

MidTown Lofts Appeal

188 Garfield Street

CITY OF
ASHLAND

City Council 'On The Record' Appeal Hearing
December 18, 2018



MidTown Lofts Appeal

188 Garfield Street – Points of Appeal

1. The Planning Commission erred in approving the conservation housing density bonus.
2. The Planning Commission erred in approving the outdoor recreation space density bonus;
3. The Planning Commission erred in approving the major recreational facility density bonus.
4. The Planning Commission erred in approving the alternative bicycle parking solution proposed by the applicant.
5. The Planning Commission erred in failing to address evidence in the record regarding the inadequacy of existing water and sewer facilities and failed to plan to rectify those deficiencies.
6. The Planning Commission erred in calculating each of the 72 units as .75 units;

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7. The Planning Commission erred in granting the on-street parking credits and by approving a project with insufficient off-street parking.
8. The Planning Commission erred in approving a driveway location on Quincy Street in exception to the street standards.
9. The content of the notice of public hearing was insufficient in not including the name and phone number of a City contact person and in failing to cite the applicable criteria and citations for decision.
10. The Planning Commission erred in approving an alternative to the landscaped medians and swales.
11. The Planning Commission erred procedurally and failed to provide due process by admitting new evidence during the applicant's rebuttal without providing other parties an opportunity to respond and in making findings which contradict the conditions of approval with regard to unit sizes, density bonuses and open and recreation space;

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12. The City erred procedurally and failed to provide due process by failing to provide the parties with the staff report and initial recommendations at least seven days before the initial public hearing, and in not making the full record available publicly.

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188 Garfield Street – Scope of Appeal

18.5.1.060.1.5b.Scope of Appeal Deliberations. Upon review, and except when limited reopening of the record is allowed, **the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission.**

Review shall in any event be limited to those issues clearly and distinctly set forth in the notice of appeal. No issue may be raised on appeal to the Council that was not raised before the Commission with sufficient specificity to enable the Commission and the parties to respond.

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188 Garfield Street - Proposal

Proposal

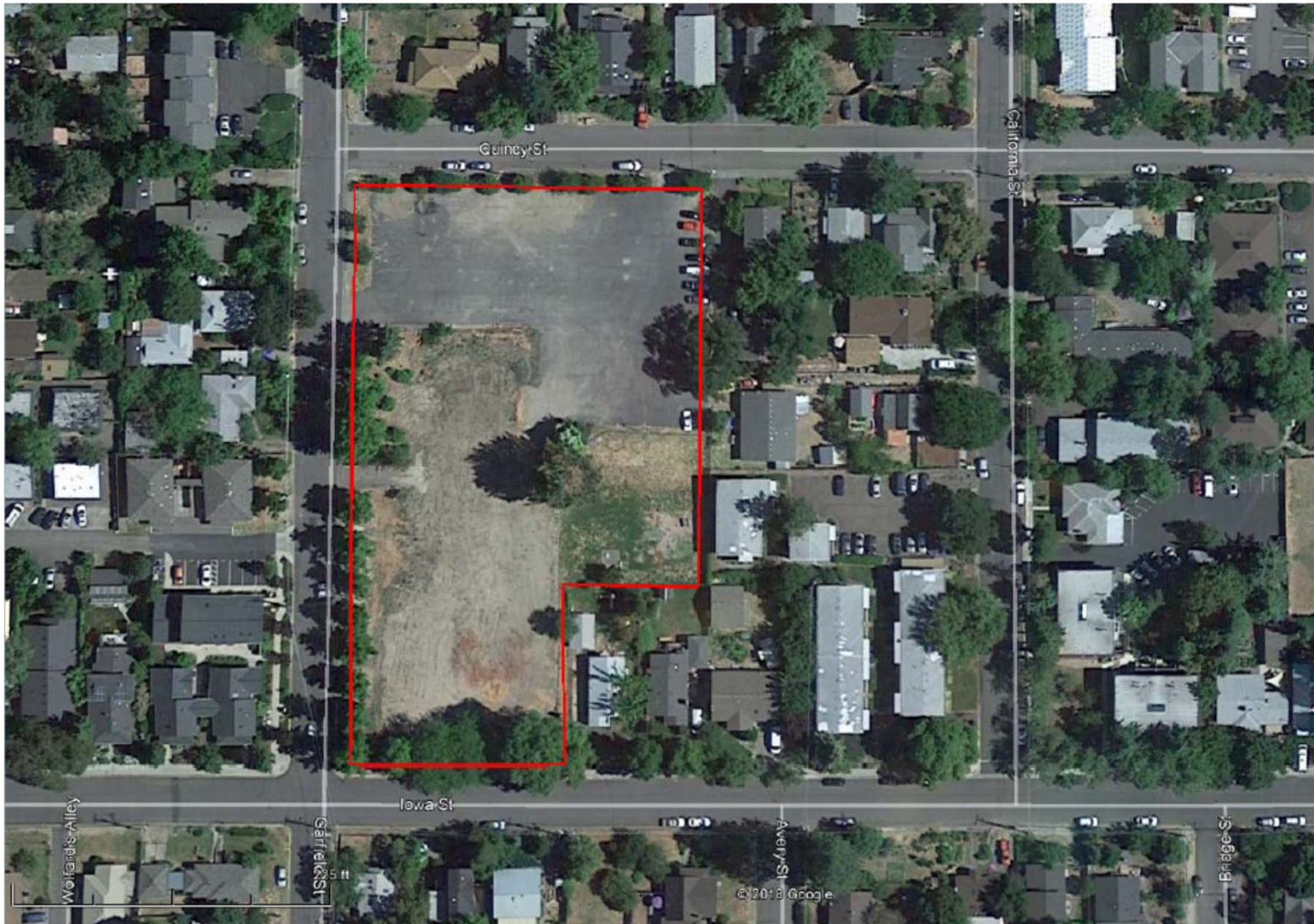
The application requests **Site Design Review** approval to construct a 72-unit studio apartment community. All of the units were studios less than 500 square feet in gross habitable floor area, which count as $\frac{3}{4}$ of a unit for purposes of density calculation. Density bonuses are requested for conservation housing, outdoor recreation space and major recreation facilities.

The application also includes requests for a Tree Removal Permit to remove 15 trees that are more than six-inches in diameter at breast height (d.b.h.); an Exception to the Site Development and Design Standards to treat stormwater run-off in a combination of bio-swales, underground treatment facilities and detentions ponds rather than in landscaped parking lot medians and swales; and for Exceptions to Street Standards to retain the existing curbside sidewalk system along the frontage of the property and for the driveway curb cut on Quincy Street, which was proposed to be shared with the property to the east and which would exceed the maximum driveway curb cut width for residential developments.

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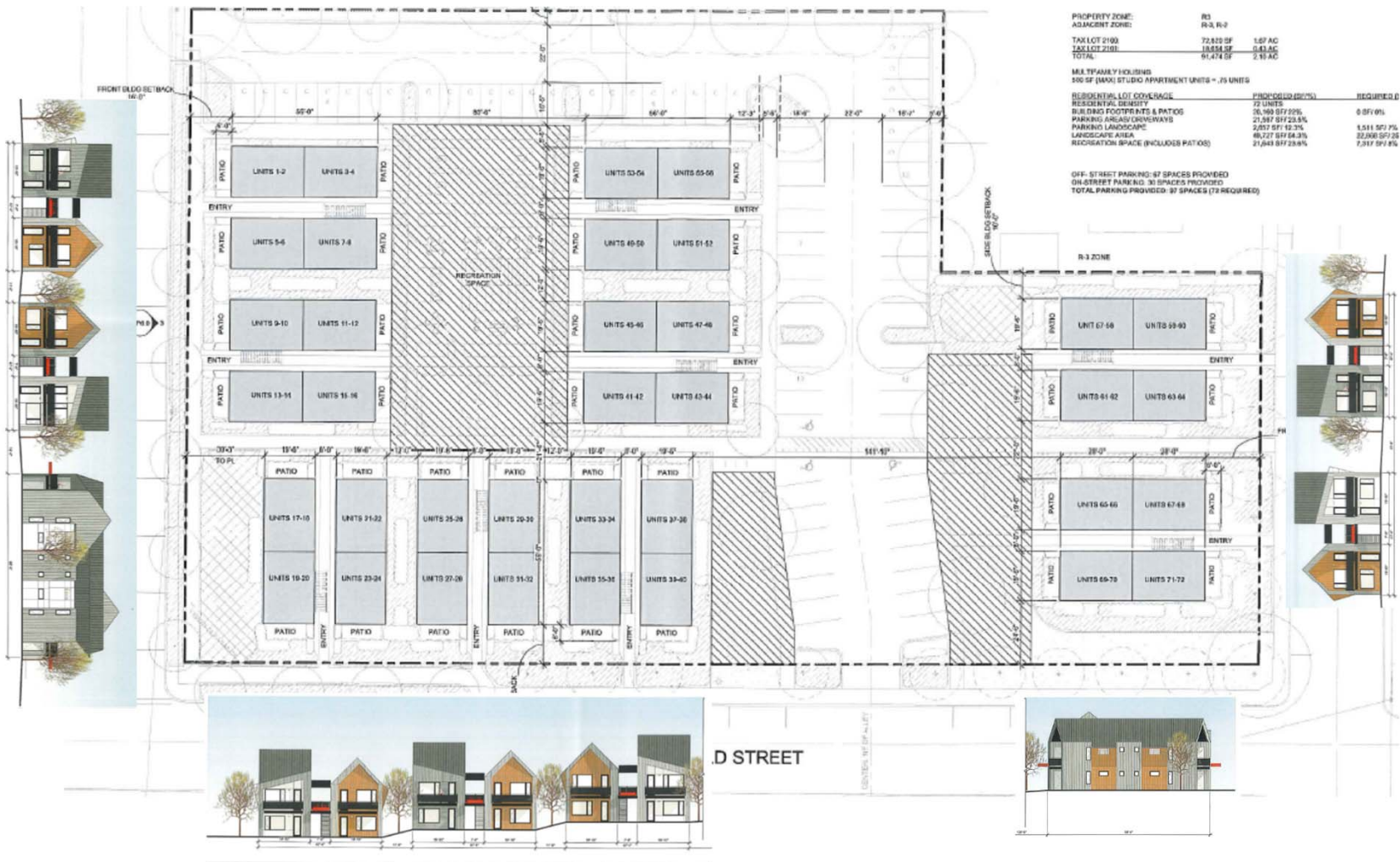
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188 Garfield Street – Appeal Issue #1

The Planning Commission erred in approving the conservation housing density bonus.

- ✓ *Earth Advantage is a third-party certification program where point sheets based on the permit drawings are reviewed by a third-party reviewer.*
- ✓ *PC found it was feasible to obtain third-party certification.*
- ✓ *Conditions to require evidence pursuing certification at permit and evidence of certification at occupancy.*

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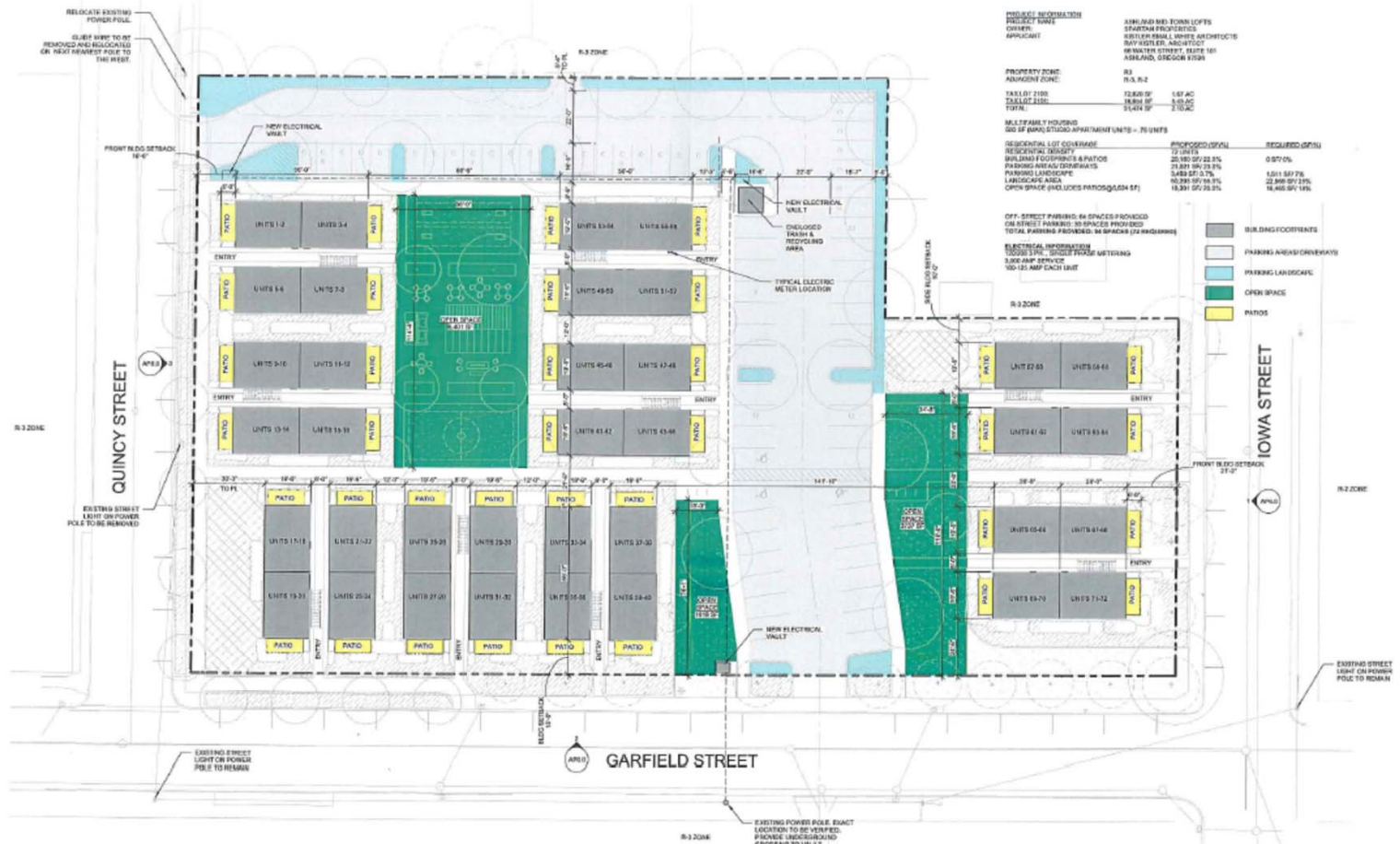
188 Garfield Street – Appeal Issue #2

The Planning Commission erred in approving the outdoor recreation space density bonus.

- ✓ *Drawings identify 23.6 percent of the site in open space (8% required of all) and additional outdoor recreation space (add'l 10% percent proposed for bonus).*
- ✓ *PC found that semi-private patios and decks could be considered outdoor recreation space rather than requiring it to meet the open space definition.*

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PROJECT INFORMATION
 PROJECT NAME: ASHLAND MID-TOWN LOFTS
 OWNER: STARINA PROPERTIES
 ARCHITECT: SUTHERLAND WHITE ARCHITECTS
 CIVIL ENGINEER: SUTHERLAND WHITE ARCHITECTS
 APPLICANT: REYNOLDS, SUTHERLAND & COMPANY
 188 GARFIELD STREET, SUITE 101
 ASHLAND, OREGON 97101

PROPERTY ZONE: R3
ADJACENT ZONE: R3, R-2

TAX LOT: 2108
TOTAL LOT AREA: 12,808 SF
TOTAL LOT AREA: 12,808 SF
TOTAL LOT AREA: 12,808 SF

MULTIFAMILY HOUSING
 200 OR SUDS SECTION APARTMENT UNITS - 75 UNITS

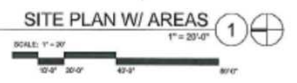
RESIDENTIAL LOT COVERAGE	PROPOSED (SF)	REQUIRED (SF)
RESIDENTIAL DENSITY	12 UNITS	0.57%
BUILDING FOOTPRINT & PATIOS	20,193 SF (22.5%)	
PARKING AREA & DRIVEWAYS	21,891 SF (23.5%)	
PARKING LANDSCAPE	3,482 SF (3.7%)	
LANDSCAPE AREA	10,280 SF (11.5%)	
OPEN SPACE (INCLUDES PATIO/LOGIA) (SF)	13,291 SF (15.2%)	

OFF-STREET PARKING: 46 SPACES PROVIDED
 ON-STREET PARKING: 30 SPACES PROVIDED
 TOTAL PARKING PROVIDED: 76 SPACES (2.4% MINIMUM)

ELECTRICAL INFORMATION
 20000 3PH, 3WGE PHASE METERING
 2000 AMP SERVICE
 100-125 AMP EACH UNIT

City of Ashland Planning Exhibit

Exhibit # P-001
 PA # TA-2018-00003
 Date 10.23.2018
 Staff JB



SITE PLAN W/ AREAS AP.1

MidTown Lofts Appeal

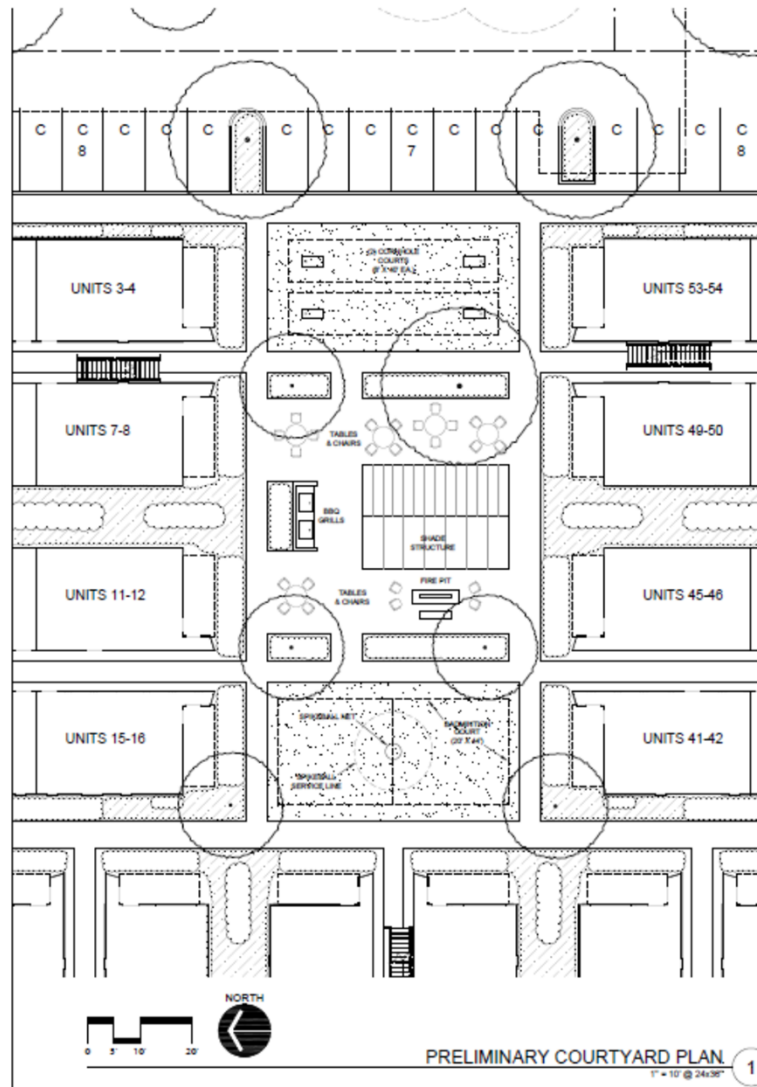
188 Garfield Street – Appeal Issue #3

The Planning Commission erred in approving the major recreational facility density bonus.

- ✓ PC finds proposed facilities were similar facilities (an adult playground) and that the estimate provided was from a qualified architect and thus satisfied the code.*

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Ashland, OR email@kistleremailwhite.com
97529 541.489.9200

kistler+small+white
architects

October 16, 2018

Value of Major Recreational Facilities for the Ashland Urban Lofts

Dear Staff and Commissioners,

This letter is to clarify the value of the project proposal for the MidTown Lofts, and the cost of the proposed Major Recreational Facilities in order to obtain a six percent density bonus.

Following the submittal of the Site Review application, the appraisal of the development by Paul Zacha, MAI of Real Property Consultants Grants Pass (RPC) was completed. The appraised prospective market value of the subject project, assumed complete, unoccupied and available for lease by late 2019, is estimated to be \$11,775,000.00. Prior to the appraisal, when the application was submitted, the project team's estimate of \$10,800,000.00 was too low. The project value is based on the professional appraisal. Additionally, construction costs are rapidly increasing, this increases the expenses towards the space. The application addresses the costs associated with when the initial application was submitted and not on increased construction costs.

For each one percent of the total project costs devoted to recreational facilities, a six percent density bonus shall be awarded. One percent of the project costs is: $\$11,775,000 \times .01 = \$117,750.00$

The project costs devoted to the major recreational facilities are as follows:

Estimated value of Activity Equipment:	\$ 2,000.
Estimated value of surfaces (activity surfaces and courtyard hardscape): 3,600 X \$20 per SF:	\$ 72,000.
Estimated value of sheltered, outdoor cooking areas:	\$ 4,000.
Outdoor kitchen area (BBQ and cooking prep area):	\$ 4,000.
Gas Fire Feature:	\$ 5,000.
Structure:	\$ 65,000.
Estimated value of outdoor seating areas:	\$ 12,000.
Total Estimate of Recreation Amenities	\$ 164,000.

The proposed improvements to the courtyard to provide for major recreational amenities of \$164,000.00 exceeds one percent of the estimated appraised value of the project which is \$117,000.

Sincerely,

Raymond Kistler, Principal Architect

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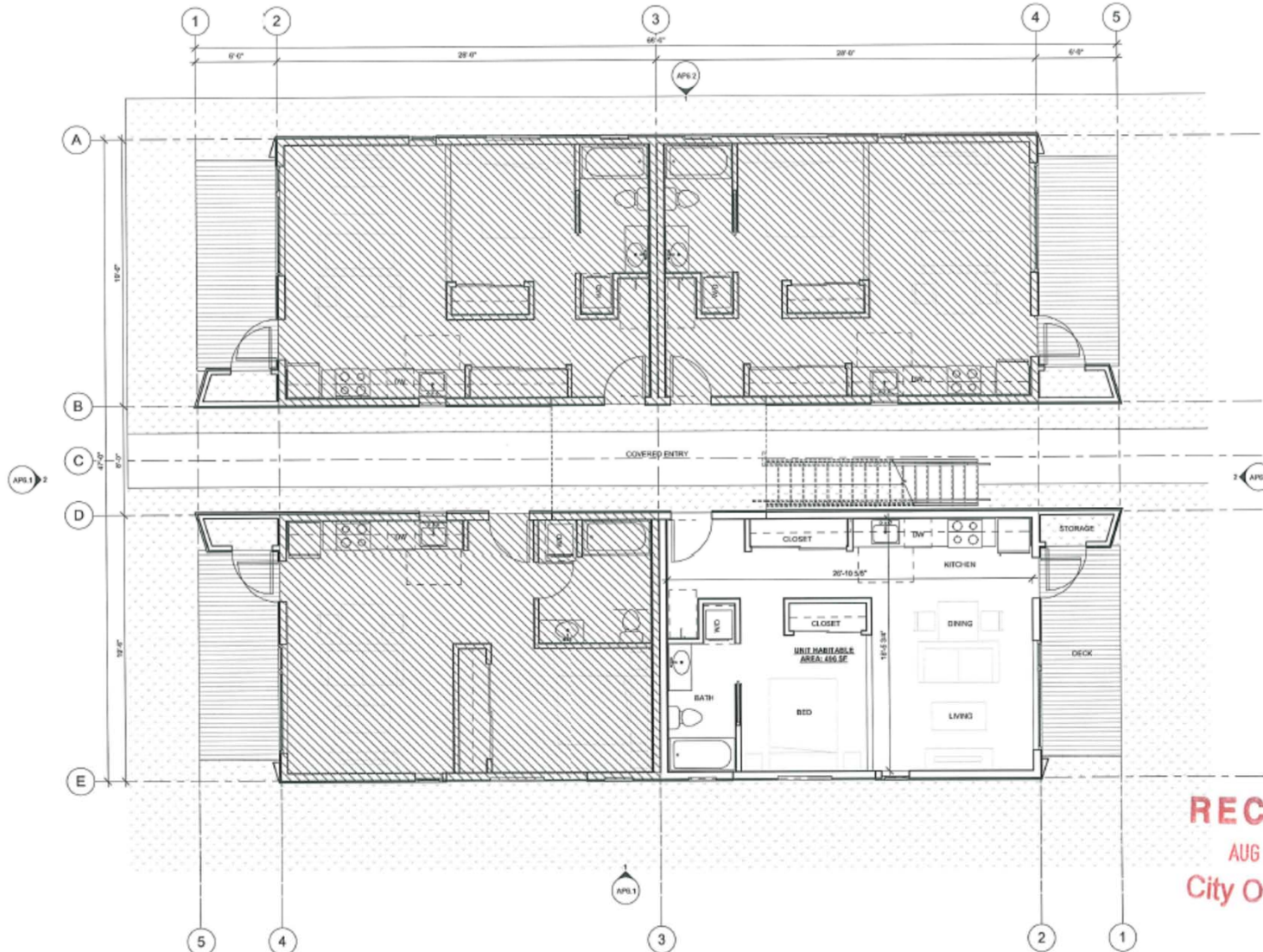
188 Garfield Street – Appeal Issue #4

The Planning Commission erred in approving the alternative bicycle parking solution proposed by the applicant.

- ✓ *PC found closets with hangers satisfied code, which allows for required bicycle parking to be met with “a bicycle storage room, bicycle lockers or racks inside the building.”*

MidTown Lofts

188 Garfield Street – Level 1 Plan



INTERIOR BIKE RACK

RECEIVED
AUG 23 2018
City of Ashland

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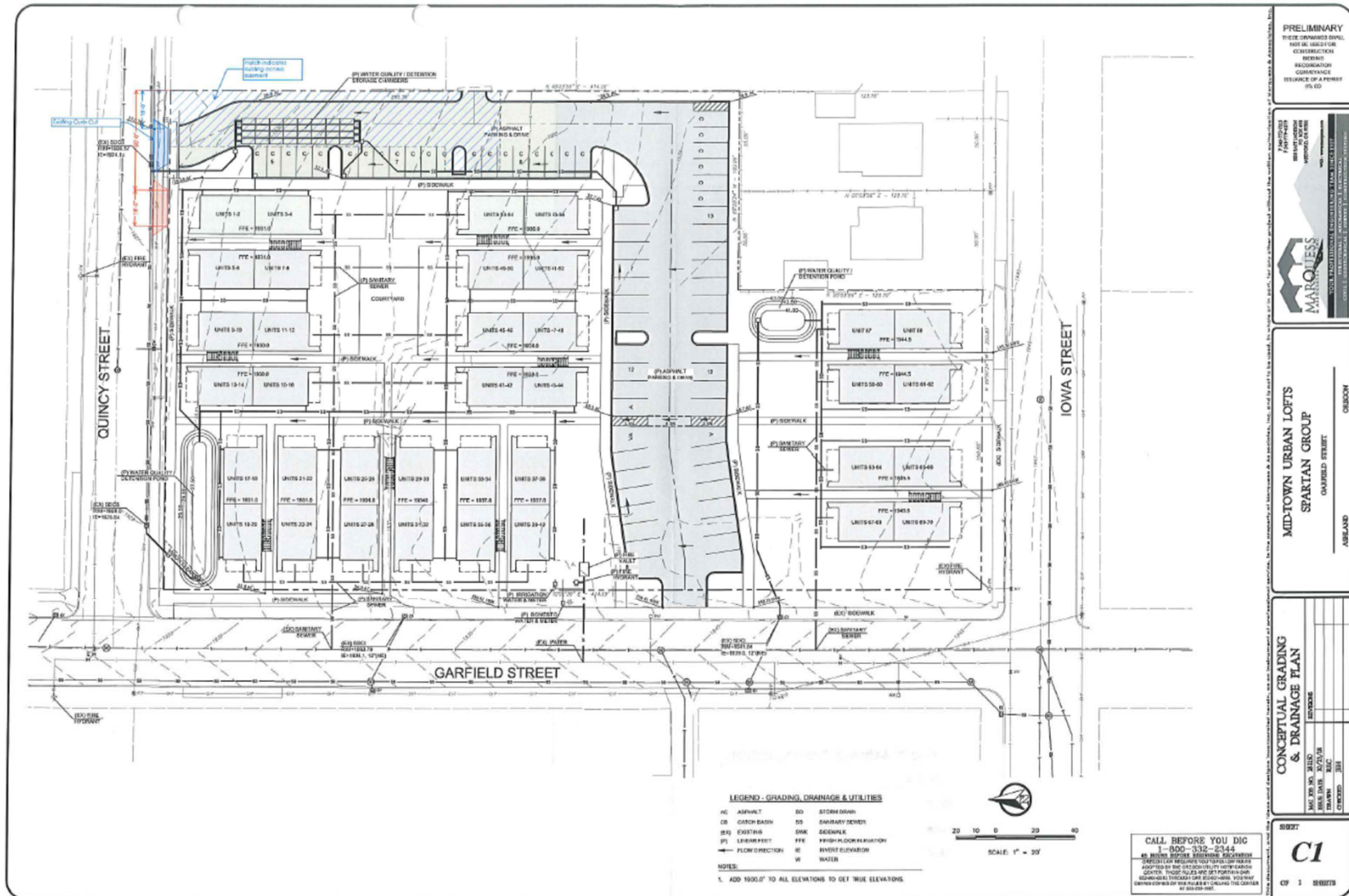
188 Garfield Street – Appeal Issue #5

The Planning Commission erred in failing to address evidence in the record regarding the inadequacy of existing water and sewer facilities and failed to plan to rectify those deficiencies.

- ✓ *Appeal issue limited to water and sewer, which are considered separately from storm drainage in the code.*
- ✓ *Criteria require adequate capacity, and standards call for connection to city systems; requires approval of development permits by City Engineer. Master plan compliance is not a criteria; master plan guides infrastructure projects adequate for full build-out of the city, not individual projects.*
- ✓ *Development may be restricted or rationed where a system deficiency exists that cannot be rectified by the development.*
- ✓ *Application included an engineered plan showing connection to facilities in right-of-way, and the applicant noted in October 9th presentation that **“According to the various City of Ashland Public Works Departments, there is adequate capacity in the City’s system for the development of the property to be served by water, electric, sanitary sewer services and stormwater.”***

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188 Garfield Street – Grading, Drainage & Utilities



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188 Garfield Street – Appeal Issue #6

The Planning Commission erred in calculating each of the 72 units as .75 units.

- ✓ *Code allows units < 500 s.f. to be counted as 0.75 units for density purposes. Applicants proposed units < 500 s.f., but during hearing it was noted the units were measured incorrectly and were larger.*
- ✓ *Applicant proposed to adjust unit dimensions. PC found this was feasible, and added a condition to this effect.*

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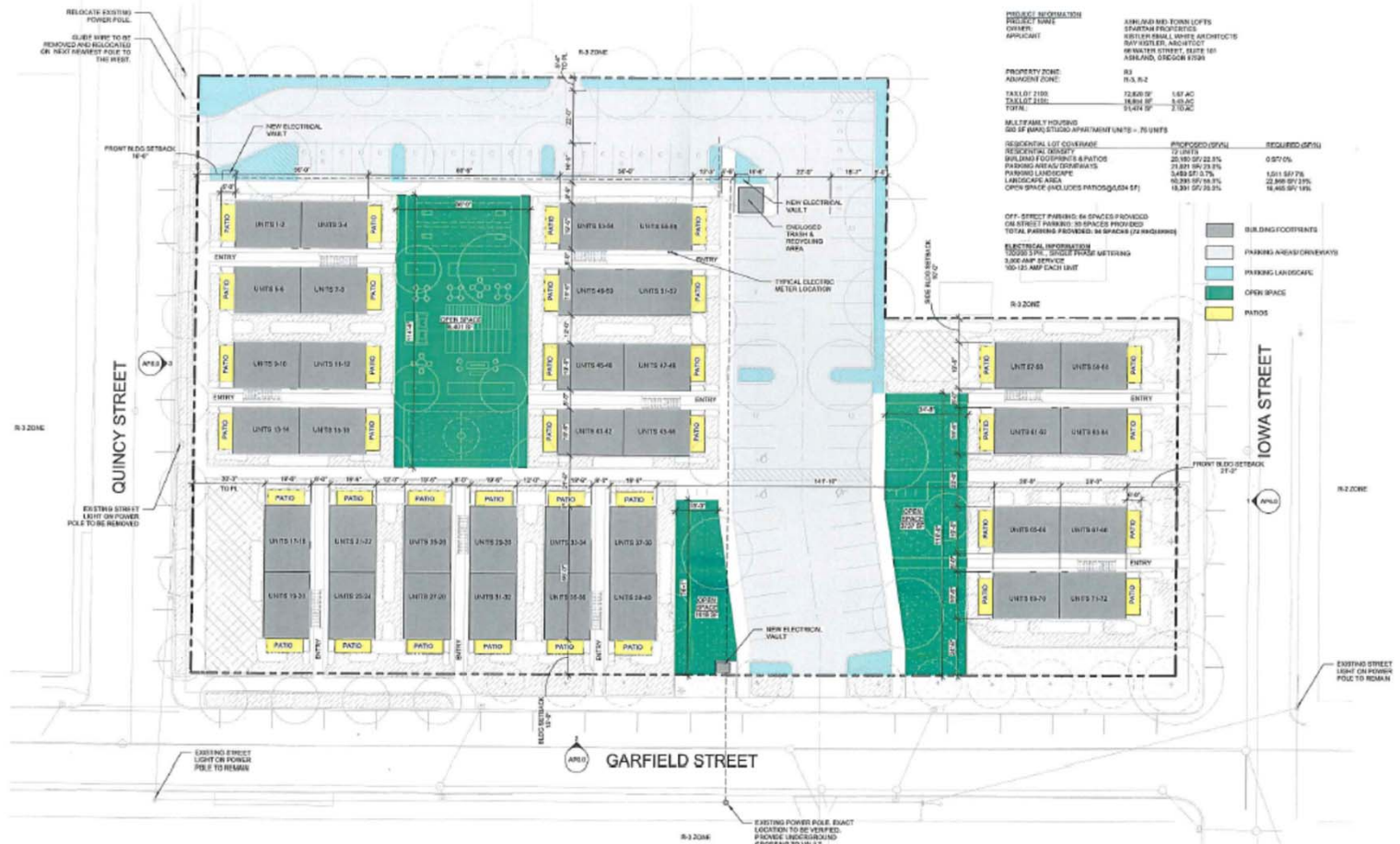
188 Garfield Street – Appeal Issue #7

The Planning Commission erred in granting the on-street parking credits and by approving a project with insufficient off-street parking.

- ✓ *72 off-street parking spaces are required for 72 studios. 64 off-street parking spaces with six on-street parking credits and two credits for additional bicycle parking were approved to meet the requirement.*
- ✓ *Six on-street credits require 132 linear feet. PC found that there were sufficient spaces to address this demand between the three frontages. (There are photos in the record illustrating parking available on the frontages.)*

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City of Ashland Planning Exhibit

Exhibit # P-001
 PA # TA-2018-00003
 Date 10.23.2018
 Staff JB

SITE PLAN W/ AREAS 1
 SCALE: 1" = 30'
 10'-0" 20'-0" 40'-0" 80'-0"

SITE PLAN W/ AREAS AP.1

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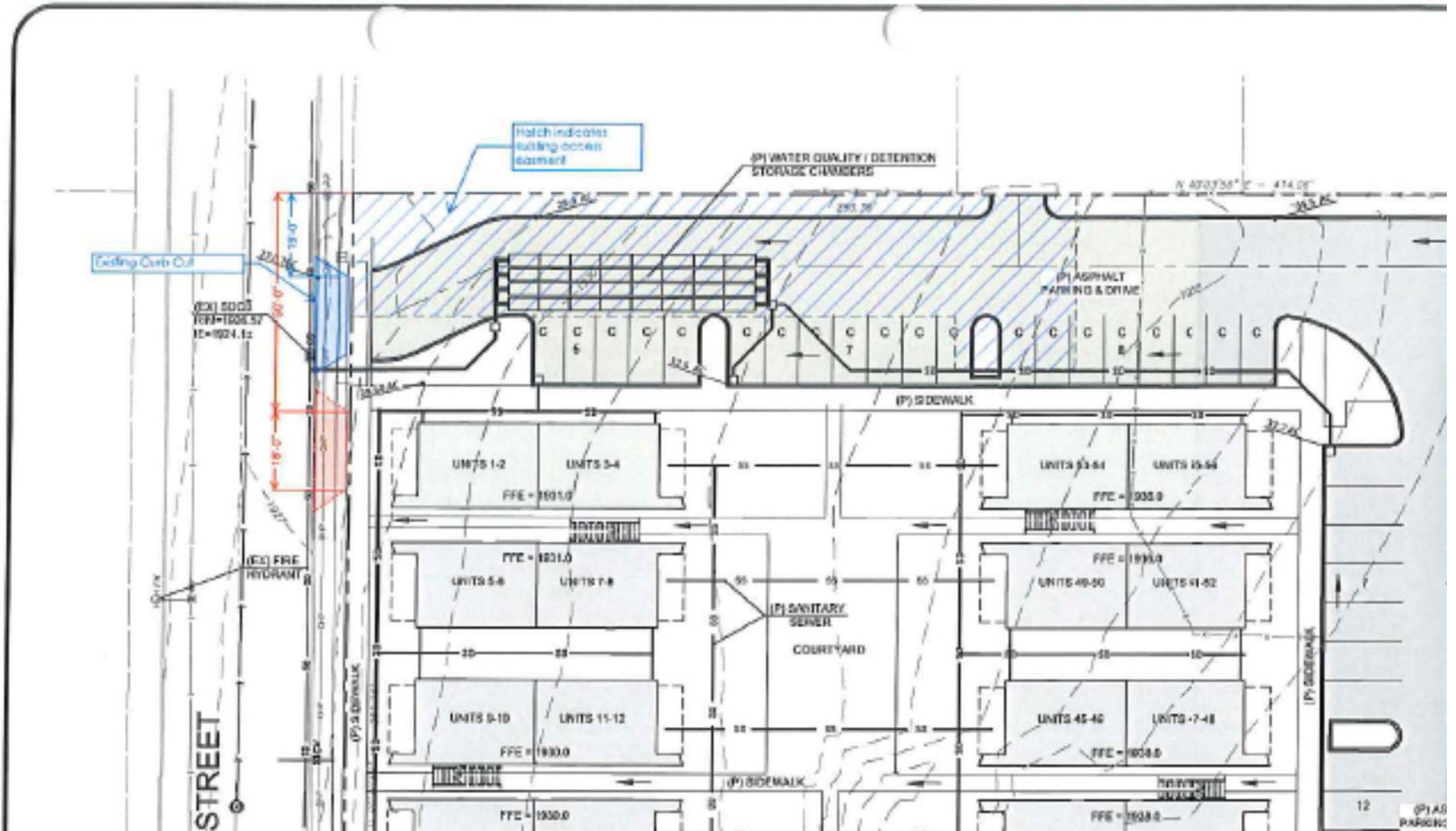
188 Garfield Street – Appeal Issue #8

The Planning Commission erred in approving a driveway location on Quincy Street in exception to the street standards.

- ✓ *Existing driveway which served large church parking lot is non-conforming. Standards require a 50-foot separation between driveways for developments of more than three units, 24-foot separation for fewer than three units. Current driveway separation is approximately 18 feet and is thus an existing non-conforming development.*
- ✓ *Easement serving another property requires a driveway in the current location.*
- ✓ *Applicants requested exception to combine two driveways into one wide curbcut rather than separating. Planning Commission instead approved an alternative to retain existing driveway location.*
- ✓ *Appellants argue that a reduction in separation requires a Variance; because this is an existing non-conformity it does not require a Variance but would require a Conditional Use Permit if non-conformity were modified.*
- ✓ *Planning Commission could have nonetheless required compliance and did not because with the easement in place it would have meant installing another driveway 50-feet from the existing.*
- ✓ *If Council determines roadway access should be otherwise addressed, could remand to PC for a Conditional Use Permit with an extension from the applicant.*

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188 Garfield Street – Appeal Issue #9

The content of the notice of public hearing was insufficient in not including the name and phone number of a City contact person and in failing to cite the applicable criteria and citations for decision.

- ✓ *Notice did not include the name of a City contact, and simply directed to “Planning” at the the main front office phone number where callers could be forwarded to the assigned planner. Template has since been updated.*
- ✓ *Issue not raised before the PC and there is no demonstration of any prejudice to a substantial right. Appellants were able to fully participate including requesting that the hearing be continued to allow them additional time to respond.*

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188 Garfield Street – Appeal Issue #10

The Planning Commission erred in approving an alternative to the landscaped medians and swales.

- ✓ *Second option for Exceptions is that there is no demonstrable difficulty in meeting standard, but exception will equally or better achieve the purpose of the standards.*
- ✓ *Purpose of the broader Site Development and Design Standards in Part 18.4 speaks to standards that in part promote resource protection, while purpose of the chapter involved (18.4.3) is more narrowly focused “to provide safe and effective access and circulation for pedestrians, bicyclists, and vehicles.”*
- ✓ *Applicants engineer noted that swales in parking lot were not suited to meeting drainage requirements, while the applicant indicated that the medians were walked on by tenants at times and a variable grade, rocky or sloped swale possibly filled with a grate system and possibly water was less safe or effective for tenant pedestrians than the alternative.*

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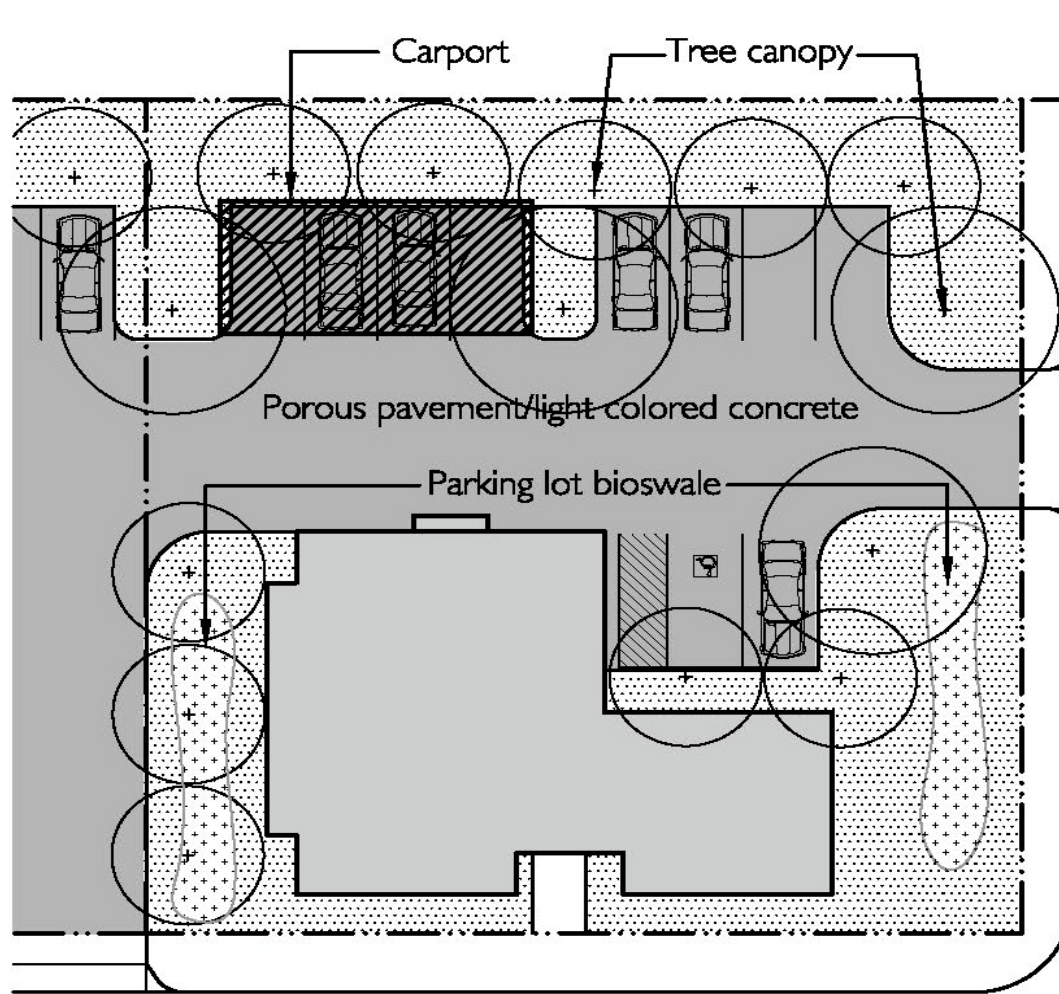
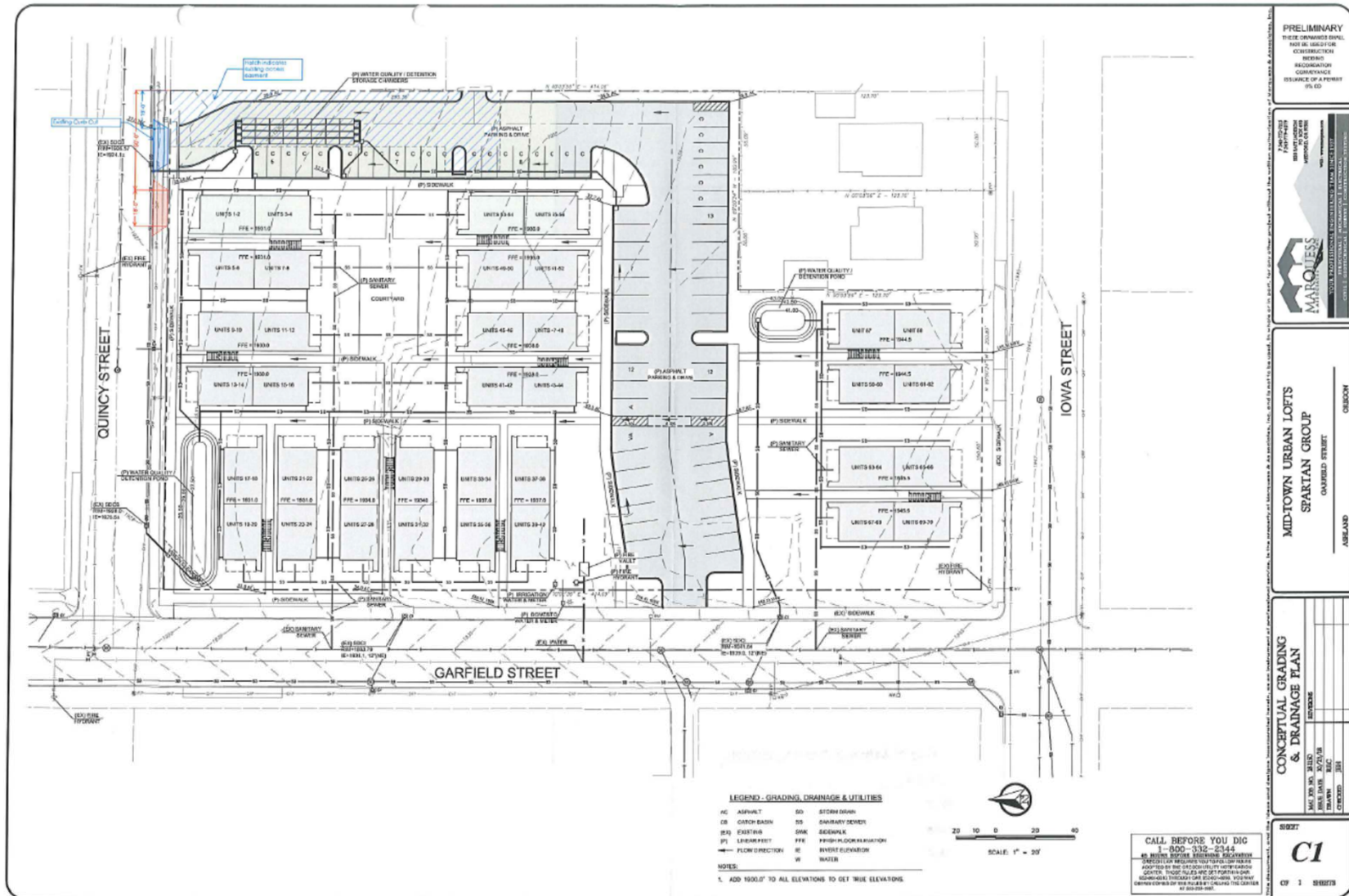


Figure 18.4.3.080.B.5
Parking Design to Reduce
Environmental Impacts

- b. Design parking lots and other hard surface areas in a way that captures and treats runoff with landscaped medians and swales.

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188 Garfield Street – Grading, Drainage & Utilities



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188 Garfield Street – Appeal Issue #11

The Planning Commission erred procedurally and failed to provide due process by admitting new evidence during the applicant’s rebuttal without providing other parties an opportunity to respond and in making findings which contradict the conditions of approval with regard to unit sizes, density bonuses and open and recreation space.

- ✓ *Applicant indicated and PC found that compliance was feasible; conditions were imposed to verify compliance.*
- ✓ *Issue not raised before the PC and there was no demonstration of any prejudice to a substantial right. Appellants were able to fully participate including requesting that the record be left open to allow them additional time to respond.*

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188 Garfield Street – Appeal Issue #12

The City erred procedurally and failed to provide due process by failing to provide the parties with the staff report and initial recommendations at least seven days before the initial public hearing, and in not making the full record available publicly.

- ✓ *Staff report and recommendations were provided in initial draft form with the understanding that recommendations might change in final version, which was made available five days prior to hearing.*
- ✓ *Issue not raised before the PC and there is no demonstration of any prejudice to a substantial right. Appellants were able to fully participate including requesting that the record be left open to allow them additional time to respond.*

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188 Garfield Street Staff Recommendation

Planning staff recommends that the Council affirm the decision of the Planning Commission, reject the appeal and direct staff to prepare findings for adoption by Council.

* * * * *

This application is subject to the 120-day rule under Oregon land use laws, and a final decision of the City is required by December 21st, with findings to be adopted within 14-days thereafter (*i.e. by January 4th*). The Council will need to schedule a meeting to adopt findings by the 4th or the applicant would need to extend the time limit to allow additional time to adopt findings at the January 15th regular meeting.

Remanding any part of the decision back to the Planning Commission would also require agreement of the applicant to extend the time limit.

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