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BY EHK
CLACKAMAS COUNTY
24CV03746

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

STATE ex rel. NEW LOOK
DEVELOPMENT LLC, an Oregon limited
liability company,

Plaintiff-Relator,

v.

CITY OF LAKE OSWEGO, a municipal
corporation,

Defendant.

Case No.

PETITION FOR PEREMPTORY WRIT
OF MANDAMUS

Amount Claimed: Equitable Relief
Filing Fee: \$281
Per ORS 21.135(1), (2)(a)

NOT SUBJECT TO MANDATORY
ARBITRATION

24CV03746
PTWM
Petition - Writ of Mandamus
17645295



New Look Development LLC ("Relator") alleges as follows:

1.

Relator is an active Oregon limited liability company with its principal place of business
in Beaverton, Oregon.

2.

Defendant City of Lake Oswego ("City") is a municipal corporation located within
Clackamas County, Oregon, organized and existing under the laws of the state of Oregon.

3.

Relator is the owner of tax lots 21E07CA00100, 21E07CA03000, and 21E07CA02902
("Property") located within the City.

4.

On January 17, 2023, Relator filed a Land Use Application with the City ("Application")
for the purpose of several lot line adjustments to the Property resulting in five (5) single-family
dwellings, an unavoidable utility (sewer) crossing of a delineated Resource Protection District (a

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Class 2 wetland), and removal of 43 trees. The application was deemed complete on July 14, 2023. A true and correct copy of the Application is attached hereto as Exhibit 1, and by this reference incorporated herein.

5.

Pursuant to ORS 221.178(5), on September 6, 2023, Relator made written request to the City to extend the 120-day deadline set forth in ORS 221.178(1) for a period of 45 days to December 26, 2023.

6.

Pursuant to ORS 227.178(1), the City was to have taken final action on the Application, including all appeals pursuant to ORS 227.180, within 120 days (plus the additional 45 days requested in Paragraph 5 above) of the date upon which the Application was deemed complete, to wit: December 26, 2023. On January 23, 2024, the City issued its *Notice of Development Review and Commission Decision* (“*Notice of Decision*”), a true and correct copy of which is attached hereto as Exhibit 2, and by this reference incorporated herein. The *Notice of Decision* purports to take final action on the Application, but pursuant to Lake Oswego City Code 50.07.003(6)(a)(i), “a final decision approving a development permit becomes effective upon expiration of the local appeal period(.)”¹ Accordingly, the City did not, in fact, take final action as provided by ORS 227.178(1) and (5).

7.

As a result of Defendant’s violation of ORS 227.178(1), Relator is entitled to a peremptory writ approving the Application without further delay, with the conditions of approval set forth in the City’s January 23, 2024, *Notice of Decision* adopting the Development Review Commission for the City of Lake Oswego’s “Findings, Conclusions, and Order,” unless, per ORS 227.179(5), the City demonstrates that the approval would violate a substantive provision

¹ Lake Oswego City Code 50.07.003(7)(b) provides for a 15-day appellate deadline.

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of the City's land use regulations or comprehensive plan as those terms are defined at ORS 197.015. Relator submits that the Application does not violate any substantive provisions of the City's land use regulations or comprehensive plan as those terms are defined at ORS 197.015. There is no other plain, speedy and adequate remedy in the ordinary course of the law.

8.

Pursuant to ORS 227.178(8), Relator is entitled to a refund of either the unexpended portion of the application fees or deposits previously paid, or 50% of the total amount of such fees or deposits, whichever is greater.

9.

Pursuant to ORS 34.210(2), Relator requests an award of its reasonable attorney fees, together with its costs and disbursements incurred herein.

WHEREFORE, Relator petitions this Court to issue a peremptory writ directed to the City of Lake Oswego and commanding as follows:

1. To immediately issue a final order approving the Application, with the conditions of approval required with the City's January 23, 2024, *Notice of Decision*, or, in the alternative, that the City appear before this Court or a Judge hereof, at a specified time and place, to show cause and demonstrate that the approval of the Application would violate a substantive provision of the City's land use regulations or comprehensive plan;

2. To return the writ, with its certificate annexed, showing that it has done as commanded;

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3. To refund Relator either the unexpended portion of the application fees or deposits previously paid, or 50% of the total amount of such fees or deposits, whichever is greater; and

4. To pay Relator's attorney fees, costs and disbursements incurred herein pursuant to ORS 34.210.

DATED this 24th day of January, 2024.

JORDAN RAMIS PC
Attorneys for Plaintiff-Relator New Look
Development LLC

By: 

Ezra L. Hammer, OSB #203791
Ezra.Hammer@jordanramis.com
Christopher K. Dolan, OSB #922821
chris.dolan@jordanramis.com

Trial Attorney: Christopher K. Dolan, OSB #922821

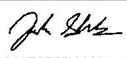
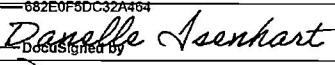
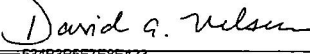


LAND USE APPLICATION

LU _____ /499- _____

(FOR OFFICE USE ONLY)

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APPLICANT <small>(If applicant is not owner, list owner's name and contact information on next page)</small>		APPLICANT'S REPRESENTATIVE / PRIMARY CONTACT <small>e.g., architect, planner, etc. (List any additional contacts on next page)</small>	
Entity Name (if applicable, e.g. Inc, LLC, Trust)	New Look Development	Entity Name (if applicable, e.g. Inc, LLC, Trust)	Emerio Design
Name (Individual Applicant or Contact Name for Entity Applicant)	John Gliebe	Name (Individual representative or Contact Name for Entity Representative)	Danelle Isenhardt
Address	7685 SW Cirrus Drive, #32F	Address	6445 SW Fallbrook Pl, Suite 100
City, State, Zip	Beaverton, OR 97008	City, State, Zip	Beaverton, OR 97008
Phone	971-678-8000	Phone	503-880-4979
Email	john@newlookdev.com	Email	danelle@emeriodesign.com
DESCRIPTION OF PROPERTY (OR PROPERTIES)			
Street Address	Vacant lots north & east of 15868 Kimball Street, and Waluga Park - West, and Baleine St. and Inverune Rd. rights-of-way		
Tax Map/Lot	21E 07CA 02902, 03000, 00100	Site Size	~104,099 sq. ft. (TL 100, 2902, and 3000)
USE			
Existing	Vacant	Proposed	5 single-family dwellings
PROJECT DESCRIPTION			
Minor development - 2 lot confirmations, 4 serial lot line adjustments and an unavoidable RP crossing for the new sanitary main extension.			
Zoning	R-7.5 (Tax lots 100, 2902, 3000); PNA (Waluga Park -West)		
Neighborhood Association	Lake Forest Neighborhood Association		
<input checked="" type="checkbox"/>	I direct that all communications and notices to be sent by email . <i>Delivery shall be considered complete upon transmission.</i>		
<input type="checkbox"/>	I wish to receive all communications and notices by US mail .		
<input checked="" type="checkbox"/>	I OPT OUT OF AN EXPEDITED LAND DIVISION PROCESS PER ORS 197.365 (by opting out, applicant is directing staff to process the application using the City's standard land division procedure)		
I consent to an on-site inspection by an employee(s) of the City of Lake Oswego (Restrain your dog on inspection day)			
Applicant Signature		Date	10/14/2022
Applicant's Representative Signature*		Date	10/11/22
Owner Signature* <small>(if Applicant is not Owner)</small>		Date	10/15/2022

*Applicant's Representative / Owner must sign or attach letter of authorization

FOR OFFICE USE ONLY

Pre-App No.		Received By	
Fee / Receipt No.	\$	<input type="checkbox"/> Admin Decision	<input type="checkbox"/> DRC <input type="checkbox"/> PC
Date Received		Staff Coordinator	

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For land division, Conditional Use, and other land use applications requiring a neighborhood meeting, the below items are required to be included with the application. Applications missing any of the required documents, below, will not be accepted by the City (LOC 50.07.003.1.f.viii).

REQUIRED NEIGHBORHOOD MEETING MATERIALS	
Check if included	If a neighborhood meeting was required, ONE copy of the following items must be provided for staff to accept the Land Use application:
<input type="checkbox"/>	A copy of the letter to the chairs of the recognized neighborhood associations, County CPO, or HOA
<input type="checkbox"/>	Copy of the letter sent to other officers of the recognized NAs, County CPO, or HOA and to surrounding property owners.
<input type="checkbox"/>	Affidavit of Mailing for letters, above, and a copy of the mailing list containing the names and addresses of such neighborhood reps and property owners.
<input type="checkbox"/>	A copy of the required posted notice, along with an affidavit of posting.
<input type="checkbox"/>	Minutes of the neighborhood meeting and any comments on the minutes submitted by the NA or other meeting attendees, if provided.
<input type="checkbox"/>	Copy of materials presented at the neighborhood meeting

Additional Contact(s) Information (If Any)	
Name	
Company/ Relationship to Application	
Phone/Email	
Name	
Company/Relationship to Application	
Phone/Email	
Name	
Company/Relationship to Application	
Phone/Email	
If Applicant is not Owner, Owner's contact information	
Name	Hail Capital, LLC
Address	501 4th Street, #974, Lake Oswego, OR 97034
Phone/Email	



NOTICE OF DEVELOPMENT REVIEW COMMISSION DECISION

File No.: LU 23-0002

Date of Decision: January 23, 2024

Property Owners: Hail Capital, LLC; City of Lake Oswego

Applicant: New Look Development

Applicant's Representative: Danelle Isenhardt, Emerio Design

Description of Proposal: The applicant is requesting approval of:

- Serial lot line adjustments resulting in five (5) residential lots, two of which are flag lots;
- Unavoidable utility (sewer) crossing of a delineated Resource Protection (RP) District (a Class 2 wetland); and,
- Removal of 43 trees.

Location of Property: Three unaddressed, vacant lots at the northwest corner of SW Baliene and SW Kimball Streets (Tax References: 21E07CA00100, -03000, -02902) and Waluga Park - West (Tax Reference: 21E07DB02209)

Description of Project and Decision: The Development Review Commission has tentatively approved this application subject to the conditions set forth in the Findings, Conclusions and Order document (decision) available as described below. This decision will become final unless appealed as described below. For further information please contact the staff coordinator, Ellen Davis, AICP, Senior Planner at edavis@lakeoswego.city or 503-635-0294.

How to Obtain Further Information: The decision (staff report, findings, and all exhibits) are available for review online at www.lakeoswego.city. Type LU 23-0002 in the search box at the top of the screen and click on "public record of file" or a copy may be reviewed at City Hall:

Planning and Building Services Department
City of Lake Oswego
P.O. Box 369
380 "A" Avenue
Lake Oswego, OR 97034
Phone: (503) 635-0290

(OVER)

Respect. Excellence. Trust. Service

503-635-0290

380 A AVENUE

PO BOX 369

LAKE OSWEGO, OR 97034

WWW.LAKEOSWEGO.CITY

Right to Appeal: This decision may be appealed to the City Council by filing a written Notice of Intent to Appeal within **fifteen calendar days** of the date of decision, above. Please note only those persons who have participated in the process by submitting either oral or written testimony may appeal this decision.

A Notice of Intent to Appeal shall:

1. List the File Number and Date of Decision.
2. Contain a statement that demonstrates that the appellant is the applicant or appeared orally or in writing at the hearing.
3. Include name, address and signature of the appellant.
4. Be accompanied by payment of a filing fee, if applicable.
5. Describe the issues raised for Council's consideration and the specific reasons why the appellant believes the Development Review Commission's decision is incorrect or not in conformance with the applicable criteria. Failure to comply with these requirements can result in rejection of the appeal.

The Notice of Intent to Appeal must be filed by **5:00 p.m., Wednesday February 7, 2024:**

City Recorder
City of Lake Oswego
P.O. Box 369
380 "A" Avenue
Lake Oswego, OR 97034
Phone: 503-635-0215
CityRecorder@lakeoswego.city

The cost to file an appeal is \$4,316.50.

BEFORE THE DEVELOPMENT REVIEW COMMISSION OF THE
CITY OF LAKE OSWEGO

SERIAL LOT LINE ADJUSTMENTS RESULTING) LU 23-0002
IN FIVE RESIDENTIAL LOTS, UNAVOIDABLE) NEW LOOK DEVELOPMENT
UTILITY (SEWER) CROSSING OF AN RP DISTRICT,)
AND REMOVAL OF 43 TREES) FINDINGS, CONCLUSIONS & ORDER

NATURE OF APPLICATION

The applicant is requesting approval of serial (legal) lot line adjustments for five (5) residential lots, two of which are flag lots; unavoidable utility (sewer) crossing of a Resource Protection (RP) District (a Class 2 wetland); and removal of 43 trees.

The site is located at Tax References 21E07CA02902, 3000, 100, and 21E07DB02209 (no situs address).

HEARING

The Development Review Commission (Commission) held a public hearing and considered this application at its meeting of November 20, 2023; 11 oral comments in opposition were provide during the meeting. A request for continuance resulted in a second evidentiary hearing on December 18, 2023; seven oral testimony comments in opposition were received. Per LOC 50.07.003.4.a.xi(1) and ORS 197.763(6)(b), a further request was made to leave the record open until December 26, 2023 to submit additional written evidence, arguments, or testimony in response to new written evidence submitted on or prior to December 18, 2023. The continued hearing was held on January 3, 2024. See Appendix A, below, for all exhibits received after publication of the October 25, 2023 Staff Report.

CRITERIA AND STANDARDS

LOC Code Section	Title
Chapter 50 Community Development Code	
50.02.001	Residential Zones
50.03.002.2	Residential Use Table
50.04.001.1	Residential Low-Density Zones Dimensional Standards
50.04.002	Special Street Setbacks
50.05.010; 50.07.004.8	Sensitive Lands Overlay Districts
50.06.002	Parking
50.06.003.1	Access/Access Lanes (Flag Lots)
50.06.003.2	On Site Circulation – Driveways & Fire Access Roads
50.06.006.3; 50.07.004.1	Stormwater Management Standards
50.06.008; 50.07.004.11	Utilities
50.07.003.1	Application Procedures
50.07.003.5	Conditions on Development
50.07.003.6	Effect of Decision
50.07.003.7	Appeals
50.07.003.10	Certificate of Occupancy
50.07.003.14	Minor Development Decisions
50.07.007.2	Flag Lots

City of Lake Oswego Utility Code [LOC Chapter 38]	
38.25	Stormwater Management Code
City of Lake Oswego Streets & Sidewalks Code [LOC Chapter 42]	
42.03.130	Sight Distance at Roadway Intersections, Private Streets & Driveways
42.03.135	Method of Establishing Special Street Setback Reference Line
City of Lake Oswego Tree Code [LOC Chapter 55]	
55.02.010 – 55.02.084	Tree Removal and Protection
Prior Approvals: LU 22-0019 RP Delineation for Tax IDs: 21E07CA00100, -03000, -02902	

CONCLUSION

The Commission concludes that LU 23-0002 can be made to comply with all applicable criteria by the application of certain conditions of approval.

FINDINGS AND REASONS

The Commission incorporates the October 25, 2023 Staff Report, with all exhibits, and staff memorandums to the Commission dated November 17th, December 15th, December 22nd and December 29th as support for its decision, supplemented by the further findings and conclusions below.

Following are the supplemental findings and conclusions of the Commission:

1. City Charter, Chapter X (Sections 41 – 46).

a. Chapter X Is Not Applicable Criteria [LOC 50.07.003.14.d.ii]

The Commission received a substantial amount of oral testimony and exhibits advocating that the City Charter's Chapter X (Sections 41-46) (Exhibit F-016) should be considered applicable criteria for this land use application as to that part of the sewer line installation within a portion of the City's Waluga Park - West.

The Commission finds that its scope of review of the land use application for compliance with applicable criteria is stated in LOC 50.07.003.14.d.ii:

ii. Review Criteria for Minor Developments.

A minor development shall comply with:

- (1)** The requirements of the zone in which it is located;
- (2)** The development standards applicable to minor developments;
- (3)** Any additional statutory, regulatory or Lake Oswego Code provisions which may be applicable to the specific minor development application, as provided for in this Community Development Code (LOC Chapter 50), Stormwater Management Code (LOC Article 38.25), streets and sidewalks chapter (LOC Chapter 42), and the tree cutting chapter (LOC Chapter 55); and
- (4)** Any applicable condition of approval imposed pursuant to an approved ODPS or prior development permit affecting the subject property.

"Chapter X is a valid (and important) law," [Exhibit F-017, pg. 1 (Executive Summary)], but that does not make it applicable review criteria for a development permit under LOC 50.07.003.14.d.ii. In examining the statutory and code scheme of the Community Development Code, the Commission concurs with staff's finding that the applicable criteria for the Community Development Code are such

1 “regulatory or Lake Oswego Code provisions” that implement the Lake Oswego Comprehensive Plan and
2 are applied to areas within the City. [See LOC 50.01.001.2.a (principal purpose of Community
3 Development Code is to implement the Comprehensive Plan); Exhibit F-017, pgs. 10-13 (Section A(4)(b));
4 see footnote 1, below]. By its own terms, Chapter X does not do that: Chapter X imposes a limitation
5 upon one specific landowner within the City, e.g., the City of Lake Oswego. Limitations imposed by virtue
6 of ownership are akin to covenants, conditions, and restrictions (CCRs); CCRs are not land use regulations
7 and are not reviewed as applicable criteria or enforced by this Commission.
8

9 To interpret Chapter X, the Commission examines the text and context (Step One), legislative
10 history (Step Two), and rules of construction (Step Three) [Exhibit F-017, pgs. 15-16 (Section B(2))]. By its
11 text and context, Chapter X does not state or demonstrate that it is implementing the Comprehensive
12 Plan [Exhibit F-017, pgs. 5-7, 7-13 (Sections A(1-2, 4))]. Chapter X makes no reference to the
13 Comprehensive Plan policies (Exhibit F-016).
14

15 There is no evidence from the legislative history presented in the public record that Chapter X
16 was intended to be a land use regulation. The Commission notes that this hearing body previously was
17 called to interpret whether the then-version of Chapter X, applicable only to Springbrook Park, was a
18 “land use regulation” applicable to the indoor tennis center in Springbrook Park. This Commission held on
19 March 15, 2021, in LU 20-0027 that Chapter X was not a land use regulation [Exhibit F-017, pgs. 13-14
20 (Section A(5))]. The current version of Chapter X was passed by the voters eight months after the
21 Commission’s decision, on November 2, 2021¹ [Exhibit F-020, pg. 2 (Section A)]. No change in relevant
22 text was made in the 2021 Chapter X amendment measure text; in relevant part, it expanded the
23 applicability of Chapter X to additional City-owned nature preserves.
24

¹ The Commission notes that there are statutory requirements that land development regulations be adopted by ordinance and placed within the Community Development Code. See, for example:

ORS 197.015(11):

“Land use regulation” means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

ORS 227.215(2):

A city may plan and otherwise encourage and regulate the development of land. A city may adopt an ordinance requiring that whatever land development is undertaken in the city comply with the requirements of the ordinance and be undertaken only in compliance with the terms of a development permit.

ORS 227.173(1)

Approval or denial of a discretionary permit application shall be based on *standards and criteria, which shall be set forth in the development ordinance* and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur *and to the development ordinance and comprehensive plan for the city as a whole*.

ORS 227.186(2):

All legislative acts relating to comprehensive plans, *land use planning or zoning* adopted by a city shall be by *ordinance*.
(Emphasis by italics).

Because the Commission concludes that *as enacted* Chapter X is not applicable review criteria, the Commission need not determine whether it would be valid under the above statutes.

1 The Commission also expressly concurs and adopts the findings set forth in Exhibit F-017, pgs. 13-
2 14 (Section A(5)).

3
4 The chief petitioners of the 2021 Chapter X amendment measure suggest that the Council should
5 amend the Community Development Code to implement Chapter X by creating a "Nature Preserve
6 Overlay District," (See Exhibits G-570, pgs. 12-15; G-571, pgs. 12-15; and, G-572, pgs. 12-15). The
7 Commission expresses no opinion about that approach except to note that its premise implicitly confirms
8 the Commission's conclusion that Chapter X is not presently part of the "regulatory or Lake Oswego Code
9 provision" review criteria that this Commission is limited to in reviewing the applicant's land use
10 application per LOC 50.07.003.14.d.ii.

11
12 Accordingly, the Commission finds that Chapter X is not applicable review criteria² under LOC
13 50.07.003.14.d.ii and thus Chapter X is not considered by the Commission in determining if the
14 application meets the applicable review criteria for approval or denial of the requested development
15 permit under LOC 50.07.003.4.g.i, ii³ and .14.d.iii(1).

16
17 **b. Alternative Finding: Chapter X is Not Applicable to the Proposed Scope of Development**

18
19 The Commission adopts these alternative Findings in the event Chapter X was found on appeal to
20 be applicable criteria. The Commission also received substantial oral testimony and exhibits asserting
21 that the proposed sewer line construction development within a portion of West Waluga Park was
22 prohibited by Chapter X, specifically that a temporary construction access, tree removal, and installation
23 of an underground sewer line, and with the area replanted with required wetland landscaping mitigation
24 (Exhibit E-010), was not permitted.

25
26 Again, to interpret Chapter X's relevant provisions, the text, context, legislative history, and rules
27 of construction are applied. As the 2021 Chapter X amendments were adopted by initiative measure, the
28 principal elements examined to ascertain the intent of the voters are the text and context of the measure

² Other theories were advanced by commenters as to why Chapter X should be considered a "land use regulation" and applicable criteria. Those theories are rejected, as addressed in Exhibits F-017 and F-020, and other exhibits, which are incorporated by reference and need not be further addressed in these Supplemental Findings.

The applicant argues that Chapter X would not be applicable criteria for this application because its "applicable criteria and standards" are limited to those in existence at the time of the *annexation* application (ORS 227.178(3)), and because Chapter X was not then applicable, Chapter X cannot be applied to this application if it were otherwise applicable. This argument is extrapolated from its argument that clear and objective criteria are required from the earliest consideration of future housing development, such as concept planning preceding a master plan (Meeting Video, 12/18/23, at 1:57:30 – 1:58:00; Exhibit F-019, pg. 6, citing *Icon Construction and Development, LLC v. City of Oregon City*, ___ Or LUBA ___ (LUBA No. 2022-100, May 19, 2023) (concept plan preceding a master plan for housing development). In *Gagnier v. City of Gladstone*, 38. OR LUBA 858 (2000), the "application" related back to the first filing of a building permit application, that was denied, a variance was filed and approved, and then the same building permit application was refiled. How far back in the development process the "application" is for purposes of the "fixed goal post" rule of ORS 227.178(3), and specifically whether the development application's standards and criteria are frozen at the time of filing an annexation application of the land, the Commission need not decide in this case because of this Commission's findings that Chapter X is not applicable criteria under LOC 50.07.003.14.d.ii, and even if it were, the proposed development within Waluga Park - West is not regulated or prohibited by the terms of Chapter X.

³ LOC 50.07.003.4.g.i: "... the hearing body shall make a preliminary oral decision to approve, approve with conditions pursuant to LOC 50.07.003.5, or deny an application based upon the applicable standards and criteria and the evidence and testimony in the record. ..." LOC 50.07.003.4.g.ii: "...The final written order shall consist of a brief statement that explains the criteria and standards considered relevant, states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria, standards and facts set forth"

1 itself [Exhibit F-017, pgs. 15-16 (Section B(2))]. The Commission expressly adopts the staff findings in
2 Exhibit F-017, pgs. 16-22 (Section B(3)) and Exhibit F-020, pgs. 5-6 (Section D). The Commission notes that
3 the pre-2021 text of Chapter X (only applicable to Springbrook Park), in relevant part, was adopted in
4 1978, yet the evidence is that two sewer lines were constructed in Springbrook Park after the original
5 Chapter X was adopted, e.g., 1991 and 1997, and that Chapter X, in relevant part, is the same as in 1991
6 and 1997 [Exhibit F-017, pgs. 13-14 (Section A(5))]. The Commission finds and concurs that the 2021
7 Chapter X amendments, specifically Section 43, Paragraphs One, Three, and Four (Exhibit F-016) do not
8 prohibit the proposed development activities within Waluga Park – West based on the text and context,
9 legislative history, and rules of construction. Specifically, the Commission finds that:

- 10
11 i. A temporary construction access, with vegetation mitigation plantings in Waluga Park -
12 West, is not a “road” under Section 43, Paragraph Three and is not contrary to the
13 preservation of a Nature Preserve under Paragraph One; and,
- 14 ii. Removal of trees, with wetland vegetation mitigation plantings within a wetland in
15 Waluga Park - West, is not contrary to the preservation of a Nature Preserve under
16 Paragraphs One and Five; and,
- 17 iii. Installation of an underground sewer main, followed by cover and wetland vegetation
18 mitigation plantings within a wetland in Waluga Park - West, is not contrary to
19 Paragraphs One and Four.

20
21 Accordingly, the Commission finds that even if Chapter X were applicable review criteria under
22 LOC 50.07.003.14.d.ii (which it is not), the proposed development activity is not contrary to Chapter X.⁴
23

24 **2. Utility Crossing / Avoidance [LOC 50.05.010.4.f.i]**

25

26 The Commission received substantial oral testimony and exhibits regarding the appropriateness of the
27 condition of annexation imposed by the Council in AN 21-0003 to record a Covenant to Construct and Connect
28 to City Sewer Line, from within West Waluga Park to the subject properties, as proposed in this development
29 application. The substance of the testimony and exhibits was to challenge whether or not the Council’s
30 condition, and the applicant’s subsequent execution, recordation, and compliance with the Covenant,
31 complied with Chapter X, and if not, then, whether alternative means and location of sewer or septic could be
32 required in order to avoid installation of the sewer main in the portion of Waluga Park - West. Under LOC
33 50.05.010.4.f.i:
34

35 “The applicant shall endeavor to avoid detrimental impacts on the resource altogether by *providing*
36 *alternative site plans* along with the development proposal demonstrating that alternative designs have
37 been explored. If disturbance of a resource district resource is proposed, the applicant shall first
38 demonstrate that *intrusion into the resource district cannot be avoided by a reduction in the size or*

⁴ A “clear and objective” challenge under ORS 197.307(4) was raised by the applicant to the ability to apply Chapter X, if it were found applicable, because “reasonable minds differ” as to the terms of Chapter X (See Exhibit F-019, Section 3: Meeting Video, 12/18/23, at 35:30 and 41:10 – 45:30). Although ORS 197.307(4) would be relevant -- if Chapter X were part of the “applicable regulatory and Lake Oswego Code...” provisions of LOC 50.07.003.14.d.ii -- because the application is “development for housing” by providing sewer service to residential development (see Staff Report, pgs. 15, 17-18), the Commission does not concur, based on staff analysis in Exhibit F-020, pgs. 2-3 (Section B), that the mere assertion of a difference of interpretation of a standard is sufficient to render a standard not “clear and objective.” However, the Commission need not dissect which portions of Chapter X would comply and which portions would not comply with ORS 197.307(4) and its companion requirement of ORS 227.173(2), after applying the methodology of interpretation, because Chapter X in its entirety is not relevant criteria to be applied under LOC 50.07.003.14.d.ii.

1 *configuration of the proposed development* or by changes in the design that would avoid adverse effects
2 on the resource *while still allowing development of the property.*
3 [Emphasis by italics].
4

5 The applicant argues that the disturbance cannot be avoided because the annexation covenant requires
6 sewer connection of the subject properties, with installation of a sewer main through a portion of Waluga
7 Park - West (Exhibit F-019, pgs. 2-3). Objections to installation of the sewer line assert that there were and are
8 alternatives to sewer connection, e.g., connection to other sewer mains in the area, septic service, STEP
9 systems and service, grinder pump with pressurized line.
10

11 **a. Review of the Annexation Condition – Covenant for Sewer Main Is Not Within Commission’s**
12 **Scope of Review**
13

14 It is not within the purview of the Commission to adjudicate the legality of an enacted ordinance. The
15 Commission’s authority is to approve, approve with condition, or deny a development application based upon
16 applicable criteria and standards (LOC 50.07.003.4.g.i, ii; LOC 50.07.003.14.d.ii). The Commission does not
17 have authority to invalidate ordinances.
18

19 Even if the Commission had such authority, the Commission defers to the Council in its determination
20 of the requirements for annexation. Specifically, the Council is charged with determining whether or not the
21 proposed annexation would comply with applicable comprehensive plan policies, as well as state law. The
22 Council found that the condition was necessary in order to meet the Comprehensive Plan policies applicable
23 to an annexation.
24

25 **b. Time for Determination of “Legally and Physically Available” Sewer**
26

27 Commenters argue that the subject properties should not be required to connect to sewer because
28 LOC 38.18.305(1)(a) exempts a residence for sewer connection when the sewer line is not “legally and
29 physically available,” by allowing the residence to “connect to a County-approved alternative on-site
30 wastewater treatment system, as defined in OAR Chapter 340, Division 071, except to a septic tank effluent
31 pump (‘STEP’) system” [LOC 38:20.315(2)]. And, the commenters argue, no sewer line is “legally and physically
32 available” because of the distance that is required to construct the sewer main from the manhole in Waluga
33 Park - West, to wit: 515 feet.
34

35 As explained in the Staff Report (pgs. 19-20), the determination of whether a sewer main is “legally
36 and physically available” for the residential lots is made *after* the sewer main is extended to the Baleine Street
37 right-of-way, and the completion of the annexation condition that the developer construct the sewer main to
38 the properties. Development of the subject properties thus will result in the construction of the sewer main to
39 the properties, and per LOC 38.18.305, connection is required because connection of the residences will be
40 “legally and physically available” to the constructed sewer main. [See Staff Report, pgs. 19-20, and Exhibit G-
41 621, pgs. 53-54.]
42

43 **c. No Feasible Alternative On-Site Wastewater Treatment Systems**
44

45 The Commission notes that the applicant and City staff have also made an analysis based on a
46 hypothetical that the sewer main was not extended (as required by the annexation condition), and found that
47 alternative on-site wastewater treatment systems would not be possible that would “avoid adverse effects on
48 the resource while still allowing development of the property” (Exhibit F-018, pgs. 4-6; Exhibit F-019, pgs. 4-5;
49 Meeting Video, 12/18/23, at 22:30 – 26:50, and 1:55:30 - 1:56:30). Thus, the Commission finds that if the
50 applicant was not required by the annexation condition to extend sewer to the properties, the evidence

1 presented shows no feasible alternative but to extend and connect to sewer in order to provide for residential
2 development.

3
4 **d. Annexation Condition Was Not Prohibited by Chapter X**
5

6 Some commenters asserted that the Council did not properly apply Chapter X when the annexation was
7 approved subject to the condition of annexation. The applicant asserts that if Chapter X was applicable to be
8 considered in regards to the condition of annexation, the time for raising that objection was then, at the time
9 of the public hearing on the annexation, and that raising Chapter X now is a collateral attack on the prior
10 annexation decision (Exhibit F-019, pgs. 2-3; Meeting Video, 12/18/23, at 42:28-42:40).
11

12 If the Commission had authority to review the Council's annexation condition and its conformance to
13 Chapter X:
14

- 15 • As a threshold matter, the Commission notes that as to Waluga Park - West, Chapter X was not
16 enacted either when the annexation petition was filed or when the condition on annexation was
17 imposed and the annexation was tentatively approved [Exhibit F-020, pgs. 1-2 (Section A) and 19-20
18 (Council minutes)]. Accordingly, if Chapter X would otherwise be an applicable annexation land use
19 regulation (which the Commission finds that it is not), because it was not enacted when the
20 application was filed (ORS 227.178(3)), and certainly because it was not enacted at the time of the
21 tentative decision (requiring only the execution and recordation of the covenant as a condition for
22 adoption of the annexation ordinance), Chapter X would not have been applicable criteria for AN 21-
23 0003.
24
- 25 • The Commission additionally finds, for the reasons stated above in these Supplemental Findings, in
26 the Staff Report, pgs.10-13 and 19-20, and Exhibit F-017, that Chapter X does not preclude the
27 proposed development within Waluga Park - West.
28

29 Therefore, if the Commission had authority to review the Council's condition on annexation (which it does
30 not), the Commission would find that the annexation condition was not contrary to Chapter X.
31

32 **ORDER**
33

34 **IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego that:**
35

- 36 1. LU 23-0002 is approved, subject to compliance with the conditions of approval set forth in Subsection
37 2 of this Order.
38
- 39 2. The conditions for LU 23-0002 are as follows:
40

41 //

42 //

43 //

44 //

45 //

46 //

Conditions of Approval		
A.	Prior to Approval of the Final Lot Line Adjustment Plan (Replat or two partition plats), the Applicant/Owner shall:	
	1.	<p>Submit the replat (or two partition plats) for review and approval by staff substantially similar to configuration shown in Exhibits E-004 and E-005. Per LOC 50.07.007.3.a.i, the final replat or partition plats must be recorded within three years of the date of this decision. <u>The deadline to record the final replat or plats to City staff is October 25, 2026.</u> The final plan must be dimensioned as depicted in Exhibit E-005, and reference this land use application – City of Lake Oswego Planning and Building Services, Case File LU 23-0002. Upon written application, prior to expiration of the 3-year period, the City Manager shall, in writing, grant a one-year extension. Additional extensions may be requested in writing and must be submitted to the City Manager for review of the project for conformance with current law, development standards and compatibility with development that may have occurred in the surrounding area. The extension may be granted or denied and, if granted, may be conditioned to require modification to bring the project into compliance with current law and compatibility with surrounding development. Failure to submit the final replat or partition plats by the deadline or to obtain an extension voids the serial lot line adjustment approval.</p> <p>The plan(s) shall include (but are not limited to) the following:</p>
		a. Common private access and utility easement over the northerly common private access lane for the benefit of Lots 1, 2 and 3.
		b. Common private access and utility easement over Lot 4 for the benefit of Lot 5.
		c. Common private stormwater easements as necessary for any shared stormwater management facilities for the common private access lanes.
		d. Private sanitary easement over Lot 4 for the benefit of Lot 5.
		e. Public utility easements as necessary to the satisfaction of the franchise utility companies.
		f. RP District boundaries as established in LU 22-0019, if required by Clackamas County.
	2.	<p>If there are any liens and encumbrances on the subject site(s), a recordable affidavit from any holder of any lien or encumbrance consenting to the lot line adjustment is required.</p> <p>If the encumbrance is a mortgage, trust deed or land sale contract, a form of recordable document amending the description of the land is necessary to reflect the reconfigured lot.</p>
	3.	<p>Submit engineered construction drawings for the public improvements for review and approval by the City Engineer. Drawings shall conform to the City's most current design standards and the drafting specifications. All final engineering design drawings and as-built plans submitted for the creation of public facilities shall be vertically controlled by the City Datum (NGVD'29) and horizontally controlled by the Oregon State Plane coordinate system (NAD 83/91). [Note: receiving construction plan approval is not a pre-requisite for recording the final replat or plats.]</p> <p>The plans shall include the following:</p>
		a. Design to extend an 8-inch public sewer main from the existing public sanitary sewer main located in Waluga Park, along the site frontage of Baleine Street and along Kimball Street to an extension point of the south boundary of Tax Lot 2902 to Kimball Street, as generally shown on the preliminary Baleine Street Sewer Extension plans (Exhibit E-006).

		b. Design of the private sanitary services per Engineering Department design standards.														
		c. Design of the private water services per the Lake Grove Water District design standards.														
		d. Design of the driveway approaches serving the development per Engineering Department design standards. The plans shall show the clear vision triangles for the driveway approaches in compliance with both the AASHTO guidelines and the City's sight distance standards. The design drawings shall show the vegetation required to be removed along the site frontage. Non-exempt vegetation and other obstructions within the clear sight triangles shall be cleared as needed to meet the sight distance requirements. (Note: The design for improvements on Kimball Street shall also be approved by Clackamas County Engineering.)														
		e. Indicate the location(s) of all native soil stockpiles on the plans.														
		f. Show restoration of the informal pedestrian pathway within the Baleine Street right-of-way to existing conditions after native soil has been replaced.														
	4.	Submit a preliminary title report or lot book report showing the status of title and any liens and encumbrances.														
	5.	Submit for review a new or an amended maintenance agreement for the shared access lane and utility easements, to be recorded with the final replat or plats.														
	6.	Submit a Notice of Development Restriction (template to be provided by staff) containing the restrictions, below, for review and approval of staff: The development restriction shall include the following information: a. Lot 4 is a new flag lot. Development of structures on this parcel shall comply with the provisions of LOC 50.07.007:2 regarding building and site design standards. The following development restrictions apply: <table><tr><td>Limitations & Requirements</td><td>Parcel 4</td></tr><tr><td>Structure Height</td><td>23.7 feet, regardless of slope</td></tr><tr><td>Front Facade Orientation</td><td>West property line</td></tr><tr><td>Front Setback</td><td>15 feet (Structure) 20 feet (Garage) Measured from edge of access lane</td></tr><tr><td>Side Setbacks</td><td>North: 10 feet South: 10 feet</td></tr><tr><td>Rear Setback</td><td>East: 25 feet</td></tr><tr><td>6-foot Rear Landscape Buffer</td><td>Rear (East) yard</td></tr></table>	Limitations & Requirements	Parcel 4	Structure Height	23.7 feet, regardless of slope	Front Facade Orientation	West property line	Front Setback	15 feet (Structure) 20 feet (Garage) Measured from edge of access lane	Side Setbacks	North: 10 feet South: 10 feet	Rear Setback	East: 25 feet	6-foot Rear Landscape Buffer	Rear (East) yard
Limitations & Requirements	Parcel 4															
Structure Height	23.7 feet, regardless of slope															
Front Facade Orientation	West property line															
Front Setback	15 feet (Structure) 20 feet (Garage) Measured from edge of access lane															
Side Setbacks	North: 10 feet South: 10 feet															
Rear Setback	East: 25 feet															
6-foot Rear Landscape Buffer	Rear (East) yard															
		b. Lot 5 is a flag lot created in Clackamas County prior to annexation. Development of structures on this parcel shall comply with the provisions in place at the time of lot creation. The following development restrictions apply:														
	//															
	//															

		<table><tr><td>Limitations & Requirements</td><td>Parcel 5</td></tr><tr><td>Minimum Lot Size</td><td>10,000 sq. ft.</td></tr><tr><td>Structure Height</td><td>35 feet</td></tr><tr><td>Front Facade Orientation</td><td>West property line</td></tr><tr><td>Front Setback</td><td>20 feet</td></tr><tr><td>Side Setbacks</td><td>5 feet</td></tr><tr><td>Rear Setback</td><td>20 feet</td></tr><tr><td>Maximum Lot Coverage</td><td>35% (Primary Use Structures) 40% (Primary and Accessory Structures)</td></tr></table> <p>Note: See separate Notice of Development Restriction recorded at Fee No. 2023-014056 in the Official Records of Clackamas County, Oregon, regarding the delineated Resource Protection (RP) District on Lots 3 and 4.</p>	Limitations & Requirements	Parcel 5	Minimum Lot Size	10,000 sq. ft.	Structure Height	35 feet	Front Facade Orientation	West property line	Front Setback	20 feet	Side Setbacks	5 feet	Rear Setback	20 feet	Maximum Lot Coverage	35% (Primary Use Structures) 40% (Primary and Accessory Structures)
Limitations & Requirements	Parcel 5																	
Minimum Lot Size	10,000 sq. ft.																	
Structure Height	35 feet																	
Front Facade Orientation	West property line																	
Front Setback	20 feet																	
Side Setbacks	5 feet																	
Rear Setback	20 feet																	
Maximum Lot Coverage	35% (Primary Use Structures) 40% (Primary and Accessory Structures)																	
	7.	Submit a final landscape plan that shows the following planting, screening, and buffering measures, to the satisfaction of Planning staff:																
		<p>a. <u>Rear Yard Landscaping for Lot 4</u>: The size and density of the evergreen or deciduous shrubs necessary to create a continuous and complete 6-foot wide hedge along the east property line of Lot 4. The size/species/density shall be a minimum four feet in height at planting and which will grow to a height of at least six feet within two years. Plantings within the delineated RP District must be a native species per the Lake Oswego Master Plant List (LOC 50.11.004 - Appendix D). Existing vegetation may be used towards meeting this standard.</p>																
		<p>b. <u>Fence</u>. A 6-foot wood fence along the east property line of Lot 4 where located outside the delineated RP District.</p>																
		<p>c. <u>Verification Mitigation Trees</u>. 48 mitigation trees, 47 of which must be native species, 2-inch caliper or 8 feet in height at time of planting and capable of reaching a mature height of 30 feet pursuant to LOC 50.07.007.2.f.v.</p>																
		<p>d. <u>Access Lane Screening</u>. Access lane screening along south and west sides of the access lane.</p>																
	8.	Submit for review and approval a maintenance and monitoring plan for the RP District mitigation/restoration areas for three consecutive years.																
	9.	<p>Apply for and obtain a <u>Verification</u> tree removal permit for the forty-three trees approved for removal. The <u>Verification</u> application shall include a copy of the tree removal and final mitigation plans, showing a minimum of 48 mitigation trees, 47 of which must be native species. All 48 mitigation trees must be capable of attaining a mature height of at least 30 feet and must be 2-inch caliper (deciduous) or eight feet tall (evergreen) at time of planting pursuant to LOC 50.07.007.2.f.v. The native species requirement will depend on a tree's planting location:</p> <ul style="list-style-type: none">• If planted outside the delineated RP District, the species must be selected from LOC Appendix 55.02-1, Native Mitigation Tree List• If planted inside the delineated RP District, the species must be selected from LOC Appendix D, Lake Oswego Master Plan List.																

		Note: Staff recommends avoiding the ash species if possible due to the threat of the Ash borer.
B.	Prior to the Issuance of any Grading or Building Permits to Construct Any Dwelling, the Applicant/Owner Shall:	
	1.	Record the staff-reviewed and approved replat or partition plats as depicted in Exhibit E-005, together with Affidavits of Consent and Amendments to Mortgage, Trust Deed or Land Sale Contract as applicable.
	2.	Provide electronic copies of the recorded (re)plat(s) and all associated recorded documents as listed in Conditions A(1), A(2), A(5), A(6) and B(1).
	3.	Submit a final drainage report, prepared by a registered engineer, that complies with the Stormwater Management Code and LOSWMM, to the satisfaction of the City Engineer. If the final design is as proposed, the final design report must include facility sizing calculations, to demonstrate that the proposed stormwater management facilities have sufficient storage capacity to infiltrate the 10-year, 24-year storm event. Ensure the proper design infiltration rate is used.
	4.	Submit final plans for all stormwater management facilities. Final facility placement must adhere to setback requirements from building foundations (10 feet) and property lines (5 feet) per LOSWMM Table 3.1.
		a. If the final design plans are to be consistent with the preliminary plans, the applicant is required to register and obtain DEQ authorization for use of any proposed UIC system. In addition, the applicant will be required to provide pretreatment if drywells are proposed.
		b. If the applicant chooses to use a private drywell system in the final design, the applicant is required provide pretreatment prior to the drywell that meets the requirements in LOSWMM 4.6:4.
		c. If the final design plans are to be consistent with the preliminary plans, the applicant must demonstrate that the grading of the south access lane drains to the proposed stormwater management facility or facilities.
	5.	Per LOC Chapter 52, submit an Erosion Control Plan and apply for and obtain an erosion prevention and sediment control permit issued through the City of Lake Oswego and a NPDES 1200-C Permit from Oregon DEQ. Install and maintain all erosion control BMPs as indicated in the permits.
C.	Prior to the Final Building Inspection on any Lot or Occupancy or any Dwelling, the Applicant/Owner Shall:	
	1.	Complete all public improvements as required by Condition A(3) above, submit certified "as-built" drawings, and receive a certificate of completion and acceptance by the City.
	2.	Obtain all necessary permits from Clackamas County Engineering for driveway approaches and work within the right-of-way along Kimball Street. All pavement restoration within Kimball Street shall be to the satisfaction of Clackamas County.
	3.	Provide certification from the engineer of record that the stormwater facilities were constructed per the design and are functioning properly.
	4.	Provide proof of recorded operations and maintenance plans (OMPs) for each stormwater facility. The OMPs must describe how to properly maintain the facilities, the frequency of maintenance required and the party responsible for maintaining the facilities.
	5.	Provide a Final Sight Distance Certification from the engineer of record documenting available sight distances from the new accesses. Non-exempt vegetation and other obstructions within the clear sight triangles shall be cleared as needed to meet the sight distance requirements.

	6.	Submit a comprehensive final landscape plan illustrating:
		a. 48 Mitigation trees from the verification permit per Condition A(9) and any mitigation trees required for Type II tree removal for the development of dwelling(s).
		b. Flag lot screening along the south and west sides of the access lane and the rear property line of Lot 4 as discussed above under Condition A(7).
		c. RP District mitigation plantings, including all 292 required mitigation trees and 1,458 shrubs, as depicted in Exhibit F-005, pg. 17. Note that all plantings within the delineated RP District must be selected from LOC Appendix D, Lake Oswego Master Plan List.
	7.	Provide certification from the engineer of record that the access lane has been designed to Fire Code emergency vehicle load standards, to the satisfaction of the Fire Marshal.
	8.	Post addresses for Lots 4 and 5 at the end of the shared access lane, to the satisfaction of the Fire Marshal.
	9.	Install all required RP District mitigation, tree removal mitigation, and flag lot screening and buffering plantings as shown on the final landscape plan [see Condition C(6), above], and request a final inspection by Planning staff.
	10.	Post a performance bond or letter of credit to the City that is equal to 120% of the value of the RP District mitigation plantings installed pursuant to the final Sensitive Lands mitigation plan, as required by Condition A(8), above, for a 3-year period, to the satisfaction of staff.
	D.	Miscellaneous: Sensitive Lands Maintenance & Monitoring
	1.	The property owner(s) shall maintain the RP District mitigation in accordance with the approved maintenance and monitoring plan and shall provide an annual report to the Planning Department by October 31 st of each year for a 3-year period, commencing on the 31 st of October following the date of issuance of the Final Building Inspection. The report, which may be combined for the various parcels, shall be prepared by a qualified professional and shall document all site conditions with a narrative and pictures.

1

Code Requirements:

1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the Development approved by this decision shall expire three years following the effective date of the development permit, and may be extended by the City Manager pursuant to the provisions of this section.
2. **Tree Protection:** Submit a tree protection site plan and application as required by LOC 55.08.020 and 55.08.030 for review and approval by staff, including off-site trees that are within the tree protection zone of a protected tree or within a development area for the project. The plan shall include:
 - a. The location of proposed tree protection measures (i.e., temporary tree protection fencing, rigid surface, wood chips, etc.). Tree protection fencing shall consist of a minimum 4-foot high metal fence secured by metal posts at the edge of the tree protection zone, or as recommended by a certified arborist and approved by the Planning Division.
 - b. A note stating that no construction activities shall occur within the fenced protected area of any of the trees, or that if construction activities are unavoidable, tree protection measures as recommended by a certified arborist will be followed to reduce or mitigate the impact of construction activities. The note shall also inform contractors that

supervision by a certified arborist is required on site to oversee construction activities within the tree protection zone.

- c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.
- d. A sign shall be attached to the tree protection fencing which states that inside the fencing is a tree protection zone, not to be disturbed unless prior written approval has been obtained from the City Manager and project arborist.

DATED this 16th day of January, 2024

/s/
Randy Arthur, Chair
Development Review Commission

/s/ Kat Kluge
Kat Kluge
Administrative Support

ATTEST: None

TENTATIVE DECISION – January 3, 2024

AYES: Arthur, Dewes, Leek, O'Connor, Poinsette, and Sangrey

NOES:

ABSTAIN:

ABSENT: Bates

WRITTEN FINDINGS – January 16, 2024

AYES:

NOES:

ABSTAIN:

ABSENT:

Appendix A: Exhibits Received after Publication of Staff Report on October 25, 2023

The following exhibits were received after publication of the October 25, 2023 Staff Report and were entered into the record at the November 20th, December 18th, and January 3rd meetings:

F Exhibits: Written Documents

- F-016. City Charter Chapter X
- F-017. Chapter X Analysis Memo, December 15, 2023
- F-018. Engineering Memo, December 15, 2023
- F-019. Applicant Letter, December 15, 2023 F-021. Applicant Objection to Written Testimony
- F-020. Second City Charter Chapter X Analysis December 22, 2023
- F-021. Objection to Written Testimony - Exhibits G-626 and G-628
- F-022. Applicant Rebuttal to New Evidence, received January 2, 2024 (Struck from Record 1/3/2023)

G Exhibits: Public Comments in Opposition:

- G-526. Testimony from Bocci, received November 10, 2023
- G-527. Testimony from West, received November 10, 2023
- G-528. Testimony from Beck, received November 10, 2023
- G-529. Testimony from Kozusyn, received November 11, 2023
- G-530. Testimony from Bourque, received November 11, 2023
- G-531. Testimony from George, received November 12, 2023
- G-532. Testimony from Miller, received November 12, 2023
- G-533. Testimony from Lomax, received November 12, 2023
- G-534. Testimony from MacDowell, received November 13, 2023
- G-535. Testimony from Molnar, received November 13, 2023
- G-536. Testimony from Myers, received November 13, 2023
- G-537. Testimony from Yamada, received November 13, 2023
- G-538. Testimony from Brown, received November 13, 2023
- G-539. Testimony from Sage, received November 13, 2023
- G-540. Testimony from Linkfield, received November 14, 2023
- G-541. Testimony from Smith, received November 14, 2023
- G-542. Testimony from Quinn, received November 15, 2023
- G-543. Testimony from Fichter, received November 16, 2023
- G-544. Testimony from Dondershine, received November 16, 2023
- G-545. Testimony from Osborne, received November 16, 2023
- G-546. Testimony from Puhlman, received November 16, 2023
- G-547. Testimony from Hamilton-Scott, received November 16, 2023
- G-548. Testimony from Stanger, received November 17, 2023
- G-549. Testimony from Scott, received November 17, 2023
- G-550. Testimony from Petrone, received November 17, 2023
- G-551. Testimony from Fortner, received November 17, 2023
- G-552. Testimony from Thomas, received November 17, 2023
- G-553. Testimony from Bregar, received November 17, 2023
- G-554. Testimony from Knowles, received November 18, 2023
- G-555. Testimony from Lavios, received November 18, 2023
- G-556. Testimony from Lindsey, received November 18, 2023
- G-557. Testimony from Connors, received November 19, 2023
- G-558. Testimony from Wosko, received November 19, 2023
- G-559. Testimony from Mikulka, received November 19, 2023

1 G-560. Testimony from Bolland, received November 20, 2023
2 G-561. Testimony from Auburn, received November 20, 2023
3 G-562. Testimony from Platz, received November 20, 2023
4 G-563. Testimony from Longley, received November 20, 2023
5 G-564. Testimony from Shumavon, received November 20, 2023
6 G-565. Testimony from Beckman, received November 20, 2023
7 G-566. Testimony from Thornton, received November 20, 2023
8 G-567. Testimony from Baumann, received November 20, 2023
9 G-568. Testimony from Meckel, received November 20, 2023
10 G-569. Testimony from Mead, received November 20, 2023
11 G-570. Testimony from Louaillier, received November 20, 2023
12 G-571. Testimony from Home, received November 20, 2023
13 G-572. Testimony from Handley, received November 20, 2023
14 G-573. Testimony from Gaudin, received November 20, 2023
15 G-574. Testimony from Boom, received November 20, 2023
16 G-575. Testimony from Thies, received November 20, 2023.
17 G-576. Testimony from Davitt, received November 20, 2023
18 G-577. Testimony from Blommer, received November 20, 2023
19 G-578. Testimony from Matthys, received November 20, 2023
20 G-579. Testimony from Myers, received November 20, 2023
21 G-580. Testimony from Myers LFNA Chair, received November 20, 2023
22 G-581. Testimony from Myers LFNA Chair, received November 20, 2023
23 G-582. Testimony from Reilly, received November 20, 2023
24 G-583. Testimony from Uchida, received November 20, 2023
25 G-584. Testimony from Howell, received November 20, 2023
26 G-585. Testimony from Bauer, received November 20, 2023
27 G-586. Testimony from Zubrinsky, received November 22, 2023
28 G-587. Testimony from Kohlhoff, received December 4, 2023
29 G-588. Testimony from Kohlhoff, received December 8, 2023
30 G-589. Testimony from Motz-Storey, received December 9, 2023
31 G-590. Testimony from Kohlhoff, received December 10, 2023
32 G-591. Testimony from Peskin, received December 10, 2023
33 G-592. Testimony from Myers, received December 11, 2023
34 G-593. Testimony from Kaufman, received December 11, 2023
35 G-594. Testimony from Melo, received December 11, 2023
36 G-595. Testimony from De Ment, received December 11, 2023
37 G-596. Testimony from Froming, received December 11, 2023
38 G-597. Testimony from Logue, received December 14, 2023
39 G-598. Testimony from Chambers, received December 14, 2023
40 G-599. Testimony from Kennedy, received December 14, 2023
41 G-600. Testimony from Myers, received December 14, 2023
42 G-601. Testimony from Boom, received December 14, 2023
43 G-602. Testimony from Johnson, received December 14, 2023
44 G-603. Testimony from Hicks, received December 14, 2023
45 G-604. Testimony from Kennedy, received December 15, 2023
46 G-605. Testimony from Lang, received December 15, 2023
47 G-606. Testimony from Kohlhoff, received December 17, 2023
48 G-607. Testimony from Zubrinsky, received December 17, 2023
49 G-608. Testimony from Lubnow, received December 17, 2023
50 G-609. Testimony from Greenlund, received December 18, 2023

- 1 G-610. Testimony from Campione, received December 18, 2023
- 2 G-611. Testimony from Shaw, received December 18, 2023
- 3 G-612. Testimony from Goulard, received December 18, 2023
- 4 G-613. Testimony from Froming, received December 18, 2023
- 5 G-614. Testimony from Pang, received December 18, 2023
- 6 G-615. Testimony from Sloat, received December 18, 2023
- 7 G-616. Testimony from Dougherty, received December 18, 2023
- 8 G-617. Testimony from Herzog, received December 18, 2023
- 9 G-618. Testimony from Miller, received December 18, 2023
- 10 G-619. Testimony from Fink, received December 18, 2023
- 11 G-620. Testimony from Rigby, received December 18, 2023
- 12 G-621. Testimony from Myers LFNA Chair, received December 18, 2023
- 13 G-622. Testimony from Myers LFNA Chair, received December 18, 2023
- 14 G-623. Testimony from Handley, received December 18, 2023
- 15 G-624. Testimony from Myers, received December 18, 2023
- 16 G-625. Testimony from Lighcap, received December 18, 2023
- 17 G-626. Testimony from Kohlhoff, received December 23, 2023
- 18 G-627. Testimony from Ockert, received December 24, 2023
- 19 G-628. Testimony from Schwartz, received December 26, 2023 (*Struck from Record 1/3/2023*)
- 20 G-629. Testimony from Ockert, received December 26, 2023
- 21 G-630. Testimony from Myers, LFNA Chair, received December 26, 2023
- 22 G-631. Testimony from Kohlhoff Response to Applicant Exhibit F-021, received December 30, 2023
- 23 G-632. Testimony from Bregar Westridge NA Chair, received January 2, 2024 (*Struck from Record 1/3/2023*)