



City of McMinnville
Planning Department
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EXHIBIT 2 - STAFF REPORT

DATE: August 19, 2021
TO: Planning Commission Members
FROM: Heather Richards, Planning Director
SUBJECT: Minor Partition Application MP 6-20
for a partition of 835 SW Hilary Street into three (3) parcels

STRATEGIC PRIORITY & GOAL:



GROWTH & DEVELOPMENT CHARACTER

Guide growth & development strategically, responsively & responsibly to enhance our unique character.

OBJECTIVE/S: Strategically plan for short and long-term growth and development that will create enduring value for the community

Report in Brief:

This is the continuation of a quasi-judicial public hearing of the Planning Commission to consider an application for a Minor Partition (MP 6-20) of 835 SW Hilary Street (Tax Lot 1600, Section 29AB, T. 4 S., R. 4 W., W.M.). The hearing was first opened on Thursday, June 17, 2021, and was then continued to July 15, 2021, at which time it was continued to August 19, 2021.

The proposed partition would divide an approximately 7.22-acre parcel of land into three (3) parcels, approximately 6.43, 0.31, and 0.48 acres in size to allow for new residential development on the two smaller parcels. The larger parcel (parent parcel) already has a dwelling unit on it.

Minor partitions are a Type II Oregon land-use application, meaning that they are decided based on clear and objective criteria, and are typically an administrative decision after sending out a notice to neighboring property owners.

In this case, some of the neighboring properties are opposed to the minor partition and requested a public hearing with the Planning Commission, which is allowed via the McMinnville Municipal Code (MMC).

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The decision of the Planning Commission is the final decision unless appealed to City Council. The hearing is conducted in accordance with quasi-judicial hearing procedures, and the application is subject to the 120-day processing timeline. However, the applicant requested that the 120-day deadline for a decision be extended from September 17, 2021 to October 31, 2021. (Please see Attachment A.

The record for this project can be found at the following link: [Minor Partition \(MP 6-20\) - 835 SW Hilary Street | McMinnville Oregon](#)

Background:

Request

The proposal is an application for a Tentative Partition (MP 6-20) to partition an approximately 7.22 acre parcel of land into three (3) parcels approximately 6.43 (approximately 280,090 sf), 0.31 (approximately 13,500 sf), and 0.48 (approximately 20,900 sf) acres in size to allow for future residential development of the parcels. The subject site is located at 835 SW Hilary Street, and is identified as Tax Lot 1600, Section 29AB, T. 4 S., R. 4 W., W.M.

Subject Property

The subject property is located west of SW Baker Street (Highway 99W) and south of SW Fellows Street at the termination of SW Hilary Street. Cozine Creek and its associated flood plain and steep terrain bisect the site, running generally north to southwest. The flood plain and surrounding areas are wooded. The subject property has portions that are zoned R-2 (Single-Family Residential), R-3 (Two-Family Residential), and F-P (Flood Plain). Portions of the site zoned R-2 (Single-Family Residential) include the northwest corner of the site, and the eastern portion of the site north of the Hilary Street terminus. The southeast corner of the site south of the Hilary Street terminus is zoned R-3 (Two-Family Residential). The remainder of the site is zoned F-P (Flood Plain). A single-family dwelling is existing on the land zoned R-2 (Single-Family Residential) north of Hilary Street. The portion of the site east of Cozine Creek zoned R-2 and R-3 is accessed from Hilary Street. The portion of the site west of Coine Creek zoned R-2 is accessed via private easement from Fellows Street.

Cozine Creek and its floodplain continue north and southwest of the site. Adjacent properties to the west of the subject site include the Tall Oaks subdivision that is zoned R-2 (Single-Family Residential). Properties to the north and east of the site are also zoned R-2. South of Hilary Street, adjacent property is zoned R-4 (Multiple-Family Residential), developed with multi-family apartment buildings. A 33-foot wide undeveloped right-of-way borders the western property line of the subject site, between the it and the Tall Oaks subdivision. ***See Vicinity Map (Figure 1), Zoning Map (Figure 2), and Applicant’s Proposed Partition Plan (Figure 3).***

Procedure

The applicant originally submitted the partition application on November 23, 2020. Following the completeness review of the application, it was unclear to staff that the applicant had provided sufficient evidence of access (a requirement for partitions) to proposed Parcel 2 via private easement from Fellows Street through three (3) existing parcels. Current zoning code (MMC Section 17.53.100(C)(1)) limits parcels accessed via private access easement to three (3). The applicant submitted an application for a variance from that code, seeking City approval and documentation to allow a fourth lot to be accessed from the existing easement. The variance and partition applications were scheduled for concurrent review through the public hearing process required for variances, the procedure that provides the most

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public hearing and notice. During staff review of the applications, evidence and documentation of the legal access through the access easement to proposed Parcel 2 was demonstrated, and the variance was no longer warranted. The variance application was withdrawn, and the minor partition application was unbundled from the concurrent review, reverting back to the Director's Review with Notification procedure typical for partitions. The partition application was noticed to surrounding property owners, and as allowed by code, a person who received notice requested a public hearing for the minor partition application. Minor Partition application MP 6-20 was then required to follow the public hearing procedure described in MMC Section 17.72.120.

Summary of Criteria

A minor partition application is subject to the standards and criteria in Chapter 17.53 – Land Division Standards of the Zoning Ordinance, which are intended to "...provide uniform procedures and standards for the subdivision and partitioning of land, and adjustment of property lines; to assure adequate width and arrangement of streets; to coordinate proposed development with plans for utilities and other public facilities; to avoid undue congestion of population; to assure adequate sanitation and water supply; to provide for the protection, conservation, and proper use of land; to secure safety from fire, flood, slides, pollution, drainage or other dangers; to provide adequate light and air, recreation, education, and adequate transportation; to promote energy conservation; to protect in other ways the public health, safety, and welfare; and to promote the goals and policies of the McMinnville Comprehensive Plan."

The 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. Proposed Parcel 1 is accessed via access easement from Hilary Street, and is larger than the minimum lot size in the underlying R-3 (Two-Family Residential) zone. Utilities can be provided from Hilary Street through the easement to the parcel. Proposed Parcel 2 is accessed via private access easement from Fellows Street and through the adjacent undeveloped public right-of-way. Utilities are provided through the easement and right-of-way, and to a sewer main along Cozine Creek. Parcel 2 is larger than the minimum lot size of the underlying R-2 (Single-Family Residential) zone.

Minor partitions are normally an administrative decision as they are considered a Type II land-use application, meaning that the decision-making for compliance with the criteria is based on clear and objective standards that do not allow limited discretion. However, in McMinnville, during the 14 day notice period to adjacent property owners, anyone may request that the application be considered at a public hearing with the planning commission. That request was made by a neighboring property owner for this land-use application. The criteria for rendering a decision remains the same whether it is an administrative decision or a decision by the planning commission, and the decision needs to be rendered based on a clear and objective review and evaluation. The decision document attached to this staff report provides the criteria that should be used for rendering a decision on this land-use application.

Discussion:

The public hearing was opened on Thursday, June 17, 2021, where a staff report, applicant report and public testimony was heard.

Part of the public testimony provided pointed out that the applicant had not provided all of the necessary information required for a minor partition application per the McMinnville Municipal Code (MMC) section 17.53.060, Submission of a Tentative Partition Plan, necessitating a new Title Report and new survey

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maps. Those were provided by the applicant in supplemental materials and are provided as Attachments D and E to this staff report.

The Decision Document has been revised to reflect the supplementation materials provided.

Summary of Issues Raised in Written Public Testimony Received: The following issues have been raised in public testimony received by the Planning Department:

Loss of Mature Trees

Most of the written public testimony received expressed concern about the potential loss of trees in the undeveloped right-of-way remnant and the subject site to accommodate access to Parcel 2 and the future residential development on Parcel 2 located in the northwest corner of the parcel to be partitioned. The right-of-way remnant and Parcel 2 are heavily wooded with many large, mature trees, some of which would likely require removal for the extension of the access easement driveway and to clear land for building construction. Chapter 17.58 (Trees) of the Zoning Ordinance provides regulation of tree removal from public right-of-way, which includes the remnant adjacent to Parcel 2. Below is Section 17.58.020 of the MMC describing the applicability of the code which includes all trees located within any public area or right-of-way, and all trees on developable land subject to partition review.

17.58.020 Applicability. The provisions of this ordinance shall apply to:

- A. Individual significant or historic trees as defined in this ordinance.
- B. All trees with trunks located completely or partially within any public area or right-of-way;
- C. All trees with trunks located completely within any private property which directly affect public infrastructure including but not limited to sewers, water mains, sidewalks, streets, public property, or clear vision distances at street intersections;
- D. All trees on developable land and subject to or undergoing development review such as site plan review, tentative subdivision review, or partition review; (Ord. 5027 §2, 2017; Ord. 4654B §1, 1997).

There are no McMinnville code provisions that would prevent development of Parcel 2 from occurring to preserve all of the mature trees. However, there are code provisions that require a thoughtful and diligent review of planning the development to preserve as many trees as possible. Below is Section 17.58.050 of the MMC describing the review criteria for granting tree removals

17.58.050 Review Criteria. A permit for major pruning or tree removal shall be granted if any of the following criteria apply:

- A. The tree is unsafe, dead, or diseased as determined by a Certified Arborist.
- B. The tree is in conflict with public improvements.
- C. The proposed removal or pruning is part of an approved development project, a public improvement project where no alternative is available, or is part of a street tree improvement program.
- D. Verification of tree health or a tree's impacts on infrastructure shall be required, at the expense of the applicant, by a Certified Arborist acceptable to the City.

As required by 17.58.040, requests for tree removal from public right-of-way or partitioned land would be reviewed by the Landscape Review Committee, an advisory committee to the Planning Director. It should also be noted that the Landscape Review Committee may condition a tree removal request upon replacement of the tree with another tree approved by the City, per Section 17.58.040(D).

Staff is recommending the following condition to help mitigate the concern raised in public testimony and to adhere to the provisions of the municipal code:

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“That existing trees with trunks partially or wholly within Parcels 1, 2, and 3 of the partition and the undeveloped public right-of-way west of Parcel 2 are subject to the provisions of Chapter 17.58 – Trees of the McMinnville Municipal Code, and shall not be removed by the applicant without prior review and written approval by the Planning Director, pursuant to Chapter 17.58. Trees greater than nine inches DBH will not be approved for removal unless a certified arborist determines that they are diseased, dying, or dead, or the developer demonstrates that practical development of an approved lot, or required public improvements (i.e. streets, sidewalks, and public utilities), will adversely impact the survival of such tree or trees. In addition, all trees that are not to be removed shall be protected during the construction of all public improvements and residential development in the approved partition. A plan for such tree protection approved by the Planning Director shall be submitted with construction and/or building permit applications prior to release of construction or building permits within the subject site.”

The intent of the condition is to require the review of tree removal requests for the right-of-way remnant and the future development sites to limit the removal of trees to those that are in poor or hazardous condition or that would be severely impacted by access and development of an approved, buildable lot. These limitations are in accordance with the criteria for approving tree removal described in Section 17.58.050-Review Criteria.

Increased Traffic on Existing Private Driveway

Another issue brought to attention through public testimony is a concern about increased traffic on the private driveway leading from Fellows Street to proposed Parcel 2. Section 17.53.100(C)(1) requires private access easements to have a minimum width of 15 feet, and a minimum paved surface of 10 feet wide. The existing easement is 22 feet wide and has a 12 to 13 foot wide driveway, both exceeding the required minimums. The private easement agreement between affected property owners governing construction and maintenance of the easement further requires the expansion of the driveway to 15 feet wide prior to development of the Applicant’s property.

The layout and specification of the driveway was reviewed and approved by the City, including the Engineering and Fire Department, at the time the easement was required in 2000-2001 knowing that the easement was approved to serve the land west of the cozone on the applicant’s property. The Engineering and Fire Departments were provided opportunity to comment again on the access requirements for Parcel 2 in this current application, and all comments have been incorporated into the Decision Document. Further review of new driveway extension layout and specification, if necessary, can occur at the time of building permit submittal.

Emergency Vehicle Access to Parcel 2

Concerns about emergency vehicle access to Parcel 2 has been expressed. The layout and specification of the existing driveway was reviewed and approved by the City, including the Engineering and Fire Department, at the time the easement was required in 2000-2001 knowing that the easement was approved to serve additional future lots. The Engineering and Fire Departments were provided opportunity to comment again on the access requirements for Parcel 2 in this current application, and all comments have been incorporated into the Decision Document. Further review of new driveway extension layout and specification, if necessary, can occur at the time of building permit submittal.

Increased Safety Issues on Fellows Street

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A concern about increased safety issues on Fellows Street due to increased traffic from new residential development on Parcel 2 has been raised in public testimony. 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. Single family residential development, as allowed in the R-2 zone of Parcel 2, would be considered a low intensity use. Further, the subject property was identified for development at the densities of the R-2 and R-3 zones, the residential zoning designation of the site. With only one existing dwelling on the large site, the property is not developed to the full density of the zone(s). This means the surrounding street network and facilities are designed to accommodate more traffic and use than the site is currently contributing. Staff also notes that the layout and intersection of the existing private access driveway and Fellows Street was reviewed and approved by the City in 2000-2001, at the time it was required, when the private access drive was replacing a planned local street that would have served these properties.

Impact on the Floodplain and Sensitive Lands

Concern about the encroachment and impact of development on the adjacent Cozine Creek floodplain and riparian corridor has been raised. Land within the Special Flood Hazard Areas (100-year flood) as identified by “The Flood Insurance Study for Yamhill County, Oregon and Incorporated Areas” (effective March 2, 2010) and accompanying Flood Rate Insurance Maps (FIRM) are regulated by Chapter 17.48 (FP Flood Area Zone) of the Zoning Ordinance. Development within the Flood Area Zone is not permitted. Portions of Parcel 1 and Parcel 2 are within the Cozine Creek floodplain and are designated Flood Area Zone, and no residential development would be allowed within this zone. Further, the residential zones found in Parcels 1 and 2, R-2 (Single-Family Residential) and R-3 (Two-Family Residential) both incorporate setbacks for development that can further protect the floodplain from the impact of development by limiting the building envelope. The residentially zoned portions of the proposed lots outside of the floodplain exceed the minimum lot size for the zone(s), which is a regulatory criterion for land division.

Staff is recommending conditions for the Applicant to demonstrate compliance with all necessary state and/or federal environmental permitting agency requirements, including the Department of Environmental Quality, Department of State Lands, and Army Corps of Engineers. The City of McMinnville does not maintain regulatory authority over wetlands, state bodies of water, or other significant natural features that may be present on the site at this time and relies on the state and federal agencies to regulate impact on such lands and/or features.

Decreased Property Values

Surrounding property owners have expressed concern that the combined effects of new residential development and the loss of trees will negatively impact their own property values. Consideration of property value is not a regulatory criterion for land-use decisions for property that is designated as Residential on the City’s Comprehensive Plan and intended for development.

Summary of Additional Issues Raised at the June 17 Public Hearing:

Access Rights for Parcel #2: An argument was made at the June 17 Public Hearing (written and oral testimony by David Koch, Attorney at Law, representing several neighboring property owners directly west of the property proposed to be partitioned) that the access rights for “that portion of Block “L” of Cozine’s Third Addition, lying westerly of Cozine Creek” (western side of the subject site) were not valid as they were not compliant with the City’s current code, Section 17.53.100(C), which only allows three

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properties to have access to a private access easement. It is true that Parcel #2 would be a fourth parcel utilizing the private access easement established by Instrument No. 220100600, a 22' wide access easement serving three properties to the north of the subject site and the western side of the subject site. However, when the property owner to the north of the subject site asked to have the established public right-of-way vacated that served their property and the subject site, the McMinnville City Council adopted Ordinance No. 4741 on December 12, 2000, that specifically stated, "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."

Ordinance No. 4741, page 2, adopted December 12, 2000.

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.

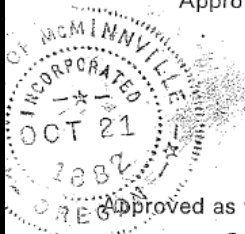
Passed by the Council this 12th day of December 2000 by the following votes:


Ayes: Aleman, Olson, Windle

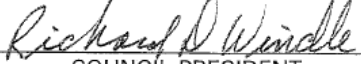
Abstain: Payne

Nays _____

Approved this 12th day of December 2000.

 Approved as to form:


CITY ATTORNEY


COUNCIL PRESIDENT

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The potential presence of moderate and potentially high landslide soils on the subject site render the new parcels unbuildable, and therefore not legal parcels of record that can be approved by the partition: The City of McMinnville does not have an adopted inventory of maps for landslide hazards nor does it have any policies or codes that state that soils with moderate or high landslide potential are not buildable. In fact, many homes in the West Hills subdivision are built on high landslide potential soils. On December 8, 2020, the McMinnville City Council approved Resolution No. 2020-67 adopting the *Yamhill County Multi-Jurisdictional Natural Hazards Mitigation Plan*. This is a high-level, county wide plan for Yamhill County. Each community in Yamhill County then had an addendum to the plan that provided an overall synopsis of general discoveries for the community that should be evaluated further and an action plan in which to do the evaluation, “*The City of McMinnville Addendum to the Yamhill County Multi-Jurisdictional Hazard Mitigation Plan*”. Below is the adopted action plan in the McMinnville Addendum for landslides. The City of McMinnville is currently engaged in a long-range planning project to inventory landslide soils within the current urban growth boundary utilizing technology and geologic resources, and developing a set of comprehensive plan policies and codes to mitigate development in high landslide potential areas. These are in draft form and not adopted yet, so they therefore do not apply to this land-use decision. However, a new condition of approval was drafted to help identify mitigating measures for any development on slopes greater than 15% slope much like the conditions of approval that are governing the West Hills subdivision development. – Condition of Approval #3, “If any development is proposed for a slope of 15% or greater, a geo technical report will be required to mitigate the potentiality of land slide hazards, and any resulting recommendation of that report will need to be incorporated into the construction project.”

“The City of McMinnville Addendum to the Yamhill County Multi-Jurisdictional Hazard Mitigation Plan”, Action Plan for Landslides, page MA-13.

Natural Hazard Action ID	Action Item	Coordinating Organization (Lead)	Partners	Potential Funding	Cost	Timing	Plan Goals Addressed							
							Goal 1	Goal 2	Goal 3	Goal 4	Goal 5	Goal 6	Goal 7	Goal 8
Landslide Actions														
Landslide #1	Utilize technology, geologic resources and other available data (such as DOGAMI LIDAR data) to identify and map potential areas for landslides - high, moderate and low.	Planning	DOGAMI, Engineering, MW&L	General fund, utility fees, grants	M	Short	✓	✓	✓			✓	✓	
Landslide #2	Develop a process to limit future development in high landslide potential areas - permitting, geotechnical review, soil stabilization techniques, etc.	Planning	Engineering, MW&L	General fund, utility fees, grants	M	Short	✓		✓	✓	✓	✓	✓	
Landslide #3	Development in steeply-sloped areas (greater than 15%) should be subject to specific development requirements to control erosion.	Planning	Engineering, MW&L	General fund, utility fees, grants	L	Short	✓	✓	✓		✓		✓	
Landslide #4	Complete an inventory of locations where critical facilities, other buildings and infrastructure may be subject to landslides.	Planning	Engineering, MW&L	General fund, utility fees, grants	M	Short		✓	✓	✓	✓		✓	

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Need to revise Condition of Approval #1 language to ensure that the provisions of the Easement Agreement referenced as Plat Note #2 on Partition Plan 2001-03 are maintained: The City received an email on August 4 from Walt Gowell of Haugeberg, Rueter, Gowell, Fredricks & Higgins, P.C. representing Steve and JacElaine Macy stating that his client was comfortable with the language of Condition of Approval #1 and it was no longer an issue.

Recommendation:

Planning Commission Options (for Quasi-Judicial Hearing):

- 1) **APPROVE** the application as proposed by the applicant with the conditions recommended in the attached Decision Document, per the decision document provided which includes the findings of fact.
- 2) **CONTINUE** the public hearing to a specific date and time.
- 3) Close the public hearing, but **KEEP THE RECORD OPEN** for the receipt of additional written testimony until a specific date and time.
- 4) Close the public hearing and **DENY** the application, providing findings of fact for the denial, specifying which criteria are not satisfied, or specifying how the applicant has failed to meet the burden of proof to demonstrate all criteria are satisfied, in the motion to deny.

Staff Recommendation:

Staff has reviewed the proposal for consistency with the applicable criteria. Absent any new evidence to the contrary presented during the hearing, staff finds that, subject to the recommended conditions specified in the attached Decision Document, the application submitted by the applicant and the record contain sufficient evidence to find the applicable criteria are satisfied.

Staff **RECOMMENDS APPROVAL** of the application, subject to the conditions specified in the attached Decision Document.

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 THAT THE PLANNING COMMISSION APPROVE THE DECISION DOCUMENT AND APPROVE MINOR PARTITION APPLICATION MP 6-20 SUBJECT TO THE CONDITIONS SPECIFIED IN THE DECISION DOCUMENT.

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