

ORDINANCE NO. 4581

An Ordinance rezoning certain property from an AH (Agricultural Holding) zone to an R-4 PD (Multi-Family Residential Planned Development) zone on 8.6 acres of land located north of Three Mile Lane and east of Kingwood Street.

RECITALS:

The Planning Commission received an application from Sun Retirement Corporation for a zone change (ZC 8-94), dated November 8, 1994, for the property described as Tax Lot 100, Section 22DD, T. 4 S., R. 4 W., W.M.

A public hearing was held on December 8, 1994, at 7:30 p.m. before the Planning Commission after due notice had been given in the local newspaper on December 3, 1994, and written notice had been mailed to property owners within 300 feet of the affected property; and

At said public hearing, testimony was received, the application materials and a staff report were presented; and

The Planning Commission, being fully informed about said request, found that said change conformed to the review criteria listed in Chapter 17.72.035 of Ordinance No. 3380 based upon the material submitted by the applicant and findings of fact and the conclusionary findings for approval contained in the staff report, all of which are on file in the Planning Department, and that the zone change is consistent with the Comprehensive Plan; and

The Planning Commission approved said zone change and has recommended said change to Council; now, therefore,

THE CITY OF McMinnville Ordains as follows:

Section 1. That the Council adopts the findings and conclusions of the Planning Commission, staff report on file in the Planning Department, and the application filed by Sun Retirement Corporation.

Section 2. That the property described in Exhibit "A," which is attached hereto and incorporated herein by this reference, is hereby rezoned from an A-H (Agricultural Holding) zone to an R-4 PD (Multi-Family Residential Planned Development) zone, subject to the following conditions:

- (a) That landscaping plans must be submitted to and approved by both the Three Mile Lane Design Review Committee and the McMinnville Landscape Review Committee prior to the issuance of any permits for construction of the proposed housing units. Such plans must include irrigated turf and trees along the Highway 18 frontage. Care shall be given in

the placement of said trees that they will not interfere now or in the future with highway signage.

(b) That site plans, building plans and elevations, parking lot plans, and signage plans be submitted for review and approval to the Three Mile Lane Design Review Committee prior to the issuance of permits for development of the subject site, as required by McMinnville Ordinance No. 4131, as amended.

(c) That the applicants enter into an agreement with the City of McMinnville to effect the following:

1) The Oregon Department of Transportation, in cooperation with the City of McMinnville and Yamhill County, is currently preparing a "corridor refinement study" for that portion of the Salmon River Highway known as Three Mile Lane. One result of that study will be a determination of whether a frontage road will need to be extended across the subject site adjacent to and north of the existing Three Mile Lane right-of-way or whether, instead, Kingwood Drive will need to be extended across the site. After completion of the corridor refinement study and within 90 days of such request from the City, the applicants will deed to the City that right-of-way needed for the construction of the frontage road or Kingwood Drive, whichever the case may be. The width and alignment of such deeded right-of-way shall be as required by the City Engineer.

2) At such time as the frontage road or Kingwood Drive is improved, access to the subject site from Three Mile Lane shall be closed.

3) That it is the applicant's responsibility to construct improvements to the Three Mile Lane frontage similar to those required of the Tanger Factory Outlet Center and the hospital. The actual construction of these improvements may be delayed until after the completion of the corridor refinement study, and may be made a part of the frontage road construction project if the study shows that such a frontage road improvement is required, provided proper security is posted with the City. The actual time of construction may be triggered by one of several factors, such as adjacent development or specified traffic counts.

4) The applicant agrees to post said security with the City, in a form acceptable to the City Attorney, to cover the full costs of construction of the frontage road or Kingwood Drive, whichever the case may be, and the Three Mile Lane frontage improvements, if such improvements are delayed under the provisions of subsection (3) above.

5) This ordinance shall go into effect 30 days after its passage provided the "agreement" required in this subsection has been executed. If said agreement is not executed then this ordinance shall be null and void and of no effect.

(d) That final development plans as approved by the Three Mile Lane Design Review Committee shall be placed on file with the Planning Department and become a part of the zone and binding on the owner and developer.

The developer will be responsible for requesting permission of the Planning Commission for any major change of the details of the adopted site plan. Minor changes to the details of the adopted site plan may be approved by the City Planning Director. It shall be the Planning Director's decision as to what constitutes a major or minor change. An appeal from a ruling by him may be made only to the Commission. Review of the Planning Director's decision by the Planning Commission may be initiated at the request of any one of the commissioners.

(e) That the applicant secure from the Oregon Department of Transportation (ODOT) a permit for access to Highway 18, pursuant to OAR 734-50. Evidence of such permit shall be required prior to release of any permits for this project.

Passed by the Council this 28th day of February, 1995, by the following votes:

Ayes: Kirchner, Massey, Olson, Payne, Tomcho, Windle

Nays: _____

Approved this 28th day of February, 1995.

Richard D Windle
COUNCIL PRESIDENT

Attest:

Carle M. Borell
RECORDER

EXHIBIT "A"

Being a tract of land in Sections 22 and 23, Township 4 South, Range 4 West, Willamette Meridian, Yamhill County, Oregon and being a part of the Isaiah M. Johns Donation Land Claim, Notification No. 1238, Claim No. 81, and a part of the Reuben Harris Donation Land Claim, Notification No. 1232, Claim No. 80 and being a portion of that certain tract described in Volume 140, Page 290, Deed Records of Yamhill County, Oregon and being a part of County Surveys C.S. 3362, Volume K, Page 152, and C.S. 3735, Volume M, Page 69, Yamhill County Surveyor Records and being more particularly described as follows:

Beginning at a point 30.0 feet North (North $00^{\circ}15'$ West per Survey), 26.896 chains West (South $89^{\circ}45'$ West per Survey) of the Northeast corner of Isaiah M. Johns D.L.C., said Beginning Point being on the North line of a 60.0 foot wide State Highway right of way; thence North $00^{\circ}15'$ West, a distance of 726.0 feet; thence South $89^{\circ}45'$ West, a distance of 180.0 feet; thence North (North $0^{\circ}15'$ West) 12.3655 chains; thence South $32^{\circ}03'$ East, a distance of 3.994 chains (not surveyed); thence South $56^{\circ}05'$ East, a distance of 4.384 chains (not surveyed); thence South (South $0^{\circ}15'$ East), a distance of 17.5345 chains to the North line of said Highway; thence West (South $89^{\circ}45'$ West), a distance of 5.757 chains to the Beginning Point of this description.

AGREEMENT

Parties to the Agreement:

City of McMinnville, (hereinafter City)
230 NE 2nd Street
McMinnville, OR 97128

Sun Retirement Corporation, (hereinafter Sun)
735 Commercial Dr. SE
Salem, OR 97301

This is the agreement of the parties in regard to the development of a parcel of land by "Sun" which is described as Tax Lot 100, Section 22DD, T.4S., R.4W., W.M., City of McMinnville, Yamhill County. Approval for development of the site is contained in City of McMinnville Ordinance No. 4581 adopted on February 28, 1995. Section 2(c) of Ordinance No. 4581 requires the execution of this agreement.

"Sun" agrees as follows:

1. To deposit with the "City" the sum of \$29,841.60 as its share of the costs to either improve a frontage road along Highway 18 or as its share of the costs to improve Kingwood Drive across its property. [The transportation plan adopted by Oregon Department of Transportation (ODOT) purportedly will resolve which of these alternatives should be implemented.]

a) That the actual use and time when these funds are expended is the responsibility of the "City," and "Sun" has no authority or control over these matters.

2. To deposit with the "City" the sum of \$19,831.20 as its share of the costs to improve the storm drainage and curbs, as well as other improvements to Three-Mile Lane.

a) That the actual use and time when these funds are expended is the responsibility of the "City," and "Sun" has no authority or control over these matters.

3. That "Sun" or its successor in interest shall convey, at no cost to the "City," the land area necessary to create a right-of-way for the extension of Kingwood Drive across its property (the width and alignment of the area to be deeded shall be as required by the "City's" Engineer) or shall convey

"Sun" - "City" Agreement Re: Ordinance No. 4581

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at no cost to the "City" the area necessary for the creation of a frontage road for Three-Mile Lane as may be specified by the McMinnville Corridor Refinement Study. ("Sun" or its successors in interest shall under no circumstances be required to dedicate both areas.)

a) Conveyance shall be completed within 90 days of "City's" request. In the event that enforcement of this agreement in a Court of competent jurisdiction is necessary, then "Sun" shall pay the costs and attorney fees for the initial action and for any appeal.

b) At such time as the frontage road or Kingwood Drive is improved, access to the subject site from Three-Mile Lane shall be closed.

4. That the "City" has the full authority to determine when any of the improvements referred to above are to be made and that "City" may take into consideration such factors as adjacent development or specified traffic counts before commencing the implementation of the transportation plan for this area.

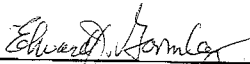
"City" agrees as follows:

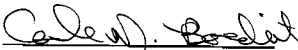
1. That the sums referred to above and deposited by "Sun" are the total costs that shall be due and payable as regards the street and highway improvements to be constructed in conjunction with the Planned Development Plan approved in City of McMinnville Ordinance No. 4581.

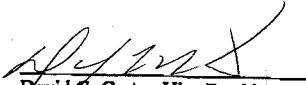
Dated this 28th day of March 1995.

City of McMinnville

Attest:


Edward J. Gormley, Mayor
City of McMinnville


Carol M. Benedict, Recorder
City of McMinnville


David G. Carter, Vice President
Sun Retirement Corporation

"Sun" - "City" Agreement Re: Ordinance No. 4581

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Dated this 28th day of March, 1995.

STATE OF OREGON)

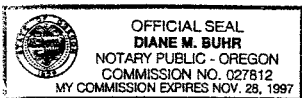
) ss

County of Marion)

_____, March 28, 1995

Personally appeared David G. Carter who, being duly sworn, did say that he is the vice president of Sun Retirement Corporation and that said instrument was signed in behalf of said corporation by authority of its board of directors; and he acknowledged said instrument to be its voluntary act and deed.

Before me:



Diane M Buhr

Notary Public for Oregon

My commission expires: 11/28/97