

Snowberry Brook, Ph. II

CITY OF
ASHLAND

September 3, 2019 Council Appeal "On the Record"



Snowberry Brook Appeal

Request to Reopen the Record

AMC 18.5.1.060.I.4.b Reopening the Record. The City Council may reopen the record and consider new evidence on a limited basis, if such a request to reopen the record is made to the City Administrator together with the filing of the notice of appeal and the City Administrator determines prior to the Council appeal hearing that the requesting party has demonstrated one or more of the following.

- i. That the Planning Commission committed a procedural error, through no fault of the requesting party, that prejudiced the requesting party's substantial rights and that reopening the record before the Council is the only means of correcting the error.
- ii. That a factual error occurred before the Commission through no fault of the requesting party which is relevant to an approval criterion and material to the decision.
- iii. That new evidence material to the decision on appeal exists which was unavailable, through no fault of the requesting party, when the record of the proceeding was open, and during the period when the requesting party could have requested reconsideration. A requesting party may only qualify for this exception if he or she demonstrates that the new evidence is relevant to an approval criterion and material to the decision. This exception shall be strictly construed by the Council in order to ensure that only relevant evidence and testimony is submitted to the hearing body.
- iv. Re-opening the record for purposes of this section means the submission of additional written testimony and evidence, not oral testimony or presentation of evidence before the Council.

Snowberry Brook Appeal

Request to Reopen the Record

- July 31, 2019** Appellant's 'Notice of Appeal' filed without a request to reopen the record.
- August 12, 2019** Staff mailed notice for appeal hearing as required in AMC 18.5.1.060.I.3. Mailed notice made clear hearing was to be "*on the record.*" Mailed notice made clear that Council would consider whether second ground for appeal was within the allowed "Scope of Appeal Deliberations" since the second ground had not previously been raised in the record during the Planning Commission hearing.
- August 22, 2019** Appellant's Written Argument Submittal received.
Appellant's Written Argument included request to reopen the record.

Because the request to reopen the record was not timely submitted as provided in AMC 18.5.1.060.I.3, the City Administrator has determined that the record cannot be reopened tonight.

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June 11, 2019 Planning Commission Hearing



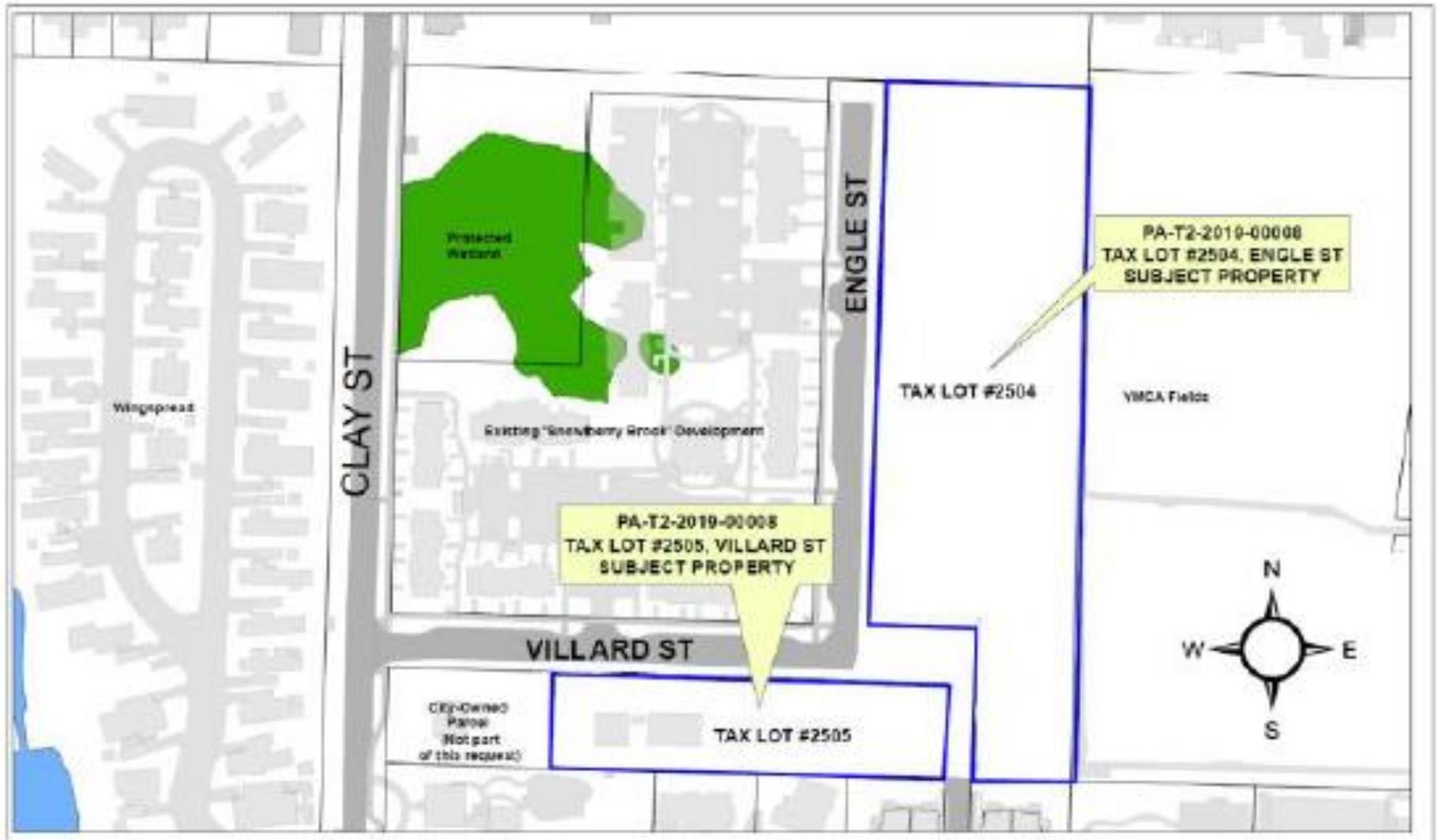
Snowberry Brook, Ph. II

The Proposal

- 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.
 - Four two-story 8-plex apartment buildings
 - Seven two-story townhouse 4-plexes.
 - Units will consist of ten 1-bedroom flats, 12 2-bedroom flats, ten 3-bedroom flats, and 28 2-bedroom townhomes.
- The application includes a request for Tree Removal Permits to remove three trees:
 - One 24-inch diameter Deodar Cedar (*cedrus deodara*) which the project arborist describes as posing a hazard.
 - Two 13- to 14-inch scrub almonds in poor condition located in the path of the required sidewalk improvements.
- 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.

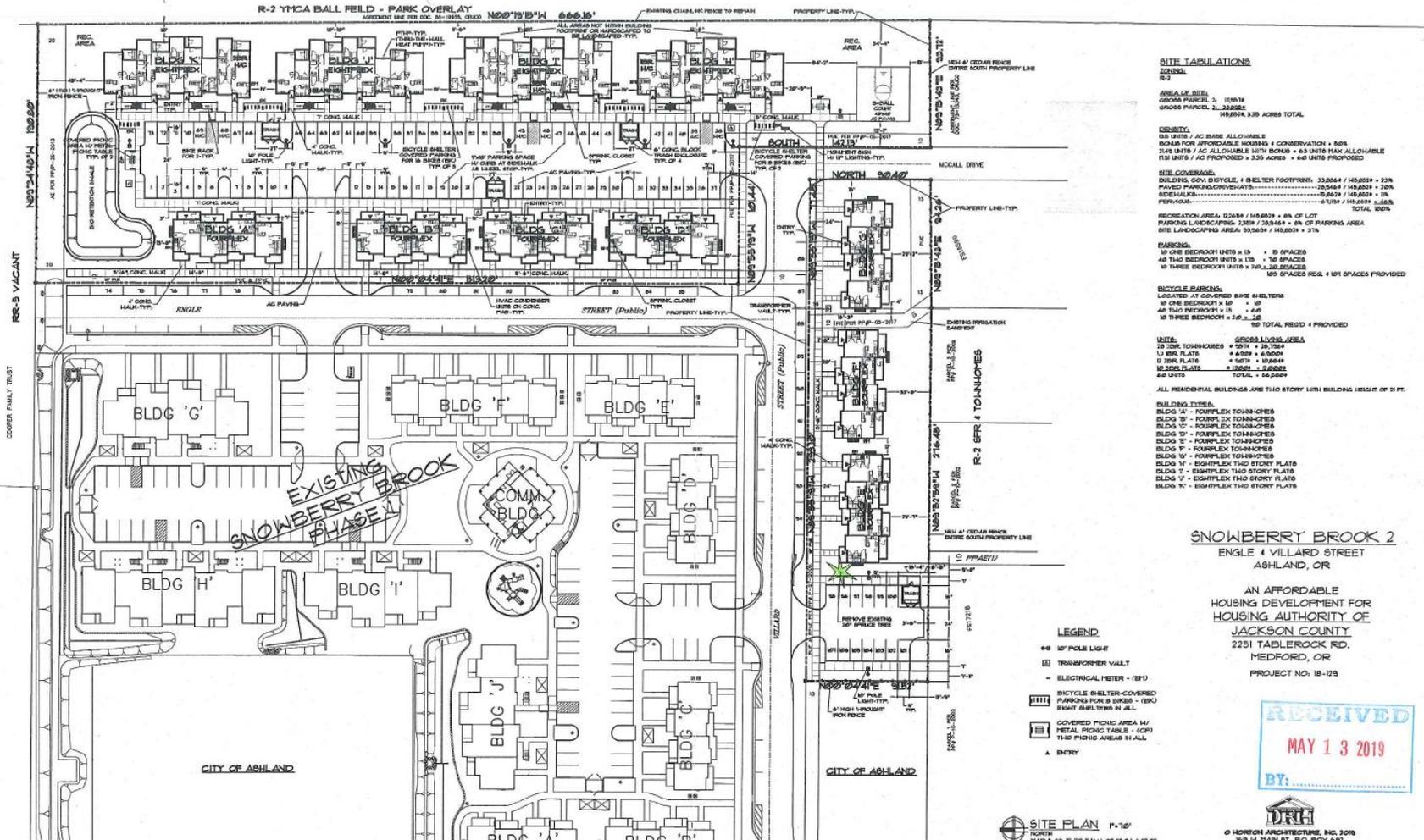
Snowberry Brook, Ph. II

Vicinity Map



Snowberry Brook, Ph. II

Site Plan



SITE TABULATIONS

GENERAL
 AREA OF SITE: 18,874
 GROSS PARCEL: 21,330
 18,874 3.35 ACRES TOTAL

DENSITY:
 138 UNITS / AC BASE ALLOWABLE
 8048 FOR AFFORDABLE HOUSING + CONSERVATION + 50%
 3148 UNITS / AC ALLOWABLE WITH BONUS + 83 UNITS MAX ALLOWABLE
 171 UNITS / AC PROPOSED + 335 ACRES + 645 UNITS PROPOSED

SITE COVERAGE:
 BUILDING COV. (BIKECYCLE + WHEELER FOOTPRINT): 33,886 / 18,874 = 23%
 PAVED PARKING/DRIVEWAYS: 28,366 / 18,874 = 20%
 SIDEWALKS: 7,829 / 18,874 = 1%
 PERMANENT: 10,600 / 18,874 = 1%
 TOTAL: 80,681

RECREATION AREA: 2,024 / 18,874 = 8% OF LOT
 PARKING LANDSCAPING: 2,359 / 38,344 = 6% OF PARKING AREA
 SITE LANDSCAPING AREA: 83,529 / 18,874 = 31%

PARKING:
 10 ONE BEDROOM UNITS x 15 = 150 SPACES
 40 TWO BEDROOM UNITS x 15 = 600 SPACES
 18 THREE BEDROOM UNITS x 20 = 360 SPACES
 100 SPACES REG. 4 100 SPACES PROVIDED

BIKECYCLE PARKING:
 LOCATED AT COVERED BIKE SHELTERS
 10 ONE BEDROOM x 10 = 100
 40 TWO BEDROOM x 15 = 600
 10 THREE BEDROOM x 20 = 200

UNITS:
 28 TOWN TOWNHOUSES + 3579 + 28,724
 17 BRK PLATS + 4269 + 6,200
 12 TRK PLATS + 1879 + 10,844
 10 TRK PLATS + 1269 + 2,600
 64 UNITS TOTAL + 48,197

ALL RESIDENTIAL BUILDINGS ARE TWO STORY WITH BUILDING HEIGHT OF 31 FT.

BUILDING TYPES:
 BLDG 'A' - FOURPLEX TOWNHOUSES
 BLDG 'B' - FOURPLEX TOWNHOUSES
 BLDG 'C' - FOURPLEX TOWNHOUSES
 BLDG 'D' - FOURPLEX TOWNHOUSES
 BLDG 'E' - FOURPLEX TOWNHOUSES
 BLDG 'F' - FOURPLEX TOWNHOUSES
 BLDG 'G' - FOURPLEX TOWNHOUSES
 BLDG 'H' - EIGHTPLEX THO STORY PLATS
 BLDG 'I' - EIGHTPLEX THO STORY PLATS
 BLDG 'J' - EIGHTPLEX THO STORY PLATS
 BLDG 'K' - EIGHTPLEX THO STORY PLATS

SNOWBERRY BROOK 2
 ENGLE & VILLARD STREET
 ASHLAND, OR

AN AFFORDABLE
 HOUSING DEVELOPMENT FOR
 HOUSING AUTHORITY OF
 JACKSON COUNTY
 2251 TABLER RD.
 MEDFORD, OR
 PROJECT NO. 18-125

- LEGEND**
- ⊙ 10' POLE LIGHT
 - ⊠ TRANSFORMER VAULT
 - ELECTRICAL PETER - (EPI)
 - ⊞ BIKECYCLE SHELTER COVERED PARKING FOR 8 BIKES - (B8) EIGHT SHELTERS IN ALL
 - ⊞ COVERED PICNIC AREA W/ METAL PICNIC TABLE - (CP) TWO PICNIC AREAS IN ALL
 - ▲ ENTRY



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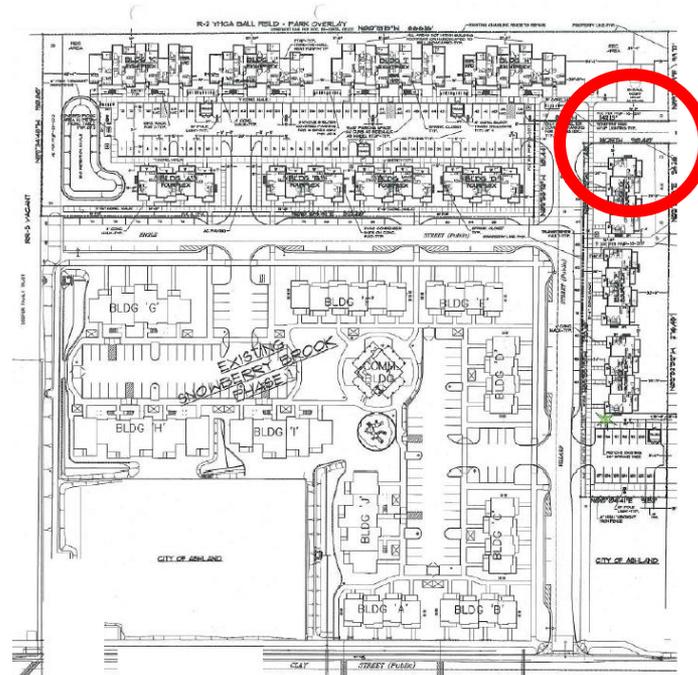
Context – Phase I and Subject Property

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McCall Drive



Traffic Impact Analysis (**TIA**) by S.O. Transportation Engineering, LLC concludes that the 60-units can be approved without adverse impacts to the transportation system. **TIA** recommends limiting McCall Drive to bicycles, pedestrians and emergency vehicles, and restricting regular vehicle traffic, to avoid cut-through traffic. [**NOTE:** Connection is in the TSP, right-of-way is already dedicated, and with the sale to HAJC, the city is to pay for the McCall Drive connection.]

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Connectivity



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Connectivity – Clay to Tolman

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Connectivity – McCall & Birchwood

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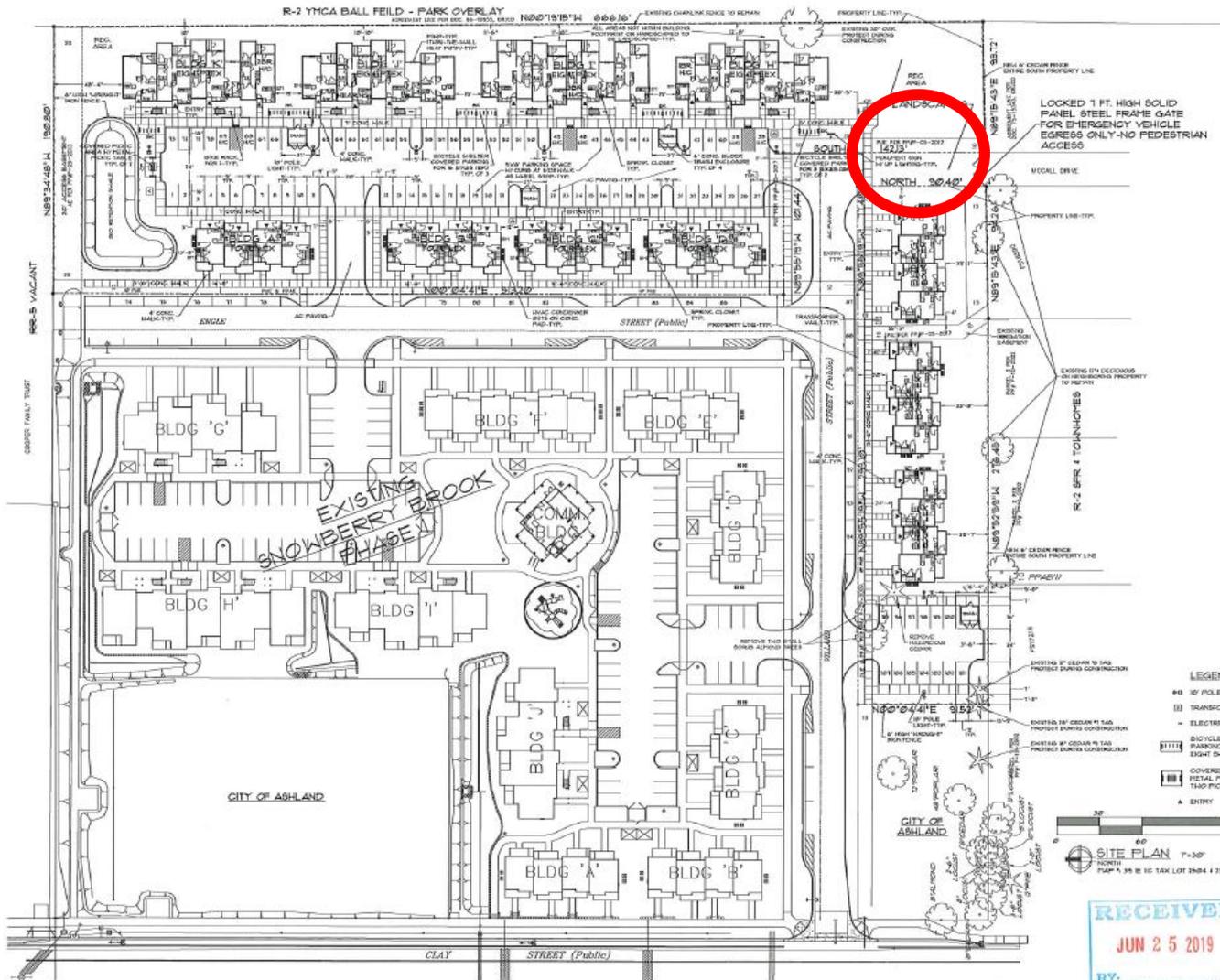
McCall Drive

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Snowberry Brook, Ph. II

McCall Drive



- LEGEND
- Ø 40' POLE I
 - ▤ TRANSICS
 - ELECTRIC
 - ▨ BICYCLE PARKING EIGHT (8)
 - ▩ COVERED TOTAL P/T TWO (2)
 - ▲ ENTRY

SCALE: 1" = 30'
NORTH
MAP # 35 10 TAX LOT 3804 4 31

RECEIVED
JUN 25 2019
BY:

Staff recommended and the PC required alley-level improvements for McCall to meet city street standards for existing right-of-way. PC recognized they lacked jurisdiction to approve encroachments into existing right-of-way, and left future encroachment permits to the Public Works Director.



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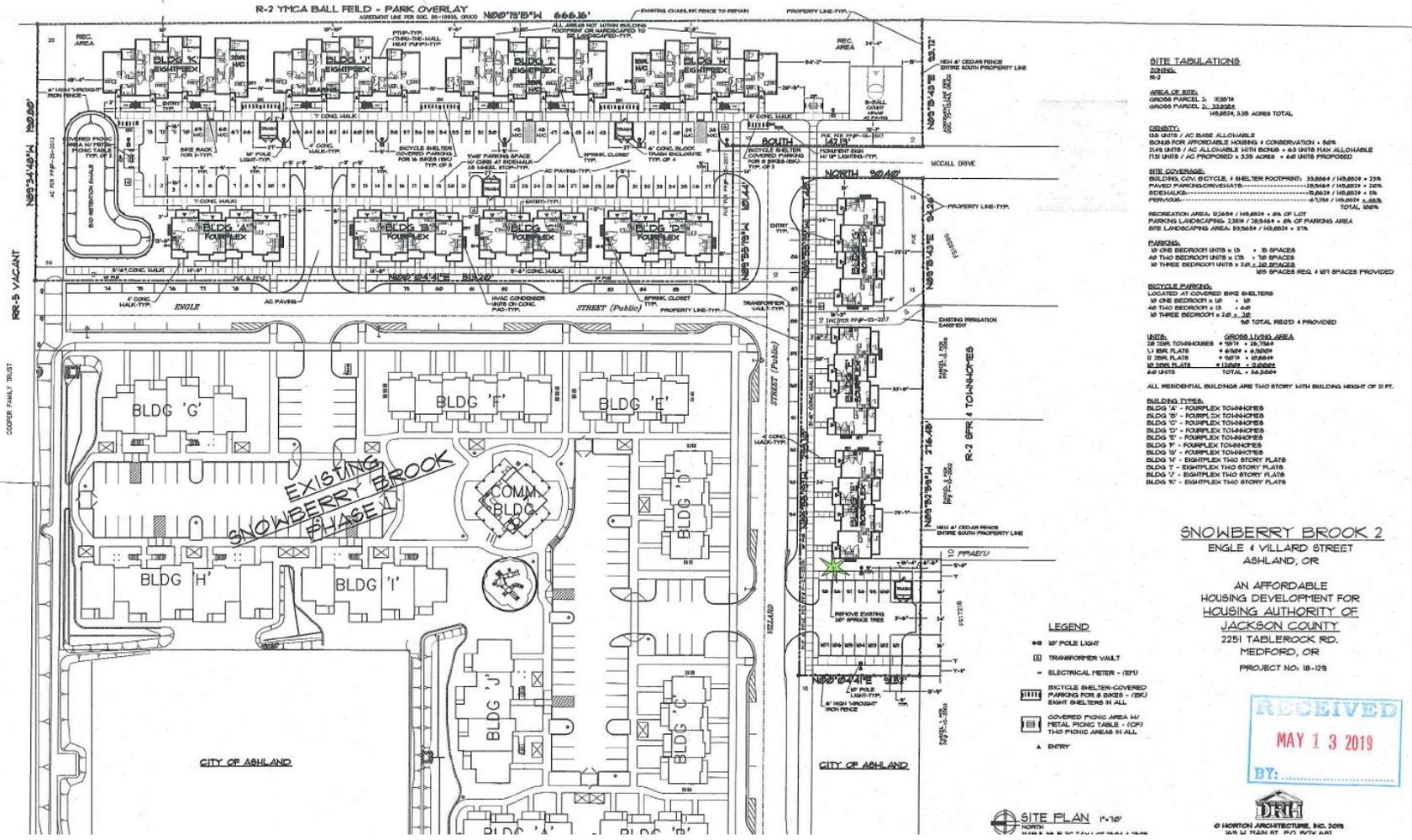
Parking



105 Off-Street Parking Spaces required for the 60 units proposed. The applicant proposes 86 surface parking spaces and would meet the remaining 19 space requirement using on-street parking credits. 90 covered bicycle parking spaces would also be provided on-site.

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Site Plan



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 171 UNITS / AC PROPOSED + 335 UNITS + 65 UNITS PROPOSED

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 12 TRK. FLATS + 1879 + 2,264
 10 TRK. FLATS + 1269 + 1,586
 65 UNITS TOTAL + 36,843

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SNOWBERRY BROOK 2
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 - ▲ ENTRY



Snowberry Brook, Ph. II

CITY OF
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June 11, 2019 Planning Commission Hearing



Snowberry Brook Appeal

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.
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.

Snowberry Brook Appeal

Ground #1

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

THE PLANNING COMMISSION FINDINGS:

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...

Snowberry Brook Appeal

Ground #1

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

THE PLANNING COMMISSION FINDINGS:

...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.

Snowberry Brook Appeal

Ground #1 – Staff Recommendation

The Planning Commission specifically found that:

- It lacked jurisdiction to approve any encroachments such as the bollards and gate proposed by the applicant.
- 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 is not subject to a land use appeal (AMC 13.02.070 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 this first ground for appeal.**

Snowberry Brook Appeal

Ground #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.

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.

Snowberry Brook Appeal

Ground #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.

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 spaces 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 (i.e. $19/105 = 0.18$).**

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 explicitly allowed by code.**

Snowberry Brook Appeal

Ground #2/Allowed Scope of Appeal Deliberations

The “*Scope of Appeal Deliberations*” in AMC 18.5.1.060.1.5.b is clear that “*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.*”

Staff has determined that this second ground for appeal dealing with the parking management strategy was not raised before the Planning Commission during the original hearing. As such, staff made note in the Public Hearing notice that the Council would determine tonight whether the second ground for appeal should be excluded from the appeal hearing.

Staff recommends that the Council exclude the second ground for appeal as falling outside the allowed Scope of Appeal Deliberations. This would strike materials related to this ground for appeal from the record and from consideration in the decision tonight, and all speakers would be directed to limit their testimony strictly to the first ground for appeal.

Should the Council concur with staff’s recommendation, a motion such as “**I move to exclude the second ground for appeal dealing with the parking management strategy from the hearing tonight as it falls outside the allowed “Scope of Appeal Deliberations” because it was not previously raised before the Planning Commission**” would be appropriate. Such a motion would need to happen prior to taking testimony, and if passed parties would need to be advised that oral arguments must be limited to only the first ground for appeal.

Snowberry Brook Appeal

Staff Recommendation

Planning staff recommends that the Council:

- Exclude the second ground from the scope of appeal deliberations prior to testimony with a motion, *and*
- Affirm the decision of the Planning Commission,
- Reject the remaining (i.e. first) ground for appeal, and
- Adopt the draft findings tonight (*or direct staff to prepare revised findings for adoption by Council in two weeks.*)

The draft findings provided in your packets reflect the staff recommendations above, and 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. (*For this project, the 100-day timeline ends on September 11, 2019.*)

Snowberry Brook Appeal

Potential Motions

To Exclude the Second Ground for Appeal (*before taking testimony*)

I move to exclude the second ground for appeal dealing with the parking management strategy from the hearing tonight as it falls outside the allowed “Scope of Appeal Deliberations” because it was not previously raised before the Planning Commission.

Decision

I move to affirm the decision of the Planning Commission and reject the appeal on the remaining (first) ground.

Findings Adoption

I move to adopt the written findings as presented by staff rejecting the appeal and supporting the original Planning Commission decision from July 23, 2019.

Snowberry Brook, Ph. II

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September 3, 2019 Council Appeal "On the Record"

