

# Council Business Meeting

November 19, 2019

<b>Agenda Item</b>	Request for Sanitary Sewer Service Connection, 1156 Oak Street	
<b>From</b>	Scott Fleury, PE	Deputy Public Works Director
<b>Contact</b>	<a href="mailto:Scott.fleury@ashland.or.us">Scott.fleury@ashland.or.us</a> ; (541) 552-2412	

## SUMMARY

Before the Council is a request to approve a sanitary sewer service connection for the RR-5 zoned residential property located at 1156 Oak Street. Requirements for a sanitary sewer service connection outside of City Limits, and outside of the Urban Growth Boundary (UGB) are detailed in Ashland Municipal Code 14.08.031.

## POLICIES, PLANS & GOALS SUPPORTED

N/A

## PREVIOUS COUNCIL ACTION

The Council has previously approved sanitary sewer service connections outside city limits, within and outside of the UGB.

## BACKGROUND AND ADDITIONAL INFORMATION

Public Works staff was contacted by the property owner at 1156 Oak Street regarding the potential to obtain a City sanitary sewer service connection due to a failing septic tank system. The property is located outside of City limits and outside of the UGB. The property is a 1.10-acre parcel zoned RR-5 by Jackson County. The property is occupied by a 1590 square foot single story house, a barn, shed and mature landscaping.

The property owner is aware of the conditions set forth in AMC 14.08.031 to establish a sewer service connection. The property owner has completed all requirements and upon Council approval will record the required documents and pay the appropriate fees. The conditions which must be satisfied include:

Ashland Municipal Code 14.08.031:

A. Premises located outside the urban growth boundary may be connected to the Ashland sewer system when such connection is determined by the Ashland City Council to be in the best interest of the City of Ashland and to not be detrimental to the City's sewage facilities. Such connection shall be made only upon the following conditions:

- a. The applicant for sewer service pays the sewer connection fee and the systems development charges established by the City Council.
- b. The connection is for the use and benefit of dwellings and buildings completed and existing on July 1, 1973.

**The house was constructed in 1966-condition satisfied.**

- c. An Ashland sewer main or line exists within 100 feet of the premises. No main or lines will be extended to serve properties outside of the Ashland Urban Growth Boundary.

**A sanitary sewer main is located on the property itself (easement) and a second sanitary sewer main is located in Oak Street, approximately 20 feet from the property boundary-condition satisfied.**

- d. The applicant shall secure, in writing, statements from Jackson County that the existing sewage system has failed and that the provision of sewer by the City of Ashland does not conflict with the Jackson County Comprehensive Plan support documents, rules or regulations.

**Reference attachment #1-condition satisfied.**

- e. The property owner shall execute a deed restriction on the property that states that no further buildings or additions to existing buildings shall be connected to the sewer service.

**Reference attachment #2, property owner will record if a connection is approved and return recorded copy to City for records retention-conditions to be satisfied.**

- f. The property owner shall execute a contract with the City of Ashland which provides for payment of all charges connected with the provision of sewer service to the property; compliance with all ordinances of the City related to sewer service and that failure to pay for charges when due shall automatically become a lien upon the property. A memorandum of the contract shall be recorded in the county deed records with the cost of recording to be paid by the property owner.

**Reference attached #2, property owner will record if a connection is approved and return recorded copy to City for records retention-conditions to be satisfied.**

B. The City Council may also provide sewer service outside the urban growth boundary by special contract under such terms and conditions the Council deems appropriate when such connection is in the best interest of the City. (Ord. 2704, amended, 1993)

### **FISCAL IMPACTS**

The only resource is staff time expended to bring forth the request to the City Council. The property owner will be required to pay the recording fees associated with the consent to annexation; consent not to subdivide; pay the appropriate system development charge (SDC) and the monthly sewer bill charges. Per Resolution 2019-11; sewer rates outside City limits shall be two times the sewer charge for inside City limits. The quantity charge for unmetered accounts will be calculated on an average winter time usage of 700 cubic feet per month.

The SDC fee for residential is calculated on a square foot basis for livable space (\$2.0787/square foot). The residential until is 1,590 square feet in total. The total SDC is calculated to be 1,590 square feet x \$2.0787/square foot = \$3,305.13

### **STAFF RECOMMENDATION**

Staff recommends approval of the water service connection for 1156 Oak Street as the property owner has or will met all conditions specified in AMC 14.08.031.

### **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

Move to approve a sanitary sewer service connection for 1156 Oak Street.

Move to deny a sanitary sewer service connection for 1156 Oak Street.

### **REFERENCES & ATTACHMENTS**

Attachment 1: Sanitary Sewer Service Agreement

Attachment 2: DEQ Notification

## **SPECIAL AGREEMENT FOR A SANITARY SEWER SERVICE CONNECTION**

This Special Agreement for a Sanitary Sewer Service Connection (“Agreement”) is entered into by and between the City of Ashland, an Oregon municipal corporation (“City”), and Benjamin Gault, an individual and the property owner of Tax Lot 391E04A TL-700 (“Owner”).

### **RECITALS**

- A.** Owner owns that real property located at 1156 Oak Street, Ashland, Oregon, and which is outside of the City’s Urban Growth Boundary (“UGB”). The real property (the “Property”) is more particularly described in Exhibit “A” which is attached hereto and incorporated herein by this reference.
- B.** Owner desires a sanitary sewer service connection to the City of Ashland public sewer main.
- C.** AMC 14.08.031 allows the City to connect premises located outside the UGB to the City’s sewer system when such connection is determined by the Ashland City Council to be in the best interest of the City of Ashland and to not be detrimental to the City’s sewage facilities. Such a connection may only be made upon those conditions specified in AMC 14.08.031.A. Those conditions include the following:
1. The applicant for sewer service pays the sewer connection fee and the systems development charges established by the City Council.
  2. The connection is for the use and benefit of dwellings and buildings completed and existing on July 1, 1973.
  3. An Ashland sewer main or line exists within 100 feet of the premises. No main or lines will be extended to serve properties outside of the Ashland Urban Growth Boundary.
  4. The applicant shall secure, in writing, statements from Jackson County that the existing sewage system has failed and that the provision of sewer by the City of Ashland does not conflict with the Jackson County Comprehensive Plan support documents, rules or regulations.
  5. The property owner shall execute a deed restriction on the property that states that no further buildings or additions to existing buildings shall be connected to the sewer service.
  6. The property owner shall execute a contract or agreement with the City of Ashland which provides for payment of all charges connected with the provision of sewer service to the property; compliance with all ordinances of the City related to sewer service and that failure to pay for charges when due shall automatically become a lien upon the property. A memorandum of the contract or agreement shall be recorded in the county deed records with the cost of recording to be paid by the property owner.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **PAYMENT OF SDC CHARGES.** Owner agrees to pay the “residential” sanitary sewer Systems Development Charges (“SDC Charges”) established by the City Council in the amount of \$3305.13 (three thousand three hundred and five dollars and thirteen cents.
2. **USE AND BENEFIT.** The extension of the sewer line shall be solely for the use and benefit of the existing 1590 (one thousand five hundred and ninety) square foot single story residence located on the Property. Such residence was completed and existing on July 1, 1973.
3. **FUTURE EXPANSION.** This Agreement shall not prevent Owner from expanding the facilities on the subject Property, in conformance with Jackson County, Oregon, land development and zoning requirements. However, any further extension of the City sewer line, or any additional sewer connections, must be approved in writing by the City at the time the Owner makes an application to Jackson County for a project which involves additional sewer connections or extensions.
4. **FURTHER DEVELOPMENT.** City acknowledges that the Property may be further developed, subdivided, or partitioned as allowed under Jackson County land use and zoning regulations, provided that in no event shall a higher density of residential development take place than would be authorized without the presence of the City sewer system’s connection, and provided further that the City sewer line on the Property shall not be extended to serve additional properties or development without the written consent of the City.
5. **PAYMENT FOR SERVICE.** The City shall bill Owner for providing sewer services in accordance with the City’s standard requirements, and Owner shall pay all such billings timely. If a bill is not paid by the next billing date, a notice complying with the then-current regulations for utility services shall be given stating that service will be disconnected if the bill is not paid by the date specified.
6. **TERMS OF CITY-PROVIDED SEWER SERVICE.**
  - A. Owner shall comply with all ordinances of the City related to sewer service and use. The City shall have the right to terminate sewer service to the Property for any failure to comply with such ordinances, upon not less than ten (10) days’ prior written notice to Owner.
  - B. Failure to pay all charges when due shall automatically become a lien upon the Property.
  - C. This Agreement shall be recorded in the County Deed Records, with the cost of recording to be paid by Owner.

D. In the event Owner's buildings which are legally connected to the City sewer system are subsequently replaced for any reason, the replacement buildings may continue to be connected to the City's sewer system without further agreement, as long as the use of the sewer system will not be increased as determined by the Director of Public Works.

**7. DEFAULT.**

A. Time is of the essence for any obligation set forth in this Agreement. It shall be a default under this Agreement if either party fails to perform any act or obligation required of that party by this Agreement.

B. Before declaring a breach of this Agreement, the party claiming a failure has occurred shall give written notice to the other party specifying the nature of the breach with reasonable particularity. No default shall occur if the breach is remedied within ten (10) days after the written notice is given.

C. If the breach specified in the written notice is of such a nature that a remedy cannot be completely performed within the ten (10)-day period, no default shall occur if the party receiving the notice begins performance of the act or obligation within the ten (10)-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

D. If substantially the same breach for which notice was given recurs within six (6) months, the party injured by such breach may declare a default by giving written notice to the other party specifying the nature of the breach.

**8. AMENDMENTS.** This Agreement may be amended only by written instrument executed by both parties with the same formalities as this Agreement.

**9. GOVERNING LAW; JURISDICTION:** This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Jackson County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon.

**10. REMEDIES.** In addition to the remedies specified elsewhere in this Agreement, if a default occurs, the party damaged by the default may elect to terminate this Agreement and pursue any equitable or legal rights and remedies available under Oregon law.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the dates set forth below.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Signature: \_\_\_\_\_  
Benjamin Gault

State of Oregon        )  
                                  )        ss.  
County of Jackson    )

Personally, appeared before me the above-named Benjamin Gault and acknowledged the foregoing instrument to be his voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Signature: \_\_\_\_\_  
Kelly A. Madding, City Administrator

State of Oregon        )  
                                  )        ss.  
County of Jackson    )

Personally, appeared before me the above-named Kelly A. Madding and acknowledged the foregoing instrument to be her voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

# EXHIBIT A

85-12063

4

et- Accom  
WARRANTY DEED

8.00  
2.00

KNOW ALL MEN BY THESE PRESENTS, That KARL BUBLER and ADALBERT WIESEN, hereinafter called the grantors, for the consideration hereinafter stated, to grantors paid by BEN GAULT, hereinafter called the grantee, do hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Jackson and State of Oregon, described as follows, to wit:

Beginning at a point on the east line of Oak Street, North 3°00' East, 444.2 feet and East, 30.0 feet from the point of centerline intersection of said Oak Street and Nevada Street in the City of Ashland, Jackson County, Oregon, being the northwest corner of property described in Volume 584 page 486 of the Deed Records of Jackson County, Oregon; thence East, 582.48 feet along the north line of said property to the northeast corner thereof; thence South 30°00' East along the east line of said property, 86.5 feet, more or less, to a point that is 75.0 feet South of the north line of said property when measured at right angles therefrom; thence West, 75.0 feet South of and parallel to said north line, 629.71 feet, more or less, to the east line of said Oak Street; thence North 3°00' East along said Street line, 75.1 feet, more or less, to the point of beginning.

Code 5-4 Account 391E4BD Tax Lot 101

SUBJECT TO:

1. Easement for transmission and distribution of electricity, granted The California Oregon Power Company as set forth in Volume 328 page 66, Jackson County, Oregon, Deed Records.
2. Sewer line easement recorded in Volume 521 page 225, Jackson County, Oregon, Deed Records.

TO HAVE AND TO HOLD the same unto the said grantee and grantee's heirs, successors and assigns forever.

And said grantors hereby covenant to and with said grantee and grantee's heirs, successors and assigns that grantors are lawfully seized in fee simple of the above granted premises, free from all encumbrances except as above stated, and that

Return to: Ben Gault  
Page 1. 1156 Oak St. Ashland OR 97520

85-12063

grantors will warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever, except those claiming under the above described encumbrances.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$14,000.00.

WITNESS grantors' hands this 15<sup>th</sup> day of November, 1971.

Karl Bublter  
Karl Bublter

Adalbert Wiesen  
Adalbert Wiesen

Jackson County, Oregon  
Recorded  
OFFICIAL RECORDS

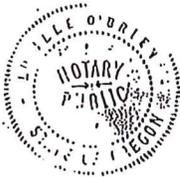
11:37 JUL 25 1985 A.M.

STATE OF OREGON )  
County of Jackson ) ss.  
November 15, 1971

KATHLEEN S. BECKETT  
CLERK and RECORDER  
By [Signature] Deputy

Personally appeared the above named KARL BUBLER and ADALBERT WIESEN, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:



[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires:  
Nov. 4-1973

This instrument filed for record is an accommodation only.  
It has not been examined as to its execution or as to its effect upon the title.  
Grator Title Insurance Co.



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Western Region Medford Office

221 Stewart Avenue, Suite 201

Medford, OR 97501

(541) 776-6010

FAX (541) 776-6262

TTY 711

October 1, 2019

Re: Onsite Wastewater Treatment System at 1156 Oak St., Ashland OR 97520

To whom it may concern,

Oregon Administrative Rule (OAR) 340-071-0160 (4)(f) states, "The agent must deny a permit if any of the following occurs: (f) A sewerage system that can serve the proposed sewage flow is both legally and physically available, as described in paragraphs (A) and (B) of this subsection.

(A) Physically availability.

- i. A sewerage system is considered available if topographic or man-made features do not make connection physically impractical and one of the following applies.
  1. For a single family dwelling or other establishment with a maximum projected daily sewage flow not exceeding 899 gallons, the nearest sewerage connection point from the property to be served is within 300 feet.

In looking at the sewerage system map of the City of Ashland it appears that there is an existing sewerage system that is within 300 feet of 1156 Oak St., Ashland OR. If this is correct then DEQ cannot issue a repair permit for the onsite wastewater treatment system.

Please let me know if you have any further questions,

Marty Easter  
Regional Onsite Wastewater Specialist  
Oregon Department of Environmental Quality  
221 Stewart Ave, Suite 201  
Medford, OR 97501  
541-776-6289