



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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NOTICE OF ADOPTED AMENDMENT

April 11, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Newport Plan Amendment
DLCD File Number 010-06



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: April 26, 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
Laren Woolley, DLCD Regional Representative
James Bassingthwaite, City of Newport

<paa> ya

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

APR 06 2007

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: City of Newport Local File No.: 7-CP-06/10-Z-06 (If no number, use none)

Date of Adoption: April 2, 2007* (Must be filled in) Date Mailed: April 5, 2007 (Date mailed or sent to DLCD)

*Signed April 4, 2007

Date the Notice of Proposed Amendment was mailed to DLCD: October 7, 2006

- 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."

Adopted amendments to the Newport Comprehensive Plan and Zoning Map designations of Commercial/C-1 to High Density Residential/R-4 for most of the property included in Lincoln County Assessor's Map 10#11-29-BD Tax Lots 13200, 13400, 13500

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."

Minor change to leave 2 foot buffer of Commercial/C-1 remaining along property frontage on NW Agate Way, NW Circle Way and northeasterly property line so as not to adversely impact adjacent and abutting Commercial/C-1 designated property.

Plan Map Changed from: Commercial to High Density Residential

Zone Map Changed from: C-1/Retail and Service to R-4/High Density Multi-Family Residential

Location: Assessor's Map 10-11-29-BD TL 13200, 13400, 13500 Acres Involved: 0.56 acres

Specify Density: Previous: New: 1 unit per each 1,250 square feet max

Applicable Statewide Planning Goals: 2, 9, 10, 12

Was an Exception Adopted? Yes: No: X

DLCD File No.: 010-06 (15741)

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:

*Mailed in time for DLCD to receive 45 days prior.

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: City of Newport, ODOT

Local Contact: James Bassingthwaite Area Code + Phone Number: 541-574-0626

Address: 169 SW Coast Highway

City: Newport Zip Code+4: 97365-4713

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 of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will 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.

CITY OF NEWPORT

ORDINANCE NO. 1909

AN ORDINANCE AMENDING ORDINANCE NO. 1621 (AS AMENDED) OF THE CITY OF NEWPORT, OREGON, AND ORDINANCE NO. 1308 (AS AMENDED) TO AMEND THE COMPREHENSIVE PLAN MAP OF THE CITY OF NEWPORT COMPREHENSIVE PLAN: 1990-2010 AND THE NEWPORT ZONING MAP

WHEREAS, a request by George Lewis, LLC was filed on December 6, 2006, for an amendment (Newport File No. 7-CP-06/10-Z-06) to the Comprehensive Plan Map (General Land Use Plan Map) of the City of Newport Comprehensive Plan (Ordinance No. 1621, as amended) and the Newport Zoning Map of the City of Newport Zoning Ordinance (Ordinance No. 1308, as amended),

WHEREAS, the proposed request involves Comprehensive Plan Map and Zoning Map amendments to change the Comprehensive Plan and Zoning classifications of property currently identified as Lincoln County Assessor's Map 10-11-29-BD Tax Lots 13200, 13400, and 13500 (Lots 7, 8, 9, and 10 of Block 34, AGATE BEACH) fronting on NW Agate Way, NW Gilbert Way, and NW Circle Way of approximately 0.56 acres of property from Commercial/C-1 (Retail and Service Commercial) to High Density Residential/R-4 (High Density Multi-Family Residential) except for a 2 foot portion of property to be left as a Commercial/C-1 along NW Agate Way, NW Circle Way, and the northeasterly property line,

WHEREAS, the Planning Commission of the City of Newport, after providing the required public notification including the notification to the Department of Land Conservation & Development, held a public hearing on January 22, 2007, on the proposed amendments for the purpose of reviewing the proposed amendments and providing a recommendation to the City Council,

WHEREAS, the above said public hearing was held in accordance with the appropriate provisions of the city ordinances, and, after due deliberation and consideration of the proposed change, the Planning Commission, by a 5-1 vote, did recommend that the proposed amendments be adopted by the City Council of the City of Newport; and

WHEREAS, the City Council of the City of Newport, after providing the required public notification, held a duly noticed public hearing on March 5, 2007, regarding the question of the proposed Comprehensive Plan Map and Zoning Map amendments (Newport File No. 7-CP-06/10-Z-06), and voted 6-0 in favor of adoption of the proposed amendments after considering the application materials, the recommendation of the Planning Commission, the Planning Staff Report and attachments, and the evidence and argument presented at the public hearing,

NOW, THEREFORE, THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 1621 (as amended) is amended to establish a "High Density Residential" Comprehensive Plan Map land use designation for the subject property consisting of Lots 7, 8, 9, and 10 of Block 34, AGATE BEACH (currently identified as Lincoln County Assessor's Map 10-11-29-BD Tax Lots 13200, 13400, and 13500) fronting on NW Agate Way,

NW Gilbert Way, and NW Circle Way except for a 2 foot portion of property to be left as a "Commercial" designation along both: 1) the entire frontage of the subject property along both NW Agate Way and NW Circle Way and 2) the northeasterly property line (that being the common property line between the subject property and Lots 6 and 11 of Block 34, AGATE BEACH) as illustrated in Exhibit "A".

Section 2. Ordinance No. 1308 (as amended) is amended to establish an R-4/"High Density Multi-Family Residential" designation for the subject property consisting of Lots 7, 8, 9, and 10 of Block 34, AGATE BEACH (currently identified as Lincoln County Assessor's Map 10-11-29-BD Tax Lots 13200, 13400, and 13500) fronting on NW Agate Way, NW Gilbert Way, and NW Circle Way except for a 2 foot portion of property to be left as a C-1/"Retail and Service Commercial" designation along both: 1) the entire frontage of the subject property along both NW Agate Way and NW Circle Way and 2) the northeasterly property line (that being the common property line between the subject property and Lots 6 and 11 of Block 34, AGATE BEACH) as illustrated in Exhibit "A".

Section 3. The City Council adopts the findings contained in Exhibit "B" in support of approval of the amendments to the Newport Comprehensive Plan Map and the Newport Zoning Map.

Section 4. The City Council adopts the following conditions on the approval of the requested amendments:

- A. The property owner shall sign and record a Measure 37 waiver prior to the effective date of the ordinance adoption.
- B. The property owner shall sign and record a waiver of remonstrance for participation in local improvement districts for any future street, sidewalk, storm sewer, water, and/or sewer districts that may be formed of which the subject property would be a part, prior to the effective date of the ordinance adoption.

Introduced and passed on first reading in a regular meeting of the City Council of the City of Newport, Oregon, held on the 19th day of March, 2007.

Passed on second reading, placed for final passage, and adopted by the City Council of the City of Newport, Oregon, on the 3rd day of April, 2007.

Approved by the Mayor of the City of Newport, Oregon, on the 3rd day of April, 2007.



MAYOR

ATTEST:

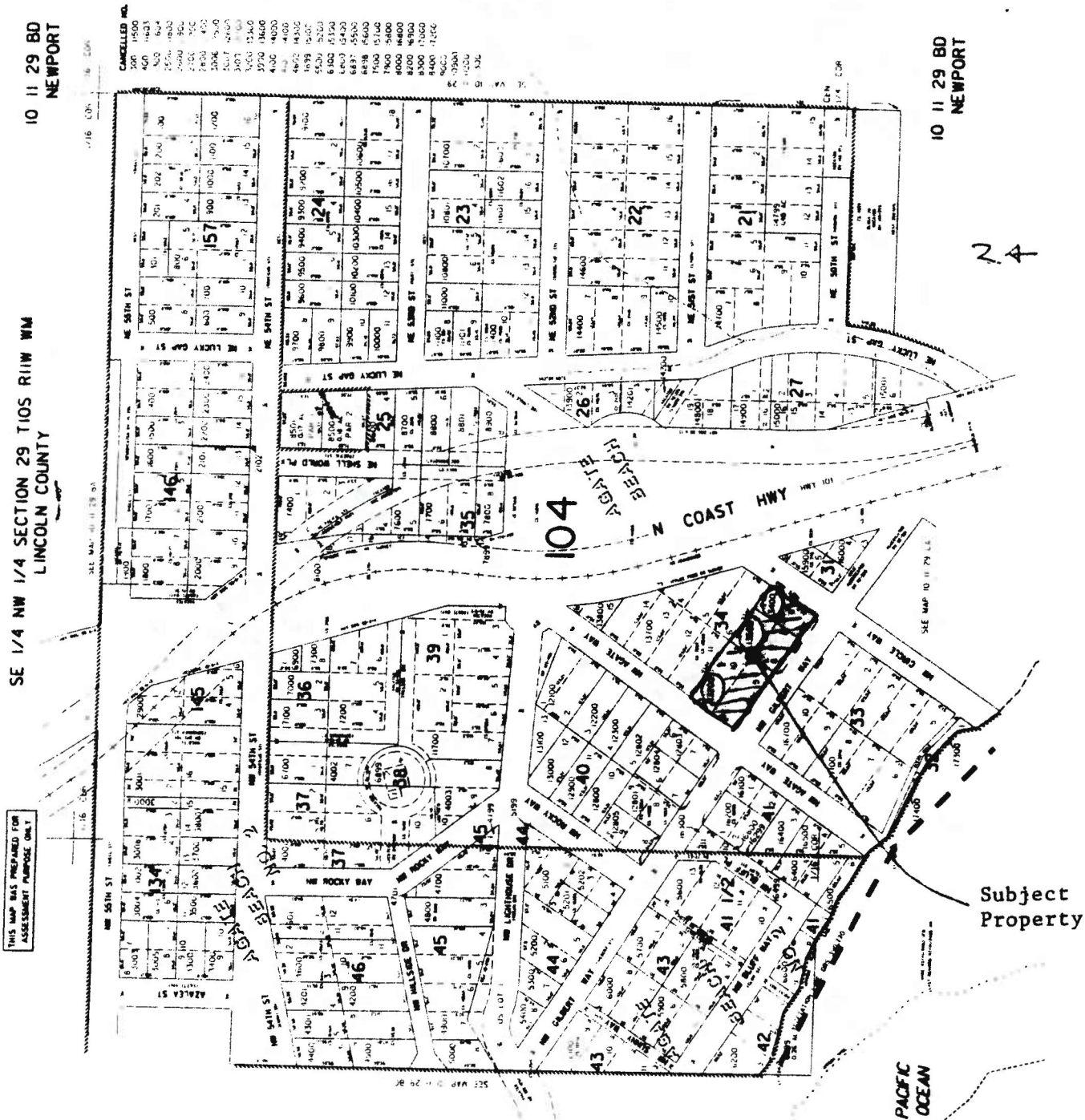


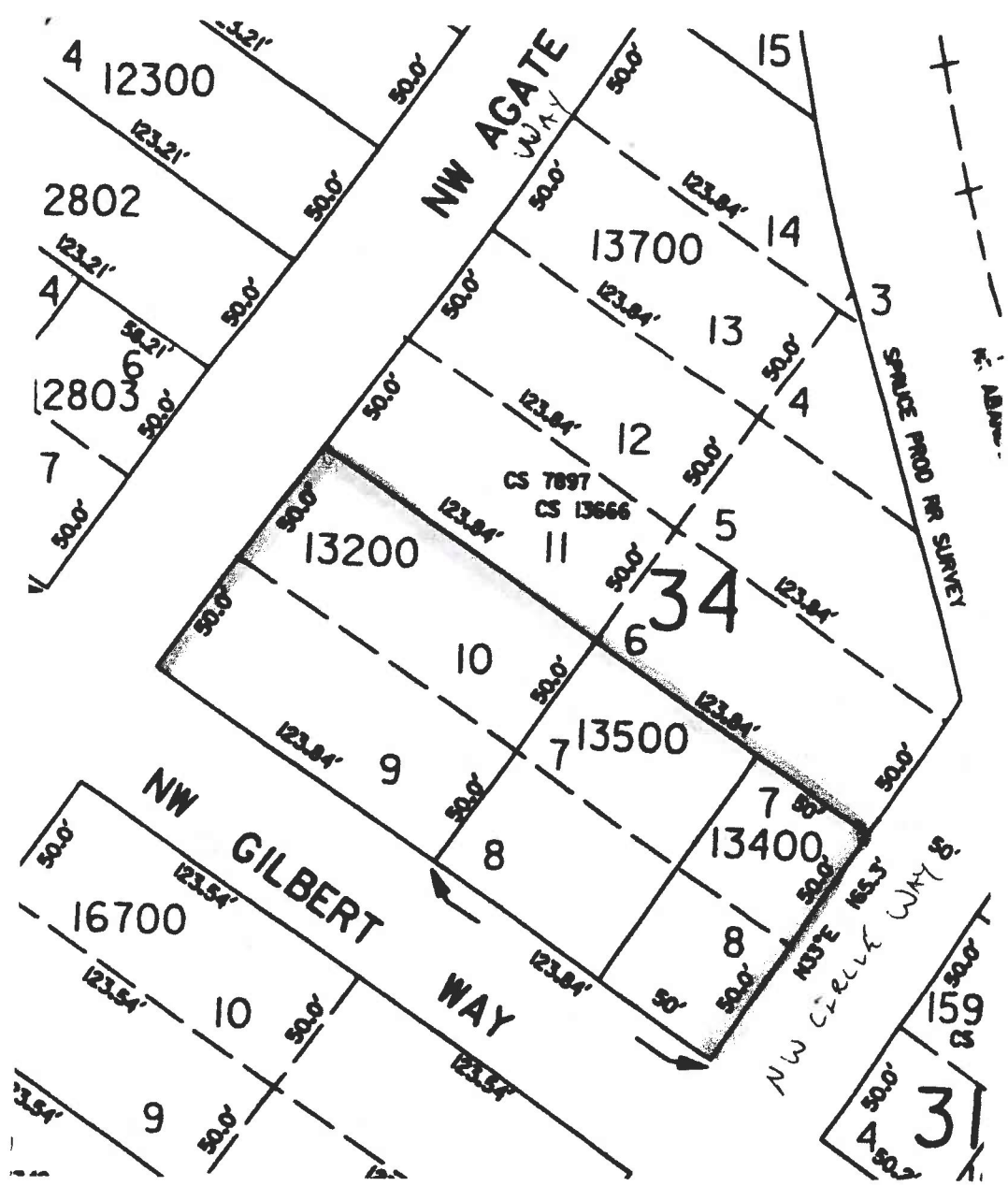
CITY RECORDER

Exhibit "A"

Newport File No. 7-CP-06/10-Z-06

Existing Comp Plan Map designation: Commercial
 Amended Comp Plan Map designation: High Density Residential (except for a 2 foot strip along NW Agate Way, NW Circle Way and the northeasterly property line)
 Existing Zoning Map designation: C-1/"Retail and Service Commercial"
 Amended Zoning Map designation: R-4/"High Density Multi-Family Residential" (except for a 2 foot strip along NW Agate Way, NW Circle Way and the northeasterly property line)






Portion of subject property for which a 2 foot Commercial/C-1 designation is retained on along the property line of the subject property illustrated in 

EXHIBIT "B"

Newport File No. 7-CP-06/10-Z-06

**FINDINGS FOR A MINOR COMPREHENSIVE PLAN MAP AMENDMENT
ZONING MAP AMENDMENT TO CHANGE THE COMPREHENSIVE PLAN
AND ZONING CLASSIFICATIONS OF PROPERTY FRONTING NW GILBERT
WAY, NW AGATE WAY, AND NW CIRCLE WAY FROM COMMERCIAL/C-1
"RETAIL AND SERVICE COMMERCIAL" TO HIGH DENSITY RESIDENTIAL/
R-4 "HIGH DENSITY MULTI-FAMILY RESIDENTIAL"**

FINDINGS OF FACT

1. George Lewis, LLC, 5111 N Coast Hwy, Newport, OR 97365 (Charles & Patricia Snawder, 1094 Highland View Loop, Redmond, OR 97765, property owner) (Pavitt Land Use Consulting, LLC, PO Box 5, Newport, OR 97365, authorized representative) submitted a land use application on December 6, 2006, for approval of land use requests involving Comprehensive Plan Map and Zoning Map amendments to change the Comprehensive Plan and Zoning classifications of property fronting NW Gilbert Way, NW Agate Way, and NW Circle Way from Commercial/C-1 "Retail and Service Commercial" to High Density Residential/R-4 "High Density Multi-Family Residential". Prior to the public hearing by the City Council, the property ownership was transferred to George Lewis LLC.
2. The subject property is a vacant property with frontage on NW Gilbert Way, NW Agate Way, and NW Circle Way located to the west of the Roby's Furniture store (5111 N Coast Hwy) and currently identified as Tax Lots 13200, 13400, and 13500 of Lincoln County Assessor's Map 10-11-29-BD (also known as Lots 7, 8, 9 & 10 of Block 34, Agate Beach). The size of the subject property is 0.56 acres or approximately 24,768 square feet.
3. Staff reports the following facts regarding the subject property:
 - a. Plan Designation: Commercial.
 - b. Zone Designation: C-1/"Retail and Service Commercial".
 - c. Surrounding Land Uses: Mix of uses in the surrounding area including commercial (including but not limited to restaurants, hotels, furniture store and other types of commercial uses), public (Yaquina Head Lighthouse), and residential (both single-family and multi-family) uses in the area surrounding the subject property.
 - d. Topography and Vegetation: According to the applicant, the property slopes down to the west towards Gilbert Way and contains typical coastal brushy vegetation.
 - e. Existing Structures: Vacant.
 - f. Utilities: Utilities are available in the area of the subject property. Newport Fire Department notes that water pressure in area does not meet current minimum standard required by International Fire Code.
 - g. Development Constraints: None known.

h. Past Land Use Actions: None known.

4. Upon acceptance of the application, notification of the comprehensive plan map and zoning ordinance map amendments (File No. 7-CP-06 and 10-Z-06) was mailed to the Department of Land Conservation and Development (DLCD) on December 7, 2006, in conformance with the DLCDC post-acknowledgment plan amendment requirements. All applicable city departments and other public agencies and affected property owners within 300 feet of the subject property were notified on December 27, 2006, for the Planning Commission hearing. The December 27, 2006, notice incorrectly identified the applicant as being the City of Newport. A corrected notice for the Planning Commission hearing with the correct applicant information was mailed on January 9, 2007. The notice of the City Council hearing was mailed on February 13, 2007. See Planning Staff Report Attachment "B". Notice was published in the Newport News-Times on January 12, 2007, for the Planning Commission hearing and on February 23, 2007, for the City Council hearing.

5. In addition to the applicant, testimony received from other parties included:

a) Two "No Comment" comments dated December 27, 2006, and February 16, 2007, received from the Newport Public Works Department.

b) A comment dated January 9, 2007, from Toby Cole, Assistant Chief of the Newport Fire Department stating that: "For future development it should be noted that the water supply in this area does not meet the minimum standard required by the International Fire Code. Required minimum fire flow would be 1500 gpm for commercial and 1000 gpm for residential application."

c) A letter received January 10, 2007, from Patrick Kelley, owner of Agate Beach Motel, in which he states a number of concerns, including that: "My concerns are the effect of development up hill from my property, which is causing an increase of water flow to an already fragile drainage. There is a spring that runs year round on the subject property and drains on and under my motel units. The spring was manageable until the sewer system was installed. From that point the drainage has made a substantial increase in flow. The development of Gilbert Way behind my motel must be addressed to correct the water drainage problem. Also there is a need for review of a traffic study to determine the effect of high density development. My concerns need to be addressed prior to the development of the subject property." See Planning Staff Report Attachment "D" (Kelley 1/10/07 Letter).

d) A letter received January 22, 2007, from Stephen Stocks regarding existing parking and congestion problems on NW Gilbert Way from the surf crowd and requesting that NW Gilbert Way be developed to its full width and parking on the street provided for the surf crowd. See Planning Staff Report Attachment "D-1".

e) A letter received January 22, 2007, from Troy Delle (Sr. Eng. Tech.) with the Central Lincoln PUD stating that they have no objection to the proposed zone change but noting that it is anticipated that future development in the area will require an underground electrical system. See Planning Staff Report Attachment "D-2".

f) Testimony from Mark McConnell at the City Council public hearing regarding the need for future road improvements in the area.

6. A public hearing was held on January 22, 2007, before the Planning Commission. The statement of rights and relevance and applicable criteria were read. The Planning Commissioners disclosed any ex parte contact, conflicts of interest, and/or bias and allowed for objections to any of the Planning Commissioners hearing the matter. The Planning Commission heard a report by staff and allowed for testimony by the applicant and others in favor or opposed to the request. The record and minutes of the January 22, 2007, meeting are hereby incorporated by reference

7. At the January 22, 2007, hearing, the applicant presented a modification to the requested change from commercial to residential so as not to impact any adjacent commercial ownership in a negative manner by keeping a 2-foot buffer of commercial zone on three sides of the subject property (across the back side along the common property line between the subject property and the Roby's property, along NW Agate Way, and along NW Circle Way).

8. A public hearing was held on March 5, 2007, before the Newport City Council. The statement of rights and relevance and applicable criteria were read. The City Councilors disclosed any ex parte contact, conflicts of interest, and/or bias and allowed for objections to any of the City Councilors hearing the matter. The City Council heard a report by staff and allowed for testimony by the applicant and others in favor or opposed to the request. The record and minutes of the March 5, 2007, meeting are hereby incorporated by reference. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

Attachment "A"	Applicant Findings
Attachment "A-1"	MLS Comparison (Applicant Exhibit 5)
Attachment "A-2"	Table A of NZO Section 2-3-5 (Applicant Exhibit 6)
Attachment "A-3"	Architect's Rendering of an Example of Potential Residential Use (Applicant Exhibit 7)
Attachment "B"	Notices of Public Hearing and Map
Attachment "C"	Zoning Map of Area
Attachment "C-1"	Uses Allowed in the R-4 Zone
Attachment "C-2"	Uses Allowed in the C-1 Zone
Attachment "C-3"	Intent of Zoning Districts
Attachment "C-4"	NZO Section 2-4-4
Attachment "D"	Kelley 1/10/07 Letter

Attachment "D-1"	Stocks 1/22/07 Letter
Attachment "D-2"	CLPUD 1/22/07 Letter
Attachment "E"	Planning Commission 1/22/07 Minutes
Attachment "F"	Applicant Traffic Use Comparison

9. The applicable criteria identified in the Newport Comprehensive Plan for the Comprehensive Plan map amendment (File No. 7-CP-06) are as follows:

A. The Newport Comprehensive Plan Section entitled "Administration of the Plan" (p. 286) requires findings regarding the following for the proposed map minor amendment:

1. Change in one or more goal or policy; and
2. Demonstrated need to accommodate unpredicted population trends, housing needs, employment needs, or change in community attitudes; and
3. Orderly and economic provision of key public facilities; and
4. Ability to serve the subject property with City services without an undue burden on the general population; and
5. Compatibility of the proposed change with the surrounding neighborhood and community.

10. The applicable criteria for the Zoning Ordinance text amendment (File 10-Z-06) per Newport Zoning Ordinance (NZO) (No. 1308, as amended) Section 2-5-5.005 are as follows:

1. The change furthers a public necessity.
2. The change promotes the general welfare.

CONCLUSIONS

1. In regard to the Comprehensive Plan map minor amendment (File No. 7-CP-07), the City Council concludes as follows:

A. In regard to the requirement for findings on a "*Change in one or more goal or policy*", the Council concludes the following in support of the approval of the application:

1. In regard to the proposed Comprehensive Plan map amendment, the applicant is requesting to change the map designation from Commercial to High Density Residential, which the applicant states simply extends the map designation from property to the southwest across the street to the north by 150 feet, including the right-of-way for Gilbert Way. See Planning Staff Report Attachment "C" (Zoning Map of Area).
2. The applicant's findings state that the High Density Residential designation will still allow some small-scale commercial uses and appears to be a better "fit" both physically and with the character of the neighborhood. The applicant explains that the neighborhood is primarily

characterized by substandard streets and non-conforming residences. The applicant contends that this property is not physically suited to a Commercial designation and would be better suited to Residential. The applicant notes that while this request will remove about one-half acre from the city's commercial lands inventory, it is under the two acre minimum required to trigger a review under OAR 660-009-0010. The applicant also notes that the request will still allow limited commercial development within the R-4 requested zone.

3. The City adopted the Agate Beach Neighborhood Plan as an amendment to the Newport Comprehensive Plan by Ordinance No. 1792 (July 6, 1998) after the existing zoning on the subject property was established in 1982. The Agate Beach Neighborhood Plan was a plan that contained discussion of existing conditions and of future development and included a list of aspirational (not mandatory) goals and policies that could serve as the basis for future zoning requirements or that emphasized compliance with existing or future plans. With the exception of the Agate Beach Neighborhood Plan sign ordinance amendments, no further zoning implementation was completed after adoption of the Agate Beach Neighborhood Plan. Although not a specific requirement, Goal 1 of the Agate Beach Neighborhood Plan stated that in essence the vision of the Goal was: "To foster a sustainable urban living environment and to seek the maintenance and improvement of the character of the neighborhood for its people." It is possible to view the applicant's findings for the proposed change as a contention that the proposed Comprehensive Plan Map and Zone Map amendments further Goal 1 of the Agate Beach Neighborhood Plan as the applicant contends the residential designation is a better fit with the character of the neighborhood. See also the applicant's findings under the compatibility of the proposed change criterion below and under Goal 10 (Housing) (page 6 of the Applicant's Findings) in which the applicant also discusses a portion of the Agate Beach Neighborhood Plan.
4. In regard to the commercial land needs of Newport, in Ordinance No. 1891 (adopted June 5, 2006), the City of Newport adopted a new Economic Section to the Newport Comprehensive Plan that included updated land needs information for commercial and industrial land. In the regard to commercial land need, the 20 year forecast (to 2025) under the medium growth scenario identified a demand for approximately 201.6 acres of Retail Commercial land needs, with approximately 184.2 acres being visitor-driven commercial. As part of the Economic Section goals and policies, Goal 1 directs the City: "To maintain an adequate supply of land within the Newport city limits and urban growth boundary to accommodate the anticipated need." The City has chosen not to provide all of the required vacant commercial land needed to satisfy the 20 year forecast, but in Policy 1 of Goal 1, to add some additional commercial

property south of the Yaquina Bay and to focus on other types of infill and redevelopment activities on the north side of the Yaquina Bay (primarily in the central core area (ie. Nye Beach/City Center/Bay Front areas on the north side of the Bay). The proposed R-4 zoning still allows the potential for future commercial uses, especially those that are visitor driven such as hotels and vacation rentals. See Planning Staff Report Attachment "C-1". The applicant also discusses the suitability of the property for commercial uses versus residential uses in the applicant's discussion of Statewide Planning Goal 9 (Economic Development) and (Statewide Goal 10 (Housing) on pages 6 and 7 of the applicant's findings (Planning Staff Report Attachment "A") with a conclusion that the property is better suited for the residential land use classification rather than a commercial land use classification.

B. In regard to the requirement for findings on a "*Demonstrated need to accommodate unpredicted population trends, housing needs, employment needs, or changes in community attitudes*", the Council concludes the following in support of the approval of the application:

1. In response to this criterion, the applicant in their proposed findings notes that the City of Newport has seen a housing boom over the last two years. Much of the inventory for residential land has been sold. The applicant cites to multiple listing real estate information, which last year indicated that there were 106 active residential land listings while this year there are 70, which is a decrease of 33%. See Planning Staff Report Attachment "A-1" (MLS Comparison (Applicant Exhibit 5)). The applicant believes that there is a need for additional urban housing in Newport that could be met in part by development of the subject property.

C. In regard to the requirement for findings on an "*Orderly and economic provision of key public facilities*", the Council concludes the following in support of the approval of the application:

1. The applicant addresses this criterion in their proposed findings by stating that the zone change request will not impact the orderly and economic provision of key public facilities, since water and sewer are both available close by. According to the applicant, the storm water facilities in this neighborhood are being improved. The applicant has stated that they have participated in prior improvements and plans to participate in those necessary future improvements. The applicant notes that according to Newport Public Works staff, there is not adequate capacity for water in the 4" line for both commercial and residential uses to this site. Either commercial or residential uses will require an improvement of the facilities. However, according to the applicant, the 6" sewer line is sufficient for the proposed use.

2. The applicant further states that NW Agate Way is a paved road that adjoins the subject property. NW Gilbert Way is unimproved. Power is available at the property. The applicant is willing to work with the city and neighbors to help improve facilities as required by this proposal. In addition, system development charges will be paid and used for improvements in Newport.
3. Dawn Pavitt, in conjunction with her oral testimony at the public hearing on January 22, 2007, submitted into the record a traffic comparison between a C-1 zoned outright use (48 unit motel with restaurant) and an R-4 zoned outright use (12 unit residential condominium) which indicated that a proposed outright allowed motel use in C-1 zone would generate 620.6 more trips per day than the potential traffic for the permitted outright R-4 use. See Planning Staff Report Attachment "F".
4. A letter received January 22, 2007, from Troy Delle (Sr. Eng. Tech.) with the Central Lincoln PUD stated that they have no objection to the proposed zone change but noting that it is anticipated that future development in the area will require an underground electrical system. See Planning Staff Report Attachment "D-2".
5. Letters and oral testimony received regarding the need for improvements in the area included improvements to streets (Stocks, Kelley, and McConnell), storm drainage (Kelley) and water (Cole). As a condition of approval of the proposed requests, the applicant will be required to sign a waiver of remonstrance for participation in local improvement districts that the property would be a part of in order to promote the orderly and economic provision of key public facilities.

D. In regard to the requirement for findings on an *"Ability to serve the subject property with City services without an undue burden on the general population"*, the Council concludes the following in support of the approval of the application:

1. Addressing this criterion, the applicant's findings indicate that there is sufficient capacity to serve the subject property with city sewer. According to the applicant, it is believed by Newport Public Works staff that additional improvements are necessary in storm sewer and water to serve the property. The applicant is willing to help improve the necessary facilities, including the adjoining streets, so that the subject property will not be an undue burden on the general population.
2. Toby Cole, Assistant Chief of the Newport Fire Department, sent an e-mail dated January 9, 2007, stating that: "For future development it should be noted that the water supply in this area does not meet the

minimum standard required by the International Fire Code. Required minimum fire flow would be 1500 gpm for commercial and 1000 gpm for residential application." The applicant's proposed zoning change to High Density Residential would therefore appear to require less gpm than would be required for the current commercial zoning if the property is developed with a residential development.

3. Letters and oral testimony received regarding the need for improvements in the area included improvements to streets (Stocks, Kelley, and McConnell), storm drainage (Kelley) and water (Cole). In order to promote the orderly and economic provision of key public facilities, the City Council approval contains a recommended condition of approval for a waiver of remonstrance requiring that the subject property be required to be a "yes" vote for the formation of any local improvement district for streets, sidewalks, sewer, storm sewer and water with which the property would be a part of.
4. Dawn Pavitt, in conjunction with her oral testimony at the public hearing on January 22, 2007, submitted into the record a traffic comparison between a C-1 zoned outright use (48 unit motel with restaurant) and an R-4 zoned outright use (12 unit residential condominium) which indicated that a proposed outright allowed motel use in C-1 zone would generate 620.6 more trips per day than the potential traffic for the permitted outright R-4 use. See Planning Staff Report Attachment "F".
5. The applicant has stated that they are willing to help with necessary improvements. As a Comprehensive Plan map and Zone map amendment does not require a specific development plan to be presented or approved, it is difficult to identify the level of improvements that would be required by a future development. It is also important to note that in order for the City to constitutionally require improvements as a condition of development that there must be both a rational nexus between the improvement required (also called an "exaction") and the impacts from the development and also a rough proportionality of the required improvements to the impacts from the development. The burden of demonstrating that required improvements meet the constitutional requirements is on the government imposing the requirements.

E. In regard to the requirement for findings on the *"Compatibility of the proposed change with the surrounding neighborhood and community. Ability to serve the subject property with City services without an undue burden on the general population"*, the Council concludes the following in support of the approval of the application:

1. In regards to this criterion, the applicant's findings state that this change to

High Density Residential will be more compatible with the surrounding neighborhood and community than the existing Commercial designation. This applicant notes that the area is currently characterized as a residential neighborhood and includes high density residential uses such as the Agate Beach Motel, and at least two bed and breakfast facilities, thereby, making the request a logical transition.

2. The applicant further states that the neighborhood has been developed since at least 1915, the age of the oldest house in the notice area. The applicant notes that the homes within the Commercially-designated area are non-conforming and that the roadways in this neighborhood are substandard. The applicant further notes that the facilities would need to be upgraded for any use. The applicant contends that the requested down zoning to Residential is more compatible with the surrounding neighborhood uses and community improvements than the current Commercial designation.
3. The proposed request would substantially down zone the potential for commercial development on the property (although the R-4 zone does still allow for limited commercial development both permitted outright and conditionally) and would increase restrictions on the use of the property including, but not limited to, building height restrictions (50 foot in the C-1 zone, 35 foot in the R-4 zone), lot coverage requirements (85-90% maximum in the C-1 zone and 64% maximum in the R-4 zone), and setback requirements (zero setback requirements in the C-1 zone except for the portion of subject property for which a residential zone designation is located directly opposite the property for which a 10 foot setback would be required and R-4 setbacks including a front yard setback of 15 foot (or 10 feet and 20 feet on corner lots), 5 foot side yard setbacks, and 10 foot rear yard setbacks. See Planning Staff Report Attachments "A-2" (Table A of NZO Section 2-3-5 (Applicant Exhibit 6)), "C-1" (Uses Allowed in the R-4 Zone), and "C-2" (Uses Allowed in the C-1 Zone). The resulting R-4 zone designation from the Comprehensive Plan Map amendment to High Density Residential would be compatible with the surrounding neighborhood uses.
4. Additionally, as discussed earlier in the Planning Staff Report, if a change in zoning is granted for the subject property, those other remaining commercial properties that may become subject to NZO Section 2-4-4 would become legal nonconforming uses pursuant to the portions of NZO Section 2-4-4, if any, that the remaining commercial properties do not currently comply with. See Planning Staff Report Attachment "C-4" (NZO Section 2-4-4). The applicant has modified the request to maintain a 2 foot strip of commercial designation such that there would be no

impacts on remaining commercial properties in regard to NZO Section 2-4-4.

5. Dawn Pavitt, in conjunction with her oral testimony at the public hearing on January 22, 2007, submitted into the record a traffic comparison between a C-1 zoned outright use (48 unit motel with restaurant) and an R-4 zoned outright use (12 unit residential condominium) which indicated that a proposed outright allowed motel use in C-1 zone would generate 620.6 more trips per day than the potential traffic for the requested R-4 use. See Planning Staff Report Attachment "F".

2. In regard to the Zoning Map Amendment (File No. 10-Z-07), the City Council concludes as follows that the criterion have been satisfied:

A. In regard to the first criterion (The change furthers a public necessity.), the Council concludes the following supports a conclusion that this criterion has been met:

1. In regard to this criterion, the applicant has indicated in their proposed findings that the requested change furthers a public necessity and is in accordance with the Comprehensive Plan goals and policies, and the Statewide Planning Goals. This request will not create spot zoning because there is existing R-4 zoning to the south and to the west; therefore this request to continue R-4 zoning is logical.
2. The applicant states that the City of Newport Zoning Ordinance on page 18 indicates that the intent of the R-4 zone is *"to provide for high density multi-family residential and some limited commercial development."* Further, the R-4 zoning has existed in this neighborhood for many years, probably since annexation. This is not a new zone to the community or local area. The applicant is simply requesting that the zoning be extended across the street to cover three tax lots.
3. The applicant further states that it is possible for this property to receive city services and as such is identified in the Statewide Planning Goals as "urbanizable land". As such, the applicant contends that the requested zone change furthers a public necessity.

B. In regard to the second criterion (*"The change promotes the general welfare"*), the Council concludes that the following supports a conclusion that this criterion has been met:

1. To address this criterion, the applicant has stated in their findings that the provision of buildable land for additional residential uses, as required in the Comprehensive Plan, will promote the general welfare. The applicant notes that the Comprehensive Plan requires that the City of Newport make

sufficient residential land available. The zone change will promote the general welfare by allowing the orderly provision of utilities to this "urbanizable land". The applicant plans to provide all typical city services to the subject property. The applicant notes that access is by way of a public roadway abutting the subject property.

2. The applicant further states that the request is for a down zoning from C-1/"Retail and Service Commercial". The C-1 zone allows for much taller buildings of 50' versus 35' in the R-4 zone. The C-1 zone also allows construction with no setbacks and 85-90% lot coverage. The R-4 zone requires a smaller scale with residential setbacks and 64% lot coverage. It is believed by the applicant that the smaller scale and lesser mass indicated in development in the R-4 zone is more consistent with the characteristics of the neighborhood, including the existing motel across the street and many residences in the area.

3. In regard to the Oregon Statewide Planning Goals, the applicant's findings address the Statewide Planning Goals on pages 4-8 of the findings. See Planning Staff Report Attachment "A". The applicant's findings regarding the Statewide Planning Goals may also be considered in regard to the criteria and analysis discussed above for a Comprehensive Plan map and Zoning Map amendments.

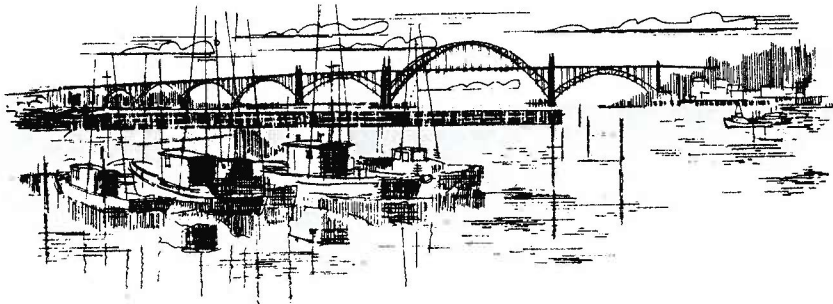
4. Measure 37 is the ballot measure approved by the Oregon voters that allows for property owners to seek compensation or waiver of regulations that are adopted after the property owner acquires property and that reduce the property value of the property. There are a number of uncertainties with the application of Measure 37 in general and there is insufficient information regarding the subject property to say whether or not there is a potential for a valid Measure 37 claim based on the proposed change in zoning, so it is not certain that there would be a potential Measure 37 issue. Based on the deed submitted with the application, the current property owners of Tax Lots 13200, 13400, and 13500, Charles W. and Patricia M. Snawder, appear to have acquired the property in 1992 and based on testimony by the applicant, the applicant appears to have acquired ownership of the property prior to the Council public hearing. Measure 37 appears to be unclear as to whether or not a Measure 37 claim can be filed when the property owner was a part of the application for the requested change. As there could be a potential for a Measure 37 claim, especially given the significant land uses and restrictions between the existing Commercial/C-1 designation and the requested High Density Residential/R-4 designation, a condition of approval is attached that requires the property owner to sign and record a Measure 37 waiver prior to the effective date of the ordinance adoption.

OVERALL CONCLUSION

After consideration of the application material, the Planning Staff Report, and other evidence and testimony in the record, the City Council concludes that the above findings of fact and conclusions support a determination that the applicant has demonstrated compliance with all

the applicable criteria as described in the applicant findings and supporting documentation submitted in support of the requested Comprehensive Plan map amendment and Zoning Ordinance map amendment, and the requests are hereby **APPROVED** (as modified by the applicant to retain a 2 foot buffer of Commercial/C-1 property on the property along the property line abutting NW Agate Way and NW Circle Way and along the northeasterly property line) and with the following conditions of approval:

- A. The property owner shall sign and record a Measure 37 waiver prior to the effective date of the ordinance adoption.
- B. The property owner shall sign and record a waiver of remonstrance for participation in local improvement districts for any future street, sidewalk, storm sewer, water, and/or sewer districts that may be formed of which the subject property would be a part, prior to the effective date of the ordinance adoption.



CITY OF NEWPORT

169 SW COAST HWY

NEWPORT, OREGON 97365

TDD/VOICE 1-800-735-2900

OFFICE OF Community Development

CERTIFICATE OF MAILING OF NOTICE OF ADOPTION AND THE ADOPTED TEXT AND FINDINGS AS APPLICABLE

Local File # 7-CP-06/10-2-06

Date of Deposit in the U.S. Mail: April 5, 2007

Name of Person Mailing JAMES BASS-WORTHINGTON

Signature of Person Mailing 