

**From:** [Peggy Reaume](#)  
**To:** [Peggy Reaume](#); [Vera Kolas](#)  
**Subject:** Proposed Waverly Woods Development  
**Date:** Monday, November 16, 2020 9:45:53

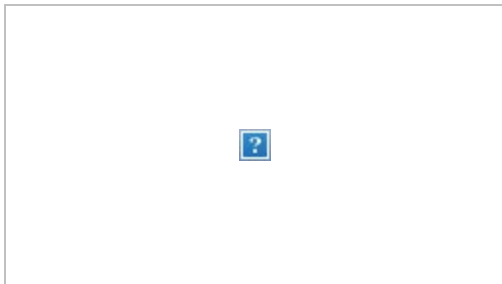
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<https://digitalcommons.unomaha.edu/cgi/viewcontent.cgi?article=2150&context=studentwork>

<https://www.realtor.com/news/trends/things-that-affect-your-property-value/>



Neighborhood Features That Drag Down Your Home Value | realtor.com®

[www.realtor.com](http://www.realtor.com)

The spring home-buying season is just ahead of us. But before you rush out to buy, check out our list of things you don't want to have in your neighborhood.

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Vera,

I have attached two articles which refer to single family home values near multifamily developments. The first attachment is a master's thesis and is highlighted below and the second article, while less scientific, shows similar results.

I am a realtor with Windermere Realty Trust. It is my opinion that the Waverly Woods current plan will impact housing prices in Waverly Heights neighborhood, particularly those at the end of SE Cambridge Lane. I believe there are ways to decrease this impact including, but not limited to, decreasing the height of the buildings closest to SE Cambridge Lane, in accordance to current standards in Willamette Greenway and sheilding the impact with solid wall and trees so the visual and auditory impact is lessened.

Another case in point is the property located at 10200 SE Cambridge

Lane. This property is an estate like property on 3.28 acres with 9206 SF. While this is not a property with a high number of qualified buyers, it took two years to sell. The initial price was \$3,500,000 in 3/2018 and it sold for \$1,799,900 in 3/2020. I personally showed this property twice and sent it to several others. The consistent feedback I received from qualified buyers was the readily apparent presence of apartments in the rear of the yard. They wanted a larger property but not one next to apartments.

Thank you for your time and kindly confirm receipt.

best,  
Peggy Reaume

#### Attachment #1:

The objective for this research study is to analyze the impact apartment complexes have on the sales price of single-family dwellings by using distance and structural density as factors. The two hypotheses determined if the selling price of single-family dwellings increase with increasing distance from an apartment complex and if the greater the number of apartment complexes within 914.4 meters (3,000 feet) of a single-family dwelling the lower the selling price.

The results of the quantitative analysis performed on the data indicated that both the first and second hypotheses are supported. The selling price of single-family dwellings increased with increasing distance, but only after performing factor analysis and regression analysis utilizing factor scores. Regression using factor scores was utilized because severe multicollinearity existed in both the full and reduced attribute multiple regression models. However, the second hypothesis where selling price of single-family dwellings decrease with increasing numbers of apartment complexes was supported by all of the multivariate analyses including the full and reduced attribute multiple regression model, the Varimax rotated factor analysis scores, and regression utilizing factor scores. The regression coefficient for the number of apartments variable was negative for Models 1 and 2 and were significant at the 0.05-level. The number of



apartments variable had a positive coefficient when using factor scores in regression because it was grouped with distance. As a result, referring to both the rotated component matrix and the rotated component plot are essential when analyzing the factors scores because they showed that the number of apartments variable were in fact negative and distance positive. In other words, both hypotheses are supported, but the support of the second hypothesis is stronger. This is because the number of apartments variable had a negative coefficient in Models 1 and

2 and in the results presented in the tables for factor analysis. More research needs to be done to investigate the multifaceted effect apartment complexes have on the value of single-family dwellings.



## Real Estate Broker, MA

Windermere Foundation Board Member  
Certified Negotiation Expert  
Home Staging Expert  
Relocation Specialist  
Licensed in the State of Oregon

## Windermere Realty Trust

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11-16-2020  
City of Milwaukie

Attention: Planning Commission Chair, Massey; Commission Members and Planning Staff

Reference: PD 2020-001; TFR-2020-002; WG-2020-001; PLA-2020-001; ZC-2020-001

Please re-review our comments and photographs addressed to the Planning Commission on 11-07 and 10-13-2020 as well as oral testimony given on 10-27-2020. Basically, we oppose this development because it is not in keeping with the greater neighborhood and does not meet existing approval criteria.

Let us remind you that we built and have lived in our home for 50 years. We are not newcomers and have been active in the greater community. Prior to our purchase, we were diligent in our contacts with the City of Milwaukie about this adjacent property zoned at that time R10 and were assured there would be a significant buffer zone between apartments and single family homes. Our building and associated home loan was contingent on that. Subsequently, the City failed to recognize the importance of that buffer and allowed the zone change in spite of neighborhood opposition.

We now ask for consideration and approval of the proposed development in accordance with the Willamette Greenway and effective Comprehensive Plan.

We wish to emphasize and re-emphasize the following:

1. The building height and width requests are significantly in excess of requirements . We've asked for elevations from the north and have not received them. It appears that the building will reach nearly 63' in height as viewed from the river and our property. *(Note the 8'-11' garage wall at lower elevation and the 8' +/- height added for mechanical equipment and roofline).*
  - We've suggested elimination of the 4th story; or, moving the A1 and A2 complexes toward Waverly Court where the proposed Willamette River viewing location is planned; or, the reduction of the overall density planned for this site.
  - The owner indicates the development is not financially feasible without a 4th story. The City and community are not responsible for a developer's financial success. We respectfully ask the Planning Commission to consider the financial impact and quality of life impacts on the immediately adjacent single family neighborhood.
  - While we appreciate the offer to move A2 six feet to the south, this distance does little to mitigate views, noise and light pollution. In accordance with 'dark skies' objectives, we are concerned about lighting on sides of buildings A2 and B2 as well as walkways and community areas. We request no lighting on the north buffer of the development.
2. It also appears that building A2 incorporates wrap-around balconies and the owner makes specific points of the value of windows on two sides . Those balconies should be completely obstructed from viewing our property from 4 stories above. The walkway/path shown between our properties should also be eliminated and outdoor ground level terraces should not be placed in a buffer zone between our properties.

Construction noise and geological disruption: As noted by neighbors, we are concerned about blasting impact on a basalt ridge extending through our property. Excavation would occur immediately adjacent to our property line and to single family homes in Waverley Heights. Will the developer be liable for any damages to Waverley Heights properties?

3. Significant natural area: The developer notes many times that 54% of properties will be kept in a natural state. A definition of 'natural area' is requested. Does that include community viewing area, paths, the already existing garden? Completely re-landscaped property could hardly be considered **retention** of natural area. No mention has been made of impact on the wildlife resource and habitat. Further, Planned Developments require designation of permanent green space. We have no indication that provisions of this nature have been made. We suggest that a permanent green space could act as the buffer between R2 and R10 neighborhoods.

4. Photographic walk through Waverley Heights: Our neighborhood is shown as 'historic' in the Comprehensive Plan and there is direction as to how these properties should be protected. We have included a photographic walk-thru of the Historic Waverley neighborhood for your review as neither the Planning Staff or the Planning Commission members have agreed to view the site from Cambridge Lane or the entire north, east or west borders. Thus, a realistic view of all impacted neighboring communities has not been obtained. Also included is a photo of the cover of the book, *It was 100 Years Since—100 Years in the Waverley Area* researched and written by Elizabeth Dimon, the daughter of one of the original resident families in Waverley Heights. It is available for your review if there is interest in the significant historical value of this neighborhood. It gives perspective on why current residents are adamant about preservation of this **significant historic Milwaukie resource**.

Photos clearly point out the maintenance of forested lands, open spaces, large lot size and historic homes. Care for this environment has been the residents' purposeful objective for over half a century! The condition of trees maintained in Waverley Heights and the condition of vegetation in the development site is also evident. Developer states "the owners have had this property in their family for decades and appreciate the natural beauty of these wooded areas — —and have committed significant resources to maintaining and protecting the existing trees". Due to lack of maintenance, we question whether trees designated to remain can be rehabilitated and will live through excavation. Tree inventory shows only 135 trees retained of which 36 are in only fair condition. We question whether requirements stated in the Comprehensive Plan or the Willamette Greenway are being met and whether the "Waverly Forest" retention mentioned in the submission is realistic or sustainable given the footprint and density of the proposal.

A photographic 'walk' down the fence line between Waverley Heights and the proposed development also adds perspective. Please note comments added on photos.

5. **Conclusion:** The proposed development is bordered on three sides by extremely low density, historic properties.

In order to mitigate impact of any development plan, a significant, impenetrable buffer zone is imperative to meet Willamette Greenway and effective Comprehensive Plan provisions and ensure quality of life for neighboring residents.

This Planned Development does not meet numerous provisions in the Willamette Greenway and effective Comprehensive Plan and should be denied in its current form. To be allowed as presented would be precedent setting for future requests and compromises validity of Milwaukie's current planning framework and values set forth in the Willamette Greenway.

Finally, I must mention the role of the NDA in this proposed development. I've talked with the outgoing president of Historic Milwaukie. He indicated that during COVID it has been difficult to get information out including meeting agendas. I've been unable to ascertain if the July meeting was held primarily for the Waverly Development presentation. Applicant states there

was no opposition at the meeting and we note that most attendees were Waverly apartment dwellers. In any event, none of the impacted Waverley Heights neighbors were advised of this meeting and as a result none attended. Our **first** notice of the proposal arrived in the mail on 10-9-2020 barely two weeks prior to the hearing where the Planning Staff recommended approval.

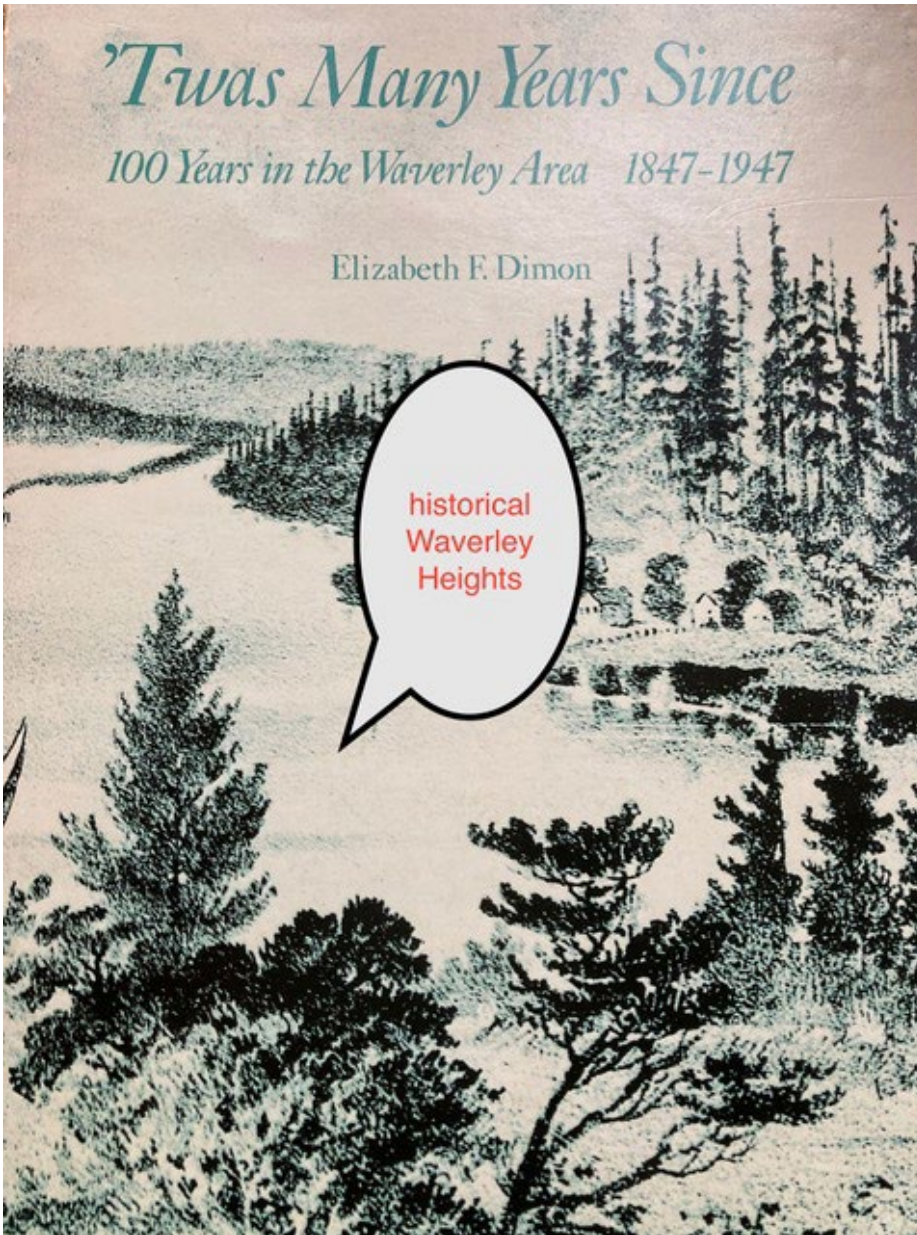
Our point: The NDA's should not bear the responsibility for garnering citizen approval of developments, especially when Willamette Greenway and Comprehensive Plan 'exceptions' are in consideration.

**From:** [Steve Stone](#)  
**To:** [Vera Kollias](#)  
**Subject:** Photo tour of Waverley Heights - 1st part of album  
**Date:** Tuesday, November 17, 2020 8:39:45

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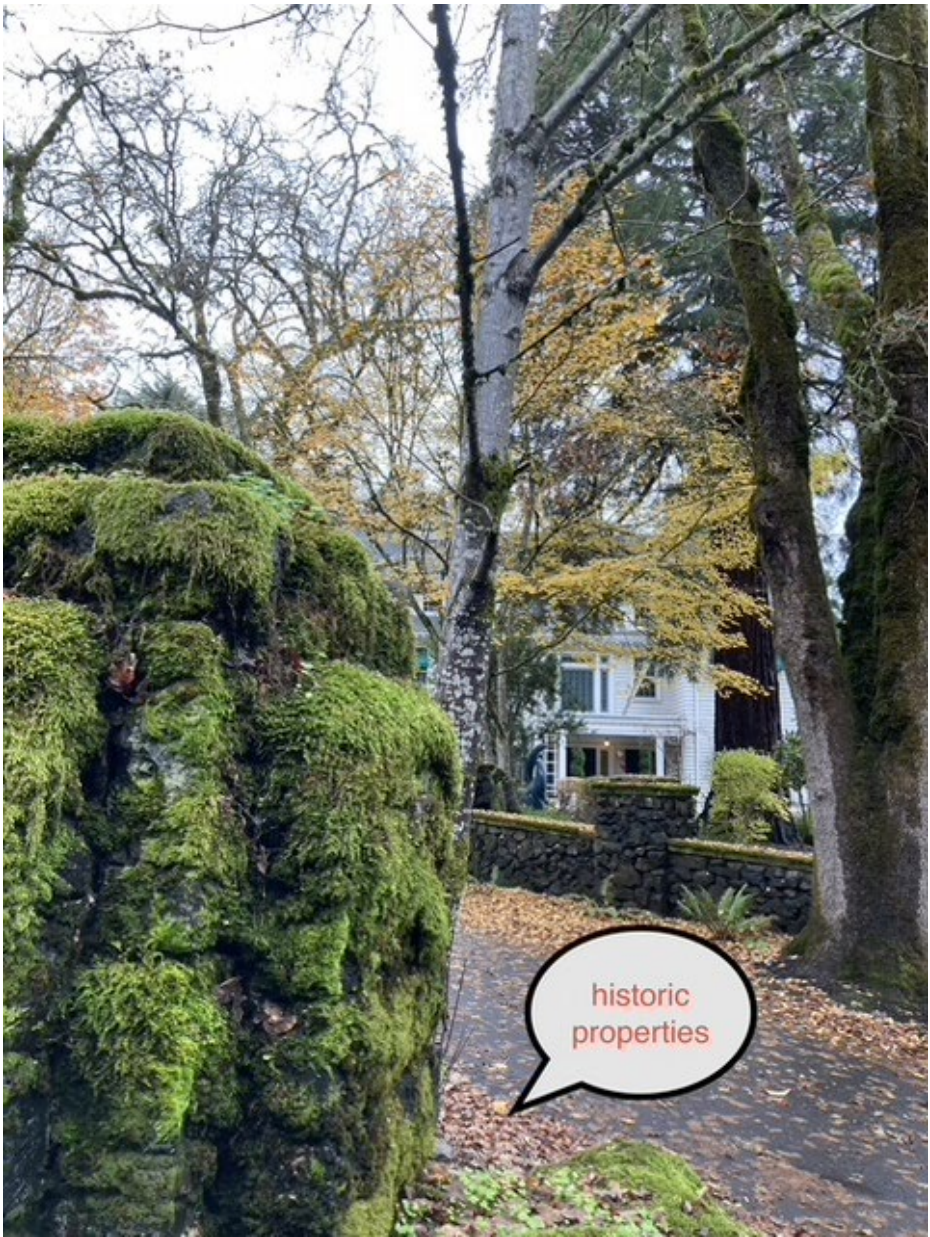
healthy maintained  
natural vegetation







historic properties  
natural settings



historic  
properties





**From:** [Steve Stone](#)  
**To:** [Vera Kollias](#)  
**Subject:** Photo tour of Waverley Heights - 2nd part of album  
**Date:** Tuesday, November 17, 2020 9:27:36

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Vera- please let us know if you have any problem with the 'tour' photos sent in two emails  
Thanks, Gloria





looking southwest  
into development property tree  
health in question



fenceline looking south



fenceline  
looking sw

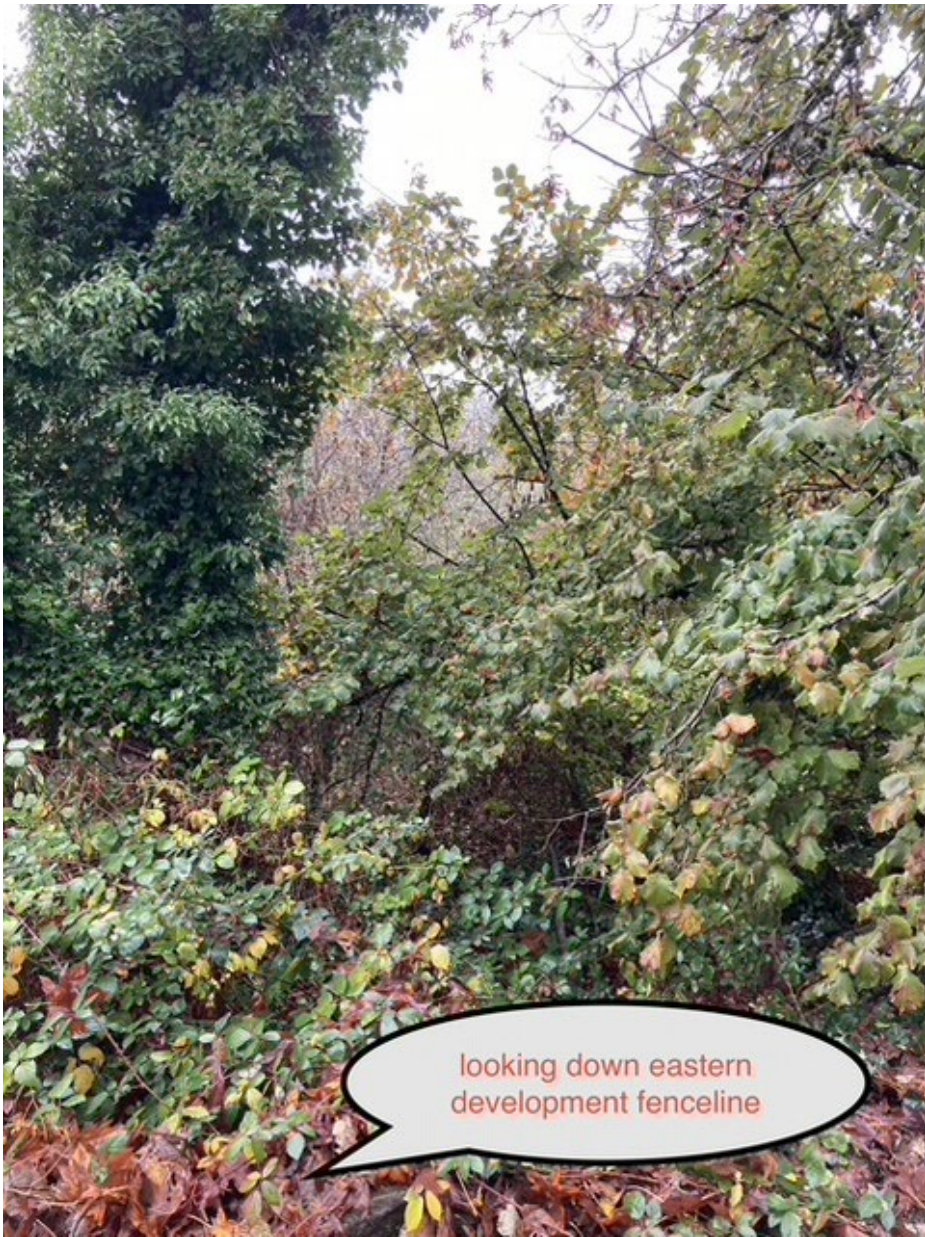


fenceline on entire  
southern border of stone  
property and joining county club  
property at base of hill



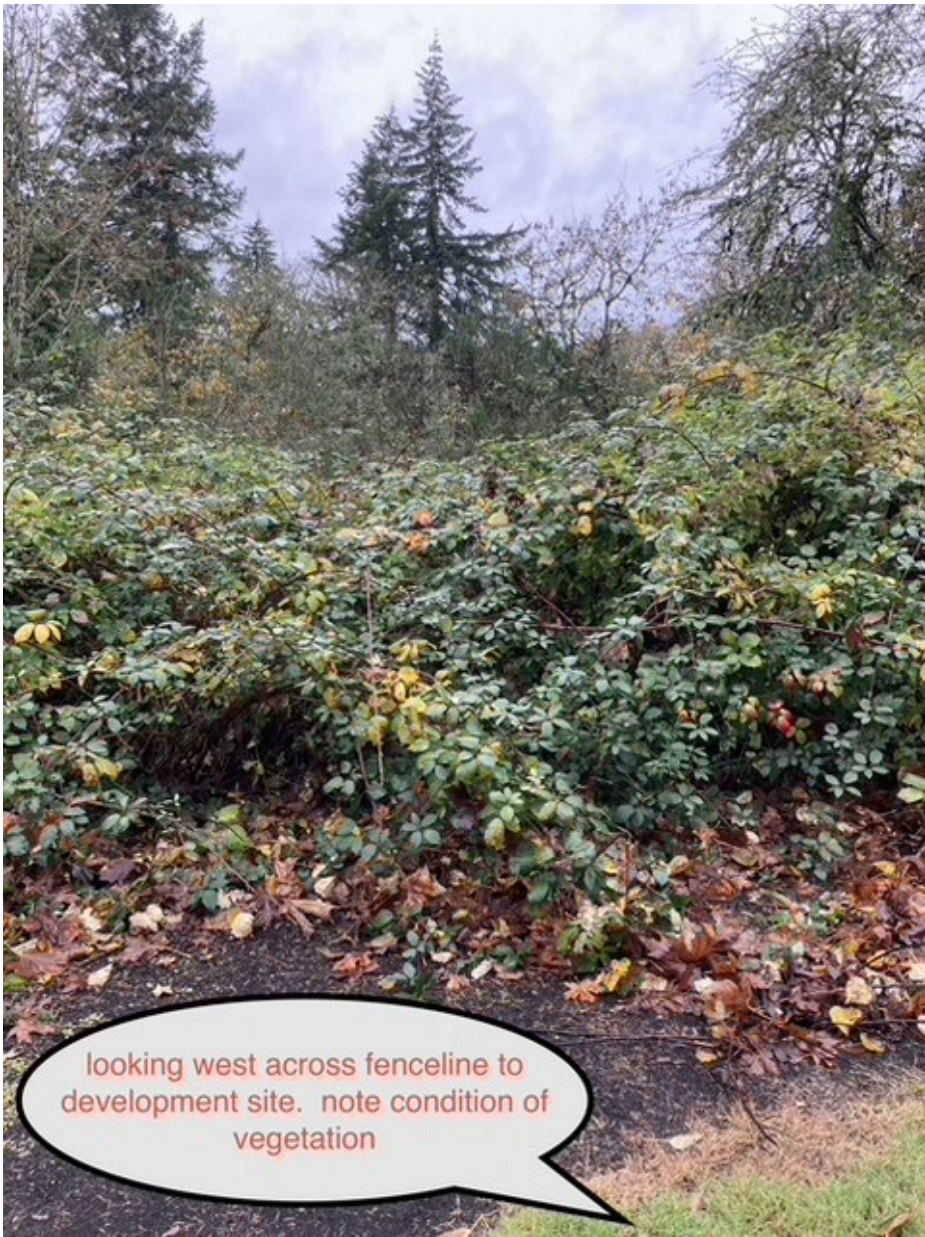


continuous fenceline



looking down eastern  
development fence line





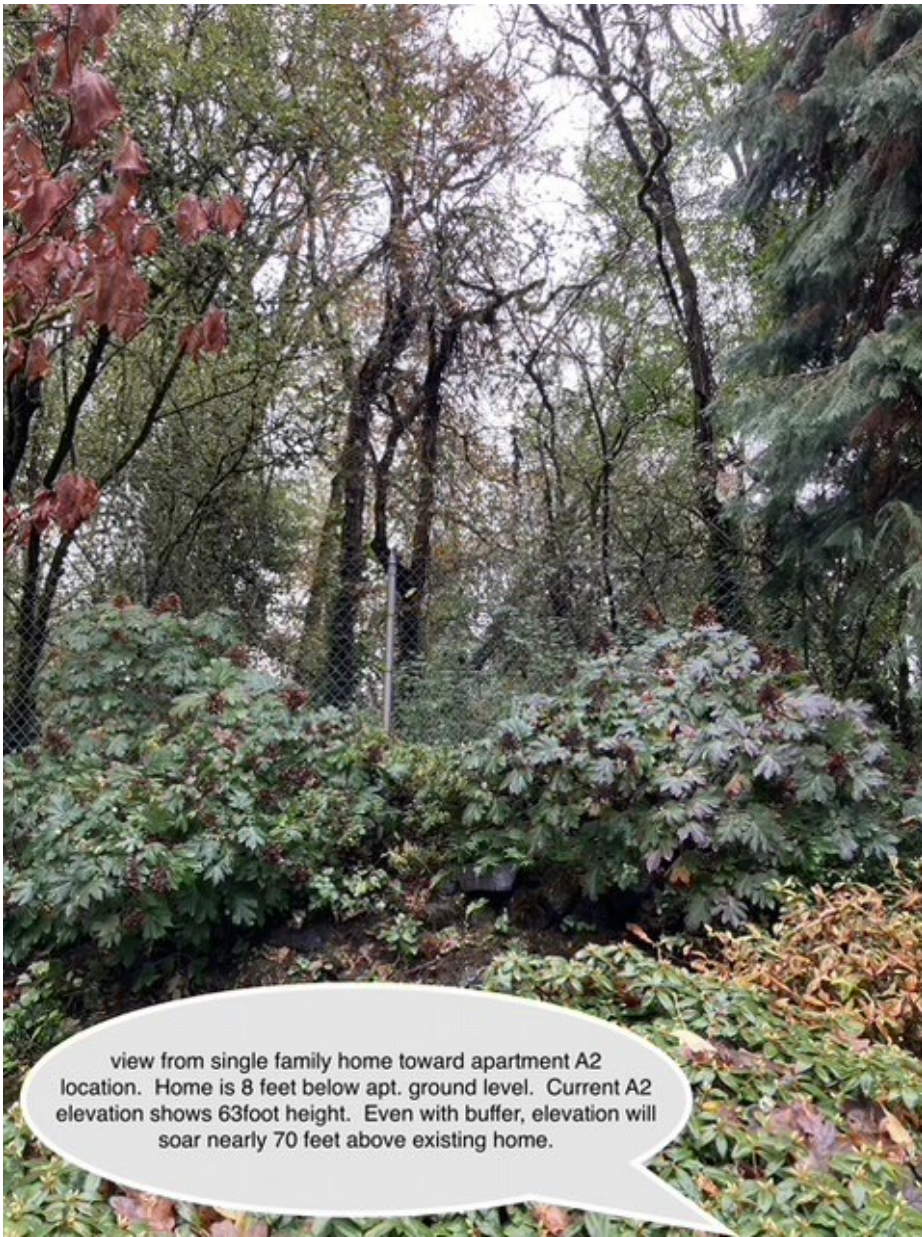


continous fenceline



Closeup of fenceline showing canopy health and pink tape designating location of 4 story apartment





view from single family home toward apartment A2 location. Home is 8 feet below apt. ground level. Current A2 elevation shows 63foot height. Even with buffer, elevation will soar nearly 70 feet above existing home.



further down fenceline looking west to intersection with Waverley country club

**From:** [Cassie Fotheringham](#)  
**To:** [Vera Kolas](#)  
**Subject:** proposed Waverley Woods development  
**Date:** Tuesday, November 17, 2020 10:34:04

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**This Message originated outside your organization.**

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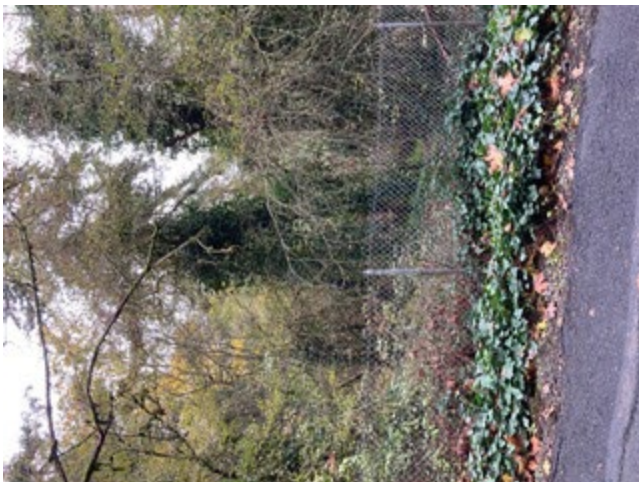
I am the owner of a buildable lot at 10135 SE Cambridge lane. My lot is less than 30 feet from the northern property line of the proposed apartment complex. I want to add my name to the recently submitted letter, with photographs, from my nearest Waverley Heights neighbors.

Variances on the height and footprint of the proposed apartment buildings should not be approved. The Willamette Greenway requirements are very important and should to be respected. Ideally, I'd like to see the whole proposed project moved south on the Wyse property. At the very least, a much wider buffer of trees and bushes needs to be established between the proposed development and Waverley Heights. This would help maintain property values in Waverley Heights, a historic Oregon neighborhood, which is good for the City of Milwaukie as well as the developers. As is obvious from the photographs, building B1 would be so close to the fence line (property line) that the visual and noise impact on single-family neighbors would be unavoidable and, in my opinion, negative.

I have added another photo taken from my property looking south into the proposed development area. The pink tape isn't visible, but building B1 would be where the middle ivy-covered tree sits. Please allocate space for a reasonable vegetative buffer zone between Waverley Heights and the proposed apartment complex. *Waverley Woods* should live up to their name and maintain the woods.

Thank you for accepting my comments.

Catherine Delord Fotheringham  
1430 11th Ave W  
Seattle WA 98119  
(206) 612-9349



November 17, 2020

To: Milwaukie Planning Commission  
From: Patricia Justice, 10252 SE Cambridge Lane, Milwaukie, Oregon  
Subject: Waverley Woods

I continue to be concerned about the proposed Waverley Woods apartments. Please consider my comments as additional to the ones previously submitted.

**1.** From an overriding management policy of the applicable Comprehensive Plan: "Neighborhoods, their identity, and security, will be maintained and enhanced by all actions resulting from public and private activities."

From Chapter 3 of the applicable Comprehensive Plan: "GOAL STATEMENT: Preserve and protect significant historical and cultural sites, structures, or objects of the city."  
(Also see map 4 Historic resources.)

From MMC 19.311.9 Approval Criteria

"C. The proposed amendment is compatible with the surrounding area based on the following factors:

1. Site location and character of the area.
2. Predominant land use pattern and density of the area"

The proposed development is not compatible with the surrounding area and land use pattern or density. Contrary to the application, the proposed development is not surrounded by multifamily units. In fact, as stated earlier, two property lines of the proposed development border our Waverley Heights neighborhood; a third borders the Waverley Country Club. While we appreciate the mitigation offered by the owners including screening and moving building A2 an additional six feet away from the Stone property, no amount of shrubbery or trees can eliminate the negative visual impact and incompatibility of three and four story apartment buildings, including lights (even downward facing lights), and noise placed so close to our forested and historic neighborhood. The development plan currently under review is not compatible with our neighborhood. The 4th story proposed for both buildings A1 and A2 should be denied, and buildings A2 and B2 should be moved further toward Waverly Court widening the buffer zone.

**2.** From an overriding management policy of the applicable Comprehensive Plan:

"Existing natural resources and developments of character will be preserved, and new development will contribute to improving the quality of the living environment, and to a sense of City-wide identity and pride."

From Chapter 3 of the applicable Comprehensive Plan. "GOAL STATEMENT: To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources."

From MMC 19.401.1 "The purpose of the Willamette Greenway Zone is to protect, conserve, enhance, and maintain the natural, scenic, historic, economic, and recreational qualities of lands along the Willamette River and major courses flowing into the Willamette River."

From MMC 19.311.3 Development Standards:

"E. Open Space



"Open space means the land area to be set aside and used for scenic, landscaping, or open recreational purposes with the development."

"All planned unit developments will have at least one-third of the gross site area devoted to open space and/or outdoor recreational areas."

I am increasingly concerned that the subject property will be so forever changed by this development that it will no longer support a variety of forest-loving birds and native animals such as the Townsend chipmunk and the Douglas squirrel. And there are smaller creatures such as salamanders, garter snakes, and other vertebrates and invertebrates who make the forest their home and who may be driven out by development. Coyotes have thrived in our neighborhood, proving that this is a balanced and healthy habitat for native birds and animals.

Forty-six percent of the subject property will be developed. An unknown percentage of the remaining 54% will be maintained in an undefined natural condition. The remaining unknown percentage will be landscaped, which may not offer the forest habitat necessary for these birds and animals. And furthermore, as indicated in my earlier letter, the arborist states that only about 1/3 of all the trees will be saved (135 of 391). The owners continue to justify their 4-story buildings within the Willamette Greenway Zone by claims of trees and land saved, but I am skeptical of what will actually remain to support a healthy ecosystem.

In addition to screening, please consider requiring a large open space between the applicant's R-2 property and our Waverley Heights R-10 neighborhood and requiring maintenance of this open space as a wild and healthy forest of native trees and shrubs. A permanent open space will provide forever the habitat necessary for forest-dwelling wildlife. And it will further shield the view of the apartments from the river and the country club (see number 3).

**3.** From MMC 19.401.6 Willamette Greenway Zone Criteria. "The following shall be taken into account in the consideration of a condition use:

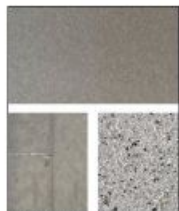
C. Protection of views both toward and away from the river;"

I've attached two exhibits from the owners' application. One provides a preliminary color palette, and the other is a rendering of one of the buildings. The color selections in the preliminary palette are very nice, but they don't seem to match the colors in the rendering of the building. Is there a reason for this? In addition, I am concerned that these colors may make the buildings stand out from the natural landscape when the goal is to limit their visibility from the river. A different color palette that matches a woodland setting of native trees and shrubs might reduce the visual impact from the river.

Thank you.



PRELIMINARY MATERIALS AND COLORS



SITE AND PRECAST CONCRETE



METAL PANELS AND MULLIONS



GLAZING



VERTICAL FIBER PANELS



HORIZONTAL TREATED WOOD SIDING



STANDING SEAM METAL ROOF

1 EAST  
1/16" = 1'-0"

45.6% GLAZING



2 SOUTH  
1/16" = 1'-0"

40.9% GLAZING



Please include this response from us for consideration during the upcoming apartment construction forums regarding the Waverly Heights neighborhood.

From the summary obtained from our neighbors.

The critical points stated are:

1- Greenway. The requested variance will exceed the height limitation and allow a fourth story on the two proposed ridge buildings.

2- Forest. Although the applicant states that 54% of the subject area will be maintained in a natural or landscaped condition, in fact only about 1/3 of the trees over 6 inches in diameter will be saved (135 of 391), and some of these are only in fair condition.

3-Compatibility with surrounding area and land use pattern/density. As noted previously in public testimony and written comments, our neighborhood of single-family homes was ignored in the application. Traffic is a concern. SO many things are of concern. It is imperative that the open space preserved. I do not believe there is any mention about the impact on the extensive wildlife in the area and how the damage a loss of habitat will have. Water run-off also needs to be addressed.

Of course, Karleanne and I are vehemently opposed to any additional multi-purpose construction in the Waverly Heights area. New construction of apartment seeking a height variance adds fresh insult to injury.

As you may know, many homes in this are over 100 years old – our home being one of them. We did not select and invest in this area to witness a transient population explosion. We have been living in this neighborhood since 1994. We have invested extensively in our home and land since then. We did not do all of this because we wanted to look out our window and see rows of apartments. Quite the opposite, in fact.

Plowing under land and clearing trees is planned. It should be controlled and developers should be held accountable for telling the truth about tree removal and other building plans. The general public

has the right to know all building truths that will impact this neighborhood. Apartment construction is forever. Apartment dwellers will be temporary which creates a whole list of issues. These issues should be defined and posted for public consumption. Developers want the increased income from the location address their proposed apartment will deliver. They don't care what happens to the entire area once construction is completed (or really what happens during that extensive construction). We who live here do care.

Ignoring the fact that we live in an established, single-family home community on the construction application is shameful and should also be disclosed to the general public and at all relevant forums.

Sincerely,

Kevin Berigan  
Karleanne Rogers  
Eton Lane

November 17, 2020

**Michael C. Robinson**  
Admitted in Oregon  
T: 503-796-3756  
C: 503-407-2578  
mrobinson@schwabe.com

**VIA E-MAIL**

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

RE: Waverly Woods Planned Development, File No. PD-2020-001  
Letter on behalf of Waverley Country Club

Dear Chair Massey and Planning Commission Members:

This office represents Waverley Country Club (“Waverley”). In submitting its third letter, Waverley maintains its opposition to the above-referenced file and writes in response to letters submitted on November 10, 2020 by Walker Ventures, LLC and Yost Grube Hall Architecture (collectively, “Applicant”). Specifically, Applicant’s November 10 letters address certain criteria Applicant must meet to obtain approval of its proposed planned development. Waverley notes that the Commission and the City are obligated to review the application in its totality, and against the other required approval standards. Thus, even if the Commission and / or the City determine that Applicant now meets the criteria discussed in its November 10 letters, Applicant must still also meet all other approval criteria. However, for the reasons stated below and in Waverley’s previous letters, Applicant does not meet the approval criteria.

**1. Response to Walker Ventures, LLC’s November 10 Letter**

Applicant’s Nov. 10 letter explains in more detail why it believes it should be allowed the benefit, pursuant to MMC 19.311.3.C, of increased density over that allowed by the underlying R-2 and WG zoning, but still does not meet its burden of showing by substantial evidence that it meets the requirements to obtain that benefit. Namely, Applicant ignores that to obtain the proposed twenty percent increase in density (via the additional height and length proposed for buildings A.1 and A.2), it must show that its development is (a) outstanding in planned land use and design; ***and*** (b) provides exceptional advantages in living conditions; ***and*** (c) provides exceptional advantages in amenities, ***none of which*** are found in “similar developments constructed under regular zoning.” Applicant’s new evidence—much of which is not relevant—only makes more clear that it does not meet these three requirements.

### **A. Response to Point 1**

Applicant's Point 1 states that its proposed development covers "significantly less of the land with impervious surfaces *than is typical of apartment developments.*" (Walker Ventures, LLC's Nov. 10 Letter ("WV Ltr.") at p. 1.) First, Applicant provides no basis for that statement. For example, Applicant provided no evidence regarding the definition of "significantly less" that would allow the Commission or the City to compare Applicant's proposed development to other relevant developments. The same is true for the phrase "typical of apartment developments," which Applicant also neglected to define. Moreover, Applicant must show that its proposed development has outstanding land use features *not found in similar developments constructed under regular zoning.* Applicant simply does not meet its burden by making a vague comparison to "typical . . . apartment developments."

Applicant also states in Point 1 that its development proposal "provides . . . more views of the natural and landscaped settings" and "provides greater capacity for the property to absorb rainwater and provide a place for abundant flora and fauna." (WV Ltr. at p. 1.) While Waverley agrees that the design and layout of the proposed development will likely provide residents more views of natural and landscaped settings, Applicant's conclusion regarding a "greater capacity for the property to absorb rainwater and provide a place for abundant flora and fauna" is without basis. Applicant should provide substantial evidence showing that its planned design will actually create greater rainwater absorption and allow for "abundant flora and fauna."

In Points 1(a) through 1(c), Applicant discusses the design features that apparently allow Applicant to achieve the above-stated results; however, none of those design features discuss how they assist with absorption of rainwater or allowing for abundant flora and fauna. (*Id.* at pp. 1-2.) Indeed, they appear to only discuss "amenities" not discussed in Applicant's previous submissions—that is, more views across the river, fewer views of other buildings, underground parking, and indoor access from parking to the apartments. (*Id.* at p. 2.) Applicant, again, does not provide substantial (or any) evidence that these amenities are "exceptional" as compared to similar developments constructed under regular zoning.

### **B. Response to Point 2**

In Point 2, Applicant discusses the benefits of the buildings being broken up in appearance at the front by a courtyard. (*Id.* at p. 2.) Specifically, Applicant explains that the courtyard will allow "6 of the 8 apartments on each floor to have their main living areas on building corners so that they can have windows on two sides of the living area with two different outlooks." (*Id.*) Applicant discusses the potential benefits of this design, but omits discussion of its pitfalls. While such a design may provide a living area with two different outlooks and cross ventilation, such a design also decreases the privacy, especially for residents in an apartment complex where neighbors are closer in proximity than in single-family home communities. Added windows will create a need for window coverings to prevent those living across the courtyard and close by from peering in, which arguably defeats the Applicant's stated purpose of added windows—that is, to provide "two different outlooks" and "light on two sides." Moreover, more windows in the apartments means that there will be more external light at night, and the neighbors will be

impacted by this. (See Comp. Plan, Ch. 4, Residential Land Use & Housing Element, Objective 3, Policy 1 (“New multifamily development projects will take measures to reduce potentially negative impacts on existing, adjacent single-family development and adjacent lower-density zones. Such measures may include reduced maximum heights, increased setbacks for large façades, building size limitations, and other design features to maintain privacy of nearby properties.”).) Finally, the additional windows provided by the development could in fact harm wildlife such as birds, which are known to fly into glass windows due to the reflections of vegetation or themselves, which is contrary to Applicant’s statement regarding the development allowing for “abundant . . . fauna.” (See, e.g., <https://audubonportland.org/our-work/rehabilitate-wildlife/being-a-good-wildlife-neighbor/birds-and-windows/>.)

### **C. Response to Point 3**

In Point 3, Applicant argues that by “keeping the total number of buildings on the site to only four,” as opposed to five, Applicant is able to “space the buildings further apart and in configurations which minimize the number of views from apartments that are dominated by views of other buildings.” (WV Ltr. at p. 3.) Notwithstanding the duplicative nature of this point as compared to Point 1, Applicant does not explain how this feature—one fewer building than would otherwise be constructed to allow for the requested 100 units—is exceptional or outstanding compared to other similar developments constructed under regular zoning. And regardless, Applicant could move forward with this development as a four-building development without the added density or added height and length. That such a development may not be economically viable for Applicant, as discussed in Waverley’s previous letter, is not relevant to any approval criteria.

### **D. Response to Point 4**

In Point 4, Applicant discusses the community garden its proposed development will provide to its residents, and states that it is “an amenity rarely found in other apartment complexes.” (*Id.* at p. 3.) But the apartment complexes in Waverley Greens *already have* a community garden that is available to all residents of the 325 units in the community, and that will also be available to residents of the new development at issue here if built.<sup>1</sup> Applicant’s discussion of this amenity also omits that the existing community garden exists without the preservation of 54% of the land it argues allow it to provide the garden. Thus, Applicant provides no explanation, and there is no explanation, as to the purported connection between preserved vegetation and the ability to provide a community garden.

### **E. Response to Chart of 24 Nearby Apartments**

Applicant also provided a chart of “nearby apartments” to show the purported “outstanding and exceptional characteristics of Applicant’s project.” (WV Ltr. at pp. 3-6.) But that chart provides information that is largely not relevant to the approval criterion discussed in the letter, and leaves

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<sup>1</sup> The “new” community garden is not planned for development / relocation until Phase 3, after buildings A.1 and A.2 have been completed and presumably rented.



out highly relevant information about the apartments most similar to Applicant's proposed development.

First, Applicant misstates the proper standard. The standard Applicant must meet to obtain the requested density bonus is *not* whether the proposed development is “outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities” as compared to “*nearby apartment complexes*.” Rather, the Milwaukie zoning code requires those features to be compared to “*similar developments constructed under regular zoning*.” The phrase “constructed under regular zoning” means constructed under the Milwaukie zoning code. As such, the six apartment complexes listed that are located in the City of Portland—regulated by a different zoning code—are completely irrelevant and should not be considered by the Commission. The phrase “similar developments” is undefined, but cannot under any definition simply mean developments that are close in proximity to the proposed development. If anything, and as Applicant implied by noting which five of the twenty-four listed developments in its chart are located in Milwaukie's R-2 zone, that term means developments of the same type (here, multi-family), constructed under the same zoning (here, R-2). Whether the comparator developments are “nearby” is not relevant to this requirement. In fact, only five apartment complexes listed on Applicant's chart—those five in the R-2 zone—are relevant to this requirement, and that is true only if they can be considered “similar developments” to the proposed development.

Nor is the standard whether the similar developments constructed under regular zoning *rarely have* the “outstanding . . . planned land use and design” and “exceptional advantages in living conditions and amenities.” Rather, the plain language of the Code requires that the “outstanding . . . planned land use and design” and “exceptional advantages in living conditions and amenities” provided by the proposed development must ***not be found at all*** in those similar developments. Applicant's chart shows that its proposed development does not meet that standard. And, had Applicant included in the chart its own developments, six multi-family apartment communities in the R-2 zone, its inability to meet this requirement would be even more obvious because those apartment communities offer almost all of the amenities offered by the proposed development. (*See, e.g.*, 10-27-20 Packet, Section 5.1, p. 64 and Applicant's Oct. 27 Hrg. Presentation (discussing the Waverley Greens community's amenities).)

Second, Applicant has stressed in both its application materials and during the hearing that its proposed development is unique and like no other development on the market. Therefore, there are no *similar developments* with which it can be compared. If the requirement for “outstanding . . . planned land use and design” and “exceptional advantages in living conditions and amenities” could be met by having new and updated features that are standard to include, then every new and unique development would be able to obtain the requested density increase. Applying this standard should be a high bar. Indeed, Applicant could provide the amenities discussed in its November 10 letter and chart—underground parking, community garden, increased vegetation, and corner units—without needing extra density and added height and length it has proposed.

Third, Applicant does not explain the relevance of apartment complexes with thirty percent or more of their land in vegetation. Rather, it appears Applicant arbitrarily chose thirty percent and measured, presumably by eye, whether the complexes in the chart met that limit by reviewing “their websites and . . . aerial maps,” as well as by in-person visits. (WV Ltr. at p. 3.) For multi-family dwellings in Milwaukie’s R-2 zone (which could be considered “similar”), all that is required of developers is to keep *fifteen* percent of the land in a vegetated state. Thirty percent exceeds the minimum requirement, just as Applicant’s fifty-four percent does, and just as sixteen percent would. Applicant’s chart does not include information as to the amount of land preserved by the selected apartments; rather, it provides a best guess as to whether those apartments meet an arbitrary standard chosen by Applicant and not relevant to any approval criteria.

Finally, Applicant provides no guarantee that *all* of the features and amenities it proposes to justify the requested increase in density, height, and length will be in place when those increases are first used, or at all. Nor do any of the proposed conditions of approval provide or require such a guarantee.

\* \* \*

In sum, Walker Ventures, LLC’s November 10 letter, submitted on behalf of Applicant, is not sufficient to prove by substantial evidence that the proposed planned development meets the requirements of MMC 19.311.3.C., and therefore cannot meet all of the approval criteria set forth in MMC 19.311.9.

**2. Response to Yost Grube Hall Architecture’s November 10 Letter**

**A. Item 1 - Phased Development Requirements Under MMC 19.311.17**

Applicant’s discussion of its phasing plan is in conflict with statements made by Applicant during the Oct. 27 hearing. (YGH Ltr. at p. 1.) Applicant should be required to provide a concrete plan for each phase. Further, in discussing its phasing plan, Applicant makes clear that it is, in fact, submitting an application for a phased development plan. As such, Applicant has improperly submitted a combined preliminary and final development plan. MMC 19.311.5 explicitly states that if “the proposed project is to be constructed in phases, the project as a whole must be portrayed in the application materials *and shall require preliminary approval.*” Applicant’s failure to obtain preliminary approval is discussed in more detail below.

**B. Item 2 – Multi-Family Housing Review Process and Design Standards Under MMC 19.505.3**

Waverley appreciates Applicant’s clarification as to which process it has selected for the multi-family housing review, but notes that most of Applicant’s “new” or “supplemental” responses (e.g., that for private and public open spaces, screening, recycling areas, sustainability) simply mirror almost exactly the responses provided in its initial application. (YGH Ltr. at pp. 1-4.)

Waverley incorporates its previous letters as relate to these design requirements and features, and responds specifically to others below.

As to **public open space**, Waverley again notes that none of the proposed amenities that are “for the purpose of outdoor recreation, scenic amenity, or shared outdoor space for people to gather” are planned to be built until phases 2 and 3 of the development. (*See id.* at p. 2.) Further, for the first time, Applicant mentions “river overlook sitting areas.” (*Id.*) Waverley notes that such an amenity may be contradictory to Applicant’s statements that the development will not be visible from the golf course or from on or across the river.

As to **pedestrian circulation**, Waverley notes, as it did above, that the “adequate lighting” provided for pedestrian circulation here may be in conflict with the Comprehensive Plan goal to reduce impact to neighboring communities. (*Id.*) Applicant does not provide drawings, plans, or specific description as to how the ground floor units will “provide a clear transition from the public realm to the private dwellings”; rather, Applicant merely provides a conclusory statement that it will do so, and without explaining what “clear transition,” which is a subjective term, means. (*Id.*)

As to **vehicle and bike parking**, Applicant still does not explain how the parking will be “secure.” While Waverley appreciates the buildings are not located on a public right-of-way, Applicant has not explained how bicycles (or cars for that matter) will be secure and safe from theft or vandalism in its planned development. Indeed, outdoor bicycle racks, and garage bicycle parking on “permanently mounted bike racks/hangers” without a locked entrance to those racks and hangers is not secure at all. (*See id.*) Moreover, a “private” road such as that on which the planned development is sited does not equate to “security.” (*See id.*) Waverley does not understand that the road limits access to only residents or its guests.

As to **building orientation and entrances**, Applicant omits discussion of building B.1. (*Id.*)

As to **building façade design and building materials**, Applicant omits discussion of many of the requirements listed, and does not explain how or why the features it chose to include meet the requirements. (*Id.* at 2-3.) Further, it is a requirement for street-facing facades to “consist predominantly of a simple palette of long-lasting materials,” which include “brick, stone, stucco, wood siding, and wood shingles.” MMC 19.505.3.D. Applicant fails to state whether the “mix of fiber cement board siding with wood accent siding with metal trim panels” meets the requirement of “predominantly . . . long-lasting.” (YGH Ltr. at p. 3.)

### C. Item 3 – Planned Development Approval Criteria

Applicant argues that it meets the approval criterion set forth in MMC 19.311.9.A, requiring “[s]ubstantial consistency with the proposal approved with Subsection 19.311.6.” Subsection 19.311.6 is entitled “Planning Commission Review of Preliminary Development Plan and Program,” and sets forth the process for first obtaining conditional approval by the planning commission, wherein a meeting is held, and following such meeting, “the Planning Commission shall notify the applicant whether, in its opinion, the provisions of this chapter have been

satisfied, or advise of any deficiencies.” MMC 19.311.6.A. After receiving “approval in principle of the preliminary development plan and program by the Planning Commission, with or without modifications, the owner-applicant must [then], within 18 months, file with the City a final development plan and program, including a phasing plan if applicable, which serves as an application for a PD Zone change.” MMC 19.311.6.B. The plain language of the Code thus requires submission and approval of a preliminary plan, followed by submission of a final development plan. Only that final development plan may serve as the PD Zone application.

However, Applicant states that MMC 19.311.6 “does not preclude an applicant from requesting both preliminary and final planned development approval.” (YGH Ltr. at p. 4.) In so stating, Applicant fails to consider that if that were the case, this approval criterion would be obviated. Applicant also fails to consider that MMC 19.311.5 *requires* preliminary approval of phased developments, as discussed above in Section 2(A).

To obtain PD zoning, Milwaukie’s zoning code requires *first* submission and approval of a preliminary development plan, and *then* submission and approval of a final development plan. MMC 19.311.6 (discussing preliminary development plan); MMC 19.311.7 (discussing final development plan). Milwaukie’s City Council could have drafted the Zoning Ordinance in the way Applicant urges, but did not do so. Moreover, nothing in MMC 19.311 allows the preliminary and final development plans to be submitted concurrently. This is because the preliminary development plan precedes the final development plan so that there can be a final decision on the preliminary development plan. Concurrent submittals thwart that purpose. Finally, the Planning Commission has no authority to finally interpret provisions of the Zoning Ordinance because it is not the legislative body that enacted the Zoning Ordinance. Even if the City Council did agree with Applicant, its interpretation will not be entitled to deference on appeal under ORS 197.829 because Applicant’s position is inconsistent with the express language of MMC 19.311.5, 19.311.6, and 19.311.7.

Moreover, Applicant’s reference to and discussion of the Kellogg Creek Planned Development project is not relevant; this is discussed in more detail below in Section 2(E). (YGH Ltr. at p. 4.)

Applicant failed to adequately address its compliance with each specific requirement of Section 19.311.2.A-E, which is required to meet the approval criteria for PD zoning. MMC 19.311.9.B.

Applicant’s responses to the remaining approval criteria are almost identical to those in its initial submission, and therefore Applicant still has not shown by substantial evidence that those criteria are met.

#### **D. (Second-listed) Item 3 – Comprehensive Plan Goals**

Applicant states that its “previous responses to the 2020 Comprehensive Plan are sufficient to demonstrate compliance with both Comprehensive Plans.” (YGH Ltr. at p. 6.) Waverley disagrees. While the two plans may have some overlap, they are different, and compliance with one does not mean there is compliance with the other. Waverley incorporates its discussion of

both Comprehensive Plans herein, and points to the following further deficiencies from Applicant's November 10 letter.

As to the historical resources element, Waverley disagrees that this Goal does not apply to the site, and incorporates its November 10 discussion of this element. (*See id.* at pp. 7-8.)

As to Applicant's discussion of the "Open Spaces, Scenic Areas, and Natural Resources Element," Objective #3 – Scenic Areas, Waverley incorporates its discussion in Sections 1(A) and 2(B) above regarding concern over the newly identified views out to the Willamette River. (*See id.* at p. 8.)

As to Policy 1 of the "Residential Land Use: Design" objective, which requires new multi-family development projects to take measures to reduce potentially negative impacts on existing, adjacent single-family development and lower-density zones, Waverley re-states its concern discussed above regarding privacy and light pollution from the extra windows the development will feature. (*See id.* at p. 9.) Waverley also incorporates its discussion of this Policy from its November 10 letter.

As to the requirement in Policies 3 and 4 of the "Residential Land Use: Design" objective for all planned unit developments to have an area devoted to open space and/or outdoor recreational areas, Applicant still has not expressed whether its development will meet the requirement for "at least half of the open space and/or recreational areas [to] be of the same general character as the area containing dwelling units." (*See id.* at p. 10.) Indeed, Applicant here stated that the "development will maintain most of the vegetation as natural native growth," which cannot be "the same general character as the area containing dwelling units," and therefore is not in compliance with this policy. (*Id.*) Applicant's conclusory statement that its proposed development will comply with the "same general character" requirement is not sufficient to meet Applicant's burden of proving this by substantial evidence. (*Id.*)

In sum, Applicant's proposed development fails to comply with applicable Comprehensive Plan goals, objectives, and policies, and thus does not meet the approval criteria for PD zoning.

**E. Item 5 – Combined Preliminary and Final Development Plan Approval and Concurrent Land-Use Applications**

As mentioned above, Applicant has submitted as evidence the Kellogg Creek Planned Development Application No. PD-2017-001 to show that "[t]he City has previously determined that 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." (YGH Ltr. at p. 15.) Applicant is incorrect for the reasons stated above in Section 2(C) and further for the reasons below.

As Applicant acknowledged, the Kellogg Creek application was withdrawn by the applicant before the City Council made any determination as to whether the application (which requested preliminary and final planned development approval simultaneously) should be approved. (*Id.*)

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As such, the City Council never rendered a decision as to whether such a simultaneous submission was allowed under the Zoning Ordinance. That “both the City staff and the Planning Commission recommended approval” to the City Council is not relevant to Applicant’s combined submission. (*Id.*) Nor is a recommendation for approval of such a consolidated and combined application a “determin[ation]” by the City as Applicant stated in its letter. (*Id.*) The Planning Commission is not required to, and should not, defer to a prior administrative action never approved by the City Council that is inconsistent on its face with the Code, and should not do so here. As discussed in Waverley’s last letter, land use applications are not precedential, and City Staff and Planning Commission recommendations for approval are not the same as a final land use decision from the City Council.

**3. Conclusion**

For the reasons set forth above and in its previous letters and testimony, Waverley respectfully requests that the Commission recommend denial of the application for the Waverly Woods Planned Development, File No. PD-2020-001.

Very truly yours,



Michael C. Robinson

MCR/jmhi

cc: Ms. Vera Kalias (*via email*)  
Ms. Erin Forbes (*via email*)  
Mr. James Dulcich (*via email*)  
Mr. Justin Gericke (*via email*)  
Mr. Bruce Pruitt (*via email*)  
Mr. Brian Koffler (*via email*)

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**WALKER VENTURES, LLC**  
900 S.W. Fifth Avenue, Suite 2000  
Portland, Oregon 97204  
November 17, 2020

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

Re: Waverley Woods Apartment Development Plan dated July 28, 2020  
(Application)  
Application File Nos. PD-2020-001, ZC-2020-001, WG-2020-001,  
PLA-2020-001 & TFR-2020-002

Dear Chair Massey and Planning Commission Members:

Applicant, Walker Ventures, LLC, submits this letter in response to written testimony submitted by neighbors of Waverley Greens by the November 10, 2020, deadline for submission of any such additional material. Because of questions raised, Walker Ventures notes at the outset that it would not have gone to all the time, trouble, and expense of submitting its Application for this planned development if did not plan to complete the development within the seven years permitted as set forth in MCC 19.311.17A.

Some of the material submitted by neighbors suggests that Applicant ought to amplify its explanation of how its proposal is exceptional, which we do in the next two sections. In doing so, we must go beyond comparing our proposal to other existing apartment developments (See my November 10, 2020, letter) by also analyzing what could be built under regular multi-family zoning on this parcel.

**1. In Determining Whether the Proposal is “Exceptional,” the Proposed Development Must be Compared to What Applicant would be Permitted to Build on its Property Under Regular Zoning.**

Many of the objections to Applicant’s proposed development ask the Planning Commission to compare that plan to the site in its current natural state, pointing out that the development will reduce vegetation and natural buffer. However, Applicant’s property is zoned for development as multi-family. Were Applicant simply to develop its property under regular R-2 zoning, neighbors would not have the same opportunity to object which they have in this planned development process.

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.

Furthermore, Applicant has made a concerted effort to develop this property to include elements that would not be available through regular R-2 zoning. For example, by increasing the size and height of two of the buildings, Applicant is able to set back the proposed buildings substantially farther from neighboring properties than is required under regular zoning, thereby leaving significant buffer areas of a minimum of 45 feet rather than 5 feet to the north and 190 feet for Building A-1 and 99 feet for Building A-2 rather than 15 feet to the west. Also, Applicant will save a large number of trees and a large swath of the natural environment that would be mostly lost if the property were developed under regular zoning with lower buildings and surface parking.

In summary, the fact that a portion of the natural environment will be lost when this property is developed is not a compelling objection because Applicant's plan will limit those losses substantially compared with the loss that would inevitably occur if Applicant were limited by the constraints of R-2 zoning. The City of Milwaukie decided that Applicant's property need not be maintained in its natural state when it zoned the property for multi-family development. It is part of Milwaukie's relevant comprehensive plan that this property be developed as high density residential. *Milwaukie Comprehensive Plan, Map 8.*

**2. Applicant's Proposed Development provides enough "exceptional advantages..." to warrant the additional proposed density and building height as allowed by MMC Subsection 19.311.3C.**

Websters Third International Dictionary of the English Language defines the word "exceptional" to mean:

1. : forming an exception; *usu* : being out of the ordinary : uncommon, rare
2. : better than average; superior



“Exceptional” does not mean better than every other. Likely, every member of a high school cross county team would be considered to be an exceptional runner when compared to the average student, even if none of its members could qualify to run in the Boston Marathon. Sometimes only a minor difference is enough for something to be considered “exceptional.” For example, it is not unusual that a person with otherwise ordinary human characteristics but with an unusually attractive face to be considered “exceptional.” Similarly, in some instances, something that is only slightly better is considered to be “exceptional.” For example, a slightly tastier cup of coffee. Applicant believes that its plan as proposed with all the amenities it will include will provide the finest apartment living available within the City of Milwaukie, but for its amenities to be “exceptional,” all they need to be is better than average, out of the ordinary, superior, or uncommon.

One argument submitted is that Applicant’s plan is not “exceptional” because some of the features of Applicant’s plan can be found in other apartment communities. However, that argument largely ignores the features of Applicant’s plan that are rarely found in other apartment complexes<sup>1</sup>. Those features are a part of what make Applicant’s plan exceptional:

**a. Fifty-four percent open space.** Applicant’s development proposal covers significantly less of the land with impervious surfaces than is typical of apartment developments. Applicant’s proposal retains approximately 54% of the land in vegetated pervious surface, with some natural and some landscaped, all of which is in addition to the land devoted to the swimming pool. This creates an environment of urban living in a forested setting which is seldom achieved in apartment communities and provides occupants with more views of the natural and landscaped settings. It also creates greater capacity for rain water absorption and a habitat for abundant flora and fauna.

**b. Substantial buffers between Applicant’s buildings and neighboring properties.** Applicant’s plan was specifically designed to provide significantly greater buffers between the proposed buildings on Applicant’s property and the neighboring properties than is required by regular zoning. At its closest point, Building A-1 will be 190 feet away from the Waverley Country Club (WCC) property to the west and Building A-2 will be 99 feet away from the WCC property, with retained natural areas between to provide a significant buffer of trees, shrubs, and vegetation so that Applicant’s buildings will not impose upon WCC’s driving range. The closest that any of Applicant’s buildings would come to any neighboring home is 82 feet, (45 feet from Applicant’s property line where only a 5 foot setback is required). Even at that, it is only the end of the building that extends toward that home, with the other corner of that building end 97 feet from the nearest home. Substantial trees and other vegetation will be maintained between Applicant’s buildings and neighboring properties. *See*, Exhibit 1.

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<sup>1</sup> See comparison to other apartment complexes in my November 10, 2020, letter.

**c. Windows on two walls with views in two directions in 75% of the Buildings A-1 and A-2 apartments.** In office buildings, the desirability of corner offices is widely recognized. The same is true of apartments. Three quarters of the apartments in Buildings A-1 and A-2 will have will have corner outlooks with windows on two walls providing wonderful views from the apartment's principal living area. In Buildings B-1 and B-2, two-thirds of the apartments also have this feature. This quality is rarely achieved in an apartment project. None of the apartments referred to in my letter dated November 10, 2020, have this feature in any way comparable to the apartments proposed by Applicant. *See*, Exhibit 2.

**d. Under building parking.** This feature, rare in any but the most dense urban settings, allows tenants to drive under the building in which their apartment is situated, park in a dry space, and walk under cover to an elevator that will take them to their floor. In Oregon, the ability to go from your car to your home without being exposed to the rain is an important amenity, rare in apartment complexes other than those in which the apartment building occupies all or nearly all the property on which it is situated with little, if any, open space.

**e. Preservation of trees and wildlife area.** Applicant has submitted a detailed tree survey and a plan showing trees that are likely to be removed with a large number of trees to be preserved. Applicant's plan retains 54% of the site as open space and a substantial amount of that space will remain in its natural condition. This is an extraordinary retention of trees when compared either to what typically occurs when properties such as those identified in my November 10, 2020, letter are developed or when compared to what would likely occur if this property were developed under regular zoning.

**f. Exceptional views and balconies.** The A-1 and A-2 Buildings are designed so as 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. This is an "exceptional" feature of Applicant's plan for the benefit of the future residents. Development of this site in some other way under regular zoning could not take advantage of these views to the same extent.

Buildings B-1 and B-2 are also situated to provide pleasing territorial views for the residents of those buildings. Although those views will not look over the Willamette River, they will primarily face vegetated areas and not other buildings and parking lots as is commonly found in most apartment complexes.

These views will be complemented by the unusually large decks which all

apartments will have (more than three times as large as required by code) and which will provide all residents with generous exclusive outside space. *See*, Exhibit 2.

**g. Community garden.** The existing community garden has been available to residents of Waverley Greens Apartments because Walker Ventures owns the adjacent undeveloped parcel of land proposed for this planned development. If it did not own this parcel, it is not obvious that it would offer such an amenity to its existing residents. Nor is it apparent that it could continue to provide such an amenity if the parcel were developed under regular zoning. One of the many advantages of Applicant's proposal is that it not only makes it possible for Applicant to continue to provide this amenity to its existing tenants after it develops this parcel, it will also be able to offer the community garden amenity to residents of its new development. Of the 24 apartments discussed in my November 10, 2020, letter, only one had a community garden, which was also situated on adjacent vacant land.

**h. Cross ventilation in 80% of apartments.** Of the eight apartments on each floor of the A Buildings, six will be corner units with windows on two walls so that they will have cross ventilation. The two apartments on the top floor of the A Buildings which are not corner units will also have cross ventilation because they will have clerestory windows. For the same reasons, 14 of the 18 apartments in the B Buildings will have cross ventilation. Of all the planned apartments, 80% will have cross ventilation. Cross ventilation is a pleasing amenity in appropriate weather to allow gentle cooling breezes to drift through the apartments. Cross ventilation also reduces the need for air conditioning during some periods of warm weather, lowering electricity usage and improving the carbon footprint and sustainability of the project. *See*, Exhibit 2.

**i. Overlook area and paths available from public right of way.** The memorandum submitted on November 10, 2020, by Applicant's architects, Yost Grube Hall Architecture, to supplement Applicant's Application included a new amenity of a landscaped sitting area at the entrance off Waverley Court. This sitting area will be adjacent to the new sidewalks connected to the public right-of-way and the new paths and will provide views across the Willamette River. This amenity will be built at the time of the construction of Building A-1<sup>2</sup>.

**j. Secure parking.** One neighbor has raised a question as to what Applicant means by secure parking. "Secure parking" means that the access to the parking under buildings will be locked, with an electrically operated garage door that will only open when a resident drives through. No one will have access to residents' cars except those

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<sup>2</sup>See PD-2020-001 Written Comments for November 10, Deadline pps. 49, 54, 56 on the City of Milwaukie's website.

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with access keys. This is an amenity for the benefit of the residents which does not generally exist in apartment complexes with open-air parking, which includes most apartments in the area. In those rare apartments which do have offer under-building parking, most lack significant open space. Applicant's proposed plan is exceptional in that it has both amenities: secure under building parking and extensive open space.

In summary, in addition to all the other features of Applicant's plan, Applicant's plan will include the following ten exceptional amenities:

- a. **Fifty-four percent open space.**
- b. **Substantial buffers between Applicant's buildings and neighboring properties.**
- c. **Windows on two walls with views in two directions in 75% of the Buildings A-1 and A-2 apartments.**
- d. **Under building parking.**
- e. **Preservation of trees and wildlife area.**
- f. **Exceptional views and balconies.**
- g. **Community garden.**
- h. **Cross ventilation in 80% of apartments.**
- I. **Overlook area and paths available from public right of way.**
- j. **Secure parking.**

Each of these amenities by itself is exceptional, and taken together, they justify the density requested. Every one of these ten exceptional amenities will be available as soon as Building A-1 is completed and ready for occupancy. They will also be immediately available for residents of the other buildings in the planned development as soon as they are constructed. This list of ten exceptional amenities is not an exhaustive list of all features of this planned development which might be considered to be exceptional. As some of Applicant's neighbors have pointed out, this project will also include some of the same amenities which Waverley Greens Apartments now has, some of which amenities are themselves exceptional because they are not common in other apartment complexes in the vicinity. For example, Waverley Greens Apartments has electric charging stations for cars and has a solar panel array which is one of the largest, if not, the largest, on any apartment complex in the state of Oregon. Most of the apartment complexes described in my November 10, 2020, letter do not have those features. Some of those neighbors express concerns that not all of these other amenities will be constructed during the first phase of the development. Applicant's plan will include all ten of the above-listed exceptional amenities during every phase of the development. When completed, Applicant's development plan will also include some of the other exceptional amenities already offered at Waverley Greens Apartments such as solar panels and charging stations as well as many features which are more commonly found in other apartment complexes (such as a swimming pool). It is the entire package which makes Applicant's plan exceptional.

**3. Responses to Other Subjects Raised by Neighbors.**

**a. Applicant's Plan Complies with Open Space Requirements.**

Applicant seeks only to develop Parcel 02 which is 6.76 acres. The proposed plan will leave 3.65 acres (54%) as open space of which half (1.83 acres) must be in the "same general character as the area containing dwelling units." Applicant's plans show the buildings as surrounded by woods in the back and landscaped areas in the front. All of the open space will be in the "same general character as the area containing the dwelling units," i.e. natural or landscaped, and will be provided for "scenic, landscaping, or open recreational purposes." The 54% of open space does not include any of the impervious surfaces. The pool, for example, will be recreational space in addition to the 54% of open space otherwise provided. Applicant's plan exceeds the Planned Development Code which only requires 1/3 of the area (2.25 acres) to be left open area with 1.12 acres as "same general character as the area containing dwelling units."

**b. Measurement of the Height of Buildings A-1 and A-2.** The Willamette greenway zone has a 35' height limit but does not say how this is to be measured. The City of Milwaukie applies its zoning code measurement as described in MCC19.202.2.B.1. On a sloped site with more than a 10' drop from front to back, the City measures height from 10' above lowest point. Applicant's Buildings A-1 and A-2 are 62' in height when measured from the average lowest point on the sloped side. The R-2 zone allows 45' plus 10' for a sloped site for a total of 55'. Applicant is requesting an additional 7' to accommodate its planned development. In the Staff report, the City accepted the 43' Applicant proposed on the street side since it was below the base code R-2 height maximum of 45'.

**c. City Water and Sewer Systems Are Adequate to Serve this Development.** The application materials submitted by Applicant have satisfied City's relevant departments that the City's existing storm water, sewer, and domestic and fire water supply systems are adequate to accommodate this 100 unit development. *See*, Staff Recommended Findings for Approval Section 7.a.(5)(e) - 5.1 page 25-26.

**d. The Northern Boundary of the Property is Already Subject to a Fence Agreement.** The northern boundary of Applicant's property is subject to an existing fence agreement, entered into in 1961. A copy of that agreement is attached. *See*, Exhibit 3.

**e. Comprehensive Plan Recognizes the Need for Housing.** In Chapter 4 of the Land Use Residential Land Use and Housing Element, the applicable Comprehensive Plan states: "Metro projects the need for an additional 3,514 housing units in Milwaukie by 2017." The City clearly anticipated a need for housing and provided Planning

Concepts and Policies that allowed for density increases as indicated below:

**Objective #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 whenever feasible. (Emphasis supplied)

**Planning Concepts**

Residential design policies are intended to ensure a high quality of environmental design, a flexible design approach, and a smooth integration of new development into existing neighborhoods. **Density bonuses and transfers will be encouraged so that full development potential on individual parcels may be realized.** Transition policies will be applied to reduce any negative impacts of development on adjacent uses. The transition policies will have little or no effect on the number of new units calculated in Table 2. (Emphasis supplied)

**Policies**

2. In all Planned Unit Developments, a density bonus up twenty percent (20%) over the allowable density may be granted in exchange for exceptional design quality or special project amenities.

Applicant's Parcel 02 is a large remaining parcel within Milwaukie available for development as multi-family. Maximizing the density of that parcel as proposed in Applicant's plan best meets Milwaukie's need for additional housing.

**f. Early Neighbor Contact.** Many months ago, Applicant notified WCC's leadership that we were preparing plans for the development of this property and inviting input from WCC. Applicant received no response from WCC until October 27, 2020, the day of the first Planning Commission hearing regarding this project, when it received the letter WCC submitted less than two hours before the hearing. Applicant has since met with WCC and is hopeful that all issues may be resolved.

In addition, Applicant met with the Historic Milwaukie Neighborhood Association on July 13, 2020, to describe the proposed development and to listen to input from neighbors who attended. The minutes of that meeting include the statement "Overall, the community reaction to the presentation was positive with attendees looking forward to walking through the wooded areas and perhaps even being future tenants." Applicant heard nothing further from neighbors until shortly before the first Planning Commission hearing, and then promptly met with them to discuss their concerns.

**g. Visibility from Waverley Country Club.** While the buildings in the development may be somewhat visible from some parts of the WCC, it seems inevitable that nearly any multi-family development would be somewhat visible. Applicant has made significant efforts to minimize the effect of its development on WCC's property. At their closest point, the Buildings A-1 and A-2 are respectively 190 feet and 99 feet from WCC's property. That large buffer area will remain densely populated by tall trees and shrubs. WCC has acknowledged that its driving range abuts Applicant's property.

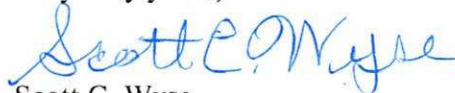
**h. Phasing.** Applicant intends to build the three phases outlined in its Application within the seven years provided by law. *See*, MCC 19.311.17A. Applicant estimates that each active phase of construction will take about a year, with external construction (grading, framing, and exterior envelope) taking about half of the construction time for each phase. The remaining approximately six months of each phase would involve primarily interior work that will not external disturbance.

**i. Applicant's Plan will be of Benefit to Milwaukie and the Public.** Applicant's plan will provide increased density thereby helping to fulfill Milwaukie's housing needs. Because Applicant's property is within easy walking distance of downtown Milwaukie, this development will contribute to the vibrancy of Milwaukie's downtown. Furthermore, because it is within easy walking distance bus lines and the light rail, it will be conducive to the use of public transportation and reduced automobile use. Many of those who have submitted objections to Applicant's plan are concerned about the reduction of the open space, natural environment, and trees on the site. Because there is such wide spread public interest in these attributes, Applicant's plan, which preserves approximately 54% of these features, is also of benefit to the public.

#### **4. Conclusion.**

Applicant's proposed plan optimizes the use of its property for the benefit of the City and the future residents of the property while at the same time limiting adverse effects upon neighbors from development of the property. It should be approved.

Very truly yours,



Scott C. Wyse

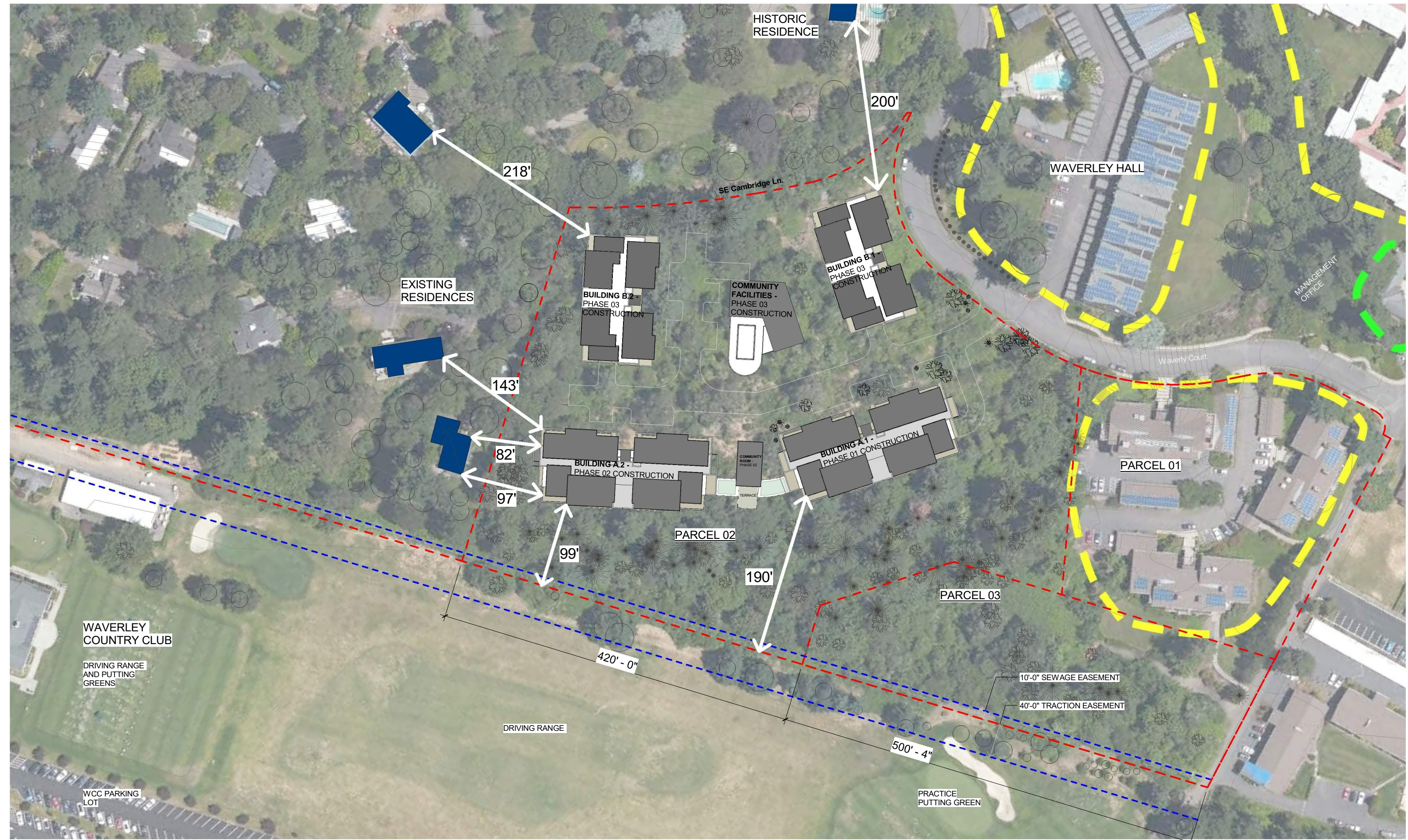
Member, Walker Ventures, LLC

Attachments: Exhibit 1, Distances to Adjacent Properties and PD Setbacks  
Exhibit 2, PD Advantages and Amenities  
Exhibit 3, Fence Agreement

Mr. Robert Massey, Chair  
November 17, 2020  
Page 10

c: Walker Ventures, LLC (w/enc)





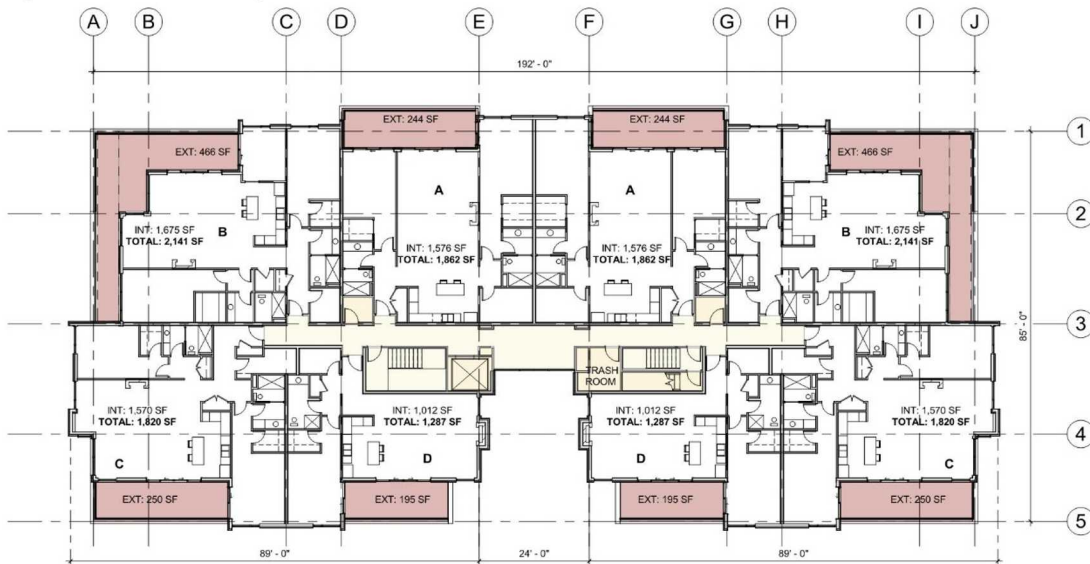
# WAVERLEY WOODS PD SUBMITTAL

## ADVANTAGES AND AMENITIES ADDITIONAL INFORMATION:

### Exceptional Views from Exterior Balconies



Building A.1 & A.2 Balcony View



Building A.1 & A.2 Top Level Plan

All units with large balconies averaging over 3 times code required area.

All units at top floor with cross ventilation – 6 out of 8 lower floor units with cross ventilation.

75% of units on building corners with living areas opening to 2 façade views and ventilation.

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165

ACKNOWLEDGMENT OF SETTLEMENT  
AGREEMENT RELATING TO CERTAIN  
REAL PROPERTY WITHIN RECORDED  
PLAT OF WAVERLEY HEIGHTS,  
CLACKAMAS COUNTY, OREGON

WHEREAS PAUL W. BECHTOLD and ELIZABETH L. BECHTOLD,  
husband and wife, WENDELL E. HANSEN, HENRY J. ZILKA and MABEL J.  
ZILKA, husband and wife, JEAN F. DeLORD and NATALIE L. DeLORD,  
husband and wife, E. ROY JARMAN and EVA G. JARMAN, husband and wife,  
GEORGE E. SULLIVAN and ANNA G. SULLIVAN, husband and wife, LEROY  
B. STAVER and HELENE M. STAVER, husband and wife, RAY E. MACKENZIE  
and BESS MACKENZIE, husband and wife, THOMAS D. TAYLOR and DORIS  
V. TAYLOR, husband and wife, and THOMAS S. HARRISON, JR., and  
MARGARET L. HARRISON, husband and wife (hereinafter referred to  
as "Individual Owners"), have been or now are the owners of or  
have interests in various tracts of real property, or portions  
thereof, included within the recorded plat of Waverley Heights,  
Clackamas County, Oregon, and

WHEREAS JACK Y. H. LEONG and EDITH L. S. LEONG, husband  
and wife, and HAROLD B. SHERFY and GLORIA T. SHERFY, husband and  
wife (hereinafter referred to as "Apartment Owners"), are the owners  
of or have interests in tracts 5, 6, 7, 8, 9, and 11 of the recorded  
plat of Waverley Heights, Clackamas County, Oregon, and

WHEREAS Individual Owners filed a complaint in equity  
in the Circuit Court of the State of Oregon for the County of  
Clackamas, bearing Clerk's No. 71155, seeking a decree requiring  
Apartment Owners to construct and maintain a fence along a  
boundary defined in an agreement dated February 4, 1961 (a copy  
of the textual portion of the complaint is attached hereto,  
marked Exhibit A, and by this reference made a part hereof), and

WHEREAS Apartment Owners, pursuant to 28 USCA Section  
1446, removed the above-mentioned case to the United States

OCT 6 1970

District Court for the District of Oregon, Clerk's No. 69-480,  
and

WHEREAS, prior to the filing of said complaint, Apartment Owners submitted proposals to the Planning Commission of the City of Milwaukie, Oregon, to expand their apartment house complex, and in connection therewith requested a zone change of Lot 5 from R-10 Residential to A-2 Apartment Residential, which zone change was objected to by Individual Owners, and

WHEREAS, on or about October 24, 1969, Individual Owners and Apartment Owners compromised and settled their disputes on the basis of the following agreement which they agree binds and benefits the land within the recorded plat of Waverley Heights, Clackamas County, Oregon and shall run with the land and bind and inure to the benefit of their respective heirs, personal representatives and assigns.

1. Withdrawal of Objections to Zone Change. Individual Owners agreed to withdraw their objections to the requested zone change of Lot 5 from R-10 Residential to A-2 Apartment Residential. The requested zone change came on for hearing before the City Council of the City of Milwaukie, Oregon, on October 27, 1969, at which time the Individual Owners, by and through their attorneys, advised the City Council that the Individual Owners had reached an agreement with Apartment Owners and, therefore, were withdrawing their objections to the zone change. As a result, the City Council passed a city ordinance changing the zone for Lot 5 from R-10 Residential to A-2 Apartment Residential.

2. Agreement to Construct and Maintain Fence. In return for Individual Owners' agreement withdrawing their objections to the aforesaid zone change, Apartment Owners agreed to erect and maintain a fence of the type described in said agreement dated February 4, 1961, along the entire length of the boundary defined in paragraph 6 of the agreement of February 4, 1961. Apartment Owners have now completed

OCT 6 1970

construction of said fence along said boundary, which boundary includes areas that are not suitable to pedestrian or vehicular traffic, and the fence, as constructed, has been deemed satisfactory to Individual Owners. Apartment Owners have also agreed to maintain said fence along said boundary.

3. Dismissal of Suit. Said action between Individual Owners and Apartment Owners pending in the United States District Court for the District of Oregon shall be dismissed with prejudice and without costs to any of the parties.

IN WITNESS WHEREOF Apartment Owners hereby acknowledge and confirm the aforesaid settlement agreement, this 25<sup>th</sup> day of September, 1970.

Jack Y. H. Leong  
Jack Y. H. Leong

Edith L. S. Leong  
Edith L. S. Leong

Harold B. Sherry  
Harold B. Sherry

Glوريا T. Sherry  
Glوريا T. Sherry

APPROVED:

Frederic A. Yerke  
Frederic A. Yerke  
Of Attorneys for Individual Owners

George W. Mead  
George W. Mead  
Attorney for Apartment Owners

3

OCT 6 1970

STATE OF HAWAII )  
COUNTY OF ) SS

On this 24<sup>th</sup> day of September, 1970, personally appeared before me, a notary public for said county and state, the within named JACK Y. H. LEONG and EDITH L. S. LEONG, husband and wife, to me known to be the identical persons described in and who executed the foregoing instrument and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein stated.

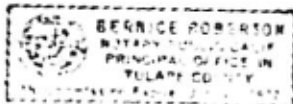
IN TESTIMONY WHEREOF I have hereunto set my hand and official seal, the date first hereinabove written.

*Marie C. Turpin*  
Notary Public for said judicial circuit  
My Commission expires: 26 April 74

STATE OF CALIFORNIA )  
COUNTY OF TULARE ) SS

On this 21st day of September, 1970, personally appeared before me, a notary public for said county and state, the within named HAROLD B. SHERFY and GLORIA T. SHERFY, husband and wife, to me known to be the identical persons described in and who executed the foregoing instrument and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein stated.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal, the date first hereinabove written.



*Bernice Robertson*  
Notary Public for  
My Commission expires:

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Page

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

PAUL W. BECHTOLD and ELIZABETH L. BECHTOLD, husband and wife,  
WENDELL E. HANSEN, HENRY J. ZILKA and MABEL J. ZILKA, husband and wife,  
JEAN F. DeLOED and NATALIE L. DeLOED, husband and wife,  
E. FOY JARVIN and EVA G. JARVIN, husband and wife,  
GEORGE E. SULLIVAN and ANNA G. SULLIVAN, husband and wife,  
LEROY B. STAYER and HELENE M. STAYER, husband and wife,  
ROY E. MACKENZIE and BESS MCKENZIE, husband and wife,  
THOMAS D. TAYLOR and DORIS V. TAYLOR, husband and wife,  
and THOMAS S. HARRISON, JR., and MARGARET L. HARRISON, husband and wife,

Plaintiffs,

v.

JACK Y. H. LEONG and EDITH L. S. LEONG, husband and wife, and HAROLD B. SHEFFY and GLORIA T. SHEFFY, husband and wife,

Defendants.

No. 71155.

COMPLAINT IN EQUITY

Plaintiffs for cause of suit against defendants, complain and allege as follows:

I

Plaintiffs, and each of them, are the owners or have interests in various tracts of real property, or portions thereof, included within the recorded plat of Waverly Heights, Clackamas County, Oregon. Said plat is hereinafter referred to as "Waverly Heights." The tract or tracts in which the property interest of the respective plaintiffs is located, is as follows:

<u>Plaintiff</u>	<u>Tract</u>
Paul W. Bechtold Elizabeth L. Bechtold	13
Wendell E. Hansen	13
Henry J. Zilka Mabel J. Zilka	14 and 15

5

KING MILLER ANDERSON, NASH & YERKS  
ATTORNEYS AT LAW  
1000 AMERICAN BANK BUILDING  
PORTLAND OREGON 97208  
533-5435

76-22004

EXHIBIT A

OCT 6 1970

	<u>Plaintiff</u>	<u>Tract</u>
1		
2	Jean F. DeLord Natalie L. DeLord	12
3	E. Roy Jarman	1
4	Eva G. Jarman	
5	George E. Sullivan	14
6	Anna G. Sullivan	
7	Leroy B. Staver	3
8	Helene M. Staver	
9	Ray F. Mackenzie	14
10	Bess Mackenzie	
11	Thomas D. Taylor	16
12	Doris V. Taylor	
13	Thomas S. Harrison, Jr.	13
14	Margaret L. Harrison	

II

Defendants, and each of them, are the owners or have interests in tracts 5, 6, 7, 8, 9 and 11 of Waverly Heights. Attached hereto, marked Exhibit A, and by this reference made a part hereof, is a plat map of Waverly Heights.

III

On or about and prior to March 17, 1902, all the property which is now known and described as Waverly Heights, was owned by The Waverly Association, an Oregon corporation. On or about March 17, 1902, The Waverly Association caused to be duly recorded in the office of the county clerk of Clackamas County, Oregon, the plat of Waverly Heights in Book 5 of Plat Book Records, pages 27 and 28 thereof, and attached to said plat certain conditions, restrictions and covenants which were and are for the benefit of all the property owners of Waverly Heights. Attached hereto, marked Exhibit B, and by this reference made a part hereof, is a copy of said restrictions on the plat of Waverly Heights.

IV

Prior to February 4, 1961, the then owners of tracts 5, 6, 7, 8, 9 and 11 of Waverly Heights expressed an intention to construct on the property owned by them a large multiple family apartment house

6  
70-22604

EXHIBIT A

WING MILLER ANDERSON, NASH & YERKE  
ATTORNEYS AT LAW  
PORTLAND, OREGON 97208

WING MILLER ANDERSON, NASH & YERKE



4 1/2 x 11 1/2 IN. APPROX. 100% & REPROD  
FOR OFFICIAL USE ONLY  
GPO : 1970 O 1970

OCT 6 1970

EXHIBIT A

COMPLAINT IN EQUITY

The Agreement of February 4, 1961, was executed in three counterparts, and was recorded on June 27, 1961, in Book 508 of Chatham County deed records at pages 411 and 429 respectively. A copy of said Agreement, with attached copies of the stipulations showing from the three town reports, in attached hereto, parcel exhibit (c), and by this return

Said fence shall be a woven chain link fence of not less than nine gauge galvanized steel and not less than six feet high. The top edge thereof shall have twisted wire fence shall be uninterrupted and without gates. Said fence need not be constructed on any portion of the boundaries hereinafter described which is not now suitable to pedestrian or vehicular traffic until such time as chances in certain, vegetation or structures make the same necessary to stop such traffic.

(a) The boundary between Tract 4 and Tract 5;  
(b) The boundary between Tract 5 and Tract 10;  
(c) On or near the boundary of Tract 10 bordering upon the portion of said road shown on said plat and known as S.E. Kaverly Road or S.E. Cambridge Lane fronting upon Tracts 6, 7, 8, 9 and 11;

6. The owners of Tracts 5, 6, 7, 8, 9, and 11 agree, except as hereinafter set forth, to construct and maintain a fence along all of the following boundaries in said Kaverly Heights:

to wit:  
13 and maintain a fence along certain boundaries in Kaverly Heights, and Tract 12.  
12 6, the then owners of tracts 5, 6, 7, 8, 9 and 11 agree to construct  
11 or, said dispute, and as incorporated in said Agreement in paragraph  
10 under said conditions and restrictions. As a part of the settlement  
9 of March 17, 1962, and the property owners' rights and obligations  
8 or otherwise. Said Agreement amended and modified the restrictions  
7 Heights either as an owner, mortgagee, vendor, contract purchaser,  
6 then owned or had an interest in the various tracts of Kaverly  
5 an Agreement dated February 4, 1961, signed by all the persons who  
4 plaintiffs. Said dispute was eventually settled, and resulted in  
3 property owners in Kaverly Heights, including some of the present  
2 project, which said project was objected to by various other

KING, MILLER, ANDERSON, NASH & STRAIN  
ATTORNEYS AT LAW  
100 N. W. CORNER OF 10th & 11th STS. N.W.

OCT 6 1970

V

1  
 2 Plaintiffs Paul W. Bechtold, Elizabeth L. Bechtold,  
 3 Wendell E. Hansen, Henry J. Zilka, Mabel J. Zilka, Jean F. DeLord,  
 4 Natalie L. DeLord, E. Roy Jarman, Eva G. Jarman, George E. Sullivan,  
 5 Anna G. Sullivan, Leroy B. Staver, Felena M. Staver, Pay E. Mackenzie,  
 6 and Bess Mackenzie were property owners in Waverly Heights on February  
 7 4, 1961, and were parties to the Agreement of February 4, 1961.  
 8 Plaintiffs Thomas D. Taylor, Doris V. Taylor, Thomas S. Harrison, Jr.  
 9 and Margaret L. Harrison and defendants thereafter became property  
 10 owners in Waverly Heights and thereby assumed and succeeded to the  
 11 obligation and benefits of their successors in interest in said  
 12 Agreement. Defendants became property owners of tracts 5, 6, 7, 8,  
 13 9 and 11 on December 24, 1963.

VI

14  
 15 After the settlement of the dispute and the execution  
 16 of the Agreement of February 4, 1961, defendants or their successors  
 17 in interest caused an apartment complex of 64 units, known as Waverly  
 18 Green Apartments, to be constructed on tracts 6, 7, 8, and 9 of  
 19 Waverly Heights. Despite repeated requests to construct the fence  
 20 called for in said Agreement, defendants failed to construct said  
 21 fence. In reply to one such request, defendants advised the inter-  
 22 ested property owners of Waverly Heights by letter, dated October 27,  
 23 1966, that they would comply with the Agreement of February 4, 1961,  
 24 and begin construction of the fence within 60 days. Attached hereto,  
 25 marked Exhibit D, and by this reference made a part hereof, is a copy  
 26 of said letter of October 27, 1966. Thereafter, defendants did con-  
 27 struct such a fence over a small portion of the boundary, but despite  
 28 repeated demands that the balance of the fence be constructed, have  
 29 failed and refused to complete the construction of the fence over the  
 30 entire boundary as required by the Agreement of February 4, 1961.

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 KING MILLER ANDERSON NASH & YERKE  
 ATTORNEYS AT LAW AMERICAN BANK BUILDING  
 PORTLAND, OREGON 97208

OCT 6 1970

VII

1 Since the construction of the multiple unit apartment  
 2 complex on tracts 6, 7, 8, and 9 of Waverly Heights, the plaintiffs  
 3 and other property owners in tracts 1, 2, 3, 4, 10, 12, 13, 14, 15  
 4 and 16 of Waverly Heights have been subjected to pedestrian and  
 5 motor vehicular traffic, including motorcycles and motorbikes,  
 6 originating on tracts 5, 6, 7, 8, 9 and 11 of Waverly Heights and  
 7 entering the other tracts of Waverly Heights at places where no  
 8 fence has been constructed, which traffic has created noise and  
 9 otherwise adversely affected the privacy of the plaintiffs in their  
 10 enjoyment and use of their property. Certain of said plaintiffs'  
 11 property has also been subjected to vandalism caused by persons  
 12 entering upon their portion of Waverly Heights from tracts 5, 6, 7,  
 13 8, 9 and 11 at points not protected by fences.

VIII

15 Defendants have submitted proposals to the Planning  
 16 Commission of the City of Milwaukee, Oregon, to expand their apart-  
 17 ment house complex. Said plans call for the additional construction  
 18 on tracts 5 and 6 of 68 new units. Defendants have also requested  
 19 a zone change of tract 11 from R-10 Residential to A-2 Apartment  
 20 Residential so that they will be able to construct additional units  
 21 on said tract 11. Any additional apartment units will cause even  
 22 further influx of persons and motor vehicles into and upon the por-  
 23 tion of Waverly Heights owned by the plaintiffs, and cause even  
 24 greater damage to the plaintiffs, unless the fence which defendants  
 25 and their successors in interests agreed to construct and maintain,  
 26 is in fact built.

IX

28 With the exception of that portion of the boundary described  
 29 in the Agreement of February 4, 1961, where defendants have already  
 30 constructed a portion of the aforesaid fence, all portions of said  
 31 boundary are now suitable for either pedestrian or vehicular traffic.  
 32

KING, WELLS, ANDERSON, NASH & YERSE  
ATTORNEYS AT LAW, MILWAUKEE, WISCONSIN 53102

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OCT 6 1970

X

1  
2 Plaintiffs have duly performed all the covenants and  
3 conditions of the Agreement of February 4, 1961, on their part to  
4 be performed. Plaintiffs have no plain and adequate remedy at law.

5 WHEREFORE plaintiffs pray

6 1. For a decree requiring defendants to construct within  
7 three months from the date of the decree and to maintain along  
8 all of the following boundaries in Waverly Heights:

9 (a) The boundary between Tract 4 and Tract 5;

10 (b) The boundary between Tract 5 and Tract 10;

11 (c) On or near the boundary of Tract 10 bordering  
12 upon the portion of said road shown on said plat and known  
13 as S.E. Waverly Road or S.E. Cambridge Lane fronting upon  
14 Tracts 6, 7, 8, 9 and 11;

15 (d) The boundary between Tract 11 and Tract  
16 a woven chain link fence of not less than nine gauge galvanized  
17 steel, not less than six feet high, the top edge thereof having  
18 twisted wire ends and the posts thereof set in concrete.

19 2. That if specific performance of said Agreement of  
20 February 4, 1961, is not granted, that a decree be entered  
21 enjoining defendants, and each of them, from constructing any  
22 additional apartment units on tracts 5, 6, 7, 8, 9 and 11 of  
23 Waverly Heights until such time as defendants have constructed  
24 the fence required to be constructed under the Agreement of  
25 February 4, 1961.

26 3. That Plaintiffs have such other, further or different  
27 relief as the court shall deem proper.

28 4. That Plaintiffs recover their costs and disbursements  
29 herein incurred.

30 KING, MILLER, ANDERSON, WASH & YERKE

31 Fredric A. Yerke, Jr.  
32 Fredric A. Yerke, Jr.

Dean D. DeChaine  
Dean D. DeChaine

Attorneys for Plaintiff

KING, MILLER, ANDERSON, WASH & YERKE  
ATTORNEYS AT LAW  
AMERICAN BANK BUILDING  
PORTLAND, OREGON 97208

70-22604

EXHIBIT A

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1 STATE OF OREGON )  
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KING, MILLER, ANDERSON, HARRIS & YERGEN  
ATTORNEYS AT LAW OFFICES  
MULTNOMAH COUNTY BUILDING  
200 WEST 10TH STREET  
MULTNOMAH, OREGON 97130

70-22604

EXHIBIT A

(STAT.)

Dean D. DeChaine  
Notary Public for Oregon  
My commission expires: January 20, 1972

Thomas D. Taylor  
SUBSCRIBED and sworn to before me this 31st day of July, 1969.

I, THOMAS D. TAYLOR, being first duly sworn, depose and say that I am one of the plaintiffs above-named, that I have read the foregoing Complaint in Equity, know the contents thereof, and the same is true as I verily believe.

STATE OF OREGON )  
COUNTY OF MULTNOMAH ) SS

STATE OF OREGON,  
County of Multnomah, ss.  
I, George D. Pappas, County Clerk, do hereby certify that the foregoing Complaint in Equity, as verified by the County of Multnomah, do hereby certify that the contents of the same are true and correct for the purposes of the law.  
GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 6th day of July, 1969.

Notary Seal: Notary Public for Oregon, My Commission Expires January 20, 1972. Signature: Dean D. DeChaine, Notary Public.

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