

**CITY COUNCIL
RESOLUTION NO. 690**

**RESOLUTION TO AFFIRM AND ADOPT THE PLANNING
COMMISSION'S INTERPRETATION REGARDING PRIMARY
OPEN SPACE LOCATED ON TAX LOT 300, T3S-R1W,
SECTION 24A - BRUCE BARTON, APPLICANT**

WHEREAS, Bruce Barton has submitted an application for the construction of a single-family residence in accordance with the procedures set forth in Section 4.174 of the Wilsonville Code, and

WHEREAS, the Wilsonville Planning Commission held a public hearing on November 14, 1988, to review the Staff Report, consider planning exhibits prepared by the applicant and to gather public testimony, and

WHEREAS, all interested and affected parties have had an opportunity to offer testimony and be heard on this subject after public notice had been posted, legal notice was published, and surrounding property owners were notified, and

WHEREAS, the Council duly considered all reports, exhibits and testimony and adopted the Planning Commission's interpretation regarding the construction of a single-family residence within a primary open space area, and

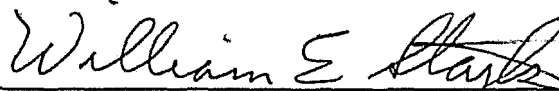
WHEREAS, the applicant demonstrated that an actual conflict existed between the Comprehensive Plan map and the Comprehensive Plan text and policies concerning designated "Primary Open Space" on the subject property, and

WHEREAS, the Planning Commission found that the "Primary Open Space" designation on the applicant's parcel need not be reflected in the site development and that the proposed development would be in conformance with the Comprehensive Plan policies regarding open space, and

WHEREAS, the City Council has the final authority for the interpretation of the Comprehensive Plan text and/or map.

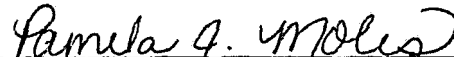
NOW, THEREFORE, BE IT RESOLVED that the Wilsonville City Council does hereby affirm and adopt the interpretation of the Planning Commission regarding the Primary Open Space shown to be located on Tax Lot 300, T3S-R1W, Section 24A. Further, the Council adopts the Staff Report attached hereto as Exhibit A, along with the findings and Conditions of Approval contained therein as modified by the Planning Commission.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 21st day of November, 1988, and filed with the Wilsonville City Recorder this same day.



WILLIAM E. STARK, Mayor

Attest:


PAMELA J. MOLES, City Recorder Pro-Tem

SUMMARY of Votes:

| | |
|-------------------|---------------|
| Mayor Stark | <u>AYE</u> |
| Councilor Edwards | <u>ABSENT</u> |
| Councilor Braymen | <u>AYE</u> |
| Councilor Clarke | <u>AYE</u> |
| Councilor Jameson | <u>AYE</u> |

CITY

OF

Wilsonville

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Wilsonville, Oregon 97070

MEMORANDUM

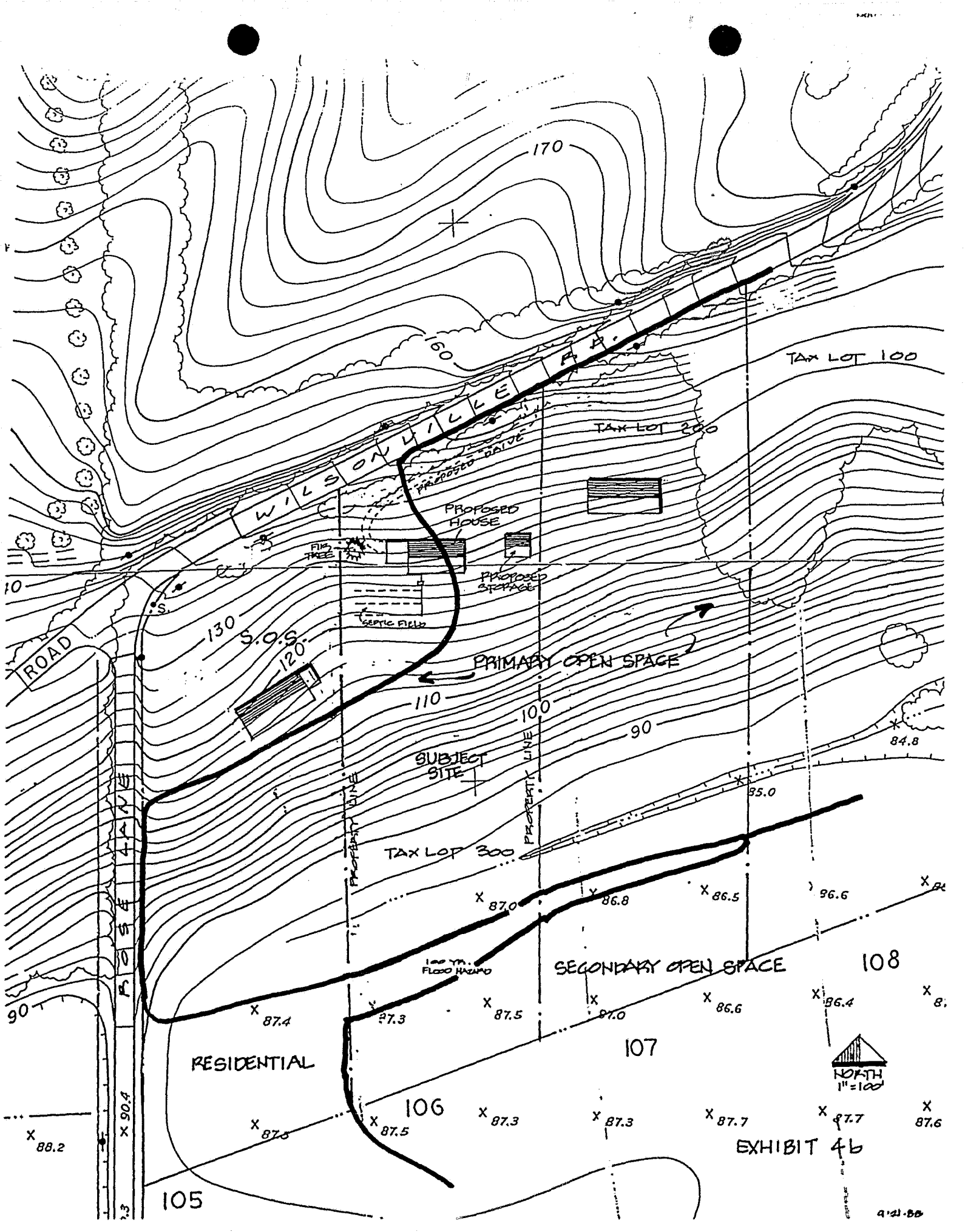
TO: Honorable Mayor Bill Stark and City Council
FROM: Blaise Edmonds, Associate Planner
DATE: November 16, 1988
RE: Planning Commission Action 88PC35 - Applicant Bruce Barton - Construction of a single-family residence within an area designated in Primary Open Space.

On November 14, the Planning Commission approved the subject Conditional Use Permit and rendered a recommendation to resolve an interpretation conflict between Plan Policy 4.5.1(b) of the Comprehensive plan and the Comprehensive Plan map for areas designated in Primary Open Space.

The procedure to interpret plan policies over the Comprehensive Plan map for the purpose of resolving Primary Open Space conflicts has been established as a planning policy. In this case, the Primary Open Space area shown on the Comprehensive Plan map north of the 110 foot contour line will be deleted and replaced in the Residential Plan designation, thus allowing the applicant more flexibility in the use of his land for residential development. The remaining land area south of the 110 foot contour line will retain the Primary and Secondary Open Space Plan designations.

The Planning Commission further recommended that the two residential lots to the east of the applicant's property be given similar consideration that the Plan Policy 4.5.1(a) interpretation to delete the areas north of approximately the 110 foot contour line from Primary Open Space designation.

be:jme



TAX LOT 100

TAX LOT 200

PROPOSED HOUSE

PROPOSED STORAGE

SEPTIC FIELD

PRIMARY OPEN SPACE

SUBJECT SITE

TAX LOT 300

SECONDARY OPEN SPACE

RESIDENTIAL



EXHIBIT 4b

9-21-88

PROPOSED FINDINGS

1. Mr. Barton has made application to the Planning Commission for approval of a Conditional Use Permit for the construction of a single-family dwelling on property designated in Primary Open Space. The unimproved lot lies within the River Estates II subdivision. River Estates II was platted in March of 1971, which predates the City adoption of the Comprehensive Plan in 1980, including the identification of all Primary Open Space areas. Mr. Barton recently purchased the property with full knowledge of the Comprehensive Plan and zoning information background.
2. The subject property has three separate Comprehensive Plan designations as follows:
 - A. Primary Open Space covers the middle and northeast corners of the subject site. The proposed homesite is shown on the north portion of the property with approximately half the development site within the Primary Open Space and the other half in Secondary Open Space.
 - B. A narrow swath of residential planned designated land extends through the south portion of the site.
 - C. Secondary Open Space primarily covers the lower portion of the site together with the area designated in the 100 year flood plain. This portion of the site is generally flat.
 - D. The 2.22 subject property is zoned RA-1. Single-family residential development is permitted in this zoning district.

Refer to Exhibit 4B for a graphic breakdown of the Comprehensive Planning designations applied on the property.

Secondary Open Space

3. Within the Comprehensive Plan, a Secondary Open Space goal and policy statements address Secondary Open Space and apply to the subject property. The major ones are as follows:

Policy 4.5.1 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.
4. In this application, the proposed homesite is generally located within the Secondary Open Space area.
 5. As a part of the conditional use application, Bruce Barton is requesting the City to resolve the above-mentioned conflict and interpret its plan in a manner which recognizes that the property does not constitute Primary Open Space and that any development within this area would not be inconsistent with the policies of the Comprehensive Plan.

The Planning Commission would consider the above application and resolve the conflict at a public hearing. If the Planning Commission approved the proposed development and resolved the conflict through an interpretation, this would be forwarded to the City Council and be considered by them at a public meeting (possibly as a consent agenda item). This needs to occur since the Plan provides that the City Council shall have final authority for the interpretation of the Plan text and map.

6. The location of the open space designation severely hinders Mr. Barton's ability to construct a single-family dwelling. Areas designated in Primary Open Space are intended to remain undeveloped.
7. An issue has been raised as to whether or not the Plan map designation was in conformance with the Plan's policy regarding Primary Open Space. Policy 4.5.1(b), on page 81 of the City's Comprehensive Plan, defines the types of areas that constitute Primary Open Space as follows:
 1. 100 year floodway.
 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.
 4. Major natural drainage channels.
8. The City's Comprehensive Plan at page 3 under "PROCEDURES" recognizes a procedure to resolve conflicts between Plan Policies and the Plan Map:

"When any ambiguity or conflict appears to exist, Goals shall take precedence over objectives, Policies, text and map; Objectives shall take precedence over Policies, text and map; Policies shall take precedence over text and map. The land use map is only a visual illustration of the intent of the Plan." (Emphasis added)

This procedure acknowledges the ability of the City to resolve conflicts through the interpretation of the text and map and allows adjustments when the policies of the plan are in conflict with the map. As a result, this procedure authorizes resolution through an interpretation and does not require an amendment to the Plan when a conflict exists.

Conclusion

The above procedure provides an efficient resolution to the apparent conflict that presently exists without the unnecessary time and delay associated with the Plan Amendment Process. It appears that the City's Comprehensive Plan contemplated these types of conflicts when it provided a solution to resolving them without the need to amend the Plan.

Analysis of Policy 4.5.1(b)

9. Therefore, it is appropriate for the Planning Commission to evaluate the property with respect to the criteria of Policy 4.5.1(b). Following are findings with respect to these criteria:
 - A. "100-year Floodplain" - the Federal Emergency Management Agency Flood Insurance Map (Panel No. 4100250005) which covers the subject area, identifies the south portion of the site, where it levels out, is within the 100 and 500 year flood hazard. The homesite is on high ground and outside of the 100 year flood hazard.
 - B. "Slopes Greater than 20%" - the topographic map prepared by the applicant for the subject site shows 21% slopes on the middle section of the site. The homesite is on the northerly portion of the site where the slopes are 18%. Steep slopes along the north property will create a difficult access point onto Wilsonville Road in terms of design and construction. The City Engineering Department has designed the proposed access which is identified as Exhibit 3A.
 - C. "Significant Trees" - the Site Plan generally identifies existing trees on the site. One fir tree of notable significance is located along the west property line adjacent to the proposed homesite. The subject site is predominantly covered in blackberry bushes and poison oak mixed with smaller evergreen and deciduous trees. The smaller trees are thinly distributed on the site. This site was also recently brushed to establish preliminary grades for the proposed homesite, with little disturbance to the existing trees.
 - D. "Major Natural Drainage Channels" - after a field inspection, it is the opinion of City staff that the site is clearly not a major natural drainage channel.

Conclusion

It can be concluded from the evaluation of Plan Policy 4.5.1(b) that site characteristics of the proposed homesite to be located on the northerly portion of the 2.22 acre site do not fall within criteria 1 through 4, to be interpreted as Primary Open Space. In fact, nearly half the homesite is located within a Secondary Open Space area, which is more flexible in terms of site development. Furthermore, under a conditional use process, the Planning Commission may permit site development within a Secondary Open Space area subject to site and design approval. Since slopes are 21% or greater on the middle portion of the site, this bank falls within the Primary Open Space slope criteria, and should retain the Primary Open Space plan designation. The lower area of the site is appropriately designated Secondary Open Space, since this area lies within the 100 year flood plain.