

Blue River Law, P.C.
P.O. Box 293
Eugene, Oregon 97440
Tel. (541) 870-7722
Email: eli.blueriverlaw@gmail.com

December 31, 2013

Via Email steve.p.ochs@ci.eugene.or.us

Mr. Steve Ochs, Associate Planner
Eugene Planning Division
Zoning and Land Use
City of Eugene
99 West 10th Avenue
Eugene, OR 97401

Re: Comments on Proposed Subdivision “Woodview Estates”
937 Irvington Drive, Eugene,
City of Eugene Planning Commission Application ST-13-004

Dear Mr. Ochs:

This law firm represents 27 residents of Cherry Tree Estates (“Clients”), a subdivision located adjacent to the proposed development of Woodview Estates, 937 Irvington Drive, Eugene (City of Eugene Planning Commission Application ST-13-004) (“Woodview Estates”) by Bruce Wiechert Custom Homes Inc. (“Applicant”).

Thank you for providing the public with the opportunity to comment on this proposal. On behalf of my Clients, I submit the following comments for your consideration in connection with the Woodview Estates proposed project. These comments incorporate by reference the materials previously submitted to you by residents of Cherry Tree Estates concerned with the proposed project, the materials submitted with those comments, and the documents referenced herein.

My Clients do not oppose the proposed development of Woodview Estates into a residential subdivision, they appreciate the Applicant’s quality of work in the Eugene area, and they do not want an inferior developer to adopt this project. In

fact, the Applicant built several of the homes in Cherry Tree Estates. However, my Clients do oppose the suggested manner of execution of the Woodview Estates project, the repeated disregard for the requirements and factors of EC 9.8515(7)(b) “Tree Preservation”, and the failure to provide any meaningful mitigation measures under EC 9.8515(7)(c) “Restoration or Replacement”. My Clients request that the City not approve Woodview Estates in its current proposed form, and that the Applicant be required to modify the project so that it (1) preserves trees, (2) does not cause a “technical kill” of the trees to build large footprint homes, (3) does not provide Woodview Estates residents proper drainage at the expense of Cherry Tree Estates’ drainage, and (4) does not eliminate the Cherry Tree Estates’ residents enjoyment of the natural features of their properties, including the view, screening, and buffering functions.

Cherry Tree Estates is a very special neighborhood. It is surrounded on three sides by undeveloped tracts, and it has a feel that is less urban than other developed neighborhoods. Many of the residents purchased their homes specifically because of the surrounding undeveloped lands, and because of the trees enveloping the neighborhood. *See* Photos (Exhibits A1-A10). Cherry Tree homes that abut the trees on the Woodview Estates property have a higher value than other homes in Cherry Tree Estates, primarily because of the character and beauty provided by the trees. Many Cherry Tree homes enjoy morning and afternoon sun patterns that are protected by the existing trees. There are approximately 229 trees on the proposed Woodview Estates property, which may explain the genesis of the property’s name. Approximately 16 trees would be removed for proposed expansions of Argon Way and Leonard’s Way. The Woodview Estates proposal (as revised), however, would only protect approximately 24 trees of the 213 remaining trees, or about 11% of the remaining trees. *See* King Report (Dec. 12, 2013) (City of Eugene Planning & Development Department File No. ST-13-0004) (hereinafter “File No. ST-13-0004”). This approach is frankly not enough, is not supported by the record, and my Clients want to see a better effort made to comply with Eugene’s tree preservation laws.

To the north of Cherry Tree, a filbert orchard runs from Willowbrook Street all the way to River Road, nearly a mile away. On the west, Cherry Estates is bordered by a large, open, piece of property with only a scattering of homes, the Irving Grange, and the Holly Residential Care Center. On the east, Cherry Tree Estates is bordered by the nearly more than 3 acres of vacant land. The 3.6 acre plot contains a Douglas Fir stand approximately 500 feet long and 60 feet wide (the “Doug Fir Stand”), Scots pines, and orchards of European filberts, and English

Walnuts. The average diameter at breast height (dbh) of the Douglas firs in the stand is about 12 inches, and they range between 60 to 75 feet high.

About 500-700 feet away from the eastern side of proposed project area is Spring Creek. Spring Creek connects to Awbry Park, 3/4 of a mile away from the proposed project area. The Awbry Park and the Spring Creek area is a “haven for wildlife and native plants in this otherwise developed suburban setting.” *See* City of Eugene, City Facilities, Awbry Park (Exhibit B). The City of Eugene’s website notes that in Awbry Park “[a]rea residents have noted over 50 species of birds in the park, including wood ducks, downy woodpeckers, Cooper's hawks, great-horned owls, western screech owls, spotted towhees, and rufous hummingbirds. Under the mature fir trees and big leaf maples one can see a variety of healthy native plants such as false Solomon's seal, thalictrum, trillium, osoberry, thimble berry, and ocean spray.” *Id.* My Clients believe that some of these characteristics extend beyond the boundaries of Awbry Park into the surrounding areas, including the proposed development area. My Clients believe that the trees on the proposed project area play a major role in allowing the nature to extend into their community.

My Clients are emphatic that the unique characteristics and benefits of their properties be preserved. The current proposal for Woodview Estates would irreparably harm my Clients’ interests, but certain mitigation measures can preserve a large number of the trees and enable the project to proceed to both parties’ satisfaction.

Comments

The primary problems with the Applicant’s proposal stem from (1) stormwater drainage needs which require much of the proposed project area be “raised” by adding at least 2-3 feet of fill to much of the property, which will smother existing tree roots and compromise their survival, and (2) the likelihood of building large footprint single-story homes on large lots, which will eat into the tree-covered areas on the property. Both of these issues have a further impact on the trees on the property; after cutting down trees, the Applicant then proposes grinding the remaining stumps thus destroying the critical root zone for the remaining trees. My Clients believe that re-positioning some of the lots, re-siting the homes, re-siting driveways, constructing two-story homes where necessary to preserve trees, stopping the fill line near the eastern edge of the Doug Fir Stand so that the land gently tapers downward, and using less invasive tree and stump removal methods (e.g. horse logging) will help the project comply with EC

9.8515(7) tree preservation and mitigation requirements, as well as with the Eugene – Springfield Metro Plan. These considerations will also maintain the density of the tree screen and buffer, and preserve the view corridor for all the homes in Cherry Tree Estates.

A. Standards

Eugene’s tree preservation laws impose heavy burdens on developers. Proposed subdivision projects “shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible...”. EC 9.8515(7)(b). To determine trees that have the highest priority for preservation, the City is to evaluate ten factors. EC 9.8515(7)(b)(1)-(10). Mitigation measures must mitigate to the greatest degree attainable or feasible, the loss of significant natural features. EC 9.8515(7)(c). For the reasons discussed herein, the Applicant has not satisfied the requirements of EC 9.8515(7).

B. Tree Preservation EC 9.8515(7)(b) Factors

Introduction

Following public comments to its initial application in August 2013, the Applicant re-submitted revised plans in September 2013 and October 2013. Each of the three applications only dedicated one paragraph to the ten EC 9.8515(7) tree preservation factors, and made no effort to explain how the proposed approach was designed and sited to protect significant trees to “the greatest degree attainable or feasible.” (See August 2013 Application at 5-6, September 2013 Application at 5-6, and October 2012 Application at 5-6) (File No. ST-13-0004). The Applicant’s September 2013 and October 2013 submissions included letters from their arborist which explained that the proposed activity would negatively affect the trees, but this information does not correlate to what is required under EC 9.8515(7) (part of File No. ST-13-0004). The Applicant’s submissions simply assume that their proposed approach is acceptable. It was not until December 12, 2013 that the Applicant submitted a Tree Protection Site Plan. See King Report (Dec. 12, 2013) (File No. ST-13-0004). The Tree Protection Site Plan is still insufficient, it does not clearly identify or inventory the trees, namely those over 8 inches dbh, and it does not explain how the project will proceed in light of the EC 9.8515(7)(b) requirements and tree characteristics. The City should require a more rigorous application of the law before taking any action on this proposed project.

The heart of the disagreement between my Clients and the Applicant is how many trees can be saved not just as part of the development of the Woodview Estates, but how many can be saved *because* of the 2 or more feet of fill the Applicant needs to add to Woodview Estates' land to ensure proper drainage for Woodview Estates residents. My Clients believe that if the Applicant were to agree re-position the houses, driveways, and possibly the lots themselves, more trees could be saved. If more trees could be saved, my Clients would be able to continue to enjoy the benefits of the natural environment of the proposed project area, and not be at increased risk of ponding and poor drainage on their own properties. If my Clients' mitigation measures are considered and implemented, both parties can have homes, drainage, and trees.

Tree Preservation Factors

The default rule is that subdivision development must “minimize the impacts to the natural environment.” EC 9.8515(7). In doing so, “the proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible.” EC 9.8515(7)(a)(1). “Significant trees” are defined as “[a] living, standing tree having a trunk with a minimum cumulative diameter breast height of 8 inches, or, when there are multiple trunks, having a minimum cumulative diameter breast height of 8 inches, considering the 2 largest trunks measured at 4.5 feet above mean ground level at the base of the trunk or trunks.” EC 9.0500. Many of the trees on the proposed project area exceed 8 inches dbh; in fact the *average* diameter dbh is 12 inches. *See* Sperry Tree Report (Oct. 21, 2013) (File No. ST-13-0004).

The most recent proposed plan suggests preserving more trees than the first plan did – but it *still* falls short of the legal standard. The first proposed plan would have cut down all or almost all of the trees; the most recent plan still proposes cutting down 90% of the trees. In adopting the requirement that something be done “to the greatest degree” possible, the City endorsed a far more exacting standard than a “cost effective for the developer” standard. *See Frewing v. City of Tigard*, LUBA No. 2003-194 at 28-29 (Or. LUBA 2004) (applying City of Tigard's tree preservation law).

The trees subject to the proposed project should be given the highest priority for preservation as they meet the majority of the EC 9.8515(7) factors below.

1. *Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria*

Both the Applicant and my Clients retained arborists, and both arborists concluded that the trees are generally healthy; my Clients' arborist also observed that the trees display the proper amount of foliage growth and density for the species. *See* King Report (Dec. 12, 2013) (File No. ST-13-0004) and Sperry Tree Report (Oct. 21, 2013) (File No. ST-13-0004). Without the Applicant's action on the property, or disturbance of the critical root zones, the trees have a reasonable chance of survival.

2. *Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow*

Significant on-site vegetation currently exists at the proposed project area. This includes the Doug Fir Stand, and the northern and eastern orchards. The Doug Fir Stand extends nearly 60 feet wide and runs the entire parallel length of Cherry Tree Estates, is approximately 500 feet long. The Doug Fir Stand is a major, extended grouping of trees on the property, and its connectivity should remain intact to greatest degree attainable or feasible.

3. *Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement*

My Clients have previously described of the shade and relief these trees provide. *See, e.g.,* Comments submitted Oct. 21, 2013 and Nov. 15, 2013 (File No. ST-13-0004). These trees "provide shade from morning sun to current neighbors on the West side of the proposed development and [would provide shade] from afternoon sun to the new owner[s]...". Many of my clients' homes are screened by the existing Doug Fir Stand, and they would be directly impacted by the removal or thinning of these trees. The trees' screening function would also shield both the Cherry Tree and Woodview Estates residents from each others' homes, offering continued privacy. A wider grouping of trees would provide greater benefits to both subdivisions.

4. *Trees that provide a buffer between potentially incompatible land uses*

Cherry Tree Estate residents wish to keep the widest swath of trees possible on the Doug Fir Stand so that they, and new Woodview residents, have a privacy

buffer between them. Moreover, the trees provide a buffer between the filbert orchard to the north and the vacant lot (formerly agricultural land) to the east.

5. *Trees located along the perimeter of the lot(s) and within building setback areas*

Currently the Doug Fir Stand abuts several backyards of Cherry Tree Estate residents on the eastern side of the housing estate and runs along the perimeter of their lots and the Woodview Estates lots. The Doug Fir Stand extends from Cherry Tree Estate residents' backyards for up to 60 feet deep into the proposed project area. In addition to shade, the view, and the enjoyment my Clients get from the existing trees, this expansive stand cushions noises, and feel, of the city.

An interior yard setback is “[a]n area of a lot that is adjacent to a property line that is not also a street lot line. The minimum depth of the area is as required by zoning standards. Interior yards include side and rear yards.” EC 9.0500. The setback for interior yards in R-1 (Low Density Residential Zone) areas is 5 feet or minimum of 10 feet between buildings. EC 9.2750 (Table 9.2750). My Clients want the Applicant to preserve trees well beyond the minimum 5 foot setback area, and wants the City to take account of the other EC 9.8515(7) factors (e.g. screening, buffering, viewing) and the most number of trees possible will be preserved despite the 5 foot minimum setback. My Clients wish to note that the more trees that are removed, the more the remaining trees' survivability is at risk. The need for a large setback area is clear from the discussion regarding the critical root zone. EC 9.0500. If only 5 feet of trees are kept, the Applicant's arborist suggests that there be approximately a 20 foot no fill / no build area. *See King Report* (Dec. 12, 2013) (File No. ST-13-0004). The Applicant's arborists estimates that the 20 foot buffer should interfere with “no more than 30%” of the trees' critical root zone, and categorizes the interference as “negligible.” *Id.* My Clients are concerned that removal of critical root zone, and bulldozing outside the critical root zone plus adding at least 2-3 feet of fill could in fact negatively affect the trees. Consideration of the factors of EC 9.8515(7) favor other solutions, such as siting the homes on different parts of the large lots, instead of the risks of ripping out and destroying critical root zones. One solution is to perform root crown excavation to obtain a more precise evaluation of the trees' root zones, and thus to know whether only 30% of the critical root zone will be damaged during construction.

Trees located along the perimeter of these lots perform an important drainage function. Removal of these trees and their critical root zone risks

eliminating existing, adequate drainage for my Clients. *See also* EC 9.8515(5)(b) (proposed subdivisions will provide adequate drainage). Currently my Clients are relatively protected from backyard ponding and flooding because the Doug Fir Stand absorbs significant amounts of water and moisture. Eliminating the trees, their root system, and adding additional stormwater runoff from roofs, driveways, streets and other impervious surfaces, will significantly increase my Clients' risks of water problems. This problem has already been acknowledged by the Applicant, hence the proposal to add at least 2-3 feet of fill to the property, and why the Applicant proposes cutting down so many trees. Eliminating the trees and increasing water flow through the area, however, will also increase soil erosion. That said, the Applicant's engineer has asserted that "runoff from the post-development site will not increase the runoff above pre-development conditions." Amended Application, Woodview Estates Hydrology and Hydraulic Study (Sept. 27, 2013) at 9 (File No. ST-13-0004). Backyard flooding was raised at the public meeting, but the response was not clear to the public. *See* Email from R. Wiard to S. Ochs (Oct. 24, 2013) (File No. ST-13-0004).

My Clients believe that the trees and the critical root zones located along the Cherry Tree – Woodview perimeter perform an important drainage function in the area. As such, my Clients request that this factor be closely evaluated and the trees preserved to protect their interests.

6. *Trees and stands of trees located along ridgelines and within view corridors*

The Doug Fir Stand extends along viewpoints for most Cherry Tree Estate residents. For the residents of the eastern side of Cherry Tree, the Doug Fir Stand towers over their homes and frames the eastern side of the neighborhood. The Doug Fir Stand trees are so tall that residents of the western side of Cherry Tree Estate can also see them and enjoy the natural environment these trees provide. *See* Photographs (Exhibits A1-A10). Some of my Clients' windows have direct picture-perfect views of the trees that tower over their homes. These views are of immeasurable value to my Clients on both sides of Hyacinth Drive, and to my other Clients in Cherry Tree Estates.

7. *Trees with significant habitat value*

The trees on the proposed development contain mostly squirrels, birds, and raccoons. My Clients enjoy seeing and watching these animals. The proposed project area, combined with the filbert orchard to the north, makes for one of the

few wooded properties nearby that offers these animals an open space. Additionally, Cherry Tree and the proposed project area are nearby to Spring Creek, which extends from Awbry Park. Awbry Park and the Spring Creek area is a “haven for wildlife and native plants in this otherwise developed suburban setting.” See City of Eugene, City Facilities, Awbry Park, <http://www.eugene-or.gov/Facilities/Facility/Details/33> (Exhibit B). According to the City of Eugene, “[a]rea residents have noted over 50 species of birds in the park, including wood ducks, downy woodpeckers, Cooper's hawks, great-horned owls, western screech owls, spotted towhees, and rufous hummingbirds. Under the mature fir trees and big leaf maples one can see a variety of healthy native plants such as false Solomon's seal, thalictrum, trillium, osoberry, thimble berry, and ocean spray.” *Id.* Residents have noted the diversity of wildlife in Awbry Park and the Spring Creek area. My Clients believe that the trees on the proposed project area form an extension of the Awbry Park habitat, and thus may have a significant habitat value for the area.

8. *Trees adjacent to public parks, open space and streets*

The trees on the proposed project area are part of a small grouping of open, varied use spaces in the Irvington Drive – River Road area. In addition to the proposed project area, the nearly mile-long filbert orchard to the north, and the open space to the west, Filbert Meadows Park is just north of the orchard. All of these spaces offer residents of Cherry Tree Estates a feeling of being surrounded by nature. Removal of the trees would change the natural setting of the area.

9. *Trees along water features*

The trees on the proposed project area do not run along a water feature, but the tree area is roughly located between two creeks, Spring Creek to the east and Flat Creek to the west. Spring Creek is about 500-700 feet away from the eastern side of proposed project area. As discussed above, Spring Creek and Awbry Park offer a habitat for wildlife. My Clients believe that the proposed project area offers an extension of habitat for this wildlife.

10. *Heritage trees*

A heritage tree is “[a] living, standing tree having exceptional value to the community due to its size and species.” EC 9.0500. Given the disappearance of trees throughout the City to make room for more development, and in particular in the neighborhoods of the growing River Road area, my Clients advocate for the

role and value these particular trees have to the immediate community. My Clients believe that because of the size (up to approximately 75 feet), and the age of these trees (roughly estimated at 40-60 years), and the disappearing natural environment in the River Road area, these trees should be considered heritage trees.

Design and Siting Requirement

In addition to the ten tree characteristics that must be considered, EC 9.8515(7)(b) requires the project actually “shall be *designed and sited* to preserve significant trees to the greatest degree attainable or feasible...”. (emphasis added). The Applicant has “identified” the EC 9.8515(7)(b) factors in its application materials, but the Applicant has not adequately addressed these factors, nor has the Applicant adjusted the proposed project’s design and siting plans to incorporate the 10 tree preservation characteristics, or the general principles of the statute. Despite being presented with more information since the applications in the form of public comments and public meetings, the Applicant has failed to adjust the proposed project’s design to comport with EC 9.8515(7)(b)’s tree preservation requirements. The Applicant has not responded to my Clients’ proposals to change lot sizes, move driveways, re-position homes on the incredibly large lots (13 of the 16 proposed Woodview Estates lots are over 7,000 square feet and 7 of these lots are 8,000 – 10,000 square feet). My Clients ask that the Applicant and the City thoroughly evaluate the EC 9.8515(7) tree preservation factors, and the statutory requirement that the project designed and sited to preserve significant trees, and that any siting and designing be done to the greatest degree attainable or feasible; not to the convenience or cost efficiency of the Applicant.

C. Applicant’s Proposed Mitigation Methods are Inadequate

The Applicant has not complied with EC 9.8515(7)(c), “Restoration or Replacement”, which states in relevant part:

For areas not included on the city’s acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:

- a. Planting of replacement trees within common areas...

The Applicant's initial proposed plan in August 24, 2013 suggested cutting down all, or almost all, of the trees that border Cherry Tree Estates. *See* Application (Aug. 24, 2013) (File No. ST-13-0004). The Applicant's arborist Dec. 12, 2013 supplemental proposal, however, *still* does not satisfy the legal requirements of tree preservation or restoration/replacement under EC 9.8515(7)(c). The Applicant's proposed plan still suggests eliminating a significant number of trees, and it does not adequately mitigate the loss of trees, and certainly does not do so "to the greatest degree attainable or feasible."

The revised plan proposes protecting approximately only 24 trees – 11% of the remaining trees - along the northern section of the subdivision's west property line. *See* King Report (Dec. 12, 2013) (File No. ST-13-0004). My Clients believe that the Applicant's proposed restoration/replacement for the loss of all of these trees is to plant "a minimum of two trees" on the backyards of Lots 1-5. *See* Re-application at 6 (Oct. 24, 2013) (File No. ST-13-0004). These are simply "token" trees which will not mitigate in any meaningful way the losses my Clients will suffer. These token trees will most likely be smaller, in different locations, and will not provide the shade, natural enjoyment, buffer, or privacy the current trees offer. The proposed plan merely suggests "replacing" the loss of trees to a degree that is convenient or economical to the Applicant; this is not the legal standard to which the Applicant must adhere. The Applicant has not, as part of the comments and information received, offered to re-position homes, driveways, or build two-story homes. Adoption of the requirement that something be done "to the greatest degree" possible is a far more exacting standard than a "cost effective for the developer" standard. *See Frewing v. City of Tigard*, LUBA No. 2003-194 at 28-29 (Or. LUBA 2004) (applying City of Tigard's tree preservation law).

Without the trees, the sunshine and shade patterns over my Clients' homes will be affected. The token trees cannot replace this. Without the trees' root zones, my Clients are at increased risk for ponding and flooding of their properties. The token trees do not minimize this risk.

Additionally, the restoration/replacement measures do not adequately recognize, identify, or address the tree preservation requirements of the Eugene City Code, and thus have also failed to address property size and siting concerns.

- Failure to Provide a Tree Preservation Plan: It was not until December 12, 2013, four months after its initial application, that the Applicant finally provided a Tree Protection Site Plan. *See* King Report (Dec. 12, 2013) (File No. ST-13-0004). The proposed Tree Protection Site Plan

does not appear to clearly incorporate any of the accommodations my Clients have proposed, such as (1) re-sizing the lots, (2) re-siting the homes on the lots, or (3) moving driveways. My Clients wish to note that the Applicant has been resistant to tree preservation and mitigation requirements throughout this project; for example, in the first application the Applicant concluded that tree preservation requirements did not apply to the project; did not provide a tree preservation plan; did not show the critical root zones; did not clearly designate trees in excess of 8 inches dbh; did not permit the public to draw any conclusions about the number of trees, the size of trees, or any of the 10 factors that must be evaluated under EC 9.8515(7). Thus, the first application essentially proposed that all trees on the proposed project area would need to be cut down, and their stumps ground. *See Application at 6 (Aug. 9, 2013)*. This essentially amounts to clear-cutting the area and causing substantial destruction of the trees. *See EC 9.0500*. The most recent proposal suggests preserving 24 trees, most of which are in the northwest corner of the property, but it does not clearly incorporate the EC 9.8515(7)(b) factors, or meet the statutory requirements.

- Not All of Woodview Estates Requires 2' of Fill: My Clients understand that for proper storm water drainage, and to connect to the City sewer on Irvington Road, the Applicant would need to add at least 2-3 feet of fill to the property to obtain proper drainage. My Clients believe that the fill, and the accompanying removal of trees, does not need to extend all the way to the western edge of the property where it joins Cherry Tree Estates. *See Sperry Tree Report (Oct. 21, 2013) (File No. ST-13-0004)*. This could be accomplished by stopping the fill at the drip line of the eastern edge of the Doug Fir Stand and gently tapering downward in a westward direction. If the fill were more limited, more trees could be preserved.
- Siting of Homes on Lots Is Prioritized Over Tree Preservation and Existing Neighbors' Interests: For the Woodview Estates lots that run along the western edge of the project area, the first application proposed the lots at 128 deep and an average width of 60 feet (approximately 8,000 square feet). Two of the lots are approximately 10,000 square feet; but the depth of all 16 lots is uniform at 127.41 feet. If all the trees needed to be removed, as the Applicant has initially proposed, that means that the homes would be built deep into the lots, and that trees on the western border would be removed to make this happen. It appears that the

contemplated footprint of the proposed homes is approximately 2,000 square feet (*see* Amended Application at 7 (Oct. 24, 2013) (File No. ST-13-0004)), which means the Applicant has *significant* flexibility where on the lot each home can be positioned. In fact, in Cherry Tree Estates the Applicant has previously positioned similar homes on shorter lots; some homes in neighboring Cherry Tree Estates are 100 and 90 feet deep. In Cherry Tree Estates, several of the lots that abut the trees on the Cherry Tree-Woodview border are only 70 (Lot 16), or 85 (Lots 17 and 18) feet deep. *See, e.g.*, Cherry Tree Estate Lot Sizes (Exhibit C). If the Applicant were to slightly shorten Woodview Lots 6-11 (e.g. by 30-40 feet), the Woodview Avenue road could be moved slightly east, and Lots 1-5, 12-16 could be lengthened (e.g. by 30-40 feet), and the majority of the trees in the Doug Fir Stand could be preserved. My Clients also suggest that the Applicant build two-story homes on certain lots instead of single-story homes so as to minimize the footprint of the home and preserve trees. Alternatively, the Applicant could consider eliminating one lot from the proposed project and gain flexibility in lot size and home siting, and preserve more trees. Again, my Clients emphasize that the standard to be applied here is that of preserving the trees “to the greatest degree” possible; not whether a solution is “cost effective for the developer”.

- “Panhandle” Properties’ Driveways: The current proposal has Lots 14 and 15 as the largest lots, measuring 9,389 and 10,889 square feet respectively. Lots 14 and 15 are “L” shaped, with very long narrow strips of land with a combined measurement of 25 feet wide, running approximately 92 feet through the Doug Fir Stand and into the main area of the lot. This long narrow strip would likely be a driveway so Lot 14 and 15 residents could access their property from Leonard’s Way. My Clients dispute that eliminating all of the southern section of the Doug Fir Stand, which abuts Cherry Tree Estates’ property, so Lot 14 and 15 residents can have a long driveway comports with EC 9.8515(7). My Clients have considered the layout of Lots 12-16, and suggest that if the Applicant were to eliminate one lot and position the homes on the eastern side of the lots, the greatest number of trees can be preserved.
- Percentage of Trees Preserved: Initially the Applicant proposed preserving just a single row of trees along the western side of the property. Upon further review, the Applicant’s arborist concluded that “more than just a single row of trees will be beneficial to the long term

health and protection of the entire group of remaining trees.” Kyle King Letter to Bruce Wiechert Homes, Inc. (Dec. 12, 2013) (File No. ST-13-0004). The new proposal preserves 24 trees, or only 11% of the 213 trees after 16 trees are cut to make new roads. This percentage is alarming, and well below recommended averages in other cities. *See, e.g.*, Eugene’s Infill Compatibility Standards Task Team’s Subdivisions and Edge Development Committee’s (“SEDC”) proposed tree preservation ordinance suggests that no more than 30% of the canopy should be removed. Available at http://www.eugeneneighbors.org/wiki/ICS-TT_Subdivisions_and_Edge_Development_Committee/Tree_Preservation_Ordinance#a._Tree_Preservation (Exhibit D-1).

Here, the proposed project is unacceptably below any of these preservation thresholds, and the City should consider this as part of its EC 9.8515(7) analysis. Of further note, the SEDC has already recommended that our “natural capital not be squandered as Eugene continues to grow”, that “much can be done both for natural capital preservation, and for simple neighborhood compatibility, by significantly enhancing tree preservation in Eugene.” Infill Compatibility Standards Interim Task Team Report, Draft Issue Paper #5 “Tree Preservation” pp. 58 (11/2008) Available at <http://www.eugene-or.gov/documentcenter/view/615>. (Exhibit D-2).

The SEDC has noted that “even when a new house on the block is appropriate to its immediate neighbors in size, shape, and style, if mature trees around it were cut down in the development process, it is likely to seem as out of place as a newly-missing tooth.” *Id.* at 59.

The International Society of Arboriculture (“ISA”) suggests 35% canopy cover should remain, and its proposed medium-density zoning regulations require 25% or more of trees to be conserved. Available at http://www.isaarbor.com/education/resources/educ_TreeOrdinanceGuidelines.pdf.

- **Tree and Stump Removal Techniques:** My Clients’ arborist, Sperry Tree Care, proposed less invasive methods of logging than bulldozing out stumps, including horse logging and stump grinding, which would further enable the remaining trees to survive and not impact their critical root zones as dramatically. *See* Sperry Tree Report (Oct. 21, 2013) (File No. ST-13-0004). The Applicant’s most recent response still includes stump grinding, but provides a buffer that it believes will not impact the critical

root zone. *See* King Report (Dec. 12, 2013) (File No. ST-13-0004). To minimize impact on preserved trees and the critical root zones, my Clients suggest that the City should require the Applicant to use alternative low impact logging techniques and stump grinding both inside and outside of the 20 foot zone where preserved trees' root structures are entangled by roots of the removed trees and/or stumps.

My Clients' proposed mitigation measures do not reduce amount of land available to develop; they simply request a re-positioning of the proposed homes, driveways, and possibly building two-story homes instead of one-story homes. This approach is consistent with the preservation and restoration/replacement requirements of EC 9.8515(7)(b) and (c).

D. Allowing Removal of Trees Would Violate the Metro Plan

The Eugene-Springfield Metropolitan Area General Plan's ("Metro Plan") Environmental Design Element "is concerned with that broad process which molds the various components of the urban area into a distinctive, livable form that promotes a high quality of life. Metro Plan at III-E-1 (pp. 103). "The Metro Plan must go beyond making the urban area more efficient and better organized to also ensure that the area is a pleasant, attractive, and desirable place for people to live, work, and play. The Environmental Design Element is concerned with how people perceive and interact with their surroundings. Perceptions of livability greatly differ between individuals; so, generalizations concerning this element need to be carefully drawn. Many different indicators of livability have been identified, such as the numbers of local educational, medical, and recreational facilities, and natural environmental conditions." *Id.* The Metro Plan specifically found that "Landscaping with trees and other vegetation provides a pleasant, distinctive, and permanent atmosphere for the metropolitan area." III-E-2 (pp. 104). The Metro Plan's Policy E.3 states that natural vegetation, natural water features, and drainage ways shall be protected and retained to the maximum extent practical. Metro Plan III-E-3 (pp. 105). Under EC 9.8515(4), a proposed subdivision must be consistent with the Metro Plan policies. *See also* ORS § 197.829(1)(b), (c) (local government's interpretation of its regulations must be consistent with the purpose and policy for a comprehensive plan or land use regulation). The goals of the EC land use code include "Protect[ing] and improv[ing] air and water quality and protect natural areas of good habitat value through a variety of means such as better enforcement of existing regulations, new or revised regulations, or other practices." EC 9.0020(1)(q)(Policy 17). The land use code is designed to "[p]reserve and enhance environmental resources, the natural scenic beauty of the

area, and aesthetic qualities of the community.” EC 9.0020(2)(f). Allowing the removal of the trees on the Woodview Estate project would be contrary to Eugene City Code, as well as the principles of the Metro Plan.

E. Access / traffic issue

With the addition of more homes in the Woodview Estates area, and the potential development of other open land in the area, my Clients are concerned about the increase in traffic through their neighborhood. Notably, the Woodview Estates project would increase traffic through Cherry Tree Estates because the current proposal does not include building a road from Woodview Estates to Irvington Drive, which is the major artery in the area; it only includes extending Leonard’s Way, which would then require Woodview Estates residents to use Cherry Tree Estates as their ingress and egress to the main road. Cherry Tree Estates residents also have concerns that the Woodview Estates residents would have inferior access from fire and emergency vehicles as they would have to travel extra blocks through Cherry Tree before reaching Woodview. Many of the residents of Cherry Tree are retired, or senior citizens, and this is a very real concern for the people of this community. Additionally, Leonard’s Way is a narrow street. It has a width of approximately 21 feet, and cars can park on one side. There is little room to get large emergency vehicles in or out. Moreover, Leonard’s Way bends, compromising vision clearance, and longer vehicles already would have an extremely difficult task to safely and quickly enter any panhandle driveways in Woodview Estates.

F. Procedural Problems

Lastly, applicable due process requirements for Type II Applications dictate that notice must be given to owners and occupants of properties located within 300 feet of the perimeter of the subject property. EC 9.7007(5)(b)(1) and EC 9.7210(1)(c). My Clients believe that not all interested owners and occupants of properties located within 300 feet of the perimeter received notice of the initial application, as only 10 homes were notified (*See* Application at 23-24 (File No. St-13-0004)). Residents on the western side of Hyacinth Drive should also have been included in the initial notification as they are within 300 feet of the western perimeter of the Woodview Estates proposed project. It was not until October 21, 2013, that after repeated requests my Clients were informed by the City that in fact 59 homes should have been notified. *See* Notice Emails (Exhibits E-1, E-2). My Clients request confirmation from the City, and/or from the Applicant, that all interested owners and occupants of properties located within 300 feet of the

perimeter of the proposed project have been fully notified of the November 7, 2013 meeting and the comment period closing on December 31, 2013. If they have not been fully notified, my Clients request that the City refrain from making any decisions on this project until all interested parties can be notified and can be afforded the right to comment.

Conclusion

Trees are an essential component of the Willamette Valley regional identity. Some of my Clients moved to Cherry Tree Estates because of the trees on the proposed project area. *See, e.g.*, KEZI News, “Residents Express Subdivision Concerns” (Oct. 24, 2013) available at <http://www.kezi.com/residents-express-subdivision-concerns/>. Eugene has been an Arbor Day Foundation “Tree City USA” community for nearly 35 years. *See* Arbor Day Foundation, Tree Cities in Oregon, <http://www2.arborday.org/programs/treeCityUSA/map.cfm?>. As Eugene grows, it is essential to uphold the City’s identity and apply the laws that enable us to protect the City’s values. The City has already recognized this by exploring more stringent tree conservation ordinances. Allowing the proposed project to proceed in its current format would be a classic case of favoring a short-term benefit over long-term aesthetic and neighborhood desirability benefits. Simply making the changes suggested by my Clients will provide my Clients and the community with the continued protection and enjoyment of the trees that abut their property, and will satisfy the Tree Preservation and Restoration/Replacement requirements of EC 9.8515(7)(b) and (c). My Clients reject the current proposed plan and request that the City order the Applicant to re-draft a tree preservation plan that fully considers the preservation of trees to the greatest degree attainable or feasible, evaluates the 10 tree preservation factors, incorporates mitigation proposals suggested herein, and that the revised plan be made available for public comment.

My Clients further notify the City of Eugene that should their concerns not be addressed in a manner that is consistent with EC 9.8515(7) and the Metro Plan, and a decision on the application be issued that is contrary to the tree preservation and mitigation laws, they may appeal the City’s decision and pursue their rights through the legal remedies available to them, including through the Land Use Board of Appeals procedures, and seeking attorneys fees and costs.

Submitted on behalf of
Residents of Cherry Tree Estates,

/s/ Elisabeth A. Holmes
Elisabeth A. Holmes
Counsel for
27 Residents of Cherry Tree Estates

cc: Clients
Enclosures: Exhibits A1-E2