

ATTACHMENT A

Staff Report and Findings – Interpretation Request

Applicant: City of Springfield

Journal Number: ZON2006-00032

I. Interpretation Request- Facts and Background

Springfield Development Code (SDC) Article 4- Interpretation provides a process to clarify the meaning of terms or phrases found in the Code.

A request for an Interpretation of terms and phrases in the SDC is normally reviewed under Type II procedure, unless the Director determines that the application should be reviewed as a Type III decision by the Planning Commission due to the need for discretionary review. Interpretations shall be reviewed by City Council under Type IV procedures when a decision by elected officials is required to establish City policy. The Director may also elect to have the City Council establish new policy or endorse a current policy on the record when the potential exists for appeals before the Oregon Land Use Board of Appeals (LUBA). LUBA typically gives deference to policy directions established by elected local officials during land use appeal procedures.

This interpretation is initiated by staff at the request of Roy Carver to confirm and ratify that the Hillside Development Overlay District (Article 26 of the Springfield Development Code) permits Cluster Subdivisions as per staff's practice of allowing Cluster Subdivisions on property within the Hillside Development District in compliance with the slope provisions of the overlay district.

Specifically, this request seeks confirmation of the correctness of Staff's administration of the SDC allowing cluster subdivisions "within all residential districts" (see SDC 16.100(3)) and on hillside property "where there are sizable portions of the development area which have slopes less than 15 percent" (see SDC 26.050(1) Option B).

Conclusion: Simply stated, the question before the Planning Commission and the City Council is, "Shall Staff continue to allow Cluster Subdivisions on hillside property with average slopes less than 15%?" Planning Commission and City Council approval of the staff findings and conclusions contained in this staff report will provide a measure of security for the development community and resolve any interpretation questions which may arise during future development review or appeals.

Procedural Finding 1: SDC Article 4 – Interpretation provides a process for staff interpretation of Code language and, where necessary, clarification or endorsement by the Planning Commission and City Council (SDC 4.040-050).

II. Applicable Criteria

SDC 4.040 INTERPRETATION OF TERMS OR PHRASES.

- (2) Criteria of Approval. The Director shall interpret a term or phrase, after consultation with the City Attorney and City staff. The meaning of any term or phrase:
- (a) Shall be consistent with the purpose and intent of this Code, including any Article or Section to which the term or phrase is related;
 - (b) May be determined by legislative history, including staff reports and public hearing tapes and minutes; and
 - (c) Shall be consistent with any dictionary of common usage, if criteria (a) and/or (b) cannot be applied.

Procedural Finding 2: Staff, the Planning Commission or City Council can find compliance of a proposed Interpretation based on (a) or (b) and if (a) or (b) cannot be applied then (c).

III. Interpretation of Applicable Code Language

Procedural Finding: The specific code language under interpretation and used by staff as a basis to allow cluster subdivisions in the Hillside District is the following excerpt from the Residential District:

“SDC 16.100(3)(a)- Cluster Development Applicability. Cluster Development is a form of subdivision development that permits flexibility in dimensional requirements by reducing lot size, setback, street width and other developmental standards to allow more flexible design than is permissible under the conventional subdivision process. Cluster Development preserves open space and creates innovative residential designs that emphasize affordability and home ownership. **Cluster Development shall be permitted in all residential districts. (Emphasis added.)** The minimum development area shall be at least 1 gross acre in size. Cluster Development shall not exceed the maximum density of the applicable zoning District and the Metro Plan. Density shall be calculated on the gross acreage.”;

and, the following excerpt from the Hillside Overlay:

“SDC 26.050(1) OPTION “B” -DENSITY TRANSFER BONUS. In order to promote the preservation of natural slopes greater than 15 percent, and encourage solar access, development density transfer is encouraged when dividing land. **The density transfer is only feasible where there are sizable portions of the development area which have slopes less than 15 percent (Emphasis Added)** or which have a south-facing slopes of less than 25 percent.” ;

Staff Findings:

- 1) Cluster Subdivisions are a special use allowed subject to compliance with locational and siting standards of the Code (SDC 16.020); Cluster Subdivisions shall be allowed in all residential districts (SDC 16.100(3)).
- 2) Staff has consistently administered the above code language to mean that Cluster Subdivisions are allowed within all residential districts subject to all applicable locational and siting standards, including overlay district provisions.
- 3) The stated purpose of the Cluster Subdivision standards is to provide design flexibility, encourage infill on larger properties, provide common open space and preserve natural features (SDC 16.100(3)). Cluster Development specifically allows reduced lot sizes and setback standards for individual lots, without exceeding the maximum density provisions of the applicable zoning district for gross acreages (SDC 16.100(3)(e)).
- 4) The Hillside Development District is a zoning overlay district of the Springfield Development Code and is applied in addition to underlying base districts on properties located above the 670 foot elevation or having an average slope in excess of 15%. The stated purpose of the Hillside Development Overlay District is to minimize hazards to life and property from erosion and mass earth movement, protect natural vegetation, drainage ways and water quality while encouraging site and building designs consistent with the natural topography (SDC 26.010).
- 5) The stated purpose of the Hillside District density transfer bonus is to promote the preservation of natural slopes greater than 15% (SDC 26.050(1)). The Density Transfer Bonus provides a formula to allow increased density on the developable portion of the site with average slopes less than 15%. The maximum density shall not exceed 8 units per developable acre. The Density Transfer Bonus is silent with regard to lot sizes for that portion of the site located on areas with an average slopes less than 15%.
- 6) Where a Special Use is specifically allowed in an underlying District and an applicable Overlay District is silent, staff interprets the Special Use to be allowed. Staff interprets Cluster Subdivision to be allowed on property within the Hillside Development Overlay District with average slopes less than 15% in compliance with all other overlay district provisions.
- 7) Where provisions conflict between underlying zones and overlay districts, staff administrative practice is to apply the more restrictive provision. Staff interprets the maximum density of Cluster Subdivisions within the developable portion of a hillside development site to be 8 units per acre.

IV. Prior Approvals

Procedural Finding: Staff has permitted Cluster Subdivisions within the Hillside Overlay District subject to compliance with all applicable provisions of the underlying and overlay districts.

Findings:

- 8) Westwind Subdivision was approved by Staff as a combination cluster-hillside subdivision within the Hillside Development Overlay District after Type II Administrative Review on November 7, 2005.
- 9) The MountainGate Master Plan included two Cluster Subdivisions and was approved by the Springfield Hearings Official on May 15, 1998. The Type III Quasi-Judicial Review and Approval for the Cluster Subdivisions was un-contested.

V. City Attorney Review

Findings:

- 10) The City Attorney has reviewed this Interpretation and finds that use of Cluster Subdivision provisions within the Hillside Overlay District is permissible subject to review and approval pursuant to all applicable regulations of the Springfield Development Code, including but not limited to: SDC Article 16- Residential Zoning Districts, SDC Article 26- Hillside Development Overlay District, SDC Article 35- Subdivision Standards.

VI. Findings, Conclusion and Recommendation

- 1) Cluster Subdivisions are a special use allowed subject to compliance with locational and siting standards of the Code (SDC 16.020); Cluster Subdivisions shall be allowed in all residential districts (SDC 16.100(3)).
- 2) Staff interprets the above code language to mean that Cluster Subdivisions are allowed within all residential districts subject to all applicable locational and siting standards, including overlay district provisions.
- 3) The stated purpose of the Cluster Subdivision standards is to provide design flexibility, encourage infill on larger properties, provide common open space and preserve natural features (SDC 16.100(3)). Cluster Development specifically allows reduced lot sizes and setback standards for individual lots, without exceeding the maximum density provisions of the applicable zoning district for gross acreages (SDC 16.100(3)(e)).

- 4) The Hillside Development District is a zoning overlay district of the Springfield Development Code and is applied in addition to underlying base districts on properties located above the 670 foot elevation or having an average slope in excess of 15%. The stated purpose of the Hillside Development Overlay District is to minimize hazards to life and property from erosion and mass earth movement, protect natural vegetation, drainage ways and water quality while encouraging site and building designs consistent with the natural topography (SDC 26.010).
- 5) The stated purpose of the Hillside District density transfer bonus is to promote the preservation of natural slopes greater than 15% (SDC 26.050(1)). The Density Transfer Bonus provides a formula to allow increased density on the developable portion of the site with average slopes less than 15%. The maximum density shall not exceed 8 units per developable acre. The Density Transfer Bonus is silent with regard to lot sizes for that portion of the site located on areas with an average slopes less than 15%.
- 6) Where a Special Use is specifically allowed in an underlying District and an applicable Overlay District is silent, staff interprets the Special Use to be allowed. Staff interprets Cluster Subdivision to be allowed on property within the Hillside Development Overlay District with average slopes less than 15% in compliance with all other overlay district provisions.
- 7) Where provisions conflict between underlying zones and overlay districts, staff policy is to apply the more restrictive provision. Staff interprets the maximum density of Cluster Subdivisions within the developable portion of a hillside development site is 8 units per acre.
- 8) Westwind Subdivision was approved by Staff as a combination cluster-hillside subdivision within the Hillside Development Overlay District after Type II Administrative Review on November 7, 2005. (See Attached excerpt from DRC2005-00063).
- 9) The MountainGate Master Plan included two Cluster Subdivisions and was approved by the Springfield Hearings Official on May 15, 1998. The Type III Quasi-Judicial Review and Approval for the Cluster Subdivisions was uncontested. (See 97-05-123, Attached.)
- 10) The City Attorney has reviewed this Interpretation and finds that use of Cluster Subdivision provisions within the Hillside Overlay District is permissible subject to review and approval pursuant to all applicable regulations of the Springfield Development Code, including but not limited to: SDC Article 16- Residential Zoning Districts, SDC Article 26- Hillside Development Overlay District, SDC Article 35- Subdivision Standards.

Conclusion and Recommendation:

The attached findings of fact support to the conclusion that Cluster Subdivisions are allowed in all residential districts subject to compliance with all applicable locational, siting and overlay district standards. Staff concludes that the Hillside Development

Overlay District did not anticipate, permit or preclude the use of Cluster Subdivisions. The practice is consistent with the purpose and intent of the SDC: design flexibility and encouraging site and building designs consistent with the natural topography of the site.

This Interpretation request is consistent with criterion of approval 4.040(2)(a) set out in Article 4, INTERPRETATIONS, of the Springfield Development Code. Staff recommends approval of this request by adoption of the findings in this report and signature of the Chairperson on the attached Recommendation of Approval. The recommendation will be forwarded to the City Council on July 17, 2006.

Jim Donovan
Planner II