



RIVERGROVE LAND USE ORDINANCES

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Interpretation of Ordinance 68-2000

Whereas the City of Rivergrove adopted Ordinance 68-2000 on October 16, 2000, adding Section 5.075 to the Land Development Ordinance (RLDO) to establish minimum and maximum residential densities in areas outside the Flood Hazard District; and

Whereas a question has arisen concerning the reference to "multi-family developments" in Section 5.075(c), excluding such developments from the provisions of Section 5.075; and

Whereas Section 5.075(b)(1) and (2) plainly govern the density calculation for all single-family detached dwellings, secondary dwelling units, duplexes, and triplexes outside the Flood Hazard District, without exception; and

Whereas the minimum and maximum density formulas in Section 5.075 have been relied upon by the City of Rivergrove as the basis for determining compliance with the RLDO for all applications for multiple lot and multiple structure developments filed since October 16, 2000; and

Whereas the Planning Commission has the authority and responsibility to interpret the RLDO pursuant to Section 3.090 of the RLDO, and that interpretation shall be in writing and shall be available with copies of the RLDO,

NOW THEREFORE, the following interpretation, to be filed in Article 5 of the Rivergrove Land Development Ordinance, is hereby adopted by the Planning Commission at its regular meeting on February _____, 2008. Until Section 5.075 is revised or until a different interpretation of this section is adopted by the Planning Commission, this section shall be applied and enforced in accordance with the following interpretation:

INTERPRETATION

The words, "multi-family developments," in Section 5.075 shall be interpreted and are defined to mean residential structures which contain more than three units, as defined in Section 5.075(b)(1).

Ayes 1
Nays 0 *CityPariz*

6/8/2008 2/14/2008
Chair Date

J. PC
~~* City Manager Copy~~

*Withdrawn by City Council
at applicant's request*

Section 4.020 gives the Planning Commission broad discretion and authority concerning development permit applications and decision-making procedures.

5. Section 3.090 of the RLDO reads as follows:

"Section 3.0920. Interpretation of the Land Development Code. It is the duty of the Planning Commission to interpret this Ordinance when necessary. These interpretations shall be made in writing and shall be available with copies of this Ordinance. A Planning Commission Interpretation of this Ordinance may be appealed to the City Council following the appeals procedure set forth in this Ordinance."

Whereas the Planning Commission has the authority and responsibility to interpret the RLDO under Section 3.090 of the RLDO, and whereas that interpretation shall be in writing and shall be available with copies of the RLDO, therefore the following written interpretation of the RLDO is hereby adopted by the Planning Commission at its regular meeting on April 4, 2005. Until this portion of the RLDO is revised or until a different interpretation of this portion of the RLDO is adopted by the Planning Commission or the City Council, the following interpretation shall be applied and enforced:

Interpretation

The broad discretion (and authority) the Planning Commission is given in Section 4.020 for "coordinating the development permit application and decision-making procedure" includes the power to delegate to staff the authority to grant *tentative* and *conditional* approval to Area Accessory Development Permit Applications that are *solely* for individual sewer service lines / connections, expressly subject to those conditions specified by the Commission and also expressly subject to validation by the Commission at its next regularly scheduled meeting. The Planning Commission does hereby delegate to staff such authority as per its guidance of March 7, 2005.

An Interpretation of the Planning Commission

(April 4, 2005)

1. An Area Accessory Development Permit is required for Individual Sewer Service Lines / Connections in accordance with Rivergrove Land Development Ordinance (RLDO) Sections 1.050(e), 2.030, 6.010, and 6.020. The approval criteria for decisions on Area Accessory Development are found at RLDO Section 6.050. RLDO Section 6.050 reads in its entirety as follows:

"Section 6.050. Criteria for Decisions on Area Accessory Development."

- (a) A development permit shall be issued for an area accessory development if, in addition to complying with the plan and applicable standards, the location, size, design and operating characteristics of the proposal are appropriate to the needs of the area and will be reasonably compatible with and have minimal impact on the livability and development of abutting property and the surrounding area.
- (b) Consideration shall be given also to the following:
 - (1) harmony in scale, bulk, coverage and density;
 - (2) the availability of public facilities and utilities;
 - (3) the generation of traffic and the capacity of surrounding streets; and
 - (4) other relevant impacts of the development."

2. Since an Area Accessory Development Permit Application that is solely for an individual sewer service line / connection will almost certainly be consistent with the approval criteria at Section 6.050, a simplified and expedited permit application and processing procedure is desired.

3. The Planning Commission has previously authorized and instructed the staff to develop a simplified procedure for the processing of Area Accessory Development Permit Applications that are solely for individual sewer service lines / connections and has generally responded favorably to the proposals made. The issue has been raised concerning the Commission's authority to adopt simplified / expedited procedures under the RLDO versus the possible requirement for a legislative amendment to the RLDO to expressly provide for such a procedure.

4. Section 4.020 of the RLDO reads as follows:

"Section 4.020. Coordination of Development Procedures. The Commission shall be responsible for coordinating the development permit application and decision-making procedure and shall issue a development permit to an applicant whose application and proposed development complies with the plan and this ordinance after being provided with the detail required to establish full compliance with the requirements of this ordinance."

The Planning Commission has the authority and responsibility to interpret the RLDO. Section 3.090. That interpretation shall be in writing and shall be available with copies of the RLDO. The following interpretation of RLDO Sections 5.080(a) and (b) and Ordinance 70-2001, Section VI(D)(4) hereby adopted by the Planning Commission at its regular meeting on October 11, 2004. Until these Sections are revised or until a different interpretation of these Sections is adopted by the Planning Commission, these Sections shall be applied and enforced in accordance with the following interpretation:

INTERPRETATION

The Planning Commission hereby interprets Sections 5.080(a) and (b) and Ordinance 70-2001, Section VI(D)(4) of the Rivergrove Land Development Ordinance to include the following requirement:

When a separate tract must be created to comply with Water Quality Resource requirements contained in Ordinance 70-2001, Section VI(D)(4) and that separate tract is in contiguous ownership with the parent tract, setbacks, as required by Sections 5.080(a) and (b), shall be determined by the lot lines of the original parent tract. However, this interpretation of setbacks does not alter or diminish any of the setback requirements or other obligations contained in Ordinance 70-2001.

- (4) Any other ownership proposed by the owner and approved by the Council.

The above provisions do not specify whether setbacks must be determined by the new lot lines after the separate water quality resource tract has been created or if setbacks can be determined based on the original lot lines. After consultation and upon recommendation from the City Attorney, the Council has determined that compliance with Section VI(D)(4) does identify a particular type of ownership for the property but does not remove the separate tract requirement set out in Section VI(A).

The purpose of setback requirements is to maintain light, air, separation for fire protection, and access. They reflect the general building scale and placement of houses in the city's neighborhoods. Setbacks promote a reasonable physical relationship between residences and they promote options for privacy for neighboring properties. Setbacks also provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity.

The purposes of the Water Quality Resource requirements are to protect and improve water quality, to support beneficial water uses, and protect and maintain Flood Management Areas. This includes maintaining the vegetated corridor separating Protected Water Features from development, maintaining or reducing stream temperature, protecting natural stream corridors, minimizing erosion and pollution in the water and stabilizing slopes.

Both of these purposes will be served by interpreting the setback requirements from the original lot line rather than the lot line created after the Water Quality Resource tract is created. Adequate air, light and sight distance will be provided by the setback area that is provided by the unbuildable vegetative corridor requirement. A general uniformity of scale and house placement will be retained. Allowing for an overlap of setback and water quality resource area will further maximize the flexibility to site a building so that may be compatible with the neighborhood and fit the topography of the site.

Similarly, the water quality resource and vegetative corridor will still be adequately protected by all of the development regulations contained in Ordinance 70-2001. There is nothing in Ordinance 70-2001 that regulates uses outside the protected Water Quality Resource tracts, vegetated corridor or floodplain areas. Construction of permanent structures and other uses of the area in the protected tract will still be regulated by the terms of the Ordinance.

It is not reasonable to impose a double setback requirement. Since the purpose of the setback requirement is still furthered by measuring setback along the vegetative corridor tract and the protections given to the resource tract is not compromised by allowing an overlap of the setback requirement, it makes sense to allow a setback to be determined from the original lot line rather than the lot line after the resource tract has been created.

Finally, there is nothing in the language of the Ordinance, the RLDO or the intent of the Planning Commission when adopting this Ordinance to suggest that a double setback was intended when these regulations were adopted.

Interpretation of the Planning Commission
(October 11, 2004)

Section 5.080 of the Rivergrove Land Development Ordinance (RLDO) establishes general building setbacks in all zones and districts. Sections 5.080(a) and 5.080(b) establish setbacks for detached and attached residential structures. They read as follows:

Section 5.080 General Building Setbacks in All Zones and Districts.

- (a) All new detached residential structures built with [sic] any zone or district in the City of Rivergrove shall maintain the following setbacks from the property lines of the lot on which they are constructed or erected.

Front Setback – 25 feet

Side Setback – 10 feet

Side Setback on a Corner Lot – 15 feet (to insure better visibility)

Rear Setback – 25 feet (from the rear [sic] lot line or the ordinary high water mark – whichever is greater).

- (b) All new attached residential shall maintain the same set backs as detached residential around the perimeter of the structure.

Ordinance 70-2001 establishes water quality resource and floodplain development standards. Section VI requires that Water Quality Resource Areas be delineated as a separate tract. It reads in relevant part as follows:

- (A) The purpose of this section is to amend the city regulations governing land divisions to require that new subdivision and partition plats delineate and show the Water Quality Resource Area as a separate tract.
- (B) The standards for land divisions in Water Quality Resource Areas Overlay Zone shall apply in addition to the requirements of the city land division ordinance and zoning ordinance.
- (C) Prior to preliminary plat approval, the Water Quality Resource Area shall be shown as a separate tract, which shall not be part of any parcel use for construction of a dwelling unit.
- (D) Prior to final plat approval, ownership of the Water Quality Resource Area tract shall be identified to distinguish it from lots intended for development. The tract may be identified as any one of the following:

An Interpretation of the Planning Commission

(September 5, 2002)

Section 5.010 of the Rivergrove Land Development Ordinance (RLDO), as amended by Ordinance No. 59-97A, establishes zoning (residential) and minimum lot sizes for all land within the City of Rivergrove. Section 5.010 reads as follows:

Section 5.010. Land Use. All land within the city of Rivergrove is zoned residential. The minimum lot size within the Flood Hazard District is $\frac{1}{2}$ acre. The minimum lot size outside the Flood Hazard District is 10,000 square feet.

The above section clearly establishes the minimum lot size standards for lots that are wholly within and wholly outside the Flood Hazard District (FHD). That section, however, does not clearly specify how the minimum lot size standard should be applied to a lot that is partially within and partially outside the FHD. The uncertainty / ambiguity that results from this lack of specificity concerning the application of the minimum lot size standard to a lot that is partially within and partially outside the FHD can be eliminated by an interpretation of the Planning Commission.

The Planning Commission has the authority and responsibility to interpret the RLDO (Section 3.090 of the RLDO). That interpretation shall be in writing and shall be available with copies of the RLDO. The following interpretation of Section 5.010 is hereby adopted by the Planning Commission at its regular meeting on September 5, 2002. Until this Section is revised or until a different interpretation of this Section is adopted by the Planning Commission or the City Council, this Section shall be applied and enforced in accordance with the following interpretation:

A lot that is partially within and partially outside the FHD shall be deemed in conformance with the minimum lot size standard of Section 5.010 of the RLDO, as amended by Ordinance No. 59-97A, if the lot:

- a. is at least $\frac{1}{2}$ acre in size

OR

- b. includes at least 10,000 square feet of land that is wholly outside the FHD and all existing and future development on the lot is limited to the portion of the lot that is wholly outside the FHD.

An Interpretation of the Planning Commission

(August 5, 2002)

Section 5.010 of the Rivergrove Land Development Ordinance (RLDO), as amended by Ordinance No. 59-97A, establishes zoning (residential) and minimum lot sizes for all land within the City of Rivergrove. Section 5.010 reads as follows:

Section 5.010. Land Use. All land within the city of Rivergrove is zoned residential. The minimum lot size within the Flood Hazard District is $\frac{1}{2}$ acre. The minimum lot size outside the Flood Hazard District is 10,000 square feet.

The above section clearly establishes the minimum lot size standards for lots that are wholly within and wholly outside the Flood Hazard District (FHD). That section, however, does not clearly specify how the minimum lot size standard should be applied to a lot that is partially within and partially outside the FHD. The uncertainty / ambiguity that results from this lack of specificity concerning the application of the minimum lot size standard to a lot that is partially within and partially outside the FHD can be eliminated by an interpretation of the Planning Commission.

The Planning Commission has the authority and responsibility to interpret the RLDO (Section 3.090 of the RLDO). That interpretation shall be in writing and shall be available with copies of the RLDO. The following interpretation of Section 5.010 is hereby adopted by the Planning Commission at its regular meeting on August 5, 2002. Until this Section is revised or until a different interpretation of this Section is adopted by the Planning Commission or the City Council, this Section shall be applied and enforced in accordance with the following interpretation:

A lot that is partially within and partially outside the FHD shall be deemed in conformance with the minimum lot size standard of Section 5.010 of the RLDO, as amended by Ordinance No. 59-97A, if the lot:

- a. is at least $\frac{1}{2}$ acre in size

OR

- b. includes at least 10,000 square feet of land that is wholly outside the FHD and all existing and future development on the lot is limited to the portion of the lot that is wholly outside the FHD.

4. While Ordinance No. 69-2000 has not yet been adopted by the City Council, the Planning Commission wishes to currently interpret the term "bankful" in Section 5.2-4(1)(iii) consistently with the way balanced cut and fill requirements will be implemented by Section IV.G.3. of Ordinance 69-2000 above with respect to the limitations placed upon excavation below a certain level not counting toward compensating for fill in the floodplain. [Note: When Ordinance 69-2000 is adopted, the balanced cut and fill standards in Section 5.2-4(1)(iii) of Ordinance # 52 will be replaced by the balanced cut and fill requirements in Section IV.G.3. of Ordinance No. 69-2000.]
5. The Planning Commission applied this interpretation on March 5, 2001, to its evaluation of the Development Permit Application for Land Division (18-Lot Subdivision) (Stark's Landing Incorporated) (5050 SW Childs Road – Consolidated Application).
6. In accordance with RLDO Section 3.090, this interpretation is hereby made in writing and will be available with copies of the applicable ordinance (Section 5.2-4, Balanced Cut and Fill Standards, as added to the Rivergrove Flood Damage Prevention Ordinance (Ordinance # 52) by Ordinance 62-98).

INTERPRETATION

Section 5.2-4(1)(iii) of Ordinance # 52

The Planning Commission hereby interprets Section 5.2-4(1)(iii) of Ordinance # 52 as follows:

The bankful stage referred to in Section 5.2-4(1)(iii) of Ordinance # 52 shall be equal to the 10-year flood elevation for the property as that phrase is used in Section IV.G.3. of Ordinance No. 69-2000.

An Interpretation of the Planning Commission
(May 7, 2001)

1. Section 5.2-4, Balanced Cut and Fill Standards, was added to the Rivergrove Flood Damage Prevention Ordinance (Ordinance # 52) by Ordinance 62-98. It reads, in part, as follows:

"5.2-4 Balanced Cut and Fill Standards"

(1) All development, excavation and fill in the areas of special flood hazard (i.e., the flood plain) shall conform to the following balanced cut and fill standards:

(iii) Any excavation below bankful stage shall not count toward compensation for fill since these areas would be full of water in the winter and not available to hold storm water;

***** "

2. The term "bankful" is not defined in Ordinance 62-98 or in Ordinance # 52. The term "bankful" is not defined anywhere in the Rivergrove Land Development Ordinance.

3. Ordinance 69-2000, which has been recommended by the Planning Commission to the City Council for adoption, has a balanced cut and fill standard which reads, in part, as follows:

"Section IV. Water Quality Resource Areas

G. Development Standards

All development, excavation and fill in the floodplain shall conform to the following standards:

3. Any excavation below the 10 year flood elevation for the property shall not count toward compensating for fill.

***** "

hereby adopted by the Planning Commission at its regular meeting on July 6, 1998. Until these Sections are revised or until a different interpretation of these Sections is adopted by the Planning Commission, these Sections shall be applied and enforced in accordance with the following interpretation:

INTERPRETATION

Sections 5.080(a) and (b), Rivergrove Land Development Ordinance

The Planning Commission hereby interprets Sections 5.080(a) and (b) of the Rivergrove Land Development Ordinance to include the following requirements:

All setbacks referred to in these sections shall be based either upon the orientation of the residential structure or the orientation of the lot, whichever basis would require the greater setback.

41.060). The fundamental purpose and intent of setback requirements (and thus the setback distance selected) are based to a great extent on the activities that are expected to occur in the "yard" for which the setback is required and the character of the side of the residential structure that faces the "yard" in question.¹ For "yard" setbacks, it is the orientation of the residential structure that is most important for determining the "yard" setback requirement. The fundamental purpose and intent of setback requirements are exactly the same whether they are expressed as "yard" setbacks or just as setbacks. Therefore, the fundamental purpose and intent of the setback requirements of Sections 5.080(a) and (b) will be satisfied only if the orientation of the residential structure (as well as, perhaps, the orientation of the lot -- see discussion that follows) is taken into consideration.

2) The RLDO already includes clear and explicit guidance on how conflicts between more restrictive criteria and less restrictive criteria should be resolved. Section 1.040 reads as follows: "Where the conditions imposed by a provision of this ordinance are less restrictive than comparable conditions imposed by any other provisions of this or any other ordinance, the more restrictive provision shall govern." The fundamental policy contained in and enunciated by Section 1.040 can be applied to an interpretation of Sections 5.080(a) and (b) as follows: Where the conditions imposed by an interpretation of a provision of this ordinance are less restrictive than comparable conditions imposed by another interpretation of that provision, the more restrictive interpretation shall govern. Thus, the required setback should be based upon the more restrictive interpretation (the one requiring the greater setback). In other words, the setback distance should be based either upon the orientation of the residential structure or the orientation of the lot, whichever basis would require the greater setback.

3) The title of the section is 'General Building Setbacks in All Zones and Districts' not 'General Lot Line Setbacks in All Zones and Districts.' Therefore, a method of determining setback requirements which considers only lot orientation and ignores building orientation would be generally inappropriate and inconsistent with the purpose and intent of the section as indicated by the language of its title.

The Planning Commission has the authority and responsibility to interpret the RLDO (Section 3.090 of the RLDO). That interpretation shall be in writing and shall be available with copies of the RLDO. The following interpretation of Sections 5.080(a) and (b) is

¹ Section 41.060(2) of the Tualatin Development Code is instructive on this point: "Where living spaces face a side yard, the minimum setback shall be 10 feet [rather than 5 feet]."

An Interpretation of the Planning Commission

(July 6, 1998)

Section 5.080 of the Rivergrove Land Development Ordinance (RLDO) establishes General Building Setbacks in All Zones and Districts. Sections 5.080(a) and 5.080(b) establish setbacks for detached and attached residential structures. They read as follows:

"Section 5.080 General Building Setbacks in All Zones and Districts.

- (a) All new detached residential structures built with [sic] any zone or district in the City of Rivergrove shall maintain the following setbacks from the property lines of the lot on which they are constructed or erected.

Front Setback - 25 feet.

Side Setback - 10 feet.

Side Setback on a Corner Lot - 15 feet (to insure better visibility).

Rear Setback - 25 feet (from the read [sic] lot line or the ordinary high water mark - whichever is greater).

- (b) All new attached residential shall maintain the same set backs as detached residential around the perimeter of the structure."

The above provisions do not clearly specify whether the terms front, rear, and side relate to the orientation of the structure or to the orientation of the lot. When there is only one residential structure on the lot, the orientation of lot and structure will be the same (the orientation of the residential structure will determine the orientation of the lot as in the case of a corner lot OR the orientation of the lot will dictate the orientation of the residential structure) and there will be no ambiguity concerning the application of this ordinance provision. When there is more than one residential structure per lot, and when the orientations of the residential structures on that lot are not all the same as the lot itself, then there can be uncertainty and ambiguity concerning the application of this ordinance provision. The uncertainty / ambiguity that results from this lack of specificity within the text of the RLDO can be eliminated by an "interpretation" of the Planning Commission.

In "interpreting" this provision, the Planning Commission finds the following three factors pertinent and persuasive:

- 1) Setback requirements are often identified and expressed as "yard" setback requirements (front yard setback, side yard setback, rear yard setback -- see, for example, the Tualatin Development Code Section

on the activities that are expected to occur in the "yard" for which the setback is required and the character of the side of the residential structure that faces the "yard" in question.¹ For "yard" setbacks, it is the orientation of the residential structure that is most important for determining the "yard" setback requirement. The fundamental purpose and intent of setback requirements are exactly the same whether they are expressed as "yard" setbacks or just as setbacks. Therefore, the fundamental purpose and intent of the setback requirements of Sections 5.080(a) and (b) will be satisfied only if the orientation of the residential structure (as well, perhaps, as the orientation of the lot -- see discussion that follows) is taken into consideration.

2) The RLDO already includes clear and explicit guidance on how conflicts between more restrictive criteria and less restrictive criteria should be resolved. Section 1.040 reads as follows: "Where the conditions imposed by a provision of this ordinance are less restrictive than comparable conditions imposed by any other provisions of this or any other ordinance, the more restrictive provision shall govern." The fundamental policy contained in and enunciated by Section 1.040 can be applied to an interpretation of Sections 5.080(a) and (b) as follows: Where the conditions imposed by an interpretation of a provision of this ordinance are less restrictive than comparable conditions imposed by another interpretation of that provision, the more restrictive interpretation shall govern.

The Planning Commission has the authority and responsibility to interpret the RLDO (Section 3.090 of the RLDO). That interpretation shall be in writing and shall be available with copies of the RLDO. The following interpretation of Sections 5.080(a) and (b) is hereby adopted by the Planning Commission at its regular meeting on June 1, 1998. Until these Sections are revised or until a different interpretation of these Sections is adopted by the Planning Commission, these Sections shall be applied and enforced in accordance with the following interpretation:

INTERPRETATION Sections 5.080(a) and (b), Rivergrove Land Development Ordinance

The Planning Commission hereby interprets Sections 5.080(a) and (b) of the Rivergrove Land Development Ordinance to include the following requirements:

All setbacks referred to in these sections shall be determined based upon the orientation of the residential structure, unless the setback requirement(s) would be more restrictive (greater) if determined based upon the orientation of the lot.

¹ Section 41.060(2) of the Tualatin Development Code is instructive on this point: "Where living spaces face a side yard, the minimum setback shall be 10 feet [rather than 5 feet]."

An Interpretation of the Planning Commission
(June 1, 1998)

Section 5.080 of the Rivergrove Land Development Ordinance (RLDO) establishes General Building Setbacks in All Zones and Districts. Sections 5.080(a) and 5.080(b) establish setbacks for detached and attached residential structures. They read as follows:

"Section 5.080 General Building Setbacks in All Zones and Districts.

- (a) All new detached residential structures built with any zone or district in the City of Rivergrove shall maintain the following setbacks from the property lines of the lot on which they are constructed or erected.

Front Setback - 25 feet.

Side Setback - 10 feet.

Side Setback on a Corner Lot - 15 feet (to insure better visibility).

Rear Setback - 25 feet (from the read [sic] lot line or the ordinary high water mark - whichever is greater).

- (b) All new attached residential shall maintain the same set backs as detached residential around the perimeter of the structure."

The above provisions do not clearly specify whether the terms front, rear, and side relate to the orientation of the structure or to the orientation of the lot. When there is only one residential structure on the lot, the orientation of lot and structure will be the same (the orientation of the residential structure will determine the orientation of the lot as in the case of a corner lot OR the orientation of the lot will dictate the orientation of the residential structure) and there will be no ambiguity concerning the application of this ordinance provision. When there is more than one residential structure per lot, and when the orientations of the residential structures on that lot are not all the same as the lot itself, then there can be uncertainty and ambiguity concerning the application of this ordinance provision. The uncertainty / ambiguity that results from this lack of specificity within the text of the RLDO can be eliminated by an "interpretation" of the Planning Commission.

In "interpreting" this provision, the Planning Commission finds the following two factors pertinent and persuasive:

- 1) Setback requirements are often identified and expressed as "yard" setback requirements (front yard setback, side yard setback, rear yard setback -- see, for example, the Tualatin Development Code Section 41.060). The fundamental purpose and intent of setback requirements (and thus the setback distance selected) are based to a great extent

An Interpretation of the Planning Commission
March 2, 1998

Section 5.080 of the Rivergrove Land Development Ordinance (RLDO) establishes General Building Setbacks in All Zones and Districts.

The acknowledged RLDO on file at the Department of Land Conservation and Development does not specify how the setbacks are to be measured (whether from / to the building wall line or from / to the roof edge or drip line).

~~The uncertainty / ambiguity that results from this lack of specificity within the text of the RLDO can be eliminated by an "interpretation" of the Planning Commission.~~

The Planning Commission has the authority and responsibility to interpret the RLDO (Section 3.090 of the RLDO). That interpretation shall be in writing and shall be available with copies of the RLDO. The following interpretation of Section 9.030 is hereby adopted by the Planning Commission at its regular meeting on March 2, 1998. Until this Section is revised or until a different interpretation of this Section is adopted by the Planning Commission, this Section shall be applied and enforced in accordance with the following interpretation:

INTERPRETATION
Section 5.080, Rivergrove Land Development Ordinance

The Planning Commission hereby interprets Section 5.080 of the Rivergrove Land Development Ordinance to include the following requirements:

All setbacks referred to in this section shall be measured from / to the building wall line.

- 1. Estimated costs necessary to consider the permit are included in the fees that must be paid to the City by the applicant at the time of application.*
- 2. System development charges (system development fees) are included in the fees that will be assessed by the City at the time of application. The payment of system development charges (system development fees) may be delayed until the time of issuance of a development permit provided that at the time of application the applicant provides a written, unqualified promise to pay the assessed SDC when the City issues a development permit.*
- 3. An application is not complete until the fees due at the time of application are, in fact, fully paid to the City by the applicant and the applicant provides to the City a written, unqualified promise to pay the assessed SDC when the City issues a development permit..*

A Revised Interpretation of the Planning Commission
November 3, 1997

On September 8, 1997, the Planning Commission adopted an interpretation of Section 9.030 of the Rivergrove Land Development Ordinance (RLDO) which included a determination that an application is not complete until all fees, including SDC's, are fully paid to the City by the Applicant.

ORS 223.299(4)(a) defines system development charge as "... a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit or connection to the capitol improvement ..." (Emphasis added.)

ORS 223.299(4)(a) clearly allows the City of Rivergrove to assess the system development charge at the time of application and to collect it at the time of issuance of a development permit. The issuance of the development permit is, in fact, the City's "last chance" to collect the SDC as part of a City review and approval process. Currently, the Rivergrove Land Development Ordinance as interpreted by the Planning Commission on September 8, 1997, requires the payment of the SDC at the time of application.

The requirements of Section 9.030 of the Rivergrove Land Development Ordinance can be fully synchronized with the SDC definition in ORS 223.299(4)(a) by a slight revision to the September 8, 1997 interpretation as it applies to the collection of the SDC's. The Planning Commission, therefore, hereby revises that interpretation to provide for the collection of the SDC's at the time of issuance of a development permit rather than at the time of application *provided that* at the time of application the applicant provides a written, unqualified promise to pay the assessed SDC when the City issues a development permit. (Note: Both the assessment and the promise to pay will be on a per unit basis.)

The Planning Commission has the authority and responsibility to interpret the RLDO (Section 3.090 of the RLDO). That interpretation shall be in writing and shall be available with copies of the RLDO. The following revised interpretation of Section 9.030 is hereby adopted by the Planning Commission at its regular meeting on November 3, 1997. Until this Section is revised or until a different interpretation of this Section is adopted by the Planning Commission, this Section shall be applied and enforced in accordance with the following interpretation. Except as specifically revised herein, the Planning Commission's interpretation of September 8, 1997, and the explanation of the interpretation as contained in its preamble, remain fully valid and in effect.

INTERPRETATION
Section 9.030, Rivergrove Land Development Ordinance

The Planning Commission hereby interprets Section 9.030 of the Rivergrove Land Development Ordinance to include the following requirements:

To be Filed in Article 9 of the Rivergrove Land Development Ordinance

time of application are, in fact, fully paid to the City by the applicant follows directly from the language of Section 9.030: "Fee[s] must be paid to the City by the applicant *at the time of application.*" (Emphasis added.) If the "time of application" has arrived, then the fees *must* be paid. If the fees have not been paid, then the "time of application" has not yet arrived. Thus, the Planning Commission may determine that an application is not complete³ until the fees due at the time of application (to include estimated costs and system development charges - see above discussion) are paid in full as required by Section 9.030 as interpreted herein.

The Planning Commission has the authority and responsibility to interpret the RLDO (Section 3.090 of the RLDO). That interpretation shall be in writing and shall be available with copies of the RLDO. The following interpretation of Section 9.030 is hereby adopted by the Planning Commission at its regular meeting on September 8, 1997. Until this Section is revised or until a different interpretation of this Section is adopted by the Planning Commission, this Section shall be applied and enforced in accordance with the following interpretation:

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INTERPRETATION Section 9.030, Rivergrove Land Development Ordinance

The Planning Commission hereby interprets Section 9.030 of the Rivergrove Land Development Ordinance to include the following requirements:

1. *Estimated costs necessary to consider the permit are included in the fees that must be paid to the City by the applicant at the time of application.*
2. *System development charges (system development fees) are included in the fees that must be paid to the City by the applicant at the time of application.*
3. *An application is not complete until the fees due at the time of application are, in fact, fully paid to the City by the applicant.*

Important Note: Section 9.030 is the principal provision of the Rivergrove Land Development Ordinance covering fees and system development charges. In the case of any possible inconsistency between the requirements of Section 9.030 as interpreted above, and any other provision of a City ordinance or City document (to include an old application form, for example), *the requirements of Section 9.030 as interpreted above shall govern.*

³ RLDO Section 4.050 assigns to the Planning Commission the authority and the responsibility for determining whether an application is complete.

matters rely upon "interpretations" of the Rivergrove Land Development Ordinance,² those interpretations are hereby made by the Planning Commission and are explained below.

1. An interpretation that the estimated costs the City will incur should be included in the fees due at the time of application follows directly from the wording of Section 9.030 ("Fees assessed to an applicant may include the costs . . . necessary to consider the permit." "When such costs are not known in advance, the City shall estimate the cost . . ." "Fee[s] must be paid to the City by the applicant at the time of application."). This interpretation is reinforced by the part of the Section which provides for overcharges to be refunded (i.e., the provision contemplates payment in advance coupled with a refund - or additional payment - based upon the full accounting at the end of the permit process).

2. An interpretation that system development charges (system development fees) should be included in the fees due at the time of application has two (2) bases of support:

a. It is only in the first sentence of Section 9.030 that fees and system development charges are separately mentioned and distinctly identified. That same sentence goes on to indicate that both "shall be as outlined below." The manner in which they are outlined below is a manner which treats them without distinction (i.e., as though they were the same and/or interchangeable). For example, system development charges are included on the *fee* schedule. With respect to the fee schedule, therefore, system development charges *are* fees. Thus it is consistent to interpret this Section in a manner which determines that system development charges are also fees with respect to the requirement that fees must be paid at the time of application.

b. In the second paragraph of Section 9.030 the word *fee* is used to identify, describe, or refer to the assessment of a system development fee no less than four (4) times. From the predominant use of the word *fee* with respect to this assessment, it is reasonable to conclude that the authors of this Section intended the phrases 'system development charge' and 'system development fee' to be interchangeable and to mean exactly the same thing. Thus system development charges *are* fees and are to be included in the fees required to be paid at the time of application.

Either of the two bases discussed above would be adequate by itself to support the interpretation being made here. Combined, they seem to allow no other reasonable interpretation on this particular point.

3. An interpretation that an application is not complete until the fees due *at the*

² The Planning Commission has the authority and the responsibility to interpret the Rivergrove Land Development Ordinance (RLDO) when necessary. See RLDO Section 3.090.

An Interpretation of the Planning Commission
September 8, 1997

Section 9.030 of the Rivergrove Land Development Ordinance (RLDO) reads, in part, as follows:

"All fees and system development charges under this ordinance, and the Development Standards Document, shall be as outlined below. This fee schedule may be amended at any time by Resolution of the City Council. Fee[s]¹ must be paid to the City by the applicant *at the time of application*. Fees assessed to an applicant may include the costs to the City of legal services, hearings officers, engineering services, planning services, and design services as the City determines are necessary to consider the permit. *When such costs are not known in advance, the City shall estimate the cost*, and provide a full accounting at the end of the permit process. Overcharges will be refunded to the applicant, and the applicant shall be responsible to the City for any additional costs not covered by the estimate." (Emphasis added.)

"For construction of new residential units which will use streets and roads within the City of Rivergrove, the City may assess a roadway system development fee. This fee will be deposited in to the City's Road fund and may be used only for the purposes legally allowed for road funds. The roadway system development fee may be waived by the City Council should the City determine it will be a hardship, and, at the City's discretion, may credit the cost of required public facility improvements against such fees." (Emphasis added.)

The following matters are explicitly (and clearly) stated and thus do not require an interpretation: 1) fees must be paid *at the time of application*; 2) fees may include costs, which, when not known in advance, shall be estimated; and 3) the City may assess roadway system development fees.

The following matters are less explicitly stated: 1) estimated costs necessary to consider the permit are included in the fees that must be paid to the City by the applicant at the time of application; 2) system development charges (system development fees) are included in the fees that must be paid to the City by the applicant at the time of application; and 3) An application is not complete until the fees due *at the time of application* are, in fact, fully paid to the City by the applicant. To the extent that these

¹ To correct an apparent typographical error.

An Interpretation of the Planning Commission
July 7, 1997

Section 2.040(h) of the Rivergrove Land Development Ordinance (RLDO) seems to be internally inconsistent. It excludes from the requirement for a development permit the "installation or construction of an accessory structure that does not require a building permit." It then goes on to add the parenthetical expression: "(i.e. 108 square feet in size)."

Clackamas County issues "building permits" within the City of Rivergrove. The requirement for a building permit is established by Clackamas County. Clackamas County has established that "small accessory buildings not over 120 square feet or a height of 10 feet measured from the highest point are exempt." In other words, according to the current County requirements, a small accessory building that is neither more than 120 square feet in area nor more than 10 feet in height does not require a building permit.

The internal inconsistency creates an ambiguity. The ambiguity calls for an interpretation. The Planning Commission has the authority and responsibility to interpret the RLDO (Section 3.090 of the RLDO). That interpretation shall be in writing and shall be available with copies of the RLDO. The following interpretation of Section 2.040(h) is hereby adopted by the Planning Commission at its regular meeting on July 7, 1997. Until this Section is revised or until a different interpretation of this Section is adopted by the Planning Commission, this Section shall be applied and enforced in accordance with the following interpretation:

INTERPRETATION
Section 2.040(h), Rivergrove Land Development Ordinance

Parenthetical expressions are normally used to supplement or clarify rather than contradict the content of the body of the sentence. It is not likely that the City Council that originally enacted this provision intended for the parenthetical expression to contradict or overrule the body of the sentence. Therefore, the Planning Commission hereby makes the following "interpretation" of Section 2.040(h):

In the case of inconsistency between the body of the sentence of Section 2.040(h) and the parenthetical expression of that Section, *the requirement as stated in the body of the sentence shall govern*. In other words, an accessory structure that does not require a building permit by Clackamas County does not require a development permit by the City of Rivergrove.