



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

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Web Address: <http://www.oregon.gov/LCD>

### NOTICE OF ADOPTED AMENDMENT

February 7, 2006



TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment  
DLCD File Number 001-06

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures\*

#### **DLCD ACKNOWLEDGMENT OR DEADLINE TO APPEAL: February 8, 2006**

This amendment was not submitted to DLCD for review prior to adoption. Pursuant to ORS 197.625 (1), 197.830 (2), and 197.830 (9) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS ADOPTED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD.**

Cc: Dale VanValhenberg, City of Bend

<paa>





**FORM 2**

**DEPT OF**

**D L C D NOTICE OF ADOPTION**

**FEB 03 2006**

This form must be mailed to DLCD within 5 working days after the final decision  
per ORS 197.610, OAR Chapter 660 - Division 18

**LAND CONSERVATION  
AND DEVELOPMENT**

(See reverse side for submittal requirements)

Jurisdiction: City of Bend Local File No.: 05-334  
(If no number, use none)  
Date of Adoption: Signed on 1/31/06 Date Mailed: 2/2/06  
(Must be filed in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: \_\_\_\_\_

- Comprehensive Plan Text Amendment
  - Comprehensive Plan Map Amendment
  - Land Use Regulation Amendment
  - Zoning Map Amendment
  - New Land Use Regulation
  - Other: \_\_\_\_\_
- (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write see Attached.≡

Change zoning on 1.94 acres from RS to RM  
in accordance with General Plan.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write same.≡ If you did not give notice for the proposed amendment, write AN/A.≡

Same

Plan Map Changed from : \_\_\_\_\_ to \_\_\_\_\_

Zone Map Changed from: Standard Density to Medium Density Res.

Location: <sup>NE</sup>Vail Ave, between 6th + 8th Acres Involved: 1.94

Specify Density: Previous: 7.3/acre New: 21/acre

Applicable Statewide Planning Goals: n/a

Was an Exception Adopted? Yes: \_\_\_\_\_ No:

DLCD File No.: 001-06 (NOA)

Did the Department of Land Conservation and Development **receive** a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing?** Yes:  No:

If no, do the Statewide Planning Goals apply. Yes:  No:

If no, did The Emergency Circumstances Require immediate adoption. Yes:  No:

Affected State or Federal Agencies, Local Governments or Special Districts: \_\_\_\_\_

Local Contact: Dak VanValkenburg Area Code + Phone Number: 541-388-5560  
Address: 710 NW Wall Street City: Bend  
Zip Code+4: 97701 Email Address: dvanvalkenburg@ci.bend.or.us

### ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:  
**ATTENTION: PLAN AMENDMENT SPECIALIST**  
**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**635 CAPITOL STREET NE, SUITE 150**  
**SALEM, OREGON 97301-2540**
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to [Mara.Ulloa@state.or.us](mailto:Mara.Ulloa@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.



Bend City Council  
January 18, 2006 Council Meeting

### Issue Summary

Department: Community Development:  
Staff Member: Dale VanValkenburg, Current Planning Manager

*DV* *MAYO*

388-8912

Conduct a second reading of an ordinance implementing a proposed zone change from RS (Standard Density Residential) to RM (Medium Density Residential) for 1.94-acres of land located on Vail Avenue between 6<sup>th</sup> Street and 8<sup>th</sup> Street in Northeast Bend, owned by Paul and Gael Selman.

**Staff Review and Recommendation to Council:**

City of Bend Hearings Officer Tim Elliot has conducted a public hearing and issued a written recommendation of approval of the proposed zone change from RS to RM. Staff concurs with that recommendation and recommends that the Council conduct a second reading of the attached ordinance implementing the proposed zone change.

**History:**

Presented for Public Hearing:	January 4, 2006
Presented for First Reading:	January 4, 2006
Presented for Second Reading:	January 18, 2006

**Background:** Applicants Paul and Gael Selman submitted an application for the proposed zone change on May 26, 2005. The requested zone change was accompanied by an application for a 26-lot zero lot-line medium density residential subdivision (file PZ05-335). A public hearing before Hearings Officer Tim Elliott was held on August 16, 2005. One written letter was received from an attorney representing a nearby property owner prior to the public hearing, and 5 people testified in opposition to the proposal at the public hearing. Both the written letter and the oral testimony expressed concern about the proposed zone change from RS to RM and how the subsequent subdivision proposal could have a negative impact on surrounding property values, as well as concerns about traffic associated with the proposed development. After hearing testimony, Hearings Officer Elliott issued a written Recommendation and Decision on November 3, 2005, approving the proposed subdivision subject to 17 conditions of approval, and recommending City Council approval of the zone change (file PZ05-334) with no conditions. No appeals of the Hearings Officer's decision were

submitted within the 12-day appeal period. Therefore, the subdivision approval is now a final decision.

Pursuant to the City's Land Use Review and Procedures Ordinance, the City Council is required to hold a public hearing on an application for a zone change that has been recommended for approval by the Hearings Officer. A public hearing on this matter was held by City Council on January 4, 2006. Only the applicant's representative, Deborah McMahon, appeared at the public hearing. No written comments have been received from any parties since the public hearing.

**Discussion of the Issue and Alternatives Explored:** The proposed zone change from RS to RM is in conformance with the City of Bend General Plan Map, as revised in 1998. The change would permit medium density residential development as contemplated in the General Plan in an area that has city sewer service and other adequate public infrastructure. The Hearings Officer concluded, pursuant to General Plan Residential Lands Policy #23, that the availability of sewer mandates rezoning of the property as proposed. Policy 23 states:

*"The City shall rezone residential lands to the designated general plan densities when sewer service is available to the area." Bend Area General Plan, p 5-32.*

Denial of this zone change would limit residential development of the 1.94-acre property to no more than 13 residences (7.3 dwelling units per acre), and would contribute to the need to expand the Urban Growth Boundary (UGB) in the future to accommodate needed multi-family housing. As proposed, the 26-lot zero lot-line subdivision results in a density of 13 dwelling units per acre, within the range specified in the General Plan for density in the RM zone (7.3-21.7 units per acre).

**Secondary Issues:** The 120-day review period has expired on the zone change. Review of the accompanying subdivision proposal was completed well within 120 days.

**Committee Review and Recommendation to Council:** Hearings Officer Tim Elliott has reviewed the applicant's proposal and issued a written recommendation of approval, attached hereto for Council review.

**Budgetary Considerations:** None.

**ORDINANCE NO. NS-1994**

AN ORDINANCE AMENDING THE CITY OF BEND ZONING ORDINANCE NO. NS-1178, BY CHANGING THE ZONE OF A PARCEL OF LAND FROM RS, URBAN STANDARD DENSITY RESIDENTIAL TO RM, URBAN MEDIUM DENSITY RESIDENTIAL.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the Hearings Officer's findings and record, and has found that there is a public need and benefit for the proposed change. The Bend City Council adopts the Findings and Recommendation of the Hearings Officer dated November 3, 2005, file number PZ-05-334.

Section 2. Section 7(1) of Ordinance NS-1178 and the Zoning Map of the City of Bend are amended by changing the designation of the property described in "Exhibit A" from Urban Standard Density Residential (RS) to Urban Medium Density Residential (RM).


Read for the first time the 4th day of January, 2006.

Read for the second time the 18<sup>th</sup> day of January, 2006.

Placed upon its passage the 18<sup>th</sup> day of January, 2006.

YES: 6                      NO: 1

Authenticated by the Mayor the 18th day of January, 2006.

  
Bill Friedman, Mayor

ATTEST:  
  
Patricia Stell, City of Bend Recorder

**EXHIBIT "A"**

**PARCEL 1:**

The Easterly portion of Lot 1 in Block 4 of ELLIS SUBDIVISION, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Beginning at the Southeast corner of said Lot 1; thence along the Southerly lot line of said Lot 1 West, 261.70 feet; thence leaving said Southerly line North 100.00 feet to a point on the Northerly lot line of said Lot 1; thence along the Northerly lot line East, 262.51 feet to a point of the Westerly right-of-way line of Butler Market Road (East 8<sup>th</sup> Street); thence along said right-of-way line along on an arc of a 1175.92-foot radius curve left, 43.72 feet; the chord of which bears South 01°03'42" West, 43.72 feet; thence South 56.29 feet to the Point of Beginning and terminus of this description.

**PARCEL 2:**

Lot 1 in Block 6 and Lot 1 in Block 4 of ELLIS SUBDIVISION, Deschutes County, Oregon.

TOGETHER WITH that portion of Seventh Street which inured to said Lots upon the vacation thereof by Ordinance No. NS-1234 dated April 16, 1947.

EXCEPTING THEREFROM the Easterly portion of Lot 1 in Block 4 of ELLIS SUBDIVISION, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Beginning at the Southeast corner of said Lot 1; thence along the Southerly lot line of said Lot 1 West, 261.70 feet; thence leaving said Southerly line North 100.00 feet to a point on the Northerly lot line of said Lot 1; thence along the Northerly lot line East, 262.51 feet to a point of the Westerly right-of-way line of Butler Market Road (East 8<sup>th</sup> Street); thence along said right-of-way line along on an arc of 1175.92-foot radius curve left 43.72 feet, the chord of which bears South 01°03'42" West, 43.72 feet; thence South 56.29 feet to the Point of Beginning and terminus of this description.



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**DECISION AND RECOMMENDATION OF HEARINGS OFFICER**

**FILE NUMBER(s):** PZ 05-334 and 05-335

**HEARING DATE:** August 16, 2005

**HEARINGS OFFICER:** Tim Elliott

**APPLICANT:** Paul and Gael Selman  
2171 NE 8<sup>th</sup> Street  
Bend, OR 97702

**OWNERS:** Paul and Gael Selman  
2171 NE 8<sup>th</sup> Street  
Bend, OR 97702

**ENGINEER:** Sun Country Engineering & Surveying, Inc.  
920 SE Armour Road  
Bend, OR 97702

**REQUEST:** The applicant requests approval of a zone change from Urban Standard Residential (RS) to Urban Medium Density Residential (RM) for Tax Lots 17-12-28CA-600 and 601. The applicant also requests subdivision tentative plat approval for a 26 lot subdivision on the subject site. The applicant intends to build duplexes on the site.

**LOCATION:** The property is located at 2171 NE 8<sup>th</sup> Street and are further identified as tax lots 600 and 601 on Deschutes County Assessor's Map #17-12-28CA, respectively.

**REVIEWER:** Steve Miller, Associate Planner

**APPLICABLE CRITERIA:**

- (1) City of Bend Zoning Ordinance No. NS-1178, Chapter 10
  - (a) 10.10.10, Urban Medium Density Residential Zone (RM)
  - (b) 10.10.33 (2), Standards for Zone Change

- (2) City of Bend Subdivision Ordinance, NS-1786,
  - (a) Article III, Sections 3.010 –3.090 Application Procedures
  - (b) (b)Article VI, Design Standards and Improvements.
- (4) City of Bend Land Use Review and Procedures Ordinance, NS-1775.

**FINDINGS OF FACT:**

- 1. **LOCATION:** Tax lot 600 is located at 2171 NE 8<sup>th</sup> Street, while tax lot 601 currently does not have an assigned address. The properties are further identified as tax lots 600 and 601 on Deschutes County Assessor's Map #17-12-28CA, respectively.
- 2. **ZONING:** The subject property is zoned RS and designated RM on the Bend Area General Plan Map.
- 3. **SITE DESCRIPTION AND SURROUNDING LAND USES:** The vegetation on the site is a combination of pasture and residential landscaping, with some trees. The surrounding properties are designated RM on the Plan Map and are zoned RS or RM. There is an RM zoned apartment complex directly to the west and across 6<sup>th</sup> Street and an RM zoned parcel to the north adjoining the Deer Pointe Subdivision.
- 4. **PROPOSAL:** The applicant proposes amending the Bend Urban Area Zoning Map from RS to RM to match the Comprehensive Plan designation for the property. The application also includes a request to divide an approximately 1.94-acre property into 26 duplex lots. The subdivision is proposed as a two-phase development.
- 5. **PUBLIC NOTICE AND COMMENTS:** The City of Bend Planning Division sent notices of the request to surrounding property owners of record as shown on the most recent property tax assessment roll within 250 feet of the property.
- 6. **AGENCY COMMENTS:** Various agencies were sent notice of and subsequently commented on the application. Their comments are set forth in the Staff Report to the hearings officer or are otherwise contained in the record of this proceeding.

**CONCLUSIONARY FINDINGS:**

**CONFORMANCE WITH THE CITY OF BEND ZONING ORDINANCE NS-1178;**

**CHAPTER 10; 10-10.10; URBAN STANDARD DENSITY RESIDENTIAL ZONE (RS) AND CHAPTER 10; 10-10.11; URBAN MEDIUM DENSITY RESIDENTIAL, OR RM ZONE.**

**Section 9D. Urban Standard Residential Zone or RS Zone.**

- (1) **Purpose.** The RS zone is intended to provide for the most common urban residential densities in places where community sewer services are or will be available and to encourage, accommodate, maintain and protect a suitable environment for family living.

**Section 10. Urban Medium Density Residential Zone, or RM Zone.**

- (1) **Purpose.** This zone is intended to provide for the development of medium density multiple-family residential structures where such buildings are reasonably spaced on the lot to provide for light, air, privacy, safety and insulation against transmission of sound in areas with sewer and water services. Each development of two or more units is subject to Site Plan approval as provided in Section 23.

**FINDING:** The applicant is proposing a zone change from RS to RM. The property is now designated RM by the General Plan adopted on December 2, 1998. City of Bend sanitary sewer service will be extended to the proposed development if the zone change is approved and is now available from 6<sup>th</sup> Street. The applicant has also submitted an application for a 26 lot zero lot line multi-family residential subdivision on the subject property which would result in a density of approximately 13 dwelling units per acre. This density is consistent with the recommended densities of the RM Zone. The above criteria are met.

**CONFORMANCE WITH CITY OF BEND ORDINANCE  
CHAPTER 10; 10.10.33(2), STANDARDS FOR ZONE CHANGE**

- (2) **Standards for Zone Change.** The burden of proof is upon the one seeking change. The degree of that burden increases proportionately with the degree of impact of the change, which is sought. The applicant shall in all cases establish:
  - A. That the change conforms to the Comprehensive Plan. Specifically, the change is consistent with the Plans intent to promote an orderly pattern and sequence of growth.

- B. That the change will not interfere with existing development, development potential or value of other land in the vicinity of the proposed action.
- C. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.
- D. That the change will result in the orderly and efficient extension or provision of public services. Also, that the change is consistent with the City of Bend policy for provision of public facilities.

...

**FINDING:** Opponents of the application argue that the original Burden of Proof does not adequately address all of the above criteria. The applicant correctly argues that in this instance review of the criteria is not required. Beginning with PZ-01-035, the City of Bend Hearings Officer, and subsequently the Bend City Council, determined that Policy 23 of the Comprehensive Plan takes precedence over the above Section 33 criteria in cases where a zone change has been sought that would bring a property into conformance with its Plan designation. That decision has been followed by other city hearings officers and supported by the Bend City Council repeatedly. The applicant's proposal seeks a zone change to bring the subject property into conformance with the Comprehensive Plan. The basis for not applying Section 33 criteria is found in Policy 23, which reads: "The City shall rezone residential lands to the designated Plan densities when sewer service is available to the area." A further basis is found in companion Policy No. 21, which reads: "Densities recommended on the Plan shall be recognized in order to maintain proper relationships between proposed public facilities and services and population distribution." Multiple zone change decisions have held that the language of Policy 23 is more focused and is expressed in mandatory terms in relation to a specific set of circumstances – that being where the change would bring the zoning into conformance with the Plan. Those decisions have further found that a zone change itself has no actual impact on the provision of public services. It is the actual development that triggers the impact and it is at the development application or subdivision stage when it is most appropriate to determine the particular impacts and any mitigation requirements for a development. In this case the applicant has also filed a subdivision application. Similar criteria are found in the subdivision ordinance and will be addressed below. I find the above criteria to be met.

**CONFORMANCE WITH CITY OF BEND ORDINANCE, CHAPTER 10; 10-10.11; URBAN MEDIUM DENSITY RESIDENTIAL ZONE, OR RM ZONE.**

- (1) **Purpose.** This zone is intended to provide for the development of medium density multiple-family residential structures where such buildings are reasonably spaced on the lot to provide for

light, air, privacy, safety and insulation against transmission of sound in areas with sewer and water services. Each development of two or more units is subject to Site Plan approval as provided in Section 23.

(2) **Permitted Uses.** The following uses are permitted.

(a) Two-family dwelling or duplex

...

**FINDING:** The proposed use for the property is a residential subdivision with duplexes or two-family dwellings. The applicant is required to apply for and obtain site plan review and approval for the proposed duplexes prior to obtaining a building permit.

(4) **Height Regulations.** No building or structure shall be hereafter erected, enlarged or structurally altered to exceed a height of 30 feet without approval of Conditional Use Permit.

**FINDING:** No new buildings or alterations to existing buildings are proposed with this application. This criterion is not applicable at this time.

(5) **Lot Requirements.** The following requirements shall be observed:

(a) **Lot Area:** Every lot shall have a minimum area of 2,500 square feet for the first unit plus 2,000 square feet per unit thereafter. A lot having a width of less than 50 feet, and an area of less than 2,50 square feet of record at the time of the passage of this ordinance, may be occupied by one single-family dwelling provided that all the yard requirements of the section are observed.

(b) **Lot Width:** Every lot shall have a minimum width of 30 feet. The lot width may be reduced to 20 feet for lots in an approved zero lot line subdivision.

...

**FINDING:** The applicant has applied for a rezone from RS to RM. The subject property is approximately 1.94 acres in size. The proposed lots range in size from 2,565 square feet to 3,096 square feet and all proposed lots have a minimum width of 20 feet or greater. The above criteria will be met.

(c) **Front Yard:** The front yard shall be a minimum of 10 feet

except a garage or carport shall be a minimum of 20 feet.

- (f) Side and rear yard setbacks for duplexes and triplexes are subject to standards in Section 23 (d) and (e).
- (g) For single family residences, the side yard shall be a minimum of five feet on one side and a total of the two side yards shall be 10 feet. The rear yard shall be a minimum of five feet.
- (j) Solar Setback: The solar setback as prescribed in Section 26A.

**FINDING:** No buildings are proposed at this time. Compliance with the above criteria will be reviewed during the future building permit review process.

**CONFORMANCE WITH THE CITY OF BEND LAND DIVISION ORDINANCE, NS-1786; ARTICLE III LAND DIVISION – APPLICATION PROCEDURE**

**Section 3.040 PHASED TENTATIVE PLAN.** An overall development plan shall be submitted for all development affecting land under the same ownership for which phased development is contemplated. The Review Authority shall review a master development plan at the same time the tentative plan for the first phase of a phased subdivision is reviewed. The phased tentative plan shall include, but not be limited to the informational requirements of 10-10.3.030 of this title, as well as the following elements:

1. Overall development plan, including phase or unit sequence, and the schedule for initiation of improvements and projected completion date.
2. Show compliance with the Bend Area General Plan and implementing land use ordinances and policies.
3. Overall facility development plan, including transportation and utility facilities plans, that specify the traffic pattern for motor vehicles, bicycles, and pedestrians, water system plans, sewer system plans and utility plans.
4. Development plans for any common elements or facilities.
5. The Review Authority may require a potential development pattern for streets, bikeways, and access corridors for adjoining lands to be submitted together with the phased tentative plans as part of the overall development plan.



**FINDING:** The applicant is proposing the development of the subdivision in two phases and has provided information regarding the overall development plan and the phasing sequence, satisfying the criteria.

**CONFORMANCE WITH THE CITY OF BEND SUBDIVISION ORDINANCE, NS-1786; ARTICLE II GENERAL REQUIREMENTS, LAND DIVISIONS.**

**SECTION 2.050 LAND DIVISIONS. Land divisions are as follows:**

- B. Zero Lot Line Subdivision. In addition to the general provisions for subdivisions set forth in this ordinance, any application for a zero lot line subdivision shall meet the following requirements:**

**Definitions:**

**Zero Lot Line Subdivision or Partition. A type of residential subdivision or partition utilizing zero lot lines between dwelling units and providing for individual ownership of each lot.**

**FINDING:** The applicant proposes a residential subdivision utilizing zero lot lines between dwelling units and providing for individual ownership of each lot. Ordinance NS-1786, Section 10-13.2.050 permits zero lot line subdivisions outright, subject to site plan review and satisfying the subdivision ordinance.

- i. The tentative plan shall indicate all lot divisions, including those along the common wall of the dwelling units and building envelopes.**

**FINDING:** The tentative plan depicts all lot divisions.

- ii. Independent utility services shall be provided to each unit, including but not limited to water, electricity, and natural gas, unless common utilities are approved by the affected utility agency and are adequately covered by easements.**

**FINDING:** According to the submitted tentative plat and Burden of Proof Statement independent utility services will be provided to each proposed lot. This criterion is met.

- iii. Prior to the granting of final approval for creation of a zero lot line subdivision, the Planning Director shall require the applicant(s) to enter into a written**

**agreement, in a form approved by the City, that establishes the rights, responsibilities, and liabilities of the parties with respect to maintenance and use of any common areas of the dwelling, such as, but not limited to, common walls, roofing, water pipes and electrical wiring. Such agreement shall be in a form suitable for recording and shall be binding upon the heirs, executors, administrators, and assigns of the parties.**

**FINDING:** The applicant has submitted draft Covenants, Conditions and Restrictions (CC&R's) addressing the rights, responsibilities and liabilities of the future owners. The draft CC&R's appear to assure adequate provisions will be in place for the long term maintenance of any common areas, common walls, roofs, etc. As a condition of any final approval the applicant is required to submit a copy of the CC&R's to the Planning Division for its review and approval prior to final plat approval.

- iv. **For all common wall zero lot line subdivisions, site plan review shall also be required prior to final plat approval.**

**FINDING:** Site plan review shall also be required prior to final plat approval.

**CONFORMANCE WITH THE CITY OF BEND SUBDIVISION ORDINANCE, NS-1786; SECTION 3.060, REQUIRED FINDINGS FOR APPROVAL**

**The Review Authority shall not approve a tentative plan for a proposed subdivision or partition unless the Hearings Body finds, in addition to other requirements and standards set forth in this ordinance, that the land division as proposed or modified will satisfy the intent and requirements of this ordinance, and Bend Zoning Ordinance, and be in compliance with the Bend Area General Plan. Such findings shall include the following:**

1. **No application for subdivision or partition shall be approved unless the following requirements are met:**
  - A. **The land division contributes to the orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, and other natural resources to the maximum degree practicable as determined by the City of Bend.**

**FINDING:** The submitted tentative plan indicates that lot sizes, street construction and extension of utilities will be typical of other subdivisions in Bend.

The tentative plan also indicates that City sewer and water services will be extended to and through the subdivision. The subdivision will utilize the existing streets and the extension of NE Vail Lane to and through the subdivision. The proposed density is within the limits of the RM Zone and is consistent with the developing nature of the surrounding area. There are no natural features such as streams, lakes, natural vegetation, and special terrain features, nor does the Bend Urban Area General Plan identify any areas of special interest on the subject property.

Based on the record this criterion will be satisfied.

**B. The land division will not create excessive demand on public facilities and services required to serve the development.**

**FINDING:** The term “public facilities” as it applies to this application includes infrastructure for sewer, water, roads and storm drainage. “Public services” includes police, fire and school services. An analysis of the effect of the proposal on each of these facilities and services is discussed below:

**SEWER:** The subdivision will be served by City sewer lines. The applicant proposes to extend the existing gravity sewer system, located within the 6<sup>th</sup> and 8<sup>th</sup> street right-of-ways, via a 6-inch main line “to and through” the development as required by City standards and policies. In addition, services shall be provided to each lot created within the subdivision. The applicant will need to submit engineered sewer, water, street and any required grading/drainage plans to the Engineering Division for approval.

**WATER:** The subdivision will be served by City water lines. The Fire Department has commented that a minimum fire flow of 1,000 gallons per minute at 20 p.s.i. residual pressure must be available and fire hydrants must be located along fire access roadway. The spacing of hydrants shall not exceed 500 feet. The applicant submitted the required fire flow analysis confirming that the available fire flow is 1,547 gallons per minute at 42.23 p.s.i. residual pressure. In addition, the tentative plat shows that the applicant proposes a fire hydrant at the intersection of 8<sup>th</sup> Street and Vail Lane, as well as at the intersection of 7<sup>th</sup> Street and Vail Lane, satisfying the 500 foot spacing requirement.

**STORM DRAINAGE/GRADING:** As an ongoing condition of approval all storm drainage shall be retained onsite and disposed of in the facilities developed with this subdivision. The applicant shall also submit an on-site grading plan for any lots that are to be graded or filled.

**STREETS:** The property abuts the Vail Lane right-of-way along its southern property boundary, 6<sup>th</sup> Street along its western property boundary and 8<sup>th</sup> Street

along its eastern boundary. Section 2.1.2 of Street Policy 6 sets out a methodology for conducting studies and sets a level of performance that transportation facilities are expected to meet. The applicant has submitted a copy of a Transportation Impact Analysis (TIA), prepared by Gary Judd, for review by the City Transportation Engineer. Pursuant to Street Policy 6 the Traffic Engineer is required to render an opinion as to whether the TIA is satisfactory and meets the requirements of Policy 6. The Traffic Engineering did so and found that the study complies with the Traffic Impact Analysis-Development Requirements of Street Policy #6.

Opponent Randy Entler argues that the TIA is deficient because it should have considered the likelihood of a higher traffic volume from the proposed subdivision due to the presence of an existing RM zoned apartment complex adjoining the west boundary of the subject property across 6<sup>th</sup> street. According to Mr. Entler this in turn indicates that the applicant's lots will be built out with inexpensive starter housing for working families or rentals with frequent occupancy turn over and no pride of ownership. Mr. Entler concludes that because these structures will not likely be owned by occupants, such as true town homes or condominiums, the TIA should have analyzed this subdivision as if it were of single family homes, which are accorded a higher trip generation rate by the ITE manual. Except as to units owned as second homes or vacation units which are not continuously occupied, which these may still be, how or why ownership, or the presence of nearby RM density would actually equate to more trips from the subject property is not entirely clear to the hearings officer. The applicant and its traffic engineer addressed these arguments and testified that one could use either the trip generation rate accorded to either town homes or to single family homes without causing the transportation system to function at a failing level. It appears from the TIA that this certainly would be the case as the TIA places the function of the surrounding system at level B with town homes. These would generate 153 ADT. Single family homes would generate about 248 ADT. I conclude that analyzing this development as single family housing would not change the TIA's conclusion that the development would not cause the surrounding transportation system to function at an unacceptable level. The hearings officer finds that the TIA complies with Street Policy #6.

Bend Code Sections 10-13.6.020(2)(9) and (12) provide what is commonly known as the "connectivity requirement", and require an applicant to extend internal streets to property boundaries to give access to or permit future division of adjoining lots. The applicant proposes to connect the proposed Vail Lane with 6<sup>th</sup> street to the west and 8<sup>th</sup> street to the east, and a stub-out of 7<sup>th</sup> street to the north property line to allow for future road connections. The proposed streets make a grid pattern and will be publicly dedicated rights of way of 60 foot width. The applicant proposes a 28 foot wide paved street for Vail Lane. Mr. Entler objects to the proposed 7<sup>th</sup> Street stub-out for the reason that there is no evidence that the properties to the north will develop further and the applicant

does not control development on adjoining private properties. The same can be said with respect to required stub-outs to non-developed properties throughout the City. However, some properties to the north have either been rezoned to RM or have already developed and the Deer Pointe Subdivision also contains stubbed-out streets to the south. These stub-outs are to provide a grid system and a logical continuation of streets to adjoining lands. Adopted plans and plats are to be followed. Without such a requirement maintaining a grid pattern of streets and developing a property so as to not adversely affect future development, traffic flow and connectivity would be virtually impossible. Further and as disclosed at the time of the hearing of this matter and again now as required by Bend Code, the hearings officer is aware from a separate application that the Traffic Engineer would require the 7<sup>th</sup> Street stub-out all the way to Burks Court/Keats Drive, where there is a stubbed out street to the south. The 7<sup>th</sup> Street stub-out is in conformance with the Bend Code.

I also find that the block length between 7<sup>th</sup> and 8<sup>th</sup> Street and 7<sup>th</sup> and 6<sup>th</sup> Streets is 300 feet respectively, less than the maximum 600 feet.

Section 6.020.16B requires that the streets in a subdivision be laid out in a grid pattern. Mr. Entler argues that because the proposed Vail Street connects with 8<sup>th</sup> and 6<sup>th</sup> Streets there is no such pattern. Why 8<sup>th</sup> and 6<sup>th</sup> are not to be included in considering the grid pattern is unclear. Given the standards for connection, the requirements of the code, including fire code which the Vail/6<sup>th</sup> and Vail/8<sup>th</sup> connections will meet, the hearings officer finds that the proposed streets will form a grid pattern.

Based upon the applicant's ability to meet the required conditions of approval, the hearings officer finds that the proposal satisfies the criterion as to streets.

**POLICE AND FIRE PROTECTION:** The property will be served by the Bend fire and police departments. This criterion is met.

**SCHOOLS:** This property is located within the Bend-La Pine School District, which provided the following standard comments.

*"It is the policy of the Bend-La Pine School District to anticipate and respond to growth in enrollment. The district does not take a position encouraging or discouraging growth. Attached is a chart showing our current capacity and enrollment projections. The district is currently operating several schools over capacity in the Bend area.*

*The district makes the following requests for any development: (1) any new development should have sidewalks at least on both sides of the road in order to accommodate student pedestrians; (2) all roads in the development should be public roads. Alternatively, if development has private roads, the District*

*requests a condition of approval include a perpetual easement allowing the School District vehicles to travel across the roads and a damage waiver binding on the owner of the private road that holds the School District harmless for any road damage caused by its vehicles traveling on the road."*

This criterion is met.

- C. The land division contributes to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities and does not conflict with existing access easements within or adjacent to the land division.**

**FINDING:** The hearings officer finds that the proposed subdivision contributes to the orderly development of the Bend area transportation network. The proposed subdivision will extend street facilities from 6<sup>th</sup> Street and 8<sup>th</sup> Street, which parallel the western and eastern boundaries of the site, respectively. There will be a stub-out of 7<sup>th</sup> street to the north to allow for a future connection. According to the submitted tentative plat, pedestrian sidewalks will be provided along two sides of 7<sup>th</sup> Street and one side of NE Vail Lane in accordance with City of Bend standards, as well as along the 8<sup>th</sup> Street frontage. Other than 8<sup>th</sup> Street, which is currently equipped with a bike lane, there are no identified bicycle lanes proposed on the subject property according to the Bend Urban Area – Bicycle and Trail System map. Bicycle lanes are not required on local streets. For the reasons stated herein, including those with respect to subsection B, this criterion is met.

- E. Each lot or parcel is suited for the use intended or offered.**

**FINDING:** The applicant proposes multi-family residential use in accordance with the RM Zone. The record indicates that each lot will be used for this purpose in compliance with the Zoning Ordinance.

- F. An approved water rights division plan.**

**FINDING:** As a condition approval, any water rights shall be shown on the final plat and signed by the water company providing such.

- G. If the land division adjoins an SM or SMR zone, the existence and location of such zone shall be entered on the deed for the lots or parcels created by the land division.**

**FINDING:** The Subject property does not adjoin an SM or SMR zone.

- G. The tentative plan for the proposed subdivision meets the requirements of ORS 92.090.**

**FINDING:** Oregon Revised Statute 92.090 sets forth the requirements for tentative plan and final plat procedures. These requirements are incorporated into the City of Bend Subdivision Ordinance No. NS-1786, Article III. The applicant is required to prepare the final subdivision plat in accordance with the City Subdivision Code and ORS 92.090 to meet this criterion. Conformance with these requirements will be determined as part of the final plat review process. By meeting these requirements this criterion will be satisfied.

- H. If the tentative plan is approved with phasing, the final plat for each phase shall be filed in accordance with the applicable provisions of Article IV of this ordinance.**

**FINDING:** The applicant proposes to develop the subdivision in two phases. As a condition of approval the applicant must file the final plat for each phase in accordance with Article IV of this ordinance.

**CONFORMANCE WITH CITY OF BEND SUBDIVISION ORD. NS-1786,  
ARTICLE VI, DESIGN STANDARDS AND IMPROVEMENTS**

**SECTION 6.010 Compliance required. All land divisions shall be in compliance with the design standards set forth in this article and Appendix "A".**

**FINDING:** The applicant proposes the required 60 foot right-of-ways for all local streets. Mr. Entler has raised concern that proposed local street Vail Lane will have a dedicated right-of-way of only 40 feet. However the tentative plan shows an existing right-of-way of 50 feet and contains a notation that the additional 10 feet will be dedicated. The applicant has also confirmed this, and it may be that Mr. Entler comments pre-existed the applicant's clarifications. The tentative plan also shows that Vail will be paved with hard service asphalt of 28 feet in width. Based on the information submitted by the applicant, the hearings officer finds that the applicant is proposing to develop the streets within the subdivision in compliance with the standards outlined in Section 6.010 and Appendix "A".

**SECTION 6.020 Streets, Sidewalks, and Bikeways**

- 1. General. Facilities providing safe and convenient motor vehicle, pedestrian and bicycle access shall be provided within new subdivisions, partitions, and planned unit developments. Where appropriate and reasonable such facilities may be required from new subdivisions, partitions,**

**and planned unit to nearby residential areas, transit stops, and neighborhood activity centers such as parks, schools, and shopping.**

- 2. New Streets. The location, width, and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried considering the terrain.**

...

**FINDING:** Based on the submitted tentative plat, the proposed motor vehicle, pedestrian and bicycle facilities in the subdivision are provided as required by the City Subdivision Ordinance and will provide for safe and convenient access from the subdivision to the area's streets and bicycle lanes.

The applicant's proposal includes the construction of NE Vail Lane and NE 7<sup>th</sup> Street. Pursuant to the City of Bend Urban Area Roadway System Plan, both streets are classified as being local streets. Presently NE Vail Lane is a dirt road consisting of 40 feet of right-of-way between 6<sup>th</sup> Street and 8<sup>th</sup> Street. It is accessed only off of 8<sup>th</sup> Street and provides access to approximately three lots. Thus, for all intent and purposes, the development of NE Vail Lane running east/west throughout the subdivision is the development of a new street.

In addition to developing NE Vail Lane, the applicant is proposing the construction of 7<sup>th</sup> Street, which will be stubbed to the northern property boundary. The tentative plan shows that 7<sup>th</sup> Street will be located within a 60 foot right-of-way, paved to 28 feet in width, and have a 5 foot wide property tight sidewalk on both sides of the street. Because 7<sup>th</sup> Street will be less than 150 feet in length, a fire apparatus turn around is not warranted.

The connection, improvement and extension of the planned streets, as proposed, will facilitate a continuation of the grid street system within the proposed subdivision and to the adjoining properties in the surrounding area. The extension of the proposed streets to and through the subject property will make for a logical continuation of streets and a functional transportation system. Based on the information submitted by the applicant, the proposal meets the requirements of this section.

- 3. Street Layout and Cul-de-sacs. Residential local streets shall be developed whenever practicable to increase connectivity within and between neighborhoods. The street layout shall be**



generally in a rectangular grid pattern to provide or continue a network of inter-connecting streets. The subdivision streets shall be oriented on an east/west axis to the greatest extent possible to ensure solar access for lots within the subdivision. The grid pattern may be modified as is physically proper to adapt to topography, natural conditions, or to afford scenic views. Cul-de-sac and dead end streets shall only be permitted when the following conditions are met:

- A. One or more of the following conditions prevent a required street connection:
  - \* natural slopes of 18% or more where it is not practical to construct streets with grades of 12%; or
  - \* presence of a wetland or water body which cannot be crossed; or
  - \* existing development on adjacent property prevents a street connection; and
- B. A street which either meets standards for connections and spacing or requires less deviation from standards is not possible; and
- C. Access Corridors are provided consistent with the standards for such corridors; and
- D. The cul-de-sac(s) shall be as short as possible and shall not exceed 600 feet in length between the center of the cul-de-sac bulb and the centerline of a through street.

**FINDING:** The applicant has proposed a grid street system to the greatest extent possible. The proposed streets and lots are oriented east/west and north/south, respectively. Based on the submitted tentative plat, the applicant has proposed a layout that will provide continuity with adjacent development. All streets are to be developed to City of Bend standards and specifications. There are no cul-de-sacs or public alleys proposed as part of the project. The proposal satisfies this criterion.

- 4. **Existing Streets.** Wherever streets, adjacent to or within a tract, are of inadequate width to accommodate the increased traffic expected for the subdivision or the City's transportation policies, additional right-of-way shall be provided at the time of the land division by the applicant. During consideration of the tentative plan for the subdivision or partition, the

**Subdivision Committee shall determine whether improvements to existing streets, adjacent to or within the tract, are required. If so determined, such improvements to adjacent streets shall be required where traffic on said streets shall be directly affected by the proposed subdivision.**

**FINDING:** As mentioned previously, the subject site is to be bound by NE Vail Lane along the southern property boundary, NE 6<sup>th</sup> Street along the western property boundary, and NE 8<sup>th</sup> Street along the eastern property boundary. Based on the submitted tentative plat, the applicant is proposing a 10 foot right-of-way dedication along the northern property boundary for NE Vail Lane, which is designated as a local street, and a 20 foot right-of-way dedication along the eastern property boundary for NE 8<sup>th</sup> Street, which is designated as a Minor Arterial. This is to bring the local roads into compliance with street design standards which require a 60 foot right-of-way. 6<sup>th</sup> Street does not require any dedications as it is currently an existing 60 foot right-of-way. The proposed right-of-way dedications meet the City of Bend standards for the roadway classification.

In addition to providing the necessary right-of-way dedications, the 10 foot dedication along NE Vail Lane will provide for a 60 foot width and allow the applicant to construct a 28 foot wide paved section of road.

Based on the information provided by the applicant, the proposal satisfies this criterion.

- 5. Intersection Angles. Street intersections shall be as near right angles as possible except where topography requires a lesser angle, but in no case shall the acute angle be less than 60 degrees.**

**FINDING:** The applicant has submitted a tentative plan map which depicts all street intersections at as near right angles as possible.

- 6. Alignment. Staggered street alignment shall, whenever practicable, leave a maximum of 200 feet distance between the center line of the streets, but in no case be less than 125 feet.**

**FINDING:** The tentative plan does not propose any staggered intersections. Therefore, this criterion will be satisfied.

- 7. Minimum Right of Way and Roadway Width. The street right of way and roadway surfacing widths shall be in conformance with the standards and specifications set forth in Appendix "A", "B" and "C".**

**FINDING:** According to the submitted application, the proposed development will comply with the appropriate standards as illustrated on the tentative plan. No comments to the contrary have been submitted by the City of Bend Traffic Engineer or City Engineer. The proposed internal street will have a right of way width of 60 feet, a paved surface of 28 feet with curbs and 5 foot wide property tight sidewalks on both sides of the roadway, except for the south side of NE Vail Lane. The actual plan now shows a 50 foot right of way with a notation that the additional 10 feet will be dedicated. These development standards are in conformance with Appendix "A".

- 8. Reserve Strips. Reserve strips controlling access to streets shall be required when deemed necessary by the Hearings Body. Deeds to the City for reserve strips shall be filed with the final plat. Reserve strips shall be numbered in sequence beginning with Lot "A".**

**FINDING:** No reserve strips are proposed with or required by this application.

- 9. Future Extension of Streets. When necessary to give access to or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary of the subdivision or partition and the resulting dead end streets less than 150 feet in length may be approved without a permanent turnaround.**

**FINDING:** The proposal meets this criterion because the applicant has indicated on the submitted tentative plan that 7<sup>th</sup> Street shall be extended to and through the site and stubbed to the northern property boundary of the site. Based on the submitted application materials, agency comments, and the findings herein, the above criterion is satisfied.

- 10. Frontage Roads. If a land division abuts or contains an existing or proposed collector or arterial street, the Hearings Body may require frontage roads, reverse frontage lots with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic. Provision may be made for emergency access. All frontage roads shall comply with appropriate local road standards.**

**FINDING:** The proposed subdivision abuts 8<sup>th</sup> Street, an existing Minor Arterial. Given the residential nature of the neighborhood, and since all proposed lots will have access onto local roads, no frontage road, reverse frontage lots, screen planting or other treatment is required

11. **Streets Adjacent to Railroads, Freeways and Parkways.** When the area to be subdivided adjoins or contains a railroad, freeway, or parkway, provision may be required for a street approximately parallel to and on each side of such right of way at a distance suitable for use of the land between the street and railroad, freeway, or parkway. In the case of a railroad, there shall be a land strip of not less than 25 feet in width adjacent and along the railroad right of way for screen planting between the railroad right of way and residential property. If the intervening property between such parallel streets and a freeway or a parkway is less than 80 feet in width, such intervening property shall be dedicated to park or thoroughfare use. The intersections of such parallel streets, where they intersect with streets that cross a railroad, shall be determined with due consideration at cross streets of a minimum distance required for approach grades to a future grade separation and right of way widths of the cross street.

**FINDING:** The subject property does not adjoin or contain a railroad, freeway, or parkway. Therefore, this criterion is not applicable.

12. **Continuation of Streets.** Subdivision streets, which constitute the continuation of streets in contiguous territory, shall be aligned so that their centerlines coincide. Where straight-line continuations are not possible, such centerlines shall be continued as curves. These streets or the continuation of streets in contiguous territory may be required by the Hearings Body where such continuation is necessary to maintain the function of the street or desirable existing pattern of development of streets and blocks in the surrounding area. Where solar orientation would not be possible if the street area continued, a new pattern may be started that is solar oriented.

**FINDING:** The applicant is not proposing the continuation of an existing street as part of this development request. This criterion is not applicable.

13. **Street Names.** Except for extension of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the City and shall be subject to the approval of the Fire Department.

**FINDING:** The applicant has proposed the extension of NE Vail Lane and 7<sup>th</sup> Street. The tentative plat further shows that the applicant proposes to maintain these street names within the proposed subdivision. The applicant will be required to coordinate new street names with the Deschutes County Property Address Coordinator and the City of Bend Property Address Coordinator.

- 14. Sidewalks. Sidewalks shall be installed at the property line. The Review Authority may allow a sidewalk to meander between the property line and street curb to avoid rock outcroppings, trees, steep side slopes or to provide variety where there is a wide planter strip, or to connect with adjoining sidewalks. Sidewalks are required to be installed on both sides of a public street and in any special pedestrian way within the subdivision except that in the case of collectors, arterial, cul-de-sacs, industrial districts, or in steep terrain, the Hearings Body may approve a subdivision with a sidewalk on one side only. When reasonable and appropriate the Hearings Body shall consider alternate pedestrian facilities or access corridors. The construction of off-site sidewalks may be required along routes to existing school and parks sites.**

**FINDING:** The applicant has proposed 5 foot wide sidewalks along both sides of 7<sup>th</sup> Street, as well as along the north side of NE Vail Lane. The tentative plat shows that the sidewalks will be separated from the curb and adjacent to the property line as required by City Code. This criterion will be satisfied.

- 15. Bikeways. If appropriate to the extension of a system of bikeways, existing or planned, the Review Authority may require the installation of separate bicycle lanes within local streets and/or separate bikeways in addition to the requirements of Tables "A", "B" and "C".**

**FINDING:** According to the Bend Urban Area – Bicycle and Trail System Plan map, there are no planned bike lane routes within the subject property. The proposed streets within the subdivision are identified as local streets and therefore are not identified for any future bike lanes. City standards do not require the striping of bicycle lanes on local streets. The proposal meets this criterion.

#### **SECTION 6.030 BLOCKS**

- 1. General. The length, width, and shape of blocks shall accommodate the need for adequate building site size and street width and shall be compatible with the limitations of the topography.**

**FINDING:** The applicant's proposal meets this criterion because the general block shape and configuration within the proposed subdivision provides for lot sizes that are adequate to accommodate future duplex development. In addition, the block lengths accommodate local streets that meet City specifications. There are no topographical limitations that would affect the size and shape of blocks.

2. **Size. No block shall be longer than 1,200 feet between the centerline of through cross streets except in residential subdivisions where no block shall be longer than 600 feet between centerline of through cross streets and where street location is restricted by natural topography, wetlands or other bodies of water.**

**FINDING:** Based on the submitted tentative plan, and in accordance with the prior findings concerning block length, no block is longer than 600 feet between street intersections. Therefore, this criterion will be met.

3. **Connecting access corridors. Where appropriate at cul-de-sacs, dead end streets, or along blocks more than 600 feet in length, pedestrian and bicycle access corridors shall be provided to minimize travel distance between subdivisions, parks, schools and collector and arterial streets. Access corridors shall be located to provide a reasonably direct connection between likely pedestrian destinations. A reasonably direct connection is a route, which minimizes out of direction travel for people likely to use the connection considering terrain, safety and likely destination. The Hearings Body may determine based on evidence in the record that construction of a separate access corridor is inappropriate or impracticable. Such evidence may include but is not limited to:**
  - A. **When the nature of abutting existing development makes construction of an Access Corridor impracticable;**
  - B. **When the access corridor would cross a natural area with significant natural habitat and construction would be incompatible with protection of natural values;**
  - C. **When the access corridor would cross topography where slopes exceed 30% or where path grades would exceed 18% slope; or**

- D. When a cul-de-sac or dead end street abuts rural resource land at the urban growth boundary except where the adjoining land is designated as an urban reserve area.**

**FINDING:** The applicant's subdivision proposal does not include a roadway designed with a cul-de-sac, a dead end street or a block longer than 600 feet.

**SECTION 6.040 LOTS: SIZE AND SHAPE.** The size, width, and orientation of lots shall be appropriate for the location of the land division and for the type of development and use contemplated, and shall be consistent with the lot size provisions of the zoning ordinance, with the following requirements:

- 1. In areas not to be served by a public sewer, minimum lot and parcel sizes shall permit compliance with the requirements of the Department of Environmental Quality and County Sanitarian, and shall be sufficient to permit adequate sewage disposal. Any problems posed by soil structure and water table as related to sewage disposal by septic tank shall be addressed and resolved in the applicant's initial plan.**

**FINDING:** The proposed development is in an area that is served by public sewer.

- 2. Where property is zoned and planned for business or industrial use, other widths and areas may be permitted by Hearings Body. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.**

**FINDING:** The subject property is zoned for residential use.

- 3. In steep terrain, increased lot sizes may be required to avoid excessive cuts, fills, and steep driveways.**

**FINDING:** The terrain of the subject property is not unusually steep and increased lot sizes are not required.

- 4. On tracts containing water courses or rock outcroppings, increased lot or parcel sizes may be required to allow adequate room for development and protection of the topographical feature.**

**FINDING:** The subject property does not contain any water courses or rock outcroppings.

**SECTION 6.050 LOTS, GENERAL REQUIREMENTS.**

1. **Frontage.** Each lot shall abut upon a street or an officially approved way other than an alley for a minimum width required for lots or parcels in the zone, except for lots or parcels fronting on the bulb of a cul-de-sac, where the minimum frontage shall be 30 feet, and for lots in a zero lot-line subdivision, where the minimum frontage shall be 20 feet. In zones where a minimum width is not specified, the minimum frontage requirement shall be 50 feet.

**FINDING:** All 26 lots in this project exceed the minimum width requirement of 20 feet on streets. This criterion is satisfied.

2. **All side lot or parcel lines shall be at right angles to street lines or radial to curved streets wherever practical.**

**FINDING:** According to the submitted tentative plat all side lot lines are radial or perpendicular wherever practicable.

3. **Through lots or parcels shall be avoided except where they are essential to provide separation of residential development from major street or adjacent nonresidential activities, or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least 10 feet in width and across which there shall be no right of access may be required along the lines of lots abutting such traffic artery or other incompatible use.**

**FINDING:** There are no double frontage lots proposed with this application. There are lots that have two frontages on corners where streets meet, however these lots are not considered through lots as contemplated by this criterion. Consequently, the above criterion does not apply.

4. **Corner lots or parcels shall be five feet more in width than the minimum lot width allowed in the underlying zone.**

**FINDING:** According to the submitted tentative plat there will be a total of four corner lots (Lot 1, 14, 15 and 26) within the proposed development. All corner lots exceed the minimum width by at least 5 feet, meeting the above criterion.



5. **Solar Access Performance Standard. As much solar access as feasible shall be provided each lot or parcel in every new subdivision, considering topography, development pattern, and existing vegetation.**

**FINDING:** No new development is being proposed with this application. Solar access requirements must be reviewed during the building permit review process.

6. **Underground Utilities. All permanent utility service to lots in a subdivision shall be provided from underground facilities. The subdivider or partitioner shall be responsible for complying with requirements of this section,**

**FINDING:** According to the burden of proof statement, all new permanent utilities will be installed underground to each lot. This will be a condition of approval.

#### **SECTION 6.060 GENERAL PROVISIONS.**

1. **Lighting. The subdivider or partitioner shall install street lights, including underground wiring and a base for any proposed ornamental street lights, in accordance with the City street light plan. Locations of the wiring and any base shall be approved by the City in coordination with the affected utility company.**

**FINDING:** The submitted application does not indicate that underground wiring and a base for street lights will be provided pursuant to City standards. As a condition of any final approval, the applicant shall provide underground wiring and base for future street lighting to City standards along with the construction of the proposed streets.

2. **Fire Hazards. Wherever possible, a minimum of two points of access to the subdivision shall be provided to provide assured access for emergency vehicles and ease resident evacuation.**

**FINDING:** The proposed subdivision will have at least two points of access, one from 6<sup>th</sup> Street and one from 8<sup>th</sup> Street. The proposal satisfies this criterion.

3. **Street Tree Planting. Street tree planting plans, if proposed, for a subdivision shall be submitted to the Planning Director and receive approval before the planting is begun.**

**FINDING:** According to the submitted tentative plan, no street tree plantings are planned for the subdivision, as the planting of street trees is optional.

4. **Water/Sewer. All subdivisions shall provide water and sewer lines constructed to City standards and specifications approved by the City Engineer. All lots shall be served from the City of Bend water system or by water systems acceptable to the City. Water mains and services lines shall be installed prior to the curbing and paving of new streets in all new subdivisions.**

**FINDING:** The applicant proposes to extend City sewer and water through the site. Comments received from the City Engineering Division indicate that extension of sewer and water services is reasonable.

Based on the information submitted by the applicant, as well as agency comments, the proposal satisfies the above criterion.

**SECTION 6.070 GRADING OF LOTS AND PARCELS. Grading of lots and parcels shall conform to the following standards unless physical conditions demonstrate the practicality of other standards. Such grading shall be in conformance with the applicable provisions of the Uniform Building Code, Chapter 33, and any other City of Bend provisions pertaining to grading.**

1. **Cut slope ratios shall not exceed one foot vertically to one-half foot horizontally.**
2. **Fill slope ratios shall not exceed one foot vertically to two feet horizontally.**
3. **The composition of soil or fill and the characteristics of lots and parcels made usable by fill shall be suitable for the purpose intended.**
4. **When filling or grading is contemplated by the subdivider, or petitioner, he shall submit plans showing existing and finished grades for the approval of the City Engineer and Building Official. In reviewing these plans, the City Engineer and Building Official shall consider the need for drainage and the effect of filling on adjacent property. Grading shall be finished in such a manner as not to create steep banks or unsightly areas to adjacent property.**

**FINDING:** Due to the generally flat nature of the site, the applicant does not propose to excavate the site beyond what is necessary to accommodate the proposed roadways. This will not have an adverse impact on adjacent properties as all proposed grading will be completely contained on the applicant's property. According to the submitted application materials, filling and grading will be minimal and will be subject to Building Department review. Based on the information provided by the applicant this criterion will be satisfied.

**SECTION 6.120 PARK AND TRAIL DEVELOPMENT AND DEDICATION.**

1. **All lots or parcels that are developed with residential structures shall pay an applicable system development charge for park development as provided for under Bend Code Sections 1.900-932 and ORS 223.297-314. The amount of the system development charge shall be pursuant to a City of Bend Resolution adopted under the aforementioned Code. The system development charge shall be payable at the time of issuance of the building permit.**
2. **No subdivision or partition of land lying within the Bend Urban Growth Boundary, but outside the boundaries of the Bend Metro Park and District, shall be approved unless the land owner has signed an annexation agreement with the Bend Metro Parks and Recreation District.**

...

**FINDING:** The City of Bend Urban Area Bicycle and Primary Trail System Plan does not call for a trail on the subject property. The applicant has met with Bend Metro Parks and Recreation District to discuss possible park acquisition and development of the subject property. However, the applicant's property does not offer an opportunity for a future park. As a condition of any final approval, the applicant is required to pay all applicable SDC's for parks as required by Bend Code Sections 1.900-932 and ORS 223.297-314.

**SECTION 6.130 NATURAL FEATURES AND OPEN SPACE**

**In order to promote livability through the preservation of natural features and vegetation, and the development of public or private open spaces, no subdivisions shall be approved unless the following requirements are met:**

1. **Areas of Special Interest . . .**

**FINDING:** There are no identified areas of special interest on the subject property. The above criterion is not applicable to the applicant's request.

2. **As a means of retaining the natural character and visual quality of the community, significant rock outcrops, stands of native trees or other permanent natural features shall be maintained to the maximum extent practicable.**

**FINDING:** There are no significant outcrops, stands of native trees or permanent natural features on the site. However, there are several large trees. Therefore, as a condition of any final approval the applicant shall be required to preserve the existing trees located on tax lot 600 to the extent practicable given the proposed construction.

3. **Natural tree cover shall be preserved along streets, both within and along dedicated street right-of-way, to the maximum extent practicable. Streets, sidewalks and other public services and utilities constructed within the rights-of-way may meander within the public right-of-way to allow preservation of trees as deemed appropriate by the City of Bend Engineer.**

**FINDING:** The record indicates that it will be difficult, if not impracticable, to retain all trees within and along the dedicated street right-of-ways. Nevertheless, natural tree cover shall be preserved to the maximum extent practicable.

#### **ZONING ORDINANCE SECTION 10.10.29, CONDITIONAL USE PERMITS**

- (1) **General Conditional Use Permit Criteria. A conditional Use Permit may be granted only upon findings by the Approval Authority that the proposal meets all the criteria in this section, as well as all other applicable criteria contained in this ordinance. The general criteria are:**
  - (a) **That the location, size, design and operating characteristics of the proposed use are such that it will have a minimal adverse impact on the property value, livability and permissible development of the surrounding area. Consideration shall be given to compatibility in terms of scale, coverage, and density, to the alteration of traffic patterns and the capacity of surrounding streets, and to any other relevant impact of the proposed use.**

**FINDING:** The proposal includes the development of a zero lot line subdivision to support the development of shared wall units. These homes look like duplexes in appearance but each unit may be individually owned. Since each unit may also be classified as a town home, the applicant has addressed the conditional use permit criteria. Planning staff found that a conditional use permit

was not required and that the units proposed here are effectively duplexes and allowed outright in the proposed zone. The hearings officer agrees. While their may be different ownership, the units will look like and most importantly function the same as a duplex, irrespective of ownership.

**DECISION AND RECOMMENDATION:**

The hearings officer recommends **approval** of the zone change application. The hearings officer further **approves** the subdivision plat and application contingent upon approval of the zone change. Approval by the hearings officer is based on the conditions of approval set forth below as well as those found in the body of this Decision.

1. Approval is based on a revised submitted tentative plan, and the improvements and physical conditions depicted thereon. Any substantial alteration to those plans, other than those that may be required by this decision or by the City Council, will require a new application. Any public improvements proposed by the applicant on the submitted plan or other submitted documents have been relied upon in granting subdivision approval and are hereby required as a condition of subdivision approval.
2. Prior to final plat approval, engineered plans for the respective street, sewer and water facility improvements, and grading, storm and master drainage facilities for the subdivision shall be submitted in a single submittal to the City Engineering Division and City Development Services Division for review and approval. The sewer system shall be designed to provide gravity service to each lot. All new streets shall be constructed to City standards and specifications including paving, curbs and drainage facilities. Prior to issuance of any building permits, all City infrastructures shall be completed, including paved access to all fire hydrants and manholes.
3. The applicant shall preserve the existing trees located on tax lot 600 to the maximum extent practicable, particularly those trees located within the required setbacks.
4. The applicant shall apply for site plan review, prior to final plat approval, for the proposed zero lot line parcels and structures.
5. The applicant shall submit a recorded copy of the CC&R's for the lots to be developed with common wall zero lot-line structures to the Planning Division prior to final plat approval.

6. The final plat shall contain a statement of water rights, if necessary, and be signed by an authorized representative of the applicable Irrigation District.
7. The final plat shall show a right-of-way dedication of 10 feet for the right-of-way along the subject property's NE Vail Lane frontage and 20 feet for the right-of-way along the property's 8<sup>th</sup> Street frontage, ensuring that local streets shall have a right-of-way width of 60 feet.
8. The applicant shall identify lots that will include fill material on the final plat. Engineered foundations will be required in these areas.
9. Prepare the final plat in accordance with the City subdivision ordinance, NS-1786.
10. Coordinate the location of streetlights with the City Public Works Department and the utility service serving the area. Provide underground wiring and a base for the streetlights.
11. Provide underground utility services, including water, sewer, electric, telephone and television cable to each lot.
12. The new street within the subdivision shall have a unique name approved by the Deschutes County and City of Bend Property Address Coordinators. Documentation from the Deschutes County and City of Bend Property Address Coordinators which indicates that the street name has been approved shall be submitted to the City of Bend Planning Division prior to final plat approval.
13. The applicant shall provide 5 foot wide sidewalks installed property tight along both sides of 7<sup>th</sup> Street and the north side of NE Vail Lane within the subdivision.
14. Provide a subdivision guarantee report prior to final plat approval.
15. Submit closure sheets with the final plat.
16. Show individual lot sizes on the final plat.
17. Comply with the requirements of ORS 92.090 for preparation of the final plat.

**The decision pertaining to the applicant's subdivision application becomes final twelve days after the date mailed, unless appealed by a party of interest.**

Dated this 3<sup>rd</sup> day of November, 2005



Timothy G. Elliott  
City of Bend Hearings Officer

Mailed this 3<sup>rd</sup> day of November, 2005  
(Date to be filled in by City Planning Division)

