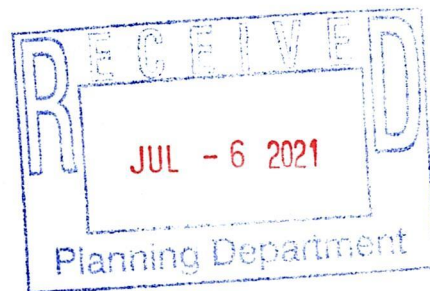


CITY OF MCMINNVILLE
PLANNING DEPARTMENT
Heather Richards Planning Director
231 NE FIFTH STREET
MCMINNVILLE, OR 97128
heather.richards@mcminnvilleoregon.gov
July 5, 2021



Planning Department,

“Property owners have a "bundle of legal rights" that transfers to them when they purchase a property. ... The main legal property rights are the right of possession, the right of control, the right of exclusion, the right to derive income, and the right of disposition.” This applies to all property owners.

We are rule followers. As property buyers thirty years ago we performed our buyers due diligence and found that this 7 plus acres had the potential to fit our long term goals for our planned growth. It was a deciding factor in committing to this large purchase. Within three years we built our home. During that time we ran a business, raised our children, were involved in the community and set our plans in motion to partition our land and build.

We had the property surveyed and followed the city’s partition guidelines. Our property fits the criteria defined by city code. This is reflected by the acknowledgment and approval from the City of McMinnville in 2001 “Partition plat 2001-03 Block L” signed by the then planning director, Doug Montgomery.

Through the process we set up a detailed easement agreement with Delane Smith. This was to allow him to give us access to our property on the Northwest corner of parcel 2. The reason was to make it possible for the Smiths to the north to not have to remove their garage and part of his house that is on the now vacated city right of way. Staff Report; 17.53.100 “Proposed Parcel 2 is provided legal access via existing private easement, as indicated on approved Partition Plat 2001-03, and through an undeveloped public right-of-way. Although proposed Parcel 2 is the fourth lot accessed via the private easement, the City has acknowledged and approved this deviation from 17.53.100(C)(1) through prior land-use decision MP 7-00 and Ordinance No. 4741, and by approving Partition Plat 2001-03. The existing access easement is 22 feet wide, and the existing driveway leading to Parcel 2 is approximately 12 to 13 feet wide, both exceeding the minimum width. The applicant is party to an existing private easement agreement noted on Partition Plat 2001-03 that provides the terms for construction and maintenance of the shared access driveway.” We have met all criteria. In 2001 we paid to have City water and electric, the gas company and cable install lines to our lots for our future development to the tune of over Twenty (\$20 thousand).

In 2001 we trusted our neighbor and the City of McMinnville, gave up our street “right of way” to our northwest corner of parcel 2 for this private recorded easement. Over the past thirty years we have maintained the property and paid city property taxes for this

parcel. Developing this property will contribute to the City of McMinnville's goal as stated in the City Charter under housing opportunities and the City Center Housing strategy (page 9 Housing Needs) by creating "dense and diverse housing opportunities". Also covered in Comp Plan Policy 58.00 "City land development ordinances shall provide opportunities for development of a variety of housing types and densities."

We have addressed the recent request of the City planning to update our partition application to make sure we are meeting our responsibilities. Fresh title, which way the creek flows, trees etc..We know we have responsibilities as land owners. The neighbors, as property owners had a responsibility when they purchased their homes to do their buyers due diligence to determine if houses could be built around them, to help their decision to live in Tall Oaks. Contacting city Planning could have shown "Partition plat 2001-03 Block L" and its zoning of R2 which is what Parcel 2, MP 6-20 is listed under.

Addressing some of the concerns of the neighbors. *Concerns from letters are in italic.*

When the other parcel of land was developed "*we had rats galore in our yard*" and "*who's to say that new tenants on that property won't be in our yards and looking in our windows*". In other complaint's that the parcel "*is entirely to close to the flood plain*" "*the beautiful forest canopy . . . would be destroyed*". "*applicant insist on removing important " Public trees"*" "*We entertain our family. . . in full view of the birds and trees and deer.*" "*I do not want to see buildings behind the houses across the street*"

We have no desire to cut the trees unless it is necessary. We appreciate the trees and know they add a value to our property. We have honored, cared for and improved our property for thirty years with the intention to develop it. This is our yard and has been for over 30 years. The opposition has the responsibility to make their back yards their refuge. This property belongs to Steve and Mary Allen Trust, the trees on our property are not "*public trees*", they are on private property. We have never stated that we would destroy the trees. What bothers us the most is that the Tall Oaks neighbors indicating that the trees, birds, deer that they **see** over their fence belong to them because they **see** them. Just because you can see something does not make it yours. Although we acknowledge these as real concerns, every one owns and has control of their own private property. No one owns the view or should they expect to control our property. We agree.

"There is a 33 foot right of way that provides public access for all" " legacy 33 foot public right-of-way, a natural protected area within the city." "It only makes sense that the public access should continue in large part to remain as public access"

What is a right of way?

"As a general rule, a city or county right-of-way is an easement for public travel. (An easement is a privilege or a right, distinct from ownership, to use in some way the land of another.)

So, typically, a city or county does not own the fee title to the property underlying the public right-of-way; the abutting property owners have that fee title. There is no public access to this street. Only private property abuts this landlocked street. It has been vacated at both ends. This "right of way" is a 33 foot land locked street set up for travel. It is not maintained by the City of McMinnville for any use. It was the only way to give our property access before we entered into an easement. There are no improvements, electric, water etc. located on or around this City "right of way". Right now it only used for yard debris, grass trimmings, branches, old potted plants from the Tall Oaks neighbors across the fence. It is overgrown with ivy up the trees and poison oak along proposed Parcel 2 and beyond. Staff Report "Planning staff have already recommended conditions to protect trees, ensure the access is adequate, and address other city goals. This satisfies the comp plan requirements."

"It is likely the daily number of entries and departures of the site will increase by as many as 10 to 18, causing the existing driveway to function essentially as a common city street." "There are already four vehicles coming in and out of the private driveway plus any guests that they may have".

"Fellows Street is classified as a Minor Collector in the McMinnville Transportation System Plan and has been designed to accommodate medium intensity adjacent land-uses. Note that the layout and intersection of the existing private access drive and Fellows street was reviewed and approved by the city in 2000-2001, when the private access drive was replacing a planned local street that would have served these properties." The layout and specification of the build able driveway was reviewed and approved by the City, including Engineering and Fire Department, at the time the easement was required in 2000-2001 knowing that easement was approved to serve the land west of the Cozine on the applicant property. Staff found that we meet the access requirement due to the city's prior commitment to providing access to multiple lots on our property. This has been clear since the city's decision 20 years ago, and this planning commission should not violate the promise that the city previously made to us that we could have access to multiple lots through the driveway easement in existence already.

Landslides

In our research almost all property built along the Cozine Creek area through out the City of McMinnville have been built on the moderate to high landslide areas. The City of McMinnville's police department is built partially on the moderate landslide area as well as every home in Tall Oaks abutting Parcel 2. This makes it a highly ironic that opponents criticize our plan for issues that are also true of their own homes. We will follow City codes to build a safe structure as we are sure the Tall Oaks developers did.

We have supplied maps with the flow of the water, contour lines, flood area and wooded areas, utilities, water etc.. Fellows street and our easement are addressed above. A shadow Plat map for the future parcel is included with access points. New Title search supplied.

“America’s Founders understood clearly that private property is the foundation not only of prosperity but of freedom itself. Thus, through the common law, state law, and the Constitution, they protected property rights — the rights of people to acquire, use, and dispose of property freely.”

Staff report . . . This “application achieves the purpose of Chapter 17.53-Land Division Standards, and meets the standards for access, lot size and shape, and provision of utilities and improvements for each of the proposed parcels”. The addition of these parcels will be adding much needed housing to the City of McMinnville.

Policy 187.10 The City of McMinnville shall establish Great Neighborhood Principles to guide the land use patterns, design, and development of the places that McMinnville citizens live, work, and play. The Great Neighborhood Principles will ensure that all developed places include characteristics and elements that create a livable, egalitarian, healthy, social, inclusive, safe, and vibrant neighborhood with enduring value, whether that place is a completely new development or a redevelopment or infill project within an existing built area.

FINDING: SATISFIED. The proposed partition would create buildable lots within an existing neighborhood that can be used for infill development. This type of development can help provide a variety of housing choice at different income levels for different generations that would be integrated into an established neighborhood.

We have met all the criteria for a partition for our property MP 6-20 and look forward to our partition approval. This Partition will be contributing to the city’s goal to create more housing so more people can support and live in this community.

Steve & Mary B. Allen
835 SW Hilary Street
McMinnville, OR 97128
maryballen5@gmail.com

Exhibit 2c. Partition Plat 2001-03, Page 2 Enlargement with Doug Montgomery's approval signature (City of McMinnville Planning Director) and Note #2.




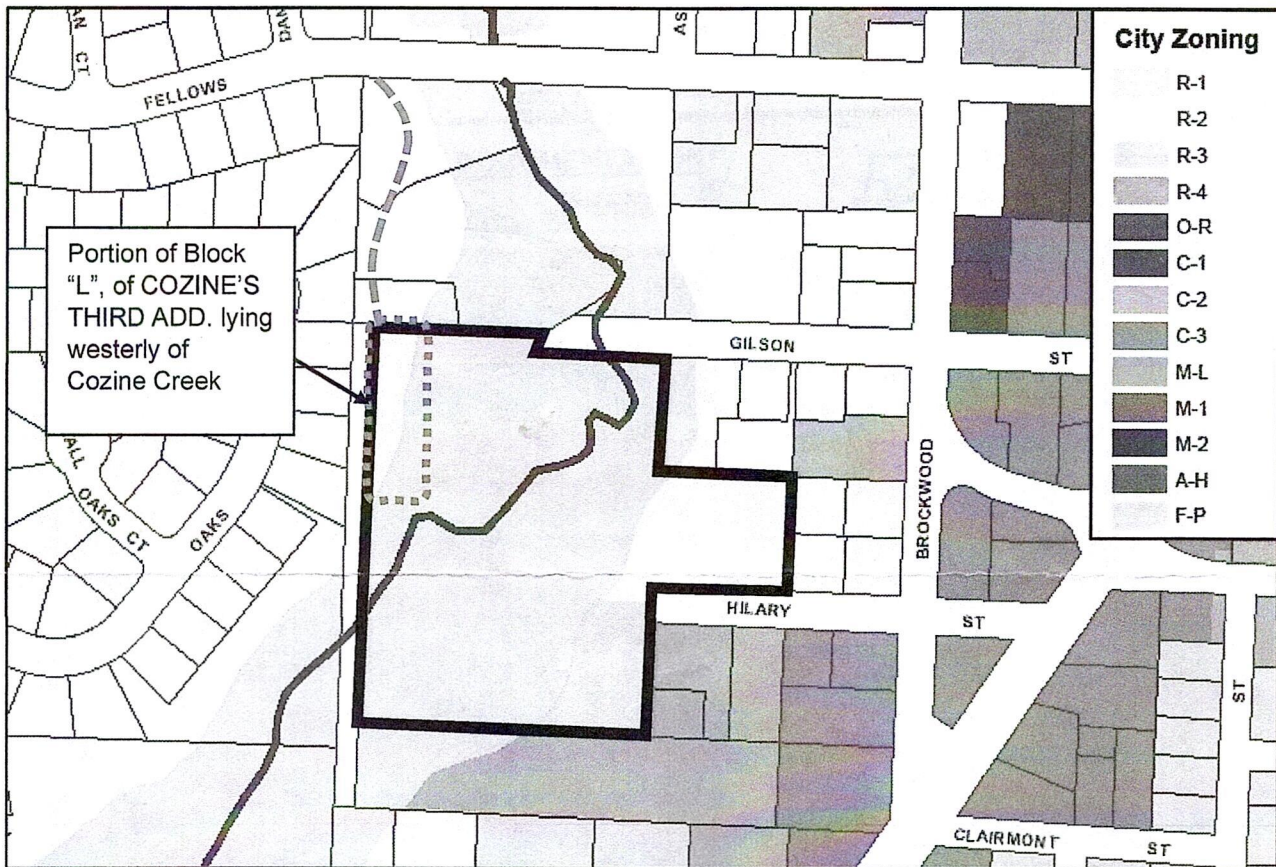
<u>APPROVALS :</u>	<u>Notes</u>
 _____ City of McMinnville Surveyor 1/10/01 Date	1) Prior to issuance of building permits for Parcels 2 or 3 of this partition, arrangements must be made with the City for construction of a turnaround for emergency vehicles if required by the McMinnville fire Marshall. 2) The easements for access & utilities granted by the recording of this plat shall be perpetual, non-exclusive and subject to and governed by the provisions of that Driveway Construction and Maintenance Agreement recorded in Instrument No. <u>200100600</u>
 _____ City of McMinnville Planning Director 1/10/01 Date	
 _____ Yamhill County Surveyor 1/12/01 Date	

Exhibit 3. Zoning Map illustrating the property at 835 SW Hilary Street. The portion of the property in the northwest corner that is residentially zoned (R-2, Single-Family Residential), does not have access to the surrounding street network via public right-of-way, and is separated by Cozine Creek and its flood plain from the eastern portion of the lot that does have right-of-way access, is the portion of the property described as Block "L" of COZINE'S THIRD ADD. lying westerly of Cozine Creek on the partition map 2001 - 03, identified in Exhibit 2a and 2b.



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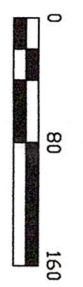
Tentative Partition Shadow plat for:
Steve & Mary Allen

Location: NE 1/4 Section 29, T. 4 S., R. 4 W., WM,
 Block L, Lot 3 of Block K, Lots 1 & 2 of Block M
 COZINE'S 3RD ADDITION
 City of McMinnville, Yamhill County, OR

Tax Lot: 44299A - 1600

Date: 28 JUNE 2021

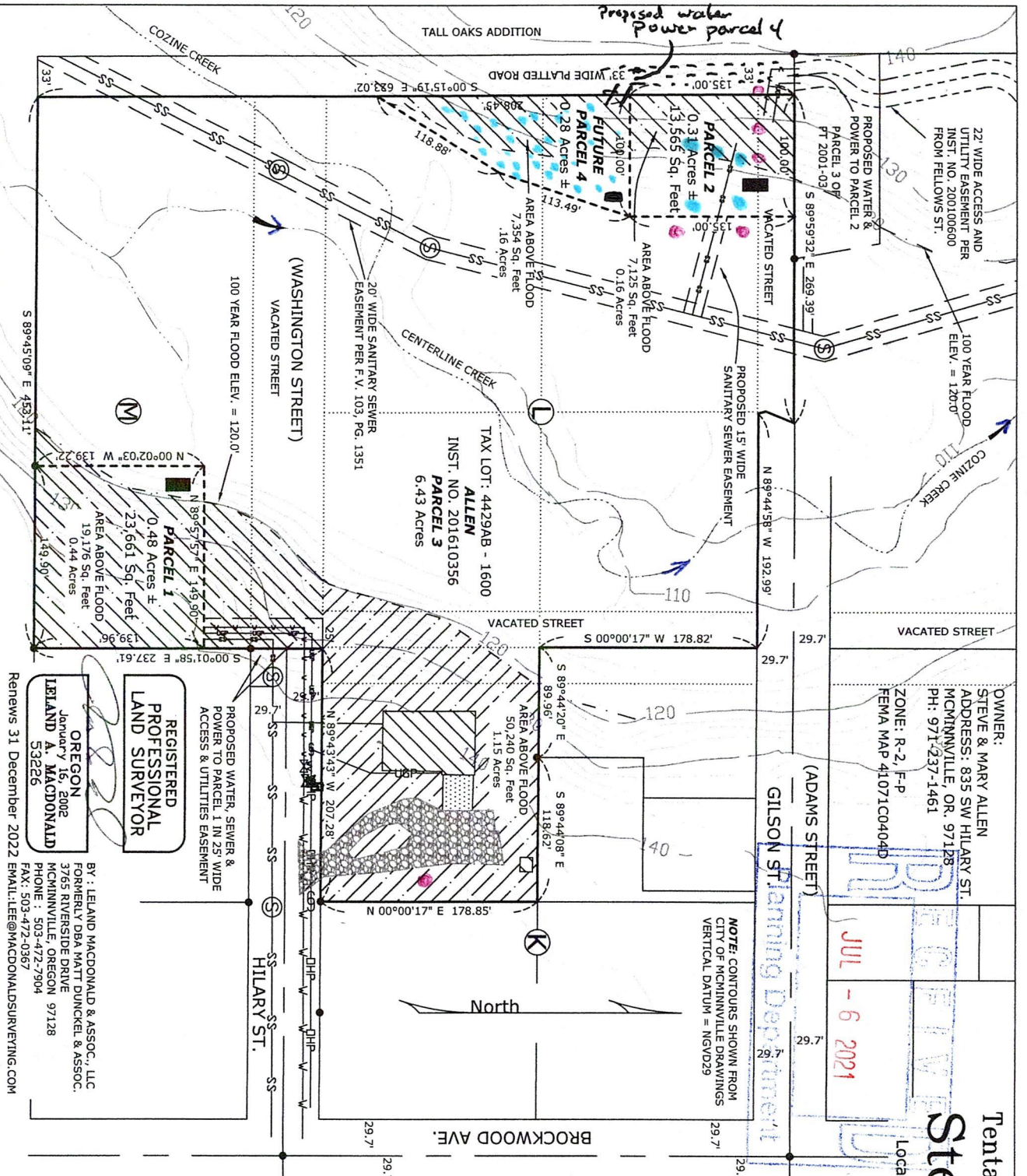
Scale: 1" = 80'



Legend

- = MONUMENT FOUND
- ⊗ = WATER VALVE
- ⊕ = WATER METER
- ⊙ = FIRE HYDRANT
- ⊖ = POWER POLE
- ⊙ = GUY ANCHOR
- ⊙ = SANITARY SEWER MANHOLE
- = PROPERTY LINE
- = PROPOSED PARCEL LINES
- - - = PUBLIC RIGHT-OF-WAY
- - - = OVERHEAD POWER
- - - = UNDERGROUND POWER
- - - = EDGE OF ROCK
- - - = SANITARY SEWER LINE
- - - = WATER LINE
- - - = EDGE OF PAVEMENT
- - - = 100 YEAR FLOOD LINE
- - - = CENTERLINE OF PUBLIC ROAD
- - - = PROPOSED EASEMENT
- - - = ASPHALT
- - - = BUILDING
- - - = AREA ABOVE FLOOD
- - - = GRAVEL
- - - = PROPOSED STORM SWALE

#9144



REGISTERED
 PROFESSIONAL
 LAND SURVEYOR
 OREGON
 January 16, 2002
LELAND A. MACDONALD
 53226

BY: LELAND MACDONALD & ASSOC., LLC
 FORMERLY DBA MATT DUNCKEL & ASSOC.
 3765 RIVERSIDE DRIVE
 McMinnville, Oregon 97128
 PHONE: 503-472-7904
 FAX: 503-472-0367
 EMAIL: LEE@MACDONALDSURVEYING.COM

Renews 31 December 2022

all trees listed are 9+ inches
 ● Oak
 ● Fir
 ↗ Direction of water flow. Cozine

Access
 Point
 Parcel 4

Proposed water and
 power to parcel 4