

ORDINANCE NUMBER 1671

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1438, BY REZONING CERTAIN PROPERTY FROM RESIDENTIAL-TEN (R-10) TO RESIDENTIAL SEVEN (R-7) ZONES (ZC-89-01).

WHEREAS, a Zoning Map Amendment was considered at a public hearing before the Planning Commission on May 23, 1989, and City Council on June 20, 1989, discussed by the City Council on November 7, 1989 and reconsidered by the City Council on November 21, 1989,

WHEREAS, the City Council finds the application should be approved based on the findings listed below,

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Findings. The following findings of fact and conclusions are adopted:

FINDINGS:

1. The current zoning for subject property is R-10.
2. Subject property is designated by the Comprehensive Plan as Low Density Residential.
3. The area involved is identified on Map Exhibit "1."
4. Findings of Fact and Conclusions of Law are addressed in Exhibit "2."

CONCLUSIONS:

1. All applicable Zoning Map Amendment criteria have been met.
2. All applicable Comprehensive Plan conformity has been shown.

Section 2. Zoning Map Amendment. The Zoning Map of Ordinance 1438 is amended by rezoning subject property as depicted on Map Exhibit "1" (attached) from R-10 to R-7.

Read the first time on November 21, 1989 and moved to second reading by 3 - 1 vote of the City Council.

Read the second time and adopted by the City Council on December 5, 1989.

Signed by the Mayor on December 5, 1989.

Roger Hall
Roger Hall, Mayor

ATTEST:

Jerri Widner
Jerri Widner, City Recorder

Approved as to form:

Tim Ramis
Tim Ramis, City Attorney

EXHIBIT "2"
14 PAGES

CITY OF MILWAUKIE

IN THE MATTER OF a request by)
GREAT AMERICAN DEVELOPMENT) File No. ZC-89-01
COMPANY for a rezone of 10.67)
acres of property from R-10) FINDINGS OF FACT AND
to R-7.) CONCLUSIONS OF LAW

1.

INTRODUCTION

The Applicant proposes to rezone 10.67 acres of property from R-10 to R-7. The adopted Comprehensive Plan Map designation for the subject property is Low Density Residential. The Applicant has applied for a 48-lot subdivision, however, the subdivision approval is not part of the application considered by the City Council. The property is owned by the North Clackamas School District No. 12 with Great American Development Company holding an option to purchase the property. The property is located on the west side of Freeman Road south of Lake Road. All adjacent properties within the City limits are zoned R-10.

The standards relevant to the approval are Section 9.03 of the City Zoning Ordinance and certain applicable goals, objectives and policies relating to the housing and residential land use elements contained within the Community Conservation and Development Division of the Comprehensive Plan for the City of Milwaukie.

The matter came before the City Council on June 20, 1989. Resolution 20-1989 was adopted on July 13, 1989 denying the

application. The Applicant appealed to the Land Use Board of Appeals, however, the action was dismissed by mutual agreement of the parties. The Council acted to reconsider the proposed zone change when the Applicant indicated a willingness to reduce the number of lots in the proposed subdivision from 48 to 45.

2.

ZONING MAP AMENDMENT CRITERIA

A. Section 9.03, Item 1

"The proposed rezoning must be to the maximum Comprehensive Map designation, unless proof is provided by the Applicant that development at full intensity is not possible due to physical conditions (such as topography, street patterns, public service, existing lot arrangements, etc.)."

The proposal is to rezone land designated R-10 to R-7. Both zones are within the Comprehensive Plan Map Designation "Low Density Residential" with a density range from 0 to 6.7 units per net acre. R-7 is the maximum zone meeting this density range. The record shows that there are no physical conditions evident that would prevent development of this property at an R-7 density. The actual density proposed within the preliminary subdivision plan is for slightly less than R-7 with an average size overall of 8,009 square feet per lot. If the subdivision were developed with 45 lots, the average lot size would be even greater at 8,543 square feet per lot. Because R-7 is the maximum zoning meeting the density range for the low density residential designation in the Comprehensive Plan, we conclude that criteria No. 1 to the zoning map amendment criteria is met.

B. Rezone Criteria from Section 9,03, Section 2

"Public facilities to be on the site are adequate to serve the proposed land uses allowed by the designations, are presently available or can be reasonably made available consistent with the Comprehensive Plan Public Facilities Policies, by the time the proposed use qualifies for a certificate of occupancy or completion from the Building Department."

"For the purpose of this requirement, public facilities include:

- a. Water service;
- b. Sanitary sewers;
- c. Storm sewers;
- d. Streets;
- e. Police and fire protection;
and
- f. Schools.

"Where public facilities are required to be installed or improved by the Applicant, a performance contract or bond assuring their installation to specified standards is required."

The Record contains evidence on the various public facilities available on the site as follows:

1. Water Services. Based on the report of the City Engineer, in the Record, water is available from the City of Milwaukie from a 12-inch line in Lake Road and from an 8-inch line in Where Else Lane. Oak Lodge Water District plans to expand the 8-inch line in Where Else Lane with a 10-inch line to the pump station on the property owned by the Water District immediately south of this proposed subdivision as a intertie with the City. The developer will tie into this newly extended line and loop it to the line in Lake Road. Based on the engineer's report, the Council concludes that the water is available to the site.

2. Sanitary Sewer. Based on the report of the City Engineer, the record shows that sanitary sewer is available from the City of Milwaukie 8-inch line in Freeman Road and from the line at the end of Bowman Street to the south. The Council concludes that sanitary sewer is available to the site.

3. Storm Drainage. Storm drainage will run to Kellogg Creek. All storm drainage in the area is currently inadequate and results in periodic ponding in some areas. This problem is of particular concern to some neighbors. If approved, the proposed subdivision would be obligated to make substantial drainage system improvements, including connection to a 21 inch storm line that has been installed from Kellogg Creek north to Bowman Street. The City Engineer has stated that this storm line is sized to handle the new development. The Council concludes that, if approved, the proposed use would be served by adequate storm sewer available at the time of occupancy.

4. Streets. The impact on the street system from the zone change is estimated at 336 to 480 trips per day if the subdivision were developed at 48 lots. The developer proposed to mitigate the impact by constructing a half-street improvement to Freeman Road. If necessary, a left turn pocket would be provided to ease peak hour traffic flow from Freeman Road to Lake Road. The City Engineer concluded that onsite and offsite improvements are required for the affected streets, but that the necessary streets are available or can be made available. Opponents raised concerns about additional potential traffic and traffic networking problems

generated by development and the need for a signal at the intersection of Freeman and Lake Roads. The Council considered the concerns of the neighbors and the mitigation measures proposed by the Applicant and the City Engineer's report and concluded that the present roadways are adequate or could reasonably be made available upon completion of conditions of approval by the Applicant to address present traffic generation, as well as that created by the potential subdivision. The Council also concluded that the additional trips per day generated by the zone change based upon information submitted by the Applicant is under the minimum required to justify the installation of a signal.

5. Police and Fire Protection. The Comprehensive Plan notes that there appears to be adequate fire equipment and personnel to serve the Milwaukie area. Fire hydrants proposed within the application would meet required spacing for the City of Milwaukie. The addition of up to ten more homes over the present zoning would not result in a significant impact on the delivery of police services. Because of this, the Council concludes that police and fire protection are adequate for the uses allowed in the R-7 zone.

6. Schools. North Clackamas School District No. 12, which serves the entire Milwaukie area, does not foresee overcrowding in the schools. Neighbors opposing the zone change believe that the subdivision would create an overcrowding of school facilities in the area. Enrollment projections indicate that adequate facilities exist for grade, junior high and high school students who would be residents in the proposed development. In light of the evidence

from the School District, the Council concludes that school are adequate to serve the proposed land use allowed by the R-7 designation.

Conclusion. Based on the specific findings and conclusions made for each of the public facilities listed above, the City Council concludes that the proposed 48 lot subdivision meets criterion No. 2 of the zoning map amendment criteria. The City Council further concludes that a 45 lot subdivision in the same design as the 48 lot subdivision would create less demand for public facilities, and that if public facilities are adequate for a 48 lot subdivision, they are also adequate for a 45 lot subdivision.

3.

COMPREHENSIVE PLAN COMPLIANCE

Comprehensive Plan goals, objectives, and policies which are applicable to the rezone request are found within the Community Conservation and Development Division of the Comprehensive Plan within the Housing and Residential Land Use elements.

A. Residential and Land Use Housing Elements - Goal Statement

"To provide for the maintenance of existing housing, the rehabilitation of older housing and the development of sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market, while preserving and enhancing local neighborhood quality and identity."

According to the Comprehensive Plan, in 1979 only 217 acres of vacant residential land were available in Milwaukie for future

housing. The neighborhood is comprised of single family lots ranging in size from 6,871 square feet to over an acre in size. The Applicant stated that housing types proposed for the new subdivision would be similar to those already existing in the area. Homes in the area are single level and split level ranch homes.

The Council received testimony that the size of the lots which could be developed under the R-7 zoning would undermine the local neighborhood quality and identify. Mr. Isom stated the concern of the neighbors that a rezoning would set a precedent for the density of the other developable properties in the area. He stated that a pattern of smaller lot size development could result which would shift the balance of average lot size to smaller, R-7 size parcels. Opponents stated that the identity of the area is linked to a sense of compatibility of housing types and lot sizes. The Applicant provided information that the lots and housing types proposed will be similar to those already in the neighborhood. The Applicant has proposed a subdivision that would be developed at less than the maximum density allowed.

The Council received testimony from neighbors that lot sizes would not be adequate, resulting in automobiles and recreational vehicles being parked on residential streets due to lack of on-site parking areas. In addition, neighbors stated that adequate individual play areas would not be provided for children. Mr. Heald stressed that such conditions were elements of the quality of life of a neighborhood. He stated that the present R-10 zoning provides a quality of life which is characteristic to the

neighborhood and which should be preserved.

The Council concluded that the lots in the proposed subdivision, particularly if the maximum number of lots did not exceed 45 lots, will be similar to those of the surrounding area, creating no different parking, play area or other conditions than exist in the surrounding area. The Council concluded that the rezone would provide the ability to develop sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market. In addition, the Council concluded that the proposal would preserve and enhance the local neighborhood quality and identity.

B. Objective No. 1 (p. 25 of the Comprehensive Plan)

"To utilize lands in the City according to their relative measure of buildability, based on the following land use type specifications."

The site is relatively level and is not located within any natural hazard area as identified in the Comprehensive Plan. Concerns over drainage have been addressed by the Applicant through a proposal to install a 21-inch storm drain. The Council found that the subject area is not located within an area identified or regulated by any of the special policy classifications related to the 100-year floodplain, geologic hazard, slopes over 15 percent, wetlands or riparian vegetation, or weak foundation source. The site does not present any physical restrictions for development potential. The Council concludes that the site is free from constraints to development.

C. Objective No. 2 (p. 26 of the Comprehensive Plan)

"To locate higher density residential uses so that the concentration of people will help to support public transportation services in major commercial centers."

The preliminary subdivision proposed for the property results in a net density of 6.1 units per acre, less than the range of 6.7 which is the maximum density allowed within an R-7 zone. If developed to 45 lots, the density would be even less. Since the R-7 zone is not considered to be higher density, the issue of public transportation services was not addressed. The Council concludes that the proposal would not have an impact on public transportation services and development of the property as proposed would be within the low density range allowed by the Plan.

D. Policy 2(A) (p. 28 of the Comprehensive Plan)

Low Density Residential Development will be based on the following policies:

"The predominate housing type will be single family detached."

The Comprehensive Plan defined single family detached dwelling as:

"A house normally occupied by one family with no structural connection to adjacent units. The unit may be situated at a specified distance from lot lines, or with one wall on a side property line. Typical density is 4 to 6.7 units per acre."

The proposed development is for single family residential lots in the R-7 zone. The proposed density is within the low density framework and the Applicant provided testimony that all lots would

be developed for single family detached dwellings. Because of the testimony received, the Council concludes that the policy is met.

E. Objective No. 3, Residential Land Use; Design

"To encourage a desirable living environment by allowing flexibility in design, minimizing the impact of new construction on existing development, and assuring that natural open spaces and developed recreational areas are provided wherever feasible."

The intent of the objective is to encourage a high quality of environmental design, a flexible design approach, and a smooth integration of new development into existing neighborhoods. The Applicant presented detailed testimony showing the wide range in lot and home sizes and values in the area. Opponents contended that the general character of the area was large homes on large lots, which would not be maintained under the development plan. According to neighbors, development under the standards of the existing R-10 zone, assuming development with lot sizes of 10,000 square feet or larger, would give more flexibility for design and provide additional area for individual backyards and for on-site parking. Mr. Heald testified that smaller lot size would impact the character of the area and limit the opportunity to provide adequate play areas for children. Mr. Heald testified that additional units and the resultant smaller lot size would require the residents of the proposed lots to utilize residential streets in the neighborhood for the parking of vehicles.

Testimony was received that the Applicant should include a greenway, park or commons to comply with the Comprehensive Plan.

Mr. Jones stated that area parks were not adequate to meet the needs of the additional children which would reside in the development. The Applicant does not propose to provide land for recreation, open space, or recreational vehicle parking.

Recreation areas are available at Rowe Junior High and North Clackamas Park. The City Council found that the facilities would adequately handle the recreation needs of the potential residents. The City Council found that the preservation of open space is not necessary and feasible given the size of the potential subdivision. City Council also concluded that the City has no final parks and recreation master plan that requires recreational areas to be established along with the proposal.

The Council found that the potential development of the property, according to the applicants proposed design and intent to develop no more than 45 lots, is similar in size and scale to the surrounding area. The impact will be no different than that created by the existing properties in the area. The Council concluded that adequate flexibility of design will be available with the proposed lots, given that the proposed development utilizes less than the maximum density allowed.

The Council concluded that the proposed rezone would minimize the impact of new construction on existing development and serve the objective of the Comprehensive Plan. The Council determined that R-7 is the proper zone for this area as it would allow development which would have minimal impact to existing development and continue the development of a desirable living environment.

F. Policies 6 and 7 (p. 30 of the Comprehensive Plan) Were Considered as Criteria for Review of the Rezone

1. Policy 6. "In all cases, existing tree coverage will be preserved whenever possible, and areas of trees and shrubs will remain connected, particularly along natural drainage courses."

2. Policy 7. "Specified trees will be protected during construction, in accordance with conditions attached to building permits."

Maps of the area show that there are no natural drainage courses affected by the property and there are no special areas of trees and shrubs. The site contains relatively few trees. The Applicant committed to tree preservation being encouraged at the site development stage. The Council concludes that the existence of few trees on the site and the commitment by the Applicant to preservation of existing tree coverage whenever possible adequately addresses the concerns of the policy. Because of this, the Council concludes that the policies are met.

G. Objective No. 4 (p. 30 of the Comprehensive Plan)

"To maximize the opportunities to preserve, enhance and reinforce the identify, pride of existing well defined neighborhoods in order to encourage the long-term maintenance of the City's housing stock."

The proposed change from R-10 to R-7 would result in more homes than allowed in the R-10 zone. The Applicant provided testimony that all homes would be equal or greater in value than those in the surrounding area and would be of comparable height,

scale and bulk to those in the area. The Applicant testified that the neighborhood is in transition and is not well defined. The provision of new public facilities and homes to City standards, the Applicant contends, would enhance the pride and identity of the neighborhood.

Testimony was received from opponents of the application that the proposed rezone would allow smaller lot sizes and set a precedent for the density of the other developable properties in the area. They interpreted this to be undesirable and a threat to the identity of the area. Opponents also stated that the elements of the quality of life of the existing neighborhood would be threatened by reduced lot sizes promoting vehicle parking on residential streets and the creation of smaller backyards which would serve as less than adequate play areas for children. Opponents stressed that the size of lots is more important to the identity and pride of the neighborhood than the potential value of new homes.

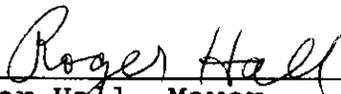
The Council weighed the testimony and concluded that development of the property particularly where limited to a maximum of 45 lots, would be consistent with the identity of the existing neighborhood, and would result in improved amenities and facilities, resulting in a significant enhancement of the neighborhood. The Council concluded that a change to R-7 would meet the objective and would not have a negative impact on the existing neighborhood.

4.

CONCLUSION

The Council concludes that the application, subject to a maximum of 45 lots, adequately addresses, and complies with, all zoning map amendment criteria, as well as all Comprehensive Plan goals, objectives, and policies found to be applicable to the application. The rezone from R-10 to R-7 is justified and approved by the City Council.

APPROVED by the City Council and signed by the Mayor on December 5, 1989.



Roger Hall, Mayor

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