AGENDA

WILSONVILLE CITY COUNCIL MEETING
APRIL 6, 2015
7:00 P.M.

CITY HALL
29799 SW TOWN CENTER LOOP
WILSONVILLE, OREGON

Mayor Tim Knapp
Council President Scott Starr — Councilor Julie Fitzgerald
Councilor Susie Stevens — Councilor Charlotte Lehan

CITY COUNCIL MISSION STATEMENT
To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

Executive Session is held in the Willamette River Room, City Hall, 2nd Floor

5:00 P.M. **EXECUTIVE SESSION** [20 min.]
A. Pursuant to ORS 192.660(2)(f) Exempt Public Records
ORS 192.660(2)(h) Litigation

5:15 P.M. **REVIEW OF AGENDA** [5 min.]

5:20 P.M. **COUNCILORS' CONCERNS** [5 min.]

5:25 P.M. **PRE-COUNCIL WORK SESSION**

A. Community Development Planning Fees (Cole) [20 min.] **Page 1**
B. Community Development Project Updates (Kraushaar) [20 min.]

6:50 P.M. **ADJOURN**

CITY COUNCIL MEETING

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, Monday, April 6, 2015 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on March 18, 2015. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered therewith except where a time limit for filing has been fixed.

7:00 P.M. **CALL TO ORDER**
A. Roll Call
B. Pledge of Allegiance
C. Motion to approve the following order of the agenda and to remove items from the consent agenda.

7:05 P.M. MAYOR'S BUSINESS

A.	Proclamation Declaring April Parkinson's Awareness Month (Kevin Mansfield Oregon State Director for Parkinson's Action Network.)	**Page 4**
B.	Recognition for National Service Proclamation (Lara Jones, AmeriCorps)	**Page 5**
C.	Arbor Day Proclamation (staff – Pauly)	**Page 8**
D.	Child Abuse Prevention Month (Tracy Cramer, Development and Communications Coordinator)	**Page 11**
E.	Upcoming Meetings	**Page 13**

7:30 P.M. COMMUNICATIONS

A. Chief Duyck, Tualatin Valley Fire & Rescue (TVF&R) Annual State of the District

7:45 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items ***not*** on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

7:50 P.M. COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

A. Council President Starr – (Park & Recreation Advisory Board Liaison)
B. Councilor Fitzgerald – (Development Review Panels A & B Liaison)
C. Councilor Stevens – (Library Board and Wilsonville Seniors Liaison)
D. Councilor Lehan– (Planning Commission and CCI Liaison)

8:00 P.M. CONSENT AGENDA

A. Minutes of the March 16, 2015 Council Meeting. (staff – King) **Page 15**

8:05 P.M. PUBLIC HEARING

A. **Resolution No. 2524** **Page 19**
Resolution To Issue An Order By The City Council Denying The Appeal And Affirming Development Review Board Resolution No. 299 Relating To A Tentative Land Partition For Two Parcels. The Subject Site Is Located On Tax Lot 2700 Of Section 13BA, T3S, R1W, Clackamas County, Oregon. Applicant/Appellant/Owner Gerald And Joanne Downs; Applicant Representative Ronald Downs. Application Nos. AR14-0077; DB15-0006. (staff – Kraushaar/Jacobson)

8:50 P.M. CITY MANAGER'S BUSINESS
8:55 P.M. LEGAL BUSINESS
9:00 P.M. ADJOURN

Time frames for agenda items are not time certain (i.e. Agenda items may be considered earlier than indicated. The Mayor will call for a majority vote of the Council before allotting more time than indicated for an agenda item.) Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting if required at least 48 hours prior to the meeting. The city will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting:-Qualified sign language interpreters for persons with speech or hearing impairments. Qualified bilingual interpreters. To obtain services, please contact the City Recorder, (503)570-1506 or king@ci.wilsonville.or.us

City of
WILSONVILLE
in OREGON

CITY COUNCIL MEETING
STAFF REPORT

Meeting Date: April 6, 2015	**Subject:** Community Development Planning Fees **Staff Member:** Susan Cole **Department:** Finance
Action Required	**Advisory Board/Commission Recommendation**
☐ Motion ☐ Public Hearing Date: ☐ Ordinance 1st Reading Date: ☐ Ordinance 2nd Reading Date: ☐ Resolution ☐ Information or Direction ☒ Information Only ☒ Council Direction ☐ Consent Agenda	☐ Approval ☐ Denial ☐ None Forwarded ☒ Not Applicable **Comments:**
Staff Recommendation: For review, discussion and direction.	
Recommended Language for Motion: Information Only	
PROJECT / ISSUE RELATES TO: *[Identify which goal(s), master plans(s) issue relates to.]*	
☐Council Goals/Priorities ☐Adopted Master Plan(s) ☐Not Applicable	

ISSUE BEFORE COUNCIL: The Community Development (CD) Fund resources are falling behind the fund's requirements. Staff is evaluating whether to raise Land Use Development and Planning Review Fees for fiscal year beginning July 1, 2015. The last increase was approved in May of 2007, and took effect July 1, 2007. Staff is seeking direction whether to prepare a fee resolution that increases these fees, effective July 1, 2015.

EXECUTIVE SUMMARY: Finance staff have partnered with CD staff to review functions and tasks performed for land use development and planning review, to ensure that fees are set to recover the costs. This cursory review has led to the following conclusions:

- Review of large, complicated projects indicate that fees are not recovering the costs associated with extensive staff review, hearings, amendments and modifications.
- Data systems have continued to evolve, making in-depth analysis time consuming, especially for projects that span many years. Prior to the City implementing its financial Eden in 2004, and its labor tracking software (TimeTrax) the process of calculating fees

and tracking permit projects was manual. After Eden and TimeTrax were implemented, continued refinement and process improvements have occurred, leading to inconsistencies in comparing data over time.

- Allowable annual increases have not been implemented. The most recent enabling fee resolution, Resolution No. 2050, allowed for the fees to be adjusted annually to reflect the increase in the Portland/Salem area consumer price index (CPI).

A more in-depth analysis of the requirements of the CD Fund as compared to the resources is recommended, not only to review the Land Use Development and Planning Review Fees, but also transfers from the capital program, charges to the Urban Renewal Agency, and the General Fund subsidy. A more thorough analysis of the CD Fund will ensure its long-term sustainability.

This in-depth analysis would be most efficiently performed by an outside consultant, who could dedicate focused time to it, and who would bring experience and expertise to the topic. The results of such a study would inform budget planning for the Fiscal Year 2016-17.

Considering that allowable annual increases have not occurred, Council could decide to implement a fee increase, effective July 1, 2015, as a stop-gap measure until a more in-depth analysis is completed.

Since Resolution 2050 was implemented in 2007, the CPI for the Portland/Salem area has increased from 2007 to 2014 approximately 15.7%, or 2.24% on average, each year. Fees could be increased by this amount to "catch up" to the changes in the CPI.

An additional 2.24% increase could be included to "catch up" the fees through FY 2015-16, bringing the total percent increase to 17.9%. This would yield approximately $60,000 more revenue to the CD Fund in FY 2015-16. This additional revenue would be used to offset anticipated deficits in the CD Fund. The current year budget shows a deficit of about $152,000. While next year's budget is still being worked on, a deficit is anticipated.

	2014-15
CD Fund (235)	**YE Est**
Resources	
Engineering fees	633,000
Planning fees	320,606
Charges for services	856,950
Investment interest	17,017
Transfers in - Ops	136,000
Transfers in - CIP	974,164
Transfers in - GF Subsidy	236,000
Total Resources	**3,173,737**
Uses	
410/CD Admin	703,778
420/Engineering	1,240,615
440/Planning	873,850
470/Stormwater	133,810
Total Transfers	373,546
Total Uses	**3,325,599**
Net	*(151,862)*
Beginning Fund Balance	2,510,752
Ending Fund Balance	2,358,890

Staff is seeking direction as to whether Land Use Development and Planning Review Fees should be set to “catch up” with the CPI.

EXPECTED RESULTS:
Depending upon Council direction, staff would prepare a fee resolution to become effective July 1, 2015.

TIMELINE:
A fee resolution would be proposed June 1, 2015, along with other budget resolutions for Fiscal Year 2015-16.

CURRENT YEAR BUDGET IMPACTS:
Any fee changes would become effective with the new Fiscal Year 2015-16 and not impact the current year budget.

FINANCIAL REVIEW / COMMENTS:
Reviewed by: _SCole_____ Date: _3/30/15____

LEGAL REVIEW / COMMENT:
Reviewed by: ____ _____ Date: _____

COMMUNITY INVOLVEMENT PROCESS:
None

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY
None

ALTERNATIVES:
Not Applicable

CITY MANAGER COMMENT:

ATTACHMENTS

PROCLAMATION DECLARING APRIL PARKINSON'S AWARENESS MONTH

WHEREAS, Parkinson's disease is a progressive neurological movement disorder of the central nervous system, which has a unique impact on each patient; and

WHEREAS, there is no objective test or biomarker for Parkinson's disease and the symptoms of the disease vary from person to person resulting in a high rate of misdiagnosis; and

WHEREAS, although new medicines and therapies may enhance life for some time for people with Parkinson's, more work is needed for a cure; and

WHEREAS, there is no therapy or drug to slow or halt the progression of the disease and increased education and research is needed to find more effective treatments and ultimately a cure for Parkinson's disease; and

WHEREAS, a multidisciplinary approach to Parkinson's disease care includes local wellness, support, and caregiver groups; and

WHEREAS, local, regional and state volunteers, researchers and medical professionals are working to improve the quality of life of persons living with Parkinson's disease and their families;

NOW THEREFORE I, Tim Knapp, Mayor of the City of Wilsonville do hereby proclaim April 2015.

Parkinson's Awareness Month.

_____

Tim Knapp, Mayor
Signed this 6th day of April, 2015

PROCLAMATION

Whereas, AmeriCorps and Senior corps participants serve in more than 60,000 locations across the country, bolstering the civic, neighborhood, and faith-based organizations that are so vital to our economic and social well-being; and

Whereas, national service participants increase the impact of the organizations they serve with, both through their direct service and by recruiting and managing millions of additional volunteers; and

Whereas, national service represents a unique public-private partnership that invests in community solutions and leverages non-federal resources to strengthen community impact and increase the return on taxpayer dollars; and

Whereas national service participants demonstrate commitment, dedication, and patriotism by making an intensive commitment to service, a commitment that remains with them in their future endeavors; and

Whereas, the Corporation for National and Community Service shares a priority with mayors nationwide to engage citizens, improve lives, and strengthen communities; and is joining with the National League of Cities, City of Service, and mayors across the country to recognize the impact of service on the Mayors Day of Recognition for National Service on April 7, 2015.

NOW, THEREFORE, I, Mayor Tim Knapp, do hereby proclaim April 7, 2015 as

National Service Recognition Day in the City of Wilsonville

and I encourage residents to recognize the positive impact of national service in our city, to thank those who serve; and to find ways to give back to their communities.

_____

Tim Knapp, Mayor
Signed April 6, 2015

City and County Day of Recognition for National Service: April 7, 2015

Every day, in communities across America, national service is tackling tough problems. On April 7, 2015, city and county leaders throughout the country will thank those who serve and recognize their impact on the City and County Day of Recognition for National Service.

Throughout the nation, local governments are increasingly turning to national service as a cost-effective strategy to address local challenges. By unleashing the power of citizens, AmeriCorps and Senior Corps (Foster Grandparents, Senior Companions and RSVP) programs have a positive and lasting impact, making our communities better places to live. To spotlight the impact of national service and thank those who serve, elected leaders across the country will participate in **City and County Day of Recognition for National Service** on April 7, 2015. The event began in 2013 as Mayors Day of Recognition through a partnership between the National League of Cities and the federal Corporation for National and Community Service (CNCS). In 2015, to celebrate National County Government Month, the National Association of Counties (NACo) has joined the other partners and expanded this special day to include all local governments in recognizing the millions of Americans who reside and serve in their communities.

National Service: A Resource for Communities

As the federal agency for national service and volunteering, CNCS annually engages five million citizens in service at more than 60,000 sites across the country. Through AmeriCorps (including VISTA and NCCC), Senior Corps (including Foster Grandparents, Senior Companions, and RSVP), the Social Innovation Fund, and other programs, CNCS leverages federal and private funds to support organizations that achieve measurable results where the need is greatest. Whether supporting food banks and homeless shelters, restoring parks, providing health services, strengthening public safety and juvenile justice services, tutoring and mentoring students, and managing community volunteers, national service members help local elected leaders tackle tough problems.

Why a City and County Day of Recognition?

County governments have a broad range of responsibilities to their residents, which matches CNCS's mission to improve lives, strengthen communities and foster civic engagement. A coordinated day of recognition presents a unique opportunity to spotlight the key role that national service plays in helping counties solve problems. Participating in the day will highlight the impact of citizen service, show support for nonprofit and national service groups, and inspire more residents to serve in their communities.

What Happened Last Year?

On April 1, 2014, the second annual Mayors Day of Recognition for National Service united mayors across the country to spotlight the impact of national service and honor those who serve. Altogether, 1,760 mayors in all 50 states and the District of Columbia, Guam, and Puerto Rico officially recognized the work that AmeriCorps members and Senior Corps volunteers are doing to make cities better and stronger. Together, these elected officials represent more than 110 million citizens, or one-third of all Americans. In 2015, CNCS is expanding this initiative so that county executives and tribal leaders also have the opportunity to highlight the contributions of national service members in their communities.

What are the Goals of the Day?

- Highlight how local government leaders and communities use national service to solve challenges
- Thank national service members for their commitment and impact
- Build public awareness about the value and impact of national service to Oregon's cities and counties
- Provide opportunities for elected leaders to communicate about the impact of national service to national policymakers
- Generate press coverage and online discussion about local government's support for service as a strategy for strengthening communities.

Who Can Participate?

County board chairs or judges, mayors, or tribal leaders of Oregon counties and cities of any size.

What We Can Offer:

CNCS offers a variety of resources that can help local leaders learn about national service and volunteering in their area and expand the impact of volunteering by their residents:

- Each year, CNCS produces State Profiles that list all national service funding, projects, and participants in every state. CNCS also will produce county profiles on demand for counties participating in the County Day of Recognition for National Service. To receive your county profile, contact the CNCS Oregon State Director: Stephanie Wrightsman. Her email address is swrightsman@cns.gov
- CNCS also produces the annual Volunteering and Civic Life in America report, the most comprehensive data on volunteering ever assembled. Visit: www.volunteeringinamerica.gov
- Employers of National Service builds a talent pipeline to connect AmeriCorps and Peace Corps alumni with leading employers from all sectors to create recruitment, hiring, and advancement opportunities. Through Employers of National Service, local governments have access to a dedicated, highly qualified, and mission-oriented pool of potential employees.

How Can Local Elected Leaders Get Involved?

- Register your community's support on the website: http://www.nationalservice.gov/special-initiatives/mayors-day/mayorscounty-day-event-registration
- Announce your county is becoming an Employer of National Service
- Issue a proclamation naming April 7 as National Service Recognition Day
- Visit national service programs or projects in order to highlight their value to the county
- Invite national service programs to a public roundtable to discuss how they address local problems
- Issue a press release or report on the scope and impact of national service in your county
- Serve with a national service program as a "member" for a day to highlight their important work
- Use Twitter, Facebook, and other social media to thank national service members in your community
- Write an op-ed about the unique contributions of national service your county

About CNCS

The Corporation for National and Community Service is a federal agency that engages more than five million Americans in service through its AmeriCorps, Senior Corps, Social Innovation Fund, and other programs, and leads President's national call to service initiative, United We Serve. For more information, visit NationalService.gov.

City of
WILSONVILLE
in OREGON

CITY COUNCIL MEETING
STAFF REPORT

Meeting Date: April 6, 2015	**Subject:** Tree City USA Proclamation **Staff Member:** Chris Neamtzu, AICP and Daniel Pauly, AICP **Department:** Community Development, Planning Division
Action Required	**Advisory Board/Commission Recommendation**
☐ Motion ☐ Public Hearing Date: ☐ Ordinance 1st Reading Date: ☐ Ordinance 2nd Reading Date: ☐ Resolution ☐ Information or Direction ☒ Information Only ☐ Council Direction ☐ Consent Agenda	☐ Approval ☐ Denial ☐ None Forwarded ☒ Not Applicable **Comments:**
Staff Recommendation: There is no recommendation; the item is for Council's information.	
Recommended Language for Motion: N/A	
PROJECT / ISSUE RELATES TO: *[Identify which goal(s), master plans(s) issue relates to.]*	
☐Council Goals/Priorities	☐Adopted Master Plan(s) ☒Not Applicable

ISSUE BEFORE COUNCIL:
Reading of a proclamation recognizing the City of Wilsonville as a Tree City USA. This marks the 17th year the city has received this designation.

EXECUTIVE SUMMARY:
Staff is pleased to announce the City of Wilsonville has been recognized for the 17th consecutive year as a Tree City USA by the National Arbor Day Foundation. There are four criteria that need to be satisfied in order to achieve Tree City USA status. They include: 1) a comprehensive urban forestry program; 2) an Arbor Day proclamation; 3) a tree ordinance and a tree department/board; and 4) an Arbor Day observance.

This recognition reflects Wilsonville's ongoing commitment to maintaining and promoting the community asset called the urban forest. The urban forest is comprised of all trees in the City, both native and planted, that contribute to seasonal beauty and livability. Whether it is a majestic 200- year old Oregon white oak, a grove of towering Douglas-firs, or a young flowering cherry, the trees of the urban forest greatly contribute to a sense of place and quality of life in Wilsonville. City trees help clean the air, conserve the soil and water, reduce heating and cooling costs, and bring nature close to where we live.

Also, as part of the 2015 Oregon Arbor Week celebration a community tree planting event will be held at 10:00 a.m. on Saturday April 11, 2015 at the lower Memorial Park parking area.

EXPECTED RESULTS: N/A

TIMELINE: N/A

CURRENT YEAR BUDGET IMPACTS: N/A

FINANCIAL REVIEW / COMMENTS: N/A

LEGAL REVIEW / COMMENT: N/A

COMMUNITY INVOLVEMENT PROCESS:
The public is being invited to the community tree planting event through a variety of means including the Boones Ferry Messenger, social media, and the City's Website).

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups): N/A

ALTERNATIVES: N/A

CITY MANAGER COMMENT:

ATTACHMENTS
A. 2015 Arbor Day Proclamation

CITY OF WILSONVILLE
2015 ARBOR DAY PROCLAMATION

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide better habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in our city increase property value, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal, and

WHEREAS, Wilsonville has been recognized as a Tree City USA by The National Arbor Day Foundation and desires to continue its tree-planting practices.

NOW, THEREFORE, I, Tim Knapp, Mayor of the City of Wilsonville, urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and

Further, I encourage all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

Dated this 6th day of April 2015

Tim Knapp, Mayor

Attachment A

CITY OF WILSONVILLE
PROCLAMATION DECLARING APRIL 2015
CHILD ABUSE PREVENTION MONTH

WHEREAS, child abuse and neglect is an ongoing tragedy and the effects of child abuse are felt by whole communities and need to be addressed by the entire community; and

WHEREAS, effective child abuse intervention programs succeed because of partnerships created between the courts, social service agencies, schools, religious organizations, law enforcement agencies, and the business community; and

WHEREAS, all citizens should become more aware of child abuse and its prevention within the community, and become involved in supporting parents to raise their children in a safe, nurturing environment; and

WHEREAS, children are key to the City of Wilsonville's future success, prosperity, and quality of life and are our most valuable resource; and

WHEREAS, we must come together as partners to shine the light on child abuse so the voices of our children are heard by all and as a community extend a helping hand to children and families in need; and

WHEREAS, by providing a safe and nurturing environment for our children, free of violence, abuse and neglect, we can ensure children will grow to their full potential as the next generation of leaders, helping to secure the future of this city and nation;

NOW, THEREFORE, I, Tim Knapp, Mayor of the City of Wilsonville do hereby proclaim the month of April 201 as

CHILD ABUSE PREVENTION MONTH

And call upon all citizens to increase their participation in efforts to prevent child abuse, thereby strengthening the community in which we live.

_____

TIM KNAPP, MAYOR
Dated: April 6, 2015

Children's Center
A place where healing begins

CONTACT
Barbara Peschiera, Executive Director
Children's Center
Barbara@childrenscenter.cc
503-655-7725

THE PROBLEM

One in ten children will be sexually abused by their 18th birthday. And sadly, an average of 20 children are killed as a direct result of child abuse, in Oregon alone, every year.

Untreated, child abuse leads to debilitating, lifelong chronic physical and mental health conditions. The fallout from child abuse and neglect extends beyond these young victims, destabilizing families, fracturing communities, and increasing the financial burden on law enforcement, social services, and the health care system.

Children of every gender, age, race, ethnicity, background, socioeconomic status and family structure are at risk of child abuse. **No child is immune.**

WHO WE ARE

Children's Center is an accredited member of National Children's Alliance and an integral partner in Clackamas County's response to child abuse and the answer to a child's pain. A private, non-profit medical assessment center, Children's Center supports children and families in cases of suspected physical abuse, sexual abuse, neglect, drug endangerment, and witness to violence. Core services include:

- **Forensic Medical Evaluations**: Comprehensive head-to-toe exam to determine and document a child's health and safety by Medical Examiners trained in diagnosing child abuse and neglect.
- **Forensic Interviewing Services**: Digitally recorded forensic interviews with Child Interviewers specially trained to talk to children of all ages and developmental levels. Child Interviewers work with the Medical Examiners as part of the medical evaluation.
- **Family Support**: Support, referrals, education, and case management for families in Clackamas County struggling with issues of abuse or neglect. These services are offered to non-offending family members of children receiving evaluations at Children's Center as well as families in the community.
- **Community Education and Outreach**: Trainings, presentations, prevention workshops, and resources for local professional and community groups.

HOW YOU CAN BE PART OF THE SOLUTION

Though we hope to prevent child abuse from ever occurring, there is a national movement in April to recognize Child Abuse Prevention Month. Working with strong community leadership, we are undertaking a comprehensive public education and engagement campaign. Our goals are to increase calls to our local Child Abuse Hotline and decrease incidents of child abuse in Clackamas County.

Many community partners will play a role in the success of our campaign. We hope you will consider joining us as we all work together to prevent child abuse and neglect in Clackamas County. We welcome the opportunity to talk with you more about how we can work together to end child abuse in our community.

CITY COUNCIL ROLLING SCHEDULE

Board and Commission Meetings 2015

Items known as of 03/30/15

April

DATE	DAY	TIME	MEETING	LOCATION
4/6	Monday	7 p.m.	City Council Meeting	Council Chambers
4/8	Wednesday	1 p.m.	Wilsonville Community Seniors	Community Center
4/8	Wednesday	6 p.m.	Planning Commission	Council Chambers
4/9	Thursday	6:30 p.m.	Parks & Recreation Brd.	Park & Recreation Admin. Offices
4/13	Monday	6:30 p.m.	DRB Panel A	Council Chambers
4/20	Monday	7 p.m.	City Council Meeting	Council Chambers
4/22	Wednesday	6:30 p.m.	Library Board	Library
4/27	Monday	6:30 p.m.	DRB Panel B	Council Chambers

COMMUNITY EVENTS

Antique Appraisal Day
Saturday, April 11 – 10 am to 2 pm at the Community Center
Appraisals will be done during set appointments for $10.00 per item.
All proceeds to towards the Senior Nutrition program.
Call 503-682-3727 to schedule an appraisal appointment.

Book Notes Concert: Hiroya Tsukamoto
April 11, 2:00 PM - 3:00 PM @ Wilsonville Public Library
Come enjoy the sound of live music in the library with Hiroya Tsukamoto, acoustic guitarist and singer-songwriter from Kyoto, Japan. "...chops, passion and warmth. Zealously recommended." ~Jazz Review.com

Walk SMART
April 29 – 1215 p.m. Meet at City Hall for a 20 minute walk
Walk SMART is a free program that encourages participants to walk more by providing tools and motivation. Each Walk SMART participant receives a pedometer, safety light, and log sheet to record daily step counts. Registered walkers who turn in their monthly step counts are eligible to win fun and practical rewards for their efforts. Stop by and pick up a Walk SMART Kit at the SMART building, 28879 SW Boberg Rd. between 8am – 5pm, they are available at the Dispatch counter. Check ridesmart.com/walksmart for more Walk Wednesday dates.

LIBRARY BOARD VACANCY

The City of Wilsonville is accepting applications for the Library Board

The Library Board consists of a chair, vice-chair and three other members who serve a regular term of four years. The Board supports and assists the Library Director in all library planning, and advises the City of budgetary and policy considerations relating to the Library's operation and development.

Board members assist in areas such as monitoring the quality of library operations and promoting a high level of service to the public; encouraging cost effectiveness in all areas of Library service; and periodically reviewing - and revising, if necessary - the Library's statement of policies and procedures and its goals and objectives.

Other typical duties include assisting the Library Director with the adoption, implementation and revision of a collection development plan to meet the needs of the community; coordinating with other agencies to exchange and introduce new ideas, methods and technology; and considering policy questions.

If you are interested in applying for the Library Board you may pick up an application from Sandra King, City Recorder, at City Hall, 29799 SW Town Center Loop, Wilsonville, Or. 503-570-1506. Applications are also available online at
http://www.ci.wilsonville.or.us/478/Apply-for-a-Board-or-Commission

The application deadline is April 17, 2015.

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, March 16, 2015. Mayor Knapp called the meeting to order at 7:05 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp
Councilor Starr - excused
Councilor Fitzgerald
Councilor Stevens
Councilor Lehan

Staff present included:

Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Mike Kohlhoff, City Attorney
Sandra King, City Recorder
Nancy Kraushaar, Community Development Director
Jon Gail, Community Relations Coordinator
Susan Cole, finance Director

Motion to approve the order of the agenda.

Motion: Councilor Lehan moved to approve the order of the agenda. Councilors Fitzgerald and Stevens seconded the motion.

Vote: Motion carried 4-0.

MAYOR'S BUSINESS

A. Upcoming Meetings

Mayor Knapp announced the meeting date for the next City Council meeting and reported on meetings he attended on behalf of the City.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

Carol Yamada, and Leonard Schaber, members of the Stafford Hamlet Board distributed a paper titled "The Stafford Hamlet Compromise" which explained the Board's position on the Stafford Reserve and urban reserve determination. The document has been included in the record.

Mayor Knapp pointed out the City has no plans to be contiguous to the Borland area and the Council has not taken any position on the proposed legislation.

COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

Councilor Fitzgerald – (Development Review Panels A & B Liaison) noted on March 23rd the DRB Panel B will meet. She announced the Wilsonville Egg Hunt Saturday April 4th, and the Wood Middle School's Jr. Scoop Club Clothing Sale set for the same day.

Councilor Stevens – (Library Board and Wilsonville Seniors Liaison) announced the next Library Board meeting date. She reported the Wilsonville Community Seniors are working on goal setting, and are beginning to plan how to stabilize their funding. The Councilor joined the Meals on Wheels Program last week by riding along with two volunteers. The volunteers play an important role in insuring homebound seniors are doing well. The next meeting date of the Frog Pond Task Force was noted as well as the open house scheduled for April 2nd.

Councilor Lehan– (Planning Commission and CCI Liaison) reported she attended the Comcast Open House where concerns about the service and programing were expressed. The Councilor said the Planning Commission will be meeting on April 8th. She announced the Antique Appraisal Day scheduled for April 11th. The Community Garden registration will be open on March 19th.

CONSENT AGENDA

Mr. Kohlhoff read the titles of the Consent Agenda items into the record.

A. **Resolution No. 2518**
A Resolution Granting An Exemption From Property Taxes Under ORS 307.540 To ORS 307.548 For Autumn Park Apartments, A Low-Income Apartment Development Owned And Operated By Northwest Housing Alternatives, Inc.

B. **Resolution No. 2519**
A Resolution Granting An Exemption From Property Taxes Under ORS 307.540 To ORS 307.548 For Charleston Apartments, A Low-Income Apartment Development Owned And Operated By Northwest Housing Alternatives, Inc.

C. **Resolution No. 2520**
A Resolution Granting An Exemption From Property Taxes Under ORS 307.540 To ORS 307.548 For Creekside Woods LP, A Low-Income Apartment Development Owned And Operated By Northwest Housing Alternatives, Inc.

D. **Resolution No. 2521**

A Resolution Granting An Exemption From Property Taxes Under ORS 307.540 To ORS 307.548 For Rain Garden Limited Partnership A Low-Income Apartment Development Owned And Operated By Caritas Community Housing Corporation.

E. **Resolution No. 2522**
A Resolution Granting An Exemption From Property Taxes Under ORS 307.540 To ORS 307.548 For Wiedemann Park, A Low-Income Apartment Development Owned And Operated By Accessible Living, Inc.

F. **Resolution No. 2523**
A Resolution Of The City Of Wilsonville Acting As The Local Contract Review Board Authorizing The South Metro Area Regional Transit Department (SMART) To Purchase Two 35-Foot Low Floor, Heavy Duty, Clean Diesel Buses Through The 5307 Grant # OR-95-X061-00.

G. Minutes of the February 19, 2015 and March 2, 2015 Council Meetings.

Motion: Councilor Fitzgerald moved to adopt the Consent Agenda. Councilor Lehan seconded the motion.

Vote: Motion carried 4-0.

NEW BUSINESS

A. Set a Public Hearing Date of April 6, 2015 to Hear the Appeal of the DRB Decision of Case No. DB15-006 for Appellant Gerald and Joanne Downs.

Mr. Kohlhoff introduced the item for consideration. The memorandum prepared for Council by Mr. Kohlhoff regarding the appeal follows in its entirety:

On the agenda for the March 16, 2015 City Council meeting is the setting of the date for the public hearing of the Downs appeal of certain conditions the Development Review Board determined in approving the Downs application for a land use partition. The staff recommends this be ordered for the April 6, 2015 City Council meeting as it is within the 120-day time limit and will allow for a second, continued hearing if needed.

Additionally, you will need to determine the scope of review as to one of the following under WC 4.022(.05)B:

1. Restricted to the record made on the decision being appealed.
2. Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.
3. A de novo hearing on the merits (accept new testimony).

Because the issues on appeal are limited in number, staff recommends rather than determining what issues are necessary to resolve, that the scope of review be restricted to the record and receive oral argument.

Should the City Council follow staff recommendations, the motion suggested is as follows:

> "I move the City Council order the public hearing on the Downs Appeal, DRB-Panel B be set before the City Council on April 6, 2015 and be limited to the record made on the decision being appealed and the receipt of oral argument."

Mayor Knapp restated the considerations before the Council.

Motion: Councilor Lehan moved to order the public hearing on the Downs Appeal, DRB-Panel B be set before the City Council on April 6, 2015 and be limited to the record made on the decision being appealed and the receipt of oral argument. Councilor Stevens seconded the motion.

Vote: Motion carried 4-0.

CITY MANAGER'S BUSINESS

Mr. Cosgrove reported he had attended the First Citizen Festivities at the impressive World of Speed Museum and commented the Museum will be great attraction for region. He has received the work plans from all the Departments which will be incorporated into the Council Goals. A final report will be brought forward to Council.

LEGAL BUSINESS

Mr. Kohlhoff advised he would be out of the office during March and early April.

ADJOURN

Mayor Knapp adjourned the meeting at 7:45 p.m.

Respectfully submitted,

_____
Sandra C. King, MMC, City Recorder

ATTEST:

_____
Tim Knapp, Mayor

City of WILSONVILLE in OREGON

CITY COUNCIL MEETING
STAFF REPORT

Meeting Date:	**Subject: Resolution No. 2524** Appeal of DRB Panel B Decision Regarding the Appeal of a Two-Parcel Land Partition in Case Files AR14-0077 and DB15-0006 **Staff Members:** Nancy Kraushaar, Blaise Edmonds, and Barbara Jacobson **Department:** Engineering, Planning Division, and Legal
Action Required	**Advisory Board/Commission Recommendation**
☐ Motion ☐ Public Hearing Date: ☐ Ordinance 1st Reading Date: ☐ Ordinance 2nd Reading Date: ☒ Resolution & Order ☐ Information or Direction ☐ Information Only ☐ Council Direction ☐ Consent Agenda	☐ Approval ☒ Denial ☐ None Forwarded ☐ Not Applicable **Comments:** Following a public hearing held on February 23, 2015, the Development Review Board Panel B ("DRB") rejected an appeal of the Planning Director's Decision regarding the partition application of Gerald and Joanne, Owners, represented on appeal by Ronald Downs ("Applicant")

Staff Recommendation: That City Council adopt a Resolution and Order upholding the decision of the Development Review Board.

Recommended Language for Motion:
I move to adopt Resolution No. 2524 and Order: A Resolution to Issue an Order by the City Council Denying the Appeal and Affirming Development Review Board Resolution No. 299 Relating to a Tentative Land Partition for Two Parcels. The Subject Site Is Located on Tax Lot 2700 of Section 13BA, T3S, R1W, Clackamas County, Oregon. Applicant/Appellant/Owner Gerald and Joanne Downs; Applicant Representative Ronald Downs. Application Nos. AR14-0077; DB15-0006.

PROJECT / ISSUE RELATES TO: Development Code

☐Council Goals/Priorities	☐Adopted Master Plan(s)	☐Not Applicable

ISSUE BEFORE COUNCIL:

At a public hearing held on February 23, 2015, the "DRB" voted 5-0 to deny the Applicant's appeal of the Planning Director's Class II Administrative Decision (Application Nos. AR14-0077 and DB15-006). That DRB decision has been appealed by the Applicant to the City Council. The issue on appeal is Condition PFA 27, which condition requires the Applicant to make certain street improvements, which include sidewalk, curb, and gutter along the entire frontage of the proposed land partition. The Applicant argues that this requirement is not roughly proportionate and should be reduced to only require these improvements in front of the smaller of the two partitioned lots where a new second home will be constructed (approximately 40% of the total area).

EXECUTIVE SUMMARY:

The Applicant is appealing Condition PFA 27, which requires certain street improvements, including sidewalk, curb, and gutters (meeting current City requirements for residential street construction), to be placed across the entire frontage of Applicant's parcel as a condition for the partition of that parcel into two separate lots. This partition will allow the Applicant to cause a second home to be built on the property. The Applicant contends that this requirement, as written, is overbroad and should be reduced to only require street frontage improvements across the front of the parcel where the new home will be located and that no frontage improvements should be required across the other half of the parcel, where an existing home is located. The Applicant states that his argument is based on the nexus and rough proportionality standards set forth in the United States Supreme Court case of *Dolan v. City of Tigard,* 512 US 374 (1994). While the City disputes the applicability of *Dolan* to this condition, City staff has assumed, for the sake of argument, that *Dolan* findings could apply and, therefore, made Dolan findings that staff believes satisfy the nexus and rough proportionality tests of the *Dolan* case, as set forth in the DRB record before City Council.

City Council has determined that this appeal shall be an on-the-record only appeal. Therefore, attached please find the same legal memo submitted in support of the Planning Director's Decision to the DRB and part of the DRB record, which summarizes staff's position. See Record Memo at #5.

As outlined in the memo and on the record, Wilsonville ordinances impose a standard requirement on all development in the City that requires certain street improvements, including sidewalks, curb, and gutter to be placed in front of the developed property. The City Comprehensive Plan, which is the governing law for land use in the City, provides at Policy 3.3.2 that the City shall work to improve accessibility for all citizens to all modes of transportation, and at Implementation Measure 3.3.2.d requires that gaps in existing sidewalks be filled to create a safe and continuous network of safe and accessible bicycle and pedestrian facilities. It is the standard and consistent requirement of the City to require street frontage improvements, including the placement of sidewalks, curb, and gutter, with every new development or redevelopment. Wilsonville City Code Section 4.177(3) requires sidewalks be provided on the public street frontage of all development. City Code Section 4.001(79) defines "development" as "any human-caused change to improved or unimproved real estate." City

Code Section 4.005 lists certain activities that are exempt from development permit requirements, but a partition is not listed as an exception. The condition imposed and at issue is a required condition applied to all partitions, including recently to a three-lot partition located one property away from that of the Applicant, as well as a similar two-lot partition located just a few blocks away from the Applicant's parcel. The requirement imposed upon the Applicant is not in any way unique to the Applicant's property, nor is it based on any development assumptions. It is therefore easily distinguishable from the court case primarily relied upon by the Applicant and from the *Dolan* findings, as briefed in the attached memo.

Finally, it should be noted, as is provided in the record, that the cost estimate made by engineering staff assumes three criteria that are not applicable if the Applicant elects to perform the work himself, which is an option that he has.

Specifically, the City estimate includes the cost to grind and overlay the entire road area, which is what the City would do if it were doing the work. This is not, however, being required of the Applicant, who can elect to patch only what he disturbs, in accordance with Public Works Standards. Also, the City estimate includes generally higher BOLI wages, which would not be applicable to work done by the Applicant. Finally, the in-lieu-of payment contains a 30% mark-up cushion for the City, if the Applicant elects to shift the risk of performance to the City.

EXPECTED RESULTS:
Final decision by the City regarding Applicant's appeal.

TIMELINE:
The City must render a final decision regarding the Applicant's appeal by no later than May 4, 2015.

CURRENT YEAR BUDGET IMPACTS:
None anticipated.

FINANCIAL REVIEW / COMMENTS:
Reviewed by: _SCole_____ Date: ___3/20/15_____

LEGAL REVIEW / COMMENT:
Reviewed by: Mike Kohlhoff Date: 3/19/15

The City Council, as the reviewing body, shall decide if the correct procedure was followed (which is not at issue) and, if so, was the correct or appropriate decision made based on the applicable policies and standards. WC 4.022(.06)B. The City Council has the authority to enter an order to affirm, reverse, or modify, in whole or in part, the DRB decision. WC 4.022(.08)A. In making its determination the Council should set forth its findings and reasons for taking the action.

COMMUNITY INVOLVEMENT PROCESS:
All standard public notice procedures for the DRB public hearing were followed. The DRB allowed all interested parties to testify during the hearing process. One resident sent in email

testimony supporting the condition at issue, which is included in the record. The only other party to present testimony at the hearing was the Applicant Representative, Ron Downs. A public notice of this upcoming appeal public hearing has been published, in accordance with the requirements of the Wilsonville City Code.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY
Street improvements and sidewalk will benefit the property owner as well as the public relating to public safety.

ALTERNATIVES:

1. Affirm the DRB decision by approving the proposed Resolution and Order, attached.

2. Grant the Appeal and direct staff to prepare revised Conditions of Approval for presentation to City Council at the April 20, 2015 City Council meeting.

CITY MANAGER COMMENT:

ATTACHMENTS:

A. Draft Resolution No. 2524 for Denial of the Application

B. DRB Record (including Legal Memo at #5)

RESOLUTION NO. 2524
AND ORDER

RESOLUTION TO ISSUE AN ORDER BY THE CITY COUNCIL DENYING THE APPEAL AND AFFIRMING DEVELOPMENT REVIEW BOARD RESOLUTION NO. 299 RELATING TO A TENTATIVE LAND PARTITION FOR TWO PARCELS. THE SUBJECT SITE IS LOCATED ON TAX LOT 2700 OF SECTION 13BA, T3S, R1W, CLACKAMAS COUNTY, OREGON. APPLICANT/APPELLANT/OWNER GERALD AND JOANNE DOWNS; APPLICANT REPRESENTATIVE RONALD DOWNS. APPLICATION NOS. AR14-0077; DB15-0006.

WHEREAS, City Council received a timely filed appeal from Appellant/Applicant Gerald and Joanne Downs, by and through their representative and attorney Ronald Downs, of the decision of the Development Review Board, Panel B ("DRB"), made pursuant to Wilsonville City Code 4.022(.02), following the DRB denial of said appeal at the public hearing held on February 24, 2015; and

WHEREAS, at a public meeting held on March 16, 2015, City Council set the date for public hearing for the appeal of DRB Case Nos. AR14-0077 and DB15-0006 for April 6, 2015, to be held as an on-the-record only appeal but allowing oral argument; and

WHEREAS, having conducted the appeal hearing and having reviewed all of the evidence in the DRB record, including the unanimous DRB member reasoning and findings for its decision denying Appellant/Applicant's appeal, and having heard argument from both the Appellant/Applicant and staff at the appeal hearing; and

WHEREAS, having considered all of the foregoing evidence and following all applicable requirements of the Wilsonville Development Code pertaining to the Applications and Appeal, the City Council hereby orders as follows:

1. The City Council hereby orders that the decision of the DRB on the above referenced Applications is hereby upheld.
2. City Council's Findings of Fact, Conclusions of Law, and Decision, rendered on April 6, 2015, are attached hereto as **Exhibit A** and incorporated by reference herein.
3. This Order is subject to the rights of appeal, as set forth in Oregon law. If you desire to appeal this decision to the Oregon Land Use Board of Appeals you must

make application stating the grounds for appeal with the Land Use Board of Appeals, as proscribed by State law and within the timeframe proscribed by State Law.

IT IS HEREBY ORDERED by the Wilsonville City Council at a regular meeting thereof this 6th day of April, 2015, to be effective immediately and filed with the Wilsonville City Recorder on this date.

_____
Tim Knapp, Mayor

ATTEST:

_____
Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp
Council President Starr
Councilor Fitzgerald
Councilor Stevens
Councilor Lehan

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION BY CITY COUNCIL, RENDERED ON APRIL 6, 2015

Gerald and Joanne Downs Partition
APPLICATION AR14-0007
APPEAL DB15-0006

APPEAL HEARING DATE April 6, 2015

APPLICATION NOS.: AR14-0077; DB15-0006

REQUEST/SUMMARY: The Applicant appealed the decision of the Development Review Board ("DRB") DB15-0006, denying the Applicant's appeal of and affirming the Planning Director's Class II Administrative Decisions, Findings, and Conclusions, and Approving a Tentative Land Partition For Two Parcels (Case File AR14-007), incorporating the revised staff report submitted to the DRB. Based on the findings set forth herein, City Council affirms the decision of the DRB. Applicant's appeal to the DRB was limited to Condition PFA 27. Although the DRB public hearing was de novo, meaning the DRB could have considered all aspects of the Director's Decision, the DRB did not make any revisions to that decision and focused solely on the Applicant's appeal of Condition PFA 27, Applicant testifying that his appeal concerned only imposition of PFA 27 across the frontage of the entire parcel, as opposed to his request that it be required only in front of the smaller partitioned parcel where he intended to construct a new home. Thus, our on-the-record review was limited to that same condition.

LOCATION: Tax Lot 2700 in Section 13BA, T3S, R1W, City of Wilsonville, Clackamas County, Oregon

OWNER/APPLICANT: Gerald and Joanne Downs, husband and wife

APPLICANT'S REPS.: Ronald Downs

COMPREHENSIVE PLAN MAP DESIGNATION: Residential 4 - 5 dwelling units an acre

ZONE MAP CLASSIFICATION: Residential Agricultural-Holding

STAFF REVIEWERS: Chris Neamtzu, Planning Director
Blaise Edmonds, Manager of Current Planning
Jennifer Scola, Assistant Planner
Steve Adams PE, Development Engineering Manager
Nancy Kraushaar, Community Development Director
Barbara Jacobson, Assistant City Attorney

APPLICABLE REVIEW CRITERIA:

Sections 4.008 – 4.015	Administration Sections
Section 4.022(.01)	Administrative Action Appeal
Section 4.022(.04)	Appeal Notice
Section 4.022(.05)	Scope of Review

Section 4.022(.07)	Review Consisting of Additional Evidence or De Novo Review
Sections 4.030(.01)B.5; 4.034(.05); 4.035(.03)	Class II AR
Section 4.202	Land Divisions General
Section 4.210	Application Procedure
Section 4.120	Residential Agricultural – Holding Zone (RA-H)
Section 4.031	Authority of the DRB
Section 4.113	Standards to all Residential Zones
Section 4.118(.03)C.9	Waiver of Right of Remonstrance
Section 4.167	Access
Section 4.177(.01) and (.02)	Street Improvement Standards
Section 4.177(.03)	Sidewalks
Section 4.236(.01)	Conformity to the Transportation Systems Plan
Section 4.236(.02)	Relation to Adjoining Street System
Section 4.237	Land Divisions General Requirements
Section 4.260(.02)	Improvement Procedures
Sections 4.262(.01) through (.10)	Improvement Requirements
Sections 4.300 – 4.320	Underground Utilities

Other: Administrative Decision AR14-0077
Comprehensive Plan: Plan Policy 3.3.2, Implementation Measures 3.3.2.c and 3.3.2.d.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Wilsonville City Council, having reviewed the record and heard oral argument, hereby affirms the decision of the DRB, including imposition of the appealed Condition PFA 27, reaching the following Findings of Fact and Conclusions of Law with respect to that appealed condition:

Section 4.177. Street Improvement Standards. **This section contains the City's requirements and standards for pedestrian, bicycle, and transit facility improvements to public streets, or within public easements. The purpose of this section is to ensure that development, including redevelopment, provides transportation facilities that are safe, convenient, and adequate in rough proportion to their impacts.**

Findings of Fact and Conclusions of Law. This Section of the City Development Code sets the standards for pedestrian, bicycle and transit facilities for public streets, including curb and sidewalk, to ensure that development, including redevelopment, provides safe, convenient and adequate facilities in rough proportion to their impacts. Section 4.177(.03) requires that "Sidewalks shall be provided on the public street frontage of all development." As this property is now being subdivided into two separate lots with two separate homes, the sidewalk/roadway transportation requirements being imposed must cover both properties. City Code requires these improvements to be made at the time of development or redevelopment, and this partition constitutes redevelopment, per Code definition, as found in Section 4.001(79).

City Code Section 4.005 lists certain activities that are exempt from development permit requirements, and a partition is not listed as an exception. This required condition is applied to all partitions, including recently to a three-lot partition located one property away from that of the Applicant, as well as a similar two-lot partition located just a few blocks away. The requirement is not in any way unique to the Applicant's property, nor is it based on any development assumptions. Section 4.177(.01) requires that development and related public

facility improvements shall comply with the standards in Section 4.177, the Wilsonville Public Works Standards, and the Transportation System Plan in rough proportion to the potential impacts of development. In the case at hand, the Applicant is not being required to make any additional roadway improvements or deviate from standard sidewalk requirements. The Applicant is not being asked to build the improvements in any area except directly in front of the Applicant's own property. No land is being exacted from the Applicant for the sidewalk. The City Council finds this requirement is in rough proportion to the redevelopment being requested and is in accordance with the standards of the Code and the Public Works Standards, including the Public Works Standard that all sidewalks meet the Americans with Disabilities Act standards. See Public Works Standards, Section 201.2.25a.2.

The City's Comprehensive Plan, which is the City's governing land use regulation, sets forth the requirements for a connected network of sidewalks and requires, at implementation Measure 3.3.2.d, that all gaps in the existing sidewalk network be filled so as to create safe and accessible bicycle and pedestrian facilities. Thus, in accordance with that requirement, as each parcel in the City without sidewalks is developed or redeveloped, the placement of the sidewalk and related curb, gutter and street improvements to current City standards is required to be built by the developer in front of the developer's property, as a proportionate requirement of development. This requirement has been consistently imposed as a developer responsibility as development occurs, thereby resulting in fewer gaps in the sidewalk. Just as the City Code, at Section 2.220, requires the property owner to be responsible for the sidewalk repairs that front the owner's property, so does the Code require the property owner/developer to install those same sidewalks as a proportionate condition of development.

Downs Partition Plat Appeal
INDEX of RECORD

Case Files:
AR14-0077 Class II Administrative Review for Partition Plat
DB15-0006 DRB Appeal of AR14-0077 decision

1. Downs letter: Appeal to City Council
2. February 23, 2015 DRB Panel B meeting minutes (DRAFT)
3. DRB Notice of Decision and Resolution (Affirming decision in AR14-0077 and denying appeal in DB15-0006) dated February 23, 2015
4. DRB Amended and Adopted Staff Report, dated February 23, 2015
5. Exhibits entered into the record at the February 23, 2015 DRB Panel B meeting:
   - Exhibit A5: Memorandum from Barbara Jacobson, Assistant City Attorney, dated February 20, 2015, providing a legal response to the Appeal Letter submitted by the Applicant. (Exhibit B10)
   - Exhibit B10: Letter entitled "Appeal Pursuant to Section 4.022" submitted by the Applicant, Ronald Downs PC, dated February 13, 2015.
   - Exhibit B11: Bound booklet titled, "Appeal of Downs Partition Plat #AR14-0077 Index", containing colored photographs and discussing the opposition to Condition of Approval PFA-27. Distributed by the Applicant at the meeting.
   - Exhibit B12: Multiple-page, stapled packet, "II. Takings Issue...The *Nollan* "Nexus" Test" printed from OSB Legal Publications. Distributed by the Applicant at the meeting.
   - Exhibit B13: Multiple-page, stapled packet, titled, "Subdivision Law and Growth Management Database updated November 2014; Chapter 6. Financing Capital Improvements References." Distributed by the Applicant at the meeting.
   - Exhibit B14: Stapled, 9-page packet, titled, "US Department of Justice Title II Highlights" discussing ADA requirements. Distributed by the Applicant at the meeting.
   - Exhibit B15: Stapled, 11-page packet, titled, "US Department of Justice Title III Highlights" discussing ADA requirements. Distributed by the Applicant at the meeting.
   - Exhibit B16: Stapled, 5-page packet, Louis F. Schultz and Anna May Schultz, Appellants v. City of Grants Pass Oregon Court of Appeals case. Distributed by the Applicant at the meeting.
   - Exhibit D1: Email received February 23, 2015 from Wayne Kirk, which was read into the record by Mr. Edmonds.

6. February 23, 2015 DRB Panel B meeting record, including:
   - DRB Packet, including Redlined version of staff report (for DRB review), Clean version of staff report (for DRB approval) and Exhibits:

EXHIBITS (AR14-0077):

The following exhibits are entered into the public record for the Class 2 Administrative Review of Tentative Land Partition Application in AR14-0077.

- **A1.** Original Staff Report
- **B.** Applicant's Submittal Notebook, as follows:
- **B1.** Applicant's Narrative, dated 10/21/2014
- **B2.** Completed City of Wilsonville Application Form
- **B3.** Public Record Report for New Subdivision, dated 09/04/2014
- **B4.** Preliminary Partition Plat Plan
- **B5.** Vicinity Map
- **B6.** Tax Lot Information
- **B7.** Certification of Assessment and Liens
- **B8.** Description of No-Construction Easement
- **C1.** Tax Map
- **C2.** Case File 03DB43, Findings E19, E30, and Condition of Approval DRB D3
- **C3.** Case File 03DB43 of Exhibit 44

EXHIBITS (DB15-0006):

The following exhibits are entered into the public record for the appeal to the DRB in appeal application DB15-0006 as submitted.

Staff Report:

- **A2.** Revised Staff Report (this one), including Proposed Revised Findings of Fact, Conditions of Approval and Conclusionary Findings. (Changes to the original are shown in redline for DRB and applicant ease of review.)
- **A3.** PowerPoint presentation. (10 slides)
- **A4**. Memorandum to Development Review Board members from Blaise Edmonds and Barbara Jacobson, dated February 12, 2015 Re: Director's Decisions/ Applicant Appeal

Applicant's Written and Graphic Materials:

- **B9.** Letter of appeal, dated January 17, 2015.

RONALD DOWNS P.C.
Trial Attorney

P.O. Box 12613
Salem, Oregon 97309-0613

Telephone (503) 375-8898
Fax (503) 371-4781
E-Mail rdowns@sdao.com

APPEAL OF DRB DECISION TO CITY COUNCIL
MATTER OF DOWNS APPLICATION AR14-077

February 25, 2015

City of Wilsonville Planning Department
Attn: Nancy Kraushaar & Barbara Jacobsen
29799 SW Town Center Loop E
Wilsonville, Oregon 97070

Application Number:	AR14-0077
Project Name:	Tentative Partition Plat
Property Owners:	Gerald and Joanne Downs
Applicant's Rep:	Ronald W. Downs
Property Description:	Legal Tax Lot 2700 in Section 13BA; T3S R1W; Clackamas County, Oregon

Dear Ms. Kraushaar & Ms. Jacobsen:

Attached is Property Owner's appeal fee and appeal in the above referenced matter.

Respectfully submitted,

/s/ Ronald W. Downs

Ronald W. Downs

CC: Gerald and Joanne Downs

CITY OF WILSONVILLE

29799 SW Town Center Loop East
Wilsonville, OR 97070
Phone: 503.682.4960
Fax: 503.682.7025
Web: www.ci.wilsonville.or.us

Pre-Application meeting date:

TO BE COMPLETED BY APPLICANT:
Please PRINT legibly

Planning Division
Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

Applicant:
Gerald Downs
Address: 28205 SW Canyon Creek Rd, Wilsonville OR 97070
Phone: 503-682-0956
Fax:
E-mail: downsgd5@frontier.com

Authorized Representative:
Ronald Downs
Address: 2474 Crowther Dr., Eugene OR 97404
Phone: 503-780-0847
Fax:
E-mail: rdowns@sdao.com

Property Owner:
Gerald Downs
Address: 28205 SW Canyon Creek Rd., Wilsonville OR 97070
Phone: 503-682-0956
Fax:
E-mail: downsgd5@frontier.com

Property Owner's Signature:
Printed Name: Gerald Downs Date:

Applicant's Signature *(if different from Property Owner)*
Printed Name: Ronald Downs Date: 2/25/15

Site Location and Description:
Project Address if Available: 28205 SW Canyon Creek Rd., Wilsonville OR 97070 Suite/Unit
Project Location: Wilsonville Oregon
Tax Map #(s): 31W13BA02700 Tax Lot #(s): 2700 County: ☐ Washington ☑ Clackamas

Request: Notice of Appeal of DRB Decision of February 23, 2015 on Application AR14-077 to the City Council.

Project Type: Class I ☐ Class II ☐ Class III ☐

☑ Residential ☐ Commercial ☐ Industrial ☐ Other (describe below)

Application Type:

☐ Annexation	☑ Appeal	☐ Comp Plan Map Amend	☐ Conditional Use
☐ Final Plat	☐ Major Partition	☐ Minor Partition	☐ Parks Plan Review
☐ Plan Amendment	☐ Planned Development	☐ Preliminary Plat	☐ Request to Modify Conditions
☐ Request for Special Meeting	☐ Request for Time Extension	☐ Signs	☐ Site Design Review
☐ SROZ/SRIR Review	☐ Staff Interpretation	☐ Stage I Master Plan	☐ Stage II Final Plan
☐ Type C Tree Removal Plan	☐ Tree Removal Permit (B or C)	☐ Temporary Use	☐ Variance
☐ Villebois SAP	☐ Villebois PDP	☐ Villebois PDP	☐ Waiver
☐ Zone Map Amendment	☐ Other		

Wilsonville City Hall
29799 SW Town Center Loop East
Wilsonville, Oregon

Development Review Board – Panel B
Minutes–February 23, 2015 6:30 PM

I. Call to Order
Chair Aaron Woods called the meeting to order at 6:30 p.m.

II. Chair's Remarks
The Conduct of Hearing and Statement of Public Notice were read into the record.

III. Roll Call
Present for roll call were: Aaron Woods, Cheryl Dorman, Dianne Knight, Richard Martens, Shawn O'Neil, and Council Liaison Julie Fitzgerald

Staff present: Blaise Edmonds, Barbara Jacobson, and Steve Adams

IV. Citizens' Input This is an opportunity for visitors to address the Development Review Board (DRB) on items not on the agenda. There were no comments.

V. City Council Liaison Report
No Councilor liaison report was given due to Councilor Fitzgerald's absence.

VI. Consent Agenda:
A. Approval of minutes of November 24, 2014 DRB Panel B meeting

Dianne Knight moved to approve the November 24, 2014 DRB Panel B meeting minutes as presented. Cheryl Dorman seconded the motion, which passed 3 to 0 to 2 with Shawn O'Neil and Richard Martens abstaining.

B. Approval of minutes of January 26, 2015 DRB Panel A meeting

Dianne Knight moved to approve the January 26, 2015 DRB Panel B meeting minutes as presented. Shawn O'Neil seconded the motion, which passed 4 to 0 to 1 with Cheryl Dorman abstaining.

VII. Public Hearing:
A. Resolution 299. Downs Appeal: Gerald and Joanne Downs – owners. The applicant is appealing the Staff Decision of a two parcel land partition approval in Case File AR14-0077. The property is located at 28205 SW Canyon Creek Road South on Tax Lot 2700, Section 13BA, T3S-R1W, Clackamas County, Oregon. Staff: Blaise Edmonds

Case Files: DB15-0006 – Appeal

Chair Woods called the public hearing to order at 6:36 pm and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site. No board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

Barbara Jacobson, Assistant City Attorney, noted Staff's memorandum (Exhibit A4) in the packet explained that as a de novo hearing, the Applicant had appealed specific criteria as outlined in the Applicant's letter; however, the DRB could look at the entire application and was free to ask questions on

any issues. While the hearing was open to all issues, the focus would be on the criteria that were appealed. She confirmed that the Board received the revised, redlined Staff report. Originally, some of the red lines had gotten deleted, so a revised Staff report was sent so the Board and Applicant could see exactly all of the changes made from the original Director's decision to the revised Staff report.

- She also noted her legal memorandum (Exhibit A5), which was distributed to the Board. As the representative of the City, it was her duty to look at the legal issues on appeal and render an opinion on whether or not the recommendations in the Staff report were correct under the law and particularly, under the City's Code and land use regulations. While she concurred with Staff's recommendation, this was a public hearing; it would be the Board's decision to weigh tonight's testimony and the information in Staff's memo as well as the Applicant's memo and presentation.

Blaise Edmonds, Manager of Current Planning, announced that the criteria applicable to the application were stated on page 2 of the Staff report, which was entered into the record. Copies of the report were made available to the side of the room.

Mr. Edmonds noted that all references to DB14-0077 in the revised Staff report needed to be corrected to AR14-0077. He entered the following new exhibits were entered into the record as follows:

- Exhibit B10: Letter entitled, "Appeal Pursuant to Section 4.022" submitted by the Applicant, Ronald Downs PC, dated February 13, 2015.
- Exhibit A5: Memorandum from Barbara Jacobson, Assistant City Attorney, dated February 20, 2015, providing a legal response to the Appeal Letter submitted by the Applicant. (Exhibit B10)
- Exhibit D1: Email received February 23, 2015 from Wayne Kirk, which was read into the record by Mr. Edmonds.

- He explained that as mentioned, this was a de novo hearing. It was a brand new hearing, and did not just involve sidewalks. Board and audience members could comment on anything found in the Staff report as if it were a brand new application for the first time.
- Comments would be heard regarding new conditions of approval, including:
  - Condition PFA8 on Page 6 of 36 of the revised Staff report which referred to a waiver of remonstrance. This type of condition was added to practically every planned development in the city for the past 35 years.
    - If a local improvement district existed for Canyon Creek South for improvements, such as storm drainage, the property owners had the right to challenge the cost assessment, but as written, this particular remonstrance condition required the Applicant to participate in a local improvement district.
  - Condition PFA27 on Page 14 of 36 would be the focus of most of tonight's discussion as some additional language was added by the Engineering Division.
  - He noted the revised redlined Staff report also included new language shown green colored text.
- He continued by presenting the Staff report via PowerPoint, noting the subject site's location, surrounding features and nearby development with these comments:
- Canyon Creek Rd South used to intersect with Boeckman Rd, but was closed off into a cul-de-sac a few years back due to sight distance. The road intersection was too close to the major intersection of Boeckman Rd and Canyon Creek Rd.
- The subject property was approved through administrative action for a tentative land partition resulting in two land parcels with an existing house on the north parcel owned by Gerald and Joanne Downs.
  - The portion of the tentative plat approved through administrative action was displayed. Parcel 2 showed the footprint of a future brand new house the Applicant, representing his parents, proposed to build.
- Slide 4 indicated the existing sidewalks as well as future sidewalks that would be built throughout the neighborhood. Both the Renaissance development and CrossCreek Subdivision have sidewalks on both sides of the street. A sidewalk would also be installed along the Renaissance properties

purchased to the south of the site when those homes were built. Other sidewalk segments included the one built by James Knorr as building street frontage was a condition of their property being partitioned. Some connectivity could start to be seen and with effort over time the street would eventually have sidewalks.

- He reviewed several pictures showing views of the streets and sidewalks adjacent to recent developments in the immediate neighborhood, and especially along Canyon Creek Rd South. His key comments included:
  - Parcel 2, the future home site, had a small swale or drainage ditch on the east side facing Canyon Creek Rd South and Parcel 1 with the existing house owned by Gerald and Joanne Downs.
  - Both curbside and offset sidewalks could be seen along each side of Canyon Creek Rd South. Hopefully over time there would be more of a semblance of one sidewalk over another.
  - CrossCreek Subdivision is a good example of an offset sidewalk along Canyon Creek Rd South.
- Staff's memorandum summarized Staff's recommendation. Should the DRB affirm the Director's decision, a draft Resolution was included that would accept the revised Staff report, thereby denying the appeal.
  - If the DRB granted the appeal tonight, revisions would be required to the Staff report and conditions of approval, in addition to the need to prepare new findings and conclusions. Due to the time needed to craft those findings and conclusions, Staff advised continuing the matter to March 23, 2015.

Ms. Jacobson clarified if the Board was satisfied with everything and wanted to close the hearing, but decided to grant the appeal, the hearing would not really be continued, but the record kept open solely to bring in the revised findings. The Board would direct Staff to work with the Applicant on the revised findings and then bring them back at the March 23rd meeting.

Mr. Edmonds noted Steve Adams from the Engineering Division was present to answer any technical questions about streets, patches, sidewalks, drainage, etc. and why street frontage was required.

Richard Martens asked what triggered the requirement for the improvement. If the Applicant were endeavoring just to replace the existing house, would that trigger the street improvements as well?

Mr. Edmonds replied the Development Code allowed a homeowner one year to replace a house in its current configuration in the case of a house fire or other disaster, but he did not believe that would trigger a new sidewalk or street improvement. The new house would have to be built close to the same size and location as the previous house. A larger, Street of Dreams type house might trigger some additional improvement.

Ms. Jacobson clarified that the Development Code cited in her memorandum included a definition of development as well as the Code section that required the sidewalk. There might be an exception in the Code if there was a fire, but the definition of development under the City's Code was quite broad.

Mr. Edmonds said the issue had not come up before, so whether development would trigger street improvements was uncertain; it was a gray area.

Chair Woods called for the Applicant's presentation.

Ron Downs, Attorney, stated he was representing the Applicants, Gerald and Joanne Downs, who were also his parents. He distributed several items to the Board, which were later entered into the record by Staff as noted. The handouts included a bound notebook, as well as several literature pieces from the Oregon State Bar Continuing Legal Education (CLE) on land use planning and subdivision law with a case attached as well as Title II and Title III of the Americans with Disabilities Act because it was cited in

Staff's memorandum and warranted a short discussion. He noted these applicable materials were for the Board to read at a future time.

- He presented the notebook (Exhibit B11), titled Appeal of Downs Partition Plat #AR14-0077, with these comments:
  - The law in this area was fairly succinct and stated that a government entity may not impose conditions of approval on a permit unless they establish two things. First, there had to be a direct relationship between the conditions that are imposed and the impact created by the development or project.
    - Second, there had to be a rough proportionality determined, essentially, the condition imposed was roughly proportional both in terms of the scope and the cost to the actual impact created by the development or project. The law said and the courts had defined this to say that the government had to make individualized findings on each applicant. This came from Supreme Court case *Dolan v City of Tigard* that addressed the constitutionality in takings and established the law that was the focus of most of the discussion in the material provided.
  - It was a two-part test and the Supreme Court had established that it was a must, not a shall or should, the government entity must meet both those criteria. A governmental entity had to impose conditions that mitigate whatever new impact was created by whatever the condition, development or project before them.
  - Since *Dolan,* a number of cases, including Oregon Court of Appeals cases, had tinkered with the language on what the limits were and tried to interpret it in various ways, including whether or not the imposed standards were legislative in nature, in which case some courts of appeals decided they do not apply. *Dolan* did not apply to those kinds of decisions.
    - Recently, the Supreme Court case of *Koontz v St Johns River* put that to rest. The Supreme Court was literal and said, "We meant what we said in *Dolan* and if it is a condition that required exactions then the government have to meet that test." This was the standard by which all land applications and permits were to be judged.
- The Applicant's moved to Wilsonville 45 years ago and bought the subject property, which was featured in several pictures included in Part 1 of the notebook. The third picture showed Parcel 2, which had been used for gardening, horses, a number of different things over the years. The Applicants wanted their son to move home and build a house on this new parcel.
- Parcel 2 measured 60 ft across and it was on that parcel and that parcel alone that a single-family house would be developed. Any new impacts in terms of the sewer system, sidewalks, water, electricity, gutters, system development charges (SDCs) and permit fees would all be associated with this newly created 60-ft parcel.
  - The remaining parcel, as shown on subsequent pages, measured 90 ft across, so both parcels together were 150 ft total. There would be no new development or impacts to the system caused by the 90-foot parcel. While a separate tax lot with a separate owner, the land would remain as it had for the last 45 years, the single-family residence of the Applicants.
- The simplest way to look at the issue before the Board was Condition PFA27, noted in Part 2 of the notebook. The only issue, which was very narrow, was the street frontage required to have utilities and, specifically, facilities, such as sidewalks, curbs, etc. The issue was should the street frontage be 60 ft or along the entire 150-ft parcel.
  - The requirement was that the Applicant either deposit roughly $45,000 into an account for future construction of that sidewalk and gutter for the entire 150-ft, or design and construct those additional facilities themselves.
  - Parts 3 and 4 of the notebook (Exhibit B11) discussed his interpretation of the Code provisions themselves and then reverted back to the law with regard to this notion.
  - Part 3 addressed the difference between a land partition and a development. The Code contained definitions for both which was important because, per the Code definition, partition and development require two different things.

- As defined, land partition meant to divide an area or tract of land into two parcels, an act of partitioning land or an area or tract of land. It was more of a paper type process. An applicant would fill out an application for a partition, pay the fee, hire a land surveyor to do a metes and bounds description, and then submit it. Once approved, the partition would be filed with the County and the County would then create two separate tax lots.
- The definition of a development went to the next step. A development was any human-caused change to improved or unimproved real estate, including, but not limited to, buildings or other structures. The definition also talked about mining; basically, physical acts. Development was really what it sounded like; actually doing something to develop the land, improve the land, or change the land physically, which he believed was a completely different definition from a partition. Nowhere in the definition of a development did it say partition; a partition was completely separate.
- A partition required a whole separate process for approval. Section 4.030.01(b)5 listed the specific conditions that had to be met for a land partition. He believed everyone, including Staff agreed for the most part that Sections A through H were all met; the submittal, materials, if any easements or public right-of-ways would need to be provided, and the plan met the lot size and yard setbacks.
  - Section G was probably the one condition that was going to be an issue and was probably the basis from which Condition PFA27 had come from. It stated, "All public utilities and facilities are available or can be provided prior to the issuance of any development permit for any lot or parcel." It literally stated that as a condition for granting the partition, the applicant had to tell the City that public utilities, sewer, water, electricity, and the sidewalks, gutters, and all those facilities would be available or could be provided prior to the issuance of any development permit for any lot or parcel.
    - The assumption was that it would be for any development permit. In this particular case, once the partition was done and filed with the County, there would be two separate legal parcels, two separate tax lots, two separate owners. At that point, he would be going through the permit process, the development process, paying the fees and the associated SDCs, and going through the new process to develop that newly created parcel. Again, nothing would happen on the remaining parcel.
    - In reading Section G, the only development permit that would be submitted was for the newly created parcel. Having read that to the extent that was the whole hang up or basis for whether or not it was 60 ft or 150 ft, the Applicant was not developing Parcel 1, the remaining parcel.
- He had pointed out the literal definitions because the City's position was that the definition of development was to be broadly interpreted, and under Staff's reading of it, if that was what the Board accepted, the definition of development included a partition, and if a partition was considered a development then that in and of itself would trigger all of the rest of the Codes, not just for the newly created parcel, but the entire parcel as one, which was the basis for wanting to impose the condition that facilities were to be provided for the entire 150 ft.
  - He submitted that Staff had interpreted the definitions in the Code in an overbroad manner that went too far. Even without the constitutional analysis, which he would discuss, calling a partition a development did not meet the Code definition. If the Board agreed, Staff could simply be advised to change the required facilities from 150 ft to 60 ft because it met the definition and requirements for a land partition.

- Part 4, the Applicant's legal argument, was where the ***Dolan*** standard came into play. ***Dolan*** did, in fact, set the tone for all permit conditions. Nexus and proportionality were the tests the Supreme Court had established as having to be met.
  - He did not dispute that utilities and facilities had to be provided for a portion of the property. In this case, about 40 percent of the 150 ft was the new parcel and he agreed that all of the facilities would need to be provided to that parcel. The ***Dolan*** standard stated there had to be

a relationship, a nexus, between the imposed condition, in this case regarding facilities, and the impact that would be caused by the newly created development or project. When applying a strict reading of ***Dolan***, the only thing that would be newly created was the 60-ft street frontage, so for the City to impose 150 ft was well beyond what the Supreme Court established as reasonable in ***Dolan***.

- The Court also stated that the government entity had to go through a finding to determine rough proportionality. As mentioned with the 2013 ***Koontz*** case, the Supreme Court stated that they meant what they said in ***Dolan***, which was the condition imposed had to be proportional to the actual impact created by the project.
  - In applying that analysis to the current application, the conditions that should be imposed would be simply limited to 60 ft, not 150 ft. No argument could be made that would fit going beyond that rough proportionality standard because no new impacts were being created.

- The ***Hallmark*** case cited in Staff's memorandum (Exhibit A5) was one of the decisions Staff had relied on to argue that the conditions were reasonable and met the ***Dolan*** rough proportionality standard. However, he submitted that was not an apples-to-apples analysis.
  - The ***Hallmark*** case involved Hallmark Inns and Resorts, which had a large property site in Lake Grove on which they were going to build their new corporate headquarters. The City of Lake Oswego imposed a condition requiring Hallmark to build a pedestrian sidewalk to connect Waluga Park and the residential homes on one side of the corporate headquarters with the shopping center on the other side. The Hallmark property did not include multiple parcels, but was one big parcel on which Hallmark wanted to build a corporate headquarters with parking and all of the related facilities. Factually, it was different; a completely different scenario than what was being addressed tonight.
  - In his reading of the ***Hallmark*** case, he realized that the Court of Appeals was really saying the same thing that he had said. The Court of Appeals noted that the conditions focused on "The expected use of the facility that Hallmark applied to build and actually built." The focus was not on what was going on at some other parcel. It was focused on what Hallmark was doing. The Court talked about the standards saying, "Here the City's findings demonstrate that without the pathway, the development would impede the flow of pedestrian and bicycle traffic from the adjoining residential area to the adjoining shopping center. The pathway removes that impediment."
  - He noted that the need for the pathway was directly related to the development itself and, thus, satisfied the related-in-nature aspect. This case showed the basis for the rough proportionality and what the Supreme Court said, that it had to be related to that parcel. There was no relationship to the remaining parcel that had been there for 45 years. Nothing new would be added, so it would not create any impact or affect on the system.
- He also noted the third paragraph on Page 2 of Staff's memorandum (Exhibit A5) stated, "The requirement being imposed by Wilsonville was simply that street frontage improvements be placed in front of the full length of the partitioned property only, which improvements will directly serve those two partitioned lots." Not only did that statement go beyond what the Supreme Court stated could be done, but it was also an acknowledgement by the City that there are two parcels. The City was trying to argue it both ways. On the one hand, the City was imposing conditions on the whole thing, but, in reality, after being filed with the Country and creating two separate tax lots, both lots would be served by that. He believed that was going too far, which was also what the Courts had consistently held.
- He noted the excerpts pertaining to American with Disabilities Act (ADA) laws that were provided for the Board's review and explained that ADA had three parts. Title I pertained to prohibiting discriminating people with disabilities with regard to employment. Title II regarded public accommodations and was created to require public entities' facilities to be accessible to individuals with disabilities. It required public entities to change their policies and practices to allow individuals with disabilities access to public facilities, public meetings like this, etc. Title III took it to the next

level by addressing commercial facilities, such as restaurants and malls. These regulations were designed to provide accommodations to individuals with commercial facilities, requiring such things as wide enough aisles and water fountains low enough for people with disabilities.
    - Title III did not extend to or regard residential or private houses. He did a lot of ADA work and, as he read the statute, Title II did extend beyond providing access and services to public entities either. It did not mandate that individual residents build a sidewalk in front of their house to allow people with disabilities access onto that sidewalk. That was not what the ADA regulations stated.
- From a practical standpoint, this was a 60-feet parcel, essentially, what would be seen for a single-family home. The Applicant was going to build a single-family home and was open to providing the sidewalks and public facilities for that parcel.
    - After submitting the materials and paying to get the survey done, he was surprised to learn that per the Staff report, if he agreed to the conditions, he would have to write a check for $45,000 now, and when it came time to build, he would have to pay another $25,000 for SDCs, in addition to the building permit fees. So he would have to pay roughly $70,000 to $80,000 for the right to build a single-family home in the town he grew up in. He found this excessive and believed the Board might suffer the same shock factor if they were in his shoes and received the report.
- He reiterated that he did not oppose improving streets or changes in Wilsonville, but there had to be a limit and it had to be considered reasonable and fair. That was what the Supreme Court said. That was what the Supreme Court demanded. And that was all the Applicant was asking from the DRB.

Mr. Edmonds entered the additional exhibits distributed by the Applicant into the record.as follows:
- Exhibit B11: Bound notebook titled, "Appeal of Downs Partition Plat #AR14-0077 Index", containing colored photographs and the applicant's comments in opposition to Condition of Approval PFA-27. Distributed by the Applicant at the meeting.
- Exhibit B12: Multiple-page, stapled packet, "II. Takings Issue...The *Nollan* "Nexus" Test" printed from OSB Legal Publications. Distributed by the Applicant at the meeting.
- Exhibit B13: Multiple-page, stapled packet, titled, "Subdivision Law and Growth Management Database updated November 2014; Chapter 6. Financing Capital Improvements References." Distributed by the Applicant at the meeting.
- Exhibit B14: Stapled, 9-page packet, titled, "US Department of Justice Title II Highlights" discussing ADA requirements. Distributed by the Applicant at the meeting.
- Exhibit B15: Stapled, 11-page packet, titled, "US Department of Justice Title III Highlights" discussing ADA requirements. Distributed by the Applicant at the meeting.
- Exhibit B16: Stapled, 5-page packet, Louis F. Schultz and Anna May Schultz, Appellants v. City of Grants Pass Oregon Court of Appeals case. Distributed by the Applicant at the meeting.

- In response to the question submitted by Mr. Martens about an existing house being burned or destroyed, he cited Section 4.190.03, noting he believed that when the existing house was built, it predated the Development Code. He read, "When a non-conforming structure is damaged by any cause exceeding 75 percent of the replacement cost, as determined by the building official, the non-conforming structure shall not be reestablished unless all required building permits for repair and replacement are received within 18 months of damage. The City will endeavor to contact the owner of properties that have been damaged to alert them of the time limitations for receiving a building permit for repair or replacement. The property owner's failure to receive such notification does not alter or extend the time limit specified in this subsection."
- He did not know if it was considered a development permit. In past practice for a non-conforming structure, the City only required a building permit to replace the house.

Ms. Jacobson agreed, noting that was an exception to the Code for a catastrophic happening to an existing dwelling, which was why it was called out separately.

Mr. Martens understood the Applicant's argument early on was that the proposed partition should not trigger the improvements, as it was a paper process that would get recorded with the County and should be separated from the requirement to do any improvements.

Mr. Downs clarified he was asserting that the partition was not considered a development, so that in and of itself would only trigger Subsection G; it would trigger that "when." The partition was a paper process. The partition itself would be approved under Subsection G conditioned upon the applicant being able to provide those utilities. The trigger was that when the partition, the new piece of property, was developed, the Applicant could assure that adequate utilities and facilities were provided. The partition itself did not trigger all of it. Subsection G did only to the extent that the applicant could assure the City that those things would be provided for that newly created parcel.

Mr. Martens asked if the Applicant was asking the Board to approve the partition without any requirements, and then have those requirements wait and be contingent upon the ultimate construction of the home.

Mr. Downs answered no; he was asking the Board to only change one thing, that the Board require, as a condition of approval of the land partition, that the Applicant provide all of that for 60 ft, which was being developed, not 150 ft.

Mr. Martens responded that if it was based upon a partition that was not requiring anything, why would the Applicant not then say there should be no requirement at all for the entire 150 ft until such time as the Applicant applied for a building permit.

Mr. Downs confirmed that would be the condition, and was, in fact, what Subsection G stated. Subsection G stated that the applicant had to assure the City that the facilities could be provided at the time of development. At that time the partition is granted and as a condition of granting the partition, the applicant assures that those facilities would be provided when the parcel is developed. If the partition was done and the owner just sat on the property, it would just sit there. The condition of installing and providing utilities and sidewalks did not go into effect until the land was developed, from both a practical and definitional standpoint, as he read the Code.

Cheryl Dorman understood that this would be granting approval to partition the land.

Mr. Edmonds agreed the administrative review application was for a land partition.

Ms. Dorman stated in her interpretation, it had nothing to do with the future and that although the future was being discussed, in order to grant approval for the partition, these terms would need to be met, 150 ft.

Ms. Jacobson agreed that was Staff's opinion as well.

Ms. Dorman asked if that was the Applicant's interpretation as well; that to grant partition, the 150 ft had to be met.

Mr. Downs agreed that was the issue; whether it was 150 ft or some other configuration that was the issue as a condition of granting the partition. There was still a whole other process related to development, such as the requirement to pay SDCs and etc. It was a separate issue, the cart before the horse, so to speak.

Chair Woods called for public testimony in favor of, opposed and neutral to the application. Seeing none, he asked if Staff had further comments.

Ms. Jacobson stated that Staff's reading of the definition of development included a partition, as outlined in her memorandum. It was any action; it did not need to be physical. The applicant did not need to be turning soil. The act of taking one parcel and making it into two to provide the ability to have two homes, or 20 homes, would be making a change to improve property. Section 4.005 listed those things that were exempted from development permit requirements, and a partition was not listed as exempt. The City's Development Code stated that any time there was development that was when there was a requirement under both the City's Comprehensive Plan and City Code that sidewalks, which were public improvements that serve not only the properties they front, but the public in general, had to be installed in order to achieve the connectivity standard needed so people could safely walk in the neighborhoods. Although the improvement would be put in by a private party, it was, in fact, a public sidewalk and would have to meet certain City requirements that would make it level and accessible for wheelchairs or any member of the public to be able to use.

Chair Woods confirmed there was no further questions and closed the public hearing at 7:33 pm.

Ms. Jacobson confirmed the Board could accept the amended Staff report with the exhibits that were read into the record first, and then address the resolution.

Chair Woods moved to deny the Applicant's appeal of the Director's Class II Administrative Decision of application AR14-0077, case file DB15-0006, and that the Board approve Resolution 299, which affirms the Director's Class II Administrative Decision, Findings and Conditions, approving a tentative land partition for two parcels, as rendered in Case File AR14-0077 Class II Administrative Review, but as amended by the revised staff report, dated February 12, 2015, correcting references to "DB14-0077" to state "AR14-0077" and including Exhibits A5, B10, B11, B12, B13, B14, B15, B16, and D1 as read into the record by Blaise Edmonds. Dianne Knight seconded the motion.

Chair Woods clarified his motion would approve the Resolution 299, which affirmed the Director's Class II administrative decision, findings, and conditions that approved a tentative land partition for those two parcels, as rendered in Case AR14-0077, the Class II administrative review, but as amended by the revised Staff report dated February 12, and including all the exhibits as read into the record by Mr. Edmonds. Basically, the Board would be accepting the revised Staff report and its contents and particulars.

Ms. Dorman appreciated the process the Applicants had gone through, and their hard work in providing the Board with a lot of information. While she was sympathetic to their cause, she strongly believed the partition, by its very nature of dividing one property into two, was a human-caused change to the improved real estate in this case, and would trigger the requirements of the improvements as Staff had recommended. The human-caused change to improve real estate caused Condition PFA27 to come into play.

Chair Woods added that it would be for the entire 150.01 ft of frontage.

Shawn O'Neil agreed. He noted the email (Exhibit D1) Staff received regarding the neighborhood in question. After seeing the site and envisioning children and older citizens trying to walk down that road, it just made sense to require improvements for that entire parcel.

Chair Woods believed with the City's imposed requirements to require a sidewalk on that portion in front of the property, which he believed was 60.01 ft, appeared to be consistent with the requirements of the City Code, Comprehensive Plan, Transportation System Plan, ADA requirements, and sidewalk

requirements, and it appeared to him that the entire 150 ft would fall under this and would then need to be developed, particularly in light of the definitions.

Chair Woods called the question.

The motion passed unanimously.

Chair Woods read the rules of appeal into the record.

VIII. Board Member Communications

A. Results of the February 9, 2015 DRB Panel A meeting

There were none.

IX. Staff Communications

There were none.

X. Adjournment

The meeting adjourned at 7:43 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for
Shelley White, Planning Administrative Assistant

February 24, 2015

DEVELOPMENT REVIEW BOARD PANEL B

NOTICE OF DECISION

Project Name: Downs Appeal

Case File Nos.: AR14-0077 – Tentative Land Partition
DB15-0006 – Appeal of Case File AR14-0077

Applicants/Owners: Gerald and Joanne Downs

Applicant's Representative: Ronald Downs

Property Description: Tax Lot 2700, Section 13BA; T3S R1W; Clackamas County; Wilsonville, Oregon

Location: 28205 SW Canyon Creek Road South

On February 23, 2015, at the meeting of the Development Review Board the following action was granted on the above-referenced proposed development application:

The Development Review Board approved Case File AR14-0077 with revisions to the staff report. The appeal, in Case File DB15-0006, was denied by the Development Review Board

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022(.02).*

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Annex this **24th day of February 2015** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022(.09).*

Written decision is attached

This approval will expire on **March 11, 2017**.

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960.

Attachments: DRB Resolution No. 299 including adopted staff report with conditions of approval.

DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 299

A RESOLUTION AFFIRMING THE DIRECTOR'S CLASS II ADMINSITRATIVE DECISIONS, FINDINGS AND CONDITIONS APPROVING A TENTATIVE LAND PARTITION FOR TWO PARCELS RENDERED IN CASE-FILE AR14-0077 AND DENYING THE APPLICANT'S APPEAL DB15-0006. THE SUBJECT PROPERTY IS LOCATED AT 28205 SW CANYON CREEK ROAD SOUTH. THE PROPERTY IS DESCRIBED AS TAX LOT 2700 OF SECTION 13BA, T3S, R1W, CLACKAMAS COUNTY, OREGON. GERALD AND JOANNE DOWNS, OWNERS.

RECITALS

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code; and

WHEREAS, the Planning Staff has prepared a staff report on the above-captioned subject dated February 12, 2015; and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board at meetings conducted on February 23, 2015, at which time exhibits, together with findings and public testimony, were entered into the public record; and

WHEREAS, the Development Review Board, through de novo public hearing, considered the Applicant's appeal of the Director's Class II Administrative Decision for a two parcel Tentative Land Partition; and

WHEREAS, the Applicant, City staff, and all other interested parties, if any, have had an opportunity to be heard on the foregoing.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby affirm the Director's decision of the following application:

AR14-0077: Class II Administrative Review

as amended by the revised staff report, attached hereto as Exhibits A-2, with findings, conditions and recommendations contained therein, and approves the application consistent with said recommendations;

And does hereby deny the following appeal:

DB15-0006: Appeal of AR14-0077

ADOPTED by the Development Review Board Panel B of the City of Wilsonville at a regular meeting thereof this 23rd day of February, 2015, and filed with the Planning Administrative Assistant on Feb. 24, 2015. This resolution is final on the 15th calendar day

after the postmarked date of the written notice of decision unless appealed or called up for review by the council in accordance with *WC Sec 4.022(.09)*

Aaron Woods, Chair
Development Review Board, Panel B

Attest:

Shelley White, Planning Administrative Assistant

Exhibit A2

REVISED STAFF REPORT
WILSONVILLE PLANNING DIVISION
Appeal Class II Administrative Review Decision

DEVELOPMENT REVIEW BOARD PANEL 'B'
QUASI-JUDICIAL PUBLIC HEARING
AMENDED AND ADOPTED FEBRUARY 23, 2015

ADDED LANGUAGE ***bold italics underline*** **DELETED LANGUAGE** ~~strikethrough~~

HEARING DATES: **February 23, 2015**

DATE OF REPORT: **February 12, 2015**

APPLICATION NOS.: ~~DB~~***AR***14-0077 and DB15-0006

APPLICANT/OWNERS: Gerald and Joanne Downs (collectively "Applicant")

APPLICANT/OWNER REPRESENTATIVE: Ronald Downs

REQUEST: Appeal AR14-0077 (Class II Tentative Land Partition) and including Condition of Approval PFA27

LOCATION: The subject property is located at 28205 SW Canyon Creek Road South, on the west side of SW Canyon Creek Road South.

LEGAL DESCRIPTION: Tax Lot 2700 of Section 13BA, T3S, R1W, Willamette Meridian, Clackamas County, Wilsonville, Oregon.

LAND USE DESIGNATION: Comprehensive Plan Map Designation: Residential – 4 to 5 dwelling units an acre.

ZONING DESIGNATION: Residential Agricultural - Holding (RA-H)

STAFF REVIEWERS: Blaise Edmonds, Manager of Current Planning; Jennifer Scola, Assistant Planner, Barbara Jacobson, Assistant City Attorney and Steve Adams, Development Engineering Manager.

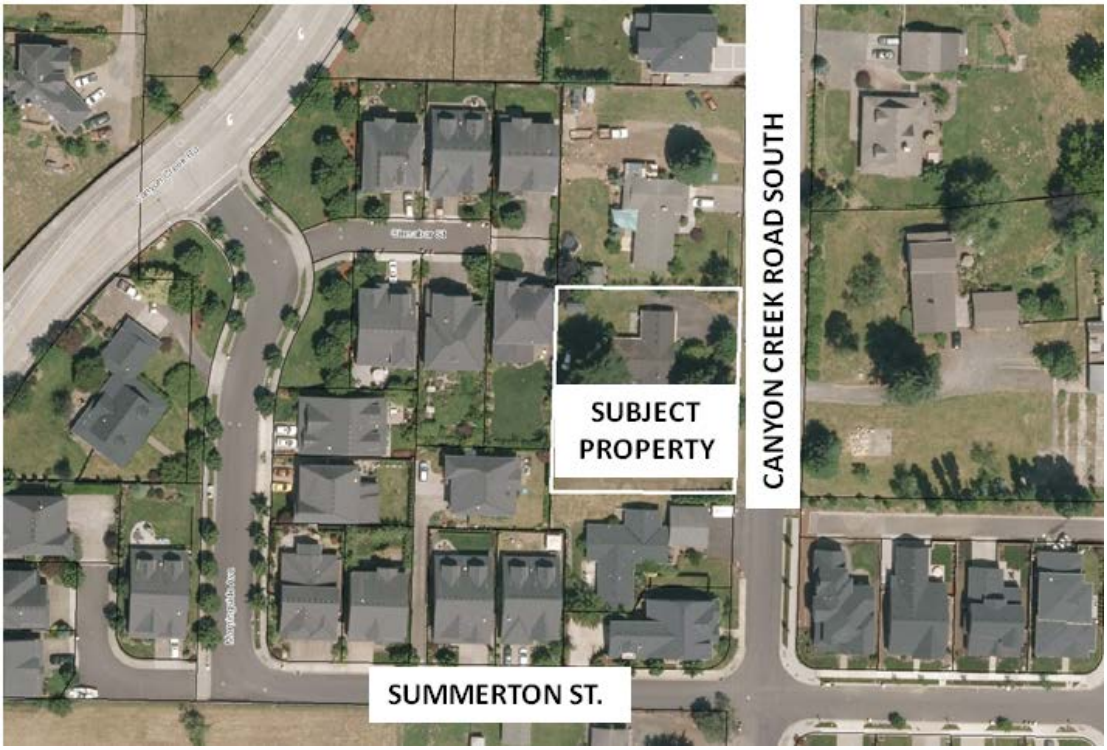
Applicable Review Criteria: Planning and Land Development Ordinance:

Sections 4.008 - 4.015	Administration Sections
Section 4.022(.01)	Administrative Action Appeal
Section 4.022(.04)	Appeal Notice
Section 4.022(.05)	Scope of Review
Section 4.022(.07)	Review Consisting of Additional Evidence or De Novo Review
Sections 4.030(.01)(B)(5); 4.034(.05); 4.035; 4.035(.03)	Class II AR
Section 4.202	Land Divisions General
Section 4.210	Application Procedure
Section 4.120	Residential Agricultural – Holding Zone (RA-H)
Section 4.031	Authority of the DRB
Section 4.113	Standards to all Residential Zones
Section 4.118(.03)C.9	Waiver of Right of Remonstrance
Section 4.167	Access
Section 4.177(.01) and (.02)	Street Improvement Standards
Section 4.177(.03)	Sidewalks
Section 4.236(.01)	Conformity to the Transportation Systems Plan
Section 4.236(.02)	Relation to Adjoining Street System
Section 4.237	Land Divisions General Requirements
Section 4.260(.02)	Improvement Procedures
Sections 4.262 (.01 through .10)	Improvement Requirements
Sections 4.300-4.320	Underground Utilities

Other: Administrative Decision AR14-0077
Comprehensive Plan: Plan Policy 3.3.2, Implementation Measures 3.3.2c and 3.3.2d.

STAFF RECOMMENDATION: Approve Option 2, which consists of this revised staff report, as outlined in the 'Summary' statement of this revised staff report (Exhibit A2) below, with proposed revised findings and conditions of approval in case file DB15-0006 (Exhibit A2).

VICINITY MAP



SUMMARY

The applicant is appealing the staff decision for a Class II administrative approval of a two (2) parcel land partition in case file AR14-0077. Section 4.022(.05)WC Scope of Review requires "that the standard on an appeal or call up of a staff decision to be heard by the Development Review Board is de novo." *De novo* is a Latin expression meaning "from the beginning," "afresh," "anew," "beginning again." Although the applicant may want to contest only certain portions of the staff decision, the entire Class II administrative approval record will be open for public testimony and admission of new evidence.

The applicant is objecting to certain sidewalk, street and utility improvements required by City engineering condition PFA27. See Exhibit B9 for the applicant's detailed objection. The applicant, by and through the Applicant Representative (Ron Downs), is seeking to partition their land into two parcels so that one may be deeded to Ron Downs for construction of a new home. The applicant, however, only wants to make the required improvements in front of that newly created lot and not in front of the other lot that is a part of the application and partition; in other words, the applicant is seeking to divide their property into two lots but to only provide street and sidewalks for the portion located in front of the newly created lot and not the remainder of the partitioned property. It is City staff's opinion that, by virtue of the partition, as the City's definition as "Development" as set forth in City Code, the entire property is being redeveloped and, thus, the City conditions for redevelopment apply across the entire parcel and, therefore, sidewalk, curb, and gutter must be provided to front the entire parcel. Authority for this position is found under the City's Comprehensive Plan Section 3.3.2; Implementation Measure 3.3.2.c.;

Implementation Measure 3.3.2.d; and the City's Development Code Section 4.236. Development is defined in Code Section 4.001, subsection 79.

Based on the foregoing, the Development Review Board has three options to consider at the upcoming DRB hearing:

Option 1: Approve the original staff report, findings of fact, conclusionary findings and conditions of approval in case file AR14-0077 (Exhibit A1). This action would deny the appeal. The applicant would then be free to either abandon the application, comply with the required conditions, or appeal the DRB decision to City Council.

Option 2: Approve the proposed revised staff report, findings of fact, conclusionary findings and conditions of approval in case file DB15-0006 (Exhibit A2). The proposed changes are being recommended by staff to give more clarity to the DRB and to the applicant, as well as to give the applicant some alternatives options with respect to implementation of the challenged condition. The applicant would then be free to abandon the application, comply with the required revised or original conditions, or appeal the DRB decision to City Council. These proposed revisions are highlighted in the revised staff report to show all as additions and strike-outs to the original staff report for DRB and applicant ease of reference.

Option 3: The DRB could reject portions of the recommended revised staff report by modifying conditions, applying new conditions, or removing conditions, should the DRB find that the applicant has sustained the burden of proving that the staff conditions are incorrect or not proportionate and therefore not legally permissible.

EXHIBITS (AR14-0077):

The following exhibits are entered into the public record for the Class 2 Administrative Review of Tentative Land Partition Application in AR14-0077.

A1. Original Staff Report
B. Applicant's Submittal Notebook, as follows:
B1. Applicant's Narrative, dated 10/21/2014
B2. Completed City of Wilsonville Application Form
B3. Public Record Report for New Subdivision, dated 09/04/2014
B4. Preliminary Partition Plat Plan
B5. Vicinity Map
B6. Tax Lot Information
B7. Certification of Assessment and Liens
B8. Description of No-Construction Easement

C1. Tax Map
C2. Case File 03DB43, Findings E19, E30, and Condition of Approval DRB D3
C3. Case File 03DB43 of Exhibit 44

EXHIBITS (DB15-0006):

The following exhibits are entered into the public record for the appeal to the DRB in appeal application DB15-0006 as submitted.

Staff Report:

A2. Revised Staff Report (this one), including Proposed Revised Findings of Fact, Conditions of Approval and Conclusionary Findings. (Changes to the original are shown in redline for DRB and applicant ease of review.)
A3. PowerPoint presentation.
A4. Memorandum to Development Review Board members from Blaise Edmonds and Barbara Jacobson, dated February 12, 2015 Re: Director's Decisions/Applicant Appeal
A5*. *Memorandum from Barbara Jacobson, Assistant City Attorney, dated February 20, 2015, providing a legal response to the Appeal Letter submitted by the Applicant. (Exhibit B10)

Applicant's Written and Graphic Materials:

B9. Letter of appeal, dated January 17, 2015.
B10. Letter entitled "Appeal Pursuant to Section 4.022" submitted by the Applicant, Ronald Downs PC, dated February 13, 2015.
B11. Bound booklet titled, "Appeal of Downs Partition Plat #AR14-0077 Index", containing colored photographs and discussing the opposition to Condition of Approval PFA-27. Distributed by the Applicant at the meeting.
B12. Multiple-page, stapled packet, "II. Takings Issue...The Nollan "Nexus" Test" printed from OSB Legal Publications. Distributed by the Applicant at the meeting.
B13. Multiple-page, stapled packet, titled, "Subdivision Law and Growth Management Database updated November 2014; Chapter 6. Financing Capital Improvements References." Distributed by the Applicant at the meeting.
B14. Stapled, 9-page packet, titled, "US Department of Justice Title II Highlights" discussing ADA requirements. Distributed by the Applicant at the meeting.

B15. Stapled, 11-page packet, titled, "US Department of Justice Title III Highlights" discussing ADA requirements. Distributed by the Applicant at the meeting.

B16. Stapled, 5-page packet, Louis F. Schultz and Anna May Schultz, Appellants v. City of Grants Pass Oregon Court of Appeals case. Distributed by the Applicant at the meeting.

Development Review Team: None submitted

D1. General Correspondence:

D1. Letters (neither For nor Against): Email received February 23, 2015 from Wayne Kirk.

D2. Letters (In Favor): None submitted

D3. Letters (Opposed): None submitted

DB15-0006 - ~~PROPOSED~~ *APPROVED* REVISED CONDITIONS OF APPROVAL:

PD = Planning Division Conditions
PF = City Engineering Division Conditions

Bold/Italic = New words

Planning Conditions:	
PDA1.	Approval of the partition is effective for two (2) years from the date of the notice of decision. Time extensions may be granted per Section 4.023 of the City's Development Code. The Applicant/***Owner*** shall submit final plat application within two (2) years of date of the notice of decision.
PDA2.	The final plat for the land partition shall be in substantial compliance with the approved tentative plat and narrative submitted to the Planning Division as part of this application.
PDA3.	The Applicant/Owner shall provide the City's Engineering and Planning Division with a copy of the final plat of the land partition recorded with the Clackamas County Surveyor's Office.
PDA4.	Any improvements installed shall conform to the City's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards.
PDA5.	Any utilities installed as part of development on the property shall be installed underground.
PDA6.	A Reduced Setback Agreement shall be recorded concurrently with the final plat.
PDA7.	The final plat shall not display the ten-foot No Construction Easement, nor shall the proposed building outline for the southern parcel of the partition.
PDA8.	Applicant/Owner shall waive the right of remonstrance against any local improvement district that may be formed to provide public improvements to serve the subject site. Before the start of construction, a waiver of right to remonstrance shall be submitted to the City Attorney for review. See Finding 51.

Engineering Division Conditions:

New development on the two lots shall be in compliance with the following Engineering conditions of approval.

Standard Comments:

PFA1. All construction or improvements to public works facilities shall be in conformance to the City of Wilsonville Public Works Standards - 2014.

PFA2. Applicant shall submit insurance requirements to the City of Wilsonville in the following amounts:

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$2,000,000
Each Occurrence	$2,000,000
Automobile Insurance	$1,000,000
Fire Damage (any one fire)	$50,000
Medical Expense (any one person)	$10,000

PFA3. No construction of, or connection to, any existing or proposed public utility/improvements will be permitted until all plans are approved by Staff, all fees have been paid, all necessary permits, right-of-way and easements have been obtained and Staff is notified a minimum of 24 hours in advance.

PFA4. All public utility/improvement plans submitted for review shall be based upon a 22" x 34" format and shall be prepared in accordance with the City of Wilsonville Public Work's Standards.

PFA5. Plans submitted for review shall meet the following general criteria:

a. Utility improvements that shall be maintained by the public and are not contained within a public right-of-way shall be provided a maintenance access acceptable to the City. The public utility improvements shall be centered in a minimum 15-ft. wide public easement for single utilities and a minimum 20-ft. wide public easement for two parallel utilities and shall be conveyed to the City on its dedication forms.
b. Design of any public utility improvements shall be approved at the time of the issuance of a Public Works Permit. Private utility improvements are subject to review and approval by the City Building Department.
c. In the plan set for the PW Permit, existing utilities and features, and proposed new private utilities shall be shown in a lighter, grey print. Proposed public improvements shall be shown in bolder, black print.
d. All elevations on design plans and record drawings shall be based on NAVD 88 Datum.
e. All proposed on and off-site public/private utility improvements shall comply with the State of Oregon and the City of Wilsonville requirements and any other applicable codes.

f. Design plans shall identify locations for street lighting, gas service, power lines, telephone poles, cable television, mailboxes and any other public or private utility within the general construction area.
g. As per City of Wilsonville Ordinance No. 615, all new gas, telephone, cable, fiber-optic and electric improvements etc. shall be installed underground. Existing overhead utilities shall be undergrounded wherever reasonably possible.
h. Any final site landscaping and signing shall not impede any proposed or existing driveway or interior maneuvering sight distance.
i. Erosion Control Plan that conforms to City of Wilsonville Ordinance No. 482.
j. Existing/proposed right-of-way, easements and adjacent driveways shall be identified.
k. All engineering plans shall be stamped by a Professional Engineer registered in the State of Oregon.

PFA6. Submit plans in the following general format and order for all public works construction to be maintained by the City:

a. Cover sheet
b. City of Wilsonville construction note sheet
c. General construction note sheet
d. Existing conditions plan.
e. Erosion control and tree protection plan.
f. Site plan. Include property line boundaries, water quality pond boundaries, sidewalk improvements, right-of-way (existing/proposed), easements (existing/proposed), and sidewalk and road connections to adjoining properties.
g. Grading plan, with 1-foot contours.
h. Composite utility plan; identify storm, sanitary, and water lines; identify storm and sanitary manholes.
i. Detailed plans; show plan view and either profile view or provide i.e.'s at all utility crossings; include laterals in profile view or provide table with i.e.'s at crossings; vertical scale 1"= 5', horizontal scale 1"= 20' or 1"= 30'.
j. Street plans.
k. Storm sewer/drainage plans; number all lines, manholes, catch basins, and cleanouts for easier reference
l. Water and sanitary sewer plans; plan; number all lines, manholes, and cleanouts for easier reference.
m. Detailed plan for storm water detention facility (both plan and profile views), including water quality orifice diameter and manhole rim elevations. Provide detail of inlet structure and energy dissipation device. Provide details of drain inlets, structures, and piping for outfall structure. Note that although storm water detention facilities are typically privately maintained they will be inspected by engineering, and the plans must be part of the Public Works Permit set.
n. Detailed plan for water quality facility (both plan and profile views). Note that although storm water quality facilities are typically privately maintained they will be inspected by Natural Resources, and the plans must be part of the Public Works Permit set.
o. Composite franchise utility plan.
p. City of Wilsonville detail drawings.
q. Illumination plan.

r. Striping and signage plan.
s. Landscape plan.

PFA7.	Design engineer shall coordinate with the City in numbering the sanitary and stormwater sewer systems to reflect the City's numbering system. Video testing and sanitary manhole testing will refer to City's numbering system.
PFA8.	The applicant shall install, operate and maintain adequate erosion control measures in conformance with the standards adopted by the City of Wilsonville Ordinance No. 482 during the construction of any public/private utility and building improvements until such time as approved permanent vegetative materials have been installed.
PFA9.	Applicant shall work with City's Natural Resources office before disturbing any soil on the respective site. If 5 or more acres of the site will be disturbed applicant shall obtain a 1200-C permit from the Oregon Department of Environmental Quality. If 1 to less than 5 acres of the site will be disturbed a 1200-CN permit from the City of Wilsonville is required.
PFA10.	The applicant shall be in conformance with all stormwater and flow control requirements for the proposed development per the Public Works Standards.
PFA11.	A storm water analysis prepared by a Professional Engineer registered in the State of Oregon shall be submitted for review and approval by the City.
PFA12.	The applicant shall be in conformance with all water quality requirements for the proposed development per the Public Works Standards. If a mechanical water quality system is used, prior to City acceptance of the project the applicant shall provide a letter from the system manufacturer stating that the system was installed per specifications and is functioning as designed.
PFA13.	Storm water quality facilities shall have approved landscape planted and/or some other erosion control method installed and approved by the City of Wilsonville prior to streets and/or alleys being paved.
PFA14.	The applicant shall contact the Oregon Water Resources Department and inform them of any existing wells located on the subject site. Any existing well shall be limited to irrigation purposes only. Proper separation, in conformance with applicable State standards, shall be maintained between irrigation systems, public water systems, and public sanitary systems. Should the project abandon any existing wells, they shall be properly abandoned in conformance with State standards.

PFA15.	All survey monuments on the subject site, or that may be subject to disturbance within the construction area, or the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated or destroyed as a result of any construction, the project shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to Staff.
PFA16.	Sidewalks, crosswalks and pedestrian linkages in the public right-of-way shall be in compliance with the requirements of the U.S. Access Board.
PFA17.	No surcharging of sanitary or storm water manholes is allowed.
PFA18.	The project shall connect to an existing manhole or install a manhole at each connection point to the public storm system and sanitary sewer system.
PFA19.	The applicant shall provide adequate sight distance at all project driveways by driveway placement or vegetation control. Specific designs to be submitted and approved by the City Engineer. Coordinate and align proposed driveways with driveways on the opposite side of the proposed project site.
PFA20.	Access requirements, including sight distance, shall conform to the City's Transportation Systems Plan (TSP) or as approved by the City Engineer. Landscaping plantings shall be low enough to provide adequate sight distance at all street intersections and alley/street intersections.
PFA21.	The applicant shall provide the City with a Stormwater Maintenance and Access Easement (on City approved forms) for City inspection of those portions of the storm system to be privately maintained. Stormwater or rainwater LID facilities may be located within the public right-of-way upon approval of the City Engineer. Applicant shall maintain all LID storm water components and private conventional storm water facilities; maintenance shall transfer to the respective homeowners association when it is formed.
PFA22.	Applicant shall provide a minimum 6-foot Public Utility Easement on lot frontages to all public right-of-ways.
PFA23.	For any new public easements created with the project the Applicant shall be required to produce the specific survey exhibits establishing the easement and shall provide the City with the appropriate Easement document (on City approved forms).
PFA24.	MYLAR RECORD DRAWINGS: At the completion of the installation of any required public improvements, and before a 'punch list' inspection is scheduled, the Engineer shall perform a record survey. Said survey shall be the basis for the preparation of 'record drawings' which will serve as the physical record of those changes made to the plans and/or specifications, originally

approved by Staff, that occurred during construction. Using the record survey as a guide, the appropriate changes will be made to the construction plans and/or specifications and a complete revised 'set' shall be submitted. The 'set' shall consist of drawings on 3 mil. Mylar and an electronic copy in AutoCAD, current version, and a digitally signed PDF.

PFA25. SUBDIVISION OR PARTITION PLATS:

Paper copies of all proposed subdivision/partition plats shall be provided to the City for review. Once the subdivision/partition plat is approved, applicant shall have the documents recorded at the appropriate County office. Once recording is completed by the County, the applicant shall be required to provide the City with a 3 mil Mylar copy of the recorded subdivision/partition plat.

PFA26. SUBDIVISION OR PARTITION PLATS:

All newly created easements shown on a subdivision or partition plat shall also be accompanied by the City's appropriate Easement document (on City approved forms) with accompanying survey exhibits that shall be recorded immediately after the subdivision or partition plat.

Specific Comments:

PFA27. The City has estimated the costs to reconstruct Canyon Creek Road South to meet the requirements of the Residential Street at $1,135,099.88. The estimated costs of street improvements shall be divided proportionately between all owners of record based on property street frontage along Canyon Creek Road South; this breaks down to $232.82 per foot of property frontage.

Applicant/Owner shall either:

1. Be responsible to submit funds to the City to equal 130% of their estimated proportionate share; City will undertake street reconstruction at some time in the future. For the 150.01 feet of property frontage, this comes to $45,402.93; or
2. Design and construct 150.01 feet of frontage improvements that include curb and gutter, 5-foot sidewalk, stormwater LID for new residence and driveway, and installation of three 4" conduits terminating in vaults at the north and south end of the properties. Applicant shall provide the City a cash deposit for cost to purchase and install a new streetlight equivalent to streetlights recently installed with the adjacent Renaissance Development. Construction and street repair shall be done in accordance with PFA1.

PFA28. Each lot shall be allowed one driveway access onto Canyon Creek Road South.

PFA29. Applicant shall obtain water and sanitary sewer service from the existing systems in Canyon Creek Road South.

PFA30. If stormwater detention and/or water quality facilities are designed for joint usage between the tax lots, maintenance plans or the system(s) shall be required and approved prior to acceptance. The applicant shall be required to establish a homeowners association with responsibility to maintain the private stormwater detention and/or water quality.

Natural Resources Conditions:

The following conditions of approval are based on the material submitted by the applicant. Any subsequent revisions to the submitted plans may require conditions of approval to be modified by staff.

Stormwater Management

NRA1. Pursuant to the Public Works Standards, stormwater facilities are required when proposed development establishes or increases the impervious surface area by more than 5,000 square feet. Development includes new development, redevelopment, and/or partial redevelopment.

NRA2. Submit a drainage report and drainage plans. The report and plans shall demonstrate the proposed stormwater facilities satisfy the requirements of the Public Works Standards.

NRA3. Provide profiles, plan views and specifications for the proposed stormwater facilities consistent with the requirements of the Public Works Standards.

NRA4. Pursuant to the Public Works Standards, the applicant shall submit a maintenance plan (including the City's stormwater maintenance and access easement) for the proposed stormwater facilities prior to approval for occupancy of the associated development.

NRA5. Pursuant to the Public Works Standards, access shall be provided to all areas of the proposed stormwater facilities. At a minimum, at least one access shall be provided for maintenance and inspection.

Other

NRA6. Pursuant to the City of Wilsonville's Ordinance No. 482, the applicant shall submit an erosion and sedimentation control plan. The following techniques and methods shall be incorporated, where necessary:

a. Gravel construction entrance;
b. Stockpiles and plastic sheeting;
c. Sediment fence;
d. Inlet protection (Silt sacks are recommended);
e. Dust control;
f. Temporary/permanent seeding or wet weather measures (e.g. mulch);
g. Limits of construction; and
h. Other appropriate erosion and sedimentation control methods.

NRA7. The applicant shall comply with all applicable state and federal requirements for the proposed construction activities (e.g., DEQ NPDES #1200–CN permit).

Exhibit A2 - FINDINGS OF FACT:

1. The statutory 120-day time limit begun with the date that staff rendered the application for the Tentative Partition complete. The Tentative Partition application (AR14-0077) was deemed complete on December 4, 2014. Thus the City, including appeals, before May 4, 2015, must render a final decision.

2. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	PDR-3	Single-family residential
East:	RA-H	SW Canyon Creek Rd. South, Single-family residential
South:	PDR-3	Single-family residential
West:	PDR-1	Single-family residential

3. The subject site contains an existing single-family home.

5. The Applicant has complied with Sections 4.210 and 4.233 pertaining to review procedures and submittal requirements for review of an appeal.

Exhibit A2 - GENERAL INFORMATION

Section 4.008 Application Procedures-In General: This section lists general application procedures applicable to a number of types of land use applications and also lists unique features of Wilsonville's development review process.

The application is being processed in accordance with the applicable general procedures of this Section. These criteria are met.

Section 4.009 Who May Initiate Application: ***Except for a Specific Area Plan (SAP), applications involving specific sites may be filed only by the owner of the subject property, by a unit of government that is in the process of acquiring the property, or by an agent who has been authorized by the owner, in writing, to apply.***

Signed application form has been submitted by the property owners.

Subsection 4.010 (.02) Pre-Application Conference: This section lists the pre-application process

A pre-application conference was held in 2014 for the tentative partition application – AR14-0077 in accordance with this subsection. These criteria are satisfied.

Subsection 4.011 (.02) B. Lien Payment before Application Approval: **City Council Resolution No. 796 precludes the approval of any development application without the prior payment of all applicable City liens for the subject property. Applicants shall be encouraged to contact the City**

Finance Department to verify that there are no outstanding liens. If the Planning Director is advised of outstanding liens while an application is under consideration, the Director shall advise the applicant that payments must be made current or the existence of liens will necessitate denial of the application.

No applicable liens exist for the subject property. The application for the appeal can thus move forward. This criterion is satisfied.

Subsection 4.035 (.04) A. General Site Development Permit Submission Requirements: An application for a Site Development Permit shall consist of the materials specified as follows, plus any other materials required by this Code." Listed 1. through 6.j.

The applicant has provided all of the applicable general submission requirements contained in this subsection. These criteria are satisfied.

Section 4.110 Zoning-Generally: The use of any building or premises or the construction of any development shall be in conformity with the regulations set forth in this Code for each Zoning District in which it is located, except as provided in Sections 4.189 through 4.192. The General Regulations listed in Sections 4.150 through 4.199 shall apply to all zones unless the text indicates otherwise.

This tentative partition with the city conditions of approval is in conformity with the RA-H zone and general development regulations listed in Sections 4.150 through 4.199 have been applied in accordance with this Section. These criteria are satisfied.

Section 4.009(.01) Ownership: Who may initiate application

The application has been submitted by the property owners meeting the above criteria.

Sections 4.013-4.031, 4.113, 4.118, 4.124 Review procedures and submittal requirements

The required public notices have been sent and all proper notification procedures have been satisfied. The applicant has complied with these sections of the Code.

Section 4.120 – Residential Agricultural – Holding Zone (RA-H)

The subject property is designated Residential – 4 to 5 dwelling units an acre on the Comprehensive Plan Map and is zoned Residential Agricultural – Holding Zone (RA-H). The RA-H Zone allows residential outright.

Section 4.022. Appeal and Call-up Procedures.
(.01) Administrative Action Appeals. A decision by the Planning Director on issuance of a Site Development Permit may be appealed. Such appeals shall be heard by the Development Review Board for all quasi-judicial land use matters except expedited land divisions, which may be appealed to a referee selected by the City to consider such cases. Only the applicant may appeal a Class I decision unless otherwise specified in Section 4.030, and such appeals shall be filed, including all of the required particulars and filing fee, with the City recorder as provided in this Section. Any affected party may appeal a Class II decision by filing an appeal, including all of the required particulars and filing fee, with the City Recorder within fourteen (14) calendar days of notice of the decision. Either panel of the Development Review Board, or both panels if convened together, may also initiate a call-

up of the Director's decision by motion, without the necessity of paying a filing fee, for matters other than expedited land divisions. The notice of appeal shall indicate the nature of the action or interpretation that is being appealed or called up and the matter at issue will be a determination of the appropriateness of the action or interpretation of the requirements of the Code.

(.04) Notice. Legal notice of a hearing on an appeal shall set forth:
A. The date of the hearing.
B. The issue(s) being appealed. C. Whether the review will be on the record or whether new evidence will be accepted, if known.

The application is being processed in accordance with the applicable general procedures of this Section including legal notice requirements. The applicant's representative is requesting de novo review of the appeal. Section 4.022(.04) is met.

Section 4.022(.05) Scope of Review.
A. At its discretion, the hearing body may limit an appeal or review to a review of the record and a hearing for receipt of oral arguments regarding the record, or may accept new evidence and testimony. Except, however, that the standard of review on an appeal or call up of a staff decision to be heard by the Development Review Board is de novo.
B. The reviewing body shall issue an order stating the scope of review on appeal to be one of the following:
1. Restricted to the record made on the decision being appealed.
2. Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.
3. A de novo hearing on the merits.

The subject application involves an appeal of a staff decision. Thus, as provided in Section 4.002(.05) the appeal of this staff decision to the DRB is de novo.

Section 4.022(.07) Review Consisting of Additional Evidence or De Novo Review.
A. Except as otherwise specified in this Code, or required by State law, the reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing if it is satisfied that that additional testimony or other evidence could not reasonably have been presented at the prior hearing. The reviewing body shall consider all of the following in making such a decision.
1. Prejudice to the parties.
2. Convenience or availability of evidence at the time of the initial hearing.
3. Surprise to opposing parties.
4. The competency, relevancy and materiality of the proposed testimony or other evidence.
5. Such other factors as may be determined by the reviewing body to be appropriate.
B. "De novo hearing" shall mean a hearing by the review body as if the action had not been previously heard and as if no decision had been rendered, except that all testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review.

Because the standard of review on an appeal of a staff decision to the DRB is generally by its nature de novo, meaning all matters may be considered and new evidence received, these criteria are satisfied by the nature of the type of appeal.

Exhibit A1
CONCLUSIONARY FINDINGS – AR14-0077

STAFF REPORT
WILSONVILLE PLANNING DIVISION
LAND PARTITION - DOWNS
ADMINISTRATIVE REVIEW AND DECISION

DATE OF REPORT: **January 22, 2015**

APPLICATION NO.: **AR14-0077**

REQUEST: The applicants, Gerald and Joanne Downs, together with their representative, Ronald Downs, are requesting administrative approval of a land partition of 28205 SW Canyon Creek Road South, located between SW Summerton Street and Boeckman Road on the west side of SW Canyon Creek Road South. The land partition would allow for the existing home to remain, as well as the creation of one additional parcel to the south. This request is being processed through the Class II Administrative Review process.

LOCATION: The subject property is located at 28205 SW Canyon Creek Road South, on the west side of SW Canyon Creek Road South. The subject site more specifically described in tax records as Tax Lot 2700 in Section 13BA, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

OWNER/APPLICANT: Gerald and Joanne Downs

APPLICANT'S REPRESENTATIVE: Ronald Downs

COMPREHENSIVE PLAN MAP DESIG.: Residential – 4 to 5 dwelling units an acre

ZONE MAP CLASSIFICATION: Planned Development Residential (PDR-3)

Applicable Review Criteria:
City of Wilsonville Planning and Land Development Ordinance: Sections 4.008 through 4.015; 4.030(.01)(B)(5); 4.034(.05); 4.035; 4.035(.03); 4.113; 4.118; 4.124.3; 4.167; 4.177; 4.202; 4.210; 4.236; 4.237; 4.262; and 4.300-4.320

ACTION TAKEN: Approval of the application, together with conditions of approval, as found beginning on page 15 of this report.

STAFF REVIEWERS: Jennifer Scola, Assistant Planner; Blaise Edmonds, Manager of Current Planning; and, Steve Adams, Development Engineering Manager

EXHIBITS:

A1. Staff Report (this document)

B. Applicant's Submittal Notebook, as follows:
B1. Applicant's Narrative, dated 10/21/2014
B2. Completed City of Wilsonville Application Form
B3. Public Record Report for New Subdivision, dated 09/04/2014
B4. Preliminary Partition Plat Plan
B5. Vicinity Map
B6. Tax Lot Information
B7. Certification of Assessment and Liens
B8. Description of No-Construction Easement

C1. Tax Map
C2. Case File 03DB43, Findings E19, E30, and Condition of Approval DRB D3
C3. Case File 03DB43 of Exhibit 44

FINDINGS OF FACT:

1. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	PDR-3	Single-family residential
East:	RA-H	SW Canyon Creek Rd. South, Single-family residential
South:	PDR-3	Single-family residential
West:	PDR-1	Single-family residential

2. The Comprehensive Plan does not place this site in an Area of Special Concern.

3. The subject site contains an existing single-family home.

5. The Applicant has complied with Sections 4.210 and 4.233 pertaining to review procedures and submittal requirements for review of a tentative partition plat.

SUMMARY OF PROPOSAL:

The project summary submitted by the Applicant is found in the Applicant's narrative (Exhibit B1), and on accompanying drawing (Exhibit B5). Except where a discrepancy is determined to exist, and may be discussed in this report, the Applicant's will not be duplicated here.

CONCLUSIONARY FINDINGS:

Sections 4.008-4.009 Application Procedures and Applicant's Rights

1. The Applicant's submitted documents meet these code criteria.

Section 4.014 Burden of Proof

2. Subsection 4.014 provides that the Applicant bears the burden of proving that the necessary findings of fact can be made for approval of any land use or development application. Staff finds that the Applicant has provided sufficient information proving the necessary findings of fact.

Subsection 4.030(.01)(B)(5) Class II Administrative Review - Land Partitions

3. This subsection directs land partitions, other than expedited land partitions, to be processed according to the Class II Administrative Review procedures pursuant to Section 4.210. In addition, it directs approval of land partitions to be based on the following criteria:

a. The applicant has made a complete submittal of materials for the Director to review, as required by Section 4.210.

4. The Applicant has submitted the required documents, satisfying this subsection.

b. The proposed plan meets the requirements of the Code regarding minimum lot size and yard setbacks.

5. The tentative plat demonstrates that two (2) proposed parcels meet the requirements for minimum lot size. The northernmost lot of the two (2) proposed parcels does not meet minimum setback requirements; however condition of approval PDA6 requires that a Reduced Setback Agreement be recorded with the final plat.

c. The approval will not impede or adversely affect the orderly development of any adjoining property or access thereto.

6. Access to adjoining properties will not be affected, and the abutting sites have already been developed. This provision is met.

d. The public right-of-way bordering the lots will meet City standards.

7. An Engineering Condition of Approval, PFA4, will ensure any improvements in the right-of-way bordering the lots meet City standards.

e. Any required public dedications of land have been approved for acceptance by the City and will be recorded with the County prior to final plat approval.

8. No dedication of land to the public is required as part of this partition. This provision is met.

f. Adequate easements are proposed where an existing utility line crosses or encroaches upon any other parcel to be created by the partition.

9. No existing utility lines cross or encroach upon any of the proposed parcels as discussed in this subsection. This provision does not apply.

g. All public utilities and facilities are available or can be provided prior to the issuance of any development permit for any lot or parcel.

10. Engineering PFA3 ensures that prior to any development permit is issued, all public utility and facility plans will be submitted and reviewed. This provision is satisfied.

h. Roads extended or created as a result of the land partition will meet City standards.

11. No roads will be extended or created as result of the proposed partition. This provision does not apply.

Subsection 4.034(.05) Application Requirements

12. The Applicant has submitted all of the materials required by this subsection.

Subsection 4.035(.03) Procedure for Processing Class II - Administrative Review.

13. The Applicant's proposal will, together with the attached conditions of approval, result in conformance with applicable provisions of the City's Planning and Land Development Ordinance. Staff has followed the provisions of this code section. Staff notes that this approval is contingent upon final plat approval by the City and recordation of the final approved partition plat with the Clackamas County Clerk's Office.

Section 4.113 Standards for Residential Development in All Zones

14. Provisions of this section regarding landscaping are not applicable to partitions. The area of the two proposed parcels will allow all other applicable provisions of this section, including setbacks, to be met.

Sections 4.124 Standards Applying to All Planned Development Residential Zones
Subsection 4.124 (.01)-(.04) Uses allowed in Planned Development Residential Zones

15. These subsections lists uses associated with the Planned Development Residential Zones. The parcels will be sufficient for a number of uses allowed in the Planned Development Residential Zones.

Subsection 4.124 (.06) Block and Access Standards

16. No new blocks or streets are involved with the proposal.

Section 4.124.3 Planned Development Residential-3 Zone

Subsection 4.124.3 (.01) Average Lot Size

17. The average lot size for a lot in the PDR-3 Zone is 7,000 square feet, of which the proposed parcels exceed 7,000 square feet.

Subsection 4.124.3 (.02) Minimum Lot Size

18. The minimum lot size for PDR-3 Zone is 5,000 square feet. At 8,100 square feet, and 12,150 square feet, the two (2) proposed parcels meet this minimum requirement. This provision is satisfied.

Subsection 4.124.3 (.03) Minimum density at build-out

19. The minimum density at build-out for the PDR-3 Zone is 8,000 square feet. Both proposed parcels would meet this minimum. This provision is satisfied.

Subsection 4.124.3 (.04) Other Standards

20. All other applicable standards will or can be met by the proposed parcels. This provision is satisfied.

Section 4.140 Planned Development Regulations

21. The subject parcel was part of a previously approved Planned Development, subject to this Section. All requirements of this section were found to be satisfied by the development (see case file 03DB43). As shown in Exhibit 44 of Case File 03DB43 (Exhibit C3), the partition of the subject property was anticipated as a future phase of the planned development. Because certain frontage and other requirements were not required at the time of that approval, due to lack of planned development on the parcel at hand, certain development requirements were deferred but must be put into place now that this property is being further partitioned and redeveloped.

Section 4.155 Parking, Loading and Bicycle Parking

22. This section requires that each dwelling provide a minimum of one parking space. The proposed parcel Number Two (2) will enable siting of a future dwelling that will be required to provide one off-street parking space. This criterion is satisfied.

Section 4.167 General Regulations – Access, Ingress and Egress

23. These provisions require that safe access be provided to each of the proposed uses. The proposed parcel Number Two (2) will have direct access to Canyon Creek Road South, and the parcel with the existing structure has a driveway, also taking access from Canyon Creek Road South. This criteria is satisfied.

Section 4.176 Landscaping, Screening and Buffering

24. Because the proposal is for a partition, rather than a subdivision, there are no landscape requirements applicable to the request. While Subsection 4.176(.06)(d) provides for the installation of street trees along the frontage of the proposed parcels, such requirement is appropriately limited to subdivisions, not partitions. This section is not applicable.

Section 4.177 Street Improvement Standards

25. This Subsection requires that all development, which by its definition includes a partition of a property into two or more lots, comply with the requirements of this Section, the Wilsonville Public Works Standards, and the Transportation Plan in rough proportion to the potential impacts of development, including redevelopment. The required options contained in PFA27 satisfy this criterion.

Subsection 4.202 (.04) B. Parcel Partitions Not Allowed that Make Remaining Parcels Less than Allowed in Zone.

26. This subsection does not allow parcel partitions to create parcels less than that allowed in the zone. The minimum parcel size for the Planned Development Residential Zone (PDR-3) is 5,000 square feet. Proposed Parcel 1 will be 12,150 square feet, proposed Parcel 2 will be 8,100 square feet, with both two (2) parcels exceeding the required minimum. This criterion is met. [See also findings for Subsection 4.124.3 (.02), above.]

Section 4.210 Land Divisions - Application Procedure.
Subsection 4.210 (.01) A. Pre-Application Meeting

27. This subsection requires a pre-application meeting as part of the process. While no formal pre-application meeting was held, the applicant did contact staff to understand required submittal materials and the review process. This provision is satisfied.

Subsection 4.210 (.01) B. Tentative Plat Submission

28. This subsection sets forth the submission requirements for tentative plats. The Applicant submitted the required documents, meeting the requirements of this subsection. [See also finding for Subsection 4.030(.01)(B)(5)(a), above.]

Section 4.236 General Requirements – Streets
Subsection 4.236 (.01) Conformity to the Master Plan or Map

29. This subsection requires land partitions to be in harmony with adopted Transportation Master Plans, Bicycle and Pedestrian Master Plans, Park and Recreation Master Plans, and the Master Street Plan. The proposed land partition does not create any new infrastructure associated with these plans, nor is any required. There is no evidence to suggest that the proposed partition would affect the harmony of existing infrastructure with the above plans. This criterion is met.

Subsection 4.236 (.02) A. Relation to Adjoining Street System

30. This subsection requires land partitions to provide for the continuation of the principal streets existing in the adjoining area and proposed streets to be the width required elsewhere in the Wilsonville City Code. No new streets are planned or proposed with this partition. There are no adjoining streets that would continue through the subject property. This criterion does not apply.

Subsection 4.236 (.02) B. Requirement to Submit Prospective Future Street System

31. This subsection requires the submission of prospective future street systems when the land partition does not cover the entire tract. The proposed land partition covers the Applicant's entire tract and no streets are proposed. This criterion does not apply.

Subsection 4.236 (.02) C. Arrangement of Parcels to Allow Future Subdivision

32. This subsection requires the arrangement of streets and parcels to allow for future land partition if allowed by the Comprehensive Plan. The parcels are arranged in a manner to allow the partition, if found compliant with the Comprehensive Plan. This provision is satisfied.

Subsection 4.236 (.03) Conformity with Section 4.177 and Block Standards of Zone.

33. This subsection requires all streets to conform to Section 4.177 of the Wilsonville City Code and block standards of the zone. No new streets or will result from this application. This provision does not apply.

Subsection 4.236 (.04) Creation of Easements

34. This subsection allows the Planning Director to approve easements as a reasonable method to allow vehicular access and adequate utilities to the lots in this two-parcel land

partition. The applicant is required to provide a minimum 6-foot Public Utility Easement on lot frontages to all public right-of-ways See Condition PFA22. This provision is satisfied.

Subsection 4.236 (.08) Existing Streets

35. No additional right-of-way is being required as part of the proposed partition. Therefore, the standards in this subsection are not affected.

Section 4.237 General Requirements – Other.
Subsection 4.237 (.01) Block Standards

36. This subsection provides standards for new blocks created by land partitions. No block creation is involved in the proposed land partition. These criteria do not apply.

Subsection 4.237 (.02) Easements

37. This subsection requires easements for existing and needed utility lines. As indicated in Finding 34, above, a six-foot-wide public utility easement will be required along the frontage of the two parcels. Condition of Approval PFA22 requires a six-foot-wide public utility easement along the Canyon Creek Road South frontage for potential future franchise utilities.

Subsection 4.237 (.03) Pedestrian and Bicycle Pathway

38. This subsection requires an improved public path for blocks that exceed the length standard for the zone they are located in. No new blocks are involved in this partition. Compliance with this subsection is not altered by the proposed partition.

Subsection 4.237 (.04) Street Tree Planting

39. This subsection presents requirements for street trees, as applicable. No street trees are proposed by the Applicant. Because the application is for a partition, rather than a subdivision, street trees are not required. This provision is satisfied.

Subsection 4.237 (.05) Parcel Size, Shape, Width, and Orientation.

40. This subsection requires the parcels resulting from the land partition have the size, width, shape and orientation appropriate for the location of the land partition and for the development and use that are contemplated as well as for the zone in which they are located. Proposed parcel sizes, widths, shapes and orientation are appropriate for contemplated future development and are in conformance with the PDR-3 requirements. The proposed partition complies with the standards of this subsection.

Subsection 4.237 (.06) Access

41. This subsection requires parcels resulting from the land partition have the minimum frontage of public streets. The parcels resulting from proposed land partition meet the street frontage requirements for the zone. This provision is met.

Subsection 4.237 (.07) Through Lots

42. The current parcel is not a through lot, and the proposed parcel also will not be a through lot. The applicable provisions of this subsection are satisfied.

Subsection 4.237 (.08) Parcel Side Lines

43. This subsection requires side parcel lines be at right angles to the street the parcels face as far as practical. All parcel lines are at right angles. This provision is met.

Subsection 4.237 (.10) Building Line

44. This subsection gives the Planning Director authority to create building setback lines to be recorded on the plat to allow for future repartition or other development or to support other findings. In a separate Class I Administrative Application, the Applicant is seeking a setback agreement to allow reduced setbacks between the existing house and the future house at a side property line.

Subsection 4.237 (.11) Build-to Line

45. This subsection gives the Planning Director authority to create build-to lines for the development. The Applicant is not requesting nor is the Planning Director requiring the creation of build-to-lines.

Section 4.250 Legal Lots of Record

46. The existing parcel is a legal lot of record. Upon satisfaction of conditions of approval and recordation of a final plat, the one (1) resulting parcel will also be a legal lot of record, meeting this provision.

Section 4.260 Improvements-Procedure

47. This section requires, in addition to other requirements, improvements installed by the developer to conform to the requirements of Wilsonville's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards. Condition of Approval PDA4 will ensure the requirements of this section are met.

Section 4.262 Improvements-Requirements

48. This section presents improvement requirements for individual improvements and utilities including curbs, sidewalks, sewer, and water. Engineering Conditions will ensure the requirements of this section are met.

Section 4.264 Improvements - Assurance

49. This section requires assurance for improvements. An engineering condition of approval will ensure the requirements of this section are met.

Section 4.320 Underground Utility Requirements

50. This section requires all utilities to be underground. Condition of Approval PDA5 will ensure any utilities are installed underground.

ACTION TAKEN AND CONDITIONS OF APPROVAL FOR REQUEST AR14-0077:

Based on the analysis above, and conclusionary findings 1 through 50 the request is hereby **approved,** together with the following conditions of approval:

This decision approves **only** the tentative partition described in the request above, as modified by the conditions below, and is on file with the City of Wilsonville's Planning Division as Case File AR14-0077.

Planning Conditions:	
PDA1.	Approval of the partition is effective for two (2) years from the date of the notice of decision. Time extensions may be granted per Section 4.023 of the City's Development Code. The Applicant shall submit final plat application within two (2) years of date of the notice of decision.
PDA2.	The final plat for the land partition shall be in substantial compliance with the approved tentative plat and narrative submitted to the Planning Division as part of this application.
PDA3.	The Applicant/Owner shall provide the City's Engineering and Planning Division with a copy of the final plat of the land partition recorded with the Clackamas County Surveyor's Office.
PDA4.	Any improvements installed shall conform to the City's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards.
PDA5.	Any utilities installed as part of development on the property shall be installed underground.
PDA6.	A Reduced Setback Agreement shall be recorded concurrently with the final plat.

PDA7.	The final plat shall not display the ten-foot No Construction Easement, nor shall the proposed building outline for the southern parcel of the partition.

Engineering Division Conditions:

New development on the two lots shall be in compliance with the following Engineering conditions of approval.

Standard Comments:

PFA 1. All construction or improvements to public works facilities shall be in conformance to the City of Wilsonville Public Works Standards - 2014.

PFA 2. Applicant shall submit insurance requirements to the City of Wilsonville in the following amounts:

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$2,000,000
Each Occurrence	$2,000,000
Automobile Insurance	$1,000,000
Fire Damage (any one fire)	$50,000
Medical Expense (any one person)	$10,000

PFA 3. No construction of, or connection to, any existing or proposed public utility/improvements will be permitted until all plans are approved by Staff, all fees have been paid, all necessary permits, right-of-way and easements have been obtained and Staff is notified a minimum of 24 hours in advance.

PFA 4. All public utility/improvement plans submitted for review shall be based upon a 22" x 34" format and shall be prepared in accordance with the City of Wilsonville Public Work's Standards.

PFA 5. Plans submitted for review shall meet the following general criteria:

l. Utility improvements that shall be maintained by the public and are not contained within a public right-of-way shall be provided a maintenance access acceptable to the City. The public utility improvements shall be centered in a minimum 15-ft. wide public easement for single utilities and a minimum 20-ft. wide public easement for two parallel utilities and shall be conveyed to the City on its dedication forms.

m. Design of any public utility improvements shall be approved at the time of the issuance of a Public Works Permit. Private utility improvements are subject to review and approval by the City Building Department.

n. In the plan set for the PW Permit, existing utilities and features, and proposed new private utilities shall be shown in a lighter, grey print. Proposed public improvements shall be shown in bolder, black print.

o. All elevations on design plans and record drawings shall be based on NAVD 88 Datum.
p. All proposed on and off-site public/private utility improvements shall comply with the State of Oregon and the City of Wilsonville requirements and any other applicable codes.
q. Design plans shall identify locations for street lighting, gas service, power lines, telephone poles, cable television, mailboxes and any other public or private utility within the general construction area.
r. As per City of Wilsonville Ordinance No. 615, all new gas, telephone, cable, fiber-optic and electric improvements etc. shall be installed underground. Existing overhead utilities shall be undergrounded wherever reasonably possible.
s. Any final site landscaping and signing shall not impede any proposed or existing driveway or interior maneuvering sight distance.
t. Erosion Control Plan that conforms to City of Wilsonville Ordinance No. 482.
u. Existing/proposed right-of-way, easements and adjacent driveways shall be identified.
v. All engineering plans shall be stamped by a Professional Engineer registered in the State of Oregon.

PFA 6. Submit plans in the following general format and order for all public works construction to be maintained by the City:

t. Cover sheet
u. City of Wilsonville construction note sheet
v. General construction note sheet
w. Existing conditions plan.
x. Erosion control and tree protection plan.
y. Site plan. Include property line boundaries, water quality pond boundaries, sidewalk improvements, right-of-way (existing/proposed), easements (existing/proposed), and sidewalk and road connections to adjoining properties.
z. Grading plan, with 1-foot contours.
aa. Composite utility plan; identify storm, sanitary, and water lines; identify storm and sanitary manholes.
bb. Detailed plans; show plan view and either profile view or provide i.e.'s at all utility crossings; include laterals in profile view or provide table with i.e.'s at crossings; vertical scale 1"= 5', horizontal scale 1"= 20' or 1"= 30'.
cc. Street plans.
dd. Storm sewer/drainage plans; number all lines, manholes, catch basins, and cleanouts for easier reference
ee. Water and sanitary sewer plans; plan; number all lines, manholes, and cleanouts for easier reference.
ff. Detailed plan for storm water detention facility (both plan and profile views), including water quality orifice diameter and manhole rim elevations. Provide detail of inlet structure and energy dissipation device. Provide details of drain inlets, structures, and piping for outfall structure. Note that although storm water detention facilities are typically privately maintained they will be inspected by engineering, and the plans must be part of the Public Works Permit set.

gg. Detailed plan for water quality facility (both plan and profile views). Note that although storm water quality facilities are typically privately maintained they will be inspected by Natural Resources, and the plans must be part of the Public Works Permit set.
hh. Composite franchise utility plan.
ii. City of Wilsonville detail drawings.
jj. Illumination plan.
kk. Striping and signage plan.
ll. Landscape plan.

PFA 7.	Design engineer shall coordinate with the City in numbering the sanitary and stormwater sewer systems to reflect the City's numbering system. Video testing and sanitary manhole testing will refer to City's numbering system.
PFA 8.	The applicant shall install, operate and maintain adequate erosion control measures in conformance with the standards adopted by the City of Wilsonville Ordinance No. 482 during the construction of any public/private utility and building improvements until such time as approved permanent vegetative materials have been installed.
PFA 9.	Applicant shall work with City's Natural Resources office before disturbing any soil on the respective site. If 5 or more acres of the site will be disturbed applicant shall obtain a 1200-C permit from the Oregon Department of Environmental Quality. If 1 to less than 5 acres of the site will be disturbed a 1200-CN permit from the City of Wilsonville is required.
PFA 10.	The applicant shall be in conformance with all stormwater and flow control requirements for the proposed development per the Public Works Standards.
PFA 11.	A storm water analysis prepared by a Professional Engineer registered in the State of Oregon shall be submitted for review and approval by the City.
PFA 12.	The applicant shall be in conformance with all water quality requirements for the proposed development per the Public Works Standards. If a mechanical water quality system is used, prior to City acceptance of the project the applicant shall provide a letter from the system manufacturer stating that the system was installed per specifications and is functioning as designed.
PFA 13.	Storm water quality facilities shall have approved landscape planted and/or some other erosion control method installed and approved by the City of Wilsonville prior to streets and/or alleys being paved.
PFA 14.	The applicant shall contact the Oregon Water Resources Department and inform them of any existing wells located on the subject site. Any existing well shall be limited to irrigation purposes only. Proper separation, in conformance with applicable State standards, shall be maintained between irrigation systems, public water systems, and public sanitary systems. Should the project abandon any existing wells, they shall be properly abandoned in conformance with State standards.

PFA 15.	All survey monuments on the subject site, or that may be subject to disturbance within the construction area, or the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated or destroyed as a result of any construction, the project shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to Staff.
PFA 16.	Sidewalks, crosswalks and pedestrian linkages in the public right-of-way shall be in compliance with the requirements of the U.S. Access Board.
PFA 17.	No surcharging of sanitary or storm water manholes is allowed.
PFA 18.	The project shall connect to an existing manhole or install a manhole at each connection point to the public storm system and sanitary sewer system.
PFA 19.	The applicant shall provide adequate sight distance at all project driveways by driveway placement or vegetation control. Specific designs to be submitted and approved by the City Engineer. Coordinate and align proposed driveways with driveways on the opposite side of the proposed project site.
PFA 20.	Access requirements, including sight distance, shall conform to the City's Transportation Systems Plan (TSP) or as approved by the City Engineer. Landscaping plantings shall be low enough to provide adequate sight distance at all street intersections and alley/street intersections.
PFA 21.	The applicant shall provide the City with a Stormwater Maintenance and Access Easement (on City approved forms) for City inspection of those portions of the storm system to be privately maintained. Stormwater or rainwater LID facilities may be located within the public right-of-way upon approval of the City Engineer. Applicant shall maintain all LID storm water components and private conventional storm water facilities; maintenance shall transfer to the respective homeowners association when it is formed.
PFA 22.	Applicant shall provide a minimum 6-foot Public Utility Easement on lot frontages to all public right-of-ways.
PFA 23.	For any new public easements created with the project the Applicant shall be required to produce the specific survey exhibits establishing the easement and shall provide the City with the appropriate Easement document (on City approved forms).

PFA 24. MYLAR RECORD DRAWINGS:

At the completion of the installation of any required public improvements, and before a 'punch list' inspection is scheduled, the Engineer shall perform a record survey. Said survey shall be the basis for the preparation of 'record drawings' which will serve as the physical record of those changes made to the plans and/or specifications, originally approved by Staff, that occurred during construction. Using the record survey as a guide, the appropriate changes will be made to the construction plans and/or specifications and a complete revised 'set' shall be submitted. The 'set' shall consist of drawings on 3 mil. Mylar and an electronic copy in AutoCAD, current version, and a digitally signed PDF.

PFA 25. SUBDIVISION OR PARTITION PLATS:

Paper copies of all proposed subdivision/partition plats shall be provided to the City for review. Once the subdivision/partition plat is approved, applicant shall have the documents recorded at the appropriate County office. Once recording is completed by the County, the applicant shall be required to provide the City with a 3 mil Mylar copy of the recorded subdivision/partition plat.

PFA 26. SUBDIVISION OR PARTITION PLATS:

All newly created easements shown on a subdivision or partition plat shall also be accompanied by the City's appropriate Easement document (on City approved forms) with accompanying survey exhibits that shall be recorded immediately after the subdivision or partition plat.

Specific Comments:

PFA27. The City has estimated the costs to reconstruct Canyon Creek Road South to meet the requirements of the Residential Street at $1,135,099.88. The estimated costs of street improvements shall be divided proportionately between all owners of record based on property street frontage along Canyon Creek Road South; this breaks down to $232.82 per foot of property frontage.

PFA28. Each lot shall be allowed one driveway access onto Canyon Creek Road South.

PFA29. Applicant shall obtain water and sanitary sewer service from the existing systems in Canyon Creek Road South.

PFA30. If stormwater detention and/or water quality facilities are designed for joint usage between the tax lots, maintenance plans or the system(s) shall be required and approved prior to acceptance. The applicant shall be required to establish a homeowners association with responsibility to maintain the private stormwater detention and/or water quality.

Natural Resources Conditions:

The following conditions of approval are based on the material submitted by the applicant. Any

subsequent revisions to the submitted plans may require conditions of approval to be modified by staff.	
Stormwater Management	
NRA 1.	Pursuant to the Public Works Standards, stormwater facilities are required when proposed development establishes or increases the impervious surface area by more than 5,000 square feet. Development includes new development, redevelopment, and/or partial redevelopment.
NRA 2.	Submit a drainage report and drainage plans. The report and plans shall demonstrate the proposed stormwater facilities satisfy the requirements of the Public Works Standards.
NRA 3.	Provide profiles, plan views and specifications for the proposed stormwater facilities consistent with the requirements of the Public Works Standards.
NRA 4.	Pursuant to the Public Works Standards, the applicant shall submit a maintenance plan (including the City's stormwater maintenance and access easement) for the proposed stormwater facilities prior to approval for occupancy of the associated development.
NRA 5.	Pursuant to the Public Works Standards, access shall be provided to all areas of the proposed stormwater facilities. At a minimum, at least one access shall be provided for maintenance and inspection.
Other	
NRA 6.	Pursuant to the City of Wilsonville's Ordinance No. 482, the applicant shall submit an erosion and sedimentation control plan. The following techniques and methods shall be incorporated, where necessary: i. Gravel construction entrance; j. Stockpiles and plastic sheeting; k. Sediment fence; l. Inlet protection (Silt sacks are recommended); m. Dust control; n. Temporary/permanent seeding or wet weather measures (e.g. mulch); o. Limits of construction; and p. Other appropriate erosion and sedimentation control methods.
NRA 7.	The applicant shall comply with all applicable state and federal requirements for the proposed construction activities (e.g., DEQ NPDES #1200–CN permit).

Exhibit A2, DB15-0006 - PROPOSED ADDITIONAL FINDINGS:

Section 4.118(03)C. 9. **A waiver of the right of remonstrance by the applicant to the formation of a Local Improvement District (LID) for streets, utilities and/or other public purposes.**

51. In tentative partition approval (AR14-0077) waiver of remonstrance was not included as a condition of approval. Staff is proposing the above requirement be added as condition PDA8.

Section 4.177. Street Improvement Standards. **This section contains the City's requirements and standards for pedestrian, bicycle, and transit facility improvements to public streets, or within public easements. The purpose of this section is to ensure that development, including redevelopment, provides transportation facilities that are safe, convenient, and adequate in rough proportion to their impacts.**

52. To satisfy the foregoing PFA27 requires that the applicant/owner construct sidewalk and integrated road improvements to front only that land that is the subject of this application and not beyond those boundaries. The City Development Code at this Section sets the standards for pedestrian, bicycle and transit facilities for public streets, including curb and sidewalk, to ensure that development, including redevelopment, provides safe convenient and adequate facilities in rough proportion to their impacts. As this property is now being subdivided into two separate lots with two separate homes, the sidewalk /roadway transportation requirements being imposed cover only those properties. City Code requires these improvements to be made at the time of development or redevelopment, and this partition constitutes redevelopment, per Code definition.

Further to this requirement, the City's Comprehensive Plan sets forth the requirements for a connected network of sidewalks and requires, at implementation Measure 3.3.2.d that all gaps in the existing sidewalk network be filled so as to create safe and accessible bicycle and pedestrian facilities. Thus, in accordance with that requirement, as each parcel in the City without sidewalks is developed or redeveloped, the placement of the sidewalk and related curb, gutter and street improvements to current City standards is required to be built by the developer in front of the developer's property, as a proportionate requirement of development. This requirement has been consistently imposed as a developer responsibility as development occurs, thereby resulting in fewer gaps in the sidewalk. Just as the City Code at Section 2.220 requires the property owner to be responsible for the sidewalk repairs that front the owner's property, so does the Code require the property owner/developer to install those same sidewalks as a proportionate condition of development.

State and Federal law requires that all Development conform to the requirements of the Americans with Disabilities Act, thus requiring sidewalks to meet exact construction criteria and connectivity requirements as properties are developed or redeveloped. The applicant has one property that is being redeveloped into two (2) home sites and is therefore required to bring that property up to current ADA requirements.

Section 4.177(.01). **Development and related public facility improvements shall comply with the standards in this section, the Wilsonville Public Works Standards, and the Transportation System Plan, in rough proportion to the potential impacts of the development. Such improvements shall be constructed at the time of development or as provided by Section 4.140, except as modified or waived by the City Engineer for reasons of safety or traffic operations.**

53. See Finding 52.

Section 4.177(.02) Street Design Standards.

A. All street improvements and intersections shall provide for the continuation of streets through specific developments to adjoining properties or subdivisions.

1. Development shall be required to provide existing or future connections to adjacent sites through the use of access easements where applicable. Such easements shall be required in addition to required public street dedications as required in Section 4.236(.04).

54. Canyon Creek Road South fronting the east side of the subject property is a public street. It provides direct connections to existing and future to adjacent sites.

Section 4.177(.03) Sidewalks. **Sidewalks shall be provided on the public street frontage of all development. Sidewalks shall generally be constructed within the dedicated public right-of-way, but may be located outside of the right-of-way within a public easement with the approval of the City Engineer.**

A. Sidewalk widths shall include a minimum through zone of at least five feet. The through zone may be reduced pursuant to variance procedures in Section 4.196, a waiver pursuant to Section 4.118, or by authority of the City Engineer for reasons of traffic operations, efficiency, or safety.

55. See Finding 52.

Section 4.177(.04) Bicycle Facilities. **Bicycle facilities shall be provided to implement the Transportation System Plan, and may include on-street and off-street bike lanes, shared lanes, bike boulevards, and cycle tracks. The design of on-street bicycle facilities will vary according to the functional classification and the average daily traffic of the facility.**

56. Applicant is not required to add Bicycle facilities.

Section 4.236. General Requirements - Streets.

(.01) <u>Conformity to the Transportation System Plan</u>. Land divisions shall conform to and be in harmony with the Transportation Systems Plan, the Bicycle and Pedestrian Master Plan, and the Parks and Recreation Master Plan.

(.02) <u>Relation to Adjoining Street System</u>.
A. A land division shall provide for the continuation of the principal streets existing in the adjoining area, or of their proper projection when adjoining property is not developed, and shall be of a width not less than the minimum requirements for streets set forth in these

regulations. Where, in the opinion of the Planning Director or Development Review Board, topographic conditions make such continuation or conformity impractical, an exception may be made. In cases where the Board or Planning Commission has adopted a plan or plat of a neighborhood or area of which the proposed land division is a part, the subdivision shall conform to such adopted neighborhood or area plan.

57. Based on conditions of approval, all of the above applicable conditions will be met.

Section 4.260. Improvements - Procedures.

In addition to other requirements, improvements installed by the developer, either as a requirement of these regulations or at the developer's own option, shall conform to the requirements of this Code and improvement standards and specifications of the City. The improvements shall be installed in accordance with the City's Public Works Standards.

58. Applicant has the option under PDF 27 of installing or paying the City to perform the work.

Section 4.262. Improvements - Requirements.

(.01) Streets. Streets within or partially within the development shall be graded for the entire right-of-way width, constructed and surfaced in accordance with the Transportation Systems Plan and City Public Works Standards. Existing streets which abut the development shall be graded, constructed, reconstructed, surfaced or repaired as determined by the City Engineer.

59. Design and construction requirements for all public transportation facilities shall be done in conformance with the 2014 Public Works Standards, Section 2, "Transportation Design and Construction Standards." Specific street design standards are found in Section 201.2.00 of the Public Works Standards; detail drawing RD-1015 shows the design standards for Residential Streets.

(.02) Curbs. Curbs shall be constructed in accordance with standards adopted by the City.

60. Curb and gutters are required elements of Residential Streets, per detail drawing RD-1015. Specific design standards for curbs are provided in Section 201.2.24 of the Public Works Standards.

(.03) Sidewalks. Sidewalks shall be constructed in accordance with standards adopted by the City.

61. Sidewalks are required elements of Residential Streets, per detail drawing RD-1015. Specific design standards for sidewalks are provided in Section 201.2.25 of the Public Works Standards.

(.04) Sanitary sewers. When the development is within two hundred (200) feet of an existing public sewer main, sanitary sewers shall be installed to serve each lot or parcel in accordance with standards adopted by the City. When the development is more than two hundred (200) feet from an existing public sewer main, the City Engineer may approve an alternate sewage disposal system.

62. An existing sanitary sewer main is located in Canyon Creek Road South. Applicant is required to install a sanitary sewer service line to the new parcel being created with the partition. Specific design standards for sanitary sewer lateral service lines is provided in Section 401.2.02.f., Section 401.2.02.g., and Section 401.2.02.i. of the Public Works Standards and in detail drawing S-2175.

(.05) Drainage. Storm drainage, including detention or retention systems, shall be provided as determined by the City Engineer.

63. Applicant is required to be in conformance with the 2014 Public Works Standards, Section 3, "Stormwater & Surface Water Design & Construction Standards" for all stormwater, flow control, and water quality facilities installed within the proposed development. Specific design requirements and options are located in numerous subsections of Section 3 and also found in several detail drawings.

(.06) Underground utility and service facilities. All new utilities shall be subject to the standards of Section 4.300 (Underground Utilities). The developer shall make all necessary arrangements with the serving utility to provide the underground services in conformance with the City's Public Works Standards.

64. Underground utility and service facilities are required elements of Residential Streets, per detail drawing RD-1015 and Section 201.2.31.a. of the Public Works Standards. However, with only 150 feet of street improvements, it is not economical to underground the existing overhead franchise utilities. Applicant has been allowed to install three conduits, terminating in vaults, for future use when the City moves forward with undergrounding these utilities. Applicant is also required to provide a 6-foot wide public utility easement per Section 201.2.31.b. of the Public Works Standards and per detail drawing RD-1015.

(.07) Streetlight standards. Streetlight standards shall be installed in accordance with regulations adopted by the City.

65. Streetlights are required elements of Residential Streets, per detail drawing RD-1015. Specific design standards for streetlights are provided in Section 201.9.00 of the Public Works Standards. With existing overhead utility lines, installation of a street light is not possible. Applicant has been required to provide the City with a cash deposit for cost to purchase and install a new streetlight equivalent to streetlights recently installed within nearby development.

(.10) Water. Water mains and fire hydrants shall be installed to serve each lot in accordance with City standards.

66. Water mains and fire hydrants were installed on Canyon Creek Road South in 2005 and no additional requirements were placed on the Applicant.

MEMORANDUM

TO: Development Review Board Members, Panel B

FROM: Barbara Jacobson, Assistant City Attorney

DATE: February 20, 2015

RE: Application No. DB14-0077 and DB15-0006
Gerald and Joanne Downs, Applicant
Ronald Downs, Applicant Representative
Response to Appeal Letter

The following is the City's legal response to the Appeal Letter submitted by the Applicant's Representative, Ron Downs. Please take note that the DRB is not bound to take this legal advice if it believes it to be incorrect, just as the DRB is not bound to accept the findings and conclusions of the staff report. Any DRB decision may be appealed to the City Council and any City Council decision may be appealed to the Land Use Board of Appeals, and thereafter through the Oregon court system.

Summary of the Issue:

The Applicant is appealing Condition PFA 27, which requires certain street improvements, including sidewalk, curb, and gutters (meeting current City requirements for residential street construction), to be placed across the frontage of Applicant's parcel as a condition for the partition of that parcel into two separate lots. This partition is requested to allow the Applicant to cause a second home to be built on the property. The Applicant contends that this requirement, as written, is overbroad and should be reduced to only require street frontage improvements across the front of the parcel where the new home will be located and that no frontage improvements should be required across the other half of the parcel, where an existing home is located. The Applicant states that his argument is based on the nexus and on the proportionality standards set forth in the United States Supreme Court cases of *Dolan v. City of Tigard,* 512 US 374 (1994).

Argument:

Since 1994, many land use decisions have been challenged based on the foregoing standards. In the more recent case of *Brown v. City of Medford*, 251 Or.App. 42, 283 P.3rd 367 (2012), the Oregon Court of Appeals succinctly summarized two relevant constitutional requirements that are derived from two Supreme Court cases, *Nollan v. California Coastal Comm'n,* 483 U.S. 825, 831-832, 107 S.Ct. 3141, 97 L.Ed.2nd 677 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374, 384, 114 S.Ct. 2309, 129 L.Ed.2nd 304 (1994). The Court held that, together, these cases establish a two-part test for

assessing the constitutionality of a government exaction of a dedication of private property: "First, the exaction must substantially advance the same government interest that would furnish a valid ground for denial of the development permit—also known as the 'essential nexus' prong of the test. *Nollan*, 483 US at 836-37. Second, the nature and extent of the exaction must be 'roughly proportional' to the effect of the proposed development. *Dolan*, 512 US at 385." It is the City's position that if a court were to find these standards applicable to the case at hand, as discussed in more detail below, the City requirements would satisfy both tests, for all of the reasons set forth in the staff report and in this memo, below.

In support of the Applicant's argument that Wilsonville's requirement to build a sidewalk, with required attendant curb and gutter, across the entire parcel does not pass these tests, the Applicant cites to the case of *Schultz v. Grants Pass*, 131 Or.App. 220 (1994). After careful review of that case and others, the City finds the facts in the *Schultz* case inapposite to those in the case at hand and easily distinguishable.

In the *Schultz* case, the owner wished to divide his property into two lots but presented no plans for development beyond the two lot partition. In response to that application, the City of Grants Pass assumed that in the future his two lots might become 20 lots, despite the fact no approval was requested or given for 20 lots. Based on that extraordinary assumption, Grants Pass imposed extensive land dedication requirements in order to widen two adjoining streets that it felt would be needed to accommodate 20 additional families at some point in the future. In the case at hand, no street dedication is being required. No assumption of any further land division is being made by the City of Wilsonville. The requirement being imposed by Wilsonville is simply that street frontage improvements be placed in front of the full length of the partitioned property only, which improvements will directly serve those two partitioned lots.

Contrary to the finding in *Schultz*, in *Hallmark Inns & Resort, Inc. v. City of Lake Oswego*, 193 Or. 24, 88 P.3rd 284 (2004), the Court of Appeals upheld the City of Lake Oswego's imposition of a public path requirement through the Hallmark property as a condition of development, finding that "rough proportionality" is not restricted to considering the impacts of a single use of the site when the development application, as approved, allows a range of uses reasonably generating a variety of impacts. Thus, the Court of Appeals held for Lake Oswego, finding that the City Council's report on Hallmark's application cogently explained that principal as follows: "[T]he pedestrian patterns are 'people-dependent' and will naturally change as the specific individuals change. For example, when a new residence is constructed, a sidewalk is required because the occupants statistically will utilize the sidewalk system at some time in the future. Although a homebound first owner of a residence will not use the pedestrian system in the neighborhood, when the residence is sold to a couple with 4 young children, they will extensively utilize the pedestrian system. Exaction of a sidewalk is not something that is temporal—imposed when one person moves in, removed when they move out. It is based on the expectation that over the life of the residence, occupants will statistically utilize the pedestrian system…." Id at 38.

The Court of Appeals, in upholding Lake Oswego's challenged conditions of development in *Hallmark*, distinguished the *Schultz* case from the *Hallmark* case as follows: "… the local government required roadway dedications as conditions of approving a partition application. The local government's justification for imposing that exaction was that the property in question might, upon further and future applications, be subdivided and that, in turn, might result in up to 20 homes being built on the site. Thus, the justification for the roadway dedications conditions was that those

conditions would mitigate transportation impacts that could be generated if, at some point in the future, these sites were developed in a manner that was not yet permitted. Applying *Dolan*, we rejected that rationale." "[T]he city's justification for the conditions is, in the words of the city's own supplemental findings, the impact of '*potential development* of the partitioned tract.' In other words, the city imagined a worst case scenario—assuming that petitioners would, at some undefined point in the future, attempt to develop their land to its full development potential of as many as 20 subdivided residential lots, further assuming that petitioners would obtain all the necessary permits and approvals—and on the basis of that scenario, it calculated the impacts of the development and tailored conditions to address them." Id at 38. As in *Hallmark*, and unlike *Schultz*, the Wilsonville condition of development is based on a reasonable assumption that contemplates nothing more than the basic division of the property into two home sites. The requirement imposed by Wilsonville is for a sidewalk that will serve the property whose occupants, over the life of each residence, will statistically utilize the pedestrian system, as stated by the Court of Appeals in the *Hallmark* case. Id. at 38.

In the *Shultz* case, cited by the Applicant, the Court, in paraphrasing the Supreme Court decision in *Dolan*, held that when a condition is based on city ordinances that are functionally the equivalent of a legislative decision, or quasi legislative enactment, that is applied generally to all similarly situated property, the *Dolan* test will not apply. *Schultz v. Grants Pass*, 131 Or.App. 220, 227 (1994). In this case, the Wilsonville ordinances impose a standard requirement on all development in the City that requires sidewalks, curb, and gutter to be placed in front of the developed property. The City Comprehensive Plan, which is the governing law for land use in the City, provides at Policy 3.3.2 that the City shall work to improve accessibility for all citizens to all modes of transportation, and at Implementation Measure 3.3.2.d requires that gaps in existing sidewalks be filled to create a safe and continuous network of safe and accessible bicycle and pedestrian facilities. It is the standard and consistent requirement of the City to require street frontage improvements, including the placement of sidewalks, curb, and gutter with every new development. This requirement is not in any way unique to the Appellant's property, nor is it based on any development assumptions. Thus, it is the City's position that the *Dolan* "rough proportionality standard" actually does not apply here due to the legislative or quasi legislative nature of this decision.

The Applicant further appears to argue that merely partitioning the property into two lots should not trigger development conditions. The City disagrees. "Development" is broadly defined in the City's Code as "Any human-caused change to improved or unimproved real estate." "Partition land" is defined as the act of dividing an area or tract of land into two or more parcels. Thus, this partition, by its very nature of dividing one property into two, is a human caused change to the improved real estate in this case. Furthermore, the partition will necessarily trigger the requirement to provide additional City services to the newly created lot, thereby causing actual physical changes to the land.

The Wilsonville City Code, at 4.177(3), expressly requires that sidewalks shall be provided on the public street frontage of all development. In his letter, the Applicant sites to one example where street improvements were not required along the frontage of an existing house. This is really not an accurate statement. Street improvements were required along the front of the house but was allowed to stop short, as it turned around the corner and ended. Allowing the sidewalk to end was an error on the part of the City that has not been made since. In fact, that same property owner, Mr. Knorr, purchased property one lot to the north of the Applicant's land, which he recently

divided into three parcels. As a condition of that partition, Mr. Knorr was required to pay the City for future street improvements, including installation of a sidewalk, curb, gutter, and half-street asphalt grind and overlay across all three newly created parcels. The only difference between this situation and the Knorr development is that the City has offered the Applicant the opportunity to install the street improvements himself instead of being required to deposit 130% of the estimated cost with the City and wait for the City to build the improvements. Mr. Knorr was not offered that option. In a second recent partition on Canyon Creek Road South, Ms. Dorothy Bernard was provided an option to either deposit funds with the City for future street improvements along her two-lot partition or cause the improvements to be done. She chose the latter option and installed sidewalk, curb, gutter, and curb inlet, extended the public storm system 125 feet, and added a storm manhole and half-street asphalt grind and overlay. It should be noted that, as a concession already made by engineering staff, the Applicant is not being required to do a grind and overlay of the road, nor is the Applicant being required to perform any stormwater work. In other words, the minimum requirements were imposed on this Applicant.

Returning to Applicant's position that the City must meet the *Dolan* test, assuming arguendo that the *Dolan* rough proportionality test and the *Nollan* nexus test actually apply here, both tests are met by the City for all of the reasons stated above and in the staff report. The City is requiring that the Applicant build or pay for street frontage improvements, including a sidewalk, curb, and gutter across the front of Applicant's own property only. There is no requirement to expand the sidewalk beyond his boundaries or to dedicate land for a road widening to accommodate future development, as in the *Schultz* case. The primary beneficiary of the sidewalk will be the occupants and future occupants of Applicant's property, although the public will also benefit, as is required by City Code. The Applicant's argument that the sidewalk should only be required in front of half of his property is contrary to the requirements of the Comprehensive Plan, the City Code, the City Transportation Plan, the Americans with Disabilities Act requirements, and sidewalk requirements consistently imposed throughout the City to create accessible connected pathways for all residents. Just as all residents are responsible for maintaining the sidewalks in front of their homes under the City Code, a person wishing to develop property is responsible for installing the sidewalk for the benefit of those who will occupy that property now and in the future.

As the Applicant states in his letter, in the future, the Applicant may ask to further divide this property into even more lots. Unlike the City of Grants Pass in *Schultz*, however, Wilsonville is not making assumptions concerning what that maximum future development might be and is therefore only imposing conditions that have a direct nexus to and are roughly proportionate to the current division of one lot into two.

For all of the foregoing reasons, Condition PFA 27 is a reasonable condition with a nexus to the partition that is roughly proportional to the development that will take place.

cc: Gerald and Joanne Downs, Applicant
Ron Downs, Applicant Representative
Blaise Edmonds, Manager of Current Planning
Steve Adams, Development Engineering Manager
Nancy Kraushaar, City Engineer/Community Development Director
Mike Kohlhoff, City Attorney

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APPEAL PURSUANT TO SECTION 4.022

February 13, 2015

City of Wilsonville Planning Department
Attn: Nancy Kraushaar & Barbara Jacobsen
29799 SW Town Center Loop E
Wilsonville, Oregon 97070

Application Number: AR14-0077

Project Name: Tentative Partition Plat

Property Owners: Gerald and Joanne Downs

Applicant's Rep: Ronald W. Downs

Property Description: Legal Tax Lot 2700 in Section 13BA; T3S R1W; Clackamas County, Oregon

Dear Ms. Kraushaar & Ms. Jacobsen:

As we prepare for the upcoming hearing, I wanted to share my analysis of the law as it relates to PFA 27, and the connection between the requirement and actual impact of the proposed development.

The issue before the Design Review Board is PFA 27 and the Cities condition that we provide improvements for the entire 150' of frontage and not just the 60' of frontage that will make up the new parcel. For the reasons set forth, this position is overbroad and fails to meet the tests for imposing such conditions on a property owner.

As you know, *Dolan v. City of Tigard, 512 US 374 (1974)* established that a jurisdiction must meet two tests before imposing a condition requiring dedication and/or improvements related to a development application:

1. **Nexus**; There must be a clear and **direct connection** or relationship between the requirement and the actual impact of the proposed development; and

2. **Proportionality**; The requirement (both in **cost and scope**) must be roughly proportional to the actual impact of the development.

In determining the degree of proportionality, the Supreme Court has held "the required dedication [must be] related both in **nature** and **extent** to the impact of the proposed development." *Id.*

In *Schultz v. City of Grants Pass, 131 Or. App. 220 (1994)*, the Oregon Court of Appeals applied this analysis in a case of a land owner partitioning a 3.85 acre lot into two parcels. In this case, the City approved the petition subject to a number of conditions affecting both parcels. Concluding that the City was unable to meet the test of "rough proportionality," the Court of Appeals noted "the proposed development in this case is the partitioning of a single lot into two lots and nothing more." "There is absolutely nothing in the record to connect the dedication of a substantial portion of petitioners' land, for the purpose of widening city streets, with petitioners' limited application." *Id*

Essentially, the Court of Appeals in *Schultz*, held there was no relationship between the conditions the city imposed and the impact of the land owners' proposed development. The Courts reasoning in *Dolan* and *Schultz* are applicable to the Downs petition before the Development Review Board.

In this case, the partition creates one new lot, and leaves a remaining lot with an existing home that has been there since the 1960's. Therefore, the impact is limited to one new lot and nothing more. The impact from the older lot and home already existed prior to the petition.

In addition, the older lot is 12,150 square feet and can be further divided under the PDR-3 zoning. This results in future development potential with no immediate new impacts. Any future potential for development of this older lot still leaves the City with the opportunity to impose conditions on any such land division, at the appropriate time for development.

One final thought relates to the City applying the standards to the property owners along Canyon Creek South in a consistent and fair manner. During the course of the Renaissance at Canyon Creek (North Plat), it is apparent that the Knor property and existing house to the south, (Lot 6, existing house and Lot 7, new lot) was allowed to be partitioned with no improvements required along the frontage of the existing house. If so, then I respectfully submit that PFA-27 imposes conditions that are inconsistent with prior partitions. Such an inconsistent application negates any governmental interest advanced by the dedication.

Applying the Court's analysis, it is our position that PFA 27 is overbroad and not in compliance with the test set-out for such conditions.

Respectfully submitted,

/s/ Ronald W. Downs

Ronald W. Downs
CC: Gerald and Joanne Downs

APPEAL OF DOWNS PARTITION PLAT #AR14-0077

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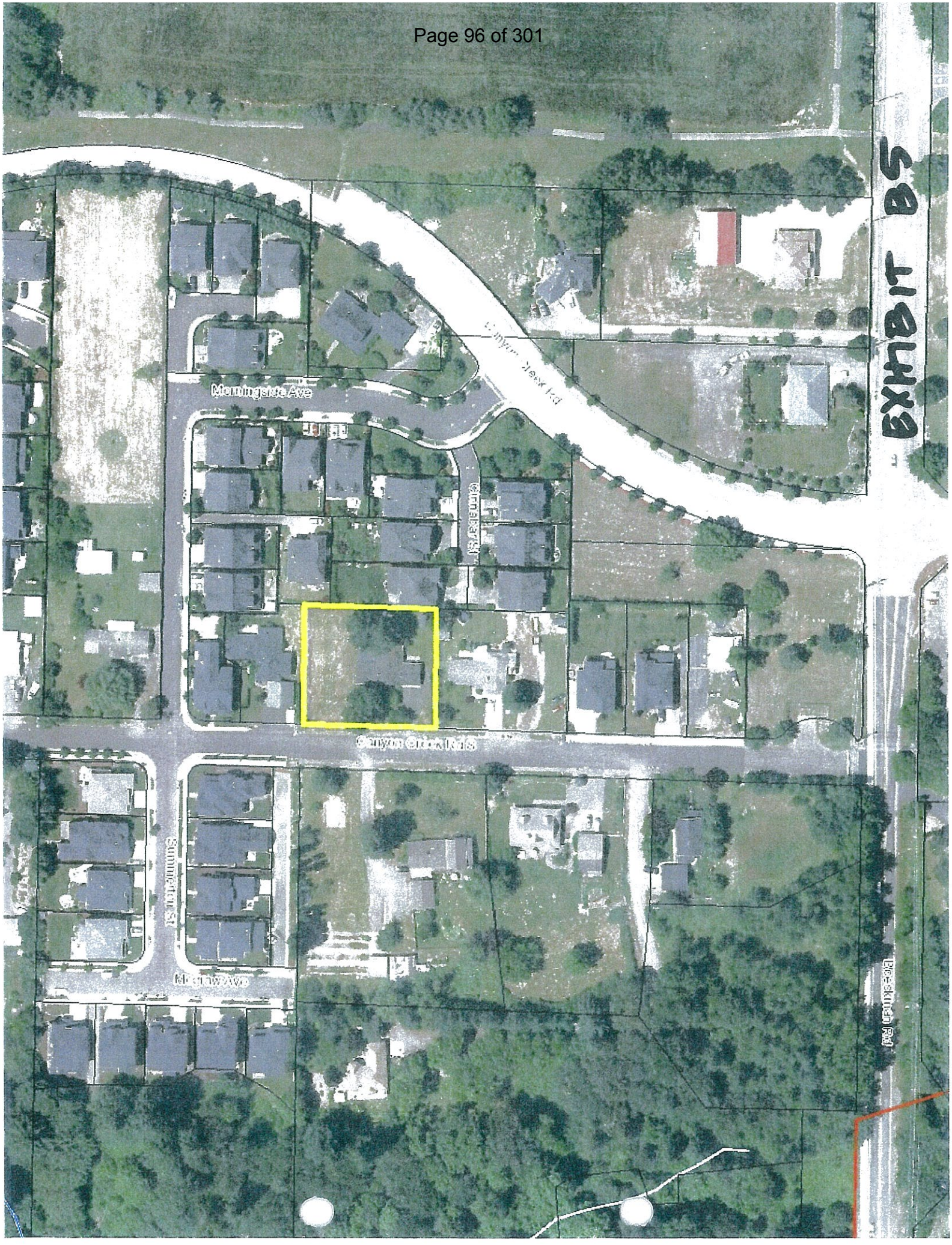
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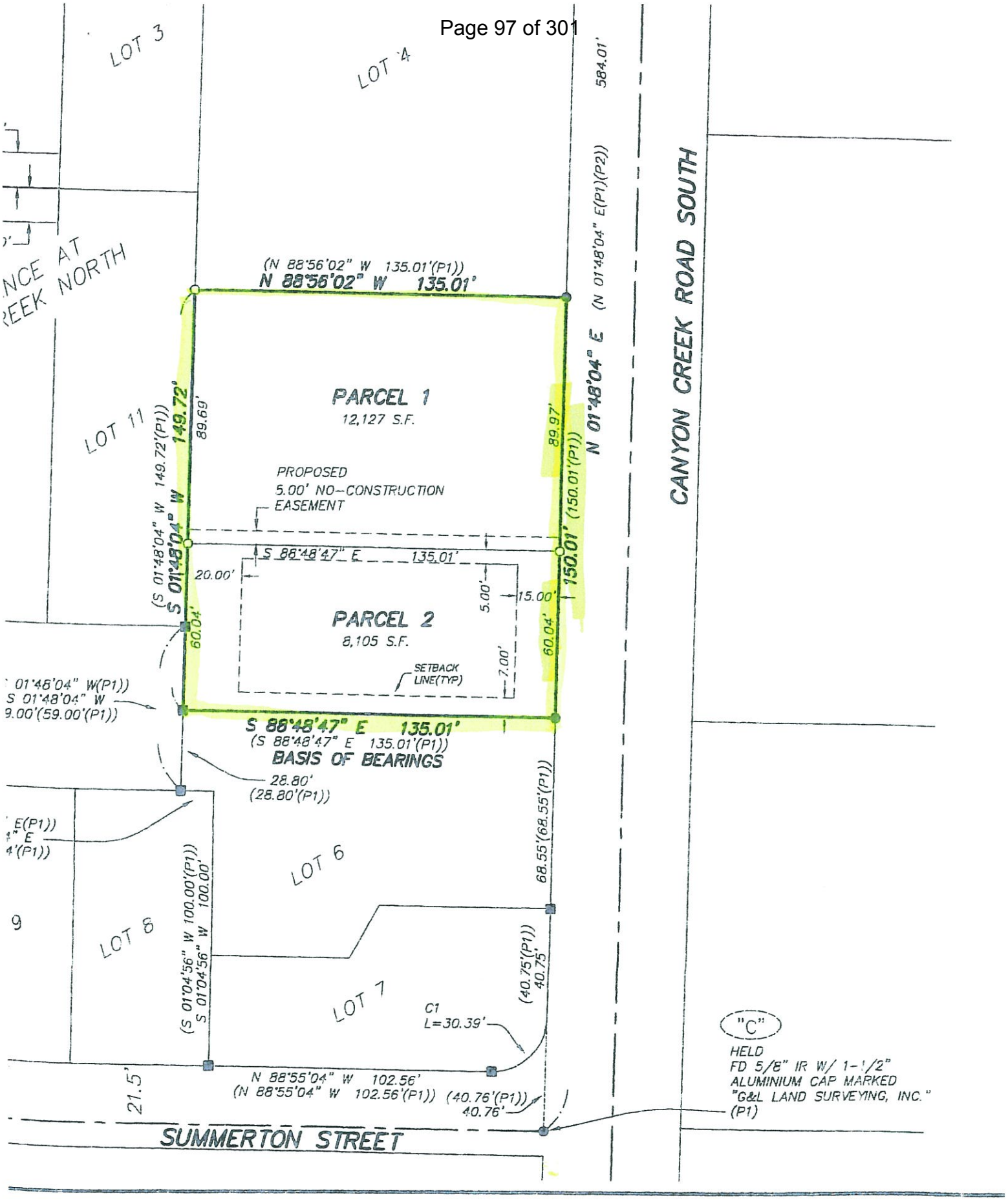
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LOT 4
LOT 11
LOT 6
LOT 8
LOT 7
NCE AT
REEK NORTH
(N 88°56'02" W 135.01'(P1))
N 88°56'02" W 135.01'
584.01'
(N 01°48'04" E(P1)(P2))
N 01°48'04" E
(150.01'(P1))
150.01'
89.97'
89.69'
149.72'
(S 01°48'04" W 149.72'(P1))
S 01°48'04" W
CANYON CREEK ROAD SOUTH
PARCEL 1
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PROPOSED
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EASEMENT
S 88°48'47" E 135.01'
20.00'
5.00'
15.00'
PARCEL 2
8,105 S.F.
60.04'
60.04'
7.00'
SETBACK
LINE(TYP)
01°48'04" W(P1))
S 01°48'04" W
9.00'(59.00'(P1))
S 88°48'47" E 135.01'
(S 88°48'47" E 135.01'(P1))
BASIS OF BEARINGS
28.80'
(28.80'(P1))
E(P1))
E
4'(P1))
68.55'(68.55'(P1))
(S 01°04'56" W 100.00'(P1))
S 01°04'56" W 100.00'
(40.75'(P1))
40.75'
C1
L=30.39'
"C"
HELD
FD 5/8" IR W/ 1-1/2"
ALUMINIUM CAP MARKED
"G&L LAND SURVEYING, INC."
(P1)
21.5'
N 88°55'04" W 102.56'
(N 88°55'04" W 102.56'(P1))
(40.76'(P1))
40.76'
SUMMERTON STREET

2

approved by Staff, that occurred during construction. Using the record survey as a guide, the appropriate changes will be made to the construction plans and/or specifications and a complete revised 'set' shall be submitted. The 'set' shall consist of drawings on 3 mil. Mylar and an electronic copy in AutoCAD, current version, and a digitally signed PDF.

PFA25. SUBDIVISION OR PARTITION PLATS:

Paper copies of all proposed subdivision/partition plats shall be provided to the City for review. Once the subdivision/partition plat is approved, applicant shall have the documents recorded at the appropriate County office. Once recording is completed by the County, the applicant shall be required to provide the City with a 3 mil Mylar copy of the recorded subdivision/partition plat.

PFA26. SUBDIVISION OR PARTITION PLATS:

All newly created easements shown on a subdivision or partition plat shall also be accompanied by the City's appropriate Easement document (on City approved forms) with accompanying survey exhibits that shall be recorded immediately after the subdivision or partition plat.

Specific Comments:

PFA27. The City has estimated the costs to reconstruct Canyon Creek Road South to meet the requirements of the Residential Street at $1,135,099.88. The estimated costs of street improvements shall be divided proportionately between all owners of record based on property street frontage along Canyon Creek Road South; this breaks down to $232.82 per foot of property frontage.

Applicant/Owner shall either:

1. Be responsible to submit funds to the City to equal 130% of their estimated proportionate share; City will undertake street reconstruction at some time in the future. For the 150.01 feet of property frontage, this comes to $45,402.93; or
2. ~~1.~~ Design and construct 150.01 feet of frontage improvements that include curb and gutter, 5-foot sidewalk, stormwater LID for new residence and driveway, and installation of three 4" conduits terminating in vaults at the north and south end of the properties. Applicant shall provide the City a cash deposit for cost to purchase and install a new streetlight equivalent to streetlights recently installed with the adjacent Renaissance Development. Construction and street repair shall be done in accordance with PFA1.

PFA28. Each lot shall be allowed one driveway access onto Canyon Creek Road South.

PFA29. Applicant shall obtain water and sanitary sewer service from the existing systems in Canyon Creek Road South.

PFA30. If stormwater detention and/or water quality facilities are designed for joint usage between the tax lots, maintenance plans or the system(s) shall be required and approved prior to acceptance. The applicant shall be required to establish a homeowners association with responsibility to maintain the private stormwater detention and/or water quality.

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PFA 27 Does not Apply to a Land Partition

Land Partitions v. Development

Partition: "Means either an act of partitioning land or an area or tract of land partitioned under the provisions of Section 4.200. As used in this Code, a land partition may be either a "major" or "minor" partition, as those terms are commonly used."

Partition Land: "Means to divide an area or tract of land into two or three parcels ..." A land partition is a splitting of land into more than one parcel.

By definition, a land partition does not include a development. A land partition is a process that requires an application, associated fee and survey. Once approved the partition is filed with the County and creates a separate tax lot.

Development: "Any human-caused change to improved or unimproved real estate, including, but not limited to, buildings or other structures ... ".

By definition, a development does not encompass a partition. A development is a process that arises after the completion of a partition and requires the submittal of a development application and associated fees and systems development charges.

Requirements for a Land Partition

Land Partitions are governed by section 4.030(.01)B5 and require the following:

a. A complete submittal of the materials required in Section 4.210; *(Met)*
b. Proposed plan meets the minimum lot size and yard setbacks; *(Met)*
c. Approval will not adversely affect the development of any adjoining property; *(Met)*
d. Public right-of-way bordering the parcel meets City standards; *(Met)*
e. Required public dedications of land have been approved and recorded; *(No public dedications at issue)*
f. Adequate easements are proposed where an existing utility line crosses; *(There are no utility lines crossing the parcel)*
g. **All public utilities and facilities are available or can be provided prior to the issuance of any development permit for any lot or parcel;** ***(Can be met, however scope may be at issue)*** and
h. Roads extended or created as a result of the land division will meet City standards. *(No roads will be extended or created from this land division)*

Argument

Subsection (g) appears to be the provision by which PFA-27 is based. A plain reading of this provision limits its scope to the development permit of a parcel that is being developed. In this case, the newly created unimproved parcel is all that is being developed and not the remaining parcel which was developed in the late 1960's. The frontage for this newly created parcel is 60 feet. Utilities and facilities are available and/or can be provided prior to the issuance of a development permit for this newly created parcel.

PFA-27 requires as a condition of approval of this land partition, that applicant provide utilities and facilities for not only the 60 feet of newly created frontage, but also the additional 90 feet of remaining frontage. There is no new impact or development permit associated with the remaining 90 feet of frontage. PFA-27 therefore is overbroad and not in compliance with the requirements for a land partition.

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Case Law Argument

Application of US Supreme Court Standard in *Dolan v. City of Tigard*

The issue before the Design Review Board is PFA 27 and the City's condition that applicant provide improvements for the entire 150' of frontage and not just the 60' of frontage that will make up the new parcel. For the reasons set forth, this position is overbroad and fails to meet the tests for imposing such conditions on a property owner.

Dolan v. City of Tigard, 512 U.S. 374 (1974) established that a jurisdiction must meet two tests before imposing a condition requiring dedication and/or improvements related to a development application:

1. **Nexus**; There must be a clear and **direct connection** or relationship between the requirement and the actual impact of the proposed development; and

2. **Proportionality**; The requirement (both in **cost and scope**) must be roughly proportional to the actual impact of the development.

In determining the degree of proportionality, the Supreme Court has held "the required dedication [must be] related both in **nature** and **extent** to the impact of the proposed development." *Id.*

Subsequent cases have further clarified that the condition(s) imposed mitigate the actual impacts generated by the "project." *Art Piculell Group v. Clackamas County 142 Or. App. 327, (1996); Burton v. Clark County, 91 Wash. App. 505, (Div. 2 1998).* In *McClure v. City of Springfield, 175 Or. App. 425, (2001)* the Oregon Court of Appeals held the city must provide the methodology for demonstrating that the project generated the need for the improvements.

In *Schultz v. City of Grants Pass, 131 Or. App. 220 (1994)*, the Oregon Court of Appeals applied this analysis in a case of a land owner partitioning a 3.85 acre lot into two parcels. In this case, the City approved the petition subject to a number of conditions affecting both parcels. Concluding that the City was unable to meet the test of "rough proportionality," the Court of Appeals noted "the proposed development in this case is the partitioning of a single lot into two lots and nothing more." "There is absolutely nothing in the record to connect the dedication of a substantial portion of petitioners' land, for the purpose of widening city streets, with petitioners' limited application." *Id*

These cases demonstrate that there must be a relationship between the conditions the city imposes and the actual impact of the proposed development or project.

In this case, the partition creates one new lot, and leaves a remaining lot with an existing home that has been there since the 1960's. Therefore, the impact is limited to one new lot and nothing more. The impact from the older lot and home already existed prior to the petition.

Applying the Court's analysis, it is our position that PFA 27 is overbroad and not in compliance with the test set-out for such conditions.

Hallmark Inns and & Resorts, Inc. v. City of Lake Oswego

The City relies on the Oregon Court of Appeals 2004 holding in a case involving Hallmark Inn's development permit to build a corporate headquarters on a large site. At issue was a condition requiring Hallmark Inns to provide an easement for a public pathway to connect pedestrian travel between residential neighborhoods and park on one side, and retail shopping on the other.

Holding that the City satisfied both prongs of the Dolan standard (nexus and rough proportionality), the Court of Appeals noted that the conditions focused on the "expected use of the facility that Hallmark **applied to build and actually built**, taking into account its size, the number of parking spaces it has, and the types of uses to which it may be put." *Id at 292.* "The rough proportionality inquiry concerns whether the required dedication is related both in nature and extent to the impact of the proposed development." *Id. at 293.*

> "Here, the city's findings demonstrate that, without the pathway, the development would impede the flow of pedestrian and bicycle traffic from an adjoining residential area to an adjoining shopping center. The pathway removes that impediment. **The need for the pathway is directly related to the development itself**, and thus satisfies the related in nature aspect of the test." *Id. at 293.*

Contrary to the City's reading, the Court of Appeals holding in *Hallmark* supports applicant's assertion that the condition must be related and proportional to the "actual impact" of the development / project, (i.e. the only parcel that is being developed). *Hallmark* makes clear that the condition imposed must mitigate the impact created by the project. The City may wish to extend the reach of such a standard to "each residence" (in the City's words at page3 of their memorandum), but such an application is novel under the case law and places too great a hurdle on a private property owner.

Legislative or Quasi-Legislative Nature of City Decision

The City takes the position that the conditions imposed under PFA 27 are legislative in nature and not subject to *Dolan* analysis. The City misstates the law. Cases where Courts have not extended *Dolan,* involve legislatively enacted traffic impact fees or the

assessment of systems development charges. In *Rogers Machinery v. Wash. County, 181 Or. App. 369, (2002),* the Oregon Court of Appeals described the concern that *Dolan* addresses:

> "The two-pronged heightened scrutiny that the Court adopted in Dolan was animated by the Court's particular concern with the sort of governmental leveraging that can arise in case-by-case adjudicatory imposition of development conditions. The Court also was expressly concerned with the nature of the conditions imposed – i.e., dedications of property to public use. The nature of the exaction involved here – a monetary assessment in the form of a traffic impact tax or fee – coupled with its imposition and calculation through a detailed legislative formula meaning fully distinguishes this condition from those in Nollan/Dolan." *Id at 389-400.*

Exactions required by general legislative provisions are subject to *Dolan's* requirement in the same way as conditions imposed on a case-by-case basis. *Schultz v. City of Grants Pass, 131 Or. App. 220, (1994); J.C. Reeves Corp. v. Clackamas County, 131 Or. App. 615, (1994).* In *Koontz v. St. Johns River Water Management District 133 S. Ct. 2586, (2013)* the Supreme Court recently held that *Dolan* extends to all permit conditions, including those requiring the expenditure of funds and necessarily the payment of impact and other fees.

For all of these reasons, this application is subject to *Dolan's* requirement for an "individualized determination of rough proportionality." *Dolan at 391.*

Application of the Americans With Disabilities Act

ADA Title II

Applies to State and local government entities and protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local governments.

Title II does not extend to private property or residential homeowners.

ADA Title III

Applies to private entities and commercial facilities that own, operate, lease or lease to places of public accommodation. Commercial facilities are nonresidential facilities, such as office buildings, factories, and warehouses, whose operations affect commerce.

II. THE TAKINGS ISSUE

E. Exactions

1. (§2.19) The *Nollan* "Nexus" Test

The United States Supreme Court first began to differentiate the Fifth Amendment analysis for exactions from other regulatory takings claims in *Nollan v. California Coastal Com.*, **483 US 825, 107 S Ct 3141, 97 L Ed2d 677** (1987). The plaintiff in *Nollan* applied for a permit to replace an existing beachfront house with a much larger dwelling. The Coastal Commission granted the request, but imposed a condition of approval requiring dedication of a lateral access easement across the beach frontage of the Nollan property. *Nollan,* 483 US at 827–828. The Court concluded that such an easement requirement was in essence a "physical invasion" of the property as defined in *Loretto v. Teleprompter Manhattan CATV Corp.*, **458 US 419, 102 S Ct 3164, 73 L Ed2d 868** (1982). *Nollan,* 483 US at 831–832. The Court therefore held that an exaction of property as a condition of approval would be a taking, unless the condition serves the same legitimate police-power purpose as the underlying regulation of the property. *Nollan,* 483 US at 836–837. In other words, if the government had the authority to prohibit or limit the development to accomplish a valid public purpose, it has the power to condition that approval on a concession—"even a concession of property rights"—that serves the same purpose. *Nollan,* 483 US at 836–837. The Court held that the beachfront easement lacked this "essential nexus" to the Commission's stated purpose for the exaction, which was to mitigate the negative impact of the larger house on the view of the beach from the street. The Court noted that such a nexus might have existed if the exaction involved a view easement from the front to the back of the lot. *Nollan,* 483 US at 836–838.

In *Lingle v. Chevron U.S.A. Inc.*, **544 US 528, 125 S Ct 2074, 161 L Ed2d 876** (2005) (discussed in §2.14), the Court took pains to differentiate the *Nollan* nexus test from the overruled "substantially advances" prong identified in *Agins v. Tiburon,* **447 US 255**, 260, **100 S Ct 2138, 65 L Ed 106** (1980) (discussed in §2.13), on which it was at least facially based. *Lingle,* 544 US at 546–548. The Court first distinguished between exactions and other regulatory takings, noting that exactions involved an adjudicative extraction of a property right that would otherwise be a physical invasion and thus a per se taking. According to the Court, the question under the *Nollan* nexus test is not whether the exaction substantially advances *some* state interest (the overruled *Agins* prong), but whether it advances the *same* interests that

would allow a land use authority to deny the proposed permit. *Nollan,* 544 US at 547–548. Thus, the appropriate inquiry is whether there is a connection between the exaction and the purposes of the underlying permit criteria, not with some more generalized legitimate state interest.

II. THE TAKINGS ISSUE

E. Exactions

2. (§2.20) The *Dolan* "Rough Proportionality" Test

In *Dolan v. City of Tigard,* **512 US 374, 114 S Ct 2309, 129 L Ed2d 304** (1994), the United States Supreme Court expanded on the exaction analysis it began in *Nollan v. California Coastal Com.,* **483 US 825, 107 S Ct 3141, 97 L Ed2d 677** (1987) (discussed in §2.19). *Dolan* involved the city of Tigard's imposition of bicycle path and greenway exactions as conditions of approval of an application to expand the Dolans' hardware store. The Court noted that *Dolan* raised the issue it didn't reach in *Nollan*—the constitutionally required degree of connection between the exaction imposed and the impacts of the proposed development. *Dolan,* 512 US at 377. The Court analyzed state court decisions on the subject and noted that they fell into three camps: states that required a very generalized connection; states that required a very strict "specifically and uniquely attributable" connection; and states (the majority) that required a "reasonable relationship" between the exaction and the impacts of the development. *Dolan,* 512 US at 389–391. The Court concluded that the "reasonable relationship" test was closest to the mark, but that it was too confusingly similar to the more lax "rational basis" standard. *Dolan,* 512 US at 391. The Court therefore held:

> We think a term such as "rough proportionality" best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.

Dolan, 512 US at 391.

The Court also concluded that it was the government that had the burden of demonstrating such "rough proportionality." *Dolan,* 512 US at 391 n 8.

Applying the *Nollan* and newly minted *Dolan* tests to the Tigard exactions, the Court held that flood control and traffic congestion were "legitimate public purposes" and were implicated by the Dolans' proposed expansion, and that there was a "nexus" between those regulatory purposes and the greenway and bicycle path exactions. *Dolan,* 512 US at 386–388. The Court held, however, that the city of Tigard had not sufficiently demonstrated that the bike path or the greenway path exactions were related in nature and degree to the impacts caused by the Dolans'

expansion of their hardware store. With regard to the greenway, the Court found that the city had not sufficiently explained why public ownership, as opposed to a nonpossessory development restriction, was necessary to accomplish the regulatory purpose given the impact of the former on the Dolans's right to exclude others from their property. *Dolan,* 512 US at 392–395. With regard to the bicycle path, the Court concluded that the city had not sufficiently demonstrated that the bike path would alleviate the increased traffic congestion as a result of the expansion of the store. *Dolan,* 512 US at 395.

II. THE TAKINGS ISSUE

E. Exactions

3. (§2.21) Exactions under Article I, §18

Article I, §18, of the Oregon Constitution is infrequently invoked in Oregon cases challenging exactions because the case law suggests that the Fifth Amendment as interpreted in *Dolan v. City of Tigard,* **512 US 374**, **114 S Ct 2309**, **129 L Ed2d 304** (1994) (*Dolan IV*) (discussed in §2.20), imposes different and more stringent requirements than article I, §18. In their initial appeal of the city's decision to the Land Use Board of Appeals (LUBA), the *Dolan* plaintiffs argued that the city of Tigard exactions violated both the Fifth Amendment and article I, §18. Based on prior LUBA and court of appeals cases, LUBA concluded that the "reasonable relationship" standard was the appropriate test for determining the required degree of connection between an exaction and the impacts of development under both constitutions. *Dolan v. City of Tigard,* LUBA No. 91-161, 22 Or LUBA 617, 623 (1992) (*Dolan I*). Applying that standard, LUBA affirmed the city's decision. *Dolan I,* 22 Or LUBA at 623. On appeal, the court of appeals concurred with LUBA's interpretation and affirmed LUBA's decision. *Dolan v. Tigard,* **113 Or App 162**, 167–168, **832 P2d 853** (1992), *aff'd,* **317 Or 110** (1993), *rev'd,* **319 Or 567** (1994) (*Dolan II*). By the time the case reached the Oregon Supreme Court, however, the petitioners had limited their arguments to the federal claim and so the Oregon Supreme Court did not address article I, §18. *Dolan v. City of Tigard,* **317 Or 110**, 112 n 2, **854 P2d 437** (1993), *rev'd,* **512 US 374** (1994) (*Dolan III*). After the United States Supreme Court decided *Dolan IV,* the Oregon Court of Appeals concluded that although the "rough proportionality" standard does not "differ sharply" from the state "reasonable relationship" standard, *Dolan IV* shifted the burden to local governments and imposed a more specific findings requirement. *Art Piculell Group v. Clackamas County,* **142 Or App 327**, 330–332, **922 P2d 1227** (1996). As a result, most takings claims involving exactions are brought under the Fifth Amendment in Oregon, notwithstanding that the Oregon Supreme Court has never actually articulated a standard for applying article I, §18, to exactions.

II. THE TAKINGS ISSUE

E. Exactions

4. Determining "Rough Proportionality"

a. (§2.22) Impact Supporting an Exaction

The impact supporting an exaction must arise from the development for which the permit is being sought. In *Schultz v. City of Grants Pass,* **131 Or App 220, 884 P2d 569** (1994), the court of appeals reversed the city's pre-*Dolan* imposition of a right-of-way exaction on a partition of a 3.85-acre property into two lots. *See Dolan v. City of Tigard,* **512 US 374, 114 S Ct 2309, 129 L Ed2d 304** (1994); *see also* §2.20. The city based the exaction on the amount of right-of-way that the city would need for street improvements necessary to serve the property in the future when it was developed at urban densities. The court held that an exaction cannot be based on the impact of a speculative future development when such development would require a subsequent application when the exaction could be imposed. *Schultz,* 131 Or App at 227–229.

The proportionality analysis can, however, consider projected future impacts when those impacts arise directly from the proposed development without further land use approvals. In *J.C. Reeves Corp. v. Clackamas County,* **131 Or App 615, 887 P2d 360** (1994), the county required elimination of a reserve strip that would have required adjacent development to pay the applicant for access to the public street constructed to serve the applicant's subdivision. The court distinguished *Schultz* and affirmed the county requirement. The court held that future impacts can be considered in determining the validity of an exaction when the future impacts flow from the present decision without any future opportunity to mitigate the impacts in a subsequent application. *J.C. Reeves Corp.,* 131 Or App at 623–625. *See Hallmark Inns & Resorts, Inc. v. City of Lake Oswego,* **193 Or App 24**, 36–40, **88 P3d 284** (2004) (in determining proportionality of proposed pathway exaction, city appropriately considered maximum allowable occupancy rather than current occupancy of approved office building).

In *State by & Through Dep't of Transp. v. Altimus,* **137 Or App 606, 905 P2d 258** (1995), an eminent domain case, the original pre-*Dolan* decision approved a value that included a reduction for a road exaction that would have been imposed on the development of the property. The case was appealed to the United States Supreme Court, which remanded for reconsideration in light of *Dolan. Altimus,* 137 Or App at 608. The

property owner argued, based on *Schultz,* that a speculative road right-of-way exaction based on future development could not be considered. The court disagreed, noting that the market value determination was based on the "highest and best use" of the property—the standard in eminent domain cases—that required a zone change that might or might not be granted. The court concluded that consideration of a speculative future exaction, necessary as the result of impacts of a speculative future "highest and best use," was permissible under *Dolan* in the context of eminent domain. *Altimus,* 137 Or App at 612–615.

II. THE TAKINGS ISSUE

E. Exactions

4. Determining "Rough Proportionality"

b. (§2.23) Public Need for the Exaction Not Relevant

Proportionality is measured based solely on the impacts of the proposed development, and is not balanced against the degree of public need for the exaction. *See Art Piculell Group v. Clackamas County,* **142 Or App 327**, 340, **922 P2d 1227** (1996) (extent of public's need for road improvement irrelevant to proportionality consideration). *See also McClure v. City of Springfield,* LUBA No. 99-121, 37 Or LUBA 759 (2000).

II. THE TAKINGS ISSUE

E. Exactions

4. Determining "Rough Proportionality"

c. (§2.24) Benefits Accruing to the Property Owner from the Exaction Are Relevant

Benefits accruing to the property owner from the exaction can be considered when determining rough proportionality. In *Art Piculell Group v. Clackamas County,* **142 Or App 327**, 336, **922 P2d 1227** (1996), the court rejected the argument that "benefits in the form of road system improvements that the subdivision residents will share with the public at large" play no role in the test outlined in *Dolan v. City of Tigard,* **512 US 374**, **114 S Ct 2309**, **129 L Ed2d 304** (1994). The court stated that "conditions that in whole or in part serve the needs of the development itself should be weighed differently than pure 'exactions' of the kind that serve only to mitigate an impact of the development on the public or public facilities." *Art Piculell Group,* 142 Or App at 337.

See also *Lincoln City Ch. of Com. v. City of Lincoln City,* LUBA No. 98-153, 36 Or LUBA 399, 411 (1999), which held that the *Dolan* analysis may require up to three considerations:

(1) "[T]he extent to which the proposed exaction will benefit the development";

(2) The extent to which the exaction will mitigate the impact of the development on the public infrastructure; and

(3) Whether the benefits and impacts, analyzed together, demonstrate that the exaction is roughly proportional to the impacts of the proposed development.

II. THE TAKINGS ISSUE

E. Exactions

4. Determining "Rough Proportionality"

d. (§2.25) "Roughly Proportional" Means What It Says

The degree of impact caused by the proposed development is relevant to the determination of proportionality, but it does not have to be a one-for-one match. *Art Piculell Group v. Clackamas County,* **142 Or App 327**, 338–339, **922 P2d 1227** (1996) (agreeing that the degree of traffic impact of the proposed development was relevant to a proportionality determination, but rejecting argument that a development that would generate only 2.6% of a street's traffic should only be required to pay for 2.6% of the improvements). *See McClure v. City of Springfield,* **175 Or App 425**, 435–436, **28 P2d 1222** (2001) (precisely detailed correlation between impact and exaction not required); *see also Hallmark Inns & Resorts, Inc. v. City of Lake Oswego,* **193 Or App 24, 88 P3d 284** (2004). The Land Use Board of Appeals' opinions in *McClure* and *Hallmark* are also instructive on nexus and the degree of connection between the exaction and impacts of development. *See McClure v. City of Springfield,* LUBA No. 99-121, 37 Or LUBA 759 (2000); *Hallmark Inns & Resorts, Inc. v. City of Lake Oswego,* LUBA No. 2002-049, 43 Or LUBA 62 (2002).

II. THE TAKINGS ISSUE

E. Exactions

4. Determining "Rough Proportionality"

e. (§2.26) Individualized Findings Required

A local government must adopt individualized findings for each exaction. *See McClure v. City of Springfield,* **175 Or App 425**, 433–434, **28 P2d 1222** (2001) (rejecting city argument that demonstration of vehicular-traffic impact justifying road right-of-way exaction also justified sidewalk and clipped corner for sight distance exactions in absence of specific justification). A local government can, however, constitutionally require the applicant to analyze the impacts in the first instance. *Lincoln City Ch. of Com. v. City of Lincoln City,* LUBA No. 98-153, 36 Or LUBA 399 (1999).

II. THE TAKINGS ISSUE

E. Exactions

5. *Nollan/Dolan*'s Reach—Legislative Actions, Fees, and Other Nonpossessory Exactions

a. (§2.28) *Del Monte Dunes*

The United States Supreme Court first addressed the reach of the *Nollan v. California Coastal Com.*, **483 US 825**, **107 S Ct 3141**, **97 L Ed2d 677** (1987), and *Dolan v. City of Tigard,* **512 US 374**, **114 S Ct 2309**, **129 L Ed2d 304** (1994) (*Nollan/Dolan*) decisions in *City of Monterey v. Del Monte Dunes, Ltd.*, **526 US 687**, **119 S Ct 1624**, **143 L Ed2d 882** (1999). The property owner and its predecessor in title tried for years to develop a 37.6-acre oceanfront parcel. Five different development proposals at 344, 264, 224, and 190 units, all consistent with the zoning and some even suggested by the city, were denied over the course of six years. The property sued for violation of due process and equal protection and unconstitutional regulatory taking. After bouncing up and back down the appellate system, the property owner eventually received a $1.45 million jury verdict. *Del Monte Dunes, Ltd.,* 526 US at 694–702.

The Supreme Court rejected the Ninth Circuit's application of the *Dolan* rough proportionality test to the situation in *Del Monte Dunes*:

> Although in a general sense concerns for proportionality animate the Takings Clause, . . . we have not extended the rough-proportionality test of Dolan beyond the special context of exactions—land-use decisions conditioning approval of development on the dedication of property to public use. . . . The rule applied in Dolan considers whether dedications demanded as conditions of development are proportional to the development's anticipated impacts. It was not designed to address, and is not readily applicable to, the much different questions arising where, as here, the landowner's challenge is based not on excessive exactions but on denial of development. We believe, accordingly, that the rough-proportionality test of Dolan is inapposite to a case such as this one.

Del Monte Dunes, Ltd., 526 US at 702–703 (internal citations omitted).

This portion of the *Del Monte Dunes* opinion was unanimous. Citing to *Del Monte Dunes,* the Court reiterated in *Lingle v. Chevron U.S.A. Inc.,* **544 US 528**, 547, **125 S Ct 2074**, **161 L Ed2d 876** (2005), that the *Nollan/Dolan* test only applies in the "special context of exactions."

II. THE TAKINGS ISSUE

E. Exactions

5. *Nollan/Dolan*'s Reach—Legislative Actions, Fees, and Other Nonpossessory Exactions

d. (§2.31) Oregon Cases

In *Rogers Mach., Inc. v. Wash. County,* **181 Or App 369, 45 P3d 966** (2002) (*Rogers Machinery*), the court of appeals concluded that heightened scrutiny tests set forth in *Nollan v. California Coastal Com.,* **483 US 825, 107 S Ct 3141, 97 L Ed2d 677** (1987), and *Dolan v. City of Tigard,* **512 US 374, 114 S Ct 2309, 129 L Ed2d 304** (1994) (*Nollan/Dolan*) did not apply to Washington County's traffic-impact fee imposed pursuant to a legislatively adopted ordinance. The court noted a substantial split of opinion about whether *Dolan's* heightened scrutiny applies to nonpossessory exactions such as impact fees. *Rogers Machinery,* 181 Or App at 387–388. The court stated, however, that "[w]ith near uniformity, lower courts applying *Dolan* to monetary exactions have done so *only* when the exaction has been imposed through an adjudicatory process; they have expressly declined to use *Dolan*'s heightened scrutiny in testing development or impact fees imposed on broad classes of property pursuant to legislatively adopted fee schemes." *Rogers Machinery,* 181 Or App at 389. Citing *Ehrlich v. City of Culver City,* **911 P2d 429** (Cal 1996), and *San Remo Hotel v. City and County of San Francisco,* **41 P3d 87** (Cal 2002), the court found that an impact fee required by ordinance "that leaves no meaningful discretion either in the imposition or in the calculation of the fee" is not subject to the *Dolan* test. *Rogers Machinery,* 181 Or App at 389–400.

> [T]he two-pronged heightened scrutiny that the Court adopted in Dolan was animated by the Court's particular concern with the sort of governmental leveraging that can arise in case-by-case adjudicatory imposition of development conditions. The Court also was expressly concerned with the nature of the conditions imposed—i.e., dedications of property to public use. The nature of the exaction involved here—a monetary assessment in the form of a traffic impact tax or fee—coupled with its imposition and calculation through a detailed legislative formula meaning fully distinguishes this condition from those in Nollan/Dolan.

Rogers Machinery, 181 Or App at 398. *See also Homebuilders Ass'n of Metro. Portland v. Tualatin Hills Park & Rec. Dist.,* **185 Or App 729**, 737,

62 P3d 404 (2003) (system development charge requiring park fee calculated by legislatively adopted formula is not subject to *Dolan*).

The *Rogers Machinery* opinion left the door open as to whether *Nollan/Dolan* would apply to adjudicatively imposed nonpossessory exactions, such as off-site improvements and fees. The court noted that in *Clark v. City of Albany,* **137 Or App 293**, **904 P2d 185** (1995), it held that monetary exactions and requirements to construct public improvements on public property were subject to *Nollan/Dolan*'s heightened scrutiny. *Rogers Machinery,* 181 Or App at 394. The court further noted, however, that the United States Supreme Court's holding in *City of Monterey v. Del Monte Dunes, Ltd.,* **526 US 687**, **119 S Ct 1624**, **143 L Ed2d 882** (1999), might require a reexamination of *Clark,* but concluded it was not required to do so in the context of the case at hand. *Rogers Machinery,* 181 Or App at 394 n 14. Relying on *Rogers Machinery,* the court of appeals ducked this question again in *Homebuilders Ass'n of Metro. Portland,* 185 Or App at 736–737.

The other interesting question that *Rogers Machinery* raises is whether a legislatively imposed possessory exaction—for example, all subdivisions of four units or more must dedicate 15% open space to the city—would also be exempt from *Nollan/Dolan* scrutiny. The court of appeals has held that exactions required by general legislative provisions are subject to *Dolan* requirements in the same way as conditions imposed on a case-by-case basis. *Schultz v. City of Grants Pass,* **131 Or App 220**, 227, **884 P2d 569** (1994); *J.C. Reeves Corp. v. Clackamas County,* **131 Or App 615**, 622–623, **887 P2d 360** (1994). *See also Gensmen v. City of Tigard,* LUBA No. 94-211, 29 Or LUBA 505, 515 (1995) (*Dolan* analysis prohibits blanket exactions). These holdings appear to be consistent with *Dolan*'s requirement for an "individualized determination" of rough proportionality. *See Dolan,* 512 US at 391.

However, *Rogers Machinery* suggests that legislatively enacted exactions of real property interests may not need to be justified by the *Dolan* test. The court specifically notes that it had "reserved the question of whether [the court] would reach the same conclusion for dedications imposed pursuant to legislatively adopted criteria that are 'sufficiently detailed and uniformly applied to obviate' *Dolan*'s concerns about ad hoc exactions." *Rogers Machinery,* 181 Or App at 393 (quoting *McClure v. City of Springfield,* **175 Or App 425**, 435 n 6, **28 P3d 1222** (2001)). In *Dudek v. Umatilla County,* **187 Or App 504**, 510–512, **69 P3d 751** (2003), the court concluded that the county properly applied *Dolan* requirements to a legislatively required property dedication when the county exercised considerable discretion in the interpretation and application of the ordinance requirements, but suggested that a different result might be the case if a possessory exaction is imposed pursuant to a legislative

enactment applying to a broad class of property when there is no need for adjudication or exercise of discretion.

Thus, the jury is still out on whether it is the nature of the property exacted, or how the exaction is imposed, or both, that governs whether heightened *Nollan/Dolan* scrutiny will apply to a condition of approval. A case is currently pending before the Oregon Supreme Court that may provide some clarification. In *W. Linn Corporate Park LLC v. City of West Linn,* **345 Or 461**, **200 P3d 147** (2008), the Oregon Supreme Court accepted certification of several inverse condemnation questions from the Ninth Circuit Court of Appeals. One of the questions certified is whether construction of off-site improvements imposed as a condition of development approval may constitute an exaction or physical taking.

> *Query*: Might article I, §18, of the Oregon Constitution play a role in this analysis? There is one significant textual difference between article I, §18, and the Fifth Amendment: although both constitutional provisions prohibit the taking of private property without just compensation, article I, §18, also prohibits the government from demanding the "particular services of any man." A condition of approval requiring an applicant to construct improvements on public property may implicate this language, whereas such a condition may not operate on an "identifed property interest" under the Fifth Amendment as described in *Eastern Enters. v. Apfel,* **524 US 498**, 540, **118 S Ct 2131**, **141 L Ed2d 451** (1998). This may not result in *Nollan/Dolan* scrutiny (see discussion above), but could underpin at least a "reasonable relationship" argument.

Other Oregon cases have been instructive on the applicability of *Nollan/Dolan*. In *Carver v. City of Salem,* LUBA No. 2001-140, 42 Or LUBA 305, 323–335 (2002), the city argued that the applicant for an urban growth area development permit, to develop property before city park facilities were in place, waived his rights to assert *Dolan* with regard to a park-dedication requirement when the ordinance gave the applicant the option of waiting to develop until the city had developed the necessary facilities and thereby avoid the dedication. The Land Use Board of Appeals (LUBA) concluded that the option—of waiting until the city built the park—was too remote and speculative for the application to effect a waiver of *Dolan. Carver,* 42 Or LUBA at 333–335. LUBA also rejected the city's alternative argument that the availability of system development charge (SDC) credits provided just compensation for the exaction, because the SDC reimbursement ordinance did not ensure that the "just compensation" as required by the courts in eminent domain cases would be paid. *Carver,* 42 Or LUBA at 337–338. *See also Lindstedt v. City of Cannon Beach,* LUBA No. 96-134, 33 Or LUBA 516, 523–525 (1997), *aff'd,* **152 Or App 489** (1998) (requiring a tree-cutting permit is

not an exaction subject to *Dolan*); *Nike, Inc. v. City of Beaverton,* LUBA No. 98-020, 35 Or LUBA 57, *aff'd,* **157 Or App 397** (1998) (requirement for future street plan is not an exaction subject to *Dolan*); *Herman v. City of Lincoln City,* LUBA No. 98-146, 36 Or LUBA 521, 542–543 (1999) (*Dolan* not applicable to city decision downzoning property from multifamily to single-family use.)

1 Subdivision Law and Growth Mgmt. § 6:44 (2d ed.)

Subdivision Law & Growth Management
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Chapter 6. Financing Capital Improvements

References

§ 6:44. Power to exact fees, dedications, and improvements and the extent of power to impose exactions—*Dolan*

In *Dolan v. City of Tigard*,[1] the United States Supreme Court wrote another chapter in the takings saga. The landowner in this case sought to expand a plumbing and electric supply store to nearly double its size, to 17,600 square feet on a 1.67-acre parcel of land, proposing to pave the gravel 39-space parking lot. The city of Tigard granted a building permit. An unused and undevelopable portion of the Dolan property was within the floodplain of a creek and was designated in the city's comprehensive plan as part of a greenway system. The city planning commission, pursuant to an authorizing ordinance imposed a condition on the permit that Dolan dedicate a 15-foot strip of land adjacent to the floodplain for a pedestrian/bicycle pathway amounting to 7,000 square feet or roughly 10% of the property. The city was to maintain a landscaped buffer between the dedicated area and the store.

The Court ruled the dedication condition to be excessive and a regulatory taking. *Dolan* applies only to the conditioning of a permit upon some concession or exaction from the developer and is inapplicable to land use regulations that merely restrict use.[2]

In *City of Monterey v. Del Monte Dunes*,[3] the United States Supreme Court unanimously supported its ruling in *Dolan*, that *Dolan* was limited solely to reviewing exactions or conditions on permits, and has no relevance to excessive regulatory taking claims. The lower court had used *Dolan* as an alternative model to measure regulatory takings.[4]

Although *Dolan* presents a reasonably simple fact pattern, understanding its principle is anything but simple. *Dolan* was written by Chief Justice Rehnquist, but in style and inscrutability closely resembles *Nollan* and *Lucas*. Early commentary runs the continuum from proclaiming that *Dolan* reflects a radical change in the law of takings and exactions,[5] or that the decision presents a modest adjustment of standards,[6] to the view that the ruling makes no change in the law.

First, the Court confirmed the "essential nexus" test of *Nollan* in finding its satisfaction. Chief Justice Rehnquist found that the purpose of the dedication was to reduce traffic congestion by providing alternative transportation for customers and employees and to accommodate increased storm water flow from the intensified use of the parcel.

Second, the Court proceeded to undertake resolution of one of the unanswered questions in *Nollan*: the degree of connection between the exactions and the projected impact of the development that is constitutionally mandated. Chief Justice Rehnquist cited both a "rational nexus" case, *Jenad, Inc. v. Village of Scarsdale*,[7] and a "reasonableness" ruling, *Billings Properties, Inc. v. Yellowstone County*,[8] as representing rules too lax, while the stricter "uniquely attributable" standard was found too strict. Instead, the Court ostensibly created a new test of quantification requiring some level of proportionality between the needs generated by the project and the exaction demanded.

The Court however, apparently interpreted *Jenad* as a mere "reasonableness" case not requiring any mathematical proportionality. Indeed *Jenad* and its requirement of reasonableness" had already been abrogated in New York following *Nollan* in favor of a more rigorous nexus analysis.[9] Inexplicably, *Jenad* was cited with approval in Justice Scalia's opinion for the Court in *Nollan*. The *Dolan* decision proceeded to endorse the "rational nexus" test of *Jordan*.[10]

Yet, unsatisfied with the simple elevation of the "rational nexus" test to constitutional status, the Court opted to establish a new test of "reasonable relationship." This new test, however, appears to be the classic "rational nexus" test applied by a number of state courts. While *Dolan* would appear to liberalize the exaction standard in those jurisdictions following a "uniquely attributable" standard, nothing in *Dolan* prevents states from requiring an additional proportionality rule in restricting state

government regulation. While the few states clearly following the ostensibly more lax "reasonableness" standard must adjust to the "reasonable relationship" standard, for most states *Dolan* presents no change in the law.

Chief Justice Rehnquist further defined the "reasonable relationship" test as requiring "rough proportionality." This means that no precise mathematical calculation is required. It is required, however, that the conditioning body make some sort of individualized determination that the exaction is related both in nature and extent to the impact of the proposed project. The Court's opinion apparently endorses the use of estimates of average need generation as used in many transportation ordinances or in the Los Angeles County Development Monitoring System, which projects needs based on reasonable estimates of demand, such as water and sewage, schools, streets, or libraries, based on the number and size of dwelling units or the square footage of commercial development and reflecting average demand for infrastructure capacity experience, such as the number of children, or water usage per household. [11] Indeed, *Dolan* compliance is most easily satisfied under impact fee assessment standards and *Dolan* is likely to generate the proliferation of impact fee ordinances. In *Koontz v. St. Johns River Water Management District*, [12] the United States Supreme Court re-endorsed and extended *Dolan* to reach all permit conditions, including those requiring the expenditure of funds and presumably the payment of impact and other fees. Nevertheless, impact fees are likely to meet the Dolan/Koontz scrutiny assuming an effort to quantify the infrastructure need and the fee. An example of how state and lower federal courts have responded to *Dolan* is demonstrated by Washington's intermediate court in *Sparks v. Douglas County*. [13] In *Sparks*, the court rejected a condition of dedication of a strip of land for street widening where existing capacity existed and no evidence was presented suggesting that the projected 25 cars per hour to be generated by the short plat would not render the existing road less safe. *Sparks* establishes a powerful motivation to impose an impact fee system as some developers enjoy a free ride while others are forced to finance capacity to accommodate the traffic that they hope to generate. On appeal, however, the Washington Supreme Court reversed the intermediate court invalidation, accepting a county planning office report documenting deficiencies in right-of-way width and surfacing of adjoining streets, calculating the increase in traffic and both the specific need and the cumulative impact of a series of short subdivisions as substantial evidence under roughly proportional *Dolan* standard. [14] The Washington Supreme Court in *Burton v. Clark County*, [15] interpreted the *Dolan* "roughly proportional" standard to require that the permit condition must actually mitigate the problem generated by the project. In *Burton*, the county had required the dedication of a road right-of-way for a road that might, in the future, be opened and connected to a highway, an improvement that would eventually offset only a portion of the impact of traffic to be generated by the project. Although the court would have sustained the dedication if it had in fact provided access to the project, the condition was invalidated because it failed to mitigate the current traffic impacts of the project. It did not matter to the court either that the condition would eventually mitigate only a portion of the project's impacts or that the cost of the dedication was similar to the costs generally associated with street extensions experienced by other similar projects. It would appear that the court in *Burton* preferably should have invoked *Nollan*, which requires that the condition substantially advance the state's legitimate interest. The condition, while not offering immediate relief to the traffic problem, was, nevertheless, of value toward future mitigation. For that reason, unlike in *Nollan*, the condition was not irrelevant to the state's interest. The Washington Supreme Court also appeared to simply apply *Dolan* as the exaction standard in the jurisdiction. In *City of Olympia v. Drebick*, [16] the Washington Supreme Court approved a traffic impact fee calculation that was based on the proportionate square feet of the entire service area, thus the fee may be based on the cumulative area needs rather than the specific project's impact and only regulatory fees and conditions are subject to an individualized determination. An Oregon intermediate appellate court ruling in *Hammer v. City of Eugene* demanded only a record that the permit condition mitigated a problem that would justify permit denial, allowing the landowner to raise *Dolan* in judicial review of the administrative decision and permitting the municipality to demonstrate rough proportionality in the litigation. [17] This approach would permit the municipality to impose on the developer the condition of preparing a *Dolan* rough proportionality analysis to satisfy the individualized determination requirement. Not surprisingly, some courts, in reviewing impact fees, had exempted them from review under *Dolan* as the determination of standards are legislative rather than adjudicative. [18] The *Koontz* decision, without discussing impact fees would appear to preempt those state rulings in extending *Dolan* to reach all permit conditions, including those requiring the expenditure of funds and presumably the payment of impact and other fees. The Virginia Supreme Court found *Nolan* and *Dolan* inconsistent with the presumption of validity due ordinances. [19] Alternatively, the proportionality and individuality requirements could be satisfied by a fair

apportionment of the cost of capital capacity expansion such as sewage lines and treatment capacity by building lot, number of bedroom units, or square footage of commercial or industrial development. The Illinois Supreme Court, *Northern Illinois Home Builders Association v. County of Du Page*,[20] in sustaining a facial challenge to a transportation impact fee, while applying the *Pioneer Trust* strict proportionality test, stated that it would approve of the use of "generally accepted traffic engineering practices as assignable to the new development paying the fees" as satisfying *Dolan*. *Northern Illinois Home Builders*, particularly coming from one of the jurisdictions imposing the strictest scrutiny of exactions and endorsing a standard admittedly more rigorous than *Dolan*, stands as a powerful precedent upon which impact fee ordinances can be validated. The use of estimates of generated trips upon which transportation planning has been traditionally based would be the equivalent to estimates by service providers of average use per household or other type of use from streets to water, sewer, school, library, or any other service or facility. These estimates upon which impact fee models are based then satisfy the "rough proportionality" test of *Dolan*. One court has suggested that *Dolan* is satisfied if the developer is able to pass compliance costs on to purchasers or new residents through price increase or publicly imposed utility rates.[21] In Ocean Harbor House Homeowners Association v. California Coastal Commission, a California intermediate appellate court sustained a mitigation fee as a condition for a permit to build a beach seawall, finding that a roughly proportional nexus existed between loss of recreational resources and the construction and was supported by substantial evidence despite the lack of a specific study of the beach at issue and holding that the fee could include costs in addition to the loss of sand and that the community properly based the fee on per person beach expenditures of beach users.[22]

The Oregon Court of Appeals, in *Art Piculell Group v. Clackamas County*,[23] ostensibly simply adopted *Dolan* as the standard for reviewing permit conditions in Oregon. In reviewing dedication and street improvement conditions, the court vacated a decision of the Land Use Board of Appeals because the hearing officer acted on several errors of fact and failed to consider individualized traffic data. The court emphasized that the appropriate issue is upon the impacts that the project will generate, and not the apportionment of costs for general improvements over all benefitted owners. Thus, the LUBA correctly rejected the argument that as the project would produce 2.6% of traffic on the road, the developer should pay 2.6% of the costs of improvement. Mathematical cost and use comparisons were relevant but not determinative. The Oregon court, however, refused to address how much mathematical precision is called for under rough proportionality. The court stated it was "unclear where on the continuum the Court [in *Dolan*] intended to locate the line between precise mathematical calculation and quantification, and the issues in this case do not require us to identify its exact location."[24] Nevertheless, the court stated "[w]e do not imply that a development cannot have impacts that could warrant improvement conditions that are system wide in scope."[25] In *McClure v. City of Springfield*,[26] an Oregon appellate court found that a safety study constituted substantial evidence that a street right-of-way dedication offered a reasonable solution to a problem generated by the proposed development, as the dedicated adjacent road corrected an alternative more dangerous driveway and the dedication would maintain the pre-development safety level. The court emphasized that the study measured current and projected vehicle trips and used a fraction of the percentage of new trips as related to the needed total street capacity. Thus the study met the rough proportionality and individualized determination standards because it found that the percentage of land exacted was less than the percentage of trips generated by the proposed project. The court, however, found that the city failed to justify the dedication of a five-foot strip along the project's frontage to widen the street for a sidewalk and lighting and the dedication of a 10-foot by 10-foot clipped corner triangular area required for vision clearance. The city failed to offer a methodology for demonstrating that the project generated the need for these improvements. Another Oregon intermediate appellate court in *Lincoln City Chamber of Commerce v. City of Lincoln City*,[27] addressed the question of the burden of proof under *Dolan*. Finding *Dolan* to be silent on the issue, *Lincoln City* sustained an ordinance requiring that the applicant for a building permit submit a "rough proportionality report" by a qualified engineer regarding any exactions that the applicant does not consent to over facial taking claim.

Dolan would, however, appear to be the death knell for ordinances requiring an automatic dedication of a percentage of the parcel regardless of the proposed use and likely demand for infrastructure such as in *Billings Properties*. *Dolan* would also threaten the imposition of traditional requirements such as the provision of right-of-ways for perimeter roads or drainage systems not often based on proportionality to actual project generated demands, and threatens policies of imposing the costs of off-site facilities capacity expansion upon a developer in need of but a portion of the expanded capacity. *Dolan* suggests the death knell also for extraordinary conditions such as the construction and dedication of a museum or other public facility.

In *Isla Verde Intern. Holdings, Inc. v. City of Camas*,[28] the Washington Supreme Court invalidated a condition on subdivision that the developer set aside 30% of land for open space. It appears irrelevant that the condition failed to take the form of a dedication. The court applied state statutory review, finding the condition to constitute a tax, fee, or charge where the condition was not a part of a voluntary agreement or within the statute's rough proportionality exception. The decision is confusing as it is unclear if the condition is based on a uniform policy regarding lot coverage or a dedication; the court applies the state statute enacting the rough proportionality standard although *Dolan* has never been interpreted to apply to on-site conditions. In addition, it is impossible to discover in the opinion whether the percentage is more or less than the unbuildable land in a typical subdivision. A lot owner typically discovers that more than 30% may be unbuildable and to be reserved for set-backs and yard. In the end, the court is insisting that the regulating agency identify rough proportionality data on each condition to be imposed. In such a case, a demonstration of an individualized analysis would suffice, such as a set amount of open space per occupant or dwelling. A subdivision featuring a cluster of higher density units may include open space of at least 30% of the parcel. Such an individualized approach may yield even more than 30% of open space. The Washington court is not happy with an automatic 30% set-aside employed by the city regardless of the use and density, for the city's open space ordinance ostensibly eschewed any individualized determination of the effect of the proposed subdivision. By contrast, Arizona[29] and New York[30] consider an open space set-aside as a regulation subject to a regulatory takings analysis, limiting exactions to conditions that exact a public use.

Dolan was thought by some to be limited solely to off-site ad hoc discretionary permit exactions, inapplicable to on-site conditions presumptively serving the proposed project, just like objectively measured nondiscretionary impact fees.[31] That notion was probably ended by the Court's ruling in *Koontz* that restated *Dolan* and extended *Dolan* to reach all permit conditions, including those requiring the expenditure of funds.

In *Ehrlich v. Culver City*,[32] the California Supreme Court adopted the *Dolan* rough proportionality standard as a replacement for the statutory and judicial reasonable relationship standard. The court rejected a recreation mitigation fee reflecting the replacement value of private tennis courts to be replaced by 30 townhouses. The developer's donation of the removed tennis equipment to the city was ostensibly not constitutionally significant, yet reflected additional value received by the city.

The court in *Ehrlich* did not rule that only the need for tennis courts generated by the proposed townhouse occupants could be exacted. Instead, the court suggested that in addition to such implicitly permissible exaction, the city could impose some mitigation fee for the lost facilities. As impact fees based on an objective quantitative formula would not be subject to *Dolan* scrutiny, the court upheld an Art in Public Places ordinance requiring original art or payment of an in-lieu fee equal 1% of the value of the development applied to new construction projects of $500,000, or remodeling projects of $250,000. The court remanded the issue of the permissible size of a recreation mitigation fee for specific findings under *Dolan*. The California court's ruling on the public art impact fee has ostensibly been preempted by *Koontz v. St. Johns River Water Management District*,[33] where United States Supreme Court extended *Dolan* to reach all permit conditions, including those requiring the expenditure of funds and presumably the payment of impact and other fees. Although the city may not constitutionally measure the magnitude of the loss by the value of facilities that it had no right to appropriate without payment, it could require the transfer of the restricted recreational use classification to another parcel owned by the developer or, if impracticable, could impose an in-lieu fee of the same value as an alternative to denial of the permit. *Nollan* and *Dolan* were not limited to exactions involving a dedication or the transfer of title, according to the court in *Ehrlich*, citing the author of this treatise, but they also extend to discretionary or ad hoc exactions.

In *San Remo Hotel L.P. v. City of San Francisco*,[34] the California Supreme Court sustained a hotel conversion ordinance, requiring residential hotels desiring to lease rooms for short-term tourist rentals, to offer lifetime leases or pay a conversion or housing replacement fee of $567,000 to be used to fund affordable housing based on 62 rooms. The court found the fee to be controlled by the art fee in *Ehrlich* rather than the recreation mitigation fee and thus subject to deferential scrutiny rather than the heightened scrutiny of *Nollan*, *Dolan*, and now *Koontz*, which likely announced the end to fee immunity from *Dolan scrutiny*, as the fees are not discretionary but computed on the basis of a set formula. As not subject to *Dolan*, the court found that the fee ordinance met the still-California standard of bearing a "reasonable relationship" to the impacts of the development. Although *San Remo* is easily distinguished from the discretionary ad hoc-calculated recreation mitigation fee in *Ehrlich*, critics will be uneasy with the assumption that the developer's use modification will generate a greater demand for capital facilities and services to support the project. The same unquantifiable concern surrounds how by developing on the

site of a defunct recreational facility must provide recreational facilities for the city beyond serving the needs of development residents.

As in California, the Minnesota Court of Appeals in *Kottschade v. City of Rochester*,[35] in a cursory review of a right-of-way dedication condition for a shopping mall development, in what may be a growing trend, simply adopted the rough proportionality of *Dolan* as the state standard. The Washington Supreme Court has followed *Dolan* in sustaining a right-of-way dedication condition in accepting a county planning office report that documents deficiencies in right-of-way width and surfacing of adjoining streets and calculates the increase in traffic and both the specific need generated by the proposed plat and the cumulative impact of a series of short subdivisions as substantial evidence under the *Dolan* rough proportionality standard.[36] The Washington Supreme Court also approved a traffic impact fee calculation that was based on the proportionate square feet of the entire service area, thus allowing the fee to be based on the cumulative area needs rather than the specific project's impact and requires only regulatory fees and conditions to be reviewed under *Dolan*.[37]

Although the weight of authority addressing the question of whether legislatively enacted impact fees are subject to the *Dolan* analysis, prior to Koontz, had found them them exempt from federal takings scrutiny, Ohio has elected to follow what it believes to be the Florida rational nexus or dual nexus standard adopted in *St. Johns County v. Northeast Florida Builders Association*[38] and patterned after federal permit conditions standards. In *Home Builders Ass'n v. City of Beavercreek*,[39] the Ohio Supreme Court sustained a roadway impact fee ordinance and adopted what might appear to be its own version of Nollan-Dolan but is actually the Florida "dual rational nexus test" to review impact fees under the federal and state constitutional takings clauses. The test requires: (1) a reasonable connection between the need for additional capital facilities and the population growth generated by the subdivision, and (2) a reasonable connection between the expenditure of funds collected and the benefits accruing to the subdivision. For the court the question is whether the exaction is unduly burdensome. The dual rational nexus test appears consistent with the requirements of *Koontz*.

The court specified that judicial review of impact fees would look to the methodology to determine if the fee was based on generally accepted traffic engineering practices, was based on a comprehensive plan for creating the impact fee, and the ordinance should provide for review and updating of the fee allocation. The court is to review if the methodology is reasonable and not which method produces the best results. The ordinance is not subject to any precise mathematical formulation, as the choice is a legislative matter. In *Beavercreek* the need for new roadways was based on the full development of the fee district, subtracting a percentage for pass-through traffic not generated by the development, and subtracting the amount raised from other funding sources, exempting projects not likely to generate traffic, and crediting the developer for off-site roadway improvements made by the developer.

The court further opined that the fees can be used outside the fee district if the use is beneficial to the district. Although the title of "dual rational nexus test" might appear to present a new variation of the prior state exaction review standards, it may be simply a thoughtful amalgam of the rationale behind *Nollan* and *Dolan* and the "good faith," earmarking, and targeting that has been imposed by states on the collection of impact fees either by courts or through legislation. It is notable that the Ohio court appears to call for great deference in reviewing impact fee ordinances specifically and exactions implicitly. The court did not address the question of whether legislatively enacted impact fee ordinances are subject to *Dolan* review.

The Florida Supreme Court in *Volusia County v. Aberdeen*,[40] announced that it would adhere to the *St. John's County* dual nexus impact fee standard, requiring that the fee must offset needs sufficiently attributable to the subdivision, and the fee revenue must be sufficiently earmarked for the substantial benefit of the subdivision residents. In *Volusia County*, the court ruled that application of a county ordinance imposing school impact fees on new dwelling units to a development for older persons that was legally closed to minor children violated the state constitution. The mobile homes development was designed for persons at least 55 years of age, and the age-based restriction where the restriction was contained in a covenant that was binding for 30 years. The Florida ruling was explicitly based on an interpretation of Florida's internal law and perhaps rightfully assumed that the standard would meet the *Dolan* criteria or possibly assumed that impact fees are not subject to *Dolan* review.

In reversing a dismissal of a *Dolan* dedication challenge, the Eighth Circuit remanded the case for *Dolan* compliance without regard to the internal law of Arkansas.[41] *Dolan* may have contributed to the simplification and standardization of infrastructure finance standards. Cases have yet to disclose a pattern suggesting if *Dolan* has resulted in an altered substantive standard, enhanced predictability, or fairness. An Oregon intermediate appellate court ruling sustained an adjacent street

improvement subdivision condition on findings of *Dolan* consistency, which, the court announced, replaced the former reasonable relationship test.[42] Arizona has simply adopted the *Dolan* standard by legislation,[43] and like the California Supreme Court, has interpreted the doctrine to apply solely to discretionary exactions and not to impact fees or exactions or dedications that are legislatively established and defined. Minnesota by statute has enacted the *Dolan* rough proportionality standard and has specifically indicated application to both dedications and impact fees.[44]

In California, communities engaged in redevelopment will have to structure impact fees to allow a credit for the elimination of infrastructure demand represented by the previous development.[45] It can be argued that the same result is compelled under state rational nexus standards or the proportionality and individuality requirements of *Dolan* should federal or state courts rule those doctrines applicable to legislatively imposed impact fees.

It appears to be the principle of *Dolan* that the protection of property rights demands a minimal constitutional rule of rough proportionality in the imposition of exactions. Thus, states would be free, just as under the other clauses of the Bill of Rights, to grant additional protection, such as the more rigid proportionality of *Pioneer Trust*. Although Illinois was empowered by *Dolan* to impose the more rigid proportionality of *Pioneer Trust*, the intermediate appeals court in *Amoco Oil Co. v. Village of Schaumburg*[46] did not. The court reviewed a dedication condition imposed on a special use permit sought to allow redevelopment of a property currently used as a gas station. The court sustained a finding of a taking as the condition demanded 20% of the parcel for highway expansion, while the record disclosed that the projected increase in traffic, over the current gas station use, would be approximately four-tenths of 1%. The court in *Amoco Oil* apparently joined the universal trend of treating *Dolan* as replacing the previous local state standard, such as the Illinois uniquely attributable, *Pioneer Trust*, test. *Amoco Oil*, on the limited facts disclosed in the opinion, found a violation of *Dolan*. While in another case, it is possible that a court finding compliance with *Dolan* may nevertheless invalidate an exaction under *Pioneer Trust*, it is strange that the *Amoco Oil* court failed to suggest such a model.

In *Curtis v. Town of South Thomaston*,[47] the Maine Supreme Court sustained an exaction based on an ordinance requiring subdivisions to construct a 250,000 gallon fire pond within 2,000 feet of any proposed developments lacking an adequate water supply, together with the dedication of an easement so that the town may maintain and use the pond and hydrant pumping system. The court sustained the condition as the town could have rejected the subdivision and thus, under the dicta in *Nollan*, the town may impose a condition to mitigate the problem that would justify plat rejection. While the court ruled that rough proportionality may not be satisfied by conclusory statements, the reviewing court assigns weight to the fact that the requirement here is a legislative standard rather than an ad hoc requirement. The court found the condition to be related in nature and extent to the impact of the project.

The Eighth Circuit, in *Goss v. City of Little Rock*,[48] went in a different direction when it found that requiring the owner dedicate 22% of the property for highway use as a condition for rezoning constituted a taking for lack of rough proportionality evidence, despite suggesting that the city could pursue its legitimate interests by denying the rezoning. This might suggest the rejection of Justice Scalia's dictum in *Nollan* that a condition might be valid if it is designed to mitigate a problem that would justify rejection of the permit application. *Goss* also addresses the issue not encountered in subdivision and building permit situations where the approval is based on a specific project design: what is the appropriate baseline for determining rough proportionality? Where a rezoning is sought, the applicant may or may not have a specific future plan for development, yet the rezoning may permit a number of different uses and each might generate a different demand for infrastructure. Should infrastructure conditions be based on the highest intensity of development allowed under the proposed rezoning classification? In *Goss*, the Eighth Circuit agreed with the trial court that basing the condition on the speculative likelihood that the owner would build a mini-mall, one of the most intensive traffic-generating uses permitted under the proposed zone change, was not consistent with *Dolan*. *Goss* counsels that in cases of conditional rezoning, that regulators hold off rezoning until a structure and use-specific development is offered and an additional condition imposed requiring the owner to restrict future use of the property to that contained in the project plan. Of course, communities must carefully avoid the label of contract zoning.

The Texas Supreme Court in *Town of Flower Mound v. Stafford Estates Limited Partnership*[49] ruled that requiring a developer to construct and pay for improvements to an adjacent public street where the development would increase traffic by about two-thirds but where there was no showing that the improvement bore any relationship to the increased traffic impact, the road itself, or the town's roadway system as a whole, violated *Dolan* and the applicable Texas reasonable relationship test. A traffic study demonstrated that the development would generate about 750 vehicle trips per day, or about 18% of

the total average traffic on the improved street but there was no evidence offered on the road or the development's impact upon the town's roadway system. The court rejected the town's argument of a wider impact reflected in traffic impact fees and despite the town having discounted the developer's obligation to pay traffic impact fees by nearly $600,000 as the road improvement condition was not part of the town's capital improvement plan and could not be improved using impact fees. In addition, the road had been improved as an asphalt road and replacing it with a concrete road failed to increase capacity. The Texas high court refused to limit *Dolan* to dedications. extending it to all exactions, but refusing to apply *Dolan* to conditions such as on-site construction standards. That the adjacent street improvement obligation was legislatively established, the court refused to exempt the legislative standard from *Dolan* or to limit that case to ad hoc adjudicative conditions. The court. however, acknowledged that legislatively enacted fees would be exempt from *Dolan* while it rejected a bright-line legislative-adjudicative distinction. The town attempted to argue that *Dolan* should not apply as the town could simply deny the permit and a challenge would be based on the more permissive *Penn Central* regulatory takings model. The court rejected the invitation and refused to limit *Dolan* to dedications and instead extended it to all exactions. yet found that the reasonable relationship test, rather than the rough proportionality test is the applicable standard. The court refused to apply *Dolan* to conditions and to apply *Penn Central* where the application is denied. extending *Dolan* to cases where the permit denial is like an exaction. ostensibly not understanding *Monterey Dunes*. The court was also asked to reject the town's post-litigation attempt at an individualized rough proportionality analysis. The Texas court ruled that the roughly proportionality analysis may be performed after imposition and challenge, but that it usually should be performed before the condition is imposed.

Dolan cannot be characterized as a victory for city planning. yet, like *Nollan*, may not represent a victory for property owners. Although *Dolan* stands for the proposition that the taking clauses prohibit extortionist permit condition demands out of proportion with the infrastructure demand generated by the project, that principle had been established under the system of state exaction law. To the extent that *Dolan* reflects increased public costs associated with accommodating growth. the *Dolan* decision. like *Nollan*. appears to authorize the denial of a permit application where a community faces unmet capacity for infrastructure demand generated by a proposal. The next post-*Nollan* issue may be to test the dictum in *Nollan* that exactions may also be authorized where they mitigate a problem that would constitute a basis to deny the permit. Landowners may anticipate a higher rate of permit application denials and perhaps the increased use of special assessment-financed infrastructure.[50] *Koontz*, however, demonstrates that permit denial will not insulate the regulating entity from a takings challenge based on an excessive unmet condition. Further development delays may be shown to be an inevitable effect. *Dolan* may generate the proliferation of impact fee ordinances linked to infrastructure capacity expansion costs tied to project size. Some developers previously enjoying a "free ride" exclusion from having to share in the costs of already in-place infrastructure such as schools. roads, and waste treatment, may now find they are charged their share.

A survey of local California governments by Ann Carlson and Daniel Pollak disclosed that proportionality and individualized analysis has disclosed that developers have been grossly undercharged for the supporting infrastructure necessary to mitigate or accommodate the impacts of projects. Regulators are anticipating significant increases in exactions and impact fees as infrastructure elements are scrutinized.[51] The ironic impact of *Dolan* has been to establish an infrastructure impact statement-like requirement, increasing the cost of development, but generating improved planning.

Alternatively, Chief Justice Rehnquist's opinion in *Dolan* discussed why a private rather than a public greenway was required, suggesting that the city might have conditioned the *Dolan* permit on the private improvement and maintenance of the greenway. The landowner would also retain the obligation to pay taxes on the greenway, maintain insurance and exposure to liability arising from its maintenance of the greenway. Indeed, the majority opinion is notable for ignoring the value of the benefit to the property owner and not acknowledging any reciprocity of advantage including being adjacent to publicly maintained and landscaped bikeway and pedestrian walkways.

Chief Justice Rehnquist appeared to confuse the regulatory taking—physical occupation taking dichotomy in characterizing the recreational easement condition as violative of the right to exclude. Thus, appearing to set back belated efforts to establish bikeways and pedestrian walkways. Such recreational easements must be based on an individualized finding of need generated by the project, a negotiated development agreement assigning financing and infrastructure improvement obligations, the expensive power of eminent domain requiring higher taxes, or through the establishment of a benefit assessment or urban redevelopment district. Although *Dolan* involved an easement-like physical occupation, the decision is likely to be applied to all permit conditions and the ruling is likely to apply to all discretionary or ministerial permit conditions.[52] *Koontz* has ostensibly announced that principle.

Dolan may generate a practice of developing a use with a lower demand for infrastructure to restrict the cost of permit approval with a subsequent shift of use to one which places greater demands including sewage treatment, water, or traffic generation. Communities may respond with policies of charging fees based on the most intense demand for infrastructure of all permissible district uses.[53] *Dolan* should also encourage the increased use of development agreements to avoid the uncertainty of vague and indeterminate nexus and proportionality requirements.[54]

Footnotes

1 Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304, 38 Env't. Rep. Cas. (BNA) 1769, 24 Envtl. L. Rep. 21083 (1994). See also: **Eighth Circuit:** Goss v. City of Little Rock, 90 F.3d 306 (8th Cir. 1996) (rezoning conditioned dedication, for future street widening, of 55-foot deep strip running along entire 633 foot frontage, amounting to 0.8 acres, or 22 of the parcel; owner used property as a prior nonconforming use for 20 years, such use consisting of a convenience store, gas station, laundromat, and car wash on a parcel zoned residential; the owner wished to obtain conforming commercial zoning to allow for property's possible sale; the court reversed dismissal of the complaint to have a trial on whether the dedication bore rough proportionality to generated need under Dolan, but the court appeared to suggest that the dedication might be reasonable if the zone change would permit a different heavy traffic-producing business; the court never mentioned any standard that might additionally apply under Arkansas law), subsequent proceedings, Goss v. City of Little Rock, Ark., 151 F.3d 861 (8th Cir. 1998) (appellate court found that rezoning conditioned on requirement that owner dedicate 22 of property to the city for highway use constituted a taking for lack of rough proportionality evidence; the court agreed with the trial court that the city erred in basing the condition on the speculative likelihood that the owner would build a strip mall, one of the most intensive traffic-generating uses permitted under the proposed zone change; the court rejected the payment of any damages, despite the claim that the failure to rezone cost the owner $265,000; since there was no right to the change of zoning, one cannot base a regulatory taking; appellant failed to prove that he could not sell the property as zoned without the dedication requirement). Cf. Christopher Lake Development Co. v. St. Louis County, 35 F.3d 1269 (8th Cir. 1994) (development criteria requiring subdivider to subsidize drainage system for entire watershed area would appear to violate equal protection since they single out one developer, and may not be rational; the court found the dispute ripe, and found that the developer was entitled to recoup the portion of cost of providing flood control beyond its pro rata share, that it needed for its development).
Ninth Circuit: David Hill Development, LLC v. City of Forest Grove, 688 F. Supp. 2d 1193 (D. Or. 2010) (requirements that developer include an extra four feet of right-of-way width, extension of trunk line, and construction of central median presented material issue of fact along with road improvements adjacent to a school on alleged inverse condemnation; excluded lay witness opinion in affidavit on proportionality as not qualified as an expert to give such an opinion and as a mixed question of law and fact, may be given to the jury).
California: Building Industry Ass'n of Cent. California v. City of Patterson, 171 Cal. App. 4th 886, 90 Cal. Rptr. 3d 63 (5th Dist. 2009), as modified, (Mar. 2, 2009) and as modified on denial of reh'g, (Mar. 20, 2009) (increasing affordable housing fee by more than $20,000 per unit violated development agreement calling for $734 per unit and following tentative tract approval of subdivision, the amount calculated based on the cost of making 642 units of the remaining 3,507 units affordable and such escalation not within the agreement's provision for reasonably justified fees and the new fee was not a standard practice that might have been permitted, but the 642 units was the city's need for affordable housing rather than that generated by the developer's 214 lots and thus the fee not reasonably based on costs attributed to it).
Maine: Curtis v. Town of South Thomaston, 1998 ME 63, 708 A.2d 657 (Me. 1998) (ordinance requiring subdivisions to construct 250,000 gallon fire pond within 2,000 feet of any proposed development if no adequate water supply exists, as well as the dedication of an easement so that town may maintain and use pond and hydrant pumping, was found to be valid since town could have rejected subdivision and thus, under Nollan, may impose condition to mitigate the problem; while rough proportionality may not be satisfied by conclusory statement, reviewing court assigns weight to fact that requirement is legislative standard rather than ad hoc requirement, here related in nature and extent to impact of project).
Maryland: Steel v. Cape Corp., 111 Md. App. 1, 677 A.2d 634 (1996) (refusal to upzone from open space to residential based on inadequacy of school facilities a taking as no reasonable economic use, influenced by previous mistaken downzoning when community association wrongly asserted ownership; mistaken zoning permits rezoning but does not justify the grant of a variance; Dolan not a change in law as same as Maryland reasonable nexus or reasonable relationship).
Michigan: Dowerk v. Charter Tp. of Oxford, 233 Mich. App. 62, 592 N.W.2d 724 (1998) (conditioning subdivision on upgrading existing private road that would provide development's only access to public highways, and on strict compliance with current construction standards with extensions to serve new residences at least roughly proportional to increased traffic and public safety; due

process complied with where township reviewed owner's request for permits and variances and discussed them at length at several meetings. in light of letters of fire chief and police chief explaining why improvement of private roadway required for subdivision: no equal protection violation where conditioned subdivision on road improvement as served safety and owner granted permit—not so conditioned—for single residence not similarly situated).

Oregon: State By and Through Dept. of Transp. v. Altimus, 124 Or. App. 61, 862 P.2d 109 (1993), cert. granted, judgment vacated on other grounds, 513 U.S. 801, 115 S. Ct. 44, 130 L. Ed. 2d 6 (1994) (proper in condemnation action in valuing parcel to consider that upon annexation city would require dedication of a portion for street improvements). But see Brown v. City of Medford, 251 Or. App. 42, 283 P.3d 367 (2012) (requirement that landowner grant easement as a condition for approval of partition of landowner's lot was an unconstitutional taking; requirement that landowner grant easement over southern portion of lot for future street, as a condition for city's approval of partition of lot into a northern lot and a southern lot, was an unconstitutional taking, since no essential nexus existed between the easement and the proposed partition; neither of landowner's proposed lots would access the street to the south, and city failed to identify any code provisions or specific policies that would have allowed it to deny partition; and landowner's damages were to be determined based on valuation of landowner's property as of date that city imposed condition; *author notes that clearly the condition met the essential nexus test of Nollan as it served a public purpose and most likely was an aid to circulation and possibly related to safety; the problem was a Dolan violation that the condition failed to meet the rough proportionality to needs generated by the partition).

Texas: Town of Flower Mound v. Stafford Estates Ltd. Partnership, 135 S.W.3d 620 (Tex. 2004) (requiring developer to construct and pay for improvements to adjacent public street where the development would increase traffic by about two-thirds but there was no showing that the improvement bore any relationship to the increased traffic impact, the road itself, or the town's roadway system as a whole where traffic study demonstrated that the development would generate about 750 vehicle trips per day, or about 18 of the total average traffic on the improved street and no evidence was offered on the road impact upon the town's roadway system, the court rejecting town's argument of a wider impact as reflected in allowable impact fees and despite having discounted the developer's obligation to pay traffic impact fees by nearly $600,000 as the road improvement condition was not part of the town's capital improvement plan and could not be improved using impact fees, in addition the road had been improved as an asphalt road and replacing it with a concrete road failed to increase capacity); Town of Flower Mound v. Rembert Enterprises, Inc., 369 S.W.3d 465 (Tex. App. Fort Worth 2012), review denied, (Aug. 17, 2012) (development agreement requiring developer to construct a road and requiring town to reimburse developer for the cost of construction was a contract for the provision of goods or services, for purposes of statutory waiver of immunity from suit; developer's declaratory judgment claim was a recast of developer's breach of contract claim, and thus Declaratory Judgments Act did not waive town's immunity from suit on such claim; Act did not waive town officials' immunity from suit on developer's declaratory judgment claim; and conflicting evidence precluded dismissal of developer's eminent domain claim on town's plea to the jurisdiction on whether contractual provision was proportional to the projected impact of the development in violation of Dolan but owner may have consented through agreement; developer was seeking declaration that town was required to reimburse developer for 100% of the cost of road construction); Mira Mar Development Corp. v. City of Coppell, 364 S.W.3d 366 (Tex. App. Dallas 2012), reh'g overruled, (2 pets.) (May 7, 2012) and review denied, (2 pets.) (May 3, 2013) and opinion withdrawn and superseded, 421 S.W.3d 74 (Tex. App. Dallas 2013) ($2000 fee for review of developer's floodplain study, and city's assessment of roadway, sewer, water impact fees in subdivision because the city did not condition approval of the development on payment of the water and sewer impact fees, those fees met *Nollan* and were not exactions from the developer requiring compensation, but requirement that developer extend drainage pipe and requirement that developer of subdivision change slopes from three-to-one to four-to-one was a compensable exaction as it failed to meet *Nollan* as it was not related to a legitimate government interest; city's requirement that developer conduct two water-bacteria tests as a condition for approval of the subdivision bore an essential nexus to the advancement of a legitimate government interest and was roughly proportional to the projected impact of the proposed development, and thus, did not constitute a compensable exaction for property development; subsequent superceding ruling rejected lower court compensation rulings); Bringardner, Exactions, Impact Fees and Dedications: National and Texas Law After *Dolan* and *Del Monte Dunes*, 2000 Inst. on Plan, Zoning & Eminent Domain 14-1, reprinted in 32 Urb. Law. 561 (2000).

Utah: B.A.M. Development, L.L.C. v. Salt Lake County, 2012 UT 26, 282 P.3d 41 (Utah 2012) (sustaining the inclusion of the costs to state, federal, and local government in the rough-proportionality analysis of county's exaction of dedication of additional land for expanded roadway, including the state's costs of improving that road as a proper measure of the development's impact; if a local government's purpose encompasses a development's impact not just on the specific government entity imposing the exaction but also costs to the broader community or coordinate government entities, then presumably all such costs count in the rough-proportionality calculus); B.A.M. Development, L.L.C. v. Salt Lake County, 2008 UT 74, 196 P.3d 601 (Utah 2008) (denial of license due to its objection to dedicating additional land for expanded roadway "rough proportionality" analysis should have been a "rough equivalency" test that compared respective costs of municipally required exaction and its impact to developer and county that is whether the exaction and impact are related in extent, either by measuring cost to the municipality of assuaging the impact.

or by measuring the value of the land to be dedicated by the developer at the time of the exaction, and, whether the costs to each party are roughly equivalent).

See generally: Takings: Land-Development Conditions and Regulatory Takings After *Dolan* and *Lucas* (D. Callies ed. 1996); Berger, Vindicating the Rights of Private Land Development in the Courts, 32 Urb. Law. 941 (2000); Bringardner, Exactions, Impact Fees and Dedications: National and Texas Law After *Dolan* and *Del Monte Dunes*, 2000 Inst. on Plan. Zoning & Eminent Domain 14-1, reprinted in 32 Urb. Law. 561 (2000); Callies & Goodin, The Status *of Nollan v. California Coastal Commission* and *Dolan v. City of Tigard* After *Lingle v. Chevron U.S.A., Inc.*, 40 J. Marshall L. Rev. 539 (2007); Callies & Tappendorf, Unconstitutional Land Development Conditions and the Development Agreement Solution: Bargaining for Public Facilities After *Nollan* and *Dolan*, 51 Case W. Res. L. Rev. 663 (2001); Cholewa & Edmonds, Federalism and Land Use After *Dolan*: Has the Supreme Court Taken Takings from the States?, 28 Urb. Law. 401 (1996) (arguing that the federalization of takings law and the obligation for individualized determinations is an affront to federalism); Cordes, Legal Limits on Development Exactions: Responding to *Nollan* and *Dolan*, 15 N. Ill. U. L. Rev. 513 (1995); Curtin, *Dolan* and *Nollan* Takings and Exactions, California Style, Inst. on Plan. Zoning & Eminent Domain ch. 8 (2002); Curtin & Davidson, Report of the Committee on Land Use, Planning and Zoning Law—Life After *Dolan*: Review of the Cases, 27 Urb. Law. 874 (1995); Dana, Land Use Regulation in an Age of Heightened Scrutiny, 75 N.C. L. Rev. 1243 (1997) (critical of sacrificing allocative efficiency to achieve a narrow conception of expenditure efficiency as a result of nexus and proportionality tests); Davidson, Rosenberg & Spata, "Where's *Dolan*?": Exactions Law in 1998, 30 Urb. Law. 683 (1998) (mostly technical rulings now far and few between after three years flurry of litigation under Dolan); Fenster, Failed Exactions, 36 Vt. L. Rev. 623 (2012) (arguing that "failed exactions"—regulatory conditions on property development that government agencies contemplate but that are never finalized or enforced are not subject to Nollan and Dolan, but might be challenged under substantive process or more rigorous state standards: *author's note that such failed exactions are unlikely to be a part of entitlements or the basis of estoppel, and such state standards have yet to emerge); Fenster, Regulating Land Use in a Constitutional Shadow: The Institutional Contexts of Exactions, 58 Hastings L.J. 729 (2007) (critical of Nollan, Dolan, and Lingle); Fenster, Takings Formalism and Regulatory Formulas: Exactions and the Consequences of Clarity, 92 Cal. L. Rev. 609 (2004) (advocating local infrastructure negotiation over legislatively enacted objective standards to allow the possibility of superior results as compared to developer-influenced statutory standards); Freilich & Bushek, Public Improvements and the Nexus Requirements: The Takings Equation After *Dolan v. City of Tigard*, 1995 Inst. on Plan. Zoning & Eminent Domain 2-1; Gerry, Parity Revisited: An Empirical Comparison of State and Lower Federal Court Interpretations of *Nollan v. California Coastal Commission*, 23 Harv. J.L. & Pub. Pol'y 233 (1999) (finding interpretation of essential nexus test divided equally between strict and deferential, with an identical pattern comparing federal and state courts, yet your author entertains certain concerns for the scientific nature of the study, viewing only reported cases and ignoring trial courts, federal district judge rulings except those the judge affirmatively elects to publish, and the complexities and subjectivity of interpreting Nollan, in the face of a unique experience of state courts embracing Dolan, and the fact that so many exactions cases are generated in a small number of large developing jurisdictions); Guy & Holloway, The Direction of Regulatory Takings Analysis in the Post-*Lochner* Era, 102 Dick. L. Rev. 327 (1998); Holloway & Guy, The Impact of a Federal Takings Norm on Fashioning a Means-End Fit Under Takings Provisions of State Constitutions, 8 Dick. J. Envtl. L. & Pol'y 143 (1999); Holloway & Guy, A Limitation on Development Impact Exactions to Limit Social Policy-Making: Interpreting the Takings Clause to Limit Land Use Policy-Making for Social Welfare Goals of Urban Communities, 9 Dick. J. L. & Pol'y 1 (2000); Holloway & Guy, Land Dedication Conditions and Beyond the Essential Nexus: Determining "Reasonable Related" Impacts of Real Estate Development under the Takings Clause, 27 Tex. Tech. L. Rev. 73 (1996); Huffenus, *Dolan* Meets *Nollan*: Towards a Workable Takings Test for Development Exactions Cases, 4 N.Y.U. Envtl. L.J. 30 (1995); Laitos, Causation and the Unconstitutional Conditions Doctrine: Why the City of Tigard's Exaction Was a Taking, 72 Denv U.L. Rev. 893 (1995); Merrill, *Dolan v. City of Tigard*: Constitutional Rights as Public Goods, 72 Denv. U.L. Rev. 859 (1995); Morgan, Development Exactions: Avoiding and Defeating *Dolan* Challenges, 52 Land Use L. & Zoning Dig. 3 (Sept. 2000); Ostler, Restorating Due Process as the Essential First Step in Every Takings Case, 13 Loy. J. Pub. Int. L. 1 (2011) (Arguing that historical tradition would utilize due process as the first thing to consider in every takings case, which is what the *Penn Central* balancing test seems to attempt and that in a physical takings case, where there is no question whether a taking has occurred, due process should still be the first step to make sure the property was taken in a fair way; this involves more than making sure the amount of compensation is fair, but looks to whether the entire manner in which the taking occurred is fair. If property was arbitrarily taken without an opportunity for the landowner to have a say in the matter, an improper taking has occurred; this is true whether the law on which the taking was based failed to provide procedural due process, or whether a law was passed that took physical property with no mention of any protections to the; if basic due process standards of fairness have been met, then courts can proceed to make sure the purpose of the taking is for a public use, following which they can make sure the amount of compensation is fair; the three harm-based tests from *Penn Central* or *Lingle* may then be applied; different from the "public use" test, the inquiry should 10 turn to whether the purpose of the law is constitutionally sound and defensible in its own right; if it is, another due process question follows (from the *Agins* case): do the goals or ends for which the law was created substantially advance a legitimate state interest?

This is essentially the same as the "nexus" test of *Nollan* as there is no legitimate reason to completely isolate exaction cases from other takings cases: Exaction cases will have one additional due process question that follows after those described above: is the government exaction "roughly proportional" to the impact of the proposed development? This last question is clearly taken from the case of *Dolan v. City of Tigard*, and applies only in exaction cases, where the landowner is being required to donate land in a rough proportion to the impact his actions or development will have on the public. If all of these questions are answered in the affirmative, then due process is satisfied and courts can proceed to making sure the purpose of the taking is for a public use, following which they can make sure the amount of compensation is fair: the author believes that in many ways, the court is already doing much of this. It is simply doing it in a very confused way. According to the author, the method would work well with judicial taking claims following Justice Kennedy's proposed approach.): Quick, *Dolan v. City of Tigard*: The Case that Nobody Won, 1995 Det. C. L. Rev. 79 (1995): Mulvaney, The Remnants of Exaction Takings, 33 Environs 189 (2010) (over-interpreting Lingle to suggest a new, more deferential test replacing Nollan and Dolan, the author suggests that the Lingle dicta has yet been ineffective as in the nearly five years since Lingle, some lower courts have disregarded the author's reading of Lingle's dicta and continued to apply Nollan and Dolan to a broad set of permit conditions, perpetuating the possibilities for regulator circumvention that flow from applying a standard of scrutiny to permit conditions that is inconsistent with that for permit denials): Romero, Two Constitutional Theories for Invalidating Extortionate Exactions, 78 Neb. L. Rev. 348 (1999) (advocating a substantive due process theory): Stroud & Trevarthen, Defensible Exactions After *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*, 25 Stetson L. Rev. 719 (1996): Ziegler, Development Exactions and Permit Decisions: The Supreme Court's *Nollan, Dolan*, and *Del Monte Dunes* Decisions, 34 Urb. Law. 155 (2002): Comment, Calling for a New Analytical Framework for Monetary Development Exactions: The "Substantial Excess" Test, 22 T.M. Cooley L. Rev. 1 (2005) (advocating higher scrutiny of fees and exactions limiting amount to benefit received by landowner): Comment, The Scope of the Supreme Court's Heightened Scrutiny Takings Doctrine and its Impact on Development Exactions, 20 Whittier L. Rev. 181 (1998).

2 Harris v. City of Wichita, Sedgwick County, Kan., 862 F. Supp. 287, 294 (D. Kan. 1994), aff'd, 74 F.3d 1249 (10th Cir. 1996) (airport overlay restricting uses) (text in Westlaw) (deferential standard of rational relationship to legitimate government purpose and no evidence of arbitrary and capricious action): Wonders v. Pima County, 207 Ariz. 576, 89 P.3d 810 (Ct. App. Div. 2 2004) (sustaining county native plant preservation ordinance over takings and preemption claims and finding that obligation to designate 30% of parcel as open space to comply with law was neither a regulatory taking nor an exaction under *Dolan* as it did not require a dedication for public use or interfere with the right to exclude): Schultz v. City of Grants Pass, 131 Or. App. 220, 884 P.2d 569 (1994) (mandatory dedication for right-of-way expansion for needed county storm drain improvement together with dedication for city street widening as condition for parcel partition that would produce up to 17 homesites, each single family home generating 3,200 vehicle trips per year or 8.7 per day and possible maximum of 149 trips per day assumed to be in violation of rough proportionality rule of *Dolan*; also rejected claim that dedications where requirement set by ordinance not subject to *Dolan* which the court held applied where owner required to deed property to government and did not apply where condition was in the form of a limit on use to which owner can put property).

3 City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 119 S. Ct. 1624, 143 L. Ed. 2d 882, 48 Env't. Rep. Cas. (BNA) 1513, 29 Envtl. L. Rep. 21133 (1999). See also Home Builders Ass'n of Northern California v. City of Napa, 90 Cal. App. 4th 188, 108 Cal. Rptr. 2d 60, 31 Envtl. L. Rep. 20800, 22 A.L.R.6th 785 (1st Dist. 2001), as modified, (July 2, 2001) (sustaining inclusionary zoning ordinance requiring 10% of all newly constructed units to be affordable generally applicable regulation and as such *Nollan* and *Dolan* is inapplicable absent a particular land use bargain with developer): Smith v. Town of Mendon, 4 N.Y.3d 1, 789 N.Y.S.2d 696, 822 N.E.2d 1214, 59 Env't. Rep. Cas. (BNA) 2133, 35 Envtl. L. Rep. 20001 (2004) (approving site plan condition placing a conservation restriction on portion of site within environmental overlay district which the court found not to be an exaction but nevertheless not a regulatory taking, for an exaction requires a public use). But see Town of Flower Mound v. Stafford Estates Ltd. Partnership, 135 S.W.3d 620 (Tex. 2004) (refusing to apply *Dolan* to conditions and *Penn Central* where the application is denied and extending *Dolan* to where the denial is like an exaction, ostensibly not understanding *Monterey Dunes*).

4 Del Monte Dunes at Monterey, Ltd. v. City of Monterey, 95 F.3d 1422, 27 Envtl. L. Rep. 20139 (9th Cir. 1996), aff'd, 526 U.S. 687, 119 S. Ct. 1624, 143 L. Ed. 2d 882, 48 Env't. Rep. Cas. (BNA) 1513, 29 Envtl. L. Rep. 21133 (1999).

5 Cholewa & Edmonds, Federalism and Land Use After Dolan: Has the Supreme Court Taken Takings from the States?, 28 Urb. Law. 401 (1996) (arguing that the federalization of takings law and the obligation for individualized determinations is an affront to federalism): Fries & Reyniak, Putting Takings Back Into the Fifth Amendment: Land Use Planning After Dolan v. City of Tigard, 21 Colum. J. Envtl. L. 103 (1996) (strict scrutiny but unclear guidance on applicability): Kossow, Dolan v. City of Tigard, Taking Law, and the Supreme Court: Throwing the Baby Out With the Floodwater, 14 Stan. Envtl. L.J. 215 (1995) (critical): Martinez, "United States Supreme Court Cases in State and Local Government Law: 1993–1994 Term," 5 Ass'n of Am. L. Sch. Section on Urb., State & Local Gov't L. Newsletter 3 (Nov. 1994) (reflects higher level of judicial scrutiny, citing evidentiary burden on local government): Morgan, Exactions as Takings Tactics for Dealing with Dolan, 46 Land Use L. & Zoning D. 3 (Sept. 1994) (raising

questions about whether *Dolan* affects traditional exactions such as right-of-way for perimeter streets, or drainage facilities; whether damages are available for excessive exactions; attempting to make an argument that the burden of proof has been shifted to the government; arguing that the ruling prohibits the use of ad hoc determinations of permit conditions in discretionary proceedings such as subdivision—(author's note: the burden to challenge a policy decision such as fee pricing based on average unit or per person demand generated by development or the average use and apportionment of the capital expansion costs of a service provider, such as a district providing expanded sewage treatment capacity, would remain a legislative one with the burden resting with the challenger (see § 8:20), while the *Dolan* burden on the government may be the equivalent of the requirement of findings supported by substantial evidence traditionally required in discretionary administrative permit proceedings; "so called" ad hoc decisions such as subdivision review which might tailor conditions to particular projects need only be supported by an individualized inquiry into project-generated demand for infrastructure and compliance with the "rough proportionality" standard)); Yates, Reagan Revolution Redux in Takings Clause Jurisprudence, 72 U. Det. Mercy L. Rev. 531 (1995) (land use planning riskier after *Dolan*); Comment, Sedona's Sustainable Growth Ordinance: Testing the Parameters of Dolan v. City of Tigard, 28 Ariz. St. L.J. 1297 (1996) (critical of annual permit cap but under probably wrong view of *Dolan* that it establishes a substantive limit on regulation apart from exactions); Comment, A Poor Relation? Regulatory Takings After Dolan v. City of Tigard, 63 U. Chi. L. Rev. 199 (1996) (possible end of *Carolene Products* and substantive due process deferential review, yet notes unclear result of case). See also Sullivan, Dolan and Municipal Risk Assessment, 12 J. Envtl. L. & Litig. 1 (1997) (improved planning and process and better assessment along with development agreements can reduce exposure to risk of noncompliance, also recommending that is prudent to consider that impact fees are subject to *Dolan*). Cf. Fennell, Hard Bargains and Real Steals: Land Use Exactions Revisited, 86 Iowa L. Rev. 1 (2000) (criticizing *Dolan* as not protective of property rights and particularly concerned with developer agreements and bargaining away exaction protections, and advocating an economistic model of a free market in development rights); Kendall & Ryan, "Paying" for the Change: Using Eminent Domain to Secure Exactions and Sidestep Nollan and Dolan, 81 Va. L. Rev. 1801 (1995), reprinted in 1996 Zoning and Planning Law Handbook 191 (A. Forrest ed. 1996) (proposal to condemn land required for infrastructure offering cash value or development permits; if value of permit exceeds value of land, offer of cash, the permit, or possibly transferable development rights).

6 Freilich & Bushek, Thou Shalt Not Take Title Without Adequate Planning: The Takings Equation After Dolan v. City of Tigard, 27 Urb. Law. 187 (1995) (little impact on communities that plan such as where impact fees established and otherwise comply with rational nexus standard, or deny project where inadequate infrastructure and suggesting case appropriately limited to physical occupation situations such as easement or dedication conditions); Funk, Reading Dolan v. City of Tigard, 25 Envtl. L. 127 (1995) (not a difficult standard to meet); Kelly, Supreme Court Strikes Middle Ground on Exactions Test, 46 Land Use L. & Zoning Dig. 6 (July 1994); Merriam & Lyman, Dealing With Dolan, Practically and Jurisprudentially, 17 Zoning & Plan. L. Rep. 57 (1994), reprinted in Zoning and Planning Law Handbook p 111 (little practical change but a theoretical victory for property rights advocates); Recent Development, Dolan v. City of Tigard: Property Owners Win the Battle but May Still Lose the War, 48 Wash. U. J. Urb. & Contemp. L. 275 (1995) (endorses the case which provides less than full protection, but notes that states may find ways to avoid the ruling and thus, it offers less protection to developers but suggests that developers go along since the ruling does provide protection against the really excessive exaction).

7 Jenad, Inc. v. Village of Scarsdale, 18 N.Y.2d 78, 271 N.Y.S.2d 955, 218 N.E.2d 673 (1966).

8 Billings Properties, Inc. v. Yellowstone County, 144 Mont. 25, 394 P.2d 182 (1964).

9 Weingarten v. Town of Lewisboro, 144 Misc. 2d 849, 542 N.Y.S.2d 1012 (Sup 1989), aff'd, 160 A.D.2d 668, 559 N.Y.S.2d 807 (1st Dep't 1990), order modified, 77 N.Y.2d 926, 569 N.Y.S.2d 599, 572 N.E.2d 40 (1991).

10 Jordan v. Village of Menomonee Falls, 28 Wis. 2d 608, 137 N.W.2d 442 (1965).

11 Ocean Harbor House Homeowners Ass'n v. California Coastal Com'n, 163 Cal. App. 4th 215, 77 Cal. Rptr. 3d 432 (6th Dist. 2008) (sustaining $5.3 million mitigation fee as a condition for a permit to build seawall, finding a roughly proportional nexus existed between loss of recreational resources and the construction and supported by substantial evidence despite lack of specific study of the beach at issue and could include costs in addition to the loss of sand; properly based fee on per person beach expenditures of beach users); State Route 4 Bypass Authority v. Superior Court, 153 Cal. App. 4th 1546, 64 Cal. Rptr. 3d 286 (1st Dist. 2007) (individualized determination requirement for condition of dedicating strip of property for highway bypass project was satisfied by evidence at trial as modest in relation to the cost of accommodating the likely traffic impact, and rationally related to legitimate governmental interest in mitigating traffic problems created by new development); Trimen Development Co. v. King County, 124 Wash. 2d 261, 877 P.2d 187 (1994) (lawfully imposed park fee as need the direct result of project and voluntary where had choice of dedication or fee payment earmarked to park service area; need based on anticipated occupancy and estimated per person park need rather than based on a site-specific study, following *Dolan*). See also Isla Verde Intern. Holdings, Inc. v. City of Camas, 99 Wash. App. 127, 990 P.2d 429 (Div. 2 1999), as clarified on denial of reconsideration, (Feb. 11, 2000) and aff'd on other grounds, 146 Wash. 2d 740, 49 P.3d 867 (2002) (*Nolan* requires only an essential nexus, that the condition substantially serve a legitimate state interest; 30% set aside of subdivision as open space ruled a taking as insufficient evidence that condition roughly proportional to subdivision impacts; current

surplus in open space does not necessarily show condition invalid), aff'd. 146 Wash. 2d 740, 49 P.3d 867 (2002). Castle Homes and Development, Inc. v. City of Brier, 76 Wash. App. 95, 882 P.2d 1172 (Div. 1 1994) (traffic mitigation fee must be based on direct impact of development and city council's "fair share" policy; state environmental protection statute authorizing voluntary agreements authorizes impact fees to mitigate environmental impacts; voluntary agreements to mitigate effects must be reasonably necessary); Kendig, Stop the Insanity!, 47 Land Use L. & Zoning Dig. 3 (Jan. 1995) (*Dolan* encourages the use of the more objective performance zoning); § 2.11 (performance zoning and environmental regulation); Comment, Afforestation Under Maryland's Forest Conservation Act and Selected County Codes: Viability of This Land Use Regulation Pre—and Post-Dolan v. City of Tigard, 4 U. Balt. J. Envtl. L. 53 (1994) (argues no proportionality if "rough" is "strict" or if "reasonable"). Cf. Home Builders Ass'n of Greater Des Moines v. City of West Des Moines, 644 N.W.2d 339 (Iowa 2002), as amended on other grounds, (May 31, 2002) (park fees, although lacking state law authorization, met equivalent of *Nollan* standard as reasonably related to a substantial public purpose and implicitly met *Dolan* although the court imposed a more rigorous standard on the issue of state law authority and insisted that the exacted fees specially benefit the homes); Atlas Valley Golf and Country Club, Inc. v. Village of Goodrich, 227 Mich. App. 14, 575 N.W.2d 56 (1997) (higher sewer connection fees for nonresidents reasonable provided fees not charged to subsidize resident users; table of unit factors used to determine connecting cost was not arbitrary for due process and equal protection purposes, despite fact that plaintiff's peak flow was lower than units assigned; since reflected peak flow of all the country clubs in the system, equal protection requiring classification based on natural distinguishing characteristics and that all persons of same class treated alike; equality not subject to mathematical computation with scientific exactitude; ordinance enjoys presumption of constitutionality; statute requiring uniform sewer connection fees for residents and nonresidents applied only to counties). See also Burchell & Listokin, The Components and Procedures of Development Impact Analysis, 1993 Inst. on Plan. Zoning & Eminent Domain 6-1.

12 Koontz v. St. Johns River Water Management Dist., 133 S. Ct. 2586, 186 L. Ed. 2d 697, 76 Env't. Rep. Cas. (BNA) 1649 (2013). See also Freilich & Popowitz, How Local Governments Can Resolve *Koontz*'s Prohibitions on Ad Hoc Land Use Restrictions, 45 Urb. Law. 971 (2013) (advocating legislative prohibition of ad hoc conditions); Kamprath, A Look at *Koontz v. St. Johns River Water Management District*, 45 Urb. Law. 953 (2013) (interpreting the ruling to extend *Nollan* and *Dolan* to conditions demanding money).

13 Sparks v. Douglas County, 72 Wash. App. 55, 863 P.2d 142 (Div. 3 1993), rev'd. 127 Wash. 2d 901, 904 P.2d 738 (1995).

14 Sparks v. Douglas County, 127 Wash. 2d 901, 904 P.2d 738 (1995).

15 Burton v. Clark County, 91 Wash. App. 505, 958 P.2d 343 (Div. 2 1998). See also Honesty in Environmental Analysis and Legislation (HEAL) v. Central Puget Sound Growth Management Hearings Bd., 96 Wash. App. 522, 979 P.2d 864 (Div. 1 1999), as amended on reconsideration in part, (Aug. 25, 1999) (*Dolan* nexus rule restricts development permit conditions designed to mitigate a specific adverse impact of a proposal); Castle Homes and Development, Inc. v. City of Brier, 76 Wash. App. 95, 882 P.2d 1172 (Div. 1 1994) (traffic mitigation fee must be based on direct impact of development and city council's "fair share" policy; state environmental protection statute authorizing voluntary agreements authorizes impact fees to mitigate environmental impacts; voluntary agreements to mitigate effects must be reasonably necessary). But cf. Kahuna Land Co. v. Spokane County, 94 Wash. App. 836, 974 P.2d 1249 (Div. 3 1999) (sustaining preliminary subdivision conditions to build road and connect sewer through adjoining federal land; conditions also met substantive due process test, with the court ostensibly meeting the *Nollan* minimum without acknowledging the standard; where both takings and substantive due process claims are advanced, court should first address the taking claim; substantive due process review based on three elements: (1) is decision aimed at achieving a legitimate public purpose, (2) is means reasonably necessary to achieve the purpose, and (3) is decision unduly oppressive to the landowner; rather than indicating *Dolan* as its guide, court followed state test asking if taking: (1) denies fundamental attribute of property ownership such as right to possession, disposition, or to make some economically viable use of the property, or (2) whether the ordinance protects the public interest or whether it goes too far and requires the regulated party to confer a public benefit, here validating conditions as road and sewer line conditions not needed by the federal lands and imposed solely to mitigate impacts of the project). See also Hodges and Himebaugh, Have Washington Courts Lost Essential Nexus to the Precautionary Principle? *Citizens' Alliance For Property Rights v. Sims*, 40 Envtl. L. 829 (2010) (charging that Washington State courts have allowed the precautionary principle to encroach upon the essential nexus test in the context of land use exactions, that the essential nexus test requires the government to establish a cause-and-effect connection between development and an identified public problem before placing conditions on development while the precautionary principle endorses regulation of land use in the absence of causation and this test of causation is morphing into a less scrutinizing means-end test of rationality and urges courts to take a more vigorous interest in protecting private property rights by making causation, not precaution, the driving principle of environmental regulation—the authors misunderstanding the essential nexus test of Nollan which calls for a rational connection to a state interest and not the causation of state statute and the rough proportionality of Dolan which the authors recognize to be applied by that state's court).

16 City of Olympia v. Drebick, 156 Wash. 2d 289, 126 P.3d 802 (2006) (approving a fee of $2.95 per square foot, reflecting the average cost of road construction allocated to new office buildings, thus may be based on cumulative area needs rather than specific project's impact; only regulatory fees and conditions subject to rough proportionality).

17 Hammer v. City of Eugene, 202 Or. App. 189, 121 P.3d 693 (2005) (absence of finding of rough proportionality does not indicate compensation required as *Dolan* contains no procedural requirements). But cf. Sefzik v. City of McKinney, 198 S.W.3d 884 (Tex. App. Dallas 2006) (invalidating road construction cost subdivision condition requiring construction or payment in lieu for future road development; developer agreement to pay not a waiver of regulatory taking claims and burden on government to make an individualized determination).

18 **Fourth Circuit:** But see Herron v. Mayor and City Council of Annapolis, Md., 388 F. Supp. 2d 565, 203 Ed. Law Rep. 563 (D. Md. 2005), aff'd, 198 Fed. Appx. 301 (4th Cir. 2006) (impact fees for schools validated under Nollan and Dolan despite spent throughout district rather than directly impacted school, and fees not a taking applying a reasonable relationship test under Dolan).

Ninth Circuit: Cf. McClung v. City of Sumner, 548 F.3d 1219 (9th Cir. 2008) (rejecting taking claim to requirement that property owners seeking to develop property upgrade size of storm pipe and finding Nollan/Dolan inapplicable as base on an implied contract as owner given choice of fee payment or voluntary upgrade and no violation of Penn Central, limiting Nollan/Dolan to requirements that landowners relinquish rights in real property); Garneau v. City of Seattle, 147 F.3d 802 (9th Cir. 1998) (Seattle ordinance requiring landlords to pay one-half of cost of relocating displaced low-income tenants sustained over taking challenge; court found that taking claim precluded alternative substantive due process claim, applying both Lucas and in noncategorical regulatory taking cases. Penn Central; Dolan ruled inapplicable to on the face takings challenges as limited to as applied challenges).

Alaska: Cf. Spinell Homes, Inc. v. Municipality of Anchorage, 78 P.3d 692 (Alaska 2003) (performance bonds did not require municipality to issue building permits and certificates of occupancy; municipality could condition certificates of occupancy on installation of landscaping as an established requirement under ordinance; generally applicable regulatory obligations, such as tree verification and homeowners' association approval, not exactions subject to Dolan).

Arizona: Home Builders Ass'n of Cent. Arizona v. City of Scottsdale, 187 Ariz. 479, 930 P.2d 993, 44 Env't. Rep. Cas. (BNA) 1447 (1997).

California: Ehrlich v. City of Culver City, 12 Cal. 4th 854, 50 Cal. Rptr. 2d 242, 911 P.2d 429 (1996) (recreation mitigation fee reflecting the replacement value of the private tennis courts to be replaced by 30 townhouses, a discretionary or ad hoc exaction, requires Dolan rough proportionality findings, while impact fees based on an objective quantitative formula would not be subject to Dolan scrutiny; the court upheld an Art in Public Places ordinance requiring original art or payment in lieu thereof of a development fee equaling 1 of the value of the development); Loyola Marymount University v. Los Angeles Unified School Dist., 45 Cal. App. 4th 1256, 53 Cal. Rptr. 2d 424, 109 Ed. Law Rep. 1323 (2d Dist. 1996) (school development fees not taxes and thus property tax exemption in state constitution inapplicable; Dolan inapplicable to fees).

Cf. Action Apartment Ass'n v. City of Santa Monica, 166 Cal. App. 4th 456, 82 Cal. Rptr. 3d 722 (2d Dist. 2008) (Nollan/Dolan inapplicable to affordable housing ordinance increasing obligation to include 35% of new construction on site or at another location or a payment in lieu fee as challenge was on the face and not to a particular project and limiting the principle to dedications and a generally applicable ordinance).

Colorado: Colo. Rev. Stat. § 29-20-203 (exempting legislatively enacted impact fees from Nollan/Dolan analysis); Krupp v. Breckenridge Sanitation Dist., 19 P.3d 687 (Colo. 2001) (mandatory plant investment fee or PIF imposed as a capital expansion fee a one-time charge assessed on new building projects to defray the cost of wastewater treatment system by sanitary district not a development exaction and as a legislatively imposed and generally applicable fee and not a dedication of land not subject to Nollan/Dolan). Cf. Wolf Ranch, LLC v. City of Colorado Springs, 220 P.3d 559 (Colo. 2009) (rejecting claim by developer based on denial of its request to develop land it owned as a closed basin, which would have exempted developer from basin drainage fees under the Regulatory Impairment of Property Rights Act (RIPRA), as drainage fees fell within RIPRA's exception for legislatively formulated fees imposed upon a broad class of property owners).

Georgia: Greater Atlanta Homebuilders Ass'n v. DeKalb County, 277 Ga. 295, 588 S.E.2d 694 (2003) (sustaining tree ordinance over takings and preemption claims as a generally applicable law and thus not subject to Dolan; as applied claims unripe).

Illinois: But see Raintree Homes, Inc. v. Village of Kildeer, 302 Ill. App. 3d 304, 235 Ill. Dec. 770, 705 N.E.2d 953 (2d Dist. 1999) (applying five-year statute of limitations for action to seek refund of impact fees not specifically and uniquely attributable to the development).

Kansas: Cf. McCarthy v. City of Leawood, 257 Kan. 566, 894 P.2d 836, 845 (1995) (traffic impact fee sustained, the court finding a critical leap from a fee to a taking).

Maine: Cf. Curtis v. Town of South Thomaston, 1998 ME 63, 708 A.2d 657 (Me. 1998) (ordinance requiring subdivisions to construct 250,000 gallon fire pond within 2,000 feet of any proposed development if no adequate water supply exists, as well as the dedication of an easement so that town may maintain and use pond and hydrant pumping, was found to be valid since town could have rejected subdivision and thus, under Nollan, may impose condition to mitigate the problem; while rough proportionality may not be satisfied by conclusory statement, reviewing court assigns weight to fact that requirement is legislative standard rather than ad hoc requirement, here related in nature and extent to impact of project).

Maryland: Cf. Waters Landing Ltd. Partnership v. Montgomery County, 337 Md. 15, 650 A.2d 712, 724 (1994) (sustaining development impact taxes earmarked for area road improvements, rejecting special benefit assessment characterization and further finding Dolan as a taking claim irrelevant to assessments).

Minnesota: Arcadia Development Corp. v. City of Bloomington, 552 N.W.2d 281 (Minn. Ct. App. 1996) (requirement that mobile home park operators pay relocation costs of residents when closing park not violative of Lucas as no loss of all; Dolan inapplicable as a legislative land use regulation, and ostensibly finding no taking under a Penn Central type of balancing as where indicates that regulations designed to benefit government enterprise would violate Minnesota constitution; no violation of equal protection as rationally related to legitimate government interest).

New York: Twin Lakes Development Corp. v. Town of Monroe, 1 N.Y.3d 98, 769 N.Y.S.2d 445, 801 N.E.2d 821 (2003) (sustaining in-lieu $1,500 per lot park fees, ostensibly finding that generally applicable impact fees are exempt or easily meet Dolan).

Oregon: Homebuilders Ass'n of Metropolitan Portland v. Tualatin Hills Park and Recreation Dist., 185 Or. App. 729, 62 P.3d 404 (2003) (sustaining system development charge over takings claim, finding generally applicable development fee imposed on broad range of specific, legislatively determined scheme leaving no meaningful discretion, exempt from Nollan/Dolan review); Rogers Machinery, Inc. v. Washington County, 181 Or. App. 369, 45 P.3d 966 (2002) (traffic impact fee for improvements to city streets and arterials within authority of state statutes and county need not make an individualized determination before assessing fee, even though fee labeled a tax it was a fee as assessed at the time of permit issuance and charge was for costs associated with future capital improvement; Dolan inapplicable to legislatively imposed and calculated impact fees).

But cf. Schultz v. City of Grants Pass, 131 Or. App. 220, 884 P.2d 569 (1994) (mandatory dedication for right-of-way expansion for needed county storm drain improvement together with dedication for city street widening as condition for parcel partition that would produce up to 17 homesites, each single family home generating 3,200 vehicle trips per year or 8.7 per day and possible maximum of 149 trips per day assumed to be in violation of rough proportionality rule of Dolan; also rejected claim that dedications where requirement set by ordinance not subject to Dolan which the court held applied where owner required to deed property to government and did not apply where condition was in the form of a limit on use to which owner can put property).

Texas: But cf. Town of Flower Mound v. Stafford Estates Ltd. Partnership, 135 S.W.3d 620 (Tex. 2004) (refusing to limit Dolan to dedications, extending it to all exactions, but refusing to apply Dolan to conditions; requiring developer to construct and pay for improvements to adjacent public street where the development would increase traffic by about two-thirds but there was no showing that the improvement bore any relationship to the increased traffic impact, the road itself, or the town's roadway system as a whole where traffic study demonstrated that the development would generate about 750 vehicle trips per day, or about 18 of the total average traffic on the improved street and no evidence was offered on the road impact upon the town's roadway system, the court rejecting town's argument of a wider impact as reflected in allowable impact fees and despite having discounted the developer's obligation to pay traffic impact fees by nearly $600,000 as the road improvement condition was not part of the town's capital improvement plan and could not be improved using impact fees, in addition the road had been improved as an asphalt road and replacing it with a concrete road failed to increase capacity).

Utah: Home Builders Ass'n of Utah v. City of American Fork, 1999 UT 7, 973 P.2d 425 (Utah 1999) (sustaining sewer and water hookup fees, finding city council members not required to personally attend to basic fact gathering and analysis conducted by council's staff regarding factors used in setting impact fees; fee should reflect reasonable estimates of the cost of existing facilities and projections of future capital costs and the disclosure of other relevant factors, but it need not be based on mathematical formulae; duty of body to disclose calculation basis, shifting burden to challenger to demonstrate a violation of constitutional standard of reasonableness).

Virginia: Eagle Harbor, L.L.C. v. Isle of Wight County, 271 Va. 603, 628 S.E.2d 298 (2006) (sustaining increase in water and sewer connection fees which is not subject to reasonable-correlation test—looking to nexus between benefit conferred and cost exacted which is inapplicable to ordinances and not treated as an exaction or an impact fee but given a presumption of validity).

Washington: Belleau Woods II, LLC v. City of Bellingham, 150 Wash. App. 228, 208 P.3d 5 (Div. 1 2009) (landowner, which had already contributed land for a neighborhood trail by way of an easement over wetlands pursuant to planned development contract with city, could be charged a park impact fee so long as landowner was given credit for value of prior contribution; for purposes of vesting statute providing that a development is subject to the land use control ordinances in effect at the time the application was perfected, impact fees do not affect physical aspects of a development, and, therefore, they are not "land use control ordinances"; whether landowner's planned development agreement with city was a development agreement that controlled all development standards during term of agreement, pursuant to statute authorizing development agreements, such that statute barred imposition of park impact fees after agreement was signed, as this issue was not presented to hearing examiner, nor was it argued on appeal in superior court, and record was insufficiently developed).

But see Pavlina v. City of Vancouver, 122 Wash. App. 520, 94 P.3d 366 (Div. 2 2004) (sustaining application of postpreliminary plat approval enacted traffic impact fee ordinance as such fees typically attached upon application for building permit; impact fees

are not viewed as a development condition as they do not affect physical aspects of the development: impact fees need not be spent on infrastructure that specifically benefits a particular development as long as they provide a general benefit to the entire area, the court not discussing Dolan).

See generally: Baker, Much Ado About *Nollan/Dolan*: The Comparative Nature of the Legislative-Adjudicative Distinction in Exactions, 42 Urb. Law. 171 (2010) (arguing that as *Dolan* calls for a comparative review to assure that a landowner is not treated inequitably that such concern is satisfied by exempting legislative exaction enactments from the rough proportionality and individualized assessment standard): Bosselman, Dolan's Mysteries Explained?, Land Use L. & Zoning Dig. 3, 4 (Jan. 1999) (placing emphasis on Justice Kennedy's concurring opinion in Eastern Enterprises v. Apfel, 524 U.S. 498, 118 S. Ct. 2131, 141 L. Ed. 2d 451, 22 Employee Benefits Cas. (BNA) 1225 (1998), that taking limited to interference with property interest not presented by a demand for a fee): Faus, Exactions, Impact Fees, and Dedications—Local Government Responses to *Nollan/Dolan* takings law issues, 29 Stetson L. Rev. 675 (2000): Breemer, The Evolution of the "Essential Nexus": How State and Federal Courts Have Applied *Nollan* and *Dolan* and Where They Should Go From Here, 59 Wash. & Lee L. Rev. 373 (2002) (arguing for extension of Dolan review to legislatively imposed monetary exactions): Haskins, Closing the *Dolan* Deal—Bridging the Legislative/Adjudicative Divide, 38 Urb. Law. 487 (2006) (arguing that Dolan should apply to legislatively enacted fees and exactions as well as those that are administrative): Sullivan, *Dolan* and Municipal Risk Assessment, 12 J. Envtl. L. & Litig. 1 (1997) (improved planning and process and better assessment along with development agreements can reduce exposure to risk of noncompliance, also recommending that is prudent to consider that impact fees are subject to Dolan): Comment: Order for the Courts: Reforming the Nollan/Dolan Threshold Inquiry for Exactions, 35 Seattle U. L. Rev. 1499 (2012) (arguing that the Court's recalibrated view of Nollan and Dolan as applications of the doctrine of unconstitutional conditions suggests that nexus and proportionality standards should be applied to both legislatively and adjudicatively imposed exactions, and proposes a test that would balance the various policy interests identified by the Court, such as preserving the government's ability to engage in land-use planning, while simultaneously serving judicial economy by efficiently flagging claims most suited for heightened scrutiny, thereby preventing the government from disproportionately heaping burdens on individuals to effect a widespread public benefit): Comment, Sudden Impact: The Effect of *Dolan v. City of Tigard* on Impact Fees in Washington, 71 Wash. L. Rev. 205 (1996) (development and transportation impact fees valid under Dolan, but voluntary fees or dedications of land and relocation assistance impact fees do not adequately meet Dolan's requirements): Note, Cities, Ideal Cities: Proposing a Test of Intrinsic Fairness for Contested Development Exactions, 91 Cornell L. Rev. 699 (2006) (arguing against deference to legislatively enacted impact fees): Note, The Distinction Between Legislative and Adjudicative Decisions in *Dolan v. City of Tigard*, 75 N.Y.U. L. Rev. 242 (2000) (arguing simplistic or false dichotomy with wide variation in judicial interpretation).

19 Eagle Harbor, L.L.C. v. Isle of Wight County, 271 Va. 603, 628 S.E.2d 298 (2006) (sustaining increase in water and sewer connection fees which is not subject to reasonable-correlation test—looking to nexus between benefit conferred and cost exacted which is inapplicable to ordinances and not treated as an exaction or an impact fee).

20 Northern Illinois Home Builders Ass'n, Inc. v. County of Du Page, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995). See also Country Joe, Inc. v. City of Eagan, 560 N.W.2d 681 (Minn. 1997) (under Minnesota scheme cities such as Eagan may be statutory cities having not adopted a home rule charter subject to Dillon's Rule, and lacked the implied authority under the planning laws to adopt a road unit connection charge imposed as a building permit condition, and as not an authorized impact fee, was an illegal tax; revenues were not earmarked and could be used on all streets and not for projects necessitated by the project; in seemingly rejecting the charge for lack of expert recommendations that fee schedule be periodically updated, a rule ostensibly stricter than *Dolan* as road costs no doubt only increase and the charge if anything would be less than generated needs, alternatively perhaps all the court wants is an individualized determination of the generated impacts and the cost of mitigation). But see Raintree Homes, Inc. v. Village of Kildeer, 302 Ill. App. 3d 304, 235 Ill. Dec. 770, 705 N.E.2d 953 (2d Dist. 1999) (applying five-year statute of limitations for action to seek refund of impact fees not specifically and uniquely attributable to the development). But cf. Pond Run Watershed Ass'n v. Township of Hamilton Zoning Bd. of Adjustment, 397 N.J. Super. 335, 937 A.2d 334 (App. Div. 2008) (agreed to developer obligation to pay $4,000 per unit for portion of offsite park and amphitheater as condition of variance approval for mixed-use development where no proof of how computed nor how many would use the facility invalid and not authorized by statute and implemented by ordinance).

21 Sarasota County v. Taylor Woodrow Homes Ltd., 652 So. 2d 1247 (Fla. 2d DCA 1995) (dedication of waste water treatment sewer system pursuant to nearly 20-year-old agreement appears to meet essential nexus test of *Nollan* and trial court to determine if rough proportionality of *Dolan* satisfied yet opinion confused as suggests such challenges should have been raised at the time of execution yet that developers might not waive rights by agreeing to conditions and then filing an action challenging, but the court simply remanded all issues for a better factual record).

22 Ocean Harbor House Homeowners Ass'n v. California Coastal Com'n, 163 Cal. App. 4th 215, 77 Cal. Rptr. 3d 432 (6th Dist. 2008).

23 Art Piculell Group v. Clackamas County, 142 Or. App. 327, 922 P.2d 1227 (1996). See also Hallmark Inns & Resorts, Inc. v. City of Lake Oswego, 193 Or. App. 24, 88 P.3d 284 (2004) (sustaining city requirement of pedestrian pathway as condition of development permit for corporate headquarters as served essential function in promoting safe connectivity for nonvehicular walking and bicycle

traffic between residential area and shopping center and roughly proportional to impacts of actual development, considering that walking distance to shopping should development block way would discourage walking).

24 Art Piculell Group v. Clackamas County, 142 Or. App. 327, 922 P.2d 1227, 1231 (1996).

25 Art Piculell Group v. Clackamas County, 142 Or. App. 327, 922 P.2d 1227, 1236 (1996).

26 McClure v. City of Springfield, 175 Or. App. 425, 28 P.3d 1222 (2001).

27 Lincoln City Chamber of Commerce v. City of Lincoln City, 164 Or. App. 272, 991 P.2d 1080 (1999) (rejecting claim that plan inconsistency is the sole application consideration as state statute allows application denial only if project cannot conform to plan through the imposition of reasonable conditions).

28 Isla Verde Intern. Holdings, Inc. v. City of Camas, 146 Wash. 2d 740, 49 P.3d 867 (2002).

29 Wonders v. Pima County, 207 Ariz. 576, 89 P.3d 810 (Ct. App. Div. 2 2004) (sustaining county native plant preservation ordinance over takings and preemption claims and finding that obligation to designate 30% of parcel as open space to comply with law was neither a regulatory taking nor an exaction under *Dolan* as it did not require a dedication for public use or interfere with the right to exclude).

30 Smith v. Town of Mendon, 4 N.Y.3d 1, 789 N.Y.S.2d 696, 822 N.E.2d 1214, 59 Env't. Rep. Cas. (BNA) 2133, 35 Envtl. L. Rep. 20001 (2004) (approving site plan condition placing a conservation restriction on portion of site within environmental overlay district which the court found not to be an exaction).

31 Norman v. U.S., 429 F.3d 1081, 61 Env't. Rep. Cas. (BNA) 1577, 35 Envtl. L. Rep. 20239 (Fed. Cir. 2005) (conveyance of wetlands portion of tract to nonprofit was voluntary rather than an exaction: while a condition, conveyance of 220 acres in exchange for dredging on larger parcel of 2280 acres would meet *Dolan* and revocation of wetlands designation after owner purchased in reliance not a taking): Wonders v. Pima County, 207 Ariz. 576, 89 P.3d 810 (Ct. App. Div. 2 2004) (sustaining county native plant preservation ordinance over takings and preemption claims and finding that obligation to designate 30% of parcel as open space to comply with law was neither a regulatory taking nor an exaction under *Dolan* as it did not require a dedication for public use or interfere with the right to exclude): Home Builders Ass'n of Northern California v. City of Napa, 90 Cal. App. 4th 188, 108 Cal. Rptr. 2d 60, 31 Envtl. L. Rep. 20800, 22 A.L.R.6th 785 (1st Dist. 2001), as modified, (July 2, 2001) (sustaining inclusionary zoning ordinance requiring 10% of all newly constructed units to be affordable generally applicable regulation and as such *Nollan* and *Dolan* is inapplicable absent a particular land use bargain with developer): Colo. Rev. Stat. § 29-20-203 (exempting legislatively enacted impact fees from *Nollan Dolan* analysis): City of Annapolis v. Waterman, 357 Md. 484, 745 A.2d 1000 (2000) (sustaining requirement that developer set aside recreational space—not a dedication as for use by residents of the development—and not subject to *Dolan*: subdivision may be denied for failure to comply with subdivision legal requirements, zoning, or reasonable conditions imposed on the development): Smith v. Town of Mendon, 4 N.Y.3d 1, 789 N.Y.S.2d 696, 822 N.E.2d 1214, 59 Env't. Rep. Cas. (BNA) 2133, 35 Envtl. L. Rep. 20001 (2004) (approving site plan condition placing a conservation restriction on portion of site within environmental overlay district which the court found not to be an exaction but nevertheless not a regulatory taking, for an exaction requires a public use): Rogers Machinery, Inc. v. Washington County, 181 Or. App. 369, 45 P.3d 966 (2002) (traffic impact fee for improvements to city streets and arterials within authority of state statutes and county need not make an individualized determination before assessing fee, even though fee labeled a tax it was a fee as assessed at the time of permit issuance and charge was for costs associated with future capital improvement: *Dolan* inapplicable to legislatively imposed and calculated impact fees): Clark v. City of Albany, 137 Or. App. 293, 904 P.2d 185 (1995) (fast food restaurant site plan conditions requiring street improvements and the building of adjacent sidewalks were exactions subject to *Dolan*, while requiring designation of a traffic-free area of site and provision of storm drainage plan and construction of storm drain were not exactions but mere conditions not subject to rough proportionality test which test is not limited to dedications and the transfer of title). See also Burling & Owen, The Implications of *Lingle* on Inclusionary Zoning and Other Legislative and Monetary Exactions, 28 Stan. Envtl. L.J. 397 (2009) (believing that administratively-imposed a hoc conditions likely invalid while legislatively-imposed likely to be sustained and arguing that inclusionary zoning is unconstitutional and that there should be no exception from Nollan and Dolan for legislatively-enacted requirements): Siegel, Exactions After *Lingle*: How Basing *Nollan* and *Dolan* on the Unconstitutional Conditions Doctrine Limits Their Scope, 28 Stan. Envtl. L.J. 577 (2009) (arguing that Nollan and Dolan can only apply to permit conditions that require owners to dedicate real property to the public, not to conditions that require owners to pay fees, to set aside affordable housing units, or, in general, to dedicate conservation easements: Lingle's analysis suggests that Nollan and Dolan should only apply when conditions are imposed on a case by case basis, not when they are legislatively required and ministerially applied, dashing the hopes of the property rights movement for expanding exaction protection under a theory that conditions must substantially advance government interests with the Court's rejection): Note, The Death of *Nollan* and *Dolan*? Challenging the Constitutionality of Monetary Exactions in the Wake of *Lingle v. Chevron*, 87 B.U. L. Rev. 725 (2007) (unclear whether Lingle suggests that monetary exactions exempt from Nollan and Dolan): Note, Escaping the Takings Maze: Impact Fees and the Limits of the Takings Clause, 62 Vand. L. Rev. 1315 (2009) (arguing that legislatively enacted impact fees should not be subject to Nollan and Dolan and recommending application of the dual nexus test).

32 Ehrlich v. City of Culver City, 12 Cal. 4th 854, 50 Cal. Rptr. 2d 242, 911 P.2d 429 (1996): Kanner, Tennis Anyone: How California Judges Made Land Ransom and Art Censorship Legal, 25 Real Estate L.J. 214 (1997): Pannone, Give and Take: Responding to Recent Restrictive Federal Court Decisions, The California Supreme Court in Ehrlich v. Culver City Upheld Some of the Basic Tenets of Municipal Land-Use Control, L.A. Law. 45 (July-Aug. 1996). See also Curtin & Lindgren, Impact Fees, the Nollan/Dolan Test, and Ehrlich v. City of Culver City: The California Supreme Court and Other Recent State Decisions, 19 Zoning & Plan. L. Rep. 62 (1996).

33 Koontz v. St. Johns River Water Management Dist., 133 S. Ct. 2586, 186 L. Ed. 2d 697, 76 Env't. Rep. Cas. (BNA) 1649 (2013). See also Freilich & Popowitz, How Local Governments Can Resolve *Koontz*'s Prohibitions on Ad Hoc Land Use Restrictions, 45 Urb. Law. 971 (2013) (advocating legislative prohibition of ad hoc conditions); Kamprath, A Look at *Koontz v. St. Johns River Water Management District*, 45 Urb. Law. 953 (2013) (interpreting the ruling to extend *Nollan* and *Dolan* to conditions demanding money).

34 San Remo Hotel L.P. v. City And County of San Francisco, 27 Cal. 4th 643, 117 Cal. Rptr. 2d 269, 41 P.3d 87, 32 Envtl. L. Rep. 20533 (2002).

35 Kottschade v. City of Rochester, 537 N.W.2d 301 (Minn. Ct. App. 1995) (yet referred to case as presenting a sufficient nexus, perhaps suggesting through the "nexus" language that the new test is much like the old test). See also Arcadia Development Corp. v. City of Bloomington, 552 N.W.2d 281 (Minn. Ct. App. 1996) (requirement that mobile home park operators pay relocation costs of residents when closing park not violative of *Lucas* as no loss of all; *Dolan* inapplicable as a legislative land use regulation apparently treating it as the state standard, and ostensibly finding no taking under a *Penn Central* type of balancing as where indicates that regulations designed to benefit government enterprise would violate Minnesota constitution; no violation of equal protection as rationally related to legitimate government interest); Burton v. Clark County, 91 Wash. App. 505, 958 P.2d 343 (Div. 2 1998) (dedication of right-of-way for road that, in the future, might be opened and connected to highway that would eventually offset only a portion of the impact of traffic to be generated by the project, but that failed to mitigate current traffic impact, fails the "roughly proportional" *Dolan* standard, despite fact that project would incur costs generally associated with street extensions experienced by other similar projects; condition must actually mitigate the problem generated by the project; taking claim subsumes substantive due process claim).

36 Sparks v. Douglas County, 127 Wash. 2d 901, 904 P.2d 738 (1995).

37 City of Olympia v. Drebick, 156 Wash. 2d 289, 126 P.3d 802 (2006).

38 St. Johns County v. Northeast Florida Builders Ass'n, Inc., 583 So. 2d 635, 69 Ed. Law Rep. 636 (Fla. 1991).

39 Home Builders Ass'n of Dayton & the Miami Valley v. Beavercreek, 89 Ohio St. 3d 121, 2000-Ohio-115, 729 N.E.2d 349, 97 A.L.R.5th 657 (2000). See also Hopperton, Ohio Supreme Court Regulatory Takings Jurisprudence: An Analytical Framework, 29 Cap. U. L. Rev. 321 (2001).

40 Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000) (covenant was deemed binding despite a reservation of the absolute authority to modify the covenants in the covenantor which the court found inapplicable to the age restriction's no exception and nonwaivability clause. The court did not consider the potential inclusion of children of school age after 30 years with no means to expand school capacity, the possible inflationary impact on land and future school construction as the senior citizen housing is exhausting the supply of developable land, nor the relationship between the quality of community schools and the property values enjoyed by the owner of the housing project. Perhaps the court believed these connections as too attenuated just as it rejected the argument that residents benefit because schools can be used as shelters or for adult education. The court distinguished the case from that where a developer might seek an exemption because a household simply does not have children).

41 Goss v. City of Little Rock, 90 F.3d 306 (8th Cir. 1996) (rezoning conditioned dedication, for future street widening, of 55-foot deep strip running along entire 633-foot frontage, amounting to 0.8 acres, or 22% of the parcel; owner used property as a prior nonconforming use for 20 years, such use consisting of a convenience store, gas station, laundromat, and car wash on a parcel zoned residential; the owner wished to obtain conforming commercial zoning to allow for property's possible sale; the court reversed dismissal of the complaint to have a trial on whether the dedication bore rough proportionality to generated need under *Dolan*, but the court appeared to suggest that the dedication might be reasonable if the zone change would permit a different heavy traffic-producing business; the court never mentioned any standard that might additionally apply under Arkansas law), subsequent proceedings, 151 P.3d 861 (8th Cir. 1998) (appellate court found that rezoning conditioned on requirement that owner dedicate 22% of property to the city for highway use constituted a taking for lack of rough proportionality evidence; the court agreed with the trial court that the city erred in basing the condition on the speculative likelihood that the owner would build a strip mall, one of the most intensive traffic-generating uses permitted under the proposed zone change; the court rejected the payment of any damages, despite the claim that the failure to rezone cost the owner $265,000; since there was no right to the change of zoning, one cannot base a regulatory taking; appellant failed to prove that he could not sell the property as zoned without the dedication requirement).

42 J.C. Reeves Corp. v. Clackamas County, 131 Or. App. 615, 887 P.2d 360 (1994) (street improvements for streets adjacent to subdivision where subdivision required new street construction and extension of existing street upheld as findings supported compliance with *Dolan*), accord Art Piculell Group v. Clackamas County, 142 Or. App. 327, 922 P.2d 1227 (1996) (ostensibly adopted *Dolan* as the standard for reviewing permit conditions; vacating dedication and street improvement conditions ruling as hearing

officer acted on several errors of fact and failed to consider individualized traffic data. The court emphasized that the appropriate issue is upon the impacts that the project will generate, and not the apportionment of costs for general improvements over all benefitted owners. Thus, the LUBA correctly rejected the argument that as the project would produce 2.6% of traffic on the road the developer should pay 2.6% of the costs of improvement. Mathematical cost and use comparisons were relevant but not determinative: refusing to address how much mathematical precision is called for under rough proportionality: development cannot have impacts that could warrant improvement conditions that are system-wide in scope).

43 Ariz. Rev. Stat. Ann. § 9-500.12 (legislation adopts *Dolan* standard and establishes an appeal procedure wherein developers may appeal the imposition of dedication and other exaction conditions, at least those that are discretionary rather than those such as impact fees that are legislatively established, to assure consistency with *Nollan* and *Dolan*). Ariz. Rev. Stat. Ann. § 11-810 (standard applied to counties): Home Builders Ass'n of Cent. Arizona v. City of Scottsdale, 187 Ariz. 479, 930 P.2d 993, 44 Env't. Rep. Cas. (BNA) 1447 (1997) (Dolan, which is now the statutory test, is inapplicable to generally applicable legislative policy-imposed impact fees and may be limited to invasive forms of regulation such as mandatory dedication). See also City of Federal Way v. Town & Country Real Estate, LLC, 161 Wash. App. 17, 252 P.3d 382 (Div. 2 2011), as corrected, (May 10, 2011) (traffic effects on horizon year level-of-service failures (LOSFs) were encompassed within meaning of "direct impact" and "direct result" of statute affirming city's authority to impose mitigation payments and city could consider cumulative impacts when considering proposed subdivision's "direct impact": city could impose payments on developer even if neighboring city intended to construct traffic improvement plans (TIPs) regardless of whether developer built subdivision: evidence was insufficient to support hearing examiner's determination that trips generated by proposed subdivision development was "insignificant" under State Environmental Policy Act (SEPA) although mitigation payment was related to specific adverse environmental impacts clearly identified in an environmental document on the proposal as required by SEPA and payment was "reasonable and capable of being accomplished" under SEPA rules: SEPA rule requirement that a mitigation payment be related to "specific adverse environmental impacts clearly identified in an environmental document on the proposal" requires only that the responsible official identify the impact, not prove the impact: statute authorizing developers to enter into mitigation agreements contains a "rough proportionality" analysis between the impact of the development and the exacted condition of approval, regardless of whether that condition is a mitigation payment or a dedication of land: statute authorizing mitigation agreements does not actually grant state and local governments the authority to impose any exactions on private landowners where "reasonably necessary as a direct result of the proposed development," but rather affirms the government's authority to enter into an agreement with the private landowners to collect such exactions so long as they are not "indirect taxes, fees, or charges on development activity," except for on-site dedications and easements permitted by other statutes: thus, the authority to impose the exaction must come from another source).

44 Minn. Stat. Ann. § 462.358(2c)(a).

45 Warmington Old Town Associates, L.P. v. Tustin Unified School Dist., 101 Cal. App. 4th 840, 124 Cal. Rptr. 2d 744, 168 Ed. Law Rep. 875 (4th Dist. 2002) (school district may not require payment of school impact fees on redevelopment, where a developer replaces existing housing with fewer units, generating fewer children who would attend school: school district fee study defective as failed to assure fees complied with nexus requirement of statute, and formula defective in allocating fees based on new housing while ignoring reduction of demand from redevelopment, here 56 apartments replaced with 38 single-family homes).

46 Amoco Oil Co. v. Village of Schaumburg, 277 Ill. App. 3d 926, 214 Ill. Dec. 526, 661 N.E.2d 380 (1st Dist. 1995). But see Raintree Homes, Inc. v. Village of Kildeer, 302 Ill. App. 3d 304, 235 Ill. Dec. 770, 705 N.E.2d 953 (2d Dist. 1999) (applying five-year statute of limitations for action to seek refund of impact fees not specifically and uniquely attributable to the development).

47 Curtis v. Town of South Thomaston, 1998 ME 63, 708 A.2d 657 (Me. 1998).

48 Goss v. City of Little Rock, Ark., 151 F.3d 861 (8th Cir. 1998).

49 Town of Flower Mound v. Stafford Estates Ltd. Partnership, 135 S.W.3d 620 (Tex. 2004). See also City of Carrollton v. RIHR Inc., 308 S.W.3d 444 (Tex. App. Dallas 2010), reh'g overruled, (Apr. 26, 2010) and review denied, (July 30, 2010) (city's refusal to issue building permits to complete construction of homes on two lots unless owner provided funding for remediation of nearby retaining wall was an exaction in violation of takings clauses of federal and state constitutions as city failed to demonstrate that an essential nexus existed between a legitimate government interest and the permit condition exacted, in that, even if the collapsed wall presented a condition adverse to public safety and city properly acted to eliminate danger by remediating lots in which owner had no interest, there was no connection between remediation of collapsed wall and city's exaction: state courts typically look to federal cases for guidance on the constitutionality of a taking: approving $119,200 in damages reflecting owner's out-of-pocket expenses incurred during exaction period, reflecting property taxes, interest on mortgage note, insurance premiums, and expenses associated with maintenance and repair while awaiting building permits, as the appropriate measure of damages: but owner was not entitled to attorney fees under Uniform Declaratory Judgments Act as owner's declaratory action had no greater ramifications than owner's cause of action for a compensable taking and merely duplicated the issues already before the court: Author's note: while the court

rejects the exaction on a lack of essential nexus it would appear the an essential nexus is clearly present but the condition is not arguably roughly proportionate to the developer's project, violating *Dolan*).

50 Cf. Sea Cabins on Ocean IV Homeowners Ass'n. Inc. v. City of North Myrtle Beach, 345 S.C. 418, 548 S.E.2d 595 (2001) (conditioning pier construction on public access to the pier not a temporary taking, as simply denied application based on zoning ordinance in that right to rebuild is lost if replacement is 75% destroyed, and challenger failed to allege in essence a *Nollan* or other regulatory taking claim that failed to advance a legitimate interest or denied an economically viable use of property, the court refusing to segment the property rights).

51 Carlson & Pollack, Takings on the Ground: How the Supreme Court's Takings Jurisprudence Affects Local Land Use Decisions, 35 U.C. Davis L. Rev. 103 (2001). See also Grosso, Regulating for Sustainability: The Legality of Carrying Capacity-Based Environmental and Land Use Permitting Decisions, 35 Nova L. Rev. 711 (2011) (Arguing that In Florida, a state whose natural environment, built communities, and infrastructure are being overwhelmed by growth that is not paying for itself, government can and must ensure that the public fiscal and welfare are not harmed by the amount, type, and location of new development and that government can require growth to truly pay for itself and can regulate land strictly; even adopt annual growth caps, if important to ecosystem, farmland and community protection. It can maintain a tax system and fiscal policies that work in the same direction as the rules. We must be able to talk about carrying capacity limits in polite company and government buildings.).

52 **Ninth Circuit:** But cf. McClung v. City of Sumner, 548 F.3d 1219 (9th Cir. 2008) (rejecting taking claim to requirement that property owners seeking to develop property upgrade size of storm pipe and finding Nollan/Dolan inapplicable as base on an implied contract as owner given choice of fee payment or voluntary upgrade and no violation of Penn Central, limiting Nollan/Dolan to requirements that landowners relinquish rights in real property).

Arizona: But see Home Builders Ass'n of Cent. Arizona v. City of Scottsdale, 187 Ariz. 479, 930 P.2d 993, 44 Env't. Rep. Cas. (BNA) 1447 (1997) (Dolan, which is now the statutory test, is inapplicable to generally applicable legislative policy-imposed impact fees and may be limited to invasive forms of regulation such as mandatory dedication); Wonders v. Pima County, 207 Ariz. 576, 89 P.3d 810 (Ct. App. Div. 2 2004) (sustaining county native plant preservation ordinance over takings and preemption claims and finding that obligation to designate 30 of parcel as open space to comply with law was neither a regulatory taking nor an exaction under Dolan as it did not require a dedication for public use or interfere with the right to exclude).

California: Ehrlich v. City of Culver City, 12 Cal. 4th 854, 50 Cal. Rptr. 2d 242, 911 P.2d 429, 438-439 (1996) (Nollan and Dolan not limited to exactions involving a dedication or the transfer of title, citing the author of this treatise, but they also extend to discretionary or ad hoc exactions; here invalidating a recreation mitigation fee reflecting the replacement value of the private tennis courts to be replaced by 30 townhouses, while upholding an Art in Public Places ordinance requiring original art of payment of an in-lieu fee equal to 1 of the value of the development); Action Apartment Ass'n v. City of Santa Monica, 166 Cal. App. 4th 456, 82 Cal. Rptr. 3d 722 (2d Dist. 2008) (Nollan/Dolan inapplicable to affordable housing ordinance increasing obligation to include 35% of new construction on site or at another location or a payment in lieu fee as challenge was on the face and not to a particular project and limiting the principle to dedications and a generally applicable ordinance); Home Builders Ass'n of Northern California v. City of Napa, 90 Cal. App. 4th 188, 108 Cal. Rptr. 2d 60, 31 Envtl. L. Rep. 20800, 22 A.L.R.6th 785 (1st Dist. 2001), as modified, (July 2, 2001) (sustaining inclusionary zoning ordinance requiring 10 of all newly constructed units to be affordable generally applicable regulation and as such Nollan and Dolan is inapplicable absent a particular land use bargain with developer).

But see San Remo Hotel L.P. v. City And County of San Francisco, 27 Cal. 4th 643, 117 Cal. Rptr. 2d 269, 41 P.3d 87, 32 Envtl. L. Rep. 20533 (2002) (sustaining hotel conversion ordinance, requiring hotels desiring to lease rooms for short-term tourist rentals, to offer lifetime leases or pay a conversion or housing replacement fee of $567,000 to be used to fund affordable housing based on 62 rooms ruled subject to deferential rather than the heightened scrutiny of Nollan and Dolan as fees not discretionary but on a set formula and met standard of "reasonable relationship" to the impacts of the development; Ellis Act allowing an owner to withdraw residential accommodations from the market did not apply to conditional use to change use to complete tourist use).

New York: But see Smith v. Town of Mendon, 4 N.Y.3d 1, 789 N.Y.S.2d 696, 822 N.E.2d 1214, 59 Env't. Rep. Cas. (BNA) 2133, 35 Envtl. L. Rep. 20001 (2004) (approving site plan condition placing a conservation restriction on portion of site within environmental overlay district which the court found not to be an exaction but nevertheless not a regulatory taking, for an exaction requires a public use).

Oregon: Clark v. City of Albany, 137 Or. App. 293, 904 P.2d 185 (1995) (fast food restaurant site plan conditions requiring street improvements and the building of adjacent sidewalks were exactions subject to Dolan, while requiring designation of a traffic-free area of site and provision of storm drainage plan and construction of storm drain not exactions, but mere conditions not subject to rough proportionality test which test is not limited to dedications and the transfer of title). But see Schultz v. City of Grants Pass, 131 Or. App. 220, 884 P.2d 569 (1994) (mandatory dedication for right-of-way expansion for needed county storm drain improvement together with dedication for city street widening as condition for parcel partition that would produce up to 17 homesites, each single family home generating 3,200 vehicle trips per year or 8.7 per day and possible maximum of 149 trips per day assumed to be in

violation of rough proportionality rule of Dolan; also rejected claim that dedications where requirement set by ordinance not subject to Dolan which the court held applied where owner required to deed property to government and did not apply where condition was in the form of a limit on use to which owner can put property).

Washington: Benchmark Land Co. v. City of Battle Ground, 103 Wash. App. 721, 14 P.3d 172 (Div. 2 2000), aff'd on other grounds, 146 Wash. 2d 685, 49 P.3d 860 (2002) (condition that developer to make half-street improvements to street adjoining development subject to Dolan analysis, which is not limited to dedications).

But see Honesty in Environmental Analysis and Legislation (HEAL) v. Central Puget Sound Growth Management Hearings Bd., 96 Wash. App. 522, 979 P.2d 864 (Div. 1 1999), as amended on reconsideration in part, (Aug. 25, 1999) (Dolan nexus rule restricts development permit conditions designed to mitigate a specific adverse impact of a proposal). But cf. Citizens' Alliance for Property Rights v. Sims, 145 Wash. App. 649, 187 P.3d 786 (Div. 1 2008) (ordinance which limited clearing on property zoned rural area residential to a maximum of 50%, depending on the size of the parcel, violated state statute which generally prohibits counties from imposing "any tax, fee, or charge" on the development of land, in addition, set aside was not roughly proportional to the direct result of the proposed development and thus was not impact specific as required by statute, a strange analysis as the regulation was not a condition imposed administratively and under federal takings jurisprudence should have been reviewed under Penn Central).

Wisconsin: Pederson v. Town Bd. of Town of Windsor, 191 Wis. 2d 663, 530 N.W.2d 427 (Ct. App. 1995) (requiring subdivider to complete facilities plan including sewers for entire drainage basin which lies beyond urban service area and to advance costs as condition for preliminary plat approval patently unreasonable, while meeting essential nexus, likely violates rough proportionality standard, perhaps implicitly interpreting "reasonableness" as the Nollan-Dolan model, and extending Dolan to nondedication conditions).

See generally Breemer, The Evolution of the "Essential Nexus": How State and Federal Courts Have Applied *Nollan* and *Dolan* and Where They Should Go From Here, 59 Wash. & Lee L. Rev. 373 (2002) (arguing for extension of Dolan review to legislatively imposed monetary exactions); Curtin, Davidson & Lindgren, Recent Developments in Land Use, Planning and Zoning Law, *Nollan Dolan*: The Emerging Wing in Regulatory Takings Analysis, 28 Urb. Law. 789 (1996).

53 But see Goss v. City of Little Rock, Ark., 151 F.3d 861 (8th Cir. 1998) (Dolan: the opinion might be read as implicitly counseling that in cases of conditional rezoning, that regulators hold off rezoning until a structure and use-specific development is offered and an additional condition imposed requiring the owner to restrict future use of the property to that contained in the project plan).

54 Callies, Solutions After Dolan: Land Development Agreements, Land Use L. & Zoning Dig. 3 (Oct. 1997), contra Bosselman, *Dolan's* Mysteries Explained?, Land Use L. & Zoning Dig. 3, 4 (Jan. 1999) (placing emphasis on Justice Kennedy's concurring opinion in Eastern Enterprises v. Apfel, 524 U.S. 498, 118 S. Ct. 2131, 141 L. Ed. 2d 451, 22 Employee Benefits Cas. (BNA) 1225 (1998), that taking limited to interference with property interest not presented by a demand for a fee). See also Callies & Sonoda, Providing Infrastructure for Smart Growth: Land Development Conditions, 43 Idaho L. Rev. 351 (2007); Callies & Tappendorf, Unconstitutional Land Development Conditions and the Development Agreement Solution: Bargaining for Public Facilities After *Nollan and Dolan*, 51 Case W. Res. L. Rev. 663 (2001).

U.S. Department of Justice
Civil Rights Division
Disability Rights Section

Title II Highlights

I. Who is Covered by Title II of the ADA

The title II regulation covers "public entities."

"Public entities" include any State or local government and any of its departments, agencies, or other instrumentalities.

All activities, services, and programs of public entities are covered, including activities of State legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment.

Unlike section 504 of the Rehabilitation Act of 1973, which only covers programs receiving Federal financial assistance, title II extends to all the activities of State and local governments whether or not they receive Federal

funds.

Private entities that operate public accommodations, such as hotels, restaurants, theaters, retail stores, dry cleaners, doctors' offices, amusement parks, and bowling alleys, are not covered by title II but are covered by title III of the ADA and the Department's regulation implementing title III.

Public transportation services operated by State and local governments are covered by regulations of the Department of Transportation.

DOT's regulations establish specific requirements for transportation vehicles and facilities, including a requirement that all new busses must be equipped to provide services to people who use wheelchairs.

II. Overview of Requirements

State and local governments --

May not refuse to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability.

For example, a city may not refuse to allow a person with epilepsy to use parks and recreational facilities.

Must provide programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.

Must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy their services, programs or activities unless "necessary" for the provisions of the service, program or activity.

Requirements that tend to screen out individuals with disabilities, such as requiring a driver's license as the only acceptable means of identification, are also prohibited.

Safety requirements that are necessary for the safe operation of the program in question, such as requirements for eligibility for drivers' licenses, may be imposed if they are based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Are required to make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result.

For example, a city office building would be required to make an exception to a rule prohibiting animals in public areas in order to

admit guide dogs and other service animals assisting individuals with disabilities.

Must furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

May provide special benefits, beyond those required by the regulation, to individuals with disabilities.

May not place special charges on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications required to provide program accessibility or providing qualified interpreters.

Shall operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.

III. "Qualified Individuals with Disabilities"

Title II of the Americans with Disabilities Act provides comprehensive civil rights protections for "qualified individuals with disabilities."

An "individual with a disability" is a person who --

Has a physical or mental impairment that substantially limits a "major life activity", or

Has a record of such an impairment, or

Is regarded as having such an impairment.

Examples of physical or mental impairments include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. Homosexuality and bisexuality are not physical or mental impairments under the ADA.

"Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Individuals who currently engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs.

"Qualified" individuals.

A "qualified" individual with a disability is one who meets the essential

eligibility reqirements for the program or activity offered by a public entity.

The "essential eligibility requirements" will depend on the type of service or activity involved.

For some activities, such as State licensing programs, the ability to meet specific skill and performance requirements may be "essential."

For other activities, such as where the public entity provides information to anyone who requests it, the "essential eligibility requirements" would be minimal.

IV. Program Access

State and local governments--

Must ensure that individuals with disabilities are not excluded from services, programs, and activities because buildings are inaccessible.

Need not remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.

Can provide the services, programs, and activities offered in the facility to individuals with disabilities through alternative methods, if physical barriers are not removed, such as --

Relocating a service to an accessible facility, e.g., moving a public information office from the third floor to the first floor of a building.

Providing an aide or personal assistant to enable an individual with a disability to obtain the service.

Providing benefits or services at an individual's home, or at an alternative accessible site.

May not carry an individual with a disability as a method of providing program access, except in oemanifestly exceptionalî circumstances.

Are not required to take any action that would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens. However, public entities must take any other action, if available, that would not result in a fundamental alteration or undue burdens but would ensure that individuals with disabilities receive the benefits or services.

V. Integrated Programs

Integration of individuals with disabilities into the mainstream of society is fundamental to the purposes of the Americans with Disabilities Act.

Public entities may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits and services are equally effective.

Even when separate programs are permitted, an individual with a disability still has the right to choose to participate in the regular program.

> For example, it would not be a violation for a city to offer recreational programs specially designed for children with mobility impairments, but it would be a violation if the city refused to allow children with disabilities to participate in its other recreational programs.

State and local governments may not require an individual with a disability to accept a special accommodation or benefit if the individual chooses not to accept it.

VI. Communications

State and local governments must ensure effective communication with individuals with disabilities.

Where necessary to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, the public entity must provide appropriate auxiliary aids.

> "Auxiliary aids" include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, Brailled materials, and large print materials.
>
> A public entity may not charge an individual with a disability for the use of an auxiliary aid.

Telephone emergency services, including 911 services, must provide direct access to individuals with speech or hearing impairments.

Public entities are not required to provide auxiliary aids that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. However, public entities must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or undue burdens.

VII. New Construction and Alterations

Public entities must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by individuals with disabilities.

When a public entity undertakes alterations to an existing building, it must also ensure that the altered portions are accessible.

The ADA does not require retrofitting of existing buildings to eliminate barriers, but does establish a high standard of accessibility for new buildings.

Public entities may choose between two technical standards for accessible design: The Uniform Federal Accessibility Standard (UFAS), established under the Architectural Barriers Act, or the Americans with Disability Act Accessibility Guidelines, adopted by the Department of Justice for places of public accommodation and commercial facilities covered by title III of the ADA.

The elevator exemption for small buildings under ADA Accessibility Guidelines would not apply to public entities covered by title II.

VIII. Enforcement

Private parties may bring lawsuits to enforce their rights under title II of the ADA. The remedies available are the same as those provided under section 504 of the Rehabilitation Act of 1973. A reasonable attorney's fee may be awarded to the prevailing party.

Individuals may also file complaints with appropriate administrative agencies.

The regulation designates eight Federal agencies to handle complaints filed under title II.

Complains may also be filed with any Federal agency that provides financial assistance to the program in question, or with the Department of Justice, which will refer the complaint to the appropriate agency.

IX. Complaints

Any individual who believes that he or she is a victim of discrimination prohibited by the regulation may file a complaint. Complaints on behalf of classes of individuals are also permitted.

Complaints should be in writing, signed by the complainant or an authorized representative, and should contain the complainant'sname and address and describe the public entity's alleged discriminatory action.

Complaints may be sent to --

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

Complaints may also be sent to agencies designated to process complaints under the regulation, or to agencies that provide Federal financial assistance to the program in question.

X. Designated Agencies

The following agencies are designated for enforcement of title II for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas --

Department of Agriculture: Farming and the raising of livestock, including extension services.

Department of Education: Education systems and institutions (other than health-related schools), and libraries.

Department of Health and Human Services: Schools of medicine, dentistry, nursing, and other health-related schools; health care and social service providers and institutions, including oegrass-rootsî and community services organizations and programs; and preschool and daycare programs.

Department of Housing and Urban Development: State and local public housing, and housing assistance and referral.

Department of Interior: Lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.

Department of Justice: Public safety, law enforcement, and the administration of justice, including courts and correctional institutions; commerce and industry, including banking and finance, consumer protection, and insurance; planning, development, and regulation (unless otherwise assigned); State and local government support services; and all other government functions not assigned to other designated agencies.

Department of Labor: Labor and the work force.

Department of Transportation: Transportation, including highways, public transportation, traffic management (non-law enforcement), automobile

licensing and inspection, and driver licensing.

XI. Technical Assistance

The ADA requires that the Federal agencies responsible for issuing ADA regulations provide "technical assistance."

Technical assistance is the dissemination of information (either directly by the Department or through grants and contracts) to assist the public, including individuals protected by the ADA and entities covered by the ADA, in understanding the new law.

Methods of providing information include, for example, audio-visual materials, pamphlets, manuals, electronic bulletin boards, checklists, and training.

The Department issued for public comment on December 5, 1990, a government-wide plan for the provision of technical assistance.

The Department's efforts focus on raising public awareness of the ADA by providing--

Factsheets and pamphlets in accessible formats,

Speakers for workshops, seminars, classes, and conferences,

An ADA telephone information line, and

Access to ADA documents through an electronic bulletin board for users of personal computers.

The Department has established a comprehensive program of technical assistance relating to public accommodations and State and local governments.

Grants will be awarded for projects to inform individuals with disabilities and covered entities about their rights and responsibilities under the ADA and to facilitate voluntary compliance.

The Department will issue a technical assistance manual by January 26, 1992, for individuals or entities with rights or duties under the ADA.

For additional information, contact:

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section, NYAV
Washington, D.C 20035-6738

(800) 514-0301 (Voice)
(800) 514-0383 (TDD)

www.ada.gov

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last updated August 29, 2002

U.S. Department of Justice
Civil Rights Division
Disability Rights Section

Title III Highlights

I. Who is Covered by Title III of the ADA

The title III regulation covers --

Public accommodations (i.e., private entities that own, operate, lease, or lease to places of public accommodation),

Commercial facilities, and

Private entities that offer certain examinations and courses related to educational and occupational certification.

Places of public accommodation include over five million private establishments, such as restaurants, hotels, theaters, convention centers, retail stores, shopping centers, dry cleaners, laundromats, pharmacies, doctors' offices, hospitals, museums, libraries, parks, zoos, amusement parks, private schools, day care centers, health spas, and bowling alleys.

Commercial facilities are nonresidential facilities, including office buildings, factories, and warehouses, whose operations affect commerce.

Entities controlled by religious organizations, including places of worship, are not covered.

Private clubs are not covered, except to the extent that the facilities of the private club are made available to customers or patrons of a place of public accommodation.

State and local governments are not covered by the title III regulation, but rather by the Department of Justice's title II regulation.

II. Overview of Requirements

Public accommodations must --

Provide goods and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.

Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation.

Make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration would result in the nature of the goods and services provided.

Furnish auxiliary aids when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

Remove architectural and structural communication barriers in existing facilities where readily achievable.

Provide readily achievable alternative measures when removal of barriers is not readily achievable.

Provide equivalent transportation services and purchase accessible vehicles in certain circumstances.

Maintain accessible features of facilities and equipment.

Design and construct new facilities and, when undertaking alterations, alter existing facilities in accordance with the Americans with Disabilities Act Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board and incorporated in the final Department of Justice title III regulation.

A public accommodation is not required to provide personal devices such as wheelchairs; individually prescribed devices (e.g., prescription eyeglasses or hearing aids); or services of a personal nature including assistance in eating, toileting, or dressing.

A public accommodation may not discriminate against an individual or entity because of the known disability of a person with whom the individual or entity is known to associate.

Commercial facilities are only subject to the requirement that new construction and alterations conform to the ADA Accessibility Guidelines. The other requirements applicable to public accommodations listed above do not apply to commercial facilities.

Private entities offering certain examinations or courses (i.e., those related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes) must offer them in an accessible place and manner or offer alternative accessible arrangements.

III. "Individuals with Disabilities"

The Americans with Disabilities Act provides comprehensive civil rights protections for "individuals with disabilities".

An individual with a disability is a person who --

Has a physical or mental impairment that substantially limits one or more *major life activities*, or

Has a record of such an impairment, or

Is regarded as having such an impairment.

Examples of physical or mental impairments include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. Homosexuality and bisexuality are not physical or mental impairments under the ADA.

"Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Individuals who currently engage in the illegal use of drugs are not protected by the ADA

when an action is taken on the basis of their current illegal use of drugs.

IV. Eligibility for Goods and Services

In providing goods and services, a public accommodation may not use eligibility requirements that exclude or segregate individuals with disabilities, unless the requirements are *necessary* for the operation of the public accommodation.

> For example, excluding individuals with cerebral palsy from a movie theater or restricting individuals with Down's Syndrome to only certain areas of a restaurant would violate the regulation.

Requirements that tend to screen out individuals with disabilities, such as requiring a blind person to produce a driver's license as the sole means of identification for cashing a check, are also prohibited.

Safety requirements may be imposed only if they are necessary for the safe operation of a place of public accommodation. They must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

> For example, an amusement park may impose height requirements for certain rides when required for safety.

Extra charges may not be imposed on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as removing barriers or providing qualified interpreters.

V. Modifications in Policies, Practices, and Procedures

A public accommodation must make reasonable modifications in its policies, practices, and procedures in order to accommodate individuals with disabilities.

A modification is not required if it would "fundamentally alter" the goods, services, or operations of the public accommodation.

> For example, a department store may need to modify a policy of only permitting one person at a time in a dressing room if an individual with mental retardation needs the assistance of a companion in dressing.

Modifications in existing practices generally must be made to permit the use of guide dogs and other service animals.

Specialists are not required to provide services outside of their legitimate areas of specialization.

> For example, a doctor who specializes exclusively in burn treatment may refer an individual with a disability, who is not seeking burn treatment, to another provider. A burn specialist, however, could not refuse to provide burn treatment

to, for example, an individual with HIV disease.

VI. Auxiliary Aids

A public accommodation must provide auxiliary aids and services when they are necessary to ensure effective communication with individuals with hearing, vision, or speech impairments.

"Auxiliary aids" include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, brailled materials, and large print materials.

The auxiliary aid requirement is flexible. For example, a brailled menu is not required, if waiters are instructed to read the menu to blind customers.

Auxiliary aids that would result in an undue burden, (i.e., "significant difficulty or expense") or in a fundamental alteration in the nature of the goods or services are not required by the regulation. However, a public accommodation must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or an undue burden.

VII. Existing Facilities: Removal of Barriers

Physical barriers to entering and using existing facilities must be removed when "readily achievable."

Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense."

What is readily achievable will be determined on a case-by-case basis in light of the resources available.

> The regulation does not require the rearrangement of temporary or movable structures, such as furniture, equipment, and display racks to the extent that it would result in a significant loss of selling or serving space.
>
> Legitimate safety requirements may be considered in determining what is readily achievable so long as they are based on actual risks and are necessary for safe operation.

Examples of barrier removal measures include --

> Installing ramps,
>
> Making curb cuts at sidewalks and entrances,
>
> Rearranging tables, chairs, vending machines, display racks, and other

furniture,

Widening doorways,

Installing grab bars in toilet stalls, and

Adding raised letters or braille to elevator control buttons.

First priority should be given to measures that will enable individuals with disabilities to "get in the front door," followed by measures to provide access to areas providing goods and services.

Barrier removal measures must comply, when readily achievable, with the alterations requirements of the ADA Accessibility Guidelines. If compliance with the Guidelines is not readily achievable, other safe, readily achievable measures must be taken, such as installation of a slightly narrower door than would be required by the Guidelines.

VIII. Existing Facilities: Alternatives to Barrier Removal

The ADA requires the removal of physical barriers, such as stairs, if it is "readily achievable." However, if removal is not readily achievable, alternative steps must be taken to make goods and services accessible.

Examples of alternative measures include --

Providing goods and services at the door, sidewalk, or curb,

Providing home delivery,

Retrieving merchandise from inaccessible shelves or racks,

Relocating activities to accessible locations.

Extra charges may not be imposed on individuals with disabilities to cover the costs of measures used as alternatives to barrier removal. For example, a restaurant may not charge a wheelchair user extra for home delivery when it is provided as the alternative to barrier removal.

IX. New Construction

All newly constructed places of public accommodation and commercial facilities must be accessible to individuals with disabilities to the extent that it is not structurally impracticable.

The new construction requirements apply to any facility occupied after January 26, 1993, for which the last application for a building permit or permit extension is certified as complete after January 26, 1992.

Full compliance will be considered "structurally impracticable" only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features (e.g., marshland that requires construction on stilts).

The architectural standards for accessibility in new construction are contained in the ADA Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board, an independent Federal agency. These standards are incorporated in the final Department of Justice title III regulation.

Elevators are not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, shopping mall, professional office of a health care provider, or station used for public transportation.

X. Alterations

Alterations after January 26, 1992, to existing places of public accommodation and commercial facilities must be accessible to the maximum extent feasible.

The architectural standards for accessibility in alterations are contained in the ADA Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board. These standards are incorporated in the final Department of Justice title III regulation.

An alteration is a change that affects usability of a facility. For example, if during remodeling, renovation, or restoration, a doorway is being relocated, the new doorway must be wide enough to meet the requirements of the ADA Accessibility Guidelines.

When alterations are made to a "primary function area", such as the lobby or work areas of a bank, an accessible path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving that area, must be made accessible to the extent that the added accessibility costs are not disproportionate to the overall cost of the original alteration.

> Alterations to windows, hardware, controls, electrical outlets, and signage in primary function areas do not trigger the path of travel requirement.
>
> The added accessibility costs are disproportionate if they exceed 20 percent of the original alteration.

Elevators are not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, shopping mall, professional office of a health care provider, or station used for public transportation.

XI. Overview of Americans with Disabilities Act Accessibility Guidelines for New Construction and Alterations

New construction and alterations must be accessible in compliance with the ADA Accessibility Guidelines.

The Guidelines contain general design ("technical") standards for building and site elements, such as parking, accessible routes, ramps, stairs, elevators, doors, entrances, drinking fountains, bathrooms, controls and operating mechanisms, storage areas, alarms, signage, telephones, fixed seating and tables, assembly areas, automated teller machines, and dressing rooms. They also have specific technical standards for restaurants, medical care facilities, mercantile facilities, libraries, and transient lodging (such as hotels and shelters).

The Guidelines also contain "scoping" requirements for various elements (i.e., it specifies how many, and under what circumstances, accessibility features must be incorporated).

Following are examples of scoping requirements in new construction --

At least 50 percent of all public entrances must be accessible. In addition, there must be accessible entrances to enclosed parking, pedestrian tunnels, and elevated walkways.

An accessible route must connect accessible public transportation stops, parking spaces, passenger loading zones, and public streets or sidewalks to all accessible features and spaces within a building.

Every public and common use bathroom must be accessible. Only one stall must be accessible, unless there are six or more stalls, in which case two stalls must be accessible (one of which must be of an alternate, narrow-style design).

Each floor in a building without a supervised sprinkler system must contain an "area of rescue assistance" (i.e., an area with direct access to an exit stairway where people unable to use stairs may await assistance during an emergency evacuation).

One TDD must be provided inside any building that has four or more public pay telephones, counting both interior and exterior phones. In addition, one TDD must be provided whenever there is an interior public pay phone in a stadium or arena; convention center; hotel with a convention center; covered shopping mall; or hospital emergency, recovery, or waiting room.

One accessible public phone must be provided for each floor, unless the floor has two or more banks of phones, in which case there must be one accessible phone for each bank.

Fixed seating assembly areas that accommodate 50 or more people or have audio-amplification systems must have a permanently installed assistive listening system.

Dispersal of wheelchair seating in theaters is required where there are more than 300 seats. In addition, at least one percent of all fixed seats must be aisle seats without armrests (or with movable armrests). Fixed seating for companions must be located adjacent to each wheelchair location.

Where automated teller machines are provided, at least one must be accessible.

Five percent of fitting and dressing rooms (but never less than one) must be accessible.

Following are examples of specific scoping requirements for new construction of special types of facilities, such as restaurants, medical care facilities, mercantile establishments, libraries, and hotels --

In restaurants, generally all dining areas and five percent of fixed tables (but not less than one) must be accessible.

In medical care facilities, all public and common use areas must be accessible. In general purpose hospitals and in psychiatric and detoxification facilities, ten percent of patient bedrooms and toilets must be accessible. The required percentage is 100 percent for special facilities treating conditions that affect mobility, and 50 percent for long-term care facilities and nursing homes.

In mercantile establishments, at least one of each type of counter containing a cash register and at least one of each design of check-out aisle must be accessible. In some cases, additional check-out aisles are required to be accessible (i.e., from 20 to 40 percent) depending on the number of check-out aisles and the size of the facility.

In libraries, all public areas must be accessible. In addition, five percent of fixed tables or study carrels (or at least one) must be accessible. At least one lane at the check-out area and aisles between card catalogs, magazine displays, and stacks must be accessible.

In hotels, four percent of the first 100 rooms and approximately two percent of rooms in excess of 100 must be accessible to persons with hearing impairments (i.e., contain visual alarms, visual notification devices, volume-control telephones, and an accessible electrical outlet for a TDD) and to persons with mobility impairments. Moreover, an identical percentage of additional rooms must be accessible to persons with hearing impairments.

Technical and scoping requirements for alterations are sometimes less stringent than those for new construction. For example, when compliance with the new construction requirements would be technically infeasible, one accessible unisex bathroom per floor is acceptable.

XII. Examinations and Courses

Certain examinations or courses offered by a private entity (i.e., those that are related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes) must either be given in a place and manner accessible to persons with disabilities, or be made accessible through alternative means.

In order to provide an examination in an accessible place and manner, a private entity must --

Assure that the examination measures what it is intended to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills.

Modify the examination format when necessary (e.g., permit additional time).

Provide auxiliary aids (e.g., taped exams, interpreters, large print answer sheets, or qualified readers), unless they would fundamentally alter the measurement of the skills or knowledge that the examination is intended to test or would result in an undue burden.

Offer any modified examination at an equally convenient location, as often, and in as timely a manner as are other examinations.

Administer examinations in a facility that is accessible or provide alternative comparable arrangements, such as providing the examination at an individual's home with a proctor.

In order to provide a course in an accessible place and manner, a private entity may need to --

Modify the course format or requirements (e.g., permit additional time for completion of the course).

Provide auxiliary aids, unless a fundamental alteration or undue burden would result.

Administer the course in a facility that is accessible or provide alternative comparable arrangements, such as provision of the course through video tape, audio cassettes, or prepared notes.

XIII. Enforcement of the ADA and its Regulations

Private parties may bring lawsuits to obtain court orders to stop discrimination. No monetary damages will be available in such suits. A reasonable attorney's fee, however, may be awarded.

Individuals may also file complaints with the Attorney General who is authorized to bring lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged.

In suits brought by the Attorney General, monetary damages (not including punitive damages) and civil penalties may be awarded. Civil penalties may not exceed $50,000 for a first violation or $100,000 for any subsequent violation.

XIV. Technical Assistance

The ADA requires that the Federal agencies responsible for issuing ADA regulations provide "technical assistance".

Technical assistance is the dissemination of information (either directly by the Department or through grants and contracts) to assist the public, including individuals protected by the ADA and entities covered by the ADA, in understanding the new law.

Methods of providing information include, for example, audio-visual materials, pamphlets, manuals, electronic bulletin boards, checklists, and training.

The Department issued for public comment on December 5, 1990, a government-wide plan for the provision of technical assistance.

The Department's efforts focus on raising public awareness of the ADA by providing--

Fact sheets and pamphlets in accessible formats,

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(800) 514-0301 (Voice)
(800) 514-0383 (TDD)

(202) 514-6193 (Electronic Bulletin Board)

884 P.2d 569 (1994)
131 Or. App. 220

Louis F. SCHULTZ and Anna May Schultz, Appellants,

v.

CITY OF GRANTS PASS, an Oregon municipal corporation, Respondent.

92-CV-0006; CA A77006.

Court of Appeals of Oregon.

Argued and Submitted April 18, 1994.
Decided November 2, 1994.

570 *570 James R. Dole, Grants Pass, argued the cause for appellants. With him on the brief was Schultz, Salisbury, Cauble, Versteeg & Dole.

Timothy J. Sercombe, Portland, argued the cause for respondent. With him on the brief was Preston Thorgrimson Shidler Gates & Ellis.

Before WARREN, P.J., and EDMONDS and LANDAU, JJ.

LANDAU, Judge.

The City of Grants Pass (the city) approved petitioners' application to **partition** a parcel of property, subject to a number of conditions. Petitioners requested a writ of review, challenging the constitutionality of the conditions under the Takings Clause of the Fifth Amendment. The trial court entered judgment in favor of the city. We reverse and remand.

Petitioners own a 3.85-acre parcel of real property, located within the acknowledged urban growth boundary of Grants Pass. The northern boundary of the property abuts Savage Street. The eastern boundary abuts Beacon Drive. Petitioners wish to **partition** the parcel into two lots. The first lot would consist of a 90-foot by 201-foot parcel located at the corner of Savage Street and Beacon Drive. The second lot would consist of the remaining property.

Petitioners applied to the city for a development permit to **partition** their lot. The city approved the application, subject to conditions. Among the conditions were a 10-foot "dedication for county right-of-way" along the length of the portion of both of the parcels that abuts Beacon Drive and

> "[a] 20-foot dedication, measuring from the street centerline, plus an additional 5-foot dedication for City right-of-way * * *"

along the length of the portion of the parcels abutting Savage Street, "including enough area to round the intersection."

In support of its conditions, the city made a number of findings, including the following:

> "B. The division of this property will increase the use of City streets which are immediately adjacent to the property. These streets are designate [*sic*] in the Comprehensive Plan and City Master Transportation Plan.
>
> "The dedication and improvement of the street right of way will directly benefit this property through improved and expanded access from the parcels and through the City.
>
> "The improvement of the streets will occur through a deferred development agreement/non-remonstrance as part of a local improvement district where the total costs of the improvements will be

> fairly apportioned to all properties in accordance with applicable laws. Based on the size and proximity of this property to the street improvements, a designation of 50% is a reasonable apportionment.

"* * * * *

> "D. The improvement of the storm drain system will directly benefit this property and will help in preventing drainage from entering this property from the street and from adjacent properties to the north and east.
>
> "The improvement of the storm drain system will occur through a deferred development agreement/non-remonstrance as part of a local improvement district where the total costs of the improvements will be fairly apportioned to all properties in accordance with applicable laws. Based on the size and proximity of this property to the storm drain improvements, a designation of 50% is a reasonable apportionment."

Petitioners filed a petition for a writ of review.[1] The parties stipulated to the record, with the following addendum:

571 *571 "[The city] plans to adopt supplemental findings as part of the local government record. Petitioners reserve the right to object to any such supplemental findings offered by [the city] * * *."

The city then adopted and filed supplemental findings in support of the imposition of the challenged conditions. In those supplemental findings, the city noted several policies stated in the Grants Pass and Urbanizing Area Comprehensive Community Development Plan, including the general policy that service needs are determined based on the intensity of development and the policy that those who benefit from a development should pay for the costs of extending services to the development. The city also referenced specific implementing ordinances, including those requiring the availability of storm drainage and street improvements consistent with the comprehensive plan prior to the allowance of any partitioning.

In the supplemental findings, the city also described its rationale for concluding that those policies and ordinances require the specific conditions imposed in this case:

> "[T]he conditions imposed are justified because of the *potential development* of the partitioned tract. The tract to be partitioned is 3.85 acres and is zoned R-1-8, a low-density residential designation. Properties to the south, east and west of the tract are subdivided.
>
> "The portion of the property adjacent to Beacon Drive (Parcel II) is proposed to be divided from the remainder of the tract (Parcel I). Parcel II is a 90 foot by 211.8 foot tract, and 18,990 square feet in size.

"* * * * *

> "The *full development* of this 3.85 acre parcel would be considerable. Under the existing R-1-8 zoning, 20 homesites of 8,000 square feet could be situated on the tract. Even assuming loss of some developable land because of exactions * * *, 15 homes *could* be placed on Parcel I. With the two lot potential for Parcel II, the entire tract would likely house 17 large homesites. Moreover, the existing zoning allows some commercial and institutional uses for the land as well.
>
> "The transportation impact of this amount of housing would be substantial. A single-family home typically generates 3200 vehicle trips per year, or 8.7 trips per day. Seventeen homes produces [*sic*] 149 trips per day." (Emphasis supplied.)

Petitioners objected to the supplemental findings, on the ground that they addressed issues outside the scope of those addressed in the original findings. The trial court overruled the objections.

After briefing and argument on the merits, the trial court issued findings and conclusions, in which it upheld the validity of the conditions imposed on petitioners. On appeal, petitioners assign error to the trial court's ruling on the objections to the supplemental findings and to the trial court's decision on the merits of the petition. We do not address

petitioners' first assignment, because we conclude that, even if the supplemental findings were properly considered part of the record, the conditions do not survive constitutional scrutiny.

The validity of the conditions turns on the application of the Supreme Court's recent decision in ***Dolan*** *v. City of Tigard*, ___ U.S. ___, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994). In that case, **Dolan** applied to the City of Tigard to expand her store and pave her parking lot. The City Planning Commission approved the application, but subject to conditions that included the dedication of land for a public greenway and for a pedestrian/bicycle pathway. **Dolan** challenged the constitutionality of the conditions, contending that they effected a taking of property without compensation in violation of the Fifth Amendment. The Oregon Supreme Court upheld the conditions and the United States Supreme Court reversed on certiorari. The Supreme Court's articulation of the appropriate test warrants careful scrutiny, and so we quote from its opinion at some length.

The Court began by referring to the long line of decisions generally describing the impact of the Takings Clause of the Fifth Amendment on the authority of state and local governments to engage in land use planning:

572 *572 "A land use regulation does not effect a taking if it `substantially advance[s] legitimate state interests' and does not `den[y] an owner economically viable use of his land.' *Agins v. Tiburon*, 447 US 255, 260, 100 S Ct 2138, 2141, 65 L Ed 2d 106 (1980)." ***Dolan*** *v. City of Tigard, supra*, ___ U.S. at ___, 114 S.Ct. at 2316.

In those cases, the burden rests with the party challenging the regulation to show that it constitutes an arbitrary deprivation of property rights. ___ U.S. at ___, 114 S.Ct. at 2320 n. 8.

The Court then drew a distinction between that line of cases and cases involving the imposition of conditions on the approval of a land use permit:

> "The sort of land use regulations discussed in the cases just cited, however, differ in two relevant particulars from the present case. First, they involved essentially legislative determinations classifying entire areas of the city, whereas here the city made an adjudicative decision to condition petitioner's application for a building permit on an individual parcel. Second, the conditions imposed were not simply a limitation on the use petitioner might make of her own parcel, but a requirement that she deed portions of the property to the city. * * * Under the well-settled doctrine of `unconstitutional conditions,' the government may not require a person to give up a constitutional right—here the right to receive just compensation when property is taken for a public use—in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit." ___ U.S. at ___, 114 S.Ct. at 2316.

The Court then articulated the following test for determining whether the exaction of a condition is constitutional:

> "[W]e must first determine whether the `essential nexus' exists between the `legitimate state interest' and the permit condition exacted by the city. If we find that a nexus exists, we must then decide the required degree of connection between the exactions and the projected impact of the proposed development." ___ U.S. at ___, 114 S.Ct. at 2317. (Citation omitted.)

The Court explained that the "required degree of connection" between the conditions and the impact of the proposed development is one of "rough proportionality," which it defined in these terms:

> "No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." ___ U.S. at ___, 114 S.Ct. at 2319. (Footnote omitted.)

In this case, petitioners argue that the imposition of the condition of dedicating extensive portions of their property for widening of city streets does not satisfy the rough proportionality requirement of ***Dolan***. There is, they argue,

absolutely no relationship between the impacts of their proposed development and the imposition of the dedication requirement.

The city offers two arguments in support of the validity of its conditions. First, it argues that, because the conditions are based on city ordinances, they are the "functional equivalent" of legislative decisions and, therefore, are not subject to the requirements of ***Dolan***. According to the city, such legislative decisions are subject to minimal scrutiny; indeed, they are subject to a presumption of validity. Second, it argues that, even if ***Dolan*** applies, its findings are sufficient to satisfy the requirements of that decision. We are unpersuaded by either argument.

The city's first argument is based on a misunderstanding of ***Dolan*** and a mischaracterization of its own actions. As the Supreme Court noted in ***Dolan***, the presumption to which the city refers attaches only when a petitioner challenges the validity of a zoning ordinance or similar legislative or quasi-legislative enactment that is applied generally to all similarly situated properties. ___ U.S. at ___, 114 S.Ct. at 2320 n. 8. In this case, petitioners bring no such challenge. Instead, they challenge the city's decision to impose a particular set of conditions—dedication of up to 25 feet of street-front
573 *573 property along the length and width of their parcel—in exchange for approval of their development application.

The city insists that, because the relevant ordinances *require* the imposition of such conditions, the decision to do so is, in reality, a legislative one. The city misses the point. Even if that were so, the character of the restriction remains the type that is subject to the analysis in ***Dolan***. In drawing its distinction between the legislative land use decisions that are entitled to a presumption of validity and the exactions that are not, the Supreme Court noted that what triggers the heightened scrutiny of exactions is the fact that they are "not simply a limitation on the use" to which an owner may put his or her property, but rather a requirement that the owner deed portions of the property to the local government. ___ U.S. at ___, 114 S.Ct. at 2316. That is precisely the nature of the exaction imposed by the city in this case.

The city's second argument similarly relies on a misreading of ***Dolan*** and an inaccurate characterization of its own decision. According to the city, even if ***Dolan*** applies, the conditions imposed are inoffensive to the constitution. The city argues that, because no one contests the legitimacy of the local government's interest in transportation planning, or because there is a sufficient "nexus" between the local government's interest and the imposition of the condition in this case, the only issue is whether there is the required degree of connection between the conditions and the impact of the proposed development. On that issue, the city argues, we exercise limited review to determine whether there is substantial evidence to support its findings. Because there is such evidence, the city concludes, it must prevail.

We need not address the city's argument about our limited scope of review, because, even if it is correct, the city cannot prevail. The only issue in dispute is, indeed, whether there is the "required degree of connection" between the conditions the city has imposed "and the projected impact of the proposed development." ***Dolan*** *v. City of Tigard, supra*, ___ U.S. at ___, 114 S.Ct. at 2317. In this case, however, the city's justification for the conditions is, in the words of the city's own supplemental findings, the impact of *"potential development* of the partitioned tract." In other words, the city imagined a worst-case scenario—assuming that petitioners would, at some undefined point in the future, attempt to develop their land to its full development potential of as many as 20 subdivided residential lots, further assuming that petitioners would obtain all the necessary permits and approvals—and on the basis of that scenario, it calculated the impacts of the development and tailored conditions to address them.

The problem with that approach is that ***Dolan*** requires that the exactions imposed be "related both in nature and extent to the impact of *the proposed development*." ___ U.S. at ___, 114 S.Ct. at 2320. (Footnote omitted; emphasis supplied.) The proposed development in this case is the partitioning of a single lot into two lots and nothing more. There is absolutely nothing in the record to connect the dedication of a substantial portion of petitioners' land, for the purpose of widening city streets, with petitioners' limited application.

Even taking into account the city's data reflecting the number of vehicle trips per day that the city assumes each new household will generate, the fact that there is an increase of eight vehicle trips on Beacon Drive and Savage Street each day hardly justifies requiring petitioners to part with 20,000 square feet of their land without compensation. That does not comport with what the Supreme Court meant by "rough proportionality."

The city does not contest that petitioners' application is very limited. Relying on language from an earlier Supreme Court decision, ***Nollan** v. California Coastal Comm'n*, 483 U.S. 825, 835, 107 S.Ct. 3141, 3147, 97 L.Ed.2d 677 (1987), it insists that it is appropriate to evaluate the impacts of a proposed development "alone, or * * * in conjunction with other construction." That is what the Court said in ***Nollan***. However, that language is not relevant to this case, in which there is no reference to actual "other construction." There is only the city's *speculation* as to what other
574 construction *could* take place at some time in the future. That is not *574 what the Supreme Court was referring to in ***Nollan***.

There is, in short, nothing in the record that provides evidence of a relationship between the conditions the city has imposed and the impact of petitioners' proposed development. The trial court erred, as a matter of law, in concluding otherwise.

Reversed and remanded.

[1] Petitioners first sought review by the Land Use Board of Appeals. LUBA dismissed the case for lack of jurisdiction because the city's decision was not a "land use decision" under the law then in effect. *See* ORS 197.015(10) (*since amended by* Or.Laws 1991, ch. 817, § 1, and Or.Laws 1993, ch. 550, § 4).

From: Wayne Kirk [mailto:summerton97070@yahoo.com]
Sent: Monday, February 23, 2015 7:52 AM
To: Scola, Jennifer
Subject: Case file AR14-0077

Dear Development Review Board

We had seen the stand up sign in front of 28205 SW Canyon Creek Road and thought it meant development in the empty lot.Then one of our neighbors called the city and was told it had to do with appealing street improvements for that address.We still don't know the entire scope of what that means, but we are concerned.

Many of us walk down the street with our children, our friends and other families. Currently we often have to walk in the street as there are no sidewalks in many spots. We have been looking forward to more sidewalks as the neighborhood has been changing.

If this is an action to avoid installing a sidewalk when other improvements are made, please do not allow that to happen.

Please help Wilsonville be a city that encourages walking, not one that discourages it.

Thank you; concerned neighbors

DEVELOPMENT REVIEW BOARD MEETING

MONDAY, FEBRUARY 23, 2015
6:30 PM

VII. Public Hearing:

A. Resolution 299. Downs Appeal: Gerald and Joanne Downs – owners. The applicant is appealing the Staff Decision of a two parcel land partition approval in Case File AR14-0077. The property is located at 28205 SW Canyon Creek Road South on Tax Lot 2700, Section 13BA, T3S-R1W, Clackamas County, Oregon. Staff: Blaise Edmonds

Case Files: DB15-0006 – Appeal

MEMORANDUM

TO: Development Review Board Members

FROM: Blaise Edmonds, Manager of Current Planning
Barbara Jacobson, Assistant City Attorney

DATE: February 12, 2015

RE Director's Decisions/Applicant Appeal
Applicant/Owner: Gerald and Joanne Downs; Ron Downs, Applicant/Owner Representative

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On February 23, 2015, you will be hearing an appeal of City staff's Class 2 Administrative Decision involving the partition of a parcel into two parcels for the purpose of constructing a second home on the parcel.

In accordance with the City's Code, although the applicant may only be challenging portions of the decision, this DRB public hearing is de novo, meaning the DRB may consider all aspects of staff's decision and, likewise, may take additional testimony or input from staff, the applicant, and any other member of the public wishing to offer testimony.

In reviewing the applicant's concerns, staff has made some revisions to the staff report in an attempt to give the applicant other options, as well as a better explanation of why certain conditions of approval are required by City Code. Certain conditions were also clarified, modified, or added by staff for this de novo review. To make it easy for the Applicant and the DRB panel to see the change between the original staff decision, which the applicant has appealed, and this revised staff report with recommendation for DRB approval, changes made to the original staff decision issued to the Applicant are shown in redline. A clean copy of the Revised staff report is also enclosed.

Staff is recommending to the DRB that the revised staff report be adopted, the appeal denied, but the application be allowed to move forward subject to the conditions imposed by the revised staff report.

Finally, we have enclosed a draft Resolution that can be used if DRB affirms the Director's decision and accepts the revised staff report, thereby denying the appeal. If, however, the DRB wishes to grant the appeal and thus require revisions to the staff report and conditions of

approval, new findings and conclusions will need to be prepared and the matter continued to allow for presentation of those revised findings and conclusions.

If any DRB member has procedural questions regarding this appeal, please feel free to contact Barbara Jacobson.

cc: Gerald and Joanne Downs, Applicant
Ron Downs, Applicant Representative

Redlined Staff Report for DRB Review

Exhibit A2

REVISED STAFF REPORT
WILSONVILLE PLANNING DIVISION
Appeal Class II Administrative Review Decision

DEVELOPMENT REVIEW BOARD PANEL 'B'
QUASI-JUDICIAL PUBLIC HEARING

HEARING DATES: **February 23, 2015**

DATE OF REPORT: **February 12, 2015**

APPLICATION NOS.: DB14-0077 and DB15-0006

APPLICANT/OWNERS: Gerald and Joanne Downs (collectively "Applicant")

APPLICANT/OWNER REPRESENTATIVE: Ronald Downs

REQUEST: Appeal AR14-0077 (Class II Tentative Land Partition) and including Condition of Approval PFA27

LOCATION: The subject property is located at 28205 SW Canyon Creek Road South, on the west side of SW Canyon Creek Road South.

LEGAL DESCRIPTION: Tax Lot 2700 of Section 13BA, T3S, R1W, Willamette Meridian, Clackamas County, Wilsonville, Oregon.

LAND USE DESIGNATION: Comprehensive Plan Map Designation: Residential – 4 to 5 dwelling units an acre.

ZONING DESIGNATION: Residential Agricultural - Holding (RA-H)

STAFF REVIEWERS: Blaise Edmonds, Manager of Current Planning; Jennifer Scola, Assistant Planner, Barbara Jacobson, Assistant City Attorney and Steve Adams, Development Engineering Manager.

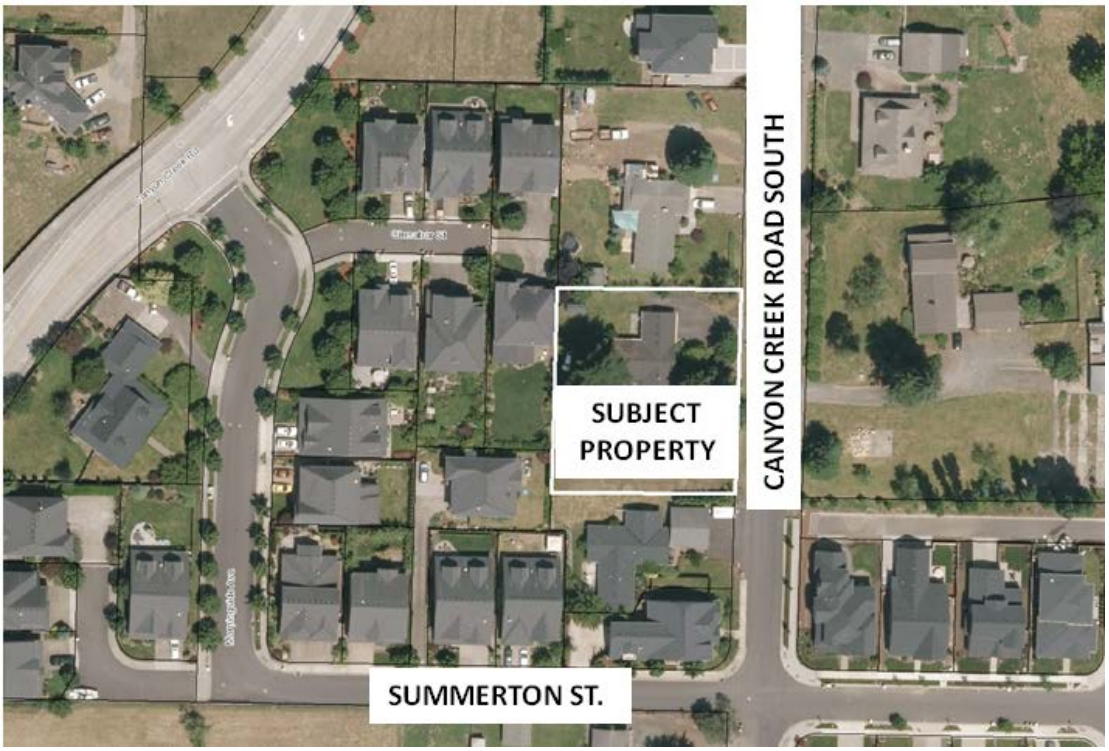
Applicable Review Criteria: Planning and Land Development Ordinance:

Sections 4.008 - 4.015	Administration Sections
Section 4.022(.01)	Administrative Action Appeal
Section 4.022(.04)	Appeal Notice
Section 4.022(.05)	Scope of Review
Section 4.022(.07)	Review Consisting of Additional Evidence or De Novo Review
Sections 4.030(.01)(B)(5); 4.034(.05); 4.035; 4.035(.03)	Class II AR
Section 4.202	Land Divisions General
Section 4.210	Application Procedure
Section 4.120	Residential Agricultural – Holding Zone (RA-H)
Section 4.031	Authority of the DRB
Section 4.113	Standards to all Residential Zones
Section 4.118(.03)C.9	Waiver of Right of Remonstrance
Section 4.167	Access
Section 4.177(.01) and (.02)	Street Improvement Standards
Section 4.177(.03)	Sidewalks
Section 4.236(.01)	Conformity to the Transportation Systems Plan
Section 4.236(.02)	Relation to Adjoining Street System
Section 4.237	Land Divisions General Requirements
Section 4.260(.02)	Improvement Procedures
Sections 4.262 (.01 through .10)	Improvement Requirements
Sections 4.300-4.320	Underground Utilities

Other: Administrative Decision AR14-0077
Comprehensive Plan: Plan Policy 3.3.2, Implementation Measures 3.3.2c and 3.3.2d.

STAFF RECOMMENDATION: Approve Option 2, which consists of this revised staff report, as outlined in the 'Summary' statement of this revised staff report (Exhibit A2) below, with proposed revised findings and conditions of approval in case file DB15-0006 (Exhibit A2).

VICINITY MAP



SUMMARY

The applicant is appealing the staff decision for a Class II administrative approval of a two (2) parcel land partition in case file AR14-0077. Section 4.022(.05)WC Scope of Review requires "that the standard on an appeal or call up of a staff decision to be heard by the Development Review Board is de novo." *De novo* is a Latin expression meaning "from the beginning," "afresh," "anew," "beginning again." Although the applicant may want to contest only certain portions of the staff decision, the entire Class II administrative approval record will be open for public testimony and admission of new evidence.

The applicant is objecting to certain sidewalk, street and utility improvements required by City engineering condition PFA27. See Exhibit B9 for the applicant's detailed objection. The applicant, by and through the Applicant Representative (Ron Downs), is seeking to partition their land into two parcels so that one may be deeded to Ron Downs for construction of a new home. The applicant, however, only wants to make the required improvements in front of that newly created lot and not in front of the other lot that is a part of the application and partition; in other words, the applicant is seeking to divide their property into two lots but to only provide street and sidewalks for the portion located in front of the newly created lot and not the remainder of the partitioned property. It is City staff's opinion that, by virtue of the partition, as the City's definition as "Development" as set forth in City Code, the entire property is being redeveloped and, thus, the City conditions for redevelopment apply across the entire parcel and, therefore, sidewalk, curb, and gutter must be provided to front the entire parcel. Authority for this position is found under the City's Comprehensive Plan Section 3.3.2; Implementation Measure 3.3.2.c.;

Implementation Measure 3.3.2.d; and the City's Development Code Section 4.236. Development is defined in Code Section 4.001, subsection 79.

Based on the foregoing, the Development Review Board has three options to consider at the upcoming DRB hearing:

Option 1: Approve the original staff report, findings of fact, conclusionary findings and conditions of approval in case file AR14-0077 (Exhibit A1). This action would deny the appeal. The applicant would then be free to either abandon the application, comply with the required conditions, or appeal the DRB decision to City Council.

Option 2: Approve the proposed revised staff report, findings of fact, conclusionary findings and conditions of approval in case file DB15-0006 (Exhibit A2). The proposed changes are being recommended by staff to give more clarity to the DRB and to the applicant, as well as to give the applicant some alternatives options with respect to implementation of the challenged condition. The applicant would then be free to abandon the application, comply with the required revised or original conditions, or appeal the DRB decision to City Council. These proposed revisions are highlighted in the revised staff report to show all as additions and strike-outs to the original staff report for DRB and applicant ease of reference.

Option 3: The DRB could reject portions of the recommended revised staff report by modifying conditions, applying new conditions, or removing conditions, should the DRB find that the applicant has sustained the burden of proving that the staff conditions are incorrect or not proportionate and therefore not legally permissible.

EXHIBITS (AR14-0077):

The following exhibits are entered into the public record for the Class 2 Administrative Review of Tentative Land Partition Aapplication in AR14-0077.

A1. Original Staff Report ~~(this document)~~
B. Applicant's Submittal Notebook, as follows:
B1. Applicant's Narrative, dated 10/21/2014
B2. Completed City of Wilsonville Application Form
B3. Public Record Report for New Subdivision, dated 09/04/2014
B4. Preliminary Partition Plat Plan
B5. Vicinity Map
B6. Tax Lot Information
B7. Certification of Assessment and Liens
B8. Description of No-Construction Easement

C1. Tax Map
C2. Case File 03DB43, Findings E19, E30, and Condition of Approval DRB D3
C3. Case File 03DB43 of Exhibit 44

EXHIBITS (DB15-0006):

The following exhibits are entered into the public record for the appeal to the DRB in appeal application DB15-0006 as submitted.

Staff Report:

A2. Revised Staff Report (this one), including Proposed ~~r~~Revised Findings of Fact, Conditions of Approval and Conclusionary Findings. (Changes to the original are shown in redline for DRB and applicant ease of review.)~~.~~
A3. PowerPoint presentation.

Applicant's Written and Graphic Materials: *(Distributed Separately)*
B9. Letter of appeal ___, dated , 2015.

Development Review Team: None submitted

D1. General Correspondence:
D1. Letters (neither For nor Against): None submitted
D2. Letters (In Favor): None submitted
D3. Letters (Opposed): None submitted

DB15-0006 - PROPOSED REVISED CONDITIONS OF APPROVAL:

PD = Planning Division Conditions
PF = City Engineering Division Conditions

Bold/Italic = New words

Planning Conditions:	
PDA1.	Approval of the partition is effective for two (2) years from the date of the notice of decision. Time extensions may be granted per Section 4.023 of the City's Development Code. The Applicant/***Owner*** shall submit final plat application within two (2) years of date of the notice of decision.
PDA2.	The final plat for the land partition shall be in substantial compliance with the approved tentative plat and narrative submitted to the Planning Division as part of this application.
PDA3.	The Applicant/Owner shall provide the City's Engineering and Planning Division with a copy of the final plat of the land partition recorded with the Clackamas County Surveyor's Office.
PDA4.	Any improvements installed shall conform to the City's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards.
PDA5.	Any utilities installed as part of development on the property shall be installed underground.
PDA6.	A Reduced Setback Agreement shall be recorded concurrently with the final plat.
PDA7.	The final plat shall not display the ten-foot No Construction Easement, nor shall the proposed building outline for the southern parcel of the partition.
PDA8.	Applicant/Owner shall waive the right of remonstrance against any local improvement district that may be formed to provide public improvements to serve the subject site. Before the start of construction, a waiver of right to remonstrance shall be submitted to the City Attorney for review. See Finding 51.

Engineering Division Conditions:

New development on the two lots shall be in compliance with the following Engineering conditions of approval.

Standard Comments:

PFA1. All construction or improvements to public works facilities shall be in conformance to the City of Wilsonville Public Works Standards - 2014.

PFA2. Applicant shall submit insurance requirements to the City of Wilsonville in the following amounts:

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$2,000,000
Each Occurrence	$2,000,000
Automobile Insurance	$1,000,000
Fire Damage (any one fire)	$50,000
Medical Expense (any one person)	$10,000

PFA3. No construction of, or connection to, any existing or proposed public utility/improvements will be permitted until all plans are approved by Staff, all fees have been paid, all necessary permits, right-of-way and easements have been obtained and Staff is notified a minimum of 24 hours in advance.

PFA4. All public utility/improvement plans submitted for review shall be based upon a 22" x 34" format and shall be prepared in accordance with the City of Wilsonville Public Work's Standards.

PFA5. Plans submitted for review shall meet the following general criteria:

a. Utility improvements that shall be maintained by the public and are not contained within a public right-of-way shall be provided a maintenance access acceptable to the City. The public utility improvements shall be centered in a minimum 15-ft. wide public easement for single utilities and a minimum 20-ft. wide public easement for two parallel utilities and shall be conveyed to the City on its dedication forms.
b. Design of any public utility improvements shall be approved at the time of the issuance of a Public Works Permit. Private utility improvements are subject to review and approval by the City Building Department.
c. In the plan set for the PW Permit, existing utilities and features, and proposed new private utilities shall be shown in a lighter, grey print. Proposed public improvements shall be shown in bolder, black print.
d. All elevations on design plans and record drawings shall be based on NAVD 88 Datum.
e. All proposed on and off-site public/private utility improvements shall comply with the State of Oregon and the City of Wilsonville requirements and any other applicable codes.

f. Design plans shall identify locations for street lighting, gas service, power lines, telephone poles, cable television, mailboxes and any other public or private utility within the general construction area.
g. As per City of Wilsonville Ordinance No. 615, all new gas, telephone, cable, fiber-optic and electric improvements etc. shall be installed underground. Existing overhead utilities shall be undergrounded wherever reasonably possible.
h. Any final site landscaping and signing shall not impede any proposed or existing driveway or interior maneuvering sight distance.
i. Erosion Control Plan that conforms to City of Wilsonville Ordinance No. 482.
j. Existing/proposed right-of-way, easements and adjacent driveways shall be identified.
k. All engineering plans shall be stamped by a Professional Engineer registered in the State of Oregon.

PFA6. Submit plans in the following general format and order for all public works construction to be maintained by the City:

a. Cover sheet
b. City of Wilsonville construction note sheet
c. General construction note sheet
d. Existing conditions plan.
e. Erosion control and tree protection plan.
f. Site plan. Include property line boundaries, water quality pond boundaries, sidewalk improvements, right-of-way (existing/proposed), easements (existing/proposed), and sidewalk and road connections to adjoining properties.
g. Grading plan, with 1-foot contours.
h. Composite utility plan; identify storm, sanitary, and water lines; identify storm and sanitary manholes.
i. Detailed plans; show plan view and either profile view or provide i.e.'s at all utility crossings; include laterals in profile view or provide table with i.e.'s at crossings; vertical scale 1"= 5', horizontal scale 1"= 20' or 1"= 30'.
j. Street plans.
k. Storm sewer/drainage plans; number all lines, manholes, catch basins, and cleanouts for easier reference
l. Water and sanitary sewer plans; plan; number all lines, manholes, and cleanouts for easier reference.
m. Detailed plan for storm water detention facility (both plan and profile views), including water quality orifice diameter and manhole rim elevations. Provide detail of inlet structure and energy dissipation device. Provide details of drain inlets, structures, and piping for outfall structure. Note that although storm water detention facilities are typically privately maintained they will be inspected by engineering, and the plans must be part of the Public Works Permit set.
n. Detailed plan for water quality facility (both plan and profile views). Note that although storm water quality facilities are typically privately maintained they will be inspected by Natural Resources, and the plans must be part of the Public Works Permit set.
o. Composite franchise utility plan.
p. City of Wilsonville detail drawings.
q. Illumination plan.

r. Striping and signage plan. s. Landscape plan.
PFA7. Design engineer shall coordinate with the City in numbering the sanitary and stormwater sewer systems to reflect the City's numbering system. Video testing and sanitary manhole testing will refer to City's numbering system.
PFA8. The applicant shall install, operate and maintain adequate erosion control measures in conformance with the standards adopted by the City of Wilsonville Ordinance No. 482 during the construction of any public/private utility and building improvements until such time as approved permanent vegetative materials have been installed.
PFA9. Applicant shall work with City's Natural Resources office before disturbing any soil on the respective site. If 5 or more acres of the site will be disturbed applicant shall obtain a 1200-C permit from the Oregon Department of Environmental Quality. If 1 to less than 5 acres of the site will be disturbed a 1200-CN permit from the City of Wilsonville is required.
PFA10. The applicant shall be in conformance with all stormwater and flow control requirements for the proposed development per the Public Works Standards.
PFA11. A storm water analysis prepared by a Professional Engineer registered in the State of Oregon shall be submitted for review and approval by the City.
PFA12. The applicant shall be in conformance with all water quality requirements for the proposed development per the Public Works Standards. If a mechanical water quality system is used, prior to City acceptance of the project the applicant shall provide a letter from the system manufacturer stating that the system was installed per specifications and is functioning as designed.
PFA13. Storm water quality facilities shall have approved landscape planted and/or some other erosion control method installed and approved by the City of Wilsonville prior to streets and/or alleys being paved.
PFA14. The applicant shall contact the Oregon Water Resources Department and inform them of any existing wells located on the subject site. Any existing well shall be limited to irrigation purposes only. Proper separation, in conformance with applicable State standards, shall be maintained between irrigation systems, public water systems, and public sanitary systems. Should the project abandon any existing wells, they shall be properly abandoned in conformance with State standards.

PFA15.	All survey monuments on the subject site, or that may be subject to disturbance within the construction area, or the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated or destroyed as a result of any construction, the project shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to Staff.
PFA16.	Sidewalks, crosswalks and pedestrian linkages in the public right-of-way shall be in compliance with the requirements of the U.S. Access Board.
PFA17.	No surcharging of sanitary or storm water manholes is allowed.
PFA18.	The project shall connect to an existing manhole or install a manhole at each connection point to the public storm system and sanitary sewer system.
PFA19.	The applicant shall provide adequate sight distance at all project driveways by driveway placement or vegetation control. Specific designs to be submitted and approved by the City Engineer. Coordinate and align proposed driveways with driveways on the opposite side of the proposed project site.
PFA20.	Access requirements, including sight distance, shall conform to the City's Transportation Systems Plan (TSP) or as approved by the City Engineer. Landscaping plantings shall be low enough to provide adequate sight distance at all street intersections and alley/street intersections.
PFA21.	The applicant shall provide the City with a Stormwater Maintenance and Access Easement (on City approved forms) for City inspection of those portions of the storm system to be privately maintained. Stormwater or rainwater LID facilities may be located within the public right-of-way upon approval of the City Engineer. Applicant shall maintain all LID storm water components and private conventional storm water facilities; maintenance shall transfer to the respective homeowners association when it is formed.
PFA22.	Applicant shall provide a minimum 6-foot Public Utility Easement on lot frontages to all public right-of-ways.
PFA23.	For any new public easements created with the project the Applicant shall be required to produce the specific survey exhibits establishing the easement and shall provide the City with the appropriate Easement document (on City approved forms).
PFA24.	MYLAR RECORD DRAWINGS: At the completion of the installation of any required public improvements, and before a 'punch list' inspection is scheduled, the Engineer shall perform a record survey. Said survey shall be the basis for the preparation of 'record drawings' which will serve as the physical record of those changes made to the plans and/or specifications, originally

approved by Staff, that occurred during construction. Using the record survey as a guide, the appropriate changes will be made to the construction plans and/or specifications and a complete revised 'set' shall be submitted. The 'set' shall consist of drawings on 3 mil. Mylar and an electronic copy in AutoCAD, current version, and a digitally signed PDF.

PFA25. SUBDIVISION OR PARTITION PLATS:

Paper copies of all proposed subdivision/partition plats shall be provided to the City for review. Once the subdivision/partition plat is approved, applicant shall have the documents recorded at the appropriate County office. Once recording is completed by the County, the applicant shall be required to provide the City with a 3 mil Mylar copy of the recorded subdivision/partition plat.

PFA26. SUBDIVISION OR PARTITION PLATS:

All newly created easements shown on a subdivision or partition plat shall also be accompanied by the City's appropriate Easement document (on City approved forms) with accompanying survey exhibits that shall be recorded immediately after the subdivision or partition plat.

Specific Comments:

PFA27. The City has estimated the costs to reconstruct Canyon Creek Road South to meet the requirements of the Residential Street at $1,135,099.88. The estimated costs of street improvements shall be divided proportionately between all owners of record based on property street frontage along Canyon Creek Road South; this breaks down to $232.82 per foot of property frontage.

Applicant/Owner shall either:

1. Be responsible to submit funds to the City to equal 130% of their estimated proportionate share; City will undertake street reconstruction at some time in the future. For the 150.01 feet of property frontage, this comes to $45,402.93; or
~~1.~~2. Design and construct 150.01 feet of frontage improvements that include curb and gutter, 5-foot sidewalk, stormwater LID for new residence and driveway, and installation of three 4" conduits terminating in vaults at the north and south end of the properties. Applicant shall provide the City a cash deposit for cost to purchase and install a new streetlight equivalent to streetlights recently installed with the adjacent Renaissance Development. Construction and street repair shall be done in accordance with PFA1.

PFA28. Each lot shall be allowed one driveway access onto Canyon Creek Road South.

PFA29. Applicant shall obtain water and sanitary sewer service from the existing systems in Canyon Creek Road South.

PFA30. If stormwater detention and/or water quality facilities are designed for joint usage between the tax lots, maintenance plans or the system(s) shall be required and approved prior to acceptance. The applicant shall be required to establish a homeowners association with responsibility to maintain the private stormwater detention and/or water quality.

Natural Resources Conditions:

The following conditions of approval are based on the material submitted by the applicant. Any subsequent revisions to the submitted plans may require conditions of approval to be modified by staff.

Stormwater Management	
NRA1.	Pursuant to the Public Works Standards, stormwater facilities are required when proposed development establishes or increases the impervious surface area by more than 5,000 square feet. Development includes new development, redevelopment, and/or partial redevelopment.
NRA2.	Submit a drainage report and drainage plans. The report and plans shall demonstrate the proposed stormwater facilities satisfy the requirements of the Public Works Standards.
NRA3.	Provide profiles, plan views and specifications for the proposed stormwater facilities consistent with the requirements of the Public Works Standards.
NRA4.	Pursuant to the Public Works Standards, the applicant shall submit a maintenance plan (including the City's stormwater maintenance and access easement) for the proposed stormwater facilities prior to approval for occupancy of the associated development.
NRA5.	Pursuant to the Public Works Standards, access shall be provided to all areas of the proposed stormwater facilities. At a minimum, at least one access shall be provided for maintenance and inspection.
Other	
NRA6.	Pursuant to the City of Wilsonville's Ordinance No. 482, the applicant shall submit an erosion and sedimentation control plan. The following techniques and methods shall be incorporated, where necessary: a. Gravel construction entrance; b. Stockpiles and plastic sheeting; c. Sediment fence; d. Inlet protection (Silt sacks are recommended); e. Dust control; f. Temporary/permanent seeding or wet weather measures (e.g. mulch); g. Limits of construction; and h. Other appropriate erosion and sedimentation control methods.
NRA7.	The applicant shall comply with all applicable state and federal requirements for the proposed construction activities (e.g., DEQ NPDES #1200–CN permit).

Exhibit A2 - FINDINGS OF FACT:

1. The statutory 120-day time limit begun with the date that staff rendered the application for the Tentative Partition complete. The Tentative Partition application (AR14-0077) was deemed complete on December 4, 2014. Thus the City, including appeals, before May 4, 2015, must render a final decision.

2. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	PDR-3	Single-family residential
East:	RA-H	SW Canyon Creek Rd. South, Single-family residential
South:	PDR-3	Single-family residential
West:	PDR-1	Single-family residential

3. The subject site contains an existing single-family home.

5. The Applicant has complied with Sections 4.210 and 4.233 pertaining to review procedures and submittal requirements for review of an appeal.

Exhibit A2 - GENERAL INFORMATION

Section 4.008 Application Procedures-In General: This section lists general application procedures applicable to a number of types of land use applications and also lists unique features of Wilsonville's development review process.

The application is being processed in accordance with the applicable general procedures of this Section. These criteria are met.

Section 4.009 Who May Initiate Application: ***Except for a Specific Area Plan (SAP), applications involving specific sites may be filed only by the owner of the subject property, by a unit of government that is in the process of acquiring the property, or by an agent who has been authorized by the owner, in writing, to apply.***

Signed application form has been submitted by the property owners.

Subsection 4.010 (.02) Pre-Application Conference: This section lists the pre-application process

A pre-application conference was held in 2014 for the tentative partition application – AR14-0077 in accordance with this subsection. These criteria are satisfied.

Subsection 4.011 (.02) B. Lien Payment before Application Approval: **City Council Resolution No. 796 precludes the approval of any development application without the prior payment of all applicable City liens for the subject property. Applicants shall be encouraged to contact the City**

Finance Department to verify that there are no outstanding liens. If the Planning Director is advised of outstanding liens while an application is under consideration, the Director shall advise the applicant that payments must be made current or the existence of liens will necessitate denial of the application.

No applicable liens exist for the subject property. The application for the appeal can thus move forward. This criterion is satisfied.

Subsection 4.035 (.04) A. General Site Development Permit Submission Requirements: An application for a Site Development Permit shall consist of the materials specified as follows, plus any other materials required by this Code." Listed 1. through 6. j.

The applicant has provided all of the applicable general submission requirements contained in this subsection. These criteria are satisfied.

Section 4.110 Zoning-Generally: The use of any building or premises or the construction of any development shall be in conformity with the regulations set forth in this Code for each Zoning District in which it is located, except as provided in Sections 4.189 through 4.192. The General Regulations listed in Sections 4.150 through 4.199 shall apply to all zones unless the text indicates otherwise.

This tentative partition with the city conditions of approval is in conformity with the RA-H zone and general development regulations listed in Sections 4.150 through 4.199 have been applied in accordance with this Section. These criteria are satisfied.

Section 4.009(.01) Ownership: Who may initiate application

The application has been submitted by the property owners meeting the above criteria.

Sections 4.013-4.031, 4.113, 4.118, 4.124 Review procedures and submittal requirements

The required public notices have been sent and all proper notification procedures have been satisfied. The applicant has complied with these sections of the Code.

Section 4.120 – Residential Agricultural – Holding Zone (RA-H)

The subject property is designated Residential – 4 to 5 dwelling units an acre on the Comprehensive Plan Map and is zoned Residential Agricultural – Holding Zone (RA-H). The RA-H Zone allows residential outright.

Section 4.022. Appeal and Call-up Procedures.
(.01) Administrative Action Appeals. A decision by the Planning Director on issuance of a Site Development Permit may be appealed. Such appeals shall be heard by the Development Review Board for all quasi-judicial land use matters except expedited land divisions, which may be appealed to a referee selected by the City to consider such cases. Only the applicant may appeal a Class I decision unless otherwise specified in Section 4.030, and such appeals shall be filed, including all of the required particulars and filing fee, with the City recorder as provided in this Section. Any affected party may appeal a Class II decision by filing an appeal, including all of the required particulars and filing fee, with the City Recorder within fourteen (14) calendar days of notice of the decision. Either panel of the Development Review Board, or both panels if convened together, may also initiate a call-

up of the Director's decision by motion, without the necessity of paying a filing fee, for matters other than expedited land divisions. The notice of appeal shall indicate the nature of the action or interpretation that is being appealed or called up and the matter at issue will be a determination of the appropriateness of the action or interpretation of the requirements of the Code.

(.04) Notice. Legal notice of a hearing on an appeal shall set forth:
A. The date of the hearing.
B. The issue(s) being appealed. C. Whether the review will be on the record or whether new evidence will be accepted, if known.

The application is being processed in accordance with the applicable general procedures of this Section including legal notice requirements. The applicant's representative is requesting de novo review of the appeal. Section 4.022(.04) is met.

Section 4.022(.05) Scope of Review.
A. At its discretion, the hearing body may limit an appeal or review to a review of the record and a hearing for receipt of oral arguments regarding the record, or may accept new evidence and testimony. Except, however, that the standard of review on an appeal or call up of a staff decision to be heard by the Development Review Board is de novo.
B. The reviewing body shall issue an order stating the scope of review on appeal to be one of the following:
1. Restricted to the record made on the decision being appealed.
2. Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.
3. A de novo hearing on the merits.

The subject application involves an appeal of a staff decision. Thus, as provided in Section 4.002(.05) the appeal of this staff decision to ~~requires the appeal it be heard by~~ the DRB is de novo.

Section 4.022(.07) Review Consisting of Additional Evidence or De Novo Review.
A. Except as otherwise specified in this Code, or required by State law, the reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing if it is satisfied that that additional testimony or other evidence could not reasonably have been presented at the prior hearing. The reviewing body shall consider all of the following in making such a decision.
1. Prejudice to the parties.
2. Convenience or availability of evidence at the time of the initial hearing.
3. Surprise to opposing parties.
4. The competency, relevancy and materiality of the proposed testimony or other evidence.
5. Such other factors as may be determined by the reviewing body to be appropriate.
B. "De novo hearing" shall mean a hearing by the review body as if the action had not been previously heard and as if no decision had been rendered, except that all testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review.

~~The applicant has the burden of proving to the DRB to approve his appeal relative to the above criteria.~~ Because the standard of review on an appeal of a staff decision to the DRB is generally by its nature de novo, meaning all matters may be considered and new evidence received, these criteria are satisfied by the nature of the type of appeal.

Exhibit A1
CONCLUSIONARY FINDINGS – AR14-0077

STAFF REPORT
WILSONVILLE PLANNING DIVISION
LAND PARTITION - DOWNS
ADMINISTRATIVE REVIEW AND DECISION

DATE OF REPORT: **January 22, 2015**

APPLICATION NO.: **AR14-0077**

REQUEST: The applicants, Gerald and Joanne Downs, together with their representative, Ronald Downs, are requesting administrative approval of a land partition of 28205 SW Canyon Creek Road South, located between SW Summerton Street and Boeckman Road on the west side of SW Canyon Creek Road South. The land partition would allow for the existing home to remain, as well as the creation of one additional parcel to the south. This request is being processed through the Class II Administrative Review process.

LOCATION: The subject property is located at 28205 SW Canyon Creek Road South, on the west side of SW Canyon Creek Road South. The subject site more specifically described in tax records as Tax Lot 2700 in Section 13BA, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

OWNER/APPLICANT: Gerald and Joanne Downs

APPLICANT'S REPRESENTATIVE: Ronald Downs

COMPREHENSIVE PLAN MAP DESIG.: Residential – 4 to 5 dwelling units an acre

ZONE MAP CLASSIFICATION: Planned Development Residential (PDR-3)

Applicable Review Criteria:
City of Wilsonville Planning and Land Development Ordinance: Sections 4.008 through 4.015; 4.030(.01)(B)(5); 4.034(.05); 4.035; 4.035(.03); 4.113; 4.118; 4.124.3; 4.167; 4.177; 4.202; 4.210; 4.236; 4.237; 4.262; and 4.300-4.320

ACTION TAKEN: Approval of the application, together with conditions of approval, as found beginning on page 14 of this report.

STAFF REVIEWERS: Jennifer Scola, Assistant Planner; Blaise Edmonds, Manager of Current Planning; and, Steve Adams, Development Engineering Manager

EXHIBITS:

A1. Staff Report (this document)

B. Applicant's Submittal Notebook, as follows:
B1. Applicant's Narrative, dated 10/21/2014
B2. Completed City of Wilsonville Application Form
B3. Public Record Report for New Subdivision, dated 09/04/2014
B4. Preliminary Partition Plat Plan
B5. Vicinity Map
B6. Tax Lot Information
B7. Certification of Assessment and Liens
B8. Description of No-Construction Easement

C1. Tax Map
C2. Case File 03DB43, Findings E19, E30, and Condition of Approval DRB D3
C3. Case File 03DB43 of Exhibit 44

FINDINGS OF FACT:

1. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	PDR-3	Single-family residential
East:	RA-H	SW Canyon Creek Rd. South, Single-family residential
South:	PDR-3	Single-family residential
West:	PDR-1	Single-family residential

2. The Comprehensive Plan does not place this site in an Area of Special Concern.

3. The subject site contains an existing single-family home.

5. The Applicant has complied with Sections 4.210 and 4.233 pertaining to review procedures and submittal requirements for review of a tentative partition plat.

SUMMARY OF PROPOSAL:

The project summary submitted by the Applicant is found in the Applicant's narrative (Exhibit B1), and on accompanying drawing (Exhibit B5). Except where a discrepancy is determined to exist, and may be discussed in this report, the Applicant's will not be duplicated here.

CONCLUSIONARY FINDINGS:

Sections 4.008-4.009 Application Procedures and Applicant's Rights

1. The Applicant's submitted documents meet these code criteria.

Section 4.014 Burden of Proof

2. Subsection 4.014 provides that the Applicant bears the burden of proving that the necessary findings of fact can be made for approval of any land use or development application. Staff finds that the Applicant has provided sufficient information proving the necessary findings of fact.

Subsection 4.030(.01)(B)(5) Class II Administrative Review - Land Partitions

3. This subsection directs land partitions, other than expedited land partitions, to be processed according to the Class II Administrative Review procedures pursuant to Section 4.210. In addition, it directs approval of land partitions to be based on the following criteria:

a. The applicant has made a complete submittal of materials for the Director to review, as required by Section 4.210.

4. The Applicant has submitted the required documents, satisfying this subsection.

b. The proposed plan meets the requirements of the Code regarding minimum lot size and yard setbacks.

5. The tentative plat demonstrates that two (2) proposed parcels meet the requirements for minimum lot size. The northernmost lot of the two (2) proposed parcels does not meet minimum setback requirements; however condition of approval PDA6 requires that a Reduced Setback Agreement be recorded with the final plat.

c. The approval will not impede or adversely affect the orderly development of any adjoining property or access thereto.

6. Access to adjoining properties will not be affected, and the abutting sites have already been developed. This provision is met.

d. The public right-of-way bordering the lots will meet City standards.

7. An Engineering Condition of Approval, PFA4, will ensure any improvements in the right-of-way bordering the lots meet City standards.

e. Any required public dedications of land have been approved for acceptance by the City and will be recorded with the County prior to final plat approval.

8. No dedication of land to the public is required as part of this partition. This provision is met.

f. Adequate easements are proposed where an existing utility line crosses or encroaches upon any other parcel to be created by the partition.

9. No existing utility lines cross or encroach upon any of the proposed parcels as discussed in this subsection. This provision does not apply.

g. All public utilities and facilities are available or can be provided prior to the issuance of any development permit for any lot or parcel.

10. Engineering PFA3 ensures that prior to any development permit is issued, all public utility and facility plans will be submitted and reviewed. This provision is satisfied.

h. Roads extended or created as a result of the land partition will meet City standards.

11. No roads will be extended or created as result of the proposed partition. This provision does not apply.

Subsection 4.034(.05) Application Requirements

12. The Applicant has submitted all of the materials required by this subsection.

Subsection 4.035(.03) Procedure for Processing Class II - Administrative Review.

13. The Applicant's proposal will, together with the attached conditions of approval, result in conformance with applicable provisions of the City's Planning and Land Development Ordinance. Staff has followed the provisions of this code section. Staff notes that this approval is contingent upon final plat approval by the City and recordation of the final approved partition plat with the Clackamas County Clerk's Office.

Section 4.113 Standards for Residential Development in All Zones

14. Provisions of this section regarding landscaping are not applicable to partitions. The area of the two proposed parcels will allow all other applicable provisions of this section, including setbacks, to be met.

Sections 4.124 Standards Applying to All Planned Development Residential Zones
Subsection 4.124 (.01)-(.04) Uses allowed in Planned Development Residential Zones

15. These subsections lists uses associated with the Planned Development Residential Zones. The parcels will be sufficient for a number of uses allowed in the Planned Development Residential Zones.

Subsection 4.124 (.06) Block and Access Standards

16. No new blocks or streets are involved with the proposal.

Section 4.124.3 Planned Development Residential-3 Zone

Subsection 4.124.3 (.01) Average Lot Size

17. The average lot size for a lot in the PDR-3 Zone is 7,000 square feet, of which the proposed parcels exceed 7,000 square feet.

Subsection 4.124.3 (.02) Minimum Lot Size

18. The minimum lot size for PDR-3 Zone is 5,000 square feet. At 8,100 square feet, and 12,150 square feet, the two (2) proposed parcels meet this minimum requirement. This provision is satisfied.

Subsection 4.124.3 (.03) Minimum density at build-out

19. The minimum density at build-out for the PDR-3 Zone is 8,000 square feet. Both proposed parcels would meet this minimum. This provision is satisfied.

Subsection 4.124.3 (.04) Other Standards

20. All other applicable standards will or can be met by the proposed parcels. This provision is satisfied.

Section 4.140 Planned Development Regulations

21. The subject parcel was ~~is~~ part of a previously approved Planned Development, subject to this Section. All requirements of this section were found to be satisfied by the development (see case file 03DB43). As shown in Exhibit 44 of Case File 03DB43 (Exhibit C3), the partition of the subject property was anticipated as a future phase of the planned development. Because certain frontage and other requirements were not required at the time of that approval, due to lack of planned development on the parcel at hand, certain development requirements were deferred but must be put into place now that this property is being further partitioned and redeveloped.

Section 4.155 Parking, Loading and Bicycle Parking

22. This section requires that each dwelling provide a minimum of one parking space. The proposed parcel Number Two (2) will enable siting of a future dwelling that will be required to provide one off-street parking space. This criterion is satisfied.

Section 4.167 General Regulations – Access, Ingress and Egress

23. These provisions require that safe access be provided to each of the proposed uses. The proposed parcel Number Two (2) will have direct access to Canyon Creek Road South, and the parcel with the existing structure has a driveway, also taking access from Canyon Creek Road South. This criteria is satisfied.

Section 4.176 Landscaping, Screening and Buffering

24. Because the proposal is for a partition, rather than a subdivision, there are no landscape requirements applicable to the request. While Subsection 4.176(.06)(d) provides for the installation of street trees along the frontage of the proposed parcels, such requirement is appropriately limited to subdivisions, not partitions. This section is not applicable.

Section 4.177 Street Improvement Standards

~~24.~~25. This Subsection requires that all development, which by its definition includes a partition of a property into two or more lots, comply with the requirements of this Section, the Wilsonville Public Works Standards, and the Transportation Plan in rough proportion to the potential impacts of development, including redevelopment. The required options contained in PFA27 satisfy this criterion.

Subsection 4.202 (.04) B. Parcel Partitions Not Allowed that Make Remaining Parcels Less than Allowed in Zone.

~~25.~~26. This subsection does not allow parcel partitions to create parcels less than that allowed in the zone. The minimum parcel size for the Planned Development Residential Zone (PDR-3) is 5,000 square feet. Proposed Parcel 1 will be 12,150 square feet, proposed Parcel 2 will be 8,100 square feet, with both two (2) parcels exceeding the required minimum. This criterion is met. [See also findings for Subsection 4.124.3 (.02), above.]

Section 4.210 Land Divisions - Application Procedure.
Subsection 4.210 (.01) A. Pre-Application Meeting

~~26.~~27. This subsection requires a pre-application meeting as part of the process. While no formal pre-application meeting was held, the applicant did contact staff to understand required submittal materials and the review process. This provision is satisfied.

Subsection 4.210 (.01) B. Tentative Plat Submission

~~27.~~28. This subsection sets forth the submission requirements for tentative plats. The Applicant submitted the required documents, meeting the requirements of this subsection. [See also finding for Subsection 4.030(.01)(B)(5)(a), above.]

Section 4.236 General Requirements – Streets
Subsection 4.236 (.01) Conformity to the Master Plan or Map

~~28.~~29. This subsection requires land partitions to be in harmony with adopted Transportation Master Plans, Bicycle and Pedestrian Master Plans, Park and Recreation Master Plans, and the Master Street Plan. The proposed land partition does not create any new infrastructure associated with these plans, nor is any required. There is no evidence to suggest that the proposed partition would affect the harmony of existing infrastructure with the above plans. This criterion is met.

Subsection 4.236 (.02) A. Relation to Adjoining Street System

~~29.~~30. This subsection requires land partitions to provide for the continuation of the principal streets existing in the adjoining area and proposed streets to be the width required elsewhere in the Wilsonville City Code. No new streets are planned or proposed with this partition. There are no adjoining streets that would continue through the subject property. This criterion does not apply.

Subsection 4.236 (.02) B. Requirement to Submit Prospective Future Street System

~~30.~~31. This subsection requires the submission of prospective future street systems when the land partition does not cover the entire tract. The proposed land partition covers the Applicant's entire tract and no streets are proposed. This criterion does not apply.

Subsection 4.236 (.02) C. Arrangement of Parcels to Allow Future Subdivision

~~31.~~32. This subsection requires the arrangement of streets and parcels to allow for future land partition if allowed by the Comprehensive Plan. The parcels are arranged in a manner to allow the partition, if found compliant with the Comprehensive Plan. This provision is satisfied.

Subsection 4.236 (.03) Conformity with Section 4.177 and Block Standards of Zone.

~~32.~~33. This subsection requires all streets to conform to Section 4.177 of the Wilsonville City Code and block standards of the zone. No new streets or will result from this application. This provision does not apply.

Subsection 4.236 (.04) Creation of Easements

~~33.~~34. This subsection allows the Planning Director to approve easements as a reasonable method to allow vehicular access and adequate utilities to the lots in this two-

parcel land partition. The applicant is required to provide a minimum 6-foot Public Utility Easement on lot frontages to all public right-of-ways See Condition PFA22. This provision is satisfied.

Subsection 4.236 (.08) Existing Streets

~~34.~~35. No additional right-of-way is being required as part of the proposed partition. Therefore, the standards in this subsection are not affected.

Section 4.237 General Requirements – Other.
Subsection 4.237 (.01) Block Standards

~~35.~~36. This subsection provides standards for new blocks created by land partitions. No block creation is involved in the proposed land partition. These criteria do not apply.

Subsection 4.237 (.02) Easements

~~36.~~37. This subsection requires easements for existing and needed utility lines. As indicated in Finding 34, above, a six-foot-wide public utility easement will be required along the frontage of the two parcels. Condition of Approval PFA22 requires a six-foot-wide public utility easement along the Canyon Creek Road South frontage for potential future franchise utilities.

Subsection 4.237 (.03) Pedestrian and Bicycle Pathway

~~37.~~38. This subsection requires an improved public path for blocks that exceed the length standard for the zone they are located in. No new blocks are involved in this partition. Compliance with this subsection is not altered by the proposed partition.

Subsection 4.237 (.04) Street Tree Planting

~~38.~~39. This subsection presents requirements for street trees, as applicable. No street trees are proposed by the Applicant. Because the application is for a partition, rather than a subdivision, street trees are not required. This provision is satisfied.

Subsection 4.237 (.05) Parcel Size, Shape, Width, and Orientation.

~~39.~~40. This subsection requires the parcels resulting from the land partition have the size, width, shape and orientation appropriate for the location of the land partition and for the development and use that are contemplated as well as for the zone in which they are located. Proposed parcel sizes, widths, shapes and orientation are appropriate for contemplated future development and are in conformance with the PDR-3 requirements. The proposed partition complies with the standards of this subsection.

Subsection 4.237 (.06) Access

~~40.~~41. This subsection requires parcels resulting from the land partition have the minimum frontage of public streets. The parcels resulting from proposed land partition meet the street frontage requirements for the zone. This provision is met.

Subsection 4.237 (.07) Through Lots

~~41.~~42. The current parcel is not a through lot, and the proposed parcel also will not be a through lot. The applicable provisions of this subsection are satisfied.

Subsection 4.237 (.08) Parcel Side Lines

~~42.~~43. This subsection requires side parcel lines be at right angles to the street the parcels face as far as practical. All parcel lines are at right angles. This provision is met.

Subsection 4.237 (.10) Building Line

~~43.~~44. This subsection gives the Planning Director authority to create building setback lines to be recorded on the plat to allow for future repartition or other development or to support other findings. In a separate Class I Administrative Application, the Applicant is seeking a setback agreement to allow reduced setbacks between the existing house and the future house at a side property line.

Subsection 4.237 (.11) Build-to Line

~~44.~~45. This subsection gives the Planning Director authority to create build-to lines for the development. The Applicant is not requesting nor is the Planning Director requiring the creation of build-to-lines.

Section 4.250 Legal Lots of Record

~~45.~~46. The existing parcel is a legal lot of record. Upon satisfaction of conditions of approval and recordation of a final plat, the one (1) resulting parcel will also be a legal lot of record, meeting this provision.

Section 4.260 Improvements-Procedure

~~46.~~47. This section requires, in addition to other requirements, improvements installed by the developer to conform to the requirements of Wilsonville's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards. Condition of Approval PDA4 will ensure the requirements of this section are met.

Section 4.262 Improvements-Requirements

~~47.~~48. This section presents improvement requirements for individual improvements and utilities including curbs, sidewalks, sewer, and water. Engineering Conditions will ensure the requirements of this section are met.

Section 4.264 Improvements - Assurance

~~48.~~49. This section requires assurance for improvements. An engineering condition of approval will ensure the requirements of this section are met.

Section 4.320 Underground Utility Requirements

~~49.~~50. This section requires all utilities to be underground. Condition of Approval PDA5 will ensure any utilities are installed underground.

ACTION TAKEN AND CONDITIONS OF APPROVAL FOR REQUEST AR14-0077:

Based on the analysis above, and conclusionary findings 1 through 50 the request is hereby **approved,** together with the following conditions of approval:

This decision approves **only** the tentative partition described in the request above, as modified by the conditions below, and is on file with the City of Wilsonville's Planning Division as Case File AR14-0077.

Planning Conditions:	
PDA1.	Approval of the partition is effective for two (2) years from the date of the notice of decision. Time extensions may be granted per Section 4.023 of the City's Development Code. The Applicant shall submit final plat application within two (2) years of date of the notice of decision.
PDA2.	The final plat for the land partition shall be in substantial compliance with the approved tentative plat and narrative submitted to the Planning Division as part of this application.
PDA3.	The Applicant/Owner shall provide the City's Engineering and Planning Division with a copy of the final plat of the land partition recorded with the Clackamas County Surveyor's Office.
PDA4.	Any improvements installed shall conform to the City's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards.
PDA5.	Any utilities installed as part of development on the property shall be installed underground.
PDA6.	A Reduced Setback Agreement shall be recorded concurrently with the final plat.

PDA7.	The final plat shall not display the ten-foot No Construction Easement, nor shall the proposed building outline for the southern parcel of the partition.

Engineering Division Conditions:

New development on the two lots shall be in compliance with the following Engineering conditions of approval.

Standard Comments:

PFA 1. All construction or improvements to public works facilities shall be in conformance to the City of Wilsonville Public Works Standards - 2014.

PFA 2. Applicant shall submit insurance requirements to the City of Wilsonville in the following amounts:

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$2,000,000
Each Occurrence	$2,000,000
Automobile Insurance	$1,000,000
Fire Damage (any one fire)	$50,000
Medical Expense (any one person)	$10,000

PFA 3. No construction of, or connection to, any existing or proposed public utility/improvements will be permitted until all plans are approved by Staff, all fees have been paid, all necessary permits, right-of-way and easements have been obtained and Staff is notified a minimum of 24 hours in advance.

PFA 4. All public utility/improvement plans submitted for review shall be based upon a 22" x 34" format and shall be prepared in accordance with the City of Wilsonville Public Work's Standards.

PFA 5. Plans submitted for review shall meet the following general criteria:

l. Utility improvements that shall be maintained by the public and are not contained within a public right-of-way shall be provided a maintenance access acceptable to the City. The public utility improvements shall be centered in a minimum 15-ft. wide public easement for single utilities and a minimum 20-ft. wide public easement for two parallel utilities and shall be conveyed to the City on its dedication forms.

m. Design of any public utility improvements shall be approved at the time of the issuance of a Public Works Permit. Private utility improvements are subject to review and approval by the City Building Department.

n. In the plan set for the PW Permit, existing utilities and features, and proposed new private utilities shall be shown in a lighter, grey print. Proposed public improvements

shall be shown in bolder, black print.

o. All elevations on design plans and record drawings shall be based on NAVD 88 Datum.
p. All proposed on and off-site public/private utility improvements shall comply with the State of Oregon and the City of Wilsonville requirements and any other applicable codes.
q. Design plans shall identify locations for street lighting, gas service, power lines, telephone poles, cable television, mailboxes and any other public or private utility within the general construction area.
r. As per City of Wilsonville Ordinance No. 615, all new gas, telephone, cable, fiber-optic and electric improvements etc. shall be installed underground. Existing overhead utilities shall be undergrounded wherever reasonably possible.
s. Any final site landscaping and signing shall not impede any proposed or existing driveway or interior maneuvering sight distance.
t. Erosion Control Plan that conforms to City of Wilsonville Ordinance No. 482.
u. Existing/proposed right-of-way, easements and adjacent driveways shall be identified.
v. All engineering plans shall be stamped by a Professional Engineer registered in the State of Oregon.

PFA 6. Submit plans in the following general format and order for all public works construction to be maintained by the City:

t. Cover sheet
u. City of Wilsonville construction note sheet
v. General construction note sheet
w. Existing conditions plan.
x. Erosion control and tree protection plan.
y. Site plan. Include property line boundaries, water quality pond boundaries, sidewalk improvements, right-of-way (existing/proposed), easements (existing/proposed), and sidewalk and road connections to adjoining properties.
z. Grading plan, with 1-foot contours.
aa. Composite utility plan; identify storm, sanitary, and water lines; identify storm and sanitary manholes.
bb. Detailed plans; show plan view and either profile view or provide i.e.'s at all utility crossings; include laterals in profile view or provide table with i.e.'s at crossings; vertical scale 1"= 5', horizontal scale 1"= 20' or 1"= 30'.
cc. Street plans.
dd. Storm sewer/drainage plans; number all lines, manholes, catch basins, and cleanouts for easier reference
ee. Water and sanitary sewer plans; plan; number all lines, manholes, and cleanouts for easier reference.
ff. Detailed plan for storm water detention facility (both plan and profile views), including water quality orifice diameter and manhole rim elevations. Provide detail of inlet structure and energy dissipation device. Provide details of drain inlets, structures, and piping for outfall structure. Note that although storm water detention facilities are typically privately maintained they will be inspected by engineering, and the plans must be part of the Public Works Permit set.

	gg. Detailed plan for water quality facility (both plan and profile views). Note that although storm water quality facilities are typically privately maintained they will be inspected by Natural Resources, and the plans must be part of the Public Works Permit set. hh. Composite franchise utility plan. ii. City of Wilsonville detail drawings. jj. Illumination plan. kk. Striping and signage plan. ll. Landscape plan.
PFA 7.	Design engineer shall coordinate with the City in numbering the sanitary and stormwater sewer systems to reflect the City's numbering system. Video testing and sanitary manhole testing will refer to City's numbering system.
PFA 8.	The applicant shall install, operate and maintain adequate erosion control measures in conformance with the standards adopted by the City of Wilsonville Ordinance No. 482 during the construction of any public/private utility and building improvements until such time as approved permanent vegetative materials have been installed.
PFA 9.	Applicant shall work with City's Natural Resources office before disturbing any soil on the respective site. If 5 or more acres of the site will be disturbed applicant shall obtain a 1200-C permit from the Oregon Department of Environmental Quality. If 1 to less than 5 acres of the site will be disturbed a 1200-CN permit from the City of Wilsonville is required.
PFA 10.	The applicant shall be in conformance with all stormwater and flow control requirements for the proposed development per the Public Works Standards.
PFA 11.	A storm water analysis prepared by a Professional Engineer registered in the State of Oregon shall be submitted for review and approval by the City.
PFA 12.	The applicant shall be in conformance with all water quality requirements for the proposed development per the Public Works Standards. If a mechanical water quality system is used, prior to City acceptance of the project the applicant shall provide a letter from the system manufacturer stating that the system was installed per specifications and is functioning as designed.
PFA 13.	Storm water quality facilities shall have approved landscape planted and/or some other erosion control method installed and approved by the City of Wilsonville prior to streets and/or alleys being paved.
PFA 14.	The applicant shall contact the Oregon Water Resources Department and inform them of any existing wells located on the subject site. Any existing well shall be limited to irrigation purposes only. Proper separation, in conformance with applicable State standards, shall be maintained between irrigation systems, public water systems, and public sanitary systems. Should the project abandon any existing wells, they shall be properly abandoned in conformance with State standards.

PFA 15.	All survey monuments on the subject site, or that may be subject to disturbance within the construction area, or the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated or destroyed as a result of any construction, the project shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to Staff.
PFA 16.	Sidewalks, crosswalks and pedestrian linkages in the public right-of-way shall be in compliance with the requirements of the U.S. Access Board.
PFA 17.	No surcharging of sanitary or storm water manholes is allowed.
PFA 18.	The project shall connect to an existing manhole or install a manhole at each connection point to the public storm system and sanitary sewer system.
PFA 19.	The applicant shall provide adequate sight distance at all project driveways by driveway placement or vegetation control. Specific designs to be submitted and approved by the City Engineer. Coordinate and align proposed driveways with driveways on the opposite side of the proposed project site.
PFA 20.	Access requirements, including sight distance, shall conform to the City's Transportation Systems Plan (TSP) or as approved by the City Engineer. Landscaping plantings shall be low enough to provide adequate sight distance at all street intersections and alley/street intersections.
PFA 21.	The applicant shall provide the City with a Stormwater Maintenance and Access Easement (on City approved forms) for City inspection of those portions of the storm system to be privately maintained. Stormwater or rainwater LID facilities may be located within the public right-of-way upon approval of the City Engineer. Applicant shall maintain all LID storm water components and private conventional storm water facilities; maintenance shall transfer to the respective homeowners association when it is formed.
PFA 22.	Applicant shall provide a minimum 6-foot Public Utility Easement on lot frontages to all public right-of-ways.
PFA 23.	For any new public easements created with the project the Applicant shall be required to produce the specific survey exhibits establishing the easement and shall provide the City with the appropriate Easement document (on City approved forms).

PFA 24. MYLAR RECORD DRAWINGS:

At the completion of the installation of any required public improvements, and before a 'punch list' inspection is scheduled, the Engineer shall perform a record survey. Said survey shall be the basis for the preparation of 'record drawings' which will serve as the physical record of those changes made to the plans and/or specifications, originally approved by Staff, that occurred during construction. Using the record survey as a guide, the appropriate changes will be made to the construction plans and/or specifications and a complete revised 'set' shall be submitted. The 'set' shall consist of drawings on 3 mil. Mylar and an electronic copy in AutoCAD, current version, and a digitally signed PDF.

PFA 25. SUBDIVISION OR PARTITION PLATS:

Paper copies of all proposed subdivision/partition plats shall be provided to the City for review. Once the subdivision/partition plat is approved, applicant shall have the documents recorded at the appropriate County office. Once recording is completed by the County, the applicant shall be required to provide the City with a 3 mil Mylar copy of the recorded subdivision/partition plat.

PFA 26. SUBDIVISION OR PARTITION PLATS:

All newly created easements shown on a subdivision or partition plat shall also be accompanied by the City's appropriate Easement document (on City approved forms) with accompanying survey exhibits that shall be recorded immediately after the subdivision or partition plat.

Specific Comments:

PFA27. The City has estimated the costs to reconstruct Canyon Creek Road South to meet the requirements of the Residential Street at $1,135,099.88. The estimated costs of street improvements shall be divided proportionately between all owners of record based on property street frontage along Canyon Creek Road South; this breaks down to $232.82 per foot of property frontage.

PFA28. Each lot shall be allowed one driveway access onto Canyon Creek Road South.

PFA29. Applicant shall obtain water and sanitary sewer service from the existing systems in Canyon Creek Road South.

PFA30. If stormwater detention and/or water quality facilities are designed for joint usage between the tax lots, maintenance plans or the system(s) shall be required and approved prior to acceptance. The applicant shall be required to establish a homeowners association with responsibility to maintain the private stormwater detention and/or water quality.

Natural Resources Conditions:

The following conditions of approval are based on the material submitted by the applicant. Any

subsequent revisions to the submitted plans may require conditions of approval to be modified by staff.	
Stormwater Management	
NRA 1.	Pursuant to the Public Works Standards, stormwater facilities are required when proposed development establishes or increases the impervious surface area by more than 5,000 square feet. Development includes new development, redevelopment, and/or partial redevelopment.
NRA 2.	Submit a drainage report and drainage plans. The report and plans shall demonstrate the proposed stormwater facilities satisfy the requirements of the Public Works Standards.
NRA 3.	Provide profiles, plan views and specifications for the proposed stormwater facilities consistent with the requirements of the Public Works Standards.
NRA 4.	Pursuant to the Public Works Standards, the applicant shall submit a maintenance plan (including the City's stormwater maintenance and access easement) for the proposed stormwater facilities prior to approval for occupancy of the associated development.
NRA 5.	Pursuant to the Public Works Standards, access shall be provided to all areas of the proposed stormwater facilities. At a minimum, at least one access shall be provided for maintenance and inspection.
Other	
NRA 6.	Pursuant to the City of Wilsonville's Ordinance No. 482, the applicant shall submit an erosion and sedimentation control plan. The following techniques and methods shall be incorporated, where necessary: i. Gravel construction entrance; j. Stockpiles and plastic sheeting; k. Sediment fence; l. Inlet protection (Silt sacks are recommended); m. Dust control; n. Temporary/permanent seeding or wet weather measures (e.g. mulch); o. Limits of construction; and p. Other appropriate erosion and sedimentation control methods.
NRA 7.	The applicant shall comply with all applicable state and federal requirements for the proposed construction activities (e.g., DEQ NPDES #1200–CN permit).

Exhibit A2, DB15-0006 - PROPOSED ADDITIONAL FINDINGS:

Section 4.118(03)C. 9. **A waiver of the right of remonstrance by the applicant to the formation of a Local Improvement District (LID) for streets, utilities and/or other public purposes.**

51. In tentative partition approval (AR14-0077) waiver of remonstrance was not included as a condition of approval. Staff is proposing the above requirement be added as condition PDA8.

Section 4.177. Street Improvement Standards. **This section contains the City's requirements and standards for pedestrian, bicycle, and transit facility improvements to public streets, or within public easements. The purpose of this section is to ensure that development, including redevelopment, provides transportation facilities that are safe, convenient, and adequate in rough proportion to their impacts.**

52. To satisfy the foregoing PFA27 requires that the applicant/owner construct sidewalk and integrated road improvements to front only that land that is the subject of this application and not beyond those boundaries. The City Development Code at this Section sets the standards for pedestrian, bicycle and transit facilities for public streets, including curb and sidewalk, to ensure that development, including redevelopment, provides safe convenient and adequate facilities in rough proportion to their impacts. As this property is now being subdivided into two separate lots with two separate homes, the sidewalk /roadway transportation requirements being imposed cover only those properties. City Code requires these improvements to be made at the time of development or redevelopment, and this partition constitutes redevelopment, per Code definition.

Further to this requirement, the City's Comprehensive Plan sets forth the requirements for a connected network of sidewalks and requires, at implementation Measure 3.3.2.d that all gaps in the existing sidewalk network be filled so as to create safe and accessible bicycle and pedestrian facilities. Thus, in accordance with that requirement, as each parcel in the City without sidewalks is developed or redeveloped, the placement of the sidewalk and related curb, gutter and street improvements to current City standards is required to be built by the developer in front of the developer's property, as a proportionate requirement of development. This requirement has been consistently imposed as a developer responsibility as development occurs, thereby resulting in fewer gaps in the sidewalk. Just as the City Code at Section 2.220 requires the property owner to be responsible for the sidewalk repairs that front the owner's property, so does the Code require the property owner/developer to install those same sidewalks as a proportionate condition of development.

State and Federal law requires that all Development conform to the requirements of the Americans with Disabilities Act, thus requiring sidewalks to meet exact construction criteria and connectivity requirements as properties are developed or redeveloped. The applicant has one property that is being redeveloped into two (2) home sites and is therefore required to bring that property up to current ADA requirements.

Section 4.177(.01). **Development and related public facility improvements shall comply with the standards in this section, the Wilsonville Public Works Standards, and the Transportation System Plan, in rough proportion to the potential impacts of the development. Such improvements shall be constructed at the time of development or as provided by Section 4.140, except as modified or waived by the City Engineer for reasons of safety or traffic operations.**

53. See Finding 52.

Section 4.177(.02) Street Design Standards.

A. All street improvements and intersections shall provide for the continuation of streets through specific developments to adjoining properties or subdivisions.

1. Development shall be required to provide existing or future connections to adjacent sites through the use of access easements where applicable. Such easements shall be required in addition to required public street dedications as required in Section 4.236(.04).

~~52~~54. Canyon Creek Road South fronting the east side of the subject property is a public street. It provides direct connections to existing and future to adjacent sites~~ meeting Section 4.022(.02)~~.

Section 4.177(.03) Sidewalks. **Sidewalks shall be provided on the public street frontage of all development. Sidewalks shall generally be constructed within the dedicated public right-of-way, but may be located outside of the right-of-way within a public easement with the approval of the City Engineer.**

A. Sidewalk widths shall include a minimum through zone of at least five feet. The through zone may be reduced pursuant to variance procedures in Section 4.196, a waiver pursuant to Section 4.118, or by authority of the City Engineer for reasons of traffic operations, efficiency, or safety.

55. See Finding 52.

~~**B. Within a Planned Development, the Development Review Board may approve a sidewalk on only one side. If the sidewalk is permitted on just one side of the street, the owners will be required to sign an agreement to an assessment in the future to construct the other sidewalk if the City Council decides it is necessary.**~~

Section 4.177(.04) Bicycle Facilities. **Bicycle facilities shall be provided to implement the Transportation System Plan, and may include on-street and off-street bike lanes, shared lanes, bike boulevards, and cycle tracks. The design of on-street bicycle facilities will vary according to the functional classification and the average daily traffic of the facility.**

56. Applicant is not required to add Bicycle facilities.

Section 4.236. General Requirements - Streets.

(.01) <u>Conformity to the Transportation System Plan</u>. Land divisions shall conform to and be in harmony with the Transportation Systems Plan, the Bicycle and Pedestrian Master Plan, and the Parks and Recreation Master Plan.

(.02) Relation to Adjoining Street System.
A. A land division shall provide for the continuation of the principal streets existing in the adjoining area, or of their proper projection when adjoining property is not developed, and shall be of a width not less than the minimum requirements for streets set forth in these regulations. Where, in the opinion of the Planning Director or Development Review Board, topographic conditions make such continuation or conformity impractical, an exception may be made. In cases where the Board or Planning Commission has adopted a plan or plat of a neighborhood or area of which the proposed land division is a part, the subdivision shall conform to such adopted neighborhood or area plan.

57. Based on conditions of approval, all of the above applicable conditions will be met.

Section 4.260. Improvements - Procedures.
In addition to other requirements, improvements installed by the developer, either as a requirement of these regulations or at the developer's own option, shall conform to the requirements of this Code and improvement standards and specifications of the City. The improvements shall be installed in accordance with the City's Public Works Standards.

58. Applicant has the option under PDF 27 of installing or paying the City to perform the work.

Section 4.262. Improvements - Requirements.
(.01) Streets. Streets within or partially within the development shall be graded for the entire right-of-way width, constructed and surfaced in accordance with the Transportation Systems Plan and City Public Works Standards. Existing streets which abut the development shall be graded, constructed, reconstructed, surfaced or repaired as determined by the City Engineer.

59. Design and construction requirements for all public transportation facilities shall be done in conformance with the 2014 Public Works Standards, Section 2, "Transportation Design and Construction Standards." Specific street design standards are found in Section 201.2.00 of the Public Works Standards; detail drawing RD-1015 shows the design standards for Residential Streets.

(.02) Curbs. Curbs shall be constructed in accordance with standards adopted by the City.

60. Curb and gutters are required elements of Residential Streets, per detail drawing RD-1015. Specific design standards for curbs are provided in Section 201.2.24 of the Public Works Standards.

(.03) Sidewalks. Sidewalks shall be constructed in accordance with standards adopted by the City.

61. Sidewalks are required elements of Residential Streets, per detail drawing RD-1015. Specific design standards for sidewalks are provided in Section 201.2.25 of the Public Works Standards.

(.04) Sanitary sewers. When the development is within two hundred (200) feet of an existing public sewer main, sanitary sewers shall be installed to serve each lot or parcel in accordance with standards adopted by the City. When the development is more than two hundred (200) feet from an existing public sewer main, the City Engineer may approve an alternate sewage disposal system.

62. An existing sanitary sewer main is located in Canyon Creek Road South. Applicant is required to install a sanitary sewer service line to the new parcel being created with the partition. Specific design standards for sanitary sewer lateral service lines is provided in Section 401.2.02.f., Section 401.2.02.g., and Section 401.2.02.i. of the Public Works Standards and in detail drawing S-2175.

(.05) Drainage. Storm drainage, including detention or retention systems, shall be provided as determined by the City Engineer.

63. Applicant is required to be in conformance with the 2014 Public Works Standards, Section 3, "Stormwater & Surface Water Design & Construction Standards" for all stormwater, flow control, and water quality facilities installed within the proposed development. Specific design requirements and options are located in numerous subsections of Section 3 and also found in several detail drawings.

(.06) Underground utility and service facilities. All new utilities shall be subject to the standards of Section 4.300 (Underground Utilities). The developer shall make all necessary arrangements with the serving utility to provide the underground services in conformance with the City's Public Works Standards.

64. Underground utility and service facilities are required elements of Residential Streets, per detail drawing RD-1015 and Section 201.2.31.a. of the Public Works Standards. However, with only 150 feet of street improvements, it is not economical to underground the existing overhead franchise utilities. Applicant has been allowed to install three conduits, terminating in vaults, for future use when the City moves forward with undergrounding these utilities. Applicant is also required to provide a 6-foot wide public utility easement per Section 201.2.31.b. of the Public Works Standards and per detail drawing RD-1015.

(.07) Streetlight standards. Streetlight standards shall be installed in accordance with regulations adopted by the City.

65. Streetlights are required elements of Residential Streets, per detail drawing RD-1015. Specific design standards for streetlights are provided in Section 201.9.00 of the Public Works Standards. With existing overhead utility lines, installation of a street light is not possible. Applicant has been required to provide the City with a cash deposit for cost to purchase and install a new streetlight equivalent to streetlights recently installed within nearby development.

~~**(.08) Street signs. Street name signs shall be installed at all street intersections and dead end signs at the entrance to all dead-end streets and cul-de-sacs in accordance with standards adopted by the City. Other signs may be required by the City Engineer.**~~

~~**(.09) Monuments. Monuments shall be placed at all lot and block corners, angle points, points of curves in streets, at intermediate points and shall be of such material, size and length as required by State Law. Any monuments that are disturbed before all improvements are completed by the developer and accepted by the City shall be replaced to conform to the requirements of State Law.**~~

(.10) Water. Water mains and fire hydrants shall be installed to serve each lot in accordance with City standards.

66. Water mains and fire hydrants were installed on Canyon Creek Road South in 2005 and no additional requirements were placed on the Applicant.

~~Regarding code criteria above, see Findings 53-55 under Section 4.177(.04).~~

Resolution, Clean Staff Report & Exhibits for DRB Approval

DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 299

A RESOLUTION AFFIRMING THE DIRECTOR'S CLASS II ADMINSITRATIVE DECISIONS, FINDINGS AND CONDITIONS APPROVING A TENTATIVE LAND PARTITION FOR TWO PARCELS RENDERED IN CASE-FILE AR14-0077 AND DENYING THE APPLICANT'S APPEAL DB15-0006. THE SUBJECT PROPERTY IS LOCATED AT 28205 SW CANYON CREEK ROAD SOUTH. THE PROPERTY IS DESCRIBED AS TAX LOT 2700 OF SECTION 13BA, T3S, R1W, CLACKAMAS COUNTY, OREGON. GERALD AND JOANNE DOWNS, OWNERS.

RECITALS

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code; and

WHEREAS, the Planning Staff has prepared a staff report on the above-captioned subject dated February 12, 2015; and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board at meetings conducted on February 23, 2015, at which time exhibits, together with findings and public testimony, were entered into the public record; and

WHEREAS, the Development Review Board, through de novo public hearing, considered the Applicant's appeal of the Director's Class II Administrative Decision for a two parcel Tentative Land Partition; and

WHEREAS, the Applicant, City staff, and all other interested parties, if any, have had an opportunity to be heard on the foregoing.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby affirm the Director's decision of the following application:

AR14-0077: Class II Administrative Review

as amended by the revised staff report, attached hereto as Exhibits A-2, with findings, conditions and recommendations contained therein, and approves the application consistent with said recommendations;

And does hereby deny the following appeal:

DB15-0006: Appeal of AR14-0077

ADOPTED by the Development Review Board Panel B of the City of Wilsonville at a regular meeting thereof this 23rd day of February, 2015, and filed with the Planning Administrative Assistant on _____, 2015. This resolution is final on the 15th calendar day

after the postmarked date of the written notice of decision unless appealed or called up for review by the council in accordance with *WC Sec 4.022(.09)*

_____
Aaron Woods, Chair
Development Review Board, Panel B

Attest:

_____
Shelley White, Planning Administrative Assistant

Exhibit A2

REVISED STAFF REPORT
WILSONVILLE PLANNING DIVISION
Appeal Class II Administrative Review Decision

DEVELOPMENT REVIEW BOARD PANEL 'B'
QUASI-JUDICIAL PUBLIC HEARING

HEARING DATES: **February 23, 2015**

DATE OF REPORT: **February 12, 2015**

APPLICATION NOS.: DB14-0077 and DB15-0006

APPLICANT/OWNERS: Gerald and Joanne Downs (collectively "Applicant")

APPLICANT/OWNER REPRESENTATIVE: Ronald Downs

REQUEST: Appeal AR14-0077 (Class II Tentative Land Partition) and including Condition of Approval PFA27

LOCATION: The subject property is located at 28205 SW Canyon Creek Road South, on the west side of SW Canyon Creek Road South.

LEGAL DESCRIPTION: Tax Lot 2700 of Section 13BA, T3S, R1W, Willamette Meridian, Clackamas County, Wilsonville, Oregon.

LAND USE DESIGNATION: Comprehensive Plan Map Designation: Residential – 4 to 5 dwelling units an acre.

ZONING DESIGNATION: Residential Agricultural - Holding (RA-H)

STAFF REVIEWERS: Blaise Edmonds, Manager of Current Planning; Jennifer Scola, Assistant Planner, Barbara Jacobson, Assistant City Attorney and Steve Adams, Development Engineering Manager.

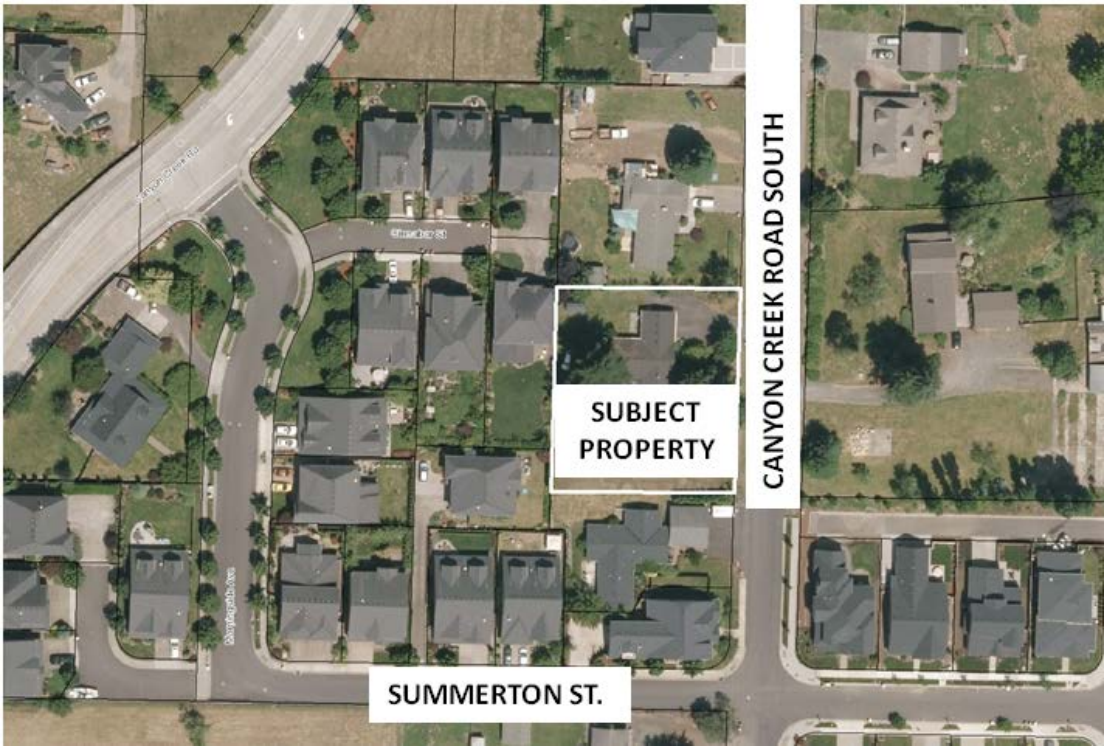
Applicable Review Criteria: Planning and Land Development Ordinance:

Sections 4.008 - 4.015	Administration Sections
Section 4.022(.01)	Administrative Action Appeal
Section 4.022(.04)	Appeal Notice
Section 4.022(.05)	Scope of Review
Section 4.022(.07)	Review Consisting of Additional Evidence or De Novo Review
Sections 4.030(.01)(B)(5); 4.034(.05); 4.035; 4.035(.03)	Class II AR
Section 4.202	Land Divisions General
Section 4.210	Application Procedure
Section 4.120	Residential Agricultural – Holding Zone (RA-H)
Section 4.031	Authority of the DRB
Section 4.113	Standards to all Residential Zones
Section 4.118(.03)C.9	Waiver of Right of Remonstrance
Section 4.167	Access
Section 4.177(.01) and (.02)	Street Improvement Standards
Section 4.177(.03)	Sidewalks
Section 4.236(.01)	Conformity to the Transportation Systems Plan
Section 4.236(.02)	Relation to Adjoining Street System
Section 4.237	Land Divisions General Requirements
Section 4.260(.02)	Improvement Procedures
Sections 4.262 (.01 through .10)	Improvement Requirements
Sections 4.300-4.320	Underground Utilities

Other: Administrative Decision AR14-0077
Comprehensive Plan: Plan Policy 3.3.2, Implementation Measures 3.3.2c and 3.3.2d.

STAFF RECOMMENDATION: Approve Option 2, which consists of this revised staff report, as outlined in the 'Summary' statement of this revised staff report (Exhibit A2) below, with proposed revised findings and conditions of approval in case file DB15-0006 (Exhibit A2).

VICINITY MAP



SUMMARY

The applicant is appealing the staff decision for a Class II administrative approval of a two (2) parcel land partition in case file AR14-0077. Section 4.022(.05)WC Scope of Review requires "that the standard on an appeal or call up of a staff decision to be heard by the Development Review Board is de novo." *De novo* is a Latin expression meaning "from the beginning," "afresh," "anew," "beginning again." Although the applicant may want to contest only certain portions of the staff decision, the entire Class II administrative approval record will be open for public testimony and admission of new evidence.

The applicant is objecting to certain sidewalk, street and utility improvements required by City engineering condition PFA27. See Exhibit B9 for the applicant's detailed objection. The applicant, by and through the Applicant Representative (Ron Downs), is seeking to partition their land into two parcels so that one may be deeded to Ron Downs for construction of a new home. The applicant, however, only wants to make the required improvements in front of that newly created lot and not in front of the other lot that is a part of the application and partition; in other words, the applicant is seeking to divide their property into two lots but to only provide street and sidewalks for the portion located in front of the newly created lot and not the remainder of the partitioned property. It is City staff's opinion that, by virtue of the partition, as the City's definition as "Development" as set forth in City Code, the entire property is being redeveloped and, thus, the City conditions for redevelopment apply across the entire parcel and, therefore, sidewalk, curb, and gutter must be provided to front the entire parcel. Authority for this position is found under the City's Comprehensive Plan Section 3.3.2; Implementation Measure 3.3.2.c.;

Implementation Measure 3.3.2.d; and the City's Development Code Section 4.236. Development is defined in Code Section 4.001, subsection 79.

Based on the foregoing, the Development Review Board has three options to consider at the upcoming DRB hearing:

Option 1: Approve the original staff report, findings of fact, conclusionary findings and conditions of approval in case file AR14-0077 (Exhibit A1). This action would deny the appeal. The applicant would then be free to either abandon the application, comply with the required conditions, or appeal the DRB decision to City Council.

Option 2: Approve the proposed revised staff report, findings of fact, conclusionary findings and conditions of approval in case file DB15-0006 (Exhibit A2). The proposed changes are being recommended by staff to give more clarity to the DRB and to the applicant, as well as to give the applicant some alternatives options with respect to implementation of the challenged condition. The applicant would then be free to abandon the application, comply with the required revised or original conditions, or appeal the DRB decision to City Council. These proposed revisions are highlighted in the revised staff report to show all as additions and strike-outs to the original staff report for DRB and applicant ease of reference.

Option 3: The DRB could reject portions of the recommended revised staff report by modifying conditions, applying new conditions, or removing conditions, should the DRB find that the applicant has sustained the burden of proving that the staff conditions are incorrect or not proportionate and therefore not legally permissible.

EXHIBITS (AR14-0077):

The following exhibits are entered into the public record for the Class 2 Administrative Review of Tentative Land Partition Application in AR14-0077.

A1. Original Staff Report
B. Applicant's Submittal Notebook, as follows:
B1. Applicant's Narrative, dated 10/21/2014
B2. Completed City of Wilsonville Application Form
B3. Public Record Report for New Subdivision, dated 09/04/2014
B4. Preliminary Partition Plat Plan
B5. Vicinity Map
B6. Tax Lot Information
B7. Certification of Assessment and Liens
B8. Description of No-Construction Easement

C1. Tax Map
C2. Case File 03DB43, Findings E19, E30, and Condition of Approval DRB D3
C3. Case File 03DB43 of Exhibit 44

EXHIBITS (DB15-0006):

The following exhibits are entered into the public record for the appeal to the DRB in appeal application DB15-0006 as submitted.

Staff Report:

A2. Revised Staff Report (this one), including Proposed Revised Findings of Fact, Conditions of Approval and Conclusionary Findings. (Changes to the original are shown in redline for DRB and applicant ease of review.)
A3. PowerPoint presentation.
A4. Memorandum to Development Review Board members from Blaise Edmonds and Barbara Jacobson, dated February 12, 2015 Re: Director's Decisions/Applicant Appeal

Applicant's Written and Graphic Materials:

B9. Letter of appeal, dated January 17, 2015.

Development Review Team: None submitted

D1. General Correspondence:

D1. Letters (neither For nor Against): None submitted
D2. Letters (In Favor): None submitted
D3. Letters (Opposed): None submitted

DB15-0006 - PROPOSED REVISED CONDITIONS OF APPROVAL:

PD = Planning Division Conditions
PF = City Engineering Division Conditions

Bold/Italic = New words

Planning Conditions:	
PDA1.	Approval of the partition is effective for two (2) years from the date of the notice of decision. Time extensions may be granted per Section 4.023 of the City's Development Code. The Applicant/***Owner*** shall submit final plat application within two (2) years of date of the notice of decision.
PDA2.	The final plat for the land partition shall be in substantial compliance with the approved tentative plat and narrative submitted to the Planning Division as part of this application.
PDA3.	The Applicant/Owner shall provide the City's Engineering and Planning Division with a copy of the final plat of the land partition recorded with the Clackamas County Surveyor's Office.
PDA4.	Any improvements installed shall conform to the City's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards.
PDA5.	Any utilities installed as part of development on the property shall be installed underground.
PDA6.	A Reduced Setback Agreement shall be recorded concurrently with the final plat.
PDA7.	The final plat shall not display the ten-foot No Construction Easement, nor shall the proposed building outline for the southern parcel of the partition.
PDA8.	Applicant/Owner shall waive the right of remonstrance against any local improvement district that may be formed to provide public improvements to serve the subject site. Before the start of construction, a waiver of right to remonstrance shall be submitted to the City Attorney for review. See Finding 51.

Engineering Division Conditions:

New development on the two lots shall be in compliance with the following Engineering conditions of approval.

Standard Comments:

PFA1. All construction or improvements to public works facilities shall be in conformance to the City of Wilsonville Public Works Standards - 2014.

PFA2. Applicant shall submit insurance requirements to the City of Wilsonville in the following amounts:

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$2,000,000
Each Occurrence	$2,000,000
Automobile Insurance	$1,000,000
Fire Damage (any one fire)	$50,000
Medical Expense (any one person)	$10,000

PFA3. No construction of, or connection to, any existing or proposed public utility/improvements will be permitted until all plans are approved by Staff, all fees have been paid, all necessary permits, right-of-way and easements have been obtained and Staff is notified a minimum of 24 hours in advance.

PFA4. All public utility/improvement plans submitted for review shall be based upon a 22" x 34" format and shall be prepared in accordance with the City of Wilsonville Public Work's Standards.

PFA5. Plans submitted for review shall meet the following general criteria:

a. Utility improvements that shall be maintained by the public and are not contained within a public right-of-way shall be provided a maintenance access acceptable to the City. The public utility improvements shall be centered in a minimum 15-ft. wide public easement for single utilities and a minimum 20-ft. wide public easement for two parallel utilities and shall be conveyed to the City on its dedication forms.
b. Design of any public utility improvements shall be approved at the time of the issuance of a Public Works Permit. Private utility improvements are subject to review and approval by the City Building Department.
c. In the plan set for the PW Permit, existing utilities and features, and proposed new private utilities shall be shown in a lighter, grey print. Proposed public improvements shall be shown in bolder, black print.
d. All elevations on design plans and record drawings shall be based on NAVD 88 Datum.
e. All proposed on and off-site public/private utility improvements shall comply with the State of Oregon and the City of Wilsonville requirements and any other applicable codes.

f. Design plans shall identify locations for street lighting, gas service, power lines, telephone poles, cable television, mailboxes and any other public or private utility within the general construction area.
g. As per City of Wilsonville Ordinance No. 615, all new gas, telephone, cable, fiber-optic and electric improvements etc. shall be installed underground. Existing overhead utilities shall be undergrounded wherever reasonably possible.
h. Any final site landscaping and signing shall not impede any proposed or existing driveway or interior maneuvering sight distance.
i. Erosion Control Plan that conforms to City of Wilsonville Ordinance No. 482.
j. Existing/proposed right-of-way, easements and adjacent driveways shall be identified.
k. All engineering plans shall be stamped by a Professional Engineer registered in the State of Oregon.

PFA6. Submit plans in the following general format and order for all public works construction to be maintained by the City:

a. Cover sheet
b. City of Wilsonville construction note sheet
c. General construction note sheet
d. Existing conditions plan.
e. Erosion control and tree protection plan.
f. Site plan. Include property line boundaries, water quality pond boundaries, sidewalk improvements, right-of-way (existing/proposed), easements (existing/proposed), and sidewalk and road connections to adjoining properties.
g. Grading plan, with 1-foot contours.
h. Composite utility plan; identify storm, sanitary, and water lines; identify storm and sanitary manholes.
i. Detailed plans; show plan view and either profile view or provide i.e.'s at all utility crossings; include laterals in profile view or provide table with i.e.'s at crossings; vertical scale 1"= 5', horizontal scale 1"= 20' or 1"= 30'.
j. Street plans.
k. Storm sewer/drainage plans; number all lines, manholes, catch basins, and cleanouts for easier reference
l. Water and sanitary sewer plans; plan; number all lines, manholes, and cleanouts for easier reference.
m. Detailed plan for storm water detention facility (both plan and profile views), including water quality orifice diameter and manhole rim elevations. Provide detail of inlet structure and energy dissipation device. Provide details of drain inlets, structures, and piping for outfall structure. Note that although storm water detention facilities are typically privately maintained they will be inspected by engineering, and the plans must be part of the Public Works Permit set.
n. Detailed plan for water quality facility (both plan and profile views). Note that although storm water quality facilities are typically privately maintained they will be inspected by Natural Resources, and the plans must be part of the Public Works Permit set.
o. Composite franchise utility plan.
p. City of Wilsonville detail drawings.
q. Illumination plan.

r. Striping and signage plan.
s. Landscape plan.

PFA7.	Design engineer shall coordinate with the City in numbering the sanitary and stormwater sewer systems to reflect the City's numbering system. Video testing and sanitary manhole testing will refer to City's numbering system.
PFA8.	The applicant shall install, operate and maintain adequate erosion control measures in conformance with the standards adopted by the City of Wilsonville Ordinance No. 482 during the construction of any public/private utility and building improvements until such time as approved permanent vegetative materials have been installed.
PFA9.	Applicant shall work with City's Natural Resources office before disturbing any soil on the respective site. If 5 or more acres of the site will be disturbed applicant shall obtain a 1200-C permit from the Oregon Department of Environmental Quality. If 1 to less than 5 acres of the site will be disturbed a 1200-CN permit from the City of Wilsonville is required.
PFA10.	The applicant shall be in conformance with all stormwater and flow control requirements for the proposed development per the Public Works Standards.
PFA11.	A storm water analysis prepared by a Professional Engineer registered in the State of Oregon shall be submitted for review and approval by the City.
PFA12.	The applicant shall be in conformance with all water quality requirements for the proposed development per the Public Works Standards. If a mechanical water quality system is used, prior to City acceptance of the project the applicant shall provide a letter from the system manufacturer stating that the system was installed per specifications and is functioning as designed.
PFA13.	Storm water quality facilities shall have approved landscape planted and/or some other erosion control method installed and approved by the City of Wilsonville prior to streets and/or alleys being paved.
PFA14.	The applicant shall contact the Oregon Water Resources Department and inform them of any existing wells located on the subject site. Any existing well shall be limited to irrigation purposes only. Proper separation, in conformance with applicable State standards, shall be maintained between irrigation systems, public water systems, and public sanitary systems. Should the project abandon any existing wells, they shall be properly abandoned in conformance with State standards.

PFA15.	All survey monuments on the subject site, or that may be subject to disturbance within the construction area, or the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated or destroyed as a result of any construction, the project shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to Staff.
PFA16.	Sidewalks, crosswalks and pedestrian linkages in the public right-of-way shall be in compliance with the requirements of the U.S. Access Board.
PFA17.	No surcharging of sanitary or storm water manholes is allowed.
PFA18.	The project shall connect to an existing manhole or install a manhole at each connection point to the public storm system and sanitary sewer system.
PFA19.	The applicant shall provide adequate sight distance at all project driveways by driveway placement or vegetation control. Specific designs to be submitted and approved by the City Engineer. Coordinate and align proposed driveways with driveways on the opposite side of the proposed project site.
PFA20.	Access requirements, including sight distance, shall conform to the City's Transportation Systems Plan (TSP) or as approved by the City Engineer. Landscaping plantings shall be low enough to provide adequate sight distance at all street intersections and alley/street intersections.
PFA21.	The applicant shall provide the City with a Stormwater Maintenance and Access Easement (on City approved forms) for City inspection of those portions of the storm system to be privately maintained. Stormwater or rainwater LID facilities may be located within the public right-of-way upon approval of the City Engineer. Applicant shall maintain all LID storm water components and private conventional storm water facilities; maintenance shall transfer to the respective homeowners association when it is formed.
PFA22.	Applicant shall provide a minimum 6-foot Public Utility Easement on lot frontages to all public right-of-ways.
PFA23.	For any new public easements created with the project the Applicant shall be required to produce the specific survey exhibits establishing the easement and shall provide the City with the appropriate Easement document (on City approved forms).
PFA24.	MYLAR RECORD DRAWINGS: At the completion of the installation of any required public improvements, and before a 'punch list' inspection is scheduled, the Engineer shall perform a record survey. Said survey shall be the basis for the preparation of 'record drawings' which will serve as the physical record of those changes made to the plans and/or specifications, originally

approved by Staff, that occurred during construction. Using the record survey as a guide, the appropriate changes will be made to the construction plans and/or specifications and a complete revised 'set' shall be submitted. The 'set' shall consist of drawings on 3 mil. Mylar and an electronic copy in AutoCAD, current version, and a digitally signed PDF.

PFA25. SUBDIVISION OR PARTITION PLATS:

Paper copies of all proposed subdivision/partition plats shall be provided to the City for review. Once the subdivision/partition plat is approved, applicant shall have the documents recorded at the appropriate County office. Once recording is completed by the County, the applicant shall be required to provide the City with a 3 mil Mylar copy of the recorded subdivision/partition plat.

PFA26. SUBDIVISION OR PARTITION PLATS:

All newly created easements shown on a subdivision or partition plat shall also be accompanied by the City's appropriate Easement document (on City approved forms) with accompanying survey exhibits that shall be recorded immediately after the subdivision or partition plat.

Specific Comments:

PFA27. The City has estimated the costs to reconstruct Canyon Creek Road South to meet the requirements of the Residential Street at $1,135,099.88. The estimated costs of street improvements shall be divided proportionately between all owners of record based on property street frontage along Canyon Creek Road South; this breaks down to $232.82 per foot of property frontage.

Applicant/Owner shall either:

1. Be responsible to submit funds to the City to equal 130% of their estimated proportionate share; City will undertake street reconstruction at some time in the future. For the 150.01 feet of property frontage, this comes to $45,402.93; or
2. Design and construct 150.01 feet of frontage improvements that include curb and gutter, 5-foot sidewalk, stormwater LID for new residence and driveway, and installation of three 4" conduits terminating in vaults at the north and south end of the properties. Applicant shall provide the City a cash deposit for cost to purchase and install a new streetlight equivalent to streetlights recently installed with the adjacent Renaissance Development. Construction and street repair shall be done in accordance with PFA1.

PFA28. Each lot shall be allowed one driveway access onto Canyon Creek Road South.

PFA29. Applicant shall obtain water and sanitary sewer service from the existing systems in Canyon Creek Road South.

PFA30. If stormwater detention and/or water quality facilities are designed for joint usage between the tax lots, maintenance plans or the system(s) shall be required and approved prior to acceptance. The applicant shall be required to establish a homeowners association with responsibility to maintain the private stormwater detention and/or water quality.

Natural Resources Conditions:

The following conditions of approval are based on the material submitted by the applicant. Any subsequent revisions to the submitted plans may require conditions of approval to be modified by staff.

Stormwater Management

NRA1. Pursuant to the Public Works Standards, stormwater facilities are required when proposed development establishes or increases the impervious surface area by more than 5,000 square feet. Development includes new development, redevelopment, and/or partial redevelopment.

NRA2. Submit a drainage report and drainage plans. The report and plans shall demonstrate the proposed stormwater facilities satisfy the requirements of the Public Works Standards.

NRA3. Provide profiles, plan views and specifications for the proposed stormwater facilities consistent with the requirements of the Public Works Standards.

NRA4. Pursuant to the Public Works Standards, the applicant shall submit a maintenance plan (including the City's stormwater maintenance and access easement) for the proposed stormwater facilities prior to approval for occupancy of the associated development.

NRA5. Pursuant to the Public Works Standards, access shall be provided to all areas of the proposed stormwater facilities. At a minimum, at least one access shall be provided for maintenance and inspection.

Other

NRA6. Pursuant to the City of Wilsonville's Ordinance No. 482, the applicant shall submit an erosion and sedimentation control plan. The following techniques and methods shall be incorporated, where necessary:

a. Gravel construction entrance;
b. Stockpiles and plastic sheeting;
c. Sediment fence;
d. Inlet protection (Silt sacks are recommended);
e. Dust control;
f. Temporary/permanent seeding or wet weather measures (e.g. mulch);
g. Limits of construction; and
h. Other appropriate erosion and sedimentation control methods.

NRA7. The applicant shall comply with all applicable state and federal requirements for the proposed construction activities (e.g., DEQ NPDES #1200–CN permit).

Exhibit A2 - FINDINGS OF FACT:

1. The statutory 120-day time limit begun with the date that staff rendered the application for the Tentative Partition complete. The Tentative Partition application (AR14-0077) was deemed complete on December 4, 2014. Thus the City, including appeals, before May 4, 2015, must render a final decision.

2. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	PDR-3	Single-family residential
East:	RA-H	SW Canyon Creek Rd. South, Single-family residential
South:	PDR-3	Single-family residential
West:	PDR-1	Single-family residential

3. The subject site contains an existing single-family home.

5. The Applicant has complied with Sections 4.210 and 4.233 pertaining to review procedures and submittal requirements for review of an appeal.

Exhibit A2 - GENERAL INFORMATION

Section 4.008 Application Procedures-In General: This section lists general application procedures applicable to a number of types of land use applications and also lists unique features of Wilsonville's development review process.

The application is being processed in accordance with the applicable general procedures of this Section. These criteria are met.

Section 4.009 Who May Initiate Application: ***Except for a Specific Area Plan (SAP), applications involving specific sites may be filed only by the owner of the subject property, by a unit of government that is in the process of acquiring the property, or by an agent who has been authorized by the owner, in writing, to apply.***

Signed application form has been submitted by the property owners.

Subsection 4.010 (.02) Pre-Application Conference: This section lists the pre-application process

A pre-application conference was held in 2014 for the tentative partition application – AR14-0077 in accordance with this subsection. These criteria are satisfied.

Subsection 4.011 (.02) B. Lien Payment before Application Approval: **City Council Resolution No. 796 precludes the approval of any development application without the prior payment of all applicable City liens for the subject property. Applicants shall be encouraged to contact the City**

Finance Department to verify that there are no outstanding liens. If the Planning Director is advised of outstanding liens while an application is under consideration, the Director shall advise the applicant that payments must be made current or the existence of liens will necessitate denial of the application.

No applicable liens exist for the subject property. The application for the appeal can thus move forward. This criterion is satisfied.

Subsection 4.035 (.04) A. General Site Development Permit Submission Requirements: An application for a Site Development Permit shall consist of the materials specified as follows, plus any other materials required by this Code." Listed 1. through 6.j.

The applicant has provided all of the applicable general submission requirements contained in this subsection. These criteria are satisfied.

Section 4.110 Zoning-Generally: The use of any building or premises or the construction of any development shall be in conformity with the regulations set forth in this Code for each Zoning District in which it is located, except as provided in Sections 4.189 through 4.192. The General Regulations listed in Sections 4.150 through 4.199 shall apply to all zones unless the text indicates otherwise.

This tentative partition with the city conditions of approval is in conformity with the RA-H zone and general development regulations listed in Sections 4.150 through 4.199 have been applied in accordance with this Section. These criteria are satisfied.

Section 4.009(.01) Ownership: Who may initiate application

The application has been submitted by the property owners meeting the above criteria.

Sections 4.013-4.031, 4.113, 4.118, 4.124 Review procedures and submittal requirements

The required public notices have been sent and all proper notification procedures have been satisfied. The applicant has complied with these sections of the Code.

Section 4.120 – Residential Agricultural – Holding Zone (RA-H)

The subject property is designated Residential – 4 to 5 dwelling units an acre on the Comprehensive Plan Map and is zoned Residential Agricultural – Holding Zone (RA-H). The RA-H Zone allows residential outright.

Section 4.022. Appeal and Call-up Procedures.
(.01) Administrative Action Appeals. A decision by the Planning Director on issuance of a Site Development Permit may be appealed. Such appeals shall be heard by the Development Review Board for all quasi-judicial land use matters except expedited land divisions, which may be appealed to a referee selected by the City to consider such cases. Only the applicant may appeal a Class I decision unless otherwise specified in Section 4.030, and such appeals shall be filed, including all of the required particulars and filing fee, with the City recorder as provided in this Section. Any affected party may appeal a Class II decision by filing an appeal, including all of the required particulars and filing fee, with the City Recorder within fourteen (14) calendar days of notice of the decision. Either panel of the Development Review Board, or both panels if convened together, may also initiate a call-

up of the Director's decision by motion, without the necessity of paying a filing fee, for matters other than expedited land divisions. The notice of appeal shall indicate the nature of the action or interpretation that is being appealed or called up and the matter at issue will be a determination of the appropriateness of the action or interpretation of the requirements of the Code.

(.04) Notice. Legal notice of a hearing on an appeal shall set forth:
A. The date of the hearing.
B. The issue(s) being appealed. C. Whether the review will be on the record or whether new evidence will be accepted, if known.

The application is being processed in accordance with the applicable general procedures of this Section including legal notice requirements. The applicant's representative is requesting de novo review of the appeal. Section 4.022(.04) is met.

Section 4.022(.05) Scope of Review.
A. At its discretion, the hearing body may limit an appeal or review to a review of the record and a hearing for receipt of oral arguments regarding the record, or may accept new evidence and testimony. Except, however, that the standard of review on an appeal or call up of a staff decision to be heard by the Development Review Board is de novo.
B. The reviewing body shall issue an order stating the scope of review on appeal to be one of the following:
1. Restricted to the record made on the decision being appealed.
2. Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.
3. A de novo hearing on the merits.

The subject application involves an appeal of a staff decision. Thus, as provided in Section 4.002(.05) the appeal of this staff decision to the DRB is de novo.

Section 4.022(.07) Review Consisting of Additional Evidence or De Novo Review.
A. Except as otherwise specified in this Code, or required by State law, the reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing if it is satisfied that that additional testimony or other evidence could not reasonably have been presented at the prior hearing. The reviewing body shall consider all of the following in making such a decision.
1. Prejudice to the parties.
2. Convenience or availability of evidence at the time of the initial hearing.
3. Surprise to opposing parties.
4. The competency, relevancy and materiality of the proposed testimony or other evidence.
5. Such other factors as may be determined by the reviewing body to be appropriate.
B. "De novo hearing" shall mean a hearing by the review body as if the action had not been previously heard and as if no decision had been rendered, except that all testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review.

Because the standard of review on an appeal of a staff decision to the DRB is generally by its nature de novo, meaning all matters may be considered and new evidence received, these criteria are satisfied by the nature of the type of appeal.

Exhibit A1
CONCLUSIONARY FINDINGS – AR14-0077

STAFF REPORT
WILSONVILLE PLANNING DIVISION
LAND PARTITION - DOWNS
ADMINISTRATIVE REVIEW AND DECISION

DATE OF REPORT: **January 22, 2015**

APPLICATION NO.: **AR14-0077**

REQUEST: The applicants, Gerald and Joanne Downs, together with their representative, Ronald Downs, are requesting administrative approval of a land partition of 28205 SW Canyon Creek Road South, located between SW Summerton Street and Boeckman Road on the west side of SW Canyon Creek Road South. The land partition would allow for the existing home to remain, as well as the creation of one additional parcel to the south. This request is being processed through the Class II Administrative Review process.

LOCATION: The subject property is located at 28205 SW Canyon Creek Road South, on the west side of SW Canyon Creek Road South. The subject site more specifically described in tax records as Tax Lot 2700 in Section 13BA, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

OWNER/APPLICANT: Gerald and Joanne Downs

APPLICANT'S REPRESENTATIVE: Ronald Downs

COMPREHENSIVE PLAN MAP DESIG.: Residential – 4 to 5 dwelling units an acre

ZONE MAP CLASSIFICATION: Planned Development Residential (PDR-3)

Applicable Review Criteria:
City of Wilsonville Planning and Land Development Ordinance: Sections 4.008 through 4.015; 4.030(.01)(B)(5); 4.034(.05); 4.035; 4.035(.03); 4.113; 4.118; 4.124.3; 4.167; 4.177; 4.202; 4.210; 4.236; 4.237; 4.262; and 4.300-4.320

ACTION TAKEN: Approval of the application, together with conditions of approval, as found beginning on page 14 of this report.

STAFF REVIEWERS: Jennifer Scola, Assistant Planner; Blaise Edmonds, Manager of Current Planning; and, Steve Adams, Development Engineering Manager

EXHIBITS:

A1. Staff Report (this document)

B. Applicant's Submittal Notebook, as follows:
B1. Applicant's Narrative, dated 10/21/2014
B2. Completed City of Wilsonville Application Form
B3. Public Record Report for New Subdivision, dated 09/04/2014
B4. Preliminary Partition Plat Plan
B5. Vicinity Map
B6. Tax Lot Information
B7. Certification of Assessment and Liens
B8. Description of No-Construction Easement

C1. Tax Map
C2. Case File 03DB43, Findings E19, E30, and Condition of Approval DRB D3
C3. Case File 03DB43 of Exhibit 44

FINDINGS OF FACT:

1. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	PDR-3	Single-family residential
East:	RA-H	SW Canyon Creek Rd. South, Single-family residential
South:	PDR-3	Single-family residential
West:	PDR-1	Single-family residential

2. The Comprehensive Plan does not place this site in an Area of Special Concern.

3. The subject site contains an existing single-family home.

5. The Applicant has complied with Sections 4.210 and 4.233 pertaining to review procedures and submittal requirements for review of a tentative partition plat.

SUMMARY OF PROPOSAL:

The project summary submitted by the Applicant is found in the Applicant's narrative (Exhibit B1), and on accompanying drawing (Exhibit B5). Except where a discrepancy is determined to exist, and may be discussed in this report, the Applicant's will not be duplicated here.

CONCLUSIONARY FINDINGS:

Sections 4.008-4.009 Application Procedures and Applicant's Rights

1. The Applicant's submitted documents meet these code criteria.

Section 4.014 Burden of Proof

2. Subsection 4.014 provides that the Applicant bears the burden of proving that the necessary findings of fact can be made for approval of any land use or development application. Staff finds that the Applicant has provided sufficient information proving the necessary findings of fact.

Subsection 4.030(.01)(B)(5) Class II Administrative Review - Land Partitions

3. This subsection directs land partitions, other than expedited land partitions, to be processed according to the Class II Administrative Review procedures pursuant to Section 4.210. In addition, it directs approval of land partitions to be based on the following criteria:

a. The applicant has made a complete submittal of materials for the Director to review, as required by Section 4.210.

4. The Applicant has submitted the required documents, satisfying this subsection.

b. The proposed plan meets the requirements of the Code regarding minimum lot size and yard setbacks.

5. The tentative plat demonstrates that two (2) proposed parcels meet the requirements for minimum lot size. The northernmost lot of the two (2) proposed parcels does not meet minimum setback requirements; however condition of approval PDA6 requires that a Reduced Setback Agreement be recorded with the final plat.

c. The approval will not impede or adversely affect the orderly development of any adjoining property or access thereto.

6. Access to adjoining properties will not be affected, and the abutting sites have already been developed. This provision is met.

d. The public right-of-way bordering the lots will meet City standards.

7. An Engineering Condition of Approval, PFA4, will ensure any improvements in the right-of-way bordering the lots meet City standards.

e. Any required public dedications of land have been approved for acceptance by the City and will be recorded with the County prior to final plat approval.

8. No dedication of land to the public is required as part of this partition. This provision is met.

f. Adequate easements are proposed where an existing utility line crosses or encroaches upon any other parcel to be created by the partition.

9. No existing utility lines cross or encroach upon any of the proposed parcels as discussed in this subsection. This provision does not apply.

g. All public utilities and facilities are available or can be provided prior to the issuance of any development permit for any lot or parcel.

10. Engineering PFA3 ensures that prior to any development permit is issued, all public utility and facility plans will be submitted and reviewed. This provision is satisfied.

h. Roads extended or created as a result of the land partition will meet City standards.

11. No roads will be extended or created as result of the proposed partition. This provision does not apply.

Subsection 4.034(.05) Application Requirements

12. The Applicant has submitted all of the materials required by this subsection.

Subsection 4.035(.03) Procedure for Processing Class II - Administrative Review.

13. The Applicant's proposal will, together with the attached conditions of approval, result in conformance with applicable provisions of the City's Planning and Land Development Ordinance. Staff has followed the provisions of this code section. Staff notes that this approval is contingent upon final plat approval by the City and recordation of the final approved partition plat with the Clackamas County Clerk's Office.

Section 4.113 Standards for Residential Development in All Zones

14. Provisions of this section regarding landscaping are not applicable to partitions. The area of the two proposed parcels will allow all other applicable provisions of this section, including setbacks, to be met.

Sections 4.124 Standards Applying to All Planned Development Residential Zones
Subsection 4.124 (.01)-(.04) Uses allowed in Planned Development Residential Zones

15. These subsections lists uses associated with the Planned Development Residential Zones. The parcels will be sufficient for a number of uses allowed in the Planned Development Residential Zones.

Subsection 4.124 (.06) Block and Access Standards

16. No new blocks or streets are involved with the proposal.

Section 4.124.3 Planned Development Residential-3 Zone

Subsection 4.124.3 (.01) Average Lot Size

17. The average lot size for a lot in the PDR-3 Zone is 7,000 square feet, of which the proposed parcels exceed 7,000 square feet.

Subsection 4.124.3 (.02) Minimum Lot Size

18. The minimum lot size for PDR-3 Zone is 5,000 square feet. At 8,100 square feet, and 12,150 square feet, the two (2) proposed parcels meet this minimum requirement. This provision is satisfied.

Subsection 4.124.3 (.03) Minimum density at build-out

19. The minimum density at build-out for the PDR-3 Zone is 8,000 square feet. Both proposed parcels would meet this minimum. This provision is satisfied.

Subsection 4.124.3 (.04) Other Standards

20. All other applicable standards will or can be met by the proposed parcels. This provision is satisfied.

Section 4.140 Planned Development Regulations

21. The subject parcel was part of a previously approved Planned Development, subject to this Section. All requirements of this section were found to be satisfied by the development (see case file 03DB43). As shown in Exhibit 44 of Case File 03DB43 (Exhibit C3), the partition of the subject property was anticipated as a future phase of the planned development. Because certain frontage and other requirements were not required at the time of that approval, due to lack of planned development on the parcel at hand, certain development requirements were deferred but must be put into place now that this property is being further partitioned and redeveloped.

Section 4.155 Parking, Loading and Bicycle Parking

22. This section requires that each dwelling provide a minimum of one parking space. The proposed parcel Number Two (2) will enable siting of a future dwelling that will be required to provide one off-street parking space. This criterion is satisfied.

Section 4.167 General Regulations – Access, Ingress and Egress

23. These provisions require that safe access be provided to each of the proposed uses. The proposed parcel Number Two (2) will have direct access to Canyon Creek Road South, and the parcel with the existing structure has a driveway, also taking access from Canyon Creek Road South. This criteria is satisfied.

Section 4.176 Landscaping, Screening and Buffering

24. Because the proposal is for a partition, rather than a subdivision, there are no landscape requirements applicable to the request. While Subsection 4.176(.06)(d) provides for the installation of street trees along the frontage of the proposed parcels, such requirement is appropriately limited to subdivisions, not partitions. This section is not applicable.

Section 4.177 Street Improvement Standards

25. This Subsection requires that all development, which by its definition includes a partition of a property into two or more lots, comply with the requirements of this Section, the Wilsonville Public Works Standards, and the Transportation Plan in rough proportion to the potential impacts of development, including redevelopment. The required options contained in PFA27 satisfy this criterion.

Subsection 4.202 (.04) B. Parcel Partitions Not Allowed that Make Remaining Parcels Less than Allowed in Zone.

26. This subsection does not allow parcel partitions to create parcels less than that allowed in the zone. The minimum parcel size for the Planned Development Residential Zone (PDR-3) is 5,000 square feet. Proposed Parcel 1 will be 12,150 square feet, proposed Parcel 2 will be 8,100 square feet, with both two (2) parcels exceeding the required minimum. This criterion is met. [See also findings for Subsection 4.124.3 (.02), above.]

Section 4.210 Land Divisions - Application Procedure.
Subsection 4.210 (.01) A. Pre-Application Meeting

27. This subsection requires a pre-application meeting as part of the process. While no formal pre-application meeting was held, the applicant did contact staff to understand required submittal materials and the review process. This provision is satisfied.

Subsection 4.210 (.01) B. Tentative Plat Submission

28. This subsection sets forth the submission requirements for tentative plats. The Applicant submitted the required documents, meeting the requirements of this subsection. [See also finding for Subsection 4.030(.01)(B)(5)(a), above.]

Section 4.236 General Requirements – Streets
Subsection 4.236 (.01) Conformity to the Master Plan or Map

29. This subsection requires land partitions to be in harmony with adopted Transportation Master Plans, Bicycle and Pedestrian Master Plans, Park and Recreation Master Plans, and the Master Street Plan. The proposed land partition does not create any new infrastructure associated with these plans, nor is any required. There is no evidence to suggest that the proposed partition would affect the harmony of existing infrastructure with the above plans. This criterion is met.

Subsection 4.236 (.02) A. Relation to Adjoining Street System

30. This subsection requires land partitions to provide for the continuation of the principal streets existing in the adjoining area and proposed streets to be the width required elsewhere in the Wilsonville City Code. No new streets are planned or proposed with this partition. There are no adjoining streets that would continue through the subject property. This criterion does not apply.

Subsection 4.236 (.02) B. Requirement to Submit Prospective Future Street System

31. This subsection requires the submission of prospective future street systems when the land partition does not cover the entire tract. The proposed land partition covers the Applicant's entire tract and no streets are proposed. This criterion does not apply.

Subsection 4.236 (.02) C. Arrangement of Parcels to Allow Future Subdivision

32. This subsection requires the arrangement of streets and parcels to allow for future land partition if allowed by the Comprehensive Plan. The parcels are arranged in a manner to allow the partition, if found compliant with the Comprehensive Plan. This provision is satisfied.

Subsection 4.236 (.03) Conformity with Section 4.177 and Block Standards of Zone.

33. This subsection requires all streets to conform to Section 4.177 of the Wilsonville City Code and block standards of the zone. No new streets or will result from this application. This provision does not apply.

Subsection 4.236 (.04) Creation of Easements

34. This subsection allows the Planning Director to approve easements as a reasonable method to allow vehicular access and adequate utilities to the lots in this two-parcel land

partition. The applicant is required to provide a minimum 6-foot Public Utility Easement on lot frontages to all public right-of-ways See Condition PFA22. This provision is satisfied.

Subsection 4.236 (.08) Existing Streets

35. No additional right-of-way is being required as part of the proposed partition. Therefore, the standards in this subsection are not affected.

Section 4.237 General Requirements – Other.
Subsection 4.237 (.01) Block Standards

36. This subsection provides standards for new blocks created by land partitions. No block creation is involved in the proposed land partition. These criteria do not apply.

Subsection 4.237 (.02) Easements

37. This subsection requires easements for existing and needed utility lines. As indicated in Finding 34, above, a six-foot-wide public utility easement will be required along the frontage of the two parcels. Condition of Approval PFA22 requires a six-foot-wide public utility easement along the Canyon Creek Road South frontage for potential future franchise utilities.

Subsection 4.237 (.03) Pedestrian and Bicycle Pathway

38. This subsection requires an improved public path for blocks that exceed the length standard for the zone they are located in. No new blocks are involved in this partition. Compliance with this subsection is not altered by the proposed partition.

Subsection 4.237 (.04) Street Tree Planting

39. This subsection presents requirements for street trees, as applicable. No street trees are proposed by the Applicant. Because the application is for a partition, rather than a subdivision, street trees are not required. This provision is satisfied.

Subsection 4.237 (.05) Parcel Size, Shape, Width, and Orientation.

40. This subsection requires the parcels resulting from the land partition have the size, width, shape and orientation appropriate for the location of the land partition and for the development and use that are contemplated as well as for the zone in which they are located. Proposed parcel sizes, widths, shapes and orientation are appropriate for contemplated future development and are in conformance with the PDR-3 requirements. The proposed partition complies with the standards of this subsection.

Subsection 4.237 (.06) Access

41. This subsection requires parcels resulting from the land partition have the minimum frontage of public streets. The parcels resulting from proposed land partition meet the street frontage requirements for the zone. This provision is met.

Subsection 4.237 (.07) Through Lots

42. The current parcel is not a through lot, and the proposed parcel also will not be a through lot. The applicable provisions of this subsection are satisfied.

Subsection 4.237 (.08) Parcel Side Lines

43. This subsection requires side parcel lines be at right angles to the street the parcels face as far as practical. All parcel lines are at right angles. This provision is met.

Subsection 4.237 (.10) Building Line

44. This subsection gives the Planning Director authority to create building setback lines to be recorded on the plat to allow for future repartition or other development or to support other findings. In a separate Class I Administrative Application, the Applicant is seeking a setback agreement to allow reduced setbacks between the existing house and the future house at a side property line.

Subsection 4.237 (.11) Build-to Line

45. This subsection gives the Planning Director authority to create build-to lines for the development. The Applicant is not requesting nor is the Planning Director requiring the creation of build-to-lines.

Section 4.250 Legal Lots of Record

46. The existing parcel is a legal lot of record. Upon satisfaction of conditions of approval and recordation of a final plat, the one (1) resulting parcel will also be a legal lot of record, meeting this provision.

Section 4.260 Improvements-Procedure

47. This section requires, in addition to other requirements, improvements installed by the developer to conform to the requirements of Wilsonville's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards. Condition of Approval PDA4 will ensure the requirements of this section are met.

Section 4.262 Improvements-Requirements

48. This section presents improvement requirements for individual improvements and utilities including curbs, sidewalks, sewer, and water. Engineering Conditions will ensure the requirements of this section are met.

Section 4.264 Improvements - Assurance

49. This section requires assurance for improvements. An engineering condition of approval will ensure the requirements of this section are met.

Section 4.320 Underground Utility Requirements

50. This section requires all utilities to be underground. Condition of Approval PDA5 will ensure any utilities are installed underground.

ACTION TAKEN AND CONDITIONS OF APPROVAL FOR REQUEST AR14-0077:

Based on the analysis above, and conclusionary findings 1 through 50 the request is hereby **approved,** together with the following conditions of approval:

This decision approves **only** the tentative partition described in the request above, as modified by the conditions below, and is on file with the City of Wilsonville's Planning Division as Case File AR14-0077.

Planning Conditions:	
PDA1.	Approval of the partition is effective for two (2) years from the date of the notice of decision. Time extensions may be granted per Section 4.023 of the City's Development Code. The Applicant shall submit final plat application within two (2) years of date of the notice of decision.
PDA2.	The final plat for the land partition shall be in substantial compliance with the approved tentative plat and narrative submitted to the Planning Division as part of this application.
PDA3.	The Applicant/Owner shall provide the City's Engineering and Planning Division with a copy of the final plat of the land partition recorded with the Clackamas County Surveyor's Office.
PDA4.	Any improvements installed shall conform to the City's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards.
PDA5.	Any utilities installed as part of development on the property shall be installed underground.
PDA6.	A Reduced Setback Agreement shall be recorded concurrently with the final plat.

PDA7.	The final plat shall not display the ten-foot No Construction Easement, nor shall the proposed building outline for the southern parcel of the partition.

Engineering Division Conditions:

New development on the two lots shall be in compliance with the following Engineering conditions of approval.

Standard Comments:

PFA 1. All construction or improvements to public works facilities shall be in conformance to the City of Wilsonville Public Works Standards - 2014.

PFA 2. Applicant shall submit insurance requirements to the City of Wilsonville in the following amounts:

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$2,000,000
Each Occurrence	$2,000,000
Automobile Insurance	$1,000,000
Fire Damage (any one fire)	$50,000
Medical Expense (any one person)	$10,000

PFA 3. No construction of, or connection to, any existing or proposed public utility/improvements will be permitted until all plans are approved by Staff, all fees have been paid, all necessary permits, right-of-way and easements have been obtained and Staff is notified a minimum of 24 hours in advance.

PFA 4. All public utility/improvement plans submitted for review shall be based upon a 22" x 34" format and shall be prepared in accordance with the City of Wilsonville Public Work's Standards.

PFA 5. Plans submitted for review shall meet the following general criteria:

l. Utility improvements that shall be maintained by the public and are not contained within a public right-of-way shall be provided a maintenance access acceptable to the City. The public utility improvements shall be centered in a minimum 15-ft. wide public easement for single utilities and a minimum 20-ft. wide public easement for two parallel utilities and shall be conveyed to the City on its dedication forms.

m. Design of any public utility improvements shall be approved at the time of the issuance of a Public Works Permit. Private utility improvements are subject to review and approval by the City Building Department.

n. In the plan set for the PW Permit, existing utilities and features, and proposed new private utilities shall be shown in a lighter, grey print. Proposed public improvements shall be shown in bolder, black print.

o. All elevations on design plans and record drawings shall be based on NAVD 88 Datum.
p. All proposed on and off-site public/private utility improvements shall comply with the State of Oregon and the City of Wilsonville requirements and any other applicable codes.
q. Design plans shall identify locations for street lighting, gas service, power lines, telephone poles, cable television, mailboxes and any other public or private utility within the general construction area.
r. As per City of Wilsonville Ordinance No. 615, all new gas, telephone, cable, fiber-optic and electric improvements etc. shall be installed underground. Existing overhead utilities shall be undergrounded wherever reasonably possible.
s. Any final site landscaping and signing shall not impede any proposed or existing driveway or interior maneuvering sight distance.
t. Erosion Control Plan that conforms to City of Wilsonville Ordinance No. 482.
u. Existing/proposed right-of-way, easements and adjacent driveways shall be identified.
v. All engineering plans shall be stamped by a Professional Engineer registered in the State of Oregon.

PFA 6. Submit plans in the following general format and order for all public works construction to be maintained by the City:

t. Cover sheet
u. City of Wilsonville construction note sheet
v. General construction note sheet
w. Existing conditions plan.
x. Erosion control and tree protection plan.
y. Site plan. Include property line boundaries, water quality pond boundaries, sidewalk improvements, right-of-way (existing/proposed), easements (existing/proposed), and sidewalk and road connections to adjoining properties.
z. Grading plan, with 1-foot contours.
aa. Composite utility plan; identify storm, sanitary, and water lines; identify storm and sanitary manholes.
bb. Detailed plans; show plan view and either profile view or provide i.e.'s at all utility crossings; include laterals in profile view or provide table with i.e.'s at crossings; vertical scale 1"= 5', horizontal scale 1"= 20' or 1"= 30'.
cc. Street plans.
dd. Storm sewer/drainage plans; number all lines, manholes, catch basins, and cleanouts for easier reference
ee. Water and sanitary sewer plans; plan; number all lines, manholes, and cleanouts for easier reference.
ff. Detailed plan for storm water detention facility (both plan and profile views), including water quality orifice diameter and manhole rim elevations. Provide detail of inlet structure and energy dissipation device. Provide details of drain inlets, structures, and piping for outfall structure. Note that although storm water detention facilities are typically privately maintained they will be inspected by engineering, and the plans must be part of the Public Works Permit set.

gg. Detailed plan for water quality facility (both plan and profile views). Note that although storm water quality facilities are typically privately maintained they will be inspected by Natural Resources, and the plans must be part of the Public Works Permit set.
hh. Composite franchise utility plan.
ii. City of Wilsonville detail drawings.
jj. Illumination plan.
kk. Striping and signage plan.
ll. Landscape plan.

PFA 7.	Design engineer shall coordinate with the City in numbering the sanitary and stormwater sewer systems to reflect the City's numbering system. Video testing and sanitary manhole testing will refer to City's numbering system.
PFA 8.	The applicant shall install, operate and maintain adequate erosion control measures in conformance with the standards adopted by the City of Wilsonville Ordinance No. 482 during the construction of any public/private utility and building improvements until such time as approved permanent vegetative materials have been installed.
PFA 9.	Applicant shall work with City's Natural Resources office before disturbing any soil on the respective site. If 5 or more acres of the site will be disturbed applicant shall obtain a 1200-C permit from the Oregon Department of Environmental Quality. If 1 to less than 5 acres of the site will be disturbed a 1200-CN permit from the City of Wilsonville is required.
PFA 10.	The applicant shall be in conformance with all stormwater and flow control requirements for the proposed development per the Public Works Standards.
PFA 11.	A storm water analysis prepared by a Professional Engineer registered in the State of Oregon shall be submitted for review and approval by the City.
PFA 12.	The applicant shall be in conformance with all water quality requirements for the proposed development per the Public Works Standards. If a mechanical water quality system is used, prior to City acceptance of the project the applicant shall provide a letter from the system manufacturer stating that the system was installed per specifications and is functioning as designed.
PFA 13.	Storm water quality facilities shall have approved landscape planted and/or some other erosion control method installed and approved by the City of Wilsonville prior to streets and/or alleys being paved.
PFA 14.	The applicant shall contact the Oregon Water Resources Department and inform them of any existing wells located on the subject site. Any existing well shall be limited to irrigation purposes only. Proper separation, in conformance with applicable State standards, shall be maintained between irrigation systems, public water systems, and public sanitary systems. Should the project abandon any existing wells, they shall be properly abandoned in conformance with State standards.

PFA 15.	All survey monuments on the subject site, or that may be subject to disturbance within the construction area, or the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated or destroyed as a result of any construction, the project shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to Staff.
PFA 16.	Sidewalks, crosswalks and pedestrian linkages in the public right-of-way shall be in compliance with the requirements of the U.S. Access Board.
PFA 17.	No surcharging of sanitary or storm water manholes is allowed.
PFA 18.	The project shall connect to an existing manhole or install a manhole at each connection point to the public storm system and sanitary sewer system.
PFA 19.	The applicant shall provide adequate sight distance at all project driveways by driveway placement or vegetation control. Specific designs to be submitted and approved by the City Engineer. Coordinate and align proposed driveways with driveways on the opposite side of the proposed project site.
PFA 20.	Access requirements, including sight distance, shall conform to the City's Transportation Systems Plan (TSP) or as approved by the City Engineer. Landscaping plantings shall be low enough to provide adequate sight distance at all street intersections and alley/street intersections.
PFA 21.	The applicant shall provide the City with a Stormwater Maintenance and Access Easement (on City approved forms) for City inspection of those portions of the storm system to be privately maintained. Stormwater or rainwater LID facilities may be located within the public right-of-way upon approval of the City Engineer. Applicant shall maintain all LID storm water components and private conventional storm water facilities; maintenance shall transfer to the respective homeowners association when it is formed.
PFA 22.	Applicant shall provide a minimum 6-foot Public Utility Easement on lot frontages to all public right-of-ways.
PFA 23.	For any new public easements created with the project the Applicant shall be required to produce the specific survey exhibits establishing the easement and shall provide the City with the appropriate Easement document (on City approved forms).

PFA 24. MYLAR RECORD DRAWINGS:

At the completion of the installation of any required public improvements, and before a 'punch list' inspection is scheduled, the Engineer shall perform a record survey. Said survey shall be the basis for the preparation of 'record drawings' which will serve as the physical record of those changes made to the plans and/or specifications, originally approved by Staff, that occurred during construction. Using the record survey as a guide, the appropriate changes will be made to the construction plans and/or specifications and a complete revised 'set' shall be submitted. The 'set' shall consist of drawings on 3 mil. Mylar and an electronic copy in AutoCAD, current version, and a digitally signed PDF.

PFA 25. SUBDIVISION OR PARTITION PLATS:

Paper copies of all proposed subdivision/partition plats shall be provided to the City for review. Once the subdivision/partition plat is approved, applicant shall have the documents recorded at the appropriate County office. Once recording is completed by the County, the applicant shall be required to provide the City with a 3 mil Mylar copy of the recorded subdivision/partition plat.

PFA 26. SUBDIVISION OR PARTITION PLATS:

All newly created easements shown on a subdivision or partition plat shall also be accompanied by the City's appropriate Easement document (on City approved forms) with accompanying survey exhibits that shall be recorded immediately after the subdivision or partition plat.

Specific Comments:

PFA27. The City has estimated the costs to reconstruct Canyon Creek Road South to meet the requirements of the Residential Street at $1,135,099.88. The estimated costs of street improvements shall be divided proportionately between all owners of record based on property street frontage along Canyon Creek Road South; this breaks down to $232.82 per foot of property frontage.

PFA28. Each lot shall be allowed one driveway access onto Canyon Creek Road South.

PFA29. Applicant shall obtain water and sanitary sewer service from the existing systems in Canyon Creek Road South.

PFA30. If stormwater detention and/or water quality facilities are designed for joint usage between the tax lots, maintenance plans or the system(s) shall be required and approved prior to acceptance. The applicant shall be required to establish a homeowners association with responsibility to maintain the private stormwater detention and/or water quality.

Natural Resources Conditions:

The following conditions of approval are based on the material submitted by the applicant. Any

subsequent revisions to the submitted plans may require conditions of approval to be modified by staff.	
Stormwater Management	
NRA 1.	Pursuant to the Public Works Standards, stormwater facilities are required when proposed development establishes or increases the impervious surface area by more than 5,000 square feet. Development includes new development, redevelopment, and/or partial redevelopment.
NRA 2.	Submit a drainage report and drainage plans. The report and plans shall demonstrate the proposed stormwater facilities satisfy the requirements of the Public Works Standards.
NRA 3.	Provide profiles, plan views and specifications for the proposed stormwater facilities consistent with the requirements of the Public Works Standards.
NRA 4.	Pursuant to the Public Works Standards, the applicant shall submit a maintenance plan (including the City's stormwater maintenance and access easement) for the proposed stormwater facilities prior to approval for occupancy of the associated development.
NRA 5.	Pursuant to the Public Works Standards, access shall be provided to all areas of the proposed stormwater facilities. At a minimum, at least one access shall be provided for maintenance and inspection.
Other	
NRA 6.	Pursuant to the City of Wilsonville's Ordinance No. 482, the applicant shall submit an erosion and sedimentation control plan. The following techniques and methods shall be incorporated, where necessary: i. Gravel construction entrance; j. Stockpiles and plastic sheeting; k. Sediment fence; l. Inlet protection (Silt sacks are recommended); m. Dust control; n. Temporary/permanent seeding or wet weather measures (e.g. mulch); o. Limits of construction; and p. Other appropriate erosion and sedimentation control methods.
NRA 7.	The applicant shall comply with all applicable state and federal requirements for the proposed construction activities (e.g., DEQ NPDES #1200–CN permit).

Exhibit A2, DB15-0006 - PROPOSED ADDITIONAL FINDINGS:

Section 4.118(03)C. 9. **A waiver of the right of remonstrance by the applicant to the formation of a Local Improvement District (LID) for streets, utilities and/or other public purposes.**

51. In tentative partition approval (AR14-0077) waiver of remonstrance was not included as a condition of approval. Staff is proposing the above requirement be added as condition PDA8.

Section 4.177. Street Improvement Standards. **This section contains the City's requirements and standards for pedestrian, bicycle, and transit facility improvements to public streets, or within public easements. The purpose of this section is to ensure that development, including redevelopment, provides transportation facilities that are safe, convenient, and adequate in rough proportion to their impacts.**

52. To satisfy the foregoing PFA27 requires that the applicant/owner construct sidewalk and integrated road improvements to front only that land that is the subject of this application and not beyond those boundaries. The City Development Code at this Section sets the standards for pedestrian, bicycle and transit facilities for public streets, including curb and sidewalk, to ensure that development, including redevelopment, provides safe convenient and adequate facilities in rough proportion to their impacts. As this property is now being subdivided into two separate lots with two separate homes, the sidewalk /roadway transportation requirements being imposed cover only those properties. City Code requires these improvements to be made at the time of development or redevelopment, and this partition constitutes redevelopment, per Code definition.

Further to this requirement, the City's Comprehensive Plan sets forth the requirements for a connected network of sidewalks and requires, at implementation Measure 3.3.2.d that all gaps in the existing sidewalk network be filled so as to create safe and accessible bicycle and pedestrian facilities. Thus, in accordance with that requirement, as each parcel in the City without sidewalks is developed or redeveloped, the placement of the sidewalk and related curb, gutter and street improvements to current City standards is required to be built by the developer in front of the developer's property, as a proportionate requirement of development. This requirement has been consistently imposed as a developer responsibility as development occurs, thereby resulting in fewer gaps in the sidewalk. Just as the City Code at Section 2.220 requires the property owner to be responsible for the sidewalk repairs that front the owner's property, so does the Code require the property owner/developer to install those same sidewalks as a proportionate condition of development.

State and Federal law requires that all Development conform to the requirements of the Americans with Disabilities Act, thus requiring sidewalks to meet exact construction criteria and connectivity requirements as properties are developed or redeveloped. The applicant has one property that is being redeveloped into two (2) home sites and is therefore required to bring that property up to current ADA requirements.

Section 4.177(.01). **Development and related public facility improvements shall comply with the standards in this section, the Wilsonville Public Works Standards, and the Transportation System Plan, in rough proportion to the potential impacts of the development. Such improvements shall be constructed at the time of development or as provided by Section 4.140, except as modified or waived by the City Engineer for reasons of safety or traffic operations.**

53. See Finding 52.

Section 4.177(.02) Street Design Standards.

A. All street improvements and intersections shall provide for the continuation of streets through specific developments to adjoining properties or subdivisions.

1. Development shall be required to provide existing or future connections to adjacent sites through the use of access easements where applicable. Such easements shall be required in addition to required public street dedications as required in Section 4.236(.04).

54. Canyon Creek Road South fronting the east side of the subject property is a public street. It provides direct connections to existing and future to adjacent sites.

Section 4.177(.03) Sidewalks. **Sidewalks shall be provided on the public street frontage of all development. Sidewalks shall generally be constructed within the dedicated public right-of-way, but may be located outside of the right-of-way within a public easement with the approval of the City Engineer.**

A. Sidewalk widths shall include a minimum through zone of at least five feet. The through zone may be reduced pursuant to variance procedures in Section 4.196, a waiver pursuant to Section 4.118, or by authority of the City Engineer for reasons of traffic operations, efficiency, or safety.

55. See Finding 52.

Section 4.177(.04) Bicycle Facilities. **Bicycle facilities shall be provided to implement the Transportation System Plan, and may include on-street and off-street bike lanes, shared lanes, bike boulevards, and cycle tracks. The design of on-street bicycle facilities will vary according to the functional classification and the average daily traffic of the facility.**

56. Applicant is not required to add Bicycle facilities.

Section 4.236. General Requirements - Streets.

(.01) <u>Conformity to the Transportation System Plan</u>. Land divisions shall conform to and be in harmony with the Transportation Systems Plan, the Bicycle and Pedestrian Master Plan, and the Parks and Recreation Master Plan.

(.02) <u>Relation to Adjoining Street System</u>.
A. A land division shall provide for the continuation of the principal streets existing in the adjoining area, or of their proper projection when adjoining property is not developed, and shall be of a width not less than the minimum requirements for streets set forth in these

regulations. Where, in the opinion of the Planning Director or Development Review Board, topographic conditions make such continuation or conformity impractical, an exception may be made. In cases where the Board or Planning Commission has adopted a plan or plat of a neighborhood or area of which the proposed land division is a part, the subdivision shall conform to such adopted neighborhood or area plan.

57. Based on conditions of approval, all of the above applicable conditions will be met.

Section 4.260. Improvements - Procedures.

In addition to other requirements, improvements installed by the developer, either as a requirement of these regulations or at the developer's own option, shall conform to the requirements of this Code and improvement standards and specifications of the City. The improvements shall be installed in accordance with the City's Public Works Standards.

58. Applicant has the option under PDF 27 of installing or paying the City to perform the work.

Section 4.262. Improvements - Requirements.

(.01) Streets. Streets within or partially within the development shall be graded for the entire right-of-way width, constructed and surfaced in accordance with the Transportation Systems Plan and City Public Works Standards. Existing streets which abut the development shall be graded, constructed, reconstructed, surfaced or repaired as determined by the City Engineer.

59. Design and construction requirements for all public transportation facilities shall be done in conformance with the 2014 Public Works Standards, Section 2, "Transportation Design and Construction Standards." Specific street design standards are found in Section 201.2.00 of the Public Works Standards; detail drawing RD-1015 shows the design standards for Residential Streets.

(.02) Curbs. Curbs shall be constructed in accordance with standards adopted by the City.

60. Curb and gutters are required elements of Residential Streets, per detail drawing RD-1015. Specific design standards for curbs are provided in Section 201.2.24 of the Public Works Standards.

(.03) Sidewalks. Sidewalks shall be constructed in accordance with standards adopted by the City.

61. Sidewalks are required elements of Residential Streets, per detail drawing RD-1015. Specific design standards for sidewalks are provided in Section 201.2.25 of the Public Works Standards.

(.04) Sanitary sewers. When the development is within two hundred (200) feet of an existing public sewer main, sanitary sewers shall be installed to serve each lot or parcel in accordance with standards adopted by the City. When the development is more than two hundred (200) feet from an existing public sewer main, the City Engineer may approve an alternate sewage disposal system.

62. An existing sanitary sewer main is located in Canyon Creek Road South. Applicant is required to install a sanitary sewer service line to the new parcel being created with the partition. Specific design standards for sanitary sewer lateral service lines is provided in Section 401.2.02.f., Section 401.2.02.g., and Section 401.2.02.i. of the Public Works Standards and in detail drawing S-2175.

(.05) Drainage. Storm drainage, including detention or retention systems, shall be provided as determined by the City Engineer.

63. Applicant is required to be in conformance with the 2014 Public Works Standards, Section 3, "Stormwater & Surface Water Design & Construction Standards" for all stormwater, flow control, and water quality facilities installed within the proposed development. Specific design requirements and options are located in numerous subsections of Section 3 and also found in several detail drawings.

(.06) Underground utility and service facilities. All new utilities shall be subject to the standards of Section 4.300 (Underground Utilities). The developer shall make all necessary arrangements with the serving utility to provide the underground services in conformance with the City's Public Works Standards.

64. Underground utility and service facilities are required elements of Residential Streets, per detail drawing RD-1015 and Section 201.2.31.a. of the Public Works Standards. However, with only 150 feet of street improvements, it is not economical to underground the existing overhead franchise utilities. Applicant has been allowed to install three conduits, terminating in vaults, for future use when the City moves forward with undergrounding these utilities. Applicant is also required to provide a 6-foot wide public utility easement per Section 201.2.31.b. of the Public Works Standards and per detail drawing RD-1015.

(.07) Streetlight standards. Streetlight standards shall be installed in accordance with regulations adopted by the City.

65. Streetlights are required elements of Residential Streets, per detail drawing RD-1015. Specific design standards for streetlights are provided in Section 201.9.00 of the Public Works Standards. With existing overhead utility lines, installation of a street light is not possible. Applicant has been required to provide the City with a cash deposit for cost to purchase and install a new streetlight equivalent to streetlights recently installed within nearby development.

(.10) Water. Water mains and fire hydrants shall be installed to serve each lot in accordance with City standards.

66. Water mains and fire hydrants were installed on Canyon Creek Road South in 2005 and no additional requirements were placed on the Applicant.

Exhibit A1

STAFF REPORT
WILSONVILLE PLANNING DIVISION
Land Partition - Downs
ADMINISTRATIVE REVIEW AND DECISION

DATE OF REPORT: **January 7, 2014**

APPLICATION NO.: **AR14-0077**

REQUEST: The Applicants, Gerald and Joanne Downs, together with their representative, Ronald Downs, are requesting administrative approval of a land partition of 28205 SW Canyon Creek Road South, located between SW Summerton Street and Boeckman Road on the west side of SW Canyon Creek Road South. The land partition would allow for the existing home to remain, as well as the creation of one additional parcel to the south. This request is being processed through the Class II Administrative Review process.

LOCATION: The subject property is located at 28205 SW Canyon Creek Road South, on the west side of SW Canyon Creek Road South. The subject site more specifically described in tax records as Tax Lot 2700 in Section 13BA, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

OWNER/APPLICANT: Gerald and Joanne Downs

APPLICANT'S REPRESENTATIVE: Ronald Downs

COMPREHENSIVE PLAN MAP DESIG.: Residential – 4 to 5 dwelling units an acre

ZONE MAP CLASSIFICATION: Planned Development Residential (PDR-3)

Applicable Review Criteria:
City of Wilsonville Planning and Land Development Ordinance: Sections 4.008 through 4.015; 4.030(.01)(B)(5); 4.034(.05); 4.035; 4.035(.03); 4.113; 4.118; 4.124.3; 4.167; 4.177; 4.202; 4.210; 4.236; 4.237; 4.262; and 4.300-4.320

ACTION TAKEN: **Approval** of the application, together **with conditions of approval**, as found beginning on page 10 of this report.

STAFF REVIEWERS: Jennifer Scola, Assistant Planner; Blaise Edmonds, Manager of Current Planning; and, Steve Adams, Development Engineering Manager

EXHIBITS:

A1. Staff Report (this document)

B. Applicant's Submittal Notebook, as follows:
B1. Applicant's Narrative, dated 10/21/2014
B2. Completed City of Wilsonville Application Form
B3. Public Record Report for New Subdivision, dated 09/04/2014
B5. Preliminary Partition Plat Plan
B6. Vicinity Map
B7. Tax Lot Information
B8. Certification of Assessment and Liens
B9. Description of No-Construction Easement

C1. Tax Map
C2. Case File 03DB43, Findings E19, E30, and Condition of Approval DRB D3
C3. Case File 03DB43 of Exhibit 44

FINDINGS OF FACT:

1. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	PDR-3	Single-family residential
East:	RA-H	SW Canyon Creek Rd. South, Single-family residential
South:	PDR-3	Single-family residential
West:	PDR-1	Single-family residential

2. The Comprehensive Plan does not place this site in an Area of Special Concern.

3. The subject site contains an existing single-family home.

5. The Applicant has complied with Sections 4.210 and 4.233 pertaining to review procedures and submittal requirements for review of a tentative partition plat.

SUMMARY OF PROPOSAL:

The project summary submitted by the Applicant is found in the Applicant's narrative (Exhibit B1), and on accompanying drawing (Exhibit B5). Except where a discrepancy is determined to exist, and may be discussed in this report, the Applicant's will not be duplicated here.

CONCLUSIONARY FINDINGS:

Sections 4.008-4.009 Application Procedures and Applicant's Rights

1. The Applicant's submitted documents meet these code criteria.

Section 4.014 Burden of Proof

2. Subsection 4.014 provides that the Applicant bears the burden of proving that the necessary findings of fact can be made for approval of any land use or development application. Staff finds that the Applicant has provided sufficient information proving the necessary findings of fact.

Subsection 4.030(.01)(B)(5) Class II Administrative Review - Land Partitions

3. This subsection directs land partitions, other than expedited land partitions, to be processed according to the Class II Administrative Review procedures pursuant to Section 4.210. In addition, it directs approval of land partitions to be based on the following criteria:

a. The applicant has made a complete submittal of materials for the Director to review, as required by Section 4.210.

4. The Applicant has submitted the required documents, satisfying this subsection.

b. The proposed plan meets the requirements of the Code regarding minimum lot size and yard setbacks.

5. The tentative plat demonstrates that two (2) proposed parcels meet the requirements for minimum lot size. The northernmost lot of the two (2) proposed parcels does not meet minimum setback requirements; however condition of approval PDA6 requires that a Reduced Setback Agreement be recorded with the final plat.

c. The approval will not impede or adversely affect the orderly development of any adjoining property or access thereto.

6. Access to adjoining properties will not be affected, and the abutting sites have already been developed. This provision is met.

d. The public right-of-way bordering the lots will meet City standards.

7. An Engineering Condition of Approval, PFA4, will ensure any improvements in the right-of-way bordering the lots meet City standards.

e. Any required public dedications of land have been approved for acceptance by the City and will be recorded with the County prior to final plat approval.

8. No dedication of land to the public is required as part of this partition. This provision is met.

f. Adequate easements are proposed where an existing utility line crosses or encroaches upon any other parcel to be created by the partition.

9. No existing utility lines cross or encroach upon any of the proposed parcels as discussed in this subsection. This provision does not apply.

g. All public utilities and facilities are available or can be provided prior to the issuance of any development permit for any lot or parcel.

10. Engineering PFA3 ensures that prior to any development permit is issued, all public utility and facility plans will be submitted and reviewed. This provision is satisfied.

h. Roads extended or created as a result of the land partition will meet City standards.

11. No roads will be extended or created as result of the proposed partition. This provision does not apply.

Subsection 4.034(.05) Application Requirements

12. The Applicant has submitted all of the materials required by this subsection.

Subsection 4.035(.03) Procedure for Processing Class II - Administrative Review.

13. The Applicant's proposal will, together with the attached conditions of approval, result in conformance with applicable provisions of the City's Planning and Land Development Ordinance. Staff has followed the provisions of this code section. Staff notes that this approval is contingent upon final plat approval by the City and recordation of the final approved partition plat with the Clackamas County Clerk's Office.

Section 4.113 Standards for Residential Development in All Zones

14. Provisions of this section regarding landscaping are not applicable to partitions. The area of the three proposed parcels will allow all other applicable provisions of this section, including setbacks, to be met.

Sections 4.124 Standards Applying to All Planned Development Residential Zones

Subsection 4.124 (.01)-(.04) Uses allowed in Planned Development Residential Zones

15. These subsections lists uses associated with the Planned Development Residential Zones. The parcels will be sufficient for a number of uses allowed in the Planned Development Residential Zones.

Subsection 4.124 (.06) Block and Access Standards

16. No new blocks or streets are involved with the proposal.

Section 4.124.3 Planned Development Residential-3 Zone

Subsection 4.124.3 (.01) Average Lot Size

17. The average lot size for a lot in the PDR-3 Zone is 7,000 square feet, of which the proposed parcels exceed 7,000 square feet.

Subsection 4.124.3 (.02) Minimum Lot Size

18. The minimum lot size for PDR-3 Zone is 5,000 square feet. At 8,100 square feet, and 12,150 square feet, the two (2) proposed parcels meet this minimum requirement. This provision is satisfied.

Subsection 4.124.3 (.03) Minimum density at build-out

19. The minimum density at build-out for the PDR-3 Zone is 8,000 square feet. Both proposed parcels would meet this minimum. This provision is satisfied.

Subsection 4.124.3 (.04) Other Standards

20. All other applicable standards will or can be met by the proposed parcels. This provision is satisfied.

Section 4.140 Planned Development Regulations

21. The subject parcel is part of a previously approved Planned Development, subject to this Section. All requirements of this section were found to be satisfied by the development (see case file 03DB43). As shown in Exhibit 44 of Case File 03DB43 (Exhibit C3), the partition of the subject property and construction of two (2) additional homes was anticipated as a future phase of the planned development.

Section 4.155 Parking, Loading and Bicycle Parking

22. This section requires that each dwelling provide a minimum of one parking space. The proposed parcel Number Two (2) will enable siting of a future dwelling that will be required to provide one off-street parking space. This criterion is satisfied.

Section 4.167 General Regulations – Access, Ingress and Egress

23. These provisions require that safe access be provided to each of the proposed uses. The proposed parcel Number Two (2) will have direct access to Canyon Creek Road South, and the parcel with the existing structure has a driveway, also taking access from Canyon Creek Road South. This criteria is satisfied.

Section 4.176 Landscaping, Screening and Buffering

24. Because the proposal is for a partition, rather than a subdivision, there are no landscape requirements applicable to the request. While Subsection 4.176(.06)(d) provides for the installation of street trees along the frontage of the proposed parcels, such requirement is appropriately limited to subdivisions, not partitions. This section is not applicable.

Subsection 4.202 (.04) B. Parcel Partitions Not Allowed that Make Remaining Parcels Less than Allowed in Zone.

25. This subsection does not allow parcel partitions to create parcels less than that allowed in the zone. The minimum parcel size for the Planned Development Residential Zone (PDR-3) is 5,000 square feet. Proposed Parcel 1 will be 12,150 square feet, proposed Parcel 2 will be 8,100 square feet, with both two (2) parcels exceeding the required minimum. This criterion is met. [See also findings for Subsection 4.124.3 (.02), above.]

Section 4.210 Land Divisions - Application Procedure.

Subsection 4.210 (.01) A. Pre-Application Meeting

26. This subsection requires a pre-application meeting as part of the process. While no formal pre-application meeting was held, the applicant did contact staff to understand required submittal materials and the review process. This provision is satisfied.

Subsection 4.210 (.01) B. Tentative Plat Submission

27. This subsection sets forth the submission requirements for tentative plats. The Applicant submitted the required documents, meeting the requirements of this subsection. [See also finding for Subsection 4.030(.01)(B)(5)(a), above.]

Section 4.236 General Requirements – Streets

Subsection 4.236 (.01) Conformity to the Master Plan or Map

28. This subsection requires land partitions to be in harmony with adopted Transportation Master Plans, Bicycle and Pedestrian Master Plans, Park and Recreation Master Plans, and the Master Street Plan. The proposed land partition does not create any new infrastructure associated with these plans, nor is any required. There is no evidence to suggest that the proposed partition would affect the harmony of existing infrastructure with the above plans. This criterion is met.

Subsection 4.236 (.02) A. Relation to Adjoining Street System

29. This subsection requires land partitions to provide for the continuation of the principal streets existing in the adjoining area and proposed streets to be the width required elsewhere in the Wilsonville City Code. No new streets are planned or proposed with this partition. There are no adjoining streets that would continue through the subject property. This criterion does not apply.

Subsection 4.236 (.02) B. Requirement to Submit Prospective Future Street System

30. This subsection requires the submission of prospective future street systems when the land partition does not cover the entire tract. The proposed land partition covers the Applicant's entire tract and no streets are proposed. This criterion does not apply.

Subsection 4.236 (.02) C. Arrangement of Parcels to Allow Future Subdivision

31. This subsection requires the arrangement of streets and parcels to allow for future land partition if allowed by the Comprehensive Plan. The parcels are arranged in a manner to allow the partition, if found compliant with the Comprehensive Plan. This provision is satisfied.

Subsection 4.236 (.03) Conformity with Section 4.177 and Block Standards of Zone.

32. This subsection requires all streets to conform to Section 4.177 of the Wilsonville City Code and block standards of the zone. No new streets or will result from this application. This provision does not apply.

Subsection 4.236 (.04) Creation of Easements

33. This subsection allows the Planning Director to approve easements as a reasonable method to allow vehicular access and adequate utilities to the lots in this two-parcel land partition. The applicant is required to provide a minimum 6-foot Public Utility Easement on lot frontages to all public right-of-ways See Condition **Error! Reference source not found.**. This provision is satisfied.

Subsection 4.236 (.08) Existing Streets

34. No additional right-of-way is being required as part of the proposed partition. Therefore, the standards in this subsection are not affected.

Section 4.237 General Requirements – Other.

Subsection 4.237 (.01) Block Standards

35. This subsection provides standards for new blocks created by land partitions. No block creation is involved in the proposed land partition. These criteria do not apply.

Subsection 4.237 (.02) Easements

36. This subsection requires easements for existing and needed utility lines. As indicated in Finding 33, above, a six-foot-wide public utility easement will be required along the frontage of the two parcels. Condition of Approval **Error! Reference source not found.** requires a six-foot-wide public utility easement along the Canyon Creek Road South frontage for potential future franchise utilities.

Subsection 4.237 (.03) Pedestrian and Bicycle Pathway

37. This subsection requires an improved public path for blocks that exceed the length standard for the zone they are located in. No new blocks are involved in this partition. Compliance with this subsection is not altered by the proposed partition.

Subsection 4.237 (.04) Street Tree Planting

38. This subsection presents requirements for street trees, as applicable. No street trees are proposed by the Applicant. Because the application is for a partition, rather than a subdivision, street trees are not required. This provision is satisfied.

Subsection 4.237 (.05) Parcel Size, Shape, Width, and Orientation.

39. This subsection requires the parcels resulting from the land partition have the size, width, shape and orientation appropriate for the location of the land partition and for the development and use that are contemplated as well as for the zone in which they are located. Proposed parcel sizes, widths, shapes and orientation are appropriate for contemplated future development and are in conformance with the PDR-3 requirements. The proposed partition complies with the standards of this subsection.

Subsection 4.237 (.06) Access

40. This subsection requires parcels resulting from the land partition have the minimum frontage of public streets. The parcels resulting from proposed land partition meet the street frontage requirements for the zone. This provision is met.

Subsection 4.237 (.07) Through Lots

41. The current parcel is not a through lot, and the proposed parcel also will not be a through lot. The applicable provisions of this subsection are satisfied.

Subsection 4.237 (.08) Parcel Side Lines

42. This subsection requires side parcel lines be at right angles to the street the parcels face as far as practical. All parcel lines are at right angles. This provision is met.

Subsection 4.237 (.10) Building Line

43. This subsection gives the Planning Director authority to create building setback lines to be recorded on the plat to allow for future repartition or other development or to support other findings. In a separate Class I Administrative Application, the Applicant is seeking a setback agreement to allow reduced setbacks between the existing house and the future house at a side property line.

Subsection 4.237 (.11) Build-to Line

44. This subsection gives the Planning Director authority to create build-to lines for the development. The Applicant is not requesting nor is the Planning Director requiring the creation of build-to-lines.

Section 4.250 Legal Lots of Record

45. The existing parcel is a legal lot of record. Upon satisfaction of conditions of approval and recordation of a final plat, the one (1) resulting parcel will also be a legal lot of record, meeting this provision.

Section 4.260 Improvements-Procedure

46. This section requires, in addition to other requirements, improvements installed by the developer to conform to the requirements of Wilsonville's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards. Condition of Approval PDA 4 will ensure the requirements of this section are met.

Section 4.262 Improvements-Requirements

47. This section presents improvement requirements for individual improvements and utilities including curbs, sidewalks, sewer, and water. Engineering Conditions will ensure the requirements of this section are met.

Section 4.264 Improvements - Assurance

48. This section requires assurance for improvements. An Engineering Condition of Approval **Error! Reference source not found.** will ensure the requirements of this section are met.

Section 4.320 Underground Utility Requirements

49. This section requires all utilities to be underground. Condition of Approval PDA 5 will ensure any utilities are installed underground.

ACTION TAKEN AND CONDITIONS OF APPROVAL FOR REQUEST AR14-0065:

Based on the analysis above, and conclusionary findings 1 through 49 the request is hereby **approved,** together with the following conditions of approval:

This decision approves **only** the tentative partition described in the request above, as modified by the conditions below, and is on file with the City of Wilsonville's Planning Division as Case File AR14-0077.

Planning Conditions:	
PDA 1.	Approval of the partition is effective for two (2) years from the date of the notice of decision. Time extensions may be granted per Section 4.023 of the City's Development Code. The Applicant shall submit final plat application within two (2) years of date of the notice of decision.
PDA 2.	The final plat for the land partition shall be in substantial compliance with the approved tentative plat and narrative submitted to the Planning Division as part of this application.
PDA 3.	The Applicant/Owner shall provide the City's Engineering and Planning Division with a copy of the final plat of the land partition recorded with the Clackamas County Surveyor's Office.
PDA 4.	Any improvements installed shall conform to the City's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards.

PDA 5.	Any utilities installed as part of development on the property shall be installed underground.
PDA 6.	A Reduced Setback Agreement shall be recorded concurrently with the final plat.
PDA 7.	The final plat shall not display the ten-foot No Construction Easement, nor shall the proposed building outline for the southern parcel of the partition.

The following Conditions of Approval are provided by the Engineering, Natural Resources, or Building Divisions of the City's Community Development Department or Tualatin Valley Fire and Rescue, all of which have authority over development approval. A number of these Conditions of Approval are not related to land use regulations under the authority of the Development Review Board or Planning Director. Only those Conditions of Approval related to criteria in Chapter 4 of Wilsonville Code and the Comprehensive Plan, including but not limited to those related to traffic level of service, site vision clearance, recording of plats, and concurrency, are subject to the Land Use review and appeal process defined in Wilsonville Code and Oregon Revised Statutes and Administrative Rules. Other Conditions of Approval are based on City Code chapters other than Chapter 4, state law, federal law, or other agency rules and regulations. Questions or requests about the applicability, appeal, exemption or non-compliance related to these other Conditions of Approval should be directed to the City Department, Division, or non-City agency with authority over the relevant portion of the development approval.

ACTION TAKEN AND CONDITIONS OF APPROVAL FOR REQUEST AR14-0065:

Based on the analysis above, and conclusionary findings 1 through 49 the request is hereby **approved,** together with the following conditions of approval:

This decision approves **only** the proposal described in the request above, as modified by the conditions below, and is on file with the City of Wilsonville's Planning Division as Case File AR14-0065:

Planning Conditions:

PDA 1.	Approval of the partition is effective for two (2) years from the date of the notice of decision. Time extensions may be granted per Section 4.023 of the City's Development Code. The Applicant shall submit final plat application within two (2) years of date of the notice of decision.
PDA 2.	The final plat for the land partition shall be in substantial compliance with the approved tentative plat and narrative submitted to the Planning Division as part of this application.

PDA 3.	The Applicant/Owner shall provide the City's Engineering and Planning Division with a copy of the final plat of the land partition recorded with the Clackamas County Surveyor's Office.
PDA 4.	Any improvements installed shall conform to the City's Development Code, improvement standards, specifications of the City, and the City's Public Works Standards.
PDA 5.	Any utilities installed as part of development on the property shall be installed underground.

Engineering Division Conditions:

New development on the three lots shall be in compliance with the following Engineering conditions of approval.

Standard Comments:

PFA 1. All construction or improvements to public works facilities shall be in conformance to the City of Wilsonville Public Works Standards - 2014.

PFA 2. Applicant shall submit insurance requirements to the City of Wilsonville in the following amounts:

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$2,000,000
Each Occurrence	$2,000,000
Automobile Insurance	$1,000,000
Fire Damage (any one fire)	$50,000
Medical Expense (any one person)	$10,000

PFA 3. No construction of, or connection to, any existing or proposed public utility/improvements will be permitted until all plans are approved by Staff, all fees have been paid, all necessary permits, right-of-way and easements have been obtained and Staff is notified a minimum of 24 hours in advance.

PFA 4. All public utility/improvement plans submitted for review shall be based upon a 22"x 34" format and shall be prepared in accordance with the City of Wilsonville Public Work's Standards.

PFA 5. Plans submitted for review shall meet the following general criteria:

a. Utility improvements that shall be maintained by the public and are not contained within a public right-of-way shall be provided a maintenance access acceptable to the City. The public utility improvements shall be centered in a minimum 15-ft. wide public easement for single utilities and a minimum 20-ft wide public easement for two parallel utilities and shall be conveyed to the City on its dedication forms.
b. Design of any public utility improvements shall be approved at the time of the

issuance of a Public Works Permit. Private utility improvements are subject to review and approval by the City Building Department.

c. In the plan set for the PW Permit, existing utilities and features, and proposed new private utilities shall be shown in a lighter, grey print. Proposed public improvements shall be shown in bolder, black print.
d. All elevations on design plans and record drawings shall be based on NAVD 88 Datum.
e. All proposed on and off-site public/private utility improvements shall comply with the State of Oregon and the City of Wilsonville requirements and any other applicable codes.
f. Design plans shall identify locations for street lighting, gas service, power lines, telephone poles, cable television, mailboxes and any other public or private utility within the general construction area.
g. As per City of Wilsonville Ordinance No. 615, all new gas, telephone, cable, fiber-optic and electric improvements etc. shall be installed underground. Existing overhead utilities shall be undergrounded wherever reasonably possible.
h. Any final site landscaping and signing shall not impede any proposed or existing driveway or interior maneuvering sight distance.
i. Erosion Control Plan that conforms to City of Wilsonville Ordinance No. 482.
j. Existing/proposed right-of-way, easements and adjacent driveways shall be identified.
k. All engineering plans shall be stamped by a Professional Engineer registered in the State of Oregon.

PFA 6. Submit plans in the following general format and order for all public works construction to be maintained by the City:

a. Cover sheet
b. City of Wilsonville construction note sheet
c. General construction note sheet
d. Existing conditions plan.
e. Erosion control and tree protection plan.
f. Site plan. Include property line boundaries, water quality pond boundaries, sidewalk improvements, right-of-way (existing/proposed), easements (existing/proposed), and sidewalk and road connections to adjoining properties.
g. Grading plan, with 1-foot contours.
h. Composite utility plan; identify storm, sanitary, and water lines; identify storm and sanitary manholes.
i. Detailed plans; show plan view and either profile view or provide i.e.'s at all utility crossings; include laterals in profile view or provide table with i.e.'s at crossings; vertical scale 1"= 5', horizontal scale 1"= 20' or 1"= 30'.
j. Street plans.
k. Storm sewer/drainage plans; number all lines, manholes, catch basins, and cleanouts for easier reference
l. Water and sanitary sewer plans; plan; number all lines, manholes, and cleanouts for easier reference.
m. Detailed plan for storm water detention facility (both plan and profile views), including water quality orifice diameter and manhole rim elevations. Provide detail of

inlet structure and energy dissipation device. Provide details of drain inlets, structures, and piping for outfall structure. Note that although storm water detention facilities are typically privately maintained they will be inspected by engineering, and the plans must be part of the Public Works Permit set.

n. Detailed plan for water quality facility (both plan and profile views). Note that although storm water quality facilities are typically privately maintained they will be inspected by Natural Resources, and the plans must be part of the Public Works Permit set.
o. Composite franchise utility plan.
p. City of Wilsonville detail drawings.
q. Illumination plan.
r. Striping and signage plan.
s. Landscape plan.

PFA 7.	Design engineer shall coordinate with the City in numbering the sanitary and stormwater sewer systems to reflect the City's numbering system. Video testing and sanitary manhole testing will refer to City's numbering system.
PFA 8.	The applicant shall install, operate and maintain adequate erosion control measures in conformance with the standards adopted by the City of Wilsonville Ordinance No. 482 during the construction of any public/private utility and building improvements until such time as approved permanent vegetative materials have been installed.
PFA 9.	Applicant shall work with City's Natural Resources office before disturbing any soil on the respective site. If 5 or more acres of the site will be disturbed applicant shall obtain a 1200-C permit from the Oregon Department of Environmental Quality. If 1 to less than 5 acres of the site will be disturbed a 1200-CN permit from the City of Wilsonville is required.
PFA 10.	The applicant shall be in conformance with all stormwater and flow control requirements for the proposed development per the Public Works Standards.
PFA 11.	A storm water analysis prepared by a Professional Engineer registered in the State of Oregon shall be submitted for review and approval by the City.
PFA 12.	The applicant shall be in conformance with all water quality requirements for the proposed development per the Public Works Standards. If a mechanical water quality system is used, prior to City acceptance of the project the applicant shall provide a letter from the system manufacturer stating that the system was installed per specifications and is functioning as designed.
PFA 13.	Storm water quality facilities shall have approved landscape planted and/or some other erosion control method installed and approved by the City of Wilsonville prior to streets and/or alleys being paved.
PFA 14.	The applicant shall contact the Oregon Water Resources Department and inform them of any existing wells located on the subject site. Any existing well shall be limited to irrigation purposes only. Proper separation, in conformance with applicable State

	standards, shall be maintained between irrigation systems, public water systems, and public sanitary systems. Should the project abandon any existing wells, they shall be properly abandoned in conformance with State standards.
PFA 15.	All survey monuments on the subject site, or that may be subject to disturbance within the construction area, or the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated or destroyed as a result of any construction, the project shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to Staff.
PFA 16.	Sidewalks, crosswalks and pedestrian linkages in the public right-of-way shall be in compliance with the requirements of the U.S. Access Board.
PFA 17.	No surcharging of sanitary or storm water manholes is allowed.
PFA 18.	The project shall connect to an existing manhole or install a manhole at each connection point to the public storm system and sanitary sewer system.
PFA 19.	The applicant shall provide adequate sight distance at all project driveways by driveway placement or vegetation control. Specific designs to be submitted and approved by the City Engineer. Coordinate and align proposed driveways with driveways on the opposite side of the proposed project site.
PFA 20.	Access requirements, including sight distance, shall conform to the City's Transportation Systems Plan (TSP) or as approved by the City Engineer. Landscaping plantings shall be low enough to provide adequate sight distance at all street intersections and alley/street intersections.
PFA 21.	The applicant shall provide the City with a Stormwater Maintenance and Access Easement (on City approved forms) for City inspection of those portions of the storm system to be privately maintained. Stormwater or rainwater LID facilities may be located within the public right-of-way upon approval of the City Engineer. Applicant shall maintain all LID storm water components and private conventional storm water facilities; maintenance shall transfer to the respective homeowners association when it is formed.
PFA 22.	Applicant shall provide a minimum 6-foot Public Utility Easement on lot frontages to all public right-of-ways.
PFA 23.	For any new public easements created with the project the Applicant shall be required to produce the specific survey exhibits establishing the easement and shall provide the City with the appropriate Easement document (on City approved forms).

PFA 24. Mylar Record Drawings:

At the completion of the installation of any required public improvements, and before a 'punch list' inspection is scheduled, the Engineer shall perform a record survey. Said survey shall be the basis for the preparation of 'record drawings' which will serve as the physical record of those changes made to the plans and/or specifications, originally approved by Staff, that occurred during construction. Using the record survey as a guide, the appropriate changes will be made to the construction plans and/or specifications and a complete revised 'set' shall be submitted. The 'set' shall consist of drawings on 3 mil. Mylar and an electronic copy in AutoCAD, current version, and a digitally signed PDF.

PFA 25. Subdivision or Partition Plats:

Paper copies of all proposed subdivision/partition plats shall be provided to the City for review. Once the subdivision/partition plat is approved, applicant shall have the documents recorded at the appropriate County office. Once recording is completed by the County, the applicant shall be required to provide the City with a 3 mil Mylar copy of the recorded subdivision/partition plat.

PFA 26. Subdivision or Partition Plats:

All newly created easements shown on a subdivision or partition plat shall also be accompanied by the City's appropriate Easement document (on City approved forms) with accompanying survey exhibits that shall be recorded immediately after the subdivision or partition plat.

Specific Comments:

PFA 27. The City has estimated the costs to reconstruct Canyon Creek Road South to meet the requirements of the Residential Street at $1,135,099.88. The estimated costs of street improvements shall be divided proportionately between all owners of record based on property street frontage along Canyon Creek Road South; this breaks down to $232.82 per foot of property frontage. Applicant shall be responsible to submit funds to the City equal to 130% of their proportionate share; City will undertake street reconstruction at some time in the future. For the 150.01 feet of property frontage, this comes to $45,402.93.

PFA 28. Each lot shall be allowed one driveway access onto Canyon Creek Road South.

PFA 28. Applicant shall obtain water and sanitary sewer service from the existing systems in Canyon Creek Road South.

PFA 29. If stormwater detention and/or water quality facilities are designed for joint usage between the tax lots, maintenance plans for the system(s) shall be required and approved prior to acceptance. The applicant shall be required to establish a homeowners association with responsibility to maintain the private stormwater detention and/or water quality

Natural Resources Conditions:

The following conditions of approval are based on the material submitted by the applicant. Any subsequent revisions to the submitted plans may require conditions of approval to be modified by staff.

Stormwater Management	
NRA 1.	Pursuant to the Public Works Standards, stormwater facilities are required when proposed development establishes or increases the impervious surface area by more than 5,000 square feet. Development includes new development, redevelopment, and/or partial redevelopment.
NRA 2.	Submit a drainage report and drainage plans. The report and plans shall demonstrate the proposed stormwater facilities satisfy the requirements of the Public Works Standards.
NRA 3.	Provide profiles, plan views and specifications for the proposed stormwater facilities consistent with the requirements of the Public Works Standards.
NRA 4.	Pursuant to the Public Works Standards, the applicant shall submit a maintenance plan (including the City's stormwater maintenance and access easement) for the proposed stormwater facilities prior to approval for occupancy of the associated development.
NRA 5.	Pursuant to the Public Works Standards, access shall be provided to all areas of the proposed stormwater facilities. At a minimum, at least one access shall be provided for maintenance and inspection.
Other	
NRA 6.	Pursuant to the City of Wilsonville's Ordinance No. 482, the applicant shall submit an erosion and sedimentation control plan. The following techniques and methods shall be incorporated, where necessary: a. Gravel construction entrance; b. Stockpiles and plastic sheeting; c. Sediment fence; d. Inlet protection (Silt sacks are recommended); e. Dust control; f. Temporary/permanent seeding or wet weather measures (e.g. mulch); g. Limits of construction; and h. Other appropriate erosion and sedimentation control methods.
NRA 7.	The applicant shall comply with all applicable state and federal requirements for the proposed construction activities (e.g., DEQ NPDES #1200–CN permit).

Approved:

Blaise Edmonds 1/7/15

Blaise Edmonds, Manager of Current Planning — Date
for Chris Neamtzu, Planning Director

Section 4.022(.01) of the Wilsonville Code provides that this decision may be appealed by the Applicant and party entitled to notice or adversely affected or aggrieved or called up for review by the Development Review Board. The notice of appeal shall indicate the nature of the action or interpretation that is being appealed or called up. The appeal shall regard a determination of the appropriateness of the action or interpretation of the Code requirements involved in the decision.

Note: The decision of the Planning Director may be appealed by an affected party or by three (3) Board members in accordance with Section 4.017. Any appeal must be filed with the City Recorder within fourteen (14) calendar days of the notice of the decision. The notice of appeal shall be in writing and indicate the specific issue(s) being appealed and the reason(s) therefore. Should you require further information, please contact Jennifer Scola, Assistant Planner, with the City Planning Division at 503-682-4960. Last day to appeal: ***4:00 P.M. on the 21th day of January 7, 2015.***

For more information, contact the Wilsonville Planning Division at 503-682-4960.

Note: This decision is not effective unless this form is signed and returned to the planning office as required by Section 4.l40(.09)(L) of the Wilsonville Code.

Acknowledged:

The Administrative Decision and Conditions of Approval for ***AR14-0077*** *have been received and accepted by:*

_____
Printed Name

_____
Authorized Signature

_____
Title Date

Please return the signed form to the following:
City of Wilsonville Planning Division
Attention: Jennifer Scola, Assistant Planner
29799 S. W. Town Center Loop East
Wilsonville, OR 97070

RONALD DOWNS P.C.
Trial Attorney

P.O. Box 12613
Salem, Oregon 97309-0613

Telephone (503) 375-8898
Fax (503) 371-4781
E-Mail rdowns@sdao.com

October 21, 2014

City of Wilsonville Planning Department
Attn: Blaze Edmonds
Wilsonville, Oregon 97070

Re: Request for Land Partition and Reduced Setback Agreement

Dear Blaze:

My parents own a lot at 28205 SW Canyon Creek Road. This lot includes an adjacent pasture which was identified as a shadow lot during the Rennasaince development. At this time, my parents wish to deed me the adjacent pasture lot for the purpose of building a home. Consistent with this wish, I submit the following request for a land partition (4.030(B)5 and 4.210B), and request for waiver of setback agreement (4.113(.12)B).

Tentative Partition Plat Requirements pursuant to 4.210B

1. Development **application** and preliminary **title report** are attached as **Exhibits 1 and 2.**

2. The following fees are included:
   a. $560 for Class II Administrative Review of Tentative Partition Plat;
   b. $160.00 for Class I Administrative Review of Reduced Setback Agreement.

3. Three copies of **Tentative Plat** are attached as **Exhibit 3.**

4. Property is not included within any subdivision. Property is however, immediately adjacent to a Renaissance Development.

5. Contact Information:
   a. Property Owner:
      Gerald and Joanne Downs
      28205 SW Canyon Creek Rd.
      Wilsonville, Oregon 97070
      (503) 682-0956.

b. Applicant:
Ronald Downs
2474 Crowther Drive
Eugene Oregon 97404
(503) 780-0847.

c. Surveyor:
James Brown, Centerline Concepts, Land Surveying
729 Mollala Ave., Suite 1&2
Oregon City Oregon 97045
(503) 650-0188.

6. See attached **Exhibit 3.**

7. Northwest one-quarter of Section 13, Township 3 South, Range 1 West of the Willamette Meridian, City of Wilsonville, Clackamas County.

8. Access Road: Canyon Creek South.

9. **Vicinity Map** is attached as **Exhibit 4.** Nearest street is Boeckman Road and nearest highway is Interstate 5.

10. One lot measuring 135' 1" x 60'4".

11. 8,100 Square Feet.

12. Single family residential home.

13. Code requires the construction of a sidewalk along the west side of Canyon Creek, bordering of the property.

14. The house and landscape design has not yet been completed.

15. To the best of my knowledge, all public utilities are accessible along Canyon Creek Road..

16. 5' non-construction easement along the north side of the property is proposed. This easement has been agreed to between the property owner and applicant. **Exhibit 5.**

17. No deed restrictions are anticipated.

18. N/A.

19. Not a planned development and no by-laws are anticipated.

20. Property does not border any stream or river. No flooding issues anticipated.

21. No open space designated.

22. Property owners within 250 to be notified by the city.

23. **Liens and assessments form** is attached as **Exhibit 6.**

24. Property owner is not aware of any wet lands or overlay zones impacted by the property.

25. Property owner believes all utilities are in place along Canyon Creek Road.

26. N/A.

Reduced Set Back Agreement (4.113(.12)B(1-9))

B(4): Application for Class I Administrative Review is attached.

B(5): **Metes and Bounds legal description** and map of non-construction easement is attached as **Exhibit 7.**

Attached as **Exhibit 5** is a letter from Gerald and Joanne Downs authorizing the establishment of a reduced setback of 5' between his house and the north property line.

I hope this provides the City with all of the information necessary to consider this request. Please feel free to give me a call if you have any questions or concerns.

Very truly yours,

Ronald W. Downs, for Gerald Downs
Applicant

10-22-2014
Date

Gerald Downs
Property Owner

Date

Joanne Downs
Property Owner

Date

CITY OF WILSONVILLE

29799 SW Town Center Loop East
Wilsonville, OR 97070
Phone: 503.682.4960
Fax: 503.682.7025
Web: www.ci.wilsonville.or.us

Pre-Application meeting date:

TO BE COMPLETED BY APPLICANT:
Please PRINT legibly

Planning Division
Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

Applicant:
Gerald Downs
Address: 28205 SW Canyon Creek Road, Wilsonville OR 97070
Phone: 503-682-0956
Fax:
E-mail: Joann & JERRY DOWNS (downsgd5@frontier.com)

Authorized Representative:
Ronald Downs
Address: 2474 Crowther Drive, Eugene OR 97404
Phone: 503-780-0847
Fax: 503-371-8667
E-mail: rdowns@sdao.com

Property Owner:
Gerald Downs
Address: 28205 SW Canyon Creek Rd., Wilsonville OR 97070
Phone: 503-682-0956
Fax:
E-mail: Joann & JERRY DOWNS (downsgd5@frontier.com)

Property Owner's Signature:

Printed Name: Gerald Downs Date:

Applicant's Signature *(if different from Property Owner)*

Printed Name: Ronald Downs Date:

Site Location and Description:
Project Address if Available: 28205 SW Canyon Creek Rd., Wilsonville OR 97070 Suite/Unit
Project Location: Wilsonville Oregon
Tax Map #(s): ~31W13BA02700 Tax Lot #(s): 2700 County: ☐ Washington ☑ Clackamas

Request: Class II Administrative Review for a Tentative Partition Plat and Class I Review for a Reduced Setback Agreement.

Project Type: **Class I** ☑ **Class II** ☑ **Class III** ☐

☑ Residential ☐ Commercial ☐ Industrial ☐ Other (describe below)

Application Type:

☐ Annexation	☐ Appeal	☐ Comp Plan Map Amend	☐ Conditional Use
☐ Final Plat	☐ Major Partition	☑ Minor Partition	☐ Parks Plan Review
☐ Plan Amendment	☐ Planned Development	☑ Preliminary Plat	☐ Request to Modify Conditions
☐ Request for Special Meeting	☐ Request for Time Extension	☐ Signs	☐ Site Design Review
☐ SROZ/SRIR Review	☐ Staff Interpretation	☐ Stage I Master Plan	☐ Stage II Final Plan
☐ Type C Tree Removal Plan	☐ Tree Removal Permit (B or C)	☐ Temporary Use	☐ Variance
☐ Villebois SAP	☐ Villebois PDP	☐ Villebois PDP	☑ Waiver
☐ Zone Map Amendment	☐ Other		

City of Wilsonville
EXHIBIT B2

First American

American Title Company of Oregon
121 SW Morrison St, FL 3
Portland, OR 97204
Phn - (503)222-3651 (800)929-3651
Fax - (877)242-3513

PUBLIC RECORD REPORT
FOR NEW SUBDIVISION OR LAND PARTITION

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

Hollman Company Properties
3011 SW Riverfront TERR
Wilsonville, OR 97070
Phone: (503)701-3265
Fax: (503)210-0228

Date Prepared : September 04, 2014
Effective Date : 8:00 A.M on August 27, 2014
Order No. : 7019-2313363
Reference :

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

REPORT

A. The Land referred to in this report is located in the County of Clackamas, State of Oregon, and is described as follows:

As fully set forth on Exhibit "A" attached hereto and by this reference made a part hereof.

B. As of the Effective Date, the tax account and map references pertinent to the Land are as follows:

As fully set forth on Exhibit "A" attached hereto and by this reference made a part hereof.

C. As of the Effective Date and according to the Public Records, we find title to the land apparently vested in:

As fully set forth on Exhibit "B" attached hereto and by this reference made a part hereof.

D. As of the Effective Date and according to the Public Records, the Land is subject to the following liens and encumbrances, which are not necessarily shown in the order of priority:

As fully set forth on Exhibit "C" attached hereto and by this reference made a part hereof.

City of Wilsonville
EXHIBIT B3

EXHIBIT "A"
(Land Description Map Tax and Account)

LOT 5, RENAISSANCE AT CANYON CREEK NORTH, IN THE CITY OF WILSONVILLE, COUNTY OF CLACKAMAS AND STATE OF OREGON.

Map No.: 31W13BA02700
Tax Account No.: 05012303

EXHIBIT "B"
(Vesting)

Gerald D. Downs and Cleo J. Downs, as tenants by the entirety

EXHIBIT "C"
(Liens and Encumbrances)

1. Taxes for the fiscal year 2014-2015 a lien due, but not yet payable

2. City liens, if any, of the City of Wilsonville.

3. Easement, including terms and provisions contained therein:
   Recording Information: September 21, 2005 as Fee No. 2005 092948
   In Favor of: Renaissance Development Corporation, an Oregon Corporation
   For: Storm Water

4. Restrictions shown on the recorded plat/partition of Renaissance at Canyon Creek North.

5. Easement as shown on the recorded plat/partition
   For: Public utilities

6. Covenants, conditions, restrictions and/or easements; but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, family status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes:
   Recording Information: October 05, 2005 as Fee No. 2005 098964

   Modification and/or amendment by instrument:
   Recording Information: December 22, 2005 as Fee No. 2005 127237

7. Regulations and Assessments of Renaissance at Canyon Creek Homeowner's Association, as set forth in Declaration recorded October 05, 2005 as Fee No. 2005 098964.

NOTE: Taxes for the year 2013-2014 PAID IN FULL

Tax Amount:	$4,212.18
Map No.:	31W13BA02700
Property ID:	05012303
Tax Code No.:	003-027

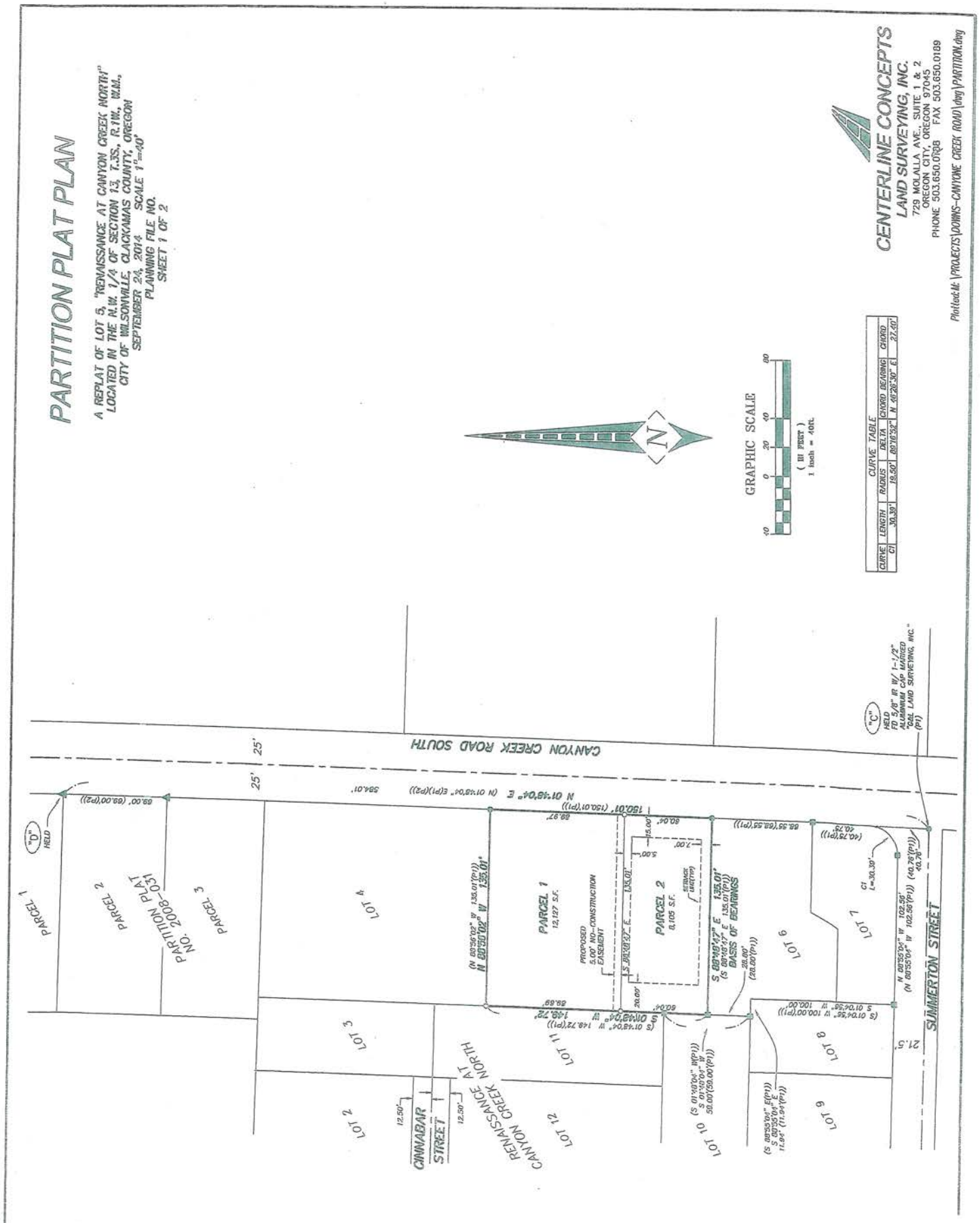
DEFINITIONS, CONDITIONS AND STIPULATIONS

1. **Definitions.** The following terms have the stated meaning when used in this report:
   (a) "Customer": The person or persons named or shown as the addressee of this report.
   (b) "Effective Date": The effective date stated in this report.
   (c) "Land": The land specifically described in this report and improvements affixed thereto which by law constitute real property.
   (d) "Public Records": Those records which by the laws of the state of Oregon impart constructive notice of matters relating to the Land.

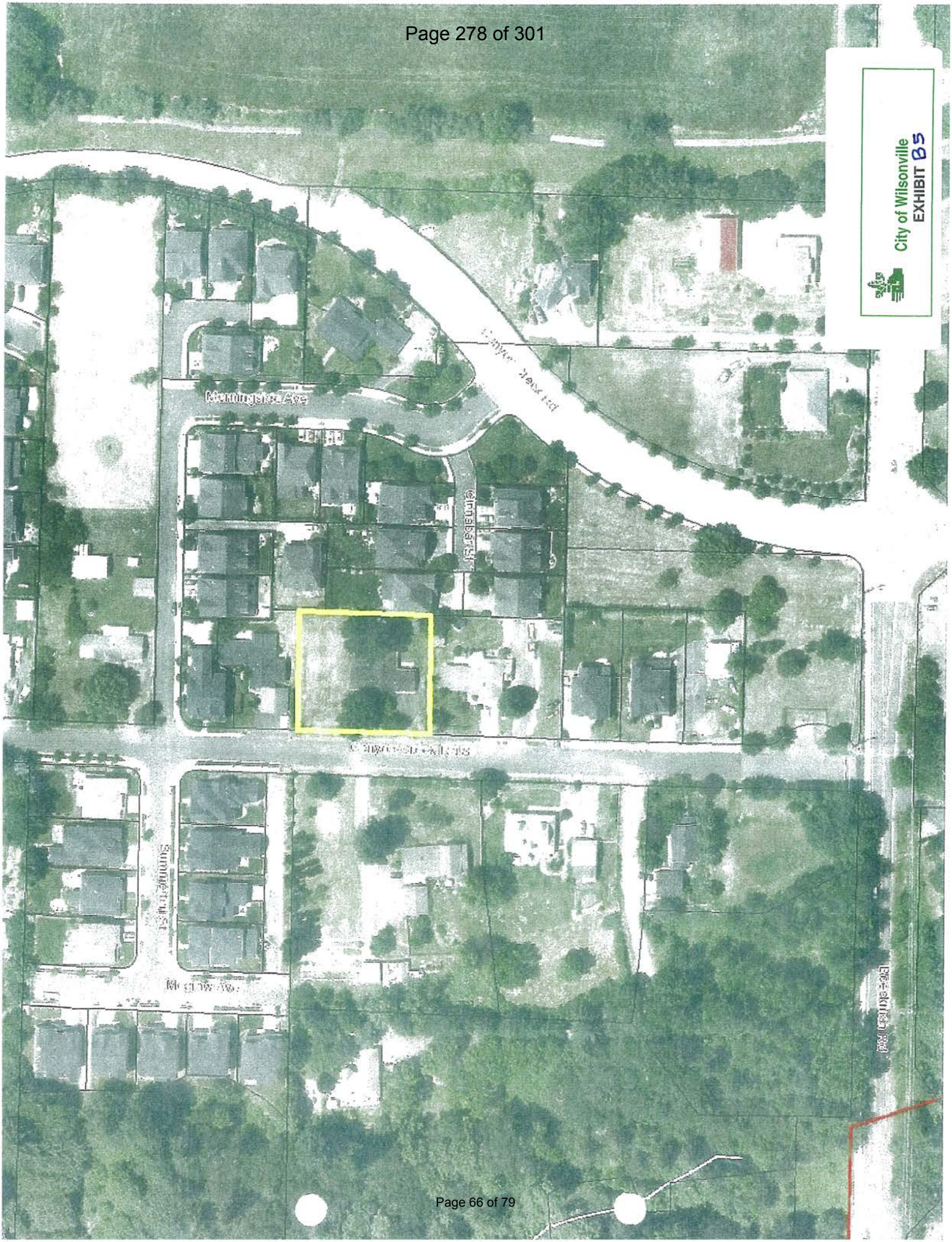
2. **Liability of the Company.**
   (a) This is not a commitment to issue title insurance and does not constitute a policy of title insurance.
   (b) The liability of the Company for errors or omissions in this public record report is limited to the amount of the charge paid by the Customer, provided, however, that the Company has no liability in the event of no actual loss to the Customer.
   (c) No costs (including, without limitation attorney fees and other expenses) of defense, or prosecution of any action, is afforded to the Customer.
   (d) In any event, the Company assumes no liability for loss or damage by reason of the following:
      (1) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records.
      (2) Any facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
      (3) Easements, liens or encumbrances, or claims thereof, which are not shown by the Public Records.
      (4) Discrepancies, encroachments, shortage in area, conflicts in boundary lines or any other facts which a survey would disclose.
      (5) (i) Unpatented mining claims; (ii) reservations or exceptions in patents or in Acts authorizing the issuance thereof, (iii) water rights or claims or title to water.
      (6) Any right, title, interest, estate or easement in land beyond the lines of the area specifically described or referred to in this report, or in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
      (7) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use or enjoyment on the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the Public Records at the effective date hereof.
      (8) Any governmental police power not excluded by 2(d)(7) above, except to the extent that notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the Public Records at the effective date hereof.
      (9) Defects, liens, encumbrances, adverse claims or other matters created, suffered, assumed, agreed to or actually known by the Customer.

3. **Report Entire Contract.** Any right or action or right of action that the Customer may have or may bring against the Company arising out of the subject matter of this report must be based on the provisions of this report. No provision or condition of this report can be waived or changed except by a writing signed by an authorized officer of the Company. By accepting this form report, the Customer acknowledges and agrees that the Customer has elected to utilize this form of public record report and accepts the limitation of liability of the Company as set forth herein.

4. **Charge.** The charge for this report does not include supplemental reports, updates or other additional services of the Company.

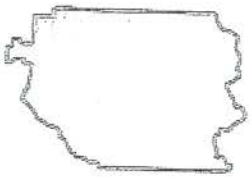


City of Wilsonville
EXHIBIT B4


City of Wilsonville
EXHIBIT B5
Cinnabar St
Summerfield St
Boeckman Rd

Map Tools

Photo View Off



Scale = 1 : 1200

Property Information

- Address Information
- Building Characteristics
- Jurisdiction Information
- Schooling Information
- Voting Information
- Service Information
- Hazard Information

Address Information

For owner information please contact Assessment & Taxation

28205 SW CANYON CREEK RD S, WILSONVILLE OR. 97070

Street View

Building Characteristics

return to map | new search

Sq Ft	1502	
Bedrooms	3	
Baths	1	
Year Built	1969	
Last Sale	10/10/2005	$275,000.00

Tax Information

return to map | new search

Map Number (TLNO)	31W13BA02700

City of Wilsonville
EXHIBIT B6

Parcel Number	05012303
View Tax Map	view tax map
Est. Market Building Value	111,980.00
Est. Market Land Value	145,514.00
Est. Market Total Value	257,494.00
Est. Current Year Assessed Value	227,370.00
Tax Code	003-027
Est. Acres	.46

Jurisdiction Information return to map | new search

City	Wilsonville
Urban Growth Boundary	METRO UGB
Zoning	Contact City

Schooling Information return to map | new search

Elementary School Attendance	Boeckman Creek Primary
Middle School Attendance	Inza R Wood Middle
Senior High School Attendance	Wilsonville High

Voting Information return to map | new search

State House District	26
State Senate District	13
Voting Precinct	202
Congressional District	5

Service Information return to map | new search

Cable Company	City
Community Planning Organization	City
Fire District	Tualatin Valley Fire & Rescue
Garbage Hauler	Allied Wasted (United)
Park District	Not in district
School District	West Linn/Wilsonville
Sewer District	Not in district

Water District	Not in district

Hazard Information

return to map | new search

Flood	Likely not in a flood zone
Relative Earthquake Hazard	You may be at a moderate risk
Relative Wild Fire Hazard	Your risk may be the lowest.
Soils Information	1B - ALOHA SILT LOAM, 3 TO 6 PERCENT SLOPES, 1A - ALOHA SILT LOAM, 0 TO 3 PERCENT SLOPES
Approximate Elevation	226.49

Survey & Plat Information

return to map | new search

Clackamas County's Surveyor Information System

Contact CMap | Privacy statement

City of WILSONVILLE In OREGON
29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax

CERTIFICATION OF ASSESSMENTS AND LIENS

"It is the policy of the City of Wilsonville that no permits of any kind shall either be issued or application processed for any applicant who owes or for any property for which there is any payment which is past due owing to the City of Wilsonville until such time as said sums owed are paid." (Resolution #796)

Project/Property Address: Downs Partition Plat & Waiver of Set back
28205 SW Canyon Creek Rd., Wilsonville, Oregon 97070

Aka Tax Lot(s) 2700 on Map(s) 31W13BA02700

Applicant: Ronald W. Downs

Address: 2474 Crowther Drive,
Eugene, Oregon 97404

Property Owner: Gerald and Joanne Downs,

Address: 28205 SW Canyon Creek Road
Wilsonville, Oregon 97070

In reference to the above, the City of Wilsonville records show that the following amount is due to the City:

Principal Amnt Due $ 0 ☐Current ☐Non-Current

Comments: No liens at this time.

Dated: 8/21/13

Finance Department: Cheri J. Kero

(This certification shall be null and void 120 days following the Finance Department date of signature)

"Serving the Community with Pride"

City of Wilsonville
EXHIBIT B7

CENTERLINE CONCEPTS
LAND SURVEYING, INC.

729 Molalla Avenue, Ste. 1 and 2, Oregon City, OR 97045
P. 503-650-0188 F. 503-650-0189

Exhibit "A"
No-Construction Easement
Legal Description

A Tract of land being a portion of Lot 5, per the Plat of "Renaissance at Canyon Creek North", Plat records of Clackamas County, located in the Northwest one-quarter of Section 13, Township 3 South, Range 1 West of the Willamette Meridian, City of Wilsonville, County of Clackamas, State of Oregon, being more particularly described as follows:

COMMENCING at the S.E. corner of Lot 5, per the Plat of "Renaissance at Canyon Creek North", Plat records of Clackamas County, said point being 25.00 feet West of the centerline of Canyon Creek Road South when measured at right angles; thence along the East line of said Lot 5, Westerly of, parallel with, and 25.00 feet distant from said centerline, N01°48'04"W, 60.04 feet to the ***TRUE POINT OF BEGINNING*** of the Tract to be described; thence continuing along the East line of said Lot 5, N01°48'04"W, 5.00 feet to a point being 65.04 feet North of the South line of said Lot 5 when measured at right angles; thence Northerly of, parallel with, and 65.04 feet distant from the South line of said Lot 5, N88°48'47"W, 135.01 feet to a point on the West line of said Lot 5; thence along the West line of said Lot 5, S01°48'04"W, 5.00 feet to a point being 60.04 feet North of the South line of said Lot 5 when measured at right angles; thence Northerly of, parallel with, and 60.04 feet distant of the South line of said Lot 5, S88°48'47"E, 135.01 feet to the ***POINT OF BEGINNING.***

Subject to Easements of Record.

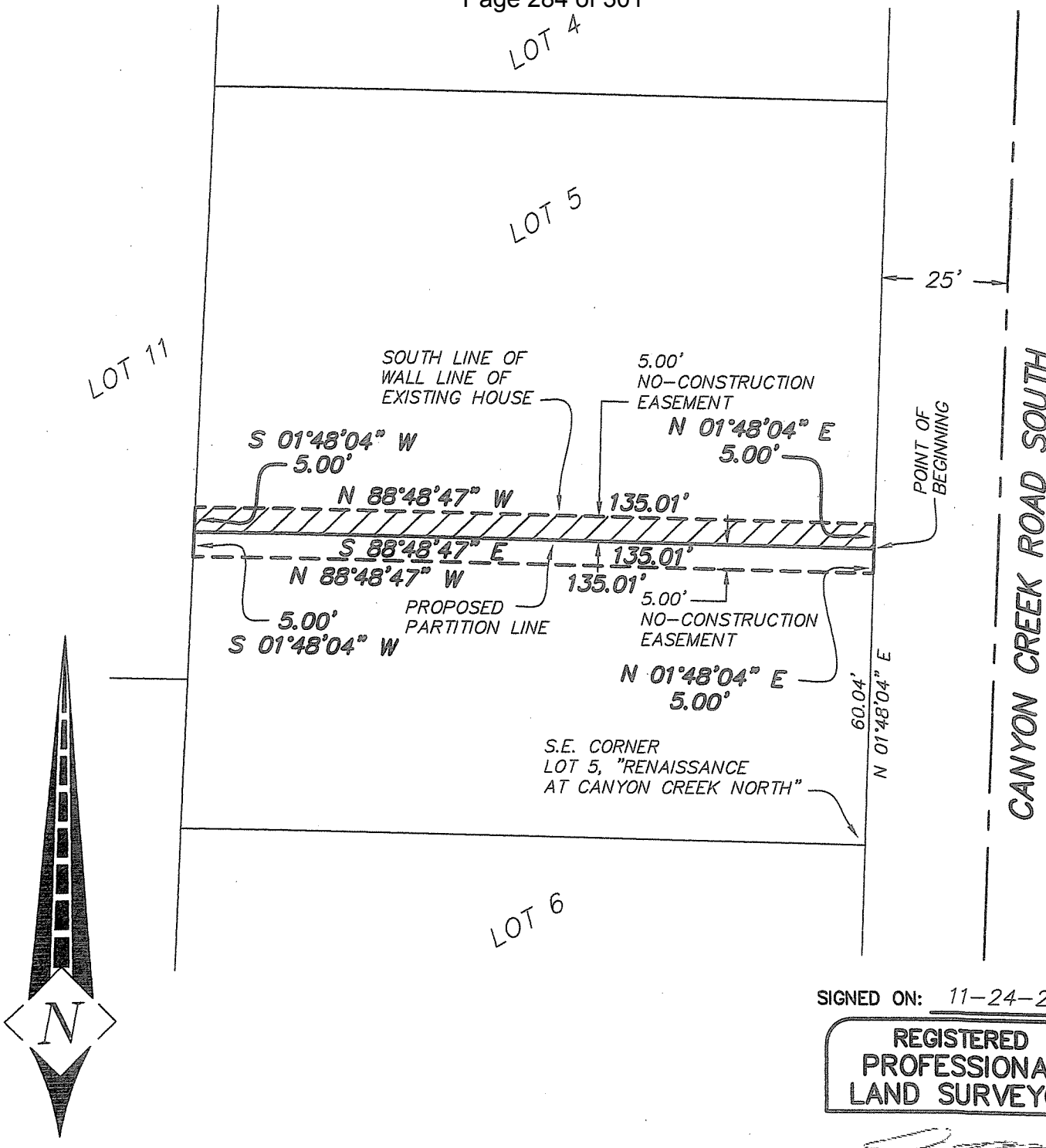
SIGNED ON: 9-28-2014

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
NOVEMBER 30, 2007
JAMES BURTON BROWN
60379

VALID THROUGH DECEMBER 31, 2015

City of Wilsonville
EXHIBIT B8



SIGNED ON: 11-24-2014

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
NOVEMBER 30, 2007
JAMES BURTON BROWN
60379

VALID THROUGH DECEMBER 31, 2015

CLIENT:	DOWNS
ORIG. DATE:	9/23/2014
DRAWN BY:	MPW
SHEET No.	1 of 1

EXHIBIT "B"

5.00' EASEMENT

CITY OF WILSONVILLE, CLACKAMAS COUNTY

Scale: 1"=30'

CENTERLINE CONCEPTS
LAND SURVEYING, INC.
729 MOLALLA AVE., SUITE 1 & 2
OREGON CITY, OREGON 97045
PHONE 503.650.0188 FAX 503.650.0189

Plotted: 11/24/2014 - 7:52am, M: \PROJECTS\DOWNS-CANYON CREEK ROAD\dwg\PARTITION.dwg, Layout: Model

RONALD DOWNS P.C.
Trial Attorney

P.O. Box 12613
Salem, Oregon 97309-0613

Telephone (503) 375-8898
Fax (503) 371-4781
E-Mail rdowns@sdao.com

NOTICE OF APEAL PURSUANT TO SECTION 4.022

January 17, 2015

2:00 PM
RECEIVED
JAN 2 0 2015
BY:_____

City of Wilsonville Planning Department
Attn: Jennifer Scola
29799 SW Town Center Loop E
Wilsonville, Oregon 97070

Application Number: AR14-0077

Project Name: Tentative Partition Plat

Property Owners: Gerald and Joanne Downs

Applicant's Rep: Ronald W. Downs

Property Description: Legal Tax Lot 2700 in Section 13BA; T3S R1W; Clackamas County, Oregon

Dear Ms. Scola:

Please accept this letter as Gerald and Joanne Down's notice of appeal of the above referenced administrative decision dated January 7, 2015. The filing of this notice is timely and consistent with Section 4.022.

Respectfully, applicants appeal Engineering Condition PFA 27, set forth at Page 16 of the Administrative Decision. PFA 27 requires applicant to submit $45,402.93 as a condition of approval of the partition plat.

Applicant does not dispute that a proportionate share of the street improvement costs may need to be assessed to the property owners or developers as Canyon Creek Road South is re-developed. Applicant requests however, that the following factors or options be considered in the scope of this condition:

Factors:

1. That the cost is truly "proportionate" and limited in this application to the street frontage of Parcel 2 of this tax lot. PFA 27 states that the street improvements are to be divided proportionately between all owners of record. Upon filing this plat with Clackamas County, Parcel 2 I will be the new owner

City of Wilsonville
EXHIBIT B9

of record. A single family home will thereafter be built on Parcel 2, which consists of 60.01' of street frontage. Assuming the estimated costs set forth in PFA 27, the proportional share assessed to me as owner of Parcel 2 will be 60.01' x $232.82 per foot x 130% = $18,162.98.

2. That the total administrative cost to build a single family residence on this one lot, not be unreasonably disproportionate to the overall construction costs. As the future owner of Parcel 2, I am well aware and anticipated the administrative costs associated with SDC's and Building Permits. The cost to reconstruct Canyon Creek Road South was not one of those costs, let alone, the amount of $45,402.93. I have already incurred substantial architectural costs to build a single family home estimated at $400,000. To require me to pay an additional $45,402.93, would place the overall administrative costs at 20% of project and likely force me to either discontinue the project altogether or start over at the architectural end.

Options:

1. Depending on the scope of work required under PFA 27, consider allowing me as owner of Parcel 2 to build the street improvements for the proportional 60.01' of street frontage. I have hired a builder who is local and been building homes in Wilsonville for a number of years. This builder is well respected and understands what is necessary to bring this portion of Canyon Creek South up to code.

2. Depending on the time-line set for reconstruction of Canyon Creek South, allow me as owner of Parcel 2 to pay the proportional share of the improvement cost of $18,162.98, over a ten year period.

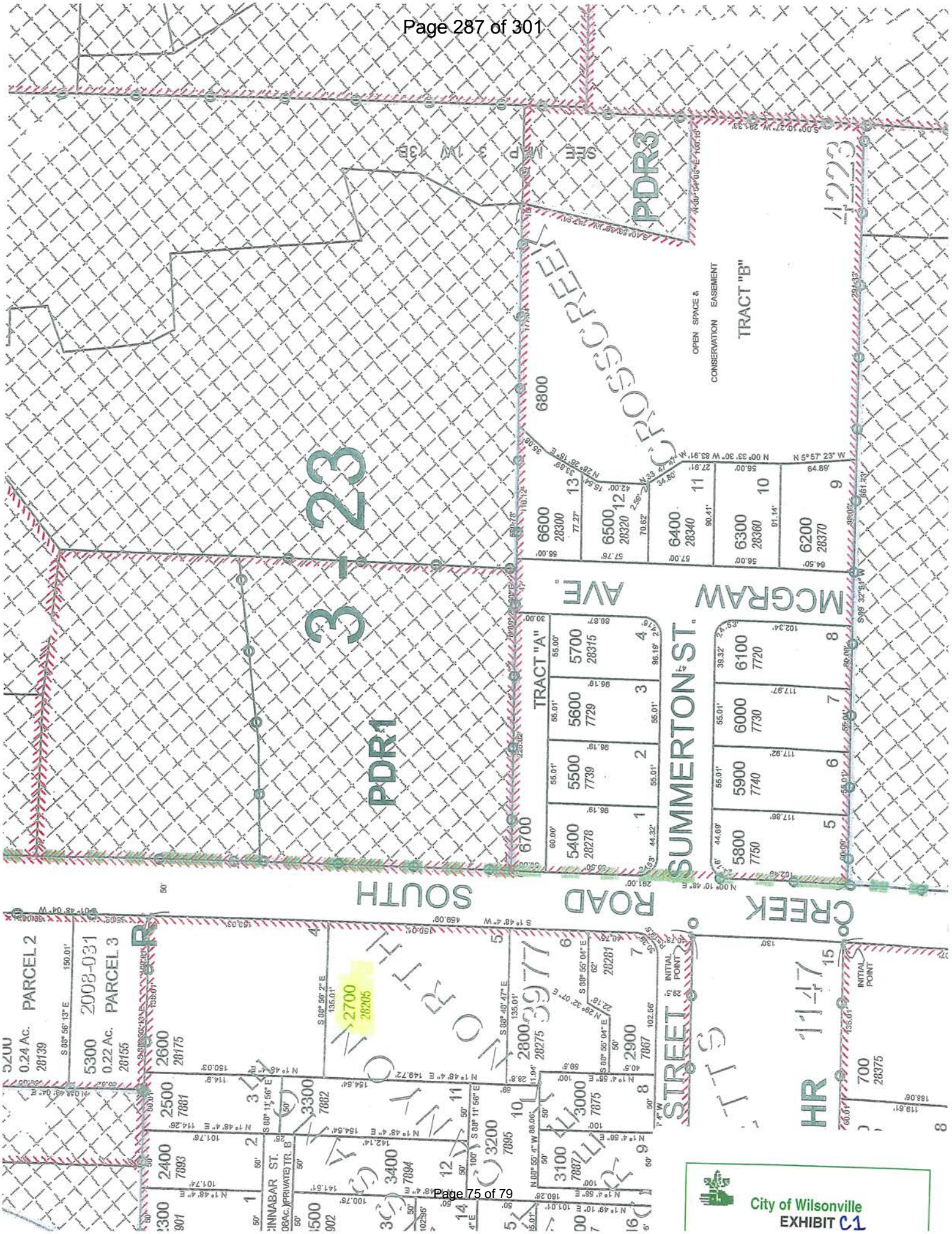
Thank you for your consideration. I look forward to working with staff to find a workable solution.

Respectfully submitted,

Ronald W. Downs

Ronald W. Downs

CC: Gerald and Joanne Downs
28205 SW Canyon Creek Road
Wilsonville, Oregon 97070


PDR3
PDR1
TRACT "B"
OPEN SPACE & CONSERVATION EASEMENT
TRACT "A"
SUMMERTON ST.
MCGRAW AVE.
SOUTH ROAD
CREEK
STREET
HR
PARCEL 2
PARCEL 3
2008-031
6800
6700
6600
6500
6400
6300
6200
5700
5600
5500
5400
6100
6000
5900
5800
2700
2800
2900
3000
3100
3200
3300
3400
2600
2500
2400
2300
INITIAL POINT
City of Wilsonville
EXHIBIT C1

E17. **Finding:** Based on the Tentative Subdivision Plat provided by the applicant (Exhibits 35a, 35b and 35c, and 44), the average lot size is approximately 7,288 SF, which exceeds the 7,000 SF average.

E18. **Finding:** All proposed lot sizes are greater than the 5,000 SF.

E19. **Finding:** Required minimum density at build-out is one (1) dwelling unit per 8,000 SF. The applicant's proposal meets this requirement (15.01 net acres * 43,560 SF) / 8000 SF = 81 dwelling units).

E20. **Finding:** Lot depths range from 94 to 156 feet.

E21. **Finding:** The applicant is requesting a waiver from the minimum street frontage requirements for Lots 1 – 3 (north), 9 – 12 (north), 17 – 20 (north), 28 – 35 (south), 14 – 16 (south) and 20 (south). The applicant shall seek approval from the City Engineer for the placement of the driveway aprons to those lots to ensure safe maneuverability. This waiver is favorably considered, beginning on page 29.

E22. **Finding:** The applicant is requesting a waiver from the minimum setback criteria for side yards for two-story dwellings on all lots.

E23. **Finding:** Of the estimated 163,716 SF of open space proposed in this subdivision, approximately 85,155 SF of that would be in rear yards (44% of total open space), as allowed by Code.

E24. **Finding:** The applicant proposes home less than 35 feet in height.

E25. **Finding:** Proposed lot sizes range from 5000 SF to 28,096 SF (Lot 21). As with all new single-family houses developed in the City, Planning staff will approve all building plans relative to setbacks and lot coverage.

4.237(.06) – Access

E26. **Finding:** Subsection 4.124.3 (PDR-3 Zone) requires a minimum lot width at building line of 40 feet. While the proposed tentative subdivision plat proposes the creation of two (2) flag lots, all lots have sufficient width to allow for 40 feet at building line.

E27. **Finding:** Except for three private drives and one private street, the applicant is proposing public streets for the project. Subsection 4.124.3 requires 40 feet of minimum street frontage for each lot. This frontage can be reduced to 24 feet when a lot fronts a cul-de-sac. No culs-de-sac are proposed. The applicant requests a waiver from this standard for proposed Lots 1 – 3 (north), 9 – 12 (north), 17 – 20 (north), 28 – 35 (south), 14 – 16 (south) and 20 (south). Subsection 4.237(.06)(B) grants the DRB the authority to waive the frontage requirements "where in its judgment the waiver of frontage requirements will not have the effect of nullifying the intent and purpose of this regulation". This waiver request is given consideration, beginning on page 41 of this report.

4.237(.07) – Through Lots

City of Wilsonville
EXHIBIT C2

E28. **Finding:** The applicant believes that Lots 15 – 20 are through lots; they are not, as they do not abut the right-of-way of the southerly extension of Canyon Creek Road. There are no through lots in the proposal.

4.237(.08) – Side Lot Lines

E29. **Finding:** It appears that most lot side lines are proposed perpendicular to the street upon which the lots face. Staff is recommending that the City Engineer be granted approval authority for the alignment of the driveways for all lots (Conditions PF31 and PF37), to ensure adequate sight distance and access maneuverability.

4.237(.09) – Large Lot Land Divisions

E30. **Finding:** Eight (8) of the proposed 72 lots of the proposed initial subdivision have been demonstrated to be further divisible. The proposed improvements shown on the applicant's revised drawings (Exhibits 35a, 35b and 35c) present the possibility of 10 additional lots. This potential future platting identifies the potential location of streets and utilities to serve these lots. Additional phases 2 – 9, in no particular order, will be required to occur in subsequent redevelopment of the affected lots. Conditions DRB D3 and DRB E5.d are proposed to achieve this, in order to achieve required minimum density at buildout.

4.237(.10) – Building Line

E31. **Finding:** The applicant is not requesting, nor is staff recommending, the establishment of building lines.

4.237(.11) – Build-To-Line

E32. **Finding:** The applicant has not requested, nor is staff recommending, any build-to-lines.

4.237(.12) – Land for Public Purposes

E33. **Finding:** The applicant proposes to dedicate appropriate street rights-of-way for the project, including road frontage for the southerly extension of Canyon Creek Road. The applicant will be required to dedicate all public utility easements deemed necessary by the City Engineer for the project, prior to approval of any Certificate of Occupancy requested subsequent to this action, if approved.

4.237(.13) – Corner Lots

E34. **Finding:** All radii in the proposed subdivision plat are in excess of 10 feet, which meets the Code's requirement.

4.262 – Improvements – Requirements

E35. **Finding:** The City Engineer's condition PF1 requires the installation of all public utilities to the City's Public Works standards.

4.264 – Improvements – Assurance

E36. **Finding:** The applicant has furnished an assurance to the City for the complete installation of all improvements (Exhibit 34). The applicant shall provide cost estimate and securities acceptable to the City Engineer for the completion of all public improvements.

03 DB 43 (2)
Urban Solutions for Renaissance Homes

Stage II Final Plan
Tentative Subdivision Plat
Type 'C' Tree Removal Plan
~~Five (5)~~ Four (4) Waivers

RECOMMENDED CONDITIONS OF APPROVAL FOR REQUEST:

REQUEST (D) – Stage II Final Plan

DRB D1. This action approves the Stage II Final Plan for an 82-lot residential Planned Development (Exhibits 35a, 35b and 35c), and Exhibits 32a through 32l, as necessarily modified by Exhibits 35a, 35b and 35c, as entered into the record on August 23, 2004, for the proposed project. This approval is contingent upon City Council approval of the Comprehensive Plan Amendment, Stage I Preliminary Plan, and Zone Map Amendment [03 DB 43 (1)].

DRB D2. The project shall constructed in ~~nine (9)~~ eight (8) phases, although not in any specified order. In the event the project proceeds in more than ~~nine (9)~~ eight (8) phases of construction, the applicant/owner shall supply the anticipated schedule of construction, and shall communicate any significant changes in the anticipated schedule in writing, for review and approval by the Planning Director. (Amended by the DRB on 8/23/2004)

DRB D3. The project shall achieve the required minimum density at build-out (i.e., 82 lots) through subsequent redevelopment of Lots 4, 5, ~~6, 21, 22,~~ 24, 25, 26 and 27, as illustrated on Exhibits 35a, 35b and 35c, and Exhibit 44. This redevelopment shall be considered to be phases 2 through ~~9~~ 8, but such redevelopment may be in any sequence or order. (Amended by the DRB on 8/23/2004)

REQUEST (E) – Tentative Subdivision Plat

DRB E1. This action approves the Tentative Subdivision Plat for ~~72~~ 73 lots (Exhibits 35a, 35b, 35c and ~~35e~~ 45), as entered into the record on August 23, 2004, for the proposed project. This approvals is contingent upon City Council approval of the Comprehensive Plan Amendment, Stage I Preliminary Plan, and Zone Map Amendment [03 DB 43 (1)]. (Amended by the DRB on 8/23/2004)

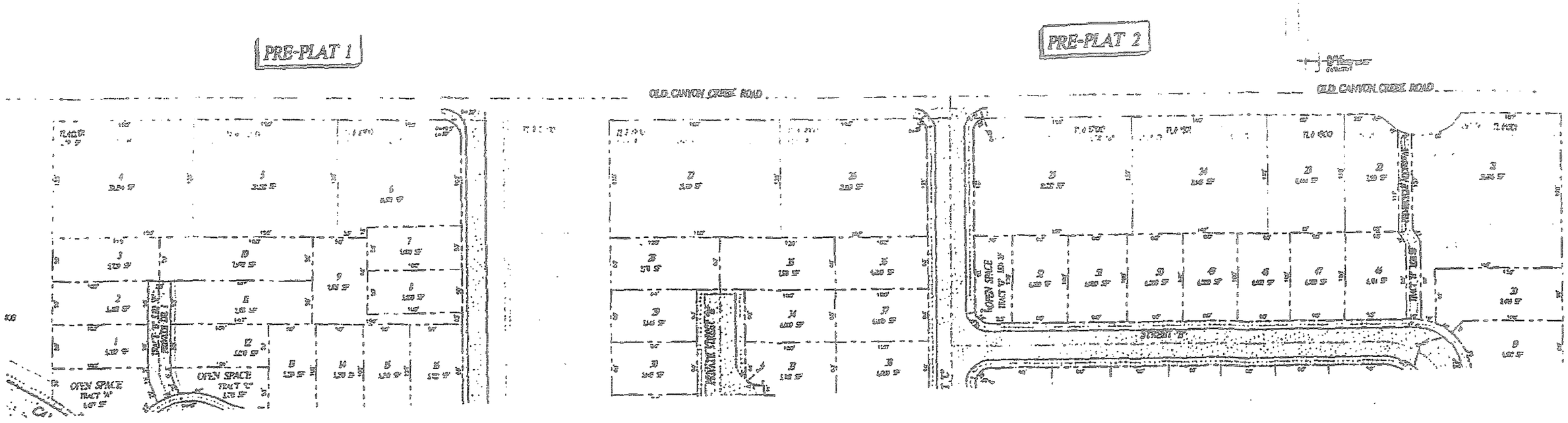
DRB E2. Prior to approval of the Final Subdivision Plat, the applicant/owner shall:

a. Assure that the lots shall not be sold or conveyed until such time as the final plat is recorded with Clackamas County.

b. Submit final construction plans, to be reviewed and approved by the Planning Director, City Engineer, the Tualatin Valley Fire and Rescue District, Natural

PRE-PLAT 1

PRE-PLAT 2



City of Wilsonville
EXHIBIT 44 33 DB 43

City of Wilsonville
Exhibit C8 AR14-0065
318/320

City of Wilsonville
EXHIBIT C3

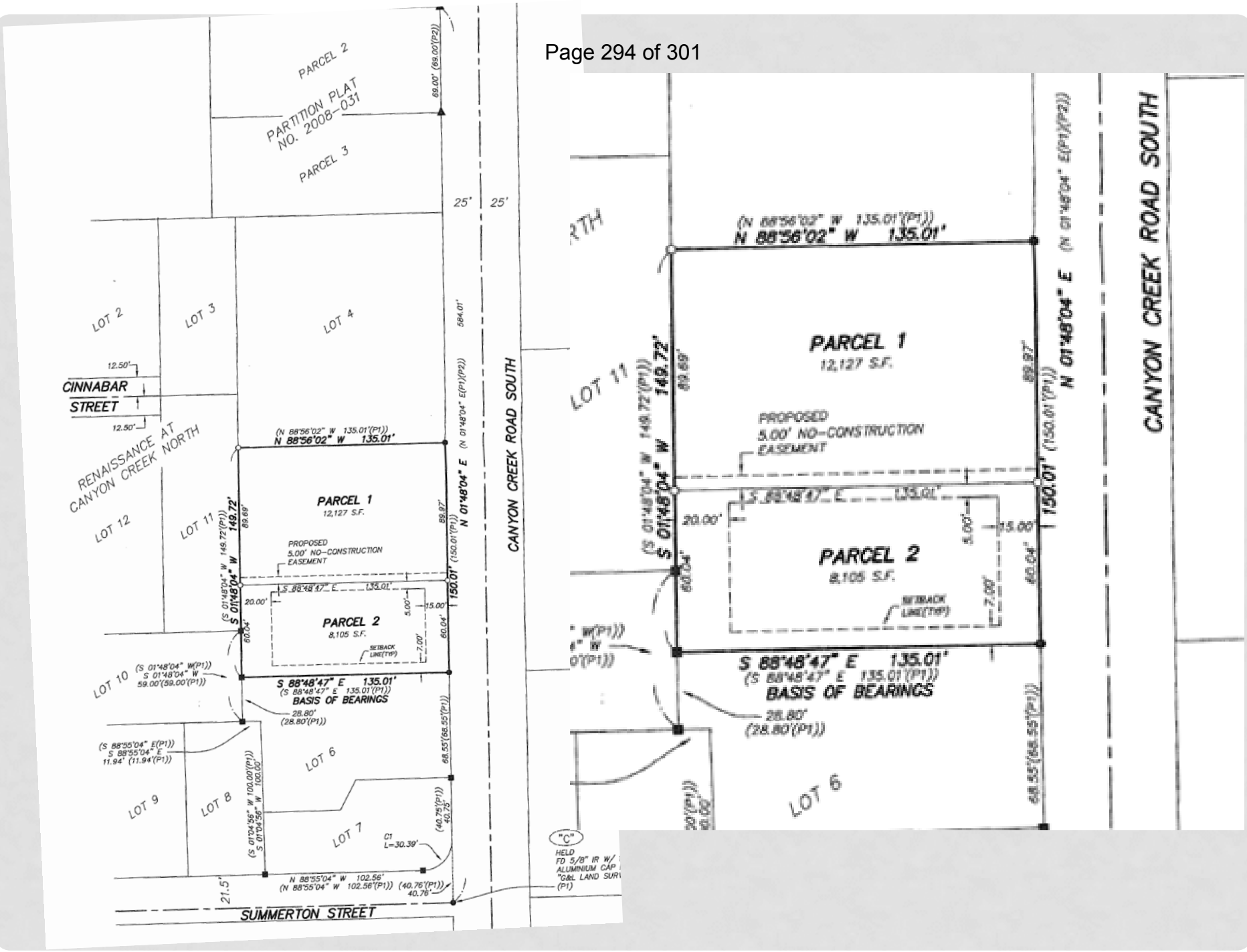
Case Files: AR14-0077 and DB15-0006

Downs Appeal

Land Partition

Public Hearing
Development Review Board – Panel B
February 23, 2015


JAMES KNORR
CANYON CREEK ROAD SOUTH
Canyon Creek Rd
Cinnabar St
GERALD & CLEO DOWNS
TL 2700
SUBJECT PROPERTY
Canyon Creek Rd S
Morningside Ave
CHARLES KNORR
CROSSCREEK SUB.
SUMMERTON ST.
Summerton St


PARCEL 2
PARTITION PLAT NO. 2008-031
PARCEL 3
69.00' (69.00'(P2))
25'
25'
LOT 2
LOT 3
LOT 4
12.50'
CINNABAR STREET
12.50'
RENAISSANCE AT CANYON CREEK NORTH
LOT 12
LOT 11
(N 88°56'02" W 135.01'(P1))
N 88°56'02" W 135.01'
PARCEL 1
12,127 S.F.
PROPOSED 5.00' NO-CONSTRUCTION EASEMENT
S 01°48'04" W 149.72'
(S 01°48'04" W 149.72'(P1))
89.69'
89.87'
N 01°48'04" E
(N 01°48'04" E(P1)(P2))
584.01'
150.01'
(150.01'(P1))
S 88°48'47" E 135.01'
(S 88°48'47" E 135.01'(P1))
20.00'
5.00'
15.00'
PARCEL 2
8,105 S.F.
60.04'
SETBACK LINE(TYP)
7.00'
S 88°48'47" E 135.01'
(S 88°48'47" E 135.01'(P1))
BASIS OF BEARINGS
28.80'
(28.80'(P1))
LOT 10
(S 01°48'04" W(P1))
S 01°48'04" W 59.00'(59.00'(P1))
(S 88°55'04" E(P1))
S 88°55'04" E 11.94' (11.94'(P1))
LOT 6
68.55'(68.55'(P1))
LOT 9
LOT 8
LOT 7
(S 01°04'56" W 100.00'(P1))
S 01°04'56" W 100.00'
(40.75'(P1))
40.75'
C1
L=30.39'
N 88°55'04" W 102.56'
(N 88°55'04" W 102.56'(P1))
(40.76'(P1))
40.76'
21.5'
SUMMERTON STREET
"C"
HELD FD 5/8" IR W/ ALUMINIUM CAP "G&L LAND SURV"
(P1)
CANYON CREEK ROAD SOUTH

EXISTING SIDEWALKS: ———

FUTURE SIDEWALKS: - - - -


28257 SW Canyon Creek Rd
Exit Street View
PARCEL 2 FUTURE HOMESITE
PARCEL 1


CHARLES KNORR
CANYON CREK ROAD SOUTH
PARCEL 2


PARCEL 1


JAMES KNORR
CANYON CREEK ROAD SOUTH


28257 SW Canyon Creek Rd
CROSSCREEK
SUBDIVISION