

RESOLUTION NO. 2480

ADOPTING FINDINGS IN THE GRANTING OF PERMITS TO
PERMAWOOD NORTHWEST CORPORATION UPON A REMAND
BY THE LAND USE BOARD OF APPEALS OF PREVIOUSLY ISSUED
PERMITS AND INCORPORATING CERTAIN AGREEMENTS
AND CONDITIONS ATTACHED HERETO

WHEREAS, on September 23, 1983, H. David Smith, on behalf of PermaWood Northwest Corporation, filed an application with the City of Albany for the approval of a greenway use permit, site plan review approval and variance approvals for the operation of a tile plant on certain property at the north end of Geary Street containing 5.28 acres located within the City of Albany; and

WHEREAS, a hearing was held on October 17, 1983, before the Albany Hearings Board which said hearing resulted in an approval of said requests; and

WHEREAS, the aforesaid approvals were appealed to the Planning Commission of the City of Albany and a hearing upon said appeal was held on December 5, 1983, at which time the decision of the Hearings Board was affirmed and the applications were again approved; and

WHEREAS, the aforesaid denial of the appeal was appealed to the City Council of the City of Albany and a hearing upon said appeal was held on January 10, 1984; and

WHEREAS, the Albany City Council on January 25, 1984, adopted Resolution No. 2445 which by Exhibit incorporated findings upholding the previous actions of the Hearings Board and Planning Commission and which Resolution is hereby superseded; and

WHEREAS, the decision of the City Council and appurtenant findings were appealed by the Bowman Park Neighborhood Association to the State of Oregon Land Use Board of Appeals; and

WHEREAS, the Land Use Board of Appeals revised in part, upheld in part, and remanded in part, said decision of the City Council; and

WHEREAS, the City Council set a new public hearing for July 11, 1984, to hear from the parties in response to the various parts of the Land Use Board of Appeals decision; and

WHEREAS, at the Public Hearing of July 11, 1984, Permawood Northwest Corporation and the Bowman Park Neighborhood Association presented to the City Council an agreement, attached hereto as Exhibit 3, within which all contested matters presently in dispute have been resolved; and

WHEREAS, the City Council, through adoption of this Resolution, directs the City Manager to sign the agreement, attached as Exhibit 3 and by this reference incorporated herein;

NOW, THEREFORE, BE IT RESOLVED by this City Council of Albany that the applications sought by Permawood Northwest Corporation are hereby approved.

This decision is based upon Title 20 of the Albany Municipal Code adopted September 25, 1981, as Ordinance No. 4441, and subsequently amended October 1, 1982, by Ordinance No. 4528. The Land Conservation and Development Commission acknowledged the Comprehensive Plan and City of Albany Development Code on November 19, 1982.

The City Council hereby resolves that this final decision shall be void upon any appeal.

This decision is based upon the findings and conclusions set forth in Exhibit 1 establishing that the applications comply with the applicable sections of the Development Code.

In addition to the findings cited above, the City Council does hereby find that certain objections argued by the appellants can be mitigated or eliminated through adherence with certain conditions and further that the attachment of certain conditions is desirable to assure full compliance with applicable criteria. These conditions are the same as those previously adopted by this Council as further amended by the agreement attached hereto as Exhibit 3. Therefore, the City Council does also hereby include as a part of this decision attached as Exhibit 2 which by this reference is incorporated herein and entitled "Conditions."

DATED this 11th day of July, 1984.



Mayor

Attest:



Deputy City Recorder

OPPONENTS' EVIDENCE:

Opponents have not submitted specific testimony on this issue.

CONCLUSION:

It appears the site plan design provides the needed security and protection intended to meet the provisions of the Development Code.

GREENWAY CONSIDERATIONS:

ALLEGED VIOLATION OF COMPREHENSIVE PLAN GOALS:

Opponents allege that the Permawood project violates Greenway Goal Policy No. 3. This specific policy states as follows:

"Encourage the development of recreational and scenic river related uses as a preferred land use within the Greenway."

CONCLUSION:

As we understand the opponents' position, it is not that the City has not provided for recreational and scenic river related uses within the Greenway, but that the City should require a 100 foot easement at the northern edge of the site beginning at the edge of the Willamette River. Their position is based upon a previous City approval which required a previous owner to make such a dedication. However, the City staff testimony in the Planning Commission Hearing record, a part of this record, indicates that the City has not found itself in a position to accept such a dedication from the previous owner and the easement was never granted. As we understand Permawood's proposal, Permawood would grant an easement to the City of varying widths with the narrowest point being 30 feet and the widest point being 95 feet along its property line, with the northern edge of the easement generally being the top of the bank rather than the waterline. Upon reviewing this proposed dedication a second time, the City Parks and Recreation Commission requested an additional 5 feet of dedication to assure adequate width from the approximate top of the bank for both the bike path and the landscape buffer. It is the opinion of the City Council that Permawood's proposal, with the additional area requested by the Parks and Recreation Commission and made a part of the conditions listed in Exhibit "B", more than exceeds the quality of land the City would have received under the previous approval. In addition, Permawood has agreed to landscape and plant this area as part of its landscaping plan and provide rough grading for the bike path. This

would leave the City only with the responsibility of building the bicycle path itself and maintaining the planted vegetation. In essence, the City is obtaining land which will provide public recreation and scenic benefits at low cost to the City of Albany. The opponents' argument that Permawood would have the ability to seek a variance to the land granted in the easement fails to take into account the legal effect of the easement. For the easement to be reduced, it would take a specific act by the City Council in deeding back to Permawood a portion of the easement. A simple variance request would not be sufficient. In addition, there is nothing in the evidence to indicate that future expansion, as demonstrated in the documents submitted by Permawood, would be in the area of the proposed easement. The opponents have failed to provide a factual or legal basis for their contention that Greenway Policy No. 3 has been violated.

ALLEGATION OF VIOLATION OF GREENWAY POLICY NO. 6:

Opponents urge that Greenway Policy No. 6 has been violated. Policy No. 6 states:

"Provide for the continuation of existing uses within the Greenway boundary; however, limit the intensification and change of such uses to insure compatibility with the Greenway Goal and policies."

CONCLUSION:

The basis of the opponents' objection is that the Permawood plant would be a heavy industrial use which would be an intensification over the only allowed use on the site, now a warehouse. That prior uses of the site which have now been rendered illegal by zoning changes should not be taken into consideration as the historic use of the site. Opponents' contentions must fail for several reasons. First, it is the City Council's view that Policy No. 6 requires that a proposed intensification must go through the Greenway Use Permit application process set forth in Section 11 of the Albany Development Code. The applicant has proceeded with such an application. The Greenway Goal Policy does not prohibit intensification, it only requires that intensification must be compatible with Greenway Goals and policies. In addition, as discussed elsewhere, the Council is not in agreement that the proposed Permawood operation is a heavy industrial operation, rather we conclude that the proposed use meets City requirements for light industry.

GREENWAY USE PERMIT CRITERIA, SECTION 11.130 OF THE ALBANY
DEVELOPMENT CODE:

- A. LANDS DESIGNATED ON THE COMPREHENSIVE PLAN AS OPEN SPACE SHALL BE PRESERVED AND MAINTAINED IN OPEN SPACE USE.

PERMAWOOD'S EVIDENCE:

A review of the evidence indicates that none of the property has been designated for open space use. However, the City park lands to the northwest and northeast of the site are designated for open space use. Permawood has agreed to provide an area of land on the northern portion of its property for public use to be utilized as a bike path and for open space uses.

OPPONENTS' EVIDENCE:

Opponents really present no evidence on this criteria, but rather argument. In summary, the opponents' argument is that the 100 foot easement previously discussed should be maintained and that the public has an interest in preserving the maximum open space.

CONCLUSION:

As indicated before, it is the conclusion of the City Council that the Permawood proposal exceeds in quantity and quality the previous proposal by the previous owner. It should be remembered that land use planning is in derogation of the common law rights of property owners. What is being requested of the property owner is that approximately 25% of the land will be dedicated to public uses at no charge to the City and at a substantial loss to the owner. A bike path will connect the existing park to the proposed park. In summary, all land designated as open space is being preserved and is not included within the proposed site and additional property is being dedicated for open space purposes.

CRITERIA:

- B. SIGNIFICANT FISH AND WILDLIFE HABITATS SHALL BE PROTECTED.

PERMAWOOD'S EVIDENCE:

Permawood's evidence indicates that it intends no development near the edge of the Willamette River where any wildlife habitat that exists on the property would be located. Permawood's testimony indicated that there was no wildlife habitat on the balance of the property. Permawood's proposal intends to protect the

bank of the river by construction of an open space area and bike path at the northern edge of the property which would place the fence for the Permawood site between 30 and 95 feet from the top of the bank of the river. In addition, plant activities would be contained within buildings setting at least 100 feet from the fenceline and at least 130 feet from the top of the bank of the river. The vegetative screen that will be planted along the fenceline will provide further buffer of plant activities to the water's edge.

OPPONENTS' EVIDENCE:

Opponents' evidence is that there is fish and wildlife along the river bank. Opponents' witnesses testified that they fished along the river bank for many years. Opponents' evidence agreed with Permawood's evidence that prior to 1978, the site was used by Hub City Concrete as an aggregate extraction and concrete batch plant. Opponents also advocate the potential damage to fish and wildlife due to toxic chemicals as a possible impact of proposed plant operations.

CONCLUSION:

It is the conclusion of the City Council that the setbacks proposed by Permawood, the containment of environmental factors, the vegetative screening, provide significant protection to the fish and wildlife habitat along the river. Further, although the major argument by the opponents is that fugitive toxic substances, spillage and accidental discharge due to rain or flooding may cause damage to the fish and wildlife, there is no convincing evidence to support that position. It seems clear from the record that a cement plant was a prior use of the site for many years. Cement is the only toxic substance in the Permawood plant not contained within a building or contained within a holding vessel surrounding the chemical tank. The evidence does not show the prior cement plant had an adverse effect on the fish and wildlife along the river except that much of the site is now barren and devoid of natural vegetation due to the stockpiling of raw and processed materials. If the public was able to fish along the river bank during prior years, then it seems reasonable that fishing will be able to continue along the river bank with the site in use with modern pollution control devices in place. In fact, public use for recreational activities will be further enhanced through the proposed dedication and improvements.

CRITERIA:

- C. SIGNIFICANT NATURAL AND SCENIC AREAS, VIEWPOINTS AND VISTAS SHALL BE PRESERVED.

PERMAWOOD'S EVIDENCE:

As indicated several times before, Permawood's evidence indicates that it will not disturb the existing natural vegetations along the north, northwest and northeast portions of the property. By dedicating the easement along the northern edge of the property, Permawood intends to preserve and enhance the public views and vistas from the river bank area. Permawood's photographic evidence indicates that existing views of the river from Linn Avenue are extremely limited. Permawood's plan also provides for improved vegetation to screen the site from the view of a person using the river. The evidence indicates that the vegetation plan submitted by the landscape architect has been approved by the Parks Department.

OPPONENTS' EVIDENCE:

Opponents have not identified this criteria in their summary of evidence and legal arguments as one of the issues which they challenge. However, testimony during the hearing before the City Council, opponents' witness indicated that the one person with a river view was blocked by the existing buildings.

CONCLUSION:

In summary, it appears that Permawood has preserved the natural area near the river and has made landscaping, setback and other provisions in order to meet this criteria. Opponents have not produced any substantive evidence that would indicate a failure to meet this criteria. The requested variances do involve minor intrusions into the setback and height limits imposed due to the location of certain structures near the floodway line. The Council concludes that granting of these variances does not further run contrary to this criteria due to the very limited intrusions involved and the unique circumstances involved and discussed in greater detail under the variance criteria.

CRITERIA:

- D. AREAS OF ECOLOGICAL, SCIENTIFIC, HISTORICAL OR ARCHAEOLOGICAL SIGNIFICANCE SHALL BE PROTECTED, PRESERVED, RESTORED OR ENHANCED TO THE MAXIMUM EXTENT POSSIBLE.

PERMAWOOD'S EVIDENCE:

PermaWood's evidence indicates that there are no scenic, historical, archaeological or other areas of significance that exist on the site. All parties agree that the Willamette River is the area of scenic and ecological significance which borders the site. PermaWood's testimony indicates that it is attempting to protect and preserve to the maximum extent possible the ecological areas surrounding the site by the utilization of state-of-the-art pollution control equipment, the use of sanitary sewers and commercial solid waste collection, careful engineering to reduce noise and vibration, placement of interior lighting, placement and screening of noise sources, and an acknowledgement to meet all of the regulations of the various regulatory agencies which may monitor or have control over any environmental or ecological impact originating from the site. In addition, the PermaWood evidence indicated that they would be utilizing all natural vegetation along the river and supplementing that vegetation with its proposed landscape plan.

OPPONENTS' EVIDENCE:

Opponents have not indicated this criteria as one of the issues they wish to contest in their summary of evidence and legal argument as submitted to the City Council.

CONCLUSION:

The photographic evidence shows this as a very debilitated site. The proposed site plan protects, preserves, enhances, and will restore the ecological environment of the subject property. No scientific, historical or archaeological sites are known to exist on the subject property.

CRITERIA:

- E. THE QUALITY OF THE AIR, WATER AND LAND RESOURCES IN AND ADJACENT TO THE GREENWAY SHALL BE PROTECTED.

PERMAWOOD'S EVIDENCE:

PermaWood's evidence indicates that air, water, and land resources would be protected by the utilization of pollution

control equipment, and engineering features, as discussed in detail previously discussed in these findings. Air pollutants would come from two sources. The first source would be the utilization of Portland cement and the air pollutant from that source would be contained within the pollution control facility at the top of that structure. Once in the structure, the Portland cement is completely contained until it is finally discharged into the contained ribbon blender where it is mixed with water, chemicals, and wood fibers. The other source of air pollutant is the reduction of wood chips to wood fiber. This process is contained within a self-contained room within the chip storage and processing building which will eliminate both the air discharge potential and greatly reduce noise impacts. Both activities will be reviewed by DEQ prior to obtaining the necessary permit from DEQ. The evidence of both the opponent and Permawood indicates that DEQ requires the signature of the appropriate local official guarantying compliance with local zoning ordinances before it can issue a permit. Permawood's evidence indicated that it intended no direct discharge into the Willamette River of any of its industrial effluent. As it discussed in detail before, the chemical content of the industrial waste water has been disclosed and appears to be in compliance with necessary regulations.

OPPONENTS' EVIDENCE:

The opponents have produced evidence of their concern that there may be the following water pollution sources existing on the site: heat pollution, unacceptable pH level, toxic substances, and discharges of substances such as sand, sulfites, spent lime, wood, and plastics. Most, if not all of opponents' evidence on this specific issue, was produced by their expert engineer. Opponents also indicate that the sewage capacity is presently inadequate and the discharge from the Permawood site would increase the problem in the area. Opponents also argue the following: That toxic substances would be added to the overflow from the plant operation, that cement may escape as dust from inside the plant, that fugitive cement dust would get into rain water and into ground drainage, that the chemical tank and cement silo are located "inches" from the sewer interceptor, that an earthquake or similar disaster would cause the chemical tanks to crack or collapse and the cement silo to fall, and that rain water may cause pollutants to wash from curing tile and be discharged into the ground or Willamette River.

CONCLUSION:

Permawood has demonstrated that it knows it must meet the requirements of various regulatory agencies. It has demonstrated within

its evidence and site review plans, and other documents submitted, that it will obtain the necessary permits. The evidence indicates that there should be no problem obtaining those permits as there is nothing in the record that indicates that any agency has indicated that it will not or that PermaWood could not obtain a permit. The City Council, by conditioning the operation to be in compliance with applicable regulatory agency rules, insures that the quality of air, water and land resources to and adjacent to the Greenway shall be protected. It is important to note that most of the evidence of potential disaster described by the opponents comes from a witness who has no knowledge of the process, has not made an inquiry into the process, is not a licensed engineer in Oregon, is not a chemist, has not been on the site, and supported most of her conclusions on what may happen in other industries. Further, the argument that the chemical storage tank and the cement silo are "located inches from the sewer interceptor" is clearly a grand overstatement. The scale of the drawings submitted in the record may indicate that it is a matter of inches from the chemical tank and the silo to the edge of the interceptor right-of-way. However, one must then translate the scale of the submitted maps into actual distances. In this case, the scale is 1 inch equals 30 feet. Using the opponents' own argument, it is very apparent that the cement silo of approximately 30 feet in height could fall and not even reach the right-of-way for the sewer interceptor, let alone reach the buried sewer interceptor in the middle of a 30 foot right-of-way. Opponents have not offered any evidence that once bonded into the tile product that the cement would leach from the product. Since the tile as part of the process goes through a heating and cooling cycle, it would appear that the outside edges of the tile would be the most cured when it reached the yard for storage. Further, it does not seem credible that cement would not bond with sand and gravel, the main ingredients of the soils, to form concrete rather than pass through the sands and gravels to reach the river or the ground water. The City Council is not convinced that the objections raised by the opponent are credible and the Council does not find said objections to be persuasive in any case.

CRITERIA:

- F. AREAS OF ANNUAL FLOODING, FLOOD PLAINS AND WETLANDS SHALL BE PRESERVED IN THEIR NATURAL STATE TO THE MAXIMUM POSSIBLE EXTENT TO PROTECT WATER RETENTION, OVERFLOW AND OTHER NATURAL FUNCTIONS.

PERMAWOOD'S EVIDENCE:

PermaWood's evidence indicates that areas of annual flooding do not occur on site and that any areas designated as wetlands would be that along the bank of the Willamette River. The evidenced as discussed several times before indicates that no development activities are intended in the river bank area. The flood plain does exist on a portion of the property. The flood plain designation has been at the 200 foot contour line as shown on Corps of Engineers maps. The Corps of Engineers maps were prepared at the time when Hub City Concrete was operating on the property and portions of the Hub City operation are shown on the map. Because of the uneven terrain of the site, a general leveling of the site will be required for utilization of the site. Fill will be required in those areas under the new chip storage building to insure that the floor of the building is one foot above the flood plain level. All future construction would be in accord with the building code and other applicable flood plain development regulations.

OPPONENTS' EVIDENCE:

Opponents' evidence is that while the Army Corps of Engineers flood plain map indicates that it is at a 200 foot level, that when that same area is measured against the most recent survey, the most recent survey indicates areas above 200 feet which are within the floodplain area designated on the Corps of Engineers map. The opponents argue that this means that elevations higher than 200 feet must be used as the flood plain designation.

CONCLUSION:

It is the City Council's conclusion after evaluating the Corps of Engineers maps, together with other City datum submitted, that the flood plain level is at 200 feet. The contour map furnished by PermaWood clearly indicates a nominal amount of area to be filled in order to construct the building at an appropriate level. Furthermore, we conclude that the proposed fill areas can be accomplished in full compliance with all City of Albany, state and federal requirements for placement of fill in a flood plain area. The subsequent application for and issuance of fill permits will reflect adherence to the specific requirements of

the applicable regulatory agencies. It is the conclusion of the City Council that the property will be developed and to the maximum extent possible the areas of annual flooding, flood plain and wetlands will be preserved in their natural state.

CRITERIA:

- G. THE NATURAL VEGETATIVE FRINGE ALONG THE RIVER SHALL BE MAINTAINED TO THE MAXIMUM EXTENT THAT IS PRACTICAL IN ORDER TO ASSURE SCENIC QUALITY, PROTECTION OF WILDLIFE, AND PROTECTION FROM EROSION.

PERMAWOOD'S EVIDENCE:

As indicated several times before, the PermaWood site plan does not make use of the vegetative fringe along the river and therefore this provision will be met. The developable portion of the site has virtually been stripped of natural vegetation due to the previous industrial uses of the site, particularly the storage and movement of sand and gravel products over the course of many years prior to 1978. The environmental controls designed and developed by PermaWood, discussed at great length earlier, will assist in preventing additional damage to the vegetative fringe. The landscape plan will provide a substantial vegetative buffer between the plant itself and the vegetative fringe along the river.

OPPONENTS' EVIDENCE:

Opponents' evidence is that natural vegetation and new landscaping will be disturbed due to the fugitive cement dust which will cause unnaturally high levels of lime in the soil and water disturbing the pH balance. They further used the example of a Portland area cement manufacturing plant around which the area is devoid of landscape materials due to the harsh environment caused by fugitive dust and leaching of lime.

CONCLUSION:

While opponents have indicated that additional evidence is necessary in order to determine the adequacy of the pollution control system for the cement tower, it should be noted that in the material submitted by the opponents the DEQ had no objections to the proposed pollution control system proposed by PermaWood. The only concern raised was whether or not additional protection from fugitive dust which may be caused by the unloading of wet chips inside the chip processing building would require an additional bag house on the chip processing building. The referred to example of the cement plant in the Portland area is in no way

comparable to the proposed use. The example cites a very large manufacturing facility of Portland cement which produces, stores, and transports many thousands of times the amount of cement which will be used in this process. The City Council believes sufficient and adequate information has been submitted by Permawood. The evidence in the record indicates Permawood has met this criteria.

CRITERIA:

- H. THE HARVESTING OF TIMBER SHALL BE DONE IN A MANNER WHICH WILL INSURE THAT WILDLIFE HABITAT AND THE NATURAL SCENIC QUALITIES OF THE GREENWAY WILL BE MAINTAINED OR WILL BE RESTORED.

PERMAWOOD'S EVIDENCE:

Permawood's evidence indicates that there will be no harvesting of timber on the proposed site. There has been no identification of any trees or the locations of wooded or natural areas which would be eliminated as a result of carrying out the proposed site plan by Permawood.

OPPONENTS' EVIDENCE:

Opponents have submitted no evidence or argument on this issue.

CONCLUSION:

There will be no timber harvested on the site, in fact, many trees and other landscaping will be placed on the site, therefore, this criteria will be met, if it is applicable.

CRITERIA:

- I. THE PROPOSED DEVELOPMENT, CHANGE OR INTENSIFICATION OF USE IS COMPATIBLE WITH EXISTING USES ON THE SITE AND THE SURROUNDING AREA.

PERMAWOOD'S EVIDENCE:

Permawood's evidence indicates that in its opinion the proposed site is an amalgam of prior uses. Prior uses on the site have previously processed cement products and wood products have been utilized in a cabinet shop. The new process is a blending of wood fibers with Portland cement and other products to produce a roof tile. The proposed manufacturing activity would be contained within a building and the production of the wood fiber on the site would also be contained within a building. External

storage of finished product would be conducted outside the building, along with the unloading of certain raw materials and the loading of finished product. There are two adjoining industrial uses. The Fletcher Plastics site is directly across Geary Street from the entrance to the Permawood site. The photographic evidence indicates that a great number of barrels of some product are stored on the site. In addition, polyurethane foam products can be seen on the site. The largest single example of a polyurethane foam product is the large dragon which occupies a corner of that site overlooking both the Permawood site and the City park. The southern boundary of the Permawood property adjoins the Oregon Bartile Plant where on occasion traditional cement bartile is produced. Permawood's evidence, as discussed in detail above, indicates that it has made efforts to minimize environmental impacts on the surrounding residential properties which exist to the south, southeast and southwest.

OPPONENTS' EVIDENCE:

Opponents' evidence indicates that in effect the only permitted activity which can occur on the site is a warehouse and reference to any other historical or occurring activities is not relevant. Opponent's argument is that the Permawood plant is a heavy industrial use being placed in a light industrial zone which will produce large amounts of noise pollution, water and ground pollution. The opponents base this determination largely upon the summary descriptions of "Light" and "Heavy" Industrial Districts found in Section 5.090 of the Albany Development Code. They further argue that even if the DEQ recommendations for placing noise sources to the north, east and west sides of the property are followed, that such activities will have an adverse impact on the Greenway and users of the park.

CONCLUSION:

The City Council believes that in its review of the activities which will occur in the tile making operation, that those activities are in fact compatible with the existing activities on the site and those that have historically taken place on the site. The City Council in construing its Comprehensive Plan and its Development Code does not agree with the opponents that an intensification of use cannot occur in the Greenway zone. If an intensification of use does occur, then a party must apply for a Greenway Use Permit. This permit process provides the opponents with the mechanism that enables them to raise the objections they have before the City Council in this case. It is apparent from the photographic evidence introduced that Oregon Bartile stores some of its finished products in the outside yard area of its site. This is very similar, if not identical, to what will occur

at the PermaWood site. In addition, it appears that outside storage occurs at Fletcher Plastics. Certainly the photographic information shows large quantities of sand and many barrels being stored on the Fletcher site. The City Council believes that if PermaWood is able to meet the environmental regulatory levels of DEQ and the City of Albany for dust and noise, that the plant will be compatible with the surrounding residential uses. The City Council concludes that it is apparent that the PermaWood design concentrates to the greatest degree possible sound sources within the center of the property to alleviate as much as possible adverse impacts to users of property surrounding the site in any direction. The City Council further concludes that the PermaWood operation is consistent with the summary description of the Light Industrial District found in Section 5.090 in that it is a "manufacturing" process which will have a "limited impact on surrounding properties." In addition, we interpret the proposed use to fall within category number 35 of Section 5.100 which includes "manufacturing, compounding, processing, . . . fabrication of such articles to include . . . paint, ceramic, . . . plaster, . . . stone, . . . wood . . . products and chemicals" as a use permitted with site plan approval. In reviewing all of the evidence, the City Council concludes that the PermaWood development is compatible with the existing uses on the site and the surrounding area inasmuch as the difference in zoning districts of residential and light industrial can be made to be compatible.

CRITERIA:

- J. AREAS CONSIDERED FOR DEVELOPMENT, CHANGE OR INTENSIFICATION OF USE WHICH HAVE EROSION POTENTIAL SHALL BE PROTECTED FROM LOSS BY APPROPRIATE MEANS WHICH ARE COMPATIBLE WITH THESE PROVISIONS.

PERMAWOOD'S EVIDENCE:

PermaWood's evidence indicates that in their view the Willamette River bank does not show evidence of erosion. Portions of the river bank are covered with existing layers of concrete slag due to the previous use of the site. In addition, existing vegetation appears to be intact along the bank of the river. The channel direction of the river appears to be a contributing factor in bank stabilization. Buildings on the site or property are located in the middle of the property at a considerable distance from the river bank.

OPPONENTS' EVIDENCE:

Opponents' evidence indicates that not all of the river bank is covered with concrete. They further indicate that at an undesignated spot along the river bank a cave exists. Opponents' evidence also indicated that in their opinion, the bank has soft soils that crumble easily in many places and there is a potential for erosion around the cement silo due to the weight of the cement.

CONCLUSION:

The areas considered for building on the site are a considerable distance from the river bank. They are more than 100 feet from the river edge except during exceedingly high water levels. For the river to reach the areas to be improved, the bank of the river would have to be drastically changed from where it currently exists, the proposed bike path would be eliminated, the sewer interceptor would be washed into the river, and an additional amount of land would have to be eroded away before the cement silo could be reached. It is the conclusion of the City Council that the evidence indicates that the bank at this time is not subject to erosion and that the developed areas will be a considerable distance from the bank of the river. Furthermore, all development will occur to rigid flood plain development standards such that even during a 100 year flood, the alleged hazard will not exist. Therefore, this criteria has been met.

CRITERIA:

- K. EXTRACTION OF AGGREGATE DEPOSITS SHALL BE CONDUCTED IN A MANNER DESIGNED TO MINIMIZE ADVERSE EFFECTS ON WATER QUALITY, FLOW, VISUAL QUALITY, NOISE AND SAFETY AND NECESSARY RECLAMATION WILL BE GUARANTEED.

PERMAWOOD'S EVIDENCE:

PermaWood's evidence indicated that this site has long been used for aggregate extraction, processing and storage. However, aggregate extraction is not intended to take place any further on the property. The site plan, landscape plan, and other documents submitted by PermaWood indicate that this site will be renovated and greatly improved, adding to the scenic benefit of the river. Further, that holes existing on the property would be filled, increasing the safety of the general area.

OPPONENTS' EVIDENCE:

Opponents have offered no testimony or argument on this issue.

CONCLUSION:

If this criteria is applicable, then the criteria has been met by the activities proposed in the site plan and landscape plan of Permawood. No further aggregate extraction will occur on the site.

CRITERIA:

- L. ANY PUBLIC RECREATIONAL USE OF THE FACILITY WILL BE DEVELOPED, MAINTAINED AND OPERATED IN SUCH A WAY AS TO MINIMIZE ADVERSE AFFECTS ON ADJACENT PROPERTIES.

PERMAWOOD'S EVIDENCE:

Permawood's evidence indicates the site is intended for industrial use as was the zoning and the Comprehensive Plan designation for the site. Permawood has in the furtherance of other Greenway goals and policies proposed to dedicate a portion of its northern boundary for public utilization. This public recreational use of the property will be used to maximize the recreational benefits of the two adjacent City park properties and will serve also to buffer the use of the property from the Willamette River.

OPPONENTS' EVIDENCE:

Opponents offer no testimony or evidence on this issue.

CONCLUSION:

It is the conclusion of the City Council that the public recreational use of the site will maximize the public benefits of the two adjacent park properties by allowing a connecting bike path and river access area to be dedicated and improved for public use at minimal public cost. This criteria has been met based upon the evidence submitted.

CRITERIA:

- M. MAINTENANCE OF PUBLIC SAFETY AND PROTECTION OF PUBLIC AND PRIVATE PROPERTY, ESPECIALLY FROM VANDALISM AND TRESPASS, WILL BE PROVIDED TO THE MAXIMUM EXTENT PRACTICABLE.

PERMAWOOD'S EVIDENCE:

Permawood's evidence indicates that the site would be fenced and that it would have an external light system. The lighting system

would be designated to shine onto the interior of the plant site. The fencing and lighting system will help to provide public safety, prohibit trespassing and vandalism, and eliminate the existing excessive littering, trespass and other illegal activities occurring on the site.

OPPONENTS' EVIDENCE:

Opponents have offered no testimony or argument on this issue.

CONCLUSION:

The proposed fencing, lighting and building locations provide evidence that this criteria has been met.

CRITERIA:

- N. BUILDING SETBACKS FROM THE FLOODWAY LINE SHALL BE DETERMINED BY THE SETBACK AND HEIGHT PLANE AS DEFINED IN SECTION 6.140 OF THIS CODE. (ORD. 4528; 10/8/82)

PERMAWOOD'S EVIDENCE:

PermaWood's evidence on this issue indicates that a variance must be granted for PermaWood to construct its plant at this site. The City requirement begins at the floodway boundary line and at that point a 15° slope restricts building height. The testimony indicates that the chip storage building would have to be less than 7 feet in height without a variance and the proposed silo would have to be less than 18 feet in height without obtaining a variance despite the fact that both would be over 150 feet from the river. The testimony also indicated that the City staff, in developing this criteria, used the maps in the general downtown area. On those maps, a copy of which is in the record, the floodway line runs at the top of the bank of the river and at the 200 foot elevation contour. In these vicinities, the slope restriction begins much closer to the river's edge. The City staff did not take into account the change in the floodway line as it moves east from the city center. As demonstrated on the floodway map, as the floodway line moves east from city center, it moves from the 200 foot elevation contour and runs on an arbitrary line which bears no relationship to contour or bank location. As demonstrated before the City Council, at some points the floodway line is over the water and in other places it is more than 100 feet inland from the bank. As indicated on PermaWood's site, the contours may change as much as 25 feet without any change in the direction of the floodway line. PermaWood's position was that a variance should be granted in order to allow the economic use of the property for an allowable industrial use, especially if the

purpose for which the regulation was imposed, to provide light to maintain vegetation along the river bank, is clearly provided. Further, if the regulation was also intended to provide for additional setback from the bank of the river and create open spaces, then this has been accomplished, as the buildings sit more than 100 feet from the top of the bank of the river at the narrowest point. PermaWood also points out that the height variance being sought for the building is exactly the same as the existing structure. Further factual descriptions of the need for a variance are contained within the variances section.

OPPONENTS' EVIDENCE:

Opponents' argument is the variance should not be granted because it will cause a visual intrusion into the Greenway. That intrusion will be the fact that the silo will extend approximately 20 feet above the roof of the existing building and will have a width of 10 feet in diameter.

CONCLUSION:

Except for the request for a variance, all other setback requirements have been met. The variance requested has been approved based on findings and conclusions discussed later in this document.

CRITERIA:

- O. PUBLIC ACCESS WILL BE PROVIDED TO AND ALONG THE WILLAMETTE RIVER BY APPROPRIATE LEGAL MEANS FOR ALL DEVELOPMENT IN CONFORMANCE WITH PLANS APPROVED BY THE CITY.

PERMAWOOD'S EVIDENCE:

PermaWood's evidence indicates that it is willing to grant to the City an easement for the bikeway as proposed on the site plan, including the additional amount requested by the Parks and Recreation Commission. At some future time, when it would be advantageous to both the City and to PermaWood, the fee to the land could be deeded to the City.

OPPONENTS' EVIDENCE:

Opponents' evidence indicates that this criteria is not being properly protected because the City should require the 100 foot easement as it did of Mr. Hoag, a prior owner of the property. To that end, opponents have submitted a document identified as Exhibit 21 which purports to be a letter to Mr. Mitchell, an

owner after Mr. Hoag, requiring him to prepare and record a 100 foot landscape and recreation easement.

CONCLUSION:

For the reasons discussed elsewhere in these findings, the City Council concludes that the easement proposed by Permawood best meets the public needs in providing access to and along the Willamette River. It is also noted for the benefit of the record that the evidence submitted by the opponents indicates that the 100 foot easement was to occur along Tax Lot 6900. In reviewing the Tax Lot maps included in the record, it appears that 6900 does not connect to the Willamette River. However, 6900 is the tax lot upon which the warehouse was built which was the permit sought by and obtained by Mr. Hoag. If the intent was, as we believe, to require the 100 foot dedication to occur adjacent to the river, we conclude that the proposed dedication will more than satisfy the purpose of the requirement in that not only is ample area being provided for construction of the bike path above average flood levels, but all development will occur in excess of 100 feet from the river itself. Finally, this proposal offers to make substantial improvements to the dedicated area in the form of landscaping and grading which was absent from the previous proposal.

CRITERIA:

- P. THE DEVELOPMENT, CHANGE OR INTENSIFICATION OF USE PROVIDES THE MAXIMUM POSSIBLE LANDSCAPE AREA, OPEN SPACE, OR VEGETATION BETWEEN THE ACTIVITY AND THE RIVER.

PERMAWOOD'S EVIDENCE:

Permawood's evidence indicates that the placement of the structures on the site are a compromise between conflicting but equally necessary goals. The first goal was to place the buildings in a location which provides maximum distances from surrounding residences. The second goal for Permawood was to locate the building to provide maximum distance from the river. The locations designated on the site plan are a compromise of the maximization of each of those two goals. In placing the buildings at the site and as proposed for the future buildings on the site plan, no building is closer than 105 feet from the top of the bank of the river. Between the proposed building and the bank of the river is open space, the vegetative plantings of the bike path, and the natural occurring vegetation. Permawood's site plan was submitted to, reviewed by, and approved by the River Programs section of the State Parks Department which reviews Greenway Permit applications.

OPPONENTS' EVIDENCE:

The only argument or evidence that the opponents submitted on this issue is the fact that the maximum space the City has a right to require on this particular site is 100 feet, again referring to the earlier Hoag approval condition.

CONCLUSION:

The site plan as submitted by PermaWood exceeds, at its minimum point, the 100 feet setback demanded by the opponents. As a further limiting factor, it should be noted that the floodway line and the Code restrictions forbidding buildings within the floodway line prevent any future building within this setback area.

In conclusion, the City Council finds that the plan submitted by PermaWood meets this criteria.

FLOOD FRINGE AREA CRITERIA, SECTION 11.030 OF THE ALBANY DEVELOPMENT CODE:

CRITERIA:

- A. THE PROPOSED SITE OF BUILDING WILL NOT, DURING POTENTIAL FUTURE FLOODING, BE SO INUNDATED BY WATER AS TO RESULT IN INJURY TO RESIDENTS OR SERIOUS DAMAGE TO PROPERTY OR UTILITIES.

PERMAWOOD'S EVIDENCE:

PermaWood's site plans indicate that all buildings on the site currently have a minimum floor elevation of 200 feet, the same elevation as the highest point in the 100 year flood designation for this site. The site plan and other evidence in the record indicates that PermaWood intends to build all new structures on the site in accord with current regulations. PermaWood proposes to level this site in such a manner that the drainage from the public rights-of-way and private property to the south will continue to flow across the property and percolate through the soils in the same manner as currently exists. The utilities to serve the site would not be affected by the flood activities as they are buried or enter from Alco Street which is above the flood-plain line.

OPPONENTS' EVIDENCE:

The opponents indicate that in their view the current warehouse is several feet lower than the current flood plain. In addition,

they argue that in a serious flood, toxic chemicals from the site could be washed down stream with the flood waters. They also argue that City flood waters may wash pollutants into the City sewer which may damage the sewage plant or in the alternative wash upstream to the downtown area and flood into downtown basements.

CONCLUSION:

This criteria specifically discusses whether or not the proposed site for a building will be so inundated as to cause damage to property or persons or utilities. The evidence introduced by Permawood indicates that the building would be built above the floodplain level and the building code provisions followed. The evidence introduced by the opponents must be reviewed with other evidence in the record. As explained previously, it is the Council's position that the 200 foot elevation is the floodplain designation for this section of the Willamette as has been determined by the Army Corps of Engineers. The opponents, by utilizing a map which does not show current conditions existing on the site, cannot argue that the flood plain designation of 200 feet has been changed. Since the floor of the existing structure is at 200 feet, the estimated height of the highest point of the water in a 100 year flood, it is apparent that minimal amounts of water, if any, will be in the existing building. The new buildings will have a floor level one foot above the flood level insuring no water damage. The likelihood of damage to persons, properties and utilities as proposed by the opponents appears highly unlikely. It does not seem very reasonable to assume that the manholes which are less than 200 feet in elevation as indicated on the contour map would not be flooded prior to a building which is at 200 feet or more in elevation. If for the sake of argument, one assumes that the chemicals at the site and the cement could be discharged in a serious flood, the dilution factor of the river at its highest flow would render the likelihood of individual damage by these individual chemicals and particles of cement to be extremely slight and the probability of such an event incredibly remote. In our view, the credible evidence indicates the building site as proposed will not during potential future flooding be so inundated by water as to result in injury to residents or serious damage to property or utilities.

CRITERIA:

- B. THE FINISHED FLOOR ELEVATION OF ANY PROPOSED BUILDING IS PLACED AT LEAST ONE FOOT ABOUT THE 100-YEAR FLOOD LEVEL, AS MOST CURRENTLY ESTABLISHED BY THE U.S. ARMY CORPS OF ENGINEERS.

PERMAWOOD'S EVIDENCE:

The evidence introduced into the record indicates that the most currently established 100 year flood level is at the 200 foot contour. The evidenced submitted by Permawood indicates that the new buildings will be constructed one foot above the necessary flood plain designation.

OPPONENTS' EVIDENCE:

The evidence introduced by the opponents indicates that they again believe that by utilizing the Corps of Engineers map and overlaying it over the contour map prepared by Permawood, the Corps of Engineers has raised the floodplain levels, at certain areas on the site only, to exceed 200 feet. They maintain this position even though the elevation marker on the Corps of Engineers map states 200 feet.

CONCLUSION:

As indicated before, it is the position of the City Council that the 200 foot elevation contour is the currently established 100 year floodplain marker for this area. The applicant has indicated that all buildings will be in accord with the rules and have a finished flood elevation one foot above that level. Even the opponents do not dispute that contention. The Council concludes the uncontradicted evidence in the record indicates this criteria has been satisfied.

CRITERIA:

- C. THE PROPOSED DEVELOPMENT SITE OR BUILDING WILL COMPLY WITH ALL OF THE REQUIREMENTS AS ESTABLISHED BY THE FEDERAL FLOOD INSURANCE PROGRAM (REFERENCED TO SPECIAL CITY RESOLUTIONS 1565, 1566, AND 3608).

PERMAWOOD'S EVIDENCE:

Permawood indicated it is working closely with the Planning Department, Engineering Department, and Building Department in order to insure that the applicable regulations have been met. In addition to several meetings with the members of the

Departments within their office, Permawood has met with the City staff on the site to discuss building programs. Permawood's testimony indicated that they had not been informed of any potential violation of any regulation by any of these three departments. The staff has indicated that the Federal Flood Insurance Program standards have incorporated within the standards in the Albany Development Code.

OPPONENTS' EVIDENCE:

Opponents have not issued any testimony or opposing argument on this issue.

CONCLUSION:

A review of the proposed development site plan, and a review of the various development code criteria addressed in these findings of fact, insure that this specific criteria will be met.

CRITERIA:

- D. ANY DEVELOPMENT WILL NOT CHANGE THE FLOW OF SURFACE WATER DURING FUTURE FLOODING SO AS TO ENDANGER THE RESIDENTS OR PROPERTY IN THE AREA.

PERMAWOOD'S EVIDENCE:

Permawood's evidence at the hearings indicated that the site will have to be leveled due to the previous aggregate production activities on the site. A review of the contour map indicates that there are several instances of the remains of stockpiled aggregate and smaller pits. The evidence indicates that Permawood intends to level the site from the south to the north and west to the east making the northeast corner the lowest point on the parcel. The site is clearly the lowest point of the surrounding parcels to the east, southeast, south and southwest. The City-owned park property to the northeast and the northwest is much lower in elevation than the Permawood site. The lower park areas will fill with water prior to any flooding of the Permawood site. Evidence of the water filling in the park was testified to by several witnesses during the hearing before the City Council. Photographic pictures taken at or near the time of the hearing indicated that water was not on the Permawood site. Permawood has also submitted the statement of an engineer indicating that the fill that would take place on the site would have minimal impacts, if any.

OPPONENTS' EVIDENCE:

Opponents have not offered any testimony or argument on this criteria.

CONCLUSION:

The evidence submitted by Permawood indicates that this criteria has been met.

CRITERIA:

- E. ADEQUATE STEPS HAVE BEEN TAKEN TO ASSURE PROVISIONS OF EMERGENCY SERVICES DURING FLOODING.

PERMAWOOD'S EVIDENCE:

The evidence submitted by Permawood indicates that Chicago Street would provide access to the property during periods of flooding. Testimony on behalf of Permawood indicated that during the 1964 flood this site was used for rescue operations. Maps in the record show that both Chicago and Alco Streets are above the floodplain level as they enter the site.

OPPONENTS' EVIDENCE:

Opponents indicate that Chicago is unimproved and that most of the property would be inaccessible from Chicago Street.

CONCLUSION:

In reviewing the flood maps in the file, and the testimony of the parties, it is clear that emergency access is available on two streets, Alco and Chicago, and that from either of these streets emergency vehicles could reach the site. From the Alco entrance, one could gain emergency entrance directly into the manufacturing building. Although unimproved in terms of complete paving, curbs and gutters, both streets have gravel surfaces sufficient to support emergency access needs. In summary, it is apparent that emergency services can be provided to the site in the event of a 100 year flood.

CRITERIA:

- F. ACCEPTABLE ENGINEERING PRACTICES HAVE BEEN MET IF FILLING OR COMPACTION OF FILL IS NECESSARY. THE CITY MAY REQUIRE ENGINEERING PLANS AND DATA AS PART OF THE DEVELOPMENT PERMIT REVIEW.

PERMAWOOD'S EVIDENCE:

The applicant's testimony indicates that it is working closely with the Engineering and Parks Department in the filling of the site. Permawood is attempting a coordinated effort in order to insure that the two large holes on the property, located primarily on the City's easement, are properly filled so that they do not continue to pose a safety hazard to an unwary trespasser or hold water. In addition, the engineers for Permawood are preparing the plans for submittal for building permits. At the time the building permits are submitted for City review, the City would have the opportunity to review the engineering plans and determine if fill or compaction of fill is necessary.

OPPONENTS' EVIDENCE:

The opponents have not submitted testimony or argument on this criteria.

CONCLUSION:

The testimony makes it abundantly clear that Permawood is working with various City departments to resolve the fill problem on the site. The City Council understands why a property owner would request that the City maintain and fill land located in the City easement caused by work on the sewer line. The evidence in the record indicates this criterion has been met.

CRITERIA:

- G. THE AVERAGE DEPTH OF FILL ON ANY DEVELOPMENT SITE OR BUILDING LOCATION MAY NOT EXCEED THREE FEET, EXCEPT WHERE HARDSHIP IS DEMONSTRATED UNDER A TYPE II PROCEDURE AND DEMONSTRATION CAN BE MADE THAT INCREASED AMOUNTS OF FILL WILL HAVE NO ADVERSE IMPACTS ON OTHER PROPERTIES.

PERMAWOOD'S EVIDENCE:

The applicant has identified the two deepest areas which will require fill. As indicated previously, these are the two holes that exist on the existing sewer right-of-way. The other areas

of minimal fill will be under the proposed chip storage building where nominal amounts of fill will need to take place. Permawood continues to work with affected City departments in order to provide proper fill and meet this regulation.

OPPONENTS' EVIDENCE:

Opponents' argument is that more fill may be required if the floodplain exceeds 200 feet as they have previously argued. They further argue that the applicant needs to furnish additional information before the City Council can make a determination that the fill will not require more than an average three feet. Opponents also argue that the fill may adversely affect the proposed bikepath and the park lands.

CONCLUSION:

In reviewing the evidence submitted by Permawood, it appears from the engineering reports and contour maps that the amount of fill will not require more than the average three foot depth of fill. The contour maps submitted show gradual slopes away from the flood line contour of 200 feet except for two small areas of steep depressions discussed earlier. Using the maximum allowance of three feet of fill times the area within the flood plain to be developed yields a total fill of more than 20,000 cubic yards. In order to obtain the necessary fill permits, the developer will be required to submit detailed engineered data on amounts and locations of fill within the limitations of this requirement. Given the amount of fill allowable and the small area involved, we conclude that this requirement can be satisfied. There has been no evidence submitted the amount of fill will exceed the three feet of average fill depth requirement. For the foregoing reasons, the City Council concludes this criteria has been met.

CRITERIA:

- H. THE PROPOSED DEVELOPMENT INCLUDES DRAINAGE IMPROVEMENTS ACCEPTABLE TO THE CITY ENGINEER WHICH WILL ADEQUATELY REMOVE PONDING AND RUNOFF WATERS FROM AND THROUGH THE DEVELOPMENT SITE WITHOUT ADVERSELY AFFECTING OTHER DEVELOPED AREAS OR POTENTIAL DEVELOPMENT SITES.

PERMAWOOD'S EVIDENCE:

Permawood has worked with the City engineer on a drainage plan which is intended to catch surface water along vegetative screens and direct the surface water to the northern edge of the property. The surface water will then be allowed to settle down

through the soil which consists of soils and gravels due to the prior years of usage as an aggregate extraction site.

OPPONENTS' EVIDENCE:

Opponents have not presented any evidence or argument on this criteria.

CONCLUSION:

The proposed plan appears to take care of the ponding on the site and the criteria is satisfied.

CRITERIA:

- I. WHERE IT IS FEASIBLE TO PROVIDE CONTINUOUS EMERGENCY ROADWAY ACCESS, ANY PUBLIC OR PRIVATE STREET PROPOSED WITHIN A FLOOD PLAIN DISTRICT SHALL HAVE A ROADWAY CROWN ELEVATION NOT MORE THAN ONE FOOT BELOW THE 100 YEAR FLOOD ELEVATION.

PERMAWOOD'S EVIDENCE:

The testimony of PermaWood indicates that this criteria is not applicable as there is no planned construction for a public or private street on the site. The staff comments indicate that the intent of this criteria is that all developments must have emergency vehicle access at times of flooding. The evidence in the record indicates that emergency vehicle access to the site is available on Chicago and Alco Streets.

OPPONENTS' EVIDENCE:

The opponents have offered no evidence or argument on this criteria.

CONCLUSION:

This criteria is not relevant to the issue before the City Council. If, for the sake of argument, it is deemed to be relevant, emergency vehicle access exists on Chicago and Alco Streets to the site.

CRITERIA:

- J. DEMONSTRATION CAN BE MADE THAT THE PROPOSED DEVELOPMENT OF FLOOD PLAIN LANDS IS NEEDED TO PROVIDE BUILDABLE LANDS FOR THE PROPOSED USE AND SUCH NEED OUTWEIGHS POTENTIAL DAMAGES AND COSTS WHICH MAY BE INCURRED AS A RESULT OF FUTURE FLOODING.

PERMAWOOD'S EVIDENCE:

PermaWood's testimony indicated that a very minimal amount of land in the floodplain would be filled in order to allow the building of a chip storage and processing unit. The storage and processing facility is an integral part of the manufacturing process. Without this building, the manufacturing process would not occur on this site. In addition, most of the development in the floodplain will be open space, landscaping, and a bikepath. The bikepath, according to the City Park's Department, is necessary in order to fully utilize Bowman Park and the undeveloped park land to the northeast of the site. Therefore, most of the development in the floodplain is development which is intended to benefit a City park and provide additional screening to maintain the purposes of the Greenway. This means that what is occurring is a balancing of the risk of filling versus the benefit of improved access and utilization of park facilities, screening along the Willamette River, utilization of now-vacant land, and new jobs for the community. PermaWood also submitted the report of an engineer indicating minimal, if any, damages would occur with the filling as proposed. The staff, in reviewing the application, concurred that the proposed buildings must be located in the proposed locations.

OPPONENTS' EVIDENCE:

The opponents have offered no testimony on this issue or argument.

CONCLUSION:

PermaWood has demonstrated that the proposed development is necessary in order to provide buildable lands for the proposed use and that the proposed use outweighs the potential damages and costs that may be incurred. Further, the City Council has failed to find persuasive evidence that any damages or costs resulting from fill will occur.

VARIANCES, SECTION 15.030 OF THE ALBANY DEVELOPMENT CODE:

PermaWood seeks three variances. The variances are to allow for height, setback, and screening exceptions to Development Code requirements.

In reviewing the requested variances, the City Council will first address the height variance and review each of the seven applicable criteria. The setback and screening variance request will be reviewed by evaluating again the seven criteria for the variation in buffering and setbacks.

A. HEIGHT VARIANCE:

CRITERIA:

- (1) THAT THERE ARE UNIQUE PHYSICAL CIRCUMSTANCES OR CONDITIONS, SUCH AS IRREGULARITY, NARROWNESS OR SHALLOWNESS OF THE LOT OR EXCEPTIONAL TOPOGRAPHICAL OR OTHER PHYSICAL CONDITIONS PECULIAR TO THE AFFECTED PROPERTY.

PERMAWOOD'S EVIDENCE:

PermaWood's evidence indicated that the site in question has unique physical circumstances and conditions peculiar to the property because of its close proximity to the Willamette River and its unusual shape as shown on the various maps submitted for the benefit of the record. In addition, the floodplain line arbitrarily runs through the property greatly restricting that portion of the property which can be utilized. In looking at the restrictiveness of the property, one must remember that building setbacks and other physical limitations push the buildings toward the north of the property. The floodway line and the required 15° elevation limitation push the buildings toward the south property line. The existing structures on the site are in violation of the elevation limitation or setback limitations. PermaWood contends that the line is clearly arbitrary and capricious as it follows no set contour line and no set elevation nor distance from the river. As indicated on the map submitted by PermaWood, the floodway line at times is in the Willamette River. At other times, contours may vary as much in height as 25 feet in a very short lineal distance, such as on the subject site without any change in the location of the floodway line. The height of the building is computed by taking the tangent of 15° and multiplying it by a lineal distance from the floodway line. At the proposed locations, the silo could be 18 feet in height and the building proposed for chip storage would be less than 7 feet in height. Neither height limitation would allow reasonable commercial activity. Placing these buildings further from the river

could eliminate the height variance requirement but would move these buildings and their appurtenant uses closer to the existing residences, thus increasing the potential conflicts in regards to noise and obstruction of views as put forth by the neighborhood.

OPPONENTS' EVIDENCE:

Opponents offer no factual evidence, but offer argument that the cement silo could have been located where it would not have violated the Greenway height restrictions.

CONCLUSION:

Opponents offer no evidence as to where the silo could be located on the site or whether its location at such a point would be economically reasonable. The evidence indicates that the lot is of irregular shape and there is a unique physical circumstance caused by the floodway line on one side and the residential area and zoning on the opposite side. As indicated previously, the intent of the floodway line was to provide setback and solar access to the river bank. These objectives will not be interfered with due to the small dimensions involved in width of the silo and the distance of over 100 feet to the river. The City Council concludes that there is adequate information in the record to indicate that criteria (1) has been met.

CRITERIA:

- (2) THE PROPERTY TOGETHER WITH ANY ADJOINING PROPERTY UNDER THE SAME OWNERSHIP IS NOT OTHERWISE REASONABLY CAPABLE OF ECONOMIC USE UNDER THE PROVISIONS OF THIS CODE AND WOULD THUS BE DEPRIVED OF A SUBSTANTIAL PROPERTY RIGHT IF THE VARIANCE WERE NOT GRANTED.

PERMAWOOD'S EVIDENCE:

Permawood proposes to develop the entire site as one unit of 5.28 acres. In developing the site, Permawood became cognizant over the split zoning which exists on the site. For reasons unknown to Permawood, the southwest corner of the property formed by an extension of the northerly line of Linn Avenue to Geary Street is zoned R-2, medium density residential. With the attendant setback restrictions on the western portion of the property south from the residential zone, and the fact that the floodway line extends furthest to the south on the western portion of the property, the development is forced to the eastern and central portions of the property. Additional considerations of minimizing environmental impacts, discussed previously, further indicate and require the concentration of buildings at or near

their location on the site plan. Permawood's testimony further indicated that they have explored the commercial market to find a silo of lower height. The only silo that could be commercially obtained at a lower height came with a vibrating system which vibrated the external skin of the silo making it unusable due to the environmental (noise) limitations of the site. The Permawood project requires the utilization of Portland cement in this silo in order to have the proper flow of product into the production process.

OPPONENTS' EVIDENCE:

Opponents do not present any evidence on the issue, but argue that not all industrial uses require 40 foot silos and a bag house for Portland cement.

CONCLUSION:

The City, in reviewing the evidence, agrees that Permawood has utilized the entire site in the development of its project in the most reasonable fashion possible given both the physical and code limitations imposed on the site. The City Council further concludes that the cement silo is economically necessary to the utilization of the site. The City Council concludes that the applicant could not use other land under its ownership and control to solve the height problem. In this situation, Permawood is using all of its land in an attempt to resolve the problems raised by the opponents and the provisions of the Albany Development Code. The evidence is uncontroverted, and in fact admitted to by the opponents, that if Permawood was unable to have the cement silo, it would not be able to operate on this site. The City has designated the site for industrial use and has identified the planning process to be utilized by Permawood so that an industrial use can take place on this site. Barring Permawood from operating a use authorized by the City would be depriving Permawood of a substantial property right. Furthermore, the restrictions of the 15° height restriction in combination with the buffering and other setback requirements restrict the developable portions of the site to a very small area within which very few industrial uses could be accommodated without similar variances.

CRITERIA:

- (3) THAT THE SITUATION REQUIRING THE VARIANCE HAS NOT BEEN INTENTIONALLY CREATED BY THE APPLICANT.

PERMAWOOD'S EVIDENCE:

PermaWood's evidence indicates that it was not responsible for the location of the existing building. Without utilizing the existing building, further development of the site is not economically feasible. In addition, the regulation requiring the variance was formulated by City staff and is above and beyond the regulations of the State Greenway Division. Testimony at the hearing before the City Council indicated that the City staff did not contemplate a situation such as exists on the PermaWood site when they developed the ordinance. PermaWood's evidence indicated that it had not created the parcel size or shape.

OPPONENTS' EVIDENCE:

Opponents do not offer any evidence or argument on this situation.

CONCLUSION:

The evidence is uncontroverted that the necessity for requesting a variance was not intentionally created by PermaWood.

CRITERIA:

- (4) GRANTING OF THE VARIANCE WOULD NOT BE INCONSISTENT WITH THE COMPREHENSIVE PLAN.

PERMAWOOD'S EVIDENCE:

PermaWood's argument is that the Comprehensive Plan policy that creates the need for the regulation from which a variance is sought, is found in Greenway Policy No. 1 which reads:

"Maintain and enhance the natural vegetative fringe along the banks and terraces of the river through establishment of special setbacks and other available means in order to protect wildlife habitat; provide food and shelter for fish; mitigate erosion and flood damage; and provide scenic character. (ORD. 4517; 9/10/82)"

PermaWood argues that the reason for having the special 15° setback height limitation was to maintain the vegetative fringe and provide necessary sunlight to maintain plant growth. As indi-

cated earlier, the evidence in the record shows that the buildings are more than 100 feet from the bank of the river, providing plenty of sunlight to the vegetation. In addition, the natural vegetative fringe along the river has not been utilized and the wildlife habitat existing there and fish habitat in the river will not be adversely affected by the heights of the building.

OPPONENTS' EVIDENCE:

Opponents argue that the entire Permawood proposal is inconsistent with the Comprehensive Plan, Greenway Policies 3 and 6, as it is a violation to place heavy industry on a site designated in the Comprehensive Plan as light industrial. Since the plant cannot operate without a silo, the granting of a variance to permit such a use is inconsistent with the Comprehensive Plan.

CONCLUSION:

The City Council has determined, in other portions of this document, that Permawood is a light industrial operation. The City Council has also determined in other portions of this document, that the Permawood proposal is not inconsistent with the Comprehensive Plan and does not violate Greenway Policies 3 and 6. The City Council agrees with Permawood's contention that the intent of Comprehensive Plan Policy No. 1 is met with the granting of a variance. The City concludes that the purpose of Policy No. 1 was to protect the vegetation along the river bank so that the vegetation can protect the bank from erosion and provide a shelter for fish and other wildlife. The evidence indicates the vegetation will receive plenty of light, and will not be disturbed, thereby meeting the applicable Comprehensive Plan policy.

CRITERIA:

- (5) GRANTING OF THE VARIANCE WOULD NOT BE MATERIALLY DETRIMENTAL TO THE WELFARE OR ADVERSELY AFFECT OTHER PROPERTY IN THE VICINITY.

PERMAWOOD'S EVIDENCE:

Permawood is seeking a variance for the minimum amount of height necessary to complete the structures in a commercially reasonable manner. Permawood's evidence at the various hearings has indicated its efforts to minimize environmental impacts. For the sake of brevity in this long document, the various environmental impacts and the steps taken to minimize the impact by Permawood will not be repeated at this point. Any reader of this section should refer to the earlier references of this specific issue.

OPPONENTS' EVIDENCE:

Opponents offer no testimony on this particular criteria, but argue as they have on many other issues that the project will have an adverse impact based upon noise, impact on the park, the Greenway, residential area, a high potential for water pollution of the Willamette, pollution of the municipal sewer system, and the creation of traffic hazards.

CONCLUSIONS:

The City Council agrees that Permawood is seeking the minimal amount of variance that could be granted. Since the City Council has elsewhere in this document rejected the opponents' contentions of adverse affects from the site, they are again rejected. The City Council again concludes that the granting of this variance would not be materially detrimental to the public welfare or adversely affect other property in the vicinity.

CRITERIA:

- (6) THE COMPLIANCE WITH THE PROVISIONS OF THIS CODE ARE ACHIEVED TO THE MAXIMUM EXTENT POSSIBLE.

PERMAWOOD'S EVIDENCE:

Permawood's testimony indicates that except as identified in the site plan as modified, that they are in compliance with all other provisions of the Code. Permawood further indicates that a variance is sought for all provisions of the Code for which compliance cannot be obtained. The City staff indicates that the contentions of Permawood are accurate.

OPPONENTS' EVIDENCE:

Opponents have offered no testimony or argument on this issue.

CONCLUSION:

In reviewing the evidence, it appears that Permawood's site plan is in conformance with the provisions of the Albany Development Code, except in those areas where a variance has been requested and received. The conditions listed in Exhibit "B" will further insure compliance with applicable regulations for which detailed data has not yet been submitted.

CRITERIA:

- (7) THAT THE INTENT IF NOT THE LETTER OF THE CODE CANNOT BE ACHIEVED BY ALTERNATIVE MEANS.

PERMAWOOD'S EVIDENCE:

PermaWood has offered testimony indicating that it cannot obtain a commercially viable cement silo without obtaining a silo with objectionable features which may cause unwarranted noise for the neighbors and surrounding property owners. In reviewing the site plan exhibit submitted PermaWood, PermaWood argues that there is no other location where the cement silo can be reasonably constructed to meet the standards. PermaWood also argues that the intent of the Code and the Comprehensive Plan is met even with the granting of this variance. The staff comment indicates that they are in agreement with the contentions of PermaWood.

OPPONENTS' EVIDENCE:

Opponents offer no argument or testimony on this criteria.

CONCLUSION:

The City Council concludes that the evidence submitted by PermaWood indicates that the proposal, including the granting of the variance for the height limitation, will meet the intent, if not the letter, of the Albany Code, and the letter of the Code cannot be achieved by alternative means.

B. BUFFERING AND SETBACKS:

CRITERIA:

- (1) THAT THERE ARE UNIQUE PHYSICAL CIRCUMSTANCES OR CONDITIONS, SUCH AS IRREGULARITY, NARROWNESS OR SHALLOWNESS OF THE LOT OR EXCEPTION TOPOGRAPHICAL OR OTHER PHYSICAL CONDITIONS PECULIAR TO THE AFFECTED PROPERTY.

PERMAWOOD'S EVIDENCE:

PermaWood seeks a variance which would allow a site screening fence to be constructed on the property line with the buffered area behind the fence. The Development Code requires the buffered area to be in front of the fence. This variance would apply along the southern boundary of the property. In this case, there is a steep bank. Placing the fence on the property line allows the fence to be at the highest point, thereby providing a visual screen for the site. Without the variance, the fence

would be at the bottom of the bank and back from the bank and would not provide any effective visual screening of the site. The other portion of this variance request is to eliminate the buffering and setback along the southern portion of the property, Tax Lot 7200, as it abuts Oregon Bartile, and on the southwest corner as it abuts Geary Street. Exhibit 46 indicates the design sought by Permawood. Exhibit 44 sets forth the requirements of the Development Code. Permawood seeks access onto the widest portion of Geary Street. Strict compliance with the Code would place the access onto Geary Street farther north and at a point on Geary Street where the road narrows and curves west away from the property. The historical access for Oregon Bartile has been through two gates on its north property line across Permawood property, Tax Lot 7200, to Geary Street, utilizing Permawood's traditional access point. This access point is the same area that Permawood has designated for access on Exhibit 46. The record indicates that the owners of Oregon Bartile requested the City of Albany to require Permawood, as a condition of approval, to grant easement access across Permawood's property to protect his traditional access. Permawood points out that both the Oregon Bartile site and Tax Lot 7200 have the same zoning designation. Both Permawood and Oregon Bartile are industrial uses.

OPPONENTS' EVIDENCE:

Opponents' testimony indicates that they would require the City to maintain the buffering requirements and to deny access on Geary Street to Permawood as indicated on the amended site plan. Opponents argue that the buffering requirements cannot be varied and that the residential property cannot be used as an access point to the industrial property.

CONCLUSION:

The City Council concludes that there are unique physical circumstances. In the case of the fencing requirements, the unique facts are steep banks adjoining the property to the south. In the case of Geary Street access, the unique circumstances are that Geary Street narrows and curves to the west away from the subject property at its southwest corner, there is a well defined historical point of access, Oregon Bartile's use of the access and the benefit of limiting two industrial uses to one access point. It is also noted that the opponents do not contest there are unique physical circumstances or conditions that require this variance.

CRITERIA:

- (2) THE PROPERTY TOGETHER WITH ANY ADJOINING PROPERTY UNDER THE SAME OWNERSHIP IS NOT OTHERWISE REASONABLY CAPABLE OF ECONOMIC USE UNDER THE PROVISIONS OF THIS CODE AND WOULD THUS BE DEPRIVED OF A SUBSTANTIAL PROPERTY RIGHT IF THE VARIANCE WERE NOT GRANTED.

PERMAWOOD'S EVIDENCE:

PermaWood's testimony indicates that they are utilizing all of the property in their ownership for the development of this site. The site screening fences would have no practical affect if they were placed at the bottom of the bank. The site screening requirement would be rendered meaningless without a variance. PermaWood's position is that it has a historical long-term utilization of the access onto Geary Street. Further, that a property owner has the right of access onto a fully improved public street which abuts its property regardless of the zoning designation of the property.

OPPONENTS' EVIDENCE:

Opponents offer no testimony on this point, but argue that the variance originally granted by the Hearings Board on this point should not be allowed because of improper advertisement.

CONCLUSION:

The City Council concludes that PermaWood has no other property available which will allow it to place the fence in a meaningful position. Screening of the site is one of the requirements of the City Code and its utilization should be made practical. The site plan clearly indicates an intent to provide maximum screening through a combination of fencing and landscaping in appropriate locations. The record does reflect that the opponents were present before the Hearings Board, they in fact appealed the matter to the Planning Commission, did in fact appeal the matter to the City Council and had a de novo hearing. The City Council concludes that the opponents have been present at all times when the variance has been discussed, have had opportunities to present written and oral testimony in opposition to the variance, and have in fact done so. The City Council concludes, based upon the evidence in the record, that this criteria has been met, that adequate screening and buffering have been provided. The City Council concludes that PermaWood has no other available point for access onto the wide portion of Geary Street. PermaWood would be deprived of substantial property right if it was not allowed access onto Geary Street.

CRITERIA:

- (3) THAT THE SITUATION REQUIRING THE VARIANCE HAS NOT BEEN INTENTIONALLY CREATED BY THE APPLICANT.

PERMAWOOD'S EVIDENCE:

PermaWood's testimony indicates that at the time it purchased the subject property that all surrounding properties were under different ownership. In addition, PermaWood has not requested the split zoning that has occurred on the property. In fact, testimony indicates that PermaWood was unaware of the split zoning on the property when it acquired the property and made application to develop the site.

OPPONENTS' EVIDENCE:

Opponents offer no testimony or argument on this criteria.

CONCLUSION:

The City Council concludes that PermaWood is not responsible for the property design nor is it responsible for the zoning applications which appear on the property and which place severe restrictions on the development of the property, and therefore this criteria has been met.

CRITERIA:

- (4) THE GRANTING OF THE VARIANCE WOULD NOT BE INCONSISTENT WITH THE COMPREHENSIVE PLAN.

PERMAWOOD'S EVIDENCE:

PermaWood indicates that the variance is in fact carrying out the terms of the Comprehensive Plan in order to provide site screening to the property and in providing safe access onto a public street which is designated as a collector and designed for the industrial use proposed.

OPPONENTS' EVIDENCE:

Opponents offer no testimony or evidence on this issue.

CONCLUSION:

The City Council concludes that PermaWood's proposed development with the appurtenant variances will achieve the purposes and intent of the Comprehensive Plan.

CRITERIA:

- (5) GRANTING OF THE VARIANCE WOULD NOT BE MATERIALLY DETRIMENTAL TO THE PUBLIC WELFARE OR ADVERSELY AFFECT OTHER PROPERTY IN THE VICINITY.

PERMAWOOD'S EVIDENCE:

PermaWood's testimony indicated that the site screening fences would comply with the requirements of the ordinance and further provide public safety in keeping unwarranted parties out of the property. The variance would also allow entrance onto the street by truck traffic at the widest portion of Geary Street and at a point where vehicles entering Geary Street have clear vision in both directions. The granting of the variance would benefit Oregon Bartile to the south, as it would provide them with their historic access to Geary Street, and allow them full utilization of their property. In addition, it would limit the access of two adjacent industrial uses to one access point.

OPPONENTS' EVIDENCE:

Opponents offer no specific evidence or argument on this point.

CONCLUSION:

The variance would not be materially detrimental to the public as it would provide access at the best location in the area onto Geary Street. Adjacent property owner, Oregon Bartile, would be benefited by the variance and no other property has been identified as being harmed by granting of the variance. The City Council concludes that this criteria has been met.

CRITERIA:

- (6) THE COMPLIANCE WITH THE PROVISIONS OF THIS CODE ARE ACHIEVED TO THE MAXIMUM EXTENT POSSIBLE.

PERMAWOOD'S EVIDENCE:

PermaWood's evidence indicates that it is attempting to go beyond the minimum requirements of the Code in its screening of the site. It has offered two maps into evidence which indicate the City requirements for buffered areas, Exhibit 44, and the proposed buffered areas, Exhibit 46. The evidence in the record indicates that it was the conclusion of the Hearings Board that Exhibit 46 exceeded the intent of the buffering requirement set forth in Exhibit 44. In addition, the purpose of this variance is to place the site screening fence in an area where it will in

fact screen the site rather than at the bottom of an embankment where the embankment will be taller than the fence. Compliance with the letter of the setback and buffering codes creates a conflict with the requirements of the Code on access to public roadways. Permawood's amended site plan attempts to maximize the buffering of the site to protect visual impacts of the site for those in the park lands and to maximize public safety in the entrance and exit from the Permawood site. Permawood's testimony indicated that it intended to have a wide driveway to make sure that traffic leaving Geary Street could do so quickly without impeding traffic preceding northward into Bowman Park. The wide entrance was also designed to provide maximum visibility to those leaving the site to avoid a conflict with traffic either leaving or entering Bowman Park.

OPPONENTS' EVIDENCE:

Opponents have not offered any testimony or objection to this criteria.

CONCLUSION:

The City Council concludes that both of these variances could be avoided based on the original site plan submitted by Permawood but that the variances actually result in improved development of the site due to more logical buffering and screening and improved access. It is the conclusion of the City Council, therefore, that, based on the foregoing evidence, Permawood has met this criteria.

CRITERIA:

- (7) THAT THE INTENT IF NOT THE LETTER OF THE CODE CANNOT BE ACHIEVED BY ALTERNATIVE MEANS.

PERMAWOOD'S EVIDENCE:

Permawood's evidence indicates that it believes that it is complying with the intent of the Code in seeking this variance. Permawood argues that it believes the intent of the Code is to provide site screening. For the screening to have any affect, it must be at an elevation where a practical result is reached. Placing the fence at the bottom of the embankment does not provide any screening. Permawood also argues that public safety is more important than ornamental screening between two industrial uses. Therefore, a variance should be allowed to insure the safest access onto Geary Street.

OPPONENTS' EVIDENCE:

Opponents argue that the intent of the Code should not be addressed and the variance should be denied, and the letter of the Code enforced.

CONCLUSION:

The City Council agrees with Permawood that its proposed buffering plan as set forth in Exhibit 46 meets the intent of the Code. Specifically, a site screen should in fact screen vision of the site and the placement of the fence at the top of the berm and the open area behind the fence, rather than the reverse as required by the Code, provides an effective screen. One of the purposes of the Development Code is to provide safe access. Public safety is a matter of significant concern to the City Council. It is not the intent of the City Council to intentionally deprive anyone of access to and from their site. The arguments of the opponents, addressed elsewhere, see procedural objections, have been rejected by the City Council. The City Council concludes that the evidence at the hearing indicates that this variance should be granted.

PROCEDURAL OBJECTIONS:

A. OPPONENTS' PROCEDURAL OBJECTIONS:

Opponents have filed a document entitled Appellants' Procedural Objection, supported by Memorandum in Support of Appellants' Argument. The opponents designate six separate procedural arguments which will be separately discussed.

(1) Inadequate notice.

CONCLUSION:

Opponents argue that the signs posted by Permawood in October of 1983 were unreadable in January of 1984 and therefore action by the City should be delayed until new notices are posted by Permawood. The City Council rejects the procedural objection (1) by the opponents for the reason that it interprets its own Code to require Permawood to post the notice at the time of its first hearing in October of 1983. Further appeals of that hearing were at the instance of the opponents and any duty to provide notice under the Development Code fell to those opponents. It should be noted that Section 2.040(1) only requires the notice to be posted for a period of seven days or until the date of the scheduled hearing, not for a period of three months. Further, Section 4.035 indicates that the actual mailed notice is to be provided

by the City with the duty to post being only designated to the applicant at the original hearing. All required mailed notices have in fact been provided. Widespread media coverage of these proceedings have provided further information to interested persons. No evidence has been received that affected parties were at any point uninformed of the proceedings.

(2) Common law dedication of easement.

CONCLUSION:

Opponents submit a three page memorandum in support of this procedural objection. The opponents' position may be summarized as claiming that the City has acquired a common law dedication of the 100 foot easement mentioned often in these findings of fact. The contentions of the opponents are found in the record. However, the opponents fail to indicate two significant factors: One, during the testimony before the Planning Commission, the Planning staff indicated that the City of Albany was never ready to accept a deed from Mr. Hoag since the City had not completed acquisition of the connecting property to the northeast and the actual on-site boundaries of the easement had not been determined. The second, and most critical error, is that only the City Council of the City of Albany has authority to bind the City of Albany and make an acceptance on its behalf of any property. The opponents have failed to indicate at any point in the record any evidence that indicates that the official governing body, the City Council, took any action that would bind the City. The opponents have failed to prove a willingness and intent to accept by the appropriate government entity, and have failed to unequivocally prove any specific intent by Mr. Hoag to convey the property since the record indicates Mr. Hoag was contacted on many occasions to deliver the deed, and never did. Based upon all the foregoing, the City Council rejects the procedural objection that the City obtained a 100 foot easement.

(3) Because the designated zoning is not in compliance with the Comprehensive Plan designation, the Permawood proposal should be delayed until the property is zoned in accordance with the Comprehensive Plan.

CONCLUSION:

Opponents do not submit any documentation in support of this objection. The evidence in the record indicates that the City staff, and City Planning Commission, and City Hearings Board, have proceeded on the premise that if there is a conflict between the Comprehensive Plan and the Zoning Ordinance, the Comprehensive Plan would prevail. The City has requested of Permawood,

and Permawood has acquiesced, to apply the most restrictive standards that would apply whether the zoning was light industrial or heavy industrial. The surrounding property owners, including the opponents, have been protected by standards which would exceed those in the light industrial zone. Although not specifically discussed in the documents submitted, oral presentations on behalf of the opponents indicate that the primary issue at this point is the fact that Permawood is not a light industrial operation. This specific issue was first raised before the Planning Commission who determined that Permawood was in fact a light industrial use as designated by Section 5.100(35). Opponents have argued that Permawood is a major lumber or wood processing plant similar to a sawmill, plywood plant or papermill as designated in 5.100(32). In reviewing the operating characteristics of Permawood, it does not appear to the City Council that Permawood is in fact a major lumber or wood processing plant. They are a manufacturing operation, using paint, stone, wood, and chemicals as designated by Section 5.100(35). Opponents argue that Permawood should be designated heavy industrial because of the summary description of the term heavy industrial as contained in Section 5.090 of the Code. Opponents argue that there will be large amounts of traffic to the site. As indicated in the opponents' own testimony, there may be as many as seven trucks a day and fifteen cars a day to the site. In reviewing its own ordinance, the City Council interprets its own ordinance to indicate that the term "large amounts of traffic" indicates a volume of traffic that greatly exceeds 22 vehicles per day. Opponents argue that there is also extensive shipping of goods. Every industrial plant which manufactures or produces a product for sale must transfer or ship its product. Two truckloads a day have been identified for the shipping of the product. Two truckloads a day does not, in the City Council's view, constitute extensive shipping of goods. Opponents argue that the Permawood site would have outside storage of finished goods. The City Council agrees that the evidence is clear that Permawood will use outside storage of finished goods. The final issue is whether the Permawood plant contains a "controlled but higher level of noise and/or air pollution." The City Council has determined, as indicated in other portions of the findings of fact that the noise levels at the Permawood site would meet DEQ regulations. The City Council does not conclude that there is a higher level of noise or air pollution from the site typical of heavy industries.

In summary, the opponents have identified one of four parts of the summary description of a heavy industrial use as typifying this use and have failed to demonstrate that the proposed use does not meet the summary description of light industry or the category #35 found by the Hearings Board and Planning Commission

to apply to this use, and therefore the City Council concludes that by definition, Permawood is not a heavy industrial operation.

- (4) Before approving the site plan and other requests of Permawood, Permawood should be required to seek a zone change and a Comprehensive Plan change for that portion of the property that is currently zone R-2, Medium Density Residential.

CONCLUSION:

The opponents have not indicated what provision of the Comprehensive Plan or Development Code requires this step. The City Council having been informed of no requirement of its Code or Comprehensive Plan that requires this action declines to take such action without apparent authority or reason. As indicated earlier, the Council finds no authority in the Development Code to deny access to the industrial property through R-2 property under the same ownership and through which the users of this property have always gained access.

If this argument was found to be persuasive, a simple remedy would be to dedicate an access easement or right-of-way through the R-2 area to the industrial property. We conclude that such dedication would serve no useful purpose as the property is within the same ownership and could, if necessary, be provided with access at a point on Geary Street further to the north, but such access would be contrary to other objectives pertaining to public safety.

- (5) Because Permawood has not submitted an application form bearing the title variance as to setback requirements, and another document entitled variance as to buffering requirements, Permawood's application should be delayed until the proper applications have been filed with the City Planning staff and proper hearings scheduled by the City Planning staff.

CONCLUSION:

Notice of each of the hearings on this development included a general description of concurrent variances being requested.

Opponents acknowledge that the site plan submitted to the City for review set forth clearly the variances that have been requested and discussed earlier in these findings of fact in the variance section. The record also discloses that the opponents were present for all hearings in this matter. The opponents

appear to be suggesting that for the benefit of paperwork alone, the matter should be held up. They have not indicated that they have suffered any prejudice nor have they identified how they have been adversely affected by the procedures that have been followed. Since these variances were granted at a hearing in October, the opponents had two months to prepare for the de novo hearing before the City Council. Maps showing the requested variances have been on file all of that time with the City staff and opponents have acknowledged that they have reviewed the records with the City staff. All criteria pertaining to the requested variances have been addressed. The City Council concludes that there has been no error by the applicant, Permawood, and denies the procedural objection. For the benefit of the record, if there has been a procedural error, the procedural error is de minimis and no detrimental affect has been suffered by the opponents.

- (6) Opponents allege that the City's acceptance of Permawood's proposed 30 foot easement at its minimum width would violate Section 1.060 of the Development Code.

CONCLUSION:

The opponents argue that the previous Conditional Use Permit granted to Mr. Hoag granted the City a common law dedication to the 100 foot wide easement. Opponents argue that the Section 1.060(2) is violated because the City cannot accept less than the 100 foot easement without going through a vacation proceeding which it has not done, and that Permawood's current proposal does not rectify Mr. Hoag's failures.

As decided earlier in these findings of fact, the City Council has rejected the theory that the City of Albany has acquired a common law dedication of the 100 foot easement. The City Council has also previously, in these findings, determined that the proposal by Permawood is in the public interest as the public benefit obtained from their proposal exceeds the public benefit obtained under the prior Hoag proposal and therefore the current proposal rectifies any prior violation.

The opponents have alleged that Hoag has failed to provide necessary screening, vegetative planting and failure to dedicate the 100 foot wide easement. The Permawood application provides a landscape plan which exceeds that required of Hoag, screening that meets or exceeds that required by the City Code, and further provides the City with a bike path location with all the plantings in place, rectifying any violations which may previously have occurred on the site.

The City Council in construing this portion of its Code notes that Mr. Hoag developed the building on the site in accord with the building permit and other permits issued by the City of Albany. If Mr. Hoag is in violation of any conditions, they are conditions subsequent to development, not conditions precedent to the development. Therefore, the City Council construes Section 1.060(2) to mean that permits are not going to be issued when there has been a violation in the division or land or when a building has been developed on a site without a permit.

Under the facts as identified in this case, the Planning Director would not be prohibited from issuing development permits to Permawood provided that Permawood meets or exceeds the intent of the earlier condition which it has done.

OTHER DISCUSSION:

The City Council wishes to provide guidance to anyone who may have the task of reading these findings of fact in their entirety. In the findings, a reference to another point in the finding is intended to incorporate that subject matter into that specific finding. Additionally, the City Council may find evidence submitted on one point to be relevant and material to several other points. Rather than refer to the same fact over and over again in the findings portion, the City Council may well refer to it once and then refer to it again in several conclusion areas.

As a general view, the City Council finds that Permawood has applied for those environmental control permits which it is able to obtain without prior planning approval and is going to apply for those environmental permits which require prior planning approval. The City Council was not persuaded by the evidentiary materials submitted by the opponents on the issues of environmental and traffic concerns, for a variety of reasons, some of them specifically discussed in the foregoing findings. The Council did find it significant that Permawood's materials were presented after many years of study and after the development of the product.

In summary, any reviewing body should construe any conflict in the testimony not specifically resolved by these findings of fact of the City Council against the opponents for the reason that the majority of their materials were found to be unpersuasive in regards to any single criteria or procedure argument which by itself would cause the proposed development to fail. Those parts specifically found to be persuasive were identified in these findings of fact and most cases resulted in a condition of approval found in attached Exhibit "B" which when complied with,

will mitigate a possible adverse impact. Failure to meet the attached conditions will place the project in noncompliance and will result in enforcement proceedings to assure compliance.