

July 28, 2015

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Mr. John Cook, Mayor
City of Tigard
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**Re: Appeal of Tigard Planning Commission Final Order on ZON2015-0002,
SUB2015-0001, and VAR2015-0001; Applicant's Final Written Argument**

Dear Mayor Cook and Members of the Tigard City Council:

This office represents the applicant and appellant, Venture Properties, Inc. (hereinafter referred to as "Applicant" or "Appellant"). This letter constitutes the applicant's final written argument submitted pursuant to ORS 197.763(6)(e). This letter is timely submitted on July 28, 2015 prior to 5:00 p.m.

I. Introduction.

A. Status of Appeal.

The City Council closed the public hearing and record to all other parties except the Applicant on July 14, 2015 after the conclusion of the City Council's public hearing on the appeal. The City Council allowed the applicant to submit final written argument without new evidence on July 28, 2015 by 5:00 p.m. The Appellant's May 6 and May 14, 2015, letters to the Planning Commission and its June 15, 2015 appeal letter to the City Council supplement the Appellant's final written argument. The City Council will deliberate to a tentative decision on the appeal on September 8, 2015. Because the record is closed to all other parties, no additional evidence from any party or staff may be submitted to the City Council. The applicant extended the 120-day clock by 56 days, the period of time between July 14, 2015 and September 8, 2015.

To the extent a staff report is offered after the Appellant's final written argument is submitted, the Appellant requests the opportunity to rebut the staff report. While the Appellant recognizes that staff may speak to the City Council based on evidence in the record and that such discussions are not *ex parte* contacts, ORS 197.763(6)(e) provides that the Applicant has the right to submit final written argument after the record is closed to all other parties. ORS 197.763(6)(e) makes no exception for a staff report. ORS 197.763(3)(i) requires that a staff report be available for inspection at least seven days prior to the hearing.

B. Draft Findings for Approval.

Accompanying the final written argument are draft findings demonstrating how the applicable approval criteria are satisfied. The draft findings are based solely on the evidence in the record as of July 14, 2015 and on the Appellant's argument, including final written argument.

II. Summary of Arguments in Favor of Reversing the Planning Commission.

a. The zoning map amendment from R-12 to R-7 will have only a negligible effect on the City's residential zoned capacity and Metro has submitted no substantial evidence to show otherwise.

b. The R-7 zone is more compatible with the adjacent and surrounding single family development in the R 4.5 and R-7 zoning districts than is the R-12 and mitigation will not increase compatibility. This infill site is appropriate for R-7 development but not R-12 development

c. Development of the site in the R-7 zone will have no adverse impact on the City's support of transit.

d. The City is not required to force high density housing into an infill site along a Metro-designated Corridor because the Corridor policy is flexible enough to encourage high density development at other appropriate locations along the Metro-designated Corridor or on SW Hall Boulevard. Further, the TCP policy calling for development along transit corridors (not the same as the Metro-designated Corridor) calls for such development in areas with certain characteristics; this area has none of those characteristics.

e. Virtually all of the testimony on this application supported the change from R-12 to R-7.

f. The history of this area as shown by the Appellant's evidence is a change from more intense zoning to less intense zoning and development in those less intense zoning districts. Moreover, there is a proven community need for this type of housing in this particular location. Additionally, there is an inadequate amount of R-7 zoned land as shown in the Appellant's evidence.

g. The City Council has the discretion to approve the zoning map amendment because it can find that all of the applicable approval criteria are satisfied by substantial evidence. Nothing in the TCP or the TCDC requires the City Council to force high density housing into an isolated infill site where it is surrounded by dissimilar housing and where the relevant TCP policies expressly call for compatible development.

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III. Specific Reasons Why the Planning Commission Denial Should be Reversed.

A. The Applicant Has Met Its Burden of Proof by Substantial Evidence to Show that Metro Urban Growth Management Functional Plan, Title I, “Housing Capacity”, Section 3.07.120.E, is Satisfied.

Metro Functional Plan Section 3.07.120.E provides:

“A city or county may reduce the minimum zoned capacity of a single lot or parcel so long as the reduction has a negligible effect on the city's or county's overall minimum zoned residential capacity.”

The Planning Commission found:

“The application proposes to meet this criterion through the use of Goal 10 methodology, citing excess capacity, but Title I creates separate requirements that provide that any reduction in capacity beyond a negligible effect. The proposed zone change will reduce the overall capacity of the city's housing capacity by 66 housing units when housing type is not taken into consideration. When accounting for the change that allowed housing types, the City could lose capacity for 66 attached units or 107 multi-family units, which is not a negligible effect on the City's overall zoned residential capacity.”

(Planning Commission Decision at page 31).

The City Council can find that the Planning Commission erred in several respects on this finding and that the Appellant has met its burden of proof to allow the City Council to find that the change from R-12 to R-7 will have a “negligible effect” on the City's *acknowledged* overall minimum zoned residential capacity.

a. The definition of “zoned capacity” does not consider types of dwelling units, only the number of dwelling units.

The Metro Functional Plan defines “zoned capacity” as “the highest number of dwelling units or jobs that are allowed to be contained in an area by zoning and other City or County jurisdiction regulations.” (Exhibit 1)

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The City Council can find that the definition of “zoned capacity” considers only the number of dwelling units, not the types of dwelling units. To consider the types of dwelling units, as did the Planning Commission, inserts words into the definition of “zoned capacity” that the Metro Council did not chose to include. To do so is error. The City Council’s task is to determine whether the change in zone from R-12 to R-7 results in a “negligible effect” on the City’s overall minimum zoned residential capacity: the number of dwelling units. The Appellant defined “negligible” in its May 14, 2015 letter.

The City Council can find that neither type of dwelling unit nor acres of zoned land are relevant to satisfaction of the Metro Functional Plans zoned capacity requirement. Only the number of dwelling units is considered and, in this case, City Council can find that the zoning map amendment, if granted, would have a “negligible effect” based on the common understanding of the word “negligible” on the City’s acknowledged zoned capacity.

b. The City Council can find that the City’s residential zoned capacity is in the acknowledged Tigard Comprehensive Plan (“TCP”).

The Appellant’s July 15, 2015 appeal statement addressed this provision. The appeal stated at pages 7 and 8 “. . . the zoning map amendment would have less than a one percent impact on the City’s minimum zoned residential capacity.” (Appeal at page 8). Additionally, at the City Council appeal hearing, the applicant distributed a page from the City’s “Housing” Chapter entitled “Urban Growth Management Functional Plan”. The page submitted to the City Council and described by the Appellant states in relevant part:

“The City has committed to providing the development opportunity for an additional 6308 dwelling units between 1998-2017. This number shows Tigard’s zoned capacity for additional dwelling units”. (TCP at page 10-2) (emphasis added) (Exhibit 2)

The City is obligated to rely upon the analysis in its acknowledged comprehensive plan. *D.S. Parklane, Inc. v. Metro*, 165 Or App 1, 22, 994 P2d 1205 (2000). The Court of Appeals held in *Parklane* that a local government errs by making a decision relying primarily or conclusively on studies and information that has not been adopted as part of its acknowledged comprehensive plans, instead of relying on studies and projections that have been incorporated into the acknowledged comprehensive plans. In fact, *Parklane* remanded Metro’s decision because it relied on a draft report rather than an adopted Metro 2040 document.

The same situation applies here. The City’s acknowledged TCP states that the City’s zoned capacity is 6,308 dwelling units between 1998-2017. The Planning Commission not only erred by considering types of dwelling units when the definition of “zoned capacity” does not consider

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types of dwelling units, but also erred by failing to consider the zoned capacity number in the acknowledged TCP.

Additionally, the staff response to the appeal dated June 30, 2015 improperly considers *zoned land* rather than the number of dwelling units.

The City Council must conclude that the Appellant is correct that based on the zoned capacity of 6,308 dwelling units, the change from R-12 to R-7 will result in the loss of about one percent of the City's residential zoned capacity.

- c. No legislative history supports a contrary conclusion to the Appellant's evidence and the City Council decides whether the Metro Functional Plan standard is satisfied.**

Staff urged the City Council to consider Metro's "legislative history". Metro submitted no legislative history into the record nor did Metro *ever* submit any numerical analysis of the "zoned capacity".

While Metro adopted the Metro Functional Plan provision, the City Council is called upon to apply the standard based on substantial evidence in the whole record. The City Council's task is relatively straight forward: apply the unambiguous language in the Metro Functional Plan. In this case, the unambiguous language requires the City Council to determine the City's "zoned capacity" (which is contained in the City's acknowledged TCP) and then determine whether the zoning map amendment has a "negligible effect" of the zoned capacity. The City Council can so find based on the acknowledged TCP and that only about one percent of the zoned capacity will be reduced if the zoning map amendment from R-12 to R-7 is approved.

- d. Addition of the River Terrace land makes the change of zoning have more of a negligible effect on the City's minimum zoned capacity.**

The June 30, 2015 staff rebuttal to the Appeal included the River Terrace Zoning information. However, the information described the acreage of zoning districts, not the number of dwelling units and is irrelevant to the City's residential zoned capacity. Moreover, the City Council can find that the River Terrace area increased the residential zoned capacity, meaning this zoning map amendment has an even more negligible effect.

- e. Conclusion.**

The City Council can find that the Appellant has met its burden of proof to demonstrate that this Metro Functional Plan provision is satisfied. There is no competing substantial evidence to demonstrate otherwise and City Council must find that zoned capacity is concerned only with the

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number of dwelling units, not dwelling unit type or type of zoning district. For these reasons, the City Council can reverse the Planning Commission on this issue.

Councilor Snider asked staff on July 14 if they could communicate with Metro about the appeal. Staff answered Councilor Snider that “it’s not off the table”; presumably meaning an appeal is possible. While it is possible that Metro could appeal the City Council’s decision, the City Council must be more concerned about a correct application of the law rather than an appeal. Because the Appellant has demonstrated by substantial evidence that the Metro Functional Plan is satisfied, even if Metro were to appeal, the City Council can conclude that the appeal would be unsuccessful on this issue.

B. No Applicable TCP policy Requires the City Council to Consider Housing Diversity in a Quasi-Judicial Application.

The Planning Commission found that the Appellant failed to satisfy TCP Policy 10.1.1, which provides as follows:

“The City shall adopt and maintain land use policies, codes, and standards that provide opportunities to develop a variety of housing types that meet the needs, preferences, and financial capabilities of Tigard’s present and future residents.”

The Planning Commission found that the proposed zone change would reduce the variety of housing types available to Tigard’s residents. Further, the Planning Commission found that the Appellant failed to provide evidence that the larger lot sizes allowed in the R-7 zone and the reduction of the availability of attached or multi-family units would meet the needs, preferences, and financial capabilities of Tigard’s present and future residents to a degree greater than that allowed in the R-12 zone.

First, the City Council can find that TCP policy 10.1.1 is not applicable to this application. The TCP policy calls for the City to “adopt and maintain” land use policies, codes and standards, meaning that the policy instructs the City to implement the policies goals through the City’s TCP and land use regulations. The TCP and the implementing land use regulations achieve the policies goals. The policy does not prohibit a zone change where *applicable* approval criteria are satisfied.

Second, staff asserts in its June 30, 2015 response to the appeal that the Applicant acknowledged the TCP policy 10.1.1 is applicable. The Applicant addressed the policy but did not take a position on its applicability until the appeal. The Appellant may challenge the applicability of

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the policy and the City Council should conclude that the policy is inapplicable to a quasi-judicial application because of its express language.

Third, the City Council can find that the record demonstrates that this property has remained vacant despite development around it. The City Council can conclude that a likely reason for the non-development of the property is its R-12 zoning because the clear preference as indicated by evidence in the record for development is single family homes on larger lots. This indicates a need, preference, and financial capability of future residents for R-7 type lots. The City Council can find that beyond this policy, no TCP policy in either TCP Chapters 2 or 10 require "Housing Diversity".

The City Council can reverse the Planning Commission finding on this policy.

C. The R-12 Zoning District Is Incompatible with Surrounding R-4.5 and R-7 Zoning Districts and Cannot Be Made Compatible.

Several TCP policies call for the City to consider or promote compatibility in its land use decisions. These policies include TCP policy 2.1.15.F ("Land uses allowed in the proposed designation would be compatible, are capable of being made compatible, with environmental conditions and surrounding land uses"); TCP policy 6.1.3 ("The City shall promote land use patterns which reduce dependency on the automobile, are compatible with existing neighborhoods, and increase opportunities for walking, biking, and/or public transit."); TCP policy 10.2.7 ("The City shall ensure that residential densities are appropriately related to location, characteristics, and site conditions such as the presence of natural hazards and natural resources, availability of public facilities and services, and existing land use patterns."); TCP policy 2.1.23 ("The City shall require new development, including public infrastructure, to minimize conflicts by addressing the need for compatibility between it and adjacent existing and future land uses."); and TCP policy 10.2.9 ("The City shall require infill development to be designed to address compatibility with existing neighborhoods.")

The City Council can find that the R-12 zone is incompatible with the existing adjacent and surrounding R-4.5 and R-7 zoning districts for the following reasons.

First, the uses allowed in the R-12 zone are inconsistent with those allowed in the other two zoning districts in which the adjacent and surrounding neighborhoods are developed. The R-12 zoning district allows multi-family and attached dwelling units, whereas the two adjacent and surrounding zoning districts do not.

Second, the R-12 zone requires a much smaller single family lot size when compared to the adjacent and surrounding zoning districts.

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Third, as the Appellant's exhibits demonstrated before both the Planning Commission and the City Council, in order to meet the minimum density requirement of the R-12 zoning district, a developer would be forced to build multi-family dwellings with parking around the perimeter of the site adjacent to the single-family homes, or small lot attached single-family development inconsistent with the adjacent single-family homes. **(Exhibits 3-7)**

Fourth, the City Council can note that almost every person who testified orally or in writing concerning the zone change did so in support. The families who live around the site do not want the property developed in R-12 because it will be incompatible with their single-family homes. **(Exhibit 8)**

Fifth, to the extent the City Council is called upon to define the term "compatibility", the TCP defines compatibility as follows: "Compatibility - the ability of adjacent and/or dissimilar land use to coexist without aesthetic, environmental, and/or operational conflicts that would present persons to enjoy, occupy, or use their properties without interference. A variety of remedies to compatibility conflicts are normally provided in a jurisdiction's land program; including limited land use designation, buffering, screening, site and building design standards, transportation facility design, etc." (Planning Commission decision at page 27).

Sixth, the City Council can find that this site is not near shopping, other than a very small convenience store, and is not otherwise at a location intended to support high density development. The City Council can take official notice of its zoning map, showing that virtually all of the City's more intense zoning is located near shopping opportunities. It makes no sense to promote high density development in an isolated area not adjacent to the kinds of facilities and services appropriate for high density development. The Tigard zoning map is included as an exhibit to the Appellant's May 6, 2016 letter to the Planning Commission. **(Exhibit 9)**

Seventh, City Council can find that TCP policy 10.2.9 expressly requires the City to require infill development to be designed to address compatibility with existing neighborhoods. To the extent this TCP policy applies at all, the R-7 zone will be more compatible with the existing adjacent neighborhoods than the R-12 zone.

For these reasons, the City Council can find that the relevant Policies applicable to a quasi-judicial application concerning compatibility require the R-7 zone at this location rather than development in the R-12 zone.

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D. Changing the Zone From R-12 to R-7 Will Have No Impact on Transit or Support of Commuter Rail.

As an initial matter, the Planning Commission erred in finding TCP policy 12.1.1:1-6 applicable to this quasi-judicial application. This policy calls for the City to plan for a transportation system that achieves certain goals. The application before the City Council has nothing to do with the transportation system. The City Council must find that TCP policy 12.1.1:1-6 is inapplicable to this application.

The Planning Commission erred by finding that TCP Policy 10.2.5 (“The City shall encourage housing that supports sustainable development patterns by promoting efficient use of land, conservation management resources, easy access to public transit and other efficient modes of transportation, easy access to services and parks, resource sufficient design and construction, and the use of renewable energy resources.”), TCP policy 10.2.7 (“The City shall ensure the residential densities are appropriately related to locational characteristics and site conditions such as the presence of natural hazards and natural resources, availability and public facilities and services, and existing land use patterns.”) and TCP policy 12.3.1 (“The City shall continue to support the existing commuter rail and bus service in Tigard and will support opportunities for increased service frequency and passenger convenience.”)

First, the City Council can find that TCP Policy 10.2.5 is met to the extent that it applies because the site has “easy access to public transit” regardless of whether it is zoned R-7 or R-12.

Second, the City Council can find that TCP policy 10.2.7 is satisfied because the site is available to a Tri-Met bus line and is, therefore, available to that public service despite its lack of access to other public facilities and services.

Finally, the City Council can find that the Planning Commission erred by finding that TCP policy 10.3.1 is both applicable and not satisfied. This TCP policy calls for the City to support existing commuter rail and bus service in Tigard. The TCP policy says nothing about zoning map amendments. To the extent this policy is even applicable, development of this property in the R-7 zone rather than leaving vacant in the R-12 zone supports bus service; regardless of which zone the property is developed, it has nothing to do with supporting existing commuter rail.

The City Council can find that the only substantial evidence in the record of use of the Tri-Met line is that several witnesses said that they observed over the number of years they have resided in the area either no one or very few people using the bus in this location. Notwithstanding that Tri-Met *might* increase the frequency of bus service on this site, the frequency of bus service has nothing to do with the zoning map amendment. There is no evidence that more bus ridership

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will be encouraged with development in the R-12 zone as opposed to development in the R-7 zone. It would be inappropriate for the City Council to make a finding based on evidence not in the record.

For these reasons, the City Council can reverse the Planning Commission findings on these three (3) TCP policies.

E. The City Council Can Find that Planning Commission Erred by Concluding that TCP Policies 2.1.5, 10.1.5 and 10.2.8 Are Not Satisfied.

TCP policy 2.1.5 provides:

“The City shall promote intense urban level development and metro-designated Centers and Corridors, and employment in industrial areas.”

First, the City Council can find that TCP policy 2.1.5 is satisfied by the application. The Appellant agrees that Hall Boulevard is a “metro-designated corridor”. However, as explained in the Appellant’s May 6, 2015 letter, this TCP policy calls *only* for the City to promote intense urban-level development in designated corridors. TCP policy 2.1.5 says nothing about whether the City may change a zoning map designation in the case such as this, where the change makes the zoning map designation consistent with the development of surrounding property, and the change is supported by, and implements, other relevant TCP policies.

The Appellant’s May 6, 2015 letter to the Planning Commission stated with respect to Plan policy 2.1.5:

“Plan policy 2.1.5 provides:

“The City shall promote intense urban land development in Metro-designated Centers and Corridors, and employment and industrial areas.”

Metro’s 2040 Regional Concept map designates SW Hall Boulevard as a “Corridor.” Notwithstanding this designation, the City is not bound to deny the zoning map Application because of Plan policy 2.1.5. First, the Plan policy calls only for the city to *promote* intense urban-level development in designated corridors. Plan policy 2.1.5 says nothing about whether the City may change a zoning map amendment in a case such as this where the change makes the zoning map designation consistent with the development of surrounding property and the change is supported by other Plan Policies.

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Moreover, the Plan policy says nothing about how much intense urban-level development must be promoted by the City, or where it must be located along a Corridor. The City can certainly find that this Plan policy has been satisfied along SW Hall Boulevard without denying this Application. For example, there is intense urban-level development at the north end of SW Hall Boulevard adjacent to Highway 99 and intense urban-level development at the terminus of SW Hall Boulevard near Durham Road.

Finally, this Plan policy does not prohibit the City from making a common sense decision where it is clear that the current zoning map designation is inconsistent with surrounding development. "Intense urban land development" in the middle of less-dense single-family development is inconsistent with the City's Land Use Planning Program. Plan Goal 2, "Land Use Planning", Section 1, "Legislative Finding" at pages 2-3 and 2-4 states:

"Within residential areas, the City's land use program assures that infill occurs in a way that is sensitive and complimentary to existing residential neighborhoods".

This vision is implemented by Plan policy 2.1.15.D which calls for zoning map amendments to be compatible with surrounding areas. This Application achieves the purpose of the City's land use program, whereas leaving the R-12 zoning district in place does not.

The Planning Commission can either find that Plan policy 2.1.5 is satisfied by this Application, or does not apply to a quasi-judicial map amendment, or does not prohibit approval of this Application."

The City Council can find that intense urban level development at this location is inappropriate and would be inconsistent with other applicable TCP policies, especially those calling for development compatible with adjacent and surrounding land uses. Moreover, the City Council can find that TCP policy 2.1.5 is satisfied by promoting in appropriate locations intense urban level development along the corridor, such as locations closer to Highway 99 West.

The City Council enacted TCP policy 2.1.5. The City Council's interpretation and application of the policy is entitled to deference. The Appellant's argument is the better interpretation of the TCP policy than is the Planning Commission's decision."

TCP policy 10.1.5 provides:

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“The City shall provide for high and medium density housing in the areas such as town centers (Downtown), regional centers (Washington Square), and along transit corridors where employment opportunities, commercial services, transit, and other public services necessary to support a higher population density are either present [sic] or plan for in the future.”

The City Council can find that TCP policy 10.1.5 is not applicable to this application because notwithstanding whether this site is located along a “transit corridor” (that term is undefined and neither the Planning Commission or staff define the term), this is not an “area” where “employment opportunities, commercial services, transit and other public services necessary to support high population densities are either present or planned for in the future.”

The Planning Commission erred by considering areas outside of the City of Tigard. The TCP policies require the City to focus on “the areas” near the site. In examining the area in which this site is location, none of the requisites for higher population densities are either present or planned for. This area is primarily a low density residential area. It is certainly not an area where the City is planning to support higher population densities.

The City Council must reverse the Planning Commission on this policy.

Additionally, the City Council can find that the Planning Commission erred by finding TCP policy 10.2.8 as applicable or, if applicable, as not satisfied by this application. This policy provides: “The city shall require measures to mitigate the adverse impacts from differing, or more intense, land uses on residential living environments, such as: A. orderly transitions from one residential density to another; B. protection of existing vegetation, natural resources and provision of open space areas; and C. installation of landscaping and effective buffering and screening.”

Given that this site is an infill site immediately adjacent to low density single family development, there is no possibility of “an orderly transition” from one residential density to another. Furthermore, notwithstanding the possible use of landscaping as a buffering or screening technique, the Appellant's evidence shows that parking areas, the noise from those parking areas, lighting from the parking areas and activity from parking for multi-family development would be immediately adjacent to the backyards of the single family homes surrounding the infill site. The City Council can find that the TCP calls for compatible land use designations in the first place rather than attempting to place a band aid on an incompatible land use designation.

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F. The City Council Can Find that TCP Policy 2.1.2 Is Satisfied.

TCP policy 2.1.2 requires the following:

“The city's land use regulations, related plans, and implementing actions shall be consistent with and implement its Comprehensive Plan.”

For the reasons explained elsewhere in this final written argument and in the Appellant's other submittals, the City Council can find that the proposed zoning map amendment is consistent with the acknowledged Tigard Comprehensive Plan.

G. The City Council Can Find that TCP policy 2.1.4 Is Satisfied.

TCP policy 2.1.4 provides:

“Applicants shall bear the burden of proof to demonstrate that land use applications are consistent with applicable criteria and requirements of the Development Code, the Comprehensive Plan and when necessary, those of the state and other agencies.”

As explained elsewhere in Appellant's final written argument and Appellant's other submittals, the City Council can find that the applicant has met its burden of proof to demonstrate that the zoning map amendment from R-12 to R-7 is consistent with applicable requirements of the Tigard Community Development Code (“TCDC”), the TCP and the Metro Functional Plan.

The City Council can find that the R-12 zone is incompatible with surrounding R-4.5 and R-7 zoning districts for several reasons. First, multi-family or attached housing will have an aesthetic environmental and operational conflict with the surrounding single family dwellings that have a practical impact on how those families enjoy, occupy and use their properties. For example, the Appellant's evidence demonstrates that a multi-family development requires a parking lot on the perimeter of the infill site. The parking lot would be adjacent to the backyards of the adjacent single family homes. The external impacts from off-street parking to serve dozens of apartments would interfere with families' ability to enjoy, occupy or use their properties without interference. The City Council can further find that it is unlikely that simple landscaping or fencing would mitigate this interference. The better result, and one dictated by the acknowledged TCP, is to place higher density development in an appropriate location. This infill site, which is surrounded by low density single family development, is not such a location.

The Planning Commission relied on several other examples where detached single family homes were built on small lots as evidence of compatibility. Nevertheless, the City Council can reject

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these examples for three reasons. First, there is no requirement that the Appellant use a planned unit development for this site. Second, the Planning Commission's examples provide no context of surrounding uses, or whether there are any single family homes adjacent to the more dense development cited in the Planning Commission's decision. Third, this infill site is appropriate for development matching its surrounding use. It is one thing to allow intense urban development in an isolated area where no low density single family development exists adjacent to the site but it is another to allow intense development in the middle of an existing and long established low density single family site such as this.

H. TCDC 18.380.030.C.3 is met because there has been a change in the neighborhood.

The evidence shows that the area around the site (**Exhibit 10**) has, over time, changed so that the site is the only remaining R-12 area that is undeveloped (**Exhibit 11 and 12**). Substantial changes since 1983 (**Exhibit 13**) show how the area has changed so that R-12 development is not desirable and a change in the zoning is warranted. (See also Applicant's narrative at pages 16-19).

I. TCP Policy 2.1.15.C is satisfied because the Appellant's evidence shows a proven need for R-7 housing in this location.

The Application narrative at page 71 explains that proven community need for R-7 development is based on the City-commissioned 2010 Goal 10 study by Johnson Reid.

Further, it is clear that this site is vacant only because of its R-12 zoning given that it is the only remaining vacant site in the area.

J. Possible condition of approval.

While the Appellant believes it has satisfied all of the relevant approval criteria, it would consider a condition of approval whereby an R-12 strip would remain along SW Hall Boulevard, subject to discussion with the Appellant.

IV. Conclusion

For the reasons contained in this letter and other submittals by the Appellant, the City Council can reverse the Planning Commission and approve the Application.

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Very truly yours,



Michael C. Robinson

MCR:rsp
Enclosures

cc: Ms. Kelly Ritz (via email) (w/encls.)
Ms. Mimi Doukas (via email) (w/encls.)
Mr. Tom McGuire (via email) (w/encls.)
Mr. John Floyd (via email) (w/encls.)
Ms. Shelby Rihala (via email) (w/encls.)

sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

(uuu) "Zoned capacity" means the highest number of dwelling units or jobs that are allowed to be contained in an area by zoning and other city or county jurisdiction regulations.

(Ordinance No. 97-715B, Sec. 1. Amended by Ordinance No. 98-721A, Sec. 1; Ordinance No. 98-730C, Sec. 10. Readopted by Ordinance No. 00-839, Sec. 1. Amended by Ordinance No. 00-869A, Sec. 2; Ordinance No. 02-972A, Sec. 1; Ordinance No. 05-1077C, Sec. 6; and Ordinance No. 10-1244B, Sec. 9).

TITLE 11: PLANNING FOR NEW URBAN AREAS

3.07.1105 Purpose and Intent

The Regional Framework Plan calls for long-range planning to ensure that areas brought into the UGB are urbanized efficiently and become or contribute to mixed-use, walkable, transit-friendly communities. It is the purpose of Title 11 to guide such long-range planning for urban reserves and areas added to the UGB. It is also the purpose of Title 11 to provide interim protection for areas added to the UGB until city or county amendments to land use regulations to allow urbanization become applicable to the areas.

(Ordinance No. 99-818A, Sec. 3. Amended by Ordinance No. 02-969B, Sec. 11; and Ordinance No. 10-1238A, Sec. 5; and Ordinance No. 11-1252A, Sec. 1).

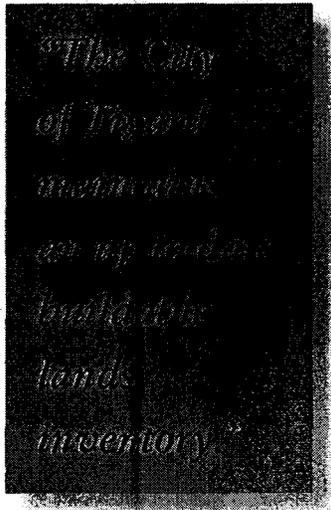
3.07.1110 Planning for Areas Designated Urban Reserve

- A. The county responsible for land use planning for an urban reserve and any city likely to provide governance or an urban service for the area, shall, in conjunction with Metro and appropriate service districts, develop a concept plan for the urban reserve prior to its addition to the UGB pursuant to sections 3.07.1420, 3.07.1430 or 3.07.1435 of this chapter. The date for completion of a concept plan and the area of urban reserves to be planned will be jointly determined by Metro and the county and city or cities.
- B. A local government, in creating a concept plan to comply with this section, shall consider actions necessary to achieve the following outcomes:



Urban Growth Management Functional Plan

Metro implements Goal 10 through Title 1. To meet Title 1, each jurisdiction was required to determine its housing capacity and adopt minimum density requirements. Tigard adopted an 80% of minimum density requirement for development in 1998, which means that a development must build 80% of the maximum units allowed by the zoning designation. The City has committed to providing the development opportunity for an additional 6,308 dwelling units between 1998 – 2017. This number shows Tigard’s zoned capacity for additional dwelling units. It is an estimate based on the minimum number of dwelling units allowed in each residential zoning district, assuming minimum density requirements.



The City of Tigard maintains an up-to-date build-able lands inventory, a permit tracking system for development, as well as complying with Metro’s Functional Plan. The City is responsible for monitoring residential development. All of these tools aid the City in monitoring its progress toward the above goals, and determining if the opportunity remains for current and future residents to have diverse housing choices.

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Tigard’s Geographic Limits to Growth

In the last several years, Washington County has urbanized significant areas of unincorporated land to the south and west of Tigard. It and service districts provide the minimum required facilities and services. The county’s actions, combined with state annexation law, make it is improbable that most of these developed lands will annex to Tigard. Urbanized unincorporated land forms a barrier between Tigard and unincorporated urban growth areas designated by Metro. Thus, Tigard is unlikely to expand its City boundaries in the future. The lack of vacant residential land will require Tigard to meet its housing capacity commitment within its current, mostly built-out, City limits. This will require actions to increase residential density within the appropriate areas such as along major transportation corridors, and within designated Regional and Town Centers. Thus, much new residential development will occur through urban infill and redevelopment.

Alternate Site Plan – Min R-12 Density



DENSITY CALCULATIONS

R-12 ZONE

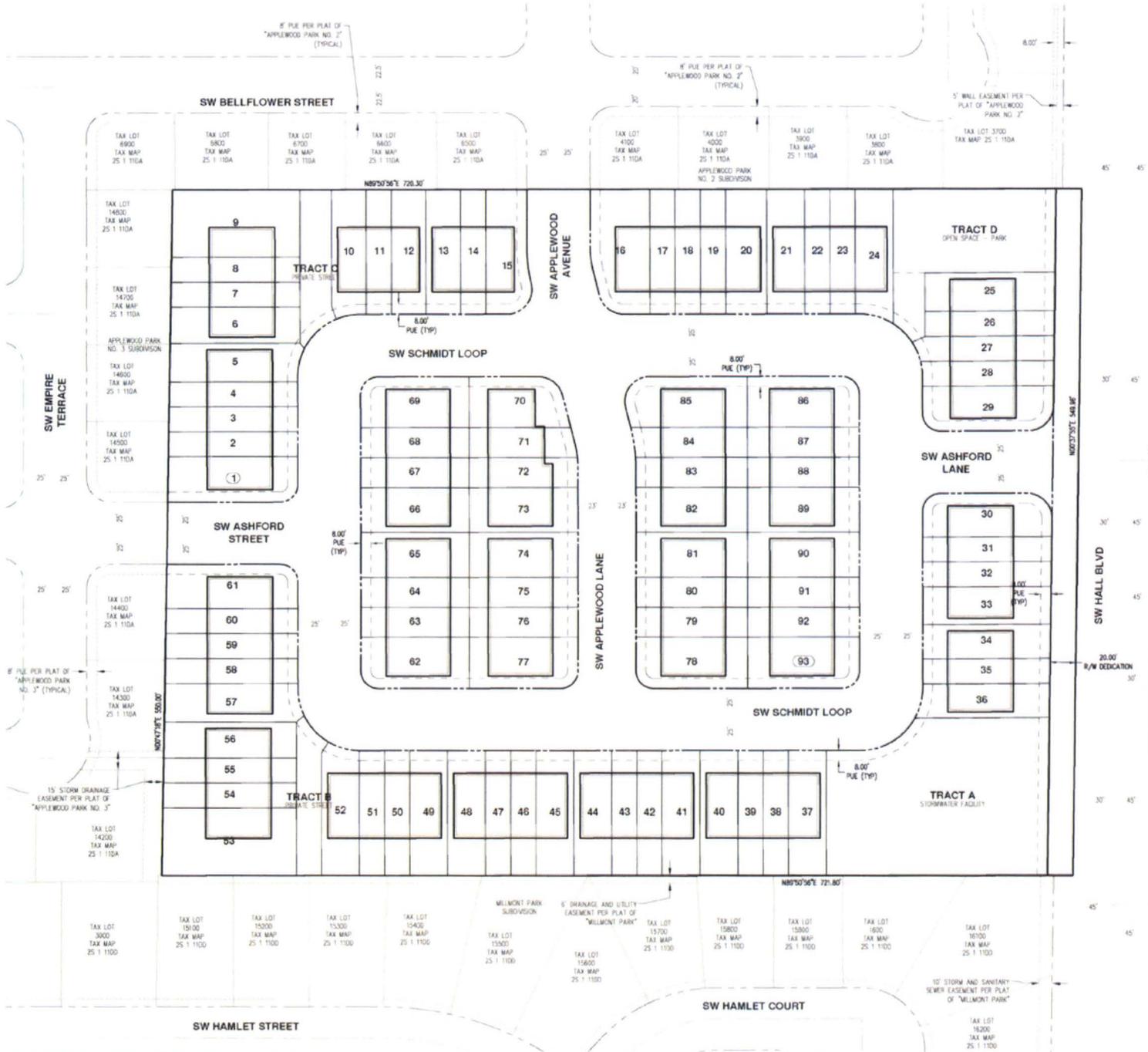
GROSS SITE AREA: 396,523 SF (9.10 AC)
 PUBLIC R.O.W. DEDICATION: 110,837 SF (2.54 AC)
 NET DEVELOPABLE AREA: 285,204 SF (6.56 AC)

MINIMUM AVERAGE LOT AREA: 3,050 SF

MAXIMUM DENSITY: $(285,204) = 93.51 = 93$ LOTS
 MINIMUM DENSITY: $93 \text{ LOTS} (80\%) = 74.4 = 74$ LOTS

PROPOSED UNIT DENSITY: 74 UNITS
 PROPOSED AVERAGE LOT AREA: $(255,055/74 \text{ LOTS}) = 3,446$ SF
 PROPOSED MINIMUM LOT AREA: 3,000 SF

Alternate Site Plan – Max R-12 for sale Density



DENSITY CALCULATIONS

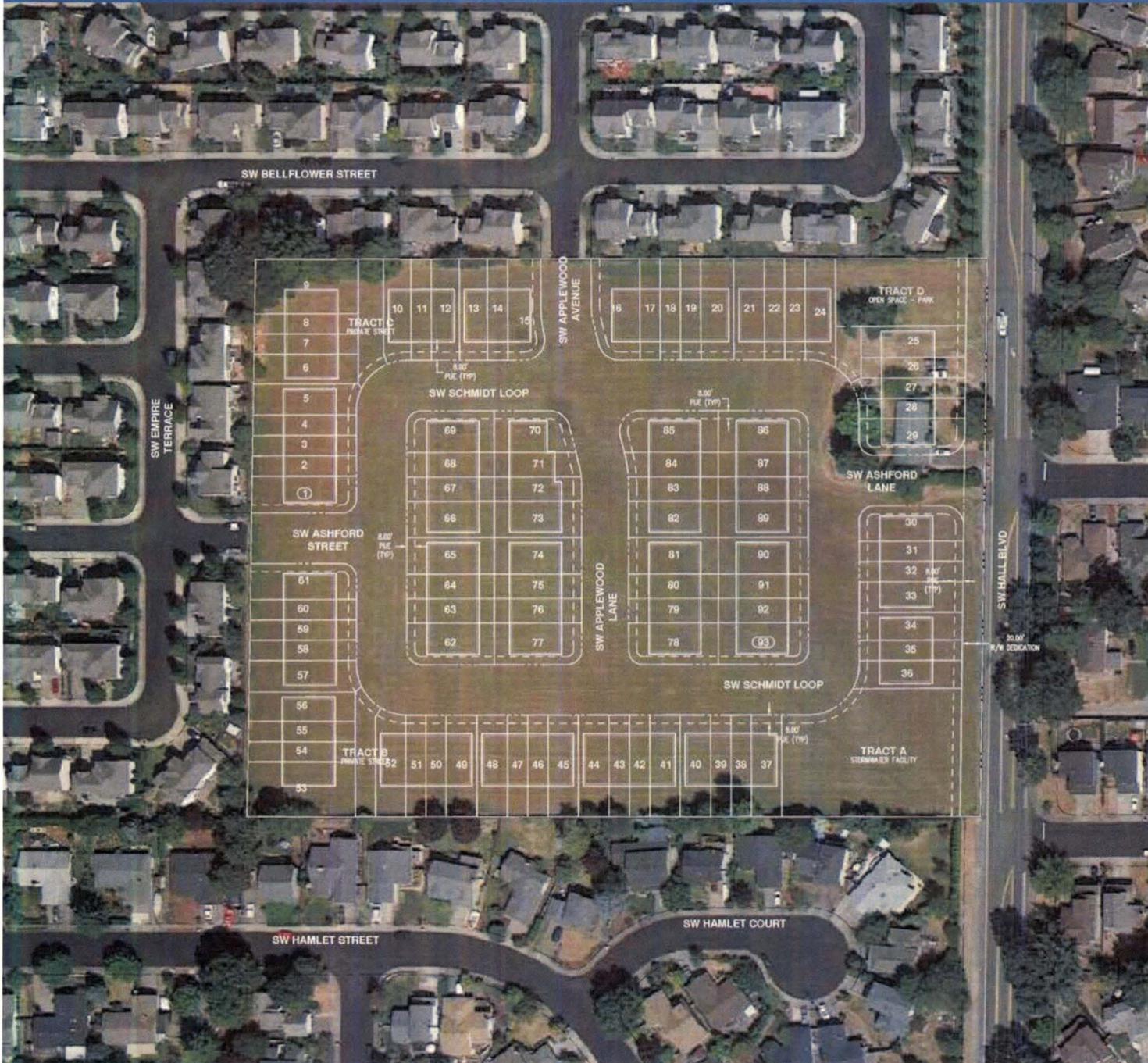
R-12 ZONE
 GROSS SITE AREA: 396,523 SF (9.10 AC)
 PUBLIC R.O.W. DEDICATION: 110,837 SF (2.54 AC)
 NET DEVELOPABLE AREA: 285,204 SF (6.56 AC)

MINIMUM AVERAGE LOT AREA: 3,050 SF

MAXIMUM DENSITY: $(285,204) \div 3,050 = 93.51 = 93 \text{ LOTS}$
MINIMUM DENSITY: $93 \text{ LOTS} (80\%) = 74.4 = 74 \text{ LOTS}$

PROPOSED UNIT DENSITY: 93 UNITS
 PROPOSED AVERAGE LOT AREA: $(249,326 / 93 \text{ LOTS}) = 2,680 \text{ SF}$
 PROPOSED MINIMUM LOT AREA: 2,441 SF

Alternate Site Plan – Max R-12 for sale Density



DENSITY CALCULATIONS

R-12 ZONE

GROSS SITE AREA: 396,523 SF (9.10 AC)
 PUBLIC R.O.W. DEDICATION: 110,837 SF (2.54 AC)
 NET DEVELOPABLE AREA: 285,204 SF (6.56 AC)

MINIMUM AVERAGE LOT AREA: 3,050 SF

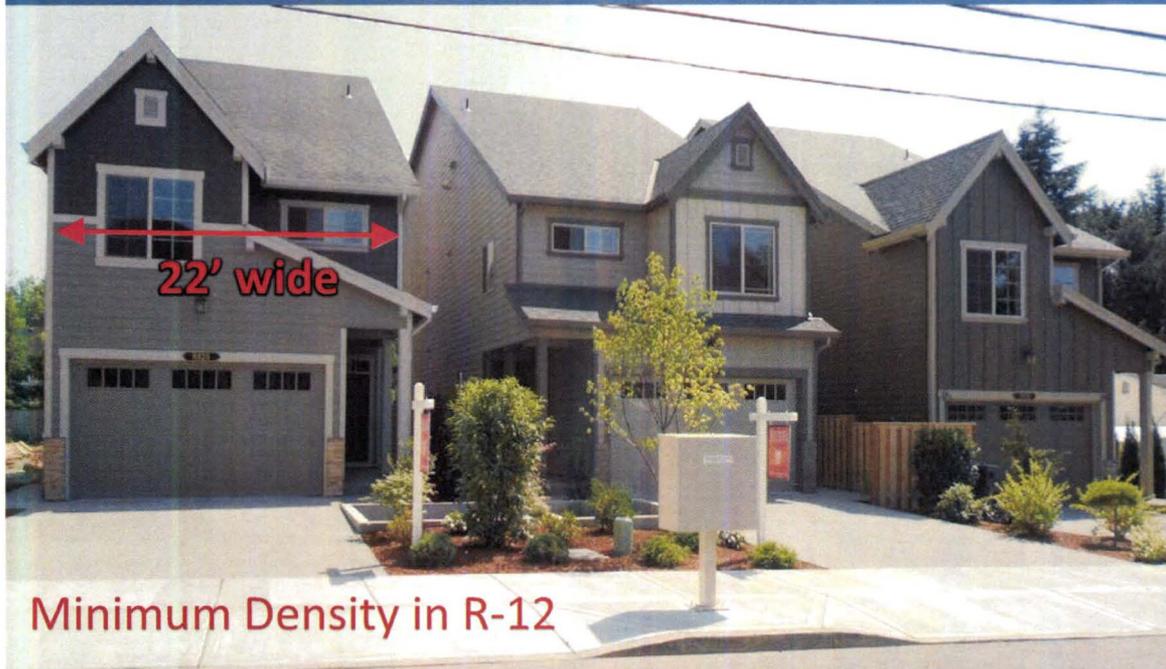
MAXIMUM DENSITY: $(285,204) = 93.51 = 93$ LOTS

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 PROPOSED MINIMUM LOT AREA: 2,441 SF



Existing Applewood Homes



Minimum Density in R-12



Zoning Map

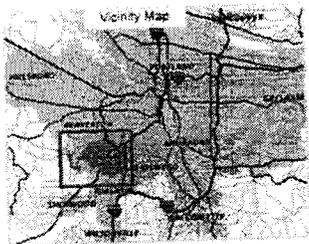
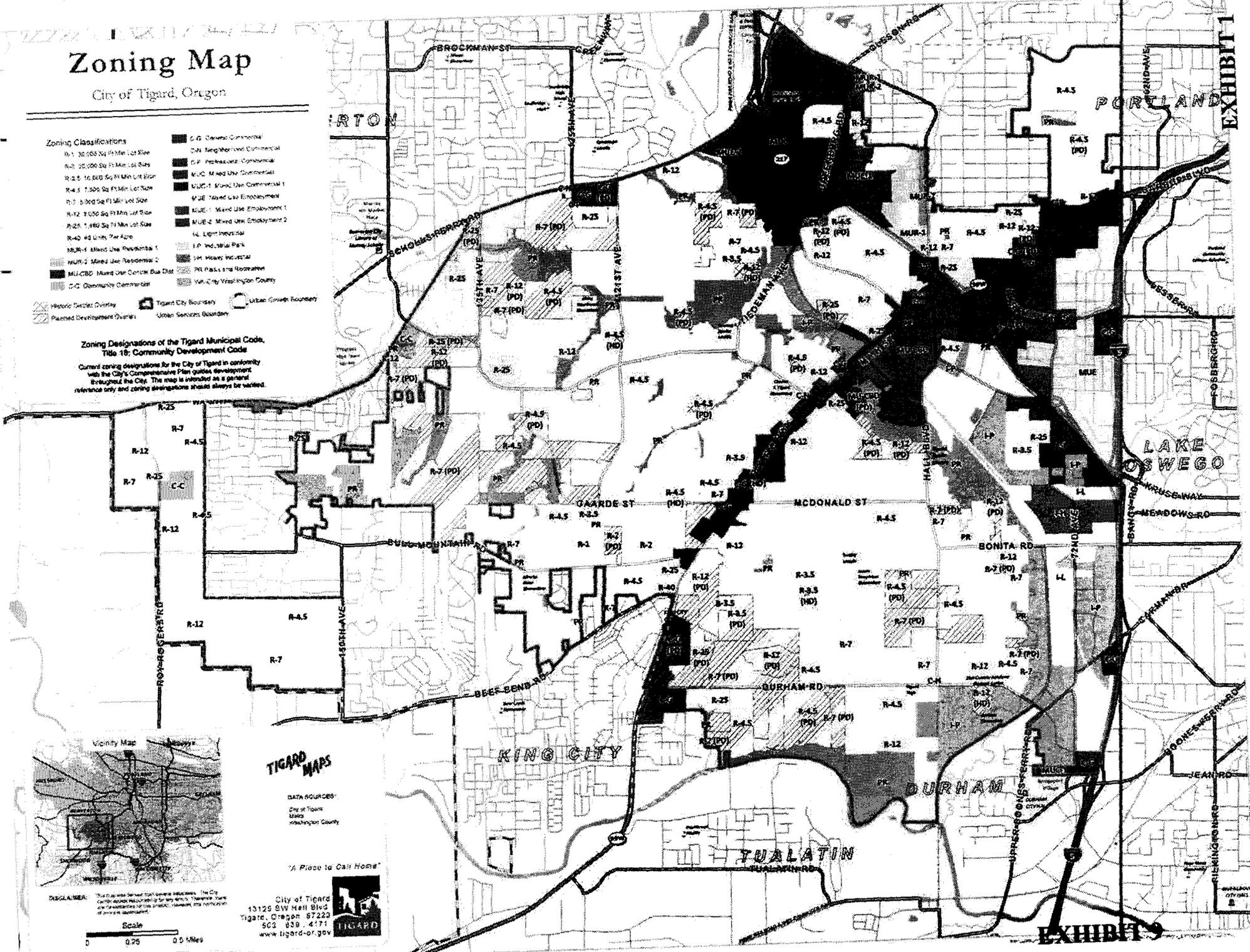
City of Tigard, Oregon

Zoning Classifications

| | |
|---------------------------------|------------------------------|
| R-1 30,000 Sq Ft Min Lot Size | C-1 General Commercial |
| R-2.5 30,000 Sq Ft Min Lot Size | C-2 Neighborhood Commercial |
| R-4.5 10,000 Sq Ft Min Lot Size | C-3 Professional Commercial |
| R-7 7,500 Sq Ft Min Lot Size | MUC Mixed Use Commercial |
| R-12 5,000 Sq Ft Min Lot Size | MUC-1 Mixed Use Commercial 1 |
| R-25 2,000 Sq Ft Min Lot Size | MUE Mixed Use Employment |
| R-40 40 Units Per Acre | MUE-1 Mixed Use Employment 1 |
| MUR-1 Mixed Use Residential 1 | MUE-2 Mixed Use Employment 2 |
| MUR-2 Mixed Use Residential 2 | LI Light Industrial |
| MUC-2 Mixed Use Commercial 2 | LI-1 Light Industrial |
| MUC-3 Mixed Use Commercial 3 | LI-2 Light Industrial |
| C-2 Community Commercial | LI-3 Light Industrial |
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| | LI-100 Light Industrial |

Zoning Designations of the Tigard Municipal Code, Title 18: Community Development Code

Current zoning designations for the City of Tigard in conformity with the City's Comprehensive Plan guidelines development throughout the City. The map is intended as a general reference only and zoning designations should always be verified.



TIGARD MAPS

DATA SOURCES:
City of Tigard
State
Washington County

"A Place to Call Home"
City of Tigard
13125 SW Hill Blvd
Tigard, Oregon 97223
503 859 4177
www.tigard-or.gov

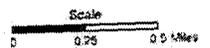


EXHIBIT 1

EXHIBIT 9

Location

Sattler Street



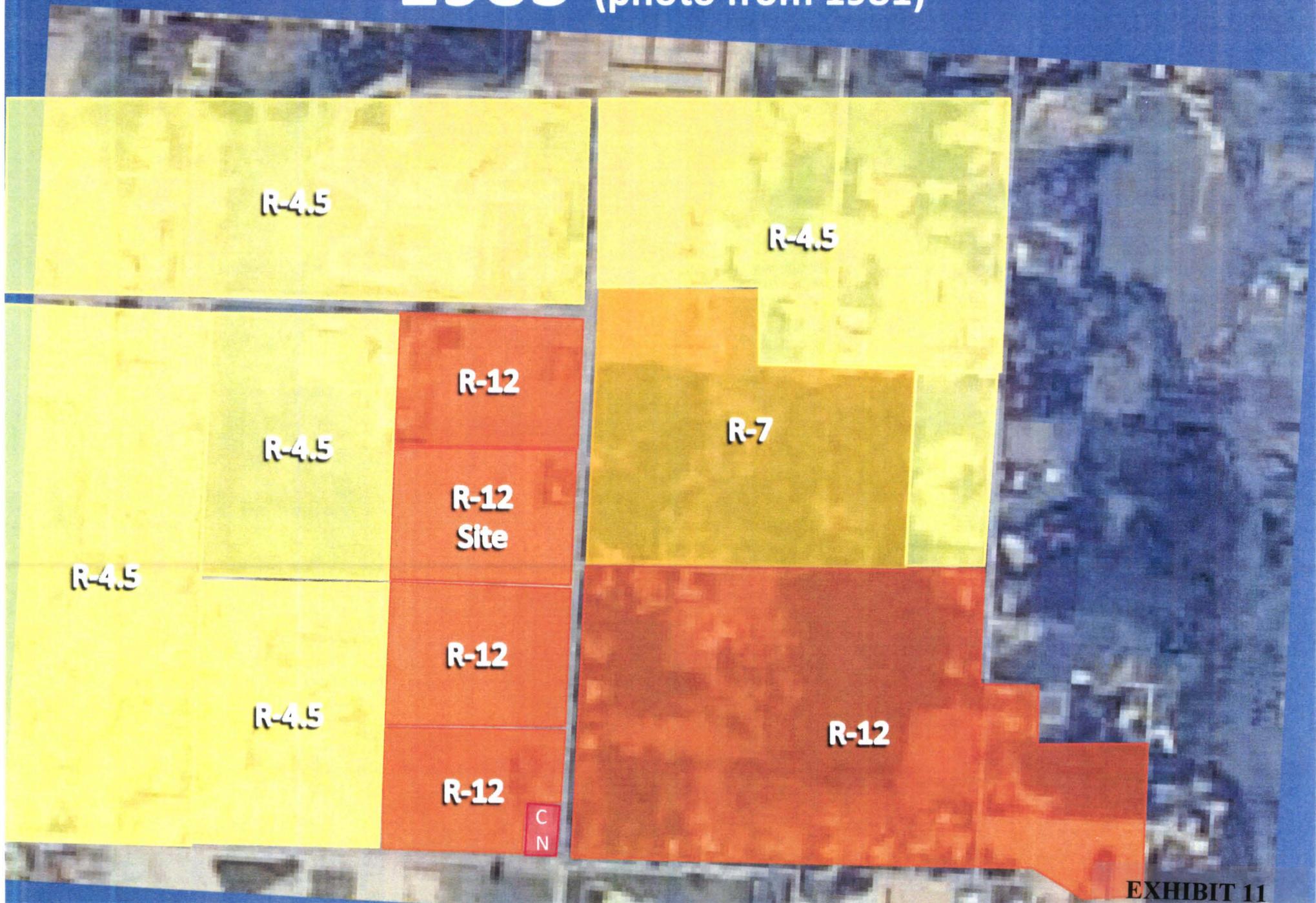
Hall Boulevard

Durham Road

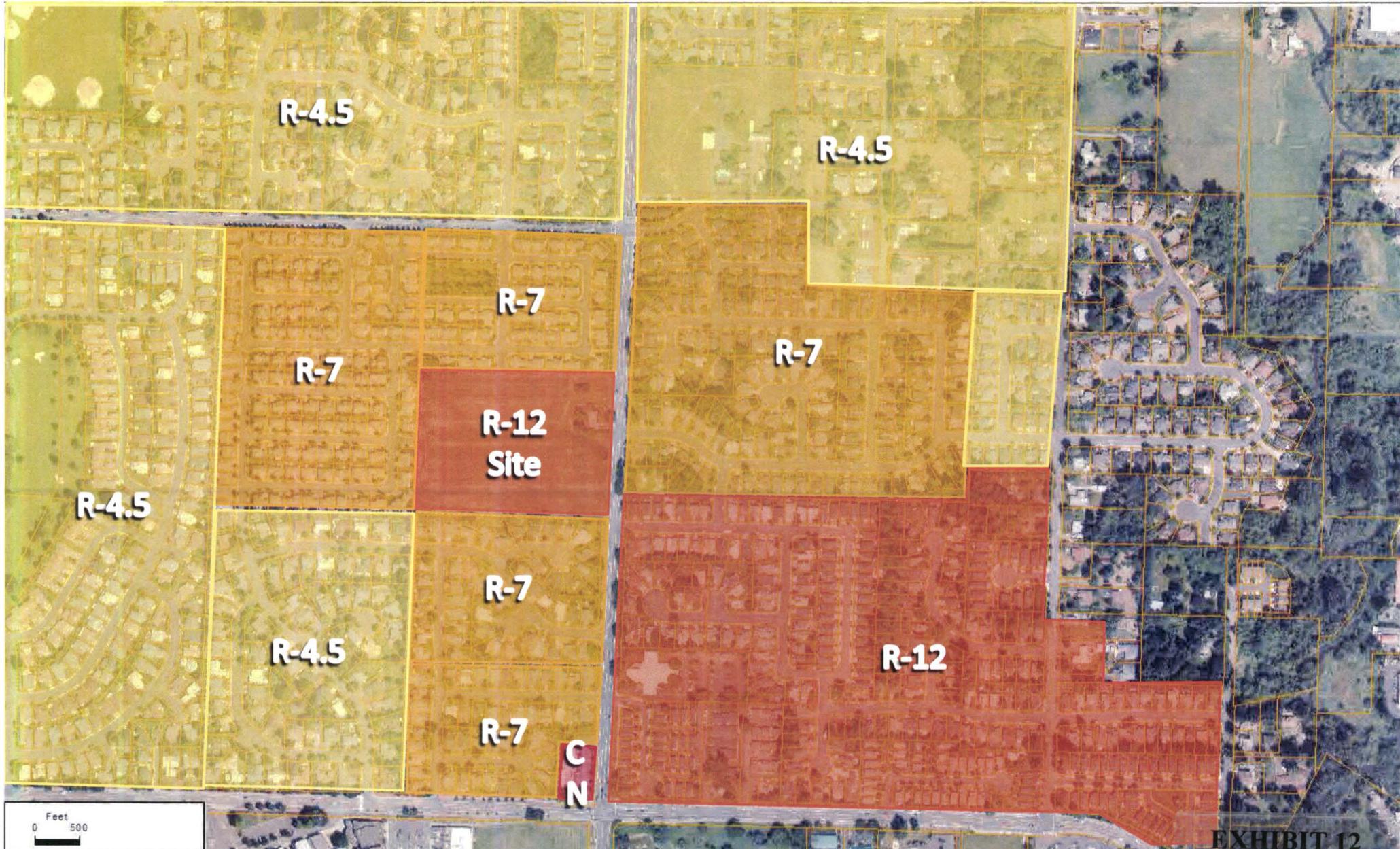
Google earth

EXHIBIT 10

1983 (photo from 1981)



2013



Substantial Changes Since 1983

- Rezone of land to the south from R-12 to R-7
- Rezone of land to the north from R-12 to R-7
- Rezone of land to the west from R-4.5 to R-7
- Build-out of most of the corridor between 1983 and 1998
- Establishment of minimum density provisions did not occur until 1998 after most of the neighborhood was built out

Evidence of a Mistake

- Acknowledged in the Sattler Zone Change decision (Exhibit O)