

April 28, 2022

Tillamook County Planning Commission
Department of Community Development
1510 – B Third Street
Tillamook, Oregon 97141

RE: Sahlali South Replat and Conditional Use Request #851-22-000003-PLNG/
851-22-000003-PLNG-01

Dear Commissioners,

The Sahlali South lot owners whose names appear below, representing all of the lots currently owned with the exception of those owned by the Declarant, are submitting a 4-part summary of our testimony regarding this application.

Thank you for allowing us to participate and share our viewpoints in a variety of ways. On an individual basis we have submitted information to you previously, we have testified at the April 14, 2022 hearing, we have submitted new evidence since the hearing, and now we are sending you this additional correspondence.

We look forward to discussing this summary with you at your May 12, 2022 hearing.

Sincerely yours,

Ron and Kathy Clark
Katherine Hammack
Pam Johnson
Todd Karakashian and Paul Fukui
Ron and Lynell Bohr
Jim and Peggy Richards
Chris and Christine Diani
Boyce and Brooke Heidenreich
Peter and Stephanie Sammons
M. Christine Hauptmann, M.D.
Jiri Vitek
Merrill McPeak
Heidi Heidenreich
Bari Johnson
Lisa Bentson
Tony and Kristy Ryan
Brenda Freshman
Wyatt and Linda Angelo

PART 1: CHARACTER OF THE COMMUNITY

We all chose to purchase homes and property in Sahhali South for a variety of reasons. But one that we share in common is to live in a community that respects the natural beauty of the area, protects our views and property values, retains the current density of homes, and prescribes clear parameters for its future growth. When each of us bought our property, we were assured this would be the case, both by the Master Development Plan for our community and by our CCRs.

None of us expect that the community will remain exactly the same. In fact, we will welcome new neighbors as additional lots are sold and homes are built. But we have the right to expect that the lots yet to be sold will be used in ways specified by the Master Development Plan for Sahhali South. This plan, as previously approved by the County, clearly states that there are “46 zero-lot line townhouse lots” and that each of these townhouse lots “will be constructed with one common, zero-lot line wall on one side.” Further, the Master Plan states there will be 23 attached building units, each of two dwelling units, on the 46 zero-lot line townhouse lots in Sahhali South.”

In addition to expecting that lots to be sold will conform to the Master Development Plan, all of us expect that new homes will be constructed in accordance with our CCRs. In fact, the development provisions in our CCRs – specifically those dealing with setbacks – were our guarantee, when each of us purchased our property, that Sahhali South would be developed in a manner that would preserve the character of the neighborhood, even as it was further developed.

Given the Declarant’s stunning “about face” and his abrupt unilateral decision to deviate from the approved Master Plan and ignore the CCRs in ways that will significantly and permanently alter our community, it is ironic that Patti Lundeen, the Property Manager of Sycan B Corp, who is employed by the Declarant, sent each of us a memo on June 16, 2021 – just ten months ago – with the following message:

“Please be assured that ALL future sold lots will follow the Sahhali South By-Laws & CC&R’s & Rules and Regulations for the build out of the development. These documents were formed in the beginning before any home was built out and are the foundation for the development that will eventually be turn (sic) over to the elected Board of Directors that will represent Sahhali South Homeowners Association. “

In direct contrast with this message, we learned from the County and prospective buyers, not from the Declarant, that what Ms. Lundeen wrote to us last June was meaningless. Instead, the Declarant is now asking the Planning Commission to be part of his plan to hijack our CCRs in ways that will constrict our views, substitute our current Open Space for an area that is very

steep and inaccessible, lower our property values, and completely disregard the protections and provisions in our CCRs that would ensure the present character of our community.

When we learned from the County that the Declarant had submitted a detailed application that would drastically change the conditions under which we purchased our property, members of our community contacted him to discuss our concerns. We have been rebuffed at every turn. In fact, the Declarant said more than once in a Zoom call with residents that he could do “whatever he wants.” He also said if we had problems or concerns with what he was doing, we could “take them to the Planning Commission.” In other words, our opinions don’t count. Instead, he has chosen to ignore the CCRs that he developed – the ones he shared with each of us as “the foundation for the development.”

None of us bought property in Sahhali South with the understanding that the community’s CCRs could be superseded by whatever the Declarant wanted to do. Who would? For the Declarant to say this now is arrogant and dismissive. It ignores procedures in our CCRs that clearly delineate how changes can be made to them, it evades the state statutes governing amendments to our CCRs – despite a reminder from our attorney – and it shows complete disdain for our reasonable expectations and legitimate concerns for the preservation of the character of our community.

For these reasons, as well as the many others contained in this letter, all 18 property owners listed on the cover letter – who represent 100% of the property sold in Sahhali South – urge you to deny the Declarant’s application.

PART 2: PARTITION TRACT A

APPLICATION REQUEST #3: PARTITION TRACT A INTO (2) LOTS:

Review Criteria & Development Standards, Tillamook County Land Use Ordinance Sections 6.040 and 3.520(3)(b), Subsections (3) and (6) read as follows: *“The parcel is suitable for the proposed use, considering its size, shape, location, topography, existence of improvements, and natural features.”*

Page 18 of the Tillamook County Land Division Ordinance, as adopted May 27, 2015, indicates the lot size for detached single-family dwellings zoned rural residential is 12,000 square feet. If Tract A is replatted as proposed, neither resulting lot meets this requirement, as one is 9285 square feet and the other 5785. The same document further indicates, *“Lot sizes may be further reduced only in Cluster Subdivisions which involve condominiums or other types of attached, individually owned dwellings.”* Therefore, Tract A is not suited for development as two single-family dwellings.

Review Criteria & Development Standards, Tillamook County Land Use Ordinance Sections 6.040 and 3.520(3)(b), Subsections (4) and (7) read as follows: *"The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zone."*

Tract A is an integral part of the core of our development and is the only suitable Open Space within the central core of the neighborhood. Changing its current designation as Open Space to the site of two homes, and the resulting density, completely alters the character of the neighborhood.

The Applicant's proposal to "swap" flat Tract A with what he describes in his Application as a parcel with "steep slopes" is not an equitable trade and violates Section 6.4 of our current CC&Rs, "Owners' Easement of Enjoyment," which states ". . . every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to every Lot." The steep, inaccessible land proposed by the Applicant in exchange for Tract A is not a usable piece of ground for the community. We previously provided to the Planning Commission a copy of our latest homeowner dues, indicating a portion of our dues goes to maintenance of common areas, which includes Tract A.

For 17 years Tract A has been designated as "Open Space" on all documents presented to Tillamook County by the Applicant. Page 190 of the materials regarding the current Application before you contains the following sentence: *"All areas designated as open space, common area, wetlands . . . shall not be further subdivided for development purposes."* Identical wording is also contained in Exhibit A of a Conditional Use Permit found on page 191. Both page 190 and 191 are conditions of the Tillamook County Planning Commission's 2005 approval of the Developer's plans.

Additionally, on 6-16-21 all Sahhali South homeowners received an email from the Applicant that reads as follows: *"Please be assured that ALL future sold lots will follow the Sahhali South By-Laws & CC&R's & Rules and Regulations for the build out of the development. These documents were formed in the beginning before any home was built out and are the foundation for the development . . ."*

Therefore, all lot owners in Sahhali South have a reasonable expectation that the design of their community, including allocation of "Open Space," will adhere to the precedent set 17 years ago and confirmed as recently as 6-16-21.

If Tract A is replatted, property values for many lots in our neighborhood will be negatively affected due to density and diminishing view corridors. The Tillamook County Land Use Ordinance, at Section 1.020, states the purpose is to ". . . preserve and stabilize the value of

property." This Application, if approved, will reduce the value of much of the property in the development.

On page 21 of the Application it reads, in part, *"The proposed use will not alter the character of the surrounding area in a manner which substantively limits, impairs, or prevents use of surrounding properties for the permitted uses listed in the underlying zone."* On page 20 it reads, *"The 2021 Amendment to Sahhali South does not change the relationship of the proposed development to the surrounding area . . ."* Every lot owner in Sahhali South and at least eight lot owners in Sahhali Shores, the adjoining development, have filed objections to the Applicant's proposal citing, among other things, the drastic change in views, increased density, alteration of the character of the neighborhoods, and reduction in property values. Further, if the Application is approved, the replatting of Tract A will result in inconsistent setbacks between Tract A and the immediately adjoining Sahhali Shores property due to what will become a shared property line.

On page 3 of the 2005 Master Development Plan for Sahhali South, it is indicated that the proposed design for the community *" . . . is to create a development that visually appears to be lower in density than it really is."* The proposed replatting of Tract A, together with the reduction in side yard setbacks, negates this statement as both increase the density of the development, destroy the feel of the neighborhood, and change the current sense of an open-spaced neighborhood to that of just another urban subdivision.

PART 3: REPLAT OF LOTS 13A and B

Regarding the application to replat Lots 13A and B, we have several concerns.

As mentioned in the April 7, 2022, Staff Report, the Oregon Department of State Lands recognizes that the wetlands map used by the developer is out of date, since wetland boundaries can, and do, change in size and character periodically. In fact, the Wetland Land Use Notice Response, as contained in your materials and dated 2-24-22, reads as follows:

"Construction documents associated with the Sahhali South subdivision and Master Plan cite a PHS delineation to demonstrate avoidance of wetlands, with some built features on the edge of those wetlands. That delineation only covered a portion of the work area shown as the Master Plan and expired in 2010 (WD2005-0063). Since that time, the Army Corps of Engineers updated technical standards for conducting wetland delineations and the previous delineation may not be accurate. Without an updated delineation it is not possible to evaluate the current Master Plan for wetland and water impacts. An updated delineation for the entirety of the proposed

project area, including for any offsite utility and sewer trenching that may be coming from the east side of Hwy 101, is recommended.”

In reviewing the old construction plans that were included in the staff report package, it appears that even with the older 50-foot buffer around the wetland that extends up to the upper settling pond – which is just below Thalassa – the replatted Lots 13A and B will quite likely have an impact on the wetland buffer.

Therefore, before a decision is made by the planning commission regarding the relocation of Lots 13A and B and the reconfiguration of Lots 14–19, it would seem prudent to follow the recommendation cited above and obtain a current wetland delineation, to be reviewed and accepted by the Department of State Lands and/or Department of Fish and Wildlife in Newport. It would also be good to know whether the replatted lots would be considered riparian or wetland, as the buffer zone requirements differ.

The argument presented by the developer’s consultant in the April 14 hearing regarding the “discovery” of the steepness of currently platted Lots 13 A and B was disingenuous. When walking along the road above these currently platted lots, Lidar technology is not required to understand that these lots are steep and present building challenges. However, other homes have been built on steeper lots in Sahhali Shores, the community to the north with which the same developer was involved.

The question is: Would the original Lots 13A and B be a detriment to the environment, wildlife, and the retention of views and property values of nearby homes as would replatted Lots 13A and B? The answer is an emphatic NO. In their current location, these lots provide a suitable but challenging building site for an attached townhouse, as originally planned. They afford an excellent ocean view without encroaching on the views of existing homes on Lots 7-10 and future homes on Lots 11 and 12. They do not have the potential of impacting wildlife, wetlands or property values of nearby homes.

Unused Thalassa Drive is in poor condition for reasons not yet entirely understood. In all likelihood, it would not sustain the traffic involved in excavating or constructing new homes on replatted Lots 13A and B. It would seem that a complete study and remediation of the causes of Thalassa Drive’s present condition should be undertaken by the developer before a replat could be considered. As a matter of fact, the Tillamook County Director of Public Works, Chris Laity, stated the following in an email to Melissa Jenck on April 6, 2022: *“Page 22 of 62 (pdf page 23) Section 3.520(3)(b)(4) states that the streets are adequate to support the anticipated traffic and the development will not overload the streets outside of the planned area... This is incorrect as there is ongoing base failure along the existing lower road that needs to be addressed. This is likely a result of the poor & inadequate drainage contrary to what (5) states.”*

Additionally, in the long term, the maintenance of not only Thalassa Drive but of the proposed turnaround and the necessary retaining walls built on fill near the wetland would fall to the HOA, expenses hardly commensurate with access to only two houses, which are not suited to

that location. The current location of Lots 13A and B have no adverse effect on the wetlands or wildlife and use Heron View Drive as their access point, thus not requiring expensive turnarounds and retaining walls that possibly encroach on the wetlands.

Furthermore, the developer's "reasoning" for exchanging the steep slope of current Lots 13A and B as a suitable "swap of common space" for Tract A is not acceptable. Tract A, currently used and monetarily maintained by our dues, is centrally located, accessible and fairly level. As platted, 13A and B is fraught with difficulties as a common area, as goats would have a difficult time walking on the land.

In conclusion, we ask that the planning commission not allow this replat so that views, property values and our common space can be maintained without the possible negative effects on wetlands and wildlife – all of which would be avoided by retaining the original platting.

PART 4: REDUCING SETBACKS

APPLICATION GOAL 5: AMEND MASTER PLAN AND CCRs TO REDUCE SETBACKS

Introduction

Applicant seeks to amend the Master Plan (Commission Packet p. 162) to *add* 5 foot side yard setbacks for detached homes and replace CCR Section 10.13 (setback requirements) in its entirety, using the Land Use Ordinance (LUO) Conditional Use procedures and Approval Criteria. Importantly, the Master Plan does not address a regime of setbacks necessitating any amendment, nor do any previous orders of the Planning Commission establish setbacks that would necessitate this Application or justify the request.

(1) Application of LUO Conditional Use Procedures Is Not Appropriate

The LUO states that the purpose of "a CONDITIONAL USE is to provide for *uses* that are not allowed by right. . ." LUO SECTION 6.010 (emphasis added)

The LUO defines a "Use" as the "purpose for which a structure is designed, arranged or intended, or for which a unit of land is developed, occupied or maintained." LUO Definitions, Article 11. For the Review Criteria to apply, the "use must be listed as a conditional use in the underlying zone." LUO 6.040

Setbacks are not "listed" as a conditional use in the Neskowin RR Zone. Application of the Conditional Use Criteria to setbacks is neither appropriate nor called for in the consideration of this Application. As this is not properly before the Commission, it should be denied.

(2) The County has no authority to change CCRs

The DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SAHHALI SOUTH was developed by the Applicant to guide the affairs of the homeowners' association and delineate the rights and obligations of the Declarant, the Association and its members (owners).

This document is given to all buyers of property in the development prior to closing on their purchase and is part of a buyer's due diligence to read and understand. A buyer is given to understand that he/she may rely on these rights and protections before finalizing their purchase. At its essence, it is a contract; and included in it are rights of owners to vote on matters affecting the development and its governance.

Section 15.6 of the CCRs prescribes that amendments to the CCRs be done by vote of owners (members of the association). The Applicant currently controls all positions of governance within the Association EXCEPT the right to vote on matters affecting the CCRs.

Additionally, the Applicant's request finds no support in the Land Use Ordinance for the County to amend CCRs and cites none. Amendment of CCRs is specifically **prohibited** by the LAND DIVISION ORDINANCE in the process of replatting. LDO SECTION 120(3)(c). This request should be denied for lack of jurisdiction and ability of the County to act.

(3) The Application Is Designed to Disenfranchise Other Owners

The undersigned have submitted as "evidence" a marketing brochure being used to inform potential buyers that an application is pending before the County to change the "zoning" of townhome lots to single-family (detached homes). While technically incorrect, it references what the Applicant is seeking to achieve. The lots which are the purported subject of the Application are 50% smaller than lots within the development designed for detached homes. This was only possible if designated as "zero lot-line townhome lots" as set forth in the Master Plan (Commission Packet p. 165). The Applicant is now advertising and selling these lots for detached homes in contravention of its own Master Plan. The only way to feasibly build detached homes on these lots is to shrink the side yard setbacks.

The Applicant does not control sufficient votes to change the CCRs using the voting process prescribed for that purpose. It is for that reason that the Applicant has sought to do an "end run" around the voting rights of other owners by seeking to change the CCRs via the County planning process. AND ... it appears, from the marketing brochure, the Applicant intends to close sales based on action by the County, subjecting those buyers to potential economic harm if setbacks are not properly changed.

This portion of the Application is motivated and designed to circumvent a vote of the members (homeowners) and make the County an unwitting accomplice to the plan. As noted in previous filings, if the Planning Commission is inclined to grant this portion of the Application, it should require, as a condition, proof that such changes have been properly approved by a vote of ALL owners.

We have addressed application of the Review Criteria elsewhere based on the assumption of the Community Development Department that they apply as set forth in the Notice of Hearing.

ANALYSIS OF APPLICABLE CRITERIA TO GOAL 5 (SETBACKS)

(1) Planned Development Procedure LUO Section 3.520(3)(a) Densities

Neither the Application nor subsequent filings address the real change in densities caused by the proposed setback changes. The Applicant continues to rely on density calculations based on the overall acreage of the development of 73 acres, only 13 of which are buildable. The square footage of Lots A-1, A-2 and 14-19 range from 9285 sq feet to 4824 sq. feet, all well below the minimum lot size of 12000 sq. feet for detached homes in clustered developments in RR zones, as prescribed in the Land Development Ordinance. The LDO excepts smaller lots from this minimum for “. . .**Cluster Subdivisions which involve condominiums or other types of attached, individually owned dwellings.**” LDO SECTION 100(1)

With side yard setbacks reduced by 66% for detached homes, the true density within the core development is substantially increased. The Master Plan represents these smaller lots to be designed for attached homes. This was a central and predominant characteristic of the development. To now change the use of those lots to detached homes should require the Applicant to reapply for approval of the Planned Development (and Master Plan) and follow the process therefore as if it were a new application.

(2) Conditional Use Review Criteria LUO Section 6.040(3) Size of Parcel

With the exception of Lots 13, 46 and 48, the size of the lots is NOT suitable for detached dwellings. As noted in the Applicant's Master Plan, lots of this size are specifically designed for townhouses with a common “zero lot line wall” required to allow for the reduction in side yard setbacks to 10 feet resulting in “a development that visually appears to be lower in density than it really is.” Compressing these setbacks even further eliminates the visual benefits which the Master Plan sought to achieve

(3) Conditional Use Criteria LUO Section 6.040(4) Character

In its original and subsequent filings, the Applicant fails to make the detailed statement and demonstration of facts meeting this criteria, as required in the LUO. Its naked assertion that the proposal “does not alter the character of the surrounding area in any way” because it continues the “development character of detached and attached two-unit single-family dwellings” is insufficient and, standing alone, fatal to the Application.

By contrast, the Commission has before it detailed opposition statements from those who live in and near Sahhali South, addressing this criteria on factors of aesthetics, values, densities, privacy, fire hazard, utility access, etc. This is THE competent testimony on this issue. Change of setbacks should be denied for failure to provide facts to support the request. _____

APPLICATION GOAL 6: AMEND MASTER PLAN (ALLOWED LAND USES)

As previously noted, the Master Plan designated most originally platted lots as attached or townhome lots with zero setback common walls. In support of this goal, the Applicant asserts only that it is for “consistency” and addresses none of the Approval Criteria required for the sufficiency of the Application.

Moreover, the Application inserts language not found in the CCR section it seeks to amend by referencing “Applicable Criteria” and “Planned Development decision documents.” It omits CCR references to disallow structures on lots based on restrictions in the “Covenants,” CCR Section 10.3.1.

This appears to be an effort to amend or dilute the character of the development in the Master Plan, which designates specific lots for “attached homes,” and to create new and ambiguous standards of “Applicable Criteria” and undefined “decision documents” as a substitute for the CCRs. At its core, this is an *admission* that the Application really seeks to change or alter the character of the development.

As an effort to make substantive changes to the character of the development described in the Master Plan, it addresses none of the criteria for approval in the LUO. To the extent that the request seeks to change the CCRs, it should be denied.

ADDENDUM

Compliance with Previously Imposed Conditions

ADDENDUM

VIOLATION OF PREVIOUSLY IMPOSED CONDITIONS

1. As a condition of approval for the partition of Tracts 13 and 48, the Applicant was required to construct a turnaround at the end of Vanora Street. See Findings of Fact, Conclusions and Order in PC 07-13.
2. The Planning Commission ordered that the "turnaround will be developed and approved during the Major Partition Process."
3. This turnaround has not been constructed.
4. An inquiry was made to the Community Development Department as to whether the Applicant had ever been relieved of this obligation. No response has been received as of the date of filing of this document with the Department on April 28, 2022.
5. A final plat of this partition was filed in 2012.
6. Compliance with Conditions of Approval are required, and any deviation therefrom is a violation of the Ordinance. LUO 6.080.
7. LUO Section 1.030 bars approval of any application unless compliance can be shown with local laws.
8. The same Planning Commission Decision imposed the condition that the partitioned Lot 13 was limited to ". . . townhomes. . ."
9. The Applicant's failure to construct the turnaround on Vanora Street and designation and sale of Lots 13a and 13b for anything other than townhomes is a violation of the conditions of the Commission's decision in PC-07-13.
10. As such, the entirety of this Application cannot be approved.

**PROPOSED
FINDINGS OF FACT
AND
CONCLUSIONS**

PROPOSED SPECIFIC FINDINGS OF FACT

GENERAL

1. Comment provided by the Oregon Department of State Lands states that the wetland delineation provided as part of the Applicant's original Master Plan expired in 2010.
2. Technical Standards for conducting wetland delineations have been updated by the Army Corps of Engineers since the approval of the Sahhali South conditional use.
3. Without an updated wetland delineation, it is not possible for the Department of State Lands to evaluate the entirety of the proposed Sahhali South Development project area, as set forth in the Application, for wetland and water impacts.

APPLICATION REQUEST (3) Partition of Tract A

1. Tract A was identified as open space on the Sahhali South original plat and Master Plan and has remained as such for 17 years.
2. Tract A lies within the 13-acre central core of the development and is relatively flat and usable by the residents for a variety of purposes, including a gathering point in emergencies.
3. The Applicant proposes to substitute a parcel carved from Lots 13a and 13b, which is very steep and not usable.
4. The current DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS of the Sahhali South development (CCR Section 6.4) provides, in part, as follows: ". . . every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with title to every lot."
5. As a condition of the original approval of the conditional use, the Planning Commission provided that: "All areas designated as open space, common area, wetlands . . . shall not be further subdivided for development purposes."
6. The common areas of the development, including Tract A, have been maintained exclusively from funds obtained via assessments to the owners.
7. The Sahhali South CCRs exempt the Applicant from paying assessments on lots which it owns.
8. As proposed, the development of Tract A will result in two lots of 9285 sq. ft. and 5785 sq. ft., which is smaller than the minimum lot size prescribed for cluster developments in the Tillamook Land Development Ordinance.
9. The Applicant's request proposes that these two lots be for detached homes.
10. Tract A as open space is a component of the character of the development as part of the original design of Sahhali South, and owners of lots have a reasonable expectation that it remain as open space.

APPLICATION REQUEST (4) Replat Partition Lots 13a and 13b and One Open Space Tract

1. Lots 13a and 13b are immediately adjacent to the wetlands to the west and in close proximity to the wetland buffer zone.
2. As originally platted, these lots would be accessed from Heron View Drive.
3. The request proposes that access for these lots be via Thalassa Drive. As proposed, Thalassa Drive would end in a cul de sac. Thalassa Drive is currently an easement.
4. In order to accommodate access from Thalassa, it would be necessary to create a large turn-around at its terminus for fire equipment, which would necessitate the construction of retaining walls of significant height and length with unknown future maintenance requirements due to instability of the geography.

5. Thalassa Drive is failing for reasons known and unknown, and in its current state is inadequate to support traffic associated with the development of these lots.
6. The difficulty of constructing homes on the steep slopes of these lots as now platted was apparent at the time of the original platting and has been possible in other areas of the adjacent development of Sahhali Shores.
7. The proposed replat and resulting location of homes would encroach on ocean views from Lots 7-12 of the development and would negatively impact their value.
8. A previous Condition for the partition of lot 13 required that it remain designated for an attached dwelling (townhome) which the Applicant now seeks to sell for a detached home.

APPLICATION REQUEST (5) Amend CCRs (Section 10.13 Setbacks) Add Addendum to Master Plan

1. The Sahhali South CCRs Section 15.6 provides a mechanism for amending the CCRs.
2. It is within the exclusive purview of the Applicant to call a special meeting or schedule a vote of owners on changes to the CCRs.
3. Despite a request to put the Applicant's proposed setback changes to a vote by all owners, no action has been taken by the Applicant to do so.
4. The Master Plan, as originally filed, establishes no regime of setbacks that necessitate an addendum or amendment.
5. No authority can be found in the Land Use or Land Development Ordinances to allow the Planning Commission to amend CCRs.
6. The Sahhali South Master Plan defines the character of the development as 46 zero-lot line townhouse lots with 10 foot setbacks and 9 single-family detached lots, and states that the advantage of using zero-lot line lots is to create a development that "visually appears to be lower in density than it really is."
7. The Applicant proposes to redesignate the "town home" lots it currently owns for single-family or detached homes with significantly reduced setbacks.
8. If approved, the reduction will have significant impacts on the density within the core area and abandon the benefits of the visual appearance of less density created by the zero-lot line design.
9. Additional negative impacts on privacy, property values and aesthetics are reasonably expected.
10. Significantly higher densities will result in the core area of development changing its appearance from rural to urban by virtue of homes in close proximity (10 feet) to each other.
11. The Applicant has not provided the "detailed statement" or "demonstration" to satisfy all of the criteria of the Land Use Ordinance, specifically as it pertains to LUO 6.040 (3) "Size" or (4) "Character." The Applicant is never relieved of that responsibility.
12. The written and oral testimony received by the commission from all residents of Sahhali South and many of our neighbors in the adjoining development, Sahhali Shores, addressing the negative impacts relating to lot size and character is substantial, although no such showing by opponents is required. It is the only competent evidence presented on the subjects.
13. The size of the subject townhome lots would not meet current development standards for lot size for detached homes in cluster developments.

APPLICATION REQUEST (6) Amend Master Plan (Clarify Allowed Land Uses)

1. This request seeks to create an addendum to the Master Plan which is "consistent" with Sahhali South CCR Section 10.3.1.
2. The Applicant suggests that this addendum is necessary to make the Master Plan consistent with the current CCRs.
3. There is no provision in the Master Plan which conflicts with the existing CCR Section 10.3.1, and there is, then, no need to add this language to the Master Plan.

4. Adding such an addendum would create language inconsistent with the CCRs by adding standards of "Applicable Criteria" and "Sahhali South Planned Development decisions," which are nebulous and undefined.

PROPOSED CONCLUSIONS

General

1. An updated wetlands delineation is required before any action can be taken on the Application.

Request (3) Remove Tract A from Open Space and Subdivide It

2. Tract A constitutes a component of the usable open space within the core of the development and is part of its "character."
3. The Application and additional materials provided by the Applicant do not provide the "detail" or "demonstration" addressing criteria of appropriate lot size and alteration of character as set forth in the Land Use Ordinance.
4. The numerous testimonial letters are more competent on the criteria of alteration of character.
5. Previous orders of this Commission have included conditions that no open space or common area shall be further subdivided for development purposes.
6. Implicit in that condition is a view by the Commission that the open spaces identified in earlier plats inherently contribute to the rural character of the area, and subdividing the same would alter its character.
7. For the reasons stated above, Request (3) as to Tract A should not be approved.

Request (4) Replat Lots 13a and 13b to substitute Open Space in Lieu of Tract A

8. The proposed replat would require access to these lots via Thalassa Drive. The Tillamook County Comprehensive Plan discourages the use of cul de sacs. Goal 12 Section 2.1.
9. Thalassa Drive is failing and is not capable of providing reliable access for development of Lots 13a and 13b.
10. The construction of the turn-around and retaining walls associated with the Thalassa access are near wetlands, and the effects thereon from these structures is not determinable without further wetland delineation and engineering study.
11. For reasons above, this request should be denied pending further study.

Request (5) Amend CCRs (Section 10.13 Setbacks) Add Addendum to Master Plan

12. The Commission has no authority to amend CCRs of a development.
13. The Applicant has failed to support this request to change setbacks by providing the detailed statements and demonstration satisfying all the criteria of the Land Use Ordinance.
14. Amending the Master Plan to include a provision for reduced setbacks and other language in conflict with the adopted CCRs is not appropriate, nor is it supported by the "detail" or "demonstration" required to satisfy the review criteria of the Land Use Ordinance.
15. This request should be denied.

Request (6) Amend Master Plan (Allowed Land Uses)

16. This request seeks to incorporate into the Master Plan a provision creating standards for evaluating proposed structures which differs from that of the CCRs.

17. It is out of place in the Master Plan and, contrary to its claim, the language thereof is inconsistent with the CCR provision which it purports to mimic.
18. The proposal is clearly an effort by the Applicant to create a vehicle in the Master Plan where it can trump the provisions of the CCRs and allow the Applicant to approve deviations from the CCRs based on "Sahhali South Planned Development decision documents."
19. This is an inappropriate addition to the Master Plan, and an effort to nullify the Applicant's own CCRs by creating different decision criteria via amendment to the Master Plan. This is not appropriate.
20. This request is likewise unsupported by the necessary showing to satisfy the review criteria and cannot be justified on the disingenuous claim of consistency. For all the reasons stated above, it should be denied.