

RESOLUTION NO. 849

A RESOLUTION ADOPTING AN INTERPRETATION OF THE WILSONVILLE COMPREHENSIVE PLAN TEXT AND MAP FOR TAX LOT 1900, T3S-R1W, SECTION 22-ELDON AND JACQUELIN EDWARDS, APPLICANTS

WHEREAS, an application, prepared by Ben Altman on behalf of the Edwards, had been submitted for the Planning Commission's consideration and review at their regularly scheduled meeting held on March 11, 1991; and,

WHEREAS, the Planning Director prepared a Staff Report, together with findings, to support a request to continue the hearing because of procedural requirements and to consider additional information submitted by the applicant; and,

WHEREAS, the applicant, at the March 11th hearing, submitted to the Planning Commission a substantially revised application and requested a continuance of the hearing in order to provide proper public notice; and,

WHEREAS; the Commission rendered a decision to approve the applicant's request, subject to conditions, and, in doing so, failed to adopt appropriate findings to support their decision; and,

WHEREAS, the Planning Director, with the approval and concurrence of the applicant's consultant, requested the Commission to reconsider the original decision, to adopt findings in support thereof, and to provide legal notice in accordance with local Codes and state law; and,

WHEREAS, the Planning Commission passed a motion to reconsider this application at its regularly scheduled meeting held on May 13, 1991, and directed that all interested and affected parties were to be notified and legal notice of the proceeding was to be posted and published; and,

WHEREAS; all interested and affected parties, including City staff and public agencies, were afforded an opportunity to be heard on this subject and all exhibits and testimony were entered into the public record of this proceeding after being duly weighed and considered by the Commission members; and

WHEREAS, the Planning Commission did adopt findings and approved the application of Eldon and Jacquelin Edwards at its regularly scheduled meeting held on May 13, 1991, and forwarded a recommendation to the Wilsonville City Council regarding the interpretation of the City's Comprehensive Plan; and,

WHEREAS, the Wilsonville City Council is the designated authority for the interpretation of the Comprehensive Plan text and/or map and the City Council finds that the Planning Commission's action regarding this matter was reasonable and appropriate.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES that the City Council of the City of Wilsonville does hereby adopt the findings prepared by Mr. Altman (attached hereto as "Exhibit A") and approves the Commission's action, including the interpretation of the Comprehensive Plan. The City Council notes that all or a portion of this property has been identified as wetland on the state-wide inventory. If the site is a jurisdictional wetland, this proposal may require a State and/or Federal permit. The applicant must obtain any necessary State or Federal permits before beginning the project. The City Council specifically limits the scope of this action and interpretation to the property which is the subject of this application and directs that similar decisions be addressed on a case-by-case basis.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 1st day of July, 1991 and filed with the Wilsonville City Recorder this date.



GERALD A. KRUMMEL, Mayor

ATTEST:



VERA A. ROJAS, CMC, City Recorder

SUMMARY of Votes:

Mayor Krummel	<u>AYE</u>
Councilor Chandler	<u>AYE</u>
Councilor Carter	<u>AYE</u>
Councilor Lehan	<u>AYE</u>
Councilor Van Eck	<u>AYE</u>

Testimony to: Wilsonville Planning Commission
 Presented by: Ben Altman
 Date: May 2, 1991

Regarding: Edwards minor partition 91PC21 -Reconsideration

On March 11, 1991 the Planning Commission approved the above referenced minor land partition based on the following motion:

Motion Approved March 11, 1991

"Under Policy 4.4.7, we approve the division of this lot into two river front home sites with a deed restriction, that there be only one house on each one of those two lots, and that we require of them that they obtain sewer and water easements for hookup to the sewer and water system, and that they also provide the City with an agreement with the Fire department that they have resolved the issue of the road with access for fire apparatus . "

We note for the record that the attached Notice of Decision, prepared by staff, inappropriately contains additional language not in the actual motion.

Subsequently, the staff has requested a reconsideration of this application based on procedural errors identified in Blaise Edmonds' Memorandum, dated April 8, 1991.

We understand the need to clarify on the record the basis for the Commission's action with appropriate findings, and to provide the notice which is appropriately related to the actual decision. Therefore we have agreed to the reconsideration before the Commission rather than an appeal to City Council.

The applicant's request is for a Minor Land Partition, with a private access drive, within the RA-1 zone.

This request involves the simply creation of one additional lot in a manner consistent with the established very unique and special neighborhood character of this portion of the City. This includes maintaining the existing and universally admired limited private access and secluded setting for river front estate lots.

It is obvious that our view is fundamentally different than staff's view of this application. We do, however, agree on two key issues that must be addressed in the Commission's reconsideration of this application to correct procedural deficiencies. The issues are proper notice and findings to support the decision.

ITEM 1: NOTICE

We coordinated with staff to prepare the appropriate notice for our specific request, as noted above. This notice has been properly mailed, posted and published consistent with the Code requirements.

Therefore this procedural deficiency has been corrected.

ITEM 2: FINDINGS

We believe the Commission made a good and proper decision at the March 11, 1991 hearing. The exact motion is restated as follows:

"Under Policy 4.4.7, we approve the division of this lot into two river front home sites with a deed restriction, that there be only one house on each one of those two lots, and that we require of them that they obtain sewer and water easements for hook-up to the sewer and water system, and that they also provide the City with an agreement with the Fire department that they have resolved the issue of the road with access for fire apparatus."

It is our desire to sustain the approval exactly as stated in this motion approved in March. In support of this motion we have prepared three recommended findings. The findings address three key issues that support the following conclusions:

- A. The application is consistent with Comprehensive Plan densities as set forth in Policy 4.4.7.
- B. Based on the special and unique site and neighborhood characteristics, and in consideration of net usable acreage, and in consideration of Primary Open Space, this partitioning is consistent with purpose of Section 4.120(1)(a), and further consistent with the intent and purpose of Section 4.120(2)(b)2. Therefore no zone change is necessary.
- C. This application represents a minor partition in that no street is proposed or necessary. Consistent with the proposed density and the intent and purpose of the RA-1 zoning, under Section 4.120(1)(a), and in consideration of Section 4.233, full compliance with the subdivision standards is not required.

Adequate access will be provided by the existing easement. Since no street is required there is no need for compliance with the street standards. Therefore no variance to Section 4.167 is necessary.

Adequate public facilities including sewer and water are available and can be extended to serve the site.

FINDINGS

We present our case in the form of recommended findings to support the adopted motion:

1. The subject property is currently designated Residential (3-5 du/ac), Primary Open Space and Secondary Open Space on the Comprehensive Plan under Area of Special Concern 8.

It is presently zoned RA-1, Residential Agricultural, which carries a one acre minimum lot size. The lot consists of approximately 2.71 acres. The southern portion of the site lies within the designated Willamette River Greenway, and carries a Primary Open Space designation.

The applicant is requesting a minor land partition of an existing single family lot within the RA-1 zone. The partition will create one additional single family parcel. Parcel 1, with the existing residence will be approximately 70,813 square feet and Parcel 2 will be approximately 47,438 square feet. Within these two lots, however, there is a combined total of approximately 1.21 acres of designated Primary Open Space. This equals a gross density of .73 units/acre, but an effective net density of 1.33 units/acre.

This is below the designated density of 3-5 units/acre, but is within the range of densities set forth in Policy 4.4.7.

We do not believe it was the City's intent, in setting density ranges, to generally prohibit development below the low end of the designated range on the Plan Map. We do not see specific language in the plan that sets forth such an interpretation.

What we see is a policy (4.4.7) that sets forth "planning districts" with density ranges assigned to each district. Only the "suburban low" and the "urban high" density districts have one range. the "urban low" and "urban medium" districts each have two ranges assigned. The inclusion of two ranges within the districts creates a framework of a wider density range within the planning district than may be designated on the map. At page 3 of the comprehensive plan, the text states that, "**policies shall take precedence over text and map. The land use map is only a visual illustration of the intent of the Plan.**"

The subject site is within an area designated for "urban low density residential". Under policy 4.4.7 "urban low density" includes ranges from 1-3 and 3-5 units/acre. Therefore, development proposals ranging from 1 to 5 units/acre would be consistent with this policy.

The City's Plan seeks to provide for diverse housing types coordinated with the social and economic needs of the community. It further provides for various densities throughout the city. The site and area surrounding it is designated **Urban Low Density Residential.**

At page 68, the plan states:

"URBAN LOW DENSITY RESIDENTIAL (U.L.R.)(1-3, 3-5 du/ac)

The purpose of this district is to provide for low density single-family residential areas.

The following areas should be designated and developed at urban low density:

a. Areas with access to a minor arterial, collector, or local streets. However, direct vehicular access from individual lots onto a minor arterial will be restricted.

b. Undeveloped areas adjacent to existing suburban low density developments, or near the fringe of the urban growth boundary.

c. Areas where sensitivity to the natural environment or natural hazards warrant a reduced density.

In order to encourage originality, flexibility, and innovation in land development, and minimize monotonous standardized subdivisions, all subdivisions will require a Planned Development Review (PDR)."

The proposed partition plat is designed at a low density consistent with the surrounding development pattern. Several large lots have been developed in the immediate area. It recognizes the natural drainage swale and trees along the river bank. This development and the adjacent large lots conform to the areas described in paragraphs b. and c. of the policy.

There is no main collector street that exists to serve this site. Access is currently provided Morey Lane, which is a private easement. This area is currently isolated from direct public street access by intervening undeveloped properties to the north. These properties are expected to develop at some time in the future, but development and the provision of streets is not under the control of the applicants.

This application plan will create two estate type lots with river frontage. These will have significant value, as a limited commodity. With this in mind, it is expected that purchasers will want to maintain the secluded privacy of the larger lots. The applicants currently live on the site in an existing residence and plan to remain and remodel. They will sell the other lot.

This application will provide for a housing type that is not generally available throughout the city. These lots will meet the preferences of individuals seeking a rural or suburban river front environment. The limited lot pattern is consistent with the limited access and facilities available to serve this area.

Further, the city has often employed and encouraged a transferring of density within a developing area in order to protect open space and other unique site characteristics. Density transfers have also been used to shift density from single family to multi-family areas within a planned development. This allows a lower density in one area and a higher density in another, while maintaining an averaged density within the designated range.

From this perspective, density not utilized by this applicant remains available for transfer to the undeveloped property to the north which is part of the same Area of Special Concern #8. Such a transfer of density preserves the potential for maintaining the overall average within the designated range.

CONCLUSION A.

The application is consistent with Comprehensive Plan densities as set forth in Policy 4.4.7. The comprehensive plan does not specifically limit or set a minimum density. Rather it seeks to provide opportunities for an averaging of densities through the use of ranges within development districts. Within this context, the request for one additional lot does not violate the designated density provisions of the Comprehensive Plan. There remains an opportunity for future transfer of density to undeveloped properties to the north, thereby providing for an averaging of the designated density.

2. No zone change has been requested. It is not deemed necessary in order to implement the Comprehensive Plan policies. As concluded in finding 1, above, under the RA-1 zoning, the site will be subject to the provisions of Sections 4.120(2)(a); and 4.231(5), Minor Land Partition.

The planning staff's position regarding rezoning and partitioning of the property stems from their interpretation of a "minimum density" and on a strict interpretation of Code language. The RA-1 zoning reads as follows:

RA-1 Zone

Section 4.120

(1) Purpose:

(a) The purpose of this zone is to provide large lot residential areas, incidental agricultural use and small scale livestock raising within areas designated for 0-3 dwelling units per acre on the Comprehensive Plan.

(b) It is further the purpose of this zone to serve holding zone to preserve the future urban level development potential as undeveloped property designated for industrial or more intensive residential development. This zone shall be applied to all urbanizable properties within the city which are planned for industrial and residential development greater than three units per acre and which have not been previously zoned or preliminarily planned in accordance with the Comprehensive Plan.

(2) Intensity of Use Permitted: The intensity of use permitted shall be governed by the land use designation of the City of Wilsonville Comprehensive Plan as follows:

- (a) **Lands designated for residential use - 0 to 3 dwelling units per acre:**
1. **One single-family dwelling unit per lot.** If the designated Plan density is greater than one (1) unit per acre, a site Plan or pre-plat review shall be required to insure that placement of the dwelling on the site will not obstruct or restrict future development of the site, in accordance with the Comprehensive plan densities.
- (b) **Lands designated for residential use - 3 to 20 units per acre or non-residential use:**
1. **Except for existing lots of record of less than two acres recorded prior to the effective date of this Code partitioning or subdivision of properties designated for residential development at greater than three units per acre or for non-residential use shall only be considered in conjunction with or following a zone change in conformance with the Comprehensive Plan. Said Zoning shall confirm the adequate provision of public facilities and the protection of future urban development potentials.**
 2. Existing lots of record of less than two acres may be developed or partitioned in accordance with Section 4.120 (2)(a).

In analyzing the site we have determined that the Primary Open Space designation functionally reduces the buildable lot area. The current lot is approximately 2.71 acres. The designated Primary Open Space is 1.21 acres. This creates a developable area of 1.50 acres, which is less than the 2 acre standard requiring a zone change. Further, the applicant is prepared to place deed restrictions on the lots to limit further partitioning.

When the impact of the Primary Open Space is factored in, this application is functionally consistent with the provisions of Section 4.120(2)(b)2. Therefore a zone change is not required.

CONCLUSION B.

Based on the special and unique site and neighborhood characteristics, and in consideration of net usable acreage, and in consideration of Primary Open Space, this partitioning is consistent with purpose of Section 4.120(1)(a), and further consistent with the intent and purpose of Section 4.120(2)(b)2. Therefore no zone change is necessary.

3. Beyond the density and zone change issues, the City's Planning staff has raised questions regarding Code compliance including the following:

- a. Is this a minor or major partition?
- b. Is full compliance with the subdivision and other urban level standards required or necessary, and is there adequate access provided by the existing private easement, and is a variance to the street standards is necessary?
- c. Is the site adequately served by public services?
- a. Minor versus Major Partitioning

The standards for administrative approval of a minor partition, as set forth in Section 4.321(4), clearly are not met by this application. However, that does not automatically require a major partition. This only means the Planning Director can not approve the application.

Under Section 4.321(5) the Director must forward the application to the Planning Commission for hearing. Through the hearing process the Planning Commission must render a discretionary decision within the framework of the Code.

Section 4.231(4) provides 7 prescriptive standards for Planning Director approval of a minor partition. **Section 4.231 (5)** states:

"If affirmative findings cannot be made with regard to all of the above criteria, the Planning Director shall forward the application to the Planning commission for a hearing."

This language does not say if affirmative findings cannot be made that a major partition is required. It simply says the application must be forwarded to the Planning Commission for a hearing. It further does not say the Commission must limit its approval to the specific criteria set forth in **Section 4.231(4)**. The Commission must render its decision based upon its full authority granted within the Code.

This application does not constitute a Major partition. It is a Minor Partition. A major partition under **Section 4.230** involves, "the creation of a road or street".

This application does not include the creation of a road or street. The private access easement is not being created, it already exists. Further, it is an easement and not a street. A street is defined under **Section 4.001(74)** as,

"The entire right-of-way of a dedicated public way which provides vehicular and pedestrian access to adjacent properties. It shall include the terms street, court, and other such terms. A right-of-way less than twenty (20) feet in width shall not be recognized as a street."

An easement is defined under Section 4.001(23) as,

"The grant of a right of use across or through a block or tract."

Conclusion a.

The access for this development is an easement not a street. This easement will provide adequate access for the level of development proposed. Therefore this is a minor partition.

A major partition would only be necessary if the Commission concluded that a street is necessary to provide adequate access.

b. Full Code Compliance, adequate access, and street variance

The Planning Commission has the discretion to determine when full compliance with the subdivision standards is required.

Section 4.233 WHEN FULL COMPLIANCE WITH SUBDIVISION REGULATIONS REQUIRED.

"If the parcel of land to be partitioned exceeds two acres and within a Year is being partitioned into more than two parcels, any one of which is less than one acre, full compliance with all requirements for subdivision may be required if the Planning Commission should determine that the entire parcel being partitioned is in the process of being divided into small parcels." **EMPHASIS ADDED.**

While the two lots proposed both technically exceed one acre, by excluding Primary Open Space, the net buildable area of each lot is less than one acre. However, the applicant is prepared to place deed restrictions on these lots to limit further partitioning. It is clear that there is no intent to further divide them into smaller parcels. For this reason, full compliance with the subdivision standards is not necessary nor appropriate.

Access and egress to and from the development site has and will continue via Morey Lane. Morey Lane intersects with Wilsonville Road about 2313 feet north of the site. Morey Lane is an existing easement that is 20 feet wide, 11 feet of which is paved. There is 24 feet of unobstructed width for the length of the easement. While the paved surface is not 20 feet wide, this easement provides safe and convenient access and egress to Wilsonville Road. Local lot access will be via driveways extended from the paved access easement.

The access as proposed in this application does not comply with the street standards set forth in Section 4.167 of the Code. However, the applicant is not proposing a street as defined and discussed in finding 3a. There is no intent to develop a

standard urban street, or any public street for that matter. We believe a standard 32 foot wide street would substantially degrade the unique character of this special neighborhood, and significantly devalue the property.

The existing private easement access has worked well to serve the existing homes for many years. One additional house will not create enough traffic to cause a problem. Appropriate provisions for emergency access through an "all weather surface" can be provided without requiring major street improvements.

The Fire District has approved an access design within the existing easement. This can be provided without substantially altering the unique and peaceful character of this private drive. If necessary, gravel can be added along the shoulder of the existing paved drive. Further under the provisions of **Section 4.233** and **Section 4.167~1** the Planning Commission has the authority to set aside the general standards and grant access via private easement under RA-1 zoning.

Section 4.167(1) specifically states, "Except as specifically approved by the Planning Commission, all street and access improvements shall conform..." EMPHASIS ADDED

Further, Section 4.240 (4) states,

"Creation of Easements: The Planning Commission may approve an easement of way to be established without full compliance with these regulations provided such an easement is the only reasonable method by which a portion of lot large enough to warrant partitioning into two (2) parcels may be provided with vehicular access and adequate utilities. If the proposed lot is large enough to partition into more than two (2) parcels, a street must be dedicated. Also, within a Planned Development, cluster settlements may have easement driveways for any number of dwelling units when approved by the Planning Commission."

Full compliance with the street standards is a matter of practical difficulty for the applicant. They do not have control of the necessary properties in order to provide dedicated streets from Wilsonville Road to the proposed lot. This request seeks to authorize one additional lot to rely on this access.

The subject easement already exists. The applicant now shares a legal access easement with three other property owners. These owners do not want to create a public street to their properties. Further, the applicants are isolated from Wilsonville Road by two intervening ownerships. Until these parcels are subdivided, the applicants have no way to provide public streets to their site. When the properties to the north develop, full compliance to the street standards can be accomplished, if determined necessary. Until then the private access is the only reasonable method to provide.

Conclusion b.

Based on the limited impact of this development and the proposed deed restrictions, full compliance with the subdivision and other urban level standards is not required nor necessary. Therefore the Planning Commission is not compelled to apply the General Standards set forth in **Section 4.240**. It may apply the standards and other provisions of the Code as determined appropriate for this zone and development plan.

In this case, there is adequate access provided by the existing private easement. A street is not necessary. Therefore no variance to the street standards is necessary.

c. Adequate Public facilities

The Plan requires that adequate public facilities be provided with development. Primary facilities required include sewer, water, drainage, roads, police and fire.

1. Sewer The site lies within a sewer basin for which no trunk line has been constructed. The sewer master plan calls for this area to be served by a line that extends along the river bank eastward to the treatment plant. There are several intervening properties between the site and the treatment plant. For many of these properties there are no current development plans. Likewise, there are no near future plans for construction of the proposed trunk line. It would be unreasonable and cost prohibitive for this small development to construct the proposed trunk line.

The existing house is on a septic system. However, there is an existing line to the west available from the near by River Green subdivision. This line is within 300 feet of the subject site. The City's Code requires connection if the site is within 300 feet of an existing line.

Connection to this line will require a pressure line. This type of system can be constructed to serve the two lots. There is adequate capacity in the adjacent system to serve the two lots.

This creates a matter of practical difficulty. First, the City Code requires connection to sewer if the site is within 300 feet of an existing line. The subject site is within 300 feet of an existing line in the River Green development to the west. Yet the City Engineer has informed us that we cannot connect to this line because it is within a different sewer basin.

A transfer of sewer basins must be approved by City Council to resolve the conflict with the Code. The applicants have shown that service can be provided, the City must decide if we will be allowed to make the appropriate connections.

The applicants have made application to BPA and Southern Pacific for easements to cross their rights-of-way with sewer and water lines. They have not given any indication that the request would not be granted. They have further coordinated with Olympic Homes and their engineers OTAK for appropriate location of line extensions and easements. Final plans, including assessment of the trunk line capacity and decisions can be packaged as necessary for consideration by City Council.

The applicant is coordinating with the intervening property owners to secure the necessary easements.

Therefore adequate sewer service can be provided. However, the City must either allow connection to the existing line, as required by Code, or authorize an interim solution, such as septic service, until the planned trunk line is constructed.

2. Water The existing house is served by a well. However, city water service can also be provided from the adjacent subdivision. The line will be sized to provide necessary domestic and fire flows for a sprinkler system. This method of fire protection has been approved by Tualatin Valley Fire and Rescue.

Therefore adequate water service can be provided.

3. Drainage There is no formal storm drainage system serving the site. Although there will only be nominal increases in flows expected from development or redevelopment of the two lots. Storm drainage will be designed to outfall to the existing swale, with appropriate protection for erosion control.

Therefore adequate storm drainage can be provided.

4. Roads As noted above, there are currently no improved public roads serving the area south of Wilsonville Road in this area. The recently approved Morey's Landing plat will begin to provide roads in this general area, but will still not serve the subject site. No development has been proposed for the land immediately to the north of the site. Access to the existing homes is now provided by Morey Lane.

Morey Lane is a private 20 foot wide, paved access easement. It connects to Wilsonville Road and now serves four homes. Consistent with the Fire District's approval, this easement will be improved to provide 15 feet of "all weather" travel surface, with about 24 feet of clear travel lane. Until the property to the north develops, there is no alternative access available to the site. This private access is considered desirable for this type of development.

5. Police and Fire The private access drive as proposed has been approved by the Fire District as being adequate for emergency access.

Therefore the road element is satisfactorily met. and all required public facilities can be provided.

Conclusion c.

Adequate public facilities are available and can be extended to serve the site. The applicant will need to obtain the necessary easements for extension of services from intervening properties.

CONCLUSION C.

This application represents a minor partition in that no street is proposed or necessary. Consistent with the proposed density and the intent and purpose of the RA-1 zoning, under Section 4.120(1)(a), and in consideration of Section 4.233, full compliance with the subdivision standards is not required.

Adequate access will be provided by the existing easement. Since no street is required there is no need for compliance with the street standards. Therefore no variance to Section 4.167 is necessary.

Adequate public facilities including sewer and water are available and can be extended to serve the site.



City of
WILSONVILLE
in OREGON

30000 SW Town Center Loop E • PO Box 220
Wilsonville, OR 97070
(503) 682-1011

NOTICE OF DECISION

Project Name: ELDON AND JACQUELIN EDWARDS

Applicant / Owner: Eldon and Jacquelin Edwards

Proposed Action: City Council interpretation of the Comprehensive Plan text and map regarding Edwards' Tax Lot.

PROPERTY DESCRIPTION:

Map No: 22 Tax Lot No: 1900

Address: _____

Location: On the north bank of the Wilamette River at southerly terminus of Morey Lane

On July 1, 1991, at the meeting of the City Council, the following decision was made on the above-referenced Proposed Development Action:

 Approval XX Approval with Conditions Denied

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this 5th day of July, 1991 and is available for public inspection. The date of filing is the date of the decision. Any appeal(s) must be filed with the Land Use Board of Appeals (LUBA) in accordance with ORS Chapter 197.

XX Written decision is attached

 Written decision is on file and available for inspection and/or copying.

For further information, please contact the City Recorder at City Hall or phone 682-1011.

Attachments: Applicable Conditions, if any.