

Council Business Meeting

September 3, 2019

Agenda Item	Snowberry Brook Phase II Appeal	
From	Bill Molnar Derek Severson	Director of Community Development Senior Planner
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SUMMARY

Consideration of an appeal of the Planning Commission’s July 23, 2019 approval of a request for Site Design Review approval to construct a 60-unit affordable multi-family housing development on Engle and Villard Streets as the second phase of the Snowberry Brook development.

POLICIES, PLANS & GOALS SUPPORTED

Comprehensive Plan

Element VI – Housing. Goal 6.10.02 is to, “*Support the creation and preservation of housing that is affordable to low and moderate income households and that is commensurate with the incomes of Ashland’s workforce.*” Supporting policy #14 in support of this goal is to, “*Provide for minimal off-street parking requirements in locations where it is demonstrated that car ownership rates are low for resident populations in order to help reduce housing costs and increase affordability and where the impact on neighborhoods allow.*”

Element X – Transportation. Goal 10.15.01 is “*To raise the priority of convenient, safe, accessible and attractive walking and bicycling networks.*” The first policy in support of this goal is to, “*Provide walkways and bikeways that are integrated into the transportation system.*” The implementing ordinance in AMC 18.4.6.040.E includes “*Connectivity Standards*” which require that streets be interconnected to reduce travel distance, promote the use of alternative modes, provide for efficient provision of utilities and emergency services, and provide multiple travel routes; that street be designed to connect to existing, proposed, and planned streets adjacent to the development, unless prevented by environmental or topographical constraints or existing development patterns; and the use of alleys is recommended as they can enhance the grid street network and provide midblock connections for non-motorists. Other supporting policies for this goal include “*#3 - Provide walkways and bikeways in conjunction with all land divisions, street construction and reconstruction projects and all commercial, industrial and residential developments,*” and “*#8 – Require sidewalks and pedestrian access in all developments.*” In the implementing ordinance, AMC 18.4.3.090 “*Pedestrian Access and Circulation*” requires that developments except single-family dwellings on individual lots and associated accessory structures *shall* provide a continuous walkway system throughout the development and connect to all future phases of development and to existing or planned off-site adjacent sidewalks, trails, public parks, and open space, and developers may be required to connect or stub walkways to adjacent streets and to private property. The fourth supporting policy is to “*Require pedestrian and bicycle easements to provide neighborhood connectors and reduce vehicle trips. Modify street vacation process so pedestrian and bicyclist through access is maintained.*” The fifth supporting policy is to “*Target walkway and bikeway improvements that link neighborhoods, schools, retail and service areas, employment centers and recreation areas.*” The seventh supporting policy is to, “*Design walkways and bikeways for all types of users including people with disabilities, children and the elderly.*” This is implemented through AMC 18.4.6.040.D “*Required Street Layout and Design Principles*” which emphasizes that, “*Pedestrians, bicyclists, and bus riders are*

considered primary users of all streets. Design streets to meet the needs of pedestrians and bicyclists, thus encouraging walking, bicycling, and riding the bus as transportation modes. Integrate pedestrian, bicycle, and public transportation considerations from the beginning of the design process.” Goal 10.15.03 is “To support and encourage increased levels of walking and bicycling.” Goal 10.15.05 is “Emphasize environments, which enhance pedestrian and bicycle usage.”

PREVIOUS COUNCIL ACTION

The city previously partnered with the Housing Authority of Jackson County (the current applicants) and the Parks Department to acquire the parent property here which lead to the development of the first 60-unit phase of Snowberry Brook. The remainder of the property had been planned as a neighborhood park, but in cooperation with the Parks Department another property was acquired nearby for a park and the subject property was sold to the applicants for the development of 60 units of additional affordable housing here.

BACKGROUND AND ADDITIONAL INFORMATION

Original Request

The original application was a request for Site Design Review approval to allow the construction of a 60-unit multi-family development on two tax lots (#2504 & #2505) along Villard and Engle Streets as Phase II of the existing ‘Snowberry Brook’ development. The proposal consists of four two-story eight-plex apartment buildings and seven two-story townhouse four-plexes. Units will consist of ten one-bedroom flats, 12 two-bedroom flats, ten three-bedroom flats, and 28 two-bedroom townhomes. The application proposes density bonuses because all units are to be built to Earth Advantage® Gold standards and all units are to be deed-restricted as affordable housing. The application also includes a request for a Tree Removal Permit to remove three trees, including an approximately 24-inch diameter Deodar Cedar (*cedrus deodara*) which the project arborist describes as posing a hazard.

Planning Commission Decision

The Planning Commission approved the application. Issues raised during the Planning Commission hearing process focused largely on concerns raised by neighbors in the condominiums on McCall Drive to the south about potential conflicts between vehicles and pedestrians and about allowing public pedestrian access via the existing public right-of-way between the two developments. The applicant had initially proposed to restrict motor vehicle access between the two developments with removable bollards that would allow pedestrian, bicycle and emergency vehicle access, but in response to the concerns raised during the hearing, the applicant ultimately proposed to limit all access with a locked gate that could only be unlocked to enable emergency vehicle access and which would prevent pedestrian or bicycle access as well as non-emergency motor vehicle traffic.

The Planning Commission found that McCall Drive was public right-of-way that was already owned by the city, that worked in conjunction with a network of easements provided through adjacent developments to enable connectivity in the absence of a more traditional gridded street network, and that it was to be improved as an alley to address standards requiring that paved access and adequate transportation be provided according to city street standards. The Planning Commission’s decision with regard to the issues raised by neighbors was predicated on the fact that the Commission found that it lacked jurisdiction to approve any encroachments such as the bollards or gate proposed by the applicant which would encroach upon existing public right-of-way, and further found that such permits to encroach into public right-of-way are regulated outside the Land Use Ordinance, are obtained from the Public Works Director, and are not reviewed or approved by the Planning Commission. As such, a condition (#6h) was attached to the approval to require that McCall Drive be completed to city alley standards, and that should the applicant or neighbors wish to install any sort of encroachment to limit access they would need to make application for an encroachment permit through the Public Works Department.

Appeal Request

Subsequent to the mailing of the Planning Commission's adopted findings, an appeal was timely filed by Russell Ellis Dale, who developed the condominiums to the south and who retains ownership of several of the units. As a neighboring property owner, Mr. Dale received notice of the original application and participated in the Planning Commission hearing by providing both oral and written testimony. This appeal will be processed on the record according to AMC 18.5.1.060.I. The grounds for the appeal as identified in the notice of appeal are:

1. The Planning Commission erred in approving the application without a permanent locked gate restricting access to McCall Drive to avoid pedestrian conflicts.
2. The Planning Commission erred in approving a parking management strategy which is counter to the General Automobile Parking Requirements and Exceptions in AMC 18.4.3.030.

Scope of Appeal Deliberations

An appeal on the record is limited to the grounds for appeal which were clearly and distinctly identified in the appeal request, however in this case staff has determined the second ground for appeal noted above was not previously raised in the record. AMC 18.5.1.060.I.5 provides that

- b. Scope of Appeal Deliberations.** Upon review, and except when limited reopening of the record is allowed, the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. Review shall in any event be limited to those issues clearly and distinctly set forth in the notice of appeal. **No issue may be raised on appeal to the Council that was not raised before the Commission with sufficient specificity to enable the Commission and the parties to respond.** [emphasis added]

Prior to taking testimony from parties at the hearing, the Council will need to determine whether this item falls within the allowed "Scope of Appeal Deliberations." Staff would recommend that the Council make a finding that the second ground dealing with parking was not raised before the Planning Commission with sufficient specificity to enable the Commission and the parties to respond in the record and as such falls outside the allowed scope of appeal deliberations and as such cannot be considered or heard by the Council on appeal. With such a finding, hearing testimony would be limited strictly to the first ground for appeal, and any written argument submitted would be stricken from the record and not considered by the Council in reaching a decision.

Considering the Grounds for Appeal

- 1) The Planning Commission erred in approving the application without a permanent locked gate restricting access to McCall Drive to avoid pedestrian conflicts.**

In the appeal notice for this ground for appeal, the appellant argues against pedestrian connectivity in general, and specifically notes that, "*Pedestrian connectivity through small enclaves of tightly spaced small home has proven to be truly a very bad idea in Ashland.... (And) is not working!*" The appellant concludes that "*without a permanent locked gate, McCall has no choice but to appeal to the city council for a better long term resolution.*"

In considering concerns raised over connectivity between the subject property and the McCall Drive condominiums to the south and potential conflicts, the Planning Commission decision noted:

The Commission finds that McCall Drive is an alley as envisioned with its creation in Planning Action #2013-00104, and right-of-way has already been dedicated to the city to connect the existing terminus of McCall Drive to Villard Street. Based on concerns raised by neighbors in the McCall Drive Condominiums development to the south about potential conflicts between vehicles and pedestrians and about allowing public pedestrian access via the existing public right-of-way

between the two developments, the applicants have proposed to limit access with a locked gate that could only be unlocked to enable emergency vehicle access. The Planning Commission finds that McCall Drive is public right-of-way that is already owned by the city, that works in conjunction with a network of easements provided through adjacent developments to enable connectivity in the absence of a more traditional gridded street network, and that is to be completed to address standards requiring that paved access and adequate transportation be provided according to city street standards. The Commission finds that it lacks jurisdiction to approve any encroachments such as the bollards and gate proposed by the applicant, and further finds that permits to encroach into public right-of-way are regulated outside the Land Use Ordinance, are obtained from the Public Works Director, and are not reviewed or approved by the Planning Commission. A condition has accordingly been included below to require that McCall Drive be completed to city alley standards, and that should the applicant or neighbors wish to install any sort of encroachment to limit access they would need to make application for an encroachment permit through the Public Works Department.

The Planning Commission specifically found that it “lacks jurisdiction to approve any encroachments such as the bollards and gate proposed by the applicant, and further finds that permits to encroach into public right-of-way are regulated outside the Land Use Ordinance, are obtained from the Public Works Director, and are not reviewed or approved by the Planning Commission.” An encroachment permit to allow any sort of encroachment, temporary or permanent, into public rights-of-way is by code a ministerial decision on the part of the Public Works Director as set forth in Chapter 13 and does not come before the Planning Commission. This appeal ground seeks to obtain a permanent encroachment permit through a land use appeal when an encroachment is a ministerial decision not involving land use discretion, and as such not subject to a land use appeal (i.e. AMC 13.02.070 explicitly states that, “*The Public Works Director’s decision is final and not appealable by any party through the normal land use process.*”)

In staff’s assessment, the Planning Commission was correct in determining that encroachments are not regulated in the Land Use Ordinance, but instead fall to the Public Works Director as provided in Chapter 13, and that the Commission lacked jurisdiction to approve a requested encroachment into existing public right-of-way. Staff would recommend that the Council make a finding that the Planning Commission did not err in this regard and reject the first ground for appeal.

2) The Planning Commission erred in approving a parking management strategy which is counter to the General Automobile Parking Requirements and Exceptions in AMC 18.4.3.030.

As noted above, this appeal on the record is limited to the grounds for appeal which were clearly and distinctly identified in the appeal notice, however in this case staff has determined the second ground for appeal was not previously raised in the record. AMC 18.5.1.060.I.5 provides that

- b. Scope of Appeal Deliberations.** Upon review, and except when limited reopening of the record is allowed, the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. Review shall in any event be limited to those issues clearly and distinctly set forth in the notice of appeal. **No issue may be raised on appeal to the Council that was not raised before the Commission with sufficient specificity to enable the Commission and the parties to respond.** [emphasis added]

Prior to taking testimony from parties at the hearing, the Council will need to determine whether this item falls within the allowed “Scope of Appeal Deliberations.” Staff would recommend that the Council make a finding that this second ground for appeal dealing with parking was not raised before the Planning

Commission with sufficient specificity to enable the Commission and the parties to respond in the record and as such falls outside the allowed scope of appeal deliberations and as such cannot be considered or heard by the Council on appeal. The hearing notice made clear that the Council would be considering whether this ground fell within the allowed scope of appeal deliberations. With a finding that this issue was not raised in the record, hearing testimony would need to be limited strictly to the first ground for appeal, and any written argument submitted relative to the second ground would be stricken from the record and not considered by the Council in reaching a decision.

Should the Council nonetheless wish to consider the parking issue, the Planning Commission found as follows:

The Planning Commission finds that the application as proposed requires 105 off-street parking spaces. The applicant proposes to provide 86 off-street parking spaces in the surface parking lots proposed, and to utilize 19 on-street parking credits for the remaining required parking which amounts to approximately an 18 percent reduction in required off-street parking. The Planning Commission here would note that it has previously found that a lower parking ratio for proposed affordable units was appropriate based on the Affordable Housing Parking Study provided with the “Rogue Ridge” application at 1661 Ashland Street, which asserted that affordable housing developments require about one-half of the parking typically required of market rate rental developments along with anecdotal observations by the Rogue Ridge applicants and by Planning staff that affordable housing developments locally tend to generate less off-street parking demand than market rate developments. The Planning Commission further found that determining the minimum parking required based on these considerations was an allowed exercise of the Commission’s discretion supported by AMC 18.4.3.030. However, in the current application, the applicant has not proposed a reduction in required parking and has instead simply proposed to utilize a parking management strategy which is allowed in the municipal code to off-set some of the parking requirement based on available on-street parking. The Commission finds the request to be an appropriate use of an allowed parking management strategy, and further finds that given the nature of the proposal the likely parking demand may be substantially less than calculated. (page 6).

The appellant suggests:

The conclusion that a “parking management strategy” is an adequate resolution to off set a lower parking ratio for proposed affordable housing units as applied with the “Rogue Ridge” application at 1661 Ashland Street is flawed and lacking in appropriate application to the Snowberry phase two application. This rationale is in conflict with many other precedent setting decisions made by the same Planning Commission body. At the appeal before the City Council hearing testimony will be giving that demonstrates that the Planning Commission created a “factual error” in the application of providing for an exception to Ashland’s parking standards.

AMC 18.4.3.030 allows three methods for determining the minimum required number of off-street parking spaces. Parking requirements may be determined by: 1) The standard parking ratios found in AMC 18.4.3.040, which provide specific automobile parking space requirements based on the proposed use; 2) Where parking requirements are not listed in AMC 18.4.3.040 – i.e. an “unspecified use” - such requirements are to be determined by the Staff Advisor based on the most comparable use in the table and other available data; or 3) The Planning Commission may approve a different parking standard based on a “Parking Demand Analysis” which speaks to average parking demand and available supply for existing and proposed uses; opportunities for shared parking with other uses in the vicinity; existing public parking in the vicinity; transportation options existing or planned near the site, such as frequent bus service,

carpools, or private shuttles; and other relevant factors. The parking demand analysis option may be used in conjunction with, or independent of, the options provided under section 18.4.3.060 Parking Management Strategies which details how credits for on-street parking, alternative vehicle parking, mixed uses, joint use of facilities, off-site shared parking, transportation demand management plans or transit facilities may be used to reduce required off-street parking.

In this case, the Commission relied on standard parking ratios to determine that 105 parking spaces were required, and accepted the applicant's proposal to meet this requirement with 86 off-street paces to be provided on-site and 19 on-street parking credits. On-street parking credits are an allowed parking management strategy under AMC 18.4.3.060.A which *may* be used to reduce the required off-street parking requirements by up to 50 percent with one off-street parking space credited for each available on-street parking space. Here the credit requested and approved was 18 percent. The Commission found that the request was an appropriate use of an allowed parking management strategy, and further found that given the nature of the proposal (i.e. affordable housing) the likely parking demand could be substantially less than calculated. The parking study considered in the Rogue Ridge application and included in the record here found that affordable housing developments generated only about half the parking demand of market rate rental developments. This study was noted as supporting the requested on-street parking credit, however there was no exception to parking requirements granted and the application did not rely on any sort of lesser parking ratio in reaching a decision, it simply used available on-street parking spaces to offset some required off-street spaces as allowed by code.

As noted above, this item was not previously raised and there is no evidence in the record to support reversal of the Commission's decision. The appellant cannot, as suggested in the appeal notice, provide new information at an "*on the record*" appeal hearing - hearing testimony is limited to summarizing written arguments, written arguments cannot introduce any new evidence, and Council deliberations are confined to the existing record. If the Council chooses to consider the merits of the parking issue, rather than finding that it is outside the allowed scope for appeal deliberations, staff would recommend that this ground be rejected and that the Planning Commission decision with regard to off-street parking requirements be affirmed.

FISCAL IMPACTS

No fiscal impacts.

STAFF RECOMMENDATION

Planning staff recommends that the Council affirm the decision of the Planning Commission, reject the appeal and direct staff to prepare findings for adoption by Council. Draft findings reflecting the staff recommendations have been provided should the Council wish to adopt them tonight in the interest of meeting the 100-day rule in ORS 197.311, which requires a final decision on affordable multi-family housing projects within 100 days of receiving a complete application, and findings adoption within 14 days thereafter.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- 1) I move to affirm the decision of the Planning Commission, reject the appeal and direct staff to prepare written findings for approval reflecting the original Planning Commission decision from July 23, 2019 for adoption by Council. (*Draft findings in keeping with the staff recommendations herein and supporting the Planning Commission's original approval are provided. Should the Council wish to pursue adoption tonight, a separate motion to adopt the draft findings as submitted would be required following the decision. Should the Council have modifications to these findings, specific direction on modifications should be provided and adoption would occur on September 17th.*)

- 2) I move to reverse the decision of the Planning Commission and support the written appeal, and direct staff to prepare written findings for adoption by Council (*include specific direction as to where the original decision was found to be in error relative to the identified appeal issues*).
- 3) I move to modify the decision of the Planning Commission and direct staff to prepare written findings for adoption by Council (*include specific direction to staff as to the modifications to the Planning Commission decision being made*).
- 4) I move to send the decision back to the Planning Commission with the following instructions for further proceedings, with the understanding that subsequent actions by the Planning Commission will be the final decision of the City (*include specific instructions relating to further proceedings*). ***[Please note that as an affordable multi-family development, this application is subject to a “100 Day Rule” under Oregon land use laws, and a final decision of the City is required by September 11, 2019, with findings to be adopted within 14-days thereafter, and as such remanding the decision back to the Planning Commission would only be an option if an extension were agreed to by the applicant.]***

REFERENCES & ATTACHMENTS

Attachment 1: Draft findings reflecting the staff recommendations.

Attachment 2: Adopted Planning Commission findings as Exhibit A of the Draft Council findings.

All Snowberry Brook Phase II record materials are posted on-line at:

<http://www.ashland.or.us/Page.asp?NavID=17831>. These include the appeal submittals; the Planning Commission hearing packet materials with findings, staff reports, application materials, minutes and videos (where available); and materials submitted by parties during the open record period following the initial public hearing.

BEFORE THE CITY COUNCIL
September 3, 2019

IN THE MATTER OF PLANNING ACTION PA-APPEAL-2019-00007, AN APPEAL)
TO THE ASHLAND CITY COUNCIL OF THE PLANNING COMMISSION'S)
APPROVAL OF PLANNING ACTION PA-T2-2019-00008, A REQUEST FOR)
SITE DESIGN REVIEW APPROVAL TO ALLOW THE CONSTRUCTION OF A 60-)
UNIT MULTI-FAMILY DEVELOPMENT ON TWO TAX LOTS (#2504 & #2505))
ALONG VILLARD AND ENGLE STREETS AS PHASE II OF THE EXISTING)
SNOWBERRY BROOK DEVELOPMENT. THE PROPOSAL CONSISTS OF FOUR)
2-STORY EIGHT-PLEX APARTMENT BUILDINGS AND SEVEN 2-STORY TOWN-)
HOUSE FOUR-PLEXES. UNITS WILL CONSIST OF TEN 1-BEDROOM FLATS, 12)
2-BEDROOM FLATS, TEN 3-BEDROOM FLATS, AND 28 2-BEDROOM TOWN-)
HOMES. THE APPLICATION INCLUDES A REQUEST FOR TREE REMOVAL)
PERMITS TO REMOVE THREE TREES, AN APPROXIMATELY 24-INCH DIAM-)
ETER DEODAR CEDAR (*CEDRUS DEODARA*) WHICH THE PROJECT ARBORIST)
DESCRIBES AS POSING A HAZARD AND TWO SMALLER ALMONDS WHICH)
ARE NOTED AS BEING IN POOR CONDITION AND LOCATED IN THE PATH OF)
THE PROPOSED NEW SIDEWALK ALONG VILLARD STREET.)

**FINDINGS,
CONCLUSIONS &
ORDERS**

OWNER/APPLICANT: HOUSING AUTHORITY OF JACKSON COUNTY)
DAN HORTON, ARCHITECT/HAJC DEVELOPMENT)
APPELLANT: RUSSELL ELLIS DALE)

RECITALS:

- 1) Tax lots #2504 and #2505 of Map 39 1E 11C are located along Engle and Villard Streets, south and east of the Snowberry Brook development at 380 Clay Street and are zoned R-2 (Low-Density Multi-Family Residential). With the first phase of the Snowberry development, these properties were initially designated as Parks/Open Space, but prior to sale of the properties to the applicant by the City, this designation was removed and alternative property for a neighborhood park was acquired nearby.

- 2) The applicant is requesting Site Design Review approval to allow the construction of a 60-unit multi-family development on two tax lots (#2504 & #2505) along Villard and Engle Streets as Phase II of the existing 'Snowberry Brook' development. The proposal consists of four two-story eight-plex apartment buildings and seven two-story townhouse four-plexes. Units will consist of ten one-bedroom flats, 12 two-bedroom flats, ten three-bedroom flats, and 28 two-bedroom townhomes. The application includes a request for a Tree Removal Permit to remove three trees, including an approximately 24-inch diameter Deodar Cedar (*cedrus deodara*) which the project arborist describes as posing a hazard. The application also includes proposals for density bonuses because all units are to be built to Earth Advantage® Gold standards and all units are to be deed-restricted as affordable housing. The proposal is outlined in plans on file at the Department of Community Development.

3) 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.*

4) 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 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.*
- 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.*

5) The Planning Commission held a public hearing on June 11, 2019 at which time testimony was received and exhibits were presented. Prior to the closing of the hearing, participants requested that the hearing or record remain open pursuant to ORS 197.763(6) to present additional evidence or argument. The Planning Commission closed the hearing, but left the record open to the submittal of new evidence by parties until 4:30 p.m. on June 18, 2019; to the submittal of responses to the new submittals by parties until 4:30 p.m. on June 25, 2019; and to the submittal of written arguments, but no new evidence, by the applicant only until 4:30 p.m. on July 2, 2019. The meeting was continued for Planning Commission deliberations until 7:00 p.m. on July 9, 2019 at the City Council Chambers.

Subsequent to the close of the public hearing on June 11, 2019, Planning staff determined that there had been a noticing error in the initial Notice of Public Hearing which had been mailed on May 28, 2019. AMC 18.5.1.060.C requires that *“The City shall mail notice of public hearing not less than ten days before the hearing. Such notice shall be mailed to all individuals and organizations listed below: i. Applicant; ii. Owners of the subject property; iii. Owners of record for properties located within 200 feet of the perimeter of the subject site; iv. Neighborhood group or community organization officially recognized by the City that includes the area of the subject property; and v. Any person who submits a written request to receive a notice.”* AMC 18.5.1.060.C.2 further provides, *“The notices shall be mailed to owners of record of property on the most recent property tax assessment roll.”* City staff uses an internet-based application from Jackson County’s Geographic Information Systems (GIS) department to generate mailing labels for the *“owners of record of property on the most recent property tax assessment roll,”* and it was determined that the County’s label-generating application was not generating labels for all property

owners of record for multi-story condominiums because the condominiums had been mapped in such a way that one layer of units blocked out the other in the mapping application. In this instance, the neighboring McCall Drive Condominium development was within 200 feet of the perimeter of the subject site, but only eight of the 16 condominiums within 200 feet had received the initial notice.

AMC 18.5.1.120.B provides guidance for addressing Noticing Errors, however this section assumes that the error is identified after a decision has been made. In this instance, because the noticing error was identified prior to the Planning Commission's decision, Planning staff re-noticed the application on June 24, 2019 to a list of recipients that was amended to include all 32 property owners of record within the McCall Drive Condominium development and the owners' association announcing a limited re-opening of the public hearing on July 9, 2019 to allow testimony from any McCall Drive Condominium owners who had not received the initial Notice of Public Hearing and who had not participated in the hearing process to date.

The Planning Commission, following proper public notice, then held a limited re-opening of the public hearing on July 9, 2019 at which time testimony was received and exhibits were presented. Subsequent to the closing of the hearing, the Planning Commission approved the application subject to conditions pertaining to the appropriate development of the site.

6) This matter came before the City Council as an appeal on the record pursuant to Ashland Municipal Code (AMC) 18.5.1.060.I. Subsequent to the mailing of the Planning Commission's adopted findings, an appeal was timely filed by Russell Ellis Dale, who developed the condominiums to the south and who retains ownership of several of the units. As a neighboring property owner, Mr. Dale received notice of the original application and participated in the Planning Commission hearing by providing both oral and written testimony. AMC 18.5.1.060.I.2.c requires that each appeal set forth a clear and distinct identification of the specific grounds for which the decision should be reversed or modified, based on identified applicable criteria or procedural irregularity. The two identified grounds for appeal in this case were:

- 1) **The Planning Commission erred in approving the application without a permanent locked gate restricting access to McCall Drive to avoid pedestrian conflicts.**
- 2) **The Planning Commission erred in approving a parking management strategy which is counter to the General Automobile Parking Requirements and Exceptions in AMC 18.4.3.030.**

7) The City Council, following proper public notice, held a public hearing on September 3, 2019 at which time oral arguments were presented. Subsequent to the closing of the hearing, the City Council rejected the first ground for appeal, found that the second ground for appeal was outside the allowed scope of appeal deliberations, upheld the Planning Commission's original decision and approved the application.

Now, therefore, the City Council 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. CONCLUSORY FINDINGS

2.1 The City Council finds that it has received all information necessary to make a decision based on the staff reports, public hearing testimony and the exhibits contained within the whole record.

2.2 The City Council finds that the Planning Commission was correct in determining that the proposal for Site Design Review approval met all applicable criteria for Site Design Review approval described in AMC section 18.5.2.050; and that the proposal for a Tree Removal Permit to remove five trees met all applicable criteria for Tree Removal described in AMC section 18.5.7.040.B. The Planning Commission's adopted findings for Planning Action #PA-T2-2019-00008 are hereby adopted in their entirety as Exhibit A to these findings.

2.3 With regard to the first ground for appeal, that "*The Planning Commission erred in approving the application without a permanent locked gate restricting access to McCall Drive to avoid pedestrian conflicts,*" the City Council notes that in the appeal notice for this ground for appeal, the appellant argues against pedestrian connectivity in general, and specifically notes that, "*Pedestrian connectivity through small enclaves of tightly spaced small homes has proven to be truly a very bad idea in Ashland.... (And) is not working!*" The appellant concludes that "*without a permanent locked gate, McCall has no choice but to appeal to the city council for a better long term resolution.*" The Council further notes that in considering the concerns raised over connectivity between the subject property and the McCall Drive condominiums to the south and potential conflicts during the hearing, the Planning Commission decision noted:

The Commission finds that McCall Drive is an alley as envisioned with its creation in Planning Action #2013-00104, and right-of-way has already been dedicated to the city to connect the existing terminus of McCall Drive to Villard Street. Based on concerns raised by neighbors in the McCall Drive Condominiums development to the south about potential conflicts between vehicles and pedestrians and about allowing public pedestrian access

via the existing public right-of-way between the two developments, the applicants have proposed to limit access with a locked gate that could only be unlocked to enable emergency vehicle access. The Planning Commission finds that McCall Drive is public right-of-way that is already owned by the city, that works in conjunction with a network of easements provided through adjacent developments to enable connectivity in the absence of a more traditional gridded street network, and that is to be completed to address standards requiring that paved access and adequate transportation be provided according to city street standards. The Commission finds that it lacks jurisdiction to approve any encroachments such as the bollards and gate proposed by the applicant, and further finds that permits to encroach into public right-of-way are regulated outside the Land Use Ordinance, are obtained from the Public Works Director, and are not reviewed or approved by the Planning Commission. A condition has accordingly been included below to require that McCall Drive be completed to city alley standards, and that should the applicant or neighbors wish to install any sort of encroachment to limit access they would need to make application for an encroachment permit through the Public Works Department.

The City Council concurs with the Planning Commission finding that “... *McCall Drive is public right-of-way that is already owned by the city, that works in conjunction with a network of easements provided through adjacent developments to enable connectivity in the absence of a more traditional gridded street network, and that is to be completed to address standards requiring that paved access and adequate transportation be provided according to city street standards.*” AMC 18.4.3.090 “Pedestrian Access and Circulation” requires that developments except single-family dwellings on individual lots and associated accessory structures *shall* provide a continuous walkway system throughout the development *and* connect to all future phases of development and to existing or planned off-site adjacent sidewalks, trails, public parks, and open space, and specifically notes that a developer may be required to connect to adjacent streets and to private property. The “Connectivity Standards” in AMC 18.4.6.040.E require that streets be interconnected to reduce travel distance, promote the use of alternative modes, provide for efficient provision of utilities and emergency services, and provide multiple travel routes; that streets be designed to connect to existing, proposed, and planned streets adjacent to the development; and the use of alleys is recommended as to enhance the grid street network and provide midblock connections for non-motorists.

The City Council finds that the Planning Commission specifically determined that it “lacks jurisdiction to approve any encroachments such as the bollards and gate proposed by the applicant, and further finds that permits to encroach into public right-of-way are regulated outside the Land Use Ordinance, are obtained from the Public Works Director, and are not reviewed or approved by the Planning Commission.” The Council concurs that an encroachment permit to allow any sort of encroachment, temporary or permanent, into public rights-of-way is by code a ministerial decision on the part of the Public Works Director as set forth in Chapter 13 and does not come before the Planning Commission. The Council finds that this appeal ground seeks to obtain a permanent encroachment permit through a land use appeal when an encroachment is a ministerial decision not involving land use discretion, and as such not is not subject to a land use appeal. AMC 13.02.070 explicitly states that, “The Public Works Director’s decision is final and not appealable by any party through the normal land use process.” The Council finds that the Planning

Commission was correct in determining that encroachments are not regulated in the Land Use Ordinance, but instead fall under the Public Works Director's authority as provided in Chapter 13, and that the Commission lacked jurisdiction to approve a requested encroachment into existing public right-of-way. The Council further finds that the Planning Commission did not err in determining that they lacked jurisdiction to approve an encroachment and rejects the first ground for appeal on this basis.

2.4 With regard to the second ground for appeal, that "*The Planning Commission erred in approving a parking management strategy which is counter to the General Automobile Parking Requirements and Exceptions in AMC 18.4.3.030,*" the City Council notes that appeals on the record are limited to the grounds for appeal which are clearly and distinctly identified in the appeal notice, and further notes that this second ground for appeal was not previously raised in the record. AMC 18.5.1.060.I.5.b provides that:

Scope of Appeal Deliberations. Upon review, and except when limited reopening of the record is allowed, the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. Review shall in any event be limited to those issues clearly and distinctly set forth in the notice of appeal. ***No issue may be raised on appeal to the Council that was not raised before the Commission with sufficient specificity to enable the Commission and the parties to respond.*** [*emphasis added*]

The Council also notes that the appeal notice mailed to parties prior to the appeal hearing, made clear that, "*Staff has determined this issue was not previously raised in the record; Council will determine at the hearing whether it is within the "Scope of Appeal Deliberations" allowed in AMC 18.5.1.060.I.5.b.*"

The Council finds that because this ground for appeal was not previously raised before the Planning Commission with sufficient specificity to enable the Commission and the parties to respond in the record, there is no evidence in the record to counter the Commission's decision. The appellant cannot, as suggested in the appeal notice, provide new information at an "*on the record*" appeal hearing - hearing testimony is limited to summarizing written arguments, written arguments cannot introduce any new evidence, and Council deliberations are confined to the existing record. The Council finds that this ground falls outside the allowed scope of appeal deliberations as detailed in AMC 18.5.1.060.I.5.b and cannot be considered by the Council with an on the record appeal. As such, the second ground for appeal is rejected, and the Planning Commission's decision affirmed. Written arguments with regard to this second ground for appeal are stricken from the record and from consideration by the Council, and oral testimony during the hearing was limited to the first ground for appeal.

SECTION 3. DECISION

3.1 With regard to the appeal request, the City Council finds that the first ground for appeal hinges largely upon neighbors' concern that connectivity between the subject property and the condominium development to the south along McCall Drive will lead to conflicts, and that to alleviate this potential all access other than emergency vehicles should be permanently restricted. Because the potential connectivity in question would occur via existing public rights-of-way, the Planning Commission

determined that encroachments installed to restrict access would require encroachment permits. The Planning Commission found, and the Council concurs, that encroachment permits are regulated outside the Land Use Ordinance and fall under the Public Works Director's sole authority, are outside the Planning Commission's jurisdiction, and are not subject to land use appeal as explicitly provided in AMC 13.02.070.

In terms of the second ground for appeal, the use of on-street parking credits being approved as a parking management strategy approved, the Council concludes that this issue was not raised while the record was open and as such cannot be raised on appeal or considered by the Council as it falls outside the allowed "Scope of Appeal Deliberations" detailed in AMC 18.5.1.060.I.5.b.

Based on the record of the Public Hearing on this matter, the City Council concludes that the Planning Commission's original decision to approve the requested Site Design Review and Tree Removal Permits is supported by evidence contained within the whole record.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, the City Council rejects appeal #PA-APPEAL-2019-00007 on both grounds raised and reaffirms the Planning Commission's decision to approve the original Planning Action #PA-T2-2019-00008 subject to the Planning Commission's original conditions of approval. Further, if any one or more of those conditions are found to be invalid, for any reason whatsoever, then Planning Action #PA-T2-2019-00008 is denied. The City Council attaches the following condition to this decision:

- 1) That all conditions of Planning Action #PA-T2-2019-00008 attached hereto as "Exhibit A" shall remain in effect.

John Stromberg, *Mayor*
City of Ashland

September 3, 2019
Date

BEFORE THE PLANNING COMMISSION
July 23, 2019

IN THE MATTER OF PLANNING ACTION #PA-T2-2019-00008, A REQUEST FOR)
 SITE DESIGN REVIEW APPROVAL TO ALLOW THE CONSTRUCTION OF A 60-)
 UNIT MULTI-FAMILY DEVELOPMENT ON TWO TAX LOTS (#2504 & #2505))
 ALONG VILLARD AND ENGLE STREETS AS PHASE II OF THE EXISTING)
 SNOWBERRY BROOK DEVELOPMENT. THE PROPOSAL CONSISTS OF FOUR)
 2-STORY EIGHT-PLEX APARTMENT BUILDINGS AND SEVEN 2-STORY TOWN-)
 HOUSE FOUR-PLEXES. UNITS WILL CONSIST OF TEN 1-BEDROOM FLATS, 12)
 2-BEDROOM FLATS, TEN 3-BEDROOM FLATS, AND 28 2-BEDROOM TOWN-)
 HOMES. THE APPLICATION INCLUDES A REQUEST FOR TREE REMOVAL)
 PERMITS TO REMOVE THREE TREES, AN APPROXIMATELY 24-INCH DIAM-)
 ETER DEODAR CEDAR (*CEDRUS DEODARA*) WHICH THE PROJECT ARBORIST)
 DESCRIBES AS POSING A HAZARD AND TWO SMALLER ALMONDS WHICH)
 ARE NOTED AS BEING IN POOR CONDITION AND LOCATED IN THE PATH OF)
 THE PROPOSED NEW SIDEWALK ALONG VILLARD STREET.)

FINDINGS,
CONCLUSIONS &
ORDERS

OWNER/APPLICANT: HOUSING AUTHORITY OF JACKSON COUNTY/)
 HAJC DEVELOPMENT/DAN HORTON, ARCHITECT)
)

RECITALS:

- 1) Tax lot #2504 and #2505 of Map 39 1E 11C are located along Engle and Villard Streets, south and east of the Snowberry Brook development at 380 Clay Street and are zoned R-2 (Low-Density Multi-Family Residential). With the first phase of the development, these properties were initially designated as Parks/Open Space, but prior to sale of the properties to the applicant by the City, this designation was removed and alternative property for a neighborhood park was acquired nearby.

- 2) The applicant is requesting Site Design Review approval to allow the construction of a 60-unit multi-family development on two tax lots (#2504 & #2505) along Villard and Engle Streets as Phase II of the existing ‘Snowberry Brook’ development. The proposal consists of four two-story eight-plex apartment buildings and seven two-story townhouse four-plexes. Units will consist of ten one-bedroom flats, 12 two-bedroom flats, ten three-bedroom flats, and 28 two-bedroom townhomes. The application includes a request for a Tree Removal Permit to remove three trees, including an approximately 24-inch diameter Deodar Cedar (*cedrus deodara*) which the project arborist describes as posing a hazard. The application also includes proposals for density bonuses because all units are to be built to Earth Advantage® Gold standards and all units are to be deed-restricted as affordable housing. 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 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.*

5) The Planning Commission held a public hearing on June 11, 2019 at which time testimony was received and exhibits were presented. Prior to the closing of the hearing, participants requested that the hearing or record remain open pursuant to ORS 197.763(6) to present additional evidence or argument. The Planning Commission closed the hearing, but left the record open to the submittal of new evidence by parties until 4:30 p.m. on June 18, 2019; to the submittal of responses to the new submittals by parties until 4:30 p.m. on June 25, 2019; and to the submittal of written arguments, but no new evidence, by the applicant only until 4:30 p.m. on July 2, 2019. The meeting was continued for Planning Commission deliberations until 7:00 p.m. on July 9, 2019 at the City Council Chambers.

Subsequent to the close of the public hearing on June 11, 2019, Planning staff determined that there had been a noticing error in the initial Notice of Public Hearing which had been mailed on May 28, 2019. AMC 18.5.1.060.C requires that *“The City shall mail notice of public hearing not less than ten days before the hearing. Such notice shall be mailed to all individuals and organizations listed below: i. Applicant; ii. Owners of the subject property; iii. Owners of record for properties located within 200 feet of the perimeter of the subject site; iv. Neighborhood group or community organization officially recognized by the City that includes the area of the subject property; and v. Any person who submits a written request to receive a notice.”* AMC 18.5.1.060.C.2 further provides, *“The notices shall be mailed to owners of record of property on the most recent property tax assessment roll.”* City staff uses an internet-based application from Jackson County’s Geographic Information Systems (GIS) department to generate mailing labels for the *“owners of record of property on the most recent property tax assessment roll,”* and

it was determined that the County's label-generating application was not generating labels for all property owners of record for multi-story condominiums because the condominiums had been mapped in such a way that one layer of units blocked out the other in the mapping application. In this instance, the neighboring McCall Drive Condominium development was within 200 feet of the perimeter of the subject site, and only eight of the 16 condominiums within 200 feet had received the initial notice.

AMC 18.5.1.120.B provides guidance for addressing Noticing Errors, however this section assumes that the error is identified after a decision has been made. In this instance, because the noticing error was identified prior to the Planning Commission's decision, Planning staff re-noticed the application on June 24, 2019 to a list of recipients that was amended to include all 32 property owners of record within the McCall Drive Condominium development and the owners' association announcing a limited re-opening of the public hearing on July 9, 2019 to allow testimony from any McCall Drive Condominium owners who had not received the initial Notice of Public Hearing and who had not participated in the hearing process to date.

The Planning Commission, following proper public notice, then held a limited re-opening of the public hearing on July 9, 2019 at which time testimony was received and exhibits were presented. Subsequent to the closing of the hearing, the Planning Commission 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 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 decision based on the staff report, public hearing testimony and the exhibits received.

The Planning Commission finds that testimony provided during Public Forum at the July 9, 2019 meeting by Jessie Kinney, Princess Franks and Maya Jaarad which pertained to efforts to support affordable housing and included mention of the Snowberry Brook development prior to the re-opening of the hearing could not be

added to the hearing record or considered in the decision on this matter as it was provided when the hearing was closed.

The Planning Commission finds that the materials submitted by Mark Knox of KDA Homes, LLC on June 14, 2019 and Greg Holmes of 1,000 Friends of Oregon on June 25, 2019 while the record was left open to the submittal of new materials by parties must be stricken from the record and from consideration in this decision as neither Mr. Knox nor Mr. Holmes were parties of record as they had not participated in the land use process either orally or in writing prior to the close of the hearing. Here, the Planning Commission would note that the local newspaper The Daily Tidings posted an article (“Affordable Housing Gets Delayed”, June 13, 2019) which incorrectly indicated that *any person* could submit new materials while the record was open.

The Planning Commission finds that a letter submitted by the applicant on July 1, 2019 - during the period when they were allowed to submit only written argument - contained new evidence and would normally be stricken, however the Commission further finds that because ORS 197.763.7 provides that when the record is re-opened “*to admit new evidence, arguments, or testimony any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue,*” the new evidence contained in the letter was admitted as it was consistent with the applicant’s rebuttal during the re-opened hearing and related to the new testimony.

2.2 The Planning Commission finds that the proposal for Site Design Review and Tree Removal permit approvals meets all applicable criteria for Site Design Review described in AMC 18.5.2.050, and for a Tree Removal Permit as 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 Commission finds that the subject property is zoned R-2, a Low-Density Multi-Family Residential zoning, and building and yard setbacks and other applicable standards including building separation, height, lot coverage, landscaping, solar access and density have been addressed in the applicant’s designs.

The Commission further finds that the base density in the R-2 zoning district allows for 13½ dwelling units per acre. The subject properties’ 3.35 acres allow a base density of 45.2 units [3.35 acres x 13.5 du/acre = 45.225 du], and the applicant is proposing density bonuses for providing affordable housing (35 percent) and for conservation housing (15 percent) allowing a 50 percent increase in the base density for a total potential density of 67.8 units [45.225 du x 1.50 = 67.8375]. 60 units are proposed, and conditions have been included to require that all units be deed restricted as affordable per city standards and certified as Earth Advantage® Gold to qualify for the requested density bonuses.

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 has no applicable overlay zones and as such complies with this standard.

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 the proposal has been designed to address the standards of part 18.4. The buildings are oriented to the streets with individual porches, patios and entries from the street where possible, parking has been placed behind street-facing buildings on Engle and to the side on Villard, with no parking or circulation between the buildings and the street. Street trees are to be planted along both frontages. The proposed buildings are to use durable materials similar to those in the first phase of the Snowberry Brook development, and will be treated in similar earth tone colors. Walls and roof lines are articulated to break up the building massing and add interest to facades. The community building and play area from the first phase are to be made available to residents of Phase II, and new open space/recreation areas incorporated with Phase II here.

The Planning Commission finds that the application as proposed requires 105 off-street parking spaces. The applicant proposes to provide 86 off-street parking spaces in the surface parking lots proposed, and to utilize 19 on-street parking credits for the remaining required parking which amounts to approximately an 18 percent reduction in required off-street parking. The Planning Commission here would note that it has previously found that a lower parking ratio for proposed affordable units was appropriate based on the Affordable Housing Parking Study provided with the “Rogue Ridge” application at 1661 Ashland Street, which asserted that affordable housing developments require about one-half of the parking typically required of market rate rental developments along with anecdotal observations by the Rogue Ridge applicants and by Planning staff that affordable housing developments locally tend to generate less off-street parking demand than market rate developments. The Planning Commission further found that determining the minimum parking required based on these considerations was an allowed exercise of the Commission’s discretion supported by AMC 18.4.3.030. However, in the current application, the applicant has not proposed a reduction in required parking and has instead simply proposed to utilize a parking management strategy which is allowed in the municipal code to off-set some of the parking requirement based on available on-street parking. The Commission finds the request to be an appropriate use of an allowed parking management strategy, and further finds that given the nature of the proposal the likely parking demand may be substantially less than calculated. The Planning Commission further finds that 90 bicycle parking spaces are required, and the applicant proposes to provide 90 covered bicycle parking spaces in shelters on site.

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 city facilities are available at the site, including: eight-inch Water Mains in Villard & Engle Streets; eight-inch Sanitary Sewer Mains in Villard & Engle Streets; and 12-inch storm drains in Villard & Engle Streets. The Commission finds that stormwater facilities will be provided to meet city, Rogue Valley Stormwater Quality Design Manual, State of Oregon and any other applicable agency requirements; that electrical service is available to serve the property, and that the applicant has met with

the Ashland Electric Department and provided a conceptual electric service plan from the Electric Department with the application materials.

The Commission further finds that Public Works/Engineering staff have noted that the property along Engle Street is currently served by an eight-inch sanitary sewer main along the southern property line, and that existing grades are such that it may make not be feasible for the entire property along Engle Street to use this main, and additional sanitary sewer mains may need to be installed. A condition has accordingly been included to require that the applicant's civil engineer work to address this issue in the final civil drawings which will need to be reviewed and approved by Planning, Building and Engineering staff before building permit issuance.

In terms of paved access and adequate transportation, the Planning Commission finds that Clay Street is a residential neighborhood collector street, and is a County road in this vicinity. City standards envision five-foot sidewalks, seven-foot parkrow planting strips, a six-inch curb, seven-foot parking bays on each side, and nine- to ten-foot travel lanes on each side. The city-standard cross-section includes a 22- to 34-foot curb-to-curb paved width within a 49- to 61-foot right-of-way, dependent on the on-street parking configuration. The Commission further finds that frontage improvements including additional paving, curbs, gutters, a bio-swale parkrow planting strip and sidewalks were installed to meet these standards along the Snowberry I frontage, and along the frontage of the property to the north, with the initial Snowberry development.

The Commission further finds that Engle and Villard Streets are residential neighborhood streets, and city standards envision five-foot sidewalks, seven-foot parkrow planting strips, a six-inch curb and seven-foot parking bays on each side, with an 11- to 14-foot queuing travel lane. The city standard cross-section includes a 25- to 28-foot curb-to-curb paved width in a 50- to 55-foot right-of-way. The existing "half-street" improvements consist of full paving to accommodate travel lanes and parking, curb, gutter, sidewalks and parkrow on the west side of Engle and the north side of Villard along Snowberry I, and the Commission finds that the applicant proposes to complete both street corridors by installing sidewalks and parkrow planting strips along the Snowberry II frontages of both streets.

The Commission finds that McCall Drive is an alley as envisioned with its creation in Planning Action #2013-00104, and right-of-way has already been dedicated to the city to connect the existing terminus of McCall Drive to Villard Street. Based on concerns raised by neighbors in the McCall Drive Condominiums development to the south about potential conflicts between vehicles and pedestrians and about allowing public pedestrian access via the existing public right-of-way between the two developments, the applicants have proposed to limit access with a locked gate that could only be unlocked to enable emergency vehicle access. The Planning Commission finds that McCall Drive is public right-of-way that is already owned by the city, that works in conjunction with a network of easements provided through adjacent developments to enable connectivity in the absence of a more traditional gridded street network, and that is to be completed to address standards requiring that paved access and adequate transportation be provided according to city street standards. The Commission finds that it lacks jurisdiction to approve any encroachments such as the bollards and gate proposed by the applicant, and further finds that permits to encroach into public right-of-way are regulated outside the Land Use Ordinance, are obtained from the Public Works Director, and are not reviewed or approved by the Planning

Commission. A condition has accordingly been included below to require that McCall Drive be completed to city alley standards, and that should the applicant or neighbors wish to install any sort of encroachment to limit access they would need to make application for an encroachment permit through the Public Works Department.

The Commission finds that the proposal includes the preservation of a 20-foot wide corridor along the north edge of the site where an access easement is in place. A similar corridor was preserved on the north side of the wetland on Phase I, and these two segments may ultimately combine with a similar dedication when the property to the north is annexed to provide for a future vehicular connection between Tolman Creek Road and Clay Street.

The Planning Commission agrees with the conclusion of the Traffic Impact Analysis (TIA) prepared by S.O. Transportation Engineering, LLC that the proposed 60-unit development can be approved without adverse impacts to the transportation system.

The final criterion for Site Design Review approval addresses "Exception to the Site Development and Design Standards." The Planning Commission finds that the current request does not include any Exceptions to the Site Development and Design Standards.

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

2.5 The Planning Commission finds that there are five trees on the subject property: a 20-inch diameter Oak behind proposed Building H, a 24-inch Deodar Cedar near the proposed parking lot at the southeast corner, two scrub Almonds in the 13- to 14-inch range near the Deodar Cedar, and a 12-inch diameter Cedar near the southeast corner of the property along Villard. The remainder of the property is generally devoid of natural features other than native grasses. In addition, five trees are noted on adjacent properties within 15 feet of the property line. The Planning Commission further finds that the application materials identify trees on adjacent properties within 15 feet of the property lines and indicates that these trees will be protected.

The application proposes to remove the 24-inch d.b.h. Deodar Cedar as a hazard tree based on the project arborist's determination that the tree is in poor condition, with massive historical damage including multiple damaged leaders, no dominant leader and severe damage to large lower branches, and an 18-inch deep trench cutting through the root zone within three feet of the trunk. There are two smaller trees immediately adjacent to this tree, described as "Scrub Almonds" on the Tree Protection Plan, that are also proposed for removal. The project arborist notes that these trees are not in good shape, with dead branches and evidence of prior severe pruning, and further explains that both Almonds are located in the path of the proposed new sidewalk along Villard Street. After reviewing the proposal, the Tree Commission has recommended that the application be approved with conditions that the trees to be removed be mitigated with large stature deciduous trees of no less than 1 ½ inch caliper at planting within one year of the removals.

Based on the project arborist's assessment and the supporting recommendation of the Tree Commission, the Planning Commission finds that the removals are merited. A condition of approval has been included

to require that the recommendations of the Tree Commission become conditions of approval, and that a Tree Verification Permit be obtained to verify the identification of trees to be removed and the installation of any requisite tree protection for trees to be preserved and protected prior to any site work.

The Planning Commission concludes that, as detailed above and with the conditions discussed, the proposal complies with the requirements for both Tree Preservation and Protection and for Tree Removal Permits to remove the three trees proposed.

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 approval to allow construction of a for 60-unit multi-family development and the removal of three trees meets all applicable criteria and is supported by a preponderance of the evidence contained within the whole record.

The Commission finds that the Housing Authority's initial willingness to partner with the City to bring the first phase of the Snowberry development forward while embracing Ashland's site design standards, enhancing and protecting a locally-significant wetland and integrating it with the project open space and landscaping to greatly benefit the livability of the project, addressing the transportation infrastructure needs and minimum density requirements of the project's original annexation, and providing 60 units of much needed affordable housing was a win-win situation, and the opportunity here to add an additional 60 units of affordable housing to a project that has fit well into the community seems to advance on that prior "win-win situation" by providing much-needed affordable rental housing in a mix of one-, two- and three-bedroom configurations immediately adjacent to the previous development, allowing for more efficient management by the Housing Authority.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, we approve Planning Action #PA-T2-2019-00008. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #PA-T2-2019-00008 is denied. The following are the conditions and they are attached to the approval:

1. That all proposals of the applicant shall be conditions of approval unless otherwise modified herein.
2. That any new addresses shall be assigned by City of Ashland Engineering Department.
3. That permits and associated inspections shall be obtained from the Ashland Public Works Department prior to any work in the public right-of-way, including but not limited to permits for curbs, parkrows, sidewalks and driveway approaches, or for any necessary encroachments. A 1200-C permit will need to be secured by the applicant if required by Oregon State DEQ, and the City of Ashland Engineering Division must receive a copy of this permit prior to any construction activity.
4. That the building permit submittals shall include:
 - a. That the plans submitted for the building permit shall be in substantial conformance with those approved as part of this application. If the plans submitted for the building permit are

not in conformance with those approved as part of this application, an application to modify the Site Design Review approval shall be submitted and approved prior to issuance of a building permit.

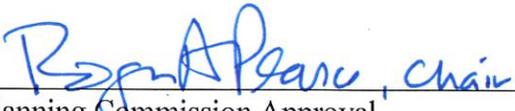
- b. All easements including but not limited to public and private utilities, irrigation, access, public pedestrian access and fire apparatus access shall be indicated on the building permit submittal for review by the Planning, Engineering, Building and Fire Departments.
- c. Solar setback calculations demonstrating that all new construction complies with Solar Setback Standard A in the formula $[(\text{Height} - 6/16)/(0.445 + \text{Slope}) = \text{Required Solar Setback}]$ and elevations or cross section drawings clearly identifying the highest shadow producing point(s) and their height(s) from natural grade.
- d. Final lot coverage calculations demonstrating how lot coverage is to comply with the applicable coverage allowances of the zoning district (65 percent coverage is allowed in the R-R district). Lot coverage includes all building footprints, driveways, parking areas and other circulation areas, and any other areas other than natural landscaping.
- e. Storm water from all new impervious surfaces and run-off associated with peak rainfalls 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.
- f. The engineered construction drawings for the proposed street improvements along Engle and Villard Streets including city standard seven-foot parkrow planting strips with irrigated street trees and five-foot sidewalks shall be submitted for review and approval of the Ashland Planning and Engineering Divisions with the building permit submittal, prior to work in the street right-of-way or installation of improvements in the pedestrian corridor. Sidewalk designs will need to include handicap access ramps meeting current United States Access Board Guidelines (PROWAG) and shall be designed in accordance with the current ODOT design guidelines. Civil drawings shall consider existing fill and grades in the vicinity of Buildings A and K and the proposed detention pond, and grades and fill will need to be planned to enable future street extensions to the north, east and west, with any associated retaining walls, to relate to the existing Engle Street elevation.
- g. All frontage improvements, including but not limited to the sidewalk, parkrow planting strips and irrigated street trees shall be constructed across the entire Engle and Villard frontages of the subject properties, and if additional right-of-way is necessary to accommodate city standard frontage improvements the applicant shall dedicate additional right-of-way or necessary public pedestrian access easements prior to the issuance of a certificate of occupancy or final project approval.
- h. Final utility, grading, drainage and erosion control plans.
- i. The final storm drainage plan shall detail the location and final engineering for all storm drainage improvements associated with the project, and shall be submitted for review and approval by the Departments of Public Works, Planning and Building Divisions. The storm drainage plan shall demonstrate that post-development peak flows are less than or equal to the pre-development peak flow

- for the site as a whole, and that storm water quality mitigation has been addressed through the final design.
- ii. The final utility plan for the parcels shall be submitted for review and approval by the Planning, Engineering, and Building Divisions with the Final Plan application. The utility plan shall include the location of connections to all public facilities including the locations of water lines and meter sizes, fire hydrants, sanitary sewer mains and services, manholes and clean-outs, and storm drainage pipes and catch basins, and shall address the sewer mains on Engle Street relative to grades and any additional mains needed to serve the Engle parcel. Any required private or public utility easements shall be delineated on the civil plans.
 - iii. The final electric design and distribution plan including load calculations and locations of all primary and secondary services including transformers, cabinets and all other necessary equipment with the Final Plan application. This plan must be reviewed and approved by the Electric Department prior to permit issuance or installation of equipment. Transformers and cabinets shall be located in areas least visible from streets and outside of vision clearance areas, while considering the access needs of the Electric Department. Individual electric services/meters shall be installed underground to serve all units.
- i. A final Tree Protection Plan addressing the requirements of AMC 18.4.5.030.B and any recommendations of the Tree Commission from its June 6, 2019 regular meeting, where consistent with applicable standards and criteria and with final approval by the Staff Advisor. The plan shall identify the location and placement of fencing around the drip lines of all trees identified for preservation. The amount of fill and grading within the drip lines shall be minimized. Cuts within the drip line shall be noted on the tree protection plan, and shall be executed by handsaw and kept to a minimum. No construction shall occur within the tree protection zone including dumping; storage of materials such as building supplies, soil, waste, equipment, or parked vehicles; and no fill shall be placed around the trunk/root crown.
 - j. A final size- and species-specific landscaping plan including irrigation details and details of the landscape materials to be planted shall be provided for the review and approval of the Staff Advisor. New landscaping shall comply with the General Fuel Modification Area requirements and shall not include plants listed on the Prohibited Flammable Plant List adopted by Resolution #2018-028.
 - k. That the requirements of the Ashland Fire Department relating to approved addressing; fire apparatus access and approach; firefighter access pathways and any gates, fences or other obstructions; fire flow; fire hydrant spacing, distance and clearance; fire department work area; fire sprinkler, extinguishers and fire department connection, as applicable; and wildfire hazard area requirements shall be satisfactorily addressed in the building permit submittals. Fire Department requirements shall be included in the building permit drawings, and a Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements of AMC 18.3.10.100.A.2. shall be provided with the building permit submittals. This plan shall be reviewed and approved by the Fire Marshal prior to bringing combustible materials onto the property.

- l. That exterior building materials and paint colors shall be compatible with the surrounding area and consistent with those described in the application. Sample exterior building colors shall be provided with the building permit submittals for review and approval of the Staff Advisor. Very bright or neon paint colors shall not be used in accordance with 18.4.2.030.E of the Multi-Family Site Design and Use Standards.
 - m. That the final plans shall demonstrate that the strategies for “Parking Design to Reduce Environmental Impacts” in AMC 18.4.3.080.B.5 are addressed in the parking lot designs.
5. That prior to building permit issuance:
- a. A Tree Verification Permit shall be applied for and approved by the Ashland Planning Division prior to any site work including excavation, staging or storage of materials, or building or excavation permit issuance. The Tree Verification Permit is to inspect the identification of the trees to be removed and the installation of tree protection fencing for trees to be protected. Standard tree protection consists of chain link fencing six feet tall and installed in accordance with the requirements of AMC 18.4.5.030.B. No construction shall occur within the tree protection zone including dumping or storage of materials such as building supplies, soil, waste, equipment, or parked vehicles.
 - b. That the requirements of the Building Division shall be satisfactorily addressed.
 - c. That the applicant shall pay all applicable plan review & building permit fees and all associated fees and charges.
6. That prior to the issuance of a certificate of occupancy or final project approval:
- a. That the sidewalks shall be installed according to the approved plan, and parkrow planting strips along the Villard and Engle street frontages planted with irrigated street trees selected from the Recommended Street Trees guide at a spacing of one per 30 feet prior to the issuance of a certificate of occupancy or final inspection approvals for the project.
 - b. Electric services shall be installed underground to serve all proposed units, inspected and approved. A final electric service plan shall be reviewed and approved by the Ashland Electric, Building, Planning and Engineering Divisions prior to installation.
 - c. Utility installations and common area improvements including landscaping, open space/recreational areas, hardscaping, irrigation, automobile and bicycle parking, and trash and recycling facilities shall be completed according to approved plans, inspected and approved by the Staff Advisor.
 - d. That all exterior lighting shall be directed on the property and shall not directly illuminate adjacent properties.
 - e. That bicycle parking facilities to accommodate the 90 required bicycle parking spaces shall be installed prior to the issuance of a certificate of occupancy or final project approval. Inverted u-racks shall be used for the bicycle parking. All bicycle parking shall be installed in accordance with design and rack standards in 18.4.3.070.I and J prior to the issuance of the certificate of occupancy, inspected and approved by the Staff Advisor. The building

permit submittals shall verify that the bicycle parking rack design, spacing and coverage requirements are met in accordance with 18.4.3.070.I.

- f. The applicant shall record deed restrictions in accordance with the City of Ashland's Affordable Housing Standards to satisfy the requirements for the affordable housing density bonus requested.
- g. The applicant shall provide evidence of Earth Advantage certifications necessary to satisfy the requirements for the conservation housing density bonus requested.
- h. That the McCall Drive alley improvements shall be completed according to the approved plan. These alley improvements shall be constructed to city standards which require a minimum 12-foot width paved driving surface with two-foot buffers on each side through to McCall Drive to the south. Should the applicant wish to limit regular motor vehicle access, approvals would need to be obtained through the Public Works Department and Transportation Commission prior to the installation of any encroachment.



Planning Commission Approval

July 24, 2019

Date