



MEMORANDUM

To: The Honorable Mayor and City Commission
From: Carrie Richter, Deputy City Attorney
Laura Terway, AICP, Community Development Director
Christina Robertson-Gardiner, AICP, Senior Planner
Re: AP 17-05: Appeal of the Planning Commission's October 9, 2017 denial of TP 17-03 and ZC 17-02; Zone Change from "R-10" Single-Family Dwelling District to "R-8" Single-Family Dwelling District and a Subdivision of 77 lots.
Date: October 25, 2017

INTRODUCTION

On October 9, 2017, the Planning Commission denied files TP 17-03 and ZC 17-02 for a Zone Change from "R-10" Single-Family Dwelling District to "R-8" Single-Family Dwelling District and a subdivision of 77 lots. An Appeal of the decision was subsequently submitted by the applicant. The City Commission's review of the Planning Commission decision is limited to the issues raised in the notice of appeal based on evidence that is already in the record. Only those individuals who participated in the Planning Commission review have standing to participate before the City Commission and no new evidence is allowed.

The City Commission is to review the evidence in the record, including the Planning Commission's findings, Appellant's grounds for appeal, public testimony, the staff report and memos to determine if the proposal meets the requirements for Zoning Changes and Amendments in Chapter 17.68.020, found in OCMC 17.68.020, and Minimum Improvements and Design Standards for Land Divisions in Chapter 16.12.050; Subdivisions of the Oregon City Municipal Code and Comprehensive Plan Goals 2.4, Policy 2.4.2, 2.4.3, 2.4.5, Goal 10.1, 10.1.3, 10.4 and Goal 11.1.

Commission Options

- If the City Commission agrees with the Planning Commission's findings and decision, staff recommends that the City Commission deny the appeal and provide staff any additional findings, as needed, to supplement the record and final order.
- If the City Commission determines that the Planning Commission erred in its deliberations and findings, staff recommends 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.

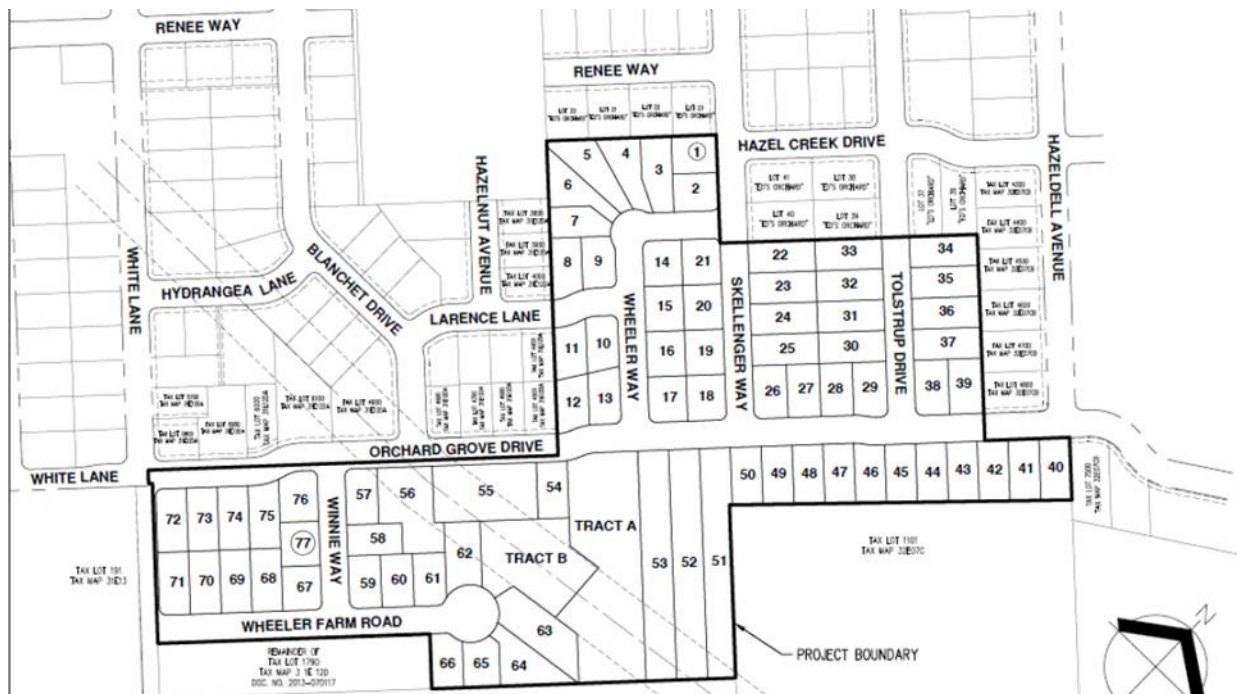
After the City Commission makes a tentative decision, staff will return at the next available City Commission meeting with either additional findings in support of denial or a draft Ordinance and final order for approval.

BACKGROUND

The applicants / appellants have applied to the City to change the zoning on approximately 22.56 acres of land, comprising six tax lots. The land would go from the existing R-10 zoning designation to an R-8 zoning designation. In addition, the applicants seek a 77-lot subdivision to accommodate single-family detached residential homes. As explained in the staff report, the key components of this proposal include:

- 1) 77 lots of various sizes that meet the dimensional and density standards of the R-8 zone;
- 2) A 1.35-acre, voluntarily provided, open space (Tract A);
- 3) An integrated on-site stormwater management system including street side vegetated filtration swales and flow control (Tract B); and
- 4) Transportation connections between Orchard Grove Drive, Larence Lane, Skellenger Way, and Tolstrup Drive through the project site.

Figure 1: Proposed Site Plan



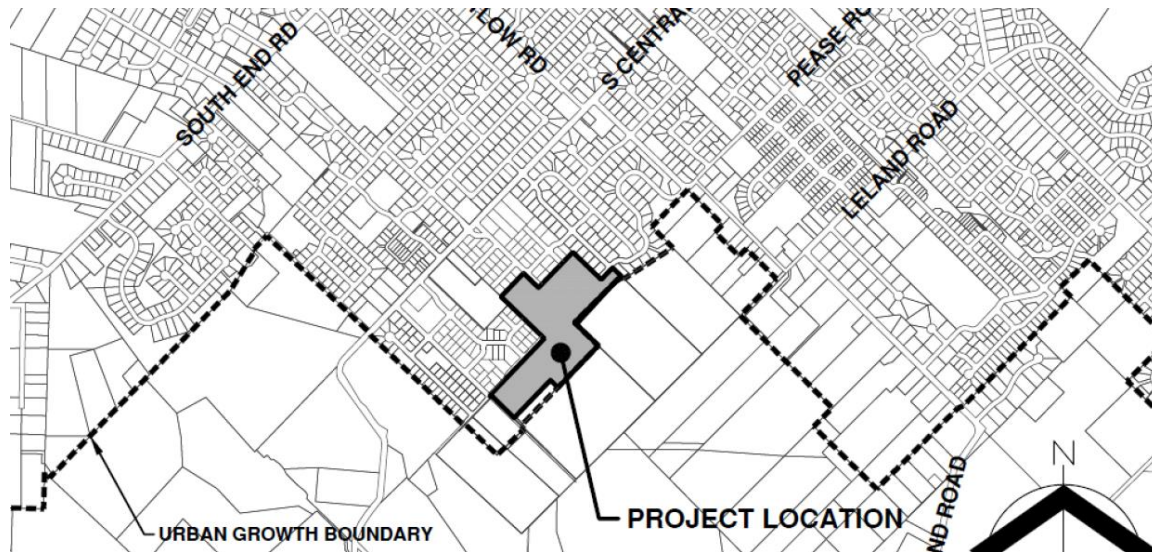
The project is located near Central Point Road and is surrounded by a variety of subdivisions. The south side of the property is coterminous with the urban growth boundary. The proposed subdivision includes lots of various sizes as allowed by OCMC 16.12.050.¹ The largest lot is 26,814 sf and the smallest are 6,407 sf. The proposed lot pattern is shown the subdivision layout in the exhibits.

¹ OCMC 16.12.050 provides as follows:

“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. . . .”

Figure 2: Project Location



The Staff Report presented to the Planning Commission recommended approval of the zone change and subdivision requests. The recommendation was based on a finding that development of the surrounding property has already occurred, new streets and utility infrastructure have been extended to the property boundaries as necessary to facilitate further development at the increased densities proposed. Staff's recommendation was based on a determination that the R-8 zoning designation implemented the Low Density Residential comprehensive plan designation and would represent sustainable development in a more compact form capitalizing on public infrastructure investment and also provide for the development of a variety of housing types and lot sizes. See also pages 10-17 of the Staff Report (Exhibit 5) and the October 2 Staff Memo (Exhibit 7 of Exhibit 7)

After two public hearings considering this request, the Planning Commission voted 4-2 to deny the applications. The Planning Commission cited concerns about neighborhood compatibility and utility/infrastructure (transportation) adequacy. Understanding that the zone change would add four additional lots beyond what could be developed under the existing R-10 zone,² the Planning Commission found:

- the proposed zone change could result in a lot layout was not cohesive and compatible with the existing surrounding developments, particularly the Hazel Creek Farms development to the west;
- the existing level of traffic congestion within the City, most notably the intersection of Warner-Milne Rd, Warner-Parrot Ave and Leland Road/Linn Ave, was unacceptable and additional density, no matter how modest, would contribute to this concern;
- a lack of capacity within the school system; and
- concern regarding a sewer pump station to accommodate the additional development.

NOTICE OF APPEAL HEARING:

As stated in OCMC 17.50.190(E)

Notice of the Appeal Hearing. The planning division shall issue notice of the appeal hearing to all parties who participated either orally or in writing before the close of the public record in accordance with Section 17.50.090B. Notice of the appeal hearing shall contain the following information:

1. The file number and date of the decision being appealed;

² The applicant testified that an R-8 zoned parcel could contain 11 lots in addition to the 77 lots proposed and that the proposed 77-lot subdivision included 4 more lots than could be permitted within an R-10 subdivision.

2. *The time, date and location of the public hearing;*
3. *The name of the applicant, owner and appellant (if different);*
4. *The street address or other easily understood location of the subject property;*
5. *A description of the permit requested and the applicant's development proposal;*
6. *A brief summary of the decision being appealed and the grounds for appeal listed in the notice of appeal;*
7. *A statement that the appeal hearing is confined to the issues raised in the notice of appeal;*
8. *A general explanation of the requirements for participation and the city's hearing procedures.*

This appeal hearing has been noticed in accordance with this requirement.

STANDING TO APPEAL:

As stated in OCMC 17.50.190.D(2),

For Type III and IV decisions, only those persons or recognized neighborhood associations who have participated either orally or in writing have standing to appeal the decision of the planning commission or historic review board, as applicable. Grounds for appeal are limited to those issues raised either orally or in writing before the close of the public record. No new evidence shall be allowed

The appellant is the applicant and through their written application has standing to appeal the decision of the Planning Commission

Chapter 17.68: ZONE CHANGES AND AMENDMENT

17.68.020 Criteria

The criteria for a zone change are set forth as follows:

A. The proposal shall be consistent with the goals and policies of the comprehensive plan.

APPEAL ISSUE #1 - LOT SIZES AND NEIGHBORHOOD COMPATIBILITY

Planning Commission Finding: There are a number of applicable Comprehensive Plan goal and policies that are relevant. In addition to the goals and policies discussed in the staff report, the Planning Commission found that the following goals and policies from the Comprehensive Plan are relevant to this application:

Comprehensive Plan Goal 2: Land Use

Goal 2.4: Neighborhood Livability. 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.

The Planning Commission found as follows:

“The Planning Commission interprets this plan policy to require compatibility and cohesion between neighborhoods as necessary to protect existing neighborhood livability. The Planning Commission finds that proposed “R-8” Single-Family Dwelling District zoning is not compatible with the existing adjacent developments which are within the “R-10” Single-Family Dwelling District. The adjacent developments contain lots which are a minimum of 10,000 square feet and often larger. The zone change is not compatible given that Chapter 16.12.050 of the Oregon City Municipal Code allows land divisions with lots up to 20% less than the minimum lot size, provided the subdivision as a whole averages the minimum lot size of the zoning district, without a limitation to the number of lots which may be below the minimum lot size or limitations of where those lots may be located in proximity to the larger neighboring properties.

In this case, the zone change could allow a significant number of lots as small as 6,400 square feet, and some of those may be located next to or near the neighboring properties with large lots. Density matters not just in terms of overall lot totals but also in how varied lot sizes relate to each other along shared property lines. The City's minimum lot size and averaging requirements can result in a significant number of lots that are less than 8,000 square feet.

In addition, the orientation of this development allows for lots of less than 8,000 square feet to abut existing lots that are over 10,000 square feet which is incompatible with the existing larger lot subdivisions, particularly to the east, where the lots are larger than 10,000 square feet. One Planning Commissioner noted that Skellenger Way appeared to provide the appropriate separation between greater and reduced densities."

The Planning Commission believed that the lot layout, with lot sizes as low as 6,400 square feet, was relevant to Plan Goal 2.4 because the subdivision regulations permit such lot averaging and would adversely affect neighborhood livability when located adjacent to an existing R-10 subdivision where all the lots are 10,000 square feet.

Public Comment: Many neighbors providing comment before the Planning Commission felt that community livability is compromised when 65 of the 77 lots do not meet the 8,000 sf standard making this a *de facto* R-6 subdivision. The neighbors argued that nothing in the Comprehensive Plan required higher densities and that the proposal would not increase the supply of affordable housing. The neighbors believe that this plan policy requires lot sizes that are compatible or cohesive with adjoining neighborhoods.

Appellants' Arguments on Appeal: The Appellants argue that the Planning Commission erred in a number of respects. First, they argue that most of the proposed lots line up with the adjacent lots, suggesting that as a factual matter, the proposed lot dimensions are a good match for each other. Beyond the factual issue, the appellants also argue that Plan Goal 2.4 is only a policy statement "regarding the importance of protecting and maintaining neighborhood as a basis of community life in Oregon City" and, if applied to require consistency and compatibility with lot sizes, would fail to give meaning to other plan goals and policies, most notably Plan Goal 10.1 requiring that the City plan and develop "a variety of housing types and lot sizes." The appellants also argue that the decision "does not explain how marginally smaller lots would be contrary to existing neighborhood livability." Finally, the appellants take issue with the Planning Commission's consideration of the lot layout in the first instance because the subdivision proposal fully complies with the lot size and averaging requirements contained within the Oregon City Municipal Code (OCMC).

Staff Response on Appeal:

The Council should first determine whether Plan Goal 2.4 applies in reviewing a zone change request when both the existing and proposed zones implement the Low Density Residential Plan designation. The City's past practice has been to view the inclusion of three zones (R6, R8 and R10) as implementing the Low Density plan designation as an inherent determination that these zones are compatible with each other, so long as utility facilities and serves are sized to accommodate the additional density. Further, R-10 is an initial zoning determination established upon annexation and it would be reasonable to assume that requests for greater density would follow.

If the City Commission finds that Plan Goal 2.4 is applicable, the Commission should next determine the level of compatibility the City will require between zones of the same comprehensive plan designation. Plan Goal 10.1 requires the provision of "Diverse Housing Opportunities" including the "development...of a variety of housing types and lot sizes." If lot size compatibility is going to be required, it may be difficult to accomplish lot diversity if lots sizes must be cohesive. In other words, the more uniformity that is required in order to make something compatible, the result is less diversity.

The OCMC further encourages the lot diversity policy by allowing up to a 20% reduction in lot sizes and lot averaging which, in this case, resulted in a variety of lot sizes – yet it is this extreme variety that allowed the significant number of lots under 8,000 square feet, in this case. The Appellant argues that the City cannot consider this proposed lot layout because the reduction in lot size and lot averaging is allowed by right under the Code. They are correct on that point. However, if lot compatibility is a component of an applicable plan policy regarding neighborhood livability, as the Planning Commission found, it would be appropriate to consider a proposed “worst case scenario” of density as necessary to determine if the policy is met.

Finally, the City Commission needs to consider whether, and to what extent, there was insufficient evidence that the impacts that follow from smaller adjacent lots makes them incompatible. The desire for lot compatibility should not have the effect of being exclusionary but must instead achieve some reasoned planning objective such as transportation or facility adequacy.

Although there was testimony presented that there is a perceptible difference between lots ranging in size from 6,500 square feet when adjacent to 10,000 square foot lots, no testimony was presented that variety of lot sizes affect livability. Rather, the proposal will extend existing stub streets from adjacent subdivisions providing for enhanced neighborhood vehicular and pedestrian connectivity, a voluntarily provided 1.35 acre open space, and a diversity of housing types and sizes within the area.

In conclusion, implementation of the Low Density Residential plan designation through both the R-8 and R-10 zones, the City determined that R-8 and R-10 zones are inherently compatible. No transition is necessary. Requiring uniformity in lot sizes between neighboring subdivisions would interfere with plan policies encouraging lot size diversity.

APPEAL ISSUE #2 – TRANSPORTATION, SCHOOLS AND SEWER ADEQUACY

Planning Commission Finding: The Planning Commission also found that Comprehensive Plan Goal 11.1 requiring the provision of adequate public facilities was not satisfied with regard to transportation, schools and sewers. Goal 11.1 provides:

Goal 11: Public Facilities

Goal 11.1: Serve the health, safety, education, welfare and recreational needs of all Oregon City residents through the planning and provision of adequate public facilities.

The Planning Commission made the following finding:

“The Planning Commission heard testimony from the applicant that the density resulting from approving this zone change could result in the construction of 11 additional dwelling units beyond what the R-10 zoning would allow. Though the proposed subdivision results in four additional units, each unit which have an impact on the City. The Planning Commission 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 but the additional trips resulting from the additional dwelling units on the additional lots would increase traffic congestion. 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. A number of existing intersections, particularly the intersection of Warner-Milne Rd, Linn Ave and Warner-Parrott Ave are at or near capacity. Given the existing levels of congestion, the transportation system is not adequate to justify the zone change. Further, although the School District staff did not identify concerns with the zone change application, the Planning Commission found

that the schools lacked capacity, as evidenced by their intent to seek a bond to fund school improvements in the future. Finally, the Planning Commission found insufficient details about how a sewer pump station would function as necessary to ensure adequate sewer capacity. For these reasons, the Planning Commission found that the public facilities were not adequate to serve the development.”

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.

Public Comment: The Planning Commission heard testimony that the intersection at Central Point Avenue is at capacity and cannot accommodate any additional traffic. Nearby residents testified that the schools are overcrowded and cannot accommodate additional students.

Appellants’ Arguments on Appeal:

Transportation

The appellants argue that Plan Goal 11.1 provides planning guidance only and cannot serve as a basis for denial when the Planning Commission otherwise found that all of the more specific regulations regarding traffic were satisfied. Appellants believe that the Planning Commission’s finding that “the roadways are already more congested than the Planning Commission would like” is not the appropriate standard for evaluating adequacy, particularly when specific regulations establish appropriate base lines for determining road capacity. Further, appellants argue that the Planning Commission failed to take into account the evidence submitted by the applicant and the City’s traffic engineers.

Schools

The Appellants point out that ORS 195.110(a)-(c) prohibits the consideration of school capacity as a basis for denying a development application and that a request for bond approval is not an indication of lack of school capacity.

Sewer Capacity

The appellants argue that a pump station is not necessary and if it is necessary, the details of the station can be dealt with at the final plat and construction phase.

Staff Response on Appeal:

Transportation

John Replinger, the city’s contract transportation engineering consultant, reviewed the transportation materials submitted by the applicants in support of the proposed land use actions for the Wheeler Farms Subdivision, TP17-03 and ZC17-03. His original September 5th was attached to the staff report and a secondary memo is attached as an exhibit to this document (Exhibit 3) responding to the Planning Commission findings. Mr. Replinger’s analysis agrees with the applicants’ engineer, Todd Mobley, that the traffic operations would be adequate at all analyzed intersections and no offsite capacity or safety mitigation is needed for this application with or without the zone change as the number of new lots is a nearly undetectable impact on the transportation system.

Schools

ORS 195.110(13) limits a local government's ability to deny an application for "residential development based on a lack of school capacity" to only those cases where it is raised by the school district, among other things.³ School capacity concerns were not raised by the school district, although its representatives attended the Pre-Application Conference and were provided notice of the application. Finally, evidence of an intention to seek a school bond does not prove a lack of capacity.

Sewer Capacity

Wendy Marshall reviewed the Planning Commission finding regarding public sewer as it relates to private lift stations or public pump stations. Her memo is attached as an exhibit to this document. She explains that the reference in the staff report to a potential pump station came from a reference found in the Sewer Master Plan which determined that the property and surrounding area could be served by a sewer system, though a pump station potentially might be needed contingent on further design at the time the area develops. The applicant did not propose to install a pump station. Rather, a pump station is an alternate means of conveying sanitary flows and does not mean that the capacity of the sewer system could not accommodate additional homes. No evidence was submitted in the record indicating a lack of sewer system capacity.

CONCLUSION

Based on the foregoing, staff believes that Planning Commission's decision to deny this zone change represents a departure from the City's past approach of approving zone changes that are consistent with the comprehensive plan designation upon a finding that the facilities and services are adequate as regulated in the OCMC standards. This change in course creates uncertainty that satisfying the adopted service standards for transportation and utility infrastructure as set forth in the Oregon City Municipal Code, do not similarly satisfy Comprehensive Plan goals, when such consistency was established as part of adoption. More importantly, the Comprehensive Plan should be viewed and implemented as a complete package. A vast majority of the Goals and Policies within the Comprehensive Plan encourage a variety of housing opportunities as well as increased density to support a more efficient system of infrastructure. If a zone change from R-10 to R-8 is found to be incompatible, then it may be difficult to make an argument that any zone change would be compatible because they would entail allowing different densities or uses. Furthermore, the City is comprised of a variety of designations which allow a wide opportunity for flexibility and housing choices as well as provide opportunities for residences to live near amenities.

Staff understands the concerns raised by residents in the surrounding neighborhood but also understand the need to support the Comprehensive Plan, on balance, by providing others an opportunity for housing as well.

COMMISSION DECISION OPTIONS:

- 1) Reverse the Planning Commission decision and approve the proposed zone change and subdivision including the following Revised Conditions of Approval:

Existing:

19. NROD and Geohazard overlay shall be clearly delineated on the public facilities construction plans, and on the subsequent building site plans for each affected lot. (DS)

³ It is not clear whether this zone change would qualify as "residential development," as opposed to the subdivision which certainly would.

Revised - Added by staff at the September 25, 2017 Planning Commission meeting.

19. The Geohazard overlay shall be clearly delineated on the public facilities construction plans and on the subsequent building site plans for each affected lot as described in the Geotechnical Engineering Report prepared by GeoPacific Engineering, Inc. dated June 17, 2017. Per City File No. NR 17-03, no natural resources exist on the subject site.

(New)- Added by staff at the October 9, 2017 Planning Commission meeting.

31. Prior to platting, the applicant shall demonstrate that the subdivision complies with the lot width and lot depth dimensional standards of the zone.

- 2) Affirm the Planning Commission decision and deny the proposed zone change and subdivision

EXHIBITS

1. AP 17-04 Appellants Submittal
2. October 20, 2017 Memorandum from Wendy Marshall
3. October 20, 2017 Memorandum from John Replinger of Replinger and Associates
4. ZC 17-02, TP 17-03 Planning Commission Findings and Notice of Decision
5. ZC 17-02, TP 17-03 Staff Report
 - a. Vicinity Map
 - b. Applicant's Narrative and Plans
 - c. ZC 17-02 plans and findings
 - d. TP 17-03 plans and findings.
 - e. Letter from John Replinger
 - f. Public Comments-West Susan Rictor
 - g. NR 17-03 Exemption
6. September 25, 2017 Planning Commission Meeting
 - a. Exhibits and public comments entered into the record
7. October 9, 2017 Planning Commission Meeting
 - a. Exhibits and public comments entered into the record

The following meeting agendas, videos, staff report and exhibits for this project are available for viewing at <http://oregon-city.legistar.com/Calendar.aspx> and are part of the record.