



CITY OF MILWAUKIE

AGENDA

December 8, 2020

PLANNING COMMISSION

milwaukieoregon.gov

Zoom Video Meeting: due to the governor's "Stay Home, Stay Healthy" order, the Planning Commission will hold this meeting through Zoom video. The public is invited to watch the meeting online through the City of Milwaukie YouTube page (https://www.youtube.com/channel/UCRFbfaq3OnDWLQKSB_m9cAw) or on Comcast Channel 30 within city limits.

If you wish to provide comments, the city encourages written comments via email at planning@milwaukieoregon.gov. Written comments should be submitted before the Planning Commission meeting begins to ensure that they can be provided to the Planning Commissioners ahead of time.

To speak during the meeting, visit the meeting webpage (<https://www.milwaukieoregon.gov/bc-pc/planning-commission-64>) and follow the Zoom webinar login instructions.

1.0 Call to Order - Procedural Matters — 6:30 PM

2.0 Planning Commission Minutes – Motion Needed

2.1 October 27, 2020

3.0 Information Items

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

5.0 Hearing Items

5.1 PD-2020-001 Waverly Woods continued public hearing

Summary: Waverly Woods Planned Development

Applicant: Walker Ventures, LLC

Address: 10415 SE Waverly Ct

File: PD-2020-001

Staff: Senior Planner Vera Kolas

5.2 ZA-2020-001 Emergency Shelters – Temporary Use Code Amendments

Staff: Senior Planner Vera Kolas

6.0 Work Session Items

6.1 Summary: Update on Central Milwaukie Bikeways Concept Plan

Staff: Associate Planner Brett Kelter

6.2 Summary: Update on Proposed Revision to Title 18 (Flood Hazard Regulations)

Staff: Associate Planner Brett Kelter

7.0 Planning Department Other Business/Updates

8.0 Planning Commission Committee Updates and Discussion Items — This is an opportunity for comment or discussion for items not on the agenda.

9.0 Forecast for Future Meetings

January 12, 2021 Hearing Items: PD-2020-001 continued public hearing (tentative); Title 18 flood hazard regulations amendments (recommendation hearing)
Work Session Items: Comp Plan Implementation project update – code concept development

January 19, 2021 Joint meeting with City Council – workplan and bylaws

Milwaukie Planning Commission Statement

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

1. **PROCEDURAL MATTERS.** If you wish to register to provide spoken comment at this meeting or for background information on agenda items please send an email to planning@milwaukieoregon.gov.
2. **PLANNING COMMISSION and CITY COUNCIL MINUTES.** City Council and Planning Commission minutes can be found on the City website at www.milwaukieoregon.gov/meetings.
3. **FORECAST FOR FUTURE MEETINGS.** These items are tentatively scheduled but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
4. **TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should attend the Zoom meeting posted on the city website, state their name and address for the record, and remain available until the Chairperson has asked if there are any questions from the Commissioners.

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

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the city's YouTube channel and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el canal de YouTube de la ciudad y el Canal 30 de Comcast dentro de los límites de la ciudad.

Milwaukie Planning Commission:

Robert Massey, Chair
Lauren Loosveldt, Vice Chair
Joseph Edge
Greg Hemer
Amy Erdt
Adam Khosroabadi
Jacob Sherman

Planning Department Staff:

Laura Weigel, Planning Manager
Vera Kolias, Senior Planner
Brett Kolver, Associate Planner
Mary Heberling, Assistant Planner
Janine Gates, Assistant Planner
Tempest Blanchard, Administrative Specialist II



CITY OF MILWAUKIE

PLANNING COMMISSION MINUTES

Meeting held online via Zoom
www.milwaukieoregon.gov

October 27, 2020

Present: Robert Massey, Chair
Lauren Loosveldt, Vice Chair
Greg Hemer
Joseph Edge
Amy Erdt
Adam Khosroabadi
Jacob Sherman

Staff: Laura Weigel, Planning Manger
Vera Koliass, Senior Planner
Steve Adams, City Engineer
Dalton Vodden, Associate Engineer

1.0 Call to Order – Procedural Matters

Chair Massey called the meeting to order at 6:30 pm and read the conduct of meeting format into the record.

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

2.0 Planning Commission Minutes – Motion Needed

2.1 August 11, 2020

Commissioner Sherman stated a correction. On page 3 regarding his remarks, he would like them to read, “and the Planning Commissioner should look at variances and modifications as public benefits.”

Commissioner Hemer approved the minutes as amended and Commissioner Edge second the motion.

2.2 September 22, 2020

Commissioner Hemer approved the minutes and Commissioner Edge second the motion.

3.0 Information Items

Vera Koliass encouraged members to read the November Pilot when it is released next week. There is an article about the Comprehensive Plan Implementation Project and an invitation to an upcoming public participation event.

4.0 Audience Participation

- Chair Massey shared information from an email exchange between staff and a member of the public. It was regarding ADU utility pricing.

- Commissioner Hemer does not believe it is under his purview to comment on utility rates for ADUs. The individual mentioned that ADUs are paying the same amount in utilities as a residential home and Commissioner Hemer agreed that Council should investigate this.
- Commissioner Sherman would like to know if it is possible for the County to set up a larger billing framework that is applied to the city?

Chair Massey read that as well and is not aware of the agreements between the County and City. The City was communicating with the County regarding how residents are being billed and if any changes were needed. He is unsure where that conversation went. This does not seem to be in the Planning Commissioner's purview and it is an important conversation for City staff to have.

- Steve Adams will take the request to the Finance Department.

5.0 Public Hearings

5.1 Summary

Vera Kolas, Senior Planner and Dalton Vodden, Associate Engineer shared a staff report.

The purpose of this hearing is to consider a proposal for Waverly Woods Development, which is located at 10415 SE Waverly Court and is zoned Residential R-2, and a portion of the site is in the Willamette Greenway. The proposal is a multi-family development consisting of four residential buildings with 100 dwelling units and a community center with a swimming pool. This is a three-phase proposal. The proposal includes a Property Line Adjustment which would alter the existing 3 parcels so that the existing Dunbar Woods development would be on its own parcel, the proposed Waverly Woods development would be on a separate parcel, and a third vacant parcel accessed from Lava Dr would be developed at some point in the future. The applicant is seeking a Type IV Review and accommodations for more flexibility regarding the building height and a Willamette greenway conditional use.

The following criteria is what the city is considering, and testimony should be based on. Milwaukie Municipal Code:

- Title 12: Street, Sidewalk, and Public Places
- Section 19.1007: Type IV Review
- Section 19.311: Planned Development Zone PD
- Section 19.302: Medium and High Residential Zones, including the Residential R-2 zone
- Title 17: Land Division
- Section 19.401: Willamette Greenway Zone WG
- Chapter 19.500: Supplementary Development Regulations
- Chapter 19.600: Off-Street Parking and Loading
- Chapter 19.700: Public Facility Improvements
- Section 19.902: Amendments to Maps and Ordinances

- Section 19.905: Conditional Uses

Staff Recommendation is that the Planning Commission recommends an approval of the project to the City Council.

Applicant's presentation: Duncan Wyse, Scott Wyse, Wendy Wyse, "the applicant," presented. Ms. Wyse shared the history of the applicant's company and developments. Waverly Greens is owned by Ms. Wyse and her brothers. Scott Wyse presented about the current project, which is a 6.7-acre parcel. Since 2008, they have explored how to develop the part of the land. The applicant decided to build a four-story building with underground parking to achieve their density goals, and ensure the land is not completely covered with buildings. The applicant wanted to retain as much as the natural environment as possible. The applicant met with the Neighborhood District Association, neighboring residents, and the City to discuss their development plans and to hear the community's and city's thoughts.

Commissioners questions to the applicant:

Commissioner Hemer asked which LEED standards the applicant planned to use and what are the plans for developing environmentally friendly buildings?

The applicant responded, they were unsure which LEED standards the development would achieve because they are waiting to complete an environmental study. The applicant is interested in the heating and air conditioning system, photovoltaic cells for the roof, and there will be significant insulation in the buildings. They are also interested in electric vehicle stations in the garage, innovative transportation, and having a bicycle room onsite.

Commissioner Loosveldt asked, has the applicant studied what rent would be for this project phrase.

The applicant responded, they have talked generally about rents. They have considered rents because that is important when thinking if a project is feasible. The apartments will be high end and will be priced similar to the Dunbar Woods apartment and perhaps even higher due to the price of developing the building.

Commissioner Loosveldt asked about an affordable housing component of the development because she read something about affordable housing in their plans.

The applicant responded, they would not advertise the project as affordable housing.

Commissioner Loosveldt asked about the building heights and if the applicant considered building level one underground or other options to get below the requirement.

Nels Hall, the applicant's architect, shared the study they completed suggesting options for meeting the building standards. There is uneven basalt, which makes it difficult to build. The applicant plans to have additional studies to understand what options are available to them.

Commissioner Loosveldt added if it would be possible to move the mechanical units from the roof to the ground or sub-graded in order to accommodate a low-pitched roof.

Mr. Hall responded that is an option and they were looking at a vertical roof and split system, which would have heat exchangers on the roof. Mr. Hall believed the roof was as flat as it could be and shed water properly. The roof being proposed offers cross ventilation and vaulted ceilings that would allow the middle units cross ventilation. When looking at the building from the river or a helicopter, the building will look small. Also, the roof is waterproof. Mr. Hall does not see the roof as a problem with discussing the scale of the building because they are almost flat.

Commissioner Khosroabadi asked about the variance and trade-off for building a four-story building. He was unsure what the trade-off was when the proposed development is building high end apartments.

The applicant responded with more housing options some people will move in. It was their understanding that Milwaukie wanted more housing. The fourth floor was designed as the primary benefit to the City of Milwaukie because there will be open space.

Commissioner Khosroabadi had an additional question about the stormwater system and the effect it will have on the city's existing stormwater system. He believed there was a lot that still needed to be figured out. He wondered when the applicant met with the Neighborhood Association District.

The applicant responded they met with the Historic Milwaukie NDA last summer.

Commissioner Khosroabadi added was there a lot of input from that meeting because a lot of comments he read stated that the meeting had low attendance.

The applicant shared it was a zoom meeting and they were unsure how many people attended. They also added that energy efficiency was important to them and they have the building with the largest solar system in the state according to the Energy Trust of Oregon. The proposed development will be energy efficient and follow the City's stormwater requirements.

Commissioner Sherman asked how many trees would have been removed with previous proposals for the site?

The applicant answered, the original plan would have required more pavement and therefore, removal of a lot of trees. The current proposed development is compacted with the goal to protect the trees.

Commissioner Sherman added that there are few things under studied, such as the solar and electric vehicle charging. He asked when these things would be completed as the applicant moves forward with the development.

The applicant shared, that they were putting electric charges in and will determine how many to implement based on their tenants' needs. They were waiting on approval before deciding on the design of the buildings, which include the solar system.

Mr. Hall added the applicant has completed all studies required by the City of Milwaukie. The additional studies are for the applicant's benefit to make the building as sustainable as possible. Also, this is normally something the Planning Commission would not normally see.

The applicant added their goal was to work with the Planning Commission and neighbors to bring something that is beneficial to the city.

Commissioner Sherman asked, if there were any discussion about family sized units, such as three-bedroom options in any of the buildings?

Mr. Hall responded, there was and that could be an option for phrase three. For phrase one, they are large units and a possibility for one of the rooms to be a guestroom.

Commissioner Sherman added, the phrase three building does not include four stories. He asked if the applicant has considered changing the plan to include additional bedrooms to provide more affordable family size units.

Mr. Hall responded, there was a limit to 100 units they could have and it was possible to build three-bedroom units for another phase.

The applicant added, they would look into three bedrooms.

Commissioner Edge asked, what were the plans for the forested area, the trees that were being removed, and trail amenity that was being proposed. He asked if the general public would be invited to use the trail.

The applicant answered, they hired an arborist to assist with protecting the native trees and the other plants on the property. Most of the trees and plants being removed were unhealthy or invasive. The ivy plants were growing up the trees and damaged some of those. They planned to remove those trees. The trail was designed for the residents of the building.

Commissioner Edge asked if it was true that the building would be dwarfed by the surrounding trees?

Mr. Hall answered, that was true.

Commissioner Edge proposed a five minute recess and it was granted by Chair Massey. After the break, the Commissioners listened to the public comments.

Lyndon Murray testified, he was a resident of Cambridge lane and a member of the country club. He asked Ms. Kolas about the code and how the applicant has taken full advantage of the code as it relates to density. The applicant is also obligated to have 30% of the property as green space and possibly setting separate deeds for the land. It appears the applicant can meet the obligation for green space. Why wasn't the applicant meeting the requirement? He was very concerned that there would be a flow of people on the driving range and would be dangerous. Lastly, he suggested, the applicant to look into Tesla solar tiles as the roofing.

Patricia Justice testified, her home is close to the development. She wrote a letter about the project to the Planning Commissioner and the applicant. The applicant met with her. She stated, the code mentioned that new development should fit the neighborhood character and have minimal impact. She believed the proposed development would have an impact on the surrounding homes. The applicant was proposing a multi-story development in a single-family residential neighborhood. This would have a significant negative impact on the neighbors and this needed to be addressed. She asked for a reduction in height for buildings A1 and A2 by one story as it would lessen the visual impact from the river and the nearby homes. She requested, to move the buildings closer to Waverly Court, which would expand the buffer between the neighbors' homes and the apartments.

Gloria Stone testified, she sent a lot of materials to the Planning Commission. She focused on four key issues. The first issue was the Willamette Greenway criteria should be compatible with and have minimal impact and this criteria was not met. The development plan stated it was compatible and did not have any impact on the surrounding community this also was not true. Parts of the building were inconsistent with the R-10 and existing open space zoning regulations. The regulations provided in the plan did not include elevations from surrounding properties. Lastly, she was concerned about the economic impact on the nearby properties, which could have a 20% negative impact to their land. She asked that the applicant addresses her concerns.

Maria Nash testified, she represented the Shore Side East Condominium Development. She submitted written testimony and had additional questions that did not receive an answer. She asked about the trees, maintaining some of the dead trees, and if the fruit trees were native. She hasn't heard much about wildlife and wondered if the Willamette Green Review was completed. If not, she wanted to know if the public receive a report, especially as it is related to the wildlife.

Mike Nugent testified, he was a Waverly member and was a Real Estate Developer and Broker. He was concerned about the negative impacts on the neighborhood, the future developments and their impacts, the phrasing of the development. A multi-phrase development could tax residents with ongoing construction. He was also concerned about height, trees buffer, and storm water sound attenuation. He planned to meet with the family to further discuss his concerns.

Peggy (did not state their last name) testified, she was concerned about the rents and how this would impact individuals. She was also concerned about the trees and what would happen to them. She stated that the development does impact the neighborhood.

Michael Robinson testified, he represented the Waverly Country Club as a Land Use Attorney and sent a letter to the Planning Commissioner. He requested that the hearing continues to another date to allow for more deliberation. This request was being made under ORS 197.763 since this was the first hearing. He stated, the current Comprehensive Plan could not be applied to the proposed development because the applicant submitted their proposal two weeks before the Comprehensive Plan went into effect. He discussed the size of the building, vegetation based on phrase three, and affordability. He was unsure if the applicant would deliver phase three and it is not something the city should count on. Also, the apartments are designed as high end and not affordable. He shared he would like the applicant to provide more details and to not use vague language.

Nancy Dalton testified, her concerns about the Willamette Greenway, the vegetation, scenic views, the additional height, and the length of the building. The building is 75% higher than previous developments and what was allowed previously. She requested that the Planning Commission oppose the application.

Mark Hudspith testified, he owned a property near the development. He encouraged the Commissioners to look at the photos and wonder if the buildings were proportional to what would be built. He did not think the photos were accurate. He wondered if the residents of Milwaukie, Clackamas County, and Oregon receiving a benefit from the property? He wanted the Commissioner to ensure the proposed development is beneficial for the area and the code is being followed.

Alexander Pitts testified, she agreed with what her neighbors shared. She questioned why we have greenways if we keep bending the rules to allow for development. She was concerned about the auditory creep and its impact to the residents and animals in the area. This needed to be considered since construction will take place between seven and ten years. She was also concerned about the trees and their relation to the bald eagles in the area.

Steve Reaume testified, he met with the applicant and discussed his concerns. He felt good going into his driveway and believed a tall building with 50 apartments would impact how he felt as a homeowner. The proposed development would have a significant impact on his property. He encouraged the applicant to have more setbacks and create a divide between the property and his. He hoped that the applicant would write their greenway plans to ensure it is developed in phrase three.

Testimony concluded.

Commissioner Edge started the conversation about next steps, which included Mr. Robinson's assertion that the Commissioner needed to leave the record open after the hearing. If yes, does that mean the Commission would deliberate during another hearing?

Justin Gericke, the City Attorney, responded, Mr. Robinson is correct. The Oregon revised statutes provide an opportunity for an additional hearing to allow for more testimony and more evidence to be presented.

Commissioner Edge shared the Commission would collect more evidence and wondered if the applicant should respond to the comments received or wait until a later time.

Chair Massey agreed to allow the applicants to respond to questions.

The applicant responded to the public testimony. The applicant believed the proposed plan addressed and allowed for open space. There wasn't any access to the driving range and they committed to designing a strong bramble bush fence to ensure no one could access the range, if that was needed. They were not familiar with the economics of a Tesla solar system and would investigate it. The applicant restated that they were committed to bringing a landscape architect in to minimize the impact on the neighborhood and save as many trees as possible. Lastly, the applicant stated they were committed to working with the neighborhoods

Chair Massey asked Ms. Weigel and Ms. Kolas about next steps, which are below.

The Commission voted to continue the hearing to December 8, 2020 with a comment process as follows:

- November 10 – deadline for submittal of written testimony.
- November 17 – deadline for written responses to Nov 10 submittals.
- November 24 – deadline for applicants' final written rebuttal.
- December 8 – hearing date for Planning Commission deliberations (no oral testimony).

6.0 Planning Department Other Business/Updates

There were no updates.

7.0 Planning Commission Committee Updates and Discussion

There were no updates.

8.0 Forecast for Future Meetings

The forecaster will be shared later.

Meeting adjourned at approximately 10:10 PM

Respectfully submitted,
N. Janine Gates
Assistant Planner

Robert Massey, Chair



CITY OF MILWAUKIE

To: Planning Commission

Through: Laura Weigel, Planning Manager

From: Vera Kalias, Senior Planner

Date: December 1, 2020, for December 8, 2020, Public Hearing

Subject: **File:** PD-2020-001
Applicant/Owner: Walker Ventures, LLC
Address: 10415 SE Waverly Ct
Legal Description (Map & Tax Lot): 11E26DC 02100, 02200, 02400
NDA: Historic Milwaukie

ACTION REQUESTED

This is a continued public hearing. Open the hearing, take any additional testimony on the application and the information submitted since the October 27, 2020 public hearing, and continue the hearing to January 12, 2021 for deliberations.

BACKGROUND INFORMATION

Extensive public input was received during the first public hearing, and additional information has been submitted by both the applicant and the public in response to that testimony. All written testimony received after the October 27, 2020 public hearing was posted, as required, on the [application webpage](#). This staff report identifies and discusses the key issues raised during the hearing and subsequent comment period. Please refer to the [October 20, 2020 staff report](#) for detailed background information.

The proposed development is an addition to the existing Waverly Greens Apartment communities. The 10.8-acre subject property at 10415 SE Waverly Ct is made up of three parcels and is currently developed with the Dunbar Woods apartments. As part of this proposal, the applicant is adjusting the boundaries of the site to establish Dunbar Woods on its own lot, use 6.77 acres for the planned development, and establish a third parcel for a future development (see Figure 1). The proposal is for Waverly Woods, which would be the phased construction of four multifamily apartment buildings with a total of 100 dwelling units. The project would be phased so that Building A.1 (32 units) will be built along the Ridge in Phase 1 and Building A.2 (32 units) and the associated community room will occur in Phase 2. The two Gardens Buildings

B.1 (18 units) and B.2 (18 units) and the community center with pool would be developed in Phase 3 (see Figure 2).

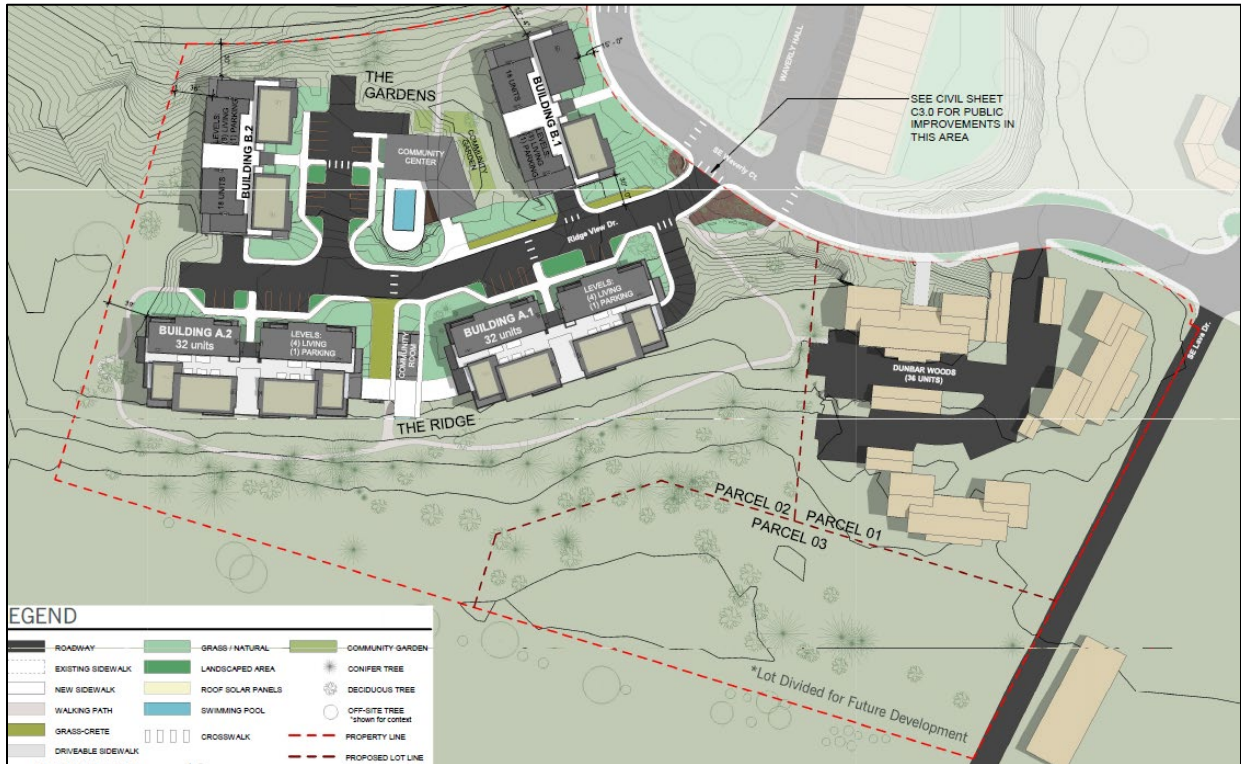


Figure 1. Development Plan



Figure 2. Phasing Plan

A. Proposal

The applicant is seeking land use approval to develop a 100-unit apartment community. The applicant is using the Planned Development (PD) process, which allows greater flexibility in design that would otherwise be possible through the standards of the underlying zone in the Willamette Greenway.

The project requires approval of the following applications:

1. Planned Development (master file #PD-2020-001)

The Planned Development process allows for adjustments in lot sizes, lot dimensions, and some development standards, including building height; and a potential increase in density (up to 20% above the maximum normally allowed).

2. Zoning Map Amendment (ZC-2020-001)

The City's Zoning Map would be changed, adding the PD designation to the existing R-2 designation for the site.

3. Willamette Greenway review (WG-2020-001)

Much of the site is located in the Willamette Greenway Overlay zone. Development in the WG requires conditional use approval.

4. Property Line Adjustment (PLA-2020-001)

As part of this proposal, the applicant is adjusting the boundaries of the site to establish Dunbar Woods on its own lot, use 6.77 acres for the Waverly Woods planned development, and establish a third parcel for a future development. The number of lots is not changing.

5. Transportation Facilities Review (TFR-2020-002)

The project's impacts on transportation (vehicular, bicycle, and pedestrian) must be evaluated to determine whether improvements to the transportation system are warranted.

B. Land Use Review Process

Milwaukie Municipal Code (MMC) Section 19.311 outlines the review process for approval of a Planned Development. Ordinarily, after receiving "approval in principle" from the Planning Commission of a preliminary development plan, the applicant would initiate a Type IV review process by submitting a final development plan along with a proposed subdivision and any other applicable reviews. The Planning Commission would consider the application package and make a recommendation to the City Council for a final decision. In this case, and as permitted by MMC 19.1001.6.B (discussed below), the applicant opted to move directly into the Type IV process and has presented its preliminary development plan as the final development plan. The applicant is aware of the risks associated with the possibility that the Planning Commission may not approve the development plan in principle and may not forward a recommendation for approval to City Council. All of the other associated land use applications are also subject to the Type IV review process.

Questions have been raised about the processing of the application, specifically about the preliminary and final planned development process in MMC 19.311.

MMC Subsection 19.311.6 makes reference to a meeting of the Planning Commission for consideration of the preliminary development plan, after which the Commission shall inform the applicant whether it believes the preliminary plan satisfies the provisions of MMC 19.311 or shall advise the applicant of any perceived deficiencies. Once the Commission has approved the preliminary plan and any modifications "in principle," the applicant is free to submit a final development plan and zone change application, and in fact must make that submittal within 6 months. No formal decision on these additional aspects would be issued at this preliminary stage, but the Commission would advise the applicant of any recommended revisions that would make the proposal more approvable "in principle."

MMC Subsection 19.311.10 provides a slightly clearer review path for the final development plan. The applicant would submit the final plan with an application for zone change and any needed subdivision. The Type IV review process (MMC Section 19.1007) would be engaged.

Per MMC 19.1001.6.B, the applicant may request, or the city may require, that multiple land use applications be processed concurrently or individually. Applications processed concurrently consolidates the review of multiple applications into a single review process, which has been followed in this case. In the interest of moving the proposal through the review process without unnecessary delay but without reducing the opportunities for public participation and input, this application has been processed and reviewed as concurrent applications: consideration of preliminary development plan and proposed zone change, including any related land division, natural resource review, transportation facilities review, etc., within one Type IV process.

If the Commission decides the preliminary plan submittal can be recommended for approval, this initial hearing/review process would suffice as the recommendation hearing required by the Type IV process—and the Commission could make a formal recommendation to the City Council on what becomes considered as the final development plan.

KEY ISSUES

Clarification of Project Details

Various questions were asked during the public hearing regarding specific aspects of the project. Responses were provided by the applicant as follows:

- Project Phasing
 - The project's general contractor estimates each phase will take approximately one year to complete resulting in three years of total construction for all three phases over the permitted 7-year timeframe. Per Section 19.311.16 Expiration of Planned Development Zone, "substantial construction" of Phase 1 is required to occur within one year of the final development approval. Building A.1 is currently on schedule for a mid-Summer 2021 construction start with site utility work scheduled for late Spring 2021. Construction on Phase 2 will commence after Phase 1 construction is complete, but that is subject to change depending on market conditions.
 - The applicant confirmed in written testimony and on a revised site plan that key amenities in the proposal, including tuck-under parking, preserved open space and vegetated areas, large community garden, and viewing areas and a forested path accessible from the public right-of-way, will be available upon completion and occupancy of Building A.1 (Phase 1).
- Construction Access
 - The applicant has confirmed that all construction access for the proposed project would be from Waverly Court, not from Lava Dr.

- Applicable Comprehensive Plan
 - The applicant submitted a revised narrative addressing the prior comprehensive plan goals and objectives that were in place when the application was filed. See Key Questions for a detailed analysis.
- Building Height, Building Locations and Setbacks, and Solar Shading
 - The applicant submitted building section diagrams illustrating the proposed building height. At the top of the slope, the proposed 4-story buildings would be 43 ft high; at the bottom of the slope, the calculated building height would be 52 ft. The maximum building height in the R-2 zone, with additional vegetated area, is 4 stories or 55 ft; in the Willamette Greenway, the maximum building height is 35 ft.

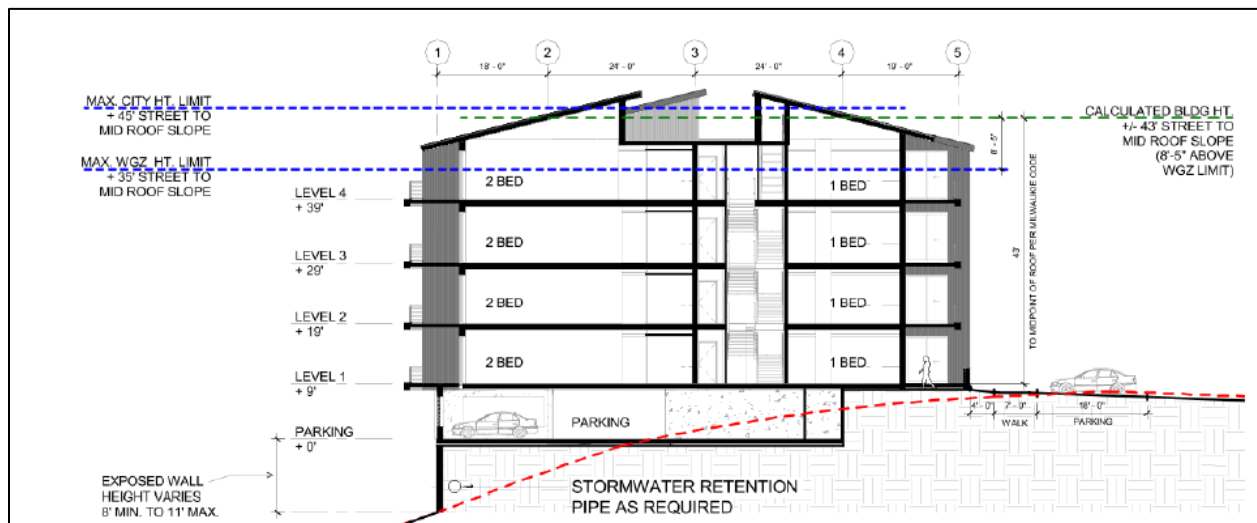


Figure 3. Building Height

- The applicant submitted revised site plans showing Building A.2 moved six feet away from the adjacent property line, increasing the proposed setback for a total setback of 49 feet. The site plans also provide the total distance between Buildings A.2, B.2, and B.1 from the four closest residences: 218 feet, 200 feet, 143 feet, and 82 feet. The revised site plan also shows that Building A.2 is 99 feet from the Waverly Country Club property line.

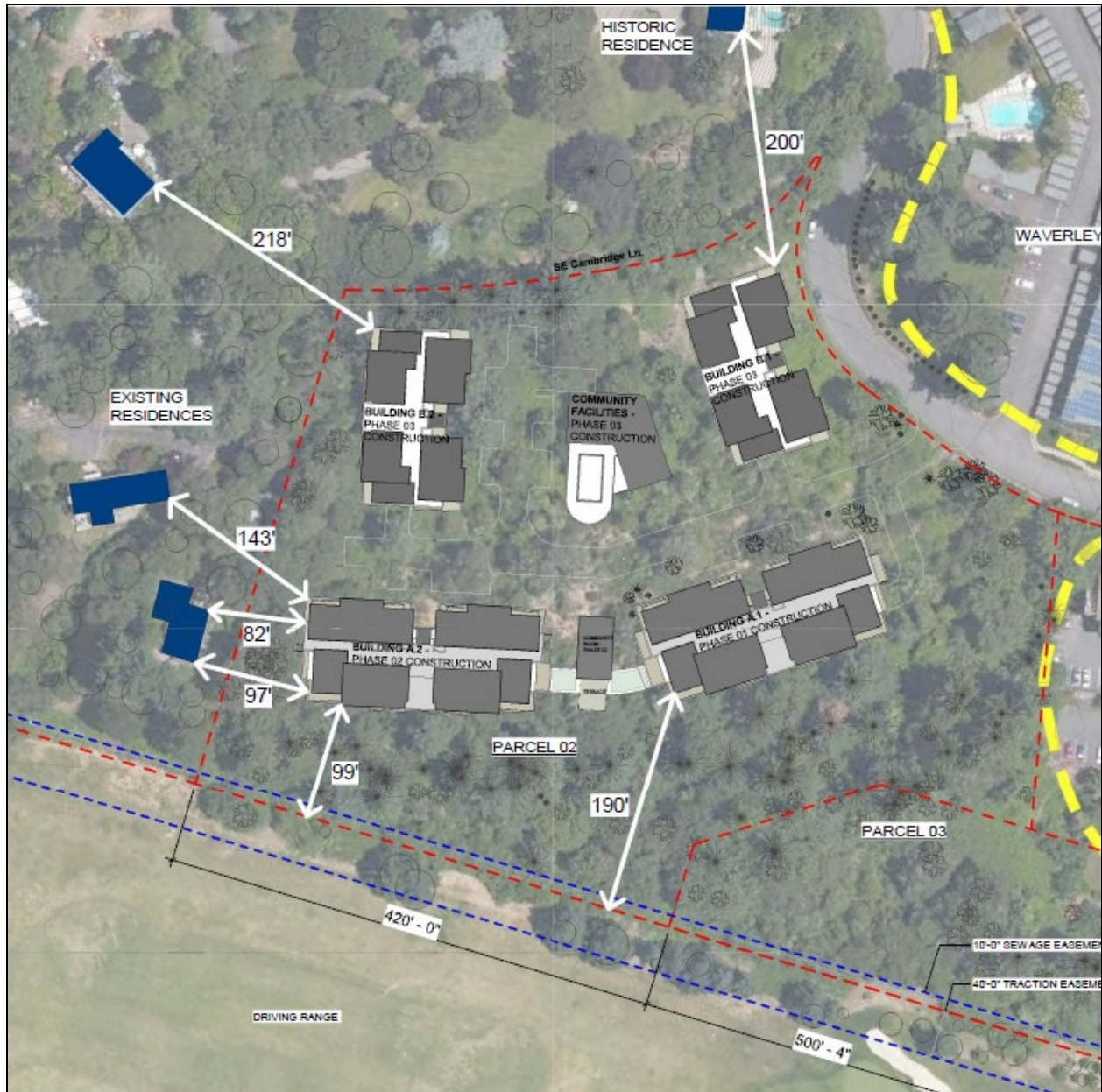


Figure 4. Distance to adjacent properties

- Comments relative to shading impacts to neighboring properties were addressed in the applicant's supplemental plan set, which included existing and new development conditions during the summer and winter solstice. The submitted studies show no impact to adjacent properties during the summer solstice and minimal shadow impact from Building A.2 on the entry porch and garage of the adjacent residence.

- Open Space
 - The applicant submitted a revised site plan identifying the preserved forest buffer area. The total area of the development site is 292,150 sq ft; the proposed buffer area is 114,150 sq ft or 40% of the total site. This open space area represents a green “collar” around the developed portion of the property.
 - MMC 19.311.3.E states that “The development plan and program shall provide for the landscaping and/or preservation of the natural features of the land. To ensure that open space will be permanent, deeds or dedication of easements of development rights to the City **may** be required (*emphasis added*)... Instruments and documents guaranteeing the maintenance of open space shall be approved as to form by the City Attorney. Failure to maintain open space or any other property in a manner specified in the development plan and program shall empower the City to enter said property in order to bring it up to specified standards.” The applicant has stated the intent to preserve the site’s open space areas but has not proposed a conservation restriction for the forested buffer area. Staff has included a draft condition of approval should the Commission choose to require permanent protection and maintenance of this open space area. Final language for this condition pending further discussion.

- Multifamily Housing review process
 - The applicant is pursuing the discretionary review process for multifamily housing design review per MMC 19.505.3.

Key Questions - Summary

As raised during the October 27th public hearing and in subsequent written testimony, staff has identified the following key questions for the Planning Commission's deliberation. Aspects of the proposal not listed below are addressed in the Findings (see Attachment 1) and generally require less analysis and discretion by the Commission.

- A. Does the proposed project comply with the applicable comprehensive plan?
- B. Does the project design adequately address the approval criteria for review of a development in the Willamette Greenway?
- C. Does the project provide enough “exceptional advantages in living conditions and amenities not found in similar developments” to warrant the additional proposed density, building height, and building length as allowed by MMC Subsection 19.311.3?

Analysis

A. Does the proposed project comply with the applicable comprehensive plan?

Comments were raised during the public hearing and in written testimony regarding the applicability of the 2020 Comprehensive Plan on the proposal. Based on the application

filing date, it was correctly pointed out that the prior comprehensive plan adopted in 1989 should be applied to the application.

The applicant submitted a revised narrative addressing the applicable criteria of the 1989 plan (see Attachment 1 for detailed Findings). Several sections of the comprehensive plan apply to the proposal, but the key elements and associated objectives are:

Open Spaces, Scenic Areas, and Natural Resources Element

Goal statement: To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources.

The subject property does not contain mapped natural resources subject to MMC 19.402. In 1987, the area known as “Waverly Woods” was identified as a natural resources property, but, as noted in the Background and Planning Concepts section, the site (and others) was removed as a designated natural area because of “...other values (i.e. economic, social).”

Objective #1 – Open Space

This objective seeks to protect open space resources in the city, defined as vacant land that will remain undeveloped in accordance with the Willamette Greenway program or other land use requirements. MMC 19.401 regulates development in the Willamette Greenway. As proposed, the development would maintain more than one-half of the site as vegetation, including 40% as a preserved forest. The proposal includes restoration of this forested area with the removal of invasive species. As discussed further in this staff report, the proposal meets the approval criteria of MMC 19.401.

Objective #2 – Natural Resources

The subject property is not designated as containing mapped natural resources. However, by preserving a significant portion of the site as forest, this upland wooded area would remain in a natural state.

Residential Land Use and Housing Element

Goal statement: To provide for the maintenance of existing housing, the rehabilitation of older housing and the development of sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market, while preserving and enhancing local neighborhood quality and identity.

One of the planning concepts is that the City’s housing policies are designed to ensure that existing and future residents are provided housing opportunities coincident with a broad

range of housing demands. The applicant has clarified that the overall Waverly Greens communities include rental units at a variety of rent levels and that the proposed units would be rented at the higher end of that scale. The 2016 Housing Needs Assessment (HNA) notes that there is an overall need for additional housing in the city to meet the 20-year future housing unit demand. Of all needed future housing, 30% is estimated to be in the form of multi-unit developments and the proposed additional units expand the overall housing stock in the city. Although the greatest need is for housing is at the lower price point, there is a case to be made for adding to the existing housing stock at this higher price point to provide an opportunity for existing residents to move into these new units, thereby making units at lower price points available to others. Data from the HNA shows that some renter households have the ability to pay for newer and/or higher quality units than is currently available.

Objective #3 - Residential Land Use: Design

This objective relates to a desirable living environment by allowing flexibility in design while also minimizing the impact of new construction on existing development. Planning concepts in this section state that "...residential design policies are intended to ensure a high quality of environmental design, a flexible design approach, and a smooth integration of new development into existing neighborhoods. Density bonuses and transfers will be encouraged so that full development potential on individual parcels may be realized. Transition policies will be applied to reduce any negative impacts of development on adjacent uses."

From staff's perspective the goal is to balance the goal of providing additional housing, including density bonuses to realize the full development potential of a site, while requiring thoughtful design as it relates to adjacent properties. The subject property is zoned for high density development and is part of a larger multi-unit development community but is also adjacent to a low-density single-unit development area. As shown in the applicant's revised site plans, by providing additional setbacks and a stated commitment to additional landscaped buffers, the proposed development provides this balance of interests.

Objective #4 – Neighborhood Conservation

This objective relates to the various areas of city that are defined by allowed density. In high density areas, such as the subject property, "...clearance and new construction will be allowed, as will construction on currently vacant lands. Identified historic resources will be protected as outlined in the Historic Resources Chapter. The predominant housing type will be multifamily." MMC 19.403 applies to designated historic resources in the city.

Objective #5 – Housing Choice

This objective states that the city will “...continue to encourage an adequate and diverse range of housing types and the optimum utilization of housing resources to meet the housing needs of all segments of the population.” The planning concept in this objective is that “...while the predominant housing type is expected to continue to be single family detached, the City will encourage a wide range of housing types and densities in appropriate locations within individual neighborhood areas including duplexes, rowhouses, cottage clusters, accessory dwelling units, live/work units, multifamily...”

Again, the plan looks to balance somewhat competing interests and minimize impacts to adjacent properties. It also discusses the desire for open space and/or recreational areas as part of these housing developments and preserving existing tree coverage whenever possible.

The proposed project addresses these policy objectives through the use of extensive vegetated areas, tuck-under parking and additional building height to reduce overall project footprint, and increased setbacks and buffer areas to adjacent residences.

Willamette Greenway Element

Goal statement: To protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

As stated in the plan, the Willamette Greenway boundaries are to include all land within 150 feet of the ordinary low water line of the Willamette River and such additional land, including Kellogg Lake and lands along its south shore. The subject property is more than 1,000 feet from the river and there is private development of both residential dwellings and the Waverly Country Club between the river and the development site.

The subject property has no physical relationship with the river as it is far away and is on a steep slope making the river inaccessible from the subject property. The proposed site plan minimizes the visual impact of the development from the river and provides public viewing points to the river and a walking path.

Neighborhood Element

Goal statement: To preserve and reinforce the stability and diversity of the City’s neighborhoods in order to attract and retain long-term residents and ensure the City’s residential quality and livability.

The subject property and surrounding area are in what was identified in the 1989 plan as Neighborhood Area 1. It recognizes that the Waverly Heights residential area is a “mix of large single family homes and high density apartments.” The plan includes a guideline for multifamily housing that includes that new multifamily housing should not “significantly alter the visual character of existing single family areas.” The plan includes considerations such as: projects should not be located randomly throughout the neighborhood; should have adequate off-street parking; should have close proximity to major streets and public transit; and should be designed to be aesthetically pleasing.

The subject property is on the edge of an existing single-unit dwelling neighborhood and also within a high-density residential area made up of both rental apartments and condominiums. Its proposed location is not random and is within walking distance of downtown and all of its amenities including public transit. As noted above, the proposed site design includes a significant setback and buffer from adjacent properties, over one-half of the site will be vegetated, will have adequate off-street parking, and the buildings have a high-end design aesthetic.

B. Does the project design adequately address the approval criteria for review of a development in the Willamette Greenway?

Approval of a project in the Willamette Greenway (WG) is a conditional use, subject to the provisions of MMC 19.905. The conditional use approval criteria are found in MMC 19.905.4. The key criteria that apply to this project and that must be addressed by the application are:

- Are the characteristics of the lot suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features?
- Will the operating and physical characteristics of the proposed use be reasonably compatible with, and have minimal impact on, nearby uses?
- Will all identified impacts be mitigated to the extent practicable?

The purpose of the WG is to protect, conserve, enhance, and maintain the natural, scenic, historic, economic, and recreational qualities of lands along the Willamette River and major courses flowing into the Willamette River. The subject property is entirely within the Willamette Greenway. The WG section (MMC 19.401) of the code functions as an overlay zone and is combined with the base zone. MMC 19.401.6 includes a list of criteria that are to be taken into account in the consideration of a greenway conditional use:

- Compatibility with the scenic, natural, historic, economic, and recreational character of the river;
- Protection of views both toward and away from the river;

- Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;
- Public access to and along the river, to the greatest possible degree, by appropriate legal means;
- Emphasis on water-oriented and recreational uses;
- Maintain or increase views between the Willamette River and downtown;
- Protection of the natural environment according to regulations in Section 19.402;
- Conformance to applicable Comprehensive Plan policies;
- The request is consistent with applicable plans and programs of the Division of State Lands;
- A vegetation buffer plan.

As the crow flies, the proposed development would be more than 1,000 ft from the river. There is currently no access to the river from the subject property. The applicant's materials state that the proposal is consistent with the multi-family character of the surrounding area and in its relationship with the river. Images were provided with the application materials showing that the proposed development would be set back from the river with a buffer of the existing Waverly Country Club golf course and multiple existing multi-family developments closer and more exposed to the river.

Maintaining the natural tree canopy and forested nature of the site are important aspects to this development, which includes the addition of recreational walking paths through the forested site (See Figure 5). The application materials show that by maintaining the existing forest and purposefully orienting the new development, the views to and from the river will be minimally impacted. New opportunities for views to the river are proposed through the creation of recreational paths in the existing forest by removing invasive species and dead or diseased trees as well as creating new views from the development itself. Overall, the project will minimally impact the views from and/or across the river (See Figure 6).

MMC 19.401.3 prohibits structures exceeding 35 ft in height west of McLoughlin Blvd. This height restriction would appear to be related to protection of views to and from the river. Building A.1, a portion of Building A.2 and a portion of Building B.1 would be located in the Willamette Greenway. As discussed above, and shown in the illustrations submitted with the application, the additional building height requested as part of this planned development will not have a negative impact on the views to and from the river. As already noted, there are also many other visible existing developments and structures much closer to the river between the river and the subject property. Preservation of a significant amount of wooded areas on the site minimizes impacts of the proposed structures located in the greenway.



Figure 5. Surrounding development and Willamette R.

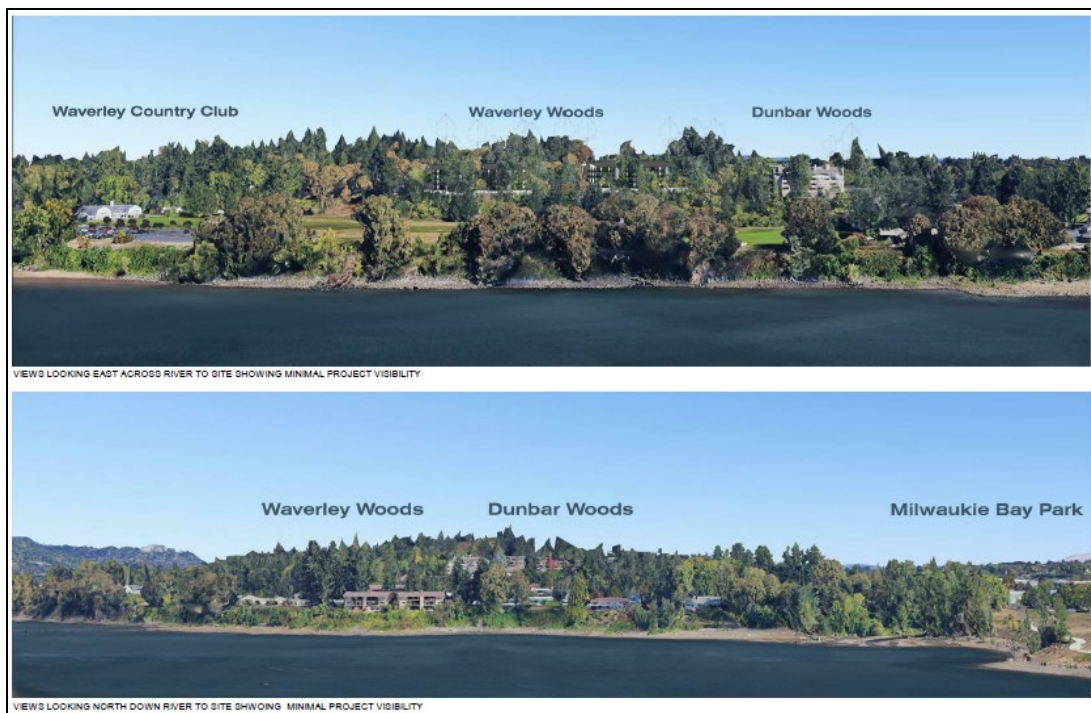


Figure 6. Views from the River

Based on the criteria for both the WG and for conditional uses, the subject property is appropriate for the proposed development, and its design takes into account the necessary considerations for development in the Willamette Greenway Zone.

C. Does the project provide enough “exceptional advantages in living conditions and amenities not found in similar developments” to warrant the additional proposed density and building height as allowed by MMC Subsection 19.311.3?

- The subject property is in the Residential R-2 zone as well as the Willamette Greenway (WG) zone. The Planned Development process allows the applicant to effectively create new development standards for the project, including:
 - An increase to the maximum the building height, which in the R-2 is permitted up to 45 ft but is limited to 35 ft in the WG. The proposed development would include a building height along the ridge of just under 44 ft as measured on sloped sites (see detailed discussion below).
 - If the applicant can demonstrate exceptional design in the project, there is an opportunity to increase the density up to 20% above the maximum normally allowed. The proposal exceeds the maximum density of 84 dwelling units by 20%, equal to 16 units, for a total of 100 dwelling units (see detailed discussion below).
 - The proposal also includes an increase to the maximum overall building length of the two ridge buildings (Buildings A.1 and A.2) by 50 ft so that they would be 203 ft from end wall to end wall instead of the maximum of 150 ft (see detailed discussion below).
- The applicant has asserted that the proposed development provides the following exceptional features:
 - In lieu of developing a fifth residential building, the project proposes to add an additional story to the two ridge buildings and increase their length to 203 ft. As a result, the overall lot coverage is decreased and the amount of pervious surface is increased, which are both clear advantages to a more compact development type.
 - The development takes advantage of the naturally sloping topography by tucking most of the required parking under the building to minimize surface parking which further increases the vegetated area.
 - The proposed development retains 54% of the vegetated area and the existing tree canopy west of the development extends above the building heights which minimizes the visual impact of the additional building height from the Willamette River. This creates a unique forested setting for the proposed development.
 - The proposal includes relocating and enlarging the existing community garden which is an extremely popular amenity, creating a public river

viewing area adjacent to the public right-of-way, and walking paths through the forested area with strategic views of the Willamette River in an area currently impassable. Very few multi-unit developments include a community garden space. The public river view area and paths will be available from the public right-of-way.

- The development seeks to maximize density and minimize its footprint to create “an urban development within an urban forest.” Fulfilling the need for more housing while providing more natural recreation spaces to improve occupant health and exposure to and appreciation for the natural environment. Through the project’s compact design, the project will also reduce its operational footprint. Through the approval of the additional height allowance and width of the buildings the project is able to take advantage of the natural topography on the site to tuck parking under the buildings. Tucking the parking under the building saves the development from surface parking allowing the project to maintain the forested areas, add additional community spaces, community gardens, and other amenities.
- The proposed development includes 100 units of much-needed housing with a range of different sized units and price points.
- The revised site plan, as discussed above, includes significant buffers and setbacks from existing residences that are well beyond the requirements of the R-2 zone. These setbacks and buffers include significant trees and other vegetation.
- The proposed buildings include many exceptional features as compared to similar multi-unit developments:
 - Buildings A.1 and A.2 are designed to have corner windows to take advantage of views.
 - Buildings B.1 and B.2, while without river views will primarily face vegetated areas rather than other buildings and parking lots.
 - Tuck-under parking is rare in typical multi-unit developments providing a significant amenity for tenants while also reducing the footprint of the development.
 - Each apartment unit is designed with a balcony, which are designed to be more than three times the size required in the multi-family design standards. The smallest private outdoor space is 195 sq ft.
 - 80% of the apartments are designed to have cross ventilation, which reduces the need for air conditioning during warm weather.
- As noted above, the key amenities will be available in Phase 1 when Building A.1 is completed.

- Other amenities, such as solar panels and electric vehicle charging stations will be available upon completion of the project.
- Building Height

In Section 19.202.2, the zoning code provides for an alternative way of measuring building height for structures on sloped sites. It establishes a new base point to compensate for slope (See Figure 7).

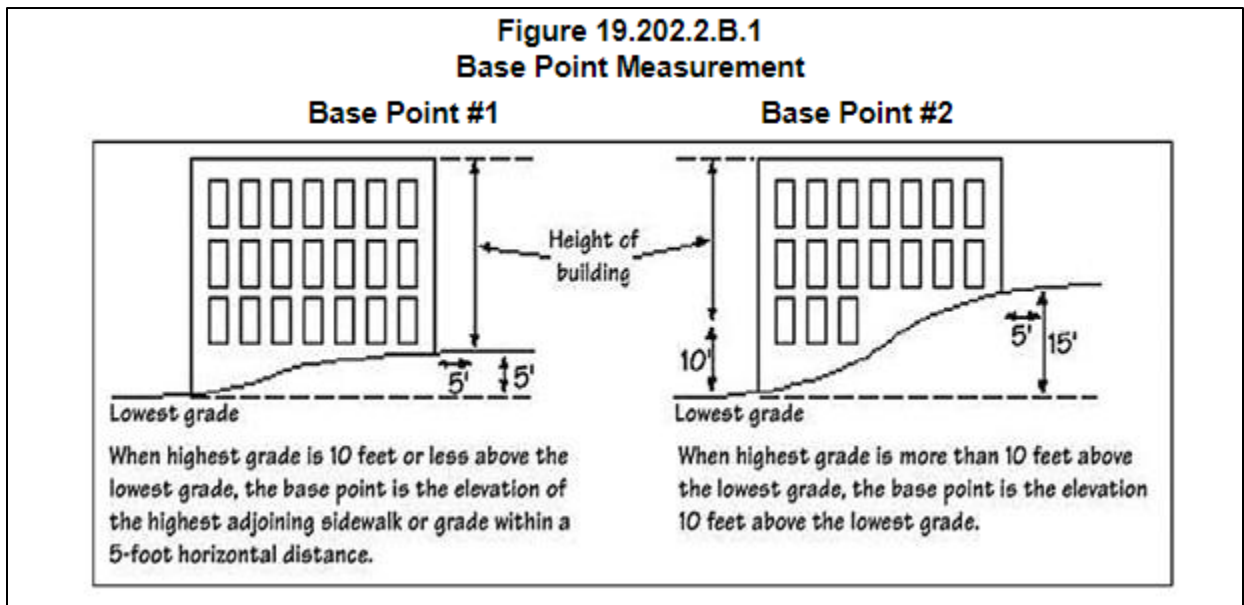


Figure 7. Building height measurement

Section 19.302.5.E also allows for one story of additional height if an additional 10% of site area beyond the minimum is retained in vegetation. The proposed development maintains 54% of the total site as vegetation, well above the minimum of 15% in the R-2 zone. Therefore, an additional story beyond the 3 story/45 ft maximum height would be allowed, for a total height of 4 stories/55 ft. However, the site is also in the WG zone, which prohibits buildings taller than a maximum height of 35 ft.

Through the Planned Development process, the proposed development would have buildings along the ridge of 43 ft 8 inches in height rather than the maximum of 35 ft in the WG zone (see Figure 3).

The proposed building height is in keeping with the base code requirements and, as detailed above in the Willamette Greenway discussion, the additional height does not impact views to and from the river.

- Density

The maximum density in the R-2 zone is 17.4 units per acre. Parcel 3 is not proposed for development at this time, and Parcel 1 is the existing Dunbar Woods development site, so the density calculation focuses on Parcel 2.

Parcel 2 includes steep slopes over 25%, which is an area of 1.9 acres. The net area of Parcel 2 when subtracting the area of steep slopes is 4.855 acres. The maximum density allowed on Parcel 2 is 84 units. As a Planned Development, a 20% increase in density is permitted if the applicant can demonstrate exceptional design in the project. This increase would allow 100 units. The applicant is proposing 100 new units of housing in four buildings on Parcel 2.

- Building Length

Subsection 19.302.5.H.2 limits the overall horizontal length of multifamily buildings to 150 linear ft as measured from end wall to end wall.

Through the Planned Development process, the applicant seeks approval to extend the overall length of the two ridge buildings to 203 ft. The application materials show that the buildings would be broken up into two smaller 89-ft sections with a 23-ft wide entry access area at the street, so from the street the building will not have the appearance of a 200-ft long building (see Figure 8).

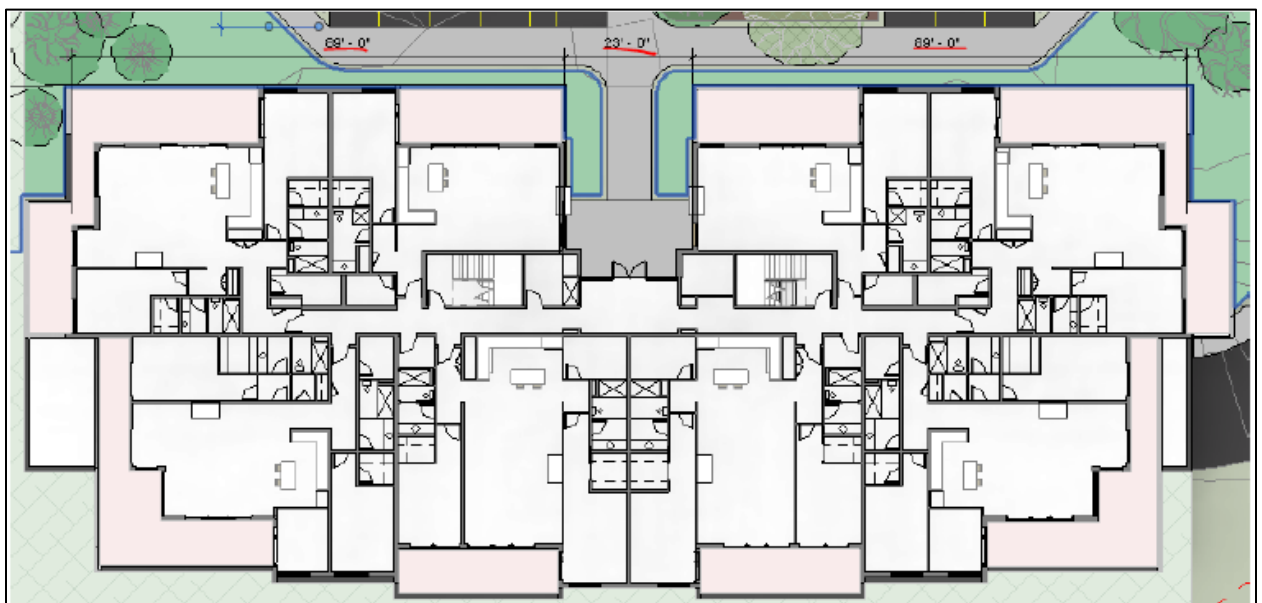


Figure 8. Building A-1 footprint

Based on the proposed design, the proposed building length is reasonable and is consistent with the purpose of minimizing the bulk of a building. It is also worth noting that buildings in the original Waverly Greens development exceed 280 ft in width, so the additional 50 ft is not out of context.

- Housing Affordability

Comments were raised about the proposed units being affordable or not and how the price point for the proposed units addresses the city's housing need. The applicant has clarified that the overall Waverly Greens communities include rental units at a variety of rent levels and that the proposed units would be rented at the higher end of that scale. The 2016 Housing Needs Assessment (HNA) notes that there is an overall need for additional housing in the city to meet the 20-year future housing unit demand. Of all needed future housing, 30% is estimated to be in the form of multi-unit developments and the proposed additional units expand the overall housing stock in the city. Although the greatest need is for housing is at the lower price point, there is a case to be made for adding to the existing housing stock at this higher price point to provide an opportunity for existing residents to move into these new units, thereby making units at lower price points available to others. Data from the HNA shows that some rental households have the ability to pay for newer and/or higher quality units than are currently available.

- Benefits and Amenities

The discussion above identifies many amenities and benefits associated with the development. The additional density requested would add 16 units to the city's housing inventory. Through the site design, the proposed development preserves and manages areas of significant forest far beyond the requirements of the base zoning regulations. It also includes a new river viewpoint adjacent to the public right-of-way, that would be open to the public.

The general arrangement of the proposed buildings, including forested area and large setbacks and buffers, integrates the development into the surrounding neighborhood. It serves as a better transition between the surrounding high-density neighborhood and the adjacent low-density area with single-family homes.

- Conclusion

The purpose of the Planned Development zone is to encourage greater flexibility in design, to promote variety in the physical development pattern of the city, and to provide a more desirable environment than is possible through the strict application of the zoning requirements. Except for the Willamette Greenway zone restriction on building height, and the additional 16 dwelling units, the proposed development could be permitted via review of variances rather than the application of a planned development review. The proposal meets the base requirements for off-street parking as well as the design guidelines for multifamily

development. The proposed design exceeds requirements for vegetation and open space and is in keeping with the purpose and goals of a planned development.

CONCLUSIONS

A. Staff recommendation to the Planning Commission is as follows:

1. Recommend that the City Council approve the final development plan for the Waverly Woods Planned Development. This action would allow for development of a 100-unit multifamily apartment planned development in the Willamette Greenway Zone.
2. Recommend that the City Council adopt the attached Findings and Conditions of Approval.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):

- MMC 19.302 - Medium and High Density Residential Zones
- MMC 19.311 - Planned Development Zone
- MMC 19.401 - Willamette Greenway Zone
- MMC 19.505.3 - Multifamily Housing
- MMC 19.600 - Off Street Parking and Loading
- MMC 19.700 - Public Facility Improvements
- MMC 19.902 – Amendments to Maps and Ordinances
- MMC 19.905 – Conditional Uses
- MMC 19.1007 - Type IV Review
- MMC 17 - Land Division (Property Line Adjustment)
- MMC 12.16 - Access Management

Key Approval Criteria

MMC 19.311.9 – Planned Development Zone

The approval authority(ies) may approve, approve with conditions, or deny the PD Zone based on the following approval criteria:

- A. Substantial consistency with the proposal approved with Subsection 19.311.6;
- B. Compliance with Subsections 19.311.1, 19.311.2, and 19.311.3;
- C. The proposed amendment is compatible with the surrounding area based on the following factors:

1. Site location and character of the area.
 2. Predominant land use pattern and density of the area.
 3. Expected changes in the development pattern for the area.
- D. The need is demonstrated for uses allowed by the proposed amendment;
- E. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment;
- F. The proposal is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700;
- G. Compliance with all applicable standards in Title 17 Land Division;
- H. Compliance with all applicable development standards and requirements; and
- I. The proposal demonstrates that it addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.

MMC 19.401.6 – Willamette Greenway

The following shall be taken into account in the consideration of a conditional use:

- A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;
- B. Compatibility with the scenic, natural, historic, economic, and recreational character of the river;
- C. Protection of views both toward and away from the river;
- D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;
- E. Public access to and along the river, to the greatest possible degree, by appropriate legal means;
- F. Emphasis on water-oriented and recreational uses;
- G. Maintain or increase views between the Willamette River and downtown;
- H. Protection of the natural environment according to regulations in Section 19.402;
- I. Advice and recommendations of the Design and Landmark Committee, as appropriate;
- J. Conformance to applicable Comprehensive Plan policies;
- K. The request is consistent with applicable plans and programs of the Division of State Lands;
- L. A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.

MMC 19.902.6 – Zoning Map Amendments

Changes to the Zoning Map shall be evaluated against the following approval criteria. A quasi-judicial map amendment shall be approved if the following criteria are met. A legislative map amendment may be approved if the following criteria are met:

1. The proposed amendment is compatible with the surrounding area based on the following factors:
 - a. Site location and character of the area.
 - b. Predominant land use pattern and density of the area.
 - c. Expected changes in the development pattern for the area.
2. The need is demonstrated for uses allowed by the proposed amendment.
3. The availability is shown of suitable alternative areas with the same or similar zoning designation.
4. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.
5. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.
6. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.
7. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.
8. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

This application is subject to Type IV review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above and make a recommendation to City Council for a final decision. In Type IV reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing, in order to determine what recommendation to forward to the Council.

Staff notes the public hearing process as determined by the Planning Commission on October 27, 2020 and corrected on [November 24, 2020](#):

1. December 8, 2020: continued Planning Commission hearing to include written and oral testimony regarding the information submitted to date, including the staff report, findings, and conditions.
2. December 15, 2020: deadline for applicant's last written argument.
3. January 12, 2020: continued public hearing for Planning Commission deliberations

A waiver of the 120-day clock is necessary to accommodate this revised schedule, because currently the final decision on these applications, which includes any appeals to the City Council, must be made by January 9, 2021 in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance.

The Commission has four decision-making options as follows:

- A. Continue the hearing, to allow for additional public testimony and/or the provision of additional information from the applicant. The Commission may be able to identify specific information needs or suggested revisions to the proposed development plan. The applicant may need to provide a waiver to the 120-day clock in the future.
- B. Recommend to City Council that the application be approved subject to the recommended Findings and Conditions of Approval.
- C. Recommend to City Council that the application be approved with minor modifications to the recommended Findings and Conditions of Approval. Such modifications need to be read into the record.
- D. Recommend denial of the application upon finding that it does not meet approval criteria.

COMMENTS

Comments were submitted per the review process established on October 27, 2020:

- 11/10: deadline for new information/submittal of written testimony
- 11/17: deadline for responses to information submitted by November 10

All comments were posted on the date in question so that they were available for review by the public (see Attachments 4 and 5).

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early Web Posting	Packet
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Conditions of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Recommended Other Requirements	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Comments Received by November 10 deadline	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. Comments Received in response to November 10 comments by November 17 deadline	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early Web Posting = Materials posted to the land-use application webpage at the time of public notice 20 days prior to the hearing.
Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-64>.

**Recommended Findings for Approval
File #PD-2020-001, Waverly Woods**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, Scott Wyse, representing Walker Ventures LLC, has applied for approval of a Planned Development in the Willamette Greenway Overlay Zone at 10415 SE Waverly Ct. This site is in the R-2 Zone. The land use application file number is PD-2020-001.
2. The proposal is for a multi-unit dwelling development consisting of four (4) residential buildings, a community center with swimming pool, and a community room built over three (3) phases totaling 100 dwelling units. The proposed development is being submitted as a Planned Development application to provide more flexibility related to development standards, such as building height in the Willamette Greenway Zone. The site is in the Willamette Greenway Zone and is also subject to Willamette Greenway review.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Title 12 Streets, Sidewalks, and Public Places
 - MMC Section 19.1007 Type IV Review
 - MMC Section 19.311 Planned Development Zone (PD)
 - MMC Section 19.302 Medium and High Density Residential Zones (including R-2)
 - MMC Title 17 Land Division
 - MMC Section 19.401 Willamette Greenway Zone
 - MMC Chapter 19.500 Supplementary Development Regulations
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC 19.905 Conditional Uses

Only the sections relevant to the decision for denial of the application are addressed below.

4. The application submittal includes a proposed Planned Development, Zoning Map Amendment, Property Line Adjustment, Willamette Greenway Conditional Use Review, and Transportation Facilities Review. Of all of the application components, the Planned Development and Zoning Map Amendment require the highest level of review (Type IV); as per MMC Subsection 19.1001.6.B, all are being processed with Type IV review.

The application has been processed and public notice provided in accordance with MMC Section 19.1007 Type IV Review. As required by MMC Subsection 19.1002.2, a preapplication conference was held on May 14, 2020. Public notice was sent to property owners and current residents within 400 ft of the subject property. As required by law, public hearings with the Planning Commission were held on October 27, 2020, December 8, 2020, and January 12, 2021, resulting in a recommendation for final decision by the City

Council. A public hearing with the City Council was held on [month/day], 2020, as required by law.

These findings are worded to reflect the City Council's role as final decision-maker; they represent the Planning Commission's recommendation to the City Council.

5. MMC Title 12 Streets, Sidewalks, and Public Places

a. MMC Chapter 12.16 Access Management

MMC Section 12.16.040 establishes standards for access (driveway) requirements, including access spacing, number and location of accessways, and limitations for access onto local and neighborhood streets. For multifamily properties accessing local and neighborhood streets, new driveways must be spaced at least 100 ft from the nearest intersection.

The subject property has frontage on both Waverly Ct and Lava Dr, but development accessing Waverly Ct is the only development proposed at this time. Waverly Ct is a local street. The proposed site driveway would meet the City's spacing standard of 100 ft for local streets due to the property location on a corner. However, the driveway on Waverly Ct was shown to be offset from the existing Waverly Greens driveway on the opposite side of the street. The proposed new driveway at Waverly Ct was found to meet stopping sight distance but intersection sight distance for turning vehicles was not met. In the submitted Transportation Impact Study (TIS) Kittleson & Associates cited the following AASHTO guidance, "if the available sight distance for an entering or crossing vehicle is at least equal to the appropriate stopping sight distance for the major road, then drivers have sufficient sight distance to anticipate and avoid collisions." Their study specified that any new landscaping, above ground utilities, and signage should be located and maintained along the site frontage to maximize sight distance.

The City's traffic consultant recommends the minimum AASHTO sight distance requirements should be met at the proposed driveways and final acceptance should be made by the City Engineer prior to final site plan approval.

As conditioned, the development is consistent with the applicable standards of MMC 12.16.

b. MMC Chapter 12.24 Clear Vision at Intersections

MMC 12.24 establishes standards for maintenance of clear vision at intersections to protect the safety and welfare of the public in their use of City streets.

As conditioned, all driveways, accessways, and intersections associated with the proposed development conform to the applicable standards of MMC 12.24.

The City Council finds that, as conditioned, the development meets all applicable requirements of MMC Title 12. This standard is met.

6. MMC Title 17 establishes the regulations governing land division.

a. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC Section 17.12.030 establishes the approval criteria for property line adjustment. The proposed plans meets these criteria as described below.

- (1) MMC Subsection 17.12.030.A.1 requires that the proposed property line adjustment complies with Title 19 Zoning and other applicable ordinances, regulations, and design standards.

As demonstrated by the applicant's submittal materials and evidenced by these findings, the proposed property line adjustment complies with the applicable ordinances, regulations, and design standards. As proposed, this criterion is met.

- (2) MMC Subsection 17.12.030.A.2 requires that the proposed boundary will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

The proposed boundary will provide sufficient area on each parcel to accommodate future development in accordance with the standards of the underlying R-2 zone. The parcels do not have physical constraints or dimensional limitations that would necessitate the need for variances in the future. As proposed, this criterion is met.

- (3) MMC Subsection 17.12.030.A.3 requires that the proposed boundary change not reduce residential density below minimum density requirements of the zoning district in which the property is located.

The proposed boundary results in three parcels. Parcel 1 contains the existing Dunbar Woods development with 36 units. The minimum density on this parcel would be 25 units. Parcel 2 is proposed to contain the proposed development of 100 units, which exceeds the minimum density of 78 units. Parcel 3 is 1.84 acres and will be developed as part of a future development.

As proposed, this criterion is met.

As proposed, the City Council finds that the proposed boundary meets the applicable criteria.

b. MMC Chapter 17.28 Design Standards

MMC 17.28, particularly MMC Section 17.28.040, establishes standards for lot design for land divisions and boundary changes.

- (1) MMC Subsection 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated, as well as that minimum lot standards shall conform to Title 19.

The proposed lots are generally rectangular in shape and meet the minimum area requirements for the underlying R-2 zone. All lots conform to the relevant standards of the R-2 zone as described in Finding 7 and to other applicable standards of Title 19 as described elsewhere in these findings.

- (2) MMC Subsection 17.28.040.B requires that lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street

upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street.

The proposed lots are generally rectangular in shape and meet the minimum lot standards in Title 19. The proposed new lot lines are at a 90-degree angle to Waverly Ct or Lava Dr and the rear lot lines are generally parallel to the street.

- (3) MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines.

No compound lot lines are proposed for the side or rear lot lines.

- (4) MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

No variances to the lot shape standards are requested in this application.

- (5) MMC Subsection 17.28.040.E limits double frontage and reversed frontage lots, stating that they should be avoided except in certain situations.

None of the proposed lots is a double frontage or reversed frontage lot.

- (6) MMC Subsection 17.28.040.F requires that, pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access. This standard applies when a lot has frontage on more than one street.

As proposed all of the lots comply with the minimum required 35 ft of frontage.

As proposed, the City Council finds that the new lots presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.

c. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that work shall not begin until plans have been approved by the City.

As discussed in Finding 11, physical improvements are required as a result of the proposed Planned Development.

As conditioned, the City Council finds that the applicable standards of MMC 17.32 are met.

7. MMC Chapter 19.300 Base Zones

As a Planned Development, the proposed subdivision is subject to the requirements for Planned Developments as established in MMC Section 19.311. The Planned Development (PD) zone is a superimposed zone applied in combination with regular existing zones. The subject property is zoned R-2, so the underlying zone requirements of MMC Section 19.302 are relevant and must be addressed as well.

a. MMC Section 19.311 Planned Development Zone (PD)

The purpose of a Planned Development (PD) zone is to provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements, encouraging greater flexibility of design and providing a more

desirable use of public and private common open space. PD zones can promote variety in the physical development pattern of the city and encourage a mix of housing types.

(1) MMC Subsection 19.311.2 Use

The City Council approves the final development plan of a PD zone, in consideration of the proposal's conformance to the following standards:

(a) Conformance to the City's Comprehensive Plan

As addressed in more detail in Findings 8 and 12, the proposed Planned Development conforms to the City's applicable Comprehensive Plan and is consistent with the relevant policies and goals.

(b) Formation of a compatible and harmonious group

As proposed, the development is a new community within the Waverly Greens and Dunbar Woods "neighborhood" already located in the immediate area. The proposed development will provide 100 units of apartments in four buildings. Although the proposed structures will have different front facades from the existing developments, because each community has its own character, according to the applicant's submittal materials, the size, orientation, architecture, color palette, and articulating features will be similar and will lend a sense of group compatibility.

(c) Suitability to the capacity of existing and proposed community utilities and facilities

The existing public utilities and facilities in the vicinity of the subject property are all of sufficient size and capacity to support the proposed development. As required, the new utilities provided within the proposed development itself will be suitable to serve it.

(d) Cohesive design and consistency with the protection of public health, safety, and welfare in general

The proposed street access is cohesively designed and meets the various applicable City standards for spacing and sight-distance. Frontage improvements along the subject property's frontage on Waverly Ct, including sidewalks, landscaping, and streetlights will meet applicable City standards. A trail system through a portion of the open space area will offer recreational opportunities while limiting impacts to natural areas.

(e) Affordance of reasonable protection to the permissible uses of properties surrounding the site

No commercial or other nonresidential uses are proposed as part of the development. Surrounding properties are zoned for low-density and high-density

residential uses, and the proposed development will not limit any future development or redevelopment of those properties.

(2) MMC Subsection 19.311.3 Development Standards

MMC 19.311.3 establishes that the various applicable standards and requirements of MMC Title 19, including those of the underlying zone(s), are applicable in a PD zone, unless the Planning Commission grants a variance from said standards in its approval of the PD or the accompanying subdivision plat. The City Attorney has concurred with the conclusion of City staff that a formal variance request is not required for adjustments related to the flexibility inherent in the stated purpose of the PD zone to encourage greater flexibility of design and provide a more efficient and desirable use of common open space, with an allowance for some increase in density as a reward for outstanding design (e.g., housing type, lot size, lot dimension, setbacks, and similar standards).

(a) Minimum Size of a PD Zone

MMC Subsection 19.311.3.A requires that a PD Zone may be established only on land that is suitable for the proposed development and of sufficient size to be planned and developed in a manner consistent with the purposes of this zone.

The subject property is approximately 10.8 acres in size and provides an adequate area for development.

(b) Special Improvements

MMC Subsection 19.311.3.B establishes the City's authority to require the developer to provide special or oversize sewer lines, water lines, roads and streets, or other service facilities.

The City's Engineering Department has determined that no special or oversize facilities are required to ensure that the proposed development provides adequate public facilities.

(c) Density Increase and Control

MMC Subsection 19.311.3.C allows an increase in density of up to 20% above the maximum allowed in the underlying zone(s), if the City Council determines that the proposed Planned Development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning.

Subtracting the area occupied by area with 25% or greater slope as required by the density-calculation standards provided in MMC Subsection 19.202.4, the maximum allowable density for the net area of the subject property is 84 units. The applicant has proposed a total of 100 units, which is a 20% increase. The applicant

has listed the following elements as evidence of the project's outstanding design and exceptional advantages:

- *The development takes advantage of the naturally sloping topography by tucking most of the required parking under the building to minimize surface parking which further increases the vegetated area.*
- *The proposed development retains 54% of the vegetated area and the existing tree canopy west of the development extends above the building heights which minimizes the visual impact of the additional building height from the Willamette River. This creates a unique forested setting for the proposed development.*
- *The proposal includes relocating and enlarging the existing community garden, which is an extremely popular amenity and creating an overlook area and walking paths through the forested area with strategic views of the Willamette River in an area currently impassable. Very few multi-unit developments include a community garden space. The overlook area and paths will be available from the public right-of-way and open to the public.*
- *This development seeks to maximize density and minimize its footprint to create "an urban development within an urban forest." Fulfilling the needs for more housing while providing more natural recreation spaces to improve occupant health and exposure to and appreciation for our natural environment. Through the project's compact design, the project will also reduce its operational footprint. Through the approval of the additional height allowance and width of the buildings, the project is able to take advantage of the natural topography on the site to tuck parking under the buildings. Tucking the parking under the building saves the development from surface parking allowing the project space to maintain the forested areas, add additional community spaces, community gardens, and other amenities.*
- *The proposed development includes 100 units of much-needed housing with a range of different sized units and price points.*
- *The site plan includes significant buffers and large setbacks from existing residences that are well beyond the requirements of the R-2 zone. These setbacks and buffers include significant trees and other vegetation.*
- *The proposed buildings include many exceptional features as compared to similar multi-unit developments:*
 - *Buildings A.1 and A.2 are designed to have corner windows to take advantage of views.*

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- *Buildings B.1 and B.2, while without river views will primarily face vegetated areas rather than other buildings and parking lots.*
- *Tuck-under parking is rare in typical multi-unit developments providing a significant amenity for tenants while also reducing the footprint of the development.*
- *Each apartment unit is designed with a balcony, which are designed to be more than three times the size required in the multi-family design standards. The smallest private outdoor space is 195 sq ft.*
- *80% of the apartments are designed to have cross ventilation, which reduces the need for air conditioning during warm weather*
- *Amenities such as solar panels and electric vehicle charging stations will be available upon completion of the project.*

The applicant has asserted that, without the Planned Development process, the site would be difficult to develop without resulting in greater impacts to the forested areas of the site.

As per the recommendation of the Planning Commission, the City Council finds that the proposed development provides sufficiently outstanding design features and exceptional amenities to justify the proposed density increase.

(d) Peripheral Yards

MMC Subsection 19.311.3.D requires that yards along the periphery of any Planned Development zone be at least as deep as the front yard required in the underlying zone(s). Open space may serve as peripheral yard.

The front yard requirements of the underlying R-2 zone is 15 ft. The proposed development provides large wooded setbacks, the smallest of which is 36 ft.

(e) Open Space

MMC Subsection 19.311.3.E requires that a Planned Development set aside land as open space, for scenic, landscaping, or other recreational purposes within the development. A minimum of one-third of the gross area of the site must be provided as open space and/or outdoor recreational areas, with at least half of this area being of the same general character as the area containing dwelling units.

The gross area of the subject property is approximately 10.8 acres, so a minimum of 3.24 acres must be provided as open space, with at least 1.6 acres available for recreational purposes. The applicant has proposed a maintained forest area with walking paths of approximately 3.5 acres, in addition to the areas of forested steep slopes to be maintained as open areas.

(3) MMC Subsection 19.311.6 Planning Commission Review of Preliminary Development Plan and Program

MMC 19.311.6 establishes that the Planning Commission shall review an applicant's preliminary development plan and program for a PD and shall notify the applicant whether the proposal appears to satisfy the provisions of this section or has any deficiencies. Upon the Commission's approval in principle of the preliminary plan and program, the applicant shall file a final development plan and program and an application for zone change.

The applicant has submitted a development plan and program for the proposed PD and has requested that the Commission consider it to be the final development plan and program submittal, along with the accompanying application for zone change.

(4) MMC Subsection 19.311.8 Land Division

MMC 19.311.8 requires that the submittal of a final development plan and program be accompanied by an application for subdivision preliminary plat, where the PD involves the subdivision of land.

The proposal involves a 100-unit apartment development. The proposal includes a property line adjustment; the proposal does not include a subdivision.

(5) MMC Subsection 19.311.9 Approval Criteria

MMC 19.311.9 requires that the approval authority may approve, approve with conditions, or deny the proposed PD zone based on the following criteria:

(a) Substantial consistency with the proposal approved with Subsection 19.311.6

The applicant has submitted a development plan and program for the proposed PD and has requested that the Commission consider it to be the final development plan and program submittal, along with the accompanying application for zone change.

(b) Compliance with Subsections 19.311.1, 19.311.2, and 19.311.3

As demonstrated by these findings, the proposed development complies with these sections.

(c) The proposed amendment is compatible with the surrounding area based on the following factors:

- (i) Site location and character of the area.
- (ii) Predominant land use pattern and density of the area.
- (iii) Expected changes in the development pattern for the area.

The proposed amendment is compatible with the surrounding area based upon the site location and character of the area. The existing dense, tall forest minimizes the impact of the proposed taller and wider buildings on the ridge on the views from the Willamette River and the breaking up of the length into two distinct masses

minimizes the appearance from the street. As noted above, the existing multifamily structures in the neighborhood exceed the lengths proposed in this development with the existing Stuart and Waverley Hall Apartments located to the east of this development both ranging in over 284 ft in length. The proposed development is consistent with the predominant land use pattern and density of the area as it is surrounded by existing multifamily apartment complexes. There are no expected changes in the development pattern for the area. The area is designated med-high density residential and this development is the last undeveloped tract of land in the surrounding neighborhood. The general arrangement of the proposed buildings, including forested area and large setbacks and buffers, integrates the development into the surrounding neighborhood. It serves as a better transition between the surrounding high-density neighborhood and the adjacent low-density area with single-family homes. As indicated by the applicable 1989 City of Milwaukie Comprehensive Plan, there are no plans to change the development pattern for the area.

- (d) The need is demonstrated for uses allowed by the proposed amendment

As stated in the application materials, the proponents understand the needs of the rental market as they own a large portfolio of apartment communities ranging in affordability. They have found a gap in the availability of the proposed apartment types. Within their community, they have a waiting list for the type of accommodations this project is providing. The City of Milwaukie's Comprehensive Plan recognizes increased housing is a need and the City Council has identified increased housing opportunity and supply as a top goal for the city.

- (e) The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment

The applicant team has performed preliminary investigations into the existing infrastructure including a transportation study to analyze the impacts of increased traffic on the existing city infrastructure. Increased storm water, sewer, domestic and fire water supply as a result of this 100-unit development have also been reviewed and calculated. The submitted application materials include these analyses confirming the adequacy of the existing systems. The existing public transportation facilities, utilities, and available services are adequate to support the proposed development.

- (f) The proposal is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700

A transportation impact study has been included as part of application submittal. See Finding 11 for details.

- (g) Compliance with all applicable standards in Title 17 Land Division
As detailed in Finding 5, the proposed development complies with the applicable standards in Title 17.
- (h) Compliance with all applicable development standards and requirements
As conditioned, and as detailed in these Findings, the proposed development complies with the applicable development standards and requirements.
- (i) The proposal demonstrates that it addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone
The Residential R-2 zone allows multi-unit residential development by right. As detailed by the applicant, the proposed project fulfills and expands needed amenities for the existing six communities of Waverley Greens Apartments. It would provide more places for community gathering and celebration. The proposed two new community centers and outdoor amenities provide places for the residents to garden, swim, eat, celebrate, meet, organize, and educate themselves. The existing community already partners with local educators to provide classes to its residents. This proposal will increase the number of spaces and opportunities for these experiences. The project is designed to be part of the existing natural forest. The proposal includes relocating and enlarging the community garden, which is an extremely popular amenity and creating walkable paths through the forested area with views of the Willamette River in an area that is currently unpassable. The proposal includes a public river viewing area adjacent to the public right-of-way. The additional density requested would add 16 units to the city's housing inventory. Through the site design the proposed development preserves and manages areas of significant forest far beyond the requirements of the base zoning regulations.
- The general arrangement of the proposed buildings, including forested area and large setbacks and buffers, integrates the development into the surrounding neighborhood. It serves as a better transition between the surrounding high-density neighborhood and the adjacent low-density area with single-family homes.*
- The proposed development seeks to maximize density and minimize its footprint to create an urban development within an urban forest. An additional objective is to fulfill the need for more housing in Milwaukie while providing more natural recreation spaces to improve occupant health and exposure to and appreciation for the natural environment. Through the project's compact design, the project will also reduce its operational footprint. The approval of the additional height allowance and width of the building would allow the project to take advantage of the natural topography on the site to tuck parking under the buildings. The parking level pushes the building to exceed the Willamette Greenway Zone height limit, but still within the allowable City of Milwaukie code. Tucking the parking under the building saves the development from surface parking allowing the*

project space to maintain the forested areas, add additional community spaces, community gardens and other amenities.

As conditioned, the City Council finds that the proposed development meets the approval criteria.

(6) MMC Subsection 19.311.10 Planning Commission Action on Final Development Plan and Program

MMC 19.311.10 requires that the Planning Commission hold a public hearing using Type IV review to consider a final development plan and program, zone change application, and subdivision preliminary plat. If the Planning Commission finds that the final development plan and program is in compliance with the preliminary approval and with the intent and requirements of the applicable provisions of the zoning ordinance, it shall forward a recommendation for approval to the City Council for adoption.

As required, the Planning Commission held public hearings on October 27, 2020, December 8, 2020, and January 12, 2021 in accordance with the Type IV process outlined in MMC Section 19.1007 and considered the proposed development plan and program, zone change application, property line adjustment, and Willamette Greenway review. The Planning Commission found that the development plan and program is in compliance with the intent and requirements of the applicable provisions of MMC Title 19 Zoning and forwarded a recommendation of approval to the City Council for adoption.

(7) MMC Subsection 19.311.11 Council Action on Final Development Plan and Program

MMC 19.311.11 requires that the City Council consider the final development plan and program and zone change application through the Type IV review process, upon receipt of a recommendation from the Planning Commission. Upon consideration of the proposal, the Council may adopt an ordinance applying the PD zone to the subject property and adopt the final development plan and program as the standards and requirements for that PD zone. The Council may also continue consideration and refer the matter back to the Planning Commission with recommendations for amendment, or may reject the proposal and abandon further hearings and proceedings.

The Council considered the final plan and program and zone change application, as well as the accompanying applications for subdivision preliminary plat and associated reviews, in accordance with the Type IV review process outlined in MMC Section 19.1007. The Council held a public hearing on [month/day], 2020, and adopted an ordinance applying the PD zone to the subject property, which adopted the final development plan and program as the standards and requirements for the new PD zone (Ordinance #####).

The City Council finds that the applicable standards and requirements of MMC 19.311 are met. As per **Ordinance ###**, the final development plan and program is adopted as the standards and requirements and the PD zone designation is applied to the subject property.

b. MMC Section 19.302 Medium and High Density Residential Zones (including R-2)

The subject property is zoned Residential R-2. MMC 19.302 establish the allowable uses and development standards for the residential R-3 zone. As noted in Finding 7-a(2), although the underlying zone standards are primarily applicable, the PD zone allows adjustment to some of those standards. This applies to such underlying zone limitations as housing type, lot size, lot dimension, setbacks, and similar standards that relate to flexibility of design, greater efficiency in the use of common open space, and minor increases in density allowed as a reward for outstanding design.

(1) Permitted Uses

As per MMC Table 19.302.2, multifamily development is an outright permitted use in the R-3 zone.

The proposal is a 100-unit multifamily development.

(2) Lot and Development Standards

As discussed in Finding 7-a(2), above, adjustments to underlying zone standards that are related to the flexibility of design afforded by the PD process are allowed and do not require a formal variance request. Table 7-b(2) compares the applicable standards for development in the R-2 zone with the standards proposed as the final development plan and program for this PD zone.

Table 7-b(2)		
Standard	R-2 Requirement	Proposed PD Requirement – Parcel 2
1. Minimum Lot Size	5,000 sq ft	294,350 sq ft
2. Minimum Lot Width	50 ft	300+ ft
3. Minimum Lot Depth	80 ft	300+ ft
4. Minimum street frontage	35 ft	300+ ft
5. Front Yard	15 ft	15.08 ft
6. Side Yard	5 ft	36 ft
7. Rear Yard	15 ft	99 ft
8. Maximum Building Height	3.5 stories or 45 ft	4 stories; 52 ft

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	(whichever is less; with additional 10% vegetation)	
9. Side yard height plane limit	45-degree slope at 25 ft height	Exceeds this standard – see PD request for additional building height.
10. Maximum lot coverage	45%	21.9%
11. Minimum vegetation	15%	54%
12. Minimum density	11.6 units per acre	Minimum of 78 units for entire site
13. Maximum density	17.4 units per acre	Maximum of 84 units for entire site (Applicant has requested a 20% density increase to a total of 100 units)

The lots and development standards that will govern development on the subject property are shown in Table 7-b(2) and effectively establish a component of the final development plan and program for this PD zone.

8. MMC 19.400 Overlay Zones and Special Areas

a. MMC 19.401 Willamette Greenway Overlay Zone

MMC 19.401 establishes criteria for reviewing and approving development in the Willamette Greenway.

(1) MMC Subsection 19.401.5 Procedures

MMC 19.401.5 establishes procedures related to proposed uses and activities in the Willamette Greenway zone. Development in the Willamette Greenway zone requires conditional use review, subject to the standards of MMC Section 19.905 and in accordance with the approval criteria established in MMC Subsection 19.401.6.

To construct a multi-unit apartment community constitutes “development” as defined in MMC Subsection 19.401.4 and is subject to the conditional use review standards of MMC 19.905 and the approval criteria of MMC 19.401.6.

(2) MMC Subsection 19.401.6 Criteria

MMC 19.401.6 establishes the criteria for approving conditional uses in the Willamette Greenway zone.

(a) Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan

The State Willamette River Greenway Plan defines “lands committed to urban use” in part as “those lands upon which the economic,

developmental and locational factors have, when considered together, made the use of the property for other than urban purposes inappropriate.”

The land for the proposed project has been committed to an urban use as defined under the State Willamette River Greenway Plan. The City of Milwaukie has designated the use of this land as Residential R-2, medium and high-density development.

- (b) Compatibility with the scenic, natural, historic, economic, and recreational character of the river

The proposed development would be more than 1,000 ft from the river and there is currently no access to the river from the subject property. The proposed development is consistent with the multi-unit residential character of the surrounding area and in its relationship with the river. The proposed development is set back from the river with a buffer of an existing adjacent golf course and multiple existing multi-unit residential developments that are closer and more exposed to the river. The proposed development maintains 54% of the site in its vegetated and forested state. The proposed development includes the addition of recreational walking paths through the forested site.

- (c) Protection of views both toward and away from the river

By maintaining the existing forest and specifically orienting the new development, the views from the river will be minimally impacted. New opportunities for views to the river are proposed through the creation of recreational paths in the existing forest and removing invasive species and dead/diseased trees along with curating views from the development itself. Overall, the project will increase the opportunities for visual enjoyment of the river and its surrounding environment while minimally impacting the views from and/or across the river.

- (d) Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable

The proposed development footprint is located to the northeast portion of the site, which is the farthest corner away from the river. The south and west of the site are devoted to walking paths and recreational uses for future residents along with maintaining habitat corridors. The development site has no direct connection to the river.

- (e) Public access to and along the river, to the greatest possible degree, by appropriate legal means

There is no public access from the site to the river from the proposed development or its surrounding area. The subject property is not directly adjacent to the river.

- (f) Emphasis on water-oriented and recreational uses

There is no direct access to the river from the site. Increased access to views of the river will be created by the development.

- (g) Maintain or increase views between the Willamette River and downtown

The site is not in the downtown.

- (h) Protection of the natural environment according to regulations in Section 19.402

Section 19.402 does not apply to the site; there are no mapped resource areas on the site. However, as part of the project, the proposed development would remove invasive species, dead and diseased trees, and improve the overall health of the forested area on the site.

- (i) Advice and recommendations of the Design and Landmarks Committee, as appropriate

The subject properties are not within a downtown zone and the proposed activity does not require review by the Design and Landmarks Committee.

- (j) Conformance to applicable Comprehensive Plan policies

The Open Spaces, Scenic Areas, and Natural Resources Element includes goals and objectives related to conservation of open space and protection and enhancement of natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources.

The Willamette Greenway Element includes policies related to land use, public access and view protection, and maintenance of private property.

The Housing Element includes policies to provide opportunities for a wider range of housing choice in Milwaukie.

The proposed development is being reviewed through the Willamette Greenway conditional use process as provided in MMC Subsection 19.401.5. The project will not impact visual corridors from Waverly Ct given the limited view opportunities that currently exist. The proposed development maximizes density while minimizing development footprint to increase urban tree canopy, recreational areas, and also provide additional community spaces - key aspects of the Milwaukie Comprehensive Plan.

The subject property is not designated as containing mapped natural resources. However, by preserving a significant portion of the site as forest, this upland wooded area would remain in a natural state.

The subject property is designated as high density; increasing the number of residential units to meet future demand is an important consideration in the Comprehensive Plan. One of the planning concepts is that the City's housing policies are designed to ensure that existing and future residents are provided

housing opportunities coincident with a broad range of housing demands. The applicant has clarified that the overall Waverly Greens communities include rental units at a variety of rent levels and that the proposed units would be rented at the higher end of that scale. The 2016 Housing Needs Assessment notes that there is an overall need for additional housing in the city to meet the 20-year future housing unit demand. Of all needed future housing, 30% is estimated to be in the form of multi-unit developments and the proposed additional units expand the overall housing stock in the city. Although the greatest need is for housing is at the lower price point, there is a case to be made for adding to the existing housing stock at this higher price point to provide an opportunity for existing residents to move into these new units, thereby making units at lower price points available to others.

The subject property is zoned for high density development and is part of a larger multi-unit development community, but is also adjacent to a low-density single-unit development area. As shown in the applicant's site plans, by providing additional setbacks and a stated commitment to additional landscaped buffers, the proposed development provides this balance of interests. The proposed project addresses policy objectives through the use of extensive vegetated areas, tuck-under parking and additional building height to reduce overall project footprint, and increased setbacks and buffer areas to adjacent residences.

- (k) The request is consistent with applicable plans and programs of the Division of State Lands

The proposed activity is not inconsistent with any known plans or programs of the Department of State Lands (DSL).

- (l) A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C

The subject properties are not immediately adjacent to the main channel of the Willamette River. The proposed residential development is more than 1,000 ft from the river. This criterion does not apply.

The City Council finds that, as conditioned, the proposed activity meets all relevant approval criteria provided in MMC 19.401.6.

- (3) MMC Subsection 19.401.9 Private Noncommercial Docks

MMC 19.401.9 establishes the requirements for private noncommercial docks.

- (a) Only 1 dock is allowed per riverfront lot of record.

No docks are proposed as part of this development.

This standard is not applicable.

The City Council finds that, as conditioned, the proposed activity meets all applicable standards of development activity in the Willamette Greenway zone.

9. MMC Chapter 19.500 Supplementary Development Regulations

a. MMC Subsection 19.505.3 Multifamily Housing

MMC 19.505.3 establishes design standards for multifamily housing, to facilitate the development of attractive housing that encourages multimodal transportation and good site and building design. The requirements of this subsection are intended to achieve the principles of livability, compatibility, safety and functionality, and sustainability. The design elements, established in MMC Subsection 19.505.3.D, are applicable to all new multifamily housing developments with 3 or more units.

- (1) MMC Subsection 19.505.3.B states that all new multifamily and congregate housing developments with 3 or more dwelling units on a single lot are subject to the design elements in Table 19.505.3.D.

The proposed development will have 100 dwelling units on a single lot and is considered multifamily. The proposed development meets the applicability standards of MMC 19.505.3.B.

- (2) MMC Subsection 19.505.3.D contain standards for Multifamily Design Guidelines.

The proposed multi-unit residential development is following the Design Guidelines for the Discretionary Process. The application meets the standards of this section as described in Table 2 below.

**Table 19.505.3.D
Design Guidelines—Multifamily Housing**

Design Element	Guideline	Findings
<p>1. Private Open Space</p>	<p>The development should provide private open space for each dwelling unit, with direct access from the dwelling unit and visually and/or physically separate from common areas.</p> <p>The development may provide common open space in lieu of private open space if the common open space is well designed, adequately sized, and functionally similar to private open space.</p>	<p><i>Each apartment unit has its own private balcony directly accessible from the interior of each dwelling. The balconies are separated physically and visually from other apartments. The smallest private outdoor space is 195 sq ft.</i></p>

**Table 19.505.3.D
Design Guidelines—Multifamily Housing**

Design Element	Guideline	Findings
<p>2. Public Open Space</p>	<p>The development should provide sufficient open space for the purpose of outdoor recreation, scenic amenity, or shared outdoor space for people to gather.</p>	<p><i>There are multiple open space areas proposed in the development, including large outdoor community gardens, a swimming pool, walking trails, permanent picnic tables, and river overlook sitting areas. The project is proposing 54% of the site to be vegetated open space set aside for scenic, landscaping, or open recreational purposes.</i></p>
<p>3. Pedestrian Circulation</p>	<p>Site design should promote safe, direct, and usable pedestrian facilities and connections throughout the development. Ground-floor units should provide a clear transition from the public realm to the private dwellings.</p>	<p><i>As designed, the proposed development will have continuous connections with adequate lighting and street crossings to site elements as required. Walkways are separated from vehicle parking with physical barriers such as planter strips and raised curbs. Walkways shall be constructed of concrete, with a minimum width of 5 ft and a width of 7 ft where parked vehicles will overhang the walkway. The walkways will be separated from parking areas and internal driveways using curbing, landscaping, or distinctive paving materials.</i></p>
<p>4. Vehicle and Bicycle Parking</p>	<p>Vehicle parking should be integrated into the site in a manner that does not detract from the design of the building, the street frontage, or the site. Bicycle parking should be secure, sheltered, and conveniently located.</p>	<p><i>138 off-street parking spaces are proposed for the development. A total of 108 vehicle parking spaces for residents will be located under the buildings and 30 parking spaces will be provided off the private dead-end street for the apartment buildings, community center and other amenity spaces.</i></p> <p><i>Covered, secure bike parking with permanently mounted bike racks/hangers will be provided in the parking garage. Outdoor bike racks located no further than 3 ft from the main entrance of each building, are also proposed.</i></p> <p><i>A total of 100 bicycle parking spaces are proposed, 50 of which would be covered spaces (50%).</i></p>

**Table 19.505.3.D
Design Guidelines—Multifamily Housing**

Design Element	Guideline	Findings
<p>5. Building Orientation and Entrances</p>	<p>Buildings should be located with the principal façade oriented to the street or a street-facing open space such as a courtyard. Building entrances should be well-defined and protect people from the elements.</p>	<p><i>The proposed buildings numbered A.1, A.2, and B.2 are located on a private internal dead-end drive, not a public right-of-way. Buildings A.1 and A.2 feature street facing primary entrances, which become focal points as the central element of the buildings' U-shape. Users are drawn into the building entry by an entry overhang, walking paths, and landscape elements.</i></p>
<p>6. Building Façade Design</p>	<p>Changes in wall planes, layering, horizontal & vertical datums, building materials, color, and/or fenestration should be incorporated to create simple and visually interesting buildings. Windows and doors should be designed to create depth and shadows and to emphasize wall thickness and give expression to residential buildings.</p> <p>Windows should be used to provide articulation to the façade and visibility into the street.</p> <p>Building facades should be compatible with adjacent building facades.</p> <p>Garage doors shall be integrated into the design of the larger façade in terms of color, scale, materials, and building style.</p>	<p><i>The street facing façade is broken into two building masses flanking a recessed entry with outdoor balconies and projecting window bays providing visual interest. A minimum of 25% of the façade is glazing. Garage doors will appear highly transparent as the garages will be open air and require doors that are perforated.</i></p>
<p>7. Building Materials</p>	<p>Buildings should be constructed with architectural materials that provide a sense of permanence and high quality, incorporating a hierarchy of building materials that are durable.</p> <p>Street-facing facades should consist predominantly of a simple palette of long-lasting materials such as brick, stone, stucco, wood siding, and wood shingles.</p> <p>Split-faced block and gypsum reinforced fiber concrete (for trim elements) should only be used in limited quantities.</p> <p>Fencing should be durable, maintainable, and attractive.</p>	<p><i>Building materials will be a mix of fiber cement board siding with wood accent siding with metal trim panels. The buildings will be constructed with architectural materials that provide a sense of permanence and high quality consistent with this requirement.</i></p>

**Table 19.505.3.D
 Design Guidelines—Multifamily Housing**

Design Element	Guideline	Findings
8. Landscaping	Landscaping should be used to provide a canopy for open spaces and courtyards, and to buffer the development from adjacent properties. Existing, healthy trees should be preserved whenever possible. Landscape strategies that conserve water should be included. Hardscapes should be shaded where possible, as a means of reducing energy costs (heat island effect) and improving stormwater management.	<i>Approximately 54% of the site is proposed to be landscaped or maintained as vegetation and a detailed landscaping plan and tree plan were submitted. As part of the development, existing trees will be maintained where possible. Diseased and dead trees, as well as, invasive species, such as English ivy and blackberries, will be removed and replaced by native plants where appropriate. New natural walking paths will be developed through the preserved wooded area for residents.</i>
9. Screening	Mechanical equipment, garbage collection areas, and other site equipment and utilities should be screened so they are not visible from the street and public or private open spaces. Screening should be visually compatible with other architectural elements in the development.	<i>Screening will be provided as per the development standards. Mechanical equipment will be housed inside the buildings with some roof top equipment located on lower roof areas that are blocked from view by adjacent high sloped roofs. Trash and recycling will be collected in trash rooms on the parking levels of each apartment building to avoid waste containers being visible from the outside.</i>
10. Recycling Areas	Recycling areas should be appropriately sized to accommodate the amount of recyclable materials generated by residents. Areas should be located such that they provide convenient access for residents and for waste/recycling haulers. Recycling areas located outdoors should be appropriately screened or located so they are not prominent features viewed from the street.	<i>Recycling collection will be provided in the trash/recycling room located on the parking level of each building. Residents will be responsible for bringing their recycling to that location and maintenance staff will collect and transport the material off site.</i>

**Table 19.505.3.D
Design Guidelines—Multifamily Housing**

Design Element	Guideline	Findings
11. Sustainability	Development should optimize energy efficiency by designing for building orientation for passive heat gain, shading, day-lighting, and natural ventilation. Sustainable materials, particularly those with recycled content, should be used whenever possible. Sustainable architectural elements should be incorporated to increase occupant health and maximize a building's positive impact on the environment. When appropriate to the context, buildings should be placed on the site giving consideration to optimum solar orientation. Methods for providing summer shading for south-facing walls, and the implementation of photovoltaic systems on the south-facing area of the roof, are to be considered.	<i>As proposed, sustainability is a key component in the design of the development. Building orientation and solar access along with passive strategies were the first step of the design analysis. A preliminary solar study has been completed, and the applicants are committed to installing solar panels on the roofs. Each unit is provided with operable windows and overhangs, and sunscreens will be studied to maximize efficiency as part of the building design. Retaining and re-planting the surrounding tree canopy is a key component to maintaining a cool site that takes advantage of the breezes flowing down the Willamette River and through the tree canopy to provide passive cooling for the units. On-site rainwater collection is being investigated along with applying roofing materials with an SRI of 78 where the roof has a 3/12 pitch or less and an SRI of 29 where the roof pitch is 3/12 or greater.</i>
12. Privacy Considerations	Development should consider the privacy of, and sight lines to, adjacent residential properties, and should be oriented and/or screened to maximize the privacy of surrounding residences.	<i>As proposed, all privacy considerations have been incorporated into the design, including vegetated screening provided by the existing and proposed tree canopy and plantings.</i>
13. Safety	Development should be designed to maximize visual surveillance, create defensible spaces, and define access to and from the site. Lighting should be provided that is adequate for safety and surveillance, while not imposing lighting impacts to nearby properties. The site should be generally consistent with the principles of Crime Prevention Through Environmental Design (CPTED): <ul style="list-style-type: none"> • Natural Surveillance • Natural Access Control • Territorial Reinforcement 	<i>As proposed, all safety design considerations will be met in the final permit plans. The project is designed to maximize visual surveillance, create defensible spaces, and define access to and from the site. Exterior light fixtures will be provided that minimize light pollution while maintaining adequate lighting for egress and security. Units have living spaces that overlook building entrances and parking areas.</i>

The City Council finds that, as conditioned, the discretionary multifamily design guidelines have been met.

10. MMC Chapter 19.600 Off-Street Parking and Loading

MMC 19.600 regulates off-street parking and loading areas on private property outside the public right-of-way. The purpose of these requirements includes providing adequate space

for off-street parking, minimizing parking impacts to adjacent properties, and minimizing environmental impacts of parking areas.

a. MMC Section 19.602 Applicability

MMC 19.602 establishes the applicability of the provisions of MMC 19.600, and MMC Subsection 19.602.3 establishes thresholds for full compliance with the standards of MMC 19.600. Development of a vacant site is required to provide off-street parking and loading areas that conform fully to the requirements of MMC 19.600.

The proposed development consists of 100 apartment units in 4 buildings and an amenity building/clubhouse on a vacant site and is required to conform fully to the requirements of MMC 19.600.

The City Council finds that the provisions of MMC 19.600 are applicable to the proposed development.

b. MMC Section 19.605 Vehicle Parking Quantity Requirements

MMC 19.605 establishes standards to ensure that development provides adequate vehicle parking (off-street) based on estimated parking demand.

The proposed multi-unit residential development includes 100 apartments that are more than 800 sq ft.

As per MMC Table 19.605.1, the minimum number of required off-street parking spaces for multifamily housing is 1.25 spaces per unit for units more than 800 sq ft. The maximum number of spaces is 2 spaces per unit, regardless of size. According to MMC Table 19.605.1, the proposed development should provide a minimum of 125 spaces and would have a maximum of 200 spaces allowed. As proposed, the development would provide 29 surface parking spaces and 108 garage spaces, for a total of 137 spaces, which falls within that range.

The City Council finds that this standard is met.

c. MMC Section 19.606 Parking Area Design and Landscaping

MMC 19.606 establishes standards for parking area design and landscaping, to ensure that off-street parking areas are safe, environmentally sound, and aesthetically pleasing, and that they have efficient circulation.

(1) MMC Subsection 19.606.1 Parking Space and Aisle Dimension

MMC 19.606.1 establishes dimensional standards for required off-street parking spaces and drive aisles. For 90°-angle spaces, the minimum width is 9 ft and minimum depth is 18 ft, with a 9-ft minimum curb length and 22-ft drive aisles. Parallel spaces require with 22-ft lengths and a width of 8.5 ft.

The applicant has submitted a parking plan that satisfies these dimensional standards.

(2) MMC Subsection 19.606.2 Landscaping

MMC 19.606.2 establishes standards for parking lot landscaping, including for perimeter and interior areas. The purpose of these landscaping standards is to

provide buffering between parking areas and adjacent properties, break up large expanses of paved area, help delineate between parking spaces and drive aisles, and provide environmental benefits such as stormwater management, carbon dioxide absorption, and a reduction of the urban heat island effect.

(a) MMC Subsection 19.606.2.C Perimeter Landscaping

In all but the downtown zones, perimeter landscaping areas must be at least 6 ft wide where abutting other properties and at least 8 ft wide where abutting the public right-of-way. At least 1 tree must be planted for every 30 lineal ft of landscaped buffer area, with the remainder of the buffer planted with grass, shrubs, ground cover, mulch, or other landscaped treatment. Parking areas adjacent to residential uses must provide a continuous visual screen from 1 to 4 ft above the ground to adequately screen vehicle lights.

For the majority of the site, the design maintains more than 30 ft of setback to the proposed buildings. The majority of the parking spaces are covered garage spaces, but 29 surface spaces are proposed in the interior of the community. None of these spaces are located at the perimeter of the site.

This standard is met.

(b) MMC Subsection 19.606.2.D Interior Landscaping

At least 25 sq ft of interior landscaped area are required for each parking space. Planting areas must be at least 120 sq ft in area, at least 6 ft in width, and dispersed throughout the parking area. For landscape islands, at least 1 tree shall be planted per island, with the remainder of the buffer planted with grass, shrubs, ground cover, mulch, or other landscaped treatment.

The proposed development includes 29 surface parking spaces, for which a minimum of 725 sq ft of interior landscaping is required. As proposed, the site plan provides approximately 2,000 sq ft of interior landscaping in 10 individual landscaped islands, well over the minimum required. All of the interior landscaped areas are at least 120 sq ft in size, but the triangle-shaped islands at the end of the line of stalls are approximately 112 sq ft. All islands are disbursed throughout the various parking areas on the site.

This standard is met through the approval of the Planned Development.

(c) MMC Subsection 19.606.2.E Other Parking and Landscaping Provisions

Preservation of existing trees in off-street parking areas is encouraged and may be credited toward the total number of trees required. Parking area landscaping must be installed prior to final inspection, unless a performance bond is posted with the City. Required landscaping areas may serve as stormwater management facilities, and pedestrian walkways

are allowed within landscape buffers if the buffer is at least 2 ft wider than required by MMC 19.606.2.C and 19.606.2.D.

As noted in the findings above, approximately 54% of the site will be maintained with vegetation including the existing tree canopy. An arborist report was included with the application, including a tree removal and protection plan. 135 trees are proposed for protection and retention with priority given to the larger diameter Douglas firs and Oregon white oaks.

This standard is met.

As conditioned, the City Council finds that the applicable standards of MMC 19.606.2 are met.

(3) MMC Subsection 19.606.3 Additional Design Standards

MMC 19.606.3 establishes various design standards, including requirements related to paving and striping, wheel stops, pedestrian access, internal circulation, and lighting.

(a) MMC Subsection 19.606.3.A Paving and Striping

Paving and striping are required for all required maneuvering and standing areas, with a durable and dust-free hard surface and striping to delineate spaces and directional markings for driveways and accessways.

The plans submitted indicate that all parking areas will be paved and striped.

This standard is met.

(b) MMC Subsection 19.606.3.B Wheel Stops

Parking bumpers or wheel stops are required to prevent vehicles from encroaching onto public rights-of-way, adjacent landscaped areas, or pedestrian walkways. Curbing may substitute for wheel stops if vehicles will not encroach into the minimum required width for landscape or pedestrian areas.

The applicant's narrative indicates that a combination of curbs set back 2 ft or wheel stops will be installed to prevent vehicles from encroaching into pedestrian walkways and perimeter landscaping areas. This requirement will be confirmed as part of the subsequent Development Review and final inspection.

This standard is met.

(c) MMC Subsection 19.606.3.C Site Access and Drive Aisles

Accessways to parking areas shall be the minimum number necessary to provide access without inhibiting safe circulation on the street. Drive aisles shall meet the dimensional requirements of MMC 19.606.1, including a 22-ft minimum width for drive aisles serving 90°-angle stalls and a 16-ft minimum width for drive aisles not abutting a parking space. Along

collector and arterial streets, no parking space shall be located such that its maneuvering area is in an ingress or egress aisle within 20 ft of the back of the sidewalk. Driveways and on-site circulation shall be designed so that vehicles enter the right-of-way in a forward motion.

The proposed development will take its access via a driveway from Waverly Ct. The proposed drive aisles meet the minimum applicable dimensional requirements and are designed so that vehicles enter the right-of-way in a forward motion.

The submitted Transportation Impact Analysis (TIS) includes future vehicle trip distribution related to the development based on the impact of the development combined with background growth.

As conditioned, this standard is met.

(d) MMC Subsection 19.606.3.D Pedestrian Access and Circulation

Pedestrian access shall be provided so that no off-street parking space is farther than 100 ft away, measured along vehicle drive aisles, from a building entrance or a walkway that is continuous, leads to a building entrance, and meets the design standards of MMC Subsection 19.504.9.E.

As proposed, no off-street parking space is farther than 100 ft away from a building entrance or walkway that meets the standards of this subsection.

This standard is met.

(e) MMC Subsection 19.606.3.E Internal Circulation

The City Council has the authority to review the pedestrian, bicycle, and vehicular circulation of the site and impose conditions to ensure safe and efficient on-site circulation. Such conditions may include, but are not limited to, on-site signage, pavement markings, addition or modification of curbs, and modification of drive aisle dimensions.

The City Council has reviewed the proposed circulation plan and concluded that it provides safe and efficient on-site circulation.

This standard is met.

(f) MMC Subsection 19.606.3.F Lighting

Lighting is required for parking areas with more than 10 spaces and must have a cutoff angle of 90° or greater to ensure that lighting is directed toward the parking surface. Lighting shall not cause a light trespass of more than 0.5 footcandles measured vertically at the boundaries of the site and shall provide a minimum illumination of 0.5 footcandles for pedestrian walkways in off-street parking areas.

The proposed development will have continuous connections with adequate lighting and street crossings to site elements as required. The applicant's submittal

did not include a lighting plan. A condition requiring a photometric plan showing compliance to be submitted during permit review has been included.

As conditioned, this standard is met.

As conditioned, the City Council finds that the applicable standards of MMC 19.606.3 are met.

As conditioned, the City Council finds that the applicable design and landscaping standards of MMC 19.606 are met.

d. MMC Section 19.608 Loading

MMC 19.608 establishes standards for off-street loading areas and empowers the Planning Director to determine whether loading spaces are required. The purpose of off-street loading areas is to contain loading activity of goods on-site and avoid conflicts with travel in the public right-of-way; provide for safe and efficient traffic circulation on the site; and minimize the impacts of loading areas to surrounding properties. For residential development with fewer than 50 dwelling units on a site that abuts a local street, no loading space is required; otherwise, 1 space is required.

The proposed multi-unit residential development includes 100 units in 4 buildings. None of the buildings have more than 50 dwellings, but a loading zone is included adjacent to the Community Center. No impacts to the public right of way or surrounding properties are anticipated by loading activity on the site.

The City Council finds that this standard is met and that no loading spaces are required.

e. MMC Section 19.609 Bicycle Parking

MMC 19.609 establishes standards for bicycle parking for new development of various uses. Multifamily residential development with 4 or more units shall provide 1 space per unit. When at least 10 bicycle spaces are required, a minimum of 50% of the spaces shall be covered and/or enclosed. MMC Subsection 19.609.3.A provides that each bicycle parking space shall have minimum dimensions of 2 ft by 6 ft, with 5-ft-wide aisles for maneuvering. MMC Subsection 19.609.4 requires bike racks to be located within 50 ft of a main building entrance.

The proposed multi-unit residential development has 100 units, which equals a minimum of 100 bicycle spaces required, 50 of which must be covered and/or enclosed. Per Finding 10-b, a total of 100 bicycle spaces are proposed, with 50 of those spaces being covered, which will be located at the parking garage entry of each building. This secure bike parking will be on permanently mounted bike racks/hangers in the parking garage. Outdoor bike racks, located no further than 30 ft from the main entrance of each building are included to meet the required number of racks required. The submitted plans do not include details of the bike stall dimensions, so a condition has been established to require more detailed information sufficient to determine that the applicable standards are met.

As conditioned, the City Council finds that this standard is met.

f. MMC Section 19.610 Carpool and Vanpool Parking

MMC 19.610 establishes carpool parking standards for new industrial, institutional, and commercial development. The number of carpool/vanpool parking spaces shall be at least 10% of the minimum amount of required parking spaces. Carpool/vanpool spaces shall be located closer to the main entrances of the building than other employee or student parking, except ADA spaces and shall be clearly designated with signs or pavement markings for use only by carpools/vanpools.

The proposed development is a multi-unit residential development.

This standard does not apply.

As conditioned, the City Council finds that the proposed development meets all applicable standards of MMC 19.600.

11. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including new construction.

The applicant proposes to develop new construction of 100 multifamily residential units as an expansion to an existing multifamily development. The proposed new construction and additional dwelling units trigger the requirements of MMC 19.700.

b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and providing approval criteria.

The applicant had a preapplication conference with City staff on May 14, 2020, prior to application submittal. The applicant's proposal includes a Transportation Facilities Review and a transportation impact study, meeting the requirements of this section.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes the process and requirements for evaluating development impacts on the surrounding transportation system, including determining when a formal Transportation Impact Study (TIS) is necessary and what mitigation measures will be required.

The proposed development completed a formal TIS according to scoping developed by the City Engineer and the City's on-call traffic consultant (DKS) provided the applicant with a scope of work for the TIS. No offsite mitigation was found to be required. Adjacent frontage improvements will include 6-ft curb tight sidewalks, three new pedestrian crossings, and a ½-

street 2" mill and overlay of Waverly Court along the property frontage as shown in submitted preliminary plans dated July 28, 2020 and received by the city on August 4, 2020. Additional information regarding the TIS is presented in the accompanying staff report.

As submitted, the applicant's TIS is sufficient to meet the requirements of MMC 19.704.

d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts.

Improvements submitted by the applicant were in rough proportion to potential impacts. Final design will be approved by the City Engineer prior to construction, including final design mitigations for any deficiency in intersection-sight distance.

e. MMC Section 19.707 Agency Notification and Coordinated Review

MMC 19.707 establishes provisions for coordinating land use application review with other agencies that may have some interest in a project that is in proximity to facilities they manage.

The application was referred to the Oregon Department of Transportation (ODOT), Clackamas County Department of Transportation and Development (DTD), TriMet, and Metro for comment. Agency comments have been incorporated into these findings and the associated conditions of approval.

f. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities.

(1) MMC Subsection 19.708.1 General Street Requirements and Standards

MMC 19.708.1 provides general standards for streets, including for access management, clear vision, street layout and connectivity, and intersection design and spacing.

As proposed, the development is consistent with the applicable standards of MMC 19.708.1.

(2) MMC Subsection 19.708.2 Street Design Standards

MMC 19.708.2 provides design standards for streets, including dimensional requirements for the various street elements (e.g., travel lanes, bike lanes, on-street parking, landscape strips, and sidewalks).

The proposed Waverly Ct cross section conforms to applicable requirements and are consistent with MMC 19.708.2.

(3) MMC Subsection 19.708.3 Sidewalk Requirements and Standards

MMC 19.708.3 provides standards for public sidewalks, including the requirement for compliance with applicable standards of the Americans with Disabilities Act (ADA).

The proposed development includes ADA ramps and ADA compliant sidewalks.

As conditioned, the development is consistent with all applicable standards of MMC 19.708.3.

(4) MMC Subsection 19.708.4 Bicycle Facility Requirements and Standards

MMC 19.708.4 provides standards for bicycle facilities, including a reference to the Public Works Standards.

The City's bicycle facilities goals, objectives, and policies are found in Chapter 6 of the Transportation System Plan (TSP). No additional context is identified for the adjacent frontage of development.

As proposed, the development is consistent with all applicable standards of MMC 19.708.4.

(5) MMC Subsection 19.708.5 Pedestrian/Bicycle Path Requirements and Standards

MMC 19.708.5 provides standards for pedestrian and bicycle paths.

The proposed site plan includes pedestrian connections within the development connecting to the proposed sidewalk on Waverly Ct.

As proposed, the development is consistent with all applicable standards of MMC 19.708.5.

(6) MMC Subsection 19.708.6 Transit Requirements and Standards

MMC 19.708.6 provides standards for transit facilities.

The City's transit facilities goals, objectives, and policies are found in Chapter 7 of the TSP. No additional context is identified for the adjacent frontage of development.

As proposed, the development is consistent with all applicable standards of MMC 19.708.6.

As conditioned, the City Council finds that the proposed development meets the applicable public facility improvement standards of MMC 19.700.

12. MMC Section 19.902 Amendments to Maps and Ordinances

MMC 19.902 establishes the process for amending the City's Comprehensive Plan and land use regulations, including the zoning map. Specifically, MMC Subsection 19.902.6 establishes the review process and approval criteria for zoning map amendments.

a. MMC Subsection 19.902.6.A Review Process

MMC 19.902.6.A provides that, generally, changes to the zoning map that involve 5 or more properties or encompass more than 2 acres of land are legislative and are therefore subject to Type V review; otherwise, they are quasi-judicial in nature and subject to Type III review. The City Attorney has the authority to determine the appropriate review process for each proposed zoning map amendment.

The proposed zoning map amendment encompasses a single property of approximately 10.8 acres and is related to a proposed planned development, which requires Type IV review. The City Attorney has determined that the proposed zoning map amendment is quasi-judicial in nature and requires Type III review. The concurrent planned development requires Type IV review, which is also a quasi-judicial process. The City Council finds that the Type IV review process is appropriate for the proposed zoning map change.

b. MMC Subsection 19.902.6.B Approval Criteria

MMC 19.906.2.B establishes the following approval criteria for zoning map amendments:

(1) The proposed amendment is compatible with the surrounding area based on the following factors:

- (a) Site location and character of the area
- (b) Predominant land use pattern and density of the area
- (c) Expected changes in the development pattern for the area

The area surrounding the subject property includes a golf course, low to moderate density residential development, as well as a number of multi-unit dwelling developments. The proposed development will preserve over half of the site area as natural open space or vegetation with access through trails for low-impact recreational use. The location offers easy access to Highway 224, downtown Milwaukie and the light rail station, the Trolley Trail and the Springwater corridor, Milwaukie Bay Park, and Hwy 99E.

The 100 units of apartments will be arranged in a compact pattern of four buildings with mostly covered parking in the lower levels of the buildings to minimize the building footprint. The development is requesting a 20% increase in overall density, but that is due to the steep slopes on the site, not the gross area of the subject property. The proposed development is consistent with the Housing element of the Comprehensive Plan and the need for more rental housing opportunities in Milwaukie.

The proposed zoning amendment is compatible with the surrounding area based on the factors listed above.

(2) The need is demonstrated for uses allowed by the proposed amendment.

The applicable 1989 Milwaukie Comprehensive Plan, as amended, includes an objective calling for an adequate and diverse range of housing types in the city, including a wide range of densities. One of the planning concepts is that the City's housing policies are

designed to ensure that existing and future residents are provided housing opportunities coincident with a broad range of housing demands. The 2016 Housing Needs Assessment notes that there is an overall need for additional housing in the city to meet the 20-year future housing unit demand. Of all needed future housing, 30% is estimated to be in the form of multi-unit developments and the proposed additional units expand the overall housing stock in the city.

- (3) The availability is shown of suitable alternative areas with the same or similar zoning designation.

Functionally, the PD designation is a form of overlay zone designation that can be applied to sufficiently sized properties for greater flexibility in developing the site. This criterion is more applicable to standard base zone designations and is intended to ensure that a suitable number of other properties with the same base zone designation will remain available for development.

This criterion is not applicable to a proposal to add the PD designation to a base zone.

- (4) The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.

The applicant's submittal materials include a traffic impact study, utility plans, and preliminary stormwater drainage report to demonstrate that public facilities are or will be made adequate to serve the proposed development.

Existing water and sanitary sewer services in Waverly Ct are provided by the City and Clackamas County's Water and Environment Services (WES) respectively and are adequate to serve the proposed new units.

The applicant proposes to manage stormwater runoff from the new development with methods for water conservation and maintenance on-site. three large, shallow bioswale facilities.

No newly dedicated public rights-of-way are proposed to serve the proposed lots. Proposed public improvements to Waverly Ct are shown including new pedestrian crossings, pedestrian ramps, and sidewalks. All improvements will be constructed to meet applicable City standards.

The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the proposed development.

- (5) The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.

The applicant prepared a transportation impact study (TIS) to evaluate the proposed development's anticipated impacts on the transportation system. The TIS concluded that

traffic volumes from the proposed development will not cause any of the intersections in the study area to fall below acceptable levels of service. Additional information is provided in the accompanying staff report.

As conditioned, the proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system.

- (6) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

The Land Use Map within the City's Comprehensive Plan (Plan) reflects the R-2 zoning of the subject property, with a High Density designation for the site. The proposed amendment would add the Planned Development (PD) designation to the zone designation for the subject property but would not affect the designation on the Land Use Map.

The Comprehensive Plan includes a number of goals and policies that are applicable to the proposed development.

- (a) Chapter 1 Citizen Involvement

The goal of Chapter 1 is to encourage and provide opportunities for citizens to participate in all phases of the planning process. Prior to submitting the application, the applicant attended a meeting of the Historic Milwaukee Neighborhood District Association on July 13, 2020 to present the project. The applicant noted that the neighbors spoke highly of the current Waverley Greens apartment properties and noted the quality landscaping and community amenities. Overall, the community reaction to the presentation was positive with attendees looking forward to walking through the wooded areas and perhaps even being future tenants.

The Type IV review process utilized for consideration of any Planned Development provides for public hearings by both the Planning Commission and City Council, where citizens have the opportunity to present testimony and participate in the decision-making process. Public hearings on the proposed development were held by the Planning Commission on October 27, 2020, December 8, 2020, and January 12, 2021; a public hearing was held by the City Council on [month/day], 2020. The Commission and Council considered testimony from citizens en route to reaching the decision reflected in these findings.

- (b) Chapter 3 Environmental and Natural Resources

Open Spaces, Scenic Areas, and Natural Resources Element

Goal statement: To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources.

The subject property does not contain mapped natural resources subject to MMC 19.402. In 1987, the area known as “Waverly Woods” was identified as a natural resources property, but, as noted in the background and concepts section, the site (and others) was dropped as a designated natural area because “...of other values (i.e. economic, social).”

(i) *Objective #1 – Open Space*

This objective seeks to protect open space resources in the city, defined as vacant land that will remain undeveloped in accordance with the Willamette Greenway program or other land use requirements.

The subject property is nearly entirely wooded, and the proposed development includes maintaining approximately 54% of the site in vegetation and includes removal of all invasive plants and trees.

(ii) *Objective #2 – Natural Resources*

The subject property is not designated as containing mapped natural resources. However, by preserving a significant portion of the site as forest, this upland wooded area would remain in a natural state.

(c) *Chapter 4 Land Use*

Residential Land Use and Housing Element

Goal statement: To provide for the maintenance of existing housing, the rehabilitation of older housing and the development of sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market, while preserving and enhancing local neighborhood quality and identity.

One of the planning concepts is that the City’s housing policies are designed to ensure that existing and future residents are provided housing opportunities coincident with a broad range of housing demands. The applicant has clarified that the overall Waverly Greens communities include rental units at a variety of rent levels and that the proposed units would be rented at the higher end of that scale. The 2016 Housing Needs Assessment notes that there is an overall need for additional housing in the city to meet the 20-year future housing unit demand. Of all needed future housing, 30% is estimated to be in the form of multi-unit developments and the proposed additional units expand the overall housing stock in the city. Although the greatest need is for housing is at the lower price point, there is a case to be made for adding to the existing housing stock at this higher price point to provide an opportunity for existing residents to move into these new units, thereby making units at lower price points available to others. Data shows that some renter households have the ability to pay for newer and/or higher quality units than is currently available.

(i) *Objective #2 – Residential Land Use: Density and Location*

This objective is to locate higher density residential uses so that the concentration of people will help to support public transportation services and major commercial centers.

The proposed development seeks to maximize allowable density in a smaller footprint on a site within walking distance of the downtown area and all of its amenities including a public bus hub and a light rail transit station.

(ii) *Objective #3 – Residential Land Use: Design*

This objective relates to a desirable living environment by allowing flexibility in design while also minimizing the impact of new construction on existing development. Planning concepts in this section state that "...residential design policies are intended to ensure a high quality of environmental design, a flexible design approach, and a smooth integration of new development into existing neighborhoods. Density bonuses and transfers will be encouraged so that full development potential on individual parcels may be realized. Transition policies will be applied to reduce any negative impacts of development on adjacent uses."

This means that the goal is to balance the goal of providing additional housing, including density bonuses to realize the full development potential of a site, while at the same time requiring thoughtful design as it relates to adjacent properties. The subject property is zoned for high density development and is part of a larger multi-unit development community, but is also adjacent to a low-density single-unit development area. As shown in the applicant's revised site plans, by providing additional setbacks and a stated commitment to additional landscaped buffers, the proposed development provides this balance of interests.

(iii) *Objective #4 – Neighborhood Conservation*

This objective relates to the various areas of city that are defined by allowed density. In high density areas, such as the subject property, "...clearance and new construction will be allowed, as will construction on currently vacant lands. Identified historic resources will be protected as outlined in the Historic Resources Chapter. The predominant housing type will be multifamily."

(iv) *Objective #5 – Housing Choice*

This objective states that the city will "...continue to encourage an adequate and diverse range of housing types and the optimum utilization of housing resources to meet the housing needs of all segments of the population." The planning concept in this objective is that "...while the predominant housing type is expected to continue to be single family detached, the City will encourage a wide range of housing types and densities in appropriate locations within individual neighborhood areas including duplexes,

rowhouses, cottage clusters, accessory dwelling units, live/work units, multifamily..."

Included in the listed policies is that the City will "...encourage the development of larger subdivisions and PUDs that use innovative development techniques for the purpose of reducing housing costs as well as creating an attractive living environment. Such techniques to reduce costs may include providing a variety of housing size, type, and amenities. The City may provide density bonuses, additional building height allowances, or other such incentives for the provision of affordable housing in residential development projects."

The plan looks to balance somewhat competing interests and minimize impacts to adjacent properties. It also discusses the desire for open space and/or recreational areas as part of these housing developments and preserving existing tree coverage whenever possible.

The proposed project addresses these policy objectives through the use of extensive vegetated areas, tuck-under parking and additional building height to reduce overall project footprint, and increased setbacks and buffer areas to adjacent residences.

Willamette Greenway Element

Goal statement: To protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

Generally, the Willamette Greenway boundaries are to include all land within 150 feet of the ordinary low water line of the Willamette River and such additional land, including Kellogg Lake and lands along its south shore. The subject property is more than 1,000 feet as the crow flies from the river and there is private development in the form of both residential dwellings and the Waverly Country Club between the river and the development site.

The subject property has no physical relationship with the river and has no direct connection to the river. The proposed development maintains 54% of the site in its vegetated and forested state. The proposed development includes the addition of recreational walking paths through the forested site and provides public viewing points to the river.

By maintaining the existing forest and carefully orienting the new development, the views from the river will be minimally impacted. New opportunities for views to the river are proposed through the creation of recreational paths in the existing forest and removing invasive species and dead/diseased trees along with creating views from the development itself. Overall, the project will increase the opportunities for visual enjoyment of the river and its surrounding environment while minimally impacting the views from and/or across the river.

Neighborhood Element

Goal statement: To preserve and reinforce the stability and diversity of the City's neighborhoods in order to attract and retain long-term residents and ensure the City's residential quality and livability.

The subject property and surrounding area are in what was identified in the plan as Neighborhood Area 1. It recognizes that the Waverly Heights residential area is a "mix of large single family homes and high density apartments." The plan includes a guideline for multifamily housing that includes that new multifamily housing should not "significantly alter the visual character of existing single family areas." The plan includes considerations such as: projects should not be located randomly throughout the neighborhood; should have adequate off-street parking; should have close proximity to major streets and public transit; and should be designed to be aesthetically pleasing.

The subject property is on the edge of an existing single-unit dwelling neighborhood and also within a high-density residential area made up of both rental apartments and condominiums. Its proposed location is not random and is within walking distance of downtown and all of its amenities including public transit. The proposed site design includes a significant setback and buffer from adjacent properties, over one-half of the site will be vegetated, and the buildings have a high-end design aesthetic, which is compatible with the surrounding neighborhood.

(d) Chapter 5 – Transportation, Public Facilities and Energy Conservation

Chapter 5 focuses on the provision of high quality, consistent, and reliable public facilities and services, which are integral to the future growth and livability of Milwaukee. Policies include maintaining and enhancing levels of public facilities and services to city residents and businesses.

The applicant team has performed preliminary investigations into the existing infrastructure including a transportation study to analyze the impacts of increased traffic on the existing city infrastructure. Increased storm water, sewer, domestic and fire water supply as a result of this 100-unit development have also been reviewed and calculated. The submitted application materials include these analyses confirming the adequacy of the existing systems. The existing public transportation facilities, utilities, and available services are adequate to support the proposed development.

Chapter 5 addresses the City's responsibility to support a multimodal approach to transportation planning in a way that reflects how citizens think about and experience the transportation system. Policies include developing and maintaining a safe and secure transportation system and provide travel choices to allow people to reduce the number of trips made by single-occupant vehicles. Additional policies include maintaining a set of design and development regulations that are

sensitive to local conditions to create a well-connected transportation system that is sustainable and meets the needs of current and future generations.

The City's Transportation System Plan (TSP) is an ancillary Comprehensive Plan document that contains the City's long-term transportation goals and policies. The applicant's TIS demonstrates consistency with the TSP and asserts that the proposed development will not result in significant impacts to the surrounding transportation system.

As conditioned, the proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

- (7) The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The Metro Urban Growth Management Functional Plan includes a number of titles that address various aspects of the region's goals and policies for urban development.

- (a) *Title 1 Housing Capacity*

The proposed development will provide a large number of needed housing units in a compact urban form.

- (b) *Title 7 Housing Choice*

The proposed development will provide needed multi-unit rental housing and will support Metro's policies for expanding housing choice with a needed housing type in Milwaukie.

- (c) *Title 13 Nature in Neighborhoods*

The proposed development supports Metro's policies for conserving and enhancing habitat areas by minimizing impacts to the wooded area via a compact development, maintaining more than one-half of the site in vegetation, removing invasive species, and developing a trail system for residents.

The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

- (8) The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

Several of the Statewide Planning Goals are relevant to the proposed amendment:

- (a) *Goal 2 Citizen Involvement*

Prior to submitting the application, the applicant attended a meeting of the Historic Milwaukie Neighborhood District Association on July 13, 2020 to present the project. The applicant noted that the neighbors spoke highly of the current Waverley Greens apartment properties and noted the quality landscaping and community amenities. Overall, the community reaction to the presentation was

positive with attendees looking forward to walking through the wooded areas and perhaps even being future tenants.

The Type IV review process utilized for consideration of any Planned Development provides for public hearings by both the Planning Commission and City Council, where citizens have the opportunity to present testimony and participate in the decision-making process. Public hearings on the proposed development was held by the Planning Commission on October 27, 2020, December 8, 2020, and January 12, 2021; a public hearing was held by the City Council on [month/day], 2020. The Commission and Council considered testimony from citizens en route to reaching the decision reflected in these findings.

(b) *Goal 10 Housing*

As addressed in Finding 7-b(6) and elsewhere in these findings, the proposed development would provide 100 units of much-needed rental housing to the city.

Per the City's 2016 Housing Needs Analysis (HNA), Milwaukie currently has a range of housing types, including single-family detached and attached homes, duplexes, multi-family, and mixed-use developments, and has sufficient capacity to provide for needed housing during the next 20 years. The HNA includes the City's buildable lands inventory (BLI) for housing within the UGB, showing that the city has sufficient zoned capacity to meet the projected housing needs over the next 20 years. Relevant findings from the HNA include:

- (i) *The projected growth in the number of non-group households over 20 years (2016-2036) is roughly 1,070 households, with accompanying population growth of 2,150 new residents. The supply of buildable land includes properties zoned to accommodate a variety of housing types. Single-family residential zones with larger minimum lot sizes (e.g., R5, R7 and R10 zones) will accommodate single-family detached housing. Multi-family and mixed-use zones can accommodate high density housing (apartments).*
- (ii) *Over the next 20 years, 30% of all needed units are projected to be multi-family in structures of 5+ attached units.*
- (iii) *Although the greatest need is for housing is at the lower price point, there is a case to be made for adding to the existing housing stock at this higher price point to provide an opportunity for existing residents to move into these new units, thereby making units at lower price points available to others. Data in the HNA shows that some renter households have the ability to pay for newer and/or higher quality units than is currently available.*

(c) *Goal 12 Transportation and Transportation Planning*

As addressed in Finding 14 and elsewhere in these findings, the applicant's TIS demonstrates that the proposed development will not require changes to the functional classification of existing or planned transportation facilities and will not result in significant impacts on the transportation system.

(d) Goal 15 Willamette River Greenway

As addressed in Finding 8 and elsewhere in these findings, the proposed development is not incompatible with the river, particularly because it is located more than 1,000 ft from the river. By maintaining the existing forest and specifically orienting the new development, the views from the river will be minimally impacted. New opportunities for views to the river are proposed through the creation of recreational paths in the existing forest and removing invasive species and dead/diseased trees along with curating views from the development itself. Overall, the project will increase the opportunities for visual enjoyment of the river and its surrounding environment while minimally impacting the views from and/or across the river.

As conditioned, the proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendment, as conditioned, is consistent with the applicable criteria for zoning map amendments.

As conditioned, the City Council finds that the proposed amendment to the City's Zoning Map is approvable.

13. The application was referred to the following departments and agencies on September 17, 2020:

- Milwaukie Building Division
- Milwaukie Engineering Department
- Milwaukie Public Works Department
- Clackamas County Fire District #1
- Island Station Neighborhood District Association Chairperson and Land Use Committee
- Oregon Marine Board
- Oregon Department of Fish and Wildlife
- Division of State Lands – Wetlands and Waterways
- Oregon Parks and Recreation Department
- North Clackamas Parks and Recreation District

In addition, notice of the public hearing was mailed to owners and residents of properties within 400 ft of the subject property on October 7, 2020 and on November 17, 2020.

Agency and NDA comments received are summarized as follows:

- **Kate Hawkins, Development Review Planner and Avi Tayar, P.E., Oregon Department of Transportation:** Comments related to crash history analysis and Year 2021 queuing analysis in the submitted TIS. Recommendations were that the

ATTACHMENT 1

Recommended Findings for Approval—Waverly Woods PD
Master File #PD-2020-001 – 10415 SE Waverly Ct

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December 1, 2020

applicant should evaluate any contributing factors and demands and identify potential improvements. The applicant submitted a response to the review memo and ODOT stated that they agreed with the supplemental analysis. While there may be concerns with queues and crashes at the intersection of the 17th Ave/Harrison St/OR-99E, the proposed development does not appear to have a significant impact on these conditions and no additional mitigation is necessary.

All public comments received are available for review on the application webpage:
<https://www.milwaukieoregon.gov/planning/pd-2020-001>.

ATTACHMENT 2

ATTACHMENT 2 Conditions of Approval Master File # PD-2020-001

Waverly Woods, 10415 SE Waverly Ct

1. Applicant must construct the project in compliance with all Public Works Standards and the requirements identified in Other Requirements.

2. Building Permit Submittal

The applicant must submit a Type I Development Review application with final plans for construction of the project. The purpose of the Type I Development Review is to confirm that the final construction plans are substantially consistent with the land use approval. The final construction plans must address the following:

- a. Final plans submitted for construction permit review must be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on August 4, 2020 and further revised in submittals received on November 10, 2020, except as otherwise modified by these conditions.
 - b. Provide a narrative describing all actions taken to comply with these conditions of approval.
 - c. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
 - d. Final plans submitted for construction permit review must include details of the bike stall dimensions to confirm that the applicable standards are met.
 - e. Final plans submitted for construction permit review must include a photometric plan showing compliance with lighting standards.
 - f. Final plans submitted for construction permit review must include details of the perimeter fence that must be repaired and/or replaced and must be maintained in good condition.
 - g. Final plans submitted for construction permit review must include a final landscaping plan that must include additional buffer plantings along the western boundary to mitigate visual impacts to neighboring properties.
 - h. Final plans submitted for construction permit review must include all amenities associated with that building, including pathways, view overlook areas, community gardens, etc.
3. Prior to issuance of development permits, the following must be resolved:
 - a. Prior to commencement of any earth-disturbing activities, the applicant must obtain an erosion control permit from the City.
 - b. Prior to commencement of any earth-disturbing activities, tree protection measures must be in place and maintained throughout construction. Tree protection fencing is

ATTACHMENT 2

required to be installed a minimum of 10 ft from the trunk of the existing trees on the site. Fencing must be maintained throughout the duration of construction and will be inspected. No disturbance is permitted within the fenced area. Verification from a certified arborist that all tree protection measures have been properly installed is required.

4. Prior to final occupancy, the following must be resolved:
 - a. Verification from a certified arborist that the proposed tree removal, preservation, and new plantings as approved have been completed as required.
 - b. To ensure that the proposed open space will be permanent, deeds or dedication of easements of development rights to the City are required, including instruments and documents guaranteeing the maintenance of the open space. Failure to maintain open space or any other property in a manner specified in the development plan and program shall empower the City to enter said property in order to bring it up to specified standards. In order to recover such maintenance costs, the City may, at its option, assess the real property and improvements within the planned development.
 - c. Public Improvements as shown on the plans received by the City on August 4, 2020, except as otherwise modified by these conditions:
 - (1) Where intersection site distance cannot be met, mitigation measures subject to City Engineer approval must be proposed.
 - (2) Sufficient asphalt repair work on SE Waverly Ct fronting the development will be verified during construction (current plans show 2-inch grind and overlay).
 - (3) Stormwater improvements must be reviewed and deemed compliant with MMC 12.02 and MMC 13.14, including locating assets where inspection and maintenance activities can feasibly occur (current plans locate public manholes, including filter cartridge manhole, in locations not yet approved by the City).
 - d. Dedication/Easement Requirements as shown on the plans received by the City on August 4, 2020, except as otherwise modified by these conditions.
5. Expiration of Approval
 - a. As per MMC Subsection 19.311.16, if substantial construction or development on Phase 1, in compliance with the approved final development plan and program, has not occurred within 12 months of its effective date, the Planning Commission may initiate a review of the PD Zone and hold a public hearing to determine whether its continuation (in whole or in part) is in the public interest. Notification and hearing shall be in accordance with MMC Section 19.1007 Type IV Review. If found not to be, the Planning Commission shall recommend to the City Council that the PD Zone be removed by appropriate amendment to the Zoning Ordinance and the property changed back to original zoning.
 - b. As per MMC Subsection 19.311.17, the total time period of construction of all phases of this development shall not exceed 7 years, as measured from the date of approval

ATTACHMENT 2

Conditions of Approval—Waverly Woods
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of the final development plan until the date that building permit(s) for the last phase is (are) obtained. The required public infrastructure must be constructed in conjunction with or prior to each phase.

ATTACHMENT 3

ATTACHMENT 3 Other Requirements Master File # PD-2020-001 Waverly Woods – 10415 SE Waverly Ct

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code (MMC) and Public Works Standards that are required at various points in the development and permitting process.

1. The level of use approved by this action shall be permitted only after issuance of a certificate of occupancy.
2. Limitations on Development Activity.

Development activity on the site shall be limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, as provided in MMC Subsection 8.08.070(I).
3. Landscaping Maintenance.

As provided in MMC Subsection 19.606.2.E.3, required parking area landscaping shall be maintained in good and healthy condition.
4. Applicant must submit an access and water supply plan as required by the Clackamas Fire District #1 for full review and approval.
5. Final Development Plan and Program

As per the requirements of MMC Subsection 19.311.12 through 19.311.15, no excavation, grading, construction, improvement, or building shall begin, and no permits therefor shall be issued, until the following items must be addressed regarding the final development plan and program:

 - a. Prior to the effective date of the ordinance adopting the final development plan and program and accompanying change to the zoning map, file with the City Recorder's office a final development plan and program that includes any modifications that were part of the final plan approved by City Council.
 - b. The City shall prepare a notice to acknowledge that the final development plan and program approved by City Council constitutes zoning for the subject property. The notice shall contain a legal description of the property and reference to the certified copy of the final development plan and program filed in the office of the City Recorder. The applicant shall record a copy of this acknowledgment notice in the County Recorder's office.
 - c. An application for approval of variations to the recorded final plan and program may be submitted in writing. Such variations may be approved by the City staff provided they do not alter dwelling unit densities, alter dwelling unit type ratios, change the

boundaries of the planned development, or change the location and area of public open spaces and recreational areas.

6. Prior to, or concurrent with, building permit submittal, the following must be resolved:
 - a. Submit full-engineered plans for construction of all required public improvements, which must be reviewed and approved by the City of Milwaukie Engineering Department.
 - b. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
 - c. Pay an inspection fee equal to 5.5% of the cost of the public improvements; at time of plan submittal, a plan review fee of 1.5% is required, the balance of the 5.5% is required at time of issuance of the right-of-way permit.
 - d. Provide a payment and performance bond in the amount of 130 percent of the approved engineer's estimate or contractor's bid cost of the required public improvements.
7. Prior to final inspection, the following must be resolved:
 - a. Provide a final approved set of electronic PDF red-lined "As Constructed" drawings to the City of Milwaukie.
 - b. Install all underground utilities, including stubs for utility service, prior to surfacing any streets.
 - c. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.
8. Prior to final acceptance, the following must be resolved:
 - a. Provide a final approved set of digitally signed, electronic PDF "As Constructed" drawings to the City of Milwaukie.
 - b. Provide a 2-year maintenance bond in the amount of 10 percent of the approved engineer's estimate or contractor's bid cost of the required public improvements.
9. Other Engineering Requirements.

Submit a final stormwater management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2 - Stormwater Design Standards of the City of Milwaukie Public Works Standards. In the event the stormwater management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.

The stormwater management plan shall demonstrate that the post-development runoff does not exceed pre-development runoff, inclusive of any existing stormwater management facilities serving the development site.

ATTACHMENT 3

Other Requirements—Waverly Woods
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The stormwater management plan shall demonstrate compliance with water quality standards in accordance with the City of Portland Stormwater Management Manual.

Development/building permits will not be issued for construction until the stormwater management plan has been approved and deemed compliant with MMC 12.02 and MMC 13.14 by the City of Milwaukie.

ATTACHMENT 4

From: [Milwaukie Planning](#)
To: [Connie Concon](#)
Subject: RE: Strongly Oppose PD-2020-001 Waverly Woods
Date: Thursday, October 29, 2020 10:06:18

Good morning Connie,

Thank you for your email. I will share your thoughts with the appropriate staffer.

Best,

N. Janine Gates

Assistant Planner
she/her/hers
503.786.7627
City of Milwaukie
6101 SE Johnson Creek Blvd • Milwaukie, OR 97206

From: Connie Concon <connie023@yahoo.com>
Sent: Thursday, October 29, 2020 9:11 AM
To: Milwaukie Planning <Planning@milwaukieoregon.gov>
Subject: Strongly Oppose PD-2020-001 Waverly Woods

This Message originated outside your organization.

Why I strongly oppose PD-2020-001 Waverly Woods

1. It will Increase pressures on the sewage system
2. traffic congestion
3. habitat destruction of protected species
4. violation of the Greenway Zoning without benefit to community
5. geologic instability increased by heavy construction

Sincerely

Neighbor
Connie Concon
1550 SE Lava #11
Milwaukie OR 97222

ATTACHMENT 4

From: [Milwaukie Planning](#)
To: [Vera Kolas](#)
Subject: Fw: Opposed to Waverly Greens Apartments Development
Date: Wednesday, October 28, 2020 17:00:05

FYI.

From: edgington6@aol.com <edgington6@aol.com>
Sent: Wednesday, October 28, 2020 4:58 PM
To: Milwaukie Planning <Planning@milwaukieoregon.gov>
Subject: Opposed to Waverly Greens Apartments Development

This Message originated outside your organization.

Hello

I am writing in opposition to the proposed Waverly Greens Apartments development. The proposed area of development is one of the last wild areas along the river and home to a variety of wildlife including coyote, bald eagle, red tailed hawk and peregrine falcon. It would be a massive destruction of this wildlife habitat in addition to destruction of our way of life due to overcrowding, traffic and possible ground destabilization due to dynamiting, that would destroy my property.

Thank you

Margie Edgington
Owner, River Royal Terrace #5
1550 SE Iava Drive

ATTACHMENT 4

From: [Claudia Cougle](#)
To: [Vera Kolia](#); [Milwaukie Planning](#)
Subject: Waverley Woods Application; PD-2020-001
Date: Friday, November 6, 2020 17:29:04

This Message originated outside your organization.

Waverley Woods Concerns

My name is Claudia Cougle. I reside at the River Royal Terrace Condominiums, 1550 SE Lava Drive, Unit 8, Milwaukie. I bought this condo one year ago. Prior to that, I lived up at Waverley Greens Apartments in The Highlands complex for four years, from 2015-2019. In that four years, I never heard any mention of them building another development. Waverley is a very well-managed and well-run community. It is already very large with all the different complexes. I've described it as "several colleges on a university campus." I cannot believe they are now trying to squeeze more square footage into their already-crowded land. I am dumbstruck by the size of the proposed construction project and feel this will negatively impact us in the following ways, to name a few:

- Excess water run-off and resulting erosion;
- Huge strain on sewer and water lines and problems with sewage flow and backup;
- Lower water pressure for those of us at the bottom of the hill;
- Impact to traffic flow and traffic patterns (especially given the bike/walking trail that was recently completed at the intersection of SE 17th Avenue and SE Lava Drive). That is already a very dangerous intersection which really demands a traffic signal;
- The projected amount of time to build this 100-unit dwelling is six years. That means six years of dump trucks, dirt, rocks, debris, mud, nails in the road, traffic impediment, construction noise and other nuisances; and,
- If dynamite is used to blast/excavate for the proposed underground parking facility, that may well cause seismic activity which would very likely adversely affect us.

When I purchased my 3-bedroom, river-view condo in July 2019, I had *NO IDEA* that Waverley Woods was even in the offing. If I had known, I would not have made an offer on this place; that is how vehemently opposed to this project I am. The thought of "Waverley Woods" wreaking havoc on our otherwise quiet neighborhood is very upsetting indeed. I am opposed to this project moving forward.

ATTACHMENT 4

Sincerely,

Claudia J. Cogle

ATTACHMENT 4

11/07/2020

City of Milwaukie
Planning Commission

To whom it may concern:

Reference: PD-2020-001; TFR-2020-002; WG-2020-001; PLA-2020-001; ZC-2020-001

Please add these comments to our previous memo of 10-13-2020 regarding the proposed Waverly Development:

-The Willamette Greenway is designed to ensure certain designated environmental and recreational values for the greater benefit of the citizens of Oregon and, in this case, the citizens of Milwaukie. The request for a variance to exceed building height and length limits specified in the WG Zone appears to benefit only the developer. A fourth story of high end apartments (buildings A1 and A2) is planned to generate additional rental income. Of additional concern is the actual height for proposed apartments. Low and high end elevations including the mechanical 'story' and the roofline need specificity. The proposed height is **significantly** in excess of WG Zone requirements.

-The developer states in the application that the development provides benefits to the city by the addition of a fourth story. It seems the City of Milwaukie would give up benefits provided by the WG Zone. This development is private property. We see no provision for the greater community to use any aspect of the amenities. The pool, community buildings, garden and hiking trails are not available to the public at large. Further, per realtor input, a significant downgrade in value of adjacent Waverly Heights properties is at stake.

-As a Planned Development, it appears all phases must be portrayed in some detail upon submission. This should include the new lot created at the western corner of Lava Drive and Waverly Country Club. This 'phase' of development may also require a variance as it is within the WG Zone. By allowing a variance now, the City is setting precedence for approval of additional building within the Greenway at some future unspecified date.

-It appears that the most current tree canopy retention counts are significantly less than specified in the original submission. We question whether the requirements stated in the Comprehensive Plan (whichever one applies) or the WG are being met and whether the "Waverly Forest" retention mentioned in the submission is realistic or sustainable. The current health of the canopy needs immediate attention and the further impact on vegetation during construction should be taken into account. There is little doubt that this area is a significant natural resource to our city. Please re-review the wildlife inventory previously provided. The residents of Waverly Heights to the north, have made a conscious and continued effort to preserve this resource.

-We once again invite the Planning Staff and Commissioners to visit our historic community. The value of retention of natural habitat in this unique community is evident with a short walk.

-Finally, the Wyse family has been in touch with us about mitigation and buffers between their R2 and our R10 properties. We appreciate their outreach and will continue to work collaboratively with them.

Steve and Gloria Stone

503-730-8471

10230 SE Cambridge Ln.

ATTACHMENT 4

November 10, 2020

To: Milwaukie Planning Commission
From: Patricia Justice, 10252 SE Cambridge Lane, Milwaukie, Oregon
Subject: Waverley Woods Proposed Development

1. Screening and Moving A1 and A2

We have met twice with the owners, and the second time included the building architect and the landscape architect. They stated that they may be able to move A1 and A2 about 6 feet toward Waverley Court. Also, they have indicated a willingness to work with us on screening, including trees and shrubs, and the possibility of a solid fence. **In the event the project is approved, I would like to see the agreement on screening in writing and included as a condition. We would also appreciate elevations as viewed from Cambridge Lane, including a 3D view.**

2. Building Height

The applicant is requesting the allowable height to be based on Planned Development zoning instead of the Willamette Greenway height restriction. It's justified by referencing the 2018 Milwaukie Comprehensive Plan Update which stated that this particular piece of land in the Willamette Greenway is "subject to review." **Please reject this argument and retain the Greenway height restriction.** Buildings A1 and A2 will rise at least 62 feet as viewed from the river. I believe the true height, from the ground at the lowest grade to the highest point of the buildings, may be greater than this. **Can the applicants provide the heights as requested in the attachment?**

3. Tree canopy

Trees saved total 135, a little less than 1/3 of the total trees surveyed. The arborist's comments indicate that many of the saved trees are ivy-covered, one-sided, and some are only in fair condition. **Are any of the 135 saved trees on the parcel of land reserved for future apartments?** This could further reduce the number of trees making up the forest and the tree canopy. Not having a robust forest and tree canopy negatively impacts the views of the proposed 4-story apartments from the river. In addition, not having a healthy forest of trees and shrubs will result in fewer numbers and varieties of forest-dwelling birds and other wildlife.

4. Complete Build Out

In the April 23 Pre-App Conference Narrative there are multiple exhibits showing a draft build out of the apartments, including apartments on the parcel reserved for the future. **Why not include a full draft build out now?** This would give greater visibility over the retained forest and land, critical to the justification of this project.

5. Timeline

We would appreciate an estimated timeline for the entire project, including Phase 1, Phase 2, and Phase 3.

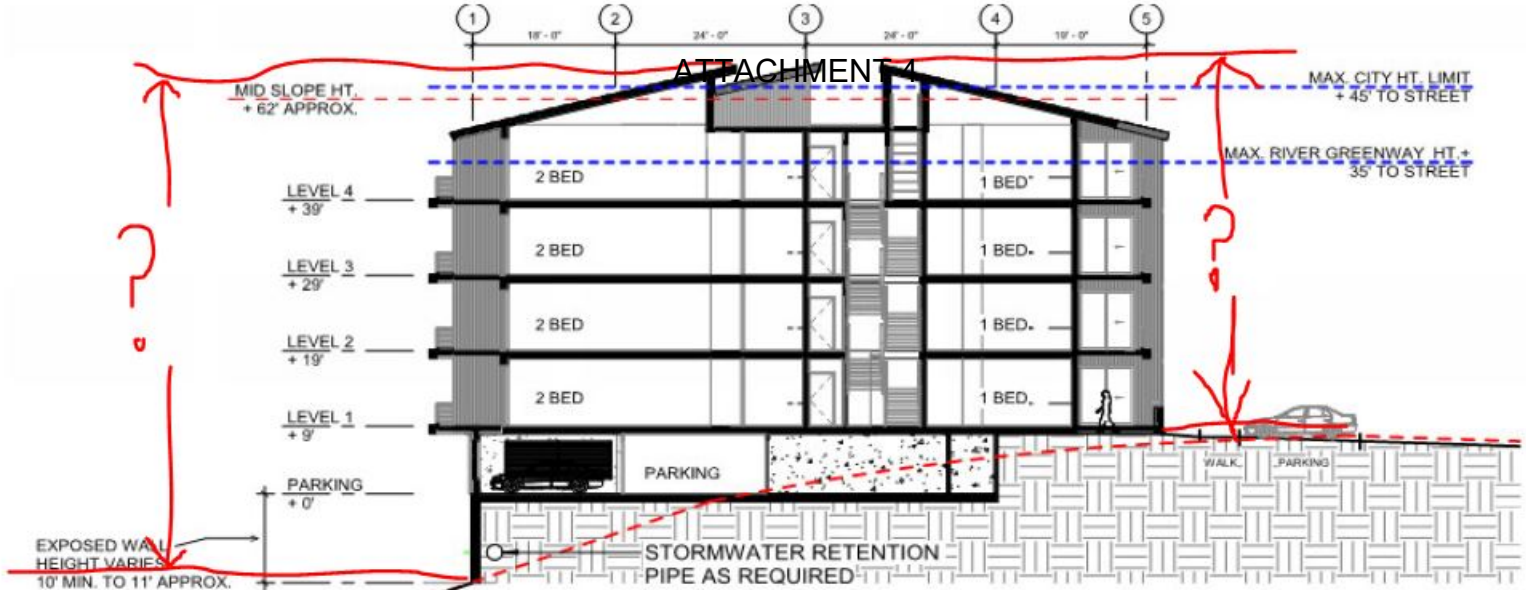
6. Visit

At the October 27 meeting of the Planning Commission, at least one of the commissioners indicated that he had visited the site of the proposed apartments. I'm guessing this was from Lava Drive. **I encourage you all to visit the site as viewed from Cambridge Lane to see the impact of multi-family units on single family homes located in a woodland setting.**

Thank you!

Patti Justice

ATTACHMENT 4



1

BUILDING A.1 (A.2 SIM) - SECTION DIAGRAM
1/16" = 1'-0"

--- EXISTING TOPOGRAPHY

ATTACHMENT 4

From: [Scott Wyse](#)
To: [Vera Kalias](#)
Cc: [Wendy Wyse](#); [Duncan Wyse](#); [Nels Hall](#); [Phil Krueger](#); [Mike Connors](#)
Subject: Waverley Woods Apartment Development Application dated July 28, 2020 (Application)
Date: Tuesday, November 10, 2020 14:07:06
Attachments: [We sent you safe versions of your files.msg](#)
[Walker Ventures, LLC letter to Planning Commission.pdf](#)

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This Message originated outside your organization.

Re: Waverley Woods Apartment Development Application dated July 28, 2020 (Application)
Application File Nos. PD-2020-001, ZC-2020-001, WG-2020-001, PLA-2020-001 & TFR-2020-002

Dear Chair Massey and Planning Commission Members:

Walker Ventures, LLC (Applicant) submits the attached letter which supplements its Application particularly with respect to MCC 19.311.3C.

In addition, Applicant responds to various questions and concerns submitted by residential neighbors to Applicant's proposed development plan:

1. Access for the construction of the proposed new buildings will be from Waverley Court. The portion of Lava Drive to the west of its intersection with Waverley Court will not be used for construction. It is possible that portion of Lava Drive may be used for the transportation of some shrubs and trees which will be removed from the site, but any such activities on Lava Drive will be limited and of short duration so as to minimally disturb any residents of condominiums at Shoreside East.

2. My brother, Duncan, our architect, our landscape architect, and I met with Steve and Gloria Stone and Patricia Justice on Saturday, November 7, 2020, to discuss their concerns further:

a. We responded to the Stones' concerns about potential shade from Building A-2 on their house by showing them a shade analysis our architect prepared which shows that on the day of the winter solstice, the day of the year on which the sun is lowest on the southern horizon, the shade on their home from Building A-2 would be minimal and that on the day of the summer solstice, the day of the year on which the sun is highest in the sky, there would be no shade from Building A-2 on their property whatsoever. Our architects are submitting a copy of that shade analysis to the Planning Commission. That shade analysis was prepared by a sophisticated software program which takes into account the heights and locations of the respective buildings.

b. We discussed with them that we are committed to planting shrubs and trees to mitigate the visibility of the A-2 Building from their properties. Our landscape architect heard their ideas as to such plantings, and we will seek their input into the plan we develop for those plantings.

c. We told them that because of their concerns about the proximity and height of Building A-2, we had our architects revise the siting of that building to move it six feet further from their home. They told us they thought that would be an improvement from their point of view. Moving the Building A-2 six feet further away from their property will visually have the same effect as would reducing the height of that building by about six feet. Our architects are submitting to the Planning Commission, drawings showing Building A-2 moved six feet further away from the Stones' property.

d. We discussed with them that our intention in designing our plan was to maintain the existing flora and fauna on our property as much as we reasonably can consistent with development of the property, and that we will be able to maintain about 54% of the property in either a natural or a landscaped condition.

ATTACHMENT 4

e. We have discussed with them that all external lighting at the property will be down lighting which does not shine directly onto other property and that we intend that our contractor and our residents will comply with all noise ordinances.

f. We have explained to these neighbors that our new stormwater system will drain water from Waverley Court and from all new hard surfaces on our property so that their drainage problems should be alleviated rather than made worse by the development.

g. We have acknowledged to these neighbors that we will maintain and repair the existing fence between our properties consistent with our obligations under the existing fence agreement.

3. There are no current plans to develop Parcel 3.

We appreciate the concerns and many thoughtful suggestions which have been submitted by residential neighbors of this property. Our plan was developed with the express objective of maintaining as much of the natural flora and fauna as could be maintained consistent with development of the property. Many of the ideas expressed by neighbors will be helpful to us as we seek to achieve that goal. The outstanding nature of our plan in this regard can best be seen when it is compared with existing apartment complexes in the vicinity as is done in the attached letter. We remain open to discussing neighbor ideas and concerns throughout the development of this property.

WALKER VENTURES, LLC

900 S.W. Fifth Avenue, Suite 2000

Portland, Oregon 97204

November 10, 2020

Mr. Robert Massey, Chair
Planning Commission
City of Milwaukie
6101 S.E. Johnson Creek Blvd.
Milwaukie, OR 97206

Re: Waverley Woods Apartment Development Application dated July 28, 2020
(Application)
Application File Nos. PD-2020-001, ZC-2020-001, WG-2020-001, PLA-2020-001 & TFR-2020-002

Dear Chair Massey and Planning Commission Members:

Applicant, Walker Ventures, LLC, submits this letter to supplement its Application and to provide additional evidence in support of that Application.

MCC 19.311.3C authorizes the City to “permit residential densities which exceed those of the underlying zone, if it determines that the planned development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning.” Applicant’s development proposal seeks approval of such an increase in density.

At the beginning of the Application, in the Development Description and Development Requests for Approval sections (10-27-20 Packet, Section 5.1, pps. 68-69), Applicant generally describes why that determination referred to in MCC 19.311.3C should be made and why the additional density requested should be permitted. This letter further elaborates.

1. Applicant’s development proposal covers significantly less of the land with impervious surfaces than is typical of apartment developments. Applicant’s proposal retains about 54% of the land in vegetated pervious surface, with some natural and some landscaped. This creates an environment of urban living in a forested setting which is seldom achieved in apartment communities. It provides the occupants with more views of the natural and landscaped settings. It provides greater capacity for the property to absorb rain water and provide a place for abundant flora and fauna. Applicant is able to achieve this result by using a combination of design techniques:

Mr. Robert Massey, Chair

November 10, 2020

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a. Applicant's design takes advantage of the ridge of the property by placing the two somewhat larger A-1 and A-2 buildings along that ridge. This placement is designed to optimize an important amenity to the occupants of the apartments in those buildings: the view from the property across the Willamette River. In addition, by having those buildings larger, aligned end-to-end, and containing more apartments means that fewer buildings are needed to achieve density, less land is covered by buildings to achieve the same density, and fewer views from apartments will be of principally of other buildings.

b. Placing those two buildings along the ridge takes advantage of the slope to build the main access roadway to the apartments and the principal parking for the apartments underneath those two buildings by cutting that level into the slope, so that when viewed from the fronts of those buildings, the parking level is entirely underground and does not appear to add to the height of the four floors of apartments. Placing the majority of the parking for the apartments underground not only means that less land needs to be paved for parking, it also provides as an amenity to the residents access to their apartments by elevator from a dry parking space as well as more views of foliage instead of cars and parking lots.

c. Building the main access driveway and parking under the buildings also makes it possible to limit the other roadways on the property to a single access road in front of the buildings and a small amount of exterior parking. As can be seen from the site plans found in the Application, the amount of area of the property which would be paved for access roadways and parking spaces is relatively small when compared to the size of the property.

2. The buildings are broken up in appearance by wide courtyard entryways which give each building the appearance of being two buildings. A significant benefit of this design is that it makes it possible for 6 of the 8 apartments on each floor to have their main living areas on building corners so that they can have windows on two sides of the living area with two different outlooks. The importance of this amenity was described by renowned Oregon architect, Christopher Alexander, in his seminal work A Pattern Language (1977, at page 747):

When they have a choice, people will always gravitate to those rooms which have light on two sides, and leave the rooms which are lit only from one side unused and empty.

It is intuitively true for most people that rooms with windows on two sides are more appealing than rooms with windows on only one wall. The unique design of Applicant's project makes it possible to have 75% of the apartments with this exceptional amenity. This characteristic is also important because it provides cross ventilation, thereby reducing the need for air conditioning. Because the two non-corner apartments on the top floors will have clerestory windows, even they will have cross ventilation so that 26 out of 32 apartments in the A-1 and A-2 buildings will have cross ventilation.

Mr. Robert Massey, Chair
November 10, 2020
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3. By keeping the total number of buildings on the site to only four, Applicant's design makes it possible to space the buildings further apart and in configurations which minimize the number of views from apartments that are dominated by views of other buildings.

4. Because Applicant's proposal preserves about 54% of the land covered by vegetation, it has room to provide and does provide a community garden. This amenity is very popular with urban dwellers who like to have the opportunity to grow their own food and flowers in close proximity while socializing with their neighbors. A community garden is an amenity rarely found in other apartment complexes.

The outstanding and exceptional characteristics of Applicant's project can best be seen when these features are compared to 24 other existing nearby apartment complexes as shown in the chart beginning on the following page. Few of these other apartment complexes have parking underneath the buildings. Few have more than 30% of their land area in a vegetative state, and most have significantly less than that with most of the land area covered by the apartment buildings, roadways, parking spaces, carports, or garages. It is a rare apartment complex which offers the amenity of a community garden. Similarly it is a rare apartment complex which has half or more of its apartments with the main living space on a corner of the building which can have windows on two walls facing outward in different directions. Many apartment complexes do not have any such units. Some have very long buildings with one apartment next to another, so that it is not possible for most of them to have a corner view. Many apartment complexes have many separate buildings which do not provide windows on two sides of the main living areas of even the apartments which are at the corner of the buildings. This could be because the views from such windows, if there were any, would simply be of the adjacent building.

On behalf of Walker Ventures, LLC, I visited each of the apartment complexes identified in the chart below, and I obtained information about them to the extent available from their websites and from aerial maps. While most of the apartment complexes clearly had significantly less than 30% of their land in vegetation and not covered by structures, driveways, or parking spaces, some that were closer to that number were determined by my best estimate from the information I was able to obtain by those methods.

As can be seen from the chart below, features of Applicant's proposed development which are outstanding in planned land use and design and provide exceptional advantages in living conditions and amenities are in sharp contrast to the features of other apartment developments in the general vicinity of Applicant's property.

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Mr. Robert Massey, Chair
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Name and Address of 24 Nearby Apartment Complexes	Apt. complexes which have more than 30% of land in vegetation and not covered by structures, driveways, or parking spaces	Parking under building(s)	Community Garden Amenity	Half or more of apartments have corner living rooms with window views on two walls
Hamlin Apts. * 2946 SE Harrison Milwaukie	No	No	No	No
Shorewood Terrace Apts. * 11233 SE 27 th Ave., Milwaukie	No	No	No	No
Milwaukian Apts. * 11275 SE 27 th Ave., Milwaukie	No	No	No	No
Dutch Village Apts. 11349-65 27 th Ave. Milwaukie	No	No	No	No
Walsh Commons * 2326 SE Willard St., Milwaukie	No	No	No	No
Chestnut Place Apts. * 12150 SE 31 st Pl., Milwaukie	Unable to determine because unclear how much property along Kellogg Creek is included	No, but with a few exceptions	Yes	No
Quail Ridge Apts. 2868 SE Lake Rd, Milwaukie	No	No	No	No
Shoreside East Condominium 1400 SE Lava Dr., Milwaukie	No, depending upon how the property shore-line is measured	No	No	No

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Mr. Robert Massey, Chair

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Name and Address of 24 Nearby Apartment Complexes	Apt. complexes which have more than 30% of land in vegetation and not covered by structures, driveways, or parking spaces	Parking under building(s)	Community Garden Amenity	Half or more of apartments have corner living rooms with window views on two walls
Axletree 11125 SE 21 st St. Milwaukie	No, building and paving covers most of the site	Yes, four stories of apartments above parking	No	No
River View Apts. 12425 SE River Rd., Milwaukie	No	No	No	No
River Cliff Apts. 12505 SE River Rd., Milwaukie	Possibly, if the unusable steep sloped area of the property is included	No	No	No
Forest Ridge Apts. 12600 SE River Rd., Milwaukie	No	No	No	No
The Bluffs Apts. 12601 SE River Rd., Milwaukie	Possibly, if the unusable steep sloped area of the property is included	No	No	No
Rim Rock Apts. 12424 SE River Rd., Milwaukie	No	No	No	No
Miramonte Lodge 12200 SE McLoughlin Blvd. Milwaukie	Yes, if Kellogg Creek and embankment which are part of the property are included	No	No	No
Springcreek Apts. 2406 SE Harrison St., Milwaukie	No, building covers almost entire site	No	No	No
Apartments at 2507-2525 SE Monroe Milwaukie	No, most of property covered by buildings and parking lot, with only a few shrubs	No	No	Yes, but most views are of buildings, some of which are within less than 10 feet
Crystal Lake Apts. 10500 SE 26 th Ave., Milwaukie	Yes, if lake and land surrounding it are included	No	No	No

ATTACHMENT 4

Mr. Robert Massey, Chair
 November 10, 2020
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Name and Address of 24 Nearby Apartment Complexes	Apt. complexes which have more than 30% of land in vegetation and not covered by structures, driveways, or parking spaces	Parking under building(s)	Community Garden Amenity	Half or more of apartments have corner living rooms with window views on two walls
Springwater Flats 8237 SE 17 th Ave. Portland	No, building covers almost the entire parcel	Yes, four stories of apartments above parking	No	Yes, if non-corner units with pop-outs are included
Holm at Sellwood 8220 SE 6 th Ave. Portland	No, building covers almost the entire parcel	Yes, four stories of apartments above parking	No	No
Wheelhouse Lofts 8130 SE 6 th Ave. Portland	No, building covers almost the entire parcel	No	No	No
The Morgan Apts. 1650 SE Tacoma St., Portland	No, building covers almost the entire parcel	Yes, four stories of apartments above parking	No	Yes, if non-corner units with pop-outs are included
Moreland Crossing Apts. 8150 SE 23 rd Ave. Portland	No, building and parking covers majority of the parcel	No	No	Yes, if non-corner units with pop-outs are included
Sellwood Apts. 1721 SE Tacoma St., Portland	No, building covers almost the entire parcel	No	No	No

* Constructed under regular R-2 zoning.

Conclusion.

Because Applicant’s proposed development achieves about 54% of the land preserved in a vegetated state and provides exceptional amenities not available in other similar apartments, it “is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning” and the greater density sought by Applicant should be permitted.

Very truly yours,


 Scott C. Wyse
 Member, Walker Ventures, LLC



November 10, 2020

Michael C. Robinson
Admitted in Oregon
T: 503-796-3756
C: 503-407-2578
mrobinson@schwabe.com

VIA E-MAIL

Mr. Robert Massey, Chair
City of Milwaukie Planning Commission
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206

RE: Waverly Woods Planned Development, File No. PD-2020-001
Letter on behalf of Waverley Country Club

Dear Chair Massey and Planning Commission Members:

This office represents Waverley Country Club (“Waverley”). In submitting this second letter, Waverley maintains its opposition and writes to supplement its letter dated October 27, 2020, as well as to bring up additional points of concern following Applicant’s presentation during the October 27, 2020 hearing.^{1,2}

1. Applicant Has Not Shown That Its Development Meets the “Exceptional Advantages in Living Conditions and Amenities” Requirement to Obtain PD Zoning

Applicant has asked for an increase in density of 20% over that allowed in the Site’s current base zoning, R-2, and has stated on the record that the only way to get to that increased density and make the development work (by avoiding covering most of the land with buildings and pavement) is to add height and length otherwise not allowed in the R-2 zone to the Ridge apartment buildings (A.1 and A.2). (Oct. 27 Hrg. at 1:43:23-1:44:50; *see also* 10-27-20 Packet, Section 5.1, p. 64 (“In lieu of adding a fifth residential building [for the additional units that would be allowed if Applicant met the requirements for increased density] the project proposes that the Ridge buildings A.1 and A.2 extend to 203’ in length and exceed the 35’ building height limit with the addition of a fourth level.”).)

¹ While Waverley appreciates Applicant’s comment and concern over its opposition (Oct. 27 Hrg. at 1:42:30), Waverley would like to clarify that it does not oppose the development outright. Rather, Waverley opposes the application because the proposed development is too big, too tall, too wide, and too dense without meeting the approval criteria for these increases, and all of these increases adversely affect Waverley and its neighbors.

² Since the October 27 hearing, Waverley and Applicant have engaged in discussions on ways Applicant can address Waverley’s concerns. Waverley is hopeful Applicant’s commitment to responding to those concerns results in an agreement acceptable to both parties.

Mr. Robert Massey, Chair
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 Page 2

Milwaukie's Municipal Code ("Code" or "MMC") clearly sets forth that to obtain the increased density benefit allowed by Planned Development ("PD") zoning, an applicant must provide "exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning." MMC 19.311.3.C; *see also* MMC 19.311.9.H.

Applicant has not met this approval criterion because it has not shown by substantial evidence that the "living conditions and amenities" its proposed development will provide are "exceptional" or that they are "not found in similar developments constructed under regular zoning." Moreover, even if found to meet this criterion, the amenities proposed are not planned for development until later phases of the project, and Applicant has stated on the record that it cannot guarantee those phases will be built.

For convenience, the living conditions and amenities Applicant argues its proposed development will have are as follows:

- "100 units of much-needed housing with a range of affordability"³ or housing that fills a "gap in the availability of the proposed apartment types" (10-27-20 Packet, Section 5.1, p. 23 (Staff Report); *id.*, p. 68);
- Upgraded/relocated community garden (*id.*, p. 64, para. 6);
- Outdoor pool and patio adjacent to the community center (*id.*);
- "[C]ommunity center at the Garden level with a kitchen, workout space, and meeting rooms" (*id.* ("Garden level" refers to buildings B.1 and B.2));
- "[A]dditional community facility . . . located at the Ridge, between Buildings A.1 and A.2 . . . [and] will include a library, warming kitchen, wine cellar, bathrooms, and meeting room opening to an expansive river view terrace." (*id.*, p. 64, para. 8);
- Walking paths (*id.*);
- Secure parking (*id.*, para. 4);
- Responsible, sustainable development (*id.*, p. 64, para. 10; *id.*, p. 66, "Response" following discussion of Ord. 2051), including:
 - solar power (*id.*, p. 64, para. 10; Oct. 27 Hrg. at 1:54:46)
 - charging stations for electric cars (Oct. 27 Hrg. at 1:55)
 - insulation (*id.* at 1:54:54).

A. Living Conditions and Amenities Not "Exceptional"

First, Applicant has not shown that the above-listed living conditions and amenities are "exceptional." For one, "exceptional" is a subjective term, and is not defined by the Code. Nor has Applicant explained what it believes "exceptional" means, or why the listed living conditions and amenities are so. For the Commission and the City to determine whether this approval

³ Applicant stated during the October 27 hearing that the proposed development would be "high-end" and thus is not "affordable" under any definition.

Mr. Robert Massey, Chair
November 10, 2020
Page 3

criterion is met, more explanation from Applicant is needed as to what “exceptional” means and why the living conditions and amenities described in the application are exceptional.

Taking the requirement in context with the approval criterion, arguably “exceptional” means that the amenity or living condition provided must “not [be] found in similar developments constructed under regular zoning.” If that were the case, then none of the above-listed living conditions or amenities can be considered exceptional. This is because most are already found in similar developments constructed under regular zoning—namely, the Waverly Greens apartment communities. For instance, the neighboring apartment communities already have a pool, dog park, sport court, fitness room, meeting room, community garden, some garage parking, community center allowing for a variety of classes and events, energy-efficient upgrades to windows and doors, increased insulation in roofs, the “biggest solar installation on an apartment in Oregon,” an electric car purchase program, and a range of housing at different rent levels. (Oct. 27 Hrg. at 1:25-1:35:15.) Applicant described these amenities in great detail during its presentation at the October 27 hearing. The Applicant’s proposed development merely upgrades, relocates, or adds additional amenities already provided by those “similar developments constructed under regular zoning.”

It may be that some of the proposed amenities meet the requirement of exceptionality, but to determine that, more explanation should be required of the Applicant. For instance, Applicant argues that it will provide “secure” parking for cars and bikes; but does not explain what “secure” means, and whether it will be a different type of, or better, security than that provided in the neighboring communities.

As another example, Applicant argues that its proposed development will be “responsible” and “sustainable,” but provides no definition or explanation of those terms. Indeed, even Commissioner Hemer pointed out during the October 27 hearing that the application included no discussion of the standard for “green buildings.” (Oct. 27 Hrg. at 1:53:56.) Applicant responded that it is “hoping to meet” one of the LEED standards, but could not provide information as to which one, or how the proposed development would meet them. (*Id.* at 1:54:22) As Commissioner Sherman pointed out (stating that it appeared there were a lot of things being studied, but nothing yet confirmed), Applicant has not provided *any* concrete guarantee or plans showing that the proposed development will include the solar panels, electric charging stations, or other “sustainable” amenities discussed. (*Id.* at 2:17:41) Statements that Applicant is “interested in” or “committed to” such “responsible, sustainable” development in general terms are not sufficient and do not prove exceptionality by substantial evidence.

In sum, for the Commission to determine whether the proposed living conditions and amenities are indeed “exceptional” and/or not found in “similar developments constructed under regular zoning” such that this approval criterion is met, Applicant should be required to provide additional information.

Mr. Robert Massey, Chair
 November 10, 2020
 Page 4

B. Amenities Provided By Nearby Developments Cannot Be Considered Evidence of Exceptionality of the Proposed Development’s Amenities

During Applicant’s opening remarks, Ms. Wyse stated that it is “important that you see this as, this new development as part of a whole entity that our community is.” (Oct. 27 Hrg. at 1:23:45; *see also* 10-27-20 Packet, Section 5.1, p. 64, paras. 2 & 11.) But that community—i.e., the other apartment complexes within Waverly Greens—is not part of the development Applicant has proposed with this application. As such, Applicant’s reliance on and discussion of the features of the other apartment complexes Applicant owns in the Waverly Greens community is inappropriate, except to the extent they are being used to show that the proposed development includes “exceptional advantages in living conditions and amenities *not found in similar developments constructed under regular zoning.*” Thus, the “affordability” of, “sustainability” of, and existing amenities found at Applicant’s existing developments have no bearing on this application outside of providing a point of comparison.

C. Even if Exceptional, None of the Proposed Amenities Are Planned for Development in Phase 1

To obtain the density bonus allowed with PD zoning, an applicant must provide the required exceptional living conditions and amenities. As discussed above, Applicant’s requested increase in density will be provided for via the additional height and length proposed for buildings A.1 and A.2. Building A.1 alone is planned for Phase 1. Building A.2 and one community center are planned for Phase 2, and the Garden Buildings (B.1 and B.2) and *all other listed amenities* are planned for Phase 3 or not planned at all:

Proposed “Exceptional Advantages in Living Conditions and Amenities”	Planned Phase for Development
Ridge community facility, located “between Buildings A.1 and A.2,” which will include “a library, warming kitchen, wine cellar, bathrooms, and meeting room opening to an expansive river view terrace.”	Phase 2
Garden level community center with a “kitchen, workout space, and meeting rooms”	Phase 3
Outdoor pool and patio	Phase 3
Relocated community garden	Phase 3
Walking paths	No discussion of phase
Responsible, sustainable development features such as solar panels, electric car charging stations, and insulation	No discussion of phase
Secure parking	No discussion of phase ⁴

⁴ Given the application’s drawings include parking underneath Building A.1 (10-27-20 Packet, Section 5.1, p. 80), Waverley assumes parking will be provided as part of phase 1. However, whether that parking will be “secure” at that time is unclear.

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This staggering of development might be acceptable if Applicant provided any substantive phasing plans, or a guarantee that all phases would and could be completed. But Applicant made clear during the October 27 hearing that phases 2 and 3 will be built “considerably down the road because the cost of these buildings is pretty high,” and that while the “hope is to build them eventually,” “it’s probably not going to happen soon,” if at all (Oct. 27 Hrg. at 1:45.)

Such a speculative plan for building and implementing the purported “exceptional” living conditions and amenities that are *required* for Applicant to obtain the density bonus requested cannot be the basis for allowing a re-zone to PD zoning. If PD zoning is allowed, Applicant would immediately obtain the benefits of the PD zone, construct residential building A.1 (which will be taller and wider than allowed by the Site’s current R-2 and WG zoning), and could then potentially halt construction due to its admitted potential lack of funding before providing the reciprocal amenities required in the PD zone. Such a plan should not be approved; or, at minimum, the Commission should require Applicant to guarantee, by bonding or some other financial mechanism, that the amenities discussed and argued to be “exceptional” will in fact be provided.

2. The Proposed Development Does Not Address a Public Purpose and Provide Public Benefits and/or Amenities Beyond Those Permitted In the Base Zone

The final approval criterion for obtaining PD Zoning requires an applicant to show by substantial evidence that its development (1) “addresses a public purpose” and (2) “provides public benefits and/or amenities beyond those permitted in the base zone.” MMC 19.311.9.I. Applicant’s narrative does not sufficiently show that the two requirements of this criterion are met.

First, “public” is not defined by the Code. However, other terms using the word “public” *are* defined, and imply that “public” relates to the City of Milwaukie as a whole. See MMC 19.201 (“*Public area requirements*’ means specific standards for streets, sidewalks, and public spaces adopted to implement the Downtown and Riverfront Land Use Framework Plan”; “*Public facilities*’ means transportation and public utility improvements as described below. ‘*Transportation facilities*’ means transportation-related improvements in a right-of-way or easement, including, but not limited to, travel lanes, bicycle lanes, sidewalks, and transit facilities. ‘*Public utilities*’ means public utility-related improvements in a right-of-way, easement, or tract, including water, sanitary sewer, and stormwater infrastructure”; “*Public park*’ means a park, playground, swimming pool, reservoir, or athletic field within the City which is under the control, operation, management, or ownership of the City of Milwaukie or other public agency” (emphasis added).)

Applicant appears to define “public” more narrowly, and focuses only on benefits to the “existing six communities of Waverley [sic] Greens Apartments.” (10-27-20 Packet, Section 5.1, p. 68). This is not in line with the Code and as such, Applicant cannot meet the requirements to obtain PD zoning on this ground because any public purpose or public benefits

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must be for the Milwaukie community as a whole – not just to the Waverly Greens Apartment Community.

Moreover, the public benefits and amenities provided by a proposed planned development must be “beyond those permitted in the base zone.” Here, even assuming the purported benefits are “public,” the benefits and amenities proposed are all permitted in the base zone, R-2. Indeed, the only features of the development Applicant proposes that are *not* permitted in the R-2 base zone are the requested increased density and building length. The public benefits and amenities Applicant has included in its narrative are:

- “more places for community gathering and celebration”
- “two new community centers and outdoor amenities [that] provide places for the inhabitants to garden, swim, eat, celebrate, meet, organize, and educate themselves”
- “existing community garden [that] already partners with local educators to provide classes to its residents”
- “increase[d] number of spaces and opportunities for these [educational] experiences”
- “relocating and enlarging the community garden which is an extremely popular amenity”
- “creating walkable paths through the forested area with peek-a-boo views of the Willamette River”
- “providing more natural recreation spaces to improve occupant health and exposure to and appreciation for our natural environment”
- “sustainable design” which will purportedly “reduce its operational footprint”
- “take advantage of the natural topography on the site”
- “tuck parking under the buildings”
- “other amenities”

(10-27-20 Packet, Section 5.1, pp. 68-69.) Notably, none of these “public benefits and/or amenities” are prohibited in the current R-2 base zone. *See* MMC 19.202.2, Table 19.302.2 (R-2 zoning allows outright multifamily residential uses, accessory uses, and agricultural or horticultural uses; allows conditionally office uses; and allows community service use via a Community Service Use approval; and there are no restrictions relating to under-building parking, sustainable design, or creating paths through the forest). Indeed, most, if not all, of these amenities exist already in the Waverly Greens community, and Applicant has admitted as much. As such, this approval criterion is not met.

3. Phased Development Must Be Complete in 7 Years

For proposed developments in a PD zone that will be phased, Milwaukie’s code requires that “in no case will the total time period of construction of all phases exceed 7 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.” MMC 19.311.17.A. Yet, Applicant’s phasing plan omits entirely any discussion of a development timeline. (*See* 10-27-20 Packet, Section 5.1, p. 64, para. 3 (explaining only that “phased construction of (4) multifamily apartment buildings” will be built

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in three distinct phases: “building A.1 (32 units) will be built along the Ridge in phase 1”; “Building A.2 (32 units) and the associated community building will occur in phase 2”; and “two Gardens Buildings B.1 (18 units) and B.2 (18 units) and the community center with pool would be developed in Phase 3”).)

During the October 27 hearing, Applicant confirmed that there was no timeline currently planned for the proposed phases, but that construction could take ten years overall to complete. (Oct. 27 Hrg. at 1:45.) Applicant’s engineer later re-affirmed this, stating that Applicant was looking at ten or more years for this development. (*Id.* at 2:02.) Applicant’s lack of a detailed phasing plan generally, coupled with a potential 10-year construction period, shows that Applicant does not meet this requirement.

4. Height of Buildings A.1 and A.2 Will Make Them Visible From Waverley Country Club

Applicant stated in its application that the A.1 and A.2 Ridge buildings “are the farthest away and downhill from the public street, so the height and length increases will not have a significant visual impact to the surrounding community.” (10-27-20 Packet, Section 5.1, p. 64 para. 12.) But this statement ignores that Waverley is part of the surrounding community, and that the height and length increases *will* have a significant visual impact on Waverley and its members and neighbors, from, at least, the driving range of Waverley’s golf course, which is located downhill from the proposed development. Currently, the view from Waverley looking towards the Site of the planned development includes only trees and vegetation. When Waverly Woods’ Ridge buildings are in place, Waverley and its members and neighbors will be able to see those buildings from the golf course. This visual impact is shown clearly on page 17 of Applicant’s hearing presentation slide deck:

VIEWS FROM RIVER



VIEWS LOOKING EAST ACROSS RIVER TO SITE SHOWING MINIMAL PROJECT VISIBILITY

Compatibility with the surrounding areas and current zoning is required for a conditional use permit and for zoning map amendments. MMC 19.905.4.A.2 (“The operating and physical

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characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.”); MMC 19.905.4.A.5 (“The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.”); *see also* MMC 19.905.5 (allowing the Planning Commission to “impose conditions of approval that are suitable and necessary to assure compatibility of the proposed use with other uses in the area and minimize and mitigate potential adverse impacts caused by the proposed use”).

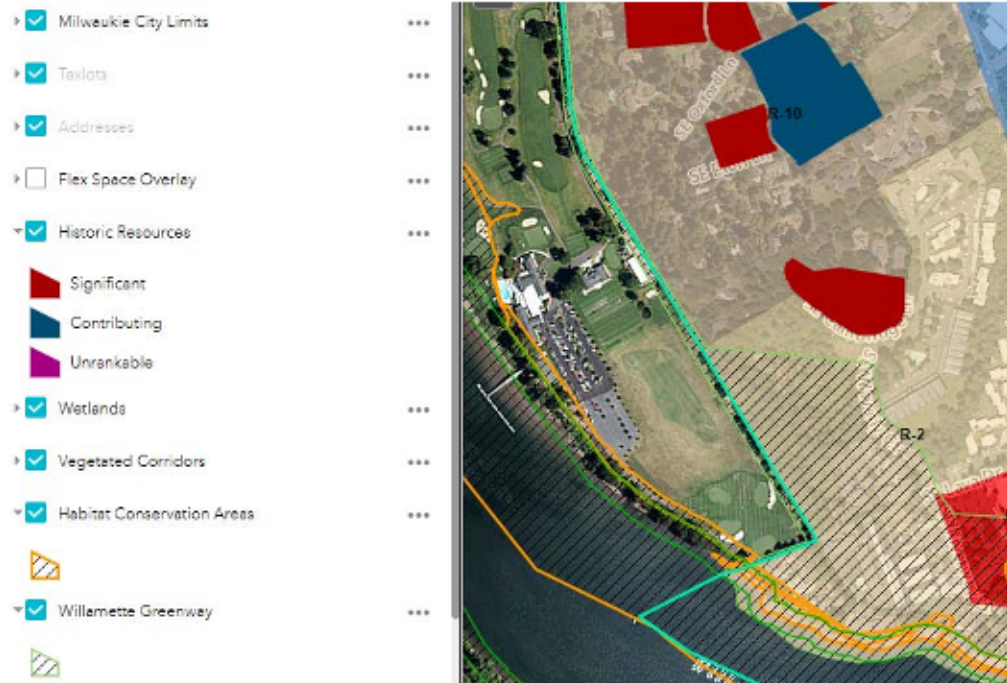
The requested increased height is not compatible with the surrounding area (Waverley) or with the base zone (R-2) or the overlay zone/special area (WG) because it exceeds the limits set by the base and overlay zones, and because Applicant has not met its burden of showing “exceptional advantages in living conditions and amenities” to obtain the increased density that will be accommodated by the increased height.

5. Application Ignores Single-Family Zoning in Area

MMC 19.311.9.C requires an applicant to show that its proposed development is compatible with the surrounding area based on “site location and character of the area”; “predominant land use pattern and density of the area”; and “expected changes in the development pattern for the area.” Applicant’s response to this approval criteria states, “The proposed development is consistent with the predominant⁵ land use pattern and density of the area *as it is surrounded by existing multifamily apartment complexes.*” (10-27-20 Packet, Section 5.1, p. 68 (emphasis added).) But the area is also surrounded by single-family homes in the R-10, low density zone, some of which have historical preservation overlay zoning:

⁵ “Predominant” is another subjective term used by Applicant that is not defined and that does not provide a standard by which the Commission or the City can use to determine its meaning. Applicant should be required to provide data showing that R-2 zoning and multi-family apartment complexes are indeed the “predominant” land use pattern and density of the area. As the City’s zoning map shows, this may not be the case.

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(See Milwaukie Zoning Map, available at <http://milwaukie.maps.arcgis.com/apps/webappviewer/index.html?id=48bfb9fc517446f9af954d4d1c4413af>.)

Applicant’s response omits reference to the single-family and historical preservation overlay zoning in the area altogether, and thus does not explain how the proposed development is compatible with such zoning. Applicant’s comments during the October 27 hearing (at around 1:46) are similarly lacking in explanation regarding the proposed development’s compatibility with the single-family and historic zoning. The application should be denied for this additional reason.

6. Additional 50 Feet in Width Proposed for the A.1 and A.2 Buildings Not Acceptable

As discussed above, Applicant wishes to use additional building length not normally allowed in the R-2 zone to accommodate the requested 20% density increase. Applicant stated that such a building with extra length is “not without precedent” in the area. (10-27-20 Packet, Section 5.1, p. 66.) But such “precedent”⁶ is not relevant. Simply put, a development must meet the requirements of the base and overlay zoning; if it does not, an applicant must prove by substantial evidence that it meets the approval criteria for PD zoning or exceptions, if any. Applicant here has not done this. The break in the middle of the building shown below—which Applicant appears to use as a way of assuaging concerns over the added length—provides none

⁶ The precedential value of buildings in the area is discussed below in Section 12.

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of the required evidence that the development meets the approval criteria of MMC 19.311.9, many of which have already been discussed herein and need not be repeated.



Image 1. Ridge Building A-1 entry level showing overall 203' long plan broken into two masses at street.

This is because the inset in the middle of the building in no way changes the fact that the proposed A.1 and A.2 buildings are still overly long buildings, longer than allowed under the current zoning. Indeed, the additional length will be strikingly visible to those viewing the buildings from the back side—namely, Waverley and its members and guests, and anyone in or across the Willamette River. These will also be the tallest buildings at the highest point on the land in this area. This is a deviation from the R2 zoning in this area, and Applicant has not shown by substantial evidence that it meets the requirements of PD zoning to make such a deviation acceptable.

7. Open Space Requirements

According to the Code, “[o]pen space means the land area to be set aside and used for **scenic, landscaping, or open recreational purposes** within the development. Open space may also include areas which, because of topographic or other conditions, are deemed by the City Council to be suitable for leaving in a natural condition. Open space shall be adequate for the recreational and leisure needs of the occupants of the development, and **shall include the preservation of areas designated by the City for open space or scenic preservation in the Comprehensive Plan or other plans adopted by the City.**” MMC 19.311.3.E (emphasis added).

Waverley does not dispute that Applicant’s proposed development includes open space. However, in the portion of the application addressing the public open space requirement of MMC 19.505.3.D, relating to multifamily design guidelines (requiring “sufficient open space for

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the purpose of outdoor recreation, scenic amenity, or shared outdoor space for people to gather”), Applicant includes a listing of amenities that do not fit within the definitions of open space in either MMC 19.505.3.D or MMC 19.311.E, including a kitchen and catering space, wine cellar, and community meeting rooms. (10-27-20 Packet, Section 5.1, p. 70). Waverley respectfully requests that the Commission consider whether the “large outdoor community gardens, swimming pool, walking trails, . . . [and] permanent picnic tables” noted by Applicant sufficiently satisfy the public open space requirement for a multifamily dwelling, especially given the residents of the 32 units of Building A.1 will be without those amenities until phases 2 and 3 are complete, which Applicant already admitted may not happen for a period of years, if at all, depending on their funding.

PD zoning also requires that the “development plan and program **shall provide for the landscaping and/or preservation of the natural features of the land. To ensure that open space will be permanent, deeds or dedication of easements of development rights to the City may be required.** Instruments and documents guaranteeing the maintenance of open space shall be approved as to form by the City Attorney. Failure to maintain open space or any other property in a manner specified in the development plan and program shall empower the City to enter said property in order to bring it up to specified standards. In order to recover such maintenance costs, the City may, at its option, assess the real property and improvements within the planned development.” MMC 19.311.3.E (emphasis added).

At least one neighbor during the hearing, as well as others through public written comments, expressed a hope that the suggested requirement for a conservation easement or the like would be imposed on Applicant, and Waverley agrees. Applicant stated at the October 27 hearing that, as to the open space requirement and in response to a question by one of the neighbors, “the whole plan commits to the open space” requirement. (Oct. 27 Hrg. at 3:19:47). Waverley notes that statements made by Applicant at the hearing are binding. Given those statements and the strong sentiments from the surrounding property owners and residents, the Planning Commission should impose conditions on any approval that require Applicant to dedicate open space as set forth in MMC 19.311.3.E.

Finally, the Code requires “[a]ll planned unit developments will have **at least one-third of the gross site area devoted to open space and/or outdoor recreational areas. At least half of the required open space and/or recreational areas will be of the same general character as the area containing dwelling units.** Open space and/or recreational areas do not include public or private streets.” MMC 19.311.3.E (emphasis added). It is unclear whether the “same general character” requirement is addressed in the application.

Applicant states, and the Staff Report confirmed, that approximately 54% of the Site will be left as vegetation. The Recommended Findings states that the “gross area of the subject property is approximately 10.8 acres, so a minimum of 3.24 acres must be provided as open space, with at least 1.6 acres available for recreational purposes.” (10-27-20 Packet, Section 5.1, p. 24). First, we respectfully note that one-third of approximately 10.8 acres is approximately **3.6** acres. Using that number, the Code requires that approximately 3.6 acres must be provided as “open

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space and/or outdoor recreational areas.” The Code thus also requires that at least half of the approximately 3.6 acres, or 1.8 acres, must be of the “same general character as the area containing dwelling units.” This requirement was not discussed in the application or in the Staff Report or Recommended Findings. (*Id.*; *id.* at p. 61.)

Waverley notes that 54% of 10.8 acres is 5.8 acres. Thus, applicants are leaving 5.8 acres as natural “vegetated open space set aside for scenic, landscaping, or open recreational purposes.” It is not clear from the narrative or accompanying drawings, however, that Applicant meets the requirements to make half of the required open space and/or recreational areas (1.8 of the 5.8 acres of open space set aside) of the same general character as the area containing dwelling units. It is also unclear whether any of the 5.8 acres of open space includes public or private streets, which is prohibited. Waverley opposes the application on this ground, and respectfully requests clarification on these points.

8. Economic Viability of a Proposed Development is Not Part of Approval Criteria

During Applicant’s presentation at the October 27 hearing, Applicant stated that building parking under the Ridge buildings was very expensive, and that the only way to make the development economically viable was to make the buildings bigger and taller: it is “not economically feasible to build the buildings on the ridge with underground parking without having them be 4 story buildings.” (Oct. 27 Hrg. at 1:43:22; *id.* at 1:44:48 (“Only way we can achieve these objectives and have an economically viable project.”).) Economic viability for the developer is not required and not part of any approval criteria, and as such, any discussion of that should be disregarded.

9. Height, Length, Density Increase Requests Cannot Be Addressed By Variances to Current Zoning

The Staff Report states that “[e]xcept for the Willamette Greenway zone restriction on building height, the proposed development could be permitted via review of variances rather than the application of a planned development review.” (10-27-20 Packet, Section 5.1, p. 13.) Waverley respectfully notes that this is not entirely correct.⁷

R-2 zoning allows for the following:

- Height: 3 stories or 45 feet, whichever is less (but with an exception allowed for 1 additional story where an additional 10% of site area beyond the minimum is retained in vegetation)
- Density: 11.6 – 17.4 dwelling units per acre, calculated to allow for 84 units
- Length: 150 linear feet horizontally

⁷ The height restriction of the Willamette Greenway zone could not be avoided by the variance procedure, as the Staff Report correctly pointed out, because structures exceeding 35 feet in height are “prohibited” in that zone. MMC 19.911.2.B.1; MMC 19.401.3.

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MMC 19.302.4; MMC 19.302.5.H.2.

However, the Code is explicit in that it lists the following “ineligible variances”:

- “To increase, *or have the same effect as* increasing, the maximum permitted density for a residential zone.”
- “To allow a use that is not allowed outright by the base zone. Requests of this nature may be allowed through the use exception provisions in Subsection 19.911.5, nonconforming use replacement provisions in Subsection 19.804.1.B.2, conditional use provisions in Section 19.905, or community service use provisions in Section 19.904.”

MMC 19.911.2.B.5; MMC 19.911.2.B.7

Because Applicant has admitted that the height and length increases requested “increase, or have the same effect as increasing, the maximum permitted density for a residential zone,” none of applicant’s proposed increases in height, density, length may thus be addressed by a variance. Rather, the only way to do it is to obtain exceptions, or apply for re-zoning, as Applicants did here.

10. New Comprehensive Plan Does Not Apply

As pointed out in Waverley’s first letter, Applicant incorrectly relied on the May 2020 Public Review Draft of the 2020 Milwaukie Comprehensive Plan in its narrative. When the application was submitted, Milwaukie’s new 2020 Comprehensive Plan was not yet effective, and Applicant should be required to revise its narrative responses to the approval criteria requiring conformance with the Comprehensive Plan in effect at the time the application was submitted (“the Effective Comprehensive Plan”). See ORS 227.178(3)(a).

Applicant’s proposed development and the added height, length, and density Applicant requests are not in conformance with either the Effective Comprehensive Plan or with the 2020 Comprehensive Plan, and as such, the application should be denied on this ground.

The Effective Comprehensive Plan includes the following relevant sections that may be relevant to the proposed development, each of which includes further relevant goals, objectives, and policies:

- Introduction
- Environmental and Natural Resources (Chapter 3)
- Land Use (Chapter 4)

The Introduction of the Effective Comprehensive Plan includes a list of “four overriding policies”:

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- Public and private actions will result in a net benefit for existing City residents and will contribute to the improvement of the local business and industrial economy.
- Existing natural resources and developments of character will be preserved, and new development will contribute to improving the quality of the living environment, and to a sense of City-wide identity and pride.
- Neighborhoods, their identity, and security, will be maintained and enhanced by all actions resulting from public and private activities.
- Public facilities and services will adequately serve existing residents and businesses, and not be overburdened by new public or private development.

Applicant's proposed development does not conform with these policies. First, as discussed above, Applicant has made no guarantee that the benefits its development will provide (in the form of amenities for the residents) will be constructed—indeed, Applicant admitted during the October 27 hearing that it may never obtain the funds needed to do more than build the single residential building that is part of the application's "phase 1." This does not amount to a "net benefit for existing City residents." Second, the planned development, while dedicated to preserving 54% of the site as "open space," is removing significant trees and other vegetation, which is not in conformance with the policy of preserving existing natural resources (and, as discussed above, it is unclear whether some of the set aside "open space" is actually that). Third, Applicant entirely ignores the single-family neighborhood—including historic residences located therein—that surrounds the site for the proposed development, contrary to the policy of maintaining and enhancing the surrounding neighborhoods, their identity, and security. The public testimony by neighbors living in those single-family homes stressed this point, and Waverley agrees. And, as to security, Waverley has its own concerns relating to security, namely, the risk of trespass onto its property. Fourth, Applicant requests a density increase of 20% (measured in number of units), which could stress and overburden the public facilities and services that are currently serving existing residents and businesses, contrary, to the fourth stated policy.

Chapter 3 of the Effective Comprehensive Plan includes the following relevant goals, objectives, and policies:

- Natural Hazards element, objective #2 – seismic conditions: "Regulate the structural integrity of all developments within the City consistent with the provisions of the Uniform Building Code, Earthquake Regulations."
- Historic Resources element, goal statement: "Preserve and protect significant historical and cultural sites, structures, or objects of the City."
- Open Spaces, Scenic Areas, and Natural Resources element,
 - Goal statement: "To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources."

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- Objective #2 – natural resources: “To preserve and maintain important natural habitats and vegetation by protecting and enhancing major drainageways, springs, existing wetlands, riparian areas, water bodies, and significant tree and vegetative cover while retaining their functions and values related to flood protection, sediment and erosion control, groundwater discharge and recharge, aesthetics, education, recreation, vegetation, and wildlife habitat. Regulate development within designated water bodies, riparian areas, wetlands, uplands, and drainage areas.”
- Objective #2, Policy 1: “Protect designated natural resources and their associated values through preservation, intergovernmental coordination, conservation, mitigation, and acquisition of resources” by doing the following:
 - “Notify and coordinate review of development proposals and plans within natural resources with affected State, local, and federal regulatory agencies.”
 - “Develop a review process for development within natural resources, which requires mitigation or other means of preservation of natural resource values.”
 - “The City shall pursue funding for the acquisition, protection, or enhancement of natural resources through private environmental groups, federal or State agencies, or local groups.”
 - “Regulate activities within natural resources that may be detrimental to the provision of food, water, and cover for wildlife.”
- Objective #2, Policy 4: “Protect existing upland areas and values related to wildlife habitat, groundwater recharge, and erosion control” by doing the following:
 - “Encourage the development of open spaces and increased vegetation for wildlife habitats.”
 - “Protect steep slopes from erosion through the use of vegetation.”
 - “Provide protection between the resource and other urban development.”

As to the Natural Hazards element, objective #2 – seismic conditions, the application does not make mention of plans to ensure conformance with this objective. The Commission should require Applicant to address the structural integrity of the planned development, especially given the proximity to the fault line (indicated by the red dashed line in the clip from Map 3 below):



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As to the Historic Resources element, Map 4 and Appendix 1 of the Effective Comprehensive Plan show numerous significant and contributing historical properties in the neighborhood directly abutting the proposed development (significant and contributing resources show in red and purple, respectively, in the clip from Map 4 below):



Yet, the application ignored that neighborhood and those resources in its narrative, and Applicant did not begin conversations with residents of that neighborhood until just before the October 27 hearing. (See also Public Comments at p. 16 (email from P. Green noting that “there were no residents of Waverly Heights present [at the Historic Milwaukie NDA Meeting]”).) As the Effective Comprehensive Plan states, “The City realizes that protecting historic resources has several cultural and economic benefits for City residents: Fostering civic pride in accomplishments of the past, promoting choices in housing types and styles, strengthening the economy of the City, and providing educational and recreational opportunities.” Waverley hopes that Applicant will adequately address the City’s goal of preserving and protecting the historical sites that are so close to the site of its proposed development.

As to the Open Spaces, Scenic Areas, and Natural Resources element, Waverley incorporates the discussion in Section 7 above regarding whether Applicant has met the open space requirements. Waverley also notes that significant wildlife habitat will be disturbed or destroyed by the proposed development, which is contrary to the goals of conservation, natural resource enhancement and preservation, and protecting wildlife habitats. Waverley repeats its request that the Commission require a conservation easement or the like to ensure that natural resources and wildlife habitats will be protected to the highest extent possible.

Chapter 4 of the Effective Comprehensive Plan includes the following relevant goals, objectives, and policies:

- Residential Land Use and Housing element,
 - Goal statement: “To provide for . . . the development of sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market, while preserving and enhancing local neighborhood quality and identity.”
 - Objective #3 – residential land use: design,

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- Policy 1: “New multifamily development projects will take measures to reduce potentially negative impacts on existing, adjacent single-family development and adjacent lower-density zones. Such measures may include reduced maximum heights, increased setbacks for large façades, building size limitations, and other design features to maintain privacy of nearby properties.”
 - Policy 3: “All Planned Unit Developments will have area devoted to open space and/or outdoor recreational areas. At least half of the open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets.”
 - Policy 5: “In all cases, existing tree coverage will be preserved whenever possible, and areas of trees and shrubs will remain connected particularly along natural drainage courses.”
- Willamette Greenway element, Objective #3 – land use, Policy 2: “Intensification of uses, changes in use, or development of new uses are permitted only when consistent with the City’s adopted Willamette Greenway Element, the Greenway Design Plan, the Downtown and Riverfront Land Use Framework Plan, and the Town Center Master Plan.”
 - Neighborhood element, Neighborhood Area 1 (Historic Milwaukie),
 - Guideline #2: “To ensure that new multifamily housing does not significantly alter the visual character of existing single family areas, and does not create problems of drainage, traffic, noise, and light to adjacent properties.”

As to the Residential Land Use and Housing element, as discussed above, it is unclear how Applicant made its assessment that there is a “need” for the type of high-end housing that will be provided by the proposed development, and Applicant should be required to provide additional information to this point. Further, it appears that Applicant’s proposed development is directly contrary to Policy 1, in that it has not taken measures to reduce potentially negative impacts on existing, adjacent single-family development and adjacent lower-density zones. Indeed, as discussed above, the application omits any discussion of those single-family areas adjacent to the development. Moreover, the requested additional height and building size is exactly what this Policy directs *against* doing (“[s]uch measures may include *reduced* maximum heights, increased setbacks for large façades, building *size limitations*, and other design features to maintain privacy of nearby properties”). Waverley incorporates its discussion from Section 7 above as it relates to Policy 3. As to Policy 5, Applicant should be required to confirm that it is eliminating only as much vegetation and as many trees as are necessary for the development. Further, given Applicant’s statements that phases 2 and 3 may not be completed in the near term, if at all, it would be reasonable to require Applicant to also phase its removal of trees and vegetation in case those phases are in fact never developed.

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As to the Willamette Greenway element, the proposed development does not conform to either Policy 2 or 3. Regarding Policy 2, the Effective Comprehensive Plan clearly states that intensification of uses, which would include the requested density, height and length increases, should only be permitted when consistent with the Willamette Greenway Element. But that element, implemented by the WG zone, expressly prohibits structures exceeding 35 feet in height. The proposed development thus does not conform with Policy 2.

Waverley is also concerned by Applicant's statement, made in connection with Goal 4 of the 2020 Comprehensive Plan, that "the city allows for a compatibility review to determine appropriateness and compatibility of a new proposed use," implying that it should be excepted from the Willamette Greenway requirements because the site is in an area "further from the river" than the areas intended to be protected by the "Greenway Review's intended purpose," which, according to Applicant, is to focus on areas "in close proximity and visible from the river." (10-27-20 Packet, Section 5.1, p. 70.) First, the stated purpose of the Willamette Greenway zone is "to protect, conserve, enhance, and maintain the natural, scenic, historic, economic, and recreational qualities of lands along the Willamette River and major courses flowing into the Willamette River," and does not include any distinction between areas close to or further away from the river. MMC 19.401.1. Second, the proposed development is in fact "in close proximity" to the river and will be "visible from the river." Third, Applicant does not explain what this "compatibility review" is or what section of the Code allows such a review. Regardless, the Site is located in the WG overlay zone and Applicant must comply with the requirements and procedures in place for that zone, regardless of its thoughts on whether such zoning should apply.

As to the Neighborhood element, Waverley and other interested parties have pointed out in letters and public testimony that there will be significant alterations to the visual character of the existing single-family areas due to the proposed development's buildings' added height and length, as well as to the elimination of 46% of the vegetation on the Site. Applicant should be required to address this concern thoroughly, as it appears the proposed development does not conform with this aspect of the Effective Comprehensive Plan.

Finally, Waverley addresses briefly the deficiencies relating to two of the remaining three goals of the 2020 Comprehensive Plan addressed by Applicant.

As to Goal 3.5 – Sustainable Design and Development, Applicant makes no promise or statement that any of the "responsible, sustainable" features it discusses (which are described above) will be implemented, and instead vaguely states that it is "committed to designing sustainably with considerations for energy efficiency and embodied carbon." (10-27-20 Packet, Section 5.1, p. 70). Applicant also does not explain the relevance of the Energy Trust of Oregon Master Planning Session or the substance of what took place during that session. (*Id.*) Comments made during Applicant's presentation during the October 27 hearing were equally vague and speculative. The Commission should condition any approval of this application on Applicant providing the sustainable and responsible amenities it has spoken of.

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As to Goal 3.4 – Healthy Urban Forest, Applicant only states that “the reduction of the development footprint” allows the project to “increase the tree canopy, vegetated areas, natural habitat and recreational opportunities.” (*Id.*) Applicant does not explain how that will happen, and, confusingly, the project’s plan includes cutting down trees and removing significant amounts of vegetation, which does not, in fact, promote or conform with the “healthy urban forest” goal. The Commission should condition any approval of this application on Applicant agreeing to a conservation easement or the like.

11. Statewide Planning Goals

For an applicant to obtain a zoning map amendment, as is requested here, consistency with the goals and policies of the Statewide Planning Goals must be shown by substantial evidence. MMC 19.902.6.B.8. Applicant did not address the Statewide Planning Goals in its application, but the Staff Report and Recommended Findings did. (10-27-20 Packet, Section 5.1, p. 51).

For the reasons explained above in Section 10 and in Waverley’s first letter, the application is not consistent with Statewide Planning Goal 2, Land Use Planning or with Goal 15, Willamette Greenway.

The application is also not consistent with Statewide Planning Goal 10, Housing. As previously discussed, Applicant explained that it saw a “need” for the type of housing its proposed development would provide, but did not explain how it determined there was such a need. Applicant’s presentation during the October 27 hearing was directly contrary to that statement. The current rents for the multifamily developments nearby, all owned by the Applicant, range from “affordable” (the \$1150-1300 per month Banbury development) to “mid-range” (the \$1500-1900 per month Highlands development and the \$1700-2000 per month Stonehaven development) to “high-end” (the \$1700-3200 per month, “condo quality” Dunbar Woods development). (Oct. 27 Hrg. at 1:27:25.) Applicant stated that the proposed Waverly Woods development would bring in rents at ranges similar to or possibly even higher than those of Dunbar Woods. (*Id.* at 1:56:32) This is contrary to Applicant’s statement, as pointed out by the Staff Report, that there is a “gap in the availability of the proposed apartment types.” (10-27-20 Packet, Section 5.1, p. 25.) Moreover, while Waverley understands there is a general need in Milwaukie and the Portland Metro Area for housing, it is unclear whether high-end housing is really what is “needed.” (See 10-27-20 Packet, Section 5.1, pp. 50-51.)

Goal 10 also includes an affordability aspect, which is not met by this application for a high-end multifamily development for the reasons stated above.

12. Procedural Issues

Waverley notes that, pursuant to ORS 197.763(6)(e), the final written argument period does not extend the 120-day period as do the first two open record periods here; as such, the 120-day period now ends on January 30. We note this because the City may want the Applicant to extend

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the 120-day period if there is any reason to believe that the City Council cannot issue its final decision by January 30.

Further, to the extent Applicant submits a revised narrative to its application, and / or a new Staff Report and Recommended Findings, which may include revised conditions for approval, is issued, the Planning Commission should hold a new evidentiary hearing so that Applicant, the Public, and all interested parties have an opportunity to provide additional testimony and comment on the new evidence and new conditions. Without such testimony, the Planning Commission will not be able to fully consider all of the relevant evidence or public comment. *See Conte v. City of Eugene*, 66 Or LUBA 334 (2012) (Parties to a land use proceeding have the right to review and respond to substantive changes in the application that occur during the proceedings. If such a change occurs after the close of the record or hearing, the local government may be required to re-open the record to allow other parties a reasonable opportunity to submit responsive testimony and evidence. Failure to do so can be procedural error and a basis for remand, if the petitioners demonstrate the error prejudiced their substantial rights.); *see also Friends of the Hood River Waterfront v. City of Hood River*, 67 Or LUBA 179 (2013) (ORS 197.763(6)(c) authorizes any participant to request an opportunity “to respond to” new evidence submitted during the open record period, even where quasi-judicial land use hearing has already closed following such open record period. If such a request is made, “the hearings authority shall reopen the record pursuant to [ORS 197.763(7)].”)

Finally, Applicant stated in its application that buildings such as the Ridge buildings proposed here that have extra length are “not without precedent” in the area. (10-27-20 Packet, Section 5.1, p. 66.) A question was raised during the October 27 hearing regarding “precedent” for similar added length and height. Waverley notes for the Commission that precedent is a legal term, and is not created by mere applications or by surrounding developments. Legal precedent is created only by decisions of the Land Use Board of Appeals and the Oregon Court of Appeals, and any questions as to precedent should be resolved by reviewing opinions issued from those institutions.

13. Conclusion

For the reasons set forth above, in Waverley’s first letter dated October 27, 2020, and in Waverley’s oral testimony during the October 27 hearing, the Planning Commission should recommend denial of the application that is File No. PD-2020-001. In the alternative, should the Planning Commission recommend approval of the application, it should do so with conditions that address each of Waverley’s points set forth in its written submissions and oral testimony.

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Very truly yours,



Michael C. Robinson

MCR/jmhi

cc: Ms. Vera Kolas (*via email*)
Ms. Erin Forbes (*via email*)
Mr. James Dulcich (*via email*)
Mr. Justin Gericke (*via email*)
Mr. Bruce Pruitt (*via email*)
Mr. Brian Koffler (*via email*)

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Memorandum

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To: Vera Kolias, Associate Planner - City of Milwaukie
From: Phil Krueger
CC: Wendy Wyse, Scott Wyse, Duncan Wyse, Michael Connors, Nels Hall
Subject: PD-2020-001 Waverley Woods 10/27/2020 Public Hearing Response
Date: 11/10/2020
Attachments: 1. Zoning Plan
 2. Site Plan with Phases
 3. Site Plan with Proximate Residences
 4. Site Plan showing Forest Buffer Zone
 5. Building Sections
 6. Solar Shading Study Summer Solstice
 7. Solar Shading Study Winter Solstice
 Kellogg Creek Staff Report

The following memorandum is provided to address public comments associated with the October 27, 2020 Planning Commission Public Hearing:

Item 1) The proposed development will comply with section **19.311.17 Phased Development:**

- A. *The Planning Commission may approve a time schedule for developing a site in phases as follows:*
2. *For all other projects, in no case will the total time period of construction of all phases exceed 7 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.*

Response: The project's general contractor estimates each phase will take approximately 1-year to complete resulting in 3-years of total construction for all three phases.. Within the 1-year construction duration, the general contractor estimates that 6-months of the work will be on the exterior and potentially impact surrounding residents. The remaining 6-months of work will be primarily on the interior and result in limited construction noise. Per Section 19.311.16 Expiration of Planned Development Zone, "substantial construction" of Phase 1 is required to occur within one year of the final development approval. Building A.1 is currently on schedule for a mid-Summer 2021 construction start with site utility work scheduled for late-Spring 2021.

Item 2) Per Section 19.505.3.C Design Standard - Multifamily Housing- Review Process, the project is pursuing the **discretionary process** since the Planned Development Review already requires Type III and Type IV Development Review. Each building in the development is required to go through a Land-use design review during permitting to confirm final design meets approved Planned Development criteria. The following responses supplement the responses to this Section in the Application. The applicant also agrees with the Staff Report response to these criteria.

19.505.3.D Multifamily Design Guidelines and Standards

1. **Private open space:** *The development should provide private open space for each dwelling unit. Private open space should have direct access from the dwelling unit and should be visually and/or physically separate from common areas.*

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Response: Each apartment unit has its own private balcony directly accessible from the interior of each dwelling, and separate physically and visually from other apartments. The smallest private outdoor space is 195 sq.ft.

1. **Public open space:** *The development should provide sufficient open space for the purpose of outdoor recreation, scenic amenity, or shared outdoor space for people to gather.*

Response: Community is important to the Waverley Greens Apartment complex. This new development has focused on creating many additional community spaces and amenities for the residents of the entire complex, including but not limited to the following: large outdoor community gardens, a swimming pool, walking trails, permanent picnic tables, and river overlook sitting areas. The project is proposing 54% of the site to be vegetated open space set aside for scenic, landscaping, or open recreational purposes

2. **Pedestrian Circulation:** *Site design should promote safe, direct, and usable pedestrian facilities and connections throughout the development. Ground-floor units should provide a clear transition from the public realm to the private dwellings.*

Response: The site design promotes safe, direct, and usable pedestrian facilities and connections throughout the development. The project will have continuous connections with adequate lighting and street crossings to site elements as required. Walkways are separated from vehicle parking with physical barriers such as planter strips and raised curbs. Walkways shall be constructed of concrete, with a minimum width 5 ft and 7 ft. where parked vehicles will overhang the walkway. The walkways will be separated from parking areas and internal driveways using curbing, landscaping, or distinctive paving materials. Exterior site lighting will be included that provides code required light levels. The ground-floor units provide a clear transition from the public areas to the private dwellings.

3. **Vehicle and Bike Parking:** *Vehicle parking should be integrated into the site in a manner that does not detract from the design of the building, the street frontage, or the site. Bicycle parking should be secure, sheltered, and conveniently located.*

Response: The vehicle parking will be integrated in a manner that does not detract from the design of the building, the street frontage, or the site. Waverley Woods A.1, A.2 and B.2 are located on a private internal dead-end drive, not a public right-of-way. As is typical for multifamily developments, including the other apartments in this complex, some parking spaces are outside the building entry along the private drive. A total of 108 vehicle parking spaces for residents will be located under the buildings and 30 parking spaces will be provided off the private dead-end street for the apartment buildings, community center and other provided amenities. Covered, secure bike parking with permanently mounted bike racks/hangers will be provided in the parking garage and outdoor bike racks, located no further than 30' from the main entrance of each building to meet the required number of racks required by this code section.

5. **Building Orientation & Entrances:** *Buildings should be located with the principal façade oriented to the street or a street-facing open space such as a courtyard. Building entrances should be well-defined and protect people from the elements.*

Response: Waverley Woods A.1, A.2 and B.2 are located on a private internal dead-end drive, not a public right-of-way. Buildings A.1 and A.2 feature street facing primary entrances, which become focal points as the central element of the buildings' U-shape and are oriented to the street. The building entrances are well-defined and will protect people from the elements as users are drawn into the building entry by an entry overhang, walking paths, and landscape elements.

6. **Building Façade Design:** *Changes in wall planes, layering, horizontal datums, vertical datums, building materials, color, and/or fenestration shall be incorporated to create simple and visually interesting buildings. Windows and doors should be designed to create depth and shadows and to emphasize wall thickness and give expression to residential buildings. Windows should be used to provide articulation to the façade and visibility into the street. Building façades shall be compatible with adjacent building façades. Garage doors shall be integrated into the design of the larger façade in terms of color, scale, materials, and building style.*

Response: The buildings incorporate numerous design features that create simple and visually interesting buildings. The buildings in the development were designed with entrances set back at the middle of the

buildings to break up the façade into two smaller masses. The street facing façade is broken into two building masses flanking a recessed entry with outdoor balconies and projecting window bays providing visual interest. A minimum of 25% of the façade is glazing. Garage doors will appear highly transparent as the garages will be open air and require doors that are perforated. The project seeks to provide condominium-quality apartments for tenants who desire premium features and amenities. Large windows and high-quality materials will make these buildings the premier rental residences in the City.

7. Building Materials: Buildings should be constructed with architectural materials that provide a sense of permanence and high quality. Street-facing façades shall consist predominantly of a simple palette of long-lasting materials such as brick, stone, stucco, wood siding, and wood shingles. A hierarchy of building materials shall be incorporated. The materials shall be durable and reflect a sense of permanence and quality of development. Split-faced block and gypsum reinforced fiber concrete (for trim elements) shall only be used in limited quantities. Fencing shall be durable, maintainable, and attractive.

Response: The Buildings will be constructed with architectural materials that provide a sense of permanence and high quality consistent with this requirement. Building materials will be a mix of fiber cement board siding with wood accent siding with metal trim panels. The owners require durable and high-quality materials for their rental properties since they own and operate the facilities for the long term.

8. Landscaping: Landscaping of multifamily developments should be used to provide a canopy for open spaces and courtyards, and to buffer the development from adjacent properties. Existing, healthy trees should be preserved whenever possible. Landscape strategies that conserve water shall be included. Hardscapes shall be shaded where possible, as a means of reducing energy costs (heat island effect) and improving stormwater management

Response: The project will provide significant open spaces and courtyards will buffer the development from adjacent properties. Landscaping will be provided per development standards. The project team includes a landscape architect and arborist to provide direction for landscape design and tree preservation. As part of the development, existing trees will be maintained where possible. Diseased and dead trees, as well as, invasive species, such as English ivy and blackberries, will be removed and replaced by native plants where appropriate. New natural walking paths will be developed through the preserved wooded area for residents. The landscape will be continually maintained by the Waverley Greens maintenance team. The project is proposing 54% of the site to be vegetated open space set aside for scenic, landscaping, or open recreational purposes.

9. Screening: Mechanical equipment, garbage collection areas, and other site equipment and utilities should be screened so they are not visible from the street and public or private open spaces. Screening should be visually compatible with other architectural elements in the development.

Response: Screening will be provided as per development to ensure that mechanical equipment, garbage collection areas, and other site equipment and utilities will not be visible from the street or open spaces. Mechanical equipment will be housed inside the buildings with all roof top equipment located on lower roof areas that are blocked from view by adjacent high sloped roofs. Trash and recycling will be collected in internal trash rooms on the parking levels of each apartment building to avoid waste containers being visible from the outside.

10. Recycling Areas: Recycling areas should be appropriately sized to accommodate the amount of recyclable materials generated by residents. Areas should be located such that they provide convenient access for residents and for waste and recycling haulers. Recycling areas located outdoors should be appropriately screened or located so that they are not prominent features viewed from the street.

Response: Recycling collection will be provided in the trash/recycling room located on the parking level of each building. Residents will be responsible to bring their recycling to that location and maintenance staff will collect and transport the material off site

11. Sustainability: Multifamily development should optimize energy efficiency by designing for building orientation for passive heat gain, shading, day-lighting, and natural ventilation. Sustainable materials, particularly those with recycled content, should be used whenever possible. Sustainable architectural elements shall be incorporated to increase occupant health and maximize a building's positive impact on

the environment. When appropriate to the context, buildings should be placed on the site giving consideration to optimum solar orientation. Methods for providing summer shading for south-facing walls, and the implementation of photovoltaic systems on the south-facing area of the roof, are to be considered.

Response: Sustainability is a key component in the design of these residences. Building orientation and solar access along with passive strategies have been the first step of our design analysis. A preliminary solar study has already been completed, and the owners are committed to installing solar panels on the roofs. Each unit is provided with operable windows and overhangs, and sunscreens will be studied to maximize efficiency as part of the building design. Retaining and replanting the surrounding tree canopy is a key component to maintaining a cool site that takes advantage of the breezes flowing down the Willamette River and through the tree canopy to provide passive cooling for the units. On-site rainwater collection is being investigated along with applying roofing materials with an SRI of 78 where the roof has a 3/12 pitch or less and an SRI of 29 where the roof pitch is 3/12 or greater.

12. Privacy Considerations: *Multifamily development should consider the privacy of, and sight lines to, adjacent residential properties, and be oriented and/or screened to maximize the privacy of surrounding residences.*

Response: All privacy design considerations will be met in design. Attention will be paid to sight lines into adjacent properties and landscaping will be located in an effort to minimize views.

13. Safety: *Multifamily development should be designed to maximize visual surveillance, create defensible spaces, and define access to and from the site. Lighting should be provided that is adequate for safety and surveillance, while not imposing lighting impacts to nearby properties. The site should be generally consistent with the principles of Crime Prevention Through Environmental Design:*

- *Natural Surveillance: Areas where people and their activities can be readily observed.*
- *Natural Access Control: Guide how people come to and from a space through careful placement of entrances, landscaping, fences, and lighting.*
- *Territorial Reinforcement: Increased definition of space improves proprietary concern and reinforces social control.*

Response: The project is designed to maximize visual surveillance, create defensible spaces, and define access to and from the site. Exterior light fixtures will be provided that minimize light pollution while maintaining adequate lighting for egress and security. Units have living spaces that overlook building entrances and parking areas.

Item 3) Proposed development meets the Planned Development Approval Criteria as detailed in applicant's Planned Development Preliminary Submission Narrative pages 5-6 and in the City Staff Report page 24-27. Those responses are provided below.

19.311.9 Approval Criteria

The approval authority(ies) may approve, approve with conditions, or deny the PD Zone based on the following approval criteria:

A. Substantial consistency with the proposal approved with Subsection 19.311.6;

Response: The applicant submitted a development plan and program for the proposed PD and has requested that the City consider it to be the final development plan and program submittal, along with the accompanying application for zone change. Although an applicant is permitted to request preliminary development plan approval before filing for final planned development approval, Section 19.311.6 does not preclude an applicant from requesting both preliminary and final planned development approval. As stated below, the City has previously determined that an applicant can apply for both preliminary and final planned development approval at the same time as was the case in the Kellogg Creek Planned Development (PD-2017-001) project.

Compliance with Subsections 19.311.1, 19.311.2, and 19.311.3;

Response: The project is applying for a Planned Development to comply with the purposes set forth in 19.311.1.

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To provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements; to provide a more efficient, aesthetic, and desirable use of public and private common open space; and to provide an alternative discretionary review process for projects requiring more flexibility than what would be provided through the standard clear and objective development review or land division process.

19.311.1 – The project is providing a more desirable environment than is possible through the strict application of the zoning ordinance requirements. The main objective of the development is to minimally impact the site by retaining as much of the existing tree canopy as possible and maximize vegetated space. The project provides recreational opportunities and appreciation for the natural environment while maximizing the density opportunity. To achieve this, three strategies will be used. 1., adding an additional story to the two ridge buildings in lieu of developing a fifth residential building; 2. increasing the length of the two ridge buildings to 203'. 3. taking advantage of the naturally sloping topography to tuck most of the required parking under the building so as to minimize surface parking, further increasing the vegetated area. Through these proposals, the site is able to retain 54% of the vegetated area while maximizing the density. The existing dense tree canopy west of the proposed development extends beyond the proposed building heights, minimizing the visual impact of the additional proposed height from the river.

19.311.2 – This project complies with all use requirements laid out in this standard. See 19.401.6 J for compliance with City's Comprehensive Plan. The proposed development is a multifamily apartment complex located within a neighborhood of existing multifamily apartments all owned by the Wyse family, each having a unique character, but cohesive and harmonious as a neighborhood. Through initial utility research, the capacity of the existing utilities have been assessed as part of the proposed development and are adequate. The development is designed to serve primarily the residents of the planned development and surrounding community.

19.311.3 Development Standards. The development is on land suitable for the proposed development and is of sufficient size to be planned and developed consistent with this zone. The project recognizes the requirements the City may impose on sewer lines, water lines, roads and street or other service facilities and has done preliminary studies to ensure the sizing is known for the existing infrastructure. The project requests the allowable 20% density increase to assist with the development of the community amenities proposed. See Review "Development Description" and "Development Requests for Approval" at the start of this document for additional details. The project provides ample wooded setbacks in its peripheral yards, the smallest of which is 30' in depth. The project is proposing 54% of the site to be vegetated open space set aside for scenic, landscaping, or open recreational purposes.

- C. *The proposed amendment is compatible with the surrounding area based on the following factors:*
1. *Site location and character of the area.*
 2. *Predominant land use pattern and density of the area.*
 3. *Expected changes in the development pattern for the area.*

Response: The proposed amendment is compatible with the surrounding area based upon the site location and character of the area. As noted above, the dense, tall forest minimizes the impact of the taller, wider buildings on the ridge from the Willamette River and the breaking up of the length into two distinct masses minimizes the appearance from the street. The existing multifamily structures in the neighborhood exceed the lengths proposed in this development with the existing Stuart and Waverley Hall Apartments located to the east of this development both ranging in over 284' in length. The proposed development is consistent with the predominant land use pattern and density of the area as it is adjacent to existing multifamily apartment buildings. There are no expected changes in the development patten for the area. The area is designated med-high density residential and this development is the last undeveloped tract of land in the community. Based on the May 2020 City of Milwaukie Comprehensive Plan, there are no city plans to change the development pattern for the area.

- D. *The need is demonstrated for uses allowed by the proposed amendment;*

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Response: The owners understand the needs of the rental market as they own a large portfolio of apartment communities ranging in affordability. They have found a gap in the availability of the proposed apartment types. Within their community, they often have a waiting list for the type of accommodations this project is providing. The City of Milwaukie's Comprehensive Plan recognizes increased housing is a need to be addressed as more people are moving to the Pacific Northwest and there is a housing shortage.

E. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment;

Response: The applicant demonstrated that there are adequate public transportation facilities, public utilities, and services to support the proposed use. The applicant evaluated the existing infrastructure including a traffic study to analyze the impacts of increased traffic on the existing city infrastructure. Increased storm water, sewer, domestic and fire water as a result of this 100-unit development have also been reviewed and calculated. Please review the additional submitted documentation for compliance. The existing public transportation facilities, utilities, and services are adequate to support the proposed development

F. The proposal is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700;

Response: A transportation impact study has been included as part of this submission

G. Compliance with all applicable standards in Title 17 Land Division;

Response: The applicant reviewed and is complying with all applicable Title 17 Land Division Standards. Project is applying for a property boundary change as part of this Planned Development submission. Proposed boundary changes meet all criteria for approval in section 17.12.030. The boundary change will still allow reasonable development and as calculated in section 19.302.4 Density Calculations, the proposed boundaries do not impact the minimum density requirements for any of the new parcels.

H. Compliance with all applicable development standards and requirements; and

Response: Please review the Planned Development Preliminary Submission documents for compliance.

I. The proposal demonstrates that it addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.

Response: The base zone – R2 allows for multi-unit residential development by right. This project is proposing much more than a series of new buildings. It is fulfilling and expanding needed amenities for the existing six communities of Waverley Greens Apartments. It is providing more places for community gathering and celebration. The proposed two new community centers and outdoor amenities provide places for the inhabitants to garden, swim, eat, celebrate, meet, organize, and educate themselves. The existing community already partners with local educators to provide classes to its residents. This proposal will increase the number of spaces and opportunities for these experiences. The project is nestled harmoniously within an existing natural forest. The proposal includes relocating and enlarging the community garden which is an extremely popular amenity and creating walkable paths through the forested area with views of the Willamette River in an area which was once unpassable. Also, the project will include a landscaped sitting area at the entrance off Waverly Court which will provide river views. This development is seeking to maximize density and minimize its footprint to create an urban development within an urban forest thereby fulfilling the City's needs for more housing while providing more natural recreation spaces to improve occupant health and exposure to and appreciation for our natural environment. Through the project's sustainable design, the project will also reduce its operational footprint. Through the approval of the additional height allowance and width of the building, the project is able to take advantage of the natural topography on the site to tuck parking under the buildings. The parking level pushes the building to exceed the Willamette Greenway Zone height limit, but still within the allowable City of Milwaukie code. Tucking

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the parking under the building saves the development from surface parking allowing the project space to maintain the forested areas, add additional community spaces, community gardens and other amenities.

Item 3) This memorandum addresses the applicable Comprehensive Plan goals and objectives from the previous Comprehensive Plan (Last Rev.Ord #2169 March 5, 2019). The 2019 Comprehensive Plan applicable goals and objectives are very similar to the 2020 Comprehensive Plan applicable goals and objectives, and therefore we believe the previous responses to the 2020 Comprehensive Plan are sufficient to demonstrate compliance with both Comprehensive Plans. We are providing the responses to the 2019 Comprehensive Plan below out of an abundance of caution.

Chapter 1: Citizen Involvement

Goal: To encourage and provide opportunities for citizens to participate in all phases of the planning process, to keep citizens informed and to open lines of communication for the sharing of questions, problems and suggestions regarding the Comprehensive Plan and land use regulations.

Objective #1 Neighborhood Associations

Policy 2. The City will assist Neighborhood Associations by:

b) Notifying neighborhood associations of proposed land use actions and legislative changes as required by ordinances. Elected association representatives will receive information regarding land use issues.

Response: Project team presented the proposed development to Historic Milwaukie NDA on July 13, 2020 and NDA did not oppose the project. Most attendees appeared enthusiastic about the development and the associated amenities such as wooded walking paths and the community garden.

Chapter 2: Plan Review and Amendment Process

Goal: Establish a Plan review and amendment process as a basis for land use decisions, provide for participation by citizens and affected governmental units, and ensure a factual base for decisions and actions.

Response: The proposed development is going through the City's required procedures for this type of proposal. The Planning Commission held a public hearing for the proposed development and opportunity for public input was provided.

Chapter 3: Environmental and Natural Resources

Natural Hazards Element

Goal: To prohibit development that would be subject to damage or loss of life from occurring in known areas of natural disasters and hazards without appropriate safeguards.

Objective #1 Floodplain

To manage identified 100 year floodplains in order to protect their natural function as waterways, and to protect the lives and property of those individuals and concerns currently located within and along the floodplain boundary.

Response: The proposed development is not located in the floodplain and therefore this objective is not applicable.

Objective#2 Seismic Conditions

Regulate the structural integrity of all developments within the City consistent with the provisions of the Uniform Building Code, Earthquake Regulations.

Response: The proposed development will meet current Building Code for seismic design and a licensed structural engineer will provide design of all structures on site.

Objective #3- Weak Foundations

To ensure that adequate measures are undertaken to mitigate the structural limitations of soils.

Response: The proposed development is not located in area denoted as soils with severe construction rating. Geotech report will be provided indicating suitable soils for foundations.

Historic Resources Element

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Goal: Preserve and protect significant historical and cultural sites, structures or objects of the City.

Response: This Goal does not apply to development site but the adjacent property to the northwest is designated a Historic Resource. For this reason, the project is proposing significant visual buffer and increased setbacks between properties to maintain as much of the original context of the Historic property.

Open Spaces, Scenic Areas, and Natural Resources Element

Goal: To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources.

Objective #1 – Open Space

Response: The proposed development will provide nearly 54% open area which is well in excess of the minimum 15% open space required under the Code.

Objective #2- Natural Resources

To preserve and maintain important natural habitats and vegetation by protecting and enhancing major drainageways, springs, existing wetlands, riparian areas, water bodies, and significant tree and vegetative cover while retaining their functions and values related to flood protection, sediment and erosion control, groundwater discharge and re-charge, aesthetics, education, recreation, vegetation, and wildlife habitat. Regulate development within designated water bodies, riparian areas, wetlands, uplands, and drainage areas.

Response: The proposed site is designated as Natural Resource Site #16 on Appendix 2 Map. The proposed development will protect the natural resources by utilizing a larger building footprint and taller buildings to maximize the density and minimize the need to remove or disturb any natural resources located on site. To save as many trees as possible, the owners are willing to spend significantly more money to provide parking levels under the buildings instead of clearing the site for surface parking, the common approach for multifamily residences in the area.

Objective #3 – Scenic Areas

Significant scenic and view sites will be preserved for the enjoyment of present and future City residents as well as for visitors to the City.

Response: The proposed development will provide walking paths and viewpoints of the Willamette River. The proposed development will minimize the impact of views to and from the Willamette River based on the orientation of the buildings and preservation of existing trees. Overall, the project will increase the opportunities for visual enjoyment of the river and its surrounding environment while minimally impacting views from the river.

Air, Water and Land Resources Quality Element

Objective #2 – Local Air Quality

Response: The proposed development will include electric vehicle charging stations on all parking levels to promote EV use and reduce vehicle emission from tenants.

Objective #3 – Noise

Response: The proposed development will address Item 7 requirement “adequate noise protection be provided between adjoining attached or multifamily residential structures. Noise from inside adjacent living units should not reasonably interfere with normal domestic activities.”

Objective 4 – Water Quality

Response: The proposed development will direct all stormwater from impervious surfaces, including roofs and paving, and route to a lower level stormwater facility that collects and detains the storm water and slowly releases it to ultimately the existing underground storm waters system in Lava Drive.

Chapter 4: Land Use

Residential Land Use and Housing Element

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*Goal: To provide for the maintenance of existing housing, the rehabilitation of older housing and the **development of sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market**, while preserving and enhancing local neighborhood quality and identity.*

Objective #1 – Buildable Lands

Response: A portion of the development is in Special Policies Classification with slopes greater than 25%. By locating two of the buildings along this steep slope, the owners are paying for the added expense of locating a parking level partially below grade. Typically for similar apartment developments, all parking would be surface parking and would result in the majority of the site being cleared.

Objective #2 – Residential Land Use: Density and Location

*To locate **higher density residential** uses so that the concentration of people will help to support public transportation services and major commercial centers and foster implementation of the Town Center Master Plan, Downtown and Riverfront Land Use Framework Plan, and Central Milwaukie Land Use and Transportation Plan.*

Response: The proposed development is consistent with this objective because it is maximizing density by building in the smallest footprint that will be financially feasible given the high construction cost to build on a steep slope and provide parking below the building in lieu of surface parking.

Objective #3 – Residential Land Use: Design

To encourage a desirable living environment by allowing flexibility in design, minimizing the impact of new construction on existing development, and assuring that natural open spaces and developed recreational areas are provided whenever feasible.

Planning Concepts

Residential design policies are intended to ensure a high quality of environmental design, a flexible design approach, and a smooth integration of new development into existing neighborhoods. Density bonuses and transfers will be encouraged so that full development potential on individual parcels may be realized. Transition policies will be applied to reduce any negative impacts of development on adjacent uses. The transition policies will have little or no effect on the number of new units calculated in Table 2.

Policies

1. New multifamily development projects will take measures to reduce potentially negative impacts on existing, adjacent single-family development and adjacent lower-density zones. Such measures may include reduced maximum heights, increased setbacks for large façades, building size limitations, and other design features to maintain privacy of nearby properties.

Response: The proposed development has established side yard setbacks 30' or greater while the minimum required is 5'. Also the proposed rear yard setback is 32' while the minimum required is 15'. After discussions with adjacent property owners, the owners agreed to shift Building A.2 6-feet away from the property line to save additional trees and increase the vegetated buffer along the single-family residential area. The project team includes a landscape architect who designed a vegetated buffer along the property line that will reduce negative impacts on adjacent properties. The applicant will maintain and repair the existing fence between the subject and adjacent properties consistent with its obligations under the existing fence agreement. The project takes advantage of increased setbacks and vegetated buffer to help mitigate the change from multifamily to single family.

2. In all Planned Unit Developments, a density bonus up twenty percent (20%) over the allowable density may be granted in exchange for exceptional design quality or special project amenities.

Response: The focus of the Waverley Woods development is to design a sustainable apartment development that preserves and maintains as much of the wooded landscape and natural habitat as possible. To this end, the project team proposes to minimize the development footprint by removing a 5th building along the ridge and requesting a height increase for an additional floor of apartments. This 4th residential floor allows the project to maximize the density desired for the site, while minimizing the environmental impacts. In addition to the maintained walking paths through the wooded areas, the project also is proposing a large community garden in the central courtyard (available to all Waverley Greens residents), a pool, community kitchen,

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exercise room, and meeting spaces for teaching classes and community gatherings. The Waverley Greens owners are passionate about creating a sense of community and enriching the lives of their residents. These new spaces will facilitate an increase in the number and types of educational and community opportunities that can be provided to all their diverse residents. These new facilities will also allow Waverley Greens to expand their engagement with local community colleges who provide a variety of classes for residents, such as yoga.

3. All Planned Unit Developments will have area devoted to open space and/or outdoor recreational areas. At least half of the open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets.

Response: The proposed development will provide 54% vegetation on the site which is substantially more than the 15% code minimum. The development will maintain most of the vegetation as natural native growth with maintenance for invasive species, walking paths, open space, and community gardens.

4. All projects in Medium Density and High Density areas will have area devoted to open space and/or outdoor recreational areas. At least half of the open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets and parking areas, but may include private yards.

Response: See item 3 above. At least half of the open space and/or recreational areas will be of the same general character as the area containing dwelling units.

5. In all cases, existing tree coverage will be preserved whenever possible, and areas of trees and shrubs will remain connected particularly along natural drainage courses.

Response: A key design feature of the two Ridge Buildings A.1 and A.2 is the parking level located in the steep slope. The additional cost to excavate the rock and build this parking level allows for many existing trees to be saved on site since less area is required for surface parking. The project team has gone to great lengths to locate and design the buildings in an effort to minimize tree removal. The project will preserve the existing tree coverage to the extent possible and 54% of the site to be vegetated open space set aside for scenic, landscaping, or open recreational purposes.

6. Specified trees will be protected during construction, in accordance with conditions attached to building permits.

Response: An arborist is part of the project team and has provided tree protection details to be included in the construction drawings for the contractor. These details will be reviewed and approved by the City during the permitting phase. As part of the City's Conditions of Approval, an arborist will be required to inspect the construction site to verify tree protection measures are in conformance with City requirements.

7. Sites within open space, natural hazard or natural resource areas will be protected according to specifications in the Natural Hazard and Natural Resources Elements.

Response: The open space, natural hazard or natural resource areas will be protected according to these specifications and this information will be included in the construction documents to ensure all requirements are met.

Objective #4 — Neighborhood Conservation

To maximize the opportunities to preserve, enhance and reinforce the identity and pride of existing well-defined neighborhoods in order to encourage the long-term maintenance of the City's housing stock.

Policy 5. Areas may be designated High Density Residential based on the following policies:

a. The predominant housing types will be multifamily units.

Response: The proposed development is providing the exact type of housing that the City has mandated for High Density Residential areas. The additional height and length for two of the buildings is required to provide the number of rental units necessary for a feasible project to be built on this site given the multiple constraints.

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b. High Density Residential areas shall be located either adjacent to or within close proximity to the downtown or district shopping centers, employment concentrations and/or major transit centers or transfer areas.

c. Access to High Density areas should be primarily by major or minor arterials.

Response: The proposed development meets all of the criteria associated with High Density Residential because it is a higher density multi-family development that is located near major transit corridors, close to downtown Milwaukie and only a few miles from Portland.

Objective #5 — Housing Choice

To continue to encourage an adequate and diverse range of housing types and the optimum utilization of housing resources to meet the housing needs of all segments of the population.

*While the predominant housing type is expected to continue to be single family detached, **the City will encourage a wide range of housing types and densities** in appropriate locations within individual neighborhood areas including duplexes, rowhouses, cottage clusters, accessory dwelling units, live/work units, **multifamily**, manufactured housing, and mobile home parks.*

Response: The proposed development is providing high density multifamily housing that will fulfill a need for high-quality apartments not currently available within the City. Waverley Greens often has a waitlist and does not anticipate any issue renting these premier units.

Recreational Needs Element

Objective #4 — Private Recreation Opportunities

To ensure that new development does not overburden existing recreation facilities

Response: The proposed development includes walking paths, river overlooks, a pool and community centers. These facilities are available to all Waverley Greens apartment residents reducing the need for residents to use City recreational facilities

Willamette Greenway Element

Goal: To protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

Objective #3 — Land Use

To encourage the cooperation of public and private ownerships to provide compatible uses within the Willamette Greenway.

*Policy 3. Within the Willamette Greenway Boundary, a Willamette Greenway **Conditional Use Permit must be obtained prior to any new construction** or intensification of an existing use. This policy applies until the Greenway Design Plan is adopted.*

Response: The proposed development will conserve and maintain the Willamette Greenway area by utilizing a larger building footprint and taller buildings to maximize the density and minimize the need to remove or disturb natural resources located on site. The proposed development is going through the Conditional Use permit review process as part of the Planned Development Review.

Objective #4 — Recreation

To maximize the recreational use of lands within the Willamette Greenway boundaries and the related waterways.

Response: The proposed development will maximize the recreational use of the site by providing walking paths, river overlooks, and a community pool for all Waverley Greens residents. Also, the project will include a landscaped sitting area at the entrance off Waverley Court which will provide river views.

Objective #5 — Public Access and View Protection

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To provide, improve, and maintain public access and visual access within the Greenway and to the Willamette River and Kellogg Lake.

*Policy 3. The City will evaluate all proposals within the vicinity of the Greenway for their effect on access to the **visual corridors to the Willamette River and Kellogg Lake.***

Response: The design team has done renderings of the site looking from the Willamette River (refer to A6.3 VIEWS FROM RIVER) and these indicate that the development will be partially visible when looking from the east and not visible when looking from the north. The dense trees to the south and west of the site will obscure the development. The proposed development will provide a majority of units with views of the Willamette River and include walking paths and overlooks that also provide residents with visual access to the river, something that is not possible now due to the dense vegetation on the site.

Neighborhood Element

Goal: To preserve and reinforce the stability and diversity of the City's neighborhoods in order to attract and retain long-term residents and ensure the City's residential quality and livability.

Objective #1 — Neighborhood Character

To maintain the residential character of designated neighborhood areas.

Policy 5. Encourage differing residential types to develop in like areas, and, provide buffers where differing types do intermix.

Response: The proposed development is located at the intersection between R-10 single family housing and R-2 multifamily apartment residences. By providing larger setbacks beyond the code minimum, the project is creating more of a buffer between the different housing types. The project team includes a landscape architect and is coordinating with adjacent property owners to develop a strategy for vegetated buffers.

Objective #2 — Neighborhood Needs

To meet the needs of neighborhood areas for public facilities and services.

Neighborhood Area 1

*Neighborhood Area 1 has the most diverse land use pattern of any Milwaukie neighborhood. Map 2 shows these separate areas. To the north is the Milwaukie Industrial park, separated from downtown Milwaukie by the Milwaukie Expressway. West of the industrial park is the Waverly Heights residential area containing a mix of large single family homes and **high density apartments**. Many of these housing units have views to the Willamette River or across the City. Immediately east of downtown is an area containing several schools surrounded with single and multifamily residences. Lake Road runs to the southeast, bisecting a largely single family area containing some open space and several small farms. Island Station, lying directly south of downtown across McLoughlin Boulevard is one of the oldest residential areas in the City.*

Guideline #2 — Multifamily Housing

To ensure that new multifamily housing does not significantly alter the visual character of existing single family areas, and does not create problems of drainage, traffic, noise, and light to adjacent properties. Important considerations regarding multifamily development are:

- *Projects should not be located randomly throughout the neighborhood.*

Response: The proposed development is adjacent to other multifamily apartment buildings and borders single family residences. The project will serve as a transition between the housing types and will take advantage of increased setbacks and vegetated buffer to help mitigate the change from multifamily to single family.

- *Projects should have close proximity to major streets and public transit, and should not cause through traffic in the neighborhood*

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Response: The proposed development is adjacent to similar apartment communities and is not routing traffic through single family residential neighborhoods. Traffic will pass by multifamily apartment residences on the way to the property.

- *Projects should have adequate off-street parking*

Response: The proposed development is locating the majority of tenant parking below each building (108 covered spaces) with limited surface parking for visitors (30 spaces). In total, the 138 off-street parking spaces exceeds the minimum parking requirement of 125 spaces.

- *Projects should be designed to be aesthetically pleasing*

Response: The buildings in the development were designed with entrances set back at the middle of the buildings to break up the façade into two smaller masses. The project seeks to provide condominium-quality apartments for tenants who desire premium features and amenities. Large windows and high-quality materials will make these buildings the premier rental residences in the City.

- *A design review process should be developed and implemented with provisions for local neighborhood input*

Response: The proposed development was presented to the Historic Milwaukie NDA in July 2020. The Planning Commission held a public hearing for the proposed development and opportunity for public input was provided. After receiving comments from the October 27, 2020 public hearing, the owners have been working with neighbors to address their concerns.

Guideline #3 — Residential Open Space

To ensure that new residential development, especially multifamily development, provides adequate open space and facilities for the children expected in the project, and provides open space and landscaping to create an aesthetically pleasing transition to adjacent properties.

Response: The proposed development will feature several walking paths through the wooded areas on site and a Community Garden. The project is planning to preserve the natural forested area to the extent possible and allow exploration with paths rather than develop significant landscaped areas.

Guideline #6 — Willamette Greenway

To maintain the present Willamette Greenway boundary and establish the Willamette Riverfront as a focal point for the community.

Response: The proposed development is located with the Willamette Greenway and will provide better access to views of the river from the property. Tenants will enjoy views from their residential units and all Waverley Greens residents will be able to access a series of walking paths and river overlooks on the property. Also, the project will include a landscaped sitting area at the entrance off Waverly Court which will provide additional river views. For additional information on compliance, refer to section 19.401 Willamette Greenway Zone WG in Planned Development Preliminary Submission dated July 28, 2020.

Guideline #8 — Walkways

To ensure adequate walkways are provided in both old and new residential areas, and once installed, are adequately maintained. Homeowners should assume the major responsibility to maintain and upgrade walkways on their property.

Response: The proposed development will be making improvements along Waverly Ct that provide additional sidewalks and cross walks that will connect to the existing Waverley Greens apartments. This will allow for a pedestrian connection to the major arterial roads and public transportation. Also, the project will include walking paths within the wooded areas of the site that take advantage of views of the Willamette River.

Chapter 5 — Transportation, Public Facilities and Energy Conservation

Objective #6 — Drainage and Streets

To improve the storm drainage and collection system within the City in order to alleviate seasonal flooding problems and to allow for permanent street and sidewalk improvements.

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1. *New and redevelopment will be designed to limit storm drainage runoff outside project boundaries and will provide a storm drainage and collection system within the project area boundary*

Response: The proposed development will direct all stormwater from impervious surfaces, including roofs and paving, and route to a lower level stormwater facility that collects and detains the storm water and slowly releases it to ultimately the existing underground storm waters system in Lava Drive.

Objective #7 — Solid Waste

To continue to ensure that solid waste services are made available to City residents.

1. *The City will continue to support the collection of solid waste and recyclable materials through private operators.*

Response: Trash and recycling collection will be provided in the trash/recycling room located on the parking level of each building. Residents will be responsible to bring their waste to that location and maintenance staff will collect and transport the material off site.

Energy Conservation Element

To conserve energy by encouraging energy efficient land use patterns and transportation systems, and by encouraging the construction industry and private homeowners to participate in energy conservation programs.

Objective #1 — Land Use

To encourage an energy efficient land use pattern.

- *Increased density and intensity of residential development in areas adjacent to transit corridors, employment and commercial centers.*

Response: The proposed development is located near major transit corridors, close to downtown Milwaukie and only a few miles from Portland.

Objective #2 — Transportation System

To encourage an energy efficient transportation system.

Response: The proposed development will include electrical vehicle charging stations on the parking levels.

Objective #4 — Site and Building Design

To encourage site design practices resulting in energy efficiency.

2. *The City will encourage street and site design which allows the orientation of structures to take maximum advantage of solar energy potential. Access to sunlight will be safeguarded.*

3. *The City will encourage the innovative use of alternative energy sources such as solar, wind, etc., on all existing and new residential, commercial and industrial developments.*

Response: Building orientation and solar access along with passive strategies have been the first step of our design analysis. A preliminary solar study has already been completed, and the owners are committed to installing solar panels on the roofs. Each unit is provided with operable windows and overhangs, and sunscreens will be studied to maximize efficiency as part of the building design. Retaining and replanting the surrounding tree canopy is a key component to maintaining a cool site that takes advantage of the breezes flowing down the Willamette River and through the tree canopy to provide passive cooling for the units.

Objective #5 — Coordination

To participate in local, regional and state-wide energy conservation programs.

4. *The City will encourage residents and local businesses to conserve energy, to use renewable resources, and to recycle materials. The City will coordinate its efforts with those of local organizations, special districts, utility companies and State, regional and federal agencies.*

Response: The project has already worked with the Energy Trust of Oregon during the Development Planning phase and has consulted with an energy and solar consultant to discuss energy efficiency strategies and propose a preliminary solar design for the development.

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Item 4) Tree Removal within Willamette Greenway Zone

Response: The project team reviewed multiple building layouts within the site to minimize tree removal. The final design represents the design team's best effort to reduce the total building footprint while providing the unit density that will allow the project to be financially feasible given the high construction costs associated with building on a steep slope. A majority of this cost is the parking level built into the slope that allows trees to be saved in areas that would have been utilized for surface parking. An arborist was involved from the beginning of the planning process to survey the site and provide a tree assessment that would assist the design team in locating the buildings while minimizing impacts to trees. The arborist has also provided tree protection details that will provide direction for the contractor to adequately protect all existing trees that will remain. The owners have had this property in their family for decades and appreciate the natural beauty of these wooded areas. They take this issue very seriously and have committed significant resources to maintaining and protecting the existing trees. After discussions with adjacent property owners, the owners agreed to shift Building A.2 6-feet away from the property line to save additional trees and increase the vegetated buffer along the single family residential area. Section 19.401.8.B.3.C *Grading or tree removal is allowed in conjunction with establishing a permitted use. Only the area necessary to accommodate the permitted use shall be altered.* The City will have multiple opportunities to review the design and approve the building permits associated with each phase.

Item 5) Combined Preliminary and Final Development Plan Approval and concurrent Land-use Applications

Response: The City has previously determined that an applicant can apply for both preliminary and final planned development approval as a consolidated process and can combine a land division application with the planned development/zone change applications. The City adopted this position for the Kellogg Creek Planned Development (PD-2017-001), which proposed a 92-unit planned development that included a request for both preliminary and final planned development approval, zone change, subdivision and related approvals. We attached a copy of the staff report to the City Council, dated August 29, 2017, in which both the City staff and the Planning Commission recommended approval. The applicant subsequently withdrew the application on January 22, 2018, before the City Council could render its decision, but this application demonstrates that there is City precedent for allowing an applicant to apply for both preliminary and final planned development approval and combine a land division (subdivision) application with the planned development/zone change applications.

Supplemental Drawings:

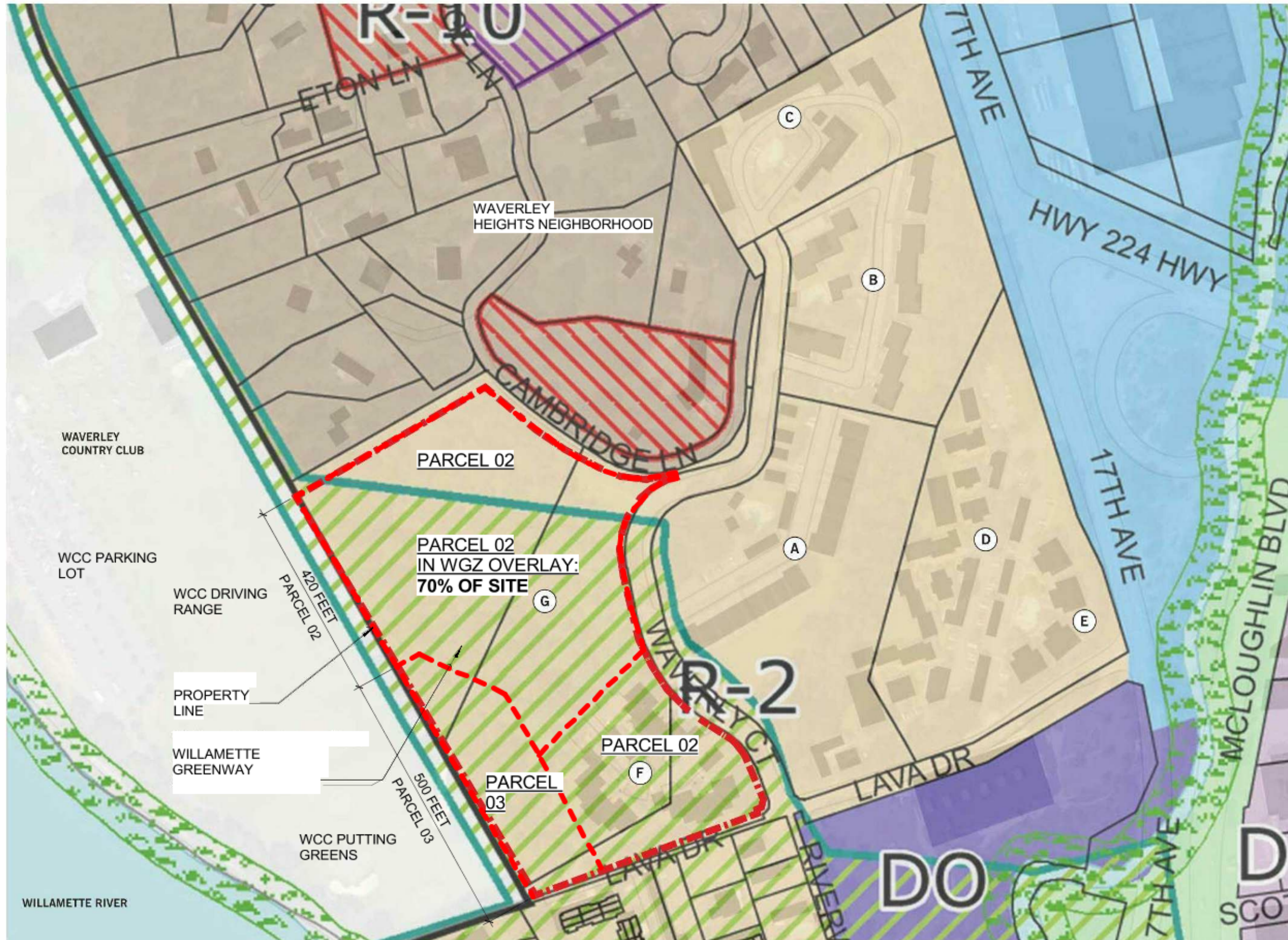
Attached are revised and/or new Waverley Woods PD graphic plans and sections prepared to support the written responses provided by YGH and the owners as follows:

Page:

1. **Zoning Plan** showing 70% of Parcel 02 project site to be within Willamette Greenway Zone with 30% excluded along northern portions of the site abutting the Waverly Heights neighborhood. The plan also notes the 920 ft. common property line between the Waverley Country Club (WCC) and the project is divided into two segments. 420 ft. of Parcel 02 frontage is the subject of this PD request. The remaining 500 ft. of Parcel 03 frontage is not subject to the PD request and is not planned for development.
2. **Site Plan** showing overall 3-phase project on Parcel 02. The plan shows Building A.2, part of Phase 02 in the PD plan moved 6 ft. further from the property line abutting Waverley Heights neighborhood residences. The shift in building siting will reduce visual impact to adjoining properties as well as reduce shadow impact. The 6 ft. shift in Building A.2 will also enable retention of additional existing trees in the enlarged buffer zone.
3. **Site Plan** showing approximate residences and setbacks with Building A.2 moved 6 ft. away from property line. The overall distances between additional residences to the north are also shown in relation to Phase 03 Buildings B.1 and B.2 which remain unchanged in site location.
4. **Site Plan** showing site perimeter and forest buffer zone (with Building A.2 moved 6 ft. away from property line. The resulting buffer zone area equates to 40% of the site which will not be disturbed by construction and will be maintained as a forest reserve area.

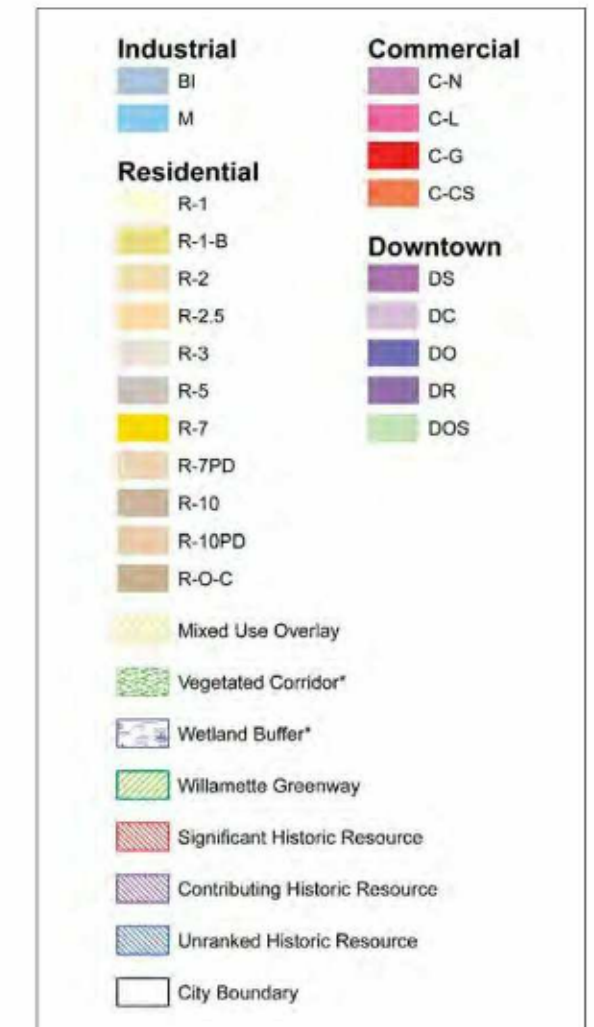
ATTACHMENT 4

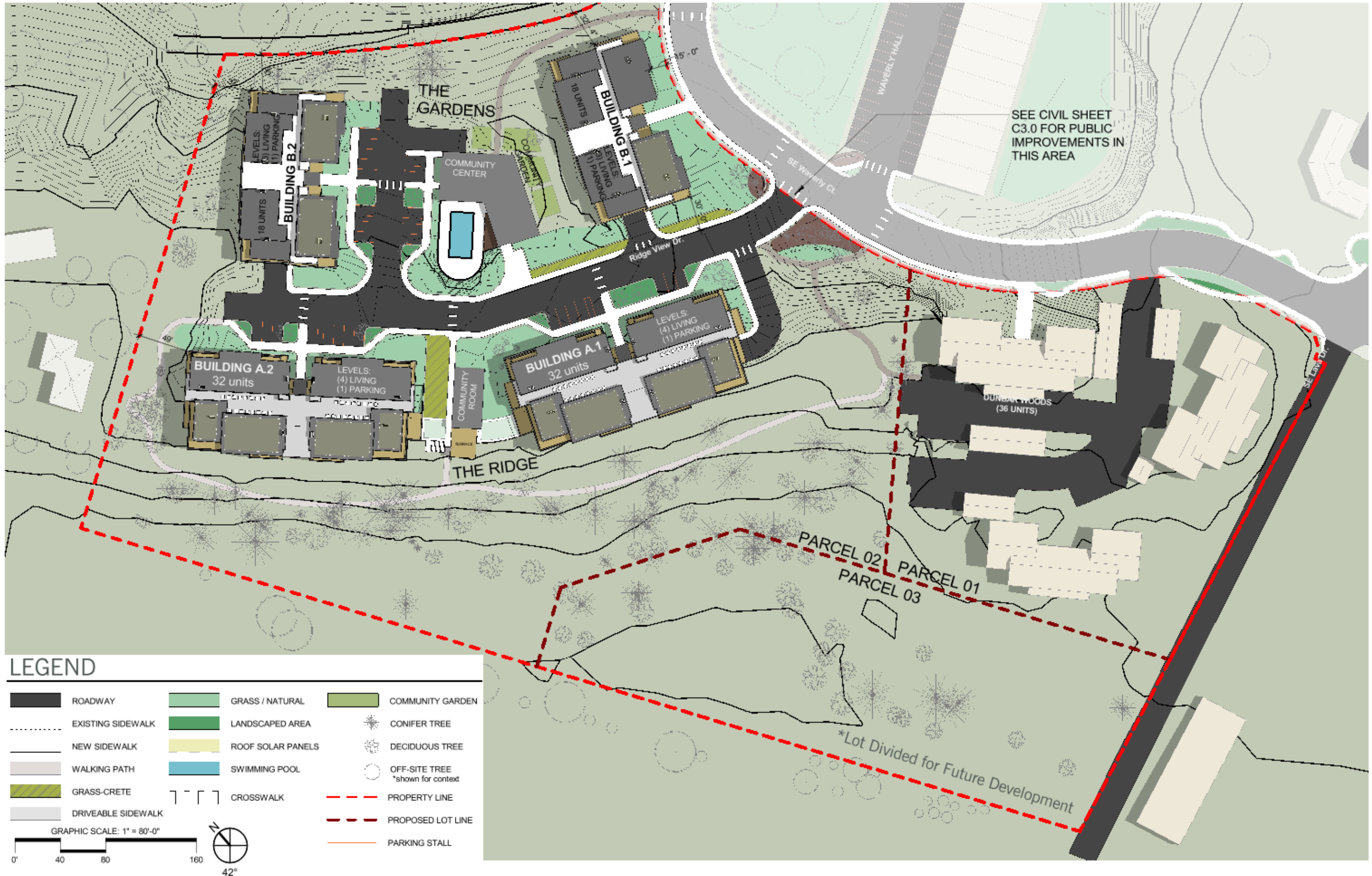
5. **Building Sections** showing Ridge Building calculated height limits to be 8 ft. 5 in. above the Willamette Greenway Zone height limit.
6. **Solar shading studies** showing existing and new development conditions at 11:30 am on the June 21 Summer Solstice. The studies, completed with accurate 3-dimensional computer modeling, **show no impact by the project development to adjacent properties.**
7. **Solar shading studies** showing existing and new development conditions at 11:30 am on the December 21 Winter Solstice. The studies also using 3-dimensional computer modeling show existing modeled tree shadows with darker residence and new development shadows. **The shadow impact of the Phase 02 Building A.2 shows minor shading of the adjacent residence** (at the entry porch and garage area) at the point of maximum winter solar shadows.



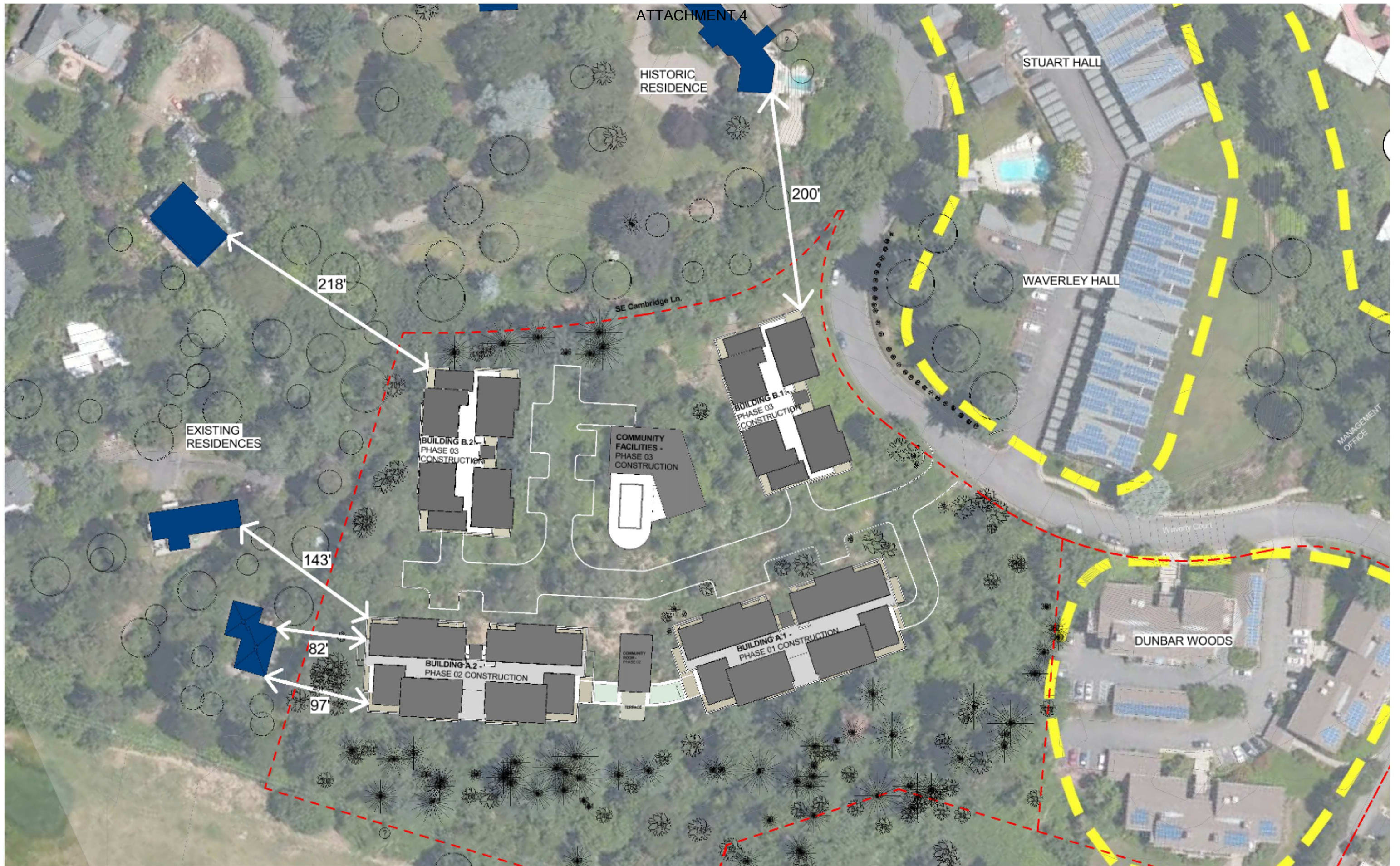
Communities

- (A) Waverley & Stuart Hall
- (B) Dundee
- (C) The Highlands
- (D) Banbury
- (E) Stonehaven
- (F) Dunbar Woods
- (G) Waverley Woods (proposed)



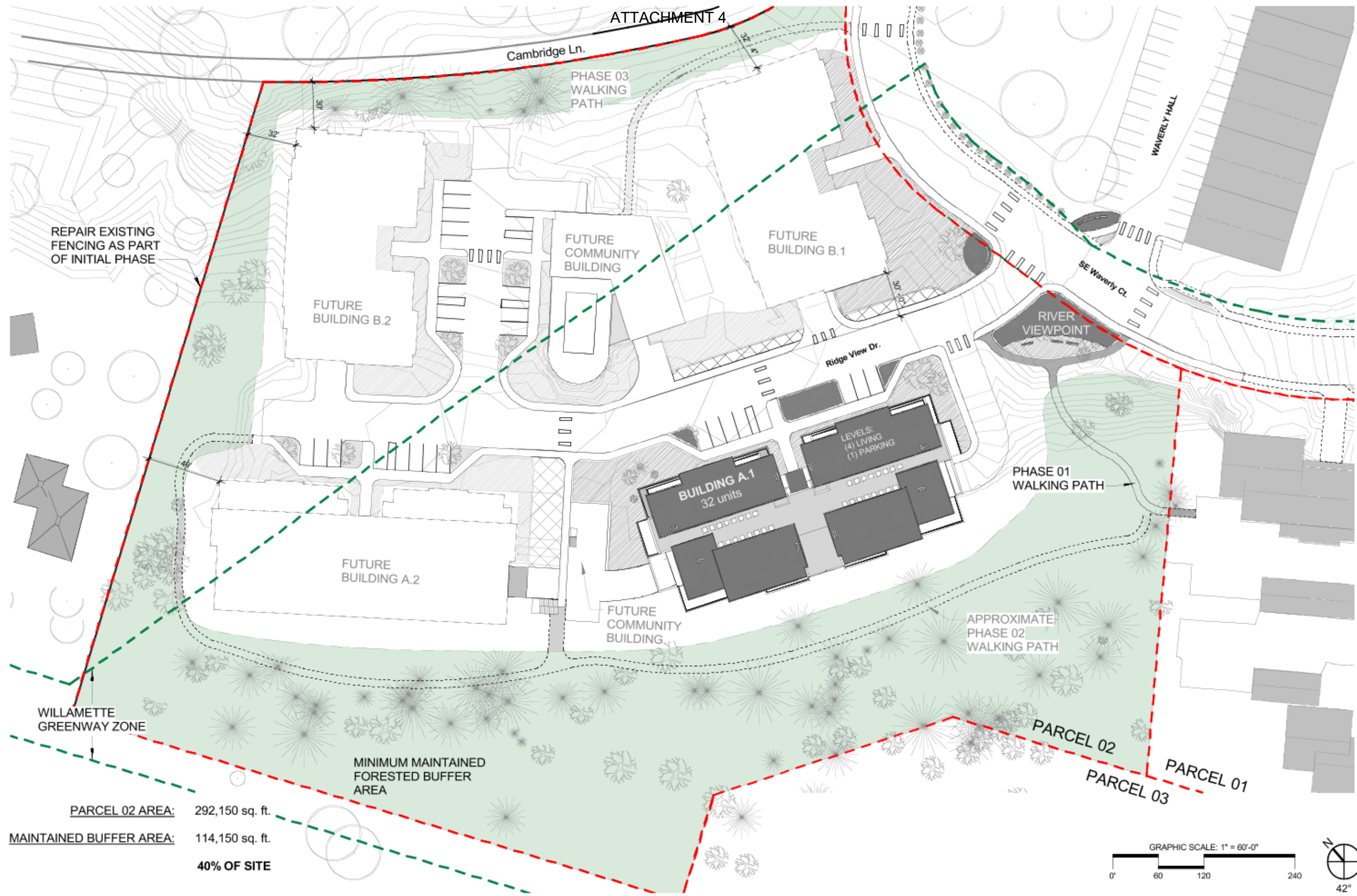


2 - SITE PLAN - SHOWING 3 PHASE PROJECT WITH BUILDING A.2 (PHASE 02) SHIFTED 6' FURTHER FROM PROPERTY LINE

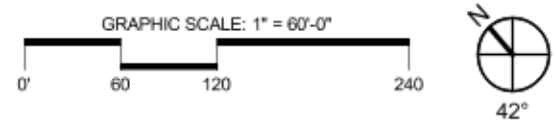


3 - SITE PLAN SHOWING PROXIMATE RESIDENCES AND SETBACKS WITH 6' SHIFT OF BUILDING A.2

11/10/2020



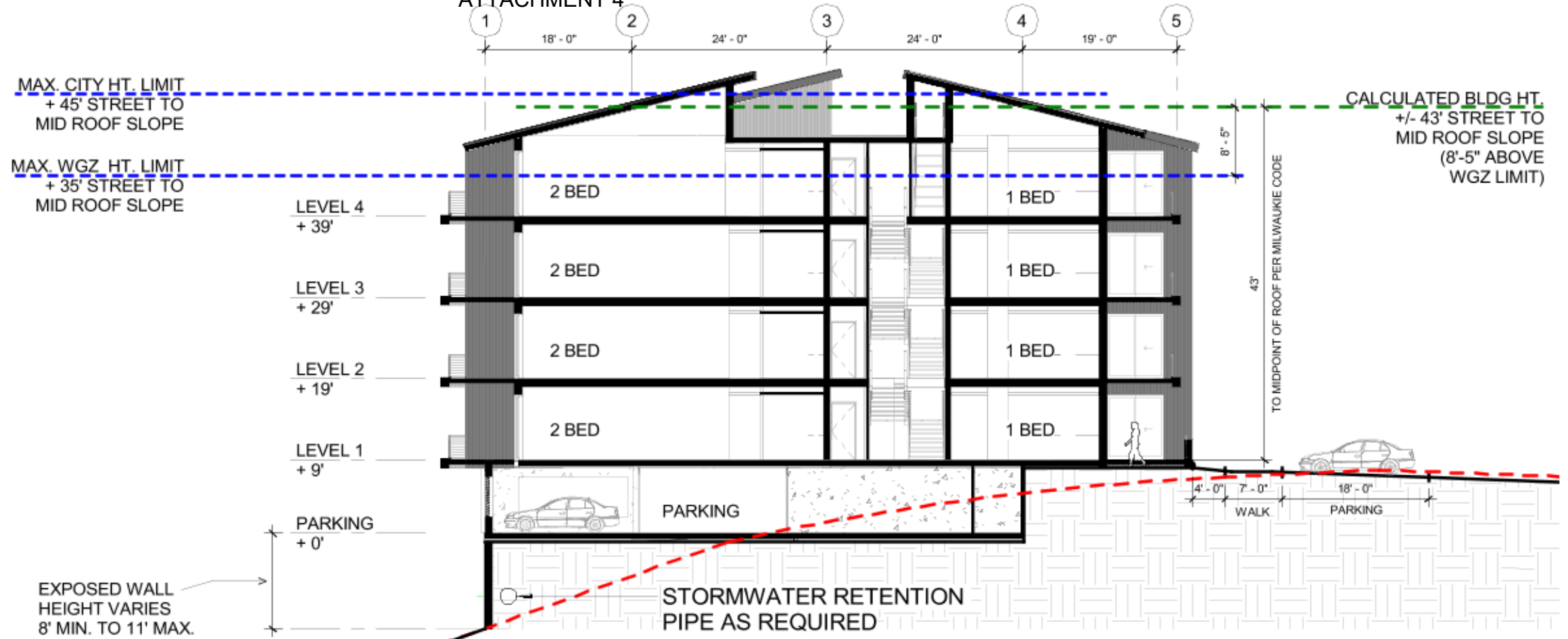
PARCEL 02 AREA: 292,150 sq. ft.
MAINTAINED BUFFER AREA: 114,150 sq. ft.
40% OF SITE



4 - SITE PLAN SHOWING PRESERVED FOREST BUFFER ZONE WITH 6' SHIFT OF BUILDING A.2

11/10/2020

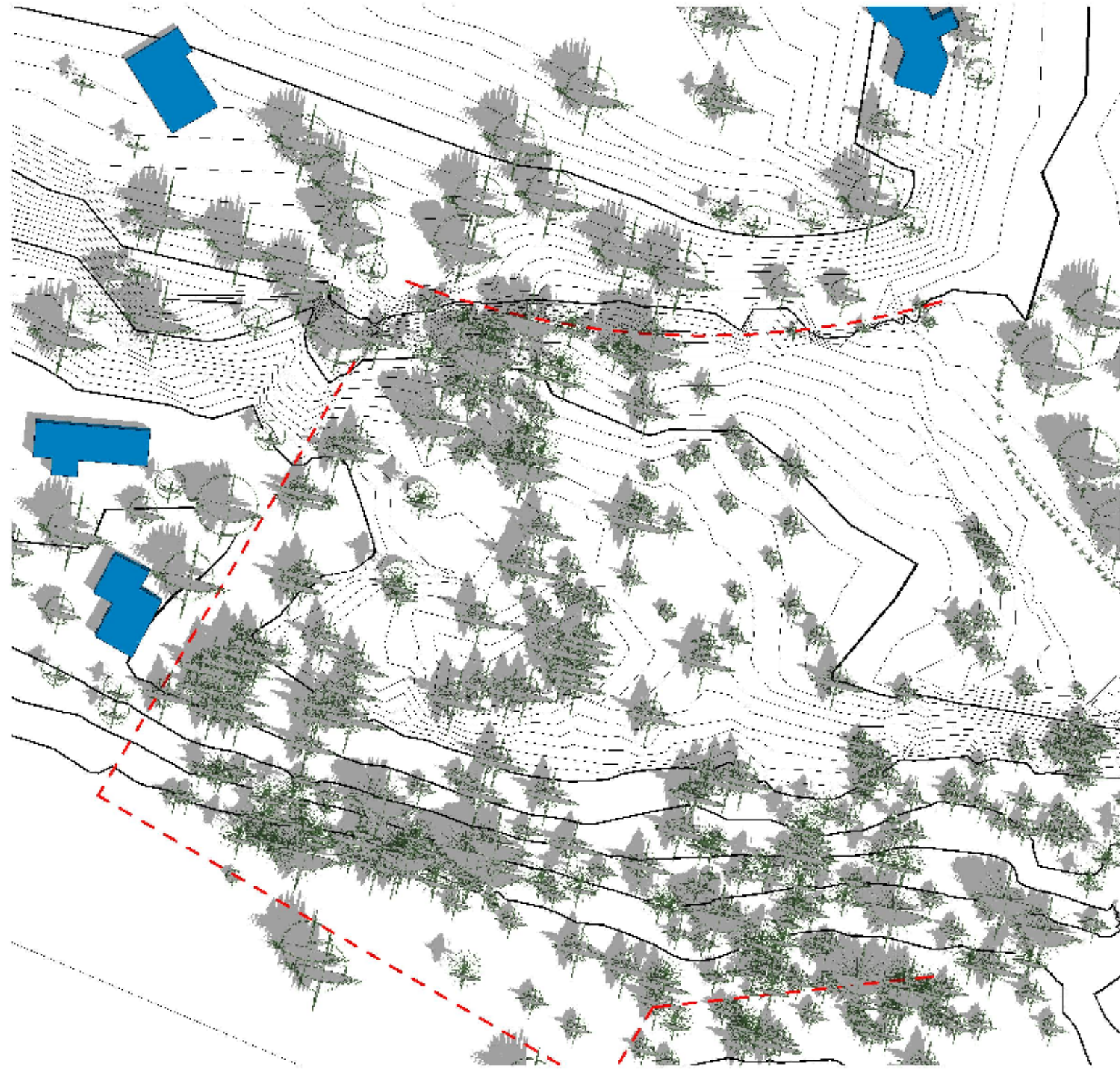
ATTACHMENT 4



1 BUILDING A.1 (A.2 SIM) - SECTION DIAGRAM
 1/16" = 1'-0" --- EXISTING TOPOGRAPHY



2 COMMUNITY FACILITIES SECTION
 1/32" = 1'-0"

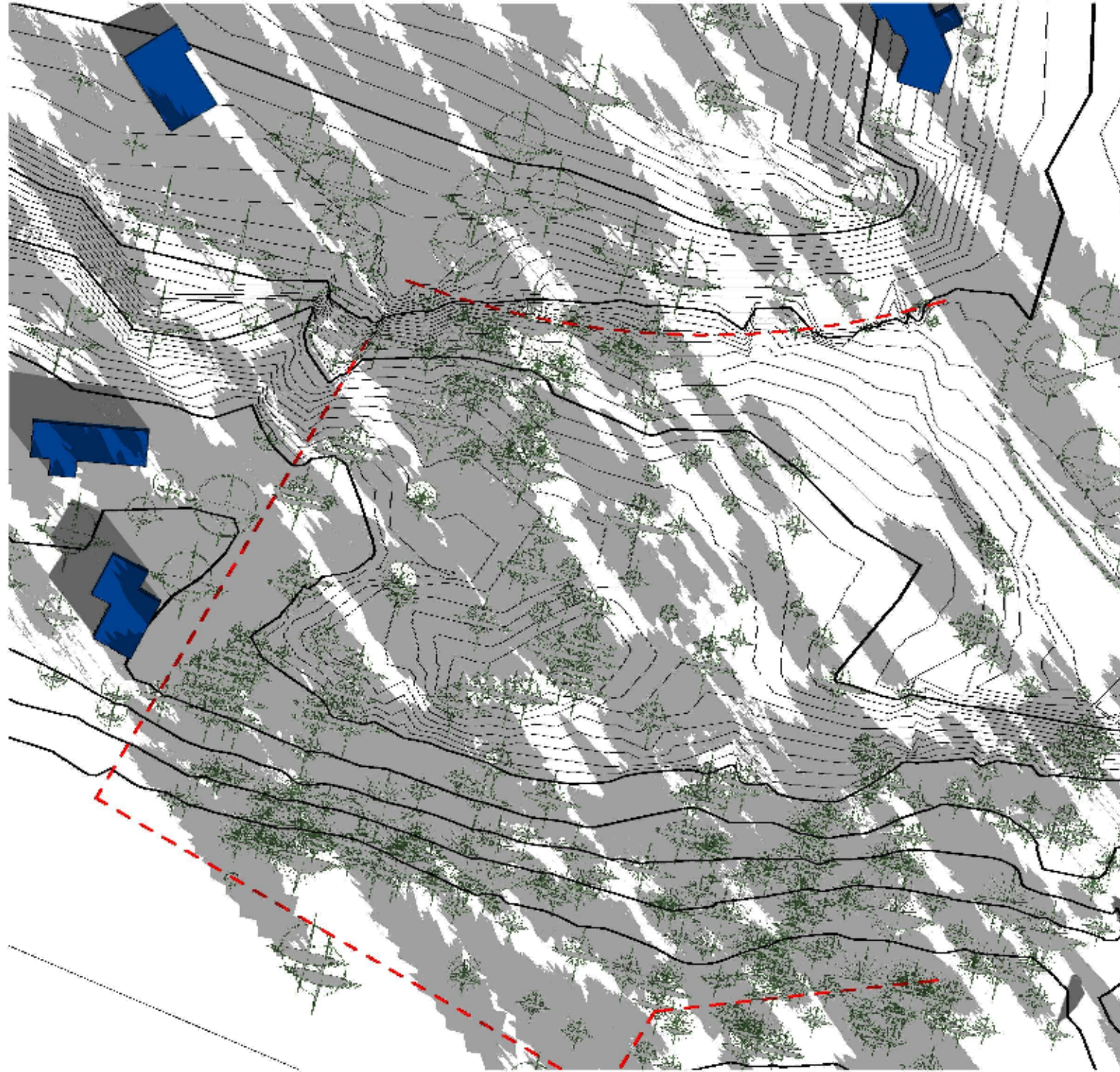


1 EXISTING CONDITIONS - SUMMER SOLSTICE SUN AT 11:30 AM
NTS

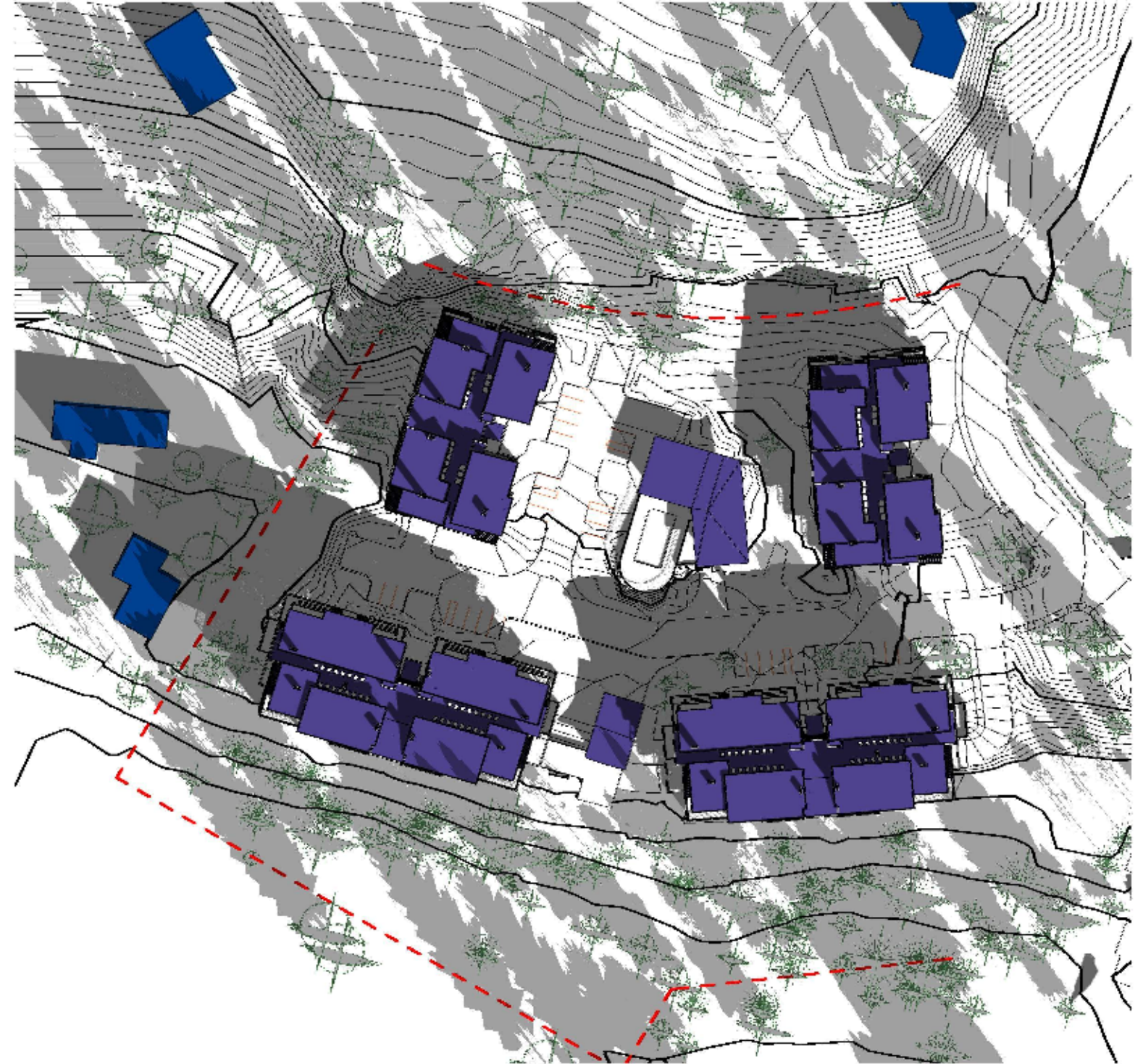


2 NEW DEVELOPMENT - SUMMER SOLSTICE SUN AT 11:30 AM
NTS





1 EXISTING CONDITIONS - WINTER SOLSTICE SUN AT 11:30 AM
NTS



2 NEW DEVELOPMENT - WINTER SOLSTICE SUN AT 11:30 AM
NTS





CITY OF MILWAUKIE
COUNCIL STAFF REPORT

To: Mayor and City Council

Date: August 29, 2017, for September 5, 2017, Public Hearing

Through: Ann Ober, City Manager

Reviewed: Denny Egner, Planning Director

From: Brett Kelper, Associate Planner

Subject: **Kellogg Creek Planned Development**

ACTION REQUESTED

Adopt the proposed ordinance found in Attachment 1 regarding the proposed 92-unit planned development subdivision on the Turning Point Church site at 13333 SE Rusk Rd (land use application master file #PD-2017-001), including the Final Development Plan and Program found in Attachment 1-b. The action would change the zoning map to add the Planned Development designation to the subject property as shown in Attachment 1-d.

In addition, adopt the Final Decision and Order presented in Attachment 2 to approve the applications for the proposed subdivision, natural resource review, transportation facilities review, variance request, and minor modification to a community service use, as addressed in the recommended Findings and Conditions of Approval found in Attachments 1-a and 1-c, respectively.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

No City Council action or discussion has occurred. The Council is the final decision-maker for Planned Development projects. Planning Commission review of the project to date is summarized below.

- **May 23, 2017** – The Planning Commission opened the public hearing for PD-2017-001 and heard presentations from City staff and the applicant. The public testimony portion of the hearing was opened, but the hearing was continued due to the lateness of the hour and the presence of many people waiting to testify. (<https://www.milwaukieoregon.gov/planning/planning-commission-170>)
- **May 25, 2017** – At a special session, the hearing was reopened to complete the public testimony and begin Commission deliberations. The Commission confirmed that it preferred the applicant's revised site plan, requested more information about several items, and continued the hearing again. (<https://www.milwaukieoregon.gov/bc-pc/planning-commission-special-session>)
- **June 27, 2017** – At the applicant's request, and without any further deliberation, the Commission continued the hearing to July 25, 2017. (<https://www.milwaukieoregon.gov/planning/planning-commission-172>)
- **July 25, 2017** – The Commission re-opened the hearing on July 25, took additional public testimony on the new information, deliberated, and voted 3-1 to recommend that City Council approve the project with the revised site plan and recommended conditions of approval. (<https://www.milwaukieoregon.gov/planning/planning-commission-174>)

ANALYSIS

On August 17, 2017, City staff met with staff from the North Clackamas Parks & Recreation District (NCPRD) to discuss issues related to ownership and management of the open space tract. That conversation prompted staff to propose a few revisions to the Findings and Conditions that were

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recommended for approval by the Planning Commission. "Track Changes" (i.e., ~~strikeout~~/underline) versions of those documents are included as Attachments 3-a and 3-b, respectively.

See Attachment 4 for a report with background and analysis similar to that which was provided to the Planning Commission over the course of its three meetings.

BUDGET IMPACTS

A decision to approve the proposed planned development subdivision will result in the addition of 92 new housing units to the City's various infrastructure systems. System Development Charges (SDCs) will be collected as per City policy to address future needed improvements to the City infrastructure. The establishment of new housing units on the previously underdeveloped site will increase tax revenues from the subject property.

WORKLOAD IMPACTS

The proposed development will not disproportionately affect City staff workload compared to other new development projects. The processes for final plat, development review and permitting, and monitoring of construction of public and private improvements will be proportional to the scale of the proposed development.

COORDINATION, CONCURRENCE, OR DISSENT

As per the standard land use referral and review process, various City departments and other agencies have had an opportunity to review and comment on the proposed development. Comments on the application have been provided by the City Engineering Department, City Public Works Department (Stormwater Division), Clackamas Fire District #1, Clackamas County Department of Transportation and Development, North Clackamas Parks and Recreation District, Metro, Oregon Department of Transportation, and Oregon Department of Fish and Wildlife. In addition, comments have been received from the Lake Road Neighborhood District Association, Oak Grove Community Council, and North Clackamas Urban Watersheds Council. Comments have been incorporated into the recommended findings and conditions as appropriate.

STAFF RECOMMENDATION

Adopt the proposed ordinance found in Attachment 1 to approve the proposed final development plan as recommended by the Planning Commission and with modified Findings and Conditions as presented in Attachments 3-a and 3-b, respectively; and to change the zoning map to add the Planned Development designation to the subject property.

In addition, adopt the Final Decision and Order presented in Attachment 2 to approve the applications for the proposed subdivision, natural resource review, transportation facilities review, variance request, and minor modification to a community service use, as addressed in the recommended Findings and Conditions of Approval found in Attachments 1-a and 1-c, respectively.

ALTERNATIVES

1. Approve the proposed planned development with modifications, including an adjustment in the number of units or other specific details. Such modifications need to be read into the record and incorporated into the Findings and Conditions.
2. Continue the hearing to allow time for the provision of additional information (if needed) to Council and/or for additional public testimony.
3. Continue consideration of the proposal and refer the application back to Planning Commission with recommendations for amendment.
4. Deny the application, ending the hearing process.

ATTACHMENT 4

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early CC Mailing	Public Copies	E- Packet
1. Ordinance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
a. Exhibit A – Findings in Support of Approval (<i>clean version</i>)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Exhibit B – Final Development Plan and Program	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
1) Attachment 1 – Development Plan Set	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
a) C000 Cover Sheet			
b) C100 Existing Conditions			
c) C101 & 102 Tree Protection & Removal Plan			
d) C200 Preliminary Lot Line Adjustment			
e) C201 Preliminary Plat			
f) C202 Typical Street Sections			
g) C300 Grading Plan			
h) C400 Composite Utility Plan			
i) C500 Public Improvement Plan			
j) L100 & 110 Landscape Plan & Enlargements			
k) A100 Building Plans & Elevations			
l) A2, A4, & A6 Alley-facing unit plans			
m) 2.0, 4.0, 6.0, 7.0, & 7.1 Street-facing unit plans			
c. Exhibit C – Conditions of Approval (<i>clean version</i>)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Exhibit D – Existing and Proposed Zoning	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Final Order			
3. Track Changes Versions (<i>modified after July 25 PC hearing</i>)			
a. Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Conditions of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Background and Analysis Report	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. Applicant's Narrative and Supporting Documentation (<i>all materials received July 11, 2017, unless otherwise noted</i>)			
a. Narratives	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
1) Planned Development, Variance, Zone Change			
2) Minor Modification to Community Service Use, Subdivision Preliminary Plat, Transportation Facilities Review, Natural Resources Review			
b. Exhibit A – Development Plan Set (<i>same as Att. 1-b(1), above</i>)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Exhibit B – Preapplication Notes from August 2016	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Exhibit C – City Planning Process Memo, dated October 4, 2016	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
e. Exhibit D – Wetland Delineation Report by Pacific Habitat Services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
f. Exhibit E – Drainage Report prepared by DOWL	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
• Exhibit E-1 – Stormwater Response Memo from DOWL (<i>received April 7, 2017</i>)			
• Exhibit E-2 – Floodplain Analysis Memo from DOWL, dated January 23, 2017 (<i>received April 7, 2017</i>)			
• Exhibit E-3 – Floodplain Mitigation Exhibit (<i>received July 17, 2017</i>)			

ATTACHMENT 4

	Early CC Mailing	Public Copies	E- Packet
g. Exhibit F – Geotechnical Evaluation prepared by GEO Consultants Northwest	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
h. Exhibit G – Traffic Impact Study prepared by Kittleson & Associates (including appendices and supplemental memo dated June 12)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
i. Exhibit H – Neighborhood Meeting Materials prepared by DOWL	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
j. Exhibit I – Arborist Report prepared by Morgan Holen & Associates (including supplemental memo dated June 11)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
k. Exhibit J – Natural Resource Review report prepared by Pacific Habitat Services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
l. Exhibit K – Memo from Johnson Economics	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
6. Comments Received as part of Planning Commission hearing			
a. Michelle Wyfells, Metro (April 20, 2017)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Matt Amos, Clackamas Fire District #1 (April 25 & May 4)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Rob Livingston, City Public Works Dept. (April 25 & 27)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Paul Hawkins, Lake Road NDA (April 28)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
e. Rebecca Hamilton, Metro (May 1)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
f. Joseph Edge, Oak Grove Community Council (May 1)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
g. Sarah Hartung, ESA (City consultant) (May 1)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
h. Marah Danielson, ODOT Region 1 (May 3)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
i. Alex Roller, City Engineering Dept. (May 5)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
j. Kenneth Kent, Clackamas County Engineering (May 8)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
k. Kathryn Krygier and Tonia Williamson, North Clackamas Parks & Recreation District (May 11)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
l. Laura Hickman, area resident (May 11)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
m. Ray Olma, area resident (May 15)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
n. Jamie Marshall, area resident (May 15)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
o. Melanie Frisch, area resident (May 15)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
p. Alex Roller, City Engineering Department, revised memo (May 16)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
q. Dan Sweet, area resident (May 18)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
r. Vince Alvarez, Lake Road NDA (May 18)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
s. Bruce Reiter, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
t. John Green-Hite, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
u. Joan Young, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
v. Howard Lanoff, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
w. Georgia Bogner, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
x. Chris Runyard, ecological restoration specialist (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
y. Linda Huntley, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
z. Jennifer Stipetic, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
aa. Terry Gibson, North Clackamas Urban Watersheds Council (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

ATTACHMENT 4

	Early CC Mailing	Public Copies	E-Packet
bb. Linda Huntley, area resident (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
cc. Sara Miller, area resident (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
dd. Dick Shook, area resident (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ee. Matt Menely, area resident (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ff. Laura Hickman, area resident (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
gg. Todd Alsbury, Oregon Department of Fish & Wildlife (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
hh. Lisa Kennedy, area resident (May 24)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ii. Sue Hayes, area resident (May 24)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
jj. Bev St. John, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
kk. Randy Day, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ll. Jarrod Allen, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
mm. Lois Keiser, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
nn. Ben Geertz, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
oo. Lois Herring, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
pp. Linda & Roger Huntley, area residents (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
qq. Joseph Edge, Oak Grove Community Council (May 26)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
rr. Chris Runyard, ecological restoration specialist (June 7)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ss. Kathryn Krygier, North Clackamas Parks & Recreation District (July 11)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
tt. Alex Roller, City Engineering Department, revised memo (July 18)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
uu. Marah Danielson, ODOT Region 1 (July 21)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
vv. Todd Alsbury, Oregon Department of Fish & Wildlife (July 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ww. Mat Dolata, DKS (City consultant) (July 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
7. Staff responses to Planning Commission questions between hearings	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
8. Minutes from May 23 Planning Commission meeting	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
9. Comments Received after Planning Commission hearing			
a. Kenneth Kent, Clackamas County Engineering (July 26)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Nancy Pierce, area resident (July 31)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Chris Runyard, ecological restoration specialist (Aug 25)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Mary Zellharie, area resident (Aug 28)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
e. Judy Sherley, area resident (Aug 28)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
f. Ed Hacmac, area business owner (Aug 28)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early CC Mailing = paper materials provided to City Council at the time of public notice 20 days prior to the hearing (August 16, 2017).

Public Copies = paper copies of the packet available for review at City facilities and at the City Council meeting.

E-Packet = packet materials available online at <https://www.milwaukieoregon.gov/citycouncil/city-council-regular-session-212>.

 CITY OF MILWAUKIE
COUNCIL **ORDINANCE No.**

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE FINAL DEVELOPMENT PLAN AND PROGRAM FOR THE KELLOGG CREEK SUBDIVISION (FILE #PD-2017-001) AND AMENDING THE CITY'S ZONING MAP TO ADD THE "PD" DESIGNATION TO THE SUBJECT PROPERTY AS SHOWN IN EXHIBIT D BELOW (FILE #ZA-2017-001).

WHEREAS, the approved final development plan and program will establish the standards and requirements for development within the Kellogg Creek subdivision; and

WHEREAS, the proposed amendments to the Zoning Map will result in residential development that is compatible with the surrounding neighborhood; and

WHEREAS, legal and public notices have been provided as required by law; and

WHEREAS, on July 25, 2017, the Milwaukie Planning Commission conducted a public hearing as required by MMC 19.1007.5 and adopted a motion in support of the final development plan and program and proposed amendments; and

WHEREAS, the Milwaukie City Council finds that the final development plan and program and proposed amendments are in the public interest of the City of Milwaukie.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Findings. Findings of fact in support of the final development plan and program amendments are adopted by the City Council and are attached as Exhibit A.

Section 2. Final Development Plan and Program. The final development plan and program for the Kellogg Creek subdivision are adopted by the City Council and are attached as Exhibit B.

Section 3. Conditions. Conditions of approval related to the final development plan and program are adopted by the City Council and are attached as Exhibit C.

Section 4. Amendments. The Milwaukie Zoning Map is amended as described in Exhibit D (Proposed Zoning Map Amendments).

Section 5. Acceptance of Open Space Dedication. On behalf of the City of Milwaukie, the City Council accepts the proposed dedication of the open space tract (Tract E), as shown on the final development plans attached as Exhibit B, and directs the City Manager to proceed with the necessary arrangements to complete the dedication.

Section 6. Effective Date. The amendments shall become effective 30 days from the date of adoption.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

ATTACHMENT 4

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Scott S. Stauffer, City Recorder

City Attorney

EXHIBIT A
Findings in Support of Approval
Master File #PD-2017-001
Kellogg Creek Planned Development

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, Brownstone Development, Inc., has applied for approval to create a 92-unit Planned Development subdivision on property currently addressed at 13333 SE Rusk Rd. The site is split zoned Medium Density Residential R-3 on the western half and Low Density Residential R-10 on the eastern half. The land use application master file number is PD-2017-001, with accompanying file numbers ZA-2017-001, S-2017-001, NR-2017-001, TFR-2017-001, VR-2017-003, and CSU-2017-001.
2. The subject property is comprised of a single lot that is the result of a recent lot consolidation and property line adjustment process (land use files PLA-2017-001 and LC-2017-001). Previously, the subject property was comprised of four lots totaling 17.55 acres, with the Turning Point Church located in the southeastern corner of the site and addressed as 13333 SE Rusk Rd. Three of the lots on the western side of the original property were consolidated, and the property line between this new lot and the remaining church lot was subsequently adjusted to accurately reflect the location of the church building and accompanying off-street parking areas. The resulting church site is approximately 3.7 acres, and the subject property being subdivided is approximately 13.8 acres.
3. The applicant has proposed to divide the subject property into 92 lots for 4-unit rowhouse development, with tracts for stormwater (3 facilities), open space (nearly 7 acres), a community garden, and a pedestrian connection to Kellogg Creek Drive along the eastern edge of the development. A network of new public streets will provide access to the new development, with two points of vehicle access to Kellogg Creek Drive and pedestrian and bicycle access to an existing sidewalk at the intersection of Rusk Road and Highway 224. Private alleys will provide additional access to the rear of some of the proposed rowhouses. Previously, the church site depended on an access through the subject property; access to the church site will be retained through one of the new public streets. The proposal includes a variance request for locating the driveway access for one of the proposed lots slightly closer to a street intersection than the City code allows.
4. Mount Scott Creek flows across the northern portion of the subject property, and a large wetland (approximately 0.7 acres) is located within the 100-year floodplain designated over most of the western half of the site. Water Quality Resource (WQR) and Habitat Conservation Area (HCA) designations exist around the creek and wetland, and portions of these natural resource areas will be disturbed by the proposed development. The applicant has proposed mitigation plantings within the WQR and HCA and to balance cut and fill within the floodplain. The proposal includes a variance request for configuring several of the new lots in such a way that there is little or no buildable area outside the WQR or HCA.
5. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1007 Type IV Review
 - MMC Section 19.311 Planned Development Zone (PD)
 - MMC Section 19.301 Low Density Residential Zones (including R-10)
 - MMC Section 19.302 Medium and High Density Residential Zones (including R-3)

- MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Title 17 Land Division
 - MMC Title 18 Flood Hazard Regulations
 - MMC Section 19.402 Natural Resources
 - MMC Chapter 19.500 Supplementary Development Regulations
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.904 Community Service Uses
 - MMC Section 19.911 Variances
 - MMC Chapter 19.1200 Solar Access Protection
6. The application submittal includes a proposed Planned Development, Zoning Map Amendment, Subdivision (preliminary plat), Natural Resource Review, Transportation Facilities Review, Variance Request, and minor modification to the church as an existing Community Service Use. Of all of the application components, the Planned Development and Zoning Map Amendment require the highest level of review (Type IV); as per MMC Subsection 19.1001.6.B, all are being processed with Type IV review.

The application has been processed and public notice provided in accordance with MMC Section 19.1007 Type IV Review. As required by MMC Subsection 19.1002.2, a preapplication conference was held on August 11, 2016. Public notice was sent to property owners and current residents within 500 ft of the subject property. MMC Subsection 19.1007.3.D requires a 400-ft radius for public notice, but the applicant requested a broader notice radius to correspond with the notice sent for the applicant's voluntary neighborhood meeting prior to submittal. As required by law, a public hearing with the Planning Commission was opened on May 23, 2017; continued to May 25; continued again to June 27 (where it was only nominally re-opened); and continued again to July 25, 2017. The Planning Commission hearing resulted in a recommendation for final decision by the City Council. A public hearing with the City Council was held on September 5, 2017, as required by law.

These findings are worded to reflect the City Council's role as final decision-maker; they represent the Planning Commission's recommendation to the City Council.

7. MMC Chapter 19.300 Base Zones

As a Planned Development, the proposed subdivision is subject to the requirements for Planned Developments as established in MMC Section 19.311. The Planned Development (PD) zone is a superimposed zone applied in combination with regular existing zones. The subject property is split-zoned R-10 and R-3, so the underlying zone requirements of MMC Sections 19.301 and 19.302, respectively, are relevant and must be addressed as well.

- a. MMC Section 19.311 Planned Development Zone (PD)

The purpose of a PD zone is to provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements, encouraging greater flexibility of design and providing a more desirable use of public and private common open space. PD zones can promote variety in the physical development pattern of the city and encourage a mix of housing types.

(1) MMC Subsection 19.311.2 Use

The City Council approves the final development plan of a PD zone, in consideration of the proposal's conformance to the following standards:

(a) Conformance to the City's Comprehensive Plan

As addressed in more detail in Finding 8, the proposed Planned Development conforms to the City's Comprehensive Plan and is consistent with the relevant policies and goals.

(b) Formation of a compatible and harmonious group

As proposed, the development will provide 92 single-family attached units in the form of 23 four-unit rowhouses. Approximately half of the units will be alley-loaded, with driveways and garages located in the rear; the other half will be front-loaded, with driveways and garages accessing the streets. Although the two types of structures will have different front facades, according to the applicant's submittal materials, the size, orientation, architecture, color palette, and articulating features will be similar and will lend a sense of group compatibility.

(c) Suitability to the capacity of existing and proposed community utilities and facilities

The existing public utilities and facilities in the vicinity of the subject property are all of sufficient size and capacity to support the proposed development. As required, the new streets and utilities provided within the proposed development itself will be suitable to serve it.

(d) Cohesive design and consistency with the protection of public health, safety, and welfare in general

The proposed street network, comprised of public streets, a public alley, and pedestrian and bicycle paths, is cohesively designed and meets the various applicable City standards for spacing and sight-distance. Frontage improvements on the new public streets and along the subject property's frontage on Kellogg Creek Drive, including sidewalks, landscaping, and streetlights will meet applicable City standards. A soft-surface trail system through a portion of the open space area will offer recreational opportunities while limiting impacts to natural areas.

(e) Affordance of reasonable protection to the permissible uses of properties surrounding the site

No commercial or other nonresidential uses are proposed as part of the development. Surrounding properties are zoned for low-density residential uses, and the proposed development will not limit any future development or redevelopment of those properties. Access to the adjacent church site will be modified to allow a safe connection to Kellogg Creek Drive through the new street system of the proposed development. Future redevelopment of the church site may require further modifications to its access, but the proposed development does not preclude such redevelopment. The northern portion of the site, which is adjacent to the rear of several residential lots on Kayla Court, will not be accessible across Mount Scott Creek and will not present any new impacts as a result of the proposed development.

(2) MMC Subsection 19.311.3 Development Standards

MMC 19.311.3 establishes that the various applicable standards and requirements of MMC Title 19, including those of the underlying zone(s), are applicable in a PD zone, unless the Planning Commission grants a variance from said standards in its approval of the PD or the accompanying subdivision plat. The City Attorney has concurred with the conclusion of City staff that a formal variance request is not required for adjustments related to the flexibility inherent in the stated purpose of the PD zone to encourage greater flexibility of design and provide a more efficient and desirable use of common open space, with an allowance for some increase in density as a reward for outstanding design (e.g., housing type, lot size, lot dimension, setbacks, and similar standards).

(a) Minimum Size of a PD Zone

MMC Subsection 19.311.3.A requires a minimum of 2 contiguous acres of land for a Planned Development.

The subject property is approximately 13.8 acres in size and provides an adequate area for development.

(b) Special Improvements

MMC Subsection 19.311.3.B establishes the City's authority to require the developer to provide special or oversize sewer lines, water lines, roads and streets, or other service facilities.

The City's Engineering Department has determined that no special or oversize facilities are required to ensure that the proposed development provides adequate public facilities.

(c) Density Increase and Control

MMC Subsection 19.311.3.C allows an increase in density of up to 20% above the maximum allowed in the underlying zone(s), if the City Council determines that the proposed Planned Development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning.

Subtracting the area occupied by floodplain, proposed rights-of-way, and required open space, as required by the density-calculation standards provided in MMC Subsection 19.202.4, the maximum allowable density for the net area of the subject property is 82 units. The applicant has proposed a total of 92 units, which is a 12% increase. The applicant has listed the following elements as evidence of the project's outstanding design and exceptional advantages:

- *Over 7 acres of open space, which will protect natural resource and floodplain areas on the site and provide recreational opportunities with a soft-surface trail system. The open space tract includes a stand of mature Oregon white oak trees that have been identified by public testimony as a priority for preservation. As proposed, the open space tract will be dedicated to the City.*

- *Overall site design that provides a sense of openness and visual permeability between the natural open space tract and the residential lots, nearly half of which will have backyards that are directly adjacent to the open space. A condition has been established to require fencing that along the boundaries of lots adjacent to the open space tract (Tract E), to maintain views of the open space but prevent uncontrolled access.*
- *Unfenced stormwater facilities planted with low-lying grasses that maintain views of the open space and provide connection points between the trail system and the rest of the development*
- *A community garden for use by residents, located in the northeastern portion of the site*
- *Trees planted as screening between Highway 224 and the adjacent lots in the northeast corner of the site*
- *92 units of attached single-family housing offered at a price point that is affordable for working people with moderate incomes*
- *Compact development in proximity to a large public park (North Clackamas Park) and with access to a major roadway (Highway 224)*

The applicant has asserted that, without the Planned Development process, the site would be difficult to develop at a level that would meet the City's minimum density standard, at least without resulting in greater impacts to the designated natural resources on the site and a loss of some of the proposed amenities like the soft-surface trails and community garden. In effect, the proposed development is outstanding by virtue of being the only practicable and feasible layout for the site that provides new housing targeted at working people with moderate incomes.

As per the recommendation of the Planning Commission, the City Council finds that the proposed development provides sufficiently outstanding design features and extraordinary amenities to justify the proposed density increase.

(d) Peripheral Yards

MMC Subsection 19.311.3.D requires that yards along the periphery of any Planned Development zone be at least as deep as the front yard required in the underlying zone(s). Open space may serve as peripheral yard.

The front yard requirements of the underlying zones are 20 ft for R-10 and 15 ft for R-3. The large open space tract on the north and west sides of the proposed development provides a buffer of well over 20 ft. Where the proposed development is adjacent to the church property on the east, a 22-ft-wide public alley provides a peripheral buffer for Lots 45 and 57, and the 20-ft-wide pedestrian connection on tracts E and F provides a peripheral buffer for Lots 1 and 17. The pedestrian-bicycle connection between the cul-de-sac and the sidewalk at Rusk Road, in the northeastern corner of the site, provides 15 ft of separation for Lot 92; together with the proposed 5-ft side yard, a total of 20 ft will be provided as a buffer for this lot.

(e) Open Space

MMC Subsection 19.311.3.E requires that a Planned Development set aside land as open space, for scenic, landscaping, or other recreational purposes within the development. A minimum of one-third of the gross area of the site must be provided as open space and/or outdoor recreational areas, with at least half of this area being of the same general character as the area containing dwelling units.

The gross area of the subject property is approximately 13.8 acres, so a minimum of 4.6 acres must be provided as open space, with at least 2.3 acres available for recreational purposes. The applicant has proposed to establish an open space tract of approximately 7 acres, with a soft-surface trail system making approximately 2.5 acres available for recreation.

(3) MMC Subsection 19.311.6 Planning Commission Review of Preliminary Development Plan and Program

MMC 19.311.6 establishes that the Planning Commission shall review an applicant's preliminary development plan and program for a PD and shall notify the applicant whether the proposal appears to satisfy the provisions of this section or has any deficiencies. Upon the Commission's approval in principle of the preliminary plan and program, the applicant shall file a final development plan and program and an application for zone change.

The applicant has submitted a development plan and program for the proposed PD and has requested that the Commission consider it to be the final development plan and program submittal, along with the accompanying application for zone change.

(4) MMC Subsection 19.311.8 Subdivision Plat

MMC 19.311.8 requires that the submittal of a final development plan and program be accompanied by an application for subdivision preliminary plat, where the PD involves the subdivision of land.

The proposal involves a 92-unit subdivision, and the applicant has included an application for subdivision preliminary plat with the submittal of a final development plan and program.

(5) MMC Subsection 19.311.9 Application for Zone Change

MMC 19.311.9 requires that an application for zone change accompany the submittal of a final development plan and program.

Along with the final development plan and program, the applicant has included an application for zone change to apply the PD zone to the subject property.

(6) MMC Subsection 19.311.10 Planning Commission Action on Final Development Plan and Program

MMC 19.311.10 requires that the Planning Commission hold a public hearing using Type IV review to consider a final development plan and program, zone change application, and subdivision preliminary plat. If the Planning Commission finds that the final development plan and program is in compliance with the preliminary approval and with the intent and requirements of the applicable provisions of the zoning ordinance, it shall forward a recommendation for approval to the City Council for adoption.

As required, the Planning Commission opened a public hearing on May 23, 2017, in accordance with the Type IV process outlined in MMC Section 19.1007, and considered the proposed development plan and program, zone change application, subdivision preliminary plat, and other accompanying reviews. The hearing was continued to May 25, again to June 27, and again to July 25, 2017. The Planning Commission found that the development plan and program is in compliance with the intent and requirements of the applicable provisions of MMC Title 19 Zoning and forwarded a recommendation of approval to the City Council for adoption.

(7) MMC Subsection 19.311.11 Council Action on Final Development Plan and Program

MMC 19.311.11 requires that the City Council consider the final development plan and program and zone change application through the Type IV review process, upon receipt of a recommendation from the Planning Commission. Upon consideration of the proposal, the Council may adopt an ordinance applying the PD zone to the subject property and adopt the final development plan and program as the standards and requirements for that PD zone. The Council may also continue consideration and refer the matter back to the Planning Commission with recommendations for amendment, or may reject the proposal and abandon further hearings and proceedings.

The Council considered the final plan and program and zone change application, as well as the accompanying applications for subdivision preliminary plat and associated reviews, in accordance with the Type IV review process outlined in MMC Section 19.1007. The Council held a public hearing on September 5, 2017, and adopted an ordinance applying the PD zone to the subject property, which adopted the final development plan and program as the standards and requirements for the new PD zone (Ordinance ____).

The City Council finds that the applicable standards and requirements of MMC 19.311 are met. As per Ordinance ____, the final development plan and program is adopted as the standards and requirements and the PD zone designation is applied to the subject property.

b. MMC Sections 19.301 Low Density Residential Zones (including R-10) and 19.302 Medium and High Density Residential Zones (including R-3)

The subject property is split-zoned Residential R-10 and Residential R-3. MMC 19.301 and 19.302 establish the allowable uses and development standards for the residential R-10 and R-3 zones, respectively. As noted in Finding 7-a(2), although the underlying zone standards are primarily applicable, the PD zone allows adjustment to some of those standards. This applies to such underlying zone limitations as housing type, lot size, lot dimension, setbacks, and similar standards that relate to flexibility of design, greater efficiency in the use of common open space, and minor increases in density allowed as a reward for outstanding design.

(1) Permitted Uses

As per MMC Table 19.301.2, rowhouse development is not a permitted use in the R-10 zone; rowhouses are an outright permitted use in the R-3 zone (as per MMC Table 19.302.2). As noted in Finding 7-a, the primary purposes of the PD zone include encouraging greater flexibility of design and providing a more

efficient use of common open space, so housing types not ordinarily permitted in the base zone may be proposed.

The applicant has proposed a 92-unit development comprised of 23 four-unit rowhouse buildings. The proposed design maximizes the development potential of the subject property, providing a public street network and utility infrastructure while minimizing impacts to the natural resource and floodplain areas on the site, which will remain protected in open space.

(2) Lot and Development Standards

The applicant has proposed to apply a single set of lot and development standards across the entire site, which is zoned R-3 on the western half and R-10 on the eastern half. As discussed in Finding 7-a(2), above, adjustments to underlying zone standards that are related to the flexibility of design afforded by the PD process are allowed and do not require a formal variance request. Table 7-b(2) compares the applicable standards for development in the R-10 and R-3 zones with the standards proposed as the final development plan and program for this PD zone.

Table 7-b(2) Lot and Development Standards			
Standard	R-10 Requirement	R-3 Requirement ¹	Proposed PD Requirement
1. Minimum Lot Size	10,000 sq ft	3,000 sq ft	Lots range from 1,600 sq ft to approx. 2,500 sq ft
2. Minimum Lot Width	70 ft	30 ft	Lot widths range from 20 ft to 28 ft
3. Minimum Lot Depth	100 ft	80 ft	Lot depths range from 80 to 87.25 ft
4. Minimum street frontage	35 ft	30 ft	Typical range is 20 to 25 ft; three lots on cul de sac are <20 ft
5. Front Yard	20 ft	15 ft	Front-loaded lots = 18 ft Alley-loaded lots = 10 ft
6. Side Yard	10 ft	0 ft (common) 5 ft (exterior)	Common wall = 0 ft Exterior wall = 5 to 6 ft
7. Street-Side Yard	20 ft	15 ft	8 ft
8. Rear Yard	20 ft	15 ft	Front-loaded lots = 15 ft Alley-loaded lots = 20 ft
8. Maximum Building Height	2.5 stories or 35 ft (whichever is less)	2.5 stories or 35 ft (whichever is less)	2 stories, <35 ft
9. Side yard height plane limit	45-degree slope at 20 ft height	45-degree slope at 20 ft height	≤20 ft
10. Maximum lot coverage	30%	40% (+20% for rowhouses)	Lots range from 46% to 59%

11. Minimum vegetation	35%	35%	Small vegetated areas on each lot, with access to large open space area to west
12. Front yard minimum vegetation	40%	40%	Front yard areas not occupied by driveways and walkways will be vegetated
13. Minimum density	3.5 units per acre	11.6 units per acre	Minimum of 67 units for entire site
14. Maximum density	4.4 units per acre	14.5 units per acre	Maximum of 82 units for entire site (Applicant has requested a 12% density increase to a total of 92 units)

¹ R-3 requirements from MMC Table 19.302.2 for rowhouses

The lot and development standards that will govern development on the subject property are shown in Table 7-b(2) and effectively establish a component of the final development plan and program for this PD zone.

8. MMC Section 19.902 Amendments to Maps and Ordinances

MMC 19.902 establishes the process for amending the City's Comprehensive Plan and land use regulations, including the zoning map. Specifically, MMC Subsection 19.902.6 establishes the review process and approval criteria for zoning map amendments.

a. MMC Subsection 19.902.6.A Review Process

MMC 19.902.6.A provides that, generally, changes to the zoning map that involve 5 or more properties or encompass more than 2 acres of land are legislative and are therefore subject to Type V review; otherwise, they are quasi-judicial in nature and subject to Type III review. The City Attorney has the authority to determine the appropriate review process for each proposed zoning map amendment.

The proposed zoning map amendment encompasses a single property of approximately 13.8 acres and is related to a proposed planned development, which requires Type IV review. The City Attorney has determined that the proposed zoning map amendment is quasi-judicial in nature and requires Type III review. The concurrent planned development requires Type IV review, which is also a quasi-judicial process. The City Council finds that the Type IV review process is appropriate for the proposed zoning map change.

b. MMC Subsection 19.902.6.B Approval Criteria

MMC 19.902.6.B establishes the following approval criteria for zoning map amendments:

- (1) The proposed amendment is compatible with the surrounding area based on the following factors:
 - (a) Site location and character of the area
 - (b) Predominant land use pattern and density of the area
 - (c) Expected changes in the development pattern for the area

The area surrounding the subject property includes North Clackamas Park and low to moderate density residential development, as well as the Deerfield Village assisted living center (40 apartment units) located directly across Kellogg Creek Drive from the site. The proposed development will preserve over half of the site

area as natural open space with access through soft-surface trails for low-impact recreational use. The location offers easy access to Highway 224, North Clackamas Park, several nearby schools, and employment centers along the Highway 224 and Interstate 205 corridors.

The 92 units of proposed rowhouses will be arranged in a compact pattern accessible by fully constructed local streets, with landscape strips, street trees, and on-street parking. Although the residential portion of the proposed development will be denser than most of the surrounding neighborhood, the Deerfield Village assisted living center is similar in density and aesthetic to an apartment or multifamily development. The proposed development is consistent with the single-family attached housing that Milwaukie's 2016 Housing Needs Analysis predicts will be developed over the next 20 years.

The proposed zoning amendment is compatible with the surrounding area based on the factors listed above.

- (2) The need is demonstrated for uses allowed by the proposed amendment.

The draft 2016 Housing Needs Analysis prepared for Milwaukie notes a particular need for single-family attached units like the proposed rowhouses.

- (3) The availability is shown of suitable alternative areas with the same or similar zoning designation.

Functionally, the PD designation is a form of overlay zone designation that can be applied to sufficiently sized properties for greater flexibility in developing the site. This criterion is more applicable to standard base zone designations and is intended to ensure that a suitable number of other properties with the same base zone designation will remain available for development.

This criterion is not applicable to a proposal to add the PD designation to a base zone.

- (4) The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.

The applicant's submittal materials include a traffic impact study, utility plans, and preliminary stormwater drainage report to demonstrate that public facilities are or will be made adequate to serve the proposed development.

Existing water and sanitary sewer services in Kellogg Creek Drive are provided by Clackamas River Water (CRW) and Clackamas County's Water and Environment Services (WES), respectively, and are adequate to serve the proposed new units. Within the public rights-of-way that will serve the proposed development, new water and sanitary sewer mains will be constructed as per City standards and will be maintained by the City, though they will connect to the CRW and WES facilities in Kellogg Creek Drive.

The applicant proposes to manage stormwater runoff from the new public streets with three large, shallow bioswale facilities. The applicant's preliminary drainage report, prepared by a qualified professional engineer, explains in more detail how stormwater will be managed and demonstrates that post-development runoff will not exceed the applicable pre-development standards.

Within the newly dedicated public rights-of-way that will serve the proposed lots, public streets will be constructed to meet applicable City standards, with paved travel lanes, curb and gutter, landscape planter strips, and sidewalks. On Kellogg Creek Drive along the subject property frontage, the existing right-of-way will be also be improved to provide the required width travel lane, striped bicycle lane, on-street parking strip, curb and gutter, landscape planter strip, and setback sidewalk.

The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the proposed development.

- (5) The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.

The applicant prepared a traffic impact study (TIS) to evaluate the proposed development's anticipated impacts on the transportation system. The TIS concluded that traffic volumes from the proposed development will not cause any of the intersections in the study area to fall below acceptable levels of service.

As discussed in Finding 14-c, the City's traffic consultant has reviewed the applicant's TIS and concluded that, with the exception of one error related to measurement of the northbound right-turn lane on Rusk Road at the Highway 224 intersection, the methodology and conclusions of the TIS are sound. As proposed, the northbound right-turn leg of the Rusk Road/Highway 224 intersection would fall below the acceptable level of service. A condition has been established to require extension of the northbound right-turn lane on Rusk Road so the Highway 224 intersection maintains an acceptable level of service.

As conditioned, the proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system.

- (6) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

The Land Use Map within the City's Comprehensive Plan (Comp Plan) reflects the split zoning of the subject property, with a Low Density designation for the portion zoned R-10 and a Medium Density designation for the portion zoned R-3. The proposed amendment would add the Planned Development (PD) designation to each of the zone designations for the subject property but would not affect the designations on the Land Use Map.

The Comp Plan includes a number of goals and policies that are applicable to the proposed development.

- (a) Chapter 1 Citizen Involvement

The goal of Chapter 1 is to encourage and provide opportunities for citizens to participate in all phases of the planning process. Prior to submitting the application, the applicant held an open meeting to present and discuss the project. The Lake Road Neighborhood District Association and to property owners and residents within 500 ft of the site were invited. According to the applicant's submittal materials, approximately 30 people attended the meeting, held on November 3, 2016. The applicant noted the various

concerns raised by neighbors and has noted that several aspects of the original plan were revised as a result.

The Type IV review process utilized for consideration of any Planned Development provides for public hearings by both the Planning Commission and City Council, where citizens have the opportunity to present testimony and participate in the decision-making process. A public hearing on the proposed development was opened by the Planning Commission on May 23, 2017; continued to May 25; continued again to June 27 (where it was only nominally re-opened); and continued again to July 25, 2017. A public hearing was held by the City Council on [month/day], 2017. The Commission and Council considered testimony from citizens en route to reaching the decision reflected in these findings.

(b) Chapter 2 Plan Review and Amendment Process

The goal of Chapter 2 is to establish a process for review and amendment of the Comp Plan, as a basis for land use decisions and with public participation. Policies related to the objective of implementing the Comp Plan include a requirement that zone changes and other planning actions be consistent with the intent of the Comp Plan. The applicant's narrative and supporting materials are evidence of the required review process at work, with opportunities for public involvement at Commission and Council hearings as noted above.

(c) Chapter 3 Environmental and Natural Resources

Chapter 3 focuses on conservation of the City's remaining natural resources.

(i) Natural Hazards Element

The goal of the Natural Hazards element is to provide appropriate safeguards for development in areas of known natural hazards, such as floodplains. Policies include the direction to establish regulations to prevent development from increasing stormwater runoff and standards to ensure the strength and quality of construction materials within the floodplain. The finished elevations of the lowest floors of buildings and streets must be a minimum of 1 ft above the 100-year flood elevation, and actions are encouraged to retain the floodplain as minimally undeveloped open space.

The subject property includes a designated floodplain area, and the proposed development involves some alteration of the floodplain. As discussed in Finding 10, the applicant proposes to balance the amount of fill that will be added within the floodplain with the removal of an equal amount of material. The fill will raise those areas of residential construction and streets at least 1 ft above the base flood elevation. The remaining floodplain areas on the site will be included in a large open space tract.

(ii) Open Spaces, Scenic Areas, and Natural Resources Element

The goal of the Open Spaces element is to conserve open space and protect and enhance natural resources to create an aesthetically pleasing urban environment. Policies include the protection of natural

resources through conservation and mitigation, designation of riparian area buffers, regulation of the placement and design of stormwater drainage facilities, and protection of existing upland areas and values related to wildlife habitat and erosion control.

As discussed in more detail in Finding 11, the applicant's submittal materials include a natural resource report that analyzes practicable alternatives to the proposed development and demonstrates that its proposal does the most to avoid impacts to the WQR and HCA parts of the site, minimizes impacts where unavoidable, and sufficiently mitigates for the allowed disturbance. The applicant's submittal materials include a preliminary drainage report that explains how the proposed stormwater management facilities are designed to ensure that post-development runoff will not exceed pre-development levels.

(d) Chapter 4 Land Use

Chapter 4 provides objectives and policies to guide the development of vacant lands and redevelopment of existing features, considering a variety of needs such as housing, employment, and recreation.

(i) Residential Land Use and Housing Element

The goal of the Residential Land Use element includes the provision of new housing that is adequate to meet the needs of local residents and the regional housing market.

Policies related to buildable lands include the use of zoning to implement the policies and standards of various other elements of the Comp Plan and requirement of a report demonstrating consistency with the policies of Chapter 3 (Environmental and Natural Resources) for sites with special resource designations. Policies related to residential land use design include an allowed density bonus of up to 20% for Planned Unit Developments in exchange for exceptional design quality or special project amenities, a requirement that Planned Unit Developments provide areas dedicated to open space and/or outdoor recreation, and encouragement for preservation of existing tree canopy and connected vegetated corridors. Policies related to housing choice include the development of larger subdivisions and Planned Unit Developments that use innovative techniques for the purpose of reducing housing costs while creating an attractive living environment.

The applicant's narrative includes an address of the proposal's consistency with the various applicable goals, objectives, and policies of the Comp Plan, including those of Chapter 3. As addressed in Finding 7-a-(2)(c), the applicant has proposed a density increase of 12%, based on the exceptional design and special amenities of the proposed development. The proposed development includes nearly half of the overall site retained as open space, with the developable lots configured in such a way as to preserve as many of the existing trees on the site as practicable and to avoid impacts to the riparian corridor along Mount Scott Creek. The applicant asserts that the number of proposed lots will create a certain economy of scale that

will allow the new units to be sold at an affordable price and meet one of the community's housing needs.

(ii) Recreational Needs Element

The goal of the recreational needs element is to provide for the recreational needs of current and future city residents by maximizing the use of existing public facilities, encouraging the development of private recreational facilities, and preserving the opportunity for future public recreational use of vacant private lands.

The subject property is adjacent to the eastern edge of North Clackamas Park, and future residents in the proposed development will have easy access to this existing public facility. Within the proposed open space tract, a soft-surface trail system will be available for recreational use by both future residents and the public at large (through a public access easement).

(e) Chapter 5 Transportation, Public Facilities, and Energy Conservation

Chapter 5 addresses the City's responsibility to provide its current and future residents with a full range of urban services, including streets, sewer, and water.

(i) Transportation Element

The City's Transportation System Plan (TSP) is an ancillary Comp Plan document that contains the City's long-term transportation goals and policies. The applicant's TIS demonstrates consistency with the TSP and asserts that the proposed development will not result in significant impacts to the surrounding transportation system. As discussed in Finding 14-c, the City's traffic consultant has reviewed the applicant's TIS and concluded that, with the exception of one adjustment related to measurement of the northbound right-turn lane on Rusk Road at the Highway 224 intersection, the methodology and conclusions of the TIS are sound. A condition has been established to address this error.

(ii) Public Facilities and Services Element

The goal of the Public Facilities element is to provide for the orderly and efficient arrangement of public facilities and services to serve urban development. The proposed development includes the extension of existing water and sewer services to serve the new lots, as well as stormwater facilities designed to ensure that post-development runoff does not exceed pre-development levels.

(iii) Energy Conservation Element

The goal of the Energy Conservation element is to conserve energy by encouraging energy-efficient land use patterns and transportation systems. The proposed development is a compact arrangement of 92 units of rowhouse housing that is located close to large employment corridors across Highway 224 and along Interstate 205.

As conditioned, the proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

- (7) The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The Metro Urban Growth Management Functional Plan includes a number of titles that address various aspects of the region's goals and policies for urban development.

- (a) *Title 1 Housing Capacity*

The proposed development will provide a large number of needed housing units in a compact urban form.

- (b) *Title 3 Water Quality and Flood Management*

The proposed development is configured to avoid and/or minimize impacts to the designated natural resources on the site. Proposed alterations to the floodplain will be done in accordance with local and federal requirements.

- (c) *Title 7 Housing Choice*

The proposed development will provide single-family attached housing and will support Metro's policies for expanding housing choice with a needed housing type in Milwaukie.

- (d) *Title 13 Nature in Neighborhoods*

The proposed development supports Metro's policies for conserving and enhancing habitat areas by avoiding and minimizing impacts to the designated natural resources on the site, as well as by establishing a large open space tract that includes wetlands, floodplain, existing mature native trees, and the riparian corridor along Mount Scott Creek.

The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

- (8) The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

Several of the Statewide Planning Goals are relevant to the proposed amendment:

- (a) *Goal 2 Citizen Involvement*

Prior to submitting the application, the applicant held an open meeting to present and discuss the proposed development with neighbors. The applicant made several revisions to the original concept plan as a direct result of the discussion at that meeting. The Type IV review process for Planned Development proposals requires public hearings with both the Planning Commission and the City Council, allowing additional opportunities for citizens to submit written and oral testimony before the decision-makers. A public hearing on the proposed development was held by the Planning Commission on May 23, 2017; continued to May 25; continued to June 27 (where it was only nominally re-opened); and continued again to July 25, 2017. A public hearing with the City Council was held on September 5, 2017.

(b) *Goal 5 Natural Resources*

The proposed development is subject to the applicable standards of MMC Section 19.402 Natural Resources, which provide protections for designated natural resource areas. As discussed in more detail in Finding 11, the applicant has proposed to avoid impacts to WQR and HCA parts of the site as much as practicable, to minimize impacts where unavoidable, and to sufficiently mitigate for the allowed disturbance.

(c) *Goal 7 Areas Subject to Natural Hazards*

The subject property includes a significant area of floodplain. As addressed in Finding 10, the applicant proposes substantial alteration of the floodplain in accordance with local and federal requirements, including the provision that the amount of fill material placed in the floodplain must be balanced by an equal removal of material from within the floodplain.

(d) *Goal 12 Transportation and Transportation Planning*

As addressed in Finding 14 and elsewhere in these findings, with the conditioned correction of one minor error noted by City staff, the applicant's TIS demonstrates that the proposed development will not require changes to the functional classification of existing or planned transportation facilities and will not result in significant impacts on the transportation system.

As conditioned, the proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendment, as conditioned, is consistent with the applicable criteria for zoning map amendments.

As conditioned, the City Council finds that the proposed amendment to the City's Zoning Map is approvable.

9. MMC Title 17 Land Division

MMC Title 17 establishes the City's regulations and procedures for lot consolidations, land divisions, property boundary changes, and creation of streets and rights-of-way. As per MMC Section 17.04.050, all decisions on boundary changes and land divisions expire 1 year after the date of approval, with one 6-month extension allowed upon submission of a formal request to the original decision-making authority.

a. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC 17.12 establishes the application procedures and approval criteria for land divisions and property boundary changes. Specifically, MMC Subsection 17.12.020.E provides that applications for subdivision preliminary plat are subject to Type III review.

MMC Section 17.12.040 establishes the following approval criteria for preliminary plat:

- (1) The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.

The proposed preliminary plat is for a planned development subdivision of 92 lots for rowhouse development, with tracts for stormwater facilities, open space, a community garden, and a pedestrian connection to Kellogg Creek Drive along

the eastern edge of the development. The subject property is a 13.8-acre parcel that was created from a larger 17.5-acre property by a Property Line Adjustment and Lot Consolidation application (file #s PLA-2017-001 and LC-2017-001) approved in July 2017.

As addressed throughout these findings, the proposed subdivision complies with the applicable standards of Title 19 and other applicable ordinances, regulations, and design standards.

The City Council finds that this standard is met.

- (2) The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

The proposed division will allow reasonable development on all developable lots, without creating the need for any additional variances of land division or zoning standards beyond those addressed in these findings.

The City Council finds that this standard is met.

- (3) The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

The proposed subdivision name, Kellogg Creek, is not duplicative, and the plat otherwise satisfies the provisions of ORS 92.090(1).

The City Council finds that this standard is met.

- (4) The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

The Whitman's Lake-East Heights subdivision of 2001 is adjacent to the subject property to the north, across Mount Scott Creek from the proposed development. The Whitman's Lake-East Heights subdivision includes a public street (Madeira Drive) that bends away from the subject property and does not provide a connection point to the subject property. The proposed development does not include a crossing of Mount Scott Creek nor any developable lots or streets adjacent to the adjoining subdivision to the north.

The City Council finds that this standard is not applicable.

- (5) A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

The applicant has provided a detailed narrative description that demonstrates how the proposal conforms to all applicable standards and addresses variance requests as needed.

The City Council finds that this standard is met.

The City Council finds that the applicable procedures and approval criteria for the proposed subdivision, as outlined in MMC 17.12, are met.

- b. MMC Chapter 17.16 Application Requirements and Procedures

MMC 17.16 establishes application requirements for land divisions and property boundary changes, including for preliminary plat for subdivision. The application must

include all required forms and fees, as well as the information specified on the Submittal Requirements and Preliminary Plat checklists.

The applicant's submittal materials include all required forms and fees for the proposed subdivision, as well as plan sheets, narratives addressing the various applicable standards and criteria, and supporting documents and reports.

The City Council finds that the application requirements and procedures of MMC 17.16 are met.

c. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required with the preliminary plat, including existing and proposed conditions, a drainage summary report, proposed deed restrictions (if any), and proposed public improvements.

The applicant's preliminary plat materials include existing and proposed conditions, a preliminary drainage report, and plans for proposed improvements (including grading, landscaping, public utilities, and frontage improvements). No deed restrictions are proposed.

The City Council finds that the preliminary plat requirements of MMC 17.20 are met.

d. MMC Chapter 17.28 Design Standards

MMC 17.28 establishes general design standards for land divisions and property boundary changes.

(1) MMC Section 17.28.020 Public Facility Improvements

MMC 17.28.020 requires that all land divisions that increase the number of lots are subject to the requirements and standards of MMC Chapter 19.700 Public Facility Improvements.

The proposed subdivision will increase the number of lots. The applicable standards of MMC 19.700 are addressed in Finding 12.

(2) MMC Section 17.28.030 Easements

MMC 17.28.030 requires that easements for public utilities (including sewers and water mains) be dedicated wherever necessary.

The proposed subdivision will establish new public streets, where the public utility infrastructure will be located. Three tracts for stormwater facilities and three tracts for pedestrian and/or bicycle access will be established and dedicated to the public. A condition has been established to ensure that easements for stormwater outfalls, for public access across private alleys, or for any other public utilities will be dedicated as needed.

(3) Specifically, MMC Section 17.28.040 provides standards for general lot design, including a requirement for rectilinear lots and a 10% limit on the cumulative lateral shift of compound lot line segments.

Lots 88-92, which are located in the curve of the proposed cul-de-sac, each have at least one compound lot line segment. None of the compound segments are greater than 10% of the distance between opposing lot corners.

The City Council finds that the applicable lot design standards of MMC 17.28 are met.

The City Council finds that the proposed subdivision meets all applicable land division standards of MMC Title 17.

10. MMC Title 18 Flood Hazard Regulations

MMC Title 18 provides standards intended to minimize public and private losses due to flood conditions in specific areas. The regulations established in MMC Title 18 do this in part by controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters; controlling filling, grading, dredging, and other development which may increase flood damage; and preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas. As per MMC Section 18.04.100, a development permit is required prior to any construction or development within the flood management area.

The subject property includes flood hazard and flood management areas as identified on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA) and acknowledged by the City for the purposes of implementing this title. The applicant is proposing a revision to the FIRM map, to demonstrate that new lots will not be in the modified floodplain. Although no buildings will be built below the floodplain elevation, the proposed development includes cut and fill within the floodplain.

The proposed development is subject to the applicable provisions of MMC Title 18.

a. MMC Section 18.04.150 General Standards

MMC 18.04.150 provides general standards for all special flood hazard and all flood management areas.

(1) MMC Subsection 18.04.150.C Utilities

MMC 18.04.150.C requires that all new water and sanitary sewer systems be designed to minimize or eliminate infiltration of floodwaters into the system.

A condition has been established to ensure that all new utilities are installed underground and shall otherwise be designed to minimize or eliminate infiltration of floodwaters into the system, including stubs for utility service prior to surfacing any streets.

(2) MMC Subsection 18.04.150.D Subdivisions

MMC 18.04.150.D requires that all subdivision proposals must be consistent with the need to minimize flood damage. Public utilities and facilities shall be located and constructed to minimize or eliminate flood damage. Adequate drainage shall be provided to reduce exposure to flood damage. Base flood elevation data shall be provided for subdivision proposals that contain at least 50 lots or 5 acres.

The base flood elevation is 69.9 located at cross section C on FEMA map number FM41005C0036D (NAVD 1988 datum). The proposed development would establish 92 units on approximately 13.8 acres and was designed to minimize flood damage by elevating the developable portions of the site at least 1 ft above base flood elevation. As proposed, all public utilities are located outside the floodplain, except for the sanitary sewer connection to the existing sanitary sewer located within the existing floodplain and those public utilities that will be in Kellogg Creek Drive, a portion of which lies within the existing floodplain. The site will be graded to provide positive drainage to reduce

exposure to flood damage. Proposed street grades meet or exceed the minimum grade allowed by the City's Public Works Standards, and street cross sections match typical sections provided by the City to ensure proper drainage.

(3) MMC Section 18.04.150.F Balanced Cut and Fill

MMC 18.04.150.F provides requirements for the displacement of flood storage area by the placement of fill or structures.

As per the applicant's submittal materials, all fill added to the floodplain will be balanced with an equal amount of soil removed from the floodplain meeting the "no net fill" requirement. Excavation will occur on the same parcel as the proposed development and will not occur below the bankfull stage.

As conditioned, the proposed development is consistent with the applicable general standards for all special flood hazard and all flood management areas.

b. MMC Section 18.04.160 Specific Standards

MMC Subsection 18.04.160.A provides specific standards for residential construction, including a requirement that new construction of any residential structure shall have the lowest floor, including basement, elevated 1 ft above base flood elevation.

As proposed, all new primary residential structures will have the lowest floor elevated at least 1 ft above base flood elevation.

The City Council finds that, pending approval of the applicant's proposed revision to the appropriate FIRM map and as conditioned, the proposed development is consistent with the applicable standards of MMC Title 18.

11. MMC Section 19.402 Natural Resources

MMC 19.402 establishes regulations for designated natural resource areas. The standards and requirements of MMC 19.402 are an acknowledgment that many of the riparian, wildlife, and wetland resources in the community have been adversely impacted by development over time. The regulations are intended to minimize additional negative impacts and to restore and improve natural resources where possible.

a. MMC Subsection 19.402.3 Applicability

MMC 19.402.3 establishes applicability of the Natural Resource (NR) regulations, including all properties containing Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) as shown on the City's Natural Resource (NR) Administrative Map.

Mount Scott Creek flows across the northern portion of the subject property, and a large wetland (approximately 0.7 acres) is located within the 100-year floodplain designated over most of the western half of the site. The City's NR Administrative Map shows WQR and HCA designations around the creek and wetland, and portions of these natural resource areas will be disturbed by the proposed development.

As presented in the applicant's submittal materials, the proposed development will temporarily or permanently disturb approximately 115,700 sq ft of WQR and/or HCA area. At that scale, the proposed activity is not listed as exempt according to the standards outlined in MMC 19.402.4.

The City Council finds that the requirements of MMC 19.402 are applicable to the proposed activity.

b. MMC Subsection 19.402.7 Activities Requiring Type II Review

MMC 19.402.7 establishes that certain activities within a designated WQR and/or HCA are subject to Type II review in accordance with MMC 19.1005. As per MMC 19.402.7.E, this includes boundary verifications that propose substantial corrections to the NR Administrative Map, including identifying the precise location of wetlands, as required by MMC 19.402.15.A.

The subject property includes a delineated wetland. As provided in MMC Subsection 19.402.15.A, the Type II review process is required to confirm the specific location of wetlands. However, the proposed activity requires other applications that are being processed concurrently with Type IV review. As provided in MMC Subsection 19.1001.6.B.1, concurrent applications are processed according to the highest numbered review type, with a single decision to be issued that includes findings for all concurrent applications.

The City Council finds that the boundary verification for wetlands shall be processed concurrently with Type IV review.

c. MMC Subsection 19.402.8 Activities Requiring Type III Review

MMC 19.402.8 establishes that certain activities within a designated WQR and/or HCA are subject to Type III review in accordance with MMC 19.1006. As per MMC 19.402.8.A.1, this includes activities allowed in the base zone that are not otherwise exempt or permitted as a Type I or II activity.

The subdivision of land containing a WQR and/or HCA is subject to Type III review and the standards established in MMC Subsections 19.402.13.H and 13.I. The level of disturbance proposed within the designated WQR and HCA areas on the subject property exceeds the levels allowed by Type I and II review, as provided in MMC 19.402.6 and 402.7, respectively. As such, the activity is subject to Type III review and the discretionary process established in MMC 19.402.12. As noted in Finding 11-b above, the Natural Resource review is associated with other applications being processed concurrently with Type IV.

The City Council finds that the proposed activity is subject to Type III review and will be processed concurrently with other applications requiring Type IV review.

d. MMC Subsection 19.402.9 Construction Management Plans

MMC 19.402.9 establishes standards for construction management plans, which are required for projects that disturb more than 150 sq ft of designated natural resource area. Construction management plans must provide information related to site access, staging of materials and equipment, and measures for tree protection and erosion control.

The applicant's Natural Resource Review report includes a construction management plan that provides the information required by MMC 19.402.9, including tree protection measures. The plan will be formally reviewed at the time of submittal for development permits.

e. MMC Subsection 19.402.11 Development Standards

MMC 19.402.11 establishes development standards for projects that impact a designated natural resource, including requirements to protect natural resource areas during development and general standards for required mitigation (e.g., plant species, size, spacing, and diversity).

In particular, MMC Subsection 19.402.11.C establishes mitigation requirements for disturbance within WQRs. The requirements vary depending on the existing condition of the WQR, according to the categories established in MMC Table 19.402.11.C. For Class A "Good" WQR conditions, MMC Table 19.402.11.C requires that the applicant submit a plan for mitigating water quality impacts related to the development; for Class C "Poor" WQR conditions, the table requires restoration and mitigation with native species using a City-approved plan.

The proposed development will permanently disturb approximately 32,800 sq ft and temporarily disturb approximately 8,350 sq ft within the WQR. The portion of the WQR closest to Mount Scott Creek is categorized as Class A ("Good"); other portions are categorized as Class C ("Poor"). In addition, the proposed development will permanently disturb approximately 40,700 sq ft and temporarily disturb approximately 5,500 sq ft within the HCA-only areas on the site.

Using the mitigation planting ratio provided in MMC Subsection 19.402.11.D.2.b as a guide, the applicant proposes to plant 5 trees and 25 shrubs per 500 sq ft of disturbance area. For the total WQR and HCA disturbance of approximately 86,350 sq ft (both permanent and temporary disturbance), the applicant proposes to plant 863 native trees and 4,317 native shrubs within a specific mitigation area. As proposed, the mitigation plantings will meet the minimum requirements established in MMC Subsection 19.402.11.B. Mitigation trees will be of at least ½-in caliper (measured at 6 ft above the ground level after planting) and shrubs will be of at least 1-gallon size and at least 12-in height.

ESA, the City's consultant for on-call natural resource services, has evaluated the proposed mitigation plan and concluded that, with a few adjustments, it adequately addresses the proposed WQR and HCA disturbance. ESA provided a few additional recommendations to improve the mitigation plan, including retaining the existing white oak saplings that appear to have been planted on the site as part of an ongoing restoration effort and re-evaluating the assessment of WQR classification at several of the sample points to ensure that mitigation plantings are distributed appropriately. Conditions have been established to ensure that these recommendations are implemented. In addition, conditions have been established to require a maintenance plan ensuring that the mitigation effort is successful and ongoing and to limit the impact of lights shining directly into WQR or HCA locations.

As conditioned, the City Council finds that the applicable development standards of MMC 19.402.11 are met.

f. MMC Subsection 19.402.12 General Discretionary Review

MMC 19.402.12 establishes the discretionary review process for activities that substantially disturb designated natural resource areas.

(1) Impact Evaluation and Analysis

MMC Subsection 19.402.12.A requires an impact evaluation and alternatives analysis in order to determine compliance with the approval criteria for discretionary review and to evaluate alternatives to the proposed development. A technical report prepared by a qualified natural resource professional is required and should include the following components:

- Identification of ecological functions
- Inventory of vegetation

- Assessment of water quality impacts
- Alternatives analysis
- Demonstration that no practicable alternative method or design exists that would have a lesser impact on the resource and that impacts are mitigated to the extent practicable
- Mitigation plan

The applicant's submittal materials include a technical report prepared by Pacific Habitat Services, Inc., a private firm providing a range of environmental consulting services including natural resource assessment, wetland delineation, and environmental restoration. The technical report includes an impact evaluation and alternatives analysis consistent with the required components listed above, as well as an inventory of existing vegetation and discusses the ecological function of the existing WQR and HCA areas within the project area. The report also provides a mitigation plan for permanent and temporary impacts to the WQR and HCA.

The technical report considers two alternatives to the proposed development configuration: (1) another planned development scenario with no regard for natural resources on the site (resulting in greater impacts to the WQR and HCA) and (2) a subdivision following the existing split zoning of the site and configured to produce almost no disturbance of the WQR and HCA. The report concludes that the proposed development is the most practicable alternative that results in the least impact to the natural resources on the site.

The City Council finds that the applicant's impact evaluation and alternatives analysis is sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is met.

(2) Approval Criteria

MMC Subsection 19.402.12.B provides the approval criteria for discretionary review as follows:

Note: ESA reviewed the applicant's technical report and presented its assessment to the City in a summary memo, which informs this portion of the findings.

- Avoid – The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable, and has less detrimental impact to the natural resource areas than other practicable alternatives.

Mount Scott Creek cuts across the northern portion of the nearly 14-acre development site, resulting in significant areas of designated WQR and HCA. Developing the site to achieve even the minimum density without any impacts to the WQR and HCA is difficult. The applicant has proposed a Planned Development instead of a conventional subdivision to have the flexibility to blend the densities allowed by the split R-10 and R-3 zoning of the site. This flexibility allows the applicant to direct the development generally away from the WQR and HCA. By using 4-unit rowhouse structures, the applicant is able to provide a larger number of units in a more compact form than a conventional subdivision would allow. Considering the other alternatives noted in Finding 11-f(1) above, the proposed development will have less detrimental impact to the natural resource areas on the site than other practicable alternatives.

- Minimize – If the applicant demonstrates that there is no practicable alternative to avoid disturbance of the natural resource, then the proposed activity shall minimize detrimental impacts to the extent practicable.

As noted in the above discussion of avoiding impacts, the proposed development is configured to reduce impacts to the WQR and HCA to the greatest extent practicable. The proposed development is compact by design and focuses major site impacts away from the WQR and HCA where practicable.

- Mitigate – If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the natural resource, then the proposed activity shall mitigate for adverse impacts to the resource area. The applicant shall present a mitigation plan that demonstrates compensation for detrimental impacts to ecological functions, with mitigation occurring on the site of the disturbance to the extent practicable, utilization of native plants, and a maintenance plan to ensure the success of plantings.

As noted in Finding 11-e, the applicant's submittal includes a mitigation plan for the WQR and HCA disturbance that will accompany the proposed development. The applicant has proposed to plant 863 native trees and 4,317 native shrubs in the areas of permanent and temporary disturbance, and to remove nuisance plants and noxious material and debris. Conditions have been established to ensure that all mitigation plantings are species from the Milwaukie Native Plants List, that existing restoration plantings are preserved where possible, and that a long-term maintenance plan is in place. To further mitigate future impacts to the WQR and HCA, conditions have been established to demarcate the boundary of the delineated wetland and provide pet-waste bag dispensing devices dispersed along the soft-surface trail system. In addition, to ensure the long-term maintenance of all mitigation areas, the applicant has proposed to dedicate the open space tract to the City. A condition has been established to ensure that the proposed dedication is finalized.

As conditioned, the City Council finds that the proposed development meets the approval criteria for discretionary review as established in MMC 19.402.12.B.

(3) Limitations and Mitigation for Disturbance of HCAs

MMC Subsection 19.402.12.C establishes the discretionary review process for mitigation of more HCA disturbance than would be allowed by the nondiscretionary standards of MMC Subsection 19.402.11.D.1. In such cases, the applicant must submit an Impact Evaluation and Alternatives Analysis consistent with the standards established in MMC 19.402.12.A and subject to the approval criteria established in MMC 19.402.12.B.

As discussed in Finding 11-f(1), the applicant's submittal materials include a technical report that provides an evaluation of impacts to the WQR as well as to those impacted HCA areas beyond the WQR, consistent with the standards established in MMC 19.402.12.A. As discussed in Finding 11-f(2), the proposed development, with the conditions noted therein, meets the approval criteria established in MMC 19.402.12.B.

As conditioned, the City Council finds that the proposed development meets the discretionary standards for disturbance of HCAs as established in MMC 19.402.12.C.

The City Council finds that, as conditioned, the proposed development meets the applicable discretionary review standards of MMC 19.402.12.

g. MMC Subsection 19.402.15 Boundary Verification and Map Administration

MMC 19.402.15 establishes standards for verifying the boundaries of WQRs and HCAs and for administering the City's Natural Resource (NR) Administrative Map.

The locations of WQRs are determined based on the provisions of MMC Table 19.402.15. For streams, the WQR includes the feature itself and a vegetated corridor that extends 50 ft from the ordinary high water mark or 2-year recurrence interval flood elevation. Where the slope exceeds 25% for less than 150 ft, the vegetated corridor is measured with a 50-ft width from the break in the 25% slope. For wetlands, a wetland delineation report prepared by a professional wetland specialist and approved by the Department of State Lands (DSL) is required.

For HCAs, the City's NR Administrative Map is assumed to be accurate with respect to location unless challenged by the applicant, using the procedures outlined in either MMC Subsection 19.402.15.A.1 or MMC Subsection 19.402.15.A.2.b.

The technical report provided by the applicant includes a detailed topographic map showing the accurate boundaries of the WQR using the provisions of MMC Table 19.402.15, as well as a wetland delineation report prepared in accordance with the standards of DSL. A revised version of the report includes a formal letter of concurrence by DSL.

The applicant is not challenging the accuracy of the NR Administrative Map with respect to the HCA location on the site. However, as a result of the disturbance allowed by the approval of the proposed development, the NR Administrative Map shall be adjusted accordingly to remove those HCA locations that will be permanently disturbed by the proposed development.

In addition, the City has conducted a review of the mapped HCA in accordance with the detailed verification procedures provided in MMC 19.402.15.A.2.b and confirmed that the NR Administrative Map is inaccurate with respect to the HCA boundary in the southwestern corner of the subject property. The City's documentation of this boundary verification was provided as an exhibit at a public hearing with the City Council on September 5, 2017, and demonstrates where the HCA boundary shall be extended to include the tree canopy provided by the existing white oak trees in the southwestern portion of the site.

The City Council finds that the City's NR Administrative Map shall be adjusted to reflect the detailed information provided by the applicant with respect to the location of the delineated wetland on the site and the permanent disturbance to the HCA, as well as to reflect the adjusted HCA boundary based on information provided by the City.

The City Council finds that, as conditioned, the proposed development, including disturbance of the designated natural resource area on the subject property, meets all applicable standards of MMC 19.402.

12. MMC Chapter 19.500 Supplementary Development Regulations

MMC 19.500 provides supplementary standards for development.

a. MMC Subsection 19.504.9 On-Site Walkways and Circulation

MMC 19.504.9 establishes standards for on-site walkways, including requirements that on-site walkways be at least 5 ft wide, constructed of hard surface materials that are permeable for stormwater, and lighted to a minimum level of 0.5 footcandles.

The proposed development includes pedestrian connections on Tracts H and I, as well as a 10-ft-wide pedestrian/bicycle path in the northeast corner of Tract E. A condition has been established to ensure that all such on-site pathways are designed and constructed to meet the applicable standards of MMC 19.504.9.

As conditioned, the City Council finds that this standard is met.

b. MMC Subsection 19.505.5 Building Design Standards for Rowhouses

MMC 19.505.5 establishes design standards for rowhouse development.

(1) MMC Subsection 19.505.5.C Rowhouse Design Standards

As per MMC Subsection 19.505.5.C.1, rowhouses are subject to the design standards for single-family housing as established in MMC Subsection 19.505.1. As per MMC Subsection 19.505.5.C.2, rowhouses shall include either a vertical or horizontal transition area between the public right-of-way and the private entry of the dwelling.

The proposed development's compliance with the applicable standards of MMC 19.505.5.C will be confirmed through the development review process outlined in MMC Section 19.906 at the time of development. As proposed, the new rowhouse units will have covered front porches that appear to meet the standards for providing a horizontal transition between the right-of-way and the front entry.

(2) MMC Subsection 19.505.5.D Number of Rowhouses Allowed

As per MMC 19.505.5.D, no more than 4 consecutive rowhouses may share a common wall, though sets of 4-unit rowhouse structures may be adjacent to one another.

The proposed development is comprised of 23 structures with 4 rowhouse units each. No more than 4 consecutive rowhouses will share a common wall.

(3) MMC Subsection 19.505.5.E Rowhouse Lot Standards

MMC 19.505.5.E establishes standards for the size and dimension of rowhouse lots in various zones. Generally, rowhouse development is not allowed on lots less than 35 ft wide.

As discussed in Finding 7-b, the Planned Development process allows some flexibility of design, including in lot size and dimension. As proposed, the new lots will range in width from 20 to 28 ft and in size from 1,600 sq ft to approximately 2,500 sq ft. Approval of the final development plan and program effectively makes the standards of MMC 19.505.5.E inapplicable.

(4) MMC Subsection 19.505.5.F Driveway Access and Parking

MMC Subsection 19.505.5.F.1 establishes restrictions on garages on the front façade of a rowhouse as well as on off-street parking areas and driveway accesses in the front yard. A minimum of 30 ft of street frontage is required, no more than 2 shared accesses are allowed for 4 rowhouses, and outdoor on-site parking areas and garage door width shall not exceed 10 ft. For rowhouses that do not provide garages or parking areas on the front façade, MMC Subsection 19.505.5.F.2 establishes standards for consolidated access.

As discussed in Finding 7-b and noted in Finding 12-c above, the Planned Development process allows for reduced lot widths. The proposed development's compliance with the other applicable standards of MMC 19.505.5.F will be confirmed through the development review process outlined in MMC Section 19.906 at the time of development. As proposed, the new 4-unit rowhouse structures with front-facing garages will share 2 driveway accesses, with on-site parking and maneuvering areas no wider than 10 ft and garage doors no wider than 10 ft. The new rowhouse structures with rear-facing garages will share access off private alleys.

(5) MMC Subsection 19.505.5.G Accessory Structure Setbacks

MMC 19.505.5.G provides that there is no required side yard setback between an accessory structure and a side lot line abutting another rowhouse lot, though all other accessory structure regulations in MMC Subsection 19.502.2.A apply.

No accessory structures are proposed as part of the proposed development, and the applicant has not requested any adjustment to this standard.

The City Council finds that the proposed development meets the standards of MMC 19.505.5 that are applicable to the subdivision and final development plan and program of the Planned Development, noting that consistency with all applicable standards will be confirmed as part of the development review process outlined in MMC Section 19.906 at the time of submittal for development permits for the new rowhouses.

The City Council finds that, as conditioned, the proposed development is consistent with the applicable standards of MMC Chapter 19.500.

13. MMC Chapter 19.600 Off-Street Parking and Loading

MMC 19.600 regulates off-street parking and loading areas on private property outside the public right-of-way. The purpose of these requirements includes providing adequate space for off-street parking, minimizing parking impacts to adjacent properties, and minimizing environmental impacts of parking areas.

MMC Section 19.605 establishes standards to ensure that development provides adequate vehicle parking based on estimated parking demand. MMC Table 19.605.1 provides minimum and maximum requirements for a range of different uses. For rowhouses, a minimum of 1 off-street parking space is required per dwelling unit, with no maximum limit.

MMC Section 19.607 establishes standards for off-street parking areas for residential uses, including for rowhouses. Standards include minimum dimensions for off-street parking spaces and limitations on required spaces being located in the front yard setback.

As proposed, all rowhouse units will have attached garages. Units with front-facing garages have a single-car garage; units with rear-facing garages have a two-car garage.

As proposed, all garages will be located outside the front yard setback and of adequate dimension. A final determination of the proposed development's consistency with the applicable standards of MMC 19.600 will be made as part of the development review process outlined in MMC Section 19.906 at the time of submittal for development permits for the new rowhouses.

The City Council finds that the proposed development meets the standards of MMC 19.600 that are applicable to the subdivision and final development plan and program of the Planned Development, noting that consistency with all applicable standards will be confirmed as part of the development review process outlined in MMC Section 19.906 at the time of submittal for development permits for the new rowhouses.

14. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

The applicant proposes to subdivide the subject property to create 92 lots for rowhouse development as well as several other tracts for open space, stormwater facilities, and pedestrian/bicycle connections. The proposed land division triggers the requirements of MMC 19.700.

b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and providing approval criteria.

The applicant had a preapplication conference with City staff prior to application submittal, on August 11, 2016. The proposed development triggers a Transportation Impact Study (as addressed in Finding 14-c). The proposal's compliance with MMC 19.700 has been evaluated through a concurrent Transportation Facilities Review application. Finding 14-f addresses the proposal's compliance with the approval criteria established in MMC Subsection 19.703.3, particularly the required transportation facility improvements.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes the process and requirements for evaluating development impacts on the surrounding transportation system, including determining when a formal Transportation Impact Study (TIS) is necessary and what mitigation measures will be required.

The proposed development will trigger a significant increase in trip generation above the existing church use on a portion of the site and therefore requires a TIS. City Engineering staff and the City's on-call traffic consultant (DKS) provided the applicant with a scope of work for the TIS. Kittleson & Associates, the applicant's traffic consultant, prepared the TIS that was included with the applicant's larger submittal for the proposed planned development. To ensure accuracy, the original TIS was updated with additional counts for the intersections of Rusk Road and Highway 224,

Rusk Road and Ruscliff Road, Rusk Road and Kellogg Creek Drive, and Kellogg Creek Drive and the proposed Street A.

The TIS concluded that the proposed development does not trigger mitigation of impacts beyond the required frontage improvements and bike lane requirements, for which conditions of approval have been established. The TIS also concluded that the surrounding transportation system will continue to operate at the same level of service as before the proposed development.

However, ODOT and Clackamas County have expressed concern regarding the analysis performed for the right-turn lane for northbound traffic at the Rusk Road/Highway 224 intersection. The TIS indicates a turn lane with a queuing length of 50 ft. City Engineering staff agrees with ODOT and Clackamas County that this value may be overestimated. The TIS also indicates that the right-turn-on-red allowance is 50 vehicles per hour, which likely is not how this intersection functions where one through-vehicle can block the entire turn lane.

DKS, the City's consultant, has re-analyzed this intersection with the left turn, through movement, and right turn all together as a single lane. Also, the right-turn-on-red movement was reduced to zero vehicles, which is a more accurate representation of how the intersection currently functions. With these adjustments, the resulting volume-to-capacity ratio (v/c) of the single lane is greater than 1.0, indicating a need for mitigation requirements. A condition has been established to require extension of the right-turn lane on Rusk Road at the Highway 224 intersection, to ensure that the surrounding transportation system will continue to operate at the same level of service as before the proposed development

As conditioned, the applicant's TIS is sufficient to meet the requirements of MMC 19.704.

d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts.

The City has determined that conditions established to require improvements on Kellogg Creek Drive and in the right-turn lane on Rusk Road at the Highway 224 intersection meet the proportionality requirements for the proposed development.

As conditioned, the proposed development is consistent with MMC 19.705.

e. MMC Section 19.707 Agency Notification and Coordinated Review

MMC 19.707 establishes provisions for coordinating land use application review with other agencies that may have some interest in a project that is in proximity to facilities they manage.

The application was referred to the Oregon Department of Transportation (ODOT), Clackamas County, Metro, and TriMet for comment. The section of Kellogg Creek Drive fronting the subject property is under the jurisdiction of Clackamas County. The County has regulatory authority where transportation impacts and improvement standards are concerned, and the County's Department of Transportation and Development (DTD) provided comments that have been incorporated into these findings and the associated conditions of approval as appropriate.

f. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. However, the subject property's public street frontage is along Kellogg Creek Drive, which is under the jurisdiction of Clackamas County. Where the City has more restrictive standards than the County for certain elements, it is the City's practice to defer to the County standards when the proposed development demonstrates that there is no practicable alternative and that the proposal presents the minimum exception necessary to provide a safe and functional design. Such situations are evaluated at the time of development permit review.

The County DTD provided comments on the application, with recommended findings and conditions that address the County's requirements for such elements as access management, clear vision, street design, and bicycle and pedestrian facilities. Those comments have been incorporated into these findings and conditions of approval as appropriate.

(1) MMC Subsection 19.708.1 General Street Requirements and Standards

MMC 19.708.1 provides general standards for streets, including for access management, clear vision, street layout and connectivity, and intersection design and spacing.

As proposed, the development is consistent with the applicable standards of MMC 19.708.1.

(2) MMC Subsection 19.708.2 Street Design Standards

MMC 19.708.2 provides design standards for streets, including dimensional requirements for the various street elements (e.g., travel lanes, bike lanes, on-street parking, landscape strips, and sidewalks).

The street to the east of Lots 45 and 57 does not comply with minimum City standards, as the required sidewalk and planter strips are not proposed. The City has allowed this reduced cross section because of the pending adoption of a low-volume residential standard cross section with pedestrian routes on the street surface. The 22-ft right-of-way width accommodates the minimum 10-ft travel lanes, curb, and separation from the private property.

The proposed cross sections for Kellogg Creek Drive and all remaining internal streets conform to applicable requirements and are consistent with MMC 19.708.2.

(3) MMC Subsection 19.708.3 Sidewalk Requirements and Standards

MMC 19.708.3 provides standards for public sidewalks, including the requirement for compliance with applicable standards of the Americans with Disabilities Act (ADA).

As proposed, the development is consistent with all applicable standards of MMC 19.708.3.

(4) MMC Subsection 19.708.4 Bicycle Facility Requirements and Standards

MMC 19.708.4 provides standards for bicycle facilities.

Per Milwaukie's Transportation System Plan (TSP), a bike lane is required connecting the northeast corner of the property to the southwest corner of the

property. The applicant has proposed to construct an on-street bike route through the development. A multiuse path will connect the northeast turnaround on Street B to the Rusk Road/Highway 224 intersection.

As proposed, the development is consistent with all applicable standards of MMC 19.708.4.

(5) MMC Subsection 19.708.5 Pedestrian/Bicycle Path Requirements and Standards

MMC 19.708.5 provides standards for pedestrian and bicycle paths.

Pedestrian access is required at the end of the proposed cul-de-sac, which is satisfied through a 15-ft multiuse path extended to Rusk Road. Pedestrian access is also required from the east end of Street A to Kellogg Creek Drive, which is satisfied through a pedestrian connection in Tracts E and F.

As proposed, the development is consistent with all applicable standards of MMC 19.708.5.

(6) MMC Subsection 19.708.6 Transit Requirements and Standards

MMC 19.708.6 provides standards for transit facilities.

The portion of Kellogg Creek Drive fronting the proposed development is classified as a transit route in the Milwaukie TSP. However, transit facilities are already in place. As a result, transit facility improvements are not required for the proposed development.

As proposed, the development is consistent with all applicable standards of MMC 19.708.6.

Conditions have been established in response to these County findings, to ensure that the proposed development will meet all applicable standards of MMC 19.708, the Clackamas County Roadway Standards, and any other applicable County requirements.

As conditioned, the City Council finds that the proposed development meets the applicable public facility improvement standards of MMC 19.700.

15. MMC Section 19.904 Community Service Uses

MMC 19.904 establishes standards for community service uses, including churches, schools, and parks. MMC Subsection 19.904.5.C authorizes the approval of minor modifications to an approved community service, provided that such modification:

a. Does not increase the intensity of any use.

The proposed modification includes reconfiguring the existing driveway at Rusk Road to reinforce its status as an ingress-only access (left and right turns in), removing some existing parking spaces along the western edge of the parking lot to create access points between the church and the proposed development, and removal of the existing play area adjacent to the western edge of the parking area. The proposed modification will not add square footage to the church use or otherwise result in an increase in activity or use of the church site.

b. Meets all requirements of the underlying zone relating to building size and location and off-street parking and the standards of Title 19.

The applicable standards of Title 19 are those related to off-street parking (MMC Chapter 19.600) and access (MMC Section 19.708 and MMC Chapter 12.16).

As proposed, 10 existing parking spaces will be eliminated from the church parking lot. The church, which has 400 seats, has a minimum parking requirement of 100 spaces (at a ratio of 1 space for every 4 seats, as per MMC Table 19.605.1) and a maximum allowance of 200 spaces (at a ratio of 1 space for every 2 seats). There are currently 225 spaces in the church parking lot. Removal of 10 spaces will bring the church site closer to conformance with the current standards.

In addition, the proposal includes a 6-ft landscape buffer along the northern and western perimeter of the existing parking area, adjacent to the proposed development, which will bring the site closer to conformance with the perimeter landscaping standards of MMC Subsection 19.606.2 and will screen the parking area from the proposed development.

One of the purposes of MMC Section 19.708 Transportation Facility Requirements, and the intent of MMC Chapter 12.16, is to ensure safe access to public streets. The proposed modifications to the existing church driveway at Rusk Road will ensure that the driveway is used for ingress only, which will improve safety on Rusk Road by reducing potential conflicts due to poor sight distance at that location.

- c. Does not result in deterioration or loss of any protected natural feature or open space, and does not negatively affect nearby properties.

The proposed modifications to the existing church parking lot and driveway access at Rusk Road do not impact any designated natural resource area or open space feature.

- d. Does not alter or contravene any conditions specifically placed on the development by the Planning Commission or City Council.

The property was annexed into the city limits in 1981 (land use file #A-80-07). In 1983, use of the site for pasture land and grazing for horses was approved as a conditional use (file #C-83-08); however, the conditional use application was subsequently withdrawn.

The site was approved as a CSU for church use by the Milwaukie Assembly of God in 1984 (file #CS-84-02). Conditions of approval included requirements to provide plans for landscaping, public facilities, and exterior lighting, as well as a traffic study and right-of-way dedication along Rusk Rd and Kellogg Creek Dr.

In 1987, the City Council approved a zone change for the western portion of the property, from R-10 to R-3, along with a conditional use approval for senior housing and an amendment to the Comprehensive Plan map (file #CPA-87-01, ZC-87-05, CU-87-05, with Ordinance #1639). The senior housing project (called Parkside Village) was never developed.

In 1992, the City approved a 5,500-sq-ft addition to the church building (file #CSO-92-03, NR-92-01). Conditions of approval included requirements to install the approved landscaping and to direct lighting away from the designated natural resource area.

In 1997, the Planning Commission denied a sign permit request to locate an electronic reader board sign on the property near the intersection of Highway 224 and Rusk Rd (file #SP-97-01).

In 2014, the Planning Director approved a minor modification to the existing CSU for the church, for removal of approximately 75 of 300 existing parking spaces as part of a natural resource restoration effort near Mount Scott Creek (file #s CSU-14-06 and NR-14-06). There were no conditions of approval.

The proposed modification does not alter or contravene any of the past conditions placed on the church development by the Planning Commission.

- e. Does not cause any public facility, including transportation, water, sewer and storm drainage, to fail to meet any applicable standards relating to adequacy of the public facility.

With regard to public facilities, the proposed modification will affect only the existing church driveway at Rusk Road. As proposed, the driveway will be modified to further limit egress movements at that location, which, due to limited sight distance and the proximity to the intersection of Rusk Road and Highway 224, will improve public safety. A new in/out access to the church site will be established through the proposed development and will be designed to meet applicable standards. The new access will focus more church trips on Kellogg Creek Drive, a local street, instead of on Rusk Road, a collector. The proposed modification will not cause any public facility to fail to meet any applicable standards relating to adequacy.

As proposed, the City Council finds that the proposed development meets the approval criteria for a minor modification to the existing community service use.

16. MMC Section 19.911 Variances

MMC Section 19.911 establishes the variance process for seeking relief from specific code sections that have the unintended effect of preventing reasonable development or imposing undue hardship.

a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B.

The applicant has requested two variances: (1) to allow more than 20 dwellings to be served by a closed-end street system as limited by MMC Subsection 19.708.1.E.5; and (2) to exempt 23 of the 92 proposed lots from the requirement of MMC Subsection 19.402.13.I.2 to provide adequate buildable area outside of the WQR and HCA. The second variance request would permit an additional number of units to be constructed through a 12% increase in density, as allowed in a Planned Development zone (MMC Section 19.311).

The request would not eliminate the restriction on a prohibited activity, change a required review type, allow a use not allowed outright in the R-10 or R-3 zone, or otherwise produce any of the results listed in MMC Subsection 19.911.2.B. The requests are each eligible for a variance as per MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. MMC Subsection 19.911.3.C establishes the Type III review process for larger or more complex variations to standards than those allowed through the Type II review process as per MMC Subsection 19.911.3.B, variations that require additional discretion and warrant a public hearing.

The applicant has requested variances to the closed-end street standard established in MMC Subsection 19.708.1.E.5 and to the requirement that all new lots have adequate buildable area outside of the WQR and HCA. These requests are not eligible for Type II review as provided in MMC 19.911.3.B and so are subject to Type III review as per MMC 19.911.3.C. As noted in Finding 6, since the variance requests are associated with a proposed Planned Development, which itself requires Type IV review, the variances are also subject to Type IV review as per MMC Subsection 19.1001.6.B.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests. Specifically, MMC Subsection 19.911.4.B.1 provides approval criteria for Type III variances where the applicant elects to utilize the Discretionary Relief Criteria:

- (1) The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

Closed-End Street System: In order to preserve the existing white oak trees in the southwestern corner of the site and to maintain 92 dwelling units as originally proposed, the development plan was shifted approximately 40 ft to the east and removed one of the two street connections to Kellogg Creek Drive. Although this effectively makes the street system a dead-end one serving all 92 units, the revised network maintains safe internal circulation and sufficient fire and emergency service access for the proposed development because access is available through the adjacent church property.

Adequate Buildable Area Variance: As noted above, 23 of the 92 proposed lots are affected by the requested variance. Eliminating the lots in question would reduce the proposed development below the minimum density of 66 units required for the site with the proposed street configuration. In addition, eliminating those lots would remove the need for the requested density bonus, which was being justified by the inclusion of several amenities (e.g., community garden, additional landscaping) that would likely be removed from the proposal. The proposed disturbance to the WQR and HCA will be mitigated with native plantings to enhance the remaining natural resource areas.

The City Council finds that the applicant's analysis of alternatives is sufficient to address the impacts and benefits of both of the proposed variances. This criterion is met.

- (2) The proposed variance is determined to be both reasonable and appropriate, and it meets one or more of the following criteria:
- (a) The proposed variance avoids or minimizes impacts to surrounding properties.
 - (b) The proposed variance has desirable public benefits.
 - (c) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

Closed-End Street System: The proposed variance will not have any negative impacts on surrounding properties and helps ensure that the existing white oak trees in the southwestern corner of the site will not be removed.

Adequate Buildable Area Variance: The requested variance does not affect any adjacent properties outside the proposed development. Approval of the variance allows the development of 92 units of housing instead of 61 units, which helps address an identified housing need for the community. The overall development layout is configured to minimize intrusion into the floodplain and designated natural resource areas on the site, and to focus impacts on WQR and HCA resources that are of lower ecological value and/or that have already been impacted by past development activity. Mitigation plantings will enhance remaining natural resources on the site.

The City Council finds that the requested variances are reasonable and appropriate and that they both meet one or more of the criteria provided in MMC Subsection 19.911.B.1.b.

- (3) Impacts from the proposed variance will be mitigated to the extent practicable.

Closed-End Street System: To address potential impacts of the proposed variance on fire and emergency service access, the design of the revised street system incorporates comments received from Clackamas Fire District #1 to provide adequate access for fire and emergency service vehicles.

Adequate Buildable Area Variance: The applicant has provided a mitigation plan for disturbed natural resource areas that includes removal of nuisance plants, noxious materials, and debris within the WQR and HCA areas on the site. As proposed, 863 native trees and 4,317 native shrubs will be planted. Two other areas beyond the disturbance zones will be enhanced with removal of nuisance plants and debris and additional native plantings. As proposed, the mitigation plan will enhance the natural resource areas that remain.

The City Council finds that both variance requests will be mitigated to the extent practicable.

The City Council finds that the proposed development meets the approval criteria for a Type III variance request, as provided in MMC 19.911.4.B.

As proposed, the City Council finds that both of the requested variances are allowable as per the applicable standards of MMC 19.911.

17. MMC Chapter 19.1200 Solar Access Protection

A primary purpose of MMC 19.1200 is to orient new lots and parcels to allow utilization of solar energy. In particular, MMC Section 19.1203 establishes solar access provisions for new development. In particular, MMC Subsection 19.1203.2 establishes the applicability of MMC Subsection 19.1203.3 as applications for the creation of lots in single-family zones. Exceptions are allowable to the extent the Planning Director finds that the applicant has shown one or more of the conditions listed in MMC Subsections 19.1203.4 and 19.1203.5 exist and that exemptions or adjustments are warranted.

a. MMC Subsection 19.1203.3 Design Standard

MMC 19.1203.3 establishes a solar design standard for at least 80% of the lots in any proposed development, including basic requirements for north-south dimension and front-lot-line orientation with respect to a true east-west axis. There are two other options for compliance, either establishing a protected solar building line or demonstrating a level of performance with respect to protection from shading.

The proposed development is for 92 lots, none of which have a minimum north-south dimension of at least 90 ft. However, 76 lots (approximately 82%) have a minimum north-south dimension of at least 80 ft and have the front lot line oriented within 30 degrees of a true east-west axis. Of the remaining 16 lots, all have their long axis oriented within 30 degrees of a true east-west axis, but due to the attached nature of the rowhouses in the proposed development, the ground floor south wall of most of the units will be shaded by the adjacent unit to the south.

The applicant has requested an adjustment to the design standard of MMC 19.1203.3.

b. MMC Subsection 19.1203.5 Adjustment to Design Standard

MMC 19.1203.5 allows the reduction of the number of lots that must comply with MMC 19.1203.3 to the minimum extent necessary, if the applicant demonstrates that the standard would cause or is subject to certain conditions, such as adverse impacts on density, cost, or amenities.

Considering the flexibility of design afforded to planned developments in MMC Section 19.311, the allowance for a density bonus as discussed in Finding 7-a, and the site constraints presented by natural resources and floodplain on the site, the design standard of MMC 19.1203.3 presents a particular challenge for the subject property. To configure more lots with a north-south axis of at least 90 ft would result in additional disturbance to natural resources or the floodplain. Reducing the number of lots accordingly would substantially reduce the effectiveness of the Planned Development option for a site that is otherwise well suited for flexible design.

As proposed, 76 of the 92 proposed lots (approximately 82%) are close to meeting the design standard of MMC 19.1203.3, with a north-south dimension of at least 80 ft. In a planned development scenario, where adjustments to conventional lot size and dimensional requirements are expected, and where strict adherence to the design standard would result in a significant decrease in density or increase in disturbance to natural resource and floodplain areas, a request to reduce the number of lots that must comply is reasonable.

The City Council finds that the request to adjust the number of lots that must comply with the design standard of MMC 19.1203.3 is warranted. The 76 lots with a north-south axis of at least 80 ft are sufficient to meet the requirements of MMC 19.1200.

As proposed, and with the approved reduction noted above, the City Council finds that the proposed development complies with the applicable standards of MMC 19.1200.

18. The application was referred to the following departments and agencies on April 13, 2017, with additional materials sent on April 26, 2017:
- Milwaukie Building Department
 - Milwaukie Engineering Department
 - Milwaukie Public Works Department
 - ESA (City's on-call consultant for natural resource review)
 - Clackamas Fire District #1
 - Lake Road Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
 - Clackamas County Department of Transportation and Development
 - Metro

- Oregon Department of Transportation (ODOT)
- TriMet
- North Clackamas Parks & Recreation District
- Oak Grove Community Council

The comments received are summarized as follows, including comments received in response to the public notice posted on the site and mailed to property owners and residents within 500 ft of the site:

- a. **Michelle Wyfells, Planner II, TriMet:** Given the imminent changes to re-route the existing bus service on Kellogg Creek Drive (Line 152), TriMet has no comments on the proposal.
- b. **Matt Amos, Fire Inspector, Clackamas Fire District #1 (CFD#1):** Comments related to fire access and water supply requirements, including notes on required turning radii and approvable turnarounds.
- c. **Rob Livingston, Erosion Control Specialist, City of Milwaukie Public Works:** Due to the site being over 5 acres, a 1200C construction stormwater permit from DEQ will be required. A maintenance agreement with the City must be established for the stormwater facilities on site. For the City's erosion control permit, more information will be required on how hydric soils will be managed during excavation of the wetland area. Given the number of new households proposed and the accompanying number of anticipated household pets, a dispensing device(s) for pet-waste bags should be required in the large natural open space area. There is also concern for the likelihood of negative impacts to water quality and fish habitat from household pets recreating in Mount Scott Creek.

The proposed stormwater facilities do not show details for detention prior to discharge into Mount Scott Creek, particularly regarding how or where stormwater discharge will be mitigated. Many of the proposed plantings are near buildings and sidewalks—tree plantings closer to the creek would improve shade, reducing stream temperatures and mitigating for the development's removal of large mature trees from the site. The plantings proposed in Additional Enhancement Areas A and B do not provide meaningful streambank enhancement or vegetative shading for the creek.

- d. **Paul Hawkins, Land Use Chair, Lake Road NDA:** The FEMA flood data for this location is dated, so it is unclear whether the three proposed detention ponds will be adequate. The "Y" intersection of Rusk Road and Kellogg Creek Drive is less than ideal, and traffic currently backs up on Rusk Road at the Highway 224 intersection during weekday commuting hours.
- e. **Rebecca Hamilton, Regional Planner, Metro:** Metro notes that the application would require a Type III Variance to allow impacts to designated natural areas for creating 31 of the 92 proposed lots. The City of Milwaukie's Municipal Code is consistent with Metro's Functional Plan. If the City of Milwaukie is satisfied that the application has met its requirements for a Type III Variance, and if there is no request for an amendment to the City's comprehensive plan or zoning code, then Metro has no comment on this application.
- f. **Joseph Edge, Director, Oak Grove Community Council:** The trip estimates for the proposed development appear to be low, as the proposed units will perform more like single-family detached dwellings than townhouses, given their proposed price point and the likelihood that two wage-earners employed outside the household will live in

each unit. The stormwater calculations are based on a pre-development curve number that is too high and does not accurately represent the pre-development conditions that should be more conservatively assumed for the site, especially considering the flood potential of the area. The loss of large white oak trees in the southwestern corner of the site is unacceptable, as these mature, old-growth trees cannot be sufficiently replaced with new trees. An alternative that preserves those trees and combines the 12 units in the southwestern portion of the site into a multifamily building elsewhere on the site would be more acceptable.

- g. **Sarah Hartung, Senior Biologist, ESA (City's On-Call Natural Resource Consultant):** A report providing peer review of the applicant's Natural Resource Review report has been provided to City staff and has been integrated into the Recommended Findings and Conditions of Approval.
- h. **Marah Danielson, Development Review Planner, ODOT Region 1:** The proposed zone change results in only a small increase in additional trips to the state highway. The applicant's Traffic Impact Analysis (TIA) shows a high number of crashes at both the Rusk Road and Webster Road intersections with Highway 224. Since the TIA analyzed the northbound right-turn movement at the Rusk Road/Highway 224 intersection as a right-turn lane where there is only a flare for a turn lane, ODOT recommends a condition requiring installation of a northbound right-turn lane at the Rusk Road/Highway 224 intersection.
- i. **Alex Roller, Engineering Tech II, City of Milwaukie Engineering Department:** Comments related to the proposal's compliance with Milwaukie Municipal Code (MMC) Title 12 Streets, Sidewalks, and Public Places; MMC Title 18 Flood Hazard Regulations; and MMC Chapter 19.700 Public Facility Improvements, with relevant recommended conditions of approval.
- j. **Kenneth Kent, Senior Planner, Clackamas County Department of Transportation and Development (DTD), Engineering Division:** Both Kellogg Creek Drive and Rusk Road are under the County's jurisdiction, so County standards and requirements apply where frontage improvements are concerned. On Kellogg Creek Drive, half-street improvements are required (minimum 16-ft roadway, curb or curb and gutter, 5-ft landscape strip, 5-ft sidewalk), with no bike lane striping. Recommendation that the existing church driveway at Rusk Road be closed, due to poor sight-distance and the difficulty of ensuring one-way ingress to the site without a median on Rusk Road. Recommendation that the applicant's traffic impact study be updated to (1) evaluate the study intersections to include estimated summer traffic volumes from North Clackamas Park, (2) include impacts of closure of the existing church driveway at Rusk Road, (3) reevaluate queuing on Rusk Road at the Highway 224 intersection using the SimTraffic program, and (4) evaluate the need for a northbound left-turn lane at the Rusk Road intersection with Kellogg Creek Drive. Suggestion that an analysis or evaluation of parking availability within the proposed development (in driveways, garages, and on-street) be conducted to understand the potential impacts of overflow parking in the adjacent neighborhood.
- k. **Kathryn Krygier, Planning and Development Manager, and Tonia Williamson, Natural Resource Coordinator, North Clackamas Parks & Recreation District (NCPRD):** Concern that increased traffic resulting from the proposed development will impact access to nearby NCPRD facilities. Note that the applicant's Traffic Impact Study (TIS) was not conducted during the time when activity at the ballfield complex in North Clackamas Park is at its peak (April through July). Concerns about safety at

the intersection of Rusk Road and Kellogg Creek Drive. Suggestion that a parking study be conducted to examine the issue of visitor parking within the proposed development. Concern that the bike lane between Rusk Road and Street B appears to dead-end. Questions about the soft-surface trail system, including public accessibility, maintenance, and assessment of natural resource impacts, with a note that the trails are short and discontinuous. Request for a phasing plan, if phasing is proposed. Concern about the potential for increased flooding resulting from development within designated natural resource areas on the site. Suggestion that the applicant has not sufficiently demonstrated that impacts to natural resources will be minimized.

- l. **Laura Hickman, area resident:** Concern about traffic impacts resulting from the proposed development; including pedestrian and bicycle safety to and from area homes, North Clackamas Park, and nearby schools. Questions about the methodology and assumptions of the TIS.
- m. **Ray Olma, area resident:** Traffic on Highway 224 and Rusk Road is already bad and will be made worse by trips from the proposed development. Concern for pedestrian safety on and crossing Rusk Road, which does not have sidewalks.
- n. **Jamie Marshall, area resident:** Existing infrastructure (including water treatment facilities and I-205) is inadequate to support the proposed development.
- o. **Melanie Frisch, area resident:** Concern about traffic impacts (inadequate infrastructure) and impacts to natural resources.
- p. **Alex Roller, Engineering Tech II, City of Milwaukie Engineering Department:** Revisions to comments provided in the earlier memo related to MMC Title 12 Streets, Sidewalks, and Public Places; MMC Title 18 Flood Hazard Regulations; and MMC Chapter 19.700 Public Facility Improvements.
- q. **Dan Sweet, area resident:** Comments in opposition to the proposed development, based on concerns about traffic, flooding, and stormwater runoff.
- r. **Vincent Alvarez, Chair, Lake Road NDA:** Concerns about the proposed destruction of existing wetlands and removal of healthy white oak trees, flooding potential, and traffic impacts.
- s. **Bruce Reiter, area resident:** Concerns about traffic impacts and potential impacts to the wetland's role in flood management.
- t. **John Green-Hite, area resident:** Concerns about impacts to the watershed and flooding as well as to traffic.
- u. **Joan Young, area resident:** Concerns about impacts to the broader community beyond city limits, including impacts to traffic, the environment in general, the white oak trees in particular, and flooding. Reports a history of illegal fill activity on the site.
- v. **Howard Lanoff, area resident:** Concern about increased density and its impacts on livability.
- w. **Georgia Bogner, area resident:** Wait times at the light at Rusk Road and Highway 224 are already bad. The proposed 92-unit development will add more than 1 vehicle each during peak times.
- x. **Chris Runyard, ecological restoration specialist:** Submitted a 3-minute video posted online in opposition to the proposed development, citing concerns about impacts to the white oak trees, wetlands, and flooding.

- y. **Linda Huntley, area resident:** Comments in opposition to the proposed development, based on concerns about traffic (accidents and congestion).
- z. **Jennifer Stipetic, area resident:** Concerns about impacts on area traffic and the environment, including a desire to preserve the existing white oak trees and avoid any fill in the wetlands.
- aa. **Terry Gibson, Board Chair of North Clackamas Urban Watersheds Council:** The applicant has failed to show that the proposed development avoids or minimizes impacts to surrounding properties, has desirable public benefits, or responds to the existing built or natural environment in a creative or sensitive manner. The application does not address the potential for increased flooding in North Clackamas Park or the public benefit currently provided by the natural resource area on the site (including the white oak trees). The watershed council is heavily invested in the restoration of the natural resource area on site through its Streamside Stewards Program and believes the proposed mitigation plantings would be redundant of these earlier efforts.
- bb. **Linda Huntley, area resident:** Additional note that traffic from ball field activity in the park (Spring through Fall) already presents significant congestion and safety issues.
- cc. **Sara Miller, area resident:** The proposed development does not promote several of the goals identified in Milwaukie's 2040 Vision, particularly where it proposes to remove existing white oak trees and fill in the wetland and floodplain. The proposal does not appear to include sidewalks or address sidewalk gaps and ADA deficiencies. There are better locations in Milwaukie to develop townhomes.
- dd. **Dick Shook, area resident:** Concerns about impacts on area creeks and wetlands (flooding), the old-growth white oak trees, and the number of proposed units.
- ee. **Matt Menely, area resident:** The proposed development does not reflect the community values that have been expressed over time—walkable communities, more open space, and housing developments that create a sense of community. Wetlands and trees provide benefits to the community and should be preserved.
- ff. **Laura Hickman, area resident:** Submitted a report from the North Clackamas School District that included a detailed review of pedestrian conditions on Rusk Road. Walking conditions on Rusk Road are unsafe.
- gg. **Todd Alsbury, District Fish Biologist, Oregon Department of Fish & Wildlife (ODFW):** ODFW has conducted a preliminary review of the proposed project and asks for additional time for review. Priority and/or special status fish and wildlife species are known to occur on and near the property, and Mount Scott Creek is considered Essential Salmonid Habitat. Flowing water, riparian zones, wetlands, and Oregon white oak habitat are identified as Strategy (Priority) Habitats in the Oregon Conservation Strategy. ODFW is concerned about siting infrastructure within an active floodplain, encroachment into the riparian zone, loss of existing wetlands, and loss of Oregon white oak trees that would result from the proposed development. ODFW recommends that new infrastructure be sited outside floodplains, wetlands, and other priority fish and wildlife habitats, that those habitats be adequately buffered, and that the white oak trees be retained.
- hh. **Lisa Kennedy, area resident:** Comments in favor of the proposed development, including that it provides plenty of open space with affordable housing.

- ii. **Sue Hayes, area resident:** Comments in opposition to the proposed development, including that 92 units are too many, the lots are too small, the site is in a flood zone, and that it would increase traffic and be dangerous for pedestrians.
- jj. **Bev St. John, area resident:** Concerns about traffic impacts and pedestrian safety (lack of sidewalks in the area).
- kk. **Randy Day, area resident:** The proposed development is too much for this site, considering the impact to adjacent sensitive lands and the fact that it will be an auto-dependent development. The traffic impacts will be significant and a right-turn lane on Rusk Road at Highway 224 is needed now; increased trips would seem to necessitate a left-turn lane and signal as well.
- ll. **Jarrod Allen, area resident:** Opposition to the proposed development, due to traffic impacts and a lack of pedestrian facilities. The wetland area should remain undeveloped.
- mm. **Lois Keiser, area resident:** Concerns about general impacts to neighborhood (density, water/sewer infrastructure, and traffic).
- nn. **Ben Geertz, area resident:** Concerns for pedestrian and other non-motorized safety, as Rusk Road is currently very unsafe (no shoulder, blind corners, limited pedestrian facilities).
- oo. **Lois Herring, area resident:** Support for May 25 comment by Joseph Edge that traffic study calculations for the proposed development should be done using the assumption that the proposed rowhouses will function in similar fashion to single-family detached dwellings.
- pp. **Linda and Roger Huntley, area residents:** Additional concerns related to the need to preserve salmon habitat and the white oak trees.
- qq. **Joseph Edge, Director, Oak Grove Community Council:** There is no guarantee that the market rate for the proposed units will remain within the price range of modest-income people, so the promotion of the proposed units as workforce housing should not be the basis for granting a density bonus. To be more affordable, at least some of the housing should be proposed as rental units in multifamily buildings. This would also reduce the aggregate footprint of structures on the site and thus further avoid and minimize impacts to natural resources.

The site is not ideal for lower income affordable housing, due to the expense of motor-vehicle ownership and the fact that the lack of safe transportation options at this location means that the people who live at the site will likely have 1 or 2 vehicles and therefore will not likely be lower income people. One suggestion is to have the new homeowners association provide a car-sharing service to help reduce the number of resident-owned vehicles in the new development. Such a car-sharing service, together with a multifamily configuration of buildings to reduce impacts to natural resources, could arguably be viewed as the kind of creative and outstanding amenities that would warrant a density bonus.

- rr. **Chris Runyard, ecological restoration specialist:** It is not the role of the Planning Commission or City staff to ensure that developers make a profit. Ninety-two (92) units are not necessary for the developer to make a profit. The new units will not be "affordable housing" but will be sold at the market rate. The developer would benefit from giving the open space tract to the North Clackamas Parks & Recreation District (NCPRD), so the wetlands should not be negotiated away in exchange for the higher

density (92 units). The City does have a responsibility to protect the public good (e.g., wetlands, trees, housing, and reduced flooding) and should be more concerned with protecting natural resources than with the developer's profit margin.

- ss. Kathryn Krygier, Planning and Development Manager, North Clackamas Parks & Recreation District (NCPRD):** NCPRD is willing to acquire and manage the proposed open space tract. No funds are available for NCPRD position to purchase the tract or to provide System Development Charge (SDC) credits in exchange, but NCPRD would accept the tract if offered at no cost. The District's interest extends only to the open space tract and not to the community garden or play area.

If acquired, NCPRD would manage the tract to be compatible with the master plan for North Clackamas Park, including approval of the location and specifications of the trail and review of the mitigation plan. NCPRD would either accept the tract after the mitigation plantings had been installed and approved by the City or could implement the mitigation plan itself with the funding provided by the developer. The District is also amenable to having the City take ownership of the tract and amending the Intergovernmental Agreement (IGA) as needed to have NCPRD manage and maintain the tract.

Pedestrian and bicycle routes through and within the site are critical to the development's success. To provide for complete connectivity throughout the site, the path shown on the revised site plan where a road was shown on the original plan should be public and meet ADA requirements.

- tt. Alex Roller, Engineering Tech II, City of Milwaukie Engineering Department:** Revised comments related to the proposed variance to the number of lots allowed to be served by a closed-end street system (MMC Subsection 19.708.1.E.5).
- uu. Marah Danielson, Development Review Planner, ODOT Region 1:** Comments on the revised traffic information, concluding that the intersection of Rusk Road and Highway 224 meets ODOT standards under the proposed development scenario but will continue to experience congestion. ODOT agrees that the addition of a northbound right-turn lane on Rusk Road will improve present and future operation.
- vv. Todd Alsbury, District Fish Biologist, (ODFW):** Significant concerns from a water quality perspective and for the potential for direct impacts if the riparian area is compromised. Concern that developments of this size provide too much risk to be located within 100 ft of salmon-bearing streams, particularly ones that are the focus of recovery efforts.
- ww. Mat Dolata, DKS (City's On-Call Traffic Consultant):** Adjustment to an earlier memo provided to City Engineering staff in response to the updated traffic information. No change in recommendation—no significant off-site traffic impacts are anticipated as a result of the proposed development.
- xx. Kenneth Kent, Senior Planner, Clackamas County DTD:** Additional comments in response to the revised site plan. With the single point of access to Kellogg Creek Drive, use of the church driveway on Rusk Road may increase, including as an exit (even if modified to be enter-only). The supplemental traffic report does not discuss the church driveway at Rusk Road and the County continues to recommend closure of that access point. In addition, the County notes that bike lanes are not usually recommended on local streets like Kellogg Creek Drive; to preserve existing white oak trees in the public right-of-way, the County recommends eliminating the bike lane and replacing it with a curb-tight sidewalk.

- yy. Nancy Pierce, area resident:** Opposition to the proposed development, citing concerns about inadequate infrastructure and traffic impacts.
- zz. Chris Runyard, ecological restoration specialist:** Assertion that the proposed development is too large for the site, that no impacts to designated natural resources should be allowed, and that all white oak trees and associated habitat should be preserved.
- aaa. Mary Zellharie, area resident:** Opposition to the proposed development due to concerns about traffic impacts.
- bbb. Judy Sherley, area resident:** Opposition to the proposed development, citing concerns about natural resource impacts and traffic impacts, with several suggestions for traffic mitigation.
- ccc. Ed Hacmac, area business owner:** Concerns about traffic impacts, with a suggestion to consider constructing a roundabout at the intersection of Kellogg Creek Drive and Rusk Road.

EXHIBIT B
Final Development Plan and Program
Master File #PD-2017-001
Kellogg Creek Planned Development

The purpose of a Planned Development (PD) zone is to provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements. PD zones encourage greater flexibility of design and a mix of housing types.

The PD zone is a superimposed zone applied in combination with regular existing zones. The subject property was previously split-zoned R-10 and R-3, so the underlying zone requirements of Milwaukie Municipal Code (MMC) Sections 19.301 (Low Density Residential Zones, including R-10) and 19.302 (Medium and High Density Residential Zones, including R-3), respectively, were considered in determining the final development plan and program.

1. Final Development Plan

The final development plan of the Kellogg Creek planned development subdivision shall be comprised of the final revised development plan set stamped received by the Planning Department on July 11, 2017 (see Attachment 1). This includes such details as building locations and elevations.

2. Final Development Program

The final development program of the Kellogg Creek planned development subdivision shall be comprised of the following requirements and standards. These requirements and standards shall be applicable to development and activity on the planned development site (as shown in Attachment 1) and supersede the related provisions of MMC Title 19 Zoning.

a. Permitted Uses

Rowhouses are permitted on all lots in the Kellogg Creek subdivision.

b. Lot and Development Standards

Table 7-b(2) compares the applicable standards for development in the R-10 and R-3 zones with the standards approved as the final development plan and program for this PD zone.

Table 7-b(2) Lot and Development Standards			
Standard	R-10 Requirement	R-3 Requirement¹	Approved PD Requirement
1. Minimum Lot Size	10,000 sq ft	3,000 sq ft	Lots range from 1,600 sq ft to approx. 2,500 sq ft
2. Minimum Lot Width	70 ft	30 ft	Lot widths range from 20 ft to 28 ft
3. Minimum Lot Depth	100 ft	80 ft	Lot depths range from 80 to 87.25 ft
4. Minimum street frontage	35 ft	30 ft	Typical range is 20 to 25 ft; three lots on cul de sac are <20 ft
5. Front Yard	20 ft	15 ft	Front-loaded lots = 18 ft Alley-loaded lots = 10 ft

ATTACHMENT 5

From: [Peggy Reaume](#)
To: [Peggy Reaume](#); [Vera Kolas](#)
Subject: Proposed Waverly Woods Development
Date: Monday, November 16, 2020 9:45:53

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<https://digitalcommons.unomaha.edu/cgi/viewcontent.cgi?article=2150&context=studentwork>

<https://www.realtor.com/news/trends/things-that-affect-your-property-value/>



Neighborhood Features That Drag Down Your Home Value | realtor.com®

www.realtor.com

The spring home-buying season is just ahead of us. But before you rush out to buy, check out our list of things you don't want to have in your neighborhood.

Vera,

I have attached two articles which refer to single family home values near multifamily developments. The first attachment is a master's thesis and is highlighted below and the second article, while less scientific, shows similar results.

I am a realtor with Windermere Realty Trust. It is my opinion that the Waverly Woods current plan will impact housing prices in Waverly Heights neighborhood, particularly those at the end of SE Cambridge Lane. I believe there are ways to decrease this impact including, but not limited to, decreasing the height of the buildings closest to SE Cambridge Lane, in accordance to current standards in Willamette Greenway and sheilding the impact with solid wall and trees so the visual and auditory impact is lessened.

Another case in point is the property located at 10200 SE Cambridge

Lane. This property is an estate like property on 3.28 acres with 9206 SF. While this is not a property with a high number of qualified buyers, it took two years to sell. The initial price was \$3,500,000 in 3/2018 and it sold for \$1,799,900 in 3/2020. I personally showed this property twice and sent it to several others. The consistent feedback I received from qualified buyers was the readily apparent presence of apartments in the rear of the yard. They wanted a larger property but not one next to apartments.

Thank you for your time and kindly confirm receipt.

best,
Peggy Reaume

Attachment #1:

The objective for this research study is to analyze the impact apartment complexes have on the sales price of single-family dwellings by using distance and structural density as factors. The two hypotheses determined if the selling price of single-family dwellings increase with increasing distance from an apartment complex and if the greater the number of apartment complexes within 914.4 meters (3,000 feet) of a single-family dwelling the lower the selling price.

The results of the quantitative analysis performed on the data indicated that both the first and second hypotheses are supported. The selling price of single-family dwellings increased with increasing distance, but only after performing factor analysis and regression analysis utilizing factor scores. Regression using factor scores was utilized because severe multicollinearity existed in both the full and reduced attribute multiple regression models. However, the second hypothesis where selling price of single-family dwellings decrease with increasing numbers of apartment complexes was supported by all of the multivariate analyses including the full and reduced attribute multiple regression model, the Varimax rotated factor analysis scores, and regression utilizing factor scores. The regression coefficient for the number of apartments variable was negative for Models 1 and 2 and were significant at the 0.05-level. The number of

page71image3795382896



apartments variable had a positive coefficient when using factor scores in regression because it was grouped with distance. As a result, referring to both the rotated component matrix and the rotated component plot are essential when analyzing the factors scores because they showed that the number of apartments variable were in fact negative and distance positive. In other words, both hypotheses are supported, but the support of the second hypothesis is stronger. This is because the number of apartments variable had a negative coefficient in Models 1 and

ATTACHMENT 5

2 and in the results presented in the tables for factor analysis. More research needs to be done to investigate the multifaceted effect apartment complexes have on the value of single-family dwellings.



Real Estate Broker, MA

Windermere Foundation Board Member
Certified Negotiation Expert
Home Staging Expert
Relocation Specialist
Licensed in the State of Oregon

Windermere Realty Trust

1610 SE Bybee Blvd.
Portland, OR 97202
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ATTACHMENT 5

11-16-2020
City of Milwaukie

Attention: Planning Commission Chair, Massey; Commission Members and Planning Staff

Reference: PD 2020-001; TFR-2020-002; WG-2020-001; PLA-2020-001; ZC-2020-001

Please re-review our comments and photographs addressed to the Planning Commission on 11-07 and 10-13-2020 as well as oral testimony given on 10-27-2020. Basically, we oppose this development because it is not in keeping with the greater neighborhood and does not meet existing approval criteria.

Let us remind you that we built and have lived in our home for 50 years. We are not newcomers and have been active in the greater community. Prior to our purchase, we were diligent in our contacts with the City of Milwaukie about this adjacent property zoned at that time R10 and were assured there would be a significant buffer zone between apartments and single family homes. Our building and associated home loan was contingent on that. Subsequently, the City failed to recognize the importance of that buffer and allowed the zone change in spite of neighborhood opposition.

We now ask for consideration and approval of the proposed development in accordance with the Willamette Greenway and effective Comprehensive Plan.

We wish to emphasize and re-emphasize the following:

1. The building height and width requests are significantly in excess of requirements . We've asked for elevations from the north and have not received them. It appears that the building will reach nearly 63' in height as viewed from the river and our property. *(Note the 8'-11' garage wall at lower elevation and the 8' +/- height added for mechanical equipment and roofline).*
 - We've suggested elimination of the 4th story; or, moving the A1 and A2 complexes toward Waverly Court where the proposed Willamette River viewing location is planned; or, the reduction of the overall density planned for this site.
 - The owner indicates the development is not financially feasible without a 4th story. The City and community are not responsible for a developer's financial success. We respectfully ask the Planning Commission to consider the financial impact and quality of life impacts on the immediately adjacent single family neighborhood.
 - While we appreciate the offer to move A2 six feet to the south, this distance does little to mitigate views, noise and light pollution. In accordance with 'dark skies' objectives, we are concerned about lighting on sides of buildings A2 and B2 as well as walkways and community areas. We request no lighting on the north buffer of the development.
2. It also appears that building A2 incorporates wrap-around balconies and the owner makes specific points of the value of windows on two sides . Those balconies should be completely obstructed from viewing our property from 4 stories above. The walkway/path shown between our properties should also be eliminated and outdoor ground level terraces should not be placed in a buffer zone between our properties.

Construction noise and geological disruption: As noted by neighbors, we are concerned about blasting impact on a basalt ridge extending through our property. Excavation would occur immediately adjacent to our property line and to single family homes in Waverley Heights. Will the developer be liable for any damages to Waverley Heights properties?

ATTACHMENT 5

3. Significant natural area: The developer notes many times that 54% of properties will be kept in a natural state. A definition of 'natural area' is requested. Does that include community viewing area, paths, the already existing garden? Completely re-landscaped property could hardly be considered **retention** of natural area. No mention has been made of impact on the wildlife resource and habitat. Further, Planned Developments require designation of permanent green space. We have no indication that provisions of this nature have been made. We suggest that a permanent green space could act as the buffer between R2 and R10 neighborhoods.

4. Photographic walk through Waverley Heights: Our neighborhood is shown as 'historic' in the Comprehensive Plan and there is direction as to how these properties should be protected. We have included a photographic walk-thru of the Historic Waverley neighborhood for your review as neither the Planning Staff or the Planning Commission members have agreed to view the site from Cambridge Lane or the entire north, east or west borders. Thus, a realistic view of all impacted neighboring communities has not been obtained. Also included is a photo of the cover of the book, *It was 100 Years Since—100 Years in the Waverley Area* researched and written by Elizabeth Dimon, the daughter of one of the original resident families in Waverley Heights. It is available for your review if there is interest in the significant historical value of this neighborhood. It gives perspective on why current residents are adamant about preservation of this **significant historic Milwaukie resource**.

Photos clearly point out the maintenance of forested lands, open spaces, large lot size and historic homes. Care for this environment has been the residents' purposeful objective for over half a century! The condition of trees maintained in Waverley Heights and the condition of vegetation in the development site is also evident. Developer states "the owners have had this property in their family for decades and appreciate the natural beauty of these wooded areas — —and have committed significant resources to maintaining and protecting the existing trees". Due to lack of maintenance, we question whether trees designated to remain can be rehabilitated and will live through excavation. Tree inventory shows only 135 trees retained of which 36 are in only fair condition. We question whether requirements stated in the Comprehensive Plan or the Willamette Greenway are being met and whether the "Waverly Forest" retention mentioned in the submission is realistic or sustainable given the footprint and density of the proposal.

A photographic 'walk' down the fence line between Waverley Heights and the proposed development also adds perspective. Please note comments added on photos.

5. **Conclusion:** The proposed development is bordered on three sides by extremely low density, historic properties.

In order to mitigate impact of any development plan, a significant, impenetrable buffer zone is imperative to meet Willamette Greenway and effective Comprehensive Plan provisions and ensure quality of life for neighboring residents.

This Planned Development does not meet numerous provisions in the Willamette Greenway and effective Comprehensive Plan and should be denied in its current form. To be allowed as presented would be precedent setting for future requests and compromises validity of Milwaukie's current planning framework and values set forth in the Willamette Greenway.

Finally, I must mention the role of the NDA in this proposed development. I've talked with the outgoing president of Historic Milwaukie. He indicated that during COVID it has been difficult to get information out including meeting agendas. I've been unable to ascertain if the July meeting was held primarily for the Waverly Development presentation. Applicant states there

ATTACHMENT 5

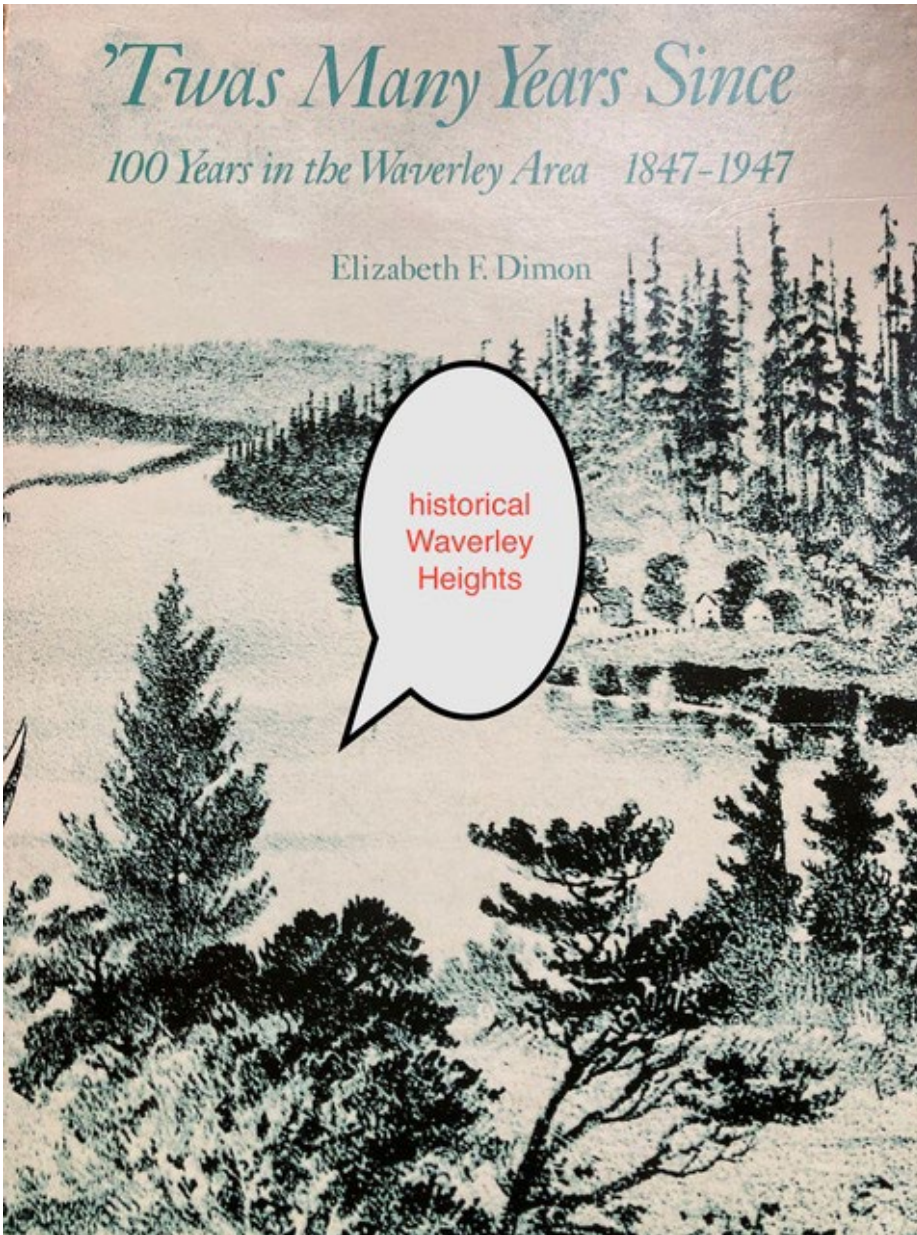
was no opposition at the meeting and we note that most attendees were Waverly apartment dwellers. In any event, none of the impacted Waverley Heights neighbors were advised of this meeting and as a result none attended. Our **first** notice of the proposal arrived in the mail on 10-9-2020 barely two weeks prior to the hearing where the Planning Staff recommended approval.

Our point: The NDA's should not bear the responsibility for garnering citizen approval of developments, especially when Willamette Greenway and Comprehensive Plan 'exceptions' are in consideration.

ATTACHMENT 5

From: [Steve Stone](#)
To: [Vera Kollias](#)
Subject: Photo tour of Waverley Heights - 1st part of album
Date: Tuesday, November 17, 2020 8:39:45

This Message originated outside your organization.





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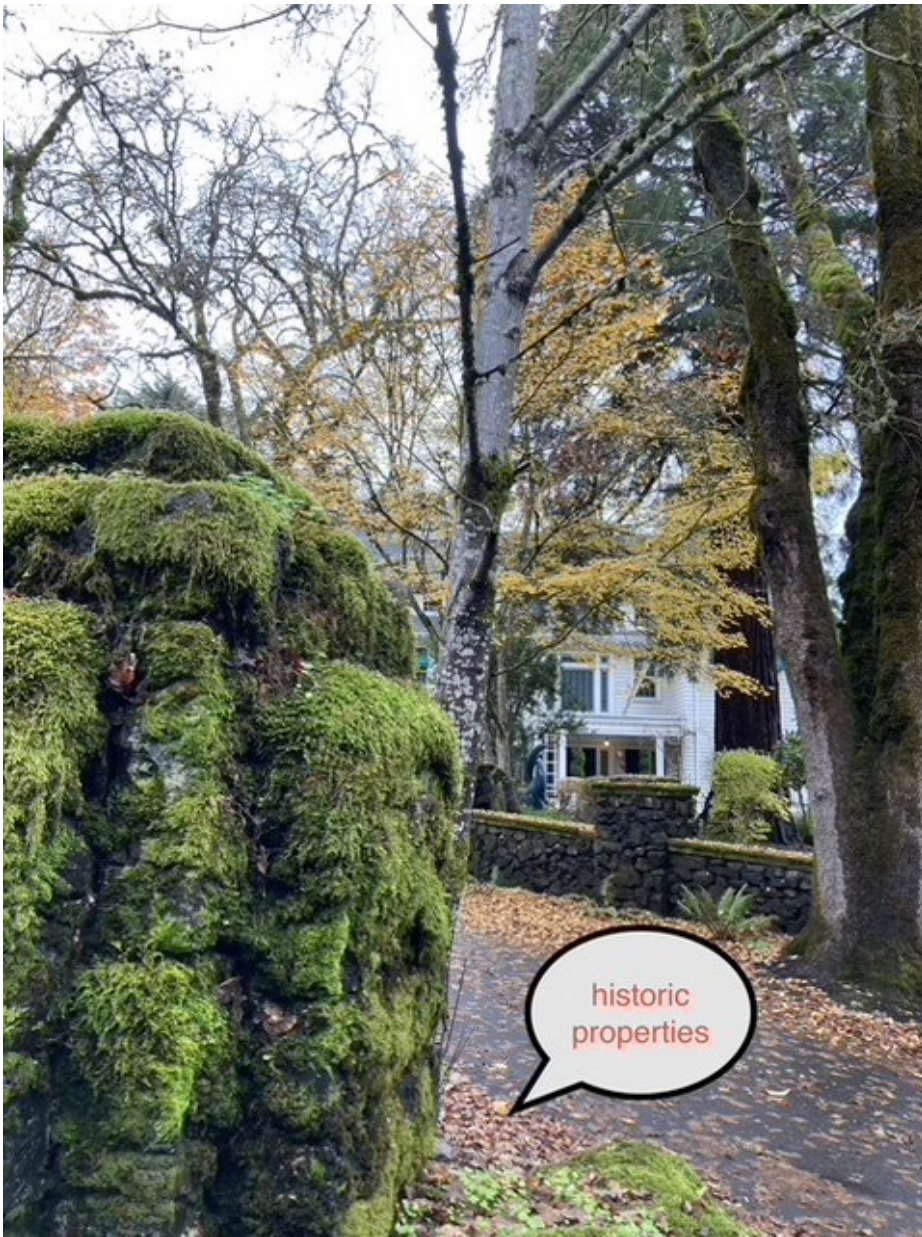














ATTACHMENT 5

From: [Steve Stone](#)
To: [Vera Kollias](#)
Subject: Photo tour of Waverley Heights - 2nd part of album
Date: Tuesday, November 17, 2020 9:27:36

This Message originated outside your organization.

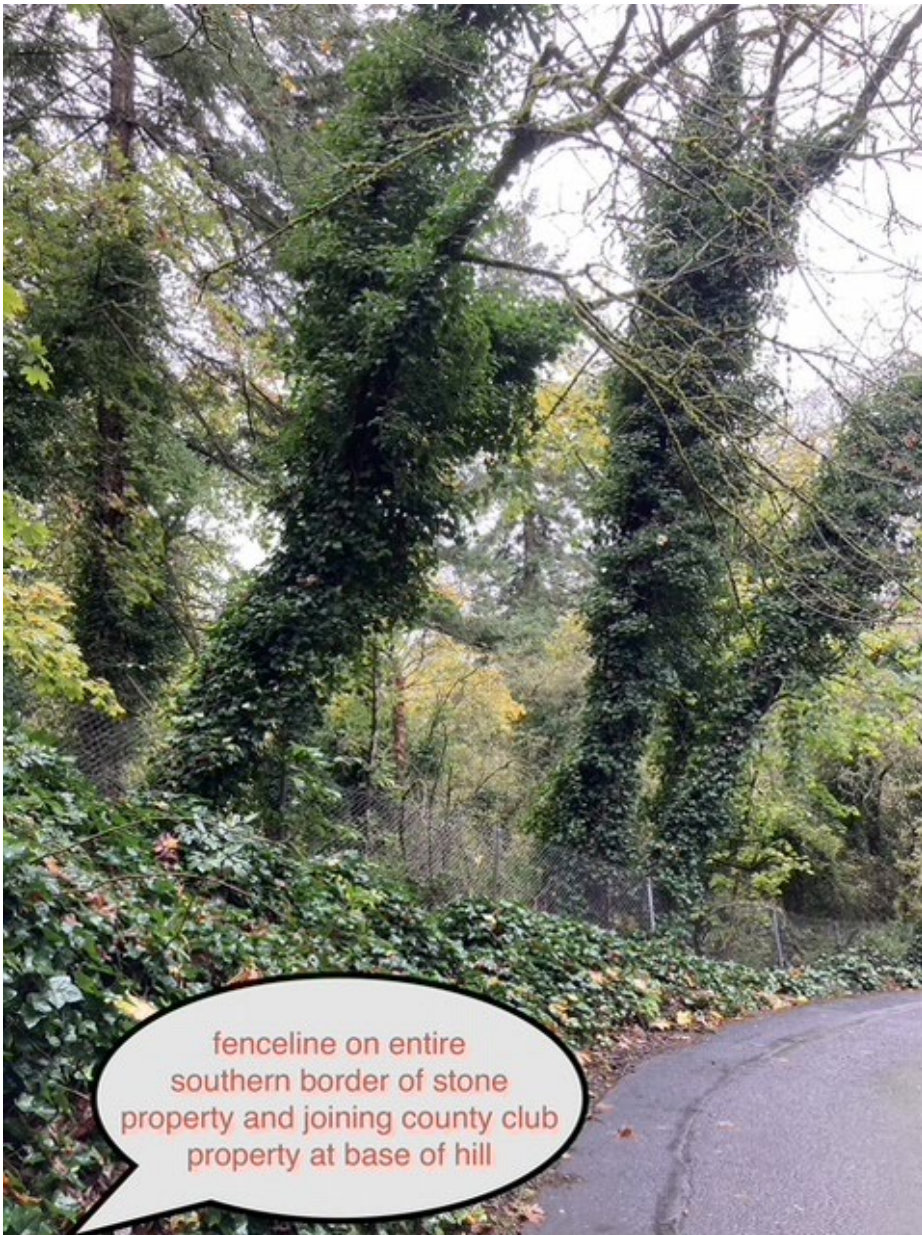
Vera- please let us know if you have any problem with the 'tour' photos sent in two emails
Thanks, Gloria







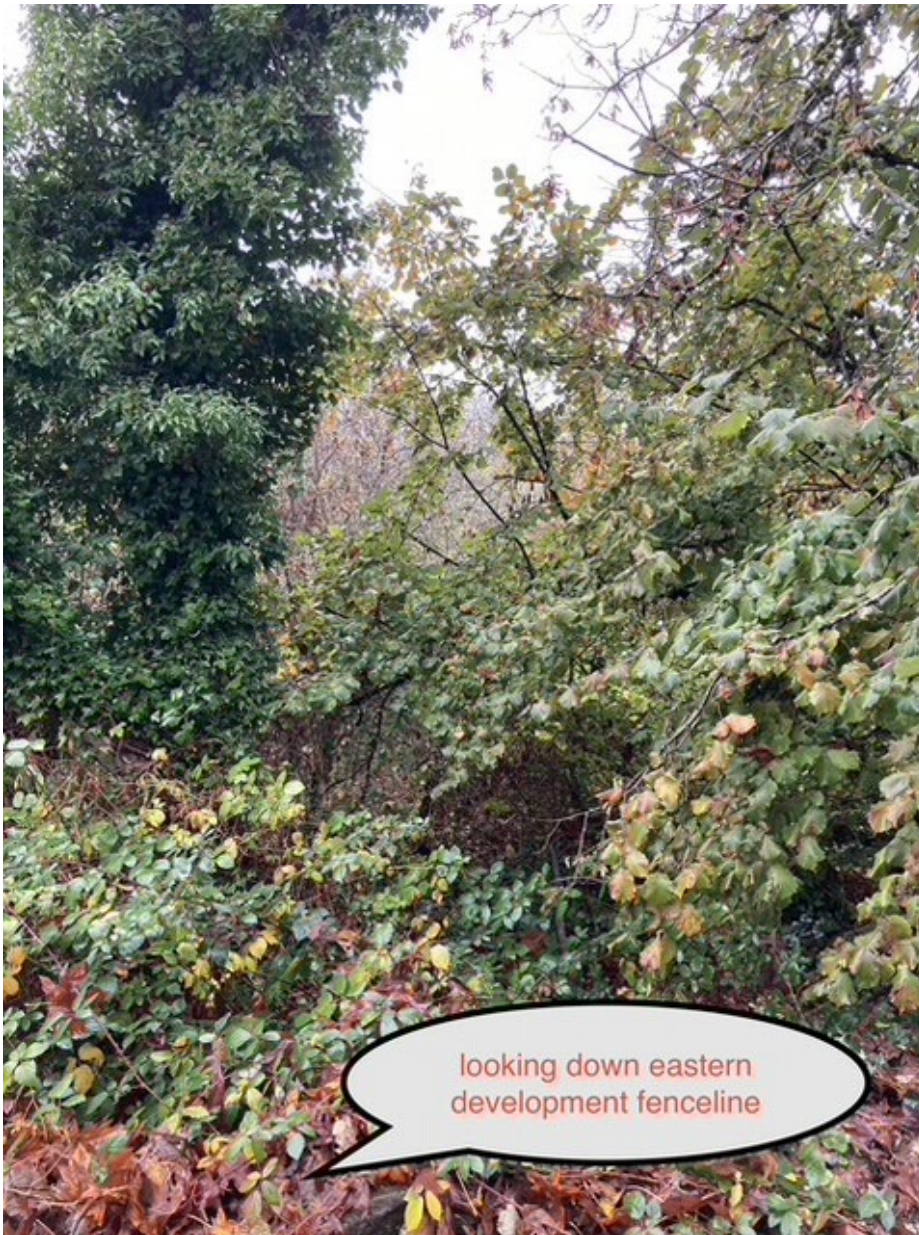








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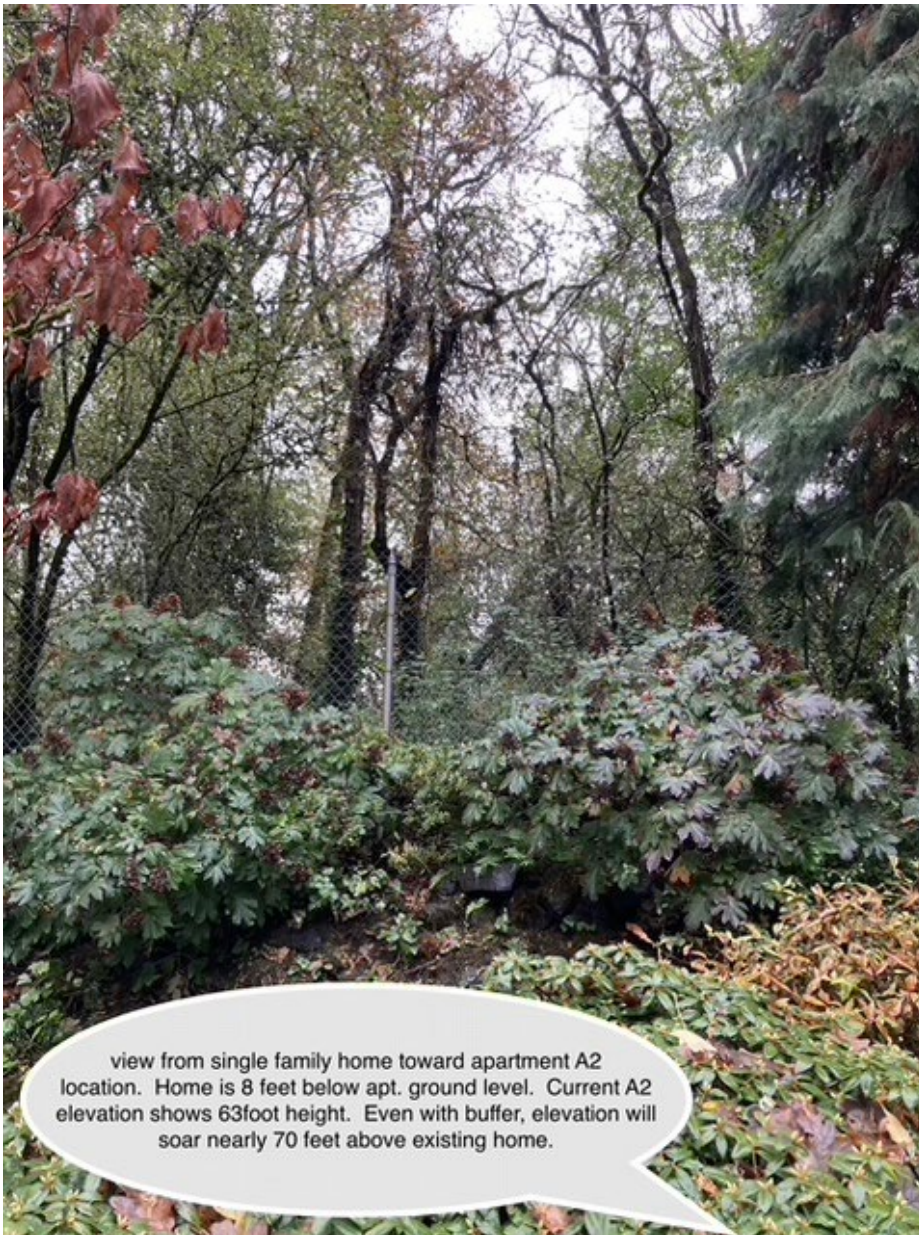


Closeup of fenceline showing canopy health and pink tape designating location of 4 story apartment

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view from single family home toward apartment A2 location. Home is 8 feet below apt. ground level. Current A2 elevation shows 63foot height. Even with buffer, elevation will soar nearly 70 feet above existing home.



ATTACHMENT 5

From: [Cassie Fotheringham](#)
To: [Vera Kolia](#)
Subject: proposed Waverley Woods development
Date: Tuesday, November 17, 2020 10:34:04

This Message originated outside your organization.

I am the owner of a buildable lot at 10135 SE Cambridge lane. My lot is less than 30 feet from the northern property line of the proposed apartment complex. I want to add my name to the recently submitted letter, with photographs, from my nearest Waverley Heights neighbors.

Variances on the height and footprint of the proposed apartment buildings should not be approved. The Willamette Greenway requirements are very important and should to be respected. Ideally, I'd like to see the whole proposed project moved south on the Wyse property. At the very least, a much wider buffer of trees and bushes needs to be established between the proposed development and Waverley Heights. This would help maintain property values in Waverley Heights, a historic Oregon neighborhood, which is good for the City of Milwaukie as well as the developers. As is obvious from the photographs, building B1 would be so close to the fence line (property line) that the visual and noise impact on single-family neighbors would be unavoidable and, in my opinion, negative.

I have added another photo taken from my property looking south into the proposed development area. The pink tape isn't visible, but building B1 would be where the middle ivy-covered tree sits. Please allocate space for a reasonable vegetative buffer zone between Waverley Heights and the proposed apartment complex. *Waverley Woods* should live up to their name and maintain the woods.

Thank you for accepting my comments.

Catherine Delord Fotheringham
1430 11th Ave W
Seattle WA 98119
(206) 612-9349



ATTACHMENT 5

November 17, 2020

To: Milwaukie Planning Commission
From: Patricia Justice, 10252 SE Cambridge Lane, Milwaukie, Oregon
Subject: Waverley Woods

I continue to be concerned about the proposed Waverley Woods apartments. Please consider my comments as additional to the ones previously submitted.

1. From an overriding management policy of the applicable Comprehensive Plan: "Neighborhoods, their identity, and security, will be maintained and enhanced by all actions resulting from public and private activities."

From Chapter 3 of the applicable Comprehensive Plan: "GOAL STATEMENT: Preserve and protect significant historical and cultural sites, structures, or objects of the city."
(Also see map 4 Historic resources.)

From MMC 19.311.9 Approval Criteria

"C. The proposed amendment is compatible with the surrounding area based on the following factors:

1. Site location and character of the area.
2. Predominant land use pattern and density of the area"

The proposed development is not compatible with the surrounding area and land use pattern or density. Contrary to the application, the proposed development is not surrounded by multifamily units. In fact, as stated earlier, two property lines of the proposed development border our Waverley Heights neighborhood; a third borders the Waverley Country Club. While we appreciate the mitigation offered by the owners including screening and moving building A2 an additional six feet away from the Stone property, no amount of shrubbery or trees can eliminate the negative visual impact and incompatibility of three and four story apartment buildings, including lights (even downward facing lights), and noise placed so close to our forested and historic neighborhood. The development plan currently under review is not compatible with our neighborhood. The 4th story proposed for both buildings A1 and A2 should be denied, and buildings A2 and B2 should be moved further toward Waverly Court widening the buffer zone.

2. From an overriding management policy of the applicable Comprehensive Plan:

"Existing natural resources and developments of character will be preserved, and new development will contribute to improving the quality of the living environment, and to a sense of City-wide identity and pride."

From Chapter 3 of the applicable Comprehensive Plan. "GOAL STATEMENT: To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources."

From MMC 19.401.1 "The purpose of the Willamette Greenway Zone is to protect, conserve, enhance, and maintain the natural, scenic, historic, economic, and recreational qualities of lands along the Willamette River and major courses flowing into the Willamette River."

From MMC 19.311.3 Development Standards:

"E. Open Space

"Open space means the land area to be set aside and used for scenic, landscaping, or open recreational purposes with the development."

"All planned unit developments will have at least one-third of the gross site area devoted to open space and/or outdoor recreational areas."

I am increasingly concerned that the subject property will be so forever changed by this development that it will no longer support a variety of forest-loving birds and native animals such as the Townsend chipmunk and the Douglas squirrel. And there are smaller creatures such as salamanders, garter snakes, and other vertebrates and invertebrates who make the forest their home and who may be driven out by development. Coyotes have thrived in our neighborhood, proving that this is a balanced and healthy habitat for native birds and animals.

Forty-six percent of the subject property will be developed. An unknown percentage of the remaining 54% will be maintained in an undefined natural condition. The remaining unknown percentage will be landscaped, which may not offer the forest habitat necessary for these birds and animals. And furthermore, as indicated in my earlier letter, the arborist states that only about 1/3 of all the trees will be saved (135 of 391). The owners continue to justify their 4-story buildings within the Willamette Greenway Zone by claims of trees and land saved, but I am skeptical of what will actually remain to support a healthy ecosystem.

In addition to screening, please consider requiring a large open space between the applicant's R-2 property and our Waverley Heights R-10 neighborhood and requiring maintenance of this open space as a wild and healthy forest of native trees and shrubs. A permanent open space will provide forever the habitat necessary for forest-dwelling wildlife. And it will further shield the view of the apartments from the river and the country club (see number 3).

3. From MMC 19.401.6 Willamette Greenway Zone Criteria. "The following shall be taken into account in the consideration of a condition use:

C. Protection of views both toward and away from the river;"

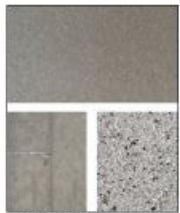
I've attached two exhibits from the owners' application. One provides a preliminary color palette, and the other is a rendering of one of the buildings. The color selections in the preliminary palette are very nice, but they don't seem to match the colors in the rendering of the building. Is there a reason for this? In addition, I am concerned that these colors may make the buildings stand out from the natural landscape when the goal is to limit their visibility from the river. A different color palette that matches a woodland setting of native trees and shrubs might reduce the visual impact from the river.

Thank you.

ATTACHMENT 5



PRELIMINARY MATERIALS AND COLORS



SITE AND PRECAST CONCRETE



METAL PANELS AND MULLIONS



GLAZING



VERTICAL FIBER PANELS



HORIZONTAL TREATED WOOD SIDING



STANDING SEAM METAL ROOF

1 EAST
1/16" = 1'-0"

45.6% GLAZING



2 SOUTH
1/16" = 1'-0"

40.9% GLAZING

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Please include this response from us for consideration during the upcoming apartment construction forums regarding the Waverly Heights neighborhood.

From the summary obtained from our neighbors.

The critical points stated are:

1- Greenway. The requested variance will exceed the height limitation and allow a fourth story on the two proposed ridge buildings.

2- Forest. Although the applicant states that 54% of the subject area will be maintained in a natural or landscaped condition, in fact only about 1/3 of the trees over 6 inches in diameter will be saved (135 of 391), and some of these are only in fair condition.

3-Compatibility with surrounding area and land use pattern/density. As noted previously in public testimony and written comments, our neighborhood of single-family homes was ignored in the application. Traffic is a concern. SO many things are of concern. It is imperative that the open space preserved. I do not believe there is any mention about the impact on the extensive wildlife in the area and how the damage a loss of habitat will have. Water run-off also needs to be addressed.

Of course, Karleanne and I are vehemently opposed to any additional multi-purpose construction in the Waverly Heights area. New construction of apartment seeking a height variance adds fresh insult to injury.

As you may know, many homes in this are over 100 years old – our home being one of them. We did not select and invest in this area to witness a transient population explosion. We have been living in this neighborhood since 1994. We have invested extensively in our home and land since then. We did not do all of this because we wanted to look out our window and see rows of apartments. Quite the opposite, in fact.

Plowing under land and clearing trees is planned. It should be controlled and developers should be held accountable for telling the truth about tree removal and other building plans. The general public

ATTACHMENT 5

has the right to know all building truths that will impact this neighborhood. Apartment construction is forever. Apartment dwellers will be temporary which creates a whole list of issues. These issues should be defined and posted for public consumption. Developers want the increased income from the location address their proposed apartment will deliver. They don't care what happens to the entire area once construction is completed (or really what happens during that extensive construction). We who live here do care.

Ignoring the fact that we live in an established, single-family home community on the construction application is shameful and should also be disclosed to the general public and at all relevant forums.

Sincerely,

Kevin Berigan
Karleanne Rogers
Eton Lane



November 17, 2020

Michael C. Robinson
Admitted in Oregon
T: 503-796-3756
C: 503-407-2578
mrobinson@schwabe.com

VIA E-MAIL

Mr. Robert Massey, Chair
City of Milwaukie Planning Commission
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206

RE: Waverly Woods Planned Development, File No. PD-2020-001
Letter on behalf of Waverley Country Club

Dear Chair Massey and Planning Commission Members:

This office represents Waverley Country Club (“Waverley”). In submitting its third letter, Waverley maintains its opposition to the above-referenced file and writes in response to letters submitted on November 10, 2020 by Walker Ventures, LLC and Yost Grube Hall Architecture (collectively, “Applicant”). Specifically, Applicant’s November 10 letters address certain criteria Applicant must meet to obtain approval of its proposed planned development. Waverley notes that the Commission and the City are obligated to review the application in its totality, and against the other required approval standards. Thus, even if the Commission and / or the City determine that Applicant now meets the criteria discussed in its November 10 letters, Applicant must still also meet all other approval criteria. However, for the reasons stated below and in Waverley’s previous letters, Applicant does not meet the approval criteria.

1. Response to Walker Ventures, LLC’s November 10 Letter

Applicant’s Nov. 10 letter explains in more detail why it believes it should be allowed the benefit, pursuant to MMC 19.311.3.C, of increased density over that allowed by the underlying R-2 and WG zoning, but still does not meet its burden of showing by substantial evidence that it meets the requirements to obtain that benefit. Namely, Applicant ignores that to obtain the proposed twenty percent increase in density (via the additional height and length proposed for buildings A.1 and A.2), it must show that its development is (a) outstanding in planned land use and design; ***and*** (b) provides exceptional advantages in living conditions; ***and*** (c) provides exceptional advantages in amenities, ***none of which*** are found in “similar developments constructed under regular zoning.” Applicant’s new evidence—much of which is not relevant—only makes more clear that it does not meet these three requirements.

Mr. Robert Massey, Chair
 November 17, 2020
 Page 2

A. Response to Point 1

Applicant's Point 1 states that its proposed development covers "significantly less of the land with impervious surfaces *than is typical of apartment developments.*" (Walker Ventures, LLC's Nov. 10 Letter ("WV Ltr.") at p. 1.) First, Applicant provides no basis for that statement. For example, Applicant provided no evidence regarding the definition of "significantly less" that would allow the Commission or the City to compare Applicant's proposed development to other relevant developments. The same is true for the phrase "typical of apartment developments," which Applicant also neglected to define. Moreover, Applicant must show that its proposed development has outstanding land use features *not found in similar developments constructed under regular zoning.* Applicant simply does not meet its burden by making a vague comparison to "typical . . . apartment developments."

Applicant also states in Point 1 that its development proposal "provides . . . more views of the natural and landscaped settings" and "provides greater capacity for the property to absorb rainwater and provide a place for abundant flora and fauna." (WV Ltr. at p. 1.) While Waverley agrees that the design and layout of the proposed development will likely provide residents more views of natural and landscaped settings, Applicant's conclusion regarding a "greater capacity for the property to absorb rainwater and provide a place for abundant flora and fauna" is without basis. Applicant should provide substantial evidence showing that its planned design will actually create greater rainwater absorption and allow for "abundant flora and fauna."

In Points 1(a) through 1(c), Applicant discusses the design features that apparently allow Applicant to achieve the above-stated results; however, none of those design features discuss how they assist with absorption of rainwater or allowing for abundant flora and fauna. (*Id.* at pp. 1-2.) Indeed, they appear to only discuss "amenities" not discussed in Applicant's previous submissions—that is, more views across the river, fewer views of other buildings, underground parking, and indoor access from parking to the apartments. (*Id.* at p. 2.) Applicant, again, does not provide substantial (or any) evidence that these amenities are "exceptional" as compared to similar developments constructed under regular zoning.

B. Response to Point 2

In Point 2, Applicant discusses the benefits of the buildings being broken up in appearance at the front by a courtyard. (*Id.* at p. 2.) Specifically, Applicant explains that the courtyard will allow "6 of the 8 apartments on each floor to have their main living areas on building corners so that they can have windows on two sides of the living area with two different outlooks." (*Id.*) Applicant discusses the potential benefits of this design, but omits discussion of its pitfalls. While such a design may provide a living area with two different outlooks and cross ventilation, such a design also decreases the privacy, especially for residents in an apartment complex where neighbors are closer in proximity than in single-family home communities. Added windows will create a need for window coverings to prevent those living across the courtyard and close by from peering in, which arguably defeats the Applicant's stated purpose of added windows—that is, to provide "two different outlooks" and "light on two sides." Moreover, more windows in the apartments means that there will be more external light at night, and the neighbors will be

Mr. Robert Massey, Chair
 November 17, 2020
 Page 3

impacted by this. (See Comp. Plan, Ch. 4, Residential Land Use & Housing Element, Objective 3, Policy 1 (“New multifamily development projects will take measures to reduce potentially negative impacts on existing, adjacent single-family development and adjacent lower-density zones. Such measures may include reduced maximum heights, increased setbacks for large façades, building size limitations, and other design features to maintain privacy of nearby properties.”).) Finally, the additional windows provided by the development could in fact harm wildlife such as birds, which are known to fly into glass windows due to the reflections of vegetation or themselves, which is contrary to Applicant’s statement regarding the development allowing for “abundant . . . fauna.” (See, e.g., <https://audubonportland.org/our-work/rehabilitate-wildlife/being-a-good-wildlife-neighbor/birds-and-windows/>.)

C. Response to Point 3

In Point 3, Applicant argues that by “keeping the total number of buildings on the site to only four,” as opposed to five, Applicant is able to “space the buildings further apart and in configurations which minimize the number of views from apartments that are dominated by views of other buildings.” (WV Ltr. at p. 3.) Notwithstanding the duplicative nature of this point as compared to Point 1, Applicant does not explain how this feature—one fewer building than would otherwise be constructed to allow for the requested 100 units—is exceptional or outstanding compared to other similar developments constructed under regular zoning. And regardless, Applicant could move forward with this development as a four-building development without the added density or added height and length. That such a development may not be economically viable for Applicant, as discussed in Waverley’s previous letter, is not relevant to any approval criteria.

D. Response to Point 4

In Point 4, Applicant discusses the community garden its proposed development will provide to its residents, and states that it is “an amenity rarely found in other apartment complexes.” (*Id.* at p. 3.) But the apartment complexes in Waverley Greens *already have* a community garden that is available to all residents of the 325 units in the community, and that will also be available to residents of the new development at issue here if built.¹ Applicant’s discussion of this amenity also omits that the existing community garden exists without the preservation of 54% of the land it argues allow it to provide the garden. Thus, Applicant provides no explanation, and there is no explanation, as to the purported connection between preserved vegetation and the ability to provide a community garden.

E. Response to Chart of 24 Nearby Apartments

Applicant also provided a chart of “nearby apartments” to show the purported “outstanding and exceptional characteristics of Applicant’s project.” (WV Ltr. at pp. 3-6.) But that chart provides information that is largely not relevant to the approval criterion discussed in the letter, and leaves

¹ The “new” community garden is not planned for development / relocation until Phase 3, after buildings A.1 and A.2 have been completed and presumably rented.

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out highly relevant information about the apartments most similar to Applicant's proposed development.

First, Applicant misstates the proper standard. The standard Applicant must meet to obtain the requested density bonus is *not* whether the proposed development is “outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities” as compared to “*nearby apartment complexes*.” Rather, the Milwaukie zoning code requires those features to be compared to “*similar developments constructed under regular zoning*.” The phrase “constructed under regular zoning” means constructed under the Milwaukie zoning code. As such, the six apartment complexes listed that are located in the City of Portland—regulated by a different zoning code—are completely irrelevant and should not be considered by the Commission. The phrase “similar developments” is undefined, but cannot under any definition simply mean developments that are close in proximity to the proposed development. If anything, and as Applicant implied by noting which five of the twenty-four listed developments in its chart are located in Milwaukie's R-2 zone, that term means developments of the same type (here, multi-family), constructed under the same zoning (here, R-2). Whether the comparator developments are “nearby” is not relevant to this requirement. In fact, only five apartment complexes listed on Applicant's chart—those five in the R-2 zone—are relevant to this requirement, and that is true only if they can be considered “similar developments” to the proposed development.

Nor is the standard whether the similar developments constructed under regular zoning *rarely have* the “outstanding . . . planned land use and design” and “exceptional advantages in living conditions and amenities.” Rather, the plain language of the Code requires that the “outstanding . . . planned land use and design” and “exceptional advantages in living conditions and amenities” provided by the proposed development must ***not be found at all*** in those similar developments. Applicant's chart shows that its proposed development does not meet that standard. And, had Applicant included in the chart its own developments, six multi-family apartment communities in the R-2 zone, its inability to meet this requirement would be even more obvious because those apartment communities offer almost all of the amenities offered by the proposed development. (*See, e.g., 10-27-20 Packet, Section 5.1, p. 64 and Applicant's Oct. 27 Hrg. Presentation (discussing the Waverley Greens community's amenities).*)

Second, Applicant has stressed in both its application materials and during the hearing that its proposed development is unique and like no other development on the market. Therefore, there are no *similar developments* with which it can be compared. If the requirement for “outstanding . . . planned land use and design” and “exceptional advantages in living conditions and amenities” could be met by having new and updated features that are standard to include, then every new and unique development would be able to obtain the requested density increase. Applying this standard should be a high bar. Indeed, Applicant could provide the amenities discussed in its November 10 letter and chart—underground parking, community garden, increased vegetation, and corner units—without needing extra density and added height and length it has proposed.

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Third, Applicant does not explain the relevance of apartment complexes with thirty percent or more of their land in vegetation. Rather, it appears Applicant arbitrarily chose thirty percent and measured, presumably by eye, whether the complexes in the chart met that limit by reviewing “their websites and . . . aerial maps,” as well as by in-person visits. (WV Ltr. at p. 3.) For multi-family dwellings in Milwaukie’s R-2 zone (which could be considered “similar”), all that is required of developers is to keep *fifteen* percent of the land in a vegetated state. Thirty percent exceeds the minimum requirement, just as Applicant’s fifty-four percent does, and just as sixteen percent would. Applicant’s chart does not include information as to the amount of land preserved by the selected apartments; rather, it provides a best guess as to whether those apartments meet an arbitrary standard chosen by Applicant and not relevant to any approval criteria.

Finally, Applicant provides no guarantee that *all* of the features and amenities it proposes to justify the requested increase in density, height, and length will be in place when those increases are first used, or at all. Nor do any of the proposed conditions of approval provide or require such a guarantee.

* * *

In sum, Walker Ventures, LLC’s November 10 letter, submitted on behalf of Applicant, is not sufficient to prove by substantial evidence that the proposed planned development meets the requirements of MMC 19.311.3.C., and therefore cannot meet all of the approval criteria set forth in MMC 19.311.9.

2. Response to Yost Grube Hall Architecture’s November 10 Letter

A. Item 1 - Phased Development Requirements Under MMC 19.311.17

Applicant’s discussion of its phasing plan is in conflict with statements made by Applicant during the Oct. 27 hearing. (YGH Ltr. at p. 1.) Applicant should be required to provide a concrete plan for each phase. Further, in discussing its phasing plan, Applicant makes clear that it is, in fact, submitting an application for a phased development plan. As such, Applicant has improperly submitted a combined preliminary and final development plan. MMC 19.311.5 explicitly states that if “the proposed project is to be constructed in phases, the project as a whole must be portrayed in the application materials *and shall require preliminary approval.*” Applicant’s failure to obtain preliminary approval is discussed in more detail below.

B. Item 2 – Multi-Family Housing Review Process and Design Standards Under MMC 19.505.3

Waverley appreciates Applicant’s clarification as to which process it has selected for the multi-family housing review, but notes that most of Applicant’s “new” or “supplemental” responses (e.g., that for private and public open spaces, screening, recycling areas, sustainability) simply mirror almost exactly the responses provided in its initial application. (YGH Ltr. at pp. 1-4.)

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Waverley incorporates its previous letters as relate to these design requirements and features, and responds specifically to others below.

As to **public open space**, Waverley again notes that none of the proposed amenities that are “for the purpose of outdoor recreation, scenic amenity, or shared outdoor space for people to gather” are planned to be built until phases 2 and 3 of the development. (*See id.* at p. 2.) Further, for the first time, Applicant mentions “river overlook sitting areas.” (*Id.*) Waverley notes that such an amenity may be contradictory to Applicant’s statements that the development will not be visible from the golf course or from on or across the river.

As to **pedestrian circulation**, Waverley notes, as it did above, that the “adequate lighting” provided for pedestrian circulation here may be in conflict with the Comprehensive Plan goal to reduce impact to neighboring communities. (*Id.*) Applicant does not provide drawings, plans, or specific description as to how the ground floor units will “provide a clear transition from the public realm to the private dwellings”; rather, Applicant merely provides a conclusory statement that it will do so, and without explaining what “clear transition,” which is a subjective term, means. (*Id.*)

As to **vehicle and bike parking**, Applicant still does not explain how the parking will be “secure.” While Waverley appreciates the buildings are not located on a public right-of-way, Applicant has not explained how bicycles (or cars for that matter) will be secure and safe from theft or vandalism in its planned development. Indeed, outdoor bicycle racks, and garage bicycle parking on “permanently mounted bike racks/hangers” without a locked entrance to those racks and hangers is not secure at all. (*See id.*) Moreover, a “private” road such as that on which the planned development is sited does not equate to “security.” (*See id.*) Waverley does not understand that the road limits access to only residents or its guests.

As to **building orientation and entrances**, Applicant omits discussion of building B.1. (*Id.*)

As to **building façade design and building materials**, Applicant omits discussion of many of the requirements listed, and does not explain how or why the features it chose to include meet the requirements. (*Id.* at 2-3.) Further, it is a requirement for street-facing facades to “consist predominantly of a simple palette of long-lasting materials,” which include “brick, stone, stucco, wood siding, and wood shingles.” MMC 19.505.3.D. Applicant fails to state whether the “mix of fiber cement board siding with wood accent siding with metal trim panels” meets the requirement of “predominantly . . . long-lasting.” (YGH Ltr. at p. 3.)

C. Item 3 – Planned Development Approval Criteria

Applicant argues that it meets the approval criterion set forth in MMC 19.311.9.A, requiring “[s]ubstantial consistency with the proposal approved with Subsection 19.311.6.” Subsection 19.311.6 is entitled “Planning Commission Review of Preliminary Development Plan and Program,” and sets forth the process for first obtaining conditional approval by the planning commission, wherein a meeting is held, and following such meeting, “the Planning Commission shall notify the applicant whether, in its opinion, the provisions of this chapter have been

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satisfied, or advise of any deficiencies.” MMC 19.311.6.A. After receiving “approval in principle of the preliminary development plan and program by the Planning Commission, with or without modifications, the owner-applicant must [then], within 18 months, file with the City a final development plan and program, including a phasing plan if applicable, which serves as an application for a PD Zone change.” MMC 19.311.6.B. The plain language of the Code thus requires submission and approval of a preliminary plan, followed by submission of a final development plan. Only that final development plan may serve as the PD Zone application.

However, Applicant states that MMC 19.311.6 “does not preclude an applicant from requesting both preliminary and final planned development approval.” (YGH Ltr. at p. 4.) In so stating, Applicant fails to consider that if that were the case, this approval criterion would be obviated. Applicant also fails to consider that MMC 19.311.5 *requires* preliminary approval of phased developments, as discussed above in Section 2(A).

To obtain PD zoning, Milwaukie’s zoning code requires *first* submission and approval of a preliminary development plan, and *then* submission and approval of a final development plan. MMC 19.311.6 (discussing preliminary development plan); MMC 19.311.7 (discussing final development plan). Milwaukie’s City Council could have drafted the Zoning Ordinance in the way Applicant urges, but did not do so. Moreover, nothing in MMC 19.311 allows the preliminary and final development plans to be submitted concurrently. This is because the preliminary development plan precedes the final development plan so that there can be a final decision on the preliminary development plan. Concurrent submittals thwart that purpose. Finally, the Planning Commission has no authority to finally interpret provisions of the Zoning Ordinance because it is not the legislative body that enacted the Zoning Ordinance. Even if the City Council did agree with Applicant, its interpretation will not be entitled to deference on appeal under ORS 197.829 because Applicant’s position is inconsistent with the express language of MMC 19.311.5, 19.311.6, and 19.311.7.

Moreover, Applicant’s reference to and discussion of the Kellogg Creek Planned Development project is not relevant; this is discussed in more detail below in Section 2(E). (YGH Ltr. at p. 4.)

Applicant failed to adequately address its compliance with each specific requirement of Section 19.311.2.A-E, which is required to meet the approval criteria for PD zoning. MMC 19.311.9.B.

Applicant’s responses to the remaining approval criteria are almost identical to those in its initial submission, and therefore Applicant still has not shown by substantial evidence that those criteria are met.

D. (Second-listed) Item 3 – Comprehensive Plan Goals

Applicant states that its “previous responses to the 2020 Comprehensive Plan are sufficient to demonstrate compliance with both Comprehensive Plans.” (YGH Ltr. at p. 6.) Waverley disagrees. While the two plans may have some overlap, they are different, and compliance with one does not mean there is compliance with the other. Waverley incorporates its discussion of

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both Comprehensive Plans herein, and points to the following further deficiencies from Applicant's November 10 letter.

As to the historical resources element, Waverley disagrees that this Goal does not apply to the site, and incorporates its November 10 discussion of this element. (*See id.* at pp. 7-8.)

As to Applicant's discussion of the "Open Spaces, Scenic Areas, and Natural Resources Element," Objective #3 – Scenic Areas, Waverley incorporates its discussion in Sections 1(A) and 2(B) above regarding concern over the newly identified views out to the Willamette River. (*See id.* at p. 8.)

As to Policy 1 of the "Residential Land Use: Design" objective, which requires new multi-family development projects to take measures to reduce potentially negative impacts on existing, adjacent single-family development and lower-density zones, Waverley re-states its concern discussed above regarding privacy and light pollution from the extra windows the development will feature. (*See id.* at p. 9.) Waverley also incorporates its discussion of this Policy from its November 10 letter.

As to the requirement in Policies 3 and 4 of the "Residential Land Use: Design" objective for all planned unit developments to have an area devoted to open space and/or outdoor recreational areas, Applicant still has not expressed whether its development will meet the requirement for "at least half of the open space and/or recreational areas [to] be of the same general character as the area containing dwelling units." (*See id.* at p. 10.) Indeed, Applicant here stated that the "development will maintain most of the vegetation as natural native growth," which cannot be "the same general character as the area containing dwelling units," and therefore is not in compliance with this policy. (*Id.*) Applicant's conclusory statement that its proposed development will comply with the "same general character" requirement is not sufficient to meet Applicant's burden of proving this by substantial evidence. (*Id.*)

In sum, Applicant's proposed development fails to comply with applicable Comprehensive Plan goals, objectives, and policies, and thus does not meet the approval criteria for PD zoning.

E. Item 5 – Combined Preliminary and Final Development Plan Approval and Concurrent Land-Use Applications

As mentioned above, Applicant has submitted as evidence the Kellogg Creek Planned Development Application No. PD-2017-001 to show that "[t]he City has previously determined that an applicant can apply for both preliminary and final planned development approval as a consolidated process and can combine a land division application with the planned development/zone change applications." (YGH Ltr. at p. 15.) Applicant is incorrect for the reasons stated above in Section 2(C) and further for the reasons below.

As Applicant acknowledged, the Kellogg Creek application was withdrawn by the applicant before the City Council made any determination as to whether the application (which requested preliminary and final planned development approval simultaneously) should be approved. (*Id.*)

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As such, the City Council never rendered a decision as to whether such a simultaneous submission was allowed under the Zoning Ordinance. That “both the City staff and the Planning Commission recommended approval” to the City Council is not relevant to Applicant’s combined submission. (*Id.*) Nor is a recommendation for approval of such a consolidated and combined application a “determin[ation]” by the City as Applicant stated in its letter. (*Id.*) The Planning Commission is not required to, and should not, defer to a prior administrative action never approved by the City Council that is inconsistent on its face with the Code, and should not do so here. As discussed in Waverley’s last letter, land use applications are not precedential, and City Staff and Planning Commission recommendations for approval are not the same as a final land use decision from the City Council.

3. Conclusion

For the reasons set forth above and in its previous letters and testimony, Waverley respectfully requests that the Commission recommend denial of the application for the Waverly Woods Planned Development, File No. PD-2020-001.

Very truly yours,



Michael C. Robinson

MCR/jmhi

cc: Ms. Vera Kalias (*via email*)
Ms. Erin Forbes (*via email*)
Mr. James Dulcich (*via email*)
Mr. Justin Gericke (*via email*)
Mr. Bruce Pruitt (*via email*)
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WALKER VENTURES, LLC
900 S.W. Fifth Avenue, Suite 2000
Portland, Oregon 97204
November 17, 2020

Mr. Robert Massey, Chair
Planning Commission
City of Milwaukie
6101 S.E. Johnson Creek Blvd.
Milwaukie, OR 97206

Re: Waverley Woods Apartment Development Plan dated July 28, 2020
(Application)
Application File Nos. PD-2020-001, ZC-2020-001, WG-2020-001,
PLA-2020-001 & TFR-2020-002

Dear Chair Massey and Planning Commission Members:

Applicant, Walker Ventures, LLC, submits this letter in response to written testimony submitted by neighbors of Waverley Greens by the November 10, 2020, deadline for submission of any such additional material. Because of questions raised, Walker Ventures notes at the outset that it would not have gone to all the time, trouble, and expense of submitting its Application for this planned development if did not plan to complete the development within the seven years permitted as set forth in MCC 19.311.17A.

Some of the material submitted by neighbors suggests that Applicant ought to amplify its explanation of how its proposal is exceptional, which we do in the next two sections. In doing so, we must go beyond comparing our proposal to other existing apartment developments (See my November 10, 2020, letter) by also analyzing what could be built under regular multi-family zoning on this parcel.

1. In Determining Whether the Proposal is “Exceptional,” the Proposed Development Must be Compared to What Applicant would be Permitted to Build on its Property Under Regular Zoning.

Many of the objections to Applicant’s proposed development ask the Planning Commission to compare that plan to the site in its current natural state, pointing out that the development will reduce vegetation and natural buffer. However, Applicant’s property is zoned for development as multi-family. Were Applicant simply to develop its property under regular R-2 zoning, neighbors would not have the same opportunity to object which they have in this planned development process.

From the beginning, more than eight years ago when Applicant first began discussions with architects about the development of this property, Applicant has emphasized the importance

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of taking advantage of the magnificent setting overlooking the Willamette river and creating this new community in a natural setting with more of a bucolic than an urban feel. That goal has remained paramount throughout the planning of this project. Applicant's architects have proposed and studied numerous different plans over many years seeking to achieve those goals. Through that process it was eventually determined that it would not be feasible to meet those objectives by developing this site under the limitations of regular zoning. It became apparent that much more of the property can be preserved as open space if some buildings larger than permitted under regular zoning are constructed with parking tucked underneath. By that method, fewer buildings are needed, less of the land will be covered by buildings, less of the property will be paved with access roads, and less of the property will be covered by external parking, carports, or garages. Plans that were considered under regular zoning would have had much less open space and would not have preserved nearly as many of the existing trees and as much of the natural setting as does the planned development Applicant has submitted.

Furthermore, Applicant has made a concerted effort to develop this property to include elements that would not be available through regular R-2 zoning. For example, by increasing the size and height of two of the buildings, Applicant is able to set back the proposed buildings substantially farther from neighboring properties than is required under regular zoning, thereby leaving significant buffer areas of a minimum of 45 feet rather than 5 feet to the north and 190 feet for Building A-1 and 99 feet for Building A-2 rather than 15 feet to the west. Also, Applicant will save a large number of trees and a large swath of the natural environment that would be mostly lost if the property were developed under regular zoning with lower buildings and surface parking.

In summary, the fact that a portion of the natural environment will be lost when this property is developed is not a compelling objection because Applicant's plan will limit those losses substantially compared with the loss that would inevitably occur if Applicant were limited by the constraints of R-2 zoning. The City of Milwaukie decided that Applicant's property need not be maintained in its natural state when it zoned the property for multi-family development. It is part of Milwaukie's relevant comprehensive plan that this property be developed as high density residential. *Milwaukie Comprehensive Plan, Map 8.*

2. Applicant's Proposed Development provides enough "exceptional advantages..." to warrant the additional proposed density and building height as allowed by MMC Subsection 19.311.3C.

Websters Third International Dictionary of the English Language defines the word "exceptional" to mean:

1. : forming an exception; *usu* : being out of the ordinary : uncommon, rare
2. : better than average; superior

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“Exceptional” does not mean better than every other. Likely, every member of a high school cross county team would be considered to be an exceptional runner when compared to the average student, even if none of its members could qualify to run in the Boston Marathon. Sometimes only a minor difference is enough for something to be considered “exceptional.” For example, it is not unusual that a person with otherwise ordinary human characteristics but with an unusually attractive face to be considered “exceptional.” Similarly, in some instances, something that is only slightly better is considered to be “exceptional.” For example, a slightly tastier cup of coffee. Applicant believes that its plan as proposed with all the amenities it will include will provide the finest apartment living available within the City of Milwaukie, but for its amenities to be “exceptional,” all they need to be is better than average, out of the ordinary, superior, or uncommon.

One argument submitted is that Applicant’s plan is not “exceptional” because some of the features of Applicant’s plan can be found in other apartment communities. However, that argument largely ignores the features of Applicant’s plan that are rarely found in other apartment complexes¹. Those features are a part of what make Applicant’s plan exceptional:

a. Fifty-four percent open space. Applicant’s development proposal covers significantly less of the land with impervious surfaces than is typical of apartment developments. Applicant’s proposal retains approximately 54% of the land in vegetated pervious surface, with some natural and some landscaped, all of which is in addition to the land devoted to the swimming pool. This creates an environment of urban living in a forested setting which is seldom achieved in apartment communities and provides occupants with more views of the natural and landscaped settings. It also creates greater capacity for rain water absorption and a habitat for abundant flora and fauna.

b. Substantial buffers between Applicant’s buildings and neighboring properties. Applicant’s plan was specifically designed to provide significantly greater buffers between the proposed buildings on Applicant’s property and the neighboring properties than is required by regular zoning. At its closest point, Building A-1 will be 190 feet away from the Waverley Country Club (WCC) property to the west and Building A-2 will be 99 feet away from the WCC property, with retained natural areas between to provide a significant buffer of trees, shrubs, and vegetation so that Applicant’s buildings will not impose upon WCC’s driving range. The closest that any of Applicant’s buildings would come to any neighboring home is 82 feet, (45 feet from Applicant’s property line where only a 5 foot setback is required). Even at that, it is only the end of the building that extends toward that home, with the other corner of that building end 97 feet from the nearest home. Substantial trees and other vegetation will be maintained between Applicant’s buildings and neighboring properties. *See, Exhibit 1.*

¹ See comparison to other apartment complexes in my November 10, 2020, letter.

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c. Windows on two walls with views in two directions in 75% of the Buildings A-1 and A-2 apartments. In office buildings, the desirability of corner offices is widely recognized. The same is true of apartments. Three quarters of the apartments in Buildings A-1 and A-2 will have will have corner outlooks with windows on two walls providing wonderful views from the apartment's principal living area. In Buildings B-1 and B-2, two-thirds of the apartments also have this feature. This quality is rarely achieved in an apartment project. None of the apartments referred to in my letter dated November 10, 2020, have this feature in any way comparable to the apartments proposed by Applicant. *See, Exhibit 2.*

d. Under building parking. This feature, rare in any but the most dense urban settings, allows tenants to drive under the building in which their apartment is situated, park in a dry space, and walk under cover to an elevator that will take them to their floor. In Oregon, the ability to go from your car to your home without being exposed to the rain is an important amenity, rare in apartment complexes other than those in which the apartment building occupies all or nearly all the property on which it is situated with little, if any, open space.

e. Preservation of trees and wildlife area. Applicant has submitted a detailed tree survey and a plan showing trees that are likely to be removed with a large number of trees to be preserved. Applicant's plan retains 54% of the site as open space and a substantial amount of that space will remain in its natural condition. This is an extraordinary retention of trees when compared either to what typically occurs when properties such as those identified in my November 10, 2020, letter are developed or when compared to what would likely occur if this property were developed under regular zoning.

f. Exceptional views and balconies. The A-1 and A-2 Buildings are designed so as to be cut into the slope of the property in such a way as to take full advantage of the extraordinary views from the property across the Willamette River, despite being set back very far from the adjoining WCC property. This is an "exceptional" feature of Applicant's plan for the benefit of the future residents. Development of this site in some other way under regular zoning could not take advantage of these views to the same extent.

Buildings B-1 and B-2 are also situated to provide pleasing territorial views for the residents of those buildings. Although those views will not look over the Willamette River, they will primarily face vegetated areas and not other buildings and parking lots as is commonly found in most apartment complexes.

These views will be complemented by the unusually large decks which all

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apartments will have (more than three times as large as required by code) and which will provide all residents with generous exclusive outside space. *See*, Exhibit 2.

g. Community garden. The existing community garden has been available to residents of Waverley Greens Apartments because Walker Ventures owns the adjacent undeveloped parcel of land proposed for this planned development. If it did not own this parcel, it is not obvious that it would offer such an amenity to its existing residents. Nor is it apparent that it could continue to provide such an amenity if the parcel were developed under regular zoning. One of the many advantages of Applicant's proposal is that it not only makes it possible for Applicant to continue to provide this amenity to its existing tenants after it develops this parcel, it will also be able to offer the community garden amenity to residents of its new development. Of the 24 apartments discussed in my November 10, 2020, letter, only one had a community garden, which was also situated on adjacent vacant land.

h. Cross ventilation in 80% of apartments. Of the eight apartments on each floor of the A Buildings, six will be corner units with windows on two walls so that they will have cross ventilation. The two apartments on the top floor of the A Buildings which are not corner units will also have cross ventilation because they will have clerestory windows. For the same reasons, 14 of the 18 apartments in the B Buildings will have cross ventilation. Of all the planned apartments, 80% will have cross ventilation. Cross ventilation is a pleasing amenity in appropriate weather to allow gentle cooling breezes to drift through the apartments. Cross ventilation also reduces the need for air conditioning during some periods of warm weather, lowering electricity usage and improving the carbon footprint and sustainability of the project. *See*, Exhibit 2.

i. Overlook area and paths available from public right of way. The memorandum submitted on November 10, 2020, by Applicant's architects, Yost Grube Hall Architecture, to supplement Applicant's Application included a new amenity of a landscaped sitting area at the entrance off Waverley Court. This sitting area will be adjacent to the new sidewalks connected to the public right-of-way and the new paths and will provide views across the Willamette River. This amenity will be built at the time of the construction of Building A-1².

j. Secure parking. One neighbor has raised a question as to what Applicant means by secure parking. "Secure parking" means that the access to the parking under buildings will be locked, with an electrically operated garage door that will only open when a resident drives through. No one will have access to residents' cars except those

²See PD-2020-001 Written Comments for November 10, Deadline pps. 49, 54, 56 on the City of Milwaukie's website.

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with access keys. This is an amenity for the benefit of the residents which does not generally exist in apartment complexes with open-air parking, which includes most apartments in the area. In those rare apartments which do have offer under-building parking, most lack significant open space. Applicant's proposed plan is exceptional in that it has both amenities: secure under building parking and extensive open space.

In summary, in addition to all the other features of Applicant's plan, Applicant's plan will include the following ten exceptional amenities:

- a. **Fifty-four percent open space.**
- b. **Substantial buffers between Applicant's buildings and neighboring properties.**
- c. **Windows on two walls with views in two directions in 75% of the Buildings A-1 and A-2 apartments.**
- d. **Under building parking.**
- e. **Preservation of trees and wildlife area.**
- f. **Exceptional views and balconies.**
- g. **Community garden.**
- h. **Cross ventilation in 80% of apartments.**
- I. **Overlook area and paths available from public right of way.**
- j. **Secure parking.**

Each of these amenities by itself is exceptional, and taken together, they justify the density requested. Every one of these ten exceptional amenities will be available as soon as Building A-1 is completed and ready for occupancy. They will also be immediately available for residents of the other buildings in the planned development as soon as they are constructed. This list of ten exceptional amenities is not an exhaustive list of all features of this planned development which might be considered to be exceptional. As some of Applicant's neighbors have pointed out, this project will also include some of the same amenities which Waverley Greens Apartments now has, some of which amenities are themselves exceptional because they are not common in other apartment complexes in the vicinity. For example, Waverley Greens Apartments has electric charging stations for cars and has a solar panel array which is one of the largest, if not, the largest, on any apartment complex in the state of Oregon. Most of the apartment complexes described in my November 10, 2020, letter do not have those features. Some of those neighbors express concerns that not all of these other amenities will be constructed during the first phase of the development. Applicant's plan will include all ten of the above-listed exceptional amenities during every phase of the development. When completed, Applicant's development plan will also include some of the other exceptional amenities already offered at Waverley Greens Apartments such as solar panels and charging stations as well as many features which are more commonly found in other apartment complexes (such as a swimming pool). It is the entire package which makes Applicant's plan exceptional.

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3. Responses to Other Subjects Raised by Neighbors.

a. Applicant's Plan Complies with Open Space Requirements.

Applicant seeks only to develop Parcel 02 which is 6.76 acres. The proposed plan will leave 3.65 acres (54%) as open space of which half (1.83 acres) must be in the "same general character as the area containing dwelling units." Applicant's plans show the buildings as surrounded by woods in the back and landscaped areas in the front. All of the open space will be in the "same general character as the area containing the dwelling units," i.e. natural or landscaped, and will be provided for "scenic, landscaping, or open recreational purposes." The 54% of open space does not include any of the impervious surfaces. The pool, for example, will be recreational space in addition to the 54% of open space otherwise provided. Applicant's plan exceeds the Planned Development Code which only requires 1/3 of the area (2.25 acres) to be left open area with 1.12 acres as "same general character as the area containing dwelling units."

b. Measurement of the Height of Buildings A-1 and A-2. The Willamette greenway zone has a 35' height limit but does not say how this is to be measured. The City of Milwaukie applies its zoning code measurement as described in MCC19.202.2.B.1. On a sloped site with more than a 10' drop from front to back, the City measures height from 10' above lowest point. Applicant's Buildings A-1 and A-2 are 62' in height when measured from the average lowest point on the sloped side. The R-2 zone allows 45' plus 10' for a sloped site for a total of 55'. Applicant is requesting an additional 7' to accommodate its planned development. In the Staff report, the City accepted the 43' Applicant proposed on the street side since it was below the base code R-2 height maximum of 45'.

c. City Water and Sewer Systems Are Adequate to Serve this Development. The application materials submitted by Applicant have satisfied City's relevant departments that the City's existing storm water, sewer, and domestic and fire water supply systems are adequate to accommodate this 100 unit development. *See*, Staff Recommended Findings for Approval Section 7.a.(5)(e) - 5.1 page 25-26.

d. The Northern Boundary of the Property is Already Subject to a Fence Agreement. The northern boundary of Applicant's property is subject to an existing fence agreement, entered into in 1961. A copy of that agreement is attached. *See*, Exhibit 3.

e. Comprehensive Plan Recognizes the Need for Housing. In Chapter 4 of the Land Use Residential Land Use and Housing Element, the applicable Comprehensive Plan states: "Metro projects the need for an additional 3,514 housing units in Milwaukie by 2017." The City clearly anticipated a need for housing and provided Planning

Mr. Robert Massey, Chair
November 17, 2020
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Concepts and Policies that allowed for density increases as indicated below:

Objective #3 – Residential Land Use: Design

To encourage a desirable living environment by **allowing flexibility in design**, minimizing the impact of new construction on existing development, and assuring that natural open spaces and developed recreational areas are provided whenever feasible. (Emphasis supplied)

Planning Concepts

Residential design policies are intended to ensure a high quality of environmental design, a flexible design approach, and a smooth integration of new development into existing neighborhoods. **Density bonuses and transfers will be encouraged so that full development potential on individual parcels may be realized.** Transition policies will be applied to reduce any negative impacts of development on adjacent uses. The transition policies will have little or no effect on the number of new units calculated in Table 2. (Emphasis supplied)

Policies

2. In all Planned Unit Developments, a density bonus up twenty percent (20%) over the allowable density may be granted in exchange for exceptional design quality or special project amenities.

Applicant's Parcel 02 is a large remaining parcel within Milwaukie available for development as multi-family. Maximizing the density of that parcel as proposed in Applicant's plan best meets Milwaukie's need for additional housing.

f. Early Neighbor Contact. Many months ago, Applicant notified WCC's leadership that we were preparing plans for the development of this property and inviting input from WCC. Applicant received no response from WCC until October 27, 2020, the day of the first Planning Commission hearing regarding this project, when it received the letter WCC submitted less than two hours before the hearing. Applicant has since met with WCC and is hopeful that all issues may be resolved.

In addition, Applicant met with the Historic Milwaukie Neighborhood Association on July 13, 2020, to describe the proposed development and to listen to input from neighbors who attended. The minutes of that meeting include the statement "Overall, the community reaction to the presentation was positive with attendees looking forward to walking through the wooded areas and perhaps even being future tenants." Applicant heard nothing further from neighbors until shortly before the first Planning Commission hearing, and then promptly met with them to discuss their concerns.

Mr. Robert Massey, Chair
November 17, 2020
Page 9

g. Visibility from Waverley Country Club. While the buildings in the development may be somewhat visible from some parts of the WCC, it seems inevitable that nearly any multi-family development would be somewhat visible. Applicant has made significant efforts to minimize the effect of its development on WCC's property. At their closest point, the Buildings A-1 and A-2 are respectively 190 feet and 99 feet from WCC's property. That large buffer area will remain densely populated by tall trees and shrubs. WCC has acknowledged that its driving range abuts Applicant's property.

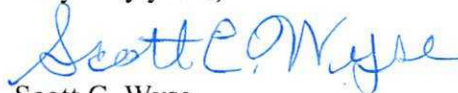
h. Phasing. Applicant intends to build the three phases outlined in its Application within the seven years provided by law. *See*, MCC 19.311.17A. Applicant estimates that each active phase of construction will take about a year, with external construction (grading, framing, and exterior envelope) taking about half of the construction time for each phase. The remaining approximately six months of each phase would involve primarily interior work that will not external disturbance.

i. Applicant's Plan will be of Benefit to Milwaukie and the Public. Applicant's plan will provide increased density thereby helping to fulfill Milwaukie's housing needs. Because Applicant's property is within easy walking distance of downtown Milwaukie, this development will contribute to the vibrancy of Milwaukie's downtown. Furthermore, because it is within easy walking distance bus lines and the light rail, it will be conducive to the use of public transportation and reduced automobile use. Many of those who have submitted objections to Applicant's plan are concerned about the reduction of the open space, natural environment, and trees on the site. Because there is such wide spread public interest in these attributes, Applicant's plan, which preserves approximately 54% of these features, is also of benefit to the public.

4. Conclusion.

Applicant's proposed plan optimizes the use of its property for the benefit of the City and the future residents of the property while at the same time limiting adverse effects upon neighbors from development of the property. It should be approved.

Very truly yours,



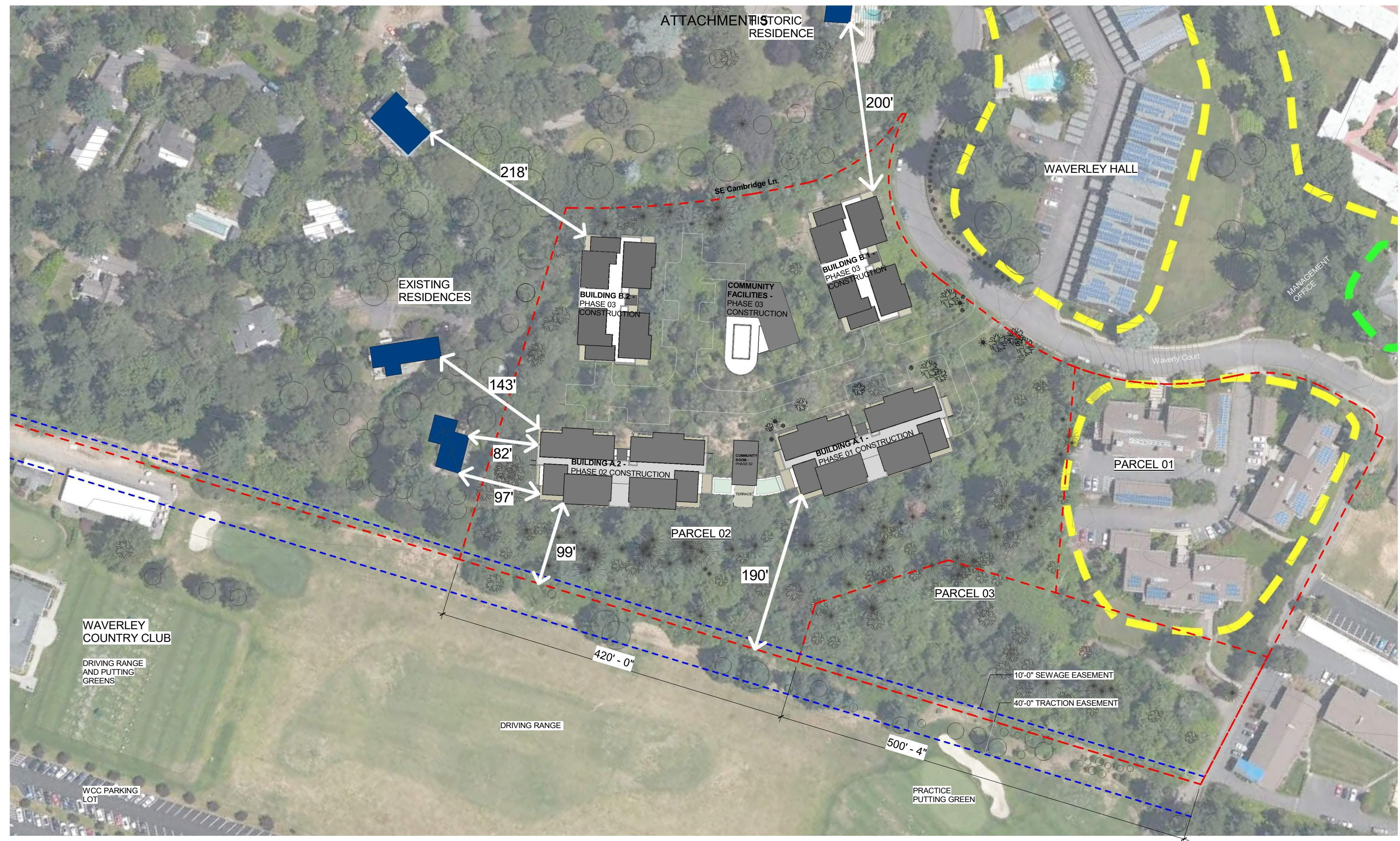
Scott C. Wyse

Member, Walker Ventures, LLC

Attachments: Exhibit 1, Distances to Adjacent Properties and PD Setbacks
Exhibit 2, PD Advantages and Amenities
Exhibit 3, Fence Agreement

Mr. Robert Massey, Chair
November 17, 2020
Page 10

c: Walker Ventures, LLC (w/enc)



ATTACHMENT 5

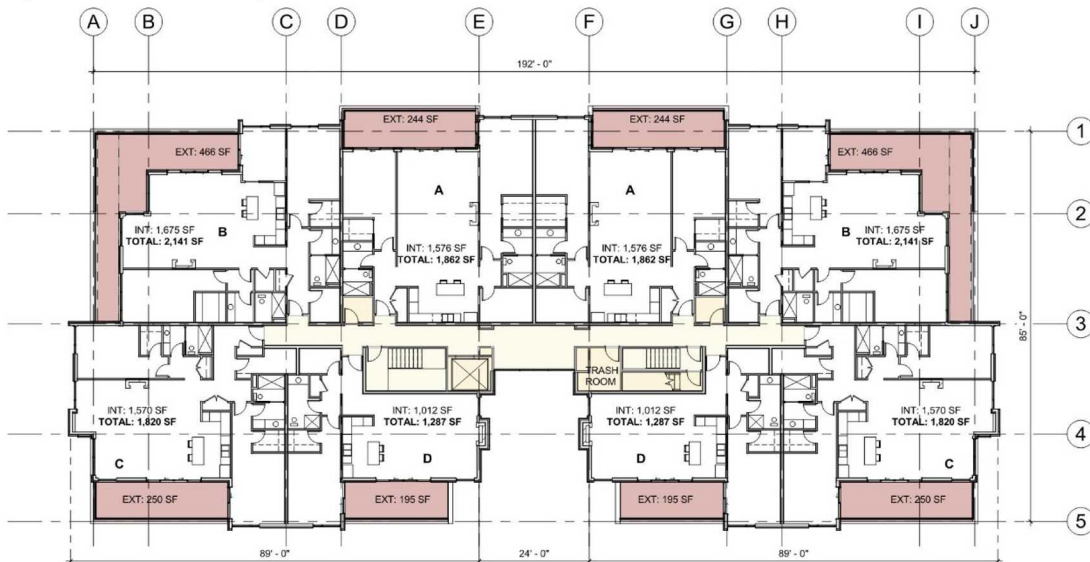
WAVERLEY WOODS PD SUBMITTAL

ADVANTAGES AND AMENITIES ADDITIONAL INFORMATION:

Exceptional Views from Exterior Balconies



Building A.1 & A.2 Balcony View



Building A.1 & A.2 Top Level Plan

All units with large balconies averaging over 3 times code required area.

All units at top floor with cross ventilation – 6 out of 8 lower floor units with cross ventilation.

75% of units on building corners with living areas opening to 2 façade views and ventilation.

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165

ACKNOWLEDGMENT OF SETTLEMENT
AGREEMENT RELATING TO CERTAIN
REAL PROPERTY WITHIN RECORDED
PLAT OF WAVERLEY HEIGHTS,
CLACKAMAS COUNTY, OREGON

WHEREAS PAUL W. BECHTOLD and ELIZABETH L. BECHTOLD, husband and wife, WENDELL E. HANSEN, HENRY J. ZILKA and MABEL J. ZILKA, husband and wife, JEAN F. DeLORD and NATALIE L. DeLORD, husband and wife, E. ROY JARMAN and EVA G. JARMAN, husband and wife, GEORGE E. SULLIVAN and ANNA G. SULLIVAN, husband and wife, LEROY B. STAVAR and HELENE M. STAVAR, husband and wife, RAY E. MACKENZIE and BESS MACKENZIE, husband and wife, THOMAS D. TAYLOR and DORIS V. TAYLOR, husband and wife, and THOMAS S. HARRISON, JR., and MARGARET L. HARRISON, husband and wife (hereinafter referred to as "Individual Owners"), have been or now are the owners of or have interests in various tracts of real property, or portions thereof, included within the recorded plat of Waverley Heights, Clackamas County, Oregon, and

WHEREAS JACK Y. H. LEONG and EDITH L. S. LEONG, husband and wife, and HAROLD B. SHERFY and GLORIA T. SHERFY, husband and wife (hereinafter referred to as "Apartment Owners"), are the owners of or have interests in tracts 5, 6, 7, 8, 9, and 11 of the recorded plat of Waverley Heights, Clackamas County, Oregon, and

WHEREAS Individual Owners filed a complaint in equity in the Circuit Court of the State of Oregon for the County of Clackamas, bearing Clerk's No. 71155, seeking a decree requiring Apartment Owners to construct and maintain a fence along a boundary defined in an agreement dated February 4, 1961 (a copy of the textual portion of the complaint is attached hereto, marked Exhibit A, and by this reference made a part hereof), and

WHEREAS Apartment Owners, pursuant to 28 USCA Section 1446, removed the above-mentioned case to the United States

OCT 6 1970

District Court for the District of Oregon, Clerk's No. 69-480,
and

WHEREAS, prior to the filing of said complaint, Apartment Owners submitted proposals to the Planning Commission of the City of Milwaukie, Oregon, to expand their apartment house complex, and in connection therewith requested a zone change of Lot 5 from R-10 Residential to A-2 Apartment Residential, which zone change was objected to by Individual Owners, and

WHEREAS, on or about October 24, 1969, Individual Owners and Apartment Owners compromised and settled their disputes on the basis of the following agreement which they agree binds and benefits the land within the recorded plat of Waverley Heights, Clackamas County, Oregon and shall run with the land and bind and inure to the benefit of their respective heirs, personal representatives and assigns.

1. Withdrawal of Objections to Zone Change. Individual Owners agreed to withdraw their objections to the requested zone change of Lot 5 from R-10 Residential to A-2 Apartment Residential. The requested zone change came on for hearing before the City Council of the City of Milwaukie, Oregon, on October 27, 1969, at which time the Individual Owners, by and through their attorneys, advised the City Council that the Individual Owners had reached an agreement with Apartment Owners and, therefore, were withdrawing their objections to the zone change. As a result, the City Council passed a city ordinance changing the zone for Lot 5 from R-10 Residential to A-2 Apartment Residential.

2. Agreement to Construct and Maintain Fence. In return for Individual Owners' agreement withdrawing their objections to the aforesaid zone change, Apartment Owners agreed to erect and maintain a fence of the type described in said agreement dated February 4, 1961, along the entire length of the boundary defined in paragraph 6 of the agreement of February 4, 1961. Apartment Owners have now completed

OCT 6 1970

construction of said fence along said boundary, which boundary includes areas that are not suitable to pedestrian or vehicular traffic, and the fence, as constructed, has been deemed satisfactory to Individual Owners. Apartment Owners have also agreed to maintain said fence along said boundary.

3. Dismissal of Suit. Said action between Individual Owners and Apartment Owners pending in the United States District Court for the District of Oregon shall be dismissed with prejudice and without costs to any of the parties.

IN WITNESS WHEREOF Apartment Owners hereby acknowledge and confirm the aforesaid settlement agreement, this 25th day of September, 1970.

Jack Y. H. Leong
Jack Y. H. Leong

Edith L. S. Leong
Edith L. S. Leong

Harold B. Sherry
Harold B. Sherry

Gloria T. Sherry
Gloria T. Sherry

APPROVED:

Frederic A. Yerke
Frederic A. Yerke
Of Attorneys for Individual Owners

George W. Mead
George W. Mead
Attorney for Apartment Owners

3

OCT 6 1970
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STATE OF HAWAII)
COUNTY OF) SS

On this 24th day of September, 1970, personally appeared before me, a notary public for said county and state, the within named JACK Y. H. LEONG and EDITH L. S. LEONG, husband and wife, to me known to be the identical persons described in and who executed the foregoing instrument and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein stated.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal, the date first hereinabove written.

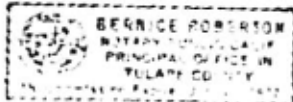
Marie B. Turpin
Notary Public for said judicial circuit
My Commission expires: 26 April 74

STATE OF CALIFORNIA)
COUNTY OF TULARE) SS

On this 21st day of September, 1970, personally appeared before me, a notary public for said county and state, the within named HAROLD B. SHERFY and GLORIA T. SHERFY, husband and wife, to me known to be the identical persons described in and who executed the foregoing instrument and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein stated.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal, the date first hereinabove written.

Berrice Robertson
Notary Public for
My Commission expires:



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OCT 6 1970

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Page

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

PAUL W. BECHTOLD and ELIZABETH L.)
BECHTOLD, husband and wife,)
WENDELL E. HANSEN, HENRY J. ZILKA)
and MABEL J. ZILKA, husband and)
wife, JEAN F. DeLOED and NATALIE)
L. DeLOED, husband and wife,)
E. FOY JARVIN and EVA G. JARVIN,)
husband and wife, GEORGE E. SULLIVAN)
and ANNA G. SULLIVAN, husband and)
wife, LEROY B. STAVER and HELENE M.)
STAVER, husband and wife, RAY E.)
MACKENZIE and BESS MCKENZIE,)
husband and wife, THOMAS D. TAYLOR)
and DORIS V. TAYLOR, husband and)
wife, and THOMAS S. HARRISON, JR.,)
and MARGARET L. HARRISON, husband)
and wife,)

Plaintiffs,)

v.)

JACK Y. H. LEONG and EDITH L. S.)
LEONG, husband and wife, and)
HAROLD B. SHEFFY and GLORIA T.)
SHEFFY, husband and wife,)

Defendants.)

No. 71155

COMPLAINT IN EQUITY

Plaintiffs for cause of suit against defendants, complain and allege as follows:

I

Plaintiffs, and each of them, are the owners or have interests in various tracts of real property, or portions thereof, included within the recorded plat of Waverly Heights, Clackamas County, Oregon. Said plat is hereinafter referred to as "Waverly Heights." The tract or tracts in which the property interest of the respective plaintiffs is located, is as follows:

<u>Plaintiff</u>	<u>Tract</u>
Paul W. Bechtold Elizabeth L. Bechtold	13
Wendell E. Hansen	13
Henry J. Zilka Mabel J. Zilka	14 and 15

5

KING MILLER ANDERSON, NASH & YERKE
ATTORNEYS AT LAW
1000 AMERICAN BANK BUILDING
PORTLAND OREGON 97208
533-5435

Page

76-22004

EXHIBIT A

OCT 6 1970

	<u>Plaintiff</u>	<u>Tract</u>
1		
2	Jean F. DeLord Natalie L. DeLord	12
3	E. Roy Jarman	1
4	Eva G. Jarman	
5	George E. Sullivan	14
6	Anna G. Sullivan	
7	Leroy B. Staver	3
8	Helene M. Staver	
9	Ray F. Mackenzie	14
10	Bess Mackenzie	
11	Thomas D. Taylor	16
12	Doris V. Taylor	
13	Thomas S. Harrison, Jr.	13
14	Margaret L. Harrison	

II

Defendants, and each of them, are the owners or have interests in tracts 5, 6, 7, 8, 9 and 11 of Waverly Heights. Attached hereto, marked Exhibit A, and by this reference made a part hereof, is a plat map of Waverly Heights.

III

On or about and prior to March 17, 1902, all the property which is now known and described as Waverly Heights, was owned by The Waverly Association, an Oregon corporation. On or about March 17, 1902, The Waverly Association caused to be duly recorded in the office of the county clerk of Clackamas County, Oregon, the plat of Waverly Heights in Book 5 of Plat Book Records, pages 27 and 28 thereof, and attached to said plat certain conditions, restrictions and covenants which were and are for the benefit of all the property owners of Waverly Heights. Attached hereto, marked Exhibit B, and by this reference made a part hereof, is a copy of said restrictions on the plat of Waverly Heights.

IV

Prior to February 4, 1961, the then owners of tracts 5, 6, 7, 8, 9 and 11 of Waverly Heights expressed an intention to construct on the property owned by them a large multiple family apartment house

6
70-22604

EXHIBIT A

WING MILLER ANDERSON, NASH & YERKE
ATTORNEYS AT LAW
PORTLAND, OREGON 97208

OCT 6 1970

1 project, which said project was objected to by various other
 2 property owners in Waverly Heights, including some of the present
 3 plaintiffs. Said dispute was eventually settled, and resulted in
 4 an Agreement dated February 4, 1961, signed by all the persons who
 5 then owned or had an interest in the various tracts of Waverly
 6 Heights either as an owner, mortgagee, vendor, contract purchaser,
 7 or otherwise. Said Agreement amended and modified the restrictions
 8 of March 17, 1902, and the property owners' rights and obligations
 9 under said conditions and restrictions. As a part of the settlement
 10 o. said dispute, and as incorporated in said Agreement in paragraph
 11 6, the then owners of tracts 5, 6, 7, 8, 9 and 11 agreed to construct
 12 and maintain a fence along certain boundaries in Waverly Heights,
 13 to wit:

14
 15 "6. The owners of Tracts 5, 6, 7, 8, 9, and 11
 16 agree, except as hereinafter set forth, to construct
 17 and maintain a fence along all of the following
 18 boundaries in said Waverly Heights:

19 (a) The boundary between Tract 4 and Tract 5;

20 (b) The boundary between Tract 5 and Tract 10;

21 (c) On or near the boundary of Tract 10 border-
 22 ing upon the portion of said road shown on said plat
 23 and known as S.E. Waverly Road or S.E. Cambridge Lane
 24 fronting upon Tracts 6, 7, 8, 9 and 11;

25 (d) The boundary between Tract 11 and Tract 12.

26 Said fence shall be a woven chain link fence of not less
 27 than nine gauge galvanized steel and not less than six
 28 feet high. The top edge thereof shall have twisted wire
 29 ends and the posts thereof shall be set in concrete. Said
 30 fence shall be uninterrupted and without gates. Said fence
 31 need not be constructed on any portion of the boundaries
 32 hereinabove described which is not now suitable to pedes-
 33 trian or vehicular traffic until such time as changes in
 34 terrain, vegetation or structures make the same necessary
 35 to stop such traffic."

36 The Agreement of February 4, 1961, was executed in three counterparts,
 37 and were recorded on June 22, 1961, in Book 508 of Clatsop County
 38 Deed Records at pages 197, 411 and 429 respectively. A copy of said
 39 Agreement, with attached copies of the signature sheets from the three
 40 counterparts, is attached hereto, marked Exhibit C, and by this refer-
 41 ence made a part hereof.

7

EXHIBIT A

JAMES M. MILLER ANDERSON, MARK B. VERRE
 ATTORNEYS AT LAW AMERICAN BANK BUILDING
 200 1/2 JAY STREET SEASIDE OREGON 97138

JAMES M. MILLER ANDERSON

OCT 6 1970

V

1
 2 Plaintiffs Paul W. Bechtold, Elizabeth L. Bechtold,
 3 Wendell E. Hansen, Henry J. Zilka, Mabel J. Zilka, Jean F. DeLord,
 4 Natalie L. DeLord, E. Roy Jarman, Eva G. Jarman, George E. Sullivan,
 5 Anna G. Sullivan, Leroy B. Staver, Felena M. Staver, Pay E. Mackenzie,
 6 and Bess Mackenzie were property owners in Waverly Heights on February
 7 4, 1961, and were parties to the Agreement of February 4, 1961.
 8 Plaintiffs Thomas D. Taylor, Doris V. Taylor, Thomas S. Harrison, Jr.
 9 and Margaret L. Harrison and defendants thereafter became property
 10 owners in Waverly Heights and thereby assumed and succeeded to the
 11 obligation and benefits of their successors in interest in said
 12 Agreement. Defendants became property owners of tracts 5, 6, 7, 8,
 13 9 and 11 on December 24, 1963.

VI

14
 15 After the settlement of the dispute and the execution
 16 of the Agreement of February 4, 1961, defendants or their successors
 17 in interest caused an apartment complex of 64 units, known as Waverly
 18 Green Apartments, to be constructed on tracts 6, 7, 8, and 9 of
 19 Waverly Heights. Despite repeated requests to construct the fence
 20 called for in said Agreement, defendants failed to construct said
 21 fence. In reply to one such request, defendants advised the inter-
 22 ested property owners of Waverly Heights by letter, dated October 27,
 23 1966, that they would comply with the Agreement of February 4, 1961,
 24 and begin construction of the fence within 60 days. Attached hereto,
 25 marked Exhibit D, and by this reference made a part hereof, is a copy
 26 of said letter of October 27, 1966. Thereafter, defendants did con-
 27 struct such a fence over a small portion of the boundary, but despite
 28 repeated demands that the balance of the fence be constructed, have
 29 failed and refused to complete the construction of the fence over the
 30 entire boundary as required by the Agreement of February 4, 1961.

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SING MILLER ANDERSON NASH & YERKE
ATTORNEYS AT LAW
PORTLAND, OREGON 97208

OCT 6 1970

VII

1 Since the construction of the multiple unit apartment
 2 complex on tracts 6, 7, 8, and 9 of Waverly Heights, the plaintiffs
 3 and other property owners in tracts 1, 2, 3, 4, 10, 12, 13, 14, 15
 4 and 16 of Waverly Heights have been subjected to pedestrian and
 5 motor vehicular traffic, including motorcycles and motorbikes,
 6 originating on tracts 5, 6, 7, 8, 9 and 11 of Waverly Heights and
 7 entering the other tracts of Waverly Heights at places where no
 8 fence has been constructed, which traffic has created noise and
 9 otherwise adversely affected the privacy of the plaintiffs in their
 10 enjoyment and use of their property. Certain of said plaintiffs'
 11 property has also been subjected to vandalism caused by persons
 12 entering upon their portion of Waverly Heights from tracts 5, 6, 7,
 13 8, 9 and 11 at points not protected by fences.

VIII

15 Defendants have submitted proposals to the Planning
 16 Commission of the City of Milwaukes, Oregon, to expand their apart-
 17 ment house complex. Said plans call for the additional construction
 18 on tracts 5 and 6 of 68 new units. Defendants have also requested
 19 a zone change of tract 11 from R-10 Residential to A-2 Apartment
 20 Residential so that they will be able to construct additional units
 21 on said tract 11. Any additional apartment units will cause even
 22 further influx of persons and motor vehicles into and upon the por-
 23 tion of Waverly Heights owned by the plaintiffs, and cause even
 24 greater damage to the plaintiffs, unless the fence which defendants
 25 and their successors in interests agreed to construct and maintain,
 26 is in fact built.

IX

28 With the exception of that portion of the boundary described
 29 in the Agreement of February 4, 1961, where defendants have already
 30 constructed a portion of the aforesaid fence, all portions of said
 31 boundary are now suitable for either pedestrian or vehicular traffic.
 32

KING, WELLS, ANDERSON, NASH & YERSE
ATTORNEYS AT LAW, MILWAUKEE, WISCONSIN 53102

9

70-22604 EXHIBIT A

OCT 6 1970

X

1 Plaintiffs have duly performed all the covenants and
2 conditions of the Agreement of February 4, 1961, on their part to
3 be performed. Plaintiffs have no plain and adequate remedy at law.

4 WHEREFORE plaintiffs pray

5 1. For a decree requiring defendants to construct within
6 three months from the date of the decree and to maintain along
7 all of the following boundaries in Waverly Heights:

8 (a) The boundary between Tract 4 and Tract 5;

9 (b) The boundary between Tract 5 and Tract 10;

10 (c) On or near the boundary of Tract 10 bordering
11 upon the portion of said road shown on said plat and known
12 as S.E. Waverly Road or S.E. Cambridge Lane fronting upon
Tracts 6, 7, 8, 9 and 11;

13 (d) The boundary between Tract 11 and Tract
14 a woven chain link fence of not less than nine gauge galvanized
15 steel, not less than six feet high, the top edge thereof having
16 twisted wire ends and the posts thereof set in concrete.

17 2. That if specific performance of said Agreement of
18 February 4, 1961, is not granted, that a decree be entered
19 enjoining defendants, and each of them, from constructing any
20 additional apartment units on tracts 5, 6, 7, 8, 9 and 11 of
21 Waverly Heights until such time as defendants have constructed
22 the fence required to be constructed under the Agreement of
23 February 4, 1961.

24 3. That Plaintiffs have such other, further or different
25 relief as the court shall deem proper.

26 4. That Plaintiffs recover their costs and disbursements
27 herein incurred.

28 KING, MILLER, ANDERSON, NASH & YERKE

29
30 Fredric A. Yerke, Jr.
Fredric A. Yerke, Jr.

31
32 Dean D. DeChaine
Dean D. DeChaine

Attorneys for Plaintiff

KING MILLER ANDERSON NASH & YERKE
ATTORNEYS AT LAW
1000 BOSTON BLDG
PORTLAND, OREGON 97208

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STATE OF OREGON)
) SS
COUNTY OF MULTNOMAH)

I, THOMAS D. TAYLOR, being first duly sworn, depose
and say that I am one of the plaintiffs above-named, that I have
read the foregoing Complaint in Equity, know the contents thereof,
and the same is true as I verily believe.

Thomas D. Taylor

SUBSCRIBED and sworn to before me this 31st day of
July, 1969.

Dean D. DeChaine
Notary Public for Oregon
My commission expires: January 20,
1972

(SEAL)

KING, MILLER, ANDERSON, NASH & YERKS
ATTORNEYS AT LAW
Portland, Oregon 97205

STATE OF OREGON,
County of Clatsop.

I, George D. Pappert, County Clerk, Ex-Officio
Recorder of Conveyances and Ex-Office Clerk
of the Circuit Court of the State of Oregon, for
the County of Clatsop, do hereby certify that
the within instrument of writing was received for
and recorded.

DEED

70-226-6-AM-30-445-0001

CLATSOP COUNTY, OREGON
RECORDED
INDEXED
JUL 31 1969
GEO. D. PAPPERT
County Clerk
By George D. Pappert
Deputy
Recording Certificate



CITY OF MILWAUKIE

To: Planning Commission
Through: Laura Weigel, Planning Manager
From: Vera Koliás, Senior Planner
Date: December 1, 2020, for December 8, 2020 Public Hearing
Subject: Emergency Shelters – Temporary Use Code Amendments

ACTION REQUESTED

Open the public hearing for application ZA-2020-001. Discuss the proposed amendments, take public testimony, and provide direction to staff regarding any desired revisions to the proposed amendments. Recommend City Council approval of application ZA-2020-001 and adoption of the recommended Findings of Approval found in Attachment 2.

BACKGROUND

Based on the discussion with the Planning Commission at the [November 10, 2020 meeting](#), staff is proposing a two-phase approach to temporary and transitional housing. The first phase is to formalize a process for temporary emergency shelters for warming, cooling or hazardous air quality. The second phase will be focused on permanent and semi-permanent transitional housing. Staff is in the initial stages of research for this phase and anticipate conducting a needs analysis and beginning discussions in the second half of 2021.

A third aspect of this issue is related to emergency management situations. The City's Emergency Management Coordinator will attend a Planning Commission meeting at a future date to provide an update on the City's emergency planning efforts including efforts related to short- and longer-term emergency shelters.

ANALYSIS

The proposed code amendments that are the subject of this public hearing are only to allow temporary emergency shelters for warming, cooling or hazardous air quality (as defined by the Environmental Protection Agencies (EPA) US Air Quality Index) as temporary use permits in MMC 11.05 (Phase 1). These are typically short-term emergencies of 90 days or less. Staff explored what neighboring communities were doing to address these seasonal shelter needs. Clackamas County and Oregon City both utilize a joint policy with Clackamas Fire District (CFD) for warming shelters to allow a building, not normally designated as a residential occupancy, to be used as a temporary shelter. The joint policy is a partnership between the local jurisdiction, their planning division, building official and CFD. It outlines clear and consistent standards and requires planning department approval, and a joint inspection by CFD and the local building official prior to occupancy. These standards do not apply to vehicles.

Staff propose to adopt a Joint Policy with Clackamas Fire District for emergency shelters in existing structures for warming, cooling and hazardous air quality. Shelters would be subject to standards for minimum requirements outlined in the Milwaukie and Clackamas Fire District Joint Policy for Temporary Emergency Shelters (see Attachment 2). These standards include provisions for life safety requirements, such as smoke alarms, carbon monoxide detectors, means of egress, responsible person in charge, etc.

These permits are proposed for a maximum of 90 days in any 12-month period with an option for one 30-day extension. Permits will require planning approval, approval of the Community Development Director, and a joint inspection between Milwaukie’s Building Official and Clackamas Fire.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	Public Copies	EPacket
1. Ordinance	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
a. Recommended Findings in Support of Approval	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Draft code amendment language (underline/strikeout)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Draft code amendment language (clean)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Milwaukie and Clackamas Fire District Joint Policy for Temporary Emergency Shelters	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = paper materials provided to Planning Commission 7 days prior to the meeting.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-64>.



COUNCIL ORDINANCE No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE (MMC) CHAPTER 11.05.010 TEMPORARY USES, PERMITS, AND REGULATIONS FOR THE PURPOSE OF CLARIFICATION OF, AND ALLOWING COOLING AND WARMING SHELTERS (FILE #ZA-2020-001).

WHEREAS, the proposed amendments to MMC Title 11 creates a section that allows for review of temporary permits for shelters for warming, cooling, and hazardous air quality with specific requirements; and

WHEREAS, legal and public notices have been provided as required by law; and

WHEREAS, on December 8, the Milwaukie Planning Commission conducted a public hearing as required by MMC 19.1008.5 and adopted a motion in support of the amendments; and

WHEREAS, the Milwaukie City Council finds that the proposed amendments are in the public interest of the City of Milwaukie.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Findings. Findings of face in support of the amendments are adopted by the City Council and are attached as Exhibit A.

Section 2. Amendments. The Milwaukie Municipal Code (MMC) is amended as described in Exhibit B (Title 11 underline/strikeout version), and Exhibit C (Title 11 clean version).

Section 3. Effective Date. The amendments shall become effective immediately.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

ATTACHMENT 1

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

**Recommended Findings in Support of Approval
File #ZA-2020-001, Temporary Use Code Amendments**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, the City of Milwaukie, proposes to amend regulations that are contained in Title 11 of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2020-001.
2. The purpose of the proposed code amendments is to amend code language related to temporary use permits to allow shelters for warming, cooling, and hazardous air quality as temporary uses. The amendments affect the following title of the municipal code:
Milwaukie Municipal Code
 - MMC 11.05 – Temporary Uses, Permits, and Regulations
3. The proposal is subject to the criteria and procedures outlined in the following sections of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Chapter 19.1000 Review Procedures
4. Sections of the MMC or Milwaukie Comprehensive Plan (MCP) not addressed in these findings are found to be not applicable to the decision on this land use application.
5. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. A public hearing was held on December 8, 2020 and January 19, 2021 as required by law.
6. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.
 - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.
The amendments were initiated by the Planning Manager on October 14, 2020.
 - b. MMC Section 19.1008 establishes requirements for Type V review. The procedures for Type V Review have been met as follows:
 - (1) Subsection 19.1008.3.A.1 requires opportunity for public comment.
Opportunity for public comment and review has been provided. The draft amendments have been posted on the City's web site since November 6, 2020. On November 6, 2020 staff e-mailed NDA leaders with information about the Planning Commission hearing and a link to the draft proposed amendments. The Planning Commission held a worksession on November 10, 2020 to discuss the proposed amendments.

ATTACHMENT 1 Exhibit A

- (2) Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public at least 30 days prior to the hearing.

A notice of the Planning Commission's December 8, 2020, hearing was posted as required on November 6, 2020. A notice of the City Council's January 19, 2021 hearing was posted as required on December 18, 2020.

- (3) Subsection 19.1008.3.A.3 requires notice be sent to individual property owners if the proposal affects a discrete geographic area or specific properties in the City.

The Planning Manager has determined that the proposal affects a large geographic area.

- (4) Subsection 19.1008.3.B requires notice of a Type V application be sent to the Department of Land Conservation and Development (DLCD) 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to DLCD on October 30, 2020.

- (5) Subsection 19.1008.3.C requires notice of a Type V application be sent to Metro 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to Metro on October 30, 2020.

- (6) Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the proposed amendments would affect the permissible uses of land for those property owners.

The proposed amendments do not further restrict the use of property. In general, the proposed amendments add flexibility.

- (7) Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application.

The Planning Commission held a duly advertised public hearing on December 8, 2020 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on January 19, 2021 and approved the amendments.

7. MMC 19.902 Amendments to Maps and Ordinances

- a. MMC 19.902.5 establishes requirements for amendments to the text of the zoning ordinance. The City Council finds that these requirements have been met as follows.

- (1) MMC Subsection 19.902.5.A requires that changes to the text of the land use regulations of the Milwaukie Municipal Code shall be evaluated through a Type V review per Section 19.1008.

ATTACHMENT 1 Exhibit A

The Planning Commission held a duly advertised public hearing on December 8, 2020. A public hearing before City Council is tentatively scheduled for January 19, 2021. Public notice was provided in accordance with MMC Subsection 19.1008.3.

- (2) MMC Subsection 19.902.5.B establishes the approval criteria for changes to land use regulations of the Milwaukie Municipal Code.
- (a) MMC Subsection 19.905.B.1 requires that the proposed amendment be consistent with other provisions of the Milwaukie Municipal Code.
- The proposed amendments have been coordinated with and are consistent with other provisions of the Milwaukie Municipal Code.*
- (b) MMC Subsection 19.902.5.B.2 requires that the proposed amendment be consistent with the goals and policies of the Comprehensive Plan.
- Only the goals, objectives, and policies of Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.*

The overarching Goal statement of the Housing section reads as follows:

Provide safe, affordable, stable housing for Milwaukie residents of every socioeconomic status and physical ability within dwellings and neighborhoods that are entirely equitable, delightfully livable, and completely sustainable.

Goal 7.1 – Equity states:

Enable and encourage housing options that meet the needs of all residents, with a specific focus on uplifting historically disenfranchised communities and eliminating disparities for populations with special needs or lower incomes.

Policy 7.1.8 states that the city should collaborate with community partners to provide a continuum of programs that address the needs of unhoused persons and families, including temporary shelters, alternative shelter models, long-term housing, and supportive services.

Policy 7.2.8 states that the city should implement development code provisions to permit shelters and transitional housing for people without housing.

The proposed amendments provide a permit process to allow temporary shelters for warming, cooling, and hazardous air quality for unhoused people during periods of extreme heat and cold and hazardous air quality (as defined by the Environmental Protection Agencies (EPA) US Air Quality Index.

ATTACHMENT 1 Exhibit A

- (c) MMC Subsection 19.902.5.B.3 requires that the proposed amendment be consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.

- (d) MMC Subsection 19.902.5.B.4 requires that the proposed amendment be consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.

Oregon Statewide Planning Goal 10: Housing

Goal 10 refers to the provision of housing to meet the needs of Oregon citizens. The proposed amendments relate to temporary permits to allow cooling and warming shelters to help unhoused people during times of extreme heat and cold weather conditions.

- (e) MMC Subsection 19.902.5.B.5 requires that the proposed amendment be consistent with relevant federal regulations.

Relevant federal regulations are those that address land use, the environment, or development in the context of local government planning. Typically, regulations such as those set forth under the following acts may be relevant to a local government land use process: the Americans with Disabilities Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Fair Housing Act, the National Environmental Policy Act, the Religious Land Use and Institutionalized Persons Act, and the Resource Conservation and Recovery Act. None of these acts include regulations that impact the subject proposal or that cannot be met through normal permitting procedures. Therefore, the proposal is found to be consistent with federal regulations that are relevant to local government planning.

Underline/Strikeout Amendments

Title 11 Miscellaneous Permits

11.05 TEMPORARY USES, PERMITS, AND REGULATIONS

11.05.010 USES

Approval may be granted for structures or uses which are temporary or seasonal in nature, such as:

- A. Seasonal sales uses on private property and on land owned by the City of Milwaukie. These activities include, but are not limited to, the sale of produce, rental of recreational equipment, provision of recreational lessons, or sale of products at a park owned by the City of Milwaukie.
- B. Temporary real estate offices;
- C. Construction parking;
- D. Construction trailers;
- E. Construction offices;
- F. Shelters for warming, cooling, or hazardous air quality, subject to the Milwaukie and Clackamas Fire District Joint Policy for Temporary Emergency Shelters.
- ~~G. F~~-Other temporary uses similar to those listed above as determined by the City Manager

11.05.030 PERMIT APPROVAL

A. Findings of Fact

A temporary use permit (TUP) may be authorized by the City Manager or designee provided that the applicant submits a narrative and detailed site plan that demonstrates that the proposed use:

1. Generally does not have negative impacts and is not inconsistent with the standards and limitations of the zoning district in which it is located;
2. Meets all applicable City and County health and sanitation requirements;
3. Meets all applicable Uniform Building Code requirements; and
4. On-site real-estate offices, construction offices, and construction trailers shall not be approved until land use approval and building permits, if applicable, have been issued.

B. Time Limits

The temporary use or structure shall be removed upon expiration of the temporary use permit, unless renewed by the City Manager or designee.

1. Temporary construction offices, construction trailers, and real estate offices shall not be issued for a period exceeding one year. The applicant may request a renewal for additional time to allow completion of the project provided that the applicant

Proposed Code Amendment

provides a narrative describing the need for additional time and an anticipated date of project completion.

2. Permits for shelters for warming, cooling, or hazardous air quality uses are limited to no more than 90-days in any twelve-month period with an option for one 30-day extension.

23. Other temporary uses, that are not temporary events per MMC 11.04, shall be issued a permit for up to one year to accommodate the duration of the proposed temporary use.

Renewals may be provided as follows:

- a. A renewal permit may be obtained for a period of one year after providing a narrative describing how the use will remain temporary and how the use is not and will not become permanent.
 - b. A temporary use permit shall not be renewed for more than three (3) consecutive years; however, a renewal may be obtained annually for uses that do not exceed a four-month period of time per year.
-

Underline/Strikeout Amendments

Title 11 Miscellaneous Permits

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TEMPORARY EMERGENCY SHELTER POLICY
City of Milwaukie and Clackamas Fire District #1 joint policy

The following policy is a collaboration between the City of Milwaukie Building Official and the Clackamas Fire District #1 Fire Marshal for temporary shelters within the jurisdictional City of Milwaukie. This policy contains the minimum guidelines to allow a building not normally designated as an “R” (Residential) Occupancy (defined as the use of a building or structure, or a portion thereof, for sleeping purposes) to be used as a temporary shelter.

Registration:

Each year prior to opening as an emergency shelter, the shelter’s building manager shall contact the City of Milwaukie to request approval. The approval is subject to:

- Obtaining a site inspection to verify the building meets the minimum requirements of this policy.
- If required, compliance with applicable land use, zoning and development regulations or approval to waive these regulations is granted via a valid emergency declaration, executed by the City or an approval from City Planning or Community Development Director.

Time Limits:

If approved, a building may be used as a temporary shelter for a maximum of ninety (90) days within any twelve (12) month period of time beginning on the first (1st) day of occupancy, or as approved by the local authority having jurisdiction. A thirty (30) day extension may be requested and will be reviewed by the authority having jurisdiction and a determination made within 72 business hours.

Maximum Number of Occupants Allowed: **adjusted to keep recommended physical distancing between occupants to prevent current spreading of COVID-19 virus*

The maximum number of allowable temporary shelter occupants shall be calculated using an occupant load factor of one (1) individual for every ~~thirty five (35)~~ ***110 square feet** of net room area.

Life Safety Requirements: The following minimum life safety requirements apply to all buildings being used as a temporary shelter.

1. Fire Sprinklers:

It is not necessary for a building to have fire sprinklers installed for it to be used as a temporary shelter; however, buildings with an approved fire sprinkler system installed may have sleeping areas located on any building floor level.

In buildings without fire sprinklers installed, the temporary sleeping areas may only be located on the first (ground) or second floor. Sleeping areas are not permitted in basement areas of a non-fire-sprinklered building.

2. Smoke Alarms and Detection:

- All temporary shelter sleeping areas shall be provided with approved smoke alarms or a complete approved smoke detection system.
- All other areas of the building used for temporary shelter operations shall be equipped with smoke alarms or a smoke detection system as approved by the authority having jurisdiction.
- Smoke alarms or smoke detection may be battery operated.

3. Carbon Monoxide (CO) Alarms and Detection:

- All temporary shelter sleeping areas shall be provided with approved carbon monoxide alarms, or a complete approved detection system in buildings that have a carbon monoxide source such as heater, fireplace, furnace, appliance or cooking source that uses, coal, wood, petroleum products and other fuels that emit carbon monoxide as a by-product of combustion. This would include buildings that have an attached garage with a door, ductwork or ventilation shaft that communicates with the rooms intended for sleeping.
- Carbon monoxide alarms may be battery operated.

4. Means of Egress (Exits):

All floor levels used as temporary shelter areas shall have a minimum of two means of egress (exits) from each floor level. All means of egress (exits) paths shall be maintained free of obstructions at all times. Exits from sleeping areas shall be as follows:

- Sleeping areas located on the ground floor of a temporary shelter with an occupant load of 49 or less shall have at least one (1) exit and at least one (1) window qualifying as an escape or rescue window as defined by the current Oregon Residential Specialty Code.
- All other floor levels used as temporary shelter sleeping areas that have an occupant load of ten (10) or more shall have at least two (2) exits from the area. The exits serving the areas shall be separated by a distance equal to at least one-third (1/3) of the longest diagonal distance of the area.

5. Emergency Evacuation Plan:

All temporary shelters shall create and maintain an approved emergency evacuation plan which provides for evacuation of all occupants in an emergency event. At a minimum, the emergency evacuation plan shall contain the following:

- **Building floor plans.** Building floor plans for each floor of the temporary shelter with sleeping areas clearly identified.
- **Room size.** The square footage of all rooms of the temporary shelter.
- **Egress (exit) path.** Building floor plans shall clearly show the egress (exit) paths from all areas of the temporary shelter. Egress (exit) path floor plans shall be posted throughout the temporary shelter.
- **Life-safety systems.** The emergency evacuation plan shall also include information about the fire sprinkler system, fire alarm system of the smoke detection systems.
- **Extinguishers.** Location of the required fire extinguishers placed within the building.
- **Occupant List.** A list of all occupants each night must be maintained and made available to the emergency personnel in the event of a fire or accident.

6. Fire Extinguishers:

Appropriately sized fire extinguishers shall be placed adjacent to the means of egress with clearly marked indicators as to the location.

7. Fire Watch:

During sleeping hours a fire watch shall be maintained continuously. This means at least one responsible person at least 18 years of age shall be awake and assigned this responsibility. The fire watch person shall be equipped with a working flash light and have access to a phone or carry a cell phone on their person.

8. Smoking or Open Flames:

- Smoking shall not be allowed at any time inside the temporary shelter.
- Open flames shall not be allowed within the temporary shelter except for approved cooking appliance which require a flame for combustion fuel to operate.

9. Documentation:

Documentation of all fire safety requirements including, copies of the temporary shelter evacuation plan, shall be maintained on site and shall be available for review at the request of the authority having jurisdiction.

10. Responsible Person In Charge:

- The authority having jurisdiction shall be notified of the Responsible Person In Charge of the temporary shelter and be provided with a means of contact. An alternate Responsible Person In Charge may be listed.
- The responsible Person In Charge is responsible to maintain the list of the aforementioned requirements are complied with.

11. Revocation:

Failure to maintain the minimum requirements of the policy can result in the temporary shelter approval being revoked by the authority having jurisdiction.

City of Milwaukie Building Official
(required)

Date

Clackamas Fire District #1 Fire Marshal
(required)

Date

City of Milwaukie Plan/Development Director
(if required)

Date



CITY OF MILWAUKIE

To: Planning Commission
Through: Laura Weigel, Planning Manager
From: Brett Kelter, Associate Planner
Date: December 1, 2020, for December 8, 2020, Work session
Subject: Update on Central Milwaukie Bikeways Concept Plan

ACTION REQUESTED

None. This is a briefing for discussion only. Staff expects to return next to this issue in a joint work session meeting with the City Council in March 2021.

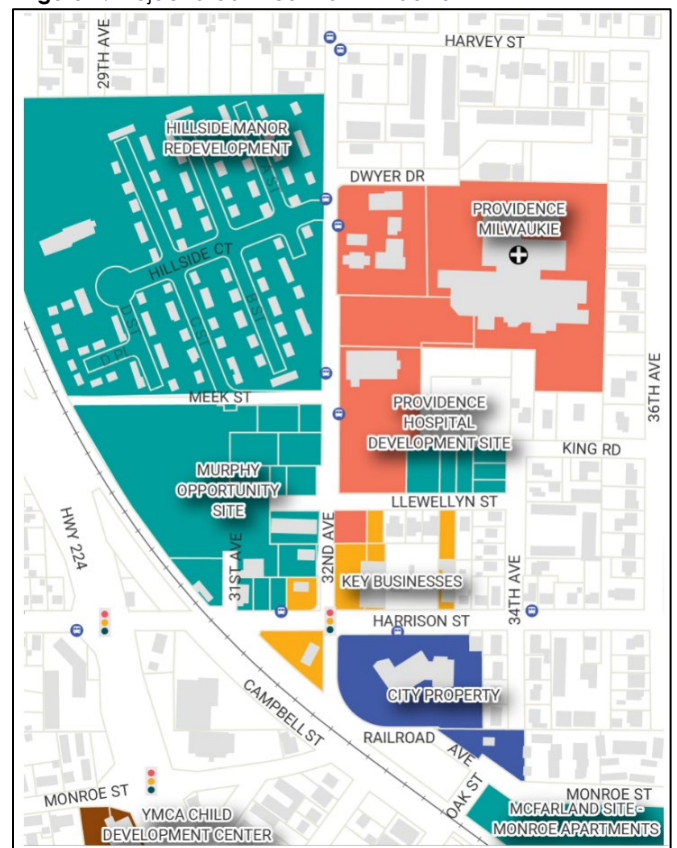
BACKGROUND INFORMATION

The Central Milwaukie Land Use and Transportation Plan, adopted in 2015, identified a multimodal neighborhood greenway connecting the planned 29th Avenue Neighborhood Greenway with the Monroe Neighborhood Greenway. The concept involved three opportunity sites in the central Milwaukie area: the Murphy site, McFarland site, and Clackamas County Housing Authority's Hillside Manor (see Figure 1).

In the Central Milwaukie plan, the proposed connecting greenway route extends through the Hillside Manor site and the undeveloped Murphy site before crossing Harrison Street (an arterial) at a location adjacent to where the Union Pacific railroad tracks cross Harrison Street. The proposed greenway route then continues along Railroad Avenue to meet the Monroe Neighborhood Greenway at the McFarland site (future home of the 234-unit Monroe Apartments).

However, it has since become apparent that this proposed alignment is more complicated than initially thought and would need approval from

Figure 1. Project area in central Milwaukie



Source: Alta Planning + Design

the railroad as well as a complex new signal system at Harrison Street in the planned location. The original design now appears impossible to achieve, and the City urgently needs an alternative design that would route bike trips from Hillside Manor to 32nd Avenue and then down 32nd Avenue to connect with the rest of the system at Oak Street. It is important to plan the necessary connection before the Murphy site in the middle of the project area begins to redevelop.

In October 2019, Community Development staff applied to the Oregon Department of Land Conservation and Development (DLCD) through its Transportation and Growth Management (TGM) Quick Response program, for assistance in developing a revised concept plan for the bikeway and multimodal connection. The proposal received approval for funding in November 2019, and staff coordinated with the TGM liaison to develop a scope of work. A consultant team from Alta Planning + Design was selected to work on the project, which officially kicked off in August 2020.

The goal is to analyze multimodal connectivity issues within the project area and identify alternatives with planning-level cost estimates. The approach involves engagement and discussion with key stakeholders as well as at least one community meeting to review and discuss the concept alternatives. The final product will be a concept report that presents the revised design, to be reviewed by the Planning Commission and adopted by the City Council as an ancillary document to the city's Transportation System Plan (TSP).

A. History of Prior Actions and Discussions

[May 5, 2020](#): City Council received an update on this project in preparation for future consideration of a request for authorization of an intergovernmental agreement (IGA) for this project.

[June 16, 2020](#): Council adopted a resolution authorizing an IGA with DLCD for the project.

B. Project Update

Once the project got underway, the team conducted a socially distanced site visit to orient all the team members with the physical space. During the month of October, the project team interviewed six key stakeholders from along the route, having in-depth conversations with representatives of the Hillside Manor housing complex, Harrison Plaza shopping center, Kimmy's Market, Bike Milwaukie advocacy group, Murphy redevelopment site, and Providence-Milwaukie hospital. The Alta team has also conducted a modal analysis and reviewed other background information to produce a memorandum summarizing the existing conditions (see Attachment 1).

What has emerged from these early steps is an understanding of opportunities and constraints, as well as a clearer sense of the essential need for a safe route through this already busy part of central Milwaukie. With the anticipated increase in residential development on the Hillside and Murphy sites, as well as at the McFarland site along the Monroe Neighborhood Greenway route, the challenge is to provide a safe north-south connection between these hotspots. The intersection of 32nd Avenue and Harrison Street is

especially challenging, with high traffic volumes and limited space for new improvements in the public right-of-way. Establishing a safe crossing of Harrison Street while limiting out-of-direction travel for bicycles as much as possible is key.

In mid-November, the Alta team produced draft concepts for three alternative routes (see Attachment 2). Each option would cross Harrison Street in a different location, and each one has its challenges. The project team is in the process of staging a virtual community open house to solicit comments on the concept alternatives. Along with another round of conversations with the key stakeholders, the feedback from the open house will help refine the development of alternatives for the concept design plan.

C. Conclusion

Staff is interested in hearing the commissioners' thoughts about the three alternative routes in advance of providing a similar project update to the City Council on December 15. Early in 2021, the project team will produce a draft of the concept plan, with refinements that reflect further analysis and public input and that move toward identifying a preferred option. A joint work session with the City Council is tentatively scheduled for March 2, 2021, where the two groups will have a chance to discuss the final proposed concept plan before the Council considers it for adoption by resolution in early April.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	E-Packet
1. Existing Conditions Memo	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Concept Alternatives (draft)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = materials provided to Planning Commission 7 days prior to the meeting.

E-Packet = packet materials posted online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-64>, available 7 days prior to the meeting.



To: Brett Kelter, Mary Heberling, City of Milwaukie
From: Derek Abe and Grace Stainback, Alta Planning + Design
Date: November 9, 2020
Re: Central Milwaukie Bikeway Connections Project – Existing Conditions

Introduction

The purpose of this memorandum is to summarize the existing conditions, opportunities, and constraints for the Central Milwaukie Bikeway Connections project. It outlines opportunities and constraints for potential bikeway connections in the project area. The intention is for this document to inform the development of concept design alternatives.

Introduction to Project Area

Central Milwaukie serves as both a commercial hub for the city as well as a crossroads for several neighborhoods. The approximately 75-acre area is located at the junction of several neighborhood boundaries and is a location where numerous commercial, housing, medical and civic activities coincide. The Central Milwaukie District is separated from Historic Downtown Milwaukie by Hwy 224 and the rail line along its western edge.¹ The residential neighborhoods of Lewelling, Lake Road, Ardenwood, and Hector Campbell are located directly east and south of the district; industrial/employment districts are located to the northwest and southeast.

Central Milwaukie is the gateway between surrounding neighborhoods and the transit hubs found Downtown: both the Milwaukie Transit Center and the Milwaukie/ Main St MAX Station. Currently, connections for people riding bikes through the project area are limited. Figure 1 illustrates the existing active transportation network in Central Milwaukie. However, there are several signed shared-street bikeways in the area that are not illustrated on the map, including 29th Ave which connects to the Springwater Trail to the north, and Harvey St east of 32nd Ave.

¹ Central Milwaukie Land Use and Transportation Plan. City of Milwaukie, March 2015. https://www.milwaukieoregon.gov/sites/default/files/fileattachments/draft_cmlutp_03-03-15_0.pdf

Figure 1. Active Transportation Network Map

ACTIVE TRANSPORTATION NETWORK

CENTRAL MILWAUKIE BIKEWAY CONNECTIONS

DESTINATIONS

- Affordable Housing
- Community Center
- Hospital
- MAX Station

BIKE ROUTES

- Bike Lane
- Shared Roadway
- Planned Bikeways

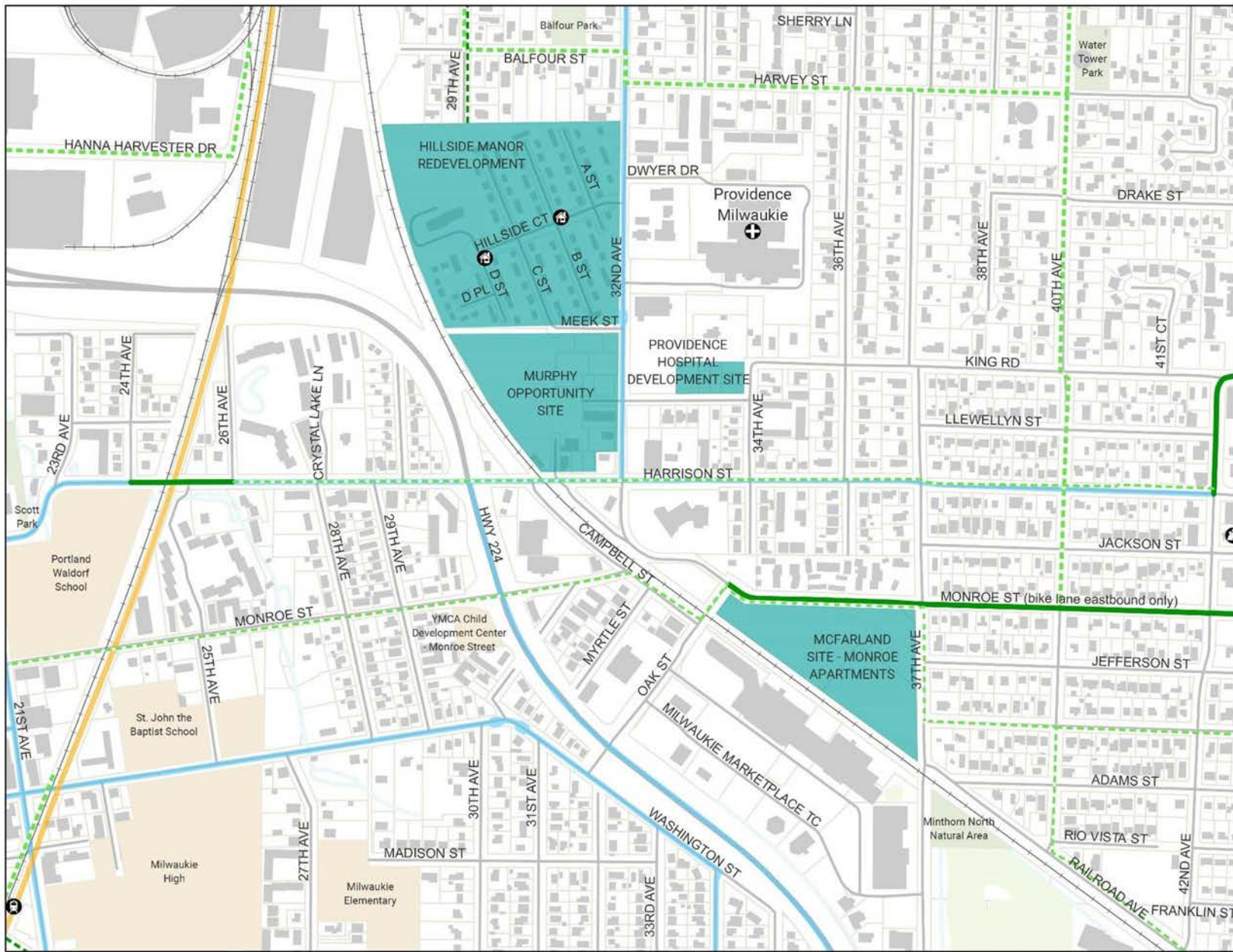
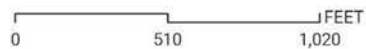
TRANSIT

- MAX Light Rail
- Bus Route

FEATURES AND BOUNDARIES

- Railroad
- Schools
- Building Footprints
- Parks
- Wetlands
- Development Site
- Taxlots

Data Source:
City of Milwaukie, Metro RLIS
Map Created:
September 2020





Collisions and Safety

Between 2016 and 2020, there have been seven motor vehicle collisions with people walking and biking in the study area (Figure 2). The crashes are concentrated near major intersections, including Hwy 224 at Oak St and Harrison St at 32nd Ave. Notably, the intersection of Harrison St and 32nd Ave lies at the heart of the project area and is viewed as a key connection opportunity. However, the high crash rate indicates that an alternative route may offer a more comfortable and safe connection for people biking.

BICYCLE AND PEDESTRIAN COLLISIONS 2016 - 2020

CENTRAL MILWAUKIE BIKEWAY CONNECTIONS

BIKE ROUTES

- Bike Lane
- - - Shared Roadway

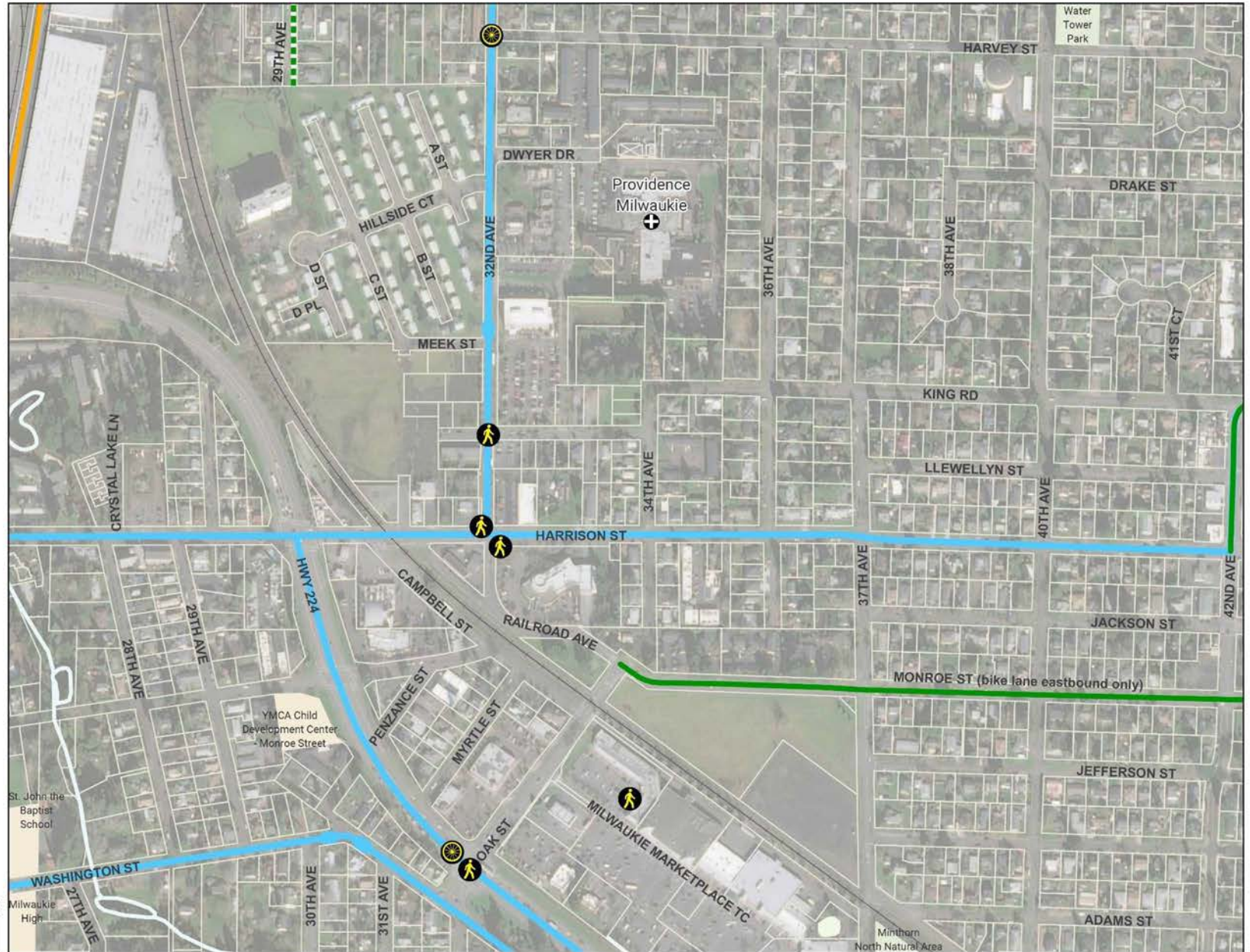
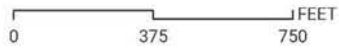
TRANSIT

- MAX Light Rail
- Bus Route

FEATURES AND BOUNDARIES

- Railroad
- School
- Park
- Wetland
- Taxlot Boundary
- Bike Collision
- Pedestrian Collision
- Hospital

Data Source:
City of Milwaukie, Metro RLIS
Map Created:
September 2020





Key Development Sites

Four sites located within the project area are currently in the process of active redevelopment (Figure 3). The Central Milwaukie Bikeway Connections project must align with these efforts; this project's recommended design will be incorporated into these ongoing development initiatives.

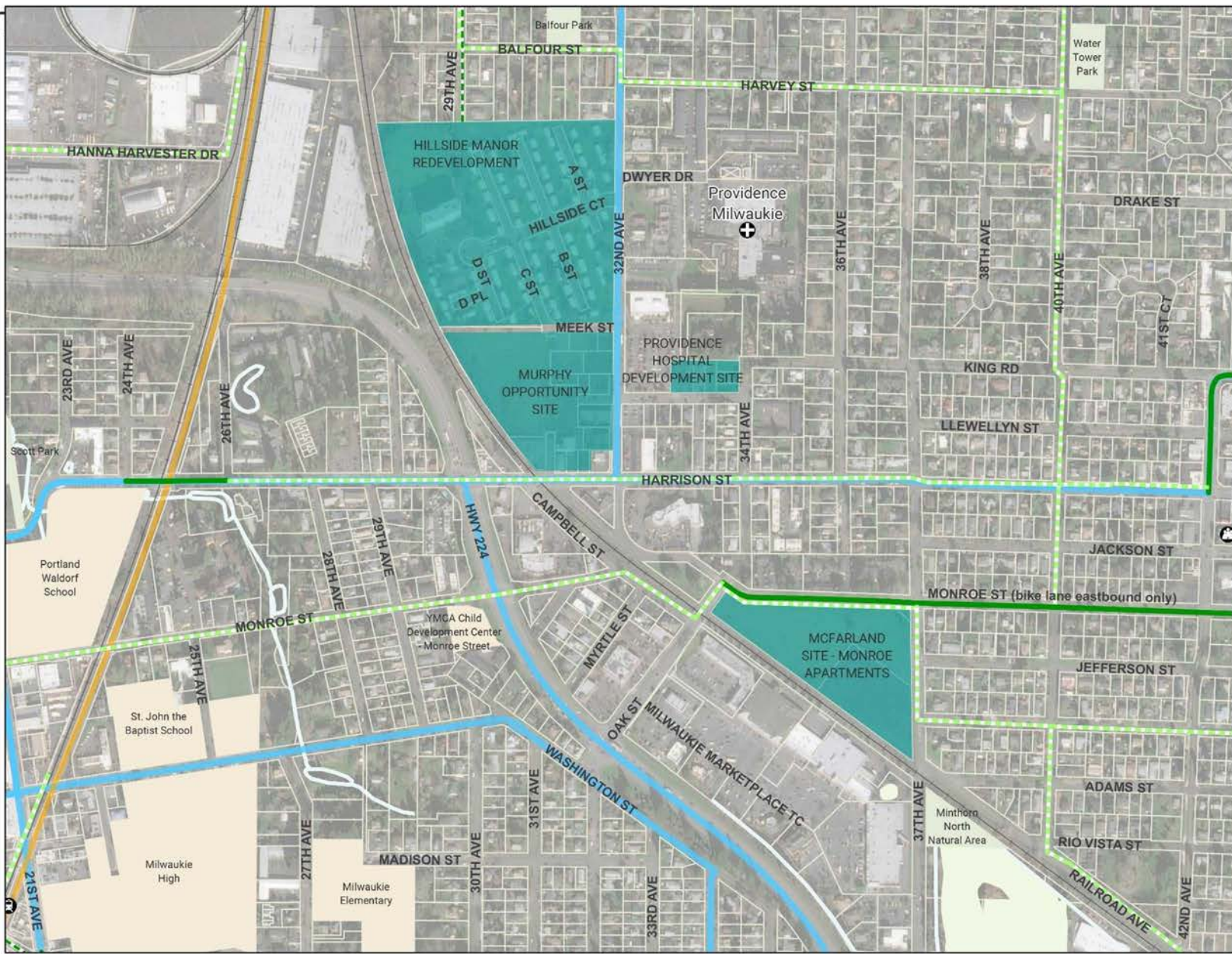
Figure 3. Key Development Sites

KEY DEVELOPMENT SITES
CENTRAL MILWAUKIE
BIKEWAY CONNECTIONS

- BIKE ROUTES**
- Bike Lane
 - Shared Roadway
 - Planned Bikeways
- TRANSIT**
- MAX Light Rail
 - Bus Route
- FEATURES AND BOUNDARIES**
- Railroad
 - Development Site
 - School
 - Park
 - Wetland
 - Taxlot Boundary
 - Community Center
 - Hospital
 - MAX Station

Data Source:
City of Milwaukie, Metro RLIS
Map Created:
September 2020

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Hillside Manor Redevelopment

The Clackamas County Housing Authority Hillside Manor redevelopment will involve the reconfiguration of both streets and buildings on approximately 20 acres of land in the northwest swath of the Milwaukie Central Bikeways project area. The redevelopment includes renovation to the existing Hillside Manor multifamily housing tower and the redevelopment of Hillside Park. Additionally, the existing 100 single family homes will be replaced with 400 new multifamily units and mixed-use development, for a total of 600 housing units on the property (the tower will be renovated, not replaced). Updated street circulation within the site will extend 29th Ave through the site to connect with Meek St to the south. Dwyer St will also extend west into the site, establishing a four-way intersection at 32nd Ave and Dwyer St. Hillside Ct will no longer serve as an entrance and egress for the site (Figure 4).

The Hillside redevelopment process is well underway. The Housing Authority has submitted a preapplication to the City, with intentions to submit a land use development application by the end of 2020. The redevelopment will occur in three phases, with the first phase of construction tentatively slated for early 2022.

Figure 4. Hillside Redevelopment Site Plan



Murphy Opportunity Site

The undeveloped Murphy site is located south of the Hillside Redevelopment site, bounded by Meek St and Harrison St to the north and south, and Highway 224 and 32nd Ave to the west and east. The site does not include the lot in the northwest



corner of Harrison St and 32nd Ave (a key intersection) where Kimmy’s Market is currently located. At present, the property owners of the Murphy Site have reviewed a variety of residential and mixed-use development options, with no decisions determined.

At present, three stub streets provide vehicle access to the site: from the south edge of the site onto Harrison at 31st Ave, and to the east onto 32nd Ave at Meek St and Llewellyn St. Due primarily to the proximity of the railroad crossing of Harrison St, it is anticipated that site access will not be provided from the Harrison St. Rather, it is likely that one or both the Meek St and Llewellyn St access points will provide site access and circulation.

Milwaukie’s TSP and in the Monroe Street Neighborhood Greenway Concept Plan envisioned a bicycle connection through the Murphy site, crossing Harrison St at the south end of the site at a location adjacent to the railroad. However, the City has concluded that the initial concept identified in is not feasible due to the location of the proposed crossing in close proximity to the railroad crossing, Highway 224, and the signalized intersection of Harrison St at 32nd Ave. Furthermore, specific plans for a bicycle facility through the site are subject to the development plans on the site, which have not been determined. However, the City has a current agreement with the property owner that includes potential for a modification of the current easements to make way for a future bicycle and pedestrian connection on the property along 32nd Ave.

McFarland Opportunity Site

The City has approved development plans for a 234-unit apartment complex on the McFarland site, which sits southeast of the intersection of Oak St and Railroad Ave. In the course of that review, the alignment of the Monroe Street Neighborhood Greenway changed from routing through the south edge of the site adjacent to the railroad, to a cycle track along the south side of Monroe St. From Monroe St, the planned cycle track will head south on 37th Ave to connect to Washington St.

Providence Hospital Development Site

Providence Hospital is currently discussing potentially development of a mixed-use health facility on the undeveloped property on the northwest corner of 34th Ave and Llewellyn St. The property has two existing curb cuts along the south edge of the property onto Llewellyn St.

Project Opportunities and Constraints

Overall Project Opportunities

- The project area encompasses an essential north-south network connection for people biking through Central Milwaukie, linking the 29th Ave Neighborhood Greenway and Springwater Corridor to the north, with Railroad Ave and the Monroe St Neighborhood Greenway to the south and east.
- The key redevelopment sites offer opportunities to align the City’s bicycle network connectivity goals with active development plans.
- The projected rapid increase in housing density and mixed-use development in the project area necessitates safe and convenient routes for people walking and biking. An abundance of travel options will offset demand on vehicle trips and help to reduce the impact of development on vehicle traffic and congestion in the project area.
- The wide sidewalk and planter strip on the 32nd Ave frontage of Providence Hospital, is a potential opportunity to provide space for a bikeway connection.
- The street redesign on the Hillside Manor site offers advantages within the project area. 29th Ave currently links to the Springwater corridor to the north, and the street redesign will extend 29th Ave to meet Meek St.
- The City-owned parcel at the terminus of 34th Ave at the junction of Railroad Ave and Oak St at the southern terminus of the project area offers a potential connection opportunity.



- There is potential to align a phased bicycle facility with the development of the Murphy site, to include improvements to the west side of 32nd Ave between Meek St and Llewellyn St. Additionally, there is an opportunity to underground utility poles along the west side of 32nd Ave in conjunction with the development of the Murphy and Hillside Manor sites.
- The City has a current agreement with the Murphy property owner that includes potential for a modification of the current easements to make way for a future bicycle and pedestrian connection through the property.
- If Llewellyn St is used to make the needed bicycle connection to support this project, the Providence Hospital proposed development offers an opportunity to plan vehicle circulation patterns on the site in a manner that limits potential conflict with people biking along Llewellyn St.

Overall Project Constraints




- 32nd Ave does not currently include a bike facility, and the width of the street north of Harrison precludes the possibility of adding one without expanding the right of way.
- Any potential widening of the right-of-way along 32nd Ave north of Harrison St would have a substantial impact on adjacent businesses and properties. While there is 50 feet of right-of-way available at the intersection of 32nd Ave and Harrison St, this is reduced to 40 feet north of Llewellyn St, leaving little room for in-street bike facilities
- The intersection of Harrison St and 32nd Ave presents barriers for people walking and biking, due to a high level of vehicle traffic and history of collisions. Although this intersection provides the most direct connection through the project area, alternative routes can offer more safety and comfort for people biking. This intersection is also challenged by its proximity to the railroad tracks, constrained space, and driveway activity.
- The Murphy Site does not include the lot in the northwest corner of Harrison St and 32nd Ave (a key intersection) where Kimmy's Market is currently located. This would likely make reconstruction of the intersection or expanding the right of way more difficult.
- The potential connection through the City-owned property at the terminus of 34th Ave at the junction of Railroad Ave and Oak St is constrained by an existing City well and water treatment facility.
- The Hillside Manor redesign leaves no right-of-way available on the west side of 32nd Ave along its frontage between Dwyer St and Meek St.
- The potential Providence Hospital development on Llewellyn St may generate more vehicle traffic on what is presently a calm route alternative.
- Clackamas County advises against enhanced crossings treatments such as Rectangular Rapid Flashing Beacons (RRFB) within 300 feet of intersections, which must be taken into account when considering different options for crossing both 32nd Ave and Harrison St. If Llewellyn St serves as the primary entrance to the Murphy site following development, it might present a challenge for bicycle crossings locations.
- It will be important for the City to balance the timing/phasing of bike facility implementation with concurrent redevelopment plans, and do so in such a manner that limits construction impacts on neighboring businesses including Kimmy's Market and the shops at Harrison Plaza.

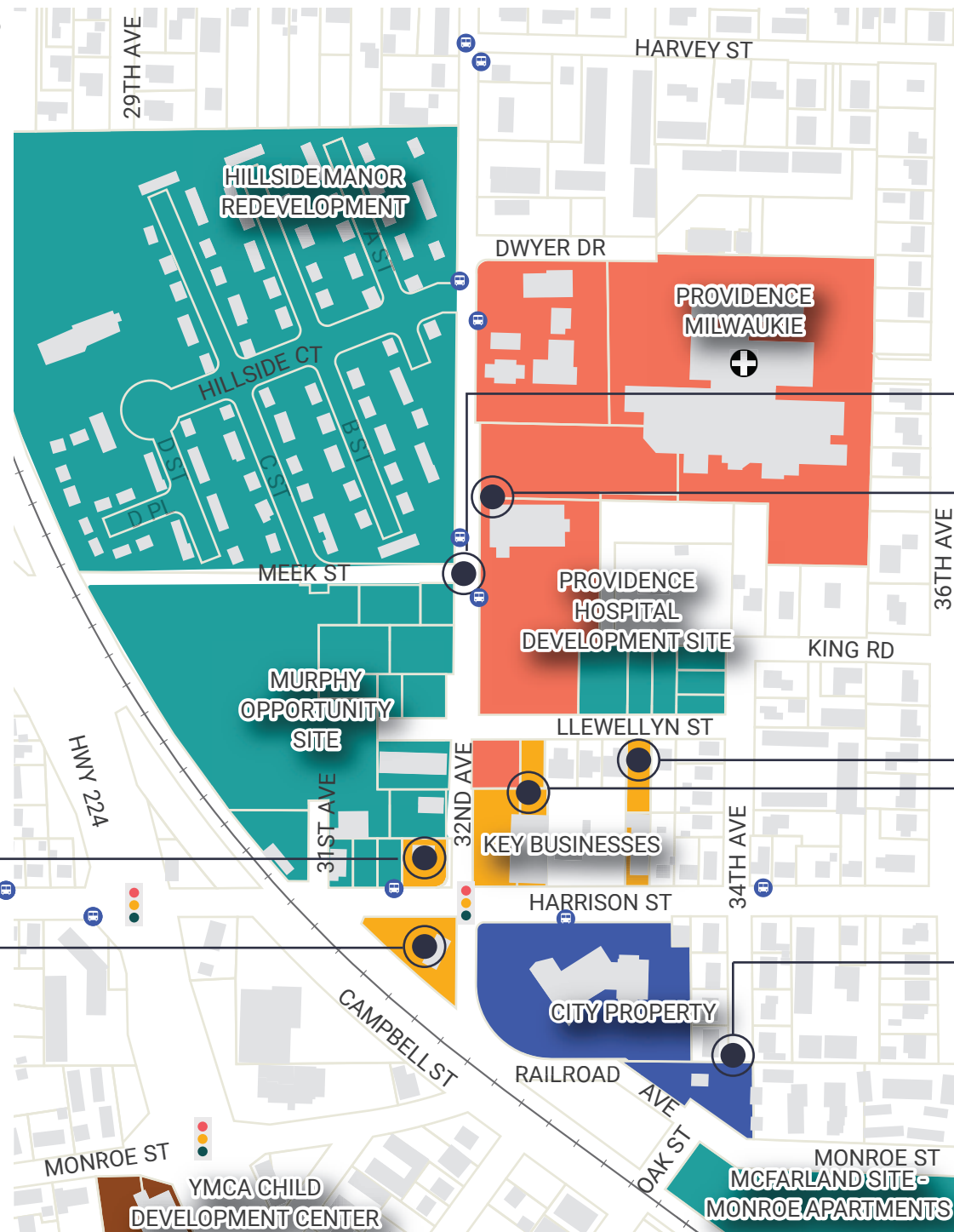
Attachment 2

KEY PROPERTIES

CENTRAL MILWAUKIE BIKEWAY CONNECTIONS

FEATURES AND BOUNDARIES

-  Railroad
-  Development Site
-  Providence Hospital
-  School
-  Key Businesses
-  City Property
-  Building
-  Property Lines



32nd Ave/Meek St
Future main entrance to Hillside and Murphy Development Sites

Providence Hospital
Main entrance to Providence Hospital Campus

JSE Labs Inc.
Parking lot access on Harrison St and Llewellyn St

Harrison Plaza
Parking lot access on Harrison St, 32nd Ave and Llewellyn St

Water Treatment Facility
City owned property with driveway access on both 34th Ave and Railroad Ave

Kimmy's Market
Property not included in Murphy development site

The Pit Stop and Purdy's Car Wash & Detail
Drive through circulation on Railroad Ave and 32nd Ave

















Data Source: City of Milwaukie, Metro RLIS
Map Created: November 2020



ALL ROUTE OPTIONS

CENTRAL MILWAUKIE BIKEWAY CONNECTIONS

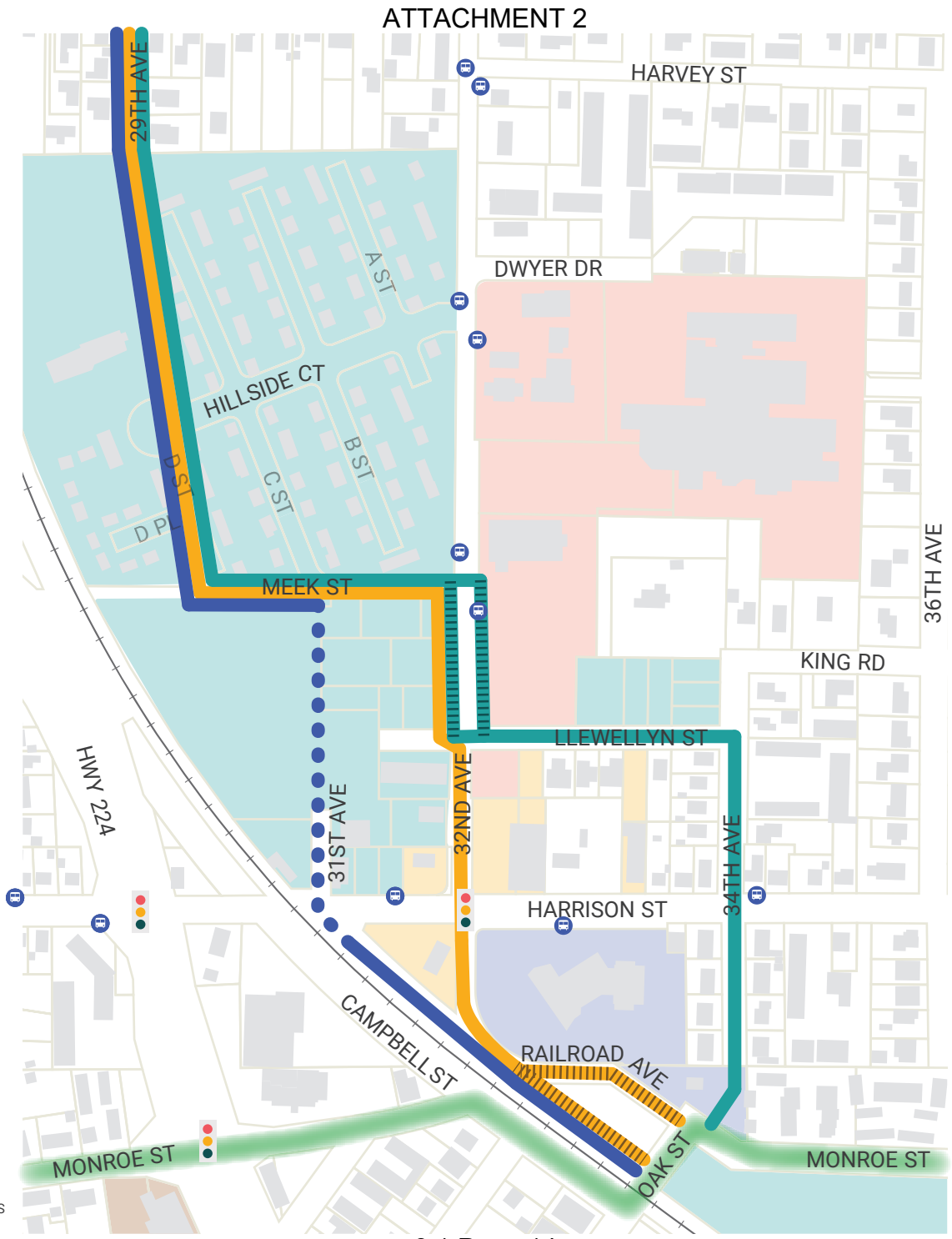
-  Railroad
-  Development Site
-  Providence Hospital
-  School
-  Key Businesses
-  City Property
-  Building
-  Property Lines
-  Traffic Signal
-  Bus Stop
-  Original TSP Option*
-  Route Option 2**
-  Route Option 3**
-  Future Monroe St Greenway

*Dotted line indicates route segment still to be determined or unknown

**Hash marks indicate multiple options exist in these locations



Data Source: City of Milwaukie, Metro RLIS
Map Created: November 2020



BIKEWAY TSP OPTION

CENTRAL MILWAUKIE BIKEWAY CONNECTIONS

- Railroad
- Development Site
- Providence Hospital
- School
- Key Businesses
- City Property
- Building
- Property Lines
- Traffic Signal
- Original TSP Option*
- Future Monroe St Greenway
- Bus Stop

*Dotted line indicates route segment still to be determined or unknown

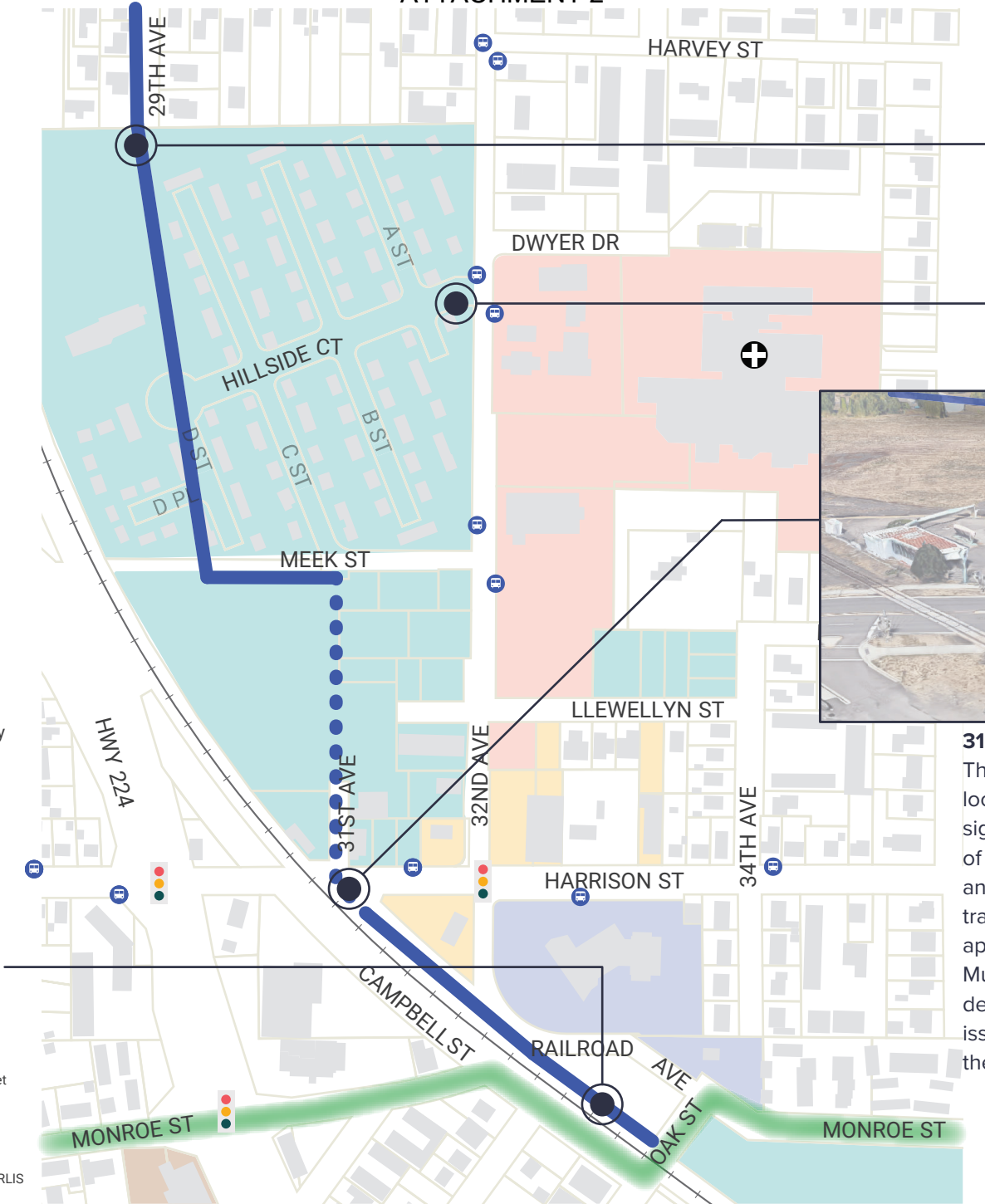
Railroad Ave

The south side of Railroad Ave presents an opportunity for a shared-use path.



Data Source: City of Milwaukie, Metro RLIS
Map Created: November 2020

ATTACHMENT 2



29th Ave/Hillside Site
29th Ave does not connect to the Hillside Site but will likely be accessible to pedestrians and bikes when redeveloped. The 29th Ave route will likely be extended south to Meek St.

Hillside Ct/Dwyer Drive
This entrance to the Hillside site will be realigned to Dwyer Dr upon redevelopment.















31st Ave/Harrison St
This route option and crossing location would require a new traffic signal or overcrossing/undercrossing of Harrison St. An at-grade crossing and signal would require a new traffic signal with ODOT and UPRR approval. Development plans on the Murphy site have yet to be determined. Collectively, these issues present a significant barrier to the feasibility of this route.



BIKEWAY ROUTE OPTION 2

CENTRAL MILWAUKIE BIKEWAY CONNECTIONS

-  Railroad
-  Development Site
-  Providence Hospital
-  School
-  Key Businesses
-  City Property
-  Building
-  Property Lines
-  Traffic Signal
-  Route Option 2**
-  Future Monroe St Greenway
-  Bus Stop

**Hash marks indicate multiple options exist in these locations

Harrison St/32nd Ave

Complex intersection with many physical constraints. May require significant reconstruction to accommodate bike facilities. Bike facility may need to change to a 2-way facility south of Harrison St.

Meek St/32nd Ave

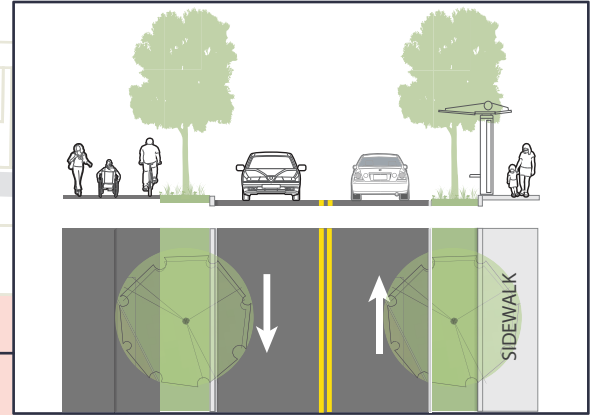
Neighborhood greenway on Meek St would transition to a shared-use path on west side of 32nd Ave. ROW frontage along Kimmy's Market features severe constraints, and will not be redeveloped with the rest of the Murphy Development Site.

Railroad Ave/Oak St

South side of Railroad Ave presents opportunity for off-street path connection to Oak St/Monroe St.

Oak St/Campbell St

Bike facilities connect to future Monroe Greenway (two-way protected bike lane on south side of Monroe St).















Data Source: City of Milwaukie, Metro RLIS
Map Created: November 2020



BIKEWAY ROUTE OPTION

CENTRAL MILWAUKIE BIKEWAY CONNECTIONS


-  Railroad
-  Development Site
-  Providence Hospital
-  School
-  Key Businesses
-  City Property
-  Building
-  Property Lines
-  Traffic Signal
-  Route Option 3**
-  Future Monroe St Greenway
-  Bus Stop

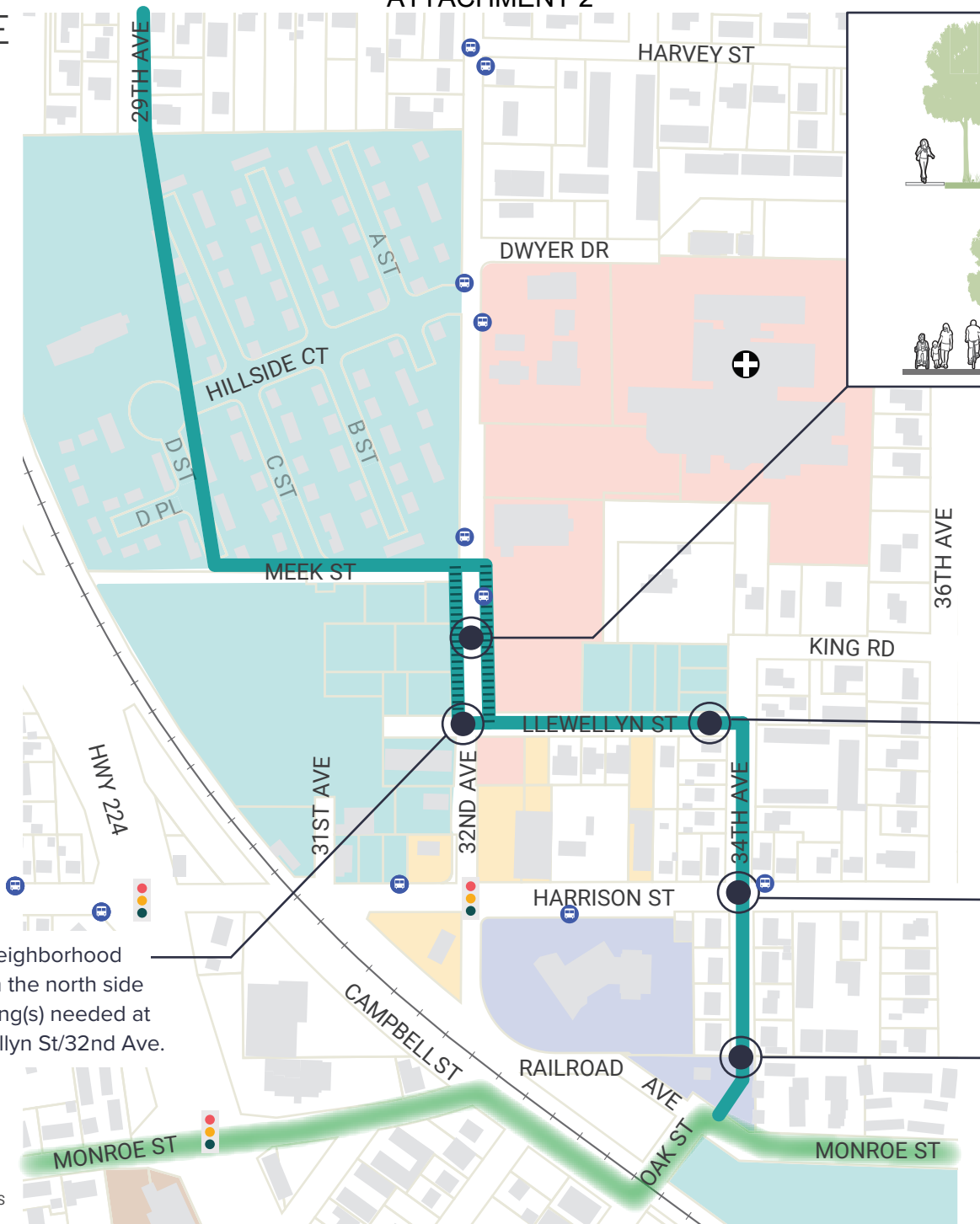
**Hash marks indicate multiple options exist in these locations

32nd Ave/Llewellyn St

Shared-use path transitions to neighborhood greenway or shared-use path on the north side of Llewellyn St. Enhanced crossing(s) needed at Meek St/32nd Ave and/or Llewellyn St/32nd Ave.



 Data Source: City of Milwaukie, Metro RLIS
Map Created: November 2020



Meek St/32nd Ave

Neighborhood greenway on Meek St transitions to shared-use path on east or west side of 32nd Ave.

Llewellyn St

Bike facility to be determined by projected vehicle volumes. Additional options include driveway access and/or vehicle circulation improvements.

34th Ave/Harrison St

Neighborhood greenway on 34th Ave continues through Harrison St with enhanced crossing. Westbound bus stop relocated to far side of 34th Ave for increased visibility.

Water Treatment Facility

City owned property with driveway access on both 34th Ave and Railroad Ave





CITY OF MILWAUKIE

To: Planning Commission
Through: Laura Weigel, Planning Manager
From: Brett Kelter, Associate Planner
Date: December 1, 2020, for December 8, 2020, Work session
Subject: Update on Proposed Revisions to Title 18 (Flood Hazard Regulations)

ACTION REQUESTED

None. This is a briefing for discussion only, in advance of a formal recommendation hearing tentatively scheduled for January 12, 2021.

BACKGROUND INFORMATION

In June 2019, a representative of the Oregon Department of Land Conservation and Development (DLCD) initiated the Community Assistance Visit (CAV) process in Milwaukie to assess the community's floodplain management program. The CAV is a tool used to ensure that a community continues to meet the floodplain management requirements overseen by the Federal Emergency Management Agency (FEMA). Compliance with the FEMA requirements is necessary for the City to maintain its eligibility for the National Flood Insurance Program (NFIP), which allows residents to purchase flood insurance at a reasonable cost.

DLCD identified several needed upgrades to the City's floodplain management process, including the establishment of a formal floodplain development permit and standard operating procedures. In addition, DLCD provided a model flood hazard ordinance that reflects new language required by FEMA for continued compliance with the NFIP, due in part to changes to the State of Oregon building code pertaining to flood hazard areas. Staff from the Engineering Department have implemented most of the required measures related to the floodplain management process, and all that remains is to adopt the necessary revisions to the code language for the City's flood hazard regulations, found in Milwaukie Municipal Code (MMC) Title 18.

Summary of Required Key Changes Proposed to Milwaukie's Title 18

DLCD has given the City until March 30, 2021, to adopt changes to MMC Title 18 that address the minimum requirements outlined in the model ordinance, in order to remain eligible for participation in the NFIP. With that in mind, the proposed replacement of the existing Title 18

code presented in Attachment 1 is drawn largely from the model ordinance provided by DLCD. The changes to the existing code are summarized as follows:

- Renumbering and reorganizing, including using more than one single chapter (18.04)
- Updates to definitions required by FEMA (additions, deletions, rewordings)
- Better alignment with the State of Oregon Specialty Codes (building code)—for example, to call out standards for garages, tanks, and flood openings in residential structures
- Establishment of a Floodplain Development Permit and standard operating procedures, to capture all the necessary information
- Requiring property owners to record a non-conversion agreement with title and deed, to prohibit conversion of interior space constructed below the flood protection elevation (such as garages) into habitable space and allowing for future City inspections to ensure compliance
- Revisions to the duties of the Floodplain Administrator, including removal of references to “Engineering Director,” adding language requiring notification of community boundary changes (annexations), a requirement to submit new technical data, and responsibility for making Substantial Improvement and Substantial Damage determinations
- Clarification of the variance procedure, including a simplification of considerations and removal of the procedural exemption for restoration of historic structures
- Disallowance of new critical facilities (such as fire stations) within the 100-year floodplain (instead of simply discouraging them) unless a variance is obtained; exemption for existing critical facilities
- Other administrative updates to conform with model ordinance and NFIP

Items for Discussion at a Later Date

In February 2020, as the process to update the City’s Comprehensive Plan (Comp Plan) entered its final stages, planning department staff updated the City Council on this project and the potential for conflicts between the MMC Title 18 model ordinance and Comp Plan policies related to development within the floodplain. In August 2020, the relevant policies were ultimately adopted as they were presented for discussion in February 2020:

***Policy 5.4.1:** In areas where there is a high risk of flooding or other natural hazards, support efforts by the City and other public and private entities to acquire properties for conservation purposes. Restrict development to uses that have a demonstrated community benefit and for which the natural hazard risks and environmental impacts can be adequately mitigated.*

***Policy 5.3.5:** Prohibit essential public facilities and uses with vulnerable populations from being located within areas at high risk of flooding, landslides, liquefaction, and fire, and aim to relocate existing uses in these areas.*

Implementation of these policies as written likely involves the prohibition of residential development within the 100-year floodplain, since Policy 5.4.1 restricts uses to only those that have a demonstrated community benefit and Policy 5.3.5 would prohibit uses such as privately-operated assisted living facilities or childcare facilities. This could result in challenges that claim development rights are being taken. Colloquially called “takings,” such action could lead to litigation and significant costs to the City. Such implementation will require an extensive public outreach effort and will no doubt stimulate a spirited discussion among affected property owners.

Conclusion

The proposed amendments to Title 18 are largely “policy neutral” and do not represent a significant departure from the current regulations. While prohibiting construction of new critical facilities in the floodplain is in keeping with the newly adopted Comp Plan Policy 5.3.5, the proposed amendments do not address the Comp Plan policies further. A proposal for significant changes in the City’s flood hazard regulations will require extensive public outreach, conversation, and deliberation—things for which there is currently not time if the City is to meet the March 2021 deadline from DLCD. In the interim, staff have determined that the wisest course of action is to adopt a set of revisions to MMC Title 18 that avoid protracted policy discussions while meeting NFIP requirements

The proposed code provided in Attachment 1 represents what staff believe is necessary to be consistent with the model ordinance provided by DLCD. Staff continue to refine the proposal but plan to return to the Planning Commission in early 2021 (tentatively, on January 12) to ask for a formal recommendation that the City Council approve the amendments before the March 2021 deadline. At the December 8 work session, it would be helpful to discuss any potential concerns or significant questions the commissioners might have, so that staff can address and resolve them prior to the recommendation hearing.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	E-Packet
1. Draft of Proposed Amendments to Title 18	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = materials provided to Planning Commission 7 days prior to the meeting.

E-Packet = packet materials posted online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-64>, available 7 days prior to the meeting.

TITLE 18 FLOOD HAZARD REGULATIONS

18.04 PURPOSE AND METHODS

18.04.010 Statement of Purpose

The flood hazard areas within the City of Milwaukie are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety, and general welfare. These flood losses may be caused by the cumulative effect of obstructions in regulatory floodplains, which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

It is the purpose of this title to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in flood hazard areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone, and sewer lines; and streets and bridges located in the regulatory floodplain;
- F. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas to minimize blight areas caused by flooding;
- G. Notify potential buyers that the property is in a regulatory floodplain;
- H. Notify those who occupy regulatory floodplains that they assume responsibility for their actions; and
- I. Participate in, promote and maintain eligibility for flood insurance and disaster relief.

18.04.020 Methods of Reducing Flood Losses

In order to accomplish its purposes, this title includes methods and provisions for:

- A. Restricting or prohibiting development which is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that development vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Controlling filling, grading, dredging, and other development which may increase flood damage;

Proposed Code Amendment

- E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.

18.08 DEFINITIONS

Unless specifically defined below, words or phrases used in this title shall be interpreted so as to give them the meaning they have in common usage.

“Appeal” means a request for a review of the interpretation of any provision of this title or a request for a variance.

“Area of February 1996 inundation” means the areas along the Willamette River and its backwaters of Johnson and Kellogg Creeks that were flooded to elevation 38 (NAVD) in February of 1996.

“Area of shallow flooding” means a designated Zone AO, AH, AR/AO, or AR/AH on a community’s Flood Insurance Rate Map with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

“Area of special flood hazard” means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map as Zone A, AO, AH, A1-30, AE, A99, or AR. Also referred to as “special flood hazard area.”

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year.

“Base flood elevation (BFE)” means the elevation to which floodwater is anticipated to rise during the base flood.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides, including any sunken room or sunken portion of a room.

“Building” means structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site.

“Critical facility” means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use, or store hazardous materials or hazardous waste.

“Design flood elevation (DFE)” means the higher elevation of the following:

1. The base flood elevation (BFE), or
2. The water surface elevation of the February 1996 flood event, interpolated as 2.4 feet above the nearest BFE.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

“Elevated building” means, for insurance purposes, a nonbasement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

“Flood or Flooding” means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 - c. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph 1-b of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1-a of this definition.

“Flood elevation study” means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also referred to as “Flood Insurance Study.”

“Flood Insurance Rate Map (FIRM)” means the official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

“Flood Insurance Study (FIS)”: See “Flood elevation study.”

“Flood Protection Elevation (FPE)” means the elevation 1 foot above the Design Flood Elevation.

“Floodplain or flood-prone area” means land area susceptible to being inundated by water from any source.

“Floodplain administrator” means the community official designated by title to administer and enforce the floodplain management regulations.

“Floodplain management” means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

“Floodplain management regulations” means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance) and other application of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Also referred to as “Regulatory floodway.”

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship

Proposed Code Amendment

building and ship repair facilities, and does not include long term storage or related manufacturing facilities.

“Hazardous material” means hazardous materials as defined by the Oregon Department of Environmental Quality, including any of the following:

1. Hazardous waste as defined in Oregon Revised Statutes (ORS) 466.005;
2. Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under ORS 469.605 and radioactive substances defined in ORS 453.005
3. Communicable disease agents as regulated by the Health Division under ORS Chapter 431 and 433.010 to 433.045 and 433.106 to 433.990;
4. Hazardous substances designated by the United States Environmental Protection Agency (EPA) under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;
5. Substances listed by the United States EPA in section 40 of the Code of Federal Regulations, Part 302 – Table 302.4 (list of Hazardous Substances and Reportable Quantities) and amendments;
6. Material regulated as a Chemical Agent under ORS 465.550;
7. Material used as a weapon of mass destruction, or biological weapon;
8. Pesticide residue;
9. Dry cleaning solvent as defined by ORS 465.200(9).

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic structure” means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this title.

“Manufactured dwelling” means a structure, transportable in one or more sections, which is intended for use as a dwelling, built on a permanent chassis, and designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured dwelling” does not include recreational vehicles and is synonymous with “manufactured home” and “mobile home.”

“Manufactured dwelling park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured dwelling lots for rent or sale.

“Mean sea level” means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

“New construction” means, for floodplain management purposes, structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by City of Milwaukie and includes any subsequent improvements to such structures.

“Regulatory floodplain” is also referred to as “regulatory flood hazard area” and means floodplain mapped as either:

1. The land area inundated by the base flood on the Flood Insurance Rate Map (FIRM), or
2. The land area inundated by the February 1996 flood on the Metro Water Quality and Flood Management Area maps.

“Regulatory flood hazard area”: See “Regulatory floodplain.”

“Regulatory floodway”: See “floodway.”

“Recreational vehicle” means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Special flood hazard area”: See “Area of special flood hazard.”

“Start of construction” includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured dwelling on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

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“Structure” means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured dwelling.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvements of a structure within the last ten years, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvements. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

“Variance” means a grant of relief by the City from the terms of a floodplain management regulation.

“Violation” means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this title is presumed to be in violation until such time as that documentation is provided.

“Watercourse” means an artificial or natural stream, swale, creek, river, ditch, canal, or other open channel that serves to convey water, whether intermittently, perennially, or continuously.

18.12 GENERAL PROVISIONS**18.12.010 Applicability**

This title shall apply to all regulatory floodplains and floodways within the jurisdiction of the City of Milwaukie.

18.12.020 Basis for Establishing the Regulatory Floodplain

- A. The special flood hazard areas identified by the Federal Insurance Administrator in a scientific and engineering report entitled “The FIS for Clackamas County, Oregon and Incorporated Areas,” dated January 18, 2019, with accompanying FIRMs 4100C0009D, 4100C0017D, 4100C0028D, and 4100C0036D are hereby incorporated by reference and declared to be a part of this title. The FIS and FIRM panels are on file at the Community Development Department, located at 6101 SE Johnson Creek Boulevard in Milwaukie, Oregon.
- B. The February 1996 flood inundation area identified by the Metro Water Quality and Flood Management Area maps are hereby incorporated by reference and declared to be a part of this title. The Metro Water Quality and Flood Management Area maps are on file at Community Development, located at 6101 SE Johnson Creek Boulevard in Milwaukie, Oregon.

18.12.030 Coordination with State of Oregon Specialty Codes

Pursuant to the requirement established in ORS 455 that the City administers and enforces the State of Oregon Specialty Codes, the City does hereby acknowledge that the Oregon Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in a regulatory floodplain. Therefore, this title is intended to be administered and enforced in conjunction with the Oregon Specialty Codes.

18.12.040 Compliance and Penalties for Noncompliance**A. Compliance**

All development within a regulatory floodplain is subject to the terms of this title and required to comply with its provisions and all other applicable regulations.

B. Penalties for Noncompliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this title and other applicable regulations. Violations of the provisions of this title by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a violation. Violations shall be punishable by a fine of not more than one thousand dollars per violation per day. Nothing contained herein shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

18.12.050 Abrogation and Severability**A. Abrogation**

This title is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this title and another title, ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

B. Severability

This title and the various parts thereof are hereby declared to be severable. If any section clause, sentence, or phrase of the title is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this title.

18.12.060 Interpretation

In the interpretation and application of this title, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

18.12.070 Warning and Disclaimer of Liability**A. Warning**

The degree of flood protection required by this title is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-

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made or natural causes. This title does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

B. Disclaimer of Liability

This title shall not create liability on the part of the City of Milwaukie, any officer or employee thereof, or the Federal Insurance Administrator for any flood damages that result from reliance on this title or any administrative decision lawfully made hereunder.

18.16 ADMINISTRATION**18.16.010 Designation of The Floodplain Administrator**

The City Engineer or their designee is hereby appointed as the Floodplain Administrator to administer, implement, and enforce this title by granting or denying development permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.

18.16.020 Duties and Responsibilities of the Floodplain Administrator

Duties of the floodplain administrator, or their designee, shall include, but not be limited to:

A. Permit Review

The floodplain administrator will review all development permits for the following purposes:

1. To determine that the permit requirements of this title have been satisfied;
2. To determine that all other required local, state, and federal permits have been obtained and approved;
3. To determine whether the proposed development is located in a floodway. If located in the floodway, assure that the floodway provisions of this title in Subsection 18.20.010.B (Floodways) are met;
4. To determine whether the proposed development is located in the regulatory floodplain where DFE or BFE data is available either through the FIS or from another authoritative source. If regulatory flood elevation data is not available, then ensure compliance with the provisions of Section 18.20.060 (Use of Other Design Flood Data);
5. To provide to building officials the FPE applicable to any building requiring a development permit;
6. To determine whether the proposed development qualifies as a substantial improvement as defined in Chapter 18.08 (Definitions);
7. To determine whether the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, ensure compliance with the provisions in Section 18.20.010 (Alteration of Watercourses); and
8. To determine whether the proposed development activity includes the placement of fill or excavation. If fill or excavation is proposed, ensure compliance with the provisions in Section 18.20.020 (Compensatory Storage).

B. Information to Be Obtained and Maintained

The following information shall be obtained and maintained and shall be made available for public inspection as needed, utilizing forms developed by the Federal Emergency Management Agency (FEMA) where applicable:

1. Obtain, record, and maintain the actual elevation (in relation to mean sea level) of the lowest floor (including basements) and all attendant utilities of all new or substantially improved structures located in the regulatory floodplain where DFE or BFE data is provided through the FIS, FIRM, or obtained in accordance with Subsection 18.20.060 (Use of Other Design Flood Data);
2. Obtain and record the elevation (in relation to mean sea level) of the natural grade of the building site for a structure prior to the start of construction and the placement of any fill and ensure that the requirements of Subsections 18.20.010.B (Floodways) and 18.16.020.A (Permit Review) are adhered to;
3. Upon placement of the lowest floor of a structure (including basement) but prior to further vertical construction, obtain documentation, prepared and sealed by a professional licensed surveyor or engineer, certifying the elevation (in relation to mean sea level) of the lowest floor (including basement);
4. Where DFE or BFE data are utilized, obtain As-built certification of the elevation (in relation to mean sea level) of the lowest floor (including basement) prepared and sealed by a professional licensed surveyor or engineer, prior to the final inspection;
5. Maintain all Elevation Certificates (ECs) submitted to the City;
6. Obtain, record, and maintain the elevation (in relation to mean sea level) to which the structure and all attendant utilities were floodproofed for all new or substantially improved floodproofed structures where allowed under this title and where DFE or BFE data is provided through the FIS, FIRM, or obtained in accordance with Section 18.20.060 (Use of Other Design Flood Data);
7. Maintain all floodproofing certificates required under this title;
8. Record and maintain all variance actions, including justification for their issuance;
9. Obtain and maintain all hydrologic and hydraulic analyses performed as required under Subsection 18.20.010.B (Floodways);
10. Record and maintain all Substantial Improvement and Substantial Damage calculations and determinations as required under Subsection 18.16.020.D (SI/SD); and
11. Maintain for public inspection all records pertaining to the provisions of this title.
12. Obtain, record, and maintain a non-conversion agreement for any areas constructed below flood protection elevation subject to inspection at least once a year.

C. Requirement to Notify Other Entities and Submit New Technical Data**1. Community Boundary Alterations**

The Floodplain Administrator shall notify the Federal Insurance Administrator (FIA) in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed authority or no longer has authority to adopt and enforce floodplain management regulations for a particular area, to ensure that all Flood Hazard Boundary Maps (FHBMs) and FIRMs

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accurately represent the community's boundaries. Include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.

2. Watercourse Alterations

Notify adjacent communities, the Department of Land Conservation and Development, and other appropriate state and federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration. This notification shall be provided by the applicant to the Federal Insurance Administration as a Letter of Map Revision (LOMR) along with either:

- a. A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or
- b. Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

The applicant shall be required to submit a Conditional Letter of Map Revision (CLOMR) when required under section (Requirement to Notify Other Entities and Submit New Technical Data) 4.2.3.3. Ensure compliance with all applicable requirements in Subsection 18.16.020.C (Requirement to Notify Other Entities and Submit New Technical Data) and Subsection 18.20.010 (Alteration of Watercourses).

3. Requirement to Submit New Technical Data

A community's flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the FIA of the changes by submitting technical or scientific data in accordance with Section 44 of the Code of Federal Regulations (CFR), Sub-Section 65.3. The community may require the applicant to submit such data and review fees required for compliance with this section through the applicable FEMA Letter of Map Change (LOMC) process.

The Floodplain Administrator shall require a CLOMR prior to the issuance of a floodplain development permit for proposed floodway encroachments that increase the DFE.

An applicant shall notify FEMA within six (6) months of project completion when an applicant has obtained a CLOMR from FEMA. This notification to FEMA shall be provided as a LOMR.

The applicant shall be responsible for preparing all technical data to support CLOMR/LOMR applications and paying any processing or application fees associated with the CLOMR/LOMR.

The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this code and all applicable state and federal laws.

D. Substantial Improvement and Substantial Damage Assessments and Determinations

Conduct Substantial Improvement (SI) (as defined in Chapter 18.08) reviews for all structural development proposal applications and maintain a record of SI calculations within permit files in accordance with Section 18.16.020.B (Information to be Obtained and Maintained). Conduct Substantial Damage (SD) (as defined in Chapter 18.08) assessments when structures are damaged due to a natural hazard event or other causes. Make SD determinations whenever structures within the special flood hazard area (as established in Subsection 18.12.020.A) are damaged to the extent that the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

18.16.030 Establishment of Floodplain Development Permit**A. Floodplain Development Permit Required**

A Floodplain Development Permit shall be obtained through application on forms furnished by the City Engineer before construction or development begins within any area horizontally within the regulatory floodplain established in Subsection 18.12.020.A. The Floodplain Development Permit shall be required for all structures, including manufactured dwellings, and for all other development, as defined in Chapter 18.08, including fill and other development activities.

B. Application for Floodplain Development Permit

Application for a Floodplain Development permit may be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. The proposed elevation (in relation to mean sea level), of the lowest floor (including basement) and all attendant utilities of all new and substantially improved structures; in accordance with the requirements of Subsection 18.16.020.B (Information to be Obtained and Maintained).
2. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed.
3. Certification by a registered professional engineer or architect licensed in the State of Oregon that the floodproofing methods proposed for any non-residential structure meet the floodproofing criteria for non-residential structures in Section 18.20.120 (Nonresidential Construction).
4. Description of the extent to which any watercourse will be altered or relocated.
5. Substantial improvement calculation for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.
6. The amount and location of any fill or excavation activities proposed.

18.16.040 Variance Procedure

The issuance of a variance is for floodplain management purposes only. Flood insurance premium rates are determined by federal statute according to actuarial risk and will not be modified by the granting of a variance.

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A. Conditions for Variances

1. Generally, variances will be heard by the Planning Commission. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the design flood level, in conformance with the provisions of Subsections 18.04.040.D.1.c and D.1.e and 18.04.040.D.2. As the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.
2. Variances shall not be issued within any floodway, unless the project is for the sole purpose of stream, fish, habitat, or other ecological enhancement, or for dam removal.
3. Variances may be issued by the City for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of Subsection 18.16.040.A.4 are met, and the structure or other development is protected by methods that minimize flood damages during the design flood and create no additional threats to public safety.
4. Approval criteria

Variances shall only be issued upon:

- a. A showing of good and sufficient cause;
- b. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; and
- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, additional public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
- d. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

B. Variance Notification

Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the flood protection elevation may result in increased premium rates for flood insurance and that such construction below the design flood elevation increases risks to life and property. Such notification and a record of all variance actions, including justification for their issuance, shall be maintained in accordance with Subsection 18.16.020.B (Information to be Obtained and Maintained).

18.20 PROVISIONS FOR FLOOD HAZARD REDUCTION

In all regulatory floodplains, the following standards shall be adhered to:

18.20.010 Alteration of Watercourses

- A. The flood carrying capacity within the altered or relocated portion of said watercourse shall be maintained. Maintenance shall be provided within the altered or relocated portion of said watercourse to ensure that the flood carrying capacity is not diminished.

Compliance with Subsection 18.20.010 (Alteration of Watercourses) and Subsection 18.16.020.C.3 (Requirement to Submit New Technical Data) is required.

B. Floodways

Located within the regulatory floodplains established in Subsection 18.12.020.A are watercourses and other areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of the floodwaters which carry debris, potential projectiles, and erosion potential.

Encroachments within floodways, including fill, new construction, substantial improvements, and other development within a setback of the adopted regulatory floodway, are prohibited unless:

1. The proposal is a dock, boat ramp, or other water dependent structures AND a certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge; OR
2. The encroachment proposal meets the following criteria:
 - a. Is for the primary purpose of fish enhancement;
 - b. Does not involve the placement of any structures (as defined in Chapter 18.08) within the floodway;
 - c. Has a feasibility analysis completed documenting that fish enhancement will be achieved through the proposed project;
 - d. Has a maintenance plan in place to ensure that the stream carrying capacity is not impacted by the fish enhancement project;
 - e. Has approval by the National Marine Fisheries Service, the State of Oregon Department of Fish and Wildlife, or the equivalent federal or state agency; AND
 - f. Has evidence to support that no existing structures will be negatively impacted by the proposed activity.

Then an approved CLOMR or may be required prior to approval of a floodplain permit.

- C. If the requirements of Subsection 18.20.010.B (Floodways) are satisfied, all new construction, substantial improvements, and other development shall comply with all other applicable flood hazard reduction provisions of Chapter 18.20.

18.20.020 Compensatory Storage (Balanced Cut and Fill)

- A. Development, excavation and fill shall be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.
- B. Excavation and fill shall not be performed in a manner as to adversely impact other functions of a floodplain, including but not limited to, erosion control, promoting biodiversity, and ground water recharge.
- C. All fill placed at or below the design flood elevation in the regulatory floodplain shall be mitigated with at least 1.5 times the volume of material removal in a hydraulically equivalent location.

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- D. Excavation shall not be counted as compensating for fill if such areas will be filled with water in two-year rainstorm conditions or are designated for HCA mitigation.
- E. Temporary fills permitted during construction shall be removed.
- F. Uncontained areas of hazardous materials in the regulatory floodplain shall be prohibited.
- G. The City will not acknowledge map revision applications based on placement of fill.

18.20.030 Utilities and Equipment**A. Water Supply, Sanitary Sewer, and Onsite Waste Disposal Systems**

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
3. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.

B. Electrical, Mechanical, Plumbing, and Other Equipment

All new electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall be elevated at or above the flood protection elevation or shall be designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during conditions of flooding. In addition, electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities in Substantially Improved structures shall be elevated at or above the flood protection elevation.

18.20.040 Structures

- A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- B. All new construction and substantial improvements shall be constructed with flood resistant materials below the flood protection elevation.

18.20.050 Tanks

- A. Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the design flood.
- B. Above-ground tanks shall be installed at or above the flood protection elevation.

18.20.060 Use of Other Design Flood Data

When DFE data has not been provided in accordance with Section 18.12.020 (Basis for Establishing the Regulatory Floodplain), the local floodplain administrator shall obtain, review, and reasonably utilize any flood elevation data available from a federal, state, or other source, in order to administer Section 18.20.

18.20.070 Structures Located in Multiple or Partial Flood Zones

In coordination with the State of Oregon Specialty Codes:

- A. When a structure is located in multiple flood zones on the community's regulatory floodplain maps the provisions for the more restrictive flood zone shall apply.
- B. When a structure is partially located in a regulatory floodplain, the entire structure shall meet the requirements for new construction and substantial improvements.

18.20.080 Critical Facilities

Construction of new critical facilities must be located outside the limits of the regulatory floodplain.

If allowed by variance in accordance with the provisions of this title, new critical facilities constructed within the regulatory floodplain must have the lowest floor elevated at least 3 ft above the BFE. Access to and from any new critical facility must also be protected 3 feet above the BFE. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters.

Existing critical facilities, including future improvements and maintenance to critical facilities, within the limits of the regulatory floodplain are exempt from this requirement.

18.20.090 Flood Openings

All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) are subject to the following requirements.

Enclosed areas below the flood protection elevation, including crawl spaces shall:

- A. Be designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters;
- B. Be used solely for parking, storage, or building access;
- C. Be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:
 1. A minimum of two openings,
 2. The total net area of non-engineered openings shall be not less than one (1) square inch for each square foot of enclosed area, where the enclosed area is measured on the exterior of the enclosure walls,
 3. The bottom of all openings shall be no higher than one foot above grade.
 4. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they shall allow the automatic flow of floodwater into and out of the enclosed areas and shall be accounted for in the determination of the net open area.
 5. All additional higher standards for flood openings in the State of Oregon Residential Specialty Codes Section R322.2.2 shall be complied with when applicable.

18.20.100 Garages

- A. Attached garages may be constructed with the garage floor slab below the flood protection elevation, if the following requirements are met:

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1. Not located within a floodway.
 2. The floors are at or above grade on not less than one side;
 3. The garage is used solely for parking, building access, and/or storage;
 4. The garage is constructed with flood openings in compliance with Subsection 18.04.050.I (Flood Openings) to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater.
 5. The portions of the garage constructed below the flood protection elevation are constructed with materials resistant to flood damage;
 6. The garage is constructed in compliance with the standards in Chapter 18.20; and
 7. The garage is constructed with electrical, and other service facilities located at or above the design flood elevation plus 1 foot.
 8. A Non-Conversion Agreement is recorded with title and deed which prohibits alteration of the accessory structure at a later date as to violate the building code and floodplain damage prevention ordinance requirements and the owner(s) and subsequent owner(s) agree to allow a representative of the City of Milwaukee onto the Property and into the building(s) to verify compliance with this Agreement.
- B. Detached garages must be constructed in compliance with the standards for accessory structures in Subsection 18.20.150 (Accessory Structures) or nonresidential structures in Section 18.20.120 (Nonresidential Construction) depending on the square footage of the garage.

18.20.110 Residential Construction

- A. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at or above the FPE.
- B. Enclosed areas below the lowest floor shall comply with the flood opening requirements in Section 18.20.090 (Flood Openings).
- C. Enclosed areas below the lowest floor shall be constructed with flood resistant materials.
- D. No enclosed areas below flood protection elevation are permitted at locations sharing a cross section with average floodway velocities that are expected to meet or exceed 5 ft/s.

18.20.120 Nonresidential Construction

- A. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall:
 1. Have the lowest floor, including basement, elevated at or above the flood protection elevation; or, together with attendant utility and sanitary facilities, be floodproofed so that below the flood protection elevation the structure is watertight, with walls substantially impermeable to the passage of water.
 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this section based on their development and/or review of the

structural design, specifications and plans. Such certifications shall be provided to the Floodplain Administrator as set forth Subsection 18.16.020.B (Information to be Obtained and Maintained).

- B. Non-residential structures that are elevated, not floodproofed, shall comply with the standards for enclosed areas below the lowest floor in Section 18.20.090 (Flood Openings).
- C. Applicants floodproofing non-residential buildings shall be notified that flood insurance premiums will be based on rates that are one (1) foot below the floodproofed level
- D. Applicants shall supply a maintenance plan for the entire structure to include but not limited to: exterior envelop of structure; all penetrations to the exterior of the structure; all shields, gates, barriers, or components designed to provide floodproofing protection to the structure; all seals or gaskets for shields, gates, barriers, or components; and, the location of all shields, gates, barriers, and components, as well as all associated hardware, and any materials or specialized tools necessary to seal the structure.
- E. Applicants shall supply an Emergency Action Plan (EAP) for the installation and sealing of the structure prior to a flooding event that clearly identifies what triggers the EAP and who is responsible for enacting the EAP.

18.20.130 Manufactured Dwellings

- A. New or substantially improved manufactured dwellings supported on solid foundation walls shall be constructed with flood openings that comply with Section 18.20.090 (Flood Openings);
- B. The bottom of the longitudinal chassis frame beam shall be at or flood protection elevation;
- C. New or substantially improved manufactured dwellings shall be anchored to prevent flotation, collapse, and lateral movement during the design flood. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (see FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques); and
- D. Electrical crossover connections shall be at or above DFE plus 1 foot.

18.20.140 Recreational Vehicles

A recreational vehicle placed on sites is required to:

- A. Be on the site for fewer than 180 consecutive days; and
- B. Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

Meet the requirements of Section 18.20.130 (Manufactured Dwellings), including the anchoring and elevation requirements for manufactured dwellings.

18.20.150 Accessory Structures

Relief from elevation or floodproofing requirements for residential and nonresidential structures may be granted for accessory structures that meet the following requirements:

Proposed Code Amendment

- A. Accessory structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in Subsection 18.20.010.B (Floodways).
- B. Accessory structures must only be used for parking, access, and/or storage and shall not be used for human habitation.
- C. In compliance with State of Oregon Specialty Codes, accessory structures on properties that are zoned residential are limited to one-story structures less than 200 square feet, or 400 square feet if the property is greater than two (2) acres in area and the proposed accessory structure will be located a minimum of 20 feet from all property lines. Accessory structures on properties that are zoned as nonresidential are limited in size to 120 square feet.
- D. The portions of the accessory structure located below the flood protection elevation must be built using flood resistant materials.
- E. The accessory structure must be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- F. The accessory structure must be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood openings in Section 18.20.090 (Flood Openings).
- G. Accessory structures shall be located and constructed to have low damage potential including no enclosed areas at locations sharing a cross section with floodway velocities that are expected to meet or exceed 5 ft/s.
- H. Accessory structures shall not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed in compliance with Section 18.20.030 (Utilities and Equipment).
- I. Accessory structures shall be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the design flood.
- J. A Non-Conversion Agreement is recorded with title and deed which prohibits alteration of the accessory structure at a later date as to violate the building code and floodplain damage prevention ordinance requirements and the owner(s) and subsequent owner(s) agree to allow a representative of the City of Milwaukie onto the Property and into the building(s) at least once a year to verify compliance with this Agreement.