

1 BEFORE THE BOARD OF COUNTY COMMISSIONERS

2 FOR MULTNOMAH COUNTY, OREGON

| | | | |
|---|-------------------------------------|---|--------------------------|
| 3 | In the Matter of an appeal from |) | ORDER AFFIRMING DECISION |
| 4 | decision of the Planning Commission |) | #89-112 |
| 4 | approving a Planned Development |) | |
| 5 | permit, Planning File No. PD1-89, |) | |
| 5 | #483 |) | |
| 6 | |) | |
| 7 | _____ |) | |

8 This appeal challenges the March 13, 1989 decision of
9 the Planning Commission approving a change of zone designation
10 from MR-4, Medium Density Residential District to MR-4, PD, for a
11 70 unit planned development.

13 Appellants are City of Fairview (City herein), appearing
14 by Marilyn Holstrum, City Administrator and Keith Eddy, appearing
15 for himself.

17 APPLICABLE CODE PROVISIONS

18 MR-4 District Regulations are set forth in MCC11.15.2742-2752.
19 PD subdistrict regulations are set forth in MCC11.15.6200-.6226.
20 The criteria for PD approval are set forth or referenced in
21 MCC11.15.6202.

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FACTS

The relevant facts as set forth in the Planning Commission decision, attached hereto, are incorporated herein.

FINDINGS

The findings of the Planning Commission's March 13, 1989 decision are incorporated herein as part of this decision. In addition, the Board of Commissioners adopts findings addressing each of the grounds for reversal asserted by appellants as follows:

(1) Appellants contends the PD approval violates the Fairview Comprehensive Plan designation for the property and also violates the Urban Planning Agreement dated June 21, 1979, as amended on September 6, 1988. Appellants point out the City's comprehensive plan designates the property for low density residential development. The 1979 Urban Planning Agreement noted that the City identified no conflicts between the land use designations on the County's draft comprehensive plan maps. Notwithstanding that provision, the City now recognizes that the County's plan designation of MR-4, Urban Medium Density Residential, conflicted then and now with the City's plan designation of Low Density Residential. The City also points to the following provisions in the 1989 amendment to the Urban Planning Area Agreement:

///

1 "WHEREAS, the City will eventually assume land use
2 jurisdiction over the subject urban areas and is
3 therefore the logical entity to assume the lead role in
4 long range comprehensive planning for the area."

5 The City argues the agreement assigns to the City the
6 responsibility for certain planning responsibilities in
7 connection with periodic review and this implies the City's
8 comprehensive plan controls land use decisions in the Urban
9 Planning Area. The relevant provisions of the agreement state:

10 "2. The City agrees to assume responsibility for
11 meeting the requirements of comprehensive plan periodic
12 review for the urban planning area pursuant to ORS
13 197. This would include, at a minimum, the following:

- 14 A. The preparation of any required amendment
15 to the comprehensive Plan, inventory and
16 implementing ordinances.
- 17 B. The preparation of findings and other
18 supporting material for the required
19 periodic review order.

20 Neither the original agreement nor the amendment
21 requires the County to defer to the City's plan when making land
22 use decisions in the Urban Planning Area. Indeed, it is
23 doubtful whether the County can make land use decisions that
24 defer to the plans and regulations of other jurisdictions and
25 not apply the County's own plan and regulations in these
26 circumstances. Appellants cite no authority for that
27 proposition. To the contrary, two statutes require otherwise.

28 ORS 197.175(2)(d) requires the County to make land use

1 decisions in compliance with its acknowledged plan and land use
2 regulations.

3

4 In addition, ORS 215.416(8) states:

5

6 Approval or denial of a permit application shall
7 be based on standards and criteria which shall be
8 set forth in the zoning ordinance or other
9 appropriate ordinance or regulation of the County
10 and which shall relate approval or denial of a
11 permit application to the zoning ordinance and
12 the comprehensive plan for the area in which the
13 proposed use of land would occur and to the
14 zoning ordinance and comprehensive plan for the
15 county as a whole.

16 The criteria for approval of a proposed 70 unit
17 development are set forth in MCC11.15.65206. To deny the
18 application for inconsistency with the City's plan would base
19 the decision on standards not in the County's ordinance. This
20 would violate ORS 215.416(8). For these reasons, the City's
21 claim of error based on inconsistency with the City's plan is
22 rejected.

23

24 2) The City of Fairview says it based its capital planning
25 on the potential single family residential development of the
26 area. If the property develops at a higher density, the City
27 contends that the additional 40 dwelling units would have a
28 significant impact on the City's water and sewer systems. The
29 applicant (CBH Company) argued that the City made an error when
30 it based capital planning projections on single family

1 residential zoning when county zoning allows 70 units.

2

3 The applicant noted that the City was bound by the
4 Urban Planning Area Agreement with Multnomah County which did
5 not affect the County's plan designations. In addition, the
6 Urban Planning Area Agreement provides that upon annexation the
7 City will adopt the same land use designation as shown on the
8 County comprehensive plan until changed by the City. Thus, a
9 lower density designation could not be placed on the land until
10 after annexation and the City follows its comprehensive plan
11 change process or the County changes the current designation.
12 As a result, the applicant argued, the City's planning for
13 capital improvements should not be based on its desire for
14 eventual development, but rather based on existing plan
15 designations until they are changed as contemplated in the Urban
16 Planning Area Agreement.

17

18 The applicants arguments are more convincing as they
19 are based on the existing plan designation and criteria in the
20 County's zoning ordinance. Nothing in the County's
21 comprehensive plan, zoning ordinance, or even the Urban Planning
22 Area Agreement, establishes Fairview capital planning
23 expectations as a standard for land use decisions in the
24 County's jurisdiction. As noted above, only standards and
25 criteria in the County's planning documents are applicable to
26 the permit approval.

1 The Board also notes that the construction of 70
2 residential units on the property is a permissible density under
3 the MR-4 regulations, whether or not the plan development
4 approval is granted. Therefore, it is not the approval of the
5 planned development under consideration that bothers the City
6 but a possibility of full buildout under the existing zone
7 classification. For the reasons stated above, the application
8 may not be denied on the grounds asserted by the City. The
9 claim of error is denied.

10

11 3) Appellants next contend the 70 unit development would
12 have a serious impact on neighboring streets. Specifically,
13 appellants say that the project's addition of 158 vehicles onto
14 Halsey Avenue together with increased traffic from a proposed
15 interchange on Interstate-84 will adversely affect the
16 neighborhood.

17

18 County engineering staff reviewed the proposed
19 development and concluded frontage improvements would adequately
20 accommodate any increased traffic associated with the
21 development. Also, the impact of the I-84 interchange is
22 unknown as its relation to Halsey has not been finalized. The
23 Board finds these facts significant.

24

25 The appellants' complaint is directed at the traffic
26 increase resulting from the construction of 70 residential units

1 on the property. However, the planned development request does
2 not increase the number of residences allowed by the existing
3 County regulations. The application merely allows a change in
4 design of the project rather than the density. The change in
5 design will not increase traffic generation over what could be
6 expected under existing zoning regulations. Appellants have not
7 alleged this to be the case. Therefore, appellants' charge that
8 approval of the plan development will increase traffic is not
9 justified. We deny this claimed ground for reversal.

10

11 4) Appellants last ground for reversal is based on
12 variations between a map included in the Notice of Public
13 Hearing (Notice Map) and the map included in the staff report
14 (Staff Map). Appellants contend the two maps depict different
15 areas and that neighbors may have been misled about whether they
16 would be affected or not. In their Notice of Review appellants
17 also questioned whether the applicant owned a strip of land
18 along the northwest edge of the property as shown on both maps.
19 At oral argument, however, appellants withdrew their objections
20 to the Map based on ownership and admitted the applicant owned
21 all of the strip shown on the Staff Map.

22

23 While the two maps did differ in some respects,
24 appellants did not allege they were prejudiced by the
25 discrepancies. Appellants also stated the legal description was
26 accurate in the Notice of Public Hearing.

Page 7 ORD. AFFIRM. DEC. OF PLAN COMMISSION PERMIT PDI-89,483

1 MCC11.15.8220 specifies what notices of hearings must
2 contain. The Notice must include a legal description of the
3 subject property. No map is required.

4
5 Because the Notice complied with the code requirements
6 and appellants have not identified anyone who was prejudiced by
7 the notice or how they were prejudiced, this claim of procedural
8 error is denied.

9 Based on the above findings, together with findings in the
10 Planning Commission's decision, the Appeal is denied and the
11 decision is affirmed.

12 DATED the 6th day of June, 1989.

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BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

By Gladys McCoy
Gladys McCoy
Multnomah County Chair

REVIEWED: THOMAS J. KRESSEL
LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY OREGON

By John L. DuBay
John DuBay
Assistant County Counsel

4890R/eb

RECEIVED

MAY 1 1989



DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
2115 SE MORRISON STREET
PORTLAND, OREGON 97214 (503) 248-3043

DECISION

COUNTY COUNSEL FOR
MULTNOMAH COUNTY, ORE.

This Decision consists of Conditions, Findings of Fact and Conclusions.

PD 1-89, #483

Planned Development
(70-Unit Planned Development Complex Approved)

Applicant requests a change in zone designation from MR-4, Medium Density Residential District to MR-4, PD, for planned development approval to develop this 6.48-acre site with a 74-unit apartment complex, plus a recreation area and rental office.

- Location:** 20255 NE Halsey Street
- Legal:** A Portion of Tax Lot '89', Section 28, 1N-3E, 1987 Assessor's Map
- Site Size:** 6.48 Acres (282,384 square feet)
- Size Requested:** Same
- Property Owner:** Watergate West
36039 E. Crown Point Highway, Corbett, OR 97019
- Applicant:** CBH Company
8315 SE Stark Street, Portland, OR 97216

Comprehensive Plan: Medium Density Residential

Present Zoning: MR-4, Urban Medium Density Residential District

Sponsor's Proposal: MR-4, PD, Urban Medium Density Residential, Planned Development District. Planned Development permits the development of properties to a pre-determined plan to provide flexibility and diversity in design and economics in land development.

PLANNING COMMISSION

DECISION: Approve, subject to conditions, the requested PD, Planned Development overlay to allow use of "garden apartment" style apartment structures on a 6.48-acre site (described in attached metes and bounds) located near NE 201st and Halsey Street. Deny requested 4-unit density bonus, all based on the following findings and conclusions.

Planning Commission

March 13, 1989

PARCEL # 1

A Tract of land in the Southwest $\frac{1}{4}$ of Section 28 and the Northwest $\frac{1}{4}$ of Section 33
T. 1 N., R. 3 E., W.M. Multnomah County, Oregon described as follows:

Beginning at a point in a 5685.0 foot radius curve in the North line of N.E. Halsey
St. that is South $77^{\circ} 45' 30''$ East 108.80 feet from the Southwest corner of the
Southwest $\frac{1}{4}$ of Section 28; thence North $1^{\circ} 31'$ East 350.58 feet; thence North $88^{\circ} 32'$
West 231.55 feet to a point in the centerline of vacated Wistful Vista right of way;
thence on the arc of a 1910.08 footm radius curve to the right (the chord of which
bears North $51^{\circ} 39' 29''$ East 765.08 feet) a distance of 770.31 feet; thence South
 $1^{\circ} 50' 55''$ West 852.30 feet to a point in the North right of way line of N.E. Halsey
St. ; thence along said North line North $88^{\circ} 22'$ West 92.87 feet; thence North $1^{\circ} 38'$
East 5.00 feet to a point of curve; thence on the arc of a 5685.0 foot radius curve
to the right (the chord of which bears North $87^{\circ} 04'$ West 258.04 feet) a distance
of 258.06 feet to the point of beginning

Containing 283,270 sq. ft. or 6.50 acres more or less...

PD 1-89

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Gene A. Leuthold

OREGON
MAY 6, 1989
GENE A. LEUTHOLD
475

15'
3 3/4"
APR 23-84

LR-10

LR-7



CASE:..... PD 01-89
1/4 SEC MAPS:..... 2850, 2851, 2950, & 2951
SITE LOCATION:... SE 1/4 SEC 29, T1N, R3E and
SW 1/4 SEC 28, T1N, R3E, WM
SZM's SHOWN:..... 483, 484, 489, & 490
MAP SCALE USED:.. 1 inch to 200 feet

NOTE: Underscoring above denotes maps within
which the subject property is located.

CITY
OF
GRESHAM

LR-10

LR-10

LR-10

MR-4

N E 201st AVENUE

DO A LEGAL
ESTATE
NE BROADWAY

CITY OF GRESHAM

N E HALSEY ST

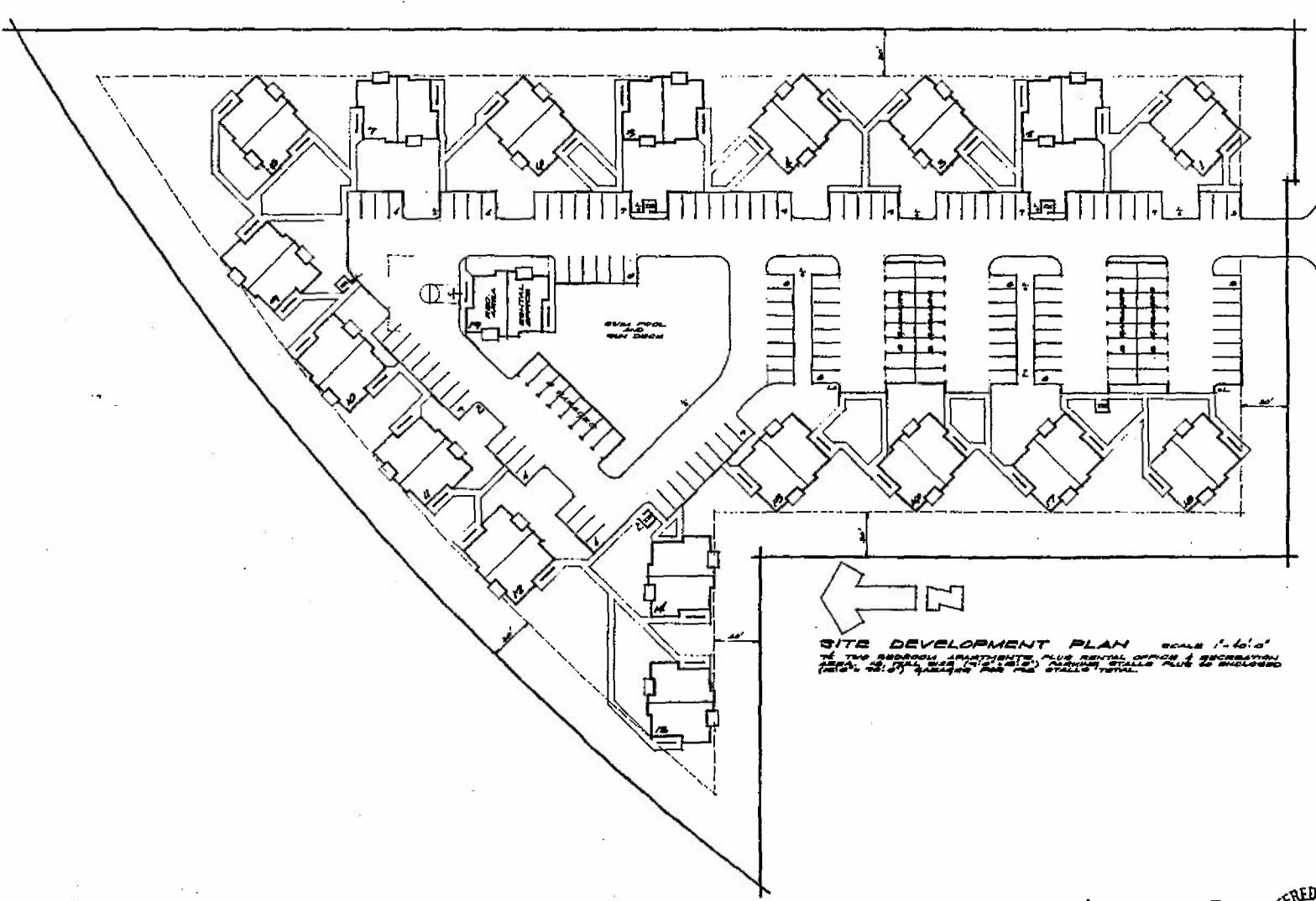
N E HALSEY STREET

N E 201st AVE

CITY
OF
FAIRVIEW

CITY OF FAIRVIEW

38'
34.82 AC



N.E. MALDEN STREET

PD I-89

SITE DEVELOPMENT PLAN scale 1/4"=1'-0"

TO TWO BEDROOM APARTMENTS, PLUS RETAIL OFFICE & STORAGE

AREA. ALL PARKING SPACES SHALL BE ENCLOSED

(SEE 22' WALKWAY FOR THE STALLS)

74 FOR CBM

TOD DE KANTER

Architect

70 N.E. 34th Place, Corvallis, OR 97331

P.O. Portland 97208, P.O. Corvallis 97331



Conditions of Approval:

1. Obtain Design Review approval of proposed site improvements and landscaping.
2. Fulfill Engineering Services requirements for right-of-way improvements along NE Halsey Street and right-of-way dedications as applicable.
3. Complete land division procedures according to MCC 11.45 prior to issuance of building permits.

Findings of Fact:

1. **Applicant's Proposal:** CBH Company proposes construction of a 74-unit apartment complex with a recreation area and rental office. The request would apply a PD overlay to the subject property. The proposed project consists of 18, two-story buildings and one single-story building. **(NOTE: This decision allows 17 4-plex structures rather than the 18 proposed in the application.)** The buildings contain 4 units each. The single story structure will contain a sales office and a recreation area. Plans include a swimming pool for residents of the project.

Applicant provides the following description of their project:

"This project will be targeted toward the high-end apartment renter. The rent structure is estimated at \$595.00 per month. The design has been used in many of our projects in the last few years. The City of Gresham has presented us an award for design excellence for the same type of complex we are proposing in Multnomah County. The current zoning does not allow for this type of garden apartments. We are going through the planned development process in order to permit this design to be used on this site.

The plan development process in the county was intended to be used to encourage the application of new techniques and technology to community development arrangements with lasting values. The use of separate garden-type apartment buildings provide for much needed private outdoor space. It also enhances view potentials because there is no solid massing of buildings on the site."

The proposal includes a requested bonus above the density permitted in the base MR-4 zone. The total site is 282,384 square feet. The current zoning will allow a total of 70 units. Section 11.15.6218 permits density bonuses up to 25% when projects fulfill approval criteria. The request would add 4 units above the 70 permitted in the base MR-4 zone. This represents a 5.7% increase in density.

2. Ordinance Considerations:

- A. MCC 11.15.6206 specifies approval criteria for planned development proposals. The following section provides findings for each applicable criteria.

- (1) The requirements of MCC .8230(D)(3), applicable elements of the Comprehensive Plan:

Staff Comments:

The proposal site is designated Medium Density Residential in the county's Comprehensive Plan. The PD request will allow development of the site with "garden apartments" consistent with the medium density residential designation.

- (2) The applicable provisions of MCC 11.45, the Land Division Chapter:

Staff Comments:

The subject proposal requires a Minor Partition under the Land Division Chapter. The partition request has been filed with the Planning office as of this writing. Condition No. 3 requires land division approval prior to issuance of any building permits for the proposed development.

- (3) Any exceptions from the standards or requirements of the underlying district are warranted by the design and amenities incorporated in the development plan and program, as related to the purposes stated in MCC .6200.

Staff Comments:

The MR-4 district does not provide for "garden apartment" structures. Rather, multi-family housing in the MR-4 provisions requires side-by-side siting of units. The PD request will allow the garden apartment style of structure to be developed on the subject parcel. This type of structure frees-up greater portions of the site for open space, landscaping and recreation amenities. The proposed PD overlay provides... "superior living or development arrangements"... on the subject site by permitting apartment units to be stacked one above the other in the two-story 4-plex structures.

- (4) That the system of ownership and the means of developing, preserving and maintaining open space is suitable to the purposes of the proposal.

Staff Comments:

The proposed site plan with the garden-style apartments allows greater portions of the site to be developed as open space, landscaping and recreation amenities than would otherwise be available if the parcel were developed under the base MR-4 zoning specifications (i.e., side-by-side units).

- (5) The provisions of MCC .6214. Relationship of the planned development to the environment.

"The site itself is fairly flat with a slight drop at the northern property line. There are some evergreen trees along this property line that will be saved and incorporated with the site design. The balance of the site has a lot of ground cover growing with wild shrubbery. We will be clearing the site completely and providing a well developed landscape plan. The project is anticipated to begin around the first of April and be completed by the end of 1989."

Staff Comments:

The requested PD overlay will facilitate a development more sensitive to the natural environment than would be permitted under the base MR-4 zone. This is due to the development of the site with the garden-style apartment structures which allows greater portions of the site to be landscaped and retained as open space. Applicant indicates that some existing evergreen trees near the north property line will be retained and incorporated into the site design. Condition No. 1 requires Design Review approval of proposed site improvements.

The development as modified by this decision will allow development of the site with 17 individual 4-plex structures providing solar exposure for most of the individual apartments, thereby promoting energy conservation.

No hazards have been identified which would be attributed to the development of the site.

Adjacent properties are of various sizes, some undeveloped, but with a scattering of single family dwellings, particularly to the northwest of the site. Multiple family units are located southwest and west of the site. Reynolds High School is located on the south side of NE Halsey Street across from the street from the site. The proposed site layout maximizes safety and convenience and displays a compatible design with neighboring road systems, buildings and uses as follows.

The plan includes a generous, 30-ft. setback along the entire perimeter for all proposed structures; the MR-4 zone requires only a 20-foot front, 15-foot rear and 5-foot side setbacks. The proposed 4-plex structures are staggered and angled to add interest and space between the structures and display a building scale similar to the single family character of surrounding properties to the northwest and east. The parking area for the project is accessed solely through NE Halsey Street, a designated arterial street. The project places no traffic direct-

ly onto 201st Street or on surrounding neighborhood local streets.

- (6) That the proposed development can be substantially completed within four years of the approval or according to the development stages proposed under MCC .6220.

Staff Comment:

Applicant indicates the project would be initiated in Spring of 1989 with completion expected by the end of the year.

- (7) The development standards of MCC .6212, .6216 and .6218:

Staff Comments:

Open Space: The proposed PD overlay will facilitate an apartment project on the site with larger open areas than would be feasible under the base MR-4 zoning provisions. Condition No. 1 requires Design Review of proposed site improvements to assure that open space areas on the site are suitably improved for the intended uses and that natural features worthy of preservation are incorporated into the site design.

Density Computation for Residential Development:

MR-4 provisions specify 4,000 square feet per unit for "multi-plex" structures. This represents an allowable density of 70 dwelling units on the subject site (282,384 sq.ft. divided by 4,000 equals 70.60 units). The zoning code defines a multi-plex structure as "a row house or town house apartment structure."

MCC .6218(B) specifies conditions under which density bonuses may be permitted up to 25% above the allowable density in the base zone. The request would add four units to the total site representing a 5.7% increase in density. Applicant has not demonstrated the proposal's consistency with approval criteria for a density bonus. Specifically, the submittal lacks findings relative to the need for the additional four units; the proximity to commercial, employment and community services; and the characteristics of the site development which will insure the project is complimentary to surrounding land uses.

- (8) The purposes stated in MCC .6200.

Staff Comments

The proposal fulfills purposes of the Planned development overlay by providing medium density housing with greater open space amenities and small scale structures compatible with surrounding land uses. Approval of the request will result in superior living arrangements on

the site and more efficient use of the property.

- (9) Modifications or Conditions of Approval are necessary to satisfy the purposes stated in MCC .6200.

Staff Comments:

As stated earlier, three conditions of approval are recommended. Condition Number 1 requires design review of proposed site improvements, Number 2 requires street improvements along NE Halsey Street abutting and the site and No. 3 requires land division approval through the County Planning Department for the proposed partitioning pursuant to this application.

B. Additional Findings:

The City of Fairview has submitted comments regarding the requested PD proposal in a letter dated March 6, 1989 and attached as Exhibit A. The following comments respond to issues raised by the City of Fairview:

- (1) The subject property is located within an area proposed for annexation into the city of Fairview. It is noted in the March 6, 1989 letter that the subject parcel is designated as "Low Density Residential" in the Fairview Comprehensive Plan. However, the county's plan designation for this site as medium density residential dates back to 1974 when an apartment project was approved on the subject parcel (reference PD 11-72). In the urban planning area agreement between Multnomah County and the City of Fairview dated June 21, 1979, Item No. 4 states:

"The city has identified no specific conflicts with the Multnomah County Comprehensive Framework Plan for the designated urban planning area of this agreement. For those areas designated 'Urban' by the Comprehensive Framework Plan, Multnomah County is in the process of preparing and adopting community plans. Portions of the Columbia and Rockwood communities lie within the designated urban planning area for the city of Fairview. The city has reviewed draft copies of these communities' plans and has identified no specific conflicts with the proposed land use designations. Upon annexation, the city will adopt the same land use designation as shown upon the county Comprehensive Plan unless and until the city changes said land use designation, pursuant to acceptable legal procedure (ORS 215.130(2)(A))." (emphasis added)

Based on these facts, staff contends that the current county plan and zone designations apply to the property; no plan or zone change requests have been proposed for the site by Fairview or others and

applicant's request fulfills the intent of the medium density residential designation.

Application submittals indicates the City of Gresham can serve the site with a 20-inch diameter sewer line within the Halsey Street right-of-way. The Rockwood Water District indicates an 8-inch line within the 201st St. right-of-way can provide 90 P.S.I. of water service to the subject site.

In item 2 on page 2 of Fairview's letter, it is suggested that approval of the PD would violate the Urban Planning Area Agreement between the County and the City. The agreement, however deals only with long range planning activities associated with Periodic Review; it does not delegate quasi-judicial land use decisions in any unincorporated areas to Fairview. It should also be noted that proposed plan designation changes could be proposed to the County by Fairview under the terms of the agreement; no proposals have been received.

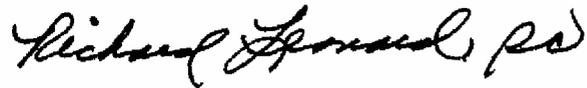
In item 3. on page 2 of Fairview's letter, it is noted that long range capital planning for the area has been based on the City's expectation of single family development of the subject site. It is unfortunate that the County's medium-density residential designation of the property was not considered in the City's planning, however, the fact remains that this decision allows a development with no deviation (i.e. 70-units) from the level of residential development permitted under the County's plan and zone designations on the site.

Conclusions

1. With the exception of using the garden apartment building style, the development as approved (i.e. no density bonus) complies with MR-4 zoning provisions.
2. The four unit increase in density has not been adequately justified pursuant to approval criteria.
3. Development of the site with garden apartment structures permits more land to be developed as open space and landscaping.
4. As conditioned and modified herein, the proposal complies with PD, planned development approval criteria.

In the matter of PD 1-89,

Signed March 13, 1989

A handwritten signature in cursive script that reads "Richard Leonard, pd".

By Richard Leonard, Chairman

Filed With the Clerk of the Board on March 23, 1989

Appeal to the Board of County Commissioners

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before 4:00 p.m. on Monday, April 3, 1989 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday, April 4, 1989 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.