

RECEIVED

APR 10 2019

COMMUNITY DEVELOPMENT
CENTER

To: City of McMinnville Planning Commission
From: Friends of Baker Creek, 501 3C
Regarding: Premier Development LLC's Planned Development Application
Docket Number: PDA 3-18/PDA 4-18/S 3-18



Request:

- ❖ Approval to leave the unplatted fourth phase of the Oak Ridge Subdivision in the boundary of the Oak Ridge Planned Development Overlay District
- ❖ Approval of the designation of the unplatted fourth phase as a nature preserve instead of a private neighborhood park.
- ❖ Approval of our suggested improvements to the traffic problems in Premier's plan.
- ❖ Approval of our request to have the FEMA maps re-drawn prior to any development.
- ❖ Approval of our request to allow development to proceed in areas except the 11.47 acres once issues of traffic and safety, and all applicable permits have been met.
- ❖ Approval of our request that all applicable permits – specifically, Oregon DSL, DEQ, Army Corps of Engineers, Oregon Department of Fish & Wildlife – and any others required by the development beside an Essential Salmon Habitat stream (Specifically Baker Creek).

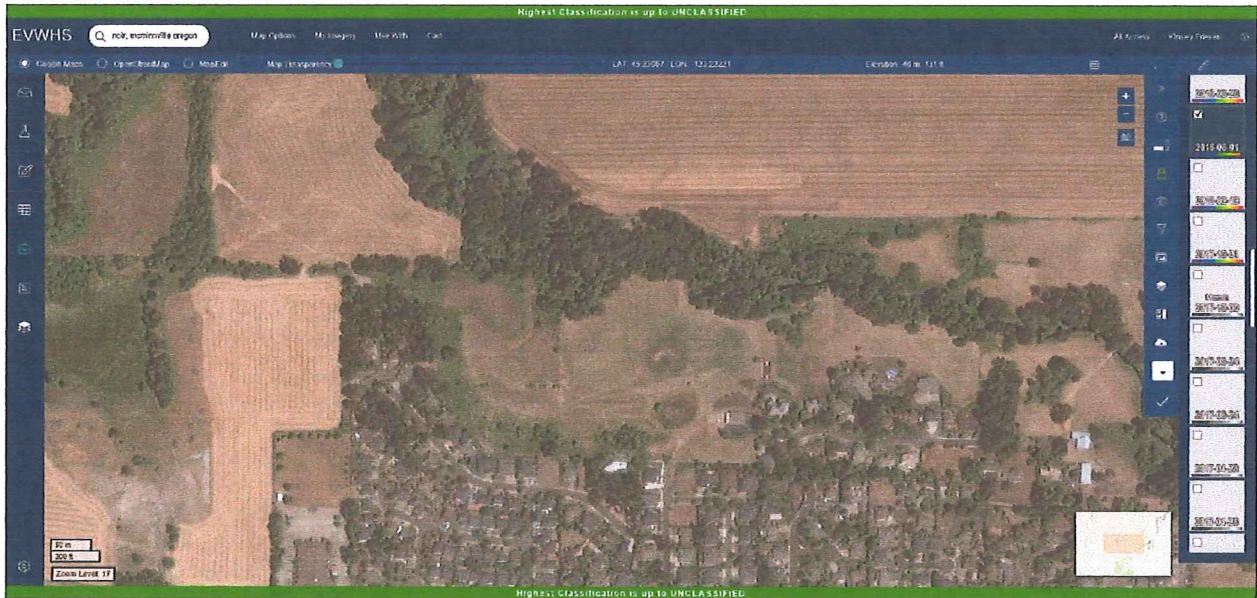
We, the Friends of Baker Creek, are excited to come before you and be a part of the process the City of Mac has written into our City Goals X1 and X2. We think together we can develop a plan that benefits the citizens of Mac, the Great Neighborhoods already in place and the one to be developed, and Premier Development. To do so we will address the problems we see in four areas:

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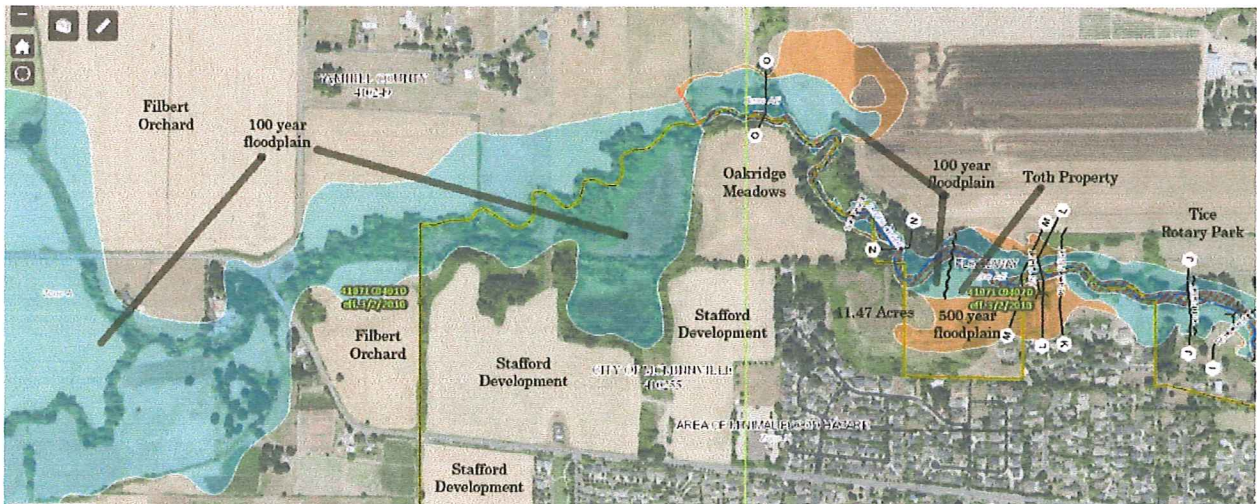
- The wetlands – the 11.47 acres in the unplatted fourth phase.
- Traffic issues
- Two proposed parks – 1) the Greenway, and 2) a 0.85 acre private active neighborhood park
- FEMA maps and permits

Let's begin with The Wetlands:

Exhibit 1



FEMA map of 100 year and 500 year floodplain Exhibit 2



Maps submitted by Premier are based on old data. Yes, it is what is available, but since the denied application to place fill in the adjacent floodplain in January 2004, it has been on record that the FEMA maps appear to be inaccurate. (See attached Yamhill County Planning Commission Minutes, Thursday, January 8 2004, page 4, highlighted, **FOB Exhibit 3**) According to that same hearing and denial of Premier's request, the "*currently effective flood study for Baker Creek is dated March 30, 1983.*" (**FOB Exhibit 4**, PB Ports & Marine Inc. page 1, highlighted) In 1983 Baker Creek Road was in Yamhill County. A lot of development has happened since 1983, on *both* sides of Baker Creek. To continue to develop lands along Baker Creek without using relevant up-to-date data is in violation of City Goal II 1:9.00.

Currently Stafford Homes is placing new homes along Hill Road. The addition of drain tile in the hazelnut orchard at the corner of Hill and Baker Creek, also along Baker Creek, has changed the flood plain. Baker Creek has flooded into these wetlands three times since 2015, exceeding both the 100 year and 500 year FEMA projections. And these weren't even heavy storms. It has flooded twice in the past five months after as little as two inches of rain. This flooding is no longer simple inundation as in past years. The creek now carries a current which deposits debris in the heart of the wetlands. (current is visible in the picture. For more flooding photos, please visit our website at <https://friendsofbakercreek.com/>



It is easy to narrow our focus to one development. In this case that would be a disastrous choice. This property is not like most other developments considered by the Planning Commission. It borders with Yamhill County on two sides. A floodplain flows *into* the wetlands. And at the other end of the floodplain, two HOA's downstream, homes *in* the city, lie along the floodplain. Every bit of fill has a direct impact far beyond the maps submitted. If fill placed in the wetlands to build roads and homes is permitted against the evidence presented here, flooding of homes within the city boundaries will most likely occur. We don't really want to do that do we?

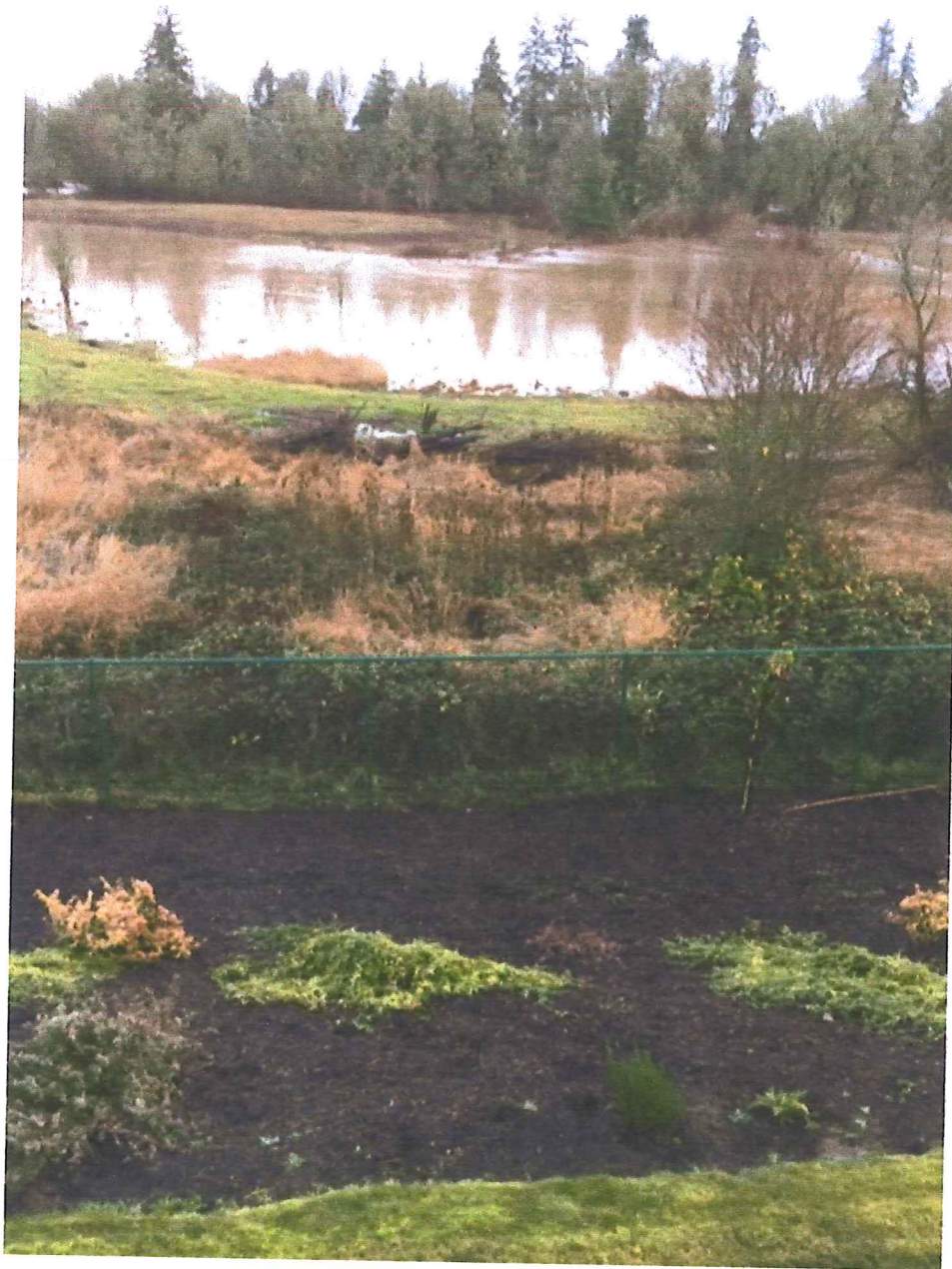
Mitigation and Blue flags. Mitigation is mentioned several times in the application. Pacific Habitat Services has begun its report. Blue flags denoting wetlands have sprung up all over areas far outside what is noted on the maps. Most notably these flags about *current* property lines (Lots 74-76 and 40-42) exactly where Lots 1-7 would be built. (Exhibit 6 of Premier's application). These wetland grasses stayed green all summer during our 100 + degree heat. Nobody was irrigating the wetlands. They stayed green because the wetlands is, well, wet. Naturally wet. That wetness doesn't just go away because we pile tons of dirt on top of it.

Another area of Premier's application mentions that the wetlands has re-established itself. This area is on the proposed Pinehurst cul-de-sac, and lots 34 and 40. (Exhibit 6 of Premier's application). Keep in mind this has happened on top of tons of fill. That is the nature of this land. This begs the question of upkeep. How much will human attempts at denying nature what she wants to do cause repairs and maintenance issues for city and homeowner alike? Is it good policy to build on such marginal lands? We don't think so.

Premier also states that mitigation has been completed. Mike DeBlasi from Oregon Department of State Lands has walked the planned development. He states that mitigation, while completed, has failed. We spoke with the staff from Pacific Habitat Services. They also said that mitigation has failed. Until we have reports from these people we can't interpret their comments. The Pacific Habitat study needs to be completed and turned in before any decision is made on these vulnerable lands. We really need to table this part of the application until further studies have been completed.

Premier's Proposal to develop the wetlands relies on establishment of Pinehurst as a necessary part of the access to Lots 1-11 and Lots 34-45. We object on several points:

- In the neighborhood meeting we were told that several feet of fill would be required to raise the proposed road above the wetlands. Again I refer to **FOB Exhibit 4**, page 2, highlighted, where the concern is that *any* fill should not raise the flood elevations above a minimum one foot rise standard. To do so will put homes in the Crestbrook subdivision at risk and the city at risk from resulting lawsuits. This 11.47 acres of the application isn't so necessary to take these kinds of risks.



- Throughout Premier's application reference is made to Pinehurst. The street is essential to serve the potential homes and carry the sewage to a pump station on Les Toth's Property [FOB Exhibit 5] Pinehurst is even identified on Les Toth's land as "a future local street." Please note the attached letter from Les Toth in opposition of *any* plans to extend Pinehurst across his property. [FOB Exhibit 6] Les Toth was in opposition to the 2004 Premier application to place fill on land adjacent to the current application. His property and that of several others *within the city limits* will be directly affected by any fill placed on the wetlands.
- The proposed greenway park abruptly ends at Lots 43 (Exhibit 6 of Premier's application). It is the City's intention to extend the greenway to Tice park. If Premier is allowed to

build in a wetlands, walkers have to turn inland and use sidewalks instead of following Baker Creek as the rest of the park is intended to do. When they come to the end of Pinehurst at the barricade at the border of Toth's property, walkers have no way to get back to Baker Creek without crossing private property or retracing their steps. We don't think this works well with the City plans. If the 11.47 acres remain a natural preserve per City Code, then the trail can easily be extended along the Baker Creek to the fence at Toth's property, allowing public access to both the creek and the wetlands without great disturbance of either.

- Lots 40-42 are also the current location of a pond. This is the point of access for Baker Creek when it floods. It travels alongside Lots 36-39 (Exhibit 6 of Premier's application), then, still demonstrating current capable of carrying debris, floods into the wetlands, where it is joined by floodwaters from the floodplain to the east, Les Toth's property. Current plans for a detention pond at the periphery of Lots 36-38 are at the wrong end of this water flow. Putting fill, engineered rip-rap, roads and sewer systems across a wetlands does not preserve it. By the time this development is complete there will be nothing to see on the wetlands.
- Further problems with traffic and the proposed private 0.85 acre park, and habitat destruction are covered in following areas.

Relevant City Goals, Policy, and Code:

Goal II 1:9.00 "The City of McMinnville shall continue to designate appropriate lands within its corporate limits as "floodplain" to prevent flood induced property damages and to retain and protect natural drainage ways from encroachment by inappropriate uses."

Planned Development Policies

74.00 "Distinctive natural, topographic, and aesthetic features within planned developments shall be retained in **all** development designs."

Residential Design Policies

80.00 "In proposed residential developments, distinctive or unique natural features such as wooded areas, isolated preservable trees, and drainage swales shall be preserved whenever feasible."

Parks & Recreation

163.05 "The City of McMinnville shall locate future community and neighborhood parks above the boundary of the 100 year floodplain...provided that the design and location of such uses can occur with minimum impacts on such environmentally sensitive lands. (Ord 4840, January 11, 2006)

166.00 "The City of McMinnville shall recognize open space and natural areas, in addition to developed park sites, as necessary elements of the urban area."

167.00 "The City of McMinnville shall encourage the retention of open space and scenic areas throughout the community, especially at the entrances to the City."

168.00 "Distinctive natural features and areas shall be retained, wherever possible, in future developments."

169.00 "Drainage ways in the City shall be preserved, where possible, for natural areas and open spaces and to provide natural storm run-offs."

City Code, Chapter V "It is important that the City continue to scrutinize planned development designs to insure that amenities are being provided in excess of what is normally required."

Finally, because this property cannot responsibly be viewed with a narrow lens, both The Friends of Yamhill County and the Board of the Yamhill Soil & Water Conservation District have offered us letters expressing their opposition to building in the wetlands. The letters weren't available at the 4/10/19 deadline to submit materials to the Planning Commission due to their respective Board meetings. We hope to be able to present them at the 4/18/19 meeting. The Great Neighborhood concept extends beyond Compton Crest, Crestbrook, and Oak Ridge.

It is time to fulfill the City's obligation to maintain current FEMA maps by requesting a new FEMA analysis.

Until we have an updated, relevant picture of where the 100 year and 500 year floodplain actually are, plus where the wetlands and floodplain current boundaries are, we suggest that Premier submit an application to the Oregon Watershed Enhancement Board Small Grant Program, part of the Greater Yamhill Watershed Council, enthusiastically endorsed by Lannette Noble, Parks Maintenance, City of McMinnville, Public Works. (FOB Exhibit 9)

Until the questions raised here are satisfied, we request the Planning Commission to deny Premier's application to move the unplatted fourth phase of the Oak Ridge Subdivision in the boundary of the Oak Ridge Planned Development Overlay District.

We request the Planning Commission to instruct Premier to complete the Pacific Habitat Services wetland analysis and submit their report to both the City and to DSL.

We also ask that the Planning Commission move to make the unbuildable wetlands into a nature preserve.

We also ask The City to request the State to remove these 11.47 acres from the Urban Growth Boundary.

For more information please visit our website at <https://friendsofbakercreek.com/>

EXHIBITS

1. Google green topo map **Exhibit 1**,
2. FEMA map **Exhibit 2**
3. Yamhill County Planning Commission Minutes, Thursday, January 8 2004, **Exhibit 3**
4. **Exhibit 4**, PB Ports & Marine Inc.
5. sewage to a pump station on Les Toth's Property [**Exhibit 5** from Premier's application]
6. attached letter from Les Toth in opposition of any plans to extend Pinehurst across his property. [**Exhibit 6**]
7. letters of opposition. – to be submitted at the 4/18/19 meeting
8. Lannette Noble, Parks Maintenance, City of McMinnville, Public Works. (**Exhibit 9**)



Next up: **Traffic**

City Code, Chapter V *"It is important that the City continue to scrutinize planned development designs to insure that amenities are being provided in excess of what is normally required."*

Just a few areas to tweak: access issues, nomenclature, and crosswalks. Let's do the easy stuff first.

City Code 132.00 *"The City of McMinnville shall encourage development of subdivision designs that include bike and foot paths that interconnect neighborhoods and lead to schools, parks, and other activity areas."*

Baker Creek Road and the planned developments to the north are the current boundary of the city limits. Proposed developments by both Stafford and Premier will place a large population of residents with no safe access to trails and streets across Baker Creek, leading to the city proper. We're not asking for stop lights. Please just give us cross walks that light up when a pedestrian wants to cross the street. Traffic is fast and not safe for pedestrian crossing at the current levels without adding more homes on one side with no safe access to the other side. One issue down.

Because of the problems of building in a wetlands detailed so carefully above, we ask that the street shown on Exhibit 6 of Premier's application be named Shadden instead of Pinehurst. If Les Toth is successful in his intent to block all access across his land, then calling Pinehurst a "Future Local Street" in Exhibit 4 of the same application is not accurate. Two down, one to go.

Access. This is a big issue. City Code 132.32.00 *"The safe, rapid movement of fire, medical, and police vehicles shall be an integral part of the design and operation of the McMinnville transportation system. (Ord. 4922, February 23, 2010)"*

Let's start with some pictures. (Insert Steve 1 and Steve 2)



This is the reality we have to work with. Steve is not the width of a truck or a car. Even an electric car. Pinot Noir as is will simply **not** accommodate the coming and going of dump trucks, heavy equipment, and emergency personnel. These two vehicles are legally parked within a reasonable distance from the curb. In past months when Premier wanted to haul fill and dump it on this site, neighbors had to be asked to not park on the street until dumping was done. If this bottleneck were a temporary problem which would go away after construction it would be one thing, but this is what will exist after all the dump trucks, and cement trucks and building material trucks go away and are replaced by neighbors trying to commute in the morning and return in the evening.

Page 66 of the proposal: *"The ultimate buildout of the site includes a connection to NW Baker Creek Road via an extension of NW Shadden Drive. In the interim, the development will be accessed via NW Pinot Noir Dr, NW Oak Ridge Dr, and Merlot Drive."* What sounds like three separate streets on paper is actually two streets that feed into only one – poor, narrow, Pinot Noir.

Fire code requires (Uniform Fire Code, Section 901.3) that there be two separate access roads at either end of a planned development. The proposal seeks to comply by calling the extension of Shadden from Baker Creek to the development area one of those streets. The problem is that emergency traffic is faced with not one but two locked gates – one at the entrance from Baker Creek Road and one at the entrance to the subdivision. Now emergency crews will have to either stop and get out and unlock not one, but two gates, or they can come down Pinot Noir only to find it blocked by two legally parked vehicles.

City Code, Police and Fire Protection:

153.00 *"The City shall continue coordination between the planning and fire departments in evaluating major land use decisions."*

155.00 *"The ability of existing police and fire facilities and services to meet the needs of new service areas and populations shall be a criterion used in evaluating annexations, subdivision proposals, and other major land use decisions."*

The applicant seeks to Amend Ordinance 4822 reducing access from two roads to providing only one paved street and one gravel street with two locked gates at either end. This just doesn't make good policy. Have both the police and fire departments agreed to this proposal? I don't see that anywhere in this proposal.

One other attempt at a temporary solution to this problem is the temporary access road shown on Exhibit 4 between Lots 73 and 122 connecting Pinot Noir to the dead-end, under-dispute Pinehurst in the middle of the wetlands. This plan also endangers an isolated oak tree, we'll talk about later. Let's not do this one either. All these temporary plans hide the fact that there is only one street currently available, Pinot Noir.

In the years since Oak Ridge was developed, the City of McMinnville has wisely changed its policy of street width, which is now twenty-eight feet instead of the previous twenty-six feet. Now turn the map

upside down. Homes are built in this development and imagine a wildfire comes roaring in. Now the 28 foot escape route constricts to 26 feet at today's Pinot Noir, trapping fleeing families in a bottleneck.

One last requested variance adds to the safety hazard to the street design:

17.53.103 Blocks

A. Size. *"No block shall be more than 400 feet in length between street corner lines or have a block perimeter greater than 1,600 feet unless it is adjacent to an arterial street, or unless the topography or the location of adjoining streets justifies an exception."*

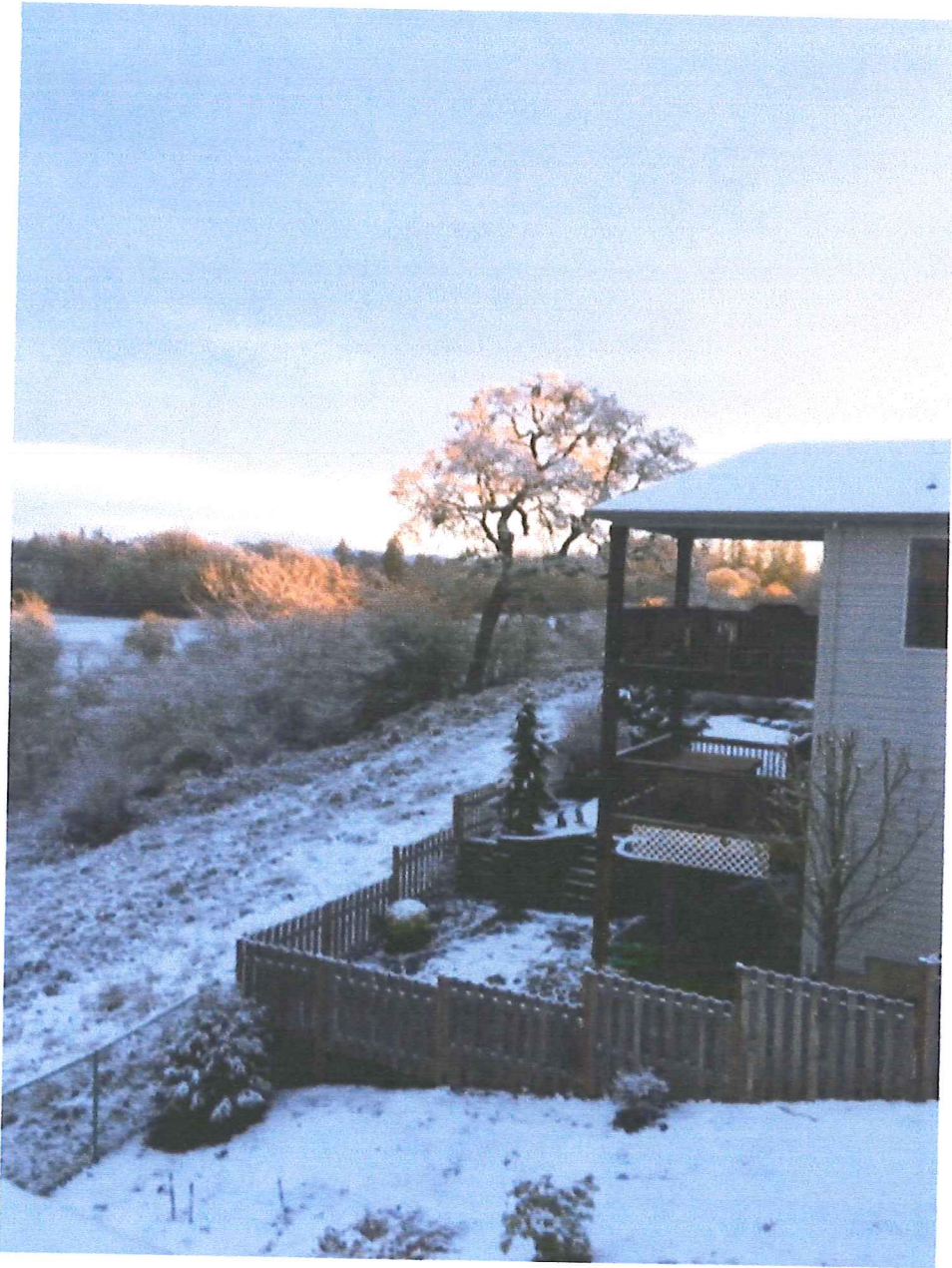
On page 53 to the proposal, a variance is requested for five streets. There are only five streets in this part of the planned development. That means 100% of the streets will be long and straight. Then they get to funnel down to the bottleneck of Pinot Noir.

And finally, the tree we discussed.

Residential Design Policies

80.00 *"In proposed residential developments, distinctive or unique natural features such as wooded areas, isolated preservable trees, and drainage swales shall be preserved whenever feasible."*

The application mention actions necessary to preserve a tree which borders the Stafford and Premier Development and we wholeheartedly support such action. There is another tree of concern, located on Lot 1, Exhibit 6 of Premier's application. It also meets the criteria of DBH. We would like the Planning Commission to require that this tree also be preserved, especially until after the fate of the 11.47 acre wetlands is determined. The reason we mention the tree under traffic is that this tree would potentially be damaged by the temporary access road crossing Lots 73, 1, & 2 in Exhibit 4 of Premier's proposal.



These *“amenities are **not** being provided in excess of what is normally required.”* The traffic portion of this plan just isn't safe for everyone involved. Back to the drawing board, please.

Two Proposed Parks



The Greenway proposed park.

Again, we applaud Premier's generous offer to cooperate with City plans to develop a greenway park which will benefit the citizens of the City.

The only problem we see is the same mentioned earlier under the Wetlands portion of our statement – the proposed Greenway ends at Lots 43 (Exhibit 6, Premier proposal). In this photo the pond which covers the land much of the winter is clearly visible. This is where Lots 40-42 (Exhibit 6, Premier proposal) would go. This also is where flood waters enter the wetlands. Floodwaters run against the berm proposed to hold the cul-de-sac of lots 34-40 and continue their push to come onto the wetland via Denial River mingling with floodwaters flowing west off Les Toth's land on the other side of the white fence. We believe the City's intention is for the connection to Rotary Park to follow Baker Creek, not wander across wetlands, thereby destroying the habitat. If there's going to be anything worth viewing, the Greenway Park has to have minimal impact on the land it seeks to observe.

One other note – HOA fees. This is a big public park, subject to flooding. The scope and intent of this planned development is to build affordable homes in a mixed development. We like the mix. We like the large lots bordering the greenway. The one hiccup is the HOA fees. We hope to have an estimate for you

at the time of our meeting. This being a public park, it will have issues of trash pick-up plus weather, storm issues, and insurance liability. This is a big burden for an HOA to carry until 2032. We like the park, but feel asking a non-existent HOA to carry such a burden could derail the City's plan for affordable housing. Just sayin'.

Park number two is the 0.85 acre private park to be paid for by Phase 1 HOA fees.



This park has several problems.

Slope. At the beginning of Premier's application slopes of 20-40% are mentioned. This proposed park contains just such a slope, so when we think of 0.85 acres, most of it is downhill covered by

blackberries. Under the blackberries is a spring. Removing the blackberries and covering the slope with a bark path over a spring isn't reasonable.

Access. Several times in the application Premier states that access to the greenway park will be from Pinot Noir along Lot 18 and from Pinehurst along Lot 8 (Exhibit 6 Premier Proposal) A *private* neighborhood park with public access from the only two entrances is bound for trouble.

Page 53 of Premier's application "*a 10 foot wide pedestrian access path is proposed to be provided connecting NW Pinot Noir to NW Pinehurst through the approximately 0.85 acre private neighborhood park.*"

This park belongs in the 11.47 wetlands as part of the nature preserve. The blackberries serve as cover for coveys of California quail, rabbits, blackbirds, bluejays, etc. They help anchor the hillside. To try and manage this natural area as a groomed park invites nothing but headache. Cost and legal issues will plague the future HOA.

Please leave this park with the 11.47 acres as a natural preserve.

Permits and FEMA Maps

Citizen involvement:

Goal X 1: "*To provide opportunities for citizen involvement in the land use decision making process established by the City of McMinnville.*"

Goal X 2: "*To make every effort to engage and include a broad cross section of the community by maintaining an active and open citizen involvement program that is accessible to all members of the community and engages the community during development and implementation of land use policies and codes.*"

188.00 "*The City of McMinnville shall continue to provide opportunities for citizen involvement in all phases of the planning process. The opportunities will allow for review and comment by community residents and will be supplemented by the availability of information on planning requests and the provision of feedback mechanisms to evaluated decisions and keep citizens informed.*"

Findings: "*...the City of McMinnville has adopted a Neighborhood Meeting program that requires applicants of most types of land use application to hold at least one public Neighborhood Meeting prior to submittal of a land use application:*"

Part of the reason we find ourselves here is that while the Neighborhood Meeting was held, per code, citizens came away frustrated and angry because they felt the concerns raised weren't addressed. So a Big Thank You to all who have allowed us to raise our concerns and have them fairly heard, evaluated and acted upon.

What concerns us most is that the necessary State and Federal permits have not been applied for the last time we checked with Kinsey Friesen at Army Corps and Mike DeBlasi at DSL.

In a City of McMinnville Memorandum, [FOB Exhibit 10] from then Planning Director Doug Montgomery the City opinion was, "*Based upon this direction provided by DSL, it would seem that Premier Development LLC would be advised to first obtain concurrence from that agency as to their efforts in*"

minimizing impacts through a study of alternative designs....From my perspective, it seems premature for the County to take action on this request at this time, particularly given the DSL's stated position and the possibility that they might not approve subsequent actions necessary to permit this area's use for residential housing as intended by the applicant."

This opinion was in reference to the floodplain adjoining the wetlands currently under consideration. Les Toth's land. In speaking with Mike DeBlasi from DSL, he concurred that in the case of Premier's proposal, the applicant is wise to begin this process of development by first contacting the state before going to the expense of developing a plan and taking it to the city.

In the 2004 letter from the City to "Jeff & Lori", Premier Development, provision 18 states "That prior to construction of the proposed subdivision, the applicant shall secure all required state and federal permits, including, if applicable, those related to the federal Endangered Species act (if applicable), Federal Emergency Management Act, and those required by the Oregon Division of State Lands, and U.S. Army Corps of Engineers. Copies of the approved permits shall be submitted to the City."(FOB Exhibit 11)

The application states that Premier proposes an estimated five year plan to completion "As soon as permitting is issued." Jumping through the hoops at the state and federal level can require years according to Mike DeBlasi. We find this estimation of completion overly optimistic.

In Premier's attempt to develop the floodplain, now Les Toth's land, in 2004, the applicant was told "The City has written a memo objecting to the request, in part because they feel it is premature." (Staff Report Yamhill County Department of Planning and Development January 8, 2004, City of McMinnville Objections, highlighted, pages 6-7) FOB Exhibit 12

We feel the same is true this time.

Until such time as the appropriate state and federal permits have been actually attained *and* submitted to the City, and until the fate of the 11.47 acre wetlands has been updated by a current FEMA study, we ask the Planning Commission to not approve any of the development plans on the 11.47 acre Phase of this development.

Thank you for the time and attention you have given to our voice of concern.

EXHIBITS

City of McMinnville Memorandum, FOB Exhibit 11

Staff Report Yamhill County Department of Planning and Development January 8, 2004, City of McMinnville Objections) FOB Exhibit 12

YAMHILL COUNTY PLANNING COMMISSION MINUTES

Thursday, January 8, 2004 · 7:00 p.m.

Yamhill County Courthouse, Room 32

535 E 5th St.

McMinnville, Oregon 97128

FOB
Exhibit 3

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APR 10 2019

COMMUNITY DEVELOPMENT
CENTER

Roll Call: Gary Johnson, Robert Smiley, Sid Friedman, Marjorie Ehry, Daryl Garrettson, Brad Myers
(7:07) Absent: Alan Halstead, Bernie Diefenderfer, Dean Brown. Staff: Ken Friday.

Review of the **minutes** from the December 4, 2003 Planning Commission Hearing. Gary Johnson moved to approve the minutes as submitted. Seconded by Robert Smiley. Approved unanimously (1 abstention - Sid Friedman).

Vice-Chair Daryl Garrettson explained the procedure for tonight's hearing.

QUASI-JUDICIAL PUBLIC HEARING:

- DOCKET NO.:** FP-08-03
- REQUEST:** A flood plain development permit to allow fill dirt on approximately 3.2 acres in order to elevate the property out of the 100-year flood plain of Baker Creek.
- APPLICANT:** Premier Development LLC
- TAX LOT:** 4417-1202
- LOCATION:** Northwest of the northern end of Pinehurst Drive, McMinnville
- ZONE:** EF-80 Exclusive Farm Use and Floodplain Overlay
- CRITERIA:** Sections 402 and 901 of the Yamhill County Zoning Ordinance. Comprehensive Plan Section I.C. Goal 1 Policies j and k apply.

Abstentions, Objections of Jurisdiction, or Ex Parte Contact: Robert Smiley stated that he had been a McMinnville Planning Commissioner and he understood the difference between the County's and City's ordinances. He felt that this would not interfere with his ability to make a fair and unbiased decision.

Ken Friday read the "Raise it or waive it" statement into the record.

Staff Report: Ken Friday gave a brief review of the staff report. He noted that there was an error on the notice listing Roman numeral I instead of Roman numeral II under the Goals and Policies. This will be corrected on all future notices.

Proponents Case:

Norm Hill, 1114 12th St., Salem, OR: He explained the criteria for this application. (Brad Myers -7:07) The heart of this application is whether we are going to raise the base flood elevation by more than 1 foot. Our fill will not affect riparian concerns. **Questions:** Sid Friedman: Why does your client want to place fill in the flood plain? Norm: The ultimate goal would be for residential development.

Dan Kizer, Westech Engineering, 3841 Fairview Industrial Drive SE, St. 100, Salem, OR: Dan indicated on a map the area designated as fill in relationship to the floodway, floodway frindge, one hundred year floodplain and wetlands. **Questions:** Gary Johnson: When you move the mitigation, will there ever be

encroachment into the area? Dan: There will be a mitigation easement. Daryl Garrettson: What is the current vegetation in the fill area? Dan: Grass. Daryl: Approximately how high will the fill be? Dan: It would vary between 0 and 3-5 feet. Daryl: Is there a gradual incline from the 100 year line to the creek or is there a cliff? Dan: It varies across the property. Daryl: How much do you have to raise it to get it out of the floodplain? Dan: 0-1 foot. Discussion continued on the proposed fill.

Cynthia Lowe: Parsons Brinckerhoff, 400 SW 6th Ave., Suite 802, Portland, OR: The addressed criteria is a common condition of the FEMA National Flood Insurance Program. She explained "floodway" and "flood fringe." She has reviewed the cross sections on Baker Creek. We anticipate an 8" rise which is lower than the 1 foot requirement. Sid Friedman: You testified that FEMA is comfortable with the placement of fill in the portion of the floodplain that is outside the "floodway" and that it will not result in a rise of the base elevation a foot or more. Is that position specific on this section of Baker Creek or is it a general position of FEMA? Cynthia: It is in the Code of Federal Regulations and goes back to the definition of a "floodway" Sid: Are you testifying that FEMA allows placement of fill in the floodplain irrespective of its location as long as it's not in the floodway and that such fill will not result in an increase in elevation of the base flood of greater than 1 foot. Cynthia: As long as the fill is in the floodplain fringe and not in the floodway that is correct. Discussion continued regarding the floodway and the cross sections used in this study.

Norm Hill: We used the study that we are required to use, that is the available data and is appropriate for us to use.

Opponents:

Tom Tankersley: 701 NE Evans St., McMinnville: Mr. Tankersley represents the residents of Crestbrook neighborhood which is located just east of the proposed project. The applicant has been very candid about their proposed use of the property. The City of McMinnville has a long standing policy against fill or development in floodplains. They have uniformly resisted development in the floodplain. The City does not want to count the area in floodplain as areas of future development in their upcoming UGB amendment process. This property is zoned EF-80. If they want to fill for farm use, that would be fine. But that is not their intention. This fill is intended for a use that is prohibited in this zone. This fill is not for beneficial use for this zone. There is no evidence that this will not adversely effect the neighbors. This does not protect the riparian vegetation. Fill for a subdivision is an urban use and the MUAMC requires annexation first. The MUAMC agreement in effect must be used to coordinate development in the Urban Growth Boundary. The applicant has failed to show that the development conforms with the zone and has failed to show a beneficial use. The FEMA rule is a minimum rule and the City of McMinnville has chosen to do more. Questions: Daryl: Is there any evidence that filling this land makes it unsuitable for agriculture use? Tom: That is not our responsibility. The applicant should need to prove that it is for agriculture use.

Tim Roberts: 1069 NW Baker Crest Ct., McMinnville, OR 97128 (Daryl noted that Dr. Roberts is his dentist but it shouldn't affect his ability to make a fair decision.) In the past 10 years, the water has passed the 100 years floodplain 7 times and the 500 year floodplain once. Tim distributed photos taken during the 1996 flood indicating the extent of the flooding on the property. He also presented a video taken at that same time. He would encourage the Commission to deny the application. Questions: Daryl: Did the

wetlands create a second channel during flooding? Tim: Yes and there was quite a current. A second channel was formed one other time during a flood.

Les Toth, 2700 NW Pinehurst Drive, McMinnville, OR: When I built my house, I was told by the City of McMinnville that I could not change the contours of the property or build in the flood plain. We were also told that our view or the animals would never go away because no one could build in the flood plain. Questions: Norm Hill: Is your property in the City of McMinnville? Les: Yes.

Ron Stevenson, 1081 NW Baker Crest Ct., McMinnville, OR: The area has flooded the last 7 of 10 years. You shouldn't fill a known floodplain that could adversely affect neighboring property.

Randy Hartzell, 1093 NW Baker Creek Ct. McMinnville, OR: Mr. Hartzell submitted photos of property prior to development of the subdivision. He doesn't want a precedence set for future development. Questions: Sid: How tall is the fence? Randy: The fence is about 4 feet. It runs from the river to Pinehurst Dr. Norm Hill: Is there water in the creek during the summer? Randy: Yes.

Sidney Huwaldt, 2685 NW Pinehurst Dr., McMinnville: He built the fence and indicated on the map where the fence is located. Questions: Sid: Could you indicate on the map where the flooding occurred in 1996? Sidney: Almost the entire area between Pinehurst and Elks Park

Public Agency: Division of State Lands, County Sanitarian, County Public Works, City of McMinnville, and McMinnville Rural Fire Department.

Rebuttal: Norm Hill: The question tonight is will the proposed fill raise the flood level more than 1 foot. Yes, this area will flood. This is why we would like to fill it. You have to use the adopted FEMA maps and the testimony of a specialist. The future development of this property does not come into play in this application. Cynthia Lowe reiterated the cross-section and the determining factors. Robert Smiley: How many miles of waterway are monitored by FEMA? Cynthia: Thousands. Robert: What percentage of error is recognized? Cynthia: A few inches. Sid: The submitted material includes a map of the area to be filled superimposed on a subdivision map. How many lots are proposed in this subdivision in both phases in and outside the City of McMinnville? Norm: There is no proposed subdivision shown on this map. We have not put in an application for anything other than the floodplain fill. Marjorie Ehry: When was this property purchased by Premier Development? September of 2003.

Staff Recommendation: Our office has concerns regarding this application. We are concerned about the precedence it sets. And in no small way we are concerned about the comments submitted from the city and neighbors. However, the applicant is correct that this application is governed by our floodplain ordinance. The engineer, Cynthia Lowe, gave a very good explanation of the floodway and flood fringe. Her understanding of the floodway/floodplain is the same as ours. By definition a floodway is: *The channel of a river or other watercourse and the adjacent land areas that must remain unobstructed in order to discharge the base flood without cumulatively increasing the upstream water surface elevation more than one foot.* They have submitted evidence that placement of fill on both sides of the floodway would not raise the base flood elevation more than one foot. Because of this, we recommend approval with the conditions listed in the staff report and an addition of condition #4 which states: Fill material shall only consist of natural materials.

Question of Staff: Gary Johnson: Do we regulate the placement of fill in the EF-80 zone? Ken: No.

Deliberation:

Marjorie Ehry: She is opposed to application.

Sid Friedman: Does not feel the application meets the criteria in our code. Regarding Zoning Ordinance Section 907.07(F)(2), this fill does not have a beneficial purpose. The ultimate proposed use of the fill is not the fill itself but the proposed urban level subdivision. We can not accept that when code means development it means the fill itself, not the intended use of the fill. Other criteria not met would include 901.06(D). All applicable permits have not been obtained. Staff is using a condition to meet this requirement. Sid would like to include additional conditions to the conclusions for denial including reference to Section 907.07(F)(2).

Daryl Garrettson: The water has to go somewhere. We are told to follow the code that FEMA has approved. Calculations tell us that the fill will not raise the base flood more than an inch. **It appears that the FEMA map is inaccurate.** If we follow the code, this is not a permitted use in this zone. The applicant has failed to carry the burden of proof.

Robert Smiley: FEMA has a gigantic task of regulating waterways and must develop a model to give a general standard. **Sometimes, general standards do not become a reality.** The fill is not a beneficial use for the current zoning. I am not in favor of this application.

Brad Myers: He would vote to deny, he agrees with the other Commissioners.

Gary Johnson: He agrees with the other Commissioners.

MOTION: Sid Friedman moved for denial of Docket FP-08-03 based on the Conclusions for Denial with the additional that the application fails to comply with Sections 907.07(F)(2), Sec. 901.06(A), and Sec. 901.06(D) of the Yamhill County Zoning Ordinance. Robert Smiley second the motion. Approved unanimously.

DOCKET NO.: PAZ-02-03
REQUEST: Approval of a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agriculture Forestry Small Holding; a zone change from EF-20 Exclusive Farm Use to AF-10 Agriculture Forestry Small Holding; and an Exception to Goal 3.
APPLICANT: Matthew and Renee Powell
TAX LOT: 3301-100, 101 and 102
LOCATION: Approximately ½ of a mile south of the intersection of Bald Peak Road and Chehalem Drive, on the north side of Chehalem Drive.
CRITERIA: Sections 402, 501 and 1208.02 of the Yamhill County Zoning Ordinance. Section 904, Limited Use Overlay may also be applied. Comprehensive Plan policies may be applicable. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule.

Abstentions, Objections of Jurisdiction, Ex Parte Contact: none



1/8/04 Planning Comm. Hearing
 FP-08-03 - Submitted by:
 Norman Hill

PB Ports & Marine, Inc. 400 SW Sixth Avenue
 Suite 802
 Portland, OR 97204
 503-274-8772
 Fax: 503-274-1412

A Parsons Brinckerhoff
 Company

January 7, 2004

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APR 10 2019

COMMUNITY DEVELOPMENT
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Yamhill County Planning Commission
 C/o Mr. Ken Friday, Planning Department
 401 NE Evans Street
 McMinnville, OR 97128

Subject: Docket No. FP-08-03, Regarding a Floodplain Development Permit for Baker Creek by Premier Development LLC, Yamhill County Planning Commission Public Hearing, January 8, 2004

In response to the Staff Report by the Yamhill County Department of Planning and Development, I have reviewed the available floodplain information for Baker Creek and prepared a response to the concerns regarding the proposed development's impact on the 100-year flood elevations relative to the one foot rise standard.

Baker Creek Flood Insurance Study

The Federal Emergency Management Agency (FEMA) developed the National Flood Insurance Program (NFIP) for floodplain management and flood insurance purposes in the early 1970s. To implement the NFIP, FEMA prepares Flood Insurance Studies (FIS) for waterways across the United States, which provides communities with flood elevations and floodplain boundaries.

The NFIP has adopted the 100-year flood as the national standard for floodplain management. Yamhill County follows FEMA guidelines for controlling development in the floodplain, and the county has adopted ordinances which FEMA designed to reduce future flood losses. Yamhill County's floodplain management ordinances are contained within Section 901.00 – Floodplain Overlay District (FP) of the county's zoning ordinances.

The currently effective flood study for Baker Creek is contained in the FEMA FIS for Yamhill County, Oregon (Unincorporated Areas), dated March 30, 1983. The Floodway Flood Boundary and Floodway Map (Floodway Map) containing Baker Creek is Panel 302 of Yamhill County, Oregon (Unincorporated Areas), dated September 30, 1983, number 410249 0302. The proposed development is located south of Baker Creek between Sections L and M on the Floodway Map.

The Baker Creek FIS was based on hydraulic computer modeling prepared by the U.S. Army Corps of Engineers (USACE), Portland District in 1979. The FIS hydraulic computer model of Baker Creek was developed using HEC-2, a step-backwater computer model developed by the U.S. Army Corps of Engineers Hydraulic Engineering Center and adopted by FEMA. The FIS HEC-2 model represents the best available data on flood elevations for Baker Creek in the vicinity of the proposed development.



The FIS HEC-2 model provides estimates of the flood elevations along Baker Creek for the selected flood events, which includes the 100-year flood. For clarification, the 100-year flood is also termed the one percent flood as the 100-year flood has a one percent chance of being equaled or exceeded in any year. The model-predicted 100-year flood elevations vary across the site, ranging from 121.8 feet National Geodetic Vertical Datum 1929 (NGVD) at Section L to 123.3 feet NGVD at Section M.

Other flood events modeled in the Baker Creek FIS include the 10-, 50-, and 500-year floods, which have a ten, two and 0.2 percent chance, respectively, of occurring during any year. In addition, a floodway has been delineated for Baker Creek, which will be addressed in further detail later in this transmittal.

Floodway and Floodway Fringe

Recognizing the appeal of developing along waterways, FEMA developed the concept of a floodway as a floodplain management tool for communities. The floodway concept involves dividing the 100-year floodplain into two components: a floodway and a floodway fringe. The floodway represents the main channel of the waterway and any overbank area needed to convey the 100-year flood without causing an unacceptable increase to the 100-year flood elevations. The minimum Federal standard limits the allowable flood elevation increase to 1.0 foot above the 100-year flood elevation at any location along the waterway. Yamhill County incorporates the 1.0 foot acceptable increase in 100-year flood elevations in Section 901.06C of the county's zoning ordinances. As the floodway represents the waterway area that transports flow, Yamhill County and other communities participating in the NFIP prohibit dwellings within the floodway. In addition, the county places stringent restrictions on fill and other obstructions within the floodway through the enforcement of Section 901.09 of the county's zoning ordinances.

The floodway fringe represents the balance of the 100-year floodplain that does not lie within the floodway. The NFIP does allow fill to be placed within the floodway fringe, recognizing that the fill's impacts on flood elevations is managed through the floodway concept. Based on the definition of the floodway, the floodway fringe could be completely filled on both sides of a waterway and not increase the 100-year flood elevations by more than 1.0 foot at any location.

While the maximum allowable floodway rise is 1.0 foot, the FIS HEC-2 model output produces a floodway rise of 0.7 feet, or 8.4 inches, between Sections L and M along Baker Creek. As such, if all of the floodway fringe on both sides of Baker Creek received fill, the resulting floodway rise anticipated would be 8.4 inches. The model-predicted floodway velocities range from 3.9 feet per second (fps) at the downstream Section L to 2.4 fps at the upstream Section M. In addition, the floodway width is 80 feet between Sections L and M.

The proposed development is only proposing to fill sections of the floodway fringe south of Baker Creek between Sections L and M, and no fill is proposed for the north side of Baker Creek or the floodway. Since the proposed development would not fill all of the floodway fringe area, the anticipated floodway rise would be less than 8.4 inches. As such, the conditions of Yamhill County zoning ordinance Section 901.06C are fulfilled.

Downstream Impacts to Flood Elevations

Homeowners located downstream of the proposed development have raised concerns regarding the potential impact to flood elevations at their residences from the proposed fill. While the proposed fill has not been



Yamhill County Planning Department

- 3 -

January 7, 2004

incorporated into the FIS HEC-2 model, experience with HEC-2 indicates that proposed fills and structures impact the HEC-2 model flood elevations at the site of the proposed modification and extending upstream. The HEC-2 output would not indicate increases in flood elevations downstream of proposed fills or structures. Consequently, the HEC-2 output would likely indicate that properties along Baker Creek across from the proposed fill and upstream may experience an increase in 100-year flood elevations due to the proposed fill, but no impact to downstream flood elevations would be predicted by HEC-2.

Conclusions

As the proposed development involves the placement of fill within the floodway fringe only and not the floodway, the floodway rise associated with the proposed development should be less than 8.4 inches. In addition, the hydraulic model output would not indicate an increase in flood elevations at downstream properties due to the proposed fill.

Cynthia Lowe

Cynthia Lowe, P.E.

PB Ports & Marine

Parsons Brinckerhoff Quade & Douglas, Inc.

Cc: Premier Development LLC
Westech Engineering
Norman Hill

EXPIRES 31 DECEMBER 2018

Leland MacDonald & Assoc., LLC
 Land Surveyors
 3765 Riverside Drive
 McMinnville, OR 97128
 Phone: 472-7904
 Fax: 472-0367

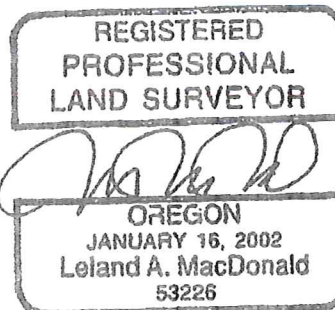


EXHIBIT "A"

7 May 2018

Description of Real Property for: Les & Kathleen Toth & The City of McMinnville: Easement description

An easement located in Section 17, Township 4 South, Range 4 West of the Willamette Meridian in Yamhill County, Oregon, being a portion of that tract of land described by Deed from Compton Family Limited Partnership to Compton Crest, LLC and recorded in Instrument No. 200408905, Yamhill County Deed and Mortgage Records, and being a portion of Parcel 1 of Yamhill County Partition Plat 2000-37, being 20 feet in width, lying 10 feet each side of the centerline thereof, said centerline being more particularly described as follows:

Commencing at an iron rod marking the northeast corner of Lot 26 of Compton Crest subdivision, said point being on the east line of said Parcel 1; thence North 00°07'08" West 315.00 feet along said east line to a point on the centerline of an existing sanitary sewer easement, said easement being 20 feet in width, lying 10 feet each side of centerline, recorded in Instrument No. 200503254, Deed Records of Yamhill County, Oregon; thence South 89°49'57" West 15.00 feet along said centerline to a point; thence South 64°36'04" West 243.01 feet to an angle point in said centerline and the POINT OF BEGINNING; thence South 58°21'07" West 172.52 feet to a point on an existing sanitary sewer easement, said easement being 20 feet in width, lying 10 feet each side of centerline, recorded in Partition Plat 2000-37, Survey Records of Yamhill County, Oregon, as shown on a map attached, hereto and made a part thereof, the sidelines of said easement to extend and shorten with the west margin of said Instrument No. 200503254 and with the North and South margin of said easement per Partition Plat 2000-37.

End of Description

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COMMUNITY DEVELOPMENT
 CENTER

From: Les & Kathleen Toth
To: The City of McMinnville

Location: Section 17 T. 4 S., R. 4 W., WM.,
 City of McMinnville
 Yamhill County, OR

Tax Lot: 4417 - 1202

Date: 4 May 2018

Scale: 1" = 60'

Exhibit "B"
Easement Map

LINE	BEARING	DISTANCE
L1	N 30°08'31" E	97.45'
L2	N 22°49'35" E	141.89'
L3	S 64°36'04" W	243.01'
L4	S 89°49'57" W	15.00'
L5	S 87°08'06" E	128.10'
L6	N 51°43'58" E	322.64'
L7	N 87°24'22" W	327.16'
L8	S 58°21'07" W	172.52'

By : Leland MacDonald & Assoc., LLC
 Formerly dba Matt Dunckel & Assoc.
 3765 Riverside Drive
 McMinnville, Oregon 97128
 Phone : 503-472-7904
 Fax: 503-472-0367
 Email: lee@macdonaldsurveying.com

**REGISTERED
 PROFESSIONAL
 LAND SURVEYOR**

(Signature)
OREGON
 January 16, 2002
LELAND A. MACDONALD
 53226

Expires 31 December 2018

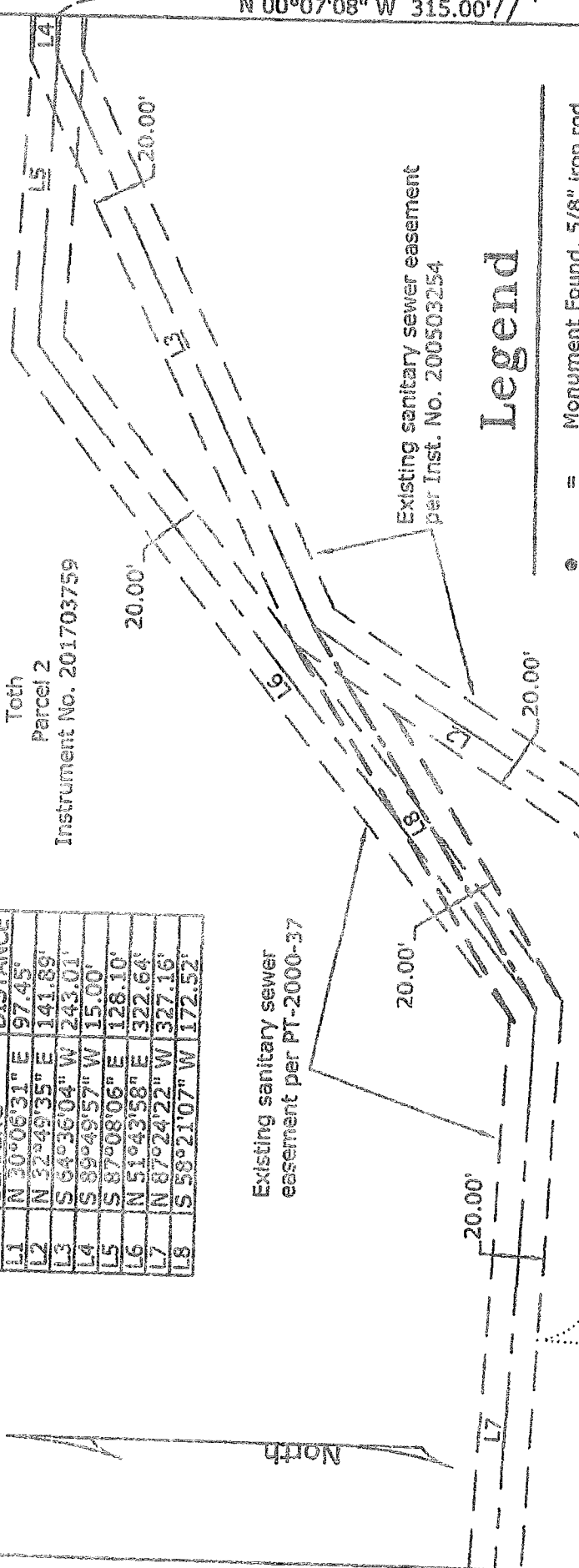
Tax Lot: 4417 - 1202

Toth

Parcel 2

Instrument No. 201703759

Parcel 1
 Tax Lot: 4417 - 1202
 Instrument No. 201703759



Legend

- = Monument Found, 5/8" iron rod with yellow plastic cap marked "Matt Dunckel & Assoc." set in the Compton Crest Subdivision.
- = Easement

Tax Lot:
 4417 - 1200
 Compton
 Parcel 2
 PT-2000-37

Northeast corner of Lot 26 of
 Compton Crest Subdivision

361.05' to centerline easement

N 89°51'28" W 514.75'

Merlot Drive

153.70'

Lot 29

Lot 28

Lot 27

Compton Crest Subdivision

Lot 26

#8639

'00.513 W 80.40.00 N
 Tax Lot: 4417 - 1202
 Toth
 Pinehurst Drive

2700 NW Pinehurst Dr.
McMinnville, OR 97128
(503) 472-2302



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COMMUNITY DEVELOPMENT
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March 20, 2019

To Whom it May Concern:

I have owned the property adjacent to the development where Premier Homes is planning to build a sub-division. My 15 acres is made up of flood plain and wetland areas. My property floods numerous times during the year when Baker Creek rises over the banks.

I have had multiple questions from concerned residents concerning rumors that Pinehurst Dr is going to extend through my property. I have not given an easement for a road to go across my property, nor do I intend to do so. I also have no interest in selling my property or any part of it.

If you have any questions please see my contact information above.

Sincerely,

Les Toth

.....

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COMMUNITY DEVELOPMENT
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January 29, 2018

Oregon Watershed Enhancement Board
Mid-Willamette West Small Grant Team
Attn: Marc Bell, Team Contact
580 Main St Suite A
Dallas, OR 97338

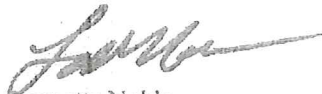
Dear Mid-Willamette West OWEB Small Grant Team,

The City of McMinnville Parks Maintenance Department would like to offer our enthusiastic support for the Greater Yamhill Watershed Council's (GYWC) application for the Ash Meadows Park Riparian Enhancement project through the Oregon Watershed Enhancement Board (OWEB) Small Grant Program.

This proposal will enable the City of McMinnville and the adjoining neighborhood to improve the health of Cozine Creek by controlling invasive weeds and planting a variety of native trees, shrubs, wildflowers, and groundcovers. Parks Maintenance has limited resources available to make improvements to our more than 90+ acres of Cozine Creek floodplain properties and easements, and relies on partnerships with homeowners, volunteers, and local conservation organizations such as the GYWC and Yamhill Soil & Water Conservation District (YSWCD) to make such projects a reality. Parks Maintenance and the homeowners adjacent to the Ash Meadows Park have already begun to remove blackberry bushes and other weeds in the Park, and to install a number of native plants. We are grateful for the opportunity to continue and expand upon these successes by requesting grant funding necessary to finish controlling invasive weeds and to install a variety of native plants that benefit water quality, wildlife, and pollinators.

We are in strong support of the GYWC's efforts to bring together the City of McMinnville and neighboring landowners to improve the health of Cozine Creek watershed and our reach along Ash Meadows Park. In support of this OWEB Small Grant proposal, we are happy to provide up to 10 hours of in-kind technical assistance (valued at \$35/hr and \$350 total) to provide general support for project design and implementation.

Thank you for your consideration.



Lannette Noble
Parks Maintenance
City of McMinnville, Public Works
1900 Riverside Drive
McMinnville, OR 97128

Lannette.Noble@mcminnvilleoregon.gov
(503) 434-7316

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APR 10 2019



DATE: December 8, 2003
 TO: Michael Brandt, Yamhill County Planning Director
 FROM: Doug Montgomery, McMinnville Planning Director
 SUBJECT: DOCKET NO. FP-08-03

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DEC 08 2003

YAMHILL COUNTY PLANNING

Regarding the above referenced land use application, the McMinnville Planning Department offers the following comments for your consideration:

1. The application appears premature.

The applicant states in their submitted material that: "There is no use proposed for the subject property at this time, other than to fill an area of property within the floodplain." It begs the question that, if there is no use proposed at this time, why should fill material be allowed within the floodplain?

Also within the applicant's submitted material is a letter from the Oregon Division of State Lands (DSL), dated December 13, 1999, which states:

"In evaluating a permit application [for working within a delineated wetland], our agency will first consider whether there is an analysis of alternatives that avoid or minimize wetland or waterway impacts. Please advise you client that state law establishes a preference for avoidance of wetland impacts."

Based upon this direction provided by DSL, it would seem that Premier Development LLC would be advised to first obtain concurrence from that agency as to their efforts in minimizing impacts through a study of alternative designs. Yamhill County should also defer recommending approval of this request until and unless such approvals are granted by the State. From my perspective, it seems premature for the County to take action on this request at this time, particularly given the DSL's stated position and the possibility that they might not approve subsequent actions necessary to permit this area's use for residential housing, as intended by the applicant.

2. Present zone does not permit intended use.

It is my understanding that Yamhill County's zoning ordinance requires that a floodplain development permit be obtained before the start of any construction or development within the FP Overlay District (Section 901.05 Floodplain Development Permit Application).¹ To gain approval of this permit, the applicant must demonstrate, in part, that the proposed development conforms with the use provisions, standards, and limitations of the underlying zoning district and other overlay district (Section 901.06, Floodplain Development Permit Criteria).¹

As detailed in the applicant's submitted material, the use intended to be proposed for this property is single-family residential housing. This is a use not permitted by the property's current zoning of EF-80.

Thank you for the opportunity to comment on this land use application. If you should have any questions regarding the City's recommendation, or wish to discuss this further, please call me at (503) 434-7311.

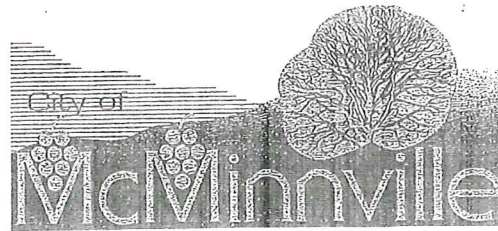
¹ The Yamhill County Zoning Ordinance defines the term "construction" as follows:

"The placement of construction materials in a permanent position and fastened in a permanent manner. Where excavation, demolition, or removal of an existing structure has substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be construction, provided that work shall be carried on diligently. Installation of a septic tank/drainfield shall be considered construction. [Added 8/23/89; Ord. 492]"

This same ordinance defines the term "use" as follows:

"The purpose for which land or a building or structure is used, designed, arranged or intended, or for which it is occupied or maintained."

Exhibit 3



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230 NE Second Street • McMinnville, Oregon 97128 www.ci.mcminnville.or.us

April 18, 2005

Premier Development LLC
1312 NE Highway 99W
McMinnville, OR 97128

RE: ZC 12-04/S14-04

Dear Jeff & Lori:

This is to advise you that, at a meeting of the McMinnville City Council on Tuesday, April 12, 2005, they took action to approve the attached ordinance and findings relative to your application for approval of a zone change from a County EF-80 (Exclusive Farm Use - 80 acre minimum) zone to a City R-2 PD (Single-Family Residential, Planned Development) zone on approximately 23 acres of land. The subject property is located north of Pinot Nair Drive and the Oak Ridge residential development and is more specifically described as a portion of Tax Lot 600, Section 7 and Tax Lot 200, Section 8, T. 4 S., R. 4 W., W.M.

As you may be aware, the Council took separate action on March 8, 2005, to approve your tentative subdivision plan for the same property. The conditions of approval for this subdivision are as follows:

1. That the subdivision approval does not take effect until and unless the companion zone change request is approved by the City Council.
2. That a detailed storm drainage plan, which incorporates the requirements of the City's Storm Drainage Master Plan must be submitted to, and approved by, the City Engineering Department. Any utility easements needed to comply with the approved plan must be reflected on the final plat. If the final storm drainage plan incorporates the use of backyard collection systems and easements, such must be private rather than public and private maintenance agreements must be approved by the City for them.
3. That a detailed sanitary sewage collection plan which incorporates the requirements of the City's Collection System Facilities Plan must be submitted to, and approved by, the City Engineering Department. Any utility easements needed to comply with the approved plan must be reflected on the final plat.
4. That the applicant secures from the Oregon Department of Environmental Quality (DEQ) applicable storm runoff and site development permits prior to construction of the required site improvements. Evidence of such permits shall be submitted to the City Engineer.

Community Development Department
Planning Department (503) 434-7311 FAX (503) 472-4104

5. That the developer enter into a construction permit agreement with the City Engineering Department for all public improvements and gain a fill and grading permit for lot fill and grading from the City Building Division.
6. That restrictive covenants shall be prepared for the development. At a minimum, the covenants shall address planting and maintenance of trees within the curbside planting strip, and requirements for tree removal, consistent with the planned development approved for this subdivision. The proposed covenants must meet with the approval of the Planning Director.
7. That the applicant plant street trees within curbside planting strips along all proposed streets in accordance with a street tree plan to be prepared by the applicant and submitted to the Landscape Review Committee for their review and approval. All street trees shall have a two-inch minimum caliper, exhibit size and growing characteristics appropriate for the particular planting strip, and be spaced as appropriate for the selected species and as may be required for the location of above-ground utility vaults, transformers, light poles, and hydrants. In addition, street trees shall not be planted within 30 feet of street intersections. All street trees shall be of good quality and shall conform to American Standard for Nursery Stock (ANSI Z60.1). The Planning Director reserves the right to reject any plant material that does not meet this standard.

Each year the applicant shall install street trees, from November 1 to March 1, adjacent to those properties on which a structure has been constructed and received final occupancy. This planting schedule shall continue until all platted lots have been planted with street trees. All required trees shall be installed by the applicant prior to final platting, or security equal to 120 percent of the cost of installing the required street trees shall be posted with the City. The amount and form of such security shall be as required by the Planning Director.

It shall be the applicant's responsibility to relocate trees as may be necessary to accommodate individual building plans. The applicant shall also be responsible for the maintenance of the street trees, and for the replacement of any trees that may die due to neglect or vandalism, for two years from the date of planting.

8. That all fill placed in the areas where building sites are expected shall be engineered and shall meet with the approval of the City Building Division and the City Engineering Department.
9. That prior to the submittal of the final plat, the names of all proposed streets shall be reviewed and approved by the Planning Director.
10. That 10-foot utility easements shall be provided along both sides of all public rights-of-way for the placement and maintenance of required utilities.
11. That cross sections for the entire street system shall be prepared which show utility location, street improvement elevation and grade, park strips, sidewalk location, and sidewalk elevation and grade.

12. Said cross sections shall be submitted to the Community Development Director for review and approval prior to submittal of the final plat. If the submitted information so indicates, the Planning Director may require the tentative subdivision plan be revised in order to provide for a more practical configuration of lots, utilities, and streets. All such submittals must comply with the requirements of 13A of the Land Division Ordinance and must meet with the approval of the City Engineer.
13. That all streets within the subdivision shall be improved with a 26-foot-wide paved section, curbside planting strips, and five-foot-wide sidewalks placed one foot from the property line within a 50-foot right-of-way, as required by the McMinnville Land Division Ordinance for local residential streets.
14. That the applicant extend water service to the subject site in accordance with McMinnville Water and Light requirements. Easements as may be required for the extension of water shall also be provided.
15. That approved, working fire hydrants must be installed prior to the issuance of building permits for the subject site.
16. That if the property owner wishes a one-year extension of the Commission approval of this tentative plan under the provisions of Section 16 of Ordinance No. 3702, a request for such extension must be filed in writing with the Planning Department a minimum of 30 days prior to the expiration date of this approval.
17. That a plan for the provision of secondary emergency access to the subject site shall be submitted to the McMinnville Fire Department for review and approval. At a minimum the required secondary emergency access must be constructed to include a 12-foot-wide paved travel lane with 20 feet of vertical clearance. All improvements required by this approved plan shall be constructed by the applicant prior to the filing of a final plat for the proposed subdivision.
18. That prior to construction of the proposed subdivision, the applicant shall secure all required state and federal permits, including, if applicable, those related to the federal Endangered Species Act (if applicable), Federal Emergency Management Act, and those required by the Oregon Division of State Lands, and U.S. Army Corps of Engineers. Copies of the approved permits shall be submitted to the City.
19. That barricades shall be installed by the applicant at the terminus of all public streets, consistent with City standards. The barricades shall include text stating: "This street is planned for extension in the future to serve proposed development."
20. That the submitted tentative plan shall be revised to include a public street extending south from "A" Street to serve future development of adjacent land. The street shall be centered approximately 225 feet east of the easterly right-of-way line of Pinehurst Drive so as to allow the future platting of lots some 100 feet in depth within the adjacent property to the south. In addition, the proposed cul-de-sac street ("C" Court) shall be redesigned as a through street connecting "B" Street and "A" Street. Adjustment of the submitted tentative plan is authorized as may be necessary to accommodate the provision of these streets.

21. That direct access to Lots 1-20, and 81-84 from Pinehurst Drive shall be prohibited. Access shall be provided by private joint access easements adjacent to and recorded on each lot. Such easements are required to be a minimum of 15 feet in width and otherwise dimensioned as proposed by the applicant (see Driveway and Easement Detail of the submitted Oak Ridge Meadows tentative plan).
22. That the applicant provide information to the City Engineer as to the design capacity of the existing downstream sanitary sewer pump station located in the Crestbrook subdivision, First Addition. If the information and studies provided by the applicant indicate that adequate capacity does not exist to support the proposed development of the Oak Ridge Meadows subdivision, then the applicant shall make improvements to the system as may be necessary and required by the City Engineer. Such improvements shall be at the expense of the applicant and shall be completed prior to release of the final plat.
23. That plat and construction phasing as described on the tentative plan is approved.
24. That the applicant provide to the Planning Department a mapped inventory of all trees greater than nine inches DBH (diameter at breast height) located within those areas of the subject site which may be impacted by the construction of streets, utilities, and future residences. This inventory shall be provided prior to construction of the proposed Oak Ridge Meadows subdivision.
25. That park fees shall be paid for each housing unit at the time of building permit application as required by McMinnville Ordinance 4282, as amended.

Please be advised that if no appeal is submitted to the Land Use Board of Appeals (LUBA) by May 9, 2005, the decision of the City Council as regards the subdivision and the zone change will become final.

If you have any questions or comments about this, please call me at (503) 434-7311.

Sincerely,

Doug Montgomery, AICP
Planning Director

DRM:pja
Encl.

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Jeff & Carol Mason, 2610 Riesling Way, McMinnville
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Emily Stater Duerfeldt, 1545 NW Cabernet Ct., McMinnville
Bart Ellinger, 2660 Pinehurst Drive, McMinnville
Paul Lunsford, 2737 NW Pinot Noir Drive, McMinnville
John Paul, 2731 NW Pinot Noir Drive, McMinnville
Lisa McKinney, 2684 NW Pinot Noir Drive, McMinnville
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STAFF REPORT
YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT

HEARING DATE: January 8, 2004

DOCKET NO.: FP-08-03 *Tax Lot 4417-1202*

REQUEST: A flood plain development permit to allow fill dirt on approximately 3.2 acres in order to elevate the property out of the 100-year flood plain of Baker Creek.

APPLICANT: Premier Development, LLC

TAX LOT: 4417-1202

LOCATION: Northwest of the northern end of Pinehurst Drive, McMinnville

ZONE: EF-80, Exclusive Farm Use and Floodplain Overlay as indicated on FEMA map Panel 410249 0308C.

REVIEW CRITERIA: Sections 402 and 901 of the Yamhill County Zoning Ordinance. Comprehensive Plan Section II.C. Goal 1 Policies j and k apply.

COMMENTS: *Oregon Department of Fish and Wildlife - No response to date.*
Division of State Lands (DSL) - As noted in the material provided for our review, regulated wetlands and waterways are present on the subject property. Impacts to these area will require an Oregon Removal/Fill permit from the Division of State Lands. A federal permit for wetland fill may also be required from the Army Corps of Engineers.
Yamhill County Sanitarian - We have reviewed the file and find no conflicts with our interests.
Yamhill County Public Works - We have reviewed the file and find no conflicts with our interests.
McMinnville RFD - Water supply for fire suppression purposes will be required as detailed in the Uniform Fire Code, Appendix III-A. Required fire hydrants, and/or alternate water source for rural areas, must be in working order prior to building construction as required in Uniform Fire Code, Section 901.3. Two separate access roads shall be provided into residential subdivisions in excess of 25 living units. (Single-family, apartment or combination of both). The access roads shall be constructed at opposite ends of the subdivision. Both access roads must be in working order prior to building construction and shall be constructed to City of McMinnville standards.
FEMA - No response to date.
City of McMinnville - See December 8, 2003 memorandum in opposition to the request from Doug Montgomery, McMinnville Planning Director.

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FINDINGS:

A. Background Facts

1. *Lot Size:* 27.38 acres. Approximately 14.8 acres is in Yamhill County. The remaining acreage to the south is in the city limits of McMinnville. The request is to place fill dirt in an area of approximately 3.2 acres of land in the County.
2. *Access:* Pinehurst Drive
3. *On-Site Land Use:* The parcel is an open field with riparian vegetation along the northern boundary close to Baker Creek.
4. *Surrounding Land Use and Zoning:* Surrounding parcels to the north are designated EF-80 Exclusive Farm Use. Land to the south, east and west is within the McMinnville city limits. Land to the south and east are zoned R-1 Low Density Residential. Land to the west is zoned R-2 Medium Density Residential.
5. *Previous Actions:* None on file. The City of McMinnville has record of a partition that created the existing property boundaries approved in August of 1999.
6. *Floodplain Issues:* Flood Insurance Rate Map (FIRM) No. 410249-0302C shows that approximately 5.3 acres is within the 100-year floodplain. Approximately 2.8 acres is identified as being within the 500-year floodplain. The floodway boundary is identified as being 40-90 feet in width along Baker Creek. None of the proposed fill dirt is proposed to be placed in the floodway. The base flood elevation at the subject parcel is 122 feet above sea level.
7. *Explanation of Request:* The applicant is proposing to bring in fill dirt to raise the property out of the 100-year floodplain. Based on the map provided with the request it appears that future application would be made to bring the property into the city limits of McMinnville and subdivide it into residential home-sites. However, this request is relatively narrow in scope as it will only evaluate the placement of fill dirt within the floodplain.
8. *Note:* As indicated in the comments submitted by the neighboring property owners there are significant objections to this request. The overriding concern is that the placement of fill dirt would raise the base flood elevation or alter the floodplain onto areas where it has not previously flooded. The reason for the requirement of a floodplain permit application for any development within the floodplain is to make sure that the base flood elevation will not rise more than one foot at any point. The result is that much of this application is determined by

whether the development can be engineered to assure that the base flood elevation will not rise by more than one foot at any point.

9. The May 1979 Natural Resource Conservation Plan contains a Fish Habitat map which shows that the portion of Baker Creek north of the subject parcel is identified as Fish Habitat. The map states that this portion of the creek is anadromous fish migration route and resident trout spawning and rearing.

B. Ordinance Provisions and Analysis

1. The National Flood Insurance Program (NFIP) is a voluntary program administered by the Federal Emergency Management Agency (FEMA) which provides a benefit to Yamhill County. A brief description of the program is found in FEMA's Program Description information which states in part: *"Participation in the NFIP is based on an agreement between communities and the Federal Government. If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, the Federal Government will make flood insurance available within the community as a financial protection against flood losses."* Therefore, proper enforcement of the floodplain ordinance is important so as not to jeopardize the flood insurance available to Yamhill County residents.
2. Floodplain vs. Floodway: The Yamhill County Zoning Ordinance contains the definition of each of these terms as follows:

FLOODPLAIN: The area adjoining a river, stream, or watercourse which may be subject to periodic inundation of floodwaters.

FLOODWAY: The channel of a river or other watercourse and the adjacent land areas that must remain unobstructed in order to discharge the base flood without cumulatively increasing the upstream water surface elevation more than one foot.

The difference in these two terms is important. The floodplain is the area which may have periodic flooding. The floodway is where flood waters come rushing through. Because the floodway transports floodwaters it must remain unobstructed. Any development within the floodway must be shown to have no increase in flood levels. The request is to place fill dirt in the floodplain. No fill dirt is proposed to be placed in the floodway.

3. Section 901.05 of the Yamhill County Zoning Ordinance (YCZO) states that a floodplain development permit shall be obtained before the start of any construction or development within the FP Overlay District.
4. Section 901.06 of the YCZO states that prior to issuance of a floodplain development permit, the applicant must demonstrate that:

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- (A) *The proposed development conforms with the use provisions, standards and limitations of the underlying zoning district and other overlay district.*
- (B) *The proposed development, if located within the floodway, satisfies the provisions of Subsection 901.09.*
- (C) *The proposed development will not increase the water surface elevation of the base flood more than one (1) foot at any point.*
- (D) *All applicable permits have been obtained from Federal, State or Local governmental agencies, and all applicable National Flood Insurance Program requirements have been satisfied.*
- (E) *The proposed development is consistent with policies j. and k. of the Comprehensive Plan, as amended by Ordinance 471.*
 - *These policies are:*

- j. *It is the policy of Yamhill County to protect riparian vegetation from damage that may result from land use applications for development that is otherwise permitted outright or conditionally under county zoning regulations. To achieve this goal, Yamhill County will review land use application for development in riparian areas in an effort to mitigate or prevent damage to riparian vegetation that might result from the development. For purposes of this policy, "riparian areas" refers to areas within 100 feet measured horizontally from the ordinary high water line of streams identified as "Fish Habitat" in the comprehensive plan inventory (National Resource Conservation Plan, Yamhill County, Oregon, May 1979 - USDA - Soil Conservation Service, that are not regulated under the Forest Practices Act.*

- k. *It is county policy that land use management practices and nonstructural solutions to problems of erosion and flooding are preferred to structural solutions. Water erosion control structures, including rip-rap and fill, should be reviewed by the appropriate state permitting authority to insure that they are necessary, are designed to incorporate vegetation where possible, and designed to minimize adverse impacts on water currents, erosion and accretion patterns.*

3. Regarding criterion (A) above, the placement of fill dirt is a permitted use in the EF-80 Exclusive Farm Use District.

4. Regarding criterion (B), as noted above and as indicated on the applicant's map, the project will not be in the floodway.

5. The applicant stated that the proposed fill dirt will not increase the base flood elevation one foot at any point. The reason given is that if the floodplain is filled on both sides of the floodway, this produces only a one foot rise in the base flood elevation. While this may be correct, the County has always required calculations from a registered professional engineer stating that the proposal will not raise the base flood elevation more than one foot at any point. This will be recommended as a condition of approval to make the request comply with criterion (C). Get PE.
6. Regarding criterion (D), the applicant must coordinate with the Division of State Lands and the Army Corp of Engineers for proper permitting regarding the placement of fill dirt within the wetland area. They have stated in their application that they are aware of these requirements and they do not yet have the required wetlands fill permits. They have requested that obtaining these be made a condition of approval. A condition requiring these permits to be obtained will be recommended.
7. Regarding criterion (E), *Comprehensive Plan policy (j)*, Baker Creek is significant fish habitat as shown on the 1979 Natural Resource Conservation Plan map. The placement of the fill appears to be just within the 100 foot distance of Baker Creek. However, the area to be filled is outside of the tree line that goes along Baker Creek. This application has been referred to the Oregon Department of Fish and Wildlife but to date they have not responded to the referral. When a floodplain permit is issued that will disturb a large area of soil, our office typically has the applicant work with representatives of the ODF&W to have the area replanted with grass or native vegetation to minimize erosion. This will be made a condition of approval on this request.
8. *Regarding Comprehensive Plan policy (k)*, the fill dirt is not intended as structural solution to erosion and flooding. No riprap or armoring of the bank is proposed so this policy does not apply.
9. Section 901.10 states that in areas where the base flood elevation has not been determined an application for a floodplain development permit shall be reviewed to ensure that the proposed development will be reasonably safe from flooding or resistant to flood damage. Since the flood elevation is a known factor, this subsection does not apply.

CITY OF McMinnville Objections:

The property is within the Urban Growth Boundary (UGB) of the City of McMinnville and therefore will someday be brought into the city limits. The City's code is more restrictive than the County's in relation to floodplain development. Apparently the City's code does not allow development within the flood hazard zone and would not allow the placement of the fill dirt within the floodplain. Therefore, the applicant is making the request for the placement of the fill while it is within the County's jurisdiction. Since the property is within the UGB, the request is referred to the City for their comments. The Urban Area Management Agreement describes how the jurisdictions are to cooperate on developments on the edge of the city. **The City has written a memo objecting to the request, in part because they feel it is**

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premature. Traditionally, the County has given the City's comments considerable weight since the property is planned to eventually go into their jurisdiction.

CONCLUSIONS FOR APPROVAL:

1. The request is for a floodplain development permit to allow the placement of fill dirt on 3.2 acres of property in the 100-year floodplain of Baker Creek.
2. With conditions, the request is consistent with the requirements of Section 901 of the YCZO.

CONCLUSIONS FOR DENIAL:

1. The applicant has not yet demonstrated that the placement of the fill will not increase the water surface elevation of a base flood by more than one foot at any point.
2. The property is within the Urban Growth Boundary of the City of McMinnville and therefore will someday be brought into the city limits. The City has voiced objections to this application. The City's objections should be given considerable weight since the property is planned to eventually go into their jurisdiction.

STAFF RECOMMENDATION:

A recommendation will be given at the hearing. At a minimum the Planning Commission should make any approval subject to the following conditions:

1. Prior to issuance of any development permits, the applicant shall submit a letter or calculations from a registered professional engineer stating that the proposal will not increase the surface water elevation of the base flood more than one foot at any point.
2. The applicant shall obtain the necessary permits from the Division of State Lands, U.S. Army Corp of Engineers and the Department of Environmental Quality prior to the placement of fill dirt. Copies of said permits, or evidence that these permits are not required, shall be submitted to the Planning Director prior to the placement of fill dirt.
3. Removal of existing riparian vegetation within 100 feet of the normal high water mark of the river shall be the minimum necessary to allow placement of the fill dirt. No trees within 50 feet of Baker Creek shall be removed. All disturbed areas shall be replanted with native vegetation upon completion of construction and all work will be consistent with Oregon Department of Fish and Wildlife policies for protection of the waterway habitat.