

RESOLUTION NO. 3296

A RESOLUTION AFFIRMING THE PLANNING COMMISSION'S DECISION TO GRANT TENTATIVE APPROVAL FOR PHASE I AND CONCEPTUAL APPROVAL OF PHASES II THROUGH IV OF THE MEADOWS AT OAK CREEK SUBDIVISION BY ADOPTING FINDINGS AND CONDITIONS ATTACHED AS EXHIBITS A THROUGH D.

WHEREAS, the Albany Planning Commission granted tentative approval on August 16 to Phase I of the Meadows at Oak Creek Subdivision based on original and supplemental findings prepared by staff; and

WHEREAS, the Albany City Council heard the case on appeal at a de novo hearing on September 22; and

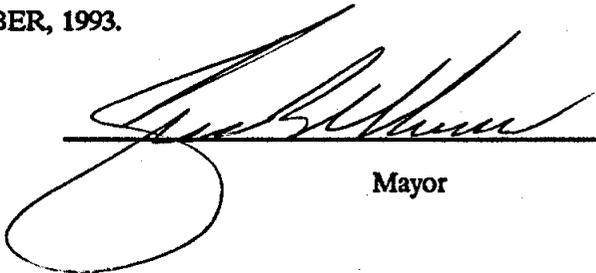
WHEREAS, following the public hearing, the Council made a tentative decision to affirm the Planning Commission's approval and directed the applicant to prepare additional findings for approval, and

WHEREAS, additional conditions of approval were also drafted by the applicant to supplement the conditions adopted by the Planning Commission.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the Planning Commission's decision to grant tentative approval to Phase I of the Meadows at Oak Creek be affirmed.

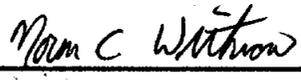
BE IT FURTHER RESOLVED that the City Council adopt the Additional Findings (Exhibit "A"); the Supplemental Planning Commission Findings (Exhibit "B"); the original Planning Commission Findings (Exhibit "C"), and the revised Conditions of Approval (Exhibit "D"). These exhibits are attached.

DATED THIS 13TH DAY OF OCTOBER, 1993.



Mayor

ATTEST:



Deputy City Recorder

EXHIBIT "A"

BEFORE THE ALBANY CITY COUNCIL

In the Matter of the Approval)	M1-09-93
of		
THE MEADOWS AT OAK CREEK.)	ADDITIONAL FINDINGS

I. Procedural

1. This matter came before the city council on appeal. The hearing was given proper notice. Ex parte contacts were declared and evidence was taken de novo. The records from the Planning Department files and the evidence and findings from the Planning Commission were admitted into evidence. There were no objections to jurisdiction, conflict of interest, or any procedural matter. New evidence was offered at the hearing, but no person requested a continuance, even though they were advised they may do so.

2. All factual and legal arguments, oral and in writing, have been heard and considered. The vote among the council members was unanimous with none abstaining. The Mayor was not present for the hearing and took no part in the decision.

3. The City interprets the approval criteria of its Code and Comprehensive Plan to have been met, under the authority for local governmental interpretation as granted by the Oregon Supreme Court. Where the evidence presented was conflicting we found that evidence which supports these findings to be more credible and weighty evidence.

4. This is a limited land use decision as the subject property is appropriately zoned and designated for residential development and no variances were sought. Under the Code, this is a I-L proceeding.

5. We hereby adopt by reference the findings of fact, conclusions of law, and approval condition's adopted by the Planning Commission in its order of approval of August 16, 1993, as supplemented and amended by these findings and conditions. These prior findings adopted by reference are the staff findings of July 19, 1993, consisting of 15 pages (as subsequently supplemented); Permit Requirement of 2 pages of July 19, 1993; and the Supplemental Findings and Conditions of Approval dated August 16, 1993 and consisting of 13 pages.

II. Developer Improvement Assurances.

6. An issue was raised regarding past financial difficulties of Mr. Dyer. The Applicant is Mayfield Development Corporation. Mr. Dyer is a minority shareholder in the Applicant company. The Code at §12.590 et. seq. sets forth the provisions for improvement assurances. The plat will contain a reference to the approval conditions and issuance of

permits is conditioned on satisfactory compliance with these conditions. We find that the public interest will be protected.

7. Appellants requested that a \$2 million bond be required of developer for 53rd Street improvements. We do not require the improvement of 53rd, other than the frontage improvement discussed elsewhere in the Planning Commission findings. The Code provides for a wide range of "guarantees" to insure compliance with the frontage improvement requirement, as discussed above. Therefore, we find there is no reason to require developer to post a \$2 million bond.

8. We find the case of Yale Dean Canyon Homeowners Association v. Dean, 100 Or App 158 (1990), cited by Appellants, to be irrelevant to our decision in approving the subdivision.

9. Compliance with Code development standards is assured as permits are issued.

10. The development code specifically provides for phasing of improvements as the demand is generated. The phasing of improvements is reasonable as this subdivision will be developed in phases.

III. Traffic Signal at Highway 99 and 53rd

11. §12.260 of the Code states:

"Traffic Signals. Where a single development or concurrent group of developments will create a need for a traffic signal at an intersection, such installation may be a condition of development approval."

12. The warrant study supplied by Mr. Lancaster, P.E., dated August 13, 1993, concluded that under accepted traffic engineering standards used by ODOT, a signal is not warranted at this time. Earlier findings address the requirements of a traffic study and the future signalization of this intersection.

IV. 53rd Avenue Improvements

13. As discussed elsewhere, there are sidewalks, curbs, gutters and roadway improvements on the 53rd Avenue frontage required under §12.200 of the Code.

14. One of the issues on appeal was the provision of walkways over the two bridges. Applicant's engineer testified to their ability to span each of the bridge areas with pre-stressed concrete structures. The walkway will adjoin the north side of each of the bridges and be separated from the existing travel lanes. The Appellants stipulated that this issue of their appeal was thus rendered moot.

15. The first issue raised in the notice of appeal was the Appellants demand to be "exempted" from any future assessment district relating to 53rd Avenue improvements. We find this issue to be premature. No local improvement district is proposed at this time. State law sets forth the procedures to be followed if and when an LID is proposed. In such event the greater the number of benefitted properties the greater the cost-sharing and thus the burden on any one owner is significantly reduced.

16. We find it is not the Applicant's responsibility to make improvements to 53rd Avenue, as any "defects" alleged by Appellants were not the result of the proposed development, Code §12.040. 53rd Avenue is suitable for access to and from the development, off-site width is sufficient, and road construction is to code for this type of collector street.

17. One opponent objected to the subdivision because 53rd Avenue was the only access route. There are other subdivisions in the city served by one access route. The Fire Chief testified that in the event of a vehicle accident and a simultaneous medical or fire emergency, that his department would move the disabled vehicle and proceed with the rescue. We also note that most modern subdivisions are designed to discourage through traffic and often utilize single access cul' de sacs. We find that the transportation system to, from and within the development is adequate.

V. Emergency Rescue and Fire.

18. As discussed in earlier findings, part of 53rd Avenue east of the development area is below the 100 year flood elevation of Oak Creek. However, the Fire Chief testified that in the past 20 years there have been two "floods," but there has not been a time when the fire department could not have got access to the site. The evidence from the Linn County Road Department, who had the prior jurisdiction over 53rd Avenue, was that "no flooding has occurred on 53rd Avenue since the construction of the existing bridges and the raising of the roadway in the summer of 1977."

19. The fire chief also testified that in the past 19 years there were possibly only three emergency ambulance calls to the residents of 53rd Avenue.

20. Based on the expert testimony we believe the likelihood of a flood which would make emergency access impossible and a fire or medical emergency occurring at the same time is relatively low. Nevertheless, the Applicant has agreed to pay up to \$28,500, under terms which are agreed to, for the purchase of a Multi-Purpose Rescue Vehicle for the City of Albany. The fire chief testified that the MPRV could be acquired for that sum, that it is a hovercraft design so it could cross water and land, and that the addition of this versatile emergency vehicle cures any public safety concerns. The MPRV will be available to assist other subdivisions in Albany, where access would be impeded during a 100 year flood, as well. Since a flood does not happen instantaneously, in the event of a pending flood a foam spray fire vehicle could be placed west of the 100 year flood plain and access across Oak Creek for emergency rescue or transportation of fire fighters would be through

the MPRV. We find that adequate provision has been made for the protection of the public health, safety and welfare.

VI. General.

21. There was testimony from an uninterested proponent that the city needs building sites as we are short of lots and housing.

22. There was testimony from an opponent that there could "possibly" be indian historical agricultural sites in the area. No evidence was introduced that there are any historic or archaeological significant sites on the subject property. Staff stated that this issue has never come up over the past 15 years as to this property and there is no indication that there are any artifacts there. We find we need not address this any further.

23. Utilities will be extended through the subject property to provide for development of adjoining lands in accordance with the Code.

24. The new city water line will be available for hook up for property in the city limits. However, no annexations are proposed or required by approval of this subdivision.

25. An issue was raised regarding schools. Provision of school facilities by the Applicant is not a criteria for land use approval.

CITY OF ALBANY

By: _____



**SUPPLEMENTAL FINDINGS AND CONDITIONS OF APPROVAL
THE MEADOWS AT OAK CREEK**

MI-09-93
August 16, 1993

BACKGROUND INFORMATION

On July 19, 1993 the Albany Planning Commission held a public hearing on the proposed Meadows at Oak Creek Subdivision on 53rd Avenue SW. The subdivision request was for tentative plat approval of Phase I and conceptual approval of Phases II through IV.

The Planning Commission received oral testimony and closed the public hearing. The record was left open until July 28 for the applicant's written rebuttal and any additional written testimony from affected parties.

The staff report for the July 19 hearing contains findings, conclusions, and conditions of approval for this case based on the subdivision review criteria in the Albany Development Code. These supplemental findings are intended to supplement those in the July 19 staff report. In some cases the original proposed conditions of approval are proposed to be amended as shown in the "Conditions of Approval" found at the end of this document.

The information contained in this document responds to issues raised at the July 19 hearing and to subsequent written testimony on the case. The analysis is organized under the headings "transportation," "public utilities and facilities," and "special features."

TRANSPORTATION (CRITERIA 3)

Summary of Issues Raised by Affected Parties

A. 53rd Avenue: Access in High Water

1. Residents of 53rd Avenue submitted an article from the Albany Democrat-Herald dated March 26, 1981. The article describes the access issue that had faced several potential developers of the same 45-acre site under consideration in this 1993 subdivision proposal. This issue is that a portion of 53rd Avenue between the two bridges over Oak Creek is below the 100-year flood elevation. The article states that a long-standing city policy prevents further development until the street is raised at least three feet. There was testimony at the March 25, 1981 Council meeting to suggest that the Corps of Engineers had recently raised the 100-year elevations along Oak Creek. At the Council meeting the City Manager read a letter from GRAMCO Development Company of Portland, a potential buyer and developer. The feasibility study prepared for GRAMCO by David Evans and Associates recommended a new bridge span across the Oak Creek floodplain at an estimated cost of \$744,250 as the ultimate solution. GRAMCO described this expense as "prohibitive."
2. There was testimony at the Planning Commission public hearing relative to their being access only by boat during the 1964 flood and written testimony that water flows over the road during periods of heavy rain.
3. There was a question raised in the written testimony as to what a new bridge span would cost and who would be expected to pay.

B. 53rd Avenue\Pacific Boulevard Traffic Signal

1. There was testimony at the public hearing on current safety issues associated with the 53rd/Pacific intersection and a fear that those problems would be exacerbated by the new subdivision. The current issues include the speed limit on Pacific Boulevard (55 mph); the fog that sometimes blankets this area; the fact that Pacific Boulevard traffic approaches the intersection either from a dip or around a curve.
2. There was written testimony concerning the difficulty of getting onto Pacific from 53rd now when Linn Benton Community College is in session. Currently there are about 18 houses on 53rd; the proposed plat contains a total of 205 lots.
3. There was written testimony suggesting that a development of 205 houses should have two access streets.

C. Condition of 53rd Avenue

1. There was testimony at the public hearing questioning whether 53rd Avenue could hold up under the heavy construction equipment that would be involved in the construction of the infrastructure and the houses.
2. There was written testimony suggesting that "there is no base or black top. It is all rock and oil."

D. Pedestrian Access along 53rd Avenue

1. There was a question raised at the Planning Commission hearing on when the city will put in curbs and sidewalks from the subdivision site out to Pacific Boulevard and whether existing residents will have to share in the expense.
2. There was written testimony on the unsafe pedestrian access that currently exists. There are no sidewalks and the narrow shoulders are unsafe for walking.
3. The Greater Albany Public Schools (GAPS) requested in a letter that a sidewalk be put in to allow students to walk to their school bus stop on Pacific Boulevard.

TRANSPORTATION (CRITERIA 3)

Supplemental Findings of Fact

A. 53rd Avenue: Access in High Water

1. There is no official city policy requiring that a new bridge span be constructed prior to the development of this subdivision. There is no Comprehensive Plan policy stating that all homes in Albany be accessible, even in times of the 100-year flood. There is a requirement in the Albany Development Code that no new street have an elevation lower than one foot below the 100-year elevation. In this case that number would be 211 feet; however, 53rd Avenue is not a new street. The proposed streets in the subdivision are all above the 100-year elevation.

2. The City has a Comprehensive Plan Policy directing the review body to "evaluate the adequacy of transportation to, from, and within the site as part of the development review process."
3. The Corps of Engineers prepared a new flood study for Albany in 1980-1981. Floodplain maps on file in the Planning Division indicate that the 100-year elevation remained at slightly above 212 feet in the area between the two bridges over Oak Creek.
4. The elevation of 53rd Avenue at its lowest point between the bridge is 207.65 feet, according to survey work done by K&D Engineering on June 8, 1993. This elevation was taken from a state benchmark at Pacific Boulevard. According to information provided by the Linn County Road Department (and contained in the original findings of fact), the elevation at the east bridge averaged 209.5 feet and ranged from 209.5 to 209.9 at the west bridge.
5. According to information provided in the applicant's rebuttal and confirmed by planning staff in a conversation with Linn County, the county completed some major improvements to the road in 1977. The culverts were removed; the western bridge was constructed at an elevation two feet higher than the original grade of the road.
6. In his rebuttal testimony, the applicant acknowledges that flooding was frequently a problem prior to the 1977 improvements. He states that since that time "there has been high water with a couple of instances of water on the road, but access has always been possible."
7. In order to call attention to potential access problems to prospective buyers, the City is proposing a condition of approval (C-5-A) that will require wording on the subdivision plat and on individual deeds alerting buyers and lenders to this issue.
8. The City is proposing a condition of approval (C-3-D) that will bind every lot in the proposed subdivision to participate in an assessment district for the needed bridge improvements on 53rd Avenue to deal with the access issue during periods of flooding.
9. When the local improvement district is formed to construct the needed 53rd Avenue bridge improvements, the Albany City Council will determine which properties "specifically benefit" from the improvement. The assessment district will include the lots in this subdivision and any other lots later created west of the bridges. It may include existing properties west of the bridges. The city will explore any possible "outside" funding sources.

B. 53rd Avenue/Pacific Boulevard Traffic Signal

1. The City agrees that a traffic study is needed to address the issues mentioned by neighborhood residents and the concerns expressed by the Oregon Department of Transportation in their letter of June 29, 1993.
2. The applicant has authorized that a traffic signal warrant analysis be prepared by a registered traffic engineer and be completed during the week of August 9-13, 1993.
3. The City is proposing new and revised conditions of approval relating to the timing of the traffic study and the method of payment for the traffic signal (Conditions C-3-A and C-3-H).

C. Condition of 53rd Avenue

1. In his rebuttal testimony, the applicant indicated that the Linn County Road Master said that the road was brought up to county standards and accepted for maintenance in 1977. At that

time, a 12-inch rock base and oil mat road was constructed. In 1989, the surface received a double treatment of chip seal.

2. In his rebuttal testimony, the applicant proposed a condition of approval that would make any damage to 53rd Avenue caused as a direct result of subdivision construction activity to be the responsibility of the developer.
3. The city is proposing a new condition of approval relative to construction damage (C-3-I) and a revision to condition C-3-B relative to the extent of the applicant's required street improvement.

D. Pedestrian Access along 53rd Avenue

1. City agrees with the testimony of the neighborhood that existing pedestrian access to the 53rd Avenue is substandard and unsafe.
2. The City is proposing a new condition of approval (C-3-J) requiring the developer of this subdivision to make interim shoulder improvements on the right-of-way along the north side of 53rd Avenue east to Pacific Boulevard.
3. A local improvement district may sometime be formed to address needed sidewalk/curb/gutter improvements needed along 53rd Avenue. The Albany City Council will determine which properties specifically benefit from the improvements. New development along 53rd Avenue west of the bridges will be required to make these improvements along their frontage at the time of development. Past practice has been to assess those properties adjacent to the improvements. At the time the planning approvals were granted for Day's Metal Fab (on the north side of 53rd Avenue near Pacific Boulevard), this company was required to sign a petition for improvements/waiver of remonstrance agreement for street/sidewalk/drainage improvements.

PUBLIC UTILITIES AND FACILITIES (CRITERIA 4)

Summary of Issues Raised by Affected Parties

1. How will storm water be handled? If it is proposed to go to Oak Creek, does the creek have the capacity to handle the additional and faster runoff.
2. Why is the water line being proposed to be along the south side of 53rd rather than the north side? Would its being on the south side have implications for existing residents along the line relative to paying a water bill or being annexed into the city?
3. Where would power supply come from to serve the subdivision?
4. Will this development contribute to overcrowding of area schools? What about a schools system development charge to help pay for school improvements needed because of new development?
5. No park areas are planned to meet children's needs.

PUBLIC FACILITIES UTILITIES (CRITERIA 4)

Supplemental Findings of Fact

1. Based upon their analysis of the storm water runoff differential between existing and proposed uses, the project engineers have told planning staff that the Oak Creek Basin has the capacity to accommodate runoff from the proposed project.

The City's Drainage Master Plan shows this property in the south fork of the Oak Creek Basin. According to Section 5.2.2 of the Plan, "the major area of drainage complaints is located at the confluence of the west fork and middle fork of Oak Creek, just south of 53rd Avenue." The proposed subdivision is located downstream on the north side of 53rd Avenue.

The City is proposing a revision to Condition of Approval C-4-C to clarify what is required in the storm drainage plan.

2. City engineering staff recommends that the new water line be placed along the south side of 53rd Avenue. The primary reason is that the north right-of-way already contains the sewer and gas lines. The subdivision can be served through a crossing under 53rd Avenue.

The water line's being on the south side of 53rd would not mean that existing residents adjacent to the line would have to connect to the water, pay a water bill or annex into the city.

Annexation would be required if any existing residences or proposed development adjacent to the line desired to connect to the water line. The connection would be less costly because the line is already on that side of the street.

3. According to the conversation between Pacific Power and planning staff, the existing power line on the south side of 53rd Avenue is adequate to serve the proposed subdivision. The power company may have to replace an existing pole. Power would then be extended underground across 53rd Avenue and throughout the subdivision.

4. The letter submitted by the superintendent of the Greater Albany Public School District 8-J indicates that both Liberty and Tangent Elementary Schools are overcrowded and that McFarland Elementary School would be expensive to reopen. Both a neighborhood resident and the superintendent suggest an impact fee to help the school system with costs associated with new development. Current Oregon state law (ORS 223.297 through 223.314) allows local government to impose system development charges (SDCs) for the following capital improvements: water, wastewater, drainage and flood control; transportation, and parks and recreation. Local government currently does not have the authority to impose an SDC (or impact fee) for schools. This is not the case in some other states (such as California) and may not always be the case in Oregon, particularly in light of Measure 5.

There is no review criteria in the Development Code relating to the adequacy of school facilities.

5. The subdivision is located within a half mile of Teloh-Calapooia neighborhood park to the south. There is no existing designated pedestrian access.

SPECIAL FEATURES OF THE SITE (CRITERIA 5)

Summary of Issues Raised by Affected Parties

1. Storm drainage issues are addressed under Criteria 4: "Public Facilities and Utilities"

2. Will wetlands be inventoried and protected?
3. How will development impact the variety of fish and wildlife which currently inhabit the south fork of Oak Creek? They include Teal, Woodducks, Mergansers, Canadian Geese, Beaver, Western Pond Turtle, and Red-Legged Frog.

Supplemental Findings of Fact

1. Supplemental findings on storm water management can be found under Criteria 4: "Public Facilities and Utilities."
2. The original staff report contains findings and proposed conditions of approval addressing wetlands issues.
3. A condition of approval (C-5-G) has been added which prohibits development in the "Nature Area" without Planning Commission approval. The tentative plat will be modified to remove the proposed pedestrian paths and bridges.

According to the project engineers

- The developer is willing to install oil separators in catch basins.
- Storm water will be handled in a way designed not to impact the wildlife habitat by putting excessive water into the south fork of Oak Creek (also called the Calapooia River Split Flow).
- At more than six acres, the natural area is of sufficient size to remain viable when impacted by low density residential development on one side.

RURAL CHARACTER

There is an issue that does not relate to the City's subdivision review criteria. However, there was testimony about it that we believe deserves a response.

Opinions Expressed by Affected Parties

1. The lots are much smaller than existing parcels along 53rd Avenue...
The area should be preserved as farmland...
"There are infertile fields all over Albany which would be suitable for building sides."
2. Owning horses in the city shouldn't become a problem.
3. Existing residents have farm animals which may be threatened by neighborhood dogs.

Staff Response to Rural Character Issues

1. The area where the proposed subdivision is located is within the urban growth boundary, city limits, and existing service area for sanitary sewer. The zoning is RS-6.5, a low density single family zoning

district that allows single family development on a minimum lot size of 6,500 square feet and duplex on corner lots of at least 8,000 square feet.

The policy choice was made during the late 1970s that this land is appropriate for urban development. It does today have a rural/agricultural development pattern and feel. It also represents one of the few areas in Linn County Albany that offers a real opportunity to meet a pressing demand for housing sites. Development during the past 15 years has brought us to a point where there are very few residentially zoned large parcels or even infill lots available.

Protection of prime farmland is a hallmark of the statewide planning program. Farmland is to be protected outside urban growth boundaries; urban development is to be accommodated within UGBs.

2. The City allows horses, cows, sheep and goats within the city limits if there is one-half acre of open yard area provided for the first animal with one acre for each additional animal over the age of six months (AMC 6.10.010).
3. Dogs within the city are limited in number by property (AMC 6.04.015). It is unlawful for a dog to run at large or be permitted to run at large (AMC 6.04.020).

**ORIGINAL PLANNING COMMISSION FINDINGS
THE MEADOWS AT OAK CREEK
M1-09-93**

EXHIBIT "C"

The approval standards relevant to the review of this application are found in the Albany Development Code and the Albany Comprehensive Plan. Section 11.180 of the Development Code lists the five review criteria which must be met for a tentative subdivision plat to be approved. Incorporated within the analysis of each review criteria are relevant Comprehensive Plan policies.

[CODE CRITERIA WILL BE WRITTEN IN BOLD PRINT FOLLOWED BY PROPOSED FINDINGS]

- 11.180 (1) *Development of any remainder of property under the same ownership can be accomplished in accordance with this Code.***

Findings of Fact

- 1-A. The tentative subdivision plat shows the proposed development of the entire property owned by Mayfield Development Corporation.
- 1-B. The proposed lots in the remaining phases of this subdivision are at or less than twice the minimum lot size for the RS-6.5 zoning district, resulting in compact urban development.

- 11.180 (2) *Adjoining land can be developed or is provided access that will allow its development in accordance with this Code.***

Findings of Fact

- 2-A. The subject property is bounded on the east, north and west by Tax Lot 400 (Assessor's Map 11-4W-24). Tax Lot 400 is owned by Schrock Farms, Inc.
- 2-B. Tax Lot 400 has a residential zoning of RS 6.5. A portion of this property is located in the floodway of Oak Creek. The remainder of the property is presently vacant, but will ultimately be developed for residential purposes.
- 2-C. The preliminary plat for "The Meadows at Oak Creek" has been designed to provide street and utility access to the developable portions of Tax Lot 400 on the north and west boundaries.
- 2-D. The proposed utility plan calls for the internal storm drainage infrastructure for "The Meadows at Oak Creek" to be engineered to extend to the west boundary at the end of Black Bear Avenue and pick up the drainage from the existing ditch west of the development. This line will be designed for the ultimate upstream drainage basin, according to findings submitted by K & D Engineering on July 7.
- 2-E. According to K & D's July 7 findings, the internal sanitary sewer infrastructure along Elk Run Drive will be designed at necessary grade to provide for future service to the property to the north.
- 2-F. Seven foot wide easements for franchised utilities are shown on the utility plan along all rights-of-way to assure linkage to the adjoining property.

- 2-G. In a letter dated July 9, Vernon Schrock, whose property surrounds the proposed subdivision, requested that the City require the developer to install a minimum 5 foot fence along the north and west property lines to minimize conflict with farming practices.

11.180 (3) *The proposed street plan affords the best economic, safe, and efficient circulation of traffic possible under the circumstances.*

The following Comprehensive Plan Transportation policies have been identified as relevant to this review criteria:

1. Review development and transportation plans to determine the most efficient, safe, and least disruptive relationship between land uses and the transportation system.
2. As part of the development review process, evaluate the adequacy of transportation to, from, and within the site.
3. Require adequate pedestrian and bicycle ways in conjunction with all new street projects and provide sidewalks along all City streets (proposed and existing) that are used for direct access to area schools.
4. Review access to state highways subject to the regulations of the Oregon Department of Transportation and the City of Albany. Where regulations of the city and state conflict, the more restrictive requirements shall apply.

Findings of Fact

Internal Streets (3-A through 3-D)

- 3-A. The internal street plan proposes a curvilinear street pattern that provides direct public access to all lots. The layout utilizes cul-de-sacs to serve groupings of lots. Four of the proposed six cul-de-sacs have no form of egress other than the ingress.
- 3-B. Elk Run Drive, Black Bear Avenue and Deer Run Street are proposed as "neighborhood collector" streets. Elk Run Drive and Black Bear Avenue will allow connection to the adjoining lands for future development. The "neighborhood collector" streets are shown as 36 foot wide improvements with 5 foot wide sidewalks on both sides of the street located within a 50 foot wide right-of-way.
- 3-C. All other internal streets in the development will be classified as "local streets." These streets will be 28 foot wide improvements with 4 foot wide sidewalks on both sides of the street located within a 40 foot wide right-of-way. Parking will be allowed on one side of the street.
- 3-D. The proposed internal streets are in conformance with the development standards (ADC) and/or the engineering requirements of the City of Albany Engineering Department, with the following exceptions:
- Antelope Circle and Elk Run Drive are both more than 1,000 feet in length. ADC 11.090(5) requires that a pedestrian way be provided on blocks in excess of 800'.
 - ADC 11.090(6) limits the number of lots accessing a cul-de-sac bulb to 5 unless an additional off-street parking space is provided. Elk Court (Phase II) has 6 lots on the bulb.
 - ADC 10.120 requires dead-end streets to be a maximum of 400' in length. Deer Court (Phase III) is in excess of 400' where measured from Deer Run Street.

53rd Avenue (3-E through 3-H)

- 3-E. The plan calls for 53rd Avenue to be widened and improved to "neighborhood collector" city standards. A partial street improvement will be constructed from the west end of the western bridge over Oak Creek to the west boundary of the development.
- 3-F. City Resolution No. 2814 requires a 7' curblin sidewalk along collector streets of a 5' sidewalk if separated from the curb by a 5' landscaped planter strip. The tentative plat does not show a striped bike lane adjacent to the property.
- 3-G. The plat shows no direct access to 53rd Avenue. A one foot reserve strip will be dedicated to the City of Albany.
- 3-H. Improvements may later be needed to 53rd Avenue due to the impact of this and other potential development. The improvements may include reconstruction of the two bridges at Oak Creek.

State Highway 99E [Pacific Boulevard] (3-I through 3M)

- 3-I. Project related traffic will be directed to Pacific Boulevard (99E), which is designated as a "district highway" by the Oregon Highway Plan. The primary function of highways in this level is to serve local traffic and land access.
- 3-J. Using the Institute of Traffic Engineers (ITE) accepted single-family trip generation rate of 10 trips/dwelling unit, Phase I of this subdivision will result in 920 average daily trips directed to the state highway.
- 3-K. The Oregon Department of Transportation (ODOT) expressed concerns (in a letter dated June 29, 1993) about the long-term cumulative traffic impacts of this subdivision, other potential residential development along 53rd Avenue, and a parcel zoned for commercial use on the southeast corner of Pacific Boulevard/53rd Avenue.
- 3-L. ODOT has indicated that the addition of traffic generated by the entire subdivision (205 units) may warrant a traffic signal at 53rd Avenue.
- 3-M. ODOT has indicated that future development in the area and the installation of a traffic signal may result in inadequate intersection spacing and affect existing access to the state highway from streets and driveways in the vicinity.

11.180 (4) *The location and design allows development to be conveniently served by various public utilities.*

The following Comprehensive Plan public utility and facility policies have been identified as relevant to this review criteria:

1. Protect existing drainage systems and easements, allowing modification to existing open drainageways upon approval and in conformance with other Comprehensive Plan policies.
2. Storm drain facilities in developing areas should be designed with the capacity to accommodate the projected storm drainage flows to at least the end of the planning period based on the land use designations.
3. Review and regulate development proposals to ensure adequate wastewater service improvements will be provided to the development and to future developments and ensure

that adequate assurances have been secured for participation in the public system when these services become available.

4. Require that developments extending wastewater collection facilities pay an equitable share of the costs.
5. Review and regulate development proposals to ensure that adequate water service improvements shall be provided for the proposed development as well as to serve future land uses as identified in the Comprehensive Plan, in the following manner: Residential subdivisions, planned developments, and manufactured home parks shall be served by the public water system.
6. Developments requiring the extension or expansion of water facilities will be required to pay an equitable share of the costs.
7. Provide an appropriate level of neighborhood park and recreation facilities to both developed and developing neighborhoods which lack readily accessible neighborhood recreation facilities.
8. Review all major residential proposals for:
 - a. Safe and efficient access to school and park sites.
 - b. Potential impacts on the school system.
 - c. The adequacy of existing facilities and the need for new facilities.

Findings of Fact

- 4-A. The Tentative Plat (Sheet 2 of 2) shows the proposed utility plan for the development.
- 4-B. There is an existing sanitary sewer line on the north side of 53rd Avenue which extends to this subdivision's eastern property line.
- 4-C. The proposed utility plan shows a proposed 12" water line on the north side of 53rd Avenue which extends from Pacific Boulevard to this subdivision's eastern property line.
- 4-D. There is currently no piped storm sewer system along 53rd Avenue. A small drainage ditch currently runs through the site.
- 4-E. Seven foot wide utility easements are shown along all street rights-of-way for the franchised utility companies (e.g. power, gas, cable, telephone) to place their lines. Northwest Natural Gas has requested 10-foot wide public utility easements on all front lot lines. Section 10.260 (existing) in the Albany Development Code sets 7 feet as the standard width.
- 4-F. Within the subdivision, all public sewer and water lines are shown on the plat in dedicated street rights-of-way.
- 4-G. The schools currently serving this area are Liberty Elementary, Memorial Middle, and West Albany High School. All are located about 2 miles north of the proposed subdivision.
- 4-H. The closest neighborhood park to the proposed subdivision is Teloh-Calapooia. Less than one-half mile to the south "as the crow flies," there currently is no pedestrian accessway between the subdivision and the park.

- 11.180 (5) *Any special features of the site (such as topography, flood plains, wetlands, vegetation, historic sites) have been adequately considered and utilized.*

Applications within the floodplain district are subject to the following Development Code standards:

1. All land division proposals shall be consistent with the need to minimize flood damage.
2. All land division proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
3. All land division proposals shall have adequate drainage provided to reduce exposure to flood damage.
4. Any lot created for development purposes must have adequate area created outside of the floodway to maintain a buildable site area meeting the minimum requirements of this Code.
5. Any new public or private street providing access to a residential development shall have a roadway crown elevation not lower than one foot below the 100-year flood elevation.
6. All land divisions or planned developments in the floodplain district shall show the location of the 100-year flood contour line followed by the date the flood elevation was established. In addition, a statement located on or attached to the recorded map or plat shall read as follows: "Development of property within the 100-year floodplain as most currently established by the Federal Emergency Management Agency or City of Albany may be restricted and subject to special regulations by the City."

In addition the following Comprehensive Plan floodplain policies have been identified as relevant to this review criteria:

1. Ensure that any filling or construction within the floodplain meets the following criteria:
 - a. Require that a fill permit is issued prior to any fill activity involving 50 or more cubic yards of material and all fill is engineered and compacted to applicable standards. Fill areas for dwellings shall have engineering certification that loading rates are adequate for dwellings.
 - b. The lowest finished floor elevation shall be built at least one (1) foot above the base-year floor level. Special engineering reports or structural work may be required.
 - c. Require property owners or developers to file a certification approved by the local community permit official, registered professional engineer, architect, or surveyor indicating elevation of the surrounding grade or lowest habitable floor (including basement) of all new residential structures. This information shall be maintained to indicate compliance with Federal Emergency Management Agency (FEMA) regulations.
2. Encourage open space alternatives to urban level development in areas subject to flooding such as park and recreation areas, agriculture, natural areas and wildlife habitat.

In addition, the following Comprehensive Plan wetland policy has been identified as relevant to this review criteria:

1. Coordinate the review of any development proposal that could impact a wetland with applicable local, state, and federal agencies including Linn and Benton Counties, the Oregon Division of State Lands, the Army Corps of Engineers, Soil Conservation Service, Soil and Water Conservation Districts, etc. In addition development that would impact a wetland within the city shall be subject to City Conditional Use requirements and Development Code standards pertaining to wetlands.

The following Comprehensive Plan vegetation policies have been identified as relevant to this review criteria:

1. Protect existing vegetation which possesses significant environmental, wildlife habitat, and aesthetic qualities, particularly along the Santiam Canal and the Willamette and Calapooia Rivers, their tributaries, and associated floodplains and drainageways.
2. Where possible, retain the environmental and aesthetic qualities of existing wooded areas by incorporating them into public park and open space plans, and ensure the maximum preservation of vegetation during the development review and construction process.

Findings of Fact

Floodplain (5-A through 5-E)

- 5-A. A portion of the property lies within the 100-year floodplain of the South Fork of Oak Creek. There is a FEMA Map No. showing the floodway portion and a FIRM Map that includes the flood fringe as well as the floodway. The FIRM Map is dated March 16, 1989; the Community Panel No. is 410137 003 E. The Floodway Map is dated April 3, 1985; the Community Panel No. is 4101 37 0003.
- 5-B. FEMA's FIRM Map No. 410137-0003-E shows that the 100-year floodplain elevation on the property varies from 212.2 feet (on the south boundary) to 208.9 feet (on the north boundary).
- 5-C. All new streets within the subdivision will have a roadway crown elevation no lower than one foot below the 100-year flood elevation, as shown on the tentative plat.
- 5-D. There are seven lots (#s 8, 9, 10, 29, 30, 42, 43) which have a significant portion lying below the base flood (100-year) elevation. Development on these lots will be subject to the requirements of Article 6 of the Albany Development Code and Appendix Chapter 70 of the Uniform Building Code.
- 5-E. A portion of 53rd Avenue between the bridges has elevation more than a foot below the base flood (100-year) elevation. The BFE is just over 212'. According to information provided by the Linn County Road Department, the elevation at the east bridge averaged 209.5. The elevation at the west bridge ranged from 209.5 (southeast corner) to 209.9. The County used the benchmark at Pacific Boulevard.

Wetlands 5-F through 5-H

- 5-F. According to information submitted by K & D Engineering on July 7, the Soil Survey of Linn County (prepared by the Soil Conservation Service) shows four (4) soil types on the subject property. Making up the upland terrace are:

- a) Symbol 102 - Willamette Silt Loam - Non-Hydric
- b) Symbol 3 - Amity Silt Loam - Non-Hydric
- c) Symbol 27 - Concord Silt Loam - Hydric

Making up the Floodway is:

- d) Symbol 99 - Wapato Silty Clay Loam - Hydric

- 5-G. The hydric soils within the upland terrace should qualify as "Prior Converted" cropland because they have grown and annually produced commodity crop and have hydrological alteration. This is the opinion of the wetlands consultant as stated in

a July 7 letter; the general opinion was confirmed in a conversation between City Planning staff and the Division of State Lands on July 9.

- 5-H.** The United States Fish and Wildlife Wetlands Inventory Map identifies wetlands adjacent to Oak Creek.

Natural Areas (5-I through 5-K)

- 5-I.** The easterly border of the property along Oak Creek is covered by a band of trees and brush. On the tentative plat, there are nine lots (Nos. 31, 32, 33, 34, 41, 43, 43, 44, 45) with a significant portion covered with trees and brush and identified on a Comprehensive Plan Map Plate 3 as Natural Vegetation and Wildlife Habitat.
- 5-J.** The City's Parks and Recreation Commission on July 7 recommended against accepting the Nature Area as a city park. While supportive of the concept and appreciative of the natural qualities of the area, the Commission determined that it did not fit into the Parks Master Plan and that any development would be difficult because of environmental constraints.
- 5-K.** According to Plate 9 in the Albany Comprehensive Plan and Planning Division inventories, there are no identified historic or archeological sites on the property.

CONDITIONS OF APPROVAL
THE MEADOWS AT OAK CREEK - PHASE I
M1-09-93

EXHIBIT "D"



250 BROADALBIN SW
PO BOX 490
ALBANY, OR 97321

(503) 967-4300
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Transportation

1. Prior to final plat approval, the developer must submit a Traffic Impact Study to the City. It will be prepared by a registered traffic engineer and conform to ODOT standard format. The study will consider the impact of the entire subdivision on traffic flows in the area. It will address future traffic impacts resulting from the remaining vacant residential parcels on 53rd Avenue and from the vacant commercial parcel at the southeast corner of Pacific Boulevard/53rd Avenue. The study will contain recommendations on the need for a traffic signal at the Pacific Boulevard/53rd Avenue intersection and for a secondary access to Pacific Boulevard. It will address the functional classification of Elk Run Drive, Deer Run Street, and Black Bear Avenue upon the future development of vacant property to the north and west. The City reserves the right to add conditions of approval to future phases of the subdivision based on the recommendations of the study.
2. Prior to final plat approval, the required street improvements within the subdivision and to 53rd Avenue must be constructed or financial assurances meeting City approval must be provided.
3. The engineering design for the improvement to 53rd Avenue must include provisions for the overlay of the southern half of the street (or engineering data including core samples to provide verification that the existing pavement is sufficient to provide an additional 20-year service life). The partial street improvement on the north side of 53rd Avenue will extend 18 feet from the centerline to the curbline.
4. The partial street improvement of 53rd Avenue must include both a wide 7' curbline or 5' sidewalk if separated by a 5' landscaped planter strip and a 6' bike lane with 8" stripe. A bike lane is currently not shown on the plans submitted for tentative approval.
5. A Petition for Improvement/Waiver of Remonstrance Agreement must be signed by the developer to bind every lot in the subdivision to participate in an assessment district for completion of the bridge improvement on 53rd Avenue. The Petition/Waiver wording for this improvement shall be indicated on the final plat for each phase and on the individual deed for each lot. Language of the agreement must meet the approval of the City Engineer and City Attorney.
6. To ensure that there is no direct access to 53rd Avenue, a 1-foot reserve strip must be dedicated to the City of Albany and indicated on the final plat of each phase prior to final approval. Dedication language must meet the approval of the City Engineer.
7. To meet Development Code requirements, the developer will explore options with the City Planning staff relative to the length of Antelope Circle (Phase II). Options include reducing the length of the street or providing a 14-foot wide accessway with sidewalk.

8. Those streets with proposed 40-foot rights-of-way must be signed for parking on one side of the street only. All street signage costs are the responsibility of the developer.
9. A traffic signal shall be installed and paid for by the developer when required by ODOT and the City of Albany. In the event that subsequent development takes place that also directly benefits from the signal, the City may consider establishing a reimbursement agreement whereby other developing properties deemed to benefit partially reimburse this developer for the expense of the signal. A Petition for Improvement/Waiver of Remonstrance Agreement must be signed by the developer to bind every lot in the development as a secondary assurance that the traffic signal will be installed when needed even if the developer defaults.
10. Access permits granted by the city and county relative to the 53rd Avenue improvements abutting the subdivision shall be conditioned to require that the developer repair any damage resulting from construction activity. The developer shall provide a video tape of the road to the city and county to document current conditions.
11. Prior to final plat approval, the developer shall provide temporary pedestrian access (a minimum of 4' in width) along the north right-of-way of 53rd Avenue from a point where their required sidewalk ends east to Pacific Boulevard or financial assurances meeting city approval must be provided for their construction. This improvement must include a span over the bridged areas. The pedestrian accessway will be protected from vehicular traffic. Engineering plans must be approved by the City Engineer.
12. The alignment of the intersection of Elk Run Drive with 53rd Avenue shall be such that the headlights of vehicles exiting the subdivision do not reflect on the residence located at 1450 53rd Avenue SW.
13. Prior to final plat approval, the developer shall provide a surety to the City in acceptable form for payment of up to \$28,500 to be used exclusively for the purchase of a Multi-Purpose Rescue Vehicle. The duty to make payment shall be triggered upon occupancy of the 92nd housing unit in the subdivision or eighteen (18) months from the start of construction of the first housing unit, whichever comes first.

Public Utilities and Facilities

14. The 12-inch waterline proposed along 53rd Avenue shall be moved to the southern side of 53rd. In addition, fire hydrants must be constructed approximately every 500 feet along this line, at final locations specified by the Albany Fire Department.
15. Internal fire hydrants with approved flow of 1,500 gpm must be constructed at the following locations specified by the Albany Fire Department and must be constructed from a minimum 8-inch diameter waterline:
 - (a) SW corner of Lot 1, Phase I-A; (b) NW corner of Lot 3, Phase I-A; (c) Sidewalk edge between Lots 21, Phase I-A and 22, Phase I-B; (d) NW corner of Lot 38, Phase I-B; (e) SE corner of Lot 59, Phase I-B; (f) Sidewalk edge between Lots 82 and 83, Phase II; (g) SW corner of Lot 91, Phase II; (h) SW corner of Lot 125, Phase III; (i) SW corner of Lot 142, Phase IV; (j) Sidewalk edge between Lots 148 and 149, Phase IV; (k) SE corner of Lot 180, Phase III.
16. Prior to final plat approval, water services to each lot must be installed, or financial assurances meeting City approval must be provided for their construction.
17. Fire hydrants and water mains are required to be in place and operational prior to any on-site combustible construction. Hydrants shall be placed to provide access by fire suppression apparatus.

18. Sanitary service manholes must be constructed at all angle points and at the terminus of all sanitary sewer lines. Cleanouts are not acceptable at the end of public sanitary sewer lines. Grade design for the mainline on Elk Run Drive shall provide for future service to the property north of the proposed development.
19. Sanitary sewers must be extended to each lot, which will require the extension of the proposed lines in the vicinity of lots 87, 161, and 162. Service laterals cannot run "down the street" to serve individual lots: rather, they must generally extend perpendicular to the mainline.
20. Prior to final plat approval, sanitary sewer services to each lot must be installed, or financial assurances meeting City approval must be provided for their construction.
21. The proposed storm drain system must be constructed prior to final plat approval or financial assurances meeting city approval must be provided. Plans must conform to the City of Albany Drainage Master Plan and be approved by the City Engineer.
22. The storm drainage plan must be provided for 53rd Avenue prior to construction of the proposed street improvements. Drainage may require the construction of a piped storm drainage system. Public storm drain lines will be placed in dedicated rights-of-way or public utility easements.
23. The proposed internal storm drainage system shall be extended to the west boundary at the end of Black Bear Avenue and pick up the drainage from the existing ditch west of the development. This line must be designed for the ultimate upstream drainage basin.
24. Manholes must be constructed at the end of long storm drain runs (end of lines in Deer Run Court and on Antelope Circle, for example). Headwalls and erosion protection meeting the approval of the City Engineer must be constructed at all proposed storm drainage outfall points.
25. The public utility easement for the storm drainage line proposed between lots 30 and 31 shall be 15 feet in width.
26. Prior to final plat approval, the developer shall submit documentation from the private utilities that their easement needs have been satisfied.

Special Features of the Site

27. There must be language on the final plat for each phase and on each individual lot deed to indicate that access to the development and each lot is not possible during 100-year flood conditions on Oak Creek. The language must meet the approval of the City Community Development Director and City Attorney.
28. There shall be a statement on or attached to the recorded plat and on individual deeds for lots 8, 9, 10, 29, 30, 42, and 43 which reads: "Development of property within the 100-year floodplain as most currently established by the Federal Emergency Management Agency or City of Albany may be restricted and subject to special regulations by the City."
29. The 100-year floodway and floodplain demarcation lines will be field located and established prior to final platting and engineering design of the public improvements.
30. Prior to final plat approval, the information provided by the wetlands consultant must be placed on the tentative (preliminary) plat). If the wetlands determination results in some lots containing a significant amount of wetlands, the lots will be reconfigured.

31. There shall be a statement on or attached to the recorded plat and on individual deeds for lots determined to contain wetlands which reads: "A portion of this property has been identified as wetland on the statewide wetlands inventory. Any development activity on this property may require a permit from the Division of State Lands and/or the Army Corps of Engineers."
32. There shall be language on or attached to the final plat and on individual deeds for lots 31, 32, 33, 34, 41, 42, 43, 44, and 45 which reads: "Removal of 5 or more trees in excess of 10" in diameter, within one calendar year requires a Site Plan Review permit from the City of Albany. No trees lying within 5 feet of a property line may be removed except with the concurrence of adjacent property owners where removal is desired for sunlight or to protect against windfall. Removal of trees below Base Flood Elevation shall not exceed 50% of all trees on the property in excess of 10" in diameter. The number of trees removed shall not exceed the minimum number necessary to accomplish development on the lot while retaining the most trees possible within the intent of the tree removal criteria in the Development Code and the intent of Comprehensive Plan policies." Any disturbance of vegetation east of the tree line shall require the approval of the City Community Development Director.
33. The private "Nature Area" near Oak Creek will be subject to the following conditions:
- 1) The developer must submit an Agreement to the City Community Development Director spelling out the responsibilities of the Homeowners Association.
 - 2) No development shall be allowed without Planning Commission approval. This area shall be left in its natural condition. The tentative plat shall be modified to remove the pedestrian accessways and bridges.
 - 3) The Nature Area shown on the tentative plat shall have its own tract or lot number.

General

34. There shall be a reference on the final plat that issuance of all building permits is dependent upon prior compliance with all conditions of approval.