

RESOLUTION NO. 1437

A RESOLUTION ADOPTING FINDINGS AND MAKING AN INTERPRETATION OF THE COMPREHENSIVE PLAN REGARDING THE BOUNDARY BETWEEN THE PRIMARY OPEN SPACE AND SECONDARY OPEN SPACE. THE SITE IS LOCATED AT 27600 CANYON CREEK ROAD ON TAX LOT 2901, SECTION 12, T3S-R1W, CLACKAMAS COUNTY, WILSONVILLE, OREGON. MR. RICHARD KEISTER, OWNER/APPLICANT.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008(4) and 4.440(1) of the Wilsonville Code; and

WHEREAS, the Planning Staff has prepared a report on the above-captioned subject; and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board at a regularly scheduled meeting conducted on December 22, 1997, at which time exhibits together with findings and public testimony were entered into the public record; and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report and interested parties have had an opportunity to be heard on the subject; and

WHEREAS, the Development Review Board of the City of Wilsonville adopted the staff report dated December 22, 1997 and approved the project contingent on City Council resolution of the conflict between the text of the Comprehensive Plan and the Land Use Map as it applies to the property at 27600 Canyon Creek Road; and

WHEREAS, the Development Review Board and staff recommended interpretation of the Comprehensive Plan Boundary between the Primary Open Space and Secondary Open Space; and

WHEREAS, the applicant and staff have provided rationale for such interpretation; and

WHEREAS, a public hearing was held by City Council on February 2, 1998 and the Council considered testimony, staff report and the Development Review Board's recommendation. Such testimony further detailed the location of steep slope areas.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

That the above recitals are adopted as findings and the following findings are adopted and the following interpretation is approved:

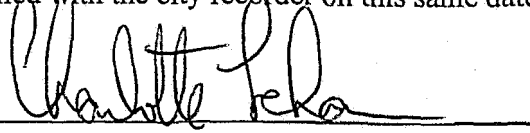
FINDINGS:

1. The staff report dated January 26, 1998 (Exhibit A) is hereby approved giving emphasis of the steep slope and heavily treed areas as Primary Open Space as illustrated on Exhibit W.
2. The applicant has provided further documentation of steep slope areas and sufficiently carried his burden to show that the revised area proposed by this applicant and staff meets the definition of Primary Open Space and Secondary Open Space particularly as it relates to slopes over 20%.

CITY COUNCIL INTERPRETATION:

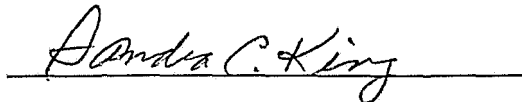
The boundary between Primary Open Space and Secondary Open Space is interpreted to be redefined as shown on Exhibit W dated February 3, 1998 attached. It is understood that the boundary in the vicinity of contour 210 may be adjusted slightly by the planning director based on actual survey information prepared by a registered surveyor.

ADOPTED by the City Council of the City of Wilsonville at a special meeting thereof this 19th day of February, 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>Excused</u>
Councilor Kirk	<u>Yes</u>



PLANNING DIVISION MEMORANDUM/STAFF REPORT

Date: January 26, 1997

To: Honorable Mayor and City Council

From: Robert G. Hoffman AICP
Director of Current Planning *RGH*

Re: Interpretation of Comprehensive Plan Permanent Open Space Boundary
Case File 97DB40 - Mr. Richard Keister

SUMMARY:

There appears to be a conflict between the Comprehensive Land Use Map and the criteria for defining Primary Open Space regarding Policy 4.5.1 as outlined on the Comprehensive Plan text. The text criteria predominates the map so the applicant has requested an interpretation of the boundary of the Primary Open Space map to more closely reflect the criteria. The change of the boundary would permit construction of a home in the area currently shown on the Comprehensive Plan map as Primary Open Space. Without the change the new home would need to be located elsewhere on the newly created lot.

RECOMMENDATION:

Approve the interpretation of the boundary as recommended by staff and the Development Review Board. The applicant recommends a different boundary. See Resolution 1437 including the attached map.



Approval criteria: Chapter #4, Zoning:

Section 4.012:	Hearings procedures
Section 4.008:	Application procedures.
Section 4.600 to 4.640.20	Tree Preservation and Protection.

Comprehensive Plan: Pg. 3 "The City Council shall have the final authority for the interpretation of the Comprehensive Plan"

Policy 4.5.1: Primary Open Space criteria: Pg. 88
"When interpreting the intent of the Plan, the text dominates the map in the event of a conflict."

BACKGROUND:

The DRB has conditionally approved a partition and a conditional use for a parcel on the new Canyon Creek Road. No appeal has been filed by the applicant so the DRB decision stands regarding the partition and conditional use provided the City Council approves the interpretation. This partition and conditional use will permit construction of a single family house on the new lot. The applicant has proposed use of the new home on a part of the lot currently shown on the Comprehensive Plan Land Use Map as Primary Open Space (POS). The POS map would prevent construction at the location requested unless the map is changed.

An arborist report was not required as trees greater than 6" DBH will not be removed or impacted by the proposed development. The nearest tree is approximately 30' from the foundation line of the proposed house. However, excavated dirt should have adequate erosion control and not be pushed down slope on tree roots.

The applicant's report indicates that in 1995, the applicant removed approximately nineteen (19) trees. He claims the trees were either unhealthy or posed a hazard to people using and enjoying the subject property. Staff believes the trees were removed from the POS on proposed parcel No. 1. Staff conducted a site visit with the applicant's planning consultants and observed 19 or more stumps of primarily Big Leaf Maples. The Tree Preservation and Protection Ordinance No. 464 was not in effect at the time of the harvest, however, the trees were protected under the POS designation. The applicant is proposing a tree mitigation plan showing four (4) new Douglas Firs at 5' height in the far northwest corner of the lot. See attachment "C" of the applicant's report. On the basis

of the above, the applicant should mitigate and replant with native, 2" caliper or greater trees within the area of the stumps.

As mitigation for the tree cutting the DRB approved the partition including Condition #6 as follows:

#6. "The applicant shall plant five (5) Big Leaf Maples at 2" caliper or greater, seven (7) Douglas Firs and seven (7) Western Red Cedars at 6' to 8' height within the Primary Open Space area. The applicant shall provide a plan, approved by staff, to ensure that the trees survive"

Primary and Secondary Open Space: (From Comprehensive Plan)

- Policy 4.5.1**
- a. *The major natural drainage ways, environmentally sensitive areas and significant stands of trees or other vegetation shall be designated as primary or secondary open space.*
 - b. *Primary open space is intended to remain undeveloped with the possible exceptions of passive recreation and underground public facilities. These areas include the following:*
 - 1. *100-year floodway*
 - 2. *Slopes greater than 20%.*
 - 3. *Significant stands of trees, including all trees and vegetation within 150 feet of the banks of the Willamette River, but not including orchards.*
 - 4. *Major natural drainage channels.*

Secondary Open Space: (From Comprehensive Plan)

- c. *Secondary open space is intended to serve as a buffer to primary open space areas. They may be developed in accordance with special development standards and shall be evaluated through a conditional use and design review process, except when the proposal is a part of a planned development. These areas include the following:*
 - 1. *Land within the Willamette River Greenway boundary, but beyond the 150-foot line.*
 - 2. *High voltage power line easements.*
 - 3. *The 100-year flood plain fringe.*
 - 4. *Slopes between 12% and 20%.*

5. *Designated historic sites. Small stands of trees and heavily vegetated areas adjacent to primary open space areas.*

Primary undeveloped portions of Secondary Open Space may be used towards satisfaction of open space requirements.

Note: In vegetated areas the visual impact of the trees, etc.. is to be preserved. Any clearing of trees for development should be from the interior of the stand.

Staff Response Findings:

The current Comprehensive Plan Map is a general mapping tool in determining the limits of POS and SOS. The Comprehensive Plan Map designates the west side of the property in Secondary Open Space and the east side is in Primary Open Space. Primary Open Space is the forested bank with slopes greater than 20%. The applicant is seeking an interpretation from the Development Review Board and the City Council to modify the extents of the Primary Open Space area involving the proposed home site. In this interpretation, the Comprehensive Plan Text governs over the Comprehensive Plan Map. The Comprehensive Plan at page 3 under "Procedures" recognizes a procedure to resolve conflicts between Plan Policy 4.5.1(b)(1 to 4) and the Plan Map. Thus, there is a reasonable argument to be made that the proposed home site is not in Primary Open Space but is better described as Secondary Open Space. In the event the City Council determines that the proposed home site is in Secondary Open Space, development is still subject to conditional use approval which the DRB has given, contingent on City Council approval of the Interpretation.

Regarding Policy 4.5.1(b)(1 to 4), the proposed home site is located in such a fashion as it will not require the removal of 6" DBH or larger trees. The property is not within 150 feet of the banks of the Willamette River. The proposed home site has slopes less than 20%. The proposed home site is not within a 100-year floodway. Finally, the proposed home site is not within the Boeckman Creek drainage channel. As a result, the evidence supplied demonstrates that Policy 4.5.1(b)(1 to 4) is met to interchange the subject Primary Open Space area into Secondary Open Space. Applying Policy 4.5.1(c)(1 to 5) further substantiates the home site in Secondary Open Space.

Most of the key natural assets within the Secondary Open Space appears to be protected. When balancing the proposed home site on the northeast corner of the property which is designated in POS with the vacant property to the west in SOS, the development will have a much lesser impact on trees.

The applicants original proposed interpretation requested a larger area be removed from the POS area than recommended by staff and DRB. The evidence supplied by the

applicant was not convincing to the DRB and the DRB and staff recommendation includes the retention of the Steeper sloped areas as POS. The DRB action also conditioned that the remaining POS area be replanted with 19 trees as were cut. the stumps remain and are scattered throughout the POS area.

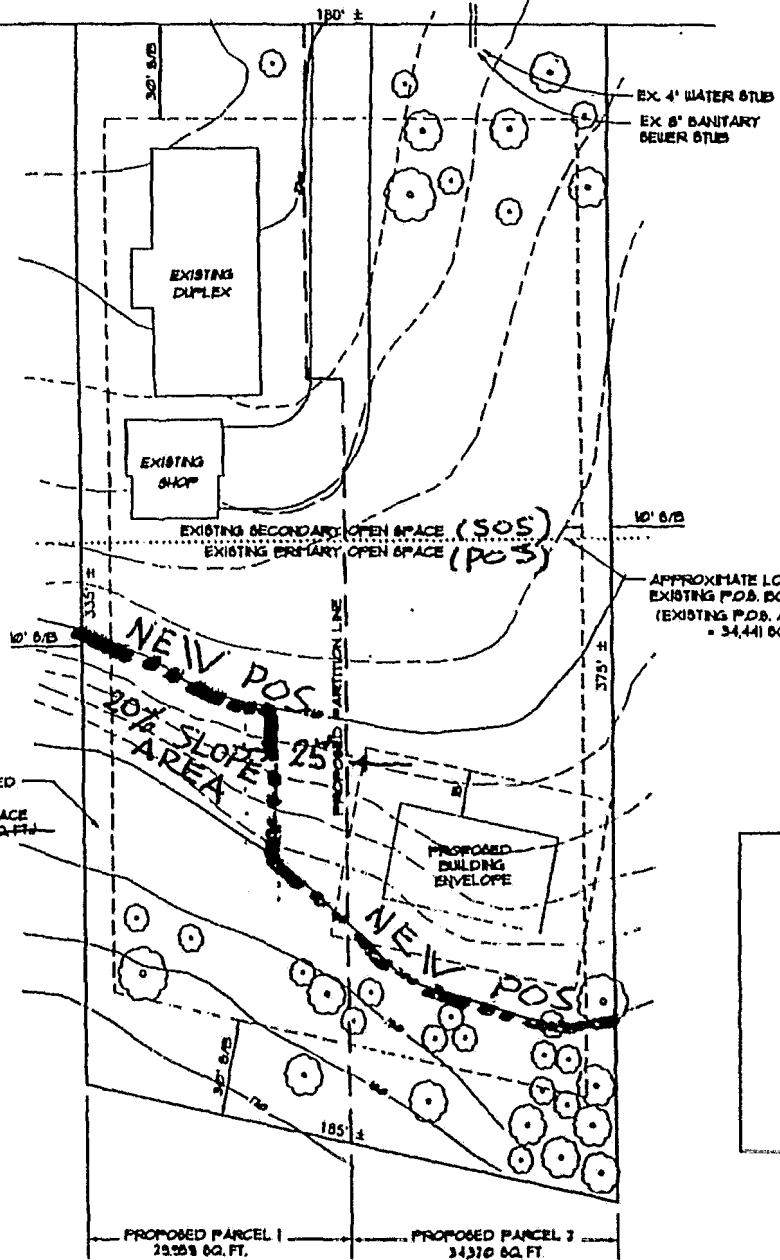
Attachments: Development Review Board Decision of December 22, 1997 including Resolution 97DB40 and attachments:

- Exhibit A - Development Review Board adopted Staff Report
- Exhibit B - Motion to approve

Exhibit C - (Condition of Approval #8) Map delineating primary open space boundary prepared by city staff and approved by board

EXHIBIT

CANYON CREEK ROAD



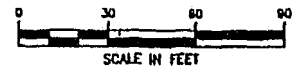
SITE PLAN
and
TENTATIVE PARTITION PLAT

of
TAX LOT 3801, SECTION 0
T. 3 S., R. 1 W., W.M.
71600 CANYON CREEK ROAD
WILSONVILLE, OREGON 97170

for
RICHARD KEISTER

71600 CANYON CREEK ROAD
WILSONVILLE, OREGON 97170

INCLUDING NEW POS LINE
2-3-98



SCALE: 1" = 60'

NOTES

- CONTOUR SOURCE: BOECKMAN CREEK 100 YEAR FLOOD INUNDATION MAP, CITY OF WILSONVILLE ENGINEERING
- CITY WATER AND SANITARY BEWER ARE LOCATED IN CANYON CREEK ROAD AND SERVICE SUBJECT PROPERTY AS SHOWN.
- PUBLIC SIDEWALK LOCATED ON EAST SIDE OF CANYON CREEK ROAD
- TOTAL AREA IS APPROXIMATELY 148 ACRES (6,4219 SQ. FT.)
- PROPOSED RESIDENTIAL DENSITY IS APPROXIMATELY 134 DU/AC.
- PROPERTY IS ZONED RA-1
- TREE LOCATIONS AS DEPICTED ON CITY OF WILSONVILLE SANITARY BEWER LOCAL IMPROVEMENT DISTRICT MAP DATED 1-11-96.

Revised:	Checked:	CCS COMPUTER-AIDED DRAWING DESIGN INCORPORATED 1000 SW MATZEN DRIVE WILSONVILLE, OREGON 97170
Designed:	Drafted:	
Kaiser Application for Conditional Use & Open Space Interpretation		
Site Plan/Tentative Partition Plat		
27800 CANYON CREEK RD. N.		
GAZELEY & ASSOCIATES LAND USE AND ENVIRONMENTAL PLANNING CONSULTANTS 1980 SW MATZEN DRIVE WILSONVILLE, OREGON 97170 (503) 622-8779		
SHEET #		
1 / 1		

Resolution No. 1437
Exhibit "W"