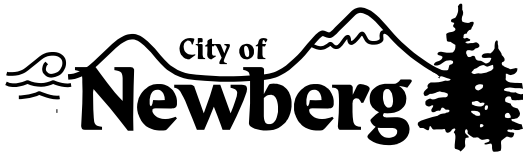


Exhibit G: 2018 Springbrook Development Agreement Update



Community Development Department

P.O. Box 970 ▪ 414 E First Street ▪ Newberg, Oregon 97132
503-537-1240 ▪ Fax 503-537-1272 ▪ www.newbergoregon.gov

NOTICE OF ADOPTION

AN ORDINANCE APPROVING THE 2018 AMENDMENT TO THE 2008
DEVELOPMENT AGREEMENT - SPRINGBROOK MASTER PLAN THAT WAS
ADOPTED BY ORDINANCE NO. 2018-2835

July 19, 2018

Pahlisch Homes, Inc.
15333 SW Sequoia Parkway, Suite 190
Portland, OR 97224

Cc: All persons who provided comments (Tony Roos, Frank and Donna Page, Marvin Robinson, Michael Robinson, Mimi Doukas, Mike Morse, Brett Baker, Dan Cline, Robert Simokovic, Michael White, Mark Wagner, Steve Able and Don Clements (CPRD))

On July 16, 2018 the Newberg City Council adopted Ordinance 2018-2835, amending the 2008 Development Agreement by adding eight (8) new paragraphs. The requested amendments are intended to clarify how the Agreement works and to add certain substantive provisions to the Development Agreement. The ordinance will take effect on August 15, 2018. A copy of the ordinance is attached.

Any party with standing aggrieved by this decision may appeal to the Land Use Board of Appeals (LUBA) by first filing a "Notice of Intent to Appeal" within 21 days after mailing of this notice of decision (OAR-661-010-0010(3)). For details on filing an appeal, contact the Land Use Board of Appeals at 503-373-1265 (550 Capitol Street NE Suite 235, Salem, OR 97301-2552).

If you have any questions, please contact Keith Leonard, Associate Planner, at 503-537-1215 or at keith.leonard@newbergoregon.gov.

Sincerely,

Keith Leonard, Associate Planner

Attachment: ORD No. 2018-2835

cc: file MISC18-0001



ORDINANCE No. 2018-2835

**AN ORDINANCE APPROVING THE 2018 AMENDMENT TO THE 2008
DEVELOPMENT AGREEMENT - SPRINGBROOK MASTER PLAN
THAT WAS ADOPTED BY ORDINANCE NO. 2007-2678**

RECITALS:

1. The City of Newberg entered into a Development Agreement dated January 28, 2008, recorded on February 6, 2008 as document number 2008-01964 in the records of Yamhill County, Oregon that was adopted by Ordinance No. 2007-2678.
2. The City of Newberg agreed to a Memorandum of Understanding regarding the Development Agreement on October 6, 2009, recorded August 11, 2011, recorded as Document No. 2011-10366 in the Records of Yamhill County, Oregon.
3. On May 11, 2018, an application, project file number MISC318-0001, was submitted by Pahlisch Homes, Inc. for amendment of the Springbrook Development Agreement.
4. On May 25, 2018, file MISC318-0001 was determined to be complete.
5. On May 29, 2018, public hearing notice signs were posted along the perimeter of the subject property in compliance with the Newberg Development Code Section 15.100.260.
6. After proper notice, On June 14, 2018 the Newberg Planning Commission conducted a public hearing, took public testimony, deliberated and adopted Resolution 2018-341 recommending City Council adopt the proposed Amendments.
7. On June 6, 2018, planning staff posted the notice of a City Council public hearing in 4 public buildings.
8. On June 27, 2018 the Newberg Graphic Newspaper published the public hearing notice for the July 16, 2018 City Council meeting.
9. After proper notice, the City Council opened the public hearing on July 16, 2018, considered public testimony and deliberated.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. The 2018 Amendment to the 2008 Development Agreement - Springbrook Master Plan shown in Exhibit "A" is adopted.

2. Exhibit "A" and "B" area hereby adopted by this reference.
3. The City Manager, in coordination with the City Attorney, is authorized to sign the 2018 Amendment to the 2008 Development Agreement and record the Agreement with Yamhill County.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: August 15, 2018.

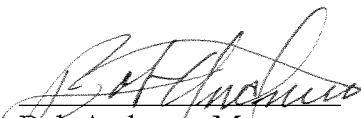
ADOPTED by the City Council* of the City of Newberg, Oregon, this 16th day of July, 2018, by the following votes: **AYE: 5 NAY: 0 ABSENT: 1 ABSTAIN: 0**



Sue Ryan, City Recorder

**District 1 seat vacant on this date.*

ATTEST by the Mayor this 19th day of July, 2018.



Bob Andrews, Mayor

**2018 AMENDMENT TO
2008 DEVELOPMENT AGREEMENT**

THIS 2018 AMENDMENT TO DEVELOPMENT AGREEMENT (the “Amendment”) is entered into and effective this ____ day of _____, 2018, by and among the CITY OF NEWBERG, an Oregon municipal corporation (the “City”); SPRINGBROOK PROPERTIES, INC. (“Springbrook”); and ASPEN WAY WEST LLC, ALLISON PROPERTIES LLC, and THE ALLISON INN & SPA LLC (the “Owners”), successors in interest to Springbrook (the City, Springbrook and the Owners are collectively referred to as the “Parties”).

Recitals

A. Springbrook was the owner of that certain real property located in the City and more particularly described in Exhibit “A,” attached hereto (the “Property”).

B. The City and Springbrook entered into a Development Agreement (the “Agreement”) dated January 28, 2008, recorded on February 6, 2008 as Document No. 200801964 in the Records of Yamhill County, Oregon, and through the recording of a Memorandum of Understanding regarding the Development Agreement recorded on August 11, 2011 as Document No. 2011-10366 in the Records of Yamhill County, Oregon for the purposes of developing a mixed-use development as described in the Springbrook Master Plan (the “Master Plan”) adopted by the Agreement.

C. Exhibit “A” attached to this Amendment is the legal description of the Property that was approved by the City in the Master Plan and supersedes and replaces the original Exhibit A, “Real Property Description” that was attached to the Agreement.

D. Springbrook conveyed its interest in the Property to the Owners after entering into the Agreement.

E. The Parties have subsequently discussed implementation of the Agreement and Master Plan.

F. The Parties agree that certain changes to the Agreement would be beneficial to the implementation of the Agreement and the Master Plan, and to the community.

G. Those certain changes as set forth below are within the scope of permissible provisions of an Agreement pursuant to ORS 94.504-94.528 and the 2007 Newberg Development Code (the “2007 NDC”) 151.255-151.259.

H. ORS 94.504(2)(k) provides that a development agreement may set forth the extent to which the agreement is transferable. The Agreement authorizes amendments. Agreement, Paragraphs 3 and 17 (authorize Agreement to be assigned).

In order to satisfy the requirements set forth in ORS 94.504-94.528 and 2007 NDC 151.255-151.259, the Parties hereby enter into this Amendment.

Amendment

IN CONSIDERATION of the mutual promises contained herein, including those set forth in the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree that the original Exhibit A, “Real Property Description” attached to the Agreement is replaced by Exhibit “A” attached to this Amendment and the Parties further amend the Agreement as follows:

1. New Paragraphs.

A. New Paragraph 1.5.

“1.5 Delegation. The City delegates to the Community Development Director the authority to allow the following changes to the Master Plan conceptual and design elements through a Type I process: tree protection; infrastructure type and location; fence materials and colors; median locations and breaks; phase boundaries; lot lines and lot areas; and changes to the required infrastructure improvements as set forth in Exhibit “F” to the Agreement, subject to the resolution of any conflicts between the Master Plan and the Agreement pursuant to Paragraph 5.2.11.

“1.5.1 Type I Process. The Community Development Director shall use the Type I process in the 2007 NDC for amendments authorized under Section 1.5 above but subject only to the approval standards set forth below. Type I amendments may be allowed for tree protection (numbers of trees and location of trees); infrastructure type, location, and size; lot lines and lot areas; fence materials and colors; median break locations; and phase boundary locations:

“1.5.1.1 Changes to the Master Plan as allowed by Paragraph 1.5 shall be to specific numerical standards, identified locations, identified fence materials and colors and identified terms for the items listed in Paragraph 1.5.1.

“1.5.1.2 The changes shall be based on the purpose of the Master Plan.

“1.5.1.3 The Community Development Director may impose clear and objective conditions of approval to implement the Type I amendments.”

B. New Paragraph 1.6.

“1.6 Goal Post Rule. The City shall apply the Goal Post Rule in ORS 227.178(3) to all land use and limited land use applications submitted under the Agreement and the Master Plan.”

C. New Paragraph 1.7.

“1.7. City Acceptance of Regional Stormwater Facilities as Public Facilities. Regional stormwater facilities that meet the applicable standards of the City’s Public Works Design and Construction Standards will be accepted as public facilities. The Applicant is required to minimize the number of regional stormwater facilities where possible.”

D. New Paragraph 1.8.

“1.8. Chehalem Parks and Recreation District (the “District”) Acceptance of Parks. The owner of the relevant portion of the Property and the District shall mutually agree if any park within the Property shall be private or shall be public and dedicated by such property owner to the District. The City is not obligated to accept any park under this paragraph.”

E. New Paragraph 1.4.1.

“1.4.1 Extension of Recording of Final Plats in Phased Subdivisions. Notwithstanding 2007 NDC 151.249, the City shall approve a phased subdivision schedule proposed in the tentative plan approval describing the expiration of the tentative plan for each subdivision phase and when recording of the final plat for each subdivision phase shall be required, subject to the City’s authority to modify the proposed schedule.”

F. New Paragraph 5.2.11.

“5.2.11. Conflict between Master Plan and Agreement. In the event of a conflict between the Master Plan and the Agreement, the Agreement shall control.”

G. New Paragraph 5.2.12.

“5.2.12. Assignment Permitted. A property owner that is a party to the Agreement may assign and transfer its interest in the Agreement to another owner of the Property without an amendment to the Agreement.”

H. New Paragraph 5.2.13.

“5.2.13. Public Utility Master Plans, Standards and System Development (“SDC”)
Charges and Credits.

“5.2.13.1 The Public Utility Master Plans standards shall be those in effect on the date that land use or limited land use applications are submitted. The current (2018) applicable master plans and standards are as follows:

- Public Works Design and Construction Standards, 2015.
- Wastewater Master Plan, 2018.
- Water Master Plan, May 2017.
- Stormwater Master Plan, June, 2014.

Transportation elements of the Agreement and Master Plan are based on the vested Traffic Impact Study that was conducted in May, 2007. Any Type I modification that changes a street classification, trip cap or otherwise modifies the existing Transportation Project List will require an update to the Traffic Impact Study.”

“5.2.13.2 The applicable SDC charges and credits shall be those in effect on the date land use or limited land use applications are submitted.”

2. Authority to Amend the Agreement.

ORS 94.522(1) provides that a development agreement may be amended by the mutual consent of the parties to an agreement. 2007 NDC 151.258(A) provides that the Agreement may be amended by the mutual consent of the parties through a Type III process.

3. Acknowledgement of Transfer and Assignment of Agreement.

The Parties acknowledge and agree that the Owners are the successors in interest to Springbrook and that pursuant to ORS 94.504(2)(k) and Agreement, Paragraphs 3 and 17, Springbrook has assigned its entire interest in the Agreement with respect to the Property to the Owners.

4. No Other Changes.

The Parties acknowledge and agree that no other amendments or changes of any kind whatsoever are made to the Agreement through this Amendment.

5. Approval by Newberg City Council.

The Newberg City Council adopted Ordinance No. _____, effective on _____, 2018, approving the Amendment.

SPRINGBROOK PROPERTIES, INC.

By _____
George K. Austin, Jr., President

Dated: _____

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 2018, by George K. Austin, Jr., the President of Springbrook Properties, Inc.

Notary Public for Oregon
My Commission Expires: _____
Commission No.: _____

ASPEN WAY WEST, LLC

By: Austin Industries LLC, Manager

By: _____
George K. Austin, Jr., Manager

Dated: _____

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 2018, by George K. Austin, Jr., Manager of Austin Industries LLC as Manager of Aspen Way West, LLC.

Notary Public for Oregon
My Commission Expires: _____
Commission No.: _____

ALLISON PROPERTIES LLC

By: Austin Industries LLC, Manager

By: _____
George K. Austin, Jr., Manager

Dated: _____

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 2018, by George K. Austin, Jr., the Manager of Austin Industries, LLC as Manager of Allison Properties LLC.

Notary Public for Oregon
My Commission Expires: _____
Commission No.: _____

THE ALLISON INN & SPA LLC

By: Springbrook Properties, Inc., Manager

By: _____
George K. Austin, Jr., President

Dated: _____

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 2018, by George K. Austin, Jr., the President of Springbrook Properties, Inc. as Manager of The Allison Inn & Spa LLC.

Notary Public for Oregon
My Commission Expires: _____
Commission No.: _____

CITY OF NEWBERG

ACCEPTED:

APPROVED AS TO FORM AND CONTENT:

City Manager

Truman A. Stone, City Attorney

Dated: _____

Dated: _____

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 2018, by _____, the City Manager of the City of Newberg.

Notary Public for Oregon
My Commission Expires: _____
Commission No.: _____

EXHIBIT "A"
Legal Description

Aspen Way West LLC:

Lots 1, 2, 3, 4 and 5, and Tracts A, B, C, D, E, F, G, H, AA, BB, CC, DD and EE, SPRINGBROOK DISTRICT, in the City of Newberg, Yamhill County, Oregon, according to the plat thereof recorded August 19, 2011, at Plat Volume 15, Page 2, Yamhill County, Oregon.

Allison Properties LLC:

Lots 6, 8 and 9, and Tracts I, J, K, L, M, N, O, P, FF, GG, HH, II, JJ, KK, LL, MM and NN, SPRINGBROOK DISTRICT, in the City of Newberg, Yamhill County, Oregon, according to the plat thereof recorded August 19, 2011, at Plat Volume 15, Page 2, Yamhill County, Oregon.

The Allison Inn & Spa LLC:

Lot 7 and Lot 10, SPRINGBROOK DISTRICT, in the City of Newberg, Yamhill County, Oregon, according to the plat thereof recorded August 19, 2011, at Plat Volume 15, Page 2, Yamhill County, Oregon.

Exhibit "B"
City Council Ordinance No.2018-2835
Findings – File MISC318-0001
Amendment to the Development Agreement – Springbrook Master Plan

Oregon Revised Statutes provide for property owners and cities or counties to enter into development agreements as allowed in ORS 94.504¹

- (1) A city or county may enter into a development agreement as provided in ORS 94.504 (Development agreements) to 94.528 (Recording) with any person having a legal or equitable interest in real property for the development of that property.

Finding: The owners of the Springbrook property have a legal and equitable interest in the Springbrook Property (Property) and may enter into an agreement to amend to the Development Agreement Springbrook Master Plan (Agreement). Staff concurs with the applicant's finding contained in Attachment 8. This section of the ORS is met.

- (2) A development agreement shall specify:
- (a) The duration of the agreement;
 - (b) The permitted uses of the property;
 - (c) The density or intensity of use;
 - (d) The maximum height and size of proposed structures;
 - (e) Provisions for reservation or dedication of land for public purposes;
 - (f) A schedule of fees and charges;
 - (g) A schedule and procedure for compliance review;
 - (h) Responsibility for providing infrastructure and services;
 - (i) The effect on the agreement when changes in regional policy or federal or state law or rules render compliance with the agreement impossible, unlawful or inconsistent with such laws, rules or policy;
 - (j) Remedies available to the parties upon a breach of the agreement;
 - (k) The extent to which the agreement is assignable; and
 - (L) The effect on the applicability or implementation of the agreement when a city annexes all or part of the property subject to a development agreement.

Finding: The proposed amendments do not disallow the Agreement to meet the required specifics found in this section of the ORS. Staff concurs with the applicant's finding contained in Attachment 8. This section of the ORS is met.

- (3) A development agreement shall set forth all future discretionary approvals required for the development specified in the agreement and shall specify the conditions, terms, restrictions and requirements for those discretionary approvals.

Finding: The proposed amendments to the Agreement still complies with this Section of the ORS. Staff concurs with the applicant's finding contained in Attachment 8. This requirement is met.

- (4) A development agreement shall also provide that construction shall be commenced within a specified period of time and that the entire project or any phase of the project be completed by a specified time.

Finding: The proposed amendments to the Agreement will not interfere with the Agreement to require

construction on the subject property commencing within a specified period of time and for the entire project or any phase of the project to be completed by a specified time period. Staff concurs with the applicant's finding contained in Attachment 8. The proposed amendments to the Agreement satisfy this section of the ORS.

- (5) **A development agreement shall contain a provision that makes all city or county obligations to expend moneys under the development agreement contingent upon future appropriations as part of the local budget process. The development agreement shall further provide that nothing in the agreement requires a city or county to appropriate any such moneys.**

Finding: The proposed amendments do not interfere with the City's ability to appropriate moneys under the Agreement contingent upon future appropriations as part of the local budget process. Staff concurs with the applicant's finding contained in Attachment 8. This section of the ORS is met.

- (6) **A development agreement must state the assumptions underlying the agreement that relate to the ability of the city or county to serve the development. The development agreement must also specify the procedures to be followed when there is a change in circumstances that affects compliance with the agreement.**

Finding: The proposed amendments to the Agreement would provide for the Community Development Director, through a Type I process, to make certain decisions regarding implementation of the Master Plan. Paragraph 1.6 of the proposed amendments would apply the "Goal Post Rule" in ORS 227.178(3) to all land use and limited land use applications under the Agreement. The City would still accept certain stormwater facilities as public facilities (whereas the City previously required these facilities to be private, they may now be public if constructed to the City standards), allow the owners and the Chehalem Parks and Recreation District to agree if parks shall be private or public, allows the owners to propose a schedule for recording of the final plat for each phase of the development, allows the Community Development Director to resolve conflicts between the Master Plan and the Agreement, requires the owners and the City to enter into an agreement on utilities and System Development Charges (SDCs). The proposed amendments to the Agreement are allowed under this section of the ORS. Staff concurs with the applicant's finding contained in Attachment 8. This ORS requirements are met.

- (7) **A development agreement is binding upon a city or county pursuant to its terms and for the duration specified in the agreement.**

Finding: This section of the ORS is not applicable to the proposed amendments to the Agreement.

- (8) **The maximum duration of a development agreement entered into with:**

Finding: This section of the ORS is not applicable to the proposed amendments to the Agreement.

- (a) **A city is 15 years; and**

Finding: This section of the ORS is not applicable to the proposed amendments to the Agreement.

- (b) **A county is seven years.**

Finding: This section of the ORS is not applicable to the proposed amendments to the Agreement.

- (9) **ORS 94.504 (Development agreements) to 94.528 (Recording) do not limit the authority of a city or county to take action pursuant to ORS 456.270 (Definitions for ORS 456.270 to 456.295) to 456.295 (Action affecting covenant). [1993 c.780 §1; 2005 c.315 §1; 2007 c.691**

§7]

Note: 94.504 (Development agreements) to 94.528 (Recording) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 94 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Finding: This section of the ORS is not applicable to the proposed amendment of the Agreement.

ORS 94.508 Approval by governing body

- (1) **A development agreement shall not be approved by the governing body of a city or county unless the governing body finds that the agreement is consistent with local regulations then in place for the city or county.**

Finding: The proposed amendments to the Agreement will not interfere with the City's ability to find that the Agreement is consistent with local regulations as demonstrated in the findings pertaining to NDC Sections 151.255-151.259. Staff concurs with the applicant's finding contained in Attachment 8. This section of the ORS is met.

- (2) **The governing body of a city or county shall approve a development agreement or amend a development agreement by adoption of an ordinance declaring approval or setting forth the amendments to the agreement. Notwithstanding ORS 197.015 (Definitions for ORS chapters 195, 196, 197 and ORS 197A.300 to 197A.325) (10)(b), the approval or amendment of a development agreement is a land use decision under ORS chapter 197. [1993 c.780 §2; 2005 c.22 §74; 2007 c.354 §27]**

Finding: The proposed amendment to the Agreement will require that, if approved, the City Council would adopt an ordinance in order to approve the amendment of the Agreement. The City has used a Type III review process for the amendment of the current application or any future amendment(s) to the Agreement. Because the City used a Type III process for review of the current amendment application it would result in the land use decision to provide for all of the rights of a quasi-judicial land use application under ORS 197.763 Conduct of Local Quasi-Judicial Land Use Hearings. Staff concurs with the applicant's finding contained in Attachment 8. This section of the ORS has been met.

2017 ORS 94.513 Procedures on consideration and approval

- (1) **A city or county may, by ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the owner of property on which development is sought or another person having a legal or equitable interest in that property.**

Finding: The City of Newberg enacted the 2007 NDC Sections 151.255-151.259 by ordinance of the City Council. The original Agreement was also enacted by ordinance of the City Council. The proposed amendments to the Agreement have been submitted on behalf of the property owners by Pahlisch Homes, Inc. Staff concurs with the applicant's finding contained in Attachment 8. This section of the ORS is met.

- (2) **Approval of a development agreement requires compliance with local regulations and the approval of the city or county governing body after notice and hearing. The notice of the hearing shall, in addition to any other requirements, state the time and place of the public hearing and contain a brief statement of the major terms of the proposed development agreement, including a description of the area within the city or county that will be affected by the proposed development agreement. [1993 c.780 §3]**

Finding: A public hearing notice for the Planning Commission was mailed by the applicant to all

property owners within 500 feet of the subject property on May 24, 2018, signs were posted in compliance with the NDC on May 29, 2018, the notice was placed in three public buildings, published in the Newberg Graphic Newspaper on May 30, 2018 and a notice was placed on the City's website on May 25, 2018. A public hearing notice for the City Council was mailed by the applicant to all property owners within 500 feet of the subject property on June 25, 2018, the notice was placed in four public buildings, published in the Newberg Graphic Newspaper on June 27, 2018. All but the sign notices listed the time and place. All notices contained a brief statement of the major terms of the proposed amendment of the Agreement. A map was provided in the mailed public notice and a general description of the area within the city that will be affected by the proposed amendments to the Agreement. Staff concurs with the applicant's finding contained in Attachment 8. This section of the ORS and Development Code is met.

ORS 94.518 Application of local government law and policies to agreement

Unless otherwise provided by the development agreement, the comprehensive plan, zoning ordinances and other rules and policies of the jurisdiction governing permitted uses of land, density and design applicable to the development of the property subject to a development agreement shall be the comprehensive plan and those ordinances, rules and policies of the jurisdiction in effect at the time of approval of the development agreement. [1993 c.780 §4]

Finding: City staff have found that the proposed amendments to the Agreement may continue to be modified by the mutual consent of the owners and the city. If the proposed amendments to the Agreement are approved then the City Council shall do so by ordinance. The proposed amendments would authorize the Community Development Director to reconcile conflicts between the Master Plan and Agreement by a Type I process, apply the Goal Post Rule to land use and limited land use applications, that the City may accept stormwater facilities as public facilities, for the City to accept a schedule for recording of the final plats in a phased subdivision and to allow the property owners and the Chehalem Parks and Recreation District to decide if parks shall be public or private. In a letter, dated June 4, 2018, from the Chehalem Park and Recreation District Board Superintendent, it was noted that the Board understands proposed paragraph 1.8. Staff concurs with the applicant's finding contained in Attachment 8. This section of the ORS is met.

ORS 94.522 Amendment or cancellation of agreement

- (1) A development agreement may be amended or canceled by mutual consent of the parties to the agreement or their successors in interest. The governing body of a city or county shall amend or cancel a development agreement by adoption of an ordinance declaring cancellation of the agreement or setting forth the amendments to the agreement.**

Finding: The proposed amendments to the Agreement do not affect the ability of the City with mutual consent of the owners to amend or cancel the Agreement. The City Council will still be required to utilize an ordinance to either amend or cancel the Agreement. Staff concurs with the applicant's finding contained in Attachment 8. This section of the ORS is met.

- (2) Until a development agreement is canceled under this section, the terms of the development agreement are enforceable by any party to the agreement. [1993 c.780 §5]**

Finding: The proposed amendments to the Agreement will still allow the terms of the Agreement to be enforceable by any party to the Agreement unless the development agreement is cancelled under this section of the ORS. Staff concurs with the applicant's finding contained in Attachment 8. This section of the ORS is met.

ORS 94.528 Recording

Not later than 10 days after the execution of a development agreement under ORS 94.504 (Development agreements) to 94.528 (Recording), the governing body of the city or county shall cause the development agreement to be presented for recording in the office of the county clerk of the county in which the property subject to the agreement is situated. In addition to other provisions required by ORS 94.504 (Development agreements) to 94.528 (Recording), the development agreement shall contain a legal description of the property subject to the agreement. [1993 c.780 §6]

Finding: If the proposed amendments to the Agreement, including legal descriptions of the subject property, are approved by ordinance of the City Council then the Agreement shall be required to be recorded by the Clerk of Yamhill County not less than ten (10) days after Council approval. Staff concurs with the applicant's finding contained in Attachment 8. This section of the ORS is met.

2007 Newberg Development Code Findings

The 2007 Newberg Development Code section pertaining to Development Agreements that apply to this application include 151.255 Description and Purpose; Applicability, Section 151.257 Procedure; Criteria, Section 151.258 Amendments; Cancellation; Zoning Map.

151.255 DESCRIPTION AND PURPOSE; APPLICABILITY

- (A) A development agreement is made between a property owner and the city and is adopted by the city by ordinance. It is intended as a tool to create quality developments. The agreement allows the city to change the zoning of a property contingent on the applicant constructing a certain project, completing certain conditions, or complying with certain standards. The agreement may also allow the city and an applicant to coordinate in the provision of facilities to serve the development.**

Finding: On January 28, 2008, the City of Newberg entered into the Springbrook Development Agreement (Agreement) with Springbrook Properties. On May 11, 2018 an application was submitted by Pahlisch Homes, Inc., on behalf of the property owners including Aspen Way West, LLC., Allison Properties, LLC, and the Allison Inn and Spa, LLC., to amend the existing Agreement. The intent of the application is to clarify how the Agreement works and add substantive provisions. The zoning that was established for the Springbrook Master Plan in 2007 will remain the same. The proposed amendment will not affect the ability of the applicant to coordinate in the provision of facilities to serve the development. The proposed amendment to the Agreement is between the property owners and the City and the City Council. If said amendment to the Agreement is approved by the City Council then said Agreement will be adopted by ordinance. Staff concurs with the applicant's finding contained in Attachment 8. This section NDC is met by the proposed amendments to the Agreement.

- (B) A development agreement may do any of the following:**
- (1) Designate the zoning district, comprehensive plan designations, and sub-districts that will be applied to a property upon execution of the agreement, upon successful completion of the terms of the agreement, and in case of failure to complete the terms of the agreement.**

Finding: The section of the development code provides for what the function of the Agreement is. The zoning, comprehensive plan and sub-districts designations established by the 2008 Agreement will not be affected by the proposed amendment. Staff concurs with the applicant's finding contained in

Attachment 8. The section of the NMC is met.

- (2) Require specific performance conditions for development of the property. These performance conditions may include, but are not limited to, construction of public facilities, dedication or reservation of land for right-of-ways, easements, or open spaces, construction of certain amenities, or other conditions property for the development.**

Finding: The proposed additional Paragraph 1.7, which provides for the City to accept stormwater facilities as public facilities. Proposed new paragraph 1.8 would allow the property owner(s) and the Chehalem Parks and Recreation District to mutually agree if any park within the Springbrook development area would be public or private and not require the City to accept any park. The proposed Amendment to the Agreement would not change any performance conditions for development of the property. Staff concurs with the applicant's finding contained in Attachment 8. This section NDC is met by the proposed amendments to the Agreement.

- (3) Create certain standards or specifications for development.**

Finding: The proposed Amendment does not prevent the ability for the City to create certain standards or specifications through the Agreement. City staff engineers have suggested additional text to added to Paragraph 5.2.13 that would provide direction to a developer that would conform with city standards and specifications. Staff concurs with the applicant's finding contained in Attachment 8. This section NDC is met by the proposed amendments to the Agreement.

- (4) Create review processes by which development under the plan is approved.**

Finding: Proposed new paragraph 1.5 would delegate authority to the Community Development Director to make changes to the Springbrook Master Plan through a Type I administrative review process for tree protection, infrastructure type and location, fence materials and colors, median locations and breaks, lot lines and lot areas, changes to infrastructure and development phase boundaries.

Proposed paragraph 1.5.1.1 would be reviewed and approved through a Type I administrative review process with the decision being made by the Community Development Director.

Proposed paragraph 1.5.1.2 would require that any Type I changes would be based on the Master Plan.

Proposed Paragraph 1.5.1.3 would allow the Director to impose clear and objective conditions of approval to implement proposed Type I amendments.

Staff concurs with the applicant's finding contained in Attachment 8. This section of the NDC is met.

151.256 DURATION; CONTENT

- (A) The agreement shall specify the duration of the agreement, which may not exceed four years for a development of fewer than seven lots or seven years for development of seven or more lots. The agreement may specify when construction will begin, when phases will be completed, and what extension opportunities area available.**

Finding: The proposed amendments would not modify the duration of the Agreement. The proposed amendment to the Agreement would continue to include the required elements under ORS 94.504. Staff concurs with the applicant's finding contained in Attachment 8. This section NDC is met by the proposed amendments to the Agreement.

(B) A development agreement shall contain all those items listed in ORS 94.504. In addition, the development agreement shall specify.

(1) The zoning district, comprehensive plan designations, and sub-districts that will be applied to a property upon adoption, upon successful completion of the terms of the agreement, and in case of failure to complete the terms of the agreement.

(2) The signature of the applicant (Ord. 2000-2537, passed 11-6-00)

Finding: This land use regulation sets forth the terms of a development agreement. The proposed amendments would still require the zoning district, comprehensive plan designations, and sub-districts be applied to the Springbrook Master Planned property. The signature of the applicant would still be required. This section of the NDC is met.

151.257 PROCEDURE; CRITERIA.

(A) A property owner or duly authorized agent may submit a proposed development agreement for approval.

Finding: The proposed amendment would still allow a property owner or duly authorized agent to submit a proposed development agreement for approval by the City Council. Further, the application for the proposed amendments to the Agreement has been signed by the property owner and submitted by Pahlisch Homes, Inc., which is the duly authorized agent for the property owners. Staff concurs with the applicant's finding contained in Attachment 8. This section of the NDC is met.

(B) In addition, in lieu of denying an application that would otherwise not meet applicable criteria, the Planning Commission or City Council may request that an applicant prepare a development agreement for consideration in conjunction with the application, including reasonable extensions of the time periods for decision making to allow preparation and review of the agreement. The applicant is under no obligation to do so, but may risk denial of an application.

Finding: This section of the NDC does not apply.

(C) The city shall process the request for development approval using a Type III procedure. The development agreement shall be adopted by the City Council by ordinance.

Finding: The proposed amendments do not affect the City requirement to process requests for development approval using a Type III review procedure and the City Council will still be required to adopt an ordinance approving any development agreement. Staff concurs with the applicant's finding contained in Attachment 8. This section of the NDC is met.

(D) The fee collected shall be the fee for the zone change, annexation, or other approval that is requested in conjunction with the development agreement.

Finding: The applicant has paid the required fee for the Type III applicant to amend the Agreement. The proposed amendments to not change the requirement for the City to collect fees for zone changes, annexations or other approval requests. Staff concurs with the applicant's finding contained in Attachment 8. This section of the NDC is met.

- (E) The criteria for approval for a development agreement shall be those criteria for a zoning map amendment, design review approval, planned development approval, or other processes that otherwise would be applied to the property. (Ord. 2000-2537, passed 11-6-00)**

Finding: The approval criteria for the proposed amendments to the Agreement still requires that the approval criteria set forth in ORS 94.504-94.528 and the 2007 NDC section 151. Staff concurs with the applicant's finding contained in Attachment 8. This section of the NDC is met.

151.258 AMENDMENTS; CANCELLATION; ZONING MAP.

- (A) The development agreement may be amended or cancelled by mutual consent of the parties to the agreement or their successors in interest, and by ordinance of the City Council using a Type III process.**

Finding: The proposed amendments do not negate that a development agreement could be amended or cancelled by mutual consent of the parties to the agreements or their successors in interest, and by ordinance of the City Council using a Type III process. The City will still apply a Type III process to the proposed amendments and, if the proposed amendments are approved by the City Council, the City Council shall still adopt an ordinance in order to approve the proposed amendments. Staff concurs with the applicant's finding contained in Attachment 8. This Section of the NDC is met.

- (B) Should the development agreement include a zone change, any such change shall be noted on the official zoning map. If the zoning change is contingent on meeting certain conditions, then the map shall include a note such to that effect such as an asterisk or LU designation. (Ord. 2000-2537, passed 11-6-00)**

Finding: The proposed amendment does not include a zone change. Staff concurs with the applicant's finding contained in Attachment 8. This section of the NDC does not apply.

151.259 EXPIRATION OR DETERMINATION OF FAILURE TO COMPLETE.

Should the applicant fail to meet the terms and conditions contained in the agreement in the time frames specified, then the zoning of the property shall revert as specified in the development agreement and other approvals shall be null and void. (11-6-00)

Finding: This section of the NDC does not apply.