

BEFORE THE PLANNING COMMISSION

October 13, 2020

IN THE MATTER OF PLANNING ACTION #PA-APPEAL-2020-00011,)
AN APPEAL OF THE ADMINISTRATIVE APPROVAL OF PLANNING)
ACTION #PA-T1-2020-00109, A TWO-LOT PARTITION OF A 12.29-)
ACRE LOT FOR THE PROPERTY LOCATED AT 345 CLINTON ST. THE)
TENTATIVE PARTITION PLAT CREATES TWO PARCELS THAT ARE)
8.94 ACRES AND 3.35 ACRES IN SIZE. STAFF INITIALLY APPROVED)
THE APPLICATION SUBJECT TO A NUMBER OF CONDITIONS.)
SUBSEQUENT TO THE MAILING OF A NOTICE OF DECISION, ERIC)
ELERATH AND BETSY MCLANE WHO RESIDE IN THE NOTICE AREA)
FILED AN APPEAL REQUEST.)

**FINDINGS,
CONCLUSIONS,
AND ORDERS.**

OWNER: PAUL MACE AND KATHLEEN KAHLE)
APPLICANT: ROGUE DEVELOPMENT SERVIES)
APPELLANT: ERIC ELERATH AND BETSY MCLANE)
_____)

RECITALS:

- 1) Tax lot #401 of Assessor’s Map 39-1E-04-DB is located at 345 Clinton Street is in the R-1-7.5 zone and is 12.29 acres in size.
- 2) The application proposed a two-lot partition and included a tentative partition plat showing two parcels that are 8.94 acres and 3.35 acres in size.
- 3) In response to the COVID-19 pandemic, Governor Kate Brown issued the “Stay home, stay safe” order on March 23, 2020, after which the city took numerous actions including closing City offices to the public including the Community Development building.
- 4) State of Oregon Executive order 20-16 “Keep government working: Ordering necessary measures to ensure safe public meetings and continued operations by local governments during coronavirus (COVID-19) outbreak” provides that any requirement of the ORS for public meetings may be satisfied by providing a method of appearing or meeting by telephone, video, or other electronic methods. As such, planning commission meetings have been conducted via Zoom.
- 5) On May 15, 2020 the application was deemed complete, and in accordance with AMC 18.5.1.050.B.4 a Notice of Complete application was posted at the subject property in clear view from the public right-of-way and mailed to all property owners of record within 200 feet of the parcel.
- 6) The Staff Advisor approved the application on June 30, 2020 subject to several conditions of approval and a Notice of Decision (NOD) was mailed on the same date.

- 7) After the mailing of the NOD, Eric Elerath and Betsy McLane, who reside at 419 Clinton Street, submitted an application to appeal the approval of the partition on July 13, 2020.
- 8) The Planning Commission, following proper public notice, held a public hearing on August 11, 2020. The meeting was conducted electronically by Zoom due to the ongoing emergency order in response to the COVID-19 pandemic. Public testimony was received, and exhibits were presented.
- 9) After the public hearing had concluded the appellant requested that the record remain open pursuant to ORS 197.763(6). Therefore the record remained open to new evidence or argument from parties to the hearing until August 18, 2020 at 4:30 p.m., open to argument only from parties in response to new submittals until August 25, 2020 at 4:30 p.m., and open to final legal argument from the applicant until September 1, 2020 at 4:30 p.m. The hearing was continued to a date and time certain: September 8, 2020 at 7 p.m.
- 10) During the period that the record remained open no additional arguments or evidence were submitted.
- 11) September 12, 2020 was the 120-day time limit after the application was deemed complete. On September 10, 2020 the applicant signed a 30-day extension to the time limit set forth in ORS 227.178(1).
- 12) On September 8, 2020 the Alameda fire took place which caused the scheduled hearing to be canceled. After the cancellation of the meeting a new notice was posted at the subject property in clear view from the public right-of-way and mailed to all property owners of record within 200 feet of the parcel that the hearing was rescheduled to September 22, 2020 at 7:00 p.m.
- 13) The Planning Commission reconvened on September 22, 2020 to deliberate. Ultimately, they determined that staff had not erred in approving the two-lot partition, denying the appeal and approving the application subject to conditions listed in the staff report, with the addition of condition 1a below.
- 14) The criteria of approval for a Land Partition are described in Ashland Municipal Code (AMC) 18.5.3.050 which state that the approval authority shall approve an application for preliminary partition plat approval only where all the following criteria are met:
 - A. The future use for urban purposes of the remainder of the tract will not be impeded.
 - B. The development of the remainder of any adjoining land or access thereto will not be impeded.
 - C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.
 - D. The tract of land has not been partitioned for 12 months.
 - E. Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).
 - F. Accesses to individual lots conform to the standards in section [18.4.3.080](#) Vehicle Area Design. See also, [18.5.3.060](#) Additional Preliminary Flag Lot Partition Plat Criteria.

G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part [18.4](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.

H. Unpaved Streets.

1. Minimum Street Improvement. When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.
2. Unpaved Streets. The Public Works Director may allow an unpaved street for access for a land partition when all of the following conditions exist.
 - a. The unpaved street is at least 20-feet wide to the nearest fully improved collector or arterial street. The City may require the street to be graded (cut and filled) to its standard physical width, and surfaced as required in chapter [18.4.6](#) prior to the signature of the final partition plat by the City.
 - b. The centerline grade on any portion of the unpaved street does not exceed ten percent.
 - c. The final elevation of the street shall be established as specified by the Public Works Director except where the establishment of the elevation would produce a substantial variation in the level of the road surface. In this case, the slope of the lot shall be graded to meet the final street elevation.
 - d. Should the partition be on an unpaved street and paving is not required, the applicant shall agree to participate in the costs and to waive the rights of the owner of the subject property to remonstrate both with respect to the owners agreeing to participate in the cost of full street improvements and to not remonstrate to the formation of a local improvement district to cover such improvements and costs thereof. Full street improvements shall include paving, curb, gutter, sidewalks, and the undergrounding of utilities. This requirement shall be precedent to the signing of the final survey plat, and if the owner declines to so agree, then the application shall be denied.
- I. Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.
- J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.
- K. A partition plat containing one or more flag lots shall additionally meet the criteria in section [18.5.3.060](#).

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, and Miscellaneous Exhibits lettered with an "M"

SECTION 2. CONCLUSORY FINDINGS

2.1 The Planning Commission finds that it has received all information necessary to render a decision based on the application, Staff Report, public hearing testimony, and the exhibits received.

2.2 The Planning Commission finds that the proposal for a two-lot partition meets all applicable criteria described in section 18.5.3.050, for preliminary partition plat approval. The Planning Commission notes that the preliminary partition plat details the two proposed parcels as 8.94 acres and 3.35 acres in size.

2.3 The Planning Commission finds that the application was deemed complete on May 15, 2020 and notice was both posted at the frontage of the subject property and mailed to all property owners within 200-feet of the subject property. The Planning Commission further finds that the application was approved by the Staff Advisor on June 30, 2020 with a 12-day appeal period which extended through July 13, 2020.

2.4 The Planning Commission finds that on July 13, 2020 prior to the end of the appeal period, Eric Elerath and Betsy McLane timely filed a notice of land use appeal. Mr. Elerath and Ms. McLane reside in the noticing area and Mr. Elerath had also submitted written comments during the public comment period and thus had standing to appeal.

2.5 The Planning Commission notes that the notice of appeal identified the following issues on appeal: 1) Incomplete application, 2) Defective notice, 3) Failure to provide access to personally inspect the application materials etc., 4) Failure to provide digital access to application materials etc., 5) the Staff Advisor's failure to grant Mr. Elerath's request for additional time to review the application materials, and 6) Defective submittal analysis. Following this list of six specific grounds of appeal the appellant goes on raise a seventh issue saying "implicit in these issues is the apparent fact that two land use decisions were actually made. One decision was made by staff about the application's completeness, and the other was made regarding compliance with criteria for a preliminary partition plat."

The Notice of Appeal further stated that the appellant reserved the right to raise other issues at the hearing. AMC 18.5.1.050.G. explains that appeal hearings on Type I decisions made by the Staff Advisor are "*de novo*" hearings before the Planning Commission and follow the standard Type II public hearing procedure except that the decision of the Planning Commission is the final decision of the City. Consideration of the appeal is not limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type I decision but may include other relevant evidence and arguments. The Commission may allow additional evidence, testimony, or argument concerning any relevant ordinance provision.

2.6 The Planning Commission finds that the subject property is located within the R-1-7.5 zoning district and that land divisions are governed by AMC 18.5.3.

2.7 The Planning Commission finds that AMC Title 18 Land Use regulates the division of land to carry out the development pattern envisioned by the Comprehensive Plan and to encourage efficient use of land resources among other goals. When considering the decision to approve or deny an application for land partition, the Staff Advisor considers the application materials against the relevant approval criteria in the AMC. The approval criteria for a preliminary partition plat are in Ashland Municipal Code (AMC) 18.5.3.050. The Planning Commission finds that there is substantial evidence in the record to make findings that each of the criteria have been met, as follows:

2.7.1 The Planning Commission notes the first approval criterion for preliminary partition plat approval is *“The future use for urban purposes of the remainder of the tract will not be impeded.”* The application includes a discussion regarding the future development plan to demonstrate that the proposed partition will not impede future development of the parcels. The future development plan indicates that the proposed new parcel would be able to be subdivided to create approximately fifteen lots for the development of single-family homes with access provided by an extension of Briscoe and Phelps Streets as well as the alley between Clinton and Briscoe Place. The development plan is not a subdivision proposal and is not approved with this two-lot partition approval. The Planning Commission finds that the two proposed lots are significantly larger than the minimum lot size for the zone, that both lots have frontage on the adjacent public streets, and that the development plan demonstrates that the further development of the new parcel is feasible while not limiting possible future development. The Planning Commission further finds that future development of either lot created here is likely to require the extension of Phelps Street, and that the access as illustrated in the application materials has the potential to complicate the street extension once the two properties are under separate ownership. Phelps Street will need to be extended in alignment with its current terminus and ultimately completed to residential neighborhood street standards while addressing the Driveway Separation for Neighborhood Streets in AMC Figure 18.4.3.080.C.3.b. The current configuration does not provide for the extension of Phelps in alignment with its current terminus or account for driveway separation if the existing driveway to Parcel 1 is retained. A condition has been included below to require that the current configuration be adjusted to allow the extension of Phelps Street in keeping with residential neighborhood street standards and in alignment with its current terminus while addressing the driveway separation requirements.

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

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

previous land use approvals that are relevant. The Planning Commission concludes that this criterion is satisfied.

2.7.4 The Planning Commission notes the fourth approval criterion for preliminary partition plat approval is *“The tract of land has not been partitioned for 12 months.”* The Planning Commission finds that the land has not been partitioned for more than 12 months and that the last plat that adjusted the subject property was a property line adjustment that took place in 2018.

2.7.5 The Planning Commission notes the fifth approval criterion for preliminary partition plat approval is the *“Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).”* The Planning Commission finds that the preliminary partition plat indicates that the two proposed lots comply with the base standards for the zone including minimum area requirements and lot coverage, and that both proposed parcels substantially exceed the 5,000 square feet minimum lot size and minimum width standards as well as lot width to depth ratio. The Planning Commission concludes that this criterion is satisfied.

2.7.6 The Planning Commission notes the sixth approval criterion for preliminary partition plat approval is that *“Accesses to individual lots conform to the standards in section [18.4.3.080](#) Vehicle Area Design.”* The Planning Commission finds that with the condition discussed in 2.7.1 above, the lot configuration will be adjusted to provide for the future extension of Phelps Street in alignment with its current terminus to the south and in keeping with street standards while addressing the driveway separation requirements of AMC Figure 18.4.3.080.C.3.b, and that with the further development of Parcel 2, individual lots created will need to address the Vehicle Area Design standards. The Planning Commission concludes that this criterion is satisfied.

2.7.7 The Planning Commission notes the seventh approval criterion for preliminary partition plat approval is *“The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part [18.4](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.”* The Planning Commission finds that the application materials make clear that all city facilities are available within the adjacent rights-of-way, including sanitary sewer, water and franchise utilities. There are no public utilities proposed to be installed to serve the new vacant parcel. The application explains that the size of these utilities will be predicated by the future development. Clinton, Ann and Briscoe streets are designated as residential neighborhood streets in the City of Ashland Transportation System Plan and are designed to have a capacity of up to 1500 daily trips. The most recent trip count data (captured between 2005 and 2008) indicates that each of these roads operate far below their design capacity: Carol 388 Average Daily Trips (ADT), Phelps 207 ADT, Clinton 143 ADT and Ann 157 ADT. According to City records in the past twenty years there have been two accidents at the point where Clinton St turns into Carol, one accident at the intersection of Clinton and Ann, and another at Phelps and Clinton, for a total of four accidents. The Land Use Ordinance does not require

a Traffic Impact Analysis (TIA), and Public Works had no concerns regarding traffic impacts of the proposed partition. The Planning Commission concludes that this criterion has been satisfied.

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

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

2.7.10 The Planning Commission notes the tenth approval criterion for preliminary partition plat approval is that *“Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.”* The Planning Commission finds that at this time there is no development that would require such permits and that at the time of future development or land division the applicant will be required to address the Water Resource Protection standards and delineation of the possible wetland as identified in the Wetland Inventory and obtain the required state and federal permits should they be required.

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

2.8 The Planning Commission notes the notice of appeal identified six specific items. It should be noted that none of these issues address the applicable approval criteria and are all focused on alleged failures to adequately notice the application and provide access to the application materials. The six specific items listed were:

- A. Incomplete application.
- B. Defective notice.

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

The Planning Commission further acknowledges that the Notice of Intent to Appeal (NITA) document continues under a heading "Specific Grounds for Appeal" there are two sections numbered one and two (A&E above). These two sections develop Mr. Elerath's arguments, the first being that "The Director's decision was made without a complete application having been produced." The second being that "The Director failed to grant an extension of time to allow access to review the application." None of the other specific points listed (B, C, D, F above) have their arguments further developed. As stated above, following the list of six appeal issues the appellant raises a seventh issue stating that two separate land use decision were made. Additionally, in a supplemental submittal the appellant raises the issue that the city failed to properly send a separate notice to co-appellant Betsy McLane, and that his due process rights under the 14th amendment had been prejudiced. Finally, during the hearing the appellant raised issues with easements of record that were not shown on the plat. Below each of these appeal issues is addressed in turn.

2.8.1 The Planning Commission notes that the first appeal issue was that the application was incomplete because the materials provided online did not include the application form itself or receipt for payment. The Planning Commission finds that the receipt and application were included in the physical record. The Planning Commission concludes that the application was complete, and further notes the application requirements of AMC 18.5.1.050.A are not approval criteria applicable to approving or denying a preliminary partition plat.

2.8.2 The Planning Commission notes that the second appeal issue was that the notice was defective. The Planning Commission notes that the notice that was posted stated that the documents would be available at the Community Development Building which was closed to the public during the public comment period. The Planning Commission notes that during the review period the appellant was in contact with staff and was directed to the City web site where the application materials were available. The Planning Commission further notes that while the posted notice stated that the application materials were available for review in the Community Development Building, with the Governor's Executive Order #20-16 and the city's declared State of Emergency in response to the COVID-19 pandemic, city offices were closed to the public, and that the mailed and posted notices included the name and phone number of a city contact person as required in AMC 18.5.1.050.B.3.h. The Planning Commission notes that the application materials were made available on the "What's Happening in My City" page of the City web site, and people who called or emailed and were interested in reviewing the file were directed to the City's web site. The Planning Commission finds that any issue with defective notice was remedied by the notice for the appeal hearing.

2.8.3 The Planning Commission notes that the third appeal issue was failure to provide access to personally inspect the application file, evidence, and documents. The Planning

Commission finds that staff contacted Mr. Elerath multiple times to ensure that he had access to the electronic materials. The Planning Commission finds that after the Notice of Decision was sent but prior to the end of the appeal period the city made accommodations to allow Mr. Elerath access to the building to review the physical materials. Despite being contacted multiple times he did not respond to staff or take those opportunities that were available to him to review the application materials in person. The Planning Commission further finds that prior to the appeal hearing the appellant did visit the Community Development building on August 3, 2020 and reviewed the application materials in person. The Planning Commission concludes that this point of appeal is resolved.

2.8.4 The Planning Commission notes that the fourth appeal issue was an alleged failure to provide digital access to application file, material evidence and documents. The Planning Commission finds that as noted previously the application materials were published on the City web site.

2.8.5 The Planning Commission notes that the fifth appeal issue was the appellant's request for additional time and the Director's failure to provide such. The Planning Commission finds that AMC 18.5.1.050.C requires that, "The Staff Advisor shall prepare a decision within 45 days of the City's determination that an application is complete, unless the applicant agrees to a longer time period." In addition, in keeping with the state's "120-Day Rule," AMC 18.5.1.090.B requires that, "*The City shall take final action on Administrative... land use applications, pursuant to this chapter, including resolution of all appeals, within 120 days from the date the Staff Advisor deems the application complete for purposes of processing, unless the applicant requests an extension in writing.*" The Planning Commission concludes that there is no requirement in the code to provide additional time for review, and additionally, staff's review timeline is constrained by the time limits set by both city ordinance and state law to render a final decision.

2.8.6 The Planning Commission notes that the sixth appeal issue was an alleged 'defective submittal analysis.' The Planning Commission finds that because this specific point of appeal was left undeveloped in the NITA the Planning Commission is left to surmise that this is an argument that ties into the complete application determination addressed below.

2.8.7 The Planning Commission notes that the final appeal issue raised was that the determination of a complete application was a second discrete 'land use decision' which also required public notice etc. The Planning Commission finds that determination that an application meets the Type I application requirements of AMC 18.5.1.050.A is a procedural component of all Type I land use decisions, and AMC 18.5.1.090.A requires the Staff Advisor make such a determination for each application within 30 days of submittal. Completeness review in and of itself is not treated as a separate land use decision requiring substantial discretion, and as such is not included as a type of Planning Action approval in Table AMC 18.5.1.010 "*Summary of Approvals by Type of Review Procedures.*"

2.8.8 In a supplemental submittal on August 10, 2020 the appellant raised additional issues including: the failure of staff to provide separate notice to co-appellant Betsy McLane, concerns with due process and equal protection under the 14th Amendment, requesting additional time to review and inspect the application, and questioning the credibility of the

preliminary plat map prepared based on easements which could not be precisely located.

The Planning Commission notes that after the notice of appeal, appellant Eric Elerath raised concerns with staff that co-appellant Betsy McLane had not received a mailed notice addressed to her. The Commission notes that Ms. McLane was listed as an appellant on the appeal form, however she did not sign the form. The Commission further notes that, as detailed in AMC 18.5.1.050.G.4, hearings for appeals of Type I decisions are to follow the Type II hearing procedures in AMC 18.5.1.060 A-E, which include that notices be mailed to owners of record of property on the most recent tax rolls (AMC 18.5.1.060.C.2) and posted on the property within view of the right-of-way. Mr. Elerath and Ms. McLane are both listed as owners of the property at 419 Clinton Street, and the current tax rolls list their mailing address as, and mailed notice was sent to, “Elerath, Eric J *et al*, 419 Clinton St, Ashland, OR 97520”. The Planning Commission notes that AMC 18.5.1.020 speaks to “Failure to Receive Notice” noting, “*The failure of a property owner to receive notice... shall not invalidate such proceedings if the City can demonstrate by affidavit that such notice was mailed. The failure to receive notice shall not invalidate the decision after the action is final if a good faith attempt was made to notify all persons entitled to receive notice.*” The Planning Commission finds that a copy of the notice received by the appellants is included in their August 10th submittal, and that required notice was also posted on the property in view of the right-of-way. The Planning Commission concludes that proper notice was provided as required in AMC 18.5.1.060.C.

Appellant argues that the 120-day rule for final decision on a permit, as required by the Oregon Legislature at ORS 227.178, violates his right to due process of law under the 14th Amendment of the United States Constitution. Appellant has provided no authority for his argument, and the Planning Commission will abide by the requirements of state law as enacted by the Legislature.

The appellant’s request for additional time are addressed in 2.8.5 above.

The Planning Commission notes that the appellant also raised concerns over notations on the preliminary plat that there were some easements identified through a title report which could not be precisely located on the property. These were noted on the preliminary plat with reference to the applicable Jackson County deed records and a notation that they cannot be located, and the appellant suggested that a partition should not be approved until these easement locations were resolved. The Planning Commission finds that such notations are typically made when a title report identifies older easements which are not described in sufficient detail to precisely locate them on the plat, and further finds that these easement locations do not relate to an approval criterion and as such do not provide a basis to approve or deny a partition application.

2.9 The Commission finds that with the conditions below attached, the proposal satisfies the applicable approval criteria and that neither the appeal issues raised in the initial notice nor those issues raised during the hearing provide a basis to reverse the initial decision of the Staff Advisor.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearings on this matter, the Planning Commission concludes that the request for the partition approval to divide the property is supported by evidence contained within the whole record.

3.2 The Planning Commission denies the appeal and re-affirms the Staff Advisor's original approval of the partition. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then the Planning Action 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 specifically modified herein.
- 2) That a final survey plat shall be submitted, reviewed and approved within 18 months of the final decision date of the preliminary partition plat approval by the City of Ashland.
 - a. That the partition plat shall be adjusted such that the north-south property line between parcel 1 and parcel 2 is shifted to allow a future extension of Phelps St. consistent with the standards for a neighborhood street and in alignment with Phelps St. to the south, and that the drive way accessing the larger parcel be relocated to meet minimum spacing requirements.
- 3) That the property owner shall sign in favor of a Local Improvement District (LID) for the future street improvements, including but not limited to paving, curb gutter, storm drainage, sidewalks and undergrounding of utilities for Clinton and Ann Streets prior to signature of the final survey plat. Nothing in this condition is intended to prohibit an owner/developer, their successors or assigns from exercising their rights to freedom of speech and expression by orally objecting or participating in the LID hearing or to take advantage of any protection afforded any party by City ordinances and resolutions.
- 4) That prior to the submittal of the final survey plat for the review, approval and signature of the Ashland Planning Division, all easements for public and private utilities, fire apparatus access, and reciprocal utility, maintenance, and access shall be indicated on the final survey plat as required by the Ashland Engineering Division.

Planning Commission Approval

October 13, 2020

Date