



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

www.mcminnvilleoregon.gov

Planning Commission
ZOOM Online Meeting:
August 19, 2021

*Please Note that this meeting will be conducted via
ZOOM meeting software due to the COVID-19 event.*

6:30 PM Regular Meeting

ZOOM Meeting: You may join online via the following link:

<https://mcminnvilleoregon.zoom.us/j/87972706677?pwd=Ykk5Q0krTkFsZ2RYWl0QnhxMUJwZz09>

Zoom ID: 879 7270 6677

Zoom Password: 354078

Or you can call in and listen via zoom: 1 253 215 8782

ID: 879 7270 6677

Public Participation:

Citizen Comments: If you wish to address the Planning Commission on any item not on the agenda, you may respond as the Planning Commission Chair calls for "Citizen Comments."

Public Hearing: To participate in the public hearings, please choose one of the following.

- 1) *Email in advance of the meeting – Email at any time up to 12 p.m. the day of the meeting to Sarah.Sullivan@mcminnvilleoregon.gov, that email will be provided to the planning commissioners, lead planning staff and entered into the record at the meeting.*
- 2) *By ZOOM at the meeting - Join the zoom meeting and send a chat directly to Planning Director, Heather Richards, to request to speak indicating which public hearing, and/or use the raise hand feature in zoom to request to speak once called upon by the Planning Commission chairperson. Once your turn is up, we will announce your name and unmute your mic.*
- 3) *By telephone at the meeting – If appearing via telephone only please sign up prior to the meeting by emailing the Planning Director, Heather.Richards@mcminnvilleoregon.gov as the chat function is not available when calling in zoom.*

----- MEETING AGENDA ON NEXT PAGE -----

The meeting site is accessible to handicapped individuals. Assistance with communications (visual, hearing) must be requested 24 hours in advance by contacting the City Manager (503) 434-7405 – 1-800-735-1232 for voice, or TDY 1-800-735-2900.

*Please note that these documents are also on the City's website, www.mcminnvilleoregon.gov. You may also request a copy from the Planning Department.

| Commission Members | Agenda Items |
|------------------------------|---|
| Roger Hall, Chair | 6:30 PM – REGULAR MEETING |
| Lori Schanche, Vice-Chair | <ol style="list-style-type: none"> 1. Call to Order 2. Approval of Minutes <ul style="list-style-type: none"> • July 15, 2021 (<i>Exhibit 1</i>) |
| Robert Banagay | <ol style="list-style-type: none"> 3. Citizen Comments 4. Public Hearings: |
| Ethan Downs | <ol style="list-style-type: none"> A. <u>Quasi-Judicial Hearing: Minor Partition (MP 6-20)</u> – (<i>Exhibit 2</i>) (Continued from June 17, and July 15, 2021 PC Meetings) |
| Gary Langenwalter | Request: Approval to partition 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 residential development. The proposed 0.31-acre parcel would be accessed by private easement from SW Fellows Street while the 6.43- and 0.48-acre parcels would be accessed from SW Hilary Street. |
| Sylla McClellan | Location: The subject site is located at 835 SW Hilary Street, more specifically described at Tax Lot 1600, Section 29AB, T.4S., R 4 W., W.M. |
| Brian Randall | Application: Steve and Mary Allen, property owners |
| Beth Rankin | <ol style="list-style-type: none"> 5. Discussion Items <ul style="list-style-type: none"> • G 2-21, City Center Housing Proposed Code Amendments (<i>Exhibit 3</i>) • G 3-21, Annexations Proposed Code Amendments (<i>Exhibit 4</i>) |
| Dan Tucholsky | <ol style="list-style-type: none"> 6. Commissioner/Committee Member Comments 7. Staff Comments 8. Adjournment |
| Sidonie Winfield | |

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EXHIBIT 1 - MINUTES

July 15, 2021
Planning Commission
Regular Meeting

6:30 pm
Zoom Online Meeting
McMinnville, Oregon

Members Present: Roger Hall, Robert Banagay, Gary Landenwalter, Sylla McClellan, Brian Randall, Beth Rankin, Lori Schanche, Dan Tucholsky, and Sidonie Winfield and Ethan Downs – Youth Liaison

Members Absent:

Staff Present: Heather Richards – Planning Director and Tom Schauer – Senior Planner

1. Call to Order

Vice Chair Schanche called the meeting to order at 6:30 p.m.

2. Approval of Minutes

- May 20, 2021
- June 17, 2021

Commissioner Langenwalter moved to approve the May 20, 2021 minutes. The motion was seconded by Commissioner McClellan and passed 9-0.

Commissioner Langenwalter moved to approve the June 17, 2021 minutes. The motion was seconded by Commissioner Hall and passed 9-0.

3. Citizen Comments

None

4. Public Hearings:

A. Quasi-Judicial Hearing: Variance (VR 2-21) – (Exhibit 2) (Continued from June 17, 2021 PC Meeting)

Request: Approval of a variance to MMC Section 17.53.100(C)(1) to allow an increase in the number of lots permitted access by private easement to more than three (3) to support a future partition application.

Location: The subject site is located at 2185 & 2191 NW 2nd Street, more specifically described at Tax Lot 502 Section 19AC, T.4S., R 4 W., W.M.

Application: Nora Collins, property owner

Vice Chair Schanche opened the public hearing.

Staff Presentation: Senior Planner Schauer said this was an application for a variance to the standard in Section 17.53.100(C)(1) regarding the maximum number of 3 parcels that could be served by private easement access. The variance would allow a partition that would have one additional parcel served by the existing easement for a total of 4. This was a continuation of the June 17, 2021 quasi-judicial hearing. He explained the applicable criteria. Staff had recommended denial, stating the applicant had not met the burden of proof for some of the criteria. The applicant requested a continuance to submit additional information regarding the criteria. Staff reviewed the additional information and also identified additional Comprehensive Plan policies that served as the criteria. Based on the additional information and updated findings, staff now recommended approval. He described the subject site, proposed variance, and access to the parcels. The applicant noted that this was in a developed area and the alternatives for access were limited. It was on the corner of two arterial streets and there were limits to the number of accesses. This application would not create a new easement. The request was to allow a fourth parcel to use the easement. Looking at the unique situation of where the property was located and the policies regarding limitations on access to the arterials, he thought that distinguished this situation from other properties and it was preferable to limit access on those streets. The variance met the applicable Comprehensive Plan goals and policies including Chapter 10, citizen involvement, Chapter 6, transportation system, and Street Policies 120.00 and 122.00.

Questions: Commissioner Randall asked about the location of the proposed property line. Senior Planner Schauer said the variance was submitted in advance of finalizing the partition application. The applicant wanted to obtain the variance before finalizing that application.

Commissioner Randall said Parcel 1 would have very limited parking and he asked if there was a shared agreement for the parking. Planning Director Richards said this application was not for the partition, it was only for the variance. They had not received the partition application yet. The applicant would have to meet parking requirements for each building in the partition application. They would either have to create a partition that provided the right amount of parking for each building or show that they had a shared parking agreement recorded on the property.

Nora Collins, applicant, said this application was to give people an opportunity to own the property their businesses were on. The variance did not change anything physically on the property.

Proponents and Opponents: None

Vice Chair Schanche closed the public hearing.

The applicant waived the 7 day period for submitting final written arguments in support of the application.

Commissioner Hall MOVED to APPROVE VR 2-21. The motion was seconded by Commissioner Tucholsky and PASSED 9-0.

**B. Quasi-Judicial Hearing: Minor Partition (MP 6-20) – (Exhibit 3)
(Continued from June 17, 2021 PC Meeting)**

Continuance Requested to August 19, 2021, PC Meeting

Request: Approval to partition 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 residential development. The proposed 0.31-acre parcel would be accessed by private easement from SW Fellows Street while the 6.43- and 0.48-acre parcels would be accessed from SW Hilary Street.

Location: The subject site is located at 835 SW Hilary Street, more specifically described at Tax Lot 1600, Section 29AB, T.4S., R 4 W., W.M.

Application: Steve and Mary Allen, property owners

Commissioner McClellan MOVED to CONTINUE the hearing for MP 6-20 to August 19, 2021. The motion was seconded by Commissioner Langenwalter and PASSED 9-0.

**C. Quasi-Judicial Hearing: Comprehensive Plan Map Amendment (CPA 2-20) and Zone Change, including Planned Development Overlay Designation (ZC 3-20) – (Exhibit 4)
(Continued from May 20, 2021 PC Meeting)**

Continuance Requested to September 16, 2021, PC Meeting

Request: Approval to amend the Comprehensive Plan Map from Industrial to Commercial, and an amendment to the Zoning Map from M-2 (General Industrial) to C-3 PD (General Commercial with a Planned Development Overlay), for approximately 37.7 acres of a 90.4-acre property.

The 37.7 acres includes 4.25 acres intended for right-of-way dedication for a future frontage road. The application also shows a portion of the area subject to the map amendment intended for a north-south extension of Cumulus Avenue and future east-west street connectivity.

The request is submitted per the Planned Development provisions in Section 17.51.010(B) of the Zoning Ordinance, which allows for a planned development overlay designation to be applied to property without a development plan; however, if approved, no development of any kind can occur on the portion of the property subject to the C-3 PD overlay until a final development plan has been submitted and approved in accordance with the Planned Development provisions of the Zoning Ordinance. This requires the application for the final development plan to be subject to the public hearing requirements again at such time as the final development plans are submitted.

Location: The subject site is located at 3310 SE Three Mile Lane, more specifically described at Tax Lot 700, Section 26, T.4S., R 4 W., W.M.

Application: Kimco McMinnville LLC, c/o Michael Strahs

Commissioner Hall MOVED to CONTINUE the hearing for CPA 2-20 and ZC 3-20 to September 16, 2021. The motion was seconded by Commissioner Winfield and PASSED 9-0.

5. Commissioner Comments

None

6. Staff Comments

Planning Director Richards discussed the recruitment process for the Associate Planner position. She said if a Planning Commissioner wanted to participate in the interview process to send her an email letting her know. She had created the planning program for the next fiscal year and would be calendaring those items for upcoming meetings.

7. Adjournment

Vice Chair Schanche adjourned the meeting at 7:22 p.m.

Heather Richards
Secretary



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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).

Attachments:

Attachment A – Email requesting continuance from applicant
Attachment B – PC Meeting Minutes, June 17, 2021
Attachment C – PC Meeting Minutes, July 15, 2021
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Attachment G – MP 6-20 Draft Decision Document Page | 1

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.

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.

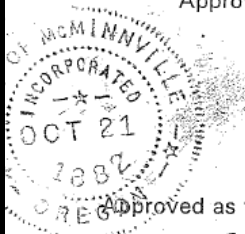
Passed by the Council this 12th day of December 2000 by the following votes:

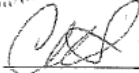
Ayes: Aleman, Olson, Windle

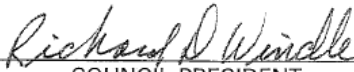
Abstain: Payne

Nays _____

Approved this 12th day of December 2000.

 Approved as to form:

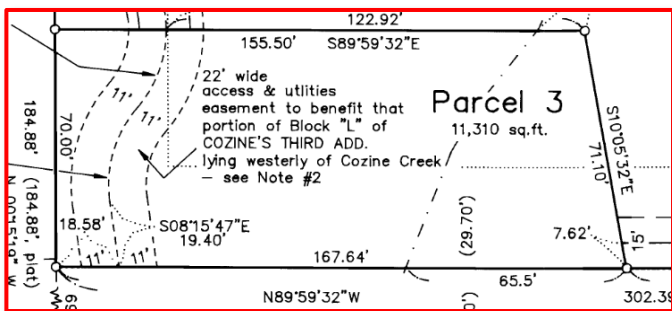
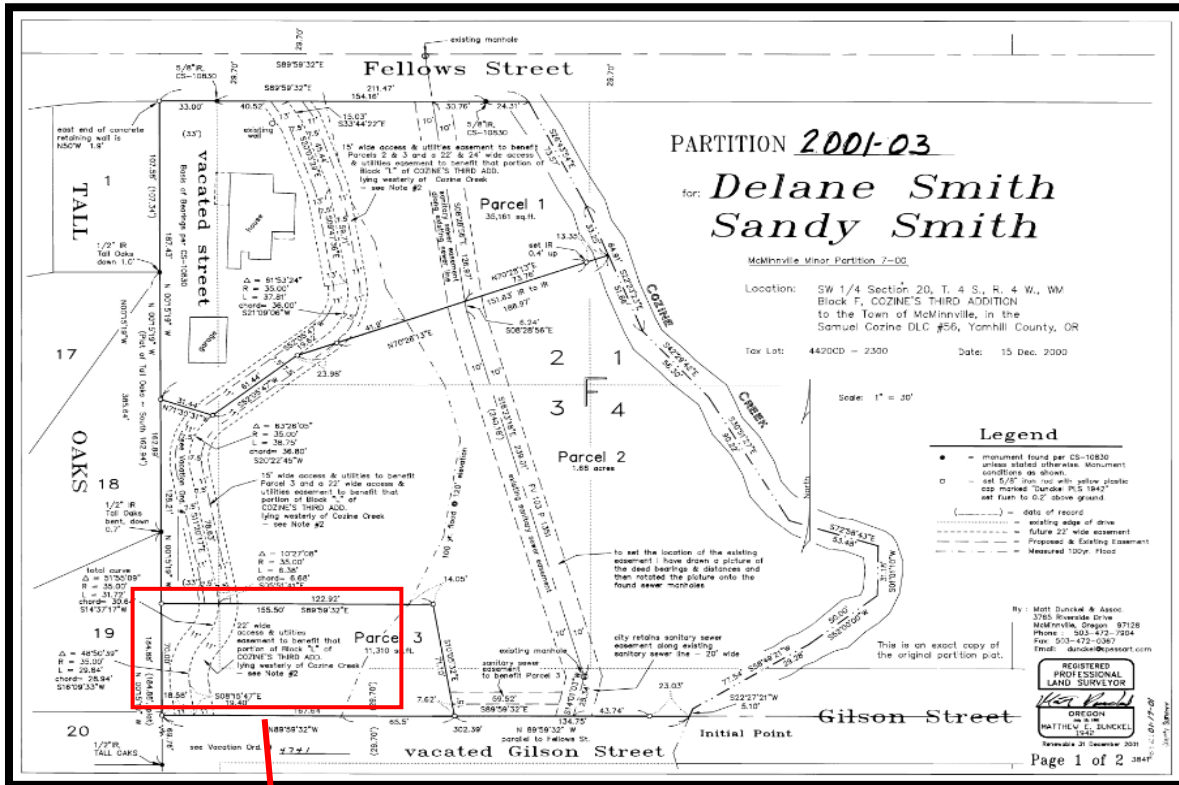

CITY ATTORNEY


COUNCIL PRESIDENT

- Attachments:
- Attachment A – Email requesting continuance from applicant
 - Attachment B – PC Meeting Minutes, June 17, 2021
 - Attachment C – PC Meeting Minutes, July 15, 2021
 - Attachment D – Revised Survey Maps
 - Attachment E – Additional Written Testimony from Applicant
 - Attachment F – Additional Testimony Received since June 15, 2021 Hearing
 - Attachment G – MP 6-20 Draft Decision Document
- Page | 7

This was then verified by the recording of Partition Plat 2001-03, which was signed by the City of McMinnville Planning Director on January 10, 2001.

Recorded Partition Plat 2001-03 (Smith Property Partition)



APPROVALS :

David E. Schat 1/10/01
City of McMinnville Surveyor Date

Paul Anderson 1/10/01
City of McMinnville Planning Director Date

Matthew Durale 1/12/01
Yamhill County Surveyor Date

It is clear from the partition plat that there were three properties that would be utilizing the private access easement from the northern property (Smith property), plus the portion of Block "L" of Cozine's Third Addition lying westerly of Cozine Creek (western side of Allen property). The City has already approved by Ordinance and acknowledged with the signature on the partition plat that the western side of the Allen property would have access rights to the private access easement.

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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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From: [Mary Allen](#)
To: [Heather Richards](#)
Subject: MP 6-20
Date: Wednesday, July 7, 2021 3:25:14 PM

This message originated outside of the City of McMinnville.

We are requesting that the public hearing for MP 6-20 be continued to the August 19, 2021 planning commission meeting, so that we can continue to put together the materials that were requested of us by oppositional testimony.

In order to extend this deadline we are also asking to allow the City to extend the deadline for issuing a decision with a possible local appeal to October 31, 2021.

Thank you for this consideration,

Mary & Steve Allen
835 SW Hilary Street
McMinnville , OR 97128
maryballen5@gmail.com
971 237 1461 Steve



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

www.mcminnvilleoregon.gov

MINUTES

June 17, 2021 6:30 pm
Planning Commission Zoom Online Meeting
Work Session Meeting McMinnville, Oregon

Members Present: Roger Hall, Gary Langenwalter, Sylla McClellan, Lori Schanche, Dan Tucholsky, Sidonie Winfield, Beth Rankin, and Ethan Downs – Youth Liaison
Members Absent: Robert Banagay and Brian Randall
Staff Present: Heather Richards – Planning Director, Jamie Fleckenstein – Associate Planner, and Spencer Parsons – Legal Counsel

1. Call to Order

Chair Hall called the meeting to order at 6:30 p.m.

2. Citizen Comments

None

3. Public Hearing:

A. Quasi-Judicial Hearing: Minor Partition (MP 6-20)

Request: Approval to partition 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 residential development. The proposed 0.31-acre parcel would be accessed by private easement from SW Fellows Street while the 6.43- and 0.48-acre parcels would be accessed from SW Hilary Street.

Location: The subject site is located at 835 SW Hilary Street, more specifically described at Tax Lot 1600, Section 29AB, T.4S., R 4 W., W.M.

Applicant: Steve and Mary Allen, property owners

Disclosures: Chair Hall opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. He asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none. Chair Hall asked if any Commissioner needed to declare any contact prior to the hearing with the applicant or any party involved in the hearing or any other source of information outside of staff regarding the subject of this hearing.

Commissioner Rankin knew an adjacent property owner. She had not spoken with her about this application.

Commissioner Winfield also knew an adjacent property owner, but had not had any contact with them about the application.

Chair Hall asked if any Commissioner had visited the site. If so, did they wish to discuss the visit to the site? Several Commissioners had visited the site, but had no comments to make on the visit.

Staff Presentation: Associate Planner Fleckenstein presented the request for a minor partition at 835 SW Hilary Street. This would partition the 7.22 acre parcel into three lots: Parcel 1 would be 0.48 acres accessed from Hilary Street, Parcel 2 would be 0.31 acres accessed from Fellows Street, and Parcel 3 would be 6.43 acres accessed from Hilary Street. He described the site location and context including the existing private access easement on Fellows. There was a past land use decision on this site. A minor partition was approved by the City in 2000 dividing the property north of the subject site into 3 parcels. A condition of approval required either a road vacation petition to vacate undeveloped right-of-way west of the property or development of the right-of-way to City standards. An ordinance was adopted by the City Council approving the vacation of the undeveloped right-of-way west and south of the property. A condition also required an access easement be granted to the southern property by the owners of the northern property in a location and of a specification to be approved by the Fire Marshall and City Engineer. The partition was finalized with the approval and recording of the partition plat. The plat included the location of the access and utilities easement to benefit the portion of Block L of the Cozine's third addition lying westerly of Cozine Creek. This plat showed that access could be provided to the current application. It also referenced a recorded driveway construction and maintenance agreement as the governing document for the access and utilities easement. A large portion of the site was zoned floodplain. There were also R-2 and R-3 zones. Partitions were considered a Type II application with decisions based on clear and objective criteria and no discretion. The public may request a public hearing during the notice period. The Planning Department did receive a request for a public hearing. The approval criteria for the partition remained the same. The criteria were clear and objective. The decision document provided the criteria/findings for decision. He then discussed the partition review criteria. The size of Parcel 1 was 19,176 square feet outside of the floodplain which was larger than the R-3 minimum lot size of 6,000 square feet and the depth of the lot was less than two times the average width. Access and utilities were provided from Hilary Street. The size of Parcel 2 was 7,125 square feet outside of the floodplain which was larger than the R-2 minimum lot size of 7,000 square feet and the depth of the lot was less than two times the average width. Access was provided from Fellows Street via the private easement and undeveloped right-of-way. Water and electric were installed in the easement from Fellows Street, sewer was available from the adjacent main, and minimal right-of-way improvements were required. The size of Parcel 3 was 50,240 square feet outside of the floodplain which was larger than the R-2 minimum lot size of 7,000 square feet. The existing dwelling continued to meet the setbacks of the R-2 zone. There was existing access and utilities from Hilary Street. Proposed parcels 1, 2, and 3 met the clear and objective criteria for partitioning.

The Planning Department received 12 public comments before the packet was issued including the request for the public hearing. The testimony received on Parcel 2 had these recurring themes: loss of trees from right-of-way and Parcel 2, increased traffic on existing private driveway, emergency vehicle access to Parcel 2, increased safety issues on Fellows Street, impact of development on the flood plain, and decreased property values. Some trees were

likely to be removed to accommodate a driveway in the right-of-way and residential development on Parcel 2. Tree removal requests were subject to Chapter 17.58—Trees. There was no zoning code that prevented development of Parcel 2 to preserve trees. Chapter 17.58 encouraged thoughtful planning and review to preserve as many trees as possible. Replacement trees could be conditioned by the Landscape Review Committee. Staff recommended a condition to require review of the tree removal requests and to limit approvals to trees in poor condition or severely impacted by the development. Regarding the increased traffic, the minimum standards for access easements were 15 feet wide with a 10 foot paved surface width. The existing access easement was 22 feet wide with a 12-13 foot paved surface width. The terms of the private agreement were a 15 foot driveway width prior to occupancy of Parcel 2. The access easement/driveway was previously approved by the City to serve future additional lots and the Engineering and Fire Departments had the opportunity to comment on the current application. Additional review could occur at the building permit review. Regarding concern about increased safety issues on Fellows Street, the access easement/driveway was previously approved by the City to serve additional future lots. The subject site was not developed to full density. The access easement replaced a vacated local street that would have served the same properties. Regarding the concern about impact on floodplain/sensitive lands, the floodplains were defined by the March 2010 Flood Insurance Study for Yamhill County and Incorporated Areas and FIRM panels. Development within 1% annual chance floodplain was prohibited by Chapter 17.48—Flood Area Zone. McMinnville relied on state/federal agencies for regulatory authority of wetlands and other sensitive natural features. Staff recommended a condition stating the application would comply with all state/federal environmental permitting agency requirements. Regarding the concern about decreased property values, consideration of property value was not a regulatory criteria for land use decisions. The subject site was designated residential on the City's Comprehensive Plan and was intended for development. Additional testimony was received from Steve and Mary Allen in response to the staff report. They were concerned about livability, neighborhood, and undeveloped right-of-way. He clarified no portion of the right-of-way adjacent to the subject site was vacated for the Tall Oaks subdivision. The future residential development was on private property. A driveway across the northern portion of the right-of-way would be necessary to access Parcel 2 from the private easement. Neighbors could still access the public right-of-way. The right-of-way was not a protected area. The Conditional Use criteria applied to those uses identified in a zoning district that might be appropriate under certain circumstances. The right-of-way was not within a zone and Conditional Uses did not apply. The applicant had some questions for staff. One was about the purpose of the revocable license and right to use public right-of-way. Staff answered the agreement allowed private development within the public right-of-way. The alternative was to require full street improvements. Another question was about the purpose of the waiver of rights of remonstrance. Staff answered it was the waiver of the right to protest future City initiated street improvements. The alternative was to require full street improvements at the time of development. There was a question from the Planning Commission about why there were no easements from the undeveloped right-of-way or vacated Hilary Street to Tall Oaks shown on the tentative partition plat. Staff answered that vacated roads were returned to the adjacent property—now private property. Tall Oaks properties about the right-of-way and no easement was necessary for access. The applicant submitted photographs of the existing conditions of the undeveloped public right-of-way. An additional letter was received from Walt Gowell on behalf of Steve Macy regarding Condition of Approval #1. That condition intended to preserve the access and development rights of three existing parcels along the existing access easement from Fellows Street without placing the City in a position of enforcing a private easement agreement. The letter suggested revising Condition #1 to clarify that the decisions were modified and amended by Note #2 that incorporated the requirements of the driveway construction and maintenance agreement. There was another question from the Planning Commission about whether the conditions for Parcel 2 included

either a remonstrance for the access easement or just plain costs. No waiver of the right of remonstrance was recommended by the Engineering Department. The City did not intend to improve the undeveloped right-of-way to Parcel 2 to current street standards. The responsibility of the cost to extend the private driveway in the right-of-way could be assigned to the applicant in the right-of-way use permit. Another Planning Commission question was if there should be a condition for the revocable license and right to use to include the costs by the applicant for widening the easement. The easement construction/widening was governed by the private easement agreement and the City was not a party. The applicant was financially responsible for the widening of the driveway per the agreement. A letter was received from David Koch on behalf of Earl Anderson, Carole Hansen, and Cheryl Lambright regarding concerns about meeting the standards of Chapter 17.53—Land Division Standards and meeting the Comprehensive Plan policies. Staff had not had time to respond to that testimony. The applicant had requested a continuance of the hearing to July 15, 2021. At this time, staff's findings supported approval of the minor partition with conditions. Staff recommended continuing the hearing as requested.

Commission Questions: Commissioner Langenwaller asked if this was an easement, driveway, or platted road. Planning Director Richards said when this area was platted for urban development, they platted a road to serve the property. When the northern property was partitioned, the platted road was vacated and changed to a private access easement. They never vacated the rest of the platted road.

Commissioner Winfield asked about the changes recommended to Condition #1. Associate Planner Fleckenstein said there needed to be more discussion about how the condition should be revised.

Commissioner McClellan asked about development in the floodplain and approvals required from state and federal agencies. Associate Planner Fleckenstein said it was prohibited to develop in the floodplain. There were storm drainage facilities that would be required and if those facilities encroached into the floodplain, that would be regulated by other agencies.

Commissioner McClellan asked about building close to the floodplain. Planning Director Richards said they would have to meet the setbacks of the zone and they could not use the floodplain as the setback. Any fill for the property that encroached in the floodplain or clearing in the floodplain would be regulated by other agencies.

Applicant's Testimony: Steve Allen said they would stay within all the regulations.

Public Testimony:

Proponents: Dee Klevinger, McMinnville resident, supported the application.

Opponents: David Koch, attorney, was representing Earl Anderson, Carole Hansen, and Cheryl Lambright, neighbors of the proposed partition. He explained where his clients lived in proximity to the proposal. The primary concern of his clients was the proposed Parcel 2 and the related residential development that would follow. The burden of proof was on the applicant to demonstrate the application met all of the criteria. The purpose of Chapter 17.53 was to ensure land divisions had adequate width and arrangement of streets, to provide for the protection, conservation, and proper use of land, to secure safety from fire, floods, slides, pollution, drainage, and other dangers, to protect public health, safety, and welfare, and to carry out the goals and policies of the Comprehensive Plan. He thought the application failed to meet these criteria. There were no contour lines on the tentative plan so the Commission did not know the topography. They also did not clarify

which areas were in the floodplain and which were not, the direction of the creek, or showed the natural features on the site. The title report was prepared 66 days before the application was submitted instead of 60 days. Because the applicant failed to submit what was required, they failed to satisfy the criteria of 17.53. The property sloped quickly from the edge of the right-of-way down into the floodplain. When you put the steep slope against the landslide hazard data, it showed these western slopes on Cozine Creek fell within moderate to high risk for susceptibility to landslides, especially Parcel 2. He questioned if it was a suitable location for future residential development. The applicant also should have provided the location of the wooded areas and trees that would be impacted, particularly those with 9 inch diameters or more that were to be preserved if possible. Since they were not on the plan the Commission did not know if it was possible to preserve them. There was a requirement that when the property that was to be partitioned could be further divided the applicant was required to submit a future development plan along with the partition plan. No future development plan had been submitted even though to the west and south there was potential for development. New parcels should only gain access by easements under unusual circumstances. Providing access to an existing parcel was different than providing access to an unlimited number of future parcels that might be partitioned off of the existing parcel. Just because the easement originally planned to give access to the existing lot, it did not mean it gave the applicant a fourth lot they were now requesting off of this private easement. He thought it should be a variance. They had the right to access it in its current configuration but if they wanted a fourth lot, they should go through a variance procedure. He did not think the application met the Comprehensive Plan policies for appropriate siting of the parcels and adequate level of urban services. The primary concern was Parcel 2. There were some deficiencies that needed to be addressed and criteria that have not been met.

Earl Anderson, McMinnville resident, discussed the Tall Oaks neighborhood's opposition to the application. There was a group of White Oak trees that would be removed for development of Parcel 2. He had chosen to live in a natural setting and this was one of the few locations within McMinnville that still resided in a green, natural setting. There were deer, birds, and other wildlife that routinely visited his backyard. The Cozine Creek area provided a soul nurturing break from the noise and congestion of the City. Bedrooms in Tall Oaks were typically on the Cozine side of the house affording only the breeze in the trees and the birds to greet the day. He entertained family and guest in the back yard in full view of the birds and trees and deer. He would like to keep it this way for his grandchildren.

Mark Davis, McMinnville resident, said development was not allowed in the floodplain, but he questioned whether Parcel 2 met the lot depth requirement due to the limited amount of area not in the floodplain. He did not think it technically qualified as a lot. He then referenced the Parks Master Plan from 1999 and the high priorities listed for this area. He thought it was a sad situation that nothing was done to preserve the Cozine Creek greenspace as was recommended in the Plan. He thought the trees would either be removed immediately or would later die or fall down due to root damage. He thought the City would need to enforce the conditions that the Planning Commission imposed.

Cheryl Lambright, McMinnville resident, had requested this public hearing. She thought this was a confusing process and wanted to make sure that everyone was paying attention to this neighborhood. She wanted to save the area and wildlife. It was a beautiful and peaceful place. She wanted the Commission to look closely at the application to balance the need for growth with the need for preservation.

Commissioner Langenwalter suggested the neighbors look into purchasing Parcel 2 to preserve it. Commissioner Tucholsky had visited the site and accessed a neighbor's backyard to get a better view of the area.

Mr. Koch questioned the depth of the lot to make Parcel 2 developable. The plan did not include the dimensions of the upland area that was out of the floodplain, however he thought it was nearly impossible to meet the setbacks for the lot. The Commission needed to decide if it was a developable parcel that was appropriate to create under the partition plan. His clients would be open to the discussion about purchasing the property.

Brad and Shirley Robison, McMinnville residents, were opposed. They asked about the mitigation that had been discussed at the neighborhood meeting. Planning Director Richards said staff had researched if a variance was required, but legal counsel determined that it wasn't. There had also been discussion about vacating the public right-of-way so the neighbors could continue to enjoy the greenway. That process had to be initiated by the property owners for a vacation request.

Carole Hansen, McMinnville resident, said removing the trees would seriously impact her enjoyment of the area. If it was a 33 foot right-of-way, some of the trees would be in that 33 feet. She did not want to see them cut down. She did not think it was an appropriate place to build. She was opposed.

Susan Perez, McMinnville resident, said she and her husband were opposed. It was a beautiful area with wildlife and should be preserved.

Rebuttal: Mr. Allen said they had requested a continuance and would provide the information that was needed.

Commissioner Langenwalter MOVED to CONTINUE the hearing for MP 6-20 with the record open to July 15, 2021. The motion was seconded by Commissioner Winfield and PASSED 7-0.

The Commission took a short break. There was discussion about when the Commission would go back to in-person meetings.

B. Quasi-Judicial Hearing: Variance (VR 2-21)

Request: Approval of a variance to MMC Section 17.53.100(C)(1) to allow an increase in the number of lots permitted access by private easement to more than three (3) to support a future partition application.

Location: The subject site is located at 2185 & 2191 NW 2nd Street, more specifically described at Tax Lot 502 Section 19AC, T.4S., R 4 W., W.M.

Applicant: Nora Collins, property owner

Disclosures: Chair Hall opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. He asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none. Chair Hall asked if any Commissioner needed to declare any contact prior to the hearing with the applicant or any party involved in the hearing or any other source of information outside of staff regarding the subject of this hearing. Chair Hall asked if any Commissioner had visited the site. If so, did they wish to discuss the visit to the site? Several Commissioners had visited the site, but had no comments to make on the visit.

Commissioner Winfield stated she knew the potential owners, but it would not affect her decision.

Commissioner Rankin went to one of the medical offices on the site. She had not talked about the application with anyone.

Staff Presentation: Associate Planner Fleckenstein presented the variance request for 2185 and 2191 NW 2nd Street. The request was to allow an increase in the number of lots to be accessed by a private easement to four lots. The variance would support a future partition and sale of the new parcel. He described the subject site, which was a medical building complex. He explained the zoning, existing access easement, and applicable review criteria. The applicant had to demonstrate that the proposed access easement was the only reasonable method for accessing the rear of the subject lot and the subject lot was unusually deep or had an unusual configuration that was large enough to warrant partitioning. Staff did not think that exceptional or extraordinary circumstances had been demonstrated by the applicant. The applicant made an argument that the change in the zoning ordinance language created a unique situation for this property. The variance would be necessary for a partition application to move forward preserving a property right substantially the same as owners of other property in the same zone or vicinity. The variance would not be materially detrimental and the use or intensity of the use would not change and there would be no change to the existing conditions of the site. This was the minimum variance to alleviate the hardship. The applicant had not demonstrated the subject site would qualify for an access easement under MMC 17.53.100(C)(1). The previous zoning ordinance language did not allow more than three lots per easement. No written testimony had been submitted to the Planning Department for this application. The applicant had submitted a request to continue the public hearing to July 15, 2021 to submit additional materials and findings. At this time, based on the application materials and the findings in the decision document, staff would recommend denial of the variance. Staff thought the Commission should continue the public hearing as requested.

Commission Questions: Commissioner Rankin asked why the code only allowed three lots per easement. Planning Director Richards said after researching this question, staff could not find anything about what set that standard. In general, cities limited how many lots could use private access easements because they did not meet public street standards for sidewalks and ADA access. The code did allow them for anomaly situations, but it was not a default for developers who wanted to build a larger complex with an internal circulation system that did not have a street standard and after it was built partition it so they could sell the lots individually.

City Attorney Parsons said fire and life safety officials were not in favor of these private accesses because of issues with substandard facilities and access. He thought that was probably part of the discussion when the standard was established. Anything beyond three could lead to overload of the private access.

Commissioner Langenwaller asked if this application was denied, could the applicant create an access from Hill Road. Associate Planner Fleckenstein did not think that would be allowed since it was a minor arterial and direct access to minor arterials was discouraged.

Commissioner Langenwaller said if the application was denied, they would not be able to partition Parcel 1 and sell one of the lots. Planning Director Richards said that was correct.

Commissioner Langenwaller did not agree with legal counsel about the meaning of e.g. Chair Hall said the applicant was not in attendance, but had requested a continuance.

Public Testimony: None

Commissioner Rankin MOVED to CONTINUE the hearing for VR 2-21 with the record open to July 15, 2021. The motion was seconded by Commissioner Schanche and PASSED 7-0.

4. Commissioner Comments

None

5. Staff Comments

- **Introduction to Natural Features and Natural Hazards Inventory and Program Management**
- *Presentation*

Planning Director Richards announced Associate Planner Fleckenstein was leaving the City. There had been a lot of commentary over the years about protecting natural features and building in hazardous areas. There were currently no Comprehensive Plan policies that addressed these issues. The first step would be to do an inventory and then create policy recommendations for Council adoption. That work was not finished yet.

Associate Planner Fleckenstein introduced the Goal 7 Natural Hazards Inventory and Program Recommendations and Goal 5 Natural Features Inventory and Program Recommendations. He gave a background on these goals. Adoption of the Great Neighborhood Principles and the McMinnville Addendum to Yamhill County Natural Hazard Mitigation Plan provided policy direction for a natural hazards inventory and management. In June 2020 the Planning Department worked with a consultant to draft natural hazard inventories and management program recommendations for a Natural Hazard Overlay Zone and mitigation/protection based on combined risk. These recommendations integrated the Goal 5/Goal 7 programs. In September 2020 the draft Oregon Natural Hazards Mitigation Plan was released, including Yamhill County. It included a composite hazard scoring methodology where risk = probability x vulnerability and also included a vulnerability index system. In 2021, staff continued to work with the consultants to update the natural hazards program. That included the new UGB boundary to inform future planning, updating the composite hardship scoring/ranking to be consistent with the Oregon Mitigation Plan, inclusion of vulnerability in hazard risk assessment, and updating maps and preparing the Natural Hazards Overlay zone text for mitigation and protection. Also in 2021 they began work on the natural features program to include riparian corridors, tree groves, scenic views, and significant trees. The natural features interconnected with the natural hazards work. Tree grove protections might decrease landslide risk but increase wildfire risk, riparian corridor protections might help decrease flood risk, and natural hazard protection areas might provide opportunities for scenic views and open space. The Goal 7 program scope was to look at hazards such as flooding, earthquake/shaking, landslides, and wildfire and creating an inventory and mapping each individual hazard, identifying and mapping the combined hazard risk assessment, and drafting policy and overlay zone language. The Goal 5 program scope was to look at riparian corridors, tree groves, scenic views, and significant trees, identify and inventory natural features in the UGB, develop recommended management and/or protection programs, and develop a method for determining landmark/significant trees outside of the riparian corridors and tree groves. The next steps were to complete the integrated natural hazards/features work by July 2021. They would need to do a Comprehensive Plan amendment to include a Natural Features Overlay map designation and policy framework. They would also need to amend the Zoning Map to include a Natural Hazard-Mitigation overlay zone and Natural Hazard-Protection overlay zone. Draft zoning code would also be presented as part of this work which would be broken down into four areas: purpose, relationships, flexibilities, and clear and objective standards. Over the next year there would be a public process/refinement and adoption.

There was discussion regarding the purpose of this work.

The Commission thanked Associate Planner Fleckenstein for his work.

6. Adjournment

Chair Hall adjourned the meeting at 9:45 p.m.



Heather Richards
Secretary



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

www.mcminnvilleoregon.gov

MINUTES

July 15, 2021
Planning Commission
Regular Meeting

6:30 pm
Zoom Online Meeting
McMinnville, Oregon

Members Present: Roger Hall, Robert Banagay, Gary Landenwaller, Sylla McClellan, Brian Randall, Beth Rankin, Lori Schanche, Dan Tucholsky, and Sidonie Winfield and Ethan Downs – Youth Liaison

Members Absent:

Staff Present: Heather Richards – Planning Director and Tom Schauer – Senior Planner

1. Call to Order

Vice Chair Schanche called the meeting to order at 6:30 p.m.

2. Approval of Minutes

- May 20, 2021
- June 17, 2021

Commissioner Langenwaller moved to approve the May 20, 2021 minutes. The motion was seconded by Commissioner McClellan and passed 9-0.

Commissioner Langenwaller moved to approve the June 17, 2021 minutes. The motion was seconded by Commissioner Hall and passed 9-0.

3. Citizen Comments

None

4. Public Hearings:

A. Quasi-Judicial Hearing: Variance (VR 2-21) – (Exhibit 2) (Continued from June 17, 2021 PC Meeting)

Request: Approval of a variance to MMC Section 17.53.100(C)(1) to allow an increase in the number of lots permitted access by private easement to more than three (3) to support a future partition application.

Location: The subject site is located at 2185 & 2191 NW 2nd Street, more specifically described at Tax Lot 502 Section 19AC, T.4S., R 4 W., W.M.

Application: Nora Collins, property owner

Vice Chair Schanche opened the public hearing.

Staff Presentation: Senior Planner Schauer said this was an application for a variance to the standard in Section 17.53.100(C)(1) regarding the maximum number of 3 parcels that could be served by private easement access. The variance would allow a partition that would have one additional parcel served by the existing easement for a total of 4. This was a continuation of the June 17, 2021 quasi-judicial hearing. He explained the applicable criteria. Staff had recommended denial, stating the applicant had not met the burden of proof for some of the criteria. The applicant requested a continuance to submit additional information regarding the criteria. Staff reviewed the additional information and also identified additional Comprehensive Plan policies that served as the criteria. Based on the additional information and updated findings, staff now recommended approval. He described the subject site, proposed variance, and access to the parcels. The applicant noted that this was in a developed area and the alternatives for access were limited. It was on the corner of two arterial streets and there were limits to the number of accesses. This application would not create a new easement. The request was to allow a fourth parcel to use the easement. Looking at the unique situation of where the property was located and the policies regarding limitations on access to the arterials, he thought that distinguished this situation from other properties and it was preferable to limit access on those streets. The variance met the applicable Comprehensive Plan goals and policies including Chapter 10, citizen involvement, Chapter 6, transportation system, and Street Policies 120.00 and 122.00.

Questions: Commissioner Randall asked about the location of the proposed property line. Senior Planner Schauer said the variance was submitted in advance of finalizing the partition application. The applicant wanted to obtain the variance before finalizing that application.

Commissioner Randall said Parcel 1 would have very limited parking and he asked if there was a shared agreement for the parking. Planning Director Richards said this application was not for the partition, it was only for the variance. They had not received the partition application yet. The applicant would have to meet parking requirements for each building in the partition application. They would either have to create a partition that provided the right amount of parking for each building or show that they had a shared parking agreement recorded on the property.

Nora Collins, applicant, said this application was to give people an opportunity to own the property their businesses were on. The variance did not change anything physically on the property.

Proponents and Opponents: None

Vice Chair Schanche closed the public hearing.

The applicant waived the 7 day period for submitting final written arguments in support of the application.

Commissioner Hall MOVED to APPROVE VR 2-21. The motion was seconded by Commissioner Tucholsky and PASSED 9-0.

**B. Quasi-Judicial Hearing: Minor Partition (MP 6-20) – (Exhibit 3)
(Continued from June 17, 2021 PC Meeting)**

Continuance Requested to August 19, 2021, PC Meeting

Request: Approval to partition 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 residential development. The proposed 0.31-acre parcel would be accessed by private easement from SW Fellows Street while the 6.43- and 0.48-acre parcels would be accessed from SW Hilary Street.

Location: The subject site is located at 835 SW Hilary Street, more specifically described at Tax Lot 1600, Section 29AB, T.4S., R 4 W., W.M.

Application: Steve and Mary Allen, property owners

Commissioner McClellan MOVED to CONTINUE the hearing for MP 6-20 to August 19, 2021. The motion was seconded by Commissioner Langenwalter and PASSED 9-0.

C. Quasi-Judicial Hearing: Comprehensive Plan Map Amendment (CPA 2-20) and Zone Change, including Planned Development Overlay Designation (ZC 3-20) – (Exhibit 4)
(Continued from May 20, 2021 PC Meeting)

Continuance Requested to September 16, 2021, PC Meeting

Request: Approval to amend the Comprehensive Plan Map from Industrial to Commercial, and an amendment to the Zoning Map from M-2 (General Industrial) to C-3 PD (General Commercial with a Planned Development Overlay), for approximately 37.7 acres of a 90.4-acre property.

The 37.7 acres includes 4.25 acres intended for right-of-way dedication for a future frontage road. The application also shows a portion of the area subject to the map amendment intended for a north-south extension of Cumulus Avenue and future east-west street connectivity.

The request is submitted per the Planned Development provisions in Section 17.51.010(B) of the Zoning Ordinance, which allows for a planned development overlay designation to be applied to property without a development plan; however, if approved, no development of any kind can occur on the portion of the property subject to the C-3 PD overlay until a final development plan has been submitted and approved in accordance with the Planned Development provisions of the Zoning Ordinance. This requires the application for the final development plan to be subject to the public hearing requirements again at such time as the final development plans are submitted.

Location: The subject site is located at 3310 SE Three Mile Lane, more specifically described at Tax Lot 700, Section 26, T.4S., R 4 W., W.M.

Application: Kimco McMinnville LLC, c/o Michael Strahs

Commissioner Hall MOVED to CONTINUE the hearing for CPA 2-20 and ZC 3-20 to September 16, 2021. The motion was seconded by Commissioner Winfield and PASSED 9-0.

5. Commissioner Comments

None

6. Staff Comments

Planning Director Richards discussed the recruitment process for the Associate Planner position. She said if a Planning Commissioner wanted to participate in the interview process to send her an email letting her know. She had created the planning program for the next fiscal year and would be calendaring those items for upcoming meetings.

7. Adjournment

Vice Chair Schanche adjourned the meeting at 7:22 p.m.

Heather Richards
Secretary

Tentative Partition Map for: Steve & Mary Allen

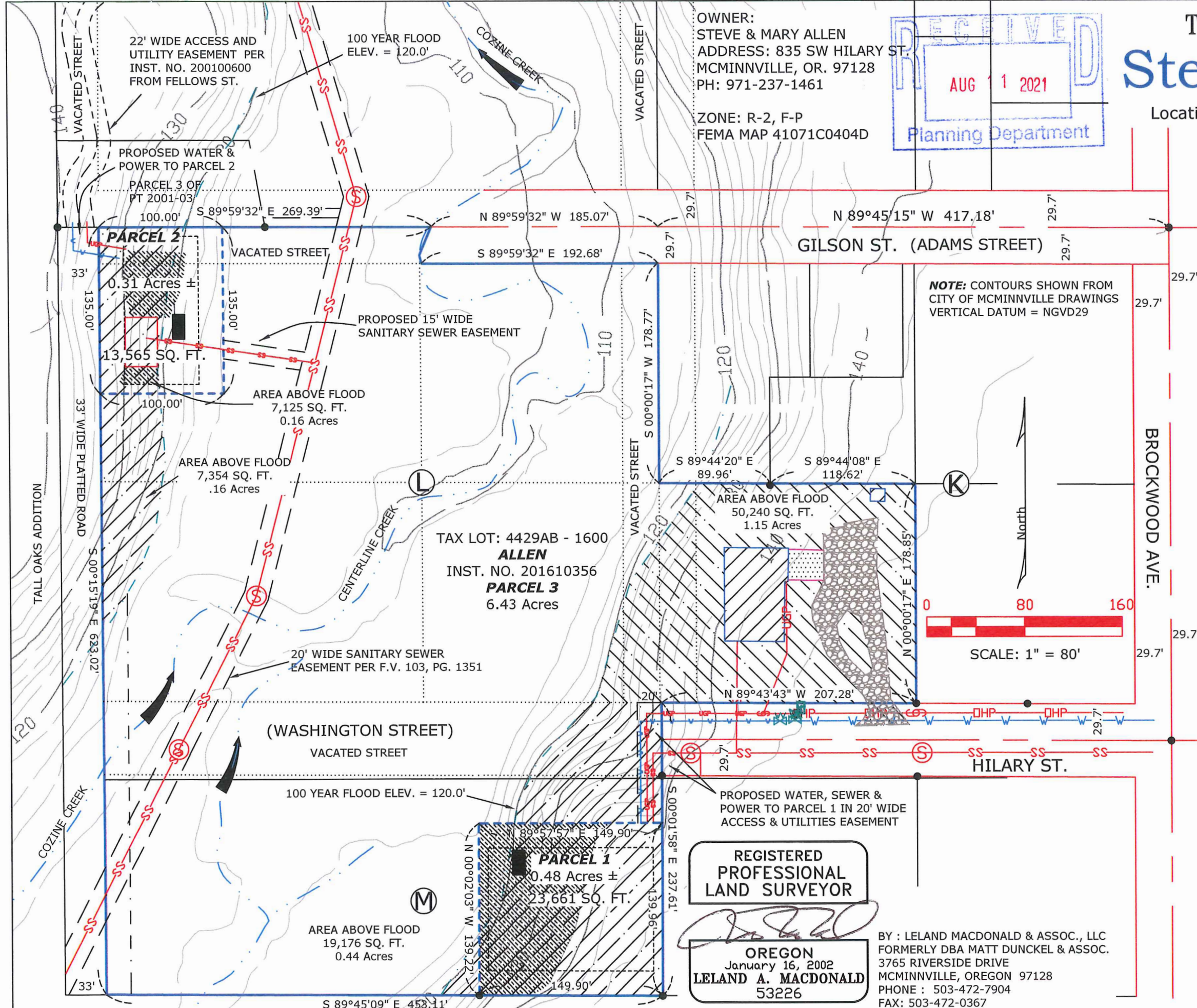
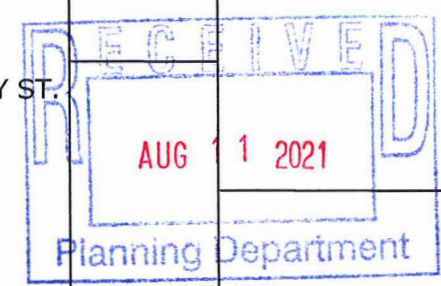
Location: NE 1/4 Section 29, T. 4 S., R. 4 W., WM.,
Block L, Lot 3 of Block K, Lots 1 & 2 of Block M
COZINE'S 3RD ADDITION
City of McMinnville, Yamhill County, OR

Tax Lot: 4429AB - 1600

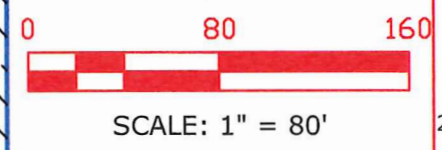
Date: 6 AUGUST 2021

OWNER:
STEVE & MARY ALLEN
ADDRESS: 835 SW HILARY ST.
MCMINNVILLE, OR. 97128
PH: 971-237-1461

ZONE: R-2, F-P
FEMA MAP 41071C0404D



NOTE: CONTOURS SHOWN FROM
CITY OF MCMINNVILLE DRAWINGS
VERTICAL DATUM = NGVD29



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
- = SANITARY SEWER LINE
- = WATER LINE
- = EDGE OF PAVEMENT
- = 100 YEAR FLOOD LINE
- = CENTERLINE OF PUBLIC ROAD
- = PROPOSED EASEMENT
- = YARD SETBACKS
- = ASPHALT
- = BUILDING
- = AREA ABOVE FLOOD
- = GRAVEL
- = PROPOSED STORM SWALE
- = SLOPES GREATER THAN 25%

TAX LOT: 4429AB - 1600
ALLEN
INST. NO. 201610356
PARCEL 3
6.43 Acres

PARCEL 1
0.48 Acres ±
23,661 SQ. FT.

PARCEL 2
0.31 Acres ±
13,565 SQ. FT.

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

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

OWNER:
STEVE & MARY ALLEN
ADDRESS: 835 SW HILARY ST.
MCMINNVILLE, OR. 97128
PH: 971-237-1461

ZONE: R-2, F-P
FEMA MAP 41071C0404D
YARD SETBACKS: SIDE 7.5'
FRONT & REAR 20'

Tax Lot: 4429AB - 1600

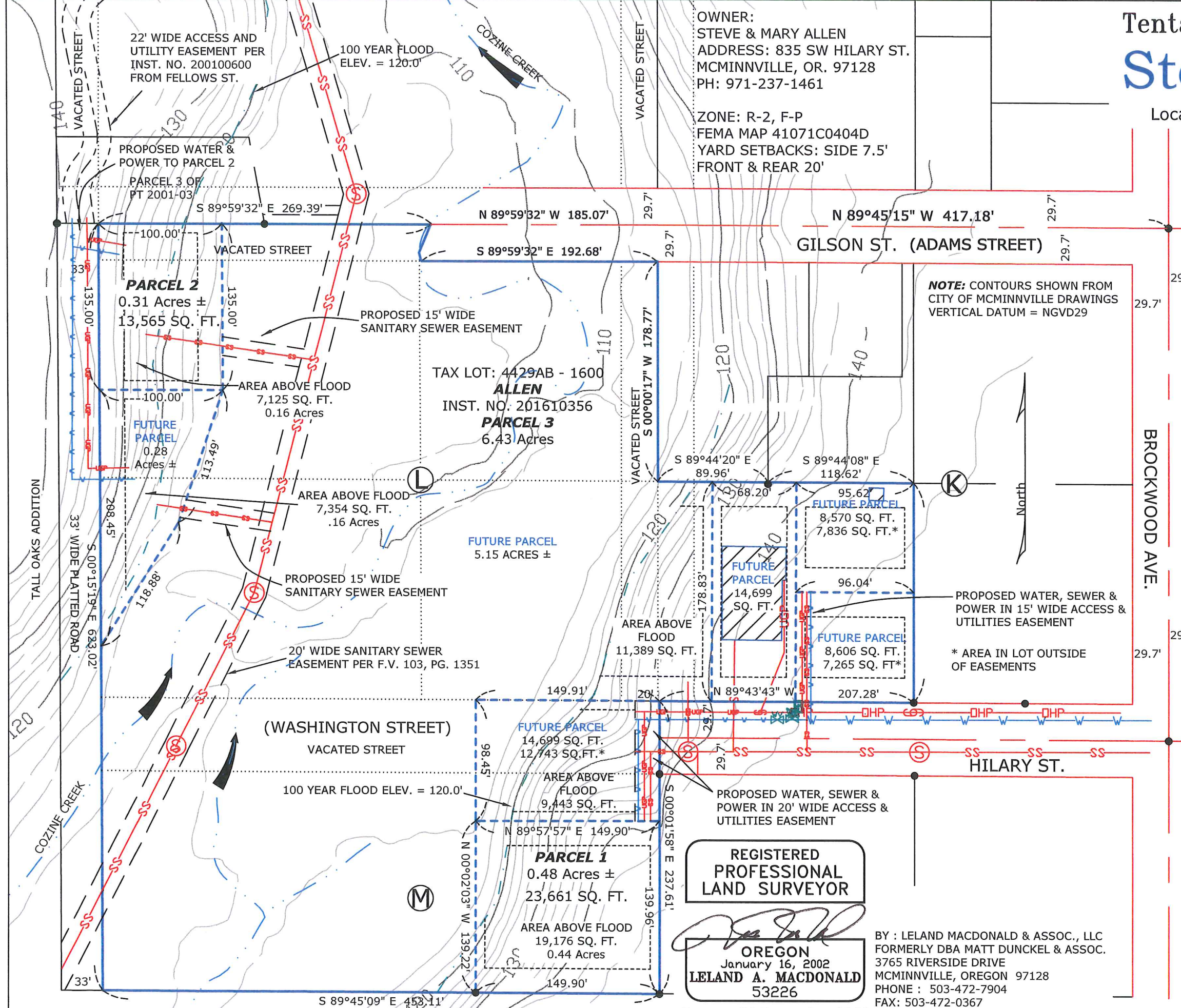
Date: 6 AUGUST 2021

Scale: 1" = 80'



Legend

- = MONUMENT FOUND
- = WATER VALVE
- = WATER METER
- = FIRE HYDRANT
- = POWER POLE
- = GUY ANCHOR
- = SANITARY SEWER MANHOLE
- = PROPERTY LINE
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- = BUILDING



REGISTERED
PROFESSIONAL
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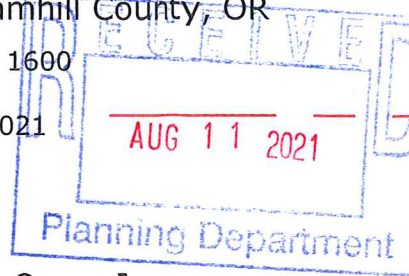
Renews 31 December 2022

Tentative Partition Map 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

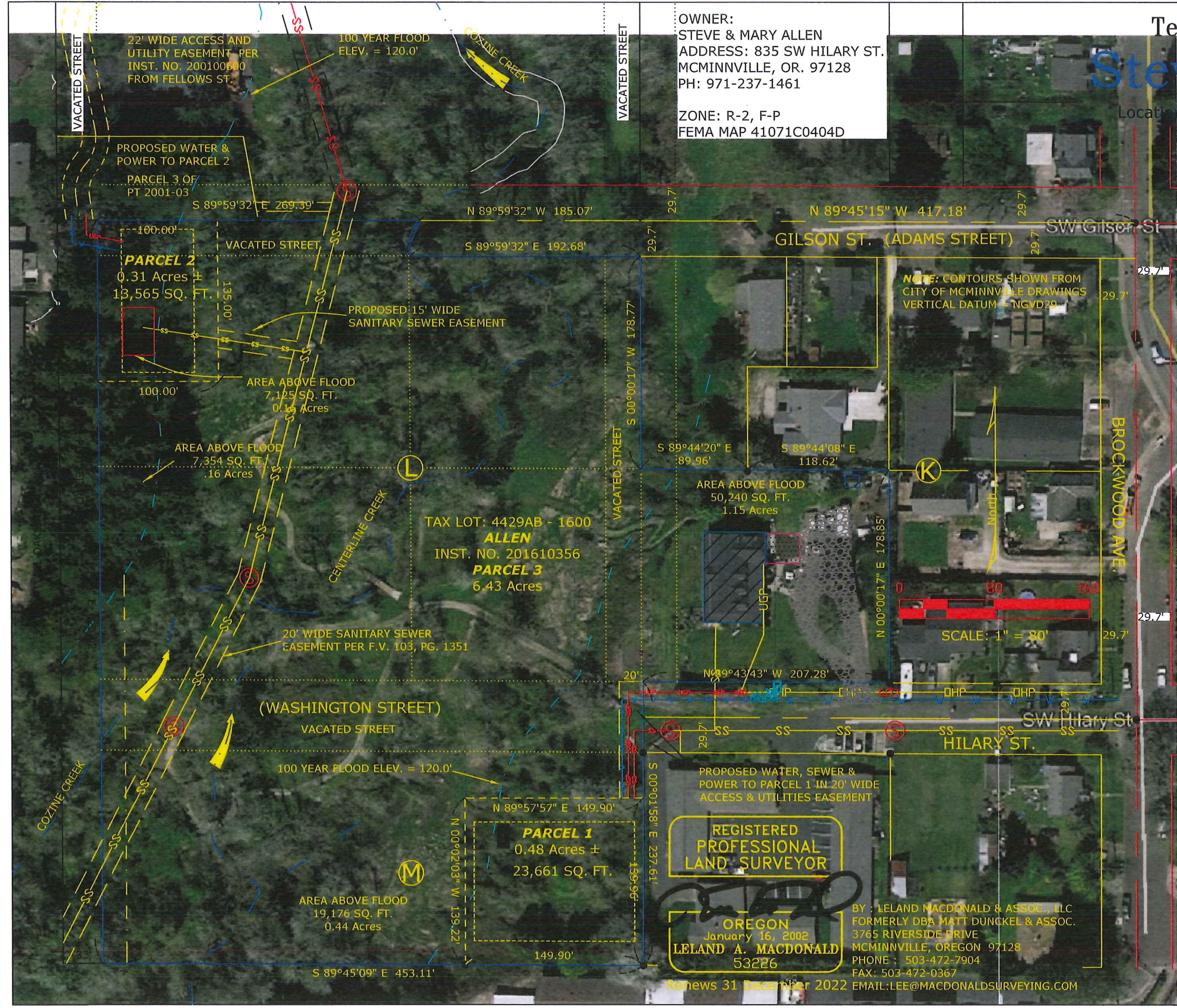
Tax Lot: 4429AB - 1600

Date: 6 AUGUST 2021



OWNER:
STEVE & MARY ALLEN
ADDRESS: 835 SW HILARY ST.
MCMINNVILLE, OR. 97128
PH: 971-237-1461

ZONE: R-2, F-P
FEMA MAP 41071C0404D



Google Earth Overlay

Legend

- = MONUMENT FOUND
- = WATER VALVE
- = WATER METER
- = FIRE HYDRANT
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- = GRAVEL

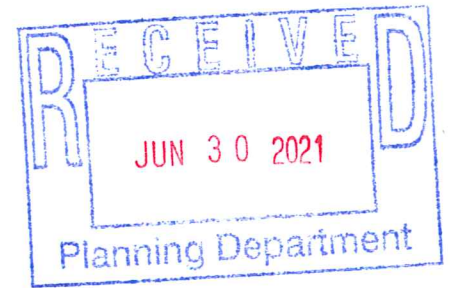
**REGISTERED
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Renews 31 December 2022

Follow up from Public Hearing MP-20
Steve & Mary Allen
835 SW Hilary Street, McMinnville OR
maryballen5@gmail.com
971 237 1461 Steve Cell



Packet includes

Letter to planning Department from Steve and Mary Allen

17.53.060 Submission of Tentative Partition Plan

1 - 11 x 15 copy of Tentative Partition Map
15 - 8 ½ x 11 Tentative Partition Map

Answers to points 8-12 as requested by Planning Department

8. New Title report from Ticor Title 1 copy
9. "Contour lines related to City Datum and having minimum intervals of two feet". Tentative Partition Map
- 10."Location and direction of water courses and location of areas within the 100 year flood plain". Tentative Partition Map
11. "Location of any natural features." On Tentative Partition Map
12. "Source and preliminary plans for domestic and other water supplies, sewage disposal . . . " On Tentative Partition Map

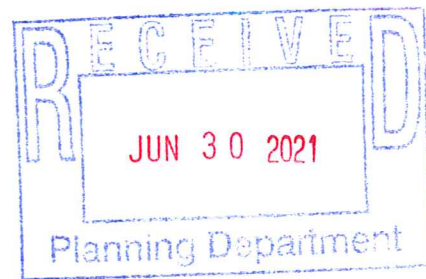
17.53.080 Submission of Future Development Plan

- A. Future lot size.
- B. Existing and proposed utilities including water, sewer and storm drains.
- C. Streets and access points for potential future lots.

Tentative Partition Shadow Plat map.

1 - 11 x 15 Tentative Partition Shadow Plat Map
15 - 8 ½ X 11 Tentative Partition Shadow Plat Map

Planning Department
Jamie Fleckenstein, Associate Planner
231 NE 5th Street
McMinnville, OR 97128
jamiefleckenstein@mcminnvilleoregon.gov
June 25, 2021



We are writing to respond to the recent Zoom meeting to our partition of MP 6-20. First some history about our family and our property.

We have a long family history of support for the McMinnville community and are proud to say that our 7 grandchildren are the 6th generation to be raised here. In 1977 we opened a small business and operated it in McMinnville for 38 years. Throughout these years we were involved in our church, community projects, and various organizations. We purchased our property on Hilary Street in 1991 and built our home here in 1994.

In 2001 we were asked by Delane Smith, the owner of the property north of parcel 2 if we would accept a easement through their property and to vacate the access to our property. The property owners before him had built their home and garage on the city's right of way. In order to prevent removal of their residence and partition the Smith's land into additional lots they needed an easement as a remedy. We agreed after getting assurance from the city that the easement would allow us to develop our lots accessed by it, one of them being parcel 2. Twenty years ago, after the city's approval of our easement and our future lots, with the expressed intention to develop these lots, we paid to install water, electric, gas, and cable lines from Fellows Street to the northwest corner of our property.

We love the location of our property in the heart of McMinnville and bought it with the intention to develop it. At the time of purchase the property was zoned R2 and remains R2 today. In 2020 we had a survey done to make sure the partition parcels are the correct size and shape to comply with city code.

We are meeting all the criteria for a partition of our property MP 6-20 by updating and completing the concerns presented at the zoom meeting. 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" for the people of our growing community.

This property will provide housing that will benefit the greater community. This is an opportunity for another deserving family to live among the trees in our beautiful community.

Steve & Mary Allen
835 SW Hilary Street
McMinnville, OR 97128
971-237-1461 Steve cell

THIS REPORT IS ISSUED BY THE ABOVE-NAMED COMPANY ("THE COMPANY") FOR THE EXCLUSIVE USE OF THE FOLLOWING CUSTOMER:

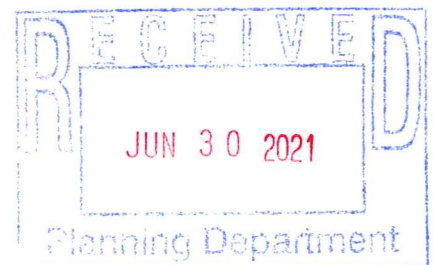
Mary Bernards Allen
Phone No.: (971)237-6164

Date Prepared: June 29, 2021
Effective Date: June 25, 2021 / 08:00 AM
Charge: \$350.00
Order No.: 471821108812
Reference: 835 SW Hilary St, McMinnville, OR 97128

The information contained in this report is furnished to the Customer by Ticor Title Company of Oregon (the "Company") as an information service based on the records and indices maintained by the Company for the county identified below. This report is not title insurance, is not a preliminary title report for title insurance, and is not a commitment for title insurance. No examination has been made of the Company's records, other than as specifically set forth in this report ("the Report"). Liability for any loss arising from errors and/or omissions is limited to the lesser of the fee paid or the actual loss to the Customer, and the Company will have no greater liability by reason of this report. This report is subject to the Definitions, Conditions and Stipulations contained in it.

REPORT

- A. The Land referred to in this report is located in the County of Yamhill, State of Oregon, and is described as follows:
As fully set forth on Exhibit "A" attached hereto and by this reference made a part hereof.
- B. As of the Effective Date, the tax account and map references pertinent to the Land are as follows:
As fully set forth on Exhibit "B" attached hereto and by this reference made a part hereof.
- C. As of the Effective Date and according to the Public Records, we find title to the land apparently vested in:
As fully set forth on Exhibit "C" attached hereto and by this reference made a part hereof.
- D. As of the Effective Date and according to the Public Records, the Land is subject to the following liens and encumbrances, which are not necessarily shown in the order of priority:
As fully set forth on Exhibit "D" attached hereto and by this reference made a part hereof.



Ticor Title Company of Oregon
Public Record Report for New Subdivision or Land Partition
Order No. 471821108812

EXHIBIT "A"
(Land Description)

All of Block L; Lot 3, Block K; and Lots 1 and 2, Block M, COZINES 3RD ADDITION TO MCMINNVILLE, in the County of Yamhill, State of Oregon.

TOGETHER WITH that portion of Euclid Street inuring thereto by reason of vacation thereof as recorded in Book 14, page 303, City Court Journal.

ALSO TOGETHER WITH that portion of Hilary Street insuring thereto by reason of vacation thereof as recorded April 27, 2009 as Instrument No. 200906040, Yamhill County Records.

Ticor Title Company of Oregon
Public Record Report for New Subdivision or Land Partition
Order No. 471821108812

EXHIBIT "B"
(Tax Account and Map)

APN/Parcel ID(s) 173369 as well as Tax/Map ID(s) R4429AB01600

Ticor Title Company of Oregon
Public Record Report for New Subdivision or Land Partition
Order No. 471821108812

EXHIBIT "C"
(Vesting)

Steven D. Allen and Mary M. Allen, as tenants by the entirety, as to that portion lying within Lots 1 and 2, Block M;

Steven D. Allen and Mary Bernards Allen, Co-Trustees, or the successor Trustee under the Steven D. Allen and Mary Bernards Allen Joint Trust dated July 6, 2016, and any amendments thereto, as to the remainder

EXHIBIT "D"
(Liens and Encumbrances)

Note: Property taxes for the fiscal year shown below are paid in full.

Fiscal Year: 2020-2021
Amount: \$7,935.75
Levy Code: 40.0
Account No.: 173369
Map No.: R4429AB 01600

1. City Liens, if any, in favor of the City of McMinnville.
2. Any adverse claim based on the assertion that any portion of the subject land has been removed from or brought within the subject land's boundaries by the process of accretion or reliction or any change in the location of Cozine Creek.

Any adverse claim based on the assertion that any portion of the subject land has been created by artificial means or has accreted to such portions so created, or based on the provisions of ORS 274.905 through 274.940.

Any adverse claim based on the assertion that any portion of the subject land is now or at any time has been below the ordinary high water line of Cozine Creek.

Rights of fishing, navigation, commerce, flood control, propagation of anadromous fish, and recreation, and other rights of the public, Indian tribes or governmental bodies in and to the waters of Cozine Creek.

3. Any irregularities, reservations, easements or other matters in the proceedings occasioning the abandonment or vacation of the street/road shown below:

Name: Euclid Street and Ashwood Street
Recording Date: September 9, 1957
Recording No: Book 185, Page 368, Deed Records

4. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of McMinnville
Purpose: Sanitary sewer
Recording Date: December 3, 1974
Recording No: Film Volume 103, Page 1354
Affects: Reference is hereby made to said document for full particulars

5. Matters contained in that certain Driveway Construction and Maintenance Agreement which document, among other things, may provide for liens and charges.

Executed by: Delane Smith, Sandra Smith, Steve Allen and Mary Bernards Allen
Recording Date: January 16, 2001
Recording No: 200100600

Reference is hereby made to said document for full particulars.

EXHIBIT "D"
(Liens and Encumbrances)
(continued)

6. Any irregularities, reservations, easements or other matters in the proceedings occasioning the abandonment or vacation of the street/road shown below:

Name: Hilary Street
Recording Date: April 27, 2009
Recording No: 200906040

7. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$130,000.00
Dated: September 24, 2020
Trustor/Grantor: Steven D. Allen and Mary Bernards Allen, Co-Trustees, or the successor Trustee under the Steven D. Allen and Mary Bernards Allen Joint Trust dated July 6, 2016, and any amendments thereto
Trustee: David C. Haugeberg
Beneficiary: First Federal Savings & Loan Association of McMinnville
Loan No.: 1010013181
Recording Date: September 29, 2020
Recording No: 202017185

8. A line of credit deed of trust to secure an indebtedness in the amount shown below,

Amount: \$40,000.00
Dated: September 24, 2020
Trustor/Grantor: Steven D. Allen and Mary Bernards Allen, Co-Trustees, or the successor Trustee under the Steven D. Allen and Mary Bernards Allen Joint Trust dated July 6, 2016, and any amendments thereto
Trustee: David C. Haugeberg
Beneficiary: First Federal Savings & Loan of McMinnville
Loan No.: 1010013280
Recording Date: September 29, 2020
Recording No: 202017186

DEFINITIONS, CONDITIONS AND STIPULATIONS

1. **Definitions.** The following terms have the stated meaning when used in this report:
 - (a) "Customer": The person or persons named or shown as the addressee of this report.
 - (b) "Effective Date": The effective date stated in this report.
 - (c) "Land": The land specifically described in this report and improvements affixed thereto which by law constitute real property.
 - (d) "Public Records": Those records which by the laws of the state of Oregon impart constructive notice of matters relating to the Land.
2. **Liability of Company.**
 - (a) This is not a commitment to issue title insurance and does not constitute a policy of title insurance.
 - (b) The liability of the Company for errors or omissions in this public record report is limited to the amount of the charge paid by the Customer, provided, however, that the Company has no liability in the event of no actual loss to the Customer.
 - (c) No costs (including without limitation attorney fees and other expenses) of defense, or prosecution of any action, is afforded to the Customer.
 - (d) In any event, the Company assumes no liability for loss or damage by reason of the following:
 - (1) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records.
 - (2) Any facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
 - (3) Easements, liens or encumbrances, or claims thereof, which are not shown by the Public Records.
 - (4) Discrepancies, encroachments, shortage in area, conflicts in boundary lines or any other facts which a survey would disclose.
 - (5) (i) Unpatented mining claims; (ii) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (iii) water rights or claims or title to water.
 - (6) Any right, title, interest, estate or easement in land beyond the lines of the area specifically described or referred to in this report, or in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
 - (7) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the Public Records at the effective date hereof.
 - (8) Any governmental police power not excluded by 2(d)(7) above, except to the extent that notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the Public Records at the effective date hereof.
 - (9) Defects, liens, encumbrances, adverse claims or other matters created, suffered, assumed, agreed to or actually known by the Customer.
3. **Report Entire Contract.** Any right or action or right of action that the Customer may have or may bring against the Company arising out of the subject matter of this report must be based on the provisions of this report. No provision or condition of this report can be waived or changed except by a writing signed by an authorized officer of the Company. By accepting this form report, the Customer acknowledges and agrees that the Customer has elected to utilize this form of public record report and accepts the limitation of liability of the Company as set forth herein.
4. **Charge.** The charge for this report does not include supplemental reports, updates or other additional services of the Company.

LIMITATIONS OF LIABILITY

"CUSTOMER" REFERS TO THE RECIPIENT OF THIS REPORT.

CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE THE EXTENT OF LOSS WHICH COULD ARISE FROM ERRORS OR OMISSIONS IN, OR THE COMPANY'S NEGLIGENCE IN PRODUCING, THE REQUESTED REPORT, HEREIN "THE REPORT." CUSTOMER RECOGNIZES THAT THE FEE CHARGED IS NOMINAL IN RELATION TO THE POTENTIAL LIABILITY WHICH COULD ARISE FROM SUCH ERRORS OR OMISSIONS OR NEGLIGENCE. THEREFORE, CUSTOMER UNDERSTANDS THAT THE COMPANY IS NOT WILLING TO PROCEED IN THE PREPARATION AND ISSUANCE OF THE REPORT UNLESS THE COMPANY'S LIABILITY IS STRICTLY LIMITED. CUSTOMER AGREES WITH THE PROPRIETY OF SUCH LIMITATION AND AGREES TO BE BOUND BY ITS TERMS

THE LIMITATIONS ARE AS FOLLOWS AND THE LIMITATIONS WILL SURVIVE THE CONTRACT:

ONLY MATTERS IDENTIFIED IN THIS REPORT AS THE SUBJECT OF THE REPORT ARE WITHIN ITS SCOPE. ALL OTHER MATTERS ARE OUTSIDE THE SCOPE OF THE REPORT.

CUSTOMER AGREES, AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THE REPORT AND TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF THE COMPANY, ITS LICENSORS, AGENTS, SUPPLIERS, RESELLERS, SERVICE PROVIDERS, CONTENT PROVIDERS AND ALL OTHER SUBSCRIBERS OR SUPPLIERS, SUBSIDIARIES, AFFILIATES, EMPLOYEES, AND SUBCONTRACTORS FOR ANY AND ALL CLAIMS, LIABILITIES, CAUSES OF ACTION, LOSSES, COSTS, DAMAGES AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEY'S FEES, HOWEVER ALLEGED OR ARISING, INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM BREACH OF CONTRACT, NEGLIGENCE, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF WARRANTY, EQUITY, THE COMMON LAW, STATUTE OR ANY OTHER THEORY OF RECOVERY, OR FROM ANY PERSON'S USE, MISUSE, OR INABILITY TO USE THE REPORT OR ANY OF THE MATERIALS CONTAINED THEREIN OR PRODUCED, **SO THAT THE TOTAL AGGREGATE LIABILITY OF THE COMPANY AND ITS AGENTS, SUBSIDIARIES, AFFILIATES, EMPLOYEES, AND SUBCONTRACTORS SHALL NOT IN ANY EVENT EXCEED THE COMPANY'S TOTAL FEE FOR THE REPORT.**

CUSTOMER AGREES THAT THE FOREGOING LIMITATION ON LIABILITY IS A TERM MATERIAL TO THE PRICE THE CUSTOMER IS PAYING, WHICH PRICE IS LOWER THAN WOULD OTHERWISE BE OFFERED TO THE CUSTOMER WITHOUT SAID TERM. CUSTOMER RECOGNIZES THAT THE COMPANY WOULD NOT ISSUE THE REPORT BUT FOR THIS CUSTOMER AGREEMENT, AS PART OF THE CONSIDERATION GIVEN FOR THE REPORT, TO THE FOREGOING LIMITATION OF LIABILITY AND THAT ANY SUCH LIABILITY IS CONDITIONED AND PREDICATED UPON THE FULL AND TIMELY PAYMENT OF THE COMPANY'S INVOICE FOR THE REPORT.

THE REPORT IS LIMITED IN SCOPE AND IS NOT AN ABSTRACT OF TITLE, TITLE OPINION, PRELIMINARY TITLE REPORT, TITLE REPORT, COMMITMENT TO ISSUE TITLE INSURANCE, OR A TITLE POLICY, AND SHOULD NOT BE RELIED UPON AS SUCH. THE REPORT DOES NOT PROVIDE OR OFFER ANY TITLE INSURANCE, LIABILITY COVERAGE OR ERRORS AND OMISSIONS COVERAGE. THE REPORT IS NOT TO BE RELIED UPON AS A REPRESENTATION OF THE STATUS OF TITLE TO THE PROPERTY. THE COMPANY MAKES NO REPRESENTATIONS AS TO THE REPORT'S ACCURACY, DISCLAIMS ANY WARRANTY AS TO THE REPORT, ASSUMES NO DUTIES TO CUSTOMER, DOES NOT INTEND FOR CUSTOMER TO RELY ON THE REPORT, AND ASSUMES NO LIABILITY FOR ANY LOSS OCCURRING BY REASON OF RELIANCE ON THE REPORT OR OTHERWISE.

IF CUSTOMER (A) HAS OR WILL HAVE AN INSURABLE INTEREST IN THE SUBJECT REAL PROPERTY, (B) DOES NOT WISH TO LIMIT LIABILITY AS STATED HEREIN AND (C) DESIRES THAT ADDITIONAL LIABILITY BE ASSUMED BY THE COMPANY, THEN CUSTOMER MAY REQUEST AND PURCHASE A POLICY OF TITLE INSURANCE, A BINDER, OR A COMMITMENT TO ISSUE A POLICY OF TITLE INSURANCE. NO ASSURANCE IS GIVEN AS TO THE INSURABILITY OF THE TITLE OR STATUS OF TITLE. CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES IT HAS AN INDEPENDENT DUTY TO ENSURE AND/OR RESEARCH THE ACCURACY OF ANY INFORMATION OBTAINED FROM THE COMPANY OR ANY PRODUCT OR SERVICE PURCHASED.

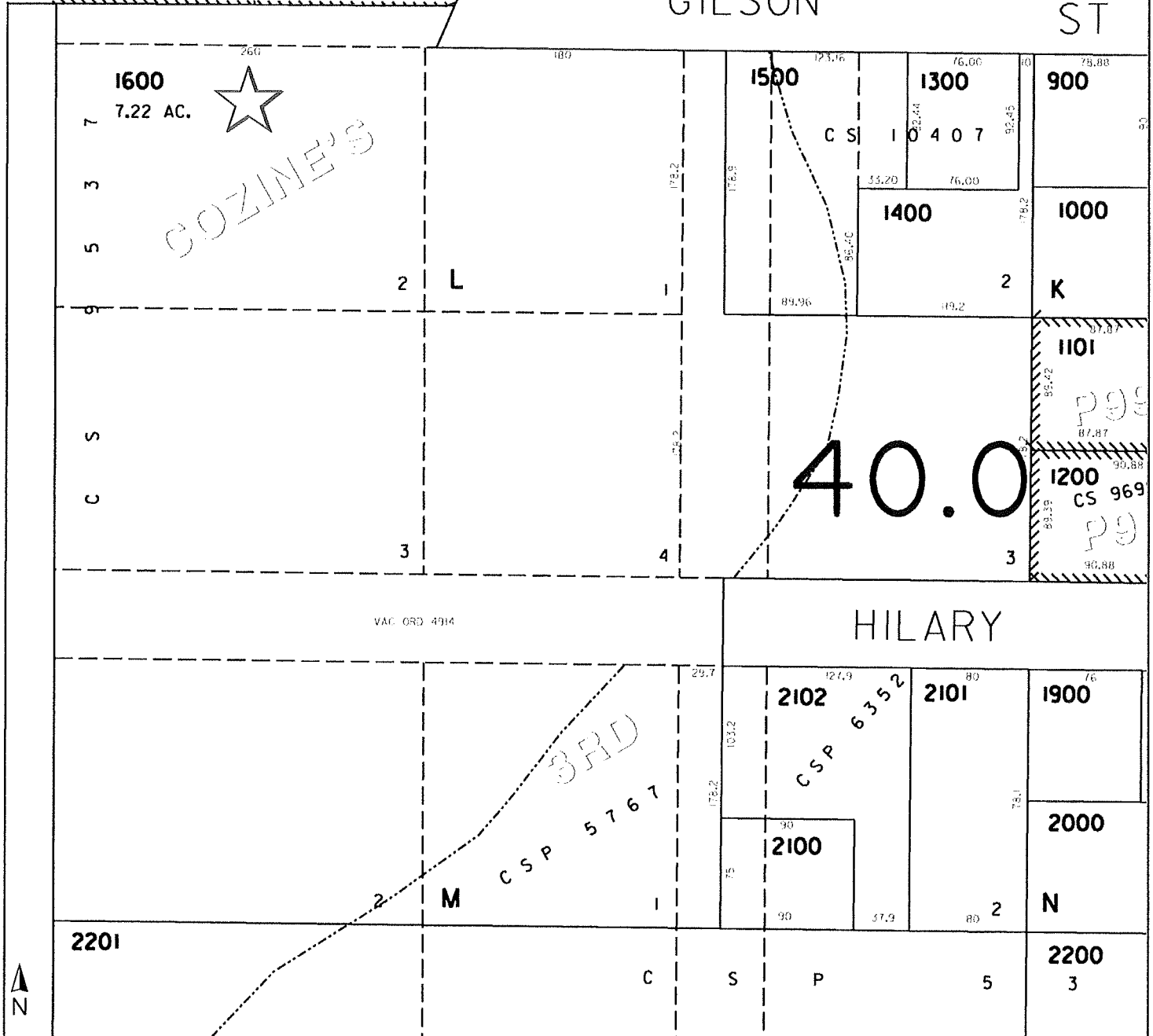
NO THIRD PARTY IS PERMITTED TO USE OR RELY UPON THE INFORMATION SET FORTH IN THE REPORT, AND NO LIABILITY TO ANY THIRD PARTY IS UNDERTAKEN BY THE COMPANY.

CUSTOMER AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COMPANY, ITS LICENSORS, AGENTS, SUPPLIERS, RESELLERS, SERVICE PROVIDERS, CONTENT PROVIDERS, AND ALL OTHER SUBSCRIBERS OR SUPPLIERS, SUBSIDIARIES, AFFILIATES, EMPLOYEES AND SUBCONTRACTORS BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, INCOME, SAVINGS, DATA, BUSINESS, OPPORTUNITY, OR GOODWILL, PAIN AND SUFFERING, EMOTIONAL DISTRESS, NON-OPERATION OR INCREASED EXPENSE OF OPERATION, BUSINESS INTERRUPTION OR DELAY, COST OF CAPITAL, OR COST OF REPLACEMENT PRODUCTS OR SERVICES, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, NEGLIGENCE, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE, OR OTHERWISE AND WHETHER CAUSED BY NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE OR ANY OTHER CAUSE WHATSOEVER, AND EVEN IF THE COMPANY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY FOR SUCH DAMAGES.

END OF THE LIMITATIONS OF LIABILITY

SEE MAP 4 4 20CD

GILSON ST



ParcelID: 173369

835 SW Hilary St

McMinnville, OR 97128

This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

1991 FEB 13 AM 11:05

F252P0083

WARRANTY DEED - OREGON STATUTORY FORM

THEODORE L. SCHROEDER JR. and LINDA J. SCHROEDER, GRANTOR, hereby conveys and warrants to STEVEN D. ALLEN and MARY M. ALLEN, husband and wife, GRANTEE, the following described real property situated in Yamhill County, Oregon:

All of Block "L" and Lot 3, Block "K", and Lots 1 and 2, Block "M" in COZINES 3RD ADDITION to McMinnville in Yamhill County, Oregon, together with that portion of Euclid Street inuring thereto by reason of vacation thereof as recorded in Book 14, Page 303 of the City Court Journal.

Grantor covenants that they own the above described property free of all encumbrances except the rights of the public, riparian owners and of governmental bodies in that portion of the above described property lying below the high water mark of Cozine Creek as to the use of the waters and the natural flow thereof and easement created by instrument recorded at FV 103, Page 1354, and will warrant and defend the same against all persons who may lawfully claim the same, except as shown above.

The true and actual consideration for this transfer is \$48,000.00.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Dated this 6 day of February, 1991.

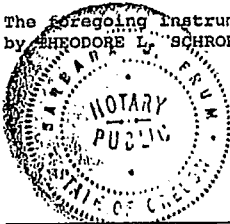
Theodore L. Schroeder Jr.
THEODORE L. SCHROEDER JR.

Linda J. Schroeder
LINDA J. SCHROEDER

YAMHILL COUNTY TITLE & ESCROW INC. 126757

STATE OF OREGON, County of Yamhill) ss.

The foregoing instrument was acknowledged before me this February 6, 1991 by THEODORE L. SCHROEDER JR. / LINDA J. SCHROEDER.
Before me:



Barbara J. Farnum
My Commission Expires Feb 14, 1991

| |
|---|
| Grantor's Name THEODORE L. SCHROEDER JR. LINDA J. SCHROEDER |
| Grantee's Name and Address STEVEN D. ALLEN MARY M. ALLEN 1208 S. BAKER STREET MCMINNVILLE, OR 97128 |
| After Recording Return To: STEVEN D. ALLEN MARY M. ALLEN 1208 S. BAKER STREET MCMINNVILLE, OR 97128 |
| Forward Tax Statements To: STEVEN D. ALLEN MARY M. ALLEN 1208 S. BAKER STREET MCMINNVILLE, OR 97128 |

RESERVED FOR RECORDER'S USE

001220

STATE OF OREGON)
COUNTY OF YAMHILL)

5.00
10.00
ss. 25.00

I hereby certify that this instrument was received and duly recorded by me in Yamhill County records.

Instrument #
Charles Stern
CHARLES STERN,
COUNTY CLERK

2-13-91

**AFTER RECORDING RETURN TO:
MOORE & WELLIVER
2002 PACIFIC AVENUE
FOREST GROVE, OR 97116**

**SEND TAX STATEMENTS TO:
NO CHANGE**

**OFFICIAL YAMHILL COUNTY RECORDS
BRIAN VAN BERGEN, COUNTY CLERK**

201610356



\$46.00

00488846201600103560020026

07/08/2016 11:29:36 AM

**DMR-DDMR Cnt=1 Stn=3 SUTTONS
\$10.00 \$5.00 \$11.00 \$20.00**

BARGAIN AND SALE DEED

STEVEN D. ALLEN and MARY M. ALLEN, husband and wife, Grantor, hereby convey to STEVEN D. ALLEN and MARY BERNARDS ALLEN, Co-Trustees, or the successor Trustee under the STEVEN D. ALLEN AND MARY BERNARDS ALLEN JOINT TRUST dated July 6, 2016, and any amendments thereto, Grantee, all of Grantors' right, title and interest in and to the real property situated in Yamhill County, Oregon, being more particularly described as follows:

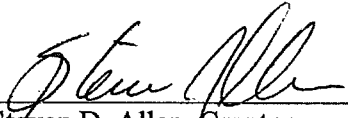
All of Block "L" and Lot 3, Block "K" in COZINES 3RD ADDITION to McMinnville in Yamhill County, Oregon, together with that portion of Euclid Street and Ashwood Street inuring thereto by reason of vacation thereof as recorded in Book 14, Page 303 of the City Court Journal, Recorded September 9, 1957, Film Volume 185, Page 368, Deed and Mortgage Records, Yamhill County, Oregon.

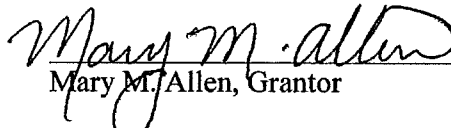
The true consideration for this conveyance is \$0. The purpose of this Bargain and Sale Deed is to transfer all of Grantors' right, title, and interest in the property described above to the Grantors' Joint Revocable Living Trust as an estate planning transfer.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE

Page 1. BARGAIN AND SALE DEED

APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

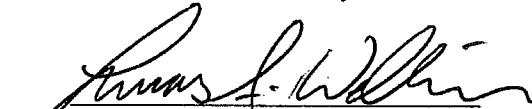

Steven D. Allen, Grantor

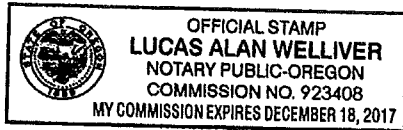

Mary M. Allen, Grantor

STATE OF OREGON)
) ss July 6, 2016
County of Washington)

Personally appeared the above named Steven D. Allen and Mary M. Allen and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:


Notary Public for Oregon



RECEIVED
JUN 30 2021
Planning Department

Tentative Partition Map 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: 4429AB - 1600

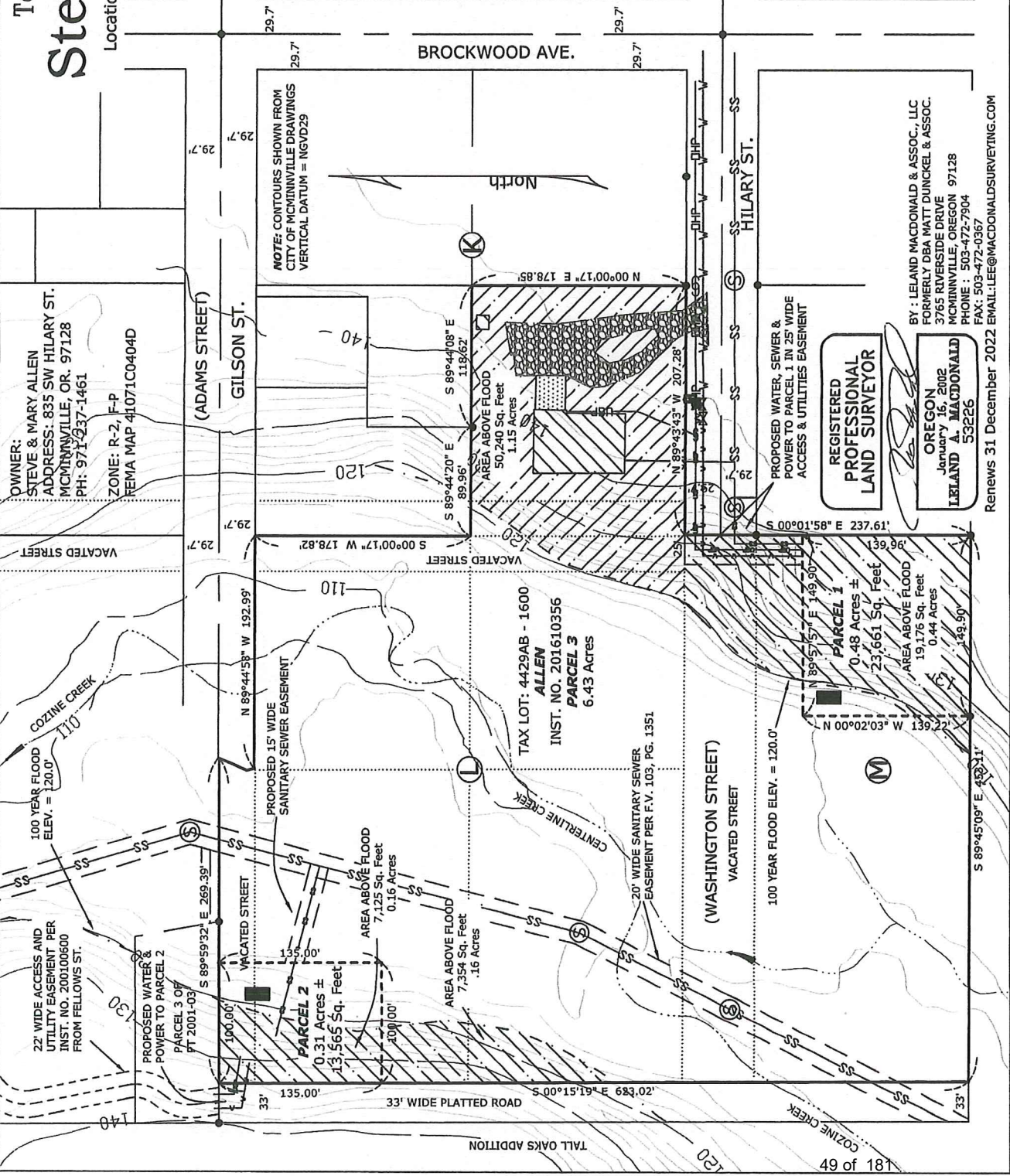
Date: 28 JUNE 2021

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



Tentative Partition Shadow plat for: Steve & Mary Allen

OWNER:
STEVE & MARY ALLEN
ADDRESS: 835 SW HILARY ST.
MCMINNVILLE, OR. 97128
PH: 971-237-1461

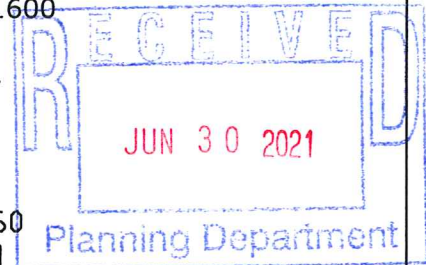
ZONE: R-2, F-P
FEMA MAP 41071C0404D

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: 4429AB - 1600

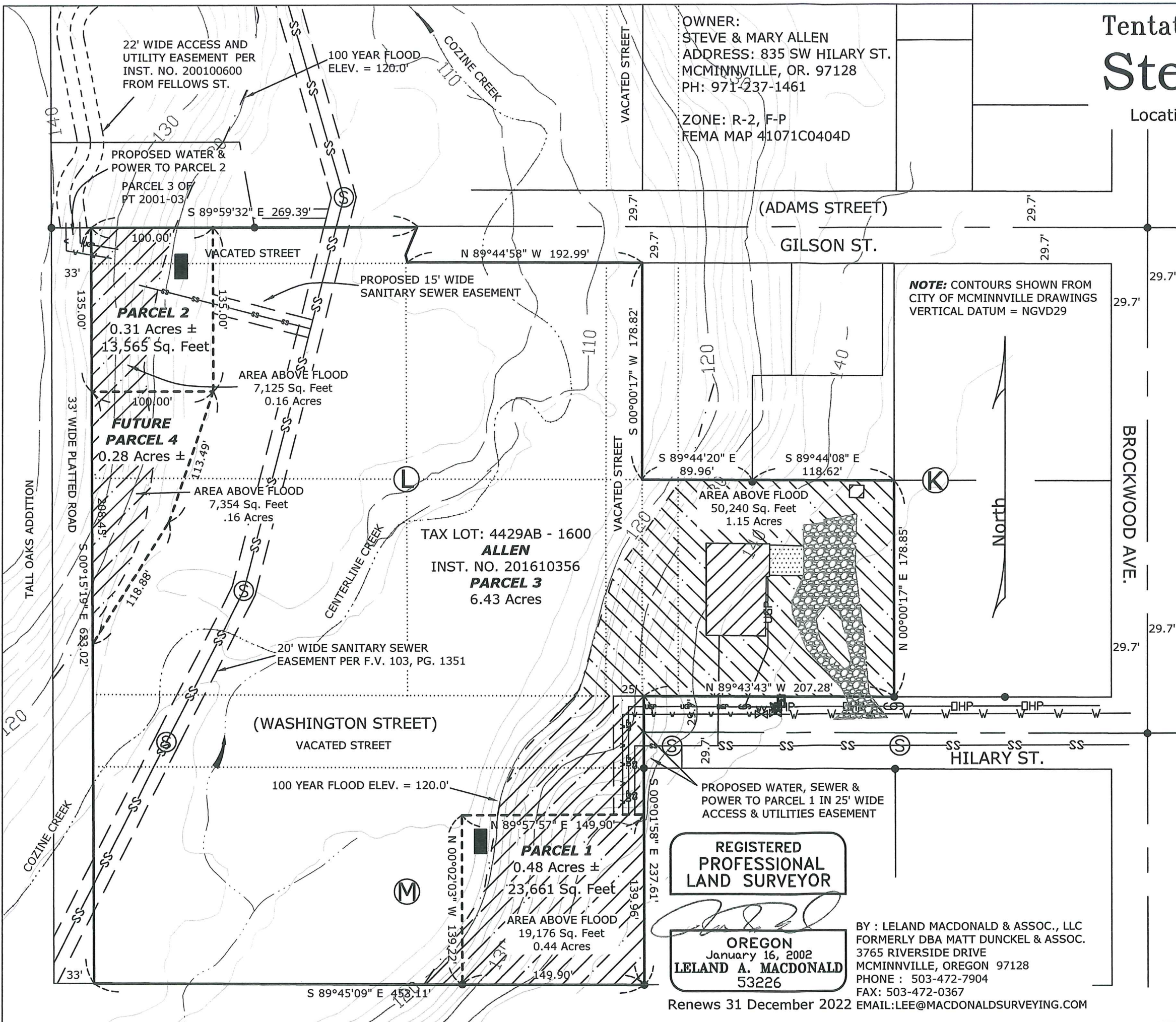
Date: 28 JUNE 2021

Scale: 1" = 80'

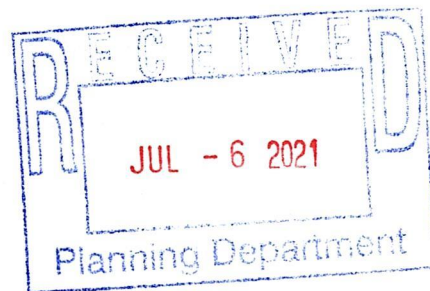


Legend

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- = GRAVEL
- = PROPOSED STORM SWALE



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.




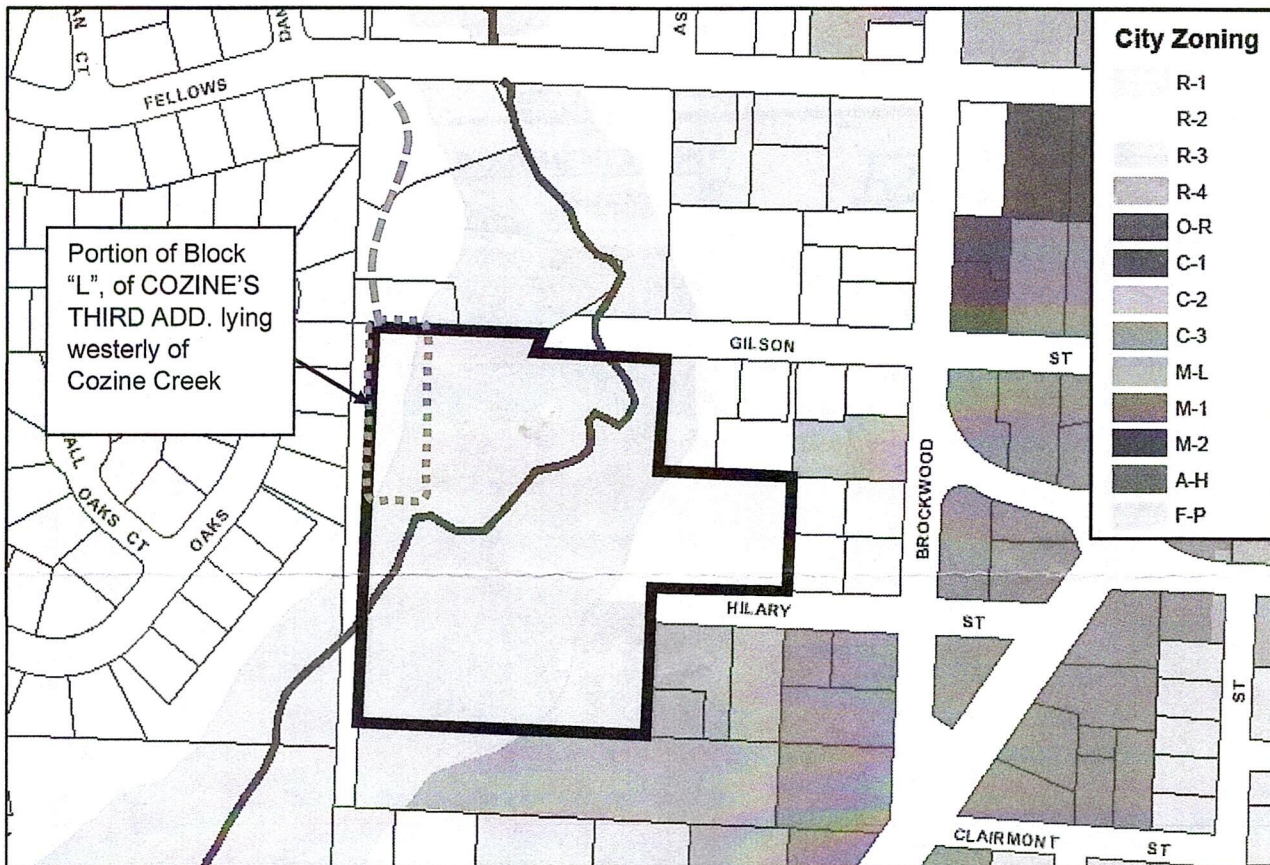
| <u>APPROVALS :</u> | <u>Notes</u> |
|---|---|
|  _____ City of McMinnville Surveyor 1/10/01 Date | 1) Prior to issuance of building permits for Parcels 2 or 3 of this partition, arrangements must be made with the City for construction of a turnaround for emergency vehicles if required by the McMinnville 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.



RECEIVED
JUL - 6 2021
Planning Department

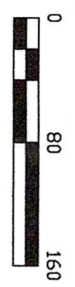
Tentative Partition Shadow plat for:
Steve & Mary Allen

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 K
 COZINE'S 3RD ADDITION
 City of McMinnville, Yamhill County, OR

Tax Lot: 44299A - 1600

Date: 28 JUNE 2021

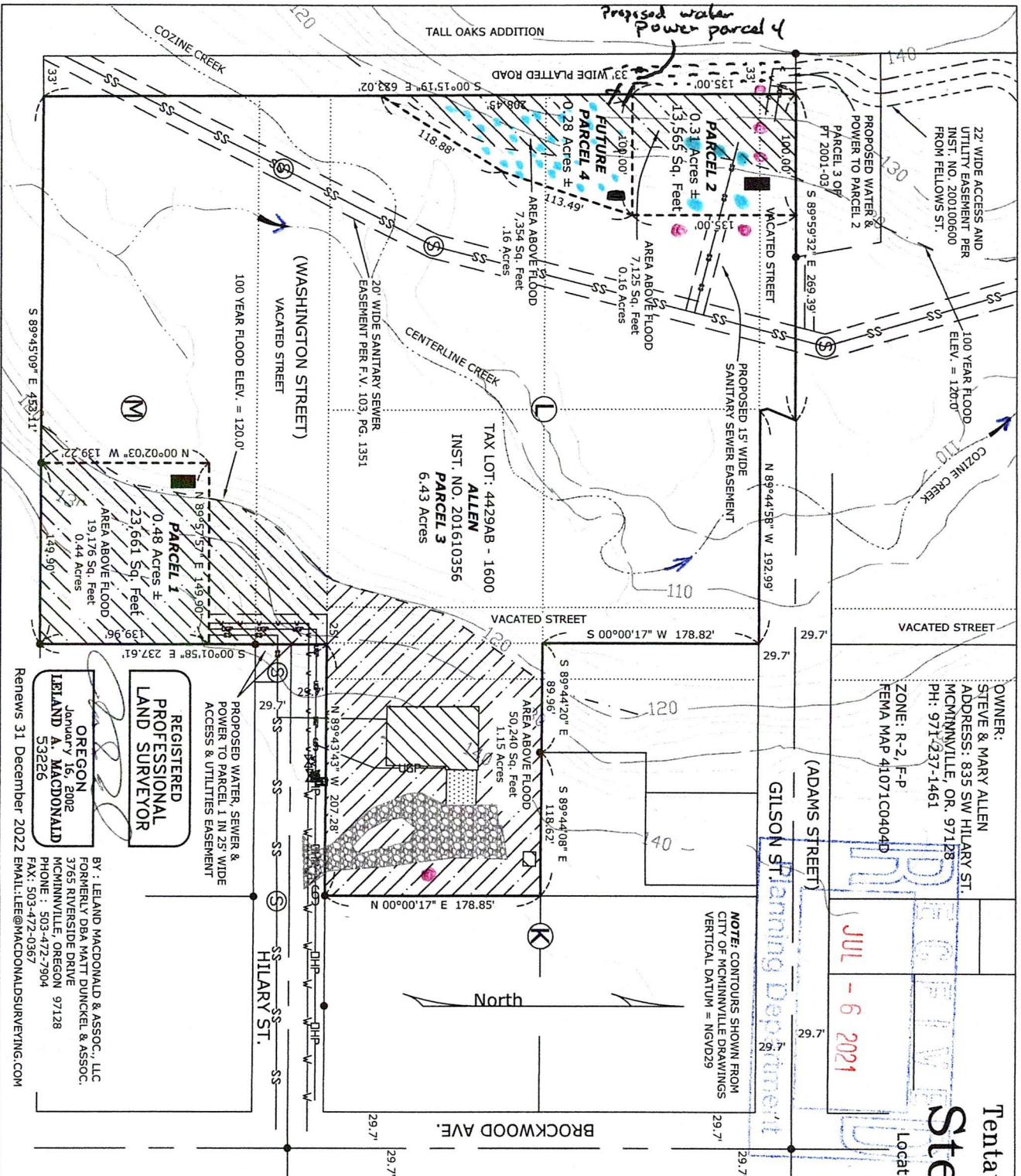
Scale: 1" = 80'



Legend

- = MONUMENT FOUND
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- ⊕ = WATER METER
- ⊙ = FIRE HYDRANT
- ⊖ = POWER POLE
- ⊙ = GUY ANCHOR
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- = EDGE OF PAVEMENT
- = 100 YEAR FLOOD LINE
- = CENTERLINE OF PUBLIC ROAD
- = PROPOSED EASEMENT
- = ASPHALT
- = BUILDING
- = AREA ABOVE FLOOD
- = GRAVEL
- = PROPOSED STORM SWALE

#9144



all trees listed are 9+ inches

○ Oak

○ Fir

↖ Direction of water flow. Cozine

Access

Point

Parcel 4

Proposed water and power to parcel 4

REVISE AND REPLACE THE LETTER
received from Steve & Mary Allen dated July 2, 2021 with this letter

CITY OF MCMINNVILLE
PLANNING DEPARTMENT
Heather Richards Planning Director
231 NE FIFTH STREET
MCMINNVILLE, OR 97128
heather.richards@mcminnvilleoregon.gov
July 6, 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.

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 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. As long as we meet and follow city guidelines the partition should be granted.

"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 plant soil, 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 originally 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.

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FINDING: SATISFIED. The proposed partition would create build able lots within an existing neighborhood that can be used for in fill 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

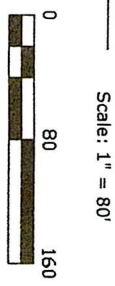
Tentative Partition Shadow plat for:
Steve & Mary Allen

Location: NE 1/4 Section 29, T. 4 S., R. 4 W., WM¹,
 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: 4429AB - 1600

Date: 28 JUNE 2021

Scale: 1" = 80'



Legend

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- = PROPOSED EASEMENT
- = ASPHALT
- = BUILDING
- = AREA ABOVE FLOOD
- = GRAVEL
- = PROPOSED STORM SWALE

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 January 15, 2002
LELAND A. MACDONALD
 532226

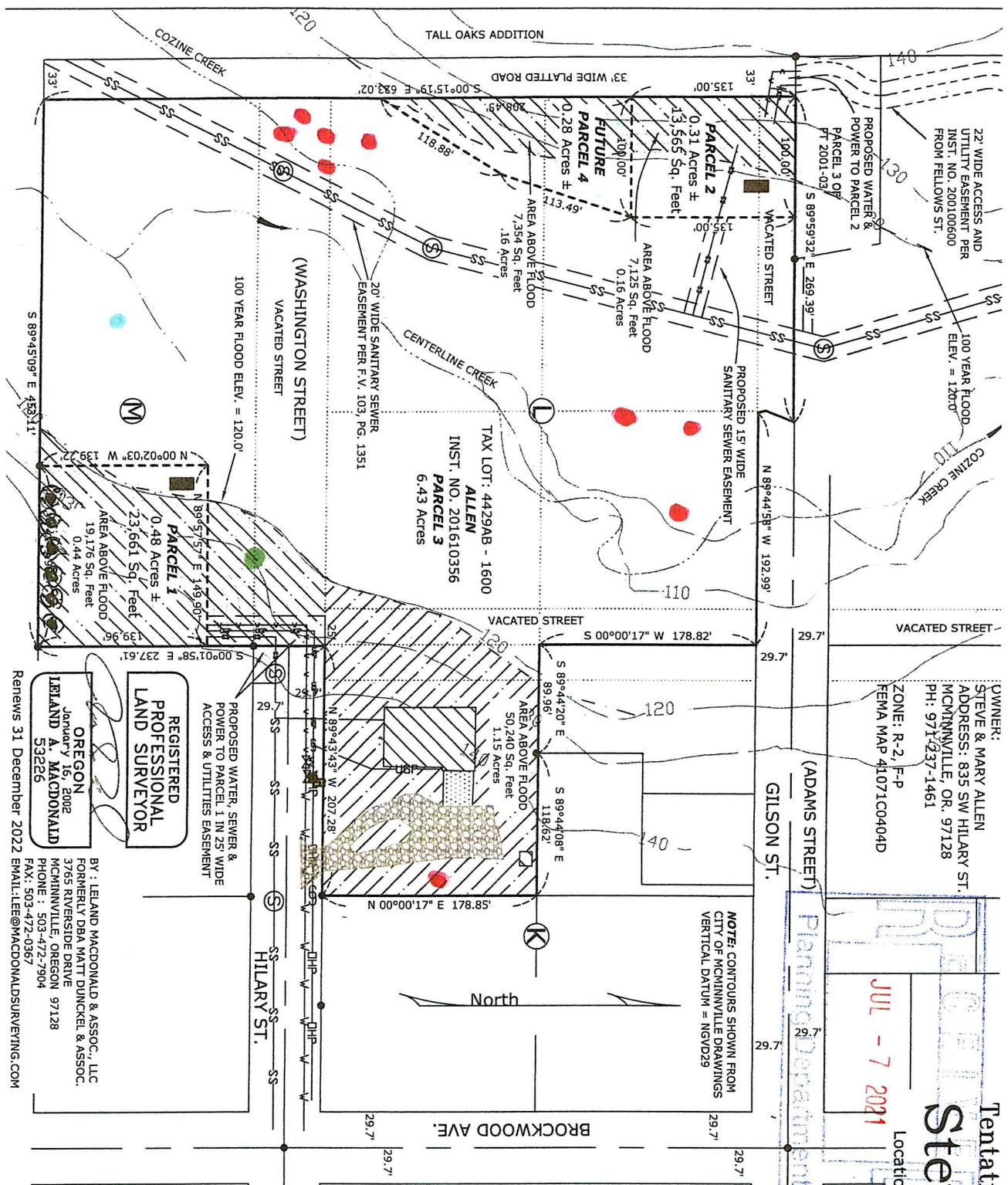
BY: LELAND MACDONALD & ASSOC., LLC
 FORMERLY DBA MATT DUNCKEL & ASSOC.
 3765 RIVERSIDE DRIVE
 McMinnville, Oregon 97128
 PHONE: 503-472-7904
 FAX: 503-472-0367

Renews 31 December 2022 EMAIL: LEE@MACDONALDSURVEYING.COM

OWNER:
 STEVE & MARY ALLEN
 ADDRESS: 835 SW HILARY ST.
 McMinnville, OR. 97128
 PH: 971-237-1461

ZONE: R-2, F-P
 FEMA MAP 41071C0404D

Planning Department
 JUL - 7 2021



Parcel 1 and Parcel 3

Parcel 1 is a flat property which slopes to the north and west toward the 100 year flood plain. Trees consist of a row of cedars to the South and wild cherry brush through out.

Parcel 3 is a flat property which slopes to the west and is where 835 SW Hilary Street house is. This area includes 100 year flood area with stands of ash trees covering most of the flood area. There are some oak, fir, hazelnut brush and some hawthorns. Those trees will not be touched since they are not in buildable area.

● Cedar Tree ● Fir Tree ● Oak Tree ● English Walnut

The Law Firm Of
**Haugeberg, Rueter, Gowell,
 Fredricks & Higgins, P.C.**

David C. Haugeberg
 Walter R. Gowell
 Douglas S. Fredricks, LL.M. Tax*
 Dianne L. Haugeberg, LL.M. Tax*
 Karin A. Moshier
 Tyler C. Yeoman-Millette
 Katherine L. Gowell**
 Nicholas A. Peasley
 *Also admitted in California
 **Also admitted in Colorado

June 18, 2021

Heather Richards
 Planning Director
 McMinnville Planning Department
 231 NE 5th Street
 McMinnville, Oregon 97128

Re: Written Submittal by Steve and JacElaine Macy for MP 6-20

Dear Heather:

In reviewing proposed Condition of Approval # 1 for the Docket MP-6-20, it appears to conflict with the City approved Easement Agreement referenced as Plat Note #2 on Partition Plat 2001-03, which requires the widening of the access easement driveway into applicant's proposed lot West of the Cozine, to a 15 foot paved surface upon the development of Applicant's property accessed by the easement.

The condition of approval as presently drafted appears to require a 12-foot paved surface reflecting the requirement for Lots 1, 2 and 3 of Partition Plat 2001-03, but not the additional requirement for a 15 foot paved surface if the easement serves an additional lot.

I have attached for the record of the above Docket three letters, dated September 20, 2000, January 5, 2001, and January 10, 2001, between the Fire Marshall Shannon Thorson and Mary Bernards Allen, and between Mary Bernards Allen and Deland Smith clearly setting out this requirement. As referenced in the Staff findings the 15-foot paving requirement was incorporated into the recorded Driveway Construction and Maintenance Agreement between the property owners and was noted on Partition Plat 2001-03 as Plat Note 2 reading as follows:

“The easement for access and 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.”

Mr. and Mrs. Macy respectfully request, that if the Planning Commission approves Applicant's request for the partition, that in order to avoid confusion, Proposed Condition # 1 be revised to read:

- “1. ***All conditions of land-use decisions Minor Partition MP-7-00 and Ordinance No. 4741, as modified and amended by Partition Plat 2001-03 Note # 2 incorporating requirements of Driveway Construction and Maintenance Agreement recorded in instrument No. 200100600 shall remain in effect.***”

Mr. and Mrs. Macy respectfully request that this additional submittal be considered in connection with the Planning Commission’s review of this matter.

Respectfully Yours,

Walter R. Gowell



Steve & Mary B. Allen

835 S. W. Hilary

503-472-8812

McMinnville, OR 97128

January 10, 2001

Shannon Thorson
McMinnville Fire Department
Fire Marshall

Dear Shannon,

I would like to confirm the information that you gave me concerning the driveway that will serve our property located to the south of Gilson Street in Block L of the COZINE THIRD ADDITION described in Exhibit B.

As per our conversation on January 5, 2001 you have indicated that the private easement crossing the property described in Exhibit A will meet fire code for access to our property if it has been paved with 15 foot in width of pavement. You indicated that this would be adequate to serve 4 homes.

Thank you for taking the time to review and sign this letter, confirming my understanding of our conversation.

Sincerely,

Mary Bernards Allen

Steve Allen

Mary Bernards Allen
Steve Allen

I am in agreement with the above information.

Shannon Thorson

Shannon Thorson
Fire Marshal

Date 1-10-01

(B)

Steve & Mary B. Allen

835 S. W. Hilary

503-472-8812

McMinnville, OR 97128

January 5, 2001

Mr. Delane Smith,

These are the few changes that we see necessary on the Construction, Maintenance Agreement. We would like to have changed in the 4th paragraph of the first page. "The easement **will** provide access to one and possibly 2 parcels located in block L of the Cozine Third Addition as described in the attached Exhibit B."

Any additional width requirement to the existing driveway to meet fire code standards can be of compacted rock only. 15 width foot must be paved to meet fire code standards. No asphalt or concrete requirement for the extension of width beyond 15 ft.

Allen's or current owner of the parcel to the south can at any time construct a rock driveway on the easement to their parcel to the south of and across parcels 1,2 and 3. Upon completion of a house or houses on the south parcel (Exhibit B) this driveway must be paved.

Thank you for your time.

Sincerely,

Mary Bernards Allen
Steve Allen

Mary Bernards Allen
Steve Allen



Jay Lilly, Fire Chief
Scott Magers, Assistant Chief
Shannon Thorson, Division Chief

175 East First Street • McMinnville, Oregon 97128 • Phone: (503) 434-7305 • FAX (503) 434-7458

September 20, 2000

Delane Smith
1300 NW Elm Street
McMinnville, Oregon 97128

RE: Delane Smith property located on Fellow Street, McMinnville, Oregon

Dear Mr. Smith

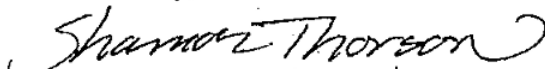
As we have discussed the Delane Smith property located on Fellows Street currently exists as 2.26 acres. We have been informed that you wish to divide the property into three building lots. Road requirements specify that driveways serving three lots or less require 12' travel width, 6" base rock, adequate grade and an approved fire department turnaround. The turnaround is needed at the time of construction.

Additionally, one fire hydrant is required. Due to topography of the driveway our department has approved the hydrant to be located at the intersection of Fellows Street and the current Delane Smith property driveway.

If you have any questions or concerns, do not hesitate to contact our office.

Thank you.

Sincerely,


Shannon Thorson



SERVING MCMINNVILLE SINCE 1874

DAVID R. KOCH
ATTORNEY AT LAW, LLC

207 NE 19th Street, Suite 100
McMinnville, Oregon 97128
www.DavidKochLaw.com

Attorney@DavidKochLaw.com
Telephone: 503-857-0724
David R. Koch, OSB# 004630

June 17, 2021

City of McMinnville, Planning Commission
230 NE 2nd Street
McMinnville, Oregon 97128

Re: Opposition to MP 6-20

Dear Chair Hall and Commissioners:

I am writing to you on behalf of my clients Cheryl Lambright, Carol Hansen and Earl Anderson to express our concerns and present opposition to the Minor Partition application submitted by Steve and Mary Allen (MP 6-20). Pursuant to ORS 197.763(6), we request an opportunity to present additional evidence, arguments or testimony regarding the application and further request that the hearing be continued to a future date where the parties will have an opportunity to present and rebut new evidence, arguments or testimony.

My clients live within the notice area for this application and own property that will be negatively impacted by any decision by the City to grant the application as submitted.

- Earl Anderson lives at 1100 SW Tall Oaks Drive, McMinnville, OR 97128.
- Carole Hansen lives at 1110 SW Tall Oaks Drive, McMinnville, OR 97128.
- Cheryl Lambright lives at 1130 SW Tall Oaks Drive, McMinnville, OR 97128.



The rear yard of each of my client's property abuts either the easement or the undeveloped right of way that would be impacted by the creation and subsequent development of proposed Parcel 2.

As noted in the Staff Report, the subject property is bisected by Cozine Creek with its associated floodplain, steep terrain, and natural wooded areas. Although my clients have concerns about the application's overall failure to meet the standards and criteria for a minor partition set forth in the McMinnville Zoning Ordinance (MZO), we are particularly concerned about the creation of proposed Parcel 2, which would allow residential development on the western banks of the Cozine Creek floodway at the end of a narrow driveway easement that already serves 3 parcels.

REVIEW CRITERIA

A minor partition application must be reviewed for compliance with the standards and criteria set forth in MZO Chapter 17.53 – Land Division Standards as well as the goals, policies, and proposals set forth in Volume II of the McMinnville Comprehensive Plan. The burden of proof is on the applicant to submit sufficient evidence to demonstrate compliance with the review criteria. If the applicant fails to submit sufficient evidence to meet its burden of proof, then the application must be denied.

The purpose of MZO Chapter 17.53 is described in MZO Section 17.53.010, and includes the intention that land divisions will:

- Assure adequate width and arrangement of streets;
- Provide for the protection, conservation, and proper use of land;
- Secure safety from fire, flood, slides, pollution, drainage and other dangers;
- Protect in other ways the public health, safety and welfare; and,
- Promote the goals and policies of the McMinnville Comprehensive Plan.

For the reasons discussed below, the application fails to meet the purpose of MZO Chapter 17.53, fails to comply with the specific requirements for the submission of a Tentative Subdivision Plat set forth at MZO 17.53.060, fails to comply with other relevant review standards described in MZO Chapter 17.53, and fails to meet one or more goals, policies and/or proposals in the City's Comprehensive Plan. As a result, the application must be denied.

1. MZO 17.53.060 – Submission of Tentative Partition Plan

In order to ensure that a proposed partition meets the standards and criteria of the McMinnville Comprehensive Plan and Zoning Ordinance, and applicant is required to submit a tentative partition application, applicable fees, and a tentative partition plan. The tentative partition application and plan must contain sufficient information to demonstrate compliance with Section 17.53.060. At a minimum, the tentative partition map must include, among other things:

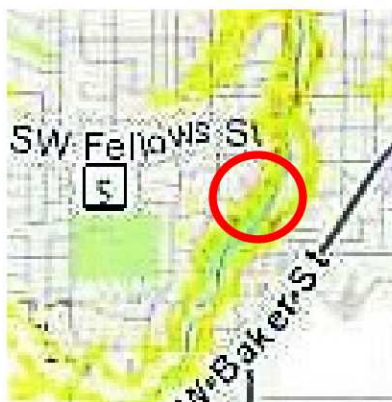
- Contour lines related to City datum and having minimum intervals of two (2) feet; MZO 17.53.060(A)(9)
- The location and direction of water courses; MZO 17.53.060(A)(10)
- The location of any natural features such as “rock outcroppings, designated wetlands, wooded areas, and natural hazards.” MZO 17.53.060(A)(11)

In addition, the application packet must include a Title Report or Partition Guarantee prepared within sixty (60) days of the application date. MZO 17.53.060(A)(8)

PROPOSED FINDING: NOT SATISFIED

DISCUSSION: The applicant submitted a tentative partition plan that fails to include contour lines, the direction of water courses, or the location of significant natural features including wetlands, wooded areas, and natural hazards. Without providing this required information, the Planning Commission does not have sufficient evidence to determine whether the proposed partition meets the purposes of the land division ordinance described in MZO 17.53.010.

For example, if the applicant had included the required topographic contour lines on its tentative partition map, the Planning Commission would be aware that proposed Parcel 2 is located on a steep slope that falls away to the east into the Cozine Creek floodplain. Although approximately half the parcel is located above the elevation of the 100-year floodplain, even that upland portion of the proposed parcel drops quickly from the western property line toward the creek. This would, at the very least, create a question regarding the suitability of future development on proposed Parcel 2 and its susceptibility to landslides.



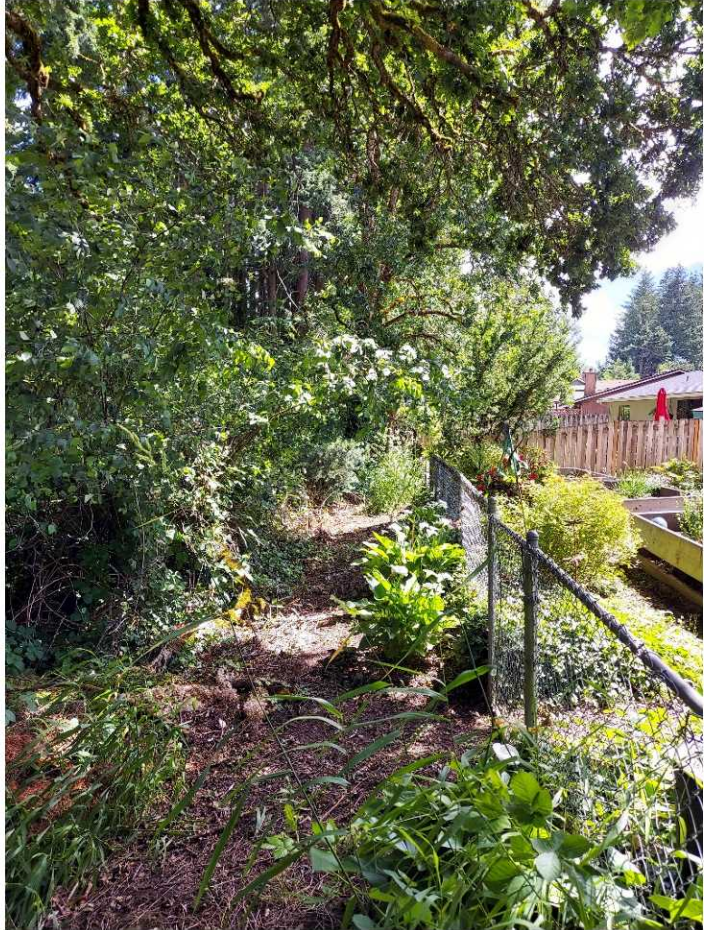
If the applicant had included the location of significant natural features, such as natural hazards, they might have included the attached map found in the City of McMinnville Addendum to the Yamhill County Multi-Jurisdictional Natural Hazards Mitigation Plan (Effective December 22, 2020 to December 21, 2025). This would have alerted the Planning Commission to the fact that most of Parcel 2 (and other steep sloped areas along the banks of Cozine Creek) appear to be areas designated by the City as Medium to High Risk for landslides.

Other required information that was omitted from the application and tentative partition map would have showed the location of wooded areas and, at the very least, the location of individual significant or historic trees (MZO 17.58.020(A)), all trees with trunks located completely or partially within the portion of the public right of way that would provide access to the proposed Parcels 1 and 2 (MZO 17.58.020(B)), and/or any trees with a DBH greater than 9

inches on the proposed Parcels 1 and 2 and the undeveloped public rights of way that would be used for access to the proposed parcels.

It is essential that the applicant provide this information in its application materials, so that the Planning Commission can meaningfully review the proposed partition and determine whether it would:

- Provide for the protection, conservation, and proper use of land;
- Secure safety from fire, flood, slides, pollution, drainage and other dangers;
- Protect in other ways the public health, safety and welfare; and otherwise,
- Promote the goals and policies of the McMinnville Comprehensive Plan.



Based on my client’s direct knowledge of the site conditions in and around Parcel 2, we believe that the creation of that proposed parcel would not meet the purpose of the ordinance.

The Title Report that was included with the application was prepared September 17, 2020, which is more than 60 days prior to the application date of November 23, 2020.

2. MZO 17.53.080 – Submission of Future Development Plan

When it is evident that the property to be partitioned can be further divided, MZO 17.53.080 requires that the applicant submit a future development plan. The future development plan is required to be submitted at the same time that the tentative partition plan is submitted and must contain the following information:

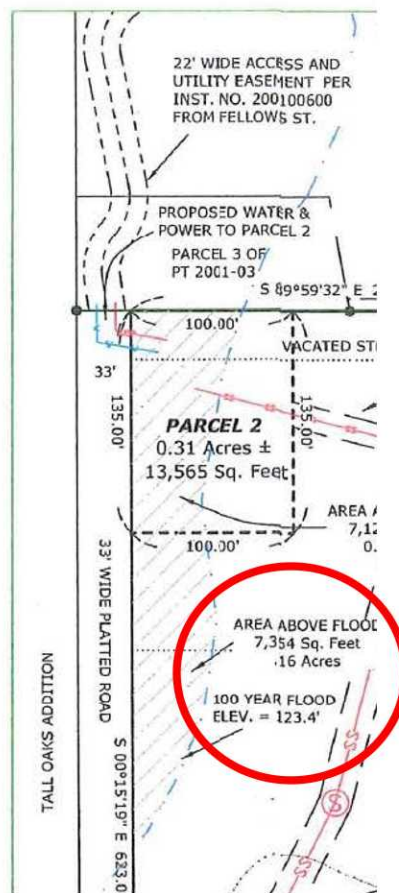
- Any potential future lots, including a depiction of the lot sizes;
- Existing and proposed utilities that will serve the potential future lots; and,
- Streets and access points for the potential future lots.

The City is then required to review the future development plan at the same time as the proposed tentative partition to ensure that it substantially conforms to the requirements of MZO Chapter 17.53 and that infrastructure to serve the potential future lots is consistent with current development requirements.

PROPOSED FINDING: NOT SATISFIED

DISCUSSION: The proposed partition would result in the creation of two new parcels (Parcels 1 and 2), and the retention of a third parcel (Parcel 3) that would contain 6.43 acres. The tentative partition map submitted by the applicant appears to show that Parcel 3 will contain more than 7,300 square feet of land area above the 100-year floodplain on the west side of Cozine Creek and more than 50,000 square feet of such land on the east side of the creek. As a result, it is evident that the subject property could be further divided and that the proposed partition is subject to the provision of MZO 17.53.080 that require the submission of a Future Development Plan.

The applicant has failed to submit a Future Development Plan that would have allowed the Planning Commission to ensure that any potential future parcels, as well as the utilities, streets and access points for the potential future parcels substantially conform to the requirements of MZO Chapter 17.53 and are consistent with current development standards. Therefore, this criterion has not been met.



3. MZO 17.53.100 – Creation of Streets

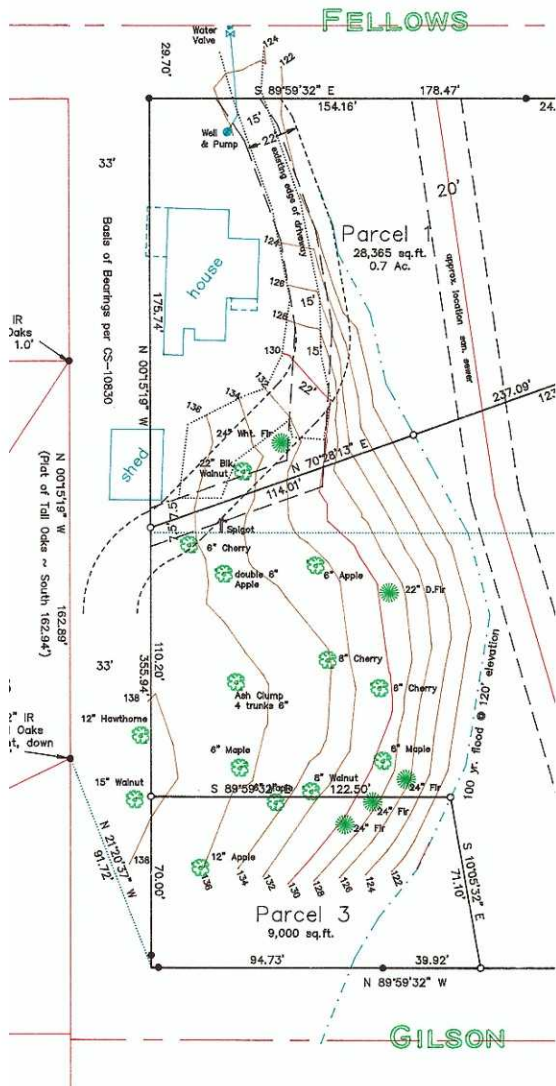
A private easement may be approved for access to a proposed new parcel in a partition only under limited circumstances, such as when it is the only reasonable method to access the rear portion of a lot that is unusually deep. However, a private easement may only be granted for access to “not more than three (3) parcels including the original parcel.”

PROPOSED FINDING: NOT SATISFIED

DISCUSSION: As noted in the Staff Report, the applicant did not submit any response to address this approval criterion. However, staff has advocated the position that:

“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.”

However, a review of prior land-use decision MP 7-00, Partition Plat 2001-03, and Ordinance 4741 clearly show that they pertained to the partition of property located immediately north of



the subject property. The matter of whether to allow the partition of the subject property, which would lead to the creation of an additional new parcel on the subject property, was not before the Planning Commission or City Council at that time. Nevertheless, the staff report appears to urge the Planning Commission to find that a land use decision and ordinance adopted two decades ago somehow granted permission for unlimited number of future parcels on the subject property to utilize the private easement in variance to the three (3) parcel limitation set forth in MZO 17.53.100.

Staff's interpretation of the meaning and effect of the previous land use decisions is not supported by provisions of the City's zoning ordinance or the language in the decisions themselves. It is true that the prior land use decision and vacation ordinance acknowledged that the private easement would allow access to the subject parcel; however, allowing access to an existing parcel of land is very different from authorizing access to an unlimited number of future parcels to be created by future partition or subdivision proceedings. If the applicant desires to create the new proposed Parcel 2 utilizing the existing narrow driveway easement for access, they must establish that a variance to the three (3) parcel limitation set forth in MZO 17.53.100 is appropriate.

Since the applicant has withdrawn their request for a variance to 17.53.100, the Planning Commission must apply the ordinance as written and find that the creation of proposed Parcel 2 is not allowed as it would exceed the number of parcels allowed to be accessed off a single private easement.

4. COMP PLAN POLICY 80.00

In proposed residential developments, distinctive or unique natural features such as wooded areas, isolated preservable trees, and drainage swales shall be preserved wherever feasible.

PROPOSED FINDING: NOT SATISFIED

DISCUSSION: As noted in the Staff Report, the applicant did not submit any response to address this approval criterion. In addition, as noted above, the applicant has failed to submit a tentative partition plat that contains the following required information:

- Contour lines related to City datum and having minimum intervals of two (2) feet; MZO 17.53.060(A)(9)
- The location and direction of water courses; MZO 17.53.060(A)(10)
- The location of any natural features such as “rock outcroppings, designated wetlands, wooded areas, and natural hazards.” MZO 17.53.060(A)(11)

Without this information, the Planning Commission is kept in the dark regarding the location of distinctive or unique natural features on the subject property, and lacks sufficient evidence to find that the proposed creation of Parcels 1 and 2 for residential development will ensure that those distinctive or unique natural features (such as wooded areas, isolated preservable trees, and drainage swales) would be preserved on the subject property. The proposed condition of approval is not sufficient to find compliance with Policy 80.00.

5. COMP PLAN POLICY 99.00

An adequate level of urban services shall be provided prior to or concurrent with all proposed residential development, as specified in the acknowledged Public Facilities Plan. Services shall include, but not be limited to:

3. *Streets within the development and providing access to the development, improved to city standards (as required).*

PROPOSED FINDING: NOT SATISFIED with respect to Streets providing access to the proposed development.

DISCUSSION: As noted in the Staff Report, the applicant did not submit any response to address this approval criterion, and the draft decision document prepared by staff completely omits any proposed findings related to the adequacy of streets providing access to future residential development within proposed Parcels 1 and 2, as required by Policy 99.00.



With respect to proposed Parcel 2, there is no public street providing direct access to the parcel. As discussed above, the existing private driveway easement may not be used to access the proposed additional parcel without a variance (which has not been applied for). In addition, without an additional dedication of right-of-way, the driveway is not capable of being improved to meet urban service level standards for an alleyway, let alone a local residential street, as described in MZO Section 17.53.101.

6. COMP PLAN POLICY 132.62.20

The City of McMinnville shall consider and apply the goals, policies, planning principles, recommended projects, implementation strategies, and maps contained in the McMinnville TSP in the review of land use actions and development applications.

PROPOSED FINDING: NOT SATISFIED with respect to proposed Parcel 2.

DISCUSSION: As noted in the Staff Report, the applicant did not submit any response to address this approval criterion. In addition, the draft decision document prepared by staff completely omits any proposed findings related to how proposed Parcel 2 complies with Policy 132.62.20. As a result, the burden of proof has not been met.

SUMMARY

The applicant has failed to meet their burden of proving that the proposed minor partition would satisfy all applicable provisions of the McMinnville Comprehensive Plan and Zoning Ordinance. It is our position that, at the very least, the western portion of the subject property is not suitable for the creation of one or more new parcels or the associated residential development that would follow. We request that the Planning Commission deny application MP 6-20.

Sincerely,

David R. Koch

McMinnville Codes Pertaining to Flooding

The following McMinnville codes, plans, and policies pertain to flooding:

1. McMinnville Comprehensive Plan (*under contract to update in 2020*). The updated plan includes a Natural Hazards Inventory and Management Program Recommendations including information on flood hazards impacting the city.
2. McMinnville Municipal Code [17.48 – Flood Area Zone](#). This portion of the Community Development Code implements the Goal 7 policies of the Comprehensive Plan and regulates development within the floodplain.

Please review Volume I, Section 2 for additional information on this hazard.

Landslide

The steering committee determined that the City's probability for landslide is **moderate** and that their vulnerability to landslide is **low** for the city as a whole, but that there were sections of the West Hills within the city limits that have high probability of landslides and the vulnerability to people and property in this section of the city is high.

Volume I, Section 2 describes the characteristics of landslide hazards, history, as well as the location, extent, and probability of a potential event within the region.

Landslide susceptibility exposure for McMinnville is shown in Figure MA-7. Approximately 8% of McMinnville has very high or high, and approximately 12% moderate, landslide susceptibility exposure.¹³ In general, the areas of greater risk are located adjacent to rivers and creeks (including the South Yamhill River and Cozine Creek). The area of the city that has the highest landslide susceptibility is in the west hills that has high and moderate landslide susceptibility (extending beyond the UGB and to the north and south along NW Fox Ridge Road in the north and SW Redmond Hill Road in the south). This area is sparsely developed currently which reduces the city's vulnerability, however, there is land within the city's UGB in this region. Development in these areas should consider strategies to reduce landslide hazard risk, including the prohibition of development in the highest risk areas. Please see the DLCD and DOGAMI publication [Preparing for Landslide Hazards, A Land Use Guide for Oregon Communities](#) (October 2019).

Potential landslide-related impacts are adequately described within Volume I, Section 2, and include infrastructure damages, economic impacts (due to isolation, and/or arterial road closures), property damages, and obstruction to evacuation routes. Rain-induced landslides, and debris flows can potentially occur during any winter, and thoroughfares beyond City limits are susceptible to obstruction as well. There are two mapped historic landslides in the city adjacent to the Cozine Creek: (1) south end of SE Evans St, damages included a broken 21-inch sanitary sewer trunk line that was replaced, and (2) northeast of Oak Grove Way east of SE Baker St, damages included a 1,000 gallon gasoline tank that was relocated.

The most common type of landslides are slides caused by erosion. Slides move in contact with the underlying surface, are generally slow moving, and can be deep. Rainfall-initiated

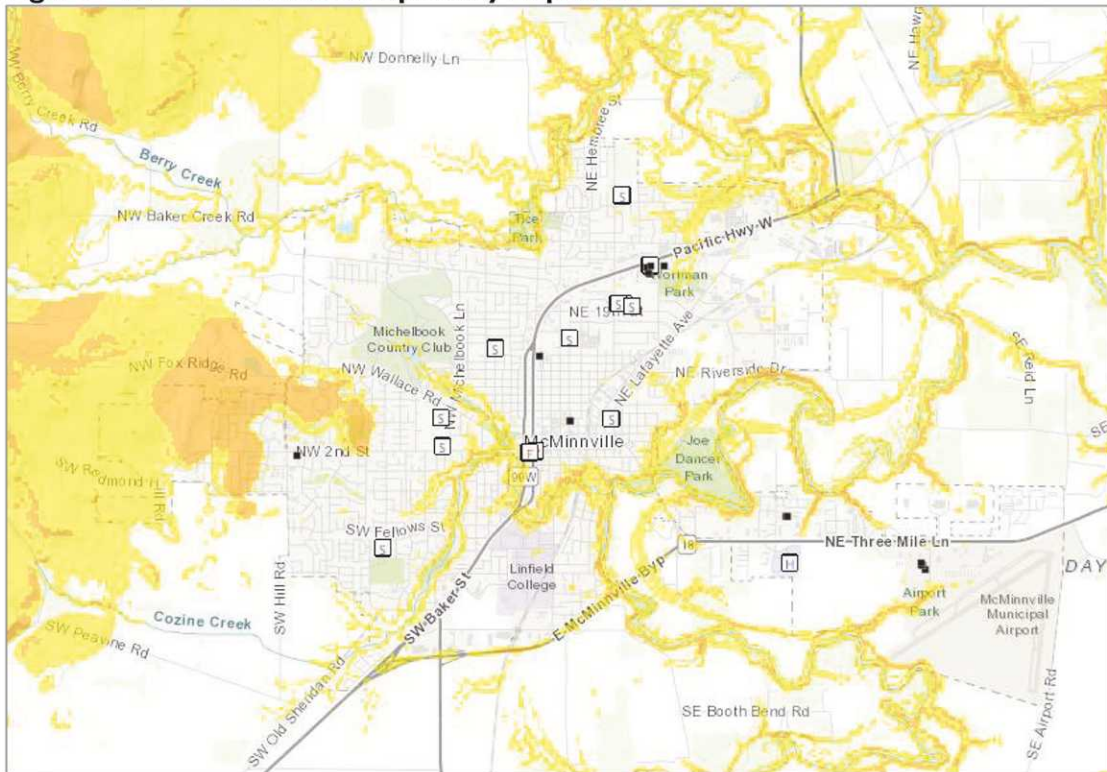
¹³ DOGAMI. [Open-File Report, O-16-02, Landslide Susceptibility Overview Map of Oregon](#) (2016)

landslides tend to be smaller; while earthquake induced landslides may be quite large. All soil types can be affected by natural landslide triggering conditions.

Vulnerability Assessment

Due to insufficient data and resources, McMinnville is currently unable to perform a quantitative risk assessment for this hazard. DOGAMI completed a statewide landslide susceptibility assessment in 2016 ([O-16-02](#)), general findings from that report are provided above and within Figure MA-7.

Figure MA-7 Landslide Susceptibility Exposure



| | |
|-----------|---|
| Low | Landsliding unlikely. Areas classified as Landslide Density = Low (less than 7%) and areas classified as Slopes Prone to Landsliding = Low. |
| Moderate | Landsliding possible. Areas classified as Landslide Density = Low to Moderate (less than 17%) and areas classified as Slopes Prone to Landsliding = Moderate OR areas classified as Landslide Density = Moderate (7%-17%) and areas classified as Slopes Prone to Landsliding = Low. |
| High | Landsliding likely. Areas classified as Landslide Density = High (greater than 17%) and areas classified as Slopes Prone to Landsliding = Low and Moderate OR areas classified as Landslide Density = Low and Moderate (less than 17%) and areas classified as Slopes Prone to Landsliding = High. |
| Very High | Existing landslides Landslide Density and Slopes Prone to Landsliding data were not considered in this category. Note: the quality of landslide inventory (existing landslides) mapping varies across the state. |

Source: [Oregon HazVu: Statewide Geohazards Viewer \(DOGAMI\)](#)

Note: To view detail click the link above to access Oregon HazVu

Response and recovery efforts will likely vary from minor cleanup to more extensive utility system rebuilding. Utility disruptions are usually local and terrain dependent. Damages may require reestablishing electrical, communication, and gas pipeline connections occurring from specific breakage points. Initial debris clearing from emergency routes and

high traffic areas may be required. Water and wastewater utilities may need treatment to quickly improve water quality by reducing excessive water turbidity and reestablishing waste disposal capability.

Mitigation Activities

Landslide mitigation activities listed here include current mitigation programs and activities that are being implemented by the City of McMinnville agencies or organizations.

City of McMinnville Codes Pertaining to Landslides

The following McMinnville codes, plans, and policies pertain to landslides:

1. McMinnville Comprehensive Plan (*under contract to update in 2020*). The updated plan includes a Natural Hazards Inventory and Management Program Recommendations including information on landslide and other geologic hazards impacting the city.
2. The City of McMinnville enforces the [Oregon Building Code](#) which includes provisions that address the potential for geologic hazards including landslides.

Please review Volume I, Section 2 for additional information on this hazard.

Severe Weather

Severe weather can account for a variety of intense, and potentially damaging hazard events. These events include windstorms and winter storms. The following section describes the unique probability, and vulnerability of each identified weather hazard.

Windstorm

The steering committee determined that the City's probability for windstorm is **high** and that their vulnerability to windstorm is **moderate**.

Volume I, Section 2 describes the characteristics of windstorm hazards, history, as well as the location, extent, and probability of a potential event within the region. Because windstorms typically occur during winter months, they are sometimes accompanied by flooding and winter storms (ice, freezing rain, and very rarely, snow). Other severe weather events that may accompany windstorms, including thunderstorms, hail, lightning strikes, and tornadoes are generally negligible for McMinnville.

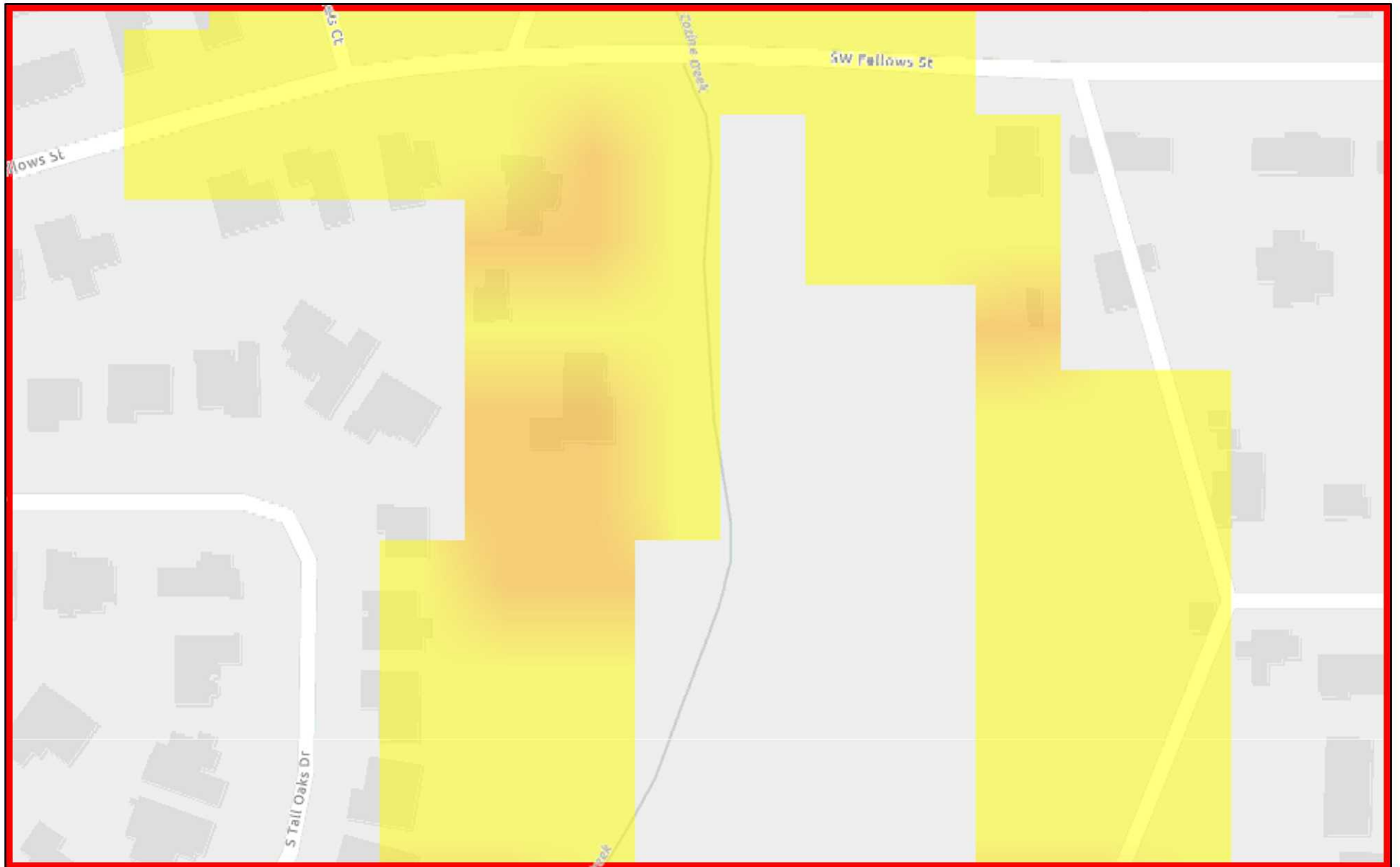
Volume I, Section 2 describes the impacts caused by windstorms, including power outages, downed trees, heavy precipitation, building damages, and storm-related debris. Additionally, transportation, and economic disruptions result as well.

Damage from high winds generally has resulted in downed utility lines, and trees usually limited to several localized areas. Electrical power can be out anywhere from a few hours to several days. Outdoor signs have also suffered damage. If the high winds are accompanied by rain (which they often are), blowing leaves, and debris clog drainage-ways, which in turn may cause localized urban flooding.

Please review Volume I, Section 2 for additional information on this hazard.

Winter Storm (Snow/Ice)

MP 6-20 Landslide Hazards



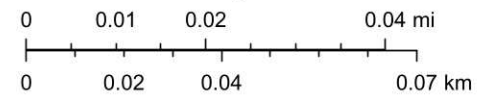
June 17, 2021

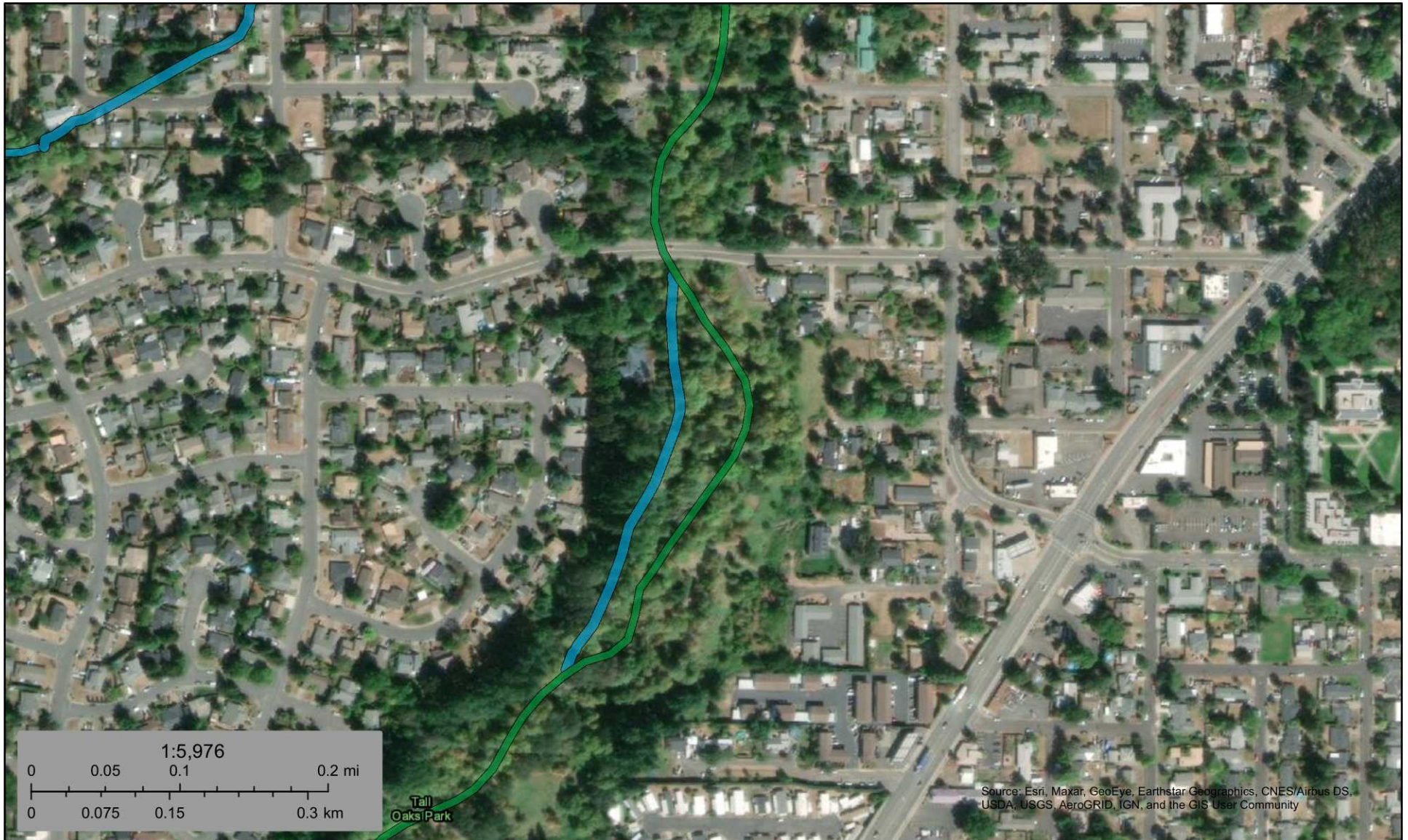
Landslide Hazard

- Low - Landsliding Unlikely
- Moderate - Landsliding Possible

- High - Landsliding Likely
- Very High - Existing Landslide

1:1,920



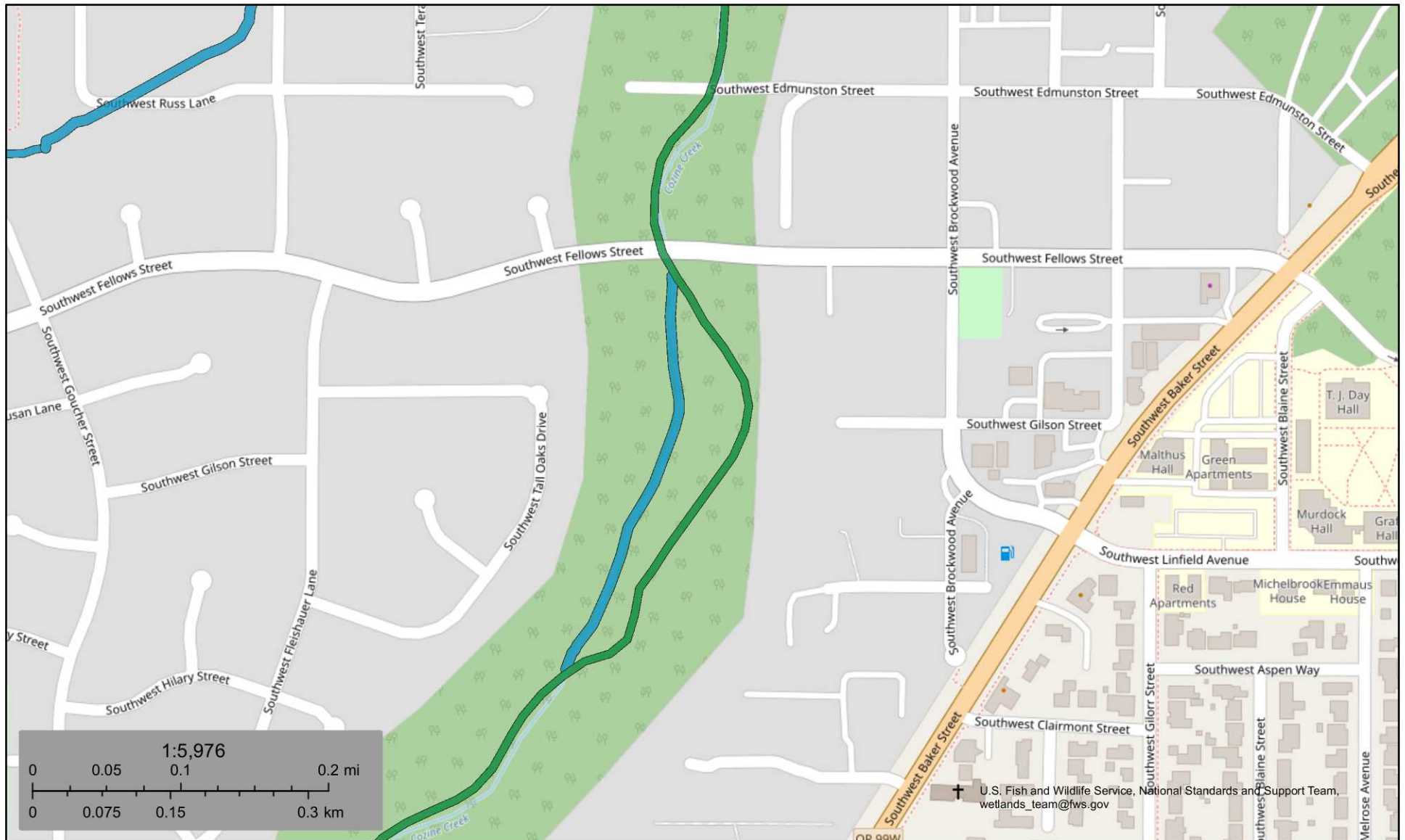


June 15, 2021

Wetlands

- | | | | | | |
|---|--------------------------------|---|-----------------------------------|---|----------|
|  | Estuarine and Marine Deepwater |  | Freshwater Emergent Wetland |  | Lake |
|  | Estuarine and Marine Wetland |  | Freshwater Forested/Shrub Wetland |  | Other |
| | |  | Freshwater Pond |  | Riverine |

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.



June 15, 2021

Wetlands

- | | | |
|--------------------------------|-----------------------------------|----------|
| Estuarine and Marine Deepwater | Freshwater Emergent Wetland | Lake |
| Estuarine and Marine Wetland | Freshwater Forested/Shrub Wetland | Other |
| | Freshwater Pond | Riverine |

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

From: [Walt Gowell](#)
To: [Heather Richards](#)
Subject: RE: Additional Submittal for MP-6-20 6.18.2021 Public Hearing
Date: Wednesday, August 4, 2021 1:53:52 PM
Attachments: [image001.png](#)

This message originated outside of the City of McMinnville.

Yes. That is correct.

From: Heather Richards <Heather.Richards@mcminnvilleoregon.gov>
Sent: Wednesday, August 4, 2021 12:54 PM
To: Walt Gowell <wgowell@hrglawyers.com>
Cc: steven macy <sdmacy20@outlook.com>; Sarah Sullivan <Sarah.Sullivan@mcminnvilleoregon.gov>
Subject: RE: Additional Submittal for MP-6-20 6.18.2021 Public Hearing

Hi Walt,

Just to confirm. COA #1 as currently proposed in the decision document and provided below will suffice.

1. All conditions of land-use decisions Minor Partition MP 7-00 and Ordinance No. 4741 shall remain in effect.

Have a great day!

Heather Richards, PCED
Planning Director
City of McMinnville
231 NE Fifth Street
McMinnville, OR 97128

503-474-5107 (phone)
541-604-4152 (cell)
Heather.Richards@mcminnvilleoregon.gov
www.mcminnvilleoregon.gov

The City of McMinnville, due to budget shortfalls, has implemented an employee furlough program. Until further notice I will not be working on Mondays. All of our development services programs (building, code compliance, engineering and planning) will still be offered Monday – Friday, 8:00 am – 5:00 pm. We will do everything that we can to maintain timely customer service, but due to the reduced work week for staff you may experience some delays in our programs. We apologize in advance and appreciate your patience as we work through this situation.

From: Walt Gowell <wgowell@hrglawyers.com>
Sent: Wednesday, August 4, 2021 11:55 AM
To: Heather Richards <Heather.Richards@mcminnvilleoregon.gov>
Cc: steven macy <sdmacy20@outlook.com>; Sarah Sullivan <Sarah.Sullivan@mcminnvilleoregon.gov>
Subject: RE: Additional Submittal for MP-6-20 6.18.2021 Public Hearing

This message originated outside of the City of McMinnville.

Heather:

After further consultation with our clients, our clients have directed that proposed condition # 1 as referenced in the email below is acceptable to them in its current form, and our client's request to modify Condition of Approval # 1 is therefore and hereby withdrawn.

Walt Gowell

From: Jamie Fleckenstein <Jamie.Fleckenstein@mcminnvilleoregon.gov>
Sent: Thursday, June 17, 2021 1:57 PM
To: Walt Gowell <wgowell@hrglawyers.com>; Heather Richards <Heather.Richards@mcminnvilleoregon.gov>
Cc: steven macy <sdmacy20@outlook.com>; Sarah Sullivan <Sarah.Sullivan@mcminnvilleoregon.gov>
Subject: RE: Additional Submittal for MP-6-20 6.18.2021 Public Hearing

Hi Walt,

I have received your additional testimony and will enter it into the record and provide copies to the Commissioners.

Thank you,



Jamie Fleckenstein, PLA

Associate Planner

231 NE 5th Street, McMinnville, OR 97128

Desk: 503-474-4153

www.mcminnvilleoregon.gov/planning

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From: Walt Gowell <wgowell@hrglawyers.com>

Sent: Thursday, June 17, 2021 12:48 PM

To: Heather Richards <Heather.Richards@mcminnvilleoregon.gov>

Cc: Jamie Fleckenstein <Jamie.Fleckenstein@mcminnvilleoregon.gov>; steven macy <sdmacy20@outlook.com>

Subject: RE: Additional Submittal for MP-6-20 6.18.2021 Public Hearing

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This message originated outside of the City of McMinnville.

Heather and Jamie:

Since neither Steve Macy nor I will be available for tonight's public hearing I have attached an additional letter and copies of three germane 2000 and 2001 letters relating to proposed Condition of Approval # 1 in the staff report.

Please enter this into the record of tonight's meeting and provide a copy to all of the PC members for their review prior to the meeting if possible.

I am available to discuss at 971-237-4998 this afternoon if you have any questions.

Walt

From: Heather Richards <Heather.Richards@mcminnvilleoregon.gov>
Sent: Friday, May 14, 2021 2:45 PM
To: Walt Gowell <wgowell@hrglawyers.com>
Subject: RE: Submittal re MP-6-20

Thanks Walt,

We will review and get back to you if we have any questions.

Have a great day!

Heather Richards, PCED
Planning Director
City of McMinnville
231 NE Fifth Street
McMinnville, OR 97128

503-474-5107 (phone)

541-604-4152 (cell)

Heather.Richards@mcminnvilleoregon.gov

www.mcminnvilleoregon.gov

The City of McMinnville, due to budget shortfalls, has implemented an employee furlough program. Until further notice I will not be working on Mondays. All of our development services programs (building, code compliance, engineering and planning) will still be offered Monday – Friday, 8:00 am – 5:00 pm. We will do everything that we can to maintain timely customer service, but due to the reduced work week for staff you may experience some delays in our programs. We apologize in advance and appreciate your patience as we work through this situation.

From: Walt Gowell <wgowell@hrglawyers.com>
Sent: Friday, May 14, 2021 2:37 PM
To: Heather Richards <Heather.Richards@mcminnvilleoregon.gov>
Subject: Submittal re MP-6-20

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This message originated outside of the City of McMinnville.

Heather:

See attached for your consideration a written submission from our client Steve and JacElaine Macy regarding your pending partition application Docket No. MP-6-20.

Please call me if you have any questions or wish to discuss the submittal.

Walt Gowell

**CITY OF MCMINNVILLE
PLANNING DEPARTMENT
231 NE FIFTH STREET
MCMINNVILLE, OR 97128**

503-434-7311

www.mcminnvilleoregon.gov



DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF A TENTATIVE PARTITION AT 835 SW HILARY STREET

- DOCKET:** MP 6-20 (Tentative Partition)
- REQUEST:** Approval to partition 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 residential development. The proposed 0.31-acre parcel would be accessed by private easement from SW Fellows Street while the 6.43- and 0.48-acre parcels would be accessed from SW Hilary Street.
- LOCATION:** 835 SW Hilary Street (Tax Lot 1600, Section 29AB, T. 4 S., R. 4 W., W.M.)
- ZONING:** R-2, R-3, F-P (Single-Family Residential, Two-Family Residential, Flood Plain)
- APPLICANT:** Steve and Mary Allen (property owners)
- STAFF:** Jamie Fleckenstein, Associate Planner
- DATE DEEMED COMPLETE:** May 20, 2021
- DECISION MAKING BODY & ACTION:** The McMinnville Planning Commission makes the final decision, unless the Planning Commission's decision is appealed to the City Council.
- DECISION DATE & LOCATION:**
- June 17, 2021, Community Development Center, 231 NE 5th Street, McMinnville, Oregon, and Zoom Online Meeting ID 927 1251 1996.
 - July 15, 2021, Community Development Center, 231 NE 5th Street, McMinnville, Oregon, and Zoom Online Meeting ID
 - August 19, 2021, Community Development Center, 231 NE 5th Street, McMinnville, Oregon, and Zoom Online Meeting ID
- PROCEDURE:** An application for a Tentative Partition is processed in accordance with the procedures in Section 17.72.110 of the Zoning Ordinance. As allowed by Section 17.72.110(B) a public hearing was requested, requiring the application to be processed in accordance with the Applications-Public Hearings procedures specified in Section 17.72.120 of the Zoning Ordinance.

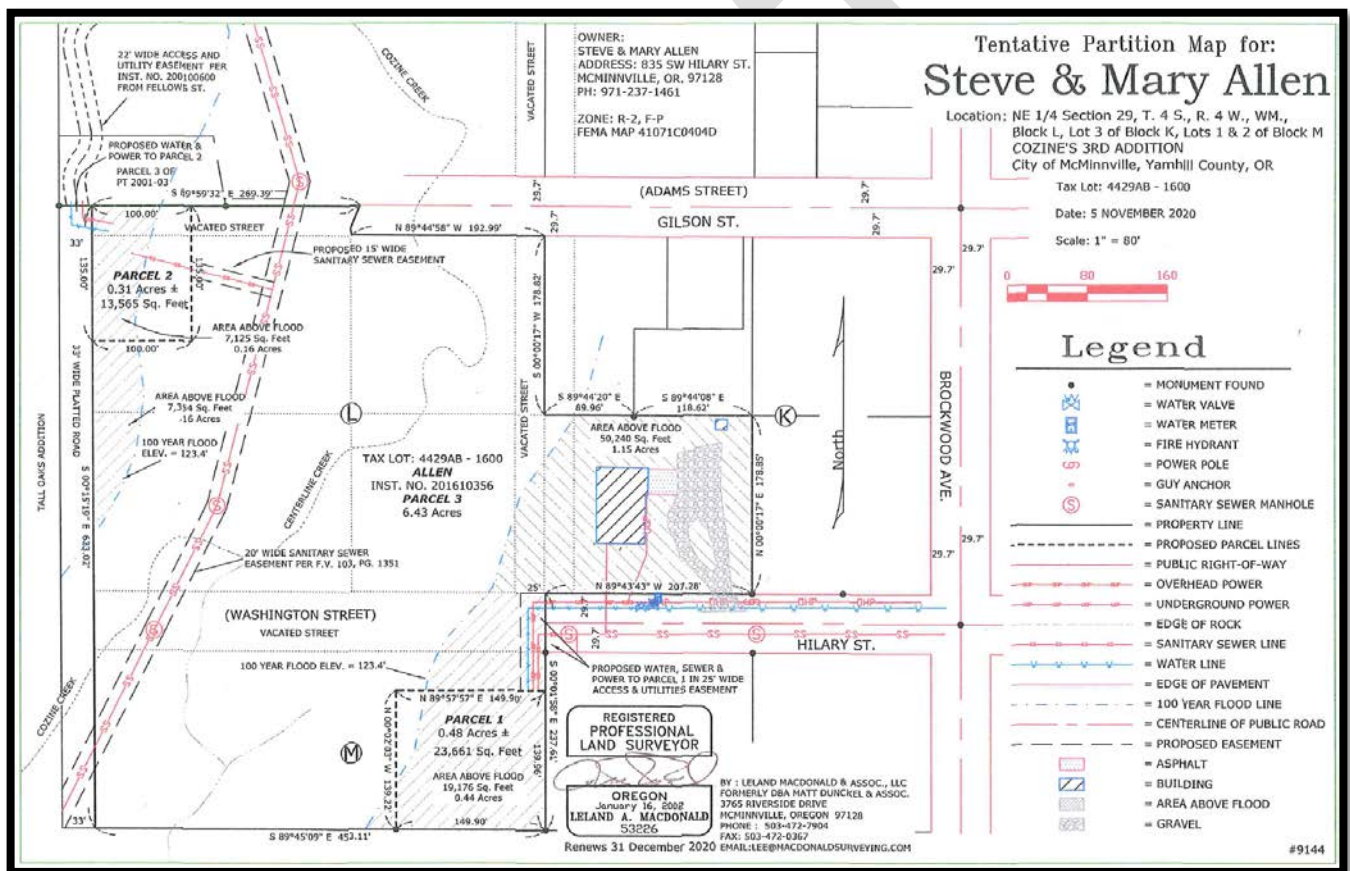
I. APPLICATION SUMMARY:

Subject Property & 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 acres (Parcel 1), 0.31 acres (Parcel 2), and 0.48 acres (Parcel 3) in size to allow for future residential development of the parcels. Proposed Parcel 1 has 1.15 acres (50,240 sf) of land that is not in the floodplain. Proposed Parcel 2 has 0.44 acres (19,176 sf) of land that is not in the floodplain. Proposed Parcel 3 has 0.16 acres (7,125 sf) of land that is not in the floodplain. **See Applicant’s Proposed Partition Plan, Figure 1 below.**

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.

Figure 1. Applicant’s Proposed Partition Plan



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 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

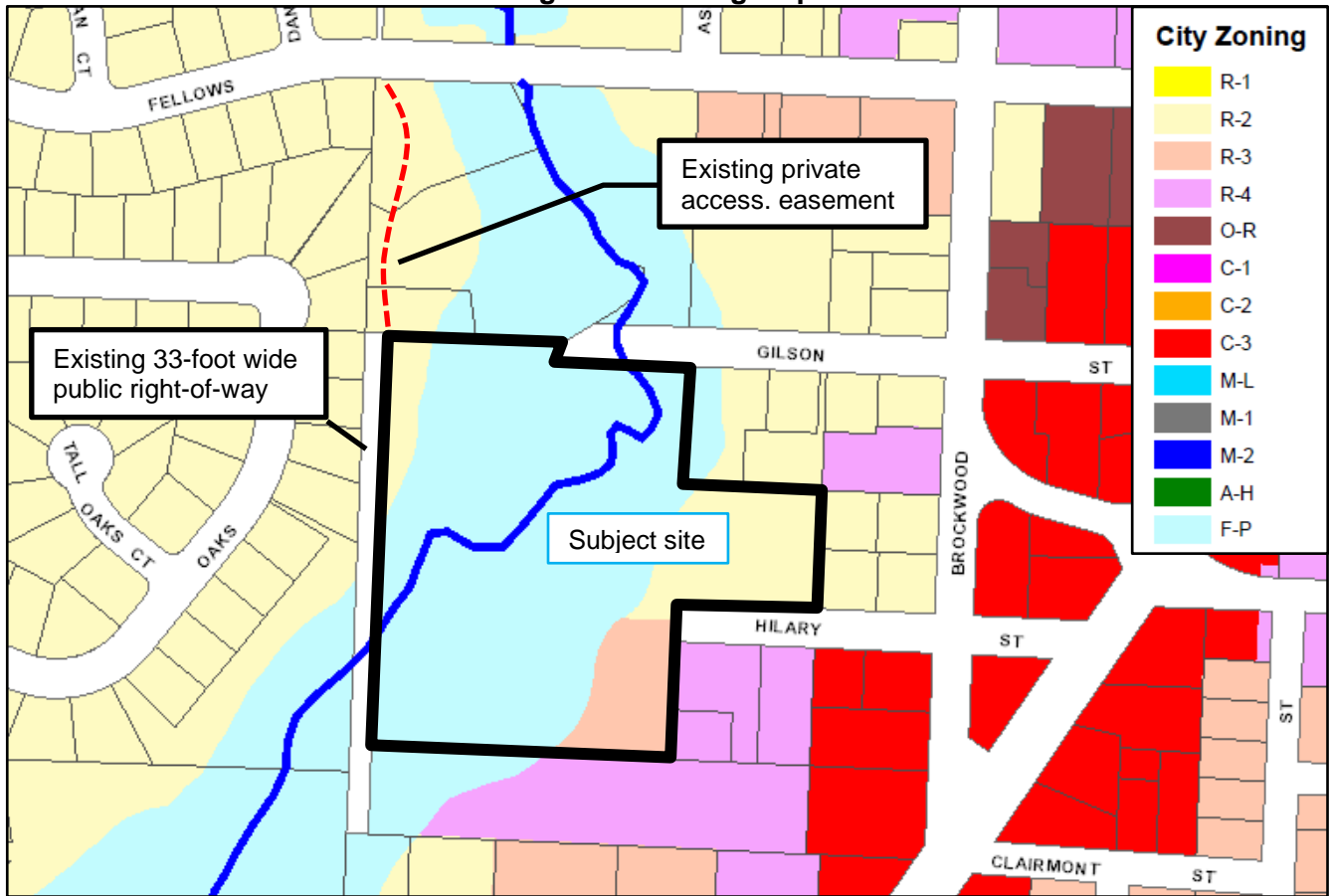
Hilary Street. The portion of the site east of Cozine Creek zoned R-2 and R-3 is accessed from Hilary Street. The portion of the site west of Cozine Creek zoned R-2 is accessed via private easement from Fellows Street.

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 subject site and the Tall Oaks subdivision. **See Vicinity Map (Figure 2), and Zoning Map (Figure 3) below.**

Figure 2. Vicinity Map



Figure 3. Zoning Map



Summary of Criteria

The application is subject to the standards and procedures established 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 goals and policies in Volume II of the Comprehensive Plan are also independent approval criteria for all land use decisions.

The specific criteria for reviewing tentative partition plans is Section 17.53.060 the McMinnville Municipal Code per below. As a Type II land-use application, the criteria are clear and objective, and if the criteria are achieved than the application needs to be approved.

17.53.060 Submission of Tentative Partition Plan. An application to partition land shall be submitted in accordance with the application submittal procedures as stated in Sections 17.72.020 through 17.72.070 and shall be reviewed and approved under the following procedure:

- A. There shall be submitted to the Planning Department, a completed tentative partition application, applicable fees, and 15 (fifteen) copies of a tentative partition plan drawn to scale with sufficient information to show the following:
 1. The date, north point, scale, a copy of recorded deed, and any conveyed rights to define the location and boundaries of the parcels to be partitioned;

2. Name, address and phone number of the recorded owner(s), authorized agents or representatives, engineer or surveyor, and any assumed business names filed or to be filed by the applicant with the Corporation Commission;
 3. Approximate size of the parcel under a single ownership or, if more than one ownership is involved, the total contiguous acreage of all owners of land directly involved in the partitioning;
 4. For land adjacent to and within the parcel to be partitioned, show locations, names, and existing widths of all streets and easements of way; locations, width, and purpose of all other existing easements; and location and size of sewer and water lines and drainage ways;
 5. Outline and location of existing buildings to remain in place;
 6. Parcel layout showing size and relationship to existing or proposed streets and utility easements;
 7. Location and dimension of any existing or planned curb-side planting strip which may border the subject site. (Amended 12/9/97 by Ordinance 4654B.)
 8. A Title Report or Partition Guarantee prepared within 60 (sixty) days of the application date.
 9. Contour lines related to City datum and having minimum intervals of two (2) feet.
 10. Location and direction of water courses, and the location of areas within the 100-year floodplain as indicated on the most recent Flood Insurance Rate Maps as prepared by the Federal Emergency Management Agency.
 11. Location of any natural features such as rock outcroppings, designated wetlands, wooded areas, and natural hazards.
 12. Source, method and preliminary plans for domestic and other water supplies, sewage disposal, storm water disposal and other drainage facility plans, and all other utilities.
 13. Such additional information as required by the Planning Director.
- B. Upon receiving a complete application for a partition, notification and review shall be provided as stated in Section 17.72.110. The Director's decision shall be based upon a finding that the tentative plan substantially conforms to the requirements of this chapter.
- C. The Planning Director may require such dedication of land and easements and may specify such conditions or modifications in the plan as are deemed necessary to carry out the McMinnville Comprehensive Plan. In no event, however, shall the Planning Director require greater dedications or conditions than could be required if the entire parcel were subdivided.
1. If the parcel of land to be partitioned, being large in size, shall be divided into more than three parcels within any one calendar year, full compliance with all requirements for a subdivision plat may be required if the Planning Director should determine, in his judgment, that the entire parcel is in the process of being subdivided.
 2. Where a parcel is proposed to be divided into units of one acre or more, the Planning Director shall require an arrangement of parcels and streets such as to permit future partitions or subdivision in conformity to the street requirements and other requirements contained in this ordinance. Refer to Section 17.53.080 for future development plan requirements.
 3. For notice of decision, effective date of decision and the appeal process, refer to Chapter 17.72 (Applications and Review Process).
 4. The effective date of the Planning Director's decision shall be 15 (fifteen) calendar days following the date the notice of decision is mailed unless an appeal is filed.
- D. Approval of a Tentative Partition Plat shall be valid for a one-year period from the effective date of approval. Upon written request, the Director may approve a one-year extension of the decision. Additional extensions shall require the approval of the Planning Commission.

Additionally, as required by the Land Division Standards, lots created by partition are required to conform to the zoning requirements of the area. The R-2 (Single-Family Residential) zone has a minimum lot size of 7,000 square feet, and the R-3 (Two-Family Residential) zone has a minimum lot size of 6,000 square feet.

Utilities are required to be provided to each proposed parcel, and the proposed partition indicates utilities are, or can be, provided to each parcel.

And proposed lots are also required to either abut public streets or to have private access easements that access public streets in order to provide vehicular access to the proposed parcels.

Both Proposed Parcels 1 and 2 are provided access through private access easements and public rights-of-way. Proposed Parcel 1 will have a private access easement from Hilary Street as part of the partition plat. And proposed Parcel 2 has existing private access rights to an private access easement from Fellows Street established by Instrument #200100600, granted by Partition Plat 2001-03. However, access to the parcel from the private access easement will need to be achieve through existing unimproved public right-of-way. Extension of an access drive through the unimproved right-of-way would likely require the removal of public trees when the right-of-way.

Summary of Issues:

Neighboring property owners and residents (primarily to the west of the subject site in the Tall Oaks subdivision) requested a public hearing with the McMinnville Planning Commission and have provided public testimony identifying the following issues:

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).

Condition of Approval #2 is recommended to help mitigate the concern raised in public testimony and to adhere to the provisions of the municipal code:

Condition of Approval #2: 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

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.

Conditions of Approval #8 and #10 are recommended 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.

Condition of Approval #8: That the applicant shall obtain agency permits (DEQ, DSL, ACOE etc.) as necessary, and provide copies of approved permits to the City, prior to any permit issuance or site disturbance for the installation of the sewer service for Parcel 1.

Condition of Approval #10: That the applicant shall obtain agency permits (DEQ, DSL, ACOE etc.) as necessary, and provide copies of approved permits to the City, prior to any permit issuance or site disturbance for the installation of the sewer service for Parcel 2.

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.

II. CONDITIONS:

1. All conditions of land-use decisions Minor Partition MP 7-00 and Ordinance No. 4741 shall remain in effect.
2. 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.
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.

Parcel 1:

4. That the applicant shall record a private access easement for Parcel #1 as represented on the Tentative Partition Plan.
5. That the applicant shall submit for approval an engineered plan for the extension of the public sanitary sewer main on Hilary Street and sewer service for Parcel #1. The Public sewer extension and service for Parcel #1 shall be installed and accepted by the City prior to the signing of the partition plat.
6. That the applicant shall enter into a Construction Permit Agreement with the City and pay associated fees for the extension of the sanitary sewer main on Hilary Street. Contact Larry Sherwood (503) 434-7312 for details.
7. That the applicant shall provide a storm drainage plan for Parcel 1 including any easements necessary from the parcel to point of discharge.
8. That the applicant shall obtain agency permits (DEQ, DSL, ACOE etc.) as necessary, and provide copies of approved permits to the City, prior to any permit issuance or site disturbance for the installation of the storm drainage facilities for Parcel 1.
9. That storm drainage facilities for Parcel 1 shall be installed from the point of discharge to the proposed property line prior to the signing of the partition plat.

Parcel 2:

10. That the applicant shall obtain agency permits (DEQ, DSL, ACOE etc.) as necessary, and provide copies of approved permits to the City, prior to any permit issuance or site disturbance for the installation of the sewer service for Parcel 2.

11. That sewer service for Parcel 2 shall be installed from the main to the proposed property line prior to the signing of the partition plat.
12. That private sanitary sewer easement for this service shall be dedicated as part of the partition plat.
13. That the applicant shall provide a storm drainage plan for Parcel 2 including any easements necessary from the parcel to point of discharge.
14. That the applicant shall obtain agency permits (DEQ, DSL, ACOE etc.) as necessary, and provide copies of approved permits to the City, prior to any permit issuance or site disturbance for the installation of the storm drainage facilities for Parcel 2.
15. That storm drainage facilities for Parcel 2 shall be installed from the point of discharge to the proposed property line prior to the signing of the partition plat.

Street Improvements:

16. Applicant shall enter into a Revocable License and Right to use Public Right of Way, prior to the approval of the final partition plat, for the extension of the access easement driveway across the unimproved public right-of-way to proposed Parcel 1.
17. Applicant shall enter into a Revocable License and Right to use Public Right of Way, prior to the approval of the final partition plat, for the extension of the access easement driveway across the unimproved public right-of-way to proposed Parcel 2.
18. Applicant shall consent and agree to a waiver of rights of remonstrance for future street improvements on Hilary Street prior to the approval of the final partition plat.

Final Partition Plat and Approval:

19. That two (2) copies of the final partition plat mylars shall be submitted to the City Engineer for the appropriate City signatures. The signed plat mylars will be released to the applicant for delivery to McMinnville Water and Light and the County for appropriate signatures and for recording.
20. That this partition will not be considered a legal partition until such time that a copy of the recorded document is provided to the City of McMinnville's Planning Department.
21. That approval of this tentative plat will expire 12 (twelve) months after the effective date of decision. If the final plat has not been submitted prior to expiration of the tentative plat, or a written request for an extension of this approval has not been submitted and approved within that same period, the applicant must resubmit a tentative plat for further consideration and comply with regulations and conditions applicable at that time.

III. ATTACHMENTS:

1. MP 6-20 Application and Attachments (on file with the Planning Department)
2. Testimony Received (on file with the Planning Department)
 - a. Letter received May 5, 2021 from Earl & Sheryl Anderson
 - b. Letter received May 10, 2021 from Carole Hansen
 - c. Letter received May 14, 2021 from Walt Gowell on behalf of Steve & JacElaine Macy
 - d. Letter received May 17, 2021 from Brad & Shirley Robison
 - e. Letter received May 18, 2021 from Carole Hansen

- f. Letter received May 18, 2021 from James & Cheryl Lambright
 - g. Letter received May 18, 2021 from Linda Jordan
 - h. Letter received May 19, 2021 from Earl & Sheryl Anderson
 - i. Letter received May 19, 2021 from Robert Tracey
 - j. Letter received May 19, 2021 from Rigo & Susan Perez
 - k. Petition received May 19, 2021 from TONCCA (Tall Oaks Neighborhood Cozine Creek Advocates)
 - l. Letter received May 19, 2021 from Cheryl Lambright
 - m. Letter received June 17, 2021 from David Koch, Attorney at Law, LLC
 - n. Powerpoint received June 18, 2021 from Earl Anderson (copy of presentation at the June 17 public hearing)
 - o. Letter received June 18, 2021 from Walt Gowell, Haugeberg, Rueter, Gowell, Fredricks & Higgins, P.C.
 - p. Email received August 4, 2021, from Walt Gowell, Haugeberg, Rueter, Gowell, Fredrick & Higgins, P.C.
3. Staff Reports (on file with the Planning Department)
- a. Staff Report to Planning Commission, June 17, 2021
 - b. Powerpoint provided at Planning Commission public hearing, June 17, 2021
 - c. Staff Report to Planning Commission, July 15, 2021
 - d. Staff Report to Planning Commission, August 19, 2021

IV. COMMENTS:

Agency Comments

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Waste Water Services, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Comcast; Recology; Oregon Department of State Lands; and Northwest Natural Gas. The following comments were received:

- McMinnville Building Department

No building code concerns.

- McMinnville Engineering Department

Parcel #1:

- Applicant shall submit for approval an engineered plan for the extension of the public sanitary sewer main on Hilary Street and sewer service for Parcel #1. The Public sewer extension and service for Parcel #1 shall be installed and accepted by the City prior to the signing of the partition plat.
- Applicant shall enter into a Construction Permit Agreement with the City and pay associated fees for the extension of the sanitary sewer main on Hilary Street . Contact Larry Sherwood (503) 434-7312 for details.
- Applicant shall provide a storm drainage plan for the parcel including any easements necessary from the parcel to point of discharge.
- Applicant shall obtain agency permits (DEQ, DSL, ACOE etc.) as necessary, and provide copies of approved permits to the City, prior to any permit issuance or site disturbance for the installation of the storm drainage facilities for this parcel.
- The storm drainage facilities for Parcel #2 shall be installed from the point of discharge to the proposed property line prior to the signing of the partition plat.

Parcel #2:

- Applicant shall obtain agency permits (DEQ, DSL, ACOE etc.) as necessary, and provide copies of approved permits to the City, prior to any permit issuance or site disturbance for the installation of the sewer service for this parcel.
- The sewer service for Parcel #2 shall be installed from the main to the proposed property line prior to the signing of the partition plat.
- A private sanitary sewer easement for this service shall be dedicated as part of the partition plat.
- Applicant shall provide a storm drainage plan for the parcel including any easements necessary from the parcel to point of discharge.
- Applicant shall obtain agency permits (DEQ, DSL, ACOE etc.) as necessary, and provide copies of approved permits to the City, prior to any permit issuance or site disturbance for the installation of the storm drainage facilities for this parcel.
- The storm drainage facilities for Parcel #2 shall be installed from the point of discharge to the proposed property line prior to the signing of the partition plat.

Street Improvement Conditions:

- Applicant shall enter into a Revocable License and Right to use Public Right of Way, prior to the approval of the partition, for the extension of the access easement driveway across the unimproved public right-of-way to proposed Parcel 2
- Applicant shall consent and agree to a waiver of rights of remonstrance for future street improvements on Hilary Street prior to the approval of the partition.
- Applicant shall enter into a Revocable License and Right to use Public Right of Way, prior to the approval of the partition, for the extension of the access easement driveway across the unimproved public right-of-way to proposed Parcel 1.

- McMinnville Water & Light

Power: Additional utility easement may be needed to extend power to Parcel 2.

Water: Water service PARCEL 2 is at the Fellows right-of-way on the west side of the driveway entrance. Applicant to pay for water meter installation and is responsible for all plumbing behind the water meter.

Water service to PARCEL 1 does not exist and will need to be installed in the Hilary right-of-way. All costs for McMinnville Water and Light to install the service and water meter is the applicants responsibility. Applicant is responsible for all plumbing behind the water meter.

Public Comments

Notice of this request was mailed to property owners located within 300 feet of the subject site. Notice of the public hearing was provided in the News Register on Friday, June 11, 2021. As of the date of the issuance of this Decision Document to the Planning Commission on Thursday, June 10, 2021, the following public testimonies have been received by the Planning Department:

1. Letter received May 5, 2021 from Earl & Sheryl Anderson expressing opposition to Parcel #2 of MP 6-20, citing concerns about loss of trees due to infrastructure and future residential development, and concerns about decreased safety with increased motor vehicle use of private easement.

2. Letter received May 10, 2021 from Carole Hansen expressing opposition to Parcel #2 of MP 6-20 citing concerns about development behind her home, development too close to the floodplain, loss of trees, emergency vehicle access, and decreased property values.
3. Letter received May 14, 2021 from Walt Gowell on behalf of Steve & JacElaine Macy, proposing suggested conditions of approval to require enforcement of a 15-foot wide driveway, continued lawful access to Parcel 3 of Partition Plat 2001-03, clear assignment of easement improvement costs to the Applicant, and incorporation of the existing easement terms into the approved Partition Plat.
4. Letter received May 17, 2021 from Brad & Shirley Robison expressing concern about the loss of trees and diminished lifestyle, and expressing desire for mitigation for adjacent Tall Oaks properties.
5. Letter received May 18, 2021 from Carole Hansen expressing opposition to Parcel #2 of MP 6-20 citing concerns about development behind her home and loss of trees from the undeveloped right-of-way, and expressing desire for mitigation by allowing trees and vegetation within the right-of-way to remain in place.
6. Letter received May 18, 2021 from James & Cheryl Lambright expressing opposition to Parcel #2 of MP 6-20 citing concerns about loss of trees for residential development and decreased property values and livability of adjacent properties.
7. Letter received May 18, 2021 from Linda Jordan expressing opposition to MP 6-20 citing concerns about visual impact, congestion, and noise from residential development behind her home.
8. Letter received May 19, 2021 from Earl & Sheryl Anderson expressing opposition to Parcel #2 of MP 6-20, citing concerns about ambiguous language on the applicant's tentative partition plan and development of the unimproved right-of-way and resulting loss of trees.
9. Letter received May 19, 2021 from Robert Tracey expressing opposition to MP 6-20, citing concerns about decreased safety at Fellows Street with increased motor vehicle use of private easement, and loss of trees resulting in increased negative climate change impacts.
10. Letter received May 19, 2021 from Rigo & Susan Perez expressing opposition to MP 6-20, citing concerns about the loss of community and lifestyle, loss of privacy due to future residential development, rodents during construction period, decreased safety at Fellows Street with increased motor vehicle use of private easement, and decreased property values of adjacent properties.
11. Petition received May 19, 2021 from TONCCA (Tall Oaks Neighborhood Cozine Creek Advocates) expressing opposition to Parcel #2 of MP 6-20, citing concerns about development of undeveloped right-of-way, loss of a perceived protected natural area subject to conditional use approval criteria, diminished Cozine Creek greenway and neighborhood livability, decreased property values specifically related to Great Neighborhood Principle #1 - Natural Feature Preservation, proposed lot size of Parcel #2, loss of trees, encroachment of Parcel #2 on floodplain, safety and economic loss due to development in the floodplain, and the lack of inclusion of wooded areas on tentative partition plan for compliance with MMC 17.53.060(A)(7).
12. Letter received May 19, 2021 from Cheryl Lambright requesting a public hearing for MP 6-20.
13. Letter received June 17, 2021 from David Koch, Attorney at Law, LLC, representing Earl Anderson, 1100 SW Tall Oaks Drive, Carole Hansen, 1110 SW Tall Oaks Drive, and Cheryl

Lambright, 1120 SW Tall Oaks Drive, challenging the findings in the decision document for MMC 17.53.060, 17.53.080, 17.53.100 and Comp Plan policies #80.00, 99.00, and 132.62.20

14. Letter received June 18, 2021 from Walt Gowell, Haugeberg, Rueter, Gowell, Fredricks & Higgins, P.C. representing Steve and JacElaine Macy, expressing concerns that Condition of Approval #1 appeared to conflict with the City approved Easement Agreement referenced as Plat Note #2 on Partition Plan 2001-03.
15. Email received August 4, 2021 from Walt Gowell, 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.

V. FINDINGS OF FACT - PROCEDURAL FINDINGS

1. The applicants, Steve and Mary Allen, property owners, submitted the Tentative Partition application on November 23, 2020.
2. The application was deemed incomplete on December 23, 2020 to allow the applicant the opportunity to provide evidence of legal access to the western portion of the subject site or submit a variance application to approve legal access.
3. Variance application VR 1-21 was submitted concurrently with the Tentative Partition application and was subsequently withdrawn when evidence of legal access was determined.
4. The Tentative Partition application was deemed complete on April 20, 2021. Based on that date, the 120 day land-use decision time limit expires August 18, 2021.
5. Notice of the application was referred to the following public agencies for comment in accordance with Section 17.72.110 of the Zoning Ordinance: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Waste Water Services, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Comcast; Recology; Oregon Department of State Lands; and Northwest Natural Gas.

Comments received from agencies are addressed in Section IV of the Decision Document.

6. Notice of the application was mailed to property owners within 100 feet of the subject property in accordance with Section 17.72.110 of the Zoning Ordinance.

Public testimonies received by the Planning Department with the public comment period are addressed in Section IV of the Decision Document.

7. During the public comment period, a public hearing for the Tentative Partition application was requested as allowed by Section 17.72.110(B).
8. Notice of the application and the June 17, 2021 Planning Commission public hearing was mailed to property owners within 300 feet of the subject property on May 27, 2021 in accordance with Section 17.72.120 of the Zoning Ordinance, and to members of the public who previously submitted testimony during the public comment period.
9. Notice of the application and the June 17, 2021 Planning Commission public hearing was published in the News Register on Friday, June 11, 2021, in accordance with Section 17.72.120 of the Zoning Ordinance.

No additional public testimony was submitted to the Planning Department prior to the issuance of this document to the Planning Commission.

10. On June 17, 2021, the Planning Commission held a duly noticed public hearing to consider the request.

VI. FINDINGS OF FACT - GENERAL FINDINGS

1. **Location:** 835 SW Hilary Street (Tax Lot 1600, Section 29AB, T. 4 S., R. 4 W., W.M.)
2. **Size:** 7.22 acres
3. **Comprehensive Plan Map Designation:** Residential, Floodplain
4. **Zoning:** The subject property has multiple zones:
 - a. R-2 (Single-family Residential)
 - b. R-3 (Two-family Residential)
 - c. F-P (Flood Plain)
5. **Overlay Zones/Special Districts:** None.
6. **Current Use:** Single-family dwelling.
7. **Inventoried Significant Resources:**
 - a. **Historic Resources:** None
 - b. **Other:** None
8. **Other Features:**
 - a. **Slopes:** The developed eastern portion of the lot accessed from Hilary Street is mostly level, then the site slopes down to Cozine Creek which bisects the property, then slopes up to the western property line. The sloped flood plain and the western portion of the site is wooded.
 - b. **Easements:** The portion of the subject site within Block “L” of Cozine’s 3rd Addition and west of Cozine Creek is accessed by private access easement (Instrument #200100600) from Fellows Street, granted by Partition Plat 2001-03. A public utility easement to the City of McMinnville is retained over the portion of Hilary Street right-of-way vacated by Ordinance No. 4914. A 20-foot wide sanitary sewer easement to the City of McMinnville is present within the floodplain area, generally parallel to Cozine Creek.
9. **Utilities:**
 - a. **Water:** The property is currently served by water mains in SW Hilary Street and SW Fellows Street. The treatment plant has sufficient treatment capacity.
 - b. **Sewer:** The property is served by sewer mains in SW Hilary Street and along Cozine Creek. The municipal water reclamation facility has sufficient capacity to accommodate expected waste flows resulting from the use.
 - c. **Stormwater:** Storm water service is not available in SW Hilary Street adjacent to the site. Storm drainage is directed to Cozine Creek.
 - d. **Other Services:** Other services are available to the property. Overhead utilities are present along the north side of Hilary Street adjacent to the property.
10. **Transportation:** SW Hilary Street is classified as a Local Street in the Transportation System Plan (TSP). The existing Hilary Street right-of-way adjacent to the site is approximately 60 feet wide. The paved street width varies, and no curbs, gutters, sidewalks, or planter strips are

present adjacent to the site. The portion of the subject site west of Cozine Creek is accessed via existing private easement from SW Fellows Street, which is classified as a Minor Collector in the TSP.

VII. CONCLUSIONARY FINDINGS:

The Conclusionary Findings are the findings regarding consistency with the applicable criteria for the application. The applicable criteria for a Minor Partition are specified in Chapter 17.53 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.

Comprehensive Plan Volume II:

The implementation of most goals, policies, and proposals as they apply to this application are accomplished through the provisions, procedures, and standards in the city codes and master plans, which are sufficient to adequately address applicable goals, policies, and proposals as they apply to this application.

The following additional findings are made relating to specific Goals and Policies:

GOAL V 2: TO PROMOTE A RESIDENTIAL DEVELOPMENT PATTERN THAT IS LAND INTENSIVE AND ENERGY-EFFICIENT, THAT PROVIDES FOR AN URBAN LEVEL OF PUBLIC AND PRIVATE SERVICES, AND THAT ALLOWS UNIQUE AND INNOVATIVE DEVELOPMENT TECHNIQUES TO BE EMPLOYED IN RESIDENTIAL DESIGNS.

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

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED WITH CONDITION OF APPROVAL #2. Per Sheet 3 of 3 of the Tentative Partition Map for Steve & Mary Allen, dated August 6, 2021 and received August 6, 2021, the subject site is heavily wooded with a riparian corridor running north to south through the site. Per the application submittal, no development is proposed in the riparian corridor or in a drainage swale or floodplain. The City of McMinnville does not currently have adopted inventories of significant natural features, including riparian corridors, tree groves, tree species or landmark trees. However, per Section 17.58 of the McMinnville Municipal Code, a condition of approval has been drafted to inventory and strive to preserve trees greater than nine inches DBH.

CONDITION FOR FINDING: 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 Zoning Ordinance, 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.

Urban Policies:

Policy 99.00 An adequate level of urban services shall be provided prior to or concurrent with all proposed residential development, as specified in the acknowledged Public Facilities Plan. Services shall include, but not be limited to:

1. *Sanitary sewer collection and disposal lines. Adequate municipal waste treatment plant capacities must be available.*
2. *Storm sewer and drainage facilities (as required).*
3. *Streets within the development and providing access to the development, improved to city standards (as required).*
4. *Municipal water distribution facilities and adequate water supplies (as determined by City Water and Light).*

APPLICANT'S RESPONSE: None.

FINDING: SATISFIED WITH CONDITIONS OF APPROVAL #4-15. Sheet 1 of 3 of the Tentative Partition Map for Steve & Mary Allen, dated August 6, 2021 and received on August 11, 2021 indicates proposed provision of water, electricity, and sanitary sewer to proposed Parcels 1 and 2. Conditions of approval are included to require storm drainage plans and installation of storm drainage facilities prior to approval of the final partition plat.


Both new parcels are accessed with private access easements which is allowed in the McMinnville Municipal Code under Section 17.53.100(C), "Creation of Streets", whereby,

Section 17.53.100(C), "An easement providing access to property and which is created to allow the partitioning of land for the purpose of lease, transfer of ownership, or building development, whether immediate or future, shall be in the form of a street in a subdivision, except that a private easement to be established by deed without full compliance with these regulations may be approved by the Planning Director under the following conditions:

1. If it is the only reasonable method by which the rear portion of a lot being unusually deep or having an unusual configuration that is large enough to warrant partitioning into two more new parcels, i.e., a total of not more than three (3) parcels including the original may then exist, that may be provided with access and said access shall be not less than 15 (fifteen) feet in width and shall have a hard surfaced drive of 10 (ten) feet width minimum;
2. The Planning Director shall require the applicant to provide for the improvement and maintenance of said access way, and to file an easement for said access way which includes the right to passage and the installation of utilities. Such requirements shall be submitted to and approved by the City Attorney.
3. Access easements shall be the preferred form of providing access to the rear lots created by partition if the alternative is the creation of a flag lot.

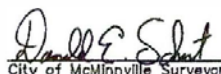
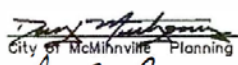

Parcel 2 is accessed via an existing private access easement, 22' wide that accesses Fellows Street and has approved access rights for Parcel 2 through an earlier partition (MP 03-01) and access easement approved by the City (Instrument No. 200100600) as part of Ordinance No. 4741. Please see below.

City of McMinnville Ordinance No. 4741, page 2, Adopted on December 12, 2000

| | |
|---|--|
| <p>THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:</p> <p>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:</p> <p>(a) That the City of McMinnville retains public utility easements over the proposed right-of-way for the maintenance of water utilities and construction of new public utilities.</p> <p>(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.</p> <p>For the City of McMinnville, this 12th day of December 2000.</p> <p>votes: Ayes: <u>Allen, Olson, Windle</u> Abstain: <u>Payne</u> Nays: _____ Approved this 12th day of December 2000.</p> <p><i>Richard D. Windle</i> COUNCIL PRESIDENT</p> <p>Approved as to form:  CITY ATTORNEY</p> | <p>(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.</p> |
|---|--|

Partition Plat signature page for Partition Plat 2001-03, signed by the McMinnville Planning Director approving the access easement for the Allen property, signed on January 10, 2001.

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

| APPROVALS : | Notes |
|--|--|
| <p> <u>1/10/01</u> City of McMinnville Surveyor Date</p> <p> <u>1/10/01</u> City of McMinnville Planning Director Date</p> <p> <u>1/12/01</u> Yamhill County Surveyor Date</p> | <p>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.</p> <p>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></p> |

Parcel 1 is accessed via a private access easement 25' wide that accesses Hilary Street per Section 17.53.100(C)(1) and (2).

CONDITIONS FOR FINDING: That the applicant shall record a private access easement for Parcel #1 as represented on the Tentative Partition Plan.

That the applicant shall submit for approval an engineered plan for the extension of the public sanitary sewer main on Hilary Street and sewer service for Parcel #1. The Public sewer extension and service for Parcel #1 shall be installed and accepted by the City prior to the signing of the partition plat.

That the applicant shall enter into a Construction Permit Agreement with the City and pay associated fees for the extension of the sanitary sewer main on Hilary Street. Contact Larry Sherwood (503) 434-7312 for details.

That the applicant shall provide a storm drainage plan for Parcel 1 including any easements necessary from the parcel to point of discharge.

That the applicant shall obtain agency permits (DEQ, DSL, ACOE etc.) as necessary, and provide copies of approved permits to the City, prior to any permit issuance or site disturbance for the installation of the storm drainage facilities for Parcel 1.

That storm drainage facilities for Parcel 1 shall be installed from the point of discharge to the proposed property line prior to the signing of the partition plat.

That the applicant shall obtain agency permits (DEQ, DSL, ACOE etc.) as necessary, and provide copies of approved permits to the City, prior to any permit issuance or site disturbance for the installation of the sewer service for Parcel 2.

That sewer service for Parcel 2 shall be installed from the main to the proposed property line prior to the signing of the partition plat.

That private sanitary sewer easement for this service shall be dedicated as part of the partition plat.

That the applicant shall provide a storm drainage plan for Parcel 2 including any easements necessary from the parcel to point of discharge.

That the applicant shall obtain agency permits (DEQ, DSL, ACOE etc.) as necessary, and provide copies of approved permits to the City, prior to any permit issuance or site disturbance for the installation of the storm drainage facilities for Parcel 2.

That storm drainage facilities for Parcel 2 shall be installed from the point of discharge to the proposed property line prior to the signing of the partition plat.

GOAL VI 1: TO ENCOURAGE DEVELOPMENT OF A TRANSPORTATION SYSTEM THAT PROVIDES FOR THE COORDINATED MOVEMENT OF PEOPLE AND FREIGHT IN A SAFE AND EFFICIENT MANNER.

Policy 132.29.05 Off-site improvements to streets or the provision of enhanced pedestrian and bicycle facilities in the McMinnville planning area may be required as a condition of approval for land divisions or other development permits.

Policy 132.40.05 Conditions of Approval – In accordance with the City’s TSP and capital improvements plan (CIP), and based on the level of impact generated by a proposed development, conditions of approval applicable to a development application should include:

- 1. Improvement of on-site transportation facilities,*
- 2. Improvement of off-site transportation facilities (as conditions of development approval), including those that create safety concerns, or those that increase a facility’s operations beyond the City’s mobility standards; and [...]*

Policy 132.62.00 TSP as Legal Basis – The City of McMinnville shall use the McMinnville TSP as the legal basis and policy foundation for actions by decision makers, advisory bodies, staff, and citizens in transportation issues. The goals, objectives, policies, implementation strategies, principles, maps, and recommended projects shall be considered in all decision-making processes that impact or are impacted by the transportation system.

Policy 132.62.05 TSP Policies – The City of McMinnville shall use the McMinnville TSP to:

- 1. Describe the classification or function of all streets within the McMinnville planning area. Policies found in the Plan shall be used to develop connective local street circulation patterns.*
- 2. Require new development to provide adequate accessibility, as defined by the McMinnville Zoning Ordinance, for all travel modes within a development and in coordination with existing and other proposed development. Street design standards in the McMinnville Zoning Ordinance are to be used to secure adequate public street and sidewalk facilities. [...]*

Policy 132.62.20 TSP Use in Review of Land Use Actions – The City of McMinnville shall consider and apply the goals, policies, planning principles, recommended projects, implementation strategies, and maps contained in McMinnville TSP in the review of land use actions and development applications.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED WITH CONDITION OF APPROVAL #17. A condition of approval is included on the proposed land division to require a waiver of rights of remonstrance for future street improvements on Hilary Street prior to the approval of the final partition plat.

CONDITION FOR FINDING: Applicant shall enter into a Revocable License and Right to use Public Right of Way, prior to the approval of the final partition plat, for the extension of the access easement driveway across the unimproved public right-of-way to proposed Parcel 1.

GOAL VII 1: TO PROVIDE NECESSARY PUBLIC AND PRIVATE FACILITIES AND UTILITIES AT LEVELS COMMENSURATE WITH URBAN DEVELOPMENT, EXTENDED IN A PHASED MANNER, AND PLANNED AND PROVIDED IN ADVANCE OF OR CONCURRENT WITH DEVELOPMENT, IN ORDER TO PROMOTE THE ORDERLY CONVERSION OF URBANIZABLE AND FUTURE URBANIZABLE LANDS TO URBAN LANDS WITHIN THE McMINNVILLE URBAN GROWTH BOUNDARY.

Policy 153.00 The City of McMinnville shall continue coordination between the planning and fire departments in evaluating major land use decisions.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. The McMinnville Fire Department was provided the opportunity to review and comment on the application.

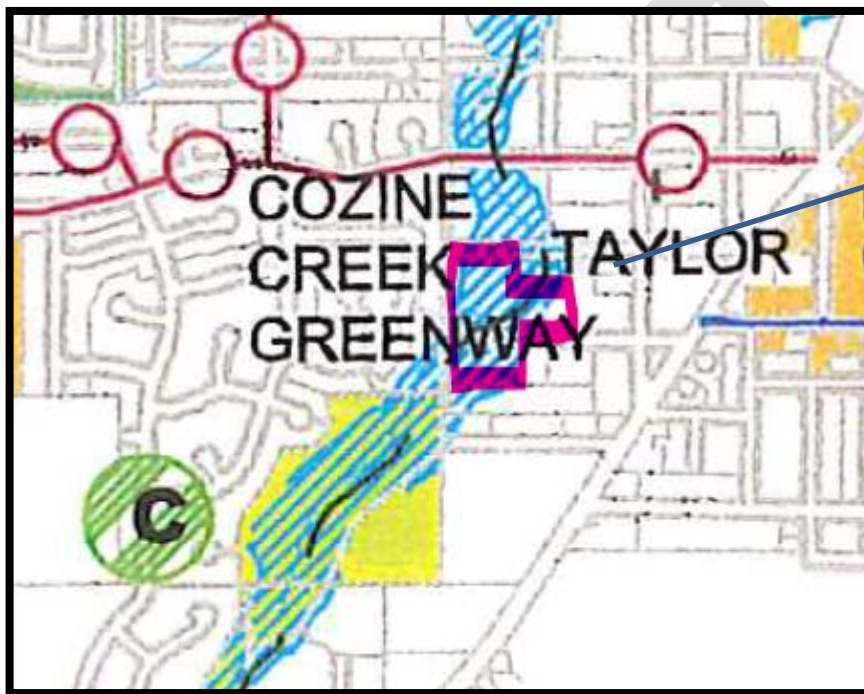
GOAL VII 3: TO PROVIDE PARKS AND RECREATION FACILITIES, OPEN SPACES, AND SCENIC AREAS FOR THE USE AND ENJOYMENT OF ALL CITIZENS OF THE COMMUNITY.

163.05 The City of McMinnville shall locate future community and neighborhood parks above the boundary of the 100-year floodplain. Linear parks, greenways, open space, trails, and special use parks are appropriate recreational uses of floodplain land to connect community and other park types to each other, to neighborhoods, and services, provided that the design and location of such uses can occur with minimum impacts on such environmentally sensitive lands. (Ord. 4840, January 11, 2006)

- 164.00 *The City of McMinnville shall continue to acquire floodplain lands through the provisions of Chapter 17.53 (Land Division Standards) of the zoning ordinance and other available means, for future use as natural areas, open spaces, and/or parks.*
- 165.00 *The City of McMinnville shall acquire park sites in advance of needs; however, purchase of lands should be closely examined in the light of current costs of land, park maintenance, personnel services, and the existing parks development priorities.*

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. The subject site has approximately four acre of floodplain along the Cozine Creek.



Subject site with floodplain in blue highlight.

A greenway trail along the Cozine Creek is identified as a high priority in the City of McMinnville Parks and Recreation Plan.

Parks Master Plan –Table 12–Recreation Facility Master Plan – Southwest

| | | | | |
|----|--|---|---|---|
| 13 | Establish a linear park along creek | X | | |
| | Greenspace/Greenways | | | |
| | Acquire additional property in the Cozine greenway | X | | |
| | Develop trails in the Barber Property | | X | |
| | Trails and Connectors | | | |
| | Develop trails in the Cozine Greenway | X | | |
| | Redevelop Ash Meadows portion of Westvale Park | X | | |
| | Extend Westvale Linear Park to Hill Rd | | | X |

Since this is a land division land-use application, per Comprehensive Plan Policy 164.00, the City of McMinnville should be acquiring the floodplain on the subject site for a future Cozine Creek Greenway Trail. However, per Comprehensive Plan Policy 165.00, after evaluation and review, the City of McMinnville is electing not to acquire the floodplain acreage of the subject site due to budget constraints in the Parks and Recreation Department and the Parks Maintenance Department.

GOAL IX 2: TO ESTABLISH A LAND USE PLANNING FRAMEWORK FOR APPLICATION OF THE GOALS, POLICIES, AND PROPOSALS OF THE McMINNVILLE COMPREHENSIVE PLAN

GREAT NEIGHBORHOOD PRINCIPLES

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.

Policy 187.20 The Great Neighborhood Principles shall encompass a wide range of characteristics and elements, but those characteristics and elements will not function independently. The Great Neighborhood Principles shall be applied together as an integrated and assembled approach to neighborhood design and development to create a livable, egalitarian, healthy, social, inclusive, safe, and vibrant neighborhood, and to create a neighborhood that supports today's technology and infrastructure, and can accommodate future technology and infrastructure.

Policy 187.30 The Great Neighborhood Principles shall be applied in all areas of the city to ensure equitable access to a livable, egalitarian, healthy, social, inclusive, safe, and vibrant neighborhood for all McMinnville citizens.

Policy 187.40 The Great Neighborhood Principles shall guide long range planning efforts including, but not limited to, master plans, small area plans, and annexation requests. The Great Neighborhood Principles shall also guide applicable current land use and development applications.

APPLICANT'S RESPONSE: None.

FINDING: SATISFIED. The application is a current land-use application for a Minor Partition of the subject site, and Great Neighborhood Principles policies are applicable.

Policy 187.50 The McMinnville Great Neighborhood Principles are provided below. Each Great Neighborhood Principle is identified by number below (numbers 1 – 13), and is followed by more specific direction on how to achieve each individual principle.

1. *Natural Feature Preservation. Great Neighborhoods are sensitive to the natural conditions and features of the land.*
 - a. *Neighborhoods shall be designed to preserve significant natural features including, but not limited to, watercourses, sensitive lands, steep slopes, wetlands, wooded areas, and landmark trees.*

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED WITH CONDITION OF APPROVAL #2. The application is a current land-use application, and Great Neighborhood Principles policies are applicable. Staff notes that the City currently has no adopted inventories of significant natural features, including riparian corridors, wooded areas, or landmark trees at this time. The Cozine Creek and floodplain corridor that bisects the subject site is heavily wooded. The wooded area extends beyond the floodplain onto the buildable portion of the site west of Cozine Creek, and further into the unimproved right-of-way that borders the western property line of the site. Many large, mature trees are present on proposed Parcels 1 and 2 and the adjacent undeveloped right-of-way west of Parcel 2, providing value to the Cozine Creek floodplain and riparian corridor, the subject site, and the surrounding neighborhood. Tree removal appears to be necessary to accommodate future residential development and associated public improvements and utility provision. Therefore, a condition of approval is included to require prior review and authorization from the Landscape Review Committee to remove any tree larger than nine (9) inches DBH (Diameter at Breast Height) to limit the unnecessary removal of trees within proximity to a sensitive natural area in the floodplain and riparian corridor.

CONDITION FOR FINDING: 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 Zoning Ordinance, 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.

11. Housing for Diverse Incomes and Generations. Great Neighborhoods provide housing opportunities for people and families with a wide range of incomes, and for people and families in all stages of life.

a. A range of housing forms and types shall be provided and integrated into neighborhoods to provide for housing choice at different income levels and for different generations.

APPLICANT’S RESPONSE: None.

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.

GOAL X 1: TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION MAKING PROCESS ESTABLISHED BY THE CITY OF McMINNVILLE.

Policy 188.00 The City of McMinnville shall continue to provide opportunities for citizen involvement in all phases of the planning process. The opportunities will allow for review and comment by community residents and will be supplemented by the availability of information on planning requests and the provision of feedback mechanisms to evaluate decisions and keep citizens informed.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. The process for a Tentative Partition provides an opportunity for citizen involvement through the public notice and comment period. Throughout the process, there are opportunities for the public to review and obtain copies of the application materials prior to the McMinnville Planning Director’s review of the request. All members of the public have access to provide testimony and ask questions during the public review process.

McMinnville Municipal Code

The following Sections of the McMinnville Municipal Code provide criteria applicable to the request:

Chapter 17.15 R-2 Single Family Residential Zone

17.15.030 Lot Size. In an R-2 zone, the lot size shall not be less than seven thousand square feet except as provided in Section 17.15.010(C) of this ordinance.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. Proposed parcels #2 and #3 each contain land zoned R-2 (Single Family Residential). The tentative partition plan indicates the area of land in Parcel #2 above the Flood Plain which is zoned R-2 is 7,125 square feet which exceeds the minimum lot size for the zone. The tentative partition plan indicates the area of land in Parcel #3 above the Flood Plain which is zoned R-2 is 50,240 square feet which exceeds the minimum lot size for the zone.

17.15.040 Yard requirements. In an R-2 zone, each lot shall have yards of the following size unless otherwise provided for in Section 17.54.050:

- A. A front yard shall not be less than twenty feet;
- B. A rear yard shall not be less than twenty feet;
- C. A side yard shall not be less than seven and one-half feet, except an exterior side yard on the street side of a corner lot shall be not less than twenty feet.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. An existing single-family dwelling is present on proposed Parcel #3. The minimum distance from the dwelling to a property line is approximately 52 feet. Because this minimum distance exceeds the maximum yard requirement in the R-2 zone (20 feet), the single-family dwelling on proposed Parcel #3 will continue to meet the yard requirements of the zone. Structural improvements on proposed Parcels #1 and #2 will be reviewed for conformity with this code criteria when building permits are submitted.

Chapter 17.18 R-3 Two-Family Residential Zone

17.15.030 Lot Size. In an R-3 zone, the lot size shall not be less than six thousand square feet except as provided in Section 17.18.010(C) of this ordinance.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. Proposed Parcel #1 contains land zoned R-3 (Two-Family Residential). The tentative partition plan indicates the area of land in Parcel #1 above the Flood Plain which is zoned R-3 is 19,176 square feet which exceeds the minimum lot size for the zone.

Land Division Standards - Partition

17.53.010 Purpose. The purpose of this chapter is to establish standards and procedures for the partitioning and subdividing of land, and adjustment of property lines in the City. These regulations are necessary 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.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. The purpose statement of a code chapter provides the overarching goals of the code, but does not provide clear and objective criteria for decision making. The applicant’s original submittal on November 23, 2020 and subsequent supplementary information that has been provided demonstrates general conformity with the overarching goals of the purpose statement of the Land Division Chapter (Section 53) of Title 17 of the McMinnville Municipal Code in the following ways.

| Section 17.53.Purpose Statement | Notes |
|--|--|
| Assure adequate width and arrangement of streets. | The partition plan that has been submitted is reliant on private access easements for access to the proposed parcels. The private access easements are 22’ and 25’ respectively, both of which are adequate width for the proposed development of the parcels. |
| Provide for the protection, conservation and proper use of the land. | The subject site is zone residential (R2 and R3) for residential development and FP (floodplain). The R2 and R3 land is intended to be developed for residential development and the proposed partition aligns with that intention. The FP zone is intended to not be developed to protect the floodplain, which the proposed partition aligns with as well. |
| Secure safety from fire, flood, slides, pollution, drainage and other dangers. | The proposed partition allows for appropriate fire response vehicles in the case of fire, does not propose development in the floodplain, provide4s the appropriate drainage, and has identified the slopes greater than 25% which are typically associated with landslide hazards. If development occurs on the identified steep slopes a geo-tech survey will be required prior to any construction. |
| Protect in other ways the public health, safety and welfare | Proposed partition achieves this overarching goal by not proposing development in the floodplain. |
| Promote the goals and policies of the McMinnville Comprehensive Plan. | Findings above demonstrate promotion of the McMinnville Comprehensive Plan goals and policies. |

Specific compliance with the chapter’s criteria is provided in the following findings.

17.53.060 Submission of Tentative Partition Plan. An application to partition land shall be submitted in accordance with the application submittal procedures as stated in Sections 17.72.020 through 17.72.070 and shall be reviewed and approved under the following procedure:

17.53.060(A): There shall be submitted to the Planning Department, a completed tentative partition application, applicable fees, and 15 (fifteen) copies of a tentative partition plan drawn to scale with sufficient information to show the following:

1. The date, north point, scale, a copy of recorded deed, and any conveyed rights to define the location and boundaries of the parcels to be partitioned;
2. Name, address and phone number of the recorded owner(s), authorized agents or representatives, engineer or surveyor, and any assumed business names filed or to be filed by the applicant with the Corporation Commission;
3. Approximate size of the parcel under a single ownership or, if more than one ownership is involved, the total contiguous acreage of all owners of land directly involved in the partitioning;
4. For land adjacent to and within the parcel to be partitioned, show locations, names, and existing widths of all streets and easements of way; locations, width, and purpose of all other existing easements; and location and size of sewer and water lines and drainage ways;
5. Outline and location of existing buildings to remain in place;
6. Parcel layout showing size and relationship to existing or proposed streets and utility easements;
7. Location and dimension of any existing or planned curb-side planting strip which may border the subject site. (Amended 12/9/97 by Ordinance 4654B.)
8. A Title Report or Partition Guarantee prepared within 60 (sixty) days of the application date.
9. Contour lines related to City datum and having minimum intervals of two (2) feet.
10. Location and direction of water courses, and the location of areas within the 100-year floodplain as indicated on the most recent Flood Insurance Rate Maps as prepared by the Federal Emergency Management Agency.
11. Location of any natural features such as rock outcroppings, designated wetlands, wooded areas, and natural hazards.
12. Source, method and preliminary plans for domestic and other water supplies, sewage disposal, storm water disposal and other drainage facility plans, and all other utilities.
13. Such additional information as required by the Planning Director.

APPLICANT'S RESPONSE: None.

FINDING: SATISFIED. The applicant submitted an application and tentative partition plan on November 23, 2020, and the application was deemed incomplete pending a variance application or other verification of legal access via private easement to the portion of the site west of Cozine Creek. Following verification of evidence documenting the provision of legal access via private easement to the portion of the site west of Cozine Creek, the application was deemed complete on April 20, 2021.

Based on oppositional testimony at the June 17, 2021, the applicant revised and updated their application submittal. Section 17.53.60(A) is satisfied in the following way:

| Section 17.53.60(A) Code Provision | Notes |
|--|--|
| The date, north point, scale, a copy of recorded deed, and any conveyed rights to define the location and boundaries of the parcels to be partitioned; | Provided in original application submittal (Recorded Deed, 11/3/2020) and updated maps dated August 6 and received on August 6 and August 11, 2021. |
| Name, address and phone number of the recorded owner(s), authorized agents or representatives, engineer or surveyor, and any assumed business names filed or to be filed by the applicant with the Corporation Commission; | Provided in original application submittal and updated maps dated August 6 and received on August 6 and August 11, 2021. |
| Approximate size of the parcel under a single ownership or, if more than one ownership is involved, the total contiguous acreage of all owners of land directly involved in the partitioning; | Provided in original application submittal and updated maps dated August 6 and received on August 6 and August 11, 2021. |
| For land adjacent to and within the parcel to be partitioned, show locations, names, and existing widths of all streets and easements of way; locations, width, and purpose of all other existing easements; and location and size of sewer and water lines and drainage ways; | Provided in original application submittal and updated maps dated August 6 and received on August 6 and August 11, 2021. |
| Outline and location of existing buildings to remain in place; | Provided in original application submittal and updated maps dated August 6 and received on August 6 and August 11, 2021. |
| Parcel layout showing size and relationship to existing or proposed streets and utility easements; | Provided in original application submittal and updated maps dated August 6 and received on August 6 and August 11, 2021. |
| Location and dimension of any existing or planned curb-side planting strip which may border the subject site. (Amended 12/9/97 by Ordinance 4654B.) | Provided in original application submittal and updated maps dated August 6 and received on August 6 and August 11, 2021. |
| A Title Report or Partition Guarantee prepared within 60 (sixty) days of the application date. | Provided in original application submittal dated September 21, 2020. Updated Title Report provided dated June 29, 2021.. |
| Contour lines related to City datum and having minimum intervals of two (2) feet. | Provided on updated maps dated August 6 and received on August 6 and August 11. |
| Location and direction of water courses, and the location of areas within the 100-year floodplain as indicated on the most recent Flood Insurance Rate Maps as prepared by the Federal Emergency Management Agency. | Provided in original application submittal and updated maps dated August 6 and received on August 6 and August 11, 2021. |
| Location of any natural features such as rock outcroppings, designated wetlands, wooded areas, and natural hazards. | Provided on updated maps dated August 6 and received on August 6 and August 11. There are no rock outcroppings or natural hazards identified. Slopes greater than 25% are identified. Notice from Division of State Lands indicates the potential presence of wetlands on the property. Condition of Approval #6 and Condition of Approval #8 require compliance with Division of State Lands to contact them prior to development for potential wetland delineation. Entire undeveloped site would be considered wooded. Applicant provided an aerial survey map to illustrate with update map submittal dated August 6 and received August 11, 2021. |
| Source, method and preliminary plans for domestic and other water supplies, sewage disposal, storm water disposal and other drainage facility plans, and all other utilities. | Provided in original application submittal and updated maps dated August 6 and received on August 6 and August 11, 2021. |
| Such additional information as required by the Planning Director. | No additional information requested. |

August 19, 2021

Staff notes that the City of McMinnville currently does not have adopted inventories of natural features such as wetlands, tree groves, or natural hazards, and is reliant upon state agencies for protection and mitigation of these resources.

17.53.060(B). Upon receiving a complete application for a partition, notification and review shall be provided as stated in Section 17.72.110. The Director's decision shall be based upon a finding that the tentative plan substantially conforms to the requirements of this chapter.

APPLICANT'S RESPONSE: None.

FINDING: SATISFIED. The application for a Tentative Partition of the subject site was deemed complete on April 20, 2021. Notification was mailed to property owners within 100 feet of the subject site on May 5, 2021. A request for public hearing was received by the Planning Department within the 14-day comment period, requiring a public hearing following the procedure outlined in Section 17.72.120 of the Zoning Ordinance. Findings have been provided for applicable Comprehensive Plan policies and goals, and criteria and standards of the McMinnville Municipal Code and other applicable ordinances.

17.53.060(C). The Planning Director may require such dedication of land and easements and may specify such conditions or modifications in the plan as are deemed necessary to carry out the McMinnville Comprehensive Plan. In no event, however, shall the Planning Director require greater dedications or conditions than could be required if the entire parcel were subdivided.

1. If the parcel of land to be partitioned, being large in size, shall be divided into more than three parcels within any one calendar year, full compliance with all requirements for a subdivision plat may be required if the Planning Director should determine, in his judgment, that the entire parcel is in the process of being subdivided.
2. Where a parcel is proposed to be divided into units of one acre or more, the Planning Director shall require an arrangement of parcels and streets such as to permit future partitions or subdivision in conformity to the street requirements and other requirements contained in this ordinance. Refer to Section 17.53.080 for future development plan requirements.
3. For notice of decision, effective date of decision and the appeal process, refer to Chapter 17.72 (Applications and Review Process).
4. The effective date of the Planning Director's decision shall be 15 (fifteen) calendar days following the date the notice of decision is mailed unless an appeal is filed.

APPLICANT'S RESPONSE: None.

FINDING: SATISFIED. Dedication of additional land and/or easements are not required to carry out the McMinnville Comprehensive Plan. The subject site has not been partitioned into more than three (3) parcels within any one (1) calendar year, nor is the subject site proposed to be divided into units of one acre or more. Sheet 2 of 3 of the updated map submittal dated August 6 and received August 6, 2021, shows additional parcels that could be created in Parcel 3 which is larger than one acre, and how they would be served.

17.53.060(D). Approval of a Tentative Partition Plat shall be valid for a one-year period from the effective date of approval. Upon written request, the Director may approve a one-year extension of the decision. Additional extensions shall require the approval of the Planning Commission.

APPLICANT'S RESPONSE: None.

FINDING: SATISFIED WITH CONDITION OF APPROVAL #19. A condition of approval has been included to confirm that the approval of the tentative partition plat shall be valid for a one-year period from the effective date of decision.

CONDITION FOR FINDING: That approval of this tentative plat will expire 12 (twelve) months after the effective date of decision. If the final plat has not been submitted prior to expiration of the tentative plat, or a written request for an extension of this approval has not been submitted and approved within that same period, the applicant must resubmit a tentative plat for further consideration and comply with regulations and conditions applicable at that time.

Land Division Standards – Future Development Plan

17.53.080 Submission of Future Development Plan. A future development plan is required when it is evident that the property to be subdivided or partitioned can be further divided. The future development plan shall be submitted at the same time that the tentative plan for either subdivision or partition is submitted and shall contain the following information:

- A. Any potential future lots (lot size shall be depicted).
- B. Existing and proposed utilities including water, sewer and storm drains.
- C. Streets and access points for potential future lots.

It shall be the responsibility of the Engineering Department and Planning Department to review a future plan to ensure that it substantially conforms to the requirements of this chapter. The review body will ensure that infrastructure for the future plan is consistent with the current development requirements. The Planning Director may reject a future plan if it is found that it does not substantially conform to the requirements of this chapter. The review body may make any of the following recommendations:

- A. The construction of streets and utilities or the dedication of right-of-way for future improvements.
- B. Any easements as deemed necessary for the extension of utility services.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. Sheet 2 of 3, Tentative Partition Plan Shadow Plat for Steve & Mary Allen, dated August 6, 2021, and received August 6, 2021, provides the map, access and utility plan for two future potential lots on the subject site. \

Land Division Standards – Approval of Streets and Ways

17.53.100 Creation of Streets.

C. An easement providing access to property and which is created to allow the partitioning of land for the purpose of lease, transfer of ownership, or building development, whether immediate or future, shall be in the form of a street in a subdivision, except that a private easement to be established by deed without full compliance with these regulations may be approved by the Planning Director under the following conditions:

1. If it is the only reasonable method by which the rear portion of a lot being unusually deep or having an unusual configuration that is large enough to warrant partitioning into two more new parcels, i.e., a total of not more than three (3) parcels including the original may then exist, that may be provided with access and said access shall be not less than 15 (fifteen) feet in width and shall have a hard surfaced drive of 10 (ten) feet width minimum;
2. The Planning Director shall require the applicant to provide for the improvement and maintenance of said access way, and to file an easement for said access way which includes the right to passage and the installation of utilities. Such requirements shall be submitted to and approved by the City Attorney.
3. Access easements shall be the preferred form of providing access to the rear lots created by partition if the alternative is the creation of a flag lot.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED WITH CONDITIONS OF APPROVAL #16, 17. Proposed Parcel 1 is to be accessed via private easement as indicated on the tentative partition plan. The proposed private access easement to Parcel 1 is 25 feet wide.

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.

CONDITIONS FOR FINDING: Applicant shall enter into a Revocable License and Right to use Public Right of Way, prior to the approval of the final partition plat, for the extension of the access easement driveway across the unimproved public right-of-way to proposed Parcel 1.

Applicant shall enter into a Revocable License and Right to use Public Right of Way, prior to the approval of the final partition plat, for the extension of the access easement driveway across the unimproved public right-of-way to proposed Parcel 2.

17.53.101 Streets.

- A. **General.** The location, width, and grade of streets shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of the land to be served by the streets. Where location is not shown in a comprehensive plan, the arrangement of streets in a subdivision shall:
1. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
 2. Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical; or
 3. Maximize potential for unobstructed solar access to all lots or parcels. Streets providing direct access to abutting lots shall be laid out to run in a generally east-west direction to the maximum extent feasible, within the limitations of existing topography, the configuration of the site, predesigned future street locations, existing street patterns of adjacent development, and the preservation of significant natural features. The east-west orientation of streets shall be integrated into the design.
- B. **Rights-of-way and street widths.** The width of rights-of-way and streets shall be adequate to fulfill city specifications as provided in Section 17.53.151 of this chapter. Unless otherwise approved, the width of rights-of-way and streets shall be as shown in the following table:

| COMPLETE STREET DESIGN STANDARDS | | | | | | | | | |
|----------------------------------|----------------------------|---|--------------------|----------------------------|---|--------------------------------|-----------------------------|-------------------|-------------|
| | | | Arterial | | Collector | | Neighborhood Connector | Local Residential | Alley |
| | | | Major | Minor | Major | Minor | | | |
| Streetscape | Street Profile | Auto/Truck Amenities (lane widths) ¹ | 2-4 lanes (12 ft.) | 2 lanes (11 ft.) | 2 lanes (11 ft.) | 2 lanes (10 ft.) | See Street Width | See Street Width | 20 ft. |
| | | Median / Center Turn Lane | 14 ft. | 12 ft. | 12 ft. | 10 ft. | None | None | None |
| | | Bike Facility ² | 2 lanes (6 ft.) | 2 lanes (6 ft.) | 2 lanes (5 ft.) | 2 lanes (5 ft.) or shared lane | Shared Lane | Shared Lane | None |
| | | Curb-to-curb Street Width ³ | na | na | na | 30 or 40 ft. 30 or 40 ft. | 28 ft. | 28 ft. | Not Apply |
| | Pedestrian Zone (with ADA) | Pedestrian Amenities ⁴ | | | | | | | |
| | | Sidewalks (both sides) | 8 ft. Com | 5 ft. Res 10-12 ft. Com | 5 ft. Res 10-12 ft. Com | 5 ft. Res 10-12 ft. Com | 5 ft. | 5 ft. | None |
| | | Planter Strips | | 6 ft. Res na Com | 6 ft. Res na Com | 6 ft. Res na Com | 5 ft. Res | 5 ft. Res | None |
| | | Preferred Adjacent Land Use – Intensity | High | Medium to High | Medium | Medium | Medium to Low | Low | Low |
| | Traffic Management | Maximum Average Daily Traffic | 32,000 | 20,000 | 16,000 | 10,000 | 1,200 – 3,000 | 1,200 | 500 |
| | | Traffic Calming | Not Typical | Not Typical | Not Typical | Permissible/ Not Typical | Permissible/ Not Typical | Typical | Not Typical |
| Managed Speed ⁵ | | 35 mph | 30-35 mph | 25-30 mph | 25 mph | 25 mph | 15-25 mph | 10 mph | |
| Through-traffic Connectivity | | Primary | Typical | Typical | Typical | Not Typical | Not Permissible | Not Permissible | |
| Access Control | | Yes | Yes | Some | Some | No | No | No | |
| Maximum Grade | | 6% | 6% | 10% | 10% | 12% | 12% | 12% | |
| | Right-of-Way: | 104 ft. | 96 ft. | 74 ft. | 56 ft. (no bike lane) 66 ft. (bike lane) | 50 ft. | 50 ft. | 20 ft. | |

General Design Notes:

- Lane widths shown are the preferred construction standards that apply to existing routes adjacent to areas of new development, and to newly constructed routes. For arterial and collector streets within industrial zones, lanes widths shall be 12 feet.
- An absolute minimum bike lane width for safety concern is 5 ft. on arterial and 4 ft. on collector streets, which is expected to occur in locations where existing development along an established route or other physical constraint preclude construction of the preferred facility width.
- Street design for each development shall provide for emergency and fire vehicle access.
- Sidewalks 10-12 feet in width are required in commercial areas to accommodate the Pedestrian zone. Street trees are to be placed in tree wells. Placement of street trees and furniture and business accesses are to meet ADA requirements for pedestrian access.
- Speeds in the central business district may be 20-25 mph. Traffic calming techniques, signal timing, and other efforts will be used to keep traffic within the desired managed speed ranges for each Functional Class. Design of a corridor's vertical and horizontal alignment will focus on providing an enhanced degree of safety for the managed speed.
- None with on-street parking

Street Design Standard Notes:

- Exclusive of side slope easement which may be required in addition for cuts and fills in rough terrain.
- The right-of-way and street width may be varied after consideration of the unique characteristics of the land including geography, topography, unique vegetation, and its relation to land development already present or proposed in the area.
- The right-of-way, street width, improvement standards, and turnaround radius of commercial/industrial cul-de-sacs and streets shall be dependent upon the types of vehicle traffic to be served.
- Intersection curb radii shall not be less than 25 feet. On-street parking shall not be permitted within a 30-foot distance of street intersections measured from the terminus of the curb return. Where such a local residential street intersects an arterial, parking along the local street shall not be permitted within a 60-foot distance of the intersection measured from the terminus of the curb return. The developer shall be responsible for the provision and installation of "No Parking" signs as approved by the City Engineering Department.
- Sidewalks and planting strips shall not be required along eyebrows.
- For cul-de-sacs greater than 300 feet in length, fire hydrants may be required to be installed at the end of the bulb and appropriately spaced along the throat of the cul-de-sac as determined by the McMinnville Fire Department.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED WITH CONDITION OF APPROVAL #18. A Condition of approval is included on the proposed land division to require the applicant to file waiver of right of remonstrance against future street improvements of Hilary Street in the right-of-way adjacent to the subject site.

CONDITION FOR FINDING: Applicant shall consent and agree to a waiver of rights of remonstrance for future street improvements on Hilary Street prior to the approval of the final partition plat.

17.53.105(A). Size and shape. Lot size, width, shape, and orientation shall be appropriate for the location of the subdivision and for the type of use contemplated. All lots in a subdivision shall be buildable.

- Lot size shall conform to the zoning requirement of the area. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street parking and service facilities required by the type of use contemplated. The depth of lot shall not ordinarily exceed two times the average width.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. The lots resulting from the proposed partition are of a size, width, shape, and orientation appropriate for the location of the subdivision and for the use contemplated (residential). All proposed lot sizes conform to the zoning requirements of the area. See findings for Sections 17.15.030 and 17.18.030 above. The depth of each of the proposed parcels does not exceed two times the width.

17.53.105(B). Access. Each lot shall abut upon a street other than an alley for a width of at least 25 (twenty-five) feet or shall abut an access easement which in turn abuts a street for at least 15 (fifteen) feet if approved and created under the provisions of 17.53.100(C). Direct access onto a major collector or arterial street designated on the McMinnville Comprehensive Plan Map shall be avoided for all lots subdivided for single-family, common wall, or duplex residential use, unless no other access point is practical.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. Proposed Parcel 1 would abut a proposed access easement that is 25 feet wide. The 25-foot wide access easement abuts the entire approximately 60 foot width of the terminus of the Hilary Street right-of-way. Proposed Parcel 2 would abut a 33-foot wide undeveloped right-of-way west of the subject site for a width of 135 feet. A 22-foot wide access easement abuts both the 33-foot wide unimproved right-of-way and Fellows Street right-of-way as a means of providing access to developable lots after the public right-of-way vacation approved per instrument number 200100600 in 2001. Fellows Street is classified as a Minor Collector and direct access is allowed. Proposed Parcel 3, the remainder of the parent parcel, will continue to abut the Hilary Street right-of-way for a 207.28-foot width.

17.53.105(C). Through Lots. Through lots shall be avoided except where they are essential to provide separation of residential development from major traffic arteries or adjacent nonresidential activities, or to overcome specific disadvantages of topography and orientation. A planting screen easement at least 10 (ten) feet wide, and across which there shall be no right of access, may be required along the line of lots abutting such a traffic artery or other incompatible use.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. The proposed partition does not create any through lots, therefore this criterion is met.

17.53.105(D). Lot side lines. The side lines of lots, as far as practicable, shall run at right angles to the street upon which the lots face.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. The proposed property lines that would divide the three proposed parcels run at approximate right angles to the street rights-of-way, or the access easement leading to the streets, upon which the parcels face. Therefore, this criterion is met.

17.53.060(E). Flag lots. The creation of flag lots shall be discouraged and allowed only when it is the only reasonable method of providing access to the rear of a lot which is large enough to warrant partitioning or subdividing. [...]

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. The proposed partition does not create any flag lots, therefore this criterion is met.

Chapter 17.58 Trees

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; [....]

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. The subject site is undergoing partition review to create new parcels with developable land. Access to proposed Parcel 2 will be through a portion of undeveloped public right-of-way adjacent to Parcel 2. The subject site is heavily wooded outside of the portion of proposed Parcel 3 that is developed with an existing single-family dwelling. Tree removal will likely be necessary to accommodate future residential development and associated public improvements on proposed Parcels 1, 2, and within the undeveloped public right-of-way west of Parcel 2. Therefore, (B) and (D) are met, and the provisions of the Trees Chapter of the Zoning Ordinance shall apply to trees within the subject site and the undeveloped public right-of-way west of proposed Parcel 2.

17.58.040 Tree Removal/Replacement

A. The removal or major pruning of a tree, if applicable under Section 17.58.020, shall require City approval, unless specifically designated as exempt by this ordinance. Persons wishing to remove or prune such trees shall file an application for a permit with the McMinnville Planning Department. [...] Requests for tree removal or pruning of trees outside of the Downtown Tree Zone shall be forwarded to the McMinnville Landscape Review Committee [...] The Landscape Review Committee may approve, approve with conditions, or deny the request based on the criteria stated in Section 17.58.050. [...]

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED WITH CONDITION OF APPROVAL #2. Any tree removal on the subject site or within the adjacent undeveloped right-of way is applicable under 17.58.020 and would require City approval. A condition of approval is included to require the applicant to submit an application for proposed tree removal for approval pursuant to Chapter 17.58.

CONDITION FOR FINDING: 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 Zoning Ordinance, 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.

JF



City of McMinnville
Planning Department
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EXHIBIT 3 - STAFF REPORT

DATE: August 19, 2021
TO: Planning Commission Members
FROM: Tom Schauer, Senior Planner
SUBJECT: G 2-21. City-initiated zoning ordinance amendments related to housing

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

Report in Brief:

This is a work session for application G 2-21, proposed City-initiated zoning ordinance amendments related to housing. The proposed amendments would (a) add provisions allowing existing single-family dwellings as a permitted use in the C-3 zone, (b) establish a City Center Housing Overlay Zone and associated provisions, and (c) add provisions allowing temporary use of an RV as a residence during construction of a permanent dwelling(s) on the same lot. The proposed draft amendments are attached as **Attachment 1**.

The Planning Commission public hearing for this proposal is scheduled for September 16. This is a legislative land use action.

Background:

This proposal is intended to increase housing opportunities and remove regulatory barriers associated with provision of housing, consistent with the Comprehensive Plan. The proposal addresses two items:

- 1. Add Existing Single-Family Dwellings as a permitted use in the C-3 zone.** The C-3 commercial zone doesn't allow single-family dwellings or duplexes as permitted uses, since the primary purpose of the zone is to provide land for commercial use at appropriate locations. The C-3 zone also allows multi-family development as a permitted use. If single-family dwellings and duplexes were included as permitted uses in the C-3 zone, that would allow for development which is inconsistent with the purpose of the C-3 zone, opening the door to proliferation of lower-density housing types and subdivisions on C-3 zoned land.

Existing single-family dwellings and duplexes are therefore currently classified as nonconforming uses in the C-3 zone. As such, they are subject to the limitations for nonconforming uses. Nonconforming uses can continue as long as the use continues to

operate without being discontinued for more than a year, but they can't be expanded, except to a limited extent within the existing building lines.

The City has recently received several requests for expansion of existing single-family dwellings within the C-3 zone to add on a room, and these requests have been subject to the limitations which apply to nonconforming uses.

By reclassifying existing single-family dwellings as a permitted use, the existing dwellings could expand on-site and operate in the same manner as permitted uses, as long as the use is continued. For purposes of determining continuation of use, the proposal would also allow for short-term rentals and owner-occupied short-term rentals to be considered a continuation of residential use.

These existing residential uses aren't inherently in conflict with other permitted uses in the C-3 zone, as typically is the case with other types of nonconformity uses. The proposed amendment is intended to provide greater "fine-grained" refinement in how this use is regulated by differentiating between existing single-family dwellings and new single-family dwellings within the C-3 zone. This would allow the existing uses to continue with less restriction, while addressing the purpose of the zone by preventing proliferation of new low-density residential development within the C-3 zone.

Of different available options, this approach is preferred to other actions such as lot-by-lot spot rezones that could be inconsistent with the long-term development goals of the area. However, some individual properties might also be candidates for rezoning to other zones such as the O-R office-residential zone, but the issue with this proposed amendment is slightly broader than would be addressed by individual rezones. This amendment would not preclude a property owner from applying for a rezone where something like the O-R zone could be appropriate.

The proposed amendment was drafted to address existing single-family dwellings in the C-3 zone, which has been the most common issue. However, the same issue also applies to existing duplexes in the C-3 zone. The amendment could potentially be expanded upon to also allow existing duplexes as a permitted use in the C-3 zone.

- 2. Establish a City Center Housing Overlay Zone and associated provisions.** On May 11, 2021, City Council adopted the City Center Housing Strategy Final Report by Resolution 2021-27. This was the culmination of work through a public process that began in 2019, guided by the McMinnville Urban Renewal Advisory Committee (MURAC) and an 18-member Project Advisory Committee, with a recommendation from both entities to City Council.

The purpose of the project was to create a strategy to potentially increase and incentivize more housing within the city center area and the surrounding higher density residential zones where there may be capacity for additional housing opportunities

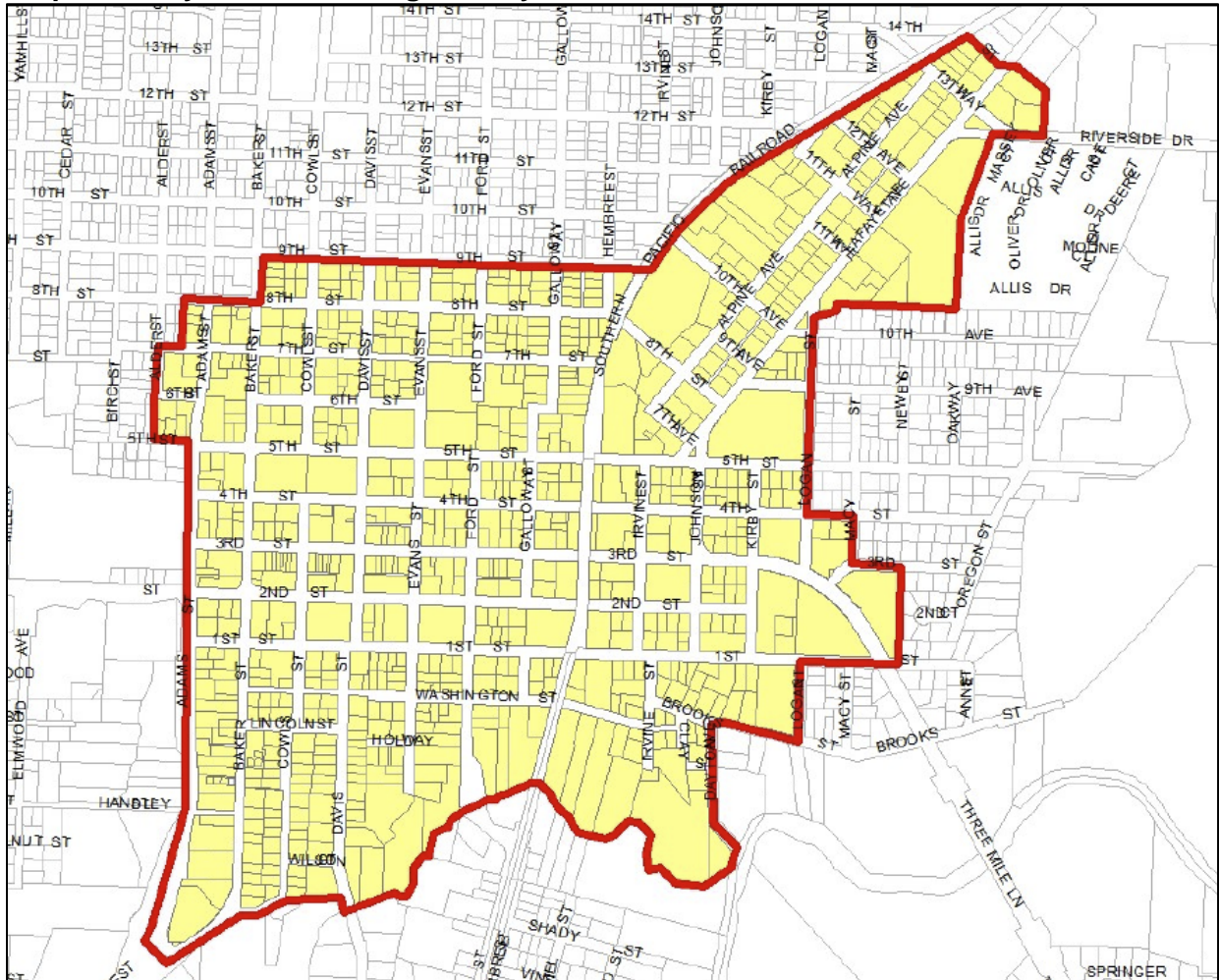
The adopted resolution and final report are available at:

https://www.mcminnvilleoregon.gov/sites/default/files/fileattachments/ordinance/22004/res_2021-27.pdf

The project included a study area. The boundary for the proposed Overlay Zone generally follows the study area boundary, but doesn't include areas with lower-density residential zoning on the southeast fringes of the study area and adds a commercial block on the southwest side, including property where a multi-family residential structure was damaged by fire. Some lower density residential properties on the east side of the study area are still included within the

proposed boundary because they are within the Urban Renewal Area and Northeast Gateway Overlay Zone. The proposed boundary for the City Center Housing Overlay Zone is shown below.

Proposed City Center Housing Overlay Zone



A summary of the City Center Housing Strategy Action Plan is provided in the table below. Four categories of actions were identified, the first being removal of barriers to desired housing in the City Center.

The proposed amendment is a first step which establishes the overlay zone and addresses some of the initial barriers, including Actions 1.1 (density), 1.2 (minimum parking), and 1.3 (parking reduction area) below. It also partially addresses Action 1.4 (parking lot standards for small-scale development), by allowing residential parking within the Overlay Zone to be located on a nearby property, as already allowed for other uses. Other Action Items would be brought forward in subsequent steps. For example, Actions 1.5, 1.6, 1.7, and 1.8 below would be brought forward as a separate bundle of amendments together with the work underway on residential design standards. Some of those items have also already been discussed in previous work sessions.

City Center Housing Strategy – Action Plan Summary Table

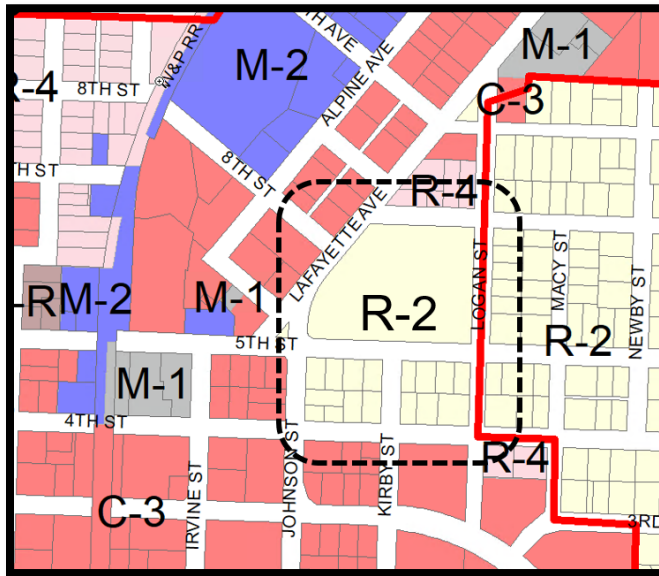
| | Regulatory | Non Regulatory | Proposed Action |
|--|------------|----------------|---|
| 1.0 Remove barriers to desired housing in city center | | | |
| 1.1 | x | | Remove density requirements* |
| 1.2 | x | | Reduce residential parking minimums* |
| 1.3 | x | | Extend the parking reduction area* |
| 1.4 | x | | Revise parking lot standards for small scale development* |
| 1.5 | x | | Permit townhouses in C3 zone* |
| 1.6 | x | | Permit or conditionally permit SROs* |
| 1.7 | x | | C3-specific setbacks for multi-family residential* |
| 1.8 | x | | Residential-specific design standards* |
| 2.0 Provide incentives and support to desired development | | | |
| 2.1 | | x | City-led pilot projects in partnership with developer* |
| 2.2 | | x | Subsidy gap financing from Urban Renewal funds |
| 2.3 | | x | Evaluate SDC costs |
| 2.4 | | x | Property Acquisition and Reduction of Land Costs |
| 2.5 | | x | Fast-track system for permitting |
| 2.6 | | x | Small-scale developer bootcamp |
| 2.7 | | x | Developer guidebook of financial assistance |
| 2.8 | | x | Developer Tours |
| 3.0 Improve street character, connections, and walkability | | | |
| 3.1 | | x | Improvements to 2nd and 4th streets |
| 3.2 | | x | Streetscape improvements to Adams and Baker |
| 3.3 | | x | Improvements to Lafayette |
| 3.4 | | x | Strengthen connections between Alpine District + 3rd St |
| 3.5 | | x | Continue façade improvement program |
| 3.6 | | x | Free design assistance application |
| 3.7 | | x | Urban open space network to support downtown housing |
| 4.0 Align enforcement and programming efforts with City's housing goals | | | |
| 4.1 | | x | Evaluate short term rental regulations |
| 4.2 | | x | Transportation modeling of the city center |
| 4.3 | | x | Parking management plan / shared parking plan |
| 4.4 | | x | Review of school capacity and other public services |
| * Being addressed as part of the City Center Housing Strategy | | | |

- 3. Allow temporary use of an RV as a residence during construction of a permanent dwelling(s) on the same lot.** Allowing temporary use of an RV during construction of a dwelling can allow a household to reduce their housing costs. With this option, a household doesn't need to own and/or rent separate properties while new construction is occurring. This option is currently allowed in some other cities and counties in Oregon, and other jurisdictions are currently considering this option.

Discussion:

Are there issues or considerations the Planning Commission would like staff to review or address in advance of the September public hearing?

1. **Add Existing Single-Family Dwellings as a permitted use in the C-3 zone.**
 - a. **Scope/Duplexes.** Does the Planning Commission wish to expand the scope of the proposed amendment to also add existing duplexes as a permitted use in the C-3 zone?
 - b. **Other items?**
2. **Establish a City Center Housing Overlay Zone and associated provisions.**
 - a. **Boundary.** The proposed Overlay Zone boundary still includes a small area of lower-density residential property on the east side, which is within the Urban Renewal boundary and Northeast Gateway Overlay Zone boundary. Should this be retained or removed from the boundary? This includes the property where the School District administrative office is located.



- b. **Off-Site Parking.** The proposed distance for the off-site parking allowance for residential uses within the Overlay Zone is 500 feet. The current standard for other uses is 200 feet. Is 500 feet a reasonable standard? Most of the traditional city center blocks are 260'x300' to street centerlines.
 - c. **Other items?**
3. **Allow temporary use of an RV as a residence during construction of a permanent dwelling(s) on the same lot.**
 - a. **Any discussion items?**

Attachments:

1. **Attachment 1.** Proposed Draft Zoning Ordinance Amendments

Recommendation:

No Planning Commission action is taken at this work session. Any suggestions and direction from the Planning Commission in advance of the September public hearing are appreciated.

G 2-21. City of McMinnville Proposed Zoning Ordinance Amendments

- **City Center Housing Overlay Zone**
- **Existing Single-Family Dwellings in the C-3 Zone**
- **Temporary Use of an RV as a Residence During Home Construction on Same Lot**

Proposed amendments to the McMinnville Zoning Ordinance to (a) add provisions allowing existing single-family dwellings as a permitted use in the C-3 zone, (b) establish a City Center Housing Overlay Zone and associated provisions, and (c) add provisions allowing temporary use of an RV as a residence during construction of a permanent dwelling(s) on the same lot, as follows:

- Amend **Chapter 17.33, C-3 General Commercial Zone**, as follows:
 - Amend Section 17.33.010 to allow existing single-family dwellings as a permitted use in the C-3 zone based on the adoption date of this amendment.
 - Amend Section 17.33.010(3) to specify that the density provisions of the R-4 zone don't apply to residential use in the C-3 zone within the City Center Housing Overlay District.
 - Amend Section 17.33.020(F) to specify that residential use in the C-3 zone within the City Center Housing Overlay District which exceeds the density provisions of the R-4 zone is a permitted use in the C-3 zone under Section 17.33.010(3), not a conditional use.
- Amend **Chapter 17.54, General Regulations**, as follows:
 - Add a new Section 17.54.065, adding provisions to allow temporary use of an RV as a residence during construction of a permanent dwelling(s) on the same lot.
- Amend **Chapter 17.60, Off-Street Parking and Loading**, as follows:
 - Amend Section 17.60.050 regarding the location of off-street parking for residential use within the City Center Housing Overlay Zone. Off-street parking need not be on the same property as the residential use if it is located not farther than 500 feet of the building with the residential use, subject to a binding parking agreement.
 - Amend Section 17.60.100 to establish a modified minimum off-street parking standard for residential use within the City Center Housing Overlay Zone as 1 parking space per dwelling unit.
- Amend **Chapter 17.63, Nonconforming Uses**, to specify that the limitation on the number of units applicable to replacement of a nonconforming multiple-family structure doesn't apply on property zoned C-3 in the City Center Housing Overlay Zone, when the nonconformity is relative the referenced setbacks of the R-4 zone, but the structure complied with the setbacks of the C-3 zone.
- Add a new **Chapter 17.66, City Center Housing Overlay Zone**, to the Zoning Ordinance, establish a boundary for the Overlay Zone, and incorporate standards that apply to residential use within the City Center Housing Overlay Zone.

Note: Additional land-use actions in the City Center Housing Strategy will be considered for adoption at a future date.

Chapter 17.33

C-3 GENERAL COMMERCIAL ZONE

[...]

17.33.010 Permitted Uses. In a C-3 zone, the following uses and their accessory uses are permitted.

[...]

2. Existing lawfully established single-family dwellings built and occupied prior to [insert adoption date], 2021.

a. Lots for these uses will be limited to their current sizes and cannot be expanded.

b. If the single-family dwelling is not occupied for more than a year as a residential use, it is no longer considered a permitted use.

c. Short-term rentals and resident-occupied short-term rentals will be considered a continued residential use for this code provision.

23. Condominiums subject to the provisions of the R-4 zone, except that within the City Center Housing Overlay Zone designated in Chapter 17.66, density limitations of the R-4 zone shall not apply, and any special development standards of the Overlay Zone shall supersede those of the R-4 zone.

34. Multiple-family dwellings subject to the provisions of the R-4 zone, except that within the City Center Housing Overlay Zone designated in Chapter 17.66, density limitations of the R-4 zone shall not apply, and any special development standards of the Overlay Zone shall supersede those of the R-4 zone.

[...]

17.33.020 Conditional Uses. In a C-3 zone, the following uses and their accessory uses may be permitted subject to the provisions of Chapters 17.72 and 17.74.

[...]

F. **Outside of the City Center Housing Overlay Zone, a** ~~A~~ multiple-family dwelling **or condominium** constructed to a higher density than normally allowed in the R-4 multiple-family zone provided that the following conditions are met. It is the applicant's burden to show that the conditions have been met:

[...]

Chapter 17.54

GENERAL REGULATIONS

[...]

17.54.065 Use of Recreational Vehicle (RV) As Temporary Residence During Residential Construction.

A recreational vehicle (RV) may be authorized as a temporary residence during construction of a new residential structure on the same lot or parcel if found to comply with the following conditions.

- a. Only one RV shall be allowed on a lot or parcel. The RV shall only be placed on a lot or parcel for which a building permit for a site-built dwelling(s) or a placement permit for a manufactured dwelling meeting the standards of the applicable zone has been obtained.**
- b. The RV shall only be placed on a vacant lot, or a lot on which any existing dwellings will be demolished or removed. If any existing dwellings on the lot are to be demolished, the RV shall only be allowed on the lot prior to demolition if a demolition permit is issued concurrently with the building permit or placement permit for the new home. Demolition of any site-built home shall begin, or removal of any manufactured home shall occur, within 30 days of placement of the RV.**
- c. The RV shall only be occupied by future residents of a dwelling under construction on the same lot. If the occupants are not the property owner, written authorization from the property owner shall be provided prior to placement of the RV.**
- c. The RV shall not be occupied concurrently with any dwelling on the lot, either prior to demolition or removal of any existing dwelling or upon completion or placement of a new dwelling.**
- d. The RV shall only be occupied during a period in which satisfactory progress is being made towards the completion of the site-built dwelling or placement of the manufactured dwelling for which a permit has been obtained, and in no case shall the time period exceed 18 months involving a site-built dwelling or 6 months involving a manufactured dwelling, including any applicable demolition or removal.**
- e. The RV shall cease to be used as a temporary residence not later than one month following the completion of a new site-built dwelling or placement of a manufactured dwelling, as applicable.**
- f. Except in the case of a self-contained RV, public sewer and water connections shall be provided, as well as electric power. Any on-site connections shall require applicable permits and approvals.**

- g. There shall be no parking of a self-contained RV or any vehicles on any portion of the site which is not paved or improved with a compacted dust-free gravel surface.**
- h. The Planning Director may revoke authorization for use of the RV as a temporary residence upon finding noncompliance with the provisions of this Section, including evidence of unsatisfactory progress on construction or placement of the permanent dwelling unit(s).**
- i. Nothing in the Section is intended to preclude any other lawful use of an RV as otherwise authorized in the McMinnville Municipal Code, such as the Safe Overnight Parking Program.**

[...]

Chapter 17.60

OFF-STREET PARKING AND LOADING

[...]

17.60.050. Spaces – Location.

~~Except for one or two upper-story residential dwelling units above a non-residential use, off-street parking spaces for dwellings shall be located on the same lot with the dwelling.~~

A. Except as provided below, required off-street parking spaces for dwellings shall be located on the same lot with the dwelling. For the following residential uses, off-street parking shall be located not farther than five hundred feet from the building or use they are required to serve, measured in a straight line from the building.

1. Off-street parking for one or two upper story residential dwelling units above a non-residential use

2. Off-street parking for residential uses in the City Center Housing Overlay Zone designated in Chapter 17.66

B. All other required parking spaces shall be located not farther than two hundred feet from the building or use they are required to serve, measured in a straight line from the building.

C. When parking is provided on a different lot than the use it is required to serve, the applicant shall provide evidence of a binding parking agreement for use of the property for off-street parking consistent with the provisions of this Chapter for as long as the parking is required to serve the property. If the property is in different ownership or subsequently conveyed to a different owner, the parking agreement shall be recorded.

[...]

17.60.100. Reduced requirements for certain area. In the area bounded by Adams Street, Ford Street, and Seventh Street, required off-street parking spaces for commercial establishments may be one-half the number stated for the particular use in Section 17.60.060 (see special parking requirements map below).

Within the City Center Housing Overlay Zone designated in Chapter 17.66, minimum required off-street parking spaces for residential uses shall be one space per dwelling unit.

[...]

Chapter 17.63

NONCONFORMING USES

[...]

17.63.060 Structure—Destruction.

- A. If a nonconforming structure or a structure containing a nonconforming use in the industrial land use category is destroyed by any cause to an extent exceeding sixty percent of the assessed structural value as recorded in the County Assessor's records at the time of destruction, a future structure or use of the property shall conform to the provisions of this ordinance;
- B. If a nonconforming structure or a structure containing a nonconforming use in a residential, commercial, or public land use category is destroyed by fire, accident, or an act of God, the structure may be rebuilt to the same size (square footage before destruction) and may be occupied by the use which occupied the structure at the time of destruction.
- C. In the case of a destruction of a nonconforming multiple-family residential structure, the structure, if rebuilt, may not contain more living units than existed prior to the destruction; **except, however, in a C-3 zone within the City Center Housing Overlay Zone, this limitation shall not apply to a multiple-family structure that is nonconforming relative to the referenced setbacks of the R-4 zone, but meets the setbacks of the C-3 zone.** (Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

[...]

Chapter 17.66

CITY CENTER HOUSING OVERLAY ZONE

Sections:

- 17.66.010 Establishment
- 17.66.020 Purpose and Intent
- 17.66.020 Applicability and Exemptions
- 17.66.030 Guidelines and Standards
- 17.66.040 Procedure

17.66.010 Establishment. The City Center Housing Overlay Zone is hereby established. The City Center Housing Overlay Zone boundary is shown in Figure 17.66.1.

17.66.020 Purpose and Intent.

17.66.030. Applicability and Exemptions. Provisions of this Chapter apply to residential development within the City Center Housing Overlay Zone boundary, including new development, and development that increases the square footage or number of existing dwelling units.

The provisions of the Chapter modify the provisions of other Chapters of the Zoning Ordinance as specified herein.

In addition, other Chapters of this Ordinance may specify that certain provisions of those respective Chapters are modified for properties within the City Center Housing Overlay Zone boundary, as specified in those Chapters.

The provisions of this Chapter do not apply to routine maintenance of residential development within the City Center Housing Overlay Zone.

17.66.040. Guidelines and Standards. [Reserved for future use].

17.66.050. Procedures. [Reserved for future use].

Figure 17.66.1. City Center Housing Overlay Zone Boundary

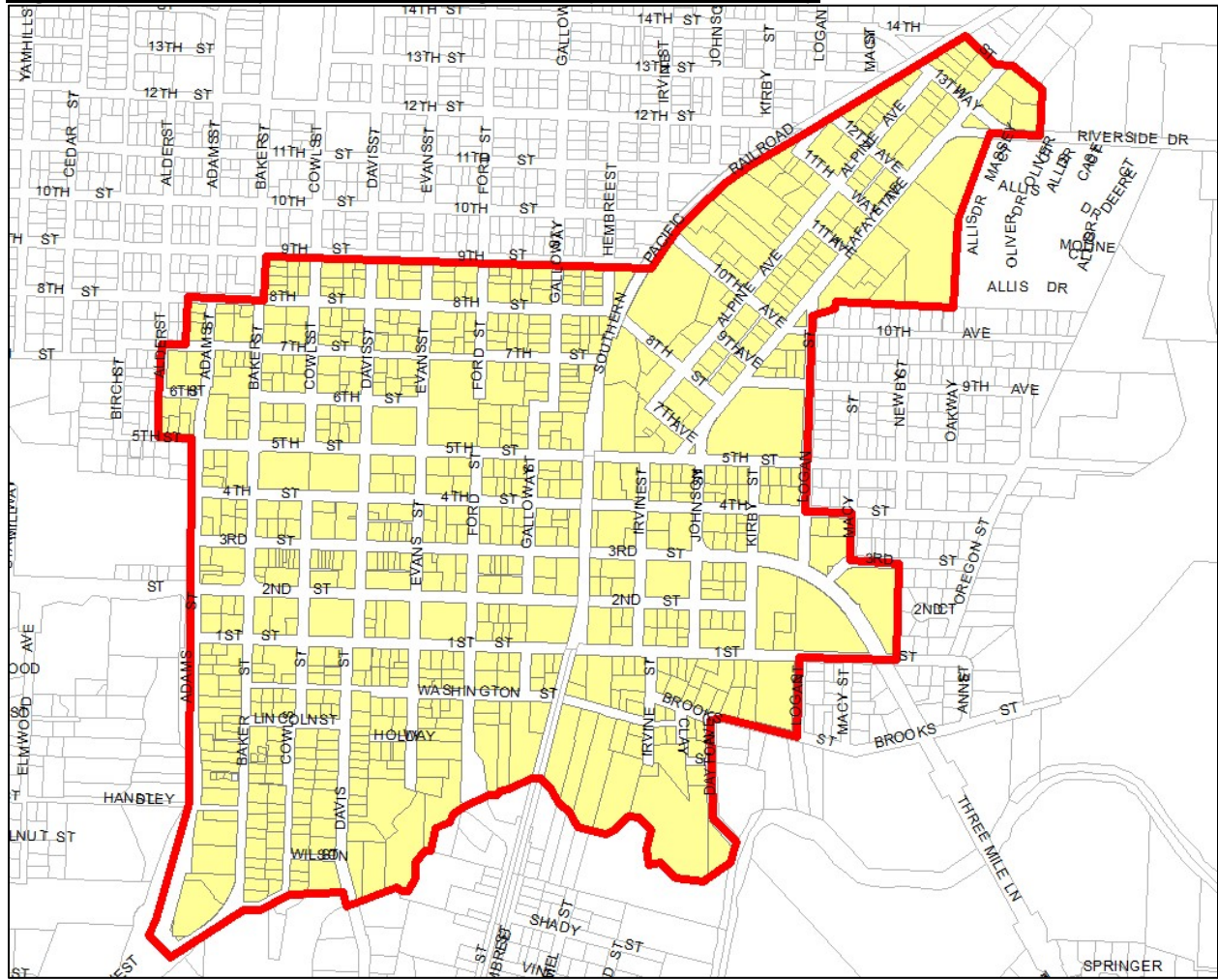


EXHIBIT 4 – STAFF REPORT

DATE: August 19, 2021
TO: McMinnville Planning Commission
FROM: Heather Richards, Planning Director
SUBJECT: Annexations Work Session

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 a work session to discuss requirements and procedures for annexation of lands to the City of McMinnville for compliance with the McMinnville Growth Management and Urbanization Plan (MGMUP) and ORS 222, which governs annexations of land into cities in Oregon.

The proposed code amendments are currently scheduled for their first evidentiary hearing with the Planning Commission on September 16, 2021, and have been noticed with the Department of Land Conservation and Development.

Background:

Oregon statewide planning goals require that each city be surrounded by a boundary which is called an urban growth boundary (UGB). The UGB defines the area which the city has identified as being eligible to be included within the city limits sometime during the 20-year planning period. Lands within the UGB may be considered for annexation into the city limits consistent with ORS 222 and local ordinances.

The history of annexation requirements and processes within the City of McMinnville is nuanced and complicated. Annexations are governed by state laws (Oregon Revised Statute, Title 21, Chapter 222), City Charters, and local ordinances.

A proposal for annexation of territory to a city may be Initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed. The boundaries of a city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water, if the proposal for annexation is approved in the manner provided by the city charter or by ORS 222.111.

In McMinnville, there has been a long history of annexation requirements and procedures that have been amended over time, including local ordinances and the City Charter.

Historically In McMinnville, annexations have been governed by Ordinances No. 4130, 4357, 4535, 4624, 4636, and 4670. All of which developed and amended an annexation process for the City of McMinnville over the past forty (40) years. The history of the amendments to these ordinances is nuanced and difficult to administer. (Please see Table 1 below).

Staff is recommending repealing all of these Ordinances and dedicating a chapter of the McMinnville Municipal Code (Chapter 16) to Annexations for transparency and ease of administration.

| Ordinance | Date of Approval | What it does? |
|-----------|------------------|---|
| No. 4130 | April 7, 1981 | <ul style="list-style-type: none"> • Enacted requirements and procedures for annexation of land to the City of McMinnville. • Land must be in the UGB. • Land must be contiguous to the city limits. • Plan for development must meet comprehensive plan policies. • Adequate level of services must be available or made available within three years of annexation. • Public hearing at the Planning Commission level. PC provides a recommendation to City Council. • City Council public hearing and final decision. • City shall attempt to not create islands of non-incorporated territory within the city limits. • If an island is created, it needs be annexed within one year. • Zoning shall be AH or county zoning until it is rezoned into a city zone for development. |

| Ordinance | Date of Approval | What it does? |
|-----------|-------------------|--|
| No. 4357 | February 4, 1986 | <ul style="list-style-type: none"> • Repeals Ordinance No. 4130. • In response to state changes to ORS 222, which no longer required two public hearings if all the property owners of the land to be annexed consent to the annexation. • City elected to retain a public hearing for annexations at the Planning Commission level and eliminate the one required at the City Council level. • Land still must be in the UGB. • Land still must be contiguous to city limits. • Plan for development must meet comprehensive plan policies. • Adequate level of services must be available or made available within three years of annexation. • Public hearing at the Planning Commission level. PC provides a recommendation to City Council. • City Council public hearing and final decision. • City shall attempt to not create islands of non-incorporated territory within the city limits. • If an island is created, it needs be annexed within one year. • Zoning shall be AH or county zoning until it is rezoned into a city zone for development |
| No. 4535 | April 27, 1993 | <ul style="list-style-type: none"> • Amends Ordinance No. 4357 due to state amendments to ORS 222 relative to nonunanimous consent of property owners to be annexed. |
| No. 4624 | May 14, 1996 | <ul style="list-style-type: none"> • Amends Ordinance No. 4357 to require that Islands created by annexations be annexed into the city within one year. |
| No. 4636 | November 12, 1996 | <ul style="list-style-type: none"> • Repeals Ordinance No. 4357 in response to local ballot measure No. 36-32 passed on May 21, 1996 to amend the City Charter to read that all annexations except those otherwise mandated by state law, be referred to a vote of the electorate. |
| No 4670 | June 23, 1998 | <ul style="list-style-type: none"> • Amends Ordinance No. 4636 relative to the definition of adequate levels of municipal sanitary sewer and water service required within three years of annexation. |

The most recent ordinance passed relative to annexations is Ordinance No. 4636, which provides for the following:

All annexations must be:

- Within the UGB
- Contiguous to the city limits
- Complies with the Comprehensive Plan, Volume II, Goals and Policies
- Must have an adequate level of urban services available or made available, within three years time of annexation.
- Findings documenting the availability of police, fire, and school facilities and services shall be made to allow for the proposed annexation.
- Public hearing with the Planning Commission for recommendation of approval to City Council to go to the ballot or denial.
- Cities shall strive to not create Islands of unincorporated territory within the corporate limits of the City
- Land will come Into the City based on underlying comprehensive plan designation and be zoned AH If no other zone has been requested or it does not have a county zone.
- Referred to the electorate for a vote of approval or denial

Just like the city ordinances, the McMinnville City Charter has also been amended over time to reflect changing requirements and procedures for annexations. In 1996, Section 3 of the McMinnville City Charter as adopted in 1971, was amended to read that "Unless mandated by State Law, any annexation, delayed or otherwise, to the City of McMinnville may only be approved by a prior majority vote among the electorate." (Ballot Measure 36-32, May 21, 1996.). This then established a history of annexation requests that were determined by a city-wide vote of the electorate.

In 2016, the Oregon State Legislature passed Senate Bill 1573 amending ORS 222.127, stating that essentially if a landowner, or landowners petition the City for annexation, the legislative body of the city shall annex the property without submitting the proposal to the electors of the city if the property is within the UGB, contiguous to the city limits, meets the comprehensive plan, and conforms to all other ordinances of the city. In other words, the City cannot force a proposed annexation to be put to the voters if all landowners within the proposed annexed area agree to the annexation.

ORS 222.127

- (1) This section applies to a city whose laws require a petition proposing annexation of territory to be submitted to the electors of the city.*
- (2) Notwithstanding a contrary provision of the city charter or a city ordinance, upon receipt of a petition proposing annexation of territory submitted by all owners of land in the territory, the legislative body of the city shall annex the territory without submitting the proposal to the*

electors of the city if:

- (a) *The territory is included within an urban growth boundary adopted by the city or Metro, as defined in [ORS 197.015 \(Definitions for ORS chapters 195, 196, 197 and ORS 197A.300 to 197A.325\)](#);*
 - (b) *The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city;*
 - (c) *At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or a body of water; and*
 - (d) *The proposal conforms to all other requirements of the city's ordinances.*
- (3) *The territory to be annexed under this section includes any additional territory described in [ORS 222.111 \(Authority and procedure for annexation\)](#) (1) that must be annexed in order to locate infrastructure and right of way access for services necessary for development of the territory described in subsection (2) of this section at a density equal to the average residential density within the annexing city.*
- (4) *When the legislative body of the city determines that the criteria described in subsection (2) of this section apply to territory proposed for annexation, the legislative body may declare that the territory described in subsections (2) and (3) of this section is annexed to the city by an ordinance that contains a description of the territory annexed. [2016 c.51 §2]*

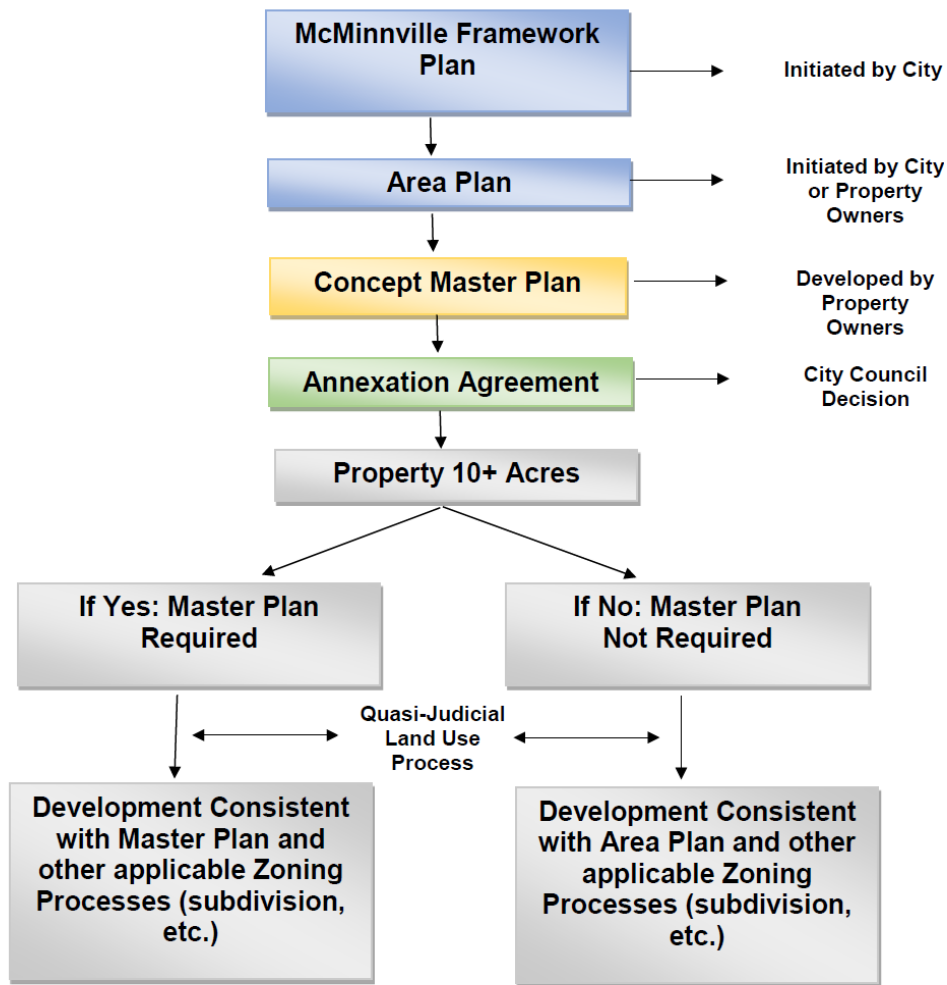
The Oregon Legislature adopted this amendment to ORS 222.127 in 2016 because it had been determined that some cities were using the electorate vote to prevent the necessary growth of the city to meet its required population absorption. (33 cities were managing annexations in this manner.)

Corvallis and Philomath challenged the law shortly after it was enacted, arguing that the law infringed on the home rule authority of cities to choose when and where to extend their boundaries. The Court of Appeals ruled in May, 2020 against the two cities, upholding the 2016 law amendments. The court cited key exceptions in the cities' charters that waive election requirements if an annexation is "mandated by state law". The City of McMinnville has similar language in its City Charter.

In December, 2020, the McMinnville City Council approved Ordinance No. 5098, adopting the McMinnville Growth Management and Urbanization Plan. Within that plan was a new annexation process for the City of McMinnville that would allow for thoughtful and intentional planning prior to annexation and compliance with ORS 222, the Oregon Statute that governs annexation processes in the State of Oregon.

This annexation process is predicated on three major components:

- Area Plan
- Annexation Agreement
- Master Plan



Comprehensive Plan Policies Governing Annexations:

- 71.05 *The City of McMinnville shall encourage annexations and rezoning which are consistent with the policies of the Comprehensive Plan so as to achieve a continuous five-year supply of buildable land planned and zoned for all needed housing types. (Ord.4840, January 11, 2006; Ord. 4243, April 5, 1983; Ord. 4218, November 23, 1982)*
- 155.00 *The ability of existing police and fire facilities and services to meet the needs of new service areas and populations shall be a criterion used in evaluating annexations, subdivision proposals, and other major land use decisions.*
- 183.00 *The City of McMinnville, with the cooperation of Yamhill County, shall establish three categories of lands within the Urban Growth Boundary. Future urbanizable lands are those lands outside the city limits, but inside the Urban Growth Boundary. These lands shall be retained in agricultural resource zones until converted to urbanizable lands by annexation to the City of McMinnville. Urbanizable lands are those lands within the city limits which are not yet developed at urban densities. Conversion of these lands to the urban classification shall involve fulfillment of the goals and policies of this plan, provision of urban services, and application of appropriate implementation ordinances and measures. Urban lands are those lands within the city limits developed at urban densities.*

187.40 *The Great Neighborhood Principles shall guide long range planning efforts including, but not limited to, master plans, small area plans, and annexation requests. The Great Neighborhood Principles shall also guide applicable current land use and development applications.*

187.90.00 *Prior to annexation of all lands greater than 10 acres in size, property owners shall submit a Master Plan to be reviewed by the City Council and acknowledged in an Annexation Agreement. (Ord. 5098, December 8, 2020)*

Comprehensive Plan Proposals Relative to Annexations:

48.30 **“Urban Holding” (UH) Zoning Map Designation.** *The City shall establish an “Urban Holding” (UH) zone, which may be applied to lands within the UH Comprehensive Plan Map designation. Lands within the UH Comprehensive Plan map designation may be annexed and rezoned to UH as an interim designation before urban zoning is applied, subject to completion of the master planning process consistent with an approved annexation agreement. (Ord. 5098, December 8, 2020)*

48.90 **Annexation Process.** *The City shall update its annexation ordinance (Ordinance No. 4357) to reflect new statutory requirements and a process consisting of an annexation agreement with the City Council that includes a conceptual master plan but is not a land-use process. (Ord. 5098, December 8, 2020)*

48.95 **McMinnville – Yamhill County Urban Growth Boundary Management Agreement.** *The City shall update its urban growth boundary management agreement (Ordinance No. 4146) with Yamhill County. (Ord. 5098, December 8, 2020)*

Comprehensive Plan Proposal 48.90 Instructs the City to update It’s annexation ordinance to reflect new statutory requirements and a process consisting of an annexation agreement with the City Council that Includes a conceptual master plan but Is not a land-use process.

Staff Is recommending amendments to the McMinnville City Code, repealing Title 16, which Is a duplicated land division ordinance similar to Chapter 17.53, and replacing It with new language dedicated to annexation requirements and processes for the City of McMinnville that reflects the process outlined and adopted In December, 2020, with the MGMUP, and to amend Chapter 17 as necessary to support this process.

The new language recommended for Title 16, "Annexations", reflects the provisions of ORS 222, the provisions of local Ballot Measure 36-32 passed In 1996 that are still relevant after Senate Bill 1753 (2016) was adopted and the process and values adopted with the MGMUP In December, 2020.

Discussion:

The first step of the annexation process is the adoption of an Area Plan for the UGB UH Comprehensive Plan designation that delineates a high level land-use plan for the area identifying future comprehensive plan designations and city zoning that will meet the intention of the adopted Framework Plan outlined the need for housing, employment land,

and public amenities in that area that serve the city's stated for growth and development. This plan will be adopted by the City Council as a supplemental document to the McMinnville Comprehensive Plan. This process will be treated similar to a Type IV land-use application requiring a public hearing with the Planning Commission and a final decision by the City Council.

Then the next step is for the landowner(s) to develop a conceptual master plan demonstrating how their property will achieve the intent of the Area Plan when annexed to the City. For this process the landowner(s) should be meeting with city staff to discuss Area Plan compliance, public infrastructure needs, etc.

Ordinance No. 5098 adopting the MGMUP also adopted amendments to the McMinnville City Code, Chapter 17.10, that provides the criteria and requirements for area plans and master plans. (See Attachment A).

When that process is completed, the landowner(s) would enter into an Annexation Agreement with the City Council outlining the terms of annexation. The Annexation Agreement is an annexation contract between the landowner(s) and the City Council determining what is expected from both parties for the annexation to be successful.

The annexation agreement is the opportunity for the City to require elements of the concept master plan that the City deems is necessary for the public good associated with the annexation. This typically includes the dedication and development of necessary public infrastructure improvements, as well as the dedication and development of public parks and trails, and in some cities, the development of necessary affordable housing to meet the city's future housing need. Attachment B provides a draft annexation agreement template. Typically, this annexation agreement is drafted prior to completion of the conceptual master plan so that the landowner(s) are aware of what the city will require as part of the annexation in advance of investing in the master planning process.

The Concept Master Plan and Annexation Agreement would then be adopted by the City Council after a public hearing process.

Then the landowner(s) would go through a quasi-judicial process for the adoption of the Master Plan (public hearing at the Planning Commission with a recommendation for approval to the City Council or a denial that can be appealed to the City Council), at which time, once approved, the City will approve the Annexation by ordinance if all other components of the Annexation Agreement have been met.

Attachment C provides the draft recommended amendments to the McMinnville City Code, Title 16 - Annexations, describing all of the annexation requirements and processes

needed outside of the land-use process for annexations in order to be compliant with ORS 222.111 and to reflect historic community values relative to annexations.

Attachment D describes necessary amendments to Title 17 of the MMC to support the city's new annexation process.

Attachment E represents a draft annexation ordinance.

The proposed amendments and process were provided to the City Council at a work session on July 21, 2021. The City Council directed staff to move forward with the proposed amendments.

After the work session the City Council received a letter from Mark Davis expressing his concerns about the proposed process. This letter was addressed in follow-up comments by the City Attorney at the next City Council meeting on July 27, 2021. Mark Davis followed up that City Council meeting with an additional email to city staff on August 1, 2021 and the City Attorney replied on August 5, 2021. (Please see Attachment F).

Mark Davis' testimony primarily focuses on whether or not the provision of public participation and opportunity for appeals are being retained in the annexation process with the proposed code amendments. Prior to the legislative amendments in 2016, a McMinnville annexation application was reviewed by the planning commission with a public hearing for compliance with the comprehensive plan and zoning ordinance. The Planning Commission made a recommendation of approval or denial to the City Council. The City Council would then review the Planning Commission recommendation and decide whether or not they supported the recommendation (that the proposed development plan associated with the annexation complied with the comprehensive plan and zoning ordinance) and would then approve or deny the request to be put on the local ballot. The decision for compliance with the comprehensive plan and zoning ordinance was a quasi-judicial process with clear and objective criteria and the opportunity for appeal to the Land Use Board of Appeals (LUBA) by both the applicant and opponents depending upon the final decision of the City Council. The popular vote by the electorate was, in the view of the 2016 legislature a discretionary vote without the opportunity for appeal by either the applicant or opponents.

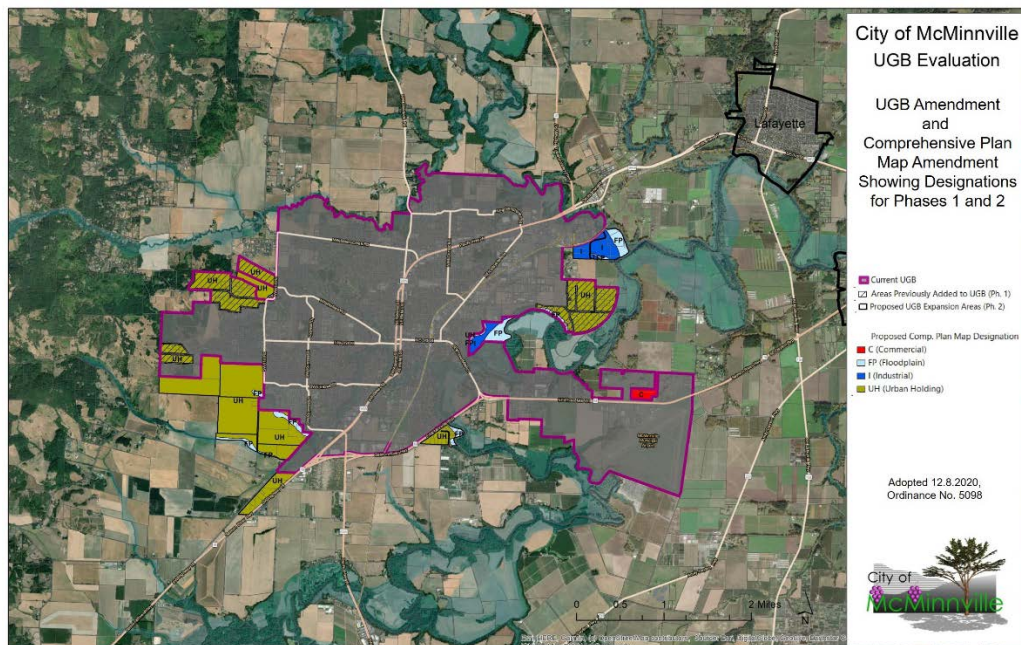
ORS 222.127 is very specific in that it instructs cities to annex property into the city if it meets the performance metrics laid out in ORS 222.127(2).

(2) *Notwithstanding a contrary provision of the city charter or a city ordinance, upon receipt of a petition proposing annexation of territory submitted by all owners of land in the territory, the legislative body of the city **shall** (emphasis added) annex the territory without submitting the*

proposal to the electors of the city if:

- (a) The territory is included within an urban growth boundary adopted by the city or Metro, as defined in [ORS 197.015 \(Definitions for ORS chapters 195, 196, 197 and ORS 197A.300 to 197A.325\)](#);
- (b) The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city;
- (c) At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or a body of water; and
- (d) The proposal conforms to all other requirements of the city's ordinances.

The proposed process eliminates the discretionary popular vote of the electorate based upon the fact that new laws do not allow cities to utilize that process for annexation decision-making. However, it retains the quasi-judicial review of the proposal by the Planning Commission and the City Council for compliance with the comprehensive plan and zoning ordinance either through a master plan and comprehensive plan map amendment process for properties 10 acres or more or a comprehensive plan map amendment for parcels less than 10 acres. The final act of Annexation cannot occur unless this compliance is demonstrated, and properties will not be considered annexed until all opportunities for the land-use appeal have been exercised. The proposed process also provides an additional layer of public process and opportunity for appeal with the added provision of the need for an adopted Area Plan prior to annexation if the property is located in an urban holding comprehensive plan designation in the urban growth boundary. The Area Plan will be adopted as a supplemental document to the Comprehensive Plan and subject to a public hearing with the Planning Commission and a final decision by the City Council, and can also be appealed to LUBA. The only occasions where an Area Plan is not required is for land that is designated either commercial or industrial land in the UGB on the City's Comprehensive Plan map.



The process proposed in the adopted MGMUP adds an additional layer of review to the process outlined in ORS 222.127, by requiring an adopted Area Plan and Master Plan prior to annexation. Since these were adopted as Comprehensive Plan policies and zoning ordinance amendments with Ordinance No. 5098, they qualify as part of the ORS 222.127(2)(d) provision.

All of the other provisions of the McMinnville's previous annexation ordinances that are not considered clear and objective land-use standards but still reflect the value of McMinnville relative to annexations have been captured in the proposed Title 16 amendments, including:

- Must have an adequate level of urban services available or made available, within three years time of annexation. (Proposed MMC 16.20.020(K)(1)).
- Findings documenting the availability of police, fire, and school facilities and services shall be made to allow for the proposed annexation. (Proposed MMC 16.20.020(K)(3)).

Attachments:

Attachment A: Chapter 17.10 of the MMC – Area Plans and Master Plans

Attachment B: Draft Annexation Agreement

Attachment C: Draft Title 16 MMC Amendments

Attachment D: Draft Title 17 MMC Amendments

Attachment E: Draft Annexation Ordinance

Attachment F: Communications from Mark Davis

ATTACHMENT A

Chapter 17.10

AREA AND MASTER PLANNING PROCESS

Sections:

- 17.10.010 Purpose.**
- 17.10.020 Applicability.**
- 17.10.030 Procedures.**
- 17.10.040 Area plan process.**
- 17.10.050 Area plan scope and components.**
- 17.10.060 Master plans.**
- 17.10.065 Master plan process.**
- 17.10.070 Master plan submittal requirements.**
- 17.10.080 Master plan review criteria.**
- 17.10.090 Development of areas less than 10 acres.**

17.10.010 Purpose.

To provide a process that will allow for and ensure the transition from rural to urban land uses in a manner that is consistent with the McMinnville Comprehensive Plan, UGB expansion plans, and the city's overall land supply needs identified in applicable UGB expansion plans and documents. (Ord. 5098 § 1 (Appx. E), 2020).

17.10.020 Applicability.

The area plan and master plan processes apply to all lands that are designated as Urban Holding (UH) on the McMinnville Comprehensive Plan Map. (Ord. 5098 § 1 (Appx. E), 2020).

17.10.030 Procedures.

- A. *Area Plan Requirement.* Prior to annexation or comprehensive plan map amendment, zone change, or development of any land in Urban Holding (UH) comprehensive plan map designations, the city must review and adopt an area plan, if applicable.
- B. *Master Plan Requirement.*
 - 1. *Concept Master Plan.* The development and approval of a concept master plan is required prior to annexation of any land in Urban Holding (UH) comprehensive plan map designations as part of an annexation agreement.

2. *Master Plan.* The development and approval of a final master plan is required prior to a zone change, or development of any land in Urban Holding (UH) comprehensive plan map designations and the UH zone. (Ord. 5098 § 1 (Appx. E), 2020).

17.10.040 Area plan process.

- A. The city council shall initiate an area planning process for lands that are designated as Urban Holding (UH) on the McMinnville Comprehensive Plan Map.
- B. Property owners may initiate the area planning process, if the city council has not yet initiated or completed an area plan for land designated on the comprehensive plan map as Urban Holding (UH) in a UGB expansion area.
1. Area planning may be initiated by property owners for lands 100 acres or greater in size.
- C. The city council shall adopt an area plan as a guiding land use document. The adoption of the area plan is not a land use decision, and does not result in any changes to comprehensive plan designations or zoning districts. (Ord. 5098 § 1 (Appx. E), 2020).

17.10.050 Area plan scope and components.

- A. Area plans shall more specifically identify land uses, their locations, and their relationship to public facilities, natural resources, and existing urban uses. The land uses identified in an area plan must be consistent with the applicable framework plan and the identified land use needs for the Urban Holding (UH) area.
- B. *Principles and Standards for Area Plans.*
1. Area plans must embody the development principles of the applicable framework plan, UGB expansion plan, McMinnville Comprehensive Plan, and any other city land use policies and standards.
 - a. *2003-2023 McMinnville Growth Management and Urbanization Plan (MGMUP).* The MGMUP provides guidance for the planning and development of fully integrated, mixed-use, pedestrian-oriented neighborhoods. Therefore, area plans for UH areas within the MGMUP areas will be developed to be consistent with:
 - i. The guidelines and characteristics of the traditional neighborhood model, as described in the McMinnville Growth Management and Urbanization Plan.
 - ii. The potential identification of locations that would be suitable for neighborhood activity centers (NACs) to meet neighborhood commercial land needs as identified in the MGMUP framework plan, and also support surrounding residential development, as described in the McMinnville Growth Management and Urbanization Plan.
 - iii. The city's adopted Great Neighborhood Principles, as described in Comprehensive Plan Policies 187.10 through 187.50. (Ord. 5098 § 1 (Appx. E), 2020).

17.10.060 Master plans.

Master plans are required for annexation into the city of McMinnville, urbanization into city of McMinnville zones and development, for all properties 10 acres or more.

A. *Applicability.* This section applies to all properties 10 acres or more proposed for annexation and/or rezoning from the UH zone to a city development zone.

1. Master plans shall be required for all lands 10 acres or greater in size.
2. Lands less than 10 acres in size may be annexed into the city, and subsequently developed.

B. *Purpose.* The purpose of a master plan is to provide:

1. Orderly and efficient development of the city consistent with the city's framework plans and adopted area plans.
2. Compatibility and/or transition with adjacent developments and the character of the area.
3. A complementary mix of uses and activities to achieve the principles of the McMinnville Growth Management and Urbanization Plan.
4. An interconnected transportation network – streets, bicycle routes, and pedestrian trails – with the master plan area and to existing and planned city streets, routes and trails.
5. A range of housing choices for areas planned to have residential components.
6. A range of open spaces and recreation facilities, as needed to facilitate the framework plan, adopted area plan and parks and recreation facility plan.
7. Public and semi-public facilities and services.
8. Preservation of historic buildings, scenic views, and natural resources to the greatest extent possible.
9. Transitions or buffers between urban development and rural areas.
10. Implementation of McMinnville's comprehensive plan, including adopted area plans and the Great Neighborhood planning principles. (Ord. 5098 § 1 (Appx. E), 2020).

17.10.065 Master plan process.

A. *Concept Master Plan.* For the conceptual plan review process, there is no need for the post-acknowledgement plan amendments (PAPAs) to the Oregon Department of Land Conservation and Development, or local Measure 56 notice, although early involvement of nearby property owners and state agencies that may have an interest in the effect of urbanization on state interests is advised, because the decision does not yet amend the McMinnville Comprehensive Plan, as it is being reviewed and approved as part of an annexation agreement with the

McMinnville city council and is not considered a land use decision. The concept master plan should consider all of the same elements and factors as the master plan described below.

B. *Master Plan.* For the final master plan approval, legislative review and approval is required as part of a quasi-judicial land use decision as it will be an amendment to the McMinnville Comprehensive Land Use Plan and Zoning Map. Following the city council's adoption of an area plan, but prior to the annexation, comprehensive plan map amendment, zone change, or development of any land within the subject area plan, property owners shall submit a master plan for review and approval by the city council.

1. Applications and requests for the approval of a master plan shall be reviewed under the review process described in Section [17.72.120](#) (Applications – Public Hearings). (Ord. 5098 § 1 (Appx. E), 2020).

17.10.070 Master plan submittal requirements.

Applications for the review and approval of a concept master plan and master plan shall include the following elements:

- A. *Plan Objectives.* A narrative shall set forth the goals and objectives of the master plan and how it achieves McMinnville's MGMUP and adopted Great Neighborhood Principles.
- B. *Plan Area and Context.* A map of the plan area and surrounding vicinity shall set the context for the master plan.
- C. *Land Use Diagram.* The land use diagram shall indicate the distribution and location of planned land uses for the master plan, including plans for park and open space and community facilities. The plan shall identify proposed comprehensive plan and zoning designations.
- D. *Significant Resources Inventory.* An inventory of significant natural resources, scenic and historic resources, and open space areas. When significant resources are present, the master plan shall include a management plan to protect resource sites.
- E. *Natural Hazard Areas.* Inventory and identify areas subject to natural hazards.
- F. *Mixed-Use Areas.* Identify areas planned for mixed uses, which may also include neighborhood activity centers if identified in the applicable area plan.
- G. *Commercial Areas.* Identify areas planned for commercial use, which may also include neighborhood activity centers if identified in the applicable area plan.
- H. *Residential Areas.* Identify areas planned for housing development. The housing plan must identify a mix of housing types and densities so that the overall density in the area meets the housing density objectives for the area that are identified in the applicable framework plan and area plan. The applicable framework plan and area plan are based on a UGB expansion plan that includes findings that specify the housing types and densities that need to be achieved in order to meet future housing needs. Great Neighborhood Principle No. 11 also requires

that “A range of housing forms and types shall be provided and integrated into neighborhoods to provide for housing choice at different income levels and for different generations.”

I. *Parks and Open Space.* Identify land suitable for park and recreation use in accordance with the needs in the applicable framework plan and area plan, and the standards in the McMinnville Parks, Recreation, and Open Space Master Plan.

J. *Transportation Analysis and Plan.* Prepare a traffic impact analysis and local street plan that is consistent with street spacing and connectivity guidelines in the McMinnville Transportation System Plan (TSP). The street plan shall show the proposed classification for all streets, proposed bicycle routes, and proposed pedestrian facilities. The street plan shall show how streets, bike routes, and pedestrian facilities will connect with adjacent urban areas that are already existing and also how those facilities will be extended to adjacent UGB expansion areas that have not yet gone through the master planning process.

K. *Public Facilities Analysis and Plan.* The plan must include a conceptual layout of public facilities (including at a minimum sanitary sewer, power, water, and storm drainage) needed to support the land use diagram. The public facilities analysis should address overall capacities and must be consistent with the city’s adopted facility master plans. Where necessary, the analysis shall identify improvements that may require amending the adopted facility master plans.

L. *Site Design and Development Standards.* If unique or innovative development standards are proposed for any area within the master plan area that differ from the city’s normal development standards, these may be identified in the master plan and requested through a planned development process. (Ord. 5098 § 1 (Appx. E), 2020).

17.10.080 Master plan review criteria.

A. In the review of an application for a master plan, the planning commission and city council shall consider the following:

1. Whether the proposed master plan is consistent with the framework plan, area plan, and comprehensive plan in terms of land use, density, transportation systems and networks, and open space.
2. Whether the proposed master plan is generally suitable for the area in which it is proposed, considering existing and planned neighborhoods, shopping and employment areas, and natural resources and hazards.
3. Whether the proposed master plan is integrated with existing developed or planned areas.
4. Whether the master plan is consistent with the city’s adopted Great Neighborhood Principles, which include:
 - a. *Natural Feature Preservation.* Great Neighborhoods are sensitive to the natural conditions and features of the land.

- i. Neighborhoods shall be designed to preserve significant natural features including, but not limited to, watercourses, sensitive lands, steep slopes, wetlands, wooded areas, and landmark trees.

- b. *Scenic Views.* Great Neighborhoods preserve scenic views in areas that everyone can access.
 - i. Public and private open spaces and streets shall be located and oriented to capture and preserve scenic views, including, but not limited to, views of significant natural features, landscapes, vistas, skylines, and other important features.
- c. *Parks and Open Spaces.* Great Neighborhoods have open and recreational spaces to walk, play, gather, and commune as a neighborhood.
 - i. Parks, trails, and open spaces shall be provided at a size and scale that is variable based on the size of the proposed development and the number of dwelling units.
 - ii. Central parks and plazas shall be used to create public gathering spaces where appropriate.
 - iii. Neighborhood and community parks shall be developed in appropriate locations consistent with the policies in the parks master plan.
- d. *Pedestrian Friendly.* Great Neighborhoods are pedestrian friendly for people of all ages and abilities.
 - i. Neighborhoods shall include a pedestrian network that provides for a safe and enjoyable pedestrian experience, and that encourages walking for a variety of reasons including, but not limited to, health, transportation, recreation, and social interaction.
 - ii. Pedestrian connections shall be provided to commercial areas, schools, community facilities, parks, trails, and open spaces, and shall also be provided between streets that are disconnected (such as cul-de-sacs or blocks with lengths greater than 400 feet).
- e. *Bike Friendly.* Great Neighborhoods are bike friendly for people of all ages and abilities.
 - i. Neighborhoods shall include a bike network that provides for a safe and enjoyable biking experience, and that encourages an increased use of bikes by people of all abilities for a variety of reasons, including, but not limited to, health, transportation, and recreation.
 - ii. Bike connections shall be provided to commercial areas, schools, community facilities, parks, trails, and open spaces.
- f. *Connected Streets.* Great Neighborhoods have interconnected streets that provide safe travel route options, increased connectivity between places and destinations, and easy pedestrian and bike use.
 - i. Streets shall be designed to function and connect with the surrounding built environment and the existing and future street network, and shall incorporate human scale elements including, but not limited to, Complete Streets features as defined in the comprehensive plan, grid street networks, neighborhood traffic management techniques, traffic calming, and safety enhancements.
 - ii. Streets shall be designed to encourage more bicycle, pedestrian and transit mobility with a goal of less reliance on vehicular mobility.

- g. *Accessibility.* Great Neighborhoods are designed to be accessible and allow for ease of use for people of all ages and abilities.
- i. To the best extent possible all features within a neighborhood shall be designed to be accessible and feature elements and principles of Universal Design.
 - ii. Design practices should strive for best practices and not minimum practices.
- h. *Human-Scale Design.* Great Neighborhoods have buildings and spaces that are designed to be comfortable at a human scale and that foster human interaction within the built environment.
- i. The size, form, and proportionality of development is designed to function and be balanced with the existing built environment.
 - ii. Buildings include design elements that promote inclusion and interaction with the right-of-way and public spaces, including, but not limited to, building orientation towards the street or a public space and placement of vehicle-oriented uses in less prominent locations.
 - iii. Public spaces include design elements that promote comfortability and ease of use at a human scale, including, but not limited to, street trees, landscaping, lighted public areas, and principles of Crime Prevention through Environmental Design (CPTED).
- i. *Mix of Activities.* Great Neighborhoods provide easy and convenient access to many of the destinations, activities, and local services that residents use on a daily basis.
- i. Neighborhood destinations including, but not limited to, neighborhood-serving commercial uses, schools, parks, and other community services, shall be provided in locations that are easily accessible to surrounding residential uses.
 - ii. Neighborhood-serving commercial uses are integrated into the built environment at a scale that is appropriate with the surrounding area.
 - iii. Neighborhoods are designed such that owning a vehicle can be optional.
- j. *Urban-Rural Interface.* Great Neighborhoods complement adjacent rural areas and transition between urban and rural uses.
- i. Buffers or transitions in the scale of uses, buildings, or lots shall be provided on urban lands adjacent to rural lands to ensure compatibility.
- k. *Housing for Diverse Incomes and Generations.* Great Neighborhoods provide housing opportunities for people and families with a wide range of incomes, and for people and families in all stages of life.
- i. A range of housing forms and types shall be provided and integrated into neighborhoods to provide for housing choice at different income levels and for different generations.
- l. *Housing Variety.* Great Neighborhoods have a variety of building forms and architectural variety to avoid monoculture design.

- i. Neighborhoods shall have several different housing types.
- ii. Similar housing types, when immediately adjacent to one another, shall provide variety in building form and design.
- m. *Unique and Integrated Design Elements.* Great Neighborhoods have unique features, designs, and focal points to create neighborhood character and identity. Neighborhoods shall be encouraged to have:
 - i. Environmentally friendly construction techniques, green infrastructure systems, and energy efficiency incorporated into the built environment.
 - ii. Opportunities for public art provided in private and public spaces.
 - iii. Neighborhood elements and features including, but not limited to, signs, benches, park shelters, street lights, bike racks, banners, landscaping, paved surfaces, and fences, with a consistent and integrated design that are unique to and define the neighborhood. (Ord. 5098 § 1 (Appx. E), 2020).

17.10.090 Development of areas less than 10 acres.

Lands less than 10 acres in size may be annexed into the city and rezoned into urban zones without the approval and adoption of a master plan. This may occur when the lands are designated for only residential use in the applicable area plan.

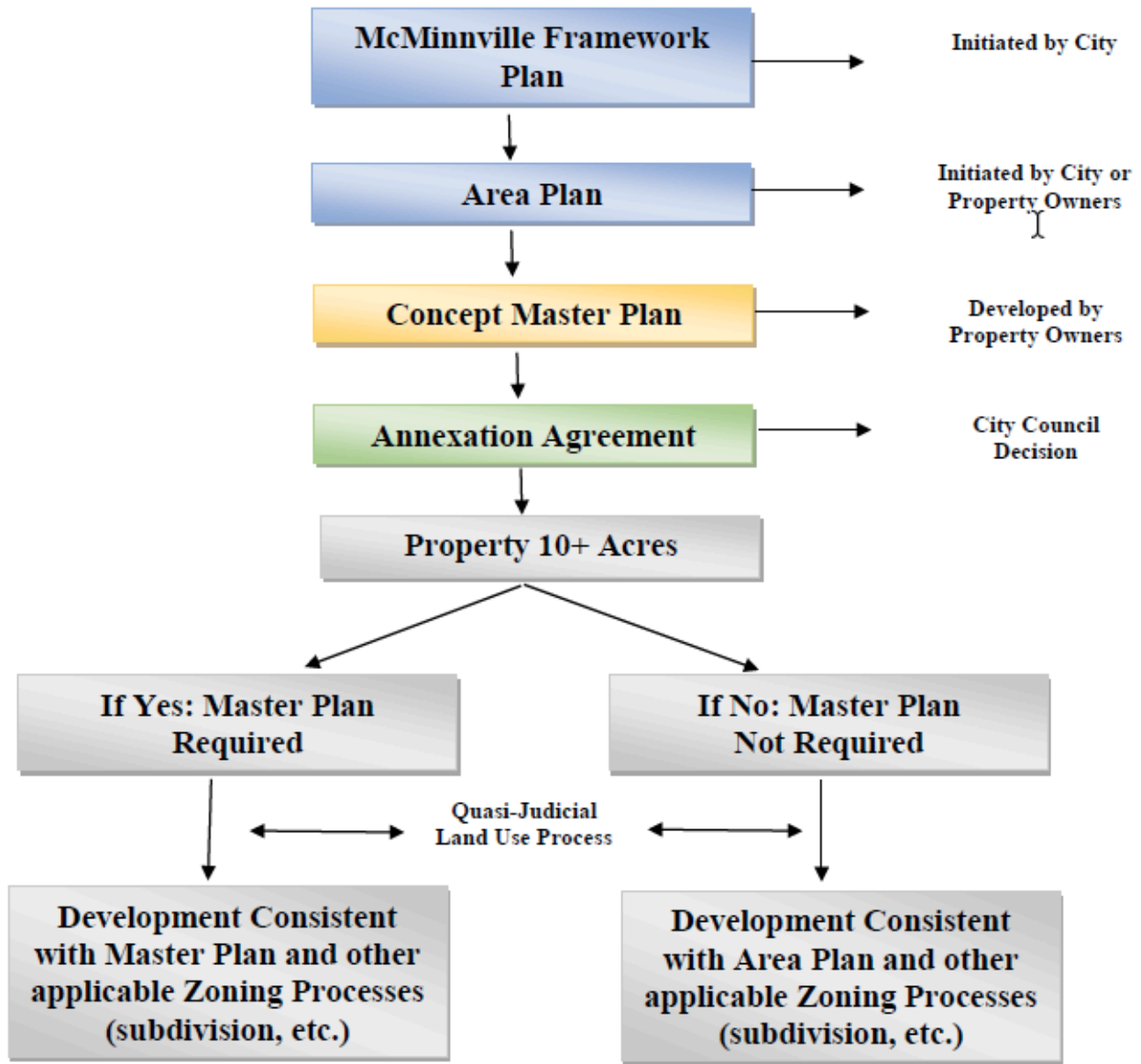
A. Following the annexation of lands that are less than 10 acres in size, the lands shall be subject to the comprehensive plan map amendment and zone change review processes described in Sections [17.72.120](#) and [17.74.020](#). Urban comprehensive plan map designations and urban zoning districts shall be requested for the lands, and the designations and zoning districts must be consistent with the land uses identified in the adopted area plan that is applicable to the land in question.

B. The development of lands less than 10 acres in size must:

1. Be consistent with the uses identified in the area plan applicable to the land in question;
2. Meet the city's adopted Great Neighborhood Principles;
3. Include a local street plan that complies with the applicable area plan, the McMinnville TSP, and other local street spacing and connectivity requirements; and
4. Be consistent with all other required policies and standards of the McMinnville Comprehensive Plan and Zoning Ordinance.

Summary Graphic of UGB Expansion Planning Process

Summary Graphic of UGB Expansion Planning Process:



(Ord. 5098 § 1 (Appx. E), 2020).

This website is for demonstration or proofing purposes only. It is not necessarily endorsed by City of McMinnville and should not be relied upon for the content of any document.

The McMinnville Municipal Code is current through Ordinance 5104, passed June 8, 2021.

Disclaimer: The city recorder's office has the official version of the McMinnville Municipal Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

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

City Telephone: (503) 435-5702

[Code Publishing Company](#)

After Recording Return To:

**City Recorder’s Office
City of McMinnville
230 Second Street
McMinnville, OR 97128**

ANNEXATION AGREEMENT

This Annexation Agreement is made and entered into this ____ day of _____, _____, by and between the City of McMinnville, Oregon, an Oregon municipal corporation (hereinafter “City”) and _____ (hereinafter “Owner”).

WITNESSETH

WHEREAS, Owner is the record owner of the property legally described on Exhibit A attached hereto and incorporated herein (hereinafter referred to as the “Property”); and

WHEREAS, the Property is within the City’s urban growth boundary and is proposed to be annexed to the City; and

WHEREAS, Owner desires to have the Property annexed to the City; and

WHEREAS, Owner will submit a petition for annexation and provide the City with all required consents for annexation; and

WHEREAS, the City is willing to annex the Property on the terms and conditions, and subject to the provisions, of this Agreement; and

WHEREAS, Owner desires to submit a Concept Master Plan application per Section 17.10 of the McMinnville Municipal Code and the City is willing to accept, process, and conditionally approve a Concept Master Plan application that meets the requirements of Section 17.10 of the McMinnville Municipal Code prior to the annexation and rezoning of the Property subject to the terms of this Agreement, and

WHEREAS, the City and Owner desire to enter into this Agreement to regulate the annexation, zoning, use and development of the Property; and

WHEREAS, should a property owner who chooses not to execute the Annexation Agreement, refuses to grant a right-of-way and/or easement across his or her property in accordance with the City's Public Facilities Plans, the City may institute condemnation proceedings to effectuate such right-of-way and/or easement, or modify the Public Facilities Plans to bypass the property, in order to accommodate the orderly construction of the public infrastructure; and

WHEREAS, Council will consider this annexation on _____, 2021 and this agreement is part of the annexation.

NOW, THEREFORE, in consideration of the representations, promises and mutual covenants contained herein, the City and Owner agree as follows:

1. RECITALS: The foregoing recitals are incorporated herein as is fully set forth in this Section.

2. ANNEXATION
 - a. City agrees that it will initiate an ordinance annexing the Property into the City once all required consents and signed Annexation Agreements have been received by the City and fully executed.

 - b. Owner may terminate this Agreement by serving written notice to the City no less than 60 days prior to the effective date of the termination. The notice must be received by the City at least 60 days prior to the public hearings for council consideration of the annexation. If the City receives such notice, this Agreement terminates as of the effective date of the notice. After the annexation resolution is adopted by the City, this Agreement may only be terminated by written consent of Owner and City.

3. COMPREHENSIVE PLAN/ZONING: At the time of annexation, the City will apply the Comprehensive Plan designations for the Property as identified in the adopted _____ Area Plan, "Area Plan", per Exhibit B, and the city zoning identified in the approved Final Master Plan.

4. DEVELOPMENT: Owner agrees as follows:
- a. Owner shall waive and shall not assert any claim against the City that may now exist or that may accrue through the date of annexation of the Property. This includes any claim arising out of this agreement, any land use regulation, or under Measure 37 (ORS 197.352), Measure 49, and Measure 56 (ORS 227.186).
 - b. Owner shall obtain approval of a Concept Master Plan per Section 17.10 of the McMinnville Municipal Code concurrent with approval of this Annexation Agreement. The City will not execute this Agreement until the Concept Master Plan is approved by the City Council.
 - c. Owner shall obtain approval of a Final Master Plan per Section 17.10 of the McMinnville Municipal Code prior to or concurrent with the Annexation Ordinance for this Property.
 - d. Owner agrees that any development of the property will comply with the applicable approved Area Plan and will incorporate and follow the City's Great Neighborhood Principles (attached as Exhibit C) as applicable. The City Manager or City Manager designee, or Hearings Body shall determine the applicability of the Great Neighborhood Principles to the subject property as necessary.
 - e. Owner agrees that it will, without any cost to the City, dedicate the necessary rights-of-way or easements for all Planned Improvements identified in the City's Public Facilities Plan, prior to annexation. The Public Facilities Plan includes the updated Wastewater and Water Master Plans, Transportation System Plan and Parks and Recreation Master Plan. If such Public Facilities Plan have not yet been adopted for the urban growth boundary, the Owner agrees that it will, without any cost to the City, dedicate the necessary rights-of-way or easements for all Planned Improvements identified in the adopted _____ Area Plan. (Attached as Exhibit D).
 - f. Owner agrees to donate funds to the McMinnville School District as specified in Exhibit E. The donation is in addition to any amounts identified by a school district under chapter 829, Oregon Laws 2007.
 - g. Owner shall be required/encouraged to construct an appropriate mix of housing as demonstrated by the adopted _____ Area Plan in order to respond to community housing needs. Furthermore, the City

will require/encourage Owner to create dedicated affordable housing for low and moderate income households by

- Allocating X% of all housing units to housing serving households of 80% Area Median Income or less. These housing units shall be deed restricted for _____ years to serve this household income demographic and will be monitored by _____ for compliance.
 - Donating X% of Property to _____ Community Land Trust for the development of affordable housing serving households of 80% Area Median Income or less.
- h. Water Rights. Owner shall remove all irrigation water rights from Property. Removal shall occur prior to the platting of the first phase of development. Alternate methods of removal will require approval of the Director of Public Works.
- i. City will accept and review development plans under anticipated zoning and proposed Public Facilities Plan. However the City will not issue any building permits for the Property until after the City has applied zoning and adopted a revised Public Facilities Plan and System Development Charges. This includes resolution of all appeals relating to provide transportation, water, wastewater and park facilities to serve the Property. Notwithstanding ORS 227.178 (3), Owner agrees that development applications for the property will be reviewed under the updated Public Facilities plan and System Development Charges.
- j. City will issue necessary permits to allow construction of necessary public facilities to serve the Property in advance of adoption of Public Facility Plans provided the developer assumes all risks and indemnifies the City from any claims arising out of the construction. This includes the risk that the City, through a public process, may zone the Property in a manner different than anticipated by Owner.
- k. Owner agrees to not remonstrate against the formation of a local improvement district or reimbursement district created for the purpose of funding public improvements that serve the Property.
5. AMENDMENT: This Agreement and any exhibits attached hereto may be amended only by the mutual written consent of both parties.

6. **SEVERABILITY:** If any provision, covenant or portion of this Agreement or its application to any person, entity, property or portion of property is held invalid, or if any ordinance or resolution adopted pursuant to this Agreement or its application to any person, entity, property or portion of property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement or other ordinances or resolutions passed pursuant hereto, and to that end, all provisions, covenants, and portions of this Agreement and of the ordinances and resolutions adopted pursuant hereto are declared to be severable.
7. **NO WAIVER OF RIGHT TO ENFORCE AGREEMENT:** Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
8. **ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements, negotiations and exhibits and is a full integration of the entire agreement of the parties relating to the subject matter hereof. The parties shall have no obligations other than specifically stated in this Agreement except those of general applicability.
9. **SURVIVAL:** The provisions contained in this Agreement shall survive the annexation of the property and shall not be merged or expunged by the annexation of the property or any part thereof to the City.
10. **SUCCESSORS AND ASSIGNS:** This Agreement shall run with the land described on Exhibit F and inure to the benefit of, and be binding upon, the successors in title of the Owners and their respective successors, grantees, lessees, and assigns, and upon successor corporate authorities of the City and successor municipalities.
11. **TERM OF AGREEMENT:** This Agreement shall be binding upon the parties and their respective successors and assigns for the full statutory term of twenty (20) years, commencing as of the date of this Agreement.

12. **ENFORCEMENT:** Owner agrees that if it fails to perform as required under this Agreement, the City Council may, at the City Council's option, refuse to process any development application submitted for the property or include as conditions of approval any requirement of this Agreement. Owner hereby waives any claim regarding such conditions of approval, whether to LUBA or to any state or federal court.
13. **ATTORNEY FEES:** In any proceeding to enforce, apply or interpret this Agreement, each party shall bear its own attorneys' fees and costs.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

CITY

OWNER

Jeff Towery, City Manager

ATTEST:

Claudia Cisneros, City Recorder

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me this ____ day of ____
_, __ by Jeff Towery, City Manager, on behalf of the City of McMinnville, who
acknowledged that he had authority to sign on behalf of the City of
McMinnville and this instrument to be the City's voluntary act and deed.

Notary Public for Oregon

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me this ____ day of _____
_, __ by _____, who
acknowledged this instrument to be his/her voluntary act and deed.

Notary Public for Oregon



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

www.mcminnvilleoregon.gov

PROPOSED AMENDMENTS TO THE MCMINNVILLE MUNICIPAL CITY CODE –

Chapter 16 will be replaced in its entirety with the following language.

**TITLE 16
ANNEXATION**

Chapters:

16.10 General Provisions

16.20 Annexation Initiation

16.30 Properties Subject to MMC 17.10.060

16.40 Properties Not Subject to MMC 17.10.060

CHAPTER 16.10 General Provisions

Sections.

- 16.10.010 Purpose**
- 16.10.020 Definitions**
- 16.10.030 Applicability**
- 16.10.040 Annexation Approval**
- 16.10.050 Zoning of Annexed Areas**
- 16.10.060 Effective Date and Notice of Approved Annexation**

16.10.010 Purpose

This Chapter is intended to establish procedures and criteria for annexation under the provisions of the Oregon Revised Statutes including, but not limited to, Chapter 222. This Chapter aims to achieve orderly and efficient annexation of land to the City that will result in providing a complete range of public services and public facilities for the annexed territory and to ensure consistency with the McMinnville Comprehensive Plan. The City recognizes that the development of lands at an urban density must include the provision of an adequate level of required urban services, including, but not limited to, such as sanitary sewer, water, stormwater, roads, and parks.

The process for annexing property is divided into two routes. The first route is provided in Chapter 16.20 herein and applies to properties that are subject to Chapter 17.10. The second route is provided in Chapter 16.30 herein and applies to properties that are 10 acres or less that are not subject to Chapter 17.10.

Cross reference: See ORS 222.855 for annexation to abate a public danger. Also, see ORS 222.111 for annexation eligibility and ORS 222.010 – 222.750 for annexation procedures.

16.010.020 Definitions

Annexation – The process by which a municipality, upon meeting certain requirements, expands its corporate limits.

Annexation Agreement – The written agreement between the City and owners of land requesting annexation that states the terms, conditions and obligations of the parties to extend public facilities and public services and mitigate public facility and public service impacts to the City associated with the annexation and future development of the property. The agreement is also used to ensure that the annexation is consistent with the McMinnville Comprehensive Plan and that the resulting development meets the community’s identified needs.

16.10.030 Applicability

The following conditions must be met prior to or concurrent with City processing of any annexation request:

- A. The subject site must be located within the McMinnville urban growth boundary.
- B. The subject site must be contiguous to the existing City limits.

16.10.040 Annexation Approval

- A. City Council approval of annexation applications shall be by ordinance.
- B. If an annexation is initiated by property owners representing less than 100 percent of all owners of property to be annexed, after holding a public hearing and if the City Council approves the proposed annexation, the City Council shall call for an election within the territory to be annexed. Otherwise no election on a proposed annexation is required.

16.10.050 Zoning of Annexed Areas

The McMinnville Comprehensive Plan Map provides for comprehensive plan designations on all land within the City’s urban growth boundary. Land that is currently designated as a Urban Holding comprehensive plan designation need to undergo an Area Planning process per Section 17.10.010 – 17.10.050 of the McMinnville Municipal Code and at the time of annexation a new comprehensive plan designation will be applied to the subject property that will identify the future City zoning classifications of that property.

16.10.060 Effective Date and Notice of Approved Annexation

A. The effective date of an approved annexation must be set in accordance with ORS 222.040 or 222.180.

B. Notice of Approved Annexation:

1. Not later than 10 working days after the passage of an ordinance approving an annexation, the City Manager or designee will:

- a. Send by certified mail a notice to public utilities (as defined in ORS 757.005), electric cooperatives and telecommunications carriers (as defined in ORS 133.721) operating within the City.
- b. Mail a notice of the annexation to the Secretary of State, Department of Revenue, Yamhill County Clerk, Yamhill County Assessor, affected districts, and owners and electors in the annexed territory. The notice must include:
 - i. A copy of the ordinance approving the annexation;
 - ii. A legal description and map of the annexed territory;
 - iii. The findings, if applicable; and
 - iv. Each site address to be annexed as recorded on Yamhill County assessment and taxation rolls.
- c. The notice to the Secretary of State will also include a copy of the statement of consent as required in Section 17.68.030, Annexation Initiation.

2. If the effective date of an annexation is more than one year after the City Council passes the ordinance approving it, the City Manager or designee will mail a notice of the annexation to the Yamhill County Clerk not sooner than 120 days and not later than 90 days prior to the effective date of the annexation.

CHAPTER 16.20
Annexation Initiation

Sections.

16.20.010 Annexation Initiation

16.20.020 Annexation Application

16.20.010 Annexation Initiation

An annexation application may be initiated by City Council resolution, or by written consents from electors and/or property owners as provided below.

16.20.020 Annexation Application

An annexation application shall include the following:

- A. A list of owners, including partial holders of owner interest, within the affected territory, indicating for each owner:
 - 1. The affected tax lots, including the township, section and range numbers;
 - 2. The street or site addresses within the affected territory as shown in the Yamhill County Records;
 - 3. A list of all eligible electors registered at an address within the affected territory; and
 - 4. Signed petitions as may be required in Subsection B below.

- B. Written consents on City-approved petition forms that are:
 - 1. Completed and signed, in accordance with ORS 222.125, by:
 - a. All of the owners within the affected territory; and
 - b. Not less than 50 percent of the eligible electors, if any, registered within the affected territory; or

 - 2. Completed and signed, in accordance with ORS 222.170, by:
 - a. More than half the owners of land in the territory, who also own more than half the land in the contiguous territory and of real property therein representing more than half the assessed value of all real property in the contiguous territory (ORS 222.170(1)); or

adequate if the municipal operations are in accordance with federal and state regulations, permits, and orders.

2. Roads with an adequate design capacity for the proposed use and projected future uses. Where construction of the road is not deemed necessary within the three-year time period, the City will note requirements such as dedication of rights-of-way and easements, waivers of remonstrance against assessment for road improvement costs, and/or participation in other transportation improvement costs, for application at the appropriate level of the planning process. The City will also consider public costs of the improvements.
 3. Documentation of the availability of police, fire, parks, and school facilities and services shall be made to allow for conclusionary findings either for or against the proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.
- L. A written narrative addressing the proposal's consistency with the approval criteria specified in Chapter 16.30, if applicable.
- M. A fee as established by Council resolution.
- N. If applicable, a draft annexation agreement to be approved by Council pursuant to Section 16.30.030 herein and a concept master plan as required in MMC Chapter 17.10.060 *et seq* to be approved by Council.

CHAPTER 16.30
Properties Subject to MMC 17.10.060

Sections.

- 16.30.010 Applicability**
- 16.30.020 Area Planning and Master Planning**
- 16.30.030 Annexation Agreement**
- 16.30.040 Review Process**

16.30.010 Applicability.

This Chapter applies to all properties that are subject to MMC 17.10.060.

16.30.020 Area Planning and Master Planning.

Properties in areas that the City has determined are subject to area planning as provided in Chapter 17.10 and in other adopted plans, such as the McMinnville Growth Management and Urbanization Plan, must have an approved area plan and master plan, as provided in Chapter 17.10, and have an annexation agreement to be annexed into the City.

16.30.030 Annexation Agreement.

Properties subject to this Chapter 16.30 must enter into an annexation agreement with the City. The City Council may adopt by resolution an annexation agreement with the owner(s) of property that is proposed for annexation to the City, and such agreement may include an agreement to annex at a future date. The annexation agreement shall address, at a minimum, connection to and extension of public facilities and services and compliance with the McMinnville Comprehensive Plan, approved applicable area plan, and concept master plan (*see* MMC 17.10). Connection to public facilities and services shall be at the discretion of the City, unless otherwise required by the Oregon Revised Statutes. Where public facilities and services are available and can be extended, the applicant shall be required to do so. The annexation agreement can also have additional requirements for annexation into the city at the discretion of the City Council that responds to the overall future growth and development needs of the community.

16.30.040 Review Process.

- A. Annexation Application Submittal. Concurrent with submittal of a concept master plan pursuant to Sections 17.10.060 – 17.10.080, the applicant must submit an annexation application consistent with the requirements of Section 16.20.020 that includes the annexation agreement. The application will be reviewed for completeness as provided in Section 17.72.040.
- B. The property owner will sign an annexation agreement to be considered for approval by the City Council either concurrently with or prior to the annexation application.
- C. The City Council will undertake a legislative review process to determine whether to approve the annexation. The burden is on the applicant to prove compliance with the requirements of this Title and to provide applicable findings.
- D. The City Council may annex properties where urban services are not and cannot practically be made available within the three-year time frame noted in subsection (b) of this section, but where annexation is needed to address a health hazard, to annex an island, to address sanitary sewer, stormwater, or water connection issues for existing development, to address specific legal or contract issues, to annex property where the timing and provision of adequate services in relation to development is or will be addressed through legislatively adopted specific area plans or similar plans, or to address similar situations. In these cases, absent a specific legal or contractual constraint, the city council shall apply an interim zone, such as a limited-use overlay, that would limit development of the property until such time as the services become available

CHAPTER 16.40
Properties Not Subject to MMC 17.10.060

Sections.

- 16.40.010 Applicability**
- 16.40.020 Review Process**
- 16.40.030 Quasi-Judicial Annexation Criteria**
- 16.40.040 Annexation of Non-Conforming Uses**

16.40.010 Applicability.

This Chapter applies to all properties that are not subject to MMC 17.10.060.

16.40.020 Review Process.

- A. Annexation Application Submittal. The applicant must submit an annexation application consistent with the requirements of Section 16.20.020 along with the applicable development application and related plan (*see* MMC 17.53 and 17.72). The application will be reviewed for completeness as provided in Section 17.72.040.
- B. Consideration of Annexation Application. Annexation applications will be reviewed and considered pursuant to McMinnville Chapter 17.72, as it applies to quasi-judicial proceedings, except the criteria to be considered by the Planning Commission and the City Council are provided in Section 16.40.030 herein.

16.40.030 Quasi-Judicial Annexation Criteria.

The following criteria shall apply to all quasi-judicial annexation requests:

- A. The proposed use for the site complies with the McMinnville Comprehensive Plan and with the designation on the McMinnville Comprehensive Plan Map. If a redesignation of the Comprehensive Plan Map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the McMinnville Comprehensive Plan and any applicable Area Plan.

- B. The application complies with the requirements of Section 16.20.020 and provides the necessary findings, including, but not limited to, findings related to adequate urban services.
- C. The burden is on the applicant to prove compliance with the requirements of this Title and to provide applicable findings.
- D. The city council may annex properties where urban services are not and cannot practically be made available within the three-year time frame noted in subsection (B) of this section, but where annexation is needed to address a health hazard, to annex an island, to address sanitary sewer, stormwater, or water connection issues for existing development, to address specific legal or contract issues, to annex property where the timing and provision of adequate services in relation to development is or will be addressed through legislatively adopted specific area plans or similar plans, or to address similar situations. In these cases, absent a specific legal or contractual constraint, the city council shall apply an interim zone, such as a limited-use overlay, that would limit development of the property until such time as the services become available.

16.40.040 Annexation of Non-Conforming Uses

- A. Generally. When a nonconforming use is annexed into the city, the applicant shall provide, in the annexation application, a schedule for the removal of the nonconforming use. At time of approval of the annexation, the city council may add conditions to ensure the removal of the nonconforming use during a reasonable time period. The time period may not exceed 10 years.
- B. Exception. A legal nonconforming residential structure is allowed to remain indefinitely. Notwithstanding the foregoing, a proposed changes to an existing residential structure will be subject to Chapter 17.63.



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

www.mcminnvilleoregon.gov

PROPOSED AMENDMENTS TO THE MCMINNVILLE MUNICIPAL CITY CODE – Chapter 17.03, General Provisions

New proposed language is represented by **bold font**, deleted language is represented by ~~strikethrough font~~.

Chapter 17.06 DEFINITIONS

~~**Annexation**—An extension of the boundary of the City which involves a land use process that evaluates if a property meets the criteria for incorporation into the City limits and a vote by the electorate of McMinnville.~~

Chapter 17.09 ZONE CLASSIFICATIONS BOUNDARIES AND MAPS

~~17.09.050 Annexed areas. If a property is annexed into the City and does not concurrently apply for and obtain urban comprehensive plan designations and urban zone designations, it shall be placed in the urban holding zone and will not be allowed any building permits until the zone is changed to a developable city zone through the procedures set forth in Chapter 17.72 (Applications and Review Process) of this title. An unzoned area annexed to the City shall be placed in the R-1 zone. A County zoned area annexed to the City shall remain in the County zone classification and shall not be allowed any building permits until the zone is changed to a city zone through the procedures set forth in Chapter 17.72 (Applications and Review Process) of this title.~~ Simultaneous application for annexation and a zone change is allowed provided that the zone change ordinance does not take effect until and unless the property is properly annexed to the City and incorporated within the city limits. (Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

Chapter 17.72 APPLICATIONS AND REVIEW PROCESS

~~17.72.080 Legislative or Quasi-Judicial Hearings. The applications listed in this Chapter are either legislative or quasi-judicial in nature and are subject to a public hearing before the Planning Commission or City Council.~~

- A. A requested amendment to the text of the zoning ordinance or comprehensive plan would call for a legislative-type hearing, the purpose of which is to obtain public input primarily on matters of policy. A legislative amendment may be initiated by the City Council, the Planning Commission or by the Citizens' Advisory Committee. Any other citizen may petition the City Council requesting them to initiate a text amendment.
- B. An application that is site specific (such as a zone change ~~or annexation request~~) would call for a quasi-judicial hearing. The decisions made as a result of such hearings must be based upon testimony submitted and supported by Findings of Fact. An amendment that is site specific may be initiated by the City Council, the Planning Commission, the Citizens' Advisory Committee or by application of the property owner.

17.72.090 Application Review Summary Table. The following table offers an overview of land use applications and corresponding review body. Additional information regarding the notification and approval criteria for specific land use applications can be found by referring to the procedural reference section in the right-hand column of the table. Information regarding the hearing body and the hearing procedure can be found in this chapter. (Ord. 5047, §2, 2018, Ord. 5034 §2, 2017; Ord. 4984 §1, 2014).

| Review Process | Land Use Application | Zoning Ordinance Reference |
|---|---|----------------------------|
| Applications Public Hearing- Planning Commission | Annexations* ** | Ord. No. 4357 |
| | Appeal of Director's Decision | 17.72.170 |
| | Application (Director's Decision) for which a Public Hearing is Requested | 17.72.120 |
| | Comprehensive Plan Map or Text Amendment* | 17.74.020 |
| | Conditional Use Permit | 17.74.030-060 |
| | Legislative Amendment | 17.72.120 |
| | Master Plan | 17.10 |
| | Planned Development Amendment* | 17.74.070 |
| | Legislative Amendment * | 17.72.120 |
| | Subdivision (more than 10 lots) | 17.53.070 |
| | Variance | 17.74.100-130 |
| | Zone Change* | 17.74.020 |

* Following Public Hearing, Planning Commission makes recommendation to City Council

~~** Following City Council recommendation, Annexation requests are subject to voter approval~~

17.72.160 Effective Date of Decision. Unless an appeal is filed, a decision made by the Planning Director or the Planning Commission shall become final fifteen (15) calendar days from the date that the notice of the decision is mailed. Unless an appeal is filed, a decision made by the City Council shall become final 21 (twenty-one) days from the date that the notice of decision is mailed. ~~Annexation requests are subject to voter approval following the City Council's decision.~~

ORDINANCE NO. XXXX

AN ORDINANCE DECLARING CERTAIN TERRITORY AS BEING ANNEXED TO AND INCORPORATED WITHIN THE CITY OF MCMINNVILLE, SETTING THE COMPREHENSIVE PLAN DESIGNATIONS AND URBAN ZONES.

WHEREAS, the real property described in Exhibit "A" attached hereto and incorporated by reference is contiguous to the City of McMinnville; and

WHEREAS, all owners of the territory described in Exhibit "A" have consented in writing to the annexation of the land described in Exhibit "A" into the City of McMinnville; and

WHEREAS, there are no electors residing on the property described in Exhibit "A"; and

WHEREAS, an application has been submitted to the City of McMinnville for the annexation of the property described in Exhibit "A"; and

WHEREAS, the City Council finds that this annexation complies with the McMinnville Comprehensive Plan and Chapter 16 of the McMinnville Municipal Code; and

WHEREAS, the City Council finds that this Docket X-XX has been approved by Ordinance No. XX thereby approving a master plan for this property that is compliant with _____ Area Plan and Chapter 17.10 of the McMinnville Municipal Code; and

WHEREAS, the City Council finds that the property owner has complied with all of the covenants and requirements of Annexation Agreement X; and

WHEREAS, the City Council finds that this annexation is in the best interest of the City and of said territory described in Exhibit "A".

NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:

SECTION 1: Annexation Area: The real property described in Exhibit "A" to this ordinance is hereby proclaimed to be annexed to the City of McMinnville, Oregon.

SECTION 2: Record: The City Recorder shall submit to the Secretary of State of the State of Oregon a copy of this ordinance together with a copy of the statement of consent of the land owners of the property described in Exhibit "A".

The City Recorder shall also send a description by metes and bounds or legal subdivision of the new boundaries of the City of McMinnville to the Yamhill County Tax Assessor and the Yamhill County Clerk within 10 days of the date of this ordinance.

SECTION 3: TAKES EFFECT: That this ordinance shall take effect thirty (30) days after its passage by the City Council.

Passed by the Council this _____ day of _____,
_____ by the following votes:

Ayes: _____

Nays: _____

MAYOR

Attest:

Approved as to form:

CITY RECORDER

CITY ATTORNEY

From: [Amanda Guile-Hinman](mailto:Amanda.Guile-Hinman@startlivingthetruth.com)
To: mark@startlivingthetruth.com
Cc: [Heather Richards](mailto:Heather.Richards@startlivingthetruth.com)
Subject: RE: Change in Annexation Process
Date: Thursday, August 5, 2021 12:34:07 PM
Attachments: [Chapter 17.10 MMC.pdf](#)

Hi Mark,

I've attached the Code language regarding Area Plans and Master Plans for your reference, as well as a link to Appendix G from the McMinnville Growth Management and Urbanization Plan, which explains area planning and master planning processes that are now in the City Code, and which this process is further implementing. https://www.mcminnvilleoregon.gov/sites/default/files/fileattachments/planning/page/19961/appendix_g_-_framework_plan_final_12.8.2020.pdf

As far as the annexation approval process, nothing is changing to the process to annex other than addressing the change codified in ORS 222.127. In other words, the applicant(s) must still fill out an application, which must be considered by Council. If the applicant(s) own all the property to be annexed, the only difference is that after Council approval, it cannot go to a vote. Similarly, the development approval process for construction on the property has not changed. What the City has done is include additional processes earlier in the planning for development to ensure that development is consistent with the community's vision of McMinnville and addresses the necessary infrastructure, parks, schools, and other community needs that are needed for new growth in McMinnville.

When the City went through its UGB amendment, the City wanted to ensure that the City properly planned for new development in the areas designated as Urban Holding by requiring area plans for large swaths of land, rather than looking at each parcel individually. That way, issues such as infrastructure, preservation, parks, density, etc. can be planned more intentionally and strategically. In the MGMUP, the City identified 6 areas to undergo an area planning process. Area plans are legislative decisions to be made by the City Council after a community engagement process. Area plans, as explained in Appendix G, "must embody the development principles of the MGMUP and other City land use policies and standards." Area planning is generally initiated by the City, will go through a public engagement process, and will be approved by the City Council. It is not an administrative process. All land that has an Urban Holding designation will be subject to an area plan.

Master plans are required for annexation into the City for any properties that are 10 acres or larger that are currently designated Urban Holding in the City's Comprehensive Plan Map. The property owner will develop a concept master plan that must address all the submittal requirements listed in the City Code and be compliant with the related area plan and the Comprehensive Plan. The concept master plan will initially be approved by the City Council along with an annexation agreement through resolution. Again, this is not an administrative process.

The final master plan must go through a quasi-judicial review process before the Planning Commission and City Council, as outlined in the City Code. Like the concept master plan, it must comply with the area plan and the Comprehensive Plan, in addition to meeting all the submittal requirements in the City Code.

If a property is less than 10 acres, or does not have an Urban Holding designation, then it goes through the standard development approval processes, including a quasi-judicial land use approval process, but is not required to have an area plan or master plan.

This new area planning/master planning process ensures that development of the new Urban Holding areas occur within the context of the larger area and the community as a whole. Both Heather and I have extensive experience with this approach and have personally seen that it better addresses issues such as traffic, water/sewer/stormwater infrastructure, park lands, preservation of natural resources, and more when the community is able to have a say from the very beginning stages of planning for what it wants to see with new development and also means that developers cannot just look at their one property when planning out their development.

Heather may have more to add, but I hope this clarification addresses your concerns.

Amanda Guile-Hinman (she/her)
City Attorney
amanda.guile@mcminnvilleoregon.gov
(503) 434-7303

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-----Original Message-----

From: Mark Davis <mark@startlivingthetruth.com>
Sent: Sunday, August 1, 2021 9:26 PM
To: Heather Richards <Heather.Richards@mcminnvilleoregon.gov>; Amanda Guile-Hinman <Amanda.Guile@mcminnvilleoregon.gov>
Subject: Change in Annexation Process

This message originated outside of the City of McMinnville.

Heather and Amanda:

Thank you for taking the time to reply to my letter to the City Council about the annexation process. I have listened again to both Heather's presentation at the Work Session and Amanda's clarification at the last City Council meeting, and I'm sorry but I don't see how this results in "significantly more public input than previously allowed."

One of the slides in Heather's PowerPoint presentation states: "Amend Chapter 17 to remove any references to annexation processes and procedures making them administrative and not quasi-judicial." From the presentation it seems clear that the Area Plan, Concept Master Plan and Annexation Agreement are administrative processes managed by Planning staff and subject to approval by City Council. I heard no indication that these overarching decisions of what land get annexed and to what purposes it will be dedicated are subject to any land use hearings (and by extension the right of citizen appeal).

It appears to me that the only point in this process where the public will be allowed to have input and a right to appeal the decision is the hearing for a Master Plan required of properties in excess of 10 acres. While I think this type of citizen participation is still important in reviewing the development plans, I think the hearings will be similar to what we heard about in Baker Creek North and Oak Ridge Meadows. Hopefully, these proposed hearings will be even less contentious since the Great Neighborhood Principles should improve the overall Master Plan that the developers present to the public.

Still, the larger questions about the annexations like infrastructure capacity, green space and park land, housing affordability, and the general layout of the development will all have been settled when the Annexation Agreement has been signed and the public will have no opportunity to address these issues.

I understand the proposed changes will be the subject of an upcoming Planning Commission hearing and I intend to raise these points at that time. If I am incorrect in my understanding that the Area Plan and Annexation Agreement

are administrative actions not subject to quasi-judicial hearings, I would appreciate you clarifying that point.

Just to be clear in making these points I do not intend to question your professional qualifications or personal integrity. I believe in the constitutional principle of checks and balances and Goal One of the State's Land Use System. As City staff and Council members change over the years, I believe allowing the citizens' right to testify and appeal important decisions helps ensure the integrity of the land use system.

Mark Davis

Mark Davis
652 SE Washington Street
McMinnville, OR 97128

July 25, 2021

McMinnville City Council
230 NE Second Street
McMinnville, OR 97128

Dear Mayor Hill and Members of the Council:

The Council's decision at the July 21st work session to move forward with a new annexation process was disappointing on several levels. Most obviously, you made that decision in a closed session that did not allow anyone from the public to comment. Not that the public could have commented about the documents under discussion anyway, since they were provided to the Council the day before work session but not made available to the public until the day after you met.

I realize you can hold that legal fig leaf in front of yourselves and righteously say you haven't made a legally binding decision so you don't have to invite the public to address you. But from a psychological perspective you have committed to very specific results from this process and such prior commitments are very hard to change even if compelling information is later provided at the required public hearing.

Despite Goal One declarations about the importance of public participation, it is hard for individual citizens who lack professional standing to be taken seriously during the formal land use hearing process. The proposal you agreed to on Wednesday evening removes even that citizen's right to be heard by turning annexation requests from land use hearings into administrative matters settled in private by staff and rubber-stamped by the Council.

The State Legislature removed our right to vote on annexations. The City Council is now proposing to take away our right to even testify about specific elements of annexation proposals and appeal misapplications of the law to the Land Use Board of Appeals (LUBA). Yes, that does happen. In 1996 I appealed approval of a city annexation to LUBA based on inadequate public infrastructure, a decision that was ultimately remanded to the city.

At the heart of the discussion about how to handle annexations is a basic philosophy of how government makes important decisions that impact the entire community. One method is to allow appointed bureaucrats with professional expertise to make those decisions subject to approval of the governing body; at the other end of the political spectrum is permitting the public to vote on those decisions.

Given our 20-year experiment with voting on annexations, I think it is instructive to look at what happened in the community before and after the implementation of voting on

annexations in the mid-90s. The early 90s was a period of rapid growth that overwhelmed our aging public infrastructure. Long-time residents complained bitterly about the increase in traffic, and the main sewer line from the west side of town was broken and leaking directly into Cozine Creek near Linfield, a situation exacerbated whenever it rained and stormwater leaked into the sewer system overwhelming its capacity.

Citizens including myself repeatedly asked the Council and Planning staff to slow the annexation process down to allow for infrastructure improvements to handle future growth. The response varied between claiming there was nothing they could do (land use law forced them to keep annexing more property) and claiming all this growth was really good for the community.

This response led directly to the voter approval of the charter amendment to require a vote on annexations. To my recollection the only annexation ever defeated at the ballot box was the proposed 172-acre Shadden Claim annexation. All other annexation votes for smaller additions to the UGB were approved, including later attempts by other developers to bring smaller chunks of the Shadden Claim property into the city limits.

Voters clearly had a vision of slow, steady growth of the community in line with our capacity to support that growth. Supporters of the defeated Shadden Claim proposal lamented the loss of the huge planned subdivision, but the developer insisted on developing it out within 5 years which would have had a dramatic impact on population which was already surging.

All this was taking place during the initial planning for a new UGB expansion that used a population projection growth rate of 3 percent. Had this vision of Shadden Claim and continued rapid population growth been realized we would have had a population of 45,000 in 2020 and be heading for 85,000 residents in 2040. Voting on annexations slowed things down so we could get the sewer infrastructure updated and new roads constructed. I personally believe that the community benefited greatly from the gentle braking that annexation votes put on what was becoming runaway growth.

That is not to say the proposal you considered on Wednesday night was without merit. I like the idea of annexations not being the automatic process that they have been. Property owners entering the city limits are being granted access to city infrastructure and services worth millions of dollars. They should be asked set aside land for parks and affordable housing. The current system puts them in the city with a few minor fees and reduced system development charges and then the expectation is that the existing taxpayers will pay the difference.

I think we currently have a good, dedicated Planning Director. I also think we have conscientious, public-spirited City Council. Having watched people come and go over the past few decades, I don't believe public policy should be based on assuming both of those things are always going to be true. However you decide to proceed with annexations, I think you should provide some ability for the public to inspect the details

of the process and maintain the right of public to appeal to LUBA those decisions lacking in legality.

I would also request that when the Council is going to look at draft planning documents and make decisions about whether they are acceptable or not that you provide them for the public to look at and allow the public the opportunity to comment on them. Work sessions are being used to avoid your Goal One responsibilities.

Thank you for considering my viewpoint on these matters.

Sincerely,

//S//

Mark Davis