



HATHAWAY LARSON

Koback · Connors · Heth

December 15, 2020

**VIA EMAIL (c/o Vera Kolas, Planner)**

Mr. Robert Massey, Chair  
Planning Commission  
City of Milwaukie  
6101 S.E. Johnson Creek Blvd.  
Milwaukie, OR 97206

Re: Waverley Woods Apartment Planned Development (Application)  
Application File Nos. PD-2020-001, ZC-2020-001, WG-2020-001,  
PLA-2020-001 & TFR-2020-002  
Final Written Argument

Dear Chair Massey and Planning Commission Members:

As you know, this firm represents the applicant for the above-reference Application, Walker Ventures, LLC (the “Applicant”). The Applicant is submitting this final written argument pursuant to the post-hearing procedures the Planning Commission established for this Application. This final written argument is based on the evidence that has already been submitted into the record. For the reasons set forth in this final written argument and the record, the Applicant respectfully requests that the Planning Commission recommend approval of the Application subject to the conditions of approval set forth in the Staff Report, dated December 1, 2020 (the “Staff Report”), with one exception. For the reasons set forth in Section D.2 below, Applicant respectfully requests that the Planning Commission not adopt Condition 4.b as part of its recommendations.

**A. The Applicant proposed the Planned Development to allow for an exceptional development that would not be feasible under the base zoning and will minimize the overall impacts on the subject property and surrounding properties.**

As the Applicant explained in its November 17, 2020 letter to the Planning Commission, the primary purpose for proposing the Planned Development (“PD”) was to use the flexibility allowed by this process to design an exceptional development project that will minimize the impacts on the subject property and surrounding properties in a way that could not be otherwise achieved under the current R-2 zone:

**E. Michael Connors**  
1331 NW Lovejoy Street, Suite 950  
Portland, OR 97209  
[mike@hathawaylarson.com](mailto:mike@hathawaylarson.com)  
(503) 303-3111 direct  
(503) 303-3101 main

“From the beginning, more than eight years ago when Applicant first began discussions with architects about the development of this property, Applicant has emphasized the importance of taking advantage of the magnificent setting overlooking the Willamette river and creating this new community in a natural setting with more of a bucolic than an urban feel. That goal has remained paramount throughout the planning of this project. Applicant’s architects have proposed and studied numerous different plans over many years seeking to achieve those goals. Through that process it was eventually determined that it would not be feasible to meet those objectives by developing this site under the limitations of regular zoning. It became apparent that much more of the property can be preserved as open space if some buildings larger than permitted under regular zoning are constructed with parking tucked underneath. By that method, fewer buildings are needed, less of the land will be covered by buildings, less of the property will be paved with access roads, and less of the property will be covered by external parking, carports, or garages. Plans that were considered under regular zoning would have had much less open space and would not have preserved nearly as many of the existing trees and as much of the natural setting as does the planned development Applicant has submitted.” Letter from Scott Wyse, dated November 17, 2020, p.1-2.

By proposing adjustments to the density, height and length standards for the A-1 and A-2 buildings, the Applicant is able to design a multi-family residential project that is far superior and less impactful than a project developed under the R-2 zoning.<sup>1</sup> The Applicant is proposing four buildings as opposed to the five buildings that would be required under the R-2 zoning, and is well below the maximum 45% building lot coverage allowed under R-2 zoning (21.9%). Milwaukie Municipal Code (“MMC”) Table 19.302.4.B.4. The Applicant is proposing under building parking which will significantly reduce the amount of surface parking and impervious area required under the R-2 zoning option. As a result of the smaller development footprint, the Applicant is proposing to retain approximately 40% of the natural forest area on the property and provide 54% of vegetative open space, well in excess of the 15% vegetation open space requirement under the R-2 zoning.<sup>2</sup> MMC Table 19.302.4. The retention of a significant portion of the natural forest area enables the Applicant to provide significantly greater buffers, screening

---

<sup>1</sup> Mr. Robinson’s claim that the Applicant’s November 17, 2020 letter was a threat to cut the neighbors out of the public process is a gross mischaracterization on that letter. Letter from Michael Robinson, dated December 8, 2020, p.1. Mr. Wyse never threatened to cut the neighbors out of the public process or pursue the base zone development option. Mr. Wyse simply explained the rationale behind the Applicant’s decision to pursue the PD proposal, why the PD proposal provides advantages over the base zone development option and noted that the PD proposal provided neighbors more procedural opportunities to comment on the project. This is a statement of fact not a threat.

<sup>2</sup> The Application Narrative indicates that the R-2 vegetative open space requirement is 25% pursuant to MMC 19.302.5.H.2 because the Applicant is proposing a fourth story. Application Narrative, p.4. Without the PD the Applicant would be limited to a 35-foot height under the WG overlay zone, and therefore the Applicant would be required to propose 5 buildings that are 35 feet in height and would be limited to the 15% vegetative open space requirement.

and setbacks to adjacent properties than the 5 to 15-foot setbacks required under the R-2 zoning.<sup>3</sup> MMC Table 19.302.4.B.1.

Although the Applicant is proposing some adjustments to the density, height and length standards, these adjustments are fairly modest under the circumstances.<sup>4</sup> The additional 20% density is consistent with the PD development standards and allows for a smaller development footprint. MMC 19.311.3.C. The additional height only applies to the A-1 and A-2 buildings, which are the furthest from the adjacent residential area, and is consistent with the R-2 zoning height limits.<sup>5</sup> Staff Report, p.6; MMC 19.202.2.B; MMC Table 19.302.4. The additional building length (203 feet as opposed to 150 feet) only applies to the A-1 and A-2 buildings, is significantly less than the 284-plus foot building length for the nearby Stuart and Waverley Hall Apartments located to the east of this development, and will include a significant recessed entry that will break the buildings up and provide the appearance of two building masses for each building. Staff Report, p.18; MMC Table 19.302.4.

This more flexible approach allows for trade-offs to enable an overall superior project, which is precisely what the PD process was intended to allow. The purpose of the PD process is to “provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements,” “encourage greater flexibility of design and the application of new techniques in land development,” “provide a more efficient, aesthetic, and desirable use of public and private common open space,” and “promote variety in the physical development pattern of the City.” MMC 19.311.1. In this case, the Applicant is proposing the PD to utilize the flexibility and provide a more efficient, aesthetic, and desirable use of the open space and promote variety in the development pattern.

**B. The Applicant is not asking for anything that is not expressly allowed or contemplated under the City’s zoning code.**

While the neighbors are certainly entitled to raise their objections and concerns as part of this public process, it is important to emphasize that many of the core objections relate to aspects of the project that are expressly allowed or contemplated under the City’s zoning code.

Several neighbors object to the concept of a multi-family apartment development on this property given its proximity to the Waverly Heights single-family subdivision and the Waverly

---

<sup>3</sup> The four closest residences will be 218 feet, 200 feet, 143 feet and 82 feet from the closest proposed buildings. Building A.2 will be at least 99 feet from the WCC property line. Staff Report, p.6.

<sup>4</sup> The PD allows an applicant to modify the development standards, such as density, height and length, subject to compliance with the PD standards. As set forth in MMC 19.311.3, the “[a]pproval of a PD Zone establishes a modified set of development standards specific to the development.”

<sup>5</sup> The adjustment is only necessary because the Willamette Greenway (“WG”) overlay zone, which covers approximately 70% of the site, has a 35-foot height limitation. MMC 19.401.3.A.

Country Club (“WCC”) driving range.<sup>6</sup> However, the subject property is specifically designated for high density residential under the Comprehensive Plan and zoned R-2, which is one of the medium and high density residential zones that are intended to accommodate multi-family residential uses. Application Narrative, p.13; MMC 19.302. Properties to the south and east are similarly designated for high density residential under the Comprehensive Plan and zoned R-2. The property is adjacent to the Dunbar Woods Apartments and very close to several other existing apartment complexes in the area. The Comprehensive Plan identifies the Waverly Heights residential area as a “mix of large single family homes and high density apartments.” Staff Report, p.12. Concerns raised about the appropriateness or compatibility of a multi-family residential use on this property are inconsistent with the Comprehensive Plan and zoning designations for the property and surrounding area.

Several neighbors object to the concept of any development on the property given the WG overlay zone over a portion of the property and the fact that it has not been previously developed. The WG overlay zone does not prevent development or require the preservation of the property in its natural state. The WG overlay zone expressly allows all uses permitted under the base zone subject to the criteria in MMC 19.401.6. MMC 19.401.5.A. MMC 19.401.6 effectively requires an applicant to minimize the impacts of the development to the extent practicable which is precisely what the PD proposal is attempting to accomplish.

Several neighbors object to the concept of a PD proposal and phased development project. MMC 19.311 specifically allows for a PD process and expressly permits a phased development. MMC 19.311.17. As previously explained, the PD is being proposed consistent with the purpose of the PD zone.

**C. The Application complies with and exceeds the applicable approval standards criteria.**

The Application must be reviewed based on the approval standards and criteria set forth in the MMC. ORS 227.173(1). The purpose for requiring that the standards and criteria be set forth in the code is to ensure that both the applicant and the public understand the standards upon which a development proposal will be judged. *State ex rel. West Main Townhomes, LLC v. City of Medford*, 233 Or App 41, 225 P3d 56 (2009).

As explained in the Application material, testimony at the public hearings and the post-hearing written submittals, the project meets or exceeds the applicable approval standards and criteria. The Applicant is proposing a high-density multi-family residential development project which is expressly contemplated under the Comprehensive Plan and R-2 zoning. The Applicant is utilizing the PD process for its intended purpose - flexibility with the design to allow for an exceptional development project that will minimize the impacts on the subject property and surrounding properties in a way that could not be otherwise achieved under the base zoning. The project exceeds several key development standards – the maximum building lot coverage (21.9% versus the maximum 45% allowed under R-2), vegetative open space requirement (54%

---

<sup>6</sup> The subject property is adjacent to the WCC driving range, but it is not adjacent to the golf course itself. The WCC is not located within the City of Milwaukie and therefore does not have a City zone.

versus the 15% required under R-2), and substantially larger buffers, screening and setbacks than required under the R-2 zone. The project complies with the multi-family residential design guidelines and proposes a superior design that implements several features not typically found in multi-family residential apartment projects (corner outlooks with windows on two walls, large balconies, cross ventilation, under building secure parking, etc.).

The City Staff, who is a neutral party in this proceeding and has significant expertise with respect to the City zoning code requirements and historical application of the code requirements to development projects, has consistently determined that the Application satisfies the applicable approval standards and criteria and recommended approval. Staff made this determination both before and after the Planning Commission's October 27, 2020 hearing and the public testimony and comments. The latest Staff Report provides a thorough and detailed analysis of the project's compliance with the approval criteria and responds to the questions and issues raised by the neighbors. The Planning Commission should give significant weight to Staff's analysis and recommendations.

#### **D. Summary of key issues and responses to neighbor comments.**

The Application, the Applicant's post-hearing written submittals and the Staff Reports already provide detailed responses to the approval criteria and the issues raised by the neighbors, and therefore the Applicant will rely on those detailed responses for purposes of this final written argument. The Applicant will use the final written argument to summarize its response to the key criteria and issues raised by the neighbors in the public process.

##### **1. The project provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning.**

MMC 19.311.3.C allows a PD to exceed the density allowed under the base zone up to 20% if "the planned development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning." The key term is "exceptional," which is not defined in the MMC, and therefore it should be interpreted consistent with its common usage. MMC 19.104. Webster's Third International Dictionary, which is the dictionary used by the Oregon courts to determine the meaning of undefined code terms, defines the term "exceptional" to mean: "being out of the ordinary: uncommon, rare" and "better than average; superior." Letter from Scott Wyse, dated November 17, 2020, p.2-3; *State v. Gaines*, 346 Or 160, 175, 206 P3d 1042 (2009).

The proposed development is an outstanding design and includes many exceptional features that are uncommon and better than average or superior to similar multi-family apartment developments constructed under regular zoning. See Letter from Scott Wyse, dated November 10, 2020, p.1-6; Letter from Scott Wyse, dated November 17, 2020, p.2-6. The proposal maximizes the density while at the same time providing a significantly smaller development footprint and less impervious area than similarly sized apartment developments. This will result in larger than typical buffers between the apartment buildings and the neighboring properties. The proposal will retain a significantly portion of the natural forest (40%) and provide significantly more open space (54%) than similar apartment developments. This will create an

environment of urban living in a forested setting which is seldom achieved in apartment communities. The proposal includes secure under building parking, which is rare in all but the most dense urban settings, and is a huge advantage in the wet Oregon climate. Three-quarters of the apartments in the A-1 and A-2 buildings and two-thirds of the B-1 and B-2 buildings will have corner outlooks with windows on two walls, providing wonderful views from the apartment's principal living area, a quality rarely achieved in other apartment projects. The A-1 and A-2 buildings are designed to be cut into the slope of the property in such a way as to take full advantage of the extraordinary views from the property across the Willamette River, despite being set back very far from the adjoining WCC property and Willamette River. These views will be complemented by exceptionally large balconies for each unit. 80% of the apartments will have cross ventilation. The Applicant intends to provide solar panels and hook ups for electrical vehicles.<sup>7</sup> The proposal includes a new community garden, which is very popular with urban dwellers and rarely found in other apartment complexes. The proposal also includes natural paths and a public river viewing area adjacent to Waverly Court.<sup>8</sup>

The Applicant provided a detailed comparison of these proposed features to 24 existing apartment complexes in the area. *See* Letter from Scott Wyse, dated November 10, 2020, p.1-6. Few of these other apartment complexes have more than 30% of their land area in a vegetative state, and most have significantly less than that with most of the land area covered by the apartment buildings, roadways, parking spaces, carports, or garages. Only a few provided under building parking. Only one of the apartment complexes included a community garden. None of the other apartment complexes provide the extent of corner outlook views, oversized balconies and quality of views as the proposed development. Many of these similar apartment complexes do not offer any of these exceptional features and none of them offered all of them.

Notwithstanding the substantial difference between the proposed PD and these similar apartment developments, WCC and other neighbors raised various questions to which the Applicant would like to respond. First, WCC disputes the Applicant's definition of "exceptional" by claiming the Applicant cannot "create its own definition" even though Mr. Robinson initially argued that the Applicant needed to define the term before it can be applied. Letter from Michael Robinson, dated December 1, 2020, p.2; Letter from Michael Robinson, dated November 10, 2020, p.2-3. As previously explained, MMC 19.104 requires terms not defined in the MMC to be interpreted

---

<sup>7</sup> The Applicant has completed a preliminary solar study, and, subject to completion of its solar study, the Applicant intends to install solar panels on the roofs, similar to the extensive solar panels the Applicant voluntarily provided as part of its Waverley Greens apartment complex. The Applicant intends to construct the infrastructure/wiring for the solar panels in the buildings as part of the development to make it solar ready and add the solar panels upon completion of the solar study. The Applicant will also construct the infrastructure/wiring needed to provide electric vehicle hook up stations for any residents that request them.

<sup>8</sup> A question was raised at the Planning Commission's December 8, 2020 hearing regarding parking for the use of the public viewing area. The Applicant is not proposing and does not believe it is necessary to provide additional parking for this small public viewing area. Most people will walk to the public viewing area from the surrounding area. For those people who will drive in their vehicle, the public viewing area is adjacent to Waverly Court and there is more than sufficient street parking to accommodate these vehicles.

consistent with their common usage and the Oregon courts rely on Webster's Third International Dictionary to determine the meaning of undefined code terms. WCC's position is contradictory since they offer their own definition of the term. Contrary to WCC's suggestion, neither MMC 19.311.3.C nor the common definition of exceptional require the Applicant to demonstrate that **none** of the similar apartment developments have **any** of these exceptional features.<sup>9</sup> The Applicant's demonstration that many of the similar apartment complexes do not offer any of these exceptional features and none of them offer all of them is sufficient to demonstrate that the project overall includes exceptional features that are uncommon, rare, better than average and superior to similar developments.

Second, WCC questions the relevancy of the similar apartment developments that were used for comparison because some of them are not in the City or on properties zoned R-2. MMC 19.311.3.C requires a comparison to "similar developments constructed under **regular zoning**," not within the City or in the same base zone. Regardless, five of the existing apartments the Applicant used for comparison are located within the City and zoned R-2. Letter from Scott Wyse, dated November 10, 2020, p.6. Neither WCC nor any of the neighbors provided a single example of a similar apartment development with the same or similar exceptional features.

Third, WCC and other parties claim that only those exceptional features provided as part of the first phase of the PD can be considered. While most of these exceptional features will in fact be provided as part of the first phase of the PD, MMC 19.311.3.C does not limit the comparison to the first phase only. The PD is an overall plan that must be judged based on the development proposed in all phases. There is nothing in MMC 19.311.3.C or MCC 19.311 generally supporting this narrow view that only considers the benefits of the first phase.

## **2. The project complies with the open space requirements.**

MMC 19.311.3.E requires open space be set aside for "scenic, landscaping, or open recreational purposes within the development." It specifically requires at least one-third of the gross site area devoted to "open space and/or outdoor recreational areas" and at least half of the required open space and/or recreational areas must be of the same general character as the area containing the dwelling units. MMC 19.311.3.E. The project exceeds these requirements.

The Applicant is proposing 54% open space. This is well in excess of the 33% PD requirement and does not even account for the outdoor recreational areas which will also be provided (for example, the community pool). The buildings are surrounded by woods in the back and landscaped areas in the front, all of which will be in the "same general character as the area containing the dwelling units" and will be provided for "scenic, landscaping, or open recreational

---

<sup>9</sup> WCC mischaracterizes the standard as requiring exceptional amenities "**none of which** are found in similar developments" or "not found **at all** in those similar developments." Letter from Michael Robinson, dated November 17, 2020, p.1 & 4. (Emphasis added). The actual standard is exceptional amenities "not found in similar developments constructed under regular zoning." The additional language Mr. Robinson included in his standard demonstrates that the actual code language does not mean what he claims it means.

purposes.” Letter from Scott Wyse, dated November 17, 2020, p.7. Therefore, the project complies with the open space requirements.

As explained at the Planning Commissions December 8, 2020 hearing, the Applicant does not believe it is necessary or prudent to require a conservation easement or deed dedication to further preserve the open space. Staff Report, p.67, Condition 4.b. Such a condition is unusual and unnecessary. MMC 19.311.11.B provides that the City can adopt an ordinance applying the PD Zone and adopt the “approved final development plan and program as the standards and requirements for said zone.” The approved final development plan and program will include the approved open space. Any variations to the approved final development plan and program must be reviewed and approved by the City pursuant to MMC 19.311.15. All approved development is subject to the compliance and enforcement provisions in MMC 19.106. Therefore, it is unnecessary to require a conservation easement or deed dedication when the open space will be approved as part of the final plan. The Applicant respectfully requests that the Planning Commission not adopt Condition 4.b.

WCC argues that the open space requirements need to be evaluated based on the larger 10.8-acre parcel because the Applicant allegedly is “requesting that the entire 10.8 acres of the subject property be zoned PD.” Letter from Michael Robinson, dated December 1, 2020, p.2. WCC is wrong about the scope of the PD. The 10.8-acre property contains three parcels, only one (Parcel 2) of which is proposed for the PD and it is 6.77 acres in size. Parcel 1 is developed with the Dunbar Woods apartments and Parcel 3 is reserved for future development. Staff Report, p.1. WCC’s claim that Staff believes the PD applies to the entire 10.8-acre property is clearly wrong. The Staff Report explains: “The 10.8-acre subject property at 10415 SE Waverly Ct is made up of **three parcels** and is currently developed with the Dunbar Woods apartments. As part of this proposal, the applicant is adjusting the boundaries of the site to establish Dunbar Woods on its own lot, **use 6.77 acres for the planned development**, and establish a third parcel for a future development (see Figure 1).” Staff Report, p.1. (Emphasis added).

WCC also incorrectly asserts that the Applicant failed to provide sufficient “public open space” which it claims is required under MMC 19.505.3.D and MMC 19.311. Neither MMC 19.505.3.D nor MMC 19.311.3.E require the Applicant to provide open space available to the public. MMC 19.311.3.E expressly defines “open space” as an area set aside for purposes of the development, not the public: “the land area to be set aside and used for scenic, landscaping, or open recreational purposes **within the development.**” (Emphasis added). The reference to public open space in MMC 19.505.3.D refers to “common space” for the development, not open space available for general public use. MMC Table 19.505.3.D.2. The project will clearly include significant common space for the development, including large outdoor community gardens, swimming pool, walking trails, kitchen/catering space, wine cellar, permanent picnic tables, and community meeting rooms.” Application Narrative, p.14. Additionally, adjacent neighbors have requested that the Applicant not allow general public use of the open space and trails to minimize the pedestrian traffic, and the Applicant agreed that they will be limited to the project residents.



**3. The project addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.**

MMC 19.311.9.I requires the Applicant to demonstrate the project “addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.” The project clearly serves a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone. The project serves a public purpose and benefit by providing additional multi-family housing, which the 2016 Housing Needs Analysis identifies is needed, and the PD allows for more housing units than the R-2 zone. Staff Report, p.9-10. The project will provide substantial amenities for its residents and expand the amenities for the existing six communities of Waverley Greens Apartments, including new community centers and outdoor amenities for the residents to garden, swim, eat, celebrate, meet, organize, and educate themselves. The project includes relocating and enlarging the community garden, which is an extremely popular amenity and creating walkable paths through the forested areas. The project maximizes the density while at the same time allowing for a significantly smaller development footprint and less impervious area than similarly sized apartment developments. As noted above, the project includes exceptional amenities that are not found in similar multi-family apartment developments. These public amenities are not required under the base zone and the Applicant is only able to provide them as part of this project using the more flexible PD approach.

WCC erroneously argues that the project must demonstrate a public purpose or benefit that relates to the City of Milwaukie as a whole. Although the additional housing units, exceptional design and amenities, and smaller development footprint do provide a public purpose and benefit that serves the City as a whole, MMC 19.311.9.I is not intended to be limited to those attributes that serve the entire City. Nothing in MMC 19.311.9.I or 19.311 in general support such a broad application of this requirement. WCC’s reliance on the meaning of “public” in the terms “public area requirements,” “public facilities” and “public park” is misguided because these are different defined terms and apply to City owned property and facilities, which is clearly different than a public purpose or benefit provided as part of a privately owned development.

**4. The project complies with the Willamette Greenway approval criteria.**

MMC 19.401.6 sets forth the approval criteria for development within the WG overlay zone. The key criteria applicable to this project include: (A) whether the land has been committed to an urban use; (B) compatibility with the scenic, natural, historic, economic, and recreational character of the river; (C) protection of views both toward and away from the river; (D) landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable; and (L) a vegetation buffer plan meeting the conditions of MMC 19.401.8. As explained by the Applicant and Staff, the project complies with all of these criteria. Application Narrative, p.11-13; Staff Report, p.12-15.

Some of the neighbors questioned the project’s compliance with these criteria based solely on the fact the Applicant is proposing development within the WG overlay zone area. The WG overlay zone does not prohibit development. The property is zoned R-2, has the existing Dunbar Woods apartments located on the property from which it is to be partitioned and is adjacent to other multi-family apartment complexes, and therefore is clearly committed to an urban use. Although the project proposes to increase the density, it does so with a significantly smaller development

footprint and less impervious area than similarly sized apartment developments. The project as proposed will retain a significant portion of the natural vegetation (40%) and provides a significant amount of open space (54%). The vegetation buffer plan in MMC 19.401.8 only apply to the “land area between the river and a location 25 ft upland from the ordinary high water line,” which is an area well outside the property boundaries. MMC 19.401.8.A. The project is set back from the Willamette River by approximately 770 to 1,000 feet, is buffered by the WCC golf course and multiple existing multi-family developments which are closer and more exposed to the river, and therefore it will have no impact on the river itself.

Some neighbors claim that the project does not comply because it will impact the views to and from the river due to the increased height, but the evidence shows otherwise.<sup>10</sup> By maintaining the existing forest between the A-1 and A-2 buildings and the river, and carefully orienting the new development, the view of the buildings from the river and the neighboring homes will be minimal, as is shown by the visual simulations the Applicant has provided. The buildings will be less visible from the river than many of the surrounding uses that are closer to the river. Staff Report, p.14. The project will also provide new opportunities for views to the river for the residents in the A-1 and A-2 buildings and through the creation of recreational paths in the forest area. Overall, the project will increase the opportunities for visual enjoyment of the river and its surrounding environment while minimally affecting the views from and/or across the river.

#### **5. The project is consistent with the Comprehensive Plan.**

The Applicant and City Staff initially addressed compliance with the relevant provisions of the 2020 Comprehensive Plan since it is the most recent Comprehensive Plan. Application Narrative, p.13-14. After it was noted that the Application was filed before the 2020 Comprehensive Plan went into effect, the Applicant addressed compliance with the relevant goals and policies in the prior Comprehensive Plan (1989). Memorandum from Phil Krueger, YGH Architecture, dated November 10, 2020, p.7-14. Therefore, the Applicant demonstrated the project is consistent with both the 1989 and 2020 Comprehensive Plans. Staff agrees that the project is consistent with the Comprehensive Plan. Staff Report, p.8-12 & Attachment 1.

The Applicant will rely on the detailed responses to the Comprehensive Plan goals and policies in its November 10 post-hearing submission and the Staff Report, but it is important to emphasize some underlying reasons why the project is consistent with the Comprehensive Plan. The project complies with the Residential goals and policies because the Comprehensive Plan designates the property high density residential development on this site. Additionally, the 2016 Housing Needs Analysis identifies a need for additional housing and anticipates 30% of the new housing to be multi-family housing. Staff Report, p.9-10. The project complies with the Neighborhood goals and policies because the Comprehensive Plan identifies the Waverly

---

<sup>10</sup> WCC complained that the A-1 and A-2 buildings will be visible from its driving range. Neither the WG overlay zone criteria nor any other provisions in the MMC are designed to protect the views from golf course driving ranges. Regardless, the Applicant is proposing to retain the forest area between the property and the WCC so any visual impacts will be mitigated. At their closest point, the A-1 and A-2 buildings are 190 feet and 99 feet from WCC’s property. That large buffer area will remain densely populated by tall trees and shrubs.

Heights residential area as a “mix of large single family homes and high density apartments” and the project provides substantial buffers, screening and setbacks to the adjacent properties to minimize the impacts. Staff Report, p.12. The project complies with the Willamette Greenway and Open Space goals and policies because it will protect a substantial portion of the natural resources and provide large open space areas by use of a significantly smaller development footprint and less impervious area than required by the zoning code or similarly sized apartment developments.

WCC’s challenge to the project’s consistency with the Comprehensive Plan is based predominately on its mischaracterization of how the Comprehensive Plan is intended to apply to specific development projects. Most of the Comprehensive plan goals and policies cited by WCC are general policies establishing policy direction for the City to implement through the zoning code or other planning provisions, and therefore are not approval standards. Comprehensive Plan policies and purpose statements that set out goals, objectives or policies to be achieved through the zoning code or other provisions, or that contain language that is merely aspirational, such as those that “encourage” a particular action or result, or indicate a certain result is “desirable,” are not mandatory approval criteria. *Bennett v. City of Dallas*, 96 Or App 645, 647-49, 773 P2d 1340 (1989); *Burlison v. Marion County*, 52 Or LUBA 216, 218-219 (2006); *Angel v. City of Portland*, 21 Or LUBA 1, 13-14 (1991). If the language of the provision is not stated in mandatory terms such as “shall”, it is not a mandatory approval standard. *Wolfgram v. Douglas County*, 54 Or LUBA 54, 63 (2007); *Neuharth v. City of Salem*, 25 Or LUBA 267, 277-78 (1993). WCC does not identify any mandatory Comprehensive Plan goals and policies with measurable standards with which the project does not comply.<sup>11</sup>

WCC also erroneously asserts that the project is inconsistent with Comprehensive Plan goals and policies even though it complies with the zoning code provisions that implement these goals and policies. For example, the project complies with the Comprehensive Plan goals and policies that require natural resources be protected, preserved or maintained by retaining far more of the existing natural resources and providing significantly more open space than required under the applicable approval criteria. As previously explained, the project exceeds many of the applicable zoning code requirements that are specifically designed to protect the natural resources,

---

<sup>11</sup> WCC also challenged the project’s compliance with the Statewide Planning Goals. The Statewide Planning Goals generally do not directly apply to decisions made pursuant to an acknowledged comprehensive plan or land use regulations. *Baxter v. Monmouth City Council*, 51 Or App 853, 858, 627 P2d 500 (1981) (once LCDC acknowledges a comprehensive plan and implementing ordinances, land use decisions are governed by applicable criteria in that plan and those ordinances); *Byrd v. Stringer*, 295 Or 311, 316–317, 666 P2d 1332 (1983) (statewide planning goals are necessarily met if the county’s land use decision comports with the acknowledged comprehensive plan and implementing ordinances). The City’s Comprehensive Plan is an acknowledged plan and the Applicant’s compliance with the Comprehensive Plan demonstrates compliance with the Statewide Planning Goals. WCC does not identify any specific Statewide Planning Goal provision that imposes different or additional requirements beyond those in the Comprehensive Plan, other than to claim without citing any legal authority that Goal 10 prohibits higher end housing. There is nothing in Goal 10 that supports WCC’s claim that it prohibits higher-end housing throughout the State unless there is a specific need for it identified in the comprehensive plan.

minimize effects on surrounding uses and ensure the development is laid out and designed in a suitable manner. The Applicant's compliance with the more specific and measurable zoning code criteria is evidence of compliance with the more general Comprehensive Plan provisions these zoning code criteria are intended to implement.

Some parties questioned whether the project complies with the Comprehensive Plan because the project does not include affordable housing units. The mere fact that the 2016 Housing Needs Analysis identifies a need for more affordable housing units does not mean the Applicant or any other residential developer is limited to developing affordable housing units. There is nothing in the MMC, the Comprehensive Plan or the 2016 Housing Needs Analysis that **require** the Applicant or any other residential developer to provide affordable housing units. Affordable housing is provided through public, regulatory and/or tax incentives, not zoning mandates that limit or force developers to develop affordable housing units.

#### **6. The project complies with the discretionary design guidelines.**

In response to questions raised about whether the Applicant is pursuing the discretionary or objective design process, the Applicant's clarified that the project is pursuing the discretionary design guidelines process set forth in MMC Table 19.505.3.D since the PD already requires Type IV Development Review. Memorandum from Phil Krueger, YGH Architecture, dated November 10, 2020, p.1. The Applicant has provided detailed responses for each of the discretionary design guidelines and has demonstrated compliance with these discretionary standards. Memorandum from Phil Krueger, YGH Architecture, dated November 10, 2020, p.1-4. Staff agrees with the Applicant's analysis of the discretionary design guidelines. Staff Report, p.42-46. None of the neighbors have challenged the project's compliance with the discretionary design guidelines.

One question was raised regarding the color choices the Applicant intends to use for the buildings, expressing a concern that the Applicant may use the color white for the base color of the buildings based on one the renderings. The Applicant does not intend to use white as the base color. The applicant intends to use more natural colors that will blend in with the surrounding natural environment.

#### **7. The project is compatible with the surrounding properties.**

Several neighbors claim the project is incompatible with the Waverly Heights single-family subdivision, which is zoned R-10, because it proposes multi-family residential apartments. Many of these neighbors argue that the project should be limited to single-family residences or include a mix of single-family and multi-family residences. There are several flaws with this assertion.

The property is specifically planned and zoned for high density residential. It is designated high density under the Comprehensive Plan and zoned R-2, which is a medium to high density residential zone intended to accommodate multi-family residential uses. Application Narrative, p.13; MMC 19.302. The zoning of the subject property controls the allowed uses, not the zoning of the adjacent properties.

The project is compatible with the surrounding area. There are several properties immediately to the south and east that are similarly planned and zoned for high density residential and already have dense multi-family apartments or condominiums located on them. The Comprehensive Plan identifies the Waverly Heights residential area as a “mix of large single family homes and high density apartments.” Staff Report, p.12. The project is clearly compatible with the overall surrounding uses and cannot be judged based solely on a comparison to the Waverly Heights single-family subdivision.

The R-2 zone expressly contemplates multi-family residential development adjacent to single-family residences and the project exceeds the transition measures required in those instances. MMC 19.302.5.I provides the transition measures required for multi-family development that abuts a R-10-, R-7-, or R-5-zoned property, demonstrating that it is proper to develop multi-family residential adjacent to single-family residential so long as the transition measures are satisfied. The project substantially exceeds the transition measures. The transition measures require the building height to be limited to the height limit for the adjacent lower density residential zone for all those buildings within: (1) 25 feet of the adjacent property/zone; or (2) 15 feet if the adjacent property/zone lies within, or on the edge of, a right-of-way. In this case, the closest building is 49 feet from adjacent R-10 zoned property and 82 feet from the closest single-family residence. Staff Report, p.6-7.

The Applicant did not ignore the single-family zoning area as some neighbors suggested. The project provides significantly greater buffers, screening and setbacks to the adjacent properties than the 5 to 15-foot setbacks required under the R-2 zoning. MMC Table 19.302.4. The four closest residences will be 218 feet, 200 feet, 143 feet and 82 feet from the closest buildings and the A-2 building will be at least 99 feet from the WCC property line. Staff Report, p.6. The Applicant is maintaining the forest areas adjacent to the residences and WCC, which will provide a significant physical and visual buffer between the properties. The Applicant continues to meet with adjacent neighbors in an attempt to further address their concerns and has made a concession to them to increase the buffer area by agreeing to move the A-2 building six feet further from the property line.

Some parties claim that the project is incompatible because it will purportedly decrease the property values of the nearby Waverly Heights single-family residences. The City cannot consider a development’s effect on property values unless there is a specific requirement in the City code to do so. *Hill v. City of Portland*, 66 Or LUBA 250, 258-59 (2012). There is nothing in the applicable approval criteria that requires the consideration of impacts on property values of surrounding uses. Additionally, there is insufficient evidence to demonstrate that the project will in fact cause a decrease in property values on the surrounding properties. Even if there were a specific requirement in the City code to consider property values (which there is not), generalized claims of effects on property values are insufficient – there must be substantial evidence demonstrating that the development will have a negative effect on the property values in this specific instance. *Johnson v. City of Eugene*, 42 Or LUBA 353, 366-67 (2002). The alleged effect on property values is speculative and unlikely given that there are already several existing multi-family apartments in the immediate area. If the City were to conclude otherwise, it would be extremely difficult to develop a multi-family residential project anywhere in the City that is not well away from single-family residences.

**8. The project does not violate historic resource or preservation requirements.**

Some neighbors allege the project violates the historic resources or preservation requirements because Waverly Heights is designated as a historic neighborhood. Although some properties in Waverly Heights are designated as historic resources, the entire subdivision is not designated as historic. Regardless, the project does not conflict with any historic resource or preservation requirements.

MMC 19.403 provides the Historic Preservation overlay zone requirements that govern historic resources. The historic preservation standards apply almost exclusively to the property where the historic resource is located and not adjacent or surrounding properties. To the extent these standards address adjacent properties at all, they are limited to commercial and industrial uses and not multi-family residential uses. MMC 19.403.5.E.10 provides: “An appropriate buffer or screen, as provided under Subsection 19.504.6, may be required when a **new commercial or industrial improvement or use** is proposed on or adjacent to a designated resource, or within or adjacent to an historic district.” (Emphasis added). Therefore, the project does not violate historic resource or preservation requirements.

**9. The project complies with the PD phasing requirements.**

Several neighbors criticized the Applicant’s proposal to develop the project in three phases. Some neighbors questioned the Applicant’s commitment to construct all three phases, believe the City should force the Applicant to commit to a specific phasing schedule and/or claim the City should only consider the amenities proposed for the first phase. These claims are inconsistent with the applicable PD code provisions.

MMC 19.311.17 specifically allows a PD applicant to develop the project in phases. MMC 19.311.17.A allows for a phased development over a seven-year period. The Applicant is proposing a three phased development over the time period allowed under MMC 19.311.17.A. MMC 19.311.17 does not require an applicant to commit to a specific construction schedule, but the Applicant provided additional information about the timing of the three construction phases in response to inquiries from the neighbors.<sup>12</sup> In response to concerns raised about blasting associated with the construction project, which will be limited, the Applicant is willing to provide reasonable advanced notice of scheduled blasting to any of the surrounding residents who request such notice. The Applicant would not have gone to the time, effort and expense of designing and proposing a three-phase PD if the Applicant did not intend to develop all three phases. MMC 19.311 does not limit the evaluation of the PD to the first phase. The PD is an overall plan that must be judged based on the development proposed in all phases.

---

<sup>12</sup> The Applicant estimates that each phase of construction will last about a year, with external construction (grading, framing, and exterior envelope) taking about six months and internal construction taking six months. Letter from Scott Wyse, dated November 17, 2020, p.9.

**10. The Applicant measured the height of the buildings consistent with MMC 19.202.2.B.**

Some neighbors questioned the Applicant's methodology for measuring the height of the A-1 and A-2 buildings. The Applicant measured the height of the buildings consistent with MMC 19.202.2.B.

MMC 19.202.2.B sets forth the standards for measuring the exterior height of buildings. MMC 19.202.2.B.1 provides for two base points for property on sloped property such as the subject property. Base point 1 is the elevation of the highest point of the property and base point 2 is the elevation at the lowest point of the property. If the highest point of the property is more than 10 feet higher than the lowest point, which is the case here, then the base point 2 is the elevation 10 feet above the lowest point. Measurements to the top of the building depend on the type of roof. MMC 19.202.2.B.2. In this case the roof is a pitched roof with a pitch 12/12 or less, which means the measurement is based on its average height of the roof as measured to its highest gable height. MMC 19.202.2.B.2.c.

The Applicant measured the A-1 and A-2 buildings consistent with MMC 19.202.2.B. The Applicant measured the buildings using both base points and the average height of the roof as measured to its highest gable height per MMC 19.202.2.B.2.c. The measurement for base point 1 (highest elevation) is approximately 43 feet and the measurement for base point 2 (10 feet above the lowest elevation) is approximately 52 feet. Application Narrative, p.8. Staff agrees with these measurements. Staff Report, p.6.

Although the Applicant is proposing the PD in part to allow the A-1 and A-2 buildings to exceed the allowed height, it is important to note that it is only necessary to address the WG overlay zone height limit. The R-2 zone allows for a height of 3 stories or 45 ft, but it permits an additional story if an additional 10% of site area is retained beyond the minimum required which the project does in this case. MMC Table 19.302.4 & 19.302.5.E. Therefore, the allowed height under the R-2 zone is 4 stories or 55 feet. The A-1 and A-2 buildings comply with the R-2 height limits under both base point 1 and 2. The PD only seeks to exceed the WG overlay zone height limit.

**11. The project complies with the privacy and lighting requirements.**

Some neighbors claim the project should not be allowed on privacy grounds because some of the buildings exceed the height limit, the balconies and windows will allegedly provide a line of sight into adjacent properties and the lights will shine from the windows at night. The Applicant designed the project to minimize the privacy effects on the adjacent properties and the project complies with the relevant code requirements.

To begin with, it is important to note that the applicable code provisions do not limit the size or number of balconies or windows. Therefore, there is nothing in the MMC that prohibits the Applicant from proposing large balconies and windows.

The A-1 and A-2 buildings are the only buildings that exceed the WG overlay zone height limit and the balconies and windows in those buildings are oriented toward the river, not adjacent residential properties. Additionally, the A-1 and A-2 buildings comply with the R-2 height limit,

and the WG overlay zone height limit they exceed is not designed to provide privacy protections for adjacent properties.

The Applicant designed the project to minimize the privacy effects on the adjacent properties in a way that complies with the approval criteria. MMC Table 19.505.3.D.12 addresses privacy considerations and requires multi-family development projects to consider the privacy and sight lines to adjacent residential properties, and “be oriented and/or screened to maximize the privacy of surrounding residences.” The project complies with these requirements. As previously noted, the A-1 and A-2 buildings are oriented toward the river, not adjacent residential properties, and the B-1 and B-2 buildings comply with the height limits. The project provides significant setbacks from adjacent residential properties – ranging from 218 feet, 200 feet, 143 feet and 82 feet – and the Applicant agreed to move the A-2 building an additional six feet away from the property line.<sup>13</sup> The project includes an extensive natural vegetative buffer along all sides of the property that are adjacent to residential properties which will screen the project from the adjacent residences. At the December 8, 2020 hearing, the Applicant submitted visualizations that show the views from adjacent properties to the north of the project which show that there will not be direct lines of sight that would significantly affect the privacy of neighbors.

Although some neighbors complained about light shining from the windows at night and the need to address light pollution, none of them identify any relevant standards in the code. The City’s zoning code does not restrict the size or number of windows due to alleged light pollution.

## **12. The project complies with the transportation standards.**

Several neighbors expressed concerns about the traffic to and from the project and the Applicant’s potential use of Lava Drive for construction access. The project satisfies the applicable transportation standards and the Applicant clarified that it will not use Lava Drive for construction access.

MMC 19.311.9.F and 19.704 provide the transportation requirements. MMC 19.311.9.F requires the project to be “consistent with the functional classification, capacity, and level of service of the transportation system.” MMC 19.704 provides the standards for the traffic evaluation.

The Applicant addressed the transportation standards and demonstrated that the project is consistent with the functional classification, capacity, and level of service of the transportation system. The Applicant submitted a formal Traffic Impact Study (“TIS”) prepared by a traffic engineer that concluded the project is consistent with the functional classification, capacity, and level of service of the transportation system and no offsite mitigation is required. The City Engineer and the City’s on-call traffic consultant (DKS) provided the Applicant the scoping for the TIS, reviewed the TIS for compliance and agreed with its conclusions and recommendations. Staff Report, p.52-53. The Oregon Department of Transportation (“ODOT”) also reviewed the

---

<sup>13</sup> The Applicant is utilizing the discretionary design guideline path for the project, but it is noteworthy that the objective design guidelines only place limits on windows “within 30 ft of windows on adjacent residences” and in those cases requires the windows be offset, not eliminated or reduced in size. MMC Table 19.505.3.D.12. None of the adjacent residences are even close to 30 feet from the proposed buildings.



TIS. Staff Report, p.53. The fact that all of the traffic engineers that reviewed the TIS agree it complies with the requirements is substantial evidence the project satisfies the applicable transportation standards and will not create adverse traffic conditions.

The Applicant clarified that access for the construction of the proposed buildings will be from Waverley Court and the portion of Lava Drive to the west of its intersection with Waverley Court will not be used for construction. Email from Scott Wyse, dated November 10, 2020. It is possible that a portion of Lava Drive may be used for the transportation of some shrubs and trees being removed from the site, but any such activities on Lava Drive will be limited and of short duration so as to minimally disturb any residents of condominiums at Shoreside East.

### **13. The Applicant's tree removal plan is consistent with the MMC and Comprehensive Plan.**

Although WCC admits the property does not fall within the vegetation buffer area of the WG overlay zone and is not subject to any requirement to retain trees, WCC erroneously states that the Applicant's proposed tree removal is inconsistent with the Comprehensive Plan and the purpose of the WG overlay zone. Letter from Michael Robinson, dated October 27, 2020, p.7-8. WCC is wrong for several reasons.

As WCC admits, the property does not fall within the vegetation buffer area addressed in MMC 19.401.8 and is not subject to any tree retention requirement. The vegetation buffer area applies to the "land area between the river and a location 25 ft upland from the ordinary high water line." MMC 19.401.8.A. There is no dispute the subject property is not within this area.

There is nothing in the WG overlay zone provision or any other section of the MMC that requires the Applicant to retain more trees than it is proposing in this case. WCC mentions the Comprehensive Plan but does not cite any specific provision to support its claim. WCC relies on the WG overlay zone purpose statement in MMC 19.401.1, but purpose statements are not approval criteria unless there is specific language stating that they are intended to be mandatory approval criterion. *Jones v. City of Grants Pass*, 64 Or LUBA 103, 110 (2011); *SEIU v. City of Happy Valley*, 58 Or LUBA 261, 271-72, *aff'd*, 228 Or App 367, 208 P3d 1057, *rev den*, 347 Or 42 (2009). MMC 19.401.1 does not include any language indicating it is intended to be a mandatory approval criterion and it does not even mention the retention of trees. MMC 19.401.8 is intended to address the tree retention requirements, not MMC 19.401.1.

The Applicant is retaining a significant portion of the trees, far more than is required under the R-2 or WG overlay zoning requirements. As the Applicant's arborist explained, the vast majority of trees being removed are "dead, dying, in poor to very poor health and/or structural conditions." 10/27/20 Planning Commission Packet, Section 5.1, p.260. The WG overlay zone is not intended to protect dead, dying or trees in poor to very poor condition.

### **14. The Applicant is entitled to consolidate its applications and request a concurrent review and process pursuant to the City code, State law and City precedent.**

WCC raised two procedural objections related to the Applicant's consolidation of the various applications and request that they be concurrently reviewed and processed. First, WCC claims

the Applicant is not allowed to process the preliminary development plan and final development plan applications concurrently. Second, WCC claims the Applicant is not allowed to process the limited land use applications (property line adjustment and design review) concurrently with the remaining applications under Oregon law. The City Staff and City attorney disagree with WCC's position. Staff Report, p.4-5. WCC is wrong and its position is inconsistent with the City code, State law and City precedent.

As explained in the Staff Report, an applicant is entitled to request that multiple applications be reviewed and processed concurrently so long as the consolidated applications are processed according to the highest numbered review type required for any part of the application. Staff Report, p.4-5. MMC 19.1001.6.B provides that “[w]hen multiple land use applications are required for a single proposal, the applicant may request, or the City may require, that the applications be processed concurrently or individually” and further states that “[t]he City shall generally allow applicants the choice of having multiple applications for a single proposal processed concurrently or individually.” MMC 19.1001.6.B implements ORS 227.175(2) which requires all cities to “establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project.” In this case, the Applicant elected to use the consolidate process allowed by MMC 19.1001.6.B and ORS 227.175(2) and have all of the applications reviewed and processed pursuant to the highest review type required of any of the applications – Type IV.

Neither MMC 19.1001.6.B nor MMC 19.311 preclude an applicant from utilizing this consolidation process for the preliminary and final development plan applications. Contrary to WCC's suggestion, the preliminary and final development plan applications are in fact separate applications and not merely two steps for the same land use application. MMC 19.311.5 and 19.311.7 require separate application filings for the preliminary and final development plan applications. As noted on the Application form, the Applicant paid two separate application fees for the preliminary (\$1,500) and final (\$5,000) development plan applications. There is **nothing** in MMC 19.311 that expressly requires an applicant to wait until after the preliminary planned development approval is obtained before it can file for the final development plan approval.

Nor does it make sense to force an applicant to process the preliminary development plan and final development plan applications separately because the preliminary development plan process is designed to benefit the applicant, not the public. Unlike a final development plan which requires public notice and a “public hearing per Section 19.1007,” the preliminary development plan does not require either public notice or a public hearing. MMC 19.311.6.A & 19.311.10.A. The preliminary development plan merely requires a Planning Commission “meeting,” the Planning Commission merely advises “the applicant whether, in its opinion, the provisions of this chapter have been satisfied, or advise of any deficiencies” and is not reviewed by the City Council. MMC 19.311.6.A. As Staff explained, the preliminary development plan process is designed to provide the Applicant preliminary input on the development project so the applicant can factor it in as part of the final development plan. Staff Report, p.4.

WCC is also wrong in claiming that ORS 227.175(2) precludes an applicant from processing limited land use applications (property line adjustment and design review) concurrently with the other types of land use applications. The Oregon Court of Appeals rejected a similar argument and concluded that ORS 227.175(2) establishes the minimum consolidation requirements for

cities and does not preclude cities from allowing broader consolidation rights. *North East Medford Neighborhood Coalition v. City of Medford*, 214 Or App 46, 53, 162 P3d 1059 (2007). MMC 19.1001.6.B applies to all applications and does not prevent an applicant from consolidating land use and limited land use applications. The PD process expressly allows an applicant to submit a land division preliminary plat, which is a limited land use application, “to be considered at the same time as the final development plan.” MMC 19.311.8.A. Therefore, the City code clearly allows an applicant to process limited land use applications concurrently with the other types of land use applications.

Finally, Staff and the Planning Commission have previously determined an applicant can apply for both preliminary and final planned development approval as a consolidated process and can combine a land division application with the planned development/zone change applications. The City adopted this position for the Kellogg Creek Planned Development (PD-2017-001), which proposed a 92-unit planned development that included a request for both preliminary and final planned development approval, zone change, subdivision and related approvals. We submitted a copy of the staff report to the City Council, dated August 29, 2017, in which both the Planning Commission and Staff recommended approval.<sup>14</sup> Memorandum from Phil Krueger, dated November 10, 2020, p.15 & Attachment.

### **Conclusion**

For the reasons set forth in this final written argument and the record, the Applicant respectfully requests that the Planning Commission recommend approval of the Application subject to the conditions of approval set forth in the Staff Report, with the exception of Condition 4.b. We appreciate your time and consideration of this matter.

Very truly yours,

HATHAWAY LARSON LLP

/s/

E. Michael Connors

EMC/ph

Cc: Walker Ventures, LLC  
YGH Architecture

---

<sup>14</sup> The applicant subsequently withdrew the application on January 22, 2018, before the City Council could render its decision, but this application demonstrates there is City precedent for allowing an applicant to apply for both preliminary and final planned development approval and combine a land division (subdivision) application with the planned development/zone change applications.