

# Minor Partition

MP 6-20

835 SW Hilary Street

Planning Commission – Public Hearing

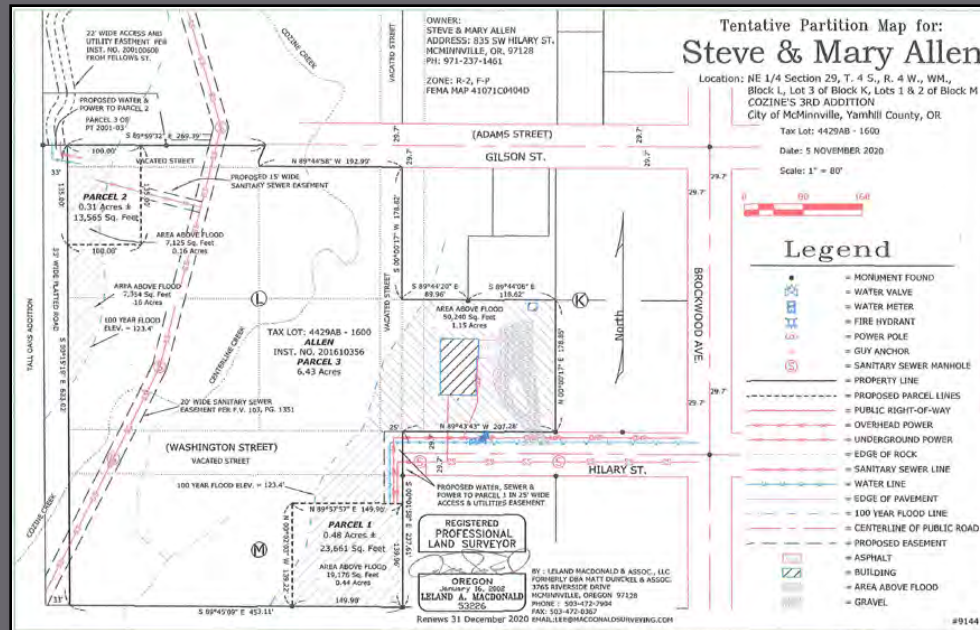
June 17, 2021

**PLANNING COMMISSION. 06.17.21**



# MINOR PARTITION REQUEST

- Partition a 7.22-acre parcel into three (3) lots:
  - Parcel 1: 0.48 acres accessed from Hilary Street
  - Parcel 2: 0.31 acres accessed from Fellows Street
  - Parcel 3: 6.43 acres accessed from Hilary Street



PLANNING COMMISSION. 06.17.21



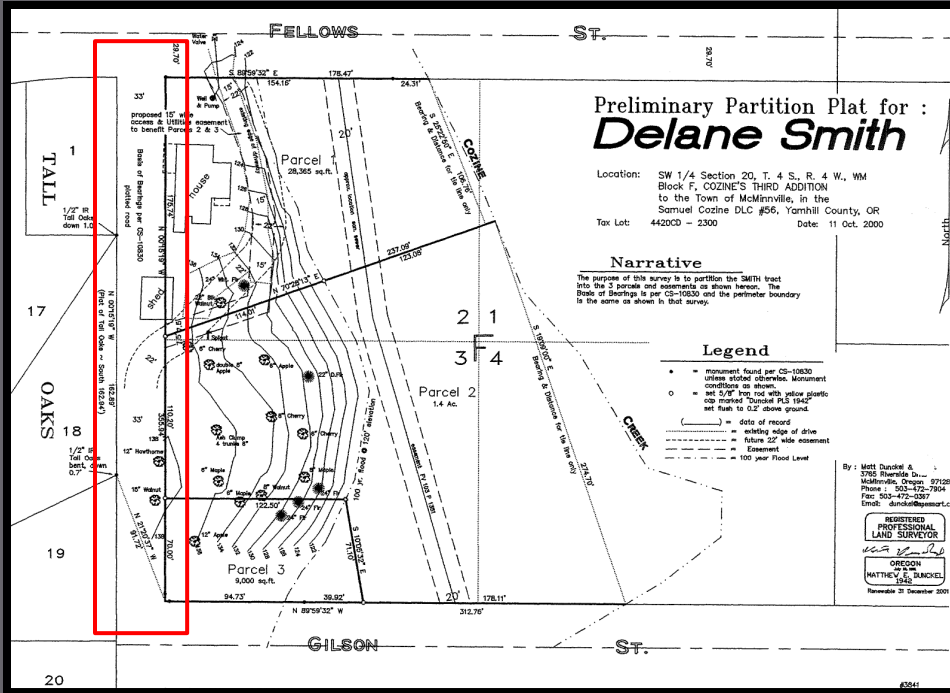
# SITE LOCATION & CONTEXT



PLANNING COMMISSION. 06.17.21



# PAST LAND-USE DECISIONS



Minor Partition 7-00 was approved by the City dividing the Smith property into 3 parcels

A condition of approval required either a Road Vacation petition to vacate undeveloped right-of-way west of the Smith property or development of the right-of-way to City standards

PLANNING COMMISSION. 06.17.21





# PAST LAND-USE DECISIONS

Ordinance No. 4741 was adopted by City Council, approving RV 1-00 vacating undeveloped right-of-way west and south of the Smith property

- A condition of approval required “an access easement be granted to the southern property (Allen property) by the owners of the northern property (Smith property) in a location and of a specification to be approved by the Fire Marshall and City Engineer.”

THE CITY OF McMinnville ORDAINS AS FOLLOWS:

1. That the portion of an unnamed street south of Fellows and north of Gilson Street, and a portion of Gilson Street located east of the unnamed street and west of Cozine Creek and more fully described in the attached Exhibit "A", be and the same is hereby fully, finally, completely, and forever vacated and the title to said property shall attach to the abutting lots and lands pursuant to ORS 271.140, subject to the following conditions:

(a) That the City of McMinnville retains public utility easements over the vacated right-of-way for the maintenance of existing utilities and construction of new public utilities.

(b) That an access easement is granted to the southern property (Allen property) by the owners of the northern property (Smith property) in a location and of a specification to be approved by the Fire Marshall and City Engineer. The vacation shall not be final until the documents granting said easement are executed by the owner of the northern property, approved by the City, and filed as required by law.

Passed by the Council this 12th day of December 2000 by the following votes:

Ayes: Aleman, Olson, Windle

Abstain: Payne

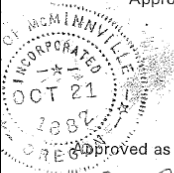
Nays: \_\_\_\_\_

Approved this 12th day of December 2000.

*Richard D. Windle*  
COUNCIL PRESIDENT

*[Signature]*  
CITY ATTORNEY

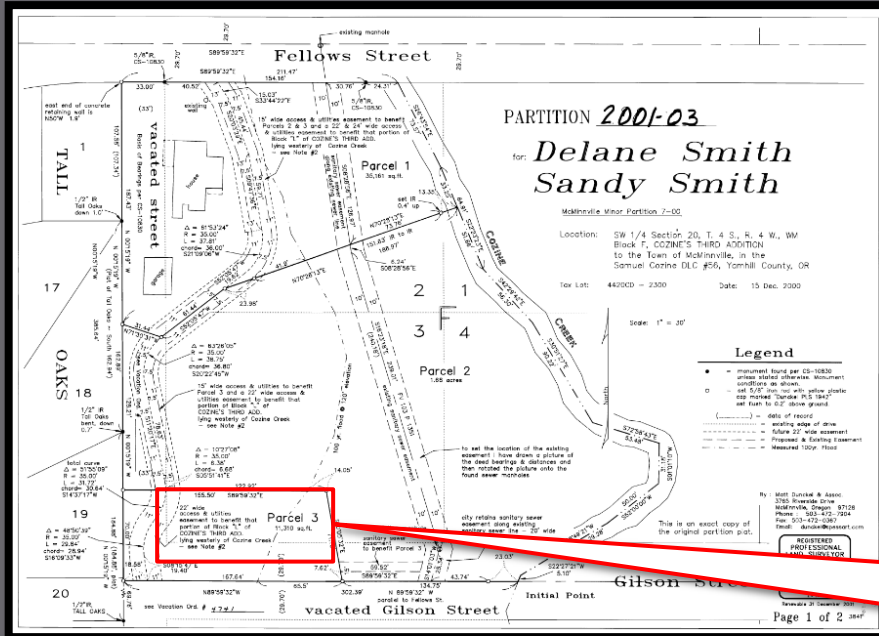
APPROVED AS TO FORM:



PLANNING COMMISSION. 06.17.21

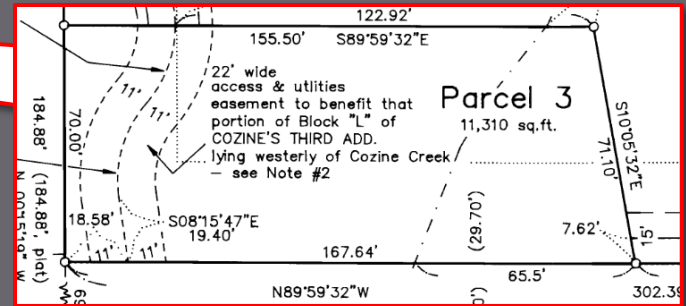


# PAST LAND-USE DECISIONS



Following Ordinance No. 4741, MP 7-00 was finalized with the approval and recording of Partition Plat 2001-03

- Plat includes location of access and utilities easement to benefit "that portion of Block "L" of Cozine's Third Add. Lying westerly of Cozine Creek"



**APPROVALS :**

*Dwight E. Schut* 1/10/01  
City of McMinnville Surveyor Date

*Paul Johnson* 1/10/01  
City of McMinnville Planning Director Date

*Alan L. Linder* 1/12/01  
Yamhill County Surveyor Date

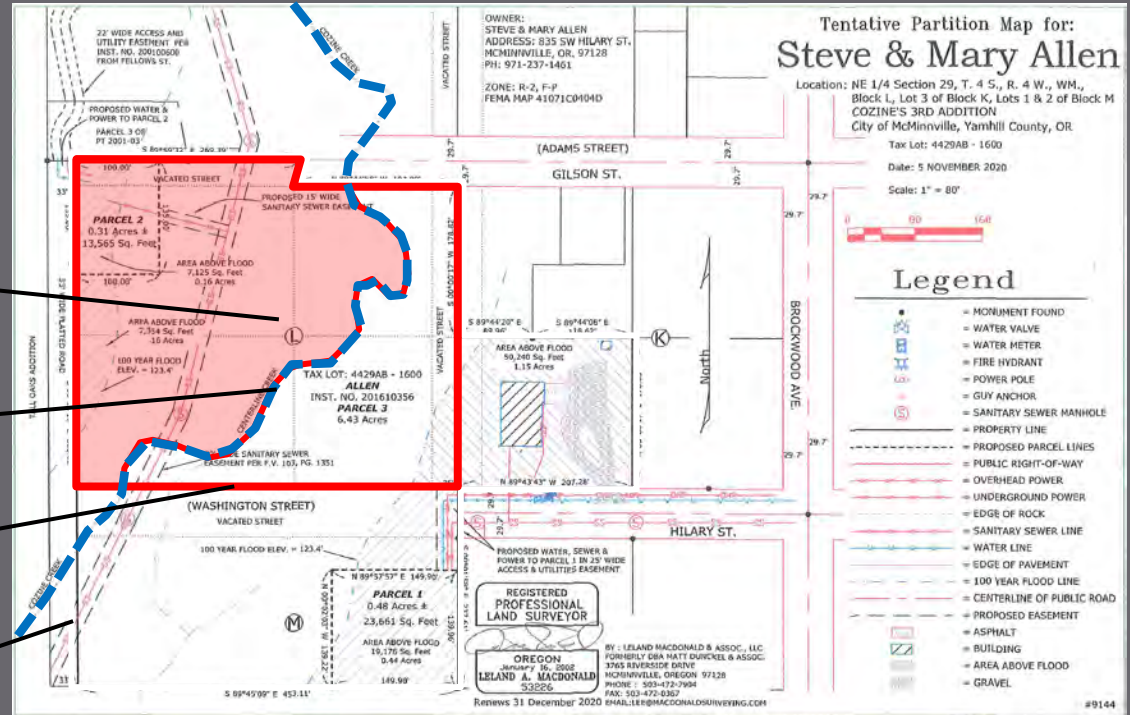
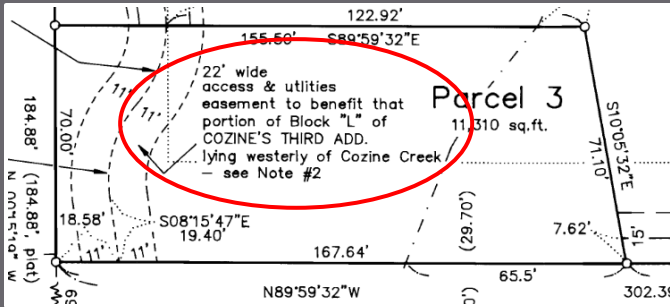
Partition Plat 2001-03 was approved by the McMinnville Planning Director on Jan. 10, 2001

PLANNING COMMISSION. 06.17.21



# PAST LAND-USE DECISIONS

Proposed Partition MP 6-20 utilizes easement for proposed "Parcel 2" within Block "L" and west of Cozine Creek



"That portion of Block "L" of Cozine's Third Addition lying westerly of Cozine Creek"

Cozine Creek

Block "L" of Cozine's Third Addition

Allen property – 835 SW Hilary Street

PLANNING COMMISSION. 06.17.21



# PAST LAND-USE DECISIONS

## Notes

- 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. 200100600

Partition Plat 2001-03 references recorded Instrument No. 200100600, the Driveway Construction and Maintenance Agreement as the governing document for the access and utilities easement

Owners Parcel A: Delane Smith and Sandra Smith

Owners Parcel B : Steve Allen and Mary Bernards Allen

### **DRIVEWAY CONSTRUCTION AND MAINTENANCE AGREEMENT**

The following is to provide for the construction and maintenance of a driveway within a perpetual, non-exclusive easement for access and utilities that has been granted by the platting of said property to be recorded contemporaneously with this Agreement, and located on that property described in Exhibit "A."

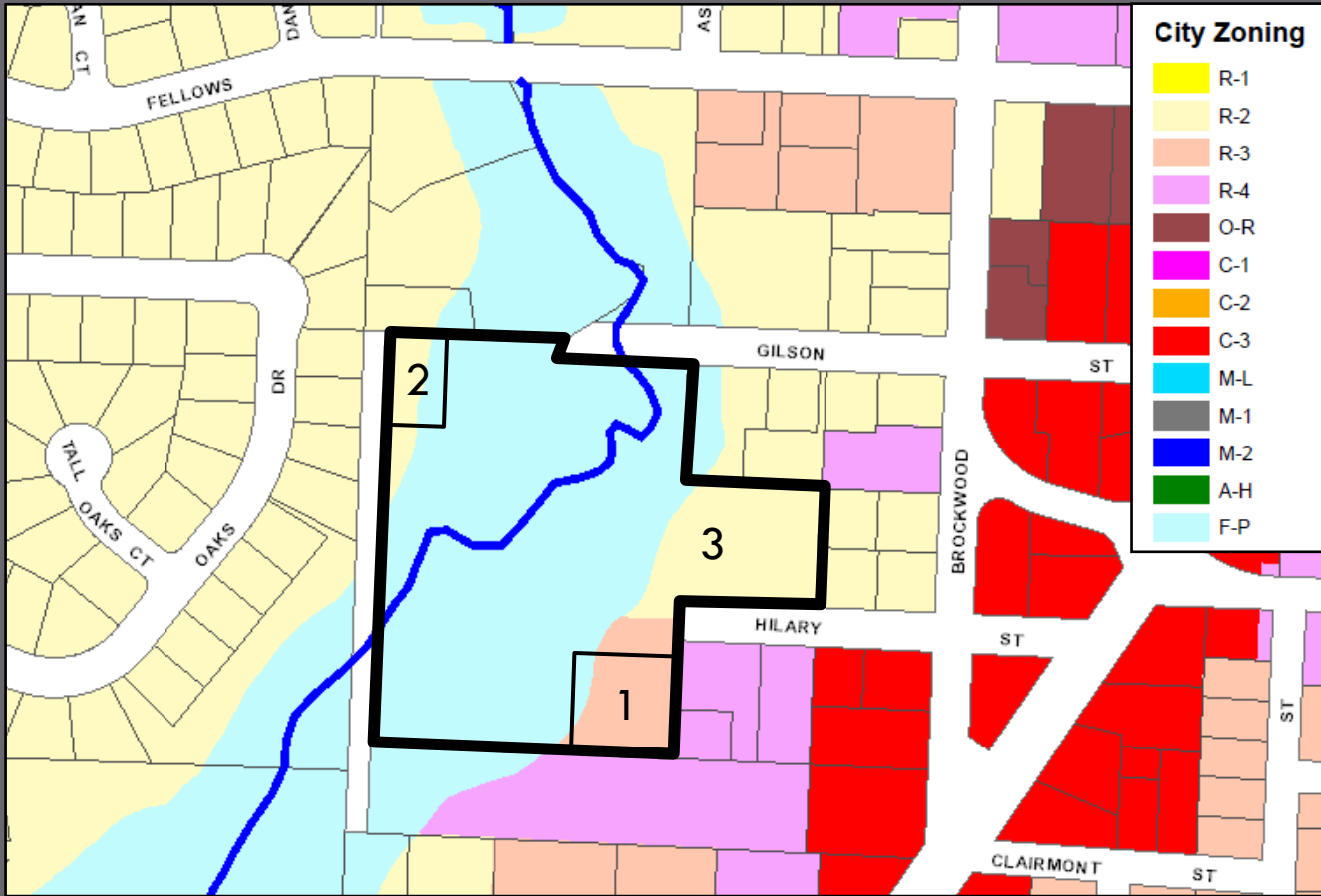
The easement will provide access to one and possibly two parcels located on property located to the south of the property in Block L of the Cozine Addition as described in the attached "Exhibit B." Those parcels shall be responsible for the cost of widening the existing segments of the driveway as may be required by any statute, regulation, ordinance or condition placed upon it by the City of McMinnville in the granting of a land use decision or building permit. They shall also be responsible for the costs incurred in constructing the driveway extension across Parcels 1, 2 and 3 needed to reach the south boundary of Parcel 3, to the extent such extensions are not already in place.

**PLANNING COMMISSION. 06.17.21**





# ZONING



PLANNING COMMISSION. 06.17.21



# PROCEDURE

---

- ORS 227.175(4)(b)(A)

A city may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including clear and objective design standards contained in the city comprehensive plan or land use regulations.

**PLANNING COMMISSION. 06.17.21**



# PROCEDURE

---

- Partitions are considered Type II application
  - Decisions based on clear and objective criteria
  - No discretion
- McMinnville: Director's Review with Notification
  - Public may request public hearing during notice period
  - Planning Dept. received request for public hearing
- Approval criteria for partition remain the same
  - Clear and objective – does the application meet the requirements of Chapter 17.53?
  - Decision document provides criteria/findings for decision

**PLANNING COMMISSION. 06.17.21**



# PARTITION REVIEW CRITERIA

---

## Chapter 17.53 – Land Division Standards

- Partition
  - 17.53.060(B). The Director's decision shall be based upon a finding that the tentative plan substantially conforms to the requirements of this chapter.

**PLANNING COMMISSION. 06.17.21**





# PARTITION REVIEW CRITERIA

---

## Chapter 17.53 – Land Division Standards

- Section 17.53.105 - Lots
  - Size and shape
  - Access
- Section 17.53.153 – Improvement Requirements
  - Water
  - Electrical
  - Sewer
  - Drainage
  - Streets

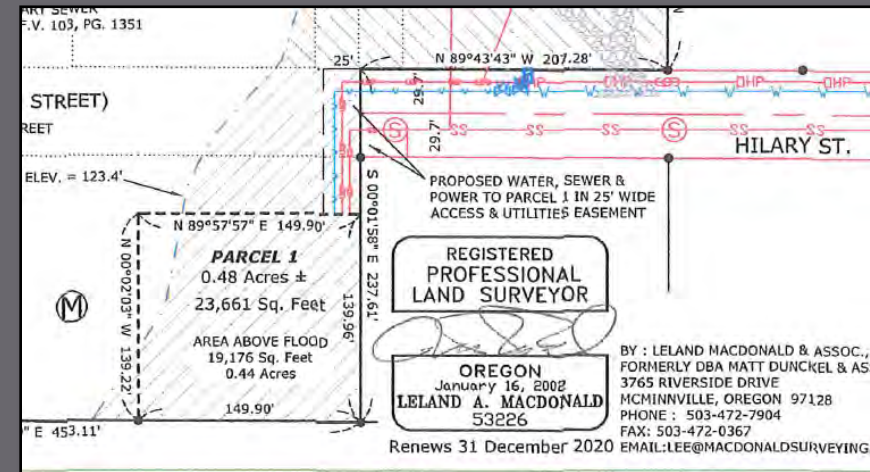
**PLANNING COMMISSION. 06.17.21**



# REVIEW CRITERIA – PARCEL 1

## Parcel 1: R-3FP (Two-Family Residential Floodplain)

- **Size**
  - 19,176sf outside of FP > R-3 minimum lot size (6,000sf)
  - Depth of lot < 2x average width
- **Access**
  - Access easement provided from Hilary Street
- **Improvements**
  - Utilities available from Hilary St.



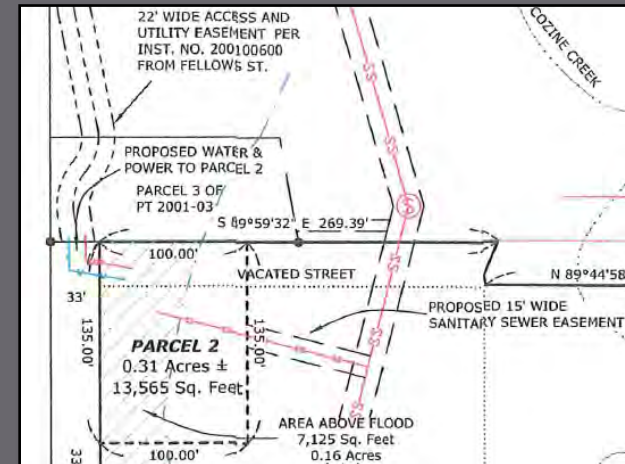
PLANNING COMMISSION. 06.17.21



# REVIEW CRITERIA – PARCEL 2

## Parcel 2: R-2FP (Single-Family Residential Floodplain)

- **Size**
  - 7,125sf outside of FP > R-2 minimum lot size (7,000sf)
  - Depth of lot < 2x average width
- **Access**
  - Access from Fellows St. via private easement and undeveloped right-of-way
- **Improvements**
  - Water, electric installed in easement from Fellows St.
  - Sewer available from adj. main
  - Minimal ROW improvements req'd



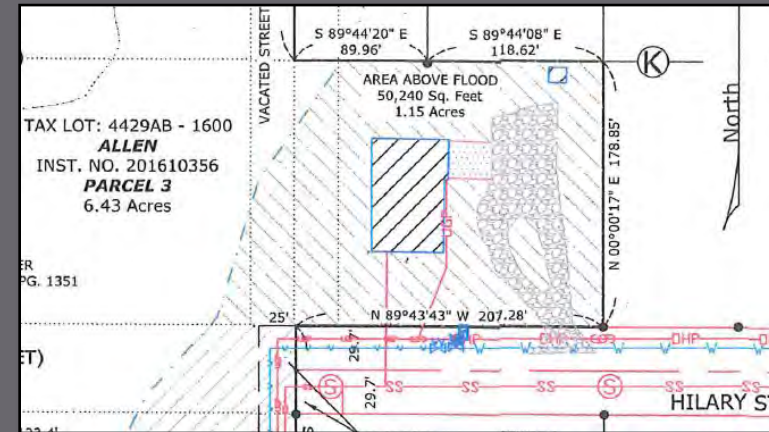
PLANNING COMMISSION. 06.17.21



# REVIEW CRITERIA – PARCEL 3

Parcel 3: R-2/R-3FP (Single-Family Residential Floodplain)

- **Size**
  - 50,240sf outside of FP > R-2 minimum lot size (7,000sf)
  - Existing dwelling continues to meet setbacks of R-2 zone
- **Access**
  - Existing access from Hilary Street
- **Improvements**
  - Existing utilities from Hilary St.



PLANNING COMMISSION. 06.17.21





# CONCLUSION

---

- Proposed Parcels 1, 2, and 3 meet the clear and objective criteria for partitioning

**PLANNING COMMISSION. 06.17.21**



# PUBLIC TESTIMONY

---

Planning Dept. received 12 public testimonies before packet was issued, including a request for public hearing

Testimony received focused on Parcel 2, with recurring themes:

- Loss of trees from right-of-way and Parcel 2
- Increased traffic on existing private driveway
- Emergency vehicle access to Parcel 2
- Increase in safety issues on Fellows Street
- Impact of development on floodplain
- Decreased property values

**PLANNING COMMISSION. 06.17.21**



# PUBLIC TESTIMONY

---

## Concern about loss of trees from right-of-way and Parcel 2:

- Some trees likely to be removed to accommodate driveway in ROW and residential development on Parcel 2
- Tree removal requests are subject to Ch. 17.58-Trees
- No zoning code that prevents development of Parcel 2 to preserve trees
- Ch. 17.58 encourages thoughtful planning and review to preserve as many trees as possible
- Replacement trees can be conditioned by LRC

## Recommended Condition:

- Require review of tree removal requests, limit approvals to poor condition or severe impact by development

**PLANNING COMMISSION. 06.17.21**



# PUBLIC TESTIMONY

---

## Concern about increased traffic on existing private driveway:

- Minimum standards for access easements: 15 feet wide, 10 paved surface width
- Existing access easement: 22 feet wide, 12-13 feet paved surface width
- Terms of private easement agreement: 15 foot driveway width prior to occupancy of Parcel 2
- Access easement/driveway was previously approved by City to serve future additional lots, and Engineering and Fire Depts. had opportunity to comment on current application
- Additional review can occur at Building Permit review

**PLANNING COMMISSION. 06.17.21**





# PUBLIC TESTIMONY

---

## Concern about increased safety issues on Fellows Street:

- Access easement/driveway was previously approved by City to serve additional future lots
- Subject site not developed to full density - Fellows Street and facilities designed to accommodate more than the site contributes
- Access easement replaced vacated local street that would have served the same properties

PLANNING COMMISSION. 06.17.21



# PUBLIC TESTIMONY

---

## Concern about impact on floodplain/sensitive lands:

- Floodplains are defined by the March 2, 2010 “Flood Insurance Study for Yamhill County, Oregon and Incorporated Areas” and FIRM panels
- Development within 1% annual chance floodplain (100-year) is prohibited by Ch. 17.48-Flood Area Zone
  - No residential development or accessory uses
- McMinnville relies on state/federal agencies for regulatory authority of wetlands and other sensitive natural features

## Recommended Condition:

- Comply with all state/federal environmental permitting agency requirements (DEQ, DSL, ACoE)

**PLANNING COMMISSION. 06.17.21**



# PUBLIC TESTIMONY

---

## Concern about decreased property values:

- Consideration of property value is not a regulatory criteria for land use-decisions
- Subject site is designated Residential on the City's Comprehensive Plan and is intended for development

PLANNING COMMISSION. 06.17.21



# ADDITIONAL TESTIMONY

---

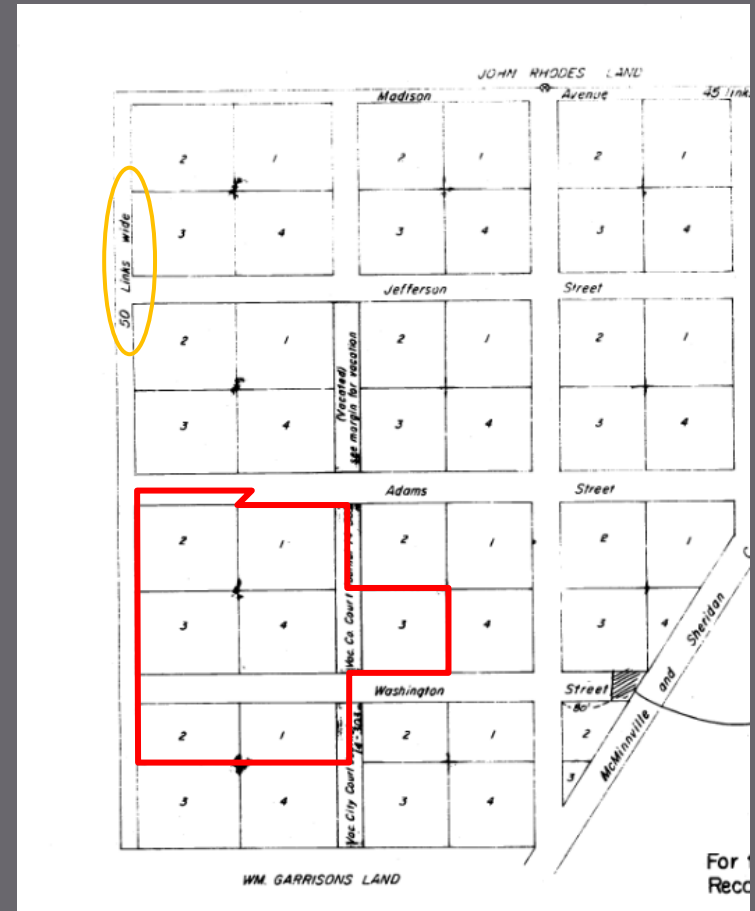
- Letter received June 16, 2021 from Steve & Mary Allen
  - Response to staff report and concerns about:
    - **Livability**
      - Growth has occurred in surrounding area
    - **Neighborhood**
      - Maintain atmosphere that makes area special
    - **Undeveloped right-of-way**

PLANNING COMMISSION. 06.17.21



# ADDITIONAL TESTIMONY

- **Undeveloped right-of-way**
  - Identified on 1888 plat as “50 Links wide”
  - Surveyor’s chain = 100 links, 66’ long
  - 50 links = 33’
  - No portion of ROW adjacent to subject site was vacated for Tall Oaks subdivision



PLANNING COMMISSION. 06.17.21



# ADDITIONAL TESTIMONY

- **Undeveloped right-of-way**
  - TONCCA: Parcel 2 develops over 33' ROW that has been used by neighbors for years
  - Future residential development is on private property (Parcel 2). A driveway across the northern portion of the ROW would be necessary to access Parcel 2 from the private easement. Neighbors can still access public ROW.



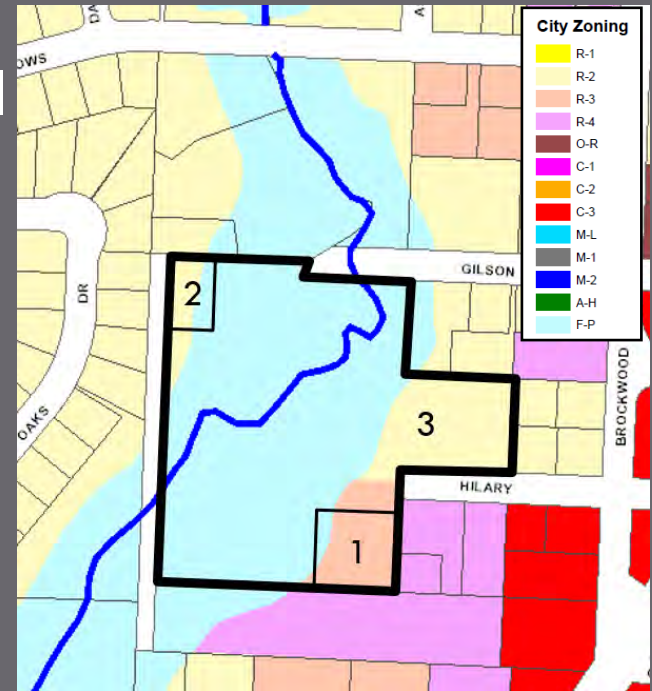
PLANNING COMMISSION. 06.17.21





# ADDITIONAL TESTIMONY

- **Undeveloped right-of-way**
  - TONCCA: 33' ROW is a natural protected area within the City, subject to conditional use criteria
  - ROW is not a protected area
  - Conditional use criteria apply to those uses identified in a zoning district that may be appropriate under certain circumstances, ROW is not within a zone – CUs do not apply



PLANNING COMMISSION. 06.17.21



# ADDITIONAL TESTIMONY

---

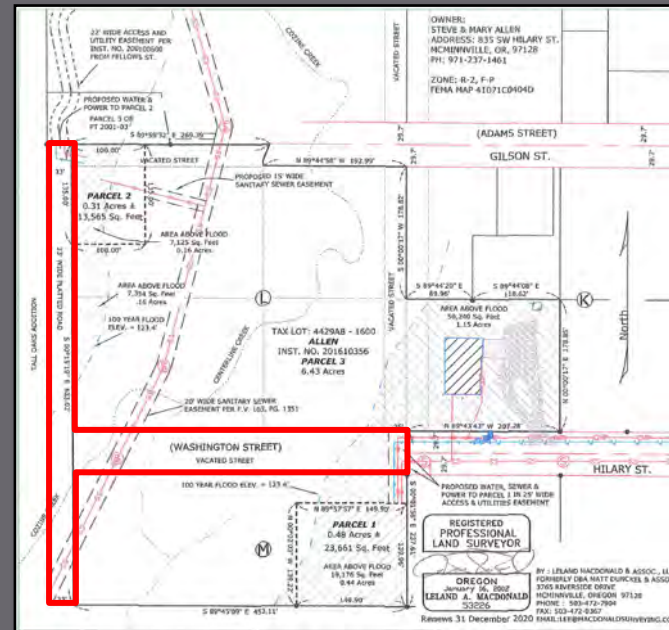
- Question: What is the purpose of the “Revocable License and Right to use Public Right-of-Way”?
  - Agreement to allow private development (driveway) within the public right-of-way
  - Alternative to requiring full street improvements
- Question: Why is there a waiver of rights of remonstrance?
  - Waiver of right to protest future City initiated street improvements
  - Alternative to requiring full street improvements at the time of development

PLANNING COMMISSION. 06.17.21



# ADDITIONAL TESTIMONY

- PC Question: Why are there no easements from the undeveloped ROW or vacated Hilary Street to Tall Oaks shown on the Tentative Partition Plan?
  - Vacated roads are returned to adjacent property – now private property
  - Tall Oaks properties abut ROW, no easement is necessary for access



PLANNING COMMISSION. 06.17.21





# ADDITIONAL TESTIMONY

- Existing conditions of undeveloped public right-of-way

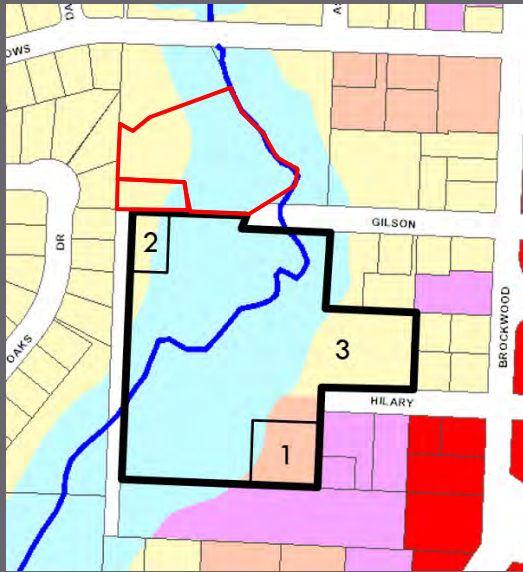


PLANNING COMMISSION. 06.17.21



# ADDITIONAL TESTIMONY

- Letter received 6/17/21 from Walt Gowell on behalf of Steve Macy re: Condition of Approval #1



Cond. #1 intended to preserve the access and development rights of 3 existing parcels along existing access easement from Fellows St. without placing the City in a position of enforcing a private easement agreement

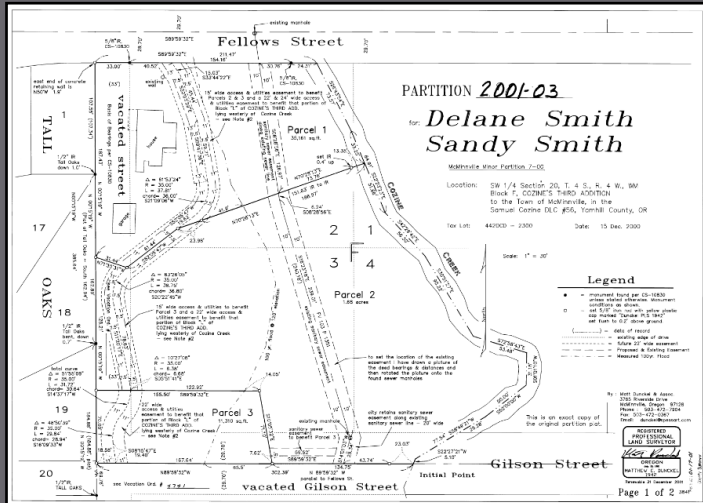
PLANNING COMMISSION. 06.17.21





# ADDITIONAL TESTIMONY

- Letter received 6/17/21 from Walt Gowell on behalf of Steve Macy re: Condition of Approval #1



## Notes

- 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.
- 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. 200100600

Proposed language for Condition #1:

1. All conditions of land-use decisions Minor Partition MP 7-00 and Ordinance 4741, as modified and amended by Partition Plat 2001-3 Note #2 incorporating requirements of Driveway Construction and Maintenance Agreement recorded in instrument No. 200100600 shall remain in effect.

PLANNING COMMISSION. 06.17.21





# ADDITIONAL TESTIMONY

---

- PC Question: Do Conditions for parcel 2 include either a remonstrance for the access easement or just plain costs?
  - No waiver of right of remonstrance was recommended by Engineering Dept.
    - No intention of City to improve undeveloped ROW to parcel 2 to current street standards
- Responsibility of cost to extend private driveway in ROW can be captured assigned to the applicant in ROW Use Permit

PLANNING COMMISSION. 06.17.21



# ADDITIONAL TESTIMONY

- PC Question: Do we need to make a condition for the revocable license and right to use to include the costs by the applicant for widening per the easement of Jan.9, 2001? This was the only citizen question/concern brought up (Gowell letter pg. 60 4.c and d.) that I did not see/missed or misunderstood an explanation or criteria in the conditions prepared by staff
- Easement construction/widening governed by private easement agreement – City is not a party.
- Applicant financially responsible for widening driveway per agreement.

The easement will provide access to one and possibly two parcels located on property located to the south of the property in Block L of the Cozine Addition as described in the attached "Exhibit B." Those parcels shall be responsible for the cost of widening the existing segments of the driveway as may be required by any statute, regulation, ordinance or condition placed upon it by the City of McMinnville in the granting of a land use decision or building permit. They shall also be responsible for the costs incurred in constructing the driveway extension across Parcels 1, 2 and 3 needed to reach the south boundary of Parcel 3, to the extent such extensions are not already in place.

PLANNING COMMISSION. 06.17.21



# ADDITIONAL TESTIMONY

---

- Letter Received 6/17/21 from David Koch on behalf of Earl Anderson, Carole Hansen, and Cheryl Lambright
- Concerns about:
  - Meeting standards of Ch. 1753-Land Division Standards
    - Missing information from Tentative Partition Plan
    - Lack of Future Development Plan
    - Interpretation of past land-use decisions re: access
  - Meeting Comp. Plan Policies
    - 80.00 - preservation of Distinctive Natural Features
    - 99.00 – Delivery of urban services, inc. streets
    - 132.62.20 – Consider TSP for land-use actions

**PLANNING COMMISSION. 06.17.21**



# ADDITIONAL TESTIMONY

---

- Letter Received 6/17/21 from David Koch on behalf of Earl Anderson, Carole Hansen, and Cheryl Lambright
- Staff has not had time to respond to testimony received

PLANNING COMMISSION. 06.17.21



# CONTINUANCE REQUEST

---

- 6/16/21 - Applicant submitted a request to continue the public hearing to Thursday, July 15, 2021 at 6:30pm

**PLANNING COMMISSION. 06.17.21**



# STAFF RECOMMENDATION

---

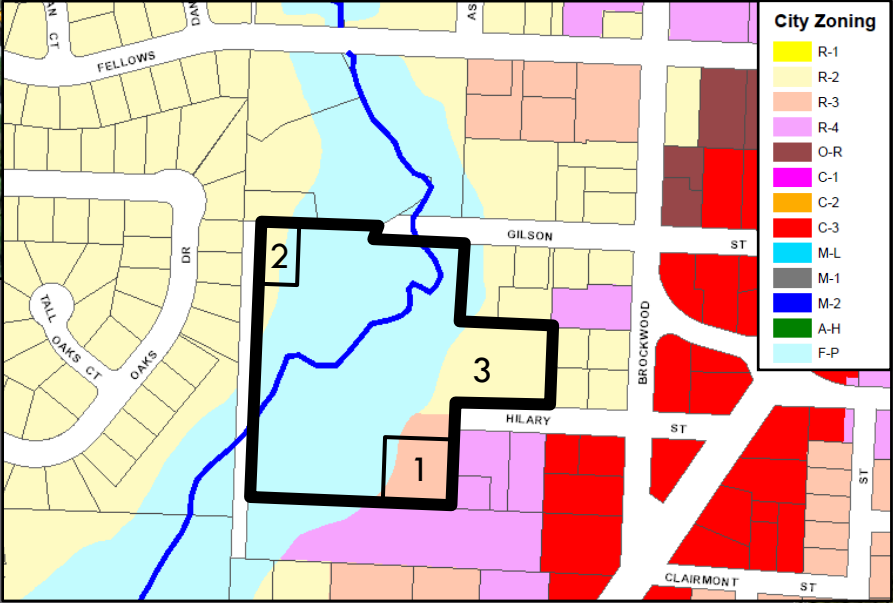
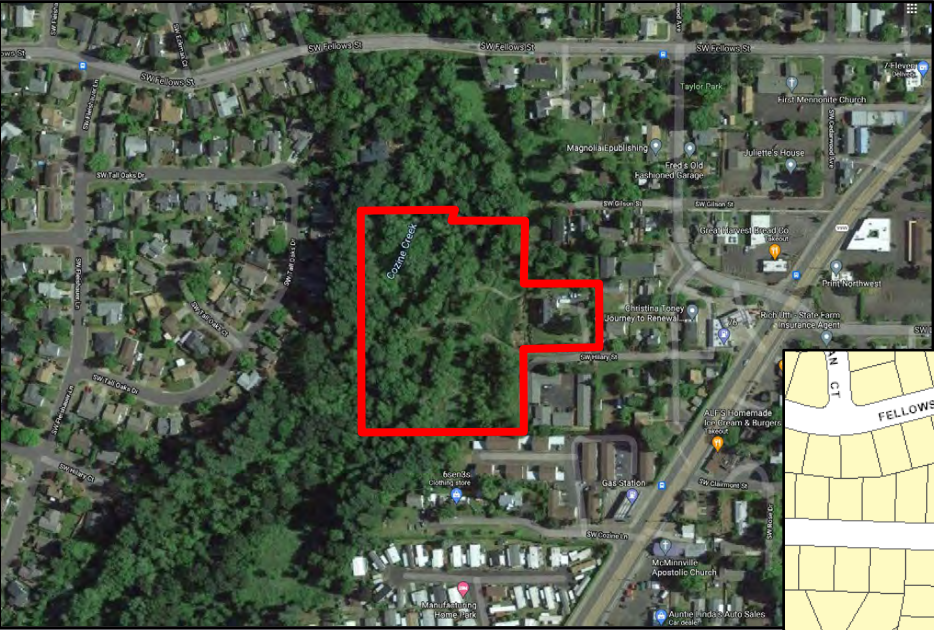
- At this time, findings for clear & objective criteria support *Approval* of Minor Partition with Conditions outlined in Decision Document
- Continue the public hearing to July 15, 2021 at 6:30 pm as requested

PLANNING COMMISSION. 06.17.21





# QUESTIONS?



**PLANNING COMMISSION. 06.17.21**

