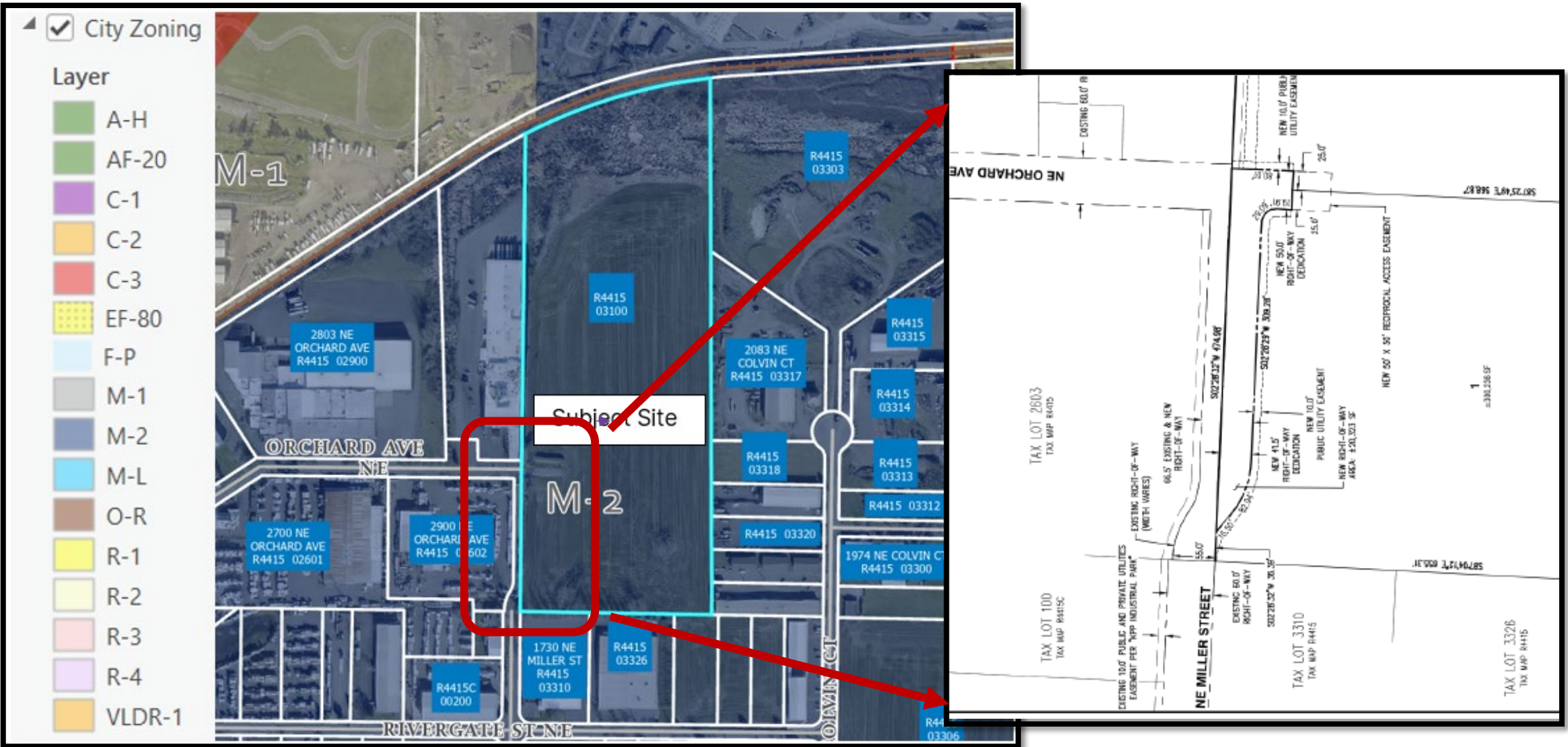


ORDINANCE No. 5174: Appeal (AP 3-16), MIP Minor Partition



HISTORY – LAND USE

MIP applied for a minor partition on October 13, 2025 which was deemed complete on November 12, 2025.

TIMEFRAME FOR QUASI-JUDICIAL DECISIONS *(Governed by ORS 197 and McMinnville Municipal Code, 17.72)*

Application Type	Completeness Review	Notification to Surrounding Property Owners	Request for Comments from Partners	Public Hearing Notice	Decision-Making Body Meeting	Deadline for Decision
TYPE I - Planning Director Decision	Upon Receipt*	N/A	N/A	N/A	N/A	Within 20 Working Days that an Application is Received**
TYPE II - Planning Director Decision with Notice	Within 30 Days	Upon Completeness, 14 Day Comment Period	Upon Completeness, 14 Day Comment Period	N/A	N/A	Within 45 Days of Deeming Application Complete
TYPE III - Planning Commission Decision	Within 30 Days	20 – 30 Days Prior to Public Hearing	Upon Completeness, 14 Day Comment Period	5 – 15 Days Prior to Public Hearing	PC: 45 – 60 Days	Within 120 Days of Deeming Application Complete***
TYPE IV - City Council Decision	Within 30 Days	20 – 30 Days Prior to Public Hearing	Upon Completeness, 14 Day Comment Period	5 – 15 Days Prior to Public Hearing	PC: 45 – 60 Days CC: 90 -120 Days	Within 120 Days of Deeming Application Complete***

HISTORY – LAND USE

MIP applied for a minor partition on October 13, 2025 which was deemed complete on November 12, 2025.

TIMEFRAME FOR QUASI-JUDICIAL DECISIONS *(Governed by ORS 197 and McMinnville Municipal Code, 17.72)*

Application Type	Completeness Review	Notification to Surrounding Property Owners	Request for Comments from Partners	Public Hearing Notice	Decision-Making Body Meeting	Deadline for Decision
TYPE I - Planning Director Decision	Upon Receipt*	N/A	N/A	N/A	N/A	Within 20 Working Days that an Application is Received**
TYPE II - Planning Director Decision with Notice	Within 30 Days	Upon Completeness, 14 Day Comment Period	Upon Completeness, 14 Day Comment Period	N/A	N/A	Within 45 Days of Deeming Application Complete
TYPE III - Planning Commission Decision	Within 30 Days	20 – 30 Days Prior to Public Hearing	Upon Completeness, 14 Day Comment Period	5 – 15 Days Prior to Public Hearing	PC: 45 – 60 Days	Within 120 Days of Deeming Application Complete***
TYPE IV - City Council Decision	Within 30 Days	20 – 30 Days Prior to Public Hearing	Upon Completeness, 14 Day Comment Period	5 – 15 Days Prior to Public Hearing	PC: 45 – 60 Days CC: 90 -120 Days	Within 120 Days of Deeming Application Complete***

HISTORY – LAND USE

- 1. MIP applied for a minor partition on October 13, 2025 which was deemed complete on November 12, 2025.**
- 2. Director's decision was issued on December 23, 2025, "Approval with Conditions".**
- 3. MIP Appealed the Director's decision on January 7, 2026, relative to the language of Condition of Approval #5.**
 - Had an issue with the requirement to build the full street width of Miller Street and putting the responsibility of encumbering the neighboring property owner for their proportional share on MIP.**
- 4. Director's decision is appealed to the Planning Commission who conduct a public hearing and render a decision.**

HISTORY – LAND USE

- 5. Staff met with MIP to discuss their concerns and agreed with their appeal, so staff brought recommended amended language to the PC public hearing (March 19) to address MIP's concerns (Revised COA #5 and new COA #10).**
- 6. At the public hearing, MIP legal counsel provided testimony that MIP was also not happy with other aspects of the COA language – specifically the requirements for sidewalks in COA #5 and COA #12.**
- 7. The Planning Commission discussed MIP's concerns with city staff and legal counsel and voted to approve an amended decision for MP 6-25 that addressed MIP's original appeal concerns, but elected not to move forward with their request to remove the requirements for sidewalks in COA #5 and COA #12, based upon the criteria in the code.**

MIP APPEAL, AP 3-26

8. MIP appealed the Planning Commission's decision on April 1, 2026.

Please state in detail the basis for and issues raised in this appeal. You must identify the criteria and findings that you are appealing. Attach additional sheets as necessary. _____

Required sidewalks on Eastside
of street.

STAFF REPORT

Since the City had not received the MIP appeal until 30 minutes prior to submitting the staff report, ordinance and decision document for posting the statutorily required seven days in advance of the public hearing, the staff report is written to share the arguments made by MIP at the PC public hearing and the PC deliberations relative to it.

This is an argument that revolves around sidewalks – when they are required to be built – historic practices at the City versus what the McMinnville Municipal code states the City should have been doing and now does do, as interpreted by several different legal counsel.

There is the argument of what some may feel should be the timing and process for requiring sidewalks, but city staff is obligated to follow the code requirements and legal counsel is obligated to provide their opinion of what they feel the code language requires.

APPLICATION OF THE CODE TO LAND USE APPLICATIONS

Staff has been advised by three separate attorneys, that the Zoning Ordinance (Volume III of the Comprehensive Plan, Title 17 of the MMC) was enacted by the city's governing body and as such, city staff must comply with its provisions and cannot waive any of its provisions unless there is a provision in the Zoning Ordinance allowing staff to waive standards. (Oregon case law provided in the staff report).

MMC 17.04.050 provides in part that "Except to the extent that this code provides decision-making authority to others, *city planning staff shall administer this code and shall apply the standards and criteria in this code to all applications for approval required or authorized by this code.*"

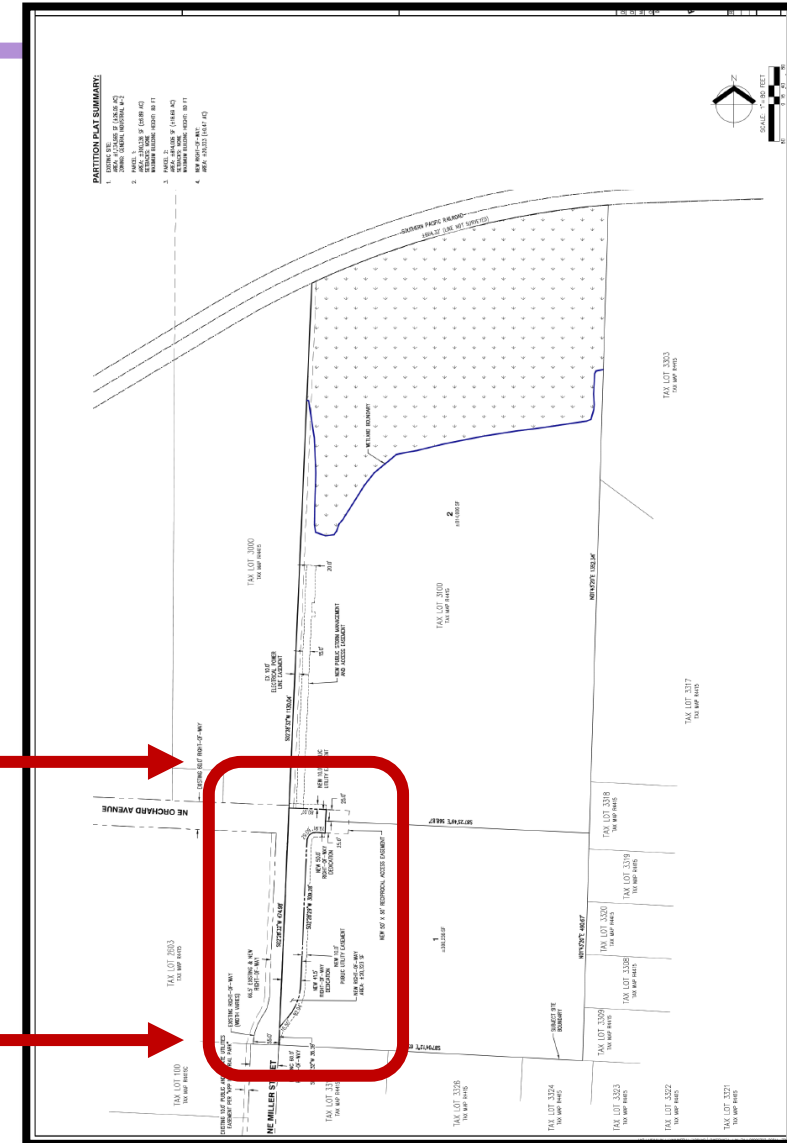
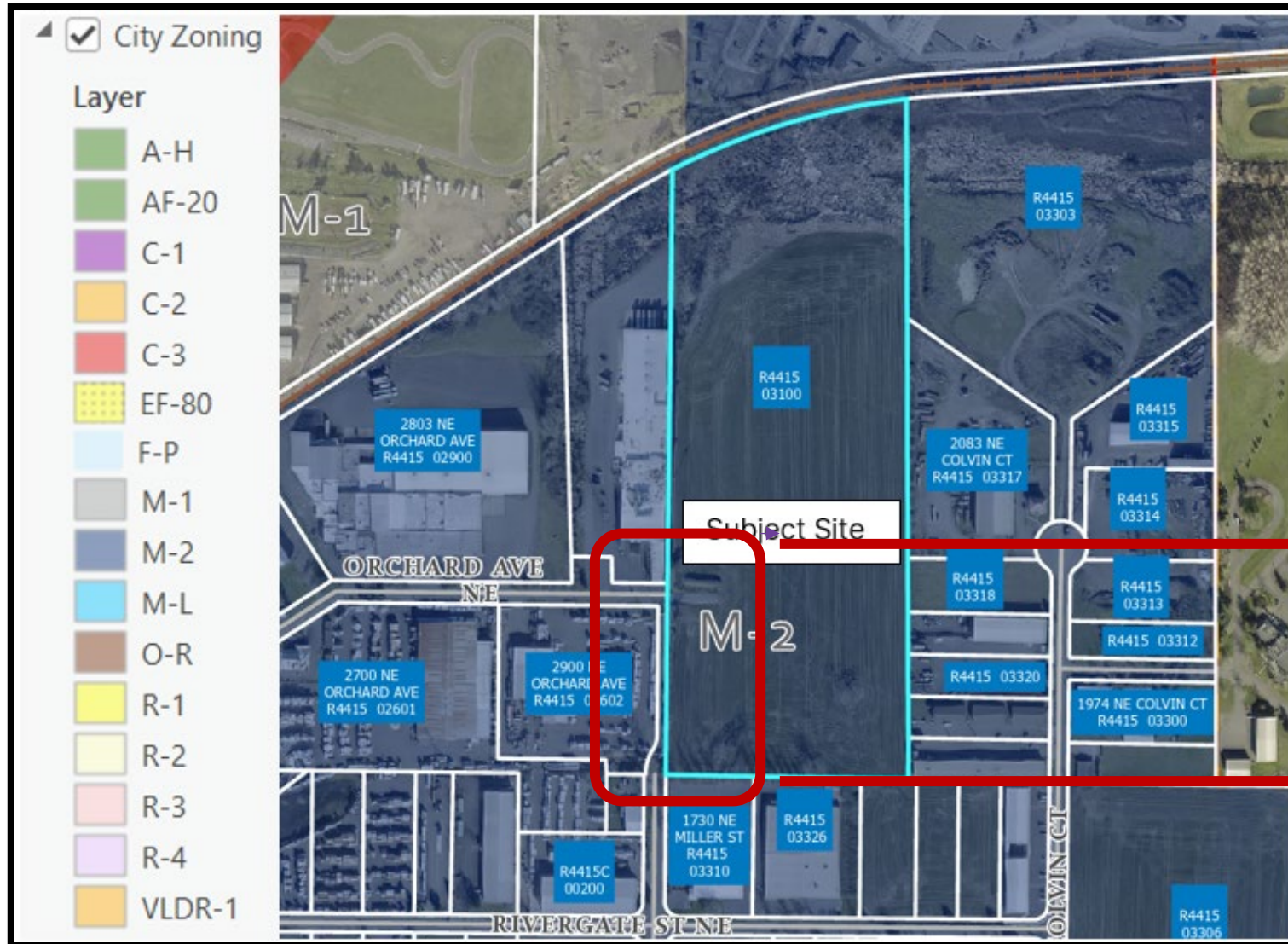
APPLICATION OF THE CODE TO LAND USE APPLICATIONS

Staff has been advised by three separate attorneys, that the Zoning Ordinance (Volume III of the Comprehensive Plan, Title 17 of the MMC) was enacted by the city's governing body and as such, city staff must comply with its provisions and cannot waive any of its provisions unless there is a provision in the Zoning Ordinance allowing staff to waive standards. (Oregon case law provided in the staff report).

MMC 17.04.050 provides in part that “Except to the extent that this code provides decision-making authority to others, *city planning staff shall administer this code and shall apply the standards and criteria in this code to all applications for approval required or authorized by this code.*”

MMC 17.04.040 provides that “*Most Restrictive Requirements Apply. Where the conditions and requirements imposed by any provision of this title are less restrictive, vary from or conflict with other provisions of this title or of any other ordinance, resolution or regulation, the provisions which are most restrictive or the highest standard shall govern. When requirements of this title vary from or conflict with other provisions of the McMinnville Municipal Code, the more specific provision shall prevail over a more general provision.*”

PARTITION APPLICATION



CODE LANGUAGE – Sidewalks required as part of land division

<u>Chapter 17.53</u>	
<u>LAND DIVISION STANDARDS</u>	
<u>Sections:</u>	
17.53.010	Purpose.
17.53.020	Scope of Regulations.
17.53.040	Planned Development.
<u>Property Line Adjustment</u>	
17.53.050	Applicability.
17.53.051	Filing Procedures and Requirements.
17.53.053	Review and Tentative Approval Process.
17.53.055	Requirements for Final Property Line Adjustment Approval.
<u>Partition</u>	
17.53.080	Submission of Tentative Partition Plan.
17.53.081	Submission of Final Partition Plat.
17.53.083	Filing of Final Partition Plat.
<u>Subdivision</u>	
17.53.070	Submission of Tentative Subdivision Plan.
17.53.071	Preliminary Review of Tentative Subdivision Plan.
17.53.073	Preliminary Approval of Tentative Subdivision Plan.
17.53.075	Submission of Final Subdivision Plat.
17.53.077	Approval of Final Subdivision Plat.
17.53.079	Filing of Final Subdivision Plat.
<u>Future Development Plan</u>	
17.53.080	Submission of Future Development Plan.
<u>Expedited Land Division</u>	
17.53.090	Expedited Land Division.
17.53.091	Application for Expedited Land Division; Notice Requirements; Procedure; Appeal.
<u>Approval of Streets and Ways</u>	
17.53.100	Creation of Streets.
17.53.101	Streets.
17.53.103	Blocks.
17.53.105	Lots.
17.53.110	Lot Grading.
17.53.120	Building Lines.
17.53.130	Large Lot Subdivision.
17.53.140	Left-over Land.
<u>Improvements</u>	
17.53.150	Improvement Procedures.
17.53.151	Specifications for Improvements.
17.53.153	Improvement Requirements.
<u>Exceptions, Variances and Enforcement</u>	
17.53.180	Exceptions in the Case of <u>Large Scale</u> Development.
17.53.181	Exceptions in the Case of Hillside Development.
17.53.183	Variance Application.
17.53.185	Failure to Receive Notice - Not to Impair Hearing.
17.53.187	Enforcement.
17.53.170	Severability.
17.53.180	Violation-Procedure-Penalty.

Table of Contents: Subsections

- Introduction
- Property Line Adjustment
- Partition
- Subdivision
- Future Development Plan
- Expedited Land Division
- Approval of Streets and Ways
- Improvements
- Exceptions, Variations and Enforcement

CHAPTER 17.53.153, IMPROVEMENTS

17.53.153 Improvement Requirements. The following improvements shall be installed at the expense of the subdivider:

- A. Water supply system. All lots within a subdivision shall be served by the City water supply system.
- B. Electrical system. All lots within a subdivision shall be served by the City electrical system.
- C. Sewer system. All lots within a subdivision shall be served by the City sewer system.
- D. Drainage. Such grading shall be performed and drainage facilities installed conforming to City specifications as are necessary to provide proper drainage within the subdivision and other affected areas in order to assure healthful, convenient conditions for the residents of the subdivision and for the general public. Drainage facilities in the subdivision shall be connected to drainage ways or storm sewers outside the subdivision. Dikes and pumping systems shall be installed, if necessary, to protect the subdivision against flooding or other inundations.
- E. Streets. The subdivider shall grade and improve streets in the subdivision, and the extension of such streets to the paving line of existing streets with which such streets intersect, in conformance with City specifications. Street improvements shall include related improvements such as curbs, intersection sidewalk aprons, street signs, gutters, shoulders, and median strips to the extent these are required.
- F. Pedestrian ways. A paved sidewalk not less than five (5) feet wide shall be installed in the center of pedestrian ways.
- G. Private way/drive. The subdivider shall grade and improve to conform to City specifications in terms of structural standards.
- H. Street trees consistent with the requirements of Chapter 17.58 of the McMinnville Zoning Ordinance and an approved street tree plan for the subdivision.

CHAPTER 17.53.153, IMPROVEMENTS

17.53.153 Improvement Requirements. The following improvements shall be installed at the expense of the subdivider:

- A. Water supply system. All lots within a subdivision shall be served by the City water supply system.
- B. Electrical system. All lots within a subdivision shall be served by the City electrical system.
- C. Sewer system. All lots within a subdivision shall be served by the City sewer system.
- D. Drainage. Such grading shall be performed and drainage facilities installed conforming to City specifications as are necessary to provide proper drainage within the subdivision and other affected areas in order to assure healthful, convenient conditions for the residents of the subdivision and for the general public. Drainage facilities in the subdivision shall be connected to drainage ways or storm sewers outside the subdivision. Dikes and pumping systems shall be installed, if necessary, to protect the subdivision against flooding or other inundations.
- E. Streets. The subdivider shall grade and improve streets in the subdivision, and the extension of such streets to the paving line of existing streets with which such streets intersect, in conformance with City specifications. Street improvements shall include related improvements such as curbs, intersection sidewalk aprons, street signs, gutters, shoulders, and median strips to the extent these are required.
- F. Pedestrian ways. A paved sidewalk not less than five (5) feet wide shall be installed in the center of pedestrian ways.

G.

H.

17.06, Definitions, Pedestrian Way – A right-of-way for pedestrian and/or bicyclist traffic.

CHAPTER 17.53.075

- D. **Agreement for Improvements.** Before Director or Planning Commission approval is certified on the final plat, the subdivider shall either install required improvements and repair existing streets and other public facilities damaged in the development of the subdivision or execute and file with the City an agreement between himself and the City, specifying the period within which required improvements and repairs shall be completed. The agreement shall provide that if the work is not completed within the period specified, the City may complete the work and recover the full cost and expense thereof from the subdivider. The agreement may provide for the construction of the improvements in units and for an extension of time under specified conditions.
- E. **Bond.**
1. The subdivider will be required to file with the agreement for improvement as required in Section 17.53.075(D) above, to assure his full and faithful performance thereof, one of the following:
 - a. **A surety bond** executed by a surety company authorized to transact business in the State of Oregon in a form approved by the City Attorney;
 - b. File with the City a copy of instructions to a **qualified escrow** agent, providing that said agent shall withhold any amounts due or to become due to the subdivider in amount sufficient to cover the cost of all public improvements to be completed or installed by the subdivider, in a form approved by the City Attorney;
 - c. **Cash;**
 - d. **Letter of credit or loan commitment** in a form approved by the City Attorney.

CHAPTER 17.53, LAND DIVISION STANDARDS

Chapter 17.53	
<u>LAND DIVISION STANDARDS</u>	
<u>Sections:</u>	
17.53.010	Purpose.
17.53.020	Scope of Regulations.
17.53.040	Planned Development.
<u>Property Line Adjustment</u>	
17.53.050	Applicability.
17.53.051	Filing Procedures and Requirements.
17.53.053	Review and Tentative Approval Process.
17.53.055	Requirements for Final Property Line Adjustment Approval.
<u>Partition</u>	
17.53.080	Submission of Tentative Partition Plan.
17.53.081	Submission of Final Partition Plat.
17.53.083	Filing of Final Partition Plat.
<u>Subdivision</u>	
17.53.070	Submission of Tentative Subdivision Plan.
17.53.071	Preliminary Review of Tentative Subdivision Plan.
17.53.073	Preliminary Approval of Tentative Subdivision Plan.
17.53.075	Submission of Final Subdivision Plat.
17.53.077	Approval of Final Subdivision Plat.
17.53.079	Filing of Final Subdivision Plat.
<u>Future Development Plan</u>	
17.53.080	Submission of Future Development Plan.
<u>Expedited Land Division</u>	
17.53.090	Expedited Land Division.
17.53.091	Application for Expedited Land Division; Notice Requirements; Procedure; Appeal.
<u>Approval of Streets and Ways</u>	
17.53.100	Creation of Streets.
17.53.101	Streets.
17.53.103	Blocks.
17.53.105	Lots.
17.53.110	Lot Grading.
17.53.120	Building Lines.
17.53.130	Large Lot Subdivision.
17.53.140	Left-over Land.
<u>Improvements</u>	
17.53.150	Improvement Procedures.
17.53.151	Specifications for Improvements.
17.53.153	Improvement Requirements.
<u>Exceptions, Variances and Enforcement</u>	
17.53.180	Exceptions in the Case of <u>Large Scale</u> Development.
17.53.181	Exceptions in the Case of Hillside Development.
17.53.183	Variance Application.
17.53.185	Failure to Receive Notice - Not to Impair Hearing.
17.53.187	Enforcement.
17.53.170	Severability.
17.53.180	Violation-Procedure-Penalty.

Table of Contents: Subsections

- Introduction
- Property Line Adjustment
- Partition
- Subdivision
- Future Development Plan
- Expedited Land Division
- Approval of Streets and Ways
- Improvements
- Exceptions, Variations and Enforcement

CHAPTER 17.53, LAND DIVISION STANDARDS

Chapter 17.53
LAND DIVISION STANDARDS

Sections:

17.53.010	Purpose.
17.53.020	Scope of Regulations.
17.53.040	Planned Development.
<u>Property Line Adjustment</u>	
17.53.050	Applicability.
17.53.051	Filing Procedures and Requirements.
17.53.053	Review and Tentative Approval Process.
17.53.055	Requirements for Final Property Line Adjustment Approval.
<u>Partition</u>	
17.53.080	Submission of Tentative Partition Plan.
17.53.081	Submission of Final Partition Plat.
17.53.082	Filing of Final Partition Plat.
<u>Subdivision</u>	
17.53.070	Submission of Tentative Subdivision Plan.
17.53.071	Preliminary Review of Tentative Subdivision Plan.
17.53.073	Preliminary Approval of Tentative Subdivision Plan.
17.53.075	Submission of Final Subdivision Plat.
17.53.077	Approval of Final Subdivision Plat.
17.53.079	Filing of Final Subdivision Plat.
<u>Future Development Plan</u>	
17.53.080	Submission of Future Development Plan.
<u>Expedited Land Division</u>	
17.53.090	Expedited Land Division.
17.53.091	Application for Expedited Land Division; Notice Requirements; Procedure; Appeal.
<u>Approval of Streets and Ways</u>	
17.53.100	Creation of Streets.
17.53.101	Streets.
17.53.103	Blocks.
17.53.105	Lots.
17.53.110	Lot Grading.
17.53.120	Building Lines.
17.53.130	Large Lot Subdivision.
17.53.140	Left-over Land.
<u>Improvements</u>	
17.53.150	Improvement Procedures.
17.53.151	Specifications for Improvements.
17.53.153	Improvement Requirements.
<u>Exceptions, Variances and Enforcement</u>	
17.53.180	Exceptions in the Case of <u>Large Scale</u> Development.
17.53.181	Exceptions in the Case of Hillside Development.
17.53.183	Variance Application.
17.53.185	Failure to Receive Notice - Not to Impair Hearing.
17.53.187	Enforcement.
17.53.170	Severability.
17.53.180	Violation-Procedure-Penalty.

<u>Subdivision</u>	
17.53.070	Submission of Tentative Subdivision Plan.
17.53.071	Preliminary Review of Tentative Subdivision Plan.
17.53.073	Preliminary Approval of Tentative Subdivision Plan.
17.53.075	Submission of Final Subdivision Plat.
17.53.077	Approval of Final Subdivision Plat.
17.53.079	Filing of Final Subdivision Plat.

CHAPTER 17.53, LAND DIVISION STANDARDS

Chapter 17.53
LAND DIVISION STANDARDS

Sections:

17.53.010	Purpose.
17.53.020	Scope of Regulations.
17.53.040	Planned Development.
<u>Property Line Adjustment</u>	
17.53.050	Applicability.
17.53.051	Filing Procedures and Requirements.
17.53.053	Review and Tentative Approval Process.
17.53.055	Requirements for Final Property Line Adjustment Approval.
<u>Partition</u>	
17.53.080	Submission of Tentative Partition Plan.
17.53.081	Submission of Final Partition Plat.
17.53.082	Filing of Final Partition Plat.
<u>Subdivision</u>	
17.53.070	Submission of Tentative Subdivision Plan.
17.53.071	Preliminary Review of Tentative Subdivision Plan.
17.53.073	Preliminary Approval of Tentative Subdivision Plan.
17.53.075	Submission of Final Subdivision Plat.
17.53.077	Approval of Final Subdivision Plat.
17.53.079	Filing of Final Subdivision Plat.
<u>Future Development Plan</u>	
17.53.080	Submission of Future Development Plan.
<u>Expedited Land Division</u>	
17.53.090	Expedited Land Division.
17.53.091	Application for Expedited Land Division; Notice Requirements; Procedure; Appeal.
<u>Approval of Streets and Ways</u>	
17.53.100	Creation of Streets.
17.53.101	Streets.
17.53.103	Blocks.
17.53.105	Lots.
17.53.110	Lot Grading.
17.53.120	Building Lines.
17.53.130	Large Lot Subdivision.
17.53.140	Left-over Land.
<u>Improvements</u>	
17.53.150	Improvement Procedures.
17.53.151	Specifications for Improvements.
17.53.153	Improvement Requirements.
<u>Exceptions, Variances and Enforcement</u>	
17.53.180	Exceptions in the Case of <u>Large Scale</u> Development.
17.53.181	Exceptions in the Case of Hillside Development.
17.53.183	Variance Application.
17.53.185	Failure to Receive Notice - Not to Impair Hearing.
17.53.187	Enforcement.
17.53.170	Severability.
17.53.180	Violation-Procedure-Penalty.

<u>Subdivision</u>	
17.53.070	Submission of Tentative Subdivision Plan.
17.53.071	Preliminary Review of Tentative Subdivision Plan.
17.53.073	Preliminary Approval of Tentative Subdivision Plan.
17.53.075	Submission of Final Subdivision Plat.
17.53.077	Approval of Final Subdivision Plat.
17.53.079	Filing of Final Subdivision Plat.

17.53.074

CHAPTER 17.53, LAND DIVISION STANDARDS

Chapter 17.53
LAND DIVISION STANDARDS

Sections:

17.53.010	Purpose.
17.53.020	Scope of Regulations.
17.53.040	Planned Development.
<u>Property Line Adjustment</u>	
17.53.050	Applicability.
17.53.051	Filing Procedures and Requirements.
17.53.053	Review and Tentative Approval Process.
17.53.055	Requirements for Final Property Line Adjustment Approval.
<u>Partition</u>	
17.53.080	Submission of Tentative Partition Plan.
17.53.081	Submission of Final Partition Plat.
17.53.082	Filing of Final Partition Plat.
<u>Subdivision</u>	
17.53.070	Submission of Tentative Subdivision Plan.
17.53.071	Preliminary Review of Tentative Subdivision Plan.
17.53.073	Preliminary Approval of Tentative Subdivision Plan.
17.53.075	Submission of Final Subdivision Plat.
17.53.077	Approval of Final Subdivision Plat.
17.53.079	Filing of Final Subdivision Plat.
<u>Future Development Plan</u>	
17.53.080	Submission of Future Development Plan.
<u>Expedited Land Division</u>	
17.53.090	Expedited Land Division.
17.53.091	Application for Expedited Land Division; Notice Requirements; Procedure; Appeal.
<u>Approval of Streets and Ways</u>	
17.53.100	Creation of Streets.
17.53.101	Streets.
17.53.103	Blocks.
17.53.105	Lots.
17.53.110	Lot Grading.
17.53.120	Building Lines.
17.53.130	Large Lot Subdivision.
17.53.140	Left-over Land.
<u>Improvements</u>	
17.53.150	Improvement Procedures.
17.53.151	Specifications for Improvements.
17.53.153	Improvement Requirements.
<u>Exceptions, Variances and Enforcement</u>	
17.53.180	Exceptions in the Case of <u>Large Scale</u> Development.
17.53.181	Exceptions in the Case of Hillside Development.
17.53.183	Variance Application.
17.53.185	Failure to Receive Notice - Not to Impair Hearing.
17.53.187	Enforcement.
17.53.170	Severability.
17.53.180	Violation-Procedure-Penalty.

Subdivision

17.53.070	Submission of Tentative Subdivision Plan.
17.53.071	Preliminary Review of Tentative Subdivision Plan.
17.53.073	Preliminary Approval of Tentative Subdivision Plan.
17.53.075	Submission of Final Subdivision Plat.
17.53.077	Approval of Final Subdivision Plat.
17.53.079	Filing of Final Subdivision Plat.

Improvements

17.53.150	Improvement Procedures.
17.53.151	Specifications for Improvements.
17.53.153	Improvement Requirements.

The fact of the matter is that the City has been requiring the construction of sidewalks before a final plat can be records as a condition of approval for Minor Partitions when the construction of a street was required for at least the past 15 years, and probably longer.

What the City has not done is actually require that the condition of approval be achieved prior to recording of a final plat.

The code allows developers to defer the public improvements required as part of land division with a deferment agreement, which is used for most public improvements in the past but sidewalks were never included in that deferment agreement.



SIDEWALKS – Conditions of Approval



CITY OF MCMINNVILLE
PLANNING DEPARTMENT
231 NE FIFTH STREET
MCMINNVILLE, OR 97128
503.535.5500
www.mcminnville.org

DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS APPROVAL OF A MINOR PARTITION AT R4415 03401

DOCKET: MP 5-19 (Minor Partition)

REQUEST: Application for a Minor Partition to partition an approximately 7.37 acre land into three (3) parcels approximately 2.59, 2.17, and 2.61 acres.

LOCATION: East of NE Miller Street, north of NE Riverside Drive (Tax Lot 3401 T. 4 S., R. 4 W., W.M.)

ZONING: M-2PD (General Industrial Planned Development)

APPLICANT: Katherine L. Gowell, Esq. of Haugeberg, Rueter, Gowell, et al., on behalf of McMinnville Industrial Promotions (property owner)

STAFF: Jamie Fleckenstein, Associate Planner

DATE DEEMED COMPLETE: December 16, 2019

DECISION MAKING BODY & ACTION: The McMinnville Planning Director makes the final decision, unless the Planning Director's decision is appealed to the Planning Commission.

DECISION DATE & LOCATION: March 9, 2020, Community Development Center, 231 NE 5th Street, McMinnville, Oregon.

PROCEDURE: An application for a Minor Partition is processed in accordance with the procedures in Section 17.72.110 of the Zoning Ordinance. The application is reviewed by the Planning Director in accordance with the Director's Review with Notification procedures specified in Section 17.72.110 of the Zoning Ordinance.

CRITERIA: The applicable criteria for a Minor Partition are specified in Section 17.53.060 of the Zoning Ordinance. In addition, the goals, policies, and proposals in Volume II of the Comprehensive Plan are to be applied to all land use decisions as criteria for approval, denial, or modification of the proposed request. Goals and policies are mandated; all land use decisions must conform to the applicable goals and policies of Volume II. "Proposals" specified in Volume II are not mandated, but are to be undertaken in relation to all applicable land use requests.

Attachments:
Attachment 1 – Application and Attachments

3. That prior to the City's approval of the final plat, the applicant shall improve Colvin Court including the installation of curb & gutter, planter strip, sidewalk, sanitary sewer, appropriately sized storm drainage facilities, and appropriately sized water facilities within the existing and proposed right-of-way. Prior to the City's approval of the final plat, the applicant shall install appropriately sized electrical and franchise utility infrastructure within the existing and proposed Public Utility Easements.
4. That prior to the City's approval of the final plat, the applicant shall improve Miller Street, along the site frontage, including the installation of curb & gutter, planter strip, sidewalk, sanitary sewer, and appropriately sized storm drainage facilities, within the existing 60' right-of-way.

SIDEWALKS – Conditions of Approval



CITY OF MCMINNVILLE
PLANNING DEPARTMENT
231 NE FIFTH STREET
MCMINNVILLE, OR 97128
503.535.2500
www.mcminnville.org

DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS APPROVAL OF A MINOR PARTITION AT R4415 03401

DOCKET: MP 5-19 (Minor Partition)

REQUEST: Application for a Minor Partition to partition an approximately 7.37 acre land into three (3) parcels approximately 2.59, 2.17, and 2.61 acres.

LOCATION: East of NE Miller Street, north of NE Riverside Drive (Tax Lot 3401 T. 4 S., R. 4 W., W.M.)

ZONING: M-2PD (General Industrial Planned Development)

APPLICANT: Katherine L. Gowell, Esq. of Haugeberg, Rueter, Gowell, et al., on behalf of McMinnville Industrial Promotions (property owner)

STAFF: Jamie Fleckenstein, Associate Planner

DATE DEEMED COMPLETE: December 16, 2019

DECISION MAKING BODY & ACTION: The McMinnville Planning Director makes the final decision, unless the Planning Director's decision is appealed to the Planning Commission.

DECISION DATE & LOCATION: March 9, 2020, Community Development Center, 231 NE 5th Street, McMinnville, Oregon.

PROCEDURE: An application for a Minor Partition is processed in accordance with the procedures in Section 17.72.110 of the Zoning Ordinance. The application is reviewed by the Planning Director in accordance with the Director's Review with Notification procedures specified in Section 17.72.110 of the Zoning Ordinance.

CRITERIA: The applicable criteria for a Minor Partition are specified in Section 17.53.060 of the Zoning Ordinance. In addition, the goals, policies, and proposals in Volume II of the Comprehensive Plan are to be applied to all land use decisions as criteria for approval, denial, or modification of the proposed request. Goals and policies are mandated; all land use decisions must conform to the applicable goals and policies of Volume II. "Proposals" specified in Volume II are not mandated, but are to be undertaken in relation to all applicable land use requests.

Attachments:
Attachment 1 – Application and Attachments

3. That prior to the City's approval of the final plat, the applicant shall improve the site frontage, including the installation of curb & gutter, appropriately sized storm drainage facilities, and appropriately sized electrical and franchise utility infrastructure within the existing and proposed Public Utility Easements.
4. That prior to the City's approval of the final plat, the applicant shall improve the site frontage, including the installation of curb & gutter, sewer, and appropriately sized storm drainage facilities, within the existing right-of-way.

From: [Mike Bisset](#)
To: [Sarah Sullivan](#)
Cc: [Larry Sherwood](#)
Subject: FW: Minor Partition (MP 5-19)
Date: Wednesday, February 19, 2020 11:51:10 AM
Attachments: [MP 5-19_submittal.pdf](#)
[MP 5-19_utility plan.pdf](#)

Our comments below...

From: Larry Sherwood <Larry.Sherwood@mcminnvilleoregon.gov>
Sent: Tuesday, February 18, 2020 5:36 PM
To: Mike Bisset <Mike.Bisset@mcminnvilleoregon.gov>
Subject: FW: Minor Partition (MP 5-19)

Our Comments:

Colvin Court:

Note: The applicant is planning to construct full width street improvements on Colvin Court. The applicant has submitted Civil plans for the Public Improvements on Colvin to the Engineering Department and are currently under review.

- The applicant shall submit to the City Engineer, for review and approval, a utility plan for the subject site, as well as for the site on the east side of Colvin. At a minimum, this plan shall indicate the manner in which separate sanitary sewer, storm sewer, electrical and franchise facilities, and water services will be provided to each of the proposed lots. Each lot will need to be served by a separate sanitary sewer lateral and connection to a public sewer main. All required utilities shall be installed to the satisfaction of the responsible agency prior to the City's approval of the final plat.
- Prior to the City's approval of the final plat, the applicant shall improve Colvin Court including the installation of curb & gutter, planter strip, sidewalk, sanitary sewer, appropriately sized storm drainage facilities, and appropriately sized water facilities within the existing and proposed right-of-way. Prior to the City's approval of the final plat, the applicant shall install appropriately sized electrical and franchise utility infrastructure within the existing and proposed Public Utility Easements.
- Applicant shall enter into a Construction Permit Agreement with the City for the Public Improvements related to the extension of Colvin Court, and pay the associated fees prior to the release of the approved construction plans.
- The utility plan does not show the extension of electrical and franchise utility infrastructure to serve the area. These facilities will need to be placed underground in existing and proposed utility easements. Plans for these utilities shall be approved by MW&L prior to the release of the Construction Permit Agreement.

Miller Street:

- Prior to the City's approval of the final plat, the applicant shall improve Miller Street along the site frontage, including the installation of curb & gutter, planter strip, sidewalk, sanitary sewer, and appropriately sized storm drainage facilities, within the existing right-of-way.

Larry Sherwood
Engineering Services Manager

SIDEWALKS – Conditions of Approval

CONSTRUCTION PERMIT AGREEMENT

This Agreement is made and entered into on this 25th day of June, 2020, by and between McMinnville Industrial Promotions, hereinafter referred to as "Developer", and the City of McMinnville, a municipal corporation, hereinafter referred to as CITY.

WHEREAS, the Developer is requesting CITY to accept construction plans for street, storm drainage, and/or sanitary sewer systems to serve Colvin Court Extension, McMinnville, Oregon:

NOW, THEREFORE, the parties mutually covenant and agree as follows:

I. DESIGN, PAYMENT, AND RESPONSIBILITIES

1.01 Definitions

Unless this Agreement expressly provides otherwise, the following definitions shall apply herein:

"ACCEPTANCE" by CITY means a determination that an improvement meets CITY construction standards, and does not refer to accepting a dedication of the improvement by the Developer.

"APPROVE" and "APPROVED" means authorized or sanctioned by the Director of Public Works or his designee.

"COST STATEMENT" means an itemized statement provided to CITY of the actual and final costs of street, sidewalk, storm drainage, and sanitary sewer facilities constructed. A copy of the final pay estimate and/or other applicable billings sufficient to verify all costs shall be included.

"CONNECT SERVICE" means to physically provide service to a customer by means of an actual pipeline connection to the public improvements.

"FINAL INSPECTION" means that inspection performed by CITY after completion of all Improvements required of the Developer under the terms of this Agreement. All Improvements must receive a satisfactory final inspection before any part of the Improvements are eligible to come within the warranty period.

"IMPROVEMENTS" means work which the Developer is required to perform under the terms of this Agreement.

"CITY" for the purposes of administering this Agreement, means the Director of Public Works of CITY, or his designee.

"STANDARD CONSTRUCTION SPECIFICATIONS" for purposes of this Agreement, means those construction specifications maintained and periodically reviewed and modified by CITY which are currently published as "2015 Oregon Standard Specifications for Construction."

"WARRANTY INSPECTION" means that inspection performed by CITY at the end of the one-year warranty period. All Improvements must satisfactorily complete a warranty inspection before final acceptance of the Improvements by CITY.

The aforesaid performance assurance amount shall include:

\$ 136,272 for the construction of project streets and drainage;
\$ 52,662 for the construction of project sanitary sewers;
\$ _____ for the installation of project street trees;
\$ _____ for the construction of project park improvements;
\$ _____ for the construction of project special lighting;
\$ _____ for sidewalks and pathways;
\$ _____ for landscaping.

TOTAL \$ 188,934

SIDEWALKS – Conditions of Approval

2.08 Performance Assurance

A. In order to guarantee the construction of the Improvement, the Developer shall provide to CITY a performance bond from a company licensed as a surety in the State of Oregon, a copy of which is attached hereto as Exhibit "A".

B. The total value of the Performance Assurance to wit: an amount of Performance Bond from a lending or financial institution authorized by the City of Oregon, Cash, etc. provided shall be equal to or greater than the amount reflected in this Agreement. Such performance assurance shall be in full force and effect until the Project is completed, approved by the City. Should Developer fail to provide said assurances, the City may deny the Project.

The aforesaid performance assurance amount shall include:

- \$ 136,272 for the construction of project streets and drainage;
- \$ 52,662 for the construction of project sanitary sewers;
- \$ _____ for the installation of project street trees;
- \$ _____ for the construction of project park improvements;
- \$ _____ for the construction of project special lighting;
- \$ _____ for sidewalks and pathways;
- \$ _____ for landscaping.

TOTAL \$ 188,934

C. The Performance Assurance will not be released by CITY until all Improvements required by this Agreement have been completed by the Developer, Improvements inspected and accepted by CITY, and an acceptable warranty guarantee posted as required by Paragraph 3.04 of this Agreement.

D. In lieu of providing performance assurance stated above, Developer agrees that the Developer will not sign the final subdivision plat until all terms and conditions of this permit are met. Developer acknowledges that said improvements are on their land until said plat is signed and recorded and that failure to complete the improvements means the City will deny acceptance of said improvements. Developer understands that at any time the stated assurance may be submitted, the City will allow final subdivision plat to be signed and recorded.

C. The Performance Assurance will not be released by this Agreement until all Improvements required under warranty by CITY, and an acceptable warranty guarantee posted as required by Paragraph 3.04 of this Agreement.

D. In lieu of providing performance assurance stated above, Developer agrees that the Developer will not sign the final subdivision plat until all terms and conditions of this permit are met. Developer acknowledges that said improvements are on their land until said plat is signed and recorded and that failure to complete the improvements means the City will deny acceptance of said improvements. Developer understands that at any time the stated assurance may be submitted, the City will allow final subdivision plat to be signed and recorded.

EXHIBIT "A"

BOND NO. 4431289

PERFORMANCE BOND

KNOW ALL MEN AND WOMEN BY THESE PRESENTS, that we, McMinnville Industrial Promotions, as principal, qualified and authorized to do business in the state of Oregon, and we, Markel Insurance Company, as surety, are held and firmly bound unto City of McMinnville, a municipal corporation, in the sum of One Hundred Eighty-Eight Thousand Nine Hundred Thirty Four dollars (\$ 188,934.00) lawful money to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS principal will be constructing improvements specified in a City of McMinnville Construction Permit Agreement between McMinnville Industrial Promotions, and City of McMinnville dated June 25th, 2020; and

WHEREAS it is expressly understood that principal is making these improvements to specifications and standards identified in the Construction Permit Agreement, and it is further understood that said principal will complete these improvements to the satisfaction of the City of McMinnville.

NOW, THEREFORE, if the principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of said Construction Permit Agreement upon the terms proposed therein and within the time prescribed therein, or as extended as may be agreed in writing for good and sufficient cause, and until same is accepted in writing; and shall promptly pay all laborers, mechanics, or subcontractors with material, supplies, or provisions for carrying on such work, and all just debts, due, and demands incurred in the performance of such work; and shall in all respects perform said work according to law, then this obligation is to be void, otherwise to remain in full force and effect.

The surety, for value received, hereby agrees that no change, extension of time, alteration, or addition to the terms of the Construction Permit Agreement or to the work performed thereunder or the specifications accompanying the same shall in any way affect the obligations of this bond, and hereby waives notice of any change, extension of time, alteration, or addition to the terms of the Construction Permit Agreement or to the work or to the specifications.

IN WITNESS WHEREOF, we, the above bounded parties, have hereunto set our hands and seal this day of November 9, 2020.

PRINCIPAL:
McMinnville Industrial Promotions

SURETY:
Markel Insurance Company

BY: _____

BY: 

NAME: _____

NAME: Janet K. Holtheus

TITLE: _____

TITLE: Attorney-in-Fact

Improvements required and accepted by Paragraph

Improvements that the City are met. Improvements signed and acceptance of said improvements be submitted and

Why did the City historically ignore the sidewalk requirements in the COA language?

Chapter 12.12, Sidewalk Installation:

12.12.030 New construction and remodeling.

A. It is hereby made the duty of every property owner whose property abuts upon any street that has been improved with hard-surface pavement or along any street, the grade of which has been established and which has been improved by excavating and bringing such street to an established grade, to construct a concrete sidewalk conforming to the ordinances of the city within 60 days from the completion of any structure located upon the property of such owner.

B. "Any structure" includes all dwellings, commercial and industrial buildings, and any remodeling of an existing structure wherein the new construction or remodeling exceeds 25 percent of the value of the improvements on the property as established by the Yamhill County tax assessor at the time a construction permit is obtained. (Ord. 4413 §3, 1987).

Legal Opinion: You can't ignore one section of the code based on the future opportunity with another section of the code.

MMC 17.04.040 provides that *“Most Restrictive Requirements Apply. Where the conditions and requirements imposed by any provision of this title are less restrictive, vary from or conflict with other provisions of this title or of any other ordinance, resolution or regulation, the provisions which are most restrictive or the highest standard shall govern. When requirements of this title vary from or conflict with other provisions of the McMinnville Municipal Code, the more specific provision shall prevail over a more general provision.”*

ADA LIABILITY

Sidewalks are considered paths of accessibility. If the City has a code requirement for sidewalks that they do not follow they could be found liable for accessibility non-compliance.

Deferring sidewalks that are required in a land-division application with a deferment agreement allows cities to build the sidewalks if the property owner or developer refuses to do so when called upon to do so.

CITY'S CURRENT PRACTICE

- 1) Require sidewalks as one of the public improvements of a land-division approval when none exist.**
- 2) If the developer chooses to defer the sidewalks they can do so with a deferment agreement and bond:**
 - **Surety Bond**
 - **Line of Credit**
 - **Cash**
 - **Escrow Agent**

STAFF CONVERSATIONS WITH MIP

- 1) When MIP first brought this up, staff shared the most recent legal opinion that the City had on the subject (AGH, BK), but let MIP know that staff would seek a second legal opinion from current land-use legal counsel.**
- 2) That opinion came back the same as the previous two opinions, and staff share it with MIP.**
- 3) Staff also visited with MIP about the option of a line of credit with a bank that staff has used before and shared we were willing to do the same for this project.**
- 4) Staff shared with MIP that the City had received a grant to update the development code to become compliant with recent housing legislation and that this issue would be one of the areas of the code that would be reviewed in that process. The project is due to start Q3 2026.**

DEVELOPMENT CODE UPDATE

In 2025, HB 2658 was passed, which prohibits municipalities with populations over 15,000 from requiring frontage improvements (curbs, sidewalks, gutters) as permit conditions for building renovations that don't increase square footage, cost under \$150,000 and don't change occupancy classification.

12.12.030 will need to be amended for compliance with this new legislation.

This is the opportunity for the City to review its policies relative to sidewalks and when they are required:

- Require sidewalks as part of land division for residential development, but not industrial development as industrial land use division could have a longer holding period than residential and the surrounding neighborhood is not as reliant on the connectivity for accessibility.
- Require sidewalks only with building permits (will need an ADA review).
- Require sidewalks with all types of land division applications (similar to current practice).

ORDINANCE NO. 5174

Has the decision document of the Planning Commission

City Council Options -

- **CONDUCT THE PUBLIC HEARING, DELIBERATE AND AFFIRM THE PLANNING COMMISSION DECISION BY APPROVING ORDINANCE NO. 5174** adopting the Decision, Findings of Fact, and Conclusionary Findings per the decision document provided.
- **CONDUCT THE PUBLIC HEARING, DELIBERATE AND AMEND THE PLANNING COMMISSION DECISION BY APPROVING ORDINANCE NO. 5174** adopting the Decision, Findings of Fact, and Conclusionary Findings per the decision document provided with amendments.
- **CONDUCT THE PUBLIC HEARING, DELIBERATE AND APPROVE THE APPELLANT'S REQUEST BY APPROVING ORDINANCE NO. 5174** and provide findings for the approval.

ORDINANCE NO. 5174

Has the decision document of the Planning Commission

City Council Options -

- **CONDUCT THE PUBLIC HEARING, DELIBERATE AND AFFIRM THE PLANNING COMMISSION DECISION BY APPROVING ORDINANCE NO. 5174** adopting the Decision, Findings of Fact, and Conclusionary Findings per the decision document provided.
- **CONDUCT THE PUBLIC HEARING, DELIBERATE AND AMEND THE PLANNING COMMISSION DECISION BY APPROVING ORDINANCE NO. 5174** adopting the Decision, Findings of Fact, and Conclusionary Findings per the decision document provided with amendments.
- **CONDUCT THE PUBLIC HEARING, DELIBERATE AND APPROVE THE APPELLANT'S REQUEST BY APPROVING ORDINANCE NO. 5174** and provide findings for the approval.

Decision must be made by April 11, which is the deadline for a City decision.

QUESTIONS?

