

**ASHLAND PLANNING COMMISSION
REGULAR MEETING
September 8, 2020
AGENDA**

- I. **CALL TO ORDER:** 7:00 PM, Civic Center Council Chambers, 1175 E. Main Street
- II. **ANNOUNCEMENTS**
- III. **CONSENT AGENDA**
 - A. **Approval of Minutes**
 - 1. July 28, 2020 Special Meeting
 - 2. August 11, 2020 Regular Meeting
- IV. **PUBLIC FORUM**
- V. **UNFINISHED BUSINESS**
 - A. Approval of Findings for PA-T2-2020-00020, 705 Helman Street (Helman Elementary School)
 - B. Approval of Findings for PA-T3-2019-00001, 1511 Hwy 99 N
- VI. **TYPE II PUBLIC HEARINGS CONT'D**
 - A. **PLANNING ACTION: #PA-APPEAL-2020-00011 (appealing PA-T1-2020-00109)**
 - SUBJECT PROPERTY:** 345 Clinton Street
 - OWNER/APPLICANT:** Rogue Planning and Development/Paul Mace & Kathleen Kahle
 - DESCRIPTION:** Consideration of an appeal of the administrative approval PA-T1-2020-00109 of a two-lot partition of a 12.29-acre lot for the property located at 345 Clinton. The tentative partition plat creates two parcels that are 8.943 ac. and 3.35 ac in size, with the smaller parcel situated in the southeast of the parent parcel. **COMPREHENSIVE PLAN DESIGNATION:** Single Family Residential; **ZONING:** R-1-5; **MAP:** 39 1E 04 DB; **TAX LOT:** 401 *(Please note: The record and public hearing is closed on this matter. The Planning Commission's consideration of this item will be limited to their deliberation and decision. No further submittals (evidence or argument) will be accepted into the record.)*
- VII. **ADJOURNMENT**



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development office at 541-488-5305 (TTY phone is 1-800-735-2900). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title 1).

**CITY OF
ASHLAND**
ASHLAND PLANNING COMMISSION
SPECIAL MEETING
MINUTES - *Draft*
July 28, 2020

I. CALL TO ORDER:

Chair Haywood Norton called the meeting to order at 7:01 p.m.

Commissioners Present:

Michael Dawkins
Alan Harper
Haywood Norton
Roger Pearce
Lynn Thompson

Staff Present:

Bill Molnar, Community Development Director
Maria Harris, Planning Manager
Derek Severson, Senior Planner
Dana Smith, Executive Assistant

Absent Members:

Kerry KenCairn

Council Liaison:

Stef Seffinger, absent

II. ANNOUNCEMENTS

Community Development Director Bill Molnar announced the Commission would hear the appeal of a Type I administrative approval on 345 Clinton Street, PA-T1-2020-00109 in August. Staff received an appeal of the Planning Commission decision for PA-T2-2020-00017 at 210 Alicia Street Friday, July 24, 2020. It would go before the City Council at their meeting August 18, 2020. The City Council heard from staff on the Affordable Housing Standards update at their Study Session July 20, 2020.

III. PUBLIC FORUM - None

IV. TYPE III PUBLIC HEARINGS CONT'D

A. PLANNING ACTION: #PA-T3-2019-00001

SUBJECT PROPERTY: 1511 Hwy 99 N

**OWNER/AGENTS/APPLICANT: Linda Zare/Casita Developments, LLC & Kendrick Enterprise, LLC/
Rogue Planning & Development Services, LLC**

DESCRIPTION: A request for Annexation of a 16.87-acre parcel and Zone Change from County RR-5 Rural Residential to City R-2 (Low Density, Multi-Family Residential) for the properties located at 1511 Highway 99 North. The annexation is to include adjacent railroad property and state highway right-of-way. The application includes conceptual details for the future phased development of 196 apartments (1- and 2-Bedrooms, ranging from 480-701 square feet) in 14 two-story buildings; Outline Plan subdivision and Site Design Review development approvals are not requested here, and would be applied for subsequent to annexation. The application also requests an Exception to Street Standards to deviate from city standard parkrow and sidewalk improvements to respond to constraints of right-of-way width and existing encroachments. COMPREHENSIVE PLAN DESIGNATION: Multi-Family Residential; ZONING: Existing – County RR-5, Proposed – City R-2; ASSESSOR'S MAP: 38 1E 32; TAX LOT#'s: 1700 & 1702.

Chair Norton read the rules of the electronic public hearing.

Staff Report

Senior Planner Derek Severson provided a presentation (see attached):

- Classroom Addition Proposal
- Vicinity Maps
- Video Tour by the Applicants
- Demolition Plan
- Pedestrian Access & Circulation (AMC 18.4.3.090)
- Parking Lot Landscaping & Screen Standards (AMC 18.4.4.030) / Street Dedication Requirements (AMC 18.4.6.030.C1)

- Civil Site Plan
- Aerial Photo (2018)
- “Grand Terrace” Annexation
- “Grand Terrace” Conceptual Elevations
- “Grand Terrace” Pedestrian Circulation
- “Grand Terrace” Open Spaces
- Contiguity & the Railroad Property
- “Grand Terrace” Annexation
- Oregon Revised Statutes (ORS) 222.170
- Transportation and Circulation – Access
- Driveway Treatment
- Site Design Review
- Vehicle Area Design (18.4.3.080.B.4 & .080.C)
- Driveways and Turn-around Design (18.4.3.080.D)
- City of Ashland Street Design Standards (AMC Table 18.4.6.040.F)
- Easement Language
- Frontage Improvements (North)
- Frontage Improvements (South)
- Transit Improvements
- Issues from last month’s discussion...
- Affordability, Base Density and Undevelopable Lands
- Tonight

Questions of Staff

Commissioner Pearce asked what the proposal was for rezoning the Oregon Department of Transportation (ODOT) and the Central Oregon and Pacific Railroad properties. Mr. Severson thought it would go in the R-2 zone. Borders between districts extended to the center of the right of way.

Applicant’s Presentation

Robert Kendrick/Ashland/Explained it had been a year-long process. Had he known; he would have submitted the proposal differently. The affordability component had been a challenge. The requirements could break the project. He was open to making a lot line adjustment to make the units fit. He had wanted to avoid doing two sets of plans, so he submitted developers plans that had caused some confusion. The project worked. He acknowledged the public response having a project on Highway 99. He used the Road Diet as an example noting that since it was put in place accidents and injuries had decreased dramatically. Ashland built approximately 15 apartments each year when it could handle over 50 yearly. The type of housing in this project would keep people in town.

Public Testimony

Don Greene/Ashland/Noted his credentials as a planning commissioner in Ashland and Jackson County for 30 years. He referenced a section of the parking ordinance and questioned having a driveway access for a 200-unit development instead of requiring it to be a street. The code also required 5-foot landscape areas when it abutted private property. He did not think there was enough space to meet the requirements. The driveway needed a sidewalk and should have a bike path. The driveway would not accommodate bikes with 1,800 vehicle trips a day.

Rebuttal by Applicant

Amy Gunter/Medford/Explained the exception to the design standard for 5-foot landscaping abutting private property would be explored during site review. They were showing the driveway conceptually and it was not up for approval currently. She clarified all trips to the site were not impacting this one narrow driveway, there would be other access points. Additionally, apartments did not have a.m. and p.m. peak hour volumes.

Questions of the Applicant

Commissioner Thompson asked about the conclusion of the traffic impact analysis done by Sandow Engineering that projected all site driveways would operate safely and efficiently. She only received the executive summary. Mr. Kendrick explained they submitted two reports. Mr. Severson clarified the packet and traffic impact analysis (TIA) was posted online. Ms. Gunter explained vehicle trip numbers, their distribution throughout the day, the turning lane by the trestle and driveway were adequate to accommodate right and left turns in and out of the property. The driveways met the standards. Mr. Molnar added ODOT concurred it met the requirement as well.

Commissioner Thompson wanted to ensure the conceptual ideas with the driveways would meet the access requirements. She asked what the conceptual plan was for pedestrian and bicycle access using the driveway within the easement. Mr. Kendrick explained there would not be a lot of cars parked on the easement and access area. A bicyclist would most likely use the main entry point. It would also depend on the time of day. Maximum peak loads projected 50 or 60 cars in the morning and afternoon. They could make the driveways shared use instead of incorporating bike paths on the easement road. Mr. Kendrick wanted a dedicated bike lane at the other entrance. They had paths already designed into the project and would add almost a mile for the rest of the sidewalk. It was a multi-modal project. They would provide electric cars onsite for residents to use. Ms. Gunter added the bike lane along the highway was already installed and would remain.

Commissioner Thompson wanted to know how a bicyclist would access the site riding north. Mr. Kendrick explained they would use good judgment and cross at the safest point. Ms. Gunter added painted arrows and restriping was suggested. It would be no different than all the other intersections without a bike path.

Commissioner Thompson wanted to know if the same would apply to a pedestrian trying to cross the highway. Mr. Kendrick responded there was excellent connectivity to the bus line on Valley View. It was a fifteen-minute walk.

Ms. Gunter noted the conclusions drawn in the TIA. The traffic engineer found all mobility standards met the current conditions and future developments. All intersections, whether they were marked or unmarked, were considered crosswalks.

Deliberations & Decision

Commissioner Pearce commented on the findings. Page 8, section 2.2. stated the proposal met the applicable criteria and it did not. He suggested saying it did not meet the boulevard street standards and the applicant would apply for an exception.

Commissioner Pearce explained the applicant did not meet the affordable housing base density either. The applicant had subtracted unbuildable areas from the calculation. Staff was recommending changing that in the code. Presently, it was not in the code so the proposal did not meet the standards. The City Council could modify the affordable housing requirements in the Type III legislative action on the annexation if they agreed with the applicant.

In the section regarding contiguity, Commissioner Pearce noted staff had included the ODOT property and justified adding it. Then ODOT agreed on including the property. The findings did not reflect that. He suggested making the findings about public facilities. That the Public Works Department reviewed the availability of water and sewer and with these conditions it would be ok.

On page 11 under **Electric**, strike the last sentence. Lastly, the Transportation section was confusing and should be rewritten to adhere with the ordinance. On the same page, Commissioner Thompson suggested deleting that it was ok the applicant did not have a site design plan. The applicant chose their approach and the Commission making findings on that approach was not necessary or appropriate. She also wanted to exclude wording that referenced what their attorneys had said.

Commissioner Harper did not agree that the City Council could choose to do whatever it wanted with the standards. He also spoke to the importance of the easement. Without the easement, the project did not meet the standard. Commissioner Dawkins agreed.

The Commission discussed the testimony Mr. Greene provided. They considered it a driveway instead of a street.

Commissioner Pearce/Dawkins m/s to move PA-T3-2019-00001 on to City Council with revised Findings.

DISCUSSION: Commissioner Pearce recommended a traffic speed study on Highway 99 at some point. Commissioner Thompson suggested adjusting the affordable housing units in the findings to 56 units or 37 if it was at 60%.

She did not think the Commission had the authority to make a recommendation contrary to the code to exclude unbuildable lands in the calculation. She reiterated her concerns about transportation safety (Section E of the Annexation Standards). Specifically that ODOT was unwilling to agree to any speed limit reduction, installation of a signal or even a crosswalk given the size of the development, the volume of cars, the history of traffic accidents according to the testimony of the community surrounding the development and the danger to bicyclists and pedestrians as well as vehicles of attempting to cross the highway under these circumstances. She also wanted language like the Transportation Commission's safety issue comments included in the findings. She thought the speed limit in that area should be addressed. Commissioner Dawkins agreed. Commissioner Pearce thought it could be treated in the findings. Commissioner Harper agreed. **Roll Call Vote: Commissioner Pearce, Harper, Thompson, Norton and Dawkins, YES. Motion passed.**

V. LEGISLATIVE PUBLIC HEARING

A. PLANNING ACTION: PA-L-2020-00008

APPLICANT: City of Ashland

DESCRIPTION: A public hearing on ordinance amendments to the Ashland Land Use Ordinance to update and clarify the open space requirements and design standards for multifamily and single-family housing developments, and to correct terminology related to open space and other minor wording edits. The proposed amendments include two ordinances: 1) An ordinance amending Chapters 18.2.5 Standards for Residential Zones, 18.3.9 Performance Standards Option and PSO Overlay, 18.4.2 Building Placement, Orientation, and Design, 18.4.4 Landscaping, Lighting, and Screening, and 18.6 Definitions of the Ashland Land Use Ordinance to amend the open space requirements and design standards, and 2) an ordinance amending chapters 18.2.2 Base Zones and Allowed Uses, 18.2.3 Special Use Standards, 18.2.5 Standards for Residential Zones, 18.3.2 Croman Mill District, 18.3.4 Normal Neighborhood District, 18.3.5 North Mountain Neighborhood District, 18.3.9 Performance Standards Option and PSO Overlay, 18.3.10 Physical and Environmental Constraints Overlay, 18.3.11 Water Resources Protection Zones (Overlays), 18.3.14 Transit Triangle Overlay, 18.4.2 Building Placement, Orientation, and Design, 18.4.2 Parking, Access, and Circulation, 18.4.4 Landscaping, Lighting, and Screening, 18.4.5. Tree Preservation and Protection, 18.4.6. Public Facilities, 18.5.2 Site Design Review, 18.5.3 Land Divisions and Property Line Adjustments, and 18.5.7 Tree Removal Permits of the Ashland Land Use Ordinance for consistency in terminology related to open space and other minor wording edits.

Staff Report

Planning Manager Maria Harris provided a presentation (see attached):

- Issues
 - Surfacing standard in proposed 18.4.4.070.Ca
 - Private open space standards, walkways and storage space, ground floor dwelling units' size
 - Table in 18.4.4.070.A
 - Cross reference open space fence requirements
- New Standards
- Current Surfacing Standard 18.4.2.030 Residential Development
- Proposed Surfacing Standard
- Shared Outdoor Space
- Renderings
- Examples of multifamily developments common open space
- Minimum Area Required in Lawn, Courts, Etc.
- Staff Recommendation
- Water Conservation & Climate Change
- Ground Floor Private Open Space 18.4.070.D
- Other Changes in Version 3

Questions of Staff

Commissioner Thompson discussed counting walkways and storage areas with Ms. Harris. Counting them addressed walkways that went through private open space like a porch, patio, or deck area.

Commissioner Pearce confirmed that moving Surfacing from Section 4 to Section 5 of the common open space standards made it applicable only to R-2 and R-3 zones.

Commissioner Thompson addressed the reference in the new table regarding maximum area allowed in private open space. She wanted to know why it was allowed only up to a certain amount. Ms. Harris explained if it was 10 units or more, the other half had to be in common open space. Commissioner Pearce commented they would provide additional open space and receive only half a credit.

Deliberations & Decision

Commissioner Pearce was not sure he supported the 48 to 60 sq. ft. dimensions for private open space. He thought people should do the door swing calculations. Mr. Molnar thought the issue would be if the 48 sq. ft. was intended to be exclusive of those other areas. A usable area had a minimum dimension of 6 feet and should be at least 48 sq. ft. By default, it was 6 x 8. The walkways and storage areas would have to be left out to create an exclusive 48 sq. ft. space. Ms. Harris clarified the concern was the administrative task of calculating for the applicants.

Commissioner Thompson/Pearce m/s to modify the proposed ordinance to incorporate Version 3 excluding Section D1 and D2. DISCUSSION: None. **Roll Call Vote:** Commissioner Thompson, Norton, Dawkins, Pearce, and Harper. **YES. Motion passed.**

Ms. Harris noted the Surfacing standard was in Version 2.

Commissioner Thompson/Pearce m/s to modify the proposed ordinance to reflect the change in the Surfacing standard as reflected in Version 2 of the proposal as well as stating lawn and durable lawn alternatives and striking the list. DISCUSSION: Commissioner Harper suggested stating lawn and durable lawn alternatives and striking the list. Commissioner Thompson accepted the modification. **Roll Call on the amended motion:** Commissioner Dawkins, Harper, Thompson, Pearce and Norton, **YES. Motion passed.**

VI. ADJOURNMENT

Meeting adjourned 9:04 p.m.

*Submitted by,
Dana Smith, Executive Assistant*

1511 Highway 99N

“Grand Terrace” Annexation

CITY OF
ASHLAND

Planning Commission
Cont'd Public Hearing
July 28, 2020



1511 Highway 99N Aerial Photo (2018)

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1 inch = 200 feet
0 62.5 125 250 375 500
Feet

Mapping is schematic only and bears no warranty of accuracy.
All features, structures, facilities, easement or roadway locations
should be independently field verified for existence and/or location.

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1511 Highway 99N

“Grand Terrace” Annexation



Annexation Request: 16.87-acres in two parcels from County RR-5 (Rural Residential) to City R-2 (Low Density, Multi-Family Residential)

Conceptual future phased development of 196 apartments.

Land Use approvals (Outline Plan subdivision, Site Design Review, etc.) for site development are to be applied for subsequent to Annexation.

1511 Highway 99N

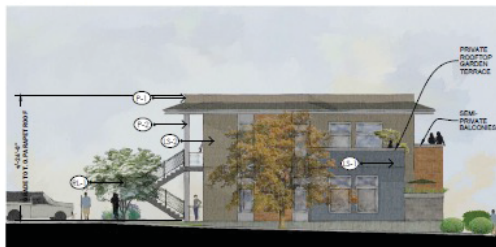
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“Grand Terrace” Conceptual Elevations



F NORTHWEST EXTERIOR ELEVATION

SCALE: NONE



E SOUTHEAST EXTERIOR ELEVATION

SCALE: NONE



D SOUTHWEST EXTERIOR ELEVATION

SCALE: NONE



C NORTHEAST EXTERIOR ELEVATION

SCALE: NONE



B NORTHWEST BIRDSEYE VIEW

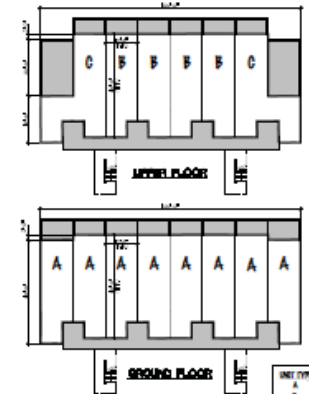
SCALE: NONE



A NORTHEAST BIRDSEYE VIEW

SCALE: NONE

EXTERIOR FINISH & COLOR SCHEDULE				
SYMBOL	FINISH	COLOR	PRODUCT	NOTES
US-1	HORIZ. LAP SIDING	DOYENNE BLUE	HARDIE PLANK OR EQUAL	
US-2	HORIZ. LAP SIDING	KANSAS BROWN	HARDIE PLANK OR EQUAL	
US-3	HORIZ. LAP SIDING	WOOD	LONGBOARD SIDING OR EQUAL	
P-1	PAINT 1	MATCH US-2	SHERWIN WILLIAMS	
P-2	PAINT 2	LIGHT GREY	SHERWIN WILLIAMS	
ROOFING	COMP. SHINGLE	ASH GREY	BID SOURCE	
RL-1	METAL FLASHING	CHARCOAL GREY	BID SOURCE	
RL-2	GLITTERS	MATCH US-2	BID SOURCE	
FINISHES	WINDOWS - VINYL	WHITE	BID SOURCE	
DOORS - WOOD	CLEAR COAT	BID SOURCE		
RAILINGS	STEEL PAINTED	CHARCOAL GREY	BID SOURCE	
STEEL CABLE WIRE	PAINT	BID SOURCE		
WOOD CEDAR	CLEAR	BID SOURCE		
MASONRY	CMU	DUSTYWOOD	MUTUAL MATERIALS OR EQUAL	



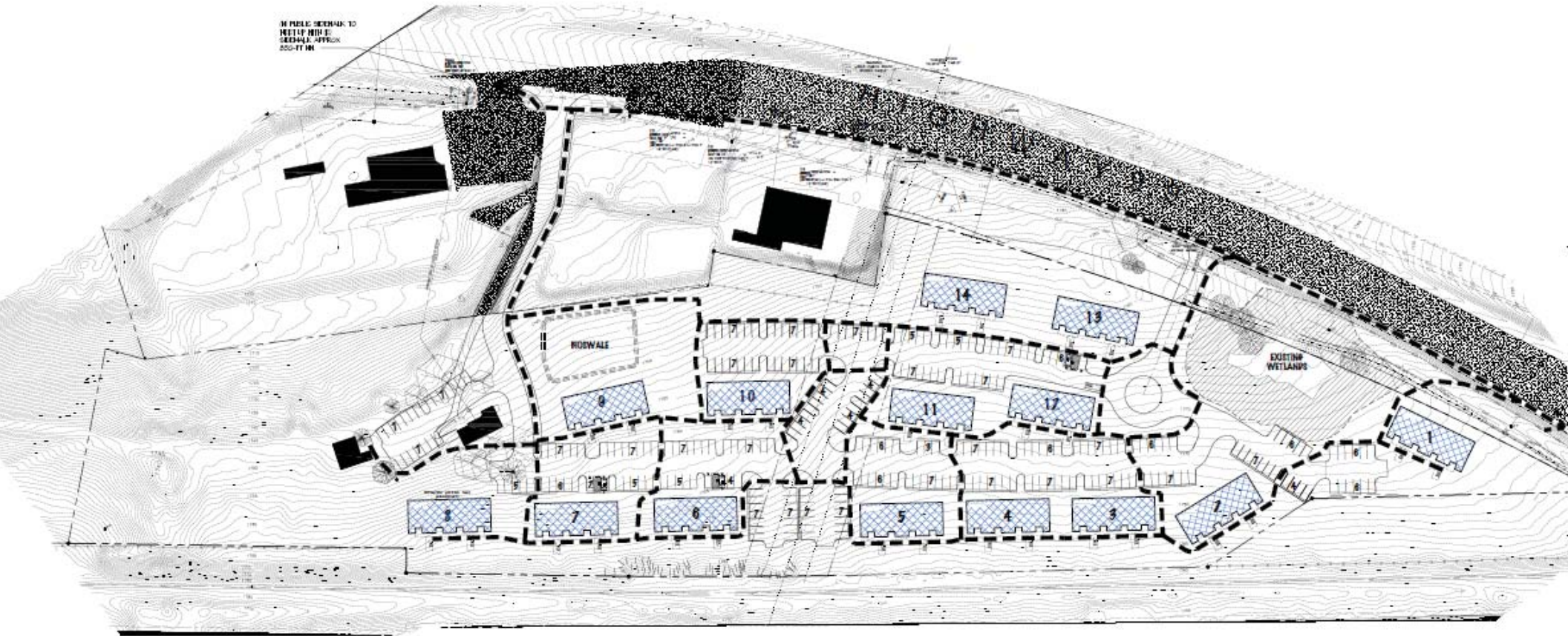
1 UNIT DIAGRAM

NOT TO SCALE

1511 Highway 99N

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“Grand Terrace” Pedestrian Circulation



1511 Highway 99N

“Grand Terrace” Open Spaces

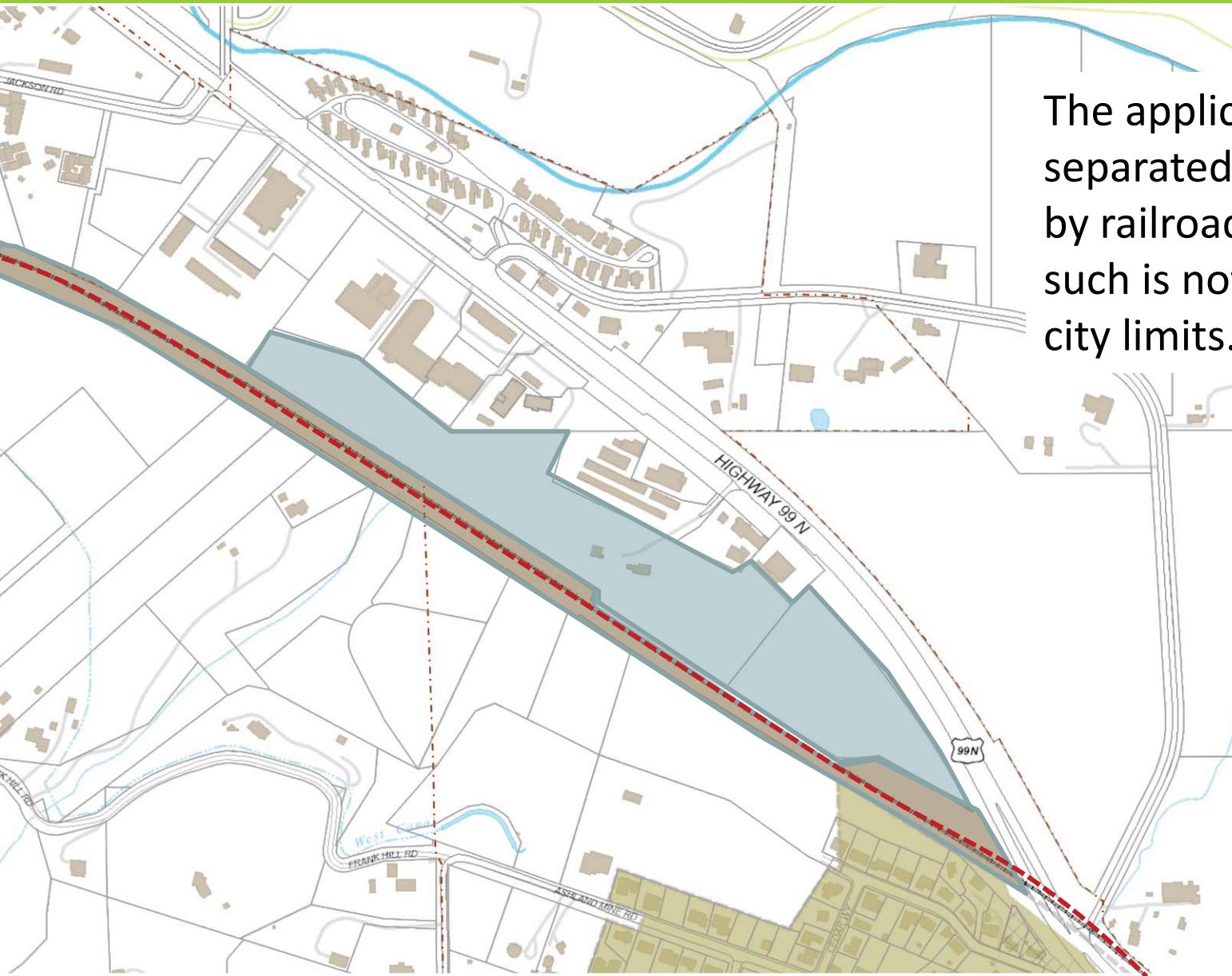
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1511 Highway 99N

Contiguity & The Railroad Property

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The applicant's property is separated from the city by railroad property, and as such is not contiguous to the city limits.

1511 Highway 99N

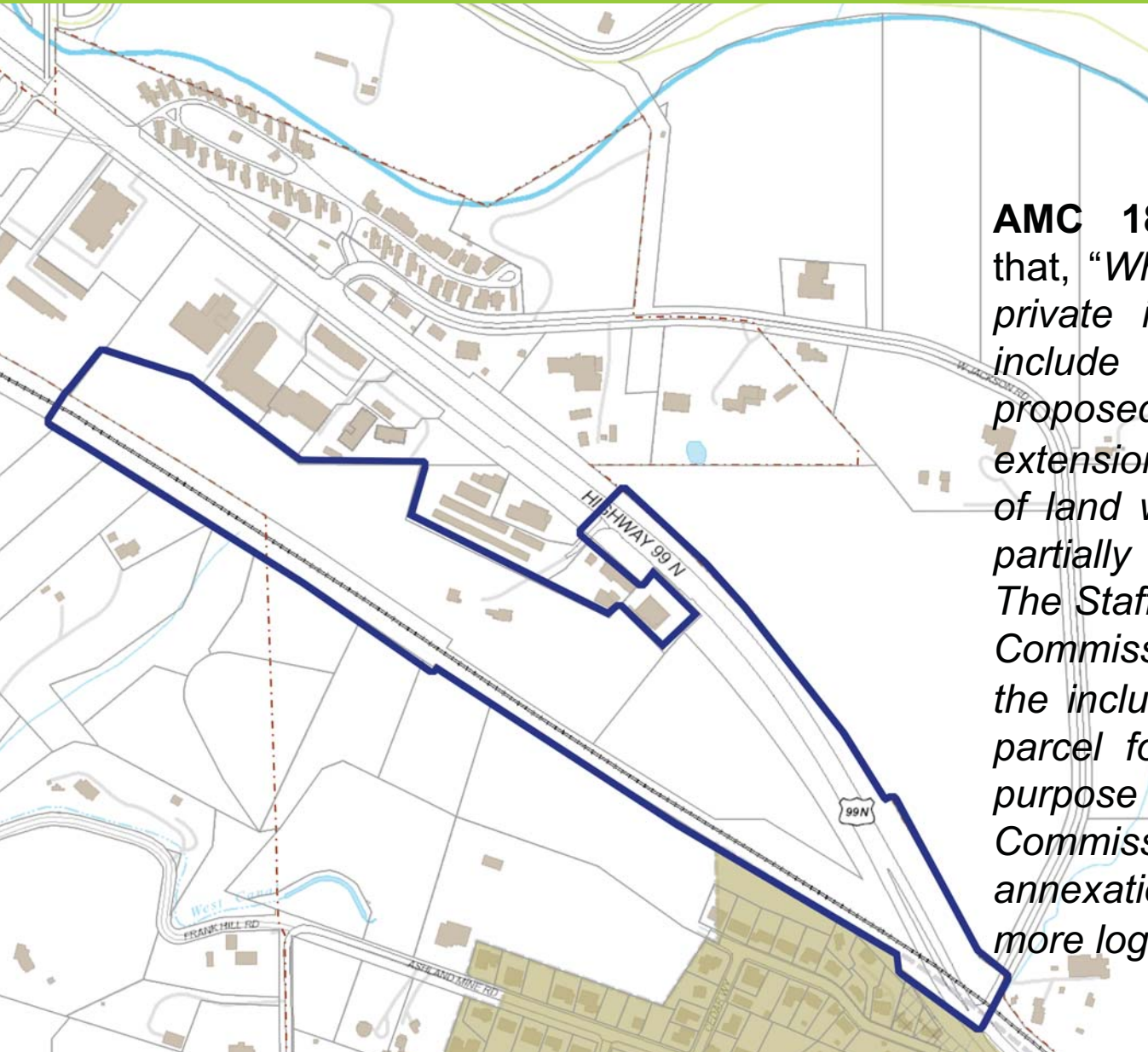
“Grand Terrace” Annexation

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Proposed
Annexation
Area

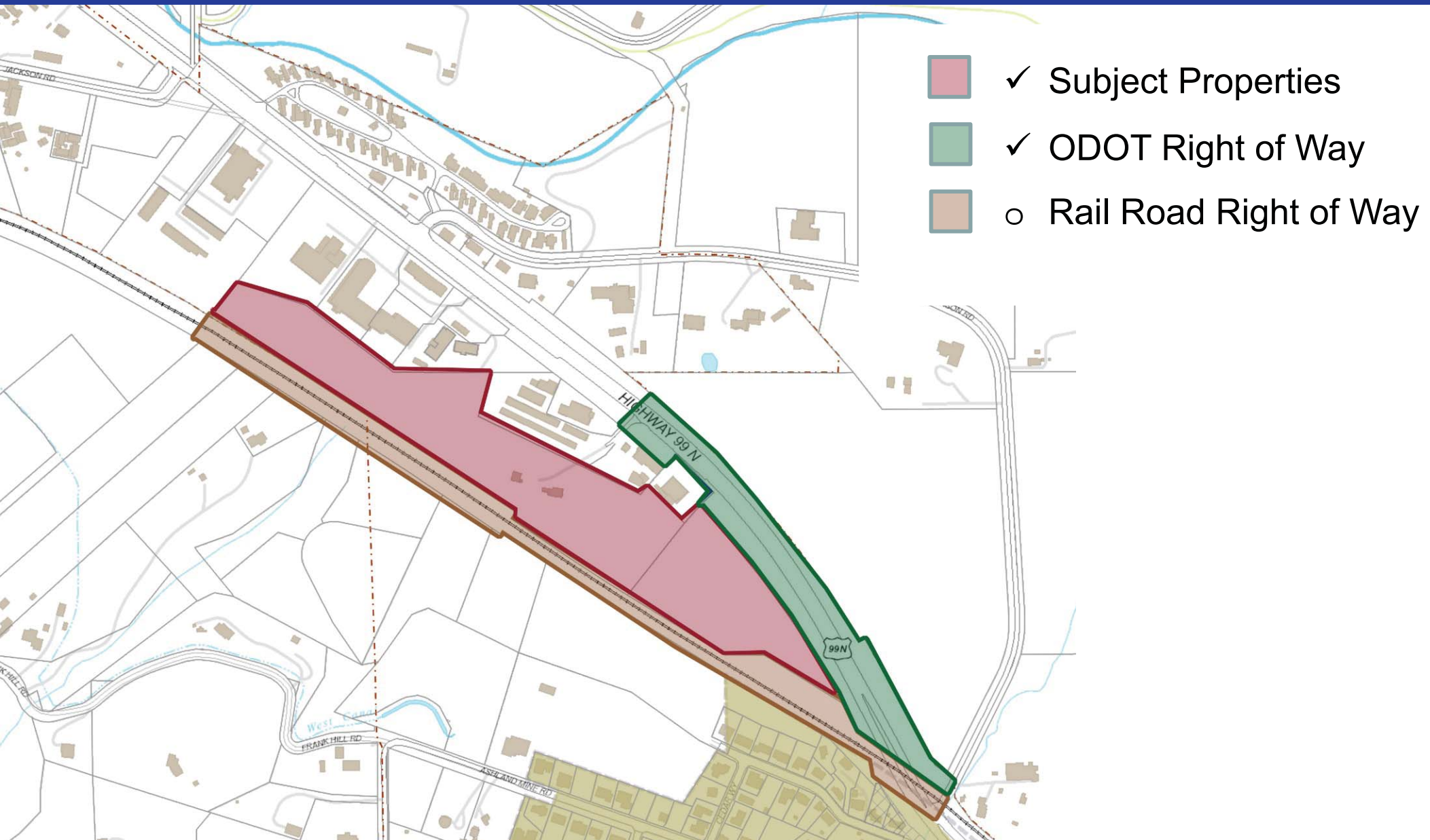
AMC 18.5.8.060 “Boundaries” provides that, *“When an annexation is initiated by a private individual, the Staff Advisor may include other parcels of property in the proposed annexation to make a boundary extension more logical and to avoid parcels of land which are not incorporated but are partially or wholly surrounded by the City. The Staff Advisor, in a report to the Planning Commission and City Council, shall justify the inclusion of any parcels other than the parcel for which the petition is filed. The purpose of this section is to permit the Commission and Council to make annexations extending the City’s boundaries more logical and orderly.”*



1511 Highway 99N

Oregon Revised Statutes (ORS) 222.170

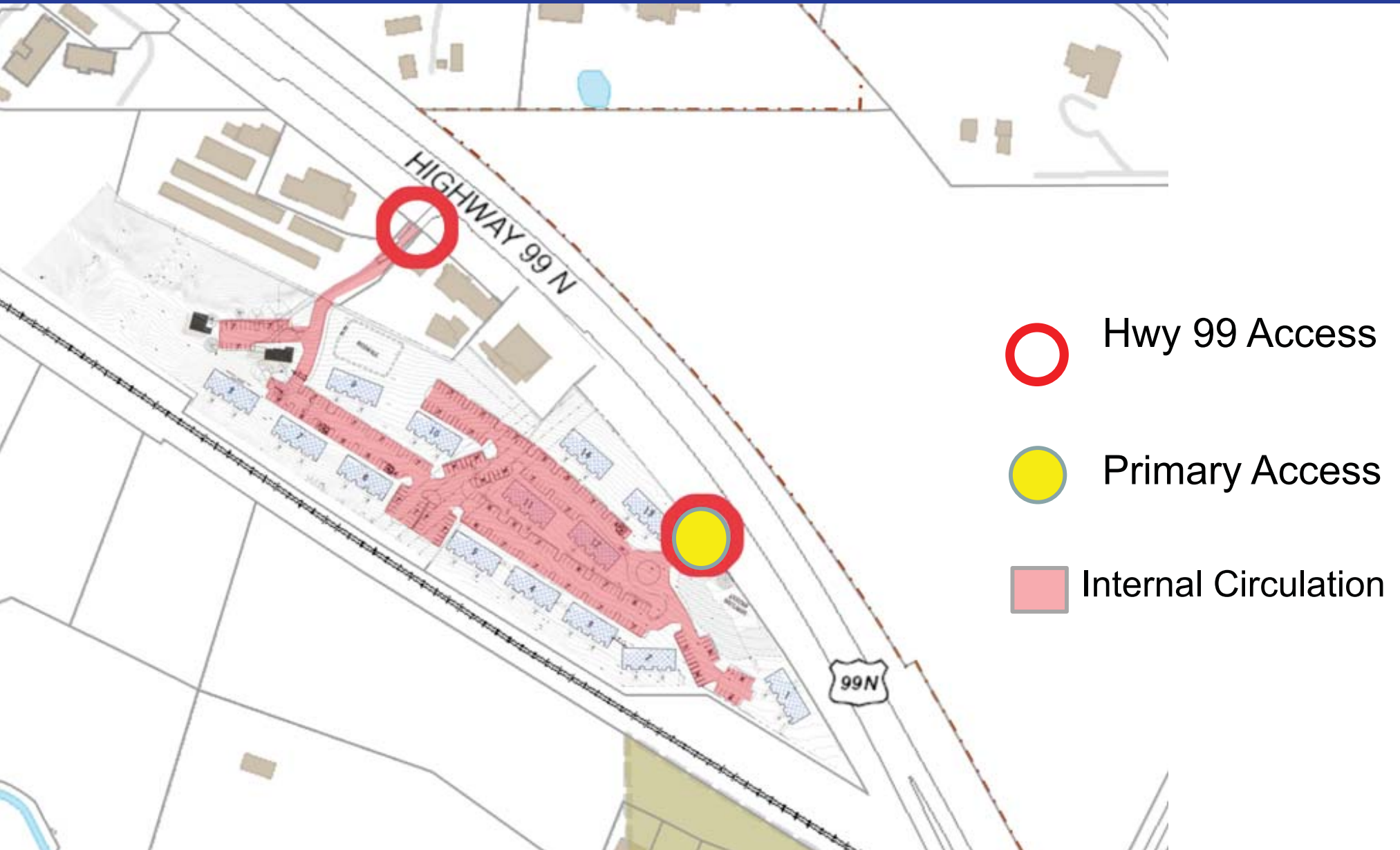
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1511 Highway 99N

Transportation and Circulation - Access

CITY OF
ASHLAND



1511 Highway 99N

“Grand Terrace” Annexation

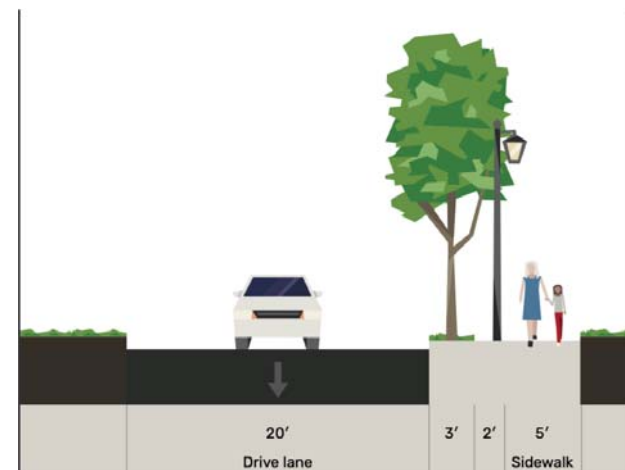
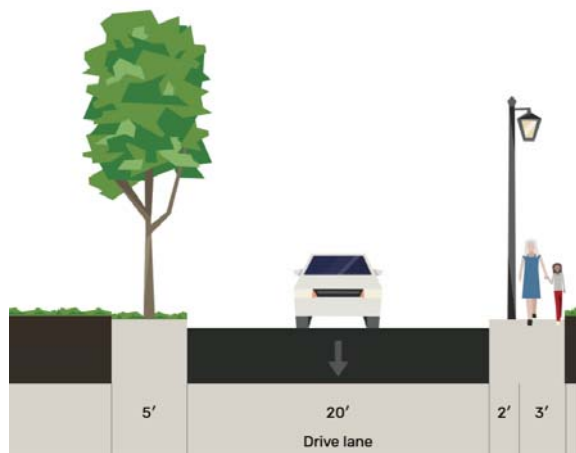
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1511 Highway 99N

Driveway Treatment

- 1) The current request does not include a Site Design Review component for development of the site. The site development plan included is conceptual.
- 2) A dedicated public street meeting city street standards is not required in R-2 (18.4.6.040.C.1). Two driveway access points are required because average daily trips will be over 250 (18.4.3.080.C.3.b).
- 3) With Site Design Review for development of the site the shared driveway will need to be paved to a 20-foot width since there are more than seven parking spaces (18.4.3.080.D.3), flag drive grade requirements will need to be met (18.5.3.060.F), and walkway connections provided within the development and to the street (18.4.3.090). The easement here is 30 feet in width, and a 20-foot paved driving surface leaves ten feet to accommodate sidewalk, curb, trees/landscape buffers and pedestrian scale lighting.



Site Design Review

The application addresses some Site Review criteria, noting for instance that the "*proposed, conceptual site development plan generally complies with the City of Ashland Vehicle Parking Area Design Standards. Additional details regarding direct code compliance with the standards for the parking lots will be demonstrated in the subsequent Site Design Review application.*" However, the application is clear that "*Subsequent applications for the physical development of the property including Outline Plan, for a Performance Standards Subdivision and Site Design Review approval for the construction of a multi-family, residential development with associated parking areas, open space and landscaping areas will be provided following annexation approval.*" Staff did not see a clear path to granting a partial or conceptual Site Design Review approval based on general compliance with direct code details to follow at a subsequent application, and instead have taken the approach that the application was demonstrating how the site could be developed to meet the minimum density required for annexation based on a conceptual site development plan but that a formal Site Design Review application, looking at all Site Design Review requirements, will follow if and when the annexation is approved. So... to begin with, the current request does not include Site Design Review approval for the development of the property and is not being considered in terms of Site Design criteria or applicable design standards at this time.

Vehicle Area Design (18.4.3.080.B.4 & .080.C) 18.4.3.080.B.4 speaking to "parking area design" that parking lots of 50 or more space and parking lots where pedestrians must traverse more than 150 feet must be divided into separate areas by: 1) a building or group of buildings; 2) plazas landscape areas with walkways at least five feet in width; 3) streets; or 4) driveways with street-like features. Street-like features are illustrated in Figure [18.4.3.080.B.4](#) and described specifically as having "a raised sidewalk of at least five feet in width, with six-inch curb, accessible curb ramps, street trees in planters or tree wells and pedestrian-oriented lighting (i.e., not exceeding 14 feet typical height)."

18.4.3.080.C.2 requires that, "All **on-site** circulation systems shall incorporate street-like features as described in [18.4.3.080.B.4](#)."

18.4.3.080.C.3.b requires that, "*All multi-family developments which will have automobile trip generation in excess of 250 vehicle trips per day shall provide at least two driveway access points to the development. Trip generation shall be determined by the methods established by the Institute of Transportation Engineers.*"

Staff Comments: With Site Design Review, the applicant will need to show at least two driveway access points to the development, and will need to address Vehicle Area Design standards *on-site*, and the Planning Commission will ultimately need to determine whether an ingress/egress easement over another property not under the applicant's ownership (and not in the city) constitutes "on-site" circulation to require "street-like features." A 30-foot width with a 20-foot paved surface would have ten additional feet to accommodate a five-foot sidewalk, curb, street trees/landscaping and lighting.

Driveways and Turn-around Design (18.4.3.080.D)

- Driveways over 50 feet in length are considered flag drives and subject to the flag drive width and design requirements. *[Flag drives shared by adjacent properties shall have a width of 20 feet, with a 15-foot paved driving surface. Width shall be increased on turns where necessary to ensure fire apparatus remain on a paved surface during travel. Flag drive grades shall not exceed a maximum grade of 15 percent. Variances may be granted for flag drives for grades in excess of 15 percent but no greater than 18 percent for not more than 200 feet.]* (D.1)
- Parking areas of more than seven parking spaces shall be served by a driveway 20 feet in width and constructed to: facilitate the flow of traffic on or off the site, with due regard to pedestrian and vehicle safety; be clearly and permanently marked and defined; and provide adequate aisles or turn-around areas so that all vehicles may enter the street in a forward manner. (D.3)
- Driveway grades in all zones shall not exceed 20 percent (D.8)

Staff Comments: With more than seven spaces served and a length greater than 50 feet, the driveway would need to be 20-feet in width and meet the grade requirements for a flag drive.

Pedestrian Access & Circulation (AMC 18.4.3.090)

With Site Design Review, the applicant would need to address providing a continuous walkway system throughout the development site and connect to all future phases of development, and to existing or planned off-site adjacent sidewalks, trails, public parks, and open space areas to the greatest extent practicable, and provide safe, reasonably direct, and convenient walkway connections between primary building entrances and all adjacent streets.

Staff Comments: Staff would also point out that AMC 18.4.3.090.B.4.a provides that the approval authority may approve a walkway abutting a driveway at the same grade as the driveway if the walkway is distinguished from vehicle-maneuvering areas. Examples of alternative treatments are mountable curbs, surface treatments such as stamped concrete or reflector bumps, and using a row of decorative metal or concrete bollards to separate a walkway from a driveway.

Parking Lot Landscaping & Screen Standards (AMC 18.4.4.030)

These standards are noted as applying to areas of "vehicle maneuvering, parking and loading" and so have typically been applied to on-site driveways as well as parking lots. Besides laying out parking lot landscaping and parking lot tree requirements, these standards call for five-foot landscape buffer strips where abutting a property line, an eight-foot landscape screen where abutting a residential building, and a 36-inch hedge screen at required yards.

Staff Comments: A five-foot landscaping buffer containing trees could be provided adjacent to the driveway where abutting a property line and still have room for a five-foot sidewalk. Staff believes that the available width can provide needed access to the site with final design details to be worked out by the applicant and neighbors prior to bringing a Site Design Review application forward.

Street Dedication Requirements (AMC 18.4.6.040.C.1)

AMC 18.4.6.040.C.1 requires dedicated public streets developed to the street standards where access is "serving four units or greater, and which are in an R-1, RR- and WR zone".

Staff Comments: R-1, RR and WR zoned properties would typically be looking at creating single family homes on individual lots with individual accesses and parking, whereas multi-family developments typically have multiple units or buildings off of a consolidate parking lot with consolidated access. The property here is proposed to be annexed with R-2 zoning for multi-family development, consistent with the comprehensive plan designation, and as such there is not a requirement by code to provide a dedicated public street developed to street standards.

City of Ashland Street Design Standards (AMC Table 18.4.6.040.F)

This table includes "Private Drive" as a street type in the city street standards table, and notes an average daily trip number of less than 100. The notes #4) in the table explain that, *"A private drive is a street in private ownership, not dedicated to the public, which serves three or less units. Private drives are permitted in the Performance Standards Options overlay."*

AMC 18.6.1.030.D defines a shared driveway separately as *"A driveway used to access two or more lots or parcels."*

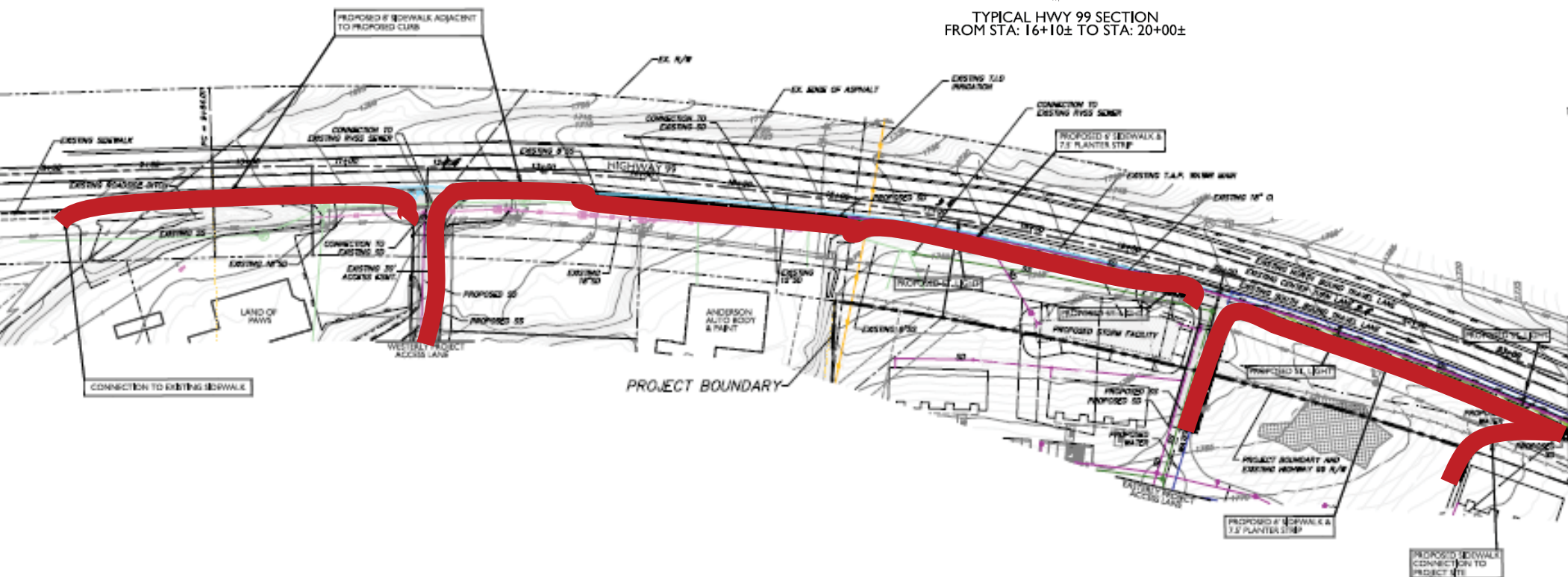
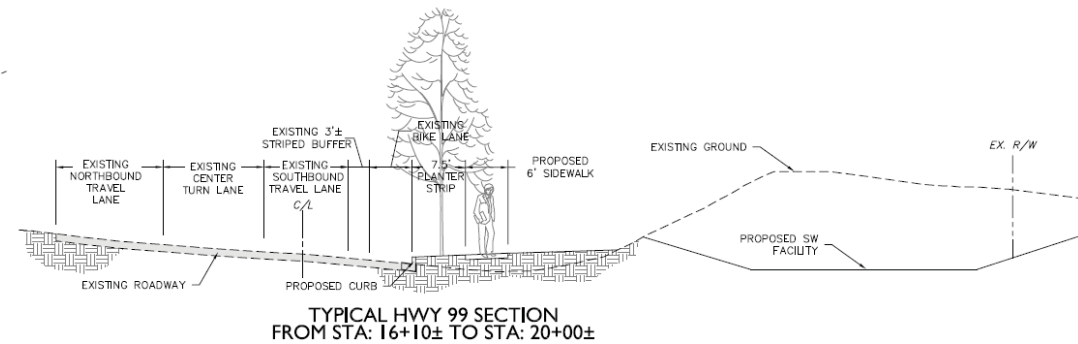
Staff Comments: As noted above, the property here is proposed to be annexed with R-2 zoning for multi-family development, consistent with the comprehensive plan designation, and as such - since it is not in an R-1, RR- or WR zone - there is not a requirement by code to provide a dedicated public street developed to street standards. In staff's view, the facility here should be treated as a shared driveway (not a private drive as it will serve more than three units). *Staff would also note that if the shared driveway were considered a "Shared Street" under City Street Design Standards in AMC 18.4.6.040.F, the paved width could be 18-feet shared by cars, pedestrians and cyclists in a 25-foot wide right-of-way with 3 1/2 landscape buffers on either side to accommodate 1,500 average daily trips.*

Easement Language

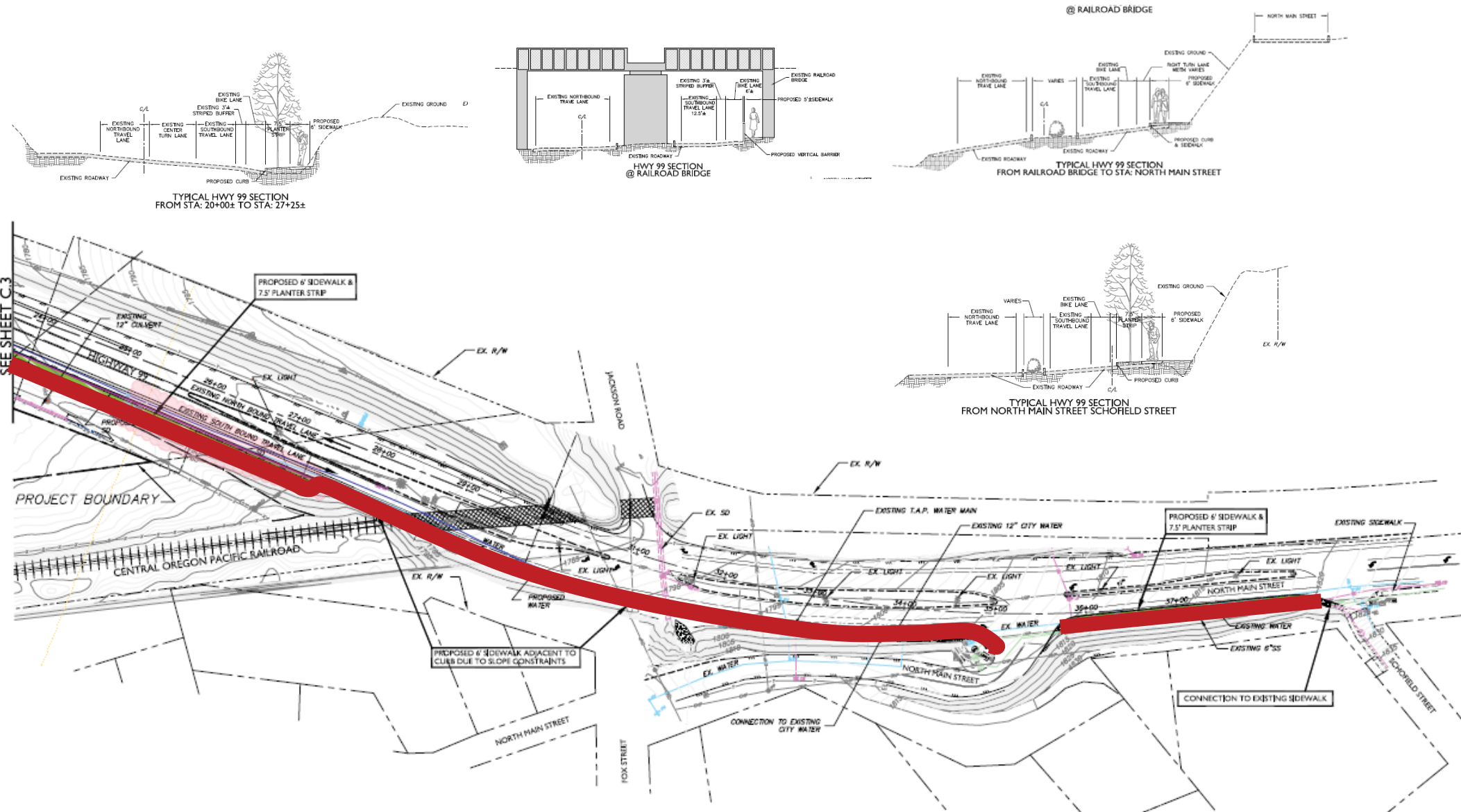
Commissioners had previously noted that they did not believe it was their role to interpret the easement language. While, as noted above, staff believes that a workable access can be achieved within the available 30-foot width described, staff would note that in the easement language provided by the applicant (see applicant's Exhibit D from page 157 of http://www.ashland.or.us/files/2020-05-12_PC_Agenda_PACKET.pdf), the easement language also appears to include *"such additional amount of land for easement purposes on the southerly side of the foregoing described easement as may be required by law for ingress and egress to the property served by the foregoing easement in the event said property is further subdivided or partitioned by the owners thereof."*

Staff Comments: The applicant has indicated that the area south of the described easement subsequently sold and is no longer available.

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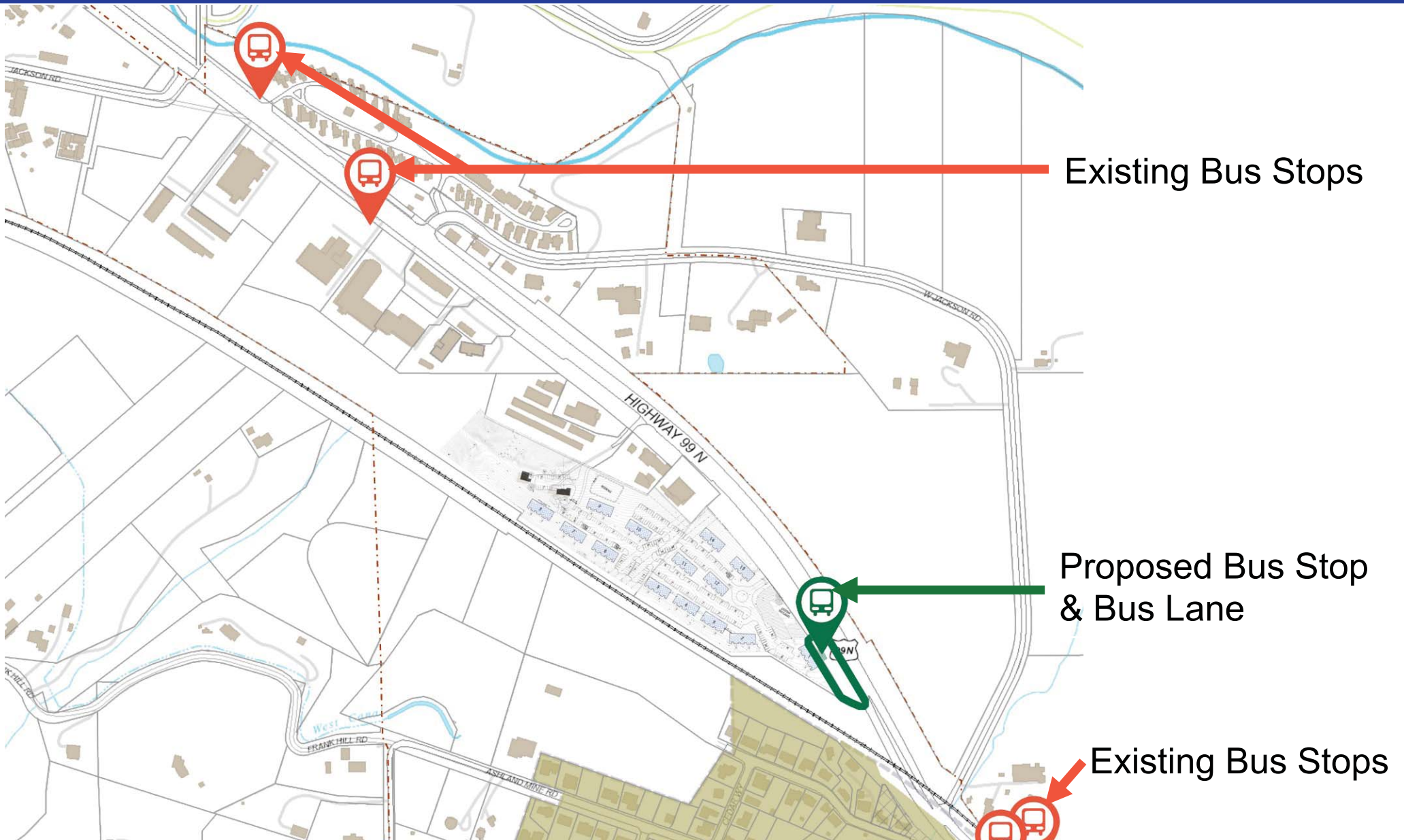
**CITY OF
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1511 Highway 99N

Transit Improvements

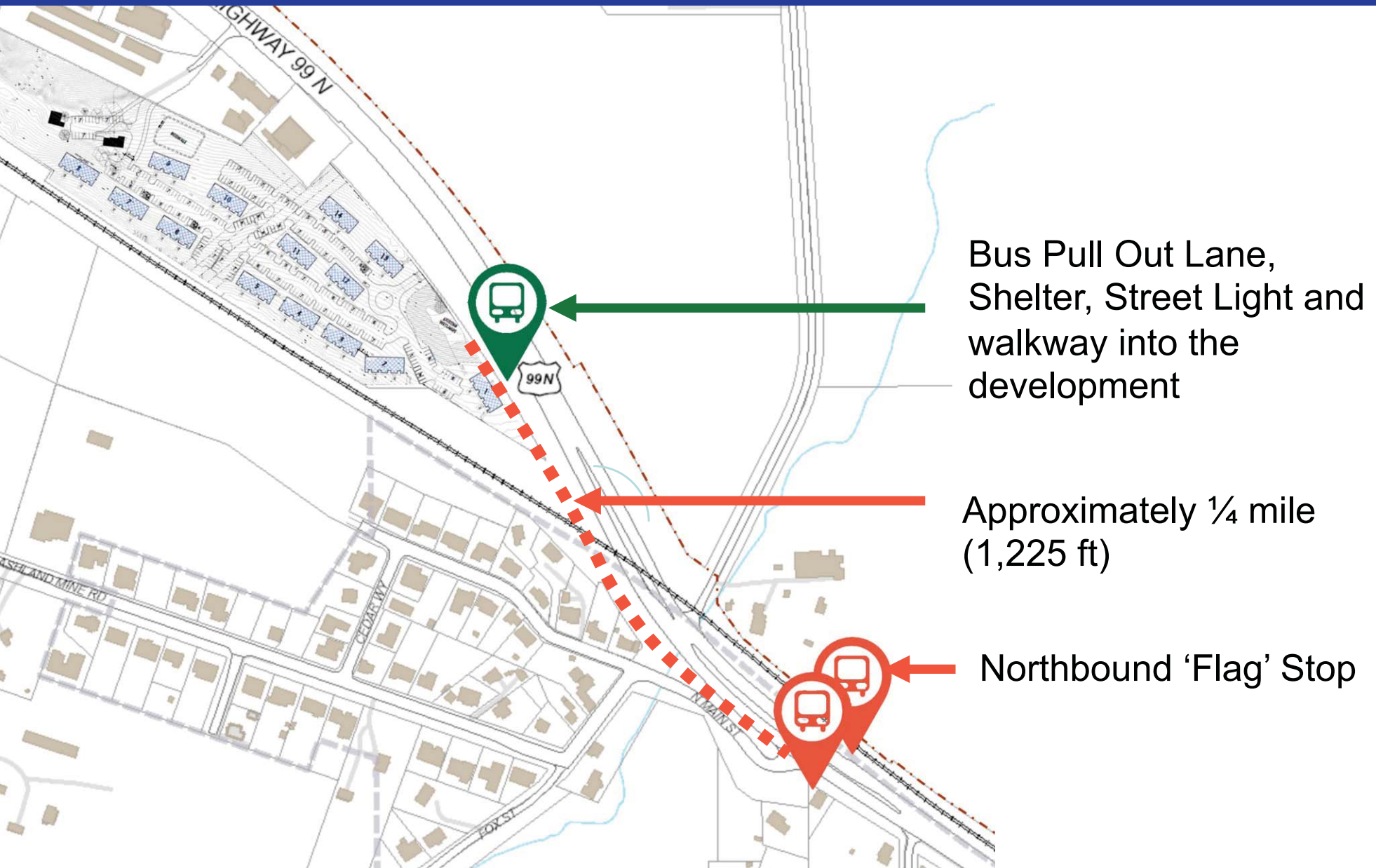
CITY OF
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1511 Highway 99N

Transit Improvements

CITY OF
ASHLAND



1511 Highway 99N

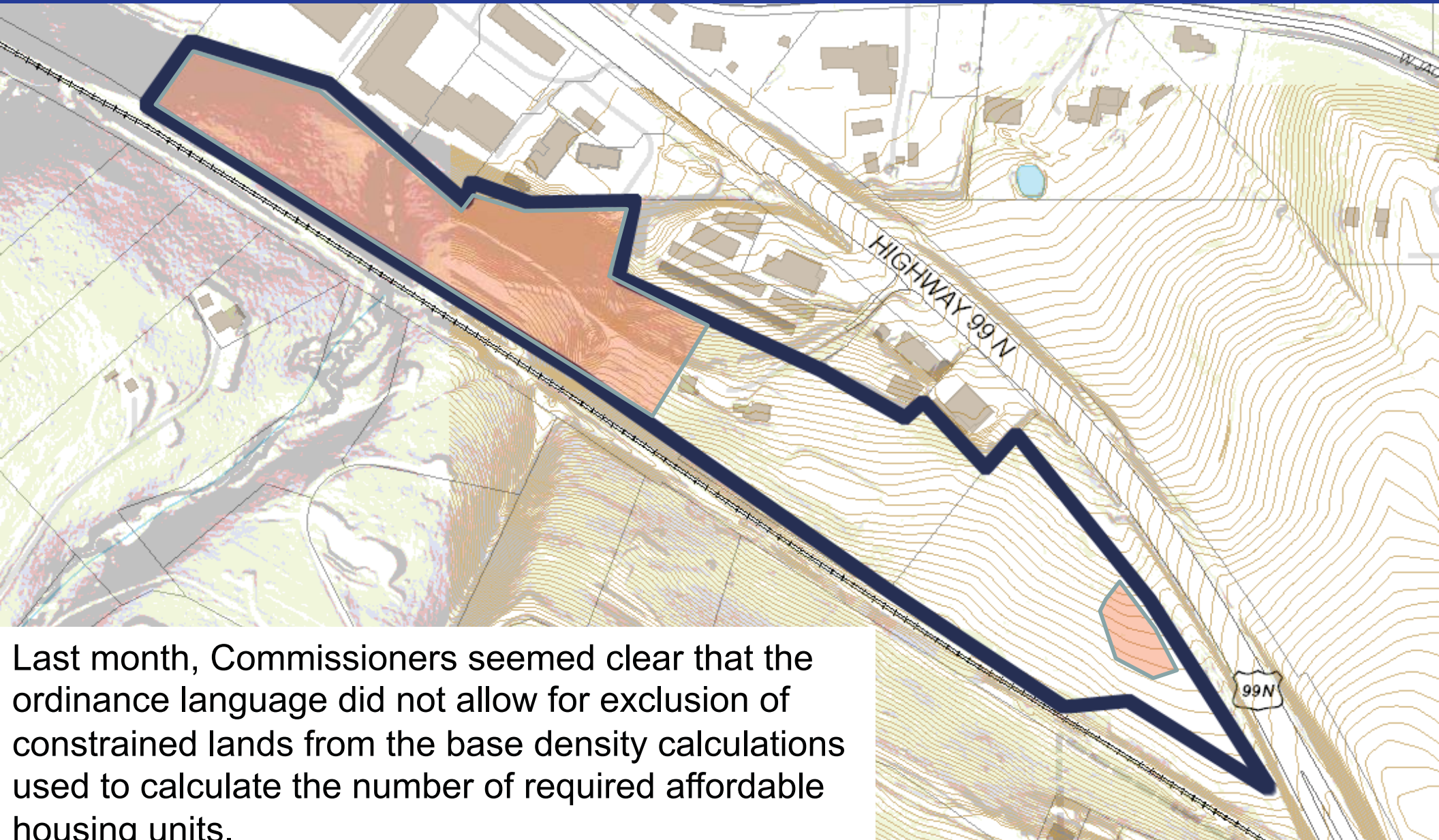
Issues from last month's discussion...

- ❑ Staff have spoken with ODOT regarding the potential for a two-way bicycle facility from the driveway north discussed last time. While ODOT is not requiring or recommending such a facility, they believe their recently updated standards have flexibility and they would be open to considering it. Key issues would likely be the available right-of-way, the extent of improvements and how/where to transition to existing facilities.
- ❑ ODOT has similarly indicated that they have not conducted a speed study since the "Road Diet" and have initiated preliminary discussions with Planning and Public Works staff about doing so. Commission may wish to incorporate conducting a speed study and advocating for reduced speeds on the highway corridor in any recommendation to Council.

1511 Highway 99N

CITY OF
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Affordability, Base Density and Undevelopable Lands



Last month, Commissioners seemed clear that the ordinance language did not allow for exclusion of constrained lands from the base density calculations used to calculate the number of required affordable housing units.

1511 Highway 99N

Tonight

- ❑ Commissioners to consider staff report and public testimony.
- ❑ Commissioners to consider draft findings presented and provide direction in terms of necessary modifications to forward a recommendation on Annexation to the Council.



1511 Highway 99N

“Grand Terrace” Annexation

CITY OF
ASHLAND

Planning Commission
Cont'd Public Hearing
July 28, 2020



Issues



- Surfacing standard in proposed 18.4.4.070.C.4
- Private open space standards
 - Walkways and storage space
 - Ground-floor dwelling units size
- Table 18.4.4.070.A
- Cross reference open space fence requirements

New Standards



- Utility Vaults
- Minimum Dimension
- Yards Abutting a Street
- Slope
- Private Open Space Minimum Dimensions and Location
- Credit for Proximity to a Park (R-2 and R-2)
- Surfacing Standard

Current Surfacing Standard



18.4.2.030 Residential Development

H. Open Space. Residential developments that are subject to the provisions of this chapter shall conform to all of the following standards.

2. Surfacing. Areas covered by shrubs, bark mulch, and other ground covers that do not provide suitable surface for human use may not be counted towards this requirement.

Proposed Surfacing Standard



a. *Surfacing.* A minimum of 50 percent of the common open space must be covered in suitable surfaces for human use, such as lawn areas and recreational fields or courts. Up to 50 percent of the common open space may be covered by shrubs, mulch, and other grounds covers that do not provide suitable surfaces for human use if the area is usable for the intended residents, such as community gardens or a natural area with benches and walking paths.

Shared Outdoor Space. Many or the same ingredients necessary to provide successful private outdoor spaces are needed for successful shared spaces. The main difference is access to the area by more than one person or unit. Shared open spaces should provide for both active and passive activities. Passive activities include areas for quiet conversation, resting, walking, and enjoyment of nature and scenery for young and old alike. Active uses include sports such as croquet, volleyball, and Frisbee.

Semi-Public

- Shared Outdoor Areas
- Passive and Active Outdoor Recreation

Private Exterior

- decks
- patios
- private yards

Private Interior

- living space

Semi-Private

- Porches • Entry Ways •
- Front yards •

Semi-Public

- service Areas
- Parking
- Shared Entry

Public
street, sidewalk



880 Park St.



880 Park St.



880 Park St.







Minimum Area Required in Lawn, Courts, Etc.



	R-2 Zone	R-3 Zone	R-1-5 Zone
Total Area Required for 10 units	.75 Ac	.50 Ac	2.3 Ac
Minimum Total Open Space	2,614 sq. ft.	1,742 sq. ft.	5,009 sq. f.
Minimum Common Open Space	1,307 sq. ft.	871 sq. ft.	5,009 sq. ft.
Minimum Area Suitable for Human Use	653 sq. ft.	436 sq. ft.	2,505 sq. ft.

Staff Recommendation



5. **R-2 and R-3 Zones.** In addition to the standards in subsection 18.4.4.070.C, above, common open space in the R-2 and R-3 zones shall meet the following requirements.
- a. ***Surfacing.*** A minimum of 50 percent of the common open space must be covered in suitable surfaces for human use, such as lawn areas, recreational fields, or courts. Up to 50 percent of the common open space may be covered by shrubs, mulch, and other grounds covers that do not provide suitable surfaces for human use if the area is usable for the intended residents, such as community gardens or a natural area with benches and walking paths.
 - b. ***Play Areas.*** Play areas for children are required for projects of greater than 20 units that are designed to include families. Play areas are eligible for common open space.
 - c. ***Credit for Proximity to a Park.*** A credit of up to 50 percent for common open space may be granted when the development is located within one-eighth of a mile walking distance of an existing public park. Distance from the development to the park shall be measured from the lot line via a sidewalk, multi-use path or pedestrian way located in a public right-of-way or public pedestrian easement.

Water Conservation & Climate Change



a. *Surfacing.* A minimum of 50 percent of the common open space must be covered in suitable surfaces for human use, such as lawn areas, **durable lawn alternatives**, recreational fields, and courts. Up to 50 percent of the common open space may be covered by shrubs, mulch, and other grounds covers that do not provide suitable surfaces for human use if the area is usable for the intended residents, such as community gardens or a natural area with benches and walking paths. **For the purpose of this standard, durable lawn alternatives is defined as ground cover that provides a surface that can withstand active uses and that conserves more water than a traditional lawn. Examples of durable lawn alternatives are eco lawn, meadow lawn, meadow sedge and mondo grass “lily turf.”**

Ground Floor Private Open Space



18.4.070.D Private Open Space

- Walkways and storage
- Size of private open space for ground floor units

Other Changes



- Table 18.4.4.070.A
- Fence references
- 18.4.4.070.C Common Open Space
- 18.4.4.070.C.4 Improvements
- 18.4.4.070.C.4.d Landscaping

**CITY OF
ASHLAND**
ASHLAND PLANNING COMMISSION
REGULAR MEETING
MINUTES - *Draft*
August 11, 2020

I. CALL TO ORDER:

Chair Haywood Norton called the meeting to order at 7:00 p.m.

Commissioners Present:

Michael Dawkins
Alan Harper
Kerry KenCairn
Haywood Norton
Roger Pearce
Lynn Thompson

Staff Present:

Bill Molnar, Community Development Director
Derek Severson, Senior Planner
Aaron Anderson, Assistant Planner
Dana Smith, Executive Assistant

Absent Members:

Council Liaison:

Stef Seffinger, absent

II. ANNOUNCEMENTS

Community Development Director Bill Molnar announced the City Council would hold a public hearing on the Appeal of 210 Alicia Street at their meeting Tuesday, August 18, 2020. He noted the Croman Mill Site and explained why a recent conditional use permit was denied. Lastly, staff received numerous emails from the public regarding the Helman Elementary School decision, PA-T2-2020-00020. They were not forwarded to the Planning Commission because the record was closed and the decision final.

III. CONSENT AGENDA

A. Approval of Minutes

1. July 14, 2020 Regular Meeting
2. July 28, 2020 Special Meeting

Commissioner m/s approved the minutes of the meeting on July 14, 2020. Voice Vote: all AYES. Motion passed.

Commissioner Thompson and Pearce had several clarifications and corrections to the minutes of the meeting on July 28, 2020. The minutes were pulled from the agenda for revision.

Commissioner Harper/Pearce m/s to pull the minutes of the Special Meeting on July 28, 2020 from the Consent Agenda. DISCUSSION: Commissioner Norton clarified staff would make the changes and bring the minutes back to the meeting on August 25, 2020 for approval.

IV. PUBLIC FORUM - None

V. UNFINISHED BUSINESS

A. Approval of Findings for PA-T2-2020-00020, 705 Helman Street (Helman Elementary School)

Commissioner KenCairn recused herself from the item because she was part of the project. She left the meeting.

Ex Parte Contact

Commissioner Dawkins, Pearce, Thompson and Norton declared no ex parte contact on the matter. Commissioner Harper explained Barb Street emailed him to discuss the project. He had responded that it was still under consideration.

Commissioner Pearce wanted to remove condition 11. **That, outside of regular school hours and school events, the perimeter gates shall remain unlocked so as to not to unreasonably limit or restrict access to school playgrounds and greenspaces.** The Commission discussed the rules on changing findings during approval. They wanted the city attorney to research if it was allowed. They also discussed whether to reopen the public hearing or not. Staff had received over 40 emails after the record was closed regarding the playgrounds and greenspaces being locked after school hours. Commissioner Dawkins wanted to make a motion to allow Commissioner Pearce to explain his reasons for removing condition 11.

Commissioner Dawkins/Harper m/s to allow Roger to speak to why he thought the Commission should deny condition 11. Discussion: Chair Norton would not support the motion. They were not clear they had the authority to make changes and had not consulted the city attorney. Commissioner Dawkins explained the motion was just to hear Commissioner Pearce speak. If he convinced the Commission, Commissioner Dawkins would make a motion to have the city attorney research changing the findings at the approval stage.

Commissioner Pearce explained they were adopting findings of fact, conclusions of law and orders. Nothing was final until the Commission voted to approve the findings. Condition 11 was plainly illegal. Takings law did not apply because it was public property. He read the standard from the Land Use Board of Appeals (LUBA) on when they could impose conditions based on *Sherwood Baptist Church v. City of Sherwood*, a 1993 Decision. When a condition of approval was imposed, LUBA stated “**we must determine whether the evidence in the record would lead a reasonable person to conclude that considering the impacts of the proposed development there is a need for the condition.**” The existing conditions of this development were there was a need for playgrounds in the neighborhood. There was no evidence in the record to show that. Currently the Ashland School District had a playground and it could allow the public to use it or decline public use. It was the Ashland School District’s property. The proposal modified the campus. After this proposal, there would be the same shortage of playgrounds in the community. It did not increase the need for playgrounds in the community. The Ashland School District would have the discretion to allow the public to use the playground or deny the public to use the playground. There was no evidence in the record that showed the proposal increased the need for playgrounds in the community. Condition 11 told the Ashland School District that even though there was not impact, they had to allow the public onto their property to use the playground. The condition was illegal, and the Commission should not be doing this kind of condition.

Commissioner Thompson commented the public was currently permitted access to school property as at all other schools. The project would install fences and gates and restrict access that was currently available for use. The Commission addressed it by asking them to unlock the gate at the easement location for children to access. Condition 11 would address the community’s current practice to having access to the school as a community greenspace. It was an attempt to preserve it because something was being changed. Commissioner Pearce responded the public was currently using the property, but they were not permitted to use it. The condition established a property right for the public to use it. If the Ashland School District wanted to build a fence, it was their absolute right. This condition would require the Ashland School District to give up a property right. This was something the Ashland School District and the Parks and Recreation Department should negotiate.

Commissioner Dawkins appreciated Commissioner Pearce’s presentation but was more aligned with Commissioner Thompson. If the Ashland School District decided it should be open all the time and did not take issue with it then it was a done deal. He understood the point of taking private property but there was a community vision of having parks with one quarter mile of each neighborhood.

Commissioner Harper also disagreed with Commissioner Pearce’s points. Conditional use permits restricted property rights all the time. He supported leaving the condition in the findings.

Commissioner Thompson suggested modifying the condition where the Ashland School District shall negotiate with the Parks and Recreation Department on allowing the public to utilize the property when school was not in session. Chair Norton responded that meant changing the condition and he wanted it clarified by the city attorney.

Mr. Severson explained the amendment to the main motion was “...to add a condition to open the green space and playground to the public during non-school and non-school event times through the normal access points.”

Commissioner Pearce would support that but noted the condition was not written the way the motion was made.

Commissioner Harper thought the idea was having findings that reflected the decisions that were made.

Commissioner Dawkins withdrew the motion.

Commissioner Dawkins/Harper m/s to approve the findings as so written.

DISCUSSION: Commissioner Pearce thought they should use Commissioner Thompson's suggestion to have the Ashland School District negotiate with the Parks and Recreation Department. Commissioner Thompson ultimately thought it was important these spaces were accessible. She had concerns they were locking down the playground. She was more comfortable with a condition requiring the Ashland School District to talk to the Parks and Recreation Department. She would vote against the motion but supported an amendment to change the language. Chair Norton agreed. **Roll Call Vote: Commission Dawkins and Harper, YES; Commissioner Thompson, Norton, and Pearce. NO. Motion failed 3-2.**

Commissioner Pearce thought they could change the condition to require the Parks and Recreation Department negotiate with the Ashland School District to continue to allow public access. Commissioner Thompson agreed. She was not in favor of reopening the public hearing. Commissioner Pearce agreed.

Commissioner Thompson/Pearce m/s to approve the Findings for as stated in planning action PA-T2-2020-00020 with the modification that Condition 11 is revised to state that the Ashland School District shall negotiate with the City of Ashland Parks and Recreation Department in an effort to maintain public access outside of school hours to the school playgrounds and greenspaces. DISCUSSION: Commissioner Dawkins would vote against the motion. He wanted to ensure the open space remained open to the public. Chair Norton did not support changing the conditions and changes like that should be done through a public hearing. He would not support the motion either. **Roll Call vote: Commissioner Thompson and Pearce, YES; Commissioner Norton, Harper, and Dawkins, NO. Motion failed 3-2.**

The Commission decided to forward two issues for the city attorney to review. One, whether conditions in findings, conclusions and orders could be changed after the preliminary decision. Two, was if condition 11 was legal.

Commissioner Harper/Thompson m/s to continue this item to next the meeting. DISCUSSION: Chair Norton noted one question for the city attorney was if it was legal. If not, then ask the city attorney if they added the negotiation language that Commissioner Thompson had suggested, would it then be legal. The third question would be, could the Commission change it in their consideration of findings, or to change it, do they have to reopen the public hearing. If they were going to change it, did they need to reopen the public hearing based on the over forty emails. Commissioner Thompson thought it might be simpler to ask whether a condition that mandates the Ashland School District in any fashion to make its property available to the public for use outside of school hours would be a lawful condition. And whether the condition was modified to negotiate the condition to require it through negotiation or just absolutely mandate it seemed to her a nuance that she thought the city attorney might have trouble grappling with in rendering a legal opinion. Commissioner Pearce thought the city attorney would have trouble rendering a legal opinion about whether it was legal or not. It was a law applied to fact situation. Commissioner Thompson explained they could ask the city attorney the standard for evaluating the legality or is it legal and what would the standard be. Chair Norton did not think the Commission had changed a condition as part of the findings in the past five years he had served on the commission. This was the first time it had come up and he thought it needed to be clarified. Commissioner Pearce disagreed. They had changed conditions of approval before. Commissioner Thompson thought it was worth asking. They had changed wording in the past. This was a specific decision they were trying to reconsider now. **Roll Call Vote: Commissioner Pearce, Thompson, Harper, Norton, and Dawkins, Yes. Motion passed.**

VI. TYPE II PUBLIC HEARINGS

A. PLANNING ACTION: #PA-APPEAL-2020-00011 (appealing PA-T1-2020-00109)

SUBJECT PROPERTY: 345 Clinton Street

OWNER/APPLICANT: Rogue Planning and Development/Paul Mace & Kathleen Kahle

DESCRIPTION: Consideration of an appeal of the administrative approval PA-T1-2020-00109 of a two-lot partition of a 12.29-acre lot for the property located at 345 Clinton. The tentative partition plat creates two parcels that are 8.943 ac. and 3.35 ac in size, with the smaller parcel situated in the southeast of the parent parcel. **COMPREHENSIVE PLAN DESIGNATION:** Single Family Residential; **ZONING:** R-1-5; **MAP:** 39 1E 04 DB; **TAX LOT:** 401

Commissioner KenCairn returned to the meeting. Chair Norton read the rules of the public hearing during an electronic meeting.

Ex Parte Contact

Commissioner Dawkins and KenCairn declared no ex parte contact but were familiar with the site. Commissioner Pearce, Thompson and Harper had no ex parte contact or site visits. Chair Norton had no ex parte contact but had driven past the site.

Staff Report

Senior Planner Derek Severson provided a presentation (see attached):

- Appeal
- Vicinity Map
- Aerial Photo
- Photo from the corner of Clinton/Ann
- Photo from end of Briscoe Place
- Preliminary Plat
- 18.5.3.050 Preliminary Partition Plat Criteria
- Proposed Additional Condition
- Adjoining Land
- Street Dedication Map (TSP Figure 10-1)
- North Mountain Neighborhood Plan (NMNP) Street Layout Map
- 18.5.3.050 Preliminary Partition Plat Criteria E, F & G
- 18.5.3.050 Preliminary Partition Plat Criteria (cont'd) H 1 & I
- 18.5.3.050 Preliminary Partition Plat Criteria (cont'd) J & K
- Floodplain & Possible Wetland
- Potential Buildable Areas
- Staff Decision
- Appeal Issues
- Appeal Issue #1 - Incomplete Application
- Appeal Issue #2 – Defective Notice
- Appeal Issue #3 – Access to Inspect Record
- Appeal Issue #4 – Digital Access
- Appeal Issue #5 – Additional Time
- Appeal Issue #6 – Multiple Land Use Decisions
- Appeal Issue #7 - Multiple Land Use Decisions
- Appeal Issue #8 – Appeal Noticing
- Staff Recommendation

Staff recommended the appeal be denied and the original staff approval be upheld with the conditions in the staff report.

Questions of Staff

Commissioner Thompson asked about online materials not including the application or the receipt and later they were on the city website. Mr. Severson confirmed the application form and receipt were not initially on the website. The application submittal materials were online. Commissioner KenCairn added the application was the one-page zoning application.

Commissioner Pearce asked staff to address the easements on the property that were not located in the survey. Mr. Severson's limited understanding of survey law was surveyors were supposed to include all easements on the plat. If the surveyor found an easement so poorly written it was difficult to locate, they made a note on the easement for a title report referencing it could not be located. Some of the older descriptions were so vague they could not be found on the property. The applicant had included a letter from the surveyor in their rebuttal submittal that was distributed earlier in the day.

Applicant's Presentation

Amy Gunter/Rogue Planning and Development/Medford, OR/Explained the applicant supported the staff decision. Many of the issues raised by the appellant were procedural issues the applicant could not speak to. They had turned in a signed application form and the applicant's paid the fee. The notice of application was mailed to property owners within 200-feet of the property. Adequate notice was provided electronically. Numerous comments were received on the Type I proposal. There was not a lack of public awareness of the proposal. The proposal was consistent with the approval criteria in **18.5.3 Land Divisions and Property Line Adjustments**. The platting was consistent with Oregon state law **ORS 92** for subdivisions and partitions.

She provided a presentation (see attached):

- Aerial photo of the Site
- Partition Plat of the Site

Ms. Gunter clarified the "L" shaped property where Carol Street terminated into Clinton Street and extended over to Oak Street had a legally stipulated open space plan on it and could not be developed. There were portions of proposed parcel #1 that could be partitioned in the future.

- Proposed Partition Plat

Ms. Gunter clarified the flood plain area was in the 500-year flood plain. It followed the 100-year flood plain boundary on the survey plat. The future development of the property because it was single family zoned property there was no minimum density requirements. The property could have anywhere from one single family home to whatever density bonuses the developer could come up with to increase density beyond the 15 units per acre. That was why there was not a formal development plan submitted with the original application. There was not a plan of any sort. The survey plan and future lot lines demonstrated the proposal did not have impacts to the natural resources. As a partition of this future property or future subdivision went through, it would be reviewed by staff or the Planning Commission.

- Natural Features
- Conclusion

They were not opposed to the condition of approval. The lay out preserved the owner's access to their own driveway in the event the someone had a different development plan for site lay out.

Questions of the Applicant - None

Appellant's Application

Eric Elerath/Ashland/Apologized to Community Development Director Bill Molnar, Assistant Planner Aaron Anderson and Planning staff if he had appeared rude to them. He strongly contested that staff made multiple attempts to provide him access to records. He first requested access to the records May 28, 2020 and they were not made available to him until he paid the \$150 appeal fee.

There were two critical issues involved. It was his contention that one, the application was not complete. One was the statements on the easements on the partition plat referred to earlier. He had submitted his first questions about these items May 28, 2020 and received a reply at 11:00 a.m. this morning after he had paid his appeal fee.

One of the comments a staff member and Mr. Hibbs from L.J. Friar & Associates P.C. had made referred to his ability to read a survey map. Mr. Elerath provided his background, credentials, and education regarding his experience with engineering drawings, survey maps, and his career in construction and architecture. He described the process used at one of the firms for requests for information. He went on to explain he had left a place of employment due to concerns regarding public-private partnerships and indicated there might have been corruption.

He was not sure the amount of money the City requested for the application was disclosed or paid for by the applicant. He was unable to find it. The record showed he had raised his concern to the Planning Department and not Mr. Hibbs but he had on May 28, 2020. Mr. Hibbs' response was forwarded to him from staff via email at 11:00 a.m. this morning. This was the first reply he had received from the City despite several efforts on his part stating that the application was not complete. Staff's email stated the rebuttal was from the applicant, but the application did not include Mr. Hibbs' name. The applicants were Paul Mason and Kathleen Kahle. From the email it did not appear it was reviewed by the applicant or Rogue Planning Development whose name and signatures appeared on the application. He did not question Mr. Hibbs' integrity and apologized if he had taken offense to his comments.

He explained that not long after he moved to Ashland there were land use documents that were messy and problematic. For example, during an escrow for closing on the purchase of his house on Clinton Street, he received a copy of a title report prepared for a different plot of land. He described the ordeal that ensued to attain the appropriate title report.

Mr. Hibbs' response still did not answer the question he had asked with his very first reply. If Mr. Hibbs was relying on information from the title report, he should provide a copy of the title report and the name of the title insurance company. If he were paying for Mr. Hibbs service, he would not pay him until he got better responses than the ones he had received.

Chair Norton paused Mr. Elerath's testimony to let him know he had just over five minutes left to speak.

Mr. Elerath resumed his testimony and explained the drawings showed there were easements for two ditches, pole lines and cable lines that could not be found. He asked what if the ditches showed up tomorrow and they were 50-foot wide concrete lined irrigation canals? What if the pole lines were 300-foot tall high voltage towers or 5G network towers scattered across the property? What if the cable television easement was for Verizon or Comcast to bury gigantic cables to carry data from the tower? What would happen to the wildflowers, wetlands, trees and wildlife? Would the title company guarantee clear title to that? The entire proposal looked dubious to him. The history did not pass the "sniff" test because these questions were not answered earlier, and he had just got an answer. The application still was not complete until these serious questions were answered in full to the satisfaction of the effected party. He wanted the planning action decision withheld until a clarification on the two issues of the easements in the title report regarding the size of the pole lines, ditches and cable lines, as well as the receipt for the application fee.

Public Testimony - None

Rebuttal by Applicant

Amy Gunter/Rogue Planning and Development/Medford, OR/Explained Mr. Hibbs from L.J. Friar & Associates P.C. was hired to do the survey. He was not listed on the application form but was on the cover page of the applicant's written findings. She could not speak to surveys and when easements were not located. Mr. Hibbs had extensive experience and she trusted his knowledge.

Chair Norton asked Mr. Elerath if he was requesting information on the receipt and utilities. Normally at this time they would close the record. Mr. Elerath wanted to leave the record open. Saying something was there did not mean it was there. He did not have an answer to the question he asked over 60 days ago. The application was not complete. It was a submittal, not an application. The application was the cover sheet, everything else was a submittal.

Mr. Severson explained the process would leave the record open for seven days where anyone could provide new argument or evidence until August 18, 2020 at 4:30 p.m. Argument or responses, but not new evidence, to the submittals from the first seven days would be submitted for another seven days until August 25, 2020 at 4:30 p.m. The next seven days would allow final argument from the applicant only, but no new evidence, until September 1, 2020 at 4:30 p.m. The Planning Commission would reconvene via Zoom at their next regular meeting on September 8, 2020 to deliberate and make a decision. The 120-

day deadline was September 12, 2020. The Planning Commission would adopt findings at their meeting on September 22, 2020. Mr. Severson clarified only the applicant and appellant could submit argument or new evidence the first week the record was open, closing September 18, 2020 at 4:30 p.m. The applicant and appellant would respond to submittals from the first week by September 25, 2020 at 4:30 p.m. and the applicant only would submit a response the last week by September 1, 2020 at 4:30 p.m.

Assistant Planner Aaron Anderson noted the receipt and application were in the planning action record on page 83 and 84. Mr. Severson brought up page 83 and 84 of the planning action record showing the application and the receipt. Mr. Elerath responded the receipt and application was no longer an issue. He wanted a response and clarification from the title company as to what the easement ditches were and wanted the reason why the law required them. Chair Norton asked Mr. Elerath to send the items that were not addressed to Mr. Severson who would respond.

Questions of Staff

Commissioner Dawkins asked staff why Phelps Street went all the way through when it seemed to line up with the driveway. Mr. Severson explained if a half street was installed next to a driveway on two separate lots, they would have to be at least 24-feet apart. Commissioner KenCairn asked for clarification that an existing driveway could not be adopted into the street dedication. Mr. Severson responded typically that would not happen. The driveway was next to a street on a separate property, so the driveway needed to be separate from the street.

Mr. Molnar wanted to make sure everyone was clear on what was allowed during the record remaining open. He understood there might be a request from Mr. Elerath for information from staff. He doubted staff would have the availability of the easements. Mr. Severson did not have that information. He only had what was on the plat. Commissioner KenCairn asked if they could be abandoned by the property owner. Commissioner Pearce suggested letting the parties submit whatever they wanted to submit. What staff had to give to someone was covered by existing law.

Commissioner Harper did not want the appellant to think that staff was going to research the easements. It was the responsibility of the appellant to submit and research whatever he wanted. That was why they were leaving the record open. It was not on the City to do the research. Commissioner Harper wanted everyone's expectations to be clear regarding the comment periods. Commissioner Thompson thought it might be helpful to Mr. Elerath to know the Planning Commission's job was to determine whether the statutory standards for the partition were met. His questions may be more for the developers in the future. Commissioner Pearce thought Mr. Elerath could argue if the standards were applicable. Commissioner Thompson agreed.

Chair Norton continued the item to the meeting on September 8, 2020.

VII. ADJOURNMENT

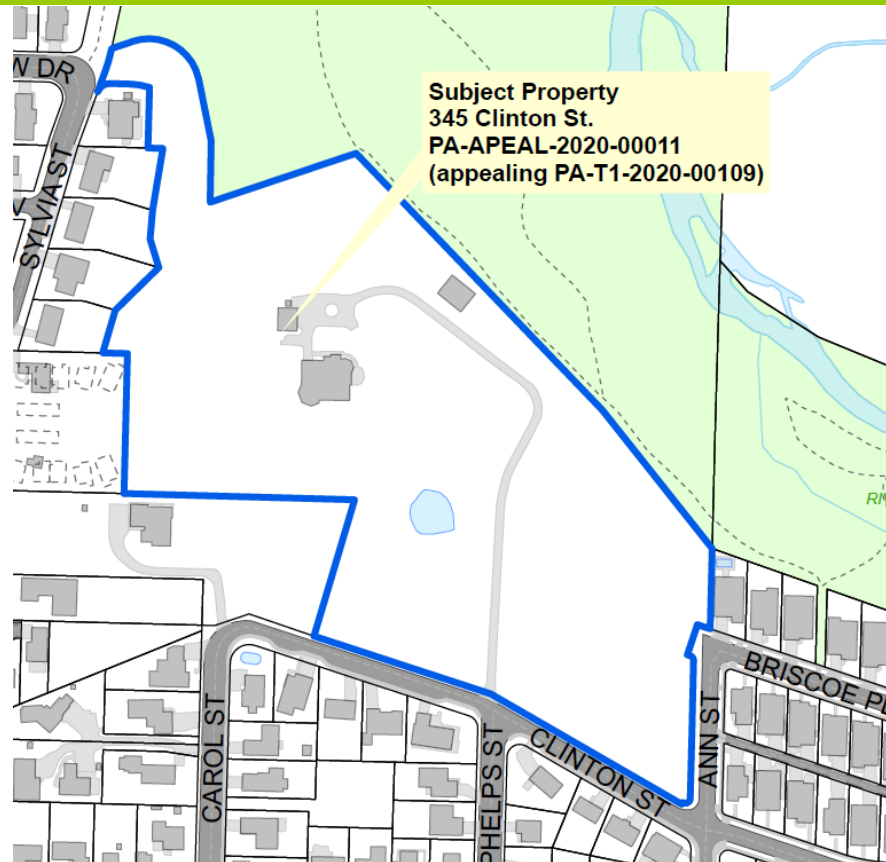
Meeting adjourned 9:11 p.m.

*Submitted by,
Dana Smith, Executive Assistant*

345 Clinton Street Minor Land Partition

CITY OF
ASHLAND

Planning Commission Appeal Hearing
August 11, 2020



345 Clinton St. Appeal

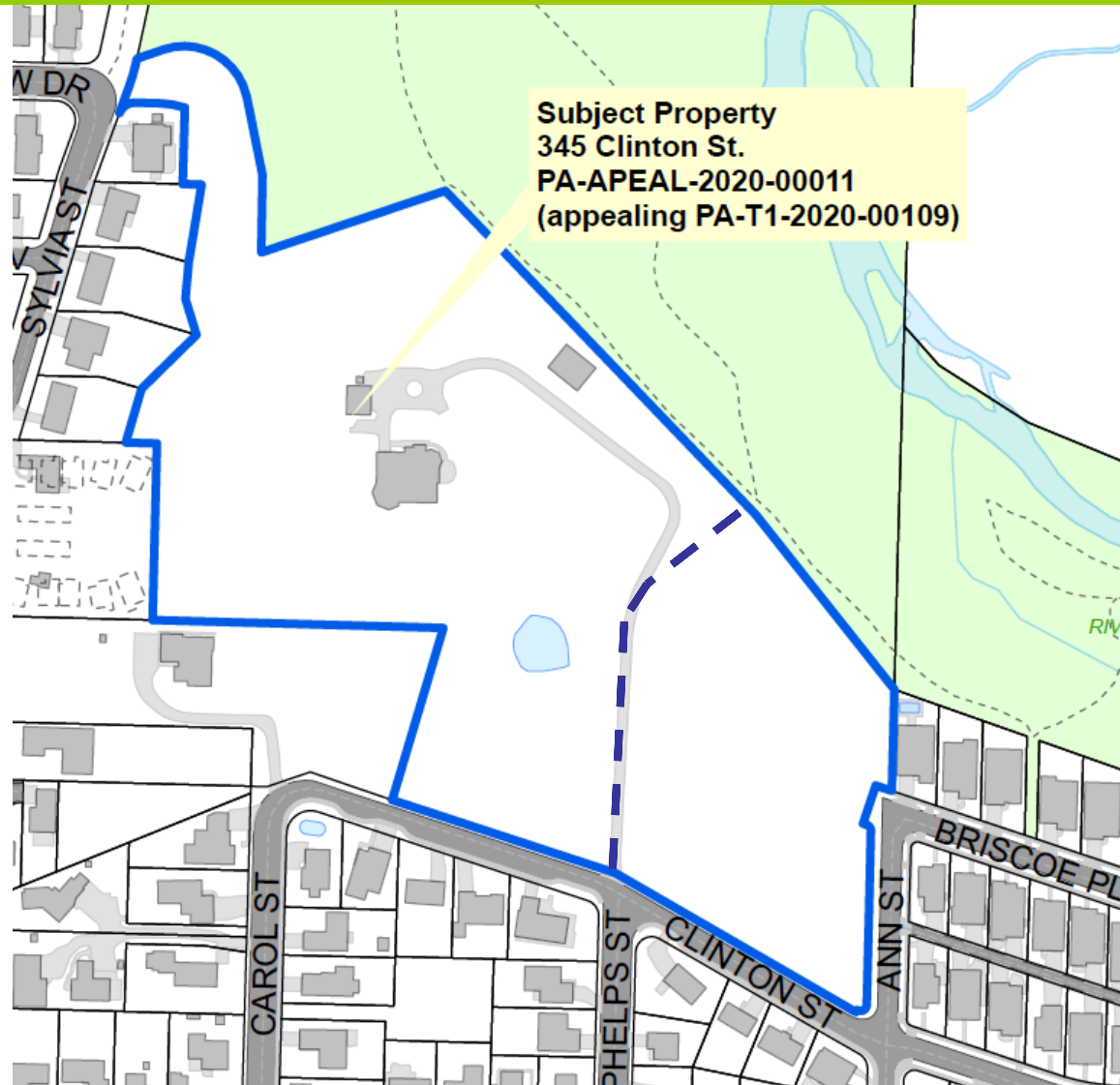
An appeal of the Staff Advisor's approval of a request for a **Land Partition** to partition the property into two lots.

- The parent parcel is a 12.29-acre lot.
- The tentative partition plat submitted with the application indicates that the two proposed parcels will be 8.94 acres and 3.35 acres in size with the smaller parcel situated in the southeast of the parent parcel.

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Vicinity Map

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Aerial Photo

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Photo from the corner of Clinton/Ann



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Photo from end of Briscoe Place

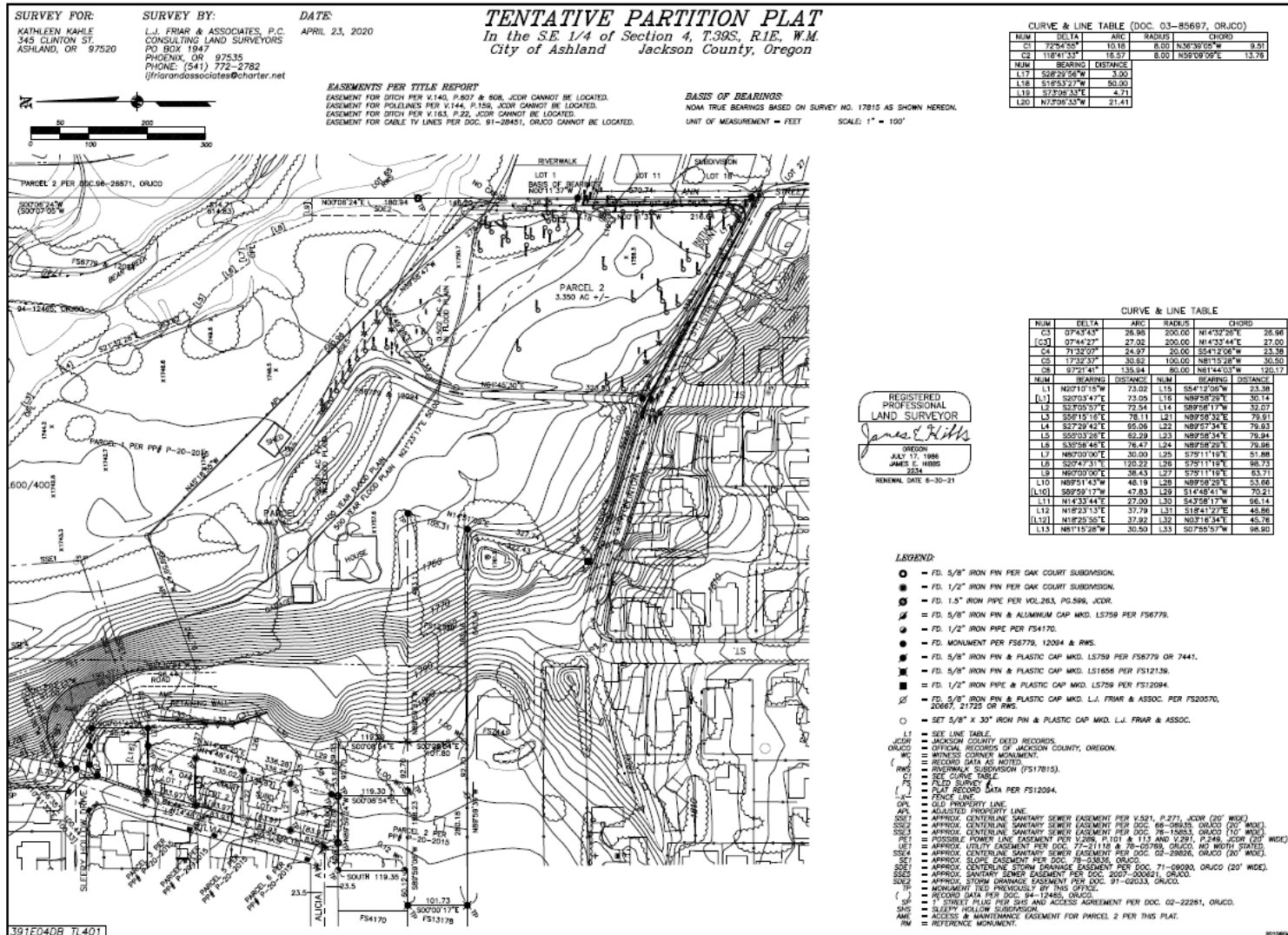
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Preliminary Plat

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Preliminary Plat

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Same Plat with North up



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18.5.3.050 Preliminary Partition Plat Criteria

The approval authority shall approve an application for preliminary partition plat approval only where all of the following criteria are met.

- A. The future use for urban purposes of the remainder of the tract will not be impeded.**
 - Staff found that the future development potential was not impeded based on the two lots being significantly oversized, having frontage on adjacent streets, and being configured to allow the future extensions of Briscoe Place and Phelps Street.*
- B. The development of the remainder of any adjoining land or access thereto will not be impeded.**
 - Adjacent properties are largely built out, or are separated by physical features (creek, floodplain or slope). The partition proposed will not impede development of or access to adjacent land.
- C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.**
 - There is no neighborhood or district plan or condition of approval from previous land use actions that apply to the subject property.
- D. The tract of land has not been partitioned for 12 months.**
 - The tract of land has not been partitioned for 12 months.

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Proposed Add'l Condition

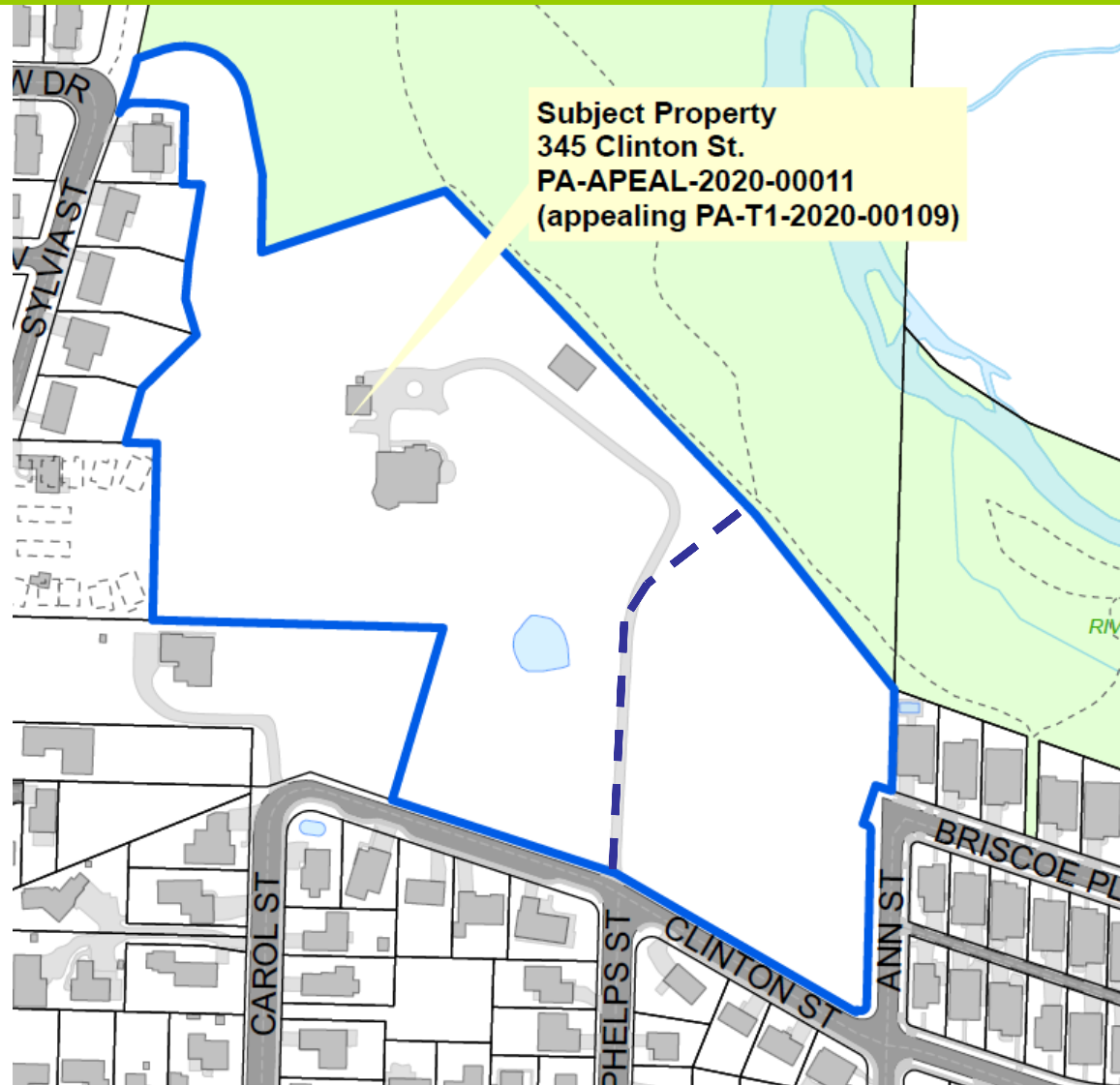


That prior to the signature of the final survey plat, the lot configuration shall be modified to allow the future extension of Phelps Street in alignment with its current terminus across Clinton.

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Adjoining Land

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Street Dedication Map (TSP Figure 10-1)



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North Mountain Neighborhood Plan (NMNP) Street Layout Map

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18.5.3.050 Preliminary Partition Plat Criteria

- E. Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).
- The proposed lots conform to the base standards of the zone including lot size, lot coverage, etc.
- F. Accesses to individual lots conform to the standards in section [18.4.3.080 Vehicle Area Design](#). See also, [18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria](#).
- The larger parcel will retain its existing flag driveway access, which has at least three parking spaces which can turn and exit to the street in a forward manner. The other parcel is to remain vacant at this time, but has direct frontage on two adjacent streets.
- G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part [18.4](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.
- Adjacent rights-of-way have city services with adequate capacity to serve one new lot. No public improvements are proposed with the current land use action, and the applicant has proposed to sign-in favor of a future Local Improvement District for the future improvements to both Clinton and Ann Streets.

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18.5.3.050 Preliminary Partition Plat Criteria (cont'd)

H. Unpaved Streets.

1. **Minimum Street Improvement.** When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.

- Frontage streets are paved, and the curb-to-curb width of Clinton and Ann Streets is twenty-seven feet which exceeds the required amount for local access streets and allows for parking on both sides.
- Clinton and Ann Streets both lack park row and sidewalks adjacent to the new parcel. The applicant requests to sign in favor of a Local Improvement District (LID) for future the future improvement of Clinton and Ann Streets.

I. **Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.**

- Not applicable - there is no alley adjacent to the proposed partition.

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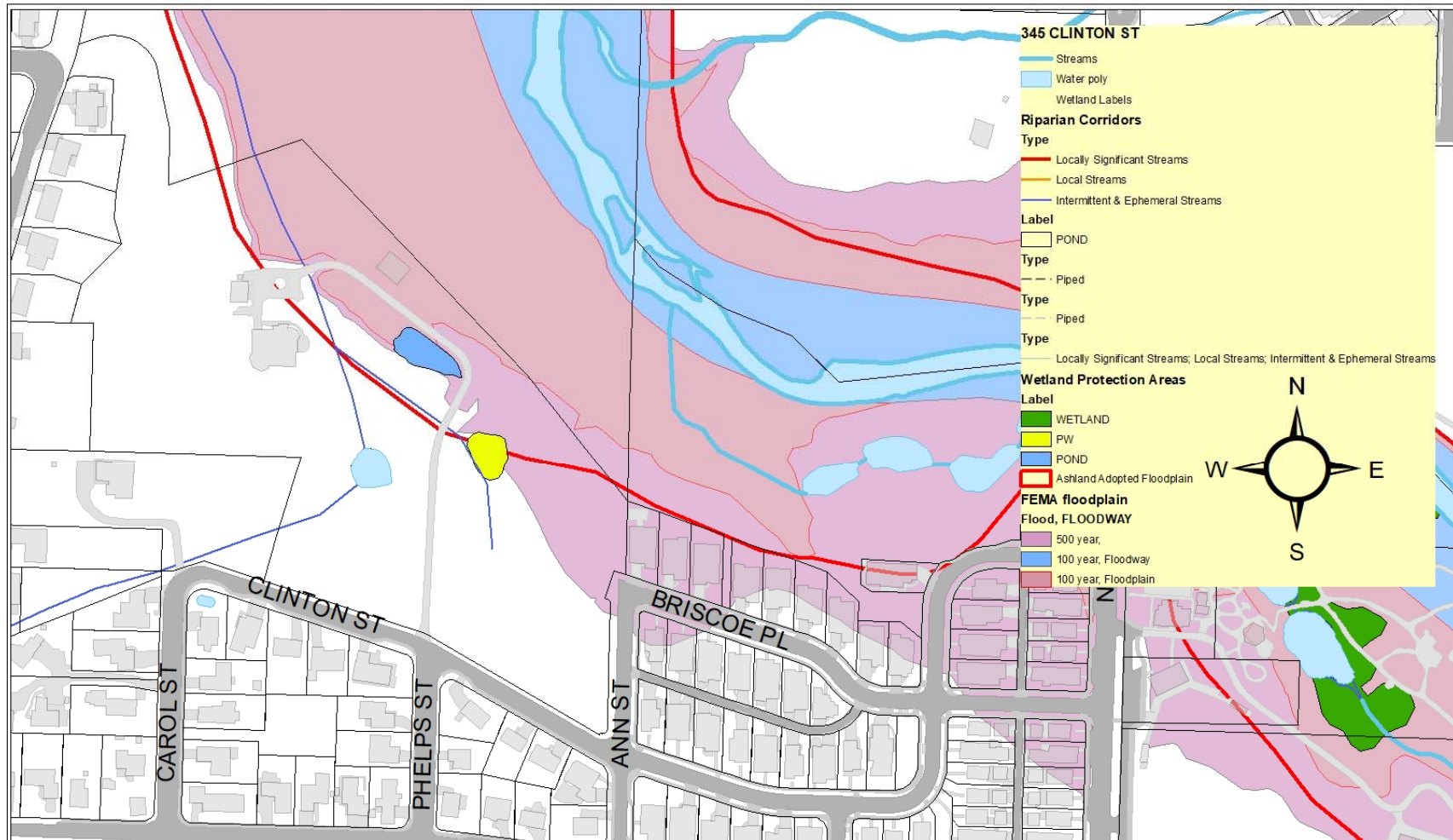
18.5.3.050 Preliminary Partition Plat Criteria (con't)

- J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.**
- Development is not proposed at this time.
 - With future development, the applicant will be required to address the Floodplain Corridor and Water Resource Protection Zone standards with delineation of the “Possible Wetland” identified in the Local Wetlands Inventory (LWI) and obtain applicable required local, state and federal permits.
- K. A partition plat containing one or more flag lots shall additionally meet the criteria in section [18.5.3.060](#).**
- Not applicable – the application does not propose to create a flag lot.

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Floodplain & Possible Wetland

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1 inch = 150 feet
0 50 100 200 300 400
Feet

Mapping is schematic only and bears no warranty of accuracy.
All features, structures, facilities, easement or roadway locations
should be independently field verified for existence and/or location.

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1:1,800

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Potential Buildable Areas

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Staff Decision



APPLICATION DATE:	April 30, 2020
DEEMED COMPLETE ON:	May 15, 2020
STAFF DECISION:	June 30, 2020
APPEALED:	July 13, 2020

Planning staff approved the application administratively on June 30, 2020 subject to several conditions of approval.

On July 13, 2020, a Notice of Intent to Appeal was timely received.

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Appeal Issues



Subsequent to the approval, neighbors Eric Elerath & Betsy A. McLane appealed the application citing the following issues:

- A. Incomplete Application.
- B. Defective Notice.
- C. Failure to provide access to personally inspect the Application File, evidence, and documents.
- D. Failure to provide digital access to Application file, material evidence and documents.
- E. Appellant's request for additional time and the Director's failure to provide such.
- F. Defective submittal analysis.

Appellants stated their intent to address additional items during the *de novo* appeal hearing tonight.

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Appeal Issue #1 – Incomplete Application

Incomplete Application.

- Online materials did not include a receipt for the application fee. Appellants also states that the application itself was missing from the online materials.
- Staff determined the application to be complete, and while the application form and receipt of payment were not included in the materials posted online, staff verified that an application was provided and payment had been made, the application and receipt were included in the physical record and the appellant was offered the opportunity to review the record in the Community Development & Engineering Services Building.
- The appellant has subsequently reviewed the application materials in the Community Development & Engineering Services Building.
- The application submittal requirements of AMC 18.5.1.050.A are not approval criteria applicable to approving or denying a preliminary partition plat.

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Appeal Issue #2 – Defective Notice

- While the posted notice stated that the application materials were available for review in the Community Development Building, with the Governor's Executive Order #20-16 and the city's declared State of Emergency in response to the COVID-19 pandemic, city offices were closed to the public.
- Mailed and posted notices included the name and phone number of a city contact person as required in AMC 18.5.1.050.B.3.h.
- The planning application materials were made available on "What's Happening in My City" on the City web site, and people who called or emailed and were interested in reviewing the file were directed to the City's web site.
- Staff spoke with the appellant multiple times to ensure that he had access to the electronic materials.

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Appeal Issue #3 – Access to Inspect Record

Failure to provide access to personally inspect the Application File, evidence, and documents.

- Staff contacted the appellant multiple times to ensure that he had access to the electronic materials.
- In addition, after the Notice of Decision was sent but prior to the end of the appeal period the city made accommodations to allow the appellant access to the Community Development & Engineering Services Building to review the physical materials prior to the appeal. Despite being contacted multiple times he did not respond to staff or take those opportunities that were available to him to review the application materials in person.
- He has subsequently reviewed the record in the Community Development & Engineering Services Building.

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Appeal Issue #4 – Digital Access



Failure to provide digital access to Application file, material evidence and documents.

- As stated above, all application materials were published on the City of Ashland's web site.

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Appeal Issue #5 – Additional Time



Appellant's request for additional time and the Director's failure to provide such.

- **AMC 18.5.1.050.C** requires that, *"The Staff Advisor shall prepare a decision within 45 days of the City's determination that an application is complete, unless the applicant agrees to a longer time period."*
- In addition, **AMC 18.5.1.090.B** requires that, *"The City shall take final action on Administrative... land use applications, pursuant to this chapter, including resolution of all appeals, within 120 days from the date the Staff Advisor deems the application complete for purposes of processing, unless the applicant requests an extension in writing."*
- There is no allowance in the code to provide additional time for review without written consent of the applicant, and staff's review timeline is constrained by the time limits set by both city ordinance and state law to render a final decision.

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Appeal Issue #6 – Multiple Land Use Decisions

Defective submittal analysis / Multiple Land Use Decisions were made.

- The determination that an application meets the ‘Type I’ application submittal requirements of **AMC 18.5.1.050.A** is a procedural component of all ‘Type I’ land use decisions, and **AMC 18.5.1.090.A** requires the Staff Advisor make such a determination for each application within 30 days of submittal.
- Completeness review in and of itself is not treated as a separate land use decision requiring substantial discretion, and as such is not included as a type of Planning Action approval in **AMC Table 18.5.1.010 “*Summary of Approvals by Type of Review Procedures.*”**

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Appeal Issue #7 – Multiple Land Use Decisions

Multiple Land Use Decisions were made.

ORS 197.015(12) “*Limited Land Use Decision*”

- (a) Means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:
 - (A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (Application for approval of subdivision or partition) (1).
 - (B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.
- (b) Does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.

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Appeal Issue #8 – Appeal Noticing

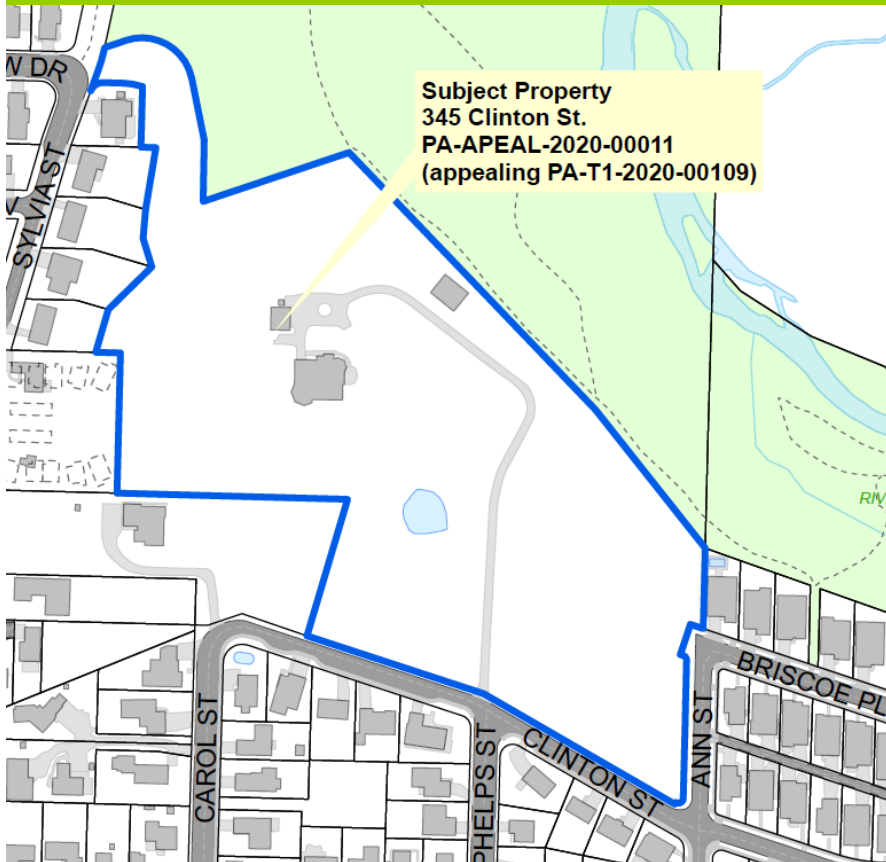
Failure to Notice Appellant Betsy A. McLane

- Betsy McLane was listed as an appellant but did not sign appeal form.
- Per **AMC 18.5.1.050.G.4** , hearings for appeals of Type I decisions follow the Type II hearing procedures in **AMC 18.5.1.060 A-E**.
- **AMC 18.5.1.060.C.2** requires that notices be mailed to owners of record of property on the most recent tax rolls.
- Tax roll lists, and mailing was sent to, “**Elerath, Eric J et al, 419 Clinton St, Ashland, OR 97520**”. See notice received in appellants’ Aug. 10 submittal.
- **AMC 18.5.1.020** speaks to “**Failure to Receive Notice**” noting, “The failure of a property owner to receive notice... shall not invalidate such proceedings if the City can demonstrate by affidavit that such notice was mailed. The failure to receive notice shall not invalidate the decision after the action is final if a good faith attempt was made to notify all persons entitled to receive notice.”

345 Clinton Street Minor Land Partition

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Planning Commission Appeal Hearing
August 11, 2020



Staff Recommendation

Staff recommends that the appeal be denied and that the original staff approval be upheld with the conditions recommended in the staff report, as detailed in your packets.

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Timelines



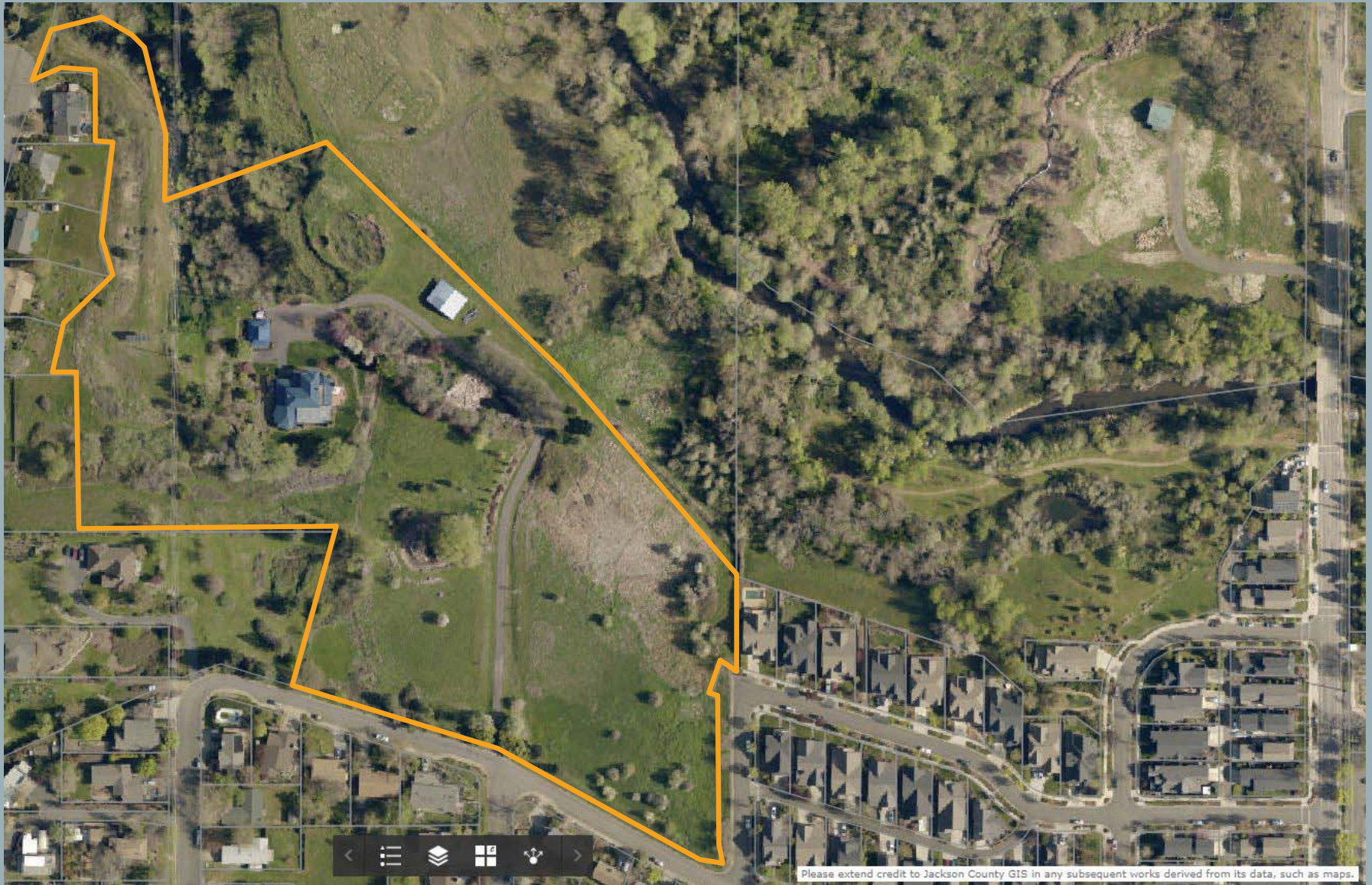
If record is left open pursuant to ORS 197.763(6)...

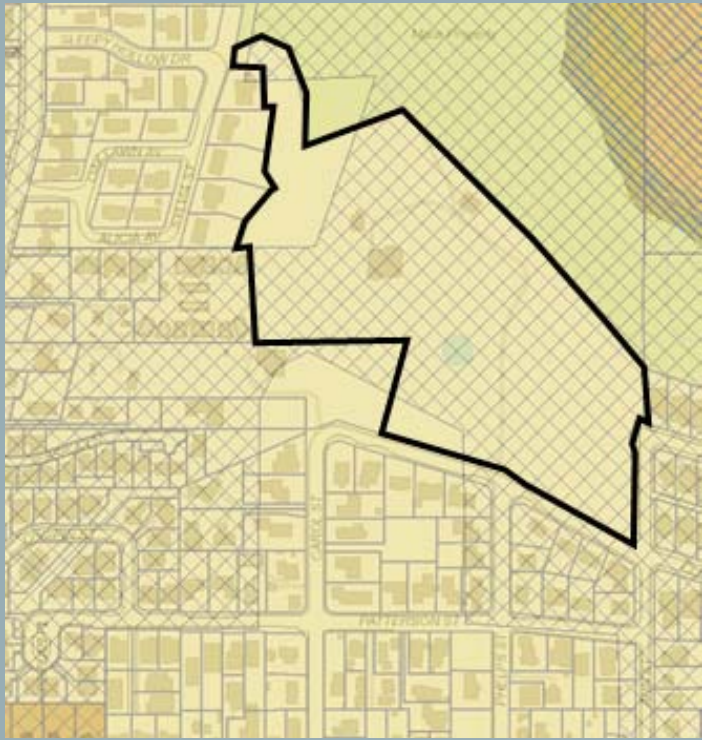
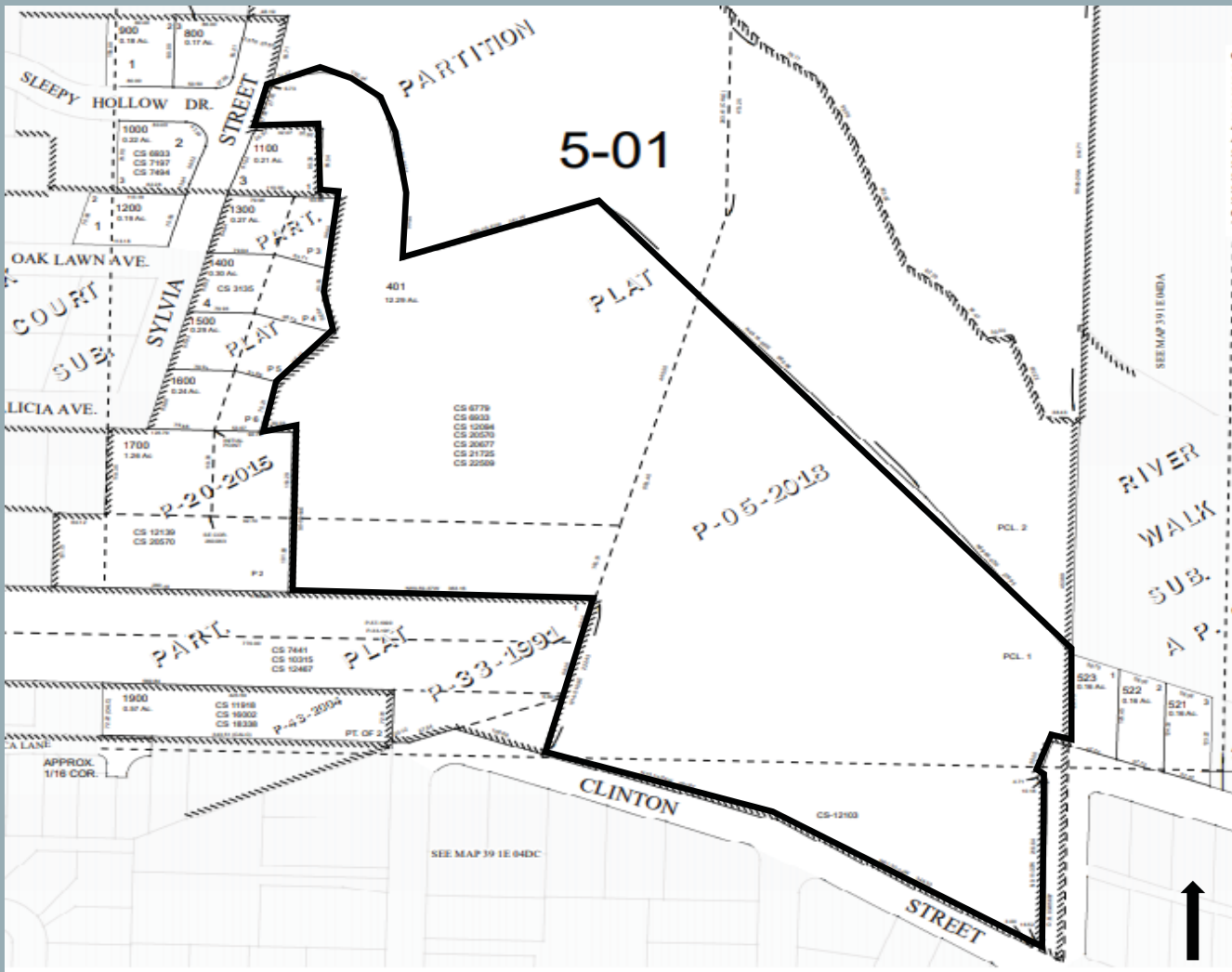
New Evidence or Argument/Parties:	August 18, 2020 @ 4:30 p.m.
Argument/Response to New Submittals:	August 25, 2020 @ 4:30 p.m.
Final Legal Argument from Applicant:	September 1, 2020 @ 4:30 p.m.
Next Regular PC Meeting Date:	September 8, 2020 @ 7:00 p.m.

The 120-day Deadline:	September 12, 2020
+ 14 days to Adopt Findings:	September 25, 2020

APPEAL OF ADMINISTRATIVELY APPROVED
MINOR LAND PARTITION

345 Clinton Street
39 1E 04DB: Tax Lots: 401







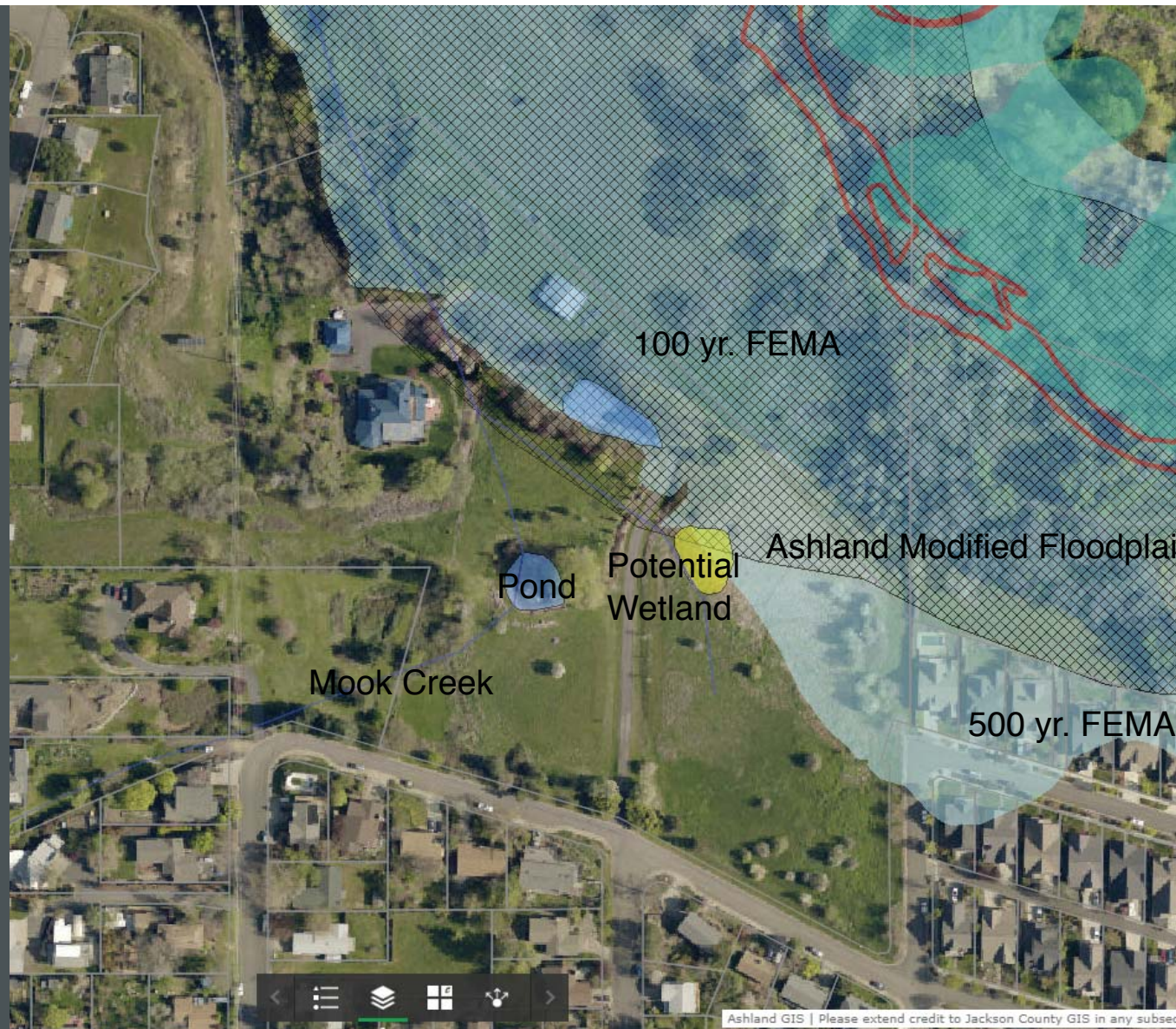
PROPOSED PARTITION PLAT

NATURAL FEATURES

Areas of the property include
potential wetland area and buffer

FEMA Floodplain

Ashland Modified Floodplain



CONCLUSION

- The proposed partition is to create a discrete parcel of record.
- Both parcels area and dimensions exceed the minimum lot size in the R-1-5-P zone.
- Adequate vehicular access presently exists to the property and future development will extend the public streets through the future development area of Parcel #2.
- The parcels do have natural features such as floodplains and potential wetlands, as addressed in the findings. The future development will be required to consider the physical constraints as part of the future subdivision.
- The City of Ashland has adopted numerous documents addressing the need to additional housing. This partition creates a developable parcel that allows for the future development of needed housing within the city limits.

**FINDINGS
and
Legal Response Memo to
Commission Questions**

**PA-T2-2020-00020
705 Helman Street**

Memo

TO: Bill Molnar, Derek Severson, Michael Dawkins, Alan Harper, Kerry KenCairn, Haywood Norton, Roger Pearce, Lynn Thompson,
FROM: David Lohman *DL*
RE: 705 Helman Findings – Changing or Mandating Conditions
DATE: September 1, 2020

Regarding the Helman School expansion application approval, the questions the Planning Commission had for me can, I believe, be captured as follows:

1. After the record is closed on a Planning Commission decision on a Type II conditional use permit application, is it legally permissible for the Planning Commission's final findings to include a condition not previously discussed or to modify a condition that was included in the meeting at which the application was approved orally?
2. Is it legally permissible for the Planning Commission to condition its approval of a land use application on allowing public access to the applicant's property?

RESPONSE

The need for definitive answers to these two questions about the Helman School expansion has been obviated by the applicant's stated voluntary commitment to comply with the proposed public access condition – a commitment to which the Planning Commission presumably would not have reason to object.

Accordingly, I have not taken the time to conduct a thorough legal analysis and conclusion to answer these two questions. However, the following comments may be helpful.

Comment on Question 1: Some preliminary analysis suggests to me (a) that the drafting of findings can uncover issues previously addressed in the record that warrant clarification or revision at the time of approval of findings without further administrative process; and (b) that a Planning Commission decision is accordingly not final until findings are approved.

Comment on Question 2: A thorough response to this question would be complicated by the differences between ordinary private property and the Helman school property which is, of course, in public ownership and a portion of which has functioned and been recognized in official planning documents as a space for general public use. Because of this distinction from ordinary private property, developing a legally defensible answer to Question 2 would require significant legal research and perhaps ultimately a difficult judgment call. Thankfully, the stated School District's willingness to embrace the proposed condition makes reaching a legally defensible conclusion unnecessary at this time.



BEFORE THE PLANNING COMMISSION
August 11, 2020

IN THE MATTER OF PLANNING ACTION #PA-T2-2020-00020, A REQUEST FOR)
SITE DESIGN REVIEW AND CONDITIONAL USE PERMIT APPROVALS TO)
ALLOW THE CONSTRUCTION OF A NEW 23,755 SQUARE FOOT, SINGLE-STORY)
CLASSROOM BUILDING FOR THE HELMAN ELEMENTARY SCHOOL PROPERTY)
AT 705 HELMAN STREET. THE REQUESTED CONDITIONAL USE PERMIT IS TO)
ALLOW EXPANSION OF AN EXISTING NON-CONFORMING DEVELOPMENT)
WHERE BOTH EXISTING AND PROPOSED PARKING AND CIRCULATION ARE) **FINDINGS,**
LOCATED BETWEEN THE BUILDINGS AND THE STREET, AND FOR THE RE-) **CONCLUSIONS &**
LOCATION OF PREVIOUSLY APPROVED SIGNS. THE PROPOSAL INCLUDES) **ORDERS**
THE DEMOLITION OF TWO EXISTING CLASSROOM BUILDINGS – THE A AND B)
QUADS - AND REQUESTS A TREE REMOVAL PERMIT TO REMOVE A TOTAL OF)
12 SIGNIFICANT TREES.)

OWNER/APPLICANT: HMK COMPANY/ASHLAND SCHOOLD DIST. #5)
)
)

RECITALS:

- 1) Tax lots 600, 2700, 2800 & 2900 of Map 39 1E 04BD comprise the Helman Elementary School campus located at 705 Helman Street and are zoned Single Family Residential (R-1-5).
- 2) The applicant is requesting Site Design Review and Conditional Use Permit approvals to allow the construction of a new 23,755 square foot, single-story school building for the Helman Elementary School property at 705 Helman Street. The requested Conditional Use Permit is to allow the expansion of an existing non-conforming development where both the existing and proposed new parking and circulation are located between the buildings and the street, and for the on-site relocation of a previously approved signage. The proposal includes the demolition of two existing classroom buildings (“A Quad” and “B Quad”) and requests a Tree Removal Permit to remove 12 significant trees. The proposal is outlined in plans on file at the Department of Community Development.
- 3) The criteria for Site Design Review approval are detailed in **AMC 18.5.2.050** as follows:
 - A. **Underlying Zone:** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*
 - B. **Overlay Zones:** *The proposal complies with applicable overlay zone requirements (part 18.3).*
 - C. **Site Development and Design Standards:** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*
 - D. **City Facilities:** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*

E. **Exception to the Site Development and Design Standards.** The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.

1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or*
2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.*

4) The approval criteria for a Conditional Use Permit are detailed in **AMC 18.5.4.050.A** as follows:

1. *That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.*
2. *That adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the development, and adequate transportation can and will be provided to the subject property.*
3. *That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone, pursuant with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone.*
 - a. *Similarity in scale, bulk, and coverage.*
 - b. *Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.*
 - c. *Architectural compatibility with the impact area.*
 - d. *Air quality, including the generation of dust, odors, or other environmental pollutants.*
 - e. *Generation of noise, light, and glare.*
 - f. *The development of adjacent properties as envisioned in the Comprehensive Plan.*
 - g. *Other factors found to be relevant by the approval authority for review of the proposed use.*
4. *A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.*
5. *For the purposes of reviewing conditional use permit applications for conformity with the approval criteria of this subsection, the target uses of each zone are as follows.*
 - b. **R-1.** *Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.*

5) The approval criteria for a Tree Removal Permit are described in **AMC 18.5.7.040.B** as follows:

1. **Hazard Tree.** A Hazard Tree Removal Permit shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.
 - a. The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard (i.e., likely to fall and injure persons or property) or a foreseeable danger of property damage to an existing structure or facility, and such hazard or danger cannot reasonably be alleviated by treatment, relocation, or pruning. See definition of hazard tree in part 18.6.
 - b. The City may require the applicant to mitigate for the removal of each hazard tree pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.
2. **Tree That is Not a Hazard.** A Tree Removal Permit for a tree that is not a hazard shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.
 - a. The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part 18.4 and Physical and Environmental Constraints in part 18.10.
 - b. Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.
 - c. Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.
 - d. Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures or alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.
 - e. The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.

6) The Demolition and Relocation Standards are described in detail in **AMC 15.04.216** as follows:

- A. *For demolition or relocation of structures erected more than 45 years prior to the date of the application:*
 1. *The applicant must demonstrate that either subparagraphs a or b apply:*
 - a. *The structure cannot be rehabilitated or reused on site as part of any economically beneficial use of the property. In determining whether an economically beneficial use can be made of the property, the Demolition Review committee may require the applicant to:*
 - (i) *Furnish an economic feasibility report prepared by an architect, developer, or appraiser, or other person who is experienced in*

- rehabilitation of buildings that addresses the estimated market value of the property on which the building lies, both before and after demolition or removal, or*
- (ii) Market the property utilizing a marketing plan approved by the Demolition Review Committee or by advertising the property in the Ashland Daily Tidings and Medford Mail Tribune at least eight times and at regular intervals for at least 90 days and by posting a for sale sign on the property, four to six square feet in size and clearly visible from the street, for the same 90 day period.*
- b. The structure proposed for demolition is structurally unsound despite efforts by the owner to properly maintain the structure.*
- 2. In addition to subparagraphs a or b above, the applicant must also:*
- a. Submit a redevelopment plan for the site that provides for replacement or rebuilt structure for the structure being demolished or relocated. The replacement or rebuilt structure must be a minimum of 1,000 square feet, unless the structure being demolished or relocated is less than 1,000 square feet. If the structure is less than 1,000 square feet, the replacement structure must be a minimum of 500 square feet. The redevelopment plan must indicate in sufficient detail the nature, appearance and location of all replacement or rebuilt structures. No replacement structure is required, however, if:*
 - (i) the applicant agrees to restrict the property to open space uses and a finding is made that such restriction constitutes a greater benefit to the neighborhood than redevelopment would, or*
 - (ii) the structure being demolished or relocated is a nonhabitable accessory structure.*
 - b. Demonstrate, if the application is for a demolition, the structure cannot be practicably relocated to another site.*
- 3. If a permit is issued and the redevelopment plan:*
- a. Requires a site review permit, no demolition or relocation may occur until the site review permit has been issued, unless the site is restricted to open space uses as provided in section 15.04.216.A.2.*
 - b. Does not require a site review permit, no demolition or relocation may occur until the building permit has been issued for the replacement or rebuilt structure, unless the site is restricted to open spaces uses as provided in section 15.04.216.A.2.*
- 4. The Demolition Review Committee may require the applicant to post with the City a bond, or other suitable collateral as determined by the City administrator, ensuring the safe demolition of the structure and the completed performance of the redevelopment plan.*

B. For demolition or relocation of structures erected less than 45 years from the date of the application:

1. The applicant:

- a. Has the burden of proving the structure was erected less than 45 years from the date of the application. Any structure erected less than 45 years from the date of the application, which replaced a structure demolished or relocated under section 15.04.216, shall be considered a structure subject to the standards in subsections 15.04.216.*
- b. Must submit a redevelopment plan for the site that provides for a replacement or rebuilt structure being demolished or relocated. The replacement or rebuilt structure must be a minimum of 1,000 square feet, unless the structure being demolished or relocated is less than 1,000 square feet. If the structure is less than 1,000 square feet, the replacement structure must be a minimum of 500 square feet. The redevelopment plan must indicate in sufficient detail the nature, appearance and location of all replacement or rebuilt structures. No replacement structure is required, however, if:
 - (i) the applicant agrees to restrict the property to open space uses and a finding is made that such restriction constitutes a greater benefit to the neighborhood than redevelopment would, or*
 - (ii) the structure being demolished or relocated is a nonhabitable accessory structure.**

2. If a permit is issued and the redevelopment plan:

- a. Requires a site review permit, no demolition or relocation may occur until the site review permit has been issued, unless the site is restricted to open space uses as provided in section 15.04.216.B.*
- b. Does not require a site review permit, no demolition or relocation may occur until a building permit has been issued for the structure or structures to be replaced or rebuilt, unless the site is restricted to open space uses as provided in section 15.04.216.B.*

C. For any demolition approved under this section, the applicant is required to salvage or recycle construction and demolition debris, in accordance with a demolition debris diversion plan that complies with the requirements adopted the Demolition Review Committee. The applicant shall submit such a plan with the application for demolition.

For any relocation approved under this section, the applicant must also comply with the provisions of Chapter 15.08. (Ord. 2925, amended, 04/18/2006; Ord. 2891, amended, 11/19/2002; Ord. 2858, amended, 06/20/2000; Ord. 2852, added, 01/21/2000)

7) On April 15, 2020 Governor Kate Brown issued Executive Order #20-16 *“Keep Government Working: Ordering Necessary Measures to Ensure Safe Public Meetings and Continued Operations by Local Government During Coronavirus (COVID-19) Outbreak.”* The Governor’s Order required that public bodies hold public meetings by telephone, video, or through some other electronic or virtual means, whenever possible; that the public body make available a method by which the public can listen to or virtually attend the public meeting or hearing at the time it occurs; that the public body does not have to provide a physical space for the public to attend the meeting or hearing; that requirements that oral public testimony be taken during hearings be suspended, and that public bodies instead provide a means for submitting written testimony by e-mail or other electronic methods that the public body can consider in a timely manner. The Oregon Legislature subsequently passed House Bill #4212 which authorizes local governments to hold all meetings of their governing bodies, including taking public testimony, using telephone or video conferencing technology or through other electronic or virtual means provided that they supply a means by which the public can listen to or observe the meeting. This bill requires that recordings of the meetings be made available to the public if technology allows, and includes provisions similar to the Governor’s order allowing public testimony to be taken in writing via e-mail or other electronic means.

8) The Planning Commission, following proper public notice, held an electronic public hearing on July 14, 2020. In keeping with Executive Order #20-16, this meeting was broadcast live on local television channel 9 and on Charter Communications channels 180 & 181, and was live-streamed over the internet on RVTV Prime at rvtv.sou.edu.

The application, including all documents, evidence and applicable criteria relied upon by the applicant, and the staff report were made available on-line seven days prior to the hearing, with in-person review by appointment, and printed copies available at a reasonable cost. Those wishing to provide testimony were invited to submit written comments via e-mail by 10:00 a.m. on Monday, July 13, 2020, and the applicant was able to provide written rebuttal to this testimony by 10:00 a.m. on Tuesday, July 14, 2020. Comments and rebuttal received were made available on-line and e-mailed to Planning Commissioners before the hearing and included in the meeting minutes. As provided in the Governor’s Executive Order #20-16, testimony was also taken electronically during the tele-conferenced meeting from those members of the public who had pre-arranged to provide oral testimony by 10:00 a.m. on Tuesday, July 14, 2020.

After the closing of the hearing and the record, the Planning Commission deliberated and approved the application subject to conditions pertaining to the appropriate development of the site.

Now, therefore, the Planning Commission of the City of Ashland finds, concludes and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the index of exhibits, data, and testimony below will be used:

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, Miscellaneous Exhibits lettered with an "M"

SECTION 2. FINDINGS & CONCLUSIONS

2.1 The Planning Commission finds that it has received all information necessary to make a decision based on the staff report, written public testimony and the exhibits received.

2.2 The Planning Commission finds that the proposal for Site Design Review approval, Conditional Use Permit, and Tree Removal Permit meets all applicable criteria for Site Design Review described in AMC 18.5.2.050; for Conditional Use Permit described in AMC 18.5.4.050; and for a Tree Removal Permit described in AMC 18.5.7.040.B.

2.3 The Planning Commission concludes that the proposal satisfies all applicable criteria for Site Design Review approval.

The first approval criterion addresses the requirements of the underlying zone, requiring that, *“The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.”* The Planning Commission finds that the building and yard setbacks and other applicable standards have been evaluated to ensure consistency with the applicable provisions of part 18.2, and all regulations of the underlying R-1-5 zoning will be satisfied.

The second approval criterion deals with overlay zones, and requires that, *“The proposal complies with applicable overlay zone requirements (part 18.3).”* The Planning Commission finds that the property is within the Performance Standards Option (PSO) overlay zone, which requires that all developments other than partitions or individual buildings be processed under Chapter 18.3.9., however the proposal here is limited to the development of school buildings on existing lots and does not require subdivision of the property.

The Planning Commission further finds that the subject property is located within the Wildfire Lands Overlay, and as such a Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 will need to be provided for the review and approval of the Fire Marshal prior to bringing combustible materials onto the property. New landscaping proposed will need to comply with these standards and shall not include plants listed on the Prohibited Flammable Plant List per Resolution 2018-028. Conditions to this effect have been included below.

Based on the foregoing, the Planning Commission finds that this criterion is satisfied.

The third criterion addresses the Site Development and Design Standards, requiring that “*The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*”

The Planning Commission finds that as proposed, the new classroom building being considered is being placed more than 100 feet from the sidewalk, and existing parking and circulation between the campus buildings and the street is being expanded through requests for Exceptions to the Site Development and Design Standards and a Conditional Use Permit discussed later in this section and in section 2.4. Parking areas are being shifted away from the street, on-site stormwater detention and new landscaping are being added, and controlled access standards better addressed with the removal of a driveway which currently exits into the crosswalk at the corner of Helman and Randy Streets.

The Planning Commission notes that automobile parking and circulation are discussed in detail in Section 2.4 below. With regard to bicycle parking, the Planning Commission notes that 70 covered bicycle parking spaces are required, based on the applicable ratios in AMC 18.4.3.070 of one covered space for every five students and an enrollment capacity of 350 students. The application explains that only 12 covered bicycle parking spaces are in place, and that the applicant proposes to add a 20 stall bicycle parking structure on the north side of campus accessible from Randy Street and an additional 29 space structure west of the new parking lot along Helman Street to yield a total of 61 covered bicycle spaces, or roughly 87 percent of the 70 spaces required.

The Planning Commission further notes that with the approval of the gym and library additions in Planning Action #2007-01756, 66 bicycle parking spaces were required for the 330 student enrollment. At the time, there were 68 spaces already in place on campus in uncovered non-standard racks, and 12 new covered city-standard bicycle parking spaces were added adjacent to the new gym so that a total of 80 bicycle parking spaces available on campus. The Planning Commission finds here that since previously required bicycle parking has been removed since the last approval and no Variance has been requested, the full required 70 covered bicycle parking spaces are required.

The Planning Commission notes that the current proposal includes the construction of a new security fence around the perimeter of the campus to control access. Presently, there is a paved pedestrian access easement from the cul-de-sac on Parkside Drive, near 535 Parkside Drive, to the south of campus which was required to be provided with the adjacent subdivision to the south to enable students to safely and efficiently access campus. The Commission here finds that given that the Pedestrian Access and Circulation Standards in AMC 18.4.3.090.B.3.b call for providing pedestrian connections to off-site adjacent uses to the site to the extent practicable and that there is already an improved easement in place to provide just such a connection, restricting this access during pick-up and drop-off times would run counter to the Pedestrian Access and Circulation Standards. The Commission therefore finds that at a minimum, the proposal needs to be modified to provide a gated neighborhood access point that can be unlocked during pick-up and drop-off periods to enable a safe and direct route to school for students living in the subdivision to the south rather than requiring a more indirect and circuitous route to campus. A condition to this effect is included below as Condition #7k.

The fourth approval criterion addresses city facilities, specifically requiring that, *“The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.”* The Planning Commission finds that adequate capacity of city facilities, paved access to and throughout the property, and adequate transportation can and will be provided to the subject property.

The Commission notes that existing services are in place and currently serve the campus and its buildings. The applicant asserts that adequate city facilities exist to service the proposed new classroom building, and further indicates that the proposal substantially upgrades the storm drainage facilities, which are currently inadequate. The applicant emphasizes that the civil engineering plans (Sheets C2.1 Erosion Control Plan, C3.0 Overall Civil Site Plan, and C.4 Overall Grading and Drainage Plan) provide necessary details to demonstrate proposed site development and construction can comply with city standards. The applicant further details:

- **Water:** There is an existing six-inch water main in Helman Street, and a six-inch main in Randy Street. There are fire hydrants on Randy Street including a hydrant and fire sprinkler vault west of the gymnasium building. There are hydrants on Helman Street. A fire connection vault is proposed to be located adjacent to Helman Street. The water line sizes are substantial and water pressure is 90 p.s.i. at the Helman Street hydrant, which is adequate to address the water needs for the new structure.
- **Sewer:** There is an eight-inch sanitary sewer line in Randy Street, and there are 18-inch and 12-inch sanitary sewer lines in Helman Street. The applicant notes that in discussion with the Wastewater Department Supervisor, no capacity issues with the public sanitary sewer lines have been identified.
- **Electrical:** There are major overhead electrical facilities along Helman Street, and private facilities including junction boxes and vaults are in place. The application explains that the new structure has been designed and engineered to be solar-ready, and areas for future solar panel installation have been reserved in the roof plan. The applicant indicates that they are unaware of any electrical capacity issues.
- **Urban Storm Drainage:** There is an 18-inch storm sewer main in Helman Street. The development proposal includes substantial storm water quality improvements including the creation of two large landscaped bio-swales. The final Civil engineering will be designed to the standards of the DEQ MS4 General Permit, Phase 2, and the storm water system also be designed to comply with all of Ashland’s specific storm water quality design standards.
- **Transportation:** The applicant notes that there are existing curbside sidewalks in place along all frontages, and indicates that no changes to the existing curbside sidewalk configuration are proposed.

According to the Transportation System Plan, Laurel Street is classified as a Residential Neighborhood Collector. Laurel was recently subject to a Local Improvement District to install sidewalks in the Helman School neighborhood, and no changes to the Laurel Street frontage are proposed.

Randy Street is classified as a Neighborhood Residential Street, and currently has paving, curbs, gutters and curbside sidewalks in place along the property frontage, but no parkrows. The proposal would remove 3 of the five existing driveway curb cuts on Randy, including one that is immediately adjacent to the intersection and crosswalk, and reinstall a new driveway cut in a location which complies with controlled access standards and serves a new one-way circulation. The applicant emphasizes that these proposed changes to the driveways improve pedestrian safety by increasing driveway spacing away from the most heavily used intersection, while the proposed changes to the parking areas increase the length of the driveway and vehicular maneuvering area on site in order to better accommodate parent drop-off and pick-up on site, without pushing traffic onto the adjacent public streets, and the new one-way vehicular traffic circulation is to increase student and pedestrian safety.

Helman Street is considered an Avenue. Helman Street along the frontage of the school is not improved to current avenue standards – there is paving, curb, gutter and curbside sidewalks in place, but no parkrows. The application proposes to plant street trees behind the sidewalk and retain two existing driveway curb cuts and add one additional new driveway cut which complies with controlled access standards. No other changes to the Helman Street frontage are proposed by the applicant.

The Planning Commission notes that the application materials assert that facilities are in place to serve the existing campus buildings, and adequate key City facilities can be provided to serve the new classroom building, and that based on consultations with representatives of the various City departments (i.e. water, sewer, streets and electric) the proposed addition will not cause a City facility to operate beyond capacity. The Commission further finds that the project is intended to improve accessibility, safety, security and site circulation, but with the demolitions and addition proposed, neither the student enrollment or staffing are to be increased. The application includes civil drawings to address the changes in site grading, drainage, utilities and access associated with the proposal, and conditions have been included below to require that final civil drawings detailing the final utility and infrastructure improvements be provided for review and approval prior of the Building, Planning, Fire, Public Works and Electric Departments prior to building permit issuance.

The Commission concludes that this criterion has been satisfied.

The final criterion for Site Design Review approval addresses “*Exception to the Site Development and Design Standards.*”

The application materials recognize that the existing and proposed site development including the placement of parking and vehicular access between the buildings and the street, placement of the new building roughly 180 feet from the property line and not oriented to the corner of Helman and Randy Street, and the lack of pedestrian entrances open to the general public from the sidewalk necessitate exception to the design standards.

The applicant suggests that the use of the site as an elementary school can be found to be a unique which poses a demonstrable difficulty in meeting these standards in that schools in 2020 cannot be open to the

general public like the typical commercial building considered in the standards. For student and staff safety and security, access to the campus must be restricted, and the funding source for the current project is through a local bond measure which sought to improve accessibility, structural safety, energy efficiency and campus security for an elementary school original built in 1960's. And the existing site layout establishes building and parking placement which pose challenges to increasing compliance with the applicable standards without full redevelopment of the campus. The applicant concludes that the exceptions requested are the minimum necessary to accommodate the re-development of the parking area and allow for the construction of a new classroom building.

The Planning Commission finds that the proposal involves the demolition of the two existing quad buildings nearest the corner of Helman and Randy Street, and the placement of a proposed new classroom addition more central to the campus rather than removing parking to put them nearer the corner.

The Planning Commission concurs with the applicant that the unique nature of the elementary school use poses challenges in meeting standards seeking a streetscape orientation without parking between buildings and the street and placement of buildings close to the sidewalk in that while a school is a public building subject to the Basic Site Review Standards for Non-Residential Development, it is at the same time a use which requires campus access controls to insure the safety and security of students and staff, and which seeks to avoid bringing cars into the mix of uses interior to the campus.

The Planning Commission notes that while the new classroom building is being placed in a location more central to the campus, rather than orienting to the corner as the standards would seek, the applicant is creating a new main entry plaza which orients the campus better to the corner and the neighborhood and places campus administrative functions in a location where they can oversee a single, controlled campus access point. The new classroom building responds to the campus character and broader neighborhood context through a scale and placement which also attempts to preserve views of Mt. Ashland and Grizzly Peak for the campus and its neighbors. The Commission finds that the proposed site plan creates a more cohesive campus with a strong central interior courtyard space centered on the library, provides a layout where access can be better controlled to maintain campus security, improves the campus orientation to the corner, improves pedestrian safety by addressing existing non-conforming driveway locations near the Helman and Randy intersection, and provides for new on-site detention of storm water in proximity to the parking as called for in current standards. The Commission further finds that the proposed improvements are in keeping with the general intent of the standards.

The Planning Commission concludes that as detailed above and with the conditions discussed, the proposal complies with the requirements for Site Design Review approval.

2.4 The Planning Commission finds that the proposal satisfies the applicable standards for Conditional Use Permit approval with regard to the expansion of a non-conforming development. The Commission notes that the first criterion for Conditional Use Permit approval is, *"That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program."* The Planning Commission notes that the Comprehensive Plan, Chapter 8 "Parks, Open Space & Aesthetics" speaks specifically to school playgrounds and fields in terms of their community role as

neighborhood parks, used as recreation space by nearby neighbors outside school hours, directly related to neighborhood character, and having the advantage of being available during summer months and non-school hours to provide recreational facilities for all age groups. The Commission further notes that the Comprehensive Plan Transportation Element (10.10.07) speaks to “neighborhood connectors” as separate off-road pedestrian and/or bikeways which minimize travel distances within and between residential areas and schools, shopping and workplaces where street connections are infeasible. For example, these short multi-use paths are useful to provide connectivity for cul-de-sac streets and dead end streets, as is the case with the easement to the south connecting the campus to Parkview Drive, and the Comprehensive Plan includes a policy to require such pedestrian and bicycle easements to provide neighborhood connectors, and thus reduce vehicle trips, with development.

The Planning Commission finds that the use of the property as a public school is an allowed use in the zone and the setbacks, lot coverage, building height, and parking conform to the R-1-5 zoning district standards, and further finds here that the Conditional Use Permit request here is limited to considering the expansion of the existing non-conforming development which places parking and associated vehicular circulation between the buildings and the street.

The second criterion for a Conditional Use Permit is, “*That adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the development, and adequate transportation can and will be provided to the subject property.*” As noted in Section 2.3 above, the application includes civil drawings detailing site grading, drainage, utilities and access associated with the proposal, and conditions have been included to require that final engineered civil drawings detailing the utility and infrastructure improvements be provided for review prior to building permit issuance, and the Planning Commission finds that adequate capacity of City facilities can and will be provided.

The Planning Commission notes that the third Conditional Use Permit criterion is, “*That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone, pursuant with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone: a) Similarity in scale, bulk, and coverage; b) Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities; c) Architectural compatibility with the impact area; d) Air quality, including the generation of dust, odors, or other environmental pollutants; e) Generation of noise, light, and glare; f) The development of adjacent properties as envisioned in the Comprehensive Plan; and g) Other factors found to be relevant by the approval authority for review of the proposed use.*” In weighing these impacts, the criteria here explain that the target use in the R-1 zones is residential use developed to the densities detailed in AMC 18.2.5, which for the R-1-5 zoning here is 4.5 dwelling units per acre. The roughly 9.5 acres campus, the Commission finds that for purposes of comparison the school property could accommodate roughly 42.75 dwelling units.

In considering the adverse material impacts of the increase in parking and circulation between the buildings and the street, the Commission finds that the adverse impacts may include the aesthetic impacts of pavement and parked cars at a scale out of character in a residential zone; the environmental impacts,

including increased stormwater run-off, an increase in the urban heat island effect, exhaust fumes, noise and headlight glare; and the pedestrian impacts of paving and parked and circulating vehicles posing obstacles to pedestrians seeking to navigate from the sidewalk corridor to building entrances and of impediments to the neighborhood connectivity such as the pedestrian easement to the subdivision to the south, which are typically sought with development through development standards and supported by the Comprehensive Plan.

The Planning Commission finds that in the approval of the gym and library additions in 2008-2009 (PA-2007-01756), 60 automobile parking spaces were required to serve the 240 seat capacity of the gym at the then-applicable parking ratio of one space per four seats. The parking in place was found to satisfy the parking requirements with 53 parking spaces to be provided off-street and the remaining seven spaces required addressed through on-street parking credits as the school property has a total of approximately 1,998 lineal feet of frontage on the three adjacent streets. The Commission further finds that current parking ratios require one parking space per 75 square feet of public assembly area, and the 4,725 square feet of assembly space here require 63 spaces. The applicant notes that there are now only 49 spaces in place on site, and proposes to add a new 17 space parking lot between the building and the street to fully accommodate the parking required on-site, with no reliance on on-street parking credits.

The Planning Commission finds that the proposed increase in parking between the building and the street seeks to bring the site into compliance with current parking ratios and to reconfigure circulation and parking in such a way that pick-up and drop-off impacts can be better absorbed on the campus itself and in so doing limit the effects of traffic on the surrounding streets. The Commission finds that there are benefits to better accommodating more of the vehicular queuing on site and in reconfiguring parking to address ratios, minimize on-street impacts and provide new areas for stormwater detention, but further finds that to fully balance the negative impacts to the neighborhood and streetscape of placing more parking between the buildings and the street, the new main entry plaza treatment should be extended with light-colored/permeable pavers, scored concrete or a similar treatment to include the driveway and seven spaces between the new plaza and the corner to provide an extension of the plaza space which strengthens the plaza and the campus orientation to the corner; reduces the aesthetic, environmental and pedestrian impacts between the buildings and corner; and still retains the potential to accommodate parking when needed. In addition, the Commission finds that the role the school's playgrounds and greenspaces serve both in providing essential neighborhood recreational space outside of school hours as recognized in the "Parks, Open Space & Aesthetics" chapter of the Comprehensive Plan and in providing neighborhood connectivity is crucial in offsetting the adverse aesthetic, environmental and pedestrian impacts of the school on the surrounding residential neighborhood and has accordingly included Condition #11 requiring, "That, outside of regular school hours and school events, the perimeter gates shall remain unlocked so as to not to unreasonably limit or restrict access school playgrounds and greenspaces."

The Commission finds that with the modified parking treatment near the plaza, the changes to parking and circulation including improved driveway spacing near the Helman and Randy can be found to be beneficial to pedestrian safety while lessening impacts to the streetscape from pick-up and drop-off traffic and strengthening the campus's presence in the neighborhood streetscape with the new main entry plaza at the corner.

The fourth criterion is that, *“A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.”* Here, the Planning Commission finds that as detailed in AMC Table 18.2.2.030.D, public schools are a permitted use in all R-1 zones.

The Planning Commission concludes that as detailed above and with the conditions discussed, the proposal complies with the requirements for Conditional Use Permit approval.

2.5 The Planning Commission finds that the proposal satisfies the applicable standards for Conditional Use Permit approval with regard to modification to the School District’s approved sign permit program under AMC 18.4.7.120 which provides that, *“Governmental agencies may apply for a Conditional Use Permit to place a sign that does not conform to this chapter when it is determined that, in addition to meeting the criteria for a conditional use, the sign is necessary to further that agency’s public purpose.”* Helman School’s murals were originally approved in Planning Action 2009-00322, and were subsequently incorporated into the district’s master sign permit program under Planning Action PA-2012-00899 which allowed a dragon wall graphic on the then-new gym and two existing student-designed/student-installed tile murals in addition to wall, ground and directional signage. A number of other murals and a tile-mosaic bench are also in place on campus, but are exempt from permitting because they are not visible from the adjacent public rights-of-way. As proposed, the dragon tile mural on the north side of the administration building, facing Randy Street, will be moved with demolition and replaced on a wall to be installed to screen mechanical equipment. With the move, the mural will be visible from Helman Street.

In originally administratively approving the murals in 2009, staff found that the student-designed/student-installed murals directly served the school’s public purpose not only in providing a direct and creative participatory educational experience but also in fostering a sense of connectedness between the students, the built environment of the school and their larger community. With the demolition of the two quad buildings, the applicant has proposed to relocate the dragon tile mural, and the Commission finds that this relocation remains in keeping with the original sign permit approval.

2.6 The Planning Commission finds that the proposal satisfies the applicable standards for a Tree Removal Permit for a tree that is not a hazard.

The first approval criterion for a Tree Removal Permit is that, *“The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part 18.4 and Physical and Environmental Constraints in part 18.3.10.”* The Commission notes that 12 significant trees are proposed for removal, and that the applicant explains that the removals are to permit the proposal to be consistent with applicable ordinance requirements and standards, including applicable Site Development and Design Standards.

The second approval criterion is that, *“Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.”* The applicant indicates that the requested tree removals will not have significant negative impacts on erosion, soil stability, the flow of surface waters, protection of adjacent trees, or existing windbreaks, and further

explains that the areas where trees are to be removed will be redeveloped with structures, hardscaping, or will re-landscaped.

The third criterion is that, *“Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.”* The applicant indicates that there are several trees within 200-feet of the subject property, and further suggests that the relative proximity to the heavily vegetated Ashland Creek corridor across Helman Street provides substantial species diversity, canopy coverage, and tree densities in the vicinity. The applicant concludes that the proposed development will ultimately replace the canopy, tree densities, sizes, and species diversity associated with the requested removals.

The fourth criterion for Tree Removal Permit approval notes that, *“Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.”* The Commission finds that there is no residential component associated with the current application.

The final Tree Removal criterion is that, *“The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.”* The Commission finds that mitigation trees sufficient to meet this requirement are proposed throughout the property. 12 significant trees proposed for removal and the Landscape Plants plans (Sheets L3.00-L3.01) call for over 50 replacement trees including Kentucky Coffee trees, Zelkovas, flowering Cherries, Maple, Birch, and Lindens and include planting of new required street trees and 26 proposed shade trees for the parking areas to reduce the microclimatic impacts of the pavement.

The Commission further notes that the Ashland Tree Commission was unable to convene its regular monthly meeting for July of 2020 due to the City Administrator’s state of emergency declaration for the Coronavirus (COVID-19) outbreak, which suspended advisory commission meetings. As such there is no Tree Commission recommendation. As provided in AMC 2.25.040, the failure of the Tree Commission to make a recommendation on any individual planning action shall not invalidate that action.

The Commission finds that the remaining trees which are to be preserved are proposed to be protected with six-foot tall chain link fencing as recommended by the arborist and required in the City’s Tree Preservation & Protection Ordinance (AMC 18.4.5). Conditions have been included to require tree protection fencing installation and verification before site work.

The Planning Commission concludes that as detailed above and with the conditions discussed, the proposal complies with the requirements for Tree Protection and for Tree Removal Permits to remove a total of 12 significant trees.

2.5 With regard to the proposed demolition of the “A” and “B” quad buildings, the Planning Commission notes that the demolition and relocation of existing buildings is regulated through AMC Chapter 15 “*Buildings and Construction*” with approval of permits by the Building Official and the potential for appeal to the Demolition Review Committee.

The Commission finds that the applicant has indicated that the two quad buildings are to be demolished following completion of the new classroom building, and a condition has been included below to make clear that the applicant will need to obtain requisite permits for demolition through the Building Official prior to commencement of demolition work.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearing on this matter, the Planning Commission concludes that the proposal for Site Design Review, Conditional Use and Tree Removal permit approvals to construct a new 23,755 square-foot, single-story classroom building and associated changes to the campus site planning, relocate approved signage and remove 12 significant trees is supported by evidence contained within the whole record.

The school property is an existing non-conforming development in that the existing placement of parking between the buildings and the streets is contrary to the city’s Basic Site Review standards which seek to place parking behind buildings or to one side and have the building placed at and oriented to the streetscape. As proposed here, this non-conformity would be retained and expanded through a Conditional Use Permit. The Commission finds that both the existing building lay-out on site and the school use pose difficulties in complying with the standards and as proposed the applicant is creating a new entry plaza near the corner of Helman and Randy Streets which creates an overall campus orientation to the corner and the neighborhood and places the school’s administrative functions at a single, controllable access point for the sake of campus safety and security. The proposed new building’s placement and scale are in direct response to a community public process by the School District which ultimately identified the need for a single-story structure placed more interior to the campus to preserve views of Mt. Ashland and Grizzly Peak for the campus and for the neighborhood, and in so doing a more cohesive campus with a central interior courtyard will be created and the library will become a clear center for the campus. In addition, with the changes proposed the controlled access issues with the northern parking lot’s driveway exiting into the crosswalk are to be remedied, new on-site storm water detention facilities installed to better respond to standards, and site circulation issues addressed to handle a greater proportion of the daily pick-up and drop-off traffic and parking on-site rather than in the surround neighborhood streetscape.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, we approve Planning Action #PA-T2-2020-00020. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #2020-00020 is denied. The following are the conditions and they are attached to the approval:

1. That all proposals of the applicant are conditions of approval unless otherwise modified herein.
2. That the plans submitted for the building permit shall be in conformance with those approved as part of this application. If the plans submitted for the building permit are not in substantial

- conformance with those approved as part of this application, an application to modify this approval shall be submitted and approved prior to the issuance of a building permit.
3. That a sign permit shall be obtained prior to the installation of signage. Signage shall be consistent with that described herein and shall be placed in a manner consistent with the vision clearance standards of AMC 18.2.4.040.
 4. That all requirements of the Fire Department shall be satisfactorily addressed, including approved addressing; fire apparatus access including aerial ladder access, turn-around, firefighter access pathways and work area; fire hydrant spacing, distance and clearance; fire flow; fire sprinkler system if applicable; fire extinguishers; limitations on gates or fences; providing required fuel breaks; and meeting the general fuel modification area standards.
 5. That mechanical equipment shall be screened from view from the surrounding streets, and the location and screening of all mechanical equipment shall be detailed on the building permit submittals.
 6. That the applicant shall obtain applicable demolition permits through the Building Division if deemed necessary by the Building Official prior to the commencement of any building demolition on site.
 7. That building permit submittals shall include:
 - a. The identification of all easements, including but not limited to public or private utility, irrigation and drainage easements, fire apparatus access easements, and public pedestrian access easements.
 - b. The identification of exterior building materials and paint colors for the review and approval of the Staff Advisor. Colors and materials shall be consistent with those described in the application and very bright or neon paint colors shall not be used.
 - c. Specifications for all exterior lighting fixtures. Exterior lighting shall be directed on the property and shall not directly illuminate adjacent properties.
 - d. Revised landscape and irrigation plans shall be provided for the review and approval of the Staff Advisor with the building permit submittals. These revised plans shall address: 1) required size and species-specific planting details and associated irrigation plan modifications, including the requirements for programmable automatic timer controllers and a maintenance watering schedule with seasonal modifications; 2) final lot coverage and required landscaped area calculations, including all building footprints, driveways, parking, and circulation areas, and landscaped areas. Lot coverage shall be limited to no more than 50 percent, and the calculations shall demonstrate that the requisite 50 percent landscaping and seven percent parking lot landscaping are provided; 3) the mitigation requirements of AMC 18.5.7 by detailing the mitigation for the 12 significant trees to be removed on a one-for-one basis through replanting planting on-site, replanting off-site, or payment to the city's Tree Fund in lieu of replanting; and 4) sight-obscuring screening of

the parking lot with a landscape buffer in keeping with the requirements of AMC 18.4.3.080.E.6.a.iv and 18.4.4.030.F.2.

- e. A Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 of the Ashland Land Use Ordinance shall be provided prior to bringing combustible materials onto the property, and any new landscaping proposed shall comply with these standards and shall not include plants listed on the Prohibited Flammable Plant List per Resolution 2018-028.
- f. Final storm water drainage, grading and erosion control plans for the review and approval of the Engineering, Building and Planning Departments. The storm water plan shall address Public Works/Engineering standards requiring that post-development peak flows not exceed pre-development levels. Any necessary drainage improvements to address the site's storm water shall be provided at the applicants' expense. Storm water from all new impervious surfaces and run-off associated with peak rainfall events must be collected on site and channeled to the city storm water collection system (*i.e., curb gutter at public street, public storm pipe or public drainage way*) or through an approved alternative in accordance with Ashland Building Division policy BD-PP-0029. On-site collection systems shall be detailed on the building permit submittals.
- g. A final utility plan for the project for the review and approval of the Engineering, Planning and Building Divisions. The utility plan shall include the location of any necessary connections to public facilities in and adjacent to the development, including the locations of water lines and meter sizes, sewer mains and services, manholes and clean-outs, storm drainage pipes and catch basins. The utility plan shall also address Water Department requirements relative to cross connections and premises isolation. Meters, cabinets, vaults and Fire Department Connections shall be located outside of pedestrian corridors and in areas least visible from streets, sidewalks and pedestrian areas, while considering access needs. Any necessary service extensions or upgrades shall be completed by the applicant at applicant's expense.
- h. A final electric design and distribution plan including load calculations and locations of all primary and secondary services including any transformers, cabinets and all other necessary equipment. This plan must be reviewed and approved by the Electric, Engineering, Building and Planning Departments prior to the issuance of excavation or building permits. Transformers, cabinets and vaults shall be located outside the pedestrian corridor in areas least visible from streets, sidewalks and pedestrian areas, while considering the access needs of the Electric Department. Any necessary service extensions or upgrades shall be completed at the applicant's expense.
- i. That the applicants shall provide final engineered plans for any work in the street rights-of-way including any changes to sidewalks, driveway aprons or pedestrian crossings for the review of the Planning and Public Works/Engineering Departments.

- j. Identification of required bicycle parking, which includes 70 covered bicycle parking spaces. Inverted u-racks shall be used for the outdoor bicycle parking, and all bicycle parking shall be installed in accordance with the standards in 18.4.3.070.I, inspected and approved prior to the issuance of the certificate of occupancy. The building permit submittals shall verify that the bicycle parking spacing and coverage requirements are met.
 - k. A revised site plan that extends the new entry plaza treatment (i.e. light-colored, permeable pavers, scored concrete or similar) to include the driveway and seven parking spaces between the new plaza and the corner to provide an extension of the plaza space, strengthen the plaza while retaining the potential to accommodate overflow parking as needed; and provides a gated access point from the Parkside Drive pedestrian easement to allow its use during pick-up and drop-off times.
8. That prior to any site work including staging, storage of materials, demolition or tree removal, the applicant shall mark the trees to be removed and install protection fencing for the trees to be retained, and obtain a Tree Verification Inspection so that the Staff Advisor can verify that the trees identified on site for removal are consistent with the approved plan, and that those trees to be protected have tree protection fencing in place in a manner consistent with the approved plans.
9. That prior to the issuance of a building permit all necessary building permits fees and associated charges, including permits and connections fees for any new utilities, and applicable system development charges for water, sewer, storm water, parks, and transportation (*less any credits for existing structures*) shall be paid.
10. That prior to the issuance of a certificate of occupancy or final project approval:
- a. That the required automobile and bicycle parking shall be installed according to the approved plan, inspected and approved by the Staff Advisor.
 - b. All hardscaping including the sidewalk corridor, on site circulations routes, parking lots and driveways; landscaping; and the irrigation system shall be installed according to the approved plan, inspected, and approved by the Staff Advisor.
 - c. That the screening for the trash and recycling containers shall be installed in accordance with the Site Design and Development Standards prior to the issuance of a certificate of occupancy. An opportunity to recycle site of equal or greater size than the solid waste receptacle shall be included in the trash enclosure in accordance with 18.4.4.040.
 - d. That all exterior lighting shall be directed on the property and shall not directly illuminate adjacent properties.
 - e. All required utility service and equipment installations and street frontage improvements, shall be installed under permit from the Public Works Department and in accordance with the approved plans, inspected and approved by the Staff Advisor.
 - f. Replacement trees to mitigate the trees removed shall be planted and irrigated according to the approved plan, or alternative mitigation demonstrated.

11. That, outside of regular school hours and school events, the perimeter gates shall remain unlocked so as to not to unreasonably limit or restrict access school playgrounds and greenspaces.

Planning Commission Approval

August 11, 2020
Date

FINDINGS

PA-T3-2019-00001
1511 Hwy 99 N

BEFORE THE PLANNING COMMISSION
September 8, 2020

IN THE MATTER OF PA-T3-2019-00001, A REQUEST FOR ANNEXATION OF TWO)
PARCELS TOTALING 16.87 ACRES, WITH A CURRENT ZONING OF JACKSON)
COUNTY RR-5 (RURAL RESIDENTIAL) AND A PROPOSED ZONING OF CITY)
OF ASHLAND R-2 (LOW DENSITY, MULTI-FAMILY RESIDENTIAL) FOR THE)
PROPERTIES LOCATED AT 1511 HIGHWAY 99 NORTH. THE ANNEXATION)
INCLUDES ADJACENT RAILROAD PROPERTY & STATE HIGHWAY)
RIGHT-OF-WAY ADDED BY STAFF FOR A MORE LOGICAL BOUNDARY.)
THE APPLICATION INCLUDES CONCEPTUAL DETAILS FOR THE FUTURE)
PHASED DEVELOPMENT OF 196 1- & 2- BEDROOM APARTMENTS RANGING) **FINDINGS,**
FROM 480-701 SQUARE FEET IN 14 2-STORY BUILDINGS. OUTLINE PLAN) **CONCLUSIONS,**
SUBDIVISION AND SITE DESIGN REVIEW DEVELOPMENT APPROVALS ARE) **ORDERS &**
NOT REQUESTED HERE, AND WOULD BE APPLIED FOR SUBSEQUENT TO) **RECOMMENDATION**
ANNEXATION. THE APPLICATION ALSO REQUESTS AN EXCEPTION TO)
STREET STANDARDS TO DEVIATE FROM CITY STANDARD PARKROW)
AND SIDEWALK IMPROVEMENTS TO RESPOND TO CONSTRAINTS OF)
RIGHT-OF-WAY WIDTH AND EXISTING ENCROACHMENTS.)

OWNER: Linda Zare)

APPLICANT: Casita Developments, LLC & Kendrick Enterprise, LLC)

RECITALS:

- 1) Tax lots #1700 and #1702 of Map 38 1E 32 are located at 1511 Highway 99 North, which is presently outside the city limits, and is zoned RR-5, Jackson County Rural Residential.
- 2) The applicants are requesting annexation of two parcels totaling 16.87 acres with a current zoning of Jackson County RR-5 (Rural Residential) and a proposed zoning of City of Ashland R-2 (Low Density, Multi-Family Residential) for the properties located at 1511 Highway 99 North. Adjacent railroad property and state highway right-of-way has been included in the annexation by the Staff Advisor for a more logical and orderly boundary as provided in AMC 18.5.8.060. The application includes conceptual details for the future phased development of 196 apartments (1- and 2-Bedrooms, ranging from 480-701 square feet) in 14 two-story buildings. Outline Plan subdivision and Site Design Review development approvals are not requested here, and would be applied for subsequent to annexation. The application also requests an Exception to Street Standards to deviate from city standard parkrow and sidewalk improvements to respond to constraints of right-of-way width and existing encroachments. The proposal is outlined in plans on file at the Department of Community Development.
- 3) The approval criteria for Annexation are described in AMC 18.5.8.050 as follows:

An annexation may be approved if the proposed request for annexation conforms, or can be made to conform through the imposition of conditions, with all of the following approval criteria.

- A. The land is within the City's Urban Growth Boundary.*
- B. The proposed zoning for the annexed area is in conformance with the designation indicated on the Comprehensive Plan Map, and the project, if proposed concurrently with the annexation, is an allowed use within the proposed zoning.*
- C. The land is currently contiguous with the present city limits.*
- D. Adequate City facilities for the provision of water to the site as determined by the Public Works Department; the transport of sewage from the site to the waste water treatment plant as determined by the Public Works Department; the provision of electricity to the site as determined by the Electric Department; urban storm drainage as determined by the Public Works Department can and will be provided to and through the subject property. Unless the City has declared a moratorium based upon a shortage of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for these facilities.*
- E. Adequate transportation can and will be provided to and through the subject property. For the purposes of this section "adequate transportation" for annexations consists of vehicular, bicycle, pedestrian, and transit transportation meeting the following standards.*
 - 1. For vehicular transportation a 20-foot wide paved access exists, or can and will be constructed, along the full frontage of the project site to the nearest fully improved collector or arterial street. All streets adjacent to the annexed area shall be improved, at a minimum, to a half-street standard with a minimum 20-foot wide driving surface. The City may, after assessing the impact of the development, require the full improvement of streets adjacent to the annexed area. All streets located within annexed areas shall be fully improved to City standards. Where future street dedications are indicated on the Street Dedication Map or required by the City, provisions shall be made for the dedication and improvement of these streets and included with the application for annexation.*
 - 2. For bicycle transportation safe and accessible bicycle facilities exist, or can and will be constructed. Should the annexation be adjacent to an arterial street, bike lanes shall be provided on or adjacent to the arterial street. Likely bicycle destinations from the project site shall be determined and safe and accessible bicycle facilities serving those destinations shall be indicated.*
 - 3. For pedestrian transportation safe and accessible pedestrian facilities exist or can and will be constructed. Full sidewalk improvements shall be provided on one side adjacent to the annexation for all streets adjacent to the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the project site is within a quarter of a mile of an existing sidewalk system, the sidewalks from the project site shall be constructed to extend and connect to the existing system. Likely pedestrian destinations from the project*

site shall be determined and the safe and accessible pedestrian facilities serving those destinations shall be indicated.

4. *For transit transportation, should transit service be available to the site, or be likely to be extended to the site in the future based on information from the local public transit provider, provisions shall be made for the construction of adequate transit facilities, such as bus shelters and bus turn-out lanes. All required transportation improvements shall be constructed and installed prior to the issuance of a certificate of occupancy for any new structures on the annexed property.*

F. *For all residential annexations, a plan shall be provided demonstrating that the development of the entire property will ultimately occur at a minimum density of 90 percent of the base density for the zone, unless reductions in the total number of units is necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The owner or owners of the property shall sign an agreement, to be recorded with the county clerk after approval of the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan. For purposes of computing maximum density, portions of the annexed area containing undevelopable areas such as wetlands, floodplain corridor lands, or slopes greater than 35 percent, shall not be included.*

G. *Except as provided in 18.5.8.050.G.7, below, annexations with a density or potential density of four residential units or greater and involving residential zoned lands, or commercial, employment or industrial lands with a Residential Overlay (R-Overlay) shall meet the following requirements.*

1. *The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25 percent of the base density as calculated using the unit equivalency values set forth herein.*
 - a. *Ownership units restricted to households earning at or below 120 percent the area median income shall have an equivalency value of 0.75 unit.*
 - b. *Ownership units restricted to households earning at or below 100 percent the area median income shall have an equivalency value of 1.0 unit.*
 - c. *Ownership units restricted to households earning at or below 80 percent the area median income shall have an equivalency value of 1.25 unit.*
 - d. *Ownership or rental units restricted to households earning at or below 60 percent the area median income shall have an equivalency value of 1.5 unit.*
2. *As alternative to providing affordable units per section 18.5.8.050.G.1, above, the applicant may provide title to a sufficient amount of buildable land for development complying with subsection 18.5.8.050.G.1.b, above, through transfer to a non-*

profit (IRC 501(3)(c) affordable housing developer or public corporation created under ORS 456.055 to 456.235.

- a. The land to be transferred shall be located within the project meeting the standards set forth in 18.5.8.050.G, subsections 4 - 6.*
 - b. All needed public facilities shall be extended to the area or areas proposed for transfer.*
 - c. Prior to commencement of the project, title to the land shall be transferred to the City, an affordable housing developer which must either be a unit of government, a non-profit 501(C)(3) organization, or public corporation created under ORS 456.055 to 456.235.*
 - d. The land to be transferred shall be deed restricted to comply with Ashland's affordable housing program requirements.*
- 3. The affordable units shall be comparable in bedroom mix and housing type with the market rate units in the development.*
 - a. The number of bedrooms per dwelling unit in the affordable units within the residential development shall be in equal proportion to the number of bedrooms per dwelling unit in the market-rate units within the residential development. This provision is not intended to require the same floor area in affordable units as compared to market-rate units. The minimum square footage of each affordable unit shall comply with the minimum required floor based as set forth in Table 18.5.8.050.G.3.*

Table 18.5.8.050.G.3

<i>Unit Type</i>	<i>Minimum Required Unit Floor Area (Square Feet)</i>
<i>Studio</i>	<i>350</i>
<i>1 Bedroom</i>	<i>500</i>
<i>2 Bedroom</i>	<i>800</i>
<i>3 Bedroom</i>	<i>1,000</i>
<i>4 Bedroom</i>	<i>1,250</i>

- b. The required on-site affordable units shall be comprised of the different unit types in the same proportion as the market dwelling units within the development.*

4. *A development schedule shall be provided that demonstrates that that the affordable housing units per subsection 18.5.8.050.G shall be developed, and made available for occupancy, as follows.*
 - a. *That 50 percent of the affordable units shall have been issued building permits prior to issuance of a certificate of occupancy for the last of the first 50 percent of the market rate units.*
 - b. *Prior to issuance of a building permit for the final ten percent of the market rate units, the final 50 percent of the affordable units shall have been issued certificates of occupancy.*
5. *That affordable housing units shall be distributed throughout the project*
6. *That affordable housing units shall be constructed using comparable building materials and include equivalent amenities as the market rate units.*
 - a. *The exterior appearance of the affordable units in any residential development shall be visually compatible with the market-rate units in the development. External building materials and finishes shall be substantially the same in type and quality for affordable units as for market-rate units*
 - b. *Affordable units may differ from market-rate units with regard to interior finishes and materials provided that the affordable housing units are provided with comparable features to the market rate units, and shall have generally comparable improvements related to energy efficiency, including plumbing, insulation, windows, appliances, and heating and cooling systems.*
7. *Exceptions to the requirements of 18.5.8.050, subsections G.2 – G.5, above, may be approved by the City Council upon consideration of one or more of the following.*
 - a. *That an alternative land dedication as proposed would accomplish additional benefits for the City, consistent with the purposes of this chapter, than would development meeting the on-site dedication requirement of subsection 18.5.8.050.G.2.*
 - b. *That an alternative mix of housing types not meeting the requirements of subsection 18.5.8.050.G.3.b would accomplish additional benefits to the City consistent with this chapter, than would the development providing a proportional mix of unit types.*

- c. *That the alternative phasing proposal not meeting subsection 18.5.8.050.G.4 provided by the applicant provides adequate assurance that the affordable housing units will be provided in a timely fashion.*
 - d. *That the distribution of affordable units within the development not meeting subsection 18.5.8.050.G.5 is necessary for development of an affordable housing project that provides onsite staff with supportive services.*
 - e. *That the distribution of affordable units within the development as proposed would accomplish additional benefits for the city, consistent with the purposes of this chapter, than would development meeting the distribution requirement of subsection 18.5.8.050.G.5.*
 - f. *That the materials and amenities applied to the affordable units within the development, that are not equivalent to the market rate units per subsection 18.5.8.050.G.6, are necessary due to local, State, or Federal Affordable Housing standards or financing limitations.*
8. *The total number of affordable units described in this section 18.5.8.050.G shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction or similar legal instrument shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years. Properties providing affordable units as part of the annexation process shall qualify for a maximum density bonus of 25 percent.*

H. *One or more of the following standards are met.*

- 1. *The proposed area for annexation is to be residentially zoned, and there is less than a five-year supply of vacant and redevelopable land in the proposed land use classification within the current city limits. "Redevelopable land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the likelihood that existing development will be converted to more intensive residential uses during the planning period. The five-year supply shall be determined from vacant and redevelopable land inventories and by the methodology for land need projections from the Housing Element of the Comprehensive Plan.*
- 2. *The proposed lot or lots will be zoned CM, E-1, or C-1 under the Comprehensive Plan, and that the applicant will obtain Site Design Review approval for an outright permitted use, or special permitted use concurrent with the annexation request.*
- 3. *A current or probable public health hazard exists due to lack of full City sanitary sewer or water services.*
- 4. *Existing development in the proposed annexation has inadequate water or sanitary sewer service, or the service will become inadequate within one year.*

5. *The area proposed for annexation has existing City water or sanitary sewer service extended, connected, and in use, and a signed consent to annexation agreement has been filed and accepted by the City.*
6. *The lot or lots proposed for annexation are an island completely surrounded by lands within the city limits.*

4) The criteria for Site Design Review approval are described in AMC 18.5.2.050 as follows:

- A. ***Underlying Zone:*** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*
- B. ***Overlay Zones:*** *The proposal complies with applicable overlay zone requirements (part 18.3).*
- C. ***Site Development and Design Standards:*** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*
- D. ***City Facilities:*** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*
- E. ***Exception to the Site Development and Design Standards.*** *The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.*
 1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or*
 2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.*

5) The criteria for an Exception to Street Standards are described in AMC 18.4.6.020.B.1 as follows:

- a. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*
- b. *The exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable.*

- i. *For transit facilities and related improvements, access, wait time, and ride experience.*
- ii. *For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.*
- iii. *For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safety and efficiency crossing roadway.*
- c. *The exception is the minimum necessary to alleviate the difficulty.*
- d. *The exception is consistent with the Purpose and Intent of the Street Standards in subsection 18.4.6.040.A.*

6) The Planning Commission, following proper public notice, held public hearings on November 12, 2019 and June 23, 2020 at which time testimony was received and exhibits were presented. Subsequent to the closing of the hearing, the Planning Commission recommended that the City Council approve the Annexation request subject to a number of conditions, and that the Council direct staff to work with the Oregon Department of Transportation to initiate a speed study to determine whether a reduction in the speed limit is possible on the adjacent state highway corridor.

Now, therefore, the Planning Commission of the City of Ashland finds, concludes and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, Miscellaneous Exhibits lettered with an "M"

SECTION 2. FINDINGS & CONCLUSIONS

2.1 The Planning Commission finds that it has received all information necessary to make a recommendation to the City Council based on the staff report, public hearing testimony and the exhibits received.

2.2 The Planning Commission finds that the proposal for Annexation meets the applicable criteria in AMC 18.5.8.050 with two exceptions. First, as discussed in 2.3 below, with regard to affordability requirements in AMC 18.5.8.050.G, the applicant's calculations are based upon excluding constrained lands

from the initial calculation, and the applicant argues that both state and city regulations do not consider these to be buildable lands, and that similar exclusions have been allowed in past applications. The exclusion of constrained lands is allowed in the code when calculating minimum density, but there is no similar provision with regard to affordability calculations. To comply with the ordinance as written, the number of affordable units would need to be increased to account for the full area of the subject properties in the calculation, or the Council could opt to use its legislative discretion to allow exclusion of these constrained lands. Second, while the annexation criteria require that *"All streets located within annexed areas shall be fully improved to City standards"* the proposal does not comply with City street standards. Along the property's immediate frontage, the applicant proposes city standard improvements except where the sidewalk must be pushed to curbside to accommodate the installation of a bus pull-out lane associated with a new southbound bus stop, and while the applicant proposes approximately 0.63 miles of new sidewalk to connect to existing sidewalks to the north and south, due to physical constraints in the form of roadside ditches and limited right-of-way standard park row planting strips with street trees cannot be installed. The application includes justification for an Exception to the Street Standards. The Commission finds that while an Exception is merited such a request would not be considered independent from a Site Design Review proposal, and that in the meantime the Council could again exercise its legislative discretion to accept the improvements as proposed.

2.3 The Planning Commission notes that the approval standards for an Annexation require that the subject property be located within the City's Urban Growth Boundary, that the proposed zoning for the annexed area be in conformance with the Comprehensive Plan Map designation, and that the land be currently contiguous with the present city limits. In this instance, the subject property is located within the city's Urban Growth Boundary, and the requested R-2 zoning is consistent with the site's Comprehensive Plan designation of "Multi-Family Residential." While Site Design Review approval is not currently requested for development of the site, a conceptual multi-family development plan is provided to demonstrate how the property could be developed to the required minimum density in keeping with applicable standards.

The applicant's two parcels are separated from the current city limits by the railroad property, however the Planning Commission notes that AMC 18.5.8.060 provides that *"When an annexation is initiated by a private individual, the Staff Advisor may include other parcels of property in the proposed annexation to make a boundary extension more logical and to avoid parcels of land which are not incorporated but are partially or wholly surrounded by the City. The Staff Advisor, in a report to the Planning Commission and City Council, shall justify the inclusion of any parcels other than the parcel for which the petition is filed. The purpose of this section is to permit the Commission and Council to make annexations extending the City's boundaries more logical and orderly."* The Planning Commission finds that the Staff Advisor has included both the adjacent railroad property and the ODOT right-of-way for Highway 99N as allowed in AMC 18.5.8.060 to provide a more logical and orderly boundary, noting that if the railroad property were to remain as a barrier, all of the property within the Urban Growth Boundary (UGB) to the north of the current city limits could not be annexed, and the inclusion of the ODOT highway right-of-way enables necessary city utility extensions.

The Commission notes that the most recent public notices have included these properties, and notices were sent to their owners. Subsequent to receiving notice, ODOT has expressed their agreement to the

inclusion of their property while representatives of the railroad have indicated they do not wish to be annexed. The Commission further notes that as provided in state law (ORS 222.170), an annexation may be approved by consent through a public hearing, without requiring an election, when: more than one-half of the owners with land in the area to be annexed consent to the annexation; owners of more than one-half the land in the area to be annexed consent to the annexation; and that land represents more than one-half of the total assessed value in the area to be annexed. The Planning Commission finds that with the consent of the applicant and ODOT, the proposal to annex the applicant's properties, adjacent state highway right-of-way and railroad property recommended by the Staff Advisor to achieve contiguity satisfies the requirements for annexation under state law and can be approved over the Railroad's objection.

Public Facilities

The Commission further notes that annexation requests must demonstrate that adequate public facilities can and will be provided to and through the subject property. With regard to specific public facilities:

- **Water:** The Water Department has noted that the property is not currently served by a water main, and a new main will need to be installed to connect to the existing city water system. The nearest point of connection is the intersection of North Main Street and Highway 99 North. The applicant notes that water lines to service the property are proposed to be extended, and indicates that these will be adequately sized to provide water pressure for residential service and fire suppression systems. The Water Department has indicated that with extension of a new main, there will be adequate supply of potable water available to the site subject to the following:
 - The City will require the applicant to extend the existing 12-inch main line at a location uphill and south of the site, between Fox & Schofield Streets to a location north of the railroad trestle at the site's northernmost driveway.
 - As this is at the low end of the City's water system, the applicant must anticipate high water pressures at the meter (160+ psi). This will require a pressure reducing valve (PRV) at the point of connection and the applicant's design team should evaluate the need for PRV's for each building.
 - It is understood that the applicant will likely install one water meter for the southernmost building and a second "master meter" for the remainder of the site near the northernmost driveway.
 - Water meters must be placed in the public right-of-way and within the city limits. As such, the proposed annexation should extend at least to centerline of the adjacent state highway right-of-way.
 - Fire hydrants to be installed on-site will be located on private property and will require yearly testing be conducted, with the annual results reported to the City's Water Department.
 - The existing well on site will need to be abandoned, or the applicant will be required to install premises isolation measures (RPZ/double check).
 - The applicant will need to work with the Bureau of Reclamation (BOR) on any necessary modifications to proposed site improvements and associated permitting to address the "Billings Siphon" irrigation easement and associated federal requirements.
 - The City will need to review a more formal plan for on-site services with the eventual Site Design Review application to develop the site, with infrastructure installation to occur in conjunction with

site development. The review here is limited to determining that adequate capacity of public facilities can and will be extended to the subject property with development.

- **Sanitary Sewer & Storm Drainage:** City code requirements typically necessitate that all utilities transition to city services with annexation, however in this instance the property is well outside and downhill of the city's sanitary and storm sewer systems, and a significant extension of new services would be needed and all sewage and stormwater would need to be pumped. There is a "Cooperative Agreement/Urban Services Agreement" in place between the City of Ashland, Jackson County and the Bear Creek Valley Sanitary Authority - now Rogue Valley Sewer Service - which dates to November 8, 1995 and which provides that with annexation, the sewer district shall continue to provide an urban level of sanitary sewer and/or storm water services that it has historically provided to territory within the district's existing limits and that the City and the sewer district may agree to joint provision of service to areas within the City or its UGB by contract, mutual agreement or other method. As proposed by the applicant here, RVSS will continue to provide these services to the subject properties per the 1995 agreement. Public Works has indicated that RVSS continuing to serve the property as allowed under the 1995 agreement is the most appropriate option and is acceptable here, and RVSS has confirmed that their sanitary sewer system has adequate capacity for the proposed development, and that there is an eight-inch main in the right-of-way due north of the project site. On-site storm water drains to a roadside ditch that is within the state highway right-of-way and maintained by the Oregon Department of Transportation (ODOT). The application indicates that the future development of the property is required to be compliant with the regionally-adopted Rogue Valley Stormwater Design Manual, and further notes that the project Civil Engineers have performed preliminary stormwater generation calculations based on the maximum coverage areas in the zone and have proposed potential surface detention, and recognize that below-grade collection, detention and treatment will be necessary with the future development of the site. With the 1995 agreement, the existing sanitary and storm sewer services to the property would continue, but may need to be formalized with an intergovernmental agreement between the City, RVSS and ODOT to finalize the logistics of RVSS providing sewer and storm water service to the properties once annexed to the City.
- **Electric:** The application explains that the property is currently served by Pacific Power, but that with the development the property will be served by the City of Ashland Electric Department with the installation of new electrical infrastructure by the applicant. The application explains that there is presently low-voltage city electric service in place to power street and landscape lighting in and around the central median at the railroad trestle overpass. With the proposal, electric lines are to be provided in or adjacent to the highway right-of-way to provide adequate infrastructure to the proposed development and future development in the vicinity. The Electric Department has indicated that they have preliminarily approved the applicant's service plan which would provide the necessary capacity to serve anticipated future development of the property. They have further noted that this preliminary service plan does not consider how development would be served on site, and is limited to bringing necessary capacity to the property.

The Planning Commission finds that the proposal is somewhat unique in that annexations, whether for commercial or residential land, have historically been associated with concurrent development proposals that provide clear trigger points for the completion of improvements and a measure of certainty with regard

to the ultimate build-out. In this instance, while the applicant has provided a development plan to conceptually demonstrate how the property could be developed in keeping with the zoning, there is no concurrent development approval requested and the proposal involves the provision of some public services by entities other than the city. The Commission recommends that any annexation approval make clear that all infrastructure shall be provided at the applicant's expense with any future development of the property.

Adequate Transportation

The Planning Commission notes that the annexation criteria include that, *"Adequate transportation can and will be provided to and through the subject property. For the purposes of this section 'adequate transportation' for annexations consists of vehicular, bicycle, pedestrian, and transit transportation meeting the following standards."*

Vehicular Transportation

For vehicular transportation, the criterion requires that *"...a 20-foot wide paved access exists, or can and will be constructed, along the full frontage of the project site to the nearest fully improved collector or arterial street. All streets adjacent to the annexed area shall be improved, at a minimum, to a half-street standard with a minimum 20-foot wide driving surface. The City may, after assessing the impact of the development, require the full improvement of streets adjacent to the annexed area. All streets located within annexed areas shall be fully improved to City standards. Where future street dedications are indicated on the Street Dedication Map or required by the City, provisions shall be made for the dedication and improvement of these streets and included with the application for annexation."*

The applicant's properties here front on Highway 99 North, sometimes referred to as the Rogue Valley Highway, which is a state highway under the jurisdiction of the Oregon Department of Transportation. Highway 99 North becomes North Main Street within the city limits south of the site. North Main Street is a boulevard or arterial as classified in the Transportation System Plan (TSP). City street standards for a boulevard or arterial street generally call for 11-foot motor vehicle travel lanes, a 12-foot median/center turn lane, six-foot bike lanes on each side, eight- to nine-foot parking lanes where on-street parking is appropriate, a six-inch curb, a seven- to eight-foot parkrow planting strip with irrigated street trees, and six-foot sidewalks. As it currently exists under the recent lane reduction, sometimes referred to as "The Road Diet", Highway 99N has one motor vehicle travel lane in each direction separated by a single, shared center turn lane, and variable width bicycle lanes on the shoulder. There are currently no curbs, park rows or sidewalks in place along the property frontage, and roadside ditches are present in some locations. On the opposite side of the roadway, a guardrail is in place at the outside edge of the bike lane.

Transportation Impact Analysis (TIA)

The applicant's traffic engineer, Kelly Sandow, P.E., has submitted a TIA and a supplementary technical memorandum which evaluates the transportation impacts of the proposal. Key findings of the TIA include:

- The TIA shows all studied intersections (Hwy 99N at South Valley View, Highway 99N at Jackson Road, North Main Street at Jackson Road, North Main Street at Maple Street, and Hwy 99N at the

project access points) will meet the mobility standards through the Year 2034 with the addition of the traffic associated with anticipated development of the subject property.

- The addition of development traffic will not substantially increase queuing conditions over the background conditions. The TIA technical memo further explains that the recent reduction in through lanes with the road diet has resulted in increased queuing lengths when disruptions to traffic such as garbage trucks, stopped buses or cars stopping for pedestrians create back-up's. No mitigation is recommended to address these queue lengths.
- All site driveways are projected to operate safely and efficiently.
- The TIA recommends that Highway 99N be restriped to include a left-turn lane for vehicles entering the site.

The TIA concludes that the Transportation Planning Rule (TPR) has been demonstrated to be met. After review of the TIA and the subsequent supplementary technical memo, the Oregon Department of Transportation (ODOT) which has jurisdiction over the roadway has accepted the TIA.

Access Easement

The Planning Commission notes that the applicant has indicated that one of the two access points to the property is to be provided via a 30-foot wide access easement and notes that there are no reservations or limits noted upon this easement. The applicant further explains that there is a 25-foot wide right of access to the highway from the easement, and has included a survey noting the easement area along with the easement language.

The Planning Commission finds that while the adjacent property owners have raised questions as to the original intent underlying the granting of the easement, it is not the Commissioners' role to analyze the history and legitimacy of the existing easement, but rather to determine, based on the easement in place, if adequate transportation can be provided.

The Planning Commission finds that while city standards generally seek a gridded, interconnected street system within and through the development that provides for broader connectivity, the presence of the railroad tracks along one boundary of the subject properties combined with site topography prevents connection to the adjacent street system. In this instance, multi-family zoned property is not required to provide a dedicated public street with development (AMC 18.4.6.040.C.1) and no dedications are identified through the subject properties on the current Street Dedication Map, however AMC 18.4.3.080.C.3.d does require that two driveway access points be provided if a multi-family development will generate over 250 trips per day as is the case here. The Planning Commission finds that the intent of this standard is to provide options for the orderly flow of traffic into and out of the site, and here, two driveways are proposed, and the applicant's supplementary technical memo to the Traffic Impact Analysis (TIA) indicates that ODOT will be permitting unrestricted turning movements at both driveways – allowing both right-in/right-out and left-in and left-out movements. With development of the site, the applicant will need to respond to standards and requirements dealing with parking, access and circulation including vehicle area design and pedestrian access and circulation standards.

The Planning Commission finds that Highway 99N is the only street within or adjacent to the proposed annexation, and while the annexation criteria require that “*All streets located within annexed areas shall*

be fully improved to City standards,” the Highway 99N improvements described in the application do not comply with City street standards. Along the property’s immediate frontage, the applicant proposes city standard improvements except where the sidewalk must be pushed to curbside to accommodate the installation of a bus pull-out lane associated with a new southbound bus stop, and while the applicant proposes approximately 0.63 miles of new sidewalks to connect to existing sidewalks to the north and south, due to physical constraints in the form of roadside ditches and limited right-of-way standard park row planting strips with street trees cannot be installed with those connections. The application includes justification for an Exception to the Street Standards. The Commission finds that while an Exception is merited such a request would not be considered independent from a Site Design Review proposal, however the Council could exercise its legislative discretion to accept the improvements as proposed.

Bicycle Transportation

For bicycle transportation, the approval criterion is that, “...*safe and accessible bicycle facilities exist, or can and will be constructed. Should the annexation be adjacent to an arterial street, bike lanes shall be provided on or adjacent to the arterial street. Likely bicycle destinations from the project site shall be determined and safe and accessible bicycle facilities serving those destinations shall be indicated.*” The Planning Commission finds that Highway 99N is classified as a boulevard or arterial street in the Transportation System Plan, and that there are existing bike lanes in place which are to be retained with the proposal.

Pedestrian Transportation

The pedestrian transportation criterion is that, “... *safe and accessible pedestrian facilities exist or can and will be constructed. Full sidewalk improvements shall be provided on one side adjacent to the annexation for all streets adjacent to the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the project site is within a quarter of a mile of an existing sidewalk system, the sidewalks from the project site shall be constructed to extend and connect to the existing system. Likely pedestrian destinations from the project site shall be determined and the safe and accessible pedestrian facilities serving those destinations shall be indicated.*”

Frontage Improvements

The Planning Commission notes that the applicant proposes frontage improvements which mix city-standard treatments with a park row planting strip between the curb and sidewalk, and curbside sidewalk installations to connect the existing sidewalks from the north of the site in the county to the south within the city. The sidewalk installation proposed equates to approximately 0.63 miles. The standard sidewalk and parkrow configuration is proposed along the applicant’s property frontage, except where the installation of a proposes bus pull-out lane and bus shelter necessitate an eight-foot curbside sidewalk. Beyond the applicant’s frontages, curbside sidewalks are proposed where the right-of-way is constrained by right-of-way width, slopes, or existing improvements. The applicant proposes to place either an ODOT-standard cobra-head style street light or a City-standard pedestrian-scaled streetlight near the improved driveway apron, and a total of five additional street lights are proposed to be installed along the property frontage. The application includes Exception findings to address those areas of sidewalk that

aren't designed to city street standards. The applicant discusses specific sidewalk sections in terms of the station numbers on the civil drawings.

- **Stations 1-16 (North of Land of Paws):** An 8-foot curbside sidewalk is proposed. The applicant explains that there is a large roadside ditch and private property belonging to Anderson Autobody which prevent standard parkrow installation, and further notes that this curbside sidewalk will connect to the curbside sidewalk to the north of the subject properties.
- **Stations 16-23:** A 3-foot bike buffer, 6-foot bike lane, 7-½ foot parkrow, and 6-foot sidewalk are proposed along this section of the property frontage.
- **Stations 23-27:** A bus turn-out lane, bus stop and 8-foot curbside sidewalk are proposed along this section of the property frontage. The parkrow here has been displaced by the proposed bus turn-out lane.
- **Station 27-34:** A 3-foot bike buffer, 6-foot bike lane, and curbside sidewalk are proposed. The applicant explains that this section is physically constrained by a steep roadside embankment and by the existing railroad trestle, and submittal materials have shown the sidewalk at varying widths in this area, however ODOT has indicated that a 6-foot sidewalk in the minimum acceptable width under the railroad trestle.
- **Station 34 – Schofield/North Main:** A 6-foot bike lane, 7½ -foot parkrow and 6-foot sidewalk are proposed in this section.

Speed reduction

The Planning Commission notes that the applicant has suggested that with a change in roadside culture through annexation and the introduction of higher density residential development, driving habits on the corridor may change. They further suggest that after improvements are made, a formal speed study to seek a reduction in highway speeds could be undertaken and if speeds are ultimately reduced and pedestrian volumes increase, marked crossings could potentially be approved by the Oregon Department of Transportation (ODOT).

The Planning Commission finds that ODOT has jurisdiction on this section of state highway with regard to issues including highway markings for pedestrian crossings and speed limits. A request to initiate a speed study will ultimately need to come from the City, and Planning and Engineering staff have indicated that preliminary discussions with ODOT staff have begun and they are open to conducting a speed study, which has not been done for this corridor since the lane reconfiguration (“road diet”) completed a few years ago. The Planning Commission recommends that with any annexation approval here, the City Council direct staff to work with ODOT to initiate a speed study and that the city strongly advocate for a speed reduction to make the corridor a more pedestrian, bicycle and transit friendly facility.

The Planning Commission notes that ODOT has indicated that the TIA is satisfactory, that the bus lane is satisfactory with a slight adjustment to its taper, and that they support a median cut to provide a pedestrian refuge at North Main Street and pedestrian crossing signage. ODOT has further indicated that they are satisfied with bicycle and pedestrian facilities as proposed, emphasizing the need for at least a six-foot sidewalk under the trestle; and that ODOT permits will be required to complete improvements. ODOT has also noted that they will need to review and approve final storm-drainage engineering at Site Review since storm drainage is to outflow into a ditch in the ODOT right-of-way.

Transit Transportation

For transit transportation, the criterion is that, “... *should transit service be available to the site, or be likely to be extended to the site in the future based on information from the local public transit provider, provisions shall be made for the construction of adequate transit facilities, such as bus shelters and bus turn-out lanes. All required transportation improvements shall be constructed and installed prior to the issuance of a certificate of occupancy for any new structures on the annexed property.*”

Southbound RVTD Bus Stop

The Planning Commission finds that the applicant has worked with Rogue Valley Transportation District (RVTD), the RVTD Bus Stop Committee and the Oregon Department of Transportation (ODOT) to provide design details for a new southbound RVTD bus stop on the subject property’s frontage to include a bus turn-out lane, bus shelter with lighting, sidewalk, accessible loading pad and accessible route to the site, any necessary retaining, and a merge lane for the bus to re-enter the travel lane at an appropriate speed. The applicant’s Exhibit C.4 illustrates the proposed bus turn-out lane, shelter and street light placement, and a proposed walkway connecting from the shelter onto the project site.

Northbound RVTD Bus Stops

The Planning Commission finds that there are two existing northbound RVTD “flag stops” within 1,800-2,000 feet of the property, with one near the intersection of North Main Street and Highway 99N and the other near Valley View and Highway 99N. The applicant has explored the potential for enhancing crossings in these locations, but indicates that ODOT has determined that new striping, rectangular rapid flash beacons (RRFB’s) or similar treatments are not appropriate given the observed traffic speeds, traffic volumes, sight and stopping distances when weighed against the anticipated number of pedestrians. The applicant further indicates that ODOT does support a median refuge at the intersection of North Main and Highway 99N along with “Pedestrian Crossing” signage.

The Planning Commission concludes that the subject property is within a Transit Supportive Area in the RVTD 2040 Transit Master Plan as the property is within the “quarter-mile walkshed” of transit stops, which typically equates to a five-minute walk at a normal pace, and that the applicant is providing a new southbound stop along their property’s frontage to support transit use by future residents of the property.

Transportation Conclusions

In considering annexations, the approval criteria call for all streets within the annexed area to be fully improved to city street standards, and all adjacent streets to be improved to at least a ½-street standard. The application as proposed does not meet these street standards. In the area to be annexed, the property’s immediate frontage is proposed with city standard improvements except where the sidewalk must be pushed to curbside to accommodate the installation of a bus pull-out lane associated with a new southbound bus stop. On Highway 99N adjacent to the area to be annexed, the applicant proposes approximately 0.63 miles of new sidewalk to connect to existing sidewalks to the north and south, but due to physical constraints in the form of roadside ditches and limited right-of-way city standard park row planting strips with street trees cannot be installed. The application includes justification for an Exception to the Street Standards, and while the applicant has demonstrated that an Exception is merited such a request is not considered independently of a formal development proposal for the site.

The proposal includes the installation of roughly 3,340 linear feet – or 0.63 miles - of sidewalk connecting from the existing sidewalk terminus near El Tapatio restaurant south into the city limits to the existing sidewalk at Schofield Street; the installation of a new bus stop with pull-out and merging lane; and improvements to the crossing from North Main Street across Highway 99N to the northbound RVTD flag stop to include an improved median refuge and pedestrian crossing signage. In considering the adequacy of the proposed transportation facilities, the Planning Commission notes that the Transportation Commission had expressed concerns with pedestrians headed to the northbound bus route and cyclists turning north on the highway without additional crossing improvements or a speed reduction. In the Planning Commission's site visit to the property, Commissioners raised similar concerns. For the Planning Commission, the applicant has done what they can to provide adequate transportation within the constraints of the state highway. Staff have indicated that ODOT is open to a speed study to determine whether a reduction in the posted speed limit is feasible, and in the Commission's view, such a study should be initiated by the city with annexation in conjunction with strong advocacy for a speed reduction from Valley View to the existing city limits.

Minimum Density

The Planning Commission notes that for all residential annexations, a plan is required to be provided to demonstrate that the development of the entire property will ultimately occur at a minimum density of 90 percent of the base density for the zone, unless reductions in the total number of units is necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The code further provides that for purposes of computing density, portions of the annexed area containing undevelopable areas such as wetlands, floodplain corridor lands, or slopes greater than 35 percent, shall not be included. To ensure compliance with this requirement, the code also requires that the owner sign an agreement for recording with the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan.

The Planning Commission finds that after excluding undevelopable areas due to significant natural features and physical constraints posed by slopes exceeding 35 percent, the riparian drainage area, and the wetland area and its buffer zone, the developable area of the property is 13.75 acres. For the proposed R-2 zoning, the base density for 13.75 acres is 185.625 dwelling units and the minimum density is 167 dwelling units (13.75 acres x 13.5 dwelling units/acre = 185.625 dwelling units x 0.90 minimum density = 167.0625 dwelling units). The application notes that the property owner will sign an agreement with annexation that future development will occur in accord with this minimum density, and the applicant has provided a conceptual development plan including building designs, site lay-out and findings to demonstrate how this could be achieved on site.

Affordability Requirement

The Planning Commission notes that annexations are required to demonstrate that they will meet the affordability requirements set forth in AMC 18.5.8.050.G., which generally requires that the total number of units shall equal or exceed 25 percent of the base density of the subject property. The application explains that the project is proposed as rental units and that the affordable rental units will be restricted to 60 percent of the area median income (AMI) as provided in AMC 18.5.8.080.G.1. At this level, each rental unit provided counts as 1.5 units for the purposes of meeting the standard, and the applicant explains that these type units will be provided with the future Site Design Review for multi-family development of

the property. The affordable units are to be evenly dispersed through the development and will be of a comparable bedroom mix to the market rate units, and it is anticipated that 12 of the future buildings would contain two units each while two of the future buildings would contain three units each for a total of 30 affordable units. The applicant notes that they envision the future development to consist of 28 two bedroom units and 168 one bedroom units of around 500 square feet in area.

The Planning Commission further notes that AMC 18.5.8.050.G.1 requires that, “*The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25 percent of the base density as calculated using the unit equivalency values set forth herein.*” As proposed, the applicant proposes to exclude lands constrained by hillside slopes, water resource protection zones for streams or wetlands, and lands with significant natural features, arguing that both state and city regulations do not consider these to be buildable lands, and that similar exclusions have been allowed in past applications. The Planning Commission finds that while there is a provision which allows for the exclusion of constrained lands (*hillsides, water resource protection zones for streams and wetlands, and lands with significant natural features*) when calculating the minimum density of a property, the ordinance currently has no similar provision to exclude these lands from the base density when calculating the required number of affordable units for annexation.

The Planning Commission finds that to comply with the ordinance as written, the number of affordable units required with annexation of the property would need to be increased to account for the full base density of the subject properties. The R-2 subject properties here have a based density of 13.5 dwelling units per acre, which for this 16.87 acre property equates to a 227.75 dwelling unit base density and would require 56 affordable dwelling units, or 37 units offered at 60 percent of area median income, rather than the 30 affordable dwelling units discussed in the application. While the proposal, in excluding constrained lands from their affordability calculations, does not strictly comply with AMC 18.5.8.050.G, the Commission finds that the applicant’s arguments to exclude the constrained portions of the site are reasonable, and the Council has the option to use its legislative discretion to allow the exclusion of the constrained lands.

Five-Year Supply

The Planning Commission notes that the final annexation criterion is that one or more of the standards in AMC 18.5.8.050.H. are met. Of these, the applicable standard addressed with the current proposal is a demonstration that there is less than a five-year supply of vacant and re-developable land in the proposed land use classification within the current city limits. The applicant has provided detail based on city data which notes there is a 4.8-year supply of available Multi-Family Residential land combined between the R-2 and R-3 zones. The Planning Commission finds that the area is envisioned and proposed for annexation as Multi-Family Residential, and based on city data in the Housing Element and Buildable Lands Inventory there is less than a five-year supply of available Multi-Family Residential zoned land.

2.4 The Planning Commission notes that the application submittal includes written findings responding to AMC 18.5.9.020 to address a Zoning Map Amendment for the zone change from the current County zoning of RR-5 (Rural Residential) to the City’s R-2 (Low Density, Multi-Family Residential) zoning, which is consistent with the properties’ Comprehensive Plan designation. The Planning Commission finds that annexation of the property into the city with zoning corresponding to the

Comprehensive Plan designation does not necessitate a Zoning Map Amendment and is necessary for Annexation to occur.

2.5 The Planning Commission finds that while neither Outline Plan subdivision nor Site Design Review approvals for development of the property are requested here, the application includes conceptual details for the future phased development of 196 apartments (One- and Two-Bedrooms, ranging from 480-701 square feet) in 14 two-story buildings with building placement and site and building designs to address Site Review criteria to address the requirement that the application include a plan demonstrating that with annexation, the property will develop to at least 90 percent of the base density. A deed restriction will be recorded on the property to require that it be developed to the minimum density.

The Planning Commission finds that the site plan details presented for future development here are conceptual, and that Site Review approval for development of the property is not being considered at this time. Outline Plan subdivision, Site Design Review and any other necessary land use approvals will need to be obtained before the site can be developed, subsequent to Annexation approval.

2.6 The Planning Commission finds that while the site has a generally consistent grade and is moderately sloped with an approximate ten- to 15-percent slope from southeast to northwest, the western half of Tax Lot #1700, west of the existing residence, consists of large terraces with areas of steep slopes between and a substantial amount of this lot has slopes in excess of 35 percent which, by city codes, would be considered “severe constraints” lands which are unbuildable.

The Planning Commission further finds that there is a riparian land drainage identified as a tributary of Bear Creek at the north end of Tax Lot #1700, and that two wetlands have been identified on the subject properties. One is only 60-square feet and is located at the base of a small depression northwest of the existing single family residence on Tax Lot #1700. The other is larger at approximately 4,606 square feet in area and located on Tax Lot #1702.

The Planning Commission has included recommended conditions below which would require that the applicant provide evidence of concurrence from the Oregon Department of State Lands (DSL) with the wetland delineation prior to a development application for the site, and that the properties be included in the Wildfire Lands, Physical & Environmental Constraints Hillside Lands and Severe Constraints, and Water Resource Protection Zones maps and associated overlays in order to fully incorporate land-use based protection of the subject properties’ natural features with annexation and subsequent development.

SECTION 3. DECISION

3.1 The application includes a request for the annexation of two parcels totaling 16.87 acres with a current zoning of Jackson County RR-5 (Rural Residential) and a proposed zoning of City of Ashland R-2 (Low Density, Multi-Family Residential) for the properties located at 1511 Highway 99 North. The annexation is to include adjacent railroad property and state highway right-of-way added by the Staff Advisor for a more orderly and logical boundary. The application includes *conceptual* details for the future phased development of 196 apartments in 14 two-story buildings. Outline Plan subdivision and Site Design

Review development approvals are not requested at this time, but would be applied for subsequent to annexation approval. The application includes a request for an Exception to Street Standards to deviate from city standard parkrow and sidewalk improvements in response to constraints of right-of-way width and existing encroachments, although such Exceptions are not considered independent of a development proposal.

The subject properties pose a number of challenges to development: there are significant road cuts, large areas of unimproved right-of-way along the frontage, and established commercial uses between the highway and the subject properties, all of which pose barriers for access and improvements; there are limited utility or transportation facilities currently in place; and railroad right-of-way restricts connectivity between the property and contiguous areas of the city. Site topography, wetlands, a stream corridor and steeply sloped, forested areas pose further challenges, and the “Billings Siphon,” critical infrastructure for the valley’s irrigation system, bisects the property with a 100-foot wide easement. However, for the Commission, the key challenge is in safely accommodating the multi-modal transportation needs of future residents along a state highway where the posted speeds, traffic and pedestrian volumes, and limited sight distances complicate multi-modal improvements such as marked or signalized crossings, particularly for those needing to cross the highway by bicycle heading north or on foot to access the northbound bus route.

The Planning Commission concludes that after the applicant’s efforts in working with the City, Rogue Valley Sewer Services, Rogue Valley Transportation District, Oregon Department of Transportation, Talent Irrigation District and the Bureau of Reclamation to address these challenges in extending utilities and installing 0.63 miles of new sidewalks and a new bus stop with pull-out lane to provide much needed rental housing along a transit route, the proposal merits approval, however with that recommendation the Commission also recommends that the city work with the Oregon Department of Transportation to conduct a speed study and strongly advocate for a reduction in speeds on Highway 99N from Valley View south the existing city limits. Therefore, based on our overall conclusions, the Planning Commission recommends that the City Council approve the requested annexation subject to each of the conditions below.

- 1) That all proposals of the applicants shall be conditions of approval unless otherwise modified herein.
- 2) That prior to any work within the right-of-way:
 - a. A final utility plan for the project shall be submitted for review and approval by the Planning, Public Works/Engineering, Electric, and Building Divisions; Oregon Department of Transportation; and Rogue Valley Sewer Services. The utility plan shall include the location of connections to all public facilities in and adjacent to the development, including the locations of water lines and meter sizes, sewer mains and services, manholes and clean-outs, storm drainage pipes and catch basins. Utility installations, including any necessary meters or fire protection vaults shall be placed outside of the pedestrian corridor, and necessary public utility easements on the property shall be shown in the future Site Design Review application.

- b. The applicant shall submit a final electric plan including any necessary load calculations and locations of all primary and secondary services including transformers, cabinets, streetlights and all other necessary equipment. With annexation, the property will no longer be served by Pacific Power and Light; service will be provided by the City's municipal electric utility and the necessary services to make this transition will need to be installed at the applicant's expense. This plan shall be reviewed and approved by the Planning, Engineering and Electric Departments prior installation. Transformers and cabinets shall be located outside of the pedestrian corridor, and in those areas least visible from the street while considering the access needs of the Electric Department.
- c. Engineered construction drawings for the required improvements along the property's Highway 99N frontage, from the existing terminus of the sidewalk south of the site near Schofield Street to the existing terminus of the sidewalk north of the site near El Tapatio restaurant shall be provided for review and approval by the Oregon Department of Transportation and the City of Ashland's Planning and Engineering Departments prior to any work within the street right-of-way or pedestrian corridor. The required improvements shall be as described herein and illustrated in the applicant's civil drawings, and shall generally consist of:
 - i. **Stations 1-16 (North of Land of Paws):** An 8-foot curbside sidewalk. There is a large roadside ditch and private property belonging to Anderson Autobody which prevent parkrow installation, and this curbside sidewalk will connect to existing curbside sidewalk to the north.
 - ii. **Stations 16-23:** A 3-foot bike buffer, 6-foot bike lane, 7-½ foot parkrow, and 6-foot sidewalk along this section of the property frontage.
 - iii. **Stations 23-27:** A bus pull-out lane, bus stop and 8-foot curbside sidewalk are proposed along this section of the property frontage. Parkrow here has been removed to accommodate the bus pull-out lane, and the final design shall reflect taper adjustments required by ODOT.
 - iv. **Station 27-34:** A 3-foot bike buffer, 6-foot bike lane, and 6-foot curbside sidewalk are proposed. This section is physically constrained by a steep roadside embankment and by the railroad trestle.
 - v. **Station 34 – Schofield/North Main:** A 6-foot bike lane, 7½ -foot parkrow and 6-foot sidewalk are proposed in this section. In addition, the final civil drawings shall include modifications to the existing medians to create a median refuge for pedestrians and associated pedestrian crossing signage in the vicinity of RVTD's flag stop near the intersection of Highway 99 North and North Main Street.
 - vi. Private sidewalks would also be extended into the subject properties along the driveway with ultimate development of the site.

- vii. Re-striping of Highway 99N to provide a left-turn lane into the property as recommended in the applicant's Transportation Impact Analysis (TIA).

The final engineered designs shall include details of the transition from the existing sidewalks, and any additional right-of-way necessary to accommodate these improvements shall be provided through a right-of-way dedication if deemed necessary by the Public Works/Engineering Department.

- d. The applicants shall obtain any necessary permit approvals from ODOT, ODOT Rail & CORP Rail. The applicants shall provide evidence of permit approval, including copies of all approved plans, for all work to be done within ODOT right-of-way prior to the commencement of work.
 - e. The applicants shall also obtain any necessary plan and permit approvals from the City of Ashland Public Works Department/Engineering Division. The applicants shall obtain all required Public Works inspection approvals for work completed within the right-of-way.
 - f. That the applicant shall obtain any necessary permits or approvals from the Bureau of Reclamation (BOR) and/or Talent Irrigation District (TID) for any work within the "Billings Siphon" irrigation easement.
- 3) That the applicants shall obtain required land use approvals including but not limited to Outline Plan subdivision and Site Design Review approvals, as applicable, as well as any necessary federal or state approvals necessary, for development of the property. The current approval is limited to the utility infrastructure and frontage improvements associated with Annexation, with site development to be addressed subsequently.
- 4) That prior to final approval and annexation of the property, the applicant shall provide:
- a. A final revised boundary description and map of the properties to be included in the annexation prepared by a registered land surveyor in accordance with ORS 308.255, to include the adjacent Highway 99N right-of-way and the adjacent railroad property. The boundary shall be surveyed and monumented as required by statute subsequent to City Council approval of the proposed annexation.
 - b. A final, signed irrevocable consent to annexation as required in AMC 18.5.8.020.A.
 - c. A final signed agreement to deposit an amount sufficient to retire any outstanding indebtedness of special districts defined in ORS 222.510 as required in AMC 18.5.8.020.B.
 - d. A deed restriction agreement ensuring that any future development will occur in accord with the minimum required 90 percent of the subject properties' base density, as indicated in the development plan, as required in AMC 18.5.8.050.F.

- e. A deed restriction agreement that development of the property shall comply with the affordability requirements described herein, and that future development of the site shall address these affordability requirements at Site Design Review, including but not limited to the affordability levels, number of affordable units, and how the applicant will qualify potential renters and provide annual reporting to the city to verify compliance with these requirements.
- 5) That prior to the submittal of the Outline Plan subdivision or Site Design Review applications, the applicants shall obtain and provide evidence of concurrence from the Division of State Lands (DSL) for a wetland delineation.
- 6) That with annexation, the Wildfire Lands, Physical & Environmental Constraints - Hillside Lands and Severe Constraints, and Water Resource Protection Zones maps and associated overlays shall be revised to fully incorporate the subject properties' natural features. Any future development of the property shall be subject to regulation under these overlays.
- 7) That prior to the issuance of the first certificate of occupancy on the property, all utility and transportation infrastructure including the proposed transit facilities shall be installed according to the approved plans, inspected, and approved by the Staff Advisor.

Planning Commission Approval

September 8, 2020
Date

**TYPE II
PUBLIC HEARING
CONT'D.**

**PA-APPEAL-2020-00011
(appealing PA-T1-2020-00109)
345 Clinton Street**

Memo

DATE: September 8, 2020

TO: Planning Commissioners

FROM: Derek Severson, Senior Planner

RE: Open Record Submittals for 345 Clinton Appeal

The only item received during the open record period for the 345 Clinton Street appeal was the attached e-mail from the appellant requesting a 30-day continuance received on August 13th.

And just as a reminder, you'll want to have your packet materials on this item from last month on hand for deliberations.



Re: August 11 PC Hearing Testimony

Eric Elerath <eelerath@verizon.net>

Thu 2020-08-13 10:58 PM

To: Dana Smith <dana.smith@ashland.or.us>; Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

[EXTERNAL SENDER]

Dear Planning Commission:

I write to ask for a continuance of 30 days in the matter of:

PLANNING ACTION: #PA-APPEAL-2020-00011 (appealing PA-T1-2020-00109)

PLANNING ACTION: PA-APPEAL-2020-00011

SUBJECT PROPERTY: 345 Clinton St.

OWNER: Paul Mace & Kathleen Kahle

If you have questions or wish to reply, the controlling case and its history may be found in: *Eric ELERATH, petitioner, v. Frank A. McGUIRE, Clerk, Supreme Court of California, et al.* 134 S.Ct. 1947 (2014) 188 L.Ed.2d 962. Supreme Court of United States. April 28, 2014.

Thank you.

Eric Elerath

On Aug 10, 2020, at 10:58 AM, Dana Smith

<dana.smith@ashland.or.us> wrote:

Thank you Eric. I will distribute this to the Planning Commission and staff today.

Dana Smith, Executive Assistant
City of Ashland, Community Development Department
51 Winburn Way, Ashland OR 97520
Phone: 541-552-2072, TTY: 800-735-2900

This email transmission is official business of the City of Ashland, and it is subject to Oregon Public Records Law for disclosure and retention. If you have received this message in error, please contact me at (541) 552-2072. Thank you.

-----Original Message-----

From: Eric Elerath <eeelerath@verizon.net>

Sent: Monday, August 10, 2020 8:48 AM

To: Planning Commission - Public Testimony <PC-public-testimony@ashland.or.us>

Subject: August 11 PC Hearing Testimony

[EXTERNAL SENDER]

Dear Staff

Please find enclosed comments for Planning Commissioners review.

Thank you!

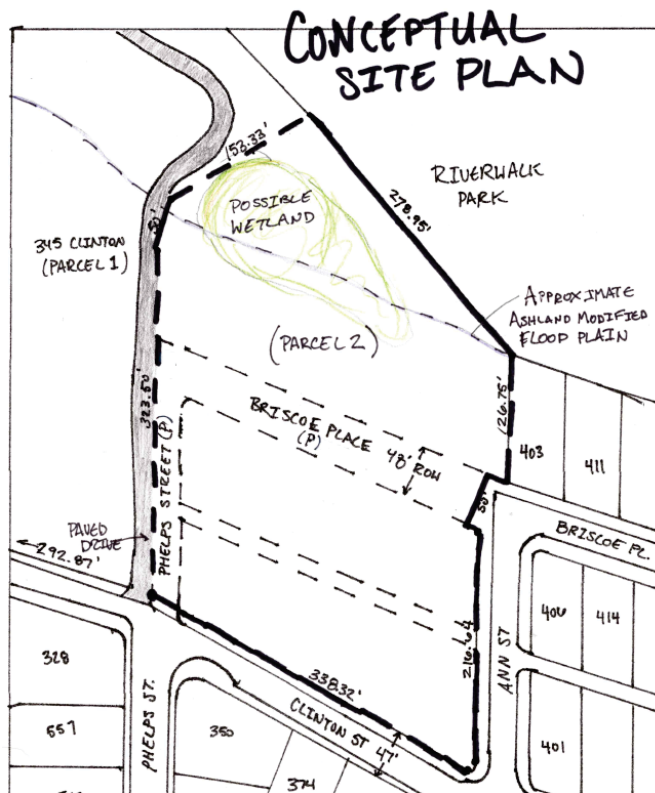
Eric Elerath
419 Clinton St.
(310) 429-8093

**08/11/2020
PACKET
INFORMATION**

345 Clinton Street

APPLICANT'S REBUTTAL

**PA-APPEAL-2020-00011
(Appealing PA-T1-2020-00109)
345 Clinton Street**



Conceptual Development Plan

TELEPHONE
541-772-2782



L.J. FRIAR & ASSOCIATES P.C.

CONSULTING LAND SURVEYORS

JAMES E. HIBBS, PLS

P.O. BOX 1947
PHOENIX, OR 97535

ljfriarandassociates@charter.net

August 10, 2020

Planning Department
City of Ashland
51 Winburn Way
Ashland, OR 97520

RE: PA-Appeal-2020-00011

To whom it may concern:

In response to Section #5 of Mr. Elerath's eloquent appeal letter dated August 10, 2020, I submit the following:

First I do agree with his statement "It appears that the surveyor can't locate four easements shown on the Title Report" as it absolutely factual. This however is where the factual statements end. I could assume, that based on his comments after this statement, Mr. Elerath has surveying experience and has read hundreds of easement documents over the course of his surveying career and has prepared Tentative & Final Plats as I have done. If so he may have reason to question my integrity on these matters. However, based on these same statements it is quite apparent to me he has not done any of the above. I also do not find any surveyor licensed in the State of Oregon under the name of Eric Elerath based on records from OSBEELS dated 8/7/2020. This fact further questions the validity of Mr. Elerath's survey related statements.

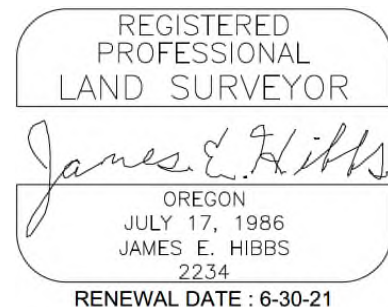
Furthermore, Mr. Elerath can, which I assume he has not yet done, obtain copies of these recorded easements free of charge from a local title company. If he so desires, he can review these easements, and the legal descriptions contained therein, in detail, using his knowledge of land surveying, as I have already done, and would then be able to determine that these easements cannot be located. I am required to show the locations of easements where possible which I have done. If the easements are not locatable, I am required to place notes on the plat to that effect which I also have done. If Mr. Elerath does not desire to review these easements in detail, he can then simply store them in the back of his vehicle or in a file folder in his garage as he has posed the question that I have done the same. The fact being the easements are in a file folder in my office. The Tentative Plat as submitted has the required information contained within it and I stand by everything that is on it. The idea presented by Mr. Elerath to reject the proposal based on the four lines regarding the unlocatable easements is simply incorrect.

Based on Mr. Elerath's statements contained in Section #5 that are incorrect, except for one, I call into serious question the validity of this whole section of his appeal letter and would ask that Section #5 would be discounted and deemed irrelevant information.

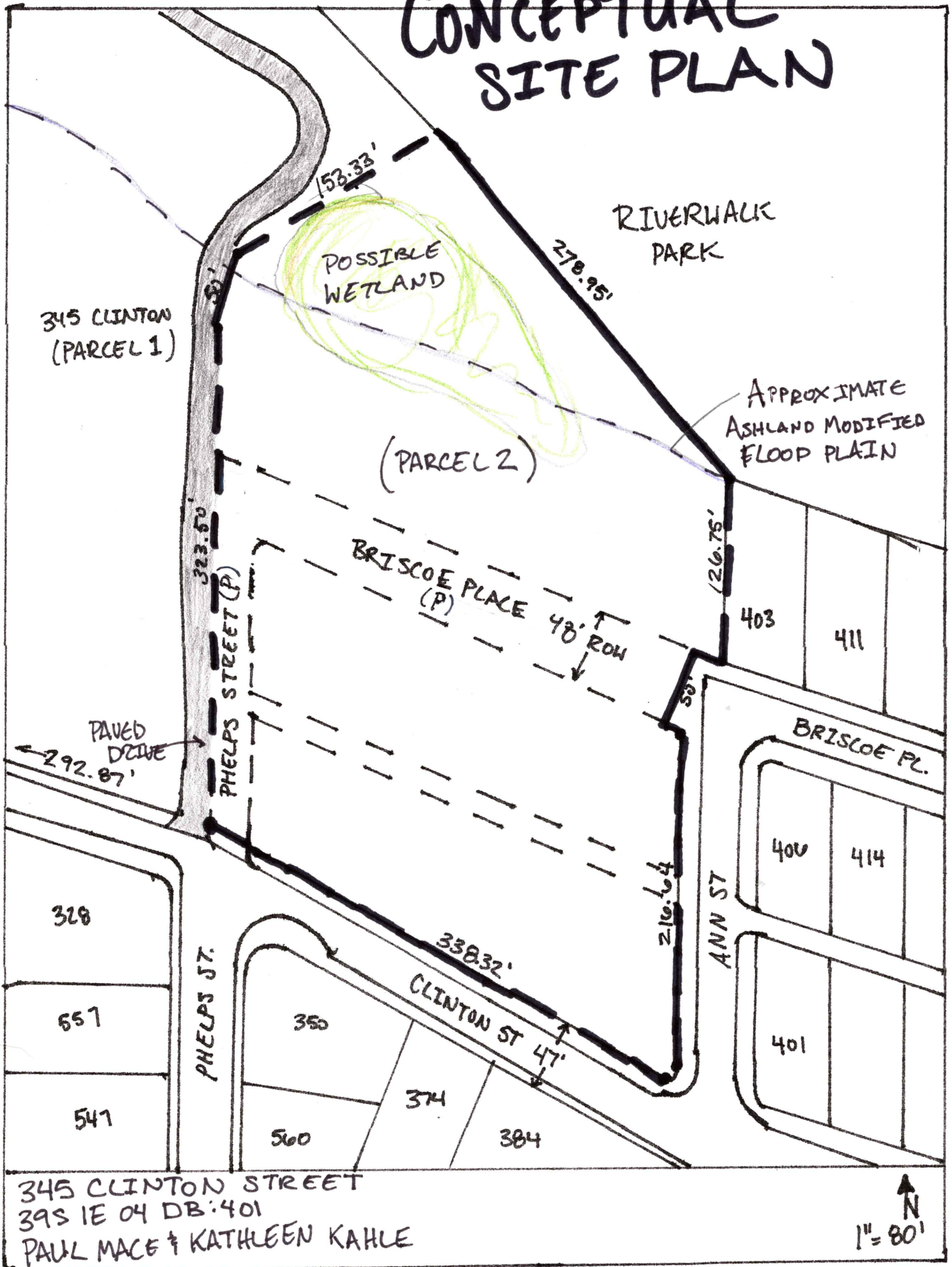
Sincerely,

James E. Hibbs, Oregon PLS2234

copy: 20-106



CONCEPTUAL SITE PLAN



345 CLINTON STREET
39S IE 04 DB:401
PAUL MACE & KATHLEEN KAHLE



SCHOTT & ASSOCIATES
Ecologists & Wetlands Specialists

21018 NE Hwy 99E • P.O. Box 589 • Aurora, OR 97002 • (503) 678-6007 • FAX: (503) 678-6011

**JURISDICTIONAL WETLAND
DELINEATION REPORT
FOR**

**345 Clinton St. Partition
Ashland, OR**

T39S, R1E, 4DB, TL 401 (portion)

Prepared for

Kathleen Kahle
345 Clinton Street
Ashland, Oregon 97520

Prepared by

Jodi Reed
&
Juniper Tagliabue
of
Schott & Associates, Inc.

Date:

March 2020

Project #: 2736

**APPLICANT'S
SUBMITTAL &
PRESENTATION**

**PA-APPEAL-2020-00011
(Appealing PA-T1-2020-00109)
345 Clinton Street**

APPEAL OF ADMINISTRATIVELY APPROVED MINOR LAND PARTITION

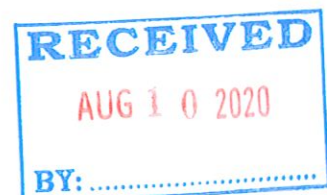
345 Clinton Street
39 1E 04DB; Tax Lots: 401

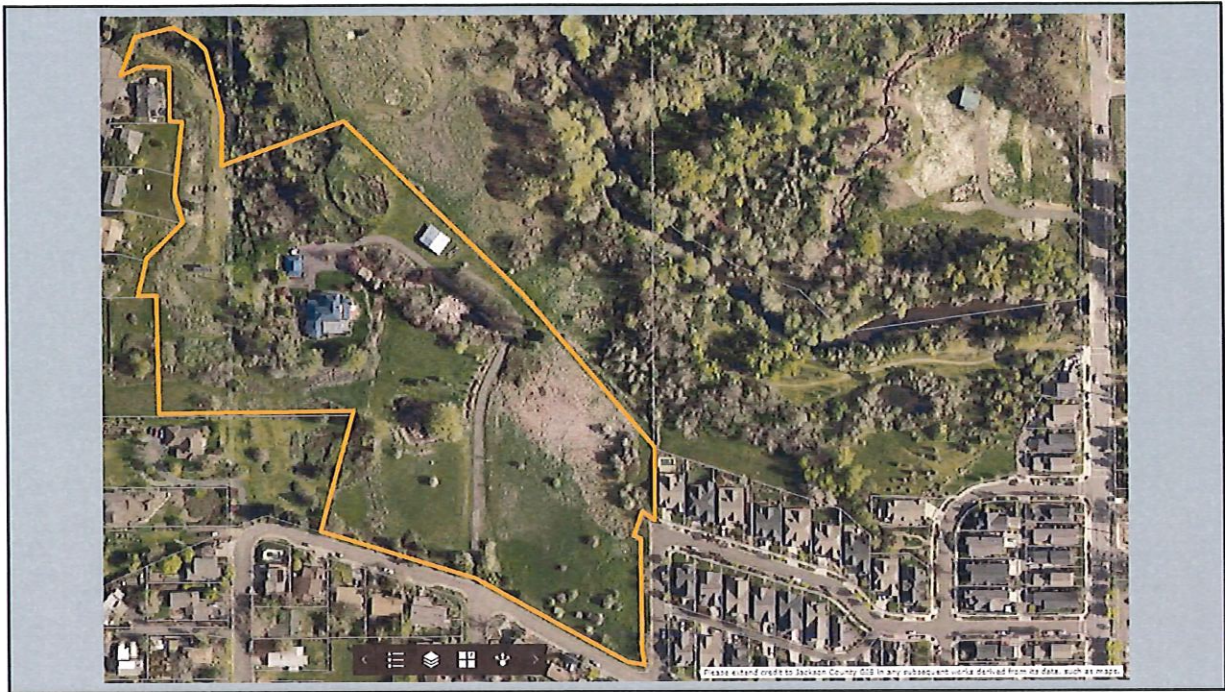
Good evening Planning Commissioners,.

The hearing before you is a request for appeal of a Minor Land Partition which was administratively approved by staff and subsequently appealed by a neighbor with standing. Many of the issues raised by the appellant address procedural issues. The property owner and their agent cannot speak to how, or how much information was provided on the City website nor as to how in person file review was or was not accommodated for. The application form with the property owner's and applicant's signatures, findings of fact and a preliminary partition plat map created by an Oregon Licensed Surveyor were submitted electronically to the City of Ashland on April 30, 2020. Based on the information submitted with the application the application was deemed complete by staff and a notice of application was sent to the property owners within 200-feet.

We believe that there was adequate notice to the neighbors as required by local code and the Oregon Revised Statutes. We believe it can be found that numerous public comments were received in the initial public comment period.

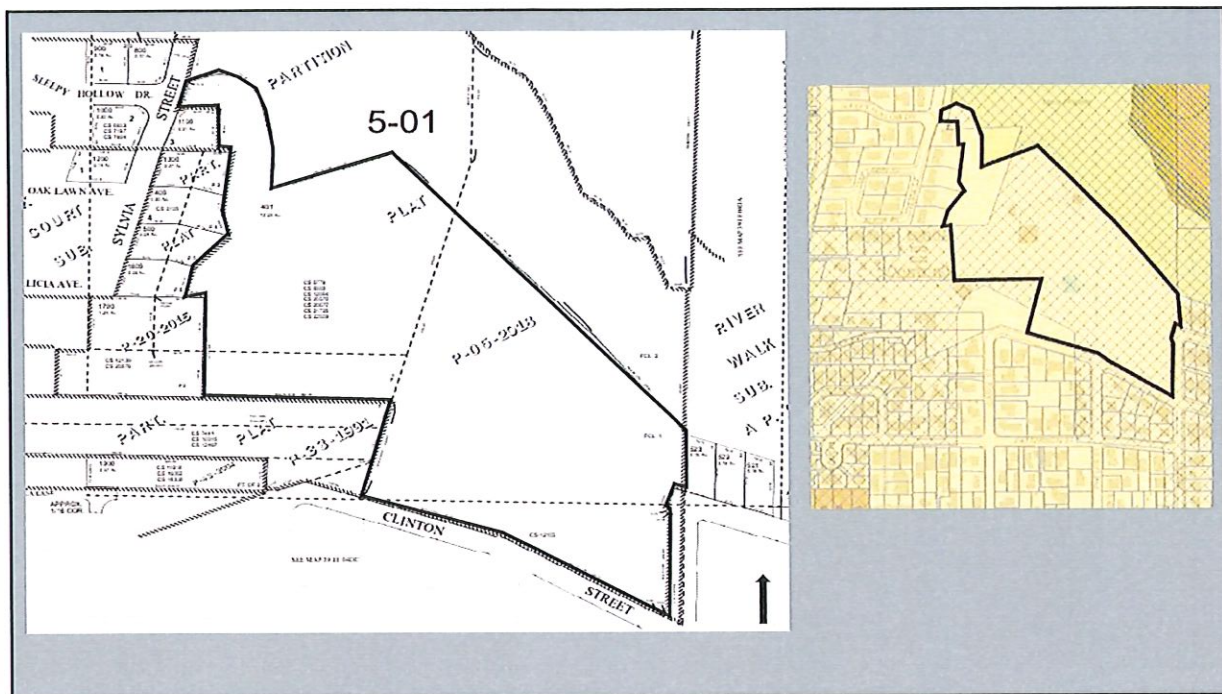
We also believe that the Planning Commission can find that the proposed partition of the property is consistent with the approval criteria from AMC 18.5.3, and that the conditions of approval from the administrative decision are consistent with the state laws (ORS 92) that allow for inclusion of conditions of approval on plats.



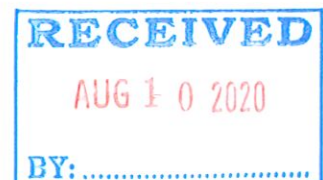


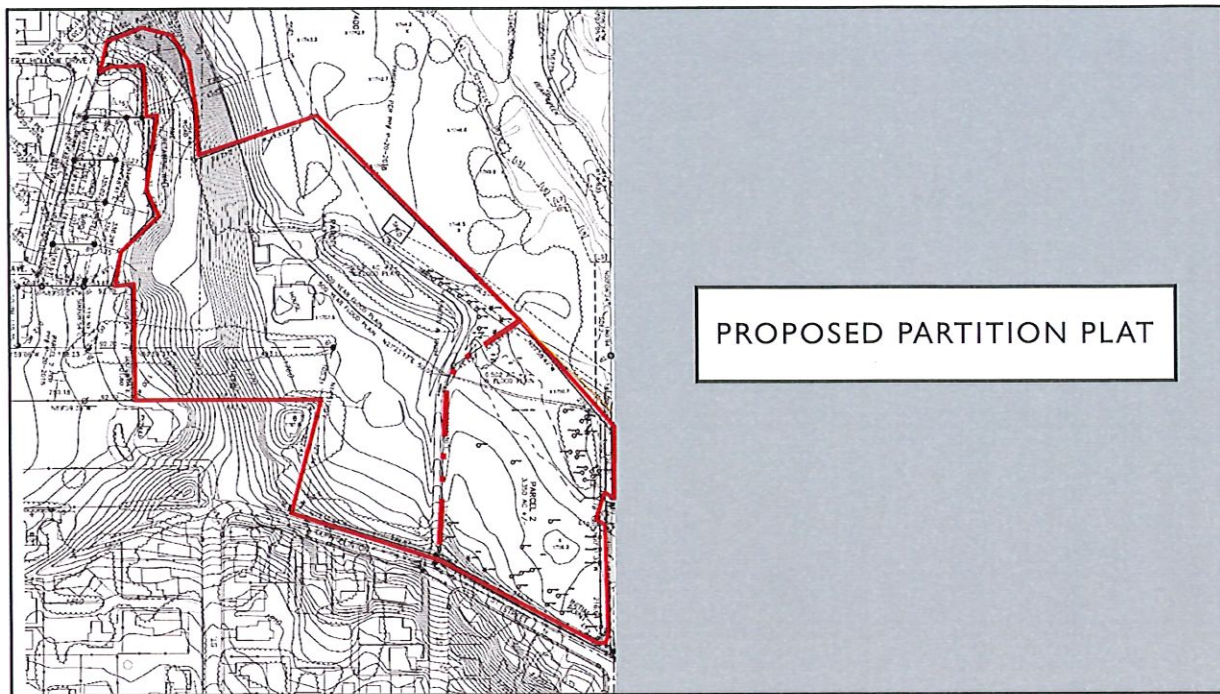
The 12.29-acre property is on the north side of Clinton Street. The property is occupied by a single-family residential home, a detached garage, and a pole barn. The residence is accessed via a paved, private driveway that extends from Clinton Street to the residence.





The subject property and the adjacent properties are R-1-5-P and are generally developed with single-family residences and their outbuildings.

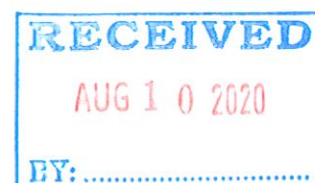




The request is to divide the property into two parcels.

Proposed Parcel 1 is 8.36 acres. This parcel would retain the residence, garage and pole barn at 345 Clinton Street. The vehicular access will be retained from Clinton Street utilizing the private driveway. The east side of the existing private driveway is the approximate east property line of proposed Parcel 1.

Proposed Parcel 2 is a vacant, developable, approximately 3.35-acre parcel northwest of the intersection of Clinton Street and Ann Street. The parcel is proposed to have 358.32 feet of frontage along Clinton Street and extends 240 feet



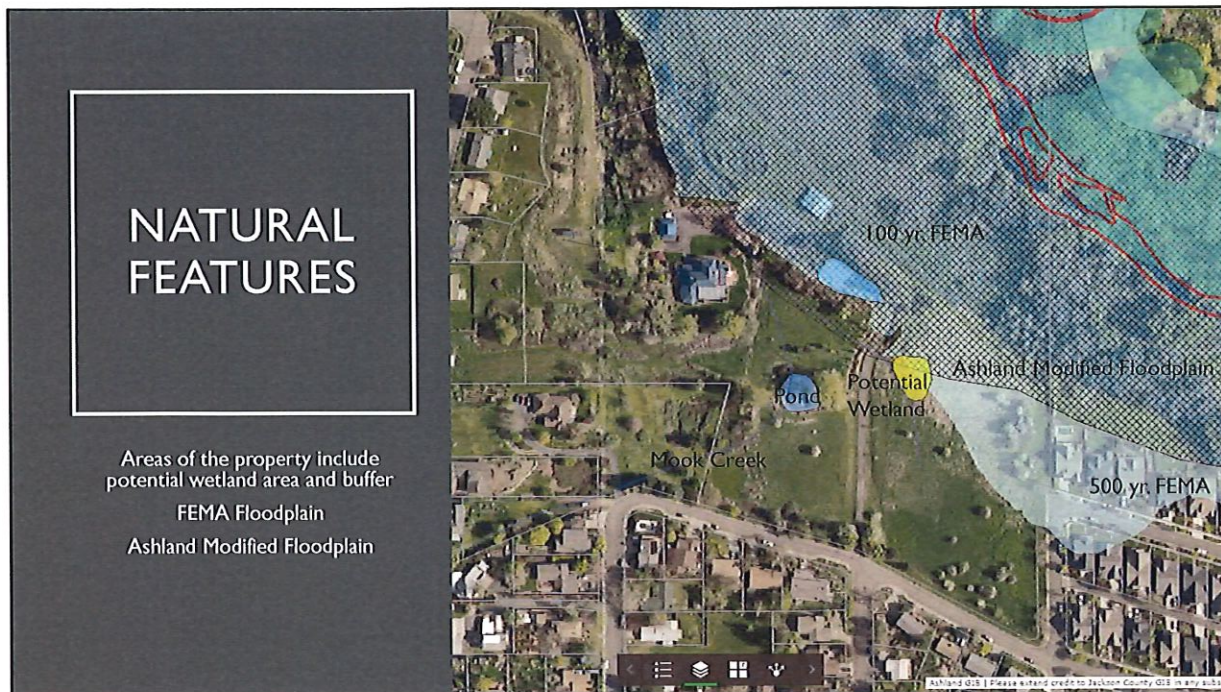
along Anne Street. Briscoe Place T's into the east side of Proposed Parcel 2.

The future subdivision of Parcel 2 will be subject to review by either staff or the Planning Commission depending on the number of parcels. The future density is dependent upon the goals of the future developer. There is no minimum density in the R-1-5-P zone and the maximum density can be increased through density bonuses. Base density of the 3.350-acre parcel is 4.5 du/acre or 15 dwelling units.

The proposed partition demonstrates compliance with AMC 18.5.3 and future development will address the specific codes applicable at the time of application these include the physical and environmental constraints review chapter, the water resources protections zone, outline and final plan, possibly site design review, tree removal or, protection and preservation.

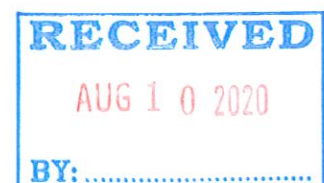
The findings of fact address how the proposal compiles with 18.5.3. The findings of fact advise that the future development will need to comply with applicable city standards in the development proposal.





There are natural features identified on the property. Mook aka Clear Creek enters the property near the southwest corner, traverses the site leading to the pond and continuing to Bear Creek (Mook Creek is an intermittent or ephemeral stream which has a 20-foot riparian buffer zone (Mook Creek is located on proposed Parcel #1.))

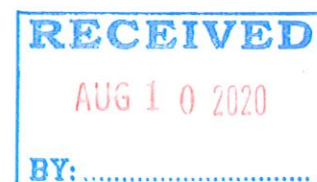
Along the north portion of proposed Parcel 2, approximately .530 acres are within the Bear Creek, FEMA floodplain and the Ashland Modified Floodplain of Bear Creek. Ashland Modified floodplain hashed area; FEMA 100 Year floodplain darker blue under the hashed area; FEMA 500 year floodplain (not regulatory) light blue area.



There is also a potential wetland (yellow circle) and a preliminary Wetland Delineation report has been completed but not filed with the Department of State Lands.

The floodplains and wetlands will be further evaluated and planned for as required by state and local ordinances and future impacts mitigated through the site development of the residential homes. There is adequate area for the development of residential lots and the preservation of the significant natural features.

Future development of Parcel #2 would need to address the Physical Constraints Review Chapter which is triggered with the development of properties per 18.3.10.020. No development is proposed at this time with the partition request.

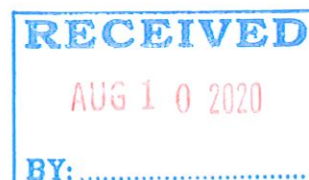


CONCLUSION

- The proposed partition is to create a discrete parcel of record.
- Both parcels area and dimensions exceed the minimum lot size in the R-1-5-P zone.
- Adequate vehicular access presently exists to the property and future development will extend the public streets through the future development area of Parcel #2.
- The parcels do have natural features such as floodplains and potential wetlands, as addressed in the findings. The future development will be required to consider the physical constraints as part of the future subdivision.
- The City of Ashland has adopted numerous documents addressing the need to additional housing. This partition creates a developable parcel that allows for the future development of needed housing within the city limits.

The City of Ashland Planning Commission can find that the proposed partition to create two discrete parcels of record conforms to the Partitions Chapter of the Ashland Municipal Code and that the Community Development Department Director Decision is consistent with local and state Oregon Revised Statutes that allow for the partitions and subdivisions within the city limits.

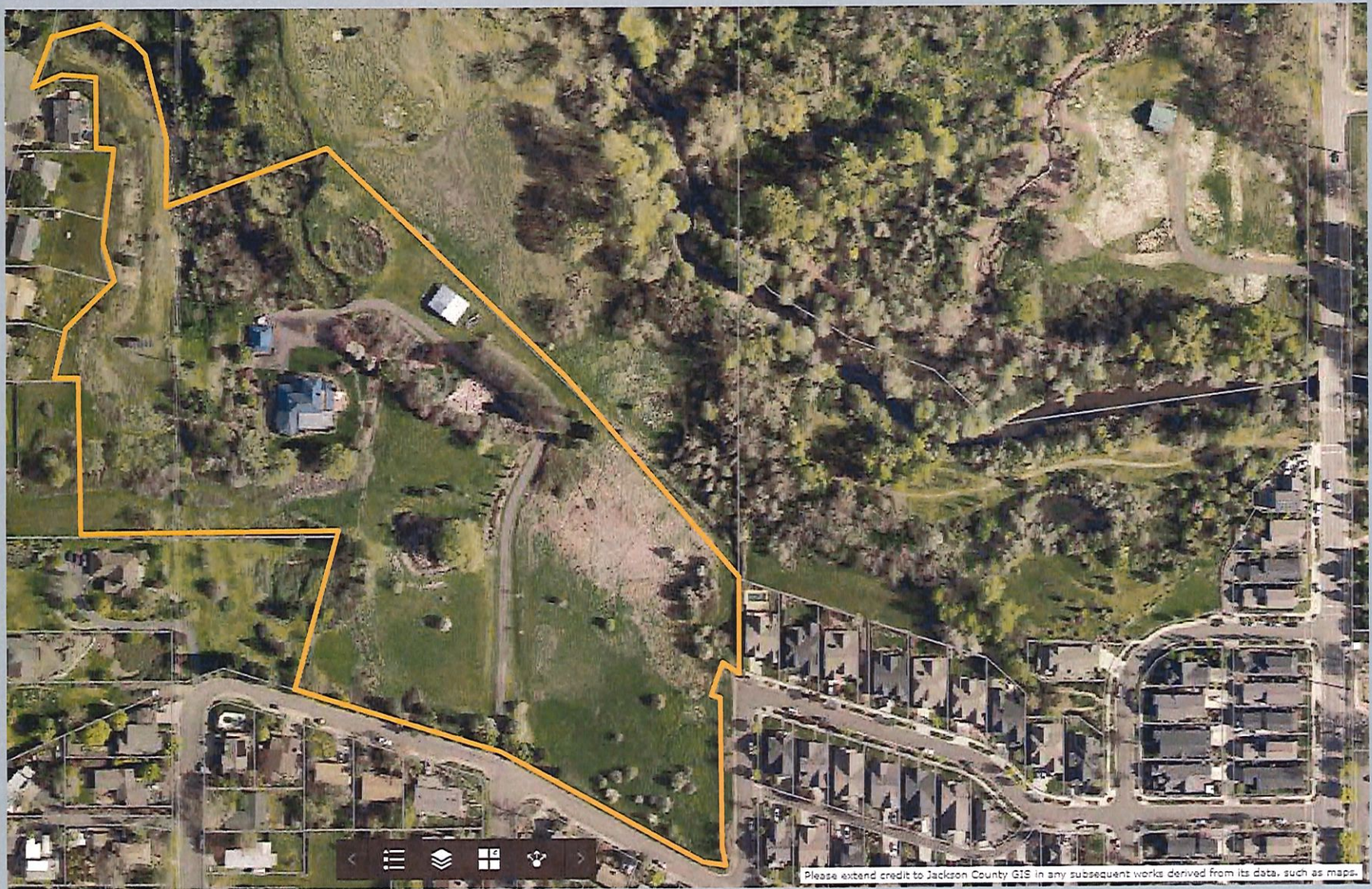
Thank you for your consideration.



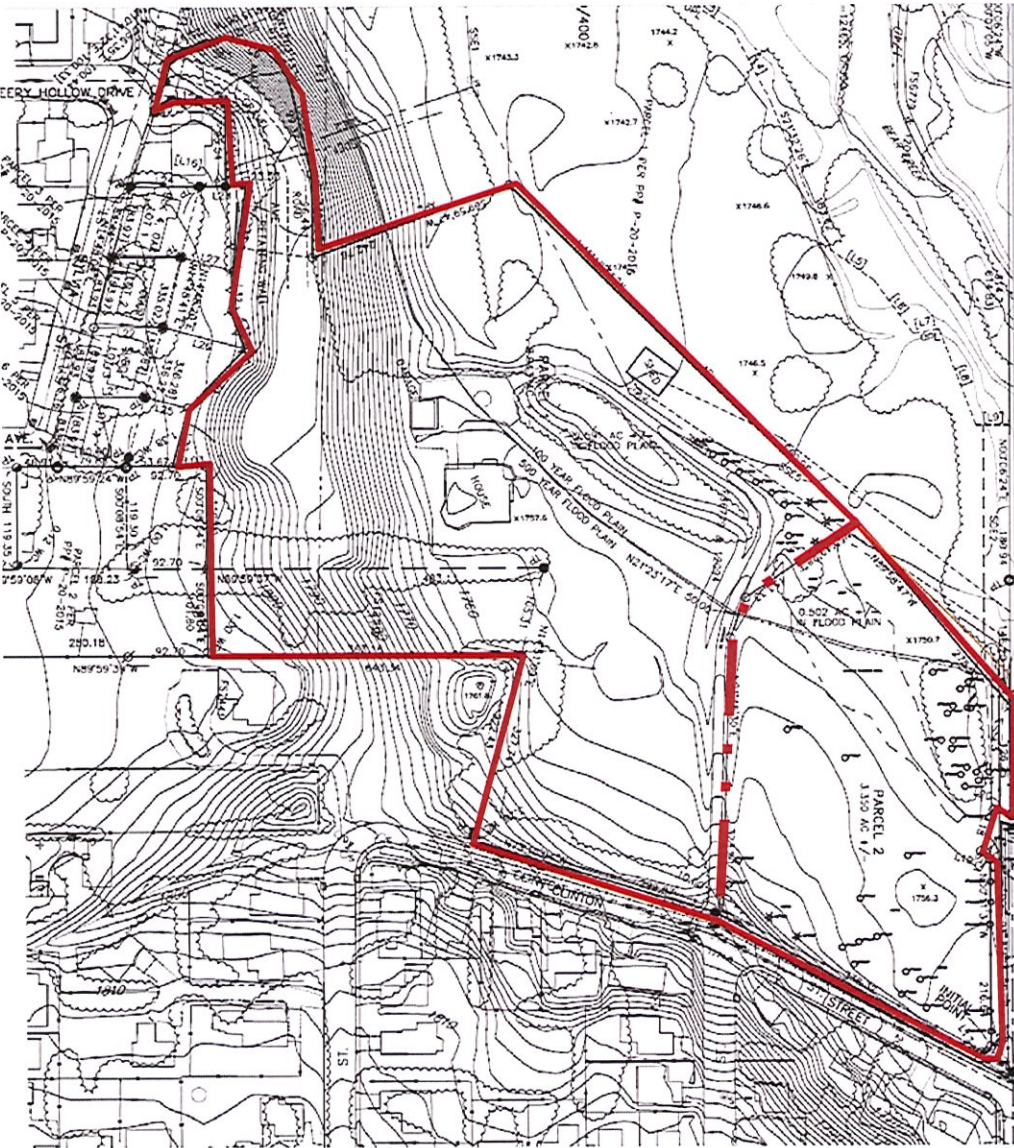
APPEAL OF ADMINISTRATIVELY APPROVED MINOR LAND PARTITION

345 Clinton Street
39 1E 04DB: Tax Lots: 401





RECEIVED
AUG 10 2020
BY:



PROPOSED PARTITION PLAT

RECEIVED

AUG 10 2020

BY:

NATURAL FEATURES

Areas of the property include
potential wetland area and buffer

FEMA Floodplain

Ashland Modified Floodplain



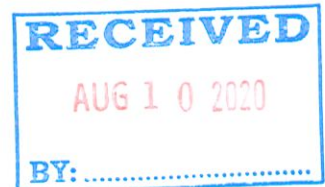
RECEIVED

AUG 10 2020

BY:

CONCLUSION

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**APPELLANT'S
SUBMITTAL**

**PA-APPEAL-2020-00011
(Appealing PA-T1-2020-00109)
345 Clinton Street**

Eric Elerath
419 Clinton St.
Ashland, OR 97520
(310) 429-8063

August 10, 2020

Planning Department
City of Ashland
51 Winburn Way
Ashland, OR 97520
(541) 488-5305

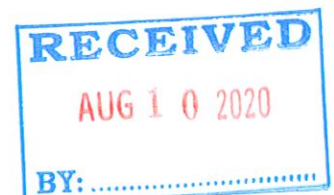
**PLANNING ACTION: #PA-APPEAL-2020-00011 (APPEALING PA-
T1-2020-00109)**

PLANNING ACTION: PA-APPEAL-2020-00011
SUBJECT PROPERTY: 345 Clinton St.
OWNER: Paul Mace & Kathleen Kahle
SUBJECT: Notice of Appeal of Planning Decision
STAFF DECISION: June 30, 2020
APPEALED: July 13, 2020

Issues De Novo

1. Due Process Failure to Notice Betsy McLane

One of the two Appellants, Betsy A. McLane (McLane), did not receive any notice of this hearing. Page 132 of the packet 2020-08-11_PC_PACKET-web.pdf lists the record for the current action. The chart header indicates the Date, Item, and Page # for each record item and the third line shows that Appellants Submittals were received on 7/13/2020 and begin on page 5. The document image on page 5, (or 137), shows two names listed as Appellants. 1. is Eric Elerath and 2. is Betsy McLane. Under D, both persons named in A.1 and A.2 qualify because they affirmed having received notice of the planning action. Page 6, (.pdf 138) shows that the Appeal Fee was paid, and the stamp on both pages shows that the copy is a conformed copy. The document shows Eric Elerath's handwritten signature in blue ink and the space above Betsy McLane's is unsigned on the document that the City chose to display.



Enclosed exhibits also show Betsy McLane's qualification as a separate party:

A. An email that Elerath sent to Planning staff on July 13 to show McLane's intent to be included as a party to the Appeal.

B. A receipt for payment, showing Betsy's name appearing on the receipt.

Betsy McLane is a person I trust. Incoming mail from the Post Office is scanned before delivery, and Betsy receives previews of the scanned envelopes by email. She has told me that, to the best of her memory, she did not receive an email with a scanned image of an envelope from the City of Ashland bearing her name, nor did she receive an paper letter of the Notice.

Attached is a copy of the envelope that Elerath received containing his Notice of Appeal, dated July 29, 2020. It is addressed to: "ELERATH ERIC J ET AL" followed by the 419 Clinton Street address. The term "et al" is not a catch-all substitute to include unnamed parties, but an abbreviation referencing parties to a case, not to identify them. Betsy McLane's name does not appear on the envelope, and Elerath requests a new hearing be scheduled pursuant to A.M.C.

2. Due Process Under the 14th Amendment

"... nor shall any state deprive any person of life, liberty, or property, without due process of law;"

While health concerns may warrant the closure or partial closure of some government offices, there is no provision in the U.S. Constitution that requires an Oregon land use authority to approve a preliminary plat map within 120 days during a declared national pandemic and health emergency. However, due process is a basic requirement.

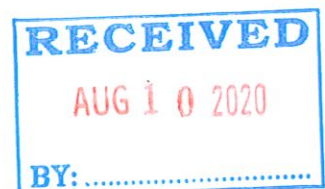
3. Equal Protection under the 14th amendment

"... nor deny to any person within its jurisdiction the equal protection of the laws."

The processes created, judged and enforced through this Planning action may be exactly what this clause was intended to prevent. By allowing land use approvals to be made on incomplete information, additional conditions may be brought through after approval, and architects, engineers, attorneys and other professionals may overrule 150 years worth of civil rights advancement in a week or two on that property. That must not happen.

Under Oregon law, a property owner may have a right to have their lot adjustment speedily approved after three years of preparation, but the public also has a right to be sure that the process doesn't allow pernicious and illegal covenants to be recorded during a period of national health emergency. Currently, it appears that the City is favoring its relationship with one pair of property owners over a duty to serve the public interest.

Director Molnar did not address Elerath's request, and the requests by others, for a time extension. Instead, the City deferred to Oregon statutes which impose a time limit. There is an inherent conflict of interest here. The City should be mediating the rights of the public against the rights of a property owner, but the public now confronts a City which lacks the judicial



authority or will to do that. This seems to violate the principle that the judicial branch of government has authority over legislative branches. Since the Planning Commission is an adjudicative body, it might declare the 120 day LUBA time frame to be arbitrary and capricious and that higher principles govern, considering the circumstances. The Applicants could then appeal to have that overturned at a higher court.

4. Additional Time

In his initial filing on May 28, Elerath asked to personally inspect relevant application documents and he asked for additional time to respond, but he received no reply from the City. He asked for both because the documents provided to the public did not match the descriptions of the documents described in the Notice. Further confusion resulted from various statements that the Development Director and others made which are not, and were not, supported by facts in evidence at the time. In his report of June 30, the Director's report states, in part:

"The planning application materials were posted on "What's Happening in my City" on the City web site,"

There is no singular place as a "web site" nor is there a singular set of documents, nor did the documents I find referenced by the link match any document titled 'Application'. This is not a trivial or irrelevant concern. The Federal PACER system, in contrast, requires registration, login, searching, retrieval and download. Logs are kept, directories have indexes, receipts are given to confirm what documents were downloaded, etc. The Director's statements about what documents were available when was not true for this Petitioner.

The request for both additional time and for inspection was a result of the City's posting of a Notice that didn't match the documents available; that was confusing. Elerath again contacted the City by appearing at 51 Winburn Way, but was refused entry, despite Jackson County public buildings - such as the Ashland Branch Library - being open. A call to Mr. Aaron Anderson indicated that he was on vacation. A call to staff on Winburn Way directed him to documents online. The documents online were self-evidently incomplete. Elerath was directed back online, then referred to staff. Two emails from Ms. Smith via Ashland's internal servers to arrange a time were delayed. Elerath was not granted access, and did not actually see the paper files for more than 60 days after his first written request, and after he had paid an appeal fee.

5. Plat map

In his initial filing of May 28, Elerath wrote:

"What may be the most significant and 'mission-critical' reason to reject this proposal outright would seem to be four lines of text appearing on the survey drawing titled "Tentative Partition Plat." It appears that the surveyor can't locate four easements shown on the Title Report: One of the easements is for "Pole Lines" and another for cable TV lines. While it's possible that there is a simple



mistake - the wrong Title Report, for example - there would seem to be no excuse for ignoring this conflict, especially when the City of Ashland owns adjacent property and has utility easements of its own on the north side.”

The City has not addressed this critical note on the proposed map. Are the easements written down on papers in the back of the surveyor’s truck or in a file folder in his garage? Are there missing benchmarks in the field somewhere? Is there a document in an online map file that doesn’t show up in a document search? What else is missing from the preliminary plat map? With all due respect to the surveyor’s integrity, these are the sorriest excuses for notes on a surveyor’s map, ever, and call into serious question the credibility of the entire map. This is utter nonsense, and the Director’s silence on this speaks volumes.

Summary

Recent events across the nation, including protests, civil disturbances and sometimes violent demonstrations, have illuminated this country’s history of systemic civil rights violations. One of the more pernicious and insidious elements of this history has been the secret recording of restrictive covenants and the development procedures that allow them to happen. Two years ago, Elerath brought this to the attention of this City in a related action, but the same issue reappears again today. There appear to be systemic problems when hard working and experienced planners and conscientious staff can follow every rule and comply with every applicable ordinance and still be accused of violating the public’s constitutional rights.

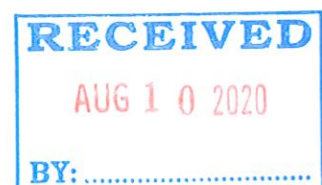
Elerath again asks for time to review the matter under consideration.




August 10, 2020

Eric Elerath

Date



From: Eric Elerath eelerath@verizon.net 
Subject: Re: Appeal Submittal for 345 Clinton
Date: July 13, 2020 at 3:21 PM
To: April Lucas april.lucas@ashland.or.us, planning@ashland.or.us

Hi April, Liz and Planning staff

At your suggestion, I'm submitting this appeal electronically.

Please find attached Appeal2020_Final.pdf. It includes the 2 page cover sheet provided by the City and six pages of re McClane's name is on the cover sheet as an additional Appellant - we share the same home and address - but I was unable to get an electronic signature before submitting. Please proceed with mine only, or I can bring over her signature on the paper for you.

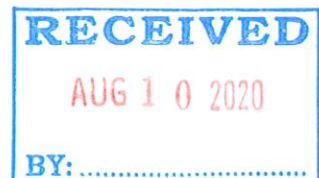
The pdf can be opened, read and printed, but is protected from copying content. Please let me know if there are problems.

As noted on the cover letter page, there are no exhibits attached. I omitted them in the interests of brevity.

Also please call to arrange payment. I prefer Visa, but electronic bank check will work too. If I don't hear from someone, I will call back again.

Thank you for your work and patience!

Eric Elerath
419 Clinton St.
(310) 429-8093



City of Ashland
Community Development
20 E Main St
Ashland, OR 97520
(541) 488-6004

004717-0004

07/13/2020 03:46PM

INVOICE

Elerath/McClane, Eric/Betsy

PA-APPEAL-2020-00011

2020 Item: INV-00005090

Balance due: 0.00

Balance unpaid: 0.00

Planning Fee - Appeal

Hearing (Initial Public

Hear

150.00

150.00

Subtotal

150.00

Total

150.00

CREDIT CARDS COMDEV

150.00

Visa

Ref:000000124909

Auth:013666

Trans ID:000000124909

Entry Method=MANUAL

TRN REF #-580195819484872

By Phone

Change due

0.00

Paid by: Elerath/McClane, Eric/Betsy

Thank you for your payment

CUSTOMER COPY



CITY OF
ASHLAND

20 EAST MAIN STREET
ASHLAND, OR 97520

RETURN SERVICE REQUESTED

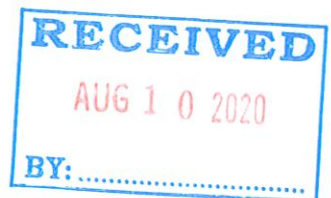
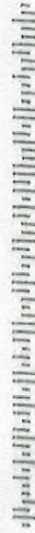
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FIRST-CLASS

PA-APPEAL-2020-00011 391E04DD1607
ELERATH ERIC J ET AL
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ASHLAND, OR 97520

97520\$1215



PACKET MATERIALS

PA-T1-2020-00109
345 Clinton Street

ASHLAND PLANNING DEPARTMENT STAFF REPORT

August 11, 2020

PLANNING ACTION: PA-APPEAL-2020-00011
appealing PA-T1-2020-00109

OWNER/APPLICANT: Paul Mace & Kathleen Kahle

APPELLANT: Eric Elerath

LOCATION: 345 Clinton St.
391E04DB Tax Lot 401

ZONE DESIGNATION: R-1-5 (partly within the “-P” Performance Standards Overlay)

COMP. PLAN DESIGNATION: Single Family Residential

ORDINANCE REFERENCES: 18.2.4 General Regulations for Base Zones
18.2.5 Standards for Residential Zones
18.5.1 General Review Procedures
18.5.3 Land Divisions and Property Line Adjustments
18.6.1 Definitions

APPLICATION DATE: April 30, 2020

DEEMED COMPLETE ON: May 15, 2020

STAFF DECISION: June 30, 2020

APPEALED: July 13, 2020

120-DAY DEADLINE: September 12, 2020

REQUEST: An appeal of the administrative approval of Planning Action #PA-T1-2020-00109, a two-lot partition of a 12.29-acre lot for the property located at 345 Clinton St. The tentative partition plat creates two parcels that are 8.94 ac. and 3.35 ac in size, with the smaller parcel situated in the southeast of the parent parcel.

I. Relevant Facts

The subject property has been modified by boundary line adjustments three times in the last decade (see PA#'s 2010-00474, 2015-00439, and 2018-00167). There was also a planning action for a density transfer (PA# 2017-02132) to allocate density from land in the flood plain, but the application was withdrawn prior to a decision being rendered. The most recent boundary line adjustment modified the property into its current configuration which conveyed land in the flood plain to the City and adjusted the property lines at the rear of the properties along Sylvia.

The current application was submitted on April 30th and was deemed complete May 15th. The Notice of Decision was mailed on June 30th with a deadline to appeal of July 13th. On

July 13th a Notice of Intent to Appeal (NITA) was received from Mr. Elerath.

Site Description

The subject property is an irregularly shaped 12.29-acre parcel located between Oak Street and North Mountain Avenue and bounded by Clinton Street to the south, Ann Street to the east, and the Bear Creek floodplain to the north. To the west is the rear of residential properties that front Sylvia St. The property is occupied by a 4,650 square foot single-family home, a detached garage, and barn. The residence is accessed via a private driveway that extends from Clinton Street to the residence.

The subject property is zoned R-1-5, a single-family residential zoning with a 5,000 square foot minimum lot size. The surrounding properties are also zoned R-1-5 and are developed exclusively with single-family homes. The subject property, as well as the surrounding properties, are located in the Performance Standards Options overlay. The P-overlay requires land divisions of three or more lots to meet the requirements of Chapter 18.3.9 Performance Standards Option and PSO Overlay. The newly created vacant lot, which is 3.35 ac in size, would allow for the development of one single-family home, absent additional subdivision.

The subject property has several physical constraints including steep slopes along the eastern portion of the property with slopes exceeding 35-percent and minor areas along the northern side of the Clinton Street frontage with slopes between 25-35-percent. The property also has FEMA / Ashland Flood zones and Mook Creek traverses the property from southwest to northeast. Mook Creek is identified as an intermittent/ephemeral stream by the Ashland Water Resource Protection Zone maps. Additionally, the Ashland Wetland Inventory indicates the presence of a wetland on the proposed vacant parcel. Future development will have to address the water resource protection zones and wetland protection.

Current Proposal

The preliminary plat included with the application indicates that proposed parcel-1 would retain the existing residence and would be 8.9 acres with 2.6 acres in the flood zone and proposed parcel-2 will be vacant and measure 3.35 acres with approximately 0.5 acres in the flood zone.

II. Project Impact

As mentioned above the current application was approved administratively on June 30, 2020 with a 12-day appeal period which ended on July 13, 2020. The approval of this two-lot partition, absent any further subdivision, would allow the development of a single-family home on the new parcel.

Partition

The approval criteria for a preliminary partition plat are in Ashland Municipal Code (AMC) 18.5.3.050.

The first approval criterion for preliminary partition plat approval is *“The future use for*

urban purposes of the remainder of the tract will not be impeded.” The application includes a discussion regarding the future development plan to demonstrate that the proposed partition will not impede future development of the parcels. The future development plan indicates that the proposed new parcel would be able to be subdivided to approximately fifteen lots for the development of single-family homes with access provided by an extension of Briscoe and Phelps Streets as well as the alley between Clinton and Briscoe Place. The development plan is not a subdivision proposal and is not approved with this two-lot partition approval. Rather the development plan is simply to demonstrate that the further development of the new parcel is feasible while not limiting possible future development.

The second approval criterion for preliminary partition plat approval is *“The development of the remainder of any adjoining land or access thereto will not be impeded.”* Based on the proposed property configuration on the preliminary partition plat the larger proposed parcel will continue to have access from Clinton St. stratifying this criterion. All other adjoining properties are either developed or constrained by the flood plain.

The third approval criterion for preliminary partition plat approval is *“The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.”* There are no adopted neighborhood or district plan that applies to the subject property, nor are there any conditions of approval from previous land use approvals that are relevant.

The fourth approval criterion for preliminary partition plat approval is *“The tract of land has not been partitioned for 12 months.”* The land has not been partitioned for more than 12 months with the last property line adjustment having taken place in 2018.

The fifth approval criterion for preliminary partition plat approval is the *“Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).”* The proposal is a request for a land partition to create two lots for the property located at 345 Clinton Street. The lots as proposed comply with the base standards for the zone, minimum area requirements and lot coverage. Based on the preliminary plat, both proposed parcels substantially exceed the 5,000 square feet minimum lot size and minimum width standards as well as lot width to depth ratio.

The sixth approval criterion for preliminary partition plat approval is that *“Accesses to individual lots conform to the standards in section [18.4.3.080](#) Vehicle Area Design.”* The existing driveway serving parcel-1 will remain, and there is no proposed access to parcel-2 at this time as the parcel will remain vacant. Any new access to the proposed parcel-1 will be required to meet minimum separation requirements.

The seventh approval criterion for preliminary partition plat approval is *“The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part [18.4](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all*

proposed public improvements and dedications.” The application materials explain that all city facilities are available within the adjacent rights-of-way, including sanitary sewer and water and franchise utilities. There are no proposed public utilities proposed to be installed to serve the new vacant parcel. The application explains that the size of these utilities will be predicated by the future development.

Clinton, Ann and Briscoe streets are designated as local streets in the City of Ashland Transportation System Plan and are designed to have a capacity of up to 1500 daily trips. The most recent trip count data (captured between 2005 and 2008) indicate that each of these roads operate far below their design capacity: Carol 388 Average Daily Trips (ADT), Phelps 207 ADT, Clinton 143 ADT and Ann 157 ADT. According to City records in the past twenty years there have been two accidents at the point where Clinton St turns into Carol, one accident at the intersection of Clinton and Ann, and another at Phelps and Clinton, for a total of four accidents. The Land Use Ordinance does not require a Traffic Impact Analysis (TIA), and Public Works had no concerns regarding traffic impacts of the proposed partition.

The eighth approval criterion for preliminary partition plat approval addresses minimum improvements to the roadway: *“When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.”* The curb-to-curb width along Clinton and Ann Streets is twenty-seven feet which exceeds the required amount for local access streets and allows for parking on both sides. Clinton and Ann Street lack park row and sidewalks adjacent to the new parcel. The application requests to sign in favor of a LID for future development of Clinton Street, Ann Street. A condition has been added below requiring that the applicant sign in favor of a LID prior to approval of the final plat.

The ninth approval criterion for preliminary partition plat approval is that *“Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.”* This criterion does not apply as there is no alley adjacent to the subject property.

The tenth approval criterion for preliminary partition plat approval is that *“Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.”* At the time of future development or land division the applicant will be required to address the Water Resource Protection standards and delineation of the possible wetland as identified in the Wetland Inventory and obtain the required state and federal permits should they be required.

The final approval criterion for preliminary partition plat approval is that *“A partition plat containing one or more flag lots shall additionally meet the criteria in section [18.5.3.060](#).”* This criterion does not apply as there is no proposed flag lot.

Public Input

Notice of the Type-I planning action was mailed to all properties within 200 feet of the subject property as well as a physical notice posted along the frontage of the property. The notice included a staff contact name and number. Subsequent to the mailing of a Notice of Application, written comments about the request were received from eleven concerned citizens. In accordance with AMC 18.5.1.050, the Type-I procedure for planning applications allows a 14-day period for the submission of written comments, starting from the date of mailing. For the subject application, the comment period began on May 15th and ended on May 29th.

Issues that were raised in relation to the planning application included concerns about open space preservation, habitat for wildlife, views, and concerns about future development of the property including noise, dust, and traffic. These issues are addressed by the application materials, as well as by this report. The applicant has dedicated land in the flood plain to the City in the past that will be kept as Parks land and open space. While there are portions of both proposed parcels that are in the flood plain no additional land is proposed to be conveyed to the City at this time. Concerns regarding loss of views are not protected by the Land Use Ordinance.

Eric Elerath submitted a written comment on May 29th raising additional concerns about the relevant approval criteria included in the mailed notice, and physical access to the application materials, and included a request for additional time to inspect and review the application materials.

The mailed notice included the relevant approval criteria from AMC 18.5.3.050 for a Preliminary Partition Plat. The issue regarding an incomplete application was identified in the written comment as the application materials posted online did not include the receipt for payment for the planning application. AMC 18.5.1.050 requires the application form and fee for a planning application to be considered complete. Both ORS 227.178 and AMC 18.5.1.090 requires the city to determine if a planning application is complete within 30 days of the applicant submitting the information and to notify the applicant if any required submittal information is missing.

The Staff Advisor is responsible for determining whether the submittal information is complete for a Type-I planning application and accordingly made the determination on May 15, 2020 that the application was complete, including that the preliminary partition plat fee had been paid on April 30th. The receipt for the payment is documented in the City's permitting software and a hard copy of the receipt is included in the planning application file.

The notice stated that the application materials were available at the Community Development & Engineering Services building at 51 Winburn Way during the period of public comment and included a staff contact with a telephone and email address. The Community Development Department offices were closed to the public during the 14-day comment period in response to the COVID-19 pandemic and the declared state of emergency.

The City's emergency declaration on March 17, 2020 closed City offices to the public and they continue to be closed to the public until such time that the state announces Phase Three of reopening. The planning application materials were posted on "What's Happening in my City" on the City web site. People that called or emailed and were interested in reviewing the file were directed to the City's web site.

Staff Decision

AMC Title 18 Land Use regulates the subdivision of land to carry out the development pattern envisioned by the Comprehensive Plan and to encourage efficient use of land resources among other goals. When considering the decision to approve or deny an application for land partition application staff consider the application materials against the relevant approval criteria* in the AMC. Staff determined that the application, with the attached conditions, complied with applicable ordinances and met all standards and criteria for approval and as such Planning Action #T1-2020-00109 was approved.

III. Appeal Request

As mentioned above, the proposed partition was approved administratively on June 30, 2020 with a 12-day appeal period which extended through July 13, 2020. On July 13, 2020, Mr. Eric Elerath timely filed a Notice of Intent to Appeal (NITA). Mr. Elerath resides in the noticing area for the application and had previously submitted written comments to be considered during the public comment period and thus had standing to appeal.

The notice of appeal identified document was formatted in such a manner that it began by addressing the Appeal criteria and his submittals compliance with the criteria[†]. Under the specific heading of AMC 18.5.1.050.G(2)(c)(iii) Mr. Elerath lists six specific items. It should be noted that none of these issues address the relevant approval criteria and are all focused on alleged failures to adequately notice the application and provide access to the application materials. The six specific items listed were:

- A. Incomplete Application.
- B. Defective Notice.
- C. Failure to provide access to personally inspect the Application File, evidence, and documents.
- D. Failure to provide digital access to Application file, material evidence and documents.
- E. Elerath's request for additional time and the Director's failure to provide such.
- F. Defective submittal analysis.

Following this list of six specific grounds of appeal Mr. Elerath goes on to say "implicit in these issues is the apparent fact that two land use decisions were actually made. One decision was made by staff about the Application's completeness, and the other was made regarding compliance with criteria for a preliminary partition plat."

* At AMC 18.5.3.050

† At AMC 18.5.1.050.G.2

As the NITA document continues under a heading “Specific Grounds for Appeal” there are two sections numbered one and two (A&E above). These two sections develop Mr. Elerath’s arguments, the first being that “The Director’s decision was made without a complete Application having been produced.” The second being that “The Director failed to grant an extension of time to allow access to review the application.” None of the other specific points listed (B, C, D, F above) have their arguments further developed.

In a section of Mr. Elerath’s NITA under the heading of ‘Scope of Appeal’ it states that he may bring other issues at the hearing. In addition to his procedural objections other issues including vegetation, wildlife, and wetlands may also be addressed at the hearing. Appeal of Type-I procedures, as provided in AMC 18.5.1.050.G, state that appeal hearings on Type-I decisions are “de novo” hearings before the Planning Commission which allows the consideration of additional materials not limited to those in the record. The Commission may allow additional evidence, testimony, or argument concerning any relevant ordinance provision.

IV. Staff Response

The NITA document develops substantive arguments for two items that were listed as specific issues being raised in the appeal (A and E). Despite the lack of developed arguments Staff will respond to each of the six items set out at the beginning of the document. In Addition to these responses staff will also respond to the allegation that the decision that the application was complete constitutes a separate land use approval.

Incomplete application

Mr. Elerath asserts that the application materials were incomplete as the digital materials online did not include a receipt for the application fee. Mr. Elerath also states that the application itself was missing from the online materials.

AMC 18.5.1.090 provides that, “The Staff Advisor shall determine within 30 days of receiving an application for Type-I, II, or III review whether the application is complete, and shall advise the applicant accordingly in writing.” Staff determined the application to be complete, and while the application form and receipt of payment were not included in the materials posted on-line, staff verified that an application was provided and payment had been made, the application and receipt were included in the physical record and the appellant was offered the opportunity to review the record in the office. The application requirements of AMC 18.5.1.050.A are not approval criteria applicable to approving or denying a preliminary partition plat.

Defective notice

Mr. Elerath asserts, and the record reflects, that the notice that was posted stated that the documents would be available at the Community Development Building which was closed to the public during the public comment period. As stated above during the review period Mr. Elerath was in contact with staff and was directed to the City web site where the application materials were available.

While the posted notice stated that the application materials were available for review

in the Community Development Building, with the Governor's Executive Order #20-16 and the city's declared State of Emergency in response to the COVID-19 pandemic, city offices were closed to the public. Mailed and posted notices included the name and phone number of a city contact person as required in AMC 18.5.1.050.B.3.h.

The planning application materials were made available on "What's Happening in My City" on the City web site, and people who called or emailed and were interested in reviewing the file were directed to the City's web site. Staff spoke with Mr. Elerath multiple times to ensure that he had access to the electronic materials. In addition, after the Notice of Decision was sent but prior to the end of the appeal period the city made accommodations to allow Mr. Elerath access to the building to review the physical materials. Despite being contacted multiple times in a good faith attempt by staff to allow the appellant to inspect the file, he did not respond to staff or take those opportunities that were available to him to review the application materials in person.

Failure to provide access to personally inspect the application file, evidence, and documents

As noted above, staff contacted Mr. Elerath multiple times to ensure that he had access to the electronic materials. In addition, after the Notice of Decision was sent but prior to the end of the appeal period the city made accommodations to allow Mr. Elerath access to the building to review the physical materials. Despite being contacted multiple times he did not respond to staff or take those opportunities that were available to him to review the application materials in person.

Failure to provide digital access to application file, material evidence and documents

As stated above, all application materials were published on the City web site.

Elerath's request for additional time and the Director's failure to provide such

AMC 18.5.1.050.C requires that, "The Staff Advisor shall prepare a decision within 45 days of the City's determination that an application is complete, unless the applicant agrees to a longer time period." In addition, AMC 18.5.1.090.B requires that, "*The City shall take final action on Administrative... land use applications, pursuant to this chapter, including resolution of all appeals, within 120 days from the date the Staff Advisor deems the application complete for purposes of processing, unless the applicant requests an extension in writing.*" There is no requirement in the code to provide additional time for review, and additionally, staff's review timeline is constrained by the time limits set by both city ordinance and state law to render a final decision.

Defective submittal analysis

Because this specific point of appeal was left undeveloped in the NITA staff is left to surmise that this is an argument that ties into the complete application determination (see below).

Determination of a complete Application as a ‘land use decision’

As mentioned above Mr. Elerath also asserts that there were two land use decisions made while approving the application stating that the determination of the application being complete was also, in and of itself, a land use decision. Determination that an application meets the Type-I application requirements of AMC 18.5.1.050.A is a procedural component of all Type-I land use decisions, and AMC 18.5.1.090.A requires the Staff Advisor make such a determination for each application within 30 days of submittal. Completeness review in and of itself is not treated as a separate land use decision requiring substantial discretion, and as such is not included as a type of Planning Action approval in Table AMC 18.5.1.010 “*Summary of Approvals by Type of Review Procedures.*”

V. Procedural - Required Burden of Proof

The approval criteria for a Land Partition are provided in AMC 18.5.3.050 which state that the approval authority shall approve an application for preliminary partition plat approval only where all of the following criteria are met.

- A. The future use for urban purposes of the remainder of the tract will not be impeded.
- B. The development of the remainder of any adjoining land or access thereto will not be impeded.
- C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.
- D. The tract of land has not been partitioned for 12 months.
- E. Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).
- F. Accesses to individual lots conform to the standards in section [18.4.3.080](#) Vehicle Area Design. See also, [18.5.3.060](#) Additional Preliminary Flag Lot Partition Plat Criteria.
- G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part [18.4](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.

H. Unpaved Streets.

1. Minimum Street Improvement. When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.
2. Unpaved Streets. The Public Works Director may allow an unpaved street for access for a land partition when all of the following conditions exist.
 - a. The unpaved street is at least 20-feet wide to the nearest fully improved collector or arterial street. The City may require the street to be graded (cut and filled) to its standard physical width, and surfaced as required in chapter [18.4.6](#) prior to the signature of the final partition plat by the

City.

- b. The centerline grade on any portion of the unpaved street does not exceed ten percent.
- c. The final elevation of the street shall be established as specified by the Public Works Director except where the establishment of the elevation would produce a substantial variation in the level of the road surface. In this case, the slope of the lot shall be graded to meet the final street elevation.
- d. Should the partition be on an unpaved street and paving is not required, the applicant shall agree to participate in the costs and to waive the rights of the owner of the subject property to remonstrate both with respect to the owners agreeing to participate in the cost of full street improvements and to not remonstrate to the formation of a local improvement district to cover such improvements and costs thereof. Full street improvements shall include paving, curb, gutter, sidewalks, and the undergrounding of utilities. This requirement shall be precedent to the signing of the final survey plat, and if the owner declines to so agree, then the application shall be denied.

- I. Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.
- J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.
- K. A partition plat containing one or more flag lots shall additionally meet the criteria in section [18.5.3.060](#).

VI. Conclusions and Recommendations

Staff initially determined that the application with the attached conditions complied with applicable ordinances and met all standards and criteria for approval of a preliminary plat approval and as such Planning Action #T1-2020-00109 was approved. After staff approved the application a Notice of Decision (NOD) was mailed to all persons entitled to notice.

Subsequent to the NOD property owner Eric Elerath filed a Notice of Intent to Appeal (NITA). Mr. Elerath resides in the noticing area for the application and had previously submitted written comments to be considered during the public comment period and thus had standing to appeal.

The notice of appeal identified several issues to appeal and other arguments. These included, 1) Incomplete Application, 2) Defective Notice, 3) Failure to provide access to personally inspect the application materials etc., 4) Failure to provide digital access to application materials etc., 5) the Director's failure to provide Mr. Elerath's request for additional time to review the application materials, 6) Defective submittal analysis, and 7) that multiple land use decisions were made. We will address these each in turn:

First, with regard to the complaint that the application was incomplete because the on-line record did not include a payment receipt; the record shows that, notwithstanding the omission of the receipt for payment from the online materials, payment was made and a receipt included in the physical record. In addition, payment of fees or an item missing from the application would not affect whether the application met the criteria for Preliminary Partition Approval.

Secondly, regarding the alleged defective notice; while the posted notice incorrectly stated that application materials were available for review in the Community Development Building when it was closed to the public in response to the Governor's Executive Order #20-16 and local State of Emergency Declaration, the mailed and posted notice included required contact information for a staff person, the application materials were made available on-line and communicated to the appellant, and follow-up correspondence with the appellant constitutes a good faith attempt to remedy the situation.

Third, with regard to Mr. Elerath's statement that there was a failure to have access to personally inspect the application material; after the NOD Mr. Elerath was invited to come to the Community Development building to examine these documents but despite several attempts to contact Mr. Elerath he did not avail himself of that opportunity.

Fourth, regarding the failure of the city to provide digital access to application materials; Mr. Elerath was provided, via email, links to the application materials via the city web site and included copies of these emails with staff in his NITA. From the forgoing it is clear that Mr. Elerath did, in fact, have digital access to the application materials.

Fifth, with regard to the Director's failure to grant Elerath's request for additional time to review the application materials in light of the COVID-19 state of emergency; there is no such requirement in the ALOU to do so. Furthermore AMC 18.5.1.050.C.1 requires that "The Staff Advisor shall prepare a decision within 45 days of the City's determination that an application is complete," additionally AMC 18.5.1.090.B and ORS 227.178 requires that a final decision is required within 120 days after the application is deemed complete. Staff was unable to provide additional time due to the state and local time constraints.

Sixth, with regard to defective submittal analysis; this argument was left undeveloped in the NITA, but Staff understands it to be related to the determination of application completeness.

Finally, regarding the allegation that the application completeness determination constitutes a separate land use decision that was not properly noticed; the completeness determination is a procedural requirement for all land use decisions, and is not treated as a separate land use decision requiring substantial discretion or notice to neighbors within the LUO.

The applicants have submitted materials to the Planning Department to demonstrate compliance with the applicable approval standards for the proposed partition and by their reference are incorporated as if set out in full. In staff's assessment the application, with the conditions recommended below, satisfies the applicable approval criteria.

Staff recommends that the Planning Commission deny the appeal and uphold the original approval.

Should the Commission choose to uphold the original approval as recommended, staff would recommend that the following conditions be attached to the approval:

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise modified herein.
- 2) That a final survey plat shall be submitted, reviewed and approved within 18 months of the final decision date of the preliminary partition plat approval by the City of Ashland.
- 3) That the property owner shall sign in favor of a Local Improvement District (LID) for the future street improvements, including but not limited to paving, curb gutter, storm drainage, sidewalks and undergrounding of utilities for Clinton and Ann Streets prior to signature of the final survey plat. Nothing in this condition is intended to prohibit an owner/developer, their successors or assigns from exercising their rights to freedom of speech and expression by orally objecting or participating in the LID hearing or to take advantage of any protection afforded any party by City ordinances and resolutions.
- 4) That prior to the submittal of the final survey plat for the review, approval and signature of the Ashland Planning Division:
 - a) All easements for public and private utilities, fire apparatus access, and reciprocal utility, maintenance, and access shall be indicated on the final survey plat as required by the Ashland Engineering Division.

Aaron Anderson

From: Maria Harris
Sent: Monday, July 06, 2020 4:11 PM
To: Eric Elerath
Cc: Bill Molnar; Aaron Anderson; Dana Smith; Maria Harris; April Lucas
Subject: RE: PA-T1-2020-00109
Attachments: AMC 18.5.1.050.pdf; Appeal Form_Type1_2015_Fillable PDF.pdf

Hi Eric,

Bill Molnar asked me to get back to you. Please see my responses below each of your questions.

I've copied in Dana Smith in our Department. She can help you arrange a time to come in and view the file. Per the Governor's latest order, a mask is required to come into the office to view the file.

Please feel free to contact me if you need more information or have further questions.

Best Regards,
Maria Harris, AICP
Planning Manager
City of Ashland, Community Development Department
20 E. Main St., Ashland, OR 97520
541.552.2045 Tel
800.735.2900 TTY
541.552.2050 Fax

This email transmission is official business of the City of Ashland, and it is subject to Oregon Public Records Law for disclosure and retention. If you have received this message in error, please contact me at 541.552.2045. Thank you.

-----Original Message-----

From: Eric Elerath [mailto:eeelerath@verizon.net]
Sent: Friday, July 03, 2020 11:35 AM
To: Bill Molnar <bill.molnar@ashland.or.us>
Cc: planning <planning@ashland.or.us>; Aaron Anderson <aaron.anderson@ashland.or.us>; Maria Harris <maria.harris@ashland.or.us>
Subject: PA-T1-2020-00109

[EXTERNAL SENDER]

Mr. Molnar

I received by mail your reply to my objection regarding the above Planning action.

In your reply, you wrote that the application, all associated documents and evidence are available for review at the Community Development Department, located at 51 Winburn Way.

1) How can I access these documents and review them in person as described above?

Please contact Dana Smith to arrange a time to review the planning application file. I've copied her in this email or by phone you can contact her at (541) 552-2072.

2) Where can I find procedures to pursue an appeal of this decision? It appears that Planning will be making a Final decision on July 14, 2020, the day after the appeal deadline date of July 13, 2020 at 4:30 pm. Will that be at a meeting of the Planning Commission?

July 14, 2020 is the date the Type I administrative decision becomes final unless the decision is appealed by 4:30 p.m. on July 13, 2020. The Planning Commission will not review the decision unless the Type I administrative decision is appealed.

I've attached the section of the Ashland Municipal Code that covers a Type I administrative decision appeal - see 18.5.1.050.G. I've also attached the appeal form. The fee for an appeal for a public hearing is \$150.00

3) As of this date, the application still does not appear to be available on the City's web site. Could you please provide a link to the application?

The application is available on the City's web site here <https://gis.ashland.or.us/developmentproposals/> . Type in 345 Clinton in the "Near Me" box and the application and the notices are attached to the information as .pdf documents.

Thank you

Eric Elerath

From: [Dana Smith](#)
To: [Eric Elerath](#)
Subject: RE: PA-T1-2020-00109
Date: Wednesday, July 08, 2020 3:08:00 PM

Yes, you will have plenty of time to review the file before the deadline. Let's make it this Friday. I recommend morning, mid-morning or early afternoon. Let me know a specific time that will work for you and I will schedule the room you will review the file in.

Thank you.

Dana Smith, Executive Assistant
City of Ashland, Community Development Department
51 Winburn Way, Ashland OR 97520
Phone: 541-552-2072, TTY: 800-735-2900

This email transmission is official business of the City of Ashland, and it is subject to Oregon Public Records Law for disclosure and retention. If you have received this message in error, please contact me at (541) 552-2072. Thank you.

-----Original Message-----

From: Eric Elerath <eelerath@verizon.net>
Sent: Wednesday, July 08, 2020 3:05 PM
To: Dana Smith <dana.smith@ashland.or.us>
Cc: Maria Harris <maria.harris@ashland.or.us>
Subject: Re: PA-T1-2020-00109

[EXTERNAL SENDER]

Hi Dana

The appeal deadline is July 13. The sooner, the better, thank you.

Eric Elerath

On Jul 8, 2020, at 2:53 PM, Dana Smith <dana.smith@ashland.or.us> wrote:

> Hi Eric,
>
> Looking at my schedule, what does Friday look like for you?
>

> Dana Smith, Executive Assistant
> City of Ashland, Community Development Department
> 51 Winburn Way, Ashland OR 97520
> Phone: 541-552-2072, TTY: 800-735-2900
>

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>

> -----Original Message-----

> From: Eric Elerath <eelerath@verizon.net>
> Sent: Wednesday, July 08, 2020 2:38 PM
> To: Dana Smith <dana.smith@ashland.or.us>

> Cc: Maria Harris <maria.harris@ashland.or.us>
> Subject: Re: PA-T1-2020-00109
>
> [EXTERNAL SENDER]
>
> Hi Dana
>
> I left a voice message with you just now, and am following up by email. I'd like to arrange a time to view the file for 345 Clinton.
>
> Thank you for your help.
>
> Eric Elerath
>
>
> On Jul 6, 2020, at 4:10 PM, Maria Harris <maria.harris@ashland.or.us> wrote:
>
>> Hi Eric,
>>
>> Bill Molnar asked me to get back to you. Please see my responses below each of your questions.
>>
>> I've copied in Dana Smith in our Department. She can help you arrange a time to come in and view the file. Per the Governor's latest order, a mask is required to come into the office to view the file.
>>
>> Please feel free to contact me if you need more information or have further questions.
>>
>> Best Regards,
>> Maria Harris, AICP
>> Planning Manager
>> City of Ashland, Community Development Department
>> 20 E. Main St., Ashland, OR 97520
>> 541.552.2045 Tel
>> 800.735.2900 TTY
>> 541.552.2050 Fax
>>
>> This email transmission is official business of the City of Ashland, and it is subject to Oregon Public Records Law for disclosure and retention. If you have received this message in error, please contact me at 541.552.2045. Thank you.
>>
>> -----Original Message-----
>> From: Eric Elerath [<mailto:eeelerath@verizon.net>]
>> Sent: Friday, July 03, 2020 11:35 AM
>> To: Bill Molnar <bill.molnar@ashland.or.us>
>> Cc: planning <planning@ashland.or.us>; Aaron Anderson <aaron.anderson@ashland.or.us>; Maria Harris <maria.harris@ashland.or.us>
>> Subject: PA-T1-2020-00109
>>
>> [EXTERNAL SENDER]
>>
>> Mr. Molnar
>>
>> I received by mail your reply to my objection regarding the above Planning action.
>>
>> In your reply, you wrote that the application, all associated documents and evidence are available for review at the Community Development Department, located at 51 Winburn Way.
>>
>> 1) How can I access these documents and review them in person as described above?

>>

>> Please contact Dana Smith to arrange a time to review the planning application file. I've copied her in this email or by phone you can contact her at (541) 552-2072.

>>

>> 2) Where can I find procedures to pursue an appeal of this decision? It appears that Planning will be making a Final decision on July 14, 2020, the day after the appeal deadline date of July 13, 2020 at 4:30 pm. Will that be at a meeting of the Planning Commission?

>>

>> July 14, 2020 is the date the Type I administrative decision becomes final unless the decision is appealed by 4:30 p.m. on July 13, 2020. The Planning Commission will not review the decision unless the Type I administrative decision is appealed.

>>

>> I've attached the section of the Ashland Municipal Code that covers a Type I administrative decision appeal - see 18.5.1.050.G. I've also attached the appeal form. The fee for an appeal for a public hearing is \$150.00

>>

>> 3) As of this date, the application still does not appear to be available on the City's web site. Could you please provide a link to the application?

>>

>> The application is available on the City's web site here <https://gis.ashland.or.us/developmentproposals/>. Type in 345 Clinton in the "Near Me" box and the application and the notices are attached to the information as .pdf documents.

>>

>> Thank you

>>

>> Eric Elerath

>> <AMC 18.5.1.050.pdf><Appeal Form_TypeI_2015_Fillable PDF.pdf>

>

From: [Dana Smith](#)
To: [Eric Elerath](#)
Subject: RE: PA-T1-2020-00109
Date: Thursday, July 09, 2020 1:37:00 PM

Hi Eric,

Are you still interested in viewing the planning action file for 345 Clinton? I have not heard back so thought I would reach out.

Dana Smith
Legal Department
20 East Main Street
Tel: 541-488-5350, TTY: 800-735-2900
Fax: 541-552-2107
dana.smith@ashland.or.us

This email is official business of the City of Ashland, and it is subject to Oregon public records law for disclosure and retention. If you have received this message in error, please contact me at 541-552-2107. Thank you.

-----Original Message-----

From: Eric Elerath <eeelerath@verizon.net>
Sent: Wednesday, July 8, 2020 2:38 PM
To: Dana Smith <dana.smith@ashland.or.us>
Cc: Maria Harris <maria.harris@ashland.or.us>
Subject: Re: PA-T1-2020-00109

[EXTERNAL SENDER]

Hi Dana

I left a voice message with you just now, and am following up by email. I'd like to arrange a time to view the file for 345 Clinton.

Thank you for your help.

Eric Elerath

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>
> Bill Molnar asked me to get back to you. Please see my responses below each of your questions.
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> I've copied in Dana Smith in our Department. She can help you arrange a time to come in and view the file. Per the Governor's latest order, a mask is required to come into the office to view the file.
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> Maria Harris, AICP
> Planning Manager
> City of Ashland, Community Development Department
> 20 E. Main St., Ashland, OR 97520

> 541.552.2045 Tel
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> Sent: Friday, July 03, 2020 11:35 AM
> To: Bill Molnar <bill.molnar@ashland.or.us>
> Cc: planning <planning@ashland.or.us>; Aaron Anderson <aaron.anderson@ashland.or.us>; Maria Harris <maria.harris@ashland.or.us>
> Subject: PA-T1-2020-00109
>
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> Mr. Molnar
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> In your reply, you wrote that the application, all associated documents and evidence are available for review at the Community Development Department, located at 51 Winburn Way.
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>
> Thank you
>
> Eric Elerath
> <AMC 18.5.1.050.pdf><Appeal Form_TypeI_2015_Fillable PDF.pdf>

CITY OF ASHLAND

RECORD FOR PLANNING ACTION #PA-T1-2020-00109

PLANNING ACTION: PA-APPEAL-2020-00011

SUBJECT PROPERTIES: 345 Clinton Street

APPLICANT: Paul Mace & Kathleen Kahle / Rogue Planning & Development

DESCRIPTION: A request land use approval for a two-lot partition of a 12.29-acre lot. The Purpose of the partition is to allow for the divestment of a large, developable portion for a single-family residential zoned property. The tentative partition plat submitted with the application indicate that the two resultant parcels will be 8.943 ac. and 3.35 ac with the smaller parcel situated in the southeast of the parent parcel. COMPREHENSIVE PLAN DESIGNATION: Single Family Residential; ZONING: R-1-5; ASSESSOR'S MAP #: 391E04DB; TAX LOT: 401.

<u>DATE</u>	<u>ITEM</u>	<u>PAGE #</u>
07/31/2020	Ashland Daily Tidings Notice of Public Hearing	1
07/29/2020	Notice of Appeal to the Planning Commission	2
07/13/2020	Appellants Submittals	5
06/30/2020	Notice of Type I Administrative Decision	21
06/30/2020	Type I Administrative Findings, Conclusions & Orders	23
06/01/2020	Public Comment	28
05/29/2020	Public Comment	45
05/26/2020	Public Comment	72
05/24/2020	Public Comment	74
05/21/2020	Public Comment	77
05/20/2020	Public Comment	79
05/19/2020	Public Comment	80
05/15/2020	Planning Commission Notice of Completeness	81
04/30/2020	Applicant's Submittals	83

ELECTRONIC PUBLIC HEARING NOTICE

On August 11, 2020, the Ashland Planning Commission will hold an electronic public hearing to consider an appeal of the administrative approval PA-T1-2020-00109 of a two-lot partition of a 12.29-acre lot for the property located at 345 Clinton. The tentative partition plat creates two parcels that are 8.943 ac. and 3.35 ac in size, with the smaller parcel situated in the southeast of the parent parcel.

The electronic public hearing will be held at 7:00 p.m. on August 11, 2020. The meeting will be televised on local channel 9 or channels 180 and 181 for Charter Communications customers or will also be available live stream by going to rvtv.sou.edu and selecting RVTV Prime.

Written testimony will be accepted via email to PC-public-testimony@ashland.or.us with the subject line "August 11 PC Meeting Testimony" by 10:00 a.m. on Monday, August 10, 2020. If the applicant wishes to provide a rebuttal to the testimony, they can submit the rebuttal via e-mail to PC-public-testimony@ashland.or.us with the subject line "August 11 PC Hearing Testimony" by 10:00 a.m. on Tuesday, August 11, 2020. Written testimony received by the deadlines will be available to the Planning Commission before the meeting and will be included in the meeting minutes.

Oral testimony will be taken during the electronic public hearing. If you wish to provide oral testimony during the electronic meeting, send an email to PC-public-testimony@ashland.or.us by 10:00 a.m. on Monday, August 10, 2020. In order to provide testimony at the public hearing, please provide the following information: 1) make the subject line of the email "August 11 PC Speaker Request", 2) include your name, 3) the agenda item on which you wish to speak on, 4) specify if you will be participating by computer or telephone, and 5) the name you will use if participating by computer or the telephone number you will use if participating by telephone.

By the order of Bill Molnar, Community Development Director

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at (541) 488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the city to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title I).

July 31, 2020



PLANNING ACTION: PA-APPEAL-2020-00011 (appealing PA-T1-2020-00109)

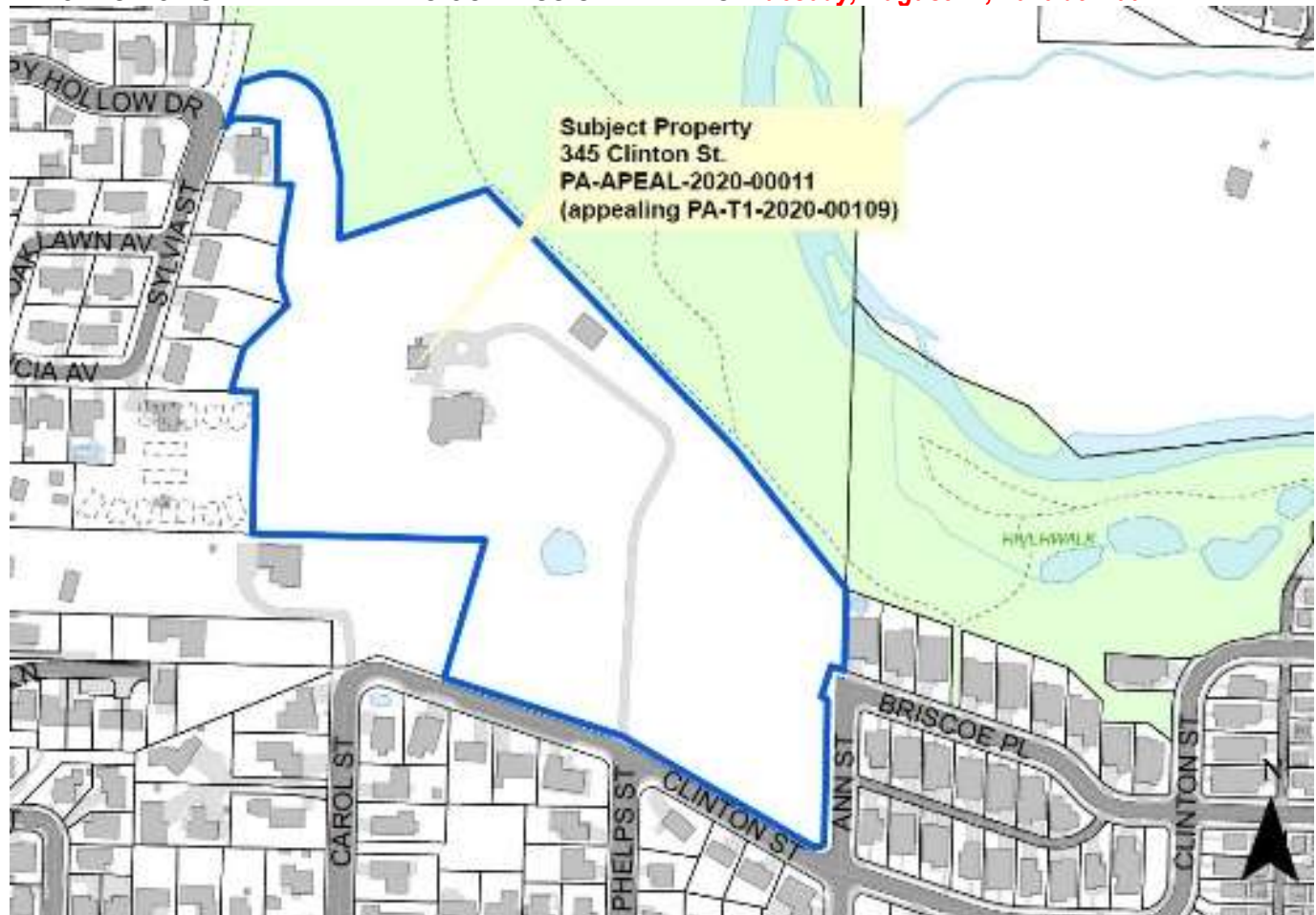
SUBJECT PROPERTY: 345 Clinton Street

APPLICANT/OWNER: Rogue Planning and Development/Paul Mace & Kathleen Kahle

DESCRIPTION: On **August 11, 2020**, the Ashland Planning Commission will hold an electronic public hearing to consider an appeal of the administrative approval PA-T1-2020-00109 of a two-lot partition of a 12.29-acre lot for the property located at 345 Clinton. The tentative partition plat creates two parcels that are 8.943 ac. and 3.35 ac in size, with the smaller parcel situated in the southeast of the parent parcel.

COMPREHENSIVE PLAN DESIGNATION: Single Family Residential; **ZONING:** R-1-5; **MAP:** 39 1E 04 DB; **TAX LOT:** 401

ELECTRONIC ASHLAND PLANNING COMMISSION MEETING: *Tuesday, August 11, 2020 at 7:00 PM*



Notice is hereby given that the Ashland Planning Commission will hold an electronic public hearing on the above described planning action on the meeting date and time shown above. You can watch the meeting on local channel 9, on Charter Communications channels 180 & 181, or you can stream the meeting via the internet by going to rvtv.sou.edu and selecting 'RVTV Prime.'

The ordinance criteria applicable to this planning action are attached to this notice. Oregon law states that failure to raise an objection concerning this application, or failure to provide sufficient specificity to afford the decision makers an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Commission to respond to the issue precludes an action for damages in circuit court.

Because of the COVID-19 pandemic, application materials are provided online and written comments will be accepted by email. Alternative arrangements for reviewing the application or submitting comments can be made by contacting (541) 488-5305 or planning@ashland.or.us.

A copy of the application, including all documents, evidence and applicable criteria relied upon by the applicant, and a copy of the staff report will be available on-line at www.ashland.or.us/PCpackets seven days prior to the hearing. Copies of application materials will be provided at reasonable cost, if requested. Under extenuating circumstances, application materials may be requested to be reviewed in-person at the Ashland Community Development & Engineering Services Building, 51 Winburn Way, via a pre-arranged appointment by calling (541) 488-5305 or emailing planning@ashland.or.us.

Anyone wishing to submit comments can do so by sending an e-mail to PC-public-testimony@ashland.or.us with the subject line "**August 11 PC Hearing Testimony**" by 10:00 a.m. on Monday, August 10, 2020. If the applicant wishes to provide a written rebuttal to the testimony, they can submit the rebuttal via e-mail to PC-public-testimony@ashland.or.us with the subject line "**August 11 PC Hearing Testimony**" by 10:00 a.m. on Tuesday, **August 11, 2020**. Written testimony received by these deadlines will be available for Planning Commissioners to review before the hearing and will be included in the meeting minutes.

Oral testimony will be taken during the electronic public hearing. If you wish to provide oral testimony during the electronic meeting, send an email to PC-public-testimony@ashland.or.us by 10:00 a.m. on Monday, August 10, 2020. In order to provide testimony at the public hearing, please provide the following information: 1) make the subject line of the email "**August 11 Speaker Request**", 2) include your name, 3) the agenda item on which you wish to speak on, 4) specify if you will be participating by computer or telephone, and 5) the name you will use if participating by computer or the telephone number you will use if participating by telephone.

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at 541-488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting. (28 CFR 35.102.-35.104 ADA Title I).

If you have questions or comments concerning this request, please feel free to contact Aaron Anderson at #541-552-2052 or aaron.anderson@ashland.or.us.

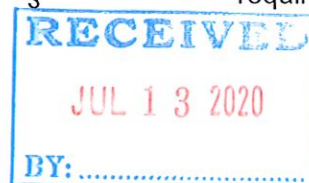
PRELIMINARY PARTITION PLAT

18.5.3.050

The approval authority shall approve an application for preliminary partition plat approval only where all of the following criteria are met.

- A. The future use for urban purposes of the remainder of the tract will not be impeded.
- B. The development of the remainder of any adjoining land or access thereto will not be impeded.
- C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.
- D. The tract of land has not been partitioned for 12 months.
- E. Proposed lots conform to the requirements of the underlying zone, per part 18.2, any applicable overlay zone requirements, per part 18.3, and any applicable development standards, per part 18.4 (e.g., parking and access, tree preservation, solar access and orientation).
- F. Accesses to individual lots conform to the standards in section 18.4.3.080 Vehicle Area Design. See also, 18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria.
- G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part 18.4, and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.
- H. Unpaved Streets.
 - 1. Minimum Street Improvement. When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.
 - 2. Unpaved Streets. The Public Works Director may allow an unpaved street for access for a land partition when all of the following conditions exist.
 - a. The unpaved street is at least 20-feet wide to the nearest fully improved collector or arterial street. The City may require the street to be graded (cut and filled) to its standard physical width, and surfaced as required in chapter 18.4.6 prior to the signature of the final partition plat by the City.
 - b. The centerline grade on any portion of the unpaved street does not exceed ten percent.
 - c. The final elevation of the street shall be established as specified by the Public Works Director except where the establishment of the elevation would produce a substantial variation in the level of the road surface. In this case, the slope of the lot shall be graded to meet the final street elevation.
 - d. Should the partition be on an unpaved street and paving is not required, the applicant shall agree to participate in the costs and to waive the rights of the owner of the subject property to remonstrate both with respect to the owners agreeing to participate in the cost of full street improvements and to not remonstrate to the formation of a local improvement district to cover such improvements and costs thereof. Full street improvements shall include paving, curb, gutter, sidewalks, and the undergrounding of utilities. This requirement shall be precedent to the signing of the final survey plat, and if the owner declines to so agree, then the application shall be denied.
- I. Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.
- J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.

Notice of Land Use Appeal – Type I (Ashland Municipal Code § 18.5.1.050.G.)		
A. Name(s) of Person Filing Appeal:	B. Address(es):	
1. Eric Elerath	419 Clinton St. Ashland, OR 97520	
2. Betsy A. McLane	419 Clinton St. Ashland, OR 97520	
Attach additional pages of names and addresses if other persons are joining the appeal.		
C. Decision Being Appealed		
Date of Decision:	Planning Action #:	Title of planning action:
June 30, 2020	PA-T1-2020-00109	(Not Indicated / 345 Clinton St.)
D. How Person(s) Filing Appeal Qualifies as a Party (For each person listed above in Box A, check the appropriate box below.)		
The person named in Box A.1. above qualifies as a party because:	<input type="checkbox"/> I am the applicant. <input checked="" type="checkbox"/> I received notice of the planning action. <input type="checkbox"/> I was entitled to receive notice of the action but did not receive notice due to error.	
The person named in Box A.2. above qualifies as a party because:	<input type="checkbox"/> I am the applicant. <input checked="" type="checkbox"/> I received notice of the planning action. <input type="checkbox"/> I was entitled to receive notice of the action but did not receive notice due to error.	
Attach additional pages if others have joined in the appeal and describe how each qualifies as a party.		
E. Specific Grounds for Appeal		
1. The first specific ground for which the decision should be reversed or modified is (attach additional pages if necessary): <p style="text-align: center;">See attached Notice of Appeal under “Specific Grounds for Appeal, pages 4, 5, 6”</p> This is an error because the applicable criteria or procedure in the Ashland Municipal Code § or other law in § requires that (attach additional pages if necessary):		
2. The second specific ground for which the decision should be reversed or modified is (attach additional pages if necessary): This is an error because the applicable criteria or procedure in the Ashland Municipal Code § or other law in § requires that (attach additional pages if necessary):		
3. The third specific ground for which the decision should be reversed or modified is (attach additional pages if necessary): This is an error because the applicable criteria or procedure in the Ashland Municipal Code § or other law in § requires that (attach additional pages if necessary):		



4. (On attached pages, list other grounds, in a manner similar to the above, that exist. For each ground list the applicable criteria or procedures in the Ashland Municipal Code or other law that were violated.)

Appeal Fee

With this notice of appeal I(we) submit the sum of **\$150.00** which is the appeal fee required by § 18.5.1.050 of the Ashland Municipal Code.

Date: July 13, 2020

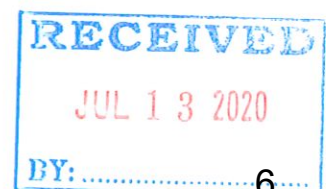
Signature(s) of person(s) filing appeal (attach additional pages if necessary):



Eric Elerath

Betsy McLane

Note: This completed Notice of Land Use Appeal together with the appeal fee must be filed with the Community Development Department, Attn: Planning Commission Secretary, 20 E Main St, Ashland, OR 97520, telephone 541-488-5305, prior to the effective date of the decision sought to be reviewed. Effective dates of decisions are set forth in Ashland Municipal Code Section 18.5.1.050.



Eric Elerath
419 Clinton St.
Ashland, OR 97520
(541) 708-0149

July 13, 2020

Planning Department
City of Ashland
51 Winburn Way
Ashland, OR 97520
(541) 488-5305

NOTICE OF APPEAL

PLANNING ACTION: PA-T1-2020-00109
SUBJECT PROPERTY: 345 Clinton St.
OWNER: Paul Mace & Kathleen Kahle

SUBJECT: Notice of Appeal of Planning Decision
DATE OF DECISION: June 30, 2020

City of Ashland Planning Department:

Eric Elerath ("Elerath", "Appellant") submits this document as notice of appeal of Planning Decision PA-T1-2020-00109. It includes:

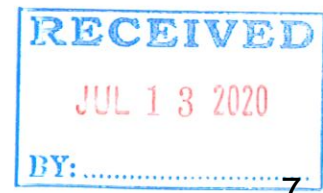
- 1) The Notice of Land Use Appeal (2 pages, signed, on the City's form)
- 2) Notice and Appeal (This document; 6 pages)

No Exhibits are attached with this Notice. Appellant will comply with staff's request to develop the record for the appeal.

Thank you!



Eric Elerath



APPEAL CRITERIA:

Appeal of a Type I decision is governed by A.M.C 18.5.1.050 G:

2. Appeal Filing Procedure.

a. Notice of Appeal. Any person with standing to appeal, as provided in subsection 18.5.1.050G.1, above, may appeal a Type I decision by filing a notice of appeal and paying the appeal fee according to the procedures of this subsection. The fee required in this section shall not apply to appeals made by neighborhood or community organizations recognized by the City and whose boundaries include the site. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded

b. Time for Filing. A notice of appeal shall be filed with the Staff Advisor within 12 days of the date the notice of decision is mailed.

c. Content of Notice of Appeal. The notice of appeal shall be accompanied by the required filing fee and shall contain.

- i. An identification of the decision being appealed, including the date of the decision.
- ii. A statement demonstrating the person filing the notice of appeal has standing to appeal.
- iii. A statement explaining the specific issues being raised on appeal.
- iv. A statement demonstrating that the appeal issues were raised during the public comment period.

d. The appeal requirements of this section must be fully met or the appeal will be considered by the City as a jurisdictional defect and will not be heard or considered.

3. Scope of Appeal. Appeal hearings on Type I decisions made by the Staff Advisor shall be de novo hearings before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type I decision, but may include other relevant evidence and arguments. The Commission may allow additional evidence, testimony, or argument concerning any relevant ordinance provision.

COMPLIANCE WITH APPEAL CRITERIA ABOVE:

18.5.1.050 G(2)(a): Appellant has submitted the required fee of \$150.00 by means of credit card payment by phone. Staff sent an email receipt and a copy of the receipt is available.

18.5.1.050 G(2)(b): The referenced decision indicates that it was mailed on June 30, 2020, and that the time for filing this appeal ends at 4:30 on July 13, 2020. Elerath submits this appeal on time.

18.5.1.050 G(2)(c)(i): The decision being appealed is PA-T1-2020-00109, made on June 30, 2020.

18.5.1.050 G(2)(c)(ii): Elerath and McLane own the property addressed 419 Clinton St. Its border is within 200 feet of the subject property, and Elerath received the Notice of Application for this decision. Elerath replied in a timely manner, as noted in the Director's decision. On May 29, Elerath received written Notice of Final Decision dated June 30, 2020, and his remarks were identified by name in the decision being appealed. These events indicate that Elerath has standing



to appeal this decision and that his comments were identified by the Director as raising additional concerns beyond the scope of those submitted by others.

18.5.1.050 G(2)(c)(iii): Elerath asserts the right to continue to raise the issues broadly identified in his letter during appeals. These issues include:

- A. Incomplete Application
- B. Defective Notice
- C. Failure to provide access to personally inspect the Application file, evidence, and documents.
- D. Failure to provide digital access to Application file, material evidence and documents.
- E. Elerath's request for additional time and the Director's failure to provide such.
- F. Defective submittal analysis.

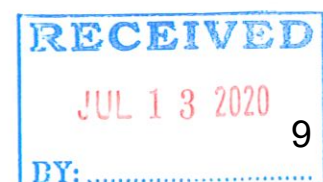
Implicit in these issues is the apparent fact that two land use decisions were actually made. One decision was made by staff about the Application's completeness, and the other was made regarding compliance with criteria for a Preliminary Partition Plat.

18.5.1.050 G(2)(c)(iv): In his decision, Director Molnar wrote, in part:

Eric Elerath submitted a written comment on May 29th raising additional concerns about the relevant approval criteria included in the mailed notice, and physical access to the application materials, and included a request for additional time to inspect and review the application materials.

The mailed notice included the relevant approval criteria from AMC 18.5.3.050 for a Preliminary Partition Plat. The issue regarding an incomplete application was identified in the written comment as the application materials posted online did not include the receipt for payment for the planning application. AMC 18.5.1.050 requires the application form and fee for a planning application to be considered complete. ORS 227.178 requires a city to determine if a planning application is complete within 30 days of the applicant submitting the information and to notify the applicant if any required submittal information is missing. The Staff Advisor is responsible for determining whether the submittal information is complete for a Type I planning application and accordingly made the determination on May 15, 2020 that the application was complete, including that the preliminary partition plat fee had been paid on April 30th. The receipt for the payment is documented in the City's permitting software and a hard copy of the receipt is included in the planning application file.

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Elerath has attached a copy of the letter that he submitted on May 29. In addition to those issues noted by Director Molnar above, Elerath indicated that the the “Application” - as it is defined and identified by Planning staff - also fails to include either the application form or the signature of either of the owners or of the agent, Amy Gunter. In his letter of May 29 comments are made under the bold underlined heading **II. Incomplete Application** Elerath reasserts that issue again here, without limiting the Application’s incompleteness to the filing fee and City provided form. These are not minor oversights, but appear to show misrepresentation, destruction, and / or omission of material facts and evidence necessary to determine that a complete application was ever submitted.

SCOPE OF APPEAL:

Elerath notes that conflicts appear to exist within the documented appeals process. In some instances, A.M.C. appears to limit issues on appeal to those previously identified during the time for public comment, but 18.5.1.050 G(3) - cited above - states that Type I appeals hearings shall be de novo hearings and “... shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type I decision...”

In making this appeal, Elerath requests leave to amend the appeal and to add, delete or augment his appeal documents to the extent that such amendments apply broadly to the categories of issues previously raised. For example, Elerath has already raised the City’s procedural issues but not issues of vegetation, wildlife, wetlands, etc.

REQUEST FOR ADDITIONAL TIME / CONTINUANCE:

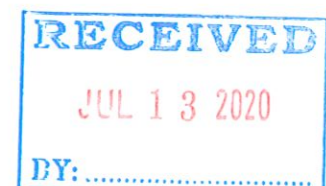
Appellant asked for additional time to review materials in his original comments, and he repeats that request again here:

- 1) A global pandemic appears to have occurred. Conditions for lockdown, sheltering-in-place, social distancing, the providing of public services, and public and private response to potential emergencies fluctuate and change on an almost daily basis.
- 2) The issues Elerath raised require some research of statutes, procedures and requirements. Elerath is not an attorney and there is no recognized right to obtain legal services - including advice or comments - in civil matters in the United States.
- 3) There is an inequitable and uneven balance of power. The City has legislative, executive and quasi-judicial authority to decide the issues in question, and there appear to be no checks and balances or clear lines to distinguish the capacity in which it acts at any time.

SPECIFIC GROUNDS FOR APPEAL:

The Director’s decision should be reversed or modified on the following grounds:

- 1) The Director’s decision was made without a complete Application having been produced. This is an error because:



A. Ashland Municipal Code § 18.5.1.050(A)(1) requires:

1. Application Form and Fee. Applications for Type I review shall be made on forms provided by the Staff Advisor. One or more property owners of the property for which the planning action is requested, and their authorized agent, as applicable, must sign the application. The application shall not be considered complete unless the appropriate application fee accompanies it.

The document entitled “Minor Land Partition,” whether part of an Application or a Submittal, is unsigned. An unsigned document, or a document not referenced by a signed document, is not evidence that a complete application was ever submitted. Failure to sign is material, and Appellant objects to Director Molnar’s references to the Minor Land Partition as inadmissible hearsay.

B. Oregon Revised Statute ORS § 197.195(1) requires:

(1) A limited land use decision shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations.

Oregon Revised Statute ORS § 197.195(3)(a) requires:

(3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this subsection.

(a) In making a limited land use decision, the local government shall follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.

(c) The notice and procedures used by local government shall:

(F) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost

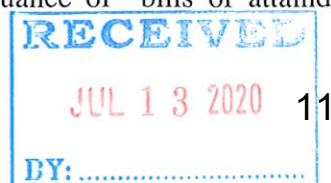
Oregon State Law, then, requires the City of Ashland to follow its own regulations to comply with US Constitutional requirements for due process.

C. US Constitution, Article I, Section 10 reads, in part:

“No state shall ... pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.”

Planning staff deemed the Application complete on May 15, 2020. No notice was given prior to this determination. The Notice of Application, subsequently mailed to affected parties, does not even provide the criteria described in A.M.C. §18.5.1.050(A) to be able to object to staff’s decision, and review appears to apply only to decisions regarding the unsigned Preliminary Partition Plat submittal. This appears to be a kind of Bill of Attainder because the determination of facts occurred both outside public view, without public hearing, without any signature, and it deprived the public of its right to speak on matters of public importance.

Based on the above passage, the entire United States legislative and executive responses to the Covid-19 medical situation - including the response by Oregon Governor Brown and by the City of Ashland’s municipal government - appear to involve widespread issuance of bills of attainder



prohibited by Article I, Sections 9 and 10. The American public has been, and continues to be deprived of life, property and / or freedom without due process of law and, apparently, without signed medical opinions.

Throughout the Ashland Planning process it also appears common to attach conditions of approval where the content of those conditions extends the breadth and scope of the approval itself. In Director Molnar's decision, he included conditions 2), 3), and 4). These involve unquantifiable parameters and conditions which may be beyond the control of the owner to perform, even though they could be identified and performed prior to the Director's final decision or could be part of a preliminary decision. These conditions of approval also seem to conflict with prohibitions against laws being passed ex post facto.

2) In his Decision, the Director failed to grant an extension of time to allow access to review the application:

Ashland Municipal Code § 18.5.1.050(B) requires:

1. Mailing of Notice of Application. The purpose of the notice of application is to give nearby property owners and other interested people the opportunity to review and submit written comments on the application before the City makes a decision on it. Within ten days of deeming a Type I application complete, the City shall mail a notice of a pending Type I application to the following.

3. Content of Notice of Application. The notice of application shall include all of the following:

f. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards are available for review and that copies will be provided at a reasonable cost.

Appellant requested additional time to be able to perform the review actions promised by the notice. While the Director noted Elerath's request, he did not grant the request and instruct staff to make the application materials available in their entirety. It is not credible to believe that the City has no duty to perform that which the legal notice indicates it shall or will perform.

SUMMARY:

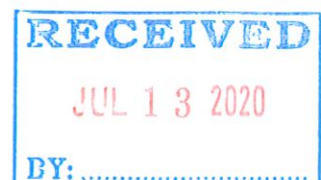
Petitioner has shown that he has standing, that he has identified specific grounds for appeal, and that he has fulfilled the requirements to do so.

Respectfully submitted,

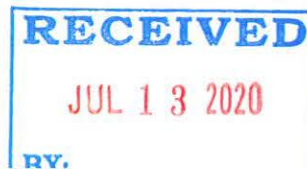


Eric Elerath

July 13, 2020



Notice of Land Use Appeal – Type I (Ashland Municipal Code § 18.5.1.050.G.)		
A. Name(s) of Person Filing Appeal:		B. Address(es):
1. Eric Elerath		419 Clinton St. Ashland, OR 97520
2. Betsy A. McLane		419 Clinton St. Ashland, OR 97520
Attach additional pages of names and addresses if other persons are joining the appeal.		
C. Decision Being Appealed		
Date of Decision:	Planning Action #:	Title of planning action:
June 30, 2020	PA-T1-2020-00109	(Not Indicated / 345 Clinton St.)
D. How Person(s) Filing Appeal Qualifies as a Party (For each person listed above in Box A, check the appropriate box below.)		
The person named in Box A.1. above qualifies as a party because:	<input type="checkbox"/> I am the applicant. <input checked="" type="checkbox"/> I received notice of the planning action. <input type="checkbox"/> I was entitled to receive notice of the action but did not receive notice due to error.	
The person named in Box A.2. above qualifies as a party because:	<input type="checkbox"/> I am the applicant. <input checked="" type="checkbox"/> I received notice of the planning action. <input type="checkbox"/> I was entitled to receive notice of the action but did not receive notice due to error.	
Attach additional pages if others have joined in the appeal and describe how each qualifies as a party.		
E. Specific Grounds for Appeal		
1. The first specific ground for which the decision should be reversed or modified is (attach additional pages if necessary): <p style="text-align: center;">See attached Notice of Appeal under “Specific Grounds for Appeal, pages 4, 5, 6”</p> This is an error because the applicable criteria or procedure in the Ashland Municipal Code § _____ or other law in § _____ requires that (attach additional pages if necessary):		
2. The second specific ground for which the decision should be reversed or modified is (attach additional pages if necessary): This is an error because the applicable criteria or procedure in the Ashland Municipal Code § _____ or other law in § _____ requires that (attach additional pages if necessary):		
3. The third specific ground for which the decision should be reversed or modified is (attach additional pages if necessary): This is an error because the applicable criteria or procedure in the Ashland Municipal Code § _____ or other law in § _____ requires that (attach additional pages if necessary):		



4. (On attached pages, list other grounds, in a manner similar to the above, that exist. For each ground list the applicable criteria or procedures in the Ashland Municipal Code or other law that were violated.)

Appeal Fee

With this notice of appeal I(we) submit the sum of **\$150.00** which is the appeal fee required by § 18.5.1.050 of the Ashland Municipal Code.

Date: July 13, 2020

Signature(s) of person(s) filing appeal (attach additional pages if necessary):



Eric Elerath

Betsy McLane

Note: This completed Notice of Land Use Appeal together with the appeal fee must be filed with the Community Development Department, Attn: Planning Commission Secretary, 20 E Main St, Ashland, OR 97520, telephone 541-488-5305, prior to the effective date of the decision sought to be reviewed. Effective dates of decisions are set forth in Ashland Municipal Code Section 18.5.1.050.



Eric Elerath
419 Clinton St.
Ashland, OR 97520
(541) 708-0149

July 13, 2020

Planning Department
City of Ashland
51 Winburn Way
Ashland, OR 97520
(541) 488-5305

NOTICE OF APPEAL

PLANNING ACTION: PA-T1-2020-00109
SUBJECT PROPERTY: 345 Clinton St.
OWNER: Paul Mace & Kathleen Kahle

SUBJECT: Notice of Appeal of Planning Decision
DATE OF DECISION: June 30, 2020

City of Ashland Planning Department:

Eric Elerath ("Elerath", "Appellant") submits this document as notice of appeal of Planning Decision PA-T1-2020-00109. It includes:

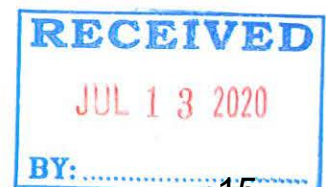
- 1) The Notice of Land Use Appeal (2 pages, signed, on the City's form)
- 2) Notice and Appeal (This document; 6 pages)

No Exhibits are attached with this Notice. Appellant will comply with staff's request to develop the record for the appeal.

Thank you!



Eric Elerath



APPEAL CRITERIA:

Appeal of a Type I decision is governed by A.M.C 18.5.1.050 G:

2. Appeal Filing Procedure.

a. Notice of Appeal. Any person with standing to appeal, as provided in subsection 18.5.1.050G.1, above, may appeal a Type I decision by filing a notice of appeal and paying the appeal fee according to the procedures of this subsection. The fee required in this section shall not apply to appeals made by neighborhood or community organizations recognized by the City and whose boundaries include the site. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded

b. Time for Filing. A notice of appeal shall be filed with the Staff Advisor within 12 days of the date the notice of decision is mailed.

c. Content of Notice of Appeal. The notice of appeal shall be accompanied by the required filing fee and shall contain.

- i. An identification of the decision being appealed, including the date of the decision.
- ii. A statement demonstrating the person filing the notice of appeal has standing to appeal.
- iii. A statement explaining the specific issues being raised on appeal.
- iv. A statement demonstrating that the appeal issues were raised during the public comment period.

d. The appeal requirements of this section must be fully met or the appeal will be considered by the City as a jurisdictional defect and will not be heard or considered.

3. Scope of Appeal. Appeal hearings on Type I decisions made by the Staff Advisor shall be de novo hearings before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type I decision, but may include other relevant evidence and arguments. The Commission may allow additional evidence, testimony, or argument concerning any relevant ordinance provision.

COMPLIANCE WITH APPEAL CRITERIA ABOVE:

18.5.1.050 G(2)(a): Appellant has submitted the required fee of \$150.00, by means of a check made payable to the City of Ashland. Elerath objects to this fee, as he already pays taxes to the City.

18.5.1.050 G(2)(b): The referenced decision indicates that it was mailed on June 30, 2020, and that the time for filing this appeal ends at 4:30 on July 13, 2020. Elerath submits this appeal on time.

18.5.1.050 G(2)(c)(i): The decision being appealed is PA-T1-2020-00109, made on June 30, 2020.

18.5.1.050 G(2)(c)(ii): Elerath and McLane own the property addressed 419 Clinton St. Its border is within 200 feet of the subject property, and Elerath received the Notice of Application for this decision. Elerath replied in a timely manner, as noted in the Director's decision. On May 29, Elerath received written Notice of Final Decision dated June 30, 2020, and his remarks were identified by name in the decision being appealed. These events indicate that Elerath has standing



to appeal this decision and that his comments were identified by the Director as raising additional concerns beyond the scope of those submitted by others.

18.5.1.050 G(2)(c)(iii): Elerath asserts the right to continue to raise the issues broadly identified in his letter during appeals. These issues include:

- A. Incomplete Application
- B. Defective Notice
- C. Failure to provide access to personally inspect the Application file, evidence, and documents.
- D. Failure to provide digital access to Application file, material evidence and documents.
- E. Elerath's request for additional time and the Director's failure to provide such.
- F. Defective submittal analysis.

Implicit in these issues is the apparent fact that two land use decisions were actually made. One decision was made by staff about the Application's completeness, and the other was made regarding compliance with criteria for a Preliminary Partition Plat.

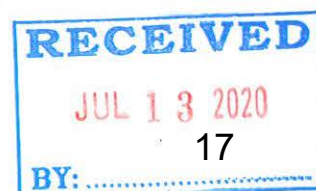
Elerath also objects to the City's requirement to pay a fee for the Appeal. He is a taxpayer who pays his due share of the salaries of Planning staff, yet the objections he raises here relate almost exclusively to the City's failure to perform those lawful duties for which all resident taxpayers pay.

18.5.1.050 G(2)(c)(iv): In his decision, Director Molnar wrote, in part:

Eric Elerath submitted a written comment on May 29th raising additional concerns about the relevant approval criteria included in the mailed notice, and physical access to the application materials, and included a request for additional time to inspect and review the application materials.

The mailed notice included the relevant approval criteria from AMC 18.5.3.050 for a Preliminary Partition Plat. The issue regarding an incomplete application was identified in the written comment as the application materials posted online did not include the receipt for payment for the planning application. AMC 18.5.1.050 requires the application form and fee for a planning application to be considered complete. ORS 227.178 requires a city to determine if a planning application is complete within 30 days of the applicant submitting the information and to notify the applicant if any required submittal information is missing. The Staff Advisor is responsible for determining whether the submittal information is complete for a Type I planning application and accordingly made the determination on May 15, 2020 that the application was complete, including that the preliminary partition plat fee had been paid on April 30th. The receipt for the payment is documented in the City's permitting software and a hard copy of the receipt is included in the planning application file.

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Elerath has attached a copy of the letter that he submitted on May 29. In addition to those issues noted by Director Molnar above, Elerath indicated that the the "Application" - as it is defined and identified by Planning staff - also fails to include either the application form or the signature of either of the owners or of the agent, Amy Gunter. In his letter of May 29 comments are made under the bold underlined heading **II. Incomplete Application** Elerath reasserts that issue again here, without limiting the Application's incompleteness to the filing fee and City provided form. These are not minor oversights, but appear to show misrepresentation, destruction, and / or omission of material facts and evidence necessary to determine that a complete application was ever submitted.

SCOPE OF APPEAL:

Elerath notes that conflicts appear to exist within the documented appeals process. In some instances, A.M.C. appears to limit issues on appeal to those previously identified during the time for public comment, but 18.5.1.050 G(3) - cited above - states that Type I appeals hearings shall be de novo hearings and "... shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type I decision..."

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REQUEST FOR ADDITIONAL TIME / CONTINUANCE:

Appellant asked for additional time to review materials in his original comments, and he repeats that request again here:

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SPECIFIC GROUNDS FOR APPEAL:

The Director's decision should be reversed or modified on the following grounds:

- 1) The Director's decision was made without a complete Application having been produced. This is an error because:



A. Ashland Municipal Code § 18.5.1.050(A)(1) requires:

1. Application Form and Fee. Applications for Type I review shall be made on forms provided by the Staff Advisor. One or more property owners of the property for which the planning action is requested, and their authorized agent, as applicable, must sign the application. The application shall not be considered complete unless the appropriate application fee accompanies it.

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(1) A limited land use decision shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations.

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(3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this subsection.

(a) In making a limited land use decision, the local government shall follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.

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(F) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost

Oregon State Law, then, requires the City of Ashland to follow its own regulations to comply with US Constitutional requirements for due process.

C. US Constitution, Article I, Section 10 reads, in part:

“No state shall ... pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.”

Planning staff deemed the Application complete on May 15, 2020. No notice was given prior to this determination. The Notice of Application, subsequently mailed to affected parties, does not even provide the criteria described in A.M.C. §18.5.1.050(A) to be able to object to staff’s decision, and review appears to apply only to decisions regarding the unsigned Preliminary Partition Plat submittal. This appears to be a kind of Bill of Attainder because the determination of facts occurred both outside public view, without public hearing, without any signature, and it deprived the public of its right to speak on matters of public importance.

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2) In his Decision, the Director failed to grant an extension of time to allow access to review the application:

Ashland Municipal Code § 18.5.1.050(B) requires:

1. Mailing of Notice of Application. The purpose of the notice of application is to give nearby property owners and other interested people the opportunity to review and submit written comments on the application before the City makes a decision on it. Within ten days of deeming a Type I application complete, the City shall mail a notice of a pending Type I application to the following.

3. Content of Notice of Application. The notice of application shall include all of the following:

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Appellant requested additional time to be able to perform the review actions promised by the notice. While the Director noted Elerath's request, he did not grant the request and instruct staff to make the application materials available in their entirety. It is not credible to believe that the City has no duty to perform that which the legal notice indicates it shall or will perform.

SUMMARY:

Petitioner has shown that he has standing, that he has identified specific grounds for appeal, and that he has fulfilled the requirements to do so.

Respectfully submitted,



Eric Elerath

July 13, 2020



June 30, 2020

Notice of Final Decision

On June 30, 2020, the Community Development Director approved the request for the following:

Planning Action: PA-T1-2020-00109

Subject Property: 345 Clinton

Owner/Applicant: Paul Mace & Kathleen Kahle / Rogue Planning & Development

Description: A request land use approval for a two-lot partition of a 12.29-acre lot. The Purpose of the partition is to allow for the divestment of a large, developable portion for a single-family residential zoned property. The tentative partition plat submitted with the application indicate that the two resultant parcels will be 8.943 ac. and 3.35 ac with the smaller parcel situated in the southeast of the parent parcel. COMPREHENSIVE PLAN DESIGNATION: Single Family Residential; ZONING: R-1-5; ASSESSOR'S MAP #: 391E04DB; TAX LOT: 401.

The Community Development Director's decision becomes final and is effective on the 12th day after the Notice of Final Decision is mailed. Approval is valid for a period of 18 months and all conditions of approval identified on the attached Findings are required to be met prior to project completion.

The application, all associated documents and evidence submitted, and the applicable criteria are available for review at the Ashland Community Development Department, located at 51 Winburn Way. Copies of file documents can be requested and are charged based on the City of Ashland copy fee schedule.

Prior to the final decision date, anyone who was mailed this Notice of Final Decision may request a reconsideration of the action as set forth in the Ashland Land Use Ordinance (ALUO) 18.5.1.050(F) and/or file an appeal to the Ashland Planning Commission as provided in ALUO 18.5.1.050(G). The ALUO sections covering reconsideration and appeal procedures are attached. The appeal may not be made directly to the Oregon Land Use Board of Appeals.

If you have any questions regarding this decision, please contact Aaron Anderson in the Community Development Department at (541) 488-5305.

cc: Parties of record and property owners within 200 ft

SECTION 18.5.1.050 Type I Procedure (Administrative Decision with Notice)

E. Effective Date of Decision. Unless the conditions of approval specify otherwise or the decision is appealed pursuant to subsection 18.5.1.050.G, a Type I decision becomes effective 12 days after the City mails the notice of decision.

F. Reconsideration. The Staff Advisor may reconsider a Type I decision as set forth below.

1. Any party entitled to notice of the planning action, or any City department may request reconsideration of the action after the decision has been made by providing evidence to the Staff Advisor that a factual error occurred through no fault of the party asking for reconsideration, which in the opinion of the Staff Advisor, might affect the decision. Reconsideration requests are limited to factual errors and not the failure of an issue to be raised by letter or evidence during the opportunity to provide public input on the application sufficient to afford the Staff Advisor an opportunity to respond to the issue prior to making a decision.
2. Reconsideration requests shall be received within five days of mailing the notice of decision. The Staff Advisor shall decide within three days whether to reconsider the matter.
3. If the Staff Advisor is satisfied that an error occurred crucial to the decision, the Staff Advisor shall withdraw the decision for purposes of reconsideration. The Staff Advisor shall decide within ten days to affirm, modify, or reverse the original decision. The City shall send notice of the reconsideration decision to affirm, modify, or reverse to any party entitled to notice of the planning action.
4. If the Staff Advisor is not satisfied that an error occurred crucial to the decision, the Staff Advisor shall deny the reconsideration request. Notice of denial shall be sent to those parties that requested reconsideration.

G. Appeal of Type I Decision. A Type I decision may be appealed to the Planning Commission, pursuant to the following:

1. **Who May Appeal.** The following persons have standing to appeal a Type I decision.
 - a. The applicant or owner of the subject property.
 - b. Any person who is entitled to written notice of the Type I decision pursuant to subsection 18.5.1.050.B.
 - c. Any other person who participated in the proceeding by submitting written comments on the application to the City by the specified deadline.
2. **Appeal Filing Procedure.**
 - a. *Notice of Appeal.* Any person with standing to appeal, as provided in subsection 18.5.1.050.G.1, above, may appeal a Type I decision by filing a notice of appeal and paying the appeal fee according to the procedures of this subsection. The fee required in this section shall not apply to appeals made by neighborhood or community organizations recognized by the City and whose boundaries include the site. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded.
 - b. *Time for Filing.* A notice of appeal shall be filed with the Staff Advisor within 12 days of the date the notice of decision is mailed.
 - c. *Content of Notice of Appeal.* The notice of appeal shall be accompanied by the required filing fee and shall contain.
 - i. An identification of the decision being appealed, including the date of the decision.
 - ii. A statement demonstrating the person filing the notice of appeal has standing to appeal.
 - iii. A statement explaining the specific issues being raised on appeal.
 - iv. A statement demonstrating that the appeal issues were raised during the public comment period.
 - d. The appeal requirements of this section must be fully met or the appeal will be considered by the City as a jurisdictional defect and will not be heard or considered.
3. **Scope of Appeal.** Appeal hearings on Type I decisions made by the Staff Advisor shall be de novo hearings before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type I decision, but may include other relevant evidence and arguments. The Commission may allow additional evidence, testimony, or argument concerning any relevant ordinance provision.
4. **Appeal Hearing Procedure.** Hearings on appeals of Type I decisions follow the Type II public hearing procedures, pursuant to section 18.5.1.060, subsections A – E, except that the decision of the Planning Commission is the final decision of the City on an appeal of a Type I decision. A decision on an appeal is final the date the City mails the adopted and signed decision. Appeals of Commission decisions must be filed with the State Land Use Board of Appeals, pursuant to ORS 197.805 - 197.860.



ASHLAND PLANNING DIVISION

FINDINGS & ORDERS

PLANNING ACTION: PA-T1-2020-00109
SUBJECT PROPERTY: 345 Clinton Street
APPLICANT: Rogue Planning and Development
OWNER: Paul Mace & Kathleen Kahle
DESCRIPTION: A request for land use approval of a two-lot partition of a 12.29-acre lot. The purpose of the partition is to allow for the divestment of a large, developable portion of single-family residential zoned property. The tentative partition plat submitted with the application indicates that the two proposed parcels will be 8.94 ac. and 3.35 ac in size with the smaller parcel situated in the southeast of the parent parcel.
COMPREHENSIVE PLAN DESIGNATION: Single-Family Residential;
ZONING: R-1-5; **MAP:** 39 1E 04 DB; **TAX LOT:** 401

SUBMITTAL DATE:	April 30, 2020
DEEMED COMPLETE DATE:	May 15, 2020
STAFF APPROVAL DATE:	June 30, 2020
APPEAL DEADLINE (4:30 P.M.)	July 13, 2020
FINAL DECISION DATE:	July 14, 2020
APPROVAL EXPIRATION DATE:	January 14, 2022

DECISION

Proposal

The application is a request for land use approval to partition a 12.29-acre lot into two lots, the proposed parcels would be 8.94 and 3.35 acres in size. The larger of the two parcels will contain the existing home site, and the smaller parcel would be vacant. The application materials include a tentative partition plat prepared by LJ Friar & Associates showing the proposed vacant parcel to be situated in the southeast corner of the lot with frontage on both Ann Street and Clinton Street. The application materials indicate that the purpose of the partition is to facilitate ‘the divestment of a large, developable portion for a single-family residential zoned property.’ There is no additional development proposed at this time.

Planning Background

The subject property has been modified by boundary line adjustments three times in the last decade (see PA#’s 2010-00474, 2015-00439, and 2018-00167). There was also a planning action for a density transfer (PA# 2017-02132) to allocate density from land in the flood plain, but the application was withdrawn prior to a decision being rendered. The most recent boundary line adjustment modified the property into its current configuration and is shown as parcel-1 of partition plat P-05-2018 (CS 22509 Jackson County Survey) which conveyed land in the flood plain to the City and also adjusted the property lines at the rear of the properties along Sylvia.

Property

The subject property is an irregularly shaped 12.29-acre parcel located between Oak Street and North Mountain Avenue and bounded by Clinton Street to the south, Ann Street to the east, and the Bear Creek floodplain to the north. To the west is the rear of residential properties that front Sylvia St. The property is occupied by a 4,650 square foot single-family home, a detached garage, and barn. The residence is accessed via a private driveway that extends from Clinton Street to the residence.

The subject property is zoned R-1-5, a single-family residential zoning with a 5,000 square foot minimum lot size. The surrounding properties are also zoned R-1-5 and are developed exclusively with single-family homes. The newly created lot, absent additional subdivision, would allow for the development of one single-family home.

The property has several physical constraints including steep slopes along the eastern portion of the property with slopes exceeding 35-percent and minor areas along the northern side of the Clinton Street frontage with slopes between 25-35-percent. The property also has both FEMA / Ashland Flood zones. Mook Creek also traverses the property from southwest to northeast, which is identified as an intermittent/ephemeral stream by the Ashland Water Resource Protection Zone maps. Additionally, the Ashland Wetland Inventory indicates the presence of a wetland on the proposed vacant parcel. Future development will have to address the water resource protection zones and wetland protection.

Partition

As mentioned at the outset the proposal is a request for a land partition to create two lots for the property located at 345 Clinton Street. The lots as proposed comply with the base standards for the zone, minimum area requirements and lot coverage. The preliminary plat included with the application indicates that proposed Parcel one would retain the existing residence and would be 8.9 acres with 2.6 acres in the flood zone and proposed Parcel two will be vacant and measure 3.35 acres with approximately 0.5 acres in the flood zone. Based on the preliminary plat, both proposed parcels substantially exceed the 5,000 square feet minimum lot size and minimum width standards as well as lot width to depth ratio.

The application explains that all city facilities are available within the adjacent rights-of-way, including sanitary sewer and water and franchise utilities. There are no proposed public utilities proposed to be installed to serve the new vacant parcel. The application explains that the size of these utilities will be predicated by the future development.

Clinton, Ann and Briscoe streets are designated as local streets in the City of Ashland Transportation System Plan and are designed to have a capacity of up to 1500 daily trips. The most recent trip count data (captured between 2005 and 2008) indicate that each of these roads operate far below their design capacity: Carol 388 Average Daily Trips (ADT), Phelps 207 ADT, Clinton 143 ADT and Ann 157 ADT. According to City records in the past twenty years there have been two accidents at the point where Clinton St turns into Carol, one accident at the intersection of Clinton and Ann, and another at Phelps and Clinton, for a total of four accidents. The curb-to-curb width is twenty-seven feet which exceeds the required amount for local access streets and allows for parking on both sides. Clinton and Ann Street lack park row and sidewalks adjacent to the new parcel. The application

requests to sign in favor of a LID for future development of Clinton Street, Ann Street. A condition has been added below requiring that the applicant sign in favor of a LID prior to approval of the final plat.

The application includes a discussion regarding the future development plan to demonstrate that the proposed partition will not impede future development of the parcels. The future development plan indicates that the proposed new parcel would be able to be subdivided to approximately fifteen lots for the development of single-family homes with access provided by an extension of Briscoe and Phelps Streets as well as the alley between Clinton and Briscoe Place. The development plan is not a subdivision proposal and is not approved with this two-lot partition approval. Rather the development plan is simply to demonstrate that the further development of the new parcel is feasible.

Public Input

Notice of the planning action was mailed to all properties within 200 feet of the subject property as well as a physical notice posted along the frontage of the property. The notice included a staff contact name and number. Subsequent to the mailing of a Notice of Application, written comments about the request were received from eleven concerned citizens. In accordance with Ashland Municipal Code (AMC) 18.5.1.050, the Type I procedure for planning applications allows a 14-day period for the submission of written comments, starting from the date of mailing. For the subject application, the comment period began on May 15th and ended on May 29th.

Issues that were raised in relation to the planning application included concerns about open space preservation, habitat for wildlife, views, and concerns about future development of the property including noise, dust, and traffic. These issues are addressed by the application materials, as well as by this report. The applicant has dedicated land in the flood plain to the City in the past and will be kept as Parks land and open space. While there are portions of both proposed parcels that are in the flood plain no additional land is proposed to be conveyed to the City at this time. Concerns regarding loss of views are not protected by the Land Use Ordinance.

Eric Elerath submitted a written comment on May 29th raising additional concerns about the relevant approval criteria included in the mailed notice, and physical access to the application materials, and included a request for additional time to inspect and review the application materials.

The mailed notice included the relevant approval criteria from AMC 18.5.3.050 for a Preliminary Partition Plat. The issue regarding an incomplete application was identified in the written comment as the application materials posted online did not include the receipt for payment for the planning application. AMC 18.5.1.050 requires the application form and fee for a planning application to be considered complete. ORS 227.178 requires a city to determine if a planning application is complete within 30 days of the applicant submitting the information and to notify the applicant if any required submittal information is missing. The Staff Advisor is responsible for determining whether the submittal information is complete for a Type I planning application and accordingly made the determination on May 15, 2020 that the application was complete, including that the preliminary partition plat fee had been paid on April 30th. The receipt for the

payment is documented in the City's permitting software and a hard copy of the receipt is included in the planning application file.

The notice stated that the application materials were available at the Winburn Way building during the period of public comment the building and included a staff contact with a telephone and email address. The Community Development Department offices were closed to the public during the 14-day comment period in response to the to the COVID-19 pandemic and the declared state of emergency. The City's emergency declaration on March 17, 2020 closed City offices to the public and continue to be closed to the public until such time that the state announces Phase three of reopening. The planning application materials were posted on "What's Happening in my City" on the City web site. People that called or emailed and were interested in reviewing the file were directed to the City's web site.

The approval criteria for a Land Partition are detailed in AMC 18.5.3.050 as follows:

- A. The future use for urban purposes of the remainder of the tract will not be impeded.
- B. The development of the remainder of any adjoining land or access thereto will not be impeded.
- C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.
- D. The tract of land has not been partitioned for 12 months.
- E. Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part 18.4 (e.g., parking and access, tree preservation, solar access and orientation).
- F. Accesses to individual lots conform to the standards in section [18.4.3.080](#) Vehicle Area Design. See also, [18.5.3.060](#) Additional Preliminary Flag Lot Partition Plat Criteria.
- G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part [18.4](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.
- H. **Unpaved Streets.**
 - 1. **Minimum Street Improvement.** When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.
 - 2. **Unpaved Streets.** The Public Works Director may allow an unpaved street for access for a land partition when all of the following conditions exist.
 - a. The unpaved street is at least 20-feet wide to the nearest fully improved collector or arterial street. The City may require the street to be graded (cut and filled) to its standard physical width, and surfaced as required in chapter [18.4.6](#) prior to the signature of the final partition plat by the City.
 - b. The centerline grade on any portion of the unpaved street does not exceed ten percent.
 - c. The final elevation of the street shall be established as specified by the Public Works Director except where the establishment of the elevation would produce a substantial

variation in the level of the road surface. In this case, the slope of the lot shall be graded to meet the final street elevation.

- d. Should the partition be on an unpaved street and paving is not required, the applicant shall agree to participate in the costs and to waive the rights of the owner of the subject property to remonstrate both with respect to the owners agreeing to participate in the cost of full street improvements and to not remonstrate to the formation of a local improvement district to cover such improvements and costs thereof. Full street improvements shall include paving, curb, gutter, sidewalks, and the undergrounding of utilities. This requirement shall be precedent to the signing of the final survey plat, and if the owner declines to so agree, then the application shall be denied.
- I. Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.
- J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.
- K. A partition plat containing one or more flag lots shall additionally meet the criteria in section [18.5.3.060](#).

Decision

The applicants have submitted materials to the Planning Department to demonstrate compliance with the applicable approval standards for the proposed partition and by their reference are incorporated as if set out in full.

In staff's assessment, the application with the attached conditions complies with all applicable City Ordinances. Therefore, Planning Action #PA-T1-2020-00109 is approved with the following conditions. Further, if any one or more of the following conditions are found to be invalid for any reason whatsoever, then Planning Action #PA-T1-2020-00109 is denied. The following conditions are attached to the approval.

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise modified herein.
- 2) That a final survey plat shall be submitted, reviewed and approved within 18 months of the final decision date of the preliminary partition plat approval by the City of Ashland.
- 3) That the applicant sign in favor of an LID for future development of Clinton and Ann Streets.
- 4) That prior to the submittal of the final survey plat for the review, approval and signature of the Ashland Planning Division:
 - a) All easements for public and private utilities, fire apparatus access, and reciprocal utility, maintenance, and access shall be indicated on the final survey plat as required by the Ashland Engineering Division.



Bill Molnar, *Community Development Director*
Department of Community Development

06.30.2020

Date

Eric Elerath
419 Clinton St.
Ashland, OR 97520
(541) 708-0149

May 28, 2020

Planning Department, City of Ashland
51 Winburn Way
Ashland, OR 97520
(541) 488-5305

PLANNING ACTION: PA-T1-2020-00109
SUBJECT PROPERTY: 345 Clinton St.

SUBJECT: Paper Copy

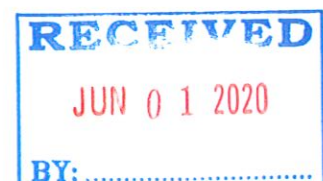
Dear City of Ashland Planning Department:

In order to ensure timely delivery and compliance with Notice requirements, the attached paper copy is being submitted either in person or by certified mail. It is an exact duplicate of the same document emailed in electronic form.

Thank you for your great work under difficult conditions!



Eric Elerath



Eric Elerath
419 Clinton St.
Ashland, OR 97520
(541) 708-0149

May 28, 2020

Planning Department, City of Ashland
51 Winburn Way
Ashland, OR 97520
(541) 488-5305

PLANNING ACTION: PA-T1-2020-00109
SUBJECT PROPERTY: 345 Clinton St.

SUBJECT: Request For Personal Inspection of Application Documents
Request For Additional Time To Respond

Dear City of Ashland Planning Department:

My name is Eric Elerath. My partner Betsy McLane and I have lived at 419 Clinton St. in Ashland since we purchased the property in 2017. We are full time residents, taxpayers and property owners affected by the above action involving property at 345 Clinton St. We received written notice ("Notice") by mail from the City of Ashland about the application for a minor land partition, and I write this letter to object to the application. I ask for:

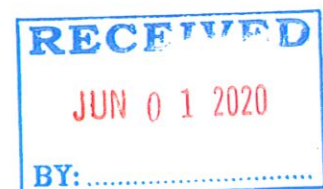
- In-person access, while safely implementing the current coronavirus guidelines, to inspect the written application and all documents and evidence relied upon by the applicant and applicable criteria, as provided by the terms of the Notice of Application.
- An additional 14 days to respond after the above documents are made available and I am notified of their availability for inspection.

I contend that both the Notice and the Application are defective, incomplete and may violate Oregon and United States Constitutions, among others. In the short time available to respond to the Notice, I've written the following reply. Topics include:

- Defective Notice
- Incomplete Application
- Defective Submittal Analysis

Thank you!


Eric Elerath



RESPONSE TO PLANNING ACTION PA-T1-2020-00109

I. Defective Notice

A. The Notice Misrepresents the Substance of the Notice's Subject Matter.

The front side of the Notice of Application ¹ reads, in part:

The Ashland Planning Division Staff has received a complete application for the property noted above.

This appears to be a factual statement affirming the receipt of an application for the property and affirming its completeness. The supporting document purported to be the Application, however, appears to be a submittal which is only one requirement of a completed application. It is evidence of neither an application nor of an application's completeness ², and therefore appears to be false. On the other hand, if the statement is true, then it appears to be evidence that the City is in violation of Oregon's public records laws.

B. The Notice References the Wrong Evaluation Criteria

The Notice continues, in part ³:

The ordinance criteria applicable to this application are attached to this notice.

The referenced 'attachment' appears to be the text on the reverse side of the Notice ⁴. That text references A.M.C. Section 18.5.3.050, however, which is "Preliminary Partition Plat Criteria." Those criteria - A through J - are submittal requirements for Preliminary Partition Plats; they are not application requirements. A submittal addressing the Partition Plat criteria listed in 18.5.3.050 is required for a complete application, and meeting the criteria under that section is required for approval, but the application criteria are found under Section 18.5.1.050(A). The subsections of 18.5.1.050 which follow, (B) through (G), appear to have important procedural information central to the reasons legal notices are provided at all. Their headings read:

- A. Application Requirements
- B. Notice of Application
- C. Decision
- D. Notice of Decision
- E. Effective Date of Decision

¹ Exhibit 1, attached.

² The incompleteness of the Application is addressed below, under the heading II. Incomplete Application.

³ Exhibit 1, attached.

⁴ Exhibit 2, attached.



- F. Reconsideration
- G. Appeal of Type I Decision

In other words, the criteria provided on the reverse side of the Notice appear to be the wrong ones, as they apply to only one submittal included as part of a completed application ⁵.

C. The Documents Necessary to Review the Noticed Subject Are Being Withheld By the City

In the upper third of the Notice, the effective date is given as:

Notice of Complete Application: May 15, 2020

Paragraph 5 in the Notice's text box reads ⁶:

A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Division, Community Development & Engineering Services Building, 51 Winburn Way, Ashland, Oregon 97520.

The Ashland Community Development & Engineering Services Building at 51 Winburn Way is currently closed as of this writing, and it appears to have been closed for the duration of the 14 day time period allotted for public inspection of the application, application criteria, related documents and evidence as required by the provisions of the Notice. In other words, the statement on the Notice is false and verifiably so, for the duration of the public review period.

On the City's website, however, as of 12:00 a.m. May 29, 2020, language on page <http://www.ashland.or.us/news.asp?newsID=4670> states:

Alert: Jackson County has been approved to move ahead in a Phase 1 reopening as of May 15.

and:

Reopening to Follow Governor's Orders, Oregon Health Authority, and Jackson County Public Health Directions

Jackson County has been approved by the Governor's Office and Oregon Health Authority to move ahead in a Phase 1 reopening as of May 15. The City of Ashland will follow guidelines laid out by the Oregon Health Authority and Jackson County Health and Human Services. Citizens should understand that the City government, including Ashland Police Department, does not have enforcement authority during this public health emergency.

Ashland City offices, however, appear to have remained closed voluntarily, even though orders by the Governor's office appear to permit partial opening, among many other social situations, and

⁵ See II. Incomplete Application, below.

⁶ Exhibit 1, attached.



effective May 15. A relevant State of Oregon website (<https://govstatus.egov.com/reopening-oregon#phase1>) states, for example:

Local cultural, civic and faith gatherings are allowed for up to 25 people provided physical distancing can be in place.

Anyone who has ever inspected similar development applications over the counter at the offices on Winburn Way understand that any continuing health risk associated with inspecting such documents would seem to be far lower than the health risks associated with many other service functions open to the public effective May15, such as shopping for groceries, banking at a local branch office, or purchasing medical items at a pharmacy. The volume of public interface is very low, and the City could easily provide document files at reasonable cost, similar to the practice of allowing take-out orders by restaurant customers. Those 'take-out' and similar practices were allowable even during the most restrictive emergency phases of the recent coronavirus crisis.

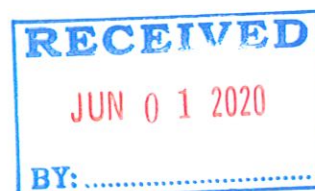
In lieu of making the documents available for inspection as stipulated by the Notice, the City opted to provide access to a limited and selective group of electronic documents through one of its web portals. While that might seem to be a reasonable and acceptable alternative during the recent crisis, the process allows the City to withhold information that the Notice indicates is available. That appears to have occurred, both factually and legally.

Upon visiting the City portal where the Application was located, I was presented with a graphic disclaimer on my screen, a true and exact copy of which is attached.⁷ As shown, that disclaimer requires the party wishing to see whatever documents and evidence the City made available to agree to terms which specifically absolve the City of any all responsibility for "... the accuracy, reliability, [n]or timeliness of any of the data provided herein." Thus, the City appears to expressly disavow the legal sufficiency of all electronic information it provides by internet access, although it has made a point to provide them in lieu of paper documents.

Planning Manager Maria Harris replied to my inquiry about the online material in an email, on May 27, a copy of which is attached.⁸ The meanings of both my inquiry and of Ms. Harris' reply are plain, and she appears to affirm the accuracy of my observations and analysis thus far.

⁷ See Exhibit 3

⁸ See Exhibit 4



II. Incomplete Application

Multiple times, the City has insisted that the document entitled 'Minor Land Use Partition,'⁹ attached as Exhibit 5, is the actual Application, and it represents that the Application is complete.

A.M.C. Section 18.5.1.050, Subsection A. Application Requirements, reads, in part:

1. Application Form and Fee. Applications for Type I review shall be made on forms provided by the Staff Advisor. One or more property owners of the property for which the planning action is requested, and their authorized agent, as applicable, must sign the application. The application shall not be considered complete unless the appropriate application fee accompanies it.
2. Submittal Information. The application shall include all of the following information.
 - a. The information requested on the application form.
 - b. Plans and exhibits required for the specific approvals sought.
 - c. A written statement or letter explaining how the application satisfies each and all of the relevant criteria and standards in sufficient detail.
 - d. Information demonstrating compliance with all prior decision(s) and conditions of approval for the subject site, as applicable.
 - e. The required fee.

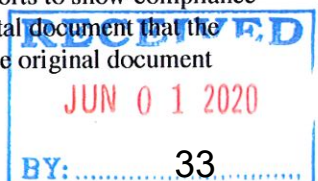
As can be seen from looking at Exhibit 5:

- There appears to be no included form "...provided by the Staff Advisor", nor are there signatures from either of the two owners or from the Applicant, Amy Gunter (Item 1).
- Since there is no application form, one cannot confirm that the requested information is included (Item 2a).
- The markup comments appearing on the Exhibit rebut the City's position that the relevant criteria and standards have been satisfied (Item 2c).
- An application involving this subject property was submitted in 2017 and the application contained many of the same deficiencies that this one does. It has been more than two years since this owner last submitted this property to the City for a development review, and the City does not appear to have come into compliance with its own procedural requirements since then (Item 2d).
- There is no receipt for any fee paid to the City. If the Application is complete, then the fees have been paid, but no record exists of that payment. Was the fee received and processed? (Item 2e).

III. Defective Submittal Analysis

As noted, comments addressing the submittal entitled "Minor Land Partition" are provided in magenta color and underlined. The most common defect appears to be the conflation of demonstrable fact and speculative or legal opinion. With respect to prospective future development, the Applicant sometimes anticipates a way in which a developer could eventually meet the criteria for this current land division at some unknown point in the future, and other times the Applicant

⁹ See Exhibit 5, below. I have marked up the Exhibit with comments, located between the lines of the original text. These appear as magenta text, arrows and bubbles, and reference the Applicant's fact finding efforts to show compliance with the appropriate development criteria. Everything not colored magenta is part of the submittal document that the City refers to as the 'Application'. I have not altered or deleted any information appearing on the original document provided on the City's website.



simply asserts that such performance will occur. A significant problem is that the property is ostensibly being prepared for sale to a third party, but Oregon statutes appear to prohibit the withdrawal of an approval for a lot division after the lot is sold, should the third party fail to comply with conditions of the division that have not been met.

What may be the most significant and 'mission-critical' reason to reject this proposal outright would seem to be four lines of text appearing on the survey drawing titled "Tentative Partition Plat." It appears that the surveyor can't locate four easements shown on the Title Report: One of the easements is for "Pole Lines" and another for cable TV lines. While it's possible that there is a simple mistake - the wrong Title Report, for example - there would seem to be no excuse for ignoring this conflict, especially when the City of Ashland owns adjacent property and has utility easements of its own on the north side.

IV. Summary

Under the circumstances and for the preceding reasons, this proposal should not be approved as submitted. All parties who received Notice, including this Petitioner should be allowed additional time to inspect and review a complete application.





NOTICE OF APPLICATION

PLANNING ACTION: PA-T1-2020-00109

SUBJECT PROPERTY: 345 Clinton

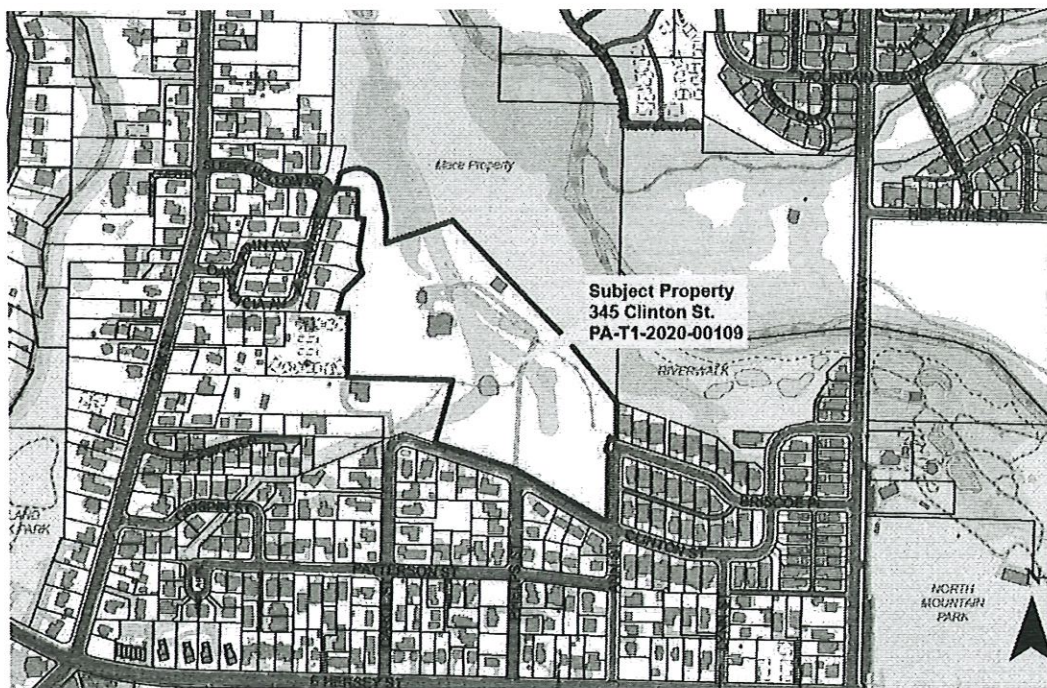
OWNER/APPLICANT: Paul Mace & Kathleen Kahle / Rogue Planning & Development

DESCRIPTION: A request land use approval for a two-lot partition of a 12.29-acre lot. The Purpose of the partition is to allow for the divestment of a large, developable portion for a single-family residential zoned property. The tentative partition plat submitted with the application indicate that the two resultant parcels will be 8.943 ac. and 3.35 ac with the smaller parcel situated in the southeast of the parent parcel.

COMPREHENSIVE PLAN DESIGNATION: Single Family Residential; **ZONING:** R-1-5; **ASSESSOR'S MAP #:** 391E04DB; **TAX LOT:** 401

NOTICE OF COMPLETE APPLICATION: May 15, 2020

DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS: May 29, 2020



The Ashland Planning Division Staff has received a complete application for the property noted above.

Any affected property owner or resident has a right to submit written comments to the City of Ashland Planning Division, 51 Winburn Way, Ashland, Oregon 97520 prior to 4:30 p.m. on the deadline date shown above.

Ashland Planning Division Staff determine if a Land Use application is complete within 30 days of submittal. Upon determination of completeness, a notice is sent to surrounding properties within 200 feet of the property submitting application which allows for a 14 day comment period. After the comment period and not more than 45 days from the application being deemed complete, the Planning Division Staff shall make a final decision on the application. A notice of decision is mailed to the same properties within 5 days of decision. An appeal to the Planning Commission of the Planning Division Staff's decision must be made in writing to the Ashland Planning Division within 12 days from the date of the mailing of final decision. (AMC 18.5.1.050.G)

The ordinance criteria applicable to this application are attached to this notice. Oregon law states that failure to raise an objection concerning this application, by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Department to respond to the issue precludes an action for damages in circuit court.

A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Division, Community Development & Engineering Services Building, 51 Winburn Way, Ashland, Oregon 97520.

If you have questions or comments concerning this request, please feel free to contact Aaron Anderson at 541-488-5305.

RECEIVED

BY:.....

35

Exhibit 2

PRELIMINARY PARTITION PLAT

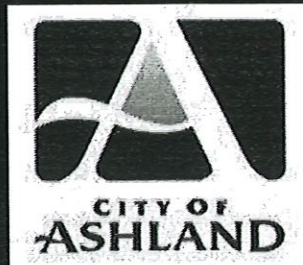
18.5.3.050

The approval authority shall approve an application for preliminary partition plat approval only where all of the following criteria are met.

- A. The future use for urban purposes of the remainder of the tract will not be impeded.
- B. The development of the remainder of any adjoining land or access thereto will not be impeded.
- C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.
- D. The tract of land has not been partitioned for 12 months.
- E. Proposed lots conform to the requirements of the underlying zone, per part 18.2, any applicable overlay zone requirements, per part 18.3, and any applicable development standards, per part 18.4 (e.g., parking and access, tree preservation, solar access and orientation).
- F. Accesses to individual lots conform to the standards in section 18.4.3.080 Vehicle Area Design. See also, 18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria.
- G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part 18.4, and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.
- H. Unpaved Streets.
 - 1. Minimum Street Improvement. When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.
 - 2. Unpaved Streets. The Public Works Director may allow an unpaved street for access for a land partition when all of the following conditions exist.
 - a. The unpaved street is at least 20-feet wide to the nearest fully improved collector or arterial street. The City may require the street to be graded (cut and filled) to its standard physical width, and surfaced as required in chapter 18.4.6 prior to the signature of the final partition plat by the City.
 - b. The centerline grade on any portion of the unpaved street does not exceed ten percent.
 - c. The final elevation of the street shall be established as specified by the Public Works Director except where the establishment of the elevation would produce a substantial variation in the level of the road surface. In this case, the slope of the lot shall be graded to meet the final street elevation.
 - d. Should the partition be on an unpaved street and paving is not required, the applicant shall agree to participate in the costs and to waive the rights of the owner of the subject property to remonstrate both with respect to the owners agreeing to participate in the cost of full street improvements and to not remonstrate to the formation of a local improvement district to cover such improvements and costs thereof. Full street improvements shall include paving, curb, gutter, sidewalks, and the undergrounding of utilities. This requirement shall be precedent to the signing of the final survey plat, and if the owner declines to so agree, then the application shall be denied.
- I. Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.
- J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.



The information on this website is provided and hosted by the City of Ashland, Oregon. Continued use of this website is conditional upon your explicit acceptance of the terms and set forth in this disclaimer document. The data provided herein may be inaccurate and/or out of date. Any person or entity who relies on this data for any purpose whatsoever does so solely at their own risk. Neither the City of Ashland, nor its employees or officers warrant the accuracy, reliability, nor timeliness of any of the data provided herein. This data is provided "as is" without warranty of any kind.



☐ I agree to the above terms and conditions

OK

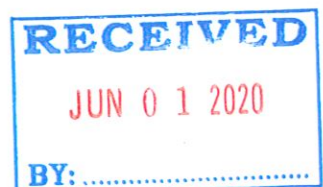


Exhibit 4, p1

From: **Maria Harris** maria.harris@ashland.or.us
Subject: RE: Application documents for PA-T1-2020-00109
Date: May 27, 2020 at 1:37 PM
To: Eric Elerath eelerath624@verizon.net
Cc: planning planning@ashland.or.us

Hello Eric,

The application we have on file is the minor land partition file that you linked to below. The approval criteria are the second page of the notice that you have also linked to below.

As stated on the notice above the map, written comments are due on May 29, 2020. Comments can be submitted by email to planning@ashland.or.us.

Please feel free to contact me if you need assistance or have further questions.

Best Regards,
Maria Harris, AICP
Planning Manager
City of Ashland, Community Development Department
20 E. Main St., Ashland, OR 97520
541.552.2045 Tel
800.735.2900 TTY
541.552.2050 Fax

This email transmission is official business of the City of Ashland, and it is subject to Oregon Public Records Law for disclosure and retention. If you have received this message in error, please contact me at 541.552.2045. Thank you.

From: Eric Elerath <eelerath624@verizon.net>
Sent: Wednesday, May 27, 2020 12:56 PM
To: planning <planning@ashland.or.us>; Maria Harris <maria.harris@ashland.or.us>
Cc: Aaron Anderson <aaron.anderson@ashland.or.us>
Subject: Application documents for PA-T1-2020-00109

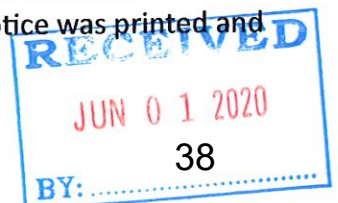
[EXTERNAL SENDER]

Dear Planning

A copy of Notice of Application for Planning Action PA-T1-2020-00109 is attached. The next to last paragraph on p1 states:

"A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Division, Community Development & Engineering Services Building, 51 Winburn Way, Ashland, Oregon 97520."

However, the Ashland Planning Division on Winburn Way is closed and it appears to have been closed on May 15, the effective date the calendar began and the presumptive date the Notice was printed and distributed.



A Planning staff person informed me that the application materials are available online.

Following links, I have been able to locate two documents: The attached Notice, at https://gis.ashland.or.us/arcgis/rest/services/planning/Planning_Action/MapServer/0/20412/attachments/25617

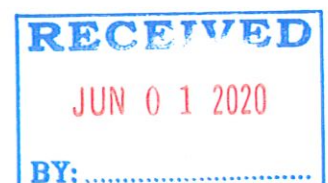
and a document entitled "Minor Land Partition" located here: https://gis.ashland.or.us/arcgis/rest/services/planning/Planning_Action/MapServer/0/20412/attachments/25616

Questions:

- 1) Could you please provide a link or links to the online Planning file(s) which include "A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria..."?
- 2) The Notice appears to be incorrect or out of date. Could you please reply with the correct date and time for reply? (Time received by staff on Winburn Way, postmark date and time, etc)
- 3) If the City is switching to online and electronic communication, can replies pursuant to this Notice be submitted by email instead of paper mail? If so, what email address should be used to reply, and what is the cutoff date for emails to be considered timely sent and received? Please clarify.

Thank you for your help!

Eric Elerath
419 Clinton st.

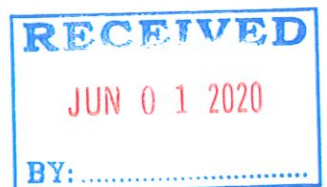


Rogue Planning & Development Services, LLC



Minor Land Partition

345 Clinton Street



Received 4.30.2020

Exhibit 5

Minor Land Partition

Property Address: 345 Clinton Street
Map & Tax Lots: 39 1E 04DB: Tax Lots: 401
Zoning: R-1-5
Adjacent Zones: R-1-5
Overlay Zones: Performance Standards Overlay
Water Resource Protection Zones
FEMA Floodplain
Ashland Modified Flood zone

Lot Area: 12.29 acres

Property Owner: Paul Mace and Kathleen Kahle
345 Clinton Street
Ashland, OR 97520

Planning Consultant: Amy Gunter
Rogue Planning & Development Services
33 N Central Avenue, Suite 213
Medford, OR 97501

Surveyor: LJ Friar and Associates
2714 N Pacific Hwy
Medford, OR 97501

Request:

A request for a minor land partition of an approximately 3.35-acre portion of a 12.29-acre parcel. The minor land partition is to allow for the divestment of a large, developable portion for a single-family residential zoned property.



Received 4:30.2020

Exhibit 5

Property Description:

The 12.29-acre property is on the north side of Clinton Street. The property is occupied by a single-family residential home, a detached garage, and a pole barn. The residence is accessed via a paved, private driveway that extends from Clinton Street to the residence.

The subject property and the adjacent properties are R-1-5-P and are generally developed with single-family residences and their outbuildings.

Clinton Street, a neighborhood street is along the south property line. Ann Street and the stub of Briscoe Place, also neighborhood streets, are along the east property line. Ann Street, along the frontage of the property, and Briscoe Place were partially improved with the development as part of the Riverwalk Subdivision.

There are steep slopes on the west side of the property uphill to the properties further west that are developed with single-family residential homes and their accessory buildings. These properties are accessed from Sylvia Street and Sleepy Hollow Drive. Both are neighborhood streets, which are accessed from Oak Street further west. A portion of the subject property wraps around the Sylvia Street properties and connects to the intersection of Sylvia Street and Sleepy Hollow Drive.

The north property line abuts City of Ashland properties that are an extension of Riverwalk Park. Bear Creek is to the north, within the city parcels. The properties to the east within Riverwalk and to the south, across Clinton Street are developed with primarily single-family residences.

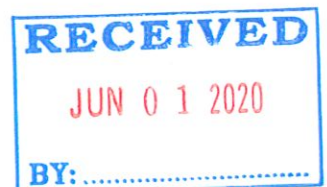
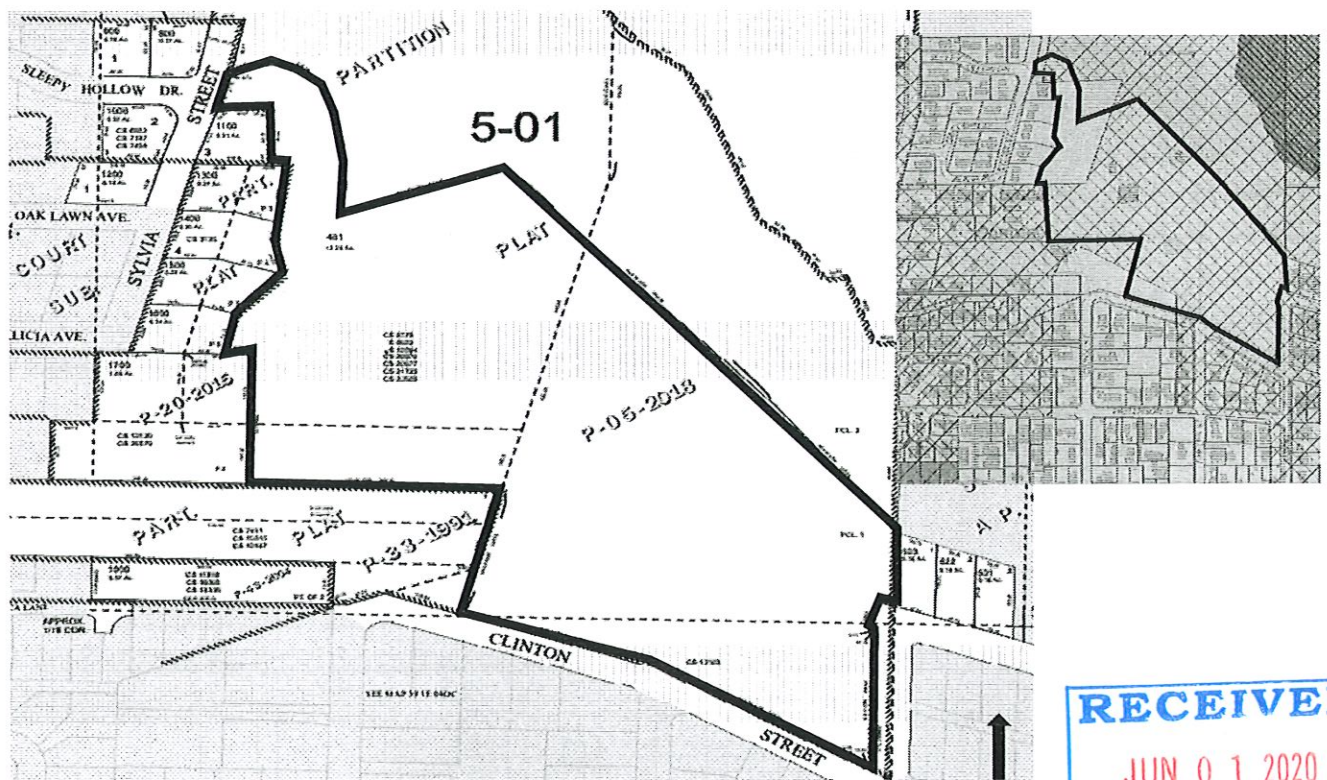


Exhibit 5

There are physical constraints on the northern portions of the property. These include steep slopes, the FEMA 100-year floodplain, FEMA 500-year floodplain, and Ashland Modified Flood zone for Bear Creek. Mook "Clear" Creek also traverses the property from north to south. According to the City of Ashland Water Resource Protection Zone maps, Mook Creek is an intermittent/ephemeral stream.

There are historical irrigation rights on the property. Over the years ponds for irrigation water storage have been created. Some of the pond areas have developed into wetlands. In addition to the ponds, according to the Local Wetlands Inventory (LWI), there is a potential wetland located to the east of the ponds on the property. Schott & Associates, Wetlands Biologist have been on-site and completed a delineation report. This report will be filed by the future developer(s).

The property has varying degrees of slope with a slight road slope along Clinton Street and the driveway. There are minor variations across the larger property area with an average slope approximately four percent downhill from the southwest to the northeast. The west side of the property behind the Sylvia Street lots is steeply sloped up to the adjacent properties to the west.

The property is subject to solar setback standard A.

There are smaller stature trees either on or directly adjacent to the subject property.

Retention of the highest number of trees in the landscape areas is an important aspect of the project and as many trees as possible will be able to be retained and still provide a buildable area for a new residential.

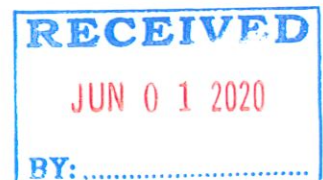
Clinton Street is paved with partial street improvements along both sides of the street that include curb, gutter, sidewalk and park row. Ann Street to the east and Briscoe Place are improved with curb, gutter, park row and sidewalk on the east side, the street side abutting the property has curb and gutter, no park row and sidewalk. The private drive is paved.

Proposal:

The request is to divide the property into two parcels.

Proposed Parcel 1 is 8.36 acres. This parcel would retain the residence, garage and pole barn at 345 Clinton Street. The vehicular access will be retained from Clinton Street utilizing the private driveway. The east side of the existing private driveway is the approximate east property line of Parcel 1.

Proposed Parcel 1 has a lot width of more than 100-feet, along Clinton Street, exceeding minimum lot width in the zone. The lot depth exceeds minimum lot depth in the zone. The parcel substantially exceeds the minimum lot area of 5,000 square feet required in the zone.



Received 4:30.2020

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL®



7019 1640 0000 0462 7636

Eric Elerath
419 Clinton St.
Ashland, OR 97520

20
E. Main

Planning Department, City of.
51 Winburn Way
Ashland, OR 97520

May 27, 2020

RE: Planning Action PA-T1-2020-00109
Subject Property: 345 Clinton

Hello,

Thank you for the opportunity to comment on this proposed action.

We have been homeowners of an adjoining property, 374 Clinton St, since 1983.

When we purchased our home at that time, we were told that the field 'across the street' (an unpaved dirt road at the time) was part of a 100 year flood plain and not slated for development.

Our comments/ questions:

Has something changed to alter that designation?

Is the area less prone to flooding, particularly in this era of 'climate change'?

Will the City of Ashland, should it approve any future development, be held liable for any property damage should future flooding occur?

Thank you,



Dennis and Rita Fiedler

RECEIVED

MAY 29 2020

City Of Ashland

May 28, 2020

City of Ashland
Planning Department
51 Winburn Way
Ashland, OR 97520

Topic: Notice of Application for Planning Action PA-T1-2020-00109

The Riverwalk Homeowners Association (HOA) is commenting on the proposed two-lot partition of the 345 Clinton property because our neighborhood borders this property. The Riverwalk HOA is made up of 62 homes. The HOA is very interested in the details of how this property will be developed because of the usual development issues of noise, dust, and increased traffic on our streets of Clinton and Briscoe, especially for safety and emergency vehicle reasons.

Information on the City web site about this Notice of Application may be incomplete. Because the City of Ashland offices are closed, members of the Riverwalk HOA have not been able to inspect the application, documents and evidence that the Notice promises. The Proposed Parcel 2 is intended to be sold and developed by others as a future single-family residential development. Since the development of this parcel is stated to be performed by someone other than the current owners, there are statements in the Notice that can't be guaranteed by the current owners. Some of our homeowners have concerns about development in possible wetland areas on the property. A more detailed set of comments on this Notice will be provided by Eric Elerath, Chair of the Riverwalk Land Use Committee and Architectural Review Advisory Committee.

The Riverwalk HOA has commented on previous plans for development of 345 Clinton Street, and the HOA will continue to be interested in the future development of this property as it will affect both our residents' quality of life and property values. Please keep the Riverwalk HOA informed on this topic.

Sincerely,



Carolyn T. Hunsaker, President Riverwalk HOA Board
ashlandriverwalkhoa@gmail.com

Eric Elerath
419 Clinton St.
Ashland, OR 97520
(541) 708-0149

May 28, 2020

Planning Department, City of Ashland
51 Winburn Way
Ashland, OR 97520
(541) 488-5305

PLANNING ACTION: PA-T1-2020-00109
SUBJECT PROPERTY: 345 Clinton St.

SUBJECT: Paper Copy

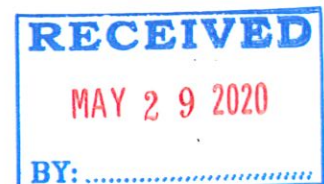
Dear City of Ashland Planning Department:

In order to ensure timely delivery and compliance with Notice requirements, the attached paper copy is being submitted either in person or by certified mail. It is an exact duplicate of the same document emailed in electronic form.

Thank you for your great work under difficult conditions!



Eric Elerath



Eric Elerath
419 Clinton St.
Ashland, OR 97520
(541) 708-0149

May 28, 2020

Planning Department, City of Ashland
51 Winburn Way
Ashland, OR 97520
(541) 488-5305

PLANNING ACTION: PA-T1-2020-00109
SUBJECT PROPERTY: 345 Clinton St.

SUBJECT: Request For Personal Inspection of Application Documents
Request For Additional Time To Respond

Dear City of Ashland Planning Department:

My name is Eric Elerath. My partner Betsy McLane and I have lived at 419 Clinton St. in Ashland since we purchased the property in 2017. We are full time residents, taxpayers and property owners affected by the above action involving property at 345 Clinton St. We received written notice ("Notice") by mail from the City of Ashland about the application for a minor land partition, and I write this letter to object to the application. I ask for:

- In-person access, while safely implementing the current coronavirus guidelines, to inspect the written application and all documents and evidence relied upon by the applicant and applicable criteria, as provided by the terms of the Notice of Application.
- An additional 14 days to respond after the above documents are made available and I am notified of their availability for inspection.

I contend that both the Notice and the Application are defective, incomplete and may violate Oregon and United States Constitutions, among others. In the short time available to respond to the Notice, I've written the following reply. Topics include:

- Defective Notice
- Incomplete Application
- Defective Submittal Analysis

Thank you!



Eric Elerath



RESPONSE TO PLANNING ACTION PA-T1-2020-00109

I. Defective Notice

A. The Notice Misrepresents the Substance of the Notice's Subject Matter.

The front side of the Notice of Application ¹ reads, in part:

The Ashland Planning Division Staff has received a complete application for the property noted above.

This appears to be a factual statement affirming the receipt of an application for the property and affirming its completeness. The supporting document purported to be the Application, however, appears to be a submittal which is only one requirement of a completed application. It is evidence of neither an application nor of an application's completeness ², and therefore appears to be false. On the other hand, if the statement is true, then it appears to be evidence that the City is in violation of Oregon's public records laws.

B. The Notice References the Wrong Evaluation Criteria

The Notice continues, in part ³:

The ordinance criteria applicable to this application are attached to this notice.

The referenced 'attachment' appears to be the text on the reverse side of the Notice ⁴. That text references A.M.C. Section 18.5.3.050, however, which is "Preliminary Partition Plat Criteria." Those criteria - A through J - are submittal requirements for Preliminary Partition Plats; they are not application requirements. A submittal addressing the Partition Plat criteria listed in 18.5.3.050 is required for a complete application, and meeting the criteria under that section is required for approval, but the application criteria are found under Section 18.5.1.050(A). The subsections of 18.5.1.050 which follow, (B) through (G), appear to have important procedural information central to the reasons legal notices are provided at all. Their headings read:

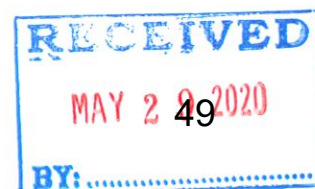
- A. Application Requirements
- B. Notice of Application
- C. Decision
- D. Notice of Decision
- E. Effective Date of Decision

¹ Exhibit 1, attached.

² The incompleteness of the Application is addressed below, under the heading II. Incomplete Application.

³ Exhibit 1, attached.

⁴ Exhibit 2, attached.



- F. Reconsideration
- G. Appeal of Type I Decision

In other words, the criteria provided on the reverse side of the Notice appear to be the wrong ones, as they apply to only one submittal included as part of a completed application ⁵.

C. The Documents Necessary to Review the Noticed Subject Are Being Withheld By the City

In the upper third of the Notice, the effective date is given as:

Notice of Complete Application: May 15, 2020

Paragraph 5 in the Notice's text box reads ⁶:

A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Division, Community Development & Engineering Services Building, 51 Winburn Way, Ashland, Oregon 97520.

The Ashland Community Development & Engineering Services Building at 51 Winburn Way is currently closed as of this writing, and it appears to have been closed for the duration of the 14 day time period allotted for public inspection of the application, application criteria, related documents and evidence as required by the provisions of the Notice. In other words, the statement on the Notice is false and verifiably so, for the duration of the public review period.

On the City's website, however, as of 12:00 a.m. May 29, 2020, language on page <http://www.ashland.or.us/news.asp?newsID=4670> states:

Alert: Jackson County has been approved to move ahead in a Phase 1 reopening as of May 15.

and:

Reopening to Follow Governor's Orders, Oregon Health Authority, and Jackson County Public Health Directions

Jackson County has been approved by the Governor's Office and Oregon Health Authority to move ahead in a Phase 1 reopening as of May 15. The City of Ashland will follow guidelines laid out by the Oregon Health Authority and Jackson County Health and Human Services. Citizens should understand that the City government, including Ashland Police Department, does not have enforcement authority during this public health emergency.

Ashland City offices, however, appear to have remained closed voluntarily, even though orders by the Governor's office appear to permit partial opening, among many other social situations, and

⁵ See II. Incomplete Application, below.

⁶ Exhibit 1, attached.



effective May 15. A relevant State of Oregon website (<https://govstatus.egov.com/reopening-oregon#phase1>) states, for example:

Local cultural, civic and faith gatherings are allowed for up to 25 people provided physical distancing can be in place.

Anyone who has ever inspected similar development applications over the counter at the offices on Winburn Way understand that any continuing health risk associated with inspecting such documents would seem to be far lower than the health risks associated with many other service functions open to the public effective May15, such as shopping for groceries, banking at a local branch office, or purchasing medical items at a pharmacy. The volume of public interface is very low, and the City could easily provide document files at reasonable cost, similar to the practice of allowing take-out orders by restaurant customers. Those ‘take-out’ and similar practices were allowable even during the most restrictive emergency phases of the recent coronavirus crisis.

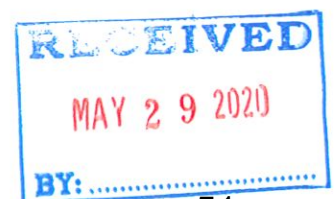
In lieu of making the documents available for inspection as stipulated by the Notice, the City opted to provide access to a limited and selective group of electronic documents through one of its web portals. While that might seem to be a reasonable and acceptable alternative during the recent crisis, the process allows the City to withhold information that the Notice indicates is available. That appears to have occurred, both factually and legally.

Upon visiting the City portal where the Application was located, I was presented with a graphic disclaimer on my screen, a true and exact copy of which is attached.⁷ As shown, that disclaimer requires the party wishing to see whatever documents and evidence the City made available to agree to terms which specifically absolve the City of any all responsibility for “... the accuracy, reliability, [n]or timeliness of any of the data provided herein.” Thus, the City appears to expressly disavow the legal sufficiency of all electronic information it provides by internet access, although it has made a point to provide them in lieu of paper documents.

Planning Manager Maria Harris replied to my inquiry about the online material in an email, on May 27, a copy of which is attached.⁸ The meanings of both my inquiry and of Ms. Harris’ reply are plain, and she appears to affirm the accuracy of my observations and analysis thus far.

⁷ See Exhibit 3

⁸ See Exhibit 4



II. Incomplete Application

Multiple times, the City has insisted that the document entitled ‘Minor Land Use Partition,’⁹ attached as Exhibit 5, is the actual Application, and it represents that the Application is complete.

A.M.C. Section 18.5.1.050, Subsection A. Application Requirements, reads, in part:

1. Application Form and Fee. Applications for Type I review shall be made on forms provided by the Staff Advisor. One or more property owners of the property for which the planning action is requested, and their authorized agent, as applicable, must sign the application. The application shall not be considered complete unless the appropriate application fee accompanies it.
2. Submittal Information. The application shall include all of the following information.
 - a. The information requested on the application form.
 - b. Plans and exhibits required for the specific approvals sought.
 - c. A written statement or letter explaining how the application satisfies each and all of the relevant criteria and standards in sufficient detail.
 - d. Information demonstrating compliance with all prior decision(s) and conditions of approval for the subject site, as applicable.
 - e. The required fee.

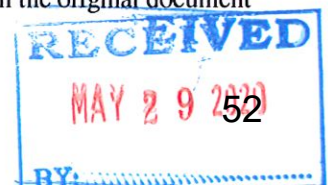
As can be seen from looking at Exhibit 5:

- There appears to be no included form “...provided by the Staff Advisor”, nor are there signatures from either of the two owners or from the Applicant, Amy Gunter (Item 1).
- Since there is no application form, one cannot confirm that the requested information is included (Item 2a).
- The markup comments appearing on the Exhibit rebut the City’s position that the relevant criteria and standards have been satisfied (Item 2c).
- An application involving this subject property was submitted in 2017 and the application contained many of the same deficiencies that this one does. It has been more than two years since this owner last submitted this property to the City for a development review, and the City does not appear to have come into compliance with its own procedural requirements since then (Item 2d).
- There is no receipt for any fee paid to the City. If the Application is complete, then the fees have been paid, but no record exists of that payment. Was the fee received and processed? (Item 2e).

III. Defective Submittal Analysis

As noted, comments addressing the submittal entitled “Minor Land Partition” are provided in magenta color and underlined. The most common defect appears to be the conflation of demonstrable fact and speculative or legal opinion. With respect to prospective future development, the Applicant sometimes anticipates a way in which a developer could eventually meet the criteria for this current land division at some unknown point in the future, and other times the Applicant

⁹ See Exhibit 5, below. I have marked up the Exhibit with comments, located between the lines of the original text. These appear as magenta text, arrows and bubbles, and reference the Applicant’s fact finding efforts to show compliance with the appropriate development criteria. Everything not colored magenta is part of the submittal document that the City refers to as the ‘Application’. I have not altered or deleted any information appearing on the original document provided on the City’s website.



simply asserts that such performance will occur. A significant problem is that the property is ostensibly being prepared for sale to a third party, but Oregon statutes appear to prohibit the withdrawal of an approval for a lot division after the lot is sold, should the third party fail to comply with conditions of the division that have not been met.

What may be the most significant and 'mission-critical' reason to reject this proposal outright would seem to be four lines of text appearing on the survey drawing titled "Tentative Partition Plat." It appears that the surveyor can't locate four easements shown on the Title Report: One of the easements is for "Pole Lines" and another for cable TV lines. While it's possible that there is a simple mistake - the wrong Title Report, for example - there would seem to be no excuse for ignoring this conflict, especially when the City of Ashland owns adjacent property and has utility easements of its own on the north side.

IV. Summary

Under the circumstances and for the preceding reasons, this proposal should not be approved as submitted. All parties who received Notice, including this Petitioner should be allowed additional time to inspect and review a complete application.





NOTICE OF APPLICATION



PLANNING ACTION: PA-T1-2020-00109

SUBJECT PROPERTY: 345 Clinton

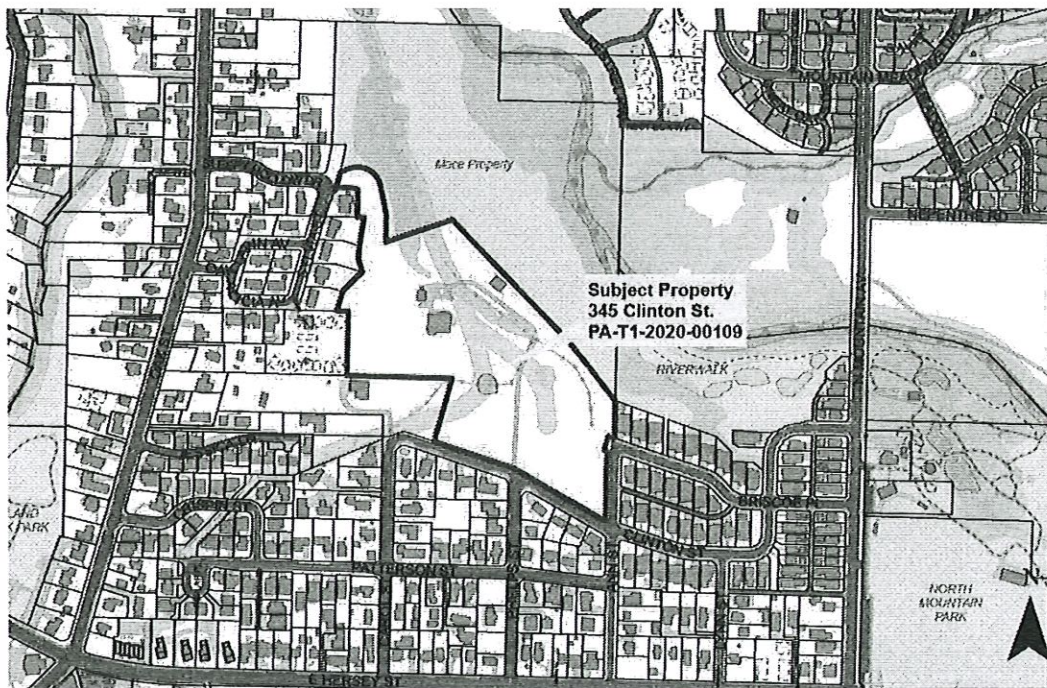
OWNER/APPLICANT: Paul Mace & Kathleen Kahle / Rogue Planning & Development

DESCRIPTION: A request land use approval for a two-lot partition of a 12.29-acre lot. The Purpose of the partition is to allow for the divestment of a large, developable portion for a single-family residential zoned property. The tentative partition plat submitted with the application indicate that the two resultant parcels will be 8.943 ac. and 3.35 ac with the smaller parcel situated in the southeast of the parent parcel.

COMPREHENSIVE PLAN DESIGNATION: Single Family Residential; **ZONING:** R-1-5; **ASSESSOR'S MAP #:** 391E04DB; **TAX LOT:** 401

NOTICE OF COMPLETE APPLICATION: May 15, 2020

DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS: May 29, 2020



The Ashland Planning Division Staff has received a complete application for the property noted above.

Any affected property owner or resident has a right to submit written comments to the City of Ashland Planning Division, 51 Winburn Way, Ashland, Oregon 97520 prior to 4:30 p.m. on the deadline date shown above.

Ashland Planning Division Staff determine if a Land Use application is complete within 30 days of submittal. Upon determination of completeness, a notice is sent to surrounding properties within 200 feet of the property submitting application which allows for a 14 day comment period. After the comment period and not more than 45 days from the application being deemed complete, the Planning Division Staff shall make a final decision on the application. A notice of decision is mailed to the same properties within 5 days of decision. An appeal to the Planning Commission of the Planning Division Staff's decision must be made in writing to the Ashland Planning Division within 12 days from the date of the mailing of final decision. (AMC 18.5.1.050.G)

The ordinance criteria applicable to this application are attached to this notice. Oregon law states that failure to raise an objection concerning this application, by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Department to respond to the issue precludes an action for damages in circuit court.

A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Division, Community Development & Engineering Services Building, 51 Winburn Way, Ashland, Oregon 97520.

If you have questions or comments concerning this request, please feel free to contact Aaron Anderson at 541-488-5305.

Exhibit 2

PRELIMINARY PARTITION PLAT

18.5.3.050

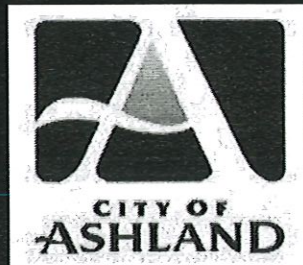
The approval authority shall approve an application for preliminary partition plat approval only where all of the following criteria are met.

- A. The future use for urban purposes of the remainder of the tract will not be impeded.
- B. The development of the remainder of any adjoining land or access thereto will not be impeded.
- C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.
- D. The tract of land has not been partitioned for 12 months.
- E. Proposed lots conform to the requirements of the underlying zone, per part 18.2, any applicable overlay zone requirements, per part 18.3, and any applicable development standards, per part 18.4 (e.g., parking and access, tree preservation, solar access and orientation).
- F. Accesses to individual lots conform to the standards in section 18.4.3.080 Vehicle Area Design. See also, 18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria.
- G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part 18.4, and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.
- H. Unpaved Streets.
 - 1. Minimum Street Improvement. When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.
 - 2. Unpaved Streets. The Public Works Director may allow an unpaved street for access for a land partition when all of the following conditions exist.
 - a. The unpaved street is at least 20-feet wide to the nearest fully improved collector or arterial street. The City may require the street to be graded (cut and filled) to its standard physical width, and surfaced as required in chapter 18.4.6 prior to the signature of the final partition plat by the City.
 - b. The centerline grade on any portion of the unpaved street does not exceed ten percent.
 - c. The final elevation of the street shall be established as specified by the Public Works Director except where the establishment of the elevation would produce a substantial variation in the level of the road surface. In this case, the slope of the lot shall be graded to meet the final street elevation.
 - d. Should the partition be on an unpaved street and paving is not required, the applicant shall agree to participate in the costs and to waive the rights of the owner of the subject property to remonstrate both with respect to the owners agreeing to participate in the cost of full street improvements and to not remonstrate to the formation of a local improvement district to cover such improvements and costs thereof. Full street improvements shall include paving, curb, gutter, sidewalks, and the undergrounding of utilities. This requirement shall be precedent to the signing of the final survey plat, and if the owner declines to so agree, then the application shall be denied.
- I. Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.
- J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.



Exhibit 3

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☐ I agree to the above terms and conditions

OK

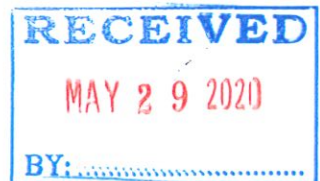


Exhibit 4, p1

From: **Maria Harris** maria.harris@ashland.or.us
Subject: RE: Application documents for PA-T1-2020-00109
Date: May 27, 2020 at 1:37 PM
To: Eric Elerath eelerath624@verizon.net
Cc: planning planning@ashland.or.us

Hello Eric,

The application we have on file is the minor land partition file that you linked to below. The approval criteria are the second page of the notice that you have also linked to below.

As stated on the notice above the map, written comments are due on May 29, 2020. Comments can be submitted by email to planning@ashland.or.us.

Please feel free to contact me if you need assistance or have further questions.

Best Regards,
Maria Harris, AICP
Planning Manager
City of Ashland, Community Development Department
20 E. Main St., Ashland, OR 97520
541.552.2045 Tel
800.735.2900 TTY
541.552.2050 Fax

This email transmission is official business of the City of Ashland, and it is subject to Oregon Public Records Law for disclosure and retention. If you have received this message in error, please contact me at 541.552.2045. Thank you.

From: Eric Elerath <eelerath624@verizon.net>
Sent: Wednesday, May 27, 2020 12:56 PM
To: planning <planning@ashland.or.us>; Maria Harris <maria.harris@ashland.or.us>
Cc: Aaron Anderson <aaron.anderson@ashland.or.us>
Subject: Application documents for PA-T1-2020-00109

[EXTERNAL SENDER]

Dear Planning

A copy of Notice of Application for Planning Action PA-T1-2020-00109 is attached. The next to last paragraph on p1 states:

"A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Division, Community Development & Engineering Services Building, 51 Winburn Way, Ashland, Oregon 97520."

However, the Ashland Planning Division on Winburn Way is closed and it appears to have been closed on May 15, the effective date the calendar began and the presumptive date the Notice was printed and distributed.

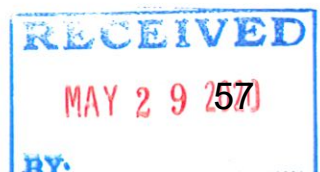


Exhibit 4, p2

A Planning staff person informed me that the application materials are available online.

Following links, I have been able to locate two documents: The attached Notice, at https://gis.ashland.or.us/arcgis/rest/services/planning/Planning_Action/MapServer/0/20412/attachments/25617

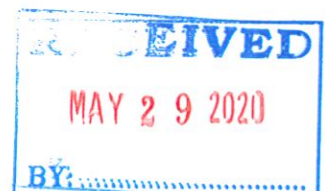
and a document entitled "Minor Land Partition" located here: https://gis.ashland.or.us/arcgis/rest/services/planning/Planning_Action/MapServer/0/20412/attachments/25616

Questions:

- 1) Could you please provide a link or links to the online Planning file(s) which include "A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria..."?
- 2) The Notice appears to be incorrect or out of date. Could you please reply with the correct date and time for reply? (Time received by staff on Winburn Way, postmark date and time, etc)
- 3) If the City is switching to online and electronic communication, can replies pursuant to this Notice be submitted by email instead of paper mail? If so, what email address should be used to reply, and what is the cutoff date for emails to be considered timely sent and received? Please clarify.

Thank you for your help!

Eric Elerath
419 Clinton st.



Rogue Planning & Development Services, LLC



Minor Land Partition

345 Clinton Street



Received 4.30.2020

Exhibit 5

Minor Land Partition

Property Address: 345 Clinton Street
Map & Tax Lots: 39 1E 04DB: Tax Lots: 401
Zoning: R-1-5
Adjacent Zones: R-1-5
Overlay Zones: Performance Standards Overlay
Water Resource Protection Zones
FEMA Floodplain
Ashland Modified Flood zone

Lot Area: 12.29 acres

Property Owner: Paul Mace and Kathleen Kahle
345 Clinton Street
Ashland, OR 97520

Planning Consultant: Amy Gunter
Rogue Planning & Development Services
33 N Central Avenue, Suite 213
Medford, OR 97501

Surveyor: LJ Friar and Associates
2714 N Pacific Hwy
Medford, OR 97501

Request:

A request for a minor land partition of an approximately 3.35-acre portion of a 12.29-acre parcel. The minor land partition is to allow for the divestment of a large, developable portion for a single-family residential zoned property.



Received 4/30/2020

Exhibit 5

Property Description:

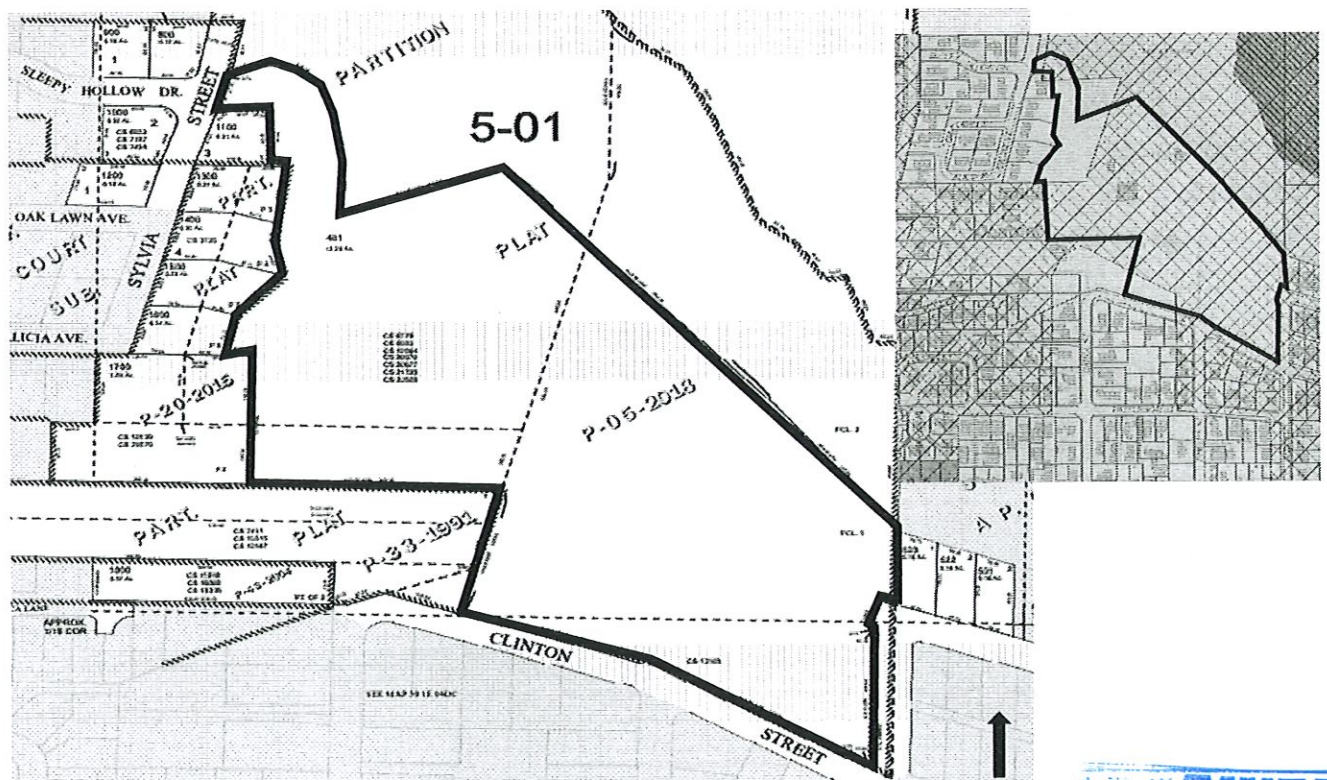
The 12.29-acre property is on the north side of Clinton Street. The property is occupied by a single-family residential home, a detached garage, and a pole barn. The residence is accessed via a paved, private driveway that extends from Clinton Street to the residence.

The subject property and the adjacent properties are R-1-5-P and are generally developed with single-family residences and their outbuildings.

Clinton Street, a neighborhood street is along the south property line. Ann Street and the stub of Briscoe Place, also neighborhood streets, are along the east property line. Ann Street, along the frontage of the property, and Briscoe Place were partially improved with the development as part of the Riverwalk Subdivision.

There are steep slopes on the west side of the property uphill to the properties further west that are developed with single-family residential homes and their accessory buildings. These properties are accessed from Sylvia Street and Sleepy Hollow Drive. Both are neighborhood streets, which are accessed from Oak Street further west. A portion of the subject property wraps around the Sylvia Street properties and connects to the intersection of Sylvia Street and Sleepy Hollow Drive.

The north property line abuts City of Ashland properties that are an extension of Riverwalk Park. Bear Creek is to the north, within the city parcels. The properties to the east within Riverwalk and to the south, across Clinton Street are developed with primarily single-family residences.



Received 4/30/2020

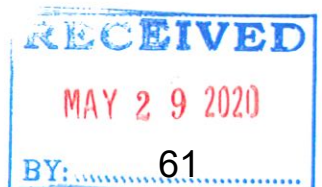


Exhibit 5

There are physical constraints on the northern portions of the property. These include steep slopes, the FEMA 100-year floodplain, FEMA 500-year floodplain, and Ashland Modified Flood zone for Bear Creek. Mook "Clear" Creek also traverses the property from north to south. According to the City of Ashland Water Resource Protection Zone maps, Mook Creek is an intermittent/ephemeral stream.

There are historical irrigation rights on the property. Over the years ponds for irrigation water storage have been created. Some of the pond areas have developed into wetlands. In addition to the ponds, according to the Local Wetlands Inventory (LWI), there is a potential wetland located to the east of the ponds on the property. Schott & Associates, Wetlands Biologist have been on-site and completed a delineation report. This report will be filed by the future developer(s).

The property has varying degrees of slope with a slight road slope along Clinton Street and the driveway. There are minor variations across the larger property area with an average slope approximately four percent downhill from the southwest to the northeast. The west side of the property behind the Sylvia Street lots is steeply sloped up to the adjacent properties to the west.

The property is subject to solar setback standard A.

There are smaller stature trees either on or directly adjacent to the subject property.

Retention of the highest number of trees in the landscape areas is an important aspect of the project and as many trees as possible will be able to be retained and still provide a buildable area for a new residential.

Clinton Street is paved with partial street improvements along both sides of the street that include curb, gutter, sidewalk and park row. Ann Street to the east and Briscoe Place are improved with curb, gutter, park row and sidewalk on the east side, the street side abutting the property has curb and gutter, no park row and sidewalk. The private drive is paved.

Proposal:

The request is to divide the property into two parcels.

Proposed Parcel 1 is 8.36 acres. This parcel would retain the residence, garage, and pole barn at 345 Clinton Street. The vehicular access will be retained from Clinton Street utilizing the private driveway. The east side of the existing private driveway is the approximate east property line of Parcel 1.

Proposed Parcel 1 has a lot width of more than 100-feet, along Clinton Street, exceeding minimum lot width in the zone. The lot depth exceeds minimum lot depth in the zone. The parcel substantially exceeds the minimum lot area of 5,000 square feet required in the zone.



Received 4:30.2020

Exhibit 5

Proposed Parcel 2 is a vacant, developable, approximately 3.35-acre parcel northwest of the intersection of Clinton Street and Ann Street. The parcel is proposed to have 358.32 feet of frontage along Clinton Street and extends 240 feet along Anne Street. Briscoe Place T's into the east side of Proposed Parcel 2.

This parcel is intended to be sold and developed by others as a future single-family residential development, on outright permitted use in the zone.

Applicant can not guarantee this. Once sold, compliance will be up to someone else.

The area for future development has the potential base density of approximately 15, single-family dwelling units. The Ashland Municipal Code The future development of either parcel will demonstrate compliance with the city standards.

Along the north portion of proposed Parcel 2, .545 acres are within the Bear Creek floodplain. The floodplains and wetlands will be further evaluated and planned for as required by state and local ordinances and future impacts mitigated through the site development of the residential homes. There is adequate area for the development of residential lots and the preservation of the significant natural features.

Findings addressing the criteria from the Ashland Municipal Code can be found on the following pages. The applicant's findings are in Calibri font and the criteria are in Times New Roman font.

Attachments:

Proposed Tentative Plat

FINDINGS OF FACT

Received 4/30/2020



Exhibit 5

18.5.3.050 Preliminary Partition Plat Criteria

A. The future use for urban purposes of the remainder of the tract will not be impeded.

Finding:

Future urban uses are not impeded with the proposed two parcel partition. The property is zoned R-1-5 and is within the Performance Standards Overlay. Development of the property as single-family residences is a permitted use in the zone.

The proposal provides for a 3.35-acre parcel of developable land at the intersection of two, city streets (Parcel 2). A third street, Briscoe Place, stubs into the property approximately 210-feet north of the Ann Street and Clinton Street intersection. These streets will provide primary access to future residential uses.

Proposed Parcel 1 has several physical constraints. Parcel 1 is also developed with the property owner's residence. There is a developable area in the southeast corner that has a frontage of 292.87 feet along Clinton Street that will remain as part of Parcel 1. This partition does not impede the future development of the property where not prevented or restricted due to the property's physical constraints.

B. The development of the remainder of any adjoining land or access thereto will not be impeded.

Finding:

The adjacent properties are mostly developed as single-family residence type developments or the land is within the floodplain, wetland, steep slopes, or treed and limited development area is present. The proposal will not impede access to adjoining lands.

C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.

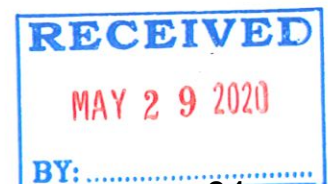
This appears to be a problem. Based on the text on the Tentative Partition Plat, final page, there appear to be easements on the property whose locations can't be identified.

Finding:

There are no City adopted neighborhood or district plans that affect the property. To the applicant's knowledge, there are not previous approvals for the subject properties that would impact the proposal. The properties to the east were developed as part of the Riverwalk Subdivision.

D. The tract of land has not been partitioned for 12 months.

Finding:



Received 4/30/2020

Exhibit 5

The tract of land has not been partitioned for the past 12 months.

E. Proposed lots conform to the requirements of the underlying zone, per part 18.2, any applicable overlay zone requirements, per part 18.3, and any applicable development standards, per part 18.4 (e.g., parking and access, tree preservation, solar access, and orientation).

This "Finding" addresses future development that isn't described anywhere. Predictions of future possibilities appear to be legal opinions, not facts.

Finding:

The proposal complies with the requirements of the underlying zone. Both parcels will have substantially more than 7,500 square feet of area and greatly exceed the minimum lot dimensions.

Parcel 1 is an 8.36-acre parcel that has FEMA floodplain, Ashland Adopted Floodplain, wetland area, and existing residential development. The floodplain is mapped on the tentative survey plat.

Parcel 2 is proposed to be +/- 3.35 -acre acres in area. The future urbanization plan for the proposed Parcel 2 will conform to the standards of the Performance Standards Subdivision, water resource and physical and environmental constraint and natural area preservation. The future development will demonstrate compliance with parking, access, solar access, and orientation of the residences towards the future public streets.

The property is within the Physical and Environmental Constraint Overlay from AMC 18.3.9. There are wetland areas and Floodplains. These have been mapped. A preliminary wetlands delineation report has been completed but not filed with the state. The wetland has identified a wetland along the north property line of proposed Parcel 2. The floodplain boundaries are mapped.

This doesn't look like a finding of fact, as it describes future development over which the current applicant has no control. Predictions of future possibilities appear to be legal opinions, not facts.

18.4.6: Public Facilities: As allowed in AMC 18.4.6.030, the request is to sign a waiver of consent to participate in the costs of a Local Improvement District for both Clinton, Ann, and Briscoe Place. These streets are not fully improved, but the future proposal to develop the property would install improvements. When Clinton Street and Ann were developed, the property owners paid for one half of the cost of the improvements. At that time, there were utilities stubbed at the end of Briscoe Place. A public utility easement extends from the end of Briscoe Place to the north towards Bear Creek.

No new public utilities are proposed to be installed to service proposed Parcel 2 as the future development utility sizing will be dependent upon the number of units, locations, etc.

18.4.8: Solar Setback Standards:

Future development will demonstrate compliance with Solar Setback Standard A.

F. Accesses to individual lots conform to the standards in section 18.4.3.080 Vehicle Area Design. See also, 18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria.

Received 4:30.2020



Exhibit 5

Finding:

The driveway for Parcel 1 is proposed to remain. No new access for proposed Parcel 2.

G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part 18.4 and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.

This doesn't appear to be a finding of fact, as it describes future development over which the current applicant has no control. Predictions of future possibilities appear to be legal opinions, not facts.

Finding:

↓ *No new streets are proposed at this time. Future streets for the development of Parcel 2 will demonstrate compliance with the standards from 18.4.6.*

H. Unpaved Streets.

Finding:

All streets are paved.

I. Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.

This doesn't appear to be a finding of fact, as it describes future development over which the current applicant has no control. Predictions of future possibilities appear to be legal opinions, not facts.

Finding:

↓ *At present, there are no alleys. The future development of Parcel 2 will likely include alleys for access to the future individual lot development.*

J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained before development.

This doesn't appear to be a finding of fact, it appears to be a legal opinion

Finding:

↓ *No state or federal permits are required to partition.*

K. A partition plat containing one or more flag lots shall additionally meet the criteria in section 18.5.3.060.

Finding:

No flag lots area proposed as part of the partition.



Received 4/30/2020

Aaron Anderson

From: dollytravers <dollytravers@earthlink.net>
Sent: Friday, May 29, 2020 1:04 PM
To: planning
Subject: PA-T1-2020-00109

[EXTERNAL SENDER]

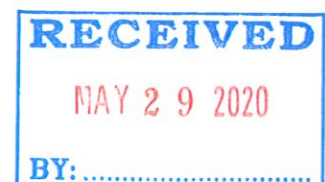
Ashland City Planning Commission:

Re: Notice of Application for Planning Action PA-T1-2020-00109

I am concerned about four things:

1. The process for this planning action seem very questionable to me. For example, I did not have access to all the documents and evidence because 51 Winburn Way was closed. I was not able to inspect the documents and the information on the website was not complete. I have begun to question the thoroughness of process, procedures, and sharing information from the Planning Commission.
2. The amount of natural underground water that flows somewhat parallel and a bit to the the east beneath Ann Street onto the property in question.
3. The certainty that the single family density would indeed be transferred unaltered to the two separated parcels.
4. I expect that the Planning Commission has pristine procedures, process, and provides access to all information and documents in order that the public has the whole picture of the proposal and can reflect and provide relevant feedback.

Regards,
Dolly Travers
426 Clinton Street
Ashland, OR 97520



Aaron Anderson

From: sparco@mind.net
Sent: Friday, May 29, 2020 4:53 PM
To: planning; hilligol@sou.edu
Subject: Written Comments on Planning Action PA-T1-2020-00109
Attachments: PA-T1-2020-00109 Public Input Hilligoss .docx

[EXTERNAL SENDER]

Dear Ashland Planning Department,

Please find the attached written comments on Planning Action PA-T1-2020-00109.

Thank you for your kind consideration.

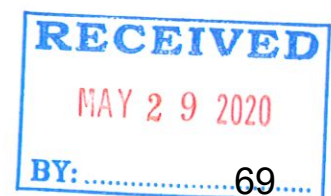
Sincerely,

Larry and Linda Hilligoss

534 Ann St.

Ashland, Oregon 97520

541-821-5522



TO: Ashland Planning Department
FROM: Larry and Linda Hilligoss. 534 Ann St. Ashland, Oregon. 97520
Date: May 29, 2020
RE: Planning Action: PA-TI-2020-00109. Tax Lot 401. Map# 391E04DB

We have lived in Ashland for almost 40 years and in the Riverwalk neighborhood since 2010. Our home is located on the corner of Clinton and Ann St, essentially across the street from the property at 345 Clinton St. We will be directly impacted by the development of 15 single family homes on the proposed 3.35-acre parcel situated in the southeast corner of the Tax Lot #401.

We would like to express several concerns and recommendations related to this Planning Action.

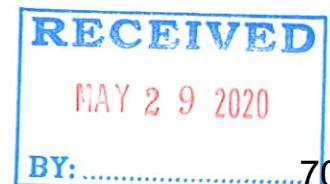
1. Concern: Accessibility of planning and assessment documents.

- Given the complexities of the Covid-19 situation and compliance to the Governor's stay-at-home orders resulting in the closure of City offices, there have been limited opportunities to explore the documents associated with this planning action.
- **Recommendation: This Planning Action should be extended for further information gathering (at least 60 days) with all documents made available both in-person and on-line and transparent for public inspection prior to any action taken.**

2. Concern: Completeness of the application and associated documents.

- Despite the information stated on the *Notice of Application* posted on the corner of Ann and Clinton streets, the documents available on-line do not cover all of the relevant information needed for informed input and review by the community, adjacent neighbors, and the Planning Commission!
- **Recommendation: Delay Planning Action until ALL reporting documents related to subdivision development are complete AND available for public review.** This could include those related to soil (permeability and percolation tests), geology/hydrology (especially related to underground springs), utilities, easements, and others. Note that on the Tentative Partition Plat (04/23/20) the professional surveyor could not locate the easements. In addition, if there will be an entrance to the proposed subdivision off of Ann St. (as indicated) a complete report of traffic flow and carrying capacity of Ann St. should be completed since Hersey St. to Ann St. would likely be the most direct approach to the proposed homes. Ann Street is narrow with parking allowed on only the east side. It is also a very steep street with cars often exceeding the speed limit as they head north (down the hill) and they tend to over-accelerate going up the hill (south). It is a challenge to navigate with ice and snow. There have been several accidents on the corner of Clinton/Ann. Since the proposed building parcel is adjacent to several flood plain and wetlands designations, it seems odd that the applicant would note

Received 5.29.2020



that there are no reports pending from city, state and federal agencies. Could this be true? Is an Environmental Impact statement required?

3. Concern: Suitability of land for building.

- Based on personal experiences of standing water and soil issues resulting in serious foundation and landscape problems with our 15 year old home at 534 Ann St. (in Riverwalk), we question the appropriateness of building in areas known to be (or adjacent to) potential wetlands (or designated wetlands). Our home is officially NOT in a wetland area or floodplain and we still have issues because of the soils and springs in this area. Let's work together to avoid future lawsuits directed at the builder and/or the City of Ashland.
- **Recommendation: Delay any Planning Action until detailed reports are complete.** Any preliminary action would be inappropriate and misleading to a builder. Please be transparent and submit all reports for review.

4. Concern: Density Transfer.

Special Note: The willingness of the applicant to sell a parcel (11.01 acres) of Tax Lot 401 to the City of Ashland for \$380,000 to add to a beautiful Riverwalk Park and trail should be commended! The majority of the portion was in the FEMA 100-Year Flood Plain. This land will be appreciated and enjoyed by both wild animals and humans!

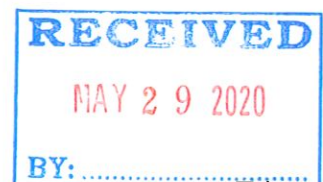
- According to a document on the City of Ashland Parks & Recreation website from Parks Director, Michael Black, dated December 5, 2017, the seller (Paul Mace & Kathleen Kahle) have the right to transfer the density to a parcel on the same property.
- **Questions:** Is there a Density Transfer option as a result of this sale or was that option deleted? If so, will this transfer of density be used in the 3.35 acre parcel considered in this Planning Action? Will the 15 single family homes proposed be increased due to the Density Transfer option? Would a builder "down-the-road" have an option to increase the number of homes? If so – how many additional homes would be considered? This is confusing and not addressed by the applicant in the proposal.

The City of Ashland typically takes great care to professionally research and present planning actions with attention to detail. It is disappointing to see so many "gaps" in this application process. Again, because of Covid-19, please extend the review by at least 60 days.

Thank you very much for your kind consideration.

Larry and Linda Hilligoss

Received 5.29.2020



From: [Diana Standing](#)
To: [planning](#)
Subject: Division of Paul Mace and Kathleen Kahle's of 345 Clinton Street property
Date: Tuesday, May 26, 2020 10:30:15 AM

[EXTERNAL SENDER]

To: Planning Commission

Twenty years ago when we bought our home on Clinton Street we were told by the realtor that the acreage across the Street was flood plain and no one could build on it. Paul Mace and Kathleen Kahle told us within a year of us moving in, that they had asked the city to allow them to build a few houses bordering Clinton Street at our end of their property. They were told it is a flood plain. How did that that acreage with its ponds and wildlife suddenly not become a floodplain? What constitutes a flood plain?

Three years after we moved to Clinton Street, the building of homes began in Riverwalk. And even though Paul and Kathleen's property was considered a flood zone, we knew it would be a matter of time before that acreage would also have homes.

People in this neighborhood dealt with 4 months of increased traffic due to the improvements on Hersey Street. It was very disruptive to our lives. And now the thought of building a subdivision at this time of the virus, makes many of us uneasy. An increase in the number of homes in this area is of concern. Here are some of the reasons:

1. Increased traffic would jeopardize the safety of many neighborhood children who ride their bikes, scooters and skateboards.
2. Increased traffic would create considerably more noise.
3. There is a blind intersection at the corner of Ann & Clinton Streets. If this is used as an entrance to the buildable parcel/parcels this could increase accidents.
4. The acreage is a riparian zone. There are ponds, the water table is high. The area is home to trees, plants and food to many animals including ducks, geese, song birds, quail, coyote, fox, pheasants, to name a few.

We need a balance between the natural world and homes.

When Riverwalk was proposed, neighbors worked with the developers. It turned out to a nice addition to our neighborhood. We hope this history of all of us working together can continue if and when this parcel/parcels is divided and a planner is deciding its future, which affects our future.

Thank you for your time.
Diana Standing
Bob Weibel

From: [Lindsey Findley](#)
To: [planning](#)
Subject: PA-T1-2020-00109
Date: Tuesday, May 26, 2020 2:21:05 PM

[EXTERNAL SENDER]

Please hear my express concern after learning about the proposed building site for Paul Mace and Kathleen Kahle. I bought my home in the 1980s. After finally retiring from nursing at RVMC, I've moved back into my home with my husband. I now learn the property across the street is to become 'Single Family Residential' Zoning R-1-5: Assessor's Map # 391E04DB; Tax Lot 401. I'm issuing a major complaint to Aaron Anderson. HOPING TO BE HEARD!!

Sent from my iPhone

From: [Ann Barton](#)
To: [planning](#)
Cc: [Becca McLennan](#)
Subject: Planning action PA-T1-2020-00109
Date: Sunday, May 24, 2020 2:42:49 PM

[EXTERNAL SENDER]

Dear Ashland Planning Department,

I'd like to state my opinion about this piece of property.

I live above Clinton on Patterson st. I look at this lovely piece of property from my windows (including my bedroom) and my deck. It is filled with wild life and beauty. It is next to a riparian zone which is important to our environment and the health of Bear creek.

I know that this partition of property is the first stage in developing and turning this field into yet another development. I think the timing is totally wrong. We are heading into the unknown with at least a recession and probably a depression ahead of us. Not to mention a potentially heavy smoke year as we are in a drought. Our local economy has been hit hard as well, with no tourist industry for the unforeseeable future, we don't know how this will effect the popularity of this town. We do know the smoky summers has been a problem for our local economy.

Also as my partner and I are in the vulnerable group for Covid we are staying home 90% of the time with an uncertain future for when it will be safe for us to go out again as Ashland doesn't have testing and very few people are wearing masks. Since I am home now so much it would be very upsetting to have to listen to development for what? years?

Last week when the city was working on Clinton it was very loud and disturbing, it jangled my nerves. This noise will be the same if they develop this property, but it will be all day long! I'm very nervous about it. So much so I'm thinking of selling my house.

Ideally I don't think this piece of property should ever be developed. We are Losing wildlife habitat rapidly. The WWF says wildlife habitat loss is the main threat to 85% of all species. That includes us because we depend on those species.

https://wwf.panda.org/our_work/wildlife/problems/habitat_loss_degradation/

Why destroy a land and wild life when we don't even know if those houses will get sold. We live in a time of the great unknown. It isn't a time to act as if it's normal. It isn't now and won't ever be the way it was.

Please I ask you to hold off and be smart about our uncertain future, the health of our wildlife and those of us that will be most directly affected.

I know that many in my neighborhood are in the same situation as we are and have the same views.

I'd like to be updated on the status of this property.

Thank You
Sincerely,
Ann Barton

From: [Rebecca McLennan](#)
To: [planning](#)
Subject: Proposed subdivision on Clinton
Date: Sunday, May 24, 2020 5:58:13 PM

[EXTERNAL SENDER]

To whom it may concern:

It seems like very bad planning to consider a major subdivision at this time. These are incredibly uncertain times and Ashland is affected on multiple levels: The virus and probable smoke in the valley this summer will likely lead to a recession in here; the country as we know is quickly headed in that direction. The impact on downtown businesses has yet to be assessed. Most likely many will close their doors. The Shakespeare Festival as we all know will be dark for at least this year, likely longer.

And then there's yet another open space going away just to put some money in someone's pocket. Doesn't seem right.

As well, many people in this neighborhood are elderly and already stressed dealing with the virus and social isolation. And, to add the noise and dust from building seems cruel and an invasion of lifestyles.

I would like to be kept informed about this situation.

Sincerely,

Rebecca McLennan
537 Phelps St
Ashland, OR
541-292-9888

Sent from my iPhone

Aaron Anderson

From: Gordon Longhurst <gordon@budget.net>
Sent: Thursday, May 21, 2020 4:47 PM
To: Aaron Anderson
Subject: 345 Clinton Street Asland OR

[EXTERNAL SENDER]

Hello Aaron,

Thanks for getting the Planning application to me for the Minor Land Partition at 345 Clinton Street.
Please enter my comments below in the record or tell me if there is a form or format that is required besides this e-mail.

The Minor Land Partition is allowed and apparently meets all the criteria to be approved so I have no specific comments regarding that land use action.

However the intent of the action is apparently to allow for future development of the 3.35 acre parcel and I would like to address that potential though
I realize that there will be a different application for any development and opportunity to comment.

There was a subdivision plat that had been submitted a couple of years ago for the property that was apparently withdrawn. The major concern I had with that plan was that the main egress from the subdivision would direct the traffic up (and down) Ann St to the intersection with Hersey St.
There are two significant flaws with this design and I would like to point them out so that they will be considered at the next stage of any planning for the property.

The first and biggest issue is the intersection off Ann and Hersey, Because Hersey meets Ann at the top of a hill, vehicles at the stop sign on Ann cannot see approaching vehicles until they crest the hill and are less than a hundred ft from the intersection. Cars travel (too) fast on Hersey, especially since it has been repaved, and close calls at that intersection are not uncommon. Adding the traffic generated by a subdivision will compound an existing problem.

The second issue is that Ann St is a very narrow street. Parking is prohibited on one side, but people often ignore this, and UPS and Fedex trucks, garbage trucks, etc create unsafe conditions or traffic jams .

My hope would be that the subdivision layout would direct the traffic generated by it to Phelps St which is much wider and has an intersection with Hersey that has good visibility and is much safer.

I realize that these issues do not directly bear on the land use action being proposed at this time, but my hope is that both Planning staff and any developer will consider these issues from the beginning rather than have to deal with them down the line when they would be a complication.



Gordon Longhurst
515 Ann St

gordon@gordonlonghurst.com or gordon @budget.net

541 659 8584



371 Tudor Street
Ashland, OR 97520

Planning Department, City of Ashland
51 Winburn Way
Ashland OR 97520

Dear Planning Department:

My comments related to planning action PA-T1-2020-00107 are as follows. I have faith that City of Ashland Parks and Recreation will take all possible care as the group constructs a pedestrian boardwalk/bridge in a wetland.

However, I would like to express my concern that all activities stay not only as far away from streams and wetlands "as practicable" but will be proven to leave the wetland and natural environment almost undisturbed. I am hoping that this fact-based guarantee is represented in the planning documents. The Water Resources Protection Zone should remain the priority, and this includes not only the construction phase but the post-construction phase as people use the platform.

I am particularly concerned about the disruption to both flora and fauna by any construction project in this area, especially disruption to the smallest inhabitants including bees and frogs, along with native plants that prevent erosion into the stream and wetlands. This may not be practicable, but bulldozers, for example, should not be allowed and any construction should be completed with the gentlest processes. I know that the experts in the Parks and Recreation department know this, but I wanted to express my concern that any construction in this area be carefully done.

Thank you.

Sincerely,

Homeowner, 371 Tudor Street ("Quiet Village")
Ashland, OR 97601

RECEIVED
MAY 20 2020
City Of Ashland

Aaron Anderson

From: Shelleerae <shelleerae@fastmail.fm>
Sent: Tuesday, May 19, 2020 11:59 AM
To: planning
Cc: Mitchell Christian
Subject: Clinton Street property development...

[EXTERNAL SENDER]

Dear Ashland Planning Department,

We are writing in reference to PA-T1-2020-00109 (assessor's map #391E04DB).

The above referenced property is across the street from our home. The proposed building site is a wildlife refuge for many animals and birds. It is also the place on Clinton street where many walkers stop to enjoy the quail, geese, birds, deer and occasional foxes.

On said property, the proximity to the creek is a riparian zone just downstream from the Nature Center on Mountain Avenue. We would like to remind the city that when the home was purchased in 1983, the homeowners were told that the field across the street was in the 100-year flood plain. In this new era of climate change, flood plains and nature refuges should take precedence over new housing developments.

The destruction of nature here will not only take away our favorite morning and evening meditation sight from the windows of our home, but will displace many of nature's 4-leggeds and winged friends. Yes, it will provide more homes but with that comes more noise, more traffic and evening lights.

Over the years, we have enjoyed the open-space property in question and the quiet setting it brings to our home. It has given us wonderful views of deer grazing and playing and of the hills beyond. We find these views priceless.

Please consider keeping nature alive here...

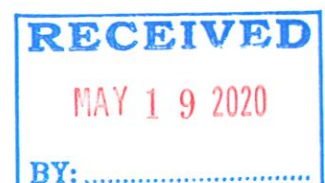
Perhaps there is another choice? What if the Ashland Parks Dept were to purchase the property from Paul Mace at a highly discounted rate? Mr. Mace could then use the sale as a write-off and the parks dept could preserve the property as park lands.

Sincerely,
Clinton street neighbors

Shellee rae
Mitchell Christian

541.482.2211
[My YouTube Channel](#)
www.shelleerae.com

Our seeming realities are only the dimly lit surface of an incredible and vast sea of consciousness.





NOTICE OF APPLICATION

PLANNING ACTION: PA-T1-2020-00109

SUBJECT PROPERTY: 345 Clinton

OWNER/APPLICANT: Paul Mace & Kathleen Kahle / Rogue Planning & Development

DESCRIPTION: A request land use approval for a two-lot partition of a 12.29-acre lot. The Purpose of the partition is to allow for the divestment of a large, developable portion for a single-family residential zoned property. The tentative partition plat submitted with the application indicate that the two resultant parcels will be 8.943 ac. and 3.35 ac with the smaller parcel situated in the southeast of the parent parcel.

COMPREHENSIVE PLAN DESIGNATION: Single Family Residential; **ZONING:** R-1-5; **ASSESSOR'S MAP #:** 391E04DB; **TAX LOT:** 401

NOTICE OF COMPLETE APPLICATION: May 15, 2020

DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS: May 29, 2020



The Ashland Planning Division Staff has received a complete application for the property noted above.

Any affected property owner or resident has a right to submit written comments to the City of Ashland Planning Division, 51 Winburn Way, Ashland, Oregon 97520 prior to 4:30 p.m. on the deadline date shown above.

Ashland Planning Division Staff determine if a Land Use application is complete within 30 days of submittal. Upon determination of completeness, a notice is sent to surrounding properties within 200 feet of the property submitting application which allows for a 14 day comment period. After the comment period and not more than 45 days from the application being deemed complete, the Planning Division Staff shall make a final decision on the application. A notice of decision is mailed to the same properties within 5 days of decision. An appeal to the Planning Commission of the Planning Division Staff's decision must be made in writing to the Ashland Planning Division within 12 days from the date of the mailing of final decision. (AMC 18.5.1.050.G)

The ordinance criteria applicable to this application are attached to this notice. Oregon law states that failure to raise an objection concerning this application, by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Department to respond to the issue precludes an action for damages in circuit court.

A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Division, Community Development & Engineering Services Building, 51 Winburn Way, Ashland, Oregon 97520.

If you have questions or comments concerning this request, please feel free to contact Aaron Anderson at 541-488-5305.

PRELIMINARY PARTITION PLAT
18.5.3.050

The approval authority shall approve an application for preliminary partition plat approval only where all of the following criteria are met.

- A. The future use for urban purposes of the remainder of the tract will not be impeded.
- B. The development of the remainder of any adjoining land or access thereto will not be impeded.
- C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.
- D. The tract of land has not been partitioned for 12 months.
- E. Proposed lots conform to the requirements of the underlying zone, per part 18.2, any applicable overlay zone requirements, per part 18.3, and any applicable development standards, per part 18.4 (e.g., parking and access, tree preservation, solar access and orientation).
- F. Accesses to individual lots conform to the standards in section 18.4.3.080 Vehicle Area Design. See also, 18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria.
- G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part 18.4, and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.
- H. Unpaved Streets.
 - 1. Minimum Street Improvement. When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.
 - 2. Unpaved Streets. The Public Works Director may allow an unpaved street for access for a land partition when all of the following conditions exist.
 - a. The unpaved street is at least 20-feet wide to the nearest fully improved collector or arterial street. The City may require the street to be graded (cut and filled) to its standard physical width, and surfaced as required in chapter 18.4.6 prior to the signature of the final partition plat by the City.
 - b. The centerline grade on any portion of the unpaved street does not exceed ten percent.
 - c. The final elevation of the street shall be established as specified by the Public Works Director except where the establishment of the elevation would produce a substantial variation in the level of the road surface. In this case, the slope of the lot shall be graded to meet the final street elevation.
 - d. Should the partition be on an unpaved street and paving is not required, the applicant shall agree to participate in the costs and to waive the rights of the owner of the subject property to remonstrate both with respect to the owners agreeing to participate in the cost of full street improvements and to not remonstrate to the formation of a local improvement district to cover such improvements and costs thereof. Full street improvements shall include paving, curb, gutter, sidewalks, and the undergrounding of utilities. This requirement shall be precedent to the signing of the final survey plat, and if the owner declines to so agree, then the application shall be denied.
- I. Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.
- J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.



City of Ashland
Community Development Department
51 Winburn Way
Ashland, OR 97520
Telephone: 541-488-5305
Inspection Line: 541-552-2080

PERMIT NUMBER

PA-T1-2020-00109

Apply Date: 4/30/2020

Plan Type: Type I Planning Action**Work Class: Type I Planning Action**

Map & Tax Lot	Property Address
391E04DB401	345 Clinton St

Owner Information	Applicant Information
Owner: Paul/Kathleen Mace/Kahle Owner 345 Clinton St Address: Ashland, OR 97520 Phone: (541) 941-9315	Applicant: Rogue Planning and Development Applicant 33 N Central Ave 213 Address: Medford, OR 97501 Phone: (541) 951-4020

Project Description
MLP-2 Lots

Fees	
Fee Description:	Amount:
Land Partition (Type I)	\$1,237.00

Applicant: _____

Date: _____

Total Fees:	\$1,237.00
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Received 4.30.2020**83**



Planning Division
51 Winburn Way, Ashland OR 97520
541-488-5305 Fax 541-488-6006

ZONING PERMIT APPLICATION

FILE # PA-T1-2020-00109

DESCRIPTION OF PROJECT MINOR LAND PARTITION - 2 LOTS

DESCRIPTION OF PROPERTY

Pursuing LEED® Certification? ☐ YES ☒ NO

Street Address 345 CLINTON STREET

Assessor's Map No. 39 1E 04DB Tax Lot(s) 401

Zoning R-1-5-P Comp Plan Designation Single-Family Residential

APPLICANT

Name Rogue Planning & Development Services LLC Phone 541-951-4020 E-Mail amygunter.planning@gmail.com

Address 33 N Central Avenue, Suite 213 City Medford Zip 97501

PROPERTY OWNER

Name Paul Mace and Kathleen Kahle Phone 541-941-9315 E-Mail katkahle@gmail.com / paul.mace@gmail.com

Address 345 CLINTON STREET City Ashland Zip 97520

SURVEYOR, ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, OTHER

Title Surveyor Name L.J. Friar & Associates Phone 541-772-2782 E-Mail ljfriarandassociates@charter.net

Address 2714 N. Pacific Hwy City Medford Zip 97501

Title _____ Name _____ Phone _____ E-Mail _____

Address _____ City _____ Zip _____

I hereby certify that the statements and information contained in this application, including the enclosed drawings and the required findings of fact, are in all respects, true and correct. I understand that all property pins must be shown on the drawings and visible upon the site inspection. In the event the pins are not shown or their location found to be incorrect, the owner assumes full responsibility. I further understand that if this request is subsequently contested, the burden will be on me to establish:

- 1) that I produced sufficient factual evidence at the hearing to support this request;
- 2) that the findings of fact furnished justifies the granting of the request;
- 3) that the findings of fact furnished by me are adequate; and further
- 4) that all structures or improvements are properly located on the ground.

Failure in this regard will result most likely in not only the request being set aside, but also possibly in my structures being built in reliance thereon being required to be removed at my expense. If I have any doubts, I am advised to seek competent professional advice and assistance.

Amy Gunter
Applicant's Signature

April 16, 2020
Date

As owner of the property involved in this request, I have read and understood the complete application and its consequences to me as a property owner. Kathleen Kahle

Kathleen Kahle (Apr 24, 2020)

Apr 24, 2020

Property Owner's Signature (required)

Apr 30, 2020
Date

[To be completed by City Staff]

Date Received 4.30.2020 Zoning Permit Type Type 1 Filing Fee \$ 1237.00

Received 4.30.2020

OVER ►►

84

G:\comm-dev\planning\Forms & Handouts\Zoning Permit Application.doc

ZONING PERMIT SUBMITTAL REQUIREMENTS

- ✓ APPLICATION FORM must be completed and signed by both applicant and property owner.
- ✓ FINDINGS OF FACT – Respond to the appropriate zoning requirements in the form of factual statements or findings of fact and supported by evidence. List the findings criteria and the evidence that supports it. Include information necessary to address all issues detailed in the Pre-Application Comment document.
- ✓ 2 SETS OF SCALED PLANS no larger than 11"x17". Include site plan, building elevations, parking and landscape details. (Optional – 1 additional large set of plans, 2'x3', to use in meetings)
- ✓ FEE (Check, Charge or Cash)
- ☐ LEED® CERTIFICATION (*optional*) – Applicant's wishing to receive priority planning action processing shall provide the following documentation with the application demonstrating the completion of the following steps:
 - Hiring and retaining a LEED® Accredited Professional as part of the project team throughout design and construction of the project; and
 - The LEED® checklist indicating the credits that will be pursued.

NOTE:

- Applications are accepted on a first come, first served basis.
- Applications will not be accepted without a complete application form signed by the applicant(s) AND property owner(s), all required materials and full payment.
- All applications received are reviewed for completeness by staff within 30 days from application date in accordance with ORS 227.178.
- The first fifteen COMPLETE applications submitted are processed at the next available Planning Commission meeting. (Planning Commission meetings include the Hearings Board, which meets at 1:30 pm, or the full Planning Commission, which meets at 7:00 pm on the second Tuesday of each month. Meetings are held at the City Council Chambers at 1175 East Main St).
- A notice of the project request will be sent to neighboring properties for their comments or concerns.
- If applicable, the application will also be reviewed by the Tree and/or Historic Commissions.

Rogue Planning & Development Services, LLC



Minor Land Partition

345 Clinton Street

Minor Land Partition

Property Address: 345 Clinton Street
Map & Tax Lots: 39 1E 04DB: Tax Lots: 401
Zoning: R-1-5
Adjacent Zones: R-1-5
Overlay Zones: Performance Standards Overlay
Water Resource Protection Zones
FEMA Floodplain
Ashland Modified Flood zone

Lot Area: 12.29 acres

Property Owner: Paul Mace and Kathleen Kahle
345 Clinton Street
Ashland, OR 97520

Planning Consultant: Amy Gunter
Rogue Planning & Development Services
33 N Central Avenue, Suite 213
Medford, OR 97501

Surveyor: LJ Friar and Associates
2714 N Pacific Hwy
Medford, OR 97501

Request:

A request for a minor land partition of an approximately 3.35-acre portion of a 12.29-acre parcel. The minor land partition is to allow for the divestment of a large, developable portion for a single-family residential zoned property.

Property Description:

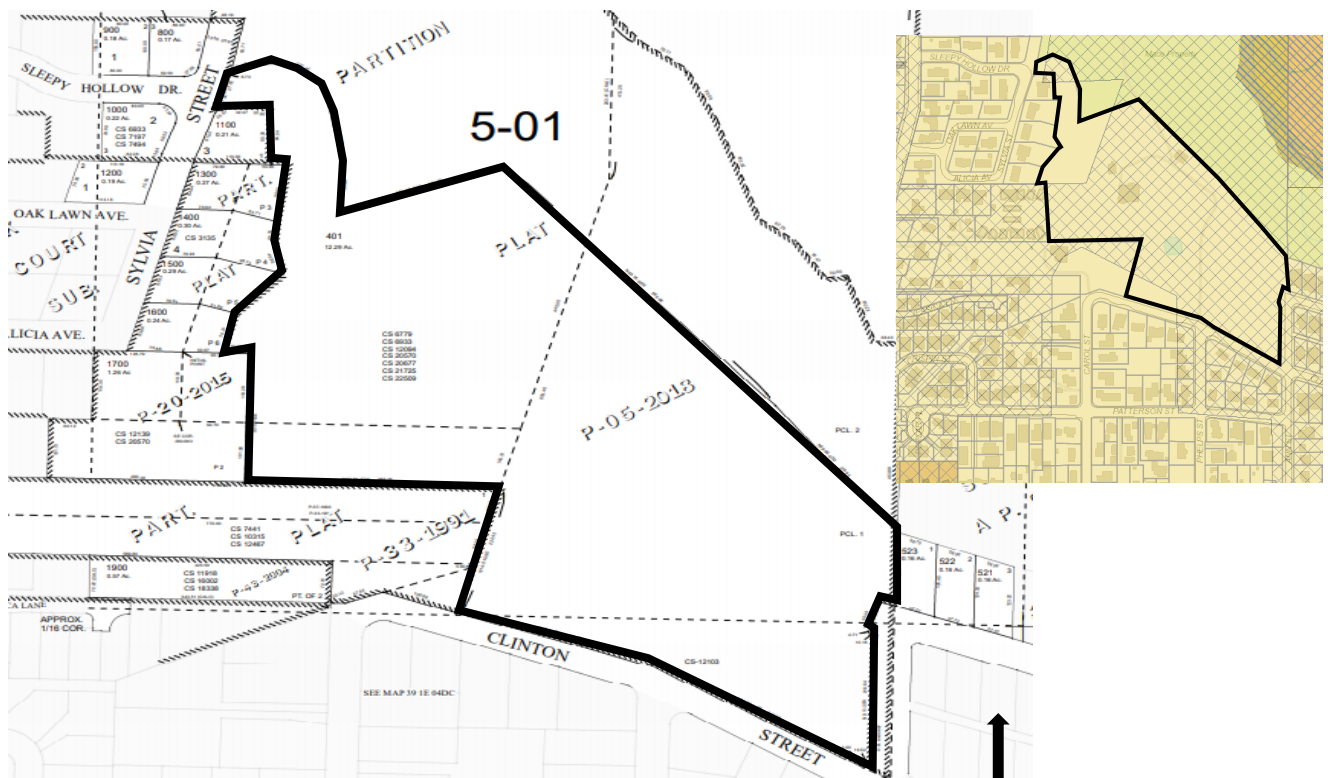
The 12.29-acre property is on the north side of Clinton Street. The property is occupied by a single-family residential home, a detached garage, and a pole barn. The residence is accessed via a paved, private driveway that extends from Clinton Street to the residence.

The subject property and the adjacent properties are R-1-5-P and are generally developed with single-family residences and their outbuildings.

Clinton Street, a neighborhood street is along the south property line. Ann Street and the stub of Briscoe Place, also neighborhood streets, are along the east property line. Ann Street, along the frontage of the property, and Briscoe Place were partially improved with the development as part of the Riverwalk Subdivision.

There are steep slopes on the west side of the property uphill to the properties further west that are developed with single-family residential homes and their accessory buildings. These properties are accessed from Sylvia Street and Sleepy Hollow Drive. Both are neighborhood streets, which are accessed from Oak Street further west. A portion of the subject property wraps around the Sylvia Street properties and connects to the intersection of Sylvia Street and Sleepy Hollow Drive.

The north property line abuts City of Ashland properties that are an extension of Riverwalk Park. Bear Creek is to the north, within the city parcels. The properties to the east within Riverwalk and to the south, across Clinton Street are developed with primarily single-family residences.



There are physical constraints on the northern portions of the property. These include steep slopes, the FEMA 100-year floodplain, FEMA 500-year floodplain, and Ashland Modified Flood zone for Bear Creek. Mook "Clear" Creek also traverses the property from north to south. According to the City of Ashland Water Resource Protection Zone maps, Mook Creek is an intermittent/ephemeral stream.

There are historical irrigation rights on the property. Over the years ponds for irrigation water storage have been created. Some of the pond areas have developed into wetlands. In addition to the ponds, according to the Local Wetlands Inventory (LWI), there is a potential wetland located to the east of the ponds on the property. Schott & Associates, Wetlands Biologist have been on-site and completed a delineation report. This report will be filed by the future developer(s).

The property has varying degrees of slope with a slight road slope along Clinton Street and the driveway. There are minor variations across the larger property area with an average slope approximately four percent downhill from the southwest to the northeast. The west side of the property behind the Sylvia Street lots is steeply sloped up to the adjacent properties to the west.

The property is subject to solar setback standard A.

There are smaller stature trees either on or directly adjacent to the subject property.

Retention of the highest number of trees in the landscape areas is an important aspect of the project and as many trees as possible will be able to be retained and still provide a buildable area for a new residential.

Clinton Street is paved with partial street improvements along both sides of the street that include curb, gutter, sidewalk and park row. Ann Street to the east and Briscoe Place are improved with curb, gutter, park row and sidewalk on the east side, the street side abutting the property has curb and gutter, no park row and sidewalk. The private drive is paved.

Proposal:

The request is to divide the property into two parcels.

Proposed Parcel 1 is 8.36 acres. This parcel would retain the residence, garage and pole barn at 345 Clinton Street. The vehicular access will be retained from Clinton Street utilizing the private driveway. The east side of the existing private driveway is the approximate east property line of Parcel 1.

Proposed Parcel 1 has a lot width of more than 100-feet, along Clinton Street, exceeding minimum lot width in the zone. The lot depth exceeds minimum lot depth in the zone. The parcel substantially exceeds the minimum lot area of 5,000 square feet required in the zone.

Proposed Parcel 2 is a vacant, developable, approximately 3.35-acre parcel northwest of the intersection of Clinton Street and Ann Street. The parcel is proposed to have 358.32 feet of frontage along Clinton Street and extends 240 feet along Anne Street. Briscoe Place T's into the east side of Proposed Parcel 2.

This parcel is intended to be sold and developed by others as a future single-family residential development, on outright permitted use in the zone.

The area for future development has the potential base density of approximately 15, single-family dwelling units. The Ashland Municipal Code The future development of either parcel will demonstrate compliance with the city standards.

Along the north portion of proposed Parcel 2, .545 acres are within the Bear Creek floodplain. The floodplains and wetlands will be further evaluated and planned for as required by state and local ordinances and future impacts mitigated through the site development of the residential homes. There is adequate area for the development of residential lots and the preservation of the significant natural features.

Findings addressing the criteria from the Ashland Municipal Code can be found on the following pages. The applicant's findings are in Calibri font and the criteria are in Times New Roman font.

Attachments:

Proposed Tentative Plat

FINDINGS OF FACT

18.5.3.050 Preliminary Partition Plat Criteria

A. The future use for urban purposes of the remainder of the tract will not be impeded.

Finding:

Future urban uses are not impeded with the proposed two parcel partition. The property is zoned R-1-5 and is within the Performance Standards Overlay. Development of the property as single-family residences is a permitted use in the zone.

The proposal provides for a 3.35-acre parcel of developable land at the intersection of two, city streets (Parcel 2). A third street, Briscoe Place, stubs into the property approximately 210-feet north of the Ann Street and Clinton Street intersection. These streets will provide primary access to future residential uses.

Proposed Parcel 1 has several physical constraints. Parcel 1 is also developed with the property owner's residence. There is a developable area in the southeast corner that has a frontage of 292.87 feet along Clinton Street that will remain as part of Parcel 1. This partition does not impede the future development of the property where not prevented or restricted due to the property's physical constraints.

B. The development of the remainder of any adjoining land or access thereto will not be impeded.

Finding:

The adjacent properties are mostly developed as single-family residence type developments or the land is within the floodplain, wetland, steep slopes, or treed and limited development area is present. The proposal will not impede access to adjoining lands.

C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.

Finding:

There are no City adopted neighborhood or district plans that affect the property. To the applicant's knowledge, there are not previous approvals for the subject properties that would impact the proposal. The properties to the east were developed as part of the Riverwalk Subdivision.

D. The tract of land has not been partitioned for 12 months.

Finding:

The tract of land has not been partitioned for the past 12 months.

E. Proposed lots conform to the requirements of the underlying zone, per part 18.2, any applicable overlay zone requirements, per part 18.3, and any applicable development standards, per part 18.4 (e.g., parking and access, tree preservation, solar access, and orientation).

Finding:

The proposal complies with the requirements of the underlying zone. Both parcels will have substantially more than 7,500 square feet of area and greatly exceed the minimum lot dimensions.

Parcel 1 is an 8.36-acre parcel that has FEMA floodplain, Ashland Adopted Floodplain, wetland area, and existing residential development. The floodplain is mapped on the tentative survey plat.

Parcel 2 is proposed to be +/- 3.35 -acre acres in area. The future urbanization plan for the proposed Parcel 2 will conform to the standards of the Performance Standards Subdivision, water resource and physical and environmental constraint and natural area preservation. The future development will demonstrate compliance with parking, access, solar access, and orientation of the residences towards the future public streets.

The property is within the Physical and Environmental Constraint Overlay from AMC 18.3.9. There are wetland areas and Floodplains. These have been mapped. A preliminary wetlands delineation report has been completed but not filed with the state. The wetland has identified a wetland along the north property line of proposed Parcel 2. The floodplain boundaries are mapped.

18.4.6: Public Facilities: As allowed in AMC 18.4.6.030, the request is to sign a waiver of consent to participate in the costs of a Local Improvement District for both Clinton, Ann, and Briscoe Place. These streets are not fully improved, but the future proposal to develop the property would install improvements. When Clinton Street and Ann were developed, the property owners paid for one half of the cost of the improvements. At that time, there were utilities stubbed at the end of Briscoe Place. A public utility easement extends from the end of Briscoe Place to the north towards Bear Creek.

No new public utilities are proposed to be installed to service proposed Parcel 2 as the future development utility sizing will be dependent upon the number of units, locations, etc.

18.4.8: Solar Setback Standards:

Future development will demonstrate compliance with Solar Setback Standard A.

F. Accesses to individual lots conform to the standards in section 18.4.3.080 Vehicle Area Design. See also, 18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria.

Finding:

The driveway for Parcel 1 is proposed to remain. No new access for proposed Parcel 2.

G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part 18.4 and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.

Finding:

No new streets are proposed at this time. Future streets for the development of Parcel 2 will demonstrate compliance with the standards from 18.4.6.

H. Unpaved Streets.

Finding:

All streets are paved.

I. Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.

Finding:

At present, there are no alleys. The future development of Parcel 2 will likely include alleys for access to the future individual lot development.

J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained before development.

Finding:

No state or federal permits are required to partition.

K. A partition plat containing one or more flag lots shall additionally meet the criteria in section 18.5.3.060.

Finding:

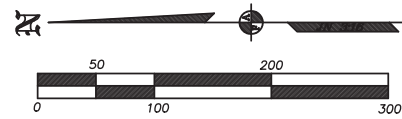
No flag lots area proposed as part of the partition.

SURVEY FOR:
KATHLEEN KAHL
345 CLINTON ST.
ASHLAND, OR 97520

SURVEY BY:
L.J. FRIAR & ASSOCIATES, P.C.
CONSULTING LAND SURVEYORS
PO BOX 1947
PHOENIX, OR 97535
PHONE: (541) 772-2782
ljfriorandassociates@charter.net

DATE:
APRIL 23, 2020

TENTATIVE PARTITION PLAT
In the S.E. 1/4 of Section 4, T.39S., R.1E., W.M.
City of Ashland Jackson County, Oregon



EASEMENTS PER TITLE REPORT
EASEMENT FOR DITCH PER V.140, P.607 & 608, JCDR CANNOT BE LOCATED.
EASEMENT FOR POLELINES PER V.144, P.159, JCDR CANNOT BE LOCATED.
EASEMENT FOR DITCH PER V.163, P.22, JCDR CANNOT BE LOCATED.
EASEMENT FOR CABLE TV LINES PER DOC. 91-28451, ORJCO CANNOT BE LOCATED.

BASIS OF BEARINGS:
NOAA TRUE BEARINGS BASED ON SURVEY NO. 17815 AS SHOWN HEREON.
UNIT OF MEASUREMENT = FEET SCALE: 1" = 100'

CURVE & LINE TABLE (DOC. 03-85697, ORJCO)				
NUM	DELTA	ARC	RADIUS	CHORD
C1	72°54'55"	10.18	8.00	N36°39'05"W 9.51
C2	118°41'33"	16.57	8.00	N59°09'09"E 13.76
NUM	BEARING	DISTANCE		
L17	S28°29'56"W	3.00		
L18	S16°53'27"W	50.00		
L19	S73°06'33"E	4.71		
L20	N73°06'33"W	21.41		



REGISTERED
PROFESSIONAL
LAND SURVEYOR
James E. Hibbs
OREGON
JULY 17, 1986
JAMES E. HIBBS
2234
RENEWAL DATE 6-30-21

CURVE & LINE TABLE					
NUM	DELTA	ARC	RADIUS		CHORD
C3	07°43'43"	26.98	200.00	N14°32'26"E	26.96
[C3]	07°44'27"	27.02	200.00	N14°33'44"E	27.00
C4	71°32'07"	24.97	20.00	S54°12'06"W	23.38
C5	17°32'37"	30.62	100.00	N81°15'28"W	30.50
C6	97°21'41"	135.94	80.00	N61°44'03"W	120.17
NUM	BEARING	DISTANCE	NUM	BEARING	DISTANCE
L1	N20°10'15"W	73.02	L15	S54°12'06"W	23.38
[L1]	S20°03'47"E	73.05	L16	N89°58'29"E	30.14
L2	S23°05'57"E	72.54	L14	S89°58'17"W	32.07
L3	S56°15'16"E	78.11	L21	N89°58'32"E	79.91
L4	S27°29'42"E	95.06	L22	N89°57'34"E	79.93
L5	S55°03'26"E	62.29	L23	N89°58'34"E	79.94
L6	S35°56'46"E	76.47	L24	N89°58'29"E	79.96
L7	N80°00'00"E	30.00	L25	S75°11'19"E	51.88
L8	S20°47'31"E	120.22	L26	S75°11'19"E	98.73
L9	N90°00'00"E	38.43	L27	S75°11'19"E	63.71
L10	N89°51'43"W	48.19	L28	N89°58'29"E	53.66
[L10]	S89°59'17"W	47.83	L29	S14°48'41"W	70.21
L11	N14°33'44"E	27.00	L30	S43°58'17"W	96.14
L12	N18°23'13"E	37.79	L31	S18°41'27"E	46.86
[L12]	N18°25'55"E	37.92	L32	N03°16'34"E	45.76
L13	N81°15'28"W	30.50	L33	S07°55'57"W	98.90

- LEGEND:**
- = FD. 5/8" IRON PIN PER OAK COURT SUBDIVISION.
 - = FD. 1/2" IRON PIN PER OAK COURT SUBDIVISION.
 - ⊗ = FD. 1.5" IRON PIPE PER VOL.263, PG.599, JCDR.
 - ⊙ = FD. 5/8" IRON PIN & ALUMINUM CAP MKD. LS759 PER FS6779.
 - ⦶ = FD. 1/2" IRON PIPE PER FS4170.
 - = FD. MONUMENT PER FS6779, 12094 & RWS.
 - = FD. 5/8" IRON PIN & PLASTIC CAP MKD. LS759 PER FS6779 OR 7441.
 - ⊗ = FD. 5/8" IRON PIN & PLASTIC CAP MKD. LS1656 PER FS12139.
 - = FD. 1/2" IRON PIPE & PLASTIC CAP MKD. LS759 PER FS12094.
 - ⊗ = FD. 5/8" IRON PIN & PLASTIC CAP MKD. L.J. FRIAR & ASSOC. PER FS20570, 20667, 21725 OR RWS.
 - = SET 5/8" X 30" IRON PIN & PLASTIC CAP MKD. L.J. FRIAR & ASSOC.
 - L1 = SEE LINE TABLE.
 - JCDR = JACKSON COUNTY DEED RECORDS.
 - ORJCO = OFFICIAL RECORDS OF JACKSON COUNTY, OREGON.
 - WC = WITNESS CORNER MONUMENT.
 - () = RECORD DATA AS NOTED.
 - RWS = RIVERWALK SUBDIVISION (FS17815).
 - C1 = SEE CURVE TABLE.
 - FS = FILED SURVEY #.
 - [] = PLAT RECORD DATA PER FS12094.
 - X- = FENCE LINE.
 - OPL = OLD PROPERTY LINE.
 - APL = ADJUSTED PROPERTY LINE.
 - SSE1 = APPROX. CENTERLINE SANITARY SEWER EASEMENT PER V.521, P.271, JCDR (20' WIDE).
 - SSE2 = APPROX. CENTERLINE SANITARY SEWER EASEMENT PER DOC. 66-06935, ORJCO (20' WIDE).
 - SSE3 = APPROX. CENTERLINE SANITARY SEWER EASEMENT PER DOC. 76-15853, ORJCO (10' WIDE).
 - PE1 = APPROX. POWER LINE EASEMENT PER V.289, P.101 & 113 AND V.291, P.249, JCDR (20' WIDE).
 - UE1 = APPROX. UTILITY EASEMENT PER DOC. 77-21118 & 78-05769, ORJCO: NO WIDTH STATED.
 - SSE4 = APPROX. CENTERLINE SANITARY SEWER EASEMENT PER DOC. 02-29826, ORJCO (20' WIDE).
 - SE1 = APPROX. SLOPE EASEMENT PER DOC. 78-03836, ORJCO.
 - SDE1 = APPROX. CENTERLINE STORM DRAINAGE EASEMENT PER DOC. 71-09090, ORJCO (20' WIDE).
 - SSE5 = APPROX. SANITARY SEWER EASEMENT PER DOC. 2007-000621, ORJCO.
 - SDE2 = APPROX. STORM DRAINAGE EASEMENT PER DOC. 91-02033, ORJCO.
 - TP = MONUMENT TIED PREVIOUSLY BY THIS OFFICE.
 - () = RECORD DATA PER DOC. 94-12465, ORJCO.
 - SP = 1" STREET PLUG PER SHS AND ACCESS AGREEMENT PER DOC. 02-22261, ORJCO.
 - SHS = SLEEPY HOLLOW SUBDIVISION.
 - AME = ACCESS & MAINTENANCE EASEMENT FOR PARCEL 2 PER THIS PLAT.
 - RM = REFERENCE MONUMENT.

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