



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

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

NOTICE OF ADOPTED AMENDMENT

May 11, 2006



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Gresham 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: May 30, 2006

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) 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 MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Stacy Hopkins, DLCD Regional Representative
Ron Bunch, City of Gresham

<paa> ya/



FORM 2

DLCD NOTICE OF ADOPTION

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

(See reverse side for submittal requirements)

DEPT OF

MAY 09 2006

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: City of Gresham Local File No.: PMA 05-6206
(If no number, use none)

Date of Adoption: 5-2-06 Date Mailed: 5-8-06
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 12-29-05

- | | |
|--|--|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: _____ |
- (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

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 "N/A."

Plan Map Changed from : MDR-24 to LDR

Zone Map Changed from: _____ to _____

Location: Driveway parcel to 4735 SE Welch Rd. Acres Involved: .18-acre

Specify Density: Previous: Min. 12.1 units/acre New: Min 6.22 units/acre

Applicable Statewide Planning Goals: Goal 10

Was an Exception Adopted? Yes: _____ No: XX

DLCD File No.: 001-06(14909)

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: X 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: Metro

Local Contact: Ron Bunch Area Code + Phone Number: 503-618-2529

Address: 1333 NW Eastman Parkway City: Gresham, OR

Zip Code+4: 97030-3813 Email Address:

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 "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice 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 - ATTENTION: PLAN AMENDMENT SPECIALIST.

CB 12-06

ORDINANCE NO. 1629

AN ORDINANCE AMENDING THE GRESHAM COMMUNITY DEVELOPMENT PLAN MAP TO CHANGE THE LAND USE DESIGNATION OF A PARCEL FROM MEDIUM DENSITY RESIDENTIAL - 24 (MDR-24) TO LOW DENSITY RESIDENTIAL (LDR) (CITY OF GRESHAM PMA 05-6206 - DAVIS PROPERTY)

THE CITY OF GRESHAM ORDAINS AS FOLLOWS:

Section 1. The Gresham Community Development Plan Map is amended as follows:

City of Gresham, Multnomah County, Oregon, 1S3E13 CD Tax Lot #4400 from Medium Density Residential - 24 (MDR-24) to Low Density Residential (LDR).

Section 2. The amended Gresham Community Development Plan Map is marked as Exhibit A.

First reading: April 18, 2006

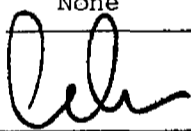
Second reading and passed: May 2, 2006

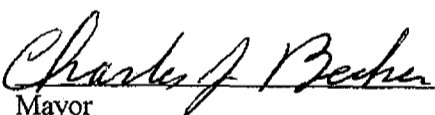
Yes: Becker, Echols, McIntire, Bemis, Widmark, Warr-King

No: None

Absent: Craddick

Abstain: None


City Manager


Mayor

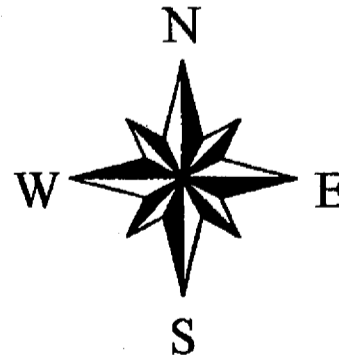
Approved as to Form:


Senior Assistant City Attorney

Exhibit A



File #: PMA 05-26006206
Project: John Davis Property



BEFORE THE CITY COUNCIL OF THE
CITY OF GRESHAM

IN THE MATTER OF AMENDMENTS TO) Order No. 588
GRESHAM COMMUNITY DEVELOPMENT PLAN)
MAP FROM MODERATE DENSITY RESIDENTIAL-) PMA 05-6206
24 (MDR-24) TO LOW DENSITY RESIDENTIAL)
(LDR) (DAVIS PROPERTY))

On April 18, 2006, the City Council held a public hearing to take testimony on an amendment to the Gresham Community Development Plan Map to change the land use designation on a .18-acre parcel used as a driveway from Moderate Density Residential-24 (MDR-24) to Low Density Residential (LDR).

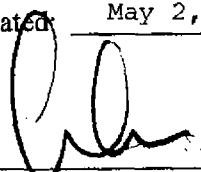
The hearing was conducted under Type III procedures. Mayor Charles Becker presided at the hearing.

The Council closed the public hearing and approved the proposed amendments at the April 18, 2006 meeting, and a decision was made at the May 2, 2006 meeting.

A permanent record of this proceeding is to be kept on file in the Gresham City Hall, along with the original of the Order.

The Council orders that this amendment is approved, and adopts the findings, conclusions, and recommendations as stated in the attached Planning Commission Recommendation Order and staff report.

Dated May 2, 2006



City Manager



Mayor

BEFORE THE PLANNING COMMISSION OF THE
CITY OF GRESHAM

TYPE III RECOMMENDATION ORDER

PMA 05-6206

A public hearing was held on February 13, 2006, to consider a proposed Plan Map amendment from **Moderate Density Residential-24 (MDR-24) to Low Density Residential (LDR)** on a .18-acre parcel used as a driveway to a single-family residence. The site is located at 4735 SE Welch Road, and is also described as State ID# 1S-3E-13CD #4400, Willamette Meridian, Gresham, Oregon.

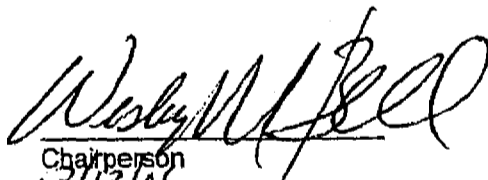
The Planning Commission closed the public hearing at the February 13, 2006 meeting, and a final recommendation was made at the March 13, 2006 meeting.

Wes Bell, Chairperson, presided at the hearing.

A permanent record of this proceeding is to be kept on file in the Gresham City Hall, along with the original of this Type III Plan Map Amendment Recommendation Order.

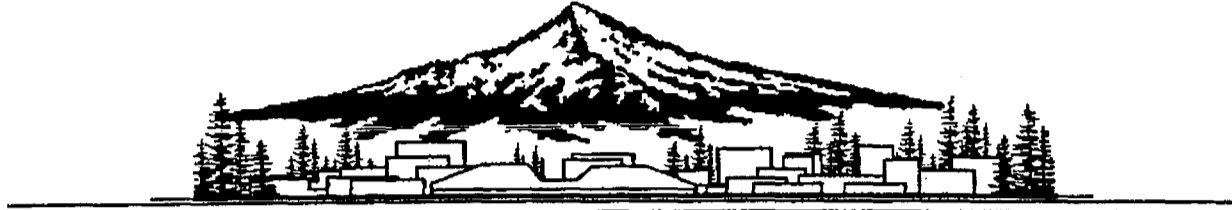
The Planning Commission recommends **Approval** of the proposed Plan Map amendment to the City Council and adopts the findings, standards, conclusions and recommendations contained in the February 1, 2006 staff report with the following exceptions/amendments:

NONE



Chairperson
3/13/06

Date



MEMORANDUM

*Comprehensive Planning
Community & Economic Development Department
City of Gresham*

STAFF REPORT TYPE III PLAN MAP AMENDMENT HEARING

**GRESHAM COMMUNITY DEVELOPMENT PLAN MAP AMENDMENT
TO CHANGE THE LAND USE DESIGNATION OF A .18-ACRE PARCEL
(1S3E13CD, TL 4400) FROM MEDIUM DENSITY RESIDENTIAL (MDR-24) TO
LOW DENSITY RESIDENTIAL (LDR)**

TO: City of Gresham Planning Commission

FROM: Ron Bunch, Principal Planner
John Pettis, Associate Planner

HEARING DATE: February 13, 2006

REPORT DATE: February 1, 2006

FILE NUMBER: PMA 05-6206

PROPOSAL: Amend the Gresham Community Development Plan Map to change the land use designation of a .18-acre parcel (1S3E13 CD TL 4400) from Medium Density Residential – 24 (MDR-24) to Low Density Residential (LDR) to be consistent with the LDR designation of adjacent properties in the same ownership (John G. Davis and Theda M. Davis). The subject property is used as a driveway to provide access to property located at 4735 SE Welch Road that is also designated LDR. The subject property measures approximately 20' x 425'.

EXHIBITS: A. Map of the Subject Property
B. Multnomah County Zoning map

RECOMMENDATION: Staff recommends that the Planning Commission recommend to the City Council adoption of the proposed Gresham Community Development Plan Map amendment as shown on Exhibit A.

SECTION I BACKGROUND INFORMATION

This quasi-judicial Community Development Plan Map change was initiated by the City Council at the request of the property owner John G. Davis who resides at 4735 Welch Road in Gresham. The subject property serves Mr. Davis' residence as a driveway. As stated above, property owned by the Davis family, including Mr. Davis' residence and his parents' properties, Elmer and Eva Davis, 4801 Welch Road (1S3E13 CD TL 4100 and 4200) are all designated as LDR. Thus all the property controlled by the Davis family is Low Density Residential except for the narrow .18-acre strip that is John Davis' driveway.

Mr. John Davis submitted the following commentary to the City Council in his request for the City to initiate the change in land use designation. He said, "*My home was constructed in 1970 and at that time the property was in the County and was all zoned (designated) SR (Single Family Residential) (Exhibit B). The City of Gresham's zoning map of July 1, 1980 appears to show my primary property zoned LDR and my driveway zoned MDR-24. The zoning map currently on the City of Gresham's web site shows the same zoning configuration. I believe my driveway was zoned MDR-24 in error and should be adjusted to an LDR status.*"

In conversations with City staff, Mr. Davis also raised the following additional reasons why it is rational for the subject property to be changed back to a single-family land use designation:

- The size and configuration of the subject property causes it to not be suitable for any type of development.
- The subject property was originally part of adjacent property designated LDR (Tax Lot 4199). It was sold to Mr. John G. Davis by his parents for the purpose of being a driveway only.
- Should the subject property and the above Tax Lots 4300, 4200, 4100¹ be sold for LDR development then it (the subject property) will be attached to the larger Tax Lot 4100. Its current MDR-24 land use designation would cause problems for any future land sale and development proposal. A mistake made by past government authorities could cause significant hardship. Also, the error that resulted in the multi-family designation could significantly impact the possible future use of Tax Lot 4100 for single-family development. This is because when the adjacent MDR-24 property (Tax Lot 4500) to the west is developed as apartments there would be less buffering and screening if the subject parcel retains its MDR-24 status.
- Different individuals own the parcels to the west. There is no possibility of the subject property being attached to these parcels. The Davis family intends to retain control of all the properties under their ownership.

¹ All of these tax lots are owned by the Davis family

**SECTION II
APPLICABLE COMMUNITY DEVELOPMENT CODE
PROCEDURES**

- A. Section 11.0204 Type III Procedure - Quasi-Judicial Hearing
- B. Section 11.0300 Public Hearings and Deliberations
- B. Section 12.0001 Community Plan Map Amendments and Amendments to Map Boundaries

**SECTION III
APPLICABLE COMMUNITY DEVELOPMENT PLAN POLICIES**

- 10.014 Land Use Planning -- Goal; Policies 1, 9, 23
- 10.100 Citizen Involvement -- Goal; Policies 1, 2, 3, 10, 11

**SECTION IV
FINDINGS OF FACT – CONFORMANCE TO THE
COMMUNITY DEVELOPMENT PLAN**

The proposed amendment to the Community Development Plan Map is consistent with all applicable criteria of the Community Development Plan as indicated by the following findings and conclusions.

Community Development Code Procedures

Section 11.0204 – Type III Procedures, Quasi-Judicial Hearings; Section 11.0300 Public Hearings and Deliberations: This Plan Map amendment proposal is identified in Section 11.0204 as requiring a quasi-judicial action necessitating a Type III Land Use Procedure. Required notice of the public hearing for this map amendment has taken place per GDC Section 11.0300: Public deliberations and Hearings; specifically per 11.0313, Procedure for Mailed Notice [GRC 11.03.140] and 11.0314, Time and Cost of Notice and Notification Criteria [GRC 11.03.150]

Section 12.0001 - Community Plan Map Amendment and Amendments to Map Boundaries: Section 12.0001 (3) Amendment Criteria states: The applicant must demonstrate compliance with the following criteria:

Approval Criteria:

- “(a) The proposed designation is consistent with the applicable policies of the Community Development Code.*
- “(b) The proposed designation will not negatively impact existing or planned public facilities and services.”*

Findings: The following provides findings that the proposal is consistent with the applicable policies of the Community Development Code. The findings illustrate consistency with the applicable Comprehensive Plan criteria are incorporated herein by reference.

In regard to above criteria (b), redesignating this site to Low Density Residential will not negatively impact existing or planned public facilities. Since the strip of land is relatively small (.18 acre) and narrow (20 ft. wide), it is not buildable and cannot be occupied by a residence that would need additional public facilities and services. It can only continue to be used for a driveway access to the northerly LDR property.

Conclusion: The proposed designation is consistent with above Plan Map amendment criteria "(a)" and "(b)", which include consistency with the applicable policies of the Community Development Code based on the findings below that are incorporated by reference.

Approval Criteria:

"(c) In addition to meeting the above Plan Map approval criteria, the applicant must demonstrate compliance with one of the following criteria:

- i. A mistake was made in the current designation. The applicant must identify a specific error made during the adoption process of the Community Development Code that, if it had been brought to the attention of the Council, would have influenced the Council's decision of the appropriate designation;*
or
- ii. The site is suitable for the proposed designation and there is a lack of appropriately designated alternative site within the vicinity. The size of the vicinity will be determined on a case by case basis since the impact of a proposed land use designation and its potential uses vary. The factors to be used in determining suitability are parcel size and location."*

Findings: This Plan Map amendment proposal complies with above criteria "(i)". The City agrees with Mr. Davis' assertions that a mistake was made in designating this long narrow property (.18 acre) as MDR-24. This is because its previous land use designation in Multnomah County, prior to city annexation, was single family residential and remained so until Gresham annexed these lands and applied urban zoning within the area.

Staff agrees that it was illogical to designate an undevelopable property (due to size and configuration) a different designation than that of the parent parcel and surrounding lands owned by the same property owners. If the property owners had an opportunity to remonstrate at the time the land use designation was applied, valid and rational case could have been presented to maintain the single-family designation of the property.

It is staff's opinion that based on the above facts presented by Mr. Davis, and incorporated herein by reference, that the City Council would have agreed the property should be designated as Low Density Residential (LDR.)

Conclusions: A mistake was made when the current designation of MDR-24 was applied to the subject property and it should be corrected by redesignating it Low Density Residential (LDR).

Approval Criteria:

“(d) The proposed designation is consistent with the Metro Urban Growth Management Functional Plan.”

Findings:

Section V of this staff report demonstrates that this proposal is consistent with the Metro Urban Growth Management Functional Plan. They are incorporated by reference.

Approval Criteria:

Applicable Community Development Plan Policies

The following are the Community Development Plan policies that relate directly to this proposal. Findings are provided to illustrate how the proposal conforms to the Community Development Plan.

Goal 2: Land Use Planning, Land Use Policies and Regulations

Goal: Maintain an up to date Comprehensive Plan and implementing regulations as the legislative foundation of Gresham’s land use program

Findings: The City finds that acknowledging and correcting past mistakes in the Community Plan Map designation of properties is a key element of maintaining an up-to-date Comprehensive Plan. Correcting mistakes is essential to ensuring that logical urban land development occurs under the City’s land use program.

Conclusion: The proposed amendment is consistent with the Land Use Planning goal by correcting a mistake that has the potential of interfering with logical development of the subject parcel and those adjacent.

Goal 2, Land Use Planning Policies 1, 9 and 23

Policy 1: The City’s land use planning program will be consistent with state and regional requirements but shall also serve the best interests of Gresham.

Findings: It is in the City’s best interests to correct mistakes on its Community Development Plan Map to ensure logical land use planning within all parts of the city. Amending the Community Plan Map to make a property that is currently not developable more likely to be used to accommodate needed housing serves to further promote the City’s interests.

Conclusion: The proposed amendment to the Community Plan Map implements Goal 2 Land Use Planning Policy 1 for the reasons stated above.

Policy 9: The City shall require new development to address the need for compatibility between itself and adjacent land uses to minimize conflicts between differing uses and building types.

Findings: As stated above, the misapplication of the multi-family plan designation on the subject property significantly reduces the required buffering and screening between it and the adjacent MDR-24 property to the west. This is a disadvantage to the existing property owners.

This is because if the subject property is ever to be developed as MDR-24 it must be combined with larger and abutting LDR properties under the same ownership. In order for this to happen it must be re-designated back to LDR.

If the land use change does not occur expeditiously and the MDR-24 property to the west (under different ownership) develops as apartment dwellings, there would not be the amount of buffering and screening between the two properties as would be required if the subject property was Low Density Residential. Therefore, to promote compatibility between different land uses (MDR 24 and LDR) and minimize conflicts it is necessary for the subject property to be designated as LDR.

Conclusion: The proposed Plan Map Amendment is consistent with the applicable policy by ensuring that appropriate buffering and screening will be applied between differing land uses (MDR-24 and LDR).

Policy 23: Gresham shall coordinate the development, adoption and amendment of its land use related goals, policies and implementing measures with other affected jurisdictions, agencies and special districts.

Findings: The proposal to amend the Community Plan Map has been coordinated with affected jurisdictions, agencies and special districts through the Post Acknowledgment Plan Amendment process required by the Department of Land Conservation and Development (DLCD). No comments have been received from DLCD, Metro or other agencies or special districts.

Conclusion: Based upon the above findings it is concluded that the proposal to amend the Community Development Plan Map complies with the above Policy 23.

Citizen Involvement – Policy 11

11. The City shall ensure that the public has complete and timely access to all public information concerning land use projects and issues. This includes private development proposals once they are in the formal application process.

Findings: The city has provided notice of this proposed minor Plan Map amendment pursuant to all requirements of state statute and the Gresham Development Code as stated above. Evidence of mailing and posting of the property is contained within the relevant file PMA 05-6206.

Conclusion: The City has ensured that the public has had complete and timely access to all public information concerning this particular land use application. Therefore, the City's actions are consistent with and implement the above Citizen Involvement Policy 11.

**SECTION V
CONSISTENCY WITH METRO URBAN GROWTH MANAGEMENT
FUNCTIONAL PLAN AND STATEWIDE PLANNING GOALS**

The Gresham Community Development Plan is consistent with the Metro Functional Plan and Statewide Planning Goals and Administrative Rules. Findings and conclusions for all amendments to the Gresham Community Development Plan must demonstrate continued compliance with regional and state requirements.

Metro Functional Plan

Findings: This proposal to amend the Community Plan Map will not affect the implementation of Metro Functional Plan Titles 2, 3, 4, 5, 6 or 7. Furthermore, these changes do not affect any land use designations that would affect the City's Compliance with Title 1, Housing and Employment Capacity. This is because the land area is so insignificant and the property if retained in its current MDR-24 zoning would be undeveloped.

Conclusion: The proposal is consistent with the requirements of the Metro Functional Plan.

Statewide Planning Goal

Findings: The proposal, because it relates to the development of residential land, affects Statewide Planning Goal 10, Housing. However, its impacts are entirely insignificant due to the very small size of the subject property. Furthermore, as stated several times above, changing its land use designation would, in fact, provide more housing development opportunities than if it remained an undevelopable MDR-24 parcel.

Conclusion: The proposal is consistent with the Statewide Planning Goals, specifically with Goal 10 for the reasons provided above.

**SECTION VI
OVERALL CONCLUSION**

The Community Plan Map Amendment, per Exhibit A, is consistent with applicable decision-making criteria, including the Gresham Development Code, goals and policies of the Community Development Plan, Metro Functional Plan and the Statewide Planning Goals, as contained or referenced within this report.

**SECTION VII
RECOMMENDATION**

Staff recommends that the Planning Commission recommend to the City Council adoption of the proposed Community Plan Map amendment as contained in Exhibit A.

End of Staff Report



Community Development Department
City of Gresham

CERTIFICATION OF MAILING

FILE NO.: PMA 05-6206 PROJECT: City of Gresham – “Davis Property” PMA
I, TAMMY J. RICHARDSON, CERTIFY THAT I HAVE MAILED THE
ATTACHED NOTICE OF FINAL DECISION TO THE FOLLOWING PARTIES:

DLCD

Plan Amendment Specialist
635 Capitol Street, NE #150
Salem, OR 97301-2540

Metro
Growth Management Services
600 NE Grand
Portland OR 97232-2736

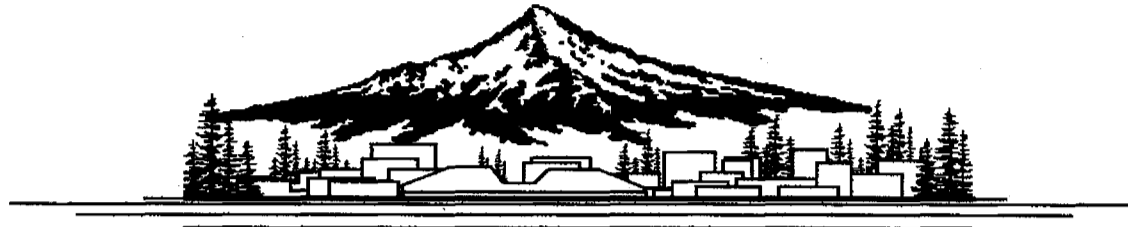
John Davis
4735 SE Welch Road
Gresham, OR 97080

Richard Kellams
4717 SE Welch Road
Gresham, OR 97080

Curtis Rystad
1800 NW 167th Place #115
Beaverton, OR 97006

SIGNATURE: Tammy J. Richardson

DATE OF MAILING: May 8, 2006



CITY OF GRESHAM
Community & Economic Development Department
1333 NW Eastman Parkway
Gresham, Oregon 97030
(503) 618-2779

NOTICE OF FINAL DECISION

May 8, 2006

On May 2, 2006, the Gresham City Council Approved **Council Order No. 588** on the application of **City of Gresham** contained in **File No. PMA 05-6206 and Ordinance No. 1629** to amend the Gresham Community Development Plan Map to change the land use designation of a .18-acre parcel from Moderate Density Residential-24 (MDR-24) to Low Density Residential (LDR).

An appeal of this decision may be filed with the Land Use Board of Appeals (LUBA) within 21 days of this Notice of Decision. LUBA has the jurisdiction to review all governmental land use decisions. An appeal of a land use decision must conform to the procedures and requirements of LUBA. They may be contacted in Salem at:

LUBA
550 Capitol Street, NE – Suite #235
Salem, Oregon 97301-2552
(503) 373-1265