

October 18, 2017

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Mr. Dan Holladay, Mayor
City of Oregon City City Commission
Oregon City City Hall
625 Center Street
Oregon City, Oregon 97045

Re: City of Oregon City File Nos. ZC 17-02 and TP 17-03 (the “Applications”); Appeal of Planning Commission Denial of Applications by Property Owners Wheeler Family Enterprises, LLC, David H. Wheeler Sr. Trust and Donald W. and Roxanne O. Wheeler and Applicant Rian Park Development, Inc. (the “Appellants”)

Dear Mayor Holladay and Members of the Oregon City City Commission:

This appeal is filed on behalf of the Appellants. The Oregon City Planning Commission (the “Planning Commission”) voted to tentatively deny the Type IV Applications at the conclusion of its public hearing on October 9, 2017 by a vote of 4–2 (Commissioner Henkin absent; Commissioners Mahoney and Johnson voting against the motion to deny the Applications). The City mailed notice of the final decision on October 12, 2017. The remainder of this letter explains why this appeal satisfies the requirements of Oregon City Municipal Code (“OCMC”) 17.50.190, “Appeals”, and why the City Commission should reverse the Planning Commission decision and approve the Applications.

1. OCMC 17.50.190.B.

This appeal is timely filed within 14 calendar days from the date notice of the challenged decision was provided to those entitled to notice. The City provided notice of the decision on October 12, 2017. The required appeal fee of \$3,488.00 was submitted separately from this appeal on October 17, 2017.

2. OCMC 17.50.190.C.1.

The City Planning file numbers for the appealed decisions are ZC 17-02 and TP 17-03. The date the decisions to be appealed were rendered is October 12, 2017.

3. OCMC 17.50.190.C.2.

The Appellants are the property owners and the Applicant. The Appellants’ mailing address and daytime telephone number are as follows: c/o Rian Park Development, Inc., PO Box 2559, Oregon City, OR 97095; (503) 786-7979.

4. OCMC 17.50.190.C.3.

The Appellants are the property owners and the Applicant. The Appellants have a property interest in the property that is the subject of the Applications and have standing to appeal because they and their representatives appeared personally and in writing before the Planning Commission prior to the issuance of the final decision.

5. OCMC 17.50.190.C.4.

The specific grounds for the appeal are as follows. **Exhibit A** attached to this letter explains these grounds in more detail:

- A. The Planning Commission exceeded its authority by improperly denying the Applications without a proper evidentiary or legal basis.
- B. The Planning Commission made a decision unsupported by substantial evidence in the whole record.
- C. The Planning Commission misconstrued and committed legal error by finding that the Applications failed to meet applicable approval criteria.
- D. The Planning Commission failed to apply clear and objective standards in OCMC 16.12.150 in violation of ORS 197.303(1) and 197.307(4).
- E. The Planning Commission failed to explain how the Appellants could remedy the reasons for denial, or consider appropriate conditions of approval to allow it to approve the Applications.

6. OCMC 17.50.190.C.5.

The appeal fee of \$3,488.00 has been submitted in the form of a check made payable to the City of Oregon City pursuant to the Oregon City 2017 Fee Schedule.

7. OCMC 17.50.190.D.2.

The Appellants participated orally and in writing before the Planning Commission and through their representatives and thus have standing to appeal the decision of the Planning Commission.

The grounds for this appeal were raised by the Appellants either orally or in writing before the close of the Planning Commission record.

This appeal does not contain evidence not in the Planning Commission record.

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The Planning Commission failed to properly apply relevant OCMC standards governing the approval of the Applications, ignored substantial evidence supporting the Applications and, as a result, improperly denied the Applications. The full reasons why the City Commission must reverse the Planning Commission are shown in **Exhibit A** attached to this letter.

The Oregon City City Commission, upon review of the appeal and the record before it, can find that the Appellants met their burden of proof by providing substantial evidence demonstrating that each and every approval criterion was satisfied and thus should reverse the Planning Commission and approve the Applications with appropriate conditions of approval. Notwithstanding that the appeal is an *on the record* hearing, the City Commission may impose additional conditions of approval to address any defects that it finds in the Applications. The Appellants are willing to discuss additional conditions of approval based on the record made before the Planning Commission.

8. Conclusion.

On behalf of the Appellants, I respectfully request that the Oregon City City Commission grant the appeal, reverse the Planning Commission decision and approve the Applications with appropriate and reasonable conditions of approval.

Very truly yours,



Michael C. Robinson

MCR:rsr

- Exhibit A with nine enclosures

cc: Mr. and Mrs. Donald Wheeler (via email) (w/encls.)
Mr. Bruce Ament (via email) (w/encls.)
Mr. Monty Hurley (via email) (w/encls.)
Mr. Chris Goodell (via email) (w/encls.)
Ms. Laura Terway (via email) (w/encls.)
Ms. Christina Robertson-Gardner (via email) (w/encls.)
Ms. Carrie Richter (via email) (w/encls.)

EXHIBIT A

BEFORE THE CITY COMMISSION FOR THE CITY OF OREGON CITY

In the Matter of an Appeal by Property Owners Wheeler Family Enterprises, LLC, David H. Wheeler, Sr. Trust, Donald W. and Roxanne O. Wheeler and Applicant Rian Park Development, Inc. of the Denial by the Oregon City Planning Commission of a Zoning Map Amendment from R-10 to R-8 in Conformance with the Oregon City Comprehensive Plan and a 77-Lot Subdivision, Located on Property Generally South of Orchard Grove Drive and Containing Approximately 22.56 Acres.

FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORTING THE GRANTING OF THE APPEAL AND THE APPROVAL OF THE APPLICATIONS

City of Oregon City File Nos. ZC 17-02 and
TP 17-03

I. FACTS.

1. Zoning Map and Subdivision Applications.

This appeal concerns the denial of an application for a zoning map amendment from R-10, “Single-Family Dwelling District” to R-8, “Single-Family Dwelling District” and for a 77-lot single family subdivision on 22.56 acres (the “Applications”) (**Exhibit 1**). Both zoning districts implement the Oregon City Comprehensive Plan (the “Plan”) map designation of “Low Density Residential”. The 77-lot subdivision is only four more lots than a subdivision in the R-10 zone would allow and seven lots fewer than the maximum density allowed in the R-8 zoning district (**Exhibit 2**). The subdivision application includes a 1.35 acre open space tract. The property has been owned by three generations of the Wheeler family since 1963. This subdivision will be developed for single family lots, just as the five surrounding subdivisions (the “Area”, or the “Area Subdivisions”) have been.

This appeal is based solely on the Planning Commission record.

2. OCMC 16.12.150 allows lots less than 8,000 square feet in size.

The proposed subdivision application meets the requirements of Oregon City Municipal Code (“OCMC”) 16.12.050, “Calculations of Lot Area” (**Exhibit 3**) because it proposes 64 lots that are twenty percent less in size (1,600 square feet) than the 8,000 square feet minimum lot size of the R-8 zone and the 77-lots’ average 8,000 square feet in size. OCMC 16.12.050 is a clear and objective standard that complies with Oregon’s “Needed Housing” laws at ORS 197.303(1) and 197.307(4) and applies to the R-3.5, R-5, R-6, R-8 and R-10 zoning districts. This standard may be used by a subdivision applicant. This standard is not a relevant approval criterion for the zoning map amendment, however. No one argues that the subdivision application does not meet this standard.

3. The Proposed Subdivision Meets the R-8 Zone Dimensional Standards which are Similar to the R-10 Zone's Dimensional Standards.

The proposed subdivision's lots meet the R-8 zone's dimensional standards and dwellings on those lots can meet the R-8 zone's setback requirements. The R-8 zone's lot width and depth standards are only five feet less than the R-10 zone's requirements: 60 feet versus 65 feet and 75 feet versus 80 feet (**Exhibit 4**) and the two zone's front yard and rear yard setbacks are also virtually the same (**Exhibit 5**).

4. Most of the Area Subdivisions Match the Proposed Subdivision in Terms of Zoning, Reduced Lot Size and Density.

The proposed subdivision is near five other Area Subdivisions: Payson Farms, Central Point Crossing, Ed's Orchard, Highland Park and Hazel Creek Farms (**Exhibit 6**). Hazel Creek Farms is the oldest subdivision of the five, having been platted in 2001. OCMC 16.12.050 was not in effect when the Hazel Creek Farms Subdivision was platted and that is why it is the only existing subdivision without minimum lot sizes less than that allowed by the zone.

The proposed subdivision abuts three of the five Area Subdivisions. Of these three subdivisions, one is exclusively zoned R-8 (Highland Park), one is zoned both R-8 and R-10 (Ed's Orchard) and one is exclusively zoned R-10 (Hazel Creek Farms). The other two Area Subdivisions are zoned R-8. Including the proposed subdivision, the six subdivisions contain 310 lots, of which 99 are in the R-10 zone and 211 are in the R-8 zone.

The four existing Area Subdivisions in the R-8 zone have minimum lot sizes ranging from 6,401 square feet to 7,022 square feet and average lot sizes ranging from 7,071 square feet to 8,580 square feet. The proposed subdivision's smallest lot is 6,407 square feet and its average lot size is 8,279 square feet.

The two existing R-10 subdivisions have minimum lot sizes of 9,114 and 10,000 and average lot sizes of 10,166 and 10,233.

The gross density of the proposed subdivision is 3.41 dwelling unit per acre ("DU/AC"), compared to a range of 3.06 DU/AC to 3.91 DU/AC for the other five Area Subdivisions.

The proposed subdivision abuts four of the Area Subdivisions in seven areas (**Exhibit 8**). Only in one of the seven areas does the proposed subdivision abut Hazel Creek Farms. In that location, six Hazel Creek Farms' lots abut six proposed subdivision lots. The ratio of existing to proposed abutting lots is:

- Area 1 (separated by Orchard Grove Drive): 9 lots to 9 lots (Lots 54-57 and 72-76)
- Area 2: 2 lots to 2 lots (Lots 11 and 12)
- Area 3: 3 lots to 3 lots (Lots 6-8)
- Area 4: 4 lots to 5 lots (Lots 1 and 3-5)
- Area 5: 2 lots to 2 lots (Lots 22 and 33)
- Area 6: 2 lots to 1 lot (Lot 34)
- Area 7: 6 lots to 6 lots (Lots 34-37 and 39-40)

In other words, even though the proposed subdivision's lots are as small as 6,407 square feet, most proposed lots abut just one existing lot, which means that the lot dimensions are a good match to one another. Even in the one area where the large Hazel Creek lots abut the proposed subdivision, only two of the six Hazel Creek Farms Subdivision lots abut more than two proposed lots. The proposed subdivision's perimeter inside the City abuts Hazel Creek Farms for only 690 linear feet out of 4,120 linear feet.

5. The Hazel Creek Farms Subdivision is Unlike the Rest of the Area.

The facts show that most of the surrounding area is zoned R-8. Of the 23 lots abutting this proposed subdivision, 17 are zoned R-8. Four of the five Area Subdivisions utilize lot size averaging allowed by OCMC 16.12.150 and contain lot sizes less than the minimum zone lot size in their zone. Only the Hazel Creek Farms Subdivision, which is just one of the three subdivisions abutting the proposed subdivision, one of the five Area Subdivisions, and the oldest subdivision, does not contain smaller lot sizes than the minimum lot size and it has the highest average lot size. **In other words, the Hazel Creek Farms Subdivision is the least typical subdivision in the area, does not represent the planning trend of using reduced lot sizes and was not developed under current lot average provisions allowed by OCMC 16.12.150, yet the Planning Commission based its decision largely on how the proposed subdivision affects Hazel Creek Farms even though the boundary between the two subdivisions is very small.**

II. SUBSTANTIAL EVIDENCE SHOWS THAT PUBLIC FACILITIES AND SERVICES ARE ADEQUATE TO SERVE THE SUBDIVISION.

1. Schools.

The only substantial evidence on school capacity is from the Applicant. The Application at page 6 states that the "school district staff did not identify concerns with the zone change application due to [its small size]". The Applicant testified to the same facts at the October 9, 2017 Planning Commission hearing.

2. Sanitary Sewer.

The only substantial evidence is from the Applicant. Exhibit F to the Application states that all public facilities are available and adequate.

3. Traffic.

Both the Applicant's traffic engineer (June 15, 2017 traffic study at page 21) and the City's traffic engineer (September 5, 2017 letter at page 4) conclude that the zoning map amendment, which adds only four lots over the R-10 zone, will not cause any intersection to fail. Finally, the proposed subdivision contains nine road connections (**Exhibit 8**), providing excellent connectivity to disperse vehicle trips.

III. PLANNING COMMISSION REVIEW.

The Applications are processed using the Type IV quasi-judicial process. OCMC Table 17.50.030. The Planning Commission makes the initial decision on Type IV Applications. OCMC 17.50.110. A denial by the Planning Commission is final unless appealed. *Id.* The criteria for the zoning map amendment are found in OCMC 17.68.020.A.-D. The criteria for the subdivision are found in OCMC 16.12.010. The Applicant has the burden of proof to show by substantial evidence that it has satisfied the relevant approval criteria. Substantial evidence is that which a reasonable person could accept. If such substantial evidence is present, the Planning Commission must approve the Applications, based on applicable approval criteria.

IV. CITY COUNCIL APPEAL HEARING.

The City Council appeal hearing is on the record made before the Planning Commission and is limited to the grounds for appeal listed in the notice of appeal. OCMC 17.50.090.F and E.7. Only those persons who participated before the Planning Commission may participate in the appeal. OCMC 17.50.120.D.6.

V. WHY THE PLANNING COMMISSION ERRED IN DENYING THE APPLICATIONS.

1. The Facts in the Planning Commission Notice of Decision Section 5, “Notice and Public Comment”, Are Inaccurate and Not Supported by Substantial Evidence.

This section of the Planning Commission decision asserts that the smaller lot sizes would be "incompatible" and "lack cohesion" with the surrounding larger lots. The Planning Commission did not define these ambiguous terms. As the facts in Section 1 of this Appeal and **Exhibit 6** show, only a few of the lots abutting the proposed subdivision are larger than those in the proposed subdivision; the majority of abutting lots are about the same size as the proposed lots and the required minimum dimensions of lots in the two zoning districts are similar.

This section of the decision also asserts that the roads in the area lack capacity to accommodate additional traffic. The Applications add just 4 lots over the R-10 zone and the City’s traffic engineer, as well as the Applicant’s traffic engineer, concluded that there is adequate intersection capacity. The opponents submitted no substantial evidence to the contrary.

This section of the decision also asserts that schools are overcrowded. The only substantial evidence in the record shows that the school district is not concerned about the impact on capacity from the Applications. Further, ORS 195.110(13)(a)-(c) (**Exhibit 9**) prohibits the City from denying the Applications based on school capacity because the school district did not raise the issue.

Finally, this section of the decision also asserts problems with off-street parking, conflicts with traffic, and no need for the open space tract. These concerns are unrelated to relevant approval criteria.

2. The Planning Commission Findings are Inadequate, not Based on Substantial Evidence and Misapply Applicable Law.

a. Introduction.

The Planning Commission denied both Applications but made findings for denial only on the zoning map amendment. Therefore, the City Commission can find that in the event it reverses the Planning Commission on the zoning map amendment decision, the subdivision Application may be approved without further consideration. The Applicant agrees with the recommended conditions of approval contained in the Planning Department staff report to the Planning Commission.

b. The City Commission can find that OCMC 17.68.020.A is satisfied.

This section addresses the reasons that the Planning Commission denied the zoning map amendment from R-10 to R-8 in compliance with the Oregon City Comprehensive Plan.

The denial of the zoning map amendment on the basis that the Applications failed to comply with relevant goals and policies of the Oregon City Comprehensive Plan is based largely on the idea that the proposed subdivision's smaller lots are "incompatible" with abutting larger lots. First, for the reasons already explained, most of the abutting lots to the proposed subdivision are about the same size; only six lots of the Hazel Creek Farms Subdivision abut the proposed subdivision. Moreover, two-thirds of the lots in area around the proposed subdivision are in the R-8 zone rather than in the R-10 zone. Finally, the majority of lots in the proposed subdivision use the lot averaging provision in OCMC 16.12.150 to create lots less than the minimum lot size required in the R-8 zoning district, just as four of the five existing Area Subdivisions did; only the Hazel Creek Farms Subdivision did not use the lot averaging method. Therefore, the City Commission can find that the factual basis for the Planning Commission decision is unsupported by substantial evidence. However, even if the facts found by the Planning Commission were correct, the City Commission must reject the Planning Commission's findings for other reasons.

The Planning Commission's decision presents an undesirable policy direction to the City Commission. By affirming the Planning Commission, the City Commission would determine that existing lot sizes must be matched by proposed lot sizes. Not only is this inconsistent with the Oregon City Comprehensive Plan as explained below, it is poor planning policy because, as demonstrated in this area, there are a variety of lot sizes that have been approved by the City. Moreover, the Planning Commission's reasoning does not provide a "bright line" of when lots are "too" small. The result of affirming the Planning Commission's decision is that existing property owners would have an expectation that their lot sizes would be matched by future lot sizes, contrary to the OCMC and the Oregon City Comprehensive Plan, and the desirable goal of providing variety of lot sizes in the future would be discouraged. Finally, the Planning Commission's decision fails to explain why the proposed subdivision is inconsistent with the Area Subdivisions and what constitutes incompatibility.

Further, the Plan is implemented by the land use regulations in OCMC Titles 16 and 17. Plan at page 4 ("The Oregon City Comprehensive Plan is implemented through City Codes ancillary plans, concept plans and master plans"). Plan Goal 2.4 is not a relevant approval criterion for a

zoning map amendment. Plan Goal 2.4 is only a policy statement regarding the importance of protecting and maintaining neighborhoods as the basis of community life in Oregon City.

However, even if Plan Goal 2.4 is a relevant approval criterion, the Planning Commission's decision is legally erroneous for two reasons. First, the Planning Commission erred legally and made a decision not supported by substantial evidence that approving the proposed subdivision would not protect and maintain existing neighborhoods in the area. Second, the Planning Commission's decision fails to give full effect to the second part of Plan Goal 2.4 by implementing other goals and policies of the plan.

The Planning Commission's decision must be reversed because it is legally insufficient and is not based on substantial evidence for the following reasons.

c. The Planning Commission's finding that the Applications did not satisfy Plan Goal 2.4, "Neighborhood Livability", is erroneous.

Plan Goal 2.4, "Neighborhood Livability", provides as follows":

"Provide a sense of place and identity for residents and visitors by protecting and maintaining neighborhoods as the basic unit of community life in Oregon City, while implementing the goals and policies of the other sections of the Comprehensive Plan."
(Emphasis added)

The Planning Commission erred legally in finding that the Applications did not satisfy Plan Goal 2.4 for two reasons.

First, Plan Goal 2.4 consists of two parts, the second part of which is to implement other Plan Goals and Policies. The Planning Commission's decision fails to give effect to this Plan Policy and, in fact, is inconsistent with other goals and policies of the Plan.

- The Planning Commission's decision fails to implement Plan Policy 2.4.2 which provides: **"Strive to establish facilities and land uses in every neighborhood that help give vibrancy, a sense of place, and a feeling of uniqueness; such as activity centers and points of interest."** The proposed subdivision voluntarily provides a 1.35 acre open space tract which provides a sense of place, a feeling of uniqueness, an activity center and a point of interest for the proposed subdivision.
- The Planning Commission's decision fails to implement Plan Policy 2.4.3 which provides: **"Promote connectivity between neighborhoods and neighborhood commercial centers through a variety of transportation modes."** The proposed subdivision provides connectivity between neighborhoods as shown in **Exhibit 8** by providing a number of connection points to other neighborhoods.
- The Planning Commission decision fails to give proper effect to Plan Policy 2.4.5 which provides: **"Ensure processes developed to prevent barriers in the development of neighborhood schools, senior and child care facilities, parks, and other uses that**

serve the needs of the immediate area and the residents of Oregon City.” The Planning Commission’s decision fails to approve the subdivision with a voluntary 1.35 acre of open space tract that may be used as a park by residents of the proposed subdivision at no cost to the City.

- The Planning Commission’s decision also fails to give proper effect to Plan Goal 10.1, “Diverse Housing Opportunities”. Goal 10.1 provides: **“Provide for the planning, development and preservation of a variety of housing types and lot sizes.”** The Planning Commission’s decision effectively requires future subdivisions to match past subdivisions notwithstanding the Applications of new land use regulations, such as OCMC 16.12.150, which permits lot size averaging. Moreover, the Planning Commission’s decision effectively prohibits a variety of lot sizes and consequently housing types by requiring new subdivisions to match old subdivision lot sizes.
- The Planning Commission’s decision also fails to give proper effect to Plan Policy 10.1.3 which provides: **“Designate residential land for a balanced variety of densities and types of housing, such as single-family attached and detached, and a range of multi-family densities and types, including mixed-use development.”** Plan Policy 10.1.3 is not implemented by the Planning Commission’s decision because the decision fails to provide a balanced variety of density and types of housing. Denying the proposed subdivision thwarts the Plan Policy’s intention to provide a variety of housing types which necessarily provides for a variety of lot sizes consistent with Plan Goal 10.1.
- Finally, the Planning Commission’s decision fails to give proper effect to Plan Policy 10.4 which provides: **“Aim to reduce isolation of income groups within communities by encouraging diversity in housing types within neighborhoods consistent with the Clackamas County Consolidated Plan, while ensuring that needed affordable housing is provided.”** The Planning Commission’s decision, by requiring unnecessarily large lots inconsistent with the Plan, reduces the affordability of housing and isolates income groups to other areas of the community, all in contrast to the plans, goals, variety of lot sizes, housing types and housing prices.

Because the Planning Commission's decision is inconsistent with and fails to give full effect to relevant Plan Goals and Policies, the City Commission must reverse the Planning Commission and approve the zoning map amendment.

d. The Planning Commission erred by making an unreasonable decision not based on substantial evidence.

The Planning Commission’s decision found that Plan Goal 2.4 requires “compatibility and cohesion” between neighborhoods in order to “protect existing neighborhoods “livability”. The Planning Commission’s most fundamental error is in failing to explain why a variety of lot sizes would not protect existing neighborhood’s “livability.” The decision does not explain how marginally smaller lots would be contrary to existing neighborhood’s livability, nor does it explain what “cohesion”, “protect”, and “livability” mean. Further, as already noted, the Planning Commission’s decision on this point is not supported by substantial evidence because the evidence is to the contrary and there is no evidence showing incompatibility.

Additionally, the Planning Commission's decision finds that the R-8 zoning district is not compatible with the adjacent Area Subdivisions which are within the R-10 zoning district. The Planning Commission's decision is not supported by substantial evidence because it fails to explain why R-8 zoning districts adjacent to R-10 zoning districts are "incompatible". Moreover, the existing subdivision pattern in the area already establishes R-8 zoning districts adjacent to R-10 zoning districts. The fact that an adjacent development contains lots which are a minimum of 10,000 square feet and often larger is simply a factual statement without any legal or substantial evidentiary basis to deny the proposed zoning map amendment.

e. The Planning Commission improperly applied OCMC 16.12.050 to the zoning map amendment decision.

There is no dispute that OCMC 16.12.050 is a clear and objective standard which the City may not prohibit an Applicant from using. The approval criteria in OCMC 17.60.020.A does not allow the Planning Commission to apply OCMC 16.12.050 as an approval standard for a zoning map amendment nor does it allow the Planning Commission to deny the zoning map amendment simply because the Applicant chose to use the lot averaging provision in OCMC 16.12.050.

f. The Planning Commission erred by concluding that "density matters not just in terms of overall lot totals, but also on how varied lot sizes relate to each other along shared property lines."

The Planning Commission was concerned that the proposed subdivision contained 64 lots less than 8,000 square feet but the City Commission must find that this is lawful under OCMC 16.12.050. Moreover, the Planning Commission's assertion that "density matters" in terms of how lot sizes relate to each other is inconsistent with the Plan. The Plan defines "density" at page 136 as: "The number of families, individuals, dwelling units, households, or housing structures per unit of land." The Plan definition of density does not provide any basis for reviewing density based on how lot sizes relate to each other; it is simply a mathematical computation. To decide otherwise is inconsistent with the Plan definition of density and is a basis for reversal.

Even if the Planning Commission were correct, only a few of the lots in the proposed subdivision abut larger lots in the R-10 zoning district. The facts in Section 1 of this Appeal demonstrate that the majority of lots in the proposed subdivision abut lots that are about the same size, not larger. However, even if this were not the case, the Planning Commission decision fails to explain why smaller lots abutting larger lots results in Applications that can be denied under the applicable approval criteria.

Finally, the Planning Commission's decision is erroneous as a matter of law because any new R-10 zoning district, even one developed on this property, may use OCMC 16.12.050 to proposed lots twenty percent smaller than the 10,000 square foot minimum lot size, or lots 8,000 square feet in size. Thus, the Planning Commission's very premise for deciding this issue is flawed.

g. The City Commission can find that Plan Goal 11.1 is satisfied.

The Planning Commission found that the Applicant failed to satisfy Plan Goal 11.1, which provides:

“Serve the health, safety, education, welfare and recreational needs of all Oregon City residents through the planning and provision of adequate public facilities.”

First, the Planning Commission can find that this Plan Goal does not apply to a development Applications. Instead, it is a more general goal for the City to follow in adoption of implementing regulations. ORS 197.175(2)(b) provides that cities with acknowledged plans apply those plans to land use decisions. Nevertheless, not every Plan Goal and policy is an approval criterion for a land use decision.

The Planning Commission’s decision notes that the zoning map amendment and proposed subdivision result in only four more lots than if the property were developed in the existing R-10 zoning district. Further, the R-8 zoning district implements the Plan’s “Low Density Residential” map designation as does the R-10 zone. The metric for evaluation of this part of the Planning Commission’s decision is how four additional lots affect public facilities.

The City Commission must reverse the Planning Commission’s finding on Plan Goal 11.1 for the following reasons.

A. The Planning Commission’s decision acknowledges that the City’s existing transportation system “could accommodate the proposed traffic” and “that the congestion of the proposed land division would comply with the acceptable levels in the Oregon City Municipal Code”.

Because the Planning Commission’s decision acknowledges that applicable standards regarding transportation are satisfied, the City Commission must reverse the Planning Commission. However, the Planning Commission denied the Applications because it found “additional trips resulting from the additional dwelling units on the additional lots would increase traffic congestion.” The Planning Commission’s decision is not a valid basis for denial for several reasons.

First, only four additional single family dwellings result from the zoning map amendment and the Planning Commission’s decision fails to explain how the few additional vehicle trips during peak hours would “increase traffic congestion”. Second, the Planning Commission’s decision acknowledges that the Applications meets the approval standards; therefore, a generalized finding that the additional single family lots would “increase traffic congestion” is not a basis for denial because the decision fails to demonstrate that the Applications did not meet applicable approval criteria.

Additionally, the Planning Commission’s finding that “the roadways are already more congested than the Planning Commission would like and the Commission does not support any additional burden to the traffic system or other public facilities allowed under the R-8 single-family dwelling district” is not a basis for denial of the Applications. Whether the Planning Commission likes additional congestion or not is irrelevant to the approval standards. The only standard that matters is whether the Applications meets the applicable approval criteria in OCMC 17.68.020.A-.D.

Moreover, the City Commission can find that the Planning Commission failed to find that the more specific criteria regarding transportation impacts found in OCMC 17.68.020.C (“The land uses authorized by the proposal are consistent with the existing or planned function, capacity and level of service of the transportation system serving the proposed zoning districts.”) are not met.

This Planning Commission finding is not supported by, and is contrary to, substantial evidence in the whole record because both the City’s traffic engineer and the Applicant’s traffic engineer found that the with the additional four single-family dwelling units, the affected intersections would be within required performance standards and the single intersection that would fail would do so regardless of whether this zoning map amendment were approved or not.

Finally, the Planning Commission found with respect to transportation that “Given the existing levels of congestion, the transportation system is not adequate to justify the zone change.” The City Commission must reverse the Planning Commission because this finding fails to relate to applicable approval criteria, is not based on substantial evidence and is contrary to substantial evidence and is contrary to substantial evidence.

B. The Planning Commission’s findings on school capacity are not supported by substantial evidence and are contrary to applicable law.

The Planning Commission found that the schools “Lack of capacity, as evidenced by their intent to seek a bond to fund school improvements in the future.” The City Commission must reverse this Planning Commission finding for the following reasons.

First, the City may not use lack of school capacity as a basis for denial of a residential development application such as this because ORS 195.110(13)(a)-(c) prohibits school capacity as a basis for denial of a residential development application unless the issue is raised by the school district. There can be no dispute that the school district did not raise the issue.

Second, the only substantial evidence in the record regarding school capacity is from the Applicant because the school district did not comment on the Applications. The City Council can find that had the school district been concerned about school capacity, it could have and likely would have commented but its failure to do so indicates that, as the Applicant states, school capacity is not a concern for the school district.

Finally, the Planning Commission’s finding that requesting a bond approval by the voters is indication of lack of capacity is not based on substantial evidence. As the City Commission knows, bonds serve a number of purposes. It may be that the school bond in addition to providing additional capacity also improves existing facilities without regard to capacity. However, because the Planning Commission’s decision is not based on substantial evidence in the whole record, there is no way to know.

For these reasons, the Planning Commission’s decision on school capacity must be reversed.

C. The Planning Commission erred by finding that the Applications failed to provide sufficient details regarding its sanitary sewer pump station.

The Planning Commission's sole reason for finding that the Applications did not demonstrate adequate sanitary sewer capacity was "insufficient details" about a sanitary sewer pump station. In fact, the only substantial evidence in the record is the Application's Exhibit F from an Oregon registered professional engineer which states that the subdivision will be served by adequate facilities that are available, or can be made available. There is no evidence demonstrating that a pump station must be used. Nevertheless, even if this were the case, the details regarding the pump station are ministerial details that can be addressed at the final plat and public improvement construction stage.

3. Conclusion.

The Planning Commission's decision that the Applications failed to satisfy OCMC 17.68.020.A must be reversed because it fails to give effect to Plan Goals 2.4 and 10.1 by ignoring other Plan Goals and Policies, does not rely on substantial evidence, is contrary to substantial evidence in the whole record, and is legally erroneous and contains flawed reasoning. For these reasons, the City Commission must reverse the Planning Commission and find that the Applications satisfies OCMC 17.68.020.A because it satisfies Plan Goals.

VI. CONCLUSION.

The Applicant respects the Planning Commission and the citizens of Oregon City. In this case, though, the Planning Commission denied an application in contravention of applicable law and without substantial evidence based on the majority opinion that smaller lots should not be next to larger lots notwithstanding that, in this case, that view is neither supported by the evidence or the law. For all of the reasons in this appeal, the Appellants respectfully request that the City Commission grant the appeal, reverse the Planning Commission and approve both the zoning map amendment and subdivision Applications with the conditions of approval recommended by the Planning Department to the Planning Commission.

EXHIBITS

- Exhibit 1** Area zoning map.
- Exhibit 2** Proposed tentative subdivision map.
- Exhibit 3** OCMC 16.12.050, “Calculations of Lot Area”.
- Exhibit 4** R-8 and R-10 zoning districts comparison.
- Exhibit 5** R-8 and R-10 front yard and garage setbacks.
- Exhibit 6** Surrounding subdivisions.
- Exhibit 7** Seven abutting areas.
- Exhibit 8** Connectivity.
- Exhibit 9** ORS 195.110(13)(a)-(c).

City of Oregon City

GEOGRAPHIC INFORMATION SYSTEM

Zoning Map

Ordinance No. 08-1014

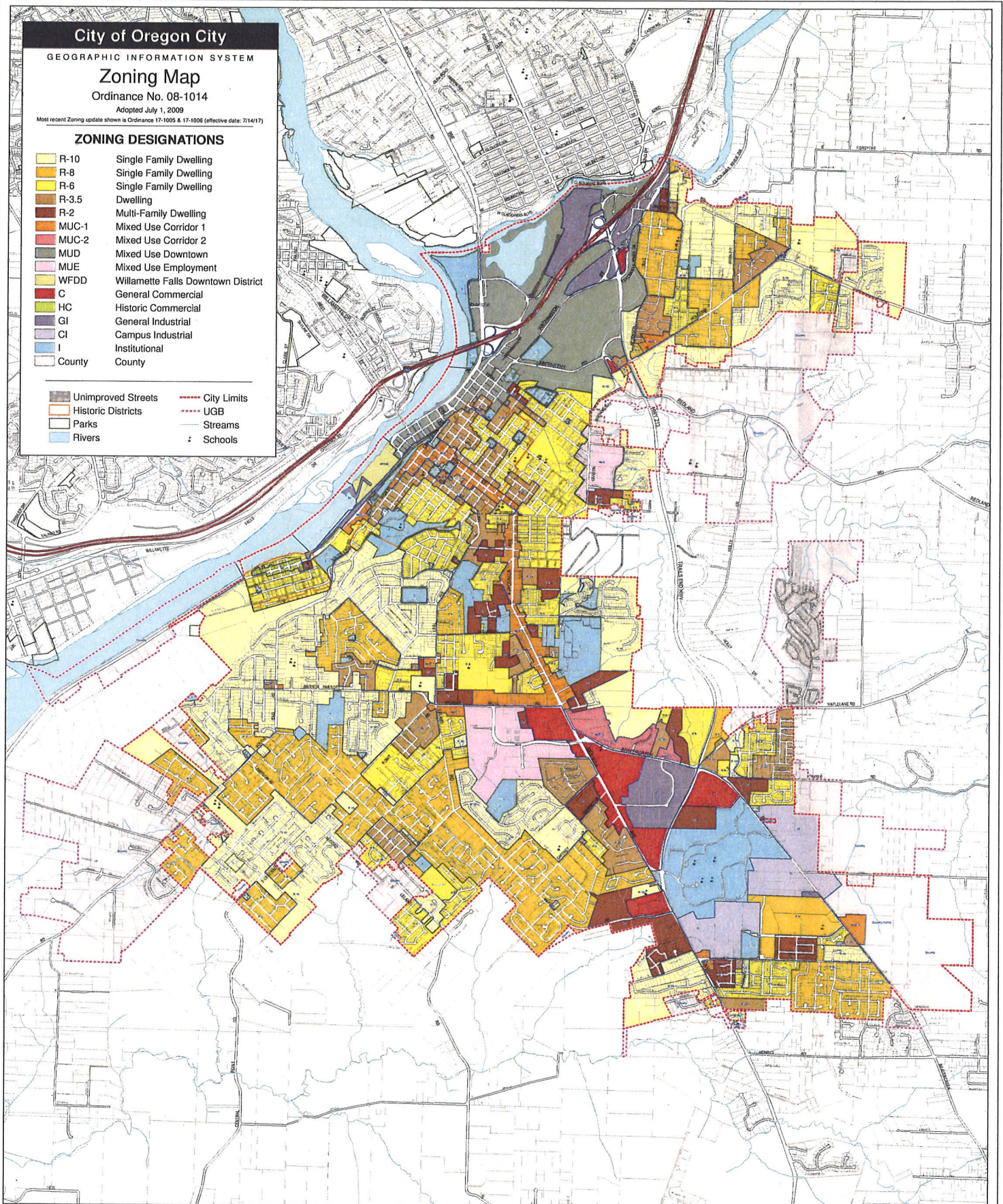
Adopted July 1, 2009

Most recent Zoning update shown is Ordinance 17-1005 & 17-1006 (effective date: 7/14/17)

ZONING DESIGNATIONS

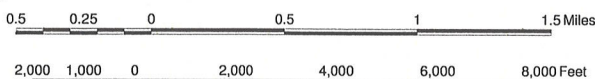
R-10	Single Family Dwelling
R-8	Single Family Dwelling
R-6	Single Family Dwelling
R-3.5	Dwelling
R-2	Multi-Family Dwelling
MUC-1	Mixed Use Corridor 1
MUC-2	Mixed Use Corridor 2
MUD	Mixed Use Downtown
MUE	Mixed Use Employment
WFDD	Willamette Falls Downtown District
C	General Commercial
HC	Historic Commercial
GI	General Industrial
CI	Campus Industrial
I	Institutional
County	County

Unimproved Streets	City Limits
Historic Districts	UGB
Parks	Streams
Rivers	Schools



The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, or surveying purposes. Notification of any errors is appreciated.

Please recycle with colored office grade paper.

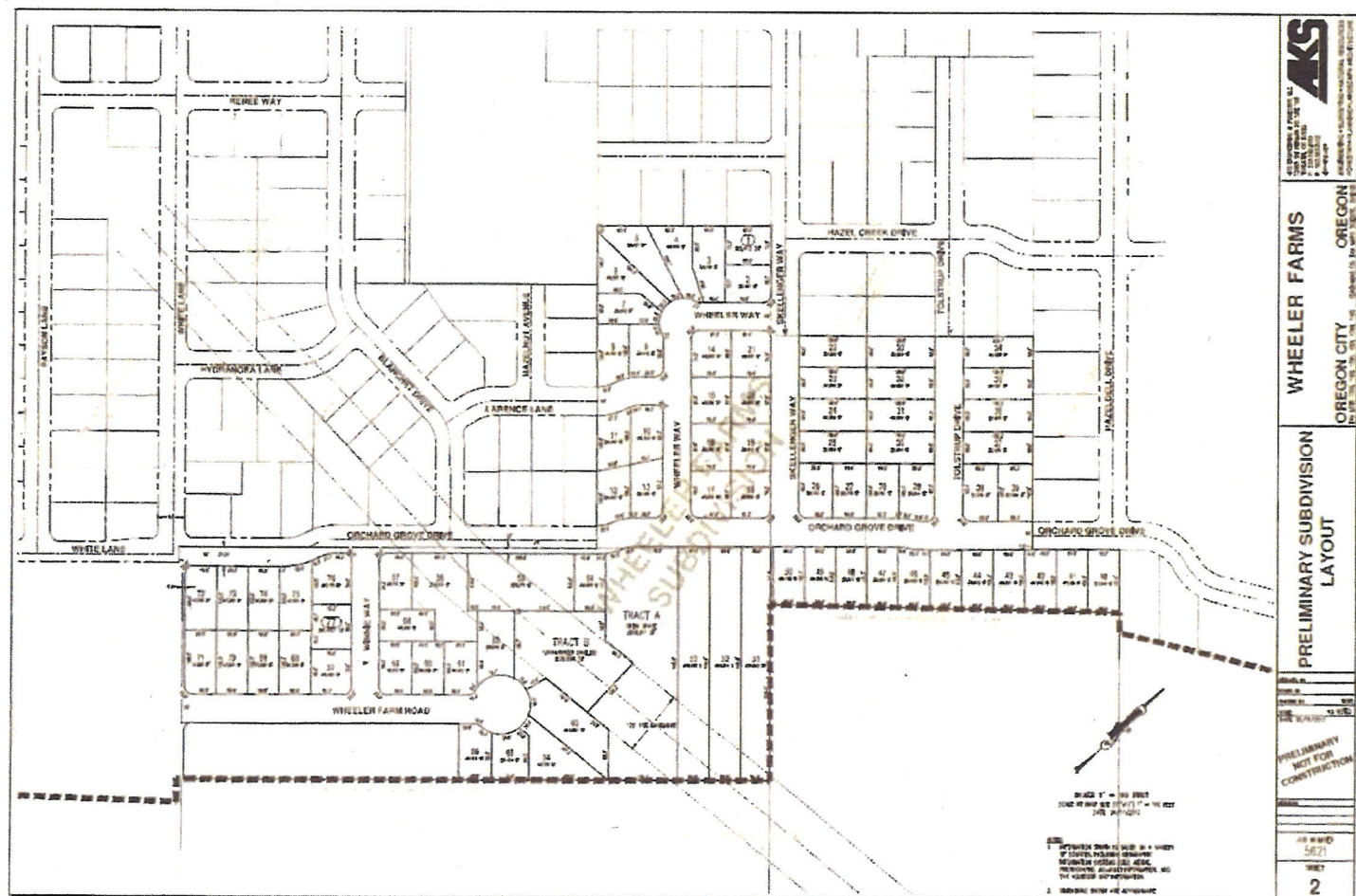


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Printed September 13, 2017
Plot name: Zoning - 36x48P - Job Address: 20170912.pdf
Map name: Zoning Map - 36x48P.mxd



16.12.050 - Calculations of lot area.

A subdivision in the R-10, R-8, R-6, R-5, or R-3.5 dwelling district may include lots that are up to twenty percent less than the required minimum lot area of the applicable zoning designation provided the entire subdivision on average meets the minimum site area requirement of the underlying zone. The average lot area is determined by calculating the total site area devoted to dwelling units and dividing that figure by the proposed number of dwelling lots.

Accessory dwelling units are not included in this determination nor are tracts created for non-dwelling unit purposes such as open space, stormwater tracts, or access ways.

A lot that was created pursuant to this section may not be further divided unless the average lot size requirements are still met for the entire subdivision.

When a lot abuts a public alley, an area equal to the length of the alley frontage along the lot times the width of the alley right-of-way measured from the alley centerline may be added to the area of the abutting lot in order to satisfy the lot area requirement for the abutting lot. It may also be used in calculating the average lot area.

Chapter 17.08 - R-10 SINGLE-FAMILY DWELLING DISTRICT^(a)

Sections:

17.08.010 - Designated.

This residential district is designed for areas of single-family homes on lot sizes of approximately ten thousand square feet.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009)

17.08.020 - Permitted uses.

Permitted uses in the R-10 district are:

- A. Single-family detached residential units;
- B. Parks, playgrounds, playfields and community or neighborhood centers;
- C. Home occupations;
- D. Farms, commercial or truck gardening and horticultural nurseries on a lot not less than twenty thousand square feet in area (retail sales of materials grown on-site is permitted);
- E. Temporary real estate offices in model homes located on and limited to sales of real estate on a single piece of platted property upon which new residential buildings are being constructed;
- F. Accessory uses, buildings and dwellings;
- G. Family day care provider, subject to the provisions of Section 17.54.050;
- H. Residential home per ORS 443.400;
- I. Cottage housing;
- J. Transportation facilities.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 13-1003, § 1(Exh. 1), 7-17-2013)

17.08.030 - Conditional uses.

The following conditional uses are permitted in this district when authorized by and in accordance with the standards contained in Chapter 17.56:

- A. Golf courses, except miniature golf courses, driving ranges or similar commercial enterprises;
- B. Bed and breakfast inns/boarding houses;
- C. Cemeteries, crematories, mausoleums and columbariums;
- D. Child care centers and nursery schools;
- E. Emergency service facilities (police and fire), excluding correctional facilities;
- F. Residential care facility;
- G. Private and/or public educational or training facilities;
- H. Public utilities, including sub-stations (such as buildings, plants and other structures);
- I. Religious institutions;
- J. Assisted living facilities; nursing homes and group homes for over fifteen patients.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009)

17.08.035 - Prohibited uses.

Prohibited uses in the R-10 district are:

- A. Any use not expressly listed in Section 17.08.020 or 17.08.030.
- B. Marijuana businesses.

(Ord. No. 16-1008, § 1(Exh. A), 10-19-2016, ballot 11-8-2016)

17.08.040 - Dimensional standards.

Dimensional standards in the R-10 district are:

- A. Minimum lot areas, ten thousand square feet;
- B. Minimum lot width, sixty-five feet;
- C. Minimum lot depth, eighty feet;
- D. Maximum building height, two and one-half stories, not to exceed thirty-five feet;
- E. Minimum required setbacks:
 - 1. Front yard, twenty feet minimum setback,
 - 2. Front porch, fifteen feet minimum setback,
 - 3.

Attached and detached garage, twenty feet minimum setback from the public right-of-way where access is taken, except for alleys. Detached garages on an alley shall be setback a minimum of five feet in residential areas.

4. Interior side yard, ten feet minimum setback for at least one side yard; eight feet minimum setback for the other side yard,
 5. Corner side yard, fifteen feet minimum setback,
 6. Rear yard, twenty feet minimum setback,
 7. Rear porch, fifteen feet minimum setback.
- F. Garage standards: See Chapter 17.20—Residential Design and Landscaping Standards.
- G. Maximum lot coverage: The footprint of all structures two hundred square feet or greater shall cover a maximum of forty percent of the lot area.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009)

Chapter 17.10 - R-8 SINGLE-FAMILY DWELLING DISTRICT⁽⁵⁾

17.10.010 - Designated.

This residential district is designed for areas of single-family homes on lot sizes of approximately eight thousand square feet.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009)

17.10.020 - Permitted uses.

Permitted uses in the R-8 district are:

- A. Single-family detached residential units;
- B. Parks, playgrounds, playfields and community or neighborhood centers;
- C. Home occupations;
- D. Farms, commercial or truck gardening and horticultural nurseries on a lot not less than twenty thousand square feet in area (retail sales of materials grown on-site is permitted);
- E. Temporary real estate offices in model homes located on and limited to sales of real estate on a single piece of platted property upon which new residential buildings are being constructed;

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- F. Accessory uses, buildings and dwellings;
- G. Family day care provider, subject to the provisions of Section 17.54.050;
- H. Residential home per ORS 443.400;
- I. Cottage housing;
- J. Transportation facilities.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 13-1003, § 1(Exh. 1), 7-17-2013)

17.10.030 - Conditional uses.

The following conditional uses are permitted in this district when authorized by and in accordance with the standards contained in Chapter 17.56:

- A. Golf courses, except miniature golf courses, driving ranges or similar commercial enterprises;
- B. Bed and breakfast inns/boarding houses;
- C. Cemeteries, crematories, mausoleums and columbariums;
- D. Child care centers and nursery schools;
- E. Emergency service facilities (police and fire), excluding correctional facilities;
- F. Residential care facility;
- G. Private and/or public educational or training facilities;
- H. Public utilities, including sub-stations (such as buildings, plants and other structures);
- I. Religious institutions.
- J. Assisted living facilities; nursing homes and group homes for over fifteen patients.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009)

17.10.035 - Prohibited uses.

Prohibited uses in the R-8 district are:

- A. Any use not expressly listed in Section 17.10.020 or 17.10.030.
- B. Marijuana businesses.

(Ord. No. 16-1008, § 1(Exh. A), 10-19-2016, ballot 11-8-2016)

17.10.040 - Dimensional standards.

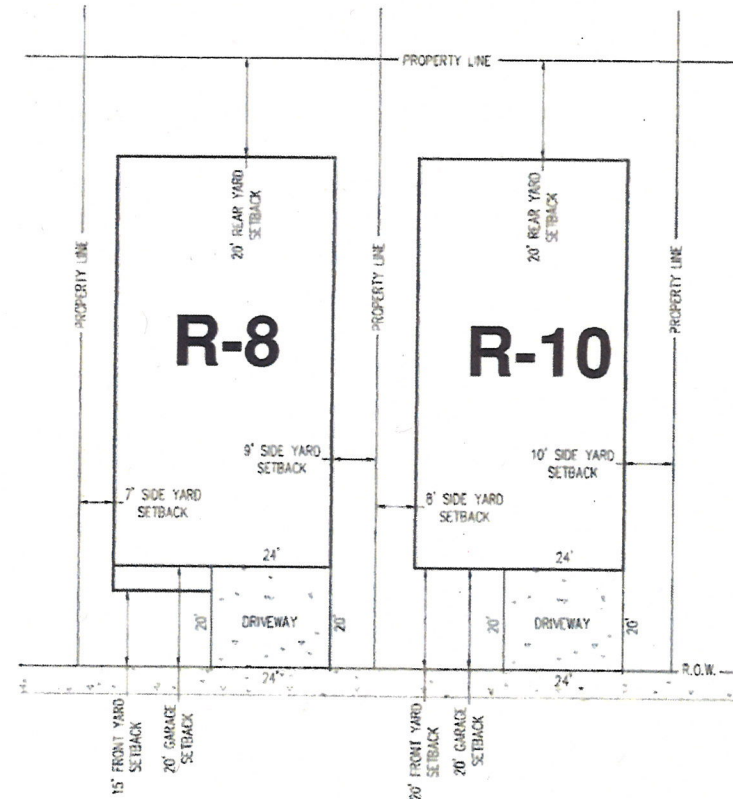
Dimensional Standards in the R-8 District are:

- A. Minimum lot areas, eight thousand square feet;
- B. Minimum lot width, sixty feet;
- C. Minimum lot depth, seventy-five feet;
- D. Maximum building height, two and one-half stories, not to exceed thirty-five feet;
- E. Minimum Required Setbacks:
 - 1. Front yard fifteen feet minimum setback;
 - 2. Front porch, ten feet minimum setback;
 - 3. Attached and detached garage, twenty feet minimum setback from the public right-of-way where access is taken, except for alleys. Detached garages on an alley shall be setback a minimum of five feet in residential areas;
 - 4. Interior side yard, nine feet minimum setback for at least one side yard, seven feet minimum setback for the other side yard;
 - 5. Corner side yard, fifteen feet minimum setback;
 - 6. Rear yard, twenty feet minimum setback;
 - 7. Rear porch, fifteen feet minimum setback.
- F. Garage Standards: See Chapter 17.20—Residential Design and Landscaping Standards.
- G. Maximum Lot Coverage: The footprint of all structures two hundred square feet or greater shall cover a maximum of forty percent of the lot area.

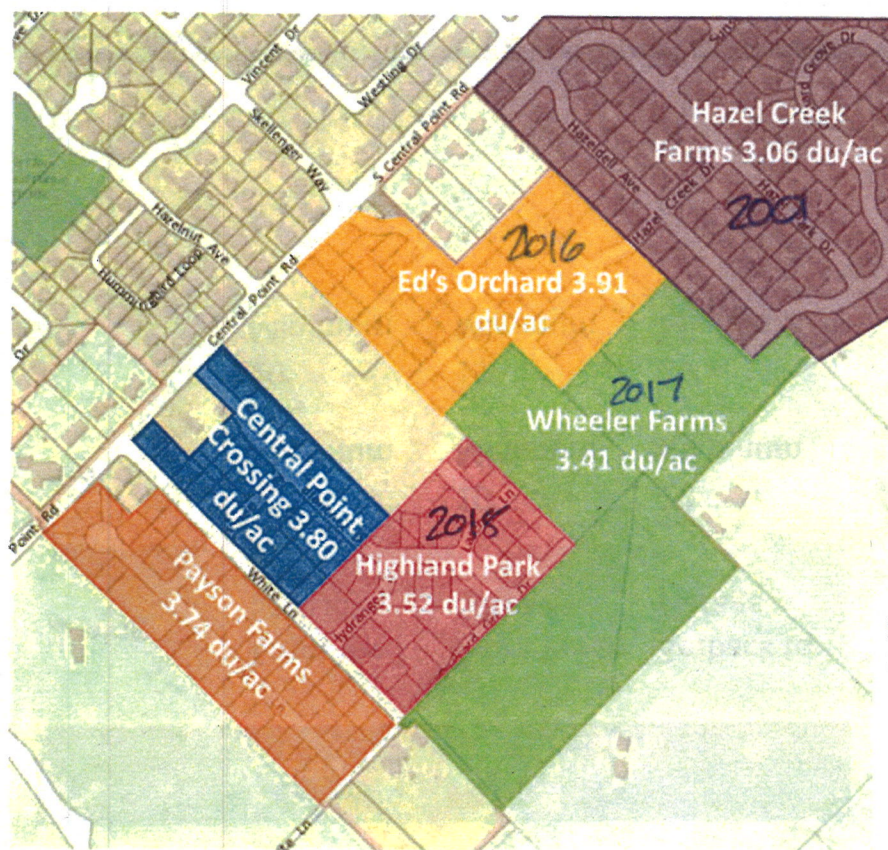
(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 16-1008, § 1(Exh. A), 10-19-2016, ballot 11-8-2016)

Front Yard / Garage Setbacks

Minimum Required Setbacks			
Zoning	Front Yard Setback	Front Porch Setback	Setback to Garage
R-8	15' Minimum	10' Minimum	20' Minimum
R-10	20' Minimum	15' Minimum	20' Minimum



Setbacks



	Subdivision	Gross Density du/ac	Zoning	No. of Lots	Average Lot Size Area (SF)	Minimum Lot Size Area (SF)	Maximum Lot Size Area (SF)
1	Ed's Orchard	3.91	R-8 R-10	35 6	8,076 10,166	6,822 9,114	13,180 10,813
2	Central Point Crossing	3.80	R-8	27	8,210	7,072	12,334
3	Payson Farms No. 1 and No. 2	3.74	R-8 PUD	40	7,071	6,700	8,798
4	Highland Park	3.52	R-8	32	8,580	6,401	20,925
5	Wheeler Farms	3.41	R-8	77	8,279	6,407	26,814
6	Hazel Creek Farms	3.06	R-10	93	10,233	10,000	13,126

City of Oregon City Municipal Code

16.12.050 - Calculations of lot area.

A subdivision in the R-10, R-8, R-6, R-5, or R-3.5 dwelling district may include lots that are up to twenty percent less than the required minimum lot area of the applicable zoning designation provided the entire subdivision on average meets the minimum site area requirement of the underlying zone. The average lot area is determined by calculating the total site area devoted to dwelling units and dividing that figure by the proposed number of dwelling lots.

Surrounding Subdivision Zoning, Densities & Lot Sizes



Project Highlights

- Voluntary
±1.35-acre
(58,911 square
feet) open space
area (Tract "A")
- Neighborhood
connectivity –
disperses traffic



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Project Highlights

- Voluntary
±1.35-acre
(58,911 square
feet) open space
area (Tract "A")
- Neighborhood
connectivity –
disperses traffic



2015 ORS 195.110¹

School facility plan for large school districts

- (1)** As used in this section, "large school district" means a school district that has an enrollment of over 2,500 students based on certified enrollment numbers submitted to the Department of Education during the first quarter of each new school year.
- (2)** A city or county containing a large school district shall:

 - (a)** Include as an element of its comprehensive plan a school facility plan prepared by the district in consultation with the affected city or county.
 - (b)** Initiate planning activities with a school district to accomplish planning as required under ORS 195.020 (Special district planning responsibilities).
- (3)** The provisions of subsection (2)(a) of this section do not apply to a city or a county that contains less than 10 percent of the total population of the large school district.
- (4)** The large school district shall select a representative to meet and confer with a representative of the city or county, as described in subsection (2)(b) of this section, to accomplish the planning required by ORS 195.020 (Special district planning responsibilities) and shall notify the city or county of the selected representative. The city or county shall provide the facilities and set the time for the planning activities. The representatives shall meet at least twice each year, unless all representatives agree in writing to another schedule, and make a written summary of issues discussed and proposed actions.
- (5)** (a) The school facility plan must cover a period of at least 10 years and must include, but need not be limited to, the following elements:

 - (A)** Population projections by school age group.
 - (B)** Identification by the city or county and by the large school district of desirable school sites.
 - (C)** Descriptions of physical improvements needed in existing schools to meet the minimum standards of the large school district.
 - (D)** Financial plans to meet school facility needs, including an analysis of available tools to ensure facility needs are met.
 - (E)** An analysis of:

 - (i)** The alternatives to new school construction and major renovation; **and**

Measures to increase the efficient use of school sites including, but not limited to,

(ii) multiple-story buildings and multipurpose use of sites.

(F) Ten-year capital improvement plans.

(G) Site acquisition schedules and programs.

(b) Based on the elements described in paragraph (a) of this subsection and applicable laws and rules, the school facility plan must also include an analysis of the land required for the 10-year period covered by the plan that is suitable, as a permitted or conditional use, for school facilities inside the urban growth boundary.

(6) If a large school district determines that there is an inadequate supply of suitable land for school facilities for the 10-year period covered by the school facility plan, the city or county, or both, and the large school district shall cooperate in identifying land for school facilities and take necessary actions, including, but not limited to, adopting appropriate zoning, aggregating existing lots or parcels in separate ownership, adding one or more sites designated for school facilities to an urban growth boundary, or petitioning a metropolitan service district to add one or more sites designated for school facilities to an urban growth boundary pursuant to applicable law.

(7) The school facility plan shall provide for the integration of existing city or county land dedication requirements with the needs of the large school district.

(8) The large school district shall:

(a) Identify in the school facility plan school facility needs based on population growth projections and land use designations contained in the city or county comprehensive plan; and

(b) Update the school facility plan during periodic review or more frequently by mutual agreement between the large school district and the affected city or county.

(9) (a) In the school facility plan, the district school board of a large school district may adopt objective criteria to be used by an affected city or county to determine whether adequate capacity exists to accommodate projected development. Before the adoption of the criteria, the large school district shall confer with the affected cities and counties and agree, to the extent possible, on the appropriate criteria. After a large school district formally adopts criteria for the capacity of school facilities, an affected city or county shall accept those criteria as its own for purposes of evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

(b) A city or county shall provide notice to an affected large school district when considering a plan or land use regulation amendment that significantly impacts school capacity. If the large school district requests, the city or county shall implement a coordinated process with the district to identify potential school sites and facilities to address the projected impacts.

- (10) A school district that is not a large school district may adopt a school facility plan as described in this section in consultation with an affected city or county.
- (11) The capacity of a school facility is not the basis for a development moratorium under ORS 197.505 (Definitions for ORS 197.505 to 197.540) to 197.540 (Review by Land Use Board of Appeals).
- (12) This section does not confer any power to a school district to declare a building moratorium.
- (13) A city or county may deny an application for residential development based on a lack of school capacity if:
- (a) The issue is raised by the school district;
 - (b) The lack of school capacity is based on a school facility plan formally adopted under this section; **and**
 - (c) The city or county has considered options to address school capacity. [1993 c.550 §2; 1995 c.508 §1; 2001 c.876 §1; 2007 c.579 §1]

¹ Legislative Counsel Committee, *CHAPTER 195—Local Government Planning Coordination*, https://www.oregonlegislature.gov/bills_laws/ors/ors195.html (2015) (last accessed Jul. 16, 2016).

OregonLaws.org, a WebLaws.org site