

RESOLUTION NO. 3390

A RESOLUTION AFFIRMING THE PLANNING COMMISSION'S DECISION TO APPROVE WITH CONDITIONS THE TENTATIVE SUBDIVISION PLAT FOR CABINS AT PERIWINKLE CREEK, FILE NO. M1-03-94, BY ADOPTING FINDINGS, CONCLUSIONS, AND CONDITIONS ATTACHED AS EXHIBIT A AND EXHIBIT B.

WHEREAS, the Albany Planning Commission granted approval with conditions of a tentative subdivision plat, File No. M1-03-94, on June 6, 1994; and

WHEREAS, the decision of the Planning Commission was appealed to the City Council, which held a de novo hearing on July 20, 1994; and

WHEREAS, following the de novo hearing, the City Council granted tentative approval with conditions of the tentative subdivision plat, and directed staff to prepare findings and conclusions that address the new information and testimony presented at the public hearing; and

WHEREAS, the findings, conclusions, and conditions of the staff report prepared for the July 20, 1994, City Council public hearing attached as Exhibit B, together with the findings and conclusions attached as Exhibit A, constitute the basis for approval of the tentative subdivision plat;

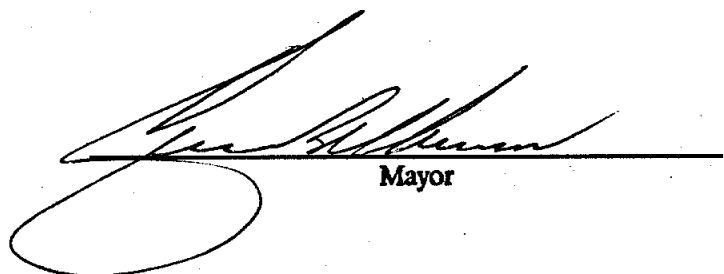
NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the findings, conclusions, and conditions of the staff report prepared for the July 20, 1994, public hearing be adopted; and


BE IT FURTHER RESOLVED by the City Council that the Additional Findings and Conclusions attached as Exhibit A, be adopted; and

BE IT FURTHER RESOLVED that the City Council affirms the Planning Commission decision to approve with conditions the tentative subdivision plat for Cabins at Periwinkle Creek, File No. M1-03-94.

DATED THIS 10TH DAY OF AUGUST, 1994




Mayor

ATTEST:

Deputy City Recorder



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**CITY COUNCIL DECISION
APPROVAL WITH CONDITIONS
FILE NO. M1-03-94, CABINS AT PERIWINKLE CREEK**

***ADDITIONAL FINDINGS AND CONCLUSIONS TO ADDRESS NEW INFORMATION AND TESTIMONY PRESENTED AT THE JULY 20, 1994 CITY COUNCIL PUBLIC HEARING
(Prepared August 2, 1994 for the August 10, 1994 City Council Meeting)***

Applicant: Glen Rea, P.O. Box 964, Albany, OR 97321

Type of Request: Tentative Subdivision Plat application to divide a 42,182 square foot land parcel, a portion of which is in the floodplain of Periwinkle Creek, into 7 lots ranging in size from 4,229 square feet to 7,510 square feet.

Property Location: Not yet addressed. North of 7th Avenue, east of Pine Street, south of Santiam Road, and west of Cleveland Street. (See vicinity map included at the end of this document as Attachment D-1.)

Total Land Area: 0.97 acres (42,182 square feet)

Assessor's Map & Tax Lot No.: Map No. 11S-3W-08BB, Tax Lot 700

BACKGROUND

The City Council, at its July 20, 1994 meeting approved with conditions, the subject tentative subdivision plat application, and directed staff to prepare findings that address the new information and testimony presented at the public hearing. The findings, conclusions, and conditions of the staff report prepared for the July 20, 1994 City Council public hearing, together with the findings and conclusions below, constitute the basis for approval of the tentative subdivision plat.

Findings of Fact

1. Don Donovan, City of Albany Associate Planner, stated for the record, that the reference in the staff report to "ODFW urban forestry guidelines" is in error, and that the reference should be corrected to read "Oregon Forestry Department urban forestry guidelines." The reference appears on pages 3, 10, 11, 12 of the staff report. (The guidelines are contained in a publication titled "A Technical Guide to Community and Urban Forestry in Washington, Oregon, and California," produced by the Word Forestry Center in Portland, Oregon and Robin Morgan, Urban Forestry Consultant, September 1989.)

2. The following additional information was submitted at the July 20, 1994 City Council public hearing:
 - a) Revised tree species inventory and graphics. Submitted by applicant.
 - b) Set of 5 photographs. Submitted by John Carter.
 - c) Petition to reject subdivision. Submitted by Robert Alexander and John Carter.
 - d) Letter from Oregon Department of Fish and Wildlife. Submitted by John Haxton, District Fish Biologist.
 - e) Survey for John Carter. Submitted by Betty Carter.
3. Robert Alexander testified that he appealed the decision of the Planning Commission because he preferred to have pavement on 6th Avenue, rather than the additional gravel surfacing allowed by the Planning Commission. He requested that 6th Avenue be improved to Development Code standards prior to the start of development, because of increased traffic associated with tree removal and filling on the subject property.
4. John Carter referred to Review Criteria (5). He testified that he believes Mr. Rea has underestimated the number of trees that will be removed at the time homes are constructed on the seven lots that will be created as a result of the proposed subdivision. Mr. Rea estimates 16 trees will be removed, Mr. Carter estimates 24-26 trees will be removed.
5. Mr. Carter described various beneficial functions that trees perform. He read the excerpts from the Albany Comprehensive Plan included in the staff report on page 10 and 11, and expressed the same concerns included in his letters attached to the staff report as Attachment B-2 and B-3.
6. Betty Carter referred to the survey referenced in Finding 2e. above, and Attachment D-2. Attachment D-2 shows the Periwinkle Creek top of bank approximately 7 feet east of the southeast corner of Tax Lot 1000, the survey shows the top of bank approximately 7 feet west of the southeast corner of Tax Lot 1000.
7. Bruce Carter testified that, contrary to Mr. Rea's written statements, the subject property is not an urban dump site. He also argues with Mr. Rea's written statement that Ivy growing in trees damages them. Bruce Carter states that blackberries provide food for birds.
8. Lisa McKirdy testified she is concerned with destruction of wildlife, and elimination of shade cover for aquatic organisms. She stated she bought her property [across 7th Avenue and west of the subject property] because there were trees in the neighborhood. She also stated she would not like to see the bike path built.
9. Debbie Miller stated a concern about what will be done with Periwinkle Creek, and removal of trees. She stated that we have an existing "green space" here, and it should be preserved.
10. Diane Glass testified that she agrees with everything that others who testified in opposition have said.
11. The applicant, Glen Rea, testified as follows:
 - a) The proposed development fits the site, neighborhood, and market. A previous proposal for the site was for 21 apartments, which would be allowed by the current RM-3 zoning.
 - b) In conversations with Mr. Alexander, Mr. Rea has agreed to participate in a Local Improvement District (LID) to improve 6th Avenue, and pay a share of the cost in proportion to the benefit to the subject property.
 - c) Mr. Rea submitted, for the record, a drawing labeled "Improvement Alternative - East 6th....," and a section entitled "Shared Driveways" from page 55 of a publication evidently called "Design Considerations." He would prefer to improve 6th Avenue to the standards shown in these documents,

rather than to Development Code standards.

- d) He objects to the form of John Carter's appeal because it is not specific, although he acknowledges later letters from Mr. Carter are more detailed.
- e) Urban sites need maintenance. He intends to accomplish development of the site in accordance with the recommendations published in "A Technical Guide to Community and Urban Forestry in Washington, Oregon, and California," and in "Naturescaping," published by Oregon Department of Fish and Wildlife, 1993. The minimum number of trees will be removed at the time of subdivision to allow installation of utilities. Urban forestry guidelines actually suggest the removal of a number of additional trees. He intends to improve the site as a habitat for wildlife, rather than destroy it.
- f) Two different engineers have calculated that Periwinkle Creek can accommodate the 100-year flood. [Staff note: One is Endex Engineering referenced in the staff report. The other is Dr. S.M. Hasan, P.E., Ph.D., a professional engineer registered in Oregon.]
- g) The recent U.S. Supreme Court decision in Dolan v. City of Tigard seems applicable to this case, in that he should be allowed an economic return from this property.

12. Marcia Morse, a consultant working for Mr. Rea, intends that this development be a demonstration project that will show how development can be done in harmony with the natural environment. Some selective clearing of the site will be done, in accordance with the recommendations found in "Naturescaping." She intends to leave Periwinkle Creek in better shape than it is now. Some trees will be taken down, but many more will be planted. Some blackberries and ivy will be removed so that other plant species will be able to grow. A variety of additional native plant species will be cultivated. Clearing along the banks of the Periwinkle Creek channel will be performed with manual labor, not a bulldozer.

13. On rebuttal:

- a) Robert Alexander spoke, but presented no rebuttal to Mr. Rea's testimony.
- b) John Carter stated that he has contacted several agencies, and none knew of the proposed development.
- c) Betty Carter stated that clearing took place on the subject property at the time of the topographic survey, allowing erosion of property adjacent to the Tax Lot 1000.
- d) Bruce Carter testified that in 1964 or 1965, water in Periwinkle Creek was above the existing top of bank.

Conclusions

- 1. Improvement of 6th Avenue beyond that recommended by the City Engineer is appropriately accomplished through formation of a Local Improvement District, which distributes the cost of improvement according to the benefit provided to participating properties.
- 2. The revised tree species inventory and graphics submitted by the applicant shows that three trees will be removed subsequent to approval of the final subdivision plat. Mr. Rea's testimony at the public hearing indicates that as many as five trees may have to be removed, depending on an evaluation of conditions at the time of construction. The minimum number of trees necessary to allow installation of utilities will be removed.

3. The set of 5 photographs submitted by John Carter show Periwinkle Creek in its current state, and a section of the creek south of the subject property with a widened channel, rip-rap, and a bike path. Only minor clearing is proposed along the banks of Periwinkle Creek as part of the proposed development. No widening of the channel, no rip-rap, and no bike path is proposed.
4. The "Petition to Reject Subdivision" characterizes the site as "a natural wildlife haven for wild turkeys, geese, ducks, blue heron, red tail hawks, black birds, blue jays, crow, opossums, raccoons, rabbits, skipper fish, periwinkles, crawdads, and other birds, animals and fish." The Petition states that development of the area will destroy their habitat and cause the wildlife to vacate and not return. The Petition characterizes the City Council's decision as a choice between development and preserving the existing wildlife.

John Haxton in the letter from the Oregon Department of Fish and Wildlife (ODFW):

- a) States that removal of brush along the banks of the stream will result in the loss of wildlife habitat and elimination of shade and cover for aquatic organisms.
- b) Assumes widening of the channel may also be necessary, further degrading habitat.
- c) Speculates as to the possibility of erosion.
- d) States that a 50-foot easement along the stream would appear not to be sufficient enough to accommodate a bike path while providing full protection to the riparian area.
- e) States that a healthy stream system is complex, and retention of floodways and floodplains are intrinsic parts of that system.
- f) States that the reason that ODFW did not contact the Planning Division about this project is that no notification was received.

Although the evidence that the range of wildlife species identified by the signers of the Petition to Reject Subdivision is anecdotal, the Albany Comprehensive Plan recognizes natural woodland vegetation along waterways as important wildlife habitat.

However, the Development Code also recognizes a need to protect property and public safety in Section 12.540 and 12.550. Section 12.540 requires provision of a public easement adequate for conveyance of and maintenance of drainageways, and allowing the City Engineer to require improvements, if necessary. Section 12.550 requires the City Engineer to review and approve the size of the drainage facilities, based on the provisions of the Storm Drainage Master Plans, and sound engineering principles and assuming conditions of maximum potential watershed development permitted by the Comprehensive Plan.

The requirement for the applicant to remove brush from the banks of the Periwinkle Channel is the minimum improvement necessary to allow passage of 100-year flood waters. The developer has further stated his intent to cut trees and clear brush in accordance with accepted urban forestry, and Oregon Department of Fish and Wildlife guidelines. The need to protect property and public safety has been balanced with consideration of wildlife habitat. Development of the subject property is not necessarily a choice between development and preserving the existing wildlife. This development is an opportunity to demonstrate how development can be done while preserving natural values.

The applicant has submitted a drawing and an inventory which clearly shows the existing trees on the subject property, and which trees will be removed at each stage of development. John Carter testified that the tree count is in error, but provided no evidence that was the case. The Comprehensive Plan says "where

possible, retain the environmental and aesthetic qualities of existing wooded areas by incorporating them into public park and open space plans, and ensure the maximum preservation of vegetation during the development review and construction process." The subject property has not been incorporated into public park or open space, but the willingness of the developer to implement urban forestry and "naturescaping" guidelines during development and construction will result in the maximum preservation of vegetation in the long term.

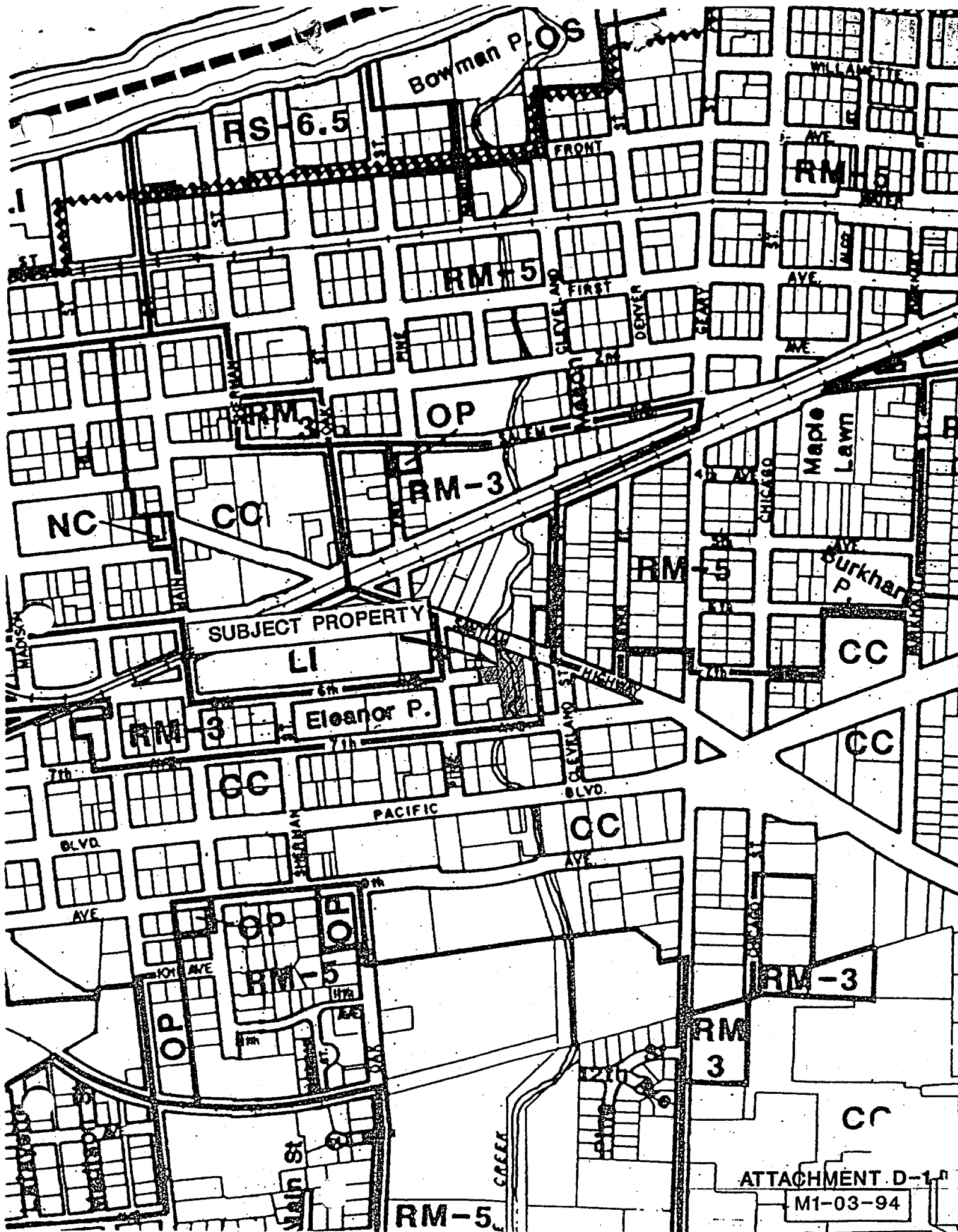
No widening of the Periwinkle Creek channel is proposed. Erosion will be controlled by establishing permanent ground cover on the banks of the creek. Endex Engineering has determined that a 50-foot easement is sufficient to accommodate 100-year flood waters and a bike path. The bike path, however, will not be built at this time. No fences or other structures will be allowed in the easement. The riparian area will be protected to the extent possible considering drainage requirements. No construction is proposed in the floodway. Fill is allowed in the flood fringe. However, any fill that exceeds 50 cubic yards requires a permit from the Building Division, and this is a condition of approval of the tentative subdivision plat.

Staff is unaware of any requirement that the Oregon Department of Fish and Wildlife be notified of proposed development in floodplains, or in areas identified as wildlife habitat.

5. The survey for John Carter shows the top of the bank of Periwinkle Creek seven feet west of the southeast corner of Tax Lot 1000 (Linn County Assessor's Map No. 11S-3W-8BB), whereas the Tentative Plat submitted by the applicant shows the top of the bank approximately seven feet east of the southeast corner of Tax Lot 1000.

The Tentative Plat submitted by the applicant meets the requirements of Albany Development Code (ADC) Section 11.210. ADC Section 11.160 states that "the tentative plat need not be prepared by a surveyor," but that "the final plat must be prepared by a licensed land surveyor..." The correct location of Periwinkle Creek will be documented on the final plat by a licensed surveyor. The exact location of the creek makes no significant difference in the review of the tentative plat. (The location of the creek may affect the sizes of proposed Lots 4 and 5, however, the subject property is zoned RM-3, a zoning district in which there is no minimum lot size for single-family residential development. It appears that structures could still be built on Lots 4 and 5 if Periwinkle Creek is actually located as shown on the survey for John Carter, and meet RM-3 zoning district setback requirements.)

6. The findings and conclusions presented in the staff report, and those presented here establish that the applicant has presented sufficient evidence to show that special features of the site have been adequately considered and utilized.





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**CITY COUNCIL DECISION
TENTATIVE APPROVAL WITH CONDITIONS
FILE NO. M1-03-94, CABINS AT PERIWINKLE CREEK**

**FINDINGS, CONCLUSIONS, AND CONDITIONS PREPARED AS PART OF STAFF REPORT
TO CITY COUNCIL FOR JULY 20, 1994 CITY COUNCIL PUBLIC HEARING**

(This document prepared for adoption by City Council at August 10, 1994 meeting as Exhibit B, attached to ordinance adopting findings, conclusions, and conditions.)

Applicant: Glen Rea, P.O. Box 964, Albany, OR 97321

Type of Request: Tentative Subdivision Plat application to divide a 42,182 square foot land parcel, a portion of which is in the floodplain of Periwinkle Creek, into 7 lots ranging in size from 4,229 square feet to 7,510 square feet.

Property Location: Not yet addressed. North of 7th Avenue, east of Pine Street, south of Santiam Road, and west of Cleveland Street. (See vicinity map included at the end of this document as Attachment D-1.)

Total Land Area: 0.97 acres (42,182 square feet)

Assessor's Map & Tax Lot No.: Map No. 11S-3W-08BB, Tax Lot 700

APPROVAL STANDARDS

The approval standards relevant to the review of this application are found in the Albany Comprehensive Plan and the Albany Development Code. Albany Development Code (ADC) Section 11.180 lists the five review criteria for tentative plat approval. Approval of a tentative plat will be granted if the review body finds that the applicant has met all of the criteria which apply to the development.

The review criteria are listed below, in *bold italic*, followed by findings of fact and conclusions. Incorporated within the analysis of each of the review criteria are relevant Comprehensive Plan policies.

- (1) *Development of any remainder of property under the same ownership can be accomplished in accordance with the Albany Development Code.*

Findings of Fact

- 1a. The proposed development includes all of the subject property. There will be no "remainder of property."

Conclusions

- 1a. This criterion is not applicable.

- (2) *Adjoining land can be developed or is provided access that will allow its development in accordance with the Albany Development Code.*

Findings of Fact

- 2a. There are five land parcels that adjoin the subject property. They are identified as follows: Linn County Assessor's Map No. 11S-3W-8BB, Tax Lot 1300, 1200, 1000, 1001, and 600.
- 2b. Each of the five land parcels is developed with a single-family residence, and each has access to a public street. (Tax Lot 1300 has access to Santiam Road, 1200 to 7th Avenue, 1000 to 7th Avenue, 1001 to 6th Avenue, and 600 to Santiam Road).
- 2c. Tax Lot 1001 could be divided into two separate tax lots, the most easterly of which would not have access to a public street.

Conclusions

- 2a. This criterion can be met if the following condition is met.

Conditions

- 2a. The applicant shall dedicate a 15-foot strip of right-of-way to the public along the westerly boundary of the subject property in order to provide access to the easterly area of 11S-3W-8BB, Tax Lot 1001.

The City will provide the form for street dedication and will mail it to the applicant for notarized signatures within 5 working days of the effective date of this approval.

- (3) *The proposed street plan affords the best economic, safe, and efficient circulation of traffic possible under the circumstances.*

Albany Comprehensive Plan Goal 12, Transportation Policy 3 is relevant to this review criteria. Policy 3 states "As part of the development review process, evaluate the adequacy of transportation to, from, and within the site."

One property owner within the 100-foot notification area has raised the following concern: (Reference appeal application from Robert and Betty Alexander dated June 17, 1994; letter from Glen Rea to Dean Nebergall dated June 23, 1994; letter from Robert and Betty Alexander to Dean Nebergall dated July 25, 1994; and letter from Dean Nebergall to Glen Rea dated July 5, 1994. These are included at the end of this document as Attachments A-1, A-2, A-3, and A-4).

- * A 20-foot wide paved street is needed to accommodate the proposed development.

This concern will be addressed in the following findings of fact, conclusions, and conditions.

Findings of Fact

- 3a. The subject property has access to 6th Avenue, Santiam Road, and 7th Avenue.
- 3b. Three of the proposed subdivision lots will have access on 6th Avenue, two lots will have access on Santiam Road, and two lots will have access on 7th Avenue.
- 3c. Santiam Road is designated as a minor collector street on the City's Master Street Plan (Comprehensive Plan, Plate 12). 6th Avenue, and 7th Avenue are both classified as local streets. 6th and 7th Avenues are both

unimproved public rights-of-way, currently open to traffic. Santiam Road is a public right-of-way, paved with curb and gutter, and no sidewalk.

3d. The Albany Development Code (ADC) requires certain standards intended to insure that the City's transportation system is capable of supporting proposed new development. "Development approval may be conditioned upon the provision and/or guarantee of public improvements called for in a public facilities master plan or any other public improvements necessitated by the development." (ADC 12.030)

3e. ADC 12.060 provides that "No development shall occur unless the development has frontage on or approved access to a public street currently open to traffic. A currently non-opened public right-of-way may be opened by improving it to city standards."

"Streets (including alleys) within and adjacent to a development shall be improved in accordance with the standards in this Article. In addition, any new street or additional street width planned as a portion of an approved street plan shall be dedicated and improved in accordance with this Article."

"Where the City Engineer determines that a required street improvement would not be timely, the City Engineer may accept a Petition for Improvement/Waiver of Remonstrance for a future assessment district."

3f. ADC 12.200 provides that "Sections of existing streets not meeting city standards which directly abut new development shall be constructed partial width to the appropriate city standard by the developer provided that a partial street improvement is determined by the city engineer to be adequate to handle the projected traffic loadings..."

"Where the city engineer determines that the street improvement would not be timely, he may accept a future improvement assurance as described in Section 12.600."

3g. The City Engineer has determined that Santiam Road is adequate to accommodate the traffic that will be generated by those new subdivision lots that have access.

3h. The City Engineer has determined that 6th Avenue and 7th Avenue are not improved to Development Code standards, and are not adequate to accommodate the traffic that will be generated by the new lots that will have access.

The City Engineer has also determined that improvement of 6th and 7th Avenues to Development Code standards is not timely, gravel surfacing is needed, and that a Petition for Improvement/Waiver of Remonstrance will be required.

3i. The proposed access plan has been reviewed by the City's Public Works Department, and found to be safe and efficient.

3j. ADC 12.290 provides that "All development for which land use applications are required by Section 1.060 must include sidewalks adjacent to public streets." However, only in the case of arterial or collector streets are sidewalks required at the time of construction. It is the City's policy to require construction of sidewalks along local streets at the time residences are constructed. The owners of proposed Lots 1 and 7 will be required to construct sidewalks along their frontages on Santiam Road at the time building permits are issued for residential construction.

3k. The City's Parks Master Plan shows a proposed bike trail through the subject property. The applicant states that the bike trail will fit in the proposed 50-foot public drainage easement that will be provided for Periwinkle Creek [see Criterion (5)], and has submitted drawings prepared by Endex Engineering, Inc., dated 2 May 1994, that show how construction can be accomplished. Construction of the trail will not be done at this time.

Conclusions

- 3a. Santiam Road is adequate to accommodate the traffic that will be generated by those new subdivision lots that have access.
- 3b. 6th and 7th Avenues have been found not adequate to accommodate the traffic that will be generated by the new lots that will have access, but since the improvement of 6th and 7th Avenues to Development Code standards is not timely, gravel surfacing is the most economic means of providing access under the circumstances. The proposed access plan also distributes access points among three different local streets, providing an efficient use of existing public facilities, a plan which has also been found to be safe.
- 3c. The applicant has agreed to provide a 50-foot wide public easement that will accommodate both the area needed to accommodate the 100-year flow of Periwinkle Creek, and the bike trail proposed in the City's Parks Master Plan. Construction of the trail will not be done at this time.
- 3d. This criterion can be met if the following conditions are met.

Conditions

The following conditions shall be met prior to final plat approval.

- 3a. A Petition for Improvement/Waiver of Remonstrance for the future construction of street and drainage improvements on 6th Avenue between Pine Street and the subject property, and on 7th Avenue from Cleveland Street to the west side of the driveway for proposed Lot 5 shall be signed by the applicant, notarized, and submitted to the City. The City will provide this form and will mail it to the applicant for notarized signatures within 5 working days of the effective date of this approval.
 - 3b. Provide a minimum of 6-inches of 3/4-0" gravel surfacing on 6th Avenue from Pine Street to the development frontage, and on 7th Avenue from Cleveland Street to the west side of the driveway for proposed Lot 5. The width of the gravel surfacing shall be a minimum of 20 feet.
- (4) *The location and design allows development to be conveniently served by various public utilities.*

Findings of Fact

- 4a. Sanitary sewer: Sanitary sewer service to this development is available by extending two (2) new public mainlines from the existing public sewer line on Santiam Road.
- 4b. Water: Water service can be provided by replacing an existing 2-inch line on 6th Avenue with a new public 4-inch line; on 7th Avenue from an existing 10-inch public mainline; and on Santiam Road from an existing 6-inch public mainline.
- 4c. Storm drainage: No connection to existing public storm drainage facilities is proposed.

Conclusions

- 4a. The location of the proposed subdivision can be conveniently served by the public sanitary sewer and water system, if the following condition is met.

Conditions

- 4a. Easements for the public sanitary sewer lines shall be 15-feet in width; a 10-foot wide easement will be

allowed for areas adjacent to structures or property lines. Easements must extend 15-feet beyond the terminating manholes on each line. The easements shall be shown on the final plat.

- (5) *Any special features of the site (such as topography, floodplains, wetlands, vegetation, historic sites) have been adequately considered and utilized.*

Albany Comprehensive Plan Goal 5 Policy 3 has been identified as relevant to this criterion. Policy 3 says "where possible, retain the environmental and aesthetic qualities of existing wooded areas by incorporating them into public park and open space plans, and ensure the maximum preservation of vegetation during the development review and construction process."

Two property owners within the 100-foot notification area have raised the following concerns: [Reference appeal letter from John and Betty Carter, Bruce and Sharon Carter dated 6-17-95 (sic); letter from John Carter to Albany Planning Commission received July 11, 1994; letter from John Carter to City of Albany Engineering received July 11, 1994; and letter from Bruce and Sharon Carter dated July 11, 1994; included at the end of this document as Attachments B-1, B-2, B-3, and B-4].

- * Destruction of wildlife habitat
- * Tree removal
- * Impact on aquatic life by modification of Periwinkle Creek

John Carter has also submitted a set of five color photographs that are labeled as follows: 1) Periwinkle Creek looking south, 2) Taken from end 7th Ave. east side of creek, 3) Plat area looking north, 4) Periwinkle Creek bike path from 21st Ave., 5) Rip rap in creek near Periwinkle Mobile Park. These photographs have been photocopied and attached at the end of this document as Attachment B-6. Color originals submitted by Mr. Carter will be provided to the City Council at the July 20, 1994 public hearing.

One property owner within the 100-foot notification area has raised the following concerns: (Reference letter from John Scoville and Judy Gilbert to Albany City Council received July 12, 1994. This letter is included at the end of this document as Attachment B-5).

- * Destruction of wetlands
- * Destruction of wildlife habitat
- * Concern for preservation of wetlands by EPA, Fish and Wildlife Agency, State Division of Land, and the Audobon Society.

These concerns will be addressed in the following findings of fact, conclusions, and conditions.

Findings of Fact

- 5a. **Topography:** The subject property varies in elevation from approximately 205 feet to 210 feet, except that Periwinkle Creek runs north/south through the property and has a flow line elevation of approximately 199-200 feet. This information is shown on a topographic survey done by Northstar Surveying, Corvallis, Oregon, in 1993.
- 5b. **Floodplains:** FEMA/FIRM Community Panel No. 410137 0002E, shows a portion of the subject property in Zone A (within the 100-year floodplain of Periwinkle Creek, but with no base flood elevations determined).

Albany Development Code (ADC) Section 12.540 states that "where a subdivision is traversed by a water course, drainageway, channel or stream, there shall be provided a public storm water easement or drainage right-of-way conforming substantially with the lines of such water course and such further width as the City Engineer determines will be adequate for conveyance and maintenance. Improvements to the drainageway, or streets or parkways parallel to water courses may be required."

ADC Section 12.550 states that "a culvert or other drainage facility shall be large enough to accommodate potential run-off from its entire upstream drainage area, whether inside or outside of the development. The City Engineer must review and approve the necessary size of the facility, based on the provisions of the Storm Drainage Master Plans, and sound engineering principles and assuming conditions of maximum potential watershed development permitted by the Comprehensive Plan."

The applicant has submitted calculations, prepared by Endex Engineering, dated 5/20/94, that recommend clearing the brush from the Periwinkle Creek channel and establishing permanent ground cover. These calculations have been reviewed by the City Engineer, who finds that if the recommendations are followed, and the channel is otherwise unobstructed, Periwinkle Creek will accommodate 100-year flood flows.

The applicant proposes to dedicate a 50-foot wide public drainage easement that will accommodate the Periwinkle Creek channel and a proposed bike trail, and fill the property outside the easement, placing it above the 100-year flood elevation. Fill is allowed in the floodplain, if a permit is obtained from the City of Albany Building Division.

- 5c. Wetlands: Periwinkle Creek is shown as a wetland on the U.S. Department of Interior, Fish and Wildlife Service, National Wetland Inventory (NWS/NWI) map, dated July 1982. No other area of wetlands on the subject property is shown on the NWS/NWI map.

Scott Craig of Wetland Environmental Technologies, Inc. states that "Periwinkle Creek is considered waters of the United States and the State of Oregon, and is listed on the USFWS NWI map." He found no other areas of wetlands on the subject property. Work in waters of the United States and/or State of Oregon requires permits from the U.S. Army Corps of Engineers and the Oregon Division of State Lands.

- 5d. Vegetation: The vegetation on the subject property, previous to September 1993, included blackberry bushes and various other species of undergrowth. This undergrowth was removed to facilitate topographic survey work. Remaining on the site are cottonwood trees, and a few evergreens. The applicant states that the cottonwoods are in poor condition (dead, detached and fallen branches, large tree cavities, leaning trees), they conflict with existing utility lines, and neighbors are concerned about falling branches. The applicant further states that most of the cottonwood trees will be removed during the subdivision construction period, and that remaining trees will be protected.

The applicant has submitted an inventory of trees and two maps that show existing trees on the site, those that will be removed, and those that will remain. (The inventory and the maps are included at the end of this document as Attachments C-1, C-2, and C-3).

Attachment C-1 shows that two trees (possibly as many as five are shown on Attachment C-2) will be removed at the time the final subdivision plat is approved, and utilities are installed on the site. Attachment C-1 also shows that an additional thirteen trees will be removed if cottages are developed on the resulting seven subdivision lots. Attachment C-2 shows the trees that will be removed. Attachment C-3 shows the trees that will remain.

The applicant states that brush removal from the Periwinkle Creek banks, establishment of permanent ground cover on the banks, and tree removal will be done according to ODFW urban forestry guidelines, which are intended to protect wildlife habitat to the extent possible.

The Albany Comprehensive Plan finds the following: The natural woodland vegetation along waterways and hillsides provides the most important wildlife habitat within the Albany area. The area's natural vegetation also provides important erosion control along river and stream banks, drainage channels, and on steep slopes. Vegetation in the Albany urban area can accomplish important environmental functions including: modification of temperature extremes, the amelioration of environmental pollution, the reduction of soil erosion and surface runoff, and aesthetic enhancement of the city. (Comprehensive Plan, pg. 4) Periwinkle Creek across the subject property is shown on Comprehensive Plan Plate 3: Natural Vegetation and Wildlife Habitat.

Comprehensive Plan Goal 5 Policy 3 says "where possible, retain the environmental and aesthetic qualities of existing wooded areas by incorporating them into public park and open space plans, and ensure the maximum preservation of vegetation during the development review and construction process." (emphasis added)

ADC Use Description 3.510 requires site plan review when removal of 5 or more trees in excess of 10" in diameter is proposed on parcels or property in contiguous single ownership in excess of 20,000 square feet, in one calendar year.

- 5e. Historic sites: The applicant states that at one time the subject property was owned by a church and used as a Boy Scout troop camp. The property does not appear on the City's inventory of historic sites.
- 5f. Neither the U.S. Environmental Protection Agency, Oregon Department of Fish and Wildlife, the Oregon Division of State Lands, nor the Audubon Society has contacted the City of Albany Planning Division regarding the proposed subdivision.

Conclusions

Special features of the site have been considered and adequately utilized because:

- 5a. A survey of the subject property has been done by a professional land surveyor, providing adequate information to evaluate the existing topography.
- 5b. The applicant has submitted calculations prepared by a registered professional engineer, showing that, if the brush is cleared from the banks of the Periwinkle Creek channel and permanent ground cover is established, and the channel is otherwise unobstructed, it will accommodate 100-year flood flows. The applicant intends to fill property outside the proposed 50-foot drainage easement, placing future development above the 100-year flood elevation.
- 5c. A wetland consultant has evaluated the subject property, and found no wetlands, except for Periwinkle Creek.
- 5d. The minimum number of trees necessary (2 - 5) to allow utility construction will be removed at the time the final subdivision plat is approved. An additional 13 trees may be removed at the time of further development of the subject property, and remaining trees will be saved.

Brush removal from the Periwinkle Creek banks, establishing permanent ground cover, and tree removal will be done according to ODFW urban forestry guidelines, which are intended to protect wildlife habitat to the extent possible. In addition, if the Periwinkle Creek channel is unobstructed by such obstacles as fills and fences, a continuous corridor for the movement of wildlife will be maintained.

It should be noted that after the subject property is subdivided as proposed, seven separate lots, all less than 20,000 square feet will have been created, and there is no requirement for City of Albany review of tree removal. The applicant states that he intends to accomplish all work, including that subsequent to final

subdivision plat approval, according to ODFW urban forestry guidelines. However, there is no assurance that the current applicant will be the ultimate developer of the individual lots. Subsequent to final subdivision approval, no further regulation of tree cutting, is provided for in the Development Code.

- 5e. No historic sites on the subject property appear on the City's inventory of historic places, and none have been identified by the applicant, affected parties, or during staff review.
- 5f. This criterion can be met if the following conditions are met.

Conditions

- 1a. The applicant shall dedicate a 50-foot wide public drainage/bike trail easement along the full length of Periwinkle Creek north/south through the subject property. The easement shall be 25 feet wide on either side of the centerline of the creek. Statements shall be included in the easement language which prohibit placement of any fill or fencing within the easement area. Final location and easement language shall meet the approval of the City Engineer.
- 1b. The applicant shall clear the brush from the banks of the Periwinkle Creek channel and permanent ground cover shall be established, as recommended by Endex Engineering in calculations submitted by the applicant, dated 5/20/94. This must be done prior to final subdivision plat approval.
- 1c. A joint permit from the U.S. Army Corps of Engineers and the Oregon Division of State Lands shall be obtained, if required, prior to performing any work within the Periwinkle Creek channel.
- 1d. All removal of vegetation on the site, including trees and brush, shall be accomplished according to Oregon Department of Fish and Wildlife urban forestry guidelines.
- 1e. The location of the 100-year flood contour line, followed by the date the flood elevation was established shall be shown on the final subdivision plat. A statement located on or attached to the plat shall read as follows: "Development of property within the 100-year floodplain as most currently established by the Federal Emergency Management Agency or City of Albany may be restricted and subject to special regulations by the City."
- 1f. Obtain a fill permit from the City of Albany Building Division for any planned fill which exceeds 50 cubic yards.

In addition to the review criteria above, ADC Section 6.130 states that applications within the floodplain district shall also be subject to the following standards:

- 1. *All land division proposals shall be consistent with the need to minimize flood damage.*

Comment: The applicant has submitted calculations, prepared by a registered professional engineer, that show the 100-year flood flow can be accommodated by the Periwinkle Creek channel, if the brush is removed from the banks of Periwinkle Creek, permanent ground cover is established, and the channel is otherwise unobstructed. This is a condition of approval of the tentative subdivision plat.

The applicant also proposes to fill the property outside the 50-foot proposed drainage easement to an elevation above the 100-year flood elevation. The proposed work will minimize potential flood damage. Future construction of residential dwellings will be reviewed for compliance with ADC Section 6.070-6.160 regarding construction in floodplains at the time of building permit review, if applicable.

- 2. *All land division proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.*

Comment: No public utilities or facilities are proposed in the 100-year floodplain of Periwinkle Creek.

3. All land division proposals shall have adequate drainage provided to reduce exposure to flood damage.

Comment: The applicant has submitted calculations, prepared by a registered professional engineer, that show the 100-year flood flow can be accommodated by the Periwinkle Creek channel, if the brush is removed from the banks of Periwinkle Creek, permanent ground cover is established, and the channel is otherwise unobstructed. These are conditions of approval of the tentative subdivision plat.

4. Any lot created for development purposes must have adequate area created outside of the floodway to maintain a buildable site area meeting the minimum requirements of this Code.

Comment: The proposed subdivision is located in an RM-3 zoning district. No minimum lot size for single-family residential construction is specified in the Albany Development Code. Proposed residential construction must simply meet setback requirements. The developer has submitted a conceptual proposal that shows single-family "cottages" can be constructed on each lot, and meet Code setback requirements, all outside the floodway.

5. Any new public or private street providing access to a residential development shall have a roadway crown elevation not lower than one foot below the 100-year flood elevation.

Comment: No new public or private street is proposed.

6. All land divisions or planned developments in the floodplain district shall show the location of the 100-year flood contour line followed by the date the flood elevation was established. Where elevation data is not available, either through the Flood Insurance Study or from another authoritative source, and the development is four or more acres or results in four or more lots or structures, the elevation shall be determined and certified by a registered engineer. In addition, a statement located on or attached to the recorded map or plat shall read as follows: "Development of property within the 100-year floodplain as most currently established by the Federal Emergency Management Agency or City of Albany may be restricted and subject to special regulations by the City."

Comment: FEMA/FIRM Community Panel No. 410137 0002E, dated March 18, 1986 shows a portion of the subject property in Zone A (within the 100-year floodplain of Periwinkle Creek, but with no base flood elevations determined). The 100-year flood elevation has been determined and certified by a registered engineer in calculations and drawings prepared by Endex Engineering, Inc. dated 2 May 1994 and 5/20/94.

The applicant proposes to fill the property outside the proposed 50-foot drainage easement to an elevation above the 100-year flood elevation of Periwinkle Creek. The applicant will be required to show the location of the 100-year flood contour line followed by the date the flood elevation was established on the final subdivision plat as a condition of approval. A statement located on or attached to the plat will read as follows: "Development of property within the 100-year floodplain as most currently established by the Federal Emergency Management Agency or City of Albany may be restricted and subject to special regulations by the City."