



# CITY OF MILWAUKIE

December 20, 2019

Land Use File(s): ~~MLP-2019-004~~ R-2019-005

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on December 20, 2019.

**Applicant(s):** Mary and Robert Tongue

**Location:** 9311 SE 55<sup>th</sup> Ave

**Tax Lot:** 1S2E30AC 05900

**Application Type:** ~~Minor Land Partition~~ Partition Replat<sup>1</sup>

**Decision:** Approved with Conditions

**Review Criteria:**

**Milwaukie Land Division Ordinance:**

- MMC Chapter 17.12 Application Procedure & Approval Criteria
- MMC Chapter 17.16 Application Requirements & Procedures
- MMC Chapter 17.20 Preliminary Plat
- MMC Chapter 17.28 Design Standards
- MMC Chapter 17.32 Improvements

**Milwaukie Zoning Ordinance:**

- MMC Section 19.301 Low Density Residential Zones (incl. R-7)
- MMC Chapter 19.500 Supplementary Development Regulations (including MMC 19.504.8 Flag Lot Design and Development Standards)
- MMC Chapter 19.600 Off-Street Parking and Loading
- MMC Chapter 19.700 Public Facility Improvements
- MMC Section 19.1005 Type II Review
- MMC Chapter 19.1200 Solar Access Protection

**Neighborhood(s):** Lewelling

**Appeal period closes: 5:00 p.m., January 6, 2020**

<sup>1</sup> The application was originally filed as a minor land partition (file #MLP-2019-004) and later reclassified as a partition replat (file #R-2019-005).

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II Review. The complete case file for this application is available for review by appointment between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Brett Kelver, Associate Planner, at 503-786-7657 or [kelverb@milwaukieoregon.gov](mailto:kelverb@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/r-2019-005>

**This decision may be appealed by 5:00 p.m. on January 6, 2020, which is 15 days from the date of this decision.**<sup>2</sup> (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov).

Per MMC Subsection 17.04.050.A, this decision on the proposed land division shall expire 1 year after the date of approval. An extension of up to 6 months may be granted upon submission of a formal request to the original decision-making authority (the Planning Director, in this case), subject to the provisions of MMC Subsection 17.04.050.B, which include the following:

- a. No changes are made on the original plan as approved;
- b. The applicant can show intent of recording the boundary change within the 6-month extension period; and
- c. There have been no changes in the ordinance provisions on which the approval was based.

### **Findings in Support of Approval**

The Findings for this application are included as Exhibit 1. The Preliminary Plat and Plat Map with Existing Conditions are included as Exhibit 2.

### **Conditions of Approval**

1. Prior to City approval of the associated final plat, the following must be resolved:
  - a. Provide a 7-ft dedication to the 55<sup>th</sup> Ave right-of-way (ROW) in front of Parcels 1 and 2.
  - b. Construct all required public improvements along the 55<sup>th</sup> Ave frontage of Parcel 2 as follows:
    - (1) 5-ft setback sidewalk
    - (2) 5-ft planter strip
    - (3) curb and gutter
    - (4) 16 ft paved half street (for 6-ft parking strip and 10-ft travel lane)

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<sup>2</sup> As per MMC Section 19.1010, if the 15<sup>th</sup> day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.

- c. Construct an asphalt driveway approach on Parcel 2 that is 12 to 20 ft wide and 7.5 ft from a side property line. The driveway approach apron must be designed in accordance with MMC Chapter 12.16 and Subsection 19.504.8.D.3.

### **Additional Requirements**

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code and Public Works Standards that are required at various point in the development and permitting process.

1. Final Plat

As per MMC Section 17.04.120, replats must be recorded by plat. As per MMC Section 17.24.040, an application for final plat must be submitted to the City within 6 months of this approval.

2. In conjunction with the required final plat submittal, the following must be resolved:
  - a. Submit full-engineered plans for construction of all required public improvements, reviewed and approved by the City of Milwaukie Engineering Department.
  - b. Obtain a right-of-way permit for construction of the required public improvements.
  - c. Pay an inspection fee equal to 5.5% of the cost of the public improvements.
  - d. Provide a payment and performance bond for 100% of the cost of the required public improvements.
  - e. Provide a final approved set of Mylar "As Constructed" drawings to the City of Milwaukie prior to final inspection.
  - f. Remove all signs, structures, or vegetation in excess of 3 ft in height located in "clear vision areas" at intersections of streets, driveways, and alleys fronting the proposed development. Prior to the removal of any vegetation, the applicant shall confirm with the Engineering Department the location of clear vision areas and if the vegetation removal is required to comply with clear vision standards.
3. As per MMC Subsection 19.504.8.F, all trees on the flag lot (Parcel 2) that are 6 in or greater in diameter (as measured at the lowest limb or 4 ft above the ground, whichever is less) must be preserved. Where site development necessitates the removal of any of protected trees, a replacement tree(s) must be provided on a 1-for-1 basis.
4. Prior to commencement of any earth-disturbing activities, the applicant must obtain an erosion control permit.
5. Development activity on the site is limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, per MMC Subsection 8.08.070(I).

6. Prior to final inspection for any building on Parcel 2, the following must be resolved:
  - a. Construct a private storm management system (e.g., drywell) on the proposed development property for runoff created by the proposed development. Connect all rain drains to the private storm management system.
  - b. Demonstrate that potential adverse impacts to abutting properties have been avoided in accordance with the standards of MMC Subsection 19.504.8.E, with screening and planting installed as necessary unless an acceptable bond has been provided.
  - c. Demonstrate that all trees on Parcel 2 that are 6 in or greater in diameter (as measured at the lowest limb or 4 ft above the ground, whichever is less) have been preserved. Where site development has necessitated the removal of any of protected trees, demonstrate that replacement trees have been provided on a 1-for-1 basis. As per MMC Subsection 19.504.8.F, the replacement tree(s) may be evergreen or deciduous but must be of a species known to grow in the region; at time of planting, deciduous trees must be a minimum of 2 in caliper and evergreen trees must be a minimum of 5 ft tall.

**Director's Declaration of Impartiality**

I certify that neither I nor any member of my immediate family has a material, personal, or financial relationship with the applicant. I further certify that no other relationship, bias, or ethical conflict exists which would have prevented me from evaluating the land use application solely on its merits and in accordance with the Milwaukie Municipal Code.

**Decision**

- Approved
- Approved with Conditions
- Denied



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Dennis Egner, FAICP  
Planning Director

**Exhibits**

1. Findings in Support of Approval
  2. Preliminary Plat, Plat Map with Existing Conditions
- cc: Mary & Robert Tongue, applicants (4207 SE Woodstock Blvd #435, Portland, OR 97206)  
Planning Commission (via email)  
Leila Aman, Community Development Director (via email)  
Justin Gericke, City Attorney (via email)  
Steve Adams, City Engineer (via email)

Engineering Development Review (via email)  
Samantha Vandagriff, Building Official (via email)  
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)  
Harmony Drake, Permit Technician (via email)  
Mike Boumann and Izak Hamilton, CFD#1 (via email)  
NDA(s): Lewelling (via email)  
Interested Persons  
Land Use File(s): ~~MLP-2019-004~~ R-2019-005

**EXHIBIT 1**  
**Findings in Support of Approval**  
**File #~~MLP-2019-004~~ R-2019-005, Replat of 9311 SE 55<sup>th</sup> Ave**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicants, Mary and Robert Tongue, have applied for approval to replat their property at 9311 SE 55<sup>th</sup> Ave (the “subject property”) to create a developable flag lot. The subject property is identified as Tax Lot 1S2E30AC05900 on the Clackamas County Tax Assessor map and is zoned Residential R-7. The land use application was originally filed as a minor land partition (file #MLP-2019-004) and later reclassified as a partition replat (file #R-2019-005).
2. The subject property is comprised of the southern half of Lot 14 from the Gibson’s Subdivision of Tracts Numbered 10, 11, 12, 13 and the West 480 ft of Tracts Numbered 1 and 2 of the Logus Tracts (subdivision platted in 1909). The proposal is to replat the approximately 21,790-sq-ft subject property to create a total of 2 parcels. Parcel 1 would be a standard rectangular lot approximately 8,000 sq ft in area and would retain an existing single-family house and detached garage. Parcel 2 would be a flag lot approximately 13,100 sq ft in area, with a 25-ft-wide accessway or “pole” and a “flag” portion of approximately 10,400 sq ft where a new single-family house would be built.
3. The proposed boundary adjustment involves the reconfiguration of a platted lot from a recorded subdivision and therefore constitutes a replat as per the definitions in Milwaukie Municipal Code (MMC) Chapter 17.08. The proposal is subject to the following provisions of the MMC:
  - MMC Title 17 Land Division, including:
    - MMC Chapter 17.12 Application Procedure & Approval Criteria
    - MMC Chapter 17.16 Application Requirements and Procedures
    - MMC Chapter 17.20 Preliminary Plat
    - MMC Chapter 17.28 Design Standards
    - MMC Chapter 17.32 Improvements
  - MMC Section 19.301 Low Density Residential Zones (including R-7)
  - MMC Chapter 19.500 Supplementary Development Regulations (including MMC 19.504.8 Flag Lot Design and Development Standards)
  - MMC Chapter 19.600 Off-Street Parking and Loading
  - MMC Chapter 19.700 Public Facility Improvements
  - MMC Section 19.1005 Type II Review
  - MMC Chapter 19.1200 Solar Access Protection

The applicant is the property owner and has authority to initiate the application per MMC Subsection 19.1001.6.A. The application was initially submitted on October 23, 2019, and

deemed complete on November 6, 2019. The application has been processed in accordance with MMC Section 19.1005 Type II Review, with a decision by the Planning Director.

4. MMC Title 17 Land Division

MMC Title 17 establishes the standards and procedures for land division and property boundary changes.

a. MMC Chapter 17.12 Application Procedure and Approval Criteria

(1) MMC Section 17.12.020 Application Procedure

MMC Table 17.12.020 outlines the applicable review procedures for various types of land divisions and property boundary changes, including replats. As per MMC Table 17.12.020, a partition replat (i.e., a replat resulting in 3 or fewer lots) that does not modify a plat originally decided by the City's Planning Commission and is not a parcel consolidation is subject to Type II review. As per MMC Subsection 17.12.020.B.1, Type II review may be changed to Type I review upon finding that the proposal is consistent with applicable standards and criteria, that it is consistent with the basis and findings of the original approval, and that it does not increase the number of lots.

*The subject property is comprised of the southern half of Lot 14 from the Gibson's Subdivision of Tracts Numbered 10, 11, 12, 13 and the West 480 ft of Tracts Numbered 1 and 2 of the Logus Tracts. The proposed reconfiguration of the underlying subdivision lot would create a new developable lot, which is a partition replat as per the definitions of MMC Chapter 17.08 and the guidance of MMC Table 17.12.020.*

*The original plat, Gibson's Subdivision of Tracts Numbered 10, 11, 12, 13 and the West 480 ft of Tracts Numbered 1 and 2 of the Logus Tracts, was platted and recorded in 1909 by Clackamas County, well before the City's first subdivision ordinance was adopted in 1967. The proposed replat is not a parcel consolidation and is consistent with all applicable standards and criteria, but it would increase the number of lots underlying the subject property from 1 to 2.*

*The Planning Director finds that the proposed replat is not a candidate for reduction to Type I review due to the increase in number of lots and so is subject to Type II review.*

(2) MMC Section 17.12.030 Approval Criteria for Lot Consolidation, Property Line Adjustment, and Replat

MMC 17.12.030 establishes three approval criteria for boundary changes:

(a) The boundary change is compliant with Title 17 and Title 19.

*As discussed in these findings, the proposed replat complies with all applicable standards of Titles 17 and 19.*

(b) The boundary change will allow reasonable development of the affected lots and will not create the need for a variance of any land division or zoning standard.

*As discussed in Findings 5 and 6, the proposed replat would not result in the creation of any new nonconformities on the property at 9311 SE 55<sup>th</sup> Ave (Parcel 1). The newly created flag lot (Parcel 2) would meet the applicable standards of the R-7 zone without the need for any variances.*

- (c) Boundary changes shall not reduce residential density below minimum density requirements of the zoning district in which the property is located.

*The subject property is zoned for low density residential development, with a net area of 0.49 acres and a minimum density requirement of 2 units. The proposed replat would result in a total of 2 lots, each with a minimum density of 1 unit, for a total of 2 units required for the overall site.*

*The Planning Director finds that the proposed replat meets the approval criteria established in MMC 17.12.030.*

*The Planning Director finds that the proposed replat meets all applicable standards of MMC 17.12.*

- b. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.050 establishes the application requirements for replat, including completed application forms and checklists, applicable fees, a narrative describing how the proposal meets approval criteria, and the applicable information specified for preliminary plat on the City's Preliminary Plat Checklist and in MMC Chapter 17.20 Preliminary Plat.

*The applicant's submittal materials include the necessary forms, checklists, and fees, as well as a narrative, preliminary plat document, and other information sufficient to demonstrate compliance with the applicable standards and criteria.*

*As proposed, the Planning Director finds that the application meets the applicable requirements for replat submittal.*

- c. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required for a preliminary plat, including general information to be shown on the plat and existing and proposed conditions.

*The applicant's preliminary plat submittal is to scale and includes a vicinity map, existing conditions, contour lines, existing improvements on Parcel 1, and the new configuration for both proposed parcels.*

*As proposed, the Planning Director finds that the preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.*



d. MMC Chapter 17.28 Design Standards

(1) MMC Section 17.28.040 General Lot Design

MMC 17.28.040 establishes general design standards for lots, including standards for size, shape, compound lot line segments, and frontage.

(a) MMC Subsection 17.28.040.A Size and Shape

MMC 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated. Minimum lot standards shall conform to Title 19.

*As addressed in Findings 5 and 6, the proposed replat would result in parcels that both have adequate size and dimensions for development and uses allowed in the underlying R-7 zone and that conform to the standards of Title 19.*

(b) MMC 17.28.040.B Rectilinear Lots Required

MMC 17.28.040.B requires that lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street.

*As proposed, all both parcels would be rectilinear in shape, with sidelines running at right angles to the street upon which each lot faces and rear lot lines running parallel to the street.*

(c) MMC 17.28.040.C Limits on Compound Lot Line Segments

MMC 17.28.040.C discourages cumulative lateral changes in direction of a side or rear lot line exceeding 10% of the distance between opposing lot corners along a given lot line. Changes in direction shall be measured from a straight line drawn between opposing lot corners.

*As proposed, Parcel 1 would be a standard rectangular shape. Parcel 2 would be a flag log shape, which technically includes a compound segment. However, Parcel 2 would conform to the applicable flag lot design standards as addressed in Findings 4-d-2 and 4-d-3.*

(d) MMC 17.28.040.D Adjustments to Lot Shape Standard

MMC 17.28.040.D provides that lot shape standards may be adjusted subject to Section 19.911 Variances.

*No adjustment to lot shape standards has been requested or proposed.*

(e) MMC 17.28.040.E Limits on Double and Reversed Frontage Lots

MMC 17.28.040.E limits double and reversed frontage lots except where essential to provide separations of residential development from railroads,

traffic arteries, or adjacent nonresidential uses, or to overcome specific disadvantages of topography and orientation.

*The proposed replat would not result in any double or reversed frontage lots.*

(f) MMC 17.28.040.F Measurement of Required Frontage

MMC 17.28.040.F requires that required frontage be measured along the street upon which the lot takes access.

*As proposed, both parcels have frontage on and would take access from 55<sup>th</sup> Ave. Parcel 1 would have 74 ft of frontage, well in excess of the 35-ft minimum requirement. Parcel 2 would provide the minimum 25-ft frontage required for single flag lots.*

*The Planning Director finds that the proposed replat complies with all applicable design standards of MMC 17.28.040.*

(2) MMC Section 17.28.050 Flag Lot Development and Future Access

MMC 17.28.050 requires that applicants for flag lot partitioning show that access by means of a dedicated public street is not possible. Consideration shall be given to other inaccessible adjacent or nearby properties for which a jointly dedicated public right-of-way could provide suitable access and avoid other flag lots. The creation of flag lots shall not preclude the development of street access to surrounding properties.

*The 3 lots directly adjacent to the north of the subject property resulted from a double-flag-lot partition completed in 1995 (master file number MLP-94-09). At that time, the City did not require the creation of a public street to access the new lots, effectively making it impossible for the subject property to be partitioned in any way other than with a flag lot due to its dimensions.*

*The Planning Director finds that the proposed flag lot configuration is allowable because access by means of a dedicated public street is not possible. This standard is met.*

(3) MMC Subsection 17.28.060 Flag Lot Design Standards

MMC 17.28.060 requires that flag lot proposals be consistent with the applicable design standards of MMC Subsection 19.504.8 and prohibits the creation of more than 2 flag lots.

*The proposed replat involves the creation of 1 standard rectangular lot and 1 flag lot. The proposed flag lot's consistency with the design standards of MMC 19.504.8 is addressed in Finding 6-c.*

*The Planning Director finds that this standard is met.*

*As proposed, the Planning Director finds that the new parcels presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.*

e. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that all work shall conform to the standards and specifications of the Public Works Standards and MMC Chapter 19.700.

*As discussed in Finding 8, dedication to the public right-of-way is required along the entire frontage of the subject property, with construction of a new driveway approach along the 25-ft frontage of Parcel 2. As required, plans for all improvements will be reviewed and approved by Engineering staff and all work will be inspected for conformance to applicable standards.*

*As proposed, the Planning Director finds that the applicable standards of MMC 17.32 are met.*

*As proposed, the Planning Director finds that the proposed replat meets all applicable standards of MMC Title 17.*

5. MMC Section 19.301 Low Density Residential Zones (including R-7)

MMC Table 19.301.4 establishes development standards for the low density residential zones, including the R-7 zone. Table 5 provides the applicable standards for development in the R-7 zone with respect to both lots resulting from the proposed replat. For Parcel 2, the table reflects the lot’s undeveloped status.

Table 5 Lot and Development Standards			
Standard	R-7 Requirement	Parcel 1 (with existing house)	Parcel 2 (undeveloped)
Minimum lot size	7,000 sq ft	Approx. 8,000 sq ft	Approx. 13,100 sq ft (10,395 sq ft not including flag pole)
Minimum lot width	60 ft	74 ft	99 ft (with 25-ft-wide flag pole)
Minimum lot depth	80 ft	108 ft	105 ft
Minimum street frontage	35 ft (25 ft for single flag poles)	74 ft	25 ft
Front yard	20 ft (See Finding 6-a for a discussion of the additional yard requirement of MMC 19.501.2)	10 ft (17 ft before 7-ft dedication to public right-of-way = existing nonconforming situation)	TBD
Side yard(s)	5 ft / 10 ft	9 ft / >30 ft	TBD
Rear yard	20 ft	c.60 ft	TBD
Maximum building height	2.5 stories or 35 ft (whichever is less)	1 story (c.15 ft)	TBD
Side yard height plane limit	20-ft height at minimum side yard depth, with 45° slope	NA (building height <15 ft)	TBD
Maximum lot coverage	30%	<20%	TBD

<b>Minimum vegetation</b>	30%	>65%	TBD
<b>Front yard minimum vegetation</b>	40%	>68%	TBD
<b>Minimum density</b>	5.0 units/acre	1 unit	1 unit
<b>Maximum density</b>	6.2 units/acre	1 unit	1 unit
<b>Off-street parking</b>	1 space per unit	At least 2 spaces	TBD

*The Planning Director finds that the proposed replat meets all applicable development standards of MMC 19.301 for both parcels.*

6. MMC Chapter 19.500 Supplementary Development Regulations

MMC 19.500 establishes regulations for a variety of development aspects.

a. MMC Subsection 19.501.2 Yard Exceptions

MMC 19.501.2 establishes special yard requirements along certain major streets in addition to the yard requirements of the underlying zone. The additional yard requirements are measured from the center line of the public right-of-way (ROW) to the closest point of any building, plus the yard requirement of the underlying zone. As per MMC Table 19.501.2.A, the special yard requirement for that portion of 55<sup>th</sup> Ave between Firwood St and Johnson Creek Blvd is 25 ft from the center line.

*The subject property has frontage on 55<sup>th</sup> Ave, on the portion of 55<sup>th</sup> Ave between Firwood St and Johnson Creek Blvd, with an existing ROW width of 40 ft. With the special yard requirement of 25 ft and the minimum R-7 front yard setback of 20 ft, the total setback required from the 55<sup>th</sup> Ave center line is 45 ft. As discussed in Finding 8, a 7-ft dedication to the ROW is required along the entire frontage of the subject property, which will effectively render the additional yard requirement moot for future development on Parcel 1. Since Parcel 2 is a flag lot with its developable area approximately 108 ft from the 55<sup>th</sup> Ave frontage boundary, the additional yard requirement is also moot.*

*The existing primary structure on Parcel 1 is set back approximately 17 ft from the current front property line, which makes it nonconforming with respect to the both the R-7 front yard setback standard and the additional yard standard of this subsection. However, as per MMC Subsection 19.504.2, dedication of property for a public use such as ROW is an allowable reason to reduce a required yard below the minimum standard.*

*As proposed, the Planning Director finds that this standard is met.*

b. MMC Section 19.502 Accessory Structures

MMC 19.502 establishes standards for accessory structures. In particular, MMC Table 19.502.2.A.1.a establishes height, footprint, and setback standards for various sizes of residential accessory structures.

*Parcel 1 includes an existing accessory structure (a detached garage with attached shed) with a footprint of approximately 640 sq ft. As per MMC Table 19.502.2.A.1.a, a structure this size is allowed a minimum height of 15 ft; a minimum size of 75% of the primary structure; and side and rear setbacks equal to those of the underlying R-7 zone (side setbacks of 5 ft and 10 ft,*

*rear setback of 20 ft), with the caveat that the structure not be located in front of the house. The existing detached garage is less than 15 ft in height and is less than 75% of the size of the approximately 950-sq-ft house. It is not located in front of the existing house and is at least 10 ft from the nearest proposed side property line and over 25 ft from the proposed rear property line.*

*As proposed, the Planning Director finds that the applicable standards of this section are met.*

c. MMC Subsection 19.504.8 Flag Lot Design and Development Standards

MMC 19.504.8 provides standards for flag lots in all zones. These include a provision that the areas contained within the accessway or pole portion of the lot do not count toward meeting the minimum lot area requirement. The minimum front and rear yard requirement for flag lots is 30 ft, with minimum side yards of 10 ft for both primary and accessory structures. As per the definition of “front lot line” established in MMC Section 19.201, the front lot line of a flag lot is the lot line closest to the street from which the flag lot takes access, excluding lot lines that are part of the pole.

As per MMC Subsection 19.504.8.D, flag lots are required to have a minimum accessway or pole width of 25 ft, with a minimum 12-ft-wide driveway that is consolidated with the driveway of the parent lot to the greatest extent practicable. MMC Subsection 19.504.8.E establishes standards to minimize potential adverse impacts to abutting properties. These include a requirement to provide fencing and screening along the flag lot driveway and around the flag portion of the lot. All trees 6 in or greater in diameter must be preserved, or mitigated for if development requires their removal.

*As proposed, Parcel 2 is a flag lot with a 25-ft wide pole. The applicant has proposed separate driveways for Parcels 1 and 2, and the Engineering Department has confirmed that it is not necessary to require the parcels to share a driveway, as 55<sup>th</sup> Ave is not a collector or arterial street. Parcel 2’s compliance with the other applicable standards of MMC 19.504.8, including setbacks and protection of adjoining properties, will be evaluated at the time of development permit submittal.*

*As proposed, the Planning Director finds that the applicable standards of this subsection are met.*

*The Planning Director finds that the proposed replat meets all applicable standards of MMC 19.500.*

7. MMC Chapter 19.600 Off-Street Parking and Loading

MMC 19.600 regulates off-street parking and loading areas on private property outside the public right-of-way. As per MMC Subsection 19.602.3.B, new development cannot cause existing parking areas to fall out of compliance (or farther out of conformance).

*In the case of the proposed replat, the applicant must demonstrate that the proposed boundary change does not make Parcel 1 nonconforming with the applicable standards of MMC 19.600.*

*Parcel 2's compliance with the applicable off-street parking standards will be evaluated at the time of development permit submittal.*

a. MMC Section 19.605 Vehicle Parking Quantity Requirements

MMC 19.605 establishes standards to ensure that development provides adequate vehicle parking (off-street) based on estimated parking demand. The section establishes processes for determination of parking requirements, exemptions and reductions to the required ratios, and provisions for shared parking. For single-family dwellings, MMC Table 19.605.1 establishes a minimum quantity requirement of 1 space per dwelling unit.

*The subject property is developed with an existing single-family house and detached garage, both of which will remain on the proposed Parcel 1. The existing driveway on Parcel 1 extends nearly 30 ft beyond the front yard setback point and, together with the detached garage, provides at least 2 off-street parking spaces that meet the applicable standards of MMC 19.600. There is ample room on Parcel 2 for a new dwelling that also provides at least the minimum required parking, which will be evaluated at the time of development permit submittal.*

*As proposed, the Planning Director finds that this standard is met.*

b. MMC Section 19.607 Off-Street Parking Standards for Residential Areas

MMC Subsection 19.607.1 establishes standards for residential driveways and vehicle parking areas, including limits on the percentage of front yard area used for parking (maximum of 50%) and on the number of parking spaces allowed in the required front yard (maximum of 3). In addition, the subsection does not allow parking spaces in the required front yard to be counted toward the minimum required parking.

*As noted above in Table 5, the nearest point of the existing house on Parcel 1 is 10 ft from the front lot line following the required ROW dedication, which establishes a front yard area of approximately 845 sq ft. Within that front yard area, the proposed Parcel 1 presents approximately 170 sq ft of paved parking and maneuvering area, which is only 20% of the front yard. The dimensions of the parking area within the required front yard are sufficient to provide only 2 spaces that meet the minimum 9 ft by 18 ft dimension, 1 less than the maximum allowance of 3.*

*As noted above, Parcel 2's compliance with the applicable off-street parking standards will be evaluated at the time of development permit submittal.*

*As proposed, the Planning Director finds that the applicable standards are met.*

*The Planning Director finds that the proposed replat meets all applicable standards of MMC 19.600.*

## 8. MMC 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

### a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including partitions, subdivisions, replats, new construction, modification of existing structures, and changes or intensifications in use.

*The applicant proposes to replat the subject property to create a new developable lot. The proposed replat triggers the requirements of MMC 19.700.*

### b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and providing approval criteria.

*The applicant had a preapplication conference with City staff on February 14, 2019, prior to application submittal. As noted in Finding 8-c, the proposed replat does not trigger a Transportation Impact Study (TIS), so the proposal's compliance with MMC 19.700 has been evaluated as part of the replat review, as per MMC Subsection 19.703.2.B.*

### c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes the process and requirements for evaluating development impacts on the surrounding transportation system, including determining when a formal TIS is necessary and what mitigation measures will be required.

*The City Engineer has determined that the proposed replat (which involves the creation of a new developable lot) would not trigger a significant increase in trip generation and therefore does not require a TIS.*

### d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts.

*The proposed replat would create 1 new developable lot (Parcel 2) of sufficient size to support a single-family detached dwelling. Development on Parcel 2 would have new impacts on the public street system, and the new developable parcel's frontage on 55<sup>th</sup> Ave is not improved to current City standards. As discussed in Finding 8-f, a condition has been established to require frontage improvements as well as a 7-ft dedication to the public right-of-way (ROW) on 55<sup>th</sup> Ave.*

*A rough analysis of proportionality shows that the required ROW dedication and street improvements are proportional to the anticipated impacts of 1 new lot sized for single-family residential development. The estimated average cost of constructing the required improvements is within the range of average cost for similar-scale single-family development.*

*The surrounding transportation system will continue to operate at the level of service as before the proposed action. The required ROW dedication and public street improvements are roughly proportional to the potential impacts of the proposed replat and no further mitigation is warranted.*

e. MMC Section 19.707 Agency Notification and Coordinated Review

MMC 19.707 establishes provisions for coordinating land use application review with other agencies that may have some interest in a project that is in proximity to facilities they manage.

*The proposed replat did not require referral to any other agencies as provided in MMC 19.707.*

f. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities.

(1) MMC Subsection 19.708.1 General Street Requirements and Standards

MMC 19.708.1 provides general standards for streets, including for access management, clear vision, street layout and connectivity, and intersection design and spacing.

*No changes are proposed to the existing driveway on Parcel 1, but a new driveway approach will be required for Parcel 2. MMC Subsection 19.708.1.A requires that driveways conform to the access management standards of MMC Chapter 12.16, including an apron between 9 ft and 20 ft wide and at least 7.5 ft from the side property line. However, since MMC Subsection 19.504.8.D.3 requires that driveways serving flag lots be at least 12 ft wide, the driveway apron for Parcel 2 effectively must be between 12 ft and 20 ft wide. A condition has been established to ensure that the driveway approach apron for Parcel 2 complies with the applicable standards of MMC 12.16 and MMC 19.504.8.D.3.*

*As conditioned, the proposed replat is consistent with the applicable standards of MMC 19.708.1.*

(2) MMC Subsection 19.708.2 Street Design Standards

MMC 19.708.2 provides design standards for streets, including dimensional requirements for the various street elements (e.g., travel lanes, bike lanes, on-street parking, landscape strips, and sidewalks).

*In the City's Transportation System Plan, 55<sup>th</sup> Ave is classified as a neighborhood route. MMC Table 19.708.2 provides street design standards for various street classifications, including ranges for the dimensions of the full ROW width as well as of individual street elements. The City Engineer has determined that the half-street cross section of 55<sup>th</sup> Ave at this location requires the following elements: 5-ft setback sidewalk, 5-ft planter strip, curb and gutter, and 16 ft of paved asphalt for a 6-ft parking strip and 10-ft travel lane. Since the 55<sup>th</sup> Ave ROW is currently only 40 ft wide and a total ROW*



*width of 54 ft is necessary to achieve the required design, a 7-ft dedication to the ROW is required along the entire 55<sup>th</sup> Ave frontage of the subject property. (The notes from the preapplication conference indicated that only a 5-ft dedication would be needed, but Engineering staff has since determined that a 7-ft dedication is more in line with the requirements of MMC Table 19.708.2.) Conditions have been established to ensure that the required ROW dedication is provided and the applicable design standards are met.*

*As conditioned, the proposed replat is consistent with the applicable standards of MMC 19.708.2.*

*As conditioned, the Planning Director finds that the proposed replat will meet all applicable standards of MMC 19.708.*

*The Planning Director finds that, as conditioned, the proposed replat meets the applicable public facility improvement standards of MMC 19.700.*

9. MMC Chapter 19.1200 Solar Access Protection

A primary purpose of MMC 19.1200 is to orient new lots and parcels to allow utilization of solar energy. In particular, MMC Section 19.1203 establishes solar access provisions for new development.

- a. MMC Subsection 19.1203.2 establishes the applicability of MMC Subsection 19.1203.3 as extending to applications to create lots in single-family zones. Exceptions are allowable to the extent the Planning Director finds that the applicant has shown one or more of the conditions listed in MMC Subsections 19.1203.4 and 19.1203.5 exist and that exemptions or adjustments are warranted.

*The proposed replat will create new parcels in the R-7 zone, which allows single-family residences. As discussed in Findings 9-b and 9-d, the Planning Director has granted an adjustment for both parcels.*

- b. MMC Subsection 19.1203.3 establishes solar design standards, including basic requirements for north-south dimension (minimum 90 ft) and front-lot-line orientation with respect to a true east-west axis (within 30°). There are two other options for compliance, for either establishing a protected solar building line or demonstrating a particular level of performance with respect to protection from shading.

*As proposed, Parcel 1 has a north-south dimension of only 74 ft and a front lot line oriented nearly 90° from a true east-west axis. Parcel 2 has a north-south dimension of 99 ft but a front lot line oriented nearly 90° from a true east-west axis. As discussed in Finding 9-d, the Planning Director has found that adjustments are warranted that would exempt both parcels from this standard.*

*As proposed and with the adjustment noted in Finding 9-d, the solar design standards are not applicable to Parcels 1 and 2.*

- c. MMC Subsection 19.1203.4 establishes exemptions from the standards of MMC 19.1203.3, including where an off-site structure and/or vegetation produces a shadow pattern that would affect allowable development on the site.

*No exemptions from the solar design standards have been requested. This standard is not applicable.*

- d. MMC Subsection 19.1203.5 establishes provisions for adjustments to the percentage of lots that must comply with the solar design standards of MMC 19.1203.3, including cases in which the application of the solar design standards would reduce the density or increase the on-site development costs.

*The subject property is 99 ft wide and 213 ft deep, with its front lot line at 55<sup>th</sup> Ave oriented nearly 90° from a true east-west axis but with a north-south dimension of more than 90 ft. It is large enough to be divided but not configured to be split into 2 lots that each have a 90-ft north-south dimension. The existing configuration of the subject property makes it impossible to create new parcels from this lot with a front-lot-line orientation that can meet the solar design standards of MMC 19.1203.3, which would otherwise prevent the subject property from achieving the minimum required density through land division. The Planning Director has reduced the percentage of lots that must comply with the solar design standards to 0%, effectively excepting both parcels from the solar design standards.*

*The Planning Director finds that an adjustment to except both Parcel 1 and Parcel 2 from the design standards is warranted. As proposed, the applicable provisions of the solar access standards established in MMC 19.1200 are met.*

10. The application was referred to the following departments and agencies on November 6, 2019:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- City Attorney
- Lewelling Neighborhood District Association (NDA), Chairperson and Land Use Committee (LUC)
- Clackamas Fire District #1 (CFD#1)
- North Clackamas School District
- NW Natural

In addition, notice of the public hearing was mailed to owners and residents of properties within 300 ft of the subject property on November 6, 2019.

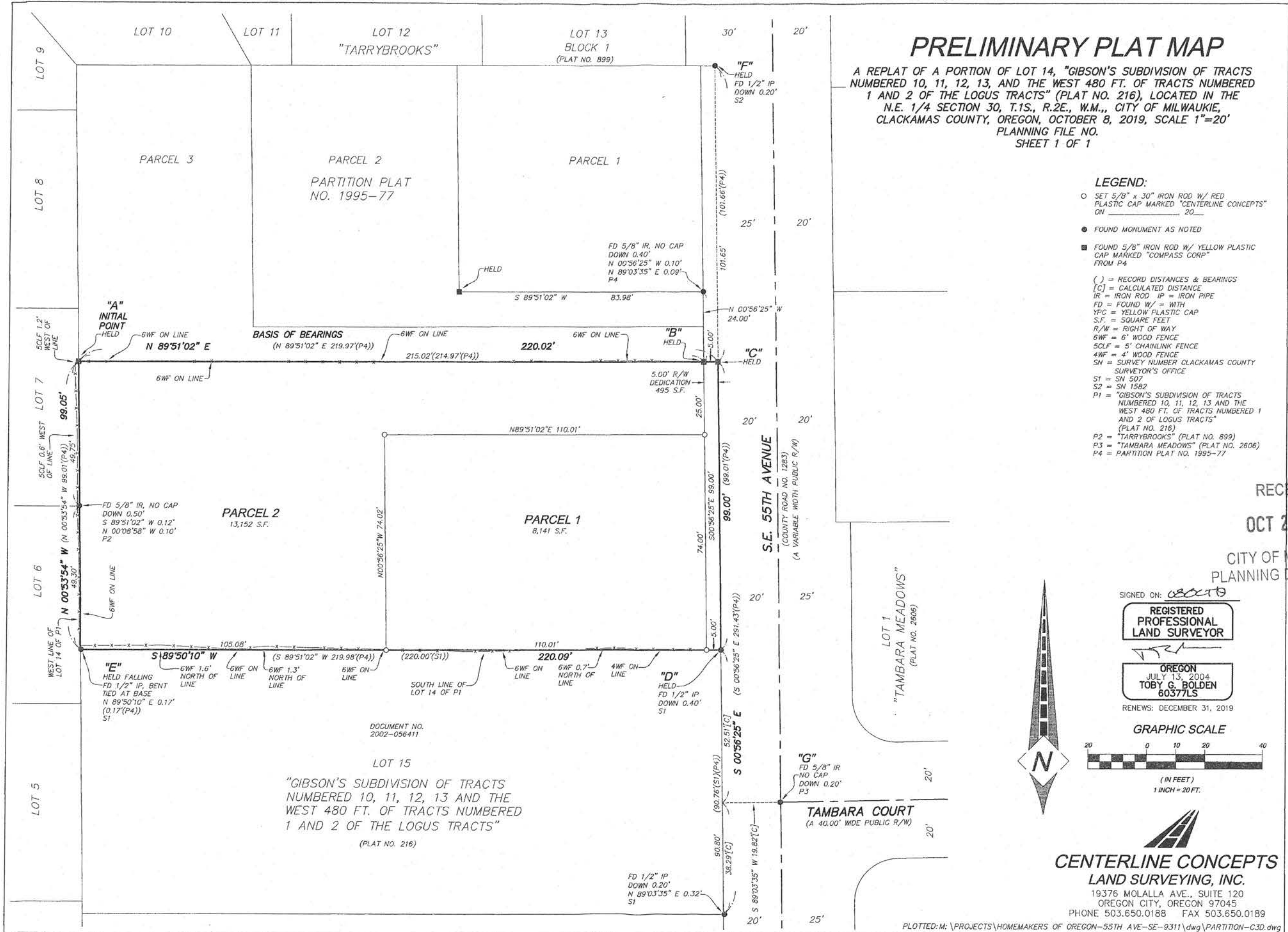
The comments received are summarized as follows:

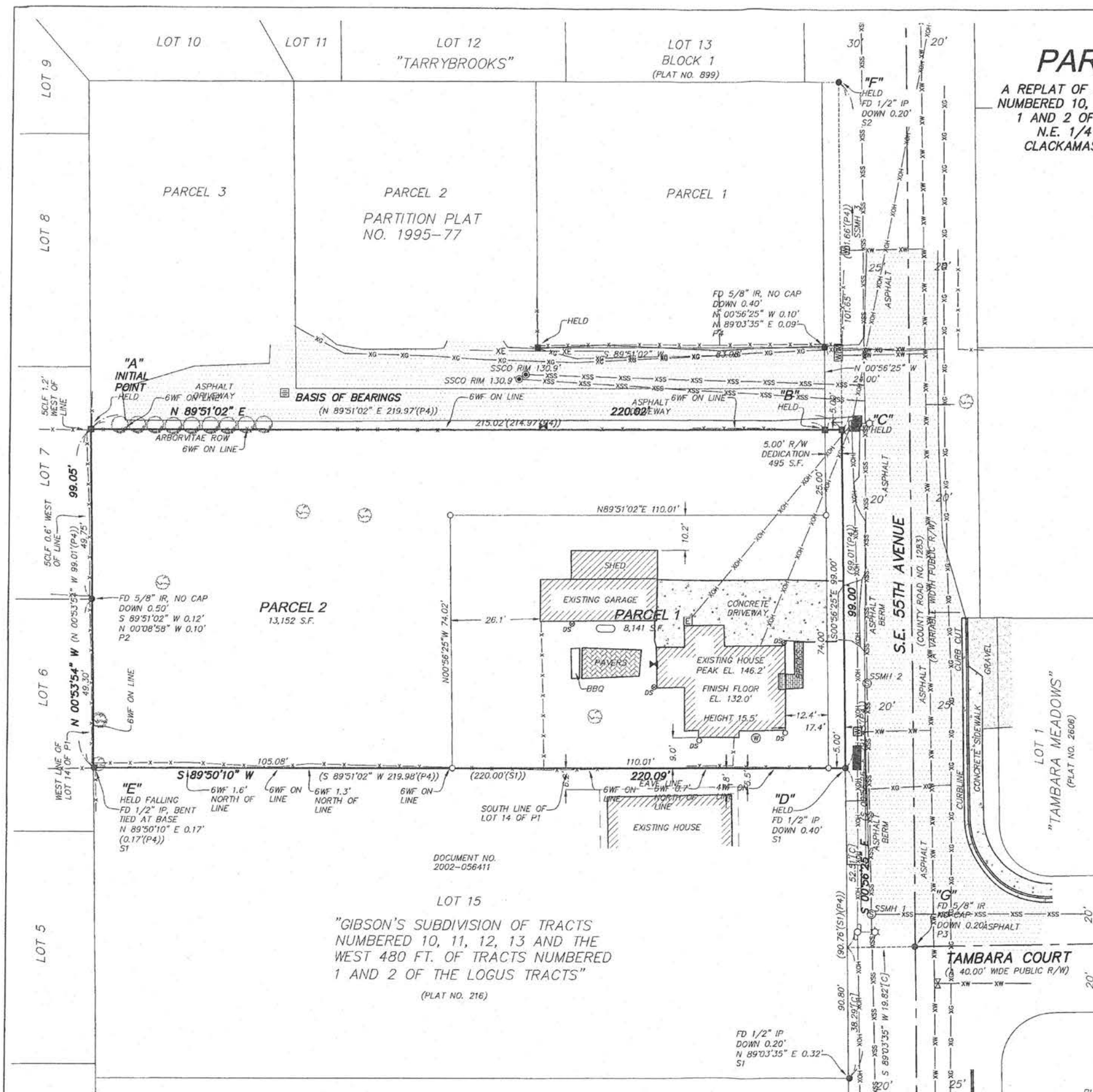
- **Steve Morrison, owner/resident at 9406 SE Winsor Dr:** Not opposed to the proposed partition but has the following concerns: (1) preservation of privacy, related to the

height and orientation of a new house on the proposed new flag lot; (2) lack of maintenance of trees along the rear boundary of the subject property; (3) standing stormwater in the northwest corner of the subject property that flows onto his property in heavy rain events; and (4) intermittent stormwater runoff onto his property from the existing flag lots at 9303 and 9305 SE 55<sup>th</sup> Ave.

- **Lisa and Denis Hutton, owners/residents at 9303 SE 55<sup>th</sup> Ave:** Concerned that a new 2-story home on the proposed new flag lot would block sunlight onto their property. Would like assurance that a fence will be constructed along the shared boundary with the subject property. Note that construction access to the subject property along their driveway is prohibited. Concerned for the nuisance potential of noise from a new house adjacent to their property.
- **Diane Lucas, owner/resident at 9326 SE Winsor Dr:** Concerned about stormwater runoff from adjacent flag-lot properties at 9303 and 9305 SE 55<sup>th</sup> Ave, which reportedly flows onto the subject property and then onto her property during heavy rain events. Interested to know if the existing stormwater problem can be addressed as part of the proposed partition. Concerned that stormwater from the proposed new flag-lot house will make the current situation even worse and would like to see additional stormwater management capacity established along 55<sup>th</sup> Ave. Would prefer that the new flag-lot house be oriented away from her and her Winsor Dr neighbors, for the sake of privacy.
- **Alex Roller, Engineering Tech II, City of Milwaukie Engineering Department:** Comments related to the project's compliance with MMC Chapter 19.700, which have been incorporated into these findings.

# Exhibit 2



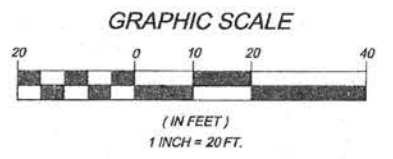


# PARTITION PLAT NO. 20\_\_-

A REPLAT OF A PORTION OF LOT 14, "GIBSON'S SUBDIVISION OF TRACTS NUMBERED 10, 11, 12, 13, AND THE WEST 480 FT. OF TRACTS NUMBERED 1 AND 2 OF THE LOGUS TRACTS" (PLAT NO. 216), LOCATED IN THE N.E. 1/4 SECTION 30, T.1S., R.2E., W.M., CITY OF MILWAUKIE, CLACKAMAS COUNTY, OREGON, JANUARY 22, 2018, SCALE 1"=20' SUPPLEMENTAL MAP

- LEGEND:**
- SET 5/8" x 30" IRON ROD W/ RED PLASTIC CAP MARKED "CENTERLINE CONCEPTS" ON \_\_\_\_\_ 20'
  - FOUND MONUMENT AS NOTED
  - FOUND 5/8" IRON ROD W/ YELLOW PLASTIC CAP MARKED "COMPASS CORP" FROM P4
  - ( ) = RECORD DISTANCES & BEARINGS
  - [C] = CALCULATED DISTANCE
  - IR = IRON ROD IP = IRON PIPE
  - FD = FOUND W/ = WITH
  - YPC = YELLOW PLASTIC CAP
  - S.F. = SQUARE FEET
  - R/W = RIGHT OF WAY
  - 6WF = 6" WOOD FENCE
  - SCLF = 5" CHAINLINK FENCE
  - 4WF = 4" WOOD FENCE
  - SN = SURVEY NUMBER CLACKAMAS COUNTY SURVEYOR'S OFFICE
  - S1 = SN 507
  - S2 = SN 1582
  - P1 = "GIBSON'S SUBDIVISION OF TRACTS NUMBERED 10, 11, 12, 13 AND THE WEST 480 FT. OF TRACTS NUMBERED 1 AND 2 OF LOGUS TRACTS" (PLAT NO. 216)
  - P2 = "TARRYBROOKS" (PLAT NO. 899)
  - P3 = "TAMBARA MEADOWS" (PLAT NO. 2606)
  - P4 = PARTITION PLAT NO. 1995-77

SIGNED ON: *D.G.C.*  
**REGISTERED PROFESSIONAL LAND SURVEYOR**  
 OREGON  
 JULY 13, 2004  
**TOBY G. BOLDEN**  
 60377LS  
 RENEWS: DECEMBER 31, 2019



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