

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF COORDINATING WITH)	RESOLUTION NO 89-1141
THE HOME BUILDERS ASSOCIATION OF)	
METROPOLITAN PORTLAND, 1000 FRIENDS)	INTRODUCED BY THE
OF OREGON, AND THE STATE DEPARTMENT)	EXECUTIVE OFFICER
OF LAND CONSERVATION AND DEVELOPMENT)	
IN PREPARING AN AMICUS BRIEF TO BE)	
FILED WITH THE STATE LAND USE BOARD)	
OF APPEALS IN SUPPORT OF THE)	
APPELLANT OF THE CITY OF MILWAUKIE)	
ZONE CHANGE CASE FILE NO. ZC 89-01)	

WHEREAS, the Metropolitan Service District has adopted an Urban Growth Boundary establishing the bounds of urban development for the greater Portland area, including the City of Milwaukie; and

WHEREAS, the Metro Urban Growth Boundary is intended to protect important resources such as farmland and to promote orderly, compact and efficient urban development; and

WHEREAS, the Metropolitan Service District has been instrumental in the creation of the Metropolitan Housing rule, which is intended to make efficient use of urban land and urban public services within Metro Urban Growth Boundary; and

WHEREAS, the fewer residential units per land area that are built within the Urban Growth Boundary, the sooner the Urban Growth Boundary will need to be moved; and

WHEREAS, the City of Milwaukie adopted their Comprehensive Plan designating the subject site as Low Density Residential; and

WHEREAS, the City of Milwaukie Zoning Ordinance has two zones, R-10 and R-7 , each of which are consistent with the Low Density Residential Plan designation; and

WHEREAS, the City of Milwaukie zoning ordinance states that "the proposed rezoning must be to the maximum Comprehensive Map designation..."; and

WHEREAS, the R-7 zone is the maximum density (7,000 square foot lot size minimum) within the Low Density Residential zone;

NOW, THEREFORE,

BE IT RESOLVED,

1) That the Metro Council finds the conservation of farmland and efficient use of urban land should be encouraged consistent with State law and local adopted comprehensive plans; and

2) That the Metro Council desires to see implementation of the residential densities embodied in local comprehensive plans; and

3) That the Metro Council directs its staff to coordinate with the Home Builders Association of Oregon, 1000 Friends of Oregon, and the State Department of Land Conservation in preparing an amicus curae brief for the State Land Use Board of Appeals in support of the appellant of the City of Milwaukie zone change case file number ZC 89-01.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1989.

Not Adopted

Mike Ragsdale, Presiding Officer

STAFF REPORT

RESOLUTION NO. 89-1141 AUTHORIZING THE OFFICE OF GENERAL COUNSEL TO COORDINATE WITH THE HOME BUILDERS ASSOCIATION OF METROPOLITAN PORTLAND, 1000 FRIENDS OF OREGON, AND THE STATE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT IN PREPARING AN AMICUS BRIEF TO BE FILED WITH THE STATE LAND USE BOARD OF APPEALS IN SUPPORT OF APPELLANT REGARDING CITY OF MILWAUKIE ZONE CHANGE CASE FILE NO. ZC-89-01

Date: August 29, 1989

Presented by: Richard Carson

CITY OF MILWAUKIE ACTION

On July 13, 1989 the City of Milwaukie denied the petition of Great American Development Company to rezone a 10.67-acre parcel of land from the R-10 (single family residential 10,000 sq. ft. minimum lot size) to the R-7 (single family residential 7,000 sq. ft. minimum lot size). Both zoning designations are consistent with the density parameters established by Milwaukie's low density residential comprehensive plan designation for the site. But only the R-7 zone is consistent with provisions of section 9.03 of the City zoning ordinance which governs petitions for zone changes.

Section 9.03 of Milwaukie's zoning ordinance establishes the following two criteria for approving changes in zoning:

1) "The proposed rezoning must be to the maximum Comprehensive Map designation, unless proof is provided by the Applicant that development at full intensity is not possible due to physical conditions (such as topography, street patterns, public service, existing lot arrangements, etc.)"

2) "Public facilities to be on the site are adequate to serve the proposed land uses allowed by the designations, are presently available or can be reasonably made available consistent with the Comprehensive Plan Public Facilities Policies, by the time the proposed use qualifies for a certificate of occupancy or completion from the Building Department. For the purpose of this requirement, public facilities include:

- a. Water service
- b. Sanitary sewers
- c. Storm sewers
- d. Streets
- e. Police and fire protection
- f. Schools"

Both the City's staff and the Planning Commission found that these two criteria were met by the proposal and recommended approval of the change of zone to the City Council. But the City Council found that the proposed zoning inconsistent with three policy provisions of the comprehensive plan as follows:

1) Residential and Land Use Housing Elements - 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, or preserving and enhancing local neighborhood quality and identity."

2) Objective No. 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 wherever feasible."

3) Objective No. 4 (p. 30 of the Comprehensive Plan)

"To maximize the opportunities to preserve, enhance and reinforce the identity, pride of existing well-defined neighborhoods in order to encourage the long-term maintenance of the City's housing stock."

The denial was based on a narrow reading of specific portions of these policies to the effect that the proposed rezoning would hurt the livability and character of the surrounding neighborhood. However, provisions of the Comprehensive Plan, itself, state that the "...Plan is a 'Policies Plan' which establishes broad City goals, and specific policies which will realize or achieve these goals. The policies are intended to provide sufficient guidance for evaluating a wide variety of proposed actions, and for making daily decisions about matters covered by the plan."

The Council's action may conflict both with ORS 197.752 which requires lands within urban growth boundaries to develop for urban uses once public services are available and with OAR 660-07-015 which requires that local approval standards regulating the development of needed housing be clear and objective. It is unclear whether the City Council's action meets the substantial evidence test implicit in Oregon's planning system. While testimony was received opposing the change of zone from a number of residents of the immediate vicinity of the Great Western parcel, the proposal was consistent with the density parameters of the low density residential comprehensive plan category, the housing product was similar to surrounding properties, and the proposal met the rezoning criteria of the City's zoning ordinance. The City's staff report on the case described the surrounding neighborhood as follows:

"...Zoning of the area includes both City R-10 and R-7 and County R-10 and R 8.5. Single family residences exist in the area with lots generally ranging from 8,000 sq. ft. to an acre in size. In addition, several large parcels also exist that are either vacant or in farm use."

Great American Development proposed subdivision S-89-03 concurrent with the change of zone which called for 48 single family detached lots on the parcel ranging in size from 7,000 to 10,998 sq. ft and averaging 8,009 sq. ft.

METRO INTEREST IN THE ACTION

OAR 197.175 requires cities and counties to prepare, adopt, amend, and revise comprehensive plans in compliance with the goals and to enact land use regulations, including zoning, to implement their comprehensive plans. Once plans and land use regulations are acknowledged, this section requires that land use decisions be made in compliance with the plans and regulations.

ORS 268.380 through 268.390 assign Metro comprehensive plan review responsibility, require Metro to adopt and maintain regional goals and objectives, regional functional plans and a regional urban growth boundary, and authorize Metro to require changes in local comprehensive plans to assure their consistency with the statewide planning goals, regional goals and objectives, functional plans and the UGB.

OAR 660, Division 7, DLCDC's operating rules, establishes the Metropolitan Housing Rule and assigns Metro the responsibility for reviewing and coordinating the Metro Housing Rule to "...ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans."

The City's action to deny the change of zone raises several issues significant to Metro and the region. Fundamental to these is the concept of urban growth management. The statewide planning goals are premised on three principles:

- 1) Prime resource lands outside urban growth boundaries are to be protected from urban encroachment and sprawl;
- 2) Developable lands within urban growth boundaries are to be provided with sufficient public services and facilities so as to facilitate urban development at urban densities necessary to accommodate population and employment growth;
- 3) Land use decisions to implement principles one and two are to be made through local comprehensive planning processes based on clear and objective standards with ample citizen participation.

In order for the planning system to work effectively it is necessary to view fully-serviced land within urban growth boundaries as resources equal in importance to prime resource lands outside the boundary. Thus, in order to maintain the cost effectiveness of public facilities investments and the compact urban form characteristic of the Portland metropolitan area, Metro and other public and private entities should encourage development to maximum densities allowed by locally adopted comprehensive plans. By providing certainty to the development process within the UGB, speculative pressures to convert resource lands outside the UGB to urban uses may be minimized.

The Milwaukie City Council's action is not consistent with this philosophy. While individually affecting only a small parcel of land, cumulatively, both in that portion of Milwaukie where additional urban infill can be expected, and elsewhere within the Metro UGB, continued underdevelopment of buildable land will result in greater urban sprawl as additional lands will need to be brought into the UGB to accommodate diffuse development.

Specific questions raised by the City Council's action include the following:

- 1) Is denial of the change of zone in conflict with the statewide planning goals?
- 2) Is denial of the change of zone in conflict with Milwaukie's comprehensive plan?
- 3) Is denial of the change of zone in conflict with DLCD's Metropolitan Housing Rule?

ANALYSIS

Statewide Planning Goals:

Goals 14, Urbanization, and 10, Housing, have greatest application to the case. Factors 3 and 4 of Goal 14 call for the orderly and economic provision of public services and maximum efficiency of land uses within and on the fringe of the existing urban area. Conversion of urbanizable land is based on these factors and should promote the wide availability of land use choices in the marketplace. The approval of zone change ZC-89-01 responds more fully to these policies than maintenance of existing zoning designations.

Goal 10 stipulates that land use plans shall encourage the availability of adequate numbers of housing units at price ranges and rent levels commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type, and density. The Great Western parcel is located in an area of Milwaukie undergoing infill development similar to that proposed in zone change ZC-89-01 and subdivision S-89-03. The additional 10 units allowed by the proposed zone change in all likelihood

could be developed in a manner compatible with the existing community while providing a product affordable to more residents of the region were they not developed. Such a course of action provides a better balance of the statewide planning goals than the course pursued by the City Council.

Milwaukie Comprehensive Plan:

The Milwaukie Comprehensive Plan is self-described as a broad policy plan. The comprehensive plan policies cited by the City Council to deny ZC-89-01 are very generic and not definitive as required by OAR 660-07-015. Thus, the standards contained in the City's zoning ordinance, the land use regulations required by ORS 197.175(2)(b) to implement the comprehensive plan, delineate the appropriate approval standards for rezoning requests. A reasonable person could consult both the Milwaukie Comprehensive Plan and the Zoning Ordinance and conclude that it was the City's policy to rezone the Great Western parcel to R-7 once adequate public services were available to the site. A reasonable person could also conclude that the Council's action to deny the request is not supported by substantial evidence in the record.

Metropolitan Housing Rule:

DLCD's Metropolitan Housing Rule is the principal rule applicable to the case. OAR Section 660-07-000 states the following:

"The purpose of this rule is to assure opportunity for the provision of adequate numbers of needed housing units and the efficient use of land within the Metropolitan Portland (Metro) urban growth boundary, to provide greater certainty in the development process and so to reduce housing costs. OAR 660-07-030 through 660-07-037 are intended to establish by rule regional residential density and mix standards to measure Goal 10 Housing compliance for cities and counties within the Metro urban growth boundary, and to ensure the efficient use of residential land within the regional UGB consistent with Goal 14 Urbanization...."

The multifaceted intent of the Metropolitan Housing Rule clearly complements the growth management concepts discussed above. Further the rule requires all cities and counties to adopt specific local comprehensive plan designations and zoning to implement the intent as follows:

660-07-018 - "(1) Residential plan designations shall be assigned to all buildable land, and shall be specific so as to accommodate the various housing types and densities identified in OAR 660-07-030 through 660-07-037.

(2) A local government may defer the assignment of specific residential plan designations only when the following conditions have been met:

(a) Uncertainties concerning the funding, location, and timing of public facilities have been identified in the comprehensive plan;

(b) The decision not to assign specific residential plan designations is specifically related to identified public facilities constraints and is so justified in the plan; and

(c) The plan includes a time-specific strategy for resolution of identified public facilities uncertainties and a policy commitment to assign specific residential plan designations when identified public facilities uncertainties are resolved."

660-07-020 - "A local government may defer rezoning of land within the urban growth boundary to maximum planned residential density provided that the process for future rezoning is reasonably justified:

(1) The plan must contain a justification for the rezoning process and policies which explain how this process will be used to provide for needed housing.

(2) Standards and procedures governing the process for future rezoning shall be based on the rezoning justification and policy statement, and must be clear and objective.

As discussed above, the operable rezoning standards required by the Metropolitan Housing Rule are contained in Section 9.03 of the Milwaukie Zoning Ordinance. The proposed zone change met the two applicable criteria and the rezoning should have been approved on that basis.

CONCLUSION

It is clear that the City Council's action conflicts with the City's zoning ordinance which was adopted to implement the comprehensive plan. Within the urban growth management framework embodied in the state planning goals, the City Council's action is also inconsistent with DLCD's Metropolitan Housing Rule. It is difficult, however, to definitively conclude that the denial of ZC-89-01 is inconsistent with the statewide planning goals or the City of Milwaukie's Comprehensive Plan.

By coordinating with the Home Builder's Association of Metropolitan Portland, 1,000 Friends of Oregon, and the Department of Land Conservation and Development in testing this action before the Land Use Board of Appeals, Metro may actively promote sound planning practices within the region. In turn LUBA may provide valuable direction to Metro that will be used in development of the regional urban growth management plan now underway. Many of the issues raised by the Milwaukie case, including underdevelopment of residentially-designated land, interpretation of the Metropolitan

Housing Rule, and the interplay between development certainty within the urban growth boundary and urban speculation outside the boundary have already been identified as key issues by Metro's Urban Growth Management Plan Technical and Policy Advisory Committees.

RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 89-1141 by the Metro Council.

attachments:

1. Draft Metro Council Resolution No. 89-1141
2. City of Milwaukie Resolution denying ZC 89-01
3. June 20, 1989 City of Milwaukie Staff Report re: ZC 89-01

PL/pl: MILBRF.SR

Mary G. H. 1/1/81

RESOLUTION BEFORE THE CITY COUNCIL FOR THE

CITY OF MILWAUKIE

IN THE MATTER OF a request by)	
GREAT AMERICAN DEVELOPMENT)	File No. ZC-89-01
COMPANY for a rezone of 10.67)	
acres of property from R-10)	FINDINGS OF FACT AND
to R-7.)	CONCLUSIONS OF LAW

1.

INTRODUCTION

The Applicant proposes to rezone 10.67 acres of property from R-10 to R-7. The adopted Comprehensive Plan Map designation for the subject property is Low Density Residential. The Applicant intends to construct a 48-lot subdivision, however, the subdivision approval is not part of the application considered by the City Council. The property is owned by the North Clackamas School District No. 12 with Great American Development Company holding an option to purchase the property. The property is located on the west side of Freeman Road south of Lake Road. All adjacent properties within the City limits are zoned R-10.

The standards relevant to the approval are Section 9.03 of the City Zoning Ordinance and certain applicable goals, objectives and policies relating to the housing and residential land use elements contained within the Community Conservation and Development Division of the Comprehensive Plan for the City of Milwaukie.

2.

ZONING MAP AMENDMENT CRITERIA

A. Section 9.03, Item 1

"The proposed rezoning must be to the maximum Comprehensive Map designation, unless proof is provided

by the Applicant that development at full intensity is not possible due to physical conditions (such as topography, street patterns, public service, existing lot arrangements, etc.)."

The proposal is to rezone land designated R-10 to R-7. Both zones are within the Comprehensive Map Designation "Low Density Residential" plan designations with a density range from 0 to 6.7 units per net acre. R-7 is the maximum zone meeting this density range. The records show that there are no physical conditions evident that would prevent development of this property at an R-7 density. The actual density proposed within a preliminary subdivision plan is for slightly less than R-7 with an average size overall of 8,009 square feet per lot. Because R-7 is the maximum zoning meeting the density range for the low density residential designation in the Comprehensive Plan, we conclude that criteria No. 1 to the zoning map amendment criteria is met.

B. Rezone Criteria from Section 9.03, Section 2

"Public facilities to be on the site are adequate to serve the proposed land uses allowed by the designations, are presently available or can be reasonably made available consistent with the Comprehensive Plan Public Facilities Policies, by the time the proposed use qualifies for a certificate of occupancy or completion from the Building Department."

"For the purpose of this requirement, public facilities include:

- a. Water service;
- b. Sanitary sewers;
- c. Storm sewers;
- d. Streets;
- e. Police and fire protection; and
- f. Schools.

"Where public facilities are required to be installed or improved by the Applicant, a performance contract or bond assuring their

installation to specified standards is required."

The Applicant provided testimony on the various public facilities available on the site as follows:

1. Water Service. Based on the July 5, 1988 report of the City Engineer, the record shows that water is available from the City of Milwaukie 12-inch line in Lake Road and from an 8-inch line in Where Else Lane. Oak Lodge Water District plans to expand the 8-inch line in Where Else Lane with a 10-inch line to the pump station on the property owned by the water district immediately south of this proposed subdivision as an intertie with the City. The developer will tie into this newly extended line and loop it to the line in Lake Road. Based on the engineer's report, the Council concludes that water is available to the site.

2. Sanitary Sewer. Sanitary sewer is available from the City of Milwaukie 8-inch line in Freeman Road and from the line at the end of Bowman Street to the south. The Council concludes that sanitary sewer is available to the site.

3. Storm Drainage. Storm drainage will run to Kellogg Creek. All storm drainage in the area is currently inadequate and results in periodic ponding in some areas. If approved, the proposed subdivision would be obligated to make substantial drainage system improvements. The proposal called for construction of a storm system adequate to correct current deficiencies and serve the new development. The Council concludes that, if

approved, the proposed use would be served by adequate storm sewer available at the time of occupancy.

4. Streets. The impact on the street system from the zone change is estimated at 336 to 480 trips per day. The developer proposed to mitigate the impact by constructing a half-street improvement to Freeman Road. In addition, a left turn pocket would be provided to ease peak hour traffic flow from Freeman Road to Lake Road. The Council concludes that the present roadways are adequate or could reasonably be made available upon completion of conditions of approval by the Applicant.

5. Police and Fire Protection. The Comprehensive Plan notes that there appears to be adequate fire equipment and personnel to serve the Milwaukie area. Fire hydrants proposed within the application would meet required spacing for the City of Milwaukie. The addition of ten more homes over the present zoning would not result in a significant impact on the delivery of police services. Because of this, the Council concludes that police and fire protection are adequate for the uses allowed in the R-7 zone.

6. Schools. North Clackamas School District No. 12, which serves the entire Milwaukie area, does not foresee overcrowding in the schools. Enrollment projections indicate that adequate facilities exist for grade, junior high and high school students who would be residents in the proposed development. Because of this, the Council concludes that schools are adequate to serve the proposed land use allowed by the R-7 designation.

COMPREHENSIVE PLAN COMPLIANCE

Comprehensive Plan goals, objectives, and policies which are applicable to the rezone request are found within the Community Conservation and Development Division of the Comprehensive Plan within the Housing and Residential Land Use elements.

A. Residential and Land Use Housing Elements - 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, or preserving and enhancing local neighborhood quality and identity."

According to the Comprehensive Plan, in 1979 only 217 acres of vacant residential lands were available in Milwaukie for future housing. The change from R-10 to R-7 would allow an additional ten houses to be constructed within the community. The neighborhood is single family lots ranging in size from 6,871 square feet to over an acre in size. The Applicant stated that housing types proposed for the new subdivision would be similar to those already existing in the area. Homes in the area are single level and split level ranch homes.

The Council received testimony that the size of the lots which could be developed under the R-7 zoning would undermine the local neighborhood quality and identity. The testimony of Mr. Isom illustrates the concern of the neighbors that a rezoning would set a precedent for the density of the other developable properties in the area. A pattern of smaller lot size development could result

which would shift the balance of average lot size to smaller, R-7 size parcels. The identity of the area is linked to a sense of compatibility of housing types and lot sizes. The proposed use would promote opportunities for lesser lot size, lesser set backs, reduced yard area for recreation, reduced off-street parking area, and closer proximity of housing units to those on adjacent properties. These changes will allow for development which will not be complementary to the character of the neighborhood which has evolved over the years. The R10 designation was placed on the property to preserve the neighborhood and insure that new development therein provide a similar living setting, along with adequate open space and facilities for the children expected as part of the households.

The reduced lot size, when clustered together on a 10.67 acre site, would detract more from the neighborhood's quality and identity than would result from the placement of smaller lots scattered throughout the neighborhood on infill type lots. Thus, the potential development plan which could occur within the proposed 48-unit development will create a 'separate neighborhood' which will be incompatible with the makeup of the existing area which has an established and defined identity.

The Council received testimony that lot sizes would not be adequate resulting in automobiles and recreational vehicles being parked on residential streets due to lack of on-site parking areas. In addition, adequate individual play areas, according to testimony in the record, would not be provided for children. Mr. Heald

stressed that such conditions were elements of the quality of life of a neighborhood. He stated that the present R-10 zoning provides a quality of life which is characteristic to the neighborhood and which should be preserved.

The Council weighed the testimony provided by the Applicant and the opponents and concluded that while the rezone would provide the ability to develop sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market, the proposal would not enhance the local neighborhood quality and identity. The Council concluded that the rezone would allow for development of a residential subdivision with R-7 lot sizes which would detract from the identity and function of the neighborhood and efficient transition of residential areas. The Council concluded that the proposal did not adequately address the general character of large homes on large lots in the area surrounding the site proposed for rezoning.

B. Objective No. 1 (p. 25 of the Comprehensive Plan)

"To utilize lands in the City according to their relative measure of buildability, based on the following land use type specifications ."

The site is relatively level and is not located within any natural hazard area as identified in the Comprehensive Plan. Concerns over drainage have been addressed by the Applicant. The Council found that the subject area is not located within an area identified or regulated by any of the special policy classifications related to the 100-year floodplain, geologic hazard, slopes over 15 percent, wetlands or riparian vegetation, or weak founda-

tion source. The site does not present any physical restrictions for development potential. The Council concludes that the site is free from constraints to development.

C. Objective No. 2 (p. 26 of the Comprehensive Plan)

"To locate higher density residential uses so that the concentration of people will help to support public transportation services in major commercial centers."

The preliminary subdivision proposed for the property results in a net density of 6.1 units per acre, within the range of the maximum density allowed within an R-7 zone. The zone is not considered to be "higher density." The record shows that the site as developed would generate additional traffic demand on residential streets, however, since the R-7 zone is not considered to be higher density, the issue of public transportation services was not addressed. The Council concludes that the proposal would not have an impact on public transportation services and development of the property as proposed would be within the low density range allowed by the plan.

D. Policy 2(A) (p. 28 of the Comprehensive Plan)

Low Density Residential Development will be based on the following policies:

"The predominate housing type will be single family detached."

The Comprehensive Plan defined single family detached dwelling as:

"A house normally occupied by one family with no structural connection to adjacent units. The unit may be situated at a specified distance from lot

lines, or with one wall on a side property line. Typical density is 4 to 6.7 units per acre."

The proposed development is for 48 residential lots in the R-7 zone. The proposed density is within the low density framework and the Applicant provided testimony that all lots would be developed for single family detached dwellings. Because of the testimony received, the Council concludes that the policy is met.

E. Objective No. 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 wherever feasible."

The intent of the objective is to encourage a high quality of environmental design, a flexible design approach, and a smooth integration of new development into existing neighborhoods. Testimony was received that the general character of the area with large homes on large lots is a desirable living environment, but it would not be maintained under the development plan which would be allowed under R-7 zoning. Development under the standards of the existing R-10 zone, assuming development with lot sizes of 10,000 square feet or larger, would give more flexibility for design and provide additional area for individual backyards and for on-site parking. Mr. Heald testified that smaller lot size would impact the character of the area and limit the opportunity to provide adequate play areas for children. An additional ten lots would be allowed under the R-7 zoning as compared to the R-10. These additional lots would not minimize the impact of the new

construction on existing development, rather, as Mr. Heald stated, the additional units and the resultant smaller lot size would require the residents of the proposed lots to utilize residential streets in the neighborhood for the parking of vehicles.

The Applicant does not propose to provide land for recreation, open space, or recreational vehicle parking. Testimony was received that the Applicant should include a greenway, park or commons to comply with the Comprehensive Plan. Mr. Jones stated that area parks were not adequate to meet the needs of the additional children which would reside in the development. Although recreation areas are available at Rowe Junior High and North Clackamas Park, the City Council found that the facilities would not adequately handle the recreation needs of the potential residents. Individual backyards would have to serve the recreational needs of the potential new residents. With smaller backyards, the need is not adequately addressed. If the Applicant received approval for an R-7 development, it would be feasible for the Applicant to set aside land for recreation, open space or recreational vehicle parking. No proposal has been made to provide these amenities, thus, the Applicant has not adequately addressed the objective to provide such natural open spaces and developed recreational areas.

The Council concluded that the proposed rezone would not minimize the impact of new construction on existing development, rather, the preservation of the existing zone would best serve the objective of the Comprehensive Plan. The Council determined that

R-10 is the proper zone for this area as it would allow for a minimal impact to existing development and continue the development of a desirable living environment.

F. Policies 6 and 7 (p. 30 of the Comprehensive Plan) Were Considered as Criteria for Review of the Rezone

1. Policy 6. "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."

2. Policy 7. "Specified trees will be protected during construction, in accordance with conditions attached to building permits."

Maps of the area show that there are no natural drainage courses affected by the property and there are no special areas of trees and shrubs. The site contains relatively few trees. The Applicant committed to tree preservation being encouraged at the site development stage. The Council concludes that the existence of few trees on the sites and the commitment by the Applicant to preservation of existing tree coverage whenever possible adequately addresses the concerns of the policy. Because of this, the Council concludes that the policies are met.

G. Objective No. 4 (p. 30 of the Comprehensive Plan)

"To maximize the opportunities to preserve, enhance and reinforce the identity, pride of existing well defined neighborhoods in order to encourage the long-term maintenance of the City's housing stock."

The proposed change from R-10 to R-7 would result in ten additional homes over that allowed in the R-10 zone. The Applicant provided testimony that all homes would be equal or greater in

value than those in the surrounding area and would be of comparable height, scale and bulk to those in the area. The Applicant testified that the neighborhood is in transition and is not well defined. The provision of new public facilities and homes to City standards, the Applicant contends, would enhance the pride and identify of the neighborhood. Testimony was received from opponents of the application that the proposed rezone would allow smaller lot sizes and set a precedent for the density of the other developable properties in the area. They interpreted this to be undesirable and a threat to the identity of the area. Opponents stated that the elements of the quality of life of the existing neighborhood would be threatened by reduced lot sizes promoting vehicle parking on residential streets and the creation of smaller backyards which would serve as less than adequate play areas for children. Opponents contended that the R-10 zoning provides a quality of life potential which is in keeping with the special characteristics of the neighborhood which results in the existing pride that residents have for their neighborhood. Opponents stressed that the size of lots is more important to the identity and pride of the neighborhood than the potential values of new homes.

Opponents testified that the proposal does not maximize the opportunity to preserve, enhance and reinforce the identity and pride of the existing neighborhood. The general character of the area and the potential development of the remaining vacant parcels under an R-10 designation would better serve the objective to

preserve the identity and pride of the neighborhood. The Council concluded that a change to R-7 would be in conflict with the objective and have a negative impact on an existing well defined neighborhood.

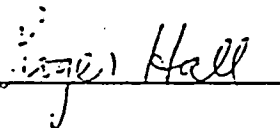
4.

CONCLUSION


The Council concludes that, because the application does not adequately address the Comprehensive Plan goals, objectives, and policies identified in these findings as 3A, 3E, and 3G, the proposed rezone has not been justified and the maintenance of the R-10 zoning is proper.

APPROVED by the City Council and signed by the Mayor on
July 13, 1989.

/s/ Roger Hall
Roger Hall, Mayor

Handwritten signature of Roger Hall in cursive script, written over a horizontal line.

Policies continued

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4. Although not all residential lands will be immediately zoned for maximum permissible densities, the rezoning of these lands will be approved when adequate facilities, as specified in the Public Facilities Review Report, have been provided or can be provided by the property owner or developer. Prior to any development approval the city may require the property owner or developer to demonstrate the ability to provide the required public facilities to the site by posting a bond, letter of credit or cash.

Amended by Ord. #1556 January 3, 1984 ckn

SECTION 9. AMENDMENTS

Section 9.01. Authorization to Initiate Amendments. An amendment to the text of this Ordinance or to a zoning map may be initiated by the City Council, by the Planning Commission or by the application of a property owner. However, application to initiate a "D" zone amendment by property owners requires 50 percent of the ownership within the "D" zone proposed to be established or changed.

Section 9.02. Amendment Procedure. The following procedures shall be followed in applying for and acting on all amendments:

1. The Planning Commission shall conduct a public hearing on the proposed amendment at its earliest practicable meeting after it is proposed. Zoning Map Amendments shall follow the procedures outlined in Section 10.05(D), Major Quasi-Judicial Review. Zoning Text Amendments shall follow the notification procedures outlined in Section 10.05(E), Legislative Procedures. (Amended 3/17/87, Ord. 1620.)
2. Denial of the proposed amendment shall be final unless it is appealed to the City Council as provided under Section 10.02 of this Ordinance.
3. Upon approval of the proposed amendment by the Planning Commission, the Commission shall, within 40 days after the hearing, provide a report recommending approval to the City Council.
4. The City Recorder shall maintain records of amendments to the text and map of this Ordinance in a form convenient for use by the public.

Section 9.03 - Zoning Map Amendment Criteria

The following criteria will be applied to a proposal for change to the Zoning Map. Two conditions must be met before upzoning may be approved. If conditions are completely met, the rezoning request will be approved. The conditions are:

1. The proposed rezoning must be to the maximum Comprehensive Map designation, unless proof is provided by the applicant that development at full intensity is not possible due to physical conditions (such as topography, street patterns, public service, existing lot arrangements, etc.)
2. Public facilities to be on the site are adequate to serve the proposed land uses allowed by the designations, are presently available or can be reasonably made available consistent with the Comprehensive Plan Public Facilities Policies, by the time the proposed use qualifies for a certificate of occupancy or completion from the Building Department. For the purpose of this requirement, public facilities include:

- a. Water service
- b. Sanitary sewers
- c. Storm sewers
- d. Streets
- e. Police and fire protection
- f. Schools

Where public utilities are required to be installed or improved by the applicant, a performance contract or bond, assuring their installation to specified standards, is required. (Added by 1465 - 6 - 80)

CITY OF MILWAUKIE



*Staff Report to
City Council
Recommending
Approval*

TO: MILWAUKIE CITY COUNCIL
DAN BARILETT, CITY-MANAGER *Dan*
THRU: *WBA* WILLIAM B. ADAMS, COMMUNITY DEVELOPMENT DIRECTOR
FROM: DAVE KROGH, ASSISTANT PLANNER
Dave
RE: REZONE FOR GREAT AMERICAN DEVELOPMENT COMPANY (ZC-89-01)
DATE: JUNE 20, 1989

Action Requested:

To follow the Planning Commission's recommended approval of ZC-89-01, and adopt the proposed ordinance (Exhibit G).

Proposal:

Rezone 10.67 acres of property from R-10 to R-7. This property is currently owned by the North Clackamas School District #12 with an option to purchase by Great American Development Company. The property is located on the west site of Freeman Road south of Lake Road.

Background:

On Tuesday, May 23, 1989, the Milwaukie Planning Commission held a public hearing for ZC-89-01 and S-89-03. Application S-89-03 is a preliminary plat for Pennywood Subdivision, a 48 lot R-7 density subdivision. Upon deliberation, the Planning Commission recommended approval (to City Council) for ZC-89-01. The Planning Commission also approved the preliminary plan for Pennywood Subdivision (with conditions), contingent upon final approval of ZC-89-01. The Planning Commission received separate findings from the Applicant (Exhibit B) but did not adopt these as its own.

Discussion Summary:

Specific criteria for rezones is listed in Section 9.03 of the City Zoning Ordinance. This has been discussed by Staff in the Staff Report (pages 3 and 4) provided to the Planning Commission (see Exhibit A) and on pages 1-4 of the Applicant's narrative (see Exhibit A). The Applicant's proposal, based on the referenced findings, complies with the rezone criteria of Section 9.03.

Memo to City Council and City Manager
Rezone for Great American Development
June 20, 1989

In addition to the above, paragraph 2 on page 7 of the City Comprehensive Plan states: "The Milwaukie Comprehensive Plan is a 'Policies Plan' which establishes broad City goals, and specific policies which will realize or achieve these goals. The policies are intended to provide sufficient guidance for evaluating a wide variety of proposed actions, and for making daily decisions about matters covered by the plan". This implies Comprehensive Plan conformity must be considered for proposed actions, such as a rezone.

Comprehensive Plan conformity was reviewed by Staff on pages 4-7 of the Staff Report (see Exhibit A) and on pages 5-11 of the Applicant's narrative (see Exhibit A). Based on this discussion, Comprehensive Plan conformity has been established.

Pennywood Subdivision (S-89-03) is not a part of this rezone review. The rezone review is a Major Quasi-Judicial review as per Section 10.05 (D) of the Zoning Ordinance. It requires public hearings by the Planning Commission (who provide a recommendation) and the City Council (who provide the final local approval). The subdivision is reviewed by a Minor Quasi-Judicial review as per Section 10.05 (C) of the Zoning Ordinance. The City Council only reviews the subdivision in case of appeal. In this case, an appeal was filed on June 7, 1989. Because of legal notice requirements, however, the appeal hearing could not be placed on the same agenda as the rezone (June 20, 1989). The subdivision appeal will be scheduled separately, following the rezone decision.

The Planning Commission stated that although this rezone request is the same as one previously denied by the City (ZC-88-03), circumstances have changed to where the rezone to R-7 is now supportable by findings. For instance, the traffic network question of ZC-88-03 has been satisfied by the extension and connection of Bowman and Brae Streets. This is under current construction by the Applicant as part of his Kellogg Crest Subdivision development. Also, additional background information has been provided that shows the range of lot sizes proposed for Pennywood Subdivision (7,000-11,000 square feet) is consistent with that already existing in adjacent Chelsea Terrace and Bowman Terrace Subdivisions. The Applicant also indicated that houses to be constructed in Pennywood Subdivision would be of similar size and type to those in the area.

Conclusion:

Findings provided in Exhibit A and included with the proposed ordinance in Exhibit G provide adequate justification for allowing this rezoning to occur.

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COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

DATE: May 23, 1989
FILE NO.: ZC-89-01/S-89-03

APPLICATION: Subdivision Preliminary Plan and Rezone of R-10 to R-7
APPLICANT: Great American Development Company
PROPERTY OWNER: North Clackamas School District #12
LOCATION: Freeman Road south of Lake Road
(Tax Lot 900 of Tax Map T2S-R2E-6BB)

PROPOSAL:

Rezone 10.67 acres of property from R-10 to R-7 and obtain preliminary plat approval for a 48 lot subdivision to be known as Pennywood Subdivision.

SITE DESCRIPTION:

This site is Parcel II of Minor Partition MLP-87-06 filed by North Clackamas School District #12 and approved February 16, 1988.

This site contains + 465,000 square feet of undeveloped ground primarily in grass cover. Topography is relatively flat to rolling and generally sloping downwards to the south (towards Kellogg Creek).

Access is via Freeman Road to Lake Road.

Zoning is currently R-10 with a Low Density Residential plan designation.

AREA DESCRIPTION:

This area (south of Lake Road) is near the City Limits and is designated Low Density Residential by the Comprehensive Plan. Zoning of the area includes both City R-10 and R-7 and County R-10 and R-8.5 (see zoning map as part of Exhibit 5).

EXHIBIT #	A
DATE	6/20/89
SUBMITTED BY	Staff
	36 pages
RECEIVED	2C-89-01
	City Council Action

Memo to City Council and City Manager
Rezone for Great American Development
June 20, 1989

Exhibits:

- A. Staff Report to Planning Commission; May 23, 1989
- B. Applicant's Findings Document; May 23, 1989
- C. Correspondence; May 17, 1989
- D. Correspondence; May 20, 1989
- E. Correspondence; May 23, 1989
- F. Planning Commission Minutes for May 23, 1989
- G. Proposed Ordinance and Findings

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Single family residences exist in the area with lots generally ranging from 8,000 square feet to an acre in size. In addition, several large parcels also exist that are either vacant or in farm use.

Adjacent to this property along Lake Road is the North Clackamas School District #12 administration facility, zoned R-10.

Currently the Freeman Road access to this area deadends. However, the Applicant is in the process of finalizing another subdivision south of Bowman (Kellogg Crest Subdivision). This development will connect Bowman and Brae Streets, forming a looped traffic network between Freeman and Kuehn Roads.

DISCUSSION:

The rezone to R-7 would allow the Applicant to provide subdivision lots meeting the R-7 (7,000 square feet) density. The Applicant is proposing 48 lots ranging in size from 7,000 to 10,998 square feet. These lots will be serviced by a new loop road (Pennywood Drive) and cul-de-sac (Pennywood Court) off of Freeman Road. All utilities will be provided on site with storm sewer run to Kellogg Creek.

BACKGROUND:

This site was partitioned in 1988 via MLP-87-06, separating the subject property from the North Clackamas School District #12 Administration facilities.

This Applicant subsequently requested a rezone from R-10 to R-7 (ZC-88-03) and a 49 lot subdivision (S-88-03). The rezone was subsequently denied by the Planning Commission on August 9, 1988, citing Comprehensive Plan conflicts in the areas of Transportation (lack of traffic networking) and Residential/Land Use (recreation, neighborhood conservation, housing scale). The City Council upheld the Planning Commission's denial of ZC-88-03 on September 6, 1988. Subdivision S-88-03 was subsequently modified to an R-10 scale (38 lots) but was ultimately withdrawn.

The current subdivision proposal (S-89-03) is a significant modification for what was previously requested (S-88-03). Refer to the following table for a comparison. Regardless, both ZC-89-01 and S-89-03 will be evaluated based on their current merits.

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Pennywood Subdivision

	Previous Proposal (S-88-03)	Current Proposal (S-89-03)
Number of Lots	49	48
Lot Range	7,000-12,300 sq. ft.	7,000-10,998 sq. ft.
Average Lot Size	7,902 sq. ft.	8,009 sq. ft.
Total Dev. Area	387,200 sq. ft.	384,454 sq. ft.
Cul-de-sacs	2	1
Traffic Network	No	Yes

The current request, though having only slightly larger of an average lot size (8009 square feet), has fewer lots proposed in the 7,000 square feet size range and also incorporates a loop road for better circulation.

CRITERIA/FINDINGS:

A. Rezone Criteria from Section 9.03 of the City Zoning Ordinance:

1. "The proposed rezoning must be to the maximum Comprehensive Map designation, unless proof is provided by the Applicant that development at full intensity is not possible due to physical conditions (such as topography, street patterns, public service, existing lot arrangements, etc.)"

The proposal is to rezone R-10 to R-7. Both R-7 and R-10 fall within the Low Density Residential Plan designation density range 0 to 6.7 units per net acre. R-7 is the maximum zone meeting this density range. No physical conditions are evident that would prevent development at an R-7 density. In fact, the actual density proposed will be slightly less than R-7 with an average size overall of 8,009 square feet per lot.

2. "Public facilities to be on the site are adequate to serve the proposed land uses allowed by the designations, are presently available or can be reasonably made available consistent with the Comprehensive Plan Public Facilities Policies, by the time the proposed use qualifies for a certificate of occupancy or completion from the Building Department. For the purpose of this requirement, public facilities include:

- a. Water service
- b. Sanitary sewers
- c. Storm sewers
- d. Streets
- e. Police and fire protection
- f. Schools*

Public facilities availability and requirements were established as part of ZC-88-03. Circumstances have not changed since that time in regards to public facilities.

The Applicant's narrative (Exhibit 1, pages 2-4) adequately addresses public facilities concerns and is considered to be part of this report's findings by reference.

- B. Comprehensive Plan conformity is addressed as follows. Only applicable Plan elements and policies will be discussed. The following findings are also supplemented by the Applicant's narrative (Exhibit 1, pages 5-11).

1. Residential Land Use and Housing Element

a. Objective 1. Buildable Lands

This site is relatively level and is not located within any

identified natural hazard area as identified in the Comprehensive Plan. Concerns over drainage have been addressed by Public Works (see Exhibit 4). Therefore, the site is free from constraints and development is consistent with Objective 1.

b. Objective 2. Density

The low density range (up to 6.7 units per net acre) is applicable for this site. The net acre figure is obtained by subtracting 25% of the site towards right-of-way improvements. For 10.7 acres of property, the net acreage is 8 for a units per net acre figure of 6.1.

In actuality, the net area (according to the subdivision preliminary plat) is 384,454 square feet with an average lot area (for 48 lots) of 8,009 square feet. This is a net density of 5.4 units per acre, well within the low density range.

Single family detached housing is also proposed, in conformance with the designation of low density.

c. Objective 3. Design

Objective 3 promotes flexibility in design so long as construction impacts to existing development are minimized and open space/recreation areas are provided for.

Policies 1-5 of this objective are not applicable as they deal with arterial access, moderate to high density developments and planned unit development, none of which is proposed in this case.

Policies 6 and 7 require tree coverage to be preserved where possible. The Applicant has not identified trees on the preliminary plat and few trees actually exist on the site. The Applicant has stated tree preservation will be encouraged at the site development stage. This could occur via deed covenant.

Conditions of approval can be provided that will require identification of significant trees (normally those with a 6 inch or greater diameter breast high). Deed covenants and a notation on the final plat can then be provided for those applicable lots, requiring house location and site improvement to consider tree retention. (Note: if the City requires specific deed covenants, then the City will enforce these.)

d. Objective 4. Neighborhood Conservation

Only Policy 5 is applicable to this proposal. Policy 5 states "within Low Density areas, new projects will maintain a single family building bulk, scale and height when abutting existing single family areas, or when abutting a street where single family houses face the project."

The surrounding area is developed with single family residences. Housing concentrations vary by location. Generally, residential lot sizes range from + 7,000 square feet in area to over an acre. Several larger parcels either vacant or in farm use are intermingled with the residential development of the area. Housing type includes a mix of many varieties including ranch style, split level and 1 1/2 to 2 story models ranging in size generally from 1200 to 2000 square feet.

The general characteristic of this area is that it is in a state of transition from a rural to a suburban setting.

The Applicant is not proposing a subdivision entirely of 7,000 square foot lots. The Applicant is providing a range of sizes from 7,000 to 10,998 square feet with an average of 8,009 square feet. This is more in character with the area in that

many lots already exist in the 8,000 square foot lot area range. For example, Chelsea Terrace Subdivision is zoned City R-10, but originally received a variance (VR-83-12) allowing lesser lot sizes (3 of the 4 lots have lot sizes ranging from 8,002 to 8,500 square feet). Also, Bowman Terrace Subdivision at the south end of Freeman Road is zoned County R-8.5 but has lot sizes ranging from 7,000 to 10,000 square feet.

- Based on market conditions in this area and information from the Applicant, housing proposed for these lots will be similar to what already exists in the area. The Applicant has stated that focus will be on ranch and two story type houses with a size range of 1300 to 2000 square feet, averaging 1700 to 1800 square feet. For comparison, this is similar to what exists in Montgomery Estates (off Linwood), Par Estates (off Stanley), and Hollyberry Subdivision (off of Where Else Lane). Homes would be priced in the +/- \$80,000 range.

Therefore, based on the above findings this proposal complies with Objective 4, Neighborhood Conservation.

e. Objective 5. Housing choice

This objective is not applicable as the low density plan designation promotes single family detached units.

f. Objective 6. Housing assistance

This objective is also not applicable as housing assistance is not being proposed.

2. Public Facilities and Services Element

Finding 2, as part of the Zone Change criteria and public facilities comments from Public Works (Exhibit 4) have shown that public facilities and services are adequate or can be extended to serve this proposed development.

3. Transportation Element

The Transportation Goal is applicable because it encourages the provision of safe and efficient transportation systems and networks. This proposal complies with the Transportation Goal in two ways.

Firstly, the Applicant will be upgrading Freeman Road by providing half-street improvements. This will result in curbs and sidewalks along the west side of Freeman Road (from Lake Road to the south end of the proposed subdivision) and also two newly paved traveling lanes for traffic. Secondly, the Applicant is already in the process of providing a traffic network for Freeman Road. This is the Bowman-Brae Street connection as part of the Kellogg Crest

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Subdivision development. Although residents of the proposed Pennywood Subdivision will (due to closeness and convenience) use Freeman Road to Lake Road for access, The Bowman-Brae connection will allow secondary or emergency access via Kuehn Road to Brae/Bowman Streets.

In addition to the above, the future extension of Bowman Street to Where Else Lane could be feasible if the Clackamas Water District and other adjacent owners decide to develop their properties. This would provide additional traffic network improvements for local residents. Therefore, the Transportation Goal has been satisfied for this proposal.

4. No other Plan Elements appear to be applicable.
- C. Subdivision Ordinance criteria are from Section 3 (Preliminary Plat) and Section 6 (Design Standards). Referring to the attached check list (see Exhibit 6), Staff will comment on those items lacking or where questions are noted.
1. As per Section 3.04.1, the preliminary plat has not provided the location of City boundary lines or monuments. The City boundary lines are not really needed, as this property is located entirely within the City limits. Monumentation should, however, be shown for the site and nearby monuments used as reference points. These can be provided on the final plat.
 2. Section 3.04.4 requires an indication of zoning and uses on the tract and within 200 feet on all sides. This has been provided except for adjacent uses. Adjacent lot patterns have been provided, however, and this does give indication of the adjacent residential uses. In addition, both Staff and the Applicant's narrative have discussed area uses. Therefore, specific indication of adjacent uses on the preliminary plat is satisfied.
 3. Section 3.04.6 requires natural features be shown on the preliminary plat. Notation is also required to identify preservable trees. This has been discussed previously in finding B.1.c. A condition can be added requiring identification of significant trees and deed covenants/plat notation requiring that onsite developments consider tree retention.
 4. Staff has reviewed all other preliminary plat and design standards (see check list, Exhibit 6.) and finds these provisions have been met. This is verified by findings within the Applicant's narrative, Pages 12-17 (Exhibit 1).

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D. REFERRALS:

Referral responses have been received from Structural Safety and Public Works and are attached as Exhibits 3 and 4.

These responses pertain to fire hydrant location and utility installation/street improvements. These improvements must be made prior to final plat approval and will be attached as conditions of preliminary plat approval.

CONCLUSION:

Based on the foregoing findings:

1. ZC-89-01 meets applicable approval criteria of the Comprehensive Plan and the Zoning Ordinance.
2. S-89-03 meets applicable Subdivision Ordinance provisions provided conditions are applied.

RECOMMENDATIONS:

For approval of ZC-88-01.

For approval of the preliminary plat for Pennywood Subdivision (S-89-03) with the following conditions:

1. Compliance with the Final Plat provisions of the City Subdivision Ordinance is required.
2. Compliance with the requirements of Structural Safety.
3. Compliance with Public Works requirements as part of the implementation of the City Public Facilities Improvement Ordinance.
4. Development shall occur as per the existing design. Minor modifications may be approved by Staff.
5. Final City Council approval for ZC-89-01 must be obtained prior to final plat approval.
6. Prior to Final Plat approval the Applicant shall provide the locations of significant trees (those with a 6 inch or greater diameter breast high) onto the preliminary plat. Deed restrictions and a notation on the Final Plat shall be provided for those lots containing significant trees, requiring tree retention (if at all possible) as part of site development.

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EXHIBITS:

1. Applicant's Narrative
2. Preliminary Plan (large copy to P.C. members only)
3. Structural Safety memo
4. Public Works memo
5. Application/Notice
6. Preliminary Plat Checklist