



# CITY OF MILWAUKIE

## AGENDA

### REVISED

February 12, 2019

#### PLANNING COMMISSION

City Hall Council Chambers  
10722 SS Main Street  
www.milwaukieoregon.gov

- 1.0 Call to Order - Procedural Matters** — 6:30 PM
- 2.0 Planning Commission Minutes** – Motion Needed
  - 2.1 August 14, 2018 (**postponed to 2/26/2019**)
- 3.0 Information Items**
- 4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda
- 5.0 Public Hearings** – Public hearings will follow the procedure listed on reverse
  - 5.1 Summary: Washington St Vacation Rental  
Applicant/Owner: Valencia Borda, LLC (Pilar Pennell)  
Address: 3316 SE Washington St  
File: CU-2018-004  
Staff: Vera Kolas, Associate Planner
  - 5.2 Summary: Appeal of MLP-2018-001  
Appellant: Daniel Barela  
Address: 10244 SE 43<sup>rd</sup> Ave  
File: AP-2019-001  
Staff: Brett Kolver, Associate Planner
- 6.0 Worksession Items**
- 7.0 Planning Department Other Business/Updates**
- 8.0 Planning Commission Committee Updates and Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
  - February 26, 2019 1. Public Hearing: CU-2018-003 (master file) Rusk Rd Senior Living Facility
  - March 12, 2019 1. Public Hearing: VR-2019-002 Harlene St Driveway Variance

### Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

- 1. PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov). Thank you.
- 2. PLANNING COMMISSION and CITY COUNCIL MINUTES.** City Council and Planning Commission minutes can be found on the City website at [www.milwaukieoregon.gov/meetings](http://www.milwaukieoregon.gov/meetings).
- 3. FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
- 4. TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

#### Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

- 1. STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
- 2. CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
- 3. APPLICANT'S PRESENTATION.**
- 4. PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
- 5. NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
- 6. PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
- 7. QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
- 8. REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
- 9. CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
- 10. COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
- 11. MEETING CONTINUANCE.** Prior to the close of the first public hearing, any person may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

*The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.*

#### **Milwaukie Planning Commission:**

Kim Travis, Chair  
John Henry Burns, Vice Chair  
Adam Argo  
Joseph Edge  
Sherry Grau  
Greg Hemer  
Robert Massey (to be appointed 2/05/19)

#### **Planning Department Staff:**

Denny Egner, Planning Director  
David Levitan, Senior Planner  
Brett Kelder, Associate Planner  
Vera Koliass, Associate Planner  
Mary Heberling, Assistant Planner  
Alicia Martin, Administrative Specialist II



# CITY OF MILWAUKIE

**To:** Planning Commission  
**Through:** Dennis Egner, Planning Director  
**From:** Vera Koliás, Associate Planner  
**Date:** February 4, 2019, for February 12, 2019, Public Hearing  
**Subject:** **File:** CU-2018-004  
**Applicant:** Valencia Borda LLC (Pilar Pennell)  
**Address:** 3316 SE Washington St  
**Legal Description (Map & Tax Lot):** 11E36AC05800  
**NDA:** Lake Rd

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## **ACTION REQUESTED**

Approve application CU-2018-004 and adopt the recommended Findings and Conditions of Approval found in Attachments 1 and 2. This action would allow for the single-family home on the site to be used as a Vacation Rental.

## **BACKGROUND INFORMATION**

### **A. Site and Vicinity**

The site is located at 3316 SE Washington St. The site contains a single-family home with a shed, attached deck, and an attached garage providing private off-street parking for 2 parked cars. The site is 5,470-sq ft in size. See Figure 1 below.



Figure 1

The surrounding area consists of residential, single-family homes that are all zoned the same as the site: R-5. The site is separated from Hwy 224 by a planted area to the north and across Hwy 224 from the site is Milwaukie Marketplace. See Figure 2 below.

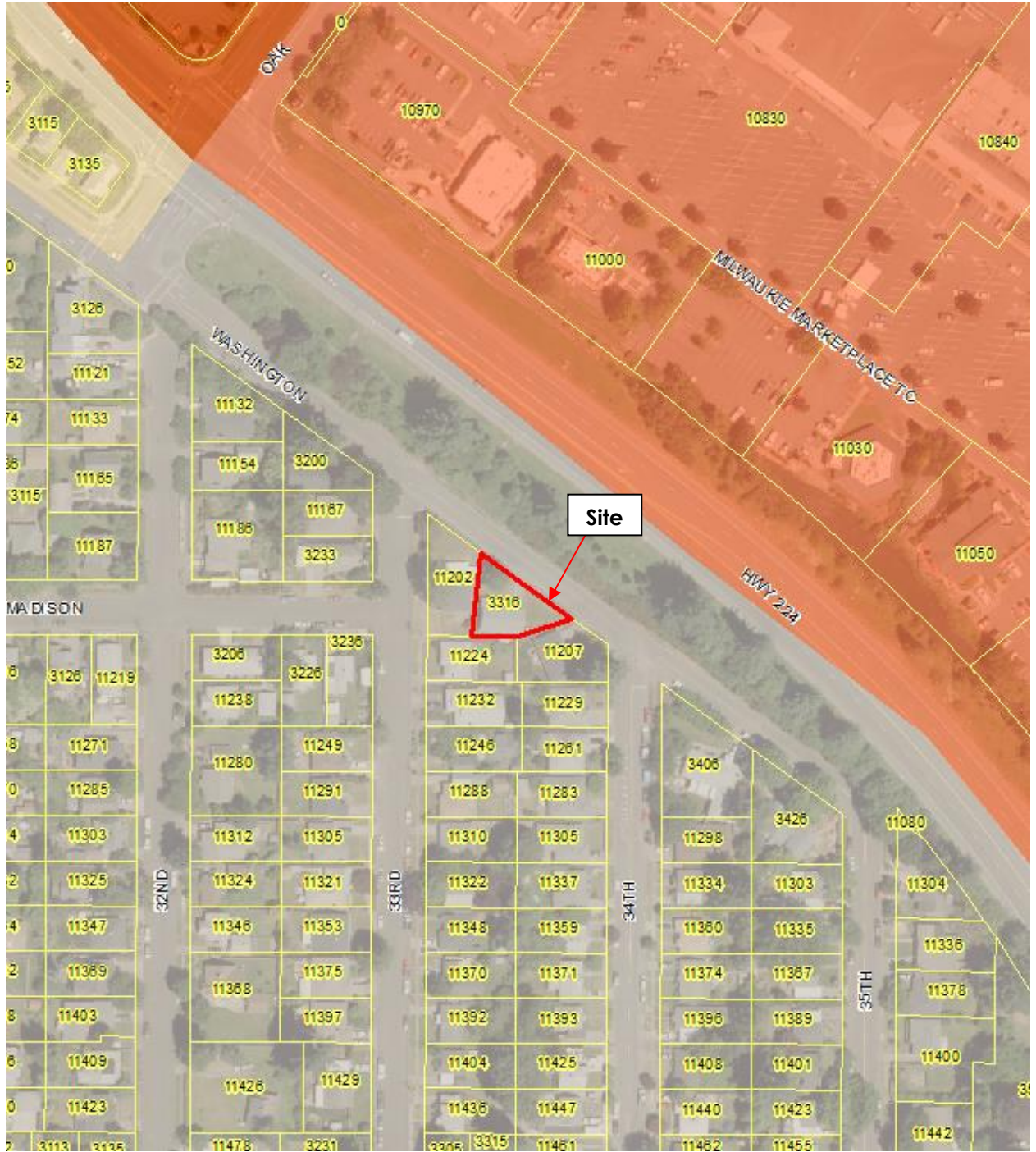


Figure 2

**B. Zoning Designation**

Low Density Residential, R-5

**C. Comprehensive Plan Designation**

LD – Low Density

**D. Land Use History**

City records indicate no previous land use actions for this site.

**E. Proposal**

The applicant is seeking land use approval for a Conditional Use to allow the single-family home to be used as a Vacation Rental.

The project requires approval of the following applications:

- Conditional Use – CU-2018-004

**KEY ISSUES**

Approval Criteria for a Conditional Use

**Summary**

A short-term rental is a housing unit, an accessory dwelling unit (ADU), or room(s) within a housing unit that is rented out for lodging for a period of less than 30 days in length. It is an accessory use to a primary residence and allowed as a home occupation where the residence must be occupied by the owner or operator for a minimum of 270 days per year. Short-term rentals are permitted as home occupations.

A vacation rental is a housing unit that is rented out to a single party for a period of less than 30 days in length where there are no primary occupants or where the residents who occupy the unit do so for less than 270 days per year. A vacation rental's primary use is more commercial in nature than a short-term rental. Because vacation rentals function differently in a neighborhood, they are permitted as a conditional use in residential zones.

MMC 19.905 establishes criteria for approval for a new conditional use. The two criteria that relate the most to a vacation rental in a low density residential zone are:

1. All identified impacts will be mitigated to the extent practicable; and
2. The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.

The property has been inspected and approved as a short-term rental, including a current business registration, but the property owner does not live on-site and would like the flexibility for both short-term and vacation rentals. The application states that the proposed vacation rental will not result in any change to any physical characteristics of the property. The residential use of the property will not change. The applicant believes there will be minimal

impact on the nearby uses as use of the home prohibits smoking/vaping both inside and outside and quiet hours are 10 PM to 6 AM. The applicant lives approximately 2 miles away and can respond immediately should an issue arise.

During the public hearings for CU-2017-001 and CU-2018-001, the Planning Commission included a condition to require the applicant for the vacation rental provide notification to property owners within a 250 ft radius from the site. The notification requires the inclusion of the contact information for the property owners, property managers, Neighborhood District Association (NDA) chair, City of Milwaukie Police non-emergency line, and the applicant's non-smoking and quiet hours policy. Staff has provided a similar requirement for properties within 300 ft (to mirror the notification requirements) from the previous vacation rental applications as a Condition of Approval for this application.

Staff believes that the applicant has provided information that shows how they can meet the approval criteria for a conditional use, especially any impact that may occur with the surrounding neighbors with the Conditions of Approval.

## **CONCLUSIONS**

**Staff recommendation to the Planning Commission is as follows:**

1. Approve the Conditional Use for 3316 SE Washington St. This will result in the ability to use the home as a Vacation Rental.
2. Adopt the attached Findings and Conditions of Approval

### **Recommended Conditions of Approval**

Provide notification to property owners within a 300 ft radius from the site. The notification will include the contact information for the property owners, vacation rental operator, Neighborhood District Association (NDA) chair, City of Milwaukie Police non-emergency line, and the applicant's policy regarding quiet hours, non-smoking, etc.

## **CODE AUTHORITY AND DECISION-MAKING PROCESS**

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC Subsection 19.301 Low Density Residential Zones
- MMC Subsection 19.905 Conditional Uses
- MMC Subsection 19.1006 Type III Review

This application is subject to Type III review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In Type III reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

The Commission has 4 decision-making options as follows:

- A. Approve the application subject to the recommended Findings and Conditions of Approval.
- B. Approve the application with modified Findings and Conditions of Approval. Such modifications need to be read into the record.
- C. Deny the application upon finding that it does not meet approval criteria.
- D. Continue the hearing.

The final decision on these applications, which includes any appeals to the City Council, must be made by April 17, 2019 in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

**COMMENTS**

- A. Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Engineering Department, Milwaukie Building Division, Lake Rd Neighborhood District Association (NDA), and Clackamas Fire District #1. The following is a summary of the comments received by the City. See Attachment 5 for further details.

There were no comments from any of the departments and agencies.

- B. A public notice was mailed to all residents and property owners within 300 ft of the site. No comments were received.

**ATTACHMENTS**

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early PC Mailing	PC Packet	Public Copies	E-Packet
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Conditions of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Applicant's Narrative and Supporting Documentation received December 13, 2018				
a. Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Building permit application materials for short-term rental review and inspection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

Packet = packet materials available online at: <https://www.milwaukieoregon.gov/bc-pc/planning-commission-4>.



**Findings in Support of Approval  
File #CU-2018-004, 3316 SE Washington St Vacation Rental**

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

1. The applicant, Valencia Borda LLC, represented by Pilar Pennell, has applied for approval of a Conditional Use for a Vacation Rental at 3316 SE Washington St This site is in the R-5 Zone. The land use application file number is CU-2018-004.
2. The applicant is proposing to use the single-family on the property as a Vacation Rental.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Subsection 19.301 Low Density Residential
  - MMC Subsection 19.905 Conditional Uses
  - MMC Subsection 19.1006 Type III Review
4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on February 12, 2019, as required by law.
5. MMC 19.301 Low Density Residential
  - a. MMC 19.301.2 establishes allowed uses for the low density residential zones. Vacation rentals are allowed in the R-5 zone per approval through the Conditional Use process.

*The applicant does not reside at the property and is proposing to use the single-family home on the site as a vacation rental. The applicant has applied for Conditional Use approval.*

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

6. MMC 19.905 Conditional Uses
  - a. MMC 19.905.4.A establishes approval criteria for approving a new conditional use. The applicant is proposing to establish a new conditional use with a vacation rental for the home. It meets the approval criteria as follows:

- (1) The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.

*The existing home is 1,064 sq ft in size and located on a 5,470-sq ft lot. The lot is fenced on two sides and the home includes an attached garage and sufficient driveway space for an additional car.*

*The physical characteristic of the property will not change. No improvements are proposed to the lot or the home other than possibly installing perimeter fencing. The Vacation Rental use will not change the residential character of the lot or building.*

*The Planning Commission finds that this criterion is met.*

- (2) The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.

*The physical characteristic of the property will not change. No improvements are proposed to the home. The applicant intends to use the home as either a vacation rental or a long-term rental unit.*

*The operating characteristics and residential character of the home remains the same. The private off-street parking area accommodates 2-3 parked cars limiting any potential negative impacts to parking on the public street.*

*The Planning Commission finds that this criterion is met.*

- (3) All identified impacts will be mitigated to the extent practicable.

*The proposed use will have restrictions on the renters to mitigate any impacts to the existing unit, property, and surrounding neighbors. The applicant has strict “No Smoking” either inside or outside and quiet hours policies. As stated above, the private off-street parking area accommodates 2-3 parked cars. This will limit any potential negative impacts to parking on the public street.*

*During the public hearings for CU-2017-001 and CU-2018-001, the Planning Commission included a condition to require the applicant for the vacation rental provide notification to property owners within a 250-ft radius from the site. The notification will include the contact information for the property owners, property managers, Neighborhood District Association (NDA) chair, City of Milwaukie Police non-emergency line, and the applicant’s no smoking and quiet hours policies. The applicant will be required to provide the same notifications for a 300-ft radius.*

*As conditioned, the Planning Commission finds that this criterion is met.*

- (4) The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.

*The residential character of the site will stay the same and will continue to have no greater unmitigated nuisance impacts than what is currently allowed outright. The visitors to the Vacation Rental would be using the unit as a residential property and maintain what any impacts may be for a typical residential unit already. As stated above, the applicants also have strict quiet hours and no smoking inside or outside policies.*

*The Planning Commission finds that this criterion is met.*

- (5) The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.

*There are no proposed changes to the existing house or lot. As it currently exists, the home is an existing single-family home in the R-5 zone on a 5,470-sq ft lot. There are no*

*overlay zones or special areas and the standards are met in Section 19.905 as demonstrated in the findings.*

*The Planning Commission finds that this criterion is met.*

- (6) The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.

*There are no specific Comprehensive Plan policies or objectives that provide clear guidance regarding whether a newly recognized vacation rental should be permitted in a given zone. Rather, the policies and objectives speak generally about maintaining the residential character of existing neighborhoods and opportunities for employment and home occupations. The applicant is proposing no changes to the existing home and it will still exist in that manner and continue its residential character and is consistent with the surrounding homes and properties. The vacation rental also allows the opportunity for the applicants to have a stream of income.*

*For these reasons, the proposal is consistent with the following goals, objectives, and policies:*

*Residential Land Use and Housing Element:*

- *Objective #4 – Neighborhood Conservation: To maximize the opportunities to preserve, enhance and reinforce the identity and pride of existing well-defined neighborhoods in order to encourage the long-term maintenance of the City's housing stock.*
- *Objective #4 – Policy #5: Within Low Density areas, new projects will maintain a single-family building bulk, scale and height when abutting existing single-family areas, or when abutting a street where existing single-family houses face the project.*

*Economic Base and Industrial/Commercial Land Use Element:*

- *Objective #2 – Policy #4: The City will support home occupations (income-producing activities in the home) as long as these activities do not detract from the residential character of the area.*

*Neighborhood Element:*

- *The Neighborhood Element Goal Statement*
- *Objective #1 – Neighborhood Character: To maintain the residential character of designated neighborhood areas.*
- *Objective #1 – Policy #2: Improve standards for home occupations to ensure adequate parking and other compatibility measures are provided.*

*The Planning Commission finds that this criterion is met.*

- (7) Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.

*There are adequate public transportation facilities and public utilities for the site. Renters for the proposed use will generally have a personal/rented vehicle that they can park on the property. The applicants have an off-street parking area that can accommodate 2-3 vehicles and prevents the need for any renters to park on the public street.*

*The Planning Commission finds that this criterion is met.*

*As conditioned, the Planning Commission finds that the approval criteria for a conditional use are met with this proposal.*

7. The application was referred to the following departments and agencies on December 21, 2018:

- Milwaukie Building Division
- Milwaukie Engineering Department
- Clackamas County Fire District #1
- Lake Rd Neighborhood District Association Chairperson and Land Use Committee

There were no comments from any of the departments and agencies.

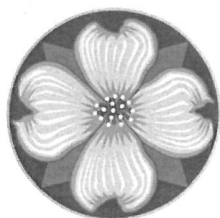
A public notice was mailed to all residents and property owners within 300 ft of the site. The comments received are summarized below:

## ATTACHMENT 2

### **Conditions of Approval File # CU-2018-004, 3316 SE Washington St Vacation Rental**

#### **Condition**

1. Provide notification to property owners within a 300 ft radius from the site. The notification will include the contact information for the property owners, vacation rental operator, Neighborhood District Association (NDA) chair, City of Milwaukie Police non-emergency line, and the applicant's policy regarding quiet hours, non-smoking, etc.



**PLANNING DEPARTMENT**  
 6101 SE Johnson Creek Blvd  
 Milwaukie OR 97206  
 503-786-7630  
 planning@milwaukieoregon.gov

# Application for Land Use Action

Master File #: CU-2018-004

Review type\*:  I  II  III  IV  V

<p><b>CHECK ALL APPLICATION TYPES THAT APPLY:</b></p> <p><input type="checkbox"/> Amendment to Maps and/or Ordinances:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Comprehensive Plan Text Amendment</li> <li><input type="checkbox"/> Comprehensive Plan Map Amendment</li> <li><input type="checkbox"/> Zoning Text Amendment</li> <li><input type="checkbox"/> Zoning Map Amendment</li> </ul> <p><input type="checkbox"/> Code Interpretation</p> <p><input type="checkbox"/> Community Service Use</p> <p><input checked="" type="checkbox"/> Conditional Use</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Development Review</li> <li><input type="checkbox"/> Director Determination</li> <li><input type="checkbox"/> Downtown Design Review</li> <li><input type="checkbox"/> Extension to Expiring Approval</li> <li><input type="checkbox"/> Historic Resource:                         <ul style="list-style-type: none"> <li><input type="checkbox"/> Alteration</li> <li><input type="checkbox"/> Demolition</li> <li><input type="checkbox"/> Status Designation</li> <li><input type="checkbox"/> Status Deletion</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Land Division:                         <ul style="list-style-type: none"> <li><input type="checkbox"/> Final Plat</li> <li><input type="checkbox"/> Lot Consolidation</li> </ul> </li> <li><input type="checkbox"/> Partition</li> <li><input type="checkbox"/> Property Line Adjustment</li> <li><input type="checkbox"/> Replat</li> <li><input type="checkbox"/> Subdivision</li> <li><input type="checkbox"/> Miscellaneous:                         <ul style="list-style-type: none"> <li><input type="checkbox"/> Barbed Wire Fencing</li> <li><input type="checkbox"/> Bee Colony</li> </ul> </li> <li><input type="checkbox"/> Mixed Use Overlay Review</li> <li><input type="checkbox"/> Modification to Existing Approval</li> <li><input type="checkbox"/> Natural Resource Review</li> <li><input type="checkbox"/> Nonconforming Use Alteration</li> <li><input type="checkbox"/> Parking:                         <ul style="list-style-type: none"> <li><input type="checkbox"/> Quantity Determination</li> <li><input type="checkbox"/> Quantity Modification</li> <li><input type="checkbox"/> Shared Parking</li> <li><input type="checkbox"/> Structured Parking</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Planned Development</li> <li><input type="checkbox"/> Residential Dwelling:                         <ul style="list-style-type: none"> <li><input type="checkbox"/> Accessory Dwelling Unit</li> <li><input type="checkbox"/> Duplex</li> <li><input type="checkbox"/> Manufactured Dwelling Park</li> </ul> </li> <li><input type="checkbox"/> Temporary Dwelling Unit</li> <li><input type="checkbox"/> Sign Review</li> <li><input type="checkbox"/> Transportation Facilities Review</li> <li><input type="checkbox"/> Variance:                         <ul style="list-style-type: none"> <li><input type="checkbox"/> Use Exception</li> <li><input type="checkbox"/> Variance</li> </ul> </li> <li><input type="checkbox"/> Willamette Greenway Review</li> <li><input type="checkbox"/> Other: _____</li> </ul> <p><b>Use separate application forms for:</b></p> <ul style="list-style-type: none"> <li>• Annexation and/or Boundary Change</li> <li>• Compensation for Reduction in Property Value (Measure 37)</li> <li>• Daily Display Sign</li> <li>• Appeal</li> </ul>
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**RESPONSIBLE PARTIES:**

**APPLICANT** (owner or other eligible applicant—see reverse): Valencia Borda LLC

Mailing address: 3316 SE Washington St. Zip: 97222

Phone(s): 971-271-2939 Email: valenciaborda18@gmail.com

**APPLICANT'S REPRESENTATIVE** (if different than above):

Mailing address: 1674 SE Marion St. Zip: 97202

Phone(s): (503) 964-8950 Email: ppilar4@gmail.com

**SITE INFORMATION:**

Address: 3316 SE Washington St. Map & Tax Lot(s): 11E36 AC 05800

Comprehensive Plan Designation: \_\_\_\_\_ Zoning: R5 Size of property: 5,470 SF

**PROPOSAL (describe briefly):** "Conditional use"

Approval for vacation rental to have flexibility to convert for short & long term rental, don't live

at the property. This is an existing structure that

**ATTEST:** I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: Pilar Bennet

Date: 12/13/18

meets the building and develop

**IMPORTANT INFORMATION ON REVERSE SIDE**

\*For multiple applications, this is based on the highest required review type. See MMC Subsection 19.1001.6.B.1.

ment codes per plans attached. It has been inspected & approved previously.

**WHO IS ELIGIBLE TO SUBMIT A LAND USE APPLICATION** (excerpted from MMC Subsection 19.1001.6.A):

**Type I, II, III, and IV** applications may be initiated by the property owner or contract purchaser of the subject property, any person authorized in writing to represent the property owner or contract purchaser, and any agency that has statutory rights of eminent domain for projects they have the authority to construct.

**Type V** applications may be initiated by any individual.

**PREAPPLICATION CONFERENCE:**

A preapplication conference may be required or desirable prior to submitting this application. Please discuss with Planning staff.

**REVIEW TYPES:**

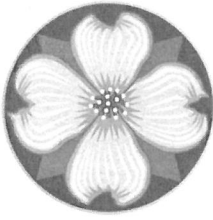
This application will be processed per the assigned review type, as described in the following sections of the Milwaukie Municipal Code:

- Type I: Section 19.1004
- Type II: Section 19.1005
- Type III: Section 19.1006
- Type IV: Section 19.1007
- Type V: Section 19.1008

**THIS SECTION FOR OFFICE USE ONLY:**

FILE TYPE	FILE NUMBER	FEE AMOUNT*	PERCENT DISCOUNT	DISCOUNT TYPE	DEPOSIT AMOUNT	DATE STAMP
Master file	CU-2018-004	\$2,000			\$	RECEIVED DEC 13 2018 CITY OF MILWAUKIE PLANNING DEPARTMENT
Concurrent application files		\$			\$	
		\$			\$	
		\$			\$	
		\$			\$	
<b>SUBTOTALS</b>		\$ 2,000			\$	
<b>TOTAL AMOUNT RECEIVED: \$</b> 2000		<b>RECEIPT #:</b> 15884		<b>RCD BY:</b> <i>AMark</i>		
<b>Associated application file #s</b> (appeals, modifications, previous approvals, etc.):						
<b>Neighborhood District Association(s):</b> Lake Rd						
<b>Notes:</b>						

\*After discount (if any)



**MILWAUKIE PLANNING**

6101 SE Johnson Creek Blvd  
Milwaukie OR 97206  
503-786-7630  
planning@milwaukieoregon.gov

# Submittal Requirements

**For all Land Use Applications  
(except Annexations and Development Review)**

All land use applications must be accompanied by a signed copy of this form (see reverse for signature block) and the information listed below. The information submitted must be sufficiently detailed and specific to the proposal to allow for adequate review. Failure to submit this information may result in the application being deemed incomplete per the Milwaukie Municipal Code (MMC) and Oregon Revised Statutes.

Contact Milwaukie Planning staff at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov) for assistance with Milwaukie's land use application requirements.

1. **All required land use application forms and fees**, including any deposits.

*Applications without the required application forms and fees will not be accepted.*

2. **Proof of ownership or eligibility to initiate application** per MMC Subsection 19.1001.6.A.

*Where written authorization is required, applications without written authorization will not be accepted.*

3. **Detailed and comprehensive description** of all existing and proposed uses and structures, including a summary of all information contained in any site plans.

*Depending upon the development being proposed, the description may need to include both a written and graphic component such as elevation drawings, 3-D models, photo simulations, etc. Where subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary onsite "story pole" installations, and photographic representations thereof, may be required at the time of application submittal or prior to the public hearing.*

4. **Detailed statement** that demonstrates how the proposal meets the following:

A. All applicable development standards (listed below):

1. **Base zone standards** in Chapter 19.300.
2. **Overlay zone standards** in Chapter 19.400.
3. **Supplementary development regulations** in Chapter 19.500.
4. **Off-street parking and loading standards and requirements** in Chapter 19.600.
5. **Public facility standards and requirements**, including any-required street improvements, in Chapter 19.700.

B. All applicable application-specific approval criteria (check with staff).

*These standards can be found in the MMC, here: [www.qcode.us/codes/milwaukie/](http://www.qcode.us/codes/milwaukie/)*

5. **Site plan(s), preliminary plat, or final plat** as appropriate.

*See Site Plan, Preliminary Plat, and Final Plat Requirements for guidance.*

6. **Copy of valid preapplication conference report**, when a conference was required.



**APPLICATION PREPARATION REQUIREMENTS:**

- Five hard copies of all application materials are required at the time of submittal. Staff will determine how many additional hard copies are required, if any, once the application has been reviewed for completeness.
- All hard copy application materials larger than 8½ x 11 in. must be folded and be able to fit into a 10- x 13-in. or 12- x 16-in. mailing envelope.
- All hard copy application materials must be collated, including large format plans or graphics.

**ADDITIONAL INFORMATION:**

- Neighborhood District Associations (NDAs) and their associated Land Use Committees (LUCs) are important parts of Milwaukie's land use process. The City will provide a review copy of your application to the LUC for the subject property. They may contact you or you may wish to contact them. Applicants are strongly encouraged to present their proposal to all applicable NDAs prior to the submittal of a land use application and, where presented, to submit minutes from all such meetings. NDA information: [www.milwaukieoregon.gov/citymanager/what-neighborhood-district-association](http://www.milwaukieoregon.gov/citymanager/what-neighborhood-district-association).
- Submittal of a full or partial electronic copy of all application materials is strongly encouraged.

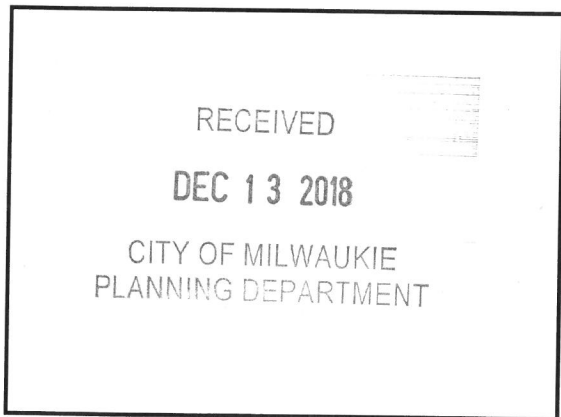
As the authorized applicant I, (print name) Pilar Pennell, attest that all required application materials have been submitted in accordance with City of Milwaukie requirements. I understand that any omission of required items or lack of sufficient detail may constitute grounds for a determination that the application is incomplete per MMC Subsection 19.1003.3 and Oregon Revised Statutes 227.178. I understand that review of the application may be delayed if it is deemed incomplete.

Furthermore, I understand that, if the application triggers the City's sign-posting requirements, I will be required to post signs on the site for a specified period of time. I also understand that I will be required to provide the City with an affidavit of posting prior to issuance of any decision on this application.

Applicant Signature: *Pilar Pennell*  
Date: 12/13/18

**Official Use Only**

Date Received (date stamp below):





PLANNING DEPARTMENT  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

PHONE: 503-786-7630  
FAX: 503-774-8236  
E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)

# Preapplication Conference Waiver

We, Valencia Borda, LLC (print), as applicant(s)/property  
owner(s) of Pilar Pennell (address of property), request to waive  
the requirement for a preapplication conference for the submission of a **Type II / (III) / IV / V** (circle one) land  
use application per MMC Subsection 19.1002.2 Applicability.

**Please provide an explanation for the waiver request:**

*MMC Section 19.1002 Preapplication Conference is provided on the reverse*

Planning staff have explained the process  
and pre-application process is unnecessary.

Signed: Pilar Pennell  
Applicant/Property Owner

Approved: [Signature]  
Planning Director

3316 SE Washington St,Portland, OR 97222

I want flexibility for both short and long term rentals, don't live at the property and address for the approval criteria for new conditional uses in [MMC 19.905.4.A](#) has already been inspected and approved by the Building Official as a short-term rental.

1. The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features. Please see attached plans.
2. The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.
- 3 & 4. To minimize complaints from the neighbors, in the house rules, noise is not allowed from 10PM to 6AM, neither smoking or vaping - inside or outside of the house nor parking off the street. We don't discriminate anyone but request government ID, phone number an email verification from prospective guests before booking. Should any complaint arises, we will respond immediately as we live locally.
5. This is an existing structure that meets the building and development codes, and has already been inspected and approved by the Building Official as a short-term rental.
6. The Comp Plan designation is for moderate density residential, and this is a form of short-term housing.
7. This is an existing structure that is already served by public utilities.

RECEIVED

DEC 13 2018

CITY OF MILWAUKIE  
PLANNING DEPARTMENT



# BUILDING PERMIT

## RESIDENTIAL / STRUCTURAL

PERMIT NUMBER : 601-14-001694

CITY OF MILWAUKIE  
6101 SE Johnson Creek Blvd  
Milwaukie, OR 97206  
(503) 786-7613

building@milwaukieoregon.gov

IVR NUMBER: 601177709328

FIRST ISSUED DATE: 06/10/2014

SCOPE: RESIDENTIAL

TYPE OF WORK

CLASS OF WORK: ALTERATION

JOB VALUATION: \$50,000.00

DESCRIPTION OF WORK TO BE DONE: FIRE DAMAGE REPAIR

### JOB SITE INFORMATION

SITE ADDRESS: 3316 SE WASHINGTON ST, MILWAUKIE, OR 97222

TAX LOT PARCEL #: 11E36AC05800

OWNER: MARTIN PATRICIA G  
ADDRESS:

PHONE:

### CONTRACTOR INFORMATION

Business Name

WILLAMETTE RESTORATION SERVICES INC

License

CCB 158552

Work

Address

PO BOX 2679 OREGON CITY OR 97045

Phone

503-656-2867

### FEE INFORMATION

**Fee Description**

Fee Description	Quantity	Unit	Total Fee
Structural Building Permit Fee	1.00		542.02
Structural Plan Review Fee	542.02	Ea	352.31
State of Oregon Surcharge (12% of applicable fees)	542.02		65.04
<b>Total Fees:</b>			<b>\$ 959.37</b>

### REQUIRED INSPECTIONS

**Inspection Type**

Schedule Inspections online at: [www.buildingpermits.oregon.gov](http://www.buildingpermits.oregon.gov)  
or by calling: 1-888-299-2821 or 503-786-7575

THIS PERMIT IS ISSUED UNDER OAR 918-460-0030. PERMITS EXPIRE IF WORK IS NOT STARTED WITHIN 180 DAYS OF ISSUANCE OR IF WORK IS SUSPENDED FOR 180 DAYS.

ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

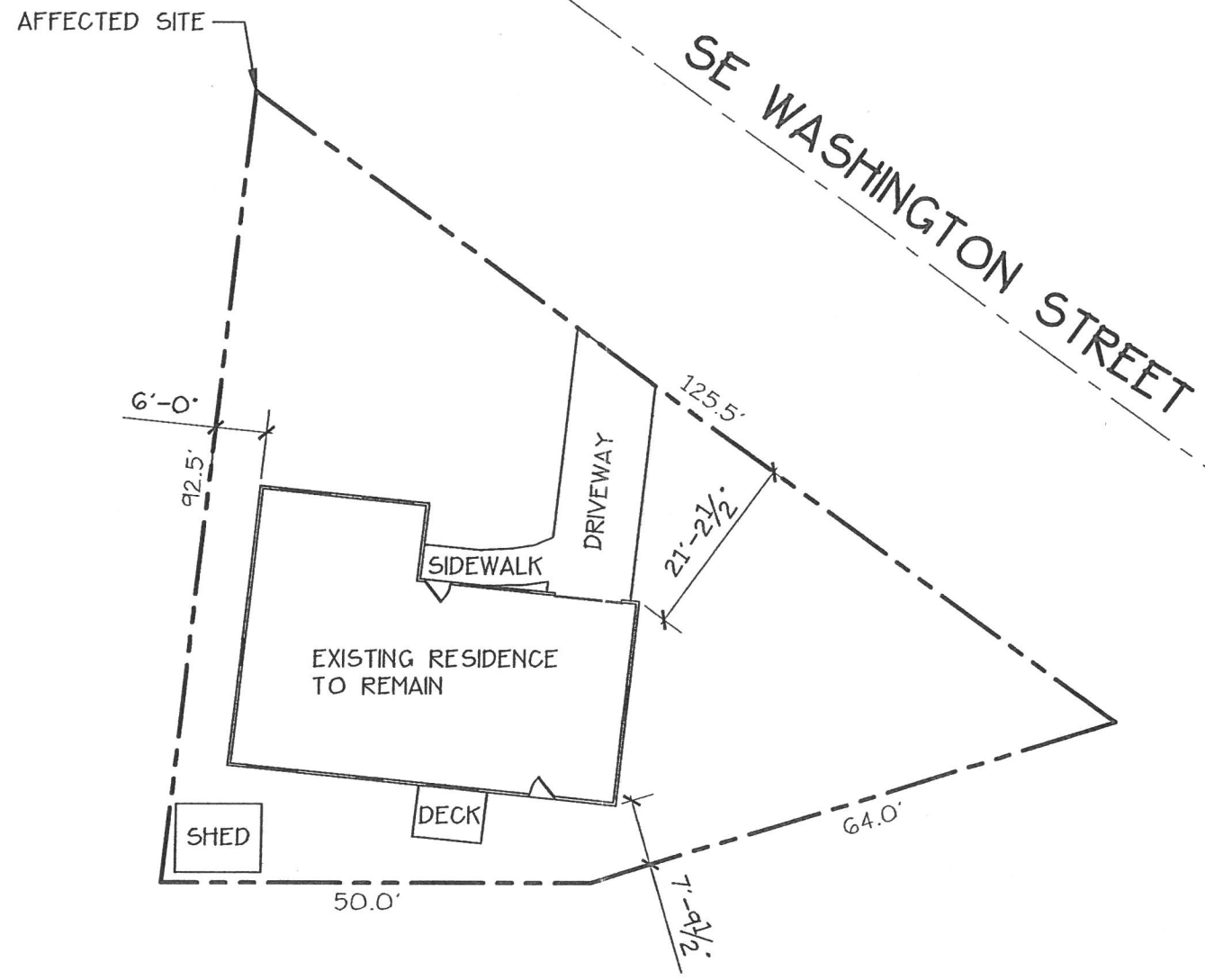
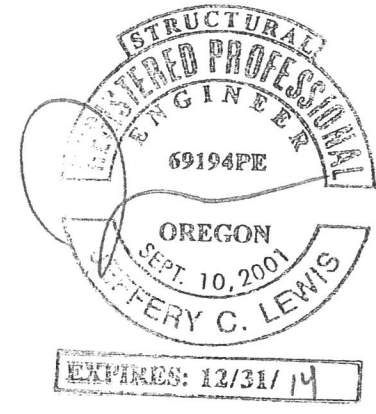
All persons or entities performing work under this permit are required to be licensed unless exempted by ORS 701.010. Permit will expire if work is not started or if work is suspended for 180 days.

RECEIVED

DEC 13 2018

CITY OF MILWAUKIE  
PLANNING DEPARTMENT

RECEIVED  
DEC 13 2018  
CITY OF MILWAUKIE  
PLANNING DEPARTMENT



**SITE PLAN**  
**FIRE DAMAGE REPAIRS**  
3316 SE WASHINGTON STREET  
MILWAUKIE, OREGON 97222

REV	DATE	DESCRIPTION
	6/3/14	PERMIT + CONSTRUCTION

NOTE: SITE PLAN FOR REFERENCE ONLY -  
NO CHANGES TO SITE.

**SITE PLAN**  
SCALE : 1" = 1'-0"

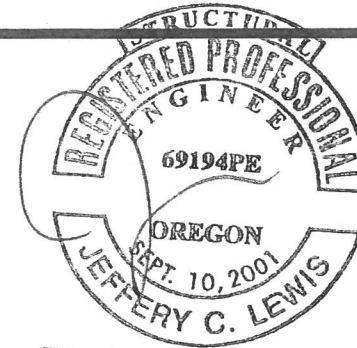


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OF 1

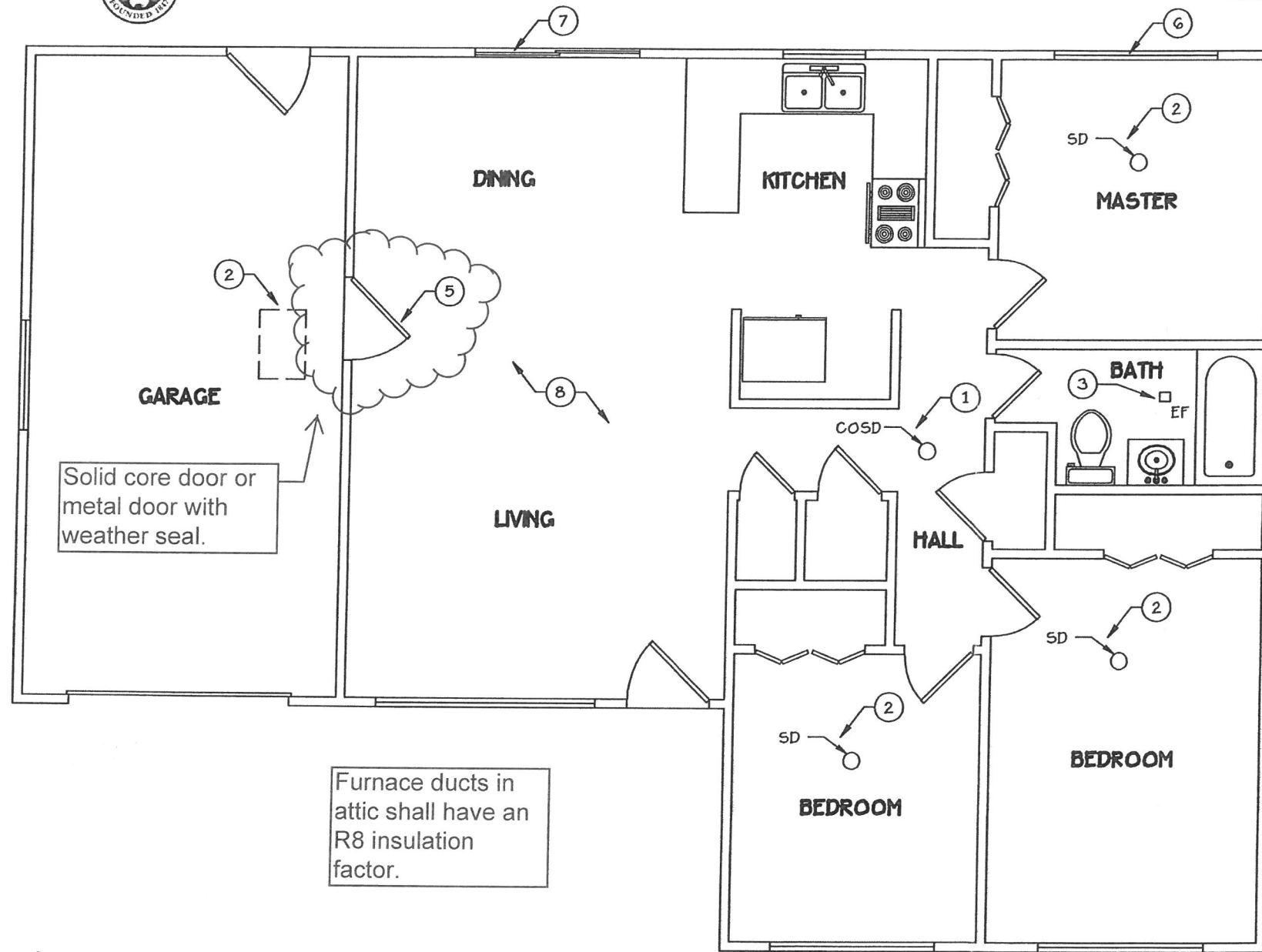
APPROVED  
 REVIEWED FOR CODE COMPLIANCE  
 JOHN STELZENMUELLER  
 City of Milwaukie



Replacement of plumbing fixtures, vents, drains or water lines may require a plumbing permit. Check with local jurisdiction prior to commencing work.



INSULATION SCHEDULE	
LOCATION	R-VALUE
CEILING (TRUSSES)	R-49
CRAWL SPACE	R-30
NEW 2x6 WALLS	R-21
EXISTING 2x4 WALLS	R-15



Solid core door or metal door with weather seal.

Furnace ducts in attic shall have an R8 insulation factor.

**FLOOR PLAN KEY NOTES**

- ① INDICATES HARD WIRED SMOKE + CARBON MONOXIDE DETECTOR WITH BATTERY BACKUP
- ② INDICATES HARD WIRED SMOKE DETECTOR WITH BATTERY BACKUP
- ③ INDICATES BATHROOM EXHAUST FAN ROUTED TO BUILDING EXTERIOR
- ④ PROVIDE 20' x 30' ATTIC ACCESS
- ⑤ NEW EXTERIOR DOORS TO MATCH ORIGINAL - MAXIMUM U-FACTOR = 0.2
- ⑥ NEW WINDOWS TO MATCH ORIGINAL - MAXIMUM U-FACTOR = 0.35
- ⑦ NEW SLIDING DOOR TO MATCH ORIGINAL - MAXIMUM U-FACTOR = 0.35
- ⑧ REPLACE INTERIOR FINISHES THROUGHOUT HOME - SMOKE SEAL FRAMING AS REQUIRED

NOTE: FLOOR PLAN SHOWN FOR REFERENCE ONLY - NO CHANGES TO FLOOR PLAN

**MAIN LEVEL FLOOR PLAN**  
 SCALE : 3/16"=1'-0"



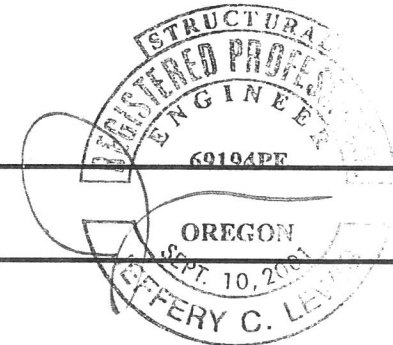
WC 4

West Coast Forenetics,  
 Engineering and Design, LLC  
 9855 SW Kelly Avenue  
 Suite 100  
 Portland, Oregon 97238  
 ph: (503) 252-5744 fax: (503) 252-5372  
 www.wcfore.com

MAIN LEVEL FLOOR PLAN  
 FIRE DAMAGE REPAIR  
 3316 SE WASHINGTON STREET  
 MILWAUKIE, OREGON 97222

REV	DATE	DESCRIPTION
	6/3/14	PERMIT + CONSTRUCTION

SHEET:  
**A1**  
 OF 1



EXPIRES: 12/31/14

## GENERAL NOTES

THESE DOCUMENTS ARE INTENDED FOR LIMITED FIRE RELATED DAMAGE RECONSTRUCTION. THEY DO NOT ADDRESS ALL CODE DEFICIENCIES THAT MAY EXIST. ANY SEISMIC UPGRADE TO ANY EXISTING COMPONENTS OF THE STRUCTURE IS BEYOND THE SCOPE OF THESE DOCUMENTS.

### BUILDING CODE:

2010 OREGON STRUCTURAL SPECIALTY CODE

### DESIGN LOADS:

#### GRAVITY:

1. ROOF/FLOOR DEAD LOAD: 15 PSF
2. ROOF SNOW LOAD: 25 PSF
3. FLOOR LIVE LOAD: 40 PSF

#### WIND:

1. BASIC WIND SPEED: 100 MPH
2. WIND LOAD IMPORTANCE FACTOR (I<sub>w</sub>): 1.0
3. WIND EXPOSURE: B
4. INTERNAL PRESSURE COEFFICIENT: 0 (METHOD 1)
5. COMPONENTS AND CLADDING DESIGN PRESSURE: 19.0 PSF

### GENERAL CONSTRUCTION:

1. CONTRACTOR IS TO VERIFY AND CONFIRM ALL DIMENSIONS. NOTIFY ENGINEER OF ANY DISCREPANCIES BETWEEN THE DRAWINGS AND EXISTING CONDITIONS PRIOR TO START OF WORK.
2. CONTRACTOR IS RESPONSIBLE FOR THE STABILITY OF THE STRUCTURE DURING CONSTRUCTION. THE STRUCTURE AS SHOWN ON THE DRAWINGS HAS ONLY BEEN DESIGNED FOR STABILITY UNDER THE COMPLETED CONDITION.

### CARPENTRY:

1. ALL NAILS TO BE COMMON WIRE OR EQUIVALENT DIAMETER AND LENGTH. NO BOX NAILS ALLOWED.
2. ALL NAILING TO BE IN ACCORDANCE WITH IBC TABLE 2304.9.1 UNLESS NOTED OTHERWISE.
3. ALL FRAMING HARDWARE TO BE SIMPSON STRONG-TIE BRAND OR EQUIVALENT SPECIFICALLY APPROVED BY ENGINEER PRIOR TO ORDERING. GENERAL CONTRACTOR SHALL PROVIDE ALL SPECIFICATIONS OF EQUIVALENT PRODUCT TO THE ENGINEER FOR APPROVAL. INSTALL FRAMING HARDWARE IN ACCORDANCE WITH MANUFACTURER'S SPECIFIED MAXIMUM NAILS OR BOLTS UNLESS SPECIFICALLY NOTED OTHERWISE ON PLANS.

### 4. LUMBER GRADES:

- A. ALL 2x MEMBERS TO BE DOUGLAS FIR #2 UNLESS NOTED OTHERWISE.
- B. ALL 4x AND LARGER MEMBERS TO BE DOUGLAS FIR #1 UNLESS NOTED OTHERWISE.
- C. BLOCKING TO BE STANDARD OR BETTER. OR STUD GRADE.
- D. ALL WOOD IN PERMANENT CONTACT WITH CONCRETE OR MASONRY TO BE PRESSURE TREATED.
- E. GLUED LAMINATED BEAMS TO BE 24FV4 FOR SIMPLE SPANS.
- F. GLUED LAMINATED BEAMS TO BE 24FV8 FOR CANTILEVER AND CONTINUOUS SPANS.
- G. LAMINATED VENEER LUMBER (LVL) TO MEET THE FOLLOWING REQUIREMENTS:

F<sub>b</sub>=2600 PSI, E=1900000 PSI, F<sub>v</sub>=285 PSI

5. CUTTING OR NOTCHING OF BEAMS, JOISTS AND COLUMNS IS NOT PERMITTED UNLESS APPROVED BY ENGINEER OF RECORD.
6. PLYWOOD SHALL BE APA RATED SHEATHING - EXPOSURE I
  - A. ROOF SHEATHING: 1/2" APA INDEX 24/0
  - B. WALL SHEATHING: 1/2" APA INDEX 24/0
  - C. FLOOR SHEATHING: 3/4" T+G APA INDEX 48/24
  - D. SHEAR WALL SHEATHING SHALL HAVE BLOCKING AT PLYWOOD JOINTS.
  - E. REFER TO PLANS AND SCHEDULES FOR DIAPHRAGM NAILING REQUIREMENTS.
7. DRILL BOLT HOLES 1/16" OVERSIZE EXCEPT WHERE NOTED LARGER.
8. ALL NAILS AND HARDWARE TO BE HOT-DIPPED GALVANIZED.

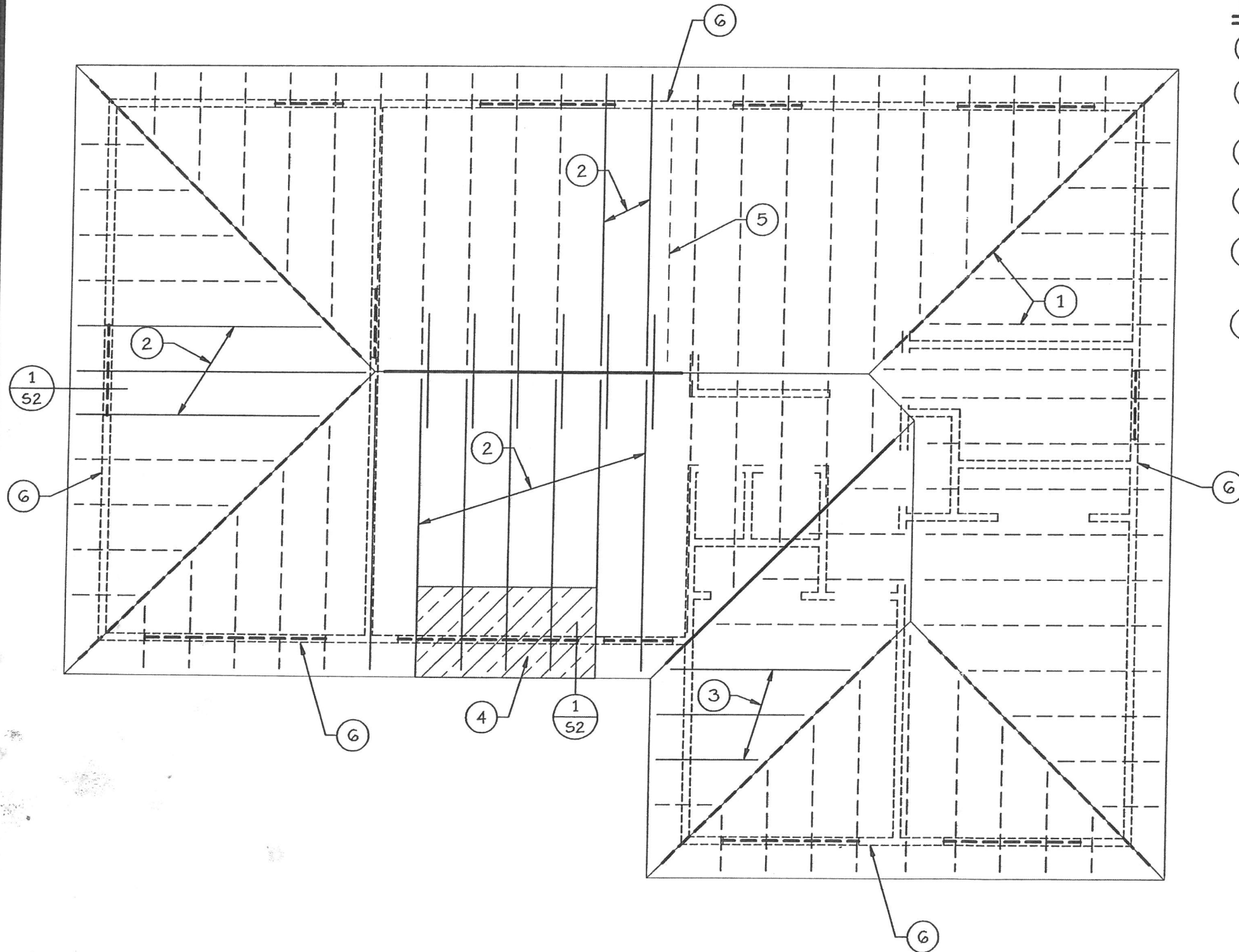
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OF 3

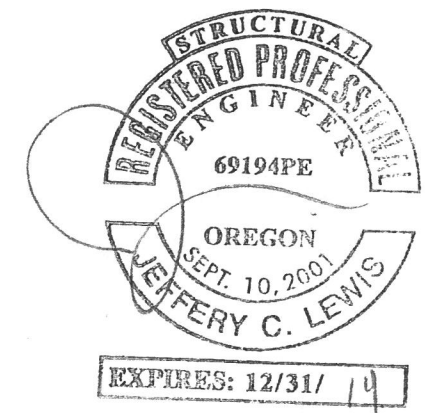
NOTE: MAINTAIN EXISTING ROOF VENTING



### KEY NOTES

- ① DASHED FRAMING IS EXISTING FRAMING TO REMAIN
- ② NEW 2x4 RAFTERS AT 24" O.C. PROVIDE SUPPORTS TO CEILING FRAMING AT EXISTING SUPPORT LOCATIONS
- ③ NEW 2x6 HIP w/ MINIMUM 2 JACKS TO CEILING FRAMING
- ④ MIN. 1/2" 24/0 EXPOSURE 1 SPAN RATED PLYWOOD w/ 8d AT 6" EDGE/ 12" FIELD TO ALL FRMG
- ⑤ EXISTING 2x8 CEILING JOIST. TYPICAL
- ⑥ REPLACE SMOKE DAMAGED FIR-TEX SHEATHING AT EXTERIOR WALLS w/ 1/2" EXPOSURE 1 SHEATHING NAILED TO ALL FRAMING w/ 8d AT 6" O.C. EDGE/ 12" O.C. FIELD - BLOCK ALL EDGES

Provide ridge vents or peak vents, with bug screen, for ventilation



**ROOF FRAMING PLAN**  
SCALE : 3/16"=1'-0"



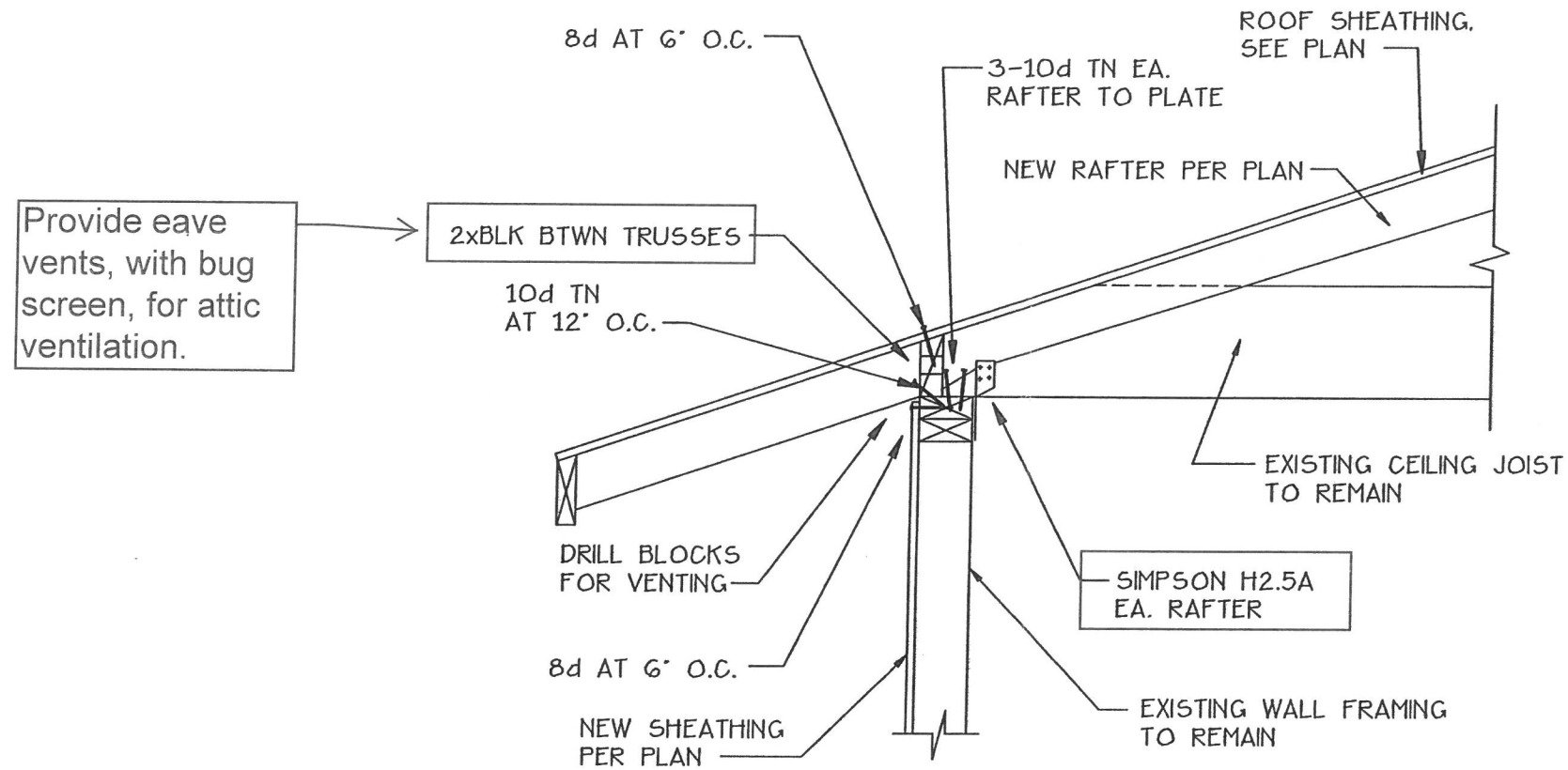
**West Coast Forensics, Engineering and Design, LLC**  
3835 SW Kelly Avenue  
Suite 100  
Portland, Oregon 97239  
ph: (503) 232-5744 fax: (503) 232-5372  
www.wcfore.com

**ROOF FRAMING PLAN**  
**FIRE DAMAGE REPAIR**  
3316 SE WASHINGTON STREET  
MILWAUKIE, OREGON 97222

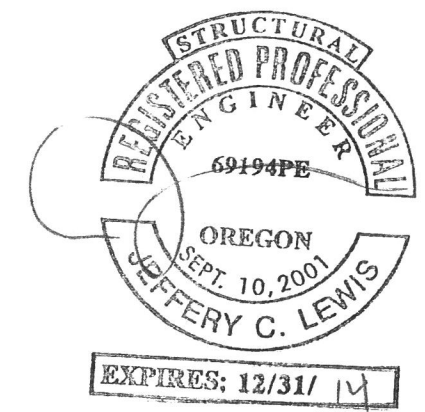
REV	DATE	DESCRIPTION
	6/3/14	PERMIT + CONSTRUCTION

SHEET:  
**S1**  
OF 3





**1** TYPICAL EAVE DETAIL  
SCALE: 1" = 1'-0"



ROOF FRAMING DETAILS  
FIRE DAMAGE REPAIR  
3316 SE WASHINGTON STREET  
MILWAUKIE, OREGON 97222

REV	DATE	DESCRIPTION
	6/3/14	PERMIT + CONSTRUCTION



# CITY OF MILWAUKIE

**To:** Planning Commission

**Through:** Dennis Egner, Planning Director

**From:** Brett Kelter, Associate Planner

**Date:** February 5, 2019, for February 12, 2019, Public Hearing

**Subject:** **File:** AP-2019-001 (an appeal of MLP-2018-001)  
**Appellant:** Daniel Barela  
**Owner(s):** Tony and Michelle DaRosa  
**Subject Property:** 10244 SE 43<sup>rd</sup> Ave  
**Legal Description (Map & Tax Lot):** 1S2E30CC 05200  
**NDA:** Lewelling

---

## **ACTION REQUESTED**

Review the Planning Director's approval of the minor land partition reviewed in land use file #MLP-2018-001 and uphold, modify, or reverse the decision. The hearing will be conducted in an "unrestricted de novo" manner, which allows for the presentation of new evidence, testimony, and argument by any party. The scope of the hearing is not limited to the issues raised on appeal. The standard of review for the Commission is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law. The recommended Findings and Conditions of Approval are found in Attachments 1 and 2.

## **BACKGROUND INFORMATION**

On December 31, 2018, the Planning Director issued a Notice of Decision to approve land use file #MLP-2018-001, a partition of 10244 SE 43<sup>rd</sup> Ave to create 2 parcels. The partition required a 5-ft-wide dedication for public right-of-way (ROW) along the 43<sup>rd</sup> Ave frontage as well as a 20-ft-wide ROW dedication along the northern boundary of the subject property to allow for a future connection to White Lake Rd to the east. Daniel Barela, the owner of the adjacent property to the north at 10194 SE 43<sup>rd</sup> Ave, appealed the decision on January 11, 2019, within the allotted 15-day appeal period, based on concerns about the required ROW dedication for a future connection to White Lake Rd. As per Milwaukie Municipal Code (MMC) Table 19.1001.5, because MLP-2018-001 was processed with Type II review, the Planning Commission is the designated review authority for an appeal.

### A. Site and Vicinity

The subject property (10244 SE 43<sup>rd</sup> Ave) is approximately 0.61 acres (26,700 sq ft) in area and is zoned Residential R-7. The lot is currently developed with a single-family house and detached garage and has frontage on 43<sup>rd</sup> Ave; its northeastern corner is only one lot away from the western end of White Lake Rd (see Figure 1). The King Road Shopping Center is less than 400 ft to the south at the intersection of 43<sup>rd</sup> Ave and King Rd.

Figure 1. Vicinity map



The surrounding area to the north and east is developed primarily for residential use, mostly single-family houses. An apartment building is located to the south and a vacant

site is located across 43<sup>rd</sup> Ave to the west. The immediate vicinity to the north and east is zoned R-7; the areas to the south and to the west across 43<sup>rd</sup> Ave are zoned R-3 and R-5 (see Figure 2).

**B. Zoning Designation**

Residential R-7

**C. Comprehensive Plan Designation**

Low-Density Residential (LDR)

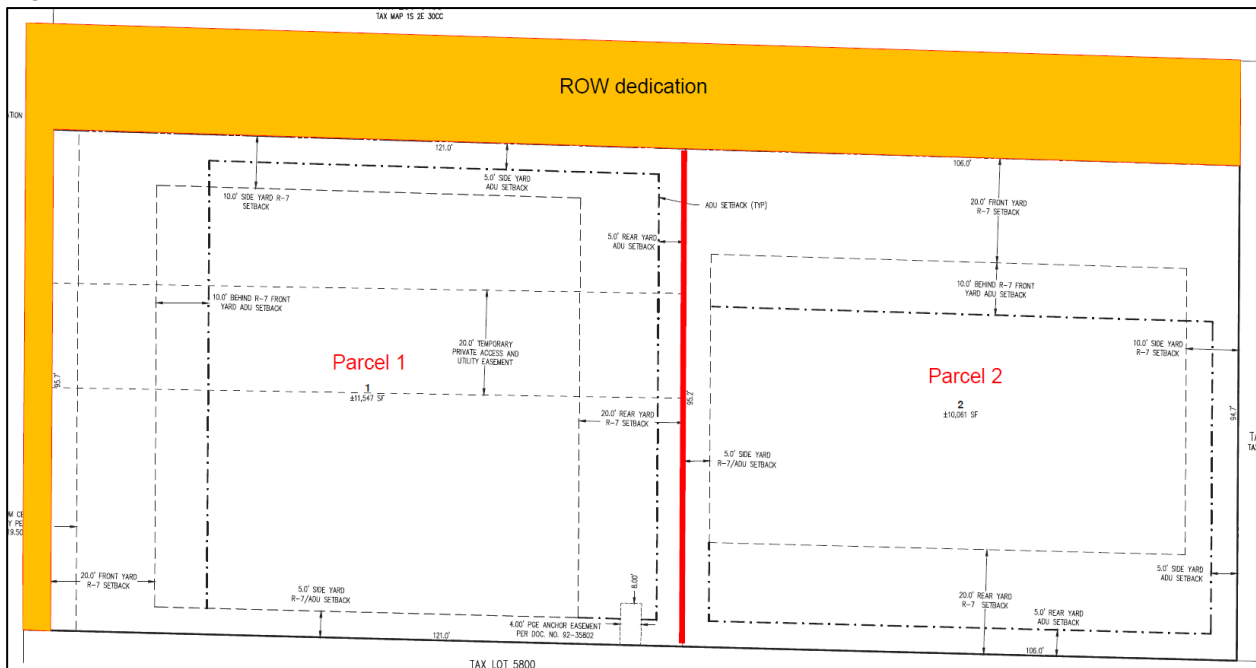
**D. Land Use History**

City records indicate no land use actions for this site prior to the approval of MLP-2018-001.

**E. Approved Partition (MLP-2018-001)**

The partition approved with MLP-2018-001 created 2 separate parcels: Parcel 1, which includes the existing single-family house, is approximately 11,550 sq ft in area; Parcel 2, which is vacant and will be developed in the future, is approximately 10,060 sq ft (see Figure 3). The approval required a 5-ft-wide dedication for public right-of-way (ROW)

**Figure 3.** Partition Approved by MLP-2018-001



along the 43<sup>rd</sup> Ave frontage; in addition, a 20-ft-wide ROW dedication was required along the northern boundary of the subject property to allow for a future connection to White Lake Rd to the east. No physical improvements were warranted, as the ROW dedications were determined to be roughly proportional to the impacts of creating the 2 lots.

As required by MMC Subsection 19.1005.3 for Type II review, public notice of the proposed partition was mailed to the owners of record of properties within 300 ft of the subject property. Several comments were received from neighbors, all in opposition to the proposed ROW dedication for a future connection to White Lake Rd. These comments were taken into consideration but did not convince the Planning Director of a need to deviate from the City’s policies and objectives for improving connectivity for all modes of travel. The Notice of Decision was issued on December 31, 2018, and Daniel Barela, a neighbor who had received notice and provided comments, filed an appeal.

## **KEY ISSUES**

### **Summary**

As established in MMC Subsection 19.1010.3.A, the standard of review for an unrestricted de novo hearing, which is the type of hearing required for the appeal of a Type II decision, is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law. As of the publication of this report, neither the appellant nor any other party has identified a possible error in the findings or conditions from MLP-2018-001. Someone could do so as late as at the hearing itself, but unless an error is identified as a basis for the appeal, the original decision should remain unchanged.

In the meantime, staff will address the questions raised by Mr. Barela in his appeal narrative, with clarifications as necessary. It is worth noting that, in conjunction with the issuance of the Notice of Decision for MLP-2018-001, staff sent a memorandum to the neighbors who commented on the original partition, to provide more information on the decision and address the concerns and questions that were raised in their comments (see Attachment 7).

- A. When does the City propose to extend White Lake Rd through Mr. Barela’s property?
- B. What amount of money does the City propose to offer Mr. Barela for the dedication of his property for ROW for White Lake Rd?
- C. When the City decides to extend White Lake Rd, will Mr. Barela’s property allow for the required 35-ft setback from the road?
- D. How does the City allow for an exception to the existing code requirement on the number of feet required between an existing structure and a road?
- E. Request for the City to survey the properties within 300 ft of the two proposed parcels from MLP-2018-001.

### **Response to Appellant Questions**

#### **A. When does the City propose to extend White Lake Rd through Mr. Barela's property?**

The City has no active plans and has not prioritized financial resources to make a full street connection to 43<sup>rd</sup> Ave from where White Lake Rd currently dead-ends to the west. In fact, the owner of the adjacent property to the east at 4446 SE White Lake Rd is the party that will

effectively determine when any further action on this issue will occur. Without 4446 SE White Lake Rd redeveloping with a partition to create a new lot (which would most likely require a similar 20-ft ROW dedication to the one in MLP-2018-001), the City has little to no reason to initiate a process to acquire all the property needed to complete a full, 40-ft-wide street connection from 43<sup>rd</sup> Ave to White Lake Rd.

For the City to arrive at a decision to extend White Lake Rd through Mr. Barela's property, a number of things would have to happen: (1) the property at 4446 SE White Lake Rd would have to redevelop, resulting in construction of a partial alleyway or half-street along to provide frontage for the newly created lots; (2) the City would have to identify funds to pay for construction to extend this new alleyway further west to connect to 43<sup>rd</sup> Ave through the 20-ft ROW width provided by MLP-2018-001; (3) the City would have to identify additional funds to acquire a strip of Mr. Barela's property as well as a strip of land from 4459 SE White Lake Rd; and (4) the City would have to identify still more funds to pay for construction of the new wider street. The ROW dedication required by MLP-2018-001 does not guarantee that White Lake Rd will ever connect to 43<sup>rd</sup> Ave, but it does at least preserve the possibility of a future connection.

**B. What amount of money does the City propose to offer Mr. Barela for the dedication of his property for ROW for White Lake Rd?**

In situations where the City cannot require the dedication of private property for public ROW (such as when no land division or development is proposed), the City's current approach to land acquisition begins with negotiation, working with the property owner to determine an agreed-upon price for the area of land needed. In a case where negotiation is not successful, the City could then utilize a process to condemn the needed land area, providing compensation to the owner for the land's value.

Since the City has no plans to acquire additional property for White Lake Rd ROW (beyond what the applicant is required to dedicate for MLP-2018-001), there is no specific value to attach to any portion of Mr. Barela's property. If the City were to pursue a wider White Lake Rd connection in the future, the most likely scenario would be to acquire the 20-ft-wide strip of land that currently serves as the driveway in Mr. Barela's flag lot; it is highly unlikely that the City would choose to acquire the entirety of Mr. Barela's property.

As noted in the discussion of Issue A, it is extremely unlikely that the City itself would initiate any property acquisition in advance of the owner of 4446 SE White Lake Rd redeveloping that property.

**C. When the City decides to extend White Lake Rd, will Mr. Barela's property allow for the required 35-ft setback from the road?**

The 35-ft setback requirement Mr. Barela's letter mentions is not one that exists in the current zoning code, and it is unclear as to what requirement he is referring. In MMC Table 19.301.4, new lots in the R-7 zone are required to have at least 35 ft of frontage on a public street, but the required front yard setback in the R-7 zone is only 20 ft. As noted above in the

discussion of Issue C, the code allows structures to fall below a required setback if the reason for the change is dedication of property for public ROW.

**D. How does the City allow for an exception to the existing code requirement on the number of feet required between an existing structure and a road?**

Title 19 of the Milwaukie Municipal Code (MMC) is the zoning code. In MMC Subsection 19.504.2, the code allows that the only way lot areas and yard setbacks can be reduced is by “dedication or conveyance for a public use,” such as dedication for public ROW. For example, if the side yard of Mr. Barela’s existing house is required to be at least 5 ft wide but were to be reduced to 4 ft if the City acquired a portion of the side yard for White Lake Rd ROW, that new nonconforming side yard setback would be allowed by the code. The provision of MMC 19.504.2 is specifically intended to address these situations.

**E. Request for the City to survey the properties within 300 ft of the two proposed parcels from MLP-2018-001.**

Staff’s understanding of Mr. Barela’s request is that he would like to know just where his existing house would sit with respect to the new ROW line, if the City were at some point to acquire some of his property for the White Lake Rd ROW. He may be concerned that a portion of his existing house would then encroach into the new ROW, or that the house may end up very close to a roadway constructed in the new ROW.

As part of any future acquisition process, the City would obtain a survey. However, since the City has no plans for initiating an extension of White Lake Rd, the City is not arranging for any surveying in this area. A street design for a future White Lake Rd extension has not been developed, and there is currently no plan to devote further City resources to such an effort at this time.

Were an extension project to become reality, the City would likely have some flexibility to reduce the width of the desired ROW dedication, especially if it meant avoiding the need to condemn and purchase a portion of Mr. Barela’s house. In addition, there should be plenty of room within an approximate ROW width of 40 ft to accommodate the vehicle travel lanes near the center of the ROW and keep them away from any existing houses along the northern ROW boundary. Even if Mr. Barela’s house were to end up only a few feet from the new ROW boundary for a White Lake Rd extension, a landscape strip is the feature most likely to be located next to it.

## **CONCLUSIONS**

**Staff recommendation to the Planning Commission is as follows:**

1. Deny the appeal and uphold the original approval of MLP-2018-001, including the required ROW dedication to establish a future connection to White Lake Rd.
2. Adopt the attached Findings and Conditions of Approval.

## CODE AUTHORITY AND DECISION-MAKING PROCESS

The appeal and the original partition are subject to the following provisions of the Milwaukie Municipal Code (MMC):

- MMC Section 19.1010 Appeals
- 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 19.700 Public Facility Improvements
- MMC Chapter 12.16 Access Management
- MMC Chapter 19.1200 Solar Access Protection
- MMC Section 19.1005 Type II Review

As per MMC Subsection 19.1001.5, the Planning Commission is the designated appeal authority for a Type II decision. As per MMC Subsections 19.1010.3.A and 19.1010.5, the appeal hearing is an unrestricted de novo hearing, which allows for the presentation of new evidence, testimony, and argument by any party. The Commission will consider all relevant evidence, testimony, and argument provided at the hearing by the appellant or any party. The scope of the hearing is not limited to the issues that were raised on appeal. The standard of review is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law.

The Commission has four (4) decision-making options as follows:

- A. Deny the appeal and uphold the initial decision approving the partition (file #MLP-2018-001). Adopt the Recommended Findings and Conditions, which are based on the original findings and conditions for MLP-2018-001.
- B. Approve the appeal upon finding that the initial decision was in error as a matter of fact or law, with Findings and Conditions sufficiently worded to approve the partition as originally proposed in MLP-2018-001 but with revisions as needed to address any issues identified by the Commission. Such revisions would need to be read into the record. If revisions trigger the need for a variance(s) from other standards and the applicant wishes to proceed with the partition, the applicant may need to waive the 120-day clock to allow time for review and a decision.
- C. Approve the appeal upon finding that the initial decision was in error as a matter of fact or law, with Findings sufficiently worded to deny the partition as originally proposed in MLP-2018-001. Such Findings would need to be read into the record.
- D. Continue the hearing. This option may require that the original applicant from MLP-2018-001 provide a waiver to the 120-day clock. If the applicant is not willing to provide such a waiver, the Planning Commission may need to deny the application. The 120-day limit by which time the City must make a decision is March 14, 2019.



As per MMC Subsection 19.1010.5.D, the Commission’s decision on this appeal is the final local decision.

## COMMENTS

As required by MMC Subsection 19.1010.5.B, written notice of the appeal was mailed to all parties who were entitled to Type II public notice per MMC Subsection 19.1005.3.B.1, to interested persons, and to the appellant. As of the publication of this report, only 1 public comment has been received. See Attachment 9 for further details.

- **Frank Fassold, property owner of 4446 White Lake Rd:** Any extension of White Lake Rd would greatly diminish the safety and security of the neighborhood. He has no objection to the applicants’ development of their property, though he would like a 6-ft-tall privacy fence to be installed and any necessary property-line corrections to be made that would result from a survey of the subject property.

*Staff Response: The partition does not require any variances for approval, and the act of dividing property itself does not provide a discretionary opportunity for the City to require mitigating measures such as a privacy fence. Mr. Fassold may contact the applicant directly to negotiate fencing or property-line issues.*

## ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early Posting	PC Packet	Public Copies	Packet
1. Recommended Findings	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Conditions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Appeal Letter (received January 11, 2019)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Notice of Decision for MLP-2018-001 (issued Dec. 31, 2018)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. Application Materials from MLP-2018-001 (submitted Oct. 24, 2018)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
• Including the Applicant's Narrative, Preliminary Plans, and Preapplication Conference Notes				
6. Comments Received for MLP-2018-001	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
7. Informational Memo to MLP-2018-001 Commenters (sent Dec. 31, 2018)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
8. Comments Received for AP-2019-001	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early Posting = materials posted online at the time of public notice 20 days prior to the hearing.

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-4>.

**Recommended Findings**  
**File #AP-2019-001, Appeal of File #MLP-2018-001**

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

1. The appellant, Daniel Barela, is the owner of the property at 10194 SE 43<sup>rd</sup> Ave. The appellant has appealed the decision issued by the City of Milwaukie Planning Director for Land Use File #MLP-2018-001, a 2-lot partition of the property at 10244 SE 43<sup>rd</sup> Ave (Tax Lot ID 1S2E30CC05200 on the Clackamas County Tax Assessor map). As allowed by MMC Subsection 19.1010.5, the appellant's basis of appeal is that he is adversely impacted or aggrieved by the original decision. The land use application file number for the appeal is AP-2019-001.
2. The action approved by MLP-2018-001 was a partition of 10244 SE 43<sup>rd</sup> Ave (the subject property), with Tony and Michelle DaRosa as the applicant. The subject property, which is approximately 26,700 sq ft in area, is in the Residential R-7 Zone. The newly created Parcel 1, which includes an existing single-family house, is approximately 11,550 sq ft; the new Parcel 2, which is vacant and will be developed in the future, is approximately 10,060 sq ft. The approval required a 5-ft-wide dedication for public right-of-way (ROW) along the 43<sup>rd</sup> Ave frontage. In addition, a 20-ft-wide ROW dedication was required along the northern boundary of the subject property to allow for a future connection to White Lake Rd to the east. No physical improvements were warranted, as the ROW dedications were determined to be roughly proportional to the impacts of creating the 2 lots.
3. The appeal and the original partition are subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.1010 Appeals
  - 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 19.700 Public Facility Improvements
  - MMC Chapter 12.16 Access Management
  - MMC Chapter 19.1200 Solar Access Protection
  - MMC Section 19.1005 Type II Review

The application has been processed and public notice provided in accordance with MMC Section 19.1010 Appeals. The original partition was subject to Type II review. As per MMC Subsection 19.1001.5, the Planning Commission is the designated appeal authority for a Type II decision. As per MMC Subsections 19.1010.3.A and 19.1010.5, the appeal hearing

for a Type II decision is an unrestricted de novo hearing, which allows for the presentation of new evidence, testimony, and argument by any party. A public hearing was held on February 12, 2019, as required by law.

4. MMC Section 19.1010 Appeals

a. MMC Subsection 19.1010.1 establishes standards for filing an appeal.

- (1) MMC 19.1010.1.A. describes the information required for an appeal, including the date and case file number of the decision being appealed, documentation that the appellant has standing to appeal per MMC Subsection 19.1010.4.A, and a detailed statement describing the basis of the appeal.

*The appellant is a property owner and resident within 300 ft of the subject property for MLP-2018-001 and received notice of the proposed partition, as per the Type II review procedures established in MMC Section 19.1006. The appellant's submittal materials provide the required information, including a statement describing how he believes he has been adversely impacted or aggrieved by the decision, as the basis of appeal.*

- (2) MMC 19.1010.1.B requires payment of an application fee at the time of filing.

*The appellant paid the application fee at the time the appeal was filed.*

- (3) MMC 19.1010.1.C requires the appeal materials to be filed within the 15-day appeal period for the decision being appealed.

*The Notice of Decision for MLP-2018-001 was issued on December 31, 2018, and the appeal period ended at 5:00 p.m. on January 15, 2019. The appellant submitted the information necessary for an appeal on January 11, 2019.*

*The Planning Commission finds that the appellant has satisfied the standards for filing an appeal of MLP-2018-001.*

b. MMC Subsection 19.1010.2 establishes the procedures for an appeal hearing.

As per MMC Table 19.1001.5, the Planning Commission is the appeal authority for MLP-2018-001, which was a Type II decision. On February 12, 2019, the Planning Commission held a hearing per the public hearing procedures provided in MMC Section 19.1009.

*The Planning Commission finds that the requirements of this section have been satisfied.*

c. MMC Subsection 19.1010.3 establishes the types of hearing for appeals.

As specified in MMC Subsection 19.1010.5.C, the appeal hearing for a Type II decision is an unrestricted de novo hearing. As required by MMC Subsection 19.1010.3.A, an unrestricted de novo hearing allows presentation of new evidence, testimony, and argument by any party.

*At the public hearing held on February 12, 2019, the Planning Commission considered all relevant evidence, testimony, and argument that were provided and did not limit the scope of the hearing to the issues that were raised on appeal. The Planning Commission's standard of*

*review is whether the initial decision in MLP-2018-001 has findings and/or conditions that are in error as a matter of fact or law.*

*The Planning Commission finds that the requirements of this section have been satisfied.*

- d. MMC Subsection 19.1010.5 establishes specific provisions for appeal of a Type II decision.

*In accordance with the standards established by MMC 19.1010.5, a person who believes themselves to be adversely affected or aggrieved by the original decision for MLP-2018-001 filed the appeal. On January 23, 2019, 20 days prior to the hearing date, the City mailed notice of the appeal hearing to all parties who were entitled to the original Type II notice. The hearing was conducted as an unrestricted de novo hearing, and the decision of the Planning Commission is the final local decision.*

*The requirements of this section have been satisfied.*

*The final decision of the Planning Commission with respect to the appeal is presented in Finding 15.*

5. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC Section 17.12.040 establishes the approval criteria for preliminary plat. The proposed preliminary plat meets these criteria as described below.

- a. MMC Subsection 17.12.040.A.1 requires that the proposed preliminary plat complies with Title 19 Zoning and other applicable ordinances, regulations, and design standards.

*As demonstrated by the applicant's submittal materials and evidenced by these findings, the proposed preliminary plat complies with the applicable ordinances, regulations, and design standards. As proposed, this criterion is met.*

- b. MMC Subsection 17.12.040.A.2 requires that the proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

*The proposed partition will provide sufficient area on both parcels to accommodate future development in accordance with the standards of the underlying R-7 zone. The parcels do not have physical constraints or dimensional limitations that would necessitate the need for a variance. As proposed, this criterion is met.*

- c. MMC Subsection 17.12.040.A.3 requires that the proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

*The proposed plat is a partition plat; therefore, this criterion is not applicable.*

- d. MMC Subsection 17.12.040.A.4 requires that the streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

*As discussed in Finding 11-e, the proposed partition requires a 20-ft-wide dedication along the length of the northern boundary of the subject property to allow for a future ROW connection to White Lake Rd. Because additional ROW does not currently exist adjacent to the subject property, an actual connection is not possible at present. However, the location and dimension of the required dedication will allow a future street connection to match the alignment of White Lake Rd to the east. As proposed, this criterion is met.*

- e. MMC Subsection 17.12.040.A.5 requires a detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

*The applicant's submittal materials include a detailed narrative demonstrating compliance with all applicable standards and criteria. As proposed, this criterion is met.*

*As proposed, the Planning Commission finds that the preliminary plat meets the applicable criteria.*

6. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.060 establishes the application requirements for preliminary plat, including completed application forms and checklists, applicable fees, and the information specified in MMC Chapter 17.20 Preliminary Plat.

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

*As proposed, the Planning Commission finds that the application meets the applicable requirements for submittal of a preliminary plat.*

7. 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, structures on surrounding properties, minimum setbacks for future development, and concepts for future development.*

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

8. MMC Chapter 17.28 Design Standards

MMC 17.28, particularly MMC Section 17.28.040, establishes standards for lot design for land divisions and boundary changes.

- a. MMC Subsection 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, as well as that minimum lot standards shall conform to Title 19.

*The proposed parcels meet the minimum area and dimensional requirements for the underlying R-7 zone. With the required dedication for a future connection to White Lake Rd, Parcel 1 will become a corner lot that has the option of orienting toward either 43<sup>rd</sup> Ave or to*

*the future White Lake Rd. Development on Parcel 2 will be oriented toward the future White Lake Rd, although in the interim the site access will be from 43<sup>rd</sup> Ave through the Parcel 1 driveway. Both parcels conform to the relevant standards of the R-7 zone as described in Finding 9 and to other applicable standards of Title 19 as described elsewhere in these findings.*

- b. MMC Subsection 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.

*The proposed parcels are both rectilinear in shape. For Parcel 1, the side lot lines run at right angles to 43<sup>rd</sup> Ave and the rear lot line is parallel to 43<sup>rd</sup> Ave. For Parcel 2, the side lot lines run at right angles to the future White Lake Rd and the rear lot line is parallel to the future White Lake Rd.*

- c. MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines.

*No compound lot lines are proposed for the side or rear lot lines on either parcel.*

- d. MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

*No variance to the lot shape standards is requested in this application.*

- e. MMC Subsection 17.28.040.E limits double frontage and reversed frontage lots, stating that they should be avoided except in certain situations.

*Neither of the proposed parcels is a double frontage or reversed frontage lot.*

- f. MMC Subsection 17.28.040.F requires that, pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access. This standard applies when a lot has frontage on more than one street.

*As proposed, Parcel 1 has almost 96 ft of frontage along 43<sup>rd</sup> Ave and 121 ft of frontage along the future White Lake Rd; Parcel 2 has 106 ft of frontage along the future White Lake Rd. Although both lots will take access from 43<sup>rd</sup> Ave in the interim until White Lake Rd is improved, both provide the 35-ft minimum public street frontage required in the R-7 zone.*

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

## 9. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that work shall not begin until plans have been approved by the City.

*As discussed in Finding 11, no physical improvements are required as a result of the proposed partition, due to an analysis of rough proportionality of impacts. The applicant will dedicate property to the existing public ROW along 43<sup>rd</sup> Ave and will dedicate property to create public*

*ROW for a future connection to White Lake Rd. The required dedications are sufficient mitigation for new impacts from the partition.*

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

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

MMC 19.301 contains standards for Low Density Residential zones, including the R-7 zone. The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed in the R-7 zone, including single-family detached dwellings, duplexes, and accessory dwelling units (ADUs) as outright permitted uses.

*As proposed, the existing house on Parcel 1 will remain. The applicant has indicated that a new house will be constructed on Parcel 2 and that ADUs will be developed on both lots. Single-family dwellings and ADUs are allowed uses in the R-7 zone. At the time of future development, all actual proposed uses will be reviewed for compliance with the applicable standards of the R-7 zone and other relevant sections of the municipal code.*

*As proposed, this standard is met.*

b. MMC Subsections 19.301.4 and 19.301.5 Development Standards

MMC 19.301.4 and 19.301.5 establish development standards for the R-7 zone. The applicable standards are addressed and met as described in Table 9-b (Zoning Compliance) below.

<b>Table 9-b Applicable R-7 Development Standards</b>			
<b>Standard</b>	<b>R-7 Requirement</b>	<b>Parcel 1</b>	<b>Parcel 2</b>
Lot Area	7,000 sq ft	11,547 sq ft	10,061 sq ft
Lot Width	60 ft	>95 ft	106 ft
Lot Depth	80 ft	121 ft	>95 ft
Public Street Frontage	35 ft	>95 ft (on 43 <sup>rd</sup> Ave) 121 ft (on White Lake Rd)	106 ft
Front Yard	20 ft (For 43 <sup>rd</sup> Ave, setback is 22.5 ft = 20 ft for R-7 zone, plus 2.5 ft for special 30-ft setback from centerline of 43 <sup>rd</sup> Ave ROW, as per MMC 19.501.2)	13.7 ft (existing nonconforming development, further reduced by dedication to ROW)	To Be Determined at Time of Development (TBD)
Side Yard	5 ft / 10 ft (interior yards)	13.6 ft (interior, south)	TBD

	20 ft (street side)	50 ft (street side, north)	
Rear Yard	20 ft	>60 ft	TBD
Maximum Building Height	2 stories or 35 ft (lesser of)	2 stories, <35 ft	TBD
Maximum lot coverage	30%	Approx. 11%	TBD
Minimum vegetation	30%	>63%	TBD
Front Yard Minimum Vegetation	40%	>84%	TBD
Density requirements	Lot area is 0.5 acres (after ROW dedications) Min. density = 2 units (@5.0 units/acre) Max. density = 3 units (@6.2 units/acre)	Sized for 1 primary unit	Sized for 1 primary unit

*As proposed, the applicable standards of this subsection are met.*

*As proposed, the Planning Commission finds that the applicable R-7 zone standards of MMC 19.301 are met.*

11. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development 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 land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

*The applicant proposes to partition the subject property into 2 distinct parcels. The proposed partition triggers the requirements of MMC 19.700.*

*MMC 19.700 applies to the proposed development.*

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 establishing approval criteria.

*The applicant had a preapplication conference with City staff on January 4, 2018, prior to application submittal. The proposed action does not trigger a Transportation Impact Study (TIS) (as addressed in Finding 10-c), but it does require a preliminary plat application. The proposal's compliance with MMC 19.700 is being reviewed as part of the preliminary plat application and a separate Transportation Facilities Review (TFR) application is not*



*necessary. As addressed in Findings 11-d and 11-e, the applicant will provide mitigation in rough proportion to the potential impacts of the proposed partition.*

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 requires submission of a TIS documenting the development impacts on the surrounding transportation system.

*The Engineering Director determined that a transportation impact study was not required, as the impacts of the proposed partition on the transportation system were minimal and evident.*

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.

*Finding 11-e addresses the required dedications to the public ROW along the subject property's frontage on 43<sup>rd</sup> Ave as well as to provide for the future extension of White Lake Rd. A rough analysis of proportionality shows that ROW dedication is proportional to the anticipated impacts of 1 new lot sized for single-family residential development; the construction of physical improvements is not proportional. The surrounding transportation system will continue to operate at the level of service as before the proposed action. The proposed partition does not trigger mitigation of impacts beyond the required ROW dedication, unless access modification cannot be justified in accordance with MMC Subsection 12.16.040.B.2.d.*

*The proposed development is consistent with MMC 19.705.*

e. 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. MMC Subsection 19.708.1 points to MMC Chapter 12.16 and establishes general requirements and standards for streets, including access management, clear vision, street design, connectivity, and intersection design and spacing standards. MMC Table 19.708.2 provides more specific street design standards for various street classifications, including for Collector and Local streets. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

All rights-of-way, streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public ROW and abutting the development site shall be adequate at the time of development or shall be made adequate in a timely manner. Driveway approach aprons shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line. In addition, all signs, structures, or vegetation over 3 ft in height shall be removed from "vision clearance areas" at intersections of streets, driveways, and alleys.

*The Milwaukie TSP and Transportation Design Manual (TDM) classify the fronting portions of 43<sup>rd</sup> Ave as a Collector street. As established in MMC Table 19.708.2, the required ROW*

*width for a Collector street is between 40 ft and 74 ft depending on the required street improvements. The existing ROW width of 43<sup>rd</sup> Ave fronting the subject property is 50 ft, so the required ROW needed for these street improvements is 60 ft. The applicant is responsible for 5 ft of ROW dedication along 43<sup>rd</sup> Ave fronting the subject property.*

*The proposed partition is also responsible for 20 ft of dedication along the northern boundary of the subject property to create ROW for a future extension of White Lake Rd as a Local street. Spacing between King Rd and Rhodesa St is larger than the required 600-ft spacing between intersections on a Collector street. Dedication of the future White Lake Rd brings intersection spacing on 43<sup>rd</sup> Ave further into conformance.*

*In the case of 43<sup>rd</sup> Ave, a requirement for half-street improvements would require construction of a 17-ft-wide half-street asphalt road along the 43<sup>rd</sup> Ave frontage of the subject property. To establish a functional roadway on White Lake Rd, 2/3-street frontage improvements would be required along the new White Lake Rd frontage. However, as noted in Finding 10-d, the proposed partition's impacts are minimal. Therefore, only ROW dedication is anticipated to be required for the proposal as submitted.*

*The dedicated land in the new White Lake Rd ROW can remain in its current form until the construction of White Lake Rd occurs. All existing structures and vegetation may remain unchanged. There are no requirements for additional fencing or signage. A condition has been established to require a ROW encroachment permit that formalizes the revocable permission for the existing structures to be in the White Lake Rd ROW and includes language that the structures must be removed when an improvement is constructed. Access to this new ROW will be controlled by the City of Milwaukie. The only access that will be permitted to 43<sup>rd</sup> Ave is through an access modification in accordance with MMC Subsection 12.16.040.B.2.*

*The City will be constructing sidewalks on 43<sup>rd</sup> Ave, so the existing fencing that is located in the 43<sup>rd</sup> Ave ROW will not be allowed to remain through an encroachment permit. A condition has been established to require the applicant to relocate this fence onto the private property.*

*As proposed, Parcel 2 will share access to 43<sup>rd</sup> Ave through the existing driveway on Parcel 1, which will remain. A condition of approval has been established to ensure that the driveway approach for Parcel 1 is reconstructed with a standard asphalt driveway approach that meets all guidelines of the Americans with Disabilities Act (ADA) as well as all other applicable requirements and standards for accessways.*

*As conditioned, the proposed partition meets all the applicable standards of MMC 19.708.*

f. **MMC Section 19.709 Public Utility Requirements**

MMC 19.709 establishes the City's requirements and standards to ensure the adequacy of public utilities to serve development.

*As discussed in Finding 11-e, the proposed partition is required to dedicate a 20-ft ROW for future White Lake Rd construction, and a condition has been established accordingly. The only ROW frontage for Parcel 2 is the new White Lake Rd ROW. Utilities for Parcel 2 can be either constructed to City standards, with a full-size water and sewer main, or can be taken*

*via an easement through Parcel 1. This requirement stands for vehicular access as well. If the applicant elects to take the utility and access easement approach, then these easements will need to be identified on the plat. A condition has been established to ensure this requirement will be met if needed.*

*As conditioned, the proposed partition meets the standards of MMC 19.709.*

*As conditioned, the Planning Commission finds that the proposed partition meets the applicable public facility improvement standards of MMC 19.700.*

## 12. MMC Chapter 12.16 Access Management

MMC 12.16 regulates access from private property onto public streets, with specific requirements and standards provided in MMC Section 12.16.040.

MMC Subsection 12.16.040.A states that access to private property shall be permitted with the use of driveway curb cuts, that driveways shall meet all applicable guidelines of the Americans with Disabilities Act (ADA), and that driveway approaches shall be improved to meet the requirements of the City's Public Works Standards. MMC Subsection 12.16.040.B.1 governs the spacing of accessways (driveways), requiring a minimum of 300 ft for spacing between accessways on collector streets and prohibiting the creation and/or modification of single-family accessways.

*As discussed in Finding 11, the proposed partition includes dedication of ROW for the future extension of White Lake Rd. Both new parcels have frontage on White Lake Rd and will be required to obtain permanent access from White Lake Rd once it is constructed. Forty-third (43<sup>rd</sup>) Ave is a Collector street, with a minimum access spacing requirement of 300 ft. An existing driveway approach on 43<sup>rd</sup> Ave serves Parcel 1 and will provide access to Parcel 2 through a shared access easement. A new access onto 43<sup>rd</sup> Ave is not permitted without approval of an accessway modification in accordance with MMC Subsection 12.16.040.B.2. The applicant has not requested a modification to this access standard. Parcel 2's access to 43<sup>rd</sup> Ave is a temporary access and will be moved to White Lake Rd when that street is constructed. The final approval of this modification is by the Engineering Director. A condition has been established to require improvements to the existing driveway approach on 43<sup>rd</sup> Ave to bring it into compliance with the applicable City standards.*

*As conditioned, the Planning Commission finds that the proposed partition meets the applicable access management standards of MMC 12.16.*

## 13. 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 for 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 partition will create new parcels in the R-7 zone, which allows single-family residences. As discussed in Findings 13-b, 13-c, and 13-d, the solar design standards of MMC 19.1203.3 are applicable, and no exemptions or adjustments are necessary.*

- b. MMC 19.1203.3 establishes solar design standards, including basic requirements for north-south dimension and front-lot-line orientation with respect to a true east-west axis. 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.

*The parcels created by the proposed partition each have a north-south dimension of 90 ft or more, and the front lot line of Parcel 2 is oriented directly on an east-west axis. Although Parcel 1 is currently developed with a house that fronts on 43<sup>rd</sup> Ave and therefore does not orient the front lot line along an east-west access, Parcel 1 is a corner lot and the proposed partition does not preclude Parcel 1 from being oriented toward the north and thus having a front lot line oriented to a true east-west axis. However, as discussed in Findings 13-c and 13-d, no exemptions or adjustments are necessary.*

*As proposed, the solar design standards are met.*

- c. MMC 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.

*As noted in Finding 13-b, the proposed partition meets the solar design standards. No exemptions are necessary.*

- d. MMC 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.

*As noted in Finding 13-b, the proposed partition meets the solar design standards. No adjustments are necessary.*

*As proposed, the Planning Commission finds that both parcels meet the solar design standards of MMC 19.1203.3 and that the proposed partition therefore meets the applicable solar access provisions established in MMC 19.1200.*

14. As described in Finding 4-d, public notice of the appeal was mailed 20 days in advance of the public hearing (on January 23, 2019), as required by the provisions established in MMC 19.1010.5 for appeal of a Type II decision.

The comments received are summarized as follows:

- **Frank Fassold, property owner of 4446 White Lake Rd:** Any extension of White Lake Rd would greatly diminish the safety and security of the neighborhood. He has no objection to the applicants' development of their property, though he would like a 6-

ft-tall privacy fence to be installed and any necessary property-line corrections to be made that would result from a survey of the subject property.

15. The Planning Commission finds that there was no error as a matter of fact or law in the findings or conditions of the original decision of MLP-2018-001. The Planning Commission denies the appeal and upholds the original decision made by the Planning Director to approve MLP-2018-001, including the requirement to dedicate property for a future ROW connection to White Lake Rd.

**Recommended Conditions**  
**File #AP-2019-001, Appeal of File #MLP-2018-001**

**Conditions**

1. Prior to approval of the final plat, the following shall be resolved:
  - a. Right-of-way Dedications:
    - (1) Provide 20-ft-wide right-of-way (ROW) dedication on north side of property, for the future White Lake Rd.
    - (2) Provide 25-ft radius in the northwest corner of the parent lot (Parcel 1), for future construction of ADA ramps.
    - (3) Provide 5-ft-wide ROW dedication on the 43<sup>rd</sup> Ave frontage.
  - b. Obtain an encroachment permit for the existing arbor, fireplace, and covered patio that will remain in the newly dedicated White Lake Rd ROW.
  - c. Construct a new driveway approach for the existing access on 43<sup>rd</sup> Ave that conforms to Milwaukie Public Works Standards 502F. The driveway approach shall meet all guidelines of the Americans with Disabilities Act (ADA), with the driveway approach apron between 9 ft and 20 ft in width and least 7.5 ft from the side property line.
  - d. If needed (as discussed in Finding 10-f), provide access and utility easements for the benefit of Parcel 2 across Parcel 1.
  - e. Relocate the existing fence on the 43<sup>rd</sup> Ave frontage to behind the resulting front property line of Parcel 1 after the required ROW dedication.
  - f. Remove all signs, structures, or vegetation in excess of 3 ft in height located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the proposed partition.

**Additional Requirements**

1. MMC Section 17.04.120 Recording

As per MMC Section 17.04.120, partition plats must be recorded by plat. An application for final plat shall be submitted to both the City Planning Department and the County Surveyor within 6 months of the date of this approval. Once approved by the County Surveyor, a copy of the recorded final plat shall be submitted to the City Planning Department.
2. Obtain a ROW permit for construction of the required driveway approach improvements listed in the conditions of approval.
3. Prior to final inspection for any building on the proposed development, connect all residential roof drains to a private drywell or other approved structure.

Attachment to City of Milwaukie Appeal of Land Use Decision

Page 1 of 2  
January 6, 2018

To: City Planning Commission: FOR TOPIC OF DISCUSSION AT MEETING, Tues.1/8/19

From: Daniel M. Barela, owner of property located at 10194 SE 43<sup>rd</sup> Ave.

Subject: Future Extension of White Lake Rd.

Re: City of Milwaukie Notice of Decision, dated 12/31/18, for applicants Tony & Michelle DaRosa  
File # MLP-2018-001, Land Use Proposal for division of property located at 10244 SE 43<sup>rd</sup> Ave.

Reference : My letter of opposition, received 12/3/18 by City Planing Dept. in response to City of  
Milwaukie Memorandum to Interested Persons for Land Use File # MLP-2018-001

I received City of Milwaukie Notice of Decision to allow division of tax lot 1S2E30CC 0500 for  
Minor Land Partition (preliminary Plat) Approved with Conditions.

Although I'm not opposed to the City's approval of a partition of the property at 10244 SE 43<sup>rd</sup> Ave. to  
create 2 parcels, it will have a negative impact on me and my property which sets to the North on an  
easement driveway bordering the 2<sup>nd</sup> parcel back of that property.

My understanding of the Decision Notice is that the City of Milwaukie will dedicate some 20 ft. of my  
property along the length of the proposed new parcel border line, taking out part of my existing drive  
way and coming almost directly up against my garage. All this for the future development of White  
Lake Rd. at some undecided time. In my comments letter to the Planning dept., I posed some questions,  
which have not been fully answered:

- 1.)The Decision acknowledged that the City would reimburse me for the property they take, but what  
amount of money does the City propose to offer me for the dedication of my land? Or entire land?
- 2.) When does the City propose to put the road extension through my property?
- 3.) How does the City allow for exception to the existing MMC statute on the number of feet  
required between an existing structure and a road?
4. When the City decides to put a right-of way road through, will my property allow the 35ft.  
required setback from the road?

The Decision Notice is covering all the aspects of developing my neighbor's (DeRosa's) two parcels,  
however, I have not been informed that the City of Milwaukie has done any survey of my property to  
justify compliance to city codes for future White Lake Rd.. I feel the impact of this decision is far  
reaching. I would like to request the City do a further study and survey the surrounding properties  
within 300 ft. of the proposed parcels. If this has already been done, I would like to be included in the  
results. Also, taking into consideration all the other surrounding properties that would be affected by  
the right-of-way.

I strongly feel that I am being discriminated against in the City's decision to go ahead with this project.

January 6, 2019

Attachment to City of Milwaukie Appeal of Land Use Decision

Page 2 of 2

To: City Planning Commission

From Daniel M. Barela, owner of property located at 10194 SE 43<sup>rd</sup> Ave.

Subject: Future Extension of White Lake Rd.

Re: City of Milwaukie Notice of Decision, dated 12/31/18, for applicants Tony & Michelle DaRosa  
File # MLP-2018-001, Land Use Proposal for division of property located at 10244 SE 43<sup>rd</sup> Ave.

Reference : My letter of opposition, received <sup>12/3/18</sup>12/3/18 by City Planing Dept. in response to City of  
Milwaukie Memorandum to Interested Persons for Land Use File # MLP-2018-001

Continued from page 1

In reading the Notice of Decision, on page 2, Findings In Support of Approval, section 2, last paragraph it says:

Because additional right-of way does not currently exist adjacent to the subject property, an actual connection is not currently possible. The newly dedicated White Lake Rd. right-of-way will remain undeveloped for the time being.

Then later on page 4, section d, it goes on... as discussed in Finding 10-e, the proposed partition requires a 20 ft. wide dedication along the length of the northern boundary of the subject property to allow for a future right -of-way connection to White Lake Rd. Because additional right-of-way does not currently exist adjacent to the subject property, an actual connection is not possible at present. However, the location and dimension of the required dedication will allow a future street connection to match the alignment of White Lake Rd. to the east.

In conclusion, I would like to ask for your consideration on my behalf in this matter.

Sincerely,

Daniel M. Barela

cc: File

Kivel & Howard Attorneys LLP

Dennis Egnor, Planner Director

Tony & Michelle DaRosa ,102244 SE 43<sup>rd</sup> Ave. Milwaukie, OR 97222

Dana Stearns (4459 SE White Lake Rd., Milwaukie, OR 97222

Sarah & Christopher Leoni (4471 SE Whie Lake Rd., Milwaukie OR 97222

Frank O. Fassold 4446 SE White Lake Rd., Milwaukie, OR 97222

Lance Olander 10167 Se 45<sup>th</sup> Ave., Milwaukie, OR 97222

William H. Schmindt 4468 White Lake Rd., Milwaukie, OR 97222

Lewelling Neighborhood Association

Attachments: Daniel Barela Letter rec'd by City of Milwaukie 12/31/18





December 31, 2018

Land Use File(s): MLP-2018-001

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on December 31, 2018.

<b>Applicant(s):</b>	Tony and Michelle DaRosa
<b>Location(s):</b>	10244 SE 43 <sup>rd</sup> Ave
<b>Tax Lot(s):</b>	1S2E30CC 05200
<b>Application Type(s):</b>	Minor Land Partition (Preliminary Plat)
<b>Decision:</b>	Approved with Conditions
<b>Review Criteria:</b>	<p>Milwaukie Land Division Ordinance:</p> <ul style="list-style-type: none"> <li>• MMC Chapter 17.12 Application Procedure &amp; Approval Criteria</li> <li>• MMC Chapter 17.16 Application Requirements and Procedures</li> <li>• MMC Chapter 17.20 Preliminary Plat</li> <li>• MMC Chapter 17.28 Design Standards</li> <li>• MMC Chapter 17.32 Improvements</li> </ul> <p>Milwaukie Zoning Ordinance</p> <ul style="list-style-type: none"> <li>• MMC Section 19.301 Low Density Residential Zones (including R-7)</li> <li>• MMC Chapter 19.700 Public Facility Improvements</li> <li>• MMC Chapter 19.1200 Solar Access Protection</li> <li>• MMC Section 19.1005 Type II Review</li> </ul> <p>Milwaukie Municipal Code</p> <ul style="list-style-type: none"> <li>• MMC Chapter 12.16 Access Management</li> </ul>
<b>Neighborhood(s):</b>	Lewelling

**Appeal period closes: 5:00 p.m., January 15, 2019**

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 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 Kelter, Associate Planner, at 503-786-7657 or [kelterb@milwaukieoregon.gov](mailto:kelterb@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/mlp-2018-001>.

**This decision may be appealed by 5:00 p.m. on January 15, 2019, which is 15 days from the date of this decision.**<sup>1</sup> 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**

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

1. The applicants, Tony and Michelle DaRosa, have applied for approval of a partition to create 2 parcels at 10244 SE 43<sup>rd</sup> Ave (“the subject property”). The subject property is identified as Tax Lot ID 1S2E30CC05200 on the Clackamas County Tax Assessor map and is in the Residential R-7 Zone.

The applicants are the property owners and have authority to initiate the application per MMC Subsection 19.1001.6.A. The application was initially submitted on October 24, 2018, and deemed complete on November 14, 2018. The land use application file number is MLP-2018-001.

2. The proposal is for a partition of the subject property to create 2 separate developable parcels. The existing house would remain on Parcel 1, which would be approximately 11,550 sq ft; Parcel 2 would be vacant, with an area of approximately 10,060 sq ft. An existing detached garage and covered area that straddle the boundary between Parcels 1 and 2 is proposed to be removed.

As discussed in Finding 10, a 20-ft-wide dedication along the length of the northern boundary of the subject property is required to allow for a future right-of-way connection to White Lake Rd to the east. Because additional right-of-way does not currently exist adjacent to the subject property, an actual connection is not currently possible. The newly dedicated White Lake Rd right-of-way will remain undeveloped for the time being. In the

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<sup>1</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.

meantime, an existing covered patio and outdoor fireplace within the dedication area on Parcel 1 are proposed to remain.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):

- MMC Section 19.1005 Type II Review
- 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 19.700 Public Facility Improvements
- MMC Chapter 12.16 Access Management
- MMC Chapter 19.1200 Solar Access Protection

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review. Public notice was mailed to property owners and residents of lots within 300 ft of the subject property on November 15, 2018, with a minimum of 14 days to comment on the application. A notice of the application was posted on the subject property on November 19, 2018, as required by law.

4. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC Section 17.12.040 establishes the approval criteria for preliminary plat. The proposed preliminary plat meets these criteria as described below.

- a. MMC Subsection 17.12.040.A.1 requires that the proposed preliminary plat complies with Title 19 Zoning and other applicable ordinances, regulations, and design standards.

*As demonstrated by the applicant's submittal materials and evidenced by these findings, the proposed preliminary plat complies with the applicable ordinances, regulations, and design standards. As proposed, this criterion is met.*

- b. MMC Subsection 17.12.040.A.2 requires that the proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

*The proposed partition will provide sufficient area on both parcels to accommodate future development in accordance with the standards of the underlying R-7 zone. The parcels do not have physical constraints or dimensional limitations that would necessitate the need for a variance. As proposed, this criterion is met.*

- c. MMC Subsection 17.12.040.A.3 requires that the proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

*The proposed plat is a partition plat; therefore, this criterion is not applicable.*

- d. MMC Subsection 17.12.040.A.4 requires that the streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

*As discussed in Finding 10-e, the proposed partition requires a 20-ft-wide dedication along the length of the northern boundary of the subject property to allow for a future right-of-way connection to White Lake Rd. Because additional right-of-way does not currently exist adjacent to the subject property, an actual connection is not possible at present. However, the location and dimension of the required dedication will allow a future street connection to match the alignment of White Lake Rd to the east. As proposed, this criterion is met.*

- e. MMC Subsection 17.12.040.A.5 requires a detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

*The applicant's submittal materials include a detailed narrative demonstrating compliance with all applicable standards and criteria. As proposed, this criterion is met.*

*As proposed, the Planning Director finds that the preliminary plat meets the applicable criteria.*

#### 5. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.060 establishes the application requirements for preliminary plat, including completed application forms and checklists, applicable fees, and the information specified in MMC Chapter 17.20 Preliminary Plat.

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

*As proposed, the Planning Director finds that the application meets the applicable requirements for submittal of a preliminary plat.*

#### 6. 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, structures on surrounding properties, minimum setbacks for future development, and concepts for future development.*

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

#### 7. MMC Chapter 17.28 Design Standards

MMC 17.28, particularly MMC Section 17.28.040, establishes standards for lot design for land divisions and boundary changes.

- a. MMC Subsection 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, as well as that minimum lot standards shall conform to Title 19.

*The proposed parcels meet the minimum area and dimensional requirements for the underlying R-7 zone. With the required dedication for a future connection to White Lake Rd, Parcel 1 will become a corner lot that has the option of orienting toward either 43<sup>rd</sup> Ave or to the future White Lake Rd. Development on Parcel 2 will be oriented toward the future White Lake Rd, although in the interim the site access will be from 43<sup>rd</sup> Ave through the Parcel 1 driveway. Both parcels conform to the relevant standards of the R-7 zone as described in Finding 9 and to other applicable standards of Title 19 as described elsewhere in these findings.*

- b. MMC Subsection 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.

*The proposed parcels are both rectilinear in shape. For Parcel 1, the side lot lines run at right angles to 43<sup>rd</sup> Ave and the rear lot line is parallel to 43<sup>rd</sup> Ave. For Parcel 2, the side lot lines run at right angles to the future White Lake Rd and the rear lot line is parallel to the future White Lake Rd.*

- c. MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines.

*No compound lot lines are proposed for the side or rear lot lines on either parcel.*

- d. MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

*No variance to the lot shape standards is requested in this application.*

- e. MMC Subsection 17.28.040.E limits double frontage and reversed frontage lots, stating that they should be avoided except in certain situations.

*Neither of the proposed parcels is a double frontage or reversed frontage lot.*

- f. MMC Subsection 17.28.040.F requires that, pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access. This standard applies when a lot has frontage on more than one street.

*As proposed, Parcel 1 has almost 96 ft of frontage along 43<sup>rd</sup> Ave and 121 ft of frontage along the future White Lake Rd; Parcel 2 has 106 ft of frontage along the future White Lake Rd. Although both lots will take access from 43<sup>rd</sup> Ave in the interim until White Lake Rd is improved, both provide the 35-ft minimum public street frontage required in the R-7 zone.*

*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.*

8. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that work shall not begin until plans have been approved by the City.

*As discussed in Finding 10, no physical improvements are required as a result of the proposed partition, due to an analysis of rough proportionality of impacts. The applicant will dedicate property to the existing public right-of-way along 43<sup>rd</sup> Ave and will dedicate property to create public right-of-way for a future connection to White Lake Rd. The required dedications are sufficient mitigation for new impacts from the partition.*

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

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

MMC 19.301 contains standards for Low Density Residential zones, including the R-7 zone. The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed in the R-7 zone, including single-family detached dwellings, duplexes, and accessory dwelling units (ADUs) as outright permitted uses.

*As proposed, the existing house on Parcel 1 will remain. The applicant has indicated that a new house will be constructed on Parcel 2 and that ADUs will be developed on both lots. Single-family dwellings and ADUs are allowed uses in the R-7 zone. At the time of future development, all actual proposed uses will be reviewed for compliance with the applicable standards of the R-7 zone and other relevant sections of the municipal code.*

*As proposed, this standard is met.*

b. MMC Subsections 19.301.4 and 19.301.5 Development Standards

MMC 19.301.4 and 19.301.5 establish development standards for the R-7 zone. The applicable standards are addressed and met as described in Table 9-b (Zoning Compliance) below.

<b>Table 9-b Applicable R-7 Development Standards</b>			
<b>Standard</b>	<b>R-7 Requirement</b>	<b>Parcel 1</b>	<b>Parcel 2</b>
Lot Area	7,000 sq ft	11,547 sq ft	10,061 sq ft
Lot Width	60 ft	>95 ft	106 ft
Lot Depth	80 ft	121 ft	>95 ft
Public Street Frontage	35 ft	>95 ft (on 43 <sup>rd</sup> Ave) 121 ft (on White Lake Rd)	106 ft

Front Yard	20 ft (For 43 <sup>rd</sup> Ave, setback is 22.5 ft = 20 ft for R-7 zone, plus 2.5 ft for special 30-ft setback from centerline of 43 <sup>rd</sup> Ave right-of-way, as per MMC 19.501.2)	13.7 ft (existing nonconforming development, further reduced by dedication to ROW)	To Be Determined at Time of Development (TBD)
Side Yard	5 ft / 10 ft (interior yards) 20 ft (street side)	13.6 ft (interior, south) 50 ft (street side, north)	TBD
Rear Yard	20 ft	>60 ft	TBD
Maximum Building Height	2 stories or 35 ft (lesser of)	2 stories, <35 ft	TBD
Maximum lot coverage	30%	Approx. 11%	TBD
Minimum vegetation	30%	>63%	TBD
Front Yard Minimum Vegetation	40%	>84%	TBD
Density requirements	Lot area is 0.5 acres (after ROW dedications) Min. density = 2 units (@5.0 units/acre) Max. density = 3 units (@6.2 units/acre)	Sized for 1 primary unit	Sized for 1 primary unit

*As proposed, the applicable standards of this subsection are met.*

*As proposed, the Planning Director finds that the applicable R-7 zone standards of MMC 19.301 are met.*

10. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development 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 land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

*The applicant proposes to partition the subject property into 2 distinct parcels. The proposed partition triggers the requirements of MMC 19.700.*

*MMC 19.700 applies to the proposed development.*

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 establishing approval criteria.

*The applicant had a preapplication conference with City staff on January 4, 2018, prior to application submittal. The proposed action does not trigger a Transportation Impact Study (TIS) (as addressed in Finding 10-c), but it does require a preliminary plat application. The proposal's compliance with MMC 19.700 is being reviewed as part of the preliminary plat application and a separate Transportation Facilities Review (TFR) application is not necessary. As addressed in Findings 10-d and 10-e, the applicant will provide mitigation in rough proportion to the potential impacts of the proposed partition.*

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 requires submission of a TIS documenting the development impacts on the surrounding transportation system.

*The Engineering Director determined that a transportation impact study was not required, as the impacts of the proposed partition on the transportation system were minimal and evident.*

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.

*Finding 10-e addresses the required dedications to the public right-of-way along the subject property's frontage on 43<sup>rd</sup> Ave as well as to provide for the future extension of White Lake Rd. A rough analysis of proportionality shows that right-of-way dedication is proportional to the anticipated impacts of 1 new lot sized for single-family residential development; the construction of physical improvements is not proportional. The surrounding transportation system will continue to operate at the level of service as before the proposed action. The proposed partition does not trigger mitigation of impacts beyond the required right-of-way dedication, unless access modification cannot be justified in accordance with MMC Subsection 12.16.040.B.2.d.*

*The proposed development is consistent with MMC 19.705.*

e. 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. MMC Subsection 19.708.1 points to MMC Chapter 12.16 and establishes general requirements and standards for streets, including access management, clear vision, street design, connectivity, and intersection design and spacing standards. MMC Table 19.708.2 provides more specific street design standards for various street classifications, including for Collector and Local streets. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).



All rights-of-way, streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public right-of-way and abutting the development site shall be adequate at the time of development or shall be made adequate in a timely manner. Driveway approach aprons shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line. In addition, all signs, structures, or vegetation over 3 ft in height shall be removed from “vision clearance areas” at intersections of streets, driveways, and alleys.

*The Milwaukie TSP and Transportation Design Manual (TDM) classify the fronting portions of 43<sup>rd</sup> Ave as a Collector street. As established in MMC Table 19.708.2, the required right-of-way width for a Collector street is between 40 ft and 74 ft depending on the required street improvements. The existing right-of-way width of 43<sup>rd</sup> Ave fronting the subject property is 50 ft, so the required right-of-way needed for these street improvements is 60 ft. The applicant is responsible for 5 ft of right-of-way dedication along 43<sup>rd</sup> Ave fronting the subject property.*

*The proposed partition is also responsible for 20 ft of dedication along the northern boundary of the subject property to create right-of-way for a future extension of White Lake Rd as a Local street. Spacing between King Rd and Rhodesa St is larger than the required 600-ft spacing between intersections on a Collector street. Dedication of the future White Lake Rd brings intersection spacing on 43<sup>rd</sup> Ave further into conformance.*

*In the case of 43<sup>rd</sup> Ave, a requirement for half-street improvements would require construction of a 17-ft-wide half-street asphalt road along the 43<sup>rd</sup> Ave frontage of the subject property. To establish a functional roadway on White Lake Rd, 2/3-street frontage improvements would be required along the new White Lake Rd frontage. However, as noted in Finding 10-d, the proposed partition’s impacts are minimal. Therefore, only right-of-way dedication is anticipated to be required for the proposal as submitted.*

*The dedicated land in the new White Lake Rd right-of-way can remain in its current form until the construction of White Lake Rd occurs. All existing structures and vegetation may remain unchanged. There are no requirements for additional fencing or signage. A condition has been established to require a right-of-way encroachment permit that formalizes the revocable permission for the existing structures to be in the White Lake Rd right-of-way and includes language that the structures must be removed when an improvement is constructed. Access to this new right-of-way will be controlled by the City of Milwaukie. The only access that will be permitted to 43<sup>rd</sup> Ave is through an access modification in accordance with MMC Subsection 12.16.040.B.2.*

*The City will be constructing sidewalks on 43<sup>rd</sup> Ave, so the existing fencing that is located in the 43<sup>rd</sup> Ave right-of-way will not be allowed to remain through an encroachment permit. A condition has been established to require the applicant to relocate this fence onto the private property.*

*As proposed, Parcel 2 will share access to 43<sup>rd</sup> Ave through the existing driveway on Parcel 1, which will remain. A condition of approval has been established to ensure that the driveway approach for Parcel 1 is reconstructed with a standard asphalt driveway approach that meets*

*all guidelines of the Americans with Disabilities Act (ADA) as well as all other applicable requirements and standards for accessways.*

*As conditioned, the proposed partition meets all the applicable standards of MMC 19.708.*

f. MMC Section 19.709 Public Utility Requirements

MMC 19.709 establishes the City's requirements and standards to ensure the adequacy of public utilities to serve development.

*As discussed in Finding 10-e, the proposed partition is required to dedicate a 20-ft right-of-way for future White Lake Rd construction, and a condition has been established accordingly. The only right-of-way frontage for Parcel 2 is the new White Lake Rd right-of-way. Utilities for Parcel 2 can be either constructed to City standards, with a full-size water and sewer main, or can be taken via an easement through Parcel 1. This requirement stands for vehicular access as well. If the applicant elects to take the utility and access easement approach, then these easements will need to be identified on the plat. A condition has been established to ensure this requirement will be met if needed.*

*As conditioned, the proposed partition meets the standards of MMC 19.709.*

*As conditioned, the Planning Director finds that the proposed partition meets the applicable public facility improvement standards of MMC 19.700.*

11. MMC Chapter 12.16 Access Management

MMC 12.16 regulates access from private property onto public streets, with specific requirements and standards provided in MMC Section 12.16.040.

MMC Subsection 12.16.040.A states that access to private property shall be permitted with the use of driveway curb cuts, that driveways shall meet all applicable guidelines of the Americans with Disabilities Act (ADA), and that driveway approaches shall be improved to meet the requirements of the City's Public Works Standards. MMC Subsection 12.16.040.B.1 governs the spacing of accessways (driveways), requiring a minimum of 300 ft for spacing between accessways on collector streets and prohibiting the creation and/or modification of single-family accessways.

*As discussed in Finding 10, the proposed partition includes dedication of right-of-way for the future extension of White Lake Rd. Both new parcels have frontage on White Lake Rd and will be required to obtain permanent access from White Lake Rd once it is constructed. Forty-third (43<sup>rd</sup>) Ave is a Collector street, with a minimum access spacing requirement of 300 ft. An existing driveway approach on 43<sup>rd</sup> Ave serves Parcel 1 and will provide access to Parcel 2 through a shared access easement. A new access onto 43<sup>rd</sup> Ave is not permitted without approval of an accessway modification in accordance with MMC Subsection 12.16.040.B.2. The applicant has not requested a modification to this access standard. Parcel 2's access to 43<sup>rd</sup> Ave is a temporary access and will be moved to White Lake Rd when that street is constructed. The final approval of this modification is by the Engineering Director. A condition has been established to require improvements to the existing driveway approach on 43<sup>rd</sup> Ave to bring it into compliance with the applicable City standards.*

*As conditioned, the Planning Director finds that the proposed partition meets the applicable access management standards of MMC 12.16.*

12. 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 for 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 partition will create new parcels in the R-7 zone, which allows single-family residences. As discussed in Findings 11-b, 11-c, and 11-d, the solar design standards of MMC 19.1203.3 are applicable, and no exemptions or adjustments are necessary.*

- b. MMC 19.1203.3 establishes solar design standards, including basic requirements for north-south dimension and front-lot-line orientation with respect to a true east-west axis. 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.

*The parcels created by the proposed partition each have a north-south dimension of 90 ft or more, and the front lot line of Parcel 2 is oriented directly on an east-west axis. Although Parcel 1 is currently developed with a house that fronts on 43<sup>rd</sup> Ave and therefore does not orient the front lot line along an east-west access, Parcel 1 is a corner lot and the proposed partition does not preclude Parcel 1 from being oriented toward the north and thus having a front lot line oriented to a true east-west axis. However, as discussed in Findings 13-c and 13-d, no exemptions or adjustments are necessary.*

*As proposed, the solar design standards are met.*

- c. MMC 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.

*As noted in Finding 11-b, the proposed partition meets the solar design standards. No exemptions are necessary.*

- d. MMC 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.

*As noted in Finding 11-b, the proposed partition meets the solar design standards. No adjustments are necessary.*

*As proposed, the Planning Director finds that both parcels meet the solar design standards of MMC 19.1203.3 and that the proposed partition therefore meets the applicable solar access provisions established in MMC 19.1200.*

13. As described in Finding 3, public notice of the application was posted on site and mailed as required by the Type II review process established in MMC 19.1005. The application was referred for comment to the following departments and agencies on November 15, 2018:

- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- Clackamas Fire District #1 (CFD #1)
- Lewelling Neighborhood District Association (NDA) Chairperson and Land Use Committee
- Clackamas County Department of Transportation & Development
- Metro
- North Clackamas School District

In addition, public notice of the application with an invitation to comment was sent on November 15, 2018, to property owners and residents within 300 ft of the subject property.

The comments received are summarized as follows:

- **William Schwindt, property owner at 4468 White Lake Rd:** No objection to the partitioning of the subject property to create another developable lot. However, residents of the area just east of the subject property do not want to see White Lake Rd extended to connect to 43<sup>rd</sup> Ave, not even for pedestrian or bicycle traffic. Neighbors do not want increased traffic, and another east-west connection through the area is not needed. More tax dollars should be spent on mass transit and not on building more roads.
- **Dana Stearns, property owner at 4459 SE White Lake Rd:** Objection to the requirement for right-of-way dedication for a future connection to White Lake Rd, signed by 5 other neighboring owners/residents. An extension of White Lake Rd is not desired for automobile, bicycle, or pedestrian traffic, as connections to the neighborhood are already provided on nearby streets.
- **Daniel Barela, property owner at 10194 SE 43<sup>rd</sup> Ave:** Concerns about the White Lake Rd right-of-way dedication, with questions about how the dedication will be accomplished and how his property and neighboring properties will be affected.
- **Izak Hamilton, Fire Inspector, CFD #1:** Standard comments related to fire access and water supply.
- **Stephan Lashbrook, Chair, Lewelling NDA:** The NDA appreciates the applicant's commitment to retain the large existing tree on the property.

- **Alex Roller, Engineering Technician II, City of Milwaukie Engineering Department:** Comments in the form of findings for MMC Chapter 19.700 Public Facility Improvements, which have been incorporated into these findings.

### **Conditions of Approval**

1. Prior to approval of the final plat, the following shall be resolved:
  - a. Right-of-way Dedications:
    - (1) Provide 20-ft-wide right-of-way dedication on north side of property, for the future White Lake Rd.
    - (2) Provide 25-ft radius in the northwest corner of the parent lot (Parcel 1), for future construction of ADA ramps.
    - (3) Provide 5-ft-wide right-of-way dedication on the 43<sup>rd</sup> Ave frontage.
  - b. Obtain an encroachment permit for the existing arbor, fireplace, and covered patio that will be located in the White Lake Rd right-of-way.
  - c. Construct a new driveway approach for the existing access on 43<sup>rd</sup> Ave that conforms to Milwaukie Public Works Standards 502F. The driveway approach shall meet all guidelines of the Americans with Disabilities Act (ADA), with the driveway approach apron between 9 ft and 20 ft in width and least 7.5 ft from the side property line.
  - d. If needed (as discussed in Finding 10-f), provide access and utility easements for the benefit of Parcel 2 across Parcel 1.
  - e. Relocate the existing fence on the 43<sup>rd</sup> Ave frontage to behind the resulting front property line of Parcel 1 after the required right-of-way dedication.
  - f. Remove all signs, structures, or vegetation in excess of 3 ft in height located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the proposed partition.

### **Other requirements**

1. MMC Section 17.04.120 Recording  
As per MMC Section 17.04.120, partition plats must be recorded by plat. An application for final plat shall be submitted to both the City Planning Department and the County Surveyor within 6 months of the date of this approval. Once approved by the County Surveyor, a copy of the recorded final plat shall be submitted to the City Planning Department.
2. Obtain a right-of-way permit for construction of the required driveway approach improvements listed in the conditions of approval.
3. Prior to final inspection for any building on the proposed development, connect all residential roof drains to a private drywell or other approved structure.

**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

  
\_\_\_\_\_  
Dennis Egner, FAICP  
Planning Director

**Exhibits**

None

- cc: Tony & Michelle DaRosa (1001 SW Fifth Ave, Suite 1100, Portland, OR 97204)  
Lindsey Sonnen, AKS Engineering & Forestry, LLC (applicant's representative) (via email)  
Planning Commission (via email)  
Alma Flores, Community Development Director (via email)  
Kelly Brooks, Acting Engineering Director (via email)  
Dalton Vodden, Associate Engineer (via email)  
Alex Roller, Engineering Technician II (via email)  
Samantha Vandagriff, Building Official (via email)  
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)  
Harmony Drake, Permit Technician (via email)  
Izak Hamilton, CFD#1 (via email)  
NDA(s): Lewelling (via email)  
Interested Persons  
Land Use File(s): MLP-2018-001  
Address File

# Land Use Application for the SE 43<sup>rd</sup> Avenue Partition

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**Date:** October 2018

**Submitted to:** City of Milwaukie  
Planning Division  
6101 SE Johnson Creek Boulevard  
Milwaukie, OR 97206

**Applicant:** Tony and Michelle DaRosa  
1001 SW Fifth Avenue, Suite 1100  
Portland, OR 97204



12965 SW Herman Road, Suite 100  
Tualatin, OR 97062  
(503) 563-6151

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## Table of Contents

<b>I. Executive Summary .....</b>	<b>2</b>
<b>II. Site Description/Setting .....</b>	<b>2</b>
<b>III. Applicable Review Criteria.....</b>	<b>3</b>
<u>CITY OF MILWAUKIE MUNICIPAL CODE</u> .....	<u>3</u>
TITLE 17    LAND DIVISION .....	3
CHAPTER 17.12    APPLICATION PROCEDURE AND APPROVAL CRITERIA .....	3
CHAPTER 17.16    APPLICATION REQUIREMENTS AND PROCEDURES .....	4
CHAPTER 17.20    PRELIMINARY PLAT.....	5
CHAPTER 17.28    DESIGN STANDARDS.....	8
CHAPTER 17.32    IMPROVEMENTS.....	11
TITLE 19    ZONING .....	12
CHAPTER 19.300    BASE ZONES.....	12
CHAPTER 19.500    SUPPLEMENTARY DEVELOPMENT REGULATIONS.....	18
CHAPTER 19.700    PUBLIC FACILITY IMPROVEMENTS .....	20
CHAPTER 19.900    LAND USE APPLICATIONS .....	28
<b>IV. Conclusion.....</b>	<b>30</b>

### Exhibits

- Exhibit A: Signed City Application Form and Checklists
- Exhibit B: Preliminary Plans
- Exhibit C: Clackamas County Assessor’s Map
- Exhibit D: City Preapplication Conference Report Summary
- Exhibit E: Ownership Information
- Exhibit F: Infiltration Test Results



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# Land Use Application for the 43<sup>rd</sup> Avenue Partition

**Submitted to:** City of Milwaukie  
Planning Division  
6101 SE Johnson Creek Boulevard  
Milwaukie, OR 97206

**Applicant/Owner:** Tony and Michelle DaRosa  
1001 SW Fifth Avenue, Suite 1100  
Portland, OR 97204

**Applicant's Consultant:** AKS Engineering & Forestry, LLC  
12965 SW Herman Road, Suite 100  
Tualatin, OR 97062  
Contact: Lindsey Sonnen  
Email: (SonnenL@aks-eng.com)  
Phone: (503) 563-6151  
Fax: (503) 563-6152

**Site Location:** 10244 SE 43<sup>rd</sup> Avenue

**Assessor's Map:** 12E30CC Tax Lot 5200

**Site Size:** ± 0.61 acres (per deed and survey)

**Existing Zoning:** Low Density Residential R-7



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## I. Executive Summary

The property owners are submitting this application for a two-parcel partition. The subject site included in this application, Tax Lot 5200 (Clackamas County Tax Map 12E30CC) is within the City of Milwaukie and is zoned Low Density Residential (R-7).

The subject site contains an existing single-family home, a detached accessory building (garage), and detached accessory structures (covered patio/fireplace). The result of this two-parcel partition will be two separate units of land (Parcel 1 and Parcel 2). Parcel 1 is intended to retain the existing home and Parcel 2 is planned for future residential use potentially including a new single-family detached home and an accessory dwelling unit (ADU). In the future, the applicant also plans to build an accessory dwelling unit on Parcel 1. In order to accommodate the partition, future home, and planned future ADU's, the existing detached garage is planned to be removed. All of this is considered appropriate and permitted in the R-7 zone.

The subject site (Tax Lot 5200) currently has access to a public street (SE 43<sup>rd</sup> Avenue). As part of this partition, the application includes a new 20-foot wide (temporary) private access easement to Parcel 2, which will result in both parcels having access to a public roadway. Per the City's request, a significant amount of public right-of-way is planned to be dedicated for SE 43<sup>rd</sup> Avenue and the City's potential improvement/extension of SE White Lake Road from the east.

This application includes the City application forms, written materials, and preliminary plans necessary for City staff to review and determine compliance with the applicable approval criteria.

Additionally, this application is for "needed housing" as that term is defined in ORS 197.303(1) because it provides for detached single family housing and is on buildable land. See *Group B, LLC v City of Corvallis*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2015-019, August 25, 2016); See *Walter v City of Eugene*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2016-024, June 30, 2016). ORS 197.307(4) requires a local government to apply only clear and objective standards, conditions, and procedures to needed housing applications. Clear and objective standards and conditions may not contain subjective, value-laden analyses. *Rogue Valley Assoc. of Realtors v City of Ashland*, 35 Or LUBA 139, 158, aff'd 158 Or App 1, 970 P2d 685(1999). The City has not taken an exception to needed housing. ORS 197.303(3). ORS 197.831 places the burden on local governments to demonstrate that that standards and conditions placed on needed housing applications can be imposed only in a clear and objective manner.

The applicant may choose to accept discretionary standards. This application addresses all standards and conditions. The applicant reserves the right to object to the application of standards or conditions other than those that are clear and objective and does not waive its right to assert that the needed housing statutes apply to this application.

## II. Site Description/Setting

The subject site is approximately 0.61 acres (per deed and survey), located to the east of SE 43<sup>rd</sup> Avenue, zoned R-7 and is improved with a single-family home, detached garage, covered patio/fireplace, landscaping and vegetation, and a driveway access to SE 43<sup>rd</sup> Avenue. Properties to the north are also zoned R-7. Properties to the east are zoned R-7 and R-5. Properties to the south and properties across SE 43<sup>rd</sup> Avenue and to the west are zoned R-3 and R-7. Generally, the surrounding properties contain a mix of single-family and multi-family residential dwellings.

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### III. Applicable Review Criteria

#### CITY OF MILWAUKIE MUNICIPAL CODE

##### TITLE 17 LAND DIVISION

##### CHAPTER 17.12 APPLICATION PROCEDURE AND APPROVAL CRITERIA

##### 17.12.020 APPLICATION PROCEDURE

- A. Applications for land division and property boundary changes shall be processed in accordance with Chapter 19.1000 Type I, Type II, and Type III procedures as indicated in this section.

**Response:** This application involves a preliminary plat review for a two-parcel partition; therefore, it will be processed as a Type II Review as described in this section.

##### 17.12.040 APPROVAL CRITERIA FOR PRELIMINARY PLAT

A. Approval Criteria

The approval authority may approve, approve with conditions, or deny a preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.

**Response:** This application includes a set of preliminary plans (located in Exhibit B), which are in conformance with Title 19 of this code and other applicable ordinances, regulations, and design standards. This approval criterion is satisfied.

2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

**Response:** The applicant reserves the right to object to the application of standards or conditions other than those that are clear and objective. With that said, the planned partition and associated future construction of a single-family home and accessory dwelling units is appropriate and permitted in the R-7 zone.

3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

**Response:** This application involves a partition but does not involve a subdivision. Therefore, the subdivision plat name is not applicable to this application or partition plat. That said, this approval criterion does not apply.

4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

**Response:** This partition application does not involve the construction of new streets, however, per the City's request, a 20-foot wide right-of-way dedication is planned for the future extension of SE White Lake Road.

- 
5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

**Response:** A detailed written narrative is included in this application and demonstrates how the planned partition is in conformance with all applicable code sections and design standards.

**B. Conditions of Approval**

The approval authority may attach such conditions as are necessary to carry out the applicable ordinances and regulations and may require access control strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties.

**Response:** This condition of approval is understood.

**CHAPTER 17.16 APPLICATION REQUIREMENTS AND PROCEDURES**

**17.16.010 APPLICATION REQUIRED**

Application submissions for lot consolidation, property line adjustment, partition, subdivision, and replat shall be made in accordance with provisions of this chapter.

**Response:** This submittal requirement is understood.

**17.16.060 PRELIMINARY PLAT FOR PARTITION AND SUBDIVISION**

The following shall accompany applications for partition:

- A. Completed application form signed by all owners of property included in the proposal;

**Response:** A complete and signed City of Milwaukie Application form is included in this application in Exhibit A. This submittal requirement is met.

- B. Application fee as adopted by the City Council;

**Response:** The required City application fee is included with this application. This submittal requirement is met.

- C. Completed and signed “submission requirements” and “partition checklist” or “subdivision checklist” forms as appropriate;

**Response:** Complete and signed “submission requirements” and “partition checklist” City of Milwaukie forms are included in Exhibit A. This submittal requirement is met.

- D. All information specified on the “submission requirements” and “partition checklist” or “subdivision checklist” forms as appropriate;

**Response:** The information specified and as marked on the “submission requirements” and “partition checklist” forms as appropriate is included with this application.

- E. Requirements and information specified in Chapter 17.20; and

**Response:** This application includes a set of preliminary plans (located in Exhibit B), which are in conformance with Chapter 17.20 and other applicable requirements and information specified in Chapter 17.20. This approval criterion is satisfied.

- 
- F. Any additional information as may be needed to demonstrate compliance with approval criteria.

**Response:** This application includes the necessary information needed to demonstrate compliance with approval criteria.

**CHAPTER 17.20**

**PRELIMINARY PLAT**

**17.20.010**

**SUBMISSION OF PLANS**

Applicants for partition, subdivision, and replat shall prepare a preliminary plat and such improvement plans and other supplemental material including as may be required to describe and represent the objectives of the proposal.

**Response:** The Preliminary Partition Plat is included with this application in Exhibit B. This submittal requirement is met.

**17.20.030**

**GENERAL INFORMATION TO BE SHOWN ON THE PRELIMINARY PLAT**

- A. Preliminary plats shall be prepared by an Oregon registered land surveyor.

**Response:** The preliminary plat included in this partition application in Exhibit B has been prepared by an Oregon registered land surveyor.

- B. The following general information shall be submitted with the preliminary plat:

1. Proposed name of the subdivision/partition. The name shall not duplicate nor resemble the name of another subdivision in the county. Subdivision names shall be approved by the County Surveyor in accordance with ORS Chapter 92;
2. Date, north point, and scale of drawing;
3. Appropriate identification clearly stating the map is a preliminary plat;
4. Location by section, township, and range; and a legal description sufficient to define the location and boundaries of the area to be divided;
5. Names and addresses of the owner, subdivider, and engineer or surveyor;
6. Acreage;
7. Structures and yard setbacks;
8. The location, width, and purpose of easements;
9. The location, approximate dimensions, and area of all lots;
10. Lot and block numbers; and
11. Other information as maybe specified on application forms and checklists prescribed by the Planning Director.

**Response:** The general information provided above is included on the preliminary plat in Exhibit B.

- 
- C. Vicinity map shall be drawn at an appropriate scale, showing all existing subdivisions, streets, and unsubdivided land between the proposed subdivision and the nearest existing arterial or collector streets, and showing how proposed streets may be extended to connect with existing streets. At a minimum, the vicinity map shall depict future street connections for land within 400 feet of the subject property.

**Response:** A vicinity map is included on the preliminary plans Exhibit B, it is drawn at an appropriate scale and shows the required information provided in this section, as applicable.

#### 17.20.050 EXISTING CONDITIONS

The following shall be shown on the preliminary plat:

- A. Location, width, and names of all existing or platted streets within or adjacent to the tract, together with easements, railroad right-of-way, and other important features, such as section lines and corners, City boundary lines, and monuments.
- B. Contour lines related to an established benchmark or other datum approved by the Engineering Director, with intervals at a minimum of 2 feet for slopes up to 10% and 5 feet for slopes over 10%.
- C. Location within the area to be divided, and in the adjoining streets and property, of existing sewers, water mains, culverts, storm drain system, and electric conduits or lines proposed to service the property to be subdivided, and invert elevations of sewer manholes, drain pipes, and culverts.
- D. Zoning and existing uses within the tract and 200 feet on all sides, including the location and use of all existing structures indicating those that will remain and those to be removed.
- E. Approximate location of areas subject to inundation or stormwater overflow with approximate high-water elevation. Location, width, direction, and flow of all watercourses on or abutting the tract including wetlands and watercourses as shown on City-adopted natural resource and Title 3 maps.
- F. Natural features such as rock outcroppings, drainages whether seasonal or perennial, wooded areas, and isolated trees, including type and caliper.
- G. Floodway and floodplain boundary.
- H. Areas containing slopes of 25% or greater. (Ord. 1907 (Attach. 1), 2002)

**Response:** The preliminary plans in Exhibit B include the existing conditions information provided above, as applicable.

#### 17.20.060 PROPOSED CONDITIONS

- A. 12 copies of a preliminary plat shall be submitted to the Planning Director. The plat shall include the following information:
  - 1. Date, north point, scale, address, assessor reference number, and legal description;

- 
2. Name and address of the record owner or owners and of the person who prepared the site plan;
  3. Approximate acreage and square feet under a single ownership, or if more than 1 ownership is involved, the total contiguous acreage of all landowners directly involved in the partition;
  4. For land adjacent to and within the area to be divided, the locations, names, and existing widths of all streets, driveways, public safety accesses, easements, and rights-of-way; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, power poles, and other utilities;
  5. Location of existing structures, identifying those to remain in place and those to be removed;
  6. Lot design and layout, showing proposed setbacks, landscaping, buffers, driveways, lot sizes, and relationship to existing or proposed streets and utility easements;
  7. Existing development and natural features for the site and adjacent properties, including those properties within 100 feet of the proposal, showing buildings, mature trees, topography, and other structures;
  8. Elevation and location of flood hazard boundaries;
  9. The location, width, name, and approximate centerline grade and curve radii of all streets; the relationship of all streets to any projected streets planned by the City; whether roads will continue beyond the plat; and existing and proposed grade profiles. No street name may be used which will duplicate or be confused with the name of an existing street, except for extensions of existing streets. Street names and numbers shall conform to the established pattern in the surrounding area.

**Response:** The preliminary plans in Exhibit B include the information provided above, as applicable.

- B. A conceptual plan shall be provided for complete subdivision or partitioning of the property, as well as any adjacent vacant or underutilized properties, so that access issues may be addressed in a comprehensive manner. The concept plan shall include documentation that all options for access have been investigated including shared driveways, pedestrian accessways, and new street development.

**Response:** A Conceptual Plan is included in Exhibit B, which demonstrates the complete partitioning of the subject site and includes the information provided above, as applicable.

- C. A detailed narrative description demonstrating how the proposal meets all applicable provisions of this title, Title 19, and City design standards, including the Public Works Standards.

**Response:** A detailed written narrative is included in this application and demonstrates how the planned partition is in conformance with all applicable provisions of Title 19, and City design standards, including the Public Works Standards.

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- F. Plans and drawings as necessary to demonstrate compliance with all applicable provisions of chapters of this title, Title 19, and City design standards, including the Public Works Standards.

**Response:** The preliminary plans included in this partition application demonstrate compliance with all applicable provisions of chapters of Title 19, and City design standards, including the Public Works Standards.

- G. A drainage summary report and plan prepared in accordance with the applicable Public Works Standards.

**Response:** Per conversations with City staff, a stormwater report is not required with the land use application submittal and is planned to be included with final engineering. That said, infiltration test results completed by GeoPacific Engineering, Inc. are included in Exhibit F. Therefore, this criterion is satisfied.

- H. Proposed deed restrictions, if any, in outline form.

**Response:** Deed restrictions are not included with this application. Therefore, this criterion does not apply.

- I. Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they may be checked for compliance with the objectives of this title, State law, and other applicable City ordinances. If the nature of the improvements is such that it is impractical to prepare all necessary details prior to approval of the preliminary plat, the additional details shall be submitted with the request for final plat approval.

**Response:** This criterion is understood.

CHAPTER 17.28 DESIGN STANDARDS

17.28.010 CONFORMITY OF SUBDIVISION

Partitions and subdivisions shall conform with any development plans of the City and shall take into consideration any preliminary plans made in anticipation thereof and shall conform with the requirements of state laws and with the standards established by the City.

**Response:** This partition application is in conformance with City development plans and designed to conform with the requirements of state laws and with the standards established by the City as described throughout this narrative. This standard is met.

17.28.020 PUBLIC FACILITY IMPROVEMENTS

All land divisions and boundary changes that increase the number of lots shall be subject to the requirements and standards contained in Chapter 19.700 Public Facility Improvements and the Public Works Standards for improvements to streets, sidewalks, bicycle facilities, transit facilities, and public utilities.

**Response:** This partition application is in conformance with the applicable standards contained in Chapter 19.700. Please refer to the responses below. This criterion is met.

17.28.030 EASEMENTS



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A. Utility Lines

Easements for sewers, water mains, electric lines, or other public utilities shall be dedicated wherever necessary. The easements shall be provided in accordance with applicable design standards in the Public Works Standards.

**Response:** A 20-foot wide temporary private access and utility easement is planned across Parcel 1 as shown on the preliminary plans in Exhibit B. Based on the City's pre-application conference report summary, it is understood that new public utility easements are not required as part of this project. This criterion is met.

B. Watercourses

If a subdivision is traversed by a watercourse such as a drainageway, channel, or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of the watercourse, and such further width as will be adequate for the purpose of construction and maintenance. Streets, parkways, bicycle ways, or pedestrian ways parallel to major watercourses may be required.

**Response:** This application includes a two-parcel partition and the subject site is not located in the vicinity of a watercourse; therefore, this criterion does not apply.

17.28.040

GENERAL LOT DESIGN

This section does not apply to units of land that are created for purposes other than land development including parks, natural areas, right-of-way dedications, or reservations of a similar nature. Lots and tracts created for cottage cluster housing development, per Subsection 19.505.4, are also exempt from the requirements of this section.

A. Size and Shape

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.

**Response:** As previously noted, the subject site is designated R-7 and the intended use involves an existing single-family home, the future addition of a single-family dwelling on one parcel, and the future construction of an ADU on each parcel. The preliminary plans in Exhibit B demonstrate the parcel size, width, shape, and orientation are appropriate for this land use and in conformance with Title 19. This criterion is satisfied.

B. Rectilinear Lots Required

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.

**Response:** The subject property is a rectilinear lot, approximately 115 feet by 232 feet, and approximately 0.61 acres (per deed and survey) with frontage on SE 43<sup>rd</sup> Avenue to the west. As shown on the preliminary plans in Exhibit B, the two parcels created from the

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partition are also planned to be rectangular and appropriate in size and shape for single-family dwellings. Additionally, the rear lot line of each parcel is oriented to run parallel to the street (SE 43<sup>rd</sup> Avenue and the conceptual extension of SE White Lake Road, respectively). The criteria are met.

**C. Limits on Compound Lot Line Segments**

Changes in direction along side and rear lot lines shall be avoided. 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 is prohibited. Changes in direction shall be measured from a straight line drawn between opposing lot corners.

**Response:** As illustrated on the preliminary plans, the parcels are designed so that changes in direction along side and rear lot lines are avoided. Therefore, this criterion is satisfied.

**D. Adjustments to Lot Shape Standard**

Lot shape standards may be adjusted subject to Section 19.911 Variances.

**Response:** Parcels 1 and 2 are in conformance with the lot shape standards, as shown on the preliminary plans and detailed in the sections above. Therefore, an adjustment to the lot shape standard is not necessary. This criterion is not applicable.

**E. Limits on Double and Reversed Frontage Lots**

Double frontage and reversed frontage lots should be avoided, 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.

**Response:** As illustrated on the preliminary plans, Parcel 1 is planned to have frontage along SE 43<sup>rd</sup> Avenue and Parcel 2 is planned to be oriented to have frontage along the 20-foot wide right-of-way dedication to the City (for the future extension of SE White Lake Road). The subject site is surrounded by properties improved with single-family and multi-family dwellings, other existing streets do not surround the site. Therefore, double and reverse frontage lots are avoided. This criterion is satisfied.

**F. Measurement of Required Frontage**

Pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access.

**Response:** As demonstrated on the preliminary plans, Parcel 1 is planned to take access from SE 43<sup>rd</sup> Avenue and the required frontage is measured along SE 43<sup>rd</sup> Avenue. It is understood per the pre-application conference report summary that the frontage of Parcel 2 is to be oriented toward the 20-foot wide right-of-way dedication to the City (for the future extension of SE White Lake Road). Thus, Parcel 2 may take access from SE White Lake Road if/when it is constructed. That said, the measurement of the required frontage for Parcel 2 is measured along the 20-foot wide right-of-way dedication and not SE 43<sup>rd</sup>

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Avenue. Access to SE 43<sup>rd</sup> Avenue to Parcel 2 is considered to be temporary. Therefore, this criterion is satisfied.

17.28.050 FLAG LOT DEVELOPMENT AND FUTURE ACCESS

Applicants for flag lot partitioning must 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. Where there is the potential for future development on adjacent lots with new roadway development, flag lots may be allowed as an interim measure. In this case, Planning Commission review shall be required and the flag lot(s) must be designed to allow for future street development. Dedication of the future street right-of-way shall be required as part of final plat approval.

(...)

**Response:** The partition included in this application does not result in the creation of a flag lot. Therefore, these criteria do not apply.

CHAPTER 17.32 IMPROVEMENTS

17.32.010 IMPROVEMENT PROCEDURES

In addition to other requirements, improvements installed by the applicant, either as a requirement of these regulations or their own option, shall conform to the requirements of this title and to improvement standards and specifications in the Public Works Standards and Chapter 19.700 Public Facility Improvements. The improvements shall be installed in accordance with the following procedure:

- A. Work shall not begin until plans have been checked for adequacy and approved by the City in writing. All such plans shall be prepared in accordance with requirements of the City.
- B. Work shall not begin until the City has been notified in advance, and if work is discontinued for any reason, it shall not be resumed until the City is notified.
- C. Improvements shall be constructed under the inspection and to the satisfaction of the City. The City may require changes in typical sections and details if unusual conditions arising during construction warrant such changes in the public interest.
- D. All underground utilities, installed in streets by the applicant, including but not limited to, water, sanitary sewers, and storm drains shall be constructed prior to the surfacing of streets. Stubs for service connections shall be extended to property lines long enough to avoid disturbing the street improvements when service connections are made. How utilities are to be serviced shall be indicated.
- E. A map showing all public improvements as built shall be filed with the City upon completion of the improvements. All

such maps shall be prepared in accordance with requirements of the City.

**Response:** The improvement procedures provided above are understood.

17.32.020 UTILITY UNDERGROUNDING

All utility lines, including, but not limited to, those required for electric, communication, lighting, cable television services, and related facilities shall be placed underground. Surface-mounted transformers, surface-mounted connection boxes and meter cabinets, temporary utility service facilities during construction, high-capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above may be placed above ground. The applicant shall make all necessary arrangements with the serving utility to provide the underground services.

**Response:** As shown on the preliminary plans in Exhibit B, the new utilities to be constructed on the subject site are planned to be located underground. Overhead utilities serving the existing home can be located underground, if required by the City. This criterion is met.

TITLE 19 ZONING

CHAPTER 19.300 BASE ZONES

19.301 LOW DENSITY RESIDENTIAL ZONES

The low density residential zones are Residential Zone R-10, Residential Zone R-7, and Residential Zone R-5. These zones implement the Low Density and Moderate Density residential land use designations in the Milwaukie Comprehensive Plan.

19.301.2 Allowed Uses in Low Density Residential Zones

Uses allowed, either outright or conditionally, in the low density residential zones are listed in Table 19.301.2 below. Similar uses not listed in the table may be allowed through a Director’s Determination pursuant to Section 19.903. Notes and/or cross references to other applicable code sections are listed in the “Standards/Additional Provisions” column.

See Section 19.201 Definitions for specific descriptions of the uses listed in the table.

Table 19.301.2 - Low Density Residential Uses Allowed		
Use	R-7	Standards/Additional Provisions
Single-family detached dwelling	P	Subsection 19.505.1 Single-Family Dwellings and Duplexes
Accessory dwelling unit	P/II	Subsection 19.910.1 Accessory Dwelling Units
P = Permitted. II= Type II review required.		

**Response:** The subject site currently supports an existing single-family home, a detached accessory building (garage), and detached accessory structures (covered patio/fireplace). This project includes a land division (partition) to create two separate units of land (parcels),

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one which is intended to retain the existing home and another, which is planned to accommodate a future single-family detached home. In the future, the applicants also plan to build an accessory dwelling unit (ADU) on each parcel. In order to accommodate the partition, planned future home, and planned future ADU's the existing detached garage is planned to be removed. All this is considered appropriate and permitted in the R-7 zone.

**19.301.4 Development Standards**

In the low density residential zones, the development standards in Table 19.301.4 apply. Notes and/or cross references to other applicable code sections are listed in the "Standards/Additional Provisions" column. Additional standards are provided in Subsection 19.301.5.

See Sections 19.201 Definitions and 19.202 Measurements for specific descriptions of standards and measurements listed in the table.

Table 19.301.4 - Low Density Residential Development Standards		
Standard	R-7	Standards/ Additional Provisions
<b>A. Lot Standards</b>		
1. Minimum Lot Size (sq. ft) a. Single-family detached	7,000	Subsection 19.501.1 Lot Size Exceptions
2. Minimum lot width (ft.)	60	
3. Minimum lot depth (ft)	80	
4. Minimum street frontage requirements (ft) a. Standard lot b. Flag lot c. Double flag lot	35 25 35	
<b>B. Development Standards</b>		
1. Minimum yard requirements for primary structures (ft.) a. Front yard b. Side yard c. Street side yard d. Rear yard	20 5/10 20 20	Subsection 19.301.5.A Side Yards Subsection 19.501.2 Yard Exceptions Subsection 19.504.8 Flag Lot Design and Development Standards
2. Maximum building height for primary structures	2.5 stories or 35 ft, whichever is less	Subsection 19.501.3 Building Height and Side Yard Height Plane Exceptions
3. Side yard height plane limit a. Height above ground at minimum required side yard depth (ft) b. Slope of plane (degrees)	20 45	Subsection 19.501.3 Building Height and Side Yard Height Plane Exceptions
4. Maximum lot coverage (percent of total lot area)	30%	Section 19.201 "Lot coverage" definition Subsection 19.301.5.B Lot Coverage
5. Minimum vegetation (percent of total lot area)	30%	Subsection 19.301.5.C Front Yard Minimum Vegetation Subsection 19.504.7 Minimum Vegetation
<b>C. Other Standards</b>		
1. Density requirements (dwelling units per acre) a. Minimum b. Maximum	5.0 6.2	Subsection 19.301.5.D Residential Densities Subsection 19.501.4 Density Exceptions

**Response:** As illustrated on the preliminary plans in Exhibit B, this two-parcel partition project is in conformance with the low density residential development standards provided in Table 19.301.4 above.

19.301.5 Additional Development Standards

A. Side Yards

In the R-7 Zone, one side yard shall be at least 5 ft and one side yard shall be at least 10 ft, except on a corner lot the street side yard shall be 20 ft.

**Response:** Parcel 1 and Parcel 2 are both planned to have a 5-foot side yard setback and a 10-foot side yard setback. The side yard setbacks are depicted on the preliminary plans in Exhibit

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B and conform with the requirements of the R-7 zone described in this section. Additionally, the subject site is not considered to be a corner lot. This criterion is met.

**B. Lot Coverage**

The lot coverage standards in Subsection 19.301.4.B.4 are modified for specific uses and lot sizes as described below. The reductions and increases are combined for properties that are described by more than one of the situations below.

**1. Decreased Lot Coverage for Large Lots**

The maximum lot coverage percentage in Subsection 19.301.4.B.4 is reduced by 10 percentage points for a single-family detached dwelling, duplex, or residential home on a lot that is more than 2.5 times larger than the minimum lot size in Subsection 19.301.4.A.1.

**Response:** As a result of this two-parcel partition the two lots are not 2.5 times larger than the minimum lot size in Subsection 19.301.4.A.1. (7,000 sq. ft.). Therefore, this criterion does not apply.

**2. Increased Lot Coverage for Single-Family Detached Dwellings**

The maximum lot coverage percentage in Subsection 19.301.4.B.4 is increased by 10 percentage points for development of a single-family detached dwelling, or an addition to an existing single-family detached dwelling, provided that the portions of the structure that are in excess of 20 ft high, or in excess of one story, are limited to the lot coverage standard listed in Subsection 19.301.4.B.4. Only portions of the structure that are less than 20 ft and no taller than one story are allowed to exceed the listed lot coverage standard. See Figure 19.301.5.B.2 for an illustration of this allowance.

**A Type II variance per Subsection 19.911.4.A, to further increase this lot coverage allowance, is prohibited.**

**3. Increased Lot Coverage for Duplexes**

The maximum lot coverage percentage in Subsection 19.301.4.B.4 is increased by 20 percentage points for a duplex.

**4. Increased Lot Coverage for Detached Accessory Dwelling Units**

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The maximum lot coverage percentage in Subsection 19.301.4.B.4 is increased by 5 percentage points for the development of a new detached accessory dwelling unit. This allowance applies only to the detached accessory structure and does not allow for the primary structure or other accessory structures to exceed lot coverage standards.

**Response:** Increasing the maximum lot coverage is not included in this application. This criterion does not apply. That said, an increase in lot coverage could be considered in the future.

**C. Front Yard Minimum Vegetation**

At least 40% of the front yard shall be vegetated. The front yard vegetation area required by this subsection counts toward the minimum required vegetation for the lot. A property may provide less than the 40% of the front yard vegetation requirement if it is necessary to provide a turnaround area so that vehicles can enter a collector or arterial street in a forward motion.

**Response:** As shown on the preliminary plans in Exhibit B, Parcel 1 contains existing landscaping and vegetation, which meets the minimum requirements listed above, and is planned to remain unaltered. In addition, Parcel 1 has an existing driveway/turnaround that provides direct access to SE 43<sup>rd</sup> Avenue (collector street). As conceptually shown on the preliminary plans, Parcel 2 is also in conformance with the front yard minimum vegetation requirement. Therefore, these criteria are satisfied.

**D. Residential Densities**

The minimum and maximum development densities in Subsection 19.301.4.C.1 are applicable for land divisions and replats that change the number of lots.

If a proposal for a replat or land division is not able to meet the minimum density requirement—due to the dimensional requirements for lot width, lot depth, or lot frontage—the minimum density requirement shall instead be equal to the maximum number of lots that can be obtained from the site given its dimensional constraints. The inability of new lot lines to meet required yard dimensions from existing structures shall not be considered as a basis for automatically lowering the minimum density requirement.

**Response:** Density calculations are provided on the preliminary plans, which demonstrate the planned two- parcel partition is in conformance with the residential density requirements in Subsection 19.301.4.C.1. Therefore, this criterion is met.

**E. Accessory Structure Standards**

Standards specific to accessory structures are contained in Section 19.502.



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**Response:** The subject site contains a detached accessory building (garage) and detached accessory structures (covered patio/fireplace). However, in order to accommodate the future construction of a single-family home on Parcel 2 and an accessory dwelling unit on each parcel, the existing garage is planned to be removed. Due to the partition and 20-foot wide right-of-way dedication, the existing covered patio/fireplace are planned to become existing nonconforming structures, please refer to the responses in Section 19.502. That said, these standards may also be applied to future accessory structures at the time of building permit review.

**F. Number of Dwelling Structures**

In the low density residential zones, 1 primary building designed for dwelling purposes shall be permitted per lot. See Subsection 19.504.4.

**Response:** As illustrated on the preliminary plans in Exhibit B, the partition is planned to create two units of land. The subject site contains one existing single-family home (primary building), which is planned to be retained on Parcel 1. The applicants also intend to construct an accessory dwelling unit on Parcel 1 in the future. Parcel 2 is intended to accommodate the future construction of a single-family dwelling (primary building) and an accessory dwelling unit. Therefore, this criterion is satisfied.

**G. Off-Street Parking and Loading**

Off-street parking and loading is required as specified in Chapter 19.600.

**Response:** Per Table 19.605.1, one off-street parking space per dwelling unit is required. As illustrated on the preliminary plans, the existing house and associated off-street parking meet the minimum off-street parking requirements, which are not planned to be altered by this project. Additionally, the minimum required off-street parking associated with the future single-family dwelling and ADUs is to be addressed at the time of building permit review. Therefore, the standards included in Chapter 19.600 are not applicable to this two-parcel partition application.

**H. Public Facility Improvements**

Transportation requirements and public facility improvements are required as specified in Chapter 19.700.

**Response:** The planned public facility improvements are detailed on the preliminary plans and explained below in Chapter 19.700.

**I. Additional Standards**

Depending upon the type of use and development proposed, the following sections of Chapter 19.500 Supplementary Development Regulations may apply. These sections are referenced for convenience, and do not limit or determine the applicability of other sections within the Milwaukee Municipal Code.

**1. Subsection 19.504.4 Buildings on the Same Lot**

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- 2. Subsection 19.504.8 Flag Lot Design and Development Standards
  - 3. Subsection 19.505.1 Single-Family Dwellings and Duplexes
  - 4. Subsection 19.505.2 Garages and Carports
  - 5. Subsection 19.506.4 Manufactured Dwelling Siting and Design Standards, Siting Standards

**Response:** This application involves a two-parcel partition. The applicable supplementary development regulations subsections provided above are to be applied to the future single-family dwelling and ADUs at the time of building permit review. Therefore, the subsections provided above do not apply at this time.

**CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS**

**19.502 ACCESSORY STRUCTURES**

**19.502.1 General Provisions**

- A. No accessory structure shall encroach upon or interfere with the use of any adjoining property or public right-of-way, including, but not limited to, streets, alleys, and public and private easements, unless permitted in accordance with Chapter 12.14.

**Response:** The conceptual future ADUs are not intended to encroach upon or interfere with the use of adjoining property or public right-of-way, as illustrated on the preliminary plans. Additionally, the existing garage is planned to be removed to accommodate the future single-family dwelling and ADUs. It is understood per conversations with City staff that the existing covered patio/fireplace are permitted to remain unaltered (as a nonconforming encroachment per Section 12.14.040.C) on the subject site and partially within the 20-foot wide right-of-way dedication to the City (for the future extension of SE White Lake Road) and are planned to be removed if/when the future right-of-way for SE White Lake Road is constructed. Therefore, this criterion is met.

- B. Multiple accessory structures are permitted subject to building separation, building coverage, and minimum vegetation requirements of the zoning district in which the lot is located.

**Response:** This criterion is understood and to the extent applicable, as illustrated on the preliminary plans, this criterion is satisfied.

- C. An accessory structure shall comply with all of the requirements of the Uniform Building Code.

**Response:** As previously noted above, the existing garage is planned to be removed and the existing covered patio/fireplace is planned to remain unaltered as a nonconforming encroachment (per Section 12.14.040.C) and can be removed if/when the future extension of SE White Lake Road occurs. Additionally, the future conceptual ADUs are to comply with the requirements of the Uniform Building Code at the time of building permit review. Therefore, this criterion is satisfied.

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- D. Accessory structures excluding fences, flagpoles, pergolas, arbors, or trellises may not be located within the required front yard except as otherwise permitted in this chapter.

**Response:** As illustrated on the preliminary plans, the existing accessory structures to remain and the conceptual building footprint of the ADUs are not planned to be located in the front yard of the associated parcel. The existing garage is planned to be removed to accommodate this two-parcel partition and associated improvements. Therefore, this criterion is satisfied.

- E. Regardless of the base zone requirements in Chapter 19.300, the required side and rear yards for an accessory structure are reduced to 5 ft, except as described below.

1. Accessory structures are subject to the minimum street side yard requirements of the base zones in Chapter 19.300.

**Response:** It is understood that the side and rear yards for accessory structures are reduced to 5 feet and are also subject to the minimum street side yard requirements of the base zone. The subject site is zoned R-7 and the planned setbacks are illustrated on the preliminary plans. Additionally, and as previously noted above, the existing covered patio/fireplace is planned to remain as a nonconforming encroachment (Per Section 12.14.040.C). Therefore, this criterion is met.

2. Regulations for overlay zones or special areas in Chapter 19.400 may require an accessory structure to be set back beyond the minimum side or rear yard requirements.

**Response:** The subject site is not located in an overlay zone or special area. Therefore, this criterion is not applicable.

3. If the rear or side yard requirement in the base zone in Chapter 19.300 is less than 5 ft, then the yard requirements of the base zone shall apply.

**Response:** The rear and side yard requirement for the R-7 zone is not less than 5 feet. Therefore, this criterion is satisfied.

4. The rear or side yard requirement for residential accessory structures per Subsection 19.502.2.A or 19.910.1.E.4 may specify a different yard requirement.

**Response:** This criterion is understood. The preliminary plans illustrate the planned setbacks for the existing and conceptual accessory structures.

- F. Alteration or modification of nonconforming accessory structures is subject to the provisions of Chapter 19.800 Nonconforming Uses and Development.

**Response:** The subject site does not contain existing nonconforming accessory structures. Therefore, alterations or modifications to an existing nonconforming structure is not planned. Therefore, this criterion does not apply.

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- G. Fences, flagpoles, pergolas, arbors, and trellises are permitted in yards in all residential zones

**Response:** This criterion is understood.

## CHAPTER 19.700 PUBLIC FACILITY IMPROVEMENTS

### 19.702 APPLICABILITY

#### 19.702.1 General

Chapter 19.700 applies to the following types of development in all zones:

- A. Partitions.
- B. Subdivisions.
- C. Replats.
- D. New construction.
- E. Modification or expansion of an existing structure or a change or intensification in use that results in any one of the following. See Subsections 19.702.2-3 for specific applicability provisions for single-family residential development and development in downtown zones.
  - 1. A new dwelling unit.
  - 2. Any increase in gross floor area.
  - 3. Any projected increase in vehicle trips, as determined by the Engineering Director.

**Response:** This application includes a two-parcel partition. Therefore, this application is subject to the standards included in Chapter 19.700.

### 19.703 REVIEW PROCESS

#### 19.703.1 Preapplication Conference

For all proposed development that requires a land use application and is subject to Chapter 19.700 per Section 19.702, the applicant shall schedule a preapplication conference with the City prior to submittal of the land use application. The Engineering Director may waive this requirement for proposals that are not complex.

**Response:** The preapplication conference meeting for this partition application was held on January 29, 2018. The preapplication conference report summary is included in Exhibit D. This criterion is met.

#### 19.703.2 Application Submittal

For all proposed development that is subject to Chapter 19.700 per Section 19.702, one of the following types of applications is required.

- A. Development Permit Application

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If the proposed development does not require a land use application, compliance with Chapter 19.700 will be reviewed as part of the development permit application submittal.

**Response:** The completed and signed City land use application form is included as Exhibit A. This criterion is met.

**B. Transportation Facilities Review (TFR) Land Use Application**

If the proposed development triggers a transportation impact study (TIS) per Section 19.704, a TFR land use application shall be required. Compliance with Chapter 19.700 will be reviewed as part of the TFR application submittal and will be subject to a Type II review process as set forth in Section 19.1005. The TFR application shall be consolidated with, and processed concurrently with, any other required land use applications.

If the proposed development does not trigger a TIS per Section 19.704, but does require the submittal of other land use applications, compliance with Chapter 19.700 will be reviewed during the review of the other land use applications.

**Response:** Per the preapplication conference report summary, the City Engineering Director has determined that there is sufficient existing transportation data available for the City to determine the transportation system impacts of the planned two-parcel partition and a transportation impact study (TIS) is not required for this partition application (or for the future addition of a single-family dwelling and ADUs). Other land use applications are not included or required with this two-parcel partition application. Therefore, this criterion is satisfied.

**19.703.3 Approval Criteria**

For all proposed development that is subject to Chapter 19.700 per Section 19.702, the required development permit and/or land use application shall demonstrate compliance with the following approval criteria at the time of submittal.

**A. Procedures, Requirements, and Standards**

Development and related public facility improvements shall comply with procedures, requirements, and standards of Chapter 19.700 and the Public Works Standards.

**Response:** This application demonstrates compliance with the procedures, requirements, and standards of Chapter 19.700 and Public Works Standards. Therefore, this criterion is satisfied.

**B. Transportation Facility Improvements**

Development shall provide transportation improvements and mitigation at the time of

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development in rough proportion to the potential impacts of the development per Section 19.705 Rough Proportionality, except as allowed by Chapter 13.32 Fee in Lieu of Construction.

Development in downtown zones that is exempt per Subsection 19.702.3.B shall only be required to provide transportation improvements that are identified by a Transportation Impact Study as necessary to mitigate the development's transportation impacts. Such development is not required to provide on-site frontage improvements.

**Response:** Per City staff, there is a capital improvement project on SE 43<sup>rd</sup> Avenue scheduled for 2021. A fee in lieu of the previously required half-street improvement may be required by the City. Therefore, the requirements of this section are satisfied.

C. Safety and Functionality Standards

The City will not issue any development permits unless the proposed development complies with the City's basic safety and functionality standards, the purpose of which is to ensure that development does not occur in areas where the surrounding public facilities are inadequate. Upon submittal of a development permit application, an applicant shall demonstrate that the development property has or will have all of the following:

1. Adequate street drainage, as determined by the Engineering Director.

**Response:** Per the City preapplication conference report summary, an existing City storm system is not available. That said, the preliminary plans in Exhibit B provide information pertaining to the planned the on-site stormwater management for newly created impervious surfaces. Therefore, the subject site is planned to have adequate drainage and to the extent applicable, this criterion is satisfied.

2. Safe access and clear vision at intersections, as determined by the Engineering Director.

**Response:** The safe access and clear vision area (per Section 12.24) at the intersection of SE 43<sup>rd</sup> Avenue and the existing driveway access is illustrated on the preliminary plans. Therefore, this criterion is satisfied.

3. Adequate public utilities, as determined by the Engineering Director.

**Response:** The existing public utility infrastructure has been determined by City staff (per the City preapplication conference report summary) to be adequate to serve the future addition of a single-family dwelling and accessory dwelling units in addition to the existing single-family dwelling. New public utility infrastructure is not required by the City as part of this two-parcel partition application. This criterion is met.

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4. Access onto a public street with the minimum paved widths as stated in Subsection 19.703.3.C.5 below.

**Response:** The subject site abuts and has existing access to SE 43<sup>rd</sup> Avenue. Per City staff, a capital improvement project is scheduled for 2021, along SE 43<sup>rd</sup> Avenue and has determined this project will satisfy street improvements previously required in the City preapplication conference report summary. Therefore, this criterion is met.

5. Adequate frontage improvements as follows:
  - a. For local streets, a minimum paved width of 16 ft along the site's frontage.
  - b. For nonlocal streets, a minimum paved width of 20 ft along the site's frontage.
  - c. For all streets, a minimum horizontal right-of-way clearance of 20 ft along the site's frontage.

**Response:** As noted above, per City staff, a capital improvement project is scheduled for 2021, along SE 43<sup>rd</sup> Avenue and has determined this project will satisfy street improvements previously required in the City preapplication conference report summary. Therefore, this criterion is met.

6. Compliance with Level of Service D for all intersections impacted by the development, except those on Oregon Highway 99E that shall be subject to the following:
  - a. Level of Service F for the first hour of the morning or evening 2-hour peak period.
  - b. Level of Service E for the second hour of the morning or evening 2-hour peak period.

**Response:** This application involves a two-parcel partition, with the intent to retain the existing single-family home on Parcel 1 and in the future construct a new single-family home on Parcel 2 and an ADU on each parcel. The addition of one single-family home and two ADUs has minimal impact to the existing intersections. The subject site is intended to remain in compliance with Level of Service D for the intersections impacted by this two-parcel partition. The subject site is not located along Oregon Highway 99E. Therefore, this criterion is satisfied.

#### 19.703.4 Determinations

There are four key determinations related to transportation facility improvements that occur during the processing of a development permit or land use application. These

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determinations are described below in the order in which they occur in the review process. They are also shown in Figure 19.703.4. In making these determinations, the Engineering Director will take the goals and policies of the TSP into consideration and use the criteria and guidelines in this chapter.

(...)

**D. Fee in Lieu of Construction (FILOC)**

If transportation facility improvements are required and determined to be proportional, the City will require construction of the improvements at the time of development. However, the applicant may request to pay a fee in lieu of constructing the required transportation facility improvements. The Engineering Director will approve or deny such requests using the criteria for making FILOC determinations found in Chapter 13.32 Fee in Lieu of Construction.

**Response:** As previously noted, there is a capital improvement project on SE 43<sup>rd</sup> Avenue scheduled for 2021. A fee in lieu of the previously required half-street improvement may be required by the City. Therefore, the requirements of this section are satisfied.

**19.704 TRANSPORTATION IMPACT EVALUATION**

The Engineering Director will determine whether a proposed development has impacts on the transportation system by using existing transportation data. If the Engineering Director cannot properly evaluate a proposed development's impacts without a more detailed study, a transportation impact study (TIS) will be required to evaluate the adequacy of the transportation system to serve the proposed development and determine proportionate mitigation of impacts. The TIS determination process and requirements are detailed below.

(...)

**Response:** As previously noted, the Engineering Director has determined that there is sufficient existing transportation data available for the City to determine the transportation system impacts of this project and a TIS is not required for this partition application or for the future addition of a single-family dwelling and ADUs. Therefore, the criteria do not apply.

**19.708 TRANSPORTATION FACILITY REQUIREMENTS**

This section contains the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. For ease of reading, the more common term "street" is used more frequently than the more technical terms "public right-of-way" or "right-of-way." As used in this section, however, all three terms have the same meaning.

The City recognizes the importance of balancing the need for improved transportation facilities with the need to ensure that required improvements are fair and proportional. The City also acknowledges the value in providing street design standards that are both objective and flexible. Objective standards allow for consistency of design and provide some measure of certainty for developers and property owners. Flexibility, on the other hand,



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gives the City the ability to design streets that are safe and that respond to existing street and development conditions in a way that preserves neighborhood character.

The City's street design standards are based on the street classification system described in the TSP. Figure 8-1 of the TSP identifies the functional street classification for every street in the City and Figure 10-1 identifies the type and size of street elements that may be appropriate for any given street based on its classification.

**Response:** No new streets are planned or required as part of this two-parcel partition application. As previously noted, a capital improvement project along SE 43<sup>rd</sup> Avenue is scheduled for 2021 and City staff has determined this project will satisfy street improvements previously required in the City preapplication conference report summary. Additionally, as illustrated on the preliminary plans, a 5-foot wide right-of-way dedication is planned along the subject site's frontage on SE 43<sup>rd</sup> Avenue and a 20-foot wide right-of-way is planned to be dedicated for the future extension of SE White Lake Road (per the City's request). That said, the criteria do not apply.

19.708.3 Sidewalk Requirements and Standards

A. General Provisions

1. Goals, objectives, and policies relating to walking are included in Chapter 5 of the TSP and provide the context for needed pedestrian improvements. Figure 5-1 of the TSP illustrates the Pedestrian Master Plan and Table 5-3 contains the Pedestrian Action Plan.
2. Americans with Disabilities Act (ADA) requirements for public sidewalks shall apply where there is a conflict with City standards.

B. Sidewalk Requirements

1. Requirements  
Sidewalks shall be provided on the public street frontage of all development per the requirements of this chapter. Sidewalks shall generally be constructed within the dedicated public right-of-way, but may be located outside of the right-of-way within a public easement with the approval of the Engineering Director.
2. Design Standards  
Sidewalks shall be designed and improved in accordance with the requirements of this chapter and the Public Works Standards.
3. Maintenance  
Abutting property owners shall be responsible for maintaining sidewalks and landscape strips in accordance with Chapter 12.04.

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**Response:** The sidewalk requirements and standards provided above are anticipated to be included as part of the City’s planned capital improvement project (scheduled for 2021) on SE 43rd Avenue. Therefore, these requirements and standards are satisfied.

19.708.4 Bicycle Facility Requirements and Standards

A. General Provisions

1. Bicycle facilities include bicycle parking and on-street and off-street bike lanes, shared lanes, bike boulevards, and bike paths.
2. Goals, objectives, and policies relating to bicycling are included in Chapter 6 of the TSP and provide the context for needed bicycle improvements. Figure 6-2 of the TSP illustrates the Bicycle Master Plan, and Table 6-3 contains the Bicycle Action Plan.

B. Bicycle Facility Requirements

1. Requirements

Bicycle facilities shall be provided in accordance with this chapter, Chapter 19.600, the TSP, and the Milwaukie Downtown and Riverfront Plan: Public Area Requirements. Requirements include, but are not limited to, parking, signage, pavement markings, intersection treatments, traffic calming, and traffic diversion.

2. Timing of Construction

To assure continuity and safety, required bicycle facilities shall generally be constructed at the time of development. If not practical to sign, stripe, or construct bicycle facilities at the time of development due to the absence of adjacent facilities, the development shall provide the paved street width necessary to accommodate the required bicycle facilities.

3. Design Standards

Bicycle facilities shall be designed and improved in accordance with the requirements of this chapter and the Public Works Standards. Bicycle parking shall be designed and improved in accordance with Chapter 19.600 and the Milwaukie Downtown and Riverfront Plan: Public Area Requirements.

**Response:** The bicycle facility requirements and standards provided above are anticipated to be included as part of the City’s planned capital improvement project (scheduled for 2021) on SE 43<sup>rd</sup> Avenue. Therefore, these requirements and standards are satisfied.

19.709 PUBLIC UTILITY REQUIREMENTS

19.709.1 Review Process

The Engineering Director shall review all proposed development subject to Chapter 19.700 per Section 19.702 in

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order to: (1) evaluate the adequacy of existing public utilities to serve the proposed development, and (2) determine whether new public utilities or an expansion of existing public utilities is warranted to ensure compliance with the City's public utility requirements and standards.

**Response:** The existing public utility infrastructure has been determined by City staff (per the City preapplication conference report summary) to be adequate to serve the future single-family dwelling and accessory dwelling units in addition to the existing single-family dwelling. New public utility infrastructure is not required by the City as part of this two-parcel partition application. These criteria are met.

(...)

19.709.2

**Public Utility Improvements**

Public utility improvements shall be required for proposed development that would have a detrimental effect on existing public utilities, cause capacity problems for existing public utilities, or fail to meet standards in the Public Works Standards. Development shall be required to complete or otherwise provide for the completion of the required improvements.

**Response:** As previously noted above, the existing public utility infrastructure has been determined to be adequate. This project is anticipated to minimally impact the existing public utilities. Therefore, improvements to the existing public utility infrastructure are not required. This criterion is satisfied.

- A. The Engineering Director shall determine which, if any, utility improvements are required. The Engineering Director's determination requiring utility improvements shall be based upon an analysis that shows the proposed development will result in one or more of the following situations:
1. Exceeds the design capacity of the utility.
  2. Exceeds Public Works Standards or other generally accepted standards.
  3. Creates a potential safety hazard.
  4. Creates an ongoing maintenance problem.

**Response:** As previously noted above, the existing public utility infrastructure has been determined to be adequate and public utility infrastructure improvements are not required by the City as part of this two-parcel partition application. Therefore, these criteria are not applicable.

- B. The Engineering Director may approve one of the following to ensure completion of required utility improvements.
1. Formation of a reimbursement district in accordance with Chapter 13.30 for off-site public facility improvements fronting other properties.

- 
2. Formation of a local improvement district in accordance with Chapter 3.08 for off-site public facility improvements fronting other properties.

**Response:** As noted above, public utility infrastructure improvements are not required by the City. Therefore, these criteria are not applicable to this project.

19.709.3 Design Standards

Public utility improvements shall be designed and improved in accordance with the requirements of this chapter, the Public Works Standards, and improvement standards and specifications identified by the City during the development review process. The applicant shall provide engineered utility plans to the Engineering Director for review and approval prior to construction to demonstrate compliance with all City standards and requirements.

**Response:** As noted above, public utility infrastructure improvements are not required by the City. Therefore, this criterion is not applicable.

19.709.4 Oversizing

The Engineering Director may require utility oversizing in anticipation of additional system demand. If oversizing is required, the Engineering Director may authorize a reimbursement district or a system development charge (SDC) credit in accordance with Chapter 13.28.

**Response:** This criterion is understood, however, the existing public utility infrastructure is deemed adequate, as noted above. Therefore, utility oversizing is not required or necessary and this criterion is not applicable.

(...)

CHAPTER 19.900 LAND USE APPLICATIONS

19.906 DEVELOPMENT REVIEW

19.906.2 Applicability

B. Type II Review

The following development proposals must submit a development review application and are subject to the requirements of this section. Type II development review does not apply to development proposals in the downtown zones as these zones have a separate design review process.

1. New development, or expansions or modifications to existing development, for which the applicant elects, where a choice is available, to have the proposal reviewed against discretionary criteria or standards.
2. New construction of over 1,000 sq ft in the Manufacturing Zone within 120 ft of areas zoned for residential uses or within any part Business Industrial Zone.

- 
3. New development or expansions, or modifications to existing development, where the scale of development and/or the level of discretion required to evaluate applicable standards and criteria is not appropriate for a Type I development review.

**Response:** This application involves a two-parcel partition. Therefore, this application is subject to a Type II review process.

19.906.4 Approval Criteria

The criteria in this subsection are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout Title 19 Zoning. Not all of the standards within the chapters listed below are applicable to a proposal, and the City will identify the applicable standards through the development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be clear and objective or require limited professional judgment, while the Type II review will involve discretionary standards and/or criteria.

An application for Type I or Type II development review shall be approved when all of the following criteria have been met:

- A. The proposal complies with all applicable base zone standards in Chapter 19.300.

**Response:** As demonstrated in the responses above, this partition application is in compliance with the standards in Chapter 19.300. Therefore, this criterion is satisfied.

- B. The proposal complies with all applicable overlay zone and special area standards in Chapter 19.400.

**Response:** The subject site is not located within an overlay zone or special area. Therefore, this partition application is not subject to the standards in Chapter 19.400. This criterion is not applicable.

- C. The proposal complies with all applicable supplementary development regulations in Chapter 19.500.

**Response:** As demonstrated in the responses above, this partition application is in compliance with the applicable supplementary development regulations in Chapter 19.500. Therefore, this criterion is satisfied.

- D. The proposal complies with all applicable off-street parking and loading standards and requirements in Chapter 19.600.

**Response:** As demonstrated in the response above, the off-street parking and loading standards and requirements in Chapter 19.600 are not applicable to this partition application. Therefore, this criterion is not applicable.

- E. The proposal complies with all applicable public facility standards and requirements, including any required street improvements, in Chapter 19.700.

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**Response:** As demonstrated in the responses above, this partition application is in compliance with all applicable public facility standards and requirements, including any required street improvements, in Chapter 19.700. Therefore, this criterion is satisfied.

F. The proposal complies with all applicable conditions of any land use approvals for the proposal issued prior to or concurrent with the development review application.

**Response:** Previous land use approvals/conditions for this partition application do not exist; therefore, this criterion is not applicable.

#### **IV. Conclusion**

The required findings have been made and this written narrative and the accompanying documentation demonstrate the application is consistent with the applicable provisions of the City of Milwaukie Municipal Code. The evidence in the record is substantial and supports approval of the application.



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## **Exhibit A: Signed City Application Form and Checklists**

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PLANNING DEPARTMENT  
 6101 SE Johnson Creek Blvd  
 Milwaukie OR 97206

PHONE: 503-786-7630  
 FAX: 503-774-8236  
 E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)

# Application for Land Use Action

Master File #: \_\_\_\_\_

Review type\*:  I  II  III  IV  V

## CHOOSE APPLICATION TYPE(S):

Land Division: Partition

...

...

...

...

**Use separate application forms for:**

- Annexation and/or Boundary Change
- Compensation for Reduction in Property Value (Measure 37)
- Daily Display Sign
- Appeal

## RESPONSIBLE PARTIES:

**APPLICANT** (owner or other eligible applicant—see reverse): Antonio J. Da Rosa and Michelle D. Da Rosa

Mailing address: 10244 SE 43rd Avenue, Milwaukie, OR Zip: 97222

Phone(s): Please Contact Applicant's Consultant E-mail: Please Contact Applicant's Consultant

**APPLICANT'S REPRESENTATIVE** (if different than above): AKS Engineering & Forestry, LLC

Mailing address: 12965 SW Herman Road, Suite 100, Tualatin, OR Zip: 97062

Phone(s): (503) 563-6151 E-mail: [SonnenL@aks-eng.com](mailto:SonnenL@aks-eng.com)

## SITE INFORMATION:

Address: 10244 SE 43rd Avenue Map & Tax Lot(s): 12E30CC 5200

Comprehensive Plan Designation: LD Zoning: R-7 Size of property: 0.61 Acres

## PROPOSAL (describe briefly):

This application includes a two-parcel partition of the subject site.

**SIGNATURE:**

**ATTEST:** I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: \_\_\_\_\_

Date: \_\_\_\_\_

**IMPORTANT INFORMATION ON REVERSE SIDE**

**RESET**







PLANNING DEPARTMENT  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

PHONE: 503-786-7630  
FAX: 503-774-8236  
E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)

For all Land Use Applications  
(except Annexations and Development Review)

# Submittal Requirements

All land use applications must be accompanied by a signed copy of this form (see reverse for signature block) and the information listed below. The information submitted must be sufficiently detailed and specific to the proposal to allow for adequate review. Failure to submit this information may result in the application being deemed incomplete per the Milwaukie Municipal Code (MMC) and Oregon Revised Statutes.

Contact Milwaukie Planning staff at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov) for assistance with Milwaukie's land use application requirements.

- ✓ 1. **All required land use application forms and fees**, including any deposits.  
*Applications without the required application forms and fees will not be accepted.*
- ✓ 2. **Proof of ownership or eligibility to initiate application** per MMC Subsection 19.1001.6.A.  
*Where written authorization is required, applications without written authorization will not be accepted.*
- ✓ 3. **Detailed and comprehensive description** of all existing and proposed uses and structures, including a summary of all information contained in any site plans.  
*Depending upon the development being proposed, the description may need to include both a written and graphic component such as elevation drawings, 3-D models, photo simulations, etc. Where subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary on-site "story pole" installations, and photographic representations thereof, may be required at the time of application submittal or prior to the public hearing.*
- ✓ 4. **Detailed statement** that demonstrates how the proposal meets the following:
  - A. All applicable development standards (listed below):
    1. **Base zone standards** in Chapter 19.300.
    2. **Overlay zone standards** in Chapter 19.400.
    3. **Supplementary development regulations** in Chapter 19.500.
    4. **Off-street parking and loading standards and requirements** in Chapter 19.600.
    5. **Public facility standards and requirements**, including any required street improvements, in Chapter 19.700.
  - B. All applicable application-specific approval criteria (check with staff).  
*These standards can be found in the MMC, here: [www.qcode.us/codes/milwaukie/](http://www.qcode.us/codes/milwaukie/)*
- ✓ 5. **Site plan(s), preliminary plat, or final plat** as appropriate.  
*See Site Plan, Preliminary Plat, and Final Plat Requirements for guidance.*
- ✓ 6. **Copy of valid preapplication conference report**, when a conference was required.

**APPLICATION PREPARATION REQUIREMENTS:**

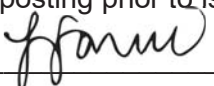
- Five hard copies of all application materials are required at the time of submittal (unless submitted electronically). Staff will determine how many additional hard copies are required, if any, once the application has been reviewed for completeness.
- All hard copy application materials larger than 8½ x 11 in. must be folded and be able to fit into a 10- x 13-in. or 12- x 16-in. mailing envelope.
- All hard copy application materials must be collated, including large format plans or graphics.

**ADDITIONAL INFORMATION:**

- Neighborhood District Associations (NDAs) and their associated Land Use Committees (LUCs) are important parts of Milwaukie's land use process. The City will provide a review copy of your application to the LUC for the subject property. They may contact you or you may wish to contact them. Applicants are strongly encouraged to present their proposal to all applicable NDAs prior to the submittal of a land use application and, where presented, to submit minutes from all such meetings. NDA information: [www.milwaukieoregon.gov/citymanager/what-neighborhood-district-association](http://www.milwaukieoregon.gov/citymanager/what-neighborhood-district-association).
- Submittal of a full or partial electronic copy of all application materials is strongly encouraged.

As the authorized applicant I, Lindsey Sonnen, attest that all required application materials have been submitted in accordance with City of Milwaukie requirements. I understand that any omission of required items or lack of sufficient detail may constitute grounds for a determination that the application is incomplete per MMC Subsection 19.1003.3 and Oregon Revised Statutes 227.178. I understand that review of the application may be delayed if it is deemed incomplete.

Furthermore, I understand that, if the application triggers the City's sign-posting requirements, I will be required to post signs on the site for a specified period of time. I also understand that I will be required to provide the City with an affidavit of posting prior to issuance of any decision on this application.

Applicant Signature: 

Date: 10/5/2018

**Official Use Only**

Date Received (date stamp below):





PLANNING DEPARTMENT  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

PHONE: 503-786-7630  
FAX: 503-774-8236  
E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)

# Preliminary Plat Checklist and Procedures

All applications for partitions and subdivisions require submission of preliminary development plans and supporting information in accordance with the Milwaukie Land Division Ordinance. In special cases, certain items listed below may not be required and can be waived by staff. All items below must be submitted except when authorized by staff signature at the end of the form. Errors, omissions, or poor quality may result in the application being rejected or declared incomplete pursuant to the Milwaukie Zoning Ordinance and/or Land Division Ordinance.

## Application Checklist

- ✓ 1. Detailed description of how the proposal complies with Land Division Ordinance Section 17.12 Application Procedure and Approval Criteria.
- ✓ 2. Detailed description of how the proposal complies with Land Division Ordinance Section 17.16 Application Requirements and Procedures.
- ✓ 3. Detailed description of how the proposal and application complies with Land Division Ordinance Section 17.20 Preliminary Plat including the following minimum requirements.
  - ✓ a. Preliminary plats shall be prepared by an Oregon registered land surveyor.
  - ✓ b. The following general information shall be submitted with the preliminary plat:
    - 1) Proposed name of the subdivision/partition. The name shall not duplicate nor resemble the name of another subdivision in the county. Subdivision names shall be approved by the County Surveyor in accordance with Oregon Revised Statutes Chapter 92.
    - 2) Appropriate identification clearly stating the map is a preliminary plat.
    - 3) Location by section, township, and range; and a legal description sufficient to define the location and boundaries of the area to be divided.
    - 4) Names and addresses of the owner, subdivider, and engineer or surveyor.
    - 5) Other information as may be specified on application forms and checklists prescribed by the Planning Director.
  - ✓ c. Vicinity map shall be drawn at an appropriate scale, showing all existing subdivisions, streets, and unsubdivided land between the proposed subdivision and the nearest existing arterial or collector streets; and showing how proposed streets may be extended to connect with existing streets. At a minimum, the vicinity map shall depict future street connections for land within 400 feet of the subject property.
- ✓ 4. Existing conditions plan including the following (12 copies):
  - ✓ a. Location, width, and names of all existing or platted streets within or adjacent to the tract, together with easements, railroad right-of-way, and other important features, such as section lines and corners, city boundary lines, and monuments.
  - ✓ b. Contour lines related to an established benchmark or other datum approved by the Engineering Director, with intervals at a minimum of 2 feet for slopes up to 10 percent and 5 feet for slopes over 10 percent.

- ✓ c. Location within the area to be divided, and in the adjoining streets and property, of existing sewers, water mains, culverts, storm drain system, and electric conduits or lines proposed to service the property to be subdivided, and invert elevations of sewer manholes, drain pipes, and culverts.
- ✓ d. Zoning and existing uses within the tract and 200 feet on all sides, including the location and use of all existing structures indicating those that will remain and those to be removed.
- ✓ e. Approximate location of areas subject to inundation or stormwater overflow with approximate high-water elevation. Location, width, direction, and flow of all watercourses on or abutting the tract including wetlands and watercourses as shown on City-adopted natural resource and Title 3 maps.
- ✓ f. Natural features such as rock outcroppings, drainages whether seasonal or perennial, wooded areas, and isolated trees, including type and caliper.
- N/A g. Floodway and floodplain boundary.
- N/A h. Areas containing slopes of 25 percent or greater
- ✓ 5. The preliminary plat plan shall include the following information (12 copies):
  - ✓ a. Date, north point, scale, address, assessor reference number, and legal description.
  - ✓ b. Name and address of the record owner or owners and of the person who prepared the site plan.
  - ✓ c. Approximate acreage and square feet under a single ownership or, if more than one ownership is involved, the total contiguous acreage of all landowners directly involved in the partition.
  - ✓ d. For land adjacent to and within the area to be divided, the locations, names, and existing widths of all streets, driveways, public safety accesses, easements, and right-of-ways; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, power poles, and other utilities.
  - ✓ e. Location of existing structures, identifying those to remain in place and those to be removed.
  - ✓ f. Dimensioned lot design and layout, showing proposed setbacks, landscaping, buffers, driveways, lot sizes, and relationship to existing or proposed streets and utility easements.
  - ✓ g. Existing development and natural features for the site and adjacent properties, including those properties within one 100 feet of the proposal, showing buildings, mature trees, topography, and other structures.
  - N/A h. Elevation and location of flood hazard boundaries.
  - ✓ i. The location, width, name, and approximate centerline grade and curve radii of all streets; the relationship of all streets to any projected streets planned by the City; indication as to whether roads will continue beyond the plat; and existing and proposed grade profiles.
  - ✓ j. Lot and block numbers.
- ✓ 6. A conceptual plan shall be provided for complete subdivision or partitioning of the property, as well as any adjacent vacant or underutilized properties, so that access issues may be addressed in a comprehensive manner. The concept plan shall include documentation that all options for access have been investigated including shared driveways, pedestrian accessways, and new street development.

- ✓ 7. A detailed narrative description demonstrating how the proposal meets all applicable provisions of this title and Title 19.
- ✓ 8. Plans and drawings as necessary to demonstrate compliance with all applicable provisions of chapters of this title and Title 19.
- ✓ 9. A drainage summary report and plan that demonstrates estimated pre- and post-development flows, stormwater collection and management measures, and proposed discharges.
- N/A 10. Proposed deed restrictions, if any, in outline form.
- ✓ 11. Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they may be checked for compliance with the objectives of this title, State law, and other applicable City ordinances. If the nature of the improvements is such that it is impractical to prepare all necessary details prior to approval of the preliminary plat, the additional details shall be submitted with the request for final plat approval.
- ✓ 12. 12 copies of a location plan drawn to an appropriate scale (on paper no larger than 8½ by 11 inches) showing nearest cross streets, drives opposite the site, and location of buildings and parking areas on adjoining lots.

**Application Procedures**

- 1. A preapplication conference with City staff is highly recommended.
- 2. Appointments may be made for review of preliminary plat requirements through the Planning Department in advance of formal submission.
- 3. The Planning Department coordinates with appropriate City departments, the Fire District, and other involved agencies as needed.
- 4. Applications will be screened for completeness at the time of submission. Incomplete applications will not be accepted.

**Please contact Milwaukie Planning staff at 503-786-7630 for any questions or help with this form.**

Lindsey Sonnen		10/5/2018
Applicant Name	Applicant Signature	Date

Waived Items	Signature of Milwaukie Planner	Date

AKS Engineering & Forestry, LLC (Applicant's Consultant)  
 Contact: Lindsey Sonnen - Email: SonnenL@aks-eng.com  
 12965 SW Herman Road, Suite 100  
 Tualatin, OR 97062  
 Phone: (503) 563-6151 Fax (503) 563-6152

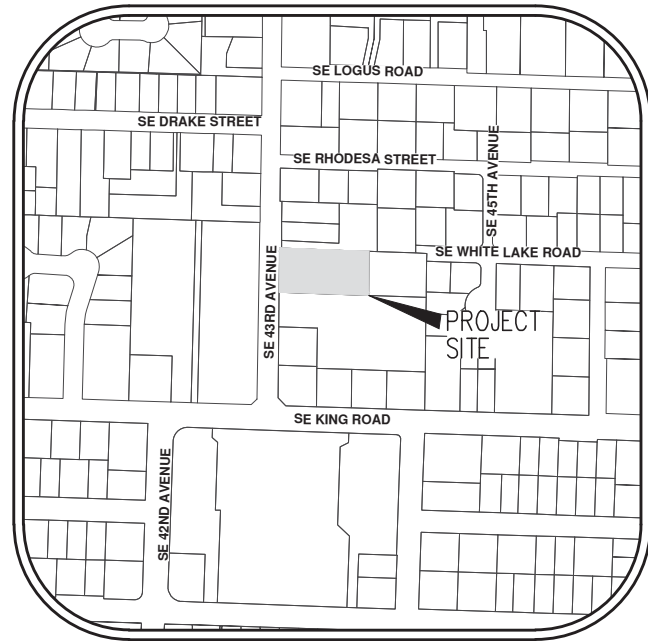


## Exhibit B: Preliminary Plans

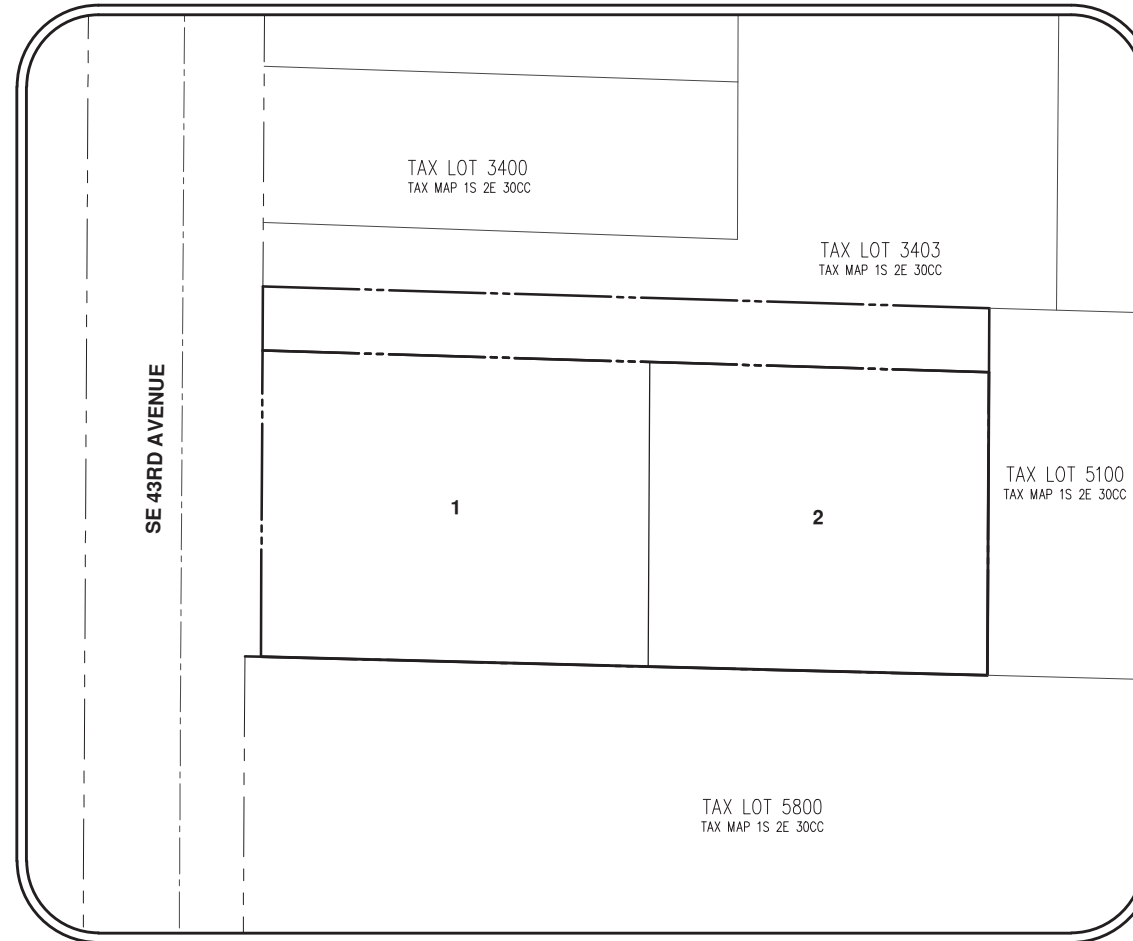
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# 10244 SE 43RD AVENUE PARTITION

## PRELIMINARY PLANS



**VICINITY MAP**  
SCALE: 1"=250'



**SITE MAP**  
SCALE: 1"=30'

**APPLICANTS/OWNERS:**

TONY & MICHELLE DA ROSA  
1001 SW FIFTH AVE., SUITE 1100  
PORTLAND, OREGON 97204

**LAND USE PLANNING, CIVIL ENGINEERING, AND SURVEYING FIRM:**

AKS ENGINEERING & FORESTRY, LLC  
CONTACT: LINDSEY SONNEN  
12965 SW HERMAN ROAD, SUITE 100  
TUALATIN, OREGON 97062  
PH: 503-563-6151  
FAX: 503-563-6152

**PROJECT LOCATION:**

10244 SE 43RD AVENUE  
MILWAUKIE, OREGON 97222

**PROPERTY DESCRIPTION:**

TAX LOT 5200, CLACKAMAS COUNTY ASSESSOR'S MAP 12E30CC, LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 30, TOWNSHIP 1 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CITY OF MILWAUKIE, CLACKAMAS COUNTY, OREGON

**SITE AREA:**

±0.61 ACRES (±26,727 SQUARE FEET)

**EXISTING LAND USE:**

RESIDENTIAL

**PROJECT PURPOSE:**

2-PARCEL PARTITION

**ZONING:**

LOW DENSITY RESIDENTIAL (R-7)

**VERTICAL DATUM:**

ELEVATIONS ARE BASED ON TRIMBLE VRS NOW GPS NETWORK (NAVD 88) STATION "OR-TIGARD"

**WATER, SANITARY SEWER, AND STORM DRAINAGE:**

CITY OF MILWAUKIE

### SHEET INDEX

- P-01 COVER SHEET WITH VICINITY AND SITE MAPS
- P-02 EXISTING CONDITIONS PLAN
- P-03 PRELIMINARY PARTITION PLAT WITH FUTURE BUILDING SETBACKS
- P-04 CONCEPTUAL SITE PLAN
- P-05 CONCEPTUAL PLAN

LEGEND			
EXISTING	PROPOSED		
DECIDUOUS TREE	●	STORM DRAIN CLEAN OUT	○
CONIFEROUS TREE	★	STORM DRAIN CATCH BASIN	□
FIRE HYDRANT	⊗	STORM DRAIN AREA DRAIN	□
WATER BLOWOFF	⊙	STORM DRAIN MANHOLE	⊕
WATER METER	⊠	GAS METER	⊠
WATER VALVE	⊗	GAS VALVE	⊠
DOUBLE CHECK VALVE	⊗	GUY WIRE ANCHOR	←
AIR RELEASE VALVE	⊗	UTILITY POLE	⊙
SANITARY SEWER CLEAN OUT	○	POWER VAULT	⊠
SANITARY SEWER MANHOLE	○	POWER JUNCTION BOX	⊠
SIGN	⊠	POWER PEDESTAL	□
STREET LIGHT	☆	COMMUNICATIONS VAULT	⊠
MAILBOX	⊠	COMMUNICATIONS JUNCTION BOX	⊠
		COMMUNICATIONS RISER	⊙
EXISTING		PROPOSED	
RIGHT-OF-WAY LINE	---	BOUNDARY LINE	---
BOUNDARY LINE	---	PROPERTY LINE	---
PROPERTY LINE	---	CENTERLINE	---
CENTERLINE	---	DITCH	---
DITCH	---	CURB	---
CURB	---	EDGE OF PAVEMENT	---
EDGE OF PAVEMENT	---	EASEMENT	---
EASEMENT	---	FENCE LINE	---
FENCE LINE	---	GRAVEL EDGE	---
GRAVEL EDGE	---	POWER LINE	---
POWER LINE	---	OVERHEAD WIRE	---
OVERHEAD WIRE	---	COMMUNICATIONS LINE	---
COMMUNICATIONS LINE	---	FIBER OPTIC LINE	---
FIBER OPTIC LINE	---	GAS LINE	---
GAS LINE	---	STORM DRAIN LINE	---
STORM DRAIN LINE	---	SANITARY SEWER LINE	---
SANITARY SEWER LINE	---	WATER LINE	---
WATER LINE	---		

**AKS**  
AKS ENGINEERING & FORESTRY, LLC  
12965 SW HERMAN RD, STE 100  
TUALATIN, OR 97062  
P: 503.563.6151  
F: 503.563.6152  
aks-eng.com

**10244 SE 43RD AVENUE PARTITION**  
**MILWAUKIE OREGON**  
TAX MAP 12E30CC

**COVER SHEET WITH VICINITY AND SITE MAPS**

DESIGNED BY: JDR  
DRAWN BY: CMS  
CHECKED BY: JDR  
SCALE: AS NOTED  
DATE: 10/23/2018



REVISIONS

JOB NUMBER  
**5042**

SHEET  
**P-01**

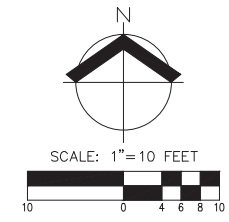
AKS DRAWING FILE: 5042\_P-01 COVER SHEET WITH VICINITY AND SITE MAPS.DWG | LAYOUT: P-01



DESIGNED BY: HS  
 DRAWN BY: GEP  
 CHECKED BY: GEP  
 SCALE: AS NOTED  
 DATE: 10/23/2018

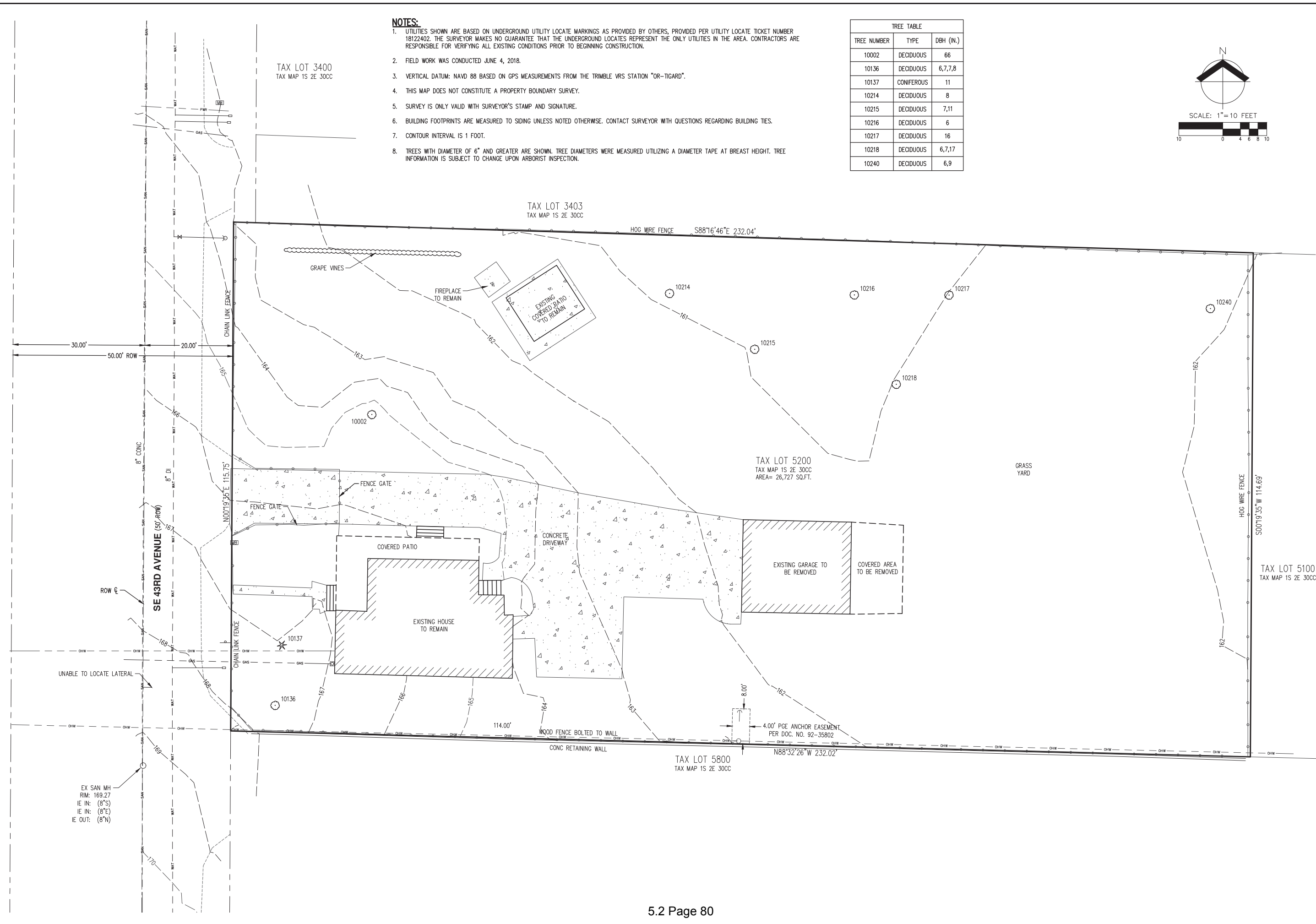
REGISTERED PROFESSIONAL LAND SURVEYOR  
**PRELIMINARY**  
**NOT FOR CONSTRUCTION**  
 GARY E. PAUL  
 2698  
 RENEWAL 12/31/2018

REVISIONS  
 JOB NUMBER  
**5042**  
 SHEET  
**P-02**



TREE TABLE		
TREE NUMBER	TYPE	DBH (IN.)
10002	DECIDUOUS	66
10136	DECIDUOUS	6,7,7,8
10137	CONIFEROUS	11
10214	DECIDUOUS	8
10215	DECIDUOUS	7,11
10216	DECIDUOUS	6
10217	DECIDUOUS	16
10218	DECIDUOUS	6,7,17
10240	DECIDUOUS	6,9

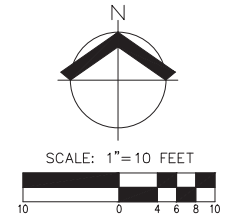
- NOTES:**
- UTILITIES SHOWN ARE BASED ON UNDERGROUND UTILITY LOCATE MARKINGS AS PROVIDED BY OTHERS, PROVIDED PER UTILITY LOCATE TICKET NUMBER 18122402. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND LOCATES REPRESENT THE ONLY UTILITIES IN THE AREA. CONTRACTORS ARE RESPONSIBLE FOR VERIFYING ALL EXISTING CONDITIONS PRIOR TO BEGINNING CONSTRUCTION.
  - FIELD WORK WAS CONDUCTED JUNE 4, 2018.
  - VERTICAL DATUM: NAVD 88 BASED ON GPS MEASUREMENTS FROM THE TRIMBLE VRS STATION "OR-TIGARD".
  - THIS MAP DOES NOT CONSTITUTE A PROPERTY BOUNDARY SURVEY.
  - SURVEY IS ONLY VALID WITH SURVEYOR'S STAMP AND SIGNATURE.
  - BUILDING FOOTPRINTS ARE MEASURED TO SIDING UNLESS NOTED OTHERWISE. CONTACT SURVEYOR WITH QUESTIONS REGARDING BUILDING TIES.
  - CONTOUR INTERVAL IS 1 FOOT.
  - TREES WITH DIAMETER OF 6" AND GREATER ARE SHOWN. TREE DIAMETERS WERE MEASURED UTILIZING A DIAMETER TAPE AT BREAST HEIGHT. TREE INFORMATION IS SUBJECT TO CHANGE UPON ARBORIST INSPECTION.



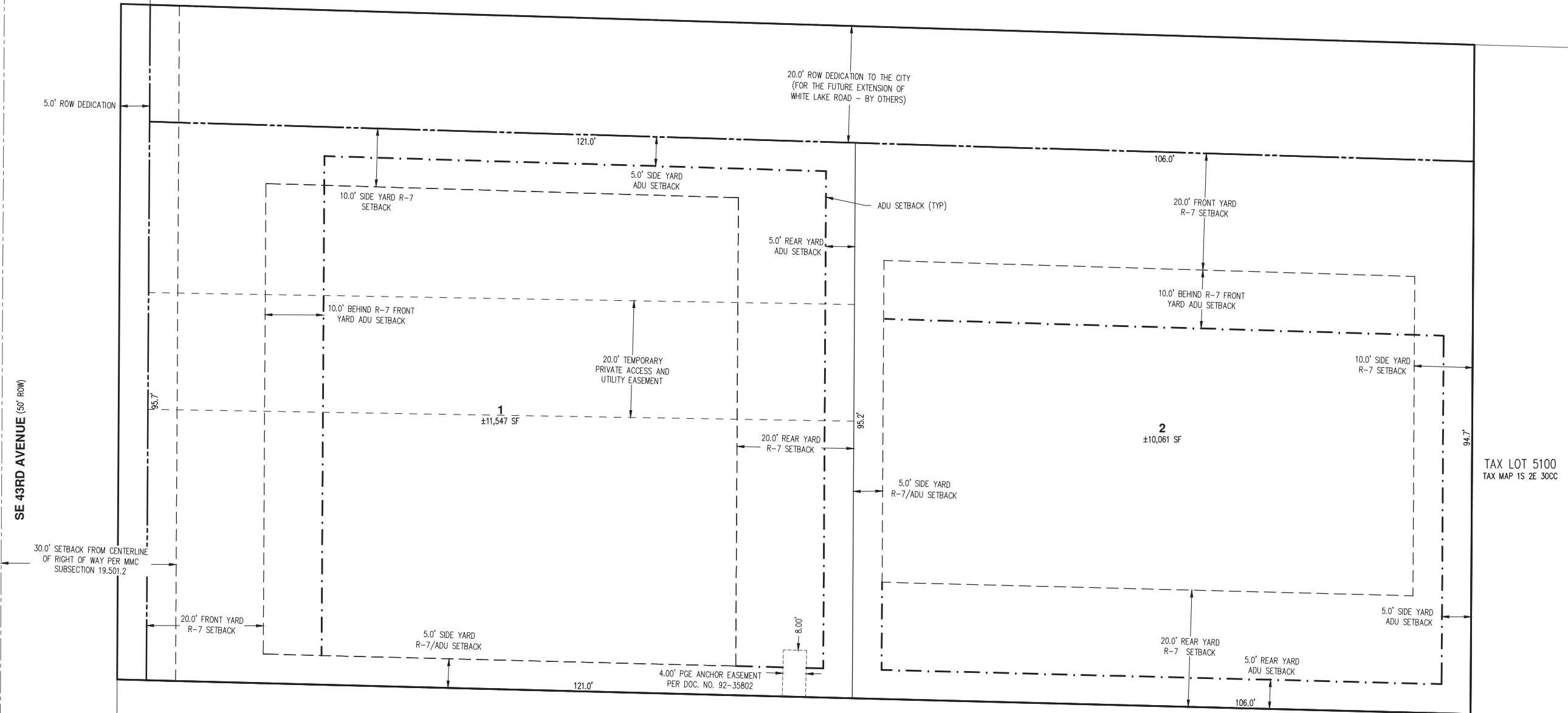


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 FORESTRY • PLANNING • LANDSCAPE ARCHITECTURE



TAX LOT 3403  
 TAX MAP 1S 2E 30CC



10244 SE 43RD AVENUE  
 PARTITION  
 MILWAUKIE OREGON  
 TAX MAP 1S 2E 30CC

PRELIMINARY PARTITION  
 PLAT WITH FUTURE  
 BUILDING SETBACKS

TAX LOT 5100  
 TAX MAP 1S 2E 30CC

SE 43RD AVENUE (60' ROW)

30.0' SETBACK FROM CENTERLINE  
 OF RIGHT OF WAY PER MMC  
 SUBSECTION 19.501.2

**PRELIMINARY PLAT DISCLAIMER**

THE PURPOSE OF THIS PRELIMINARY PLAT IS TO  
 SHOW DIMENSIONS FOR PLANNING PURPOSES. THIS  
 IS NOT A FINAL PLAT AND IS NOT TO BE USED  
 FOR SURVEYING PURPOSES.

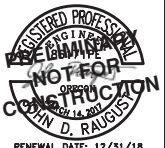
**MINIMUM REQUIRED R-7 ZONE SETBACK SUMMARY**

- 20.0' FRONT YARD SETBACK
- 20.0' REAR YARD SETBACK
- 5.0'/10.0' SIDE YARD SETBACK

**MINIMUM REQUIRED ADU DETACHED TYPE II SETBACK SUMMARY**

- 10.0' BEHIND FRONT YARD SETBACK UNLESS LOCATED AT LEAST 40.0' FEET FROM THE FRONT LOT LINE
- 5.0' REAR YARD SETBACK
- 5.0' SIDE YARD SETBACK

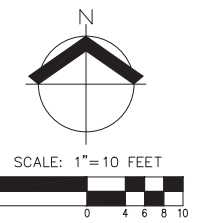
DESIGNED BY: JDR  
 DRAWN BY: CMS  
 CHECKED BY: JDR  
 SCALE: AS NOTED  
 DATE: 10/23/2018



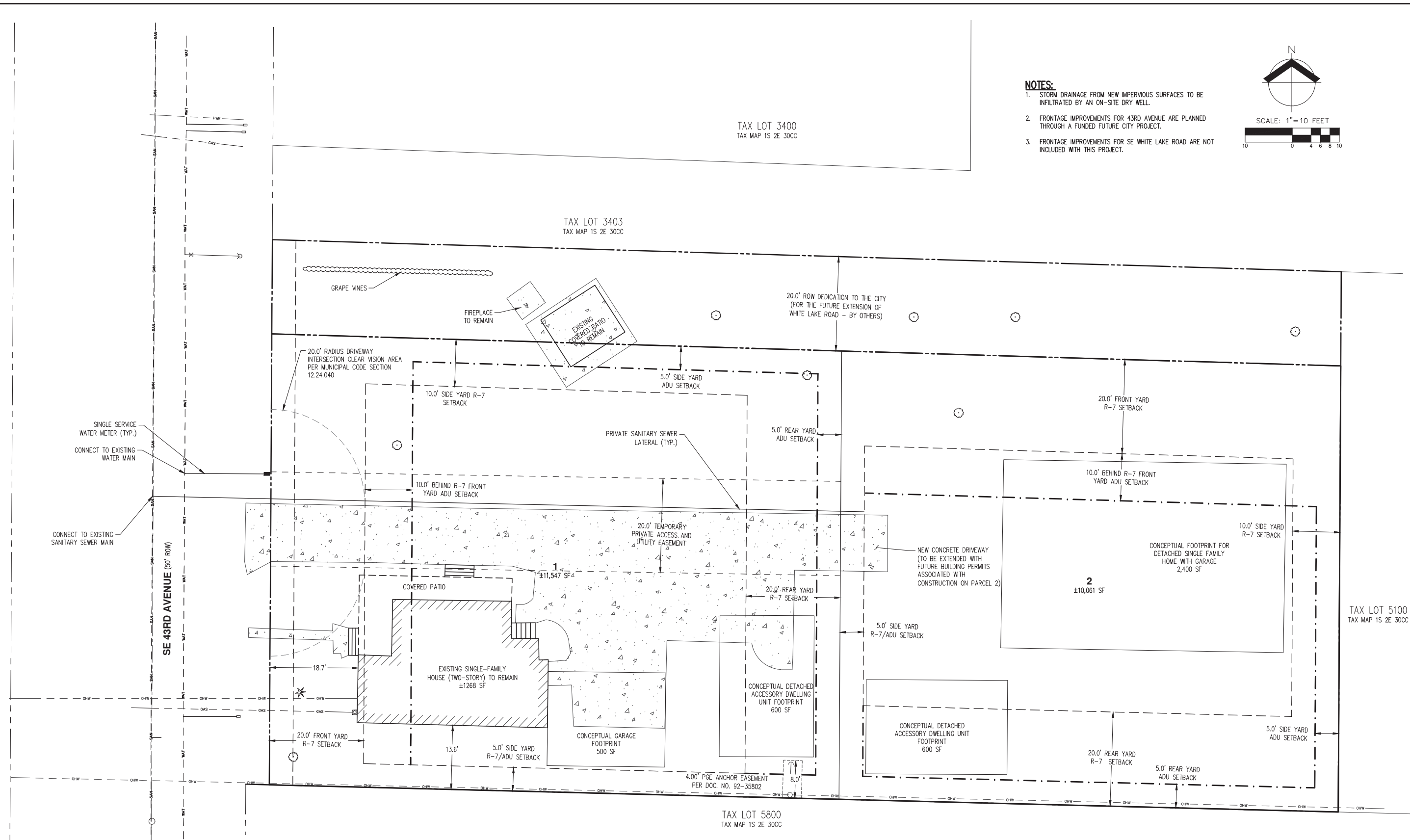
REVISIONS

JOB NUMBER  
 5042

SHEET  
 P-03



- NOTES:**
1. STORM DRAINAGE FROM NEW IMPERVIOUS SURFACES TO BE INFILTRATED BY AN ON-SITE DRY WELL.
  2. FRONTAGE IMPROVEMENTS FOR 43RD AVENUE ARE PLANNED THROUGH A FUNDED FUTURE CITY PROJECT.
  3. FRONTAGE IMPROVEMENTS FOR SE WHITE LAKE ROAD ARE NOT INCLUDED WITH THIS PROJECT.



**DEVELOPMENT STANDARD CALCULATIONS**

**LDR-7 ZONE STANDARDS**

MINIMUM LOT SIZE	7000 SF
MINIMUM LOT WIDTH	60'
MINIMUM LOT DEPTH	80'
MAXIMUM LOT COVERAGE	35% W/ADU
-MAX ADU FOOTPRINT	600 SF
MINIMUM VEGETATION	30%
MINIMUM FRONT YARD VEGETATION	40%
MINIMUM STREET FRONTAGE	35'

**PARCEL 1**

PARCEL SIZE	±11,547 SF
PARCEL WIDTH	95'
PARCEL DEPTH	121'
PARCEL COVERAGE	±21% (±2368 SF)
-EXISTING HOUSE FOOTPRINT	1268 SF
-GARAGE FOOTPRINT	±500 SF
-ADU FOOTPRINT	600 SF
VEGETATION	±58% (±6,723 SF)
FRONT YARD VEGETATION	±82% (±1571 SF)
STREET FRONTAGE	95'

**PARCEL 2**

PARCEL SIZE	±10,061 SF
PARCEL WIDTH	95'
LOT DEPTH	106'
LOT COVERAGE	±30% (±3000 SF)
-HOUSE/GARAGE FOOTPRINT	±2400 SF
-ADU FOOTPRINT	600 SF
VEGETATION	30% (3018 SF)
FRONT YARD VEGETATION	40% (±848 SF)
STREET FRONTAGE	106'

**MINIMUM REQUIRED ADU DETACHED TYPE II SETBACK SUMMARY**

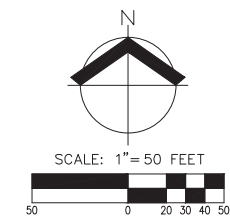
40.0'	FRONT LOT LINE SETBACK
10.0'	BEHIND FRONT YARD SETBACK
5.0'	REAR YARD SETBACK
5.0'	SIDE YARD SETBACK

**MINIMUM REQUIRED ADU DETACHED TYPE II SETBACK SUMMARY**

10.0'	BEHIND FRONT YARD SETBACK UNLESS LOCATED AT LEAST 40.0' FEET FROM THE FRONT LOT LINE
5.0'	REAR YARD SETBACK
5.0'	SIDE YARD SETBACK

**DENSITY CALCULATIONS**

**LDR-7 ZONE**  
 MINIMUM DENSITY=5.0 DU/AC  
 MAXIMUM DENSITY=6.2 DU/AC  
 PROPOSED UNITS=2.0 UNITS  
 TOTAL GROSS AREA=0.496 ACRES  
 MINIMUM UNITS=5.0 DU/AC X 0.496 ACRES=2.48 UNITS  
 =2.0 UNITS (ROUNDING PER MUNICIPAL CODE SECTION 19.202.4B)  
 MAXIMUM UNITS=6.2 DU/AC X 0.496 ACRES=3.08 UNITS  
 =3.0 DU (ROUNDING PER MUNICIPAL CODE SECTION 19.202.4B)  
 \*DU/AC: DWELLING UNITS PER ACRE



**ZONING LEGEND**

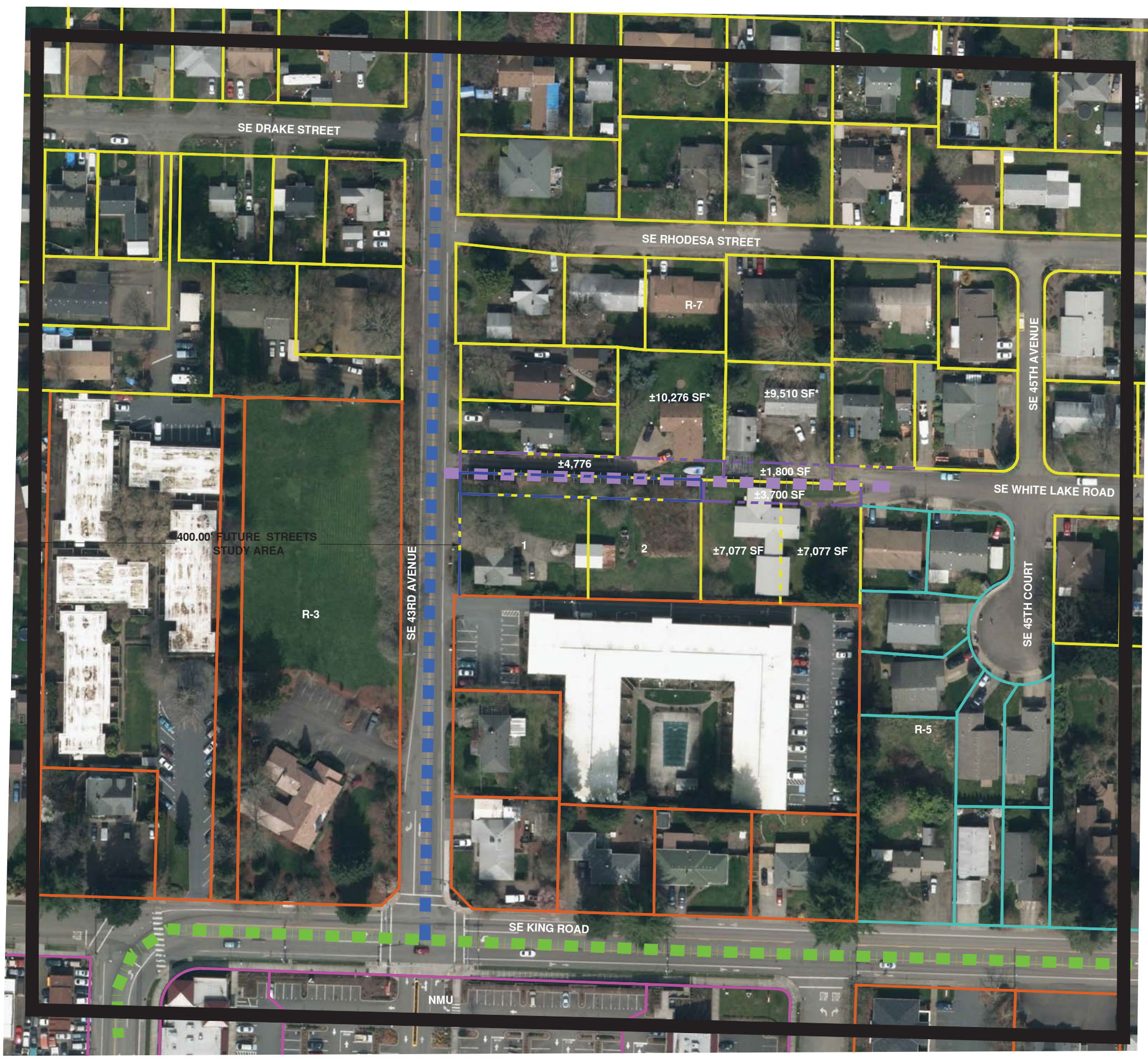
RESIDENTIAL:	
R-3	
R-5	
R-7	
CONCEPTUAL:	
R-7	
COMMERCIAL:	
NMU	

**STREET LEGEND**

ARTERIAL	
COLLECTOR	
CONCEPTUAL FUTURE LOCAL	
CONCEPTUAL FUTURE ROW DEDICATION	
PROPOSED ROW DEDICATION TO THE CITY (FOR THE FUTURE EXTENSION OF WHITE LAKE ROAD-BY OTHERS)	

**NOTES**

1. THIS CONCEPTUAL PLAN IS INCLUDED TO MEET THE SUBMITTAL REQUIREMENTS FOR THE CITY OF MILWAUKIE FOR THE LAND USE APPLICATION.
  2. THIS CONCEPTUAL PLAN IS SHOWN FOR ILLUSTRATIVE PURPOSES FOR THE LAND USE APPLICATION ONLY AND IS NOT INCLUDED WITH THIS SUBDIVISION.
- \*PER CURRENT ZONING STANDARDS THE LOT INDICATED CANNOT BE FURTHER DIVIDED





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## **Exhibit C: Clackamas County Assessor's Map**

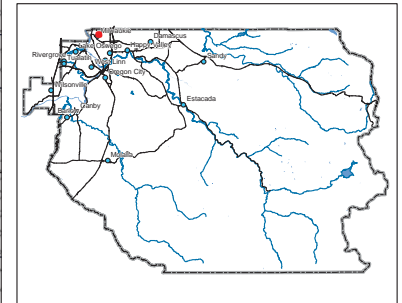
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D. L. C.  
HECTOR CAMPBELL NO. 41  
GEORGE WILLS NO. 42

Cancelled Taxlots

- 201
- 302
- 500
- 1600
- 2100
- 2200
- 2300
- 2601
- 2701
- 3001
- 3100
- 3200
- 3301
- 3402
- 3700
- 4300
- 4300
- 5000
- 5300
- 5302
- 5601
- 5900
- 7000
- 7500
- 7700A2
- 7700
- 7700A3
- 7700A4
- 7700E2
- 7700E1
- 7700A1
- 7701
- 7800
- 7900
- 7900A1
- 7900A2
- 8000
- 8400
- 8700A1

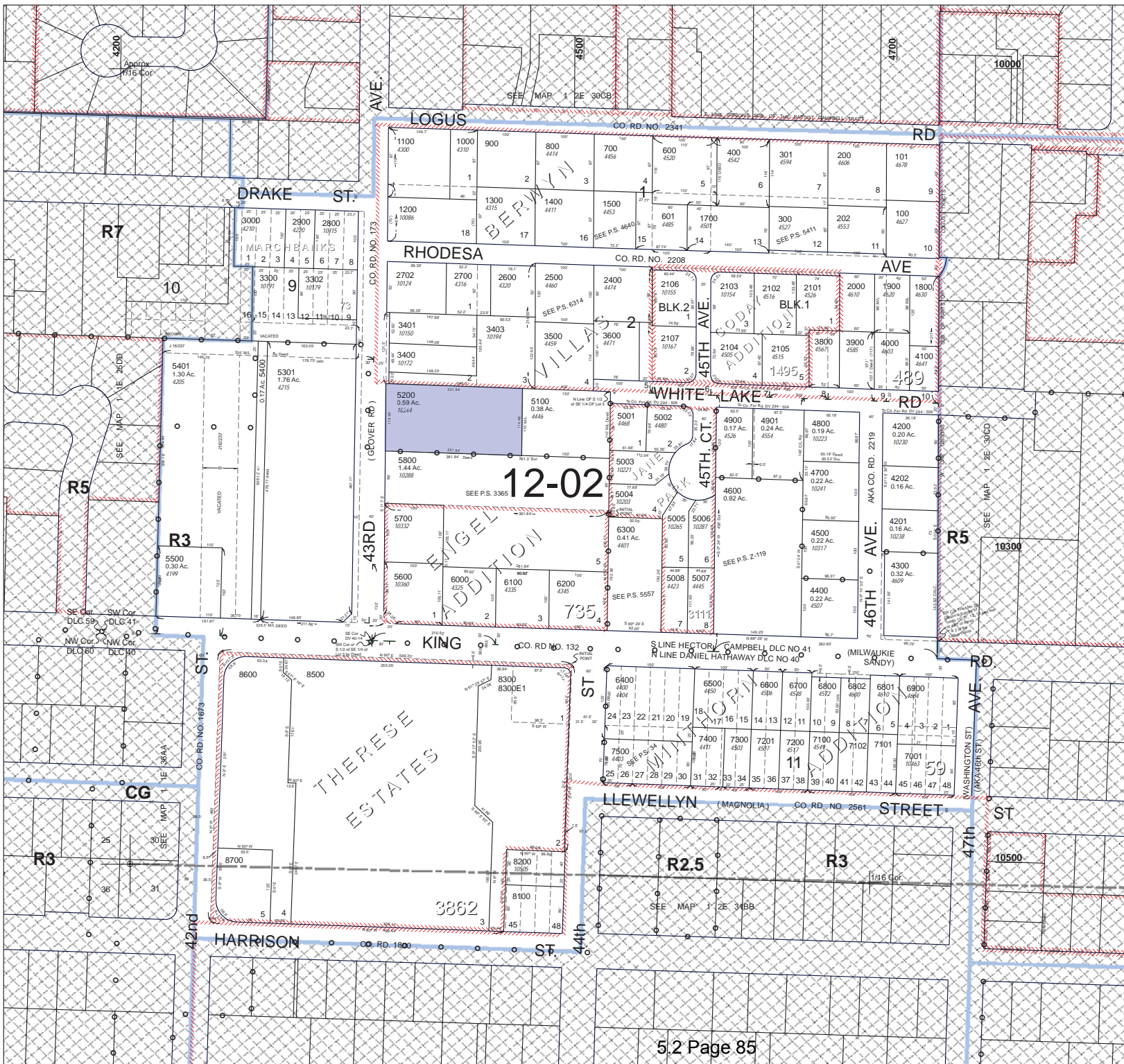
- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- TaxCodeLines
- Map Index
- WaterLines
- Land Use Zoning
- Plats
- Water
- Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- DLC Line
- Meander Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT  
PURPOSES ONLY



10/25/2010





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## **Exhibit D: City Preapplication Conference Report Summary**

---



January 29, 2018

Tony & Michelle DaRosa  
10244 SE 43<sup>rd</sup> Ave  
Portland OR 97222

**Re: Preapplication Report**

Dear Tony & Michelle:

Enclosed is the Preapplication Report Summary from your meeting with the City on January 4, 2018, concerning your proposal for action on property located at 10244 SE 43<sup>rd</sup> Ave.

A preapplication conference is required prior to submittal of certain types of land use applications in the City of Milwaukie. Where a preapplication conference is required, please be advised of the following:

- Preapplication conferences are valid for a period of 2 years from the date of the conference. If a land use application or development permit has not been submitted within 2 years of the conference date, the Planning Director may require a new preapplication conference.
- Departmental comments are based on the materials submitted for this preapplication conference. Any modifications to the project proposal at the time of land use application submission may affect city requirements.
- If a development proposal is significantly modified after a preapplication conference occurs, the Planning Director may require a new preapplication conference.

If you have any questions concerning the content of this report, please contact the appropriate City staff.

Sincerely,



Alicia Martin  
Administrative Specialist II

Enclosure

cc: file



**PRE-APPLICATION CONFERENCE REPORT**

---

**This report is provided as a follow-up to a meeting that was held on 1/4/2018 at 2:00 p.m.**

**Applicant Name:** Tony & Michelle DaRosa

**Company:**

**Applicant 'Role':** Owner

**Address Line 1:** 10244 SE 43rd Ave

**Address Line 2:**

**City, State Zip:** Milwaukie OR 97222

**Project Name:** 43rd Ave Partition

**Description:** two parcel partition

**ProjectAddress:** 10244 SE 43rd Ave

**Zone:** Residential R-7

**Occupancy Group:**

**ConstructionType:**

**Use:** Low Density (LD)

**Occupant Load:**

**AppsPresent:**

**Staff Attendance:**

**BUILDING ISSUES**

**ADA:**

**Structural:** Shall meet Oregon Residential Specialty Code (ORSC)

**Mechanical:**

**Plumbing:** If the sewer line is to cross the adjoining property, a copy of the recorded easement will need to be provided to the building division prior to final occupancy.

**Plumb Site Utilities:**

**Electrical:**

**Notes:**

Please note all drawings must be individually rolled. If the drawings are small enough to fold they must be individually folded.

### FIRE MARSHAL ISSUES

- Fire Sprinklers:** May be required if all portions of the building are not within 150 feet of fire department apparatus access.
- Fire Alarms:**
- Fire Hydrants:**
- Turn Arouds:**
- Addressing:**
- Fire Protection:**
- Fire Access:**
- Hazardous Mat.:**
- Fire Marshal Notes:**

### PUBLIC WORKS ISSUES

- Water:** A City of Milwaukie 8-inch water main on SE 43rd Avenue provides service to the proposed development. Service to the new lot will be required to be within an easement through the parent lot, or construction of new public water main will be required within the White Lake Road right-of-way. The water System Development Charge (SDC) is based on the size of water meter serving the property. The corresponding water SDC will be assessed with installation of a water meter. The water SDC will be assessed and collected at the time the building permits are issued.
- Sewer:** A City of Milwaukie 8-inch wastewater main on SE 43rd Avenue provides to service the proposed development. Service to the new lot will be required to be within an easement through the parent lot or construction of a new public sewer main will be required within the White Lake Rd. right-of-way. Currently, the wastewater System Development Charge (SDC) is comprised of two components. The first component is the City’s SDC charge of \$1,100 per 16 plumbing fixture units in accordance with the Uniform Plumbing Code and the second component is the County’s SDC for treatment of \$6,295 per equivalent dwelling unit that the City collects and forwards to the County. The wastewater SDC will be assessed and collected at the time the building permits are issued. Applicant has expressed interest in construction ADU’s on each lot. These buildings will require additional sewer SDC’s.
- Storm:** No City storm system is available for the proposed partition. The impervious area created by the roof of the new buildings do not require treatment, and must be connected directly to an approved infiltration system. Any driveway construction that creates an excess of 1000 square feet of impervious surface must include a storm water treatment facility in accordance with the City of Milwaukie stormwater manual and an approved infiltration system. Infiltration testing will be required by any proposed development of the lots that create or alter 1000 square feet of impervious surfacing (including roofs).  
The storm SDC is based on the amount of new impervious surface constructed at the site. Each single-family lot is one stormwater unit. The storm SDC is currently \$863 per unit. The storm SDC will be assessed and collected at the time the building permits are issued.

**Street:** The proposed development fronts the east side of SE 43rd Avenue, a collector street. The existing single-family residential driveway is a non-conforming use. Any modification of the driveway may trigger additional requirements based on impact and proposed use. The portion of SE 43rd fronting the proposed development has a half right-of-way width of 20 feet along the frontage and a paved half street width of approximately 13 feet and is undeveloped on both sides of the street. MMC 19.708 would require a minimum half street width of 17 feet and a right-of-way width of 30 feet. A right-of-way reduction to 25 feet could be granted if requested by the application and found to be in conformance with the requirements of 19.708.2.B.

The Transportation SDC will be based on the increase in trips generated by the new use per the Trip Generation Handbook from the Institute of Transportation Engineers. The SDC for transportation is \$1,921 per trip generated. Credits will be given for any demolished structures, which shall be based upon the existing use of the structures. Transportation SDC's will be assessed and collected at the time the build permits are issued.

**Frontage:** Chapter 19.700 of the Milwaukie Municipal Code (MMC) applies to partitions, subdivisions, new construction, and modification and/or expansion of existing structures or uses. MMC 17.12.040.A.1 Approval Criteria for Preliminary Plat requires that the "proposed preliminary plat comply with Title 19 of this code and other applicable ordinance, regulations, and design standards". Transportation Facility Requirements, MMC Section 19.708, states that all rights-of-way, streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public right-of-way and abutting the development site shall be adequate at the time of development or shall be made adequate in a timely manner. This would require construction of 17-foot wide, half street, asphalt road along the frontage of the development property of 43rd Avenue, then full 2/3rd frontage improvements in front along the frontage of White Lake Rd. Rough proportionality analysis is showing that the construction of these improvements will not be proportional to the anticipated impacts of one new single-family house and two ADU's. Therefore, only dedication is anticipated to be required for the proposal as submitted unless access modification cannot be justified in accordance with MMC 12.16.040.B.2.d. Dedication requirements are shown below under Right-of-Way.

**Right of Way:** MMC subsection 17.12.040.A states that streets and roads are to be laid out to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern. MMC 19.708 states the minimum requirements for street connectivity, layout, design and spacing. The lot configuration that was presented in the pre-application meeting complies with these requirements.

The existing right-of-way on SE 43rd Avenue fronting the proposed development is 20-feet wide. The minimum required dedication of 5-feet would be required to accommodate the minimum cross section that includes bike lanes as described in 19.708.2.B. The 20-foot dedication that is proposed for the future White Lake Rd. complies with the requirement of 19.708.2.B taking into account the existing right-of-way dimensions of White Lake Road is 20 feet. The minimum dedication required would be 17-feet in width. This would provide for the minimum local street requirements, but would not include a landscape strip or on street parking.

**Driveways:** The proposed partition dedicates right-of-way for the future extension of White Lake Rd. All lots created have access to White Lake Rd. and will be required to obtain permanent access from White Lake Rd. once it is constructed. MMC 12.16.040.A states that access to private property shall be permitted with the use of driveway curb cuts and driveways shall meet all applicable guidelines of the Americans with Disabilities Act (ADA). MMC 12.16.040.B.1 governs the requirement for driveway spacing for driveways (accessways). SE 43rd Avenue is a collector street, and the minimum access spacing is 300-feet and the creation and/or modification of single-family accessways is prohibited. Therefore, a new access onto 43rd will not be permitted without approval of a accessway modification in accordance with MMC 12.16.040.B.2 through the use of temporary accesses to 43rd. The final approval of this modification is by the Engineering Director.

MMC 12.16.040.A also indicates that driveway approaches shall be improved to meet the requirements of Milwaukie's Public Works Standards. This means that any new or modified access shall be improved to City of Milwaukie Standard.

**Erosion Control:**

Per MMC Section 16.28.020(C), an erosion control permit is required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which results in the disturbance or exposure of soils exceeding five hundred square feet.

MMC Section 16.28.020(E) states that an erosion control permit is required prior to issuance of building permits or approval of construction plans. Also, Section 16.28.020(B) states that an erosion control plan that meets the requirements of Section 16.28.030 is required prior to any approval of an erosion control permit.

**Traffic Impact Study:**

MMC 19.704 states the Engineering Director will determine whether a proposed development has impacts on the transportation system by using existing transportation data. If the Engineering Director cannot properly evaluate a proposed development's impacts without a more detailed study, a transportation impact study (TIS) will be required to evaluate the adequacy of the transportation system to serve the proposed development and determine proportionate mitigation of impacts. It is the responsibility of the applicant to provide enough detailed information for the Engineering Director to make a TIS determination. The Engineering Director has determined that sufficient existing transportation data is available for the City to determine the transportation system impacts of the development and a project specific TIS is not required for this development.

**PW Notes:**

**APPLICABILITY OF PRE-APPLICATION REVIEW**

The comments provided are intended to address the original application materials submitted unless otherwise specifically called out in the notes. The information contained within these notes may change over time due to changes or additional information presented for the development. This pre-application review is for the following:

The partition of a parcel of land into two lots with dedication for White Lake Rd. along the northern boundary and 43rd Avenue along the western boundary. The proposed partition will support two single family homes and two ADU's.

**DEDICATED WHITE LAKE ROAD RIGHT-OF-WAY**

The dedicated land in the future White Lake Road right-of-way can remain in its current form until the construction of White Lake Road occurs. All existing structures and vegetation may remain unchanged. There will be no additional fencing requirements or signage. A right-of-way encroachment permit will be required that formalizes the revocable permission for the existing structures to be in the right-of-way and includes language that the structures must be removed when an improvement is constructed. Access to this new right-of-way will be controlled by the City of Milwaukie. The only access that will be permitted to 43rd avenue is through an access modification in accordance with MMC 12.16.040.B.2.

MMC 8.04.110 governs the legal responsibility of adjacent property owners with regards to vegetation and trees. After dedication, some trees will no longer be on private property, but will be in the right-of-way and will then be governed by the tree removal code MMC 16.32.026.

**SYSTEM DEVELOPMENT CHARGES (SDC)**

There was insufficient information to estimate SDC's with the pre-application submitted. All SDC's are calculated, assessed, and collected at the time of building permit is issued. Any changes in the proposed use may result in a change in the SDC's that are assessed. If the applicant needs an estimate of SDC's then staff can provide the specific information to be submitted by the applicant required to calculate SDC's for a given proposal.

In addition to the SDC's mentioned earlier, there is a Parks & Recreation System Development Charge

(SDC) that is triggered when application for a building permit on a new dwelling is received. Currently, the parks and recreation SDC for each Single-Family Residence is \$3,985.00. Credit is applied to any demolished structures and is based upon the existing use of the structures. The parks and recreation SDC will be assessed and collected at the time the building permits are issued.

#### ADDITIONAL REQUIREMENTS

- Engineered plans for any required public improvements (street, sidewalk, and utility) are to be submitted and approved prior to start of construction. Full-engineered design is required along the frontage of the proposed development.
  
- The applicant shall pay an inspection fee of 5.5% of the cost of public improvements prior to start of construction.
  
- The applicant shall provide a payment and performance bond for 100% of the cost of the public improvements prior to the start of construction.
  
- The applicant shall provide a final approved set of Mylar “As Constructed” drawings to the City of Milwaukie prior to the final inspection.
  
- The applicant shall provide a 12-month maintenance bond for 100% of the cost of the public improvements prior to the final inspection.

#### ALTERNATIVE PLAT PROPOSAL

- The applicant submitted an alternative partition proposal after the preapplication conference without the dedication of White Lake Rd. This proposal does not comply with sections of Chapters 12, 17 and 19 of the Milwaukie Municipal Code (MMC).
- MMC 19.702.1 states that chapter 19.700 applies to all partitions.
  - MMC 19.708.1 states all developments subject to chapter 19.700 shall comply with access management standards contained in MMC chapter 12.16.
  - MMC 19.708.1.D applies to all developments outside the downtown zones and specifies the dedication of right-of-way in conformance with 19.708.2.
  - MMC 19.708.1.E addresses street layout and connectivity. The proposal would create the need for a permanent turnaround on White Lake Rd.
  - MMC 19.708.1.F address intersection design and spacing requirements which includes street intersection spacing requirements. These requirements are also contained in the Milwaukie Transportation System Plan which states “When the opportunity arises during land development, the City requires new local connections that will result in a grid of vehicle access every 530 feet and bicycle/pedestrian access every 300 feet. This standard meets the Metro RTP access spacing requirements for new residential or mixed-use developments. The arrows shown on Figure 8-4 indicate priority local and neighborhood connections only. Local connections for existing stub end streets, cul-de-sacs, or extended cul-de-sacs in the road network are, for the most part, not identified on this figure. Pedestrian connections from any cul-de-sac should be considered mandatory as future development and redevelopment occurs. The goal is improved connectivity for all modes of transportation.” The application does not meet TSP Goal 2, 3 or 5 and the direction that the City enhance street connectivity and maintain traffic flow, especially on arterials and collectors.
  - MMC 19.708.2 addresses street design standards. MMC 19.708.2.B specifies street design determination guidelines and establishes the Engineering Director as the final authority regarding right-of-way and street element widths.
  - MMC 19.708.5 addresses additional pedestrian/bicycle requirements that would be applicable under the proposal.
  - MMC 12.16.020 states new and modifications of accessways are subject to MMC 12.16 which the

proposal could not comply with due to the creation and/or modification of accessways on 43rd Avenue, a collector street.

-The proposal cannot meet the standards for accessway spacing requirements contained in MMC 12.16.040.B. The proposal creates a new single-family residential lot which is prohibited access onto a collector in accordance with MMC 12.16.040.C.2. In addition, the new multi-family (duplex) lot created also cannot comply with 12.16.040.D.4.

Therefore, approval of the alternate proposal could not be approved under the conditions contained in MMC 17.12.040.A (1,2 & 4) without the condition for right-of-way dedication allowed under 17.12.040.B which is possible under the submitted pre-application proposal.

## PLANNING ISSUES

### Setbacks:

Yard requirements for the Residential R-7 zone are established in Milwaukie Municipal Code (MMC) Subsection 19.301.4. Minimum front and rear yards are 20 ft, side yards must be at least 5 ft on one side and 10 ft on the other (for interior lots), and street-side yards must be at least 20 ft (for corner lots).

As per MMC Subsection 19.501.2, there is an additional setback requirement on 43rd Ave, measured 30 ft from the centerline of the public right-of-way. That setback is applied in addition to the R-7 front yard setback of 20 ft. If any required right-of-way dedication along 43rd Ave results in the existing house falling out of conformance with the setback standard (which is allowed by MMC Section 19.504.2), the existing house would simply become nonconforming with respect to the front yard setback requirement and therefore subject to the provisions of MMC Chapter 19.800 (Nonconforming Uses and Development).

Yard setbacks for accessory structures are established in MMC Subsection 19.502.2 and depend on the size and height of the proposed structure, varying from 3 ft to 5 ft to the same standards as the base zone (R-7). Accessory structures must be located beyond the front yard of the primary structure, unless they are at least 40 ft from the front lot line.

Yard setbacks for accessory dwelling units (ADUs) are provided in MMC Table 19.910.1.E.4.b and vary depending on the ADU review type (I or II). The proposed ADUs are over 600 sq ft and so would require Type II review, with minimum side and rear yard setbacks of 5 ft. Regardless of review type, detached ADUs must be at least 10 ft behind the front yard (measured at the front face of the primary structure) unless they are at least 40 ft from the front lot line.

Note that establishment of public right-of-way for a connection to White Lake Rd could affect future consideration of lot orientation with respect to front and street-side yards.

### Landscape:

In the R-7 zone, a minimum of 30% of the site must be landscaped. In addition, at least 40% of the front yard area must be vegetated (measured from the front property line to the front face of the house). Vegetated areas may be planted in trees, grass, shrubs, or bark dust for planting beds, with no more than 20% of the landscaped area finished in bark dust (as per MMC Subsection 19.504.7). A maximum of 30% of the site may be covered by structures, including decks or patios over 18 in above grade.

### Parking:

As per the off-street parking standards of MMC Chapter 19.600, properties that contain single-family dwellings must provide at least 1 off-street parking space per dwelling unit. Properties with an ADU and primary dwelling unit must provide a minimum of 2 off-street parking spaces. As provided in MMC Subsection 19.607.1, required residential off-street parking spaces must be at least 9 ft wide and 18 ft deep. The required spaces cannot be located within a required front or street-side yard and must

have a durable and dust-free hard surface.

Uncovered parking spaces and maneuvering areas cannot exceed 50% of the front yard area and 30% of the required street-side yard area. No more than 3 residential parking spaces are allowed within the required front yard. Parking areas and driveways on the property shall align with the approved driveway approach and shall not be wider than the approach within 5 ft of the right-of-way boundary. Alternately, a gradual widening of the onsite driveway is allowed to the 10-ft point at a ratio of 1:1 (driveway width to distance onto property), starting 2 ft behind the front property line. See the figures provided in MMC 19.607 for more information.

Where an existing off-street parking situation does not conform to the current standards, new development will trigger a requirement to bring the site closer to conformance, if not fully into conformance, depending on the nature and scale of the new development. In the partition context, the applicant shall ensure that the proposed land division does not cause the lot with the existing house to fall out of conformance with the off-street parking standards.

**Transportation Review:** The partition, as well as new development of an ADU(s), will trigger the requirements of MMC Chapter 19.700 Public Facility Improvements. Please see the Public Works (Engineering) notes for more information about the requirements of MMC 19.700 and any associated right-of-way dedication and/or street improvements.

**Application Procedures:** The land use applications required depend on the applicant's final proposal but could include the following:

- \* Minor Land Partition -- Preliminary Plat (Type II review)
- \* Final Plat (Type I review)
- \* Accessory Dwelling Unit (Type I or Type II review)
- \* Variance (Type II or III review)

Minor land partitions are processed with Type II review, and the current fee for a preliminary plat application is \$2,000. Following approval of the preliminary plat, a final plat application is required and will be processed with Type I review (current application fee is \$200).

The submittal should include the standard Land Use Application Form, a Submittal Requirements Checklist, and Preliminary Plat or Final Plat Checklist.

The approval criteria for a preliminary plat are established in MMC Subsection 17.12.040.A and include several requirements that collectively relate to the City's responsibility for enhancing street connectivity: (1) show compliance with applicable provisions of Titles 17 (Land Division) and 19 (Zoning); (2) allow reasonable development and not create the need for a variance of any land division or zoning standard; and (3) lay out streets and roads to conform to the plats of subdivisions already approved for adjoining property.

In addition, the information required with the preliminary plat application (as per MMC Subsection 17.20.060 Proposed Conditions) includes a conceptual plan for complete subdivision or partitioning of the property, as well as any adjacent vacant or underutilized properties, so that access issues may be addressed in a comprehensive manner. The concept plan is required to include documentation that all options for access have been investigated including shared driveways, pedestrian accessways, and new street development.

The existing White Lake Rd ends just one lot to the east of the subject property. The property at 4446 SE White Lake Rd is large enough for future redevelopment and will trigger a requirement for dedication to the White Lake Rd ROW when it does, to extend the street west and closer to a connection with 43rd Ave. MMC Subsection 19.708.1.E.3 requires streets to be extended to the

boundary lines of the developing property where necessary to give access to or allow for future development of adjoining properties. MMC Subsection 19.708.1.F and MMC Table 19.708.1 provide standards for intersection design and spacing, including maximum intersection spacing distance and maximum block perimeter for collectors like 43rd Ave. These requirements must be addressed in the partition application.

The City interprets these various provisions as direction to complete the connection from White Lake Rd to 43rd Ave when possible, and so a proposal to partition the subject property should address the applicable code provisions accordingly. As per MMC Section 17.44.10, request(s) for relief from any of these applicable standards would be processed through the variance provisions established in MMC Section 19.911.

An application for one Accessory Dwelling Unit (ADU) may be submitted prior to the approval of the final plat, as the existing lot is developed with a primary dwelling and is therefore entitled to establish an ADU. A second ADU application (for an ADU on the new lot) cannot be submitted until the final plat process is completed and then must be accompanied by a building permit submittal for a single-family detached dwelling on that lot. The standards and criteria for ADUs are provided in MMC Subsection 19.910.1, where two different review processes are identified. The application fees are \$200 for a Type I ADU and \$1,000 for a Type II ADU.

The size of the proposed ADUs would need to be revised to a maximum structural footprint and floor area of 800 sq ft or a variance would be required (see the applicable ADU standards in MMC Subsection 19.910.1.E). Requests for relief from other applicable requirements will be processed according to the provisions for variances as outlined in MMC Section 19.911. The application fees are \$1,000 for a Type II variance and \$2,000 for a Type III variance. As per MMC Subsection 19.911.3.A.3, one variance application may include up to 3 separate variance requests; additional variance requests must be made on a separate variance application.

The applicant should submit 5 complete copies of all application materials for the City's initial review. A determination of the application's completeness will be issued within 30 days. If deemed incomplete, additional information will be requested. If deemed complete, additional copies of the application will be required for referral to other departments, the Lewelling Neighborhood District Association (NDA), and other relevant parties and agencies. City staff will inform the applicant of the total number of copies needed.

In the Type II review process, public notice of the application is mailed to property owners and residents within 300 ft of the subject property no later than 7 days after the application is deemed complete, with 14 days allowed for comments in response. Within 7 days of being deemed complete, a sign giving notice of the application must be posted on the subject property, to remain until the decision is issued. A decision by the Planning Director will not be issued before the end of the 14-day comment period.

In the Type III review process, a public hearing with the Planning Commission will be scheduled once the application is deemed complete. Public notice will be sent to property owners and current residents within 300 ft of the subject property no later than 20 days prior to the hearing date. Staff will prepare a report with analysis of the proposal and a recommendation for decision that will be made available one week before the hearing. Both staff and the applicant will have the opportunity to make presentations at the hearing, followed by public testimony and then deliberation by the Commission.

Issuance of a decision starts a 15-day appeal period for the applicant and any party who establishes standing. Development permits submitted during the appeal period may be reviewed but are not typically approved until the appeal period has ended.



Prior to submitting the application, the applicant is encouraged to present the project at a regular meeting of the Lewelling NDA, which occurs at 6:30 p.m. on the second Wednesday of every month at the Milwaukie Café & Bottle Shop (9401 SE 32nd Ave).

**Natural Resource Review:** The subject property does not include any designated natural resource areas.

**Lot Geography:** The subject property is a rectilinear lot, approximately 114.5 ft by 232 ft in dimension and approximately 26,560 sq ft in area, with frontage on 43rd Ave to the west.

**Planning Notes:** General Note = These notes represent staff's best evaluation of the applicant's proposal(s) in advance of any official submittal of a land use application. They do not represent approval or denial of the proposed action, only an assessment of the issues and likely requirements.

The applicant has expressed interest in partitioning the property to retain the existing house at 10244 SE 43rd Ave on one lot and establish a second lot for development with either a single-family house or duplex. The applicant has also indicated interest in building a future ADU on one or both lots.

This 0.61-acre property in the R-7 zone (which requires a minimum density of 5.0 units/acre and allows a maximum density of 6.2 units/acre) has a minimum required density of 3 units and maximum allowed density of 4 units. Without reduction of the property area, such as through a dedication of property for public right-of-way (ROW), a partition proposal must demonstrate that at least one of the new parcels would be large enough for duplex development. Note that ADUs do not factor into the calculation of minimum or maximum density.

The applicant requested an evaluation of two concepts for partitioning the subject property:

**Option 1:**

One concept involves splitting the property almost in half with a north-south boundary line, the idea that was the focus of discussion at the pre-app conference itself. The required 35 ft of street frontage for the new back lot would be established through a 20-ft-wide ROW dedication from 43rd Ave along the entire northern boundary of the subject property. Ordinarily, such a partition would require construction of street improvements along the new White Lake Rd frontage, including the minimum asphalt necessary to provide approvable access from 43rd Ave. However, in light of the applicant's expressed interest in maintaining existing vegetation in the future ROW area, and given that establishment of a complete connection to the existing White Lake Rd to the east does not appear imminent, the City's Engineering Director has indicated willingness to forego construction of street improvements at this time. Shared access could be allowed as an interim measure through the existing driveway serving the parent lot at 10244 SE 43rd Ave. An analysis of proportionality would confirm whether additional ROW dedication along 43rd Ave would be justifiable for the proposed partition.

**Option 2:**

The second concept would be to propose creating two parcels that each have frontage on 43rd Ave, for which the applicant provided a site plan to staff after the pre-app conference. The lot configuration shown on the applicant's site plan appears to meet the compound lot line standard of MMC Subsection 17.28.040.C, which allows cumulative lateral changes in side or rear property lines up to 10% of the distance between opposing lot corners. The proposed parent lot (with the existing house) does not appear to meet the minimum 60-ft width required of lots in the R-7 zone, so a Type II variance may be required for relief from that standard. See the Public Works (Engineering) notes for more information on the standards for street design and access management that must be addressed for approval of the preliminary plat. If the applicable standards cannot be met, variances will be required for partition approval. Note that approval of a partition based on the second concept will likely have to demonstrate that new development on the subject property will not preclude a future connection to White Lake Rd.

This is a preliminary evaluation of the partition concepts proposed by the applicant. To obtain an actual determination regarding compliance with code standards, the applicant must submit an actual partition proposal and then follow the process to allow the issuance of a decision that could then be appealed if necessary

Other notes:

Single-family design standards are provided in MMC Subsection 19.505.1 and include requirements on any street-facing façade for articulation, minimum window area, and a main entrance. Additional standards require a minimum number of basic design features. The provisions of MMC Subsection 19.505.2 limit the width and setback location of an attached garage or carport on the street-facing façade.

Minimal development and design standards for accessory structures are provided in MMC Subsection 19.502.2.A and include a requirement for at least 5 ft of separation between the exterior wall of an accessory structure and other structures on the site. Metal siding is prohibited on structures over 10 ft high or larger than 200 sq ft (unless it replicates siding on the primary structure); a minimum 4/12 roof pitch is required for structures over 10 ft high.

One ADU is allowed on a lot with a single-family dwelling; an ADU is not allowed on a lot with a duplex. The standards and approval criteria for ADUs are established in MMC Subsection 19.910.1, with Type I and Type II review processes depending on the size and height of the structure in which the ADU is located. The maximum allowable floor area is 800 sq ft or 75% of the floor area of the primary structure, whichever is less. For detached ADUs, the maximum footprint of the structure in which the ADU is located is 800 sq ft, with a maximum height of 25 ft and 2 stories (with Type II review).

Detached ADU structures must include at least 2 detailed design elements from the list provided in MMC Subsection 19.910.1.E.4.c, such as a recessed entry, covered porch, roof eaves, horizontal lap siding, etc. ADUs reviewed through the Type II process may be required to address the privacy standards established in MMC Subsection 19.910.1.E.4.d in order to meet the approval criteria for Type II ADUs established in MMC Subsection 19.910.1.D.2.

Note that, as per MMC Subsection 19.910.1.F.1, either the primary or accessory dwelling unit must be occupied by the owner of the property, with a deed restriction recorded to that effect.

#### **ADDITIONAL NOTES AND ISSUES**

**County Health Notes:**

**Other Notes:**

**This is only preliminary preapplication conference information based on the applicant's proposal and does not cover all possible development scenarios. Other requirements may be added after an applicant submits land use applications or building permits. City policies and code requirements are subject to change. If you have any questions, please contact the City staff that attended the conference (listed on Page 1). Contact numbers for these staff are City staff listed at the end of the report.**

**Sincerely,**

**City of Milwaukie Development Review Team**

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**BUILDING DEPARTMENT**

**Samantha Vandagriff - Building Official - 503-786-7611**

**Stephanie Marcinkiewicz**

**- Inspector/Plans Examiner - 503-786-7613**

**ENGINEERING DEPARTMENT**

**Chuck Eaton - Engineering Director - 503-786-7605**

**Alex Roller - Engineering Tech II - 503-786-7695**

**COMMUNITY DEVELOPMENT DEPARTMENT**

**Alma Flores - Comm. Dev. Director - 503-786-7652**

**Leila Aman - Development Manager - 503-786-7616**

**Alicia Martin - Admin Specialist - 503-786-7600**

**PLANNING DEPARTMENT**

**Dennis Egnor - Planning Director - 503-786-7654**

**David Levitan - Senior Planner - 503-786-7627**

**Brett Kelder - Associate Planner - 503-786-7657**

**Vera Kalias - Associate Planner - 503-786-7653**

**Mary Heberling - Assistant Planner - 503-786-7658**

**CLACKAMAS FIRE DISTRICT**

**Mike Boumann - Lieutenant Deputy Fire Marshal - 503-742-2673**

**Matt Amos - Fire Inspector - 503-742-2661**

# Clackamas County Fire District #1

## Fire Prevention Office



### E-mail Memorandum

**To:** City of Milwaukie Planning Department  
**From:** Matt Amos, Fire Inspector, Clackamas Fire District #1  
**Date:** 1/29/2018  
**Re:** Two Parcel Partition 10244 SE 43<sup>rd</sup> Ave. 18-002PA

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This review is based upon the current version of the Oregon Fire Code (OFC), as adopted by the Oregon State Fire Marshal's Office. The scope of review is typically limited to fire apparatus access and water supply, although the applicant must comply with all applicable OFC requirements. When buildings are completely protected with an approved automatic fire sprinkler system, the requirements for fire apparatus access and water supply may be modified as approved by the fire code official. The following items should be addressed by the applicant:

#### COMMENTS:

The Fire District has no comments for this proposal.

## **Exhibit E: Ownership Information**

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RECORDING REQUESTED BY:



Fidelity National Title  
Company of Oregon

10200 SW Greenburg Rd, Suite 110  
Portland, OR 97223

Escrow No.: 45141508450

GRANTOR'S NAME:

Anthony Huynh and Bich Bui

GRANTEE'S NAME:

Antonio J. Da Rosa and Michelle D. Da Rosa, as tenants by the  
entirety

SEND TAX STATEMENTS TO:

Tony J. Da Rosa and Michelle D. Da Rosa  
1001 SW Fifth Avenue, Suite 1100  
Portland, OR 97204

AFTER RECORDING RETURN TO:

Tony J. Da Rosa and Michelle D. Da Rosa  
1001 SW Fifth Avenue, Suite 1100  
Portland, OR 97204

00078828

10244 SE 43rd Avenue, Milwaukie, OR 97222

Clackamas County Official Records  
Sherry Hall, County Clerk

2015-038745

06/19/2015 10:24:26 AM

D-D Cnt=1 Stn=5 KANNA  
\$15.00 \$16.00 \$10.00 \$22.00

\$63.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STATUTORY WARRANTY DEED

Anthony Huynh and Bich Bui, Grantor, conveys and warrants to

Antonio J. Da Rosa and Michelle D. Da Rosa, as tenants by the entirety, Grantee, the following described real  
property, free and clear of encumbrances except as specifically set forth below, situated in the County of  
Clackamas, State of Oregon:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS TWO HUNDRED TWENTY  
THOUSAND AND NO/100 DOLLARS (\$220,000.00). (See ORS 93.030).

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 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.

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: 06/16/15

Anthony Huynh

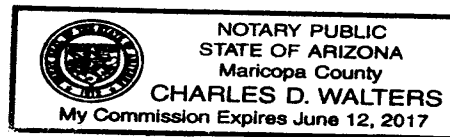
Bich Bui

State of ~~OREGON~~ ARIZONA *AK*

County of Maricopa *AK*

This instrument was acknowledged before me on JUNE 16, 20 15 by  
Anthony Huynh and Bich Bui

Notary Public - State of ~~Oregon~~ Arizona *AK*



Fidelity National Title of Oregon  
45141508450-10

**EXHIBIT "A"**  
Legal Description

Part of the Hector Campbell Donation Land Claim No. 41 in Section 30, Township 1 South, Range 2 East of the Willamette Meridian, in the City of Milwaukie, County of Clackamas and State of Oregon, described as follows:

Beginning at the Southwest corner of Lot 2, Block 2, BERWYN VILLAS; thence East along the South line of said block, 231.84 feet; thence South parallel with the East line of SE Glover Road, 114.48 feet to a point 89 feet North (measured parallel with said East road line) of the North line of ENGEL ADDITION; thence West parallel with and 89 feet North of said addition, 231.84 feet to the said East Road line; thence North 114.48 feet, more or less, to the place of beginning.

**EXHIBIT "ONE"**  
**EXCEPTIONS**

**Order No.:** 45141508450

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

Granted to: Portland General Electric Company, an Oregon corporation  
Purpose: Anchor  
Recording Date: June 12, 1992  
Recording No.: 92-035802



## **Exhibit F: Infiltration Test Results**

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Real-World Geotechnical Solutions  
Investigation • Design • Construction Support

August 9, 2018  
Project No. 18-5005

**Michelle Da Rosa**  
1001 SW Fifth Avenue, Suite 1100  
Portland, OR 97204  
Via email: [mdarosa@landandcondolaw.com](mailto:mdarosa@landandcondolaw.com)

CC: John Raugust, AKS Engineering & Forestry, LLC. Via email: [JohnR@aks-eng.com](mailto:JohnR@aks-eng.com)

**SUBJECT: INFILTRATION TEST RESULTS  
10244 SE 43<sup>RD</sup> AVENUE  
MILWAUKIE, OREGON**

This letter presents the results of our soil infiltration testing for aid in design of an on-site stormwater infiltration system for the proposed partition at 10244 SE 43<sup>rd</sup> Avenue in the City of Milwaukie, Clackamas County, Oregon. On June 19, 2018, GeoPacific Engineering, Inc.'s Engineering Geologist, Beth Rapp, observed the excavation of two test pits and conducted falling head infiltration tests. Test pits TP-1 and TP-2 were excavated to a maximum depth of 8 below existing grade at the approximate locations indicated on the attached site plan (Figure 1). Infiltration tests were conducted in the bottom of each test pit at depths of 4 and 8 feet. Design of the stormwater infiltration system is to be completed by others.

## **SOIL CONDITIONS**

In test pits, the ground surface was underlain by low to moderately organic topsoil that extended to a depth of 11 to 12 inches. In test pit TP-1, the topsoil in the north side of the test pit was underlain by undocumented fill consisting of clayey silt (ML) with glass bottles and metal debris that extended to a depth of approximately 4.5 feet and was underlain by native silt. The topsoil in test pit TP-2 was underlain by stiff, native silt (ML). The native silt in test pits extended to a depth of approximately 6 feet and was underlain by dense, medium grained sand (SP) that extended beyond the maximum depth of exploration (8 feet).

## **GROUNDWATER**

On June 19, 2018, soils encountered were damp to moist. Neither static groundwater nor groundwater seepage was encountered to a maximum depth of 8 feet. Regional geologic mapping by Snyder (2008) indicates that static groundwater is present at a depth of approximately 60 to 80 feet below the ground surface. It is anticipated that groundwater conditions will vary depending on the season, local subsurface conditions, changes in site utilization, and other factors.

## INFILTRATION TESTING

The pushed pipe method of infiltration testing was performed in test pits TP-1 and TP-2 at depths of 4 and 8 feet. The infiltration tests were conducted in native soils – undocumented fill areas were avoided. Soils were pre-saturated for a period of over 1 hour. Following the soil saturation, the infiltration tests were conducted. The water level was measured to the nearest sixteenth of an inch with reference to the ground surface. Tests were conducted at half hour intervals and continued until two successive measurements did not vary by more than 1/16<sup>th</sup> of an inch. The total test period was 4 hours. Table 1 presents the results of our falling head infiltration tests.

**Table 1. Summary of Infiltration Test Results**

Exploration Designation	Depth (feet)	Soil Type	Infiltration Rate(in/hr)	Hydraulic Head Range (inches)
TP-1	4	SILT (ML)	0	16-17
	8	SAND (SP)	5	12-22
TP-2	4	SILT (ML)	0.1	19-20
	8	SAND (SP)	4.3	7-22

## CONCLUSIONS AND RECOMMENDATIONS

The results of our infiltration testing indicate a vertical infiltration rate of 0 to 0.1 inches per hour at a depth of 4 feet in test pits TP-1 and TP-2 under a falling head of 16 to 20 inches. The vertical infiltration rate at a depth of 8 feet was 4.3 to 5 inches per hour under a falling head pressure of 7 to 22 inches in test pits TP-1 and TP-2. The infiltration rates presented do not incorporate a factor of safety. The system designer should apply an appropriate factor of safety.

## UNCERTAINTIES AND LIMITATIONS

This scope of this study includes measuring infiltration rates only. Rates of infiltration that were affected by impermeable soils or groundwater seepage were not reported. This study did not include risk assessment for geologic hazards or flooding on the site. Environmental implications of stormwater disposal or City of Milwaukie, Clackamas County, or ODEQ approval at this site are also beyond the scope of this report.

Infiltration test methods and procedures attempt to simulate the as-built conditions of the planned subsurface disposal system. However, due to natural variations in soil properties, actual infiltration rates may vary from the measured and/or recommended design rates. All systems should be constructed such that potential overflow is discharged in a controlled manner away from structures, and all systems should include an adequate factor of safety. Infiltration rates presented in this report should not be applied to inappropriate or complex hydrological models such as a closed basin without extensive further studies. This report presents infiltration test results only, and should not be construed as an approval of a system design.

Please call if you have any questions or need further information.

Sincerely,

**GeoPacific Engineering, Inc.**



Beth K. Rapp, C.E.G.  
Senior Engineering Geologist



James D. Imbrie, G.E., C.E.G.  
Geotechnical Engineer

Attachments: Figure 1 - Site and Exploration Plan

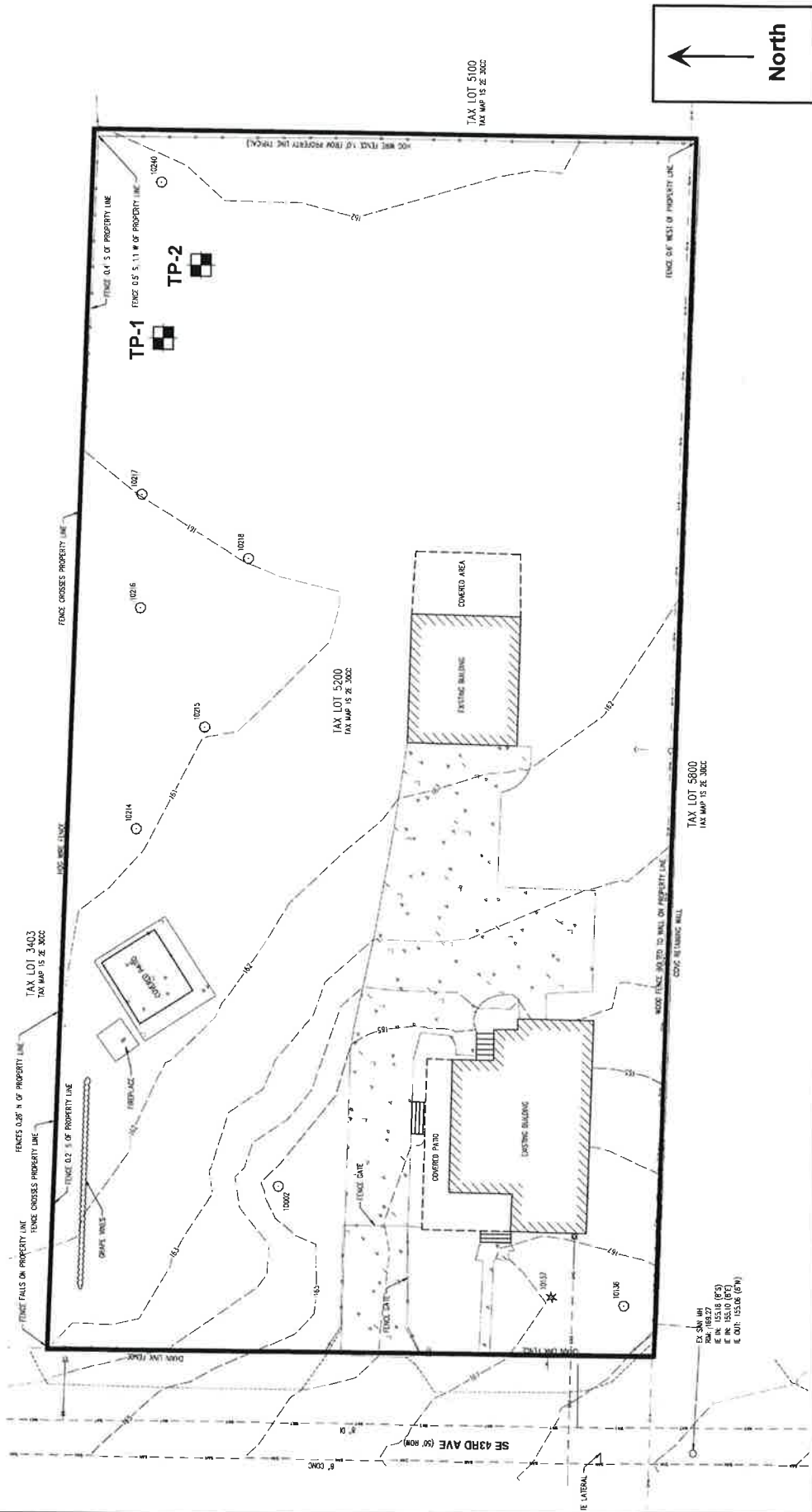
## REFERENCE

Snyder, D.T., 2008, Estimated Depth to Ground Water and Configuration of the Water Table in the Portland, Oregon Area: U.S. Geological Survey Scientific Investigations Report 2008-5059, 41 p., 3 plates.



14835 SW 72nd Avenue  
 Portland, Oregon 97224  
 Tel: (503) 598-8445 Fax: (503) 941-9281

# SITE PLAN AND INFILTRATION TESTING LOCATIONS



Date: 8/9/2018  
 Drawn by: EKR

0 30'  
 APPROXIMATE SCALE 1"=30'

**Legend**  
 TP-1 Test Pit Designation and Approximate Location

Project: 10244 SE 43rd Avenue  
 Milwaukie, Oregon

Project No. 18-5005

FIGURE 1

## ATTACHMENT 6

To The City of Milwaukie,

Nov 28 2018

In regards to the letter I received about Land use proposal in my neighborhood, Site map 10244 SE 43<sup>rd</sup> Ave.

I have no objection to that property owner adding another home onto his property using a flag lot.

But I do object to any proposed extension of White lake RD in this area. This is a neighborhood, family homes, school aged children. We do not want any more traffic in our neighborhood. And if you were to eventually do it anyway, we would certainly hope you would put in speed bumps, to keep traffic moving safely, slowly.

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Remember, wherever you put a road, no home can be built there because the road is there. And I thought we needed more homes for people. This applies more to any extension of White lake road East, and West of 43<sup>rd</sup>. And without those extensions, there's almost no reason to put in the one proposed on this site map.

I believe more of our tax dollars should be spent on mass transit, rather than more roads. Mass transit has proved to be a much better people mover than roads.

And I don't see any reason to put a walking path or bike lane in there either since 43<sup>rd</sup> has no sidewalks, and no bike lane. King road has both those.

Respectfully, William H Schwindt

4468 White Lake RD

Milwaukie OR 97222

RECEIVED  
NOV 29 2018  
CITY OF MILWAUKIE  
PLANNING DEPARTMENT

November 28, 2018

Re Land use proposal for 10244 SE 43rd Ave, MLP-2018-001, Tax lot 1S2E30CC 05200

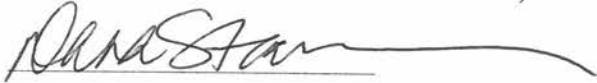
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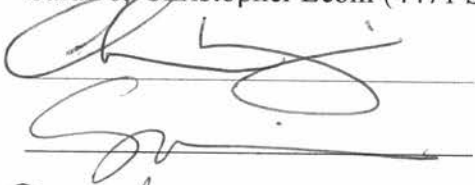
Below are the signatures of contacted residents who are of the same opinion.

Thank you,

Dana Stearns (4459 SE White Lake Rd.)



Sarah & Christopher Leoni (4471 SE White Lake Rd.)



Frank O Fassold Frank O Fassold 4446 SE White Lake Rd

Lance Olander LANCE OLANDER 10167 SE 45th AVE

William H Schweidt 4468 White Lake Rd

RECEIVED

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CITY OF MILWAUKIE  
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RECEIVED (via regular mail)  
DEC 03 2018  
CITY OF MILWAUKIE  
PLANNING DEPARTMENT

November 25, 2018

Daniel M. Barela  
10194 SE 43<sup>rd</sup> Ave.  
Milwaukie, OR 97222

CERTIFIED MAIL

City of Milwaukie  
Community Development  
6101 SE Johnson Creek Blvd.  
Milwaukie, OR 97206

Attn: Brett Kelter, Associate Planner

Re: Land Use File # MLP-2018-001

In response to your notification letter of Type II Land Use Proposal, I want to go on record as the home owner with property bordering Lot #10244 SE 43<sup>rd</sup> Ave. (Tax Lot IS2E30 5200). I am a first time home buyer, and I am concerned about due legal process.

I wish to express my concerns regarding the proposed dedication of the White Lake Road continuance along side my residence, and the proposed road taking 22 ft. of land away from my existing property. It would put the road up against my garage. My question would be, how does the City plan to reimburse me? I don't want a road that close to my residence; it would be inches from my garage. Would this violate any land codes? Not to mention the property of other neighbors which would be affected? The noise and road traffic would increase, and I may not be able to fence off that side of my property. Therefore, it will take away my privacy. And, how would this affect my property taxes?

Please keep me informed as to the City Planning Department's decisions, and I would appreciate more time to respond to any future potential steps to be taken in this process.

Respectfully,

Daniel M. Barela  
Property owner

cc: File  
Kivel & Howard Attorneys LLP



# Clackamas County Fire District #1

## Fire Prevention Office



### E-mail Memorandum

**To:** City of Milwaukie Planning Department  
**From:** Izak Hamilton, Fire Inspector, Clackamas Fire District #1  
**Date:** 12/5/2018  
**Re:** MLP-2018-001

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This review is based upon the current version of the Oregon Fire Code (OFC), as adopted by the Oregon State Fire Marshal's Office. The scope of review is typically limited to fire apparatus access and water supply, although the applicant must comply with all applicable OFC requirements. When buildings are completely protected with an approved automatic fire sprinkler system, the requirements for fire apparatus access and water supply may be modified as approved by the fire code official. The following items should be addressed by the applicant:

#### COMMENTS:

#### Access:

1. Provide address numbering that is clearly visible from the street.
2. No part of a building may be more than 150 feet from an approved fire department access road.
3. Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 feet (26 feet adjacent to fire hydrants) and an unobstructed vertical clearance of not less than 13 feet 6 inches.
4. Driveways serving up to three, single family dwellings or duplexes may be reduced to 12 feet in width but shall provide 20 feet of clear width
5. Fire apparatus access roads must support a 75,000 lb. fire apparatus.

#### Water Supply

- 1) Fire Hydrants, One and Two-Family Dwellings & Accessory Structures: Where a portion of a structure is more than 600 feet from a hydrant on a fire apparatus access road, as

measured in an approved route around the exterior of the structure(s), additional fire hydrants and mains shall be provided.

- 2) For one and two family dwellings located in areas with reliable municipal fire fighting water supply the following shall apply:
  - <3,600 square feet (including attached garage)
    - a) 1,000 gpm @ 20 psi with hydrant within 600 feet of furthest portion of new residential construction, (OFC Section B105.2)
  - >3,600 square feet (including attached garage)
    - a) Shall meet fire flow requirements specified in Appendix B of the current Oregon Fire Code, (OFC, Table B105.1)
    - b) Shall meet hydrant coverage as specified in Appendix C of the current Oregon Fire Code, (OFC, Table C105.1)

## Brett Kelter

---

**From:** Stephan Lashbrook <drampa82@gmail.com>  
**Sent:** Thursday, December 13, 2018 7:54 AM  
**To:** Brett Kelter  
**Subject:** Re: comments on MLP-2018-001?

Hi Brett.

Please convey our appreciation to the applicants for their commitment to retain the large tree on the property.

Thanks.

Stephan

On Wednesday, December 12, 2018, Brett Kelter <[KelterB@milwaukieoregon.gov](mailto:KelterB@milwaukieoregon.gov)> wrote:

Stephan,

We still haven't issued the decision for the partition on 43<sup>rd</sup> Ave, so if you get a chance to bring it up to the NDA tonight, we are open to including any official comments in the findings. Let me know tomorrow morning what happens. Thanks!

**BRETT KELVER**

Associate Planner

## MEMORANDUM

**TO:** Community Development Department  
**THROUGH:** Kelly Brooks, acting City Engineer  
**FROM:** Alex Roller, Engineering Technician II  
**RE:** 1 lot partition – 10244 SE 43<sup>rd</sup> Avenue  
MLP-2018-001  
**DATE:** December 17, 2018

Partition 1 lot into 2.

1. MMC Chapter 12.08 – Street & Sidewalk Excavations, Construction, and Repair

- A. This will apply to all construction that is completed in the right-of-way that is eventually dedicated to the City. The public improvement process will follow MMC 12.08.020.

2. MMC Chapter 12.16 – Access Management

The Planning Commission finds that the following complies with applicable criteria of MMC Chapter 12.16.

- A. MMC Chapter 12.16.040 establishes standards for access (driveway) requirements.

The proposed partition dedicates right-of-way for the future extension of White Lake Rd. All lots created have access to White Lake Rd. and will be required to obtain permanent access from White Lake Rd. once it is constructed. MMC 12.16.040.A states that access to private property shall be permitted with the use of driveway curb cuts and driveways shall meet all applicable guidelines of the Americans with Disabilities Act (ADA). MMC 12.16.040.B.1 governs the requirement for driveway spacing for driveways (accessways). SE 43<sup>rd</sup> Avenue is a collector street, and the minimum access spacing is 300-feet and the creation and/or modification of single-family accessways is prohibited. Therefore, a new access onto 43<sup>rd</sup> will not be permitted without approval of a accessway modification in accordance with MMC 12.16.040.B.2 Lot 2's access to 43<sup>rd</sup> is a temporary access and will be moved to White Lake Road when that road is constructed. The final approval of this modification is by the Engineering Director.

MMC 12.16.040.A also indicates that driveway approaches shall be improved to meet the requirements of Milwaukie's Public Works Standards. This means that any new or modified access shall be improved to City of Milwaukie Standard.

3. MMC Chapter 12.24 – Clear Vision at Intersections

The Planning Commission finds that the following complies with applicable criteria of MMC Chapter 12.24

A. 12.24.030: clear vision requirements

Proposed driveways, accessways and intersections will conform to 12.24.030 through Condition of Approval L.

4. MMC Chapter 19.700 – Public Facility Improvements

The Planning Commission finds that the following complies with applicable criteria of MMC Chapter 19.700.

A. MMC Chapter 19.700 applies to partitions, subdivisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

The partition triggers the requirements of MMC Chapter 19.700.

MMC 19.700 applies to the proposed development.

B. MMC Section 19.703 Approval Criteria

19.703.1 Preapplication Conference

Requirement for a preapplication conference was satisfied on January 4th, 2018.

19.703.2 Application Submittal

Development will not require a Transportation Facilities Review so MMC 19.703.2 will not apply.

19.703.3

Applicant will provide transportation improvements and mitigation in rough proportion to the potential impacts of the development.

The proposed development, as conditioned, is consistent with MMC 19.703.3.

C. MMC Section 19.704 requires submission of a transportation impact study documenting the development impacts on the surrounding transportation system.

The Engineering Director determined that a transportation impact study was not required as the existence of impacts on the transportation system was evident.

D. MMC Section 19.705 requires that transportation impacts of the proposed development be mitigated.

The proposed development does not trigger mitigation of impacts beyond the required right-of-way dedication. The impacts are minimal, and the surrounding transportation system will continue to operate at the level of service prior to the proposed development.

The proposed development, as conditioned, is consistent with MMC 19.705.

- E. MMC Section 19.708.1 requires all development shall comply with access management, clear vision, street design, connectivity, and intersection design and spacing standards.

19.708.1.A – Access Management

Access requirements shall comply with access management standards contained in Chapter 12.16.

19.708.1.B – Clear Vision

Clear vision requirements shall comply with clear vision requirements contained in Chapter 12.24.

19.708.1.D – Development in Non-Downtown Zones

Transportation Facility Requirements states that all rights-of-way, streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public right-of-way and abutting the development site shall be adequate at the time of development or shall be made adequate in a timely manner. This would require construction of 17-foot wide, half street, asphalt road along the frontage of the development property of 43<sup>rd</sup> Avenue, then full 2/3<sup>rd</sup> frontage improvements in front along the frontage of White Lake Rd. Rough proportionality analysis is showing that the construction of these improvements will not be proportional to the anticipated impacts of one new single-family house. Therefore, only dedication is anticipated to be required for the proposal as submitted unless access modification cannot be justified in accordance with MMC 12.16.040.B.2.d.

The existing right-of-way width of SE 43rd Avenue fronting the proposed development is 50 feet. The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of SE 43rd Avenue a Collector street. According to Table 19.708.2 Street Design Standards, the required right-of-way width for a collector street is between 40 feet and 74 feet depending on the required street improvements. The required right-of-way needed for the required street improvements is 60 feet. The applicant is responsible for 5 feet of right-of-way dedication along SE 43rd Avenue fronting the development property.

Applicant is also responsible for 20 feet of right-of-way dedication along the north edge of the partition to create right-of-way for future White Lake Road extension.

The dedicated land in the future White Lake Road right-of-way can remain in its current form until the construction of White Lake Road occurs. All existing structures and vegetation may remain unchanged. There will be no additional fencing requirements or signage. A right-of-way encroachment permit will be required that formalizes the revocable permission for the existing structures to be in the right-of-way and includes

language that the structures must be removed when an improvement is constructed. Access to this new right-of-way will be controlled by the City of Milwaukie. The only access that will be permitted to 43<sup>rd</sup> avenue is through an access modification in accordance with MMC 12.16.040.B.2.

The city will be constructing sidewalks on SE 43<sup>rd</sup> Avenue, so the existing fencing that is located here will not be allowed to remain through an encroachment permit. Applicant will be required to relocate this fence onto the private property.

Development shall conform to MMC 19.708.1.D.3 through Condition of Approval A.

#### 19.708.1.E – Street Layout & Connectivity

See above proportionality analysis under 19.708.1.D for partition's adherence to 19.708.1.E. The proposed development is consistent with MMC 19.708.3.E.

#### 19.708.1.F – Intersection Design and Spacing

Spacing between SE King Rd and SE Rhodessa St is larger than the required 600-foot spacing between intersections on a collector street. Dedication of the future White Lake Rd brings intersection spacing further into conformance.

The proposed development as proposed is consistent with MMC 19.708.1.F

- F. MMC Section 19.708.2 establishes standards for street design and improvement.

See street design requirements under MMC 19.708.1 D section above.

No frontage improvements are required for this partition. Only required work in the right-of-way is the construction of a standard asphalt driveway approach.

The proposed development as proposed is consistent with MMC 19.708.2

- G. MMC Section 19.708.3 requires sidewalks to be provided on the public street frontage of all development.

See above note on required frontage improvements.

- H. MMC Section 19.708.4 establishes standards for bicycle facilities.

The portion of SE 43<sup>rd</sup> Avenue fronting the proposed development is classified as a bike route in the Milwaukie Transportation System Plan. As a result, bicycle facility improvements on the 43<sup>rd</sup> Avenue frontage are required for the proposed development. Proportionality analysis has determined that applicant is not responsible for construction of frontage improvements on SE 43<sup>rd</sup> Avenue.

The proposed development as proposed is consistent with MMC 19.708.4.

- I. MMC Section 19.708.5 establishes standards for pedestrian and bicycle paths.

The proposed partition property is surrounded by single family residences. The proposed development does not present an opportunity to provide a pedestrian or bicycle path within the development and is not required to provide one.

MMC 19.708.5 does not apply to the proposed development.

- J. MMC Section 19.708.6 establishes standards for transit facilities.

Transit facility improvements are not required for the proposed development.

MMC 19.708.6 does not apply to the proposed development.

- K. MMC 19.709 establishes public utility requirements for all development subject to 19.700 per Section 19.702.

Partition is required to dedicate 20-foot right-of-way for future White Lake road construction. The only right-of-way frontage for lot 2 is this new White Lake Rd right-of-way. Utilities for this lot can be either constructed to city standards, with a full-size water and sewer main, or can be taken via easement through lot 1. This requirement stands for vehicular access as well. If applicant elects to take the utility and access easement approach, then these easements will need to be identified on the plat.

### **Recommended Conditions of Approval**

1. Prior to approval of the final plat, the following shall be resolved:

- A. Right-of-way Dedications:

- a. Provide 20-foot wide right-of-way dedication on north side of property, for future White Lake Road.
- b. Provide 25-foot radius in the northwest corner of parent lot (lot 1), for future construction of ADA ramps.
- c. Provide 5-foot wide right-of-way dedication on SE 43<sup>rd</sup> Avenue frontage.

- B. Obtain an encroachment permit for the arbor, fireplace, and covered patio that will be located in the White Lake Rd right-of-way.
- C. Obtain a right-of-way permit for construction of required driveway approach improvements listed in these recommended conditions of approval.
- D. Construct new driveway approach that conforms to Milwaukie Public Works Standards 502F.
- E. Provide access and utility easements for the benefit of Lot 2 across Lot 1.
- F. Relocate fence on SE 43<sup>rd</sup> Avenue frontage to behind the resulting front property line after dedication.



- G. Remove all signs, structures, or vegetation in excess of three feet in height located in “vision clearance areas” at intersections of streets, driveways, and alleys fronting the proposed development.
2. Prior to final inspection for any building on the proposed development, the following shall be resolved:
- A. Connect all residential roof drains to private drywell or other approved structure.



# CITY OF MILWAUKIE

## Memorandum

**To:** Interested Persons for Land Use File #MLP-2018-001

**From:** Brett Kelper, Associate Planner

**Date:** December 31, 2018

**CC:** Dennis Egner, Planning Director  
Land Use File #MLP-2018-001

**Re:** Future extension of White Lake Rd

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### **Purpose**

This memo is to provide a response to the various public comments that were received as part of the review process for a proposed partition at 10244 SE 43<sup>rd</sup> Ave (land use file #MLP-2018-001). The partition was subject to Type II review, which provides an opportunity for public comments in response to the proposal but does not include a public hearing with the Planning Commission unless the decision is appealed. The comments received were noted in the findings included with the Notice of Decision, but the structure of the Type II decision does not provide a direct way for City staff to respond to the questions and concerns that were raised by neighbors—thus, this memo.

### **Summary of Comments**

The common concern expressed by neighbors was not with the proposal to create an additional developable lot but rather with the City's requirement that the applicant dedicate a 20-ft-wide strip along the northern boundary for public right-of-way (ROW) for a future connection to White Lake Rd. In addition, Daniel Barela, the owner of 10194 SE 43<sup>rd</sup> Ave adjacent to the north of the subject property, asked several questions about the legal process and mechanics of the required ROW dedication.

### **Connectivity and the Future Extension of White Lake Rd**

All newly created lots must have some frontage on a public street. When property owners propose to divide their land, the City is responsible for assessing the surrounding street network to determine whether there are opportunities to improve connectivity. There are multiple examples across the city where, in the past, properties were divided without a requirement to dedicate land for future street connections. In some cases, these actions have limited the ability of adjacent properties to divide

because they have no street frontage; in others, they have established dead-end street systems with limited options for access and through-connections.

In the case at hand, intersection spacing and block perimeter lengths on 43<sup>rd</sup> Ave are already larger than required per the standards established in Milwaukie Municipal Code (MMC) Table 19.708.1. The partition of 10244 SE 43<sup>rd</sup> Ave would be in violation of that code section without providing ROW to make an eventual connection to the west end of White Lake Rd.

Although the existing house on the adjacent property at 4446 SE White Lake Rd is currently in the path of a future street connection, that property is large enough to be divided into two lots. The division of 4446 SE White Lake Rd would necessarily involve some alteration (if not complete demolition) of the existing house to provide access for a new lot. Although the current or future owners of 4446 SE White Lake Rd may not choose to redevelop the property for many years (if ever), the possibility of connecting White Lake Rd would be eliminated if the ROW was not dedicated with the partition of 10244 SE 43<sup>rd</sup> Ave.

### **No Anticipated Improvements**

With the partition of 10244 SE 43<sup>rd</sup> Ave, the impacts of 1 new lot are not significant enough to require more than just the ROW dedication for White Lake Rd. No physical improvements will be constructed in the new ROW and it will remain in its current state. The City does not foresee a street connection happening anytime soon, as it would require the redevelopment of other properties. The property at 4446 SE White Lake Rd would have to divide to trigger a requirement for a similar ROW dedication that would allow for a connection from the west end of White Lake Rd to 43<sup>rd</sup> Ave.

To date, no decisions have been made about what physical improvements might be constructed when the ROW connection is established. One option would be to construct a paved vehicle connection. Another would be to construct a narrower path that allows only pedestrian and bicycle traffic. Regardless, it is highly unlikely that any improvements would result in a travel lane being immediately adjacent to a neighboring property line without some buffer or separation.

For a more complete connection to be made between 43<sup>rd</sup> Ave and White Lake Rd, the City would have to purchase an approximately 20-ft-wide strip just to the north of 10244 SE 43<sup>rd</sup> Ave and 4446 SE White Lake Rd. The property owners of 10194 SE 43<sup>rd</sup> Ave and 4459 SE White Lake Rd would be compensated at fair market value for the acquisition of this land. The purchase would include the existing driveway of 10194 SE 43<sup>rd</sup> Ave (the “pole” portion of that flag lot, which is approximately 20 ft wide). It does not appear that any structures would be directly affected on either property, although the house on 10194 SE 43<sup>rd</sup> Ave would end up being very close to its new southern property line. Any such resulting changes to yard setbacks or similar zoning requirements would be allowed without penalty, as per MMC Subsection 19.504.2 in the zoning code.

### **Conclusion**

To be clear, the City currently has no plans to acquire any property from 10194 SE 43<sup>rd</sup> Ave or 4459 SE White Lake Rd in the foreseeable future. The City has only condemned property on very limited occasions, and while connectivity is a priority, condemnation to obtain it is not. However, we cannot lose the current opportunity to acquire ROW from developing properties so that a future connection remains possible if conditions change.

It is completely understandable that residents on dead-end streets would prefer to maintain the lower traffic counts of closed systems, and we have noted your collective concerns about the increased traffic that would come with new access. Please keep in mind that the community as a whole has an interest in and benefits from having more connections through all neighborhoods, with more travel options for residents and visitors alike. In particular, 43<sup>rd</sup> Ave is a priority street for sidewalk construction through the City's Safe Access For Everyone (SAFE) program, with improvements anticipated very soon. It is with this principle of connectivity in mind that the City is following through on its responsibility to obtain the ROW dedication for White Lake Rd that is triggered by the partition of 10244 SE 43<sup>rd</sup> Ave (file #MLP-2018-001).

Please feel free to contact me directly if you have any questions about this memo or the Notice of Decision for MLP-2018-001. You can reach me by phone at 503-786-7657 or email at [kerverb@milwaukieoregon.gov](mailto:kerverb@milwaukieoregon.gov).

### **Attachments**

Comments received from neighbors regarding MLP-2018-001:

1. William Schwindt, 4468 White Lake Rd
2. Dana Stearns, 4459 SE White Lake Rd (signed by 5 other neighboring owners/residents)
3. Daniel Barela, 10194 SE 43rd Ave

# Attachment 1

To The City of Milwaukie,

Nov 28 2018

In regards to the letter I received about Land use proposal in my neighborhood, Site map 10244 SE 43<sup>rd</sup> Ave.

I have no objection to that property owner adding another home onto his property using a flag lot.

But I do object to any proposed extension of White lake RD in this area. This is a neighborhood, family homes, school aged children. We do not want any more traffic in our neighborhood. And if you were to eventually do it anyway, we would certainly hope you would put in speed bumps, to keep traffic moving safely, slowly.

Since King Rd is just a very short distance south of White lake rd, a matter of a few hundred feet, It sure doesn't seem like another east west road is needed.

Further, from my property to the east a home sits right there in the middle of what would be White Lake road extension eastward. So unless the city plans on removing that home, and maybe others behind it, there seems no reason to put an extension of White Lake road west to 43<sup>rd</sup>.

Remember, wherever you put a road, no home can be built there because the road is there. And I thought we needed more homes for people. This applies more to any extension of White lake road East, and West of 43<sup>rd</sup>. And without those extensions, there's almost no reason to put in the one proposed on this site map.

I believe more of our tax dollars should be spent on mass transit, rather than more roads. Mass transit has proved to be a much better people mover than roads.

And I don't see any reason to put a walking path or bike lane in there either since 43<sup>rd</sup> has no sidewalks, and no bike lane. King road has both those.

Respectfully, William H Schwindt

4468 White Lake RD

Milwaukie OR 97222

RECEIVED  
NOV 29 2018  
CITY OF MILWAUKIE  
PLANNING DEPARTMENT

**Attachment 2**

November 28, 2018

Re Land use proposal for 10244 SE 43rd Ave, MLP-2018-001, Tax lot 1S2E30CC 05200

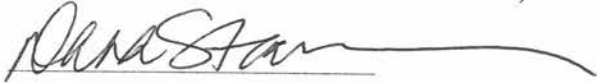
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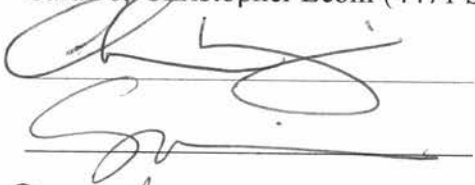
Below are the signatures of contacted residents who are of the same opinion.

Thank you,

Dana Stearns (4459 SE White Lake Rd.)



Sarah & Christopher Leoni (4471 SE White Lake Rd.)



Frank O Fassold Frank O Fassold 4446 SE White Lake Rd

Lance Olander LANCE OLANDER 10167 SE 45th AVE

William H Schweidt 4468 white Lake Rd

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November 25, 2018

Daniel M. Barela  
10194 SE 43<sup>rd</sup> Ave.  
Milwaukie, OR 97222

CERTIFIED MAIL

City of Milwaukie  
Community Development  
6101 SE Johnson Creek Blvd.  
Milwaukie, OR 97206

Attn: Brett Kelter, Associate Planner

Re: Land Use File # MLP-2018-001

In response to your notification letter of Type II Land Use Proposal, I want to go on record as the home owner with property bordering Lot #10244 SE 43<sup>rd</sup> Ave. (Tax Lot IS2E30 5200). I am a first time home buyer, and I am concerned about due legal process.

I wish to express my concerns regarding the proposed dedication of the White Lake Road continuance along side my residence, and the proposed road taking 22 ft. of land away from my existing property. It would put the road up against my garage. My question would be, how does the City plan to reimburse me? I don't want a road that close to my residence; it would be inches from my garage. Would this violate any land codes? Not to mention the property of other neighbors which would be affected? The noise and road traffic would increase, and I may not be able to fence off that side of my property. Therefore, it will take away my privacy. And, how would this affect my property taxes?

Please keep me informed as to the City Planning Department's decisions, and I would appreciate more time to respond to any future potential steps to be taken in this process.

Respectfully,

Daniel M. Barela  
Property owner

cc: File  
Kivel & Howard Attorneys LLP

ATTACHMENT 8

From: Frank O. Fassold owner of property 4446 SE White Lake Rd

Subject: future extension of White Lake Rd.

Development of 10244 SE 43 Ave.

This is my first home and any extension of White Lake Rd weather Street or Path would greatly diminish the Safety and Security of our neighborhood. Traffic volume and speed would increase, as well as people wondering through that don't live here. White Lake Rd at the West end is a dead end but still less than 150' long.

I am also concerned about property values and sellability with just a proposed extension and resulting loss of land.

I have no objection to Tony and Michelle DaRosa developing their property, but I do want a 6' high privacy fence and any property line correctons to be made.

As of the week of Jan 9 AKS surveyors said they did not yet have results, the survey was in Sept and Oct.

Thank You

Eric O'Donnell  
Frank O Fassold

