

RESOLUTION NO. 1434

A RESOLUTION APPROVING IN PART AND DENYING IN PART AN APPEAL BY J. D. SHIN/HARVEST LIMITED PARTNERSHIP OF THE DEVELOPMENT REVIEW BOARD'S APPROVAL WITH CONDITIONS AND CONTINGENCIES OF A 326-UNIT APARTMENT PROJECT (WHITE OAK VILLAGE). THE PROJECT SITE IS LOCATED AT THE SOUTHEAST CORNER OF ELLIGSEN ROAD AND CANYON CREEK ROAD, SPECIFICALLY DESCRIBED AS TAX LOTS 100, 400 AND 600, SECTION 1CD, T3S-R1W, WILSONVILLE, WASHINGTON COUNTY, OREGON.

WHEREAS, an application, together with planning exhibits, for the above-captioned development has been submitted and reviewed in accordance with the procedures set forth in Sections 4.008(4) and 4.139(1),(2), and (3) of the Wilsonville Code; and

WHEREAS, planning exhibits and a staff report were duly considered by the Development Review Board at a regularly scheduled meeting conducted on November 24, 1997, at which time exhibits, together with findings and public testimony, were entered into the public record (Case File No. 97DB24 Revised); the Development Review Board after considering the subject application, approved it subject to conditions and contingent upon City Council interpretation of the balanced housing rule and density policies, and contingent on the City Council approving a proposed land exchange; and

WHEREAS, the action of the Development Review Board was appealed on December 4, 1997, giving three bases for appeal; and

WHEREAS, the City Council adopted Ordinance 493 regarding a water moratorium on January 5, 1998; and

WHEREAS, the Planning Staff prepared a report dated December 22, 1997, regarding the bases for the appeal and recommended denial of the appeal; and

WHEREAS, the City Engineer prepared a staff report dated January 15, 1998, but made available January 8, 1998, regarding the storm drain issues; and

WHEREAS, a public hearing was held by City Council on January 15, 1998 and the City Council considered testimony and the Planning staff report dated December 22,

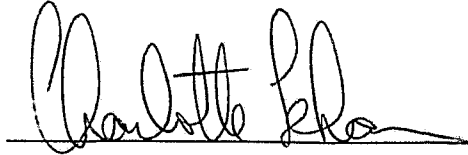
1997, the City Engineer's staff report dated January 15, 1998, and a revised engineers staff report also under the date of January 8, 1998.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve in part and deny in part the appeal of J. D. Shin/Harvest Limited Partnership of the decision of the Development Review Board of November 24, 1997 and adopts the following Findings:

1. The above recitals are adopted as City Council Findings.
2. The planning staff report dated December 22, 1997, the engineering staff report revised and dated January 15, 1998, and the assistant city attorney's staff report dated January 8, 1998, regarding the appeal are approved and attached hereto as Exhibit A and incorporated by reference as if fully set forth here, save and except as otherwise set forth below.
3. The appellant has not carried the arguments on appeal by a preponderance of the evidence.
4. The appeal is approved in part and denied in part and the Development Review Board decision of approval with conditions filed December 1, 1997 is affirmed with the following modifications:
 - a. The City Council hereby increases the project density to 326 units requested by the applicant. The additional 12 units to be re-located to buildings "B", "C" and "D" per the applicant's plans.
 - b. The city engineer's revised PF 13 condition as set forth in his January 15, 1998, revised staff report is adopted in replacement of the current PF 13 condition.
 - c. Condition 25 is amended by replacing the current language with the following: "Under the city's moratorium ordinance, enacted January 5, 1998, the Council's review of this development application has specifically gone forward on January 15, 1998, as within the exception for LID #12 benefited properties and has been so designated in Exhibit C-2 to the moratorium ordinance. This development shall have priority status for LID #12 benefited

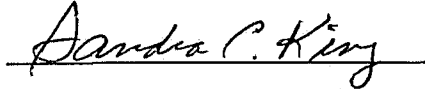
properties for water when and if it becomes available in keeping with the moratorium ordinance and shall then be eligible to secure a building permit.”

ADOPTED by the City Council of the City of Wilsonville at a special meeting thereof this 15th day of January, 1998, and filed with the City Recorder on this same date.



CHARLOTTE LEHAN, MAYOR

Attest:



Sandra C. King, CMC, City Recorder

Summary of votes:

Mayor Lehan	<u>Yes</u>
Councilor Helser	<u>Yes</u>
Councilor Barton	<u>Yes</u>
Councilor Luper	<u>Yes</u>
Councilor Kirk	<u>Yes</u>

Attachments:

Planning Staff Report dated December 22, 1997
City Engineer's Revised Staff Report dated January 15, 1998
Assistant City Attorney's Staff Report dated January 8, 1998

PLANNING DIVISION MEMORANDUM

Date: December 22, 1997

To: Honorable Mayor and City Council

From: Robert G. Hoffman AICP
Manager of Current Planning

Re: White Oak Village - 97DB24 (Revised)
Balanced housing types and density policies interpretation

SUMMARY

This proposed action is an interpretation of the city's application of the code and comprehensive plan policies regarding density and balanced housing. The Development Review Board conditionally approved the White Oak project and recommended interpretation so that the project could be approved despite the apparent conflict between the two policies. The White Oak Village project, as approved, is for 314 multiple-housing units, and was approved by the Development Review Board contingent upon the City Council's interpretation and approval of a land exchange. (If the separate appeal is approved, the project would be 326 units, as applied for).

Full application of the balanced housing rule (Obj 4.3.4) would preclude more than 60% of the housing in any large area of the city to be multiple-family type housing. The density policies of the city assigns a 12 to 20 dwelling unit/acre designation to the subject parcel as well as adjacent residential parcels. The density rule, as interpreted by the Development Review Board, would permit 196 to 326 units but the balanced housing rule would not allow more than 103 additional multiple units in this part of the city (traffic analysis zone #2). The site area is considered to be appropriate for multiple-unit residential use because of the excellent access, spectacular views and proximity to a large number of jobs. The site is difficult to develop because of wetlands, steep slopes, heavily treed areas and access difficulties. Furthermore, approval of the interpretation will help the city meet Metro Framework Plan requirements.

RECOMMENDATION

The Development Review Board and planning staff recommend that City Council interpret the comprehensive plan and code to give emphasis to the density policy and allow exceeding the so-called balanced housing rule at this time and place. This can be accomplished by adopting Resolution No. 1433.

BACKGROUND

The Development Review Board has approved the White Oak project with conditions for 314 multiple-family units (326 units originally applied for) contingent on resolution of the balanced housing rule issue and contingent upon the land transfer. The applicant has appealed the approval on three grounds, which appeal is being reviewed separately tonight.

APPROVAL CRITERIA FOR INTERPRETATION

From Wilsonville Zoning Code - Chapter #4
 Subsection 4.136(5) Housing Density
 Subsection 4.131 Intensity of Use

From Wilsonville Comprehensive Plan
 Policy 4.3.4 Balanced Housing
 Policy 4.4.7 Housing Density
 Goal 4.4 Variety of Housing

Ordinance 318 Balanced Housing

Description of Proposal (From Revised Nov. 24, 1997 Staff Report)

The subject property is an extraordinary, forested hillside with some of the steepest slopes (some greater than 20%) found in the City. The previous application (remanded by City Council back to the Development Review Board) involved a Stage I Preliminary Plan, Stage II Final Plan, Site and Design Plans and review of the project signs for "White Oak Heights Townhomes and comprised of 37 duplexes or town homes or 74 units and "White Oak Village Apartments" comprised of 201 one, two and three bedroom apartment units in 15 buildings, two and three stories tall. The revised application, conditionally approved by the Development Review Board, involves a Stage I Preliminary Plan, Stage II Final Plan, Site and Design Plans and review of the project signs for "White Oak Village Apartments" comprised of 314 one, two and three bedroom apartment units in 27 buildings, two and three stories tall. (The applicant applied for 326 units).

Building areas:	3.25 acres @ 16%
Parking and Drives:	4.83 acres @ 24%
Landscaping/natural:	12.13 acres @ 60%

Gross site area: 880,443 square feet or 20.21 acres

UHR Residential 6.9 acres* (Including wetlands area)
(12 - 20 du/ac)

Power line easements	3.4 acres*
Secondary Open Space	<u>9.8 acres*</u>
	20.1 ACRES (*est. from comprehensive plan map)

Policy 4.4.7: The comprehensive plan governs residential densities for new development. This policy states:

"to provide variety and flexibility in site design and densities, residential lands shall be divided into land use planning districts with the following prescribed density ranges for each district:" ... Urban High Density Residential 12-20.

Note: The land use map and zoning map propose the site to be developed as Urban High Density Residential Area (12-20 du/ac)

Furthermore, Subsection 4.136(5) states: *When calculating density of a planned development, the total area shall include the area of the proposed development, including streets, dedications and mapped open space designated in the comprehensive plan up to ten percent (10%) of the total land area. All the open space designated in the comprehensive plan can be outdoor living area.*

Definition No. 18 further defines density as:
"The number of residential units per acre of land".

Approved by the Development Review Board (with contingent actions by City Council required) is 314 dwelling units (326 under appeal) on 20.2 gross acres or 15.5 (or 16.14 under appeal) dwelling units per acre at gross site area. The previous site plan showed a combination of apartments and town homes was 13.6 du/ac. For the project area, the subject property was allocated 220 dwelling units in the numbers used to distribute LID No. 12 (Canyon Creek Road) costs.

Utilizing WC 4.136(5) to calculate allowed density:

Total site area is 20.2 acres approximately 1.3 acres is a wetland and 1.25 acres is slopes over 20%. Both of these areas are Primary Open Space (POS) according to master plan definitions which overrides the comprehensive plan map depiction.

Thus POS totals 2.56 acres. Past interpretations have allowed 10% maximum density transfers from POS. In this case, this would permit 2.02 acres density transfers. Never has a site plan review involved such a high proportion of Secondary Open Space (SOS) at approximately 9.98 acres (not including the BPA and PGE power line easements at approximately 3.4 acres). Previous project files are not conclusive of how Secondary Open Space has been treated in this context. However, the institutional memory of staff is that in most cases SOS areas have been counted toward calculating housing density. Therefore, staff is proposing the following:

Residential Area:	4.4 acres
POS transfer:	2.0 acres (10%)
(includes wetland @ 1.3 acres and steep slopes over 20%).	
<u>SOS (not including BPA and PGE easements):</u>	<u>9.9</u>
 Total	 16.3 acres

Note: WC4.161 allows all slopes over 20% to be transferred and 30% of 12% to 20% slopes to be developed. $16.3 \times 20 \text{ du/ac} = 326$ dwelling units
 MAXIMUM AND $16.3 \times 12 = 196$ MINIMUM Thus the requested 326 units (and approved 314 units) is within the range and is allowed by WC 4.136(5).

Comprehensive plan Objective 4.3.4 (Ordinance no. 318) proposes balancing housing types throughout the city. Regarding Objective 4.3.4, the city is divided into 20 traffic zones intended to balance housing types in large areas of the city. In this case, the subject property is in Traffic Zone #2. City Council Ordinance No. 318 requires that no particular housing type shall exceed the city-wide, long-range housing ratio of 50% multi-family, 40% of housing in single-family subdivisions and 10% of housing in manufactured/mobile homes.

The comprehensive plan sets forth residential balance ratios (targets) as follows; *50% multi-family, 40% single-family (including manufactured housing located in subdivisions and modular homes); and 10% for mobile homes and manufactured housing, housing located in mobile home parks. Because of normal building cycles, it would be expected that any single family projection for a specific type of housing might vary by 50% from the units calculated for a specific housing type. Interim targets are to be established for a five-year interval and will be allocated to vary by as much as 30%, but shall not exceed the long term goal. Permits exceeding more than 30% of an interim goal or exceeding the long term goal may be specifically excepted by the City Council on a case by case basis. To assure balance in location of housing types, no traffic zone shall have a single housing type exceeding 60% of the long term goal calculated for the sum total of the traffic zone, and all adjacent traffic zones. Note: interim targets are established as part of the city's periodic review, which is being carried out currently. No interim goals have yet been established.*

In this case, the City Council needs to consider balancing Comprehensive Plan Policy 4.3.4 (balanced housing types) against Comprehensive Plan Policy 4.4.7 (Urban High Density Residential (U.H.R.) Density: 12-20 du/ac as there is an apparent conflict between the two policies as illustrated in the following tables and findings. The purpose statement for Urban High Density Residential Land Use 12-20 du/ac states:

"The purpose of this district is to provide for efficient use of land near the major commercial or employment centers by providing for high density residential development. It is further purpose of this district to encourage mixed uses in commercial areas."

Ordinance 318 (and Comprehensive Plan Objective 4.3.4) is intended to promote a balanced mix of housing type. In this case, the subject property is in Traffic Zone #2. The current housing mix and long term goal in Traffic Zone #2 demonstrates that there will not be a balance mix of housing as determined in the tables below:

Table #1			
Percent of City Wide Current Housing Build Out			
	* 1996%	Target%	
Units			
Single family	43.6	40%	
Mobile homes	7.1%	10%	
Multi-family	49.3%	50%	
Total:	100%	100%	11,039 Dwelling Units @ Build Out.

* (Source: comprehensive plan & August, 1997 monthly development summary.)

Except for the old Ellingsen's house, the adjacent traffic zones 1, 18, and 20 do not have built or ready to build housing, as those traffic zones are intended for industrial/commercial development.

Table #2 Current and Proposed Housing		
Traffic Zone	Multi-family units	Single Family units
#1	0	0
#2	(372 Randall + 326 proposed) Canyon Creek Apts White Oak Apts	0 proposed *125 Existing Canyon Cr. Meadows Subdivision.
#3		
#18	0	1
#20	0	0
	698	126

Note: If approved, Randall's - Martha's Vineyard will add 126 units of multiple-housing in Zone #2 if City Council approves balancing the goals as proposed for that project. This would bring the total in the zone to 824 multiple residential units.

Table #3 Traffic Zones						
Source Residential housing units by Traffic Zone map from March 1, 1985, Community and Development Land Use Survey. (Exhibit 'K')						
	<u>1</u>	<u>2</u>	<u>3</u>	<u>18</u>	<u>20</u>	<u>Total</u>
<u>All Unit Types</u>						
Long Term Goal	0	1196	385	0	0	1581
Built/Approved	0	373	125	1	0	499
<u>Multi-Family</u>						
Built/Approved	0	373	0	0	0	373
% MF - Built	0	100	0	0	0	100
MF Target @ 50%	0	598	193	0	0	791
<u>Single-Family</u>						
Built/Approved	0	1	125	1	0	127
%SF -Built	0	.3	100%	0	0	100%
SF Target @40%	0	478	154	0	0	632

Note: 60% of total multi-family goal in all zones = 475
60% of single family goal in all zones = 383

The long term goal for the primary Traffic Zones No's 2 and 3 is 50% multi-family or 791 units. The addition of the proposed 326 multi-family units in the area would change the ratio to 84.7% multi-family (74% (multi-family in the previous request)), and 15.3% (single family). (Marcia's Vineyard would change the ratio in the TAZ to 13% single family and 87% multi-family.)

On the basis of the city's original planning projection, the above table shows that under this policy there is a net growth potential in Traffic Zone 2 of 1196 units, of which 598 can be multi-family. The net growth for Traffic Zone 3 is 385 units, of which 193 can be multi-family. The total planned and proposed distribution for the two traffic zones are as follows:

Table #4						
Comparison of comprehensive plan proposal to current proposal						
	Comp. Plan		Proposed for Zones 2 and 3, Including Built/Approved		%of Total	
SF	632	40%	126		15.3% (13%)	
MF	791	50%	698	(824)	84.7% (87%)	
MH	158	10%	0		0	0
Total	1581	100%	824	(950)	100%	100%

(%) with
Marcia's Vineyard 126 units

The adjacent traffic zones 1,18 and 20 do not have built or ready to build housing as those traffic zones are intended for industrial/commercial development. On the basis of Tables 1 to 4, the goal for multi-family is 50% with a combined total of 791 units from all of the abutting traffic zones. Therefore the maximum multi-family allowed in any one of those zones is 60% of the combined goal, or 475 units. The proposed 326 units plus the 372 for Canyon Creek Apartments, would bring the total multi-family count to 698. This would be 223 more units than the allowed 60% factor for combined traffic zones. This would indicate that the project is not in balance. Policy 4.3.4 is in conflict with the prescribed Comprehensive Plan, Urban High Density Residential (U.H.R. - 12 - 20 du/ac) designation as application of Policy 4.3.4 would preclude more than an additional 103 units of multi-family development in Traffic Zone #2 which was not the intent of the Comprehensive Plan Map Density Policy. Thus, the City Council needs to balance Comprehensive Plan Policy 4.3.4 (balanced housing types) against Comprehensive Plan 4.4.7 (Urban High Density Residential) Density: 12-20 du/ac as there is an apparent conflict between the two policies. The density

rule would permit 196 to 326 units ($16.3ac \times 12 = 196$ and $16.3 \times 20 = 326$) but would require a large share to be multiple units to fit the site. For the White Oak project to be approved, City Council needs to give emphasis to the density policies at this time and location.

Excerpt from applicant's original narrative received by the city on August 13, 1997

City of Wilsonville Comprehensive Plan Goal 4.3, Objective 4.3.4 Target Balance Ratios: Single Family Dwellings/Multi-Family Dwellings

Request

Allow for 73% of development to be Multi-Family Dwellings, 13% more than otherwise potentially contemplated. (Now 100% Multi-family in current proposal)

Reasoning

At the outset the applicant notes the proposal is for a limited land use decision and, therefore, unincorporated plan provisions such as Goal 4.3 would not apply as mandatory approval standards to the proposal. In any case, and in the alternative, the objectives of this provision are satisfied here and the balance policy should not be literally applied.

The balance plan provision need not be applied to ensure the city has a viable stock of multi-family housing available, which was the overwhelming policy behind the balance provisions. In addition, the subject TAZ area is unique within the city as it boasts a large part of the city's industrial and intense commercial properties, in addition to intense residential zoning, such as that applied to the subject property. Under these circumstances it is not possible to apply the usual balance analysis because the balance has no way to account for the predominant commercial and industrial zoning in this particular TAZ in the residential calculus. Moreover, the zoning applied to the subject property contemplates more dense residential zoning than in other areas due to the predominance of commercial enterprises in the subject area and the planning objective that the employees of those enterprises have opportunities to live close to their work.

BH:sh

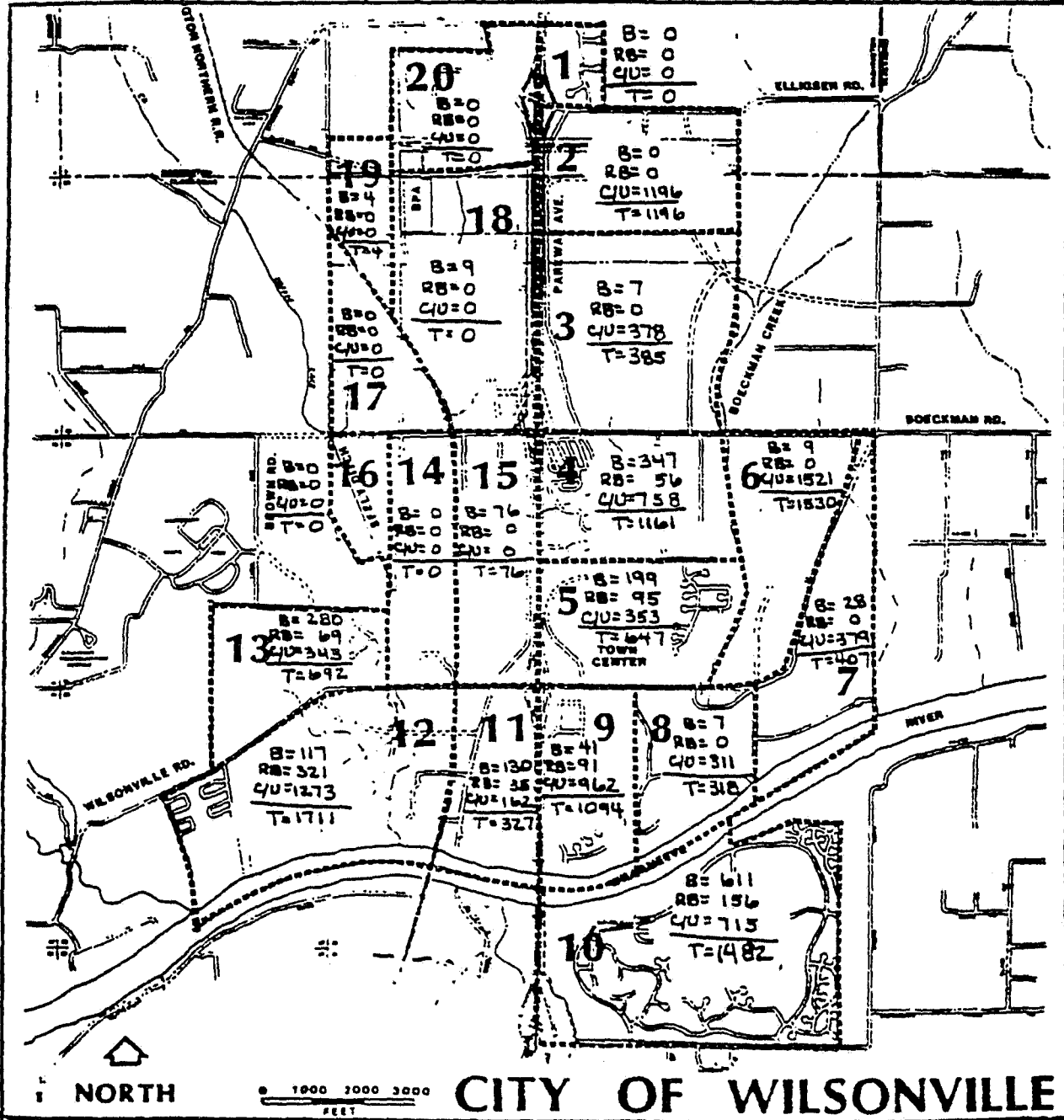
Attachments:

1. Exhibit K: Residential Housing Units by Traffic Zone
2. 11/24/97 Supplemental Exhibit -Memo from Stephan Lashbrook re Density standards in proposed developments
3. Testimony from Stephan Lashbrook, Planning Director, at the Nov. 24, 1997 DRB public hearing

(Amendments of 1/15/98 indicated in bold print)

RESIDENTIAL HOUSING UNITS BY TRAFFIC ZONE

B=1865 Housing Units Built, Note as of 4-1-85 TOTAL UNITS
 RB= 823 Ready-to-Build Built is 1905
 C/U= 8351 Committed by Zoning/Unzoned TOTAL: 11,039 TOTAL POSSIBLE
 UNITS



372
126
246

EX-15-00




30000 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax
(503) 682-3843 TDD

PLANNING STAFF MEMORANDUM

Supplemental (5)
11-24-97

November 17, 1997

TO: Development Review Board
Planning Commission, and
City Council

FROM: Stephan Lashbrook, Planning Director 

SUBJECT: Density standards in proposed developments

The issue of density has been, and will continue to be, a major factor for all residential development applications. More often than not, density is the single biggest concern of the neighbors of proposed developments.

This is unfortunate because density is actually much less important than design. A good design can minimize or mitigate the effects of density, but this fact is often lost in the inevitable debate about density.

The City of Wilsonville, and all of the other cities in the Portland region, face a mandate to increase densities within the urban areas over the next twenty years, in order to protect the surrounding farms and forests from development. Our response to Metro's planning efforts has been that we will do our best to meet the "allocation" of urban development that Metro has set for us. Basically, that will mean a 65% increase in the total number of housing units within the current City limits by the year 2016.

If we are not able to achieve that level of development, Metro will have to increase the amount of land that is included within the Urban Growth Boundary and allow for more outward expansion. While some UGB expansion is inevitable and appropriate, the goal of minimizing the expansion is a worthy one for the City, the region, and the state.

In order to meet that allocation, we must maximize residential densities wherever the site will allow for it and the design does, in fact, assure that the development will be livable for the residents of the development and for neighboring residents.

This places increasing pressure on the DRB and City Council while reviewing applications. On the one hand, we need to allow for the highest densities that a site will support. On the other, we must make sure that the proposed design is as good as possible.

If we fail to maximize densities at this point in time, we can expect even higher requirements for future developments. This is because the City's density allocation is not site-specific. It applies City-wide, within the current City limits.

As always, those of you who make these land-development decisions must balance competing interests and issues in reaching your decisions. The pressures from all sides will continue to increase in the future as more difficult sites are proposed for development. Within the limitations of good design and environmental protection, we have a responsibility to increase densities of any proposed residential development to the higher end of the range specified in the Comprehensive Plan.

KELSEY On page 36, at the very top of the page, the first line, the Subsection that's referred to should be 4.136(2)(c).

On page 53, under the first condition of approval, beginning the seventh line down, if you would take out the word "swap" and replace it with the word "exchange", and wherever you see that word, you may so substitute and also delete the wording, "reservoir property" and also in that same sentence at the end, delete the word "the".

KELSEY I do have some responses to the project description; I'll go into them later, as necessary.

LASHBROOK Mr. Chairman, for the record, I'm Stephan Lashbrook. We're just trying to make sure all of us on the staff get involved on this project, I think,I'm involved in this project primarily because after the Development Review Board denied the earlier applicant and the applicant filed an appeal, I asked Bob and Blaise and Mr. Dalton, representing the applicant, to meet with me and talk about what would have to change in that earlier project in order for it to go forward on a remand situation with a positive staff recommendation, in other words, what would the applicant have to do differently. Then, from their perspective, what value would a positive staff recommendation have for them. Would it be sufficient for them to go through this process, be back before you again, rather than just take their appeal forward to the City Council.

LASHBROOK They do still have an appeal pending and they can go forward with that if they choose to, but I appreciate the fact that they heard us out, listened to the things - and I basically turned to Bob and Blaise and asked them "what do you feel would have to change in this project for it to warrant your recommendation of approval?" The major issues had to do with some design features with preservation of trees and with the steeper slopes on the property and avoiding development of those slopes. To their credit, the applicant took what they heard and said, "we'll work with that and get back to you." They undertook this with no assurance of any positive outcome, but they were willing to do that based on my encouragement, I think.

LASHBROOK Which then brings me to the detail end of this and concerns I have about any city actions that have an effect on housing density and on the balanced housing policy of the city at this point. Let me put that together as quickly as I can. There's a memo from me to you which is really generic about housing density, but I would encourage you to actually, even though it's at the back of the packet, that you actually make that part of the record for this application and consider it as well. That way it would go forward and become a part of the record.

LASHBROOK Essentially, what I am telling you here is that the city has a relationship with Metro wherein Metro has worked with us to come up with a housing allocation figure, which is how many housing units could be accommodated in this city by the year 2016 and our willingness to do that and for all of the cities in the Region to meet their allocations in a way for Metro to assure that the Urban Growth Boundary only has to be expanded a minimal amount over time. Essentially, if cities in the Region ignore that, the Urban Growth Boundary will expand at a much more rapid rate and gobble up more farm and forest land in the process. If the cities are able to meet their allocations, that won't be necessary over time or it can at least be postponed. I think that's a worthwhile goal, professionally, and I spend a great deal of time at meetings at Metro trying to keep that course going. At the same time, I think it will be extremely difficult for the city to meet the allocation which they have given us

which is essentially 3900, give or take, more housing units within the current city limits in roughly the next 19 years. Keep in mind there are roughly 6100 current housing units in the city and another 900+ that have been approved but haven't yet started construction, so we are talking about another 3900 approximately, on top of that in order to meet that allocation.

LASHBROOK The fact of the matter is that because the allocation is city wide and not site specific, there's nobody at Metro telling us you must approve this application or any given application at a certain density, but, if we don't do it here, we'll have to make up for it elsewhere and it will become increasingly more and more difficult to do so. I found myself in meetings with the applicant and with other parts of the planning staff saying, "density isn't the issue on this application". Our previous recommendation for denial was not because it was too dense, it was because it was doing the other things that we didn't want to see happen. There were some design issues and the things that are on the list up there, basically, the negative side of the pro and con list.

LASHBROOK I'll retrace steps here a little bit and give a little more historical perspective as we also urge you to pass a recommendation on to Council that the balanced housing policy, basically be waived in favor of other comp plan policies dealing with housing. The reason for that is from my perspective, the balanced housing policy really no longer works in view of the mandate that we face from Metro, on one hand, and the geographic situation that the city now faces. The last two years, for a number of years, the city and the region has operated under a Metro Housing Rule, it was adopted by the state that was essentially a state mandate to this region that we needed to balance the number of apartment units with single-family dwellings because the fear before that, up til the early 1980's, was that some cities in the region would basically zone all of their vacant residential property for single-family dwellings and not allow apartments or allow very few apartments or mobile home type developments. That was the real motivation at that time. It was much less focused on density and much less focused on total number of units that a city could accommodate within its Urban Growth Boundary and a lot more on just balancing single-family dwellings with multiple family dwellings.

LASHBROOK That whole approach, while it had validity in it and it helped to shape housing development, especially in this city where we have had a very close ratio of single family to multi family developments since that was put in place. But now, we are moving to a situation where residential areas will end up, in order to meet these allocations, having to have an average of probably at least 10 units an acre across the city and much higher numbers than that in the portions that are going to be developed for multiple family.

LASHBROOK Still, it's a city-wide allocation and we could do it all on one property with a 20-story high-rise, but that's not likely. Part of my concern, and what I want to express to you and I will to the City Council as well is that we'll have these 3900 housing units to accommodate in this city as best we can.

LASHBROOK The staff feels the applicants have done a sufficient job, and certainly a good job of protecting the trees, protecting the steep slopes, making some other design changes that we asked them to make. I was the one who sat right there and said, "you could do that to the maximum density allowed in the zone and as long as you meet those

other criteria, we'll support you." That's what I'm here tonight saying we did. They met their end of their agreement, at least with the staff. I wanted to convey that to you.

LAKE May I ask a question? I've heard you express a desire that we as a city consider housing mixes - mixed uses. You've frequently talked about that in terms of mixing home sizes and residence sizes. How does moving from that proposal that has that mix in it to that proposal, jive with what I've heard stated.

LASHBROOK I will say frankly and honestly that I think more different types of housing units in any given development is preferable. I like townhouses...I guess a better example would be to look at Charbonneau and the multi-family areas of Charbonneau. There's such a diversity there and that's one reason why that works. I can't dispute that, in fact, I liked....one of the things I did like about the previous design was the fact that it included both duplexes and multi-family units in more conventional apartment-type arrangements. I also realize that on-balance the fact that we have all of these housing units to accommodate and I think this site can do so. There is a trade off here, for sure.

LASHBROOK This goes beyond the question you have asked, but just from talking with Blaise about the balanced housing policy of the city, we could be wrong about this, but I think there's sort of a staff belief that at the time that was put in place, this part of the city seemed "so far out there" that I think there really wasn't a great deal of thought about how would we ever get to a point of balancing single family and multiple-family at this end of town where virtually all of these multiple family areas on the north end of Canyon Creek are shown with this 12-20 unit per acre density. On the other hand, we have to meet the density minimum requirements. It gets tricky. I know that this board and the other panel have seen the other multiple family projects come in along Canyon Creek and it's hard to make the balanced housing policy work. I think it's time to let it go and have the City Council recognize that it no longer works for these properties.

WARREN My concern is that if you let it go, we are going to end up with everybody with a parcel of property in the city limits of Wilsonville wanting multi-family homes. I guess I tend to agree with you on this one, that's an obvious place to go, but when you look at the adjacent property where that may not be the case. I guess I get discouraged in the fact that there doesn't seem to be an effort by some of the other developers we've seen on properties where it does make sense to go for the mixture, rather than going for the big bucks and cramming in as many units as they can with the justification that, "we've got to get these units in because of Metro". From my end, I get very discouraged seeing that because I do think that for numerous reasons, we need that mixture of different types of residences in the city limits.

LASHBROOK I don't think that was really a question, but I understand what you are saying. I do think from a city wide perspective we have very little property left that will fill that 12-20 units per acre category. You won't see many more applications unless there is a Comp Plan amendment proposed at the same time because there's....the only other property I can think of is in the Town Center area.

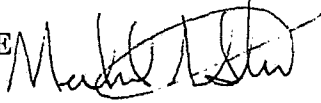
WARREN I guess it would be a comment....

KELSEY So Stephan, are you saying that the circumstances for this particular property are because it's been developed late after (Ordinance) 318 was passed and it wasn't

foreseen that this particular combination of circumstances would end up here faced with the Metro Housing Rule?

- LASHBROOK I think that's true and the fact that at the far north end of the city, it's affected by surrounding developments in the same traffic zone the way the balanced housing system works and, I think, there was no way at the time Ordinance 318 was put in place for people to envision that whole pattern of development all the way to the north end of town.
- SULLIVAN Stephan, I have a question for you. Often in our decision, and I feel in this case, previously, we are balancing competing interests, like trees and things like that. There's no bright line where you can say so many trees are too many.. Here's a classic example right behind you. We have apartment buildings within 25 feet of a wetland as opposed to 100 feet and so, what's your opinion on that? Do I start saying 25 feet is okay because we need more housing or do I....?
- LASHBROOK I think, in effect, the city reached that kind of decision on other properties where it was industrial and, the way I see it, and there may be a legal opinion to go with this that might differ from mine or add to mine, but to me the priority is protecting the wetland. You need to be assured that that has happened in the course of this and I know that there's stuff in the record and information here submitted by the engineers for the applicant addressing that. That's the real issue. Make sure that the wetland itself is protected. I think the purpose of the buffer is to provide that protection. I don't think you need to protect the buffer area, if it, itself is protecting the wetland.
- KELSEY If we're having a general policy discussion I think that might be appropriate, but once we get into the details of how this application actually functions, it might be more appropriate to have the applicant present their material and then ask questions afterwards, if you have more questions.
- LASHBROOK I'll be here. Thank you.
- GRIFFIN Anybody else for general comments? Are there any other questions of staff before we proceed to the applicant?
- SULLIVAN I had a question. On page 17, #10, on the second to the last line, it says Criteria #2 is "not" met, is that supposed to say that?
- HOFFMAN It probably should be "now" met. They have provided for protection and recognition of the impacts of the easement. That's the judgment of staff.
- GRIFFIN What is it, "now" or "not"?
- HOFFMAN They have provided at least ten foot setback from all of the power line easements. The criteria said that you needed to recognize and provide for as best as possible, the protection from the easements. That's a judgment call.
- GRIFFIN What you are saying is that staff's position is that it does meet.
- HOFFMAN Yes.
- GRIFFIN In that case the "not" is a "now". On page 17, item #10, bottom of that paragraph., criteria #2

ENGINEERING DEPARTMENT
STAFF REPORT & RECOMMENDATION
REVISED

DATE: January 15, 1998
TO: Honorable Mayor
 and City Councilors
FROM: Michael A. Stone, PE 
 City Engineer
SUBJECT: White Oak Apartment Complex - Storm Drain Issues

Staff has had the opportunity to discuss at length the Applicant's concerns over the language of Condition #13. Staff recommends, and the Applicant supports, that the language be modified as follows:

- PF 13. To lessen the impact of the proposed project on the downstream storm drain system, run-off from the site shall be limited to the difference between a developed 25 year storm and an undeveloped 25 year storm by one of the following methods:
1. On site detention. Any required detention facility shall be designed and constructed in conformance with the standards of the Unified Sewerage Agency of Washington County.
 2. Off site detention. The Applicant shall at the Applicant's expense:
 - a). Conduct an engineering study (signed by a Professional Engineer of the State of Oregon) of Boeckman Creek Detention Structure to verify the ability of the structure to meet the onsite detention requirement without exceeding the current back water easements.
 - b). Obtain all necessary easements and right-of-ways and construct all necessary improvements etc. to convey the run-off to the appropriate drainage basin without any adverse impacts.

MAS/dr

Ratter/MikeStone/StaffReports/WhiteOakApt10698Revised

 Resolution No. 1434
 Page 17 of 20

Exhibit "A"



MEMORANDUM

To: Honorable Mayor and City Councilors
From: Joan S. Kelsey, Assistant City Attorney *JSK*
Re: Appeal by J.D. Shin/Harvest Limited Partnership of Conditions of Approval and Proposed Land Exchange
Date: January 8, 1998

First, the applicant has appealed three conditions of 97DB24 (revised). Based on the findings of the Development Review Board ("DRB"), the record, and current law, in the opinion of the Legal Department the appeal is not substantiated by applicable law as explained below.

Next, the DRB recommended approval of this application contingent on City Council approval of an exception to Ordinance 318 and a proposed land exchange. Although the documentation for the land exchange is incomplete as of this writing, the exchange may be approved contingent on receipt of documents confirming the good faith representation that no liens, taxes, or other matters encumber the property transferred to public use.

First argument

The applicant states that Condition 26 "limits density by requiring certain structures be limited to two stories for aesthetic reasons" contrary to HB 2774.

Response:

Condition 26 of Resolution 97DB24(revised) states: "To add a transition between the street and the rest of the development, Buildings B, C and D which are located on top of a cut slope, are limited to two stories in height to provide that transition."

The apparently relevant portion of HB 2774 amends ORS 197.370 as follows:

(3)(b) A local government shall attach only clear and objective approval standards or special conditions, as provided in subsection (6) of this section, regulating appearance or aesthetics to an application for development of needed housing or to a permit, as defined in ORS 215.402 or 227.160, for residential development. The standards or conditions shall not be attached in a manner that will deny the application or reduce the proposed housing density provided the proposed density is otherwise allowed in the zone.

HB 2774 was signed on August 1, 1997 and became effective 90 days later, on October 4, 1997. S&S Development submitted a complete application to the city on July 7, 1997. Under ORS 227.178(3), approval or denial of an application is based upon the standards and criteria that are applicable at the time the application is first submitted. Because the complete application was submitted before HB 2774 became law, the application would be subject to former ORS 197.370, not the current ORS 197.370 as amended by HB 2774. The use of "standards and criteria" in ORS 227.178 is to "assure both proponents and opponents of an application that the substantive factors that are actually applied and that have a meaningful impact on the decision permitting or denying an application will remain

constant throughout the proceedings." *Davenport v. City of Tigard*, 121 Or App 135, 141 (1993). Where a county amended its development ordinance to change a school from a permitted to a conditional use under analogous law, ORS 215.428(3), the court found that an application submitted before the change would not be subject to the amended ordinance. *Kirpal Light Satsang v. Douglas County*, 96 Or App 207 (1989).

Even if the application were subject to the statute as amended by HB 2774, the application was reviewed under the city's conditional use process for planned development applications. Under city code and the comprehensive plan, density in this zone is a range of 12-20 du/ac, not an established, predetermined number of units. Therefore what density is "allowed" in the zone is determined by a multiplicity of development standards and criteria (WC 4.122, 4.123 and 4.130 et seq.), all of which, either singly or in combination, may increase or decrease the number of units within the range allowed for a particular application for development. In addition, for purposes of financing Local Improvement District 12, the applicant has submitted 220 units as its estimate for charges.

Finally, the condition imposed a one-story reduction in height for the three buildings at issue with the result of reducing the number of units by twelve at that location; however, the DRB noted that for those buildings containing underground parking, a request for additional height could be justified and was duly granted. Note also that the condition is based on the slope at this location. The applicant had requested a waiver to develop and grade about 40% of slopes with grades over 12% as well as a height waiver to allow 35' for several buildings. The DRB noted that berming was not possible on top of a cut slope, and the existing trees and proposed landscaping were insufficient to separate and buffer the buildings from the roadway. See DRB Transcript 12/1/97, p.40-41.

Second argument

Condition PF 13 requires that "run-off from the site shall be detained and limited to the difference between a developed 25 year storm and an undeveloped 25 year storm." The applicant objected to the condition on the basis that the applicant's consulting engineers, David Evans and Associates, and the City Engineer had not yet determined that on-site storm detention was necessary and that the City Engineer had not had the opportunity to review the revised application.

Response:

Michael Stone, the City Engineer, reviewed the application as submitted and proposed conditions based on the information supplied before the public hearing on November 24, 1997. At the time of the hearing, the submitted information was insufficient to justify the conclusion that on-site detention was not necessary. The applicant asserted that the City Engineer was studying the issue of storm detention, but the DRB found that there was not a basis to change the proposed condition 13 based on the evidence presented. The applicant had proposed that the DRB approve a requirement that the plans to accommodate storm run-off would have to satisfy the Engineering Department. Our information is that Mr. Stone's position remains unchanged as stated in his memorandum dated January 15, 1998 and received by our department January 8, 1998.

Third argument

Because there is no moratorium in place, the decision should not determine the effect of a moratorium on the proposal.

Response:

The DRB heard testimony from Eldon Johansen that the city lacked sufficient water capacity to serve the proposed project, based on the number and size of development applications that had already been approved or built. Under WC 4.139(4)(c) and the Comprehensive Plan, the city requires that public facilities be available or planned to serve a project. However, the DRB had heard testimony that the city had notified the Department of Land Conservation Development that it expected to adopt a moratorium on development in order to plan and finance solutions to the water shortage. The DRB has recommended that the City Council approve the project subject to Condition 25, which put the applicant on notice that a building permit may be delayed until the proposed moratorium, if adopted, was lifted. The applicant did not offer evidence that sufficient water was available to serve the site at any time prior to the close of the record and the close of the public hearing on November 24, 1997.

Reading the land use statutes in *pari materia*, under ORS 197.505 et seq. the very purpose of a moratorium is to stop or delay development, and the development review provisions of ORS 227.178 do not apply. Although the DRB did not discuss the effect of a moratorium on the proposal, insofar as Condition 25 could be interpreted as "determining the effect of a moratorium on the proposal", it may be revised accordingly.

In addition, Ordinance No. 493, adopted January 5, 1998, contains two provisions that recognize the circumstances of this particular development: (1) that its review may be continued to completion, and (2) that it will be one of the first projects to receive water should any Stage II approvals expire during the duration of the moratorium. Also, at the request of the applicant, the city included in Ordinance No. 493 a provision which allows for tolling of time to develop an approved project that is subject to the ordinance. It may be appropriate to revise Condition 25 to read:

If all Stage II development approvals to date obtained their building permits, then this development could not obtain its building permit. Therefore, it is more likely than not granting a building permit in this matter shall be delayed until the moratorium is lifted **a solution to the water shortfall has been planned in a capital improvements program or similar plan that is expected to provide water sufficient for this development.**