

*For: **Monday, January 23, 2023**, City Council Meeting*

Advance Packet Information

Dated: January 23, 2023

Included in this packet is documentation to support the following Agenda items:

PUBLIC HEARINGS

1. Remand Hearing of LUBA No 2020-096 regarding APP-1-20/CUP-2-20 – Final Order for a Conditional Use Permit to establish a 14-unit residential care facility at 17212 S. Passley Road. [Pg. 1]
 - a) City Council Final Order and Conditions of Approval for APP-1-20/CUP-2-20 [Pg. 6]
 - b) Council Agenda Report (CAR-APP-2-20/CUP- 2-20) presented on August 24, 2020 [Pg. 11]
 - c) Petitioners Notice of Intent to appeal – LUBA – September 28, 2020 [Pg. 323]
 - d) Final Opinion and Order – LUBA 2020-096 – August 2, 2021 [Pg. 342]
 - e) Kemp Request for Remand Hearing – January 24, 2022 [Pg. 375]
 - f) Remand Letter to Mayor Hedenskog & Council – Mike Reeder – Attorney for Kemps [Pg. 376]
 - g) Tech Memo – Sandow Engineering – Traffic Evaluation – July 26, 2022 [Pg. 378]
 - h) Tech Memo – The Dyer Partnership Engineers & Planner Inc.- Oceanside Estates Drainage Evaluation – April 14, 2022 [Pg. 411]
 - i) Oceanside Estates II – Recorded Plat Number 2002-19 [Pg. 412]
 - j) Oceanside Estates II – Stormwater As Built Drawings [Pg. 415]
 - k) Eden Lane – Stormwater As-Built Drawing [Pg. 418]
 - l) Andrus Lane – Stormwater As-Built Drawings [Pg. 419]
 - m) West Cliff Drive – Stormwater As-Built Drawing [Pg. 421]
 - n) Site Plan – 17212 S. Passley Road – Proposed Building and Site Development [Pg. 422]

*Obtain Public Comment Forms and view the agenda and packet information on-line at www.brookings.or.us, or at City Hall. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.

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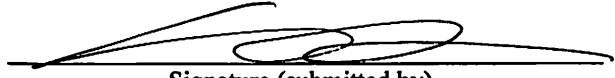
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CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: January 23, 2023



Signature (submitted by)

Originating Dept: PW/DS

City Manager Approval

Subject:

Remand Hearing of LUBA No 2020-096 regarding APP-1-20/CUP-2-20 – Final Order on remand for a Conditional Use Permit to establish a 14-unit residential care facility at 17212 S. Passley Road.

Recommended Motion:

1. Motion to approve the Final Order on remand regarding file **CUP-2-20**, based on the findings and conclusions stated in the staff report and subject to the conditions of approval.

Financial Impact: None

Background/Discussion:

The subject property is an undeveloped level flag lot, .58 acre in size and located on the west side of S. Passley Road. The property will be accessed from S. Passley Road by a flag lot driveway which is approximately 15' wide by 140' long and adjacent to West Cliff Drive (**Attachment N**).

S. Passley Road is a paved travel way with an approximate 50' right of way. Public Improvements have been made as property has been developed on the east & west sides.

The subject property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size). Surrounding development in the area consists of single family homes. Directly west of the property is Oceanside Drive Subdivision with current vacant lots ready for development and north of the property is Brookings Church of Christ. East of the property is a single family residence accessed off S. Passley Road. Adjacent and south of the property is West Cliff Drive, a 25' wide private street with five residences developed with sidewalks and gutters on the South side.

Land owner Brett and Aga Kemp submitted a land use permit application for a conditional use permit to operate a 14 bed residential care facility for elderly, in a residential (R-1-6) zone at 17212 S. Passley Road in the Dawson Tract neighborhood. The facility will consist of a 9,588 sq ft single story building with parking for 6 vehicles including 1 in garage and 1 ADA. The building will contain 14 residential rooms each with a private bathroom, a living area, dining area, library, kitchen, office, laundry, storage spaces and a one car garage. The residential rooms range in size from 319 to 587 sq ft and are arranged around the central living, dining and kitchen

area. There will be two outdoor covered patios, one on the north side and one on the west end (**Attachment N**).

The parking area will consist of a total of six parking spaces, three located at the east end of the building, two located at the front of the building and one parking space in the single car garage. Access to the parking area will be from S. Passley Road. The parking area will be fenced and or screened with landscaping to reduce visibility into the parking from neighboring properties (**Attachment N**).

Staff presented application CUP-2-20 to the Planning Commission on July 7, 2020. Several neighbors presented opposition to the Kemps proposal and the Planning Commission denied the Kemps application by a vote of 5-2. The Kemps filed an appeal to City Council (APP-1-20) on July 24, 2020.

Staff then presented the appeal application (APP-1-20) to City Council on August 24, 2020 whereby Council overturned the decision of the Planning Commission to deny CUP-2-20 by a vote of 3-2. The Final Order and Conditions of Approval for CUP-2-20 were approved by Council at a special meeting on August 31, 2020.

On September 28, 2020, neighbors (petitioners) opposing CUP-2-20 filed a Notice of Intent to Appeal (**Attachment C**) and requested a review by the State of Oregon's Land Use Board of Appeals (LUBA). LUBA responded on August 2, 2021 with a final order and opinion on case number 2020-096 (**Attachment D**) remanding the decision back to City Council based on four assignments of error that were sustained. On January 24, 2022 the Kemps' attorney requested the city initiate remand proceedings to address the issues identified by LUBA (**Attachment E**). The applicant further requested that the City open the record on remand to allow evidence and argument regarding only those four issues remanded in the LUBA opinion.

LUBA's final opinion and order responded to ten assignments of error (five main assignments and five sub-assignments) raised in the appeal by the petitioners opposing CUP-2-20. LUBA denied six of the assignments of error and remanded four assignments of error back to City Council for further consideration. The ten assignments of error, including sub assignments, are as follows:

1. Ex Parte Contact:
 - a) City Councilor's Conversation with Planning Commissioner - **DENIED**
 - b) Independent Review of Planning Files – **DENIED**
2. Relates to Streets and Highways:
 - a) Council failed to adopt finding that Highway 101 and Dawson Road are adequate in width and degree of improvement to support proposal – **SUSTAINED**
 - b) Council failed to consider the potential impact of residential care facility traffic to adjoining property owners – **DENIED**
3. Driveway width not adequate:
 - a) Council failed in the use of the Fire Chief as expert testimony on the width of the driveway is adequate for emergency vehicles - **SUSTAINED**
4. Commercial Service Drives:
 - a) City Council did not address BMC 17.92.100(E) - **DENIED**

5. Council failed to adopt findings that address impact upon adjoining properties as follows:
 - a) Pedestrian Access – **SUSTAINED**
 - b) Noise – **DENIED**
 - c) Stormwater Drainage – **SUSTAINED**
 - d) Parking - **DENIED**

ANALYSIS AND FINDINGS

In order for Council to grant CUP-2-20, the applicant is required to meet the criteria listed in Chapter 17 Land Development Code, Section 17.136 – Condition Use Permits of the Brookings Municipal Code.

The applicant has provided findings and analysis of the criteria (**Attachment F**) found in Section 17.136 of the Brookings Land Development Code.

The City of Brookings engineer of record, The Dyer Partnership, has provided a tech memo (**Attachment H**) in response to sustained assignment of error regarding stormwater drainage (Assignment of Error 5(c)). The Kemps' traffic engineer, Sandow Engineering, has provided a tech memo (**Attachment G**) in response to sustained assignment of errors regarding adequacy of Highway 101 and Dawson Road (Assignment of Error 2(a)), adequacy of driveway width (Assignment of Error 3(a)) and the impact of the proposed development on pedestrian access to adjoining properties (Assignment of Error 5(a)). Both tech memos are part of the new evidence submitted in response to the LUBA opinion. For this remand hearing, Council is only required to consider analysis and findings for the following criteria:

BMC Ch. 17.136 Conditional Use Permits - Sec. 17.136.050(C)

1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code.

REMAND ISSUE: Adequacy of Private Driveway

FINDING: The 15 ft wide private flag lot driveway to serve the residence is adequate for all traffic, including emergency vehicles, local deliveries, and traffic generated by the proposed use. This finding is supported by the Sandow Engineering Traffic Evaluation Tech Memo (**Attachment G**), which states that the driveway, as proposed, can handle the level of vehicle trips expected for the proposed development, including emergency vehicles and delivery vehicles and will operate safely. Pages 3 – 10 of Attachment G.

Criterion 1 is met.

2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.

REMAND ISSUE: Adequacy of Highway 101 and Dawson Road.

FINDING: Highway 101 and Dawson Road are adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use. This finding is supported by the Sandow Engineering Traffic Evaluation Tech Memo (**Attachment G**) concludes at Page 15:

“The intersection of Highway 101 at Dawson Road will operate safely and efficiently with the additional trips from the proposed use. There is sufficient capacity for safe operations, and the operations meet the current standards by ODOT and the city of Brookings

Criterion 2 is met.

3. The proposed use will have minimal adverse impact upon adjoining properties. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing.

REMAND ISSUE: Pedestrian Access

FINDING: The sidewalk network is adequate for pedestrians, including at the intersection of S. Passley Road at Dawson Road. This finding is supported by the Sandow Engineering Traffic Evaluation Tech Memo (Attachment G) at Pages 13-15. The Tech Memo states:

“There is adequate line of sight for vehicles on Dawn and Passley Road to perceive a pedestrian in the roadway and to provide room to pass the pedestrian safely. The trips from the proposed use will not negatively affect pedestrian access on Passley Road or Dawson Road. At the intersection of Passley Rd at Dawson Rd, there is sufficient roadway width for pedestrians travel and crossings at this location.”

REMAND ISSUE: Drainage.

FINDING: The proposed development will have minimal adverse drainage impacts upon adjoining properties. Stormwater will be directed west to a dedicated 20ft stormwater easement (Attachment I) established along the easterly property line of the Oceanside Estates II subdivision. Neighboring subdivisions to the North and East including Eden Lane, Andrus Lane and West Cliff Drive, currently direct stormwater through an existing stormwater system established within the dedicated 20 ft easement (Attachments J, K, L, M).

The finding that the proposed development will have minimal adverse impacts upon adjoining properties is supported by the Dyer Partnership Tech Memo (Attachment H) which concludes:

“From a feasibility perspective, it is expected that the applicant can direct stormwater to the storm drainage system within the easement to the west of the property; however, the applicant shall demonstrate the system can accommodate a 25-year, 24-hour storm event and not impact the downstream facilities. Engineered storm drainage plans and calculations are required when the applicant submits plans for a building permit. The applicant shall complete and submit these items to the City Engineer for review and approval prior to any construction, including streets. Storm drainage design shall be in accordance with the City of Brookings Comprehensive Plan for Drainage. All drainage from the applicant’s lot shall be engineered in a manner that protects all adjoining properties.”

Criterion 3 is met.

CONCLUSION

1. The proposed residential care facility will occupy 37% of the subject .58 acre site. The design of the facility includes setbacks that are ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line meeting all setback requirements.

The parking area will contain six parking spaces which includes one handicapped space. This meets the required number of spaces required for residential care facilities within the city.

The subject property is large enough to accommodate the proposed development.

2. S. Passley Road is a paved travel way with a 50' right of way and a 15' wide driveway, which was allowed in the 1992 partition.
3. Residential care facilities are, by nature, not a noise generator. The traffic generated by the facilities will have an incremental increase in the noise around the general area; however, residential development on the parcel has the potential to generate more general noise than the proposed project will. The proposed project is designed to provide the required buffer between the parking area and the adjoining residential use.
4. There are no historical or cultural attributes on or in the vicinity of the subject site. The proposed residential care facility should not have an impact on the scenic quality of the area.
5. The proposed facility is consistent with the provisions of the criteria discussed above and is consistent with Goal 10, Housing of the City's Comprehensive Plan, in that it provides a variety of housing types.

RECOMMENDATION

Staff recommends approval of CUP-2-20, based on the findings and conclusions stated in the applicant's findings, the staff report, and subject to the Conditions of Approval.

Staff has prepared the Conditions of Approval and a FINAL ORDER (**Attachment A**) for your consideration.

ATTACHMENTS

- A. City Council Final Order and Conditions of Approval for APP-1-20/CUP-2-20
- B. Council Agenda Report (CAR-APP-2-20/CUP- 2-20) presented on August 24, 2020
- C. Petitioners Notice of Intent to appeal – LUBA – September 28, 2020
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- I. Oceanside Estates II – Recorded Plat Number 2002-19
- J. Oceanside Estates II – Stormwater As Built Drawings
- K. Eden Lane – Stormwater As-Built Drawing
- L. Andrus Lane – Stormwater As-Built Drawings
- M. West Cliff Drive – Stormwater As-Built Drawing
- N. Site Plan – 17212 S. Passley Road – Proposed Building and Site Development.

**BEFORE THE CITY COUNCIL
CITY OF BROOKINGS, COUNTY OF CURRY
STATE OF OREGON**

**FINAL ORDER ON REMAND FROM THE LAND USE BOARD OF APPEALS IN THE
MATTER OF PLANNING COMMISSION FILE NO. CUP-2-20; AN APPLICATION
FOR APPROVAL OF A CONDITIONAL USE PERMIT TO ESTABLISH A 14-UNIT
RESIDENTIAL CARE FACILITY AT 17212 S. PASSLEY; BRETT KEMP, OWNER
AND APPLICANT. APPEALED BY FILE NO. APP-1-20, APPLICANT, BRETT KEMP**

WHEREAS:

1. The City Council duly accepted an appeal filed in accordance with the Brookings Municipal Code, pursuant to Chapter 17.152; Chapter 17.136; Chapter 17.20 Sections 17.20.040(C) and 17.20.090; Chapter 17.124 Section 17.124.100; and Chapter 17.172 Section 17.172.061 of the Brookings Municipal Code (BMC); and
2. Such application is required to show evidence that all of the above criteria have been met; and
3. The Brookings City Council duly considered the above described appeal as a de novo hearing on August 24, 2020; and
4. The appeal was presented by the Planning Director in the form of a Council Agenda Report, by oral presentation, evidence and testimony by the applicant, appellant, and the public at the public hearing; and
5. At the conclusion of the public hearing, after consideration and discussion of testimony and evidence presented in the public hearing, the City Council, upon a motion duly seconded, reversed the Planning Commission denial of the subject application and approved the application for a Conditional Use Permit and directed staff to amend the Conditions of Approval; and
6. At a City Council meeting on August 31, 2020 City Council after consideration approved the amended Conditions of Approval and directed staff to prepare a Final Order and Findings of Fact to that affect; and
7. The approval was remanded by LUBA back to the City Council for consideration of three (3) assignments of error; and

At the conclusion of the City Council meeting on January 23, 2023, City Council after consideration of additional evidence re-affirmed approval of CUP-2-20 and directed staff to prepare a Final Order and Findings of Fact to that affect.

ISSUES ON REMAND

LUBA sustained the following assignments of error:

1. **Council failed to adopt finding that Highway 101 and Dawson Road are adequate in width and degree of improvement to support proposal.**
2. **Council erred in relying on testimony from the Fire Chief that the width of the driveway is adequate for emergency vehicles to support the finding that the drive way is wide enough to support general project traffic.**
3. **Council failed to make a finding that the sidewalk network is adequate to ensure that the project will have minimal adverse impacts on the pedestrian access enjoyed by adjoining properties.**

4. Council did not adopt findings that address whether the project will cause drainage issues.

The Council did not reconsider issues affirmed by LUBA in its remand decision, or consider evidence irrelevant to the remanded issues.

CRITERIA, FINDINGS, AND CONCLUSIONS

BMC Ch. 17.136 Conditional Use Permits - Sec. 17.136.050(C)

1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code.

REMAND ISSUE: Adequacy of Private Driveway

FINDING: The 15 ft wide private flag lot driveway to serve the residence is adequate for all traffic, including emergency vehicles, local deliveries, and traffic generated by the proposed use. This finding is supported by the Sandow Engineering Traffic Evaluation Tech Memo (Attachment G), which states that the driveway, as proposed, can handle the level of vehicle trips expected for the proposed development, including emergency vehicles and delivery vehicles and will operate safely. Pages 3 – 10 of Attachment G.

Criterion 1 is met.

2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.

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Criterion 2 is met.

3. The proposed use will have minimal adverse impact upon adjoining properties. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing.

REMAND ISSUE: Pedestrian Access

FINDING: The sidewalk network is adequate for pedestrians, including at the intersection of S. Passley Road at Dawson Road. This finding is supported by the Sandow Engineering Traffic

Evaluation Tech Memo (Attachment G) at Pages 13-15. The Tech Memo states:

“There is adequate line of sight for vehicles on Dawn and Passley Road to perceive a pedestrian in the roadway and to provide room to pass the pedestrian safely. The trips from the proposed use will not negatively affect pedestrian access on Passley Road or Dawson Road. At the intersection of Passley Rd at Dawson Rd, there is sufficient roadway width for pedestrians travel and crossings at this location.”

REMAND ISSUE: Drainage

FINDING: The proposed development will have minimal adverse drainage impacts upon adjoining properties. Stormwater will be directed west to a dedicated 20ft stormwater easement (Attachment I) established along the easterly property line of the Oceanside Estates II subdivision. Neighboring subdivisions to the North and East including Eden Lane, Andrus Lane and West Cliff Drive, currently direct stormwater through an existing stormwater system established within the dedicated 20 ft easement (Attachments J, K, L, M).

The finding that the proposed development will have minimal adverse impacts upon adjoining properties is supported by the Dyer Partnership Tech Memo (Attachment H) which concludes: “From a feasibility perspective, it is expected that the applicant can direct stormwater to the storm drainage system within the easement to the west of the property; however, the applicant shall demonstrate the system can accommodate a 25-year, 24-hour storm event and not impact the downstream facilities. Engineered storm drainage plans and calculations are required when the applicant submits plans for a building permit. The applicant shall complete and submit these items to the City Engineer for review and approval prior to any construction, including streets. Storm drainage design shall be in accordance with the City of Brookings Comprehensive Plan for Drainage. All drainage from the applicant’s lot shall be engineered in a manner that protects all adjoining properties.”

Criterion 3 is met.

CONCLUSION

1. The proposed residential care facility will occupy 37% of the subject .58 acre site. The design of the facility includes setbacks that are ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line meeting all setback requirements.

The parking area will contain six parking spaces which includes one handicapped space. This meets the required number of spaces required for residential care facilities within the city. The subject property is large enough to accommodate the proposed development.

2. S. Passley Road is a paved travel way with a 50’ right of way and a 15’ wide driveway, which was allowed in the 1992 partition.

3. Residential care facilities are, by nature, not a noise generator. The traffic generated by the facilities will have an incremental increase in the noise around the general area; however, residential development on the parcel has the potential to generate more general noise than the proposed project will. The proposed project is designed to provide the required buffer between the parking area and the adjoining residential use.

4. There are no historical or cultural attributes on or in the vicinity of the subject site. The proposed residential care facility should not have an impact on the scenic quality of the area.

5. The proposed facility is consistent with the provisions of the criteria discussed above and is consistent with Goal 10, Housing of the City's Comprehensive Plan, in that it provides a variety of housing types.

The following Conditions of Approval are hereby made a part of this Final Order.

**CONDITIONS OF APPROVAL
APP-2-20 (CUP-2-20)
17212 S. Passley Road - Residential Care Facility**

General Conditions

1. Approval of this Conditional Use Permit will expire two years from approval, unless the project comes under substantial construction within that period. The Planning Commission may extend the permit for an additional one year period at the request of the applicant.
2. The final construction plans shall be in substantial conformance with the submitted preliminary site plan and as approved by the City Council.
3. Improvement work shall not be commenced until construction plans meet the approval of the City Engineer and Building Official for conformance to all applicable City of Brookings Engineering Standards and Specifications and Building Codes.
4. If needed, all costs of plan checks and inspections by the City Engineer shall be paid by the applicant to the City.
5. All outdoor lighting shall be directed and/or shielded so as to prevent light from falling directly on adjoin properties.
6. All buildings shall meet the requirements of the R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and other applicable provisions of the Land Development Code.
7. This approval is limited to a 14-bed maximum "residential care facility" for seniors and adult individuals with disabilities, as that term is defined in state law. The use will be licensed by the Oregon Department of Human Services as a "residential care facility" and shall be operated only within the scope of that license. If the applicant desires to change the use other than that authorized under the DHS license, as originally issued or amended, a minor change must be requested and approved according to section 17.136, Conditional Use Permits of the Land Development Code.
8. Facility emergency evacuation drills are to be performed in accordance with all local and State regulations.

Street Conditions

9. The existing Deferred Improvement Agreement #96 (Inst. #92-6113) will remain in place on the property. No street improvements along the S. Passley Road frontage are required at this time.
10. Prior to start of street construction, including grading the applicant shall submit construction plans to the City Engineer for review and approval. The new driveway shall be constructed to match the elevation of existing West Cliff Drive.

11. Prior to start of construction, the existing mailboxes located within the access way of the property may be removed provided that a notice in writing, 30 days in advance of the start of construction, is given to all residents occupying the mailboxes.

Parking, Landscaping and Screening

12. The applicant shall provide no less than six parking spaces as shown on the approved plot plan. The parking area and access way shall be paved and striped. The design of the parking area shall be in accordance with Section 17.92, Off-Street Parking and Loading Regulations of the Land Development Code.
13. The applicant shall provide landscaping area within or around the parking areas equal to a least 7% of the total parking area.
14. The applicant shall provide either a sight obscuring fence or landscaping around the proposed parking area. This fence or landscaping shall be high enough to prevent automobile head lights from shining onto the adjoining property.
15. The applicant shall landscape the project as shown on the preliminary plot plan. To the extent possible the applicant shall use native and drought resistant plants in the landscaped areas. The applicant shall submit a landscaping plan showing the type of plants used and proposed irrigation system to the City Planning Department for review.
16. Outdoor trash containers shall be screened from view with a decorative fence and gate at least six feet high. The applicant shall consult with Curry Transfer and Recycling as to the type of gating of the trash container fence.
17. The applicant shall construct a paved walkway around the building for use of the residents and entry to the back of the building for fire protection purposes.

Water, Sewage and Drainage

18. The proposed building shall be connected to the City's water and sewer system at the applicant's expense.
19. The applicant shall complete and submit drainage plans to the City Engineer for review and approval prior to any construction, including streets. Storm drainage design shall be in accordance with the City of Brookings Comprehensive Plan for Drainage. All drainage from the subject lot shall be engineered in a manner that protects all adjoining properties.
20. The applicant shall consult with the City Fire Marshal, City Building Inspector and City Engineer as to the water requirements for the proposed building for both domestic and fire suppression purposes.
21. The applicant shall bear the cost to relocate the existing fire hydrant at the entry of the property near S. Passley Road.

Dated this 23rd day of January, 2023

ATTEST:

Ron Hedenskog, Mayor


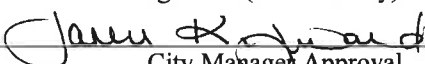
Christy Wurster, City Manager Pro Tem

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: August 24, 2020

Originating Dept: PWDS


Signature (submitted by)

City Manager Approval

Subject: APP-1-20/CUP-2-20 - Appeal of the Planning Commission denial of a Conditional Use Permit to establish a 14-unit residential care facility at 17212 S. Passley.

Recommended Motion:

1. Motion to reverse the Planning Commission denial of File CUP-2-20 and approve File No. CUP-2-20, a request for approval of a Conditional Use Permit to establish a 14-unit residential care facility on a .58 acre parcel located at 17212 S. Passley Road; Assessor's Map 4014-36BA, Tax Lot 02200; zoned R-1-6 (Single Family Residential), based on the findings and conclusions stated in the staff report and subject to the conditions of approval.
2. Motion to approve the Final Order regarding file **CUP-2-20**, based on the findings and conclusions stated in the staff report and subject to the conditions of approval.

Financial Impact: None

Background/Discussion:

Planning Staff presented application CUP-2-20, a Conditional Use Permit for a 14 bed residential elderly care facility in an R-1-6 zone, to the Planning Commission on July 7, 2020. The Planning Commission passed a motion to deny the application by a vote of 5-2. The applicant filed an appeal to City Council (APP-1-20) on July 24, 2020.

The subject property for the proposed Conditional Use Permit is an undeveloped level flag lot, .59 acre in size and located on the west side of S. Passley Road. The property will be accessed from S. Passley Road by a flag lot driveway which is approximately 15 feet wide by 140 feet long and adjacent to West Cliff Drive (**Attachment B**).

The subject parcel was partitioned in 1992 (file number M3-9-92) per BMC 17.172 Land Divisions and 17.172.061 Rear Lot Partitions, creating the flag lot with a driveway width less than 20 feet due to constraints to the North and South. At that time staff noted in the report to the Planning Commission that the property owner attempted to obtain participation with the adjacent owner to the South, now West Cliff Subdivision (SUB-1-03), to create a joint subdivision with a shared access where West Cliff Drive is currently located. That attempt failed. "Staffs opinion in 1992 was that the applicant should not be penalized by the requirement of the Land Development Code which tied division of the lot totally to the desire of the neighbor to the South". When partitioned the driveway was conveyed with ownership of the rear lot and to be an integral part of the rear lot.

S. Passley Road is a paved travel way with an approximate 50 foot right of way at or near the subject property. Public Improvements have been made as property has been developed on the East and West sides S. Passley Road near the subject property.

The subject property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size). Surrounding development in the area consists of single family homes. Directly West of the property are residential lots accessed by Oceanside Drive and north of the property is Brookings Church of Christ. East of the property is a single family residence accessed off S. Passley Road.

Adjacent and South of the property is West Cliff Drive, a 25 foot wide private street with five residences developed with sidewalks and gutters on the South side.

PROPOSED CONDITIONAL USE PERMIT

The applicant is requesting a conditional use permit per BMC 17.20.040 Conditional Uses in an R-1-6 zone, to establish a 14 bed residential assisted living home to serve elderly residents with disabilities. Specific standards that apply to a facility of this type can be found in BMC Chapter 17.124 Conditional Use Permit, Section 17.124.100 Churches, Hospitals, other Religious and Charitable Institutions. The facility will consist of a 9,588 sq ft single story building. The building will contain 14 residential rooms each with a private bathroom. Common spaces include a living area, dining area, library, kitchen, office, laundry, and storage spaces. The private residential rooms range in size from 319 to 587 sq. ft. and are arranged around the central living area. There will be two outdoor covered patios, one on the north side and one on the west end (**Attachment B**).

Off-street parking will be provided in accordance with BMC Chapter 17.92 which only requires a 14 unit residential care facility to have a minimum of three on-site parking spaces (1 per 5 beds) due to the fact that the residents don't drive. The proposed parking area will consist of a total of six parking spaces, three located at the east end of the building, two located at the front of the building and one parking space in the single car garage.

Access to the parking area will be from S. Passley Road. The parking area will be fenced and or screened with landscaping to reduce visibility into the parking from neighboring properties (**Attachment B**). Per BMC Chapter 17.92 Parking, The R-1-6 zone allows for hospitals, rest, nursing and convalescent homes with an approved Conditional Use Permit. Standards for hospitals, rest, nursing and convalescent homes are found in Brookings Municipal Code (BMC) section 17.124.100. These criteria will be required as Conditions of Approval if approved. The applicants' findings **Attachment B** discuss their plans in regard to these standards. Conformation of utilities is found in **Attachment B**.

ANALYSIS AND FINDINGS

BMC Ch. 17.136 Conditional Use Permits - Sec. 17.136.050(C) Findings of Fact

1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code;
2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
3. The proposed use will have minimal adverse impact upon adjoining properties. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;

4. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area;
5. The proposal is in compliance with the comprehensive plan.

The Planning Commission denied the application, based on several of the approval criteria cited above. The basis for denial are discussed below. The applicant has provided their findings (**Attachment B**) for the original CUP-2-20 application to the Planning Commission, and a Statement in Support of Appeal of Planning Commissions Decision (**Attachment A**) to Council. Staff has provided a summary of the Planning Commission's order and staff's analysis of the criteria as follows:

Criterion 1 - Adequate size and shape

The subject property is a level flag lot approximately 25,654 sq. ft. in size and the proposed facility will occupy approximately 9,588 sq. ft., approximately 37% of the total lot area. Per BMC 17.20.060 Lot Coverage Requirements, rear lots (flag lots) created pursuant to BMC [17.172.061](#) have setback requirements of 10 feet from all property lines. Any irregularly shaped parcel with minimal street frontage is also subject to the 10-foot setback from all property lines. Maximum lot coverage is 40%. The site is large enough to accommodate the proposed building and parking. The proposed building will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line. The driveway is 15 feet wide by 140 feet long. The proposed parking area is large enough to accommodate six vehicle parking spaces. The subject property is sufficiently large to accommodate the proposed residential care facility. Water and sewer services are sufficient and available at S. Passley Road. Staff believes Criterion 1 has been met.

Planning Commission's finding of denial on this approval criterion is based on neighbor complaints that the building is too large for the site (over 40% lot coverage) The code section referenced in the complaint is 17.172.061(A)(3) which states that the access way square footage can't be used in order to create a minimum lot size. That provision addresses the size a flag lot must be when the lot is being created. This has no correlation to maximum lot coverage of a building on a flag lot. In fact the definition of lot coverage in the code as it is referenced in 17.20.060 says ***"Lot coverage" means that percentage of the total lot area covered by structures.***

Criterion 2 - Relation of streets

S. Passley Road has a paved travel surface with a 50 foot wide right-of-way with improvements in some areas. This street provides access to approximately 70 dwelling units. In terms of the ability of S. Passley Road to handle the traffic generated by the proposed residential care facility, there should be no significant impact. The proposed facility is designed for the residential care of adult patients who do not drive. The primary traffic related impact would be from staff and visitors. Visitors would normally be scattered throughout the day rather than concentrated into one period. Staff believes Criterion 2 is met.

The Planning Commission's denial based on failure to satisfy this approval criterion provides that the street width doesn't meet standards for commercial vehicles. Fire Chief Jim Watson assured staff both in an email (**Attachment F**) that the 15ft driveway width was adequate for emergency vehicles. In addition, the fire code allows a reduction to 15ft in driveway width if the building is equipped with a fire suppression system (sprinklers). The proposed building will be equipped with a fire suppression system. In addition, all opposed to the project in letter form and in person made assumptions that the project would generate "commercial traffic" when in fact, the applicant expressed numerous times during the Planning Commission meeting and by letter provided to the commissioners in supplemental packet(s) that no large delivery trucks or transit

vehicles (buses) would be utilized. There will be an occasional emergency vehicle (ambulance) and occasional visitors but a reasonable number that would not exceed any increase you might find at a neighbors home while having a birthday party or on holidays. The section of Passley Road at this particular location and to the South allows for parking on both sides of the street and is a public right of way. At the time this area was subdivided the roadway was dedicated to the City and was developed to allow parking on both sides of the road for visitors to residents along this road.

Criterion 3 - Neighborhood impact

The impact on the surrounding neighborhood is the primary issue concerning residents in the neighborhood. One residence is located in front of the flag lot and the driveway will abut their garage. Five homes located on West Cliff Drive will face the property. Elderly adult residential care facilities are generally very quiet in nature and the day to day operation of the proposed facility will have little to no adverse impact on the surrounding neighborhood. Traffic generated by the facility, although light, will cause an incremental amount of noise in the general area, however, residential development on the same lot would have the potential of adding as much, if not more, traffic to S. Passley Road.

The proposed project will provide a landscaped buffer between the parking area and the adjoining properties as required by the Land Development Code. Staff believes criterion 3 has been met.

In the presentation to the Planning Commission, the applicant alleged possible violations of federal laws aimed at protecting housing for individuals with disabilities. Those laws target local land use laws that provide extremely discretionary approval criteria, such as this one, that allow neighbors and local decision-making bodies to block proposed housing for the disabled. Staff believes that denial of the proposal based on this approval criterion could be subject to challenge by the applicant for violation of one or more federal fair housing laws.

Criterion 4 - Historic, scenic or cultural attributes

There are no listed historic, scenic or cultural attributes on the subject site or in the immediate area. Staff believes Criterion 4 is met.

Criterion 5 - Comprehensive Plan

The property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is designated as Residential by the Comprehensive Plan. Residential care facilities are a conditional use in the R-1-6 zone. The proposed use of the property is consistent with the criteria addressed above and with the policies of Goal 10, Housing of the Comprehensive Plan, in that it provides a variety of housing types. Staff believes criterion 5 is met.

The Planning Commission found the facility is inconsistent with the adjoining R-1-6 zoning when in fact it is allowed in this zone under a conditional use permit. This alone makes the project compatible with conditions. The Planning Commission also relied on neighbors' concern that Passley Road will not be able to accommodate additional traffic. Staff believes it is not reasonable that the applicant be required to provide a traffic impact study when they have stated multiple times that traffic would be minimal and there would be no commercial traffic i.e. delivery trucks or large transit vehicles.

CONCLUSIONS

1. The proposed residential care facility will occupy 37% of the subject .59 acre site. The design of the facility includes a ten foot setback from the westerly property line, 18 foot setback from the northerly property line, 24 foot setback from the southerly property line and 38 foot setback from the easterly property line meeting all setback requirements.

The parking area will contain six parking spaces which includes one handicapped space. This meets the required number of spaces required for residential care facilities within the city. The subject property is sufficiently large enough to accommodate the proposed residential care facility.

2. S. Passley Road is a paved travel way with a 50 foot right of way, with a 15 foot wide driveway which was allowed in the 1992 partition.
3. Residential care facilities are, by nature, not a noise generator. The traffic generated by the facilities will have an incremental increase in the noise around the general area; however, residential development on the parcel has the potential to generate more general noise than the proposed project will. The proposed project is designed to provide the required buffer between the parking area and the adjoining residential use.
4. There are no historical or cultural attributes on or in the vicinity of the subject site. The proposed residential care facility should not have an impact on the scenic quality of the area.
5. The proposed facility is consistent with the provisions of the criteria discussed above and is consistent with Goal 10, Housing of the City's Comprehensive Plan, in that it provides a variety of housing types.
6. Residents have submitted letters of opposition to the Conditional Use Permit with concerns including the size of the proposed residential care facility, the locating of such a facility in an R-1-6 zone, driveway width, parking, ADA accessibility, and traffic generated (**Attachments C, D & E**).

CONDITIONS OF APPROVAL

The proposed conditions of approval are attached to and made a part of this report (**Attachment H**).

RECOMMENDATION

Staff recommends the reversal of the Planning Commissions denial of CUP-2-20, based on the findings and conclusions stated in the applicant's findings, applicants statement in support of appeal, the staff report, and subject to the Conditions of Approval.

Staff has prepared a FINAL ORDER to be considered at this meeting (**Attachment H**).

ATTACHMENTS

- A. APP-1-20 Appeal Application (includes Appeal Statement, Land Use Attorney Letter of Support, Fair Housing Act and ADA guideline summarization)
- B. Planning Commission Staff Report (includes Map, Facility Plans, Utility Confirmation, Applicant Findings, Resident Oppose Letter, Proposed Final Order & Conditions of Approval)
- C. Supplemental Planning Commission Packet #1 (includes Amended Staff Report, Letters of Opposition, Residents Petition, Land Use Attorney Letter of support, Applicant Letter of Support)
- D. Supplemental Planning Commission Packet #2 (includes Letters of Opposition, Applicants Informational Letter to Neighbors, Fair Housing Act and ADA guideline summarization, Letter of Support, Fire Department Response addressing CUP Proposal)
- E. Additional Letters of Support and Opposition
- F. Fire Department Provisions
- G. Planning Commission Minutes of July 7, 2020
- H. City Council Final Order and Conditions of Approval for APP-1-20/CUP-2-20
- I. Age Friendly Inclusive Community Tool Kits



RECEIVED

\$ 2826.00

JUL 27 2020

R# 2.248901
CITY OF BROOKINGS

898 Elk Drive, Brookings, OR 97415

541-469-1159 FAX: 541-469-3650

Land-Use Permit Application

Applicants must complete the following form to the best of their knowledge. Incomplete information may cause a delay in the review and the final decision on your request. If requested information is not known to the applicant, city staff will provide such information where appropriate.

APPLICATION FOR:

- | | | |
|---|--|---|
| <input type="checkbox"/> Amendments | <input type="checkbox"/> Extension of Time | <input type="checkbox"/> Planned Community |
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Master Plan Development | <input type="checkbox"/> Pre-Application |
| <input checked="" type="checkbox"/> Appeal: Planning Commission | <input type="checkbox"/> Minor Change | <input type="checkbox"/> Sign Permit |
| <input checked="" type="checkbox"/> Appeal: City Council | <input type="checkbox"/> Mural | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Name Street | <input type="checkbox"/> Vacation of Street |
| <input type="checkbox"/> Detailed Development Plan | <input type="checkbox"/> Partition | <input type="checkbox"/> Variance |

APPLICANT/OWNER INFORMATION			
Name	Brett Kemp – Bk Quality Construction LLC		
Mailing Address	PO Box 705		
City, State, Zip	Gold Beach, Oregon 97444		
Phone	541-610-6439	Email	bkgconstruction@live.com

Representative			
Mailing Address			
City, State, Zip			
Phone		Email	

Owner (if not applicant)			
Mailing Address			
City, State, Zip			
Phone		Email	

PROPERTY INFORMATION							
Location	17212 S, Passley Rd. Brookings Oregon 97415						
Map #	4014-36BA	Lot #	02200	Parcel Size	.58 acre	Existing Zoning	R-1-6
Comprehensive Plan Designation							
Existing Use	Bare Land						
Proposed Use	14 bed residential care assisted living care facility for seniors with disabilities						
Is water service available to site: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				If no, how far to nearest city water line?			
Is sewer service available to site: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				If no, how far to nearest city line?			

REQUEST	
Requesting a CUP to construct and operate a 14 bed residential care facility in a R-1-6 location at the property listed above.	
I hereby certify that the information provided on this application is correct to the best of my knowledge and understand that any false information may result in the rejection of the application and forfeiture of all fees submitted.	
Applicant's Signature	<i>Brett Kemp</i>
Date	7-24-20
If applicant is not the owner of the property subject to this request please have the owner sign below or attach a letter signed by the owner authorizing to act on his/her behalf.	
Property Owner's Signature	<i>Brett Kemp</i>
Date	7-24-20

APP-1-20 7/24/20 by

RECEIVED

JUL 24 2020

CITY OF BROOKINGS

STATEMENT IN SUPPORT OF APPEAL OF PLANNING COMMISSION DECISION

Nature of Application:	Conditional Use Permit to establish a 14-unit residential care facility on a .58-acre parcel located at 17212 S. Passley Road
Planning Commission Hearing:	July 7, 2020
Planning Commission Decision:	Denial
Notice of Decision Date:	July 13, 2020

I. INTRODUCTION

On July 7th, the planning commission of Curry County reviewed our application for a conditional use permit for the parcel located at 17212 Passley Road. The commission claimed that the application failed to meet three specific standards necessary for its final approval.

The Planning Commission of Curry County erred in the interpretation of the Land Development Code criteria in making its decision to deny our Conditional Use Permit on the following basis:

- The Planning Commission erred in its interpretation related to Criteria 1.
- The Planning Commission erred in findings in its interpretation related to Criteria 2.
- The Planning Commission erred in its interpretation related to Criteria 3.

Criteria 1, 2 & 3 are discussed in below.

II. PROJECT OVERVIEW

We are asking for a Conditional Use Permit to enable us to build a 14-bed residential assisted living home to serve elderly residents with disabilities. Our goal is to make a supportive environment for the elderly in a non-medical setting, where they are part of a supportive residential community. Data demonstrates that smaller residential homes, like the one we propose, result in better health outcomes for seniors, significantly lower risk of falls, better cognitive and functional status, and a greater sense of well-being. In the era of COVID-19, smaller residential homes are becoming even more important, as there is a much lower risk of virus transmission and greater safety for residents.

Our independent market analysis, along with the city's own stated goals, confirm that the Brookings community is in desperate need for additional senior care options to serve the growing aging population. In addition, the Curry County Comprehensive Plan recognizes that Curry County and Brookings continue to have a population that is older than the state average due to in-migration of retirees. The Comprehensive Plan also sets a goal to provide "varied housing types that are safe,

sanitary, and adequate for all residents of the community.” Our proposed home helps to fulfill this goal for elderly people with disabilities and, in addition, our project provides for additional economic benefits, such as job creation and tax revenue generation. Providing new opportunities for economic development and creation of jobs will have a positive impact on the City of Brookings, will meet an important demand for our aging population, and supports many of the goals in the Brookings Comprehensive Plan.

As discussed in detail below, our proposal complies with all of the BMC’s development conditions and meets all necessary criteria for a conditional use permit. We intentionally designed the home to provide aesthetics of a residential home. Indeed, it will *be* home to all who live there and the residents will function and interact as regular families do. We are also sensitive to the surrounding environment and have planned for the property to be beautifully landscaped, with appropriate screening and fencing.

In addition to being consistent with the BMC, our project is consistent with Goal 2 policy 4 of the Brookings comprehensive plan where “Planning decisions generally and amendments to the plan particularly, will be consistent with applicable State Planning Goals”.

In addition to the protections of the FHAA, the Oregon Legislative Assembly has found and declared that:

In addition to being consistent with the Comprehensive Plan and BMC, our project is supported by Oregon state law. The Oregon Legislative Assembly has found and declared that:

- (1) It is the policy of this state that persons with disabilities and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;
- (2) There is a growing need for residential homes and residential facilities to provide quality care and protection for persons with disabilities and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;
- (3) It is often difficult to site and establish residential homes and residential facilities in the communities of this state;
- (4) To meet the growing need for residential homes and residential facilities, it is the policy of this state that residential homes and residential facilities shall be considered a residential use of property for zoning purposes; and
- (5) It is the policy of this state to integrate residential facilities into the communities of this state. The objective of integration cannot be accomplished if residential facilities are concentrated in any one area.

Or. Rev. Stat. § 197.663. A city may allow a project such as the one proposed in a single-family zone. Or. Rev. Stat. § 197.667.

Additionally, integrating people with disabilities into residential communities is supported by federal law. The Fair Housing Amendments Act prohibits discrimination against people with disabilities, including by failing to grant reasonable accommodation to rules with reasonable and necessary to allow equal access to housing opportunities. 42 U.S.C. § 3604(3)(B).

III. CONDITIONAL USE PERMIT CRITERIA

We meet all the requirements for a Conditional Use Permit and respectfully request that this permit be granted.

1. Criteria 1: Adequate Size and Shape

The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code.

Please see our Conditional Permit Application and site plan which show how our proposed home meets all development conditions.

The Planning Commission found that the size of the proposed residential care facility *exceeds the maximum lot coverage*. In making this finding, the Planning Commission stated that, because this is a flag lot, the accessway cannot be included in the minimum lot size. This is an error for the following reasons:

- BMC 17.08.120 defines “Lot coverage” as “that percentage of the total lot area covered by structures.”
- As is shown in Table 1, BMC 17.20.060 allows up to 40% lot coverage in the R-1-6 zone.

Table 1: 17.20.060 Lot width, lot coverage and yard requirements

Zone	Lot Width	Front Yard	Side Yard	Rear Yard	Maximum Lot Coverage
R-1-6	60'	20'	5'*	15'	40%
R-1-8	70'	20'	5'*	15'	40%
R-1-10	80'	20'	5'*	15'	40%
R-1-12	90'	20'	5'*	15'	40%

Our home is proposed to be 9,588 sf on a .58 acre lot (25,264 sf). This results in a lot coverage ratio of 37.9%. Thus, **it complies with the lot coverage requirement.**

- The Planning Commission found that the proposed home exceeds the maximum lot coverage because *it did not count the area of the accessway in the lot size calculation*. The Planning Commission did not include a reference for its conclusion that, “The accessway of a rear lot cannot be included in the minimum lot size.” **In fact, this conclusion overlooks the clear definition of “lot coverage” in BMC 17.08.120.**

While the accessway is not included when calculating whether a rear lot meets the criteria for *eligibility for partition* under BMA 17.172.061, the controlling definition for whether the accessway should be counted in determining lot coverage is in BMC 17.08.120. The subject property is sufficiently large enough to accommodate the proposed residential care facility and parking area. In addition, water and sewer services are sufficient and available. Therefore, criteria 1 has been fully met.

2. Criteria 2 Relation of Streets:

The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.

Access to the home will be from South Passley Road. The Planning Commission found that the site “does not meet standards in Criteria 2 in terms of minimal driveway width to accommodate commercial or emergency vehicle traffic and to accommodate adequate turn radius from S. Passley Road.”

It is required that emergency vehicles are able to access all residential homes within the city. Fire Chief Jim Watson has approved and conceded that the 15ft driveway width is adequate for emergency vehicles. The fire code allows for a reduction to a 15ft in driveway width in the event the building is equipped with a fire suppression system (i.e. sprinklers). Our proposed home will be equipped with such a fire suppression system.

In addition, we can assure this Council that there will not be heavy commercial traffic. Supplies will be provided in the same methods as for other residential homes.

Our plan calls for two or three staff on duty during the day and one or two at night. Shift changes will be staggered to further minimize traffic. There will be occasional visitors and, overall, this will be consistent with any other large residential home traffic in the neighborhood.

The home will have five parking spaces (two more than required by BMC), including the single car garage. In addition, included is a hammerhead space for ease of turnaround and safety in the parking area for internal circulation. Outdoor parking spaces will be screened by fencing.

Additionally, the section of Passley Road near our accessway and to the south allows for parking on both sides of the street and is a public right of way. Therefore, *parking legally may occur on the street*. We do not anticipate that this will be needed, except for special occasions, and is open and available for the entire neighborhood to utilize.

Therefore, the Planning Commission erred when it found that Criteria 2 was not met. *South Passley Road and the accessway are adequate to handle the quantity and kind of vehicle traffic that our home is reasonably expected to generate.*

3. Criteria 3: Neighborhood Impact

The proposed use will have minimal adverse impact upon adjoining properties. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing.

Our proposed residential assisted living home will not negatively impact adjoining properties or the neighborhood as a whole. Elderly residents are good neighbors. They are quiet and do not drive or own vehicles. We will welcome the opportunity for intergenerational interaction with the neighborhood and we hope that, when it is safe to do so, the neighborhood will embrace the opportunity to interact with people who have served our community for many decades and have many stories to tell and much wisdom to impart.

There is a significant green buffer around most of the proposed property and adjoining neighbors. Additionally, we intend to have an aesthetically pleasing fence and landscaping around the home.

The proposed residential home will be set back from the main road, on a private spacious lot with a private driveway with generous spacing and setbacks from the adjoining properties having minimal impact. These unique features make this property an ideal location to support this kind of project with minimal impact on the neighborhood.

- To the North of the proposed property resides the large open field belonging to the Church of Christ.
- South of the proposed property is West Cliff Dr., a 20ft+ private road including set-backs serving only five residential homes. The proposed property will be serviced by a private driveway with no traffic impact to Westcliff Dr. The proposed property parking spaces and the majority of the property will be fenced, blocking it from view of the homes on Westcliff Dr.
- To the West lies a 20ft wide city easement in addition to set-backs from the Oceanside neighborhood that will also be fenced.
- One home on 17214 Passley that is 60+ feet from our property line in addition to trees and set-backs containing a large green field and trees between us.

The Planning Commission's further finding on Criteria 1 regarding the size of the facility and the suitability of the accessway and road have been discussed above as being fully compliant with the BMC.

4. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area.

Our proposed home is not in a preservation area. The Planning Commission did not enter a finding on this criterion.

5. The proposal is in compliance with the comprehensive plan.

The Comprehensive Plan recognizes that Curry County and Brookings continue to have a population that is older than the State average due to in-migration of retirees. Research shows that 69% of these retirees are likely to need long term care of some sort during their lifetimes. Our proposed home will help provide care options for Brookings' seniors.

The Comprehensive Plan includes a policy to "[p]rovide opportunities for development of housing for seniors, ranging from single-family detached dwellings to nursing facilities". Our proposed home is aligned with this policy.

The Comprehensive Plan also sets a goal to provide "varied housing types that are safe, sanitary and adequate for all residents of the community." Our proposed home helps to fulfill this goal for elderly people with disabilities.

The Planning Commission did not enter a finding on this criterion.

IV. FAIR HOUSING LAW

We believe that we meet all necessary requirements to justify a conditional use permit. However, should the Planning Commission feel that there is any particular rule that would be an impediment to granting this permit, we request the opportunity to provide additional information in support of **a reasonable accommodation request**

Seniors seeking care in a residential assisted living home have physical and/or mental impairments that inhibit their ability to engage in major life activities by themselves. Therefore, they are considered disabled; and are protected from housing discrimination.ⁱⁱ

Zoning ordinances should be written and applied in a way that gives disabled people equal opportunity to live in the same neighborhoods as people without disabilities. In fact, local zoning regulations *cannot* impose restrictions or additional conditions on group housing for people with disabilities that are not imposed on families or other groups of unrelated individuals.ⁱⁱⁱ Zoning practices or decisions that treat disabled people differently are seen as discriminatory.

The FHAA also defines discrimination to include, "a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford

such person equal opportunity to use and enjoy a dwelling.”^{iv} Cities have an affirmative duty to accommodate disabled people.^v

A reasonable accommodation is a change, exception or adjustment to a rule, policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.^{vi} Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities.^{vii}

The reasonableness of a request must be determined by the city on a case by case basis and not determined by a blanket policy.^{viii}

While we believe that we have met all CUP criteria, we wanted this Council to be aware of these fair housing principles. Please also see the letter of Michelle A. Pinkowski, Esq., attached in support of our application and fair housing arguments.

We think the Oregon Legislative Assembly said it best in establishing policy for our state:

It is the policy of this state that persons with disabilities and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups.^{ix}

We thank the City Council for its consideration and hope that you will find not only that we meet all criteria for the CUP, but also that what we are proposing will be an important resource for our community. Should you feel that any criteria is not met, we request a reasonable accommodation be granted, or additional time be allowed to further address a reasonable accommodation request.

ⁱ Disability, as defined by the FHAA, includes a “physical or mental impairment which substantially limits one or more of such person’s major life activities.” 42 U.S.C. § 3602(h)(1). The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments. Joint Statement of the Department of Housing and Urban Development and the Department of Justice, “State and Local Land Use Laws and Practices and the Application of the Fair Housing Act,” p. 9 (Nov 10, 2016).

ⁱⁱ See Fair Housing Amendments Act (“FHAA”), 42 U.S.C. § 3604(f)(1), which makes it unlawful:

To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of —

- (A) that buyer or renter
- (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available;
- or
- (C) any person associated with that buyer or renter.

ⁱⁱⁱ *City of Edmonds v. Oxford House, Inc.*, 461 U.S. 725 (1995); Joint Statement of the Department of Housing and Urban Development and the Department of Justice, “State and Local Land Use Laws and Practices and the Application of the Fair Housing Act,” p. 3.

^{iv} 42 U.S.C. § 3604(f)(3)(B).

^v *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir.1994), *aff'd* 514 U.S. 725 (1995).

^{vi} *Bangerter v. Orem City*, 46 F.3d 1491, 1502 (10th Cir. 1995).

^{vii} Joint Statement. p. 9 (Nov 10, 2016).

^{viii} Joint Statement, p 9; *See also United States v. Cal. Mobile Homes Park Mgmt. Co.*, 29 F.3d 1413, 1418 (9th Cir. 1994); *See also Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1103 (3rd Cir. 1996).

^{ix} Or. Rev. Stat. § 197.663.

PINKOWSKI | LAW

& Policy Group LLC

July 2, 2020

Planning Commission
City of Brookings, Oregon
898 Elk Drive
Brookings, Oregon 97415

RE: In support of Conditional Use Permit for 17212 S. Passley Road

Dear Planning Commission Members:

I am a fair housing attorney that works with owners and operators of residential assisted living homes across the country that serve people with disabilities. I am on the Board of Directors of the Residential Assisted Living National Association and a member of the Facility Guideline Institute drafting committee for design standards for residential facilities. I am a frequent speaker on fair housing topics in connection with assisted living.

I am writing to provide information for your consideration about the nature of residential care and an overview of how the federal Fair Housing Act applies to this use.

I. ASSISTED LIVING FOR THE ELDERLY DISABLED

A. *Nature of Residential Care*

As people age, some develop disabilities that make it hard for them to continue to live independently. In fact, 69% of people 65 years and older will require long term care.¹

There was a time when the elderly had few options but to stay at home and be cared for by family, or to go to the dreaded “nursing home” or “old folks’ home.” Over the past several decades, an intermediate level of care arose that enables the elderly to get assistance with daily tasks without having to be in a skilled nursing institution. This type of care is often called “assisted living” and can be provided in both small and large settings.

Residential assisted living homes are contrasted with senior care *facilities*, which provide care to the elderly on a larger scale in an apartment or institutional-style environment. Residential assisted living homes are also contrasted with skilled nursing facilities (typically known as “nursing homes”) that have elderly residents whose age or infirmity requires professionally supervised nursing care.

Residential assisted living homes have different names around the country, but the main premise is that care is provided in a group home setting in a single-family home. This

¹Kemper, Komisar and Alecxih, Long-Term Care Over an Uncertain Future: What Can Current Retirees Expect? Inquiry 42: 335-350 (Winter 2005/2006).

enables the elderly disabled to continue to live in residential environments that are enjoyed by people without disabilities.

These group homes look and function like any other single-family home. The residents interact as any other family - they take meals together that have been prepared in the home's family kitchen, they socialize in the home's common areas, and they engage in activities and provide social support as family members do.

Elderly residents are low impact residents. They seldom drive or have their own cars, they are quiet, and most likely go to bed long before the rest of the neighborhood. Residential assisted living homes are often the nicest homes on the block, with beautifully kept landscaping and a welcoming façade.

Studies have shown that group homes for the disabled do not reduce property values or stability of the surrounding neighborhood. See attached Lauber, D, "Impacts on the Surrounding Neighborhood of Group Homes for Persons with Developmental Disabilities" (1986).

In fact, group homes add to the social fabric of the surrounding community, providing intergenerational opportunities for connection and a needed service for community residents.

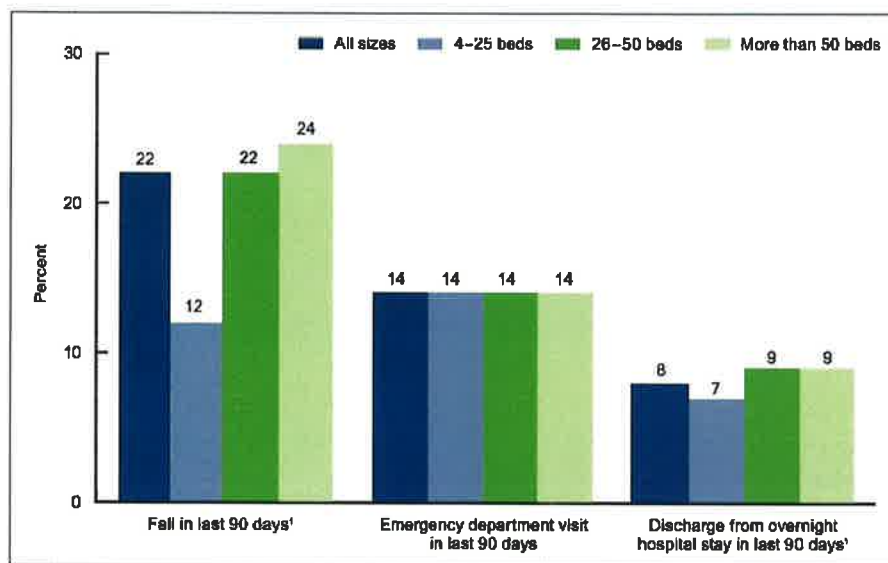
B. Benefits of Residential Care

Studies show that outcomes for residents are improved in small home environments.²

- Residents in small-scale living environments had a better cognitive and functional status than residents of traditional institutional style assisted living.
- Residents of care facilities that more closely follow the spatial character and scale of a personal residence are more likely to become engaged in socialization and activities.
- Small scale home-like environments evoke positive outcomes such as higher emotional well-being, pleasure, and social interaction among residents and with the care staff.
- Residents have less agitation/anxiety, depression, withdrawal, and mood disturbances.

A notable finding from the Centers from Disease Control and Prevention is that residents in large facilities are *two times more* likely to fall than residents in small (4 – 25 bed) facilities.

² See Zadelhoff, Ezra Van, et al. "Good Care in Group Home Living for People with Dementia. Experiences of Residents, Family and Nursing Staff." *Journal of Clinical Nursing*, vol. 20, no. 17-18, 2011, pp. 2490-2500; Wrublowsky, R. "Design Guidelines for Long Term Care Homes," 2018 Edition.



Source: *Variation in Residential Care Community Resident Characteristics, by Size of Community: United States, 2016.*

This is an important consideration because falls are the leading cause of fatal and non-fatal injuries for older Americans. According to the National Council on Aging:³

- Every 11 seconds, an older adult is treated in the emergency room for a fall; every 19 minutes, an older adult dies from a fall.
- Falls are the leading cause of fatal injury and the most common cause of nonfatal trauma-related hospital admissions among older adults.
- Falls result in more than 2.8 million injuries treated in emergency departments annually, including over 800,000 hospitalizations and more than 27,000 deaths.
- In 2015, the total cost of fall injuries was \$50 billion. Medicare and Medicaid shouldered 75% of these costs.
- The financial toll for older adult falls is expected to increase as the population ages and may reach \$67.7 billion by 2020.

II. FAIR HOUSING LAW

In addition to health benefits for seniors themselves, keeping seniors in residential neighborhoods is important to maintaining a healthy and mutually-beneficial intergenerational social fabric for our communities as a whole. Exclusionary zoning practices reduce interaction between the generations, to the detriment of us all.

Sadly, in the past 100 years, America went from being one of the most age-integrated societies in the world to arguably the polar opposite. Research from demographer Richelle Winkler in 2013 indicates that age segregation is often as ingrained as racial segregation.⁴

³ <https://www.ncoa.org/news/resources-for-reporters/get-the-facts/falls-prevention-facts/>

⁴ Freedman, M., Stamp, T. (2018). The U.S. Isn't Just Getting Older. It's Getting More Segregated. Harvard Business Review (<https://hbr.org/2018/06/the-u-s-isnt-just-getting-older-its-getting-more-segregated-by-age>).

Fair housing laws attempt to overcome the discrimination that keeps people apart.

A. Residents of Assisted Living Homes are “Disabled” and Protected under Federal Law

Seniors seeking care in a residential assisted living home have physical and/or mental impairments that inhibit their ability to handle major life activities by themselves. Therefore, they are considered disabled⁵ and are protected from housing discrimination by the federal Fair Housing Amendments Act (“FHAA”), 42 U.S.C. § 3601, *et seq.*

Congress made clear the purpose of the federal Fair Housing Act is, “to provide . . . fair housing throughout the United States.” 42 U.S.C. § 3601. The Act was amended in 1988 to include protection for people with disabilities.

Section 42 U.S.C. § 3604(f)(1), makes it unlawful:

To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of —

(A) that buyer or renter

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

Disability, as defined by the FHAA, includes a “physical or mental impairment which substantially limits one or more of such person’s major life activities.” 42 U.S.C. § 3602(h)(1).

The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments. Joint Statement of the Department of Housing and Urban Development and the Department of Justice, “State and Local Land Use Laws and Practices and the Application of the Fair Housing Act,” p. 9 (Nov 10, 2016).

“Major life activities” includes, but is not limited to, activities such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking and working. *Id.*

Though not every impairment is the same, seniors seeking care in a residential assisted living home do so because they need assistance with major life activities due to some form of disability. Therefore, they are considered disabled and are protected from housing

⁵ The Fair Housing Act uses the term “handicap” instead of disability. Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998).

discrimination. Someone who is attempting to establish a home for people with disabilities is similarly protected by the Act. *See* 42 U.S.C. § 3604(f)(1).

Zoning practices that discriminate against disabled individuals can be discriminatory, and therefore violate § 3604, if they contribute to "mak[ing] unavailable or deny[ing]" housing to those persons. *Pacific Shores Properties LLC v. City of Newport Beach*, 730 F.3d 1142, 1157 (9th Cir. 2013). *See also Bangerter v. Orem City Corp*, 46 F.3d 1491, 1498 (10th Cir. 1995).

Local zoning regulations cannot impose restrictions or additional conditions on group housing for people with disabilities that are not imposed on families or other groups of unrelated individuals. *City of Edmonds v. Oxford House, Inc.*, 461 U.S. 725 (1995); Joint Statement of the Department of Housing and Urban Development and the Department of Justice, "State and Local Land Use Laws and Practices and the Application of the Fair Housing Act," p. 3.

Additionally, the Americans with Disabilities Act provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Like the FHA, this provision prohibits governmental entities from discriminating against disabled persons through zoning. *Pacific Shores*, 730 F.3d at 1157. "Standards regarding disparate treatment claims under the ADA are typically identical, and courts accordingly 'interpret them in tandem'." *Id.* at 1157, *citing Tsombanidis v. West Haven Fire Dep't.*, 352 F.3d 565, 573 n.4 (2d Cir. 2003).

B. State Law Promotes Integration of People with Disabilities

In addition to the protections of the FHAA, the Oregon Legislative Assembly has found and declared that:

- (1) It is the policy of this state that persons with disabilities and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;
- (2) There is a growing need for residential homes and residential facilities to provide quality care and protection for persons with disabilities and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;
- (3) It is often difficult to site and establish residential homes and residential facilities in the communities of this state;
- (4) To meet the growing need for residential homes and residential facilities, it is the policy of this state that residential homes and residential facilities shall be considered a residential use of property for zoning purposes; and

- (5) It is the policy of this state to integrate residential facilities into the communities of this state. The objective of integration cannot be accomplished if residential facilities are concentrated in any one area.

OR. REV. STAT. § 197.663.

A city may allow a project such as the one proposed in a single-family zone. OR. REV. STAT. § 197.667.

III. REASONABLE ACCOMMODATION

It is my understanding that Mr. and Mrs. Kemp's project meets all requirements for a conditional use permit. To the extent that the Commission feels that a particular requirement is *not* met, it should consider granting reasonable accommodation (a/k/a an exception) to that rule.

The FHAA requires local zoning authorities to make "reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(3)(B).

The FHA's reasonable accommodations provision applies to zoning ordinances. *McGary v. City of Portland*, 386 F.3d 1259, 1264 (9th Cir. 2004).

The duty to reasonably accommodate those with disabilities is an affirmative duty. *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994), *aff'd* 514 U.S. 725 (1995). A local government may violate the Fair Housing Act if it refuses to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation is necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. Joint Statement, p. 8.

With respect to the phrase "equal opportunity," the legislative history behind the FHAA provides this context:

The Fair Housing Amendments Act, like Section 504 of the Rehabilitation Act of 1973, as amended, is a clear pronouncement of a national commitment to *end the unnecessary exclusion of persons with handicaps from the American mainstream*.⁶

The Court in *Smith & Lee Associates* said this of equal opportunity:

We find persuasive the analysis of courts that define equal opportunity under the FHAA as giving handicapped individuals the right to choose to live in single-family neighborhoods, for that right serves to end the exclusion of handicapped individuals from the American mainstream:

⁶ House Comm. on the Judiciary, Fair Housing Amendments Act of 1988, H.R.Rep. No. 711, 100th Cong., 2d Sess. 18, *reprinted* in 1988 U.S.C.A.N. 2173, 2179 (footnote omitted)(emphasis added).

[T]he Act prohibits local governments from applying land use regulations in a manner that will exclude people with disabilities entirely from zoning neighborhoods, particularly residential neighborhoods, or that will give disabled people less opportunity to live in certain neighborhoods than people without disabilities.

Smith & Lee Assoc. v. City of Taylor, Mich., 102 F.3d 781 (6th Cir. 1996), *citing Bryant Woods Inn, Inc. v. Howard County, Md.*, 911 F.Supp. 918, 946 (D.Md.1996)(citation omitted); *see also City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir.1994), *aff'd*, ___ U.S. ___, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995) ("Congress intended the FHAA to protect the right of handicapped persons to live in the residence of their choice in the community.").

When a City has a process for reviewing requests, such as The City of Brookings' Conditional Use Permit process and five attendant criteria for decision-making, the City must review the request objectively, without influence of generalized stereotypes or political pressure. As stated in *Avalon Residential Care Homes v. City of Dallas*,

A City must be willing to adjust to the particular circumstances of each case and interpret its regulations flexibly so as to reasonably accommodate handicapped persons in its zoning decisions. The City's ordinance sets a framework for decision-making, but that process fails if those decisions are based on generalized stereotypes or political pressure.⁷

I hope this analysis was helpful in your consideration of Mr. and Mrs. Kemp's CUP application.

Sincerely,

PINKOWSKI LAW & POLICY GROUP, LLC



Michelle A. Pinkowski
(303) 803-4309
michelle@pinkowskilaw.com

Attachment:
Lauber, D. study

⁷ *Avalon Residential Care Homes v. City of Dallas*, 130 F.Supp.2d 833, 841 (N.D. Tex. 2000).

The following guidance summarizes the Fair Housing Act (FHAA) and Americans with Disabilities Act (ADA)

- *What is the Fair Housing Act Amendment? How it protects developers of projects?*
- *How does the ADA apply to senior housing situations?*
- *What are the protected classes of individuals under the FHA?*
- *Senior Group Homes under the FHA.*
- *State and Local Governments Role in Supporting the FHA.*



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**



**U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION**

*Washington, D.C.
November 10, 2016*

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION OF THE FAIR HOUSING ACT

INTRODUCTION

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the Federal Fair Housing Act ("the Act"),¹ which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.² The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

- **FHAA Overview**

- The FHA and the ADA are the two main anti-discrimination statutes that affect senior living providers/Developers. The Fair Housing Act (FHA) was originally passed as Title VIII of the Civil Rights Act of 1968 and prohibits discrimination in the sale or rental of housing. It was amended in 1974 and 1988 and, as amended, the FHA makes it illegal to discriminate in the terms, conditions, or privileges of the sale or rental of a dwelling or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, national origin, or handicap/Disability. 42 USC Section 3604. As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

- **The Americans with Disabilities Act**

- The ADA was enacted in 1990 and specifically prohibits discrimination on the basis of disability in employment, state and local government activity, public accommodations, commercial facilities, and telecommunications. The ADA definition of disability is the same as under the FHA. The ADA applies in places of “public accommodations operated by private entities.” The ADA defines a place of public accommodation as a facility whose operations affect interstate commerce and includes an inn, hotel, motel, or other place of lodging, which denotes a shorter duration of occupancy than does “residence.” A senior citizen center or other social service center, and other service establishments, such as professional offices of a health care provider or hospital, are also considered places of public accommodations. In addition, long-term care organizations and nursing homes are expressly covered by ADA regulatory guidelines. Properties that are purely residential (like senior apartments with no services) will fall under the Fair Housing Act’s disability discrimination provisions rather than the ADA.
- Where a retirement community has elements that include both residential dwellings and service facilities or other areas that may be considered public accommodations, such as life plan communities, a hybrid analysis under both the FHA and ADA should be applied.

- **Who qualifies as a person with a disability under the Fair Housing Act?**

- The FHA identifies seven protected classes. Handicap (or more commonly called disability) applies most often in the senior housing context. The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such

- an impairment; and (3) individuals with a record of such an impairment
 - The term “major life activity” include activities such as seeing, hearing, walking, breathing, performing manual task, caring for ones self, Learning, speaking and working. This is not an exhaustive list.
 - **Supreme Court’s ruling in *Olmstead* apply to the Fair Housing Act**
 - In *Olmstead v. L.C.*,¹⁰ the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs.
- **What is a group home within the meaning of the Fair Housing Act?**
 - The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways.
 - The term “group home” does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities
 - In this Statement, the term “group home” refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit.
- **State or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its**

zoning or land use laws respecting housing? Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?

- Congress understood that one of the central problems for the establishment of group homes is baseless hostility on the part of neighbors and even local governments themselves. It manifestly intended, therefore, to preempt state and local laws that effectuated or perpetuated housing discrimination. The House Judiciary Committee said that: The FHAA, like Section 504 of the Rehabilitation Act of 1973, as amended, is a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.
- In the same way a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision makers themselves do not have biases against persons with disabilities.
- When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

REFERENCES

1. <https://www.justice.gov/opa/file/912366/download>

CITY OF BROOKINGS PLANNING COMMISSION
STAFF AGENDA REPORT

SUBJECT: Conditional Use Permit
FILE NO: CUP-2-20
HEARING DATE: July 7, 2020

REPORT DATE: June 25, 2020
AGENDA ITEM NO: 4.2

GENERAL INFORMATION

APPLICANT: Brett Kemp
PROPERTY OWNER: Brett Kemp
REQUEST: A conditional use permit to establish a 14 unit adult residential care facility.
TOTAL LAND AREA: .58 acres/25,654 square feet
LOCATION: Subject property is a flag lot located on the west side of S. Passley Road, adjacent to West Cliff Drive, more specifically 17212 S. Passley Road.
ASSESSOR'S NUMBER: 4014-36BA, Tax Lot 02200

ZONING / COMPREHENSIVE PLAN INFORMATION

EXISTING: R-1-6 (Single-family residential, 6,000 square foot minimum lot size)
PROPOSED: Same
SURROUNDING: Subject property is surrounded by R-1 (Single-family residential) zoned properties
COMP. PLAN: Residential

LAND USE INFORMATION

EXISTING: Undeveloped
PROPOSED: 14 unit adult residential care facility
SURROUNDING: The subject property is surrounded by residentially developed parcels
PUBLIC NOTICE: Mailed to all property owners within 250 feet of subject property and published in local newspaper.
APPLICABLE CRITERIA: Land Development Code – Ordinance No. 06-O-572
Chapter 17.136 - Conditional Use Permits
Chapter 17.20 – Single Family Residential District, Sections 17.20.040, 17.20.060, 17.20.090
Chapter 17.124 – Specific Standards Applying to Conditional Uses, Section 17.124.100
Chapter 17.172 – Land Divisions, Section 17.172.061

BACKGROUND INFORMATION

The subject property is an undeveloped level flag lot, .58 acre in size and located on the west side of S. Passley Road. The property will be accessed from S. Passley Road by a flag lot driveway which is approximately 15' wide by 140' long and adjacent to West Cliff Drive (**Attachment A**).

S. Passley Road is a paved travel way with an approximate 50' right of way. Public Improvements have been made as property has been developed on the east & west sides.

The subject property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size). Surrounding development in the area consists of single family homes. Directly west of the property is Oceanside Drive subdivision with current vacant lots ready for development and north of the property is Brookings Church of Christ. East of the property is a single family residence accessed off S. Passley Road. Adjacent and south of the property is West Cliff Drive, a 25' wide private street with five residences developed with sidewalks and gutters on the South side.

PROPOSED CONDITIONAL USE PERMIT

The applicant is requesting a conditional use permit to establish a 14 unit adult residential care facility. The facility will consist of a 9,588 sq ft single story building with parking for 6 vehicles including 1 in garage and 1 ADA. The building will contain 14 residential rooms each with a private bathroom, a living area, dining area, library, kitchen, office, laundry, storage spaces and a one car garage. The residential rooms range in size from 319 to 587 sq ft and are arranged around the central living, dining and kitchen area. There will be two outdoor covered patios, one on the north side and one on the west end (**Attachment B**).

The parking area will consist of a total of six parking spaces, three located at the east end of the building, two located at the front of the building and one parking space in the single car garage. Access to the parking area will be from S. Passley Road. The parking area will be fenced and or screened with landscaping to reduce visibility into the parking from neighboring properties (**Attachment C**).

The R-1-6 zone allows for hospitals, rest, nursing and convalescent homes with approval of a Conditional Use Permit. Standards for hospitals, rest, nursing and convalescent homes are found in Brookings Municipal Code (BMC) section 17.124.100. These criteria will be required as Conditions of Approval if approved. The applicants' findings **Attachment D** discuss their plans in regard to these standards. Conformation of utilities is found in **Attachment E**.

ANALYSIS AND FINDINGS

BMC Ch. 17.136 Conditional Use Permits - Sec. 17.136.050(C)

The Planning Commission has the authority to approve, approve with conditions, or deny the application. In order to grant any conditional use, the Planning Commission must find that the application meets the requirements of the following criteria, which is listed in Section 17.136 – Condition Use Permits of the Brookings Municipal Code, Land Development Code.

1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code;
2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
3. The proposed use will have minimal adverse impact upon adjoining properties. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;

4. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area;
5. The proposal is in compliance with the comprehensive plan.

The Applicant has provided findings (**Attachment D**). Staff has provided analysis of the criteria as follows:

Criterion 1 - Adequate size and shape

The subject property is a level flag lot approximately 25,654 square feet in size and the proposed facility will occupy approximately 9,588 sq. ft., approximately 37% of the total lot area. The site is large enough to accommodate the proposed building and parking. The proposed building will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line. The driveway is 15' wide by 140' long. The proposed parking area is large enough to accommodate six vehicles parking spaces. The subject property is sufficiently large to accommodate the proposed residential care facility. Water and sewer services are sufficient and available at S. Passley Road. Criterion 1 is met.

Criterion 2 - Relation of streets

S. Passley Road has a paved travel surface with a 50 foot wide right-of-way with improvements in some areas. This street provides access to approximately 70 dwelling units. In terms of the ability of S. Passley Road to handle the traffic generated by the proposed residential care facility, there should be no significant impact. The proposed facility is designed for the residential care of adult patients who do not drive. The primary traffic related impact would be from staff and visitors. Visitors would normally be scattered throughout the day rather than concentrated into one period. Criterion 2 is met.

Criterion 3 - Neighborhood impact

The impact on the surrounding neighborhood is the primary issue concerning residents in the neighborhood. One residence is located in front of the flag lot and the driveway will abut their garage. Five homes located on West Cliff Drive will face the property. Residential care facilities are generally very quiet in nature and the day to day operation of the proposed facility will have no adverse impact on the surrounding neighborhood. Traffic generated by the facility, although light, will cause an incremental amount of noise in the general area, however, residential development on the same lot would have the potential of adding as much, if not more, traffic to S. Passley Road.

The proposed project will provide a landscaped buffer between the parking area and the adjoining properties as required by the Land Development Code. Criterion 3 is met.

Criterion 4 - Historic, scenic or cultural attributes

There are no listed historic, scenic or cultural attributes on the subject site or in the immediate area. Criterion 4 is met.

Criterion 5 - Comprehensive Plan

The property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is designated as Residential by the Comprehensive Plan. Residential care facilities are a conditional use in the R-1-6 zone. The proposed use of the property is consistent with the criteria addressed above and with the policies of Goal 10, Housing of the Comprehensive Plan, in that it provides a variety of housing types. Criterion 5 is met.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.040 Conditional Uses

Hospitals, rest, nursing and convalescent homes, subject to BMC 17.124.100 are permitted subject to a conditional use permit.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.060 Lot Coverage Requirements

Rear lots (flag lots) created pursuant to BMC 17.172.061 have setback requirements of 10 feet from all property lines. Any irregularly shaped parcel with minimal street frontage is also subject to the 10-foot setback from all property lines. Maximum lot coverage is 40%

Proposed building footprint meets the setback requirements for a flag lot and lot coverage is calculated at 37%.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.090 Parking

Off-street parking shall be provided in accordance with Chapter 17.92 BMC.

BMC Ch. 17.92 Parking

No development permit shall be issued until plans and evidence are presented to show how the off-street parking and loading requirements are to be fulfilled and that property is and will be available for the exclusive use as off-street parking and loading space. Residential care facilities parking requirements are one parking space per five residents. Unless otherwise provided, required parking and loading spaces shall not be located in a required front yard, but parking space may be located within a required side or rear yard.

Flag lot location will require off street parking. For a 14 unit residential care facility a minimum of three on-site parking spaces for residents is required. The proposed development plans include five on-site parking spaces and one single car parking garage for a total of six parking spaces. As the proposed facility is designed for the residential care of adult patients who generally do not drive the remaining three parking spaces will be used and available for visitors and staff.

BMC Ch. 17.124 - Sec. 17.124.100 Churches, Hospitals, Other Religious or Charitable Institutions

In any "R" district, all such uses shall be located on a street adequate to serve the use. All off-street parking facilities shall be adequately screened from abutting property to reduce noise and other negative impacts.

The parking area located on site will be fenced and or screened with landscaping or order to reduce visibility into the parking area from neighboring properties.

BMC Ch. 17.172 – Land Divisions – Section 17.172.061 Rear Lot Partitions

Development Standards for rear lots require an access way with a minimum width of 20 feet and a maximum length of 200 feet. Setback requirements require no building be erected within 10 feet of any property line.

The subject parcel was partitioned in 1992 (file number M3-9-92) creating the flag lot with a driveway width less than 20 feet due to constraints to the North and South. At that time staff noted in the report to the Planning Commission that the property owner attempted to obtain participation with the adjacent owner to the South, now West Cliff Subdivision (SUB-1-03), to create a joint subdivision with a shared access where West Cliff Drive is currently located. That attempt failed. "Staffs opinion at that time was that the applicant should not be penalized by the requirement of the Land Development Code which tie division of the lot totally to the desire of the neighbor to the South". When partitioned the driveway was conveyed with ownership of the rear lot and to be an integral part of the rear lot as well as improved to a permanent, dust-free surface of asphaltic concrete or Portland cement.

The proposed building to be constructed on the lot will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line meeting setback requirements.



Residence - 9588 sf.

KEMP RESIDENCE
PASSLEY ROAD - BROOKINGS - OREGON - 97415

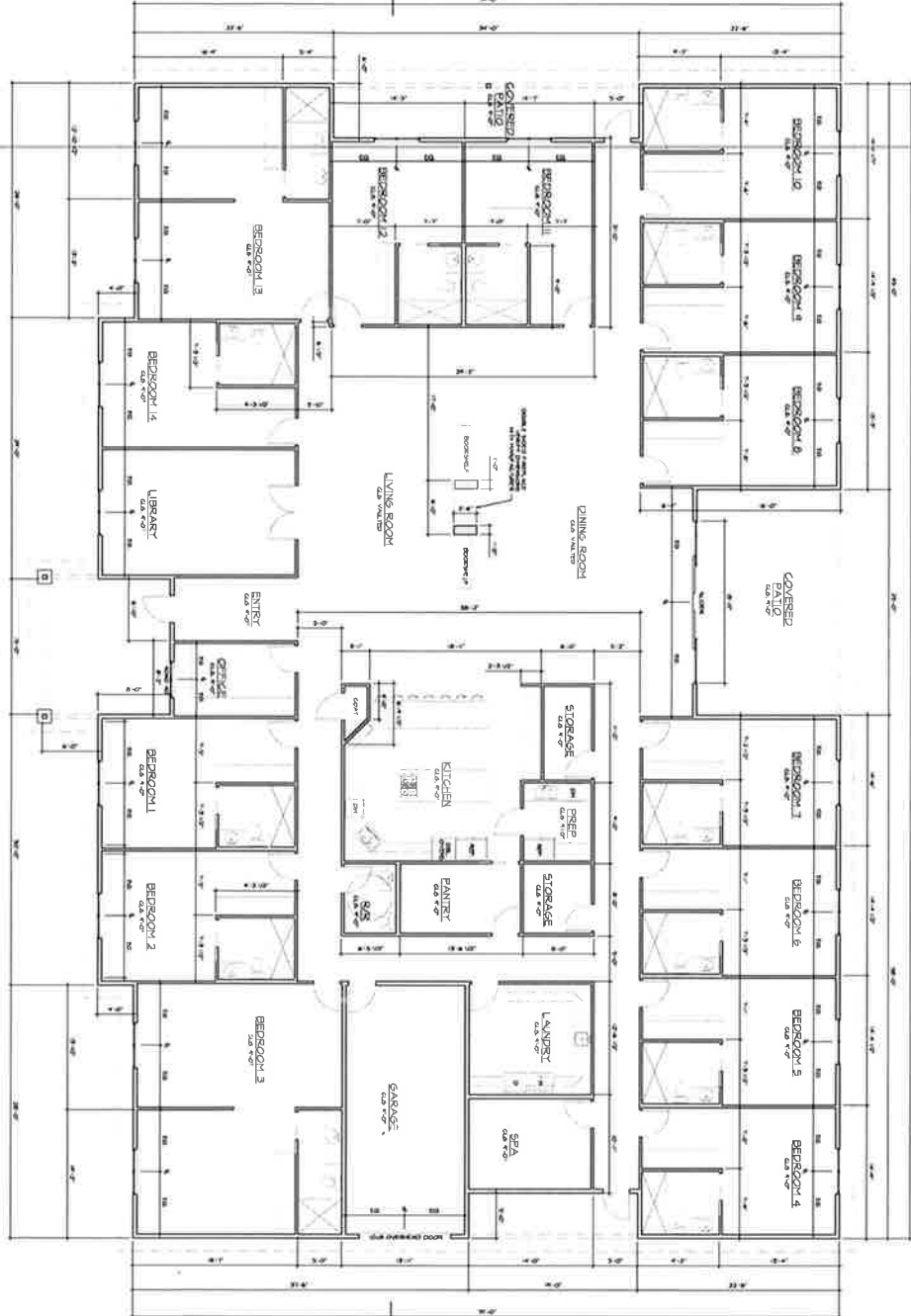
FLOOR
PLAN

1 FLOOR PLAN

SCALE 3/8" = 1'-0"



DO NOT SCALE
DIMENSIONS
FROM THIS
DRAWING



GENERAL NOTES

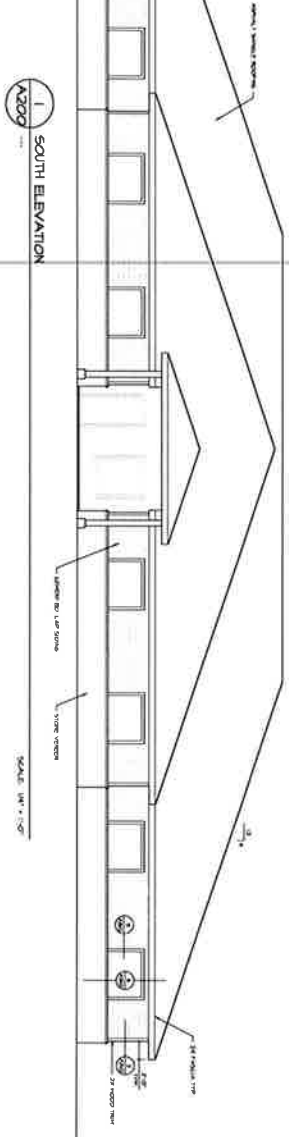
1. All dimensions are given in feet and inches.
2. All dimensions are given in feet and inches.
3. All dimensions are given in feet and inches.
4. All dimensions are given in feet and inches.

360 FT. EXISTING
CONCRETE
FOOTING
3/17/15

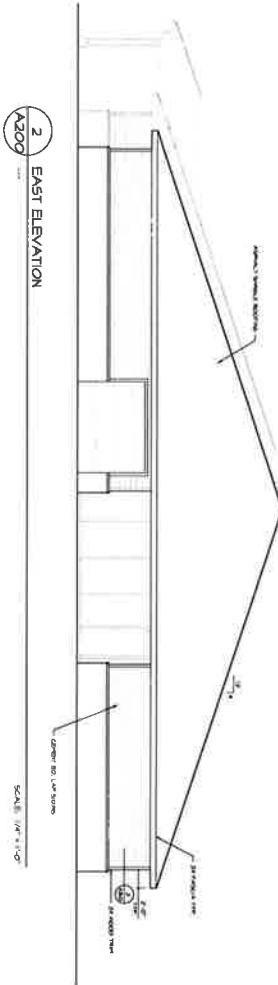


ALCO

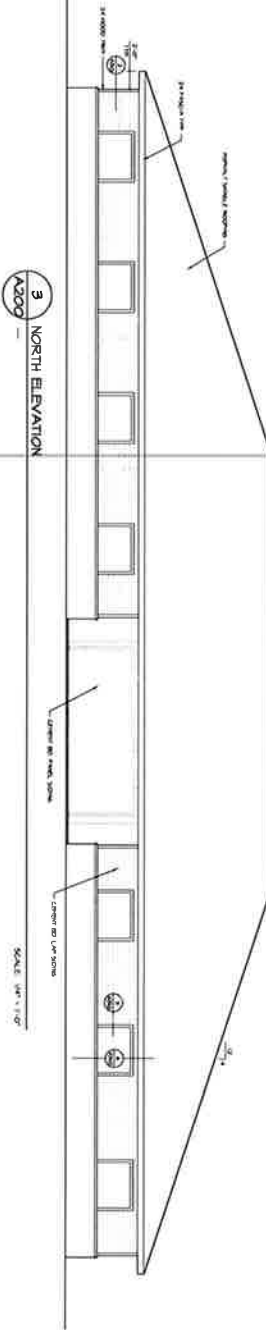
1 SOUTH ELEVATION
A200



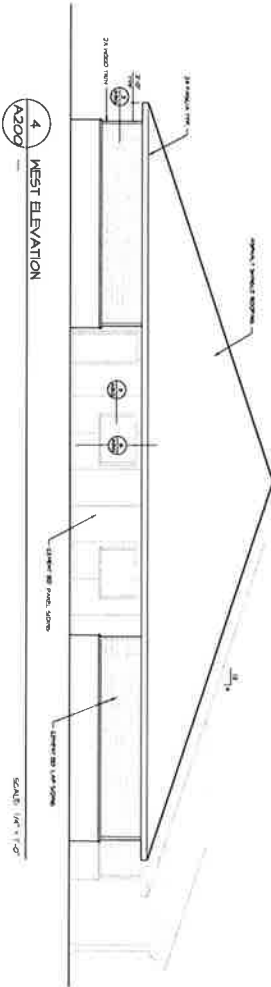
2 EAST ELEVATION
A200



3 NORTH ELEVATION
A200



4 WEST ELEVATION
A200



KEMP RESIDENCE

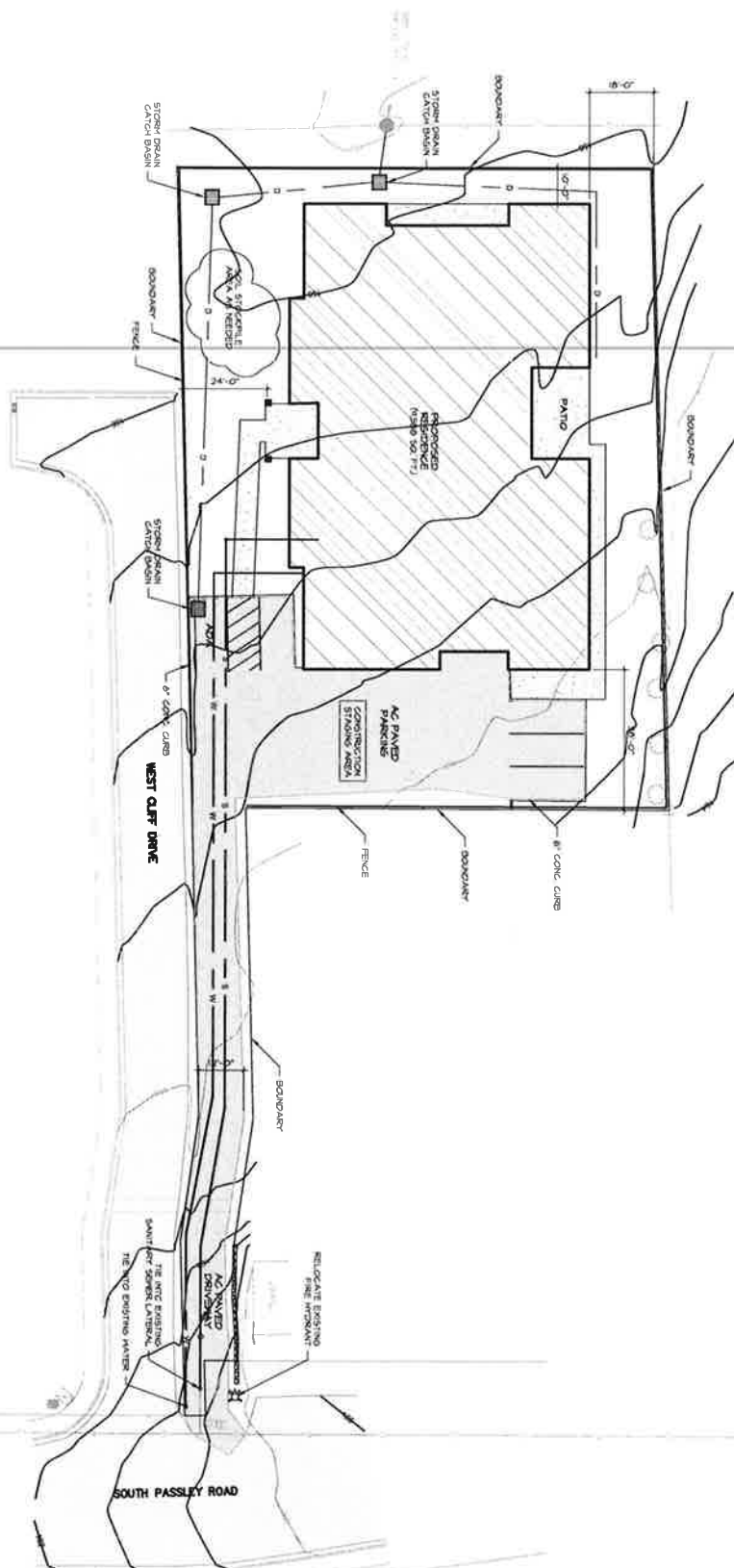
PASILEY ROAD - BROOKINGS - OREGON - 97415

BUILDING
ELEVATIONS



A200

DATE: 3/17/20



Brett Kemp
P.O. Box 705
Gold Beach OR 97444
541-247-9623

Re: Request for a Conditional Use Permit to construct and operate a residential care facility in and R-1-6 zone

Project Location: 17212 South Passley Road
Map # 40-14-36BA Lot 2200
25,654 sq. ft.
Zone R-1-6

Dear Planning Commission,

I am requesting approval of a Conditional Use Permit to construct and operate a 14 bed residential care facility in an R-1-6 zone located at above address.

The subject property is a vacant flag lot accessed from South Passley Road in the Dawson Tract neighborhood. The property is bordered by West Cliff Drive which is a private road to the South, a neighborhood church to the North, and two residential lots to the East and West.

Water, sewer and electrical utilities will be accessed from South Passley Road and storm water will exit the property into existing underground infrastructure to the West (see site plan)

There are currently several large and small shore pine trees of which a few will be removed.

A paved access of no less than 12 ft will be provided and a combination of fence and landscaping will be used to screen the parking area from adjacent neighboring properties.

The preceding findings are as follows:

17.20.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

C. Hospitals, rest, nursing and convalescent homes, subject to BMC 17.124.100;

Finding: The property is currently in an R-1-6 zone and according to Chapter 17 of the Brookings Municipal Code is eligible for a Conditional Use Permit to use the property as a rest, nursing or convalescent home.

17.124.100 Churches, hospitals, other religious or charitable institutions

In any "R" district, all such uses shall be located on a street adequate to serve the use. All off-street parking facilities shall be adequately screened from abutting property to reduce noise and other negative impacts. [Ord. 09-O-640 § 2; Ord. 08-O-616 § 2; Ord. 89-O-446 § 1.]

Finding: the parking area located on the property will be fenced and or screened with landscaping in order to reduce visibility into the parking area from neighboring properties. See Site Plan

17.20.060 Lot width, lot coverage and yard requirements.

Zone	Lot Width	Front Yard	Side Yard	Rear Yard	Maximum Lot Coverage
R-1-6	60'	20'	5'*	15'	40%
R-1-8	70'	20'	5'*	15'	40%
R-1-10	80'	20'	5'*	15'	40%
R-1-12	90'	20'	5'*	15'	40%

* Provided, that the non-street side yards shall be increased by one-half foot for each foot by which the average building height exceeds 15 feet.

* Provided, that on an existing structure, proposed additional stories must meet the setbacks for the height of the structure.

Provided, however, that side yards abutting a street shall be a minimum of 15 feet in width.

Rear lots (flag lots) created pursuant to BMC [17.172.061](#) have setback requirements of 10 feet from all property lines. Any irregularly shaped parcel with minimal street frontage is also subject to the 10-foot setback from all property lines. [Ord. 10-O-659 § 2; Ord. 08-O-612 § 2; Ord. 03-O-446.SS; Ord. 90-O-446.B § 1; Ord. 89-O-446 § 1.]

Finding: The proposed footprint of the structure meets the setback requirement for a flag lot and has a lot coverage below 40% (37% actual). See Site Plan

17.20.090 Parking.

Off-street parking shall be provided in accordance with Chapter [17.92](#) BMC. [Ord. 08-O-612 § 2; Ord. 89-O-446 § 1.]

C. Institutions		
1.	Welfare or correctional institution, convalescent hospital, nursing home, rest home, home for the aged, sanitarium, residential care facility, or similar institution	1 space per 5 beds for residents, patients or inmates

Finding: The proposed 14 bed project will require 3 parking spaces. There are 6 parking spaces including a single car garage. See Site Plan

Conclusion: I believe the project meets the criteria for a Conditional Use Permit and requesting approval to construct and operate a 14 bed residential care facility in an R-1-6 zone.

Thank You for your consideration

Respectfully

Brett Kemp





City of Brookings

898 Elk Drive, Brookings, OR 97415
(541) 469-1103 Fax (541) 469-3650 TTY (800) 735-1232

www.brookings.or.us

PUBLIC WORKS AND DEVELOPMENT SERVICES DEPARTMENT

UTILITY CONFIRMATION FORM

This form must be signed by Coos-Curry Electric, the electric utility provider, and then submitted with your application. Bring a copy of your plot plan or plat when discussing your proposal with the utility provider.

Application Information – this section to be filled out by applicant			
Applicant Name:	Brett Kemp		
Site Address:	17212 S. Passley Rd		
Assessor Map #	40-1436BA	Tax Lot #	2200
Proposal	<input checked="" type="checkbox"/>	Conditional Use Permit	<input type="checkbox"/> Variance
	<input type="checkbox"/>	Subdivision/Partition	<input type="checkbox"/> Other

Coos Curry Electric Coop - Utility Provider Confirmation:

I have reviewed the above referenced proposal and can confirm that the subject property is within this utility provider's district boundary and service can be provided. Any needed extension of service lines and all applicable fees and required charges have been discussed with the applicant.

Signature: [Signature] Date: 5/28/20
Title: Staking Engineer

June 21, 2020

City of Brookings – Planning Department
898 Elk Drive
Brookings, OR 97415

RECEIVED

JUN 23 2020

CITY OF BROOKINGS

Regarding: Matter of File No. CUP-2-20 Conditional Use Permit/Residential Care Facility

Gentlemen:

I am writing to express my strong objections to establishing a Residential Care Facility on a .58-acre flag lot currently zoned R-1-6 on Passley Road.

After reviewing the proposed drawings, there is little doubt this is a business in every sense of the word. While we may debate size of the proposed facility/business, it remains comparable to facilities, (Azalea Gardens, Sea View and Monarch Gardens) currently in Brookings. Like these facilities, there are complexities and requirement that do not fit in a residential environment whether it is residential care for the elderly, mental illness, or substance abuse victims. Some of these issues are

- The facility must be licensed and meet all federal, state and county requirements, as outlined by the Department of Human Services Administrative Rules, Chapter 411 Division 54.
- As a residential facility, it would be staffed, operational and accessible 24 hours a day / 7 days a week. A use pattern not compatible with the current residential neighborhood.
- Increased traffic brought on by this type of Business includes staffing, food and health care vendors as well as 24 hour a day service by Fire, EMT's, police and visits by family members of those under care.
- With 24-hour operations comes concerns of lighting for safety as well as lighted signage to direct traffic to the facility. This again is not compatible with the current residential setting and on a lot with extremely poor access.
- Lastly, this area of Passley Road does not have sidewalk much less meeting ADA requirement, if elderly, or recovering patients are walking, they are forced onto Passley Road, an extremely dangerous situation for both neighborhood residents and patients alike.

To build this care facility is a costly undertaking and is not reversible. Your decision on this request will have a long-term impact on all resident in the Dawson area, not just those residents in your 250' circle who received notification. Let me be clear these businesses are desperately needed, but this request goes against all logic to place such a business in a residential neighborhood.

Our neighborhood is continuing to be impacted by unregulated Vacation Rentals by Owner (VRBO), we do not need a misguided decision to place a business in a residential setting. I believe the people of Brookings deserve better.

Your decision impacts not only our neighborhood but all Brookings neighborhoods. If you approve a Conditional Use Permit here, where else will you make an exception!

Sincerely,



Robert Huntoon
96436 Ocean Park Drive
Brookings, OR 97415
(541) 661-6145

CC: Brookings City Manager – Janell Howard
Brookings City Council – Jake Pieper, Brad Alcorn, Brent Hodges, John
McKinney, Ron Hedenskog.

From: Denise Ortega <denisekerfoot@gmail.com>
Sent: Wednesday, June 24, 2020 6:56 PM
To: jpieper@brookings.or.us; balcorn@brookings.or.us; bhodes@brookings.or.us; rhedenskog@brookings.or.us; jmckinney@brookings.or.us; jhoward@brookings.or.us
Subject: opposition letter to File Number CUP-2-20 to be reviewed byBrookings Planning Commission July 7 2020

Brookings City Council and City Manager:

Attached is a letter I have written to the Brookings Planning Commission and sent to Lauri Ziemer. I am vehemently in opposition to the proposal by Brett Kemp and BK Quality Construction for a 14 bed residential facility business on S. Passley Rd. in Brookings. This is in the Dawson tract area and zoned as a single family residential R-1 district. I have enclosed in the letter reasons for my opposition. I live in this tract and my property abuts the tax lot for the proposed business. My neighbors and I are incensed by this proposal and many of us plan to attend the planning commission meeting July 7th where this will be discussed. Because of concerns regarding Covid-19 some of our neighbors will not attend this meeting but are still very much in opposition of this proposal. Currently I have 25 Dawson tract resident signatures of those in opposition and plan to have more by the commission meeting date. While a residential care facility of this size might be an asset to downtown Brookings, it does not belong on Dawson tract and I have explained my reasoning in my attached letter. We are not in favor of this current proposal and we all hope that the mayor and city council will support us in this. Thank you.

Denise Ortega, RN
96511 West Cliff Dr.
Brookings, OR

June 24, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415

Regarding: File Number CUP-2-20 request for Conditional Use Permit/Residential Care Facility in R-1 District

Brookings Planning Commission

I am writing this to say that I am vehemently opposed to the request for a conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Constructions to build a 14-bed residential business unit on Tax Lot 02200 which is zoned as a single family residential property in an R-1 District.

Tax Lot 02200 is a rear flag lot located at 17212 S. Passley Rd. in Brookings. Access to this lot is through a single ingress/egress “flag pole portion” onto Passley, next to a private lane for residents of West Cliff Dr. only. The “pole” portion of the flag lot is narrow; it does not meet the 20 foot accessway minimum requirement listed in 17.172.061 Section B2. It will not allow for easy access for police and emergency response vehicles or for food and service delivery vehicles as will be needed by a 14-bed residential business. This area of S. Passley Rd. is narrow and without sidewalks. Two lanes of traffic cannot easily traverse this area. Increasing large vehicle travel to this area, as will be needed for this size facility, will cause more traffic hazards in the neighborhood. Vision from the ingress/egress to S. Passley Rd. will be compromised. Accidents will most likely occur and people will most probably be hurt.

As an R-1 district we are zoned for single family residences. We know that some other residential care businesses exist in the Dawson Rd. area but these exist in buildings the size of single family homes. This new business, as a 14-bed residential facility and grounds, will not be able to accommodate parking for residents, staff and guests; even though the plans show enough potential spaces as required by the city, guests will have to park on S. Passley Rd. This is a narrow area that has no curb and sidewalk, no near parking, and is not ADA/wheelchair accessible. To meet Brookings Municipal Code Chapter 17.92 off-street parking requirements, lighting for the parking area onsite will need to be visible from S. Passley Rd.—that is not possible on this flag lot without disturbing existing tenants and violating 17.92.100 section C. Turning into the lot from S. Passley Rd. will be difficult and vision clearance as mentioned in 17.92.100 section E may also be violated. Also 17.124.100 states “all such uses shall be on a street adequate to serve the use” [S. Passley Rd. is not such a street] and “All off-street parking facilities shall be adequately screened from abutting property to reduce noise and other impacts”—this seems impossible, especially in regards to Tax Lot 2201 in the front of the flag lot.

There is no public transportation in the Dawson Rd. neighborhoods (except taxis). We have no bus service here. This proposed business/residential facility is ¼ mile from Highway 101. and about 3 miles north of Brookings proper. Again S. Passley Rd., the only access to Dawson Rd. from the proposed business facility, is not wheelchair friendly. It is a narrow road without sidewalks in many places, open to oneway traffic only in some places,; it is potentially not safe for residents of the new business facility to ambulate. Bus service at Dawson Rd and Highway 101 does not exist as a regular stop. Busses will stop if notified ahead and flagged, but a pedestrian would have to cross 101 to go north—there are no stoplights or safe crossings on 101; also to ambulate down Dawson from Passley can be dangerous as there are no sidewalks on this steep and blind curve. Finally there is not a safe bus stop to head south to Brookings.

While a residential facility may appear to be needed in Brookings, currently there are excess beds in senior care facilities in town. Brookings is not an ideal community for seniors to reside in their later years as we have few medical resources, not enough doctors and no hospital, for seniors; very little specialty care exists in our county. It seems unlikely that BK Quality Construction would be able to sell the facility to a senior care organization. What seems more likely, the residential care business would be used as a mental health or drug treatment facility. That would be in direct violation of Brookings municipal Code Chapter 17.20.010 “to promote and encourage a suitable environment for family living and protect and stabilize the residential characteristics of the district.” A 14-bed residential facility business with transient and changing residents will work to destabilize our neighborhood cohesiveness, relationships and connections. It will also destabilize our property values for Tax Lots 2000, 5314, 5315, 5316, 5317, 206, 205, 204, 203, 202, 2201 which all surround Tax Lot 2200 as well as possibly destabilize property values for Tax Lots 2001, 2002, 2003, 100,101,102 and 103. We will all be affected by the noise and commotion created by a business of this size in an R-1 District. We will all be negatively impacted by sirens from police and emergency vehicles at all hours, refrigerator and delivery vehicles during the day, and lights and noises from the facility itself.

This proposed business will also violate Brookings Municipal Code 17.01.020 which purpose is “to encourage most appropriate use of land, to conserve and stabilize the value of property...to prevent undue concentration of population, to lessen congestion of streets...and in general to promote the health, safety and welfare of the citizens” of Brookings. The residents of the proposed business facility would be much safer in a facility in Brookings proper, closer to healthcare and the urgent care clinics for appointments, with better access to transportation options, and nearer to shopping and other services. Persons already residing in single family residences in the Dawson Rd tract and especially along S. Passley Rd. will have better health and welfare without the noise and traffic problems created by this large business. Police and emergency services will be less costly for the city when these services are accessed in Brookings proper for a residential facility located in town rather than 3 miles out of town. With the many vacant buildings in Brookings, it seems excessive and unnecessary to allow for the construction of this business facility in an R-1 district. It seems much more feasible to repurpose a building already existing closer to downtown Brookings.

Finally have Curry County, the state of Oregon Public Health Department or any federal agencies reviewed the plans for this facility? As a nurse I see no locked medication rooms, no rehab or physical therapy areas or designated nurses stations in the plans. I see no significant office spaces for therapists or doctors. Who else has approved these plans? That certainly should be examined before the Brookings Planning Commission even begins to consider this application proposal.

Sincerely,

Denise Ortega, RN
96511 West Cliff Dr.
Brookings, OR 97415
(541) 254-9089

Cc: Brookings City Manager—Janell Howard
Brookings City Council—Jake Pieper, Mayor; Brad Alcorn, Brent Hodges, John McKinney, Ron Hedenskog

**BEFORE THE PLANNING COMMISSION
CITY OF BROOKINGS, COUNTY OF CURRY
STATE OF OREGON**

**In the matter of Planning Commission File No. CUP-2-20; an)
application for approval of a Conditional Use Permit to)
establish a 14-unit residential care facility at 17212 S. Passley;)
Brett Kemp, Owner and Applicant)**

**Final ORDER
and Findings of Fact**

ORDER approving an application for a Conditional Use Permit to establish a 14-unit residential care facility on a .58 acre parcel located at 17212 S. Passley; Assessor's Map 4014-36BA, Tax Lot 02200; zoned R-1-6 (Single Family Residential).

WHEREAS:

1. The Planning Commission duly accepted the application filed in accordance with the Brookings Municipal Code, pursuant to Chapter 17.136; Chapter 17.20 Sections 17.20.040(C) and 17.20.090; Chapter 17.124 Section 17.124.100; and Chapter 17.172 Section 17.172.061; and
2. Such application is required to show evidence that all of the above criteria have been met; and
3. The Brookings Planning Commission duly set this matter upon the agenda of a public meeting and considered the above described application with the public hearing a matter of record of the Planning Commission meeting of July 7, 2020; and
4. At the public meeting on said Conditional Use Permit application, evidence and testimony was presented by the Applicant and recommendations were received from and presented by staff in the form of a Staff Report, dated June 25, 2020 and oral presentation of same; and
5. At the conclusion of the public hearing, after consideration and discussion of testimony and evidence presented in the public hearing, the Planning Commission, upon a motion duly seconded, accepted the Staff Agenda Report and **APPROVED** the request for the subject Conditional Use Permit and directed staff to prepare a Final Order and Findings of Fact to that affect.

THEREFORE, LET IT BE HEREBY ORDERED that the application for the Conditional Use Permit on the subject property is **APPROVED**. This approval is supported by the applicant's findings, Attachment A of the staff report, and by the following findings and conclusions:

CRITERIA, FINDINGS, AND CONCLUSIONS

BMC Ch. 17.136 Conditional Use Permits - Sec. 17.136.050(C)

The Planning Commission has the authority to approve, approve with conditions, or deny the application. In order to grant any conditional use, the Planning Commission must find that the application meets the requirements of the following criteria, which is listed in Section 17.136 – Condition Use Permits of the Brookings Municipal Code, Land Development Code.

1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code;
2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
3. The proposed use will have minimal adverse impact upon adjoining properties. In making this determination, the commission shall consider, but not be limited to, the proposed location of the

improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;

4. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area;
5. The proposal is in compliance with the comprehensive plan.

The Applicant has provided findings (**Attachment A**). Staff has provided analysis of the criteria as follows:

Criterion 1 - Adequate size and shape

The subject property is a level flag lot approximately 25,654 square feet in size and the proposed facility will occupy approximately 9,588 sq. ft., approximately 37% of the total lot area. The site is large enough to accommodate the proposed building and parking. The proposed building will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line. The driveway is 15' wide by 140' long. The proposed parking area is large enough to accommodate six vehicles parking spaces (**Attachment C**). The subject property is sufficiently large to accommodate the proposed residential care facility. Water and sewer services are sufficient and available at S. Passley Road. Criterion 1 is met.

Criterion 2 - Relation of streets

S. Passley Road has a paved travel surface with a 50 foot wide right-of-way with improvements in some areas. This street provides access to approximately 70 dwelling units. In terms of the ability of S. Passley Road to handle the traffic generated by the proposed residential care facility, there should be no significant impact. The proposed facility is designed for the residential care of adult patients who do not drive. The primary traffic related impact would be from staff and visitors. Visitors would normally be scattered throughout the day rather than concentrated into one period. Criterion 2 is met.

Criterion 3 - Neighborhood impact

The impact on the surrounding neighborhood is the primary issue concerning residents in the neighborhood. One residence is located in front of the flag lot and the driveway will abut their garage. Five homes located on West Cliff Drive will face the property. Residential care facilities are generally very quiet in nature and the day to day operation of the proposed facility will have no adverse impact on the surrounding neighborhood. Traffic generated by the facility, although light, will cause an incremental amount of noise in the general area, however, residential development on the same lot would have the potential of adding as much, if not more, traffic to S. Passley Road.

The proposed project will provide a landscaped buffer between the parking area and the adjoining properties as required by the Land Development Code. Criterion 3 is met.

Criterion 4 - Historic, scenic or cultural attributes

There are no listed historic, scenic or cultural attributes on the subject site or in the immediate area. Criterion 4 is met.

Criterion 5 - Comprehensive Plan

The property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is designated as Residential by the Comprehensive Plan. Residential care facilities are a conditional use in the R-1-6 zone. The proposed use of the property is consistent with the criteria addressed above and with the policies of Goal 10, Housing of the Comprehensive Plan, in that it provides a variety of housing types. Criterion 5 is met.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.040 Conditional Uses

Hospitals, rest, nursing and convalescent homes, subject to BMC 17.124.100 are permitted subject to a conditional use permit.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.060 Lot Coverage Requirements

Rear lots (flag lots) created pursuant to BMC 17.172.061 have setback requirements of 10 feet from all property lines. Any irregularly shaped parcel with minimal street frontage is also subject to the 10-foot setback from all property lines. Maximum lot coverage is 40%

Proposed building footprint meets the setback requirements for a flag lot and lot coverage is calculated at 37%.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.090 Parking

Off-street parking shall be provided in accordance with Chapter 17.92 BMC.

BMC Ch. 17.92 Parking

No development permit shall be issued until plans and evidence are presented to show how the off-street parking and loading requirements are to be fulfilled and that property is and will be available for the exclusive use as off-street parking and loading space. Residential care facilities parking requirements are one parking space per five residents. Unless otherwise provided, required parking and loading spaces shall not be located in a required front yard, but parking space may be located within a required side or rear yard.

Flag lot location will require off street parking. For a 14 unit residential care facility a minimum of three on-site parking spaces for residents is required. The proposed development plans include five on-site parking spaces and one single car parking garage for a total of six parking spaces. As the proposed facility is designed for the residential care of adult patients who generally do not drive the remaining three parking spaces will be used and available for visitors and staff.

BMC Ch. 17.124 - Sec. 17.124.100 Churches, Hospitals, Other Religious or Charitable Institutions

In any "R" district, all such uses shall be located on a street adequate to serve the use. All off-street parking facilities shall be adequately screened from abutting property to reduce noise and other negative impacts.

The parking area located on site will be fenced and or screened with landscaping or order to reduce visibility into the parking area from neighboring properties (**Attachment C**).

BMC Ch. 17.172 – Land Divisions – Section 17.172.061 Rear Lot Partitions

Development Standards for rear lots require an access way with a minimum width of 20 feet and a maximum length of 200 feet. Setback requirements require no building be erected within 10 feet of any property line.

The subject parcel was partitioned in 1992 (file number M3-9-92) creating the flag lot with a driveway width less than 20 feet due to constraints to the North and South. At that time staff noted in the report to the Planning Commission that the property owner attempted to obtain participation with the adjacent owner to the South, now West Cliff Subdivision (SUB-1-03), to create a joint subdivision with a shared access where West Cliff Drive is currently located. That attempt failed. "Staffs opinion at that time was that the applicant should not be penalized by the requirement of the Land Development Code which tie division of the lot totally to the desire of the neighbor to the South". When partitioned the driveway was conveyed with ownership of the rear lot and to be an integral part of the rear lot as well as improved to a permanent, dust-free surface of asphaltic concrete or Portland cement.

The proposed building to be constructed on the lot will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line meeting setback requirements.

CONCLUSIONS

1. The proposed residential care facility will occupy 37% of the subject .58 acre site. The design of the facility includes a ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line meeting setback requirements.

The parking area will contain six parking spaces which includes one handicapped space. This meets the required number of spaces required for residential care facilities within the city. The subject property is sufficiently large enough to accommodate the proposed residential care facility.

2. S. Passley Road is a paved travel way with a 50' right of way, the 15' wide driveway which was allowed in the 1992 partition.
3. Residential care facilities are, by nature, not a noise generator. The traffic generated by the facilities will have an incremental increase in the noise around the general area; however, residential development on the parcel has the potential to generate more general noise than the proposed project will. The proposed project is designed to provide the required buffer between the parking area and the adjoining residential use.
4. There are no historical or cultural attributes on or in the vicinity of the subject site. The proposed residential care facility should not have an impact on the scenic quality of the area.
5. The proposed facility is consistent with the provisions of the criteria discussed above and is consistent with Goal 10, Housing of the City's Comprehensive Plan, in that it provides a variety of housing types.
6. Residents have submitted letters of opposition to the Conditional Use Permit with concerns including the size of the proposed residential care facility, the locating of such a facility in an R-1-6 zone, driveway width, parking, ADA accessibility, and traffic generated (**Attachment D & Attachment E**). Concerns to be considered by the Planning Commission.

The following Conditions of Approval are hereby made a part of this Final Order.

CONDITIONS OF APPROVAL

CUP-2-20

17212 S Passley Road - Residential Care Facility

General Conditions

1. Approval of this Conditional Use Permit will expire two years from approval, unless the project comes under substantial construction within that period. The Planning Commission may extend the permit for an additional one year period at the required of the applicant.
2. The final construction plans shall be in substantial conformance with the submitted preliminary site plan and as approved by the Planning Commission. Substantial changes to the approved preliminary plat require re-approval by the Planning Commission.
3. Improvement work shall not be commenced until construction plans have been approved by the City Engineer and/or Building Official.

4. If needed, all costs of plan checks and inspections by the City Engineer shall be paid by the applicant to the City.
5. All outdoor lighting shall be directed and/or shielded so as to prevent light from falling directly on adjoin properties.
6. All buildings shall meet the requirements of the R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and other applicable provisions of the Land Development Code.
7. This approval is for the proposed 14 unit adult residential care facility as shown on the provided plot plan. If in the future the applicant desires to change the use of the building, a minor change must be requested and approved according to Section 17.136, Conditional Use Permits of the Land Development Code.

Street Conditions

8. The existing Deferred Improvement Agreement #96 (Inst. #92-6113) will remain in place on the property. No street improvements along the South Passley Road frontage are required at this time.
9. Prior to start of street construction, including grading the applicant shall submit construction plans to the City Engineer for review and approval.
10. Prior to start of construction, the existing mailboxes located within the access way of the property may be removed provided that a notice in writing, 30 days in advance of the start of construction, is given to all residents occupying the mailboxes.

Parking, Landscaping and Screening

11. The applicant shall provide no less than six parking spaces as shown on the approved plot plan. The parking area and access way shall be paved and striped. The design of the parking area shall be in accordance with Section 17.92, Off-Street Parking and Loading Regulations of the Land Development Code.
12. The applicant shall provide landscaping area within or around the parking areas equal to a least 7% of the total parking area.
13. The applicant shall provide either a sight obscuring fence or landscaping around the proposed parking area. This fence or landscaping shall be high enough to prevent automobile head lights from shining onto the adjoining property.
14. The applicant shall landscape the project as shown on the preliminary plot plan. To the extent possible the applicant shall use native and drought resistant plants in the landscaped areas. The applicant shall submit a landscaping plan showing the type of plants used and proposed irrigation system to the City Planning Department for review.
15. Outdoor trash containers shall be screened from view with a decorative fence and gate at least six feet high. The applicant shall consult with Curry Transfer and Recycling as to the type of gating of the trash container fence.
16. The applicant shall construct a paved walkway around the building for use of the residents and entry to the back of the building for fire protection purposes.

Water, Sewage and Drainage

17. The proposed building shall be connected to the City's water and sewer system at the applicant's expense.
18. The applicant shall complete and submit drainage plans to the City Engineer for review and approval prior to any construction, including streets. Storm drainage design shall be in accordance with the City of Brookings Comprehensive Plan for Drainage. All drainage from the subject lot shall be engineered in a manner that protects all adjoining properties.
19. The applicant shall consult with the City Fire Marshal, City Building Inspector and City Engineer as to the water requirements for the proposed building for both domestic and fire suppression purposes.
20. The applicant shall bear the cost to relocate the existing fire hydrant at the entry of the property near South Passley Road.

Dated this _____ day of _____, 2020

ATTEST:

Gerald Wulkowicz, Planning Commissioner

Anthony Baron, Planning Director

Supplemental Planning Commission Packet

July 7, 2020

7pm – Council Chambers

Attachment/ Page #	Date received:	From:	Description:
File No. ANX-1-20			
#A Pg. 1-3	July 2, 2020	LCOG	ANX-1-20 Amended Staff Report – includes letter from Fair Housing Council of Oregon
File No. CUP-2-20			
#B Pg. 4-30	June 26, 2020 thru July 6, 2020	Residents	Letters and emails in opposition of CUP-2-20 from: Victor Ortega, Jeffrey Jacobs, Linda Young, L Leanza, Denise Ortega, Ron Worland, Kathryn Klein, Sara & Bob Towne, Julie & Timothy Lyons, Shannon Christopher & Dewayne Conner, Pam & Joe DeBilio, Mary Schreiber, Ron Griswold, Glenn Miller, Mr. & Mrs. Gerald Klaas, Frederick & Jeanie Wieden, Rick & Ann Peoples, Chris & Nancy Natenstedt, Lucy & Wayne Hirsch, Dave & Sharon Bergmann, Aaron Horton, Anita Vogel & Kevin O’Rear, Debra Gleason, Dennis Triglia, Brenda Cox, Sandra Geiger, Mark & Judy Williams
#C Pg. 31-43	July 6, 2020	Residents	Petition with Opposing Signatures – 13 pages
#D Pg. 44-88	July 2, 2020	Atty Michelle Pinkowski	Letter in support of CUP-2-20 with background material
#E Pg. 89-96	July 2, 2020 thru July 6, 2020	Residents	Letters and emails in support of CUP-2-20 from: Alan Nidiffer, Michelle Fraser, Greg Winters, Dr. John & Hazel Rush, Rachel Netzel-Ochoa, Sarah Sanders, Tony Jantzer

June 26, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, Oregon 97415

Regarding: File Number CUP-2-20 Request for Conditional Use Permit/ Residential Care Facility in R-1 District

Brookings Planning Commission,

I am strongly opposed to the granting of CUP-2-20 filed by Brett Kemp to build a 14-bed residential care facility/business on tax lot 02200. The existing neighborhood is zoned R-1, single family residential and this goes against the existing zoning code.

Tax lot 02200 located at 17212 S. Passeley Rd. is a flag lot adjacent to West Cliff Dr., a privately held road.

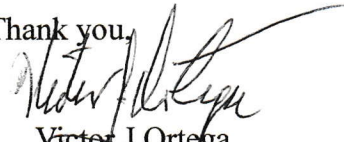
This flag lot does not meet many of the requirements of the Brookings Municipal Code. The "pole" part of the flag lot does not meet the 20 foot access way minimum Section 17.172.061 which narrows the ingress/egress to a single lane. This would put any traffic on S. Passeley at risk if a vehicle of any size had to back out of the lane.

Other requirements not met in the Municipal Code are Ch. 17.92, off street parking, 17.92.100 Section C, disturbing existing tenants, 17.92.100 Section E, vision clearance due to an existing building on S. Passeley Rd. and 17.124.100 that states " all such uses shall be on a street adequate to serve the use. S. Passeley is not appropriate for a business of this size.

I believe the two most egregious violations of the Brookings Municipal Code are 17.120.010 which states " to promote and encourage a suitable environment for family living and protect and stabilize the residential characteristics of the district " and 17.01.020 which purports " to encourage most appropriate use of land, to conserve and stabilize the value of property... to prevent undue concentration of population, to lessen congestions of streets... and in general to promote the health, safety and welfare of the citizens " of Brookings.

This quiet single family residential neighborhood will adversely be impacted by the granting of a CUP-2-20 request. Many,if not all, residents are opposed to this intrusion.

Thank you,



Victor J Ortega
96511 West Cliff Dr.
Brookings, OR 97415

Cc: Brookings City Manager- Jane Howard
Brookings City Council- Jake Pieper, Mayor; Brad Alcorn
Brent Hodges, John McKinney, Ron Hedenskog

June 28, 2020

City of Brookings – Planning Department
898 Elk Drive
Brookings, OR. 97415

Subject: Matter of File No. CUP-2-20 Conditional Use Permit/Residential Care Facility

To the attention of: City of Brookings Planning Department

I am writing to speak to you regarding the Conditional Use Permit to open and operate a residential care facility on a .58 acre flag lot adjacent to Passley Road in the city of Brookings, Oregon. This property is located within an area that is zoned R-1-6, residential.

We strongly oppose the construction of a residential care facility business here. Key impacts are the increase of noise and traffic. This is primarily due to care facility visitors, emergency services, commercial trash removal services, commercial landscape services, food and beverage deliveries, general supply deliveries, and daily/nightly operational staffing coming and going. Additionally, late night 24-hour lighting is incompatible with the area.

We purchased a lot on Oceanside East Drive last year with intent to build a home. We broke ground on that home about a month ago. The attraction for us was the quiet, residential neighborhood, with little traffic and noise. Had we known that a care facility could be opening less than 250 feet from our property, we likely would have looked to live elsewhere. I believe that this will deter others as well.

We ask that you consider this important and impacting decision, and the long-lasting effects on the neighborhood and current residents.

Sincerely,
Jeffrey Jacobs
96410 Oceanside East Drive
Brookings, OR. 97415

LindaYoung

Liny2015@aol.com

96401 Oceanside Dr e

Brookings, OR 97415

The following is text of my email to you today June 27.

Attention: City of Brookings Planning Department
Brookings ,Oregon

I am writing to express my concern and objections to the 14 unit care facility located at 17212 S. Passley.

The development of a 14 unit Care Facility runs counter to the current character of the Dawson Tract neighborhood that is ZONED for R1 or single family homes.

It is well kept, serene and stable neighborhood comprised of high to middle class residents. We take pride in ownership of our property. Reasons for my objection.

1. The value of my property investment will be diminished.
2. It will lay ground work for future multi family structures. This will further diminish not only the character of neighborhood, for example, increased traffic congestion, noise and will negatively impact the total environment with litter.
3. The facility will cause added traffic congestion and costly road development. The traffic would include approx. 20 employees (consisting from nurse or care givers to cleaning crew), as well as service providers — supply vendors, and visitors coming and going.

A care facility needs to be closer to hospitals and medical resources in town.

I sincerely hope that the Planning Department will do the right thing — leave the zoning as SINGLE FAMILY ZONE. Please do not ruin our beautiful neighborhood by allowing multi family structures.

I hope to receive an acknowledgment to this email.

Thank you for listening .

Linda B. Young
Homeowner
96401 Oceanside DR E

From: llaroo@comcast.net
Sent: Saturday, June 27, 2020 6:05 PM
To: lziemer@brookings.or.us
Subject: Planning Commission Meeting- July 7, 2020 @ 7pm

Re: Conditional use permit for a 14 unit residential care facility @ 17212 S. Passley Rd (Owner: Brett Kemp)

Dear Ms/Mrs Ziemer,

I am unable to attend the scheduled meeting for this matter on July 7th but would like to voice my opinion given that I am a resident and I will be impacted by this proposed property use as indicated. Our neighborhood is a very quiet residential neighborhood that should not include any form of commercial businesses at all. The noise, and additional vehicle traffic of care takers, resident visitors and family members, etc... is too much for our small and quiet neighborhood to absorb.

I moved to Brookings, and specifically this neighborhood, because it was a quiet, less populated, well maintained (pride of ownership) neighborhood with minimal traffic. Having worked in property management for several years, and having been on the other side of this scenario as the Director of a Property Management firm managing dozens of multiple unit complexes (including similar residential care properties) throughout the Northern and Central California, I know first hand how any type of multi unit rental/tenant property can negatively impact a neighborhood's aesthetic appearance and property value.

There are just too many other more commercial appropriate parcels in this city that can better accommodate this type of a business. In addition, this type of residential care business should be located closer to the services and amenities which are available closer to town (i.e. public transportation, medical appointments, shopping, fulfilling prescriptions, dining, etc...).

Please record my objection to this proposed Conditional Use Permit for a 14 unit residential care facility.

Thank you for your time and consideration.

L. Leanza
96544 Sunridge Terrace
Brookings, OR 97415

From: Denise Ortega [denisekerfoot@gmail.com] on behalf of Denise Ortega
Sent: Friday, June 26, 2020 10:59 AM
To: lziemer@brookings.or.us; jhoward@brookings.or.us; jmckinney@brookings.or.us;
jpieper@brookings.or.us; balcorn@brookings.or.us; rhedenskog@brookings.or.us;
bhodges@brookings.or.us
Subject: CUP-2-20

I am wondering who wrote the proposed final order of CUP-2-20. There appears to be a lot of speculation about this proposal having minimal adverse impact on the adjoining properties, that “residential care facilities are generally very quiet in nature...and will have no adverse impact on the surrounding neighborhood” and “traffic impact” will be “light” and have potentially less impact than a single family residence.

Please, who wrote this argument and where is the evidence for any of this speculation? This evidence, if it exists, needs to be demonstrated at the planning commission meeting. It appears that Gerald Wulkowicz and Anthony Baron are prepared to sign off on this without evidence and facts. Surely this cannot be the way our city government functions.

We the neighbors and residents of Dawson tract can present equal speculation about detrimental and disruptive noise and the negative traffic impact of a 14-bed residential care business facility on a piece of property zoned for a single family residence. If this issue is to be decided simply by speculation, then we have as much for disallowing the permit as you have for allowing.

Denise Ortega
96511 West Cliff Rd
Brookings, OR

From: Ron Worland [rworlandor@gmail.com] on behalf of Ron Worland
Sent: Monday, June 29, 2020 10:36 AM
To: lziemer@brookings.or.us
Subject: Care facility

I built my home on Pacific Heights 26 years ago. It has always been my understanding that this region of town is dedicated to single family homes. This is a quiet neighborhood. I am against the proposed residential unit as entrance and egress will be on a very narrow street. I believe this will lead to a dangerous situation with more traffic and blind turns if any cars are parked on this narrow street. Thank you. Ronald G Worland MD

Sent from my iPhone

From: Kathryn [klya513@charter.net] on behalf of Kathryn
Sent: Monday, June 29, 2020 1:53 PM
To: lziemer@brookings.or.us
Subject: response to request for conditional land use permit
Attachments: noname-1.odt

Attn: Laura Ziemer

Public Works Development Services Tech

I am a resident of the Dawson Residential Tract where Brett Kemp has requested a Conditional Use Permit for 14 unit care facility to be built in a solely single family residence housing tract.

My argument against issuing this conditional use permit is as follows:

One entrance/exit out of the Dawson tract that is showing some wear and tear due to the existing population.

We are densely populated as it is now, taking into consideration the one way, only, in and out to Hwy 101 in case of emergencies such as fires, etc.

Residential care unit is not specific as to what type of care.

Employees will be needed and deliveries made to the facility causing increased traffic in a residential area,

This facility would cause quite an overload on our sewer system.

Considering the location of the Dawson tract and its present use, there is no benefit to this land's potential use by approving this Conditional Land Use Permit.

Thank you, in advance, for your consideration to my concerns.

Kathryn Klein, home owner at 17290 Garvin Court, Brookings Oregon, 97415

June 28, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415
Attn: Planning Commission

***Regarding: File Number CUP-2-20 request for Conditional Use Permit/Residential
Care Facility in R-1 District***

Brookings Planning Commission:

We are writing to you to request disapproval of the conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Constructions to build a 14-bed residential business unit on Tax Lot 02200 which is zoned as a single family residential property in an R-1 District.

The residential Dawson tract is accessed from highway 101 by one steep, curved road. The increase of incoming and outgoing traffic from the facility will most assuredly cause congestion at this intersection and cause possible and unnecessary delays for everyone.

We concur with the letters written by Denise Ortega, RN of 96511 West Cliff Drive and Robert Huntoon of 96436 Ocean Park Drive, and rather than cite each of the Municipal Codes as they have done, we would only add that the proposed business will also violate Brookings Municipal Code 17.01.020 which purpose is “to encourage most appropriate use of land, to conserve and stabilize the value of property...to prevent undue concentration of population, to lessen congestion of streets...and in general to promote the health, safety and welfare of the citizens” of Brookings.

The Dawson Tract, as it is known, is a peaceful, quiet, serene neighborhood of single family residential homes. There are no businesses albeit one residence caring for one or two individuals in their home and one church within the boundaries of the Dawson Tract. People come to live here just for those reasons. Approving the Conditional Use Permit for a 14 bed Residential Care Facility Business will transform and forever destroy the character of the neighborhood and open the door to further business development.

We do not know the motivations of Brett Kemp and BK Quality Construction for requesting the conditional use permit to place a business in a single family residential property in an R-1 District, however there are more suitable properties within Brookings for the placement of this business, and we ask that you not approve this request.

Sincerely,

Sara & Bob Towne (Owners)
96420 Oceanside Drive East
Brookings, OR 97415

Cc: Brookings City Manager—Janell Howard
Brookings City Council—Jake Pieper, Mayor; Brad Alcorn, Brent Hodges, John McKinney, Ron Hedenskog

JULIE B. LYONS AND TIMOTHY M. LYONS
96378 Dawson Rd.
Brookings, OR 97415

RECEIVED

June 25, 2020

JUN 30 2020

Planning Commission
City of Brookings
898 Elk Drive
Brookings, OR 97415

CITY OF BROOKINGS

Dear Sir,

We are writing you in response to your letter of June 11, 2020 informing our neighborhood of a public hearing involving property located at 17212 S. Passley Rd. We will, unfortunately, not be able to attend your meeting on July 7, 2020. However, we would like to express our views that the proposed use of the property would be detrimental to the spirit and customs of the neighborhood.

We are a neighborhood of single-family homeowners and renters of households with no commercial enterprise. We cherish that environment and strongly feel that the character of our neighborhood would dramatically change with a commercial enterprise located among us. If you were to visit our neighborhood, you would see throughout the day neighbors walking, biking, and dog walking. We feel any commercial operation with associated increase in traffic would negatively impact this environment. We understand the importance for the city to generate income to afford services, however, please don't destroy the nature of our neighborhood by approving this commercial project.

The proposed property lies on a private, short dead-end road. There does not appear to be adequate space available for parking and service vehicles. We feel that the site is totally inappropriate for any type of commercial operation.

Thank you for your consideration of these comments and we look forward to your wise decision on this matter for the continued benefit and health of our neighborhood.

Sincerely,



Julie B. Lyons and Timothy M. Lyons

From: Shannon Christopher [shannonmchristopher@gmail.com] on behalf of Shannon Christopher
Sent: Tuesday, June 30, 2020 1:50 PM
To: lziemer@brookings.or.us
Subject: Regarding: File Number CUP-2-20 request for Conditional Use Permit/Residential Care Facility in R-1 District

City of Brookings-Planning Department
898 Elk Drive
Brookings, OR 97415

Regarding: File Number CUP-2-20 request for Conditional Use Permit/Residential Care Facility in R-1 District

Brookings Planning Commission:

Understanding that the R-1-6 zone allows for nursing homes with the approval of a conditional use permit, we are strongly opposed to the allowance of this permit to Brett Kemp and BK Quality Construction to build a 14 unit residential care facility in the heart of this quiet, single family home neighborhood.

It appears that Kemp has met city criteria to move ahead with this invasive project, some of which appear subjective. How can anyone possibly know how “light” the traffic will be or that there will be “no significant impact?” It is already challenging to make turns into and out of the Dawson Tract area via the single access that is a curved hill and often congested due to difficulty turning onto 101.

Because of the existing residence on Passley abutting the proposed driveway, and reduced width of the driveway, turning onto the property from Passley will be extremely difficult for fire or emergency service vehicles, food vendors, or any other large vehicles to access the property from the north, which means that they will have to travel the mile loop around the neighborhood to make the turn from the south causing traffic strain throughout the entire neighborhood. Adults, seniors and children in this neighborhood are daily walking or running for exercise, riding bikes, playing along the road etc, and everyone we have spoken with has concerns of increased traffic volume and speeds.

As owners of an adjacent property, we firmly believe there will be adverse impact on our property and those surrounding properties not only because of the traffic issues listed above but also due to 24-hour lighting for safety and signage and the guaranteed constant buzz of the HVAC system. This is not at all compatible with the quiet residential setting of this neighborhood.

There are certainly more suitable properties for this type of facility in the region.
We strongly urge you **not** grant the conditional use permit to Kemp for this project.

Sincerely,

Shannon Christopher and Dewayne Conner (owners)
96418 Oceanside DR E
Brookings, OR 97415
541.621.0646

Cc: Brookings City Manager—Janell Howard
Brookings City Council—Jake Pieper, Mayor; Brad Alcorn, Brent Hodges, John McKinney, Ron Hedenskog

From: wilmers7pam@gmail.com
Sent: Tuesday, June 30, 2020 12:56 PM
To: lziemer@brookings.or.us
Subject: File #cup-2-20

Dear Planning Commission,
June 30, 2020

We live at 17247 Lumber View Rd. in Brookings, Oregon.

We are very concerned Re: The facility in plan to be constructed in our little neighborhood at 17212 S. Passley Road. This proposed facility is a 14 unit (bed) care facility in which shouldn't even be zoned to occupy our neighborhood. This facility is directly around the corner from our home which all facility residents including, visitors, strangers, ambulances, caregivers, and medical supply trucks would have to drive pass several private, bedroom community homes to enter and exit. First of all, our streets in this area will not hold up to more traffic. And there is only one exit road. We believe this is a proposed disaster and nonfunctional, unsafe area to acknowledge such a facility. Kindly,
Pam and Joe DeBilio

From: Mary Schreiber [maryb5568@yahoo.com] on behalf of Mary Schreiber
Sent: Tuesday, June 30, 2020 8:11 PM
To: lziemer@brookings.or.us
Subject: Proposed 14 unit construction

I wish to express my concern and oposition to this plan.... the area is and has been clearly designed for single family dwellings.
The impact on the area...re: density change I find completely unacceptable.
Thank you for considering my comments.
I am the owner of 96409 Oceanside....
Mary Schreiber....415-407-6304

Sent from my iPhone

From: rsgriswold@charter.net
Sent: Wednesday, July 01, 2020 3:37 PM
To: lziemer@brookings.or.us
Subject: Care Facility on West Cliff Dr.

I am Ron Griswold I live at 96515 Ocean Park Dr. I am writing this letter to oppose the Care Facility proposed to b built on West Cliff Dr. in our residential neighborhood. The street that it will be on is a cul-de-sac making traffic and parking a problem.

The cross street is Passley which is a narrow street also. Our Dawson track neighborhood only has one exit and it is a concern that in case of an emergency or natural disaster traffic to get out would be highly impacted. I recommend a impact study.

Ron Griswold

From: Glenn Miller [glm348@gmail.com] on behalf of Glenn Miller
Sent: Wednesday, July 01, 2020 7:37 AM
To: lziemer@brookings.or.us
Subject: Proposed Use Permit - Dawson Tract

6/30/2020

From:
Glenn Miller
96345 Dawson Rd.
Brookings, OR 97415

To:
Planning Commission City of Brookings Oregon

Whom it may Concern:

I'm writing to express my concern and opposition to the proposed use and for a conditional use permit to establish a 14-unit care business on the 6u4 .58 acre flag shaped parcel located at 17212 S. Passley Road; (Assessor's Map 4014-36BA). This is a misuse of the R-1 single family residential zoning, and not a single family dwelling like every other building in the neighborhood of the Dawson tract. This is a family neighborhood where kids are enjoying the residential setting and not a place for a high unit care business. Please do the right thing and dismiss this idea at the public hearing.

<https://www.brookings.or.us/AgendaCenter/ViewFile/Agenda/1184?html=true>

Kind Regards,

Glenn Miller
Ph-812-350-8551
96345 Dawson Rd.
Brookings Oregon 97415

From: noreply@civicplus.com
Sent: Wednesday, July 01, 2020 1:54 PM
To: lziemer@brookings.or.us
Subject: Online Form Submittal: Contact City Staff

Name	Gerald Klaas
Email Address	gerald.klaas@gmail.com
Phone Number	9162047695
Address	96490 Dawson Road
City, State, Zip	Brookings, OR 97415
Staff Member You Wish to Contact	Lauri Ziemer, Planning Assistant

Lauri,

My wife sent the following message to Julie Schmelzer on June 27th. I wanted to make sure that you received a copy so that it can be added to the record for the CUP-2-20 item on July 7th agenda. Thanks, Gerald

Dear Lauri Ziemer,

My husband, Gerald Klaas, and I, Eva Klaas, are writing to express our concerns regarding proposed development at 17212 S. Passley Rd., Brookings, OR.

We live around the corner from this property location. We purchased our home in this residential neighborhood in 2002 and we oppose rezoning this property from a single housing dwelling to residential housing for several reasons.

Dawson tract has only one entrance for the residences in our neighborhood. When we purchased our home, there was concern about overbuilding in the area due to emergency evacuations. Since that time, there has been additional development in the area. We have experienced the need for emergency evacuations during tsunami warnings and approaching wildfires. The Dawson Road entrance and the narrow Passley road are insufficient to handle the increased traffic to support emergency services and evacuations. The old highway 101, has been blocked off since the conversion to the bike trail making it no longer accessible by vehicle.

I understand the intention behind rezoning this property is to have the ability to build and operate a residential care facility.

This neighborhood does not have the parking or easy access to facilitate the additional population in that location. We are concerned about the potential safety impact of additional foot and vehicle traffic at the already difficult to navigate intersection at Passley and Dawson

My family and neighbors have concern over the lack of transparency of what would be allowed for this type of facility within our isolated community.

We are retirees, vulnerable widows and families with children. Separate from the traffic and environmental impacts, how does our neighborhood know what type of risk the residents at the facility would impose to our families, neighbors and our property? Will this be a drug and or alcohol rehab facility, a halfway house, or sex offender and/or psychological care facility? How will it effect our current law enforcement and Brookings community?

Again, when we bought our home 18 years ago, this was a community of single family dwellings. We would like to keep it a single family dwelling community.

My husband, Gerald Klaas, would like to be added to the agenda to speak in opposition at the upcoming meeting July 7 , 2002 at 7 PM at City Hall Council Chambers.

We look forward to hearing from you,

Mr. and Mrs. Gerald Klaas
96490 Dawson Road, Brookings, OR
916-204-7694 – Gerald's Cell Phone
916-212-1165 – Eva's Cell Phone
541-412-9591 Home

From: Ted Wieden [jtwieden@gmail.com] on behalf of Ted Wieden
Sent: Wednesday, July 01, 2020 2:35 PM
To: lziemer@brookings.or.us
Cc: jpieper@brookings.or.us; balcorn@brookings.or.us; bhodges@brookings.or.us; rhedenskog@brookings.or.us; jmckinney@brookings.or.us; jhoward@brookings.or.us; shannonmchristopher@gmail.com
Subject: Brookings City Council July 7, 2020 Agenda, item 4.2

Esteemed Council Members,

Please record this letter as opposition to the Conditional Use Permit for a 14 unit adult residence facility located at 17212 S. Passley Road, Brookings. We are the long-term owners of one of the five contiguous lots with significant shared boundary to the project site (specifically lot 5316 off Oceanside Drive).

While I commend planning staff for their efforts to demonstrate how this project might be consistent with the relevant sections of the Land Development Code, as a former Senior County Planner, I can assure that there are always at least 5 reasons for denying a permit for every one reason to approve it. In this case, the reasons to deny are overwhelming. To wit:

- The proposed use will require a 24/7 operation which is inconsistent with the local R-1 zoning.
- Development projects typically underestimate the impact on local traffic. In a neighborhood where children still walk to school, any increase in traffic, beyond that from the zoned R-1 development, would jeopardize children and other established residents.
- Nights in this neighborhood are delightfully dark. Dark enough to enjoy star-gazing and sleeping. The proposed development would require security lighting and its associated adverse impact to the residential neighborhood.
- Of particular concern is access via a substandard flag lot. Narrow access for emergency vehicles, delivery vehicles and visitors poses a danger to local residents as well as workers and visitors.
- Other residential care facilities in this general area are conducted within existing single-family homes. As such, the size of the proposed 14 unit facility makes it inconsistent with the local neighborhood, creating a visual eyesore.
- At this time, there is no access to public transport in this general area. This could lead to increased pedestrian traffic without sidewalks - a significant potential hazard both at night and on very foggy days.

For these and other reasons articulated by other residents in this neighborhood, I urge you to follow the spirit of the land development guidelines for Brookings and deny this application for a Conditional Use Permit. Although neither my wife nor I will be able to attend the upcoming Planning Committee meeting on July 7, 2020, we wish to register our opposition to the proposed development.

Respectfully,

Frederick T. and Jeanie J. Wieden
Owners of Oceanside East Lot 5316

c. File

From: Ann Peoples [ann.peoples1@gmail.com] on behalf of Ann Peoples
Sent: Thursday, July 02, 2020 1:46 PM
To: lziemer@brookings.or.us
Subject: Planning Commision

To Whom It May Concern,

This letter is in regards to the planning meeting for the property at 17212 W. Passley in Brookings Oregon.

My husband and I own property on Ocean Park Ct., near the property where you are planning to build a retirement home. We are very concerned about a few points.

a) There will be much more traffic and noise on the road leading to the facility. The roads are very narrow and they will be difficult for emergency responders to maneuver including fire trucks. There is also a hair pin turn from the 101 to Dawson that will be difficult for emergency responders and other traffic. The traffic pattern is not good leading to the facility making it more dangerous for the already established community.

b) this could force traffic to go around the block to avoid narrow roads leading to more traffic throughout the area. There are a lot of seniors and children walking and playing in the area.

c) Seniors are not good drivers and will greatly increase the chance of car vs car and and car vs pedestrian accidents. Seniors have a lot of senior visitors including spouses and friends visiting them.

d)There will be more traffic due to service providers and staff going to the facility.

I am very concerned because the city will be changing the zoning from residential to business which will lower the value of homes in the area.

I am also concerned because the corona virus seems to be thinning out our senior community. Seniors are also facing a bad economy and losing their nest egg in the back economic market. Fewer people will be able to afford to live there. I think senior homes are a wave of the past but not necessarily the future. I don't know what the future of this structure will hold? I would expect the virus will cause people to want to stay in their homes even longer due to fear living in "ground zero."

Thanks for your attention.

Rick and Ann Peoples. 17160 Ocean Park Ct., Brookings Oregon.

From: CandN Natenstedt [cnejknaten@outlook.com] on behalf of CandN Natenstedt
Sent: Friday, July 03, 2020 2:52 PM
To: lziemer@brookings.or.us
Subject: Request for Conditional Use Permit/Residential Care Facility in R-1 District - File Number CUP-2-20

July 3, 2020

To the Brookings Planning Commission,

Gentlemen,

We would like to register our strong opposition to the proposed conditional use permit (File number CUP-20) to allow construction of a commercial 14 bed assisted living facility on Tax Lot 02200. Shoe-horning a large commercial facility into the middle of our quiet residential neighborhood will negatively impact all residents and landowners within Dawson Tract in terms of property values, traffic, pedestrian safety, and quality of life. We ask that the Brookings Planning Commission deny approval for this conditional use permit based on the combined weight of the following considerations:

Traffic - No approvals should be considered until a proper Traffic Study and Risk Assessment has been performed and mitigations considered.

The northern portion of S. Passley Road will be the primary access to the proposed facility. This road is currently inadequate for safe 2-way vehicle traffic and is downright dangerous for the many pedestrians that use the road daily. Please join us for a walk along it and around the S. Passley to Dawson intersection and you will understand. The Findings reported in the proposed Final ORDER state S. Passley Rd describe a paved surface with a 50' right-of-way and state that the added traffic will have no significant impact. The right-of-way width is correct, but irrelevant, as the actual paved surface is no more than 18' wide in places with obstructing hedges and parked vehicles abutting the roadway. There is a large amount of pedestrian traffic using the roadway through these constricted areas as numerous residents walk the Passley/Dawson/Ocean Park loop for daily exercise. The additional car and truck traffic associated with the proposed facility will materially add to the already substantial risk of an accident on S. Passley Road.

Parking - No approvals should be considered until a proper Parking Study has been performed using realistic staffing, resident types, and service visit assumptions to understand potential negative neighborhood impacts and mitigation options.

The planned provision of 6 on-site parking spaces may meet code requirements but will clearly be inadequate to support 14 residents/inmates and visitors plus administrative, food service, cleaning, security, and maintenance staff. There is no guarantee that residents/inmates will not have personal vehicles. There is little safe street parking on the northern portion of S. Passley Rd. As a result, substantially increased street parking associated with the proposed facility will negatively impact the neighborhood well away from the proposed facility.

Neighborhood Character and Quality of Life - Considering negative impacts on property values, traffic, street parking, pedestrian safety, and overall quality of life, approval of this Conditional Use Permit should be denied at this time.

The addition of a commercial-scale assisted living facility within the quiet environs of the Dawson Tract single-family neighborhood is clearly counter the Brookings Municipal Code's Purpose to "promote and encourage a suitable environment for family living and protect and stabilize the residential characteristics of the district." Depending on licensing allowances, we are also concerned that this facility may be used for future purposes other than senior assisted living. These could include drug rehabilitation, mental health, or half-way house commercial businesses. While such facilities may be beneficial and necessary within the City of Brookings they should be located in appropriate settings of commercial zoning. Allowing such operations at the proposed facility within Dawson Tract would be in violation of the letter and spirit of the Brookings Municipal Code "Purpose."

Thank you for your consideration of these issues as you weigh your decision regarding this ill-advised Conditional Use Permit.

Sincerely,

Chris and Nancy Natenstedt
96469 Ridgeway St.
Brookings, OR 97415
619-916-1755

From: Lucy Hirsch [lucywayne104@gmail.com] on behalf of Lucy Hirsch
Sent: Sunday, July 05, 2020 5:03 PM
To: lziemer@brookings.or.us
Subject: Opposition to File No. CUP-2-20 request for Conditional Use Permit/Residential Care Facility in R-1 District

Brookings Planning Commission:

We are writing this letter to strongly express our objections to establish a "Residential Care Facility" on .58-acre flag lot currently zoned R-1-6 on Passley Road.

We live at 96513 Susan Place which is the second house after you turn south on Dawson. Having read the detailed reports in from your May meeting we are very concerned that some statements may be incorrect.

In front of our house the pavement on Passley is barely 18 feet and not much wider at the corner of Passley and Dawson. There is no sidewalk on either side. Pulling out of our driveway can be very dangerous.

Daily, we watch vehicles drive by and two cars can barely drive side by side. If there is a larger vehicle such as a truck, or larger, one has to pull over and let the other pass or they end up over the pavement on either side.

Trucks, trucks with RVs or trailers, cannot make a right turn off Passley onto Dawson without going into either opposite lane whether it be on Passley or Dawson. Any emergency vehicles have difficulty as does the Trash pick up, Fed Ex, UPS, etc. We have witnessed many close calls with vehicles and pedestrians alike.

Another issue is that in the entire track there are many walkers. When walking by our house if any vehicles are driving by one has to walk into grassy areas, on either side, making it dangerous.

We are questioning whether a traffic study has been completed? Passley and Dawson are the only two streets that would allow access to this facility. The increase of traffic for this facility including construction and completion would be detrimental to this neighborhood.

We have had many conversations with numerous residents of this area who are adamantly against this commercial adventure and do not want it in our neighborhood.

Lucy and Wayne Hirsch

From: Dave [shadav@charter.net] on behalf of Dave
Sent: Sunday, July 05, 2020 11:39 PM
To: lziemer@brookings.or.us
Subject: July 7, 2020 Public hearing on property at 17212 S. Passley

Importance: High

Brookings Planning Commission:
Laurie Ziemer

We would like this e-mail to be part of the record at the hearing on July 7th. We are totally opposed to the conditional use permit allowing a multi-unit residential care unit at 17212 S Passley.

This property is on a flag lot that is totally unsuited for any type of residential care unit. There would be additional traffic and 24 hour staffing coming and going as well as service vehicles.

This seems to be a done deal already as notice was not given to all residents on S. Passley, but was only given to those within 200 feet of the proposed facility. There is a member of your planning commission living within two blocks of this proposed location. I'm sure the developer and this planning commission member know each other relatively well. I'm starting to smell a big rat!! This member should recuse himself from any of this matter. Putting something like this in our area is definitely going to affect our property values if we want to relocate, and I believe some will. I ask the planning commission members if they would want this facility directly across from their homes!

It appears that the developer, (Brett Kemp), has been less than honest about what he plans on building. I'm sure you must know he has at least 3 other enterprises on his property in Gold Beach, one of which is registered as, Thriving Life Community, that is connected with a man in Portland that trains people to work with persons with violence and anger issues. Is it going to be a half-way house for people trying to recover from addiction or people with criminal backgrounds? There are plenty of other areas in Brookings closer to police and fire protection that would be better suited. This developer got a good deal on this property from an absentee owner that wanted to get rid of it, so now he wants to make money, he doesn't care about how it affects the people that live here.

Most of us purchased property here because it is a residential neighborhood. It affords many of us the opportunity to walk, bike and socialize and enjoy children being safe in our neighborhood.

The road into Dawson Tract is a narrow winding road, one mishap could block traffic in or out of the area to 101. It is already becoming difficult at times to enter or exit as new home owners come into this area. Has there ever been an impact study done on this area? Does anyone on the council really care? We shouldn't even be having this conversation. We request that this email date stamped and verified that it was received in a timely manner. Please respond.

David and Sharon Bergmann
96510 Susan Place
Brookings, OR 97415
503-507-1505
shadav@charter.net

7/3/2020

City of Brookings, 898 Elk Dr, Brookings, OR97415

Attention: Anthony Baron, Public Works and Development Services Department

Dear Anthony,

I have serious concerns about Brett Kemp's proposal to establish a 14 unit care facility at 17212 S. Passley Road. It does not meet the zoning requirements and will adversely affect the neighborhood. In order to move forward with such a proposal, it would be necessary to permit a variance to the zoning.

Chapter 17.132 clearly states that a variance ".... may not be used to allow a use that is not in conformity with the uses specified in this code for the district ... to grant a variance, all the conditions and circumstances listed in BMC [17.132.030](#)(A), (B), (C), (D), and (E) must be found to exist...".

Section E says that "... all of the following conditions must exist:

1. Exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zone or vicinity...
2. The variance is necessary for the preservation of the property right of the applicant...
3. The authorization of the variance shall not be materially detrimental to the purpose of this code, be injurious to property in the same zone...
4. The variance request is the minimum variance from the provisions and standards of this code which will alleviate the hardship. [Ord. 93-O-446.N § 4; Ord. 89-O-446 § 1.]...."

Kemp's proposal does not meet any of the conditions identified in Section E.

Further, issuing a conditional use permit is inappropriate.

Section 17.124.100 states that "....In any "R" district, all such uses shall be located on a street adequate to serve the use. All off-street parking facilities shall be adequately screened from abutting property to reduce noise and other negative impacts. [Ord. 09-O-640 § 2; Ord. 08-O-616 § 2; Ord. 89-O-446 § 1.]...."

The lot that Kemp is proposing to build upon is not large enough to provide the necessary off street parking, the roads are not adequate to handle the traffic, and the noise and other negative impacts cannot be mitigated. Please do not issue a permit to destroy our neighborhood.

Sincerely,



Aaron G. Horton, 96405 Oceanside Dr E, Brookings, OR97415

From: Anita Vogel [avlok96@gmail.com] on behalf of Anita Vogel
Sent: Monday, July 06, 2020 10:16 AM
To: lziemer@brookings.or.us
Subject: Passley residential care facility

I'm writing to express my strong disagreement with your apparent decision to rezone the parcel located at 17212 So. Passley Rd. The report dated 6/25/20 could have been written by the applicant himself. The intent is to place a 14 unit residential care facility (exact client type unknown) which definitely is a commercial use in the midst of single family residences and is at the end of a narrow flag lot.

This is an unreasonable use of the lot. The scale and scope are inconsistent with the current surrounding use and nearby residences. There is no public benefit except to the commercial builder.

The proposed zone change was only mailed to residents within 250 feet of the facility despite it having an effect on the entire Dawson tract. Neighbors we don't even know have approached us and driven down our private West Cliff road trying to see the nature of the location and logistics. Neighbors are scratching their heads trying to figure out how the access road to the facility can be navigated safely. Specifically, the turn from Passley to the flag lot which is the most dangerous part as drivers approach the turn from Passley onto the proposed driveway. The turn is both awkward and dangerous as there are only a few feet between a driver and a neighbors garage and the extremely narrow road which is hampered by a fire hydrant. The West Cliff street is privately owned and will be at substantial risk for pedestrian injury and physical damage as staff, patients, visitors, vendors, etc, try to navigate the extremely tight turn on to this 15' wide flag road.

Additionally, the Dawson tract has only one way of egress/ingress located at the corner of Passley and Dawson and is already dangerous due to it's hairpin curve and a turn left onto Passley is very narrow.

Your findings claim the site is adequate in the space and shape, has sufficient required parking and minimal adverse impact on adjoining properties.

Your report cites numerous Brookings municipal codes in an attempt to justify this project. Yet the exact same report then goes on to make completely subjective claims and assumptions without base and not fact based.

Let's start with access, Please explain how service trucks, ambulances and fire equipment can get down the flag lot and be able to turn around. At that start of the report it stated the residents won't drive.

Later it states "some of them will", so which is it? Next, is "residential care facilities are generally quiet in nature" and day-to-day operations will have no adverse impact on the surrounding neighborhood. Do you have evidence of that? Where exactly are these? Are there any similar 14 unit care facilities in Curry County at the rear end of a flag lot?

"Traffic generated by the facility although light will cause an incremental amount of noise in the general area" followed by this laughable statement- "however residential development on the same lot would have the potential of adding as much if not more traffic to So. Passley Rd. Are you actually attempting to make such a broad statement without specifying/knowning the dynamics of another, normal single family residence?"

What exactly is the landscaped buffer? We have had nothing but trouble with past and now present lot owners ignoring the fire codes on this unimproved lot. Currently the lot is unkempt and weeds are 2 feet high. The neighbors year after year have paid to keep it somewhat under control. Brett Kemp's poor attitude towards his neighbors and non-adherence to fire codes/laws speaks loudly and is exhibited by the current poor condition of the proposed building site and access road.

The number of staff and residents adds to the problem of exiting the Dawson tract during an emergency such as a fire. This issue was brought up before when fires have raged in the mountains within miles of the Dawson tract. We see no plans to make an additional access street and Mr Kemp's lack of concern about adhering to fire codes on this unimproved lot reflects not only his not attitude towards following rules, his lack of professionalism and lack of honesty with us and the city has no plans for access to the tract. in any other manner.

Regarding parking, the Brookings municipal code requires a minimum of 3 spaces for 14 units and claims the requirement is more than met by the total of six. Okay, one in the garage, one blue line ADA leaves four so at least two or three staff and two driving residents fills that up.

Your own report admits the 15 foot wide access is below current codes and attempts to justify it by referring to the 1992 agreement. The agreement is perfectly understandable and access to the rear of the lot would be satisfactory if this plan was for a normal single family residence of the same type surrounding it.

Unless you live here or have physically inspected the site it is odd to have made a decision re suitability example- the effort to make the turn and be on the driveway from So. Passley requires effort and I guarantee you that people will be striking objects, fences , berm (whatever) and winding up damaging West Cliff Dr.

Kevin O'Rear

July 2, 2020

City of Brookings – Planning Commission
898 Elk Drive
Brookings, OR 97415

Re: File No. CUP-2-20 Conditional Use Permit

Committee Members:

I am writing to express my objection to the above issue. I bought my home about 7 ½ years ago because of its location on the corner of West Cliff Drive and Passley Road. I liked the quiet neighborhood and the cul-de-sac. Since there were some empty lots in the area, I checked with my realtor and was assured that the zoning was all single family residencies. This was important because I had no desire to live by a business of any type.

This application is extremely concerning for many reasons. I realize that some of the reasons might only be applicable to myself and the surrounding neighbors, but none the less, we purchased our homes trusting that the city of Brookings had a zoning plan and would abide by that plan.

Some of my concerns will affect a larger number of neighbors in the community. A major concern is traffic. I strongly urge the commission to do a traffic study. Large vehicles (such as fire trucks, delivery trucks, garbage trucks, etc) when traveling south on Passley will have difficulty or not be able to make a right hand turn from Passley Road onto the flag lot driveway. If they are successful in making the turn, they will have no turn around spot when they reach the proposed facility. As it is, large vehicles, such as garbage trucks, back down the West Cliff cul-de-sac. Vehicles going into the proposed facility will not have the use of West Cliff. Passley Road is currently too narrow in some spots for two cars to travel without going onto private property. It is extremely difficult for large vehicles to make the turn from Passley onto Dawson when leaving the neighborhood. Many cross over their line of passage on that curve because they cannot maneuver around the narrow curve. This is a risky area due to the volume of people who park along those curves to use the bike path.

Since the proposed facility has only four parking spots, it seems likely that this will force visitors and/or workers to park on Passley. This will greatly reduce visibility for residents of West Cliff to pull out onto Passley. It will also endanger pedestrians as many areas on Passley do not have sidewalks.

I also must question the integrity of the builder. When he was looking at the property, he led several neighbors to believe he was building a home for his family. No mention of his proposed business. Why the misconception? One also must wonder why he would have bought the property if not somehow being assured that he would be able to get this proposal passed through the committee.

I believe this proposed action is an example of spot zoning in which the courts have often found to be illegal. Spot zoning is defined as a small parcel of land rezoned to a classification that differs from the general surrounding area.

Public officers are the trustees and servants of the people and are at all times amenable to them. I hope you look deeper into this proposal and see the many problems within the actual application. But also remember, like probably all of you, we carefully picked the homes that we purchased. Please do not let a business be constructed in our single family home neighborhood.

Sincerely,

A handwritten signature in cursive script, appearing to read "Debra Gleason".

Debra Gleason
17192 S. Passley Road
Brookings, OR 97415
(541) 469-0266

96359 Dawson Rd
Brookings, OR 97415-9716
trigliad@yahoo.com
6 July 2020

City of Brookings
Public Works and Developmental Services Dept.
898 Elk Drive
Brookings, OR 97415

Re: File # CUP-2-20 request for CUP / Residential Care Facility in R-1 zoned district in the Dawson Tract

Dear Planning Commissioners:

I am writing to make you keenly aware that I unequivocally OPPOSE Mr. Kemp's sneaky application for issuance of a Conditional Use Permit (CUP-2-20) in order to construct a 14-bed residential care unit in our development which would be surrounded by single-family residential homes. This developer has obviously received special treatment by the City of Brookings which has already allowed him to have a driveway narrower than the 20 feet required by everyone else. The job of the Planning Commission is NOT to simply rubber-stamp the wheeling-and-dealings going on behind the scenes at the City with developers who are part and parcel of the "old boys' club". Your responsibility is to the people of Brookings, NOT to the City Manager, the City Council or City Staff members. There is universal opposition to this fiasco throughout the Dawson Tract. I have not met a single homeowner here who thinks that this is a good idea for quite a variety of reasons already spelled out very clearly by other residents (emergency vehicle access, increased vehicle traffic, parking for visitors, residents and staff, ADA accessibility, lighting issues, increased noise, lack of public transportation, destabilization of neighborhood cohesiveness, decreased property values, 24/7 operation hours...all of these are completely incompatible with our quiet residential area!)

For all the City of Brookings taxes we pay here in the Dawson Tract, we receive a small proportion of City infrastructure help while the rest of the city gets preferential treatment. I strongly advise the Planning Commission **REJECT** this CUP application outright and heed the voices of our many residents who are present at this meeting and those not present who have submitted written or electronic testimony.

I request that my letter of opposition be entered into the public record for this meeting and look forward to your rejection of this CUP Application.

Sincerely,
Dennis Triglia

CITY OF BROOKINGS PLANNING DEPARTMENT
898 ELK DRIVE
BROOKINGS, OR. 97415
Attention Laurie Zeimer

Regarding property located at 17212 S Passley, Brookings OR. 97415

I plan to sign up to speak for the 5 minutes allotted at the July 7th planning Commission meeting.

Here are the issues I'd like to bring up. The text in RED is pasted from the info on the Agenda for the meeting.

I have just read the letter submitted by Denise Ortega and Robert Huntoon. Both have done an incredible job bringing up code issues and other concerns.

I'd like to add my personal issues since they have done such an excellent job of bringing up so many important issues.

Having lived in another resort community that had to be evacuated for fires 3 times, I know the problems with evacuations in general, and I'm horrified to think of how traffic could evacuate in a timely manner with just the existing full time residents in the Dawson tract with only ONE narrow 2 lane road in and out of the Dawson tract. If, as I see in the planning commission agenda for July 7, 2020 the proposed facility is for people that do not drive, what provisions have been made to evacuate a 14 bed facility that doesn't seem to have even a staff location in the plans? Are first responders responsible for evacuating 14 people that don't drive?

As the proposed facility is designed for the residential care of adult patients who generally do not drive the remaining three parking spaces will be used and available for visitors and staff.

THREE PARKING SPACES AVAILABLE FOR VISITORS AND STAFF~WHO WROTE THESE CODES?

Looking at the plans, it looks like the ONLY PRIVATE thing the residents get is a bedroom and bathroom and some storage, all the other amenities are common rooms.

The building will contain 14 residential rooms each with a private bathroom, a living area, dining area, library, kitchen, office, laundry, storage spaces and a one car garage.

PARKING FOR 6 VEHICLES INCLUDING 1 IN GARAGE AND 1 ADA

PCU is confusing as written, it sounds like one garage for each of the 14 residents who supposedly don't drive? As I read, it's obvious that there is only ONE garage and a couple parking spaces for the residents. COMMON Central living, dining and kitchen area sounds like there would be a kitchen STAFF: A Cook, delivery persons to rooms or servers in the dining area or staff to actually hand feed disabled people unable to feed themselves. Where do those employees park? And laundry staff and cleaning staff and general office staff?

Attachment D discuss their plans in regard to these standards.

Conformation of utilities is found in Attachment E.

The proposed facility is designed for the residential care of adult patients who do not drive. The primary traffic related impact would be from staff and visitors. Visitors would normally be scattered throughout the day rather than concentrated into one period. Criterion 2 is met.

C. Institutions	
1. Welfare or correctional institution, convalescent hospital, nursing home, rest home, home for the aged, sanitarium, residential care facility, or similar institution	1 space per 5 beds for residents, patients or inmates

INMATES???

Seems there is a lot of concern over traffic once the business is established. What about all the many vehicles during the build. Concrete trucks, large building material deliveries, people to do all the checks for code of electricity, plumbing, building, etc? Where does everyone park DURING the build before there is a parking lot. I've lived here since November, and a home being built on what I think is still part of DAWSON ROAD has been in progress since before I arrived in November, and doesn't look near completion and I think that is a single family home. How long would it take to build this facility?

Are all the fees and permits for the facility income for the City of Brookings? And obviously the business itself will generate fees to the city. Do things like this get approved for financial reasons without considering the quality of life to the single family residents? Do they not drive because they are elderly or because they have lost their license or just can't afford a car because it's low income housing for homeless adult residents?

We don't even know what kind of adult residents will be living in the facility. does the City know? Alzheimer's? Drug rehab? Sex offenders or non violent prisoners released from prison? Battered women safe place? Sober living home? Housing for low income homeless? Retirement community? Rest home for the elderly or disabled? Will there be staff for the 14, or no staff? What exactly is the type of residents that will be cared for at 17212 S Passley. Why does the planning department want to consider a 14 bed place of any kind in an R1 residential area?

I'm disabled and use an electric scooter to walk my dog. The sidewalk availability in the Dawson tract leaves a lot to be desired and the intersection of Passley and Dawson Rd is the worst in the tract. No sidewalks on either side of the narrow street and there is a LOT of foot traffic in addition to vehicle traffic. My guess is the proposed property would not have to be concerned with improving that intersection. They don't even have to put sidewalks at the Passley entrance to the facility?

No street improvements along the South Passley Road frontage are required at this time.

Residential care facilities are generally very quiet in nature and the day to day operation of the proposed facility will have no adverse impact on the surrounding neighborhood.

IF residents are bed ridden! If it's sober living or ??? visitors can be very unruly and loud even if the residents don't drive..

“Staffs opinion at that time was that the applicant should not be penalized by the requirement of the Land Development Code which tie division of the lot totally to the desire of the neighbor to the South”

WHAT???? Desire of ONE neighbor....What about the desire of everyone in the Dawson tract impacted.

7. This approval is for the proposed 14 unit adult residential care facility as shown on the provided plot plan. If in the future the applicant desires to change the use of the building, a minor change must be requested and approved according to Section 17.136, Conditional Use Permits of the Land Development Code.

Talk about a loop hole?

Looking forward to attending the meeting.
Brenda Cox

July 6, 2020

City of Brookings

898 Elk Dr.

Brookings, OR 97415

RE: LAND USE ACTION: File Number: CUP2-20 – Request approval of a Conditional Use Permit to establish a 14 unit residential care facility on a .58 acre parcel at 17212 S. Passley Rd.

TO WHOM IT MAY CONCERN:

I wanted to express my concern about the conditional use permit under review. While I have the same opinion about this conditional use permit as my neighbors, I would prefer to focus on my own personal concern.

Background: My husband and I live at 96422 Oceanside Dr E. On the ArcGIS Web Map, we are 5319. We purchased this vacant land in February 2018 and finished building our house in the summer of 2019. I managed the building of my house.

17212 S. Passley Rd: This vacant lot is a rare flat piece of property perfect for multiple single family residents. But the lot has two main issues. It is not subdivided which makes it too pricey for the average house build. And it has drainage issues. The drainage is my main concern.

17212 S. Passley Rd is located on the side of a hill. Roadways and other properties discharge their water onto this vacant lot. Additionally, the proposed building will create a large area of rooftop and parking lot space which will need storm water removal. I am not aware of any viable storm drain system in the area of this property. The only storm drain system in the area is the Oceanside Estate HOA's private storm drain system.

The Oceanside Estate HOA's private storm drain system start roughly from 5314 on the ArcGIS Web Map within a 20' drainage easement to 5318 where it turns and precedes through the backyard drain easements of 5319, 5320, and 4400. This system consists of a 12" storm drain. The drain is only meant to handle the gutter run off and excess surface run off from the previously mentioned lots.

See picture below of the 12" storm drain located 11 feet off the back of my house at a dept of about 8 to 10 feet.



In comparison, most residential drains installed by my husband in his construction engineering career was 24" to 36" in diameter for a residential neighborhood. In some parts of Vegas, he installed over 60" storm drains.

Our 12" storm drain becomes overloaded in heavy rains and clogged with debris. When the drain fills up, the excess water flows out the grate located on 5318 and flows downhill to my house and my neighbor at 5320. We have had crawl space flooding and standing surface water. My crawl space drain and gutters are connected to this 12" storm drain. My neighbor at 5320 (downhill property) has drains all over his yard in addition to gutters connected to this drain pipe. It is my opinion that this storm drain cannot handle the drainage needs of a commercial style building being added to the line and all the properties located downhill such as mine will be flooded as a result either from the overflowing grate or not being able to properly drain our own storm water into the drain system.

Sandra Geiger
96422 Oceanside Dr E
Brookings,OR 97415

**Mark and Judy Williams
96424 Oceanside Dr E.
Brookings, OR 97415**

July 6, 2020

City of Brookings
Public Works and Developmental Services Dept.
898 Elk Drive
Brookings, OR 97415

Re: File # CUP-2-20 request for CUP / Residential Care Facility in R-1 zoned district in the Dawson Tract

Dear Planning Commissioners:

We are writing to advise you that we are diametrically opposed to having a residential care facility located adjacent to our neighborhood for several reasons as follows:

1. Locating a residential care facility in this neighborhood would pose dangers to its resident due to inadequate sidewalks.
2. There are zero amenities in this little area for the residents of the RCF to utilize. There are no grocery stores, movie theaters or anything else to engage them.
3. A 10-foot setback is simply inadequate regardless of landscaping. There will be no effective way to block the light from this large building nor will there be any way to eliminate the noise from delivery trucks and ambulances nor the increase in traffic from employees.
4. We object to any use of the Oceanside HOA drainage to carry water from this property as we sincerely believe that the drainage system for the HOA is undersized and already inadequate to properly handle drainage of existing properties within the HOA.
5. The addition of this building will devalue all of the adjacent properties and will likely result in the end of active development in the vacant lots in the Oceanside East II homeowner's association.

Sincerely,

Mark and Judy Williams

I, the undersigned, am a resident of the Dawson Road tract in Brookings, Oregon. It is a quiet area where seniors and children are able to walk the neighborhood without traffic concerns. I am opposed to the requested conditional use permit by BK Constructions, Brett Kemp owner, for a 14-bed residential facility at 17212 S. Passley Rd. This lot is zoned as a single-family residence (in a R-1 single family residential district). The flag-shaped lot sits behind lot 2201 on S. Passley with only a narrow ingress/egress alongside lot 2201 as the sole way to enter and exit on Passley Rd. Although other multi-bed residential variances have been granted in the neighborhood, none of the existing residences are as large as this proposed facility. Unlike this proposed construction, none had the potential for egress/ingress violation as noted in Brookings Municipal Code criteria (see chapter 17.92). Additionally I am concerned about increased noise, increased traffic and parking issues in our currently quiet residential neighborhood. I am opposed to allowing this conditional use permit.

Name. Print	Sign	Date.	Address
LINDA HUNTON	Linda J. Hunton	6/22/2020	96436 OCEAN PARK DRIVE 17285 GARDEN CT Brookings OR 97415
Georgeann Rudicel	Georgeann Rudicel	6/22/2020	17285 GARDEN CT Brookings OR 97415
Phillis Nicks	Phillis Nicks	6/22/2020	96391 DAWSON RD Brookings 97415
Timothy Young	Timothy Young	6/22/2020	17185 S. Passley Rd Brookings 97415
Cynthia Young	Cynthia Young	6/22/2020	17188 S. Passley Rd, Brookings
Lauren O'Rear	Lauren O'Rear	6-22-2020	96505 West cliff Dr
Mario Thorson	Mario Thorson	6/23-2020	96507 West cliff Dr
Tara Bachmann	Tara Bachmann	6/23/20	96421 Andrews Dr
Jerry Bachmann	Jerry Bachmann	6/23/20	96421 Andrews Dr.
Bob & Sara Towne	Bob & Sara Towne	6-23-20	96420 Ocean side Dr. E
April Thorson	April Thorson	6-23-20	96507 West cliff Drive
Marcy Natenstedt	Marcy Natenstedt	6-26-20	96469 Ridgeway St. Brookings
Bob & Al Phillips	Bob & Al Phillips		17240 GARDEN CT Brookings
Mr. Victor Orega	Victor Orega	06-26-2020	17255 GARDEN COURT L. CORNISH 06/26/2020
Eva Klaas	Eva Klaas	06/26/2020	96511 WEST CLIFF DR. BROOKINGS
Anne Wheeler-Waddell	Anne Wheeler-Waddell	6/27/2020	96490 DAWSON RD BROOKINGS
			86956 Shorewood Brookings

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Name. Print	Sign	Date.	Address
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SHANNON CHRISTOPHER	[Signature]	6.23.2020	96418 Oceanside Dr E, Brookings
Mark William	[Signature]	6/23/20	96424 " " " "
Judy Williams	[Signature]	6/23/20	96434 Oceanside Dr E Brookings
Lynette Rodriguez	[Signature]	6.23.20	96409 Oceanside E Brookings
Joshua Rodriguez	[Signature]	6.23.20	96409 Oceanside Dr E Brookings
Stephanie K. Overbeck	[Signature]	96406	Oceanside E Brookings
Jamini Redel, Timmie Redel	[Signature]	96406	Oceanside Dr Brookings
John Roscoe	[Signature]	6/23/2020	96402 Oceanside Dr E Brookings
Sherry Day	[Signature]	6.24.20	96466 Ridgeway St Brookings OR
George Velt	[Signature]	6.24.20	96466 Ridgeway St Brookings OR
Chris Natenstedt	[Signature]	96469	Ridgeway St, Brookings OR
Nancy Natenstedt	[Signature]	96469	Ridgeway St Brookings OR
Robert Luntan	[Signature]	96436	Oceanside Dr.
David Ginesoff	[Signature]	7/7/86	Passley Rd. 6/24/20
Dewayne Conner	[Signature]	6/25/20	96418 Oceanside Dr E Brookings
Kathie Krebs	[Signature]	6/25/20	17164 Ocean Park Ct Brookings Or
Pete Kreiser	[Signature]	6/25/20	17164 Ocean Park Ct Brookings OR
Loon Rings	[Signature]	6/25	96404 Oceanside E Brookings

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Name. Print	Sign	Date.	Address
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KAREN O'REAR	Karen O'Rear	6/24/20	96505 West Cliff Dr
John Wheeler-Waddell	John Wheeler-Waddell	6/24/2020	96456 Shorewood Ter.
Julie B Lyons	Julie B. Lyons	6/24/2020	96378 Dawson Rd.
CHARLES RUDICEK	Charles Rudick	6-25-2020	17285 GARVIN CT
Geoffrey Masaki	Geoffrey Masaki	6-25-2020	96328 Dawson Rd
Carol Colee	Carol Colee	6/25/2020	96424 Shorewood Terr.
Ann Peoples	Ann Peoples	6/26/2020	10170 Ocean Park Ct
KEVIN O'REAR	Ka O'R	6-28-20	96505 WEST CLIFF DR
Dana Hall	Dana E Hall	6-28-20	96515 Dawson Rd
Bryce Hall	Bryce Hall	6/28/20	96515 Dawson Rd
Jason Wiley	Jason Wiley	6-28-2020	17313 Zia Ct
Tyler Taggart	Tyler Taggart	6/28/20	17318 Zia Ct.
Glenn Miller	Glenn Miller	6-30-20	96345 Dawson Rd.
Carol Miller	Carol Miller	6/30/2020	96345 Dawson Rd.
Debra Gleason	Debra Gleason	6/30/2020	17192 S. Passley Rd
GARY GRAHAM	Gary Graham	6/30/20	96340 DAWSON RD
Jennie Graham	Jennie Graham	6-35-20	96340 Dawson Rd

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Brookings

Name.	Date.	Address
Print <u>Trin Browder</u> Sign <u>[Signature]</u>	6-22-20	17195 S. Passley Rd
FRANK RUBALCABA	6-22-20	96417 ANDRUSS DR BROOKINGS, OR
Scott Jones	6-22-20	17248 EDEN LN BROOKINGS
Nancy Jones	6-22-20	17248 Eden Ln. Brookings
Sharon Bergman	6-22-20	96510 Susan Pl Brookings
Larry Hinson	6-22-20	96573 Susan Pl Brookings
Wayne Hinson	6-22-20	96573 Susan Pl Brookings
Brenda Cox	6-22-20	17323 Blueberry Dr Brookings
MIKE WIKER	6-22-20	17257 Whitney, Brook.
Mark Christenson	6/22/20	17758 Whitney way
Joe DeBor	6/22/20	17247 Lumber View
Pamela Wilimors	6/22/2020	17247 Lumber View
Denise Ortega	6/24/2020	96511 West Cliff Dr Brookings
CLAYTON MORRISON	6-26-20	17245 Lumber View Brookings
Barbara Morris	6-26-20	17245 Lumber View Dr Brookings
Judy Seyle	6-26-20	1103 Byrtus Place Brookings
Albert Seyle	6-26-20	" " " "
Celine Anderson	6-26-20	96512 Dawson Rd Brookings
GERALD JKLAAS	6-26-20	96490 Dawson Rd Brookings

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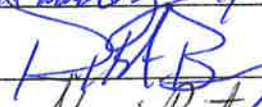
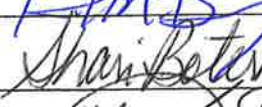
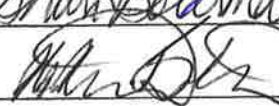

Name. Print	Sign	Date.	Address
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JEFFREY & MARIAN JACOBS		6/22/20	96410 OCEANSIDE EAST DRIVE BROOKINGS, OR 97415
Robin K. Hendel		6/23/2020	96496 DAWSON Brookings Or 97415
KATRINA BASS		6/23/20	96507 SUSAN PL Brookings 97415
HOWARD E. GANN		6-23-2020	96506 Ocean PK Drive
Lynette Globes		6/23/2020	96506 Susan Pl. 97415
Adam Grohn		6/23/20	96516 Susan Pl 97415
Lanny Wheeler		6/23/20	96500 Susan Pl
Christine Wheeler		6/23/20	96500 Susan Pl.
Daniel Busby		6-23-2020	96510 SUSAN PL. 97415
Cindy Bell		6/23/2020	96509 Susan Place
		6-23/2020	96509 Susan Place
Russell		6/24/2020	17295 GARVIN CT. 97415
Thomas Prudell		6-25-20	96364 DAWSON RD 96364
Buster Bews		6-26-20	96507 SUSAN PL. 97415
Kathryn Klein			17290 GARVIN CT 97415
James Brock			17215 GARVIN CT.
BARBARA JEAN WILLIAMS		7/3/20	95906 LANE LN BROOKINGS 97415

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Name. Print	Sign	Date.	Address
DAN KELLY	Dan Kelly	7/2/20	96461 Ridgeway
Fran Kelly	Fran Kelly	7/2/20	96461 Ridgeway
EDWARD RAMSEY	Edward Ramsey	7/2/20	17126 PACIFIC HTS.
Aaron & Pam Horton	Aaron & Pam Horton	7/2/20	96403 Oceanside Dr. E.
Pam Horton	Pam Horton	"	"
Lynda Olney	Lynda Olney	7/2/20	96385 Dawson Rd, Brookings
Gene Olney	Gene Olney	7/2/20	"
KYNN STABLES	Kynn Stables	7/2/2020	96301 SPINDRIFT L. BROOKINGS, 97415
Chris Lee	Chris Lee	7/2/20	96304 Spindrift Lane
Jody Lee	Jody Lee	7/2/20	96304 Spindrift Lane
Diana George	Diana George	7/2/20	97316 Blueberry Dr.
Walter Rosenberg	Walter Rosenberg	7/2/20	96411 Oceanside E. Dr.
Sandra Geiger	Sandra Geiger	7/4/20	96422 Oceanside E Dr.
Marcus Geiger	Marcus Geiger	7/4/20	96422 Oceanside Dr.



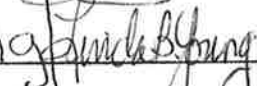

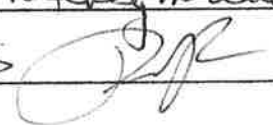
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Name. Print	Sign	Date.	Address
H. Rhonda Berry		6/27/20	17255 S. Passley Rd
ROBERT A BERRY		6-27-20	17255 S Passley Rd
Shari Bofermans		6/27/20	17244 S. Passley Rd
Matthew Bofermans		6-27-2	17244 S Passley Rd
Dolores M Baker		7/1/2020	96509 W Cliff Dr. BR.

Name.	Date.	Address
Print	Sign	

ATTACHMENT B

I, the undersigned, am a resident of the Dawson Road tract in Brookings, Oregon. It is a quiet area where seniors and children are able to walk the neighborhood without traffic concerns. I am opposed to the requested conditional use permit by BK Constructions, Brett Kemp owner, for a 14-bed residential facility at 17212 S. Passley Rd. This lot is zoned as a single-family residence (in a R-1 single family residential district). The flag-shaped lot sits behind lot 2201 on S. Passley with only a narrow ingress/egress alongside lot 2201 as the sole way to enter and exit on Passley Rd. Although other multi-bed residential variances have been granted in the neighborhood, none of the existing residences are as large as this proposed facility. Unlike this proposed construction, none had the potential for egress/ingress violation as noted in Brookings Municipal Code criteria (see chapter 17.92). Additionally I am concerned about increased noise, increased traffic and parking issues in our currently quiet residential neighborhood. I am opposed to allowing this conditional use permit.

Name. Print	Sign	Date.	Address
JASON TAYLOR		6-27-2020	96365 DAWSON RD
Brigel Pryor		6-27-2020	916364 Dawson Rd
LINDA B. Young		6-27-2020	96401 Oceanside Dr East
Harvey Wolchuck		6/27/2020	96343 DAWSON ROAD
Rick Peoples		6-27-2020	17160 Ocean Park Ct.

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Name. Print	Sign	Date.	Address
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Vickie DeLadurantey	Vickie DeLadurantey	7/4/2020	1445 Seacrest Lane Brookings, OR
KATHRYN NEUMAN	Kathryn Neuman	7/4/2020	1516 SEACREST
Connie Murphy	Connie Murphy	7-3-20	2096467 Ocean Park Dr
Michael Murphy	Michael Murphy	7-3-20	96467 Ocean Park Dr

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Name. Print	Sign	Date.	Address
Lonnie Eagles	[Signature]	7/3/20	96380 Dawson Rd 97415
JULIE SUPHER	[Signature]	7/3/20	17200 Passley Rd 97415
STEVE SUPHER	[Signature]	7/3/20	17200 Passley Rd 97415
MICHAEL J. FREES	[Signature]	7/4/20	17332 Blueberry Dr 97415
Kip Freels	[Signature]	7/4/20	17332 Blueberry Dr 97415
Cade Freels	[Signature]	7/4/20	17332 Blueberry Dr 97415
DONALD J. COX	[Signature]	7-5-20	17323 BLUE BERRY DR-97415
[Signature]	[Signature]		17163 OCEAN PARK
ROBERT P. TETRAULT	[Signature]	7-5-20	17190 S. PASSLEY
PATRICIA TETRAULT	[Signature]	7-5-20	17190 S. PASSLEY

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Name. Print	Sign	Date.	Address
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Robert Nowell	Robert Nowell	6/28/20	96361 Dawson Rd, Brookings, OR 97415
DIANA NOWELL	Diana Nowell	6/28/20	96361 DAWSON RD BROOKINGS OR 97415
Ron Dunsen			96515 Ocean Park Dr. Brookings Or 97415
Liane Goodrich			96346 DAWSON RD Brookings or 97415
Barbara Breneiser			96422 Dawson Rd Brookings OR 97415
Jaren Lundgren			96424 Dawson Rd Brookings, OR 97415
John E. Breneiser			96422 Dawson Brookings OR 97415
Cheryl Hudson			96435 Dawson Rd Brookings OR 97415
Nancy Simpson			96453 Shorewood Terrace Brookings OR 97415
Carl Lundgren			96447 DAWSON RD BROOKINGS OR
Katie Lundquist			96447 Dawson Road Brookings, OR
Robin Simpson	R. Dunsen		96453 Shorewood TER, Brookings

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Name. Print	Sign	Date.	Address
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Annie C. Ring	<i>Annie C. Ring</i>	6/31/20	70401 OceanSide East
Renee SLOWIKER	<i>Renee SLOWIKER</i>	7/5/20	12255 GARFIELD CT
Joyce SLOWIKER	<i>Joyce SLOWIKER</i>		

July 2, 2020

Planning Commission
City of Brookings, Oregon
898 Elk Drive
Brookings, Oregon 97415

RE: In support of Conditional Use Permit for 17212 S. Passley Road

Dear Planning Commission Members:

I am a fair housing attorney that works with owners and operators of residential assisted living homes across the country that serve people with disabilities. I am on the Board of Directors of the Residential Assisted Living National Association and a member of the Facility Guideline Institute drafting committee for design standards for residential facilities. I am a frequent speaker on fair housing topics in connection with assisted living.

I am writing to provide information for your consideration about the nature of residential care and an overview how the federal Fair Housing Act applies to this use.

I. ASSISTED LIVING FOR THE ELDERLY DISABLED

A. Nature of Residential Care

As people age, some develop disabilities that make it hard for them to continue to live independently. In fact, 69% of people 65 years and older will require long term care.¹

There was a time when the elderly had few options but to stay at home and be cared for by family, or to go to the dreaded “nursing home” or “old folks’ home.” Over the past several decades, an intermediate level of care arose that enables the elderly to get assistance with daily tasks without having to be in a skilled nursing institution. This type of care is often called “assisted living” and can be provided in both small and large settings.

Residential assisted living homes are contrasted with senior care *facilities*, which provide care to the elderly on a larger scale in an apartment or institutional-style environment. Residential assisted living homes are also contrasted with skilled nursing facilities (typically known as “nursing homes”) that have elderly residents whose age or infirmity requires professionally supervised nursing care.

Residential assisted living homes have different names around the country, but the main premise is that care is provided in a group home setting in a single-family home. This

¹Kemper, Komisar and Alecxih, Long-Term Care Over an Uncertain Future: What Can Current Retirees Expect? Inquiry 42: 335-350 (Winter 2005/2006).

enables the elderly disabled to continue to live in residential environments that are enjoyed by people without disabilities.

These group homes look and function like any other single-family home. The residents interact as any other family - they take meals together that have been prepared in the home's family kitchen, they socialize in the home's common areas, and they engage in activities and provide social support as family members do.

Elderly residents are low impact residents. They seldom drive or have their own cars, they are quiet, and most likely go to bed long before the rest of the neighborhood. Residential assisted living homes are often the nicest homes on the block, with beautifully kept landscaping and a welcoming façade.

Studies have shown that group homes for the disabled do not reduce property values or stability of the surrounding neighborhood. See *attached* Lauber, D, "Impacts on the Surrounding Neighborhood of Group Homes for Persons with Developmental Disabilities" (1986).

In fact, group homes add to the social fabric of the surrounding community, providing intergenerational opportunities for connection and a needed service for community residents.

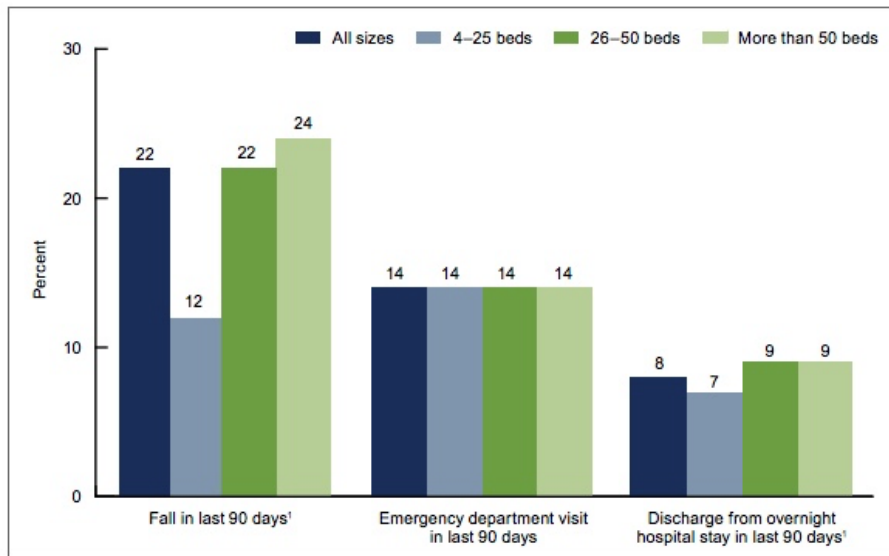
B. Benefits of Residential Care

Studies show that outcomes for residents are improved in small home environments.²

- Residents in small-scale living environments had a better cognitive and functional status than residents of traditional institutional style assisted living.
- Residents of care facilities that more closely follow the spatial character and scale of a personal residence are more likely to become engaged in socialization and activities.
- Small scale home-like environments evoke positive outcomes such as higher emotional well-being, pleasure, and social interaction among residents and with the care staff.
- Residents have less agitation/anxiety, depression, withdrawal, and mood disturbances.

A notable finding from the Centers for Disease Control and Prevention is that residents in large facilities are *two times more* likely to fall than residents in small (4 – 25 bed) facilities.

² See Zadelhoff, Ezra Van, et al. "Good Care in Group Home Living for People with Dementia. Experiences of Residents, Family and Nursing Staff." *Journal of Clinical Nursing*, vol. 20, no. 17-18, 2011, pp. 2490–2500; Wrublowsky, R. "Design Guidelines for Long Term Care Homes," 2018 Edition.



Source: *Variation in Residential Care Community Resident Characteristics, by Size of Community: United States, 2016.*

This is an important consideration because falls are the leading cause of fatal and non-fatal injuries for older Americans. According to the National Council on Aging:³

- Every 11 seconds, an older adult is treated in the emergency room for a fall; every 19 minutes, an older adult dies from a fall.
- Falls are the leading cause of fatal injury and the most common cause of nonfatal trauma-related hospital admissions among older adults.
- Falls result in more than 2.8 million injuries treated in emergency departments annually, including over 800,000 hospitalizations and more than 27,000 deaths.
- In 2015, the total cost of fall injuries was \$50 billion. Medicare and Medicaid shouldered 75% of these costs.
- The financial toll for older adult falls is expected to increase as the population ages and may reach \$67.7 billion by 2020.

II. FAIR HOUSING LAW

In addition to health benefits for seniors themselves, keeping seniors in residential neighborhoods is important to maintaining a healthy and mutually-beneficial intergenerational social fabric for our communities as a whole. Exclusionary zoning practices reduce interaction between the generations, to the detriment of us all.

Sadly, in the past 100 years, America went from being one of the most age-integrated societies in the world to arguably the polar opposite. Research from demographer Richelle Winkler in 2013 indicates that age segregation is often as ingrained as racial segregation.⁴

³ <https://www.ncoa.org/news/resources-for-reporters/get-the-facts/falls-prevention-facts/>

⁴ Freedman, M., Stamp, T. (2018). The U.S. Isn't Just Getting Older. It's Getting More Segregated. Harvard Business Review (<https://hbr.org/2018/06/the-u-s-isnt-just-getting-older-its-getting-more-segregated-by-age>).

Fair housing laws attempt to overcome the discrimination that keeps people apart.

A. Residents of Assisted Living Homes are “Disabled” and Protected under Federal Law

Seniors seeking care in a residential assisted living home have physical and/or mental impairments that inhibit their ability to handle major life activities by themselves. Therefore, they are considered disabled⁵ and are protected from housing discrimination by the federal Fair Housing Amendments Act (“FHAA”), 42 U.S.C. § 3601, *et seq.*

Congress made clear the purpose of the federal Fair Housing Act is, “to provide . . . fair housing throughout the United States.” 42 U.S.C. § 3601. The Act was amended in 1988 to include protection for people with disabilities.

Section 42 U.S.C. § 3604(f)(1), makes it unlawful:

To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of —

(A) that buyer or renter

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

Disability, as defined by the FHAA, includes a “physical or mental impairment which substantially limits one or more of such person’s major life activities.” 42 U.S.C. § 3602(h)(1).

The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments. Joint Statement of the Department of Housing and Urban Development and the Department of Justice, “State and Local Land Use Laws and Practices and the Application of the Fair Housing Act,” p. 9 (Nov 10, 2016).

“Major life activities” includes, but is not limited to, activities such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking and working. *Id.*

Though not every impairment is the same, seniors seeking care in a residential assisted living home do so because they need assistance with major life activities due to some form of disability. Therefore, they are considered disabled and are protected from housing

⁵ The Fair Housing Act uses the term “handicap” instead of disability. Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998).

discrimination. Someone who is attempting to establish a home for people with disabilities is similarly protected by the Act. *See* 42 U.S.C. § 3604(f)(1).

Zoning practices that discriminate against disabled individuals can be discriminatory, and therefore violate § 3604, if they contribute to "mak[ing] unavailable or deny[ing]" housing to those persons. *Pacific Shores Properties LLC v. City of Newport Beach*, 730 F.3d 1142, 1157 (9th Cir. 2013). *See also Bangerter v. Orem City Corp*, 46 F.3d 1491, 1498 (10th Cir. 1995).

Local zoning regulations cannot impose restrictions or additional conditions on group housing for people with disabilities that are not imposed on families or other groups of unrelated individuals. *City of Edmonds v. Oxford House, Inc.*, 461 U.S. 725 (1995); Joint Statement of the Department of Housing and Urban Development and the Department of Justice, "State and Local Land Use Laws and Practices and the Application of the Fair Housing Act," p. 3.

Additionally, the Americans with Disabilities Act provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Like the FHA, this provision prohibits governmental entities from discriminating against disabled persons through zoning. *Pacific Shores*, 730 F.3d at 1157. "Standards regarding disparate treatment claims under the ADA are typically identical, and courts accordingly 'interpret them in tandem'." *Id.* at 1157, *citing Tsombanidis v. West Haven Fire Dep't.*, 352 F.3d 565, 573 n.4 (2d Cir. 2003).

B. State Law Promotes Integration of People with Disabilities

In addition to the protections of the FHAA, the Oregon Legislative Assembly has found and declared that:

- (1) It is the policy of this state that persons with disabilities and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;
- (2) There is a growing need for residential homes and residential facilities to provide quality care and protection for persons with disabilities and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;
- (3) It is often difficult to site and establish residential homes and residential facilities in the communities of this state;
- (4) To meet the growing need for residential homes and residential facilities, it is the policy of this state that residential homes and residential facilities shall be considered a residential use of property for zoning purposes; and

- (5) It is the policy of this state to integrate residential facilities into the communities of this state. The objective of integration cannot be accomplished if residential facilities are concentrated in any one area.

OR. REV. STAT. § 197.663.

A city may allow a project such as the one proposed in a single-family zone. OR. REV. STAT. § 197.667.

III. REASONABLE ACCOMMODATION

It is my understanding that Mr. and Mrs. Kemp's project meets all requirements for a conditional use permit. To the extent that the Commission feels that a particular requirement is *not* met, it should consider granting reasonable accommodation (a/k/a an exception) to that rule.

The FHAA requires local zoning authorities to make "reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(3)(B).

The FHA's reasonable accommodations provision applies to zoning ordinances. *McGary v. City of Portland*, 386 F.3d 1259, 1264 (9th Cir. 2004).

The duty to reasonably accommodate those with disabilities is an affirmative duty. *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994), *aff'd* 514 U.S. 725 (1995). A local government may violate the Fair Housing Act if it refuses to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation is necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. Joint Statement, p. 8.

With respect to the phrase "equal opportunity," the legislative history behind the FHAA provides this context:

The Fair Housing Amendments Act, like Section 504 of the Rehabilitation Act of 1973, as amended, is a clear pronouncement of a national commitment to *end the unnecessary exclusion of persons with handicaps from the American mainstream*.⁶

The Court in *Smith & Lee Associates* said this of equal opportunity:

We find persuasive the analysis of courts that define equal opportunity under the FHAA as giving handicapped individuals the right to choose to live in single-family neighborhoods, for that right serves to end the exclusion of handicapped individuals from the American mainstream:

⁶ House Comm. on the Judiciary, Fair Housing Amendments Act of 1988, H.R.Rep. No. 711, 100th Cong., 2d Sess. 18, *reprinted* in 1988 U.S.C.C.A.N. 2173, 2179 (footnote omitted)(emphasis added).

[T]he Act prohibits local governments from applying land use regulations in a manner that will exclude people with disabilities entirely from zoning neighborhoods, particularly residential neighborhoods, or that will give disabled people less opportunity to live in certain neighborhoods than people without disabilities.

Smith & Lee Assoc. v. City of Taylor, Mich., 102 F.3d 781 (6th Cir. 1996), *citing Bryant Woods Inn, Inc. v. Howard County, Md.*, 911 F.Supp. 918, 946 (D.Md.1996)(citation omitted); *see also City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir.1994), *aff'd*, ___ U.S. ___, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995) ("Congress intended the FHAA to protect the right of handicapped persons to live in the residence of their choice in the community.").

When a City has a process for reviewing requests, such as The City of Brookings' Conditional Use Permit process and five attendant criteria for decision-making, the City must review the request objectively, without influence of generalized stereotypes or political pressure. As stated in *Avalon Residential Care Homes v. City of Dallas*,

A City must be willing to adjust to the particular circumstances of each case and interpret its regulations flexibly so as to reasonably accommodate handicapped persons in its zoning decisions. The City's ordinance sets a framework for decision-making, but that process fails if those decisions are based on generalized stereotypes or political pressure.⁷

I hope this analysis was helpful in your consideration of Mr. and Mrs. Kemp's CUP application.

Sincerely,

PINKOWSKI LAW & POLICY GROUP, LLC

A handwritten signature in blue ink, appearing to read "Michelle A. Pinkowski", with a long, sweeping horizontal line extending to the right.

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Attachment:
Lauber, D. study

⁷ *Avalon Residential Care Homes v. City of Dallas*, 130 F.Supp.2d 833, 841 (N.D. Tex. 2000).

**IMPACTS ON THE SURROUNDING NEIGHBORHOOD
OF GROUP HOMES FOR PERSONS
WITH DEVELOPMENTAL DISABILITIES**

by

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In addition, thanks go to the 74 operators of group homes in Illinois who responded to our crime survey. They constituted 93.6 percent of all group home operators in the state. Such a high response rate enabled us to identify a highly reliable crime rate among persons with developmental disabilities who live in group homes in Illinois.

EXECUTIVE SUMMARY

THE ISSUE

As the nation continues to shift the care of persons with developmental disabilities to family-like settings in group homes located in our cities and villages, there are citizens who fear that group homes will adversely affect their neighborhoods. Most frequently voiced are concerns that a group home will reduce property values, upset neighborhood stability, and jeopardize safety in the surrounding neighborhood.

Most citizens are unaware that the findings of more than 20 studies conducted around the country show that these concerns are unfounded.¹ Motivated by these fears, neighbors of proposed group homes have often opposed efforts to open group homes in the safe, residential neighborhoods in which they belong.

Because none of these studies examines the effects of group homes on Illinois communities, the Governor's Planning Council commissioned this study to:

- (1) Determine what effect, if any, group homes for persons with developmental disabilities have on property values in the surrounding community in different types of municipalities;
- (2) Determine what effect, if any, group homes for persons with developmental disabilities have on neighborhood stability in different types of municipalities; and
- (3) Determine what effect, if any, group homes for persons with developmental disabilities have on safety in the surrounding neighborhood.

PURPOSE OF THIS STUDY

This study provides the concrete evidence local officials need at zoning hearings to identify the actual effects of group homes on the surrounding community. According to the United States Supreme Court, a municipality does not have to conduct its own studies of the impacts of a land use to arrive at conclusions or findings as to what that use's effects are. Instead, it can base its findings of the proposed land use's impacts on studies conducted in other communities.² Consequently, zoning boards can use this study's findings - and those of the other studies on the effects of group homes - to arrive at conclusions as to the impacts a proposed group home would have on the surrounding neighborhood.

1. Appendix D lists the studies on property values and turnover. See infra notes 7 and 8 for studies on crime and safety.

2. See City of Renton v. Playtime Theatres, Inc., 106 S.Ct. 925 (1986).

Similarly, local officials can rely on these findings when they revise their zoning provisions for group homes to comply with the standards set by the Supreme Court that require governments to zone for group homes in a rational manner.³

This study can also be used to fully inform the neighbors of a proposed group home what effects, if any, the proposed group home would actually have on their neighborhood. By presenting this information to prospective neighbors well before any zoning hearing, group home operators can alleviate concerns based on unfounded myths.

FINDINGS AND CONCLUSIONS

This study tracked the sales of 2261 residential properties in the immediate neighborhoods surrounding 14 group home sites and 14 control neighborhoods⁴ to determine whether group homes for persons with developmental disabilities have any effect on the value of neighboring properties or on the rate at which properties are sold in the immediate neighborhood.

The data conclusively showed that:

- (1) Group homes do not affect the value of residential property in the surrounding neighborhood, and
- (2) Group homes do not affect the stability of the surrounding neighborhood.

This study also tracked, over a three year period, the activities of over 2200 persons with developmental disabilities who live in Illinois community residences, including group homes, to identify any criminal activities in which they may have participated.

This exhaustive survey of all operators of residences for persons with developmental disabilities conclusively found that:

The crime rate for persons with developmental disabilities who live in Illinois group homes is substantially lower than the crime rate for the general Illinois population. These group home residents pose no threat to safety in the neighborhood surrounding the group home.

This study's findings comport with those of more than 20 other studies of the impacts of group homes. Together they form one of the most exhaustive bodies of research on any specific land use. They offer sound evidence that group homes do not adversely affect the surrounding community.

3. See City of Cleburne v. Cleburne Living Center, 105 S.Ct. 3249 (1985).

4. Each control neighborhood was similar to the corresponding group home neighborhood except there was no group home in the control neighborhood. For a explanation of the role of control neighborhoods in this study, see infra, the section on methodology.

INTRODUCTION: PURPOSE OF THIS STUDY

As the deinstitutionalization of persons with developmental disabilities continues in Illinois, the need for group homes to house and support these deinstitutionalized individuals grows. But neighborhood opposition to such community residences has all-too-often effectively stymied efforts to locate group homes in the safe, quiet, residential neighborhoods in which they belong.

This opposition stems largely from myths about the impacts group homes and their residents have on property values, neighborhood stability, and neighborhood safety. Because local zoning ordinances in Illinois generally require a group home sponsor to obtain a special use permit before opening the home, the sponsor must win approval from both a zoning board and city council. Both bodies may conduct public hearings at which opponents typically voice their fears and produce a local Realtor or real estate appraiser who, on the basis of mere speculation, testifies that the proposed group home will lower property values and upset the stability of the neighborhood. Proponents may produce their own real estate expert to testify to the contrary, again without any data to back her up.

But neither witness is nearly as credible as the expert who can identify scientifically-sound studies of the effects of a group home on the surrounding neighborhood. At least twenty scientific studies have been conducted.⁵ They all show no adverse effects. Albeit credible and scientifically sound, these studies have not been conducted in Illinois. An Illinois study is necessary to satisfy the objection sometimes made at zoning hearings that, "Sure, that's what they found in Wisconsin and New York. But this is Illinois and we just aren't the same animal!"

This study overcomes this objection by furnishing scientifically-sound data on the actual effects group homes for persons with developmental disabilities have on residential property values, neighborhood stability, and neighborhood safety. Service providers can use this study to reliably answer the questions neighbors of a proposed group home often have concerning the impacts, if any, a group home actually has on the surrounding community. The study can be used by local planners charged with making local zoning ordinance provisions for group homes more rational, and before zoning boards, city councils, and in court by expert witnesses who seek to identify the actual effects, if any, that group homes for individuals with developmental disabilities have on the surrounding neighborhood.

As one local newspaper recently reported, neighbors of a proposed group home also frequently voice concerns over neighborhood safety: "More than a half-dozen Hanover Park homeowners - relieved that a single-family home for mentally retarded adults won't be operated in their neighborhood - told [village] trustees Monday night that they 'feared' for their lives until the real estate deal fell through."⁶

Despite over 66 years of research showing that persons with developmental

5. See infra Appendix D for a list and brief description of these studies.

6. Owner nixes site sale for Clearbrook home, Daily Herald, Feb. 17, 1981, at 1-3.

disabilities are not criminally prone,⁷ many citizens fear that a group home for persons with developmental disabilities could reduce safety in the surrounding neighborhood. It appears that only a 1979 Virginia study had previously examined crime rates among persons with developmental disabilities who lived in group homes.⁸ That study found that persons with a developmental disability are less likely to engage in criminal activity than the general population. The study found a crime rate of 0.8 percent for developmentally disabled individuals living in the community, compared to a crime rate of 4 to 6 percent for the United States as a whole for 1976-1978.

As with the studies on property values and turnover, there has been no study of the effects of group homes on neighborhood safety in Illinois communities. This study fills that gap by identifying the crime rate among persons with developmental disabilities who live in the community and comparing it to the crime rate for the general population in Illinois.

7. The first such study, of 1537 persons with mental retardation released from institutions over a 25-year period, found an 8 percent crime rate among males. Walter Fernald, State Program for the Care of the Mentally Retarded, 3 Mental Hygiene 566 (1919). Five years later Fernald's study of 5000 Massachusetts school children with mental retardation found that less than 8 percent, a relatively low proportion, showed signs of antisocial or troublesome behavior. Walter Fernald, Thirty Years Progress in the Care of the Feeble-minded, 290 Journal of Psycho-Asthenics 206 (1924).

For more recent research, see MacEachron, Mentally Retarded Offenders: Prevalence and Characteristics, 84 American Journal of Mental Disability 165, 175 (1979); D. Biklen and S. Mlinarcik, Criminal Justices, in 10 Mental Retardation and Developmental Disabilities (J. Wortis ed. 1978); D. Biklen, Myths, Mistreatments, and Pitfalls, 45 Mental Retardation 51 (Aug. 1977); Santamour and West, The Mentally Retarded Offender and Corrections 3, 28 (National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Agency, U. S. Dept. of Justice 1977); The Mentally Retarded Citizen and the Criminal Justice System (working papers for Charleston, S.C. Symposium, Santamour ed. Feb. 23-25, 1975).

8. Peggy Gould, Report on the Incidence of Client Crime within Community-Based Programming 7 (1979).

Gould contacted 86 Virginia agencies that operated group homes and other residential arrangements, or that furnished day care support programming for individuals with developmental disabilities. She gathered data on all types of criminal activity by the 4,538 persons living in or participating in these programs. She found a crime rate of 0.8 percent for persons with developmental disabilities who live in the community (in group homes, boarding houses, or on their own) and a rate of 1.6 percent for those who participate only in day programs. *Id.* at 2-3, 7. Only eight of the 1,061 persons living in the community were involved in criminal acts as follows: theft (4), sexual assault (1), drunken and disorderly conduct (2), other (1). *Id.* at 2. Overall, 56 of 4,538 individuals with developmental disabilities participated in criminal activities as follows: theft (13), breaking and entering (3), sexual assault (3), rape (0), disturbing the peace (10), assault with a deadly weapon (3), marijuana possession (1), drunken and disorderly conduct (12), other (15). *Id.* at 6.

Among persons with developmental disabilities, only 56 participated in crimes. On the average, out of 4,538 nonhandicapped persons, 182 to 272 could be expected to engage in criminal activity.

METHODOLOGY

The first two parts of this study examined the effects on residential property values and turnover of 14 of the 164 group homes for persons with developmental disabilities in Illinois. The homes were selected from lists of two group home funding programs - Community Residential Alternatives (CRA) and Home Individual Programs (HIP Homes)⁹ - furnished by several state agencies. The 14 homes were selected to assure that there would be several from each of the following types of municipalities: (1) high density urban neighborhoods in Chicago; (2) suburban municipalities (Glenview, Mount Prospect, and Schaumburg); (3) two sizeable municipalities in rural counties (Rockford and Champaign); and (4) a small municipality in a rural county with no town larger than 25,000 population (Jacksonville).¹⁰ Four of the selected homes are HIP Homes; ten are CRAs.

The third part of this study was a mail survey of all operators of community living arrangements for persons with developmental disabilities in Illinois to determine the rate at which residents of these homes engaged in criminal activities. Several state agencies furnished lists of these operators. A follow-up telephone survey of a random sample of 10 percent of the operators revealed that every one had consulted agency records to complete their survey form.

Property Values

To determine a group home's effect on property values, we compared the mean (average) sales price of all residential ownership property sales¹¹ within a five-block radius of each group home for two years before and two years after the home opened.¹² If the presence of a group home actually reduces property values, the mean sale price after the group home opened would be less than the mean sale price before the group home opened, and this difference in mean sale price would be statistically significant.¹³

9. See infra the section on Neighborhood Safety, on pages 7 and 8, for brief descriptions of the group homes funded under these two programs.

10. See infra Appendix B for a description and data on each group home examined in this study.

11. "Residential ownership property sales" include the sale of single-family houses, duplexes, three-flats, and condominiums. None of the areas studied included mobile home parks. Sales of special properties, such as retirement village units, mobile homes, and empty lots, were excluded so they would not skew the data.

12. The five-block radius was used to assure there would be a sufficient number of sales to produce useable statistics. Because they were expected to be denser and have greater real estate activity, a smaller, four-block radius was used for each of the Chicago and suburban sites. A two-year time frame was used whenever possible. However, some homes opened less than two years ago. A shorter time frame was employed for these homes and corresponding control neighborhoods. For the time frame used for each house, see the individual group home descriptions in Appendix B.

13. See infra Appendix A for an explanation of statistical significance.

In addition, we identified a "control" neighborhood for each group home. A control neighborhood is another neighborhood, in the same city as the group home, that is virtually identical to the neighborhood in which the group home is located. Each of these was selected to match, as closely as possible, one of the group home neighborhoods in terms of age of housing, housing mix, racial composition, and mean price of ownership residential units.¹⁴ The key difference between each group home neighborhood and each matching control neighborhood was the absence of a group home in the control neighborhood. We conducted on-site inspections of the group home and control neighborhoods to confirm their comparability and corroborate the census data. We designated a site in the center of each control neighborhood around which we established the same radius and collected residential property sales for the same time intervals as for the corresponding group home neighborhood.¹⁵ In some cities, we employed the same control neighborhood for each of two group homes because that control neighborhood was the best match for both group home neighborhoods. However, because the time frames studied for each group home differed, we obtained different data for the corresponding control neighborhoods. Consequently, using the same control neighborhoods in conjunction with two group home sites does not confound the data.

Control neighborhoods were identified in case the research found a statistically significant decline in mean sale price for any group home neighborhood after the group home opened. If that had happened, it would have been necessary to compare this difference to the data for the corresponding control neighborhood to see if the control neighborhood, without a group home, experienced a similar statistically significant decline in mean sale price. If it did, then the decline in mean sale price after the group home opened would most likely have been due to a general decline in the market and not due to the group home. If it didn't, then the group home would have been the most probable cause of the decline in property values. However, it is important to note here that in no instance was there a statistically significant decline in property values after a group home opened.¹⁶

Sales data came from two types of sources. We extracted sales prices from the Multiple Listing Service records for the study areas in Rockford, Champaign, and Jacksonville. For the Chicago, Glenview, Morton Grove, and Schaumburg sites, we culled the **Realty Sales Guide** published quarterly by the Law Bulletin Publishing Company. Both of these sources furnish highly reliable samples of nearly all residential property sales.

14. For the four Chicago sites, 1980 census tract data was used, as published in The Local Community Fact Book - Chicago Metropolitan Area, edited by the Chicago Fact Book Consortium (Chicago: Department of Sociology, University of Illinois at Chicago, 1984). Block-by-block data from the 1980 United States Census prepared by the Chicago Area Geographic Information Study of the Geography Department at the University of Illinois at Chicago, was used for the ten other sites.

15. See Appendix C for a list of the control neighborhoods.

16. See infra Table 1. The one instance where there was a statistically significant increase (Schaumburg, site S-7) should not be attributed to opening the group home.

The data on mean sale price before and after the dates on which group homes opened, and the applicable statistical tests, appear in tables 1 and 2 in the Findings section of this report.

Neighborhood Stability

The same study and control areas, and time frames, used in the property value part of this study were used here to identify annualized turnover rates to determine if the presence of a group home affected neighborhood stability. If the presence of a group home actually affects the stability of the surrounding neighborhood, the average difference between the change in turnover rates after group homes opened in the 14 group home neighborhoods, and the change in turnover rates in the 14 corresponding control neighborhoods, would be statistically significant. No statistical test could be applied directly to the individual turnover rates because they are rates and not a data sample. However, a Matched Pair Analysis, could be applied to the average difference in the change in turnover rates for the 14 group home and control neighborhoods. This analysis and statistical test are described in Appendix A.

We determined the number of residential ownership properties in each geographic area by examining city records and with on-site inspections when the character of a property was not clear. Annualized turnover rates were determined by first dividing the number of residential ownership property sales by the number of residential ownership properties in the geographic area, and then adjusting this figure to reflect the annualized rate of sales.

The turnover rate data appear in Table 3. The statistical test on the average difference in turnover rates appears in Table 4 in the Findings section of this report.

Neighborhood Safety

To determine whether persons with developmental disabilities who live in the community pose any threat to neighborhood safety, it was necessary to determine their crime rate and compare it to the crime rate of the general population in Illinois. A crime rate is expressed as "x" number of crimes per 1000 persons. If the crime rate for persons with developmental disabilities who live in community residences, including group homes, is higher than that of the general population, then group homes would pose a threat to neighborhood safety. If their crime rate is the same or less than the crime rate for the general population, then group homes pose no threat to neighborhood safety.

To determine the crime rate for persons with developmental disabilities who lived in community residences during 1983, 1984, and 1985, we conducted a mail survey of the 79 agencies that operated these residences in Illinois during those years. Seventy-four of the 79 operators returned completed surveys. This 93.6 percent response rate was so high that the results constitute virtually the entire universe of community residences, including group homes, in Illinois, not just a statistical sample, and make the results highly reliable.

The questionnaire, reproduced in Appendix E, divided the surveyed community residences into three types based on size:

- (1) "Residences for 1 to 3 persons" refer to independent living arrangements like Home Individual Programs (HIP Homes) and Supported Living Arrangements (SLAs) for one to three persons with developmental disabilities.

These residences are usually located in rented apartments where staff assistance ranges from around the clock supervision to periodic visits by support staff for persons with the least disabling conditions.

- (2) "Residences for four to eight persons" include group homes funded as Community Residential Alternatives (CRA) and Intermediate Care Facilities for the Developmentally Disabled (ICF/DD for 15 and fewer). Twenty-four hour staff supervision is the norm. Staff may consist of live-in house parents or be furnished on a shift basis, or a combination thereof.
- (3) "Residences for nine to 20 persons" include Community Living Facilities (CLF) and ICF/DDs for 15 or fewer residents. Twenty-four hour staff supervision is the norm. Staff may consist of live-in house parents or be furnished on a shift basis, or a combination of both.

The survey asked agency staff to examine agency records to identify, by year and type of residence, the number of residents who had been accused of a crime, and the number actually convicted. For this survey "accused of a crime" meant any instance where someone, including another group home resident, claimed a group home resident had committed a crime, whether or not charges were actually filed or the accusation was determined to be unfounded. These figures include complaints to group home operators whether or not a formal criminal charge was made. Unfounded accusations include instances where a "stolen" article turns out to have been merely misplaced, and where in one case, a group home resident who charged another with rape later admitted she fabricated the whole story.

The crime rate for the general Illinois population includes only those crimes reported to the police for which there is some foundation. Reported crimes later learned to be unfounded - such as a theft report where the owner later discovers he had merely misplaced the "stolen" item - are excluded from the crime rate for the general population shown in Table 7 in the Findings section of this report.

In the survey for this report, the number of accusations overstates the actual crime rate because many accusations prove to be unfounded. Consequently, the number of accusations, by itself, is not comparable to the crime rate for the general population. To develop some basis to compare the crime rate of the general population to that of persons with developmental disabilities living in community residences, we also asked the surveyed agencies to report the number of their residents actually convicted of a crime. By itself, the conviction rate understates the actual crime rate because the judicial process does not result in a conviction for every criminal act. The actual Illinois crime rate for persons with developmental disabilities who live in community residences lies somewhere between the rate of convictions (minimum crime rate) and accusations (maximum crime rate). This range is reported in Table 7 in the Findings section of this report.

FINDINGS

Property Values

FINDING:

Property values rose in 79 percent of the neighborhoods with a group home and in 71 percent of the neighborhoods that did not contain a group home.

This finding reflects the data and statistical tests shown in Table 1: Changes in Mean Sales Price Before and After Dates on Which Group Homes Opened.¹⁷ After a group home opened, property values rose in 11 of the 14 group home neighborhoods and in 10 of the 14 corresponding control neighborhoods. Three group home neighborhoods experienced minor decreases in average sale price: MP-6 (-\$614 or -0.67%), J-8 (-\$105 or -0.3%), and C-10 (-\$513 or -1.3%). The decreases in three of the four control neighborhoods that experienced declines were more substantial: CHI-4 (-\$1988 or -3.7%), G-5 (-\$74 or -0.1%), J-8 (-\$5904 or -14.9%), and R-14 (-\$1628 or -3.0%).

By itself, this raw data could lead to an unwarranted conclusion that the presence of a group home generally leads to increased property values. However, the change in before and after mean sale price for each group home neighborhood must still be subjected to one of the most rigorous statistical tests, the student's t-test, to determine whether the difference between the before and after mean sale price is due to chance or to establishing the group home.¹⁸

Applying the t-test, which is explained in Appendix A, Table 1 shows that only one of the differences in before and after mean sale prices is statistically significant. That is, in all but one case, the differences could be due solely to chance. The only statistically significant change was the 21 percent increase in the neighborhood around the Schaumburg group home. This increase was probably due to factors other than opening the group home. The data in Table 1 strongly indicate that opening a group home does not affect property values in the surrounding community.

FINDING:

Changes in mean sale price after group homes opened were unrelated to opening the group homes.

17. Clearly, property values generally rose during the study period. The average mean sale price in the 14 group home neighborhoods rose from \$60,303 to \$63,318 after group homes opened, an average increase of \$3015. The average mean sale price in the 14 control neighborhoods rose \$4099, from \$57,831 to \$61,930. Both increases were statistically significant, indicating that property values really did rise in general. (T-Statistic for group home neighborhoods: -2.19, significance of t-statistic: 0.048; t-statistic for control neighborhoods: -2.63, significance of t-statistic: 0.021. For the difference to be statistically significant, the significance of the t-statistic must be 0.05 or less.) However, Table 2 and the accompanying text reveal that the difference in the magnitude of the increases is statistically insignificant, and therefore due to chance.

18. See Appendix A for a discussion of the Student's t-test.

TABLE 1: CHANGES IN MEAN SALES PRICE BEFORE AND AFTER DATES ON WHICH GROUP HOMES OPENED

GROUP HOME SITE	GROUP HOME NEIGHBORHOODS				CONTROL AREA NEIGHBORHOODS			
	MEAN SALE PRICE	T-Statistic Before/After	Significance of T-Statistic		MEAN SALE PRICE	T-Statistic Before/After	Significance of T-Statistic	
	Before Date Group Home Opened	After Date Group Home Opened	Difference in mean sale price is statistically insignificant when greater than 0.05.		Before Date Group Home Opened	After Date Group Home Opened	Difference in mean sale price is statistically insignificant when greater than 0.05.	
CHICAGO SITES								
CHI-1	\$78,948	\$87,873	0.265		\$74,206	\$87,083	0.175	
CHI-2	\$43,579	\$44,476	0.860		\$43,542	\$51,273	0.181	
CHI-3	\$56,368	\$56,897	0.925		\$55,456	\$62,518	0.482	
CHI-4	\$58,051	\$59,110	0.898		\$54,388	\$52,400	0.797	
SUBURBAN SITES								
GLENVIEW: G-5	\$84,872	\$88,429	0.585		\$104,895	\$104,821	0.992	
MOUNT PROSPECT: MP-6	\$110,705	\$110,091	0.966		\$91,004	\$105,885	0.006	
SCHAUMBURG: S-7	\$85,856	\$103,894	0.001		\$79,367	\$82,874	0.223	
DOWNSTATE SITES								
JACKSONVILLE J-8	\$40,720	\$40,615	0.981		\$39,496	\$33,592	0.119	
J-9	\$35,806	\$36,703	0.991		\$33,510	\$35,702	0.427	
CHAMPAIGN C-10	\$37,613	\$37,110	0.789		\$31,573	\$33,305	0.413	
C-11	\$60,663	\$61,984	0.692		\$43,629	\$45,654	0.636	
C-12	\$41,374	\$41,987	0.657		\$5,572	\$57,598	0.162	
C-13	\$48,281	\$48,870	0.633		\$52,647	\$61,588	0.043	
ROCKFORD: R-14	\$61,407	\$68,412	0.373		\$54,353	\$52,725	0.563	

This finding reflects the data and statistics shown in Table 1, note 16, and the statistical test in Table 2 below. Table 2 shows the results of comparing the change in mean sale price for each group home neighborhood with the change in mean sale price for its corresponding control neighborhood, for all of the 14 group home-control neighborhood pairs. See Appendix A for a discussion of the methodology. If the average difference is due to chance and not to the presence or absence of a group home, then the average difference would be relatively small and be statistically insignificant. Here the difference of \$1083.71 is relatively small - it's less than 2 percent of any of the mean sale price figures given in note 16. Table 2 shows that the average difference in the change in mean sales price for the 14 group home-control neighborhood pairs was statistically insignificant and, therefore, is not attributable to the absence or presence of a group home.

TABLE 2:
AVERAGE DIFFERENCE IN CHANGE IN MEAN SALES
PRICE FOR EACH GROUP HOME NEIGHBORHOOD COMPARED
TO ITS CORRESPONDING CONTROL NEIGHBORHOOD

Average Difference in Before and After Mean Sale Price for Each Group Home Neighborhood and Its Corresponding Control Neighborhood	T-Statistic	Significance of T-Statistic (Statistically insignificant if greater than 0.05)
- \$1083.71	- 0.52	0.609

Methodology: Matched Pair Analysis. See Appendix A for description.

This data further confirms that opening a group home does not affect property values in the immediate neighborhood around the group home.

Neighborhood Stability

FINDING:

**Opening a group home did not affect turnover rates
in the surrounding community.**

Table 3 shows the number of sales in each group home and corresponding control neighborhood as well as the annual turnover rate of residential ownership property. In the control neighborhoods, the change ranged from -2.3 to +4.7 percentage points. With just two exceptions, the change in turnover rate in the group home neighborhoods ranged from -1.7 to +2.5 percentage points. The two substantial deviations from these minimal changes occurred in Mount Prospect (-9.2 percentage points) and Schaumburg (+15.4 percentage points) where the corresponding control neighborhoods experienced changes in the same directions, albeit not to as great an extent. Given the overall pattern of the data, and the opposite directions of change in Mount Prospect and Schaumburg, there clearly is no cause and effect relationship between opening the group homes in those two suburbs and the change in turnover rates. One can only speculate that the extremes in Mount Prospect and Schaumburg resulted from the unique nature of the marketplace in those two rapidly growing suburbs.

The statistical test in Table 4 confirms this finding. For all of the 14 group home-control neighborhood pairs, Table 4 shows the results of comparing the change in turnover rate for each group home neighborhood to the change in turnover rate for its corresponding control neighborhood. It shows that the

TABLE 3: CHANGES IN TURNOVER RATES BEFORE AND AFTER DATES ON WHICH GROUP HOMES OPENED

GROUP HOME SITE	GROUP HOME NEIGHBORHOODS				CONTROL NEIGHBORHOODS			
	NUMBER OF SALES IN STUDY AREA Before Date Group Home Opened	NUMBER OF Ownership Residences in Study Area	ANNUALIZED TURNOVER RATE Before Date Group Home Opened		NUMBER OF SALES IN CONTROL AREA Before Date Group Home Opened	NUMBER OF Ownership Residences in Control Area	ANNUALIZED TURNOVER RATE Before Date Group Home Opened	
CHICAGO SITES								
CHI-1	25	37	5.0 %	7.5 %	31	53	2.8 %	4.7 %
CHI-2	24	38	1.9 %	3.0 %	24	62	2.0 %	5.1 %
CHI-3	28	31	2.7 %	3.0 %	39	27	7.7 %	5.4 %
CHI-4	37	20	3.6 %	1.9 %	26	37	5.2 %	7.3 %
SUBURBAN SITES								
GLENVIEW: G-5	20	21	10.4 %	10.9 %	29	41	11.4 %	16.1 %
MOUNT PROSPECT: MP-6	30	11	14.5 %	5.3 %	36	34	13.2 %	12.5 %
SCHAUMBURG: S-7	16	55	6.3 %	21.7 %	24	34	6.6 %	9.3 %
DOWNSTATE SITES								
JACKSONVILLE J-8	30	30	1.5 %	1.5 %	23	34	1.0 %	1.4 %
J-9	32	33	1.6 %	1.6 %	30	43	1.5 %	2.2 %
CHAMPAIGN C-10	40	29	2.6 %	1.9 %	33	32	2.0 %	1.9 %
C-11	106	115	3.4 %	3.7 %	75	68	3.6 %	3.2 %
C-12	49	38	5.6 %	4.3 %	69	68	3.0 %	3.0 %
C-13	81	100	3.4 %	4.3 %	59	75	2.6 %	3.3 %
ROCKFORD: R-14	15	26	1.7 %	3.0 %	34	59	2.6 %	4.4 %

average difference in the change in turnover rate for the 14 group home-control neighborhood pairs was statistically insignificant and, therefore, cannot be attributed to the absence or presence of a group home.

TABLE 4:

**AVERAGE DIFFERENCE IN CHANGE IN TURNOVER RATES
FOR EACH GROUP HOME NEIGHBORHOOD COMPARED TO
ITS CORRESPONDING CONTROL NEIGHBORHOOD**

Mean Difference in Before and After Turnover Rates of Each Group Home Neighborhood Compared to Its Corresponding Control Neighborhood	T-Statistic	Significance of T-Statistic (Statistically insignificant if greater than 0.05)
0.395 %	0.290	0.780

Methodology: Matched Pair Analysis. See Appendix A for description.

Neighborhood Safety

FINDING:

The crime rate for persons with developmental disabilities who live in community residences, including group homes, is substantially lower than the crime rate for the general Illinois population.

This finding is based on the results of this study's statewide survey of criminal activity among persons with developmental disabilities who live in these residences. This study gathered the following data for 1983 through 1985, to determine the crime rate for residents of these group homes and other community residential living arrangements: (1) the number of these residents, (2) the number convicted of a crime, and (3) the number accused of a crime. To determine whether these residences pose any threat to neighborhood safety, this study then compared these crime rates to those of the general state population.

Table 5 identifies the total number of persons living in these residences by size of home for each of the three survey years: 1983, 1984, and 1985.

TABLE 5:

**NUMBER OF ILLINOIS COMMUNITY RESIDENCES AND
THEIR RESIDENTS, 1983-1985**

Size of Community Residence	Number of This Size Residence Operated in:			Total Number of Different Individuals Who Lived in This Size Residence in:		
	1983	1984	1985	1983	1984	1985
1 to 3 residents	258	321	352	366	486	544
4 to 8 residents	61	97	121	266	536	735
9 to 20 residents	37	46	46	743	873	904
Total by year	356	464	519	1375	1907	2195

Table 6 reports the number of these residents who were convicted of or accused of a crime in each of the three study years by size of community residence.

**TABLE 6:
NUMBER OF COMMUNITY RESIDENTS INVOLVED IN CRIMINAL ACTIVITY**

Size of Community Residence	Number Convicted of a Crime in:			Number Accused of a Crime in:		
	1983	1984	1985	1983	1984	1985
1 to 3 residents	0	1	7	7	14	17
4 to 8 residents	0	2	1	3	8	19
9 to 20 residents	0	1	1	4	7	4
Total - All Homes	0	4	9	14	29	40

To be meaningful, the raw data in Table 6 must be converted to crime rates, as described earlier in the section on methodology, and compared to the crime rate for the general Illinois population.

For each of the three study years, Table 7 shows the crime rate range, per 1000 persons, for each size of community residence and the crime rate, per 1000 persons, for the general Illinois population.



Pictured above is one of the Downstate group homes examined in this study.

TABLE 7:
CRIME RATE RANGE OF COMMUNITY RESIDENTS AND
CRIME RATE FOR THE GENERAL ILLINOIS POPULATION

Size of Community Residence	Crime Rate by Year Per 1,000 population		
	(First figure represents convictions, second figure represents accusations - see methodology discussion)		
	1983	1984	1985
	C R I M E R A T E R A N G E		
1 to 3 residents	0 - 19	2 - 28	13 - 30
4 to 8 residents	0 - 11	3 - 14	0 - 26
9 to 20 residents	0 - 5	2 - 8	1 - 4
Total - All Residences	0 - 10	2 - 15	3 - 18
Illinois General Population ¹⁹	C R I M E R A T E		
	101	104	112

To place this data in perspective, there were 112 crimes committed for every 1000 people in Illinois in 1985. But for every 1000 persons with a developmental disability who lived in an Illinois group home or other community residence in 1985, there were between 3 (convictions) and 18 (accusations) crimes committed. In fact, the highest crime rate for all homes, 18 per 1000 population, in 1985 was just 16 percent of the crime rate for the general population (112 per 1000 persons) that year!

FINDING:

Persons living in one size of community residence are no more or less likely to commit a crime than persons living in any other size community residence.

We applied the statistical t-test to determine if residents of any one size community residence were more prone to engage in criminal activity. However, as Table 8 shows, the differences in crime rate (based on accusations) between the three types of living arrangements are so small that the differences are statistically insignificant.²⁰

19. Sources of crime statistics for Illinois: **Crime in Illinois, 1983, Crime in Illinois, 1984, and Crime in Illinois, 1985** available from the Illinois Department of Law Enforcement, Division of Support Services (726 S. College, Springfield, IL 62704).

20. T-statistics and significance calculations could not be generated for convictions because the number of convictions was too small.

TABLE 8:
COMPARISON OF CRIME RATES BY SIZE OF COMMUNITY RESIDENCE

Size of Community Residence	Crime Rate in Terms of Accusations, 1983-1985	T-Statistic	Significance of T-statistic
1 to 3 residents	27.0 per 1000 persons	0.244	0.28 Insignificant
4 to 8 residents	19.5 per 1000 persons	0.520	0.09 Insignificant
9 to 20 residents	5.9 per 1000 persons	0.466	0.12 Insignificant

FINDING:

Criminal behavior among persons with developmental disabilities who live in community residences generally involves minor crimes against property, disturbing the peace, or disorderly conduct. Crimes against another person are extremely rare.

Finally, Table 9 identifies all the types of crimes of which group home residents were convicted or accused during the three study years. These figures represent the total for all three types of residences. They cannot be compared directly to the rates for the general population because these categories do not precisely match the categories the state uses. However, in those instances where a comparison could be made, the rates in this study were far below the rates for the general population.



Two of the Chicago group homes studied here appear above.

TABLE 9:
TYPES OF CRIMINAL ACTIVITY AMONG GROUP HOME RESIDENTS

TYPE OF CRIMINAL ACTIVITY	Number Convicted of This Crime in:			Number Accused of This Crime in:		
	1983	1984	1985	1983	1984	1985
Burglary	0	0	0	0	1	0
Theft	0	0	1	9	9	12
Breaking and Entering	0	0	0	0	1	0
Disturbing the Peace	0	0	1	0	3	7
Drunken/disorderly Conduct	0	1	0	1	5	6
Destruction of property	0	0	2	2	2	6
Driving Under the Influence	0	1	2	0	1	2
Public indecency	0	0	1	0	1	1
Sexual Assault/Misconduct	0	0	1	1	2	3
Rape	0	0	0	1	0	0
Arson	0	1	0	0	1	0
Murder	0	0	0	0	1	0
Assault with Deadly Weapon	0	0	0	0	0	2
Assault	0	0	1	0	1	1
Battery	0	1	0	0	1	0
Other	0	0	0	0	0	0



One of the suburban Chicago group homes examined here appears above.

CONCLUSIONS

This study examined neighborhoods surrounding 14 group homes for persons with developmental disabilities in seven different municipalities: four neighborhoods in Chicago; three neighborhoods in Chicago suburbs (Glenview, Mount Prospect, and Schaumburg); one neighborhood in a sizeable city in a predominantly rural county in northern Illinois (Rockford); four neighborhoods in a sizeable city in a predominantly rural county in central Illinois (Champaign); and two neighborhoods in a small municipality in a rural county in central Illinois (Jacksonville).

Based on an examination of the sale price and number of homes sold in 14 neighborhoods, before and after the group home at each neighborhood's center opened, and an examination of the price and number of homes sold in 14 comparable control neighborhoods distinguishable from the corresponding group home neighborhood by the absence of a group home, it is clear that:

Group homes do not affect the value of residential ownership property in the surrounding neighborhood.

and

Group homes do not affect the stability of the surrounding neighborhood.

This study also conducted a comprehensive statewide survey of over 2200 persons with developmental disabilities who live in community residences to identify any criminal activities in which they engaged from 1983 through 1985. This survey covered all community residences ranging in size from 1 to 3 residents to as many as 9 to 20 residents, including group homes for 4 to 8 persons. The survey revealed that the crime rate for persons with developmental disabilities living in community residences is substantially lower than the crime rate for the general Illinois population. This research conclusively shows that:

Persons with developmental disabilities who live in group homes pose no threat to the safety of their neighbors or the surrounding community.

This study's findings and conclusions comport with those of the other studies of group homes described in Appendix D. Together they form one of the most exhaustive bodies of research on any specific land use. They offer convincing evidence that group homes generate no adverse impacts on the surrounding neighborhood.

APPENDIX A: DESCRIPTION OF STATISTICAL TESTS

Student's T-Test

The Student's t-test is a way to answer the question whether the differences between data samples, here the mean sales price before and after a group home opened, is really different or just due to chance. Answering this question requires more than just calculating the average value of each sample. It requires examining how the raw data are distributed around that mean. Are the sale prices more or less similar and closely clustered around the mean, or are there wide variations in sale prices? The t-test measures the number of cases in a sample that fall into the extremes, or "tail," of one distribution (the before sample), and compares it with the number of cases in the tails of the other distribution (the after sample). A substantial discrepancy in the tails of the two samples being compared indicates that the difference in the means of the two samples is unlikely to be due to chance, namely that the difference is statistically significant!

The t-statistic is calculated as follows:

$$t = \frac{\bar{X}_1 - \bar{X}_2}{\sqrt{(S_1^2 / N_1) + (S_2^2 / N_2)}}$$

where:
 \bar{X}_n = mean of sample n
 S_n^2 = variance of sample n
 N_n = size of sample n

The level of significance, the most important finding from the t-test, is found in a standardized table. The significance level reflects the probability that the differences between the two samples could be due to chance alone. For example, when the significance of the t-statistic is .981, there is a 98.1 percent probability that the difference between the before and after mean sale prices in the neighborhood surrounding group home J-8 in Jacksonville (see Table 1) is due solely to chance.

At some point, the probability of the difference being due solely to chance is so low that statisticians accept the difference as statistically significant and probably caused by some factor other than chance. The statisticians place this point at .05 (5 percent). This is called the standard "decision" rule where statisticians interpret the t-test results by assuming there is no significant difference in the means of the two samples (known as the "null hypothesis") unless the level of significance is less than .05. When the level of significance is less than .05, the differences between the two means is considered to be statistically significant and the null hypothesis that there is no significant difference in the means of the two samples, must be rejected. Only then do statisticians assign the cause of the differences between the two means to some factor other than chance.

Table 1 shows that the difference in before and after mean sale price was statistically significant for only 1 of the 14 group home neighborhoods, and 2 of the 14 control neighborhoods (sites MP-6 and C-13). The only statistically significant difference in a group home neighborhood was for Site S-7 (Schaumburg), where the average sales price increased from \$85,860 to \$103,890. However, it is not contended that the presence of the group home caused this significant increase in mean sale price.

Matched Pair Analysis

For tables 2 and 4, Matched Pair Analysis employing a single-sample t-test was used to determine whether the average difference, for the 14 group home-control neighborhood pairs, in the change in mean sale price after the date each group home opened, was due to chance or to opening the group homes (Table 2). The explanation of this methodology also applies to the similar analysis that was conducted for turnover rates (Table 4).

For each of the 14 group home-control neighborhood pairs, the difference in the change in mean sales price after the date each group home opened was calculated as follows:

$(GH^n_{\text{After}} - GH^n_{\text{Before}}) - (C^n_{\text{After}} - C^n_{\text{Before}})$, where:

GH^n_{After} = mean sale price for group home neighborhood "n" after date group home opened

C^n_{Before} = mean sale price for control neighborhood "n" before date group home opened

This set of calculations yielded 14 figures, one for each group home-control neighborhood pair. The average difference in change was derived by adding these 14 figures and dividing by 14. If the average difference in the change in mean sale price between each group home-control neighborhood pair was due to chance, the average difference would be relatively small and relatively close to zero, and therefore statistically insignificant under a t-test. Next, a single-sample t-test was applied to determine whether the average difference was statistically significant.



Pictured above is the Rockford group home examined in this study.

APPENDIX B: GROUP HOMES STUDIED

GROUP HOME SITE: CHI-1, located in Chicago
SPONSORING AGENCY: Augustana Center

NUMBER OF RESIDENTS: 8
POPULATION SERVED: Moderate to severely retarded adults
STAFFING: 24 hour; shift basis; no live-in staff

DATE OF OCCUPANCY: July 12, 1984
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 12 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	496		1122	
Number of Sales	25	37	31	53
Annualized Turnover Rate	5.0%	7.5%	2.8%	4.7%
PROPERTY VALUES				
Mean Sales Price	\$78,948	\$87,873	\$74,206	\$87,083
Percent Change in Mean Sales Price	+11.3%		+17.4%	

COMMENTS:

The differences in the before and after mean sale prices were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

The home is a brick two-flat, located in a quiet, middle-class neighborhood dominated by bungalows and two-flat owner-occupied apartment buildings.

Relations with the few neighbors who know this is a group home have been cooperative.

GROUP HOME SITE: CHI-2, located in Chicago
SPONSORING AGENCY: Victor C. Neumann Association

NUMBER OF RESIDENTS: 4
POPULATION SERVED: Female adult with behavior disorders; moderate level of functioning; age range: 34-50
STAFFING: 24 hour; shift basis; no live-in staff

DATE OF OCCUPANCY: July 23, 1984
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 12 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	1288		1221	
Number of Sales	24	38	24	62
Annualized Turnover Rate	1.9%	3.0%	2.0%	5.1%
PROPERTY VALUES				
Mean Sales Price	\$43,579	\$44,476	\$43,542	\$51,273
Percent Change in Mean Sales Price	+2.1%		+17.8%	

COMMENTS:

The differences in the before and after mean sale prices were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

This brick two-flat is located in a largely lower-middle class neighborhood of small homes and two-flat apartments.

The home moved in without any neighborhood opposition. Neighbors were unaware the group home existed.

GROUP HOME SITE: CHI-3, located in Chicago
SPONSORING AGENCY: Victor C. Neumann Association

NUMBER OF RESIDENTS: 7
POPULATION SERVED: Male and female adults with behavior disorders; low to mid-moderate functioning level; age range: 30-50
STAFFING: 24 hour; shift basis; no live-in staff

DATE OF OCCUPANCY: December 10, 1984
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 12 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	1036		504	
Number of Sales	28	31	39	27
Annualized Turnover Rate	2.7%	3.0%	7.7%	5.4%
PROPERTY VALUES				
Mean Sales Price	\$56,368	\$56,897	\$55,456	\$62,518
Percent Change in Mean Sales Price	+0.9%		+12.7%	

COMMENTS:

The differences in the before and after mean sale prices were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

This wood-framed house is located in a heavily Hispanic, lower-middle class neighborhood. Much of the surrounding property is composed of two-flat and three-flat apartments buildings and small single-family houses.

The operator reports that the home initially faced opposition from Caucasian neighbors because one resident and most of the staff were Black. Since the early weeks following the opening, neighbors have become friendly to the extent of inviting group home residents to visit.

GROUP HOME SITE: CHI-4, located in Chicago
SPONSORING AGENCY: The Center for the Rehabilitation and Training of the Disabled

NUMBER OF RESIDENTS: 8
POPULATION SERVED: Previously institutionalized persons with severe behavior disorders; male and female; age range: 20-40
STAFFING: 24 hour; shift basis; no live-in staff

DATE OF OCCUPANCY: July 12, 1984
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 12 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	1036		504	
Number of Sales	37	20	26	37
Annualized Turnover Rate	3.6%	1.9%	5.2%	7.3%
PROPERTY VALUES				
Mean Sales Price	\$58,051	\$59,110	\$54,388	\$52,400
Percent Change in Mean Sales Price	+1.8%		-3.7%	

COMMENTS:

The differences in the before and after mean sale prices were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

This brick, three-flat's immediate surroundings are dominated by deteriorating houses and three-flat apartment buildings. There is some renovation in the largely Hispanic neighborhood. The home faced no neighborhood opposition.

GROUP HOME SITE: G-5, located in Glenview
SPONSORING AGENCY: Rimland School for Autistic Children

NUMBER OF RESIDENTS: 3
POPULATION SERVED: Autistic adults; age range: 26-32
STAFFING: 24 hour; shift basis; no live-in staff; two staff present during waking hours

DATE OF OCCUPANCY: July 6, 1983
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 12 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	193		254	
Number of Sales	20	21	29	41
Annualized Turnover Rate	10.4%	10.9%	11.4%	16.1%
PROPERTY VALUES				
Mean Sales Price	\$84,872	\$88,429	\$104,895	\$104,821
Percent Change in Mean Sales Price	+4.2%		-0.1%	

COMMENTS:

The differences in the before and after mean sale prices were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

This brick bungalow is located in a middle- to upper-middle class single-family neighborhood developed during the last 25 years. There's a large park at the south end of the block.

GROUP HOME SITE: MP-6, located in Mount Prospect
SPONSORING AGENCY: Glenkirk

NUMBER OF RESIDENTS: 5
POPULATION SERVED: Female adults aged 21-30; severe and profoundly retarded
STAFFING: 24 hour; shift basis; no live-in staff

DATE OF OCCUPANCY: April 5, 1985
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 12 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	207		273	
Number of Sales	30	11	36	34
Annualized Turnover Rate	14.5%	5.3%	13.2%	12.5%
PROPERTY VALUES				
Mean Sales Price	\$110,705	\$110,091	\$91,004	\$105,885
Percent Change in Mean Sales Price	-0.6%		+16.4%	

COMMENTS:

The differences in the before and after mean sale prices for the group home neighborhood were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

This group home is actually a wood and stone two-flat which, in all outward appearance, looks like the other single-family houses in the neighborhood. Newer, medium-sized single-family homes comprise this middle-class neighborhood close to shopping and major thoroughfares.

The home initially faced strong neighborhood opposition which later dissipated. The neighbors are now friendly.

GROUP HOME SITE: S-8, located in Schaumburg
SPONSORING AGENCY: Blare House, Inc.

NUMBER OF RESIDENTS: 4
POPULATION SERVED: Autistic and autistic-like males and females aged 20-27
STAFFING: 24 hour; shift basis; no live-in staff

DATE OF OCCUPANCY: May 14, 1984
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 12 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	254		366	
Number of Sales	16	55	24	34
Annualized Turnover Rate	6.3%	21.7%	6.6%	9.3%
PROPERTY VALUES				
Mean Sales Price	\$85,856	\$103,894	\$79,367	\$82,874
Percent Change in Mean Sales Price	+21.0%		+4.4%	

COMMENTS:

The increase in mean sale price after the group home opened is statistically significant. However, it is likely that factors other than opening the group home account for this large increase in value.

This wood-frame and brick bungalow is located in a newer single-family, middle-class neighborhood with mostly good-sized single-family houses. An apartment complex lies one block north of the home.

Those neighbors who were initially upset with the group home opening are reportedly pretty friendly these days.

GROUP HOME SITE: J-8, located in Jacksonville
SPONSORING AGENCY: Jacksonville Association for Retarded Citizens

NUMBER OF RESIDENTS: 2
POPULATION SERVED: Profoundly retarded male adults
STAFFING: Married couple as live-in houseparents

DATE OF OCCUPANCY: August 17, 1984
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 19 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	819		951	
Number of Sales	30	30	23	34
Annualized Turnover Rate	1.5%	1.5%	1.0%	1.4%
PROPERTY VALUES				
Mean Sales Price	\$40,720	\$40,615	\$39,496	\$33,592
Percent Change in Mean Sales Price	-0.3%		-14.9%	

COMMENTS:

The differences in the before and after mean sale prices were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

Jacksonville has suffered many economic setbacks in the last few years. This home is located in a predominantly middle- and lower-middle class neighborhood of single-family homes of all sizes, generally in pretty good condition. Nearly half the dwelling units were built before 1949.

This wood-framed house is located within four short blocks of the other group home this study examined in Jacksonville, site J-9.

GROUP HOME SITE: J-9, located in Jacksonville
SPONSORING AGENCY: Jacksonville Association for Retarded Citizens

NUMBER OF RESIDENTS: 8
POPULATION SERVED: Profoundly retarded and multiply-handicapped adults
STAFFING: Two staff on duty 24 hour; shift basis; no live-in staff

DATE OF OCCUPANCY: April 24, 1984
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 23 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	980		951	
Number of Sales	32	33	30	43
Annualized Turnover Rate	1.6%	1.6%	1.5%	2.2%
PROPERTY VALUES				
Mean Sales Price	\$35,806	\$36,703	\$33,510	\$35,702
Percent Change in Mean Sales Price	+2.5%		+6.5%	

COMMENTS:

The differences in the before and after mean sale prices were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

Jacksonville has suffered many economic setbacks in the last few years. This home is located in a predominantly middle- and lower-middle class neighborhood of single-family homes of all sizes, generally in pretty good condition. Nearly two-thirds of the dwelling units were built before 1949. In 1980, about 15 percent of the neighborhood was Black.

This large, wood-framed house is located within four short blocks of the other group home this study examined in Jacksonville, site J-8.

GROUP HOME SITE: C-10, located in Champaign
SPONSORING AGENCY: Developmental Services Center of Champaign County

NUMBER OF RESIDENTS: 2
POPULATION SERVED: Moderately to severely retarded children, aged 7-14
STAFFING: Individual houseparent lives-in with relief on weekends

DATE OF OCCUPANCY: April 11, 1983
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 24 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	782		819	
Number of Sales	40	29	33	32
Annualized Turnover Rate	2.6%	1.9%	2.0%	1.9%
PROPERTY VALUES				
Mean Sales Price	\$37,613	\$37,110	\$31,573	\$33,305
Percent Change in Mean Sales Price	-1.3%		+5.5%	

COMMENTS:

The differences in the before and after mean sale prices were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

Located across from a public elementary school, this small, wood-framed bungalow is surrounded by similarly modest single-family houses in a lower-middle class, but stable neighborhood. This neighborhood is in the far northwest corner of Champaign, far from the University of Illinois.

There's been no neighborhood opposition to this home.

GROUP HOME SITE: C-11, located in Champaign
SPONSORING AGENCY: Champaign County Association for the Mentally Retarded

NUMBER OF RESIDENTS: 6
POPULATION SERVED: Four women and two men with mild to moderate mental retardation; age range: 23-46
STAFFING: 24 hour; shift basis; no live-in staff

DATE OF OCCUPANCY: May 14, 1982
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 24 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	1546		1046	
Number of Sales	106	115	75	68
Annualized Turnover Rate	3.4%	3.7%	3.6%	3.2%
PROPERTY VALUES				
Mean Sales Price	\$60,663	\$61,984	\$43,629	\$45,654
Percent Change in Mean Sales Price	+2.2%		+4.6%	

COMMENTS:

The differences in the before and after mean sale prices were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

The surrounding neighborhood features mostly medium and large single-family houses. Since it's fairly close to the University of Illinois, there is a substantial proportion of rental property in the neighborhood. Slightly more than two-thirds of the dwelling units were built before 1949.

The group home operated in this very large, wood-framed house for several years before the neighbors realized it is a group home. There's been no neighborhood opposition.

GROUP HOME SITE: C-12; located in Champaign
SPONSORING AGENCY: Developmental Services Center of Champaign County

NUMBER OF RESIDENTS: 2
POPULATION SERVED: Moderately retarded adult women
STAFFING: One live-in houseparent

DATE OF OCCUPANCY: April 1, 1982
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 24 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	440		1152	
Number of Sales	49	38	69	68
Annualized Turnover Rate	5.6%	4.3%	3.0%	3.0%
PROPERTY VALUES				
Mean Sales Price	\$41,374	\$41,987	\$51,572	\$57,598
Percent Change in Mean Sales Price	+1.5%		+11.6%	

COMMENTS:

The differences in the before and after mean sale prices were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

Located in the extreme southwest corner of Champaign, this small, wood-framed house is surrounded by similar modest single-family houses, nearly all of which are of fairly recent vintage. The 1980 census showed a 15 percent Black population.

There's been no opposition from neighbors. Residents have interacted with neighbors.

GROUP HOME SITE: C-13, located in Champaign
SPONSORING AGENCY: Developmental Services Center of Champaign County

NUMBER OF RESIDENTS: 2
POPULATION SERVED: Moderate to mildly retarded adult women
STAFFING: Married couple as live-in houseparents

DATE OF OCCUPANCY: July 25, 1983
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 24 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	1176		1152	
Number of Sales	81	100	59	75
Annualized Turnover Rate	3.4%	4.3%	2.6%	3.3%
PROPERTY VALUES				
Mean Sales Price	\$48,281	\$48,870	\$52,647	\$61,588
Percent Change in Mean Sales Price	+1.2%		+16.9%	

COMMENTS:

The differences in the before and after mean sale prices for the group home neighborhood were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

Located in the far southwest corner of Champaign, this medium-sized, wood-framed bungalow is surrounded by other modest single-family houses built during the last 30 years.

There's been no neighborhood opposition to this home.

GROUP HOME SITE: R-14, located in Rockford
SPONSORING AGENCY: Milestone, Inc.

NUMBER OF RESIDENTS: 8
POPULATION SERVED: Men and women with moderate to low-mild mental retardation, aged 18-30
STAFFING: 24 hour; shift basis; no live-in staff

DATE OF OCCUPANCY: February 14, 1983
NUMBER OF MONTHS STUDIED BEFORE AND AFTER: 24 months

DATA

	Site		Control	
	Before	After	Before	After
TURNOVER				
Number of Units in Area	429		664	
Number of Sales	15	26	34	59
Annualized Turnover Rate	1.7%	3.0%	2.6%	4.4%
PROPERTY VALUES				
Mean Sales Price	\$61,407	\$68,412	\$54,353	\$52,725
Percent Change in Mean Sales Price	+11.4%		-3.0%	

COMMENTS:

The differences in the before and after mean sale prices were not statistically significant. They are due to chance, not to the presence of a group home. See supra tables 1 through 4 and accompanying text.

Situated at the end of a dead end street, on the edge of an area of open space, this spacious brick ranch house is surrounded largely by modest, single-family houses built in the last 25 years. The west end of the neighborhood features larger homes of more recent vintage.

When the home first opened, only the tenants next door opposed it. Subsequent tenants do not object to the group home.

APPENDIX C: LIST OF CONTROL NEIGHBORHOODS

City and Site Number	Address of Center of Control Neighborhood	Months Studied Before/ After Date on Which Group Home Opened
CHICAGO		
CHI-1	4636 N. Western	12/12
CHI-2	2425 S. Springfield	12/12
CHI-3	2912 W. McLean *	12/12
CHI-4	2912 W. McLean *	12/12
CHICAGO SUBURBS		
Glenview G-5	277 W. Beverly	12/12
Mount Prospect MP-6	212 W. Shobonee Trail	12/12
Schaumburg S-7	520 Cambridge Drive	12/12
DOWNSTATE		
Jacksonville J-8	552 S. Hardin *	19/19
J-9	552 S. Hardin *	23/23
Champaign C-10	1404 Sunset	24/24
C-11	502 Columbia	24/24
C-12	1212 Western *	24/24
C-13	1212 Western *	24/24
Rockford R-14	4002 Buckingham	24/24

A five block radius around the group home and around the center of the control neighborhood was used for all downstate sites. A four block radius was used for the Chicago and suburban sites.

* A control area was used twice when it was the best match for two group home study areas in terms of the key characteristics used to select control areas. This practice does not confound findings because the data for each group home - control area pair was collected for different periods of time.

APPENDIX D: STUDIES ON IMPACTS OF GROUP HOMES AND HALFWAY HOUSES ON PROPERTY VALUES AND TURNOVER

I. DEVELOPMENTALLY DISABLED POPULATIONS ONLY

Studies that deal exclusively with group homes for developmentally disabled populations are:

D. Lauber, Impacts on the Surrounding Neighborhood of Group Homes for Persons With Developmental Disabilities, (Governor's Planning Council on Developmental Disabilities, Springfield, Illinois, Sept. 1986)(found no effect on property value or turnover due to any of 14 group homes for up to eight residents; also found crime rate among group home residents to be a small fraction of crime rate for general population).

L. Dolan and J. Wolpert, Long Term Neighborhood Property Impacts of Group Homes for Mentally Retarded People, (Woodrow Wilson School Discussion Paper Series, Princeton University, Nov. 1982)(examined long-term effects on neighborhoods surrounding 32 group homes for five years after the homes were opened and found same results as in Wolpert, infra).

Minnesota Developmental Disabilities Program, Analysis of Minnesota Property Values of Community Intermediate Care Facilities for Mentally Retarded (ICF-MRs) (Dept. of Energy, Planning and Development 1982)(no difference in property values and turnover rates in 14 neighborhoods with group homes during the two years before and after homes opened, as compared to 14 comparable control neighborhoods without group homes).

Dirk Wiener, Ronald Anderson, and John Nietupski, Impact of Community-Based Residential Facilities for Mentally Retarded Adults on Surrounding Property Values Using Realtor Analysis Methods, 17 Education and Training of the Mentally Retarded 273 (Dec. 1982)(used realtors' "comparable market analysis" method to examine neighborhoods surrounding eight group homes in two medium-sized Iowa communities; found property values in six subject neighborhoods comparable to those in control areas; found property values higher in two subject neighborhoods than in control areas).

Montgomery County Board of Mental Retardation and Developmental Disabilities, Property Sales Study of the Impact of Group Homes in Montgomery County (1981)(property appraiser from Magin Realty Company examined neighborhoods surrounding seven group homes; found no difference in property values and turnover rates between group home neighborhoods and control neighborhoods without any group homes).

Martin Lindauer, Pauline Tung, and Frank O'Donnell, Effect of Community Residences for the Mentally Retarded on Real-Estate Values in the Neighborhoods in Which They are Located (State University College at Brockport, N.Y. 1980)(examined neighborhoods around seven group homes opened between 1967 and 1980 and two control neighborhoods; found no effect on prices; found a selling wave just before group homes opened, but no decline in selling prices and no difficulty in selling houses; selling wave ended after homes opened; no decline in property values or increase in turnover after homes opened).

Julian Wolpert, Group Homes for the Mentally Retarded: An Investigation of Neighborhood Property Impacts (New York State Office of Mental Retardation and Developmental Disabilities Aug. 31, 1978)(most thorough study of all; covered 1570 transactions in neighborhoods of ten New York municipalities surrounding 42 group homes; compared neighborhoods surrounding group homes and comparable control neighborhoods without any group homes; found no effect on property values; proximity to group home had no effect on turnover or sales price; no effect on property value or turnover of houses adjacent to group homes).

Burleigh Gardner and Albert Robles, The Neighbors and the Small Group

Homes for the Handicapped: A Survey (Illinois Association for Retarded Citizens Sept. 1979)(real estate brokers and neighbors of existing group homes for the retarded, reported that group homes had no effect on property values or ability to sell a house; unlike all the other other studies noted here, this is based solely on opinions of real estate agents and neighbors; because no objective statistical research was undertaken, this study is of limited value).

Zack Cauklins, John Noak and Bobby Wilkerson, Impact of Residential Care Facilities in Decatur (Macon County Community Mental Health Board Dec. 9, 1976)(examined neighborhoods surrounding one group home and four intermediate care facilities for 60 to 117 persons with mental disabilities; members of Decatur Board of Realtors report no effect on housing values or turnover).

II. STUDIES COVERING ADDITIONAL SPECIAL POPULATIONS

Several studies covered the effects of group homes for persons with developmental disabilities and for other special populations, as well as halfway houses and foster care homes (other populations studied appear in parentheses). Using the same types of research techniques employed in the first set of studies above, these all found that the group homes and other residential facilities they examined had no effect on property values or turnover.

Suffolk Community Council, Inc., Impact of Community Residences Upon Neighborhood Property Values (July 1984)(compared sales 18 months before and after group homes opened in seven neighborhoods and comparable control neighborhoods without group homes; found no difference in property values or turnover between group home and control neighborhoods).

Metropolitan Human Services Commission, Group Homes and Property Values: A Second Look (Aug. 1980)(Columbus, Ohio)(halfway house for persons with mental illness; group homes for neglected, unruly male wards of the county, 12-18 years old).

Christopher Wagner and Christine Mitchell, Non-Effect of Group Homes on Neighboring Residential Property Values in Franklin County (Metropolitan Human Services Commission, Columbus, Ohio, Aug. 1979)(halfway house for persons with mental illness; group homes for neglected, unruly male wards of the county, 12-18 years old).

Tom Goodale and Sherry Wickware, Group Homes and Property Values in Residential Areas, 19 Plan Canada 154-163 (June 1979)(group homes for children, prison pre-parolees).

City of Lansing Planning Department, Influence of Halfway Houses and Foster Care Facilities Upon Property Values (Lansing, Mich. Oct 1976)(adult ex-offenders, youth offenders, ex-alcoholics).

One study grouped residential homes for all populations together with nonresidential human service facilities (such as job counseling, nursing homes, adult education and day care, and drug detoxification services). Using this broader group of human service facilities, it found that in Oakland, California, these facilities for adults had an adverse effect on property values in the nonwhite housing submarket, but a positive effect in the white submarket. It found that these facilities for juveniles adversely affected property values in the white submarket, but had a positive effect in the nonwhite submarket. Stuart Gabriel and Jennifer Wolch, Spillover Effects of Human Service Facilities in a Racially Segmented Housing Market 19 (March 1983)(available from Wolch, University of Southern California, School of Urban and Regional Planning, Los Angeles). This study is unique, not only for its findings, but for its methodology of segmenting the housing market by race.

The authors' methodology is radically different from that of the other

studies noted here. The other studies used a number of techniques which basically compared the sales prices (or a reasonable surrogate) for houses within a specific radius of a group home both before and after the group home opened. In addition, most of the other studies also compared these figures to sales figures for control areas with relevant characteristics nearly identical to the areas surrounding the group homes under study, except that there was no group home in the control areas (the more vigorous studies used regression analysis to control for extraneous variables). Gabriel and Wolch did not make these kinds of comparisons. Instead they examined property sales at a single point in time. The value of their study is to show that there is a **possibility** that human service facilities may have different effects in white and nonwhite housing submarkets. But because the study mixes residential and nonresidential facilities, its application to the question at hand - the effect of group homes on property values - is highly problematic.

III. STUDIES NOT COVERING HOMES FOR DEVELOPMENTALLY DISABLED

A third group of studies examined the effects of group homes and halfway houses only for populations that neighbors might view as more threatening than persons with developmental disabilities, such as prison pre-parolees, drug addicts, alcoholics, juvenile delinquents, and former mental patients. None of these studies could find any effect on property values or turnover.

Michael Dear and S. Martin Taylor, Not on Our Street 133-144 (1982)(group homes for persons with mental illness have no effect on property values or turnover).

John Boeckh, Michael Dear, and S. Martin Taylor, Property Values and Mental Health Facilities in Metropolitan Toronto, 24 The Canadian Geographer 270 (Fall 1980)(residential mental health facilities have no effect on the volume of sales activities or property values; distance from the facility and type of facility had no significant effect on price).

Michael Dear, Impact of Mental Health Facilities on Property Values, 13 Community Mental Health Journal 150 (1977)(persons with mental illness; found indeterminate impact on property values).

Stuart Breslow, The Effect of Siting Group Homes on the Surrounding Environs (1976)(unpublished)(although data limitations render his results inconclusive, the author suggests that communities can absorb a "limited" number of group homes without measurable effects on property values).

P. Magin, Market Study of Homes in the Area Surrounding 9525 Sheehan Road in Washington Township, Ohio (May 1975)(available from County Prosecutors Office, Dayton, Ohio).

Eric Knowles and Ronald Baba, The Social Impact of Group Homes: a study of small residential service programs in first residential areas (Green Bay, Wisc. Plan Commission June 1973)(disadvantaged children from urban areas, teenage boys and girls under court commitment, infants and children with severe medical problems requiring nursing care, convicts in work release or study release programs).

FOR AN UPDATED BIBLIOGRAPHY OF STUDIES

The Mental Health Law Project maintains an frequently updated annotated bibliography of studies on the impacts of group homes and halfway houses. Write to the Mental Health Law Project, Suite 800, 2021 L Street, NW, Washington, DC 20036-4909 (phone: 202/467-5730) for a copy. For ten cents a page, the MHLF will furnish a photocopy of any studies it has.

APPENDIX E: CRIMINAL INVOLVEMENT SURVEY

Please complete all items. Type or print legibly.
Please return the completed survey by February 26, 1986 to:
Planning/Communications • 1035 Dobson • Evanston, IL 60202

ALL QUESTIONS REFER ONLY TO THE YEARS 1983, 1984, 1985

ITEM 1

We need to know who you are so we can reach you for clarification and follow-up. Remember our data will be reported in gross figures so your agency cannot be identified in our final report.

- 1a) Sponsoring Organization: _____
1b) Name of person completing this survey: _____
1c) Phone number of person completing this survey: Area Code: ____ - _____
1d) City of Sponsoring Organization: _____

ITEM 2

In order to analyze our data, we need to know a little about the types of residential facilities you operate and the number of people who lived in them during each year.

TYPES OF FACILITIES:

"Independent Living Facilities" refer to living arrangements like HIP Homes and SLAs for 1 to 3 persons with developmental disabilities.

"Group Homes" for eight or fewer residents and for nine to 20 residents include CLFs, CRAs, ICF/DDs, SNFs and similar licensed group homes.

Type of Residential Facility	Number of This Kind of Facility Your Organization Operated in:			*Total Number of Individuals Who Lived in This Kind of Facility in:		
	1983	1984	1985	1983	1984	1985
Independent Living Facility [1-3 DD residents]						
Group Home (CRA) [8 or fewer DD residents]						
Group Home [9 to 20 DD residents]						

* Here we're asking for the total number of different individuals who lived in each of these types of facilities during each of the three years. For example, suppose you operate a group home for six persons. If, during the course of 1983, nine different persons with developmental disabilities lived in the home, nine is the total number of individuals who lived in this kind of facility in 1983.

- Survey continued on other side -

ITEM 3

We need to know how many residents of your residential facilities, if any, were involved in criminal activity. For each type of residential facility, please indicate the number of residents accused of a crime and the number convicted of a crime for each year.

For purposes of this survey, **accused** means any accusation even if charges were not filed.

If zero, fill in a zero - do not leave any boxes blank.

Type of Residential Facility	Number <u>Accused</u> of a Crime in:			Number <u>Convicted</u> of a Crime in:		
	1983	1984	1985	1983	1984	1985
Independent Living Facilities						
Group Homes [8 or fewer]						
Group Homes [9 - 20]						

ITEM 4

We need to know the kinds of crimes in which residents of the different types of residential facilities were involved each year.

SPECIAL INSTRUCTIONS:

Use the first table for residents of Independent Living Facilities only. The second table is for residents of Group Homes (CRA) for eight or fewer persons. The third table is for residents of Group Homes for nine to 20 persons.

If zero, fill in a zero - do not leave any boxes blank.

If you are uncertain of the definition of a particular crime, place a question mark in the **left hand margin** next to it and we will call you to explain it.

* If the same individual committed a type of crime more than once, count each offense as a separate offense. For example, if the same person was accused of theft three times in 1983, that counts as three thefts.

Tables for answering this item appear on the next two sheets.

FOR RESIDENTS OF INDEPENDENT LIVING FACILITIES ONLY

CRIME	*Number <u>Accused</u> of This Crime in:			*Number <u>Convicted</u> of This Crime in:		
	1983	1984	1985	1983	1984	1985
a) Murder						
b) Assault with a Deadly Weapon						
c) Burglary						
d) Theft						
e) Breaking and Entering						
f) Sexual Assault						
g) Rape						
h) Disturbing the Peace						
i) Drug Abuse						
j) Marijuana Possession						
k) Drunken/disorderly Conduct						
l) Destruction of property						
m) Other (specify):						

FOR RESIDENTS OF GROUP HOMES FOR 8 OR FEWER RESIDENTS ONLY						
CRIME	*Number <u>Accused</u> of This Crime in:			*Number <u>Convicted</u> of This Crime in:		
	1983	1984	1985	1983	1984	1985
a) Murder						
b) Assault with a Deadly Weapon						
c) Burglary						
d) Theft						

- Table continued on other side -

TABLE FOR GROUP HOMES OF 8 OR FEWER - CONTINUED

CRIME	*Number <u>Accused</u> of This Crime in:			*Number <u>Convicted</u> of This Crime in:		
	1983	1984	1985	1983	1984	1985
e) Breaking and Entering						
f) Sexual Assault						
g) Rape						
h) Disturbing the Peace						
i) Drug Abuse						
j) Marijuana Possession						
k) Drunken/disorderly Conduct						
l) Destruction of property						
m) Other (specify):						

RESIDENTS OF GROUP HOMES FOR 9 TO 15 RESIDENTS ONLY

CRIME	*Number <u>Accused</u> of This Crime in:			*Number <u>Convicted</u> of This Crime in:		
	1983	1984	1985	1983	1984	1985
a) Murder						
b) Assault with a Deadly Weapon						
c) Burglary						
d) Theft						
e) Breaking and Entering						
f) Sexual Assault						
g) Rape						
h) Disturbing the Peace						

- Table continued on next page -

TABLE FOR GROUP HOMES FOR 9 TO 15 - CONTINUED

CRIME	*Number <u>Accused</u> of This Crime in:			*Number <u>Convicted</u> of This Crime in:		
	1983	1984	1985	1983	1984	1985
i) Drug Abuse						
j) Marijuana Possession						
k) Drunken/disorderly Conduct						
l) Destruction of property						
m) Other (specify):						

THANK YOU FOR YOUR CANDID RESPONSES TO THIS SURVEY.
PLEASE RETURN THIS SURVEY IN THE ENCLOSED PRE-ADDRESSED
ENVELOPE (YOU MUST ADD POSTAGE) BY FEBRUARY 26, TO:

Planning/Communications • 1035 Dobson • Evanston, IL 60202

July 1, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415

Regarding: File Number CUP-2-20 request for Conditional Use Permit/Residential Care Facility in R-1 District

Dear Brookings Planning Commission,

I am writing in support of the request for a conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Construction to build a 14-bed residential assisted living home on Tax Lot 02200 in the city of Brookings.

I have known Brett and Aga for many decades and they are truly among the highest caliber of people we have in Curry County. In their individual business and personal pursuits each of them has excelled at providing quality products and services, high levels of customer satisfaction and stellar reputations that have customers waiting in line for both a BK Quality home or a visit to Vibrant Health Center.

In my line of work I often advise clients on retirement and long term care planning. With those lenses in place I can tell you there is a significant lack residential assisted living home options both in terms of capacity and diversity of services offered locally. This style of community integrated senior assisted living is a preferred alternative for many people making these important life decisions. I firmly believe that the high level of character and compassion that Aga and Brett bring to the table will be of great value to our community.

I understand that the proposed project by BK Quality Construction meets or exceeds all zoning and Brookings city ordinances currently in place. Given the history and reputation of BK Quality construction I have no doubt the project will be of the highest quality. I have in the past partnered with BK Quality Construction on numerous single family residential projects in our area and in each case the high level of craftsmanship and attention to detail has been evident.

Given all of the above, I enthusiastically urge you to issue approvals for this project

Sincerely,

Alan Nidiffer
PO Box 1405
Brookings OR 97415
(541)251-0145

From: Chelle Fraser [mailto:foxglovewellness@gmail.com]
Sent: Wednesday, July 01, 2020 8:39 PM
To: abaron@brookings.or.us
Cc: Agnieszka Kemp
Subject: Support for conditional use permit for Residential assisted living home

June 30, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415

Regarding: File Number CUP-2-20request for Conditional Use Permit/Residential Care Facility in R-1 District

Dear Brookings Planning Commission,

I am writing in support of the request for a conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Constructions to build a 14-bed residential assisted living home on Tax Lot 02200.

Since first meeting Brett & Aga Kemp three years ago, they have impressed upon me their profound level of personal integrity, their willingness to investment in and support the betterment of our community. Time and again they have shown such kindness and generosity towards the citizens in this town. They have shown the ability through their businesses and friendships that they are trustworthy, thoughtful and respectful stewards of their land, and businesses. I am confident they will do the same for this new project and be a conscientious and an amazing benefit to the neighborhood that they choose to host this project in.

The level of professionalism as it relates to business with Brett & Aga Kemp is one of the highest I have ever seen. Aga takes such special care of all her clients to, she is highly educated and yet takes all the time necessary to explain and listen to them with great patience and understanding. They are both some of the most compassionate people I have ever met.

The Lot, Zoning, and Home all fall within the brooking city ordinances with similar sites already approved in the city.

With all of the skills that Brett & Aga Kemp possess I think they will bring a successful model of integrating seniors back into private homes within our communities vs. segregation in institutions on the outskirts of town. This is one of the healthiest and safest models for seniors with disabilities.

Studies and statistics have shown, in comparison to large facilities, Residential Assisted living homes have better health and safety outcomes than Large Institutional settings.

Residents will be in a "Home" setting without long corridors, they will participate in family style dining, and have more personalized interaction. Living in a residential model style facility, residents show better cognitive function, are more engaged in socialization, exhibit higher emotional wellbeing, with less agitation, anxiety, and significant reduction in fall risk as well as better resident to caregiver ratios. This is what we should all want for our families and for the seniors of Brookings

This will not be a nursing or mental health facility with high needs and risk situations. It will not create any more traffic or noise than a large family home would. Senior group homes are good/Quiet/polite neighbors with low impact on the communities as residents do not have cars. The esthetics of this home will be a beautiful residential style home (designed by BK quality construction utilizing the greenhouse project suggestions for best safety and satisfaction outcomes), well maintained landscape and enhance the surrounding neighborhoods. From the outside it will appear just like a regular residential home.

Thank you, Sincerely,
Michelle Fraser CAM. Ayur.
816 ½ Pioneer Rd
Brookings Oregon
97415
541-254-3281

July 2nd, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415

Regarding: File Number CUP-2-20request for Conditional Use Permit/Residential Care Facility in R-1 District

Dear Brookings Planning Commission,

I am writing in support of the request for a conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Construction to build a 14-bed residential assisted living home on Tax Lot 02200.

I appreciate the opportunity to provide input for Brett and Aga Kemp on this proposal. When I first heard about this proposal, I immediately saw the value of providing seniors living space in a smaller residential setting, being closer to the communities they have lived in, and to thrive in the care of kind and compassionate people. I was also quite struck by the energy, vision, and enthusiasm from Brett and Aga towards creating this kind and compassionate vision in an area of significant need for our community.

I have had professional and personal experience with both Brett and Aga since I moved to the area 2 years ago and honored to consider them friends.

My experience with Aga has primarily been in relation to her Acupuncture practice, where I have found great assistance in addressing a personal health challenge over the last 2 years. Aga has demonstrated strong knowledge of a wide range of care modalities and has demonstrated continuous focus on additional learning and providing quality outcomes. I have found Aga to be highly compassionate, patient, and caring in my interactions with her. She is professional, organized, and focused on delivering quality care for a fair price in an underserved community. She is very skilled in creating and nurturing a network of people to draw upon for specific skill sets that greatly enhance quality outcomes. From my perspective, Aga has had a very positive impact on the community and for me personally.

I also engaged with Brett a year or so ago to consult on building a home on an open lot I have. As part of that engagement I also had the opportunity to see his high level of craftsmanship, attention to detail, and high level of integrity in how he operates his business. He took the time to assess the project and provided guidance on clear steps that I would be required to execute for a successful project, including providing references to assist in those activities. I found that he was professional, transparent, and realistic in assessing the best path forward as well as clearly seeing and calling out the challenges up front and ways to mitigate them.

As I have reflected on this letter, I've come to the realization that I really can't think of anyone I know that would be better positioned to realize this proposal than Brett and Aga, and to do so with high level of integrity, focus on high quality service and value, and compassionate leadership and care.

Sincerely.

Greg Winters
34807 Ophir Rd.
Gold Beach, OR 97444
greg.winters@protonmail.com
(541) 373-3266

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415

July 2, 2020

Regarding: File Number CUP-2-20 request for Conditional Use Permit/Residential Care Facility in R-1 District

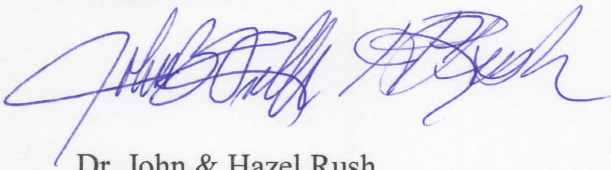
Dear Brookings Planning Commission,

I am writing in support of the request for a conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Constructions to build a 14-bed residential assisted living home on Tax Lot 02200.

I have known Brett Kemp since he was born. I saw him as a child, adolescent, student and young adult. He has a wonderful wife, Aga and a young child. The Kemp family has a long positive history in Curry County. Like those before him, he has all of the features of a young citizen that makes older people, like myself, believe that the future is in good hands. He was born in Curry County and is carrying on a family tradition of participation and leadership to improve our county. He is committed to achievement through work, integrity and responsibility. As a building contractor, he has been constructing the highest quality homes found anywhere in our county. His wife Aga, has a great deal of nutritional knowledge. She has a reputation for helping people with health problems that are founded in poor diet.

For these reasons, I can not imagine any couple that would be better suited to bring to life a high quality assisted living facility in our area. This type of facility is needed and the Kemps have the knowledge, skills and fine qualities to make us all proud that they have chosen Curry County to dedicate those skills to. We expect nothing less than an outcome as a "Premier" Residential Care facility.

Respectfully,



Dr. John & Hazel Rush
95386 Mountain Road
PO Box 1108
Gold Beach, OR 97444
541-698-7905

July 2, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415

Regarding: File Number CUP-2-20request for Conditional Use Permit/Residential Care Facility in R-1 District

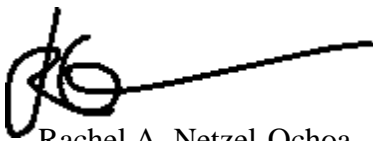
Dear Brookings Planning Commission,

I am writing in support of the request for a conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Constructions to build a 14-bed residential assisted living home on Tax Lot 02200. The proposed assisted living home is going to be just that, a home for those who need assistance and can no longer stay safely in their current home. It will provide a brilliant, safe, and healthy option for these individuals and their families.

I have known Agnieszka “Aga” Kemp for approximately two years in a professional and personal capacity. She is continuously striving for excellence in her professional practice in the community and brings a positive energy to everything she touches. The passion she infuses into her ideals of a better living environment for those who are aging with dignity, is admirable while being completely achievable and sustainable.

If this permit is granted, I firmly believe the Kems will bring a successful business to the community and bring with it a positive impact on the residents they provide services to. They will be fantastic and respectful neighbors to the surrounding residents to the facility.

Very Respectfully,

A handwritten signature in black ink, appearing to be 'RAO' followed by a long horizontal line.

Rachel A. Netzel-Ochoa

From: Sarah Sanders <ssacsanders@yahoo.com>
Date: July 2, 2020 at 11:18:13 PM PDT
Cc: aga@vibranthc.com
Subject: Regarding: File Number CUP-2-20 request for Conditional Use Permit/Residential Care Facility in R-1 District

July 02, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415

Regarding: File Number CUP-2-20 request for Conditional Use Permit/Residential Care Facility in R-1 District

Dear Brookings Planning Commission,

I am writing in support of the request for a conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Constructions to build a 14-bed residential assisted living home on Tax Lot 02200.

I've known Aga and Brett for several years, both professionally and personally.

They are hard working people of good character. Aga pours her heart into her work, and anything that Brett designs or builds is beautiful and well made.

I have no doubt that their vision for this home will fit well with the existing environment and be an example of upkeep and maintenance.

It would be such a benefit for our seniors to have a good option to remain in the community, belong to a neighborhood, and share in a family style living environment.

Aga and Brett are the definition of professionalism and integrity. I hope that you will look favorably on their request.

Sincerely,

Sarah Sanders

July 2, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415

Regarding: File Number CUP-2-20 request for Conditional Use Permit/Residential Care Facility in R-1 District

Dear Brookings Planning Commission,

I am writing in support of the request for a conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Construction to build a 14-bed residential assisted living home on Tax Lot 02200 in the city of Brookings.

My fiancé and I have had the privilege of knowing Brett and Aga Kemp for several years. In that time, we have come to realize that Brett and Aga are some of the most caring, passionate and talented people we know. We were thrilled to hear the dream and vision that these two share; to combine all of their great qualities to create an assisted living home that will provide an exceptional experience for their residents and be of great value to the entire Brookings community.

Brett and his team at BK Quality Construction will far exceed any expectations that the community has for this project. I have spent a majority of my life on construction sites coming from a family of residential builders and the work and craftsmanship that I see on their job sites is spectacular. Brett is very talented, and their track record and reputation speaks for itself. Brett will never create a home that he is not proud to put the BK Quality Construction home on.

Aga's passion to help people live a healthy life, has truly changed ours. We battled a frustrating health condition for a long time, and I believe that Aga's guidance was the difference in us overcoming this. Through this process we experienced a level of care and connection that we have never experienced before. It was as if Aga was on the journey with us, and she was going to be there with us until the end. Aga and the Vibrant Health Center continue to be an integral part of our ongoing journey of leading a healthy life and we are forever grateful for the impact she has had on our family.

Based on everything I have experienced with Brett and Aga over the last several years, they have demonstrated to be first class in every aspect. I could not think of a better team to create a residential assisted living home that is second to none in our beautiful area. From the architecture and craftsmanship to the overflowing passion to help people live a healthy life, this is a project that our community will be proud of for years to come. I would strongly encourage an approval for this project.

Sincerely,

Tony Jantzer
943 Overglan Dr
Brookings, OR 97415
jantzer@dutchbros.com
(541) 848-0824

Supplemental Planning Commission Packet - #2

July 7, 2020

7pm – Council Chambers

Attachment/ Page #	Date received:	From:	Description:
File No. CUP-2-20			
#F Pg. 1-5	July 7, 2020	Residents	Letters and emails in opposition of CUP-2-20 from: Alan Neerenberg, Stephanie Overbeck, Denise Ortega, Harvey Wolchuck
#G Pg. 6-13	July 7, 2020	Applicant	Neighbor Letter
#H Pg. 14-17	July 7, 2020	Applicant	Fair Housing Act and Americans with Disabilities Act Info
#I Pg. 18	July 7, 2020	Resident	Letters and emails in support of CUP-2-20 from: Heather Martinez
#J Pg. 19	July 7, 2020	Jim Watson Fire Chief	Letter addressing CUP Proposal

From: Alan Neerenberg [aneerenberg43@gmail.com] on behalf of Alan Neerenberg
Sent: Tuesday, July 07, 2020 10:27 AM
To: lziemer@brookings.or.us
Subject: CUP-2-20

As president of the Oceanside Homeowners' Association I object to CUP-2-20. I object for the following reasons:

1. West Cliff Dr. is too narrow to handle the increased traffic generated by the proposed facility and parking would be a problem.
2. The existing drainage which is proposed for use is inadequate, the pipes are too small. Heavy rains may lead to flooding of several houses in Oceanside Estates. Such Flooding would lead to lawsuits against the city.
3. It appears that the facility will take up more than 50% of the lot.
4. The peace and tranquility of the surrounding properties would be diminished.
5. Lighting the facility would be an issue with nearby residents.
6. Property values would decrease.

Please enter this letter of opposition into the public record for the meeting tonight.

Thank you,

Alan Neerenberg, President of Oceanside Estates Homeowners' Association

From: kai [jimandkai@aol.com] on behalf of kai
Sent: Monday, July 06, 2020 5:42 PM
To: lziemer@brookings.or.us
Subject: Against property at 17212 Paisley. brookings.

Ms lziemer:

As a resident, living approximately 200 yards from a proposed residential care facility, I am going to request one thing: come join me at 96406 Oceanside E dr, (my property) and look towards the proposed built site. You will note tall stately trees, inhabited by so many birds. So beautiful, but will be removed to accommodate this facility. Oceanside e has a natural pathway that passes thru that direction. Just imagine the constant stream of walkers passing my property Building a care facility is important, most likely needed, but not in a residential area. I am asking you and members of the Planning Commission to say No.

Please make this a public record.

Thank You,

Stephanie K. Overbeck. 7/5/20

July 7, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415

Regarding: File Number CUP-2-20request for Conditional Use Permit/Residential Care Facility in R-1 District

Brookings Planning Commission

This is in response to the staff report written by planning commission staff regarding the above conditional use permit:

I'd like to call the commissioners' attention to the 148 signatures we've gathered of Brookings residents in opposition to this proposed commercial facility. We are in opposition to CUP-2-20 primarily because the applicant wants to build on a rear flag lot with a narrow ingress; this seems inappropriate and a violation of current Brookings Municipal Codes and it is potentially hazardous to the proposed facility residents and to many of the current residents in the Dawson tract.

Beginning with **Criterion 1- Adequate Size and Shape**—Criterion 1 is **NOT MET**. The 15 foot wide ingress, of which Mr. Kemp proposes to pave 12 feet in width, is not safe for fire, ambulance and other emergency vehicles. It is not wide enough to safely access from S. Passley Rd. on the north. There will be fencing that separates it from West Cliff Dr. so there will be no access to that private lane and the turn from S. Passley Rd. will be too narrow and sharp to negotiate from the north. Vehicles will have to safe access from the south only. There is only one way into Dawson Rd from 101 and valuable time will be lost in an emergency call if vehicles have to circle Dawson then backtrack to S. Passley Rd. to access the ingress. BMC 17.172.061 B.2a. calls for a 20 foot minimum width access. To approve this ingress is a violation of this code. In regards to BMC 17.172.061 rear lot partitions and the 1992 planning commission staff finding at that time allowing the 15 foot ingress, it is highly doubtful that the planning commission staff at that time expected that there would be a CUP application for a 14 unit facility on this rear flag lot. This ingress does not meet the needs for this proposed commercial facility and to approve this could be potentially hazardous to all the area residents.

Additionally, the proposed off street parking area does not appear wide enough to drop off residents and turn vehicles around. This implies that the proposed plan anticipates having to back in/out of the ingress. BMC 17.92.100 A states "parking areas must be served by a driveway so there will be no backing movements"—this will be a violation of this code. If in fact the proposed structure is greater than 10000 square feet rather than the estimated 9588 sq ft then this permit is also in violation of 17.92.020 regarding off-loading. The current plan and property size is not adequate.

Criterion 2—Relation of Streets—NOT MET

Although S. Passley Rd. may have a 50' right-of-way, the current useable paved street area from Dawson Rd. to West Cliff Dr. varies in size from 18' to 26' wide only. There are many places where two lanes of traffic cannot pass each other. Except for the portion in front of Mr. Baron's home, sidewalks exist only on one side of S. Passley Rd., never both sides. This makes a hazardous walking area for current and future residents. There is no current appropriate ADA or wheelchair access to sidewalks without having to frequently cross the street. The Kemp plan also does not address pedestrian access from S. Passley Rd. down the 140 ft plus ingress to the facility. There are no proposed sidewalks. As the facility is planned "for adults who do not drive" this needs to be addressed. The ingress will be potentially unsafe for pedestrian residents.

The planning commission staff speculates that "there will be no significant impact" regarding traffic from staff, visitors and residents at this new facility but there is no evidence this is factual. There will most likely be times when parking needs to occur on the main street. There is no sidewalk on the front lot. Visibility may be obscured by parking on the street. **WE NEED A TRAFFIC STUDY TO EXAMINE THIS.** The staff report does not address potential main street parking problems. There are potential violations of 17.92.100 (A and E especially) and vision obstruction violations as cited in 17.128.040. **A TRAFFIC STUDY WOULD EXAMINE THESE POTENTIAL VIOLATIONS.**

Criterion 3—Neighborhood Impact—NOT MET

The staff report states that "residential care facilities are generally quiet in nature" and "day to day operations will have no adverse impact on the surrounding neighborhood." These are speculative not factual statements. There will be an adverse impact on property values. Realtor.com citing the American Community Survey says that a hospital in the immediate community decreases home values by 3%, a homeless shelter decreases by 13% and a concentration of rentals decreases home values by 14%.

The application by Mr. Kemp does not state what kind of adult residential care facility he is proposing. The application is too vague. The CUP is requested under 17.124.100 "churches, hospitals, other religious and charitable institutions", but then Mr. Kemp highlights the institution section in BMC 17.92.040 (referring to off-street parking) not for hospitals but for correctional institutions, nursing and rest homes and residential care facilities. Letters from his supporters refer to senior living facilities but this doesn't actually appear stated in his application. What kind of commercial facility is he planning to build?

The state of Oregon Dept of Human Services **requires** new construction residential care facilities to be licensed through them. As of last week, Mr. Kemp had not applied to DHS for a license. Is he planning an unlicensed, riskier facility? When he moves on what will this unlicensed 14 unit residence be used for? **WE STRONGLY URGE THE BROOKINGS PLANNING COMMISSION TO REJECT THIS CUP UNTIL OREGON DHS HAS APPROVED AN RCF LICENSE FOR KEMP CONSTRUCTION.**

Additionally **WE WANT AN IMPACT STUDY** to provide evidence that “the RCF will have no adverse impact on the surrounding neighborhood” as speculated in your staff report. The staff report also speaks to “incremental noise” from the facility—what will be the impact on the neighborhood of HVAC units running 24 hours a day, food and service delivery vehicles on the property, kitchen noises for feeding 14-18 residents plus staff and visitors, noise from emergency service vehicles at any hour of the day—all of this needs to be examined by an IMPACT STUDY.

Criterion 5—Comprehensive Plan—NOT MET

The properties in the Dawson Rd. tract are zoned R-1 single family residences. This CUP will allow a commercial enterprise to be built among single family homes. While there are some board and care residences in our neighborhood, they all appear as single family homes. This building will look like an institutional facility.

BMC 17.20.010 states the purpose for the municipal codes is to “promote and encourage a suitable environment for family living and protect and stabilize the residential characteristics of the community.” This commercial endeavor along with the possible acupuncture business implied by the “spa” room, changes and destabilizes our residential area. This small parcel of land contains one of the last old-growth areas of evergreen in the Dawson tract. It provides an environment for wild turkey, quail, owls, fox and deer. During the day neighbors come here from throughout the Dawson tract area to recreate and walk dogs. Building anything on this site will change the neighborhood; building a 14 unit commercial facility will destabilize our neighborhood and violate 17.20.010.

Finally the support letters for Mr. Kemp’s facility are quite warm and fuzzy, in speaking to his character but offer no factual evidence as to why this facility would be a safe and useful addition to our R-1 district. If in fact this type of facility is needed in Brookings it should be located closer to the downtown area for ease of transportation and access to shopping, healthcare and other services needed by the potential “non-driving” residents.

In closing, I urge the Brookings Planning Commission to reject this CUP until Mr. Kemp and his construction company have an approved license for an RCF by Oregon DHS. If this occurs, then I request both traffic and impact studies before this CUP is granted by the Brookings Planning Commission.

Sincerely,

Denise Ortega
96511 West Cliff Dr.
Brookings, OR 97415
541-254-9089

From: Harvey Wolchuck [harvw7@yahoo.com] on behalf of Harvey Wolchuck
Sent: Tuesday, July 07, 2020 3:19 PM
To: lziemer@brookings.or.us; Harvey Wolchuck
Subject: CUP-2-20

City of Brookings
Public Works and Development Services Department
898 Elk Drive Brookings, Oregon 97 415
CUP-2-20 Request for Conditional Use Permit for Residential Care Facility in R-1 Zone

I would like to express my complete disagreement with the prospects of allowing a fourteen (14) unit commercial, residential care facility in an R-1 Zone.

The planning Commission has a mandate to preserve the beauty of neighborhoods by encouraging homogeneous design techniques. This nearly 10000. square foot structure is anything but, being of a similar style. It's a very large imposing building not visually compatible with any of the 100s of homes in our community of Dawson.

By allowing a mega-structure which will cover approximately one-third of the lot's net area remaining, after allowing for a minimum twenty (20) foot all-weather access road complete with proper emergency vehicle turn-arounds at the parking lot. But this lot only has six parking spaces and only one of those is ADA accessible? This is a facility for elderly people and only one ADA space? Not good planning. What happens on a Sunday when only half of the residents may get a visitor. Seven more cars, plus a minimum of two staff for the residents and 3 other maintenance, cooks, housekeeping. This site is totally inadequate with only a FIFTEEN FOOT WIDTH DRIVEWAY, and inadequate health and safety standards for a building of this nature and for this purpose. If a fire truck entered, no other security vehicle or ambulance would be able to go directly to a potentially life threatening situation.

The residents of this facility, and the adjoining neighbors are being placed in a less than optimum situation.

Having such a large roof structure and parking lot surfaces will contribute to increased run-off and increased potential for infrastructure over-burdening. Shall this project be asked to contribute to storm drain and street improvements?

Also, the crime statistics are from 1983, 1984, and 1985??? 35 years, 36 years and 37 years old, REALLY? And they're from Chicago too. This is hardly relevant and should be discarded.

Also, there are letters in support of this project stating what a good guy the land developer is and so they believe that CUP-2-20 should be approved. Only problem is they live 35 miles away in Gold Beach. Nobody in this entire neighborhood and close community of Dawson believes this is the highest and best use of this land.

This project belongs in the commercial, apartment, industrial zone, NOT in an established residential community.

Please consider these and all my neighbors' concerns. You are in your position and charged with living up to our City Council mandate and preserve the integrity of our community and you are strongly encouraged to vote NO. It's the right thing to do.

Sincerely,

Harvey Wolchuck
96343 Dawson Road
Brookings, Or. 97415
(541)661-0251



Dear Valued Neighbors,

Recently, we have applied for a Conditional Use Permit for the property located at 17212 S, Passley Rd. You may have been recently made aware of this through the community letter sent out. It has been our goal as the purveyors of this property to be completely transparent with the community about this project and we welcome this opportunity to share with you the details as well as our intention and vision.

As longtime residents of Curry County who are invested in the health and success of our city, we understand that there are some concerns and questions that we are more than happy to address. We know that these concerns come from a mutual desire for the safety and livability of our community, concerns that we also share. We share your values, and this is why we chose this neighborhood and want the same thing for the disabled seniors of our community. What I would like to do in this letter is share with you an accurate representation of what this housing model looks like, how it can integrate into your communities, share who we are, and dispel some of the myths, assumptions and misconceptions that come before people get to experience what this project really is.

BK Quality construction has been building quality homes for over 10 years in our county and is known for his integrity and craftsmanship. Aga Kemp has been a holistic physician specializing in acupuncture and nutrition at her office, Vibrant Health center, for 7 years and has been involved in numerous

community projects. While this work has been rewarding, in 2019, we decided to embark on a different kind of build, more commonly known as a 'Residential Assisted Living' (RAL) home. There are many misconceptions and misunderstandings of what a RAL actually is. Below, we would like to share with you the details of this project, and how we believe it will be a support to our amazing community.

Perhaps more now than ever, we believe that seniors are an important part of any healthy community. Yet, the trends show that seniors with disabilities or who need assistance as they age struggle to find housing beyond traditional care facilities. As of late, these care facilities have come under scrutiny and have become unhealthy, unaffordable and in many cases, a danger to seniors. We believe seniors with disabilities or who need assistance are just as valuable and important part of the relationships, connections and cohesiveness of any community and deserve to stay in the neighborhoods they have lived in all their lives not be segregated to institution like settings on the outskirts of towns.

As a community we need to evaluate how we treat and address potentials for ageism and prejudices against the elderly and people with disabilities. Unfortunately seniors are aging very differently in the last 30+ years and over 69%, 2/3rds of seniors over 65, will need assistance with their activities of daily living and long term care.¹ In the future this includes many of us and our loved ones. According to an independent market study on assisted living done in 2019 for DHS, it was reported that Curry county has a shortage of beds. With our current trends we will be grossly under prepared to take care of our seniors over the next 10 years. For those seniors who cannot afford private in-house assistance, have families that do not have the time, or whose needs of the senior exceeds their resources, the options are extremely limited. Seniors with disabilities are plucked out of the neighborhoods and communities that they loved and created bonds with and moved to the outskirts of town's into large institutions that in no way reflects the type and quality of life that they have always known. This has many detrimental effects that I will discuss later. But with these statistics we are on track to have communities that no longer contain 2/3rds of our seniors in them. They deserve better and we can do better!



The role of seniors in our neighborhood is that of storytellers, historians, and offerings of wisdom, sometime spanning 4-5 generation. Traditionally in our culture it is these very seniors and their connection to our societies that completes the loop of a healthy community spanning from childhood, adulthood and elderhood.

From our children learning the value of service by mowing the lawn of their senior neighbor, to adults being inspired by 60+ year marriages and resilience through war and economic downturn. It is imperative, in order to have healthy communities, that we continue to engage invite and accommodate all seniors in our residential communities and provide them the housing they deserve.

It is important that we take a minute to step out of our fears and prejudices to consider what it is we want as a whole for the health of our society. In 1968 the fair housing act was enacted taking into consideration these very concerns. At a time when our nation was shifting, we observed that we had been fracturing and segregating huge parts of our society, out of unsubstantiated fears and prejudice, to those things that were not “familiar” to us. Around this time our seniors also started aging very differently than they have in the past and had began to have increased needs and disabilities. Many of them were not able to stay in their homes and many homes had become two party income earners because of financial need. We were losing family members to care for our seniors and we had nowhere to put them. This led to the unfortunate and devastating act of moving seniors with disabilities to mental health institutions. We had nowhere else to accommodate them.

Overtime this model has been somewhat adjusted with a few more upgrades but let’s not fool our selves that segregating seniors into the outskirts of town is an honorable model for our nation. If we close our eyes and think about how we would want to take care of our parents, how we would want to take care of ourselves, our children, don’t we all want the right to be able to stay an active an integrated senior in our neighborhoods? It is human nature is to fear new and unknown things but if you’re willing to be open for a few

moments let me share the vision of how it could be as well as what it will not be.

This model is called Residential Assisted living homes or RAL's. These are residential not commercial buildings. Our project will be a beautiful large residential home with well-maintained landscape to enhance the surrounding neighborhoods. The home, designed by BK quality construction, also integrates features from the greenhouse project that is a non-profit organization excelling in research and education for assisted living facilities that provide for best safety and satisfaction outcomes.

What will this really look like? These homes will be designed to be aesthetically pleasing to compliment the neighborhood, they will have beautifully maintained landscape, and they do NOT have dumpsters, commercial lighting, or noisy HVAC units.



There will NOT be frequent deliveries from commercial trucks, as we will feed our family the same way you do yours healthy, whole-food, home cooked meals, not processed foods from CISC trucks. We will grocery shop at Fred Meyer's, the farmers market and Costco just like everybody else and direct our purchases of supplies and food back to our very own community. One of the biggest contributions to illness and disability in the US is the low quality of our food and nutrition. Part of our model is to use food as medicine and deeply nourish our residents to contribute to their quality of life.

Because of their disabilities, seniors in this home will be provided services to assist them with their activities of daily living and needs. This will look like anywhere from 2 to 3 caregivers during the day and two at night on staggered shifts. There will be no large buses making regular visits for outings and by the very nature of the disabilities there is no need for access to public transportation. Any departures or travels, do to the nature of the disabilities, will be infrequent, and will be handled just like yours would, occasional trips to doctor or visits to friends and family. This is not a nursing home or hospice care and will not have frequent ambulance or fire truck visits. Arrangements can also be made with local authorities to turn sirens off in the case of a rare visit.



This house will incur no more traffic than a large family household. This is an assisted living home for seniors with disabilities; therefore, our residents do not have cars and do not drive. Elderly residents are low impact residents. The average resident in assisted living is an 86 year widow and is quiet, and most likely go to bed long before the rest of the neighborhood. They are not playing loud music, throwing, bouncing balls in the driveway and they are not adding traffic to the community.

Secondly, as unfortunate as it is, many of the seniors do not have frequent visitors as their family's time and resource restrictions are the preceding factors as to why the seniors are in a RAL's in the first place. However, if there is any additional traffic, i.e. Mother's Day or Fourth of July it would be no different than if one of our valued neighbors had extended family come to visit or throw a barbecue with numerous friends for a day. Our home will have 6 dedicated parking spaces that will accommodate the 2-3 employees that will be present at any given time as well as 3 guests' spots. Brookings city ordinances requires that RAL's have 1 parking space per 5 beds in order to accommodate traffic needs. These city ordinances are created and based from

thorough research and experience in city planning and development and can be trusted. We have doubled the required number of parking spaces required by the city to accommodate any occasional increase in visitors.

In addition to being low impact on communities, studies have shown that group homes for the disabled do not reduce property values or stability of the surrounding neighborhood. See attached Lauber, D, "Impacts on the Surrounding Neighborhood of Group Homes for Persons with Developmental Disabilities" (1986).

RAL homes have a proven track record that has far better outcomes across-the-board in safety, health and quality-of-life than the institutional models.ⁱⁱ In comparison to large facilities, Residential Assisted living homes have better health and safety outcomes than large institutional settings. Residents will be in a "Home" setting without long corridors, they will participate in family style dining, and more personalized interaction. In a RAL model statistics show better cognitive function, more engagement in socialization, higher emotional wellbeing, less agitation, anxiety, and significant reduction in Fall risk as well as better resident to caregiver ratios. A notable finding from the CDC is that resident in small facilities are much less likely to fall than residents in large facilities.ⁱⁱⁱ This is very important because falls are the leading cause of fatal and non-fatal injuries for older Americans.^{iv} If you truly want what is safest for our seniors with disabilities this is it. This is what WE want for our families and for the seniors of Brookings



Bringing seniors back into our communities involves us taking a look at our current practices and beliefs systems around “Elderhood”. We have partnered ourselves with a phenomenal nonprofit, The Eden Alternative, whose sole purpose is to develop trainings and education to integrate seniors back into our communities and solve the epidemic of loneliness, isolation and boredom within our senior populations. It IS an epidemic, hidden away on the outskirts of town, and it is our responsibility as a community and culture. This model of residential assisted living can beautifully bridge the gap and offer solutions for many of these challenges in a way that benefits all that are involved.

Lastly, what we really want to convey to you is that this is not a business for us, this is a calling. Two years ago when we were suddenly faced with two dear family members in trouble, a senior aunt with accelerating mobility issues and a grandfather with a stroke, we were dismayed and startled by what may lay ahead for them with the assistance they would need that was outside of our abilities. I believe this model was brought to answer our prayers and would allow us, Brett and Aga, to merge both of our talents (Health practitioner and General contractor) into a powerful vision of service that would not only help us take care of our loved ones but our communities as well.

You our dear neighbors will look across the street and see a beautiful quiet home that is offering a very needed and honorable service to our community. We hope that this detailed information has helped to alleviate any fears and misconceptions you mayt have had and instead of asking yourself “why my neighborhood?” I invite you to consider the question “why not this neighborhood?” And consider all the good and fulfillment that could come with that.

Thank You,

Aga Kemp and Brett Kemp

References

ⁱ Kemper, Komisar and Alecxih, Long-Term Care Over an Uncertain Future: What Can Current Retirees Expect? *Inquiry* 42: 335-350 (Winter 2005/2006).

ⁱⁱ See Zadelhoff, Ezra Van, et al. "Good Care in Group Home Living for People with Dementia. Experiences of Residents, Family and Nursing Staff." *Journal of Clinical Nursing*, vol. 20, no. 17-18, 2011, pp. 2490–2500; Wrublowsky, R. "Design Guidelines for Long Term Care Homes," 2018 Edition.

ⁱⁱⁱ *Variation in Residential Care Community Resident Characteristics, by Size of Community: United States, 2016*.

^{iv} <https://www.ncoa.org/news/resources-for-reporters/get-the-facts/falls-prevention-facts/>

^v See Fair Housing Amendments Act ("FHAA"), 42 U.S.C. § 3604(f)(1), which make it unlawful:

To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of —

(A) that buyer or renter

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

^{vii} 42 U.S.C. § 3604(f)(3)(B). *See also, e.g., McGary v. City of Portland*, 386 F.3d 1259, 1264 (9th Cir. 2004); *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir.1994), *aff'd*, ___ U.S. ___, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995) ("Congress intended the FHAA to protect the right of handicapped persons to live in the residence of their choice in the community.")

The following guidance summarizes the Fair Housing Act (FHAA) and Americans with Disabilities Act (ADA)

- *What is the Fair Housing Act Amendment? How it protects developers of projects?*
- *How does the ADA apply to senior housing situations?*
- *What are the protected classes of individuals under the FHA?*
- *Senior Group Homes under the FHA.*
- *State and Local Governments Role in Supporting the FHA.*



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

*Washington, D.C.
November 10, 2016*

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION OF THE FAIR HOUSING ACT

INTRODUCTION

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the Federal Fair Housing Act (“the Act”),¹ which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.² The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

- **FHAA Overview**
 - The FHA and the ADA are the two main anti-discrimination statutes that affect senior living providers/Developers. The Fair Housing Act (FHA) was originally passed as Title VIII of the Civil Rights Act of 1968 and prohibits discrimination in the sale or rental of housing. It was amended in 1974 and 1988 and, as amended, the FHA makes it illegal to discriminate in the terms, conditions, or privileges of the sale or rental of a dwelling or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, national origin, or handicap/Disability. 42 USC Section 3604. As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.
- **The Americans with Disabilities Act**
 - The ADA was enacted in 1990 and specifically prohibits discrimination on the basis of disability in employment, state and local government activity, public accommodations, commercial facilities, and telecommunications. The ADA definition of disability is the same as under the FHA. The ADA applies in places of “public accommodations operated by private entities.” The ADA defines a place of public accommodation as a facility whose operations affect interstate commerce and includes an inn, hotel, motel, or other place of lodging, which denotes a shorter duration of occupancy than does “residence.” A senior citizen center or other social service center, and other service establishments, such as professional offices of a health care provider or hospital, are also considered places of public accommodations. In addition, long-term care organizations and nursing homes are expressly covered by ADA regulatory guidelines. Properties that are purely residential (like senior apartments with no services) will fall under the Fair Housing Act’s disability discrimination provisions rather than the ADA.
 - Where a retirement community has elements that include both residential dwellings and service facilities or other areas that may be considered public accommodations, such as life plan communities, a hybrid analysis under both the FHA and ADA should be applied.
- **Who qualifies as a person with a disability under the Fair Housing Act?**
 - The FHA identifies seven protected classes. Handicap (or more commonly called disability) applies most often in the senior housing context. The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such

- an impairment; and (3) individuals with a record of such an impairment
 - The term “major life activity” include activities such as seeing, hearing, walking, breathing, performing manual task, caring for ones self, Learning, speaking and working. This is not an exhaustive list.
 - **Supreme Court’s ruling in *Olmstead* apply to the Fair Housing Act**
 - In *Olmstead v. L.C.*,¹⁰ the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs.
- **What is a group home within the meaning of the Fair Housing Act?**
 - The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways.
 - The term “group home” does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities
 - In this Statement, the term “group home” refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit.
- **State or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its**

zoning or land use laws respecting housing? Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?

- Congress understood that one of the central problems for the establishment of group homes is baseless hostility on the part of neighbors and even local governments themselves. It manifestly intended, therefore, to preempt state and local laws that effectuated or perpetuated housing discrimination. The House Judiciary Committee said that: The FHAA, like Section 504 of the Rehabilitation Act of 1973, as amended, is a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.
- In the same way a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision makers themselves do not have biases against persons with disabilities.
- When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

REFERENCES

1. <https://www.justice.gov/opa/file/912366/download>

June 30, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415

Regarding: File Number CUP-2-20request for Conditional Use Permit/Residential Care Facility in R-1 District

Dear Brookings Planning Commission,

I am writing in support of the request for a conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Constructions to build a 14-bed residential assisted living home on Tax Lot 02200.

I have had the pleasure of knowing Brett and Aga both professionally and personally for the last ten years. I have had the opportunity to work with each of them in different capacities, I have witnessed the professionalism, integrity and success of each of their different businesses, their positive impact on the communities and will definitely support this new endeavour.

Brett has grown up in Curry County and has family ties dating back 100 years. He is embedded and invested in this community. His company BK Construction builds beautiful custom homes and will be an asset to the community he builds into.

As a health practitioner Aga is also invested in the health and well being of our community and has supported many community projects. She brings immense knowledge of health and nutrition and will incorporate these into the lives of our residents. She has an insatiable thirst for knowledge and goes above and beyond to make sure she understands all the facets of the business and will make sure the home is ran properly and with the utmost care and competency,

Being a health care worker in private homes and in a local facility I have many thoughts on how our elders can be better served. I have seen how the current model is failing our seniors and witnessed first hand many situations I believe will be addressed in this new model. including staffing to resident ratio, nutrition, socialization and health and well being. I also believe seniors are better served integrated in our neighborhoods and communities

I hope to be a part of this amazing vision and to see it come to fruition for the betterment of our community and our loved ones as someday we may be faced with this choice and I sure know what model I would choose.

Sincerely,

Heather Martinez
Gold Beach Oregon

Tony Baron

From: Jim Watson [jwatson@brookings.or.us] on behalf of Jim Watson
Sent: Tuesday, July 07, 2020 4:21 PM
To: abaron@brookings.or.us
Subject: CUP 2-20

Tony,

After looking over the area map for the proposed 14 bed facility at 17212 South Passley Road, that with the type of proposed occupancy, a 14 bed residential care facility and with the 15' road width, that per the, OFC 2019 edition, Appendix D, Fire Department Access Roads, that the road can be narrowed to 15' instead of the require 20-26' per the Authority Having Jurisdiction (AHJ) by requiring the building to be sprinkled. If this is met then the Fire Department would recommend the Change of Use.



James Watson
Operations Fire Chief

[City of Brookings](#)

898 Elk Drive | Brookings, OR 97415



(541) 469-1142



(541) 469-3650



jwatson@brookings.or.us

----- Forwarded message -----

From: **Dave** <shadav@charter.net>

Date: Sat, Jul 25, 2020, 10:28 PM

Subject: DAWSON TRACT FAMILY RESIDENTIAL DISTRICT R-1-6

To: analls@brookings.or.us <analls@brookings.or.us>

Cc: jpieper@brookings.or.us <jpieper@brookings.or.us>, balcorn@brookings.or.us <balcorn@brookings.or.us>, jmckinney@brookings.or.us <jmckinney@brookings.or.us>, bhodes@brookings.or.us <bhodes@brookings.or.us>, rhedenskog@brookings.or.us <rhedenskog@brookings.or.us>, jhoward@brookings.or.us <jhoward@brookings.or.us>

RE: 17121S. Passley Rd.

Brookings, OR97415

Here we go again. Evidently, NO, does not mean NO! My wife and I reside at 96510 Susan Place, Dawson Tract, Brookings, OR. We were just asked to sign another petition to disallow Brett Kemp and his wife from building a commercial enterprise in our residential family neighborhood. We gladly signed and also offered to help do whatever we need to, to prevent this rezoning and building project from moving forward.

I have done some investigating in regards to the Kems, who are trying to lower our property values and destroy our beautiful quiet area for their own greed! After some preliminary inquiry, I am stating that the Kems have lied and are trying to deceive us for their own self-interests. Kemp's got a deal on some property and want to turn it into a goldmine for themselves. They wouldn't make as much money building a couple of homes on that property, if they could even sell them. These are flag lots, folks aren't too hot on that. So they want to rezone and build a commercial entity that will give them an income forever. We have no problem with that just don't build it our back yard! We have to live with the results.

We want to know **EXACTLY** what they are proposing to put on that property! I know it is not going to be as they have presented it. I think it is going to be a continuation of one of the LLC's they have in Gold Beach. That business is called "THRIVING LIFE COMMUNITY"!! (<https://thrivinglifencv.org/partner-with-me/donate/>) Upon checking this business and finding it is for people with mental health issues called NVC! Non-Violent Communications. This is a Portland enterprise run by Victoria Lynn Miller. There is another person, Fred Sly, involved with this business that also has a Portland address, and he "trains" others to work with people that are coming out of the prison systems, etc.. and can't control themselves. I'm gaining more info as I go along. If this is so, one of my questions is.....as a non-profit business (tax exempt), WHO IS PAYING THE BILL FOR THIS, the State of Oregon?? They ain't running it for free!. If it's not this business than what is it REALLY?? We don't need this crap in our area. My advise to the Kemp's.....build homes, or sell the property to someone else and cut your losses, or go bankrupt again, but move on and let us live in peace. Think about ours lives. Your web site says what an ethical good person you are, prove it. Here is the Oregon Business Registry filed 1/2020, http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.show_det?p_be_rsn=2103925&p_srce=BR_INQ&p_print=TRUE, with a Brookings mail box. You tell me.

Dave and Sharon Bergmann

shadav@charter.net

From: Ted Wieden [mailto:jtwieden@gmail.com]

Sent: Sunday, August 09, 2020 11:29 AM

To: jpieper@brookings.or.us; jhoward@brookings.or.us; balcorn@brookings.or.us; bhodges@brookings.or.us; rhedenskog@brookings.or.us; jmckinney@brookings.or.us

Cc: Shannon Christopher; lziemer@brookings.or.us

Subject: Appeal File Number APP-1-20 for a Conditional Use Permit CUP-2-20

August 9, 2020

Esteemed Council Members,

Please record this letter as opposition to the Conditional Use Permit for a 14 unit adult residence facility located at 17212 S. Passley Road, Brookings. We are the long-term owners of one of the five contiguous lots with significant shared boundary to the project site (specifically lot 5316 off Oceanside Drive).

While I commend planning staff for their efforts to demonstrate how this project might be consistent with the relevant sections of the Land Development Code, as a former Senior County Planner, I offer the following reasons to deny this permit:

- The proposed use will require a 24/7 operation which is inconsistent with the local R-1 zoning and the surrounding, residential neighborhood.
- Development projects typically underestimate the impact on local traffic. In a neighborhood where children still walk to school, any increase in traffic, beyond that from the zoned R-1 development, would jeopardize children and other established residents.
- Nights in this neighborhood are delightfully dark; dark enough to enjoy star-gazing and sleeping. The proposed development would require security lighting and its associated adverse impact to the residential neighborhood.
- Of particular concern is access via a substandard flag lot. Narrow access for emergency vehicles, delivery vehicles and visitors poses a danger to local residents as well as workers and visitors.
- Other residential care facilities in this general area are conducted within existing single-family homes. As such, the size of the proposed 14 unit facility makes it inconsistent with the local neighborhood, creating a visual eyesore.
- At this time, there is no access to public transport in this general area. This could lead to increased pedestrian traffic without sidewalks - a significant potential hazard both at night and on very foggy days.

For these and other reasons articulated by other residents in this neighborhood and by the Brookings Planning Commission, I urge you to follow the spirit of the land development guidelines for Brookings. We request that you uphold the leadership shown by the Brookings Planning Commission and deny this application for a Conditional Use Permit. Although neither my wife nor I will be able to attend the City Council meeting on August 24, 2020, we wish to register our opposition to the proposed development.

Respectfully,

Frederick T. and Jeanie J. Wieden
Owners of Oceanside East Lot 5316

From: Denise Ortega <denisekerfoot@gmail.com>

Sent: Tuesday, August 18, 2020 12:14 PM

To: [jpierper@brookings.or.us](mailto:jpieper@brookings.or.us); balcorn@brookings.or.us; bhodges@brookings.or.us; jmckinney@brookings.or.us; rhedenskog@brookings.or.us; jhoward@brookings.or.us; analls@brookings.or.us

Subject: Please reject APP-1-20

Regarding: File Number APP-1-20, appeal for request for Conditional Use Permit/Residential Care Facility in R-1 District

Mayor Pieper, City Manager, and City Council members:

We are writing this to request that you uphold the City of Brookings Planning Commission decision from July 7, 2020 to deny CUP-2-20 for BK Quality Construction and Brett and Aga Kemp to build a 14 unit residential care facility at 17212 S. Passley Rd., Assessor's Map 4014-36BA, Tax Lot 02200.

We are an R-1-6 district, a single family residential neighborhood in a designated single family home zoned tract. We and our neighbors in the Dawson Rd. tract have intentionally purchased here because this is designated as single family and we do not wish to have a large commercial property in the center of our residential neighborhood.

Make no mistake; the Kems are planning a commercial business property based on real estate seminars from Residential Assisted Living Academy and others who propose starting an RAL in a residential community as a way to create a very lucrative business. If you track the credentials of the Kemp's attorney, Michelle Pinkowski, you can find her affiliations through RALNA (Residential Assisted Living National Association) with the likes of real estate developers and attorneys Gene Guarino and Clint Coons among others. They all propose how to start a business, but call it "a residence" and then claim a community cannot fight it because of Adult with Disabilities laws and Fair Housing practices. But again, make no mistake—this is a BUSINESS facility concerned with making a large income, not with housing disabled seniors.

Here are some interesting video links with some of their recommended language to convince neighbors and city councils. Please consider viewing these before the August 24, 2020 City Council meeting:

<https://www.youtube.com/watch?v=XZpjShHdLqM>

"How Can You Make Money in Residential Assisted Living?" Gene Guarino

<https://www.youtube.com/watch?v=BxKCzeI68b8>

"How To Start a Residential Assisted Living Facility Business (Cover Your ASSETS!)" Clint Coons

On transportation <https://www.youtube.com/watch?v=h3iPW7MyLoE>

"Do You Provide Transportation?" Gene Guarino

On feeding residents <https://www.youtube.com/watch?v=DJ-WcDbx0sA>

"Feeding Residents in Residential Assisted Living" Gene Guarino

We encourage you again, please, to view a few of these. You will find this is the basis for the language Aga Kemp used in her presentations to the Planning Commission.

While the Kems have a right to create any legal business they choose, we in the Dawson tract do not want this large commercial venture in the heart of our single family residential district. If they want to build this facility there are plenty of properties available in Brookings downtown area, closer to medical facilities, shopping and other services.

Again we and our neighbors ask you to respect the Planning Commission's decision to reject the Kemp proposal as nothing in the appeal has changed the facts that the CUP failed on Criteria 1: the lot is not adequate for the size of this commercial building, Criteria 2: there is not the minimum driveway width for commercial traffic, and Criteria 3: this commercial facility is incompatible with adjoining properties.

This is a single family residential district and we urge you to keep Dawson tract and South Passley Rd. this way.

Thank you.

Denise and Victor Ortega
96511 West Cliff Dr.
Brookings, OR 97415
(541) 254-9089

From: Shannon Christopher [mailto:shannonmchristopher@gmail.com]

Sent: Tuesday, August 18, 2020 2:35 PM

To: jpieper@brookings.or.us; jhoward@brookings.or.us; balcorn@brookings.or.us; bhodges@brookings.or.us; rhedenskog@brookings.or.us; jmckinney@brookings.or.us; lziemer@brookings.or.us

Subject: Appeal File Number APP-1-20 for a Conditional Use Permit CUP-2-20

18 August, 2020

Brookings City Councilors and Planning Commissioners,

Regarding the appeal to obtain a conditional use permit by BK Construction to build a 14 unit RAL in the heart of the Dawson Tract neighborhood:

There are several major issues, not only discontent of the surrounding property owners in this R-1 zoned neighborhood, but with logistics of this particular lot being the site of such a large building.

The night of the Planning Commission meeting on July 7, 2020 was the first time the plans for the specific type of facility were made known as presented by Aga Kemp to the community. The Kemps are filing grievance that those of us in opposition to the build are prejudiced and discriminatory against seniors with disabilities. This is unfounded as the neighborhood was not made aware of the Kemp's business intent until the meeting was under way.

As I am sure you have been made aware, is the reduced width of the driveway that was grandfathered in for this lot in the early 1990's. It is barely 15' wide and will become even narrower with curb and gutter considerations. It is not an appropriate or safe width for a commercial business supporting staff, vendors, emergency vehicles and visitors. If you have not driven by the proposed site, I urge you to go take a look at it before the appeal meeting on 8/24. Even the planning commissioners stated that this grandfathered easement be reviewed.

The drainage and runoff expected to be generated from a roofline on a nearly 10k square foot building will pose a large water problem for the residents on the cul du sac on Oceanside East Drive. The newest complete home on lot 5319 had to build a culvert under their back yard and a french drain that diverts some of the flow to the street to redirect the runoff that comes from the West Cliff storm drain, which the proposed build will dump into. In previous years the home on lot 5320 has flooded due to this runoff. A large 14 bedroom building is going to have a direct impact on water draining into this system that is already overtaxed.

To approve this type of business to be built on this particular lot will change the entire neighborhood. Why not create a park or an open space? We don't have an allotted space like that in this neighborhood.

The neighbors of Dawson Tract request water, drainage, street, and traffic impact studies. This should include speaking to surrounding property owners about current issues.

It is my understanding that municipal codes are in place to maintain and protect the integrity of the city and it's neighborhoods. Approval of this conditional use permit to create a for profit business such as a residential assisted living facility in the heart of a neighborhood such as the Dawson Tract, disregards the basic idea of why municipal codes are created in the first place.

We strongly urge you to deny the request for this CUP by Mr. and Mrs. Kemp and BK Construction.

Thank you.

Shannon M. Christopher and Dewayne Conner (owners)
96418 Oceanside DR E
Brookings, OR 97415

From: brendansky@aol.com <brendansky@aol.com>

Sent: Tuesday, August 18, 2020 3:32 PM

To: jhoward@brookings.or.us

Subject: City Council Meeting, August 24th

Greetings...

This email is in reference to the agenda item regarding 17212 S Passley, for the Monday, August 24th meeting.

I'm **BEGGING** you and anyone else that may be involved in the decision about the appeal to PLEASE be sure to go and look at the property in person before the meeting. It's about 7 minutes or less from City Hall. You may have trouble finding the location. The narrow "driveway" access to the property is directly behind the mail boxes at that corner of Passley and West Cliff, and you have to go on the dirt and weeds past the garage and fire hydrant and mail boxes there to the lot with a lot of trees behind the house near the mailboxes. Picture that narrow driveway with a fence and landscaping as mentioned in the letter dated July 13th from The City of Brookings.

I'm still shocked that the Fire Marshall signed off on such a location for such a business considering the access. And, also shocked that according to what we heard at the Planning Commission meeting that nothing at that corner needed to be changed if they were going to build??? Not even curbs and sidewalk right at that corner??

Also, if you could take the time to look at just a few minutes of this video, starting at the 5 minute, 46 second mark, you'll see how/why the owners probably selected this property.

<https://www.youtube.com/watch?v=MvZXOI6FlyQ>

That side of the Dawson tract is high end homes that match the suggested "reasons" and "location location location" for such a business.

I'm sure lots of things will be brought up at the meeting on Monday, but if you haven't seen the property in person, a lot of things brought up will not make any sense based on seeing the lot on paper or in photos.

I'm pretty sure audience members won't be allowed to ask the builder/owner any questions. If it's "legal" could someone on the Council ask them how many of these businesses they own? Rumor around the neighborhood is they own some, and at the building department meeting, it was insinuated they would be hands on running this one.

I want the Dawson Tract to remain a single family residential (R-1-6) district. If 17212 S Passley is allowed to be a business with 14 residents, all the available lots in the Dawson Tract could turn into the same type of businesses. And, imagine the "rent" per room if someone buys an Ocean View lot.

Thanks~Hope to see you at the meeting. I'm signing up to speak.
Brenda Cox

August 18, 2020

To: Brookings Planning Commission

Subject: File No. CUP-2-20, Appeal of Decision submitted by Kemp

Contrary to what Kemp has stated in his Appeal, you did NOT err in your decision to deny a conditional use permit (CUP) for the 14 unit care facility. Your decision was well thought out and correct.

Kemp identifies 3 criteria in his appeal.

Criteria 1 has to do with including the area for access to the flag lot as part of the buildable space. Access to a flag lot is not part of the buildable space. It is there to access the buildable property. Kemp's argument that it should be included is without merit. The fact is that the proposed facility is too large for the lot.

Criteria 2 has to do with use of the existing streets. Kemp states that "... Supplies will be provided in the same methods as for other residential homes..." That is simply false. Providing food and care for 14 people (plus care givers) on a half-acre lot cannot be done in "the same methods" that everyone else in the Dawson tract obtains supplies. Another false statement that Kemp makes is that the traffic associated with the proposed care facility "... will be consistent with any other large residential home traffic in the neighborhood..." That is impossible. There are not any residences in the area with that many people. The roads servicing the proposed care facility are NOT adequate to handle the increase in traffic that the proposed facility will generate. We need to look to the future. More homes (that comply with the Zoning) will be built. There will be more traffic. The roads in the Dawson tract were not designed to handle the traffic associated with a 14 unit residential care facility.

Criteria 3 has to do with Neighborhood Impact and consistency with the Zoning. Kemp's proposal is not well thought out. He seems to think that a "...significant green buffer around most of the proposed property..." makes it acceptable. By proposing to build a facility that is too large for the site, it is obvious that no thought has been given about landscaping and how to blend into the neighborhood. The proposal is not consistent with the Zoning. That is why Kemp had to apply for a CUP. If a CUP is to be permitted there must be restrictions, improvements made to the infrastructure, and detailed plans developed. The plans need to be approved before the CUP is approved and any dirt disturbed.

Kemp has not presented any reasons why you should reconsider your decision to deny a CUP. The facts remain the same. The proposed facility is too large for the buildable property and it is not consistent with the Zoning. The increase in traffic that the proposal will generate is unacceptable; particularly, as more houses are built. There definitely would be an adverse impact to the neighborhood. Please stick with your decision and deny Kemp's appeal.

Thank you.

Aaron G. Horton

96405 Oceanside Drive E., Brookings, OR97415, 541-301-1645

**Mark and Judy Williams
96424 Oceanside Dr E.
Brookings, OR 97415**

July 6, 2020

City of Brookings
Public Works and Developmental Services Dept.
898 Elk Drive
Brookings, OR 97415

Re: File # CUP-2-20 request for CUP / Residential Care Facility in R-1 zoned district in the Dawson Tract

Dear Planning Commissioners:

We are writing to advise you that we are diametrically opposed to having a residential care facility located adjacent to our neighborhood for several reasons as follows:

1. Locating a residential care facility in this neighborhood would pose dangers to its resident due to inadequate sidewalks.
2. There are zero amenities in this little area for the residents of the RCF to utilize. There are no grocery stores, movie theaters or anything else to engage them.
3. A 10-foot setback is simply inadequate regardless of landscaping. There will be no effective way to block the light from this large building nor will there be any way to eliminate the noise from delivery trucks and ambulances nor the increase in traffic from employees.
4. We object to any use of the Oceanside HOA drainage to carry water from this property as we sincerely believe that the drainage system for the HOA is undersized and already inadequate to properly handle drainage of existing properties within the HOA.
5. The addition of this building will devalue all of the adjacent properties and will likely result in the end of active development in the vacant lots in the Oceanside East II homeowner's association.

Sincerely,

Mark and Judy Williams



City of Brookings



FIRE / RESCUE

898 Elk Drive, Brookings, OR 97415

(541) 469-1142 Fax (541) 469-3650

TTY (800)735-1232

Operations Fire Chief

jwatson@brookings.or.us

8/19/2020

To: Tony Baron, City Planner

Fm: Jim Watson, Fire Chief

Re: CUP for lot on Passley Rd. near West Cliff Dr.

If the relevant provisions of the 2019 Oregon Fire Code are met the fire department would support the change of use and the width of the access for the parcel of property at Tax Lot # 4014-36BA-02200.

Those provisions are:

That the building be fully sprinkled per NFPA 13.

That a turnaround be provided as required for access roads exceeding 150'.

That the lane be signed as Fire Access/ No Parking.

These references can be found in Chapter 5, Section 503 and appendix D of the 2019 Oregon Fire Code.

Your Safety Is Our Business



BROOKINGS PLANNING COMMISSION MINUTES

July 7, 2020

CALL TO ORDER

The regular meeting of the Brookings Planning Commission was called to order by Chair Wulkowicz at 7:03 pm in the Council Chambers at Brookings City Hall followed by the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Cody Coons, Bill Dundom, Tim Hartzell, Skip Hunter (telephone), Clayton Malmberg, Michelle Morosky, Chair Gerald Wulkowicz

Staff Present: PWDS Director Tony Baron, Planning Tech Lauri Ziemer, Deputy City Clerk Amber Nalls, LCOG representatives Henry Hearley and Paula Taylor present by phone

Audience Present: approximately 60 citizens

PLANNING COMMISSION CHAIR PERSON ANNOUNCEMENTS - None

PUBLIC HEARINGS

4.1 In the matter of File No. **ANX-1-20**, a request to annex seven tax lots with a zone change, located along Parkview Drive between Hampton and Vista Ridge Drive, identified as Assessors' Map 40-13-31B Tax lots 00404, 01800, 01320, 01315, 01500 and 40-13-31CB, Tax lot 01301; and one tax lot located at the end of East Harris Heights identified as Assessors' Map 40-14-36A, Tax lot 00900 into the City of Brookings.

There were no ex parte contact, bias, personal interest, or conflicts of interest declared and no objection to the jurisdiction of the Planning Commission to hear the matter. The public hearing was opened at 7:09 pm.

LCOG representative Henry Hearley presented PowerPoint presentation reviewing each parcel requesting annexation and the staff report. Chair Wulkowicz asked for clarification that tax lots 01315 and 01500 are split by Parkview Drive and small triangle portions of the parcels are also located on the east side of Parkview Drive, which LCOG representative Paula Taylor clarified was correct. Chair Wulkowicz noted that a tool shop currently on parcel 01500 may not meet setback requirements and be in the city right-of-way. Henry advised that annexation does not take into account present buildings and/or requirements for future improvements. Chair Wulkowicz recommended it be noted that the tool shop may be in city right of way and that a restriction or alternate for its demise be in the conditions and final order. No other parties appeared to present information. Public hearing was closed at 7:30 pm.

The Commission discussed the annexation request. **Motion made by Chair Wulkowicz authorizing annexation of seven tax lots with a zone change, located along Parkview Drive between Hampton and Vista Ridge Drive, identified as Assessors' Map 40-13-31B Tax lots 00404, 01800, 01320, 01315, 01500 and 40-13-31CB, Tax lot 01301; and one tax lot located at the end of East Harris Heights identified as Assessors' Map 40-14-36A, Tax lot 00900 into the City of Brookings; based on the findings and conclusions stated in the staff report and subject to the conditions of approval for tax lot 01500 and 01315 that the portions on the east side of Parkview Drive remain with their respective parcels on the west side if they are not sub-dividable and that the shop located on Parcel 01500 in the Parkview ROW be addressed by restricting any future building permits so that when it is no longer of service is removed from the public right of way. Motion seconded and with no further discussion by a 7-0 vote the motion carried unanimously.** Matter forwarded to City Council.

4.2 In the matter of File No. **CUP-2-20**, a request for approval of a Conditional Use Permit to establish a 14-unit residential care facility on a .58 acre parcel located at 17212 S. Passley Road; Assessor's Map 4014-36BA, Tax Lot 02200; zoned R-1-6 (Single Family Residential). The applicant/owner is Brett Kemp.

Commissioner Morosky declared ex parte contact as she is friends with the applicant and Commissioner Coons declared ex parte contact as he is a third cousin of the applicant. Both declared they had no bias, personal interest or conflict of interest and could make a non-partisan decision. There were no further ex parte contact, bias, personal interest or conflicts of interest declared and no objection to the jurisdiction of the Planning Commission to

hear the matter. The public hearing was opened at 7:39 pm. PWDS Director Tony Baron presented the Staff Report.

Applicant Statement:

Aga Kemp on behalf of applicant Brett Kemp presented information on the proposed facility which will be a state licensed Residential Assisted Living (RAL) Home for non-ambulatory seniors with disabilities that interfere with daily living. The facility would not house mental care, memory care or drug rehabilitation patients. They want to build the facility in a residential neighborhood so the senior residents felt included in the community and feel the Fair Housing Act and Americans with Disabilities Act are factors that should be considered when considering the application. The state licensing process is done in several phases; the first phase is currently in review and they anticipate approval to move forward to the next phase in the next 30 days. The facility plan has been developed with consultants and partners in the design of the house, along with programs for the betterment of the seniors living in the home. The house design will be submitted to the State for approval at the appropriate phase. Staffing will be 2-3 trained caregivers during the day and 1-2 during the nights; staff transition times will be staggered.

Chair Wulkowicz reminded audience members that any written documents submitted prior to tonight have been entered into the public record.

Speakers opposed to the application:

Denise Ortega, 96511 West Cliff Drive, Brookings, OR. Does not believe the neighborhood is opposed to people with disabilities, they just do not know what kind of facility it is going to be used for as the application was not specific. Believes the state license should be issued before CUP approval is granted and the CUP application should be denied by the Planning Commission. A petition was circulated and signed by 144 residents against the facility because they do not know what the facility is for and have concerns about traffic and safety issues. Would like a traffic impact study and state DHS licensure approval first.

Victor Ortega, 96511 West Cliff Drive, Brookings, OR. Does not believe the entire criterion has been met. The size of the 140' x 15' flag lot driveway is not adequate egress and ingress access for emergency vehicles; S Passley Road is presently not wide enough at 18' in some areas for emergency vehicles and does not accommodate the traffic that exists now. Believes there is no evidence to support that there will be no impact on the neighborhood. Thinks this is spot zoning and this rear flag lot zoned R-1-6 that is not the location for this facility.

Gerald Klaas, 96490 Dawson Road, Brookings, OR. Lives near the intersection of S Passley and Dawson Road. Does not believe criterion two is met and that S Passley Road is not adequate in width to handle vehicle traffic that the proposed use will generate. Currently the intersection width at S Passley and Dawson is maybe 50' wide, however there is only 18' of paved surface in that area. Intersection traffic can be delayed because of the S curve coming onto Dawson from Hwy 101 and wider vehicles make navigation difficult turning onto S Passley. Concerned that current street conditions are not adequate for emergency evacuations and requests a traffic study be done for the existing traffic use and the impact the proposed facility will have.

Debbie Gleason, 17192 S Passley Road, Brookings, OR. Lives on the SW corner of West Cliff and S Passley and is not against elderly people or the idea of the facility. Believes large vehicles will not be able to make right hand turn into the driveway and there is no turnaround once in the driveway. Excess parking will be parking in front of her house and use the West Cliff cul-de-sac. Large and emergency vehicles already have a difficult time making the turn onto S Passley and will not be able to turn into the 15' driveway.

Loren Rings, 96407 Oceanside E, Brookings, OR. Does not believe criterion 1, Section 17.172.061 for flag lots is met. The accessway of a rear lot cannot be included in the minimum lot size and building coverage is 40%. The rear lot size is 178' x 131.95 for a total of 23,487 sf when you put a 9,588 sf building on it, it is over 40% and the max is 40%. The size of the proposed facility exceeds the maximum lot coverage.

Marco Thorson, 96509 West Cliff Drive, Brookings, OR. Lives across from the proposed facility and is opposed to running a business in a residential area. Not opposed to type of facility, opposed to the facility on a flag lot sandwiched in between current homes that are a quarter of its size. Feels letters submitted in support of facility

are letters of recommendation for the builder not the location. If application approved would request trees along the property lines be maintained and a 6' fence be built prior to construction the length of the accessway to mitigate the loss of neighborhood security, privacy and loss of property value. This would also ensure that construction traffic does not use their private street, West Cliff Drive.

Donald Cox, 17323 Blueberry, Brookings, OR. Concerned the facility could be changed to a different type of facility for drug rehab, sex offenders, non violent prisoners or low income housing for homeless. Driveway access with no turnaround is not sufficient and S Passley Road too narrow.

Linda Martin, 17202 S Passley Road, Brookings, OR. The Dawson Tract area was annexed into the City 28 years ago as R-1-6, for single family residences. The property owners then paid assessments to live in a single family residence area. Bringing a 14 unit building into a single residence area is wrong and the people who live closest will be greatly affected.

Shannon Christopher, 96418 Oceanside E, Brookings, OR. Believes this parcel is not appropriate for the facility. Drainage from this parcel will drain into the existing ditch that is already overtaxed by the surrounding properties and is maintained primarily by the Oceanside HOA. The ditch has flooded multiple properties in the past. The plans submitted do not bear the stamp of an Oregon licensed architect or engineer. Request the city require detailed water, street and traffic impact studies, and an independent market analysis. Municipal codes in place to protect residents and urge denial of request.

Kai Overbeck, 96406 Oceanside E, Brookings, OR. This parcel has abundant trees and birds. Suitable for a home but not the place for this facility. Roadway too narrow. Commercial business should not be in a residential area.

Tony Ellsworth, 96384 Dawson Road, Brookings, OR. Moved there to live in a zoned R-1-6 neighborhood. Placing such a large structure on a small parcel and the inevitable amount of traffic is inconsistent with zoning law.

Sandra Geiger, 96422 Oceanside Drive East, Brookings, OR. No drainage in this area, the water will discharge down the hill onto Oceanside HOA property which cannot handle the water causing houses and crawl spaces to flood. Need to find another place for this facility and to send the water.

Brenda Cox, 17323 Blueberry, Brookings, OR. Believes there will not be adequate staff to care for 14 non-ambulatory elder residents and especially in the case of an emergency. The accessway, street access and the Dawson/S Passley intersection is inadequate to accommodate emergency vehicles. 2-3 caregivers not enough to care for 14 residents during the day and 1-2 caregivers not enough at night.

Kevin O'Rear, 96505 West Cliff Drive, Brookings, OR. Group homes problematic because of noise and parking. The 45° accessway will cause people to swerve into West Cliff Drive into existing homes. Fire plug being moved will also cause swerving. Disagreed with staff report concerning the impact on the neighborhood as there is universal opposition from neighborhood to the facility.

Applicants Rebuttal

Aga Kemp expressed they are citizens in the local community also and did not expect an us vs. them attitude. Everybody says they support the project just not here, then where. There is a serious need for facilities in the area. Chose this parcel because it is tucked away with a nature like setting off of a main street and they do plan to keep the trees. The facility is a legal use of the property and is protected by federal, state and local laws/ordinances, and the Fair Housing Act. The letters of recommendation were to indicate they would be excellent stewards of this project. The number of caregiver staff ratio is above the number required by the state and emergency requirements will be met to provide safety for residents. Emergency preparedness is part of state licensing review and they will continue to work with the state to make sure all requirements are met. Fire Chief has approved the access. The state licensing process is done in phases and all requirements will be met. Similar accessways exist throughout the city serving multiple homes. A lot of thought was put into the location thinking it would be least impacted there than being on a main street. Questioned if approval for a Conditional Use Permit is dependent upon state licensing being requirements being met. They have started the process and because of COVID the

process has been slowed down. Daily traffic will include two caregivers and possibly a nurse being staggered by shifts throughout the day and will not increase traffic. Unfortunately there are not a lot of visitors to this type of facility. An independent 3rd party market analysis has been conducted that shows there is a serious need right now for a facility as this in this area. They plan on being excellent neighbors.

Brett Kemp advised any home built is responsible for it's water runoff and to the west of the property is access to is the city easement storm drain. They do plan to keep the trees on back property line; however noted that when anyone builds they take down trees in the way of the development.

No additional comments by Planning staff. No participants requested additional time to present evidence. Applicant did not request additional time to submit written argument. The public hearing was closed at 9:24 pm.

Chair Wulkowicz provided the audience with Planning Commission guidelines. The Planning Commission does not determine building conditions to be met.

Chair Wulkowicz questioned the statement by resident Loren Rings on the 40% building coverage, PWDS Director Baron advised that a condition of approval could be established to make the building smaller to meet the criteria.

Commissioner Malmberg questioned if the CUP was issued and the facility did not get licensing approval. Chair Wulkowicz suggested a Condition of Approval be made that construction not be allowed to start until licensing has been secured for a senior assisted care facility.

Applicant Aga Kemp informed the Planning Commission that State DHS is a multi phase process, and they are currently at the point of submitting plans and requesting a license, which is currently in review. Construction cannot proceed without DHS approval, actual licensing cannot be issued until the building can be inspected and a final license is not granted until a final inspection is completed.

Commission Malmberg expressed concern about the accessway and that the turn radius off S Passley doesn't allow for larger trucks supplying medical supplies, noting that traffic frequenting a residence is different than from a business and this is inconsistent with the neighborhood. Feels criterion 2 is not met in relation to streets and S Passley cannot accommodate large vehicles like fire truck and garbage trucks. Criterion 3 - neighborhood zoning of R-1-6 allowing a 14 unit facility originally zoned to be a single family dwelling is increasing the density of the neighborhood. Feels the application does not met criterion 2, 3, and 5.

Commissioner Hunter concerned about a zoning that would allow this to happen when so many residents in the area are against it, thought matter should be tabled and have City Council make a decision as to what the concerns are. Zoning says it can be done and Federal law says it can't be stopped based on it being an assisted living facility. Chair Wulkowicz asked PWDS Director Baron if matter could be reviewed by the city attorney; advised that time may not permit for a City Council workshop to review the matter and then come back to Planning Commission. He did have earlier contact with the city attorney who advised that Planning Commission make a decision and if the decision is based on the absence of criteria they be very clear what criteria is not being met.

Commissioner Morosky expressed that she feels she cannot vote just how she wants as the Planning Commission is there to follow the criteria outlined in the BMC and adhere to that.

Commissioner Hartzell does not agree with rubber stamping of the application and feels the neighbor concerns and property rights need to be considered and not ignored.

Applicant Aga Kemp pointed the commissioner's attention to the documents she submitted from a Land Use Attorney and the Fair Housing Act and Americans with Disabilities Act guideline summary for their review, so they could be informed and understand how DOJ and the land use lawyer explain how they are protected to comply with city ordinances.

Commissioner Malmberg pointed out codes and laws are in place to protect these uses and the BMC allows for a Conditional Use but it does not guarantee approval. The Planning Commission to determine if criterion is met.

Commissioner Dundom believes the criteria and ordinances are important but that neighbors private property rights trump the ordinances. The Kems and the neighborhood both have those rights. He does not like the accessway/road conditions and thinks it is poor planning.

Commissioner Coons questioned if it was against federal law to deny, Chair Wulkowicz stated that had not been determined. An audience member stated that it is against federal law to discriminate against persons based on their disabilities but this is not that. Commissioner Morosky added Planning Commissions duty is to determine if the staff report is correct in saying the criteria is met and if not the reasons need to be explained how a criteria is not met in case of an appeal.

PWDS Director Baron reminded commissioners that even though criteria is not met they can add Conditions of Approval.

Motion made by Commissioner Malmberg to deny File No. CUP-2-20 a request for approval of a Conditional Use Permit to establish a 14-unit residential care facility on a .58 acre parcel located at 17212 S. Passley Road; Assessor's Map 4014-36BA, Tax Lot 02200; zoned R-1-6 (Single Family Residential); and direct staff to draft a denial final order, citing the following criterion as not being met: Criteria 1 adequate size and shape - lot size is not adequate for the size of the building in terms of the building is in excess of 40% of the lot size not including the accessway. Criteria 2 relation to streets - has not been met in terms of minimum driveway width to accommodate commercial traffic for a business and accommodate turn radiuses off S Passley Road. Criteria 3 neighborhood impact - has not been met in terms this facility is inconsistent with the adjoining properties. Motion seconded and with no further discussion by a 5-2 vote the motion carried with Chair Wulkowicz and Commissioner Morosky voting against.

MINUTES FOR APPROVAL

5.1 Minutes of regular Planning Commission meeting of May 5, 2020. **Motion made by Chair Wulkowicz to approve the minutes of May 5, 2020; motion seconded. With no further discussion, by a 7-0 vote the motion carried unanimously.**

UNSCHEDULED PUBLIC APPEARANCE - None

REPORT FROM THE PLANNING STAFF – None

COMMISSION FINAL COMMENTS – None

ADJOURNMENT

Chair Wulkowicz adjourned the meeting at 10:08 pm.

Respectfully submitted,

Gerald Wulkowicz, Brookings Planning Commissioner
Approved at the _____, 2020 meeting

**BEFORE THE CITY COUNCIL
CITY OF BROOKINGS, COUNTY OF CURRY
STATE OF OREGON**

**In the matter of an Appeal of the Planning Commission File)
No. CUP-2-20; an application for approval of a Conditional)
Use Permit to establish a 14-unit residential care facility at)
17212 S. Passley; Brett Kemp, Owner and Applicant.)
Appealed by File No. APP-1-20, Applicant, Brett Kemp**

**Final ORDER
and Findings of Fact**

ORDER reversing the Planning Commission denying an application for a Conditional Use Permit to establish a 14-unit residential care facility on a .58 acre parcel located at 17212 S. Passley; Assessor's Map 4014-36BA, Tax Lot 02200; zoned R-1-6 (Single Family Residential).

WHEREAS:

1. The City Council duly accepted the appeal filed in accordance with the Brookings Municipal Code, pursuant to Chapter 17.152; Chapter 17.136; Chapter 17.20 Sections 17.20.040(C) and 17.20.090; Chapter 17.124 Section 17.124.100; and Chapter 17.172 Section 17.172.061 of the Brookings Municipal Code (BMC); and
2. Such application is required to show evidence that all of the above criteria have been met; and
3. The Brookings City Council duly considered the above described appeal as a de novo hearing on August 24, 2020; and
4. The appeal was presented by the Planning Director in the form of a Council Agenda Report, by oral presentation, evidence and testimony by the applicant, appellant, and the public at the public hearing; and
5. At the conclusion of the public hearing, after consideration and discussion of testimony and evidence presented in the public hearing, the City Council, upon a motion duly seconded, reversed the Planning Commission denial of the subject application and directed staff to prepare a Final Order and Findings of Fact to that affect.

THEREFORE, LET IT BE HEREBY ORDERED that the application for the Conditional Use Permit on the subject property is **APPROVED**. This approval is supported by the following findings and conclusions:

CRITERIA, FINDINGS, AND CONCLUSIONS

BMC Ch. 17.136 Conditional Use Permits - Sec. 17.136.050(C)

The Planning Commission has the authority to approve, approve with conditions, or deny the application. In order to grant any conditional use, the Planning Commission must find that the application meets the requirements of the following criteria, which is listed in Section 17.136 – Condition Use Permits of the Brookings Municipal Code, Land Development Code.

1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code;
2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;

3. The proposed use will have minimal adverse impact upon adjoining properties. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;
4. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area;
5. The proposal is in compliance with the comprehensive plan.

The Applicant has provided findings (**Attachment B**). Staff has provided analysis of the criteria as follows:

Criterion 1 - Adequate size and shape

The subject property is a level flag lot approximately 25,654 square feet in size and the proposed facility will occupy approximately 9,588 sq. ft., approximately 37% of the total lot area. Per BMC 17.20.060 Lot Coverage Requirements, rear lots (flag lots) created pursuant to BMC 17.172.061 have setback requirements of 10 feet from all property lines. Any irregularly shaped parcel with minimal street frontage is also subject to the 10-foot setback from all property lines. Maximum lot coverage is 40%. The site is large enough to accommodate the proposed building and parking. The proposed building will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line. The driveway is 15 feet wide by 140 feet long. The proposed parking area is large enough to accommodate six vehicle parking spaces. The subject property is sufficiently large enough to accommodate the proposed residential care facility. Water and sewer services are sufficient and available at S. Passley Road. Criterion 1 is met.

Criterion 2 - Relation of streets

S. Passley Road has a paved travel surface with a 50 foot wide right-of-way with improvements in some areas. This street provides access to approximately 70 dwelling units. In terms of the ability of S. Passley Road to handle the traffic generated by the proposed residential care facility, there should be no significant impact. The proposed facility is designed for the residential care of adult patients who do not drive. The primary traffic related impact would be from staff and visitors. Visitors would normally be scattered throughout the day rather than concentrated into one period. Staff believes Criterion 2 is met.

Criterion 3 - Neighborhood impact

The impact on the surrounding neighborhood is the primary issue concerning residents in the neighborhood. One residence is located in front of the flag lot and the driveway will abut their garage. Five homes located on West Cliff Drive will face the property. Elderly adult residential care facilities are generally very quiet in nature and the day to day operation of the proposed facility will have little to no adverse impact on the surrounding neighborhood. Traffic generated by the facility, although light, will cause an incremental amount of noise in the general area, however, residential development on the same lot would have the potential of adding as much, if not more, traffic to S. Passley Road.

The proposed project will provide a landscaped buffer between the parking area and the adjoining properties as required by the Land Development Code. Staff believes criterion 3 has been met.

Criterion 4 - Historic, scenic or cultural attributes

There are no listed historic, scenic or cultural attributes on the subject site or in the immediate area. Criterion 4 is met.

Criterion 5 - Comprehensive Plan

The property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is designated as Residential by the Comprehensive Plan. Residential care facilities are a conditional use in the R-1-6 zone. The proposed use of the property is consistent with the criteria addressed above and with the policies of Goal 10, Housing of the Comprehensive Plan, in that it provides a variety of housing types. Criterion 5 is met.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.040 Conditional Uses

Hospitals, rest, nursing and convalescent homes, subject to BMC 17.124.100 are permitted subject to a conditional use permit.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.060 Lot Coverage Requirements

Rear lots (flag lots) created pursuant to BMC 17.172.061 have setback requirements of 10 feet from all property lines. Any irregularly shaped parcel with minimal street frontage is also subject to the 10-foot setback from all property lines. Maximum lot coverage is 40%

Proposed building footprint meets the setback requirements for a flag lot and lot coverage is calculated at 37%.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.090 Parking

Off-street parking shall be provided in accordance with Chapter 17.92 BMC.

BMC Ch. 17.92 Parking

No development permit shall be issued until plans and evidence are presented to show how the off-street parking and loading requirements are to be fulfilled and that property is and will be available for the exclusive use as off-street parking and loading space. Residential care facilities parking requirements are one parking space per five residents. Unless otherwise provided, required parking and loading spaces shall not be located in a required front yard, but parking space may be located within a required side or rear yard.

Flag lot location will require off street parking. For a 14 unit residential care facility a minimum of three on-site parking spaces for residents is required. The proposed development plans include five on-site parking spaces and one single car parking garage for a total of six parking spaces. As the proposed facility is designed for the residential care of adult patients who generally do not drive the remaining three parking spaces will be used and available for visitors and staff.

BMC Ch. 17.124 - Sec. 17.124.100 Churches, Hospitals, Other Religious or Charitable Institutions

In any "R" district, all such uses shall be located on a street adequate to serve the use. All off-street parking facilities shall be adequately screened from abutting property to reduce noise and other negative impacts.

The parking area located on site will be fenced and or screened with landscaping or order to reduce visibility into the parking area from neighboring properties.

BMC Ch. 17.172 – Land Divisions – Section 17.172.061 Rear Lot Partitions

Development Standards for rear lots require an access way with a minimum width of 20 feet and a maximum length of 200 feet. Setback requirements require no building be erected within 10 feet of any property line.

The subject parcel was partitioned in 1992 (file number M3-9-92) creating the flag lot with a driveway width less than 20 feet due to constraints to the North and South. At that time staff noted in the report to the Planning Commission that the property owner attempted to obtain participation with the adjacent

owner to the South, now West Cliff Subdivision (SUB-1-03), to create a joint subdivision with a shared access where West Cliff Drive is currently located. That attempt failed. “Staffs opinion at that time was that the applicant should not be penalized by the requirement of the Land Development Code which tie division of the lot totally to the desire of the neighbor to the South”. When partitioned the driveway was conveyed with ownership of the rear lot and to be an integral part of the rear lot as well as improved to a permanent, dust-free surface of asphaltic concrete or Portland cement.

The proposed building to be constructed on the lot will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line meeting setback requirements.

CONCLUSIONS

1. The proposed residential care facility will occupy 37% of the subject .59 acre site. The design of the facility includes a ten foot setback from the westerly property line, 18 foot setback from the northerly property line, 24 foot setback from the southerly property line and 38 foot setback from the easterly property line meeting all setback requirements.

The parking area will contain six parking spaces which includes one handicapped space. This meets the required number of spaces required for residential care facilities within the city. The subject property is sufficiently large enough to accommodate the proposed residential care facility.

2. S. Passley Road is a paved travel way with a 50 foot right of way, the 15 foot wide driveway which was allowed in the 1992 partition.
3. Residential care facilities are, by nature, not a noise generator. The traffic generated by the facilities will have an incremental increase in the noise around the general area; however, residential development on the parcel has the potential to generate more general noise than the proposed project will. The proposed project is designed to provide the required buffer between the parking area and the adjoining residential use.
4. There are no historical or cultural attributes on or in the vicinity of the subject site. The proposed residential care facility should not have an impact on the scenic quality of the area.
5. The proposed facility is consistent with the provisions of the criteria discussed above and is consistent with Goal 10, Housing of the City’s Comprehensive Plan, in that it provides a variety of housing types.
6. Residents have submitted letters of opposition to the Conditional Use Permit with concerns including the size of the proposed residential care facility, the locating of such a facility in an R-1-6 zone, driveway width, parking, ADA accessibility, and traffic generated (**Attachments C, D & E**).

The following Conditions of Approval are hereby made a part of this Final Order.

CONDITIONS OF APPROVAL

CUP-2-20

17212 S. Passley Road - Residential Care Facility

General Conditions

1. Approval of this Conditional Use Permit will expire two years from approval, unless the project comes under substantial construction within that period. The Planning Commission may extend the permit for an additional one year period at the required of the applicant.

2. The final construction plans shall be in substantial conformance with the submitted preliminary site plan and as approved by the Planning Commission. Substantial changes to the approved preliminary plat require re-approval by the Planning Commission.
3. Improvement work shall not be commenced until construction plans have been approved by the City Engineer and/or Building Official.
4. If needed, all costs of plan checks and inspections by the City Engineer shall be paid by the applicant to the City.
5. All outdoor lighting shall be directed and/or shielded so as to prevent light from falling directly on adjoin properties.
6. All buildings shall meet the requirements of the R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and other applicable provisions of the Land Development Code.
7. This approval is for the proposed 14 unit adult residential care facility as shown on the provided plot plan. If in the future the applicant desires to change the use of the building, a minor change must be requested and approved according to Section 17.136, Conditional Use Permits of the Land Development Code.

Street Conditions

8. The existing Deferred Improvement Agreement #96 (Inst. #92-6113) will remain in place on the property. No street improvements along the S. Passley Road frontage are required at this time.
9. Prior to start of street construction, including grading the applicant shall submit construction plans to the City Engineer for review and approval.
10. Prior to start of construction, the existing mailboxes located within the access way of the property may be removed provided that a notice in writing, 30 days in advance of the start of construction, is given to all residents occupying the mailboxes.

Parking, Landscaping and Screening

11. The applicant shall provide no less than six parking spaces as shown on the approved plot plan. The parking area and access way shall be paved and striped. The design of the parking area shall be in accordance with Section 17.92, Off-Street Parking and Loading Regulations of the Land Development Code.
12. The applicant shall provide landscaping area within or around the parking areas equal to a least 7% of the total parking area.
13. The applicant shall provide either a sight obscuring fence or landscaping around the proposed parking area. This fence or landscaping shall be high enough to prevent automobile head lights from shining onto the adjoining property.
14. The applicant shall landscape the project as shown on the preliminary plot plan. To the extent possible the applicant shall use native and drought resistant plants in the landscaped areas. The applicant shall submit a landscaping plan showing the type of plants used and proposed irrigation system to the City Planning Department for review.
15. Outdoor trash containers shall be screened from view with a decorative fence and gate at least six feet high. The applicant shall consult with Curry Transfer and Recycling as to the type of gating of the trash container fence.

16. The applicant shall construct a paved walkway around the building for use of the residents and entry to the back of the building for fire protection purposes.

Water, Sewage and Drainage

17. The proposed building shall be connected to the City's water and sewer system at the applicant's expense.
18. The applicant shall complete and submit drainage plans to the City Engineer for review and approval prior to any construction, including streets. Storm drainage design shall be in accordance with the City of Brookings Comprehensive Plan for Drainage. All drainage from the subject lot shall be engineered in a manner that protects all adjoining properties.
19. The applicant shall consult with the City Fire Marshal, City Building Inspector and City Engineer as to the water requirements for the proposed building for both domestic and fire suppression purposes.
20. The applicant shall bear the cost to relocate the existing fire hydrant at the entry of the property near S. Passley Road.

Dated this _____ day of _____, 2020

ATTEST:

Jake Pieper, Mayor

Anthony Baron, Planning Director



GUIDE for DEVELOPING ACCESSIBLE & AGE FRIENDLY ZONING CODE

April 2016

WHAT THIS MODEL CODE MATRIX PROVIDES

The Accessible & Age Friendly Model Code Matrix is intended as both a diagnostic tool and set of suggestions for updating a jurisdiction's zoning code to achieve accessibility, affordability and age-friendly goals.

HOW TO USE THIS MATRIX

The matrix includes the following for each main idea:

- **Planning Topic**
- **Code Section:** Identifies generally where the topic is located in the zoning code, though codes can vary.
- **Guidance:** Describes the scope and intention of the zoning revision, with general guidelines for adapting the language to meet local needs. This section addresses minimum requirements, such as compliance with applicable state regulations, as well as best practices that exceed common practice.
- **Code Concepts and Example Language:** This section includes specific zoning code language where possible, or references to longer sections of code. Specific code concepts are outlined where zoning code examples vary widely across individual codes.

The first step in using this tool is to review the range of topics and guidance to determine which primary areas are of interest in the

jurisdiction. The next step is an evaluation of the current code to see which topics are already addressed in code sufficiently, which topics require code revisions to address, and which topics require new code language. The evaluation can then be used to build an outline for a proposed package of zoning code revisions, drawing upon the example language with sensitivity to the existing code structure and language.

Local refinements to the recommended code concepts and example language is vital for effective implementation. Zoning code changes are not value-neutral, which is what makes it an important tool for local governments. These changes are specifically designed to achieve accessibility, affordability, and age-friendly goals, but they may have trade-offs when weighed against other community priorities and goals. This matrix is intended as a guide to start the local conversation and identify potential changes in detail, but the final package of code updates prepared by a jurisdiction will be most successful if it is developed through dialogue to balance community needs. Each code update developed with this tool, like every zoning code, will be unique.



HOW ACCESSIBLE AND AGE-FRIENDLY ARE YOUR PLANS, CODES, AND PRACTICES?

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
1	DEFINITIONS - Definition of family or household	Definitions	<p>'Family' definitions form the basis for many dwelling types and uses allowed by code, such as single-family dwelling or multifamily residential use.</p> <p>Definitions of 'family' should not discriminate against up to five unrelated individuals with disabilities residing together in a group living arrangement to comply with Residential Homes definitions under Oregon law, ORS 197.660. The definition also should not discriminate against larger extended families who wish to live together by limiting the number of related individuals who may constitute a family.</p> <p>A best practice is to focus on the housing unit characteristics itself, rather than the characteristics of the future residents. Dwelling units can be objectively regulated through zoning at the time of development and beyond, whereas monitoring the changing number of occupants and their relationships is a difficult task for development review or code enforcement.</p> <p>If the limit on number of unrelated individuals is increased above five persons, then definitions and regulations for residential care homes and facilities must be revised such that numerical occupancy limits on group housing for unrelated persons with disabilities are not more restrictive than limits for other unrelated persons. (See concept #18.)</p>	<p>If definition of family is desired, ensure that it allows up to five unrelated individuals and an unlimited number of related individuals, such as:</p> <p>"Family" means an individual; or two or more persons related by blood, marriage, legal adoption or guardianship; or a group of not more than five unrelated persons living together in a dwelling unit.</p> <p>Recommendation to replace family definition and dwelling terms with focus on the use, by adopting a definition of dwelling unit as the basis for residential use types, such as:</p> <p>Dwelling unit means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.</p>
2	ACCESSORY DWELLING UNITS (ADUs)	Definitions	<p>Add definition of accessory dwelling units (ADUs) which provide for additional residential units and variety within existing neighborhoods, without significant impacts to neighborhood character. ADUs can be more affordable to rent, or provide additional income to the homeowner. (See also concepts #3 and 4 for related ADU standards)</p>	<p>Sample definition: Accessory dwelling unit means a small, secondary dwelling unit on a lot or parcel with a single-family dwelling unit as a primary use. ADUs are independently habitable and provide the basic requirements of shelter, heating, cooking, and sanitation. ADUs may include:</p> <ol style="list-style-type: none"> Detached ADUs, such as converted garages or free-standing new construction. Attached ADUs that are attached to or part of the primary dwelling. Examples include converted living space, attached garages, basements or attics; additions; or a combination thereof.

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
3	ACCESSORY DWELLING UNITS (ADUs)	Uses in Residential Districts	<p>Allow ADUs in all single-family residential zones, at a minimum, and consider allowing ADUs in multifamily residential developments as well if single-family detached housing is an allowed use in multifamily residential zones.</p> <p>Eliminating conditional use review requirements for ADUs makes it much more feasible for homeowners, typically unfamiliar with the development review process, to initiate an ADU project.</p>	Integrate into use table or list of allowed uses in residential zones.
4	ACCESSORY DWELLING UNITS (ADUs)	Development standards for residential development or special use standards	<p>Development standards for ADUs should address the following:</p> <ul style="list-style-type: none"> • Allow one ADU per single-family attached or detached home on a single residential lot, either attached or detached. • Allow attached or detached ADUs to be created through new construction, or modification of an existing structure. • Exempt ADUs from residential density calculations. • Limit ADU size to 600 to 1,000 SF, but do not recommend a size limit tied to a percentage of the size of the primary dwelling to avoid penalizing smaller homes. • Exempt ADUs from additional parking requirements; primary dwelling shall still meet minimum parking requirement. • Address height of detached ADUs, typically 20 to 25 feet similar to other detached accessory structures and height limit for dwelling. • Address setbacks for detached ADUs, both from external property lines and from the primary dwelling. <p>Avoid creating stringent design standards, occupancy limits, or review processes that are significantly more limiting than standards for a single-family residence.</p>	<p>See model code developed by Eli Spevak, https://accessorydwellings.files.wordpress.com/2014/11/adu-model-code-pdf.pdf</p> <p>For an example as implemented, see Section 3.6.200.B of the Bend Development Code.</p>

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
5	"MISSING MIDDLE" HOUSING		<p>Develop additional definitions and development standards for a variety of residential types, particularly "missing middle" styles of housing in between single-family dwellings and multifamily apartment buildings. Examples include:</p> <ul style="list-style-type: none"> • Courtyard housing, which allows attached homes on smaller, narrower lots oriented around a shared courtyard in lieu of individual yards. • Corner duplexes in single-family zones. • Attached townhouses on smaller lots in single-family zones. • ADUs, cottage housing, internal conversions listed elsewhere in this table. 	See http://missingmiddlehousing.com
6	COTTAGE HOUSING	Definitions	<p>Add definition of cottage housing development and related definitions to allow alternative residential development types, also known as pocket neighborhoods. Cottage housing allows smaller homes oriented around a shared common space, to create community.</p> <p>For additional ideas, see: http://www.pocket-neighborhoods.net</p>	<p>Cottage housing development means a type of site development or subdivision where individual lots are created, both built in conjunction with shared open space and other common tracts of land that are intended to serve small-scale single-family dwellings that interact together as a small community.</p> <p>Cottage means a detached single-family dwelling in a cottage housing development.</p> <p>Cottage cluster relates to the configuration of cottages. A cluster is a grouping of four to 12 cottage dwellings arranged on a development site around or adjacent to usable open space. A cottage housing development may contain more than one cluster.</p>

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
7	COTTAGE HOUSING	Development standards for residential development or special use standards	<p>Development standards for cottage housing development should address the following:</p> <ul style="list-style-type: none"> • Zoning districts where product is allowed, typically single family or moderate density multi-family. • Allowed density, typically greater than the underlying district, at 8-16 units per acre. • Lot sizes and dimensions, typically less than the underlying district. Recommended lot coverage of 40 to 60%, height limit 18 to 25 feet, side and rear yards at 5 feet, front yards at 10 to 15 feet. • Separation between units of 10 feet, and between cottage projects of 1,000 feet minimum. • Size of cottage clusters, typically 4-12 units. • Maximum floor area per unit, typically around 1,000 SF with some variance depending on whether the unit includes a garage. • Requirements for common open space serving each cluster. Recommended 300 minimum SF per unit, with each unit fronting onto open space. • Parking standards at 1 to 1.5 spaces per unit. Include options for common parking area in lieu of individual garages. • Design standards, such as requirements for front porches or use of specific design style and materials. (optional) • Land division options to create cottages through subdivision, with common ownership of open space, or condominium. 	<p>For an example, see BDC 4.5.600, Cottage Housing Development.</p> <p>For general guidance, see also: http://www.oregonmetro.gov/sites/default/files/wood_village_case_study.pdf</p>
8	INTERNAL RESIDENTIAL CONVERSIONS	Development standards for residential development or special use standards	<p>Allow conversion of older homes into two internal units, exempt from duplex and density standards for the underlying zone. Conversion would allow additional housing units, preserve existing housing stock rather than encourage replacement, and provide opportunities for older adults to create “upstairs/downstairs” units with greater accessibility on the ground floor unit.</p>	<p>Standards should include:</p> <ul style="list-style-type: none"> • Exemption from density standards. • Minimum age of structure to qualify depending on local housing stock, 50 to 80 years suggested. • Design standards to maintain compatibility with single-family homes, including maintaining a single main entrance with internal access to both units.

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
9	MANUFACTURED HOUSING	Definitions	Define manufactured housing consistent with state law, ORS 446.	“Manufactured home” means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.
10	MANUFACTURED HOUSING	Allowed uses in residential zones	Allow manufactured housing that meets certain standards for minimum size, appearance and energy efficiency as permitted uses in single-family zones and wherever stick-built single-family homes are allowed, under the same review procedure. Manufactured homes may be prohibited in historic districts by law, if desired locally.	Integrate into use table or list of allowed uses in residential zones.
11	MANUFACTURED HOME PARKS	Definitions	Add definition.	Manufactured dwelling park means any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership. See BDC Chapter 3.6, Special Standards for Certain Uses, for standards related to manufactured dwelling parks.
12	MANUFACTURED HOME PARKS	Development standards for residential development or special use standards	<p>Develop standards to promote well-designed manufactured home parks without restrictive standards, to promote an affordable alternative to single-family detached housing that provides many similar benefits at prices similar to multifamily housing, and can provide a sense of community among park residents important for older adults. Standards should address:</p> <ul style="list-style-type: none"> • Minimum park size, not be less than 1 acre. • Density of units. • Internal circulation and access to public street network. • Provisions for common amenities like community gathering space, pool or other recreational open spaces. 	<p>For an example, see BDC 3.6.200.G.</p> <p>See also ORS 446.</p>

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
13	MANUFACTURED HOME SUBDIVISIONS	Land division standards or standards for residential development	Provide explicit process, no less restrictive than traditional subdivision process, to create manufactured home subdivisions. Such subdivisions combine the affordability and community benefits of manufactured home parks with home ownership benefits of subdivisions. Subdivisions provide greater certainty for continued manufactured home use because of individual lot ownership, compared to uncertainty of renting a space in a manufactured home park, many of which have been sold by their owners for more lucrative types of developments.	<p>Manufactured Home Subdivisions. Manufactured home subdivisions are reviewed as a Type II application for tentative plan approval. A manufactured home subdivision shall be subject to the provisions of (subdivision code reference), in addition to the criteria below.</p> <ol style="list-style-type: none"> 1. Lot Size and Dimension Requirements. The minimum lot area and dimensions within a manufactured home subdivision shall be the same as that allowed within the underlying zone. 2. Permitted Uses. Manufactured home subdivisions may contain manufactured homes and related accessory structures. 3. Setbacks. Setbacks for manufactured homes, modular homes, and accessory structures shall be the same as provided in the underlying zone.
14	AGE-RESTRICTED HOUSING	Definitions	Treat age-restricted residential facilities, such as a 55 and over apartment building, and facilities accessible to persons with disabilities that are exclusively residential uses, not assisted living or other supportive services, the same as other multifamily housing, avoiding a separate definition or use regulations.	<p>Use an inclusive definition of multifamily housing such as:</p> <p>Multifamily residential means housing that provides four or more dwellings on an individual lot or parcel (e.g., multi-plexes, apartments, condominiums, etc.).</p> <p>Avoid any reference to age, income level or disability status in definitions of residential use categories. (See also definition for residential care homes and facilities.)</p>

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
15	ASSISTED LIVING FACILITIES, CONGREGATE LIVING FACILITIES, AND RETIREMENT COMMUNITIES	Definitions	<p>Develop clear standards on various types of senior-oriented housing, such as assisted living facilities, congregate living facilities, and retirement communities, including memory care. Such uses typically have a primarily residential focus with additional nursing or clinical focus and common support services like housekeeping, meals, and activities, which differentiates them from traditional multifamily development. Definitions could address the issue by:</p> <ul style="list-style-type: none"> • Adding definitions for these explicit use types. • Including these use types in other residential definitions. • Specifically excluding these use types from nursing home, medical, or other commercial definitions. 	<p>Specific definition of assisted living:</p> <p>“Senior housing” means housing designed and constructed to accommodate the needs of seniors and includes the following as defined herein: independent living facility, personal care facility, and assisted living facility. Senior housing does not include nursing facilities.</p> <p>“Independent living” means a multi-unit senior housing development, also known as congregate housing, that provides supportive services such as meals (common dining), housekeeping, social activities, and transportation.</p> <p>“Personal care facility” means a state licensed facility that specializes in caring for the memory impaired resident.</p> <p>“Assisted living” means a state-licensed program offered at senior residential facilities with services that include meals, laundry, housekeeping, medication reminders, and assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).</p> <p>Definition that excludes assisted living:</p> <p>Nursing/connalescent homes (also see “Residential care facility”) means a residence, institution, or place other than a hospital or assisted living facility that operates and maintains facilities providing 24-hour connalescent or chronic care, or both, for two or more ill or infirm patients not related to the nursing home administrator or owner by blood or marriage. Connalescent and chronic care may include, but need not be limited to, the procedures commonly employed in nursing and caring for the sick.</p> <p>Group Care Home. Any dwelling or facility maintained and operated exclusively for the care, boarding, housing and rehabilitation of more than 15 unrelated persons who are ill, physically or mentally disabled, and/or elderly, the majority of whom generally do not drive an automobile. This definition includes but is not limited to homes for the aged, nursing homes and congregate care facilities.</p>
16	ASSISTED LIVING FACILITIES, CONGREGATE LIVING FACILITIES, AND RETIREMENT COMMUNITIES	Allowed uses in residential zones	Allow assisted living and similar uses in residential zones with similar density, mostly multifamily zones. Consider allowing in commercial zones as well, particularly where mixed use residential and commercial uses are allowed.	Integrate into use table or list of allowed uses in residential zones.

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
17	SHORT-TERM RENTAL HOUSING REGULATIONS	Special use regulations for residential districts	Regulating short-term rentals of homes, ADUs, and other residences to prevent vacation rentals from limiting supply for long-term rentals or homeownership at reasonable prices. Limitations help to ensure that additional units developed under ADU, cottage housing, or other codes add to the supply of permanent housing for the city's population, rather than vacation accommodations for visitors. Regulations should strike a balance between allowing property owners opportunity to profit from their investment, while ensuring additional density opportunities granted under the code go towards meeting permanent housing needs.	<p>For example, see BDC 3.6.500. Include definition, such as:</p> <p>Short-term rental means the use of a dwelling unit by any person or group of persons entitled to occupy for rent for a period of less than 30 consecutive days. Short-term rentals also include vacation home rentals and owner-occupied short-term rentals, but does not include bed and breakfast inns, hotels and motels.</p> <p>Owner-occupied short-term rental means an owner resides in a dwelling unit and rents up to two rooms to overnight guests for a period fewer than 30 consecutive days. The owner occupies the dwelling unit during the overnight rental period. Only part of the dwelling unit is used for rental purposes. The room(s) for rent cannot include rooms within a detached or attached accessory dwelling unit.</p>
18	RESIDENTIAL CARE USES DEFINITIONS	Definitions	<p>Align definitions of group housing types with state definitions tied to licensing requirements to eliminate any mismatch. Definitions may distinguish between residential care homes, with five or fewer residents, and residential care facilities with six or more residents, to better regulate the use in proportion to its impacts. Definitions should be inclusive of multiple types of residential needs, including physical disabilities, developmental disabilities, mental, emotional or behavioral disturbances, alcohol or drug dependence, and adult foster homes.</p> <p>As a best practice, allow residential care homes and facilities whether licensed or unlicensed.</p>	<p>Residential care home, also defined in ORS as “residential facility,” means a residential treatment or training home, a residential facility or an adult foster home that provides residential care alone or in conjunction with treatment, training or both for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.</p> <p>Residential care facility means a facility that provides, for six or more socially dependent individuals or individuals with physical disabilities, residential care in one or more buildings on contiguous properties.</p>
19	RESIDENTIAL CARE USES LOCATION & REVIEW	Allowed uses in residential zones	Allow residential care homes and facilities in all residential zones under the same conditions as single-family residential homes.	Integrate into use table or list of allowed uses in residential zones.
20	DENSITY BONUSES	Density standards	Provide density bonuses for affordable, accessible and/or age-restricted housing. Develop definitions and/or monitoring programs to ensure housing developed with density bonus is used as intended.	<p>Density Bonus for Affordable Housing. As an incentive to create affordable housing, the maximum densities provided in Table 2.1.600 may be increased when a developer provides “affordable housing” as part of a proposed development in conformance with BDC 3.6.200(C). The density increase is based on the percentage of affordable housing units within the proposed development. Any development that receives the density bonus shall be deemed an “affordable housing development.” The table below provides the corresponding percent of increase. In no case may the density bonus exceed 1.5 percent of the existing residential zone.</p> <p>(Similar language could be used for accessible or age-restricted housing also.)</p>

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
21	RESIDENTIAL DIMENSIONAL STANDARDS	Dimensional standards for residential zones	Review lot coverage standards to make single-story development more feasible. Consider replacing lot coverage standards with floor area ratios (FAR) that allow the same total floor area whether constructed as a single or multiple stories.	Decrease maximum lot coverage standards by 25 to 50% for single-story homes not to exceed 18 feet high. Alternatively, introduce maximum floor area ratios (FAR) of 0.5 to 0.70 in place of lot coverage standards.
22	SETBACKS FOR SINGLE-STORY HOMES	Dimensional standards for single family zones	Single-story homes can be more age friendly because of greater accessibility. Evaluate setbacks to determine whether they limit the construction of single-story homes on typical lot sizes. Consider reducing setbacks to or near minimum fire separation to make homes more viable.	Decrease setbacks, such as a 5-foot side and rear setback standard for single story homes or structures not exceeding 18 feet in height.
23	RESIDENTIAL PARKING REQUIREMENTS	Parking standards	Explore minimum and maximum parking requirements for variety of residential uses, including “missing middle” uses like ADUs and larger-scale uses like apartment buildings. Provide alternative parking standards for projects serving older adults and low-income residents to reduce costs and recognize lower car utilization rates. Maintain ADA parking spaces to ensure access for persons with disabilities even for projects with low parking requirements.	Reduce minimum parking standards to one space per dwelling unit or less, particularly for projects meeting criteria for affordable housing or projects traditionally serving older adults with limited driving needs such as assisted living facilities. Offer alternatives to satisfy minimum parking standards such as off-site parking, fee in lieu of programs, and shared parking.
24	OPTIONAL MIXED USE OVERLAY	Zoning districts, standards for residential uses	Provide flexibility with an optional mixed use overlay, allowing developers the option to develop under residential base zoning or elective mixed-use standards. Allows inclusion of additional commercial and public uses in otherwise residential districts, with additional performance standards to minimize impacts on surrounding residential uses. This is a good option in communities where demand for or knowledge to develop mixed-use projects is low, since it provides options to explore mixed use with a default base zoning option for more traditional development.	Allow selection of alternative development standards in the residential zoning district chapters. Create residential/commercial mixed-use zone compatible with surrounding residential uses. See example at CPMC 17.65.
25	COMMERCIAL MIXED USE	Allowed uses in commercial or mixed-use zones; zoning districts	Explore ways to combine residential and commercial uses for greater access to goods and services. Additional uses could include office and public uses. Zoning options include: <ul style="list-style-type: none"> Expand options under the base higher-density residential and/or commercial zones to integrate additional commercial and residential uses, respectively, to include potential for mix of uses in existing base zones. Develop a specific mixed-use district, typically focusing on a certain geography such as downtown or a commercial node. See also Code Concept #24, on optional mixed-use overlays for another approach.	For base zoning option to allow additional uses in existing zones, expand allowed uses to add uses such as ‘neighborhood-scale commercial’ in medium- or high-density residential zones, and allow upper-story residential uses in commercial zones. For a specific mixed-use district, see BDC Chapter 2.3 for an example, including as the Mixed-Use Riverfront District which is an example of a geographic-specific zone.

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
26	MEDICAL MIXED USE	Allowed uses in commercial or mixed-use zones; zoning districts	<p>Incorporating medical, commercial and residential uses allows older adults or those with medical needs easier access to medical services. Many medical uses, such as clinics or pharmacies, have no greater impact on surrounding uses than other commercial uses, though large-scale hospital campuses can pose additional site design challenges and a high level of impacts, such as traffic, on surrounding users that should be addressed through code.</p> <p>Evaluate the range of uses allowed in mixed-use and/or commercial zones to allow medical uses such as clinics, offices, care facilities, and support services, as well as residential uses, so that residents can meet their health and shopping needs in close proximity to their residences, in some cases within the same building.</p>	For a medical-focused, mixed-use district, see CPMC 17.37, Commercial-Medical District, which includes medical uses, commercial retail and services, and residential uses. Contrast with SDC 3.3-1100, Hospital Support Overlay District, which is also medical-focused but allows a much narrower range of uses, with the residential component limited to group care homes and skilled care facilities.
27	PEDESTRIAN CONNECTIONS WITHIN PARKING LOTS FOR COMMERCIAL DEVELOPMENT	Site design standards for nonresidential development, parking standards	Prioritize human connections and minimize conflicts with motor vehicles in parking lots to improve access for persons with mobility issues. Actions include requirements for pedestrian pathways, crosswalks, and pedestrian plazas and other amenities such as benches.	<p>Include pedestrian connection standards such as:</p> <ul style="list-style-type: none"> One or more raised walkways are provided through the parking areas, meeting Federal Americans with Disabilities Act requirements, in order to provide safe, convenient, and direct travel routes for pedestrians through the parking areas. Walkways abutting parking spaces or maneuvering areas are protected from vehicles through either landscaping buffers, minimum three feet wide on each side, or curbs on both sides. Walkways across vehicle aisles are delineated by nonasphaltic material in a different color or texture than the parking areas. Internal drives or streets are designed to City standards for local streets in regard to pavement width, sidewalks, and street trees. Sidewalks comply with ADA standards. Sidewalks 10 to 15 feet wide abutting front building facades are strongly encouraged. Internal vehicular circulation design for the site complies with City street connectivity standards, including maximum block length and perimeter. On-site pedestrian walkways and bikeways connect to existing pedestrian and bicycle circulation systems that serve adjacent commercial uses or residential areas. <p>See also BDC 3.1.300.B for pedestrian connectivity standards.</p>

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
28	PEDESTRIAN AMENITIES	Site design standards for commercial development	Require pedestrian amenities such as benches and plazas in larger commercial developments, which make larger development sites more navigable for older adults or persons with disabilities as well as increasing the attractiveness of the development for all users.	<p>Pedestrian Amenities. For developments with ten thousand square feet or more gross floor area, provide pedestrian amenities area equal to two percent of the gross floor area.</p> <ul style="list-style-type: none"> a. Pedestrian amenities may include benches, water feature, drinking fountain, moveable seating, distinctive paving, artwork, and/or areas along building edges that allow for outdoor eating areas. b. All amenity areas shall be physically and visually accessible from the adjacent street or major internal pedestrian route. Amenities shall be in locations that the intended users can easily access and use, rather than simply left-over or undevelopable space in locations where low pedestrian traffic is anticipated. The minimum dimension for amenity areas is eight feet. c. Pedestrian-scaled lighting is required at a level averaging at least 2 foot candles throughout the amenity space and shall not be mounted higher than fourteen feet. Lighting may be free-standing or building-mounted. d. The sidewalk area may be used for outdoor dining provided a six-foot wide pedestrian zone is maintained. Areas along building edges used for outdoor eating areas shall be screened from the pedestrian zone with a planted buffer, movable planters, bollards, fence, or other similar means of separation.
29	LOCATION OF PARKING LOTS IN COMMERCIAL DEVELOPMENTS	Site design standards for nonresidential development, parking standards	Decreasing the prominence of parking lots by moving them to the side or rear of lots keeps buildings and their primary entrances closer to their sidewalk and more accessible to users arriving on foot, transit or bicycle. ADA parking spaces remain conveniently located near the buildings for accessibility.	<p>Include parking lot siting requirements to deemphasize parking lot dominance along primary street frontages such as:</p> <ul style="list-style-type: none"> • Front facades and primary entrances of all buildings are oriented to a public street or a private internal drive or street, to minimize pedestrian and bicycle travel through a parking area and to provide safe, convenient, and direct travel routes for pedestrians. • No drive-up, drive-in, or drive-through drives or lanes are located between a building and a public or private street.

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
30	MULTIMODAL AMENITIES	Site design standards for nonresidential development, parking standards	Integrate transit stops and bicycle parking into site design to increase accessibility options. Consider incentives such as parking reductions in exchange for such amenities, or for location relative to transit.	<p>Include minimum requirements for amenities such as:</p> <ul style="list-style-type: none"> For shopping centers abutting one or more future transit routes, one or more transit stops are located and designed with the approval when applicable of the local transit provider. Bicycle parking for customers shall be provided in the right-of-way along the street either on the sidewalks or in specially constructed areas such as pedestrian curb extensions at a rate of one space per 3,000 square feet of gross floor area of the building. In addition, individual uses shall provide covered bicycle parking at the rate of one bicycle space for every 10 employees. At a minimum, each use shall provide one covered bicycle parking space. The bicycle parking shall not exceed six bicycles per parking area. Only when providing the required bicycle parking spaces is not feasible as determined by the City, the developer may pay a fee established by City. <p>Additional incentives could include:</p> <ul style="list-style-type: none"> The total number of required motor vehicle parking spaces for a commercial use may be reduced by five percent for each of the listed activities which are provided by the owners or operators, up to a maximum 10 percent reduction in the total number of motor vehicle spaces per development. Designating at least 10 percent of the employee motor vehicle parking spaces as carpool/vanpool parking and placing such spaces closer to the building than other employee parking; Providing showers and lockers for employees who commute by bicycle; Providing twice as many covered, secured bicycle parking racks or facilities as required by this code; Providing a transit facility (e.g., bus stop) that is approved by the local transit authority, with related amenities. Related amenities include, but are not limited to, a public plaza, pedestrian sitting areas, shelter, and additional landscaping.

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
31	ACCESSIBLE PARKING	Off-street parking	Ensure accessible parking is provided in every off-street parking area as required by state and federal law, consistent with ratios and design standards in ORS 447.233. Accessible parking minimizes difficulties accessing buildings, both for residential uses and commercial/employment uses.	<p>Code can defer to ORD 447.233 directly, or include requirements directly in zoning provisions such as:</p> <p>Accessible Parking Requirements. Where parking is provided accessory to a building, accessible parking shall be provided, constructed, striped, signed and maintained as required by ORS 447.233, and Section 1104 of the latest Oregon Structural Specialty Code as set forth in this section.</p> <p>See also CPMC 17.64.040.C for more detailed regulations.</p>
32	COMMERCIAL BUILDING ENTRANCES	Site design standards for nonresidential development	Provide direct, accessible building entrances from sidewalks, instead of or in addition to entrances from parking lots.	<p>Building Orientation. All building elevations adjacent to a street right-of-way shall provide doors, porches, balconies, and/or windows. A minimum of 40 percent of front (i.e., street-facing) elevations, and a minimum of 30 percent of side and rear building elevations, shall meet this standard. Percent of elevation is measured as the horizontal plane (lineal feet) containing doors, porches, balconies, terraces and/or windows.</p> <p>Pedestrian Entrances. For buildings facing a street, a primary pedestrian entrance shall be provided that is easily visible, or easily accessible, from the street right-of-way, or a pedestrian accessway. To ensure that building entrances are clearly visible and identifiable to pedestrians the principal entry to the building shall be made prominent with canopies or overhangs.</p> <p>To achieve the objectives of this subsection the design of a primary entrance should incorporate at least three of the following design criteria:</p> <ol style="list-style-type: none"> For building facades over two hundred feet in length facing a street or accessway provide two or more public building entrances off the street; Architectural details such as arches, friezes, tile work, murals, or moldings; Integral planters or wing walls that incorporate landscape or seating; Enhanced exterior light fixtures such as wall sconces, light coves with concealed light sources, ground-mounted accent lights, or decorative pedestal lights; Prominent three-dimensional features, such as belfries, chimneys, clock towers, domes, spires, steeples, towers, or turrets; and A repeating pattern of pilasters projecting from the facade wall by a minimum of eight inches or architectural or decorative columns.

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
33	OUTDOOR USES FOR COMMERCIAL DEVELOPMENT	Site design standards for nonresidential development	Develop streetscape standards for public streets in front of commercial businesses that balance amenities like landscaping, benches and sidewalk displays with clear zone for accessible travel way. Review allowances for outdoor storage, seating and/or displays to ensure they do not encroach on travel ways that conform to ADA spacing, or better.	Outdoor Storage and Display within Public Rights-of-Way. Sidewalk vendors and outdoor display of merchandise shall be prohibited within the public rights-of-way except within the Central Business District, in which case the use shall be limited to cards, plants, gardening/floral products, food, books, newspapers, bicycles, and similar small items for sale or rental to pedestrians (i.e., non-automobile oriented). A minimum clearance of five feet shall be maintained on the sidewalk at all times to allow pedestrians to pass by the displays. All merchandise shall be removed from the public way at the close of business each day.
34	BLOCK SPACING REQUIREMENTS	Site design standards, land division standards, or lot standards	Establish maximum block lengths to ensure new development patterns are walkable and do not avoid significant out-of-distance travel to navigate around or through new developments. Different maximum block lengths may be appropriate in different zones, such as single-family residential versus industrial zones.	Block lengths and perimeters shall not exceed the following standards as measured from centerline to centerline of through intersecting streets. <ul style="list-style-type: none"> a. Six hundred sixty feet block length and 2,000 feet block perimeter in all Residential Zones; b. Four hundred feet block length and 1,500 feet block perimeter in the Central Business District, Convenience Commercial, Mixed-Use Riverfront and Professional Office Districts; c. Six hundred sixty feet block length and 2,640 feet block perimeter for all other Commercial, Industrial and Mixed Employment Districts; d. An exception may be granted to the maximum block length and/or block perimeter by the Review Authority if the applicant can demonstrate that the block length and/or block perimeter cannot be satisfied due to topography, natural features, existing development or other barriers, or it is unreasonable to meet such standards based on the existing pattern of development, or other relevant factors. When an exception is granted, the Review Authority may require the land division or site plan to provide blocks divided by one or more access corridors in conformance with the provisions of BDC 3.1.300, Multi-Modal Access and Circulation. Access corridors shall be located to minimize out-of-direction travel by pedestrians and bicyclists and shall meet all applicable accessibility standards.

	PLANNING TOPIC	CODE SECTION	GUIDANCE	CODE CONCEPTS AND EXAMPLE LANGUAGE
35	ACCESSIBLE DESIGN INCENTIVES	Special use standards for residential development, planned unit development standards	<p>Explore incentives to increase the number of units designed to meet Universal Design, Lifelong Housing Certification, and other similar standards. Consider density bonuses, height bonuses and other strategies. Additional incentives can be offered through the more flexible planned unit development process.</p> <p>Beyond the zoning code, look at incentives tied to development review and building permit review, which may include faster permitting process, reduced fees, or other local benefits, and or financial incentives such as reduced application fees or system development charges (SDCs).</p>	<p>Incentive examples include:</p> <ol style="list-style-type: none"> Expedited review and permitting processing. Planning and building fee exemptions up to \$10,000 per project. System development charge (SDC) deferrals. Allow a density bonus when developing accessible housing units. Allow a 10-foot building height bonus for multifamily housing when accessible housing units are gained.
36	REVIEW CLASSIFICATION FOR ACCESSIBILITY RENOVATIONS	Review procedures, historic district standards	Provide expedited or simplified review for minor accessibility renovations, such as exterior wheelchair ramps. Balance requirements of any historic preservation or design standards against need for accessibility.	Exempt modifications below a certain threshold, offer Type I (administrative) review, and/or develop educational materials for applicants to explain the review process.

REFERENCES:

BDC: BEND DEVELOPMENT CODE, <http://www.codepublishing.com/OR/Bend/?BendDCNT.html>

CPMC: CENTRAL POINT MUNICIPAL CODE, <http://www.codepublishing.com/OR/CentralPoint/#!/CentralPoint17/CentralPoint17.html>

ORS: OREGON REVISED STATUTES

SDC: SPRINGFIELD DEVELOPMENT CODE, <http://qcode.us/codes/springfield-development/>



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GUIDE for
DEVELOPING ACCESSIBLE &
AGE FRIENDLY ZONING CODE

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Toolkit
April 2016





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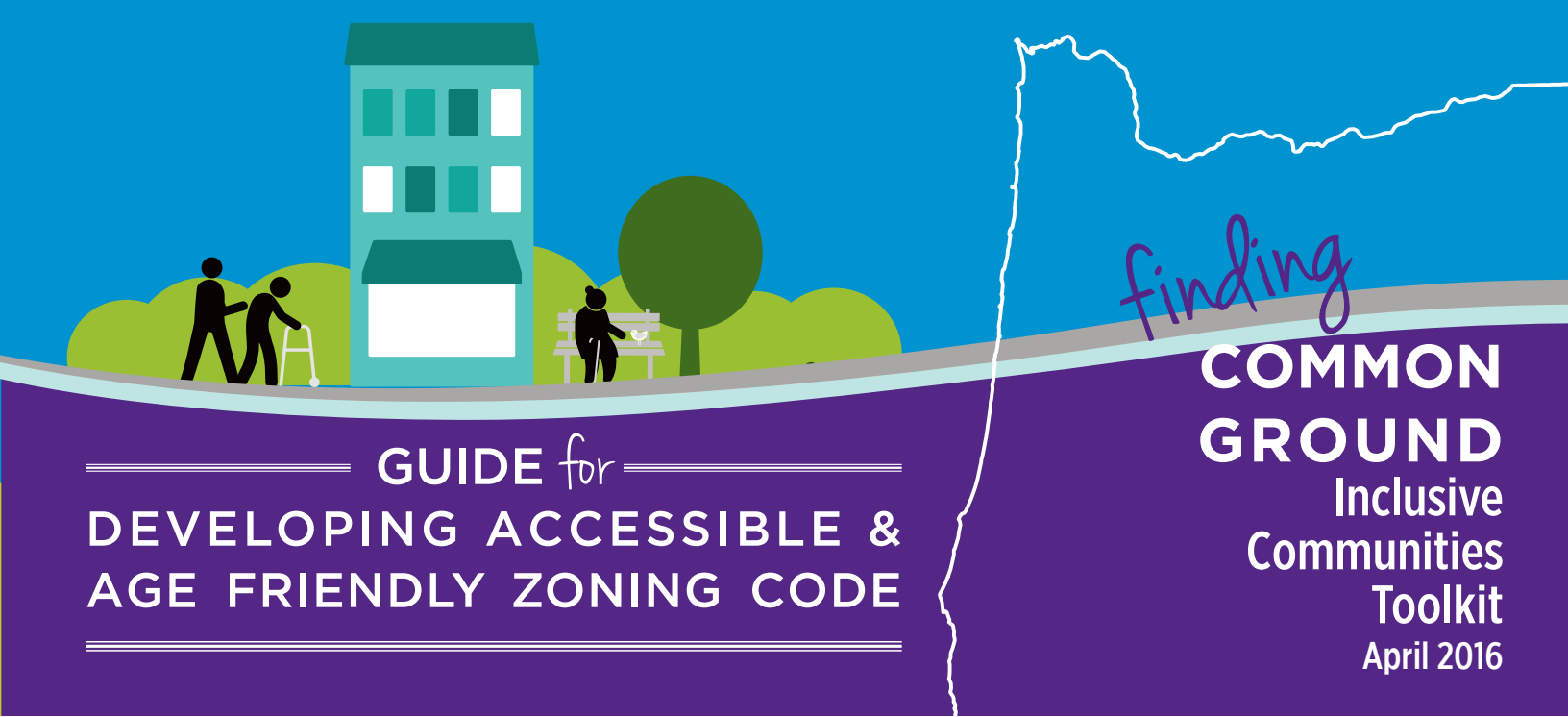
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GUIDE for DEVELOPING ACCESSIBLE & AGE FRIENDLY ZONING CODE

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SECTION 1.



ACCESSIBLE & AGE FRIENDLY ZONING PROJECT

Introduction to fair housing and accessible and age friendly development background.

SECTION 2.



ACCESSIBLE & AGE-FRIENDLY CODE MATRIX

Diagnostic tool and set of suggestions for updating a jurisdiction's zoning code to achieve accessibility, affordability and age-friendly goals.

INTRODUCTION



The relationship between fair housing and age friendly, accessible and affordable development hinges on providing housing opportunities to those members of protected classes under federal and state fair housing law who tend to be disproportionately older, lower-income and disabled.

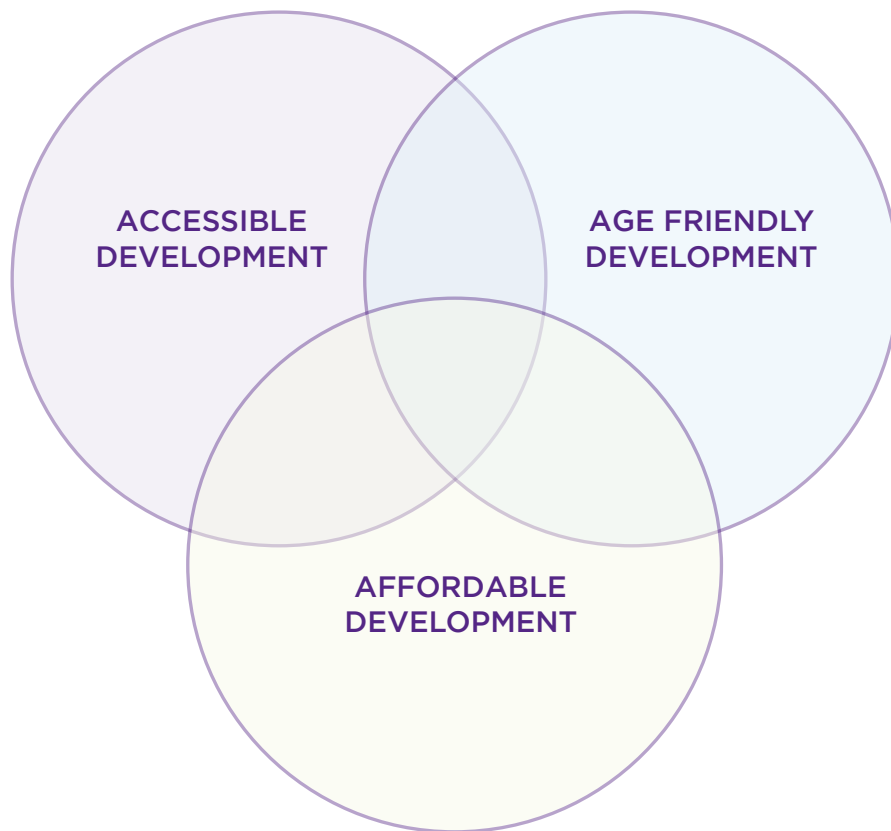
Federal fair housing law, first enacted by Congress as Title VIII of the Civil Rights Act of 1968, prohibits discrimination in housing based on race, color, religion, national origin, sex, disability or familial status—the seven federal protected classes. Oregon law also prohibits discrimination based on source of income, marital status, sexual orientation (gender identity), and being a domestic violence survivor. The law applies to public entities, private businesses, nonprofits and individuals.

Housing discrimination against people with disabilities has an outsize impact on older adults, because of the high levels of reported discrimination and the high number of older adults with disabilities. Approximately 50% of the fair housing complaints in Oregon received by the Fair Housing Council of Oregon are from people with disabilities. National statistics reflect the same percentage. And 50% or more of adults over the age of 65 years are disabled, meaning that roughly one in four fair housing complaints affect older adults.

Although age itself is not a protected class, the high degree of overlap between disability and age makes fair housing for older adults a priority for the Fair Housing Council of Oregon.

It is unlawful for local governments to utilize land use and zoning policies to keep persons with disabilities from locating in specific neighborhoods or areas. Fair housing law does not pre-empt the ability of local government to regulate land use and zoning. However, local governments may not exercise that authority in a way that is inconsistent with federal fair housing law. Local laws cannot overtly or otherwise have the effect of discriminating against individuals in housing on the basis of protected class.

This **GUIDE FOR DEVELOPING ACCESSIBLE AND AGE FRIENDLY ZONING CODE** is part of the **FHCO FINDING COMMON GROUND: INCLUSIVE COMMUNITIES TOOLKIT**, including the first guide, **GUIDE FOR EXAMINING LOCAL LAND USE WITH A FAIR HOUSING LENS**. FHCO looks forward to partnering with communities across the state to implement the ideas in these guides not just to fulfill the legal requirements of state and federal fair housing law, **but also to expand housing options for all our citizens and neighbors.**



OVERVIEW



With one in five Americans expected to be over 65 years old by 2050, adapting our cities for the needs of older adults is a top planning priority. Accessibility and affordability are two key concerns for the older adult population, and impact a broad cross-section of the general population as well. People with disabilities make up 19% of US population — including 50% or more of adults over 65 years old — whereas 30% percent of US households of all ages struggle with housing costs. In addition addressing challenges of existing communities and development, **upstream work needs to be done to ensure that new development is carefully designed to address accessibility, aging and affordability concerns.**

One important tool in shaping this future development is city and county zoning codes. This project develops model zoning code approaches that address accessibility, aging, and affordability issues in the built environment, designed to be compatible with existing zoning codes, community priorities, and state regulations in a range of Oregon cities.

The first phase of the project worked to identify initial zoning code concepts to improve age friendliness and accessibility. Additional background was provided by a focus group of city staff, citizens, and experts on planning and older adult issues to discuss the applicability of age friendly zoning in Beaverton, OR. Focus group results verified that age friendly concepts resonated with participants as a shared community goal, with the need for professional assistance to develop specific zoning code changes to achieve goals.

Case studies of three Oregon cities further explored opportunities and existing ideas for zoning code improvements. The cities of Springfield, Bend and Central Point, OR, were selected, with city selection based on size and geography for variety, local initiatives related to aging and accessibility, quality of zoning code, and demographic factors to ensure variety. Each case study included background on community needs for aging and accessible development, an inventory of the existing zoning code, overview of development review practices, permitting history for earlier senior-focused projects, and local aging and disability initiatives. Interviews with city staff and key community stakeholders were instrumental to provide an inside perspective on key issues and past performance in the three cities.

Findings from the case studies and code inventories are summarized in this report, and translated into an implementation matrix of model zoning code provisions to be used as guide for cities to update their codes. (See Section 2: Accessible and Age Friendly Zoning Code Matrix.) The matrix tool is intended as either an internal diagnosis and guide for cities to complete their own code updates, or to be implemented with the help of an outside planning consultant. Each community will benefit from carefully examining the unique needs of their population and the unique provisions of their zoning code in tailoring the model code provisions for their city. Zoning code updates can also be the springboard for future work upstream, such as comprehensive planning, and downstream, such as development review and building codes, to more holistically address issues of accessibility, affordability, and aging readiness in our communities.

A photograph of a man and a woman standing in front of a house. The man, on the left, is wearing glasses and a dark blue polo shirt. He is holding a clipboard and writing on it with a white pen. The woman, on the right, is wearing a bright blue and yellow floral shirt. She is gesturing with her right hand while looking up and to the side. The background shows the exterior of a house with green siding and a white door.

AGING IN PLACE

The vast majority of older adults across various income levels and degrees of disability want to age in place in their existing homes and neighborhoods, but retrofitting existing homes and providing services at the neighborhood-scale will require considerable effort.

Photo Credit: Esther Honig, KCUR

BACKGROUND



AN AGING POPULATION

Aging Americans will reshape our society in coming years as they become a larger segment of the population, and our communities need to adapt along with them. The percentage of adults over 65 in the US is expected to double by 2050 — from approximately 13% to 20%, or 1 in 5 Americans.¹ Aging in place is a priority for tomorrow's older adults, with 89% wishing to remain in their homes, with more than two-thirds citing community connections as their motivation.² New initiatives are needed to shape age friendly communities that address the needs of older adults, creating communities where policies, services and structures related to the physical and social environment are designed to support and enable older people to “age actively” — that is, to live in security, enjoy good health and continue to participate fully in society. Transforming our communities will require adaptations to both physical structures and services to ensure they are accessible and inclusive of older adults with varying needs and capacities. Age friendly communities have the promise to benefit all segments of society, including immediate benefits for disabled and low-income populations facing accessibility and affordability challenges.

RELATED DISABILITY ISSUES

Americans of all ages are living with a range of disabilities including physical, mental and communicative disabilities. In total, 19% of the US population has one

or more disabilities.³ Disability issues are a major issue among the older adult demographic, with 50% of adults aged 65 or over reporting a disability, and the actual number likely higher after accounting for underrepresented populations like nursing home patients.⁴ Because disability is a protected class under the Fair Housing Act, ensuring cities adequately regulate creation of accessible housing and neighborhoods to prevent discrimination against persons with disabilities is a legal as well as moral priority.

AFFORDABILITY CHALLENGES

In addition to age and accessibility issues, the third related challenge affecting development of housing and neighborhoods is affordability. According to the 2014 American Community Survey, over 30% of US households spend 30% or more of their monthly income on housing and are considered housing-cost burdened. The burden is particularly pronounced for renters, among whom 52.3% spend 30% or more of their monthly income on housing costs. The high prevalence of high housing costs makes accessibility a housing priority for all generations, including older adults and people with disabilities. According to the 2014 American Community Survey, 9.4% of older adults lived at or below the poverty line across the US; while this is lower than the 15.6% poverty rate for the general population, heavily influenced by the high number of children living in poverty, this means one in ten older adults is struggling

20%

US POPULATION
OVER 65 BY 2050

89%

SENIORS WHO
WANT TO AGE
IN PLACE

with affordability issues. Poverty is also a pronounced concern among people with disabilities: 14.7% of adults 15 to 64 years old with severe disability live at or below the poverty line and 10.4% of adults with a non-severe disability struggle with poverty, compared to 8.4% of the population without a disability.⁵

PROPOSED AGE FRIENDLY ZONING

A key component of developing age friendly and accessible cities will be physical changes to the built environment to accommodate the housing and transportation needs of this population. Zoning regulations are a powerful tool to influence new development and redevelopment of established neighborhoods, and can be adapted to implement age friendly concepts as part of every project. Planning and zoning practices directly contribute to the built environment, and age friendly zoning changes can achieve:

- Expanded housing options to increase affordability and accessibility, through incorporation of non-traditional housing types in residential zones; density bonuses or other incentives to encourage senior housing; and simplifying permit review for exterior alterations such as wheelchair ramps.

THE ROUND

Mixed use projects like The Round in Beaverton combine multiple uses, and link them to transit, providing an increased range of options for older adults.



Photo Credit: Jim Springhetti, The Oregonian

- Mixed use neighborhoods with increased accessibility of goods and services, including mixed use zoning and flexible use of buildings to allow more commercial, medical, and service opportunities near residential areas.
- Improved site design to make the public realm easier to navigate, including prioritizing pedestrian, transit and bike access to developments; requiring pedestrian connectivity across large developments; and incentivizing usable outdoor recreation spaces, including gardens and trails.

¹ Grayson K. and Victoria A. Velkoff, 2010, THE NEXT FOUR DECADES, The Older Population in the United States: 2010 to 2050, Current Population Reports, P25-1138, U.S. Census Bureau, Washington, DC.

² Keenan, Teresa A., Ph.D., 2010, Home and Community Preferences of the 45+ Population, P4, AARP, Washington, DC.

³ Brault, Matthew W., 2012, Americans with Disabilities: 2010, P4, U.S. Census Bureau, Washington, DC.

⁴ Ibid, P6.

⁵ Ibid, P11.

COMMUNITY FEEDBACK



INITIAL RESULTS

The project team, with the help of City of Beaverton and AARP Oregon, convened a focus group of City staff, citizens, and experts on planning and older adult issues to discuss the applicability of age friendly zoning in the Beaverton context. The event was held November 19, 2013 at the Beaverton City Library.

The group included Beaverton Planning Division staff, a Beaverton City Councilor, AARP volunteers, members of the Beaverton Senior Citizens Advisory Board, staff of nonprofits serving older adult populations, and senior housing providers.

Main topics of conversation included:

- Areas of Beaverton that are currently problematic for older adults, or were examples of well-design development that functioned well for older adults. Favorable examples included: the village movement, Progress Ridge town center mix of uses, increasing use of Universal Design concepts. Negative examples included: difficulty navigating public streets, lack of crosswalks, pedestrian environment on Hall Boulevard.
- Interest in mixed-use development, and the balance of integrating commercial uses into existing residential neighborhoods through home occupations and other approaches.

- Communal approaches like the village movement and Bridge Meadows in North Portland, and the importance of community spaces in multifamily development.

Key observations from the focus group are that there is an active audience for age friendly initiatives that feels a clear need for improvements, but that enthusiasm needs to be focused. Given the diverse needs of an aging society, and the significant work our communities need to do to prepare, there were many interconnections between zoning concepts and more program or service based solutions. Tools for effective future engagement with similar constituents include an educational component on zoning, as well as more specific alternatives for zoning approaches.



PEDESTRIAN CONCERNS

Participants cited auto-dominant infrastructure with limited pedestrian options as a concern, such as along Canyon Road.

Photo Credit: Jim Parsons, BikePortland.org



PROGRESS RIDGE TOWN SQUARE

Progress Ridge, a master planned community with a mix of uses was cited as a positive development example

Photo Credit: Mackenzie, mcknze.com



CASE STUDIES



The three cities selected for case studies—**BEND, SPRINGFIELD, and CENTRAL POINT, OR**—each contribute to a broader understanding of conditions that drive the built environment where older adults live, and point to opportunities to revise standards with a greater focus on aging, accessibility and affordability. The three cities were selected based on geographic diversity, diversity of sizes, and availability of online zoning code as basic pre-requisites, then focusing on cities with a larger older adult population both at present and forecast for the future, and an expressed interest in age friendly communities. Interviews with city planners and community

stakeholders provided background on each community, aging and accessibility concerns, and existing zoning code. (See Section 2.)

Their codes were used as three examples of diverse cities, and each was analyzed for general principles and areas of improvements as the basis for a model code that any interested city could implement. While each zoning code is unique and is developed over time in response to community specifics, there are general concepts that can be distilled and transferred between codes.

CITY	SIZE	OLDER POPULATION	NOTABLE FEATURES
Bend	79,698	14.3 % 65+ 26.9% 55+	<ul style="list-style-type: none"> Adopted accessibility standards in building code Housing inventory identified lack of options for seniors 25% of population will be seniors by 2029 due to immigration of retirees
Springfield	59,882	11.3% 65+ 23.7% 55+	<ul style="list-style-type: none"> Age-friendly community, planning initiative in concert with World Health Organization initiative
Central Point	17,443	18.0% 65+ 28.8% 55+	<ul style="list-style-type: none"> Lifelong Housing standard Developing intergenerational park

Source: 2010-2014 American Community Survey 5-Year Estimates



BEND WALKABILITY

Walkability remains a concern in some areas of Bend, OR, particularly where rapid development has outpaced transportation improvements.

Photo Credit: Ryan Brennecke, The Bend Bulletin

BEND

Bend is located in central Oregon with a population of nearly 80,000, and is a popular destination for retirees from Oregon and beyond who are attracted to the relatively sunny climate and active lifestyle. The Bend area experienced significant growth prior to the recession, and is once again one of the fastest growing metropolitan areas not just in Oregon but across the country, with a 2.7% annual growth rate reported in 2014 by the U.S. Census. An estimate of 14.3% of the population is currently 65 years of age or older, with a full one-quarter of the population expected to be older adults by 2024.

Bend planners have identified several initiatives to make the city more age friendly. The City integrated accessibility standards into the building code effective in 2012. City planners have reviewed the local housing inventory and found that there are not enough of the types of housing units that older adults will want, such as cottage homes,

duplexes, triplexes, condos, and townhouses. Long-range plans will identify ways to expand range of these housing types. The City's Transportation Department has also identified walkability as a priority for future transportation plans, based on survey findings that making streets more pedestrian friendly is a top priority for older adults.

Local resources for older adults include the public Bend Senior Center, several age-restricted and assisted living communities, and the Central Oregon Council on Aging (COCOA).

The City's zoning code provides for a range of residential districts at varying densities, several geographically specific mixed-use districts, commercial districts, and other supporting districts. Allowed densities range from 2 to 42 units per acre, with a variety of housing types allowed in the medium and high density zones. Commercial standards include building and site design standards, with provisions for multimodal transportation.

CASE STUDIES



SPRINGFIELD

The City of Springfield is only the second community in Oregon after Portland to join the AARP Network of Age Friendly Communities, a joint initiative of the World Health Organization (WHO) and AARP to prepare communities for rapidly aging populations. The city is halfway through developing an action plan based on assessments conducted within the community to identify needs within the eight areas the WHO has identified as influencing the health and quality of life of older adults. The city is an ideal partner for this zoning code project because they are in the initial stages of identifying opportunities to make the city more age friendly.

The city's population of 60,000 includes 11.3% seniors today; seniors are expected to make up nearly one-quarter of the population by 2024. The city is generally known as a progressive community with an emphasis on 'Hometown Feel.' Existing strengths include an award-winning park and recreation district with options tailored for older adults, a walkable and bike friendly community, and a downtown that is home to community events like farmers markets and art walks.

The Springfield Development Code allows for a range of residential types across zones that accommodate densities from 6 to 42 units per acre. There are provisions for adult day care, group care facilities, senior

recreation centers, accessory dwelling units, and a range of residential types across the residential, mixed-use and commercial zoning districts.

CENTRAL POINT

Central Point is a smaller city of 17,500 residents in southern Oregon, with a demonstrated interest in aging and accessibility issues. The city is part of the broader Medford metropolitan area, and participates in the Rogue Valley Council of Governments (RVCOG). The RVCOG provides a range of senior and disability services, and developed the Lifelong Housing standard in partnership with AARP to promote residential design that adapts to needs of older adults.

The Lifelong Housing standard is being put into practice in selected homes within the new Twin Creeks development. The city is also exploring designs for an all-ages park as a centerpiece of the new development.

The city's zoning code, however, has not necessarily caught up with the city's age friendly intentions. The ADU code, for example, was adopted in 2006 and is fairly restrictive in terms of which zones ADUs are allowed and the design requirements. Other areas of the code provide greater possibility for age friendly development, such as the Medical Commercial zone that allows mixing of residential, commercial and medical services.

DOWNTOWN SPRINGFIELD

Downtown Springfield, OR offers a range of shops and services at a scale accessible to older adults, providing an alternative to big-box or auto-dominated commercial centers.



Photo Credit: Discover Downtown Springfield



LIFELONG HOUSING

Example of a Lifelong Housing-certified home, a single-story home in the Twin Creeks development in Central Point, OR.

Photo Credit: Howard M. Johnson, Age Friendly Innovators, Inc.

ZONING CODE IMPROVEMENTS



Because of the variety of local zoning code regulations, the model code matrix covers a range of topics with examples from multiple jurisdictions. Implementing the matrix concepts in individual cities will require applying the concepts and code language throughout each city's existing code and balancing the concepts against broader community priorities, resulting in unique zoning regulations in each jurisdiction rather than a single template. The zoning matrix tool includes specific code language wherever possible, such as for definitions, however, some guidance is more general because of variety of regulations. (See Section 2.) The zoning codes from the three case study cities have been used to illustrate local opportunities, and the variety of approaches that can achieve similar outcomes.

Zoning code topics generally can be grouped into residential standards intended to expand range of housing options, mixed-use requirements for use flexibility, commercial site design standards to improve access, and process standards designed to simplify or incentivize accessible and affordable projects. Topics addressed in the model zoning matrix include:

- **“Missing middle” housing types:** Allow variety of housing types in between single-family, detached homes and multifamily buildings. Permit uses such as Accessory Dwelling Units (ADUs), courtyard apartments, and cottage

housing clusters. Add definitions for each use and create alternative dimensional standards where needed.

- **Family definitions:** Align definition of “family” with state law, to eliminate discrimination against households comprised of non-related individuals, and focus on regulating physical dwelling units rather than the occupants.
- **Care facilities definitions:** Align definitions of housing types such as adult foster homes and nursing homes with state licensing requirements to simplify siting such facilities.
- **Density bonuses:** Provide density bonuses for affordable, accessible and/or age-restricted housing. Develop definitions and/or monitoring programs to ensure housing developed with density bonus is used as intended.
- **Residential dimensional standards:** Review dimensional standards, including setbacks for single-story homes.
- **Residential parking requirements:** Explore minimum and maximum parking requirements for variety of residential uses, including “missing middle” uses like ADUs and larger-scale uses like apartment buildings. Balance needs for ADA parking spaces against cost, design implications of parking requirements.
- **Commercial mixed use:** Explore whether residential uses are appropriate in low-

impact commercial zones, such as neighborhood commercial zones.

- **Medical mixed use:** Evaluate the range of uses allowed in mixed use and/or commercial zones. Allow medical uses such as clinics, offices, care facilities, and support services integrated with residential uses to provide on-site services for residents.
- **Parking lot design for commercial development:** Prioritize human connections and de-emphasize motor vehicle access in parking lots. Actions include requirements for pedestrian pathways and crosswalks, moving parking lots to side or rear of building, interior parking lot landscaping, and pedestrian plazas and other amenities such as benches.
- **Multimodal amenities:** Integrate bicycle racks and transit stops into site design. Consider incentives such as parking reductions in exchange for such amenities, or for location relative to transit.
- **Commercial building entrances:** Provide direct, accessible building entrances from sidewalks, instead of or in addition to entrances from parking lots.
- **Commercial frontage standards:** Develop streetscape standards for public streets in front of commercial businesses that balance amenities like landscaping,

benches and sidewalk displays with clear zone for accessible travel way. Review allowances for outdoor storage, seating and/or displays to ensure they do not encroach on travel ways that conform to ADA spacing, or better.

- **Accessible design incentives:** Explore incentives to incorporate Universal Design, Lifelong Housing Certification, and other similar standards into building permit review, which may include faster permitting process, reduced fees, or other local benefits.
- **Review classification for accessibility renovations:** Provide expedited or simplified review for minor accessibility renovations, such as exterior wheelchair ramps. Balance requirements of any historic preservation or design standards against need for accessibility.

FUTURE IMPLEMENTATION



The model zoning matrix provides a tool to guide revisions of city and county zoning codes. Realizing regulatory improvements related to aging, accessibility and affordability challenges will rely on future efforts by city planners and planning professionals to apply the matrix concepts to their individual zoning codes, in order to shape future development in those communities. Future implementation efforts should focus on identifying interested communities with elected officials, community advocates and staff interested in piloting a new approach to zoning, and identifying funding sources to support the work. The three case study cities — Bend, Springfield, and Central Point — would be a good starting point. Networking through statewide groups such as the Oregon chapter of the American Planning Association, the Real Estate/Land Use Section of the Oregon State Bar, League of Oregon Cities, Oregon City/County Management Association, AARP Oregon, the Fair Housing Council of Oregon, the Oregon Department of Land Conservation and Development, and the Oregon Department of Human Services.

An initial lead for funding is the Technical Assistance Grant program run by the Department of Land Conservation and Development (DLCD). The next round of grants will be awarded in 2017. Prior to the next grant cycle, work should focus on identifying cities interested to implement the model zoning concepts to apply for grants, and lobbying the grant committee to increase the relative priority of housing-related projects in their decision process. Additional sources such as private foundations should be identified as well.

Another opportunity to expand this project statewide is to partner with DLCD to apply the model zoning concepts to the Model Development Code for Small Cities. The state model code is a tool used by many small cities as the basis for their zoning regulations, and provides the best “one-size-fits-many” approach to broaden the applicability of the accessible and age friendly model code concepts to the greatest number of cities.





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**REALIZING REGULATORY IMPROVEMENTS RELATED
TO AGING, ACCESSIBILITY AND AFFORDABILITY WILL
RELY ON FUTURE EFFORTS BY CITY PLANNERS AND
PLANNING PROFESSIONALS TO APPLY THE MATRIX
CONCEPTS TO THEIR INDIVIDUAL ZONING CODES.**

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GUIDE for
ELECTED OFFICIALS

Finding Common
Ground
Inclusive
Communities
Toolkit
July 2014





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GUIDE for ELECTED OFFICIALS

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July 2014

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INTRODUCTION

This GUIDE IS FOR PUBLIC OFFICIALS, including elected officials, planning commission members, planners and other staff for cities and counties in Oregon who seek to understand their role in addressing neighborhood conflicts over residential uses related to fair housing. When such conflicts arise, public officials often find themselves in the middle, acting informally as arbiters or more formally as decision-makers. This guide is intended to help you understand your role and stay on the right side of the law. While there is no “app” for creating inclusive, welcoming neighborhoods that are safe places to live and raise families, new knowledge and understanding can help build a strong foundation for productive engagement. This guide aims to provide that information.

From our ancient roots as hunters and gatherers, we human beings are hard-wired to be wary of situations that are unfamiliar and people who seem different from us. We also have a sense of territory. Instinctually, we feel an impulse to exert control over areas we consider belong to us.

Fortunately, we’re also hard-wired to want to live in a community. The communitarian impulse supports our efforts to figure out how to get along and to seek benefit from associating with those who have abilities and insights different from ours. It takes hard work to navigate our differences and reach solutions that provide an acceptable level of personal security for everyone. The first step starts with communication.

When changes are planned for a neighborhood, whether it is a single house, a new apartment complex or a new institution such as an assisted care facility, sometimes neighbors object. They may not oppose the proposed project per se, but they may object to its location in their neighborhood. They may believe it belongs somewhere, as long as it is somewhere else.

Sometimes opposition is based on non-discriminatory factors—fact-based concerns about traffic, for example—that do place an undue burden on a neighborhood. However, opposition can also represent a desire to avoid having to deal with people who are viewed as being “different.” Sometimes external impacts like traffic and parking problems masquerade as rationales for opposition when the real motivation is a desire for social exclusivity.

While supporting the development of an inclusive community is an art, not a science, there are some clear rules, based in federal and state law, which govern what is lawful and what is not. This guide provides guidance on those fair housing rules.

This **GUIDE FOR ELECTED OFFICIALS** is one of a series of three guides that provide practical, experience-based information to stakeholders who may become involved with local opposition to new housing or new neighbors. The other two guides are:

- **GUIDE FOR NEIGHBORS**
- **GUIDE FOR HOUSING PROVIDERS**

THIS GUIDE HAS FOUR SECTIONS

1.



THE BASICS

An introduction to fair housing as it relates to inclusive communities

2.



FAIR HOUSING, AFFORDABLE HOUSING AND HOUSING FOR PEOPLE WITH DISABILITIES

An introduction to the two types of housing developments where concerns around fair housing are especially likely to surface

3.



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RESOURCES

Information about other guides and key resources for those who wish to go deeper

SOURCING

This guide draws extensively from guides produced for other states and audiences. For ease of reading, we have elected to not cite specific sources in the body of this guide, but included them in the list of resources that forms the final chapter. We wish to thank and recognize the many sources whose work provided the foundation for this guide.



Interspersed throughout are **MYTHS AND FACTS + STORIES FROM THE FIELD** that use examples of things that actually occurred in Oregon to illustrate the main ideas.

1. THE BASICS



This section of the guide provides an introduction to fair housing concepts and touches on some of the most common rules that come into play when a new housing development or a change in use of an existing residential use sparks concerns in a community about the kinds of new neighbors who may move into the area.

INTRODUCTION

Neighborhoods are changing all the time. Neighbors move in and out and businesses come and go as well. For some, change can be challenging and can make people feel uneasy or conjure up fears of the unknown.

But change can also be an opportunity. This guide focuses on the opportunity to channel change in a way that fosters inclusive communities.

Fair housing laws ensure access to housing opportunities for all, regardless of their backgrounds, beliefs or abilities. In effect, fair housing laws help identify which issues can be legally addressed when community concerns arise, and which infringe upon the rights of others not yet living in the neighborhood. Neighborhood activists, public officials, city staff and developers all need to understand the law. The law helps to achieve a balance between existing neighbors' concerns and the right of all people to access a range of housing options and neighborhoods.

FAIR HOUSING AND PROTECTED CLASSES

The purpose of fair housing laws is to provide access to housing choice by everyone, free from discrimination. The federal Fair Housing Act makes it unlawful to discriminate against people seeking to obtain housing. A wide range of housing-related activities are covered by fair housing law, including renting, selling, lending, zoning and providing insurance. Under national fair housing laws, it is illegal to deny access to housing to people because of their race, color, national origin, religion, gender, familial status (the presence of children in a household) or disability. These seven characteristics are called the federal protected classes. In Oregon, it is also illegal to discriminate in housing transactions based on a person's marital status, source of income (including, as of July 1, 2014, Housing Choice/Section 8 Vouchers), sexual orientation (including gender identity) or status as a domestic violence victim—Oregon's protected classes. Some cities and counties have identified additional local protected classes that apply within their boundaries.

Being a member of a protected class does not give someone the right to engage in unlawful activities. For example, if someone who is disabled or a person of color commits a robbery, he/she is subject to arrest and prosecution just like anyone else. The Fair Housing Act affords no protections

DEFINITION

in·clu·sive

adjective \in-'klü-siv, -ziv\

: open to everyone : not limited to certain people

com·mu·ni·ty

noun \kə-'myü-nə-tē\

: an interacting population of various kinds of individuals in a common location

Source:

www.merriam-webster.com/dictionary

to individuals who present a direct threat to others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about a group of people or how individuals who are part of that group (such as people with mental health disabilities) might act.

Nor do fair housing laws (with one exception, special accommodations for people with disabilities, discussed in a later section) convey special privileges or rights to an individual based on his or her membership in a protected class. The intention of federal, state, and local fair housing laws is to require that all individuals be given the same treatment, the same services, and offered an equal opportunity to live in a home of their choice.



PROTECTED CLASSES

FEDERAL

- race
- color
- national origin
- religion
- gender
- familial status

(the presence of children in a household)

- disability

STATE

- marital status
- source of income
- sexual orientation
- status as a domestic violence survivor

THE BASICS



FAIR HOUSING AND TYPES OF DISCRIMINATION

Fair housing law protects against three kinds of discrimination:

Direct Evidence: Actively and openly limiting access to housing on the basis of protected class. An example of direct evidence would be the refusal to rent to someone solely because he was born in Saudi Arabia and is Muslim. That would represent discrimination on the basis of national origin and religion.

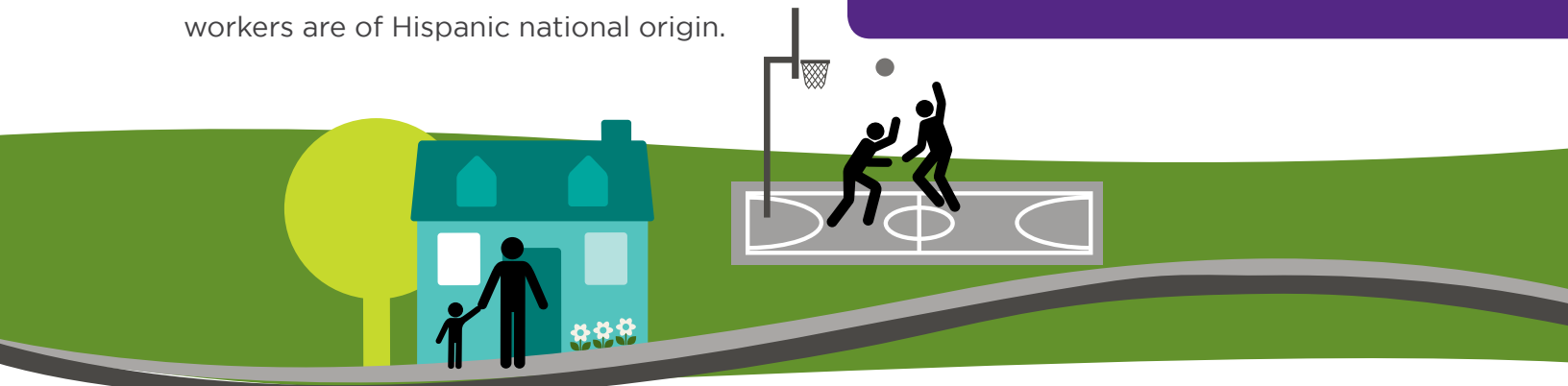
Unequal Treatment: Treating people differently based on protected class status; for example, requiring a renter with two children to pay twice the security deposit of a renter without children is discrimination on the basis of familial status.

Disparate Impact: Having a discriminatory effect on a protected class while appearing to treat everyone the same. For example, giving preference to renting to households with people who don't work in the local fish cannery would have a disparate impact on the Latino population if the vast majority of cannery workers are of Hispanic national origin.



THE FAIR HOUSING ACT

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, codified at 42 U.S.C. 3601-3619), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18) and disability. At the urging of President Lyndon B. Johnson, Congress approved the Civil Rights Act of 1968, and it was signed into law one week after the assassination of Dr. Martin Luther King, Jr.





DID YOU KNOW?

Deed restrictions were used to prohibit the sale of homes in certain areas to people of color and, in some cases, people from specific national origins. Such restrictions are now null and void by virtue of the Fair Housing Act of 1968.

DISPARATE IMPACT AND LAND USE LAWS

It is important to note that a practice does not need to be intentionally discriminatory for it to be in violation of fair housing laws. One of the complicated realities of American culture is that discriminatory practices—practices that have disproportionately negative effects based on protected class—have occurred for decades before fair housing laws were adopted. Discriminatory practices are so deeply imbedded in our institutions, traditions and ways of doing business that it can be hard to identify and isolate them. We continue those institutions and practices, unwittingly perpetuating their negative effects.

One of the main ways that the concept of disparate impact affects neighborhood quality is through zoning ordinances and practices. Fair housing laws prohibit land use regulations, restrictive covenants and conditional or special use permits from imposing special conditions that have the effect of limiting housing choice based on protected class status. In the past, deed restrictions were used to prohibit the sale of homes in certain areas to people of color and, in some cases, people from specific

national origins. Upheld as legal by a Supreme Court decision in 1917 (*Buchanan v. Warley*, 245 U.S. 60 (1917)), such restrictions are now null and void by virtue of the Fair Housing Act of 1968. A more contemporary example of a policy that would have a disparate impact is requiring an applicant seeking to build a single-unit house for five unrelated people who have disabilities (a protected class) to undergo additional hearings, reviews or community meetings that are not required for a single-unit house for any other group of five unrelated individuals.

A recent example of disparate impact and jurisdictional involvement is the *Mount Holly v. Mount Holly Gardens Citizens in Action, Inc.*, in which the Township of Mount Holly planned to tear down existing housing to build higher-end housing. The citizens who lived in the existing housing protested, saying that they would not be able to afford to live in the new housing and this would have a disparate impact on the township's minority population. The citizen group sued the jurisdiction under the Fair Housing Act, citing disparate impact. The case was settled in favor of the citizen group before it reached the Supreme Court.

THE BASICS



REASONABLE ACCOMMODATION FOR PEOPLE WITH DISABILITIES

As mentioned above, people with disabilities do have an extra privilege under fair housing to ensure that they can access equal housing opportunity. The Fair Housing Act requires housing providers respond to requests for reasonable accommodations. These are exceptions to rules, policies, practices or services to enable people with disabilities to live in the residence. This includes physical modifications to make the residence accessible. Local officials are also required to consider reasonable accommodations to zoning, building codes and ordinances.

Local jurisdictions are required to make case-by-case determinations about what is reasonable based on the facts of the particular case under consideration. For example, the accommodations required to assist people with mobility impairments may be different from those needed to assist people with loss of hearing. In neither case could basic health and safety precautions be set aside, nor could the general nature of the zoning of the neighborhood be changed.



WHAT DOES DISABILITY MEAN?

There are many different definitions of disability. The one relevant to fair housing is the one included in the Fair Housing Act, which states that someone is disabled if he or she has a physical or mental impairment which substantially limits one or more major life activities, including having a record of or being regarded as having such impairment (42 U.S.C. 3602 (h)).

FREE SPEECH AND PUBLIC DECISIONS

Fair housing laws require that public decisions about housing developments not be based on the race, color, religion, sex, national origin, familial status or disability of the residents. It also prohibits public decisions and policies that have a disproportionate impact on members of one or more protected classes.

Community members have the right, under First Amendment free speech protections, to express their opposition to projects on any

basis (as long as it does not constitute illegal intimidation). However, land use and other public decisions may not be made on the basis of concerns based upon discriminatory assumptions. Local officials, including staff, may only make their decisions based on fact-based, non-discriminatory factors. Furthermore, the law prohibits the public from asking for information about the extent or type of disability an individual or group of individuals may have.

CONCLUSION

The creation of safe, inclusive communities—places where people from a variety of backgrounds and abilities can thrive—is more of an art than a science. It involves achieving a delicate balance among many different pairs of opposing forces, such as:

- The desire of longstanding residents to control their community's future vs. the desire of newcomers to have housing choices
- The need to apply laws equally to all vs. the requirement to be flexible around the margins if so requested by someone with a disability (reasonable accommodation).



CONFRONTING EMBEDDED DISCRIMINATION?

Stella Adams, a fair housing consultant from Durham, North Carolina, compares deeply imbedded discriminatory practices from the past that continue into the present to sour dough starter that incorporates some toxic yeast. When new loaves are made from the starter, the bad yeast is baked in to the new loaves, even though the baker had no idea that toxic yeast was present. Furthermore, the bad yeast is incorporated into the dough left over to make new starter for the next batch of loaves. Getting rid of the bad leavening requires a conscious choice and hard work to create a fresh, clean batch of “mother” sourdough starter.



2. FAIR HOUSING

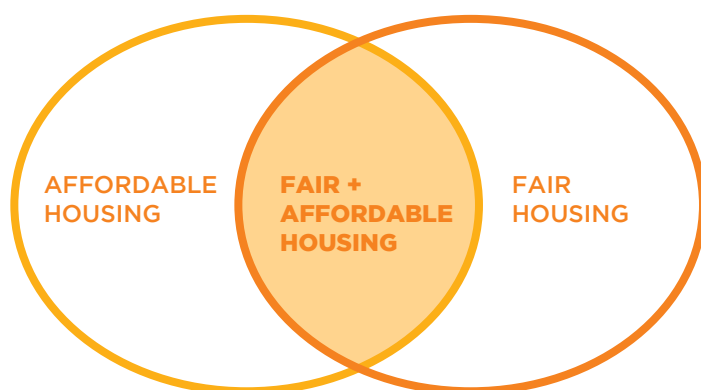


Fair housing issues may arise with respect to any kind of housing development and in any kind of neighborhood. For example, opposing a mosque's efforts to partner with a developer to create a new apartment complex in the neighborhood would likely be a fair housing violation if the objection based on not wanting people who practice Islam to move into the neighborhood. A city that refuses to permit the development of a high-end assisted living facility for adults with Alzheimer's disease based on the complaints of neighbors who don't want to live next door to "crazy people who wander" would also likely be a violation of fair housing laws based on disability.

While fair housing issues may arise in many different kinds of situations, there are two kinds of housing developments where both neighborhood resistance and fair housing issues may surface: subsidized/low cost/low income/affordable housing (it goes by many names) and projects serving people with disabilities (also called special needs housing). This chapter considers both in some detail.

THE OVERLAP BETWEEN FAIR HOUSING AND SUBSIDIZED HOUSING

In most communities, the majority of people who need subsidized housing are also people whose access to housing choice is protected under fair housing law. For example, in many communities, a greater share of people of color (race, national origin and color) may need subsidized housing than the majority population; thus, in this community, the rejection of subsidized housing would have a disparate impact on people of color. The reasons for this are complex and have deep historical roots related to decades of discriminatory practices that impacted the life opportunities of people of color and other groups, as well as contemporary patterns and institutional practices that have a disparate impact. The diagram below illustrates the overlap, or nexus, between fair housing and subsidized housing.



Rejecting a housing project on the grounds that it will serve low income people is, in most instances, a violation of fair housing because that decision would have the effect of discriminating against people on the basis of their membership in a protected class, regardless of whether or not the discrimination was intentional. In other words, that decision would have a disparate impact on minority populations protected under fair housing laws.

While the nexus between fair housing and affordable housing is a key principle, it is also important to remember that people who are not low-income can also experience housing discrimination. For example, during the housing crisis of the last decade, people of color in some cities tended to be offered riskier home mortgages (with higher interest rates and, in most cases, a greater likelihood of default) than the majority population with similar incomes. While these homebuyers of color were not low income, they likely experienced discriminatory practices in the mortgage lending market.



MORTGAGE DENIAL RATES DIFFER IN OREGON BY RACE AND ETHNICITY

In Oregon's rural communities, blacks and Hispanics with incomes above \$75,000 per year had much higher denial rates for home purchase mortgage applications than their white counterparts. In 2004 – 2008, the denial rate for home purchase mortgage applications for whites was 17.0%; during the same period, the denial rate for blacks was 30.1% and for Hispanics was 25.6%.

Source: 2011-2015 Oregon Analysis of Impediments to Fair Housing Choice (Non Entitlement Areas), p. 42, Table III-6.
www.oregon.gov/LCD/docs/publications/introductory_guide_to_land_use_planning_in_oregon.pdf



FAIR HOUSING PROTECTIONS FOR THE DEVELOPMENT OF AFFORDABLE HOUSING

Fair housing laws affecting the development of affordable housing revolve around a few essential principles:

- Housing that serves people who are members of protected classes (minority populations) cannot be put through extra steps or be required to pay extra fees or meet criteria that are not required of housing that serves the majority population (everyone else). The “minority population” can be defined in terms of one or more of the seven federal protected classes or Oregon’s protected classes. Thus, it would be illegal for a jurisdiction to require developers of multifamily affordable housing to meet with neighbors if it did not require the same of all multifamily housing developers. (Unequal Treatment)
- It is illegal to have laws that seem neutral on the surface but result a disproportionate cost or delay for housing that serves minority populations. (Disparate Impact)
- Outright discrimination is also illegal, such as prohibiting the development of affordable housing in the jurisdiction.

It is important to remember that people in protected classes must follow rules and regulations that govern the rest of

the population. People cannot use fair housing as an excuse for breaking the law. Furthermore, fair housing does not protect people who pose a direct threat to people or property. The law requires that such determinations be based on objective proof of a threat by specific individuals and not generalizations about a population.

HOUSING FOR PEOPLE WITH DISABILITIES

Another category of housing that often triggers initial opposition is housing that serves people with disabilities or special needs housing. The reaction is often based on fear of people who seem “different.” The first step is to recognize the potential for having a fear-based reaction and make the conscious choice to move beyond it to facts, understanding, and community.

Since the 1960s, there has been a cultural change in the US involving the movement away from placing people with disabilities, or those recovering from alcohol and drug addictions, into large institutions. As a result, an increasing proportion of people with a wide range of disabilities—physical, mental health, developmental—live in communities, either in traditional housing or in staffed homes with services, depending on the individual.

There are many different types and names for specialized housing with services for people with disabilities, including supportive

MYTH

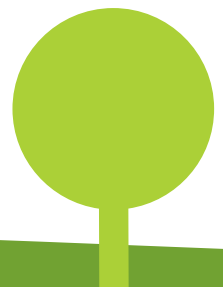
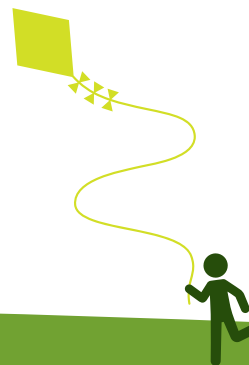
Affordable housing always lowers property values in the surrounding neighborhood.

FACT

How affordable housing affects nearby properties is complicated. In 2005, the *Journal of Planning Literature* published an authoritative review of seventeen academic studies that occurred over 40 years regarding the impact of subsidized housing on neighborhood property values. The author concluded:

- Housing that was acquired and rehabilitated as affordable housing had a positive effect on nearby property values.
- Subsidized housing had no effect on nearby property values when it was sited in healthy and vibrant neighborhoods, when it was dispersed, and when it had responsive, responsible management. Conversely, negative effects on property values were more likely to occur when affordable housing was clustered and located in declining neighborhoods.
- When negative effects do occur, they were relatively small, especially compared to other factors that affected property values.

Source: Nguyen, M.T. (2005). Does affordable housing detrimentally affect property values? A review of the literature. *Journal of Planning Literature* 20:15, DOI: 10.1177/0885412205277069



FAIR HOUSING



housing, group homes and community residential facilities. Examples include:

- Group homes for persons recovering from alcohol or drug addiction
- Residential treatment facilities for persons with a mental illness
- Adult foster homes for older adults needing assistance with activities of daily living
- Group homes for adults or children with developmental disabilities

In addition to these clear-cut examples, there are a variety of other living arrangements which may not, on the surface, appear to house people with disabilities, but which do so in fact. One example is transitional housing for formerly homeless individuals. While homelessness is not in and of itself considered to be a disability, many individuals who are homeless may have one or more disabilities. Others may be members of a protected class in Oregon by virtue of being a survivor of domestic violence. A disproportionate share of homeless youth are gay, bisexual, lesbian, transsexual or queer, and sexual orientation and gender identity are protected classes in Oregon. Thus, on a case-by-case basis, fair housing protections may extend to a wide variety of congregate living situations.

FAIR HOUSING PROTECTIONS FOR THE DEVELOPMENT OF HOUSING FOR PEOPLE WITH DISABILITIES

In addition to the protections for affordable housing described above, there are several additional principles that underlie fair housing as it applies to the development of housing for people with disabilities, including:

• **REASONABLE ACCOMMODATION:**

As discussed in Chapter 1, the Fair Housing Act requires local governments to make minor modifications to local regulations (including zoning and land use regulations) if so requested, if doing so affords equal housing opportunity to people with disabilities. For example, a developer might request an exception to a required setback that would enable a wheelchair ramp with the proper slope to be installed.

- **NO QUOTAS:** The Department of Justice has advised local jurisdictions that setting quotas on the number or share of housing units that serve people with disabilities within a geographic area is a fair housing violation. The only time that jurisdictions may consider issues related to the concentration of people with disabilities within an area is when such concentration may work to the disadvantage of people with disabilities.



MYTH

Affordable housing is ugly and will quickly become an eyesore.

FACT

Perceptions about the design and construction of affordable housing project are often based on memories of old public housing projects, some of which were, indeed, built cheaply (by Congressional mandate) and were unattractive. Much has changed since then; in Oregon, the emphasis has been on building sturdy, attractive and highly functional housing for many years now. Nonprofits and public agencies that build affordable housing are in it for the long haul; it makes sense for them to use durable materials and maintain the properties, as they are long-term owners and not in this business to make money and sell the property to a new owner. Affordable housing developments that are well built, blend into the neighborhood and well maintained can be among a neighborhood's assets.



- **CONFIDENTIALITY:** Just like everyone else, people with disabilities have a right to privacy with respect to their medical information. Housing providers cannot disclose the nature of the disability that individuals have.

provide specific protections but are not as broad as federal fair housing law. Thus, it is necessary, but not sufficient, that local codes comply with Oregon law.

OREGON STATE LAW AND RESIDENTIAL HOMES AND FACILITIES

While each jurisdiction has its own zoning code and other rules that govern the location and development of housing for people with disabilities, Oregon also has adopted laws on this subject with which jurisdictions must comply. These state laws

Specifically, Oregon law requires that jurisdictions make licensed residential homes a permitted use in all residential zones and also in any commercial zone that allows single-family dwellings (ORS 197.660). A permitted use is a one that is allowed outright in a particular zone and does not require additional review to see if it meets extra criteria. A classic example of a permitted use is a single-family home in an area zoned for single-family residences.

FAIR HOUSING



A licensed residential home is defined as a home that is licensed by the state and serves no more than five individuals with mental health disabilities or addictions (residential treatment homes) or developmental disabilities (residential training homes). It also includes adult foster homes that serve five or fewer adults needing residential care in a homelike environment (ORS 443.400). The licensing agencies are the Oregon Health Authority, the Oregon Department of Human Services and the Oregon Department of Human Services or Health Authority for treatment homes, training homes and foster homes, respectively.

Fair housing laws provide even greater protections than the state protections for residential homes. Many different types of homes with disabled persons are not and do not need to be licensed. Many people that fall under the Fair Housing Act's definition of "disabled" have a high degree of self-care, and, while they may not need the level of service provided in a licensed home or facility, they may find group living situations beneficial. Permitting and zoning restrictions that directly target these unlicensed group homes or group living situations are a violation of the Fair Housing Act.

Thus in residential zones, a group home that serves five or fewer disabled individuals must be treated in the same way that a single-family home that serves five or fewer unrelated individuals would be treated. Jurisdictions may not require additional

review, hearings or meetings or impose additional standards on the group home.

Oregon state law also requires jurisdictions to make licensed residential facilities—facilities licensed to serve six or more individuals with physical, mental health or developmental disabilities (defined in ORS 443.400)—a permitted use in any zone where multifamily housing is a permitted use. They must also be either a permitted or conditional use in zones where multifamily housing is a conditional use (ORS 197.667).

KEY CONCEPTS

In general, people who need subsidized housing are also people whose access to housing choice is protected under fair housing law.

- There are many myths surrounding affordable or subsidized housing and the people who reside there.
- Affordable housing does not automatically lower property values on the properties in the surrounding neighborhoods; property values depend on the current health of the neighborhood and a host of other factors.
- Affordable housing is more often than not attractive and well maintained.
- An increase in the number of low income people into a neighborhood does not necessarily translate into an increase in crime.





CRIMINAL HISTORY

One attribute that is frequently of concern is NOT a protected class: involvement with the criminal justice system. The federal Department of Justice advises:

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others. (Joint Statement of the Department Of Justice and the Department Of Housing And Urban Development regarding Group Homes, Local Land Use, And the Fair Housing Act).

It is important to note that some re-entry housing developments serve people with addictions or other disabilities by design, and thus fair housing protections (such as the requirement to make reasonable accommodations if requested) would apply. However, this does not mean that the residents may lawfully continue to use illegal substances or commit any other kind of offense that would otherwise be considered a crime.

Source: Joint Statement of the Department Of Justice and the Department Of Housing And Urban Development regarding Group Homes, Local Land Use, And the Fair Housing Act, www.justice.gov/crt/about/hce/final8_1.php

MYTH

An increase in the number of people who have lower incomes means more crime.

FACT

That's not what the research says. In *Memphis Murder Mystery Revisited: Do Housing Voucher Households Cause Crime?* researchers at New York University's Furman Center tracked voucher holders and their impact on neighborhood crime. Using neighborhood-level data for 10 cities across the nation, the authors, "refute the notion that rising numbers of voucher holders contribute to increasing rates of neighborhood crime... They also found no association between the arrival of voucher holders in a neighborhood and the incidence of crime one year later."

Source: National Low Income Housing Coalition, <http://nlihc.org/article/studies-examine-effects-affordable-housing-crime-patterns>

In Oregon, in residential zones, group homes that serve five or fewer disabled individuals must be treated in the same way that a single-family dwelling is treated.

In Oregon, jurisdictions are required to make licensed residential facilities serving six or more individuals with disabilities a permitted use in any zone where multifamily dwellings are a permitted use.

3. INFO FOR ELECTED OFFICIALS



When conflicts arise about land use issues in neighborhoods, public officials—elected officials, planning commission members, planners, public administrators and other staff—often find themselves in the middle, acting informally as arbiters or more formally as decision-makers. On one hand, they are called to understand the neighbors’ wishes to manage their surroundings; on the other hand, they are called to respect and uphold the rights of those seeking to provide housing for some of the community’s hardest to house residents. In this endeavor, public officials must be guided not only by their own judgment, but also by laws and professional standards of conduct associated with their professions. One area of law with which public officials need to be familiar is fair housing. This chapter addresses how fair housing laws come into play in neighborhood disputes.¹

As the introductory chapter indicates, it is illegal to deny access to housing to people because of their protected class status, regardless of whether that status arises from federal, state² or local law. More proactively, fair housing is about ensuring that people have access to the full array of housing’s benefits (including resource- and opportunity-rich neighborhoods) regardless

of personal characteristics related to protected classes.

While these basic ideas may seem straightforward, the difficulty arises in applying them to real situations in the community. So many decisions involve judgment calls about what constitutes a reasonable request and what constitutes an effort to make it difficult, if not impossible, to develop a new project serving people whom neighbors view as being somehow different from themselves. When in doubt, ask for help. The Fair Housing Council of Oregon welcomes your inquiries. We would much rather help you avoid missteps than seek remedial action in response to a complaint from an aggrieved party.



FAIR HOUSING COUNCIL OF OREGON
1 (800) 424-3247
www.fhco.org

¹ This chapter is especially indebted to the information provided by Tracey McCartney, Tennessee Fair Housing Council, in her guide *Navigating NIMBY: A Public Official’s Guide to Neighborhood Living for People with Disabilities*, Summer 2003. www.tennfairhousing.org/resources

² The most recent change to Oregon’s protected classes has the effect of making it illegal to discriminate against someone because the source of their rent is derived from a Housing Choice (Section 8) Voucher, effective July 1, 2014.



TIP

If your jurisdiction uses a land use review committee, look closely at who serves on the committee. Less informed citizen members, although well intentioned, can run afoul of fair housing provisions and create a potential liability for the jurisdiction.

THE ROLES OF PUBLIC OFFICIALS

As a public official, you play an important leadership role in the community. If you are an elected or appointed public official, you make important decisions that affect the welfare of both individuals in your community and your community as a whole. You also have access to “the bully pulpit” as a means of affecting community sentiment and expressing new ideas. If you are an elected leader, constituents may come to you for help or leverage in addressing their concerns.

If you are staff, you play an important role in upholding, interpreting and explaining laws and rules that have been adopted for the benefit of the community overall. You are on the front line—you are the ones most likely to first encounter the angry response of neighbors who discover a new project proposed for their neighborhood or who are upset with the behavior of other neighbors.

Your job is to walk the line between responding to legitimate community concerns about safety and neighborhood conditions on one hand and protecting the rights of all residents to have fair access to housing opportunities in communities of

their choice on the other. Here are some suggestions on how to find that balance:

1. Listen to what neighbors have to say.

Community members have the right, under First Amendment free speech protections, to express their opposition to projects on any basis (as long as it does not constitute illegal intimidation).

2. Never make land use or other decisions based upon discriminatory statements made by community members.

The courts have repeatedly found such decisions to be in violation of fair housing laws. Taking such action may result in costly legal fees, fines and damages charged to your jurisdiction.

3. Be aware of, and nip in the bud, efforts

to delay a project through requests from neighbors for repeated meetings to rehash topics already discussed and addressed. At public meetings, balance the need to permit free speech with the right to be free from intimidation. Mentally place yourself in the audience, as a potential resident of the proposed housing development, as a way to monitor

INFO FOR ELECTED OFFICIALS



if and when the testimony strays into intimidation. Efforts to delay a project can lead to extra costs for the developer and threaten its viability. Stalling tactics based on an illegal objective, lacking a reasonable basis in law or fact or having an improper motive are violations of the Fair Housing Act (*U.S. v. Wagner*, 940F, Supp 972 (N.D. Texas 1996)).

4. Be aware of efforts to delay or overburden a project through raising facially “neutral” issues (such as parking concerns) which have little basis in fact. Over the years, it has become less socially acceptable to raise concerns about a project based on the race, ethnicity, national origin or disability status of the likely residents. Thus, neighbors are likely to find other ways to raise concerns about a project. When you hear concerns about things like parking, sight lines and setbacks, ask yourself whether such objections would be raised if the project were to be occupied by a different population. Sometimes such objections are raised to stall the project and drive up the cost of development.

5. If a public hearing is part of a quasi-judicial proceeding, remind speakers that a decision can be made solely on the basis of whether a particular project conforms to pre-established criteria. If speakers stray into other areas, you can remind them that testimony not related to

those criteria cannot be considered by the decision-makers.

6. Take appropriate action to address legitimate complaints that the residents of any home or apartment building, including subsidized or special-needs housing, are engaging in conduct that is dangerous or a nuisance. Fair housing does not give anyone free rein to disregard the law. Disturbances of the peace, violent behavior, trespassing and other offenses should be addressed. The complaints must be addressed on the basis of the behavior of specific individuals, and not on stereotypes about how “those people” behave.

7. If your jurisdiction receives federal housing funds, be aware of your responsibility to affirmatively further fair housing. If you are not familiar with it already, find out about your Analysis of Impediments to Housing Choice and the actions that your community has proposed to promote access to housing opportunities for everyone.





COMMON FAIR HOUSING MISTAKES AND HOW TO AVOID THEM

In an effort to be responsive to constituents or to reduce community conflict, it is all too easy to stray into practices which may, in fact, have a discriminatory effect on protected classes or otherwise violate fair housing laws. This section describes common mistakes and the steps that public officials can take to avoid or rectify them.

Requiring that affordable/subsidized housing projects undergo additional approval steps, hearings, meetings with neighbors or other processes not required for similar multi-unit housing developments. Public officials and staff may not impose extra steps or meetings, and you may not condition your approval upon the developer taking any extra steps. For example, you may not require an affordable housing developer to meet with the neighborhood association if you do not require the same of developers of for-profit housing projects.

Requiring affordable/subsidized housing projects to have extra screening, setbacks or other design modifications you do not require of for-profit housing projects. For example, if a neighbor were to complain about having “those people” move in, you may not require the affordable housing project to build a fence, plant screening shrubbery or provide a bigger setback if those same requirements would not impose upon a project with a similar form in the same zone.

AFFIRMATIVELY FURTHERING FAIR HOUSING

All jurisdictions that receive federal funds of any kind (not just housing) are required to take steps to affirmatively further fair housing. **At its most fundamental, the term *affirmatively furthering fair housing* means going beyond not discriminating to actively promoting access to homes in resource and opportunity-rich communities by those who historically have had the fewest housing choices, and to invest in bringing higher quality services and resources to neighborhoods that have such populations and individuals.** If your jurisdiction receives federal housing funds directly from the US Department of Housing and Urban Development, then, in most cases, you have also adopted an Analysis of Impediments to Housing Choice and a corresponding plan describing actions to address the identified impediments. In this case, affirmatively furthering fair housing mean something specific; it means implementing those actions and documenting them and other steps that your jurisdiction has undertaken to address the impediments.

INFO FOR ELECTED OFFICIALS



Placing burdensome public safety requirements on affordable housing or housing for people with disabilities.

To quote the law, fair housing does not provide protection to “an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others” (42 U.S. Code § 3604(f)(9)). Thus, a jurisdiction may impose reasonable protections to ensure the safety of the community as a whole. **However, the concerns upon which the protections are based must be fact-based. The concerns may not be based on assumptions, generalizations or stereotypes about a population as a whole, and the protections must be reasonable.**

The courts have provided guidance on reasonableness. For example, a court in Utah found that requiring a group home for developmentally disabled adults to have 24-7 supervision and a community advisory panel to address complaints to be intentional discrimination. The court found that the city did not place similar requirements on other communal living arrangements and that the requirements were not justified by actual public safety concerns (46 F.3d 1491 (10th Cir. 1995)).

Interfering with funding for an affordable or fair housing project.

Often applicants for funding for affordable

or special needs housing are required to submit documentation that their plans conform to local zoning codes. Withholding or delaying certifications or other documentation that the developer needs could be considered discrimination, especially if the underlying reason for doing so is itself discriminatory (for example, because of objections to the project by neighbors).

Again, a court case provides a relevant example. In *Fu v. City of Clyde Hill*, an operator of a home for adults with disabilities requested documentation from the city certifying that that her home would not be in violation of the local zoning ordinance. Her bank loan was denied because the city would not provide that documentation. The court held that the town’s failure to provide the letter was a violation of fair housing laws (FH-FL Rptr. 16.195(W.D.Wash. March 7, 1997)).

Treating group homes in a neighborhood zoned for single dwelling units differently from any other housing for unrelated people living together in a single unit. The remedy here is straightforward: do not impose any use restrictions, notice criteria, design requirements or siting criteria on group homes that you do not apply to other group living situations, such as a group of unrelated people renting a house together or a homeowner who provides or rents space to housemates. If there are

TIP

Neighbors need a place to air their grievances; however, monthly meetings on the same subject with the same opposition only creates hardship for the affordable housing provider. Be clear on what is not negotiable.

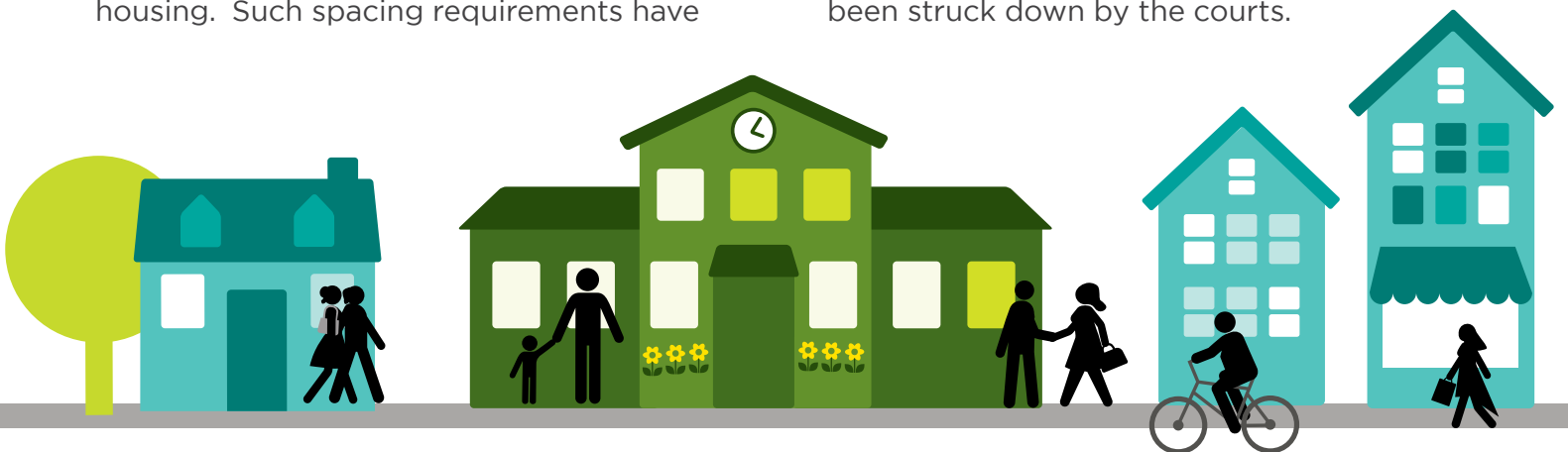
conflicts between neighbors, and one of the neighbors happens to be a group home, you may refer them to a Community Dispute Resolution Center, just as you might offer this referral to other neighbors who have conflicts. You may not, however, make an approval contingent upon a successful resolution of a conflict involving a group home if you do not also follow this approach with other neighbors.

Imposing dispersion or spacing requirements for housing for people with disabilities.

In an effort to prevent the concentration of special needs housing for people with disabilities in a particular neighborhood, some cities may consider imposing dispersion requirements that require a designated amount of space between such housing. Such spacing requirements have

been found to be in violation of the Fair Housing Act because they limit housing choice for people with disabilities. (See, for example, *Larkin v. State of Michigan*, 89 F.3d 285 (6th Cir. 1996)).

A fundamental principle of the Fair Housing Act's protections is that people with disabilities should be able to live in an integrated residential setting of their choice. The only way that dispersion requirements have been found to be acceptable by the courts is if they result in an environment beneficial for the disabled residents by avoiding segregation and clustering (*Familystyle of St. Paul v. City of St. Paul, Minnesota*, 923 F.2d 91 (8th Cir. 1991)). However, in most cases, dispersion requirements have been found to be in violation of the Fair Housing Act and have been struck down by the courts.



INFO FOR ELECTED OFFICIALS



PROVIDING REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES

To ensure that people with disabilities have access to a full range of housing opportunities, fair housing law enables them or their representatives to ask for a reasonable accommodation—a departure from a general rule or practice—to adapt or develop housing that is accessible.

According to the federal Department of Justice, whether or not a request for an accommodation based on disability is reasonable depends on the answers to two questions:

- Does the request impose an undue burden or expense on the local government?
- Does the proposed use create a fundamental alteration in the zoning scheme [or other regulation]? For example, does it allow a fundamentally different kind of use, such as a large skilled nursing facility in a single family neighborhood?

If the answer to either question is “yes,” then the requested accommodation may be considered unreasonable. This is a very complex and nuanced topic (for example, how does one determine whether a burden or expense is “undue?”) with a substantial amount of case law informing it.

FAIR HOUSING LAND USE AND ZONING CHECKLIST FOR OREGON

The Fair Housing Council of Oregon has developed a checklist for local jurisdictions to use in reviewing their land use and subdivision ordinances and related practices. Called *Examining Local Land Use with a Fair Housing Lens*, the checklist helps jurisdictions both identify problem areas and add new best practices. It is a “living tool” in that it is updated as the Fair Housing Council assists local jurisdictions with code-related issues and discovers additional issues and best practices. The most recent version of the checklist can be found on the Fair Housing Council of Oregon’s website:

www.fhco.org/pdfs/AFFHfhco1.pdf



DID YOU KNOW?

Failure to provide reasonable accommodations is a violation of the Fair Housing Act. If this occurs, contact the Fair Housing Council of Oregon for assistance.

Local jurisdictions are encouraged by the Department of Justice to specify, provide and publicize the availability of mechanisms for requesting a reasonable accommodation. These processes may not impose significant costs or delays. If your jurisdiction does not specify a mechanism, applicants for people with disabilities can still request a reasonable accommodation. Inordinate delay or failure to respond to such a request is a fair housing violation.

COMMUNITY DISPUTE RESOLUTION PROGRAMS

Some communities may find it helpful to engage the services of a Community Dispute Resolution Program to help work through concerns with respect to a new or existing housing project. These community-based organizations, some of which are affiliated with city government, have trained staff and volunteers who provide a neutral forum and a facilitated process for addressing conflict. Community dispute resolution is a way to raise difficult issues in a non-confrontational way and work toward finding a solution that all parties can accept.



COMMUNITY-BASED DISPUTE RESOLUTION CENTERS IN OREGON

In Oregon, 22 of the state's 36 counties are served by one or more community-based dispute resolution centers that provide a neutral forum for resolving conflict. A current list of centers can be found through Oregon Office for Community Dispute Resolution at the University Of Oregon School Of Law:

www.osbar.org/_docs/public/cable/commdispute.pdf



INFO FOR ELECTED OFFICIALS



One of the potential outcomes of a community dispute resolution process is a voluntary Good Neighbor Agreement, which lays out the rules each party agrees to follow to avoid conflict and be good neighbors, as well as steps to take if problems do arise.



RESOURCES ABOUT REASONABLE ACCOMMODATIONS

Joint Statement of the Departments of Justice and of Housing and Urban Development on Group Homes, Land Use, and the Fair Housing Act

Joint Statement of the Department of Housing and Urban Development and the Department of Justice—Reasonable Accommodations under the Fair Housing Act, May 17, 2004.

www.justice.gov/crt/about/hce/about_guidance.php

KEY CONCEPTS

- Public officials, including elected officials and Planning Commission members as well as staff, often finds themselves in the middle of conflict over the development of affordable/subsidized housing or special needs housing.
- Be aware of common fair housing mistakes, especially those that place burdensome requirements on housing for people with special needs.
- Engage the services of a Community Dispute resolution program if it exists in your community.
- It is important to maintain a balance by doing the following:
 - Listen to what the neighbors have to say;
 - Never make land use decisions on discriminatory statements made by community members;
 - Be aware of and stop any efforts to delay a project through neighborhood requests for repeated meetings to discuss the same topics over and over again;



- Be aware of effort to delay a project through raising facially neutral issues such as parking or traffic;
- If a public hearing is part of a quasi-judicial proceeding, remind speakers that a decision can be made solely on the basis that the project conforms to established criteria;
- Take appropriate action to address legitimate complaints of neighbors; and,
- Be aware of your responsibility to affirmatively further fair housing if your jurisdiction receives federal funding.

CONCLUSION: FROM NIMBY TO ACCESS TO OPPORTUNITY

In the decades since the passage of the Fair Housing Act, the emphasis has begun to change from a focus on the prevention and elimination of discriminatory practices (eliminating a negative) to proactively supporting access to opportunity through enabling a wider variety of housing and neighborhood choices for those who historically and economically have had the fewest choices (pursuing a positive).

Housing is a platform—a location in a particular place and a safe haven—for pursuing life’s opportunities. Housing situates people in a particular place, with a particular set of nearby assets like schools, in a particular environment (healthy and safe, unhealthy and unsafe or somewhere in between), and among a particular group of people. Denying people the opportunity to live where they can thrive based on their race, color, religion, national origin, sex, disability, or family status perpetuates cycles of poverty and despair and represents both a huge loss of human potential and a crime.

At first, integration may not be easy or comfortable for those on the front lines—not for the neighbors who may be reluctant to experience change, nor for the new people moving in. As public officials, you have the opportunity to promote patience, dialogue and understanding. You also have the responsibility of upholding the law. We encourage you to use the resources at your disposal, including our office, to help promote fair access to opportunity through housing in your community.



4. RESOURCES



The information available online on fair housing and inclusive communities continues to expand. Entering the search terms “Fair Housing” and “NIMBY” (which stands for Not in My Back Yard, a term commonly used to describe neighborhood opposition to a project being located in that neighborhood) into a web browser will yield resources which can be scanned to determine which ones are from reliable sources, such as state fair housing agencies, national nonprofits and academic sources.

In this dynamic information environment, a comprehensive list of resources would soon be out of date. Thus, the information in this chapter represents an annotated selection of key resources, including ones used in the development of this guide. While all links are current as of publication of this guide in July 2014, they, too, may change over time.

ESSENTIAL RESOURCES FROM THE DEPARTMENTS OF HOUSING AND URBAN DEVELOPMENT AND JUSTICE

Fair Housing Act, As Amended:
www.justice.gov/crt/about/hce/title8.php

List of Fair Housing Laws from HUD’s Office of Fair Housing and Equal Opportunity:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws

Department of Justice Fair Housing Policy Statements and Guidance:
www.justice.gov/crt/about/hce/about_guidance.php

Department of Justice Overview of Fair Housing Act and Enforcement Measures:
www.justice.gov/crt/about/hce/housing_coverage.php

OREGON-SPECIFIC MATERIALS

City of Portland, Office of Neighborhood Involvement (2012).

Community Residential Siting Resources.

www.portlandoregon.gov/oni/32417

Before it was discontinued in 2012, the Community Residential Siting Program provided guidance to neighbors and housing providers on siting affordable housing and housing for difficult-to-house populations in Portland and Multnomah County. Four practical resources are still available on the website above: information for neighbors, recommended public involvement guidelines, community involvement strategies, and site selection guidelines for post-incarceration facilities. Some of the information references Portland zoning code and may not be applicable elsewhere, but much of the information is relevant throughout the state.

GENERAL GUIDES

Pratt, Sara and Allen, Michael. (2004).

Addressing Community Opposition to Affordable Housing Development: A Fair Housing Toolkit. Housing Alliance of Pennsylvania.

www.housingalliancepa.org/resources/111

At 80 pages, a very thorough guide to understanding and responding to neighborhood concerns about affordable housing. This guide addresses the following topics: zoning and land use, free speech, community information campaigns and government opposition. The sidebars contain relevant examples, information about best practices, practice-related hints, and detailed information about topics mentioned in the text. The list of resources (10 pages) includes websites, articles and books, and cases. This is a good resource to have bookmarked on your computer.

Fair Housing Council of Oregon (2014).

Examining Local Land Use With a Fair Housing Lens: An Evaluation Tool for Planners, Policy Makers and Other Practitioners.

www.fhco.org/pdfs/AFFHfhco1.pdf

A checklist for reviewing zoning codes and current planning practices based on both fair housing laws and Oregon state land use laws and administrative rules.



RESOURCES FOR NEIGHBORS

Tennessee Fair Housing Council. (2003). Good Neighbors, Healthy Communities.
www.tennfairhousing.org/resources

A guide about housing for people with disabilities written for neighborhood residents. Using research findings, it addresses common misconceptions about the impact of group homes and other housing for people with disabilities on neighbors and neighborhoods. It also includes chapters on relevant laws, the rights of neighbors who live near housing for people with disabilities and frequently asked questions.

RESOURCES FOR PUBLIC OFFICIALS

McCartney, Tracey. (2003). Navigating NIMBY: A Public Official's Guide to Neighborhood Living for People with Disabilities. Tennessee Fair Housing Council.
www.tennfairhousing.org/resources

One of the few guides available specifically for elected officials. It includes a clear, logical presentation of the laws and significant cases, myths and truths about people with disabilities and a thoughtful chapter on the role of public officials.

Voelker, Robert. (n.d.). Utilizing the Fair Housing Act to Counteract NIMBY. Shelterforce Online. National Housing Institute.
www.nhi.org/online/issues/fairhousingmonth.html#Resources

A brief but very useful article that describes the kinds of actions by local governments and local officials that courts have found to be in violation of the Fair Housing Act. Includes a list of resources.

RESOURCES FOR HOUSING PROVIDERS

Connelly, Joy. (2005). Yes, in My Back Yard: A Guide for Ontario's Supportive Housing Providers. HomeComing Community Choice Coalition.

www.homecomingcoalition.com

While the laws governing housing choice are different in the US and Canada, the underlying human dynamics are similar. This guide provides step-by-step suggestions for housing developers. Of particular interest are the fifteen predictable objections and how to deal with them.

Corporation for Supportive Housing. (2006). Thinking Beyond NIMBY: Building Community Support for Supportive Housing.

www.csh.org/wp-content/uploads/2012/07/BeyondNIMBYpdf.pdf

A guide for providers of supportive housing—affordable housing with services for people who face complex challenges with daily living. Includes a variety of strategies for overcoming community fears, including ideas for ways to link to outside resources. Concludes with a case study and a list of additional publications.

Housing Assistance Council. (2005). Telling Our Story: Marketing Affordable Housing.

Rural Voices (10) 1.

www.ruralhome.org/storage/documents/voicesspring2005.pdf

The Spring 2005 edition of *Rural Voices*, the publication of the Housing Assistance Council, includes ten articles about how to advocate for affordable housing within communities, with funders and with local residents in rural areas.

John Jay College of Criminal Justice. (2009). In Our Backyard: Overcoming Community Resistance to Reentry Housing.

www.jjay.cuny.edu/TOOL_KIT_1-NIMBY_FINAL.pdf

This guide introduces the magnitude of the challenge of finding housing for people released from jails and prisons. The principal focus is a detailed case study of The Castle, a reentry project undertaken by the Fortune Society in New York City, and the more broadly applicable best practices learned from it. The publication also includes a list of resources related to on reentry housing and related topics.

4. RESOURCES



RESOURCES FOR HOUSING PROVIDERS CONTINUED

OneCPD Resource Exchange (n.d.). NIMBY Risk Assessment and Decision Tree Tool (online resource).

<https://onecpd.info/resources/nimbyassessment>

An online resource for developers of housing, with or without supportive services, targeted to homeless individuals. The user completes an online questionnaire about current concerns, and the tool leads to targeted case studies that address the identified issues.

Tennessee Fair Housing Council. (2003). A Place to Call Home: Addressing Opposition to Homes for People with Disabilities in Tennessee Neighborhoods.

www.tennfairhousing.org/resources

A guide for providers of housing for people with disabilities. One of the best features of this guide is a thorough discussion of the comparative advantages and disadvantages of high profile and low profile approaches to siting. Other chapters present an overview of relevant laws, myths and truths (backed by research findings) and other issues related to siting, including a discussion of “fair share.”

NOTES





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Supplemental City Council Packet
August 24, 2020
7pm – Council Chambers

Attachment/ Page #	From:	Description:
File No. CUP-2-20		
# H Pg. 2-9	Atty Garrett West	Letter in opposition of CUP-2-20 with attachments
#I Pg. 10-21	Residents	Letters in opposition of CUP-2-20 from: Sara & Bob Towne, Victor Ortega with attachments, Denise Ortega, Harvey Wolchuck
#J Pg. 22-35	Residents	Petition with Opposing Signatures
#K Pg. 36	Residents	Letter in support of CUP-2-20 from: Alan Nidiffer
#L Pg. 37-57	Applicant	Power Point presentation

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August 19, 2020

ELECTRONIC MAIL ONLY

Attn: City Recorder
City of Brookings
898 Elk Drive
Brookings, Oregon 97415
analls@brookings.or.us

**RE: CONDITIONAL USE PERMIT TO ESTABLISH A 14-UNIT
RESIDENTIAL CARE FACILITY ON A .58-ACRE PARCEL
LOCATED AT 17212 S. PASSLEY ROAD**

**RESPONSE OF NEIGHBORS IN OPPOSITION TO THE
APPEAL FROM THE PLANNING COMMISSION**

Dear Members of the City Council,

This firm represents Denise and Victor Ortega, who live next to the proposed development site. The Planning Commission properly denied the underlying application because it violates several provisions of the Brookings Municipal Code. *See* BMC 17.136 *et seq.* In particular, (1) the planned development is too large for the lot, (2) the proposed driveway would be too small for commercial and emergency vehicles, and (3) the proposed facility will have an adverse impact on the neighborhood given the existing conditions.

The Council should uphold the Planning Commission's final order and deny the appeal.

**1. THE CITY CODE DOES NOT DISCRIMINATE – THE PROPOSED
DEVELOPMENT SIMPLY DOES NOT COMPLY WITH THE LAW.**

The Applicants seem to argue that if the City denies their application, the City is discriminating against persons with disabilities which is not true. The City's code does not discriminate against persons with disabilities. In fact, it specifically allows for conditional use permits for residential facilities like the Applicants are attempting to build. As a result, neither the Fair Housing Act nor the Americans with Disabilities Act apply to this land use matter.

The Ortegas and everyone involved strongly support elderly persons with disabilities and believe that they should live in safe and supportive environments. No one is asserting that such persons should be prohibited from living in Brookings. Instead, we believe that the Applicants' specific proposal conflicts with existing city ordinances that were promulgated to support the public welfare. All property owners in the City follow this code and there is no reason why the Applicants should not have to follow it as well.

2. THE PROPOSED DEVELOPMENT IS TOO LARGE.

The Planning Commission was correct—the proposed development is too big. There are two issues. First, Applicants' site plans are so blurry that the building's dimensions cannot be independently verified. *See* attached Exhibit "A" for a map of proposed development superimposed on the lot. Second, BMC 17.20.060 allows a building to cover up to 40% of a lot in a Single Family Residential (R-1-6) zone but Applicants' own numbers indicate that proposed facility will take up more than 40% of the lot.

BMC 17.172.061(B)(2)(c) says that the minimum size for a rear lot is the "same as required by the applicable zoning district, not including the area of the accessway" (emphasis added). That is, because the subject property is a rear lot with a long accessway/driveway, the accessway is excluded from the lot's total area for purposes of determining the lot's size and lot coverage.

Although the Applicants contend that the total lot is 25,264 square feet, the area of the accessway must be removed from the equation. Because the backlot (excluding the accessway) is 178 by 131.95 feet, the total square footage is 23,487 square feet. Because the Applicants contend that their proposed building will be 9,588 square feet, the proposed facility will take up at least 40.8% of the lot—which is larger than the 40% limit.

The Applicants argue that BMC 17.08.120's definition of "lot coverage" supersedes the clause imposing a minimum lot size in BMC 17.172.061(B)(2)(c). However, these ordinances do not conflict with each other. While the total lot area is normally used, when a rear lot like the subject property is involved then the accessway is specifically excluded from the calculation.

As a result, the Planning Commission properly denied the application and the City Council should as well.

3. THE PROPOSED DRIVEWAY IS TOO NARROW.

The proposed development's accessway is too narrow. The proposed development would likely have a higher rate of emergency service calls than other residences. As a result, it is important that emergency services and emergency personnel be able to easily access the proposed facility. However, the Planning Commission properly concluded that the proposed driveway is too narrow to accommodate either commercial and emergency vehicle traffic and that there is inadequate turning radius onto South Passley Road. I attach Exhibit "A" which is the proposed development superimposed on the surrounding neighborhood.

BMC 17.172.061(B)(2)(a) says that a rear lot must have a minimum access width of at least 20 feet. The Applicants say that the driveway will only be 15 feet wide, but the documents submitted by the Applicants in support of their application

seems to indicate that the driveway will actually **only be 12 feet wide** – which is almost half what the code requires. It will also be approximately 180 feet long with the turnout including parking spaces. This makes it improbable that emergency vehicles, such as fire trucks (which often respond to medical calls) and ambulances, would be able to easily reach the proposed facility given the narrow driveway. Even if they were, they would likely have problems exiting the facility given the inadequate turning radius onto South Passley Road. The Planning Commission was correct that this criterion is not satisfied.

4. THE PROPOSED DEVELOPMENT WILL HAVE AN ADVERSE IMPACT.

The Planning Commission was correct that the proposed facility as it is currently designed will adversely impact the existing neighborhood.

First, the existing streets are insufficient to handle the proposal. BMC 17.136.050(C)(2) requires that existing streets be adequate to handle the proposed use. However, there is no evidence and no traffic study detailing exactly how much traffic this facility will cause or whether the existing road can handle it. South Passley Road is not able to accommodate a dramatic increase in traffic that such a large facility will bring.

Second, there is not enough parking at the proposed facility to accommodate approximately 14 live-in residents, 3 staff members, and an unknown number of visitors. Although Applicants say that there will only be one staff member in the evenings, OAR 411-054-0070(g) requires at least two staff members be scheduled. During shift changes there will not be sufficient space to allow staff members to park in the parking area. Applicants assert that their facility will have adequate parking because they will be using on-street parking along South Passley Road. However, this will cause severe congestion to the road and will further exacerbate emergency vehicle access. The applicants should be required to construct a parking area adequate for the proposed use.

Third, the proposed development will have insufficient pedestrian access in violation of BMC 17.136.050(C)(3) because there is no path to the facility other than walking in the narrow driveway. This area of Passley Road does not adequate sidewalks so if residents are out walking they will be forced to walk in the road, causing dangerous situations.

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City of Brookings
August 19, 2020
Page 4

The proposed facility will have inadequate landscaping. BMC 17.94.030 says that in R-1 zones the landowner must "Install landscaping, or keep free of impervious surfaces, an area equal to at least 25% of the property." However, the proposed structure and parking area (an impervious surface) cover most of the property.

Yours truly,

JARVIS, DREYER, GLATTE & LARSEN, LLP

s/ Garrett West

GARRETT K. WEST

GKW:csc
Attachment: Exhibit A

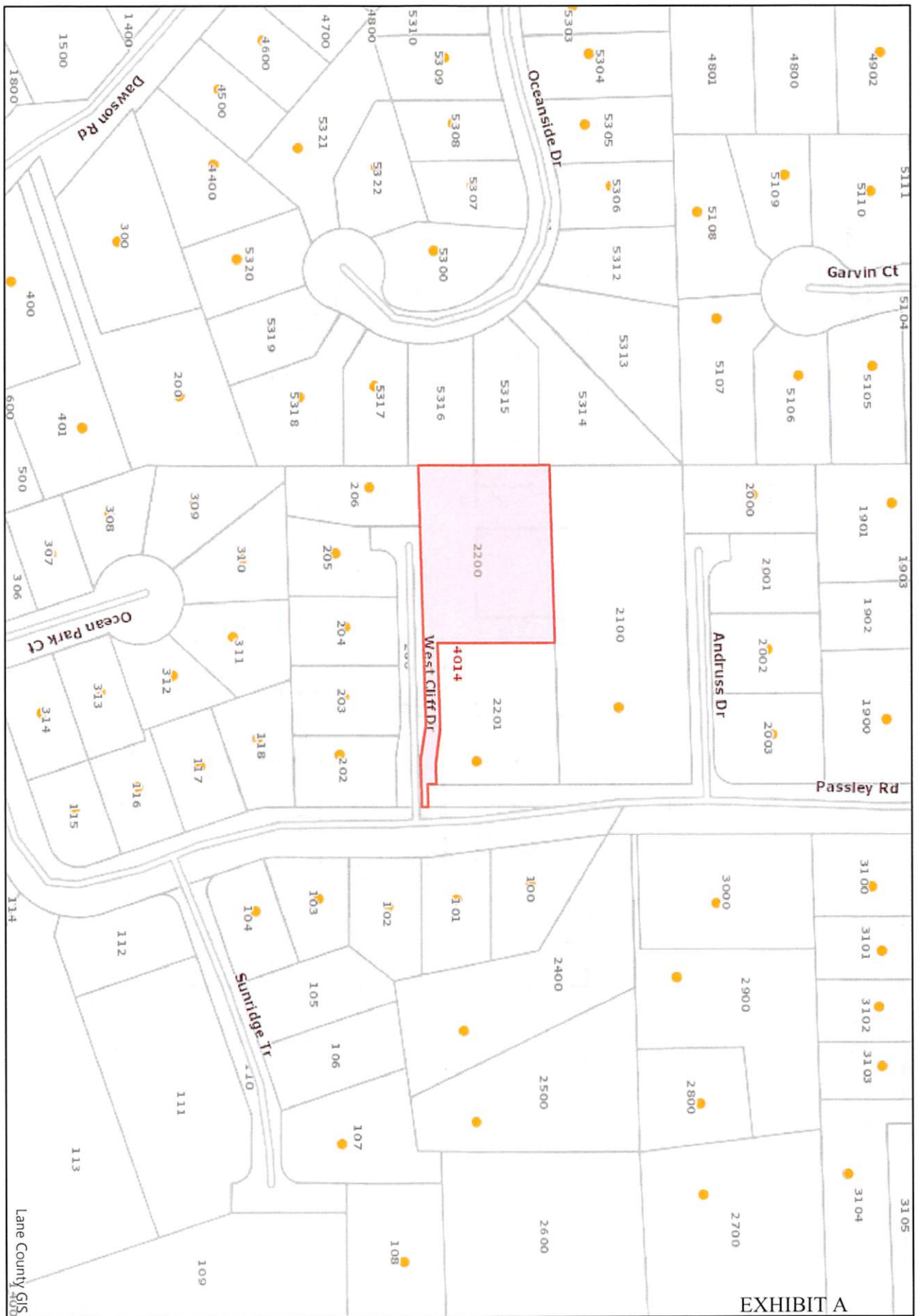
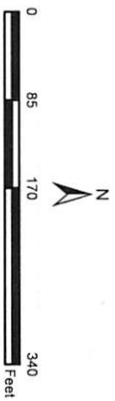


EXHIBIT A
PAGE 1 of 4

The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map to ensure that the information is as accurate as possible. However, for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.



Residence - 9588 sf.

KEMP RESIDENCE
5425 E. ROAD - SECKINUS - ONEBD - 47415

FLOOR
PLAN

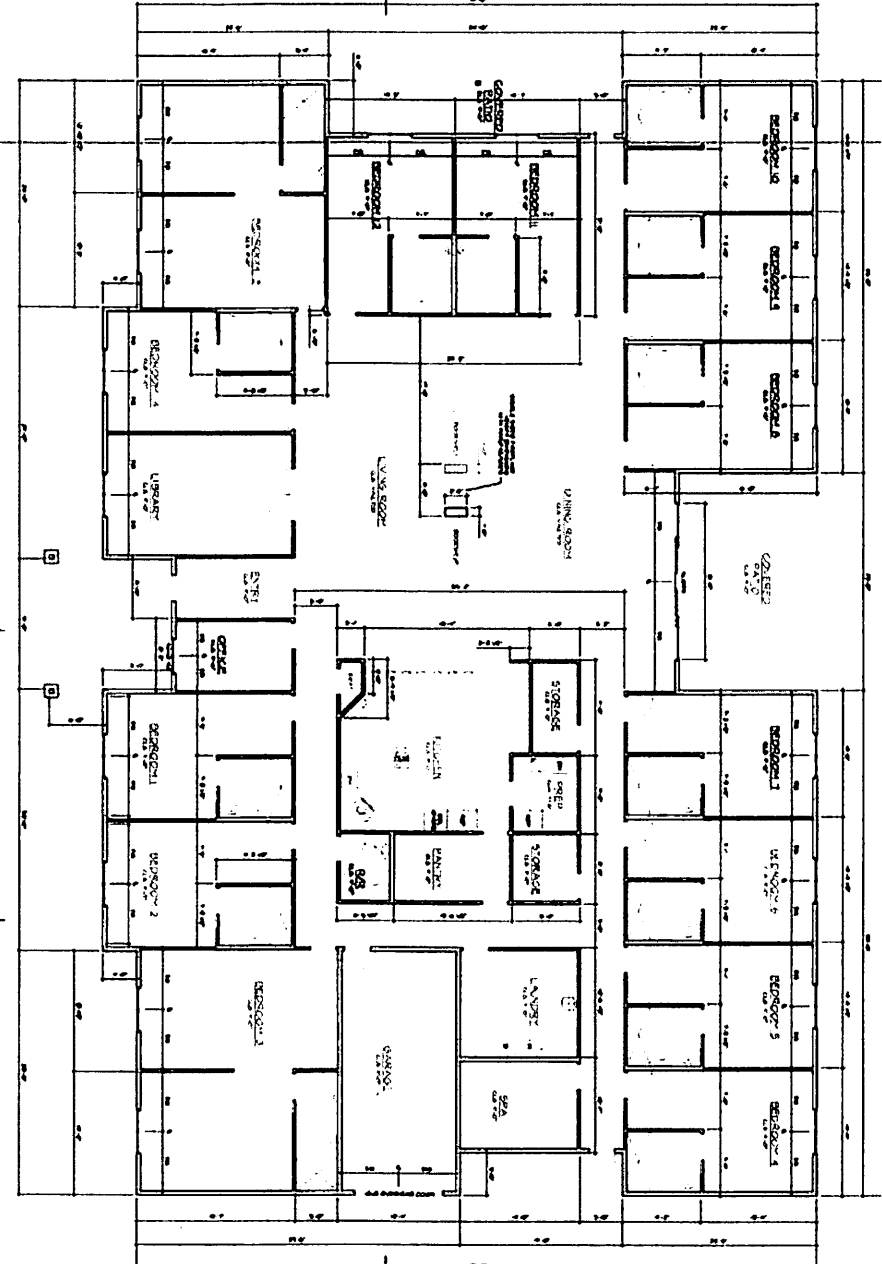
1 FLOOR PLAN
1/100

Scale 1/100



- NOTES:**
1. All dimensions are in feet and inches.
 2. All dimensions are given to the center of the wall unless otherwise noted.
 3. All dimensions are given to the center of the wall unless otherwise noted.
 4. All dimensions are given to the center of the wall unless otherwise noted.

NO. 17 PLASTER
1/100



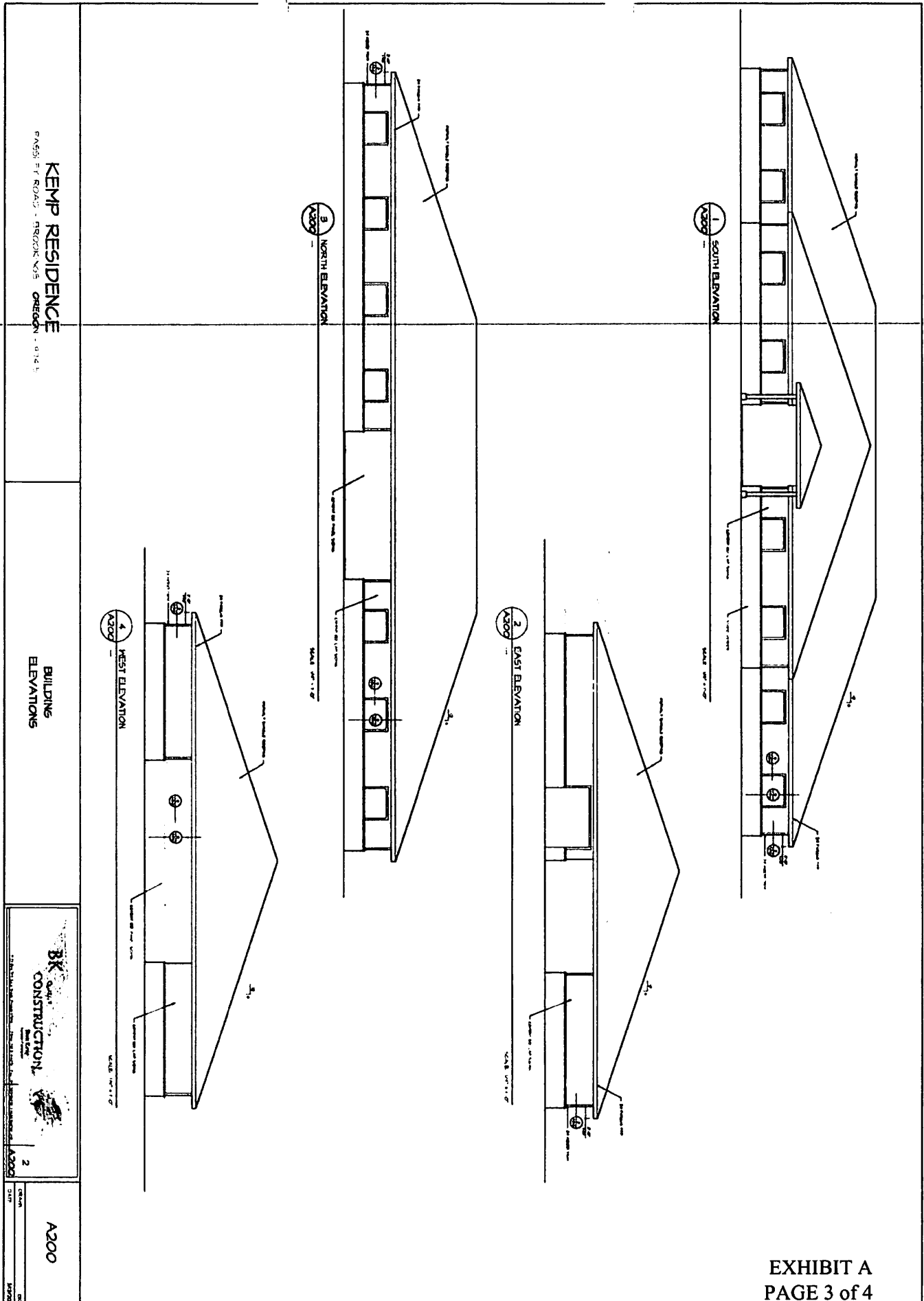
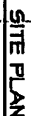
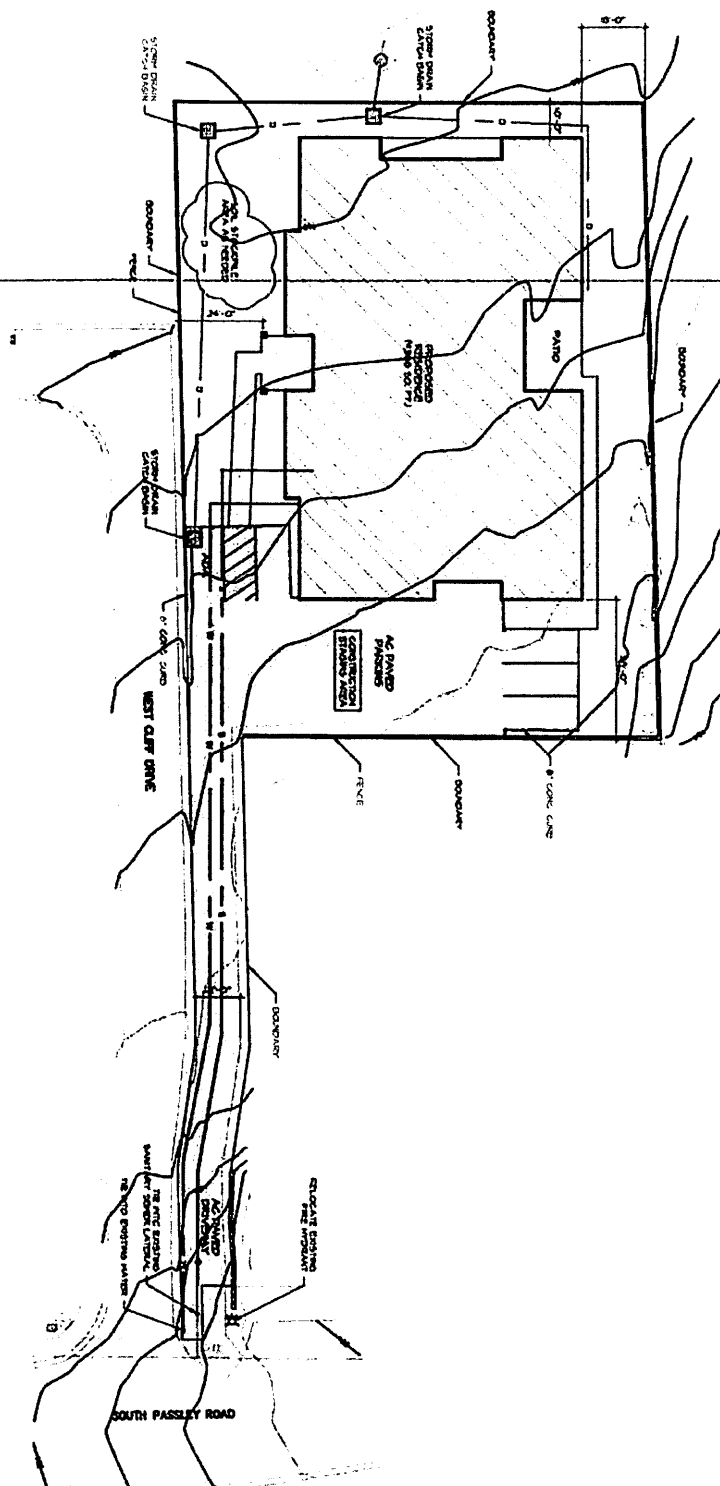
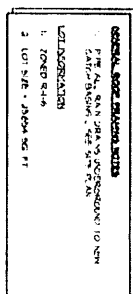


EXHIBIT A
 PAGE 3 of 4



SCALE: 1' = 20'-0"



August 22, 2020

City of Brookings
City Council
898 Elk Drive
Brookings, OR 97415
Attn: Brookings City Council

Regarding: File Number APP-1-20/CUP-2-20 Appeal of Planning Commission Denial of Conditional Use Permit-Residential Care Facility in R-1 District

Brookings City Council:

We are writing to you to request disapproval of the Kemp's Appeal of the Planning Commission's denial of the conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Constructions to build a 14-bed residential business unit on Tax Lot 02200 which is zoned as a single family residential property in an R-1 District.

The Kems have been less than honest or transparent in their motivations to build on the flag lot. At the onset of purchasing the land, they told neighbors on West Cliff Drive that they would be building a single family home on the property. When neighbors within the supposed area of impact, (250 feet) received the notification from the City of Brookings, we then knew their actual intent. In the initial documents the proposed building was referred to as an, "Adult Residential Care Facility". The term can encompass many uses and was ambiguous until the Planning Commission meeting.

Aga Kemp explained "her calling" to build a Residential Assisted Living business (RAL) for seniors with disabilities, and proceeded to verbally paint a rosy picture of that would entail. Right away she associated their project within the cloak of the American Disability Act (ADA) and proceeded to insinuate that we as a neighborhood were all against people with disabilities. She quoted different Fair Housing Laws, which are just that "Housing Laws", there is no house on the property, and no discrimination is occurring to anyone. This is a Land Use issue requiring a Conditional Use permit, they are asking to change the neighborhood for their financial gain and build a lucrative business in a single family residential property R-1 District.

New information has come to light regarding the Kems, their many LLC's and their attorney, Michelle Pinkowski, who is a Fair Housing attorney and a board member affiliated with the Residential Assisted Living National Association. According to the association's website, she provides video courses to assist potential RAL owners into overcoming neighborhood objections and "getting through zoning". Below is a direct quote from that website of a happy customer who was able to strong-arm his way into a neighborhood and start his RAL:




Kudos to Michelle Pinkowski. I just got past a major first hurdle thanks to Michelle's video course. She has provided a valuable resource that I think all aspiring RAL homeowners should check out if you're serious about overcoming perhaps the most challenging aspects of starting a RAL home, and that is getting through zoning.

Bobby K.

And another one who used the Fair Housing Act to bully their way into a neighborhood. They may have already had a home to convert, but the Kems have land, not a home.



Michelle and Brian have both been an amazing resource and team. The videos Michelle produced helped us become educated on everything from zoning to regulatory language to understanding the Fair Housing  Act. We were able to go directly to our counties and use the tools we had learned from RALNA. Their continued help and guidance has been key to overcoming obstacles.

Kristin

In Attachment A, page 8, the Kems quote section IV. Fair Housing Law:

"...A reasonable accommodation is a change, exception or adjustment to a rule, policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.vi Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons,

a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities.,ii...”

Again, I will point out, there is NO home and NO discrimination is occurring, the Kemps are using their attorney and her interpretation of the Housing Law to intimidate both the Dawson Tract, the Brookings Planning Commission, (who denied their Conditional Use Permit) and the Brookings City Council to allow them to build a monstrosity of a building/business and forever change and destroy the character of our single family residential neighborhood. Ms. Pinkowski included a 1986 study done in Chicago of all places, where they studied 2261 residential properties which included 14 already established group homes. This study is a non sequitur, and should be dismissed as to having no relevance to this issue.

The proposed business will also violate Brookings Municipal Code 17.01.020 which purpose is “to encourage most appropriate use of land, to conserve and stabilize the value of property...to prevent undue concentration of population, to lessen congestion of streets...and in general to promote the health, safety and welfare of the citizens” of Brookings.

The Dawson Tract, as it is known, is a peaceful, quiet, serene neighborhood of single family residential homes. There are no businesses within the boundaries of the Dawson Tract. People come to live here just for those reasons. Approving the Conditional Use Permit for a 14 bed Residential Care Facility Business will transform and forever destroy the character of the neighborhood and open the door to further business development.

We implore the Brookings City Council to not overturn the denial of the Brookings Planning Commission, and allow this “for-profit” money making real estate scheme to be perpetrated in our single family residential neighborhood in an R-1 District. There are more suitable properties in Brookings that could accommodate a building of this size, and offer adequate safe parking and ingress and egress for vehicles.

Sincerely,

Sara & Bob Towne (Owners)
96420 Oceanside Drive East
Brookings, OR 97415

Cc: Lauri Zimmer

August 19, 2020

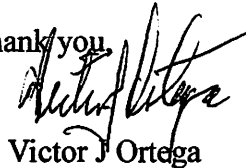
To the City Council,

I am writing in opposition to overturning the planning commission's denial of the Kemp's CUP-2-20.

I will be presenting other arguments at the August 24th meeting, but for now I would like to have admitted the two papers attached to this letter. Please look them over and you will see that their premise that this is not a business is a total falsehood. They are involved with four other LLC's which all have the same Pistol River Loop address. The basis for their application for this CUP is linked to Residential Assisted Living websites which are for profit schemes to make money off of the elderly. So to say that this will be their home and is not a business, as they asserted , is quite the misstatement.

In conclusion, why buy a single family residential lot (R-1) and try to change the neighborhood of your so called "valued neighbors" as stated in Heart To Heart (attachment G).

Thank you

A handwritten signature in black ink, appearing to read "Victor J. Ortega", written over the printed name.

Victor J Ortega



25135 PISTOL RIVER LOOP GOLD BEACH, OR 97444

Sponsored
Links

There are 4 companies that have an address matching 25135 Pistol River Loop Gold Beach, OR 97444.

The companies are Imaginations LLC, A Vision Consulting LLC, Eagle River Investments LLC, and Thriving Life Community LLC.

IMAGINATIONS LLC OREGON DOMESTIC LIMITED-LIABILITY COMPANY

Address: 25135 Pistol River Loop
Gold Beach, OR 97444

Address Types: Principal and Mailing

Registered Agent: Jeff Kemp

Filing Date: March 07, 2001

File Number: 008189-97

A VISION CONSULTING LLC OREGON DOMESTIC LIMITED-LIABILITY COMPANY

Address: 25135 Pistol River Loop
Gold Beach, OR 97444

Address Types: Registered Agent

Registered Agent: Agnieszka Mglej

Filing Date: June 09, 2010

File Number: 693359-91

Sponsored Links

EAGLE RIVER INVESTMENTS LLC OREGON DOMESTIC LIMITED-LIABILITY COMPANY

Address: 25135 Pistol River Loop
Gold Beach, OR 97444

Address Types: Principal and Registered Agent

Registered Agent: Brett Kemp

Filing Date: October 02, 2019

File Number: 1599949-96

THRIVING LIFE COMMUNITY LLC OREGON DOMESTIC LIMITED-LIABILITY COMPANY

Address: 25135 Pistol River Loop
Gold Beach, OR 97444

Address Types: Principal and Registered Agent

Registered Agent: Brett Kemp

Filing Date: January 03, 2020

File Number: 1629726-90

Sponsored Links

ADDITIONAL LINKS

25135 Pistol River Loop Gold Beach, OR 97444
25135 Pistol River Loop Gold Beach, OR 97444



residential assisted living



People also ask

How do I start a residential assisted living home? ▾

Are assisted living homes profitable? ▾

What is the difference between a care home and a residential home? ▾

What is the difference between a group home and assisted living? ▾

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The Disadvantages of Residential Assisted living Homes

I've had many opportunities to visit small, residential assisted living homes, and there can be some clear advantages, as well as disadvantages of these smaller, ...

residentialassistedlivingacademy.com ▾

Residential Assisted Living Academy - Founder & President ...

Learn about residential assisted living, understand the financial opportunity, explore what it takes to succeed, and get training to open your own home!

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Videos



How To Start a
Residential Assisted
Living Facility Business
...

Real Estate Asset Protection
YouTube - Jun 6, 2019



Turn Single Family
Homes Into a Residential
Assisted Living ...

Residential Assisted...
YouTube - Aug 24, 2016



How Can You Make
Money in Residential
Assisted Living ...

Residential Assisted...
YouTube - Jul 31, 2018

www.nia.nih.gov › [health](#) › [residential-facilities-assisted...](#) ▾

Residential Facilities, Assisted Living, and Nursing Homes ...

4 days ago - Assisted living is for people who need help with daily care, but not as much help as a nursing home provides. Assisted living facilities range in ...

thinkrealty.com › [5-success-factors-for-residential-assist...](#) ▾

5 Success Factors for Residential Assisted Living Investments

Jun 1, 2018 - Assisted Living has many different names and operates on many different scales across the country, ranging from super-sized complexes with ...

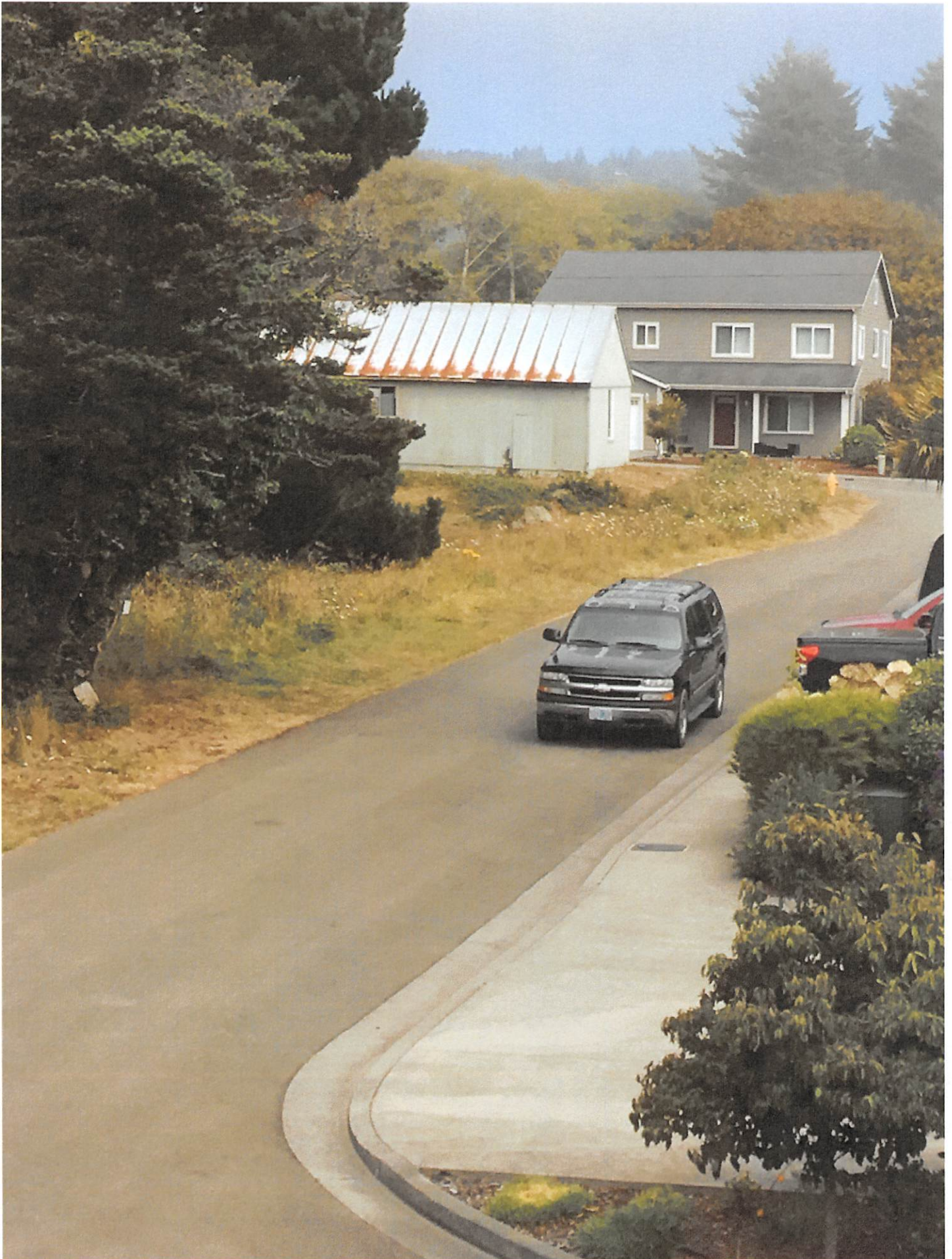
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Residential care homes offer supervised care, meals, activities and health management. While assisted living communities may offer extensive activities, such as ...

aiofinancial.com › [operate-residential-assisted-living-home](#)

Operate Your Own Residential Assisted Living Home - Fee ...





Denise Ortega
96511 West Cliff Dr.
Brookings, OR 97415

RECEIVED

AUG 24 2020

August 23, 2020

CITY OF BROOKINGS

City of Brookings
City Council
898 Elk Drive
Brookings, OR 97415

Regarding: File Number APP-1-20, appeal for request for Conditional Use Permit/Residential Care Facility in R-1 District

Mr. Mayor, Brookings City Council Members, City Manager and Recorder,

First I'd like to bring your attention to the petition turned in to Amber Nalls at City Hall last Thursday of over 175 names and signatures we've collected from Dawson tract residents asking that you endorse the Brookings Planning Commission's 5-to-2 decision to deny the conditional use permit for the 14 unit commercial residential facility on 17212 S. Passley Rd, Assessor's Map 4014-36BA, Tax Lot 02200. We residents of Dawson tract fully support the Planning Commission's conclusions that Criteria 1, 2 and 3 in BMC Chap 17.136.050 C were not met. Most especially we side with the conclusion in Criterion 3—that this facility would be inconsistent with the adjoining R-1-6 properties.

Criterion 1—the site is not adequate in size and shape.

The proposed facility for this rear flag lot is already >40%. If a facility based on the Kemps' current plan is proposed to the Oregon state Department of Human Services (DHS) it will most likely be rejected unless the hallways are made wider to code, and a reception area added (possibly a med room as well) and then this design will make the building considerably larger. This will violate BMC 17.20.060.

BMC 17.172.061 B.2.a.Rear Lot Partitions clearly states that accessway minimum width is 20 ft. Although the planning department staff claim that there was a "staff opinion" in 1992 that "the applicant should not be penalized by the requirement of the Land Development Code" with regards to the size of the driveway, this supposed opinion and planning commission decision were not included in this applicant's packet; additionally, public record of the minutes from the planning commission meeting for May 20, 1992 where M3-9-92 was approved by the commission does not state that this ingress size was approved as the current planning department staff indicates. If this was approved to be under 20 ft, why is it not cited more specifically in those minutes? Why are the documents that allow this change not included with this application appeal? Additionally, it is

doubtful that in 1992 the planning commission recognized that they might be approving a commercial driveway.

The planning department staff also state that water and sewer services are sufficient however, this lot will drain into Oceanside Dr. East properties and these lots DO NOT have adequate drainage. Many of the homes have had to place sump pumps at costs for the individual home owners, and some of the homes continue to have flooding difficulties. Allowing this facility with 14+ bathrooms and a larger than family-sized kitchen and laundry will increase the flooding and drainage problems for Oceanside Dr. East residents. An impact study is needed to determine the extent of this flooding risk.

Criterion 2—relation to streets.

S. Passley Rd. may have a 50 foot right of way but it varies in actual paved width between Dawson Rd to West Cliff Dr. from 18 to 26 feet only. Sidewalks rarely exist on both sides of the street and the proposed property accessway has no planned sidewalk (or space for such). The planning commissioners determined that S. Passley Rd. and the property ingress were not adequate for commercial and emergency vehicles. Citizens at the planning commission meeting requested traffic studies as the planning department staff stated there was not a conflict. No studies have been ordered or obtained at this time. Nothing has changed: this condition has not been met.

Criterion 3—neighborhood impact.

The planning commission found this proposed facility to be inconsistent with adjoining properties and will have a negative impact on neighbors. 175+ neighbors agree. We are concerned about the lighting and noise from a 24/7 business in the heart of our residential single family home community. We are concerned about the trash, the adult diaper disposal, the visitors, the parking congestion on S. Passley Rd., the increase in commercial vehicle traffic, the every-other month fire alarms and drills that the state DHS will require, the parking for staff meetings, the families who will have to come and go to transport the residents to all of their medical and other appointments.

And we are even more concerned that this facility may well be denied license by the Department of Human Services and so won't house disabled elders but other adult residents with unknown backgrounds. We are concerned about the integrity and the safety of our Dawson tract community and at this point the Kemps have done nothing to allay these concerns.

We too have seen the "get-rich-quick" real estate videos regarding the Residential Assisted Living (RAL) facilities. The real estate developers and attorneys on these videos recommend doing a market analysis and then moving into neighborhoods with greater-than-average price homes so that RAL owners can charge higher monthly rents. (The Kemps state they did a market analysis—was this an independent analysis or was it provided through their

affiliations with these real estate organizations?) The video promoters recommend not providing transportation to reduce liabilities, they recommend calling the business "your home" instead of a commercial enterprise, and they recommend using Fair Housing and ADA laws to threaten communities to force the business. And the Kemps use all this language from these videos. They even use the attorney from RALna (Residential Assisted Living National Association). And they call it a "Residential Assisted Living" home, per the real estate promoters' language, NOT a Residential Care Facility or an ALF as the state DHS would.

We are concerned about protecting the integrity of our community from unscrupulous contractors and their associates who appear to have purchased a cheap, inadequate rear lot but think they have found a way to make a big profit. This is a land use issue and if you approve this, the city council will, most importantly, be in violation of BMC 17.20.010 which states that these codes exist "to promote and encourage a suitable environment for family living and to protect and stabilize the residential characteristics of the district...intended to provide for single-family residential homes". The language the Kemps use may make it sound as if this will be a home, and renters will in fact live here, BUT the Kemps will not and this will not ever be a single family home consistent with the adjoining neighborhood. This is a commercial enterprise in the heart of an R-1-6 district.

In closing, I and my 175 + neighbors urge you to PLEASE respect and accept the findings of the Brookings Planning Commission to reject this application. Help us maintain the stability and integrity of our Dawson tract neighborhood.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise Ortega". The signature is fluid and cursive, with the first name "Denise" and last name "Ortega" clearly distinguishable.

Denise Ortega
96511 West Cliff Dr.
Brookings, OR 97415

Harvey Wolchuck <harvw7@yahoo.com>

To:balcorn

Mon, Aug 24 at 1:29 PM

The Honorable Mayor Jake Pieper and all members of the City Council;

I am in complete agreement with the planning commission's decision to overwhelmingly deny the applicant's attempt to undermine the integrity of our cohesive **Dawson neighborhood** by overbuilding a commercial structure smack in the middle of an established residential neighborhood.

The City Council has a mandate to protect the integrity of our neighborhoods. The Dawson Road neighborhood is one of the best neighborhoods in our town. We take great pride in our family homes and the whole community.

The chief concern, besides the safety of the surrounding neighborhood and it's residents, is the likelihood of a major flooding incident as the size of this structure and it's addition of concrete walkways, driveways, parking areas, and a very large roof structure, will add non-porous surface area, which of course increases sheet flows of water and will severely impact downstream properties.

My home, which is now on a sump pump, is unfortunately, one of the downstream recipients of this increased flow. My sump pump is very active in the winter. The existing flood control infrastructure was not designed to handle this increased flow. If this project is approved this needs to be addressed. The developer should provide flood control insurance to impacted properties, and a hydrology study needs to be completed.

Also, I am concerned that the density of this proposal is way too high given this is a CUP. We are being asked to allow 14 individual units with fourteen (14) bathrooms for the residents plus additional staff facilities. This is an extreme over-burden of our neighborhood infrastructure for a single, **duck-out-of-water project**.

This project should be limited in size far below the requested number of units, which seem to be plucked from the sky, **and** there should be a prohibition of any similar developments, or an expansion of this proposed CUP should it somehow be approved in spite of it's major design flaws.

We cannot accept this project and I believe I am speaking for most folks in our little community. Also please, if this somehow passes muster it should be limited to a **senior residential care facility only**, and there shall be no program allowed which may accept court referral cases where an individual would plea bargain with a court for a modified sentence.

Thank you for your consideration of these concerns.

Sincerely,

Harvey Wolchuck
96343 Dawson Road
Brookings, Or. 97415

(541)661-0251

Denise and Victor Ortega
96511 West Cliff Dr.
Brookings, OR 97415

August 20, 2020

City of Brookings
City Council
898 Elk Drive
Brookings, OR 97415

Regarding: File Number APP-1-20, appeal for request for Conditional Use Permit/Residential Care Facility in R-1 District

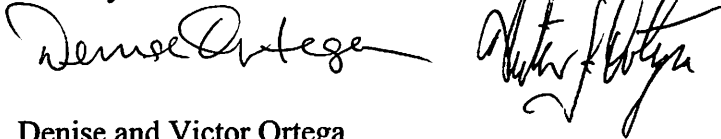
Mayor Pieper, City Manager, and City Council members:

We have collected the names and signatures of over 170 Dawson tract residents requesting that you uphold the City of Brookings Planning Commission decision from July 7, 2020 to deny CUP-2-20 for BK Quality Construction and Brett and Aga Kemp to build a 14 unit residential care facility at 17212 S. Passley Rd., Assessor's Map 4014-36BA, Tax Lot 02200.

Again we and our neighbors ask you to respect the Planning Commission's decision to reject the Kemp proposal as nothing in the appeal has changed the facts that the CUP failed on Criteria 1: the lot is not adequate for the size of this commercial building, Criteria 2: there is not the minimum driveway width for commercial traffic, and Criteria 3: this commercial facility is incompatible with adjoining properties.

This is a single family residential district and we urge you to keep Dawson tract and South Passley Rd. this way.

Thank you.

The block contains two handwritten signatures in black ink. The signature on the left is 'Denise Ortega' and the signature on the right is 'Victor Ortega'. Both are written in a cursive, flowing style.

Denise and Victor Ortega
96511 West Cliff Dr.
Brookings, OR 97415
(541) 254-9089

I, the undersigned, am a resident of Brookings, OR. I am signing this in anticipation of an appeal by Brett and Aga Kemp on behalf of BK Quality Construction to the Brookings City Council. I am opposed to a conditional use permit to allow the Kemps to construct a 14 unit residential assisted living business facility on 17212 S. Passley Rd.

The Brookings Planning Commission has denied a conditional use permit (CUP-2-20) for this facility. The planning commission, by a vote of 5 to 2, stated that the application was denied because 1) the lot did not meet adequate size requirements as it is a rear flag lot and the facility was planned for >40% of the lot size, 2) the facility in relation to the street did not meet minimal driveway requirements to accommodate commercial and emergency vehicles and accommodate adequate turn radius and 3) the proposed facility is inconsistent with adjoining R-1-6 zoned properties and will have an adverse impact on the neighborhood.

I agree with the planning commission's decisions to deny this permit and **I STRONGLY urge the Brookings City Council to deny any appeal by BK Quality Construction to build a residential assisted living (RAL) business facility in our Dawson tract single family home residential neighborhood.**

Name Print	Sign	Date	Address
Shannon Lawler		8/16/2020	96589 Susan Place
MIKE WILEY		8/16/2020	17257 Whitney, Brookings
James Horn		8/16/2020	17259 Whitney Way
Jacob Horn		8/16/2020	17259 Whitney Way
Candice Wick		8/18/20	17222 Passley
MICHAEL WILK		8/18/20	17222 Passley
RICK WASHBURN		8/18/20	17295 GARVIN CT.
Mark Zimmerman		8-18-2020	97871 Harbor View Cir.
Pete Smart		8/18/20	7165 VISTA RIDGE DR. BROOKING, OR.
Marco Thorson		8/18/20	96507 Westcliff Dr Brookings OR
April Thorson		8/18/20	96507 Westcliff Dr Brookings OR
Delores M Baker		8/18/2020	96509 Westcliff Dr Brookings OR.

I, the undersigned, am a resident of Brookings, OR. I am signing this in anticipation of an appeal by Brett and Aga Kemp on behalf of BK Quality Construction to the Brookings City Council. I am opposed to a conditional use permit to allow the Kemps to construct a 14 unit residential assisted living business facility on 17212 S. Passley Rd.

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I agree with the planning commission's decisions to deny this permit and I **STRONGLY** urge the Brookings City Council to deny any appeal by BK Quality Construction to build a residential assisted living (RAL) business facility in our Dawson tract single family home residential neighborhood.

Name Print	Sign	Date	Address
KAREN LUNDGREN	[Signature]	8/15/20	96424 Dawson Road
Cal Lundquist	[Signature]	8/15/20	96447 Dawson
Kathrine Lundquist	[Signature]	8/15/2020	Kathrine Lundquist 96447 Dawson
Conni Lundquist	[Signature]	8/15/2020	96447 Dawson Rd Brookings
Chris Wheeler	[Signature]	8/15/20	96500 Susan Pl
Sharon Bergman	[Signature]	8-15-2020	96510 Susan Pl Brookings
David BERGMAN	[Signature]	8/15/2020	96510 SUSAN PL, BROOKINGS
Matthew K. Boterman	[Signature]	8-15-20	17344 S. Passley Rd Brookings OR
Nancy Jones	[Signature]	8-15-20	17248 Eden Ln., Brookings, OR
Larry Wheeler	[Signature]	8-16-20	96500 Susan Pl Brookings OR
Chris Wheeler	[Signature]	8-16-20	96500 Susan Pl Brookings OR
[Signature]	[Signature]	8-16-20	17313 Zia Ct
JEREMY MARKS	[Signature]	8-16-20	17325 Zia Court
Heather Marks	[Signature]	8-16-20	17325 Zia Ct Brookings, OR
Paul Slosser	[Signature]	8/16/20	17330 Zia Ct. Brookings, OR

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I agree with the planning commission's decisions to deny this permit and I **STRONGLY** urge the Brookings City Council to deny any appeal by BK Quality Construction to build a residential assisted living (RAL) business facility in our Dawson tract single family home residential neighborhood.

Name Print	Sign	Date	Address
Jody Slosser	<i>Jody Slosser</i>	8/16/2020	17330 Zia Ct Briggs
Tyler Taggart	<i>Tyler Taggart</i>	8/16/20	17318 Zia Ct Briggs
DONALD J. COX	<i>Donald J. Cox</i>	8/16/20	17323 BLUEBERRY
BRENDA C. COX	<i>Brenda C. Cox</i>	8/16/20	17323 Blueberry
NIKE McMULLIN	<i>Nike McMullin</i>	8.16.20	17331 BLUEBERRY DR.
ELIZABETH McMULLIN	<i>Elizabeth McMullin</i>	8.16.20	17331 Blueberry Dr
Michael J. Frieels	<i>Michael J. Frieels</i>	8-16-20	17332 Blueberry Dr
Cade Frieels	<i>Cade Frieels</i>	8/16/20	17332 Blueberry Dr.
Mark Foley	<i>Mark Foley</i>	Aug 16, 2020	17317 Blueberry
Diana George	<i>Diana George</i>	8-16-20	17316 Blueberry Dr
TERRY AXEL	<i>Terry Axel</i>	8/16/20	17305 Blueberry Dr
Ken Anderson	<i>Ken Anderson</i>	8/16/20	96512 Dawson Rd
Rose Anderson	<i>Rose Anderson</i>	8/16/2020	96512 Dawson Rd.
James Subin	<i>James Subin</i>	8/16/20	96511 Susan Pl
Cindy Bell	<i>Cindy Bell</i>	8/16/20	96509 Susan Pl

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Name Print	Sign	Date	Address
DAVID BERGMANN	[Signature]	7/22/2020	96510 Susan Pl Brookings, OR 97415
SHARON BERGMANN	[Signature]	7/22/2020	96510 Susan Pl Brookings
Jennie Graham	[Signature]	7/22/2020	96340 Dawson Rd
Rose Anderson	[Signature]	7/22/2020	96512 Dawson Road
Eva Klaas	[Signature]	7/22/2020	96490 Dawson Rd
GERALD KLAAS	[Signature]	7/22/2020	96490 Dawson Rd
FRANK RUBALCABA	[Signature]	7-22-2020	96417 ANDRUSS DR
Barbie Breneiser	[Signature]	7-22-2020	96422 Dawson Rd.
Carol Colee	[Signature]	7-22-2020	96424 Shorewood Terr.
Tim Browder	[Signature]	7-22-20	17195 S. Passley Rd
KAREN O'REAR	[Signature]	7-22-20	96505 West Cliff Dr
BRAD HALL	[Signature]	8-15-2020	17184 S. Passley Rd.
Glenn Miller	[Signature]	8-15-2020	96345 Dawson Rd.
Carol Miller	[Signature]	8/15/2020	96345 Dawson Rd.
Thom a. Pruehl	[Signature]	8-15-2020	96344 Dawson Rd.

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Name
Print

Date

Address

Sign

SITANNON CHRISTOPHER		7.25.20	96418 Oceanside Dr. E. Brookings
Dewayne Conner		7.25.2020	96418 Oceanside Dr E. Brookings
Stephanie K. Walker		7/26	96406 Oceanside E Drive
Jim Redel		7/26/20	96406 Oceanside Dr. E, PP,
Ann C. Rings		7-26-2020	96407 Oceanside East
Ann C. Rings		7/26/2020	96407 Oceanside East
Kathleen E. Rosen		7/26/20	96402 Oceanside Dr
John H. Rosen		07/26/2020	96402 Oceanside Dr. Brookings
Melinda Farkas			96366 Dawson Rd. Brookings
Harvey Wolchuck			96343 Dawson Rd.
Marian Jacob		7/26/20	96410 Oceanside East
Jeff Jacobs		7/26/20	96410 Oceanside Dr East
J. Rodriguez		7-26-20	96409 Oceanside Dr E
Sara Towne		7-26-20	96420 Oceanside Dr
Bob Towne		7-26-20	96420 Oceanside Dr

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Name Print	Sign	Date	Address
Kathleen Bews	[Signature]	7-20-20	96507 Susan Pl Brookings
BUSTER BEWS	[Signature]	7-20-20	96507 SUSAN PL. BROOKINGS
WAYNE HIRSCH	[Signature]	7-21-20	96513 Susan Pl Brookings
Lucy Hirsch	[Signature]	7/21/20	96513 Susan Pl Brookings
Susanne Griswold	[Signature]	7/21/20	96515 Ocean Park Dr. Brookings, Or
Everett JACK Colloher	[Signature]	7/22/20	96300 Spindrift Ln Brook.
Thom a. Prudell	[Signature]	7-22-20	96364 Dawson Rd, Brookings
Lynette Globes	[Signature]	7/23/2020	96504 Susan Pl Brookings
Adam Grodin	[Signature]	7/24/2020	96516 Susan Pl Brookings
Carrie Washburn	[Signature]	7/24/2020	17212 S. Passley Rd Brookings
Anne Wheeler-Waddell	[Signature]	7/29/2020	96456 Shorewood Trl Brookings
Karen M. Lundgren	[Signature]	7/29/20	96429 Dawson Rd Brookings
Kathleen Knight	[Signature]	7/29/2020	17316 Holmes Dr. Brookings

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Name Print	Sign	Date	Address
George Vella	[Signature]	July 23 rd 2020	96466 Ridgeway St.
LESLIE BARBARA	[Signature]	July 23 2020	96465 Ridgeway
EDWARD RAMSEY	Edward Ramsey	JULY 23 2020	17126 PACIFIC HTS.
TEN REITEN	Ten Reiten	7/23/20	96452 SHOREWOOD TERR.
SUSAN REITEN	Susan Reiten	7/23/20	96452 Shorewood Terr.
Susan Simpson	Susan Simpson	7/23/20	96453 SHOREWOOD TERR.
ROBIN SIMPSON	[Signature]	7/23/20	" " "
Ron Dunswald	[Signature]	7/23/20	96515 OCEAN PARK DR.
Pamela Fronck	Pamela Fronck	7-24-2020	96462 Ridgeway Dr. Brookings
Barry Fronck	[Signature]	7/24/2020	96462 Ridgeway Dr Brookings
Regina Rushe	[Signature]	7/24/20	96438 Shorewood St 97415
Carolyn Seibert	[Signature]	7-24-20	17144 PACIFIC HTS 97415
Susanne Kleibert	[Signature]	7-24-20	17144 Pacific Hgts 97415
Ron Worland	[Signature]	7/24/20	17140 " " "
MARK NEWHOUSE	[Signature]	7/25/2020	96436 Shorewood Terrace Brookings

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Name
Print

Sign

Date

Address

LYNDA OLNEY	<i>Lynda Olney</i>	8-15-20	96385 96385 DAWSON RD
GENE OLNEY	<i>Gene Olney</i>	8-15-20	96385 DAWSON RD
Louise Rangitsch	<i>Louise Rangitsch</i>	8-15-20	96390 Dawson Rd
Lawrence Rangitsch	<i>Lawrence Rangitsch</i>	8-15-20	96390 Dawson Rd
KIRK KEOSEMAN	<i>Kirk Keesman</i>	8-15-20	96390 DAWSON RD.
Groffrey Masaki	<i>Groffrey Masaki</i>	8-15-20	96382 Dawson Rd
Charles Nicolls	<i>Charles Nicolls</i>	8-15-20	96391 DAWSON RD
DE' DE' NICOLLS	<i>De' De' Nicolls</i>	8-15-20	96391 DAWSON RD
TIMOTHY NEWBY	<i>Tim Newby</i>	8-15-20	96303 SPINDRIFT LANE
SALLY NEWBY	<i>Sally Newby</i>	8-15-20	96303 SPINDRIFT LANE
Maude Stagnas	<i>Maude Stagnas</i>	8-15-20	96307 Spindrift Lane
Jody Lee	<i>Jody Lee</i>	8-15-20	96301 Spindrift Lane
Diane Gollaher	<i>Diane Gollaher</i>	8-15-20	96300 Spindrift Ln
John Braneiser	<i>John Braneiser</i>	8-15-20	96422 Dawson
Michael Lillengren	<i>Michael Lillengren</i>	8-15-20	96424 Dawson

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Name Print	Sign	Date	Address
PAT TETRAULT	<i>P Tetrault</i>	7-19-20	17190 S. Passley
BOB TETRAULT	<i>R Tetrault</i>	7-19-20	17190 S. PASSLEY
Cynthia Young	<i>Cynthia Young</i>	7-19-20	17188 S. Passley Rd.
David Oganeoff	<i>[Signature]</i>	7-19-20	17186 S. Passley Rd.
Timothy Young	<i>[Signature]</i>	7-19-20	17188 S. Passley Rd.
Linda & ALVIN Johnson	<i>[Signature]</i>	7/19/2020	17163 Ocean Park Ct.
Amanda & Russ Deman	<i>[Signature]</i>	7/19/20	17167 Ocean Pkct.
Margie ^{LEE} Terry Lee	<i>[Signature]</i>	7-19-20	17171 Ocean Pkct.
Terry Lee	<i>TERRY/LEE</i>	7-19-20	17171 Ocean Pkct.
Ken & Leann Manuele	<i>[Signature]</i>	7/19/20	17174 Ocean ^{road} Pkct.
Peter Kresser	<i>[Signature]</i>	7/19/20	17164 Ocean Pkct.
Katherine Kresser	<i>[Signature]</i>	7/19/20	17164 Ocean Park Ct.
Bill Beggs	<i>[Signature]</i>	7/19/20	17160 Ocean Park Ct.
Ann Dezen	<i>[Signature]</i>	7/19/20	17166 Ocean Park
Randy John	<i>[Signature]</i>	7/19/2020	17156 Ocean Park Ct.

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Name Print	Sign	Date	Address
Robert HUNTOON	Robert HUNTOON	7/19/2020	96436 OCEAN PARK DR. BROOKINGS, OR
LINDA HUNTOON	Linda D. Newton	7/19/2020	96436 OCEAN PARK DR NE "
William L. Lane	William L Lane	7/19/2020	96498 Ocean Park Dr.
HOWARD E. GANN	Howard E Gann	7-19-2020	96506 Ocean PK DR.
Jo Ann Camilli	Jo Ann Camilli	7/19/20	96510 Ocean Park Dr.
Dolph E. Camilli	Dolph E. Camilli	7/19/20	95616 Ocean Park Dr
Sasithorn & Daniel	Daniel	7/20/20	17300 Garvin Ct, Brookings
Georgeann Rudicel	Georgeann Rudicel	7/20/20	17285 Garvin Court Brookings
CHARLES RUDICEL	CHARLES RUDICEL	7/20/20	17285 GARVIN CT BROOKINGS
Raymond King	Raymond King	7-20-20	17280 GARVIN CT. BROOKINGS
STAN HOBBS	STAN HOBBS	7-20-20	17280 GARCIA CT. BROOKINGS
Andy & Josette Pokk	Andy & Josette Pokk	7-20-20	17250 GARVIN CT BROOKINGS
Andy Pokk	Andy Pokk	7-20-20	17250 GARVIN CT BROOKINGS
Donna Lee Phillips	Donna Lee Phillips	7/20/20	17240 GARVIN Ct Brookings
Carol Cook	Carol Cook	7/20/20	17230 Garvin Ct Brookings
Wm Pratt	Wm Pratt	7/20/20	↓ ↓

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Name Print	Sign	Date	Address
Demise Ortega	Demise Ortega	7/20/2020	96511 West Cliff Dr
Cassie Maschmeyer	Cassie Maschmeyer	7/20/2020	17235 Garvin Ct.
Les Cornish	Les Cornish	7/20/2020	17255 Garvin Ct.
Ree Isenker	Ree Isenker	7/20/20	17265 Garvin
J	Joyce L. Slunker		
Lana Brock	Lana Brock	7/20	17275 Garvin Ct
James Brock	James Brock	7/20/20	17275 Garvin Ct.
Linda Romellini	Linda Romellini	7/20/20	96511 Dawson Rd
VICTOR (KEEG)	Victor Kegan	07-22-2020	96511 WEST CLIFF DR.
Linda Martin	LINDA MARTIN	7/22/2020	17202 S PASSLEY RD
Joseph J. DeB...	Joseph J. DeB...	7/22/2020	17247 LUMBERVIEW DR.
Pamela Williams	Pamela Williams	7/22/2020	17247 Lumber View
Ornell Vance	Ornell Vance	7-22-20	17245 Lumber View Dr-
Clayton Morrison	Clayton Morrison	7-22-20	17245 LUMBER VIEW DR

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Name Print	Sign	Date	Address
Alan Neerensberg	<i>Alan Neerensberg</i>	July 26, 2020	96411 Oceanside Dr.
Aaron Horton	<i>Aaron Horton</i>	7/26/20	96405 Oceanside Dr
PAM HORTON	<i>Pam Horton</i>	7-26-20	96405 Oceanside Dr
Jason Macken	<i>Jason Macken</i>	7-26-20	96400 Oceanside Dr.
Jason Jim Macken	<i>Jim Macken</i>	7-26-20	" " "
MARCUS GEIGER	<i>Marcus Geiger</i>	7-26-20	96422 Oceanside Dr.
Sandra Geiger	<i>Sandra Geiger</i>	7-26-20	96422 Oceanside Dr.
Mark W Williams	<i>Mark W Williams</i>	7/26/20	96424 Oceanside Dr E.
Judy Williams	<i>Judy Williams</i>	7/26/20	96424 Oceanside Dr. E.
LINDA B. YOUNG	<i>Linda B Young</i>	7/27/20	96401 OCEANSIDE DR., E.

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RECEIVED

AUG 24 2020

CITY OF BROOKINGS

Name Print	Sign	Date	Address
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Debra Gleason	<i>Debra Gleason</i>	7/25/20	17192 S. Passley Rd
John R. Breen	<i>John R. Breen</i>	7/25/20	17070 MTN DR
June Bloom	<i>June Bloom</i>	7-25-20	17070 MTN DR
KEVIN O'Rear	<i>Ka O'Rear</i>	7-25-20	96505 WEST CLIFF
Christine Wheeler	<i>Christine Wheeler</i>	7-25-20	96500 Susan Pl
Bryan Kuck	<i>Bryan Kuck</i>	7-25-20	96496 Dawson Rd.
Rhonda Berry	<i>Rhonda Berry</i>	7/25/20	17255 S. Passley Rd
Ruth A. B.	<i>Ruth A. B.</i>	7-25-20	17255 S PASSLEY RD
Frederick Wieden	<i>Frederick Wieden</i>	8-8-2020	Lot 5316 OceanSide Dr.
Janice Wieden	<i>Janice Wieden</i>	8-8-2020	Lot 5316 OceanSide Dr.
Jeannie Wieden	<i>Jeannie Wieden</i>		

August 21, 2020

City of Brookings
Public Works and Development Services Department
898 Elk Drive
Brookings, OR 97415

Regarding APP-1-20 For a conditional use permit to establish 14 unit residential care facility on 17212 S. Pasley Road

Dear Brookings Planning Commission,

I am writing in support of the request for a conditional use permit, CUP-2-20, filed by Brett Kemp and BK Quality Construction to build a 14-bed residential assisted living home on Tax Lot 02200 in the city of Brookings.

I have known Brett and Aga for many decades and they are truly among the highest caliber of people we have in Curry County. In their individual business and personal pursuits each of them has excelled at providing quality products and services, high levels of customer satisfaction and stellar reputations that have customers waiting in line for both a BK Quality home or a visit to Vibrant Health Center.

In my line of work I often advise clients on retirement and long term care planning. With those lenses in place I can tell you there is a significant lack residential assisted living home options both in terms of capacity and diversity of services offered locally. This style of community integrated senior assisted living is a preferred alternative for many people making these important life decisions. I firmly believe that the high level of character and compassion that Aga and Brett bring to the table will be of great value to our community.

I understand that the proposed project by BK Quality Construction meets or exceeds all zoning and Brookings city ordinances currently in place. Given the history and reputation of BK Quality construction I have no doubt the project will be of the highest quality. I have in the past partnered with BK Quality Construction on numerous single family residential projects in our area and in each case the high level of craftsmanship and attention to detail has been evident.

Given all of the above, I enthusiastically urge you to issue approvals for this project

Sincerely,

Alan Nidiffer
PO Box 1405
Brookings OR 97415
(541)251-0145

City Council Presentation



PROJECT OVERVIEW

- We are applying for a Conditional Use Permit to enable us to build a 14-bed residential Care Home to serve the elderly residents and Veterans with disabilities of our community. Our goal is to make a supportive environment for them in a non-medical setting, where they are valued and integrated in the fabric of our residential communities.



Planning Committee Meeting

- On July 7th, the planning commission of Curry County reviewed our application for a conditional use permit for the parcel located at 17212 Passley Road.
- The commission claimed that the application failed to meet three specific standards necessary for its final approval.
- We feel the planning committee did not properly evaluate our proposal or provide clear evidence for their denial of the criteria 1, 2, & 3
- The Planning Commission of Curry County erred in their interpretation of the Land Development Code criteria in making its decision to deny our Conditional Use Permit on the following basis:
 - Criteria 1, 2 & 3 are discussed in below.

Criteria 1: Adequate Size and Shape

- The Planning commission erred when they claimed that the proposed home exceeds the maximum lot coverage because it did not count the area of the accesway in the lot size calculation. **In fact, this conclusion overlooks the clear definition of “lot coverage” in BMC 17.08.120.**
- While the access way is not included when calculating whether a rear lot meets the criteria for *eligibility for partition* under BMC 17.172.061, the controlling definition for whether the access way should be counted in determining lot coverage is in BMC 17.08.120.
- **CRITERIA 1 IS MET**

Criteria 2 Relation of Streets:

- The Planning Commission erred when they found that the site “does not meet standards in Criteria 2 in terms of minimal driveway width to accommodate commercial or emergency vehicle traffic and to accommodate adequate turn radius from S. Passley Road. **Making this finding the planning committee disregarded that Fire Chief Watson did already approve this configuration prior to the meeting on July 7.**
- It is required that emergency vehicles are able to access all residential homes within the city. **Fire Chief Jim Watson has approved and confirmed that the 15ft driveway width is adequate for emergency vehicles.**

Criteria 2 Relation of Streets:

- The fire code allows for a reduction to a 15ft in driveway width in the event the building is equipped with a fire suppression system (i.e. sprinklers).
- Our proposed home will be equipped with such a fire suppression system.
- **CRITERIA 2 IS MET**



Criteria 3 – Neighborhood Impact

- This project will have a GREAT & POSITIVE impact on this community and our city!!!
- Elderly residents are low impact, quiet and most likely go to bed before the rest of the neighborhood. Residential Care homes are often the nicest homes on the block with beautifully kept landscaping and welcoming facades.
- Studies have shown that group homes for the disabled do not reduce property value of the surrounding neighborhood. These are common myths that are perpetuated or utilized as justification to segregate neighborhoods.

Criteria 3 – Neighborhood Impact

- In fact group homes add to the social fabrics of the surrounding community, providing intergenerational opportunities for connection and needed services for community residents.
- Some of the very residents in this neighborhood may at some point have family or friends reside here and be given the gift of aging with their peers and community.
- The proposed residential home will be set back from the main road, on a private, spacious lot with a private driveway, generous spacing and setbacks from the adjoining properties all providing minimal impact.

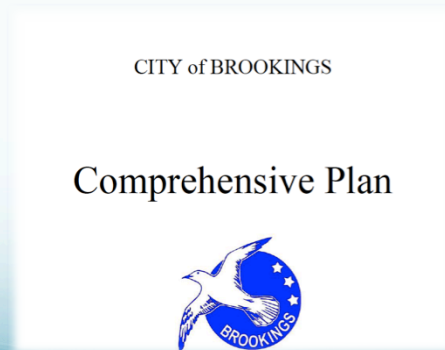
Criteria 3 - The proposed use will have minimal adverse impact upon adjoining properties

- There is a significant green buffer around most of the proposed property and adjoining neighbors. Additionally, we intend to have an aesthetically pleasing fence and landscaping around the home.
- These unique features of the property are why we specifically choose it and make this property an ideal location to support this kind of project with minimal impact on the neighborhood.
- Available property for this use and zoning is limited in Brookings. Saying no to this location could be saying no to the project as a whole

CRITERIA 3 IS MET

Criteria 5 -The proposal is in compliance with the comprehensive plan.

- This project is in compliance with many policies in Goals 9 & 10 of the comprehensive plan and has a lot of potential to support the city of brooking as a whole .



City of Brookings Comprehensive plan

- *“The Comprehensive Plan recognizes that Curry County and Brookings continue to have a population that is older than the State average due to in-migration of retirees”*
 - As I will mentioned later, 69% of these retirees are likely to need long term care.
- *“The Comprehensive Plan includes a Implementation policy to “[p]rovide opportunities for development of housing for seniors, ranging from single-family detached dwellings to nursing facilities”. (BCP, Goal 9 I-21)*
- *“ The Comprehensive Plan also sets a goal to provide “varied housing types that are safe, sanitary and adequate for all residents of the community.”*

City of Brookings Comprehensive plan cont..

- *“Brookings area has developed a strong retirement housing industry. Retirees are an important source of economic stability to the community” (BCP G-9, F-5).*
 - We need to meet their long term needs to continue to attract and retain them to our community.
- A DHS independent market analysis for Brookings, along with the city’s own stated goals, confirm that the Brookings community is in desperate need for additional senior care options to serve the growing aging population and economy.

City or Brookings Zoning

- According to the BMC The City has already determined that this projects use **is consistent** with other uses in this *R-1-6* zone which allows a residential care facility as a conditional use. This neighborhood **already contains** an approved CUP for a neighboring church.
- The State strongly encourages city's to support and grant accommodation in policies and zoning to encourage and support integrating these projects into our communities.

City of Brookings Comprehensive plan cont..

- Under Goal 2 policy 4 of the Brookings Comprehensive plan it states that:

“ Planning decisions generally and amendments to the Plan particularly, will be consistent with applicable State Planning goals.”

ORS 197.663¹ Legislative findings



Oregon State Policies

The Oregon Legislative Assembly has found and declared that:

- (1) It is the policy of this state that persons with **disabilities and elderly persons are entitled to live as normally as possible within communities** and should not be excluded from communities because their disability or age requires them to live in groups;
- (2) There is a **growing need for residential homes and residential facilities** to provide quality care and protection for persons with disabilities and elderly persons and to **prevent inappropriate placement of such persons in state institutions and nursing homes;**

Or. Rev. Stat. § 197.663.

Oregon State Policies cont..

The Oregon Legislative Assembly has found and declared that:

- (3) It is often difficult to site and establish residential homes and residential facilities in the communities of this state;
- (4) To meet the growing need for residential homes and residential facilities, it is the policy of this state **that residential homes and residential facilities shall be considered a residential use of property for zoning purposes; and**
- (5) **It is the policy of this state to integrate residential facilities into the communities of this state.** The objective of integration cannot be accomplished if residential facilities are concentrated in any one area.

Or. Rev. Stat. § 197.663.

Oregon State Policies cont..

2011 Oregon Revised statutes 197.667 says....

“A city or county may allow a residential facility in a residential zone other than those zones described in subsections (1) and (2) of this section, including a zone where a single-family dwelling is allowed”

**2011 Oregon Revised Statutes
ORS Volume 5, Chapters 171 - 200
ORS Chapter 197
197.667 Location of residential facility; application and
supporting documentation.**

Universal Citation: OR Rev Stat § 197.667 (through Leg Sess 2011)

(1) A residential facility shall be a permitted use in any zone where multifamily residential uses are a permitted use.

(2) A residential facility shall be a conditional use in any zone where multifamily residential uses are a conditional use.

(3) A city or county may allow a residential facility in a residential zone other than those zones described in subsections (1) and (2) of this section, including a zone where a single-family dwelling is allowed.

Or. Rev. Stat. § 197.667

CONDITIONAL USE PERMIT

- **CRITERIA 5 IS MET**
- Our proposal complies with all of the BMC's development conditions and meets and exceeds all necessary criteria for a conditional use permit and we respectfully request that this permit be granted.

OUR GOALS.

- Our goal is to make a supportive environment for the disabled elderly and Veterans in a non-medical setting, where they are integrated into a residential community vs herded into large facilities outside of town or in commercial areas.
- In addition, our project provides for additional economic benefits, such as job creation and increased tax revenue for the city. From the BCP
 - *“Brookings area has undergone considerable change in the last 30 years. The traditional lumber and wood products economic base is no longer strong”.*(BCP G9, F2).
 - *“The Job sector with the greatest increase in employment during the 2001-2007 period were Service and retail”*
 - *“Provide services that attract retirees as well as residents”* (BCP G9, P1-i)

KEEP IT IN HOUSE

- Big corporations hundreds of miles away are building beautiful building and then barely staffing them and feeding our seniors processed food with understaffed and undertrained employees.
- We feel the care of this population in our community should fall within our own citizens and businesses. It's the only way that we can ensure the integrity and accountability needed to keep the level of care high.
- Utilizing local business and leadership will have a much greater economic impact with revenues and spending that stay local instead of leaving our community to a outside corporation.

SMALLER IS BETTER

- Data demonstrates that smaller residential homes, like the one we propose, result in better health outcomes for seniors, significantly lower risk of falls, better cognitive and functional status, and a greater sense of well-being.
- In the era of COVID-19, smaller residential homes are becoming even more important, as there is a much lower risk of virus transmission and greater safety for residents.

FAIR HOUSING ACT (FHA)



A LITTLE FHA HISTORY

- After the great depression in the 1930's, faced with a housing shortage, the federal government began a program explicitly designed to increase and unfortunately segregate America's housing predominantly by race.
- In the 1960s "**Redlining**" was coined by sociologist John McKnight to describe the discriminatory US practice of fencing off areas where banks would avoid investments or not grant loans based on demographics, most frequently against blacks and people of color. (In this country land&home ownership is the path to wealth and more freedom)
- Historian and Author Richard Rothstein states "The government's efforts were "primarily designed to provide housing to white, middle-class, lower-middle-class families," he says. African-Americans and other people of color were left out of the new suburban communities — and pushed instead into outside urban housing projects.
- Racial discrimination in mortgage lending in the 1930s and Redlining soon after has shaped the demographic and wealth patterns of American communities today.
- The entire purpose of the fair house act was to ensure all Americans can have equal opportunities. Even though it was initial started to address racial inequalities it eventually expanded to cover 7 protected classes to overcome Racial and social barriers

THE FAIR HOUSING ACT WAS PASSED IN 1968

<https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>

A LITTLE FHA HISTORY

- When the law was comprehensively amended in 1988, it was changed to include discrimination against people because of disability
- This is important because around this time our seniors also started aging very differently than they have in the past and had began to have increased needs and disabilities. Many of them were not able to stay in their homes and many homes had become two party income earners because of financial need. We were losing family members to care for our seniors with disabilities and we had nowhere to put them. This led to the unfortunate and devastating act of moving seniors with disabilities to mental health institutions. We had nowhere else to accommodate them and we pulled them out of our communities.

SEGREGATION OF SENIORS

- Harvard business review presented research from demographer Richelle Winkler in 2013 which indicates that *“age segregation is often as ingrained as racial segregation”*.
- She states *“Sadly, in the past 100 years, America went from being one of the most age-integrated societies in the world to arguably the polar opposite”*.



Freedman, M., Stamp, T. (2018). The U.S. Isn't Just Getting Older. It's Getting More Segregated. Harvard Business Review (<https://hbr.org/2018/06/the-u-s-isnt-just-getting-older-its-getting-moresegregated-by-age>).

FAIR HOUSING ACT

- What does the FHA say....
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin.
- Title VIII was amended in 1988 (effective March 12, 1989) by the Fair Housing Amendments Act, which: expanded the coverage of the Fair Housing Act to prohibit discrimination based on disability or on familial status (presence of child under age of 18, and pregnant women);
- and it established new administrative enforcement mechanisms with HUD attorneys bringing actions before administrative law judges on behalf of victims of housing discrimination.

FAIR HOUSING ACT, DIABILITIES

- FHA states for disability housing says :
- *It is illegal to discriminate in the sale or rental or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:*
 - *That buyer renter*
 - *A person residing in or intending to reside in that dwelling after it is sold, rented or made available: or*
 - *Any person associated with that buyer or renter.*
 - *This includes developers and people who are purchasing or building group home for future disabled residents*

FHA Seniors with Disabilities

- Seniors seeking care in a residential assisted living home have physical and/or mental impairments that inhibit their ability to handle major life activities by themselves.
- Therefore, they are considered disabled and are protected from housing discrimination by the federal Fair Housing Amendments Act
- Someone who is attempting to establish a home for people with disabilities is similarly protected by the Act. See 42 U.S.C. § 3604(f)(1).

FAIR HOUSING ACT, ZONING

- From the Joint Statement of the Department of Housing and Urban Development and the Department of Justice,
- *“Local zoning regulations cannot impose restrictions or additional conditions on group housing for people with disabilities that are not imposed on families or other groups of unrelated individuals”.*
- City of Edmonds v. Oxford House, Inc., 461 U.S. 725 (1995); “State and Local Land Use Laws and Practices and the Application of the Fair Housing Act,” p. 3.

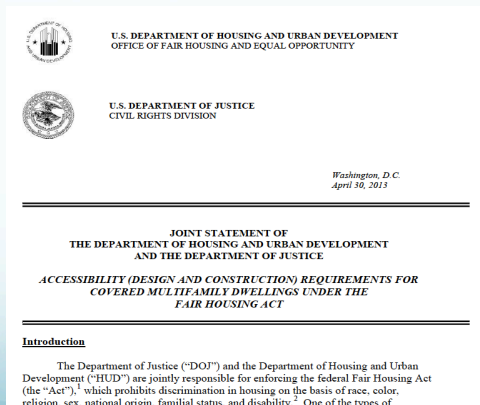
Reasonable Accommodation for People with Disabilities

- The FHAA requires local zoning authorities to make *“reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”* 42 U.S.C. § 3604(3)(B).
- Local officials are also required to consider reasonable accommodations to zoning, building codes and ordinances.

* 42 U.S.C. § 3604(3)(B).

FAIR HOUSING ACT & Fears and prejudices of neighbors.

From the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, on community opposition and discrimination.



<https://www.justice.gov/opa/file/912366/download>

FAIR HOUSING ACT & Fears and prejudices of neighbors.

Cont.....

- *"When enacting or applying zoning or land use laws state and local government may not act because of fears prejudices stereotypes or unsubstantiated assumptions that community members have about current or prospective resident...."*
- i.e. the community fear it will increase crime, endanger neighbors, lower property values, etc.
- *"Sometimes external impacts like traffic and parking problems masquerade as rationales for opposition when the real motivation is a desire for social exclusivity."*

<https://www.justice.gov/opa/file/912366/download>

FAIR HOUSING ACT & Fears and prejudices of neighbors.



“From our ancient roots as hunters and gatherers, we human beings are hard-wired to be wary of situations that are unfamiliar and people who seem different from us. We also have a sense of territory. Instinctually, we feel an impulse to exert control over areas we consider belong to us. We are also hard-wired to want to live in a community and should have the ability to do so.”



“When changes are planned for a neighborhood, whether it is a single house, a new apartment complex, or a new assisted care home, sometimes neighbors object. They may not oppose the proposed project per se, but they may object to its location in their neighborhood.

They may believe *“it belongs somewhere, as long as it is somewhere else”*. “For some, change can be challenging and can make people feel uneasy or conjure up fears of the unknown. But change can also be an opportunity.”

OUR GOALS

Approving this project would provide new opportunities for economic development and creation of service jobs and will have a positive impact on the City of Brookings.

It will also attract retirees, meet an important demand for our aging population, and supports many of the goals in the Brookings Comprehensive Plan for community health and economic growth.

WHY THIS MATTERS

- Perhaps more now than ever, we believe that seniors and veterans are an important part of any healthy community. Yet, the trends show that seniors with disabilities or who need assistance as they age struggle to find housing beyond commercial facilities.
- As of late, these facilities have come under scrutiny and have become unhealthy, unaffordable and in many cases, a danger to seniors.
- We believe seniors with disabilities or who need assistance are just as valuable and important part of the relationships, connections and cohesiveness of any community and deserve to stay in the neighborhoods they have lived in all their lives not be segregated to institution like settings on the outskirts of towns.

Why This Matters

- Aging Americans will reshape our society in coming years as they become a larger segment of the population, and our communities need to adapt along with them.
- With one in five Americans expected to be over 65 years old by 2030, adapting our cities for the needs of older adults is a top planning priority.
- Upstream work needs to be done to ensure that new developments are fully designed to address accessibility, aging and affordability concerns

US SENIOR HOUSING NEEDS

- The United States has a growing senior population. These projections from **AARP** illustrate the increasing number of Americans over the age of 65:
- 35.0 million (12.4%) in 2000 (1 in 10 people)
- 39.7 million (13.2%) in 2010
- 53.7 million (16.5%) in 2020
- **70.0 million (20.0%) in 2030 (1 in 5 people)**

By the year 2050 the number of people:

- over 65 will more than double
- over 75 will triple
- over 85 will quintuple
- over 100 will septuple (approaching 1 million)



SENIORS WITH DISABILITIES

As people age, many develop disabilities that make it hard for them to continue to live independently. However many will not need skilled nursing care but instead just need assistance with ADL's (Activities of daily living)

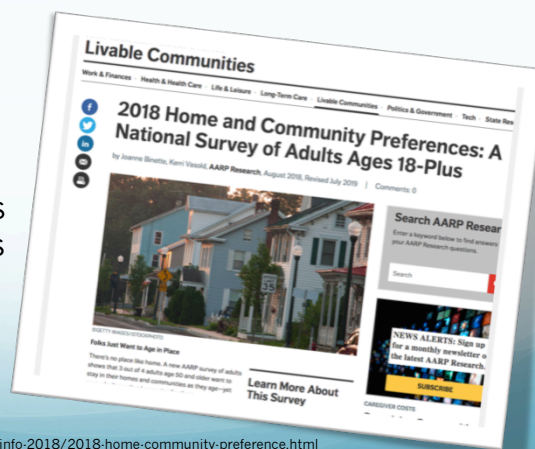
- **Research shows that 69% of these retirees (65 and over) are likely to need long term care and assistance. 2/3rd of our Seniors!!!**



There's no place like home

- **According to a 2019 AARP study, research shows that 75% of adults want to stay in homes and communities as the age.**

Trends show Seniors are considering alternatives like home sharing in order to have the resources to get support with ADL's within communities as well as for the companionship"



<https://www.aarp.org/research/topics/community/info-2018/2018-home-community-preference.html>

There's no place like home

- In addition to health benefits for seniors themselves, keeping seniors in residential neighborhoods is mutually-beneficial and important to maintaining a healthy and intergenerational social fabric for our communities as a whole. Exclusionary zoning practices reduce interaction between the generations, to the detriment of us all.



We need a model that lets seniors and veterans even ones with disabilities stay active contributors and parts of our neighborhood communities. This is how we create healthy integrated communities. And it's what any of us deserve as we age and that have served our country.

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

DAVID BERGMANN, SHARON BERGMANN, SHANNON
CHRISTOPHER, DEWAYNE CONNOR, BRENDA COX, SANDRA
GEIGER, DEBRA GLEASON, RON GRISWOLD, AARON
HORTON, ROBERT HUNTOON, JEFFREY JACOBS, EVA
KLAAS, GERALD KLAAS, GLENN MILLER, KAREN O'REAR,
KEVIN O'REAR, DENISE ORTEGA, VICTOR ORTEGA, LOREN
RINGS, GEORGEANN RUDICEL, MARCO THORSON, BOB
TOWNE, SARA TOWNE, and DENNIS TRIGLIA,

Petitioners,

vs.

CITY OF BROOKINGS,
Respondent.

LUBA No. _____

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that above-named Petitioners intend to appeal that land
use decision of Respondent entitled:

*Final Order in the Matter of an Appeal of the Planning Commission
File No. CUP-2-20; an Application for Approval of a Conditional Use
Permit to Establish a 14-unit Residential Care Facility at 17212 S.
Passley; Brett Kemp, Owner and Applicant. Appealed by file No. APP-
1-20, Applicant, Brett Kemp.*

A copy of the decision is attached hereto as **Exhibit "A"**. The decision became final
on August 31, 2020 and involves an application for approval of a conditional use
permit to establish a 14-unit residential care facility. Respondent's file numbers are

1 – NOTICE OF INTENT TO APPEAL

Jarvis, Dreyer, Glatte & Larsen, LLP
823 Alder Creek Drive
Medford, Oregon 97504
E-mail: office@medfordlaw.net

1 CUP-2-20 and APP-1-20. A check in the amount of \$400.00 payable to the Land
2 Use Board of Appeals is enclosed for the filing fee and deposit for costs.

3 II.

4 David Bergmann and Sharon Bergmann have as their address and phone
5 number:

6 David Bergmann and Sharon Bergmann
7 96510 Susan Place
8 Brookings, OR 97415
9 Phone: (503) 507-1505
10

11 Shannon Christopher and Dewayne Connors have as their address and phone
12 number:

13 Shannon Christopher and Dewayne Conner
14 96418 Oceanside Dr. East
15 Brookings, OR 97415
16 Phone: (541) 621-0646
17

18 Brenda Cox has as her address and phone number:

19
20 Brenda Cox
21 17323 Blueberry Dr.
22 Brookings, OR 97415
23 Phone: (951) 966-5432
24

25 Sandra Geiger has as her address and phone number:

26
27 Sandra Geiger
28 96422 Oceanside Dr. East
29 Brookings, OR 97415
30 Phone: (702) 373-1229
31

32 //

2 – NOTICE OF INTENT TO APPEAL

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1 Debra Gleason has as her address and phone number:

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3 Debra Gleason
4 17192 S. Passley Rd.
5 Brookings, OR 97415
6 Phone: (541) 469-0266
7

8 Ron Griswold has as his address and phone number:

9
10 Ron Griswold
11 96515 Ocean Park Dr.
12 Brookings, OR 97415
13 Phone: (541) 469-7484
14

15 Aaron Horton has as his address and phone number:

16
17 Aaron Horton
18 96405 Oceanside Dr. East
19 Brookings, OR 97415
20 Phone: (541) 301-1645
21

22 Robert Huntoon has as his address and phone number:

23
24 Robert Huntoon
25 96436 Ocean Park Dr.
26 Brookings, OR 97415
27 (541) 661-6145
28

29 Jeffrey Jacobs has as his address and phone number:

30
31 Jeffrey Jacobs
32 96410 Oceanside Dr. East
33 Brookings OR 97415
34 Phone: (209) 552-9005
35

36 Eva and Gerald Klaas have as their address and phone number:

37
38 Gerald and Eva Klaas
39 96490 Dawson Rd.

3 – NOTICE OF INTENT TO APPEAL

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1 Brookings, OR 97415
2 Phone: (541) 412-9591
3

4 Glenn Miller has as his address and phone number:
5

6 Glenn Miller
7 96345 Dawson Rd.
8 Brookings, OR 97415
9 Phone: (812) 350-8551
10

11 Karen and Kevin O'Rear have as their address and phone number:
12

13 Karen and Kevin O'Rear
14 96505 West Cliff Dr.
15 Brookings, OR 97415
16 Phone: (661) 496-0393
17

18 Petitioners Denise Ortega and Victor Ortega are represented by:

19 Garrett K. West, OSB No. 174890
20 Dreyer, Glatte & Larsen, LLP
21 823 Alder Creek Drive
22 Medford, Oregon 97504
23 Phone: (541) 772-1977
24 Fax: (541) 772-3443
25 Email: gwest@medfordlaw.net
26

27 Loren Rings has as his address and phone number:
28

29 Loren Rings
30 96407 Oceanside Dr. East
31 Brookings, OR 97415
32 Phone: (541) 813-9003
33

34 Georgeann Rudicel has as her address and phone number:
35

36 Georgeann Rudicel
37 17285 Garvin Ct.
38 Brookings, OR 97415

4 – NOTICE OF INTENT TO APPEAL

Jarvis, Dreyer, Glatte & Larsen, LLP
823 Alder Creek Drive
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E-mail: office@medfordlaw.net

1 Phone: (541) 469-5809

2
3 Marco Thorson has as his address and phone number:

4
5 Marco Thorson
6 96507 West Cliff Dr.
7 Brookings, OR 97415
8 Phone: (801) 615-1885
9

10 Sara and Bob Towne have as their address and phone number:

11
12 Sara and Bob Towne
13 96420 Oceanside Drive East
14 Brookings, OR 97415
15 Phone: (541) 254-4085
16

17 Dennis Triglia has as his address and phone number:

18
19 Dennis Triglia
20 96359 Dawson Rd.
21 Brookings, OR 97415
22 Phone: (503) 703-6613
23

24 Petitioners, other than Denise Ortega and Victor Ortega, are unrepresented by
25 attorneys. As multiple Petitioners are unrepresented, Petitioners designate Denise
26 Ortega as Lead Petitioner and all documents should be sent to her attorney, Garrett
27 West at the above address.

28 III.

29 Respondent City of Brookings, has as its mailing address and telephone
30 number:

31 City of Brookings
32 898 Elk Drive,

5 – NOTICE OF INTENT TO APPEAL

Jarvis, Dreyer, Glatte & Larsen, LLP
823 Alder Creek Drive
Medford, Oregon 97504
E-mail: office@medfordlaw.net

1 Brookings, OR 97415
2 Phone: (541) 469-1159
3

4 Respondent City of Brookings has as its legal counsel:

5 Christy K. Monson, OSB No. 011501
6 Speer Hoyt LLC
7 975 Oak Street, Ste. 700
8 Eugene, OR 97401
9 Phone: (541) 485-5151
10

11 IV.

12 The applicant was Brett Kemp who was unrepresented in the proceedings
13 below. He has as his mailing address and telephone number:

14 Brett Kemp
15 PO Box 705
16 Gold Beach, OR 97444
17 Phone: (541) 610-6439
18

19 V.

20 Other persons to whom written notice of the land use decision was mailed as
21 shown in the governing body's records are the following:

22 Charles Cooper, 805 Paradise Lane, Brookings, OR 97415
23 James Capon, 919 Easy St., Brookings, OR 97415
24 Anna Curtis, 234 Cypress St., Brookings, OR 97415
25 Jenny Horvath, 97555 Kimball Hill Road, Gold Beach, OR 97444
26 Aga Kemp, PO Box 705, Gold Beach, OR 97444
27 Rachel Ochoa, 719 6th St., Brookings, OR 97415
28

29
30 //

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32 //

6 – NOTICE OF INTENT TO APPEAL

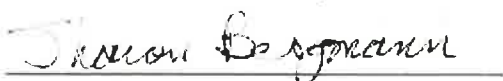
Jarvis, Dreyer, Glatte & Larsen, LLP
823 Alder Creek Drive
Medford, Oregon 97504
E-mail: office@medfordlaw.net

NOTICE

Be advised that all persons, other than the governing body, who desire to participate in the review proceeding must file a motion to intervene pursuant to OAR 661-010-0050.

Dated September 17, 2020


David Bergmann, *Petitioner*


Sharon Bergmann, *Petitioner*


Shannon Christopher, *Petitioner*


Dewayne ~~Connors~~, *Petitioner*


Brenda Cox, *Petitioner*


Sandra Geiger, *Petitioner*


Debra Gleason, *Petitioner*


Ron Griswold, *Petitioner*


Aaron Horton, *Petitioner*

//

7 – NOTICE OF INTENT TO APPEAL

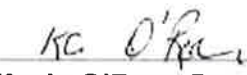
Jarvis, Dreyer, Glatte & Larsen, LLP
823 Alder Creek Drive
Medford, Oregon 97504
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1 

2
3 Glenn Miller, *Petitioner*

4 

5 Karen O'Rear, *Petitioner*

6
7 

8 Kevin O'Rear, *Petitioner*

9 

10 Garrett K. West, OSB No 174890

11 Jarvis, Dreyer, Glatte & Larsen, LLP

12 *Of Attorneys for Petitioners Denise and Victor Ortega*

13 

14 Loren Rings, *Petitioner*

15 

16 Georgeann Rudicel, *Petitioner*

17 


18 Marco Thorson, *Petitioner*

19 

20 Bob Towne, *Petitioner*

21 

22 Sara Towne, *Petitioner*

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24 Dennis Triglia, *Petitioner*


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8 – NOTICE OF INTENT TO APPEAL

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Jeffrey Jacobs, *Petitioner*


Eva Klaas, *Petitioner*


Gerald Klaas, *Petitioner*


Robert Huntoon, *Petitioner*

9 – NOTICE OF INTENT TO APPEAL

Jarvis, Dreyer, Glatte & Larsen, LLP
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10 – NOTICE OF INTENT TO APPEAL

Jarvis, Dreyer, Glatte & Larsen, LLP
823 Alder Creek Drive
Medford, Oregon 97504
E-mail: office@medfordlaw.net



Exhibit "A"

City of Brookings

898 Elk Drive, Brookings, OR 97415

(541) 469-1159 Fax (541) 469-3650 TTY (800) 735-1232

www.brookings.or.us

PUBLIC WORKS AND DEVELOPMENT SERVICES DEPARTMENT

September 1, 2020

COPY

Brett and Aga Kemp
PO Box 705
Gold Beach, OR 97444

RE: Final Order in the Matter of an Appeal of the Planning Commission File No. CUP-2-20; an Application for Approval of a Conditional Use Permit to Establish a 14-unit Residential Care Facility at 17212 S. Passley; Brett Kemp, Owner and Applicant. Appealed by file No. APP-1-20, Applicant, Brett Kemp

Dear Mr. & Mrs. Kemp:

On August 31, 2020 the City Council reversed the Planning Commissions denial for a Conditional Use Permit to establish a 14-unit Residential Care Facility at 17212 S. Passley; Assessor's Map 4014-36BA, Tax Lot 02200. Enclosed please find the Final Order and Conditions of Approval. This approval will expire in two years, unless the project comes under substantial construction within that period. The Planning Commission may extend the permit approval for one additional year at the request of applicant. In addition, all other conditions of approval must be met prior to the initiation of the Conditional Use Permit.

Please be advised that decisions of the City Council may be appealed to the Land Use Board of Appeals (LUBA) within 21 days of the adoption of the Final Order. All documents pertaining to the City Council's decision including the final order are available through the Planning Department for public viewing and copies of documents may be obtained at reasonable cost.

If you have any questions, please let us know.

Sincerely,

Lauri Ziemer
Planning Tech

Enclosed: Final Order

cc: Hearing Participants – Anna Curtis, 234 Cypress St., Brookings, OR 97415
Rachel Ochoa, 719 6th St., Brookings, OR 97415
Jenny Horvath, 97555 Kimball Hill Road, Gold Beach, OR 97444
Charles Cooper, 805 Paradise Lane, Brookings, OR 97415
James Capon, 919 Easy St., Brookings, OR 97415
Attorney Garrett West, 823 Alder Creek Drive, Medford, OR 97504
Denise & Victor Ortega, 96511 West Cliff Dr., Brookings, OR 97415
Brenda Cox, 17323 Blueberry, Brookings, OR 97415
Debbie Gleason, 17192 S Passley Road, Brookings, OR 97415
Karen O'Rear, 96505 West Cliff Dr., Brookings, OR 97415
Loren Rings – 96407 Oceanside East Dr., Brookings, OR 97415
Georgeann Rudicel – 17285 Garvin Ct., Brookings, OR 97415
Marco Thorson – 96507 West Cliff Dr., Brookings, OR 97415
Gerald Klass – 96490 Dawson Rd., Brookings, OR 97415
Sandra Geiger – 96422 Oceanside Dr. East, Brookings, OR 97415
Sara Towne – 96420 Oceanside Dr. East, Brookings, OR 97415

**BEFORE THE CITY COUNCIL
CITY OF BROOKINGS, COUNTY OF CURRY
STATE OF OREGON**

As amended by City Council on August 31, 2020

FINAL ORDER IN THE MATTER OF AN APPEAL OF THE PLANNING COMMISSION FILE NO. CUP-2-20; AN APPLICATION FOR APPROVAL OF A CONDITIONAL USE PERMIT TO ESTABLISH A 14-UNIT RESIDENTIAL CARE FACILITY AT 17212 S. PASSLEY; BRETT KEMP, OWNER AND APPLICANT. APPEALED BY FILE NO. APP-1-20, APPLICANT, BRETT KEMP

ORDER reversing the Planning Commission denying an application for a Conditional Use Permit to establish a 14-unit residential care facility on a .58 acre parcel located at 17212 S. Passley; Assessor's Map 4014-36BA, Tax Lot 02200; zoned R-1-6 (Single Family Residential).

WHEREAS:

1. The City Council duly accepted the appeal filed in accordance with the Brookings Municipal Code, pursuant to Chapter 17.152; Chapter 17.136; Chapter 17.20 Sections 17.20.040(C) and 17.20.090; Chapter 17.124 Section 17.124.100; and Chapter 17.172 Section 17.172.061 of the Brookings Municipal Code (BMC); and
2. Such application is required to show evidence that all of the above criteria have been met; and
3. The Brookings City Council duly considered the above described appeal as a de novo hearing on August 24, 2020; and
4. The appeal was presented by the Planning Director in the form of a Council Agenda Report, by oral presentation, evidence and testimony by the applicant, appellant, and the public at the public hearing; and
5. At the conclusion of the public hearing, after consideration and discussion of testimony and evidence presented in the public hearing, the City Council, upon a motion duly seconded, reversed the Planning Commission denial of the subject application and approved the application for a Conditional Use Permit and directed staff to amend the Conditions of Approval; and
6. At a following City Council meeting on August 31, 2020 City Council after consideration approved the amended Conditions of Approval and directed staff to prepare a Final Order and Findings of Fact to that affect.

THEREFORE, LET IT BE HEREBY ORDERED that the application for the Conditional Use Permit on the subject property is **APPROVED**. This approval is supported by the following findings and conclusions:

CRITERIA, FINDINGS, AND CONCLUSIONS

BMC Ch. 17.136 Conditional Use Permits - Sec. 17.136.050(C)

On appeal the City Council has the authority to affirm the Planning Commission decision and deny the application or reverse the Planning Commission decision and approve the application with conditions. In order to grant any conditional use, the City Council must find that the application meets the requirements of the following criteria, which is listed in Section 17.136 – Condition Use Permits of the Brookings Municipal Code, Land Development Code.

Exhibit "A"

1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code;
2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
3. The proposed use will have minimal adverse impact upon adjoining properties. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;
4. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complementary to the surrounding area;
5. The proposal is in compliance with the comprehensive plan.

The Applicant has provided findings. Staff has provided analysis of the criteria as follows:

Criterion 1 - Adequate size and shape

The subject property is a level flag lot approximately 25,654 square feet in size and the proposed facility will occupy approximately 9,588 sq. ft., approximately 37% of the total lot area. Per BMC 17.20.060 Lot Coverage Requirements, rear lots (flag lots) created pursuant to BMC 17.172.061 have setback requirements of 10 feet from all property lines. Any irregularly shaped parcel with minimal street frontage is also subject to the 10-foot setback from all property lines. Maximum lot coverage is 40%. The site is large enough to accommodate the proposed building and parking. The proposed building will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line. The driveway is 15 feet wide by 140 feet long. The proposed parking area is large enough to accommodate six vehicle parking spaces. The subject property is sufficiently large enough to accommodate the proposed residential care facility. Water and sewer services are sufficient and available at S. Passley Road. Criterion 1 is met.

Criterion 2 - Relation of streets

The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use:

S. Passley Road

S. Passley Road has a paved travel surface with a 50 foot wide right-of-way with improvements in some areas. This street provides access to approximately 70 dwelling units.

The Planning Commission's denial based on failure to satisfy this approval criterion provides that the street width does not meet standards for commercial vehicles. This was based on testimony from neighbors who assumed that the project would generate "commercial traffic." The applicant stated numerous times before the Planning Commission, orally and in writing, that no large delivery trucks or transit vehicles (buses) would be utilized. There will be an occasional emergency vehicle (ambulance) and occasional visitors, but only a reasonable number of visitors that would not exceed a number you might find at a neighbor's home while have a birthday party or on holidays. The section of Passley Road at this particular location and to the south allows for parking on both sides of the street and is a public right of way. At the time this area was subdivided, the roadway was dedicated to the City and was developed to allow parking on both sides of the road for visitors to residents along this road.

Exhibit "A"

In terms of the ability of S. Passley Road to handle the traffic generated by the proposed residential care facility, Fire Chief Jim Watson has determined that S. Passley Road is adequate. The proposed facility is designed for the residential care of adult patients who do not drive. The primary traffic related impact would be from staff and visitors. Visitors would normally be scattered through-out the day rather than concentrated into one period. In conclusion, S. Passley Road is adequate to accommodate the level of traffic to be generated by the proposed development.

Driveway

With regard to the driveway, the Planning Commission found that the 15-foot wide panhandle was not sufficient to accommodate the traffic to be generated by the proposed facility. Fire Chief Jim Watson provided expert testimony that the 15 foot driveway width was adequate for emergency vehicles and reiterated that the fire code allows a reduction to 15 feet in driveway width if the building is equipped with a fire suppression system (sprinklers). The proposed building will be equipped with a fire suppression system. While the 15-foot driveway is adequate for purposes of this approval criterion, the City believes it would make more sense for the proposed development to share access with the development directly to the south, as explained below.

The subject property was approved with a 15-foot panhandle in 1992. In 2003, the City approved a subdivision on the property directly south of the subject property, West Cliff Subdivision (SUB-1-03). As part of that approval, the City required the property owner to improve half of the width of the private street – West Cliff Drive. West Cliff Drive runs east-west just south of the pan handle portion of the subject property. The findings of that approval make clear that the intention was that the other half of the street would be improved if and when the subject property was developed. However, the City failed to require the developer to dedicate West Cliff Drive to the City. Accordingly, West Cliff Drive remains a private road, is owned jointly by the property owners of the West Cliff Subdivision, and is maintained by the property owners.

The Council discussed that it would be inefficient and poor planning to require the applicant in this case to develop a separate access along the panhandle mere feet from the existing private West Cliff Drive. One solution discussed by Council involved combining the access from West Cliff Subdivision with the access along the panhandle of the subject property. This option would require the applicant to negotiate with those residents of West Cliff Drive for combined access. If such negotiations fail, the City could use its condemnation authority to condemn West Cliff Drive so that access to the subject property can be shared with the residents of West Cliff Subdivision. However, the condemnation process, if challenged, which seems likely, could drag out for several years or more. It is not likely that the applicant could wait that long to complete the development. Other developments in the future could trigger condemnation of West Cliff Drive. Council has considered and accepts the expert testimony that the 15 ft driveway is adequate for the purposes of this development.

Criterion 3 – Impact on adjoining properties

Criterion 3 refers to “adjoining” (as defined in BMC 17.08.010) properties. The impact on adjoining properties is the primary issue. Elderly adult residential care facilities are generally very quiet in nature and the day to day operation of the proposed facility will have some impact on adjoining properties as every development will have some impact on adjoining properties. There is one residence to the east, a church currently allowed under a CUP to the north with a large open field adjacent to the applicants property, West Cliff Subdivision with five residential homes to the south and three residential lots in the Oceanside Estates Subdivision to the west.

There is clear evidence in the record that the traffic will not exceed the capacity of the streets or the access road. The testimony from the neighbors appears to be based only on speculation and fears of the worst case possible scenario. Fears regarding bad actor occupants can be addressed through the limitation to 14 beds, and the limit to occupants authorized by the DHS license. Testimony regarding the disturbance from visitors and ambulance calls appears to be overstated, as the bed limitation will necessarily keep that type of conflict to a minimum. This approval criterion must be interpreted in this case in the context of the federal Fair Housing limitations, which aims to facilitate development of group care facilities for the elderly population, and to curb local denials based on neighborhood fears of unlikely impacts. The proposed project will provide a landscaped buffer between the parking area and the adjoining properties as required by the Land Development Code. Council finds criterion 3 has been met.

Criterion 4 - Historic, scenic or cultural attributes

There are no listed historic, scenic or cultural attributes on the subject site or in the immediate area. Criterion 4 is met.

Criterion 5 - Comprehensive Plan

The property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is designated as Residential by the Comprehensive Plan. Residential care facilities are a conditional use in the R-1-6 zone. The proposed use of the property is consistent with the criteria addressed above and with the policies of Goal 10, Housing of the Comprehensive Plan, in that it provides a variety of housing types. Criterion 5 is met.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.040 Conditional Uses

Hospitals, rest, nursing and convalescent homes, subject to BMC 17.124.100 are permitted subject to a conditional use permit.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.060 Lot Coverage Requirements

Rear lots (flag lots) created pursuant to BMC 17.172.061 have setback requirements of 10 feet from all property lines. Any irregularly shaped parcel with minimal street frontage is also subject to the 10-foot setback from all property lines. Maximum lot coverage is 40%

Proposed building footprint meets the setback requirements for a flag lot and lot coverage is calculated at 37%.

BMC Ch. 17.20 Single Family Residential District - Sec. 17.20.090 Parking

Off-street parking shall be provided in accordance with Chapter 17.92 BMC.

BMC Ch. 17.92 Parking

No development permit shall be issued until plans and evidence are presented to show how the off-street parking and loading requirements are to be fulfilled and that property is and will be available for the exclusive use as off-street parking and loading space. Residential care facilities parking requirements are one parking space per five residents. Unless otherwise provided, required parking and loading spaces shall not be located in a required front yard, but parking space may be located within a required side or rear yard.

Flag lot location will require off street parking. For a 14 unit residential care facility a minimum of three on-site parking spaces for residents is required. The proposed development plans include five on-site parking spaces and one single car parking garage for a total of six parking spaces. As the proposed facility is designed for the residential care of adult patients who generally do not drive the remaining three parking spaces will be used and available for visitors and staff.

Exhibit "A"

BMC Ch. 17.124 - Sec. 17.124.100 Churches, Hospitals, Other Religious or Charitable Institutions

In any "R" district, all such uses shall be located on a street adequate to serve the use. All off-street parking facilities shall be adequately screened from abutting property to reduce noise and other negative impacts.

The parking area located on site will be fenced and or screened with landscaping or order to reduce visibility into the parking area from neighboring properties.

BMC Ch. 17.172 – Land Divisions – Section 17.172.061 Rear Lot Partitions

Development Standards for rear lots require an access way with a minimum width of 20 feet and a maximum length of 200 feet. Setback requirements require no building be erected within 10 feet of any property line.

The subject parcel was partitioned in 1992 (file number M3-9-92) creating the flag lot with a driveway width less than 20 feet due to constraints to the North and South. At that time staff noted in the report to the Planning Commission that the property owner attempted to obtain participation with the adjacent owner to the South, now West Cliff Subdivision (SUB-1-03), to create a joint subdivision with a shared access where West Cliff Drive is currently located. That attempt failed. "Staffs opinion at that time was that the applicant should not be penalized by the requirement of the Land Development Code which tie division of the lot totally to the desire of the neighbor to the South". When partitioned the driveway was conveyed with ownership of the rear lot and to be an integral part of the rear lot as well as improved to a permanent, dust-free surface of asphaltic concrete or Portland cement.

The proposed building to be constructed on the lot will be ten feet from the westerly property line, 18 feet from the northerly property line, 24 feet from the southerly property line and 38 feet from the easterly property line meeting setback requirements.

CONCLUSIONS

1. The proposed residential care facility will occupy 37% of the subject .59 acre site. The design of the facility includes a ten foot setback from the westerly property line, 18 foot setback from the northerly property line, 24 foot setback from the southerly property line and 38 foot setback from the easterly property line meeting all setback requirements.

The parking area will contain six parking spaces which includes one handicapped space. This meets the required number of spaces required for residential care facilities within the city. The subject property is sufficiently large enough to accommodate the proposed residential care facility.

2. S. Passley Road is a paved travel way with a 50 foot right of way, the 15 foot wide driveway which was allowed in the 1992 partition.
3. Residential care facilities are, by nature, not a noise generator. The traffic generated by the facilities will have an incremental increase in the noise around the general area; however, residential development on the parcel has the potential to generate more general noise than the proposed project will. The proposed project is designed to provide the required buffer between the parking area and the adjoining residential use.
4. There are no historical or cultural attributes on or in the vicinity of the subject site. The proposed residential care facility should not have an impact on the scenic quality of the area.
5. The proposed facility is consistent with the provisions of the criteria discussed above and is consistent with Goal 10, Housing of the City's Comprehensive Plan, in that it provides a variety of housing types.

6. Residents have submitted letters of opposition to the Conditional Use Permit with concerns including the size of the proposed residential care facility, the locating of such a facility in an R-1-6 zone, driveway width, parking, ADA accessibility, and traffic generated.

The following Conditions of Approval are hereby made a part of this Final Order.

CONDITIONS OF APPROVAL
APP-2-20 (CUP-2-20)
17212 S. Passley Road - Residential Care Facility

General Conditions

1. Approval of this Conditional Use Permit will expire two years from approval, unless the project comes under substantial construction within that period. The Planning Commission may extend the permit for an additional one year period at the request of the applicant.
2. The final construction plans shall be in substantial conformance with the submitted preliminary site plan and as approved by the City Council.
3. Improvement work shall not be commenced until construction plans meet the approval of the City Engineer and Building Official for conformance to all applicable City of Brookings Engineering Standards and Specifications and Building Codes.
4. If needed, all costs of plan checks and inspections by the City Engineer shall be paid by the applicant to the City.
5. All outdoor lighting shall be directed and/or shielded so as to prevent light from falling directly on adjoin properties.
6. All buildings shall meet the requirements of the R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and other applicable provisions of the Land Development Code.
7. This approval is limited to a 14-bed maximum "residential care facility" for seniors and adult individuals with disabilities, as that term is defined in state law. The use will be licensed by the Oregon Department of Human Services as a "residential care facility" and shall be operated only within the scope of that license. If the applicant desires to change the use other than that authorized under the DHS license, as originally issued or amended, a minor change must be requested and approved according to section 17.136, Conditional Use Permits of the Land Development Code.
8. Facility emergency evacuation drills are to be performed in accordance with all local and State regulations.

Street Conditions

9. The existing Deferred Improvement Agreement #96 (Inst. #92-6113) will remain in place on the property. No street improvements along the S. Passley Road frontage are required at this time.
10. Prior to start of street construction, including grading the applicant shall submit construction plans to the City Engineer for review and approval. The new driveway shall be constructed to match the elevation of existing West Cliff Drive.
11. Prior to start of construction, the existing mailboxes located within the access way of the property may be removed provided that a notice in writing, 30 days in advance of the start of construction, is given to all residents occupying the mailboxes.

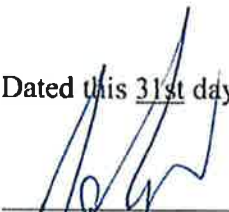
Parking, Landscaping and Screening

12. The applicant shall provide no less than six parking spaces as shown on the approved plot plan. The parking area and access way shall be paved and striped. The design of the parking area shall be in accordance with Section 17.92, Off-Street Parking and Loading Regulations of the Land Development Code.
13. The applicant shall provide landscaping area within or around the parking areas equal to a least 7% of the total parking area.
14. The applicant shall provide either a sight obscuring fence or landscaping around the proposed parking area. This fence or landscaping shall be high enough to prevent automobile head lights from shining onto the adjoining property.
15. The applicant shall landscape the project as shown on the preliminary plot plan. To the extent possible the applicant shall use native and drought resistant plants in the landscaped areas. The applicant shall submit a landscaping plan showing the type of plants used and proposed irrigation system to the City Planning Department for review.
16. Outdoor trash containers shall be screened from view with a decorative fence and gate at least six feet high. The applicant shall consult with Curry Transfer and Recycling as to the type of gating of the trash container fence.
17. The applicant shall construct a paved walkway around the building for use of the residents and entry to the back of the building for fire protection purposes.

Water, Sewage and Drainage

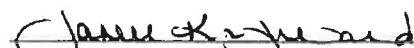
18. The proposed building shall be connected to the City's water and sewer system at the applicant's expense.
19. The applicant shall complete and submit drainage plans to the City Engineer for review and approval prior to any construction, including streets. Storm drainage design shall be in accordance with the City of Brookings Comprehensive Plan for Drainage. All drainage from the subject lot shall be engineered in a manner that protects all adjoining properties.
20. The applicant shall consult with the City Fire Marshal, City Building Inspector and City Engineer as to the water requirements for the proposed building for both domestic and fire suppression purposes.
21. The applicant shall bear the cost to relocate the existing fire hydrant at the entry of the property near S. Passley Road.

Dated this 31st day of August, 2020



Jake Pieper, Mayor

ATTEST:



Janell K. Howard, City Recorder

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

DAVID BERGMANN, SHARON BERGMANN,
SHANNON CHRISTOPHER, DEWAYNE CONNOR,
BRENDA COX, SANDRA GEIGER, DEBRA GLEASON,
RON GRISWOLD, AARON HORTON, ROBERT HUNTOON,
JEFFREY JACOBS, EVA KLAAS, GERALD KLAAS,
GLENN MILLER, KAREN O'REAR, KEVIN O'REAR,
DENISE ORTEGA, VICTOR ORTEGA, LOREN RINGS,
GEORGEANN RUDICEL, MARCO THORSON,
BOB TOWNE, SARA TOWNE, and DENNIS TRIGLIA,
Petitioners,

vs.

CITY OF BROOKINGS,
Respondent,

and

BRETT KEMP, AGA KEMP, and
B K QUALITY CONSTRUCTION, LLC,
Intervenors-Respondents.

LUBA No. 2020-096

FINAL OPINION
AND ORDER

Appeal from City of Brookings.

Garrett K. West filed the petition for review and reply brief and argued on behalf of petitioners Denise Ortega and Victor Ortega. Petitioners David Bergmann, Sharon Bergmann, Shannon Christopher, Dewayne Connor, Brenda Cox, Sandra Geiger, Debra Gleason, Ron Griswold, Aaron Horton, Robert Huntoon, Jeffrey Jacobs, Eva Klaas, Gerald Klaas, Glenn Miller, Karen O'Rear, Kevin O'Rear, Loren Rings, Marco Thorson, Bob Towne, Sara Towne, and

1 Dennis Triglia filed the petition for review on their own behalf. Also on the brief
2 was Jarvis, Dreyer, Glatte & Larsen, LLP.

3
4 No appearance by City of Brookings.

5
6 Michael M. Reeder filed the response brief and argued on behalf of
7 intervenors-respondents.

8
9 RUDD, Board Member; ZAMUDIO, Board Chair; RYAN, Board
10 Member, participated in the decision.

11
12 RYAN, Board Member, concurring.

13
14 REMANDED 08/02/2021

15
16 You are entitled to judicial review of this Order. Judicial review is
17 governed by the provisions of ORS 197.850.

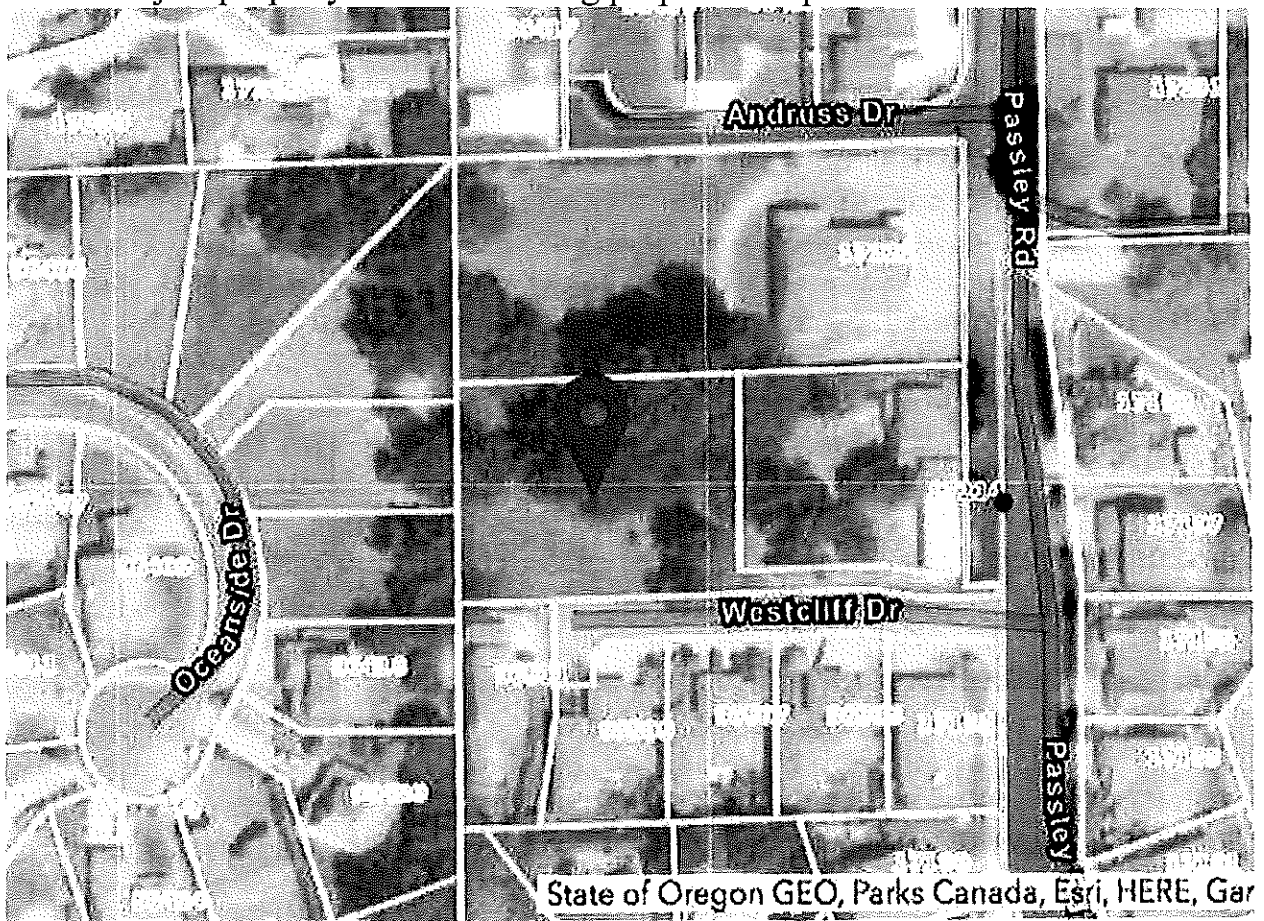
Opinion by Rudd.

NATURE OF THE DECISION

Petitioners appeal a city council decision approving a conditional use permit (CUP) for the construction of a 14-unit residential care facility.

FACTS

The subject property is an undeveloped, 0.58-acre flag lot. An aerial view of the subject property and surrounding properties is provided below.



Record 27. The “flag pole” portion of the subject property connects to Passley Road and provides access to the rear or “flag” portion of the subject property. One residence is located north of the flag pole and east of the flag. West Cliff

1 Drive, a private road serving five residences in the West Cliff Subdivision, is
2 located south of both the flag pole and the flag. Three residential lots in the
3 Oceanside Estates Subdivision are located west of the flag. A church with a large
4 open field is located north of the flag.

5 The subject property and the immediately surrounding area are zoned
6 Single-Family Residential 6,000-square-foot minimum (R-1-6). Single-family
7 dwellings are permitted uses in the R-1-6 zone. Brookings Municipal Code
8 (BMC) 17.20.020(A). Churches are conditionally allowed in the R-1-6 zone.
9 BMC 17.20.040(B).

10 Intervenors-respondents (intervenors) applied for a “[CUP] for assisted
11 living,” also describing the proposed use as “a residential care facility.” Record
12 468, 490. Intervenors’ proposed residential care facility includes a 9,588-square-
13 foot building containing 14 bedrooms with individual bathrooms, a central
14 kitchen, a dining room, a living room, a library, an office, a laundry room, and
15 storage space. On-site parking is provided for six vehicles. The city processed
16 intervenors’ residential care facility application under the BMC provision
17 authorizing hospitals, rest homes, and nursing homes as conditional uses in the
18 R-1-6 zone.¹ Record 5.

¹ The decision provides that the approval is “limited to a 14-bed maximum
‘residential care facility’ for seniors and adult individuals with disabilities, as that
term is defined in state law.” Record 8. “Residential facility” is defined in ORS
197.660(1) as

1 On July 7, 2020, the planning commission held a public hearing on the
2 CUP. On July 13, 2020, the planning commission issued an order denying the
3 CUP. Intervenors appealed the planning commission decision to the city council.
4 On August 24, 2020, the city council held a *de novo* public hearing on the appeal.
5 On August 31, 2020, the city council granted the appeal and approved the CUP.

6 This appeal followed.

7 **MOTION TO STRIKE**

8 On October 30, 2020, petitioners filed the petition for review, asserting
9 five assignments of error. On November 20, 2020, intervenors filed the response
10 brief, which, in addition to responding to petitioners' assignments of error,
11 asserted a contingent cross-assignment of error. On November 25, 2020,
12 petitioners Denise Ortega and Victor Ortega filed a motion to strike the cross-

“a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.”

ORS 443.400(6) defines “residential care” as “services such as supervision; protection; assistance while bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.”

ORS 197.667(2) provides, “A residential facility shall be a conditional use in any zone where multifamily residential uses are a conditional use.” Multifamily dwellings are a conditional use in the R-1-6 zone. BMC 17.20.040(L).

1 assignment of error in the response brief. Our rules provide the manner in which
2 an intervenor-respondent may assign error to aspects of a decision on appeal—
3 filing a cross petition for review with contingent cross-assignments of error—and
4 they expressly provide that cross-assignments of error may not be included in a
5 response brief. OAR 661-010-0030(7); OAR 661-010-0035(3)(c). Intervenors
6 did not dispute that the response brief contained a contingent cross-assignment
7 of error in violation of our rules. Instead, intervenors argued that LUBA was
8 required to excuse intervenors’ non-compliance with our rules as a “reasonable
9 accommodation” under the federal Fair Housing Amendments Act (FHAA).
10 Because the FHAA makes it unlawful for entities, including state agencies, to
11 refuse to make reasonable accommodations only “in the terms, conditions, or
12 privileges of sale or rental of a dwelling, or in the provision of services or
13 facilities in connection with such dwelling,” and because LUBA does not engage
14 in the sale or rental of dwellings or provide services or facilities in connection
15 with such dwellings, we concluded that the FHAA’s reasonable accommodation
16 provision was inapplicable. 42 USC § 3604(f)(2) (2018). We therefore granted
17 the Ortegas’ motion to strike the cross-assignment of error in the response brief.
18 *Bergmann v. City of Brookings*, ___ Or LUBA ___ (LUBA No 2020-096, Order,
19 May 7, 2021).

20 **FIRST ASSIGNMENT OF ERROR**

21 ORS 227.180(3) provides:

22 “No decision or action of a * * * city governing body shall be invalid

1 due to ex parte contact or bias resulting from ex parte contact with a
2 member of the decision-making body, if the member of the decision-
3 making body receiving the contact:

4 “(a) Places on the record the substance of any written or oral ex
5 parte communications concerning the decision or action; and

6 “(b) Has a public announcement of the content of the
7 communication and of the parties’ right to rebut the substance
8 of the communication made at the first hearing following the
9 communication where action will be considered or taken on
10 the subject to which the communication related.”

11 “Ex parte communication” is not defined in the statute. In *Horizon*
12 *Construction, Inc. v. City of Newberg*, we concluded that, under the definition of
13 *ex parte* communication found in the Attorney General’s Uniform and Model
14 Rules of Procedure, the term means “an oral or written communication to an
15 agency decision maker * * * not made in the presence of all parties to the hearing,
16 concerning a fact in issue in the proceeding.” 25 Or LUBA 656, 665 (1993). We
17 have also said that “[a]n *ex parte* communication is a communication between a
18 party and a decision-maker, made outside the hearing process, concerning a
19 decision or action before the decision-maker.” *Oregon Shores Conservation*
20 *Coalition v. Coos County*, ___ Or LUBA ___, ___ (LUBA Nos 2019-137 /2020-
21 006, Dec 22, 2020) (slip op at 10). “ORS 227.180(3) prohibits undisclosed *ex*
22 *parte* communications, whether or not those communications in fact influence
23 the city’s original decision.” *Opp v. City of Portland*, 38 Or LUBA 251, 264-65,
24 *aff’d*, 171 Or App 417, 16 P3d 520 (2000), *rev den*, 332 Or 239 (2001).

1 **A. City Councilor’s Conversation with Planning Commissioner**

2 Petitioners argue that “the City violated ORS 227.180 by not disclosing all
3 *ex parte* contacts during the public hearing and by not permitting challenges or
4 inquiries.” Petition for Review 10-11. First, petitioners argue that a city councilor
5 did not disclose an *ex parte* contact at the beginning of the city council’s August
6 24, 2020 *de novo* hearing.

7 At the beginning of the city council’s hearing, the mayor asked the council
8 members whether they had any *ex parte* communications to disclose. Councilor
9 Hedenskog disclosed, “I had a site visit earlier this week and I had contact with
10 one planning commissioner. I discussed nothing of my own opinions of it, just
11 listened to what he had to say.” Audio Recording, City Council Meeting, August
12 24, 2020, at 20:53 (comments of Councilor Ron Hedenskog). After the public
13 hearing was closed, Councilor Hedenskog, *sua sponte*, provided more
14 information on the content of their discussion with the planning commissioner:
15 “I did speak to one of the planning commissioners and the main concern that
16 came out of the planning commission was the 15-foot road accessing this
17 property and ‘safety,’ ‘safety’, ‘safety’ issues that are involved with the traffic
18 and the narrow roads and all that kind of stuff.”² *Id.* at 3:10:47. Petitioners argue
19 that this was an *ex parte* contact that Councilor Hedenskog was required to
20 disclose prior to the close of the record and, because the record was closed when

² The city did not reopen the record to allow further public inquiry or testimony after that statement.

1 the substance of the communication was revealed, petitioners had no opportunity
2 to object and their substantial rights have been prejudiced.

3 We deny this subassignment of error. In *Housing Authority of Jackson*
4 *County v. City of Medford*, 65 Or LUBA 295 (2012), *appeal dismissed*, 265 Or
5 App 648, 337 P3d 146 (2014), the city councilors disclosed *ex parte*
6 communications received by email. The mayor then advised the audience that
7 they could rebut the disclosures. The petitioner did not request clarification of the
8 substance of the email communications but argued at LUBA that the disclosures
9 were inadequate. We explained:

10 “The objective of ORS 227.180(3) is to ensure that the city makes
11 its decision based on publicly disclosed evidence and testimony that
12 is subject to rebuttal or the opportunity for rebuttal. *Opp v. City of*
13 *Portland*, 38 Or LUBA 251, 265, *aff’d* 171 Or App 417, 422, 16 P3d
14 520 (2000), *rev denied* 332 Or 239, 28 P3d 1134 (2001). In
15 *Horizon[Construction, Inc. v. City of Newberg*, 114 Or App 249,
16 834 P2d 523 (1992),] the disclosure of the *ex parte* contact was made
17 at a time where there was no meaningful opportunity to rebut the *ex*
18 *parte* contact, since the record had closed and was never reopened.
19 As such, the city in *Horizon* completely failed to comply with ORS
20 227.180(3) and failed to make a decision based on publicly
21 disclosed evidence and testimony that was subject to rebuttal or the
22 opportunity for rebuttal.

23 “This case is unlike *Horizon*. In the present case, the disclosures of
24 the *ex parte* contacts at the September 1, 2011 hearing were made at
25 the first opportunity to do so, and petitioner was given the
26 opportunity to rebut the substance of the *ex parte* contact but
27 completely failed to do so. Further, although the disclosures did not
28 provide detail regarding the substance of the *ex parte* contacts and
29 were arguably inadequate to comply with ORS 227.180(3),
30 petitioners had the opportunity to object to the adequacy of the

1 disclosures and request additional detail, but failed to do so.
2 Petitioner does not dispute that it did not object to the adequacy of
3 the disclosures during or after the September 1, 2011 hearing or
4 otherwise request the opportunity to rebut the same. Having failed
5 to do so, petitioner may not now assign error to the disclosures.”
6 *Housing Authority*, 65 Or LUBA at 310-11.

7 Similarly, here, Councilor Hedenskog disclosed the contact at the
8 beginning of the August 24, 2020 meeting.³ The mayor later asked if any
9 members of the public wished to inquire further about the councilor disclosures
10 and petitioners did not object to the adequacy of the disclosures or request
11 additional detail concerning the planning commissioner contact.⁴

12 The first subassignment of error is denied.⁵

³ Petitioners quote the meeting minutes statement that “Councilor Hedenskog visited the site and had contact with a Planning Commissioner but no discussion on the matter” and assert that Councilor Hedenskog did not disclose the *ex parte* contact with the planning commissioner because they said that they did not discuss the subject matter of the appeal. Petition for Review 11. The audio of the hearing confirms intervenors’ explanation that, despite the summary in the minutes, Councilor Hedenskog disclosed that they spoke with the planning commissioner about the subject matter of the appeal but did not share their *opinion*.

⁴ Audio Recording, City Council Meeting, August 24, 2020, at 27:21 (comments of Mayor Jake Pieper).

⁵ The parties do not argue and we do not address whether a communication between a city councilor and a planning commissioner is an *ex parte* communication.

1 **B. Independent Review of Planning Files**

2 Petitioners also argue that Councilor Hedenskog engaged in *ex parte*
3 communication when they reviewed documents outside the record related to the
4 land use history of the subject property and the private West Cliff Drive to the
5 south. Councilor Hedenskog said early in the deliberations that they believed that
6 the code requires a 20-foot width for the accessway, that they believed that a 20-
7 foot width was appropriate based on their review of historical documents, and
8 that they were going to urge the council to vote no. Audio Recording, City
9 Council Meeting, August 24, 2020, at 3:11:11 (comments of Councilor Ron
10 Hedenskog). Petitioners argue that their substantial rights were violated because
11 (1) Councilor Hedenskog changed their vote to yes and it was only a three-to-two
12 approval, and (2) the city council relied on Councilor Hedenskog's summary of
13 their independent planning file review, quoted below, to approve the application
14 and craft conditions.

15 Petitioners do not develop their argument regarding Councilor
16 Hedenskog's change in position following deliberations and petitioners are not
17 entitled to a given result. *Kopacek v. City of Garibaldi*, ____ Or LUBA ____, ____
18 (LUBA No 2020-094, Feb 11, 2021) (slip op at 7-8) (citing *Muller v. Polk*
19 *County*, 16 Or LUBA 771 (1988)). We do not address this element of the
20 subassignment of error further. We proceed to petitioners' argument that the city
21 council improperly relied upon the planning file material to approve the
22 application and craft conditions.

1 At the August 24, 2020 hearing, during deliberations and after the record
2 was closed, Councilor Hedenskog explained:

3 “I * * * got into Tony’s office and started asking him questions. I
4 wanted to see the file on West Cliff Drive. I wanted to see the
5 Planning Commission notes. I wanted to see the map that was done.

6 “And how in the dickens did this parcel to the north of West Cliff
7 get a 15-foot access, flag lot, when the standard is 20 feet? * * * So,
8 I pulled the file. Tony had them both out, he had them both
9 earmarked so I could just go right through them and see. * * * [S]ure
10 enough, the company that I had surveyed for did the map for the
11 parcel to the north, [intervenors’] parcel.

12 “[I am] very familiar with that style of mapping. I looked it over,
13 and it all made sense. The surveyor completely explained why it was
14 a 15-foot flag lot, and the main reason was * * * because the house
15 that is right there at the corner of Passley was—there was actually
16 20 feet between the building and the south property line. In fact,
17 there still is to this day 20 feet between the building and the south
18 property line. * * * [T]he planning commission allowed the 15-foot
19 so that they would provide a 5-foot setback to that building from the
20 property line. * * *

21 “My guess is that they allowed the 15 feet because, at that time,
22 nobody visualized a large development going on that property, such
23 as what [intervenors are] proposing, and they thought one house
24 back there isn’t going to cause a problem on a 15-foot flag lot.”
25 Audio Recording, City Council Meeting, August 24, 2020, at
26 3:13:43 (comments of Councilor Ron Hedenskog).

27 ORS 227.180(4) provides, “A communication between city staff and the
28 planning commission or governing body shall not be considered an ex parte
29 contact for the purposes of subsection (3) of this section.” We assume that “Tony”
30 in the above quotation is “PWDS Director Tony Baron,” Record 188, and we

1 assume that “PWDS” is the City of Brookings Public Works and Development
2 Services Department. Record 1. Thus, there was no obligation for Councilor
3 Hedenskog to place their communications with Tony on the record. However,
4 petitioners do not argue that those communications had to be disclosed. Instead,
5 petitioners argue that Councilor Hedenskog’s review of the planning files was an
6 *ex parte* contact that Councilor Hedenskog was required to disclose. Petition for
7 Review 12.

8 In *Horizon*, the Court of Appeals explained:

9 “ORS 227.180(3) does not simply establish a procedure by which a
10 member of a deciding tribunal spreads a fact on the record. It
11 requires that the disclosure be made at the earliest possible time.
12 Implicit in that requirement is that the parties to the proceeding must
13 be given the greatest possible opportunity to prepare for and to
14 present the rebuttal that ORS 227.180(3)(b) requires that they be
15 allowed to make. *The purpose of the statute is to protect the*
16 *substantive rights of the parties to know the evidence that the*
17 *deciding body may consider and to present and respond to*
18 *evidence.”* 114 Or App at 253 (emphasis added).

19 In *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419, *aff’d*, 196 Or
20 App 787, 106 P3d 699 (2004), the petitioners argued that the county erred
21 because the board of commissioners sought and considered new evidence after
22 the record was closed, failed to fully disclose that information, and failed to
23 provide an opportunity for petitioners to rebut that information.⁶ After the hearing

⁶ Although *Nez Perce* concerned extra-record evidence, not *ex parte* contact, we agree with petitioners that it is instructive.

1 on a subdivision application, the board asked the planning director to conduct
2 additional research relating to cultural resources. The planning director asked the
3 state archaeologist to comment on the draft findings. The state archaeologist
4 provided written comments and excerpts from a cultural resource protection
5 guidebook. The planning director forwarded those materials to the board, which
6 discussed them at a later meeting. We first noted that communications between
7 county decision makers and staff are exempt from the *ex parte* disclosure
8 requirement under ORS 215.442(4), the county analog to ORS 227.180(4). *Nez*
9 *Perce*, 47 Or LUBA at 428; *see also Nehoda v. Coos County*, 29 Or LUBA 251,
10 257 (1995) (concluding that the chairman of a county board of commissioners
11 was not required to disclose the contents of their conversation with a county code
12 compliance officer). However, we explained that that does not mean that a
13 decision maker may

14 “rely on new evidence that is provided by planning staff, *after* the
15 evidentiary record closes, without giving the parties a right to rebut
16 that new evidence. Accepting such new evidence and relying on that
17 new evidence without affording the parties a chance to rebut that
18 new evidence could prejudice those parties’ substantial right to rebut
19 evidence and require remand.” *Nez Perce*, 47 Or LUBA at 428
20 (emphasis in original; internal citations omitted).

21 We acknowledged the “potential difficulties in determining whether secret
22 planning staff communications include new evidence for which an opportunity
23 for rebuttal is required, or whether those communications simply assisted the
24 decision maker in analyzing and determining the facts from the evidence that is

1 already in the record,” and “related difficulties in determining whether the
2 decision maker actually relied on such new evidence, and whether that reliance
3 results in reversible error.” *Id.* We concluded that the guidebook was not relied
4 upon and that any associated error was harmless. *Id.* at 428-29. However, we
5 concluded that the decision demonstrated that the board had relied on the state
6 archaeologist’s comments and that remand was required. *Id.* at 429-30.

7 First, we recognize a factual dispute between the parties regarding whether
8 the evidence that Councilor Hedenskog referred to is, in fact, extra-record
9 evidence. Petitioners argue that Councilor Hedenskog “read from papers not in
10 evidence.” Petition for Review 13. Intervenors respond that Councilor
11 Hedenskog read from materials at Record 332 and 334, which are part of the
12 city’s 2003 final order approving the West Cliff Subdivision and creating the
13 private West Cliff Drive south of the subject property.

14 While we understand petitioners to argue that Councilor Hedenskog
15 impermissibly reviewed and then shared with the city council their review of the
16 land use history of the subject property and the private West Cliff Drive, we
17 cannot identify any “new evidence for which an opportunity for rebuttal is
18 required.” *Nez Perce*, 47 Or LUBA at 428. We will not develop petitioners’
19 argument. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220
20 (1982). Petitioners have not identified new evidence that requires remand for an
21 opportunity for rebuttal.

1 Moreover, even if we assume for purposes of this decision that petitioners
2 adequately identified extra-record evidence, petitioners have not established that
3 the city council actually relied on such new evidence. Petitioners argue that “[t]he
4 record * * * indicates that the City relied on the ex parte contacts to approve the
5 application and craft the conditions of approval.” Petition for Review 17.
6 Petitioners do not develop that argument. Petitioners do not establish
7 impermissible reliance on extra-record evidence.

8 In their discussion of the flag pole/driveway access, the findings explain
9 that, when the West Cliff Subdivision was approved in 2003, the property owner
10 was required to improve half of the width of the private West Cliff Drive and that

11 “[t]he findings of that approval make clear that the intention was
12 that the other half of the street would be improved if and when the
13 subject property was developed. However, the City failed to require
14 the developer to dedicate West Cliff Drive to the City. Accordingly,
15 West Cliff Drive remains a private road, is owned jointly by the
16 property owners of the West Cliff Subdivision, and is maintained by
17 the property owners.” Record 4.

18 The findings go on to say that it would be inefficient and poor planning to require
19 intervenors to develop a separate access along the flag pole. The findings state
20 that the city council discussed the potential to condemn West Cliff Drive. *Id.*
21 Ultimately, however, the council “considered and accept[ed] the expert testimony
22 that the 15 ft driveway is adequate for the purposes of this development.”⁷ *Id.*

⁷ The city council did not approve a partition of the subject property in its decision. In their discussion of BMC 17.172.061(B)(2)(a), which requires that

- 1 The portion of the decision that petitioners identify as “contaminated” by
- 2 Councilor Hedenskog’s summary to the city council of their independent

rear lots have an accessway with a minimum width of 20 feet, the findings explain:

“The subject parcel was partitioned in 1992 creating the flag lot with a driveway width less than 20 feet due to constraints to the North and South. At that time staff noted in the report to the planning Commission that the property owner attempted to obtain participation the adjacent owner to the south, now West Cliff Subdivision, to create a joint subdivision with a shared access where West Cliff Drive is currently located. That attempt failed. ‘Staff[’]s opinion at that time was that [intervenors] should not be penalized by the requirement of the [BMC] which tie[s] division of the lot totally to the desire of the neighbor to the South’. When partitioned the driveway was conveyed with ownership of the rear lot and to be an integral part of the rear lot as well as improved to a permanent, dust-free surface of asphaltic concrete or Portland cement.” Record 6 (citations omitted).

Petitioners do not argue that BMC 17.172.061(B)(2)(a) is an approval criterion for the CUP. Moreover, the findings quoted above originated in the Planning Commission Staff Report dated July 7, 2020, which, we assume, could not have been influenced by Councilor Hedenskog’s independent research. *See* Record 463. We also note that petitioner Denise Ortega submitted into the record the following comment on the planning history of the disputed accessway.

“In regards to BMC 17.172.061 rear lot partitions and the 1992 planning commission staff finding at that time allowing the 15 foot ingress, it is highly doubtful that the planning commission staff at that time expected that there would be a CUP application for a 14 unit facility on this rear flag lot. This ingress does not meet the needs for this proposed commercial facility and to approve this could be potentially hazardous to all the area residents.” Record 68.

research of the city planning files does not demonstrate impermissible reliance on extra-record evidence resulting in remandable error.

The second subassignment of error is denied.

The first assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

BMC 17.92.100(E) provides:

“Commercial service drives shall have a rectangular vision clearance area measured from the intersection of the face of the curb or pavement edge of the driveway and the face of the curb or pavement and the edge of the street. This rectangular area shall be calculated by measuring 25 feet along the street frontage and 10 feet along the drive. Two ‘No Parking’ signs, one on each side of the driveway, shall be installed at the point where the corner vision area ends adjacent to the back of the sidewalk or the edge of paving. Corner vision clearance requirements are found in BMC 17.128.040.”

Petitioners’ fourth assignment of error is that the city council erred because it did not address BMC 17.92.100(E).

Intervenors respond that BMC 17.92.100(E) applies to commercial service drives and is not applicable to its proposed residential use. BMC 17.08.030 defines “commercial service drive” as “an accessway for a shopping center containing four or more businesses having common parking areas.” The flag pole is not an accessway for a shopping center. BMC 17.92.100(E) is not an applicable approval criterion and the findings were not required to address that provision. Accordingly, petitioners’ argument under that provision provides no basis for remand.

1 The fourth assignment of error is denied.

2 **THIRD ASSIGNMENT OF ERROR**

3 BMC 17.136.050(C)(2) provides that, in order to grant a CUP, the decision
4 maker must find that “[t]he site for the proposed use relates to streets and
5 highways adequate in width and degree of improvement to handle the quantity
6 and kind of vehicular traffic that would be generated by the proposed use.”
7 Petitioners’ third assignment of error is that the city council’s conclusion that the
8 driveway, sited within the flag pole, will provide adequate access to the
9 residential care facility is not supported by substantial evidence. LUBA will
10 reverse or remand a land use decision if the local government “[m]ade a decision
11 not supported by substantial evidence in the whole record.” ORS 197.835(9)(C).
12 Substantial evidence is evidence a reasonable person would rely upon to reach a
13 decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993).

14 Intervenors argue that the driveway is not a “street or highway” and,
15 therefore, it is not subject to BMC 17.136.050(C)(2). The findings, however,
16 address the driveway in their discussion of compliance with that criterion and
17 intervenors did not file a cross petition for review assigning error to those
18 findings. Accordingly, we accept for purposes of this decision that BMC
19 17.136.050(C)(2) does apply to the driveway.

1 **A. BMC 17.172.061(B)**

2 The flag pole contains the driveway and provides the point at which the
3 subject property relates to the adjacent Passley Road. The findings explain that
4 the fire chief

5 “provided expert testimony that the 15 foot driveway width was
6 adequate for emergency vehicles and reiterated that the fire code
7 allows a reduction to 15 feet in driveway width if the building is
8 equipped with a fire suppression system (sprinklers). * * *

9 “* * * * *

10 “* * * Council has considered and accepts the expert testimony that
11 the 15 ft driveway is adequate for the purposes of this
12 development.”⁸ Record 4.

13 Petitioners argue in part that this finding is not supported by substantial
14 evidence because BMC 17.172.061(B)(2)(a) requires that the driveway be at least

⁸ The findings state:

“The Council discussed that it would be inefficient and poor planning to require [intervenors] to develop a separate access along the panhandle mere feet from the existing private West Cliff Drive. One solution discussed by council involved combining the access from West Cliff Subdivision with the access along the panhandle of the subject property. This option would require [intervenors] to negotiate with those residents of West Cliff Drive for combined access. If such negotiations fail, the City could use its condemnation authority to condemn West Cliff Drive so that access to the subject property can be shared with the residents of West Cliff Subdivision. * * * It is not likely that [intervenors] could wait that long to complete the development. * * * Council has considered and accepts the expert testimony that the 15 ft driveway is adequate for the purposes of this development.” Record 4.

1 20 feet in width.⁹ Petition for Review 29. Petitioners do not argue that the 20-foot
2 width required by BMC 17.172.061(B)(2)(a) provides the required baseline or
3 even useful context for an adequacy determination under BMC
4 17.136.050(C)(2). Instead, petitioners argue that BMC 17.172.061(B)(2)(a)
5 applies directly to the application.

6 Intervenor's respond, and we agree, that BMC 17.172.061(B)(2)(a) applies
7 to partitions and is not a CUP approval criterion. To the extent that the city erred
8 in approving a partition for the subject property as a flag lot with an undersized
9 driveway, that partition decision is final and not subject to collateral attack in this
10 appeal.

11 **B. BMC 17.170.100**

12 Petitioners also argue that BMC 17.170.100 "applies to commercial
13 developments like this one" and requires that commercial driveways and access
14 connections providing two-way access be a minimum of 20 feet wide. Petitioners
15 do not develop their argument that a residential care facility is a commercial

⁹ BMC 17.172.061(B) provides:

"Provided the eligibility requirements are met, a partition may be
approved subject to the following standards and criteria:

"* * * * *

"2. Rear lot.

"a. Accessway minimum width: 20 feet."

1 development for purposes of BMC 17.170.100 and that that provision is an
2 applicable approval criterion.

3 **C. BMC 17.136.050**

4 Lastly, petitioners argue that the paved portion of the driveway will be only
5 12 feet wide and that the testimony of the fire chief is not substantial evidence
6 that the proposed driveway is adequate to accommodate traffic generated by the
7 use itself, as opposed to the limited purpose of providing emergency vehicle
8 access. Petition for Review 29-30. We agree. BMC 17.136.050(C)(2) requires
9 consideration of “the quantity and kind of vehicular traffic that would be
10 generated by the proposed use.” A reasonable person would not rely on testimony
11 from a fire chief that a driveway is adequate for emergency vehicles to conclude
12 that the driveway is able to accommodate general project traffic. We sustain this
13 element of the third assignment of error.

14 The third assignment of error is sustained, in part.

15 **SECOND ASSIGNMENT OF ERROR**

16 As explained above, BMC 17.136.050(C)(2) requires that the city find that
17 “[t]he site for the proposed use relates to streets and highways adequate in width
18 and degree of improvement to handle the quantity and kind of vehicular traffic
19 that would be generated by the proposed use.” Adequate findings identify the
20 relevant criteria and the evidence relied upon, and explain how the evidence leads
21 to the conclusion that the criteria are or are not met. *Heiller v. Josephine County*,
22 23 Or LUBA 551, 556 (1992). Petitioners’ second assignment of error is that the

1 city council's findings of compliance with BMC 17.136.050(C)(2) with respect
2 to streets and highways other than the driveway are inadequate and not supported
3 by substantial evidence.

4 **A. First Subassignment of Error**

5 Petitioners' first subassignment of error is that the city council failed to
6 make findings that Highway 101 and Dawson Road are "adequate in width and
7 degree of improvement to handle the quantity and kind of vehicular traffic that
8 would be generated by the proposed use." Opponents raised concerns below
9 related to Highway 101 and Dawson Road, including that "[t]he Dawson Road
10 entrance * * * [is] insufficient to handle the increased traffic to support
11 emergency services and evacuations" and that "the residential Dawson tract is
12 accessed from highway 101 by one steep, curved road. The increase of incoming
13 and outgoing traffic from the facility will most assuredly cause congestion * * *."
14 Record 93, 98. The city council did not adopt findings responding to the Highway
15 101 and Dawson Road concerns, despite the fact that BMC 17.136.050(C)(2)
16 specifically references the relationship of the site to streets and highways. *Space*
17 *Age Fuel, Inc. v. Umatilla County*, 72 Or LUBA 92, 97 (2015) (citing *Blosser v.*
18 *Yamhill County*, 18 Or LUBA 253, 264 (1989); *Friends of Umatilla County v.*
19 *Umatilla County*, 55 Or LUBA 330, 337 (2007); *Marcott Holdings, Inc. v. City*
20 *of Tigard*, 30 Or LUBA 101, 107-08 (1995)) (re-explaining that findings must
21 address relevant issues that are adequately raised). The first subassignment of
22 error is sustained.

1 **B. Second Subassignment of Error**

2 Petitioners' second subassignment of error is that the city council's finding
3 that Passley Road is adequate in width and degree of improvement is not
4 supported by substantial evidence. The driveway connects the subject property
5 to Passley Road. In considering the potential impact of residential care facility
6 traffic on adjoining property, as required by BMC 17.136.050(C)(3), the city
7 council found:

8 "There is clear evidence in the record that the traffic will not exceed
9 the capacity of the streets or the access road. The testimony from the
10 neighbors appears to be based only on speculation and fears of the
11 worst case possible scenario. Fears regarding bad actor occupants
12 can be addressed through the limitation to 14 beds, and the limit to
13 occupants authorized by the [Department of Human Services
14 (DHS)] license." Record 5.

15 Intervenors submitted testimony that,

16 "[b]ecause of their disabilities, seniors in this home will be provided
17 services to assist them with their activities of daily living needs. This
18 will look like anywhere from 2 to 3 caregivers during the day and
19 two at night on staggered shifts. There will be no large buses making
20 regular visits for outings and by the very nature of the disabilities
21 there is no need for access to public transportation. Any departures
22 or travels, [due] to the nature of the disabilities, will be infrequent,
23 and will be handled just like yours would, occasional trips to the
24 doctor or visits to friends and family. This is not a nursing home or
25 hospice care and will not have frequent ambulance or fire truck
26 visits. Arrangements can also be made with local authorities to turn
27 sirens off in the case of a rare visit.

28 "This house will incur no more traffic than a large family household.
29 This is an assisted living home for seniors with disabilities;
30 therefore, our residents do not have cars and do not drive. * * *

1 “Secondly, as unfortunate as it is, many of the seniors do not have
2 frequent visitors and their family’s time and resource restrictions are
3 the preceding factors as to why the seniors are in a [residential care
4 facility] in the first place.” Record 76.

5 The city council found:

6 “S. Passley Road has a paved travel surface with a 50 foot wide
7 right-of-way with improvements in some areas. This street provides
8 access to approximately 70 dwelling units.

9 “The Planning Commission’s denial based on failure to satisfy
10 [BMC 17.136.050(C)(2)] provides that the street width does not
11 meet standards for commercial vehicles. This was based on
12 testimony from neighbors who assumed that the project would
13 generate ‘commercial traffic.’ [Intervenors] stated numerous times
14 before the Planning Commission, orally and in writing, that no large
15 delivery trucks or transit vehicles (buses) would be utilized. There
16 will be an occasional emergency vehicle (ambulance) and
17 occasional visitors, but only a reasonable number of visitors that
18 would not exceed a number you might find at a neighbor’s home
19 while hav[ing] a birthday party or on holidays. The section of
20 Passley Road at this particular location and to the south allows for
21 parking on both sides of the street and is a public right of way. At
22 the time this area was subdivided, the roadway was dedicated to the
23 City and was developed to allow parking on both sides of the road
24 for visitors to residents along this road.

25 “In terms of the ability of S. Passley Road to handle the traffic
26 generated by the proposed residential care facility, Fire Chief Jim
27 Watson has determined that S. Passley Road is adequate. The
28 proposed facility is designed for the residential care of adult patients
29 who do not drive. The primary traffic related impact would be from
30 staff and visitors. Visitors would normally be scattered through-out
31 the day rather than concentrated into one period. In conclusion, S.
32 Passley Road is adequate to accommodate the level of traffic to be
33 generated by the proposed development.” Record 3-4.

1 This finding describes the anticipated scale and type of traffic anticipated and
2 relies on substantial evidence—that is, evidence upon which a reasonable person
3 would rely—to reach a conclusion that Passley Road is adequate for a 14-bed
4 residential care facility. The second subassignment of error is denied.

5 The second assignment of error is sustained, in part.

6 **FIFTH ASSIGNMENT OF ERROR**

7 BMC 17.136.050(C)(3) provides that, in order to approve a CUP, the city
8 must determine that

9 “[t]he proposed use will have minimal adverse impact upon
10 adjoining properties. In making this determination, the commission
11 shall consider, but not be limited to, the proposed location of the
12 improvements on the site, vehicular egress/ingress and internal
13 circulation, pedestrian access, setbacks, height and bulk of
14 buildings, walls and fences, landscaping, screening, exterior lighting
15 and signing.”

16 The city council found:

17 “The impact on adjoining properties is the primary issue. Elderly
18 adult residential care facilities are generally very quiet in nature and
19 the day to day operation of the proposed facility will have some
20 impact on adjoining properties as every development will have some
21 impact on adjoining properties. There is one residence to the east, a
22 church currently allowed under a CUP to the north with a large open
23 field adjacent to [intervenors’] property, West Cliff Subdivision
24 with five residential homes to the south and three residential lots in
25 the Oceanside Estates Subdivision to the west.

26 “There is clear evidence in the record that the traffic will not exceed
27 the capacity of the streets or the access road. The testimony from the
28 neighbors appears to be based only on speculation and fears of the
29 worst case possible scenario. Fears regarding bad actor occupants

1 can be addressed through the limitation to 14 beds, and the limit to
2 occupants authorized by the DHS license. Testimony regarding the
3 disturbance from visitors and ambulance calls appears to be
4 overstated, as the bed limitation will necessarily keep that type of
5 conflict to a minimum. This approval criterion must be interpreted
6 in this case in the context of the federal Fair Housing limitations,
7 which aims to facilitate development of group care facilities for the
8 elderly population, and to curb local denials based on neighborhood
9 fears of unlikely impacts. The proposed project will provide a
10 landscaped buffer between the parking area and the adjoining
11 properties as required by the [BMC]. Council finds [BMC
12 17.136.050(C)(3)] has been met.” Record 4-5.

13 Petitioners’ fifth assignment of error is that the city council failed to make
14 findings addressing “adverse impact[s] on neighboring properties from
15 pedestrian access, noise, drainage, and/or parking.” Petition for Review 39.

16 **A. Pedestrian Access**

17 First, petitioners argue that the city did not make findings regarding the
18 impact of the proposed development on adjoining properties from a lack of
19 pedestrian access, even though pedestrian access is included in the BMC
20 17.136.050(C)(3) list of impacts to be considered. Findings must address and
21 respond to specific issues relevant to compliance with applicable approval
22 standards that were raised in the proceedings below. *Norvell v. Portland Area*
23 *LGBC*, 43 Or App 849, 853, 604 P2d 896 (1979). We sustain this subassignment
24 of error.

25 One opponent testified that they were

26 “disabled and use[d] an electric scooter to walk [their] dog. The
27 sidewalk availability in the Dawson tract leaves a lot to be desired
28 and the intersection of Passley and Dawson Rd is the worst in the

1 tract. No sidewalks on either side of the narrow street and there is a
2 LOT of foot traffic in addition to vehicle traffic.” Record 110.¹⁰

3 In its response, intervenors describe the sidewalk network and argue that that
4 network is adequate. However, the *city council* did not make a finding that the
5 sidewalk network is adequate to ensure that the project will have minimal adverse
6 impacts on the pedestrian access enjoyed by adjoining properties.

7 The first subassignment of error is sustained.

8 **B. Noise**

9 Opponents also raised concerns regarding noise impacts as a result of
10 emergency responder sirens, deliveries, trash removal services, landscape
11 services, and staff, visitor, and emergency service traffic. Record 368, 370, 393,
12 476. Petitioners’ second subassignment of error is that the city council did not
13 make any findings as to the impact of noise on adjoining property. Although the
14 city council found that “[e]lderly adult residential care facilities are generally
15 very quiet in nature” and “not a noise generator,” petitioners argue that a finding
16 that *these types of facilities* are generally not a noise creator does not explain
17 whether *this facility* will generate noise or impact adjoining properties. Record 4,
18 6. Findings must identify the criteria, the evidence relied upon, and explain how

¹⁰ Other opponents argued that locating a residential care facility on the subject property would pose dangers to its residents due to inadequate sidewalks and that ingress would be unsafe for pedestrian residents. Record 113, 349. Those arguments do not concern the impact of the proposed use on adjoining properties but, rather, the appropriateness of the site for the proposed users.

1 the evidence leads to the conclusion that the criteria are or are not met. *Heiller*,
2 23 Or LUBA at 556. The city council found that the testimony about disturbance
3 from visitors and ambulance calls appeared to have been overstated and that the
4 bed limitation will necessarily keep that type of conflict to a minimum. The
5 conclusion section of the decision explains:

6 “Residential care facilities are, by nature, not a noise generator. The
7 traffic generated by the facilities will have an incremental increase
8 in the noise around the general area; however, residential
9 development on the parcel has the potential to generate more general
10 noise than the proposed project will. The proposed project is
11 designed to provide the required buffer between the parking area and
12 the adjoining residential use.” Record 6.

13 These findings are adequate to explain the basis for the city council’s conclusion
14 that the facility will not create noise problems.

15 The second subassignment of error is denied.

16 **C. Drainage**

17 Petitioners also argue that the city council did not make findings regarding
18 whether drainage issues caused by the proposed use will have minimal impacts
19 on adjoining properties. Opponents raised concerns that the use will lead to
20 flooding of neighboring properties. One petitioner submitted testimony that their

21 “12” storm drain becomes overloaded in heavy rains and clogged
22 with debris. When the drain fills up, the excess water flows out the
23 grate located on 5318 and flows downhill to my house and my
24 neighbor at 5320. We have had crawl space flooding and standing
25 surface water. My crawl space drain and gutters are connected to
26 this 12” storm drain. My neighbor at 5320 (downhill property) has
27 drains all over his yard in addition to gutters connected to this drain

1 pipe. It is my opinion that this storm drain cannot handle the
2 drainage needs of a commercial style building being added to the
3 line and all the properties located downhill such as mine will be
4 flooded as a result either from the overflowing grate or not being
5 able to properly drain our own storm water into the drain system.”
6 Record 112.

7 The city council imposed a condition of approval requiring that intervenors

8 “complete and submit drainage plans to the City Engineer for review
9 and approval prior to any construction, including streets. Storm
10 drainage design shall be in accordance with the City of Brookings
11 Comprehensive Plan for Drainage. All drainage from the subject lot
12 shall be engineered in a manner that protects all adjoining
13 properties.”

14 As petitioners point out, however, the findings do not address whether the project
15 will cause drainage issues.

16 The third subassignment of error is sustained.

17 **D. Parking**

18 Lastly, petitioners argue that the city council did not make findings
19 regarding whether a lack of on-street parking will impact adjoining properties.
20 Specifically, petitioners argue that, although the decision indicates that the
21 proposed development will “meet the number of spaces required by the [BMC],
22 there are no findings as to whether the proposed development’s parking spaces
23 will meet the facility’s entire parking needs, whether on-street parking will be
24 used by residents, staff, and guests, or what impact it will have on adjoining
25 properties.” Petition for Review 43 (citation omitted). We agree with intervenors

1 that this argument was not developed with sufficient specificity to allow the city
2 council to respond.

3 The city council found:

4 "Residential care facilities parking requirements are one parking
5 space per five residents. Unless otherwise provide, required parking
6 and loading spaces shall not be located in a required front yard, but
7 parking space may be located within a required side or rear yard.

8 "Flag lot location will require off-street parking. For a 14 unit
9 residential care facility a minimum of three on-site parking spaces
10 for residents is required. The proposed development plans include
11 five on-site parking spaces and one single car parking garage for a
12 total of six parking spaces. As the proposed facility is designed for
13 the residential care of adult patients who generally do not drive the
14 remaining three parking spaces will be used and available for
15 visitors and staff." Record 5.

16 Petitioners do not challenge this finding or otherwise argue that it is inadequate
17 to address resident and staff parking.

18 BMC 17.136.050(C)(3) does not include on-street parking in its non-
19 exclusive list of examples of potential impacts on adjoining properties. In
20 addressing the adequacy of the adjacent Passley Road, the city council found that

21 "[t]he section of Passley Road at this particular location and to the
22 south allows for parking on both sides of the street and is a public
23 right of way. At the time this area was subdivided, the roadway was
24 dedicated to the City and was developed to allow parking on both
25 sides of the road for visitors to residents along this road." Record 3.

26 Petitioners develop no argument that this finding fails to adequately address the
27 use of on-street parking for visitors to residents of the residential care facility.

1 Where a party “disagrees with the [local government’s] decision without
2 attempting to demonstrate error in the [local government’s] findings that interpret
3 and apply [approval criteria, the party] fails to provide a basis for reversal or
4 remand.” *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587, 603 (2000)
5 (citing *Just v. Linn County*, 32 Or LUBA 325, 334 (1997); *Mazeski v. Wasco*
6 *County*, 28 Or LUBA 178, 188-89 (1994), *aff’d*, 133 Or App 258, 890 P2d 455
7 (1995); *Dougherty v. Tillamook County*, 12 Or LUBA 20, 34 (1984)). Petitioners
8 do not address these findings of adequate parking.

9 The fifth subassignment of error is denied.

10 The fifth assignment of error is sustained, in part.

11 The city’s decision is remanded.

12 Ryan, Board Member, concurring.

13 I agree with the resolution of this appeal, and I write separately only to
14 emphasize that, unless the BMC prohibits it, which does not appear to be the case,
15 the scope of the city’s proceedings on remand may be expanded to address in
16 more detail issues raised by intervenors during the proceedings before the
17 planning commission and the city council regarding the applicability of the
18 FHAA to the proposed development. *Schatz v. City of Jacksonville*, 113 Or App
19 675, 680, 835 P2d 923 (1992) (explaining that, while not required to do so, a city
20 may consider questions during its remand hearing that are beyond the scope of
21 the remand). During the proceedings before the planning commission and the city
22 council, intervenors argued that the FHAA required the city to make a reasonable

1 accommodation for any CUP approval criteria that applied to the proposed
2 development but that the city found were not met. The city's findings regarding
3 intervenors' FHAA arguments acknowledge that "[BMC 17.136.050(C)(3)] must
4 be interpreted in this case in the context of the federal Fair Housing limitations,
5 which aims to facilitate development of group care facilities for the elderly
6 population, and to curb local denials based on neighborhood fears of unlikely
7 impacts." Record 5. In my view, the city and the parties would benefit from more
8 detailed findings addressing intervenors' arguments presented to the city council
9 that the FHAA requires the city to make a reasonable accommodation for any
10 approval criteria that the city council finds are not met.

Tony Baron

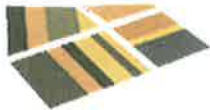
From: Mike Reeder <mreeder@oregonlanduse.com> on behalf of Mike Reeder
Sent: Monday, January 24, 2022 12:46 PM
To: Tony Baron; DAVIES Anne C
Cc: BRETT KEMP
Subject: Bergmann v. City of Brookings (Kemp) LUBA No. 2020-096 LUBA Remand
Attachments: LUBA Opinion 20096 (Aug. 2, 2021).pdf

Dear Mr. Baron and Ms. Davies:

Pursuant to ORS 227.181(2), my clients, the Applicants for the CUP decision that was remanded by LUBA on Aug. 2, 2021, hereby request that the City initiate remand proceedings to address the issues identified by LUBA. The Applicant further requests that the City open the record on remand to allow evidence and argument regarding only those issues identified by LUBA. Please confirm that this request is sufficient for the City's purposes and that no other action is required in order to perfect a LUBA remand proceeding request with the City.

Respectfully,

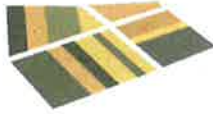
Micheal M. Reeder
Attorney for Aga & Brett Kemp and B K Quality Construction, LLC



Law Office of Mike Reeder
Oregon Land Use Law

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Law Office of Mike Reeder
Oregon Land Use Law

January 2, 2023

Via Email

ntippetts@brookings.or.us

Mayor Hedenskog and City Council
c/o Natasha Tippetts, Deputy City Recorder
Brookings City Hall
898 Elk Drive
Brookings, OR 97415

Re: *Bergmann v. City of Brookings (Kemp)* LUBA No. 2020-096

Dear Mayor and City Council,

I represent Brett and Aga Kemp and B K Quality Construction, LLC (the “Applicants”). On January 24, 2022, pursuant to ORS 227.181(2), the Applicants for the CUP decision that was remanded by LUBA on Aug. 2, 2021, requested that the City initiate remand proceedings to address the issues identified by LUBA in *Bergmann v. City of Brookings (Kemp)*, LUBA No. 2020-096.

I. Remand Issue #1 – BMC 17.136.050(C)(2) – Adequacy of Private Driveway

LUBA sustained Petitioners’ third assignment of error in part by determining that BMC 17.136.050(C)(2) requires consideration of “the quantity and kind of vehicular traffic that would be generated by the proposed use.” LUBA remanded in order for the Applicants and City to show that the driveway will be “adequate”. In response to LUBA’s decision, the Applicants provided to the City and the LUBA Remand record, a “Tech Memo” from the Applicants’ traffic engineer, Kelly Sandow, P.E., dated May 16, 2022. In this memorandum, Ms. Sandow provided her professional analysis and opinion that the private flag lot driveway to serve the residence is adequate for all traffic, including emergency vehicles, local deliveries and traffic generated by the proposed use. See pages 3-10. Therefore, this criterion is met.

II. Remand Issue #2 – BMC 17.136.050(C)(2) – Adequacy of Streets and Highways (Highway 101 & Dawson Road)

LUBA sustained Petitioners’ second assignment of error in part (i.e. the first subassignment of error) by determining that BMC 17.136.050(C)(2), which requires that the city find that “[t]he site for the proposed use relates to streets and highways adequate in width

subassignment of error entitled “C. Drainage”. LUBA determined that BMC 17.136.050(C)(3), which requires in part that the city find that the proposed use will have “minimal adverse impact upon adjoining properties” relating to “drainage.” LUBA found that the City Council findings did not address whether the project will cause drainage issues.

In response to LUBA’s remand, the City’s engineer, Andrew Hall, PE of The Dyer Partnership, provided a tech memo to the City dated April 14, 2022. The crux of the memo states: “From a feasibility perspective, it is expected that the applicant can direct stormwater to the storm drainage system within the [20-foot stormwater] easement to the west of the property.”

If the City approves the Application (again), the findings should affirmatively state that the proposal meets the City criterion that it not negatively impact the adjoining property with stormwater/drainage issues because not only is it feasible to do so, but as a condition of approval the drainage detention system must be engineered and constructed to capture the stormwater from a 25-year, 24-hour storm event. The Applicants stipulate to such a condition of approval.

Therefore, this criterion is met.

V. Conclusion

For the reasons stated above, the Applicant should be approved (again) with findings consistent with showing conformance with the above-cited code provisions.

Respectfully submitted,

/s/Micheal M. Reeder

Micheal M. Reeder
 Attorney for Applicants

TECH MEMO

DATE: January 9, 2023

TO: Mike Reeder
Law Office of Mike Reeder

FROM: Kelly Sandow PE
Sandow Engineering

RE: Brett Kemp, AGA Kemp, and BK Quality Construction, LLC. Brookings, Oregon Traffic Evaluation



RENEWAL 06/30/24

The following provides a traffic evaluation for the proposed use of tax lot 2200 of Assessor's Map 40S-14W-36BA in Brookings, Oregon. The proposal is a 14-room/16-bed residential care facility serving residents that have reduced mobility/end-of-life care.

The traffic evaluation is in response to the Land Use Board of Appeals (LUBA) No. 2020-096 Remand decision, dated May 7, 2021.

Site Operations

The proposed use of the site is 14 bedrooms with up to 16 beds. Residents of this facility will have reduced mobility and will not be mobile enough to independently leave the site. Therefore, they will not drive or have vehicles on site. Residents will require full-time skilled nursing care. There will be 2-3 staff present at any time. Staff will work a 12-hour shift with only 1 staff change occurring at a time, and the shift changes will be staggered by a minimum of 30 minutes.

The site will have local deliveries from vehicles that are no larger than a typical single-unit truck (FedEx-style truck). Additionally, garbage service will be provided to the site.

Trip Generation Estimate

The industry standard methodology for estimating the number of vehicle trips generated by developments is the use of trip rates found within the Institute of Transportation Engineers (ITE) Trip Generation Manuals 11th Ed. The ITE trip rates are provided for facilities coded in the manuals as nursing homes, assisted living, and congregate care facilities. The ITE Land Use 620-Nursing Home is the most closely matched land use as it is described as "a facility whose primary function is to care for persons who are unable to care for themselves", "skilled nurses and nursing aides are present 24 hours a day", and "resident(s) are not capable of operating a

vehicle". The description of assisted living and congregate facilities states that the residents experience some level of independent living and do not require the same level of care. Therefore, the ITE Land Use data for 620- Nursing Homes is the most appropriate to use for this proposal.

The trip rates are provided as vehicle trips generated per bed. Table 1 provides the trip estimates for the weekday and weekend peak hours of the day, and total daily trips.

TABLE 1: TRIP GENERATION

Time of Day	Size (Beds)	Rate (trips/bed)	Total Trips	Trips In	Trips Out
Weekday					
Peak AM Hour of Site	16	0.20	3	2	1
Peak PM Hour of Site	16	0.33	5	2	3
Weekday Daily Total	16	3.06	49	24	25
Weekend					
Saturday Peak Hour	16	0.36	6	3	3
Saturday Daily Total	16	2.32	37	18	19
Sunday Peak Hour	16	0.40	6	3	3
Sunday Daily Total	16	2.41	39	19	20

During the weekday, trip rates are provided for the morning and evening peak hours that the site will experience. As shown in Table 1, the industry-standard data provided for nursing homes estimate a peak vehicle trip generation of 5 trips in the weekday evening peak hour, 49 trips total during the weekday, 6 vehicles during the busiest hour on Saturday and Sunday, and 49 total trips during the day on a Sunday. The 49 daily trips estimated during the weekday and 39 trips on Sunday account for the trips from staff, visitors, mail delivery, garbage, etc. Each vehicle to the site is two trips 1 trip in/ 1 trip out during the day. Therefore, the 49 trips during the day equate to 26 vehicles to the site.

As stated previously, the residents will have limited mobility and, therefore, will not be driving or have vehicles on site. There will be 2 staff on 12-hour shifts. Shift changes will occur one at a time and will be staggered by at least 30 minutes. During shift changes, there will be up to 2 employee trips entering and 2 employee trips exiting the site during the peak hour. It is estimated that there

will be no more than 2 visitors present during the peak times. This estimation aligns with the ITE trip estimate of 6 trips in the peak hour (2 employees entering, 2 employees exiting, 2 visitor trips).

As a comparison of trip magnitude, one single-family home generates, on average, 11 total trips during the weekday and 2 trips during the busiest hour. The development site is zoned R-1-6 Single Family Residential 6000 sf lot. The site, 0.58 acres, could have 3 residential units constructed on site. Three residential units would generate 6 peak hour trips and 33 daily trips. The proposed home generates trips at a similar level to the potential of the single-family homes constructed on this site.

Access Width

The site is a flag lot with access to Passley Road via a 12-foot driveway that parallels the private street connection of West Cliff Drive. The alignment for the access connection was made due to the site constraints of the adjacent site to the north (Tax Lot 2201) and the private street of West-Cliff Drive to the south. As West Cliff Drive is a private street, the site is prohibited from a direct connection to West Cliff Drive, resulting in the need for a flag lot style driveway.

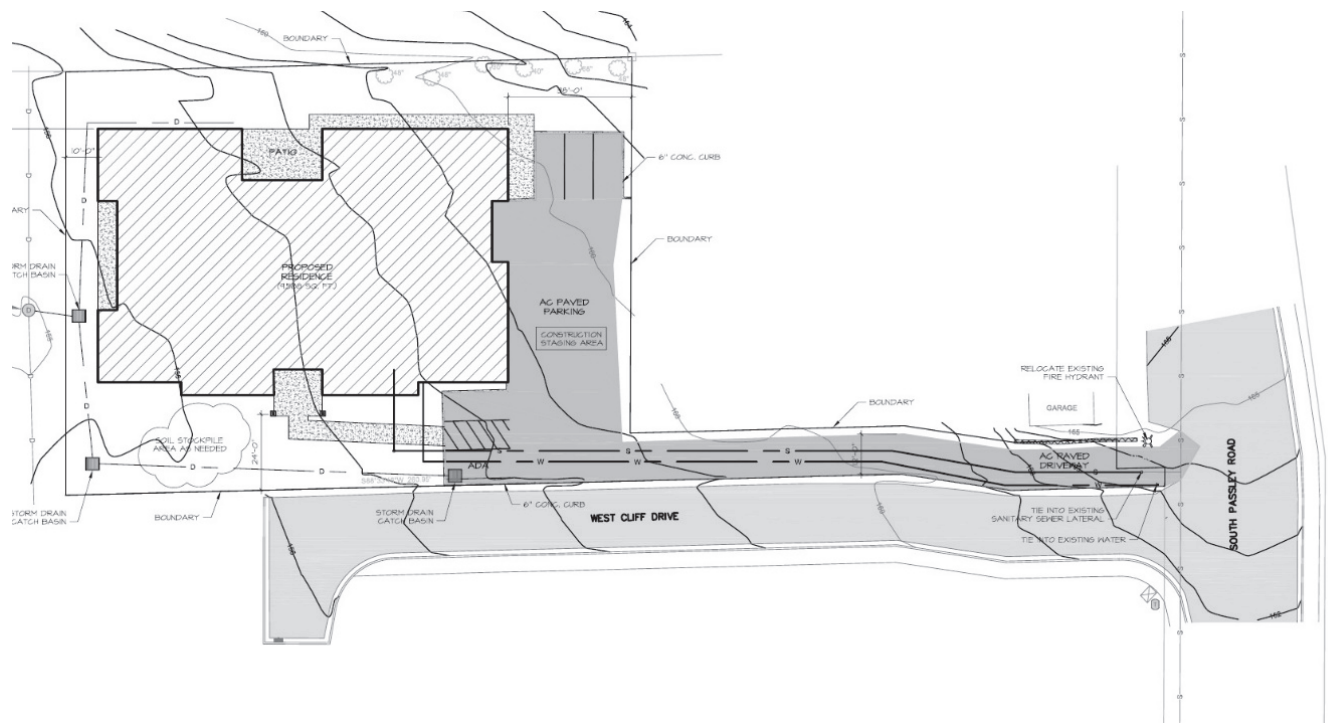


Figure 1: Site Layout

The site is anticipated to have a maximum of 6 vehicles to/from the site in the busiest hour. Specifically, it is estimated that 3 vehicles will be entering, and 3 vehicles will be exiting the site during that hour. This places vehicles utilizing the driveway at approximately 1-2 vehicles every 10 minutes. The 12-foot driveway width is sufficient for levels of vehicle travel and frequency significantly higher than what is anticipated to be generated by this site. Two-way vehicle travel can occur safely on a 12-foot width. This width of street is generally classified as a type of “narrow residential roadway” and will operate via a vehicle waiting to enter the driveway when the driveway is clear of opposing vehicles. The infrequency of use and clear line of sight for drivers allow the width to be safe for two-way travel.

As a comparison, the street design standards, as identified in Table 5 of the City of Brookings Transportation System Plan (TSP) (Attachment A), identify Local Streets to have 28 feet of pavement width with on-street parking allowed on both sides. A parked vehicle takes up 8 feet of roadway width adjacent to the curb. When parking on both sides of the street is present, the roadway width narrows to 12 feet. This is a frequent occurrence in local streets in Brookings and most cities throughout Oregon. Two-way vehicle travel routinely and safely occurs on local streets where the travel way is restricted to 12 feet of travel width for 2-way travel. This is the same scenario for the development access connection. There is adequate line of sight for a vehicle entering the driveway from either Passley Road or the site parking lot, to be able to perceive if the driveway is being used and wait until clear. The driveway, as proposed, can handle the level of vehicle trips and will operate safely.

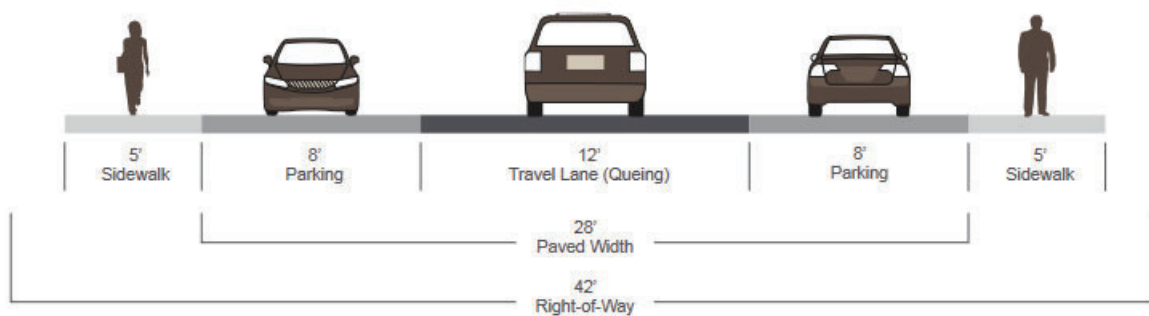


Figure 2: Local Street Cross Section from Brookings TSP Depicting 12 Foot Travel Lane for Two-Way Travel.

Emergency and Commercial Vehicle Access

The majority of vehicles to the site will be passenger vehicles. Local deliveries are anticipated infrequently and will be from single-unit trucks (FedEx style), and the site will be serviced by the local garbage service. Additionally, the site will need to accommodate emergency vehicle access.

- **Delivery Vehicles:** Deliveries to the site will occur infrequently. The delivery vehicles will be a standard single unit (SU) vehicle (FedEx style) at a 30' length. Additionally, this is the same size vehicle for garbage service. The turning path of a SU-30 into the site, using the driveway, and turning around on site was modeled using the industry standard AutoTURN software. Figures 3 and 4 below illustrate the turn path for this style of vehicle. As illustrated in Figure 3, the site design is sufficient to accommodate an SU-30 vehicle centering the site, turning around within the site, and exiting the site. As illustrated in Figure 4, the design is sufficient to accommodate the safe turn of an SU-30 vehicle into the site. The design allows for safe and efficient access by this size of vehicle.

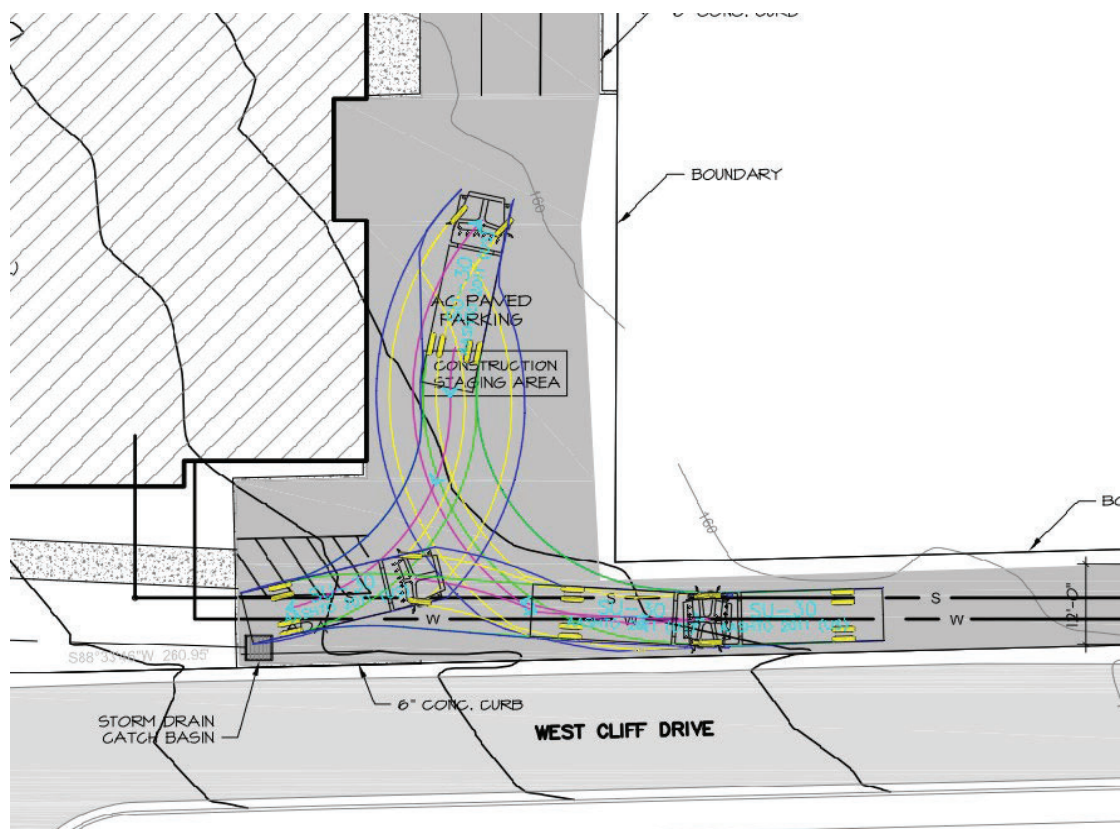


Figure 3: Path of SU-30 Turning Around on Site.

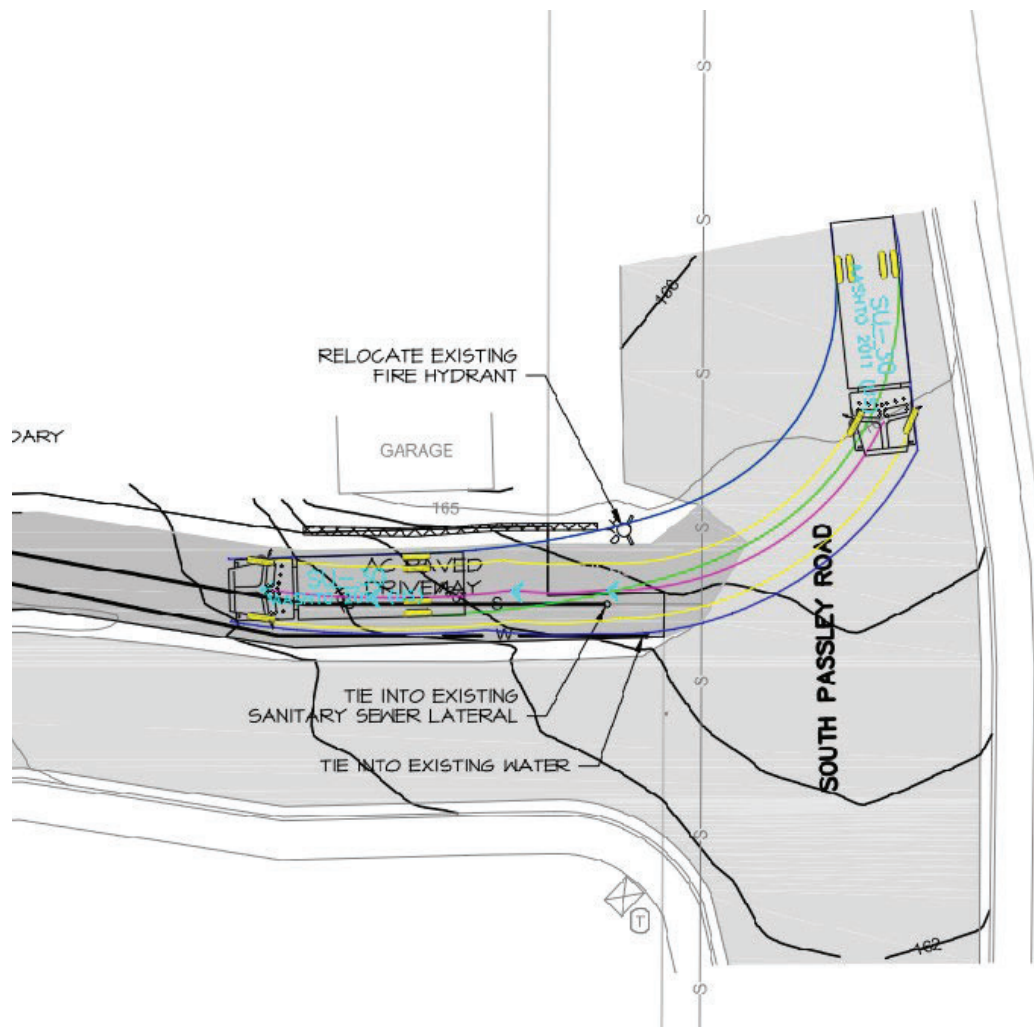


Figure 4: SU-30 Entering the Site

- **Emergency Access:** The site was evaluated for emergency access for ambulance and firetruck. The turning paths for an ambulance and firetruck were modeled using AutoTURN software. The results are provided in the images below. As illustrated, an ambulance is able to access and turn around on site. A fire truck can access the site. However, a firetruck does not require a turnaround on site. The firetruck can/will back out of the driveway onto Passley Road.

The blue lines are the front corner of the fire truck, and the yellow lines are the wheels. The front end can clear the 6" curb between the site access and West Cliff Drive. The fire truck can access the site safely.

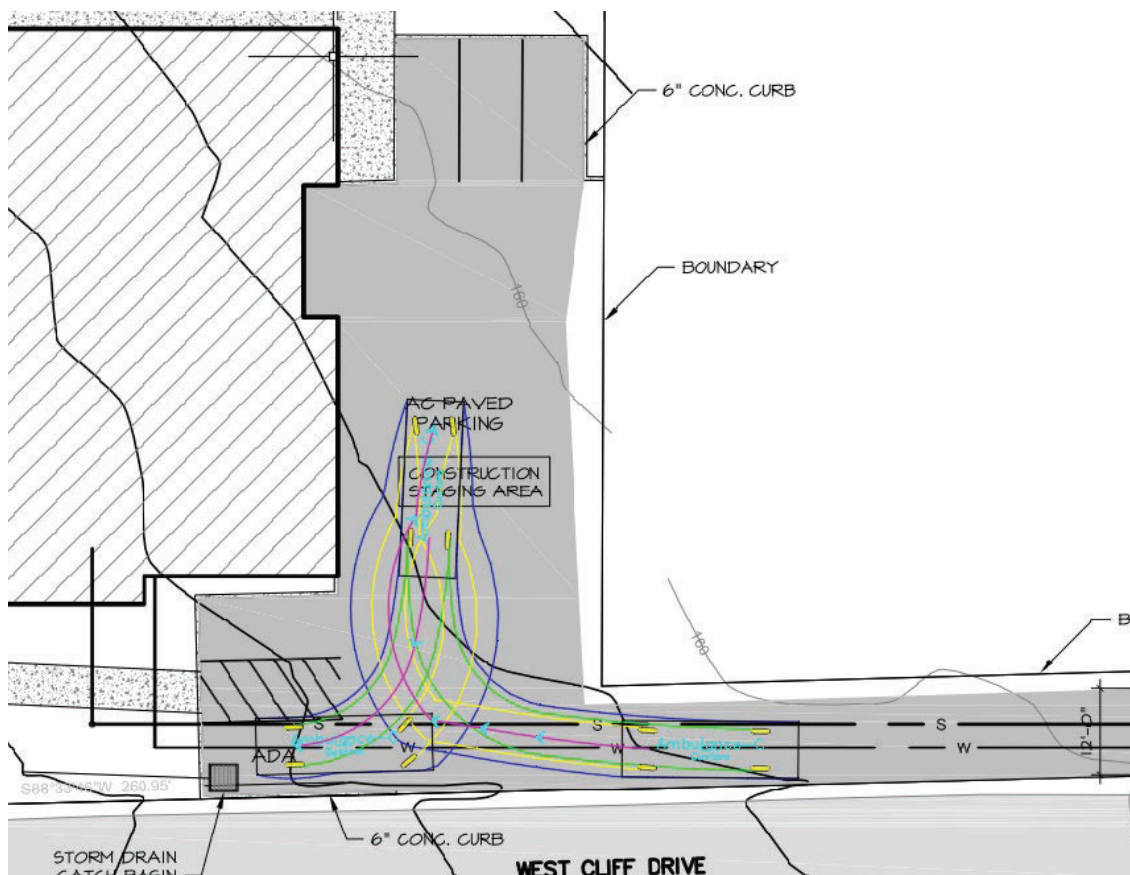


Figure 5: Ambulance Turning Around on Site

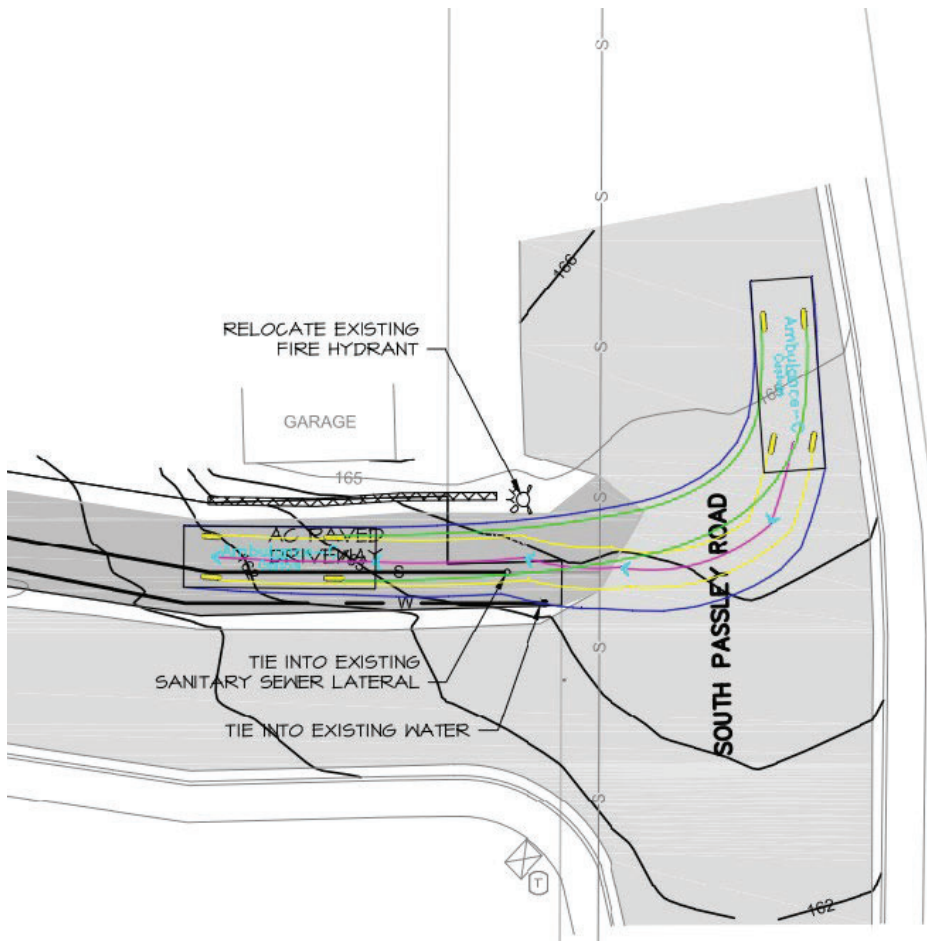


Figure 6: Ambulance Turning Into Site Driveway

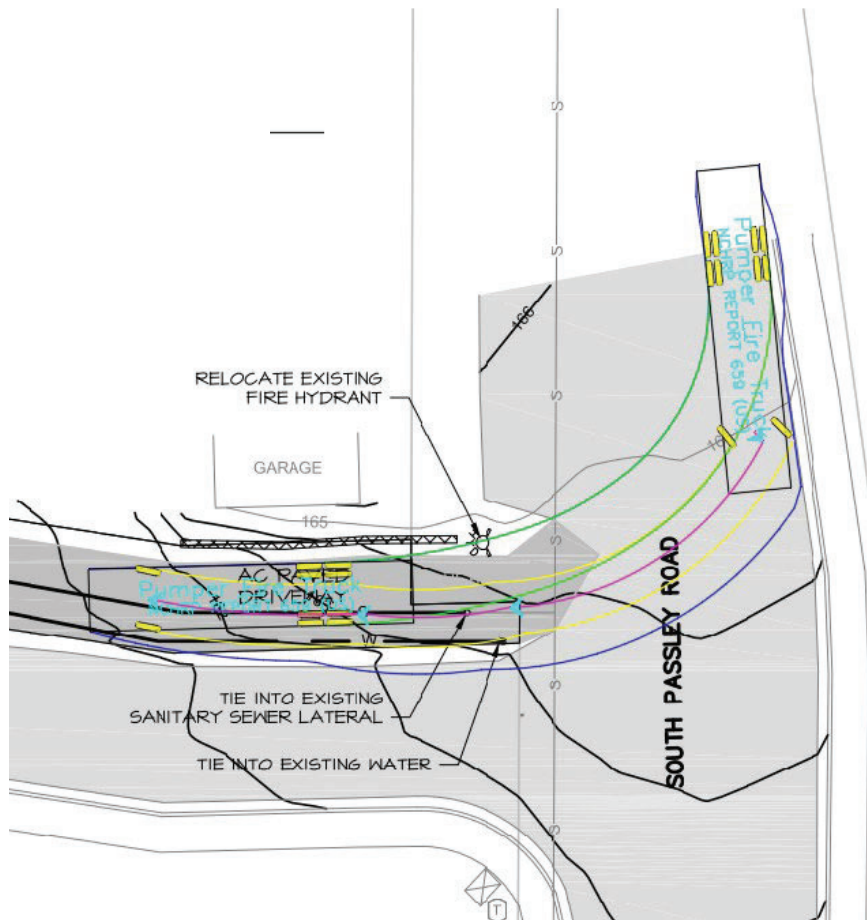


Figure 7: Fire Truck Accessing the Site

The proposed site design and site usage will allow for safe access for passenger cars, delivery, and emergency vehicles.

Highway 101 and Dawson Road Operation

The intersection of Highway 101 at Dawson Road is a stopped-controlled intersection with the east and west approaches as stop controlled.

Dawson Rd from Passley Rd to Highway 101 is two lanes (1 in each direction), and each lane is 12-16 feet wide. Dawson Rd is classified as a local road. The city standard lane widths are a minimum of 10 feet when separated striped lanes are present. Dawson Rd meets the minimum standard roadway width. Fire and ambulance vehicles are no wider than 8.5 feet. Therefore, the 12-foot lane widths are sufficient for emergency vehicle travel.

Highway 101 at Dawson Rd is one lane in each direction, center left turn pockets, and separate right turn lanes. The lane widths at the intersection are between 12' and 16' wide. The lane widths are sufficient to handle emergency vehicles.

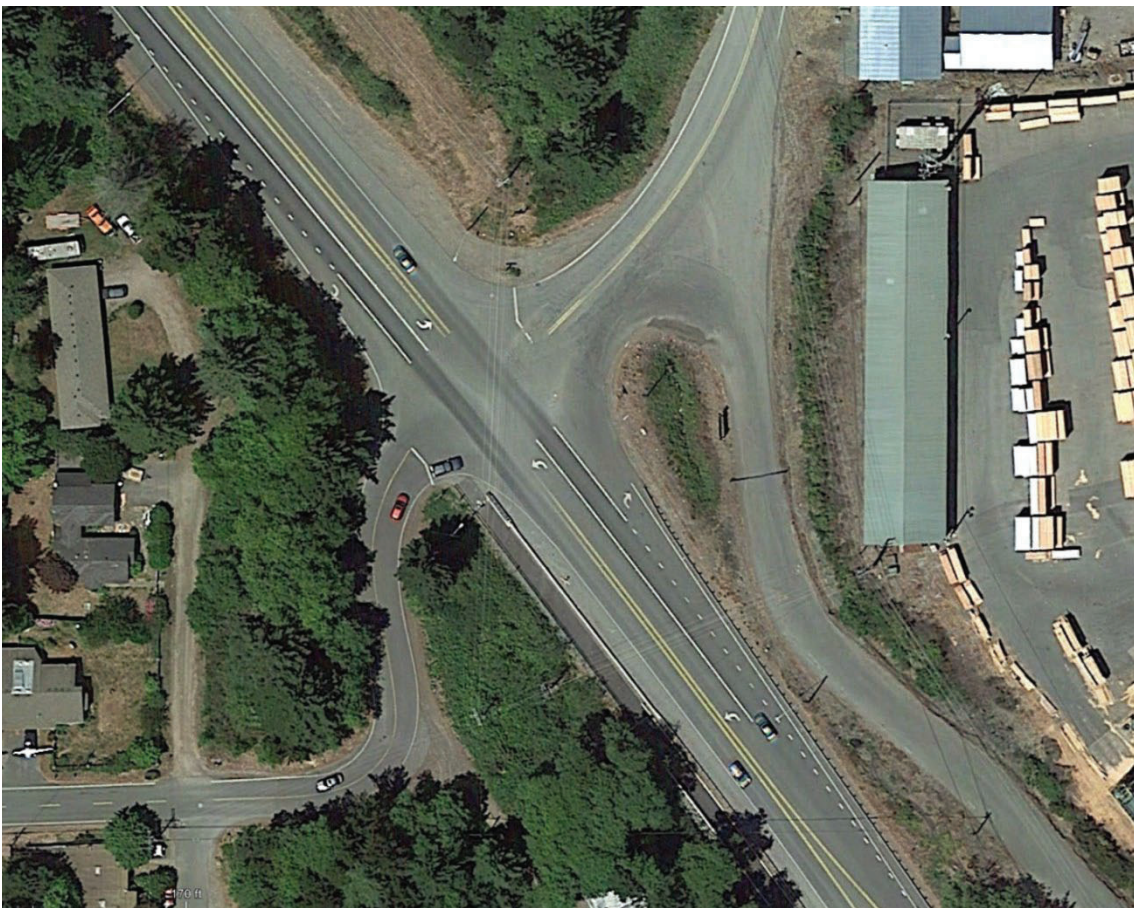


Figure 8: Intersection of Highway 101 at Dawson Road

The intersection of Highway 101 at Dawson Rd was evaluated using industry standards for determining if there is sufficient capacity for the vehicles (volume/capacity (v/c) calculations) and if there are excessive delays that will cause backups (congestion).

The City of Brookings Transportation System Plan (TSP) provides the base year (year 2012) weekday peak hour traffic volumes at the Highway 101 at Dawson Road intersection. These volumes represent the peak hour of the peak season for vehicle travel. ODOT provides historic and future growth rates within the "ODOT Future Volumes Tables" for Highway 101 at Dawson Road. This section of roadway has an annual growth rate of 0.01%. To be conservative, the growth rate is rounded up to 1%. The 1% growth rate is applied to the 2012 volumes to estimate year 2022, year 2023 (estimated completion date), and year 2028 (5-year planning horizon) consistent with ODOT standard methodology. The vehicle trips generated by the proposed use are added to the year 2023 and year 2028 volumes to represent total conditions with the use in place. The traffic volumes are included as an attachment. (Attachment B).

The capacity, delay, and vehicle queuing are analyzed using the industry-standard Highway Capacity Manual (6th Ed) methodology implemented in Synchro. The results of the analysis are shown in Table 2. Attachment C contains the analysis outputs at Highway 101.

TABLE 2: HIGHWAY 101 AT DAWSON ROAD OPERATION

Movement	95% Queuing (feet)	v/c	Delay (seconds)
Year 2022			
Eastbound Lane	75	0.26	20.8
Northbound Left	50	0.11	8.9
Southbound Right	25	0.00	0.0
Year 2023 with Project			
Eastbound Lane	75	0.28	21.8
Northbound Left	50	0.12	8.9
Southbound Right	25	0.0	0.0
Year 2028 with Project			
Eastbound Lane	75	0.31	23.6
Northbound Left	50	0.12	9.0
Southbound Right	25	0.0	0.0

The Dawson Road approach is estimated to have an average delay for vehicles of 23.6 seconds through the year 2028 with the addition. The City has adopted a standard delay of no more than 25 seconds. The operation during the peak hour of the peak season is within acceptable standards. The average delay for vehicles is not significant enough to cause safety issues.

The Dawson Road approach is estimated to have a v/c of 0.31 for the year 2028 peak hour during the peak season, with the development in place. The v/c of 0.31 means that the approach will operate at 31% capacity. The ODOT standard for this intersection is a v/c of less than 0.80. Dawson Road at the intersection will meet the standards. Operating at 31% capacity, there is sufficient capacity to handle the development trips.

The queuing at the Dawson Rd approach is estimated at 75 feet (3 vehicles) during the busiest hour of the busiest season. There is approximately 270 feet of storage space on Dawson Rd before the queue causes any issues. The queuing will not cause any operational issues.

As demonstrated above, Dawson Rd, Highway 101, and the intersection of Dawson Rd at Highway 101 have sufficient width and capacity to handle the development trips.

Pedestrian Access

As per BMC 17.136.050(c)(3)- *"The proposed use will have minimal adverse impact upon adjoining properties"*. *"Pedestrian access"* is listed as one of the impacts to be considered. BMC 17.08.010 defines *"adjoining"* as *"means the same things as abutting"* and *"abutting"* is defined as *"having a common boundary line, except where two or more lots or parcels adjoin only at a corner."* Therefore, to satisfy the criteria of BMC 17.136.050(c)(3), the pedestrian access needs to only address impacts to the parcels that share a boundary line.

The northern boundary of the site is shared with tax lots 2100 and 2201, West-Cliff Drive and tax lot 2056 share the boundary line to the south, and tax lots 5315 and 5316 share the boundary line to the west. Pedestrian access to the properties to the north and south is via Passley Rd. Passley Rd has sidewalks on both sides south of West-Cliff Drive, and intermittent sidewalks on the west side of Passley Rd. Pedestrian access to tax lots 5315 and 5316 is via Oceanside Drive. Oceanside Drive has full sidewalks on the south/west side.

Sidewalks within the Dawson Tract are intermittent, with a majority of missing sidewalks along tax lots that have not been developed. At locations within the Dawson tract that are missing sidewalks, pedestrians are currently using the roadway surface or roadway shoulder. Passley Rd is a low-volume Local Street. The City of Brookings Transportation System Plan evaluated the pedestrian level of service for roadways in Dawson Tract (Attachment D). The roadways are evaluated per a Pedestrian Level of Service (PLOS) using a numerical score from 1-5. The City defines a PLOS of 1-2 as being appropriate for *"vulnerable pedestrians, including students and aging adults."* Passley Rd and all roads within the Dawson tract were given a PLOS score of 1 and 2. Therefore, the City has identified the streets as safe for use by the current residents.

The proposed use of the site will add up to 6 vehicles in the peak 1-hour of the day. This places 1-2 additional vehicles on the roadway every 10 minutes during that one hour. The roadway width of vehicle travel between Highway 101 and the site is 12-16 feet for the striped lanes on Dawson Rd,

and 18-31 feet on Passley Road between Dawson Rd and the site. There is adequate line of sight for vehicles on Dawn and Passley Road to perceive a pedestrian in the roadway and to provide room to pass the pedestrian safely. The trips from the proposed use will not negatively affect pedestrian access on Passley Road or Dawson Road.

At the intersection of Passley Rd at Dawson Rd, there is sufficient roadway width for pedestrian travel and crossings at this location. Dawson Rd has curvature between Passley Road and Highway 101. The curvature limits the line of sight for vehicles traveling west on Dawson towards Passley. It is recommended that a sign be placed on Dawson Rd, 155 feet east of Passley Rd, which is an orange diamond warning sign with black letters that states "PEDESTRIANS ON ROADWAY." This will alert motorists to be prepared to stop for pedestrians crossing at the Passley/Dawson intersection or walking within the roadway on Dawson Rd.

Parking

The demand for parking during the peak one hour for the proposed use is:

- 2 staff on 12-hour shifts= 2 parking spaces occupied
- 1 staff arrival shift change= 3 parking spaces occupied
- 1 staff leaving shift change= 2 parking spaces occupied
- 1 staff arrival shift change= 3 parking spaces occupied
- 1 staff leaving shift change= 2 parking spaces occupied
- 2 visitor trips= 2 spaces occupied by visitors and up to 3 spaces by staff.

The site operations are estimated to have up to 5 spaces occupied at any one time. The site is proposing 5 surface parking spaces and 1 garage space. The 6 spaces on site will adequately serve the typical vehicle parking demand. Additionally, Passley south of West-Cliff is approximately 36' in width. The roadway is wide enough to support on-street parking on both sides with safe two-way vehicle travel. This on-site parking is located within 350 feet of the building. This is not an unreasonable walking distance (less than 2 minutes) for additional visitors to have staff occasionally park on the street.

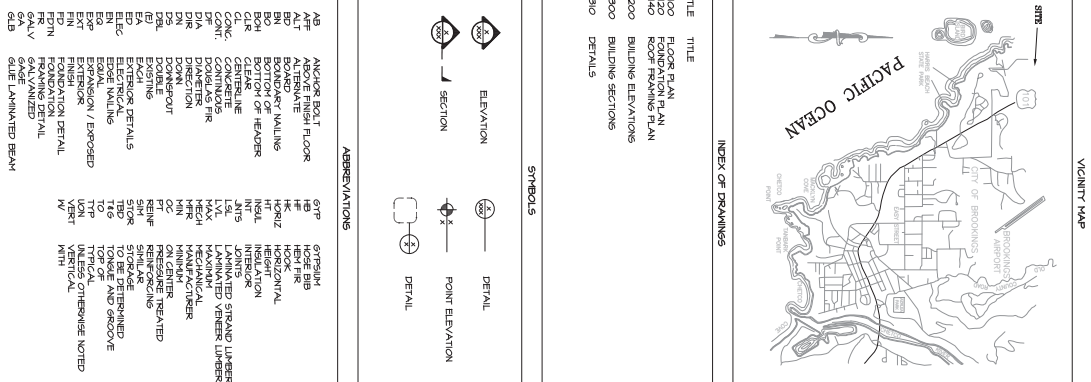
Conclusion

The adjacent existing transportation infrastructure is sufficient to handle the peak hour and daily operations for vehicles and pedestrians generated by the proposed use of the site, a 14-room 16-bed facility. The evaluation contained within this report concludes the following:

- There is sufficient parking on site for the proposed use. There is adjacent on-street parking within close proximity of the site that can be used if necessary. Parking is within

a reasonable distance, and there is a safe walking path between the parking and the site.

- The intersection of Highway 101 at Dawson Road will operate safely and efficiently with the additional trips from the proposed use. There is sufficient capacity for safe operations, and the operations meet the current standards by ODOT and the City of Brookings.
- The existing adjacent infrastructure is sufficient to allow for safe pedestrian access to the site, the adjacent parcels within the Dawson Tract, and to Highway 101. It is recommended that a "PEDESTRIANS ON ROADWAY" warning sign be placed on Dawson Road, 155 feet east of Passley Road, to alert drivers traveling through the curvature towards Passley Road of the possible presence of pedestrians.
- The proposed site design and site usage will allow for safe access for emergency vehicles.



ATTACHMENT A:
TABLE 5 CITY OF BROOKINGS TSP

Table 5-1. Roadway Street Design Standards—General Classifications

Functional Classification	Minimum Right-of-Way (feet) ¹	Minimum Road Surface Width (feet)	Pedestrian Improvements	Bicycle Improvements (if appropriate)
State Highway Arterial ²	84	70	5-12 feet, both sides	5 feet, both sides
Residential Collector	50	36	12-foot multi-use path (in lieu of bike lanes and sidewalk)	(Refer to Pedestrian Improvements)
Residential (Local) ³	42	28	5 feet, both sides	None
Residential (Local) ^{3, 4} Maximum of 12 dwelling units taking access	38	24	5 feet, both sides	None
Residential (Local) ³ Maximum of 8 dwelling units taking access and on-street parking available within 400 feet of this street ⁵	29	20	5 feet, one side	None
Downtown Core Area ² (See Municipal Code Map 17.92.030-1)	50	36	5-8 feet, both sides	5 feet, both sides
Residential One-Way Street ⁵	34	20	5 feet, both sides	None
Half Street ^{5, 6}	Half of accepted standard	Half of accepted standard	5 feet, one side	None
Access Road Turn-Around	See public works document – General Engineering Requirements and Standard Specifications	See public works document – General Engineering Requirements and Standard Specifications	To be determined based on type of turn-around	To be determined based on type of turn-around
Commercial/Industrial ²	58	44	5-8 feet, both sides	5 feet, both sides
Commercial One-Way Street	50	36	5-8 feet, both sides	5 feet, one side
Hillside Collector Street ^{5,7,8,9}	27	20	4-foot paved shoulder, one side	None
Hillside Local Street ^{5,7,8,9} Maximum of 12 dwelling units taking access	23	20	None	None
Hillside One-Way Street ^{5,7,8,9,10}	23	16	4-foot paved shoulder, one side	None
Alley	20	20	None	None
Existing Residential Streets – Must be approved by the City Council in a Local Improvement District process ^{5,11}	30	16	Proposal by applicants	Proposal by applicants

¹ If bike lanes are proposed, an additional 10 feet of right-of-way will be needed.

² Sidewalks must be maximum width possible when adequate right-of-way is available and topography allows.

³ See layout guidelines in “Neighborhood Street Design Guidelines” document. Low impact development techniques such as landscaped buffers, vegetated swales, parking pavers, etc. are encouraged.

⁴ Parking on one side only.

⁵ No parking on either side on pavement.

⁶ Only used when easement for second half width is secured on adjacent property. Must be approved by Planning Commission.

⁷ Requires documentation that topographical constraints warrant use of hillside streets. Site plan committee approval required.

⁸ Alternative engineered designed standards may be considered and right-of-way width may vary depending on topography.

⁹ Curbs may be required depending on City Engineer’s recommendation.

¹⁰ Paved shoulders must be constructed to meet paved roadway standards.

¹¹ Parking facilities to be proposed by applicant.

ATTACHMENT B:
TRAFFIC VOLUMES

2012									
		440		365					
2012		R	T	L	PED				
1		5	405	30	0				
Ped	0					5	R	135	
100	L	5	1: US 101 @ Carpenterville Rd			5	T	210	
	T	5				125	L		
60	R	50				0	Ped		
		0	90	355	175				
		Ped	L	T	R				
		580		620					

EDIT Highlighted

Base Year 2012
 Target Year 2022
 Years of Growth 10
 Growth Rate Per Year 0.010
 Growth Factor 1.10

2022 PM Volumes Background

		484		402					
		R	T	L	PED				
1		6	446	33	0				
Ped	0					6	R	149	
110	L	6	1: US 101 @ Carpenterville Rd			6	T	231	
	T	6				138	L		
66	R	55				0	Ped		
		0	99	391	193				
		Ped	L	T	R				
		638		682					

EDIT Highlighted

Base Year 2012
 Target Year 2023
 Years of Growth 11
 Growth Rate Per Year 0.010
 Growth Factor 1.11

2023 PM Volumes Background

		488		405					
		R	T	L	PED				
1		6	450	33	0				
Ped	0					6	R	150	
111	L	6	1: US 101 @ Carpenterville Rd			6	T	233	
	T	6				139	L		
67	R	56				0	Ped		
		0	100	394	194				
		Ped	L	T	R				
		644		688					

EDIT Highlighted

Base Year 2012
 Target Year 2028
 Years of Growth 16
 Growth Rate Per Year 0.010
 Growth Factor 1.16

2028 PM Volumes Background









		510		423					
		R	T	L	PED				
1		6	470	35	0				
Ped	0					6	R	157	
116	L	6	1: US 101 @ Carpenterville Rd			6	T	244	
	T	6				145	L		
70	R	58				0	Ped		
		0	104	412	203				
		Ped	L	T	R				
		673		719					

2023 PM Build Volumes										2028 PM Build Volumes									

ATTACHMENT C:
SYNCHRO OUTPUTS

HCM 6th TWSC
3: Hwy 101 & Dawson Rd/Carpenterville Rd

05/13/2022

Intersection												
Int Delay, s/veh	49.3											
Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations												
Traffic Vol, veh/h	6	6	55	138	6	6	99	391	193	33	446	6
Future Vol, veh/h	6	6	55	138	6	6	99	391	193	33	446	6
Conflicting Peds, #/hr	0	0	0	0	0	0	0	0	0	0	0	0
Sign Control	Stop	Stop	Stop	Stop	Stop	Stop	Free	Free	Free	Free	Free	Free
RT Channelized	-	-	None	-	-	None	-	-	None	-	-	None
Storage Length	-	-	-	-	-	-	250	-	160	270	-	150
Veh in Median Storage, #	-	0	-	-	0	-	-	0	-	-	0	-
Grade, %	-	0	-	-	0	-	-	0	-	-	0	-
Peak Hour Factor	85	85	85	85	85	85	85	85	85	85	85	85
Heavy Vehicles, %	0	0	0	2	0	2	0	5	0	0	5	0
Mvmt Flow	7	7	65	162	7	7	116	460	227	39	525	7
Major/Minor	Minor2		Minor1		Major1		Major2					
Conflicting Flow All	1416	1522	525	1335	1302	460	532	0	0	687	0	0
Stage 1	603	603	-	692	692	-	-	-	-	-	-	-
Stage 2	813	919	-	643	610	-	-	-	-	-	-	-
Critical Hdwy	7.1	6.5	6.2	7.12	6.5	6.22	4.1	-	-	4.1	-	-
Critical Hdwy Stg 1	6.1	5.5	-	6.12	5.5	-	-	-	-	-	-	-
Critical Hdwy Stg 2	6.1	5.5	-	6.12	5.5	-	-	-	-	-	-	-
Follow-up Hdwy	3.5	4	3.3	3.518	4	3.318	2.2	-	-	2.2	-	-
Pot Cap-1 Maneuver	116	120	556	~ 131	162	601	1046	-	-	916	-	-
Stage 1	489	492	-	434	448	-	-	-	-	-	-	-
Stage 2	375	353	-	462	488	-	-	-	-	-	-	-
Platoon blocked, %								-	-	-	-	-
Mov Cap-1 Maneuver	98	102	556	~ 97	138	601	1046	-	-	916	-	-
Mov Cap-2 Maneuver	98	102	-	~ 97	138	-	-	-	-	-	-	-
Stage 1	435	471	-	386	398	-	-	-	-	-	-	-
Stage 2	324	314	-	385	467	-	-	-	-	-	-	-
Approach	EB		WB		NB		SB					
HCM Control Delay, s	20.8		\$ 437.9		1.3		0.6					
HCM LOS	C		F									
Minor Lane/Major Mvmt	NBL	NBT	NBR	EBLn1WBLn1	SBL	SBT	SBR					
Capacity (veh/h)	1046	-	-	306	102	916	-	-				
HCM Lane V/C Ratio	0.111	-	-	0.258	1.73	0.042	-	-				
HCM Control Delay (s)	8.9	-	-	20.8	\$ 437.9	9.1	-	-				
HCM Lane LOS	A	-	-	C	F	A	-	-				
HCM 95th %tile Q(veh)	0.4	-	-	1	14	0.1	-	-				
Notes												
~: Volume exceeds capacity		\$: Delay exceeds 300s		+: Computation Not Defined				*: All major volume in platoon				









HCM 6th TWSC
3: Hwy 101 & Dawson Rd/Carpenterville Rd

05/13/2022

Intersection												
Int Delay, s/veh	52.5											
Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations		↕			↕		↙	↑	↗	↙	↑	↗
Traffic Vol, veh/h	6	6	56	139	6	6	100	394	194	33	450	6
Future Vol, veh/h	6	6	56	139	6	6	100	394	194	33	450	6
Conflicting Peds, #/hr	0	0	0	0	0	0	0	0	0	0	0	0
Sign Control	Stop	Stop	Stop	Stop	Stop	Stop	Free	Free	Free	Free	Free	Free
RT Channelized	-	-	None	-	-	None	-	-	None	-	-	None
Storage Length	-	-	-	-	-	-	250	-	160	270	-	150
Veh in Median Storage, #	-	0	-	-	0	-	-	0	-	-	0	-
Grade, %	-	0	-	-	0	-	-	0	-	-	0	-
Peak Hour Factor	85	85	85	85	85	85	85	85	85	85	85	85
Heavy Vehicles, %	0	0	0	2	0	2	0	5	0	0	5	0
Mvmt Flow	7	7	66	164	7	7	118	464	228	39	529	7
Major/Minor	Minor2		Minor1		Major1		Major2					
Conflicting Flow All	1428	1535	529	1347	1314	464	536	0	0	692	0	0
Stage 1	607	607	-	700	700	-	-	-	-	-	-	-
Stage 2	821	928	-	647	614	-	-	-	-	-	-	-
Critical Hdwy	7.1	6.5	6.2	7.12	6.5	6.22	4.1	-	-	4.1	-	-
Critical Hdwy Stg 1	6.1	5.5	-	6.12	5.5	-	-	-	-	-	-	-
Critical Hdwy Stg 2	6.1	5.5	-	6.12	5.5	-	-	-	-	-	-	-
Follow-up Hdwy	3.5	4	3.3	3.518	4	3.318	2.2	-	-	2.2	-	-
Pot Cap-1 Maneuver	114	117	554	~ 128	160	598	1042	-	-	912	-	-
Stage 1	487	489	-	430	444	-	-	-	-	-	-	-
Stage 2	371	349	-	460	486	-	-	-	-	-	-	-
Platoon blocked, %								-	-	-	-	-
Mov Cap-1 Maneuver	96	99	554	~ 94	136	598	1042	-	-	912	-	-
Mov Cap-2 Maneuver	96	99	-	~ 94	136	-	-	-	-	-	-	-
Stage 1	432	468	-	381	394	-	-	-	-	-	-	-
Stage 2	319	310	-	382	465	-	-	-	-	-	-	-
Approach	EB		WB		NB		SB					
HCM Control Delay, s	21.1		\$ 467.7		1.3		0.6					
HCM LOS	C		F									
Minor Lane/Major Mvmt	NBL	NBT	NBR	EBLn1WBLn1	SBL	SBT	SBR					
Capacity (veh/h)	1042	-	-	303	99	912	-	-				
HCM Lane V/C Ratio	0.113	-	-	0.264	1.794	0.043	-	-				
HCM Control Delay (s)	8.9	-	-	21.1\$	467.7	9.1	-	-				
HCM Lane LOS	A	-	-	C	F	A	-	-				
HCM 95th %tile Q(veh)	0.4	-	-	1	14.4	0.1	-	-				
Notes												
~: Volume exceeds capacity		\$: Delay exceeds 300s		+: Computation Not Defined				*: All major volume in platoon				









HCM 6th TWSC
3: Hwy 101 & Dawson Rd/Carpenterville Rd

05/13/2022

Intersection												
Int Delay, s/veh	54.2											
Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations												
Traffic Vol, veh/h	7	6	58	139	6	6	102	394	194	33	450	7
Future Vol, veh/h	7	6	58	139	6	6	102	394	194	33	450	7
Conflicting Peds, #/hr	0	0	0	0	0	0	0	0	0	0	0	0
Sign Control	Stop	Stop	Stop	Stop	Stop	Stop	Free	Free	Free	Free	Free	Free
RT Channelized	-	-	None	-	-	None	-	-	None	-	-	None
Storage Length	-	-	-	-	-	-	250	-	160	270	-	150
Veh in Median Storage, #	-	0	-	-	0	-	-	0	-	-	0	-
Grade, %	-	0	-	-	0	-	-	0	-	-	0	-
Peak Hour Factor	85	85	85	85	85	85	85	85	85	85	85	85
Heavy Vehicles, %	0	0	0	2	0	2	0	5	0	0	5	0
Mvmt Flow	8	7	68	164	7	7	120	464	228	39	529	8
Major/Minor	Minor2		Minor1		Major1		Major2					
Conflicting Flow All	1432	1539	529	1353	1319	464	537	0	0	692	0	0
Stage 1	607	607	-	704	704	-	-	-	-	-	-	-
Stage 2	825	932	-	649	615	-	-	-	-	-	-	-
Critical Hdwy	7.1	6.5	6.2	7.12	6.5	6.22	4.1	-	-	4.1	-	-
Critical Hdwy Stg 1	6.1	5.5	-	6.12	5.5	-	-	-	-	-	-	-
Critical Hdwy Stg 2	6.1	5.5	-	6.12	5.5	-	-	-	-	-	-	-
Follow-up Hdwy	3.5	4	3.3	3.518	4	3.318	2.2	-	-	2.2	-	-
Pot Cap-1 Maneuver	113	117	554	~ 127	158	598	1041	-	-	912	-	-
Stage 1	487	489	-	428	443	-	-	-	-	-	-	-
Stage 2	370	348	-	458	485	-	-	-	-	-	-	-
Platoon blocked, %								-	-	-	-	-
Mov Cap-1 Maneuver	95	99	554	~ 93	134	598	1041	-	-	912	-	-
Mov Cap-2 Maneuver	95	99	-	~ 93	134	-	-	-	-	-	-	-
Stage 1	431	468	-	379	392	-	-	-	-	-	-	-
Stage 2	318	308	-	379	464	-	-	-	-	-	-	-
Approach	EB		WB		NB		SB					
HCM Control Delay, s	21.8		\$ 485.3		1.3		0.6					
HCM LOS	C		F									
Minor Lane/Major Mvmt	NBL	NBT	NBR	EBLn1WBLn1	SBL	SBT	SBR					
Capacity (veh/h)	1041	-	-	297	97	912	-	-				
HCM Lane V/C Ratio	0.115	-	-	0.281	1.831	0.043	-	-				
HCM Control Delay (s)	8.9	-	-	21.8	\$ 485.3	9.1	-	-				
HCM Lane LOS	A	-	-	C	F	A	-	-				
HCM 95th %tile Q(veh)	0.4	-	-	1.1	14.6	0.1	-	-				
Notes												
~: Volume exceeds capacity		\$: Delay exceeds 300s		+: Computation Not Defined				*: All major volume in platoon				









HCM 6th TWSC
3: Hwy 101 & Dawson Rd/Carpenterville Rd

05/13/2022

Intersection												
Int Delay, s/veh	67.6											
Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations												
Traffic Vol, veh/h	6	6	58	145	6	6	104	412	203	35	470	6
Future Vol, veh/h	6	6	58	145	6	6	104	412	203	35	470	6
Conflicting Peds, #/hr	0	0	0	0	0	0	0	0	0	0	0	0
Sign Control	Stop	Stop	Stop	Stop	Stop	Stop	Free	Free	Free	Free	Free	Free
RT Channelized	-	-	None	-	-	None	-	-	None	-	-	None
Storage Length	-	-	-	-	-	-	250	-	160	270	-	150
Veh in Median Storage, #	-	0	-	-	0	-	-	0	-	-	0	-
Grade, %	-	0	-	-	0	-	-	0	-	-	0	-
Peak Hour Factor	85	85	85	85	85	85	85	85	85	85	85	85
Heavy Vehicles, %	0	0	0	2	0	2	0	5	0	0	5	0
Mvmt Flow	7	7	68	171	7	7	122	485	239	41	553	7
Major/Minor	Minor2		Minor1		Major1		Major2					
Conflicting Flow All	1491	1603	553	1405	1371	485	560	0	0	724	0	0
Stage 1	635	635	-	729	729	-	-	-	-	-	-	-
Stage 2	856	968	-	676	642	-	-	-	-	-	-	-
Critical Hdwy	7.1	6.5	6.2	7.12	6.5	6.22	4.1	-	-	4.1	-	-
Critical Hdwy Stg 1	6.1	5.5	-	6.12	5.5	-	-	-	-	-	-	-
Critical Hdwy Stg 2	6.1	5.5	-	6.12	5.5	-	-	-	-	-	-	-
Follow-up Hdwy	3.5	4	3.3	3.518	4	3.318	2.2	-	-	2.2	-	-
Pot Cap-1 Maneuver	103	107	537	~ 117	147	582	1021	-	-	888	-	-
Stage 1	470	476	-	414	431	-	-	-	-	-	-	-
Stage 2	355	335	-	443	472	-	-	-	-	-	-	-
Platoon blocked, %								-	-	-	-	-
Mov Cap-1 Maneuver	85	90	537	~ 84	123	582	1021	-	-	888	-	-
Mov Cap-2 Maneuver	85	90	-	~ 84	123	-	-	-	-	-	-	-
Stage 1	414	454	-	365	380	-	-	-	-	-	-	-
Stage 2	303	295	-	363	450	-	-	-	-	-	-	-
Approach	EB		WB		NB		SB					
HCM Control Delay, s	22.7		\$ 609		1.3		0.6					
HCM LOS	C		F									
Minor Lane/Major Mvmt	NBL	NBT	NBR	EBLn1WBLn1	SBL	SBT	SBR					
Capacity (veh/h)	1021	-	-	285	88	888	-	-				
HCM Lane V/C Ratio	0.12	-	-	0.289	2.099	0.046	-	-				
HCM Control Delay (s)	9	-	-	22.7	\$ 609	9.3	-	-				
HCM Lane LOS	A	-	-	C	F	A	-	-				
HCM 95th %tile Q(veh)	0.4	-	-	1.2	16.3	0.1	-	-				
Notes												
~: Volume exceeds capacity		\$: Delay exceeds 300s		+: Computation Not Defined				*: All major volume in platoon				

HCM 6th TWSC
3: Hwy 101 & Dawson Rd/Carpenterville Rd

05/13/2022

Intersection												
Int Delay, s/veh	69.9											
Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations												
Traffic Vol, veh/h	7	6	60	145	6	6	106	412	203	35	470	7
Future Vol, veh/h	7	6	60	145	6	6	106	412	203	35	470	7
Conflicting Peds, #/hr	0	0	0	0	0	0	0	0	0	0	0	0
Sign Control	Stop	Stop	Stop	Stop	Stop	Stop	Free	Free	Free	Free	Free	Free
RT Channelized	-	-	None	-	-	None	-	-	None	-	-	None
Storage Length	-	-	-	-	-	-	250	-	160	270	-	150
Veh in Median Storage, #	-	0	-	-	0	-	-	0	-	-	0	-
Grade, %	-	0	-	-	0	-	-	0	-	-	0	-
Peak Hour Factor	85	85	85	85	85	85	85	85	85	85	85	85
Heavy Vehicles, %	0	0	0	2	0	2	0	5	0	0	5	0
Mvmt Flow	8	7	71	171	7	7	125	485	239	41	553	8
Major/Minor	Minor2		Minor1		Major1		Major2					
Conflicting Flow All	1497	1609	553	1413	1378	485	561	0	0	724	0	0
Stage 1	635	635	-	735	735	-	-	-	-	-	-	-
Stage 2	862	974	-	678	643	-	-	-	-	-	-	-
Critical Hdwy	7.1	6.5	6.2	7.12	6.5	6.22	4.1	-	-	4.1	-	-
Critical Hdwy Stg 1	6.1	5.5	-	6.12	5.5	-	-	-	-	-	-	-
Critical Hdwy Stg 2	6.1	5.5	-	6.12	5.5	-	-	-	-	-	-	-
Follow-up Hdwy	3.5	4	3.3	3.518	4	3.318	2.2	-	-	2.2	-	-
Pot Cap-1 Maneuver	102	106	537	~ 115	146	582	1020	-	-	888	-	-
Stage 1	470	476	-	411	428	-	-	-	-	-	-	-
Stage 2	353	333	-	442	472	-	-	-	-	-	-	-
Platoon blocked, %								-	-	-	-	-
Mov Cap-1 Maneuver	84	89	537	~ 82	122	582	1020	-	-	888	-	-
Mov Cap-2 Maneuver	84	89	-	~ 82	122	-	-	-	-	-	-	-
Stage 1	412	454	-	360	375	-	-	-	-	-	-	-
Stage 2	300	292	-	360	450	-	-	-	-	-	-	-
Approach	EB		WB		NB		SB					
HCM Control Delay, s	23.6		\$ 632.4		1.3		0.6					
HCM LOS	C		F									
Minor Lane/Major Mvmt	NBL	NBT	NBR	EBLn1WBLn1	SBL	SBT	SBR					
Capacity (veh/h)	1020	-	-	278	86	888	-	-				
HCM Lane V/C Ratio	0.122	-	-	0.309	2.148	0.046	-	-				
HCM Control Delay (s)	9	-	-	23.6	\$ 632.4	9.3	-	-				
HCM Lane LOS	A	-	-	C	F	A	-	-				
HCM 95th %tile Q(veh)	0.4	-	-	1.3	16.5	0.1	-	-				
Notes												
~: Volume exceeds capacity		\$: Delay exceeds 300s		+: Computation Not Defined				*: All major volume in platoon				

ATTACHMENT D:
PEDESTRIAN LEVEL OF SERVICE TSP

3.2.5.1 Pedestrian Level of Service

The Pedestrian Level of Service (PLOS) analysis resulted in a score of 1 to 5. PLOS 1 represents a comfortable pedestrian environment for all types of users such as a complete sidewalk network on both sides of a 2-lane or narrower street. Higher scores represent conditions with higher posted traffic speeds, lack of sidewalks, and lack of buffer space adjacent to the walking area. On all streets, a score of PLOS 5 can be considered deficient for pedestrians. In areas with vulnerable pedestrians, including students and aging adults, a PLOS 1-2 target is appropriate.

The PLOS analysis used sidewalk and roadway data from the City of Brookings to assign a relative score to each roadway segment. Many roadways in Brookings have a partial sidewalk on one or both sides of the roadway, and each of these gaps presents barriers for people with mobility impairments. Therefore, these facilities were scored to account for these gaps in the analysis. **Table 3-5** shows the scoring range and criteria.

Table 3-5. PLOS Scoring Range

Pedestrian Space	Speed Limit (mph)					
	< = 25 mph*		30 - 35 mph		> = 40 mph	
	2 lanes	> 2 lanes	2 lanes	> 2 lanes	2 lanes	> 2 lanes
Complete sidewalk on both sides next to a buffer ¹	1	1	1	2	3	4
Complete sidewalk on both sides	1	1	2	3	3	4
Complete sidewalk on one side next to a buffer ¹	2	2	2	3	3	5
Complete sidewalk on one side	2	3	3	4	4	5
No dedicated space next to a buffer ¹	2	3	3	4	5	5
No dedicated space	2	3	4	5	5	5

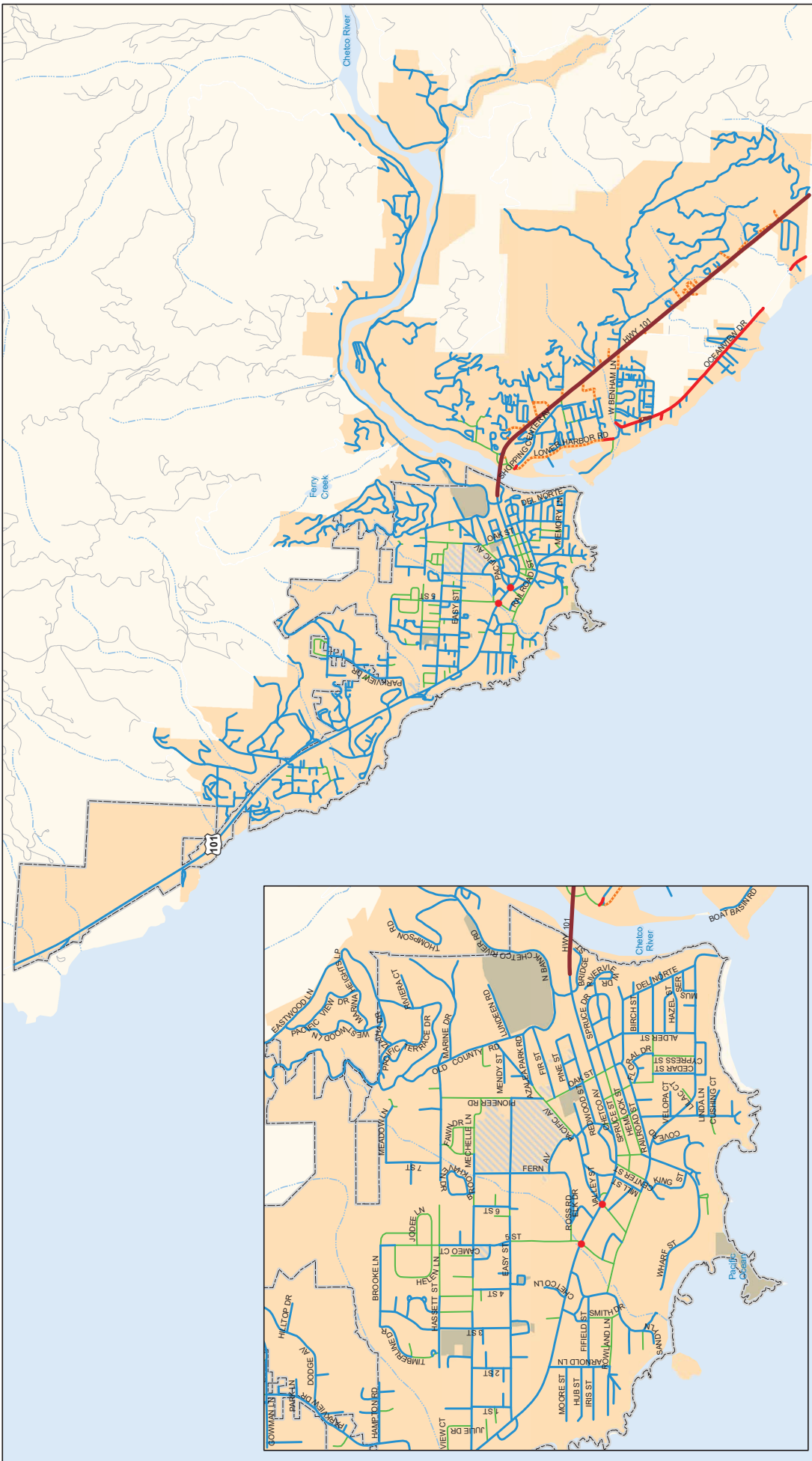
¹ Buffers include bicycle lanes and/or on-street parking

The PLOS scores on most existing city streets in Brookings reflect the low speed limits and relatively dense sidewalk network that create a good overall pedestrian environment (**Figure 3-6**). There are a few places in the city with sidewalk gaps, completely missing sidewalk, or speed limits above 25 mph. These qualities caused some streets to have a lower score.

The existing conditions in the Harbor unincorporated urban area reflect the low speed limits but fragmented sidewalk network. Although sidewalks are sparser than in Brookings, the low speeds contribute to a fair pedestrian environment. Within the Harbor unincorporated urban area, US 101 and Oceanview Drive scored low. Sidewalks are not present on Lower Harbor Road, but pedestrians are aided by the presence of bike lanes.

The PLOS scores are reflective of walkway conditions. Qualitative information about crossings was obtained from the TAC. Through them, the following intersections were described as uncomfortable:

- US 101 at 5th Street, and
- US 101 at Ransom Avenue/south end of the Harris Beach Trail.



Source: (Curry County, City of Brookings, US Census, Alta Planning + Design)

FIGURE 3-6
PEDESTRIAN LEVEL OF SERVICE (PLOS) ANALYSIS
 Transportation System Plan
 Brookings, Oregon

Pedestrian Level of Service

1 2 3 4 5

Parametrix and Alta Planning + Design

5,000
 Scale in Feet

3.2.5.2 Bicycle Level of Traffic Stress

The Bicycle Level of Traffic Stress (LTS) analysis framework adds additional roadway attributes to the ODOT method without substantially changing it and provides a general snapshot of cycling comfort. In the Bicycle LTS, road segments are classified into one of four levels of traffic stress based on the anticipated user comfort, as shown in **Table 3-6**. Bicycle LTS 1 represents streets that have low traffic stress and are suitable for all users, including cyclists 10 years old or in 5th grade. Confident and enthused riders are expected to feel safe and comfortable on a facility with an LTS of 1 or 2. LTS 3 represents moderate stress and may be uncomfortable for many adults. LTS 4 represents high stress environments, suitable only for experienced and skilled cyclists. Note that the roadway link shows the lower LTS score between the corridor and intersection analysis. To capture other situations that affect the bicycling environment, other ridership factors can be added to the analysis. Congestion, narrow travel lanes, and heavy vehicles can be factors that downgrade a segment by rendering a route less acceptable than otherwise analyzed.

Table 3-6. Levels of Traffic Stress

LTS	Description	Suitability	Traffic Speed	Intersections	Typical Locations
1	Little traffic stress and requires less attention	All cyclists (age 10 or higher)	Low	Easy to cross by children and adults	Residential local streets and separated bike paths/cycle tracks
2	Little traffic stress but requires more attention than young children can handle	Teen and adult cyclists with adequate bicycle-handling skills	Low differentials	Not difficult to cross for most teenagers and adults	Collector-level streets with bike lanes or a central business district
3	Moderate stress	Most observant adult cyclists	Moderate	Perceived to be safe by most adults	Low-speed arterials with bike lanes or moderate speed non-multi-lane roadways
4	High stress	Experienced and skilled cyclists	Moderate to high	Complex, wide, and/or high volume and speed that can be perceived as unsafe by adults, making crossings difficult	High-speed or multi-lane roadways with narrow lanes or no bike lanes

Because the methodology was developed primarily for urban areas, a separate rural methodology was created for rural highways with posted or operating speeds over 45 mph. The rural LTS considers daily volumes and paved shoulder widths.

Scores were assigned to individual roadway links using ESRI ArcGIS. Roadway data provided by the City of Brookings were enriched through review of aerial photographs. Generally speaking, in this model, cycling comfort decreases as number of lanes and posted speed increase. Cyclist comfort increases when dedicated roadway space is provided and interaction with motor vehicles is reduced (e.g., buffered bike lanes or cycle tracks). Discomfort at intersections increases with number of roadways, lanes, and speeds while decreasing with traffic calming and intersection controls.

Despite few designated on-street bikeway facilities, the city of Brookings and the Harbor unincorporated urban area sport relatively strong bicycling environments. The grid network of low-traffic, low-speed streets provides good connectivity to major destinations, especially for individuals familiar with the area and ways to avoid riding on US 101. US 101 scored the poorest on the LTS scale due to the proximity to

higher speed traffic and congestion (see **Figure 3-7**). Urban collectors with roadway centerlines, such as Oak Street and Easy Street, received slightly lower scores. Centerlines have the effect of keeping roadway users on only their half of the road, which means bicyclists tend to ride farther to the right, nearest the parking lane. In the absence of these lines, individuals are more likely to share the roadway space; moreover, bicyclists feel more comfortable riding farther into the travel lane and away from the threat of an opening car door. The Oregon Coast Bike Route runs along US 101 and diverges onto Lower Harbor Road, and is served by existing bike lanes. The roadway scored an LTS 3 because of the higher posted speed limits.

Higher order streets, such as arterials and collectors, require an increased level of physical separation to create comfortable bicycling conditions. US 101, Easy Street, Oak Street, Railroad Street, Harbor Road, W Benham Lane, Shopping Center Avenue, and other urban collectors would each benefit from the development of separated bikeway facilities, such as bike lanes or buffered bike lanes. Although local access streets have a good existing LTS score, these roads are also assessed for potential neighborhood greenway improvements.

The LTS analysis also identified areas where facilities could be improved for specific populations, particularly school students. ODOT recommends establishing a target of LTS 1 for the bikeway network within ¼ mile of an elementary school, while middle and high school students can use LTS 2 roadways without difficulty.

3.2.5.3 Transit

A qualitative assessment of the existing transit level of service was completed based on a subjective ranking of Excellent/Good/Fair/Poor. Based on the existing transit frequency, schedule, speed/travel time, bus stop amenities, and connections to a pedestrian/bicycle network, the existing transit service in and throughout Brookings is rated Poor. The local transit provider rated their service as adequate.

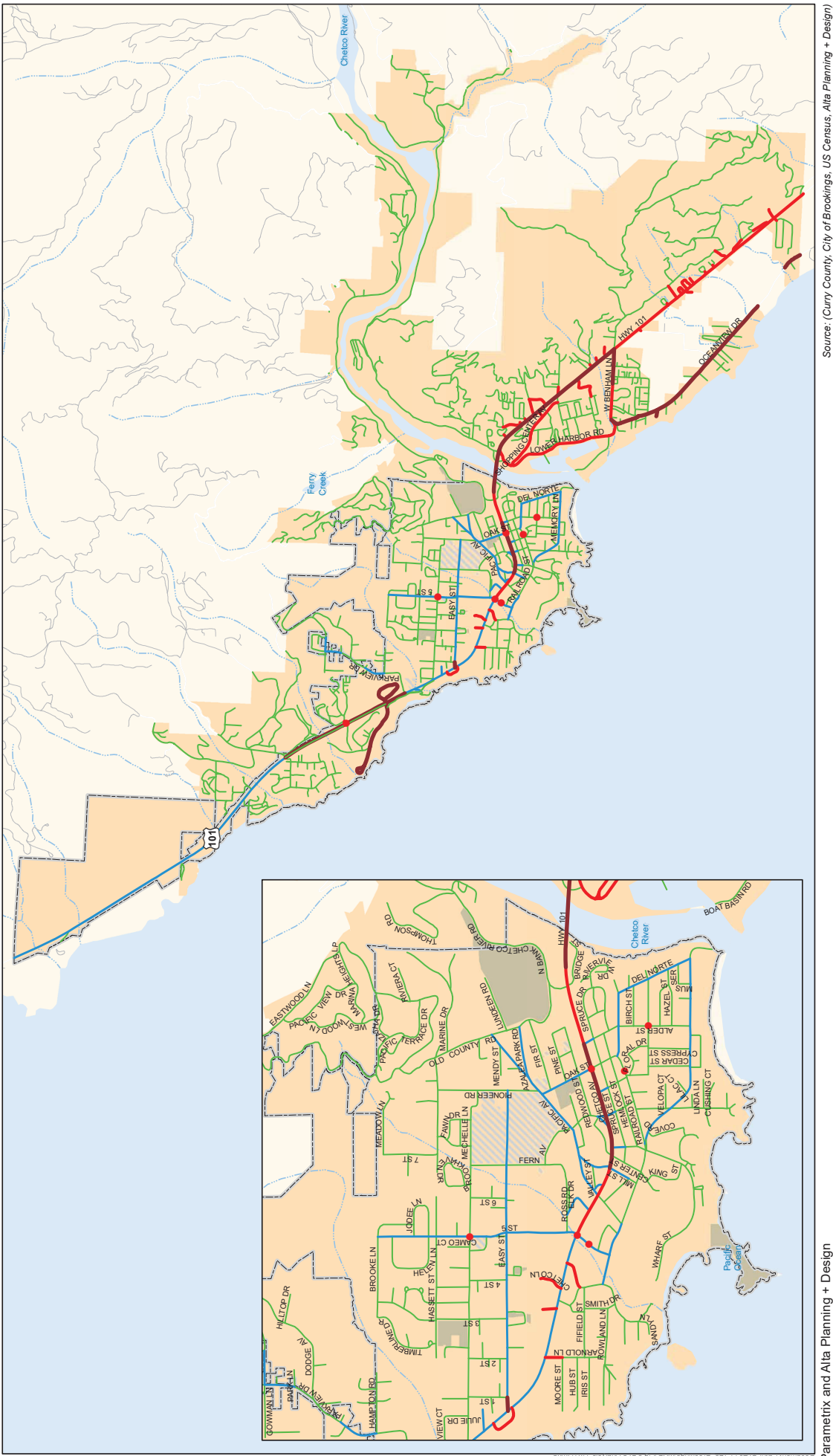
Transit in Brookings consists of a Dial-A-Ride service and a regional bus service called the Coastal Express. Both transit services provide limited frequency; the Dial-A-Ride service operates between 8:30 am and 4:00 pm on weekdays only, and the Coastal Express makes stops in Brookings three times per day on weekdays only.

3.2.6 Safety

Vehicle crashes within the Brookings Urban Growth Area were reviewed for the 5-year period between 2008 and 2012 for both state and non-state roadways to identify existing safety issues at intersections and along roadway segments. The data were provided by ODOT's Crash Data and Reporting Unit. In addition, ODOT's Statewide Priority Index System (SPIS) was reviewed to determine if ODOT had identified any hazardous locations along US 101 in Brookings based on crash frequency and severity.

3.2.6.1 Total Crash Summary

A total of 169 reported collisions occurred in Brookings from 2008 through 2012. However, on April 29, 2010, a traffic signal was installed at the intersection of N Bank Chetco River Road and US 101. In order to assess the existing conditions in 2012, only collisions that occurred after the installation of the signal at N Bank Chetco River Road were included in this analysis; as a result, 165 collisions were analyzed. Of these collisions, 1 (<1 percent) resulted in a fatal crash, 65 (40 percent) resulted in non-fatal injury-related crashes, and 99 (60 percent) resulted in property-damage only crashes. Over half of the 165 collisions (94 collisions or 57 percent) occurred at intersections, while 71 collisions (43 percent) occurred along a roadway segment.



Source: (Curry County, City of Brookings, US Census, Alta Planning + Design)

FIGURE 3-7
BICYCLE LEVEL OF STRESS (LTS)
ANALYSIS

Transportation System Plan
 Brookings, Oregon



THE DYER PARTNERSHIP
ENGINEERS & PLANNERS, INC.

1330 Teakwood Avenue
Coos Bay, Oregon 97420
Ph: (541) 269-0732
Fx: (541) 269-2044
www.dyerpart.com

MEMORANDUM

DATE April 14, 2022
TO Anthony Baron, Public Works & Development Services Director
City of Brookings
FROM Andrew Hall, PE
The Dyer Partnership
PROJECT NAME Oceanside Estates – Drainage Evaluation

This Technical Memorandum is in response to the City's request for The Dyer Partnership Engineers and Planners, Inc. to review an Oregon Land Use Board of Appeals (LUBA) for a proposed storm drainage layout that pertains to residential development located in Lot 2200 in the Oceanside Estates Subdivision.

Based on the information provided by the City, the Oceanside Estates Subdivision currently has a 20-foot stormwater easement that was established to the west side of the proposed property to be used to collect stormwater runoff from property development to the north and east of Oceanside Estates Subdivision. The easement was required when Oceanside East Subdivision was approved by the City. The storm drainage system adjacent to the proposed property within the easement is a 12-inch diameter storm drain line per City records. The as-builts for the subdivision surrounding Oceanside Estates show the conveyance of natural drainage to the stormwater system through this easement to Dawson Road and ultimately to the Pacific Ocean.

From a feasibility perspective, it is expected that the applicant can direct stormwater to the storm drainage system within the easement to the west of the property; however, the applicant shall demonstrate the system can accommodate a 25-year, 24-hour storm event and not impact the downstream facilities. Engineered storm drainage plans and calculations are required when the applicant submits plans for a building permit. The applicant shall complete and submit these items to the City Engineer for review and approval prior to any construction, including streets. Storm drainage design shall be in accordance with the City of Brookings Comprehensive Plan for Drainage. All drainage from the applicant's lot shall be engineered in a manner that protects all adjoining properties.

Per Section 18.20.003-A.1.b of the City of Brookings Engineering Requirements and Standards Specifications the applicant shall evaluate preliminary and post development storm runoff conditions for a 25-year, 24-hour storm event and overland escape route. Site committee will determine whether downstream facilities are adequate for any additional run-off. If deemed inadequate, an engineered detention system or engineered downstream improvement will be required to mitigate the effects of the additional stormwater impact from the project.

Dyer recommends the applicant reviews the City of Brookings Municipal Code 13.35 – Storm Water for any additional requirements required by the City.

Please let me know if you have any questions or concerns.

PLAT NUMBER 2002-19

INSTRUMENT NO. 2002-4922

OCEANSIDE ESTATES II PHASE III & IV
A PLANNED COMMUNITY

A PARCEL OF LAND LYING WITHIN THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 40 SOUTH, RANGE 14 WEST, WILLAMETTE MERIDIAN, CITY OF BROOKINGS, CURRY COUNTY, OREGON.

SURVEYOR'S CERTIFICATE

I, LLOYD N. MATLOCK HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR AND THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH THE PROPER MONUMENTS THE LANDS REPRESENTED ON THE ATTACHED MAP, THE BOUNDARIES BEING DESCRIBED AS FOLLOWS: A PARCEL OF LAND LYING WITHIN THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 40 SOUTH, RANGE 14 WEST, WILLAMETTE MERIDIAN, CITY OF BROOKINGS, CURRY COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 8, KURY ESTATES, SUBDIVISION PLAT 1995-31, BEING A 5/8" IRON ROD WITH YELLOW PLASTIC CAP R.L.S. 1027 AND THE INITIAL POINT OF THIS SUBDIVISION. THENCE S00°05'41"E, 424.51 FEET; THENCE S70°55'33"W, 163.99 FEET; THENCE S70°51'48"W, 66.64 FEET TO THE EASTERLY BOUNDARY OF LOT 14, SUBDIVISION PLAT 2001-08, THENCE FOLLOWING ALONG SAID BOUNDARY N19°08'12"W, 124.22 FEET; THENCE S40°30'00"W, 70.00 FEET; THENCE N49°30'00"W, 188.00 FEET; THENCE N73°26'49"E, 85.00 FEET; THENCE N73°26'49"E, 126.95 FEET; THENCE N04°14'47"E, 97.67 FEET; THENCE N00°19'05"E, 32.52 FEET; THENCE N01°31'24"W, 117.11 FEET; THENCE N88°28'36"E, 239.00 FEET TO THE POINT OF BEGINNING.

Lloyd N. Matlock
LLOYD N. MATLOCK P.L.S. 2809

I HEREBY CERTIFY THAT THIS IS A TRUE AND EXACT COPY OF THE ORIGINAL.

Lloyd N. Matlock
LLOYD N. MATLOCK P.L.S. 2809

COVENANTS, CONDITIONS AND RESTRICTIONS
RECORDED PER INSTRUMENT 94-2869

OWNER

PACIFIC-WEST ASSOCIATES, INC.
9749 HAMPTON CIRCLE NORTH DRIVE
INDIANAPOLIS, INDIANA 46256

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Lloyd N. Matlock
OREGON
MARCH 18, 1997
LLOYD N. MATLOCK
2809LS
EXPIRES 12/31/2002

NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO MAP PHASE III AND IV, OCEANSIDE ESTATES II, AS APPROVED BY THE CITY OF BROOKINGS PER SUB-2-99. THE MONUMENTS FOR THIS SUBDIVISION WERE SET AND RECORDED ON PHASE II, OCEANSIDE ESTATES II, PLAT NUMBER 2001-21. THE BASIS OF BEARING WAS TAKEN FROM FIELD TIES OF MONUMENTS FOUND AND OR SET PER COUNTY SURVEY 40-823 AND ALSO USE FOR PHASES I AND II, OCEANSIDE ESTATES II. ALL MONUMENTS SHOWN AS FOUND WERE HELD AS RECORD.

Pacific Coast Surveys P.C.

LAND SURVEYING * PARTITIONS * PLANNING
DEVELOPMENT * MAPPING * GPS/GIS
620 Pioneer Road Phone: (541) 489-5054
P.O. Box 8026
Brookings, Oregon 97415 Cell Phone: (541) 870-7990
Drawn By: LLOYD MATLOCK Date: 01-04-2002
Checked By: Job No. 20-01-03
Drawing Name: MGP3.DWG Sheet 1 of 3

APPROVED FOR CURRY COUNTY, OREGON

Rachelle D. Shea
CHAIRMAN, BOARD OF COMMISSIONERS

James J. Bates
COMMISSIONER

James J. Bates
COMMISSIONER

James J. Bates
ASSESSOR

ALL TAXES, FEES ASSESSMENTS AND OTHER CHARGES AS PROVIDED BY O.R.S. 91-512 HAVE BEEN PAID AS OF AUGUST 14TH, 2002, Rachelle D. Shea
CURRY COUNTY TAX COLLECTOR

APPROVED THIS 14TH DAY OF AUGUST, 2002, BY THE G. J. Fry
CURRY COUNTY SURVEYOR

APPROVED THIS 17TH DAY OF JULY, 2002, BY THE CITY OF BROOKINGS
PLANNING COMMISSION

Randy J. Surman
CHAIRMAN

John C. Buchhoff
PLANNING DIRECTOR

FILED THIS 23 DAY OF August, 2002, AT 11:04 O'CLOCK A.M.

2002-4922
CURRY COUNTY INSTRUMENT No.

3
DRAWER No.

RENEE KOLEN
COUNTY CLERK

BY Sheryl Reynolds
DEPUTY

DECLARATION

KNOW ALL MEN BY THESE PRESENTS THAT I, PACIFIC-WEST ASSOCIATES, INC. AM THE OWNER OF THE LANDS REPRESENTED ON THE ANNEXED MAP AND MORE PARTICULARLY DESCRIBED IN THE ACCOMPANYING SURVEYOR'S CERTIFICATE AND HAVE CAUSED THE SAME TO BE PARTITIONED AND SURVEYED INTO LOTS AS SHOWN ON THE ANNEXED MAP. ALSO DEDICATE A STORM DRAIN EASEMENTS AND A 5 FOOT WIDE PUBLIC UTILITY EASEMENT ALONG OCEANSIDE EAST DRIVE, ALL TO THE CITY OF BROOKINGS AS SHOWN ON THE ANNEXED MAP. ALSO DEDICATE OCEANSIDE EAST DRIVE AS A PRIVATE ROAD.

Michael F. Gorski
MICHAEL F. GORSKI, PRESIDENT, PACIFIC-WEST ASSOCIATES, INC.

ACKNOWLEDGEMENT

STATE OF INDIANA

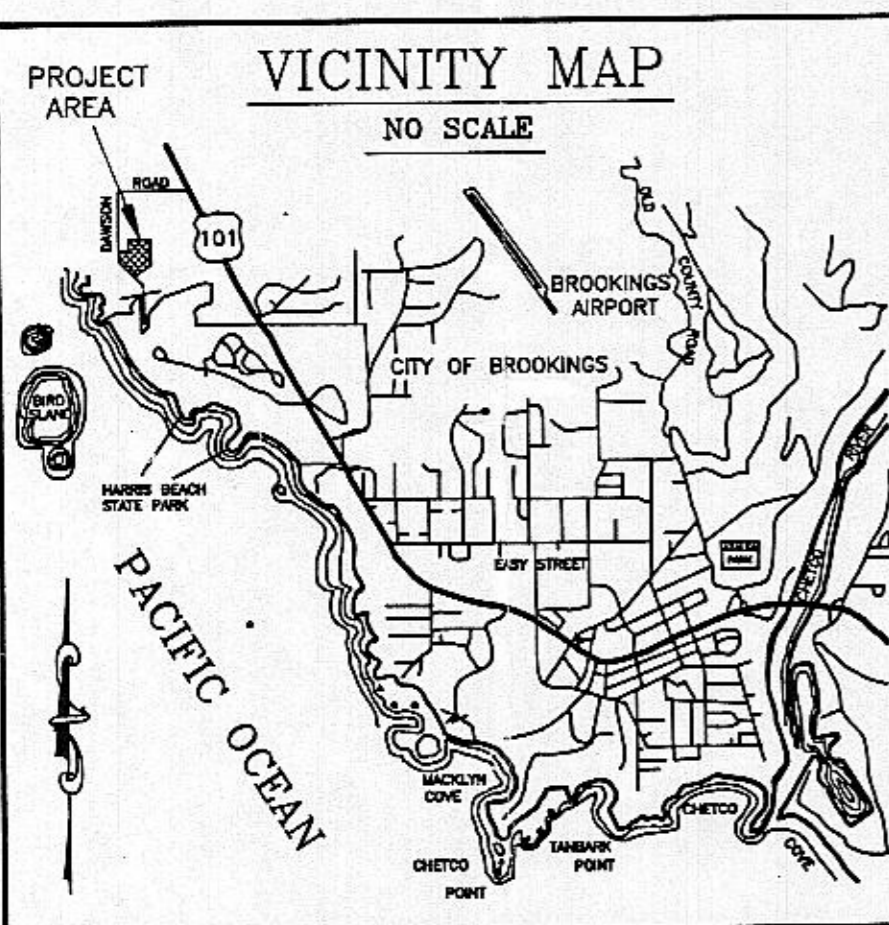
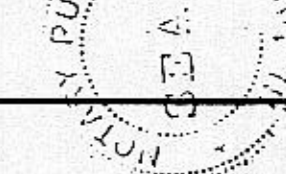
COUNTY OF Marion S.S.

BE IT REMEMBERED THAT ON THIS 25 DAY OF JANUARY, 1992, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE APPEARED MICHAEL F. GORSKI, PRESIDENT, PACIFIC-WEST ASSOCIATES, INC., TO ME PERSONALLY KNOWN TO BE THE IDENTICAL INDIVIDUAL NAMED IN AND WHO EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED SAME FREELY AND VOLUNTARILY, IN TESTIMONY WHEREOF, I HAVE SET MY HAND AND SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

NOTARY PUBLIC *Michael F. Gorski*

MY COMMISSION EXPIRES 12-07-07

Michael F. Gorski



PLAT NUMBER 2002-19

INSTRUMENT NO. 2002-4922

OCEANSIDE ESTATES II PHASE III & IV A PLANNED COMMUNITY

BASIS OF BEARING
(R&M) N88°28'36"E (M) 499.44 (R) 499.42
PER COUNTY SURVEY 40-823

INITIAL
POINT

TL 2000
40-14-36BA
BR 40-59
ANDRUSS
FD 5/8"IR
RLS 1027
C.S. 40-630

TL 2100
40-14-36BA
BR 109-56
BROOKINGS
CHURCH OF
CHRIST

PARCEL 2
P.P. 1992-41

(M) S00°05'41"E 424.51
(R) S00°07'00"E 424.47
PER C.S. 40-823

TL 200
40-14-36BD
INST. 91-3310
LINCOLN

EXISTING FENCE
ENCROACHES BY
APPROXIMATELY
BY 1.50 FEET
FD 3/4"IP
BENT

LOT 9
OCEAN
PARK
SUBD.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
MARCH 18, 1997
LLOYD N. MATLOCK
2809LS
EXPIRES 12/31/2002

SCALE 1"=40'

JANUARY 2002

OWNER

PACIFIC-WEST ASSOCIATES, INC.
9749 HAMPTON CIRCLE NORTH DR.
INDIANAPOLIS, INDIANA 46256

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	BEARING	CHORD
C1	13°23'29"	400.00	93.49	N81°47'09"E	93.28
C2	113°53'28"	120.00	238.53	N47°57'51"W	201.16
C3	67°44'53"	75.00	88.68	N42°51'19"E	83.61
C4	05°47'28"	384.00	38.81	N85°35'10"E	38.80
C5	07°36'01"	384.00	50.94	N78°53'25"E	50.90
C6	24°10'38"	136.00	57.39	S87°10'44"W	56.96
C7	24°37'27"	136.00	58.45	N68°25'14"W	58.00
C8	08°26'00"	136.00	20.02	N51°53'31"W	20.00
C9	10°07'30"	136.00	24.03	N42°36'45"W	24.00
C10	16°28'07"	136.00	39.09	N29°18'57"W	38.96
C11	27°52'00"	136.00	66.15	N07°08'53"W	65.50
C12	02°11'46"	136.00	5.21	N07°53'00"E	5.21
C13	24°02'37"	91.00	38.19	N21°00'11"E	37.91
C14	02°56'35"	91.00	4.67	N34°29'47"E	4.67
C15	10°15'00"	145.00	25.94	S30°29'10"W	25.91
C16	04°56'45"	145.00	12.52	S22°53'18"W	12.51
C17	47°31'37"	41.00	34.01	N44°10'44"E	33.04
C18	60°14'04"	41.00	43.10	S81°56'26"E	41.15
C19	45°29'14"	41.00	32.55	S29°04'47"E	31.70
C20	45°29'37"	41.00	32.55	S16°24'38"W	31.71
C21	68°47'28"	41.00	49.23	S73°33'11"W	46.32
C22	85°22'59"	20.00	29.80	N65°15'25"E	27.12
C23	13°35'03"	59.00	13.99	N15°46'24"E	13.96
C24	86°55'33"	104.00	157.78	N34°28'54"W	143.08
C25	26°57'55"	104.00	48.95	S88°34'22"W	48.50
C26	08°16'03"	416.00	60.03	N79°13'26"E	59.98
C27	05°07'26"	416.00	37.20	N85°55'11"E	37.19
C28	04°20'11"	175.00	13.24	N02°09'46"W	13.24
C29	21°10'29"	175.00	64.67	S14°55'06"E	64.31
C30	23°59'40"	175.00	73.29	S37°30'10"E	72.75
C31	49°30'20"	175.00	151.21	S24°44'50"E	146.55

LEGEND

- MONUMENT FOUND PER PARTITION PLAT 2001-21
- MONUMENT FOUND PER PARTITION PLAT 2001-08
- ⊙ MONUMENT FOUND AND ACCEPTED PER C.S. 40-739 (OR AS NOTED)
- RECORD POSITION ONLY
- (R) RECORD
- (M) MEASURED

DAWSON ROAD

FD 3/4"IP

FD 3/4"IP

C28

C29

C30

C31

C32

C33

C34

C35

C36

C37

C38

C39

4.87

FD 5/8"IR

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

FD 3/4"IP

(M) N88°22'19"E 159.85
(R) N88°20'28"E 159.78
PER P.P. 1993-29

TL 4700
40-14-36BB
INST. 94-12
NUNES

(M) N88°28'54"E 159.85
(R) N88°27'36"E 159.84
PER P.P. 1993-29

(M) N88°28'54"E 154.85
(R) N88°27'36"E 159.84
PER P.P. 1993-29

(M) N88°28'54"E 185.65
(R) N88°27'36"E 159.84
PER P.P. 1993-29

(M) N88°28'54"E 185.65
(R) N88°27'36"E 159.84
PER P.P. 1993-29

(M) N88°28'54"E 185.65
(R) N88°27'36"E 159.84
PER P.P. 1993-29

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PER P.P. 1993-29

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PER P.P. 1993-29

PARCEL 2
P.P. 1998-27

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N00°03'04"E 149.90
(M) N00°02'44"E 149.90
(R) N00°02'44"E 149.90
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N00°03'04"E 149.90
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PER P.P. 1993-29

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PER P.P. 1993-29

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PLAT NUMBER 2002-19

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A PLANNED COMMUNITY

INSTRUMENT NO. 2002-4922

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Lloyd N. Matlock

OREGON
MARCH 15, 1997
LLOYD N. MATLOCK
2809LS

EXPIRES 12/31/2002



SCALE 1"=40'

JANUARY 2002

OWNER

PACIFIC-WEST ASSOCIATES, INC.
9749 HAMPTON CIRCLE NORTH DR.
INDIANAPOLIS, INDIANA 46256

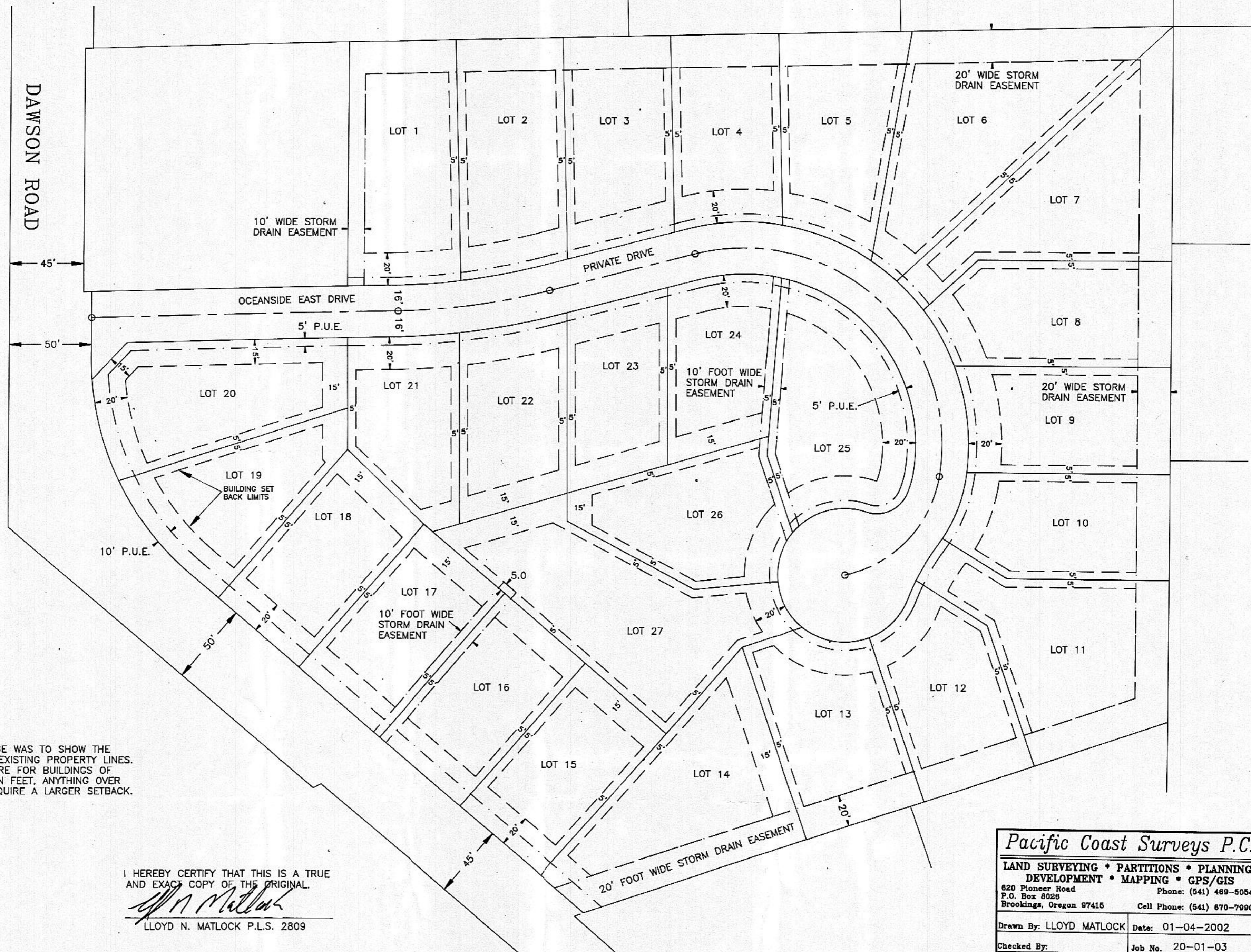
NOTE

THE PURPOSE OF THIS PAGE WAS TO SHOW THE BUILDING SETBACKS FROM EXISTING PROPERTY LINES. THESE SETBACKS SHOWN ARE FOR BUILDINGS OF MINIMUM HEIGHT OF FIFTEEN FEET, ANYTHING OVER THE FIFTEEN FEET WILL REQUIRE A LARGER SETBACK.

I HEREBY CERTIFY THAT THIS IS A TRUE
AND EXACT COPY OF THE ORIGINAL.

Lloyd N. Matlock

LLOYD N. MATLOCK P.L.S. 2809



Pacific Coast Surveys P.C.

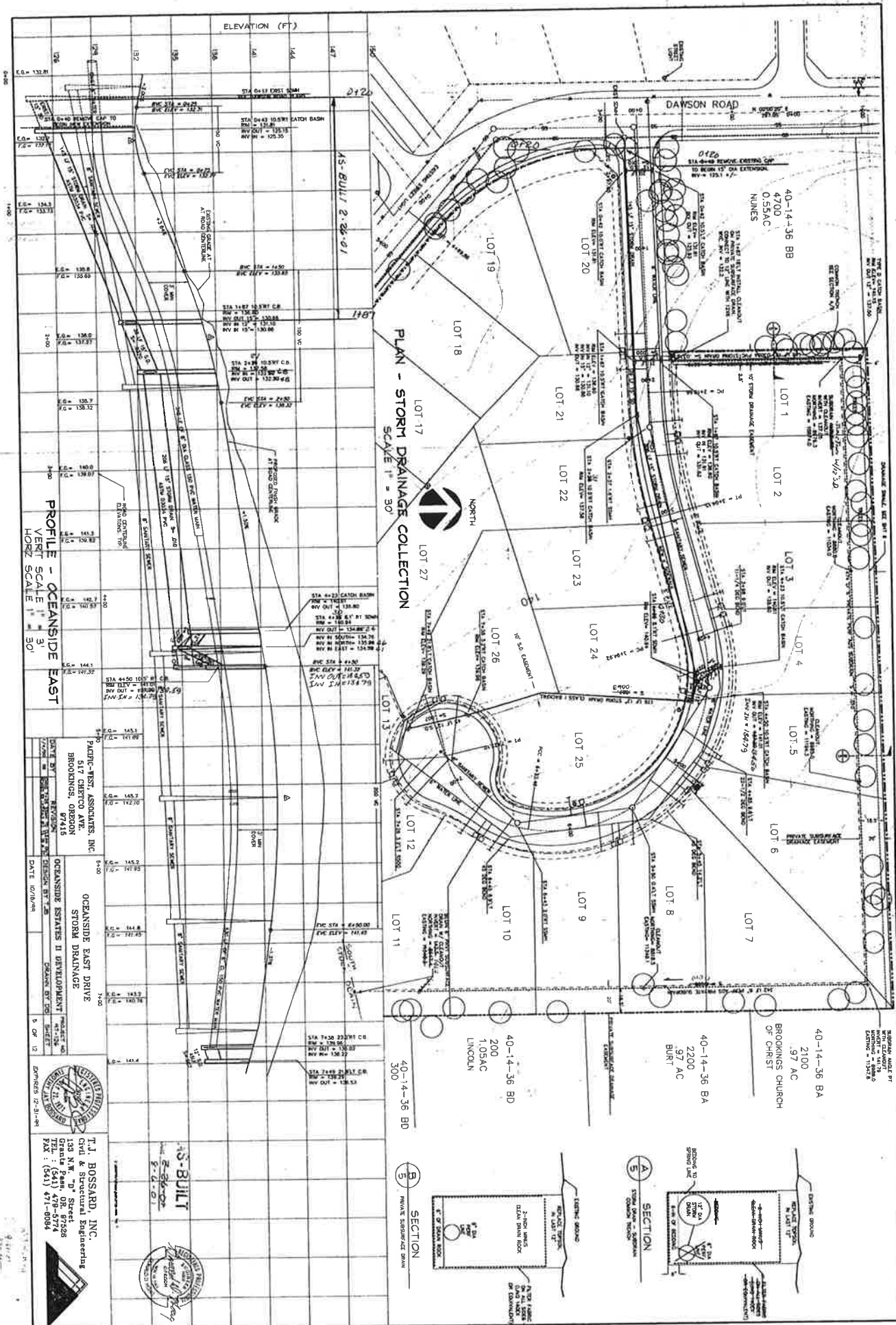
LAND SURVEYING * PARTITIONS * PLANNING
DEVELOPMENT * MAPPING * GPS/GIS
820 Pioneer Road Phone: (541) 469-5054
P.O. Box 8026
Brookings, Oregon 97415 Cell Phone: (541) 670-7990

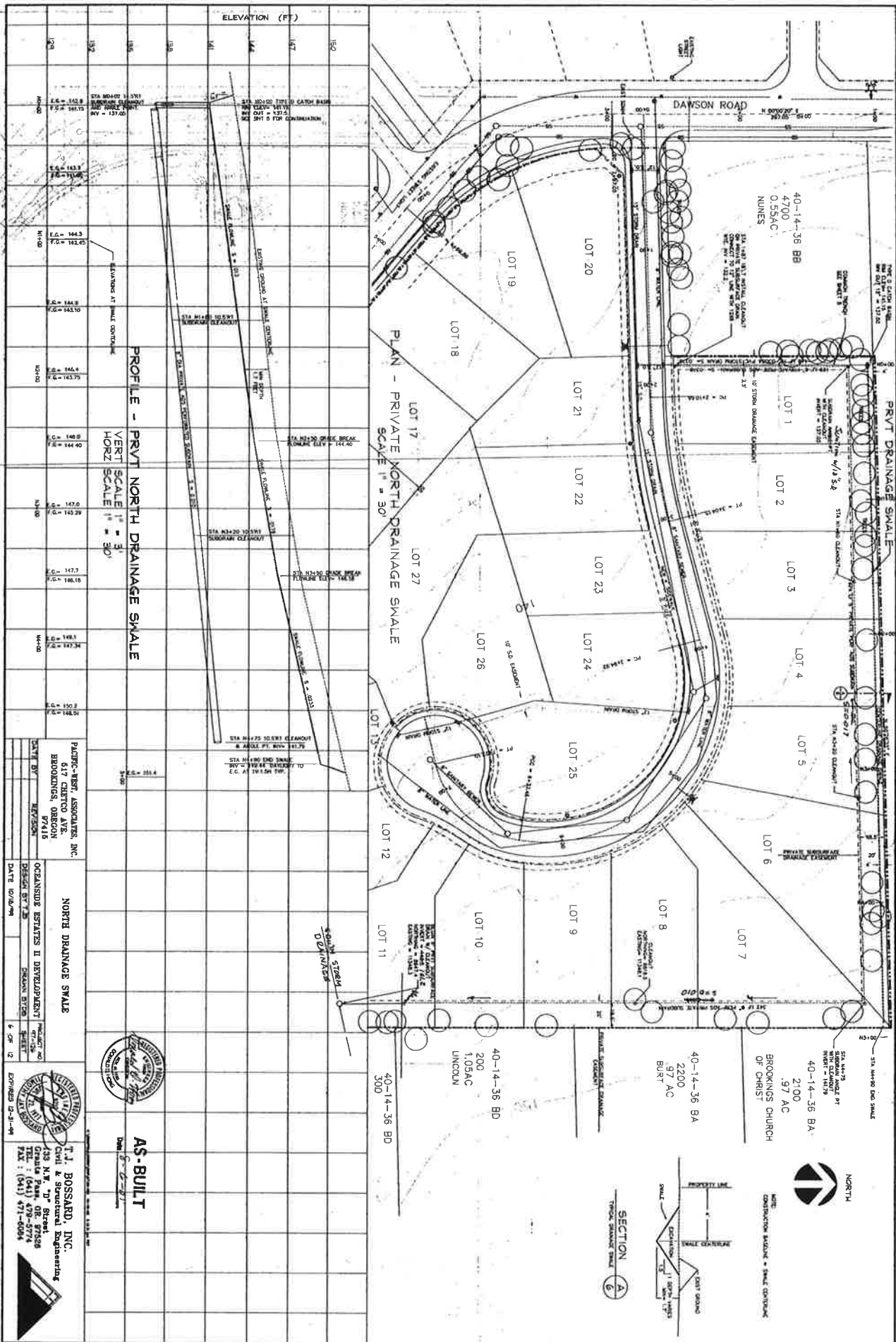
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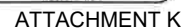
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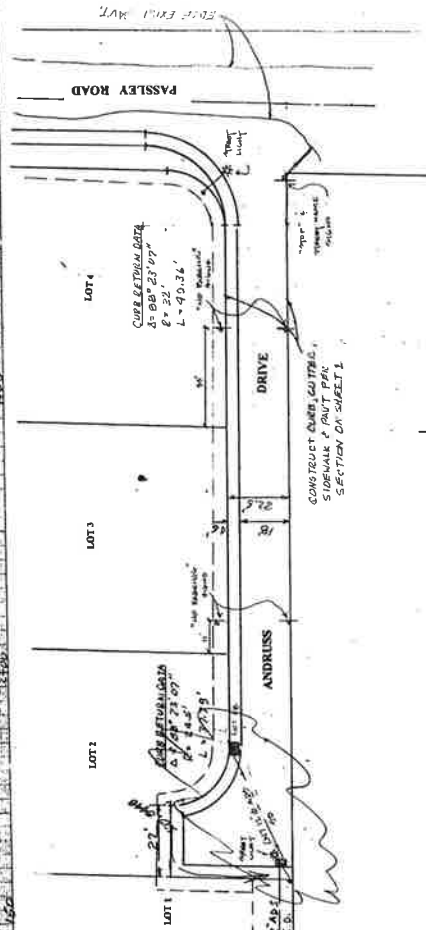
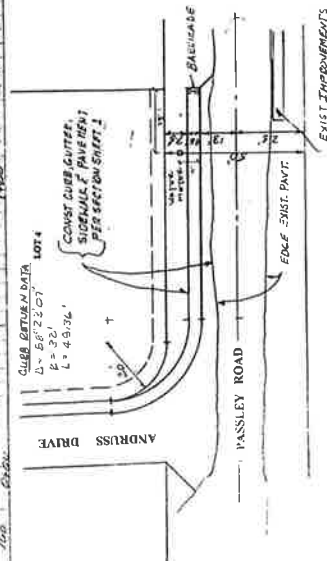
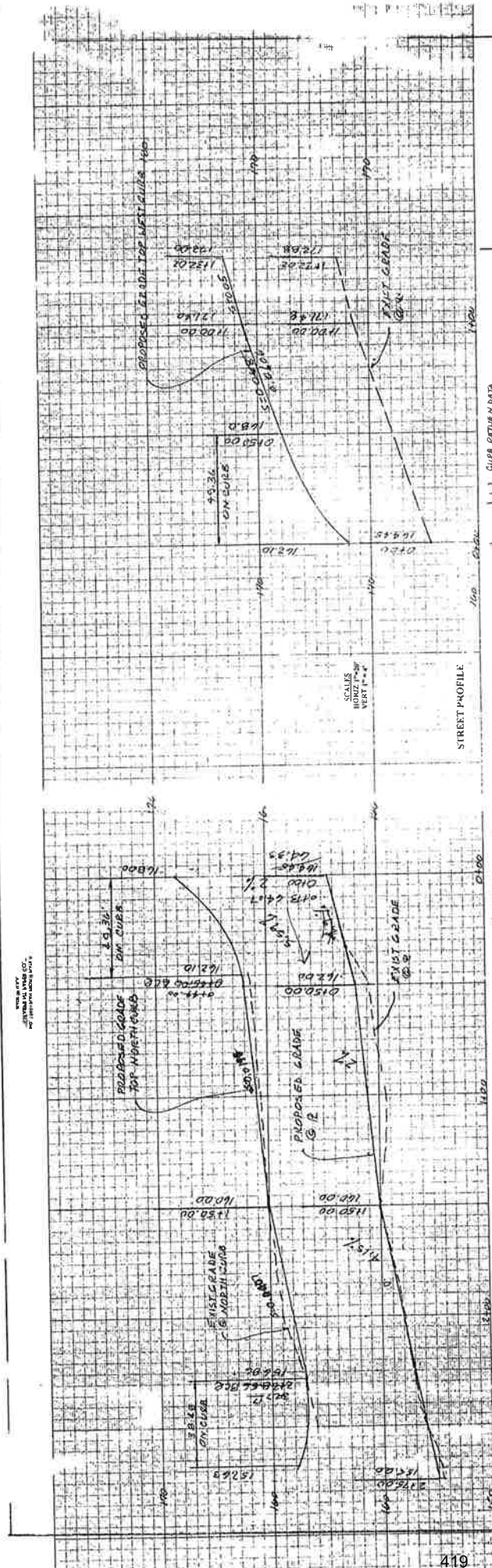
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Sheet 3 of 3









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Approved by the City of Berkeley
Date: 1-23-02

PUBLIC IMPROVEMENTS
ANDRUSS SUBDIVISION
FOR
JOHN AND ELIZABETH ANDRUSS
41 RAINBOW ROCK ROAD
BROOKINGS, OR 97415
469-7061

on Hoag & Associates
17156 Mountain Dr.
Brookings, OR 97415
(503) 460-1877

100% A C U	7 30 5 23 13
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STREET PLAN

~~ATTACHMENT L~~

