



AGENDA & NOTICE OF PLANNING COMMISSION MEETING

The Planning Commission of the City of Newport will hold a meeting at **7:00 p.m. Monday, November 9, 2015**, at the Newport City Hall, Council Chambers, 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder, 541-574-0613.

The City of Newport Planning Commission reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

NEWPORT PLANNING COMMISSION

Monday, November 9, 2015, 7:00 p.m.

AGENDA

A. Roll Call.

B. Approval of Minutes.

1. Approval of the Planning Commission regular session meeting minutes of October 12, 2015, and the work session meeting minutes of October 26, 2015.

C. Citizens/Public Comment.

1. A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

D. Consent Calendar.

E. Action Items.

F. Public Hearings.

1. File No. 3-PAR-15-A. A *de novo* hearing on an appeal of the Community Development Director's decision of denial by Final Order adopted 9/24/15 for the partition of Tax Lot 607 of Assessor's Map 10-11-20-BC filed by the applicant and property owner, Jonathan Holbrook.

G. New Business.

H. Unfinished Business.

I. Director Comments.

J. Adjournment.

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
Monday, October 12, 2015

Commissioners Present: Jim Patrick, Rod Croteau, Lee Hardy, Bob Berman, Mike Franklin, Gary East, and Bill Branigan.

City Staff Present: Community Development Director (CDD) Derrick Tokos and Executive Assistant Wanda Haney.

A. **Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Hardy, Berman, Croteau, Patrick, Franklin, East, and Branigan were present.

B. **Approval of Minutes.**

1. Approval of the Planning Commission regular session meeting minutes of September 14, 2015.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin, to approve the Planning Commission meeting minutes as presented. The motion carried unanimously in a voice vote.

C. **Citizen/Public Comment.** No public comments.

D. **Consent Calendar.** Nothing on the Consent Calendar.

E. **Action Items.** No items requiring action to be taken.

F. **Public Hearings.** Patrick opened the public hearing portion of the meeting at 7:02 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits; and they all declared site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

1. **File No. 1-SV-15.** A proposed street vacation initiated by the City Council, at the request of Samaritan Pacific Health Services, Inc. on behalf of Pacific Communities Health District, for portions of SW 10th Street from SW Bay Street north to SW Case Street; SW Case Street from SW 10th Street east to SW 11th Street; and an alley between and parallel to SW 10th and 11th Streets from SW Bay Street north to SW Case Street. The Planning Commission will forward a recommendation on this matter to the City Council.

Patrick opened the hearing for File No. 1-SV-15 at 7:03 p.m. by reading the summary of the file from the agenda. He called for the staff report. Tokos noted that in their packets the Commissioners had a staff report along with attachments. As noted, this is a request to vacate the streets listed. These streets are developed and have public utilities in them. These streets serve more or less as internal circulation for the hospital. For the hospital to expand as envisioned, these streets need to be vacated so that the hospital has the ability to expand over them. Tokos noted that the criteria for street vacation are set in State Statute chapter 271. These were listed in the staff report, and Tokos read them. First is if the owners of a majority of the affected area have objected in writing to the vacation. Tokos noted that after the City Council initiated the vacation, our department provided notice consistent with State requirements. With street vacations, the notification area is 400 feet from the terminal end of the right-of-way and 200 feet to either side of the area to be vacated. Within that area, we would have to have a majority object. We received no comments, so there's no such objection. He said it's relevant to note that only the Health District owns the abutting properties because the second criterion is will the vacation of the right-of-way adversely affect the market value of the abutting properties, and if so, have those owners consented in writing. This request was put forth by the District, and the vacation will not adversely impact them. In fact, it will likely increase their property value slightly because they will be picking up more property, which gives them more flexibility to expand. The third criterion is if notice has been duly given as prescribed by State Statute. That has been done. As required, there were the three legal publications in the newspaper prior to this meeting, and that will be repeated before the City Council hearing. The

property will be posted prior to the City Council hearing. Our department will make sure those steps are followed. Tokos noted that the fourth criterion, and probably of most concern to the Planning Commission, is if the public interest will be prejudiced by the vacation of the street. He said, in this case, Samaritan outlined in their letter of August 17th, Attachment "A", why the public interest isn't prejudiced; and he believes that the Commission can rely upon that. Tokos said there is also a standard about the maintenance of public access to the estuary and the ocean. You can access those features. In this case this is a secondary access. There are more direct accesses to the bay by way of Harbor or Bay Street; so the vacation of this right-of-way will not compromise access to the bay or ocean. Because this is within 5000 feet of the harbor, the Port Commission will have to provide consent. This is scheduled for their consent at their October 27th meeting. Tokos noted that Attachment "B" shows the exact area to be vacated. If the rights-of-way were to be vacated, a blanket utility easement would be reserved over the affected area until the hospital relocates them. At that time, the City could release the easements.

Berman asked if all or a portion of that property is on the tax rolls now or if it's considered public because the District owns it. Tokos expects that they are not taxable. He doesn't know the disposition of the residentially-zoned property in that block; but he expects they're not being taxed. He said maybe the hospital representatives can speak to that.

Proponents: Ralph Breitenstein MD, Chairman of the District's Board of Directors, and Jon Conner, Health Services Director of Engineering, came forward to testify as proponents. Breitenstein said that this is the first step for the new hospital. They own all of the lots in the blocks around the hospital. They are planning to build and extend the new facility adjacent to the existing 1988 two-story structure. It will essentially run across Case Street and down 10th Street. The central utility plant will be moved, and the helipad will be moved. There will be parking basically on all sides of the facility. There will be a new ER entrance on the south side probably. He said this is a big deal. They need this step to make it happen. Conner said they don't have the exact plans that they'll be building off of yet. They are still working on selecting a design team. He said the thought in the concept that was put forth for the bond measure election was that the very first phase would be building a central utility plant and relocating the utilities.

Berman said that the only thing that struck him on his site visit was that there were lots of cars parked in there. He wondered if this vacation is done, and the hospital begins doing ground prep, what provisions the hospital has made during construction to adequately provide parking for visitors and staff and whoever's parking there now. Conner said that he didn't have hard data to show, but from being on site every day, he would say that 99% of those vehicles belong to employees. One of the items they would have to provide is temporary parking for the duration. He said there is a parking lot there. That is what they did when they built the CHE building; provide temporary parking there. With not having any definitive plans yet, that's something they will have to design and come up with. His assumption would be that they would utilize some of the areas along 9th Street. There's a modular trailer that was used for a computer training room, and that function is now being served by the CHE building. So, they are working on getting that out of there. He agreed it is a concern and something that has to be addressed, but there's nothing on paper since they don't have drawings yet. Breitenstein noted that the parking during the day at the new CHE building tends to be underutilized; and that's where probably 30 or 40 spaces are that could get utilized during the day, which is when most people work. Berman said his concern is that the cars not move south or west and into the residential areas to park. Conner said they would do everything possible to keep those on site. A potential spot would be directly north of that temporary parking lot. There is a pretty wide open green space that could be temporarily graded, filled, and compacted. Branigan asked when the hospital expects to move dirt. Conner said until they get the design team selection done, he's hesitant to say. There's nothing set in stone. Once the design team is selected there's probably an eight to ten month design period. He said it would be nice if they were moving dirt by next summer. Branigan asked if between now and then they shouldn't be able to resolve any of the parking issues that have been brought up. Conner said that would be one of the first things that would need to be addressed. Patrick asked where the helipad is going. Conner said, again, without having any hard plans in place he couldn't say definitely; but the concept drawings put forward for the bond measure show it being moved he believes basically due east. He said as you look at the plot there, it would be kind of in the southeast portion of the campus almost towards the intersection of 11th and Bay. Franklin asked if the new building will be two-story as well; in which case the overall footprint would be less. Conner and Breitenstein said they are looking at three stories. Franklin said then you're going to have a lot more room for parking. Breitenstein said it looks like from the plans they've seen that there's a lot of parking. Conner said if they move forward with what the concept shows, the entire 1952 and 1976 structures would come down; and that would all be parking. So there would be parking on both sides of that.

There were no other proponents present to testify.

Opponents or Interested Parties: There were no opponents or interested parties present to testify.

Patrick closed the hearing at 7:15 for Commission deliberation. Hardy said that she had no problem with the projected street vacation. Berman agreed. Croteau said it's a must-do action. Franklin said it's very straightforward and agreed. East agreed. Branigan agreed with the exception that the hospital comply with any future easement rules for utilities as the project is developed. Patrick agreed as well. He said that was his only thing because he didn't see that in here about moving utilities; but if the City holds an easement until they're moved, that works.

MOTION was made by Commissioner Croteau, seconded by Commissioner Berman, to forward a positive recommendation on this matter to the City Council with the conditions indicated. The motion carried unanimously in a voice vote.

G. New Business. No new business to discuss.

H. Unfinished Business.

1. Tokos noted that the two Urban Renewal Districts were adopted by the City Council on October 5th. That step is done for the time being. He is working with the County Assessor's office to fine-tune the legal boundaries. That should be wrapped up within the next few days, and we'll get both of those ordinances recorded. He said it will be quiet for a little bit. The first increment doesn't come off until next fiscal year. He thinks we'll kick up Agate Beach first, probably in the 2017 timeframe. Croteau asked if McLean Point shouldn't go fairly quickly too. Tokos said that the Port is continuing to work with Teevin Bros. anticipating they will get a lease option by January 2017 with construction underway somewhere in 2017 for the log yard. The RONDYS group wants to get their 48-thousand-square-foot warehouse development going about the same time. Berman asked what the general schedule was for developing the projects themselves. Tokos said the first two things to do is an Agate Beach infrastructure refinement plan, which will probably be a nine to twelve month process in 2017. We'll also have the commercial core area refinement plan that we'll be doing in partnership with ODOT. That might get started a little bit earlier; but it might not. If not, then we're looking at 2017-2020, a three-year project, to identify how we're going to address our transportation network for US 101 and US 20 in the long-term over thirty years or so. Berman asked if that wouldn't be primarily consultant work. Tokos said there will be a lot of consultant work, a lot of outreach work, community engagement, and quite a bit of graphic work in Agate Beach. We'll have some charrettes to mock up. Once we map out the existing conditions to figure out what folks are comfortable with, we'll work with the internal constituents like the Fire Department and Public Works. There are limits about how narrow we can go with streets and things of that nature. So there will be some back and forth to identify priorities up there. The work with ODOT will be more involved; there's more modeling of the network involved with how the highway functions now and how it will in twenty to thirty years, what different alternatives might look like, and how they would affect traffic patterns and properties. He expects that process to be more involved. It's something we'll have to work through and work with the State on and map that out up front so we have a clear idea of what we are trying to accomplish, what the different community engagement points are, and at what point decisions will be made.

Back down to Bay Boulevard, Franklin said it's his understanding that we're going to be increasing the water line going up that road to service a better pump station or sewer line. Tokos said as part of McLean Point, it will at some point include a new pump station on the peninsula and an up-sized main line. It will tie into the existing gravity line, which is basically at Vista. Franklin wondered if that will pose a problem when there's construction going on. Are they going to tear the road up before they start working on the log yard and before they start working on the new warehouses? Tokos said it's unlikely. They don't need sewer improvements for the log yard; a holding tank is sufficient. The driver for the sewer improvements is the balance of what RHONDYS wants to do. So their first phase of 48 thousand square feet of flex warehouse space, which would be for support of the fishing fleet and maybe some marine research space, isn't going to have a heavy sewer demand with it. Down the road, they may want to do fish processing or canneries or something like that; which could have a more significant impact and would need that sewer service. They would like to have that because it increases the marketability of the property, and they have a broader range of users that they can bring in if they have that type of infrastructure in place.

2. Croteau said that he understood that the PUD acquired the property up on Avery Street that used to be the plumbing concern, and he wondered if that was anything that would affect the Planning Commission in terms of permitting or traffic issues. Tokos said that there's likely to be a traffic impact analysis on it. He noted that the PUD

has closed on that property. They are in discussion with the City about various permitting issues. The first thing the Commission will see from them will probably be an annexation because in addition to the industrial properties in the city there was a small residential property on 101 that they picked up as well that's outside the city limits. So they'll need to get that annexed into the city. All city infrastructure wraps around that little residential piece since it was outside the city; and they will want to work with us to relocate our utilities. They will be doing a replat to consolidate the properties. Some of that the Commission won't see, but will definitely see that annexation. Eventually we'll look at the traffic impact analysis and will be picking up a conversation with ODOT and maybe some other property owners up there about signalization at 73rd and whether or not that's viable and would meet State warrants to trigger a signal. We do have some funding to contribute towards it; but property owners would have to contribute as well. The PUD is moving their maintenance yard from South Beach to this northern location. They're looking at about a fourteen to sixteen month window if their governing body authorizes construction. They are still in discussion about exactly when they want to do that and don't have a specific date yet. East asked what is going to happen to their property in South Beach. Tokos said they will have to make a decision about what they want to do with their property down there. They will have to do a property line adjustment because they will retain their substation. He doesn't know if they've made any decision other than they recognize that it's something they will have to make a decision about whether or not to keep the property or sell it. Franklin thought it might be a good location for apartments. Tokos said that property is in a tsunami inundation area, and it's zoned light industrial right now. The property immediately upslope of it is vacant and is out of the tsunami inundation area. It has good access off 40th and could definitely be done as apartments. He thinks it's owned by one of the members of the Stocker family. Patrick said we're not taking any of our industrial and turning it into residential because we don't have enough anyway. Tokos said we might want to pick up a conversation about tweaking our "light industrial". He'll bring that up at a later date. Patrick said that would be a great commercial spot.

3. East asked if construction of the Oceanview Assisted Living addition where they did the annexation will happen now that the water tank is there. Tokos said that Andy Park, who's the driver behind that, is out soliciting proposals from architects for them at this point. In a few months we might see something. East asked if the water tank cleared the way for some other larger developments up there. Tokos said we have the water pressure to support that. We still have some sewer issues though; but we're working to address those in terms of capacity problems with the daisy chain of different pump stations we have as you move south.

4. Berman asked if those properties where they are putting the hospital are zoned R-4 if that will require any action on the part of the Planning Commission. Tokos said no; hospitals are permitted in that zone.

5. Tokos said on October 26th, the Commission will have a work session on recreational marijuana. He noted that the OLCC has released draft rules that are up on their website. Tokos will provide an outline about some of the different options the Commission has under the legislation that has been passed as far as what land use regulations you can and can't propose. How we approached it with medical marijuana, and whether similar approaches should be taken with recreational marijuana in terms of how we set up our permitting, was with a business license endorsement and was largely targeted at providing a little bit more robust background checks and things of that nature that the Police Department was looking for. He said it might make sense to just take a similar approach with recreational marijuana. He didn't see anything in the OLCC rules that gets at like a thousand feet from other dispensaries like you have for medical marijuana that the Health Authority actually regulates. If OLCC is not going to be putting in place any kind of spacing requirements, that's something the Commission probably at least wants to talk about since those kinds of requirements are in place for the medical marijuana dispensaries. Tokos will try to outline it and provide different options. This is just an initial work session; so you also have an opportunity to talk about how you want to take that forward and pull in the public for that conversation. It's just an initial conversation, and he expects there will be more than one work session and public hearings. Croteau wondered if there was enough time for Tokos to get input on what other jurisdictions are doing. Tokos suspects that most jurisdictions were waiting for the OLCC rules, but he will take a look and see what resources are available. He said that the Commission is not on a specific time crunch, but he will map out the key dates so the Commission has a sense of when decisions would need to be made.

6. Tokos said we have advertised positions for the Advisory Committee, and those are due next week. We have one application at this point. We have two vacancies. He asked the Commissioners to encourage anyone they may have in mind to apply. There's a link to the application on the city website. The applications will be reviewed at the next work session.

7. There's just a work session on October 26th. There will be a regular session on November 9th. There is an appeal of a partition plat denial that the Commission will consider.

I. Director Comments. No additional director comments.

J. Adjournment. Having no further business to discuss, the meeting adjourned at 7:30 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
October 26, 2015
6:00 p.m.

Planning Commissioners Present: Jim Patrick, Lee Hardy, Mike Franklin, Rod Croteau, Bill Branigan, and Bob Berman.

Planning Commissioners Absent: Gary East.

PC Citizens Advisory Committee Members Absent: Dustin Capri (*excused*).

City Staff Present: Community Development Director (CDD) Derrick Tokos and Executive Assistant Wanda Haney.

Chair Patrick called the Planning Commission work session to order at 6:02 p.m. and turned the meeting over to CDD Tokos.

A. New Business.

1. Initial discussion about recreational marijuana. Tokos said he would spend most of the time running through his cover memo, Attachment 2, and Attachment 7; but he was happy to talk about other things as well. He said this is a lot to digest. He noted that there were a couple of items being distributed tonight that were not included in the packet. One was a copy of an email from Police Chief Mark Miranda raising the question of whether preschools or daycares should be pulled into the spacing distance. The other piece that is new and not in the packets is the draft land use compatibility statement. He said this is a document that is provided as part of the application. He doesn't know the logistics of whether OLCC sends it to us or the applicant brings it in. He noted that this is the type of form OLCC will be looking for before a license is issued. We deal with these forms for other agencies such as the Department of State Lands and DEQ. This form is consistent with those other land use compatibility forms. What Tokos looks at is that they don't ask us questions we can't answer. This is much like the DSL form where it's marked that either the use is allowed, it was not allowed, or we don't know yet because they have to go through some land use review. He said he doesn't have a lot of heartburn with this form. He noted that this is a draft form that he got through the League of Oregon Cities.

Tokos noted that in his cover memo he took the time to break down how the existing land use rules would apply to recreational marijuana facilities. First he looked at the residential zoning districts. In the zoning ordinance, the permitted uses are listed specifically and are predominantly residential. R-4 allows a conditional use for professional offices, and hospitals are allowed out right. But basically you're talking about single-family, duplex, or triplex. The only way they could try to horseshoe into this district is to approach it as a commercial use in a residential area. They could try to claim this as an accessory use. He said that won't fly because it isn't customary; it hasn't been legal so they can't get there. Rod noted that in their rules the OLCC makes provisions for processors, retailers, and wholesalers. He said why it wouldn't be covered under accessory use is documented on pages 12, 17, and 36 of Attachment 5. Tokos said the Denial of Application is what he looked at on page 11 of Attachment 5. He said you will note that those who are currently medical dispensaries have to make a choice; it's not a dual setup moving forward. He noted that the one about the proposed licensed premises of a wholesaler was added; it wasn't in the October 15th version that he had worked off of. The October 21st draft came out just before the meeting packets were prepared; and then OLCC had a final draft on October 22nd. Croteau noted that it mentions prohibited in an area zoned residential; so wholesalers are out. He pointed out number 3c on page 17 eliminates processors. Then on page 36 it mentions retail premises. Tokos said under number 3 on page 17 it also states that a retailer may not be located within 1,000 feet of schools or within an area zoned exclusively residential. He said, but what do they mean by exclusively residential use; would that be in R-4 because it does allow other uses. He doesn't believe we have much in the way of exposure in the residential zones. He said somebody could try to horseshoe it in through a home occupation. For something like a home grow, that's the only place he sees it potentially landing. But with a home occupation, it can't be outdoors. There can be no display of the business outside the residence. They can't have employees; and if it's retail, they're limited to 8 vehicle trips per day. Hardy asked what if they're wholesale. Tokos said that might work; but only 25% of the structure can be utilized for the business. Croteau said maybe a lab; and Tokos agreed maybe that. Tokos wondered on the flip side, if the Commissioners thought that the home occupation standards are transparent in the neighborhood. He asked if they're doing growing in a shop where nobody sees it and they're not aware it's there; is it a problem then? Hardy said maybe not if it's just a grow operation, but if they start extracting that could be something else. Tokos said clearly that's covered through OLCC rules. Hardy said, but you have to know it's going on to enforce it. Berman said that he didn't see any problem on the residential side. Other restrictions will limit them so much; it's not financially viable, or it's so small of an operation that it doesn't bother anybody. Tokos said he's not sure they will get a home occupation. He said we have had some folks "tire-kicking" about vacant lots for growing. They can't go with that because it's a commercial use in a residential zone. Franklin said there are your "average Joes" that are growing their four plants and selling those directly to the dispensaries.

Tokos said they are providing surplus plants to dispensaries; that's how the program works. Rod thought furnishing is well covered there. Branigan asked if Tokos knew what other jurisdictions are doing; and Tokos said he didn't. Hardy asked if the County is doing anything. Tokos said he knew they have something for grow operations.

Tokos said on the commercial and industrial side of zoning, we have use categories and don't spell out what specific uses are allowed. They're general by the character and the nature of the use; like bulk retail, manufacturing, wholesale sales, etc. We don't have anything for agriculture. If the Commission feels it's appropriate, that's one where we could define agriculture as to how and where it's permissible. He said if the Commissioners think growing is part of the manufacturing operation, then it's permitted in C-3 and the industrial zones. It would have to be entirely indoors unless it's in I-3. Branigan asked what about in the UGB. Tokos said this only applies to those properties that are annexed. The County's rules apply until they're annexed. Berman wondered what the designation around the reservoir is. Tokos said it's Public, so you don't have to worry there. Once it's annexed, it will be under Public zoning; and we are in the process of annexing the property we own. Everything else would still be under the county's Timber Conservation. Croteau asked if they didn't have to get an agriculture permit to grow. Tokos said they would deal with the Department of Agriculture because it's a crop just like any other. Croteau wondered about those lands that are under Timber Conservation; and Tokos said he's not sure how that will play out. Patrick said it's reasonable to expect that they can grow in the industrial zones and in C-3; it's manufacturing. Tokos said it would be conditional in C-3 and outright in all of the industrial zones. Patrick said they could do selling in the industrial zones. Tokos said retail sales are a go in all commercial zones. Patrick said, and retail growing in C-3. Tokos said that I-1 would be good too for retail sales. Patrick asked if the City's GIS is good, once we figure out roughly what goes where, could Tokos show maps where it could be and what it could be and maybe highlight all the ones that are all residential. Tokos said you're looking at the highway corridors really. South Beach has I-1 zoning. There's C-3 on US 20 and a pocket on US 101 up by 12th Street; the rest of 101 is C-1 and will be retail. The last I-1 is way up north by 73rd Street; I-1 and I-2. McLean Point has industrial, but it won't be a marijuana operation. There's fourteen acres by Wilder where the temporary batch plant was located. That was purchased for heavy industrial use at some point. There's more light industrial down by the airport; but it's not currently serviced. The I-2 property up north is Paul Larson's shovel-ready land. Across from that will be PUD's new yard; so much of the I-1 will be gone up there. Tokos doesn't know what will happen with Larson's I-2. Larson's working on wetland mitigation and re-authorizing the shovel-ready status so it doesn't expire; but he has nobody interested in the property. Tokos said that the light industrial in South Beach is probably where we would have some exposure. There's a fair amount down there.

Berman said a grow operation has to almost be indoors. Tokos said he didn't know. He's not sure how these things would be set up. He expects that you may find a number of different licenses because they're doing a number of different things; growing, processing, packaging, distributing; wholesaling. There may be multiple licenses. You could have a situation where you could have a retail component too. Berman wondered how this parallels to liquor; things like brew pubs and distilleries. Tokos said they're not that much different. Some are strictly retail. They have to go through the state license as liquor dispensary. It's an OLCC synced venue. The oversight is a little more restrictive in that regard. He mentioned that Rouge has their distillery and then their little sales boutique; and Hood River has some combined in one location. You can see the different ways this gets packaged.

Tokos said if the Commissioners felt it's appropriate, we could do a land use to deal with agriculture as its own category. Or if you feel it's reasonable as is, then we don't need to worry about making changes. Croteau said he's good with this. Patrick said he wouldn't want to see open grows that become an attractive nuisance. Tokos said the only way that could happen is on I-3 property. That's the only place they could do it. In I-1 and C-3, it has to be indoors. Franklin didn't think we have the climate to support it here. Patrick said he didn't want to test it. Croteau said they would need a fence, security, and cameras. Tokos noted that you can't do razor wire unless it's zoned Public. Patrick said so all they could do is a regular fence. Tokos said they could get a building permit and do a concrete wall. Berman and Branigan didn't think it would be a problem. Tokos said we don't have much I-3 land. Tokos said he expects to see GVR going a different direction with that property. It is 14 acres and is attractive for bulk retail (like Lowes and other large commodity stores).

Berman asked Tokos what his feelings were. Does this need firming up, or is it good enough that it won't be a problem in the foreseeable future. Tokos said he doesn't think we have much in the way of exposure for an outdoor grow. It can't be in a residential zone. It's pretty defensive except for I-3, and we don't have a lot of that. Hardy said the climate will take care of the rest of it. Tokos said they could do an outdoor grow, but there's not a lot of exposure. Patrick said manufacturing or indoor grows could be in C-3 and the industrial zones. Tokos said in C-3 it's a conditional use. Patrick asked, and if they're doing retail. Tokos said it's fair game; any commercial or light industrial zone. There are lots of options for retail. It could end up in the water-related zone through the conditional use process. It's outright in C-2. So you could see it on the Bay Front much like the medical dispensary. Patrick asked, but the medical dispensaries have to pick either medical or recreational. He asked if those two different operations can't be within 1,000 feet of each other.

To get to that answer, Tokos moved to Attachment 7. He said he took a stab at extending the same concept we put together for medical marijuana for recreational with the same allowances; mainly for the Police Department because they recognize that this is a controlled substance at the federal level. He used the same kind of enhanced access and supplemental background checks.

With the definitions, he ended up adjusting them so they applied to recreational marijuana as well as medical. He defined what a medical and a recreational endorsement is. He didn't try to define all the terms that OLCC has. He tried to keep it fairly simple. He noted that 4.20.015 explains to what extent a business license endorsement is required. Section 4.20.020 (Application Requirements) is the same except that he had to separate the different licensing authority (OLCC). Berman asked if it's the same endorsement. Tokos said they're different endorsements. We already have a medical endorsement stamp; now a recreational endorsement stamp will be on the business license. Franklin wondered why the State is keeping them separate. Tokos said to the legislature, it's the framework. Medical is different because it is all medical-related. You're growing for medicinal purposes and sharing the plants so with a prescription people can get it. It's more akin to a pharmacy. What we're now talking about is a regular store for sales for recreational use. There are two different distinctions. That's why they're keeping it separate. The senate bill allows limited retail sales for this stop-gap term. Tokos believes that every one of these medical dispensaries will try to get a recreational endorsement; but we'll see. Those using it for medical purposes can pick it up through a retail establishment. He guesses the four we have will all go for retail licenses because it's more profitable. That's probably why they set up in the first place. They will have to make that choice. You can't have medical and recreational dispensaries at the same physical location or address. Berman wondered if the same person can have both. Tokos would guess. You could potentially have unit A as a medical dispensary and Unit B as recreational. He doesn't think that the current facilities are set up so they could do that; they are single-address-type operations.

Berman noted a typo in 4.20.020 (E) where the word should be "person" not "personal". Tokos said the only change in "Application" was to roll in OLCC. Hardy asked on the first page in the second to last paragraph, what "commercial recreation use" is. Tokos said that is as opposed to growing your own plants and smoking them. You are making money off of it. He pulled that out of the Administrative Rule; but he can put "commercial recreational purposes" instead of "use."

Tokos noted that under 4.20.025 (Agreement), at the time he didn't have all of the Administrative Rule sites, so that is why they are highlighted in yellow. Patrick asked if recreational facilities are doing video surveillance the same as the medical facilities. Tokos confirmed that. He said these provisions are all in here. OLCC didn't draft it necessarily the same as under OHA, but the same things are theoretically covered. OLCC says they have the authority to perform background checks; but they didn't say how extensively they would; so he put in language that the Police Department may accept background checks done by OLCC. That's why that flexibility language is in there. The licensee will get background checks and any employees either by the state or the city. Branigan said it says the individual can't have been convicted of the manufacture or delivery of a controlled substance; it doesn't say they can't have been a convicted rapist or something. Hardy said it does say they shall be of good moral character; but that's also not defined. Tokos said that is what we used for medical marijuana, so he used the same. That is a tough spot for the City to go down. The Police Department seemed happy with that language. Regarding alarms, Hardy thought you could stipulate that the alarm answering point notify the police. Berman said that's how it's stated now. Branigan said under the background checks, he didn't see anything prohibiting someone from carrying a gun into a recreational marijuana shop. Tokos said you can't if they have a concealed weapons permit. Patrick said the only place is on federal property. Tokos thought the concept on background checks is clear. There's probably good public policy on why not to have people convicted of crimes. Berman said the absolute background check will show that. Hardy said you can't get background checks from some states. Berman said apparently the police are happy with the way it's going. He asked if someone released from prison after serving time for murder would be of good moral character. Tokos said that would be OLCC's call. Obviously, if somebody is convicted of heroin possession, they are not going to be able to work there. The product is still a controlled substance at the federal level, and if they've violated the controlled substance act and had a conviction for marijuana, they can't work in the facility. He said you could liken it to if you've had a DUI, you shouldn't be working as a bus driver. Tokos said we have a fee resolution, and he assumes it will be the same as for medical endorsement.

Section 4.20.040 (Issuance) gets at the 1,000 feet. That's the way Tokos drafted it, but the Commission has options here. He drafted it as 1,000 feet from another facility that is retail to retail; which means you can have wholesale next door, or medical, or anything of that nature. He said the reasoning is that if you had three or four retail locations next to each other say on the Bay Front, in Nye Beach, or City Center, it could change the character and be detrimental to other businesses. Tokos was asked if we do that for anything else. Tokos said for medical marijuana, and we're treating recreational just like those if this is put in place. That's the state law for medical; and this concept extends the same restriction that's on medical facilities to recreational facilities. The question was raised if the OLCC looks at bars and how close they are; and it was thought that there is something in the rules. Tokos said we have four dispensaries, and we would have more if not for the 1,000 feet state law. Whether they'd all be successful, he doesn't know. Patrick said it's a gold rush right now. Berman wondered why OLCC didn't put it in when it was on the medical facilities. He said they must have thought about it. Tokos said he was told that some larger metro areas like Portland didn't want it. That's probably why they left it to the local jurisdictions. That way those that want it can do it; and those that don't want to do it don't have to. He said if we were to adopt it, we're not treating recreational any differently than medical marijuana; it's not to anyone's advantage then. It does limit the total number in the community. There are only so many commercial properties that are that far apart, and then if you factor in the schools. We have four medical marijuana facilities and can have recreational stores not closer than 1,000 feet to each other. So, we're not preventing people from having reasonable access to the product. It can have detrimental effects elsewhere. We've had comments that some don't like the facility on the Bay Front because they thought the Bay Front was family-oriented. Tokos said if the Commissioners don't see a problem, maybe

you don't want the spacing. If you think it could be a potential problem, then maybe we should space them like the medical marijuana facilities have to do. It allows a reasonable number. It doesn't impact the existing medical facilities. Croteau thought that 1,000 feet is reasonable. There could be one in Agate Beach; 15th Street is as far north as one is right now. South Beach is another place you could locate. That's six facilities. On US 20, that's seven; the school locations a little tricky there though. Patrick said the rules say if providing education; so anything preschool with education-type stuff. Tokos said they use different language; that is for medical. This says public elementary or secondary schools or private parochial or elementary schools. So it would have to be an elementary school; preschool won't be. Tokos said that's what Chief Miranda was asking. Tokos said there are a number of other locations where they could pop up. Branigan asked if they can locate next to a government facility; and Tokos said that would be no problem. Hatfield was mentioned; and Tokos said that Hatfield won't happen. It's water-related, but it's Hatfield, and they won't allow that on campus. Berman said it's also not elementary or secondary. Tokos thought that OCCC doesn't get hooked. This is talking about minors and is more oriented toward that. Tokos said unless the Commission wants to delve into that, that's OLCC's call. Franklin thought that 1,000 feet is fair. Patrick thought we should make them as identical as possible, which would require 1,000 feet apart for retail. Patrick said if they wanted to have them side by side, one medical and one recreational, that's fine. He doesn't care if right behind you have a grow operation. Tokos said you could require a grow operator to be 1,000 feet from retail. Franklin asked if with a grow operation there's a fire risk. Croteau said not if it's a typical greenhouse. Tokos said a permit to get a grow operation will get routed through code stuff.

Croteau thought this is good so far. Tokos asked if the Commissioners were fine not going with daycares; and just go with what the state has for schools. Croteau said he can see an issue with minors; not preschoolers. They are too small. Berman thought that 1,000 feet was too much. Croteau said if we reach saturation with 1,000 feet, then we can reconsider. Tokos said if this proves to be problematic, that standard can always be changed; but if it has an impact, that can't be changed. There will be plenty of options for retailers. We already have four medical facilities operating under this same paradigm. He asked how many pharmacies do we have in town; about four? Franklin thought it could start looking bad to tourists. If there's an abundance of these facilities, it does look bad to some people. He thought 1,000 feet was fair. Tokos said it's a learning curve. There are people that obey and people that don't. If we get a large concentration, we could get some blow back. Businesses may start to suffer. We may hear business owners saying that people don't want to come to their restaurant or whatever. That's not unreasonable. Berman thought that the wording on 4.20.040 number 7 was a little funny and not parallel to the others in structure. Tokos said he would adjust it.

Patrick said if you go in the I-1 zone, you could grow indoors, have a retail operation, and a medical operation. Tokos said the retail and medical would have to be a separate location under the State's rules for medical. If they have a different address and location, that's okay; such as unit A and unit B. He said you could have a situation where you have everything from grow to retail, and maybe some distribution could be intertwined if they meet the State's rules and get licenses. Berman wondered if OLCC is going to treat existing medical as priority in getting licenses. Tokos didn't know the state's procedure there.

Tokos thought it's prudent to get these changes on the books as quickly as we can. He said our office will get hit with questions as people get ready to submit for licenses in January. Berman thought it would be good to do an outreach to the four medical places and tell them what is happening; and if they want to switch over, they better get in early. Hardy thought the City needs to be careful doing that, and Croteau agreed. Tokos said we can let them know what the rules are and that they are welcome to attend the hearing on the business license stuff. He doesn't know if we want to get into what OLCC will do. That is their job; and he thinks they are probably on it. Croteau thought that they all are probably doing retail now. Tokos said, which tells him they are already talking to OLCC. Hardy said the two products are not vastly different. Tokos said the difference is administrative. Patrick thinks that the medical dispensaries will go away. There may be some in the county. Tokos said maybe it's more socially acceptable to say medical. It's easier to do retail than medical, and it's more profitable too. Berman said there are some nonprofits in the medical dispensary business to help people who have a need. Patrick said there probably will be at least one because they see a need. He expects the price to come down. Tokos said, as Patrick had mentioned, it's a gold rush to be at the beginning of something. It will settle out. Some businesses will stick, and some will not.

Going on, Tokos noted that 4.20.045 explains that endorsements aren't transferrable; which is the same concept. Berman asked what if a retail store gets sold and they want to do an endorsement because they are buying this business and somebody comes in with an application the day before. Tokos said that is a State function. For us, it's nontransferable; and they know that. He said for example say the operator at the operation on 15th Street sells his business, they want to make sure whoever is buying it is licensed and gets in and gets their business license. They can protect themselves. Patrick said they have to get their license before they can operate.

Under Section 4.20.050 (Inspection), Tokos added recreational to it. It's still that the City can conduct inspections. For Section 4.20.055 (Revocation), Tokos did add language under number 3 to cover the current interim period of time where because of Senate Bill 460 medical facilities can actually market retail so that their endorsement can't be revoked while they're permitted to do retail. Berman wondered if under B3 where it talks about any marijuana items, if those are things with THC in them, or paraphernalia, or what. Tokos said it's spelled out under number 6. He can move that to number 3. That's how it's defined by OLCC. Berman wondered why a couple of these are not on the medical side. Tokos said OHA didn't stick it in the rules. For

medical he pulled out items that would invalidate State licensing. It's put in here so that if OHA or OLCC decide not to revoke their license, we have the authority to. We don't know how they are going to respond, and we may want to yank their business license.

Tokos said the rest of the code is appeal, which is the same. He cleaned up some cross-references that were bad. Croteau asked about hours of operation. Tokos said they are the same as liquor stores; 7:00 a.m. to 10:00 p.m. We can set that stricter if we want to. Tokos noted that the Commissioners had discussed drive-up windows; and walk-up windows were mentioned. He said this is just parroting what the state has. It was noted that the retail display has to be enclosed and has to have surveillance. Franklin said you have to walk into the facility; it has to be a separate room completely.

Tokos asked the Commissioners if this seemed like a reasonable approach, and the consensus was that this was reasonable. It parallels the State. They thought Tokos did a good job with it. Tokos said he will take this to the City Council work session at noon on November 2nd. He said it wouldn't hurt to have a Commissioner or two attend if you can to share your perspective. He said this may not come back to the Commission. Because it's just a business license change, it will be just set up as a Council hearing; which works better anyway.


B. Adjournment. Having no further discussion, the meeting adjourned at 7:11 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant

Memorandum

To: Newport Planning Commission

From: Derrick Tokos, Community Development Director 

Date: November 4, 2015

Re: Community Development Director's Denial of Minor Partition (File 3-PAR-15)

Enclosed is a copy of the Community Development Director's decision denying an application filed by applicant and land owner, Johnathan Holbrook, for property located just north of NW 70th (a private street) and US 101.

Mr. Holbrook owns nine parcels that are served off of a gravel, 550+/- foot long private street that intersects with NW 70th adjacent to US 101. The first three parcels were created by Bill Buchanan in 1991. Johnathan Holbrook acquired the properties and created six additional parcels with partition plats recorded in 2005, 2006 and 2010. The last partition implemented a tentative approval granted in 2008. In 2009 the City of Newport overhauled its land division code and the standards applicable to the subject application were put in place at that time.

The properties were divided through a series of partitions to avoid the requirement that a public street and attendant utilities be installed to provide access to the properties. Mr. Holbrook has indicated as much. The question for the Commission is the degree to which services (water, sewer, storm drainage, streets, etc.) must be improved to support a division of land under the partition rules that were updated in 2009. Earlier this year, Mr. Holbrook submitted an application to divide the parcel immediately to the north of the subject site into two parcels (File 1-PAR-15). That application was ultimately returned to Mr. Holbrook and his filing fee was refunded because neither I nor our City Engineer, Tim Gross, felt that it could be approved in a manner consistent with the land division code without significant improvement to the street and storm drainage system (see attached). Mr. Holbrook felt that such improvements would be cost prohibitive. These same issues exist with the subject proposal.

The key approval standard at issue is NMC 13.05.095(A)(5), which reads:

"Public facilities serving the partition are adequate under Section 13.05.045. Proposed Streets within the partition comply with the standards under Section 13.05.015, including any allowed modifications or a variance has been obtained."

The first sentence of the criterion states "*Public facilities serving the partition are adequate under Section 13.05.045.*" This standard provides that a land division may only be approved if the public facility and utility providers confirm in writing that they can adequately provide service to the proposed land division (NMC 13.05.045(A)). Utility providers that must sign-off are those that provide electricity and phone service. Mr. Holbrook included letters with his appeal from Central Lincoln and Century Link that indicate they can serve the development. It is reasonable for the Commission to accept these letters as satisfying the requirement relative to electricity and phone service. As for public facilities (water, sewer, streets, and storm drainage), the City relies upon a letter from the Public Works Department to establish whether or not these services are adequate. Tim Gross, City Engineer, has prepared such a letter (enclosed). The letter indicates that the existing private street would need to be improved with curb, gutter, drainage

structures, an aggregate base, and paving in order for it to be adequate to serve additional parcels. Mr. Gross further notes that a road-side ditch storm drainage conveyance system was never installed as originally envisioned to serve the existing parcels (Partition 5-PAR-05, "Holbrook Estates"). Lastly, Mr. Gross notes that water and sewer service is adequate to support additional parcels; however, work may be needed to ensure each proposed parcel has separate sewer services that extend to the City sewer main and that those services are contained within private sewer easements for maintenance purposes.

With respect to the second sentence of NMC 13.05.095(A)(5), the Director's decision finds that the existing private street is a "proposed street" because the parcels that it will serve don't exist yet. It is the proposed street access for those parcels and is located within the partition. Mr. Holbrook's argument is that a street is "proposed" only if it is being modified or extended. The Commission will need to decide which approach is the more appropriate interpretation. If the Commission agrees with the Director then the private street must be improved to a standard that meets the provisions of NMC 13.05.015, which include the provision of a 50-foot right-of-way and 36-foot wide roadway. The City Engineer's concern that the existing private street and storm drainage system is inadequate and needs to be improved to a 36-foot wide paved section, with associated drainage improvements, dovetails with this requirement. The applicant did not apply for a variance to these standards and a hearing regarding a variance would need to be noticed. It is also unlikely that a variance could be justified, as there is no hardship or practical difficulty in constructing a larger street. It is a cost issue.

The approval authority may modify the street standards (NMC 13.05.015(A)). In doing so, it must consider the location, width and grade of streets in relation to existing and planned streets, topographical or other geographical/environmental conditions, public convenience and safety, and the proposed use of land to be served by the streets. The Commission cannot reasonably accomplish this with the information provided for a two parcel partition. Mr. Holbrook would need to provide a buildout plan for how he intends to further divide the existing nine parcels (i.e. the neighborhood") in order for the Commission to determine if topographical or other conditions make conformance to the street standards listed above impractical. This has typically been accomplished through the review and approval of a Planned Development. Both Tim and I have advised Mr. Holbrook that he has the option of submitting an application for a Planned Development to put in place alternative street standards. That type of process often involves tradeoffs, like reservation of open space, trails, etc., but is a tool that applicants have successfully used to develop reduced street sections, such as a 24 foot wide, paved street section that the Commission recently approved for the Wilder development.

Accepting Mr. Holbrook's view that, for the purposes NMC 13.05.095(A)(5), a "proposed street" only exists if it is being modified or extended would create a circumstance where anybody could blade in a roadway of any size, length or grade, no matter how inadequate it may be, and then later come in to partition a property two or three parcels at a time and claim that the road is an existing private street exempt from city standards that would otherwise require it be upgraded to adequately serve the new parcels. It would also undermine a distinction the City built into its definition of "street" which notes that a public or private way becomes a street within the meaning of the land division code if it serves more than four individual lots or parcels (NMC 13.05.005(J)). Otherwise, it is a driveway that is not regulated by the land division code. This distinction was made intentionally to establish a maximum number of lots or parcels that can be served off of an unregulated roadway. Once enough lots are created through a partition or subdivision process it becomes a private street subject to improvement standards in NMC 13.05.015. With Mr. Holbrook's interpretation, the City would never get to the construction standards for a private street that is already in place unless an applicant happened to propose a change to the street. For these reasons, if the Commission agrees with Mr. Holbrook's reading of the code, it should consider updating the Municipal Code to eliminate this pathway to circumventing street improvement standards that were put in place to ensure that new parcels possess adequate access.

In his appeal, Mr. Holbrook cites Chapter 14.44, Transportation Standards, as allowing exceptions to street standards listed in NMC 13.05.015. While it is correct that this Chapter allows the City to accept a future improvement guarantee in lieu of actual street improvements, the conditions by which the City is allowed to accept such a "future street guarantee" have not been met. Mr. Holbrook claims that his proposal qualifies for two of the conditions, the first of which states:

"Due to the developed condition of adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and the improvement associated with the project

under review does not, by itself, provide increased street safety or capacity, or improved pedestrian circulation."

Parcels to the north are served off of the same substandard private street, and the street is narrower as it extends north and does not appear to be fully constructed with respect to the northern most parcels. The lots are of a size where they can be further divided and Mr. Holbrook has indicated an interest in further dividing the properties. Therefore, it is reasonable for the Commission to find that the developed condition of these properties is such that it is likely that the private street will need to be improved to adequately serve the adjacent properties and that requiring the portion of the private street associated with the proposed partition to be improved increases street safety, capacity, and improves pedestrian circulation. Mr. Holbrook also claims that the following condition would allow for a non-remonstrance agreement to be accepted:

"The improvement is associated with an approved land partition or minor replat and the proposed land partition does not create any new streets."

The application before the Commission is not an approved land partition or minor replat, and as noted above the street is new in the context of the two parcels that Mr. Holbrook wants to create. For these reasons it is reasonable for the Commission to find that this condition has not been met.

It is relevant to note that Chapter 14.44, which was adopted by the City in 2012 as part of its Transportation System Plan update, was put in place to establish standards for responding to development of existing infill lots, not land divisions. Chapter 14.44 specifically notes that streets within or adjacent to a development subject to Chapter 13.05, Subdivision and Partition, are to be improved in accordance with the Transportation System Plan and the street standards of Section 13.05.015 (ref: NMC 14.44.050(A)(2)) and the City has not applied Chapter 14.44 to land division applications.

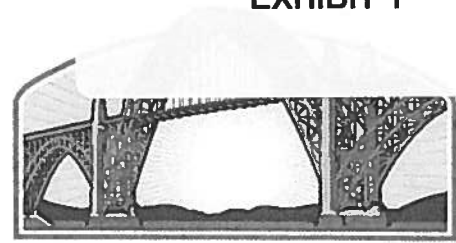
Considering the above, and information contained in the case record, the Commission will need to determine if Mr. Holbrook's application satisfies the approval standards, or can satisfy the approval standards through the imposition of reasonable conditions. If the Commission cannot find that the standards have been met, or can be met with reasonable conditions, then the application must be denied. The Commission should clearly articulate its reasoning and may direct staff to prepare findings and a final order consistent with its direction for consideration at its November 23, 2015 meeting.

It is my recommendation that the Commission carefully consider the adequacy of the street and storm drainage conveyance system that would serve the proposed parcels. If it accepts that the street must be improved to a 36-foot paved section in order to satisfy NMC 13.05.095(A)(5), then it must consider whether or not imposing a condition that the applicant construct the improvements is reasonable. This stretch of private street is approximately 140-feet in length from US 101 to the point where the street meets the north line of proposed Parcel 1. In determining whether or not the improvement is reasonable, the Commission should consider whether or not it appears to be roughly proportional to the impact of creating two new parcels. If the Commission believes the requirement is roughly proportional then it should impose the condition. If it does not, then it should deny the partition on the basis that the street access and associated storm drainage system is not adequate to serve additional parcels. If the Commission feels that the street improvement condition is reasonable, then it should also consider imposing a condition that individual sewer services be installed and private sewer maintenance easements be put in place as recommended by the City Engineer.

Exhibits

- Exhibit 1: Memo from Tim Gross, City Engineer, dated 11-3-15, with reduced copy of Partition File No. 05-PAR-05 as-built drawings
- Exhibit 2: Memo from Rob Murphy, Fire Marshall, dated 11-2-15
- Exhibit 3: Correspondence/maps from File 1-PAR-15 (fee refunded and application returned)
- Exhibit 4: Appeal by John Holbrook, with attachments, dated 10-9-15
- Exhibit 5: Community Development Director Final Order and Findings of Fact for File 3-PAR-15), dated 9-24-15
- Exhibit 6: Application and related materials for File 3-PAR-15
- Exhibit 7: NMC Chapter 13.05, Subdivision and Partition
- Exhibit 8: NMC Chapter 14.44, Transportation Standards

MEMO



Date: November 3, 2015
To: Derrick Tokos, City Planner
From: Timothy Gross, Director of Public Works/ City Engineer
Re: Adequacy of City facilities for 60 NW 70th St (10-11-20-BC-00607)

This memo is in response to the requirements of Section 13.05.045 requiring confirmation of public services for the division of property within the City limits.

1. **Water Services:** City water is provided by a 6" PVC main located within the property. This line provide sufficient water capacity and pressure for domestic and fire needs.
2. **Sanitary Sewer Services:** City sanitary sewer service is provided by 8" PVC mains and the NW 70th St Pump Station, located west of the property. These facilities are sufficient to meet the capacity needs of the property. Note that the downstream Agate Beach system has capacity issues, however no moratorium on new development has been imposed and the on-going Agate Beach Wastewater Collection Systems Improvements Project will address these capacity issues.

Proposed lots within the land division are required to have separate sewer services from the property to the public main. Easements shall be recorded in the interest of the served property whenever the service crosses private property. These easements shall be wide enough to allow maintenance of the proposed service

3. **Storm Sewer:** There is no City storm sewer adjacent to the property. Existing runoff from the property flows through a private culvert to a nearby ravine. The existing roads were not built to the width nor cross section as shown in the original partition file labeled Holbrook Estates. There are no ditches on the sides of the road and the water essentially sheets until it finds a low spot. Storm drainage needs to be addressed when the streets are improved. Please see paragraph 4 below.
4. **Street accessibility, availability, capacity and condition:** The property is accessed directly from US-101 via a private street. There are no adjacent City streets. The access to the land division as proposed does not meet City standards.

Streets will need to be improved in accordance with section 13.05.040.A.1 of the City code including but not limited to curb and gutter, drainage structures, aggregate base and paving to a width of 36 feet.

Based upon discussions City Staff have had with Mr. Holbrook, and upon the land division requests, it appears the applicant is attempting to add more density to the original partition while avoiding public improvements by systematically applying for lot divisions. The applicant has stated that he doesn't want to make the investment that required public improvements would necessitate.

The City code was written with the intent to ensure adequate public street improvements are provided when land is developed over a particular density. This ensures safe access for residents, public safety vehicles and maintenance vehicles; prevents local flooding; and improves the quality of life and land values for future residents. Although in this instance my comments are based solely on the application for land division, the development needs to be considered holistically, and the long term impact of continual lot division without adequate public access considered. If the applicant wants to implement a lesser standard for public streets, the PUD process should be considered.

NEWPORT, OREGON

[illegible]

GENERAL INFORMATION

OWNER & DEVELOPER	JOHN HOLMBOE 400 ST. SCIENCE LODGE NORTON, MA 01703 (508) 253-8384
ENGINEERING	BAKER DESIGN ENGINEERING, INC. 1025 MAIN STREET

FORMED USE	SINGLE FAMILY RESIDENTIAL
HEAT USE	VACANT
CONVNT	FORESTER
ETA	MINIAT - CITY OF NEWPORT

GENERAL NOTES:

1. LOT LINE BEARING AND LENGTH INFORMATION FROM SURVEY DATED AUGUST 11, 2007 BY ETHAN D. NICELY, PLS. SEE THIS SURVEY FOR MORE DETAILED LOT LINE AND EASEMENT INFORMATION.
2. ACCESS AND UTILITY EASEMENTS RECORDED AUGUST 15, 2007, DOCUMENT NO. 200717778.

GENERAL INFORMATION

FORMED USE	SINGLE FAMILY RESIDENTIAL
HEAT USE	VACANT
CONVNT	FORESTER
ETA	MINIAT - CITY OF NEWPORT

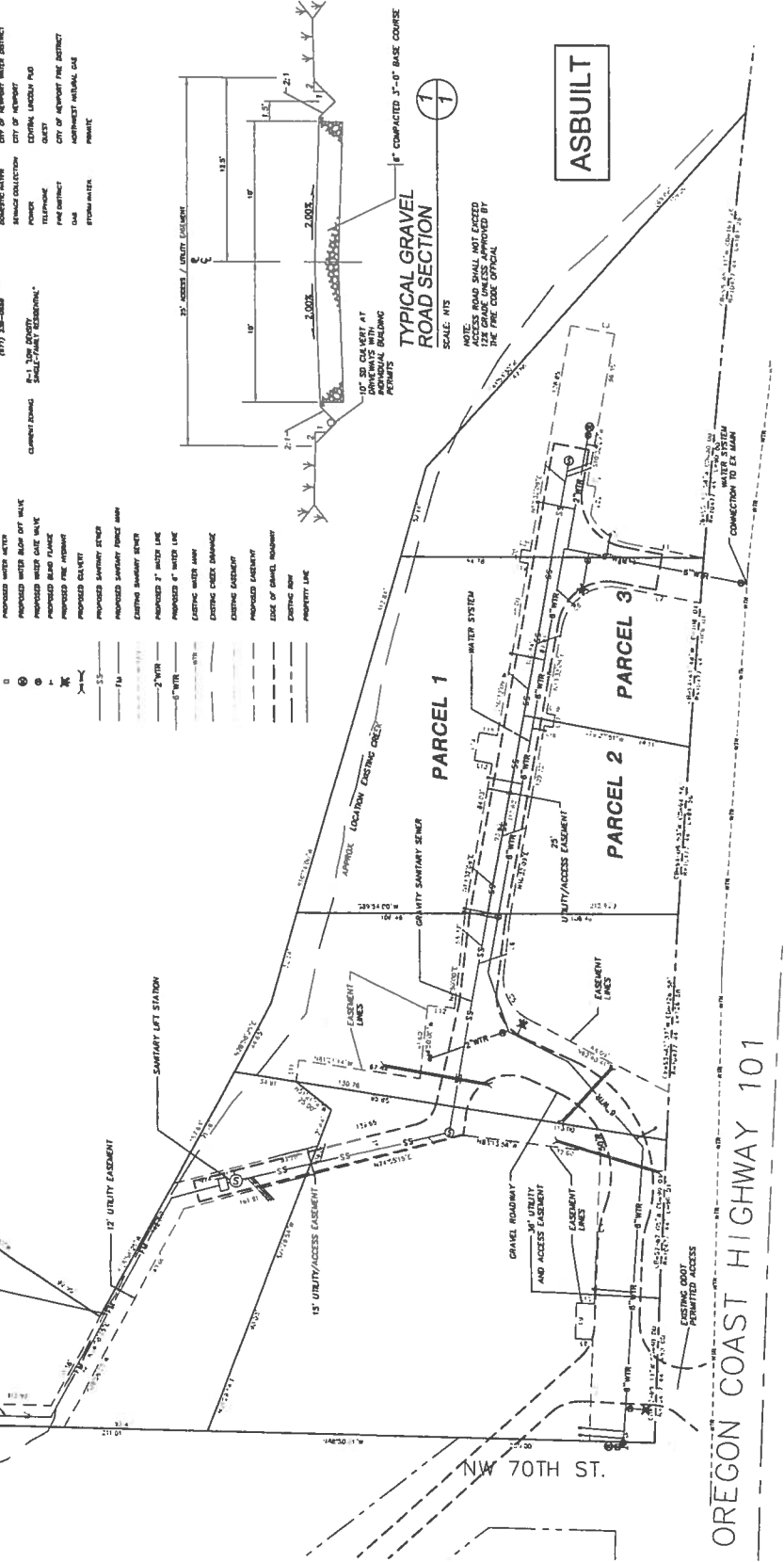


HOLBROOK ESTATES
COMPOSITE SITE PLAN
FOR: JON HOLBROOK

REV NO	DATE	DESCRIPTION

PROJECT NO.	HOL0514
DATE	12/200
DRAWN	MKF
DESIGNED	PAB
CHECKED	
SHEET TITLE	CIVIL
SHEET NUMBER	

1/3





**Baker
Design
Engineering**

6052 Kara Ln. 'E
Astoria, OR
97103

TEL 503/3101123
FAX 503/7491461



HOLBROOK ESTATES
WATER UTILITY PLAN
FOR: JON HOLBROOK
NW 1/4 SEC 20, T10S, R11W, W.M., LINCOLN COUNTY

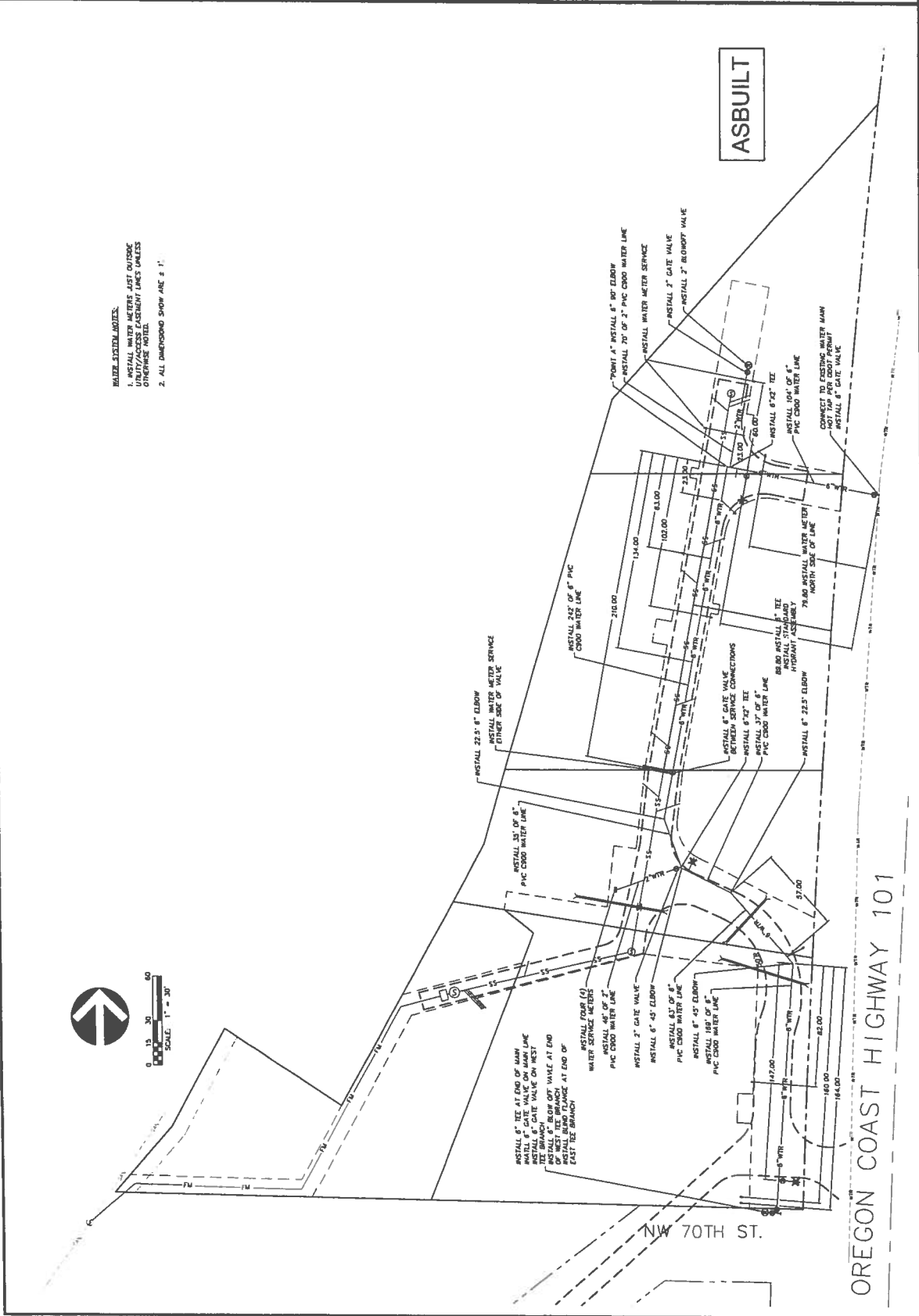
REV	DATE	DESCRIPTION

PROJECT NO. **HOL0514**
DATE **12/2007**
DESIGNED **PAB**
CHECKED **PAB**
SHEET TITLE **CIVIL**
SHEET NUMBER **2/3**

WATER UTILITY NOTES:
1. INSTALL WATER METERS JUST OUTSIDE
UTILITY/ACCESS EASTERN LINES UNLESS
OTHERWISE NOTED.
2. ALL DIMENSIONS SHOWN ARE ± 1'.



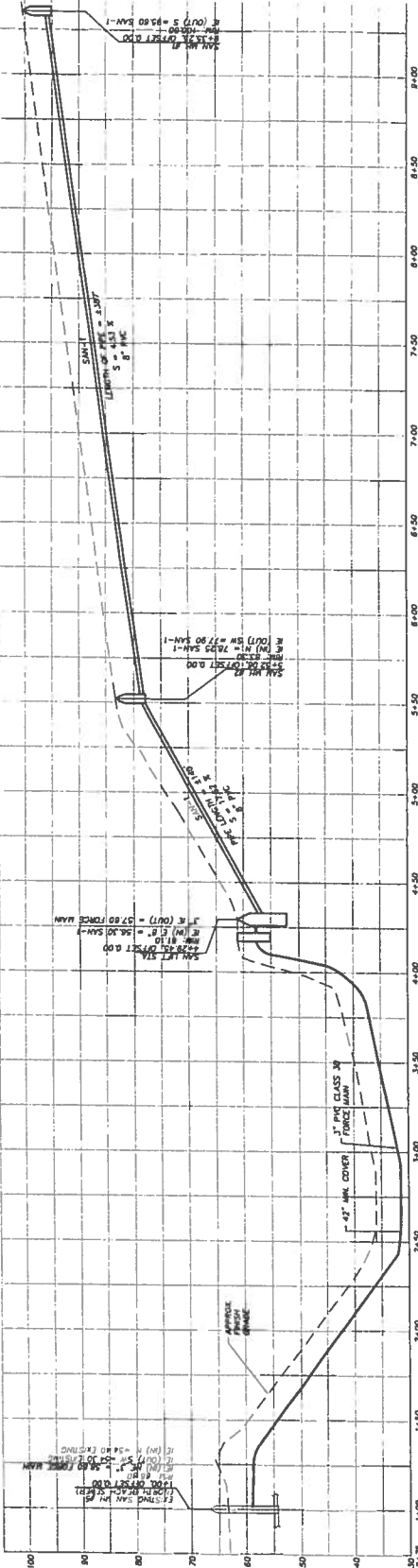
0 15 30 60
SCALE: 1" = 30'



NO.	DATE	REV.	DESCRIPTION

PROJECT NO. **H00514**
 DATE **12/2007**
 DRAWN **UKF**
 DESIGNED **PAB**
 CHECKED
 SHEET TITLE **CIVIL**
 SHEET NUMBER **3/3**

ASBUILT



SANITARY SEWER PROFILE
 SCALE: 1" = 10' VERT

SANITARY SEWER LATERAL SCHEDULE
 LOCATE SANITARY SEWER LATERALS AT THE
 EXISTING SANITARY SEWER LATERALS
 WITH CLEANOUT JUST OUTSIDE EASEMENT

STATION	DIRECTION FROM MAIN
4+24.45	S (TUB OUT FROM MAIN)
4+37.45	S
4+47.85	S
4+58.85	N
5+38.85	S
6+48.25	E
6+58.25	W
7+27.25	E
8+31.25	E
8+33.25	W
8+38.25	E
8+39.25	E



SCALE: 1" = 30'



SANITARY SEWER PLAN
 SCALE: 1" = 30' HORIZ

Newport Fire Dept.

Memo

To: Derrick Tokos, Community Development Director

From: Rob Murphy, Fire Chief

Date: November 2, 2015

Re: Appeal of minor partition #3-PAR-15

I was asked to provide comment on the appeal of minor partition #3-PAR-15 of tax lot 607 of the Lincoln County Assessor's Office map no. 10-11-20-BC submitted by Jon Holbrook. The lot in question has an address of 60 NW 70th Street in Newport.

The Fire Department does not have issue with the partition request. The access provided to tax lot 607 meets the requirements of the Oregon Fire Code as adopted by ordinance by the City of Newport.

Please let me know if you have any further questions on this matter. Thank you,

Rob Murphy

Fire Chief

Newport Fire Department

From: Jon <custhome@hotmail.com>
Sent: Friday, April 10, 2015 4:24 PM
To: Derrick Tokos
Subject: RE: Your Partition Proposal (File 1-PAR-15)

This appears to be reasonable documentation for denial, although I do feel there is a large gray area involved and it was clearly a judgement call on Tim's part as it is arguable that services are adequate enough that he could have approved it. This is extremely unfortunate for me and also for the city in that it will deny me a retirement and the city a substantial income from future development. I do believe with some minor improvements that I could have made the road totally adequate for the light traffic involved. I felt that Tim was not open to negotiation on these points and, as a public servant, could certainly be more amenable and accommodating to longtime locals like me. I look forward to the day that Tim no longer works for the City. I formally withdraw my application and thank you for providing a refund.

I do wish to meet with you and Spencer Nebel on the NW 70th Street issue. I absolutely do not agree with your and Tim's viewpoint on this and feel the residents of NW 70th are being shortchanged for no reason. Let me know when you can meet.

Jon Holbrook
Jon Holbrook Design
405 SE Scenic Loop
Newport, OR 97365
Ph. 541-265-9366

From: D.Tokos@NewportOregon.gov
To: custhome@hotmail.com
CC: T.Gross@NewportOregon.gov; S.Nebel@NewportOregon.gov
Subject: Your Partition Proposal (File 1-PAR-15)
Date: Fri, 10 Apr 2015 22:44:17 +0000

Hi Jon,

As I mentioned when we met, in putting together a draft decision it became apparent that your application for a partition does not satisfy the approval criteria for that type of request. The memo that I prepared following the meeting lists the specific criteria that are an issue, but I have tried below to more specifically outline why your application, as submitted, cannot be approved. I would like to help you get to a positive outcome, and believe that you might be able to get there through a planned development. You would still have to further improve the road, but likely not to the full extent that the City's land division code would otherwise require.

If you withdraw the partition before a decision is rendered we can provide you with a refund of your filing fee. On the other hand, if you want to proceed with the proposal, I'll prepare a decision denying the application that you can then appeal to the Newport Planning Commission. The fee for that would be \$250.00. Perhaps you can think about it over the weekend and then let me know how you would like to proceed first thing next week.

Here are reasons why your partition request cannot be approved.

Partition applications are required to satisfy the approval criteria listed under NMC 13.05.095. One of those approval criteria, NMC 13.05.095(A)(5) reads as follows:

“Public facilities serving the minor replat or partition are adequate under Section 13.05.045. Proposed streets within the minor replat or partition comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained.”

I’ll address the second part of this criterion first as it is the most straightforward. The term “street” is defined as:

“Street. A public or private way other than a driveway that is created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land. For the purposes of this section, a "driveway" is a private way that begins at a public right-of-way that is proposed to serve not more than four individual lots/parcels cumulative as the primary vehicular access to those individual lots/parcels.”

The parcel that you want to create with this partition will be served by a 15-foot wide gravel roadway that has been constructed within a 25-foot wide private access easement. The roadway serves more than four parcels therefore by this definition it is a street that must meet the provisions of Section 13.05.015. Those provisions require the right-of-way (easement) be 50-feet in width and that the travelled roadway be at least 36-feet in width (NMC 13.05.015(B)). There are other standards that trigger as well, such as the provision of sidewalks, and a restriction that a dead-end roadway such as this not exceed 400-feet. The tentative plan that you provided does not show how the roadway will be improved to these street standards and from our conversation it did not sound like you believe it would be economically feasible to do so.

The other part of this partition approval criterion states “Public facilities serving the minor replat or partition are adequate under Section 13.05.045.” The section referenced, 13.05.045, provides that a tentative plan for a partition may only be approved if public facilities can be provided to adequately service the land division as demonstrated by written letter from the public service provider. This dovetails with another partition approval criterion, NMC 13.05.095(A)(3), which requires a finding that the tentative plan will not interfere with the provision of key public facilities. Our City Engineer, Tim Gross, is charged with preparing the service provider letter relating to water, sewer, storm drainage, and street services. At our meeting on Wednesday, Tim explained that he is not prepared to draft a letter finding that these services are adequate to serve an additional parcel. He explained his reasoning, which I’ll not try to parrot. I appreciate that this is a discretionary determination on his part; however, as a licensed engineer his views are considered to be expert testimony in this regard. I would also note that such a determination is relevant to your proposal to create an additional parcel and has no bearing on the 9 existing parcels that you created over the years that relay upon the gravel access road and existing utilities.

I’ll follow-up with you separately regarding the disposition of NW 70th Street, as that is a different albeit related issue.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626
fax: 541.574.0644
d.tokos@newportoregon.gov

Derrick Tokos

From: Derrick Tokos
Sent: Friday, March 20, 2015 3:01 PM
To: 'Jon'
Cc: Robert Murphy; Tim Gross
Subject: Proposed Minor Partition at NW 70th Street
Attachments: comments.pdf; tentative plan.pdf; 2005 Partition Plat.pdf; 2010 Partition Plat.pdf; Fire Access Turnaround Options.pdf

Hi Jon,

Please see the attached comments from our Public Works and Fire Departments. Also, I have had a chance to review your submittal and would appreciate if you could provide a revised drawing(s) that address the following:

- 1.) Please show the location of existing and proposed water and sewer service lines. The Public Works Department will need this information in order for it to confirm that the service will be adequate pursuant to NMC 13.05.095((A)(5)).
- 2.) I have enclosed the last two partition plats for the subject property. They show a number of existing easements. Also, the Public Records Report that you included with the application lists easements that do not appear to be shown on the tentative plan, such as Book 250, Page 500; Book 187, Page 2094; and Instrument No. 200512067. These easements need to be shown and labeled on your tentative plan map (NMC 13.05.070(C)(6)(a)).
- 3.) The Fire Department is concerned that the access shown will not provide them sufficient area to maneuver their equipment. Attached is a schematic drawing showing the minimum turn radius requirements. If you proceed with a conventional hammerhead design, it appears that you will need to extend the turnaround onto Parcel 3 of Partition Plat 2010-4. That seems plausible since you own the property. An easement would need to be put in place separate from the partition plat since that parcel is not a part of the plat. However, you can show the easement as "to be dedicated" on this tentative plan, along with the full extent of the turnaround so that our Fire Department can confirm that emergency access to the proposed parcels will be adequate.

Feel free to submit the revised tentative plan as multiple sheets if the drawing gets too cluttered. Also, don't hesitate to contact me if you have questions about information that you need to provide so that we can move this review process to a successful conclusion.

Thank you,

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626
fax: 541.574.0644
d.tokos@newportoregon.gov

Wanda Haney

From: Robert Murphy
Sent: Tuesday, January 27, 2015 1:36 PM
To: Tim Gross; Wanda Haney; Jim Protiva; Joseph Lease; Mark Miranda; Michael Murzynsky; Spencer Nebel; Ted Smith; Victor Mettle
Subject: RE: Minor Partition - File No. 1-PAR-15

I have to agree with Tim. The detail is very poor, but the way it looked like they wanted to divide the parcel would basically land lock two of the three partitions and could potentially deny us the access we need to access these parcels. There does not appear to be any access easements or any other easements of any kind, although with the picture being so small it is hard to tell.

Rob Murphy

Fire Chief
Newport Fire Department
245 NW 10th St.
Newport, OR 97365
541-265-9461
r.murphy@newportoregon.gov

From: Tim Gross
Sent: Tuesday, January 27, 2015 1:29 PM
To: Wanda Haney; Jim Protiva; Joseph Lease; Mark Miranda; Michael Murzynsky; Robert Murphy; Spencer Nebel; Ted Smith; Victor Mettle
Subject: RE: Minor Partition - File No. 1-PAR-15

They need to provide information regarding the availability of public services for these proposed lots as part of the public record (i.e. water and sewer). Likewise, their access seems substandard to provide access for maintenance or emergency vehicles; but it is hard to tell, since they did not include any dimensions in their drawing not indicate the condition of the road or the material it is constructed from.

Timothy Gross, PE
Public Works Director/City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365
P 541-574-3369
F 541-265-3301
C 541-961-5313

From: Wanda Haney
Sent: Tuesday, January 27, 2015 12:01 PM
To: Jim Protiva; Joseph Lease; Mark Miranda; Michael Murzynsky; Robert Murphy; Spencer Nebel; Ted Smith; Tim Gross; Victor Mettle
Subject: Minor Partition - File No. 1-PAR-15

Attached is a public notice containing a land use request. The notice contains an explanation of the request, a property description and map, and a deadline for comments. Please review this information to see if you would like to make any

comments. We must receive comments prior to the last day of the comment period in order for them to be considered. **Should no response be received, a "no comment" will be assumed.**

Thanks,

Wanda Haney

City of Newport

Community Development Department

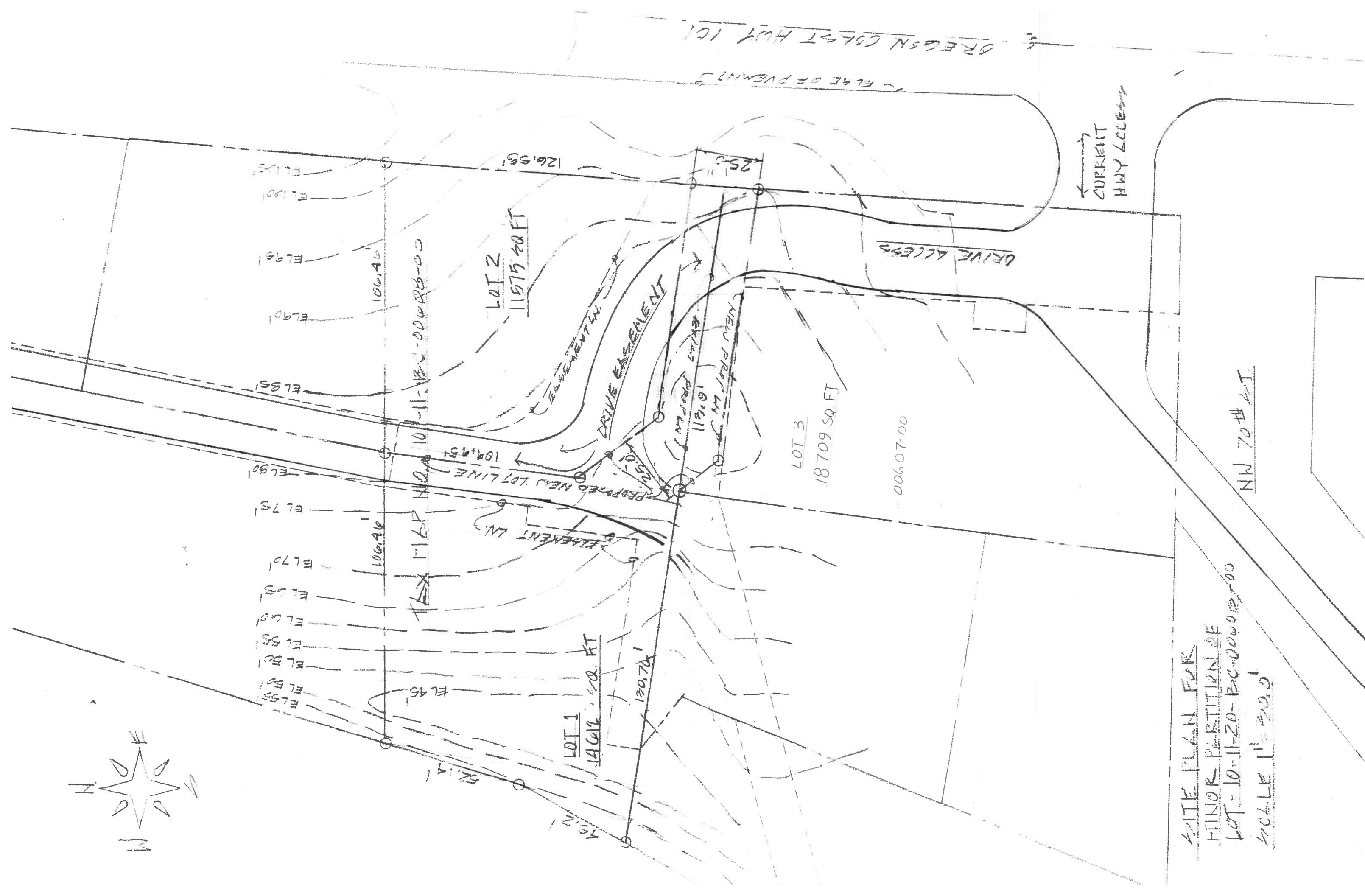
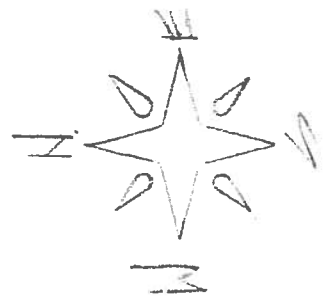
169 SW Coast Hwy

Newport, OR 97365

541-574-0629

FAX: 541-574-0644

w.haney@newportoregon.gov



SITE PLAN FOR
HINOKI PLANTATION OF
LOT - 10-11-20-B-C-00000-00
WOLF 11-2000

22/10/11

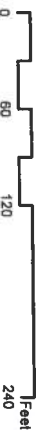


City of Newport
Community Development Department
188 SW Coast Highway
Newport, OR 97385
Phone: 1.541.574.0828
Fax: 1.541.574.0844

This aerial is for informational use only and has not been prepared for use as a substitute for legal engineering, or surveying purposes. It

Holbrook Parcels

Image Taken July 2013
4-inch, 4-band Digital Orthophotos
David Smith & Associates, Inc. Portland, OR



City of Newport Land Use Application

EXHIBIT 4

PLEASE PRINT OR TYPE • COMPLETE ALL BOXES • USE ADDITIONAL PAPER

Applicant Name(s): Jonathan Holbrook	Property Owner Name(s): If other than applicant: same
Applicant Mailing Address: 405 SE Scenic Loop Newport, OR 97365	Property Owner Mailing Address: If other than applicant:
Applicant Telephone No.: 541-265-9366 E-mail: custhome@hotmail.com	Property Owner Telephone No.: If other than applicant: E-mail:
Authorized Representative(s): Person authorized to submit and act on this application on applicants behalf	
Authorized Representative Mailing Address:	
Authorized Representative Telephone No.:	E-Mail:

Project Information

Property Location: Street name if address # not assigned 600 NW 70th St. Newport, OR		
Tax Assessor's Map No.: 10-11-20 BC	Tax Lot(s): 607	
Zone Designation: R-1	Legal Description: Add additional sheets if necessary	
Comp Plan Designation:		
Brief Description of Land Use Request(s): Appeal to denial of Minor Partition Application dated Sept. 24 2015		
Examples: 1. Move north Property line 5 feet south, or 2. Variance of 2 feet from the required 15-foot front yard setback		
Existing Structures: If any none		
Topography and Vegetation:		

APPLICATION TYPE (please check all that apply)

<input type="checkbox"/> Annexation <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Comp Plan/Map Amendment <input type="checkbox"/> Conditional Use Permit <input type="checkbox"/> PC <input type="checkbox"/> Staff <input type="checkbox"/> Design Review <input type="checkbox"/> Geologic Permit	<input type="checkbox"/> Interpretation <input type="checkbox"/> Minor Replat <input type="checkbox"/> Partition <input type="checkbox"/> Planned Development <input type="checkbox"/> Property Line Adjustment <input type="checkbox"/> Shoreland Impact <input type="checkbox"/> Subdivision <input type="checkbox"/> Temporary Use Permit	<input type="checkbox"/> UGB Amendment <input type="checkbox"/> Vacation <input type="checkbox"/> Variance/Adjustment <input type="checkbox"/> PC <input type="checkbox"/> Staff <input type="checkbox"/> Zone Ord/Map Amendment <input type="checkbox"/> Other _____
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FOR OFFICE USE ONLY

File No. Assigned: <u>3-PAR-15-A</u>		
Date Received: <u>10-9-15</u>	Fee Amount: <u>250.00</u>	Date Accepted as Complete: _____
Received By: <u>VM</u>	Receipt No.: <u>1.03176</u>	Accepted By: _____

(SEE REVERSE SIDE)

Community Development & Planning Department • 169 SW Coast Hwy, Newport, OR 97365 • Derrick I. Tokos, AICP, Director

Oct. 8, 2015

Jon Holbrook

405 SE Scenic Loop

Newport OR, 97365

Atten; Planning Department of City of Newport

RE; Request for Appeal of denial of Minor Partition #3-PAR-15 of tax lot 607 of Lincoln County Assessors tax map no. 10-11-20-BC, dated Sept. 24, 2015

Appeal by Jonathan Holbrook, owner of property and applicant for minor partition

The Appellant wishes the appeal to be heard de novo.

Below is an item by item response to the individual criteria by item number that deemed the partition ineligible. Only the criteria that deemed the partition denied are addressed. All other criteria stand as approved.

Item B ii.

The Community Development Director (referred to from here on as the Planning Director), Derrick Tokos's description of the proposed properties is completely false. He states "The applicant's tentative plan illustrates that both proposed parcels possess at least 25 feet of frontage along a private easement road (i.e. a private way) that extends north from US 101 along the east boundary of the properties, parallel to the highway. This private way currently serves as the primary vehicular access to eight parcels, including the subject property, and is therefore by definition a street (as opposed to a driveway)." I am surprised at this determination by our senior planner as I have discussed my project with him in depth and he is perfectly aware that I have direct Highway 101 access and frontage to this parcel. The proposed frontage directly on Hwy 101 is as follows, parcel 1 has 90' frontage and parcel 2 has 80' frontage. I clearly show this on my site plan submittal. The access is permitted and approved by ODOT and the City of Newport. Both proposed properties will have direct frontage on highway 101 exceeding the 25' minimum. As such the inference that my property's front and also proposed Parcel 2's access is "along a private easement road" is false. My partition does then meet the requirement of NMC 13.05.030 (B).

In previous discussions the Planning Director was concerned about increased traffic. I propose that Parcel 2 retains direct highway access and parcel one's driveway will be immediately adjacent to the highway access a short distance down the 35' easement with an existing 22' wide gravel road (see Site Plan attachment 1). The private easement road to parcel 1 is existing, legal, and City and ODOT approved, and there will be no change to either the driveway or the private easement road. If I didn't partition this parcel I would still be accessing it from the same driveway location, meaning, if my partition is granted, there will be no net

increase to traffic on the private easement road. Parcel two will continue to access directly to highway 101. The Hwy 101 access and the private easement road are both reviewed and approved by the City of Newport, the City of Newport Fire Department, and ODOT.

Item E i. The Planning Director failed to notify me of an incomplete application as required per Section 13.05.095 A. "After an application for minor replat or partition is **deemed complete**, the community development director shall send notice to persons within 100 feet of the subject property and if there are existing public easements, affected utilities, that the tentative plan has been filed." I was not informed of an incomplete application until I received the Letter of Denial. See attachments 2,3, and 4 from the utility companies.

Item E ii. The Planning Director again failed to notify me of an incomplete application as required per code. See note on Item E i. and see attached letter from City of Newport Public Works. The Municipal Development Code requires disclosure of any street improvements needed outside the development due to increased traffic flow. Outside my partition is direct access to Hwy 101 and ODOT made no recommendations for improvements needed, during the comment period, which means no changes are required outside the development.

Item E iii.

I believe the Planning Director is misinterpreting the Criteria in this instance. The Municipal Code clearly reads "Proposed streets within the partition comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained". The definition of proposed is "to form or put forward a plan or intention". This interprets to mean that any planned (proposed) **new** streets or modifications to existing streets need to meet current standards. I am not "proposing" any streets or "modifications to streets". The Planning Director has verbally confirmed to me that the existing road and access easement is grandfathered in and is the legal access to all the properties it services. I am strictly just trying to partition a piece of property that is accessed directly from Hwy 101 and from a legal private easement road approved by the City. This Criteria clearly is referencing a situation where if someone wants to build a new roadway or modify an existing roadway, they will need to follow the standards of Section 13.05.015. This is not referencing situations like mine where I am not proposing any changes to the existing approved roadway.

In addition to this there are also several exceptions to the requirement that city grade streets, per NMC Chapter 14.44 Transportation Standards, be installed that would accommodate my situation.

Section 14.44.050 of the City of Newport Municipal Code Chapter 14.44 "Transportation Standards" specifically allows exceptions to the requirement to install or improve the adjacent roadways, as follows;

"B. Guarantee. The city may accept a future improvement guarantee in the form of a surety bond, letter of credit or non-remonstrance agreement, in lieu of street improvements, if it determines that one or more of the following conditions exist."

2. "Due to the developed condition of adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide increased street safety or capacity, or improved pedestrian circulation."

The property to the south is completely undeveloped. I am attaching an email correspondence from the Planning Director to the effect that the property is in limbo and there are no plans for the property to be improved in the foreseeable future (see attachment 5). The property to the North is owned by me and I do not plan any street improvements, other than what has already been approved and built, in the foreseeable future. In Item E iii., the Planning Director quotes the criteria that "proposed streets within the partition comply with the standards under section 13.05.015, including any allowed modification, or a variance has been obtained." What the Planning Director is asking here is to install a city grade street with sidewalks along an approximately 170' stretch that would continue to a 15' gravel road without sidewalks on the North and then dead end at the south into the woods with no change to the highway access. I believe this does not improve the street safety or capacity or improve pedestrian circulation in such a little traveled area without so much as tying into any city grade road on either end or improving the access to Hwy 101. As such, I believe that my partition meets this exception.

4. "The improvement is associated with an approved land partition or minor replat and the proposed land partition does not create any new streets."

In this situation, taking into consideration the Planning Directors misrepresentation of the facts on the ground, misinterpretation of the criteria, and the Municipal Code exceptions cited, the partition meets all the criteria for approval, and as such should have been approved. I am not creating any new streets as the existing Hwy 101 access and the existing private easement road is totally adequate for the partition. As such, I believe I my partition meets this exception.

I have agreed to sign a non-remonstrance agreement, in lieu of street improvements, and I believe my partition meets the two exceptions cited above (one more exception than is actually required) thus my partition should be allowed and I should not be required to upgrade the street.

"D. Creation of Access Easements. The city may approve an access easement when the easement is necessary to provide viable access to a developable lot or parcel and there is not sufficient room for the public right-of-way due to topography, lot configuration, or placement of existing buildings. Access easements shall be created and maintained in accordance with the Uniform Fire Code"

This is the exact situation I am in with my development. There are multiple gullies with streams throughout the property limiting the access road to a very specific and minimal area. In addition, Because of the topography there are very limited buildable sites. I have very carefully placed the private easement road to allow for as many buildable sites as possible. Any increase in roadway width would make some of these properties nearly unbuildable. This was the original premise on why the private easement road was designed and permitted this way, the only other option being to install driveways off highway 101 to each property. In the early planning stages with ODOT and the City of Newport, we decided it would be best if we had only one access road to the grouping of properties. This was done from a safety perspective to limit highway access in a 55 MPH zone. I voluntarily did this as I could have just as easily, and possibly for less money, put in individual driveways to each lot. ODOT is actually required to allow driveways to landlocked properties. With the attitude of the new city administration, I am now starting to regret having cooperated so completely with the previous administration and the State. Everything was approved by the city and fire department and the conditions on the ground have not changed. As such I should be allowed to do further partitioning and not be required to go back and put in city streets as this exception was previously, and is still at this time, perfectly suited to my situation.

Item E iv. Once again, the Criteria for a minor partition only requires road upgrades when either new "proposed roads" are constructed or existing roads are modified. In my case neither of which is happening. The City's issue with the existing private easement road not being adequate to serve additional parcels is completely unfounded as per my explanation in my response to Item B ii. There is no net increase in traffic with my Partition as Parcel two will not be using the access easement road. In addition, in my response to Item E iii., it is clear I qualify for several exceptions to the requirement for road upgrades. The Planning Director also, has made it clear to me that the existing private easement road is grandfathered in as a legal access.

Item F. The Planning Director once again failed to inform me of an incomplete application as required by the Municipal Code. See attached letter from Newport Public Works.

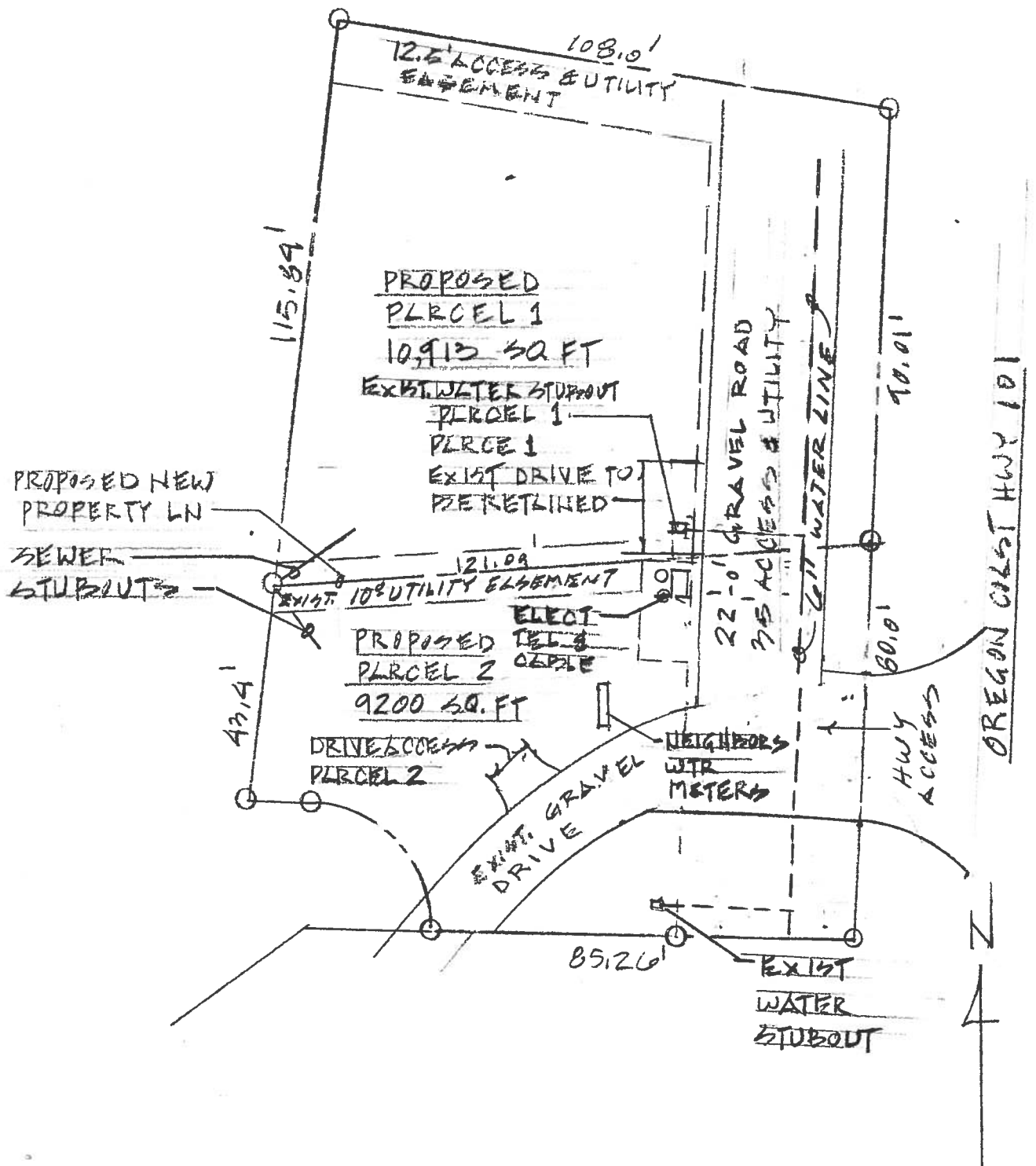
Another point, the property is a nonconforming lot per NMC13.05.030(F) in that it exceeds the maximum lot size. As we all know, there is a very limited amount of developable property available in Newport. My partition would bring the property into conformance, add one more lot to the market, and add to the property tax base at no expense to the city.

In closing, Newport Municipal Code Section 13.05.095 B. states "If the tentative plan complies with the criteria, the plan shall be approved. Conditions of approval, including requirements to provide public improvements necessary to allow development, may be imposed. If the tentative plan does not comply with the criteria or cannot be made to comply through reasonable conditions of approval, the plan shall be denied and the applicant shall be notified in writing why the tentative plan was denied and what items need to be corrected before the

tentative plan can be approved". I believe that I have demonstrated that I meet the Criteria and, I have also laid out several options for reasonable conditions of approval that would allow my partition to be approved. I have done everything by the book, spent 100's of thousands of dollars on improvements of infrastructure, water, sewer, utilities, roadways, all with city approval and with city knowledge that I would be further partitioning the properties. As proof of this I worked with the City on locating sewer and water stubouts to accommodate this and several other partitions yet to be done (one of which I was denied earlier this year for similar criteria he used to deny this partition). To come at me now with these totally extreme requirements, when it is clear there are several exceptions to the current code that allows further partitioning without the road improvements, is completely unreasonable. It is not only unreasonable but it is economically unfeasible. The cost of doing what the Planning Director asks would cost more than the resultant properties would be worth. He likes to cite the Wilder development as something I could model this after. Everybody knows the Wilder development was funded by a multimillionaire family with no worry about ever making a profit. I am personally heavily in debt to fund this project and have been hanging on by the skin of my teeth, paying my property taxes on time for the last 8 years waiting for the market to come back so that I can at least break even and hopefully make a small amount of money. The implication that every developer is a millionaire and can just fund money losing projects is repulsive, especially after seeing so many of my contractor friends go bankrupt or out of business in the last eight years. Why does the city have to put up every possible barrier to do something as insignificant as divide a piece of property into two lots? I'm a third generation Newport local, born and raised here, and when a relatively recent arrival like the Planning Director, who obviously has no idea how hard it is to make it in Newport, tells me "The City adopted new land division regulations" and then implies your ten years' worth of planning, obtaining city and state approvals, and countless hours of hard work means little now, it's incredibly discouraging. He then puts up every possible barrier, not informing me of an incomplete application as required by code and not even considering to work with me on all the possible exceptions we could have used to approve the partition. On top of that, considering his intimate familiarity with the area, it is my opinion he purposely misrepresented the facts concerning the access and frontage in order to help justify the denial he wanted. I have no idea of his motivation for this, you will have to ask him. I really have to wonder how many other people with limited finances have been shortchanged by this "no can do" attitude.

Sincerely

Jon Holbrook



SITE PLAN

SCALE 1" = 30.0'

ATTACHMENT 1

October 8, 2015



CenturyLink™

Attn: Jon Holbrook
405 SE Scenic LP
Newport, OR 97365
541-265-9366

RE: Minor Land Partition T10S, R11W Sec 20, Parcel 1, TL 607,
60 NW 70th ST, City of Newport, Lincoln County, Oregon

Mr. Holbrook:

This information is provided in response to your request regarding telephone service for the property described as T10S, R11W Sec 20, Parcel 1, TL 607, 60 NW 70th ST, City of Newport, Lincoln County, Oregon.

The address at issue is in CenturyLink service territory. Newport is the serving exchange.

The developer and subsequent property owners are subject to the terms and conditions contained in CenturyLink's filed Price List for Exchange and Network Services, Section 59, entitled "Construction of Outside Plant Facilities". It shall be in effect at the time service is billed.

Sincerely,

Travis Vaughn
Engineer II
CenturyLink
740 State ST, 4th FLR
Salem OR, 97301
503-365-5555

740 State St, RM 407
Salem, OR 97301
Fax: 503.399.4428
www.centurylink.com

ATTACHMENT 2



October 08, 2015

Dear John Holbrook

I am responding to your request for Charter Communications to be able to service the address of 60 NW 70th St in Newport. Charter Communications can adequately service this lot with the placement of conduit to an existing pedestal at the NW corner of NW 70th at the top of the driveway to your lot. If the conduits are not in a useable state the developer will be asked to repair or replace the conduits so Charter Communications can pull service lines through.

Justin Hall Construction Coordinator
Charter Communications
2800 SE HWY 101 | Lincoln City, OR 97367

ATTACHMENT 3

Serving Portions of Coos, Douglas, Lane, and Lincoln counties on Oregon's Central Coast



2129 N. Coast Hwy • P.O. Box 1126 • Newport, Oregon 97365-0090 • 541-265-3211 • clpud.org

September 28, 2015

REF: 10-11-20-BC 607

Mr. Holbrook,

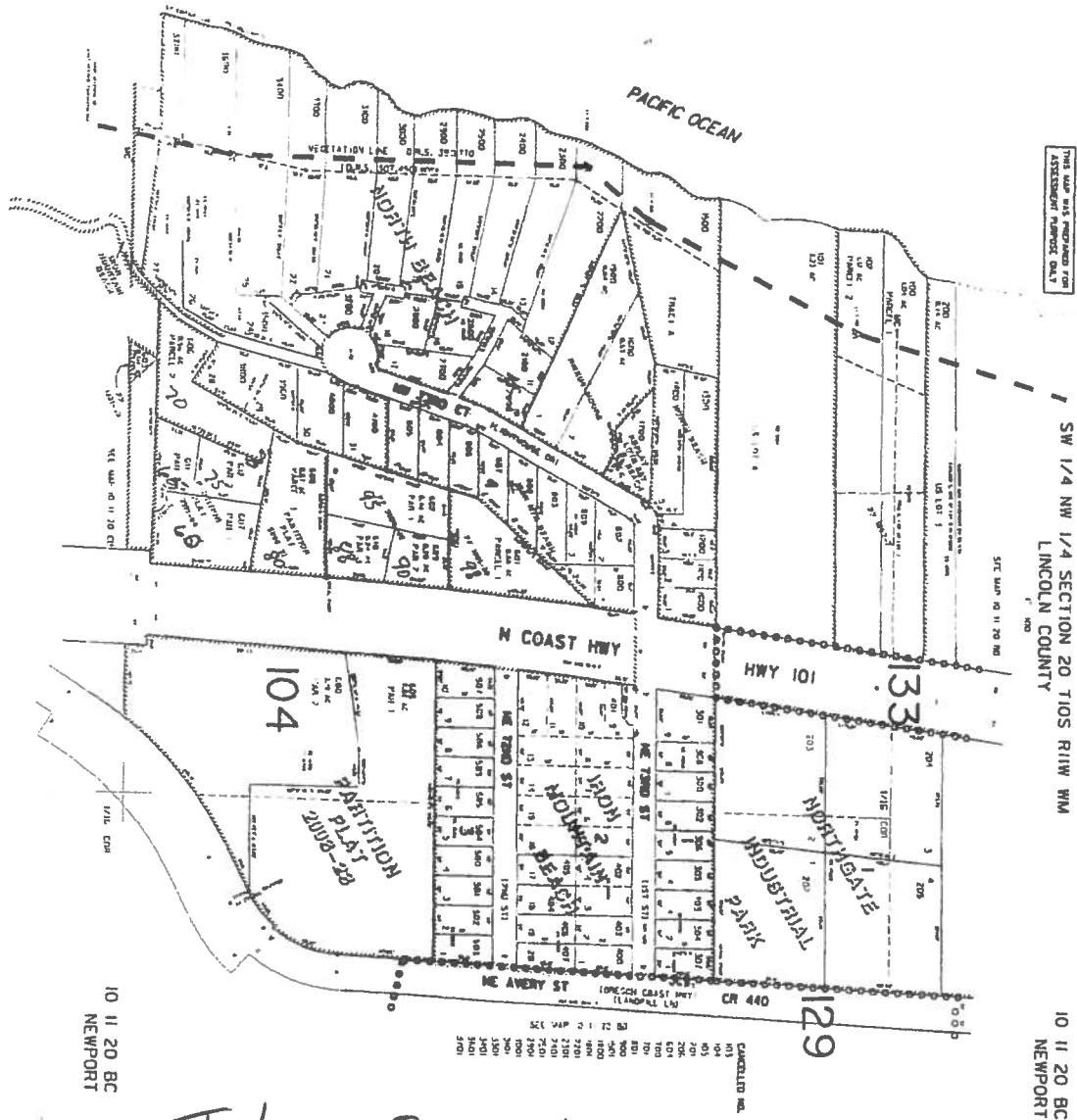
We have existing electrical facilities near this lot that we can serve it from.

Sincerely,

A handwritten signature in black ink, appearing to read "Jake Pettis".

Jake Pettis
Central Lincoln
Senior Distribution Engineer Tech
541-574-3639

ATTACHMENT A



Jake, I need a letter saying
 that elect. service is available to
 this property c-mail custhome@hotmail.com
 Jan Holbrook 541-268-9366

10-11-20-BC 607

[Print](#)

[Close](#)

RE: NW 70th Street

From: **Derrick Tokos** (D.Tokos@NewportOregon.gov)

Sent: Tue 4/28/15 6:35 PM

To: 'Jon' (custhome@hotmail.com)

Cc: Spencer Nebel (S.Nebel@NewportOregon.gov); Tim Gross (T.Gross@NewportOregon.gov); wbelmont@co.lincoln.or.us (wbelmont@co.lincoln.or.us); Steven Rich (S.Rich@NewportOregon.gov)

Hi Jon,

I'd like to take a moment to respond to this email and your previous request that the City legalize NW 70th Street as a public roadway. To the best of our knowledge, the strip of land identified as NW 70th Street was created in 1967 by owners Alvin and Doris Roberts as a private road that provided access to neighboring properties (Book 277, Page 474). At some point Alvin and Doris Roberts, or their successor's, stopped paying taxes on the property and Lincoln County picked it up via tax foreclosure in 1994 (Book 288, Page 1924). The County conveyed the property to the City in 2008 (Instrument #200809740) and County Board Order #2-08-50 indicated that the transfer was being done because the City of Newport wanted to obtain a deed to the property for possible dedication as a city street.

ORS 93.808 states that an instrument conveying title or interest to the State of Oregon or to a county, city or other political subdivision in this state may not be recorded unless the instrument carries an indication of approval of the conveyance by this state or the political subdivision accepting title or interest. The 2008 Quit Claim deed conveying title to the property from the County to the City does not include an approval clause indicating that the City accepted title to the property. Peggy Hawker, City Recorder, researched City Council minutes back to June of 2000 and found no reference to NW 70th Street and the desire for a deed to the property for a possible dedication as a city street. We have also been unable to locate any staff correspondence on the issue. That is why we have concerns about the viability of the conveyance.

Be that as it may, let's assume for discussion purposes that the City owns the property. What we then have is a strip of land that the City possesses fee title to, over which there are easements granting certain landowners' rights of access to their parcels. The property is not a public road and the City is not responsible for maintaining it as such. Those persons with road easement rights presumably have a right to maintain the road so that they can continue to exercise those rights. Similarly utilities, including Central Lincoln and NW Natural, who

obtained easements from the County when they owned the property, have a right to access and maintain the utilities they have placed on the property.

We discussed the possibility of the City legalizing NW 70th Street as a public road pursuant to ORS 223.935 to 223.950. That would include the fee owned strip of land and the portion of the "as traveled" roadway that cuts across the southwest corner of your properties (Parcels 1 and 2, Partition Plat 2010-4). The City may also be able to dedicate the fee owned piece of NW 70th as a public road through an alternative process thus limiting the legalization to the portion that extends outside of the city's ownership.

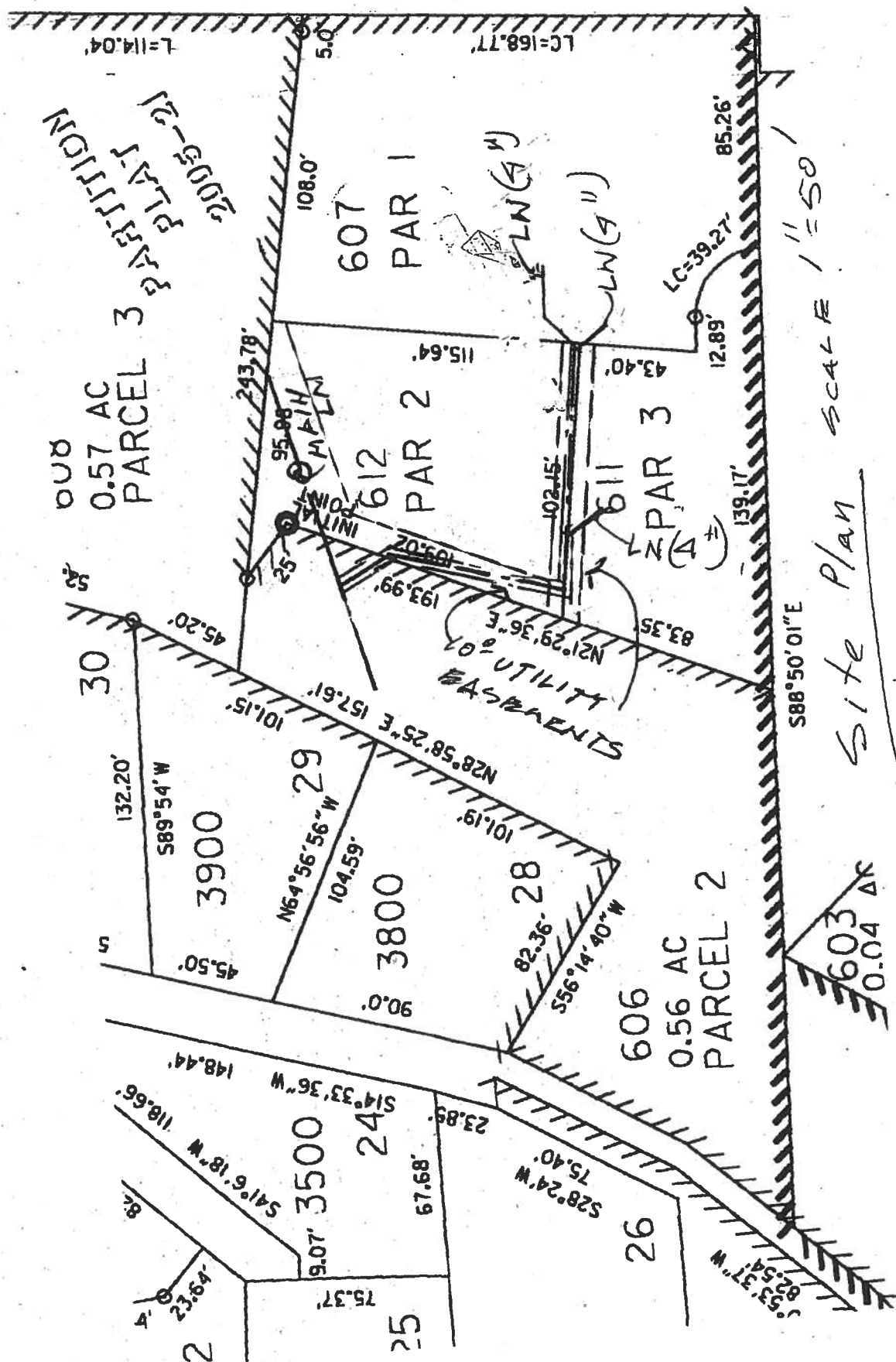
In either case, we would not recommend that the City Council establish NW 70th Street as a public road and accept maintenance responsibility over it without a commitment from the property owners to improve the road to a standard that the City would accept. This could be accomplished through the formation of a local improvement district. The process can be initiated by petition of at least half of the abutting property owners. The Public Works Department would then prepare a preliminary engineering report outlining the probable cost of the project and method of assessing the cost to the benefiting properties. There would then be a hearings process where affected owner's could testify in favor or opposition to the formation of a district.

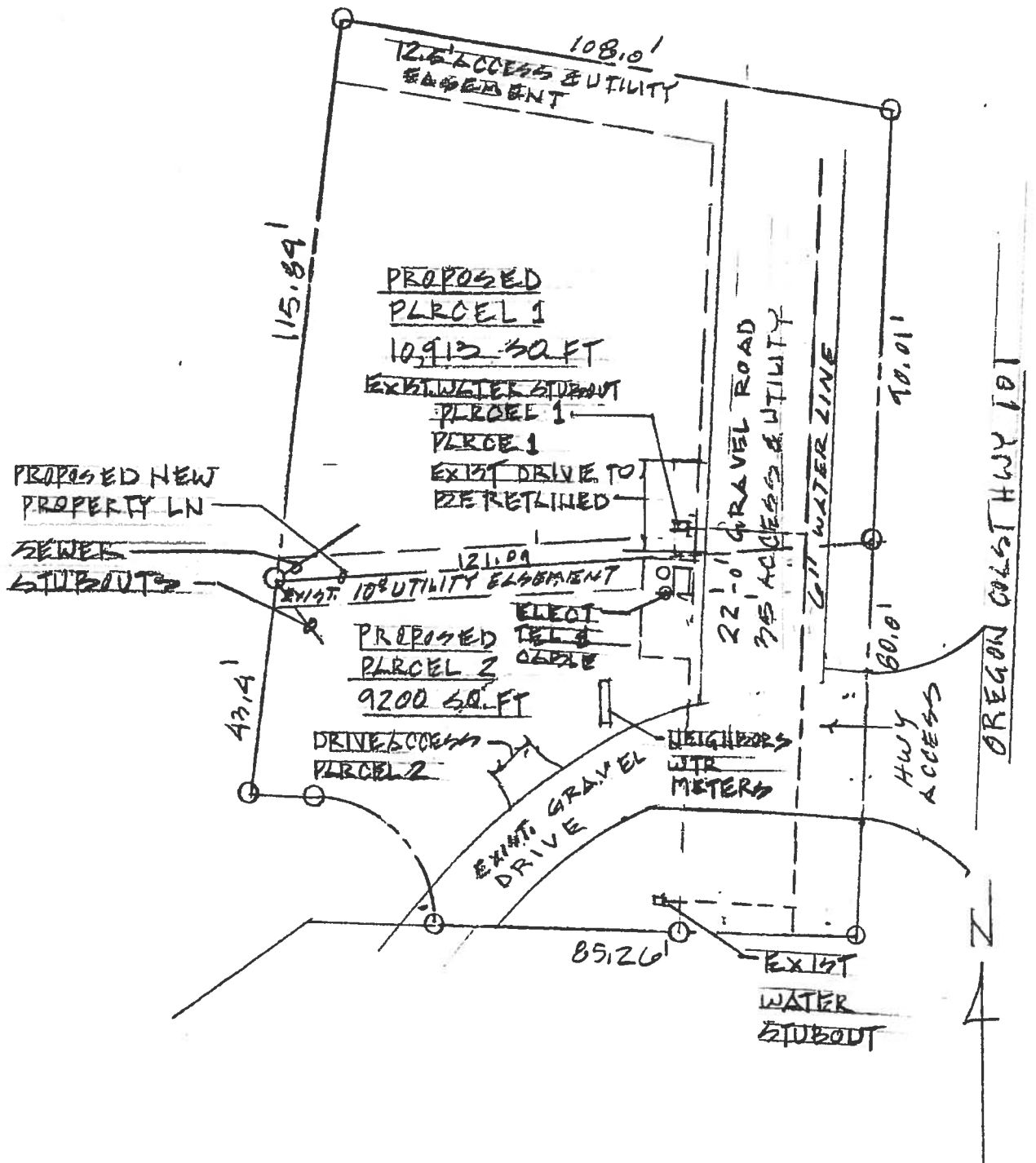
Please let me know if you are interested in establishing a local improvement district and I'll follow-up with the form(s) you'll need to get the petition started.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626
fax: 541.574.0644
d.tokos@newportoregon.gov

From: Jon [mailto:custhome@hotmail.com]
Sent: Thursday, April 16, 2015 10:37 AM
To: Derrick Tokos
Cc: spencernebel@newportoregon.gov
Subject: NW 70th Street

Hi Derrick,





SITE PLAN

SCALE 1" = 30.0'

cover administrative costs. Any shortfall will be paid from the general fund.

- c. Notwithstanding the above, a developer may guarantee installation of required sidewalks in an Improvement Agreement as provided in Section 13.05.090(C).

(13.05.040(A)(5) was amended by Ordinance No. 2045, adopted on November 5, 2012; effective December 5, 2012.)

- B. All public improvements shall be designed and built to standards adopted by the city. Until such time as a formal set of public works standards is adopted, public works shall be built to standards in any existing published set of standards designated by the city engineer for the type of improvement. The city engineer may approve designs that differ from the applicable standard if the city engineer determines that the design is adequate.
- C. Public improvements are subject to inspection and acceptance by the city. The city may condition building or occupancy within the land division on completion and acceptance of required public improvements.

13.05.045 Adequacy of Public Facilities and Utilities (Electric and Phone)

- A. Tentative plans for land divisions shall be approved only if public facilities and utilities (electric and phone) can be provided to adequately service the land division as demonstrated by a written letter from the public facility provider or utility provider stating the requirements for the provision of public facilities or utilities (electric and phone) to the proposed land division:
- B. For public facilities of sewer, water, storm water, and streets, the letter must identify the:

1. Water main sizes and locations, and pumps needed, if any, to serve the land division. — *6" Main line is adjacent to PROP. w/ STUBOUTS to each lot*
2. Sewer mains sizes and locations, and pumping facilities needed, if any, to serve the land division. *Sewer stubouts are in & approved to exist sewer below*
3. Storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the land division, or detention or retention facilities that *There is no real increase in drainage. All culverts are in.*

could be used to eliminate need for additional conveyance capacity, without increasing erosion or flooding.

4. Street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development. *Property fronts on Hwy 101 w/ direct Hwy access on property, There is no increase in access as Parcel 1's drive is exist. into the easement & Parcel 2 has direct Hwy access, No comment*
- 13.05.050 Underground Utilities and Service Facilities**

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

was received from OPOT which means Hwy 101 is adequate to serve additional Parcel

- B. Non-City-Owned Utilities. As part of the application for tentative land division approval, the applicant shall submit a copy of the preliminary plat to all non-city-owned utilities that will serve the proposed subdivision. The subdivider shall secure from the non-city-owned utilities, including but not limited to electrical, telephone, cable television, and natural gas utilities, a written statement that will set forth their extension policy to serve the proposed land division with underground facilities. The written statements from each utility shall be submitted to the city prior to the final approval of the plat for recording.

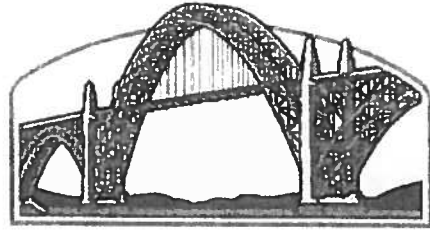
13.05.055 Street Lights

Street lights are required in all land divisions where a street is proposed. The city may adopt street light standards. In the absence of adopted standards, street lights shall be placed in new land divisions to assure adequate lighting of streets and sidewalks within and adjacent to the land division.

13.05.060 Street Signs

Street name signs, traffic control signs and parking control signs shall be furnished and installed by the city.

MEMO



Date: October 12, 2015
To: Derrick Tokos, City Planner
From: Olaf Sweetman, Assistant City Engineer OS
Re: Adequacy of City facilities for 60 NW 70th St (10-11-20-BC-00607)

This memo is in response to the requirements of Section 13.05.045 requiring confirmation of public services for the re-platting of property within the City limits.

1. **Water Services:** City water is provided by a 6" PVC main located within the property. This line provide sufficient water capacity and pressure for domestic and fire needs.
2. **Sanitary Sewer Services:** City sanitary sewer service is provided by 8" PVC mains and the NW 70th St Pump Station, located west of the property. These facilities are sufficient to meet the capacity needs of the property. Note that the downstream Agate Beach system has capacity issues, however no moratorium on new development has been imposed and the on-going Agate Beach Wastewater Collection Systems Improvements Project will address these capacity issues.
3. **Storm Sewer:** There is no City storm sewer adjacent to the property. Existing runoff from the property flows through a private culvert to a nearby ravine. Since the property is not proposing to add any additional impervious surface, the re-platting of the property should not cause any additional storm runoff.
4. **Street accessibility, availability, capacity and condition:** The property is accessed directly from US-101 via private driveway. There are no adjacent City streets.

**BEFORE THE COMMUNITY DEVELOPMENT
(PLANNING) DIRECTOR OF THE CITY OF
NEWPORT, COUNTY OF LINCOLN,
STATE OF OREGON**

IN THE MATTER OF PLANNING FILE)	
NO. 3-PAR-15, APPLICATION FOR THE)	
TENTATIVE PLAN FOR A PROPOSED)	
PARTITION AS SUBMITTED BY JONATHAN)	FINAL
B. HOLBROOK, PROPERTY OWNER)	ORDER

ORDER DENYING A REQUEST per Chapter 13.05 of the Newport Municipal Code (NMC) for approval to partition property identified as Tax Lot 607 of Lincoln County Assessor’s Tax Map 10-11-20-BC (Parcel 1 Partition Plat 2010-04) into two parcels. The resulting Parcel 1 is approximately 10,913 square feet in size, and Parcel 2 is 9,200 square feet in size. The subject property is located in an R-1/“Low Density Single-Family Residential” zoning district.

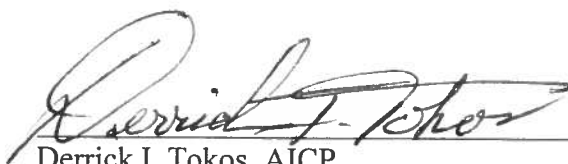
WHEREAS:

- 1.) The City of Newport Community Development (Planning) Director has duly accepted the application filed consistent with the Newport Municipal Code (NMC); and
- 2.) The Community Development (Planning) Director has duly reviewed the request and has given proper and timely notice to affected property owners; and
- 3.) The Community Development (Planning) Director allowed evidence and recommendations to be submitted from interested persons, Community Development (Planning) Department staff, other City departments, state agencies, and/or local utilities; and
- 4.) At the conclusion of said review, after consideration, the Newport Community Development (Planning) Director denied the request for a partition.

THEREFORE, LET IT BE RESOLVED by the City of Newport Community Development (Planning) Director that the attached findings of fact, Exhibit "A," support the denial of the request to partition the above referenced property into two parcels.

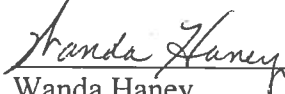
BASED UPON THE ABOVE, the Newport Community Development (Planning) Director determines that the request for the tentative plan for a partition does not comply with applicable provisions of the City of Newport Municipal Code.

Dated this 24th day of September, 2015.

A handwritten signature in black ink, appearing to read "Derrick I. Tokos", written over a horizontal line.

Derrick I. Tokos, AICP
Community Development (Planning) Director

Attest:

A handwritten signature in black ink, appearing to read "Wanda Haney", written over a horizontal line.

Wanda Haney
Executive Assistant

EXHIBIT "A"

Case File No. 3-PAR-15

FINDINGS OF FACT

1. The request submitted by the applicant and property owner, Jonathan B. Holbrook, is for consideration of a partition application per Chapter 13.05 of the Newport Municipal Code (NMC) to divide property identified as Tax Lot 607 of Lincoln County Assessor's Tax Map 10-11-20-BC (Parcel 1 Partition Plat 2010-04) into two separate parcels.
2. The application materials for the proposed partition were received by mail on July 23, 2015. A copy of the application materials are in File No. 2-PAR-15 and are incorporated by reference into these findings.
3. The subject property is identified as Tax lot 607 of the Lincoln County Assessor's Tax Map 10-11-20-BC (Parcel 1 Partition Plat 2010-04) and is located immediately north of the intersection of NW 70th Street and Highway 101. The Comprehensive Plan designation for the property is Low Density Residential, and the zoning designation is R-1/"Low Density Single-Family Residential."
4. The applicant's tentative partition map indicates that the subject property is approximately 20,113 square feet (0.46 acre) in size. Proposed Parcel 1 would contain roughly 10,913 square feet (0.25 acre) of land; and proposed Parcel 2 would contain roughly 9,200 square feet (0.21 acre) of land. Both parcels are vacant.
5. Notices of the proposed action were sent on July 24, 2015, to affected property owners within 100 feet of the subject property, affected public agencies and utilities within Lincoln County, and affected City departments. The notice contained the criteria by which the request for the tentative plan for the proposed partition is to be assessed. Affected parties were given until August 7, 2015, in which to make comment on the application.
6. By the close of the comment period, no comments were received by the Community Development Department.
7. NMC Section 13.05.095(A) outlines the criteria for the review of a tentative plan for a partition. Those criteria are:
 - (a) The tentative plan complies with the definition of a partition.
 - (b) All lots or parcels within the tentative plan meet the requirements of NMC Section 13.05.030. Alternatively, if the original lots or parcels were nonconforming, the resultant lots or parcels may be allowed without a variance if they are less nonconforming.
 - (c) Approval of the tentative plan does not interfere with the provision of key public facilities.
 - (d) The applicant has agreed to sign consent to participate in sewer, water, or street local improvement districts that the subject lots or parcels would be part of once those districts are formed. The consent shall be a separate

document recorded upon the lots or parcels subject to the partition. The document shall be recorded prior to final plat approval.

- (e) Public facilities serving the partition are adequate under Section 13.05.045. Proposed streets within the partition comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained.
- (f) All required public improvements will be provided.
- (g) Any required submitted geological hazard report concludes that the property can be developed in the manner proposed, in accordance with any recommendations contained in the report.

CONCLUSIONS

1. With regard to the criteria established in Newport's Municipal Code (NMC) Section 13.05.095(A) for approving a tentative plan for a partition, the following conclusions can be drawn:

A. Criterion # 1. *The tentative plan complies with the definition of a partition.*

Pursuant to Section 13.05.005(D) ("Definitions") of the Newport Municipal Code (NMC), a partition is the division of land into not more than three parcels in a calendar year.

The property identified as Tax Lot 607 was created by a partition plat approved by the City of Newport and recorded in 2010 as Parcel 1 Partition Plat No. 2010-04.

The applicant notes that the tentative plan complies with the definition of a partition; one property being divided into two.

The tentative plan complies with the definition of a partition.

B. Criterion # 2. *All lots or parcels within the tentative plan meet the requirements of NMC Section 13.05.030. Alternatively, if the original lots or parcels were nonconforming, the resultant lots or parcels may be allowed without a variance if they are less nonconforming.*

NMC 13.05.030 sets out dimension and access requirements for new parcels, and has been addressed by the applicant as follows:

- i. NMC 13.05.030(A) requires that the minimum area and width of parcels comply with the applicable lot size provisions of the Zoning Ordinance. The minimum lot size requirement for the R-1 zone is 7,500 square feet; and the proposed partition will result in two parcels. Parcel 1 is 10,913 square feet in size, and Parcel 2 is 9,200 square feet. Both parcels meet the minimum lot size standards in the district.

- ii. NMC 13.05.030(B) requires that each parcel possess at least 25 feet of street frontage along a street other than an alley. The term "street" is defined by NMC 13.05.005, as follows:

“Street. A public or private way other than a driveway that is created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land. For the purposes of this section, a "driveway" is a private way that begins at a public right-of-way that is proposed to serve not more than four individual lots/parcels cumulative as the primary vehicular access to those individual lots/parcels.”

The applicant’s tentative plan illustrates that both proposed parcels possess at least 25 feet of frontage along a private easement road (i.e. a private way) that extends north from US 101 along the east boundary of the properties, parallel to the highway. This private way currently serves as the primary vehicular access to eight parcels, including the subject property, and is therefore by definition a street (as opposed to a driveway).

- iii. NMC 13.05.030(C) prohibits the creation of through lots (i.e. lots with parallel street frontage along the front and rear property lines). The tentative partition map shows that no through lots are being created.
- iv. NMC 13.05.030(D) requires the side lot lines of parcels run at right angles to the street upon which they face or as close to a right angle as is practical. The tentative partition map shows that this criterion has been met for both parcels.
- v. NMC 13.05.030(E) requires that any special setbacks lines proposed by the applicant or recommended in a geologic report be depicted on the tentative partition map. No special setback lines exist other than easement access lines as shown on the tentative plan.
- vi. NMC 13.05.030(F) specifies a maximum parcel size of 175% of the required minimum lot size for the zone district, unless topography or other conditions restrict further development potential or the layout of the land division provides for the extension of streets that will permit subsequent division and development of the property at densities appropriate to the zoning designation. The tentative partition map shows that the proposed lots do not contain more than 13,125 square feet of land area, which is 175% of the required minimum lot size. This standard is satisfied.
- vii. NMC 13.05.030(G) states that no lot or parcel shall be created with more than 50% of its land area containing wetlands or lands where the city restricts development to protect significant natural resources, unless the lot or parcel is specifically designated as open space. City inventories do not identify any wetlands on the property nor are there any city protected natural resources on either of the proposed parcels.

- viii. NMC 13.05.030(H) requires that an applicant who is creating undeveloped parcels within a geologic hazards area have an engineering geologist establish a minimum 1,000 square foot building footprint on each proposed parcel as a “buildable” area. The standard further prohibits new public infrastructure needed to serve the new parcel or parcels from being placed within active or high hazard zones or active landslide areas. Neither of the proposed parcels is within a city defined geologic hazards area.

C. Criterion # 3. *Approval of the tentative plan does not interfere with the provision of key public facilities.*

- i. Key public facilities in the vicinity of the proposed partition include water and sewer main lines. Such lines appear to be within existing easements of record and the proposed tentative partition plan shows that existing easements will not be altered.
- ii. Considering the above, this partition does not appear to interfere with the provision of key public facilities.

D. Criterion # 4. *The applicant has agreed to sign consent to participate in sewer, water, or street local improvement districts that the subject lots or parcels would be part of once those districts are formed. The consent shall be a separate document recorded upon the lots or parcels subject to the partition. The document shall be recorded prior to final plat approval.*

A non-remonstrance agreement of this nature is needed when properties adjoin underdeveloped streets and the cost of improving the street and related services is disproportionate to the level of impact attributed to the proposed land division. The applicant has agreed to sign consent to any local improvement districts.

E. Criterion # 5. *Public facilities serving the partition are adequate under NMC Section 13.05.045. Proposed streets within the partition comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained.*

- i. NMC 13.05.045 sets out requirements for ensuring public facilities and utilities (electric and phone) are adequate to serve the partition parcels. With respect to electric and phone service, letters must be submitted from each service provider establishing that service is adequate, including any requirements they may have in order to provide service to the proposed parcels. The required letters were not included with the application; therefore, there is no evidence to demonstrate that the proposed parcels will have adequate electric and phone service.

- ii. For public facilities involving sewer, water, storm drainage, and streets a letter must be provided identifying water main sizes, locations and pumps needed (if any) to serve the proposed land division; sewer main sizes, locations and pumping facilities needed (if any) to serve the proposed land division; storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the land division, or detention or retention facilities that could be used to eliminate the need for additional conveyance capacity, without increasing erosion or flooding; and street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development. Such letters are obtained from the City of Newport Public Works Department. The application does not include a letter of this nature.
- iii. The second part of the approval criterion states that *“Proposed streets within the partition comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained.”* Proposed street access for the two new parcels is a 15-foot wide gravel road that has been constructed within a 36-foot wide private access easement. The road already serves more than four parcels therefore it is by definition a street that must meet the provisions of Section 13.05.015. Those provisions require the right-of-way (easement) be 50-feet in width and that the travelled roadway be at least 36-feet in width (NMC 13.05.015(B)). There are other standards that trigger as well, such as the provision of sidewalks (NMC 13.05.015(H)), and a restriction that a dead-end roadway such as this not exceed 400-feet (NMC 13.05.015(I)) . The proposed tentative partition map does not show street access for the new lots that is in conformance with these requirements nor is there any other information in the application to indicate that such a street will be constructed.
- iv. The application materials indicate that the public utilities and access road have been previously approved and installed per City of Newport requirements. This is true with regards to existing parcels. It is not the case for the proposed land division. The City adopted new land division regulations since the existing parcels were created. Staff has met with the applicant to explain that the gravel road, as constructed, is not adequate to serve additional parcels. The applicant may elect to file an application for a planned development to seek approval for a street cross-section that is narrower than what is prescribed in the subdivision ordinance. There is a precedence for this, such as the Wilder Planned Development in South Beach. If the applicant were to file for a planned development it is likely that the minimum roadway width that the Newport Public Works Department would support is 24-feet given the size of the vehicles they use to maintain and upgrade the water, sewer, and storm drainage infrastructure serving the abutting lots.

v. Considering the above, this standard has not been satisfied.

F. Criterion # 6. *All required public improvements will be provided.*

i. The street is private, so public improvements are limited to water, sewer, and storm drainage systems. Water mains are in place to serve the proposed parcels. Sewer service exists to the west and would have to be extended to the proposed parcels. It is not clear how the applicant intends to extend sewer service and whether or not the existing easements are adequate for this purpose. The application does not address how storm drainage will be handled on the parcels.

ii. Considering the above, this standard has not been satisfied.

G. Criterion # 7. *Any required submitted geological hazard report concludes that the property can be developed in the manner proposed, in accordance with any recommendations contained in the report.*

According to the City's geological hazards maps, the subject property is not in any identified geologic hazards zone.

OVERALL CONCLUSION

The request does not comply with the criteria established for the approval of a tentative plan for a partition and is hereby **DENIED**.

City of Newport Land Use Application..

EXHIBIT 6

PLEASE PRINT OR TYPE • COMPLETE ALL BOXES • USE ADDITIONAL

Applicant Name(s): <u>JONATHAN HOLBROOK</u>	Property Owner Name(s):
Applicant Mailing Address: <u>405 SE SCENIC LP.</u> <u>NEWPORT, OR 97365</u>	Property Owner Mailing Address: <i>If other than applicant</i>
Applicant Telephone No.: <u>541-265-9366</u>	Property Owner Telephone No.: <i>If other than applicant</i>
E-mail: _____	
Authorized Representative(s): <i>Person authorized to submit and act on this application on applicants behalf</i> 	
Authorized Representative Mailing Address: 	
Authorized Representative Telephone No.: _____	E-Mail: _____

Project Information

Property Location: <i>Street name if address # not assigned</i> <u>CORNER OF NW 70th ST & HWY 101</u>	
Tax Assessor's Map No.: <u>10-11-20-PC</u>	Tax Lot(s): <u>00607-00</u>
Zone Designation: <u>R-1</u>	Legal Description: <i>Add additional sheets if necessary</i>
Comp Plan Designation: 	
Brief Description of Land Use Request(s): <u>MINOR PARTITION TO SEPARATE CURRENT NW 70th ST.</u> <u>FROM PARCEL</u>	
Examples: 1. Move north Property line 5 feet south, or 2. Variance of 2 feet from the required 15-foot front yard setback	
Existing Structures: <i>If any</i> 	
Topography and Vegetation: 	

APPLICATION TYPE (please check all that apply)

<input type="checkbox"/> Annexation <input type="checkbox"/> Appeal <input type="checkbox"/> Comp Plan/Map Amendment <input type="checkbox"/> Conditional Use Permit <input type="checkbox"/> PC <input type="checkbox"/> Staff <input type="checkbox"/> Design Review <input type="checkbox"/> Geologic Permit	<input type="checkbox"/> Interpretation <input type="checkbox"/> Minor Replat <input checked="" type="checkbox"/> Partition <input type="checkbox"/> Planned Development <input type="checkbox"/> Property Line Adjustment <input type="checkbox"/> Shoreland Impact <input type="checkbox"/> Subdivision <input type="checkbox"/> Temporary Use Permit	<input type="checkbox"/> UGB Amendment <input type="checkbox"/> Vacation <input type="checkbox"/> Variance/Adjustment <input type="checkbox"/> PC <input type="checkbox"/> Staff <input type="checkbox"/> Zone Ord/Map Amendment <input type="checkbox"/> Other <u>MINOR PARTITION</u>
--	--	--

FOR OFFICE USE ONLY

Date Received: <u>7/23/15</u>	File No. Assigned: <u>3-PAR-15</u>	Date Accepted as Complete: _____
Received By: <u>wh</u>	Fee Amount: <u>320⁰⁰</u>	Accepted By: _____
Receipt No.: <u>1.027483</u>		

(SEE REVERSE SIDE)

Community Development & Planning Department • 169 SW Coast Hwy, Newport, OR 97365 • Derrick I. Tokos, AICP, Director

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

Jonathan D. Hohl Teresa J. Goldade
Applicant Signature(s)

7-23-15
Date Signed

Property Owner Signature(s) (If other than applicant)

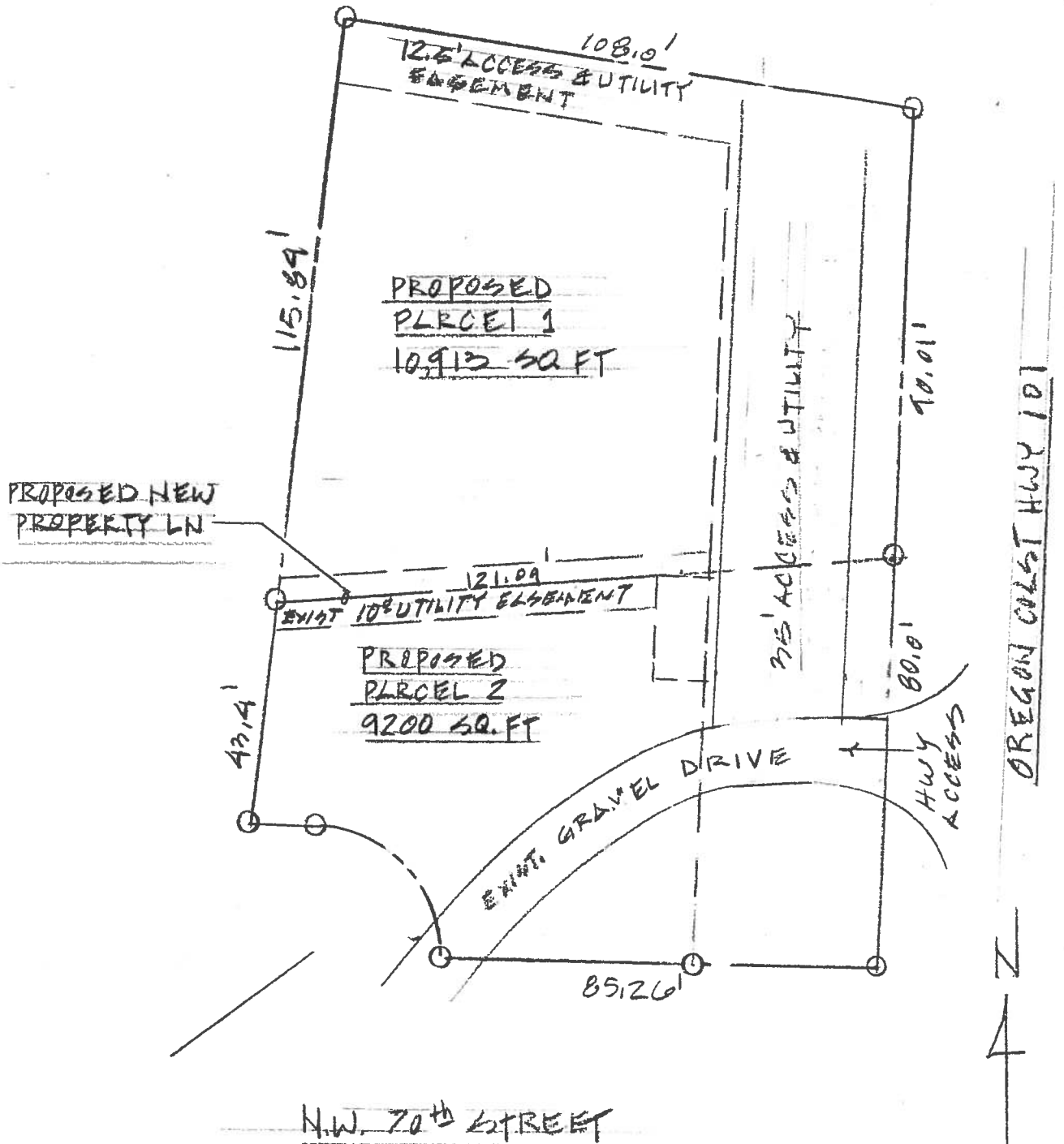
Date Signed

Authorized Representative Signature(s) (If other than applicant)

Date Signed

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.



SITE PLAN

SCALE 1" = 30.0'

July-15-2015
Jon Holbrook
405 SE Scenic Loop
Newport, OR 97365
Ph. 541-265-9366

Atten: City of Newport Planning Dept.

RE; Minor Partition of tax lot no 10-11-20-BC-00607-00

Point by Point findings of facts per application submittal requirements

- a. The tentative plan complies with the definition of a partition, one property being divided into two.
- b. Both lots will be conforming to the requirements of NMC 13.05.030, See attached Proposed Site Plan. Following are Point by Point addressing of NMC 13.05.030
 - A. At 10,913 sq ft and 9200 sq ft each property conforms.
 - B. Each lot has frontage on a public street
 - C. Properties are not through lots.
 - D. New property line follows the center line of the existing utility easement and is near 90 degrees from sidelines.
 - E. No special setback lines exist on property other than easement access lines which are shown on Site Plan.
 - F. Proposed lots do not contain more the 175% of required minimum lot size.
 - G. No wetlands are existing on the property
 - H. Property does not fall within a geologic hazard area.
- c. All key public facilities are installed and run to both proposed properties. Fire access and utility need requirements have been approved and met per City of Newport fire Department.
- d. Applicant will agree to sign consent to any local improvement districts.
- e. Public utilities have been previously approved and installed per City or Newport requirements. Access road has been previously approved and installed per City of Newport requirements.
- f. All public improvements have been previously approved and installed per City of Newport requirements.
- g. Property does not fall within any geologic hazard zone.

Sincerely
Property Owner
Jon Holbrook

PROPERTY OWNERS WITHIN 100'

Account #	Map Taxlot	Site Address(es)	Owner	Mailing Address1	Mailing Address2	City	State ZIP
R520827	10-11-20-BC-00608-00	80 NW 70TH ST	HOLBROOK JONATHAN B &	GOLDADE TERESA J	405 SE SCENIC LOOP	NEWPORT	OR 97365
R520825	10-11-20-BC-00606-00	70 NW 70TH ST	HOLBROOK JONATHAN B &	GOLDADE TERESA J	405 SE SCENIC LOOP	NEWPORT	OR 97365
R526232	10-11-20-BC-00612-00		HOLBROOK JONATHAN B &	GOLDADE TERESA J	405 SE SCENIC LOOP	NEWPORT	OR 97365
*R520826	10-11-20-BC-00607-00	60 NW 70TH ST	HOLBROOK JONATHAN B &	GOLDADE TERESA J	405 SE SCENIC LOOP	NEWPORT	OR 97365
R526233	10-11-20-BC-00611-00	65 NW 70TH ST	HOLBROOK JONATHAN B &	GOLDADE TERESA J	405 SE SCENIC LOOP	NEWPORT	OR 97365
R77941	10-11-20-CB-00110-00	130 NW 70TH ST	MASON DAVID J	130 NW 70TH ST		NEWPORT	OR 97365
R92265	10-11-20-CB-00400-00		CITY OF NEWPORT	CITY MANAGER	169 SW COAST HWY	NEWPORT	OR 97365
R58953	10-11-20-CB-00102-00		TODD STEPHEN M	PO BOX 7306		CARMEL	CA 93921
*Subject Property							



Western Title & Escrow Company
255 SW Coast Highway, Suite 100
Newport, OR 97365
Office Phone: **(541) 265-2288**
Office Fax: **(541) 265-9570**

Jon Holbrook
405 Scenic Loop
Newport, OR 97365

Date Prepared: **July 17, 2015**
Report Number: **104360**
Lot Book Service: **\$200.00**

LOT BOOK REPORT

We have searched our Tract Indices as to the following described real property:

Parcel 1, PARTITION PLAT NO. 2010-4, according to the official plat thereof, filed for record February 23, 2010, Lincoln County Plat Records.

and dated as of **July 02, 2015** at **5:00 p.m.**

We find that the title is vested in:

Jonathan B. Holbrook and Teresa J. Goldade, as tenants by the entirety

We also find the following apparent encumbrances prior to the effective date hereof:

1. 2015-2016 taxes a lien in an amount to be determined, but not yet payable.
2. City liens, if any of the City of Newport.
3. Subject property is either situated within the urban renewal boundaries or within the shared area of the City of Newport and is subject to the terms and provisions thereof.
4. Agreement, including the terms and provisions thereof, for water supply, between Agate Beach Water District and L. Leonard Krause, as
Recorded: July 15, 1960
Document No.: Book 209, Page 431, Lincoln County Records
5. Covenants, easements and restrictions, but omitting restrictions, if any, based on race, color, religion, national origin, or physical or mental handicap, imposed by instrument, including the terms and provisions thereof,
Recorded: November 24, 1987
Document No.: Book 187, Page 2094, Lincoln County Records

As a CONDITION of this conveyance, Grantee and its successors covenant that if any of said property herein conveyed is to be used as a park, said park will be named "

6. Terms, provisions and conditions, including but not limited to maintenance provisions contained in Easement,
Recorded: September 10, 1992
Document No.: Book 250, page 500, Lincoln County Records
7. Land Partition Deferred Improvement Agreement, including the terms and provisions thereof,
Dated: September 27, 2004
Recorded: May 3, 2005
Document No.: 200506698, Lincoln County Records
Between: City of Newport
And: Jonathan Holbrook and Teresa Goldade
8. Easements and notes as set forth on the recorded Partition Plat 2005-21.
9. Terms, provisions and conditions, including but not limited to maintenance provisions contained in Easement,
Recorded: August 3, 2005
Document No.: 200512067, Lincoln County Records
10. An easement created by instrument, including the terms and provisions thereof,
Dated: August 15, 2007
Recorded: August 15, 2007
Document No.: 200711778, Lincoln County Records
In favor of: Central Lincoln People's Utility District
For: Powerline and facilities
11. Land Partition Waiver of Remonstrance , including the terms and provisions thereof,
Dated: October 30, 2009
Recorded: October 30, 2009
Document No.: 2009-12580, Lincoln County Records
Between: City of Newport
And: Jonathan B. Holbrook and Teresa J. Goldale
12. Easements and notes as set forth on the recorded Partition Plat 2010-4.

Note: We find no judgment liens or tax liens against the vestees herein.

Note: Taxes paid in full for the year 2014-2015

Original Amount: \$635.28
Tax Lot No.: 10-11-20-BC-00607
Account No.: R520826, Code 104

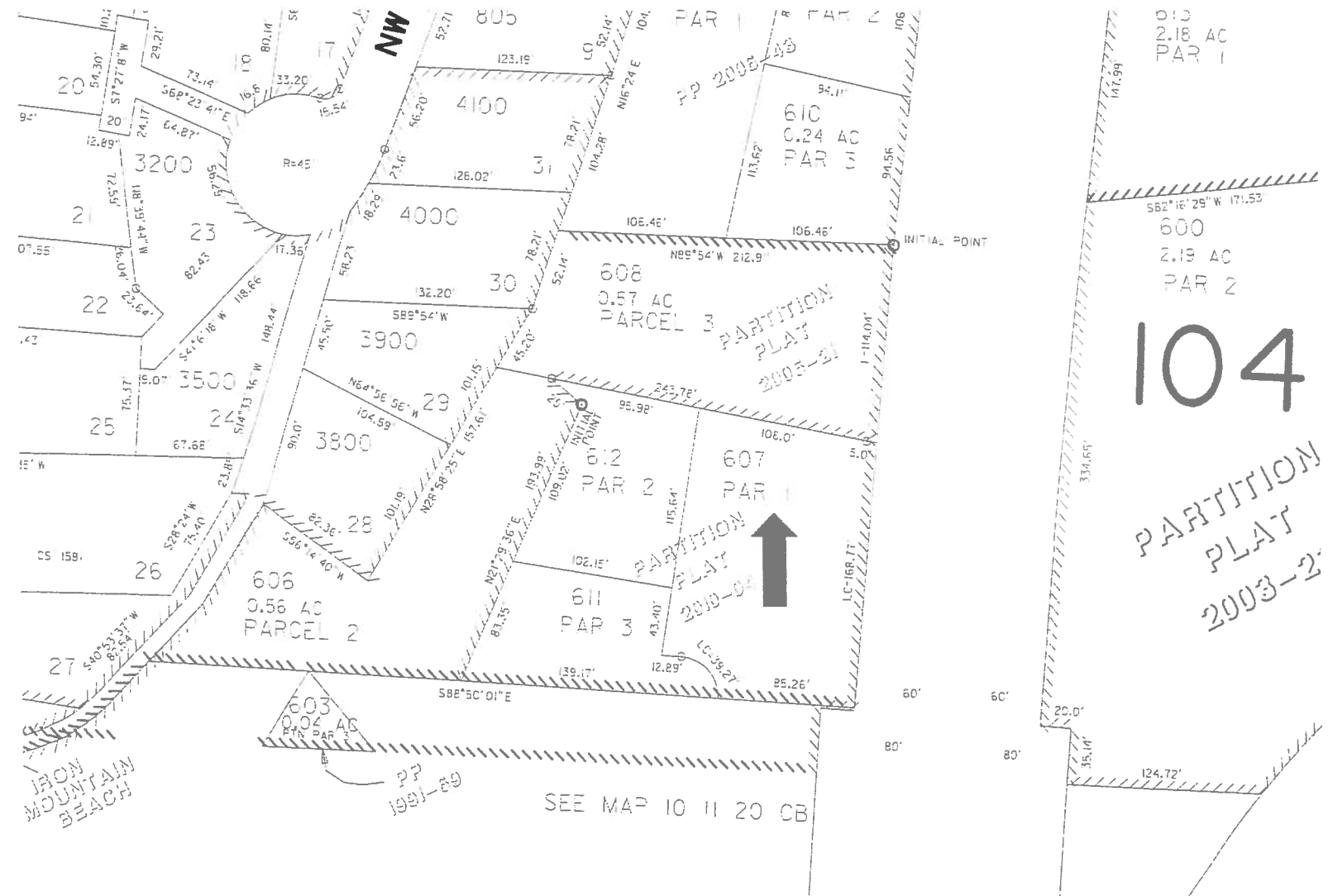
This report is to be utilized for information only. Any use of this report as a basis for transferring, encumbering or foreclosing the real property described will require payment in an amount equivalent to applicable title insurance premium as required by the rating schedule on file with the Oregon Insurance Division.

The liability of Western Title & Escrow Company is limited to the addressee and shall not exceed the premium paid hereunder.

Any questions concerning the Lot Book Report should be directed by email to **titleofficersupport@westerntitle.com**.



Compliments of Western Title & Escrow Company.
This map is not a survey and we assume no liability
for inaccuracies.





PRIVACY POLICY NOTICE

June 1, 2005

Western Title & Escrow Company is dedicated in providing a basis of trust with you, our customer, and the public we serve. With respect to the privacy expectations of today's consumers, and the requirements of applicable privacy laws, the Gramm-Leach-Bliley Act (GLBA) has been enacted to protect the privacy of nonpublic personal information relating to consumers and customers. GLBA generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices.

We are providing you with this document, which notifies you of our privacy policies and practices. We reserve the right to change this Privacy Policy Notice from time to time consistent with applicable privacy laws.

In the course of our business we may collect nonpublic personal information about you from the following sources:

- Information we receive from you, such as your social security number and information from applications or other forms we receive from you or your authorized representatives;
- Information about your transaction we secure from our files, or from our affiliates or others;
- Information from our or other internet web sites;
- Information we receive from a consumer reporting agency;
- Information we receive from others involved in your transaction, such as the real estate agent or lender; and
- Information from the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may share your personal information:

- to agents, lenders, brokers or representatives to provide you with the services you requested; and
- to third-party contractors or service providers who provide services or perform marketing or other functions on our behalf.

In addition, we will disclose your personal information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your personal information when otherwise permitted by applicable privacy laws such as when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic information.



PRIVACY POLICY

June 1, 2005

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about a consumer with a nonaffiliated third party unless the institution provides the consumer with a notice of its privacy policies and practices, such as the type of information that it collects about the consumer and the categories of persons or entities to whom it may be disclosed.

Financial institutions can include title insurance companies, title insurance agents, survey companies, attorneys, appraisers, flood certification providers, and other providers of settlement services on residential transactions.

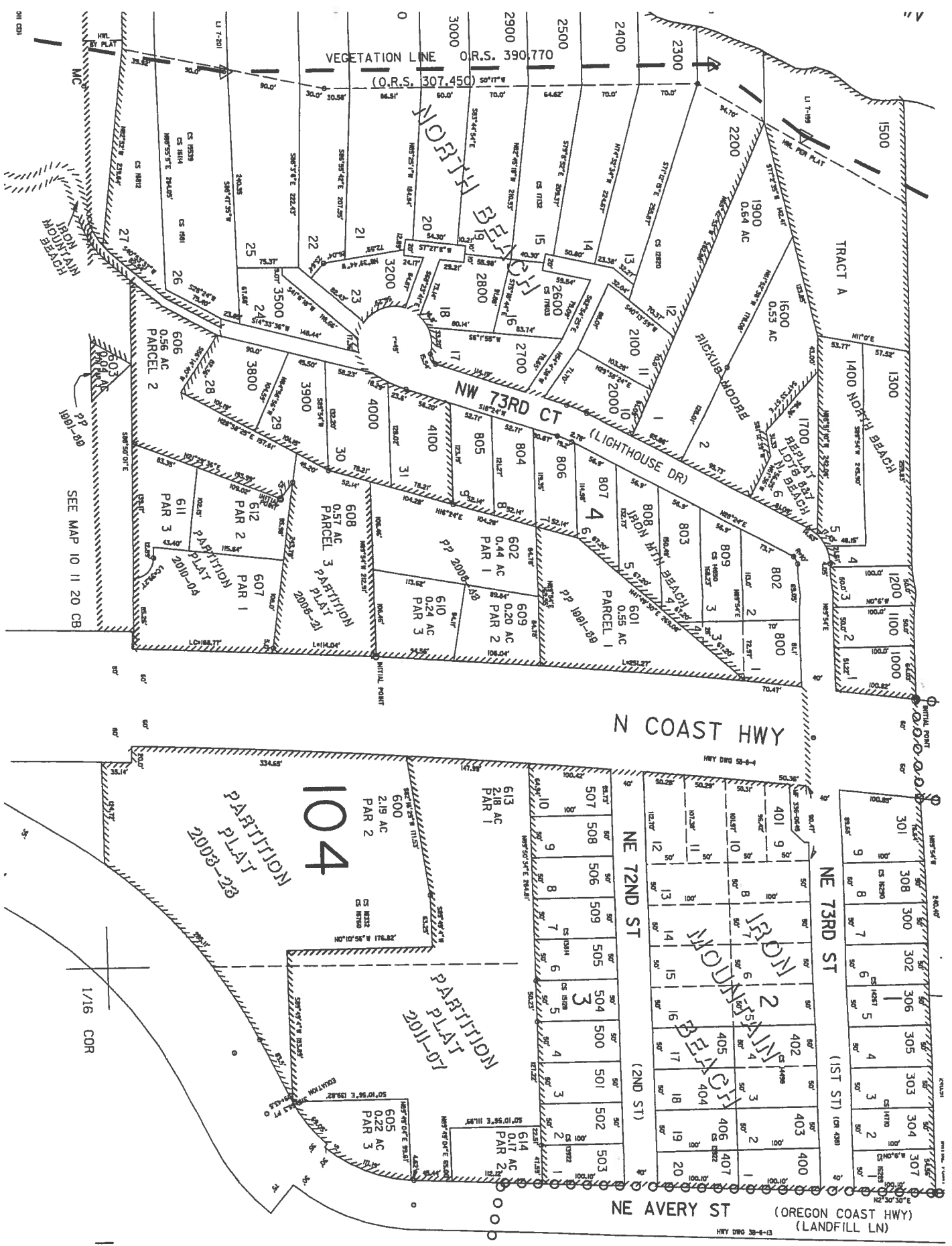
In compliance with the GLBA, we do not share nonpublic personal information about a consumer with a nonaffiliated third party, unless allowed by law.

In compliance with the GLBA, our privacy practices regarding nonpublic personal financial information of consumers and customers (as defined by GLBA) are as follows, subject to any exceptions as permitted by law.

- We protect nonpublic personal information of customers and consumers.
- We allow access on need to know basis only. Only company personnel who need to know can access the information. Examples may include accounting personnel, title examiners, title underwriter personnel, auditors, escrow closers and their assistants, management, scanning personnel, and claims related investigation personnel, including but not limited to retained counsel.
- We allow customers and consumers to review their nonpublic personal information that we have collected, and we allow them to provide us with requests for amendment or deletion of such information, to which we will reasonably respond.
- We require consent from a proper party to the transaction to provide nonpublic personal information relating to their transaction, which includes closed transactions.
- We maintain physical, electronic, and procedural safeguards that comply with law to guard the nonpublic personal information. We allow only authorized personnel to review the information, and we keep closed files in secure storage, with limited access, or we store the files on computer with limited password access.
- We generally do not keep copies of credit reports, loan applications, and tax returns on consumers and customers.
- If we share starter title information, we don't share nonpublic personal information, such as sales price (unless it is public information), policy numbers, or amount of insurance on owner's policies issued to customers.
- We don't share nonpublic personal information, such as social security numbers and bank account information, as may be shown on affidavits of indemnity, instructions to escrow, or as may be provided by a principal lender, broker or real estate agent.
- We periodically inform our personnel about our policy.
- We don't share nonpublic personal information with independent contractors, unless they have a need in the processing of the transaction as allowed by law.

Dated: June 1, 2005

Western Title & Escrow Company



200-4

STATE OF OREGON
COUNTY OF LINCOLN
I HEREBY CERTIFY THAT THIS PARTITION PLAT WAS RECEIVED FOR RECORD
ON THIS 22ND DAY OF February 2010 AT 10:00 O'CLOCK PM
AND RECORDED AS PARTITION PLAT NUMBER 200-4 LINCOLN COUNTY RECORDS.
Jonathan B. Holbrook 02/23/2010
COUNTY CLERK (VENDOR)

DECLARATION
KNOW ALL PEOPLE BY THESE PRESENTS, THAT JONATHAN B. HOLBROOK AND
TERESA J. GOLDADE, SURVEYORS, HAVE CAUSED SAID PROPERTY TO BE PARTITIONED INTO
THREE PARCELS AS SHOWN HEREON AND HEREBY CREATE EASEMENTS "A" AND "B"
AS DETAILLED HEREON, IN ACCORDANCE WITH THE PROVISIONS OF O.R.S. CHAPTER 92.
JONATHAN B. HOLBROOK
TERESA J. GOLDADE

ACKNOWLEDGMENT
STATE OF OREGON
COUNTY OF LINCOLN
ON THIS 22ND DAY OF February IN THE YEAR 2010, BEFORE
ME, Jonathan B. Holbrook, a Notary Public for the State of Oregon,
personally appeared Jonathan B. Holbrook and Teresa J. Goldade, both of legal age,
known to me or proved to me by means of satisfactory
evidence to be the persons who executed the within instrument.
JONATHAN B. HOLBROOK
TERESA J. GOLDADE

NOTARY SIGNATURE
JONATHAN B. HOLBROOK
NOTARY PUBLIC - OREGON (PRINT)
COMMISSION NO. 20000000
MY COMMISSION EXPIRES April 18, 2011

BASIS OF BEARINGS
THE BEARING NORTH 02°45'37" EAST,
THE RECORD VALUE CALCULATED FROM PP 2005-21.

NARRATIVE
THE SURVEY IS TO REPEAT AND FURTHER
PARTITION PARCEL ONE OF PP 2005-21 INTO THREE PARCELS AS
SHOWN HEREON. MONUMENTS FROM PP 2005-21 WERE FOUND AND
HELD TO CONTROL THIS SURVEY. WITH THE EXCEPTED AREAS AND
EASEMENTS, THE SURVEY WAS MADE AND THE PLAT WAS HELD
AS THE SOUTH LINE OF THIS PLAT AND WAS EXTENDED EASTERLY
TO INTERSECT WITH THE HIGHWAY RIGHT OF WAY AS SHOWN
HEREON.

SURVEYOR'S CERTIFICATE
I, JONATHAN B. HOLBROOK, DO HEREBY CERTIFY THAT I HAVE CORRECTLY
REPRESENTED ON THE ABOVE PLAT THE EXTERIOR BOUNDARY OF
WHICH IS DESCRIBED AS FOLLOWS:
THENCE S81°21'47"E FOR 208.18 FEET TO THE BEGINNING OF A 10477.44
FOOT RADIUS CURVE TO THE LEFT;
THENCE ALONG SAID CURVE (THE LONG CHORD OF WHICH BEARS
S02°44'05"W 188.77 FEET), THROUGH A CENTRAL ANGLE OF 0°55'27"
FOR 188.77 FEET;
THENCE N88°45'50"W FOR 248.43 FEET;
THENCE N02°20'07"E FOR 192.38 FEET;
TO THE INITIAL POINT, CONTAINING 0.91 ACRES MORE OR LESS.

RECORD
NUM BEARING DISTANCE BEARING DISTANCE
1 N81°21'47"E 208.18 S81°21'47"E 188.77
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City of Newport
 Community Development Department
 168 SW Coast Highway
 Newport, OR 97365
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Zoning Map for File No. 3-PAR-15

Image Taken July 2013
 4-Inch, 4-Band Digital Orthophotos
 David Smith & Associates, Inc., Portland, OR



This map is for informational use only and has not been prepared for use as a substitute for legal engineering or surveying purposes. It is not to be used for any purpose other than to provide information to the public. The City of Newport Community Development Department is not responsible for any errors or omissions in this map.

TITLE XIII LAND DIVISION

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CHAPTER 13.05 SUBDIVISION AND PARTITION

13.05.001 Purpose

This chapter provides uniform standards for the division of land and the installation of related improvements within the corporate limits of the city for the purposes of protecting property values, and furthering the health, safety and general welfare of the citizens of Newport. The provisions of this chapter implement Statewide Planning Goals as addressed in the Newport Comprehensive Plan along with the applicable portions of Chapters 92 and 227 of the Oregon Revised Statutes.

13.05.005 Definitions

The following definitions apply in this chapter:

- A. **Land Division**. A subdivision or partition.
- B. **Lot**. A unit of land that is created by a subdivision of land.
 - 1. **Corner Lot**. A lot with at least two adjacent sides that abut streets other than alleys, provided the intersection angle does not exceed 135 degrees.
 - 2. **Through Lot**. A lot having frontage on two parallel, or approximately parallel, streets other than alleys.
- C. **Parcel**. A unit of land that is created by a partitioning of land.
- D. **Partition**. To divide land into not more than three parcels of land within a calendar year, but does not include:
 - 1. A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property, or the creation of cemetery lots;
 - 2. An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable ordinance; or

3. A sale or grant by a person to a public agency or public body for state highway, county road, city street, or other right-of-way purposes, provided that such road or right-of-way complies with the applicable comprehensive plan and state law. However, any property divided by the sale or grant of property for state highway, county road, city street, or other right-of-way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.

- E. **Person**. Any individual or entity.
- F. **Plat**. The final map or other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision or partition.
- G. **Replat**. The act of platting the lots, parcels, and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision. A replat shall not serve to vacate any public street or road.
- H. **Replat. Minor**. A replat that involves five or fewer lots or any number of lots or parcels totally contained within a city block in the original configuration and that does not involve any public street rights-of-way. A minor replat shall not serve to vacate any public street or road.
- I. **Roadway**. The portion of a street right-of-way developed for vehicular traffic.
- J. **Street**. A public or private way other than a driveway that is created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land. For the purposes of this section, a "driveway" is a private way that begins at a public right-of-way that is proposed to serve not more than four individual lots/parcels cumulative as the primary vehicular access to those individual lots/parcels.
1. **Alley**. A narrow street through a block primarily for vehicular service access to the back or side of properties otherwise abutting on another street.

2. **Arterial**. A street of considerable continuity which is primarily a traffic artery among large areas.
 3. **Half-street**. A portion of the width of a right of way, usually along the edge of a subdivision or partition, where the remaining portion of the street could be provided in another subdivision or partition, and consisting of at least a sidewalk and curb on one side and at least two travel lanes.
 4. **Marginal Access Street**. A minor street parallel and adjacent to a major arterial street providing access to abutting properties, but protected from through traffic.
 5. **Minor Street**. A street intended primarily for access to abutting properties.
- K. **Subdivide Land**. To divide an area or tract of land into four or more lots within a calendar year.
- L. **Subdivision**. Either an act of subdividing land or an area or tract of land subdivided as defined in this section.

13.05.010 Standards

Land divisions shall comply with the requirements of this chapter as applicable to the land division.

13.05.015 Streets

- A. **Criteria for Consideration of Modifications to Street Design**. As identified throughout the street standard requirements, modifications may be allowed to the standards by the approving authority. In allowing for modifications, the approving authority shall consider modifications of location, width, and grade of streets in relation to existing and planned streets, to topographical or other geological/environmental conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system as modified shall assure an adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried considering the terrain. Where location is not shown in the Transportation System Plan, the arrangement of streets shall either:

1. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
2. Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

B. Minimum Right-of-Way and Roadway Width. Unless otherwise indicated in the Transportation System Plan, the street right-of-way and roadway widths shall not be less than the minimum width in feet shown in the following table:

<u>Type of Street</u>	<u>Minimum Right-of-Way Width</u>	<u>Minimum Roadway Width</u>
Arterial, Commercial, and Industrial	80 feet	44 feet
Collector	60 feet	44 feet
Minor Street	50 feet	36 feet
Radius for turn-around At end of cul-de-sac	50 feet	45 feet
Alleys	25 feet	20 feet

Modifications to this requirement may be made by the approving authority where conditions, particularly topography, geology, and/or environmental constraints, or the size and shape of the area of the subdivision or partition, make it impractical to otherwise provide buildable sites, narrower right-of-way and roadway width may be accepted. If necessary, slope easements may be required.

- C. Reserve Strips. Reserve strips giving a private property owner control of access to streets are not allowed.
- D. Alignment. Streets other than minor streets shall be in alignment with existing streets by continuations of their center lines. Staggered street alignment resulting in "T" intersections shall leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction and, in no case, shall be less than 100 feet. If not practical to do so because of topography or other conditions, this requirement may be modified by the approving authority.

E. Future Extensions of Streets. Proposed streets within a land division shall be extended to the boundary of the land division. A turnaround if required by the Uniform Fire Code will be required to be provided. If the approval authority determines that it is not necessary to extend the streets to allow the future division of adjoining land in accordance with this chapter, then this requirement may be modified such that a proposed street does not have to be extended to the boundary of the land division.

F. Intersection Angles.

1. Streets shall be laid out to intersect at right angles.
2. An arterial intersecting with another street shall have at least 100 feet of tangent adjacent to the intersection.
3. Other streets, except alleys, shall have at least 50 feet of tangent adjacent to the intersection.
4. Intersections which contain an acute angle of less than 80 degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20 feet and maintain a uniform width between the roadway and the right-of-way line.
5. No more than two streets may intersect at any one point.
6. If it is impractical due to topography or other conditions that require a lesser angle, the requirements of this section may be modified by the approval authority. In no case shall the acute angle in Subsection F.(1.) be less than 80 degrees unless there is a special intersection design.

G. Half Street. Half streets are not allowed. Modifications to this requirement may be made by the approving authority to allow half streets only where essential to the reasonable development of the land division, when in conformity with the other requirements of these regulations and when the city finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract property to be divided, the other half of the street shall be provided.

H. Sidewalks. Sidewalks in conformance with the city's adopted sidewalk design standards are required on both sides of all

streets within the proposed land division and are required along any street that abuts the land division that does not have sidewalk abutting the property within the land division. The city may exempt or modify the requirement for sidewalks only upon the issuance of a variance as defined in the Zoning Ordinance.

- I. Cul-de-sac. A cul-de-sac shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a circular turn-around meeting minimum Uniform Fire Code requirements. Modifications to this requirement may be made by the approving authority. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to connect from a cul-de-sac to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.
- J. Street Names. Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street. Street names and numbers shall conform to the established pattern in the city, as evident in the physical landscape and described in City of Newport Ordinance No. 665, as amended.
- K. Marginal Access Streets. Where a land division abuts or contains an existing or proposed arterial street, the Planning Commission may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- L. Alleys. Alleys shall be provided in commercial and industrial districts. If other permanent provisions for access to off-street parking and loading facilities are provided, the approving authority is authorized to modify this provision if a determination is made that the other permanent provisions for access to off-street parking and loading facilities are adequate to assure such access. The corners of alley intersections shall have a radius of not less than 12 feet.

13.05.020 Blocks

- A. General. The length, width, and shape of blocks for non-residential subdivisions shall take into account the need for adequate building site size and street width, and shall recognize the limitations of the topography.
- B. Size. No block shall be more than 1,000 feet in length between street corners. Modifications to this requirement may be made by the approving authority if the street is adjacent to an arterial street or the topography or the location of adjoining streets justifies the modification. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to allow connectivity to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a block of greater than 1,000 feet if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.

13.05.025 Easements

- A. Utility Lines. Easements for sewers and water mains shall be dedicated to the city wherever a utility is proposed outside of a public right-of-way. Such easements must be in a form acceptable to the city. Easements for electrical lines, or other public utilities outside of the public right-of-way shall be dedicated when requested by the utility provider. The easements shall be at least 12 feet wide and centered on lot or parcel lines, except for utility pole tieback easements, which may be reduced to six (6) feet in width.
- B. Utility Infrastructure. Utilities may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.
- C. Water Course. If a tract is traversed by a water course such as a drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially to the lines of the water course, and such further width as will be adequate for the purpose. Streets or parkways parallel to the major water courses may be required.

13.05.030 Lots and Parcels

- A. Size. The size (including minimum area and width) of lots and parcels shall be consistent with the applicable lot size provisions of the Zoning Ordinance, with the following exception:

Where property is zoned and planned for business or industrial use, other widths and areas may be permitted at the discretion of the Planning Commission. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

- B. Street Frontage. Each lot and parcel shall possess at least 25 feet of frontage along a street other than an alley.
- C. Through Lots and Parcels. Through lots and parcels are not allowed. Modifications may be made by the approving authority where they are essential to provide separation of residential development from major traffic arteries or adjacent nonresidential activities or to overcome specific disadvantages of topography and orientation. The approving authority may require a planting screen easement at least 10 feet wide and across which there shall be no right of access. Such easement may be required along the line of building sites abutting a traffic artery or other incompatible use.
- D. Lot and Parcel Side Lines. The side lines of lots and parcels shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve. Modifications to this requirement may be made by the approving authority where it is impractical to do so due to topography or other conditions or when the efficient layout of the land division has the lines running as close to right angles (or radial) as practical.
- E. Special Setback Lines. All special building setback lines, such as those proposed by the applicant or that are required by a geological report, which are to be established in a land division, shall be shown on the plat, or if temporary in nature, shall be included in the deed restrictions.
- F. Maximum lot and parcel size. Proposed lots and parcels shall not contain square footage of more than 175% of the required minimum lot size for the applicable zone. Modifications to this requirement may be made by the approving authority to allow

greater square footage where topography or other conditions restrict further development potential or where the layout of the land division is designed and includes restrictions to provide for extension and opening of streets at intervals which will permit a subsequent division into lots or parcels of appropriate size for the applicable zone designation.

- G. Development Constraints. No lot or parcel shall be created with more than 50 % of its land area containing wetlands or lands where the city restricts development to protect significant Statewide Land Use Planning Goal 5 or Goal 17 resources, except that areas designated as open space within a land division may contain up to 100% of a protected resource. Modifications to this requirement may be made by the approval authority if the approval authority determines that the proposed lot or parcel contains sufficient land area to allow for construction on the lot or parcel without impacting the resource or that a variance or other permit has been obtained to allow for impacts on the identified resource.
- H. Lots and Parcels within Geologic Hazard Areas. Each new undeveloped lot or parcel shall include a minimum 1000 square foot building footprint within which a structure could be constructed and which is located outside of active and high hazard zones and active landslide areas (See Section 2-4-7 of the Zoning Ordinance for an explanation of hazard zones). New public infrastructure serving a lot or parcel shall similarly be located outside of active and high hazard zones and active landslide areas.

(13.05.030(H) added by Ordinance No. 2017 on July 18, 2011; effective August 17, 2011)

13.05.035 Public Improvements

Public Improvement Procedures. In addition to other requirements, public improvements installed by a developer that is dividing land, whether required or voluntarily provided, shall comply with this chapter, and with any public improvement standards or specifications adopted by the city. The following procedure shall be followed:

- A. Improvement work, including excavation in the excess of 100 cubic yards, shall not be commenced until plans have been checked for adequacy and approved by the city. To the extent necessary for evaluation of the proposal, the plans shall be required before approval of the tentative plan of a subdivision or partition.

- B. Improvement work shall not commence until after the city is notified, and, if work is discontinued for any reason, it shall not be resumed until after the city is notified.
- C. Public improvements shall be constructed under the inspection and to the satisfaction of the city engineer. The city may require change in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change.
- D. Underground utilities, sanitary sewers, and storm drains installed in streets shall be constructed prior to the surfacing of the streets. Stubs for service connection for underground utilities and sanitary sewers shall be placed to allow future connections without disturbing the street improvements.
- E. A map showing public improvements as built shall be filed with the city upon completion of the improvements.
- F. Public improvements shall not be commenced until any appeals of the subdivision approval are resolved.

13.05.040 Public Improvement Requirements

- A. The following public improvements are required for all land divisions, except where a subdivision plat is reconfiguring or establishing rights-of-way for future public streets:
 - 1. Streets. All streets, including alleys, within the land division, streets adjacent but only partially within the land divisions, and the extension of land division streets to the intersecting paving line of existing streets with which the land division streets intersect, shall be graded for the full right-of-way width. The roadway shall be improved to a width of 36 feet or other width as approved by the approval authority by excavating to the street grade, construction of concrete curbs and drainage structures, placing a minimum of six inches of compacted gravel base, placement of asphaltic pavement 36 feet in width or other width as approved by the approval authority and approximately two inches in depth, and doing such other improvements as may be necessary to make an appropriate and completed improvement. Street width standards may be adjusted as part of the tentative plan approval to protect natural features and to take into account topographic constraints and geologic risks.

2. Surface Drainage and Storm Sewer System. Drainage facilities shall be provided within the land division and to connect the land division drainage to drainage ways or storm sewers outside the land division. Design of drainage within the land division shall take into account the capacity and grade necessary to maintain unrestricted flow from areas draining through the land division and to allow extension of the system to serve such areas.
3. Sanitary Sewers. Sanitary sewers shall be installed to serve each lot or parcel in accordance with standards adopted by the city, and sewer mains shall be installed in streets as necessary to connect each lot or parcel to the city's sewer system.
4. Water. Water mains shall be installed to allow service to each lot or parcel and to allow for connection to the city system, and service lines or stubs to each lot shall be provided. Fire hydrants shall be installed as required by the Uniform Fire Code. The city may require that mains be extended to the boundary of the land division to provide for future extension or looping.
5. Sidewalks. Required sidewalks shall be constructed in conjunction with the street improvements except as specified below:
 - a. Delayed Sidewalk Construction. If sidewalks are designed contiguous with the curb, the subdivider may delay the placement of concrete for the sidewalks by depositing with the city a cash bond equal to 115 percent of the estimated cost of the sidewalk. In such areas, sections of sidewalk shall be constructed by the owner of each lot as building permits are issued. Upon installation and acceptance by the city engineer, the land owner shall be reimbursed for the construction of the sidewalk from the bond. The amount of the reimbursement shall be in proportion to the footage of sidewalks installed compared with the cash bond deposited and any interest earned on the deposit.
 - b. Commencing three (3) years after filing of the final plat, or a date otherwise specified by the city, the city engineer shall cause all remaining sections of sidewalk to be constructed, using the remaining funds from the aforementioned cash bond. Any surplus funds shall be deposited in the city's general fund to

cover administrative costs. Any shortfall will be paid from the general fund.

- c. Notwithstanding the above, a developer may guarantee installation of required sidewalks in an Improvement Agreement as provided in Section 13.05.090(C).

(13.05.040(A)(5) was amended by Ordinance No. 2045, adopted on November 5, 2012; effective December 5, 2012.)

- B. All public improvements shall be designed and built to standards adopted by the city. Until such time as a formal set of public works standards is adopted, public works shall be built to standards in any existing published set of standards designated by the city engineer for the type of improvement. The city engineer may approve designs that differ from the applicable standard if the city engineer determines that the design is adequate.
- C. Public improvements are subject to inspection and acceptance by the city. The city may condition building or occupancy within the land division on completion and acceptance of required public improvements.

13.05.045 Adequacy of Public Facilities and Utilities (Electric and Phone)

- A. Tentative plans for land divisions shall be approved only if public facilities and utilities (electric and phone) can be provided to adequately service the land division as demonstrated by a written letter from the public facility provider or utility provider stating the requirements for the provision of public facilities or utilities (electric and phone) to the proposed land division:
- B. For public facilities of sewer, water, storm water, and streets, the letter must identify the:
 - 1. Water main sizes and locations, and pumps needed, if any, to serve the land division.
 - 2. Sewer mains sizes and locations, and pumping facilities needed, if any, to serve the land division.
 - 3. Storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the land division, or detention or retention facilities that

could be used to eliminate need for additional conveyance capacity, without increasing erosion or flooding.

4. Street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development.

13.05.050 Underground Utilities and Service Facilities

- A. Undergrounding. All utility lines within the boundary of the proposed land divisions, including, but not limited to, those required for electric, telephone, lighting, and cable television services and related facilities shall be placed underground, except surface-mounted transformers, surface-mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. The subdivider shall make all necessary arrangements with the serving utility to provide the underground service.
- B. Non-City-Owned Utilities. As part of the application for tentative land division approval, the applicant shall submit a copy of the preliminary plat to all non-city-owned utilities that will serve the proposed subdivision. The subdivider shall secure from the non-city-owned utilities, including but not limited to electrical, telephone, cable television, and natural gas utilities, a written statement that will set forth their extension policy to serve the proposed land division with underground facilities. The written statements from each utility shall be submitted to the city prior to the final approval of the plat for recording.

13.05.055 Street Lights

Street lights are required in all land divisions where a street is proposed. The city may adopt street light standards. In the absence of adopted standards, street lights shall be placed in new land divisions to assure adequate lighting of streets and sidewalks within and adjacent to the land division.

13.05.060 Street Signs

Street name signs, traffic control signs and parking control signs shall be furnished and installed by the city.

13.05.065 Monuments

Upon completion of street improvements, monuments shall be reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines.

13.05.070 Land Division Application

A. A person seeking approval of a land division shall submit the following to the Community Development Department:

1. A completed city application form signed by the owner of the property or an authorized agent. If the application form is signed by an authorized agent, it must be accompanied by a document signed by the property owner authorizing the agent to act for the owner in the land division process.
2. An original tentative plan and 14 copies (3 copies if a minor replat or a partition).
3. A narrative listing each applicable approval criterion or standard and an explanation as to how the criterion or standard is met.
4. A vicinity map showing existing subdivisions and unsubdivided land ownerships adjacent to the proposed subdivision and showing how proposed streets and utilities will be extended to connect to existing streets and utilities and may be connected to future streets and utilities.
5. Proposed deed restrictions, if any, in outline form.
6. Approximate center line profiles with extensions for a reasonable distance beyond the limits of the proposed subdivision showing the finished grade of streets and the nature and extent of street construction.
7. A plan for domestic water supply lines and related water service facilities.
8. Proposals for sewage disposal, storm water drainage, and flood control, including profiles of proposed drainage ways.

9. If lot areas are to be graded, a plan showing the nature of cuts and fills and information on the character of the soil.

10. Where geologic hazards are known to exist on part or all of the property in question based on adopted maps of the City of Newport, a geologic hazard report is required and shall be provided in accordance with the requirements of Section 2-4-7 of the Zoning Ordinance. The report must clearly state what measures will be taken to safeguard against existing hazards.

(13.05.070(A)(10) was adopted by Ordinance No. 2017 on July 18, 2011; effective August 17, 2011)

11. Written letters from public facilities (water, sewer, storm water, and streets) and utilities (electric and phone) identifying requirements for providing service to the land division.

12. An application fee in an amount set by City Council resolution.

13. A Trip Assessment Letter, if required by Chapter 14.43.

14. A Traffic Impact Analysis, if required by Chapter 14.45.

15. Other materials that the applicant believes relevant or that may be required by the city.

(Section 13.05.070(A)(13 - 15) were added or amended by Ordinance No. 2045, adopted on November 5, 2012; effective December 5, 2012.)

B. The tentative plan of a land division shall be drawn on a sheet 18 by 24 inches in size or a multiple thereof at a scale of one inch equals 100 feet or, for areas over 100 acres, one inch equals 200 feet.

C. The following general information shall be shown on the tentative plan of the land division:

1. If a subdivision, the proposed name of the subdivision. This name shall not duplicate or resemble the name of another subdivision in the county and shall be approved by the Planning Commission.

2. Date, northpoint, and scale of the drawing.

3. Appropriate identification of the drawing as a tentative plan.
4. Location of the property being divided sufficient to define its location and boundaries, and a legal description of the entire property being divided.
5. Names and addresses of the owner, the applicant if different from the owner, and the engineer and/or surveyor.
6. The following existing conditions shall be shown on the tentative plan:
 - a. The location, widths, and names of existing streets and undeveloped rights of way within or adjacent to the tract, any existing easements, and other important features such as section lines, section corners, city boundary lines, and monuments.
 - b. Contour lines related to some established bench mark or other datum approved by the city and having minimum intervals as follows:
 - i. For slopes of less than 5 percent: show the direction of slope by means of arrows or other suitable symbols, together with not less than four (4) spot elevations per acre, evenly distributed.
 - ii. For slopes of 5 percent to 15 percent: five (5) feet.
 - iii. For slopes of 15 percent to 20 percent: 10 feet.
 - iv. For slopes of over 20 percent: 20 feet.
 - c. The location and direction of water courses and the location of areas subject to flooding.
 - d. Natural features such as wetlands, tidelands, marshes, or any natural resource identified as a protected Statewide Land Use Planning Goal 5 or Goal 17 resource on maps adopted by the city shall be identified. Other features, such as rock outcroppings, wooded areas, and isolated trees that serve as the basis of any requested modifications to the land division standards shall also be identified.

- e. Existing uses of the property and location of existing structures to remain on the property after platting.
 - f. The location within the land division and in the adjoining streets and property of existing sewers, water mains, culverts, drain pipes, and utility lines.
7. The following information shall be included on the tentative plan of a subdivision.
- a. The location, width, names, approximate grades, and radii of curves of proposed streets and the relationship of proposed streets to streets shown in the Transportation System Plan. Streets in existing adjacent developments and approved subdivisions and partitions shall also be shown, as well as potential street connections to adjoining undeveloped property.
 - b. The location, width, and purpose of proposed easements.
 - c. The location and approximate dimensions of proposed lots and the proposed lot and block numbers.
 - d. Proposed sites, if any, allocated for purposes other than single-family dwellings.
- D. If the land division proposal pertains to only part of the property owned or controlled by the owner or applicant, the city may require a sketch of a tentative layout for streets in the undivided portion.

13.05.075 Preliminary Review and Notice of Hearing

- A. On receipt of a complete land division application, the community development director shall provide notice to other agencies known to be affected or to have an interest.
- B. Notice of a hearing before the Planning Commission shall be given in accordance with Section 2-6-1 of the zoning ordinance, except that the distance the city shall use for identifying properties entitled to notice shall be 150 feet rather than 300 feet.

13.05.080 Hearing and Approval for Land Divisions Other Than a Minor Replat or Partition.

- A. The Planning Commission shall hold a public hearing on a land division application other than a minor replat or partition and shall be the initial decision maker, subject to appeal to the City Council. The Planning Commission may approve, approve with conditions or deny the application, based on the standards and criteria of this chapter. The Planning Commission may tentatively approve the application, subject to submission of additional information. Any tentative approval must be followed by a final decision. The decision shall be in writing and supported by findings.
- B. The city shall take final action within 120 days from the time the application is complete. The time period may be extended at the request or with the consent of the applicant.
- C. The action of the Planning Commission shall be by final order. A copy of the final order shall be sent to the applicant.
- D. Notice of the decision shall be provided to all persons entitled to notice, including all persons who have asked to be notified of the decision.

13.05.085 Approval Criteria and Conditions for Land Divisions Other than Minor Replats or Partitions.

- A. The proposed land division will comply with the requirements of this chapter or can be made to comply by the attachment of reasonable conditions of approval. For the purposes of this section, a land division complies with this chapter if it meets the standard provided herein or if a modification or variance is approved by the approving agency to the standard.
- B. Any required submitted geological hazard report must conclude that the property can be developed in the manner proposed by the land division. The land division must comply with any recommendations contained in the report. Approval of the land division by the Planning Commission pursuant to a submitted geological hazard report includes approval of the geological report recommendations. Based on the geological hazard report, the Planning Commission shall establish when compliance with the geological report recommendations must be demonstrated. The geological hazard report shall be in the form of a written certification prepared by an engineering geologist or other equivalent certified professional, establishing that the report requirements have been satisfied, and should be noted as a condition of approval.

13.05.090 Final Plat Requirements for Land Divisions Other than Minor Replats or Partitions

- A. Submission of Final Plat. Within two years after tentative plan approval, such other time established at the time of tentative plan approval, or extensions granted under this chapter, the owner and/or applicant (collectively referred to as the "developer") shall cause the land division to be surveyed and a final plat prepared. If the developer elects to develop the land division in phases, final plats for each phase shall be completed within the time required (e.g. Phase I completed within two years, Phase II completed within the next two years, etc.). The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.
- B. Provision of Improvements. It shall be the responsibility of the developer to install all required improvements and to repair any existing improvements damaged in the development of the property. The installation of improvements and repair of damage shall be completed prior to final plat approval. Except as provided in Subsection C., or where payment in lieu of constructing a required improvement is allowed by the city and has been paid by the developer per Chapter 14.45, the final plat will not be approved until improvements are installed to the specifications of the city and "as constructed" drawings are given to the city and approved by the city engineer. The developer shall warrant the materials and workmanship of all required public improvements for a period of one year from the date the city accepts the public improvements.
- (Section 13.05.090(B) was amended by Ordinance No. 2045, adopted on November 5, 2012; effective December 5, 2012.)*
- C. Improvement Agreements. If all the required improvements have not been satisfactorily completed before the final plat is submitted for approval, the city may, at its discretion, allow final approval of the plat if the developer enters into a written agreement with the city to provide the required improvements secured by a bond or letter of credit. The agreement must provide for completion within one year of the approval of the final plat. The agreement shall be acceptable to the city attorney and include provisions that:
1. Authorize the city to complete the required improvements and recover their full cost and expense from the developer if the developer fails to complete the

improvements as required.

2. Authorize the inspection of all improvements by the city engineer and provide for reimbursement to the city of all costs of inspection.
3. Indemnify of the city, its officials, employees and agents, from and against all claims of any nature arising or resulting from the failure of the developer to comply with any requirement of such agreement.
4. Ensure compliance with conditions required by the city in approving the final plat prior to completion of all required improvements.

D. Financial Assurances. A developer that enters into an improvement agreement shall provide financial assurances in the form of one or both of the following:

1. A surety bond executed by a surety company authorized to transact business in the State of Oregon and in a form satisfactory to the city attorney, or
2. An irrevocable letter of credit in a form satisfactory to the city attorney.

E. Amount of Security. The financial assurances shall be in an amount equal to 150% of the amount determined by the city engineer as sufficient to cover the cost of the improvements, engineering, inspection, and incidental expenses. The financial assurances may provide for reduction of the amount in increments as improvements are completed and approved by the city engineer. However, the number of reductions or disbursements and the amount of retainage required shall be at the discretion of the city engineer.

F. Post Completion Financial Assurances. On acceptance of all improvements by the city, the amount of the security shall be reduced to 20% of the original sum and shall remain in effect until the expiration of the one year warranty period. All deficiencies in construction and maintenance discovered and brought to the attention of the developer and surety within one year of acceptance must be corrected to the satisfaction of the city engineer. The developer may substitute a new warranty bond rather than amending the original performance bond or letter of credit.

G. Acceptance of Improvements by City, Guarantee. The city will accept public improvements only if they have received final inspection approval by the city engineer and "as constructed" engineering plans have been received and accepted by the city engineer. The developer shall warrant all public improvements and repairs for a period of one year after acceptance by the city.

H. Time Limit Between Tentative Plan and Final Plat (Extensions). Requests for extension of the one year time limit for submission of final plat shall be in writing. On receipt of the written request, the community development director may grant an extension of up to one year. The Planning Commission may grant an additional one year extension after public hearing. Notice shall be the same as the original tentative plan. The criteria for an extension are:

1. An unforeseen change in the economic condition has affected the real estate market for the project; or
2. The weather has prevented the physical work; or
3. Other unanticipated hardship, such as change or turnover in engineering firms, contractors, or significant delays in obtaining required state or federal permits requires additional time to complete the project.

An extension may only be granted if the comprehensive plan, zoning ordinance, and subdivision ordinance have not changed in a way that would substantially affect the original tentative plan.

I. Phased Developments. For a phased development, final plats may be submitted consistent with any phasing plan approved at the time of tentative plan approval. Extensions may be granted by the Planning Commission under the standards of Subsection E.

J. Procedure and Standard for Approval of a Final Plat. On receipt of the final plat application, the community development director shall have up to 30 days to review and determine if the application is complete. If the application is not complete, it shall be returned to the applicant with a written explanation of why the application is being returned. If complete, the application shall be accepted.

The community development director shall forward the final

plat to the city engineer for comment. The city engineer shall have 20 days to comment on the final plat. Comments shall be in writing. After the 20-day comment period, the community development director shall decide whether the final plat complies with the following criteria:

1. The final plat is in substantial compliance with the tentative plan.
2. The required improvements have been completed.
3. The final plat complies with all conditions attached to the tentative plan.
4. Planned public facilities that were relied on to comply with Section 13.05.045 at the time of tentative plan approval have been completed and are available for use.

If the final plat is approved, the plat shall be forwarded to the Planning Commission chair for signature. If the final plat is denied, the applicant shall be notified in writing why the final plat was denied and what items need to be corrected before the final plat can be approved.

- K. Recording of Final Plat. After final approval, the final plat shall be forwarded to Lincoln County for review and recording as required by law. Within 90 days of approval, the developer shall submit to the city a mylar copy and two paper copies of the recorded final plat.

13.05.095 Minor Replats and Partitions

- A. Procedure for Review. After an application for minor replat or partition is deemed complete, the community development director shall send notice to persons within 100 feet of the subject property and, if there are existing public easements, affected utilities, that the tentative plan has been filed. Notified parties shall be given 14 days to provide written comments. After the 14 day period, the community development director shall decide whether the application complies with the criteria and provide a written decision. The criteria for approval are:

1. The tentative plan complies with the definition of a replat or partition, as appropriate.
2. All lots or parcels within the tentative plan meet the

requirements of Section 13.05.030. Alternatively, if the original lots or parcels were nonconforming, the resultant lots or parcels may be allowed without a variance if they are less nonconforming.

3. Approval of the tentative plan does not interfere with the provision of key public facilities.
 4. The applicant has agreed to sign a consent to participate in sewer, water, or street local improvement districts that the subject lots or parcels would be part of once those districts are formed. The consent shall be a separate document recorded upon the lots or parcels subject to the partition. The document shall be recorded prior to final plat approval.
 5. Public facilities serving the minor replat or partition are adequate under Section 13.05.045. Proposed streets within the minor replat or partition comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained.
 6. All required public improvements will be provided.
 7. Any required submitted geological hazard report concludes that the property can be developed in the manner proposed, in accordance with any recommendations contained in the report.
- B. Compliance with Criteria. If the tentative plan complies with the criteria, the plan shall be approved. Conditions of approval, including requirements to provide public improvements necessary to allow development, may be imposed. If the tentative plan does not comply with the criteria or cannot be made to comply through reasonable conditions of approval, the plan shall be denied and the applicant shall be notified in writing why the tentative plan was denied and what items need to be corrected before the tentative plan can be approved.
- C. Geological Hazards Reports. Approval of the minor replat or partition pursuant to a submitted geological hazard report includes approval of the geological report recommendations. Based on the report, the community development director shall establish when compliance with the geological report recommendations must be demonstrated. This shall be in the form of a written certification prepared by an engineering

geologist or other equivalent certified professional, establishing that the report requirements have been satisfied, and should be noted as a condition of approval.

- D. Appeal. Persons who make written comment during the comment period shall be notified of the final decision. Any person with standing may file an appeal of the planning director's approval or denial of a tentative plan. Notice and the hearing procedure shall be the same as for a subdivision tentative plat approval.
- E. Final Plat Approval. Within two years of the tentative plan approval, the applicant shall submit to the city a final plat for the replat or partition that is consistent with the tentative plan and state law. A signature block for the Community Development Director, the Lincoln County Surveyor, the Lincoln County Tax Collector, and the Lincoln County Tax Assessor shall be on the final plat. The community development director shall approve the final plat if it is consistent with the tentative plan and all conditions have been satisfied, including the provision and acceptance of any required public improvements. The city shall forward approved plats to Lincoln County for review and recordation. The applicant shall submit one paper copy of the recorded final plat within 90 days to the community development department.
- F. Procedure for Approval of Replat Other than a Minor Replat. The procedure and criteria for tentative and final approval of replats other than minor replats shall be the same as for subdivisions or partitions, depending on whether the replat is of a subdivision or partition.

13.05.100 Cemeteries

- A. Minimum Requirements for the Platting and Subdivision of Land for Cemetery Purposes. The following are the minimum requirements for lot sizes, walkways, streets, and street improvement widths applicable to cemeteries:
 - 1. Lot Sizes:
 - a. Width - not less than four feet.
 - b. Length - not less than 10 feet.
 - 2. Walkways:

- a. Width - not less than six (6) feet.
- b. Location - each individual grave to be served.

3. Street Right-of-Way Widths:

- a. Within the plat - not less than 32 feet.
- b. Entrance roads - to conform to present city subdivision regulations.

4. Street Improvement Widths:

- a. Within the plat - not less than 24 feet.
- b. Entrance roads - to conform to present city subdivision regulations.

5. Deadend Roads (Within the Plat):

- a. Right-of-way - not less than 42 feet.
- b. Improvement width - not less than 36 feet.
- c. Cul-de-sac - not less than a 45 foot radius.

B. Buffer Strips. Buffer strips shall be established that are at least 100 feet in width when a cemetery development is adjacent to a residentially zoned property; 75 feet when a cemetery development is adjacent to tourist-commercial zoned property; and 50 feet in width when a cemetery development is adjacent to all other commercially zoned property. No lots shall be allowed within the buffer strips.

C. Buffer Strip Planting and Maintenance. All required buffer strips shall be planted at the time the adjacent land planted for cemetery lots is being offered for sale. The buffer strip shall have evergreen trees planted to such a density that they are an effective screen to adjoining property. The evergreen trees shall have an initial minimum planting height of four (4) feet and shall be of such species that they will reach a height of at least 20 feet at maturity. All remaining ground areas in the buffer strip shall be maintained as lawn area, shrubs, or flower beds, as are maintained by the management of the cemetery in all other areas of the cemetery plat that are presently being used.

- D. Location of Cemeteries. No cemeteries shall be allowed to be placed within one mile of the high-water line of the Pacific Ocean and within one-half mile of the high-water line of the Yaquina Bay.

13.05.105 Miscellaneous

- A. Exceptions for Planned Developments. The standards and requirements of this chapter may be modified without a variance for planned developments.
- B. Variances. Variances to this chapter not otherwise allowed by modification within this chapter are subject to the standards and procedures for variances in the zoning ordinance. Notice of the variance request may be included in the legal notice for the hearing on the tentative plan for a subdivision or may be provided separately.
- C. Violations. Violations of this chapter are civil infractions with a maximum civil penalty of \$500. A separate violation exists for each day the violation continues. Violations of separate provisions of this chapter are separate civil infractions. If a developer or owner repeatedly violates this chapter, the city may elect to place and enforce a lien on any land division in violation of this chapter.

(Chapter 13.05 adopted by Ordinance No. 1990, on October 19, 2009, effective November 18, 2009.)

CHAPTER 14.44 TRANSPORTATION STANDARDS

14.44.010 Purpose. The purpose of this Chapter is to provide planning and design standards for the implementation of public and private transportation facilities and city utilities and to indicate when and where they are required. Streets are the most common public spaces, touching virtually every parcel of land. Therefore, one of the primary purposes of this Chapter is to provide standards for attractive and safe streets that can accommodate vehicle traffic from planned growth and provide a range of transportation options, including options for driving, walking, bus, and bicycling. This Chapter implements the city's Transportation System Plan.

14.44.020 When Standards Apply. The standards of this section apply to new development or redevelopment for which a building permit is required that places demands on public or private transportation facilities or city utilities. Unless otherwise provided, all construction, reconstruction, or repair of transportation facilities, utilities, and other public improvements within the city shall comply with the standards of this Chapter.

14.44.030 Engineering Design Criteria, Standard Specifications and Details. The design criteria, standard construction specifications and details maintained by the City Engineer, or any other road authority within Newport, shall supplement the general design standards of this Chapter. The city's specifications, standards, and details are hereby incorporated into this code by reference.

14.44.040 Conditions of Development Approval. No development may occur unless required public facilities are in place or guaranteed, in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of the development on public facilities. Findings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact.

14.44.050 Transportation Standards.

- A. Development Standards. The following standards shall be met for all new uses and developments:

1. All new lots created, consolidated, or modified through a land division, partition, lot line adjustment, lot consolidation, or street vacation must have frontage or approved access to a public street.
 2. Streets within or adjacent to a development subject to Chapter 13.05, Subdivision and Partition, shall be improved in accordance with the Transportation System Plan, the provisions of this Chapter, and the street standards in Section 13.05.015.
 3. Development of new streets, and additional street width or improvements planned as a portion of an existing street, shall be improved in accordance Chapter 13.05, and public streets shall be dedicated to the applicable road authority;
 4. Substandard streets adjacent to existing lots and parcels shall be brought into conformance with the standards of Chapter 13.05.
- B. Guarantee. The city may accept a future improvement guarantee in the form of a surety bond, letter of credit or non-remonstrance agreement, in lieu of street improvements, if it determines that one or more of the following conditions exist:
1. A partial improvement may create a potential safety hazard to motorists or pedestrians;
 2. Due to the developed condition of adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide increased street safety or capacity, or improved pedestrian circulation;
 3. The improvement would be in conflict with an adopted capital improvement plan; or
 4. The improvement is associated with an approved land partition or minor replat and the proposed land partition does not create any new streets.

- C. Creation of Rights-of-Way for Streets and Related Purposes. Streets may be created through the approval and recording of a final subdivision or partition plat pursuant to Chapter 13.05; by acceptance of a deed, provided that the street is deemed in the public interest by the City Council for the purpose of implementing the Transportation System Plan and the deeded right-of-way conforms to the standards of this Code; or other means as provided by state law.
- D. Creation of Access Easements. The city may approve an access easement when the easement is necessary to provide viable access to a developable lot or parcel and there is not sufficient room for public right-of-way due to topography, lot configuration, or placement of existing buildings. Access easements shall be created and maintained in accordance with the Uniform Fire Code.
- E. Street Location, Width, and Grade. The location, width and grade of all streets shall conform to the Transportation System Plan, subdivision plat, or street plan, as applicable and are to be constructed in a manner consistent with adopted City of Newport Engineering Design Criteria, Standard Specifications and Details. Street location, width, and grade shall be determined in relation to existing and planned streets, topographic conditions, public convenience and safety, and in appropriate relation to the proposed use of the land to be served by such streets, pursuant to the requirements in Chapter 13.05.

(Chapter 14.44 as adopted by Ordinance No. 2045 on November 5, 2012; effective December 30, 2012. This ordinance renumbered Municipal Code Chapters 14.43, "Procedural Requirements," through 14.51, "Fees," and enacted new Chapters 14.43, "South Beach Overlay Zone," 14.44, "Transportation Standards," and 14.45, "Traffic Impact Analysis.")