

RESOLUTION NO. 3372

A RESOLUTION APPROVING A MULTIPLE-UNIT PROPERTY TAX EXEMPTION FOR PROPERTY LOCATED AT 445 NE PENN AVENUE

Findings:

- A. The Bend City Council adopted 12.35.010 to 12.35.050 of the Bend Municipal Code (BMC), implementing the Multiple-Unit Property Tax Exemption (MUPTE) program as allowed under ORS 307.600 to 307.637.
- B. MUPTE enables the City Council to grant up to a 10-year property tax exemption to qualified multi-unit housing projects to encourage higher density housing and redevelopment in the City's core and transit-oriented areas as defined in BMC 12.35.015.
- C. Pursuant to ORS 307.606(1) and BMC 12.35.030.F., the tax exemption is only for the City's ad valorem taxes, but if the combined rates of taxation of the City and of all taxing districts whose governing boards agree to the tax exemption policy of MUPTE for the project equal 51 percent or more of the total combined rate of taxation on the property granted the exemption, the exemption is for the property taxes of all taxing districts.
- D. To qualify for MUPTE, a project must include three or more dwelling units, provide public benefits as provided in BMC 12.35.025, be at least two stories in height (or if on a lot larger than 10,000 square feet, be at least three stories in height), and be located in an eligible area.
- E. The tax exemption under MUPTE applies to residential improvements only, however, the exemption may also apply to parking constructed as part of the multiple-unit housing project, and commercial improvements required as part of the design or public benefits of a project.
- F. In January 2024, the City received an application for MUPTE for a project on tax lot 171233BB00200, located at 445 NE Penn Avenue in Bend, Oregon. The Parcel is owned by Hiatus Capital Fund LLC. The proposed development is a new 3-story micro-unit building approved under City of Bend Site Plan number PLSPR20210456 and a Modification of Approval PLMOD20230480 (the "Project"). The Project is located in the High Density Residential (RH) zone between NE 4th Street and NE 5th Street, which is an area eligible for MUPTE, and proposes approximately 59 new dwelling units.
- G. BMC Chapter 12.35 requires certain elements (referred to as "public benefits") be included in a project to qualify for MUPTE. The Project will provide the following MUPTE- eligible public benefits: middle income housing, electric vehicle

charging, and stormwater.

- H. The City retained an independent professional financial consultant to review the Project's financial pro-forma. This consultant determined that the Project would not be feasible but for the tax exemption.
- I. As provided in the Staff Report and Recommendation, attached as Exhibit A to this Resolution, Staff found that the applicant submitted all required materials, and the applicant complies with the program requirements. Staff therefore recommend the application be approved and the exemption granted.
- J. On May 14, 2024, the Bend-La Pine School District (Administrative School District No. 1) will consider a resolution agreeing to the policy of providing multiple unit property tax exemptions for this Project as provided in ORS 307.600 to 307.63 and Bend Code Chapter 12.35.
- K. The Bend La-Pine School District represents 40.5 percent of the 2024 combined tax levy and the City of Bend represents 21.6 percent of the 2024 combined tax levy. Approval of the multiple-unit property tax exemption from both the Bend La-Pine School District and City of Bend exceeds 51 percent of total combined rate of taxation for the Property.
- L. Therefore, if on May 14, 2024, or subsequently, the Bend La-Pine School District adopts a resolution agreeing to the policy of multiple unit property tax exemptions for the Project, the MUPTE Program criteria defined in Bend Municipal Code 12.35.0010 to 12.35.050 and accompanying City policies and approvals have been met and the Project should be granted the MUPTE for the tax levy of all taxing jurisdictions, subject to the conditions in this Resolution.

Based on these findings, the City of Bend resolves as follows:

Section 1. The application for the multiple-unit property tax exemption for a development on tax lot 171233BB00200, located at 445 NE Penn Avenue in Bend, Oregon, is approved for the ad valorem for the City of Bend for residential improvements and residential parking constructed under City of Bend Site Plan approval number PLSR20210456 and a Modification of Approval PLMOD20230480 (the "Exempt Improvements"), subject to the following conditions:

- a) Applicant must provide proof of a deed restriction that prohibits the use of hotels, motels, and short-term vacation rentals on the site for the period of the exemption.
- b) Applicant must provide a deed that restricts income levels for 30% of the units at 120% Area Median Income or less for the period of the exemption.
- c) Applicant must demonstrate compliance with EV charging

- infrastructure requirements.
- d) Applicant must demonstrate that stormwater facilities were constructed to treat a 100-year stormwater event including approval of a stormwater maintenance agreement.

Section 2. If, after the date of this Resolution and before the City certifies the exemption to the County tax assessor pursuant to Section 4 of this Resolution, the Bend-La Pine School District, or any other combination of the governing boards of the taxing districts whose tax rates, when combined with the City's, representing at least 51% of the combined rate of taxation, adopts a resolution approving the policy of providing a multiple-unit property tax exemption for or including the Exempt Improvements, then the multiple-unit property tax exemption for the Exempt Improvements is approved for the ad valorem taxes of all taxing districts, subject to the same conditions listed in Section 1.

Section 3. The tax exemption granted by this Resolution begins July 1 of the year following issuance of a Certificate of Occupancy for the Exempt Improvements, unless the exemption is earlier terminated in accordance with the provisions of BMC 12.35.035. The exemption approved by this Resolution is for the Exempt Improvements. Prior to certification under Section 4 and following construction of the Project, City staff will calculate the portion of the Property that is eligible for the exemption, in consultation with the Deschutes County Assessor's office and the applicant, as appropriate.

Section 4. City staff are directed to file with the county assessor and send to the applicant at the applicant's last known address a copy of the resolution approving the application on or before April 1, 2025, and to certify the Exempt Improvements as exempt to the County assessor following issuance of Certificate of Occupancy and verification of compliance with all requirements of this Resolution and the BMC Chapter 12.35.

Section 5. If construction of the Project has not been completed and the Exempt Improvements have not received a Certificate of Occupancy on or before January 1, 2031, this approval shall be void unless extended by Resolution of Council at the property owner's request and upon demonstration that the failure to complete the Project was due to circumstances beyond the control of the owner, and that the owner has been acting and could reasonably be expected to act in good faith and with due diligence, pursuant to BMC 12.35.040. Such extension may not exceed 12 additional consecutive months.

Section 6. In addition to the findings set forth above, the City Council adopts and

incorporates the Staff Report and Recommendation, attached as Exhibit A, as its findings.

Section 7. This Resolution takes effect immediately upon passage.

Adopted by the Bend City Council on April 17, 2024.

YES: Mayor Melanie Kebler
Mayor Pro Tem Megan Perkins
Councilor Barb Campbell
Councilor Anthony Broadman
Councilor Ariel Méndez
Councilor Mike Riley
Councilor Megan Norris

NO: none



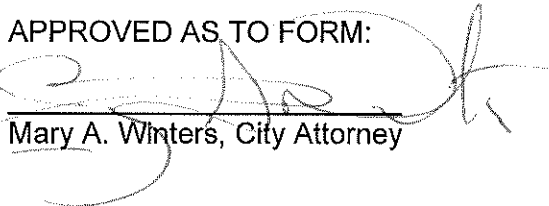
Melanie Kebler, Mayor

ATTEST:



Robyn Christie, City Recorder

APPROVED AS TO FORM:



Mary A. Winters, City Attorney



CITY OF BEND
COMMUNITY AND
ECONOMIC DEVELOPMENT

**STAFF REPORT FOR
MULTIPLE UNIT PROPERTY TAX EXEMPTION**

PROJECT NUMBER: PRTX202300065
CITY COUNCIL DATE: April 17, 2024
**APPLICANT/
OWNER:** Hiatus Homes
Jesse Russell
740 NE 3rd Street 3-314
Bend, OR 97703

OWNER: Hiatus Capital Fund LLC
20856 SE Sotra Loop
Bend, OR 97702

**APPLICANT'S
REPRESENTATIVE:** n/a

LOCATION: 445 NE Penn Avenue Bend, OR; Tax Lot 171233BB00200
Between Revere and Olney Avenues and NE 4th & NE 5th Street

REQUEST: Multiple Unit Property Tax Exemption, 10-year tax abatement on residential improvements

STAFF REVIEWER: Allison Platt, Economic Development

RECOMMENATION: Approval

DATE: February 20, 2024

PROJECT & SITE OVERVIEW:

The project site is at 445 NE Penn Ave in the High Density Residential (RH) zone, outside the Core Tax Increment Finance (TIF) Area. This application, submitted in January 2024, is a revision from an initial Multiple Unit Property Tax Exemption (MUPTE) application submitted by the same applicant in February of 2023. The project, subject to this MUPTE application proposes one (1) 3-story micro-unit building with 59 dwelling units. Thirty percent (30%) - 18 units - will be designated middle income housing and rented at levels affordable to those making 120% Area Median Income (AMI) or less. While the applicant will be required to deed-restrict 18 of the units to middle income levels for the 10-year exemption period, the project's proforma indicates a total of 27 units will likely meet middle-income rental levels (\$1,998 per month or less). In addition, two of the units will be dedicated as units accessible under Americans with Disabilities Act (ADA) standards. The project emphasizes community interaction and will include: three community spaces, one on each floor; a south-facing deck on the third floor; a community kitchen; and co-working spaces. Nine parking spaces will be provided on site and serve the project's tenant and common area uses. Five of these spaces will be served with Electric Vehicle (EV) charging infrastructure. In addition, the project includes

77 total bicycle parking spaces (18 more than is required by the Bend Development Code) as well as e-bike charging stations.

The previous MUPTE application submitted by this applicant was for a micro-unit building that would consist of 40 units utilizing the same public benefits. The primary differences between this application in comparison to the initial application include the following:

- Addition of 19 residential units
 - 6 additional units to be deed restricted to those making 120% AMI or less
- 50% reduction of total parking spaces
 - One less space to be served with EV charging infrastructure

The property is currently vacant land with no buildings, so there is no residential or commercial displacement associated with this project.

A land use decision was approved by the City for this project in September of 2022 (PLSPR20210456) and a modification of approval (PLMOD20230480) to increase the unit count was approved in November of 2023 to increase the total number of units to 59, as proposed in this revised Multiple Unit Property Tax Exemption (MUPTE) application. Building permits for the project (PRNC202202626) were issued in October of 2023 and a building permit revision was submitted to the City on October 31, 2023, for the proposed revisions to the project that are being considered as part of this MUPTE application. The building permit revisions are still under review by the City. The applicant has not begun construction and has communicated to the City that they can't proceed with construction of this revised site plan without this tax exemption. Proceeding with a building permit revision will allow the applicant some administrative efficiencies in moving this project forward if approved for MUPTE.



Figure 1. Site Location



Figure 2. Project Rendering

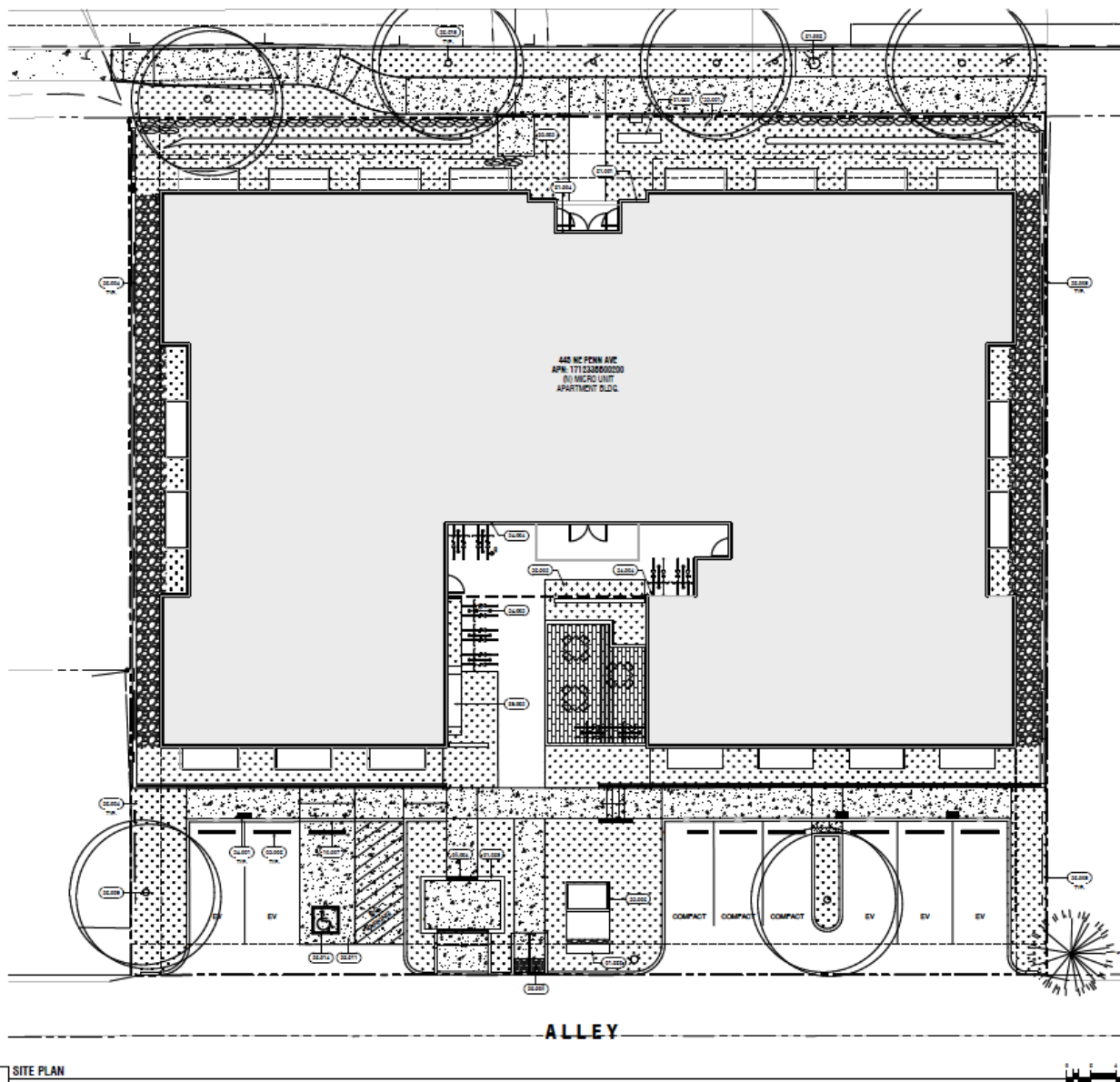


Figure 3. Site Plan

INFRASTRUCTURE NEEDED TO SERVE THE SITE

The project will be required to upsize an existing 2-inch water main located within Penn Street to an 8-inch water main to serve the site and improve the alley providing access to the development. Infrastructure improvements, currently being reviewed by the City under permit number PRINF202108539, demonstrate that the site will be served with the necessary infrastructure to serve the development. The applicant received a letter from City of Bend Private Engineering Division confirming this as part of their application.

ELIGIBILITY CRITERIA

APPLICATION OF THE CRITERIA:

LOCATION/ELIGIBLE ZONE REQUIREMENTS

This project is located within the High Density Residential (RH) zone between NE 4th Street and NE 5th Street, which is an eligible zone for the MUPTE Program per BMC 12.35.015D(3).

MULTI-STORY REQUIREMENTS

Projects on lots greater than 10,000 sf must be three (3) or more stories high to be eligible for the MUPTE Program per BMC 12.35.015(C). The proposed project is on a 20,999 square foot lot and is proposed to be 3 stories and satisfies this requirement.

HOTELS, MOTELS, SHORT TERM VACATION RENTALS ON SITE

The MUPTE Program requires that projects include a restriction on transient occupancy uses, including use by any person or group of persons entitled to occupy for rent for a period of less than 30 consecutive days (including bed and breakfast inns, hotels, motels, and short-term rentals). Applicant will be required to demonstrate a restriction of uses on the property for the period of the exemption satisfactory to the City before staff certifies the exemption with the County Assessor's office.

JUSTIFICATION FOR ELIMINATION OF ANY EXISTING HOUSING AND BUSINESSES ON THE PROJECT SITE

The existing site is vacant and therefore there is no anticipated displacement of housing or businesses by the project and therefore no mitigation is proposed. This meets the requirements of the MUPTE Program.

PUBLIC BENEFIT REQUIREMENTS

MUPTE requires that applicants provide three public benefits as defined in the MUPTE code, including one priority public benefit to qualify for the MUPTE program, per BMC 12.35.025.

Priority Public Benefit

The applicant plans to provide Middle Income Housing as their Priority Public Benefit. This requires the applicant to record a deed restriction limiting 30% of the units as only available to those making 120% Area Median Income (AMI) or less. Based on 2023 Department of Housing and Urban Development's Income Limits for the Community Development Block Grants (CDBG), 120% AMI in the Bend area is \$79,950 for a family of one (\$91,400 for a household of 2) and therefore rent must be below \$1,998 per month for a studio and \$2,142 for a 1 bedroom including all utilities and other costs of renting. The project includes 59 residential units; therefore 18 units are required to be deed restricted to middle income levels. The applicant has met with City of Bend Housing Department staff and will be required to demonstrate compliance with this public benefit in a form satisfactory to the City before staff certifies the exemption with the County Assessor's office.

Additional Public Benefits

In addition to the Priority Public Benefit, the applicant must provide two additional public benefits as defined in the MUPTE code. The applicant plans to provide the following to meet those requirements: 1) Stormwater; and 2) Electric Vehicle (EV) Charging.

Stormwater: The stormwater public benefit requires the applicant to develop the site to retain and treat stormwater from more than a 25-year storm water event by qualifying for the City's Stormwater Credit program. Qualification for this program is not a minimum requirement of the Bend Development Code; this must be an enhanced stormwater retention and treatment system. City of Bend Utility Department staff have reviewed the Penn Avenue Micro-Apartments Private Site Improvements Stormwater Design Report prepared by Adam Erlandson, PE provided by the applicant and have confirmed that the project meets the requirements of the stormwater credit program. The planned stormwater facilities will be designed to treat a 100-year stormwater event, exceeding the minimum requirements of this public benefit.

Electric Vehicle (EV) Charging: The EV charging public benefit requires the applicant to provide at least 10% more parking spaces with EV charging infrastructure (conduit for future electric vehicle charging stations) than the minimum required. Currently Oregon Building Codes require that multifamily projects provide 40% of provided parking spaces with EV charging infrastructure. Therefore, the applicant is required to provide at least 50% of parking spaces

with EV infrastructure. The applicant plans to provide 9 onsite parking spaces and therefore five (5) of these spaces must be provided with EV charging infrastructure.

The applicant provided a power plan for the site as part of their application that demonstrates the required five (5) spaces that will be served with EV charging infrastructure.

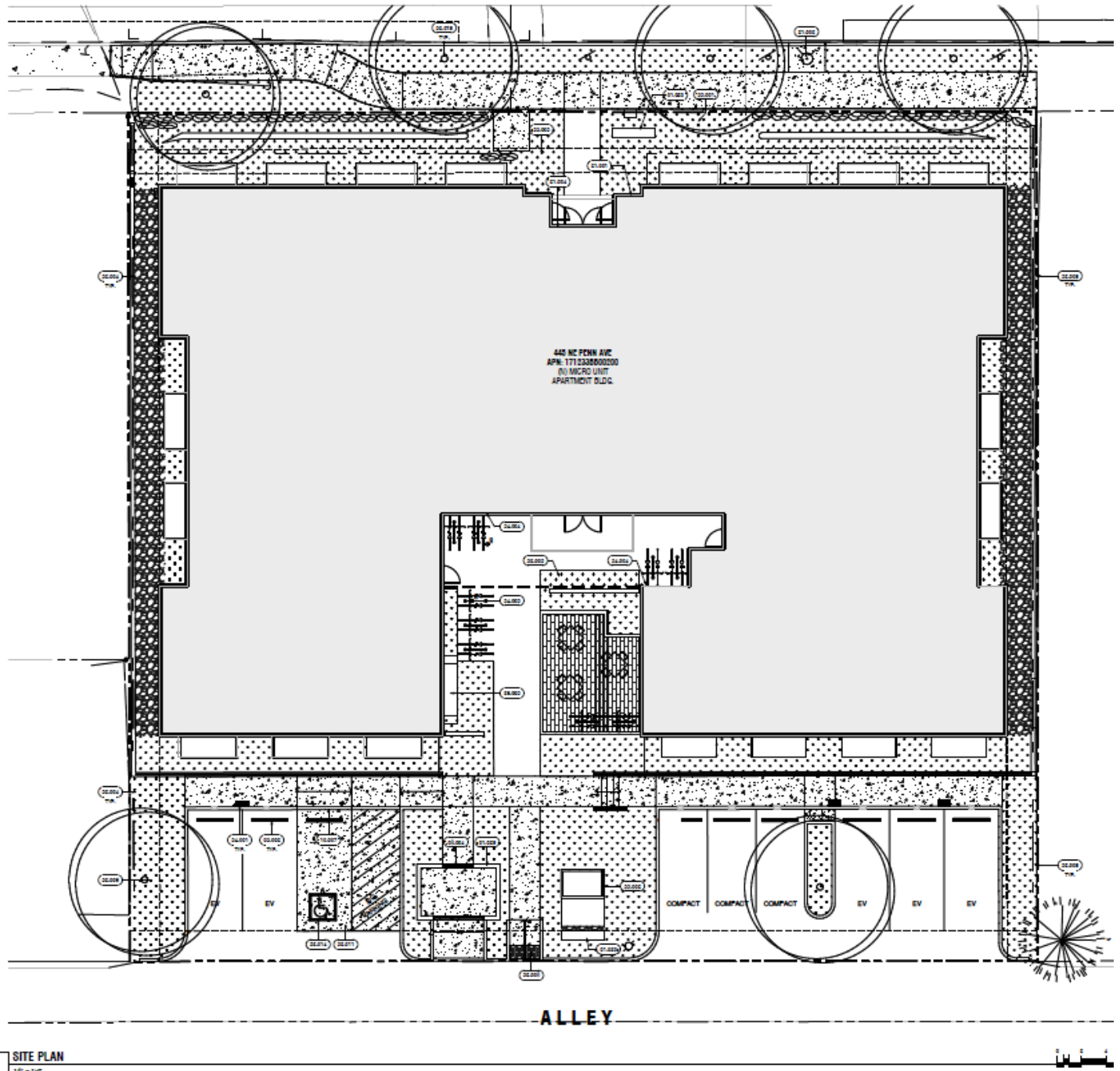


Figure 4. EV Ready Parking Space Locations as indicated on Site Plan (5 EV spaces are designated on Site Plan)

DEMONSTRATION OF FINANCIAL NEED

The applicant submitted a proforma income statement both with and without the tax exemption to demonstrate that the project would not be financially viable but for the property tax exemption. These proforma were reviewed by a City-hired third party independent financial consultant.

PNW Economics completed a review of the proformas in February of 2024. A summary of their findings is included as Attachment A. The review confirms that the project, including 18 of 40 units rent-restricted to be affordable to households earning not more than 120% of Area Median Income (AM), is not financially feasible without the MUPTE.

Without MUPTE, the Penn Avenue project's Internal Rate of Return (IRR)¹ begins at negative 3.6% and grows over time to no more than 5%, well below a rule of thumb minimum IRR of 10%². With MUPTE, the project's financial feasibility is improved beginning at 5.5% IRR with a maximum IRR of 8.5% achieved, which still never reaches the 10% minimum IRR benchmark.

The financial review suggested that staff should clarify with the developer the rationale for anticipated rental rates of the non-deed restricted units, and their assumed financing interest rates. The item and the applicant's response are included below:

Basis for high rental levels for non-middle-income units

The applicant clarified that assumed rents, which were detailed in the proforma, were valued based on specific amenities for each unit (building floor, unit size, deck square footage, orientation within the building and view) as opposed to picking an average price for a generic unit.

Staff further evaluated the assumed rental levels and found that rental levels for the 59 units vary between \$1,350 to \$1,958 with an average price of \$1,772 per unit for the 27 units that will be priced under \$1999 which is the affordability benchmark for those making 120% Area Median Income or less. The remaining units range between \$2,002 and \$2,997 with an average price of \$2,480 per unit. Units that were estimated to achieve higher rents were on the 2nd and 3rd floors, had larger deck square footage, and included mountain, butte or hill views as opposed to alley, street, or neighborhood views. Square footage between units did not vary significantly; units projected for higher rents were typically between 452-495 square feet and lower priced units between 466 and 476 square feet.

If not awarded for the tax exemption, the project with these anticipated rents is not feasible. Only if awarded for the tax exemption, can the applicant commit to deed restricting 18 of the units to remain within middle income levels for the exemption period otherwise rental levels for all units would float with the market.

¹ IRR is calculated as the total rate of return for all combined inflows and outflows of equity investment dollars from predevelopment through a hypothetical sale date of the development at its full market value that year.

² It should be noted that the rule of thumb minimum of 10% for Internal Rate of Return (IRR) measurement is higher than a rule of thumb minimum of 6% for a Return on Investment (ROI) measurement which has been used to evaluate other MUPTE applicants.

Financing interest rates (the assumed 8% rate was observed to be on the high side)

The applicant clarified that when the application was prepared in December, interest rates were at an all-time high and the applicant anticipated 8% interest rates based on a review of multiple Multifamily Commercial Mortgager summary documents. Interest rates have been moving up and down since December, and 8% is conservative in the current environment. The applicant noted that the financial consultant can use their proforma to model the impact of lower interest rates (which staff asked the financial consultant to do as part of a sensitivity analysis). The financial consultant found that it would take an interest rate well below 7% to make a measurable difference to the rate of return.

ADDITIONAL PUBLIC FUNDS SUPPORTING THIS PROJECT

On October 4, 2023, the Bend City Council awarded \$225,000 from the 2023 Middle-Income Pilot Program supported by General Fund dollars to this project. The award was contingent on the applicant agreeing to record a deed restriction to restrict rents of at least 18 units to households making up to 120% area median income (AMI) for 10 years. The applicant has stated they will only record the deed restriction if awarded the MUPTE, so they will not receive the Middle-Income grant funds if they do not receive the MUPTE. Council has allowed the applicant until June 4, 2024, to agree to record a deed restriction to receive the Middle-Income grant funds.

ESTIMATED EXEMPTION & FINANCIAL IMPACT

This project is estimated to receive a total 10-year tax exemption of approximately **\$1.28 million on residential and parking improvements** based on an estimated building value of \$15,424,128. The project is expected to be completed and certified for MUPTE, if approved, beginning in the 2027 tax year. Because the project is not financially possible without the exemption, the project will not be built, and those tax payments will not happen, unless the project receives MUPTE and therefore the exemption does not represent an actual loss of tax revenue to taxing districts.

Total tax collection for the 10-year exemption period of the site will be about \$46,350 if the project is not constructed and if it is constructed and approved for the tax exemption.

Table 1 demonstrates the tax collection that would take place on the site in year 11, after the the exemption period in both a no build and build scenario of the project. The data shows that in Year 11, total tax collection for the site would increase by 4,998% when the exemption expires. The table demonstrates the tax benefits to all districts starting in Year 11 if this project is approved for MUPTE and moves forward.

Table 1. Forecasted Tax Collection by Taxing District in Year 11 (2037)

Taxing District	% of Tax Levy*	No Project is Built	Proposed Project is Built
Bend La Pine School District**	40.5%	\$1,262	\$63,076
City of Bend	21.6%	\$670	\$33,485
Deschutes County (All)	17.9%	\$558	\$27,878
<i>Deschutes County</i>	<i>7.9%</i>	<i>\$246</i>	<i>\$12,304</i>

Taxing District	% of Tax Levy*	No Project is Built	Proposed Project is Built
<i>Countywide Law Enforcement</i>	7.7%	\$240	\$11,992
<i>Countywide Extension</i>	0.1%	\$3	\$156
<i>911 Service District</i>	2.2%	\$69	\$3,426
Bend Park and Recreation District	9.8%	\$305	\$15,263
Central Oregon Community College	4.3%	\$134	\$6,697
Library District	5.3%	\$168	\$8,410
High Desert Education Service District*	0.6%	\$19	\$934
Total	100%	\$3,116	\$155,744

* These tax collection percentages include division of taxes and local levies.

**The Bend/La Pine School District and the High Desert Education Service District are funded through per pupil allocations from the State School Fund which is comprised of many sources, including property tax revenues. The State Legislature sets the per pupil allocations and funds the State School Fund accordingly. Therefore, tax exemptions have an “indirect” impact on the funding for local districts. Tax exemptions throughout the state all have an impact on the State School Fund.

TAXING DISTRICT REVIEW PROCESS

For the tax exemption to apply to the full taxable amount, approval by taxing district agency boards that comprise at least 51% of the combined tax levy is required. Since the City and School District tax rates combine equate to 62.1% of the combined tax levy for the 2023-24 assessment year, if the project is approved by those two districts, the project would be exempt from all taxes on residential and parking improvements. All the Taxing District agencies will be provided a 45-day comment period to review the application materials and this staff report from February 20, 2024, through Council consideration on April 17, 2024.

The following district reviews are scheduled for this project:

- March 19, 2024: Applicant Presentation to Bend Park and Recreation District Board
- April 17, 2024: City Council Review and Decision on Application
- April 24, 2024: Applicant Presentation to Deschutes County Board of County Commissioners
- May 14, 2024: Bend La Pine School District Board Review and Decision on Application

Because the applicant will not have 51% approval before City Council considers the application, the proposed action for City Council will be to approve the exemption for the City’s ad valorem taxes only, and for the total tax levy if 51% approval is reached before the tax exemption is certified to the Deschutes County assessor.

CONCLUSION: Based on the application materials submitted by the applicant, and these findings, the proposed project meets all applicable criteria for City Council approval.

CONDITONS TO BE MET IF APPROVED, IN ADVANCE OF EXEMPTION CERTIFICATION WITH TAX ASSESSOR'S OFFICE:

1. Applicant must record a deed restriction that prohibits the use of hotels, motels, and short-term vacation rentals on the site for the period of the exemption.
2. Applicant must record a deed that restricts income levels for 30% of the units at 120% Area Median Income or less for the period of the exemption.
3. Applicant must provide EV charging infrastructure and stormwater facilities as approved for the MUPTE Program in future inspections prior to Certificate of Occupancy. Applicant must record an approved maintenance agreement for stormwater facilities.

ATTACHMENTS

- **Attachment A:** Review of Financial Feasibility Penn Avenue Project Hiatus Development, PNW Economics
- **Attachment B:** Application Materials