of City of Oregon City Engineering Policy 00-01 and Public Works design standards. (DS)

10. Applicant shall execute a binding agreement to not remonstrate against the formation of a local improvement district for street, water, wastewater and stormwater improvements that benefit the applicant's property. (DS)
11. A fee-in-lieu payment will be required for the northeasterly half street improvements on White Lane from the proposed street improvements at the intersection of White Lane and Orchard Grove Drive to the southeasterly boundary of the proposed development. (DS)
12. The applicant shall dedicate 54-feet of right-of-way for Orchard Grove Drive, Winnie Way, Wheeler Farm Road, Larence Lane, Skellenger Way, and Tolstrup Drive. All new streets shall consist of two (2) 16-footwide shared travel lanes, two (2) 5.5-foot-wide planter strips (inclusive of 0.5-foot wide curb), two (2) 5 foot-wide sidewalks, and two (2) 0.5-foot-wide public access strips. Additional requirements include curb, gutter, street trees, and street lights. (DS)
13. Applicant required to meet half-street roadway standards for portions of Orchard Grove Drive and Skellenger Way to roadway centerline, unless it is determined that a lesser width will meet the standard. (DS)
14. Applicant to provide full street improvements across Orchard Grove Drive along portion of roadway where existing curb exists in compliance with Oregon City roadway standards. (DS)
15. The proposed constrained cross-section of Orchard Grove Drive adjacent to Tract A will be approved contingent upon the following requirements; 1. Evaluation by certified arborist stating the 54" Douglas Fir Tree #10012 is likely to survive the proposed grading, and for how long after construction; 2. Submittal of scaled cross-section showing street, sidewalk, grading, tree canopy and tree root zone; 3. Modification of street alignment as far north as practicable, and with abrupt curvature smoothed out to maximum extent practicable. (DS)
16. A final site Residential Lot Grading Plan shall be required as part of the public facilities construction plans per the City's Residential Lot Grading Criteria and the International Building Code. (DS)
17. The applicant is responsible for obtaining a 1200-C permit from Oregon Department of Environmental Quality prior to commencement of construction activities. (DS)
18. The applicant shall provide an Erosion Prevention and Sedimentation Control Plan to the City for approval and obtain a City Erosion Control permit. (DS)
19. NROD and Geohazard overlay shall be clearly delineated on the public facilities construction plans, and on the subsequent building site plans for each affected lot. (DS)
20. Applicant's Geotechnical Engineer shall approve location and grading for the stormwater facility in relation to the geologic hazard area. (DS)
21. Applicant's Geotechnical Engineer shall certify that construction was completed in accordance with Geotechnical Report recommendations. Prior to issuance of a building permit, the applicant shall submit a completed a waiver of damages and an indemnity and hold harmless agreement provided by the City. (DS)

22. Applicant shall be responsible for payment of City's Geotechnical Consultant review fees. (DS)
23. City shall reimburse developer for completion of segments of Larence Lane and Orchard Grove Drive, which were required of TP 15-01 but deferred due to topographical constraints.
24. Per Annexation AN 06-02, each new home submitted before July 1, 2018 is required to mitigate the impact of the new home on the Police services they will provide with a fee of \$3,500. Credit is provided for each existing dwelling which is removed. (P)
25. The applicant shall demonstrate that Tax Lot 1201 at 19898 S White Lane, and Tax Lot 1101 at 19588 S Central Point Road maintain adequate access to or frontage on a public street as required by Clackamas County through a lot line adjustment, easement, or access agreement/covenant, and access shall be documented on the plat as applicable. (DS)
26. The plat, and a document/covenant referenced on the plat shall identify that Tract A is proposed for voluntary open space and shall not be further subdivided or developed without approval of a Type IV application, and the plat shall clearly state restrictions, purpose, and perpetual ownership of Tract A. (P)
27. The applicant has prepared a tree mitigation plan that appear to meet the development code for Option 1 and Option 4. Prior to submitting a grading permit, the applicant shall indicate where and how existing trees will be protected and provide a fee in lieu calculation. Fee in lieu payment shall occur before the site is platted. (P)
28. Prior to Occupancy of Building Permits the applicant shall record a permanent, protective covenant or easement on all properties with new or existing trees planted on private property in a form acceptable to the City for each lot with existing or mitigation trees. (P)
29. The applicant has proposed a street layout that requires 209 street trees. Final review of tree placement will occur during civil plan review and shall comply with the standards in OCMC 12.08. The species will be street trees from the Oregon City Street Tree List (or approved by a certified arborist). If there are remaining trees that cannot be planted for spacing reasons, the applicant shall pay fee in lieu for prior to platting. (P)
30. Prior to plat of the proposed subdivision, the applicant shall demonstrate that all existing structures comply with the permitted uses and dimensional standards of the R-8 Single-Family Dwelling District or have been relocated. (P)
31. The 1.35 open space tract ("Tract A") shall be open space in perpetuity and open to the public and shall be maintained by the subdivision homeowners association. (DS)