

EXHIBIT A: FINDINGS OF FACT BEFORE THE CITY OF WHEELER, OREGON: APPLICATION #CPA 2012-02:
Adoption of the 2011 City of Wheeler Vision Plan 2011 into the Comprehensive Plan Background Report
Planning Commission Public Hearing: November 1, 2012; City Council Public Hearing: November 20, 2012
The City reserves the right to continue the public hearings to a date and time specific
City Planner Staff Report Date: November 13, 2012

I. Application Information: Application #CPA 2012-02

Applicant: The City of Wheeler, Oregon City Council

Description of Request: Resolution # 2012-26: To process an application to adopt the City of Wheeler Vision Plan 2011 as part of the Wheeler Comprehensive Plan Background Report. If the application is approved, adoption will be reflected in an enactment Ordinance for which a number will be assigned.

II. Applicable Criteria: Copies available for review upon request, for purchase at reasonable cost

Wheeler Comprehensive Plan Goals, Policies, and Background Report
Wheeler Zoning Ordinance
Wheeler Subdivision Ordinance
Wheeler General Ordinances
Oregon Revised Statutes
Oregon Statewide Planning Goals
Oregon Administrative Rules
Code of Federal Rules

III. Public Hearing Procedure: Comprehensive Plan Background Report Text Amendment

Notice: As required, public notice was mailed to DLCD at least 35 days prior to the first evidentiary hearing. Also as required, between 20-40 days before the first evidentiary hearing, on October 10, 2012 public notice was mailed to property owners and affected agencies in the City and Urban Growth Boundary and on Wednesday, October 10, 2012 notice was published in the Tillamook County Headlight Herald.

Public Hearings: A minimum of two public hearings are required to adopt an ordinance as a Comprehensive Plan Background Report Text Amendment. The Wheeler Planning Commission is scheduled to hold their first public hearing on November 1, 2012 to receive public comments and to provide a recommendation to the Wheeler City Council. The Wheeler City Council is scheduled to hold a public hearing to determine whether the findings of fact support a decision to approve application #CPA 2012-02.

Decision: The application may be approved, approved with conditions, or denied. Any decision shall be supported by findings of fact addressing the applicable criteria. In the case of denial, it shall be sufficient to address only the criteria that the application failed to meet. The decision shall be final upon the expiration of the appeal period or after resolution of any appeal.

Appeal Process: A decision of the City Council may be appealed to the Land Use Board of Appeals (LUBA) by filing an application for appeal within 21 days of the date of the postmark date that the decision was mailed to the Department of Land Conservation and Development (DLCD).

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This is to notify you that the City of Wheeler has proposed a land use regulation that may affect the permissible uses of your property and other properties.

WHEELER, OREGON PUBLIC HEARING NOTICE

The City Council of the City of Wheeler is proposing the adoption of Amendment CPA 2012-02 to adopt the 2011 Wheeler Vision Plan Report into the Comprehensive Plan Background Report. The City of Wheeler has determined that adoption of this ordinance may affect the permissible uses of your property and other properties in the affected zone and may change the value of your property. The Ordinance Number is yet to be assigned. For additional information concerning the application you may call the City of Wheeler City Manager Jeff Aprati at (503) 368-5767.

Planning Commission Public Hearing

On Thursday, November 1, 2012, at 7:00 pm at Wheeler City Hall, the City of Wheeler Planning Commission is scheduled to hold their first evidentiary public hearing regarding the adoption of Comprehensive Plan Background Report Amendment Application CPA 2012-02. The purpose of the Planning Commission public hearing is to provide a recommendation to the City Council. If the Planning Commission continues their public hearing to a place, date and time certain, no further mailed notice will be provided.

City Council Public Hearing

On Tuesday, November 20, 2012, at 7:00 pm at Wheeler City Hall, the Wheeler City Council is scheduled to hold their first evidentiary public hearing regarding the adoption of Comprehensive Plan Background Report Amendment Application CPA 2012-02. The purpose of the City Council public hearing is to make a decision whether to adopt the proposed amendment. If the City Council continues their public hearing to a place, date and time certain, no further mailed notice will be provided.

All interested parties are invited to attend the hearing and express their views. Written statements will also be accepted at Wheeler City Hall, 775 Nehalem Blvd., PO Box 177 Wheeler OR 97147 or at the hearing if it is received not later than the close of the record of the public hearing. Testimony, arguments and evidence must be directed toward the applicable criteria described in this notice or other criteria in the plan or land use regulations to which the person believes to apply to the decision. Failure by the applicant or other parties to the hearing to raise an issue in person or by letter prior to the close of the record, or failure to provide sufficient specificity to afford the decision makers an opportunity to respond to an issue precludes an appeal based on that issue. The text proposed for adoption is available for inspection at Wheeler City Hall located at 775 Nehalem Boulevard (US Highway 101), Wheeler Oregon 97107. A staff report will be available (7) seven days prior to any public hearing. Copies are available for purchase at the cost of 30 cents per page. Copies are available for purchase at a reasonable cost.

"In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability."

CITY OF WHEELER
 RESOLUTION NO. 2012-26

A RESOLUTION ADOPTING THE CITY OF WHEELER VISION REPORT 2011 AS
 A MANDATORY GUIDING DOCUMENT

WHEREAS, in May 2011 the Wheeler Visioning Committee completed a two year review and update of the 2001 Wheeler Visioning Report and produced a document entitled City of Wheeler Vision Report 2011; and

WHEREAS, the City Council adopted the City of Wheeler Vision Report 2011 at its May 17, 2011 meeting as a “guiding document for making decisions going forward;” and

WHEREAS, the Council wishes to strengthen these requirements,

NOW, THEREFORE, BE IT RESOLVED, that the document entitled City of Wheeler Vision Report 2011 shall be a mandatory guiding document for all policy and regulatory decisions made for the City.

Further, in order to make the City of Wheeler Vision Report 2011 a mandatory guiding document for all land use decisions made for the City, the City Council directs the Planning Commission to begin the process of adopting the City of Wheeler Vision Report 2011 as a binding Comprehensive Plan background document by scheduling a public hearing for their earliest available meeting.

ADOPTED by the City Council this 21st day of August, 2012 by the following vote:

CITY COUNCIL WHEELER, OREGON	Aye	Nay	Absent/Abstain
_____ Loren Remy, President	___	___	___/___
_____ Michael Glowa, Councilor	___	___	___/___
_____ Pat Scribner, Councilor	___	___	___/___
_____ Dave Bell, Councilor	___	___	___/___
_____ Karen Mathews, Councilor	___	___	___/___

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IV. Enactment Ordinance:

ORDINANCE NO. 2012-_____

AN ORDINANCE ADOPTING THE WHEELER VISION PLAN 2011
AS PART OF THE WHEELER COMPREHENSIVE PLAN BACKGROUND REPORT

WHEREAS, the City Council of the City of Wheeler, Oregon set forth to create a Vision Plan to reflect the concerns of the citizens of the City of Wheeler, Oregon; and

WHEREAS, the City Council of the City of Wheeler, Oregon reflected its intention by resolution for the Wheeler Vision Plan 2011 to be a mandatory guiding document; and

WHEREAS, the City Council of the City of Wheeler, Oregon determined that where the Wheeler Vision Plan 2011 is adopted as part of the City of Wheeler Comprehensive Plan Background Report, all applications that require a finding of consistency with the Comprehensive Plan will require a finding of consistency with the Wheeler Vision Plan 2011; and

WHEREAS, the City Council of the City of Wheeler adopted the Wheeler Vision Plan 2011 through the Post Acknowledgement Plan Amendment Process as required by Oregon Revised Statutes and Oregon Administrative Rules;

NOW THEREFORE, The City of Wheeler ordains as follows:

Section 1. Wheeler Vision Plan 2011:

The City of Wheeler, Oregon Vision Plan 2011 shall be incorporated by reference into the City of Wheeler Comprehensive Plan Background Report and added by title to the Table of Contents.

Section 2. Mandatory Guiding Document:

All applications that require a finding of consistency with the Wheeler Comprehensive Plan shall include a finding of consistency with the section of the City of Wheeler, Oregon Vision Plan 2011 entitled "Wheeler Priorities and Recommendations for Action".

Section 3. Conflicts:

If the City of Wheeler, Oregon Zoning Ordinance is found to substantively conflict with the City of Wheeler, Oregon Vision Plan 2011 the City shall set forth immediately to amend the Wheeler Zoning Ordinance to remedy conflicts consistent with the section of the Wheeler Vision Plan 2011 entitled "Wheeler Priorities and Recommendations for Action".

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Section 4. Interpretation:

The City of Wheeler, Oregon Vision Plan 2011 was written by the citizens of the City of Wheeler, Oregon and to ensure that accurate interpretation is made where provisions are considered open to said interpretation the City Council of Wheeler, Oregon adopts the City of Wheeler, Oregon Vision Plan 2011 with findings of fact that define interpretation of the section of the Wheeler Vision Plan 2011 entitled "Wheeler Priorities and Recommendations for Action."

Section 5. Severability:

The invalidity of a section or subsection of this ordinance shall not affect the validity of the remaining sections or subsections.

Section 6. Effective Date:

Under the provisions of the City of Wheeler Charter, Chapter VIII, Section 32, this Ordinance shall become effective on the thirtieth (30th) day after its adoption and authentication.

Adopted by the Wheeler City Council this 20th day of November 2012 by the following vote:

CITY COUNCIL WHEELER, OREGON	AYE	NAY	ABSENT / ABSTAIN
_____	_____	_____	_____ / _____
Karen Matthews, City Councilor			
_____	_____	_____	_____ / _____
Loren Remy, City Councilor			
_____	_____	_____	_____ / _____
Dave Bell, City Councilor			
_____	_____	_____	_____ / _____
Vacant			
_____	_____	_____	_____ / _____
Vacant			

ATTEST:

 Stevie Burden, Mayor Date Signed

 Jeffrey P. Aprati, City Manager / City Recorder Date Signed

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V. City Planner Recommendation for Findings of Fact:

Findings of Fact: Wheeler Comprehensive Plan Goals, Policies, and Background Report

Subject to the interpretations adopted to support the implementation of the City of Wheeler, Oregon Vision Plan 2011, no inconsistency with the Wheeler Comprehensive Plan Goals, Policies and Background Report has been identified that would prevent the adoption of the City of Wheeler, Oregon Vision Plan 2011 as a mandatory guiding document for decisions that require a finding of consistency with the City of Wheeler, Oregon Comprehensive Plan.

Findings of Fact: Wheeler Zoning Ordinance

Subject to the interpretations adopted to support the implementation of the City of Wheeler, Oregon Vision Plan 2011, no inconsistency with the Wheeler Zoning Ordinance has been identified that would prevent the adoption of the City of Wheeler, Oregon Vision Plan 2011 as a mandatory guiding document for decisions that require a finding of consistency with the City of Wheeler, Oregon Comprehensive Plan.

Findings of Fact: Wheeler Subdivision Ordinance

Subject to the interpretations adopted to support the implementation of the City of Wheeler, Oregon Vision Plan 2011, no inconsistency with the Wheeler Subdivision Ordinance has been identified that would prevent the adoption of the City of Wheeler, Oregon Vision Plan 2011 as a mandatory guiding document for decisions that require a finding of consistency with the City of Wheeler, Oregon Comprehensive Plan.

Findings of Fact: Wheeler General Ordinances

Subject to the interpretations adopted to support the implementation of the City of Wheeler, Oregon Vision Plan 2011, no inconsistency with the Wheeler General Ordinances has been identified that would prevent the adoption of the City of Wheeler, Oregon Vision Plan 2011 as a mandatory guiding document for decisions that require a finding of consistency with the City of Wheeler, Oregon Comprehensive Plan.

Findings of Fact: Oregon Revised Statutes, Oregon Administrative Rules, Code of Federal Rules

Written comments have been received from the Oregon Department of Land Conservation and Development (DLCD) recommending that the proposed application is consistent with the Oregon Revised Statutes, Oregon Administrative Rules and the Code of Federal Rules as they apply to the implementation of the Oregon Statewide Planning Goals applicable to the application and said comments are hereby incorporated into the record.

VI. Planning Commission Recommendation:

At the public hearing held at the Planning Commission meeting on November 1, 2012, the Commission approved the following motion:

“Based on testimony received in the public hearing process, findings of fact presented in the City Planner Staff Report dated October 19, 2012, and as written in the enactment ordinance, I make a motion to recommend that the City Council approve Application #CPA 2012-02 subject to the following interpretations:”

1. The policy that requires the City to “Protect existing views for all of the community” is enforced through the application of applicable ordinances, policies and processes.
2. Vision Plan policies are applicable in addition to applicable local, state, and federal laws, rules, and ordinances including the rest of the Wheeler Comprehensive Plan.
3. Recommendations for 5,000 square foot lot size requirements apply only to the R-1 and R-2 zones where this is the minimum lot size standard unless an amendment is adopted through additional legislative process that adds a minimum lot size standard to the zones which currently do not have them.
4. The 5,000 square foot minimum lot size requirement does not prevent the approval of an application that meets the criteria of Wheeler Zoning Ordinance Section 12.050 “General Exception to Minimum Lot Size”.
5. The description that a 5,000 square foot lot size is 50’ x 100’ is considered one method for achieving a 5,000 square foot minimum lot size. This option does not extinguish the applicability of the minimum allowable lot dimension standards adopted for the subject land use zone, which in the R-1 and R-2 zones currently requires a minimum width of 40 feet and a minimum depth of 85 feet, unless an amendment is adopted through additional legislative process.
6. The limitation of 10 units does not prevent an applicant from developing property consistent with the standards for development adopted for the applicable land use zone.
7. The limitation of 10 units requires that no single application can be submitted for more than 10 units. After final approvals or final occupancy is approved by permitting authorities for each application to develop a maximum of 10 units, an applicant may submit a new and subsequent application to develop a maximum of 10 additional units at any one time, consistent with the minimum standards of development adopted for the applicable land use zone.
8. The term “10 units” is interpreted as the final plat approval and recordation for a subdivision or Planned Unit Development or final occupancy approval depending on the type of application approval.
9. The phrase “do not increase the moorage capacity” does not extinguish the rights of a property owner to build at the capacity which is currently allowed unless a legislative process is held that results in the reduction of existing moorage capacity.

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In addition:

At the next reasonable opportunity that the City Council pursues the process to adopt amendments to the Wheeler Zoning Ordinance, I recommend adoption of text amendments to implement the following clear and objective standards that assist with the application of the City of Wheeler Vision Plan 2011:

1. Define Large Scale Development as any development that exceeds 10 units.
2. Define that while no application may include the development of more than ten units at one time after the ten units are developed and receive approval for final occupancy from the permitting authorities, an applicant may then apply for a new and subsequent applications to develop a maximum of ten units at any one time.
3. Update the list of pertinent documents in the Wheeler Comprehensive Plan Goals and Policies Document to include the Wheeler Comprehensive Plan Background Report Table of Contents so the public may be more readily aware of the applicable background data that serves as mandatory guidance for applications that require a finding of consistency with the Wheeler Comprehensive Plan.

VII. City Planner Recommendation:

The City Council held a workshop on November 7, 2012 to discuss the recommendation provided by the Planning Commission and to discuss possible changes to the interpretations contained in the Commission's recommendation. In consideration of the Council's discussion at the workshop, and after reviewing Application #CPA 2012-02, an application to adopt the City of Wheeler Vision Plan 2011 as part of the Comprehensive Plan Background Report, for consistency with the applicable criteria based on testimony received at the time that this staff report was written, I recommend that the City Council make the following motion:

"Based on testimony received in the public hearing process, findings of fact presented in the City Planner Staff Report dated November 13, 2012, and as written in the enactment ordinance, I move to approve Application #CPA 2012-02 subject to the following interpretations."

1. The Wheeler Vision Plan 2011 policy that directs the City to "Protect existing views for all of the community" is enforced through the application of applicable ordinances, policies and processes.
2. Wheeler Vision Plan 2011 and Wheeler Comprehensive Plan policies are applicable in addition to applicable local, state, and federal laws, rules, and ordinances.
 - a. The Wheeler Vision Plan 2011 does not prevent an applicant from developing property consistent with the standards for development adopted for the applicable land use zone.
3. The 5,000 square foot minimum lot size requirement does not prevent the approval of an application that meets the criteria of Wheeler Zoning Ordinance Section 12.050 "General Exception to Minimum Lot Size".
4. The description that a 5,000 square foot lot size is 50' x 100' is considered one method for achieving a 5,000 square foot minimum lot size. This option does not extinguish the applicability of the minimum allowable lot dimension standards adopted for the subject land use zone, which in the R-1 and R-2 zones currently only requires a minimum width of 40 feet or a minimum depth of 85 feet, unless an amendment is adopted through additional legislative process.
5. The term "10 units" is interpreted as the final plat approval and recordation for a subdivision or Planned Unit Development or final occupancy approval depending on the type of application approval.
6. The phrase "do not increase the moorage capacity" does not extinguish the rights of a property owner to build at the capacity which is currently allowed unless a post acknowledgement plan amendment public hearing process is held that results in the reduction of existing moorage capacity.

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In addition:

At the next reasonable opportunity in which the City Council commences a post acknowledgement plan amendment process to review proposed amendments to the Wheeler Zoning Ordinance and Wheeler Comprehensive Plan, the City Council will hold a public hearing process to review the following proposed amendments in order to assist with the application of the Wheeler Vision Plan 2011:

1. The Wheeler Vision Plan 2011 identifies as a Priority and Recommendation for Action the need to "Limit Large Scale Development." The City will consider the adoption of amendments, through the post acknowledgement plan amendment public hearing process, that would require large scale developments over 10 units to be subject to clear and objective design standards.
 - a. The City will consider the adoption of an amendment that would define Large Scale Development as any development that exceeds 10 units.
 - b. The City will consider the adoption of an amendment that would require Large Scale Developments to be subject to clear and objective design standards.
2. The City will consider the adoption of an amendment that will apply a 5,000 square foot minimum lot size to zones which do not currently have a minimum lot size restriction.
3. The City will consider the adoption of an amendment that will require a minimum lot size of 5,000 square feet to apply to residential development within any zone.

As a housekeeping item:

The City will update the list of pertinent documents in the Wheeler Comprehensive Plan Goals and Policies Document to include the Wheeler Comprehensive Plan Background Report Table of Contents so the public may be more readily aware of the applicable background data that serves as mandatory guidance for applications that require a finding of consistency with the Wheeler Comprehensive Plan.

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VIII. City Council Decision:

After reviewing the recommendation from the Planning Commission from their October 4, 2012 public hearing, in consideration of the Council's discussion at their November 7, 2012 workshop, and after reviewing Application #CPA 2012-02, an application to adopt the City of Wheeler Vision Plan 2011 as part of the Comprehensive Plan Background Report, for consistency with the applicable criteria based on testimony received at the time that this staff report was written, the City Council makes the following motion. The vote to approve the motion was unanimous:

"Based on testimony received in the public hearing process, findings of fact presented in the City Planner Staff Report dated November 13, 2012, and as written in the enactment ordinance, I move to approve Application #CPA 2012-02 subject to the following interpretations:"

1. The Wheeler Vision Plan 2011 policy that directs the City to "Protect existing views for all of the community" is enforced through the application of applicable ordinances, policies and processes.
2. Wheeler Vision Plan 2011 and Wheeler Comprehensive Plan policies are applicable in addition to applicable local, state, and federal laws, rules, and ordinances.
 - a. The Wheeler Vision Plan 2011 does not prevent an applicant from developing property consistent with the standards for development adopted for the applicable land use zone.
3. The 5,000 square foot minimum lot size requirement does not prevent the approval of an application that meets the criteria of Wheeler Zoning Ordinance Section 12.050 "General Exception to Minimum Lot Size".
4. The description that a 5,000 square foot lot size is 50' x 100' is considered one method for achieving a 5,000 square foot minimum lot size. This option does not extinguish the applicability of the minimum allowable lot dimension standards adopted for the subject land use zone, which in the R-1 and R-2 zones currently only requires a minimum width of 40 feet or a minimum depth of 85 feet, unless an amendment is adopted through additional legislative process.
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 - a. The City will consider the adoption of an amendment that would define Large Scale Development as any development that exceeds 10 units.
 - b. The City will consider the adoption of an amendment that would require Large Scale Developments to be subject to clear and objective design standards.
2. The City will consider the adoption of an amendment that will apply a 5,000 square foot minimum lot size to zones which do not currently have a minimum lot size restriction.
3. The City will consider the adoption of an amendment that will require a minimum lot size of 5,000 square feet to apply to residential development within any zone.

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