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

State et rel. New Look Development)	)	NO. 24CV03746
LLC	)	MEMORANDUM SUPPORTING
Plaintiff, Relator	)	MOTION TO INTERVENE, DENY
	)	WRIT
v	)	ORAL ARGUMENT REQUESTED
City of Lake Oswego,	)	
Defendant.	)	

Oral argument is requested. An estimate of the time required for argument is under two hours. Official court reporting services are requested.

MEMORANDUM

Statement of the case:

The applicant (now Plaintiff, Relator) sought development approval for a 2-lot confirmation, 4 serial lot line adjustments [establishes 5 residential lots], and an unavoidable sensitive lands (RP) crossing. The sensitive lands involved a delineated wetland, in part on the private property to be developed and in part on Waluga Park-West (the "Park") and a natural forested and habitat area of the Park. The crossing was for a proposed gravity sewer main line extension to serve the development of the private property to be connected to an existing gravity line in the Park, which served the park's

1  
2 public restroom facilities. To develop and construct the sewer line extension, the applicant  
3 sought a “temporary” sewer line construction easement 17 feet wide and 525 feet long  
4 through the natural area of the Park for its motorized equipment, necessitating the cutting  
5 of 43 trees and the loss of natural vegetation and habitat.

6 It is not disputed that the City Council, acting as the City's government, has  
7 enacted by ordinances a comprehensive plan (the “Comp Plan”), which has been  
8 acknowledged by DLCD process as being in accord with the statewide land use goals, and  
9 a development and zoning code (the “Code” or “LOC”), whose provisions are designed to  
10 implement the respective Comp Plan chapters. Additionally, cities are authorized to adopt  
11 facility plans to provide for the timely and orderly provision of services, including  
12 transportation, utilities, and recreational services (both active and passive).

13  
14 Primarily of application here are Goal 5, (Open Spaces, Scenic, and Natural  
15 Resources), and Goal 11, (Public Facilities and Services); the Comp Plan's chapters Healthy  
16 Ecosystems and Utilities; and the implementing Code provisions in chapter 50 involving  
17 sensitive lands, chapter 38 involving sewer connections and the City's sewer facility plan,  
18 Wastewater Master Plan Update (the “WWMPU”).

19 Fundamental to all this is the application and interpretation of the citizen  
20 initiated home rule Charter Amendment to the Lake Oswego City Charter, Chapter X,  
21 Park Development Limitation, approved by the voters November 2, 2021 by an almost 62%  
22 majority and the City government's failure to enforce the provisions of the Charter

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10 Ecosystems and chapter Utilities; and the implementing Code provisions in chapter 50  
11 involving sensitive lands, chapter 38 involving sewer connections and the City's sewer  
12 facility plan, Wastewater Master Plan Update (the "WWMPU").

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15 initiated home rule Charter Amendment to the Lake Oswego City Charter, Chapter X,  
16 Park Development Limitation, approved by the voters November 2, 2021 by an almost 62%  
17 majority and the City government's failure to enforce the provisions of the Charter  
18 Amendment. A copy of the Charter Amendment is marked Exhibit 1, and attached for ease  
19 of reference. In essence, Springbrook Park remained a park protected from development  
20 and fifteen other parks, including Waluga, would likewise become protected from  
21 development. Note: Chapter X is not a mere ordinance: it is in the Charter and therefore  
22 a part of the City's constitution.

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1  
2 The Charter Amendment is an “important law” that enacts municipal legislation  
3 that governs and regulates by clear and objective standards added protections to the  
4 natural areas of the City’s parks and open spaces; that those standards are consistent with  
5 the statewide Goals 5 and 11, the applicable administrative rules and the Comp Plan; and  
6 supersedes contrary City government adopted development regulations for sensitive lands  
7 and sewer connections as well as the location of the sewer line extension on map Fig. 6-14  
8 of the WWMPU that were applied to approve the applicant’s development application by  
9 the Development Review Commission (the “DRC”).

10 These contrary and inconsistent regulations and map figures were available to  
11 misapprehend and apply due to the City government's failure to enforce the provisions of  
12 the Charter Amendment. This silence of enforcement was over an extended period of  
13 time and appears to be in furtherance of an animus expressed through the City Council  
14 referring a competing measure on the November 2, 2021 ballot that didn’t succeed and the  
15 negative comments toward the voters expressed afterwards by members of the Council  
16 noted by commentators in written testimony before the DRC.

17  
18 The plain meaning and context of the Charter Amendment provisions met the  
19 case law test of significant impacts, and thus as a final land use decision. On appeal of the  
20 planning staff decision the DRC failed to consider and apply it as such.

21 Finally, the DRC found that the issue of the Charter Amendment being a land  
22 use decision was precluded, citing an earlier DRC decision where the then appellant raised

1  
2 the issue concerning similar language in Chapter X that only applied to Springbrook Park.  
3 However, the City failed to disclose in its initial presentation that the appellant and City  
4 entered into a Settlement Agreement, approved by the DRC, saving the trees in question  
5 through alternative drainage facilities, reducing on-site parking, providing for some traffic  
6 control devices and returning 50% of the fees. In return appellant's arguments were  
7 withdrawn and not litigated. The Agreement recited that settlement did not reflect on the  
8 strengths or weaknesses of either side's arguments. See attached then-Appellant's file  
9 copy of the Settlement Agreement, Ex 2.

10 Obviously the DRC can always reverse itself upon new evidence or law  
11 presented. For example, the case law standard of significant impacts was not even an issue  
12 in the previous decision. Nevertheless, the DRC made findings to the effect that the  
13 Charter Amendment was not applicable to its decision under any theory the opposition  
14 presented - basically that only the Development Code applied and the Charter  
15 Amendment wasn't in the Development Code, so it wasn't relevant - and if it was relevant,  
16 its language was interpreted as allowing the sewer main line extension because it was  
17 underground, that the construction easement was temporary and not a permanent road,  
18 that the location was in accord with Fig 6-14 of the WWMPU, under the sewer utility  
19 connection and sensitive lands Code provisions no alternative sewer systems were  
20 available to support the housing development and with replanting mitigation, any loss was  
21 not a loss because it would again only be temporary. This sentence runs on with wrong  
22 assertions.

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2 Preliminary Matter:

3 This mandamus action, under ORS 227.178 may not be initiated after the local  
4 government has taken final action including resolution of appeals on a permit application,  
5 even if the government's action was taken more than 120 days after the application was  
6 filed. State ex rel. Fraley v Deschutes County Bd. of Commissioners, 151 Or App 201, 206,  
7 948 P2d 1249 (1997). The DRC approved this application on January 16, 2024, the City  
8 noticed it on the 23rd and this writ was filed on the 24th. (See Plaintiff's Ex 2 P15) At the  
9 point this writ was filed a final action by the City had been taken. The fact that the DRC's  
10 approval could have been appealed to the City Council does not change the nature of the  
11 DRC's approval as a final action This court should deny this writ for lack of jurisdiction.  
12

13 Legal Questions Presented:

- 14
- 15 1. Are the voters a governing body under the home rule provisions of the Oregon  
16 Constitution?
  - 17 2. Does the home rule Charter Amendment enact regulations affecting the use of  
18 park and open space lands by providing additional protections for the natural areas  
19 of the City's parks and open spaces lands now and providing these protections for  
20 certain after acquired park and open space lands in the future?
  - 21 3. Do the Charter Amendment development limitations provide clear and objective  
22 standards as to what is allowed to be developed and constructed and what is not?  
23

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- 1
- 2 4. If the voters have enacted land use regulations by virtue of the Charter
- 3 Amendment, do they meet the significant impact test and constitute a final land use
- 4 decision?
- 5 5. Are these Charter Amendment additional protections consistent with (a) statewide
- 6 Goal 5, (b) statewide Goal 11, (c) the modification and change of location of the
- 7 sewer line locations of a sewer facility plan under OAR 660-011-0030 (2) and (4),
- 8 and the Comp Plan Chapters, Healthy Ecosystems and Utilities in accordance with
- 9 ORS 197.015 (1) and (2) (b)?
- 10 6. Do the Charter Amendment development limitations supersede contrary City
- 11 regulations regarding (a) the location of the sewer line extension in the park under
- 12 map Fig 6-14, Sewer Utility Facility Plan, (b) sewer connections and the disallowance
- 13 of alternative sewer waste systems that could avoid the sensitive lands involved
- 14 here (c) sensitive lands mitigation that doesn't prevent loss of natural resources?
- 15 7. Did the City fail to enforce the Charter Amendment and cause land use regulations
- 16 to be applied that should not have been if the Amendment was properly enforced?
- 17 8. Did the DRC misapply issue preclusion to not consider the Charter Amendment?
- 18
- 19

20 Legal Analysis of the Questions Presented:

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22

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2           1. The voters are a City's government. It is undisputed that the Lake Oswego voters  
3 duly exercised their home rule authority under the Oregon Constitution and amended the  
4 City Charter, Chapter X, Park Development Limitation to provide additional protections  
5 for the natural areas of City owned parks and open spaces. Art. XI, Section 2, and Art, IV,  
6 Section 1(5), Or. Constitution. The Oregon Municipal Handbook-Chapter 2: Home Rule and  
7 Its Limits, at page 4, states:

8           “\* \* \*However, with the power to ‘enact . . . any charter’ comes the ability to set the  
9 chartered government's substantive authority. [footnote 15 omitted] So, rather  
10 than conferring power on the cities directly, Oregon's home rule amendments  
11 leave it to the voters to decide what their city governments can do. [footnote 16  
12 omitted]”

13  
14           Thus, the voters are the ultimate City government. In Heritage Enterprises v City of  
15 Corvallis, 300 Or 168, 708 P2d 601 (1985), while the Court found the voters' rejection of a  
16 City' Council referred annexation decision did not meet the findings test and was not a  
17 land use decision; nevertheless, the court went on to state: “We do not exclude the  
18 possibility that the electorate might be a “local government” within the meaning of ORS  
19 197.015 (10).”

20           ORS 197.015 (10) provides in part, that a “land use decision” includes:

21                           “(A) A final decision or determination made by a local government or  
22                           special district that concerns the adoption, amendment or application of:  
23

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- “(i) the goals;
- “(ii) A comprehensive plan provision;
- “(iii) A land use regulation;
- “(iv) A new land use regulation;
- “\* \* \*”.

Clearly, the Heritage court contemplated whether the voters could enact a final land use decision that concerned anyone of the four land use topics described in ORS 197.015 (10).

2. The Charter amendment provides regulations governing the use of park and open space lands. The Lake Oswego Development and Zoning code (LOC) provides that parks are zoned Park Natural Areas (PNA) and their natural resource lands are provided with a sensitive land regulatory protection overlay. Waluga Park-West is zoned PNA and has a sensitive lands (RP) overlay. On November 2, 2021 after the voters’ approval, the City Manager released an official statement, which, in part, states: “Through voter approval, the City will amend Chapter X of the Lake Oswego City Charter to include additional protections to our natural areas. Any further specific property changes will include voter approval.” DRC Exhibit G-587. No further voter approval has occurred.

The language of the Charter Amendment and its provisions of “additional protections” provides a set of standards for the development of the natural park lands and its structures. In doing so, it is an implementation of the natural resource protections of

1  
2 the Comp Plan Chapter Healthy Ecosystems. It is in accordance with the general  
3 ordinance provision implementing a Comp Plan under the definition of “land use  
4 regulations.” ORS 197.015 (11).

5           3. The plain meaning and context of the provisions of the Charter Amendment  
6 provide clear and objective standards to regulate the use of the City’s parks and open  
7 space lands. The intended purpose of the Charter Amendment is to preserve the parks’  
8 natural areas by limiting development in the natural areas. It applies to the development of  
9 the sewer line extension development and construction easement conditions. It does so  
10 with standards that are clear and objective.

11           Section 43. Limits on Development provide a series of regulations concerning what  
12 may be developed and what shall not be developed in the Nature Preserves, first by  
13 directing that “the City of Lake Oswego shall insure [ensure] that all development within a  
14 Nature Preserve is consistent with the preservation of a Nature Preserve as a natural area  
15 for public enjoyment.” Note: a Nature Preserve by definition meant: “natural area parks  
16 or open spaces owned by the City of Lake Oswego that are managed or maintained to  
17 retain their natural condition and prevent habitat deterioration. Nature Preserves that are  
18 subject to the limitations of this Chapter, which upon ratification will initially include...  
19 Waluga Park-West.” Attached Ex 1 P2

20  
21           The construction - for a private developer - of a sewer line extension through a  
22 wetland and clear cutting a swath 17 ft. wide by 525 ft. through the natural area for  
23

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1  
2 constructing a sewer trench, including the cutting of 43 trees, (some data shows total trees  
3 impacted would be 14) and the resulting deterioration to habitat is not ensuring  
4 development which is consistent with preserving a natural area. The City is doing just the  
5 opposite.

6 After directing the City as noted above, Section 43 goes on to specifically regulate  
7 what may be constructed and what shall not be constructed in the Nature Preserve. "To  
8 facilitate public access and use, the City of Lake Oswego may build trails for hiking,  
9 jogging, horseback and bicycle riding, may provide benches and interpretive displays, and  
10 may provide picnic and sanitary facilities within a Nature Preserve."

11 Under the case law governing interpreting language of an initiative, one looks first  
12 to the meaning of the plain language and the context in which it appears, and if needed or  
13 especially instructive to the legislative history, which in the case of an initiative is generally  
14 the voter's pamphlet or the contemporary literature in support or in opposition. See, State  
15 v Gaines, 346 Or 160, 206 P3d 1042 (2009).  
16

17 Additionally, the purpose statement of the Chapter X provides "it shall be  
18 interpreted liberally to achieve its purpose."

19 The plain meaning of the prepositional phrase "[t]o facilitate public access and use"  
20 and its context at the beginning of the sentence as well as the other limiting provisions of  
21 the Amendment, is intended to expressly limit what sanitary facilities and other listed  
22 development the City of Lake Oswego may provide within a Nature Preserve which  
23

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1  
2 supports public access and use of the park. Given its plain meaning and context, this is a  
3 clear and objective standard.

4           Clearly, the extension of a sewer line to benefit private property outside the park is  
5 not a sanitary facility that facilitates the public's access and use of the park. Nor is a sewer  
6 facility to benefit properties outside the park expressly listed in the what-may-be-built in  
7 Section 43 or listed in any other provision in the Amendment.

8           Given the sewer extension destroys rather than preserves the natural area, to  
9 interpret the sewer extension as intended to be included in the what-may-be-built list is  
10 preposterous at best. It certainly does not comport with a liberal construction of limiting  
11 development to preserve the natural areas.

12  
13           Section 43 also expressly limits what may be constructed or developed with a  
14 Nature Preserve: "The City of Lake Oswego shall not construct or develop (or allow any  
15 person to construct or develop) any \* \* \* road, or trail for motorized vehicles within a  
16 Nature Preserve. Given the plain meaning and context of the words, this also provides a  
17 clear and objective standard. The City of Lake Oswego shall not cut (or allow any person  
18 to cut) any tree in a Nature Preserve for the purpose of facilitating the construction or  
19 development of any \* \* \* road, or trail for motorized vehicles." Again, the language's plain  
20 meaning and context provide a clear and objective standard.

21           The plain meaning of "any" as an adjective to "road, or trail for motorized vehicles"  
22 or to the cutting of "any" tree means "one or some indiscriminately of whatever kind."  
23

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1  
2 Merriam-Webster's Third International Unabridged Dictionary. The word "road" likewise  
3 simply means a way for vehicles, people and animals. Merriam-Webster supra. The use of  
4 the term "tree' is inclusive of all species. Clear cutting of trees and ground cover to  
5 construction a roadway easement 17 ft wide by 525 ft long and covering it with a surface to  
6 support the motorized vehicles and heavy equipment necessary for the trenching and  
7 construction for the sewer main line fits into that all- inclusive meaning for "any road or  
8 trail for motorized vehicles" or the "cutting of any tree." Whether one calls it a temporary  
9 or permanent easement, its construction and development along with the cutting of any  
10 trees and the deterioration of habitat in furtherance of construction is expressly  
11 prohibited by the language and the preservation intention of the Charter Amendment.

12 Staff's argument that since the language of the Charter Amendment listed a  
13 prohibition against above ground structures and the sewer extension line would be below  
14 ground and therefore being below ground, the sewer line is not intended to be addressed  
15 by the Charter Amendment is sophistry. The Charter Amendment expressly addressed  
16 sanitary facilities and limited them expressly to facilitate public access and use of the park  
17 as set forth in Section 43. (It also failed to recognize that in the applicant's Resource  
18 Report, DRC Exhibit F-005, the line extension will apparently have 3 manholes that will  
19 extend above ground due to the line being in wetlands.)

20  
21 4. City of Pendelton v Kerns, 294 Or 126, 653 P 2d 992 (1982), established that a  
22 local government's decision qualifies as a land use decision if it "effects" a significant impact  
23 on land use now and in the future. By finding it was a land use decision, the Court held it

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1  
2 provided jurisdiction to be reviewed as a land use decision by LUBA on appeal. The City of  
3 Pendleton's ordinance authorizing a street improvement designated under their  
4 comprehensive plan as a minor neighborhood street would have opened the street as a  
5 major access route to two large undeveloped subdivisions. Therefore, the Court held that  
6 it wasn't a "de minimis street improvement project," but would "effect a significant change  
7 in the land use status quo." Id at 135.

8 More recently, in Marks v Land Conservation and Development Commission, et al,  
9 327 Or App 708 (2023), the court rejected the City of Lake Oswego's arguments,  
10 overturned the LCDC decision that it did not have jurisdiction, and held that the 3 Party  
11 Intergovernmental Agreement (IGA) the City of Lake Oswego had entered into, met the  
12 significant impact test and was a final land use decision. In Marks, the court found the IGA  
13 delayed the timing of implementing the conceptual planning for the Stafford urban reserve  
14 area for inclusion into the UGB and had significant impact now and in the future on land  
15 use.

16  
17 Disclosure: Theresa M. Kohlhoff was a City Councilor for Lake Oswego who voted  
18 for the IGA during her term of office.

19 The Charter Amendment has a significant impact on land use, now and in the  
20 future. Also see 1000 Friends v Wasco County Court, 304 Or. 76, 742 P2d 39 (1987). The  
21 court found that the City's incorporation was a land use decision as it had significant  
22 impact on how land would or would not be used. The court went on to uphold Wasco

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1  
2 County's decision that the petition to incorporate was authorized to be placed on the  
3 ballot as a final land use decision and provided LUBA jurisdiction. Likewise in the present  
4 case the City Council's decision to place the Charter Amendment on the ballot was a final  
5 land use decision, giving the DRC jurisdiction to apply the Charter Amendment.

6 The Charter Amendment is significant on several levels: (1) A decision that "effects a  
7 significant change in the land use status quo of the area" meets the significant impact test.  
8 Kerns at 135. As set forth in the Amendment's sections, it is not a de minimis decision, but  
9 applies for the first time to 15 parks and open spaces natural area lands owned by the City  
10 changing their status quo; (2) It sets forth substantive provisions to constitute a newly  
11 defined Nature Preserve and regulates what may be constructed and developed and what  
12 shall not be constructed and developed in the Nature Preserves; (3) The Amendment's  
13 provisions significantly impact the means and manner in which the natural area and habitat  
14 are to be used, protected, developed, managed and maintained now and in the future; (4)  
15 Section 46, provides new direction and standards for including future natural areas that  
16 the City may acquire to be subject to the same use, development, protection,  
17 management, and maintenance; (5) It also allows for park master plans, but directs they be  
18 in accord with the Charter Amendment's regulatory language; and (6) reasonably leaves  
19 alone existing development, making what may have done in the past irrelevant.

20  
21 The clear focus is on the present and the future. It constitutes a final land use  
22 decision applicable to this application. Contrary to the City, the DRC had jurisdiction to  
23 apply the Charter Amendment as it was otherwise consistent with applicable state law.

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1  
2 5. The Charter Amendment's stated purpose and the intent of its language  
3 establishing additional protection regulations for the natural areas of City owned parks  
4 and open spaces is consistent with state land use planning law, ORS 197.175(1) and (2)(b).

5 The statutory provisions delegate land use authority directly to the cities to adopt  
6 planning and zoning and a comprehensive plan consistent with the statewide goals and  
7 adopt and have acknowledged a comprehensive plan consistent with the goals. Once the  
8 plan is acknowledged by LCDC, implementing facility plans and regulations consistent with  
9 the comprehensive plan may be finally decided.

10 The analysis of whether the Charter Amendment is consistent with the Comp plan  
11 must begin with an analysis of whether the Charter Amendment is otherwise preempted.  
12 Unless a state or federal statute or state or federal constitutional provision expressly or  
13 impliedly preempts a home rule regulation, the home rule regulation stands. State ex rel  
14 Haley v City of Troutdale, 281 Or 203, 576 P2d 1238 (1978); Thunderbird Mobile Home Club  
15 v City of Wilsonville, 234 Or 457, 348 P2d 525, rev den 348 Or 524 (2010).

16  
17 There is no express preemption of the home rule Charter Amendments to preserve  
18 and protect City's natural resources and open space areas in any state or federal statutes  
19 or state or federal constitutions. This leaves implied preemption. Here, the test of implied  
20 preemption rests with whether the home rule regulation can be interpreted as being  
21 consistent with the applicable land use goals and statutes. See, the Troutdale and  
22 Wilsonville cases cited above. In both cases, the City regulations provided additional  
23 protections over that of the respective state statutes but were not inconsistent with the

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1  
2 intent of the statutes. Troutdale required greater double wall construction to protect  
3 against the east winds over the Building Code requirement of single wall construction.  
4 Wilsonville provided a series of relief and monetary provisions upon a mobile home park  
5 closure that were greater than the comparable state renter relief statute for mobile home  
6 closures.

7 **(A) The Charter Amendment is consistent with the stated “preservation of natural**  
8 **resources and open spaces and the prevention of loss” purposes of Goal 5 (Open**  
9 **Spaces, Scenic and Natural Resources), which, in turn, is in accordance with ORS**  
10 **197.175 (1), which provides that a City exercise planning and zoning responsibilities in**  
11 **accord with statewide goals.** The Charter Amendment’s stated purpose and the intent of  
12 its language limits development in the parks’ natural areas; thereby, protecting and  
13 conserving from loss the natural resources of its parks and open spaces currently and in  
14 the future for the public, which is a stated purpose of Goal 5.

15 **(B) The Charter Amendment provides for sewer facilities to facilitate access and use**  
16 **of the natural areas of the park for the public enjoyment of the natural areas of the**  
17 **park consistent with Goal 11’s guideline for planning and developing a timely, orderly**  
18 **and efficient sewer utility infrastructure.** The fact the Amendment does limit  
19 development and construction of sewer facilities that do not serve the public interest of  
20 preserving the park natural area land, a PNA zone, and that otherwise would not be  
21 orderly and efficiently planned by destroying and causing the loss to natural areas within  
22

1  
2 the park is not inconsistent with guidelines of Goal 11, which, in turn, is in accordance with  
3 ORS 197.175 (1).

4 **(C) Also, the Charter Amendment causing a change of location for connecting to the**  
5 **sewer system is consistent with the OARs that allows for modification of sewer line**  
6 **locations set forth in the Facility Plan. It is in accord with ORS 197.175(1).**

7  
8 OAR 660 -011-000 et. seq deals with implementation of Goal 11. While the OARs  
9 require cities to provide facility planning of utilities, including sewer facilities and their  
10 location, as part of comprehensive planning, it also recognizes that locations may be  
11 required to be modified by subsequent events, OAR 660-011-0030(2), and land use  
12 amendments that are subject to the administrative procedures and review and appeal  
13 accorded "land use decisions" set forth in ORS 197 and those set forth in OAR Chapter  
14 660, division 18." OAR 660-011-0030 (4). The location of the sewer main line extension in  
15 this case is in map Figure 6-14, WWMPU (2013), which is a "facilities plan" with the location  
16 of future sewer lines in accordance with the OARs. The Charter Amendment is a land use  
17 regulation as set forth above and constitutes a land use amendment modifying the location  
18 of the sewer main line extension subject to the procedures, review and appeal under  
19 Chapter 197. Under Chapter 197, as a land use regulation the Charter Amendment was  
20 subject to review, but the City did not apply for any review, challenge the enactment, or  
21 appeal, and consistent with Chapter 197, it is a final land use decision. Thus, the Charter  
22 Amendment change of location is consistent with the OARS and modification of a Facilities  
23 Plan. It is in accord with ORS 197.175(1).

PAGE 18 MEMORANDUM SUPPORTING MOTION TO INTERVENE, DENY WRIT

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1 **(D) The City's acknowledged Comp Plan addresses the City's natural resource areas**

2 **and sensitive lands.** See also, DRC Exhibit G-588. Ordinance 2687, effective January 14,  
3 2016, made amendments to the City's Comprehensive Plan and Zoning Maps,  
4 Comprehensive Plan Text, the Development Code and Related Cross References, to  
5 Create Changes to the Natural Resource Program and Sensitive Lands Implementing  
6 Regulations and Adopting Findings. The 1994 Plan provisions under Goal 5 (Open Spaces,  
7 Scenic and Natural Resources, Goal 6 (Air Quality), and Goal 15 (Willamette Greenway)  
8 were replaced with a new chapter, Healthy Ecosystems. Also, Sensitive Lands regulations  
9 were replaced (affecting LOC 50.05.010 and 50.07.004.8) and incentives were added to  
10 the code for habitat protection and enhancement.  
11

12 Waluga Park - West is zoned Park Natural Area Zone (PNA) and has a RP sensitive  
13 lands overlay. In implementing the Comp Plan through planned zoning and implementing  
14 code, a key purpose for the PNA zone is "to protect, preserve, conserve, and enhance  
15 natural areas, greenways, and parks." LOC 50.02,003.3.a.i.

16 In attachment B, p 7 and 8, to Ordinance 2687, the following "major issues" finding  
17 was made: **"Historically, new development and construction of utilities, especially  
18 sanitary sewers, lead to removal of vegetation, erosion, and degradation of streams."**  
19 [bold for emphasis] Also, found was "natural resource protection and conservation are  
20 integral to the City's overall water quality and compliance program."  
21

1  
2 By the Charter Amendment limiting the construction and development to sewer  
3 line facilities to that which facilitate access and use of the public of the parks open space,  
4 park natural areas are “protected, preserved and conserved” from further removal and  
5 loss of natural resources, vegetation, trees and habitat by newly constructed sewer lines  
6 that do not serve the park. The Charter Amendment is consistent with the intent of the  
7 Comp Plan Chapter, Healthy Ecosystems, and implementing PNA zone and sensitive lands  
8 RP overlay by providing additional protection of the parks’ natural areas. It is in accord  
9 with ORS 197.015 (2). (b).

10 6. A City Charter is like a constitution and its provisions preempt any ordinance  
11 that is contrary or inconsistent with the Charter. See, Canfield v Sullivan, 774 F2d 1466 (9<sup>th</sup>  
12 Cir. Court of Appeals, 1985). The court stated: “The general rule is that an ordinance is  
13 invalid if it conflicts with a city charter.” In the case of St. Croix v Superior Court, 228 Cal  
14 App. 4th 434 (2014), for example, the appellate court found that the San Francisco  
15 charter’s incorporation of the attorney client privilege of the Evid. Code, sec. 954 for the  
16 City”s communication superseded an ordinance purporting to compel disclosure of  
17 privilege communication between the San Francisco Ethics Commission and the City  
18 attorney. (This case exists but could not be shephardized at the time this memorandum is  
19 being submitted.)

20  
21 Under the express prohibitions of the construction and development of the sewer  
22 main line extension the Charter Amendment noted above, the following are preempted  
23 and superseded as being contrary and inconsistent with the Charter Amendment: (A) the

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1  
2 Wastewater Master Plan Update (2013), map figure 6-14 to the extent it proposes a future  
3 sewer main line through the wetlands and natural area of Waluga Park-West that is not  
4 intended to facilitate public access and use of the park, (B) the sewer code provisions of  
5 LOC 5.05.010. 6 to the extent they would allow this type of sewer main line as a  
6 practicable alternative, and (C) LOC 38 to the extent it would allow a connection of a  
7 sewer main line that does not facilitate the public access and use of the park to be  
8 connected to the existing sewer line in the park.

9 The DRC did not have the authority to apply WWMPU map figure 6-14, LOC  
10 5.05.010. 6 and LOC 38.18.305.1.b. to the extent the regulations were preempted and  
11 superseded by the Charter Amendment, but for the failure of City officials and staff to  
12 enforce the Amendment.

13  
14 *It should be noted and highlighted that applying the Charter Amendment to*  
15 *this application does not necessarily cause the development application to be*  
16 *denied as there are other wastewater disposal systems that can be constructed*  
17 *outside of the park that were available as practicable alternatives at the time of the*  
18 *annexation and could be available now if the City had carried out its duties in*  
19 *applying and enforcing the Charter provisions.*

20 7. The City failed to enforce the Charter Amendment, thereby allowing the DRC to  
21 misapprehend the Charter Amendment's application to the applicant's application to the  
22 detrimental reliance of the citizen opponents.

23 PAGE 21 MEMORANDUM SUPPORTING MOTION TO INTERVENE, DENY WRIT

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1  
2 Oposing commentators have presented written testimony that (1) as early as June  
3 21, 2021, the day the county election officer certified that the petitioners met the requisite  
4 signature qualification by over 15% of the registered electorate, that the language of the  
5 Charter Amendment itself was known, and on that date, that the City Manager began the  
6 preparation of a competing measure to be referred; (2) that on August 3, 2021 given the  
7 options to adopt the Charter Amendment, ordered it be placed on the ballot alone, or  
8 order it be placed on the ballot with a referred City Council charter Amendment, the City  
9 Council decide to order both on the ballot; (3) that after the citizen initiative was certified  
10 as being the winning measure at a City Council meeting, some Council members made  
11 disparaging remarks from the dais about the voters voting for the Amendment; (4) given  
12 the duty to apply and enforce the Charter Amendment by elected officials and staff, the  
13 City' remained completely silent about the Charter Amendment and whether it was  
14 consistent with state laws or superseded contrary regulation necessitating conforming  
15 amendments at the tentative adoption of annexation Ordinance 2874 on November 2, 2021  
16 which was predicated to tying into the sewer system at the Park and delayed for the owner  
17 to execute and record a covenant (not actually executed until February 23, 2022) where he  
18 would pay for the cost of the sewer line extension, acknowledge there was a further  
19 hearing process with no guarantee of outcome (the current hearing process), make no  
20 claim against the City and hold the City harmless and remained silent at 2874's enactment  
21 of March 17, 2022; (5) the City remained silent as well at the public hearing for the changes  
22 to the sewer code, Ordinance 2890, on March 17, 2022 that made changes to the sewer  
23 connection code and the WWMPU deleting the use of STEP Systems, although ostensibly

1  
2 for cost, albeit used as an alternative sewage disposal system to gravity systems in the past  
3 to avoid a natural area and water fingers of the lake; and (6) the earlier public statement by  
4 the City Manager of November 2, 2021 that further changes to the parks would be by vote  
5 of the citizens, voters had a substantial and significant right to rely on the City officials and  
6 staff doing their duty in this regard.

7 That given the early knowledge of the Charter Amendment, the home rule Charter  
8 Amendment itself, and the Manager's statement the silence by elected officials, especially  
9 at the March 17, 2022 changes to the connection regulations and deletion of the alternative  
10 STEP Systems that had been used to avoid water obstacles and natural areas, amounted to  
11 Willful Blindness or intentional indifference (a doctrine primarily found in criminal cases to  
12 establish mens rea intent). In short, their silence at these key times evidenced the intent by  
13 City officials that the voters would rely on City officials and staff performing their  
14 enforcement duties, and in reliance the voters would not need to challenge the annexation  
15 themselves to establish appeal rights to their detriment. Nor would the DRC, being heavily  
16 reliant on staff, know from the lack of enforcement that the code regulations they were  
17 applying were superseded or give the opponents evidence the weight it otherwise would  
18 have.

19  
20 The DRC could have made its decision on December 18, 2023 which would have  
21 been within their stated deadline of December 26th (which may or may not have included  
22 the 45 day extension the Plaintiff requested.) Nonetheless the City allowed the matter to  
23 be continued until final findings on January 16, 2024, (hearing delayed from January 16th)

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1  
2 with notice dated January 23, 2024. Plaintiff's Ex 2 P1 of 18. There is evidence that this  
3 notice did not go out until the 24th. The Plaintiff petitioned for this writ on January 24,  
4 2024. See Clackamas County Court Register, created at 12:24PM.

5 The Intervenor was deprived of his appellate rights to petition government in a full  
6 and fair manner through no fault of his own. Statewide Goal 1 (Citizen Involvement); First  
7 Amendment US Constitution, 14th Amendment US Constitution. Under these  
8 circumstances as well as the arguments provided herein, the remedy of intervention  
9 should be allowed as well as a full hearing on this matter.

10  
11 8. The DRC misapplied the doctrine of issue preclusion.

12 The City relies on the prior DRC decision in LU 20-0027 to provide evidence of  
13 issue preclusion of the Charter Amendment being a final land use decision under ORS  
14 197.015 (10). The issue was initially raised as to similar language in the previous Chapter X  
15 of the Charter which applied to Springbrook Park and the expansion of the tennis court  
16 facility in the park.

17 The DRC can always reconsider and reverse a former holding based on the facts  
18 and prevailing legal cases before it in a new application. For example, the significant impact  
19 test in Kearns or Marks was not presented or argued by the appellant in LU 20-0027.

20  
21 As previously pointed out in DRC Exhibit G-587, p 4, the City did not disclose in  
22 presenting its reliance on the DRC decision in LOC 20-0027 that a compromise was  
23 reached and a Settlement Agreement between the appellant and the City was reached

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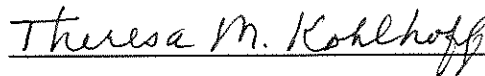


1  
2 and was made part of the record, saving the three trees appellant sought to be saved as  
3 well as a reduction of on-site parking spaces and installation of traffic control measures,  
4 plus a 50% return of the fees to appeal. The measure also provided in the recitals: "This is  
5 a settlement of a disputed matter and the agreements herein are not to be construed as a  
6 reflection of the relative strengths or weakness of the arguments submitted, or of the  
7 likelihood of a party prevailing on the arguments".

8 Under the Settlement Agreement, appellant withdrew his stated grounds for  
9 objection to the application. Thus, the issue was not litigated let alone fully and there is no  
10 weight to be given about the City's arguments, rendering the findings and conclusion of LU  
11 20-0027 of negligible weight as a precedent.

12  
13 CONCLUSION

14 Michael E. Kohlhoff should be allowed to intervene. The writ should be denied.

15 

16 Theresa M. Kohlhoff, January 31, 2024, attorney

17 This memorandum was largely authored by Mr.  
18 Kohlhoff but reviewed and added to by attorney

19  
20 Prepared and Submitted by:  
21 Theresa M. Kohlhoff, Attorney for Intervenor  
22 Author of pleadings and Trial Attorney  
23 Author of Memorandum, Michael E. Kohlhoff  
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Portland, Oregon 97203

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## CHAPTER X. PARK DEVELOPMENT LIMITATION

### Section 41. Purpose.

The purpose of this Chapter is to preserve all designated Nature Preserves that are owned by the City of Lake Oswego, inclusive of the fifteen natural parks specified in this Chapter, as natural areas for the enjoyment of all residents of and visitors to Lake Oswego. This Chapter shall be interpreted liberally to achieve this purpose.

(Amended November 7, 1978; November 2, 2021.)

### Section 42. Definitions.

As used in this Chapter:

Athletic Facility means any area, field, or building which is graded, leveled, constructed, or equipped for use in sports or athletics. Fields for baseball, soccer, or football and courts of tennis are examples of Athletic Facilities.

Bryant Woods Park means the park land owned by the City of Lake Oswego which is commonly referred to as "Bryant Woods Park" (19.7 acres, more or less, to the North of Childs Road located at the corner of Childs Road and Canal Road at 4301 Childs Road).

Canal Acres means the park land owned by the City of Lake Oswego which is commonly referred to as "Canal Acres" (27.3 acres, more or less, to the South of Childs Road, to the West of Canal Road, and to the East of Sycamore Avenue, located at 19300 Canal Road).

Cooks Butte Park means the park land owned by the City of Lake Oswego which is commonly referred to as "Cooks Butte Park" (43 acres, more or less, located at 2100 Palisades Crest Drive).

Cornell Natural Area means the park land owned by the City of Lake Oswego which is commonly referred to as "Cornell Natural Area" (3.2 acres, more or less, to the East of Cornell Street, to the South of Larch Street, located at 16920 Cornell Street).

Glenmorrie Greenway means the park land owned by the City of Lake Oswego which is commonly referred to as "Glenmorrie Greenway" (1.3 acres, more or less, to the East of Pacific Hwy, to the North of Glenmorrie Terrace, located at 16540 Pacific Hwy).

Hallinan Woods means the park land owned by the City of Lake Oswego which is commonly referred to as "Hallinan Woods" (3.8 acres, more or less, located at 1103 Obrien Street).

Iron Mountain Park means the park land owned by the City of Lake Oswego which is commonly referred to as "Iron Mountain Park" (51 acres, more or less, to the North of Iron Mountain Blvd, located at 2401 Iron Mountain Blvd).

Kerr Open Space means the park land owned by the City of Lake Oswego which is commonly referred to as "Kerr Open Space" (10 acres, more or less, to the South of SW Stevenson Street, to the East of Grouse Terrace, to the North of Walking Woods Drive, to the West of Icarus Loop).

Lamont Springs Natural Area means the park land owned by the City of Lake Oswego which is commonly referred to as "Lamont Springs Natural Area" (0.5 acres, more or less, to the South of Lakeview Blvd, and to the East of Bryant Road, at the corner of Lakeview Blvd and Bryant Road, located at 4600 Lakeview Drive).

Nature Preserve means natural area parks or open spaces owned by the City of Lake Oswego that are managed or maintained to retain their natural condition and prevent habitat deterioration. Nature Preserves that are subject to the limitations of this Chapter, which upon ratification will initially include, Bryant Woods Park, Canal Acres,

Cornell Natural Area, Cooks Butte Park, Glenmorrie Greenway, Hallinan Woods, Iron Mountain Park, Kerr Open Space, Lamont Springs Natural Area, River Run, Southshore Natural Area, Springbrook Park, Stevens Meadows, Waluga Park – West, and Woodmont Natural Park.

River Run means the park land comprised of two parcels (River Run East and River Run West), owned by the City of Lake Oswego, which is commonly referred to as "River Run" (10.8 acres, more or less, to the East of Canal Road, to the North of the Tualatin River, located at 19690 River Run Drive and 3770 Rivers Edge Drive).

Southshore Natural Area means the park land owned by the City of Lake Oswego which is commonly referred to as "Southshore Natural Area" (9.2 acres, more or less, located at 1201 South Shore Blvd).

Springbrook Park means the park land owned by the City of Lake Oswego which is commonly referred to as "Springbrook Park" (52 acres, more or less, to the South of Country Club Road, to the West and North of Wembley Park Road, and to the East of Boones Ferry Road). The term "Springbrook Park" does not include the City of Lake Oswego existing indoor tennis facility and adjoining parking lot.

Stevens Meadows means the two park lands owned by the City of Lake Oswego, which is commonly referred to as "Stevens Meadows" and the "Stevens Homestead" (27.8 acres, more or less, located at 18600 Shipley Drive and 1551 Childs Road, respectively).

Telecommunications Facility means any area, field, or building which is graded, leveled, constructed, or equipped for use in telecommunications or broadband communication, Antennas, Cellular Towers, Radio Masts and Towers, Satellite Dishes, and Emergency Communications Systems are examples of Telecommunications Facilities. This includes Telecommunications Facilities for both public or private use.

Waluga Park – West means the park land owned by the City of Lake Oswego which is commonly referred to as "Waluga Park – West" (22.8 acres, more or less, to the East of Inverurie Drive, to the North of SW Oakridge Road, to the West of Waluga Drive).

Woodmont Natural Park means the park land owned by the City of Lake Oswego which is commonly referred to as "Woodmont Natural Park" (6.8 acres, more or less, at the corner of Atwater Rd and Atwater Lane, located at 13600 Atwater Lane).

(Amended November 2, 2021.)

### **Section 43. Limitations on Development.**

The City of Lake Oswego shall insure that all development within a Nature Preserve is consistent with the preservation of a Nature Preserve as a natural area available for public enjoyment.

To facilitate public access and use, the City of Lake Oswego may build trails for hiking, jogging, horseback and bicycle riding, may provide benches and interpretive displays, and may provide picnic and sanitary facilities within a Nature Preserve. To access and use particularly fragile habitats, boardwalks may be built; however, trails shall refrain from using hard surface materials, such as asphalt and concrete, in order to remain consistent with the natural conditions of a Nature Preserve.

The City of Lake Oswego shall not construct or develop (or allow any person to construct or develop) any Athletic Facility, any Telecommunications Facility, or any parking lot, road, or trail for motorized vehicles within a Nature Preserve. The City of Lake Oswego shall not cut (or allow any person to cut) any tree in a Nature Preserve for the purpose of facilitating the construction or development of any Athletic Facility, any Telecommunications Facility, or any parking lot, road, or trail for motorized vehicles.

The City of Lake Oswego shall not construct or develop (or allow any person to construct or develop) any facility or any structure above ground that would impair or be inconsistent with the natural conditions of a Nature Preserve.

The City of Lake Oswego shall not cut (or allow any person to cut) any tree in a Nature Preserve for the purpose of commercial logging.

The City of Lake Oswego shall be allowed to maintain (or allow any person to maintain) a Nature Preserve for the purposes of ecological restoration that provides a safe and healthy natural area that is accessible for public enjoyment, provides a healthy habitat for wildlife, eliminates invasive species, restores native species, and mitigates fire hazards.

The City of Lake Oswego shall be allowed to maintain (or allow any person to maintain) any existing facility or existing structure, or any existing parking lot, road, or trail for motorized vehicles in a Nature Preserve constructed before November 2, 2021 that is above ground as long as that facility or structure, or parking lot, road, or trail for motorized vehicles is not altered in any manner that would further impair or be inconsistent with the natural conditions of a Nature Preserve.

The City of Lake Oswego shall be allowed to implement (or allow any person to implement) a park master plan for a Nature Preserve that was adopted before November 2, 2021.

(Amended November 7, 1978; November 2, 2021.)

**Section 44. Effective Date.**

This Chapter carries an effective date of November 2, 2021.

(Amended November 2, 2021.)

**Section 45. Severability.**

If a court should hold invalid or unconstitutional any clause or part of this Chapter, that holding shall not affect the remaining parts of this Chapter which are not held invalid or unconstitutional.

(Amended November 2, 2021.)

**Section 46. Application to Other Park.**

This Chapter shall apply to any other park (i) conveyed by property owners to the City of Lake Oswego with a "Nature Preserve" designation that shall carry with the property in perpetuity, (ii) nominated by the Parks, Recreation, and Natural Resources Board and/or the Director of Parks and Recreation designating such other park as a "Nature Preserve" and ratified by the City Council, (iii) ratified by voters specifically designating such other park as a "Nature Preserve," or (iv) acquired by a bond issued after the effective date of this Chapter if (and only if) the voters specifically designate such other park as subject to this Chapter. If any other park is designated as subject to this Chapter, then this Chapter shall apply to that park as if its name (preceded by the word "and") were added to the Nature Preserve definition of this Chapter.

(Amended November 7, 1978 [Note: from November 7, 1978 until June 30, 1980, this Chapter was numbered XXV and included Sections 102 through 107]; Renumbered Chapter on July 1, 1980; Amended November 2, 2021.)

**Section 46A. Maximum Height of Structures in Residential Areas.**

The City of Lake Oswego shall neither construct nor allow the construction of any structure which is more than 50 feet in height within a residential zone, except for the construction of a single symbolic appurtenance of a structure to 75 foot height. The City may, however, construct or allow the construction of a lighting structure which is more than 50 feet in height in a public park or school sports fields located in a residential zone. For purposes of this section the height of a structure or of a part or appurtenance of a structure shall be measured from the ground or sidewalk surface within a 5-foot horizontal distance of the exterior of the structure, provided such sidewalk or ground surface is not more than 10 feet above the lowest grade as defined by city ordinance; or, if such sidewalk

or ground surface is more than 10 feet above lowest grade, height shall be measured from a point 10 feet higher than the lowest grade, to the top of the highest element of the building or structure.

(Amended May 19, 1987; March 24, 1992.)

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**The Lake Oswego Municipal Code is current through Ordinance 2922, and legislation passed through June 6, 2023.**

Disclaimer: The City Recorder's Office has the official version of the Lake Oswego Municipal Code. Users should contact the City Recorder's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://www.ci.oswego.or.us/>  
(<https://www.ci.oswego.or.us/>)  
City Telephone: (503) 635-0290  
Code Publishing Company  
(<https://www.codepublishing.com/>)

Settlement Agreement

LU 20-0027

**Whereas**, the Lake Oswego Park and Recreation Dept. ("Parks") applied for a development permit for modifications to the Lake Oswego Indoor Tennis Center, Planning File No. 20-0027; and

**Whereas**, the Planning Dept. issued a Decision of Approval of the application on November 25, 2020; and

**Whereas**, Michael E. Kohlhoff ("Kohlhoff") timely filed an appeal of the Decision; and

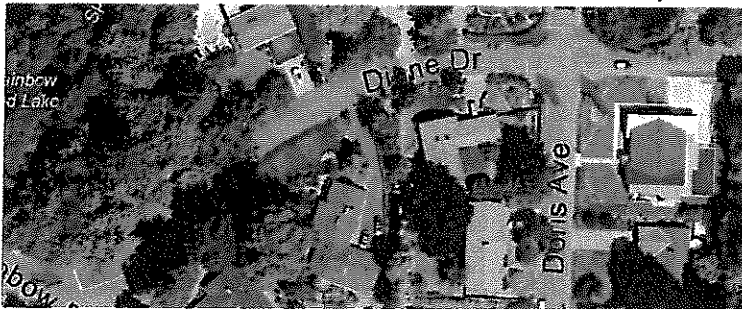
**Whereas**, a public hearing on the application and appeal was held by the Development Review Commission (DRC) on February 1, 2021, and the matter continued for additional written evidence and argument to February 17, 2021; and

**Whereas**, Parks and Kohlhoff have come to a settlement and compromise as to the scope of the application; and

**Whereas**, this is a settlement of a disputed matter and the agreements herein are not to be construed as a reflection of the relative strengths or weaknesses of the arguments submitted, or of the likelihood of a party prevailing on the arguments;

**NOW, THEREFORE**, it is agreed as follows:

1. The parties will execute the attached memorandum to the DRC entitled "Revisions to Application," the same is incorporated herein as part of the terms of settlement, and the parties will file the same on or before February 16, 2021.
2. Kohlhoff:
  - a. will support these settlement terms, including if requested by Parks by written or oral testimony to the DRC and Council (if appealed);
  - b. withdraws opposition to the Decision (by revision by the DRC per the attached memorandum) and withdraws his stated grounds for objection to the application;
  - c. will not appeal the Decision (as revised by the attached memorandum), if adopted by the DRC; and
  - d. represents that, in his opinion, no other persons will file an appeal of the decision.
3. Kohlhoff shall obtain a statement of support of the terms of this settlement from Scott Hicks.
4. The City Public Works Dept. will place or refresh "stop bars" at the following locations:



- a. On the Diane Dr. pavement, four stop bars, at its intersection with Doris Ct. / Doris Ave.
- b. On the Diane Dr. pavement, one stop bar, at its intersection with Rainbow Dr.

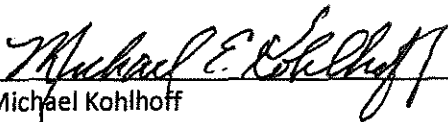
The "stop bar" paving work shall be completed prior to completion of the improvements that are the subject of LU 20-0027, as modified by revision by the DRC per the attached memorandum, if weather conditions are

optimal and painting contractor's schedule permits, or if not, then as soon thereafter as weather conditions and painting contractor's schedule permit.

5. Parks will submit to Engineering a final stormwater design different than submitted with the application because that would require removal of three trees. The parties acknowledge that what is envisioned is putting in a catch basin in the parking lot and piping the water away from the parking area. This will entail boring an ~8" stormwater line and there is a likelihood that some tree roots will be encountered in the bore. Whether the bore would compromise a specific tree is unknown until the bore.
6. Parks will pay to Kohlhoff the sum of \$308.50 upon the effective date of the Commission's Decision (as revised by the attached memorandum), provided no appeal to the City Council of the Decision is filed.

Lake Oswego Parks and Recreation Dept.

By: \_\_\_\_\_  
Bruce Powers, Project Manager

  
Michael Kohlhoff

Date: \_\_\_\_\_

Date: Feb 12, 2021





MEMORANDUM

---

**TO:** Chair Jeff Shearer and Members,  
DEVELOPMENT REVIEW COMMISSION

**CC:** Johanna Hastay, Senior Planner

**FROM:** Bruce Powers, Park Analyst / Project Manager

**SUBJECT:** LU 20-0027  
Minor Park Improvements to Lake Oswego Indoor Tennis Center  
Revisions to Application (Per Settlement with Appellant Michael Kohlhoff)

**DATE:** February 12, 2021

---

The Parks Department and Appellant Michael Kohlhoff ("Kohlhoff"), have agreed to resolution of the issues and concerns presented by Kohlhoff by revisions to the application on this matter to reduce the number of new parking spaces to 8 (resulting in 26 total) and withdraw the tree removal request.

Parks and Kohlhoff jointly request these revisions be added as conditions of approval to the Conditions as stated in the Staff Report:

1. Condition A.1:
  - a. Exhibit E-008 is revised to:
    - i. Delete the six marked parking spaces along the west parking lot curb line, and
    - ii. Remove one regular parking space from either the parking median in the center of the parking lot or from the parking area abutting the southwest corner of the building that includes handicap parking.
  - b. Exhibit E-012 is withdrawn.
2. Condition A.2: delete.
3. Condition A.3:
  - a. Revise A.3 to read:

"Submit a final drainage report, prepared by a registered engineer, in accordance with the Stormwater Management Code and LOSWMM, to the satisfaction of the City Engineer. [It is intended that stormwater will be handled by piping the water from the new impervious surface (in addition to the option

of including existing stormwater runoff) to a pipe that will run under the parking lot and tie into an existing stormwater line that runs along the boundary of the property.]”

b. Delete A.3.a and A.3.c.

4. Condition B.4: Revise to read: “Plant all landscaping.”

By: \_\_\_\_\_  
Bruce Powers

Date: Feb 12<sup>th</sup>, 2021

Agreed to: Michael E. Kohloff  
Michael Kohloff, Appellant