

ORDINANCE NO. 2012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE CITY OF MILWAUKIE ZONING MAP FROM "RESIDENTIAL ZONE R-10" TO "RESIDENTIAL ZONE R-7" FOR TAX LOT 3100 ON CLACKAMAS COUNTY ASSESSOR'S MAP 2S 2E A06BC (FILE #ZC-09-01,TPR-09-04).

WHEREAS, the City of Milwaukie desires to review, amend, and revise its Zoning Ordinance on a regular basis; and

WHEREAS, the property owner has made application to change the designation of the property from "Residential zone R-10" to "Residential zone R-7"; and

WHEREAS, the Planning Department evaluated the proposed amendment to the City's zoning map in accordance with the Comprehensive Plan and applicable sections of the Municipal Code and recommended that the designation be changed to a Residential zone R-7 designation for the subject site; and

WHEREAS, legal and public notices of the Planning Commission hearing have been provided as required by law; and

WHEREAS, on November 24, 2009, the Milwaukie Planning Commission conducted a public hearing, as required by Zoning Ordinance Subsection 19.1101.4 Major Quasi-Judicial Review; and

WHEREAS, the public hearing was continued to allow for the submission of additional supporting information as well as citizen comments to address the new information, and

WHEREAS, on January 26, 2010, a majority of the Planning Commission voted to recommend that Council approve the proposed amendment; and

WHEREAS, legal and public notices of the City Council hearing have been provided as required by law; and

WHEREAS, the Milwaukie City Council conducted a public hearing on February 16, 2010, to consider the Planning Commission recommendation and finds that the proposed amendments are in conformance with the Comprehensive Plan, the Municipal Code and the public interest of the City of Milwaukie;

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

Section 1. Findings. Findings of fact in support of the proposed amendment(s) are attached as Exhibit A.

Read the first time on 2/16/10, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 2/16/10

Signed by the Mayor on 2/16/10



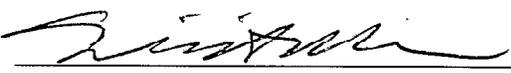
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC



Pat DuVal, City Recorder



City Attorney

Exhibit A

Recommended Findings in Support of Approval

Casefile# ZC-09-01, TFR-09-04

Sections of the Milwaukie Municipal Code that are not addressed in these findings are found to not be applicable to the development proposal.

1. The applicant, Tim Clunas, on behalf of Clunas Funding Group, Inc, has applied for approval of a Zoning Map amendment to the property located at Bowman St and Brae St (Map 22E06BC; TLID 3100). The 0.69-acre site is currently zoned Residential zone R-10; the proposed zone is Residential zone R-7.
2. The applicant proposes a zone change from R-10, which is a designated low-density residential (LD) use in the City's Comprehensive Plan, to R-7, which is also a designated LD use. The proposed Zoning Map amendment does not require a Comprehensive Plan amendment. This zone change would allow the site to be divided into 3 parcels, which, in turn, would allow for the development of 3 single-family dwellings at this location.
3. A Zoning Map amendment is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - A. Chapter 19.900 Amendments
 - B. Subsection 19.1011.4 Major Quasi-Judicial Review
4. Public notice has been provided in accordance with MMC Subsection 19.1011.4 Major Quasi-Judicial Review. Notification was sent to property owners within 400 feet of the subject property at least 10 days in advance of the required public hearings. The Planning Commission held a public hearing on November 24, 2009; the public hearing was continued to allow for the submission of additional supporting information as well as citizen comments to address the new information. At the January 26, 2010, public hearing, the Planning Commission passed a motion recommending that the City Council approve the Zoning Map amendment. The City Council held a public hearing on February 16, 2010 and passed a motion approving the Zoning Map amendment.
5. MMC Chapter 19.900 Amendments sets out the procedures and requirements for Zoning Map amendments. The proposed Zoning Map amendment is consistent with this chapter as follows:
 - A. MMC 19.901 allows amendments to the zoning map to be initiated by the City Council, Planning Commission, or by the application of a property owner. The property owner has initiated the proposed amendment.
 - B. MMC 19.902 governs the procedures for processing amendments. The application is a zoning map amendment and has been processed in accordance with MMC 19.1011.4 Major Quasi-judicial Review. Notice was provided to the Oregon Department of Land Conservation and Development on October 12, 2009. Notice was provided to Metro on November 6, 2009, and a Functional Plan analysis was provided to Metro at least 15 days prior to the final hearing on the proposed change.
 - C. MMC 19.903 provides requirements for zoning map amendments. The applicant's submittal contains the information required by this subsection. See Attachment 3 for details.

- D. MMC 19.904 establishes requirements for zoning text amendments. The proposed zoning map amendment does not include text amendments. This subsection is not applicable.
- E. MMC 19.905 states the approval criteria for zoning map and text amendments. The proposed amendment complies with these criteria as follows:
 - i. MMC 19.905.1.A requires the proposed amendment to conform to applicable Comprehensive Plan goals, policies, and objectives and be consistent with the provisions of City ordinances, Metro urban growth management functional plan, and applicable regional policies.

(a) Milwaukie Comprehensive Plan

Relevant Comprehensive Plan goals, policies, and objectives are found in Chapter 4—Land Use.

Residential Use and Housing Element

(1) Objective #2—Residential Land use: Density and Location

This objective states that Milwaukie is and will continue to be composed primarily of single-family neighborhoods. Policy 1 identifies both zones R-10 and R-7 as Low Density residential zones, which allow up to 6.2 units per net acre and a typical density of 4.0 to 6.2 units per net acre. A net acre figure is obtained by subtracting 25% of the site area for public improvements. The subject property is 0.69 acres; after subtracting dedication for public area improvements, the net acreage of the site is 0.55 acres. Approval of the zone change request would allow the site to develop at a development density of 5.5 units per net acre, which is within the typical density range identified by the Comprehensive Plan.

The current and proposed zones encourage the provision of low-density single family development by requiring Planning Commission review for other uses.

(2) Objective #4—Neighborhood Conservation

The objective of this section is to maximize the opportunities to preserve, enhance, and reinforce the identity and pride of existing well-defined neighborhoods in order to encourage the long-term maintenance of the City's housing stock.

Policy 4 encourages the rehabilitation of older housing in Low Density areas, and the construction of single family detached houses. The site is currently vacant, and Policy 4 is not applicable.

Policy 5 directs new projects to maintain a single family building bulk, scale and height when abutting existing single family areas. The proposal to rezone the site would not change the housing types (i.e. single-family detached homes) or uses (i.e. residential) allowed at this location. Since many of the R-10 and R-7 development standards that help to regulate bulk, scale, and height of single-family homes are the same (i.e. setbacks, height, and lot coverage standards), any future development would be compatible with the surrounding neighborhood.

Neighborhood Element

(3) Objective #1—Neighborhood Character

The stated goal of this objective is to maintain the residential character of designated neighborhood areas. Policy 4 requires new residential development to be consistent in type, style, and density with that existing in the neighborhood area.

The current R-10 zoning would allow the construction of 2 single family homes on the site, resulting in a residential density of 3.7 units per acre; this density falls below the Low Density (LD) use of 4.0 to 6.2 units per net acre anticipated by the Comprehensive Plan. Approval of the proposed zone change would allow for the division of the site into 3 parcels varying from 7,500 square feet to 8,643 square feet, and the construction of 3 single-family homes on site. The proposed density of 5.5 units per net acre is comparable to the development densities of surrounding sites: 5.1 units per net acre in the R-7 Pennywood Subdivision to the north; 4.95 units per net acre in the R-8.5 Bowman Terrance Subdivision to the east; and 4.51 units per net acre in the R-10 Kellogg Crest Subdivision to the south. An exception is found among the R-10 lots directly to the west of the site, which have a development density of 2.2 units per net acre. This is well below the minimum density range identified by the Comprehensive Plan and is expected to increase in the future.

The building patterns of development in the R-7 Zone are very similar to the building patterns in the R-10 Zone and the development adjacent to the site; a difference would not be visible to the casual observer.

(4) Objective #2—Neighborhood Needs

This objective ensures the needs of neighborhood areas for public facilities and services are met. Policy 3 instructs the City to provide for an adequate level of public facilities, services, and the maintenance thereof, to all neighborhood areas.

The proposed zone change would not affect the City's requirements for public right-of-way dedication or public improvements. At the time of any future development of the subject site, the City will require public area improvements including: public dedication of land for half-street improvements to widen and extend Bowman St; installation of sidewalks and a parking strip; and dedication of land for and construction of a pedestrian and bicycle path connecting Bowman St to Where Else Ln (see Attachment 3B for details). These public facilities would increase connectivity within the neighborhood and would be required at the time of any development, whether under the current R-10 zoning or the proposed R-7 zoning.

Policy 6 encourages improved neighborhood circulation to reduce congestion. This section of the Lake Road neighborhood is fairly disconnected, with a number of cul-de-sacs and unimproved rights-of-way. According to the City traffic engineer's traffic impact study, the public area improvements required upon development of the site would improve neighborhood connectivity and would not cause congestion.

(5) Neighborhood Area 3

This area includes the Lake Road neighborhood. The predominant land use in this area is single family residential.

(i) Guideline #1—Single Family Character

The intention of this guideline is to maintain the predominately single family character of the neighborhood by encouraging the rehabilitation of older and neglected structures, and by improving the quality of new housing development.

The proposed zone change would not alter the site's ability to comply with this guideline. There are no existing structures on the site. New single family housing development on the site would be required to comply with single-family residential design standards. Single-family homes are allowed outright in both the current R-10 Zone and the proposed R-7 Zone.

(b) City Ordinances

As described in Findings 5 and 6, the proposed Zoning Map amendment complies with all applicable City ordinances.

(c) Metro Functional Plan

(1) Title 8: Compliance Procedures establishes the process for determining whether city or county comprehensive plans and land use regulations comply with the requirements of the Functional Plan. The City's comprehensive plan and land use regulations comply with these requirements.

(2) Title 12: Protection of Residential Neighborhoods helps implement the policy of the Regional Framework Plan to protect existing residential neighborhoods from air and water pollution, noise and crime and to provide adequate levels of public services. The proposed zone change triggered a Transportation Impact Study, which concluded that any increase in traffic as a result of the zone change would be minimal and would not require mitigation. The proposed zone change and any future development will complement the existing neighborhood and will not affect air and water pollution or noise and crime.

(d) Regional Policies

No regional policies are anticipated to apply to the proposed rezone of the parcel. Therefore, the proposed amendment complies with this criterion.

- ii. MMC 19.905.1.B requires that the anticipated development meet the intent of the proposed zone, taking into consideration the following factors: a) site location and character of the area; b) the predominant land use pattern and density of the area; c) the potential for mitigation measures adequately addressing development effects; d) any expected changes in the development pattern for the area; e) the need for uses allowed by the proposed zone amendment; and f) the lack of suitable alternative sites already appropriately zoned for the intended use or uses. The planning commission and city council shall use its discretion to weigh these factors in determining the intent of the proposed zone.

(a) Site location and character of the area.

The site is located within the City's R-10 Zone, adjacent to the City's R-7 and R-10 Zones in the Lake Road neighborhood. The R-10 Zone is a low-density residential zone comprised primarily of single family residential uses. The Lake Road neighborhood is primarily residential, and the zoning in the subject area is a mix of R-7 and R-10. There is a variety of architectural styles in the Lake Road neighborhood and many newer homes; 34% of the homes within ¼ mile of the site have been built since 1990 and 81% of the homes within ¼ mile of the site have been built since 1950.¹

(b) The predominant land use pattern and density of the area.

The predominant land use pattern of the area is low-density residential. The immediate area consists of single family residential land uses with a smattering of undeveloped or minimally developed lots. As shown in Figure 1, the primary differences between the R-7 and R-10 Zones are the minimum lot sizes and dimensions, which affect the allowed development density.

Figure 1. Residential Zone R-7 and R-10 Development Standards

Standard	R-7	R-10
Outright Permitted Uses	Single family detached dwelling, residential home, agricultural or horticultural use	
Conditional Uses	Single family attached dwelling (duplex), senior and retirement housing, Type 2 ADUs	
Comp Plan Designation	Low Density Residential	
Minimum Lot Size	7,000 sq ft	10,000 sq ft
Minimum Lot Dimensions	60 ft x 80 ft	70 ft x 100 ft
Minimum Setbacks	20 feet (front, rear), 5/10 feet (side)	20 feet (front, rear), 10 feet (side)
Height Restriction	2½ stories or 35 feet	
Lot Coverage	30% max.	
Minimum Vegetation	35% min.	
Frontage	35 feet	
Density	5.0-6.2 units/net acre	3.5-4.4 units/net acre

In the R-10 Zone, the site could be developed with 2 single family dwellings; in the R-7 Zone, the lot could be development with 3 single family dwellings. The proposed density of 5.5 units per net acre (3 units on the subject site) is within the LD comprehensive plan density of 4.0 to 6.2 units per net acre, and is comparable to the development densities of surrounding sites: 5.1 units per net acre in the R-7 Pennywood Subdivision to the north; 4.95 units per net acre in

¹ Source: Metro 2009 Regional Land Information System (RLIS) data.

the R-8.5 Bowman Terrance Subdivision to the east; and 4.51 units per net acre in the R-10 Kellogg Crest Subdivision to the south.

The existing density of developed sites within ¼ mile of the subject property ranges from 0.28 to 7.22 units per acre. This range reflects the number of large sites to the west of the site that have not yet been developed to capacity, as well as a number of denser subdivisions in the area.

Figure 2 shows the development densities possible on the site under the current and proposed zoning and the current site area.

Figure 2. Development Densities on Site before Dedication

Zone	Site Area	Lot Dimensions	Lot Area (sf)	Density Per Net Acre	# of Dwelling Units
R-10	0.62 ac	125 x 80 ft	10,000	4.4	3.0
R-7	0.62 ac	125 x 60 ft	7,500	5.8	4.0

Figure 3 shows the development densities possible on the site under the current and proposed zoning after required public right-of-way dedication.

Figure 3. Development Densities on Site after Dedication

Zone	Site Area	Lot Dimensions	Lot Area (sf)	Density Per Net Acre	# of Dwelling Units
R-10	0.55 ac	100 x 126 ft	12,600	3.6	2.0
R-7	0.55 ac	100 x 71 ft	7,100	5.5	3.0

As these figures show, the maximum number of parcels possible on this site with an R-7 zoning designation is 3; each of these parcels would exceed the minimum dimension requirements of the R-7 Zone and would, in fact, also meet the minimum dimension requirements of the R-10 Zone as shown in Figure 1.

- (c) The potential for mitigation measures adequately addressing development effects.

Per the City traffic engineer's analysis, the potential increase in traffic would not be significant enough to require mitigation. Any development of the site would require on site stormwater treatment, mitigating runoff into the public right-of-way.

- (d) Any expected changes in the development pattern for the area.

No changes in the development pattern for the area are expected. The area is zoned for low-density single family residential uses and is expected to continue to develop in this way. Many sites in the area are not developed to their full capacity and could be redeveloped at higher densities as allowed by current zoning.

- (e) The need for uses allowed by the proposed zone amendment.

The proposed use is single family residential, which is also a current permitted use. The proposed zoning map amendment would provide for the creation of 3 new lots and the construction of 3 single family dwellings rather than the 2 allowed by current zoning.

- (f) The lack of suitable alternative sites already appropriately zoned for the intended use or uses.

Milwaukie has very few vacant and buildable residential lots. According to Metro RLIS data, there are approximately 101 vacant R-7 properties in Milwaukie. Of those properties, 34 are developable² and 7 are dividable. Of these 7 dividable sites, one is located in the Lake Road neighborhood. Although several sites to the west of the subject site are zoned R-7, the narrow lot configurations and lack of public access to the sites are significant development barriers.

The proposed zone change and development that may occur as a result meet the intent of the proposed zone. The zone will remain a Low-Density Residential land use and will permit the development of up to 3 single-family homes on the site.

- iii. MMC 19.905.1.C requires that the proposed amendment will meet or can be determined to reasonably meet applicable regional, state, or federal regulations.

No regional, state or federal regulations are anticipated to apply to the proposed rezone of the parcel from R-10 to R-7. Therefore, the proposed amendment complies with this criterion.

- iv. MMC 19.905.1.D requires that the proposed amendment demonstrate that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area. A transportation impact study may be required subject to the provisions of MMC Chapter 19.1400.

Since the proposed zone change would intensify the use on the site, a Transportation Impact Study (TIS) was required pursuant to MMC 19.1400. The TIS determined that existing public facilities and services can accommodate the anticipated development of the subject site without restricting potential development within the affected service area. Public transportation is available approximately 0.37 miles to the north of the site, at Lake Rd. Although there are no exclusive bicycle lanes along roads in the project vicinity and sidewalks are intermittent, the TIS concluded that, due to the residential nature of the surrounding neighborhood, the bicycle and pedestrian facilities would be adequate.

- v. MMC 19.905.1.E requires that the proposed amendment be consistent with the functional classification, capacity, and level of service of the transportation system.

The adjacent streets, Bowman St and Brae St, are classified as local streets in the City's Transportation System Plan. The TIS indicated that the proposed zone change would result in an increase of 10 daily trips, and concluded that the increase would be negligible and no meaningful impact to the functional classification of adjacent roadways was anticipated.

The Planning Commission finds that the criteria of MMC 19.900 are met.

6. Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Planning Building, Engineering, and Community Development Departments; Clackamas County Fire District #1; Lake Road Neighborhood District Association; and

² For the purpose of this analysis, “developable properties” are defined as non-CSU properties, without environmental overlays or restrictions, of 7,000 square feet or larger, and with public site access.

Metro. The following is a summary of the comments received by the City as of February 3, 2010. See Attachment 6 for further details.

- **Paul Hawkins, Land Use Chair, Lake Road NDA:** Neutral. Supports preservation of the tree within the Bowman St right-of-way. He also expressed concern about the property owners to the west of the site, who currently provides access to the property through their driveway.

Staff Response: Preservation of the tree will be considered upon receipt of a building permit application. A portion of the driveway of the property owners to the west is located within unimproved Where Else Ln, which is public right-of-way.

- **Mike Miller, 4206 SE Somewhere Dr, Milwaukie, OR 97222:** Photos provided with the applicant's supplemental narrative were not useful and did not accurately represent the proposed housing density of the subject site or distance between proposed homes, due to additional setbacks required for end lots.

Staff Response: The zoning ordinance does not consider any of the proposed lots on the site a "corner lot," which is defined as "a lot abutting on 2 or more streets, other than an alley, at their intersection," and none of the proposed lots would be subject to additional side yard requirements.

- **Pamela Michael, 13181 SE Pennywood Ct, Milwaukie, OR 97222:** Changing the existing zoning from R-10 to R-7 would set a precedent for home developers which would not be in keeping with the character of the current surrounding neighborhoods.
- **Melanie Phillips, 13230 SE Where Else Ln, Milwaukie, OR 97222:** The applicant was aware of the zoning when they purchased the property and is interested only in making a profit rather than what is best for the neighborhood. Homes built on the subject site should be similar in character to the homes located south of the property in the R-8.5 and R-10 zones.

Staff Response: The applicant did not purchase the property. They financed the purchase of the property by the most recent owner. The owner of the property defaulted on the loan and the applicant received the property back in foreclosure.

- **Vincent Alvarez, 12671 SE Where Else Ln, Milwaukie, OR 97222:** The existing improved Bowman St right-of-way is sufficient to provide access to one additional house. The applicant is requesting the zone change in order to have a profitable project after completing the required public area improvements. Widening the road will exacerbate runoff issues. The Planning Commission should provide relief for the applicant by reducing the public area requirements.

Staff Response: To do this, the applicant would need to apply for a variance to the City's street standards.