



**City of McMinnville**  
**Planning Department**  
231 NE Fifth Street  
McMinnville, OR 97128  
(503) 434-7311

[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## STAFF REPORT

**DATE:** August 27, 2019  
**TO:** Mayor and City Councilors  
**FROM:** Tom Schauer, Senior Planner  
**SUBJECT:** Ordinance No. 5081, (Application ZC 3-19 for a Zone Change from R-1 to R-3,  
Ordinance No. 5082, (Application S 2-19 for a Tentative Subdivision Plan for a 17-Lot  
Single Family Residential Subdivision)

### STRATEGIC PRIORITY & GOAL:



**HOUSING OPPORTUNITIES** (ACROSS THE INCOME SPECTRUM)  
Create diverse housing opportunities that support great neighborhoods.

**OBJECTIVE/S:** Collaborate to improve the financial feasibility of diverse housing development opportunities

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### Report in Brief:

This action is the consideration of Ordinance Nos. 5081 and 5082, ordinances approving the following land use actions:

- Ordinance No. 5081: ZC 3-19. Zone Change from R-1 to R-3
- Ordinance No. 5082: S 2-19. Subdivision Tentative Plan for a 17-lot single family residential subdivision, with 15 single-family detached homes and 2 single-family attached homes

The purpose of the meeting is to consider the public record, testimony, and recommendations of the Planning Commission regarding these two quasi-judicial applications on a 2.93 acre parcel on NE Newby Street between NE Grandhaven and NE 27<sup>th</sup> Street (Tax Lot 1100, Section 9DC, T. 4 S., R. 4 W., W.M.).

Typically, the Planning Commission makes a recommendation on a zone change and makes a final decision on a subdivision tentative plan. However, Section 17.72.070 of the Zoning Ordinance provides the following:

**Concurrent Applications.** When a proposal involves more than one application for the same property, the applicant may submit concurrent applications which shall be processed simultaneously. In so doing, the applications shall be subject to the hearing procedure that affords the most opportunity for public hearing and notice.

Therefore, the Planning Commission made recommendations on both applications to the City Council, and the City Council will make the final decisions on both applications.

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The applications are subject to the 120-day processing timeline. They were deemed complete on June 7, 2019. The 120-day land use decision time limit expires on November 1. In order to hold a public hearing and meet all necessary noticing requirements, the public hearing would need to be scheduled for no sooner than the September 24 City Council meeting, and no later than the October 22 City Council meeting.

### **Background:**

#### ***Subject Property & Request***

The subject property is a 2.93 acre parcel located on NE Newby Street between NE Grandhaven and NE 27<sup>th</sup> Street. Grandhaven Subdivision to the north was platted in 1999, with Buel Drive stubbed to the north property line of the subject property. **See Exhibit 1.**

The subject property and properties to the west, south, and northeast are zoned R-1. Property to the north is zoned R-2 PD, and property to the east and southeast is zoned R-3 PD. **See Exhibit 2.** Predominant surrounding uses are single-family homes and duplexes to the north, single-family homes to the east and west, Adventure Christian Church to the south, and Life Care Center south of the church. Grandhaven Elementary School is located across NW Grandhaven Street to the north. The subject property is vacant. It previously had substantial tree cover as shown in the aerial photo, which has since been cleared by the applicant, with an arbor vitae screen remaining. There is a natural drainageway generally running east-west on the property, and a portion of the drainageway is identified on the National Wetland Inventory as a riverine wetland. However, the wetland/jurisdiction water delineation determined there are no wetlands on the site, but there are jurisdictional waters associated with the drainageway, (approximately 0.07 acres). Curb, gutter, and sidewalk are present along the property frontage on NE Newby Street.

The requests would rezone the property from R-1 to R-3 and approve a 17-lot single family residential subdivision, with 15 single-family detached homes and 2 single-family attached homes (Lots 4 and 5). **Exhibit 3** shows the proposed zoning. **Exhibit 4** is the proposed subdivision tentative plan, and **Exhibit 5** shows the proposed public improvements and utilities. Most lots would access a new local street that would extend in an “L” between Buel Drive and Hoffman Drive. Lots 1 and 2 would have access from NE Newby Street. Lot 13 would have access to the new local street via a private easement across Lot 14.

#### ***Neighborhood Meeting***

Before a rezone application or tentative subdivision plan application can be submitted, an applicant must hold a neighborhood meeting as specified in Chapter 17.72 of the Zoning Ordinance. The applicant conducted the required neighborhood meeting on January 29, 2019 in accordance with these requirements and submitted the necessary documentation of the neighborhood meeting with the application, including a list of attendees and meeting notes.

The neighborhood meeting notes indicate that, in addition to the applicant and the applicant’s representatives, approximately 24 people attended the meeting. The meeting notes indicate discussion of the following main topics:

- Duplexes
- Cul-de-sac vs. through street
- Traffic and speeding
- Stormwater conveyance

The applicant’s neighborhood meeting notes, submitted with the application, summarize the concerns expressed by attendees and the applicant’s responses to the issues which were raised.

## **Discussion**

### ***Summary of Criteria & Issues***

#### **ZC 3-19. Zone Change**

The application is subject to the Zone Change criteria in Section 17.74.020 of the Zoning Ordinance, which include consistency with the Comprehensive Plan.

#### ***Comprehensive Plan Policies***

The primary substantive requirements are the provisions of Chapter V of the Comprehensive Plan (Housing and Residential Development), which include locational criteria for applying the R-3 zoning designation, need and adequacy of the buildable land inventory to provide adequate amounts of land in applicable zoning districts to provide for needed housing, and adequacy of utilities and services for the use and development permitted by the proposed zoning. The application was submitted before the effective date of the Great Neighborhood Principles, so those do not apply to this application.

There are no significant issues with the rezoning of the property as it relates to the criteria and these key issues. There is only one Comprehensive Plan map designation of “Residential”, which authorizes residential zoning districts based on locational policies. The subject property is contiguous with existing R-3 zoning to the east, and there is an existing mix of R-1, R-2, R-3, and R-4 zoning and development throughout this area. While residential Policy 71.06 discusses limitations on where R-1 and R-2 zoning should be applied, including locations with natural drainageways and wetlands, this isn’t prohibitive to designation of other zoning where some such features may be present, including policies about where R-3 zoning may be applied.

Residential Policies 71.09 and 71.10 discuss factors for where R-3 and R-4 zoning should be applied. Given the existing land use pattern of the area, the proposal is consistent overall. While Policy 71.09 discusses locational considerations of areas that have direct access from collector or arterial streets, the property has access to collectors via NE Newby Street, and the area includes existing development within the R-3 zone immediately to the east accessing NE Newby Street, which provides a connection between Grandhaven (a major collector) and 27<sup>th</sup> (a minor collector). Further, transportation policy 121.00 discourages the direct access of small-scale residential developments onto major or minor arterial streets and major collector streets.

The property can be provided with necessary services, and the site is in proximity to a park, elementary school, transit, and commercial and service uses.

The applicant has not requested a Planned Development, so approval of the requested zone change does not bind the applicant to a specific development proposal for the property once the property is rezoned. The subdivision tentative plan application is an independent application.

#### **S 2-19. Subdivision Tentative Plan**

The criteria for a subdivision are conformance of the proposed plan to the Land Division standards of Chapter 17.53, the development standards of the applicable zoning district (Chapter 17.18 for the R-3 Zone), and consistency with the Goals and Policies of the Comprehensive Plan, which are independent approval criteria for all land use decisions, as specified in Volume II of the Comprehensive Plan. Decisions must also ensure adequate coordination with other affected agencies to ensure the application is consistent with applicable local, state, and federal laws.

### **Land Division Standards**

The land division standards address issues such as street layout, block lengths, street improvement standards, etc. The proposed street configuration meets the applicable requirements for connectivity given constraints presented by surrounding development. Due to the existing development pattern and uses to the west and south, further connectivity can't be achieved.

With one exception, the proposal includes street improvements in accordance with the applicable street standards. The proposed new local street includes curb, gutter, planter strip, and sidewalk. At the "L" in the street, the proposed centerline radius is 38', while the street standards specify a 100' minimum centerline radius, to an even 10 feet. The ordinance specifies that the Planning Commission may accept sharper curves "where existing conditions, particularly topography, make it otherwise impractical to provide buildable lots. Staff obtained input from the Engineering Department regarding this issue. Tighter radiuses have previously been approved in areas where slower speeds are desired in a residential setting, including corners at 90 degree turns which would comprise a block if street extension to adjoining properties could occur.

NE Newby is already improved with curb, gutter, and curbtight sidewalk without a planter strip, within the existing right-of-way.

The proposal includes piping of the existing open draineway which runs west to east on the property, and rerouting the piped drainage conveyance from the point where the drainage enters the property, with the pipe to be routed in the new public street proposed within the development to the point where the drainage exits the property on the east side to existing conveyance to the east. Some of the sanitary sewer conveyance is proposed within public utility easements along side or rear lot lines rather than within the public right-of-way. Conditions are proposed that require the applicant to obtain authorization from DSL and the Army Corps of Engineers for alterations that would impact the delineated jurisdictional waters and final review of the utility and drainage plans by the Engineering Department. .

### **Lot Standards for Zoning District**

The development standards of the zoning district address issues such as minimum lot size, lot dimensions, etc. Lots need to be configured to meet these standards and with the intent that there shouldn't be foreseeable difficulties in developing the resulting lots with the allowed uses considering building setbacks, etc., and the proposal meets these requirements.

### **Comprehensive Plan Policies**

**Drainage and Natural Features.** The piping of the stormwater conveyance and the open drainageway would impact jurisdictional waters. The National Wetland Inventory identifies a riverine wetland on the property, but the wetland/jurisdictional waters delineation describes jurisdictional "waters" or a "waterway" described as "Drainage 1" which is part of the intermittent drainageway. The sampling locations in the wetland delineation report identified hydrophytic vegetation but not hydric soils. DSL's letter indicates 0 wetland acres and 0.07 acres of "water", which is about 3,099 square feet. The City doesn't have an adopted Local Wetland Inventory, designated "locally significant wetlands," or associated local regulation of such wetlands. Therefore, for this type of application, the City defers to the state and federal permitting requirements of the Department of State Lands and US Army Corps of Engineers. There are policies, discussed below that encourage retention of open drainageways. Given the locational context of the site, discussed below, staff finds the criteria can be satisfied if the drainage is conveyed in pipe, provided DSL and the US Army Corps of Engineers approves the off-site mitigation of the jurisdictional waters.

DSL has approved the delineation, which identifies approximately 3,099 square feet (0.07 acres) of jurisdictional waters. The applicant is proposing off-site mitigation of the wetlands/waters of the state.

DSL has commented the state law establishes a preference for avoidance of wetland impacts. The applicant will need to address these requirements with DSL and the Corps of Engineers. The Planning Commission has recommended conditions which would require the applicant to obtain approval from DSL and the Corps of Engineers for the proposed off-site mitigation. Should they be unable to address those requirements to obtain approval of off-site mitigation, the condition would be unmet, and should any result require the open drainageway conveyance to remain on site, that would require submittal of a new, revised tentative plan application. (If the open conveyance was retained at its current location, it would traverse several lots, posing potential development constraints on the proposed lots which would contain the open conveyance).

The Great Neighborhood Principles were not in effect at the time of submittal of this application, so those policies do not apply to this application. The Comprehensive Plan policies below are most relevant to the subdivision application, and considered in context of the site and its surroundings. This is the most upstream section of the drainageway which isn't piped. Upstream stormwater is all piped and discharged into the open drainageway on this property through a 30" pipe at the west property line. The drainage exits the property to the east via a culvert, and is piped for approximately an additional 200' before it daylights and remains an open drainageway to the east via tributaries to the North Yamhill River.

*Chapter V. Housing and Residential Development*

Residential Design Policy 80.00. In proposed residential development, distinctive or unique natural features such as wooded areas, isolated preservable trees, and drainage swales shall be preserved wherever possible.

*Chapter VII. Community Facilities and Services*

Storm Drainage Policy 143.00. The City of McMinnville shall encourage the retention of natural drainageway for storm water drainage.

These policies are considered in the context of the open drainageway on the property being the upper extent of the unpiPED drainageway. Upstream properties to the west are piped to the property, and the conveyance to the east is piped for about 200' before daylighting into the open drainageway for the remainder of the conveyance to the North Yamhill River. It is this context that staff weighed in finding the criteria satisfied should DSL and the Corps of Engineers approve off-site mitigation.

**Public Comments**

Public testimony was presented at the Planning Commission hearing, which is reflected in the attached minutes. Oral testimony was provided by the applicant and applicant's representative, Ron Pomeroy. Testimony was presented in opposition and concerns were expressed by Kelly Bird, Jason Petredis, and Vanessa Hadick. Following public testimony, the Chair of the Planning Commission asked if any party requested to keep the record open or continue the hearing to present additional testimony. No party made such a request, and the public hearing was closed. On Friday, July 19, the day after the hearing, Jason Petredis and Vanessa Hadick e-mailed staff with written notes summarizing their oral testimony, together with illustrative photos. Since these were submitted after the record was closed, the materials are not part of the record, and would only be made part of the record if Council calls for a public hearing.

The Planning Commission discussed potential conditions relating to issues discussed in the testimony, but did not identify criteria that would be unmet absent the conditions. Following the meeting, staff contacted the applicant, and the applicant voluntarily agreed to one of the conditions, which is reflected as an additional condition in the Decision Document for the Subdivision. Condition #19 provides that NE Newby Street will be used as the main construction access for development of the proposed subdivision; however, construction necessitates that some access will be required via Buel for utility extensions and tie-in of the new local street to Buel.

**Agency Comments**

Notice of the proposed application was sent to affected agencies and departments. Agency comments were received from the Engineering Division and the Oregon Department of State Lands. Those comments are noted in the Decision Document and addressed as conditions when applicable.

**Attachments:**

1. Ordinance 5081, including Exhibit A: ZC 3-19 Decision Document
2. Ordinance 5082, including Exhibit A: S 2-19 Decision Document
3. Application and Attachments for ZC 3-19 & S 2-19
4. Draft Minutes of July 18, 2019 Planning Commission Public Hearing

**Fiscal Impact:**

Not Applicable to these Quasi-Judicial Applications

**Ordinance 5081 (ZC 3-19) Alternative Courses of Action:**

1. **ADOPT THE ORDINANCE** adopting the recommendation of the Planning Commission to approve the rezone per the decision documents provided which includes the findings of fact.
2. **CALL FOR A PUBLIC HEARING**, date specific to a future City Council meeting. The 120-day land use decision time limit expires on November 1. In order to hold a public hearing and meet all necessary noticing requirements, the public hearing would need to be scheduled for no sooner than the September 24 City Council meeting, and no later than the October 22 City Council meeting.
3. **DO NOT ADOPT THE ORDINANCE**, providing findings of fact and/or conclusionary findings based upon specific criteria to deny the application in the motion to not approve Ordinance No. 5081.

**Ordinance 5081 (ZC 3-19) Recommendation:**

The Planning Commission reviewed the proposal for consistency with the applicable criteria. The Planning Commission found the criteria for the Zone Change were satisfied and **RECOMMENDED APPROVAL** of the application.

Staff **RECOMMENDS APPROVAL** of the application as recommended by the Planning Commission.

**Ordinance 5081 (ZC 3-19) Suggested Motion:**

**“BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR APPROVAL, THE MATERIALS SUBMITTED BY THE APPLICANT, AND EVIDENCE IN THE RECORD, I MOVE TO ADOPT ORDINANCE NO. 5081.”**

**Ordinance 5082 (S 2-19) Alternative Courses of Action:**

1. **ADOPT THE ORDINANCE** adopting the recommendations of the Planning Commission with the addition of Condition #19 regarding construction access agreed to by the applicant, per the decision documents provided which includes the findings of fact.

2. **CALL FOR A PUBLIC HEARING**, date specific to a future City Council meeting. The 120-day land use decision time limit expires on November 1. In order to hold a public hearing and meet all necessary noticing requirements, the public hearing would need to be scheduled for no sooner than the September 24 City Council meeting, and no later than the October 22 City Council meeting.
3. **DO NOT ADOPT THE ORDINANCE**, providing findings of fact and/or conclusionary findings based upon specific criteria to deny the application in the motion to not approve Ordinance No. 5081.

**Ordinance 5082 (S 2-19) Recommendation:**

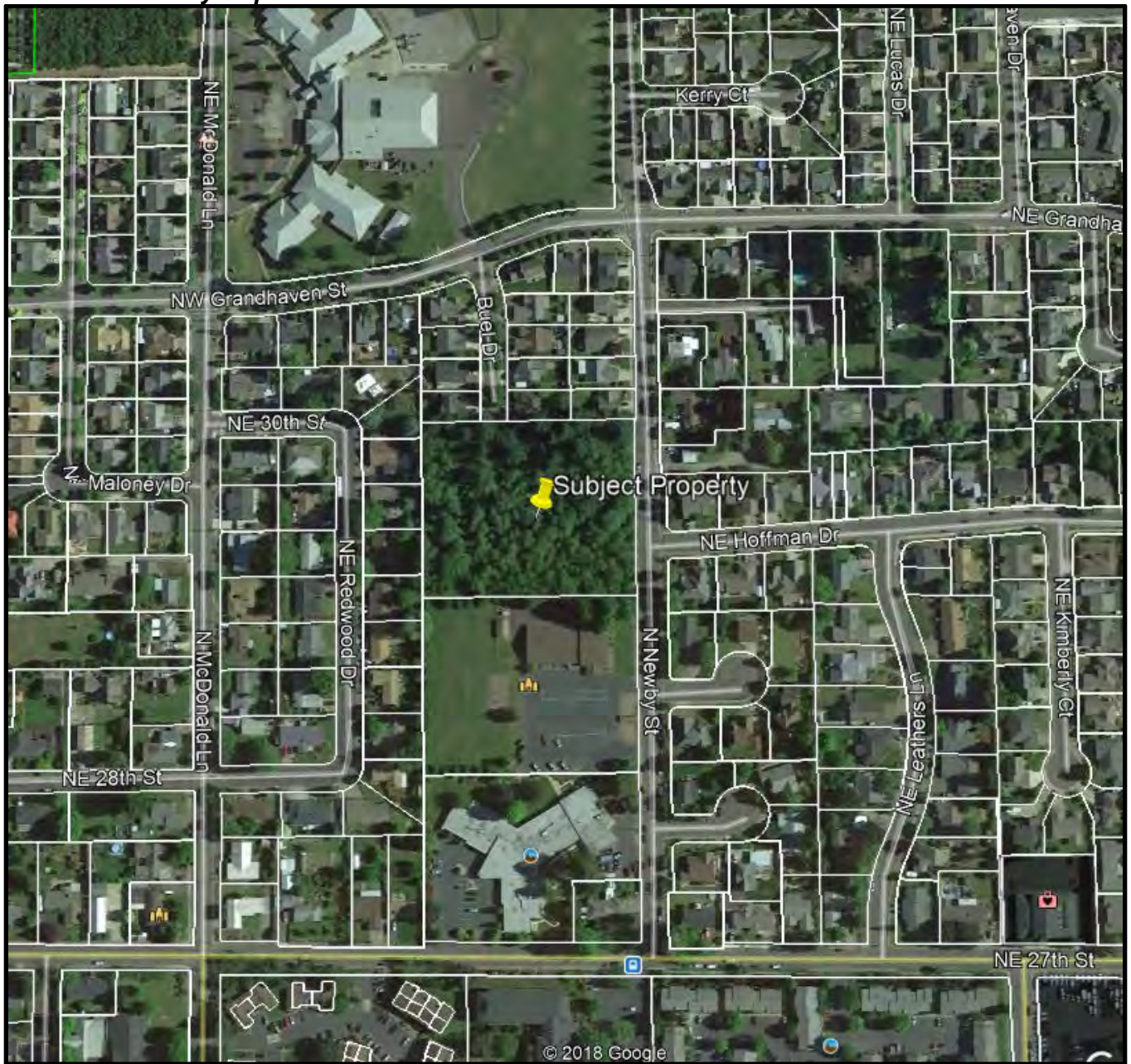
The Planning Commission reviewed the proposal for consistency with the applicable criteria. The Planning Commission found the criteria for the Subdivision Tentative Plan were satisfied with conditions and **RECOMMENDED APPROVAL WITH CONDITIONS** of the application.

Staff **RECOMMENDS APPROVAL WITH CONDITIONS** of the applications as recommended by the Planning Commission, with the addition of Condition #19 in the Decision Document for the Subdivision Tentative Plan agreed to by the applicant, pertaining to primary construction access from NE Newby Street.

**Ordinance 5082 (S 2-19) Suggested Motion:**

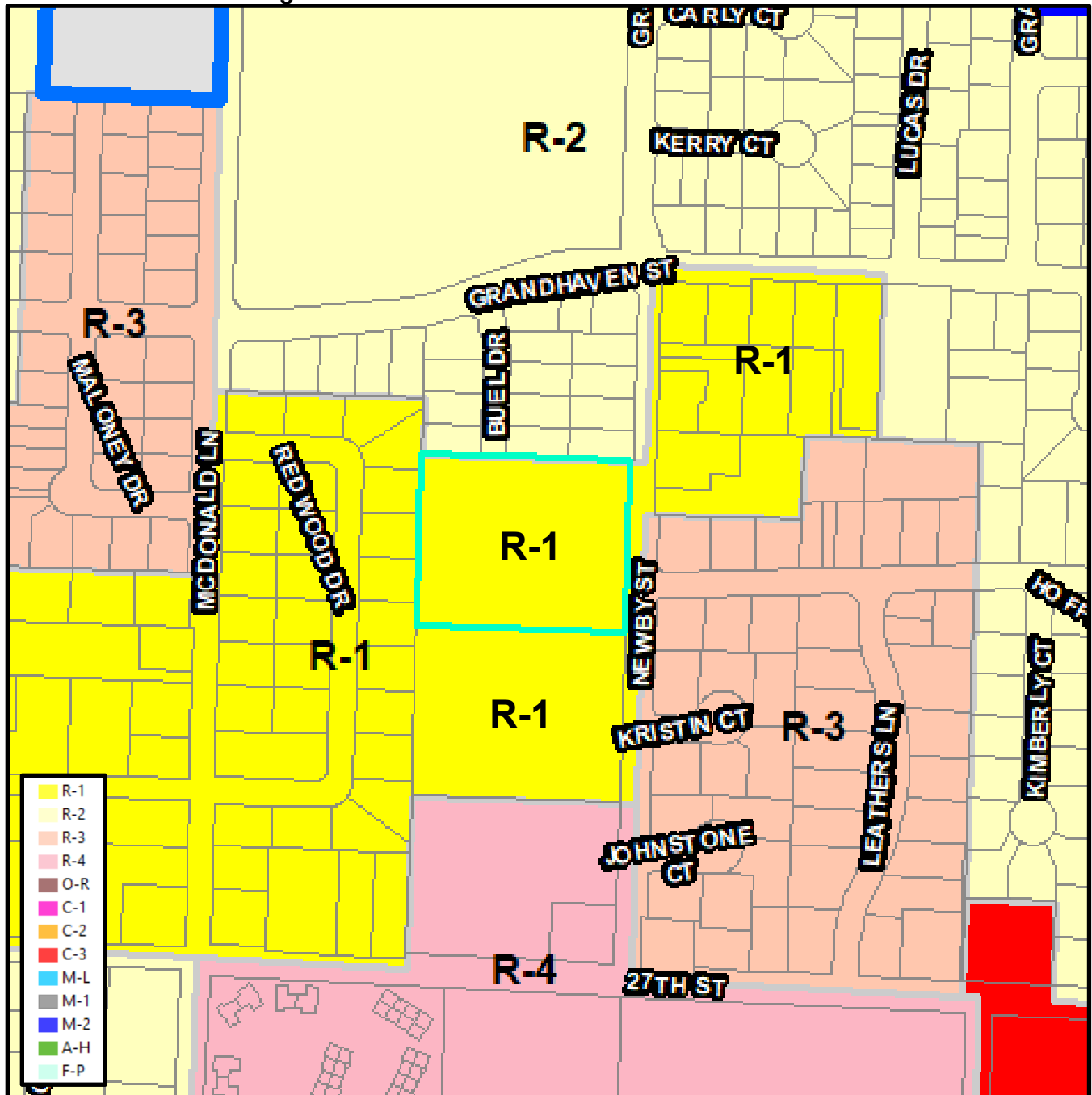
**“BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR APPROVAL, THE MATERIALS SUBMITTED BY THE APPLICANT, AND EVIDENCE IN THE RECORD, I MOVE TO ADOPT ORDINANCE NO. 5082.”**

**Exhibit 1. Vicinity Map & Aerial Photo**

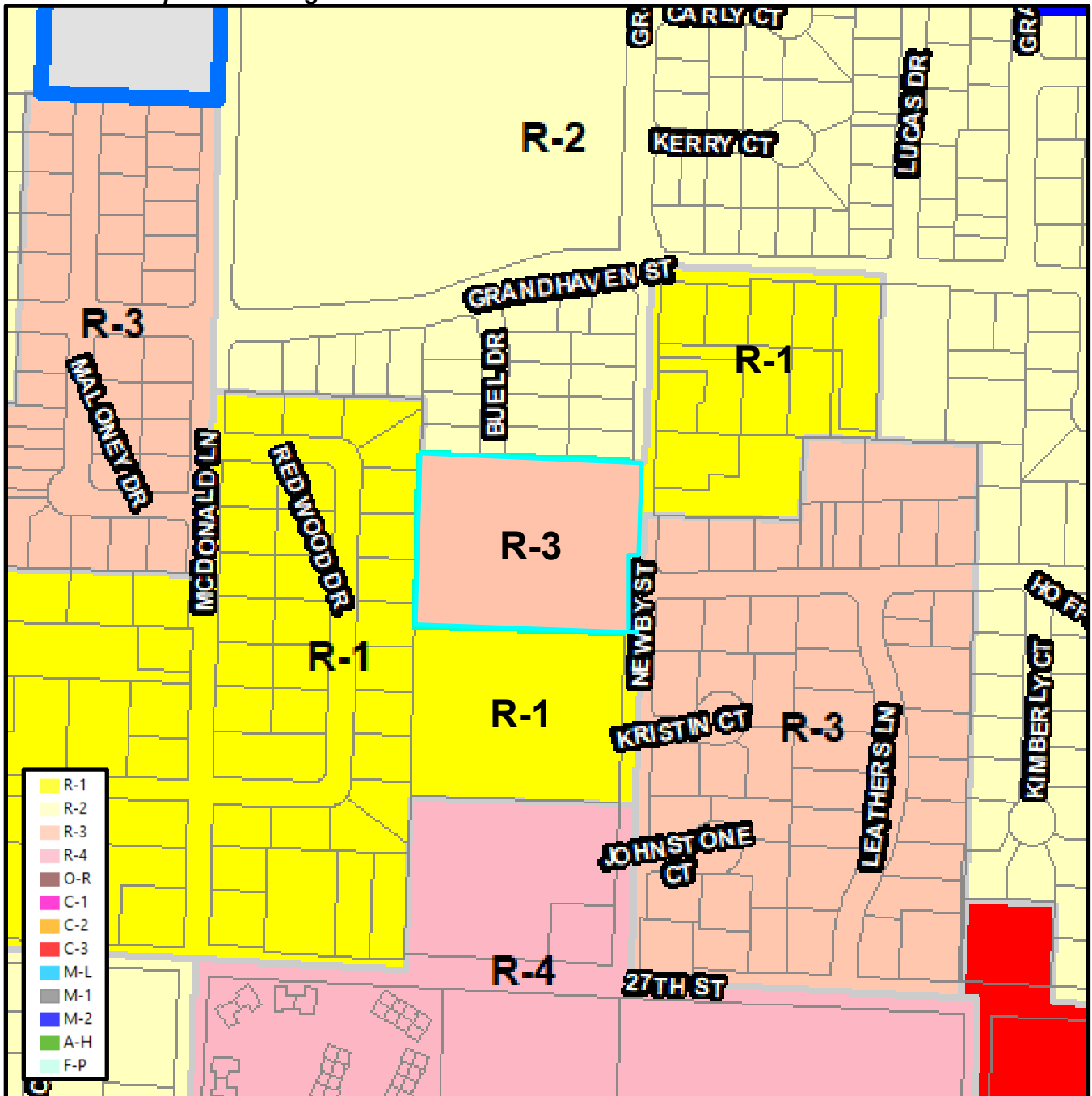




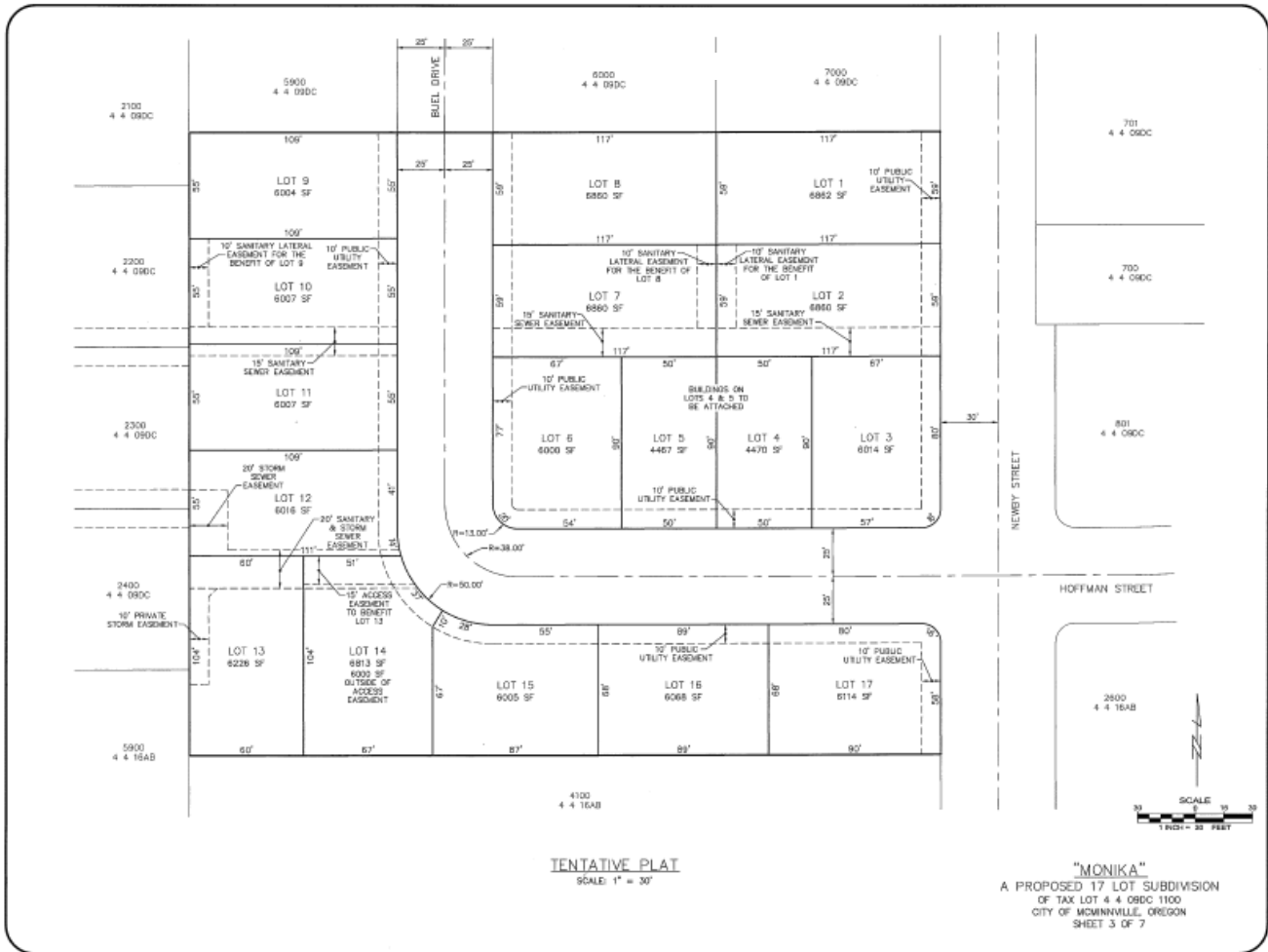
**Exhibit 2. Current Zoning**



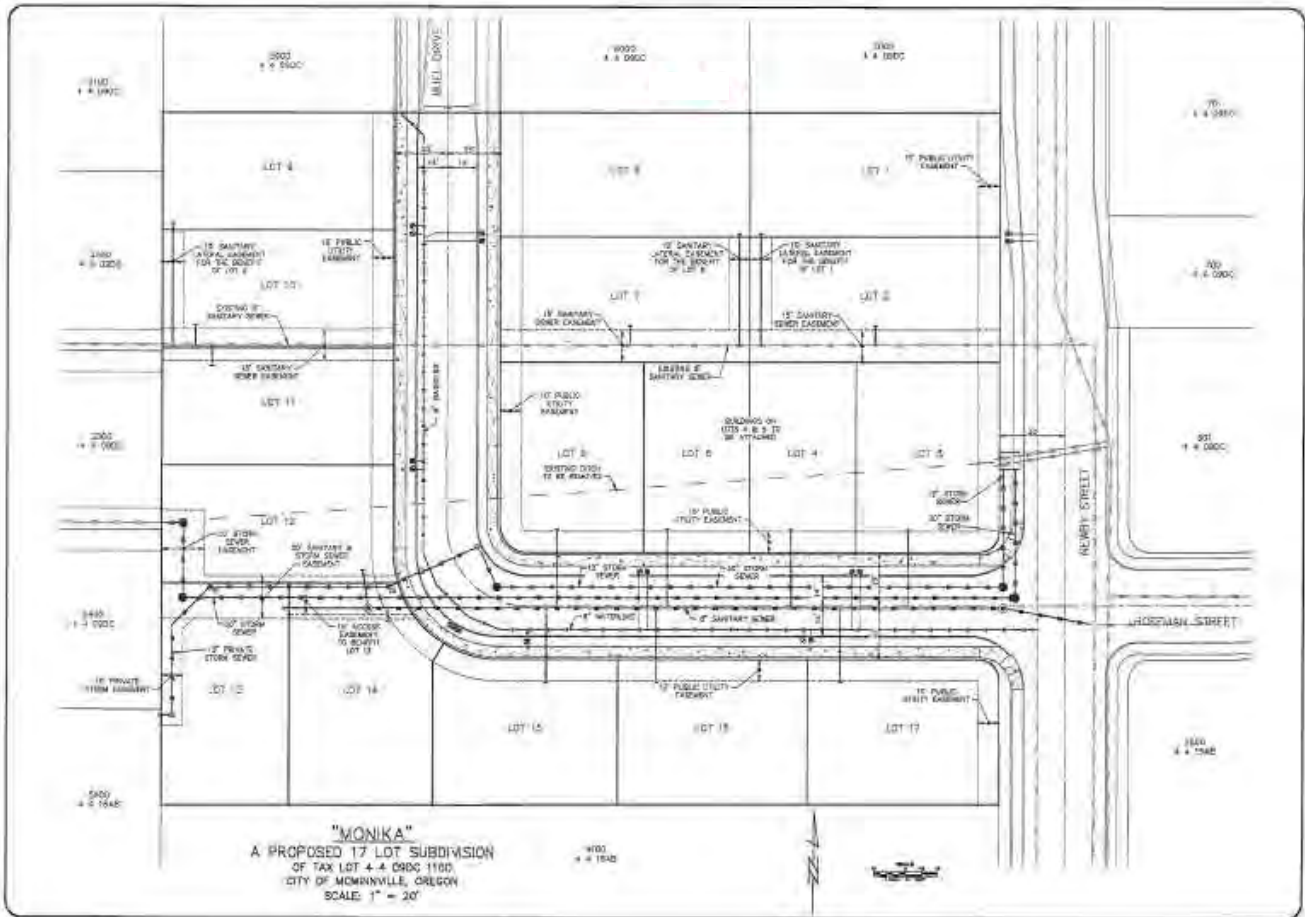
**Exhibit 3. Proposed Zoning**



**Exhibit 4. Proposed Subdivision Tentative Plan**



**Exhibit 5. Proposed Public Improvements and Utility Plan**



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