



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

### NOTICE OF ADOPTED AMENDMENT

August 2, 2007



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 003-07

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: August 16, 2007**

This amendment was submitted to DLCD for review 45 days prior to adoption. 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 ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Mark Radabaugh, DLCD Regional Representative  
Brian Harrington, City of Bend

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**DLCD NOTICE OF ADOPTION**

**DEPT OF**

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

**JUL 30 2007**

(See reverse side for submittal requirements)

**LAND CONSERVATION  
AND DEVELOPMENT**

Jurisdiction: City of Bend Local File No.: 07-008  
(If no number, use none)

Date of Adoption: July 18, 2007 Date Mailed: July 26, 2007  
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: January 19, 2007

- 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."

The adopted Zone Change is to change the subject property from Urban Standard Res. (RS)  
to Urban Medium Density Res. (RM), on .249 acres.

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."

Same

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

Zone Map Changed from: RS to RM

Location: 17-12-28CA-400 Acres Involved: 2.49

Specify Density: Previous: 2.0 - 7.3 units/gross acre New: 7.3 - 21.7 units/gross acre

Applicable Statewide Planning Goals: 10/11

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

DLCD File No.: 003-07 (15812)

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: \_\_\_\_\_

Arnold Irrigation District

Local Contact Brian Harrington Area Code + Phone Number: 541 - 693-2118

Address: 710 NW Wall Street City: Bend

Zip Code+4: 97701 Email Address: bharrington@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 "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 Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

**ORDINANCE NO. NS-2062**

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND TOTALING 2.49 ACRES BETWEEN NE 6<sup>TH</sup> STREET AND NE 8<sup>TH</sup> STREET IN THE ELLIS SUBDIVISION FROM RS RESIDENTIAL URBAN STANDARD DENSITY TO RM URBAN MEDIUM DENSITY.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the Hearings Officer's findings and record, and found that the proposal is consistent with the criteria of the Bend Development Code Section 4.6.300. The Bend City Council adopts the Findings and Decision of the Hearings Officer dated June 7, 2007, file number PZ 07-008.

Section 2. The Bend Urban Area Zoning Map is hereby amended by changing the designation of the property shown in "Exhibit A" and described in "Exhibit B" from Residential Urban Standard Density (RS) to Residential Urban Medium Density (RM).

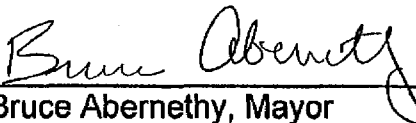
Read for the first time the 2nd day of July, 2007.

Read for the second time the 18th day of July, 2007.

Placed upon its passage the 18th day of July, 2007.

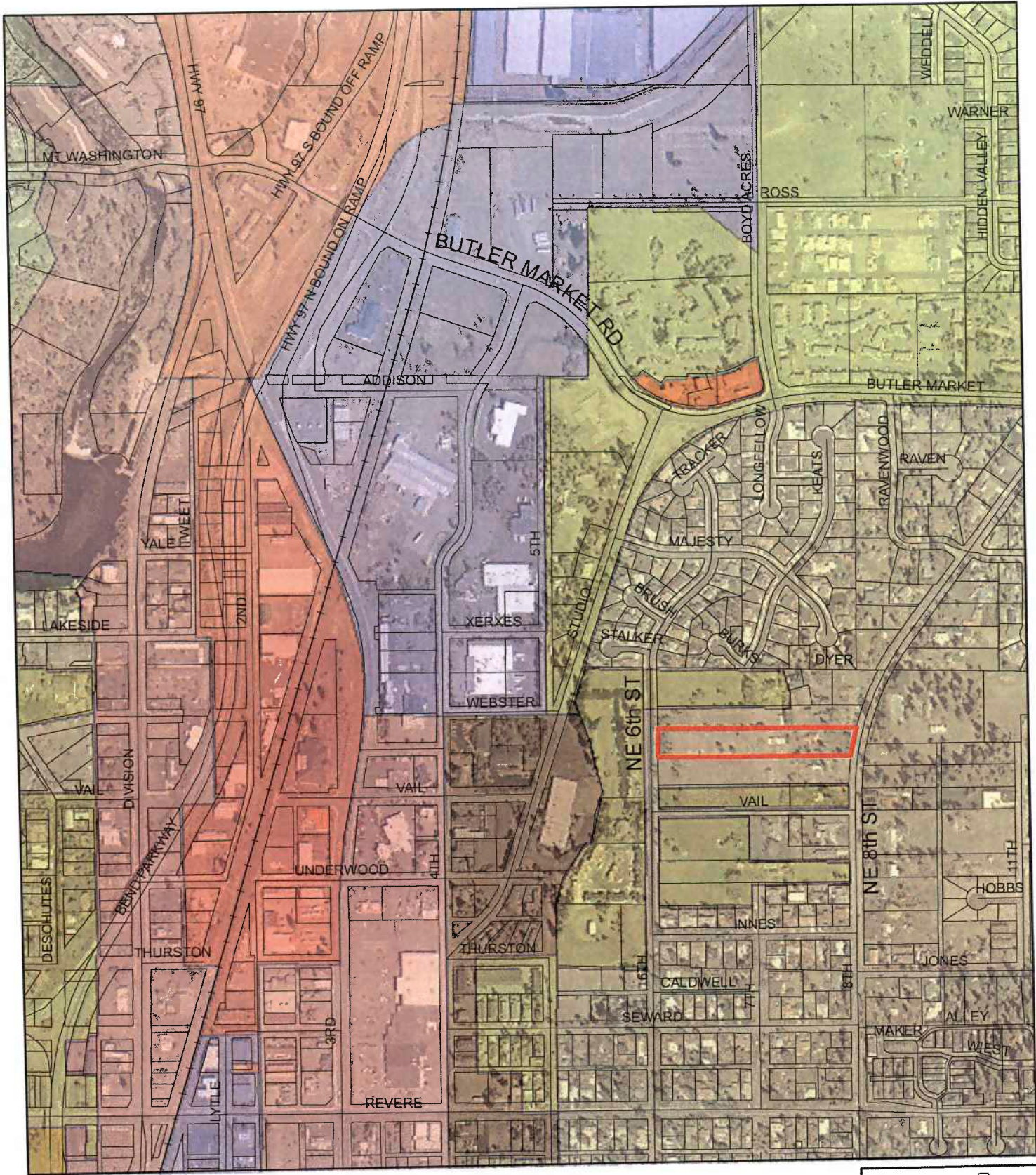
YES: 5                      NO: 0

Authenticated by the Mayor the 18<sup>th</sup> day of July, 2007.

  
Bruce Abernethy, Mayor

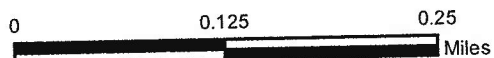
ATTEST:

  
Patricia Stell, City of Bend Recorder



## PZ 07-008 Zone Change - RS to RM

- |  |  |
|--|--|
|  RS |  RH               |
|  RM |  Subject Property |



Imagery acquired March 2004.  
Map prepared June 25, 2007.

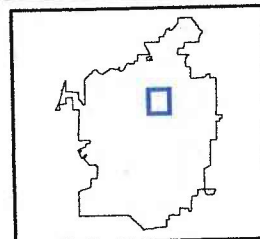
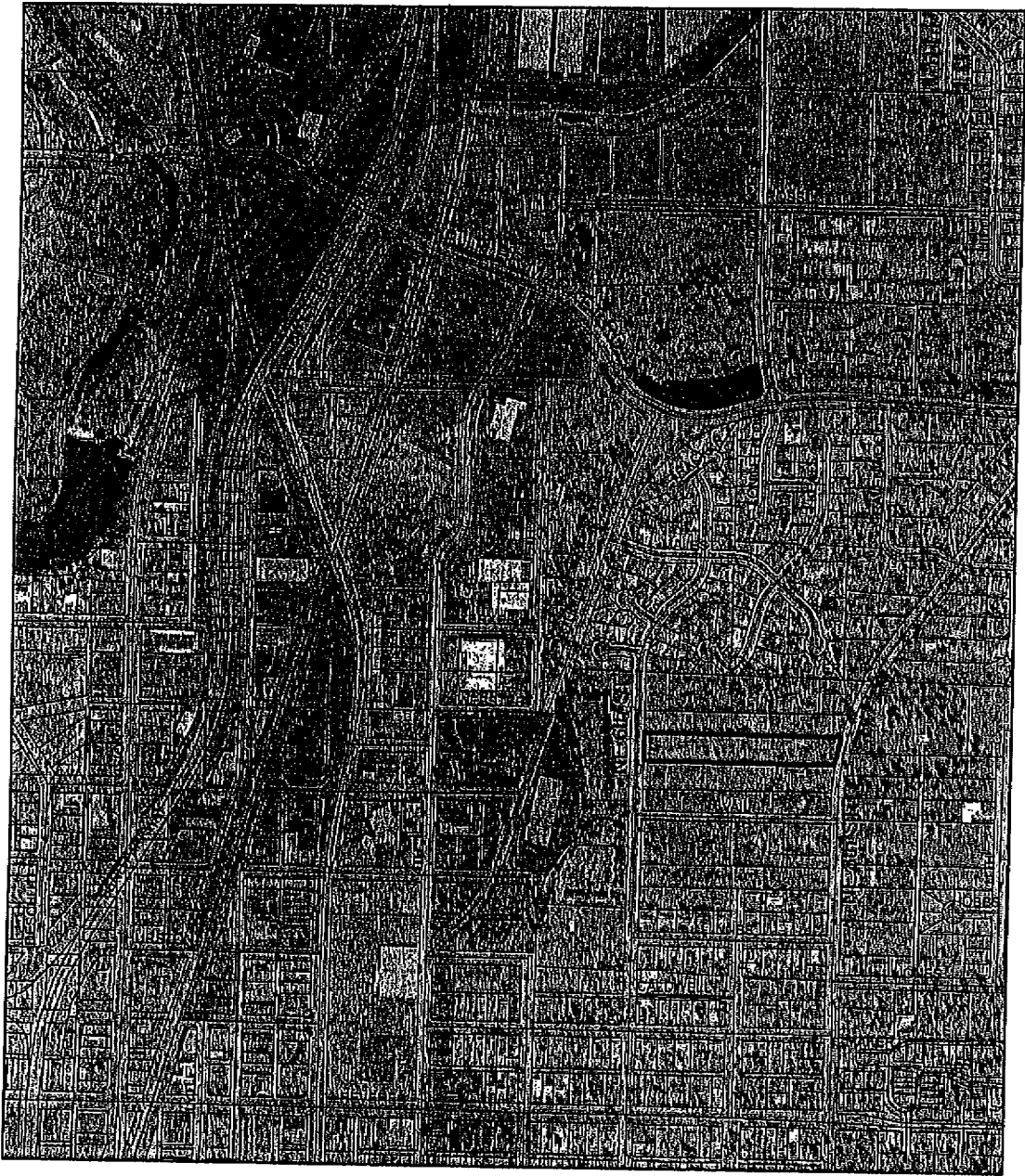




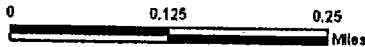


EXHIBIT A



PZ 07-008 Zone Change - RS to RM

- |   |    |   |                  |
|---|----|---|------------------|
|  | RS |  | RH               |
|  | RM |  | Subject Property |



Imagery acquired March 2004.  
Map prepared June 25, 2007.

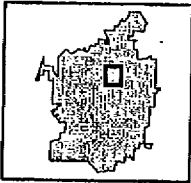


EXHIBIT B

**FINDINGS AND RECOMMENDATION OF  
CITY OF BEND HEARINGS OFFICER**

**FILE NUMBER:** PZ 07-008

**APPLICANTS/  
PROPERTY OWNERS:**

George and Jan Coyle  
2233 N.E. 8<sup>th</sup> Street  
Bend, Oregon 97701

**APPLICANTS' AGENT:** Deborah McMahon  
P.O. Box 902  
Redmond, Oregon 97756

**APPLICANTS'  
ENGINEER:**

Tim Weishaupt, P.E.  
Sun Country Engineering & Surveying, Inc.  
920 S.E. Armour Rd.  
Bend, Oregon 97702

**REQUEST:** The applicants request approval of a zone change from RS to RM for a 2.49-acre parcel located north of Vail Lane between N.E. 6<sup>th</sup> and 8<sup>th</sup> Streets in northeast Bend.

**STAFF REVIEWER:** Brian Harrington, Associate Planner

**HEARING DATE/  
RECORD CLOSED:** May 9, 2007

**I. APPLICABLE STANDARDS AND CRITERIA:**

**A. City of Bend Development Code, Ordinance No. NS-2016**

**1. Chapter 4.6, Land Use District Map and Text Amendments**

**\* Section 4.6.300, Quasi-Judicial Amendments**

**2. Chapter 4.7, Transportation Analysis**

**\* Section 4.7.400, Approval Criteria**

**B. Oregon Administrative Rules, Chapter 660, Division 12, Transportation Planning Rule**

**1. OAR 660-12-0060, Plan and Land Use Regulation Amendments**

## II. FINDINGS OF FACT:

- A. Location:** The subject property is located at 2233 N.E. 8<sup>th</sup> Street, and is further identified as Tax Lot 400 on Deschutes County Assessor's Map 17-12-28CA.
- B. Zoning and Plan Designation:** The subject property is zoned Residential Standard Density (RS) and is designated Residential Medium Density (RM) on the Bend Area General Plan map.
- C. Site Description:** The subject property is 2.49 acres in size, roughly rectangular in shape and relatively level, sloping gently down from east to west. It is developed with a single-family dwelling and accessory building the applicant proposes to remove. Vegetation consists of introduced landscaping as well as native trees, brush and grasses. The subject property abuts N.E. 6<sup>th</sup> Street on the west and N.E. 8<sup>th</sup> Street on the east. The city vacated the portion of N.E. 7<sup>th</sup> Street that once ran through the subject property.
- D. Surrounding Zoning and Land Uses:** All surrounding land between N.E. 6<sup>th</sup> and 8<sup>th</sup> Streets is zoned RS and designated RM like the subject property. Land to the east across N.E. 8<sup>th</sup> Street is zoned and designated RS. Land to the west across N.E. 6<sup>th</sup> Street is zoned and designated RM. Uses on surrounding land include single-family dwellings on parcels to the north, south and east across NE 8<sup>th</sup> Street, and an apartment complex to the west across N.E. 6<sup>th</sup> Street.
- E. Procedural History:** The subject zone change application was submitted on January 4, 2007. By a letter dated February 5, 2007 planning staff advised the applicants that the application was incomplete and allowed the applicants 30 days to submit the missing material. The material was submitted, and the application was accepted as complete on March 15, 2007. Therefore, the 120-day period for issuance of a final local land use decision under ORS 227.178 expires on July 13, 2007. As of the date of this decision there remain 37 days in the 120-day period.
- F. Proposal:** The applicants request approval of a zone change for the subject property from RS to RM to conform the property's zoning to its plan designation and to facilitate development of the property with a 26-lot zero-lot-line residential subdivision to be called "Bachelor View." The subdivision application (PZ 07-09) is not before the Hearings Officer in this proceeding.
- G. Public/Private Agency Comments:** The Planning Division sent notice of the applicants' proposal to a number of public and private agencies and received responses from: the City of Bend Engineering and Building Divisions; and the Bend Metropolitan Park and Recreation District (park district). These comments are included in the record.
- H. Public Notice and Comments:** The Planning Division mailed individual written notice of the applicants' proposal and the public hearing to the owners of record of all



property located within 100 feet of the subject property. The record indicates this notice was mailed to 29 property owners. In addition, notice of the public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed, the city had received no letters from the public in response to these notices. No members of the public testified at the public hearing.

- I. **Lot of Record:** The staff report states the city considers the subject property to be a legal lot of record consisting of portions of Lots 3 and 4, Block 4 and 6, of the Ellis Subdivision. The staff report notes the segment of N.E. 7th Street that would have run through the subject property was vacated by the city through Ordinance No. NS-1234.

**III. CONCLUSIONS OF LAW:**

**A. City of Bend Development Code, Ordinance No. NS-2016**

**1. Chapter 2.1, Residential Districts**

\* \* \*

- B. **Applicability. This chapter applies to all development in the Urban Area Reserve District (UAR), Residential Suburban Low Density (SR2 ½ ), Low Density Residential District (RL), Standard Density Residential District (RS), Medium-10 Density Residential District (RM-10), Medium Density Residential District (RM), and High Density Residential District (RH). These Districts are identified on the City's official zoning map. Properties designated within each district that contain additional standards shall comply with the provisions of the applicable District, except as may be modified by this Section. Properties within a designated Historic District shall comply with the provisions of Chapter 10-16 of the Bend Code.**

**FINDINGS:** The applicant is proposing to change the subject property's zoning from Urban Standard Residential (RS) to Urban Medium Density Residential (RM). The change is requested to conform the property's zone to its plan designation and to allow the property to be developed with an RM-density residential subdivision.

- B. **Criteria for Quasi-Judicial Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:**

- 1. **Approval of the request is consistent with the relevant Statewide Planning Goals that are**

**designated by the Planning Director or designee;**

**FINDINGS:** The city's new development code provisions governing quasi-judicial amendments apply to both plan amendments and zone changes. As a result, requirements that traditionally applied only to plan amendments now apply to zone changes. The criterion in Paragraph (B)(1) is an example. While the statewide land use planning goals apply directly to comprehensive plan amendments, it is well established that generally they do not apply directly to zone changes, or to other quasi-judicial land use applications, because the goals are implemented through the city's acknowledged comprehensive plan. Nevertheless, the city appears to have chosen to directly apply certain statewide goals to quasi-judicial zone change applications. It also is well settled that the city's land use regulations must identify clearly the applicable standards and criteria in order to give adequate notice to the applicant and interested parties. Section 4.6.300(B)(1) does not identify which of the nineteen statewide land use planning goals is applicable, instead leaving that determination to the Planning Director or his designee to be made on an *ad hoc* basis. Such a determination was made in this case through the city's staff report, which identified Goals 10 and 11 as applicable to the proposed zone change. Notification through the staff report certainly is not the most effective means of giving notice of the applicable approval criteria. Nevertheless, because neither the applicant nor any interested party raised a question about the adequacy of the city's notice of the applicable approval criteria in general or the applicable statewide goals in particular, I find I need not reach this issue.<sup>1</sup> Compliance with the goals identified in the staff report is addressed below.

**Goal 10, Housing:** Goal 10 is:

**To provide for the housing needs of citizens of the state.**

The record includes a copy of an April 11, 2006 memorandum from Senior Planner Damian Syrnyk to the Bend City Council (hereafter "council") and the Bend Planning Commission (hereafter "planning commission") concerning the city's residential lands study (Hearing Exhibit 4), and a copy of the city's June 30, 2005 "Housing Needs Analysis" (Hearing Exhibit 5). The residential lands study states the city will need additional multi-family dwelling units to meet its housing needs, and also indicates that all land *designated RM* was included in calculating available land for multi-family housing. In other words, the subject property was included in the city's residential lands inventory as needed and available to meet the city's identified needs for multi-family housing. Therefore, the Hearings Officer finds the applicants' proposed zone change is consistent with Goal 10 because it will allow the subject property to be developed with an urban-density zero-lot-line residential subdivision meeting the city's identified housing needs during the planning period.

**Goal 11, Public Facilities and Services:** Goal 11 is

**To plan and develop a timely, orderly and efficient arrangement of public**

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<sup>1</sup> This method of notice has been upheld by LUBA when challenged as inadequate. Holland v. City of Cannon Beach, 30 Or LUBA 229, *aff'd* 129 Or App 433, 879 P2d 1313 (1994).

**facilities and services to serve as a framework for urban and rural development.**

The subject property is located within the city limits and in an area already developed with urban-density residential development. As discussed in detail in the findings below, the Hearings Officer has found that RM-density residential development of the subject property will be served by adequate public facilities and services. For these reasons, I find the proposed zone change also is consistent with Goal 11.

For the foregoing reasons, the Hearings Officer finds the proposed zone change satisfies this amendment approval criterion.

**2. Approval of the request is consistent with the relevant policies of the Comprehensive Plan that are designated by the Planning Director or designee;**

**FINDINGS:** As is the case with Paragraph (B)(1) discussed above, this paragraph appears to apply to a quasi-judicial zone change application an approval criterion traditionally applied only to plan amendments – i.e., compliance with comprehensive plan *policies*. The extent to which such policies establish approval criteria for quasi-judicial land use applications has been the subject of a number of Land Use Board of Appeals (LUBA) cases. In *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004), LUBA held:

*“As intervenor correctly points out, local and statutory requirements that land use decisions be consistent with the comprehensive plan do not mean that all parts of the comprehensive plan necessarily are approval standards. [Citations omitted.] Local governments and this Board have frequently considered the text and context of cited parts of the comprehensive plan and concluded that the alleged comprehensive plan standard was not an applicable approval standard. [Citations omitted.] Even if the comprehensive plan includes provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications. [Citation omitted.] Moreover, even if a plan provision is a relevant standard that must be considered, the plan provision might not constitute a separate mandatory approval criterion, in the sense that it must be separately satisfied, along with any other mandatory approval criteria, before the application can be approved. Instead, that plan provision, even if it constitutes a relevant standard, may represent a required consideration that must be balanced with other relevant considerations. [Citations omitted.]”*

LUBA went on to hold in *Save Our Skyline* that it is appropriate to “consider first whether the comprehensive plan itself expressly assigns a particular role to some or all of the plan’s goals and policies.” The city’s comprehensive plan preface states in pertinent part:

**At the end of each chapter are policies that address issues discussed in the chapter. The policies in the General Plan are statements of public policy, and are used to evaluate any proposed changes to the General Plan.** Often these

**statements are expressed in mandatory fashion using the word “shall.” These statements of policy shall be interpreted that the actual implementation of the policies shall be accomplished by land use regulations such as the city’s zoning ordinance, subdivision ordinance and the like. The realization of these policies is subject to the practical constraints of the city such as availability of funds and compliance of all applicable federal and state laws, rules and regulations and constitutional limitations. (Emphasis added.)**

In several previous decisions, the Hearings Officer has held that in light of the above-underscored plan preface language, the city’s comprehensive plan does not establish approval criteria for quasi-judicial land use applications.<sup>2</sup> My interpretation was upheld by LUBA in its *Save Our Skyline* decision.

The city did not amend its comprehensive plan preface when it adopted its new development code, and therefore the Hearings Officer finds the preface still defines the role of plan policies as “statements of public policy” that are implemented through the city’s land use regulations. The question, then, is whether there is anything in the language in Section 4.6.300(B)(2) that would compel a different conclusion than the one I reached under very similar language in the former Section 10-10.33(2)(a).<sup>3</sup> In my previous decision in *Three Pines* (PZ 06-737) I found there was not. I adhere to that holding here.

Assuming for purposes of discussion that Section 4.6.300(B)(2) does effectively convert certain comprehensive plan policies to approval criteria for the proposed quasi-judicial zone change, and inasmuch as the applicant has not challenged the application of this provision on the basis of lack of adequate notice of the applicable approval criteria, the Hearings Officer will address the following plan policies identified and discussed in the staff report.

## **CHAPTER 5: HOUSING AND RESIDENTIAL LANDS**

### **POLICIES**

#### **Housing Density and Affordability** (Page 5-32)

21. **Densities recommended on the Plan shall be recognized in order to maintain proper relationships between proposed public facilities and services and population distribution.**
  
23. **The City shall rezone residential lands to the designated general plan densities when sewer service is available to the area. (Emphasis added.)**

<sup>2</sup> E.g., *Awbrey Towers* (02-508), *Shevlin Neighbors* (PZ-05-429, PZ-05-430), *Rimrock Riders* (PZ-05-556, PZ-05-557).

<sup>3</sup> Former Section 10-10.33(2)(a) provided:

That the change conforms with the Comprehensive Plan. Specifically, the change is consistent with the plan’s intent to promote an orderly pattern and sequence of growth.

As the staff report notes, in several previous decisions this Hearings Officer has held Policies 21 and 23 do not constitute approval criteria for a proposed zone change, and at most express the city's intent that land within the Bend Urban Growth Boundary (UGB) that is designated for urban-density development be considered for rezoning to conform to its plan designation when city sewer and water service are available.<sup>4</sup>

In *Bothman v. City of Eugene*, 51 Or LUBA 426 (2006), LUBA held the Eugene planning commission erred in not considering in a zone change proceeding a plan policy requiring the city to “[r]ecognize the existing general office and commercial uses located \* \* \* [in the geographic area including the subject property] and discourage future rezonings of these properties.” LUBA held that:

“\* \* \* even where a plan provision might not constitute an independently applicable mandatory approval criterion, it may nonetheless represent a relevant and necessary consideration that must be reviewed and balanced with other relevant considerations, pursuant to ordinance provisions that require \* \* \* consistency with applicable plan provisions.” (Emphasis added.)

The Hearings Officer finds the plan policy at issue in *Bothman* is similar to Residential Policies 21 and 23. Therefore, I find these two policies constitute a directive to the city to make zoning decisions based on *consideration* of the plan density and the availability of sewer and water service to the subject property. As discussed in the Findings of Fact above, the subject property is designated RM. And the record indicates city sewer and water facilities are located in N.E. 6th and 8<sup>th</sup> Streets abutting the subject property on the west and east, respectively. The applicants' burden of proof states the applicant proposes to provide sewer and water service to urban-density residential development on the subject property through extension of and connection to these existing city facilities in accordance with the city's applicable standards and specifications. For these reasons, I find the proposed zone change from RS to RM is consistent with Residential Policies 21 and 23.

## ***CHAPTER 1: PLAN MANAGEMENT AND CITIZEN INVOLVEMENT***

### ***MANAGING GROWTH***

#### ***POLICIES***

##### ***Development within the Urban Growth Boundary* (Page 1-7)**

- 5. The city and county will encourage compact development and the integration of land uses within the Urban Growth Boundary to reduce trips, vehicle miles traveled, and facilitate non-automobile travel.**
- 6. The city and county will encourage infill and redevelopment of the core area of the city. (Emphasis added.)**

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<sup>4</sup> E.g. *Tuscany Pines* (PZ 06-85).

The Hearings Officer finds the language of these growth management policies is different from Residential Policies 21 and 23 in that they represent directives to the city to *encourage* certain types of development, are more aspirational in character, and therefore under *Bothman* are neither approval criteria nor directives to the city to *consider* certain factors in evaluating a quasi-judicial land use application.

## ***CHAPTER 2: NATURAL FEATURES AND OPEN SPACE***

### ***POLICIES***

#### ***Natural Features and Open Space*** (Page 2-10)

12. **The city shall develop flexible subdivision and development standards that make it easier for developers to provide open space within a neighborhood.** (Emphasis added.)

The Hearings Officer finds the above-underscored language makes clear this plan policy constitutes a directive to the city to develop certain standards, and therefore is neither an approval criterion nor a directive to the city to *consider* certain factors in evaluating a quasi-judicial land use application.

For the foregoing reasons, the Hearings Officer finds the proposed zone change from RS to RM for the subject property is consistent with the relevant comprehensive plan policies designated by staff to the extent such policies require that I *consider* them in evaluating the proposal.

3. **The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property; and**

**FINDINGS:** The Hearings Officer finds this criterion effectively replaces with a “concurrency” requirement the provisions of former Section 10-10.33(2)(d) that required the applicant for a zone change to demonstrate it would “result in the orderly and efficient extension or provision of public services.” This new requirement has two alternative components with respect to adequate public facilities and services and transportation networks: (1) that they already are in place; or (2) that they are planned to be in place concurrent with development of the subject property. These components are addressed in the findings below concerning affected public facilities and services and transportation facilities.

**1. Police and Fire Protection.** The subject property is located within the Bend city limits and therefore will be served by the Bend Police and Fire Departments, neither of which commented on or objected to the applicants’ proposed zone change. The record includes a fire flow analysis from the city’s Engineering Division that indicates the city can provide a fire

flow of 1,566 gallons per minute (gpm) with a residual pressure of 55.74 pounds per square inch (psi). The Hearings Officer is aware the city's Engineering Division and fire department require for residential development a minimum fire flow of 1,000 gpm with a residual 31 psi. Therefore, I find the subject property will have adequate police and fire protection with urban-density residential development.

**2. Sewer and Water.** As discussed in the findings above, much of the area surrounding the subject property has been developed, or approved for development, with urban-density residential subdivisions. The record indicates these subdivisions are served by city water and sewer service through extension of and connections to existing city water and sewer mains located in city streets including N.E. 6<sup>th</sup> and 8<sup>th</sup> Streets that abut the subject property. For these reasons, the staff report states, and the Hearings Officer agrees, that the applicant will be able to extend and connect to the same city water and sewer mains to serve RM-density residential development on the subject property. And as discussed above the fire flow analysis in the record shows the city can provide sufficient water for fire protection and for domestic use. For these reasons, I find the subject property will have adequate sewer and water service with residential development.

**3. Schools.** The subject property is located within the boundaries of the Bend-La Pine School District. The Bend-La Pine School District did not comment on the applicants' proposal. However, the Hearings Officer is aware the school district typically comments that it is its policy to anticipate and respond to growth, that the district currently is operating over capacity at several schools, and that the district successfully passed a bond measure in November 2006 that will allow it to construct new schools and remodel existing schools to accommodate growth in school enrollment. For these reasons, I find the subject property will have adequate access to school services for residents of dwellings.

**4. Parks.** The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District. In its comments on the applicants' proposal, the park district stated there are no park or trail issues associated with the subject property. However, the staff report notes a local neighborhood park (Orchard Park) is in the design phase for development on nearby land located across N.E. 6<sup>th</sup> Street south of the subject property. In addition, the Hearings Officer is aware that dwellings developed on the subject property will be subject to a park systems development charge (SDC). For these reasons, I find the subject property will have adequate access to parks for residents of dwellings.

**5. Transportation Facilities.** As discussed above, the subject property is located between N.E. 6<sup>th</sup> and 8<sup>th</sup> Streets north of Vail Lane. The Hearings Officer finds the proposed zone change, in and of itself, will have no impact on transportation facilities. However, in support of its proposed Bachelor View Subdivision, the applicant submitted an undated traffic impact study (hereafter "traffic study") prepared by Sage Engineering Associates LLC.<sup>5</sup> The traffic

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<sup>5</sup> The submission of a traffic study is required for proposed zone changes under Section 4.7.100(C)(1)(a) of the development code. Section 4.7.200 and 4.7.300 establish the minimum required contents for a traffic study. The Hearings Officer finds the applicants' traffic study satisfies those requirements.

study assumed the subject property would be developed with a 26-lot residential subdivision that would generate 239 average daily vehicles trips (ADTs), of which 25 would occur during the p.m. peak hour (4:00 p.m. to 6:00 p.m. weekdays). The traffic study assumed these lots would have access from a new subdivision street to be called Coyle Lane that would connect with N.E. 6<sup>th</sup> Street on the west and N.E. 8<sup>th</sup> Street on the east. The traffic study analyzed the impact of subdivision-generated traffic on the capacity and function of these two new intersections in the years 2008 and 2013.<sup>6</sup> Based on this analysis, the traffic study concluded both intersections would function at acceptable levels of service with the addition of subdivision-generated traffic, and the intersections would satisfy all AASHTO intersection sight distance standards.

For the foregoing reasons, the Hearings Officer finds adequate public facilities and services -- including water for domestic use and fire flow, sewage disposal, police and fire protection, parks, schools, and transportation facilities -- currently are available to the subject property and will be available with development of a 26-lot residential subdivision as analyzed by the applicants' traffic study. In addition, I find approval of any residential development on the subject property will be conditioned on the developer designing, constructing and installing all required urban infrastructure including streets within and adjacent to the subject property to the city's applicable standards and specifications, thus assuring all required facilities and services will be in place concurrent with such development. Therefore I find the applicants' proposed zone change satisfies this approval criterion.

4. **Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property that is the subject of the application; and the provisions of Section 4.6.600, Transportation Planning Rule Compliance.**

## **FINDINGS:**

**1. Mistake or Inconsistency.** The applicant does not argue there was a mistake in the original RS zoning of the subject property and the Hearings Officer finds there was none. The applicant notes, and I concur, that there is an inconsistency between the subject property's RM plan designation and its RS zoning.

**2. Change in the Neighborhood or Community.** The applicant argues the proposed zone change from RS to RM is justified by changes to the neighborhood and community since the property was zoned RS, consisting of the city's ability to provide city water and sewer service to all property within the UGB, construction and installation of water and sewer infrastructure

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<sup>6</sup> The traffic study did not analyze impacts on any other intersections in the surrounding area. The record indicates that in discussions between the city's traffic engineer Robin Lewis and the applicants' traffic engineer Gary Judd, Ms. Lewis acknowledged that with subdivision-generated traffic none of the other area intersections would meet the minimum requirement for submission of a traffic study consisting of an increase of 15 vehicle trips in the peak hour to one particular lane group.



serving adjacent developments, and the city's identified housing needs for the 20-year planning period which require the up-zoning of standard-density properties such as the subject property to conform with its RM plan designation. In addition, the applicant notes the city recently approved a zone change from RS to RM and a residential subdivision called Selman's Victoria Lane on property south of the subject property.

For the foregoing reasons, the Hearings Officer finds the applicants' proposed zone change from RS to RM for the subject property satisfies this approval criterion.

**2. Chapter 4.6, Land Use District Map and Text Amendments**

**a. Section 4.6.600, Transportation Planning Rule Compliance**

**When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.**

**FINDINGS:** The Hearings Officer finds the applicants' proposal is subject to review under the Transportation Planning Rule (TPR) because it proposes a zone change from RS to RM for the subject property. The proposal's conformance with the TPR is discussed in the findings below.

**3. Chapter 4.7, Transportation Analysis**

**a. Section 4.7.400, Approval Criteria**

**Prior to land use approval, the City must review the applicants' transportation analysis to determine whether or not the proposal will create excessive demand on the public facilities and services required to serve the proposed development. The City will assess the impacts of new development on the transportation system. The key factors used to assess the impacts to the transportation system include, but are not necessarily limited to:**

- **number of trips by all modes associated with the proposal,**
- **turning movement demand by vehicles of various types,**
- **operations analyses results,**
- **location of the project,**
- **safety issues, location of the driveways (evaluated for conflict points and location criteria established in Chapter 3.1, Access, Circulation and Lot Design).**

\* \* \*

**Zone changes and Bend Urban Area General Plan map amendments cannot be granted if the Transportation Impact Study shows that the proposed development would overburden the City's existing or planned transportation facilities now or in the future. The Transportation Impact Study must demonstrate that compliance with the TPR and the operations standards of the City of Bend Development Code can be achieved within the adopted Bend Urban Area System Plan. \* \* \*.**

**FINDINGS:** As discussed in the findings above, the applicant submitted a traffic study which the Hearings Officer has found satisfies the city's requirements for such studies. The applicants' traffic study analyzed the transportation system impacts described in this section to the extent they are applicable to the proposed zone change without a concurrent development proposal. As discussed in the findings below, I have found the applicants' traffic study for a 26-lot subdivision demonstrates that RM-density residential development of the subject property will not significantly affect a transportation facility under the TPR, that both affected intersections will function at acceptable levels of service in 2008 and 20130 with the addition of traffic generated by such RM-density residential development, and that adequate transportation facilities therefore are available and will be available with development of the subject property. For these reasons, I find the applicants' proposal satisfies this criterion.

**B. Oregon Administrative Rules, Chapter 660, Division 12, Transportation Planning Rule**

**1. OAR 660-12-0060, Plan and Land Use Regulation Amendments**

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:**
- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);**
  - (b) Change standards implementing a functional classification system; or**
  - (c) As measured at the end of the planning period identified in the adopted transportation system plan:**

- (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
- (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
- (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

**FINDINGS:** The Hearings Officer finds the applicants' proposal is subject to the TPR because it includes a zone change which constitutes a proposed amendment to the city's zoning map that is part of the city's zoning ordinance.<sup>7</sup> I further find the proposed zone change will not, in and of itself, have any impact on transportation facilities. However, as discussed in detail in the findings above, the applicant submitted a traffic study which predicts that traffic generated by a 26-lot residential subdivision developed on the subject property would not exceed the capacity of the two study intersections, and that such intersections would function at acceptable levels of service in 2008 and 2013. The applicants' traffic study shows the proposed zone change will not change the functional classification of or standards applicable to N.E. 6<sup>th</sup> and 8<sup>th</sup> Streets or the proposed Coyle Lane. The proposed zone change also will not allow land uses or levels of development that will be inconsistent with the functional classification of affected transportation facilities, reduce the performance of existing or planned transportation facilities below the minimum acceptable level of service identified in the city's TSP (Transportation System Plan), or worsen the performance of an existing or planned transportation facility. In addition, I have found the applicant will be required at the time of subdivision development to design, construct and install all required transportation facility improvements to the city's applicable standards and specifications. For these reasons, I find the proposed zone change will not "significantly affect a transportation facility," and therefore is consistent with the TPR.

#### **IV. DECISION:**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **RECOMMENDS APPROVAL** of the applicants' proposed zone change, **SUBJECT TO THE FOLLOWING RECOMMENDED CONDITION OF APPROVAL:**


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<sup>7</sup> The applicants' burden of proof argues their proposal is not subject to the TPR because the proposed zone change would simply conform the subject property's zoning to its plan designation. The Hearings Officer finds no support for this argument in the language of the TPR or the city's zoning ordinance provisions governing zone changes.

1. The applicants/owners shall submit to the Planning Division a metes-and-bounds legal description of the subject property.

Dated this 7<sup>th</sup> of June, 2007.

Mailed this 7<sup>th</sup> of June, 2007.

  
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Karen H. Green, City of Bend Hearings Officer