

RESOLUTION NO. 1619

[Denies Appeal In Part and Modifies Development Review Board Decision]

A RESOLUTION DENYING IN PART AND ALLOWING IN PART APPLICANT'S APPEAL IN 99DB29; INTERPRETING THE COMPREHENSIVE PLAN DEFINITION OF SIGNIFICANT STANDS OF TREES TO APPLY TO CERTAIN TREES LOCATED ABOVE THE 210-FOOT CONTOUR LINE ON APPLICANT'S PROPERTY; MODIFYING THE DEVELOPMENT REVIEW BOARD'S DECISION TO ALLOW A SIX-LOT SUBDIVISION RATHER THAN A SEVEN-LOT SUBDIVISION; CLARIFYING AUXILIARY UNITS ARE PERMISSIVE, CLARIFYING THE PHASING OF FOUR LOTS, FOLLOWED BY TWO LOTS MEETS CATEGORY 1, ORDINANCE NO. 514 DE MINIMUS STANDARDS; AND IN KEEPING WITH ITS DECISION ON APPEALS HEREIN ADOPTING ZONE ORDER 99DB29 AMENDING THE OFFICIAL ZONE MAP FROM RESIDENTIAL AGRICULTURE-1 ACRE MINIMUM (RA-1) TO RESIDENTIAL (R) FOR A TWO (2)-ACRE PARCEL OF LAND GENERALLY LOCATED ALONG THE EAST SIDE OF CANYON CREEK ROAD AND NORTH OF BOECKMAN ROAD, IDENTIFIED AS TAX LOT 3100, SECTION 12D, T3S-R1W, CLACKAMAS COUNTY, WILSONVILLE, OREGON. DORIS WEHLER, APPLICANT, (Case File 99DB29).

WHEREAS, upon due notice, a public hearing on Zone Order No. 99DB29 was scheduled and heard on March 6, 2000, which order proposes that the City Council adopt the application of Doris Wehler for a zone change and order amending the official zoning map from Residential Agriculture 1-acre (RA-1) to Residential (R) for a two (2)-acre parcel identified as Tax Lot 3100, Section 12D, T3S-R1W, Clackamas County, Wilsonville, Oregon. The Development Review Board and Planning Staff recommend approval of adopting the proposed zoning order; and

WHEREAS, an issue arose before the Development Review Board as to the interpretation of the Comprehensive Plan text regarding the Primary Open Space standards of significant stand of trees and its application to the boundary for Primary Open Space within the

proposed rezone parcel, and depending on the interpretation whether the rezoned property should be subdivided into six or seven lots; and

WHEREAS, staff has interpreted the Comprehensive Plan text regarding significant stands of trees to support a Primary Open Space boundary that would allow only a six-lot subdivision to be developed and points to testimony by arborist William Owen that indicated many of the trees above the 210-foot contour line are regulated White Oaks and other important trees, deserve protection, and are part of a significant stand of trees; and

WHEREAS, the Development Review Board interpreted the presence of a significant stand of trees in a manner to support an Primary Open Space boundary which would allow a seven-lot subdivision; and

WHEREAS, the applicant has filed an appeal which requests:

- (1) the findings supporting a Primary Open Space boundary interpretation which would allow only six lots be amended to reflect the Development Review Board decision;
- (2) that it be clarified whether auxiliary units are mandatory or permissive; and
- (3) that Condition 15 be clarified as to whether the applicant's phased approach of building four residences in 2000, and the remaining 2 residences in 2001, qualifies it for Category 1 of Ordinance No. 514, the Public Facilities Water Strategy; and

WHEREAS, the City Council has determined to hear the appeal on the record, and to hear arguments on the issue of interpretation of the Comprehensive Plan Primary Open Space boundary and the findings of staff and the decision of the Development Review Board, noting the staff report clarifies that the auxiliary units are permissive, not mandatory and that the phasing qualifies for Category 1, Ordinance No. 514, **provided it is limited to an application for a six-lot subdivision**, and thereafter, to conduct the hearing on the Zone Change; and

WHEREAS, due notice of these matters having been duly given, the applicable criteria stated, and the parties and interested persons having been given an opportunity to be heard, the City Council having reviewed the record and being fully advised in this matter;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. Applicant's appeal is denied in part and allowed in part and the Development Review Board's decision is reversed in part and allowed in part, as follows:

1.1 The staff report and the record testimony by arborist William Owens indicated that many of the trees about the 210-foot contour line are regulated White Oaks and other important trees, deserve protection and as part of a significant stand of trees meet the definition of Primary Open Space under the City's Comprehensive Plan, and are more particularly described and located in the Proposed Open Space boundary as indicated on the Sisul Engineering Alternate Plan "A" dated November 26, 1999, Exhibit Q.

1.2 A review of the record indicates the six-lot subdivision provides the opportunity to protect the 15-20 trees above the 210-foot contour line and is in keeping with the Primary Open Space interpretation above and resulting Primary Open Space boundary, while the seven-lot subdivision does not or it would result in the loss of most of the trees because of the permitted home construction in the area.

1.3 Therefore, the applicant's appeal as to conforming the findings to the Development Review Board decision is denied, and the Development Review Board's decision is modified to reflect a six-lot subdivision in keeping with the findings and determinations above.

1.4 The applicant's request to clarify findings as to whether auxiliary units are mandatory or permissive is allowed and auxiliary units are found to be permissive.

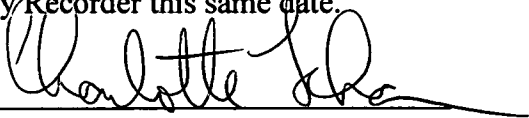
1.5 The applicant's request to clarify Condition 15 is allowed and phasing of developing four residential lots in 2000, and 2 residential lots in 2001, meets Category 1, Ordinance No. 514, **provided it is limited to an application for a six-lot subdivision**, de minimus standard.

1.6 The Planning Division staff report dated February 28, 2000, attached hereto as Attachment 4, and the recommendation of Development Review Board for


Rezoning on January 10, 2000, as set forth in Attachment 5 is adopted and so ordered, save and except as modified by the above findings and determinations.

1.7 The Planning Director is authorized to amend the Official Zoning Map in keeping with the decision herein.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 6th day of March, 2000, and filed with the Wilsonville City Recorder this same date.


CHARLOTTE LEHAN, MAYOR

ATTEST:


Sandra C. King, CMC, City Recorder

SUMMARY of Votes:

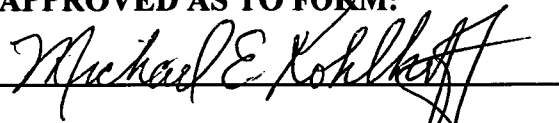
Mayor Lehan	<u>Yes</u>
Councilor Helser	<u>Yes</u>
Councilor Barton	<u>Yes</u>
Councilor Kirk	<u>Excused</u>
Councilor Holt	<u>Yes</u>

The property subject to this Zoning Order is also subject to the Order of the City Council in respect thereto made.


Dated: This 6th day of March, 2000.


CHARLOTTE LEHAN, MAYOR

APPROVED AS TO FORM:


Michael E. Kohlhoff, City Attorney

ATTEST:


Sandra C. King, CMC, City Recorder

PLANNING DIVISION MEMORANDUM

Date: February 28, 2000

To: Honorable Mayor and City Council

From: Robert G. Hoffman AICP *RGH*
Manager of Current Planning

Re: Interpretation of Primary Open Space and Rezoning
Case File 99DB29 – Doris Wehler/Wehler Estates
Tax Lot 3100, Section 12D, T3S-R1W, Clackamas County, Oregon
27800 Canyon Creek Road

SUMMARY:

The applicant is requesting City Council interpretation on above property of a Primary Open Space (POS) boundary near the 210-ft contour line as shown on map dated June, 1999. The Development Review Board has supported that request. Staff is recommending a different interpretation in order to protect more trees in support of the Boeckman Creek natural area. The significant stand of trees on this lot is part of the Boeckman Creek two mile long natural area and drainage way. The rezoning from RA-1 to R is recommended by all. The applicant has separately appealed the Development Review Board's approval of the subdivision since the findings have conflicting statements which are not resolved and there is concern about one condition. The hearing regarding the subdivision appeal will be held subsequent to this hearing. Two sets of findings and resolutions and a zone order are attached. The original staff report and the Development Review Board's amended findings are attached also. The primary issue is the Primary Open Space (POS) boundary interpretation.

RECOMMENDATION:

The Development Review Board and staff both recommend the rezoning from *RA-1 (Residential Agricultural-1 acre) to R (Residential)*. The Development Review Board recommends interpreting the Primary Open Space (POS) boundary at about the 210-ft contour line as requested by the applicant (allowing seven lots in the subdivision). Staff recommends protecting about 15 additional trees, including many white oaks, as part of the significant stand of trees (allowing six lots in the subdivision). This can be accomplished by adopting Resolution 1617 for the staff recommendation. Resolution 1618 adopts the Development Review Board recommendation. Staff does not

recommend additional findings. The Development Review Board recommendation was adopted with a 3-2 vote. One person was concerned about the density and the phasing; the other was opposed to the Primary Open Space (POS) boundary interpretation as defined by the Development Review Board. The rezoning can be accomplished by adopting Resolution 16-19 which approves Zone Order 99DB29

BACKGROUND:

On January 10, 2000 the Development Review Board reviewed and conditionally approved a subdivision and forwarded a recommendation to City Council for approval of a rezone from RA-1 to R and also recommended that the City Council interpret the location of the Primary Open Space (POS) boundary at about the 210 ft contour line. (See attached maps) There was some question about how density rules applied but they were resolved by permitting (but not requiring) auxiliary units on each lot in addition to the primary dwelling unit.

(The application before the Development Review Board on January 10, 2000 was for both a 7-lot subdivision and a 6-lot subdivision. Staff had recommended denial of the 7-lot subdivision with an accompanying full staff report. Staff recommended approval of the 6-lot subdivision with a full staff report. The applicant testified that she wanted the 6-lot approval if the board would not approve the 7-lot subdivision. The board approved the 7-lot alternative and modified the staff's report for denial to approve it. This left numerous conflicting findings.)

While the City Council must still act on the rezoning there does not appear to be any issues remaining regarding that element. The primary outstanding issue is the interpretation of the Primary Open Space (POS) boundary. Staff believes that this interpretation will affect future interpretations on sites with steep slopes which also have adjacent trees on upland areas. There are many sites like this, especially along Canyon Creek Road and the Boeckman Creek drainage way. The significant stand of trees is part of the Boeckman Creek natural area drainage way which runs for over two miles from Elligsen Road to the river.

There does not appear to be any dispute that the portion of the site which is heavily treed and is with steep slopes meets the criteria for Primary Open Space (POS). However, staff differs with the applicant and the Development Review Board about whether the upland portion of the site which has numerous large trees and is adjacent to the steep slope trees are part of a "significant stands of trees". The Comprehensive Plan and Zoning Ordinance do not explicitly define this term, but the term as used to define Primary Open Space (POS) does stand in contrast to the parallel criteria for Secondary Open Space, which in the Comprehensive Plan includes "small stands of trees and heavily vegetated areas adjacent to Primary Open Space (POS) areas". (emphasis added). (See attached excerpt from the Comprehensive Plan pp. 83-84.)

WC 4.600 – The Tree Preservation part of our Development Code also regulates trees larger than 6 inches and WC 4.161 General Regulations – Protection of Natural Features (2) also requires that “existing wooded areas, significant clumps/groves of trees and vegetation and all conifers and oaks with a diameter of six inches or greater and all deciduous trees with a diameter of eight inches or greater shall be incorporated into the development plan wherever feasible”. Within the area between the current mapped Primary Open Space (POS) boundary and the line recommended by the Development Review Board/Applicant, there are at least 15 trees which staff believes meet the above criteria for regulated trees. The arborist has described most of the trees as Oaks which are in fair to good condition. He does not recommend their removal. The arborist in his testimony described White Oaks as having a “very substantial significance historically in Wilsonville”. He stated that comparing the six and seven-lot configuration, depending on house design, there would be a “difference of maybe 20 trees”. He also stated at the public hearing, “I’d preserve every bloody oak I could preserve on the place”.

Staff recommended to the board that these trees were significant and part of a “significant stand of trees” and should be within the Primary Open Space (POS) boundary. Staff and the Assistant City Attorney advised the board that they had testimony on the record that these are significant. The applicant stated that there is no definition of “significant tree or stand of trees” in the code. Without a clear definition, the arborist would not make the call.

Staff reported both orally and in writing that there are 16 regulated trees (12 oaks) which are within the area of dispute. The only thing that separates those trees from the rest of the stand of trees is a topographic change at the 210 ft. contour line. Aside from that, they are very much a part of the stand of trees which no one disputes is a significant stand of trees. The American Heritage Dictionary 1985 defines “significant” as “having or expressing meaning; meaningful or notable or valuable”. It defines stand as “a group or growth of tall plants or trees. Secondary Open Space includes slopes between 12 and 20% and “small stands of trees and heavily vegetated areas adjacent to Primary Open Space (POS). Secondary Open Space (SOS) is intended to serve as a buffer to Primary Open Space (POS) areas. Staff advises the 15 trees are a part of a meaningful, notable, valuable group or growth of large trees. They are not just a buffer of small trees. (See attached pp 83-84 from Comprehensive Plan.)

In terms of the definition of “significant stands of trees, the Assistant City Attorney advised on page 33 of 37 of the minutes as follows:

“We have precedence in many, many applications from arborists who have discussed all the different types of trees on the project, and which ones in their opinion are more significant or significant. So you are weighing the testimony from an applicant in terms of your interpretation...you have testimony on the record that those trees are significant and there were actually a couple of variations of that testimony tonight earlier from Mr. Owens...what the burden is on the board now is whether there is evidence in the record

to support what your interpretation is and whether that's reasonable. So it's a weighing of the testimony."

Mr. Lake, the maker of the motion, stated as the primary reason for his motion that "there are no trees of significance in the redefined Primary Open Space (POS) that necessarily need to be removed, with the presence of an arborist."

Staff is of the professional opinion that the consequence of locating the Primary Open Space (POS) boundary, based on the testimony that the trees are significant, is six lots. Otherwise, locating the Primary Open Space (POS) boundary east of the stand of trees, as recommended by the Development Review Board, will result in seven lots with more or most of the 15 trees being removed. The revised Primary Open Space (POS) boundary recommended by the Development Review Board (seven lots) is not supported by the record, while the boundary with the six lots is supported by the record. (See attached maps – Exhibits P and Q)

**FROM WILSONVILLE COMPREHENSIVE PLAN - PP. 83-84
(Regarding Primary and Secondary Open Space)**

In combination these goals and objectives form the foundation for an integrated community design that preserves the integrity and aesthetic quality of the natural environment while allowing for development. It is the underlying intent of the Plan to reconcile these factors, through site planning and design, so that they complement each other. The maintenance of a pleasant place to live and work is the major motivating force of this element. Wilsonville's agricultural and rural heritage has long given it a sense of openness accented by lines and clusters of trees and other natural vegetation.

- POLICY 4.5.1:
- a. The major natural drainage ways, environmentally sensitive areas and significant stands of trees or other vegetation shall be designated as primary or secondary open space. (emphasis added)
 - b. Primary open space is intended to remain undeveloped with the possible exceptions of passive recreation and underground public facilities. These areas include the following: (emphasis added)
 - (1). 100 year floodways
 - (2). Slopes greater than 20%
 - (3). Significant stands of trees, including all trees and vegetation within 150 feet of the banks of the Willamette River, but not including orchards. (emphasis added).
 - (4). Major natural drainage channels
 - c. Secondary open space is intended to serve as a buffer to primary open space areas. They may be developed in accordance with special development standards and shall be evaluated through a

conditional use and design review process, except when the proposal is a part of a planned development.

These areas include the following:

- (1). Land within the Willamette River Greenway Boundary, but beyond the 150 foot line.
 - (2). High voltage powerline easements.
 - (3). The 100-year flood plain fringe.
 - (4). Slopes between 12% and 20%.
 - (5). Designated historic sites.
 - (6). Small stands of trees and heavily vegetated areas adjacent to primary open space areas. (emphasis added).
- d. Primary undeveloped portions of secondary open space may be used towards satisfaction of open space requirements. A density transfer credit of not more than 10% of the designated primary open space will also be allowed. (emphasis added).

Attachments:

1. Decision of DRB including amended and adopted staff report
2. Original staff report dated January 10, 2000
3. Seven-lot preliminary plat including Primary Open Space (DRB recommendation) (Exhibit P)
4. Six-lot preliminary plat including Primary Open Space (Staff recommendation) (Exhibit Q)
5. Colored aerial photo of site (from Metro), June, 1999 (Exhibit O)
6. Arborist Report submitted by William Owen
7. Minutes of January 10, 2000 DRB meeting

**AFFIDAVIT OF MAILING
NOTICE OF DECISION**

**CITY OF WILSONVILLE
Resolution No. 1619**

STATE OF OREGON)
)
COUNTIES OF CLACKAMAS)
 AND WASHINGTON)
)
CITY OF WILSONVILLE)

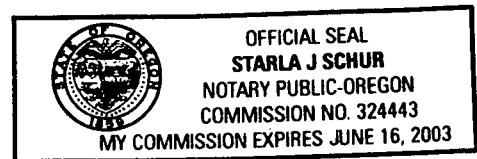
I, Sandra C. King, do hereby certify that I am City Recorder of the City of Wilsonville, Counties of Clackamas and Washington, State of Oregon, that the attached copy of Notice Decision is a true copy of the original notice of decision; that on March 8, 2000, I did cause to be mailed copies of such notice of decision in the exact form hereto attached to the property owners listed in Exhibit "A":

Witness my hand this 8th day of March, 2000.

Sandra C. King
Sandra C. King, CMC, City Recorder

Subscribed and sworn to before me
this 8th day of March, 2000

Starla J. Schur
NOTARY PUBLIC, STATE OF OREGON



My commission expires: June 16, 2003

Attachments: Notice of City Council Decision
Resolution No. 1619



Wilsonville City Council

Notice of Decision

Project Name: Wehler Estates Subdivision **Case File No.** 99DB29

Applicant/Owner: Doris A. Wehler

Action: Final Decision on Applicant's Appeal (Interprets Primary Open Space Boundary Map and Text) and Modifying The Development Review Board's Decision To Allow A Six Lot Subdivision Rather Than A Seven Lot Subdivision; and Finalizing Decision on Zone Map Amendment to Change the RA-1 Zone to the Residential (R) Zone.

Affected Location: 27899 Canyon Creek Road
Tax Lot 3100, Section 12D, T3S-R1W, Clackamas County, Oregon

After conducting a public hearing on March 6, 2000, the City Council voted to adopt Resolution No. 1619, "A Resolution Denying In Part And Allowing In Part Applicants Appeal In 99DB29; Findings And In Interpreting The Comprehensive Plan Definition Of Significant Stands Of Trees To Apply To Certain Trees Located Above The 210 Foot Contour Line On Applicant's Property, Modifying The Development Review Board's Decision To Allow A Six Lot Subdivision Rather Than A Seven Lot Subdivision; Clarifying Auxiliary Units Are Permissive, Clarifying The Phasing Of Four Lots, Then Two Lots Meets Category 1, Ordinance No. 514 De minimus Standards; And In Keeping With Its Decision On Appeal Herein Adopting Zone Order 99DB29 Amending The Official Zone Map From Residential Agriculture-1 Acre Minimum (RA-1) To Residential (R) For A Two (2) Acre Parcel Of Land Generally Located Along The East Side Of Canyon Creek Road And North Of Boeckman Road, Identified As Tax Lot 3100, Section 12D, T3S-R1W, Clackamas County, Wilsonville, Oregon. Doris Wehler, Applicant. (Case File 99DB29) "

This decision has been finalized in written form as Resolution No. 1619 and placed on file in the City records at the Wilsonville City Hall this 7th day of March, 2000, and is available for public inspection. The date of filing is the date of decision. Any appeal(s) must be filed with the Land Use Board of Appeals (LUBA) in accordance with ORS Chapter 197, within twenty-one days from the date of decision. Copies of Resolution No. 1619 may be obtained from the City Recorder, 30000 SW Town Center Loop Road East, Wilsonville, OR, (503)570-1506.

For further information, please contact the Wilsonville Planning Division, Community Development Building, 8445 SW Elligsen Road, Wilsonville, or telephone (503)682-4960.



Exhibit A -- Notice of Decision 99DB29

Mentor Graphics Corp
8005 SW Boeckman Rd
Wilsonville OR 97070

Lester & Katherine Todd
9805 Wells Landing Rd
Independence OR 97351

John William Crawford
7331 SW Boeckman Rd
Wilsonville OR 97070

Mary Alice Belieu
7480 SW Frog Pond Ln
Wilsonville OR 97070

Richard Keister
PO Box 821
Wilsonville OR 97070

William Spring
27700SW Canyon Creek Rd
Wilsonville OR 97070

Terry Schock
27650 SW Canyon Creek Rd
Wilsonville OR 97070

Doris Wehler
6855 SW Boeckman Rd
Wilsonville OR 97070

Faith Baptist Church
7805 SW Boeckman Rd
Wilsonville OR 97070

Bryan & Tania Brucker
7727 SW Boeckman Rd
Wilsonville OR 97070

Steve Nelson
NW Natural Gas
220 NW 2nd Av
Portland OR 97209

Ray Valone
Senior Regional Planner
Metro
600 NE Grand Av
Portland OR 97232

Bill Owen
PO Box 641
Portland OR 97207

Tim Ramis
Ramis Crew Carrigan and
Bachrach
1727 NW Hoyt
Portland OR 97209

Sisul Engineering Inc
375 Portland Av
Gladstone OR 97027
Attn: Curt Pellatz

Jeff Bachrach
Ramis Crew Corrigan Bachrach
1727 NW Hoyt
Portland OR 97209

John Ludlow
30825 SW Otto Lane
Wilsonville OR 97070

Mentor Graphics Corp
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Wilsonville OR 97070

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Terry Schock
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Wilsonville OR 97070

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Wilsonville City Council

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