

Aaron Panko

From: Stephenson, Garrett H. <GStephenson@SCHWABE.com>
Sent: Wednesday, March 9, 2022 1:56 PM
To: Aaron Panko; Lisa Anderson-Ogilvie
Cc: Roy Hankins; Jennifer Arnold; Dan Atchison; Oswald, Bailey M.; Hicks, Jane M.
Subject: RE: Meyer Farm Revisions
Attachments: Ltr Salem City Council re Revised Plan (SUB 21-09).pdf; Meyer Farm Revisions Summary Memo.pdf

Aaron,

Here is the Applicant's proposed revised plan for the Council's reconsideration. It reduces the proposed significant tree removal from 17 to 6 and reduces the lot count from 138 to 125, thereby ensuring that no significant trees are removed to build a new home. Pursuant to ORS 197.522(3), we request that the Council consider this as a proposed condition of approval to demonstrate compliance with the SRC. As Dan Atchison explained in his email, we have consented to an extension of the City's 120 deadline to April 12. This will allow for a 7-day open record period (to March 21) and final written argument to March 28, as well as Council's final deliberations on March 28.

Please place this email and its attachments before the Council in this matter, and please let me know if you have any questions.

Thanks,

Garrett

Garrett H. Stephenson

Shareholder

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Schwabe Williamson & Wyatt

[Please visit our COVID-19 Resource page](#)

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March 9, 2022

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VIA EMAIL

Salem City Council
555 Liberty Street SE, Room 220
Salem, Oregon 97301

RE: Letter on behalf of Applicant regarding the Meyer Farm Subdivision
(City Case No. SUB21-09)

Dear Mayor Bennett and Councilors:

This office represents Kehoe Northwest Properties, LLC (the “Applicant”) in its subdivision application (the “Application”) for the Meyer Farm Property (City Casefile SUB21-09). On February 28, 2022, the City Council tentatively voted to deny the Application due to its removal of 17 significant trees. Prior to the City Council’s deliberations, the Applicant had received consistent staff support for its Tree Conservation Plan (to which SRC 808.035(d)(2)) applies), which is a Type 1 application that is not part of the Type II subdivision Application. The City Council’s deliberation was the Applicant’s first notice that it had not, in the City’s view, satisfied SRC 808.035(d)(2). ORS 197.522(3) provides the Applicant a right to offer a condition of approval to satisfy the applicable development standards. Pursuant to that statute, the Applicant hereby requests that the City Council accept as a condition of approval the attached revised lot layout that preserves all but 6 of the 64 identified significant trees, resulting in a significant tree preservation rate of 94%. **Exhibit 1.**

The Applicant has heard the concerns of the neighborhood and now the City Council. At all relevant times, when confronted with concerns about tree removal the Applicant has been willing to provide more information, including updating its tree inventory twice— first in response to concerns raised by the Morningside Neighborhood Association and then at the request of the Council. At this point, both the Applicant’s arborist and the City Forester agree on the identity and location of all significant trees on the Property, which updated inventory was presented to the City Council in a staff memorandum dated February 3.

The Applicant understands that the City Council seeks a plan for this Property that does not remove any significant trees to allow construction of a home. The Applicant and its team has spent a great deal of time to revise the plan to address the Council’s concerns. The attached revised plan reflects the City Council’s preference and does not propose to remove any significant trees solely for the purpose of creating a building envelope. The proposed revision reduces removal of significant trees from 17 under the original plan (**Exhibit 2**) to only 6 under the revised plan (**Exhibit 1**).

However, this change results in the elimination of lots 58-65 and 40-44, reducing the total number of lots from 138 to 125.¹ The lots proposed to be eliminated are in the vicinity of the existing Meyer Farm farmhouse. This increases the undeveloped Meyer Farm remainder parcel from 3.64 acres to 4.87 acres, as shown below.

Figure 1 - Original Plan



Figure 2 - Revised Plan



The remaining trees to be removed are located in three areas: three within the street section of 12th Street, two within the proposed alignment of Hilfiker Road, and one within the public utility easement (“PUE”) fronting Lot 57. As the Applicant and staff explained during the hearing, it is not feasible to meaningfully relocate Hilfiker Lane as part of this proposal. It is also not possible to preserve a tree in a PUE, which provides power and telecommunications for each home. This is because the trenching required for installation of utilities is not possible through the root zone of a significant tree. PUEs are required pursuant to SRC 803.035(n). Removal of Lot 57 would not result in preservation of the single significant tree on that lot because the PUE is required to be placed there regardless of whether Lot 57 is developed.

No matter how the Meyer Farm property is ultimately developed, it will not be possible to preserve the significant trees within 12th Street, for two reasons. First, two of these trees are located within or on the boundary of the existing public right-of-way of 12th Street. Second, SRC 803.040 *requires* boundary streets to be dedicated and fully improved to City standards. For a local street such as 12th Street, this means a 30-foot right-of-way dedication and a half-street paved improvement with curbs, sidewalks, and street lights. These improvements are not optional because none of the exceptions to this requirement listed in 803.040(d) pertain to

¹ Note that the attached revised plan does not renumber the remaining lots, which can be done on the final plat.

this project. This fact particularly underscores the extent to which SRC 808.035(d)(2) is not clear and objective.²

At bottom, the revised plan is a good-faith attempt by the Applicant to receive feedback from the community and City Council, and make changes to its development plan to accommodate that feedback. For the above reasons, and pursuant to ORS 197.522(3), the Applicant requests that the City Council impose the following condition of approval:

“The Final Plat shall not include proposed lots 58-65 and 40-44 as development lots.”

The Applicant appreciates the Council’s consideration of the above request. Given that there is no dispute that all other criteria are met, the Council should approve the Application with the above condition.

Best regards,

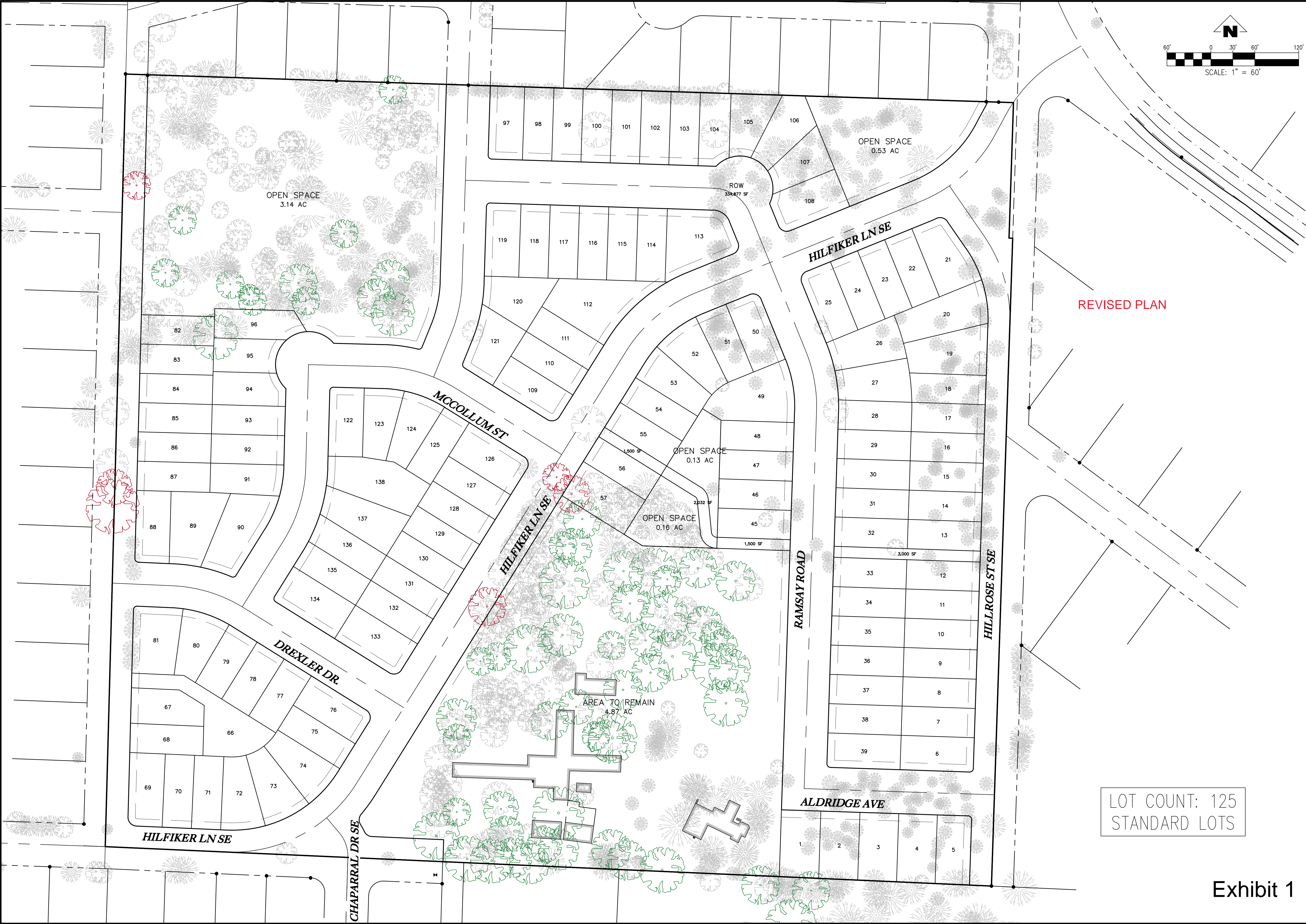


Garrett H. Stephenson

GST:jmhi
Enclosures

cc: Mr. Aaron Panko (*via email*) (*w/enclosures*)
Ms. Jennifer Arnold (*via email*) (*w/enclosures*)
Mr. Roy Hankins (*via email*) (*w/enclosures*)
Mr. Martin Kehoe (*via email*) (*w/enclosures*)

² The Applicant maintains its position that the allowance for tree removal where there “are no reasonable design alternatives that would enable preservation of the tree” in SRC 808.035(d)(2) cannot be considered an allowable “alternative approval process for applications and permits for residential development based on approval criteria [...] that are not clear and objective” in ORS 197.704(6). SRC 808.035(d)(2) is a unitary development standard, it is not “an alternative approval process,” and does not necessarily authorize “a density at or above the density level authorized in the zone.” SRC 808.035(d)(2) should not be used as a basis for denial under ORS 197.307(4), both for the reasons stated in the Applicant’s prior testimony, but also because use of such a discretionary tool necessarily results in discouragement of needed housing through unreasonable cost and delay. This is because without any codified guidance of what constitutes a “reasonable design alternative,” it makes it virtually impossible for an applicant to lay out a subdivision plan on land containing significant trees with any certainty.



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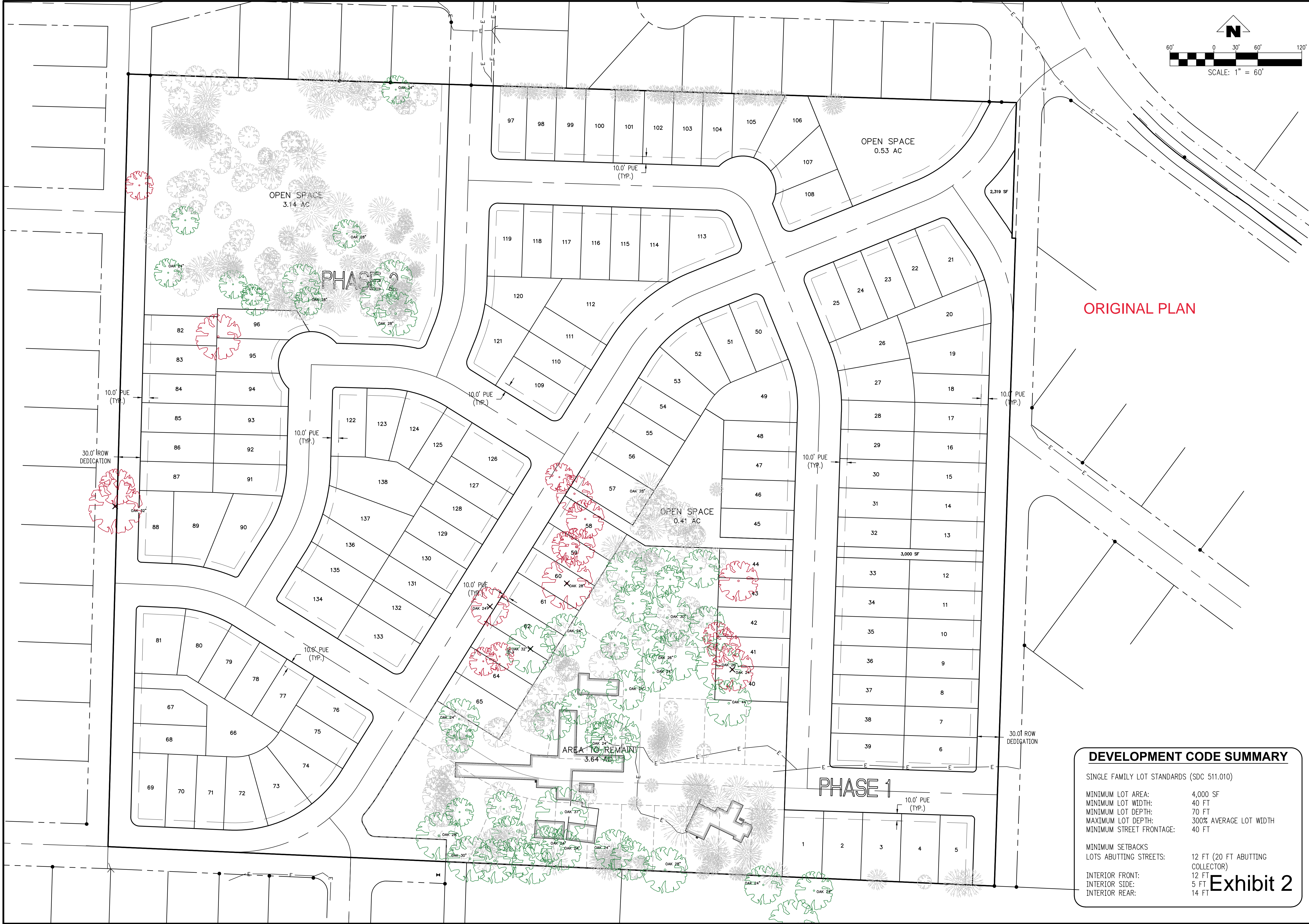
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SHEET
11 OF **74**

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SHEET
P4.0 OF **32**

4540 PRINGLE RD SE
TAX MAP - 3000 & 3002
TAX MAP - 083W11BC
SW1/4 NW1/4 SEC11 T8S R3W W.M.
SALEM, OREGON

FILE:P:\0742-003 Meyer Farm\dwg\plan\Exhibits\20220302_layout with trees, Layout: P4.0 - TENTATIVE PLAT PHI, Plot Date: 3/9/2022 12:39 PM, by: Roy Hankins

SINGLE FAMILY LOT STANDARDS (SDC 511.010)

MINIMUM LOT AREA:	4,000 SF
MINIMUM LOT WIDTH:	40 FT
MINIMUM LOT DEPTH:	70 FT
MAXIMUM LOT DEPTH:	300% AVERAGE LOT WIDTH
MINIMUM STREET FRONTAGE:	40 FT

MINIMUM SETBACKS	
LOTS ABUTTING STREETS:	12 FT (20 FT ABUTTING COLLECTOR)
INTERIOR FRONT:	12 FT
INTERIOR SIDE:	5 FT
INTERIOR REAR:	14 FT

Exhibit

Exhibit 2



March 8, 2022

City of Salem
555 Liberty Street SE RM 320
Salem, OR 97301

RE: Meyer Farm Summary of Layout Revisions

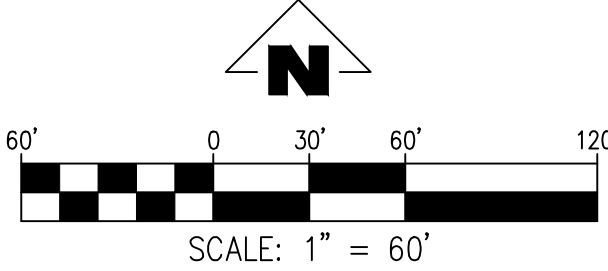
As shown on the attached Tentative Plat, the applicant is proposing a change to the initial layout to address concerns expressed by the Salem City Council. This revised layout now shows a total of 125 standard lots and preserves all significant trees not associated with public road grading or improvements. The revisions are summarized below:

Shown on plans

- Removal of lots 58-65 and 40-44
- Adjusted walking path to avoid significant trees
- Preservation of tree on lot 96 (canopy extends into lot 95 and 82)
- Significant tree removal limited to development of public streets (12th Street required improvements, Hilfiker Lane development and grading)

Not shown on the plans but improvements accepted by the applicant

- Construction of speed bumps on Albert Drive
- Installation of an all-way stop on 12th Street and Lansford Drive



4540 PRINGLE RD SE
TAX MAP - 3000 & 3002
TAX MAP - 083W11BC
SW1/4 NW1/4 SEC11 T8S R3W W.M.
SALEM, OREGON

TENTATIVE PLAT PH1

REVISIONS	
NO.	DESCRIPTION

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